

Side Event at the 51st Session of the Human Rights Council

The Negative Impact of the Legacies of Colonialism on the Enjoyment of Human Rights of People with Diverse SOGIESC

27 September 2022



Foreword

The HRC resolution 48/7: “Negative impact of the legacies of colonialism on the enjoyment of human rights” stressed the importance of eradicating colonialism, expressed deep concern at the violations of human rights of indigenous peoples committed in colonial contexts, and stressed the need for States to take all measures necessary to protect rights. The resolution called for a panel discussion to be convened in plenary at the 51st regular session of the Human Rights Council to identify challenges in addressing the negative impact of the legacies of colonialism on human rights, and to discuss ways forward.

GIN-SSOGIE and the co-organisers seized this opportunity to organize a side event addressing “The negative impact of the legacies of colonialism on the enjoyment of human rights of people with diverse SOGIESC” with reference to the idea that homosexuality is an imposition and importation of the West. The side event aimed to restore the truth and justice of the claim that homophobia in its current form was initially imposed and enforced by Western colonial powers on all their colonies through discriminatory penal codes and religious dogma. The panel also sought to establish the accountability of colonizing nations in propagating homophobia and to document the legacy of discrimination and violence around the world.

As the Independent Expert on SOGI, Victor Madrigal-Borloz, noted in his intervention, these conversations are conversations about the geopolitical power and motives of colonising nations. As he says, “Many of us grew up with the idea that colonizing processes were serving the purpose of higher moral ideas such as evangelization, or higher social ideas such as ‘civilising processes’ to cultures and contexts that were seen, perceived and qualified as savage or backward, or actually transgressive to a higher social goal.”

Much of this apparent emphasis on ‘civilising processes’ was framed in terms of evangelisation, and colonisation and the imposition of colonial religious traditions intersected to impose norms and values which have seriously impacted the human dignity of gender and sexual minority people. By way of contrast, the end of apartheid in South Africa, where GIN is based, was arguably a process of decolonisation, and gave the world the first constitution outlawing discrimination on the basis of sexual orientation.

28 years after the end of apartheid, it is clear, however, that decolonisation is not a simple process, and this is also borne out by the interventions of our panelists in this side event. In addition, there has been a growing tendency to instrumentalise the rights of people with diverse SOGIESC as markers of modernity.

This is of profound concern to GIN, because it increases the vulnerability of gender and sexual minority people to political

Panelists

Arvind Narrain (moderator)

Lawyer, jurist and writer, member of the legal team that challenged Section 377 of the Indian Penal Code

Dr Samar Habib

Writer, researcher and scholar on sexual and gender diversity in Islam and in the Middle East and North Africa

Dr Elizabeth Kerekere

New Zealand MP and LGBTQ+ activist and scholar

Daryl Yang

Co-Founder of Inter-Uni LGBT Network and CAPE Singapore

Dr Nontando Hadebe

Southern African Catholic feminist theologian, International Co-ordinator of Side-by-Side, Circle of Concerned African Women Theologians

Victor Madrigal Barloz

UN Independent Expert on violence and discrimination based on sexual orientation and gender identity

With an additional video presentation by

Anna Brown,

Australian lawyer, activist and CEO of Equality Australia

scapegoating, but also because it tends towards a narrative which is the modern day equivalent of the 'civilising processes' of colonialism, as it continues to characterise certain nations as 'backward'. It is clear that decolonisation remains a critical need in 2022, not least because of the ways in which the impacts of colonialism continue to echo in the lives of people of diverse SOGIESC across the previously colonised world.

As noted by many of our panelists in this side event, colonial and postcolonial discourses, including British penal codes continue to stand in the way of decriminalisation of the rights of people with diverse SOGIESC and GIN will continue to engage in this space, both in pursuit of decriminalisation, but also in order to complexify the discourse around the rights of people with diverse SOGIESC. In a multipolar world, the views and values of Global South actors must also be honoured, valued and protected, but this does not mean condoning violations based on SOGIESC, rather it means that good faith dialogue is a critical component of building a world in which human rights for all are respected.

