



**Address by Ian Martin
Representative of the United Nations High Commissioner
for Human Rights in Nepal**

**At the Blue Diamond Society Dialogue on Sexual Orientation/Gender
Identity and Constituent Assembly in Nepal**

**On the Occasion of International Day Against Homophobia
17 May 2006**

Kathmandu, Nepal

Members of the Blue Diamond Society, distinguished guests, friends,

Firstly, I would like to thank Blue Diamond Society for your invitation to join you today for the International Day Against Homophobia, and to congratulate you for this initiative to discuss the issues of sexual orientation and gender identity as they relate to constitution-making in Nepal.

Our Office knows, from our work with BDS, that your work as human rights defenders has often been conducted in conditions of hostility towards your organisation, your members and your clients. This is all the more reason for congratulations for today's initiative, and to commend the other human rights and social justice organisations here today with you – it is essential that the broader human rights community recognise that issues related to sexual orientation and gender identity are human rights issues and that it works in solidarity with BDS.

The fundamental starting point for this understanding is, of course, the Universal Declaration of Human Rights. The Preface to the Declaration emphasises “the inherent dignity and ... the equal and inalienable rights of all members of the human family”; Article One states that “(a)ll human beings are born free and equal in dignity and rights”; and Article Two states that “(e)veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” The Human Rights Committee of the United Nations has recognised that “sex” in this Article includes sexual orientation.

In Nepal, and in other countries, discrimination against lesbian, gay men, bisexuals and transgender people, or *metis*, takes many forms and often results in violence against them. We know that in Nepal discrimination against sexual and gender minorities often results in them being ostracised by their families and forced to leave home; in violence against them, by family members and communities; in discrimination in educational and work opportunities; targeting of sexual and gender minorities in public places by police, including arbitrary arrest and detention; and

violence, including sexual violence, against them by state agents sometimes also while they are held in detention. Further, staff and volunteers of BDS, working as human rights defenders and community health workers, have been targeted by police for arrest and detention, violating their rights and severely hampering BDS from conducting its important work.

As recently as March this year, we witnessed the mass arrest and detention of *metis* in Kathmandu. Our Office met with officials on a number of occasions after the arrests, but were unable to obtain satisfactory explanations for the legal basis of the arrests and detentions. It was clear that *metis* were targeted as a class and arrested, and not because of any specific conduct on the part of individuals. Those arrested included a number of BDS staff and volunteers conducting outreach work. These cases remain pending as the *metis* were finally released on bail, after being held in detention in unacceptable conditions for over two weeks,

None of this is acceptable.

We know that these acts of discrimination and violence occur in Kathmandu. How much harder it must be for women who are lesbian, and men who are gay, or for *metis*, living in regional and rural Nepal, where the support networks are fewer? And for women and men who are sexual or gender minorities and who suffer multiple discrimination, for example, people from castes who are discriminated against, or disabled people.

The human rights mechanisms of the United Nations have addressed the issue of discrimination based on sexual orientation and gender identity in a range of ways. There is no single convention or statement which encapsulates the United Nations position on the rights of sexual and gender minorities, but mechanisms and procedures such as the Human Rights Committee and the Special Procedures of the Commission on Human Rights have included attention to human rights violations against sexual and gender minority individuals within their respective mandates.

From the various considerations and decisions of the United Nations human rights mechanisms, two key points are clear: that lesbians, gay men, bisexuals and *metis* have the right to non-discrimination and that they have the right to equality before the law.

This is a good starting point for discussions of constitution-making in Nepal, and of ensuring the rights of all Nepalis before the law, including Nepali people from sexual and gender minorities. Constitutions should, and most do, contain general anti-discrimination provisions which conform with the international standards established in the Universal Declaration of Human Rights. The outstanding example of constitutional protection in relation to sexual orientation is the Constitution of South African, developed after the end of the apartheid era in one of the best processes of participatory constitution making in recent times. In the Bill of Rights which forms Chapter Two of the South African Constitution, in the section on Equality, the Constitution states:

“The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.”

It would be a useful exercise in Nepal to study more closely both the wording of the post-apartheid South African Constitution, and the process in which it was developed.

But even as laws are made, it is for authorities to ensure that they are implemented and for communities and citizens to live by them. Discrimination, and the violence it so often begets, does not cease simply because a law has been passed. The commitment to non-discrimination is required in law, and to be enforced by the authorities; it is also for communities, families and each of us individually to make sure that as we live our day-to-day lives that we do not discriminate against anyone.

In your struggle to help bring about this change in Nepal, to protect and promote the human rights of Nepali lesbians, gay men, bisexuals and *metis*, I congratulate the Blue Diamond Society and wish you well in today's seminar and your work in the times ahead.

Thank you.