

Draft resolution at Human Rights Council on human rights, sexual orientation and gender identity

Background information

“Some say sexual orientation and gender identity is a sensitive subject. I understand. Like many of my generation, I did not grow up talking about these issues. But I learned to speak out because lives are at stake - and because it is our duty, under the United Nations Charter and the Universal Declaration of Human Rights to protect the rights of everyone, everywhere. We need regular reporting to verify that violations are genuinely being addressed. I count on this Council and all people of conscience to make this happen. The time has come.”

- **UN Secretary General Ban Ki-moon, Address to Human Rights Council, 2012**

About the resolution:

The proposed resolution on *Protection against violence and discrimination based on sexual orientation and gender identity* is jointly presented at the Human Rights Council by **Argentina, Brazil, Chile, Colombia, Mexico and Uruguay.**

The draft text builds upon two previous resolutions, the first presented by South Africa in 2011, and the second by a Latin American Core Group in 2014, and adopted by a majority of the Council with support from all regions.

These previous resolutions mandated two reports by the UN High Commissioner for Human Rights, which documented both serious violations and positive developments in all regions of the world. The High Commissioner highlighted, however, serious protection gaps, and noted the need for a mechanism to bring more systematic attention to the issues.

The resolution would create an **Independent Expert** to assess **implementation** of existing international human rights law, identify **best practices and gaps, raise awareness** of violence and discrimination based on sexual orientation and gender identity, **engage in dialogue and consultation** with States and other stakeholders, and facilitate **provision of advisory services, technical assistance, capacity-building and cooperation** to help address violence and discrimination on these grounds.

Importance of addressing these issues:

Around the world, millions of people face human rights violations because of their sexual orientation or gender identity, including killings, rape, torture, violence, and discrimination in access to health care, housing and employment.

These violations have consistently been brought to the Human Rights Council’s attention by UN Special Rapporteurs and the High Commissioner for Human Rights. UNAIDS, UNDP and the UN Special Rapporteur on Health have also emphasized the importance of addressing human rights violations based on sexual orientation and gender identity as part of HIV education and prevention efforts.

Although issues of sexual orientation and gender identity are sensitive for many States, all agree that **no human being should face violence, torture, stigmatisation and abuse**. Failing to address these issues would send a negative message that violence and discrimination based on sexual orientation and gender identity are not a concern for the Council.

There are also **good practices** in all regions of the world that need to be acknowledged and encouraged. An Independent Expert could work together with **regional mechanisms** such as the African Commission on Human and Peoples' Rights, the Special Rapporteur on the rights of LGBTI persons of the Inter-American Commission on Human Rights, the Council of Europe institutions including the Commissioner for Human Rights and the EU Fundamental Rights Agency, the Asia-Pacific Forum of National Human Rights Institutions, to enhance **cross-regional collaborations** and foster dialogue on these issues.

Existing international human rights framework

The resolution **does not seek to create new rights** but simply affirms the application of **existing human rights standards** to those who face human rights violations because of their sexual orientation and gender identity.

The **right of all human beings** to life, to freedom from torture, privacy, and protection from arbitrary detention are as **old and timeless as the Universal Declaration itself**. In addition, there is **more than 20 years of treaty body jurisprudence** recognizing that **international human rights law prohibits discrimination** on grounds including sexual orientation and gender identity. Drafters of both international and regional human rights instruments were careful to ensure that the lists of grounds for non-discrimination were not exhaustive, by employing terms such as "of any kind", "such as" and "or other status".

The Human Rights Council's responsibility to address these issues

The Council is "**responsible for promoting universal protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner**" (GA resolution 60/251, OP 2).

The proposed resolution does not ask States to take a moral stance on the issues. It simply recognises that the Council has a responsibility to address all human rights violations and we cannot shy away from discussions which challenge us. For these reasons, States are urged to **oppose any procedural tactic** (e.g. a potential motion of "no action") designed to block the resolution from being considered on its substance. The Council must be a forum for constructive engagement on all human rights issues.

The proposed resolution will promote **constructive dialogue, increase awareness** of the issues, provide **assistance** to support States in addressing these issues, and enhance the Council's capacity to **fulfil its mandate** by addressing human rights issues on these grounds.

From the 2011 to the 2014 HRC resolutions, support from all regions increased measurably, demonstrating **growing awareness and understanding** of the issues. We encourage all States to continue that **process of dialogue by supporting this important resolution**.