

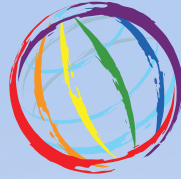


SEXUAL ORIENTATION AND GENDER IDENTITY INCLUSION AT THE UNITED NATIONS

General Assembly Elections Resolution Q&A



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OutRight Action International works at global, regional and national levels to eradicate the persecution, inequality and violence faced by lesbian, gay, bisexual, transgender, intersex, and queer (LGBTIQ) people around the world. With staff in over 10 countries and headquarters in New York, OutRight builds capacity of LGBTIQ movements, documents human rights violations, advocates for inclusion and equality, and holds leaders accountable for protecting the rights of LGBTIQ people everywhere. OutRight was founded in 1990 and has recognized consultative status at the United Nations.

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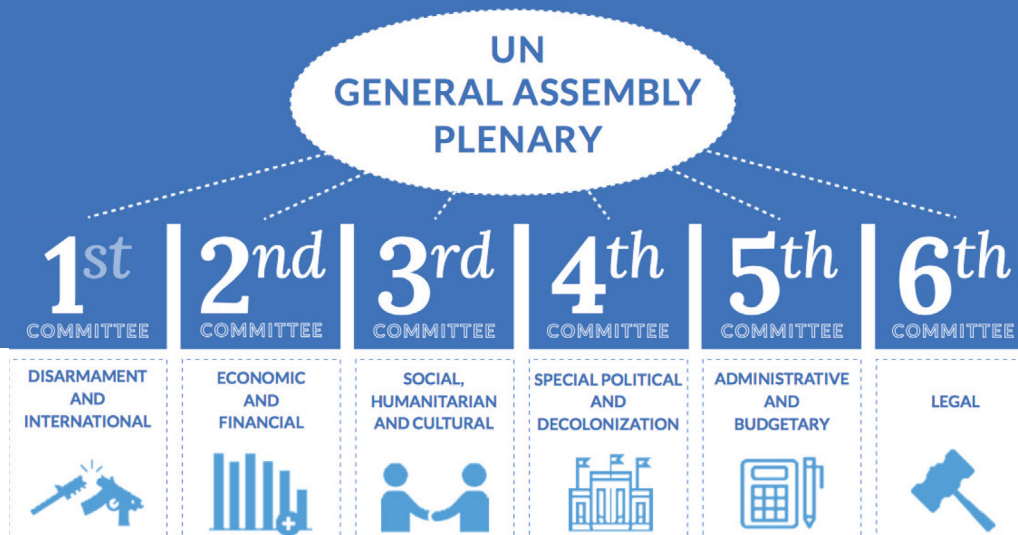
Background

The UN General Assembly in December 2021 adopted a historic resolution in support of “fair, periodic, inclusive and genuine elections.”

The resolution “Strengthening the role of the United Nations in the promotion of democratization and enhancing periodic and genuine elections” called on States to take measures to eliminate laws, regulations and practices that discriminate, directly or indirectly, against citizens in their right to participate in public affairs, including based on race, colour, ethnicity, national or social origin, sex, gender, sexual orientation and gender identity, language, religion, political views or on the basis of disability.

This document explores the importance of the resolution to movements working to end discrimination on the basis of sexual orientation and gender identity (SOGI), and discusses key takeaways from the election resolution process that can contribute to future SOGI advocacy.

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What was the Context of the UN General Assembly Meeting at Which the Elections Resolution Was Adopted?

Established in 1945, the United Nations (UN) General Assembly is the primary deliberative policy-making and representative organ of the United Nations.

Located at the UN Headquarters in New York, the General Assembly considers and makes recommendations on any issue that falls under the scope of the United Nations Charter, including human rights, peace and security, political cooperation, and international collaboration.

The General Assembly allocates most of its work to its six main committees which take up different issues and present draft resolutions and decisions to the plenary. The Third Committee, officially called The Social, Humanitarian & Cultural Affairs Committee, carries out a majority of the human rights work that takes place through the General Assembly. Any of the 193 UN member states can propose resolutions within the scope of the Third Committee mandate. The committee can adopt resolutions through a vote or by consensus. It then refers them to the General Assembly plenary, again for a vote or adoption by consensus.