Introduction

The side event began with thanks expressed by GIN SSOIGIE and co-organisers of this side event, ILGA Asia, ASEAN SOGIE Caucus, COC Nederland, FRI, Fundacion Arcoiris, LSVD and Pan Africa ILGA, to the Secretariat of the Human Rights Council for the space and opportunity, and for the presence of the panelists, including the Independent Expert on SOGI, Victor Madrigal-Borloz. Thanks were also expressed to Henry Koh from ILGA Asia, for coming all the way from Malaysia.

Appreciation was expressed for the reinstatement of in-person side events at the Palais des Nations, and the moderator noted that due to the new rules and practices circulated by the secretariat, the side event was shortened to 60 minutes instead of 90 minutes, as initially planned.

Gratitude was extended to the Permanent Missions of Costa Rica and Mexico for their understanding and flexibility regarding the new instructions regarding the sponsorship by states of side events and for their support as we continued as an NGO Side Event without official state sponsorship.

Interventions



Arvind Narrain, as moderator, introduced the panel. The event was based on Human Rights Council resolution 48/7 on the "Negative impact of the legacies of colonialism on the enjoyment of human rights." The panel sought to demonstrate the fact that among the negative effects of legacy of colonialism on the enjoyment of human rights is the negative legacy with respect to the rights of people of diverse sexual orientations, gender identities and expressions, and

sex characteristics (SOGIESC). Arvind Narrain stressed that what had been understated, underemphasized and insufficiently understood is how the colonial encounter has had deeply negative implications and

"The expression of regret directly contributed to decriminalization of same-sex relations in India."
Arvind Narrain

impact as far as the SOGIESC populations are concerned.

The moderator highlighted the need to increase international understanding and discussion on these questions. He drew a comparison to the Latin American context, where the discourse on apology, truth and reparations has been much further developed in the context of mass crimes. There had not been a similar robust discussion or acknowledgement of the truth of what had happened to SOGIESC populations around the world due to the colonial encounter, nor on the question of reparations for the harms caused.

Arvind Narrain provided an example from the Indian context to illustrate the significance of this issue. In 2018, UK Prime Minister (at the time) Theresa May delivered a speech at the Commonwealth Human Rights Conference addressing the issue of how discriminatory colonial laws made many years ago continued to affect the lives of many people around the world, such as criminalizing same sex relations and failing to protect women and girls. She stated:

“I’m all too aware that these were often put in place by my own country, they were wrong then and they’re wrong now. As the UK’s Prime Minister, I deeply regret both the fact that such laws were introduced, and the legacy of discrimination, violence and even death that persists today.”¹

The regret expressed by the then Prime Minister was picked up by India’s Supreme Court in its decriminalization judgement. Arvind Narrain highlighted this as an example of the value of an apology, or even an expression of regret. It had consequences with respect to knowing the truth of what happened, on breaking the silence on how LGBT people had been affected by the colonial encounter, to ensure the process of reparations as far as SOGIESC populations are concerned, and on the guarantee of non-recurrence. The expression of regret directly contributed to decriminalization of same sex relations in India.



Dr Samar Habib thanked GIN for the honour to share an opinion on this issue. She explained that her work was focused mostly on the Arab world which also happens to be majority Muslim. While her remarks mostly related to majority Muslim societies, she herself came from a secular Christian family and she also included non-Muslims under the umbrella of the Arab world. Much had changed since she published her first book on gender and sexual variance in

the Middle East fifteen years ago. Since then, there had been an explosion of Muslim LGBTI organizing around the world facilitated by the internet and the ability of people to connect and organize discreetly. LGBTIQ Muslims had published books about themselves, released feature films, and opened inclusive mosques where, for example, trans women prayed alongside cisgender women and men.

