

Follow up to the SOGI Resolution: Options

A) Introduction:

Human Rights Council resolution 17/19 requested the High Commissioner for Human Rights to prepare a study on human rights, sexual orientation and gender identity, which was published in December 2011. It also decided that the HRC will convene a panel discussion at its 19th session in March 2012 to discuss the findings of the study. The resolution further mandates the panel to "discuss the appropriate follow-up to the recommendations of the study commissioned by the High Commissioner".

A number of modalities for appropriate follow-up could be beneficial in addressing human rights violations based on sexual orientation and gender identity through constructive dialogue and action. These include a dedicated special procedures mandate, an expert seminar, an issues forum, and other forms of reports or panels at the HRC.

To help assess these options, it is useful to first consider the objectives and focus of the proposed discussion, as well as criteria to help achieve these objectives.

Objectives: To address human rights violations based on sexual orientation and gender identity, fill any gaps in existing protection mechanisms, promote constructive and informed dialogue, increase State consensus and understanding of these issues, and ensure a process for ongoing attention to these issues within the Council from a human rights perspective.

Potential focus:

- application of the jurisprudential framework pertaining to issues of sexual orientation and gender identity, with a focus on principles of universality and non-discrimination;
- policy, administrative and legislative measures to address human rights violations on these grounds;
- sharing of best practices in the prevention of discrimination and violence based on sexual orientation and gender identity.

Other considerations:

- Participation of **knowledgeable experts**;
- **NGO participation** is important to ensure that the discussion is not based on perceptions and stereotypes, but the actual experiences of LGBT persons;
- **Engagement with States and with the Human Rights Council:** the Council is "responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner."
- Opportunities for **continuing engagement and discussion**;
- **Building base of support** for SOGI issues amongst States – moving toward consensus;
- **Reduced risk of hijack** by unfriendly civil society groups, such as those representing the religious right wing;
- **Clear outcomes** or **contribution to a longer-term strategy or vision** for the UN.

B) Some Existing Precedents/Modalities:

1. Special Rapporteur

Precedents: The Human Rights Council receives reports from a number of Special Rapporteurs and Independent Experts, such as the Special Rapporteurs on violence against women, on human rights defenders and on the independence of judges and lawyers. Information on Special Procedures can be found at <http://www2.ohchr.org/english/bodies/chr/special/index.htm>

Special procedures' mandates usually call on mandate holders to examine, monitor, advise and publicly report on human rights situations in specific countries or territories, known as [country mandates](#), or on major phenomena of human rights violations worldwide, known as [thematic mandates](#). Various activities are undertaken by special procedures, including responding to individual complaints, conducting studies, providing advice on technical cooperation at the country level, and engaging in general promotional activities.

Most Special Procedures receive information on specific allegations of human rights violations and send [urgent appeals or letters of allegation](#) to governments asking for clarification. In 2010, a total of 604 communications were sent to Governments in 110 countries. 66% of these were joint communications of two or more mandate holders.

Mandate holders also carry out [country visits](#) to investigate the situation of human rights at the national level. They typically send a letter to the Government requesting to visit the country, and, if the Government agrees, an invitation to visit is extended. After their visits, special procedures' mandate-holders issue a mission report containing their findings and recommendations.

Whilst a Special Procedures mandate is probably the mechanism that would fulfil most of the criteria, the political ground for achieving and sustaining the creation of such a mandate is fairly unstable. A mandate would have to be created by a HRC resolution and would likely be put to a vote. Votes on resolutions creating new mandates are often politicized, although this would be true of any SOGI resolution. A further consideration to take into account is that many current mandate holders have been steady allies in highlighting human rights violations against LGBT persons, for which they have often been criticized by a number of governments for "overstepping" their mandates. A specific LGBTI mandate could serve to legitimise Special Procedures' attention to these issues, by encouraging the mandate holder to work with existing mandates. This modality could be an option further down the line, when more incremental steps have been taken to increase government support for the inclusion of SOGI issues.