It has become a practice in the Third Committee that member states proposed recurring thematic resolutions on issues such as children’s rights, human rights defenders, the rights of persons with disabilities. Some recurring resolutions are also country-specific, such as a resolution on the situation of human rights in the Islamic Republic of Iran. These recurring resolutions, in each iteration, can focus on different aspects of the same theme.

UNITED STATES

Presenting the Elections Resolution to the 3rd Committee –
“We condemn any manipulation of electoral processes that undermines the free expression of the will of the electors. Elections should be representatives of a diverse and vast electorate and all eligible citizens need to be free to participate to truly derive a fair result.”



How Did an Elections Resolution Including Protections Based on Sexual Orientation and Gender Identity Come into Being?

On a biennial basis, the Permanent Mission of the United States before the United Nations proposes a resolution entitled “Strengthening the role of the United Nations in the promotions of democratization and enhancing periodic and genuine elections.”

This resolution aims to ensure democracy as a universal value based on the free will of the people and their full participation in all aspects of their lives, including electoral rights for all citizens and the need to respect all who participate in elections.

During the 76th Session of the General Assembly, the US Mission, together with 87 co-sponsor member states, presented an iteration of the elections resolution with a focus on gender-based barriers to access to free and fair elections.¹ This year’s resolution addressed a number of barriers impacting women’s political participation and representation, including unpaid care and domestic work and sexual and gender-based violence. Through this gender lens, the US also included a section discussing other groups that may be excluded from access to free and fair elections, including those who are discriminated against based on their sexual orientation and gender identity (SOGI). The inclusion of this language stemmed from a long standing push from lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) activists for more inclusive and expansive language within thematic resolutions as well as the Biden administration’s commitment to not only promote democratic values but also to uplift the experiences of LGBTIQ people.²

¹ Resolution cosponsors: Albania, Andorra, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Bahamas, Belgium, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Canada, Central African Republic, Chad, Chile, Colombia, Costa Rica, Côte d’Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Estonia, Finland, France, Georgia, Germany, Greece, Guatemala (withdrew), Haiti, Honduras, Iceland, India, Ireland, Israel, Italy, Japan, Latvia, Lebanon, Lesotho, Liberia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malta, Marshall Islands, Mexico, Micronesia (Federated States Of), Monaco, Mongolia, Montenegro, Morocco, Myanmar, Netherlands, New Zealand, North Macedonia, Norway, Palau, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Thailand, Timor-Leste, Turkey, Ukraine, United Kingdom, Vanuatu

² This briefing paper uses the term “LGBTIQ” to refer to movements and debates that include intersex people as well as lesbian, gay, bisexual, transgender and queer people. It uses the term “LGBTQ” to discuss the particular impacts of language around sexual orientation and gender identity, recognizing that states’ positions on discrimination based on sex characteristics may differ from their positions with regard to SOGI.



Has the UN General Assembly Addressed Discrimination Based on Sexual Orientation and Gender Identity in Past Resolutions?

The 2021 resolution recognizes limitations in access to free and fair elections due to a number of characteristics, including explicitly mentioning limitations on the basis of sexual orientation and gender identity (SOGI).

To this date, this resolution recognising that LGBTQ people are particularly vulnerable to being denied their rights to free and fair elections and to democracy is only the second UNGA resolution to mention explicitly “sexual orientation and gender identity”.

The only other UNGA resolution to include explicit reference to sexual orientation and gender identity is the biennial resolution on “Extrajudicial, summary or arbitrary executions”. Since 2002,³ the Extrajudicial Execution (EJE) resolution has urged States to protect the life of all people and to investigate killings that target people on discriminatory grounds, with sexual orientation as one of those grounds. Since 2010, gender identity is also mentioned as one of those grounds. Although the EJE resolution maintains cross-regional support every time that it is presented, there is always an attempt by a group of states to remove the paragraph that includes the reference to sexual orientation and gender identity. Ultimately, this resolution as a whole has always been adopted through a vote rather than consensus.

³ OHCHR, “United Nations Resolutions on sexual orientation, gender identity and sex characteristics” <https://www.ohchr.org/EN/Issues/LGBTI/Pages/UNResolutions.aspx>

NIGERIA

“Mr. Chair, Nigeria, wants to dissociate itself from the two paragraph PP9 and OP7 and will never accept that as a precedent in any discussions or resolution, here and in the future.”



