

UPR: Botswana
Canadian HIV/AIDS Legal Network

Mr. President, distinguished members of the delegation,

We wish to address recommendations 18, 23 and 24 in the Working Group report on Botswana. These provisions deal with the promotion of tolerance, measures to address HIV/AIDS, and the importance of the decriminalisation of consensual adult same-sex conduct.

We appreciated the affirmation by the delegation during the Working Group review that the government remains open on these issues and that all persons are entitled to be treated equally and without discrimination. We therefore urge the Government to repeal the provisions of its Penal Code criminalising same-sex conduct between consenting adults. As the UN Human Rights Committee has found, such provisions violate established international human rights law, in particular the rights to privacy and non-discrimination. The provisions are also inconsistent with the African Charter on Human and Peoples' Rights and findings of the United Nations Working Group on Arbitrary Detention, which has held that arrests for consensual homosexual conduct are, by definition, human rights violations.

The struggle against HIV/AIDS is also undermined by such provisions. The Human Rights Committee has noted that laws criminalising homosexuality "run counter to the implementation of effective education programmes in respect of HIV/AIDS prevention" by driving marginalised communities underground, a finding supported by UNAIDS and other key actors in the fight against the HIV/AIDS pandemic.

Last December, 66 States from all regional groups, including 6 from the African region, called for an end to laws criminalising homosexuality. This call was supported by the High Commissioner for Human Rights, Ms. Pillay, who stated:

"No human being, simply because of their perceived sexual orientation or gender identity, may be subject to discrimination, violence, criminal sanctions, or abuse. ... There remain all too many countries which continue to criminalize sexual relations between consenting adults of the same sex in defiance of established human rights law. Ironically, many of these laws are relics of the colonial era, and are increasingly becoming recognised as anachronistic, and as inconsistent both with international law and with traditional values of dignity, inclusion, and respect for all."

We therefore urge the Government of Botswana to accept recommendations 18, 23 and 24, consistent with its commitment to equality for all its citizens and its legal obligations under international human rights law.