2. A (follow-up) report by the UN High Commissioner for Human Rights

As with the upcoming report, the High Commissioner could be requested by the HRC to prepare another study, with a different focus, which would then be presented to the Human Rights Council for discussion. In fact, the report just released in December notes: "a more comprehensive analysis of the human rights challenges facing LGBT and intersex persons would require a more extensive study and, in future, regular reporting". One possibility is a study mapping existing policies, laws and other practices in place to combat discrimination and violence based on sexual orientation and gender identity around the world.

A follow-up study by the High Commissioner might be a useful intermediate step by keeping the issues on the Council's agenda in the short term, whilst increasing the scope of discussion and thus understanding of our core human rights concerns. A focus on compiling current policies might be more effective in broadening the government support base than discussions centred on violations, thus laying the groundwork for the creation of a follow-up mechanism in the future.

3. HRC Panel Discussion

There are many precedents of panel discussions at the HRC. These include:

HRC 17 - Panel discussion on VAW: In its resolution 14/12, the Human Rights Council decided to include in the annual full-day discussion on women's human rights, at its seventeenth session, in consultation with the Special Rapporteur on violence against women, its causes and consequences, the theme of violence against women and girls, with an emphasis on prevention, with a view to sharing good practices and identifying remaining gaps in the area of prevention, and requested OHCHR to prepare and disseminate a summary of the proceedings.

HRC 17 - Panel discussion on respect for human rights and diversity of religions and beliefs: In its resolution 16/18, the Human Rights Council decided to convene, at its seventeenth session, a panel discussion on strengthened international efforts to foster a global dialogue for the promotion of a culture of tolerance and peace at all levels, based on respect for human rights and diversity of religions and beliefs.

HRC 19 – Panel discussion on sexual orientation and gender identity: In its resolution 17/19, the Human Rights Council decided to convene, at its 19th session, a panel discussion informed by the facts contained in the study commissioned by the High Commissioner and to have constructive, informed and transparent dialogue on the issue of discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity.

Common features of panels include:

- A half-day or full day discussion within the Programme of Work of the HRC;
- Either annual or one-off discussions;
- Presentations by expert panellists, including representatives of UN mechanisms, mandate holders, academics, civil society and others, taking into account regional and gender balance;
- A panel may also include presentation of reports prepared by the OHCHR, e.g. a "compilation of good practices in efforts aimed at preventing violence against women", mandated of the OHCHR by resolution 14/12;
- Interactive dialogue with States and a limited number of NGOs, and responses by panellists;
- The Office of the High Commissioner may be requested to prepare and disseminate a summary of the proceedings.

The main advantage of this format is that the issue is brought explicitly into the HRC's programme of work. The focus or terms of reference for the panel would need to be precisely outlined in the resolution. Panels can raise awareness of particular issues within the Council, although civil society participation is limited, as are outcomes. As we have a panel discussion upcoming in the 19th HRC session on SOGI issues, a particular focus for a follow up panel would need to be identified, to ensure added value. Currently the Council's agenda is becoming overloaded with thematic panel discussions and States are being encouraged to take into consideration the numbers of other panels convened at sessions.

4. OHCHR Experts Seminar

There are several examples of OHCHR-organised experts' seminars. These include:

- Experts Seminar on application of articles 19 and 20 of the ICCPR (balance between freedom of expression and incitement to hatred);
- Experts Seminar on Traditional Values.

Common features of experts' seminars include:

- Preparation of papers and presentations by experts;
- Interactive dialogue with participating States and NGOs;
- Opportunity to engage on sensitive issues in a less politicized environment;
- Preparation by the OHCHR of a summary of the proceedings and of key recommendations;
- The OHCHR could be requested to present the report to the HRC for its consideration.

