

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

Background information

"You, at the United Nations, have a particular role to play. You have a responsibility. Lesbians, gays, bisexuals, transgender people are equal members of the human family whose rights you have sworn to uphold. Those who face hatred [and] violence look to you for protection ... Do not fail them."

- **Nobel Peace Prize winner, Archbishop Emeritus Desmond Tutu**

About the resolution:

The resolution, presented by South Africa, recalls the universality of human rights, and notes concern about acts of violence and discrimination based on sexual orientation and gender identity. It **requests the High Commissioner for Human Rights to prepare a study** on violence and discrimination on these grounds, and calls for a **panel discussion** to be held at the Human Rights Council to **discuss the findings of the study in a constructive and transparent manner**.

Importance of addressing these issues:

Around the world, people face human rights violations because of their sexual orientation or gender identity, including **killings, torture, rape, criminal sanctions, and violence**. These violations have consistently been brought to the Human Rights Council's attention by UN Special Rapporteurs. 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 issues for many States, we trust we can all agree that **no human being should face violence, torture, stigmatisation and abuse**, on any ground.

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 they are lesbian, gay, bisexual and transgender, and calls for **further information and dialogue on discrimination and violence** based on 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 **almost 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".

This position is consistent with other regional and national jurisprudence, including decisions of the **European Court of Human Rights, the African Commission on Human and Peoples Rights, and courts in South Africa, Hong Kong, Fiji, India, Nepal and the USA**. Just this week, the **2011 United Nations Political Declaration on HIV and AIDS** recognised the need to address the human rights of men who have sex with men, and the **OAS** adopted by consensus a resolution on human rights, sexual orientation and gender identity.

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). Whatever differences may exist on the subject-matter of the resolution, the South African resolution recognises that the Council has a responsibility to address killings, rape, torture and violence, regardless of sexual orientation or gender identity.