

**RESOLUTION ON SEXUAL
ORIENTATION
AND HUMAN RIGHTS**

**UNITED NATIONS
HUMAN RIGHTS COMMISSION**



I G L B T H R C

CAMPAIGN DOSSIER

Summary

In April 2003, the Brazilian delegation to the United Nations Commission on Human Rights introduced an historic -- and unexpected -- resolution prohibiting discrimination on the basis of sexual orientation to the United Nations Commission on Human Rights (CHR). This resolution elicited strong opposition from a number of countries, including the Vatican, Zimbabwe, Pakistan (leading the Organization of Islamic Conference or OIC), Malaysia, Saudi Arabia, and Bahrain. Support for the resolution came from Japan and the European Union, along with a diverse array of many Latin American and Central and Eastern European countries. After prolonged debate the CHR voted to postpone further discussion on the resolution to the 2004 Commission session [see Annex 1, *Chronicle of the Last Day in the 59th Session of the United Nations Human Rights Commission*].

A broad coalition of non-governmental organizations (NGOs) is now working together to support Brazil and other friendly governments to secure passage of the resolution. In this packet, we provide brief background information about the resolution and offer recommendations for targeted actions that activists worldwide can take in support of the resolution. We have also included a short paper about the politics and potential of working at the CHR.

Background

The UN Commission on Human Rights is part of a complex and sprawling international human rights system.¹ It is a place where global politics set the key subtext of debate. Its primary meeting takes place over six weeks every year in Geneva, Switzerland, in March and April. The Commission is composed of a rotating group of 53 Member States of the UN who are elected to the CHR.

The elected members are regionally balanced. Each member government may send a delegation to the Geneva meeting in order to negotiate and vote as representatives of their government. The CHR has generally preferred to make decisions by consensus, although voting has become increasingly frequent in recent years when consensus cannot be reached. UN Member States that are not Commission members can send delegates to attend as observers, and they usually actively engage in negotiations, even if they do not vote. NGOs with *consultative status*² may also attend the CHR as observers, with limited participation rights.

¹ For more detailed information about the UN Human Rights system, please see IGLHRC's *Making the Mountain Move: An Activist's Guide to How International Human Rights Mechanisms Can Work for You*, at www.iglhrc.org.

² NGOs must apply for and be approved for consultative status. No active LGBT organization has this status [note: there is one inactive lesbian group that has ECOSOC status], which allows the organization opportunities to observe official UN meetings, gain entry to UN buildings, and speak on behalf of the organization in formal sessions in a limited capacity. ILGA (the International Gay and Lesbian Association) received consultative status in 1992, but the status was suspended in 1994 following a protest against ILGA by then-US Senator Jesse Helms.

The Commission is one of the central UN forums for discussing human rights: it hears reports from independent experts (*Special Rapporteurs and Working Groups* – many of whom are increasingly seeking out information and reporting on sexuality-related discrimination and violence), testimony is given by NGOs, deals are negotiated, norm-setting-resolutions are passed, key human rights issues are vetted. The Commission also sets out priority areas for the UN's work on human rights. When new treaties are proposed or new declarations are drafted, the work often begins at the Commission.

A major mechanism through which the Commission operates is that of "shaming." Many governments are uncomfortable with having their human rights record scrutinized in this very public arena. Governments tend to want to be seen in a positive light; they want to be seen as supporting human rights, both within their own borders and on a global level. The Commission hears public reports by Special Rapporteurs and Working Groups on countries and issues, and can also meet in a closed session (called the *1503 procedure*) to take up complaints of human rights abuses in particular countries. In other words, despite the lack of binding enforcement action attached to resolutions, governments consider the Commission an important place for protecting their reputation.