How Did Other Member States React to the Inclusion of Sexual Orientation and Gender Identity in the Elections Resolution?

Each time a UN General Assembly resolution includes a reference to sexual orientation and gender identity, or even to diversity, advocates pushing for the resolution have come to expect pushback by certain member states. This year was no exception.

Nigeria, on behalf of a group of nineteen States⁴, introduced two oral amendments at the presentation of the resolution in the Third Committee on 18 November 2021.

One amendment sought to delete the expression “women in all their diversity” from the text. LGBTIQ and other feminist activists have long pushed for the inclusion of references to diversity to reinforce the need to acknowledge that women are not a homogenous group. Opposition states have recognized the inclusion of such language to be indicative of including LGBTIQ people and have long sought to exclude these references.

The second amendment intended to remove the phrase “sexual orientation and gender identity” from the listing in the resolution mentioning exclusion “based on race, color, ethnicity, national or social origin, sex, gender, sexual orientation and gender identity, language, religion, political views, or on the basis of disability.”

Among the 19 states supporting the amendments, all of them, except Belarus, Indonesia, Mali, and the Russian Federation, maintain national laws that criminalize consensual same-sex sexual relations and, in some cases, gender nonconformity. Belarus and Russia maintain laws that infringe upon freedom of expression with regard to sexual orientation and gender identity.

Both amendments to the resolution were put to a vote and were not accepted.⁵ The resolution as a whole then passed by consensus, without a vote.

⁴ Algeria, Bangladesh, Belarus, Brunei Darussalam, Cameroon, Egypt, Indonesia, Iran, Libya, Malaysia, Mali, Nigeria, Pakistan, Qatar, Russia Federation, Saudi Arabia, Senegal, Syrian Arab Republic, Yemen

⁵ The two amendments failed in a vote of 90 against, 58 in favor and 13 abstentions for the first amendment and with 89 voting against, 55 in favor, and 12 abstentions for the second.



SOMALIA

“Somalia dissociates itself from PP9 and OP7 of the draft resolution on democratic elections.... The above mentioned terms,,do not enjoy international consensus or align with our national laws. Somalia doesn’t recognize it since it has neither scientific nor Islamic accepted meaning.”

What Kinds of Arguments Did Member States Put Forward to Oppose SOGI Inclusion in the Resolution?

Member states who opposed the reference to protections against discrimination based on sexual orientation and gender identity tended to use language centered around violations to cultural and religious values, attacks on domestic law, and the absence of agreed-upon definitions of sexual orientation, gender identity, and diversity under international law to weaken the legitimacy of the resolution.

At the heart of these arguments was an unwillingness to recognize all individuals’ right to equally and fairly participate in democratic elections processes.

This does not suggest that all opposing states actually intended to discriminate against LGBTQ people in their elections processes. Such discrimination certainly occurs. But for both sides, the stakes of the resolution went beyond specific concerns related to elections. Opposing states fear that the mainstreaming of language around SOGI and diversity in UN resolutions and other multilateral fora will lead to the normalization of the recognition of people of diverse sexual orientation, gender identity and expression, and their rights.

Specifically, after the adoption of the resolution, opposition delegates expressed reservations and disassociated their states from inclusionary language, such as “women in all their diversity” and “sexual orientation and gender identity,” attempting to orient these phrases as foreign concepts being imposed by western countries.

ALGERIA

“We regret the approach taken by facilitators of this resolution who have endangered and undermined the consensual nature of this resolution simply for the sake of imposing non-consensual terms, such as sexual orientation and gender identity, on the entire membership, ignoring thus their national laws and cultural and religious values.”



Multiple member states opposed to the inclusive language in the resolution sought to perpetuate the idea that the diversity language used in the resolution does not enjoy international consensus. This rhetoric was employed despite consensus in varying General Assembly resolutions that mention diversity. At least five other resolutions in the General Assembly this year included language around diversity, including resolutions on youth, children’s rights, people with disabilities, and human rights defenders, and a resolution acknowledging the 25th anniversary of the Beijing Declaration and Platform for Action.