However, most of the visible activity typically came from Muslims living in the Global North, with some exceptions in South Africa. Dr Samar Habib made the point that stability and democracy was needed for a nation to be in a position where its minorities could feel safe enough to organize and advocate for their rights.

She described how colonialism set the stage, later occupied by imperialism, to create a geopolitical situation where peoples were unable to be self-determining. The endless critiques of the dictatorships in countries like Iran, and militant Islamist groups like Al-Qaida, conveniently forgot the role that Western countries played in getting these contexts to where they were today.

Dr Samar Habib gave the example of Iran, where she described how British controlled Iranian oil was the centrepiece that led to political conflict and the unseating of Iran’s last democratically elected Prime Minister, Mohammad Mosaddegh in 1953. In the face of a communist threat in

¹ <https://edition.cnn.com/2018/09/11/asia/british-empire-lgbt-rights-section-377-intl/index.html>

“At the height of Arab civilization, which is often referred to as the Islamic Golden Age, gender and sexual variance was a widely observed and recorded phenomenon... There were famous same-sex attracted individuals like Caliph al-Amin, who was the son of Harun al-Rashid, or the poet Abu Nawas who was the court poet for Harun Rashid.”
Dr Samar Habib

Afghanistan, it was primarily the US and the UK that trained and funded Al-Qaida’s mujahadeen. Dr Habib cited British Army General Mark Sykes’ words, in 1915 when he was looking at a map of what is called “the Middle East”, that he should like to draw a line from the ‘E’ in Acre (in northern Palestine) to the ‘K’ in Kirkuk (in Iraq). He was in the process of creating a geopolitical reality that would eventually lead to the rise of the Saddam Hussein regime/dictatorship. Dr Habib described how this set the stage for the subsequent bloodshed and death of nearly a million innocent Iraqi civilians after the toppling of that regime through an unjustifiable invasion by the United States.

This, Dr Habib argued, illustrated how the Arabs of the last 200 years could not win. Firstly, lands and resources were appropriated, and British or French occupying forces

ostensibly maintained the peace but retained all political power. They then created artificial nations with artificial borders on their way out that suddenly forced people who had no kinship to one another to operate as a single nation, such as in Iraq and Lebanon. Those conditions prepared a ground ripe for dictatorships to form, to suppress populations. In the event where the people did succeed in creating a democracy, it would be destroyed and dictators installed if the democracy did not align with the interests of imperialist nations.

Dr Habib then introduced some history around sexual and gender diversity in the region. At the height of Arab civilization, which was often referred to as the Islamic Golden Age, gender and sexual variance was a widely observed and recorded phenomenon. There were medical and literary discussions about the lives of people who loved or sexually interacted with members of the same sex. They were well known same-sex attracted individuals such as Caliph al-Amin, who was the son of Harun al-Rashid, or Abu Nawas who was the court poet for Harun al-Rashid.

There was also a spectrum of opinions; some were for, while others were against. Dr Samar Habib provided examples from a ninth century document, where a scholar described same-sex sexual interactions and gender atypical behaviours in pigeons. The scholar noted that these were the same behavioural characteristics that he had seen among women and men of his time. This was an example of homosexuality and gender

variance being attributed to nature and the natural world. There was no moralistic element to these considerations.

Dr Samar Habib continued to illustrate her point. An 11th century Muslim jurist named Ibn Hazm wrote that when it came to same-sex sexual behaviour, some peoples of his time permitted it. While some peoples did not have rules or punishments against it, others did. Ibn Hazm himself argued against punishments for same-sex relations. Dr Habib questioned what happened to that Arab world of 1000 years ago? She described the Mongolian conquest of the 13th century, how the Abbasid Caliphate collapsed, and shortly after that the Ottoman Empire ruled over the Arab world for 600 years. Then the British and the French came for the Middle East and Africa, and after that imperialism came to continue the legacy of colonialism.