Unlike UN World Conferences or ad hoc meetings on a particular topic, the UNCHR meets every year and thus it allows for slow, well-planned work. The work of the Commission is administered by the UN Office of the High Commissioner for Human Rights (OHCHR). The OHCHR provides support for much of the UN's human rights work. A regionally representative group of CHR Member states comprises the "Bureau." The Bureau acts as a steering committee for the Commission session. The 2004 Bureau will be chaired by Australia (Ambassador Michael Smith), and it will also include Bahrain (Saeed Mohamed A-Falhani), Costa Rica (Manuel Antonio Gonzalez Sanz, and Croatia (Gordon Markotic). Mike Gbadebo Omotosho of Nigeria was elected Rapporteur.³

A variety of primarily human rights NGOs have traditionally attended the Commission session. Until now, very few organizations from the "religious right"⁴ have been present. However, this is likely to change, as these organizations increasingly track international venues where rights and sexuality are raised.⁵

The Resolution on Human Rights and Sexual Orientation

At the 59th session of the CHR (2003), the Brazilian delegation introduced a "Proposal for a Resolution on Human Rights and Sexual Orientation". For several years, beginning with the UN World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance (2001), Brazil has been at the forefront of government efforts to include language on sexual orientation and human rights in the context of the UN; in fact, such efforts have picked up pace. For example, in 2000, 2002 and 2003, the CHR debated including language on sexuality in the resolution on Extra-judicial, arbitrary and

³ See www.unog.ch/news2/documents/newsen/cn04001e.htm for more information in English and www.unhchr.ch/huricane/hurricane.nsf/view01/A3DF6490410E26C1256E210030585A?opendocument for information in French.

⁴ The term "religious right" is used to describe right wing, or conservative, extremists. People in the "religious right" tend to have fundamentalist and staunchly conservative political perspectives.

⁵ For more about the increasing participation of the US religious right in UN meetings, see Jennifer Butler, "Christian Soldiers on the March," *The Nation*, February 3, 2003. www.thenation.org.

summary executions. The debate over condemning the killing of a person because of their sexual orientation re-emerged when the UN General Assembly (the meeting of all UN Member States each fall) took up this resolution. Eventually, after heated debate, the resolutions were approved with the language on sexual orientation and the rights of sexual minorities intact⁶. While issues of sexual orientation and identity have been raised in the context of a number of reports by Special Rapporteurs, Working Groups and Special Representatives⁷, the adoption of the resolutions was significant because it required agreement by the Member States to accept explicit language about sexual orientation in the context of human rights violations.

In 2003, Brazil took the initiative on a new resolution: the Resolution on Sexual orientation and human rights (see full text attached). The resolution recognizes the existence of sexual orientation-based discrimination around the world; affirms that such discrimination contravenes what has been established in all major human rights instruments; and calls all governments to promote and protect the human rights of people, regardless of their sexual orientation. It is a "soft resolution", proposing a point in principle without calling on governments to take any specific action⁸. Despite some discussion about whether to include language on *gender identity*, the resolution in 2003 referred simply to *sexual orientation*.

What happened in 2003?

Brazil had the support of the European Union, Canada and Australia. From Latin America, Mexico and Costa Rica were in favor but started to retreat as the Vatican put pressure on them. Islamic Conference countries, particularly Pakistan, Malaysia, Saudi Arabia and Bahrain, as well as others like Zimbabwe and the fiercely attacked the Resolution, and even claimed that it was not a topic worthy of UN discussion. Governments worked behind the scenes and in public to not only defeat the resolution, but, in fact, to keep the resolution from coming to the floor for discussion at all.

Pakistan, on behalf of the OIC, issued an aide memoire on the resolution, which called for OIC and other states to vote against the resolution. The text of the aide memoire was quite hateful.⁹ In addition, states that opposed the resolution attempted a range of delaying tactics and procedural "tricks" to preclude debate. Some threatened to propose an excessive number of amendments to the page and a half of text of the resolution. Ultimately, conservative opposition to the resolution forced two votes related to the resolution, one of which was a vote on "no action". A vote in favor of "no action" would have removed the topic from discussion. A second vote, taken on the last day the Commission met, postponed discussion on the sexual orientation resolution to the following year. By a vote of 24-22 (with 6 abstentions), Commission members voted to

⁶Cynthia Rothschild, "'Sexual Rights: the Last Frontier for Human Rights?" unpublished.

⁷ For more information, see Evelyn Paradis, "Sexual Minorities Reach the UN," *Human Rights Tribune*, V. 9, No. 1, www.hri.ca/tribune.