An OHCHR-organised experts' seminar would allow intergovernmental participation, but would have the advantages that the panels would be informed by experts, and the format/structure of the discussion would be determined by the OHCHR. This would allow an informed discussion, and avoid unproductive State debates around modalities, format, focus etc. A report of the seminar could be prepared by the OHCHR and presented to the HRC for its consideration. The main disadvantage is that it is a one-off event and less connected to the Council's Programme of Work. Furthermore, as the OHCHR has already prepared a report on SOGI issues, and that report is due to be presented and discussed at an HRC panel, the value added of an OHCHR seminar is less clear. For the same reasons, a call for an experts' seminar may be easier to pass at the HRC.

5. Joint report by a group of Special Rapporteurs

Precedents include:

- Joint report of 7 mandates on human rights in Darfur (A/HRC/6/19)
- 3 joint reports of 7 thematic mandates on the situation of human rights in the Democratic Republic of the Congo ([A/HRC/10/59](#), [A/HRC/13/63](#), [A/HRC/16/68](#))
- Joint report of 4 mandate holders on the use of secret detentions (Note: this report was highly controversial, not simply due to its content, but also because the Rapporteurs wrote the report on their own initiative without it being mandated by the HRC) – A/HRC/13/42

A joint report of Special Rapporteurs would have to be framed in terms of reference that ensures it would not replicate the High Commissioner's study. However, a report written by a group of UN experts would hold credibility, and could be presented and discussed in the Human Rights Council plenary. It would also implicitly provide support for future attention being paid to SOGI issues by all relevant mandates. Whilst some governments might be opposed to allocating special procedures' time and resources to these issues, it could be a good fallback option from a more ambitious modality, such as the creation of a new mandate. A disadvantage would be that it would likely be a one-off event.

6. Annual/biennial substantive thematic resolution (in Geneva or NY)

There are numerous annual thematic resolutions passed at the UN Human Rights Council and Third Committee each year. Such resolutions may remain more or less the same year by year, or they may focus on different issues relating to the topic at hand. Examples of annual substantive thematic resolutions include:

- Annual HRC resolution on “Accelerating efforts to eliminate all forms of violence against women” – e.g. [HRC/Res/14/12](#) or [HRC/Res/17/11](#)
- Annual HRC resolution on “Rights of the child” – e.g. [HRC/res/13/20](#) (on the fight against sexual violence against children) or [HRC/Res/16/12](#) (on a holistic approach to the protection and promotion of the rights of children working and/or living on the street)
- Biennial Third Committee Resolution on “Extrajudicial, summary or arbitrary executions” – e.g. [A/C.3/61/L.45/Rev.1](#) or [A/C.3/63/L.35/Rev.1](#)

A repeating thematic resolution sponsored by either South Africa alone, or with a cross-regional group of States, would provide a means for building State support for SOGI issues, whilst increasing governmental discussions about human rights violations on these grounds through informal consultations on the draft text. Eventually such a resolution could call for a mechanism which might provide more in terms of protection. This might be more achievable at the 3rd Committee/GA, where all UN member States have voting rights, rather than at the less predictable setting of the Human Rights Council. However, the Geneva setting also provides more transparency and opportunities for interaction between States and civil society, and would probably be the only forum in which a mechanism reporting to the HRC could be established.

7. An Issues Forum

Precedents include:

Social Forum:

After the Commission on Human Rights was replaced by the Human Rights Council in 2006, the latter decided to preserve the Social Forum. (www2.ohchr.org/english/issues/poverty/sforum.htm)

The Social Forum has a number of distinguishing attributes:

- It serves as a forum for open and interactive dialogue;
- It involves representatives of UN Member States, civil society including grass-roots organizations, intergovernmental organizations, and different components of the UN system, such as mandate-holders and mechanisms of the UN human rights machinery;
- It meets for 3 days on an annual basis;
- It has a Chairperson/Rapporteur appointed by the President of the HRC from candidates nominated by regional groups;
- Up to 10 experts, including mandate-holders of thematic procedures, assist the Chairperson as resource persons and contribute to interactive dialogues;
- The High Commissioner is asked to prepare and present a report as a contribution for the Social Forum dialogue and debates;
- It reports to the Human Right Council.