Dr Samar Habib concluded by inviting the audience to consider the elements needed to ascend to a world where humanity understands how critical self-determination is to world peace, and to achieving universal human rights for everyone— for LGBTIQ individuals, for women, for children, for men. Perhaps even extending those rights to animals, forests, and rivers so all can live sustainably on this planet. She suggested that it wouldn’t hurt to begin with an apology for what she referred to as “the dimness of spirit” with which military generals in the 19th and 20th century pillaged and plundered the natural world, setting the stage for geopolitical mayhem, one symptom of which

was the persecution of gender and sexual minorities at the hands of oppressive regimes.



Dr Nontando Hadebe followed on the intervention of Dr Samar Habib. She introduced the broad topic of colonialism, considering Africa and the centuries of the slave trade, and the Berlin conference of 1885 where Africa was divided and given away. She stressed that she wanted to focus very specifically on the reality of the experiences of LGTBIQ persons. Dr Hadebe began by referring to the work of Amnesty International, which noted that the last decade saw an unprecedented rise in the levels of discrimination and violence directed towards LGTBIQ people in Sub-Saharan Africa. They faced persecution, vilification, forcible eviction from their homes because of who they were, being kicked out of churches and other ill-treatments. This included detention, rape, beating, stabbings, being branded paedophiles, being accused of recruiting children into homosexuality, being accused of sorcery, disowned by their own families, being denigrated by politicians and political parties, and blamed by religious leaders

for society's economic and social ills. Dr Hadebe stressed that this level of discrimination and violence was ongoing.

Dr Hadebe then moved on to the accountability of the colonial legacy. She introduced the three pillars of power of the colonial legacy that encapsulated contemporary experiences in a world and social context that was exclusionary and violent. The first pillar was the legal framework, the penal codes that criminalized homosexuality and any other form of gender expression. Second was the religious teachings that the rights of LGTBIQ people were against God's will and the teachings of church.

Dr Hadebe recalled Catechism 2357 of the Catholic Church, still in circulation in 2022, which stated that:

“Homosexuality refers to relationships between men or between women, we experience an exclusive or predominant sexual attraction towards people of the same sex. It has taken a great variety of forms through the centuries [...] basing itself on Sacred Scripture, which

presents homosexual acts as acts of grave depravity, tradition has always declared that ‘homosexual acts are intrinsically disordered.’ They are contrary to the natural law. They close the sexual act to the gift of life. They do not proceed from a genuine affective and sexual complementarity. Under no circumstances can they be approved.”

Dr Hadebe then introduced the third pillar: medicine and the pathologization of LGTBIQ identities. In the DSM (the American Psychological Association's Diagnostic and Statistical Manual of Mental Disorders, used worldwide) homosexuality was officially classified as a mental illness until the 1970s. She invited the audience to imagine this world that colonialism created through the imposition of legal, religious, and medical doctrines, and to recognize what was missing in this narrative— indigenous knowledge and the voices of LGBTI people. Applying the colonial lens on contemporary analyses was necessary because postcolonialism was a reminder that independence and the takeover of colonial

“We call upon the acknowledgement of responsibility that the list of violations and discrimination has to be laid at the table of colonial powers, and their need to plead guilty as charged to be able to do restorative work with the voices of LGTBIQ people to reverse this culture of violence and to make sure to make sure that human rights are upheld.”

Dr Nontando Hadebe

administration did not excise colonialism. Its effects remained entrenched.

Dr Hadebe illustrated how this colonial matrix of power drove the types of violence she had previously raised and created hierarchies of inequality. For example, it was the colonizer's hierarchy that privileged Western knowledge over indigenous knowledge, gender hierarchies that privilege males over females, and sexual hierarchies that privilege heteronormativity over all kinds of different sexualities. This legacy was entrenched in society and continued to operate in former colonies.

The postcolonial era urged a reclamation of indigenous knowledge, histories and wisdom. Dr Hadebe revealed that research exploring indigenous knowledge provided evidence that people knew about sexual diversity, and that there were different gender roles in traditional African societies. There were no houses that locked people out or criminalized them. This could be explained by the ethic of Ubuntu, that a person is a person in relation to others and the respect of mutual dignity. Dr Hadebe mentioned that she knew people of different sexual diversity growing up, but because of her religious background and socialization, she became a fundamentalist. She believed that to be a Christian meant to be homophobic. Dr Hadebe expressed relief in being liberated from that theology and being able to see how dangerous the teachings of the church could be.