⁸ See attached background paper on the CHR for more discussion about different types of resolutions and actions that come out of the Commission. Please also see materials from Action Canada for Population and Development (ACPD) (www.acpd.org) and Amnesty International (www.amnesty.org) both of whom were actively involved in discussions about this resolution at the 2003 UN Commission on Human Rights.

⁹ Al Fatiha, a Muslim LGBT organization, responded in print to the aide memoire; this response was distributed to all delegations.

take keep the resolution on the Commission's agenda, but to postpone further discussion until the 2004 session.¹⁰

What we can expect in 2004?

The Resolution is already on the agenda for discussion, as a result of the vote to postpone. Therefore, unless its opponents succeed in raising some technical issue (as they have already attempted to do), it will be debated and, most likely, voted upon. However, the resolution that will be proposed is likely to be amended from the version that was presented at the 2003 UNCHR session.

Last year, the Brazilian's introduction of the resolution took everybody by surprise. This year, there will be no surprises. The US Christian Right has already started to organize against the Resolution. The Vatican and the Islamic Conference countries are doing the same. With infinitely fewer resources at their disposal than the conservative opposition, an ad-hoc coalition of organizations working on sexual rights has also been building strategies to secure passage of the Resolution.

Why is it important that the Resolution is passed?

- It would be the first UN CHR resolution to connect the full range of human rights to sexual orientation and to condemn discrimination against people because of their sexual orientation. Language on gender identity was not included in the resolution tabled in 2003, and there remain questions about whether or not it will be included in the 2004 proposed resolution.
- Wherever sexual orientation-based discriminatory legislation is in place, the resolution could be used to support the argument that this legislation is contrary to the Universal Declaration of Human Rights and global trends opposing such discrimination.
- Wherever sexual orientation based murders, torture and arbitrary arrests happen, the resolution could be invoked to call for a more active role from the States involved to prevent discrimination and violence, protect victims and bring perpetrators to justice.
- It would strengthen asylum claims based on persecution due to sexual orientation as it strengthens the call to state obligations to protect against such persecution
- As a key building block in global understanding of human rights, it could be invoke to call on States to end all discrimination based on sexual orientation in economic and social rights (access to health, education, housing)
- The resolution provides activists with another tool to hold states accountable to respect, protect and fulfill human rights of LGBT people.

What can we do?

1. Check the attached list of countries that are Commission members.

¹⁰ See Annex II for a tally of the voting.

2. If your country is a Commission member, assess how to best put pressure on your government to vote in favor of the Resolution (see suggestions for action below). If your country is a member but is not inclined to support the resolution, put pressure on your government to abstain in any vote instead of voting against the resolution.
3. If your country is not a Commission member, but would be supportive of the resolution, consider what countries yours has a close relationship with – could members of your government be convinced to lobby other government delegations?
4. You can help by distributing this information to other individuals and organizations in countries that are Commission members.
5. You can also draft a press release about the resolution and distribute it to major media outlets and other organizations, asking for them to indicate their support for the resolution to your government by writing letters to those responsible for UNCHR matters in your capital. A list of contacts for all 53 UNCHR members is available from IGLHRC at www.iglhrc.org.

**UNITED NATIONS HUMAN RIGHTS COMMISSION
– 60th SESSION – 2004 – COUNTRY MEMBERS.**

Argentina	Italy
Armenia	Japan
Australia	Korea
Austria	Mauritania
Bahrain	Mexico
Brazil	Nepal
Bhutan	Nigeria
Burkina Faso	Pakistan
Chile	Paraguay
China	Peru
Congo	Qatar
Costa Rica	Russian Federation
Croatia	Saudi Arabia
Cuba	Sierra Leona
Dominican Republic	Sri Lanka
Egypt	South Africa
Ethiopia	Sudan
Eritrea	Swaziland
France	Sweden
Gabon	The Netherlands
Germany	Togo
Guatemala	Uganda
Honduras	Ukraine
Hungary	United Kingdom
India	USA
Indonesia	Zimbabwe
Ireland	