Throughout the Third Committee meeting, states also attempted to use rhetoric that gender diversity is not widely accepted in international human rights frameworks. For instance, Ethiopia said it would not “recognize or be bound by any reference made to sexual or gender diversity,” describing these terms as “not consensual” and expressing “regret that the resolution that has enjoyed consensus has become controversial because of the use of such language”. The majority if not all of UN Member States participate in and widely accept forums that have recognized gender diversity, including the Beijing Platform for Action, Convention on the Elimination of All Forms of Discrimination Against Women, the Commission of the Status of Women, and the Agenda 2030 for Sustainable Development.⁶

6 Beijing Declaration para 4 - “Acknowledging the voices of all women everywhere and taking note of the diversity of women and their roles and circumstances, honouring the women who paved the way and inspired by the hope present in the world’s youth;” Beijing Platform for Action, para 3 - “It respects and values the full diversity of women’s situations and conditions and recognizes that some women face particular barriers to their empowerment.”; CSW63 Agreed Conclusions para 37 - “The Commission acknowledges that all women and girls may not be able to fully access and benefit from social protection systems, public services and sustainable infrastructure when they face multiple and intersecting forms of discrimination and marginalization. It respects and values the diversity of situations and conditions of women and girls and recognizes that some women face particular barriers to their empowerment. It also stresses that while all women and girls have the same human rights, women and girls in different contexts have particular needs and priorities, requiring appropriate responses”; United Nations, Committee on the Elimination of Discrimination against Women – CEDAW, General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/GC/28, 16 December 2010, para. 5.



What is the Significance of the Adoption of the Resolution?

States opposing the reference to sexual orientation and gender identity in the resolution could have called for a vote, but refrained from doing so. Instead, they chose to make statements disassociating from the paragraphs that included reference to “women in all their diversity” and SOGI.

The choice to not call for a vote on this resolution in particular speaks to member states’ recognition of the importance of upholding principles of democracy and free and fair elections, and their wish to refrain from disrupting this narrative by calling for a vote on a resolution on this topic.

Despite divisions over the proposed amendments and rhetoric alleging that the SOGI and diversity language violated “cultural norms,” the resolution had cross regional co-sponsorship and support from member states in all regional country blocks. The rhetoric around “imposed cultural values” does not reflect state voting patterns accurately, as the resolution saw member states’ support and sponsorship from all regions of the world.

The adoption of the resolution by consensus has enormous significance. Consensus is the most inclusive procedure of adoption of resolutions within the UNGA framework. Adoption by consensus means member states agreed on the merit of the resolution, which brings legitimacy to a rights-based narrative according to which discrimination on the basis of sexual orientation and gender identity is universally unacceptable.⁷

⁷ Ibidem.



ARGENTINA

“This principle of universality does not admit any exceptions. All people have the right to enjoy protection under international human rights standards, and consequently the right to participate in public affairs should be guaranteed by States without any kind of distinction, hence those states should provide effective guarantees against the multiple and intersectional forms of discrimination, so as to ensure that the rights of all can be protected in adherence to the standards of international law.”

What are the Lessons Learned from Advocacy Related to the UN Elections Resolution?

Certain member states continue to make their usual efforts to dissociate from language around diversity.

On this occasion, it was harder for them to do so, as a call for a vote on this resolution would act as a pointed and targeted attack to undermine fundamental freedoms related to democracy and the rights of all citizens to participate in free and fair elections. This is further enshrined in the International Covenant on Civil and Political Rights and Universal Declaration of Human Rights.

An important takeaway for LGBTIQ activists is the extent to which we can present human rights issues impacting LGBTIQ people together with broadly agreed-upon frameworks. When LGBTIQ issues are included in topics such as democracy, the right to political participation and the right to be free from violence, we may garner at least some support and recognition from states that are resistant to fully embracing sexual and gender diversity.

As stated by multiple member states cross-regionally in favor of the resolution, discrimination has no place in our democratic systems and in international human rights spaces. After the failure of the amendments, the resolution as a whole was adopted by consensus, creating a precedent on language at the General Assembly. The passage of the elections resolution marked the first time that language on sexual orientation and gender identity was adopted by consensus in the UNGA.

Even though some member states expressed reservations and disassociations from the specific paragraphs containing SOGI and diversity language, the successful and consensual adoption of the Elections Resolution builds on progress in recognition of the human rights of LGBTQ people at the UN, reflecting a larger achievement towards defending democratic processes and the protection of LGBTQ equality around the globe.



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Human Rights for LGBTIQ People Everywhere