Dr Hadebe stressed the necessity in decolonial theories that knowledge production be

informed by those experiencing prejudices. She reminded the audience of the colonial matrix of power, where LGBTIQ people were excluded, and indigenous knowledge was excluded. This left the dominance of hegemonic Western knowledge, forms of religion and medicine being entrenched in the very society, actions and beliefs that normalize discrimination and violence against LGBTIQ people today. However, it was important to acknowledge the source of these practices.

There was a division among African scholars on this subject. As Dr Hadebe explained, on one hand there were those who argue that SOGI related rights and sexual diversity are in themselves an import from colonialism, and so they defend the penal codes. Criminalization continues in many former colonies partly because of the argument that sexual and gender diversity were never a part of the African experience. However, African researchers unearthing indigenous knowledge found that these diversities were part of the norm, and that there was integration, understanding and non-violence.

In concluding, Dr Hadebe called for the acknowledgement of responsibility for violations and discrimination that must be laid at the table of colonial powers who must "plead guilty as charged." Then the restorative work with the voices of LGBTIQ people could begin to reverse the culture of violence and ensure that human rights were upheld.



Dr Elizabeth Kerekere then introduced her background and heritage. She is of the Māori indigenous people of Aotearoa New Zealand on her paternal side, and hails from Counties Clare and Tipperary in Ireland on her maternal side. She started by stating that the British had a lot to answer for. The Māori were some of the last people that the British colonized. They had suffered the same as indigenous peoples across the world in terms of their sexuality and their lives being completely overturned—their frameworks, their language and their land being stolen from them. In Dr Kerekere's words, "they pathologized us, they criminalized us, and they tried to pretend we never existed. However, they failed."

Dr Kerekere expressed how despite the systemic and institutional discrimination that many people with diverse genders, sexualities and sex characteristics face, they continue to fight and resist. They used the mechanisms of human rights as well as the indigenous frameworks and languages, which were necessary to repair and heal from being told they never existed in their own country. Dr Kerekere honoured all of the languages, histories

and spiritualities that each person brought to the side event.

Dr Kerekere founded the organization *Tiwhanawhana* 21 years ago for *takatāpui*.² They were indigenous Māori people with diverse genders, sexualities, sex characteristics who organized in a way that honoured their culture, language and spirituality, but also how they identified and who they loved. This was key to being able to behave in a way that put aside the violence that was done to them, that they could have fun, and that there was joy as they fought. With the pressure that came with the situation *takatāpui* lived in, it was very easy, and sometimes completely unavoidable, to stay in trauma. Healing was necessary for individuals and communities. Further, Māori culture needed to be interwoven into political processes. Dr Kerekere considered this part of her role now that she was an MP herself.

'*Takatāpui*' was a word that had been reclaimed from the past. Dr Kerekere's research was to demonstrate that *takatāpui* had always existed, and that they were loved and celebrated. They were a normal part of culture and life. She expressed how the strength of their ancestors gave them the power to fight discrimination in their own land, and to say they would not allow Western, nuclear family, individualized, neoliberal, capitalist frameworks to define who they were. As Dr Kerekere put it: "We will fight back with our grace. We will fight back with beauty. We will fight back in the power of our ancestors and our

knowledge on our own land that you have tried to take from us, but you will keep on failing."

Dr Kerekere then shared some of the recent progress in Aotearoa New Zealand. A petition to ban

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Dr Elizabeth Kerekere

conversion practices launched in 2021 gained 160,000 signatures in a week. There was also an update in the process for trans, non-binary and intersex people to amend their birth certificates, and Dr Kerekere was working with the government to ensure that this process would be equally available to migrants, refugees and asylum seekers. She was most proud of the reforms in the health system, and that the word '*takatāpui*' had been included in law, meaning the government was now accountable to *takatāpui* and their legacy.