SUGGESTED ACTION STEPS FOR ORGANIZATIONS AND INDIVIDUALS IN THE COUNTRIES THAT ARE COMMISSION MEMBERS

1. Find out your Foreign Affairs Ministry fax number and electronic address. Same for your country delegation to the United Nations.
2. Find out names and posts of the staff at your country delegation to the United Nations.
3. If your organization has never worked on United Nation issues before, try to find out if other organizations in your country have done so. Check with mainstream human rights and women's organizations. Ask them to advise you and, if possible, to cooperate in your efforts. Assess your relationship and safety in advocating directly with your Foreign Ministry.
4. Check if other organizations in your country might be interested in joining you to support the Resolution. Check with mainstream human rights, women's, social justice and youth groups. Invite them to a meeting and distribute informative materials like the ones we are giving to you. Try to form a coalition and work together.
5. By November 2003, you can start writing to your Foreign Affairs Ministry and to your country delegation at the UN. Let them know that you are aware of the Resolution being discussed next year at the Commission, and that you want your government to support it.
6. By March 2004, request for a meeting with your Foreign Affairs Ministry officers, to discuss the Resolution.
7. If the meeting is granted, bring a document in which you explain why the CHR Resolution is important for your country, providing concrete examples as far as possible. If your country has already passed anti-discriminatory legislation or any other positive law that mentions sexual orientation, please note it. Inform the media and call a press conference after the meeting, to communicate what the Ministry has said. Distribute copies of your document to the media.
8. If the meeting is not granted, consider making the refusal to meet a 'media story'; if tactically useful, call a press conference anyhow. Prepare the same document suggested above. Deliver it by hand to the Ministry and distribute it to the media.
9. As soon as the Commission starts meeting (March), be available and visible to your Foreign Affairs Ministry and also to your country delegation to the UN. Call, send faxes and e-mails as many times as you wish. Use your media contacts to reinforce pressure.
10. Moreover, anything creative, funny and innovative to point out the importance of this resolution, and the hypocrisy of claiming rights for some while denying rights to others that you can come up with will always be useful. Do not forget that the opposition to this resolution comes from a number of governments as well as the Vatican, the Islamic Conference, along with a network of fundamentalist and religious right organizations. All of them are wealthy and well networked. They are monitoring us as much as we are watching them.

We will always be available to support you and to send you more information or materials.

If you are in Latin America or the Caribbean, please contact Alejandra Sardá - alejandra@iglhrc.org.

If you are in Asia/the Pacific or the Middle East/North Africa, please contact Sangeeta Budhiraja – sbudhiraja@iglhrc.org

If you are in Africa or in Eastern Europe/Central Asia, please contact Sara Moore - sara@iglhrc.org.

Other questions, please contact Susana Fried, Program Director - sfried@iglhrc.org

ANNEX I

Chronicle of the last day of the 59th session of the UN Commission on Human Rights

By Jan Doerfel, International Research Center for Sexual Minorities,

Geneva - 25 April 2003

After two days of delaying manoeuvres, the United Nations Human Rights Commission deferred the vote on the historic resolution on human rights and sexual orientation on Friday, 25 April, for consideration at next year's Commission.

The resolution, proposed by Brazil affirmed the universality of human rights, expressed « deep concern » at the occurrence of human rights in the world on grounds of sexual orientation » and called upon all States to « promote and protect the human rights of all persons regardless of their sexual orientation ».

If the vote had been held, the US was planning to abstain. Australia was also intending to abstain, but concerted lobbying persuaded its delegation to express an intention to support the resolution. The UK opposed the inclusion of "gender identity" in the resolution (which would have enshrined a commitment to the human rights of transgender people), despite strong support for the inclusion by Canada, New Zealand, Liechtenstein, Germany and Sweden

On Thursday, 24 April, the ambassador of Pakistan, who had previously described the resolution as « politically incorrect » and as a « direct insult to all 1.2 billion Muslims in the world » in a memo addressed to other Governments, suggested a « no-action » motion at the Commission in order to avoid the resolution going to a vote.

He argued that this issue was not a «proper subject » for consideration, that it created rights which were in direct confrontation with Islam and their legislation and that the Brazilian resolution « would turn a great many countries into direct human rights violators».

After the no-action motion was rejected by 24 to 22 (with 6 abstentions - see voting pattern below), the Commission witnessed the most concerted delaying tactics for the remaining hours of the Commission, which was scheduled to close at 5 p.m. on Friday, 25 April.