Mandated by HRC resolution 6/13:

http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_6_13.pdf

2011 Social Forum mandated by HRC resolution 16/26:
www.unhcr.org/refworld/pdfid/4dbff4952.pdf

Forum on Minority Issues: Pursuant to [HRC resolution 6/15 of 28 September 2007](#), a forum on minority issues has been established to provide a platform for promoting dialogue and cooperation on issues pertaining to national or ethnic, religious and linguistic minorities, as well as thematic contributions and expertise to the work of the [independent expert on minority issues](#).

The Forum on Minority Issues has a number of distinguishing attributes:

- It serves as a platform for dialogue and cooperation;
- It is mandated to identify and analyze best practices, challenges, opportunities and initiatives for implementation of the Declaration on the Rights of Minorities;
- It is open to representatives of UN Member States, UN mechanisms and agencies, national human rights institutions, academics, experts and NGOs;
- It meets for 2 days on an annual basis allocated to thematic discussions;
- The President of the Human Rights Council appoints for each session, on the basis of regional rotation, and in consultation with regional groups, a chairperson of the Forum among experts on minority issues nominated by HRC Members and Observers.
- The Chairperson is responsible for preparing a summary of the proceedings;
- The Independent Expert on Minority Issues guides the work of the Forum, prepares its annual meetings, and includes recommendations from the Forum in her report for consideration by the Council.

Resolution 6/15: http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_6_15.pdf

These are just two examples of Fora of the HRC. States made it clear that a forum need not trace this pattern. The resolution would need to be explicit about the focus of the forum. It could provide for in depth participation of civil society, however would likely be a less structured format than other potential modalities, and conclusions and/or recommendations of a forum could easily fall into the metaphorical black hole of UN documentation. Thus the impact of a forum on human rights promotion and protection would likely be limited. As a result of the limited impact of a forum, combined with the fact that it would take place outside of the Council plenary, less friendly States are likely find it a lesser threat to mobilise against. However, the creation of any modality on SOGI human rights issues outside the HRC might increase government attempts to pigeon-hole the discussions, and may undo the careful work undertaken to mainstream the issues. Finally, opposition forces, including those in civil society, could easily hijack a forum and manipulate the discussions.

C. Conclusions

PROS

1. Special Rapporteur

Systematic expert attention to human rights violations; response to individual cases; ability to undertake country visits and research; reports to the HRC.

2. A follow-up HC report

Would keep issues on the HRC agenda temporarily; if framed well – could increase scope of discussion and understanding of SOGI issues; and build political support for future initiatives.

3. HRC panel

Keeps the issues on the HRC agenda.

4. OHCHR Seminar

Would allow expert, civil society and government participation; discussion informed by experts; OHCHR led.

5. Joint report by Special Rapporteurs

Would hold credibility as a UN expert document; would be presented and discussed at HRC; would deflect previous arguments against mandate holders addressing these issues.

6. Thematic resolution

Could slowly build State support; provide space for informal State discussions; could lead to something more proactive.

7. Issues Forum

Allows for in depth expert and civil society participation; space for engaged and vibrant debate.

CONS

Politically harder to create mandate; possibility of SOGI being boxed away with a specific mandate.

Short term solution; would not address human rights violations and protection gap.

Limited civil society participation; outcomes unclear; HRC currently overloaded with panels.

One off event; disconnected from HRC agenda and thus lacks follow-up; content of report of seminar depends on discussions – potential for negative input.

Danger of replicating HC report; would not provide sustained attention to the issues.

Would not address the protection gap; limited influence of experts and civil society on outcome; could increase polarisation unless presented by South Africa alone or with a cross-regional group.

No obligation of States or the UN to follow up on reports or recommendations of a forum; many States may boycott; may cause issues to be pigeon-holed; may be hijacked by hostile participants.