Dr Kerekere ended her

intervention by sharing joy, with peace, with excitement with the participants, with the closing words that "every time we get together, our ancestors breathe more easily and they can look down on us with pride. I want our descendants to look back on us and think because of what we did their lives are better." She signed off with greetings in *Te Reo Māori*.³



Daryl Yang followed to discuss the legacy of colonialism in Singapore and the recent announcement of the Prime Minister to repeal Section 377A of the Penal Code. Singapore was previously a British colony with similar laws imposed to countries such as India and Malaysia. In addition to Section 377 (repealed by the Indian Supreme Court in 2018, and by Singapore in 2007) which criminalized "carnal knowledge against the order of nature," Singapore, like other previous colonies, also had a Section 377A which specifically criminalized "acts of gross indecency between men."

² *Takatāpui* is a *Te Reo Māori* (Māori language) term used to refer to individuals who are sexually or gender diverse.

³ *Te Reo Māori* is the indigenous language of Aotearoa, New Zealand. It is one of three official languages of the nation. The language itself is central to Māori culture, identity and forms part of the heritage of the country.

Daryl Yang questioned why there were so many provisions criminalizing homosexuality, and suggested it related to racism as one of the lasting legacies of colonialism. He explained that Section 377A wasn't focused only on homosexuality. Some historians had found that the reason for section 377A being enacted was to address male prostitution between European officials and Asian men. The concern was with sexual liaisons between European and Asian men. This historical backdrop of racism was important in characterizing the legacy of colonialism in terms of the inextricable relationship between racism and homophobia.

Daryl Yang identified three additional legacies of colonialism, with one being the legal legacy as one of the pillars of power. While there was often much focus on this aspect of colonialism, he introduced two other legacies which were particularly important in the context of Singapore. The first being the ideological legacy of heteronormativity, and second being the institutional legacy of colonialism. The feminist poet, writer and activist Audre Lorde wrote an essay titled "The Master's Tools Will Never Dismantle the Master's House." This was reflected in the reasons why the Singapore government announced that it was going to repeal Section 377A.

Daryl Yang then reflected on the ideological legacy of colonialism. He noted that some scholars of Singapore suggested that the idea of a heterosexual family was so powerful in Singapore because postcolonial elites had a desire to be "even

more consistently modern than the former colonial masters." As well as laying responsibility at the feet of colonial powers, postcolonial governments that continued to enact and perpetuate homophobic and transphobic laws had a share of the blame as well. Singapore provided a helpful example of how the legacy of colonialism continued through the powers of

"In addition to laying responsibility at the feet of the colonial powers, postcolonial governments today that continue to enact and perpetuate homophobic and transphobic laws against people in our own countries also have a blame to share."

Daryl Yang

postcolonial governance. Repealing Section 377A was not a complete win in Singapore because the government, in addition to announcing the repeal, said they were going to constitutionalize heterosexual marriage. Through this they sought specifically to prohibit the courts from being able to strike down the definition of marriage in existing laws that defined marriage as being between a man and a woman. Daryl Yang noted that this illustrated how powerful the idea of the nuclear heterosexual family was as a foundational value of governance in Singapore and of the power of the ruling party. Indeed, the idea of the family as the basic unit of society was enshrined as one of the five shared values in a white paper that the Singapore government had published in the 1990s. He stressed that it was particularly important to trace the legacy of this idea of the family across time from the colonial to the

post-colonial era. Daryl Yang also raised the institutional legacy of colonialism. The success of the decriminalization decision in the Indian Supreme Court motivated three gay men and their lawyers to bring a set of constitutional challenges before the courts in Singapore. He raised the fact that the constitution of Singapore itself was not written

by the people of Singapore. It was an inheritance from when Singapore was still a crown colony. Specifically, the section on vital fundamental liberties was almost copied word for word from the Indian constitution and the Malaysian constitution. This was not really a win for queer people in Singapore. The fact was that they did not succeed in the Court of Appeal. The Court only hinted at the fact that Section 377A might violate the right to equality. It was due to the risk that the Court might break this law down that the government took the cue and decided to repeal the law before the Court could do so.