When the issue was finally addressed at 4.45 p.m., Pakistan, Malaysia, Saudi Arabia, Bahrain, Zimbabwe and Malaysia implicated the Commission in a procedural debate of one and a half hours, which culminated in a proposal by the chair to postpone the consideration of the resolution to next year. The chair's proposal was accepted by 24 votes in favour, 17 against and ten abstentions.

« Unfortunately, Ms Najjat Al-Hajjaji, the Libyan chairwoman, was not impartial. It was not a coincidence that the resolution on « sexual orientation and human rights » was the only resolution of the whole Commission not to be voted upon » said Doerfel.

In order to stall the debate, five countries, including Libya, as well as Egypt, Malaysia, Pakistan and Saudi Arabia, had proposed « so-called » amendments to every single paragraph of the resolution including its title, which removed all references to « sexual orientation ».

The ambassador of Pakistan had stated that « we will not accept that the Commission imposes values on us which we do not share » and had threatened to propose « a hundred amendments more « if

necessary. Furthermore, the Vatican had lobbied predominantly Latin American countries to vote against the resolution.

Frederico S. Duque Estrada Meyer of the Brazilian delegation in Geneva called the decision to consider the issue at next year's commission a "a great victory, because thanks to the Brazilian Government, the issue of discrimination on grounds of sexual orientation is on the table and has to be discussed ».

A number of European countries were rather lukewarm in their support of the Brazilian resolution and had proposed language weakening the condemnation of human rights violations on grounds of sexual orientation.

Please note: this is a report by Jan Doerfel, at the International Research Center for Sexual Minorities. It is not an "official" account of the proceedings.

ANNEX II

Vote on « no action motion » on Resolution « Human Rights and Sexual Orientation » on 24 April 2003

In favour of no action (22): Algeria, Bahrain, Burkina Faso, Cameroon, China, Democratic Republic of Congo, Gabon, India, Kenya, Libya, Malaysia, Pakistan, Saudi Arabia, Senegal, Sierra Leone, Sri Lanka, Sudan, Swaziland, Syrian Arab Republic, Togo, Uganda, Zimbabwe.

Against no action (24): Armenia, Australia, Austria, Belgium, Brazil, Canada, Costa Rica, Croatia, France, Germany, Guatemala, Ireland, Japan, Mexico, Paraguay, Peru, Poland, Republic of Korea, Sweden, Ukraine, United Kingdom, United States of America, Uruguay, and Venezuela.

Abstentions (6): Argentina, Chile, Cuba, Russian Federation, South Africa, and Thailand. (Vietnam did not cast a vote.)

ANNEX III
59th session of CHR:
Resolution text: "Human Rights and Sexual Orientation" (L92)

The Commission on Human Rights,

PP1 - Reaffirming the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of all Forms of Racial Discrimination, the Convention on the Elimination of all

Forms of Discrimination Against Women, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the Child,

PP2 - Recalling that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

PP3 - Reaffirming that the Universal Declaration of Human Rights affirms the fundamental principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to the enjoyment of all rights and freedoms set forth therein without distinction of any kind,

PP4 -Affirming that human rights education is a key to changing attitudes and behavior and to promoting respect for diversity in society,

OP1 - Expresses deep concern at the occurrence of violations of human rights all over the world against persons on the grounds of their sexual orientation;

OP2 - Stresses that human rights and fundamental freedoms are the birthright of all human beings, that the universal nature of these rights and freedoms is beyond question and that the enjoyment of such rights and freedoms should not be hindered in any way on the grounds of sexual orientation;

OP3- Calls upon all States to promote and protect the human right of all persons regardless of their sexual orientation;

OP4- Notes the attention given to human rights violations on grounds of sexual orientation by the special procedures in their reports to the CHR, as well as the treaty monitoring bodies, and encourages all special procedures of the CHR, within their mandates, to give due attention to the subject;

OP5 - Requests the High Commissioner for Human Rights to pay due attention to violations of human rights on the grounds of sexual orientation;

OP6 - Decides to continue consideration of the matter at its sixtieth session under the same agenda item.