Daryl Yang stressed that it was important looking ahead to be careful of enshrining LGBT rights as mark of modernity, and in so doing creating new hierarchy or a new basis of international politics. It was important to try to find new ways of being able to address these issues by building

solidarity across our different communities around the world.

Arvind Narrain picked up on Daryl Yang's point that all criminalizing countries were equally responsible, and the question of apology was as applicable to Singapore and India as it was to the UK and France. He then introduced Victor Madrigal-Borloz, the UN Independent Expert on SOGI, to make his intervention.



Victor Madrigal-Barloz noted that he is preparing to embark on an enquiry about the impact of colonialism in the construction of social perceptions, and mores around sexual orientation and gender identity. He wanted to discuss a couple of things that he hoped would be as thought provoking to others as they were to him.

The Independent Expert perceived from the interventions that this was a conversation about mechanisms of power and the way in which power operates in service of a goal— be it economic, creation, subjugation. Be it the instrumentalization of SOGI at the service of a

different goal. He suggested that this placed the discussion in different context because many people were raised with the idea that colonizing processes were serving a higher social goal. This might be bringing higher moral ideas such as evangelization, or higher social ideas such as “civilizing processes”, to cultures and contexts that were seen, perceived and qualified as savage, backward or transgressive.

The previous presentations underlined the need to question the motives of colonization in different fields, as well as the mechanisms and legacies, whether these be institutional or in the creation of ideological frameworks. The Independent Expert hoped to underline that on the one hand there was the

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Victor Madrigal
Barloz
*UN Independent
Expert on sexual
orientation and
gender identity*

motive, and on the other was the way in which SOGI had been instrumentalized. He recalled his studies in Mozambique, about the way in which tribal structures were contested by the imposition of the nuclear family. This enabled the Portuguese domination of different regions of the country by weakening the structures of resistance.

Finally, the Independent Expert moved on to the question of reparation that that the moderator had raised so clearly in his introduction. All of this would form the basis of an enquiry that the Independent Expert hoped to carry out over the course of the next year, and which would be his last report as mandate holder to General Assembly of the UN in October 2023. He announced that there would be a call for inputs to that report in January and February of 2023, and he hoped that all of these rich ideas and discussions would be the basis for the considerations for inputs to that report.

Arvind Narrain agreed there was a need to advance this discussion of truth, justice and reparations and guarantee of non-recurrence.

He thanked the Independent Expert for a fantastic way to end the discussion, to make the point that there was a way forward. GIN SSOIGIE's purpose in organizing this particular side event was to affirm the need to take the discussion forward, on the entire question of truth, on the entire question of justice, the entire question of reparations, and the guarantee of non-

recurrence as well. This was a strong way to conclude the event.

The moderator thanked the panel for the wonderful, very powerful and very moving discussion, and for communicating the depth, the extent, and the historical sense of where the LGBT community was placed today, and he hoped to take this forward.

Toni Kruger-Ayebazibwe, Executive Director of GIN-SSOGIE also warmly thanked attendees and the esteemed panellists of experts. She agreed that there had been a remarkable discussion and interventions on restoring the truth and justice to the claim that homophobia in its current form was initially imposed and enforced by Western colonial powers. The discussion had aimed to establish the accountability of colonizing nations in propagating homophobia and to document the legacy of discrimination and violence around the world.

Unfortunately, due to time restraints the video intervention by the sixth panellist, Anna Brown, was not shown. However, we include it here in the event report to ensure documentation of her contributions.



Anna Brown started by acknowledging the traditional owners of the land on which she was speaking, the Gadigal People of the Eora Nation, and she paid respects to elders past and present. She also acknowledged the ongoing dispossession and injustices faced by Australia's First Nations peoples, and the ongoing impacts of colonization everywhere around the globe for First Nations and indigenous peoples.

She was asked to speak about a case study from Australia of how States can really reckon with a dark chapter in their history and deal with the legacy of colonization in their laws, policies and practices. In Australia there were criminal laws (as was the case with many British colonies) imported from Britain that criminalized same-sex relations or same-sex sexual acts. State by state, Australia saw the repeal of these laws over decades. The last territory to decriminalize these acts was Tasmania in 1997, following the now famous case of *Toonen v. Australia* which was considered by the UN Human Rights Committee.

Years later, Australia began to reckon with the untold story

of the impact of those unjust laws of the past. Many men convicted of these offenses still carried with them the shame and stigma of a criminal conviction for conduct that was no longer a crime under Australian law. As well as the shame and stigma, Anna Brown presented the practical barriers to travel, work and even volunteering created by these criminal records for conduct that was no longer unlawful in Australia. This was due to the discrimination that could be experienced for those with a criminal conviction. For many even the fear of disclosure of their record was a source of emotional distress, a deep, dark secret that was held onto tightly by many of the clients that she worked with at the time. Some of them could not even tell their loved ones and shared their stories anonymously. What was clear was the emotional and psychological toll of these criminal convictions which cast a shadow on the lives of these men. One of her clients retired early in his 50s rather than undergo a criminal record check and risk his conviction being made known to others. The chances were that his employer would have understood, but this provided a demonstration of how deep the shame and stigma really ran in those individuals.

However, Anna Brown shared the positive experience of jurisdictions in Australia responding to this injustice following a campaign to share the stories of those brave individuals that still were impacted by these criminal convictions. State by state they saw schemes introduced and legislation passed that allowed anyone impacted by a criminal

“The official apology has not only helped to heal the harm and the anguish caused by these criminal offenses and these criminal laws, but also sent a clear message to LGBTIQ+ people that they are valued, they are affirmed, they are part of society”

Anna Brown

conviction for “buggery” (as it was then known) or “indecent offences” which were other homosexual offences. This scheme allowed individuals to apply to have those offenses expunged or extinguished so the slate was wiped clean and they no longer had to carry the burden of these criminal convictions and the record that continued to plague their lives long after decriminalization.

There had to be an assessment process because, as Anna Brown explained by way of example, if there was no consent the offenses should not be expunged, but clearly sex between consenting adults should never have been

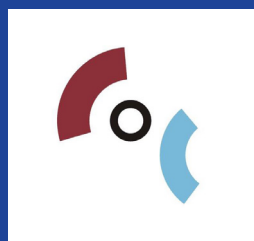
criminalized. What became clear was that the individuals that were able to have the slate wiped clean greatly benefited both emotionally as well as in a practical sense.

In Victoria, Anna Brown’s home state, they also advocated for this scheme to be accompanied by an apology— an official statement from the parliament that what was done to these (mainly) men, but LGBTIQ+ people more broadly, was wrong. After legislation to establish the expungement scheme was passed in 2014 under a former government, the Labour government finally delivered the formal and public apology in 2016. The apology was not only

to those who had been impacted by the unjust laws, but also to the broader LGBTIQ+ community that lived under the environment of persecution and fear that was encouraged by the existence of those laws. It was a profound moment and major milestone, the world’s first apology of its kind. It had not only helped to heal the harm and the anguish caused by these criminal offenses and these criminal laws, but also sent a clear message to LGBTIQ+ people that they were valued, they were affirmed, and they were part of society.

Since then, there had been apologies in other states. Anna Brown expressed her hope that these reforms and these actions by state parliaments in Australia would serve as an inspiration for the rest of the world. She stressed that it truly was an important step towards the journey of reconciliation, healing and living in a world where we are free and equal with other members of the community.

Thanks to all our co-organisers



Watch the video at <https://youtu.be/rVamFmBJ8rk>