



Talking Points for HRC SOGI Resolution

Background: While we are fully opposed to violence against individuals based on their sexual orientation and gender identity, the SOGI resolution goes far beyond protection from violence and seeks to have an independent expert monitor alleged discrimination against people based on the ambiguous conditions of sexual orientation and gender identity.

Establishing an independent expert to investigate and promote alleged SOGI rights that are impossible to measure objectively will surely open up a Pandora's box of litigation against governments and individuals who support cultural norms such as marriage between a man and a woman and ensuring that men and women and girls and boys should be able to have privacy in bathrooms and showers.

Please consider using one or more of the following talking points to stop the SOGI resolution:

- **There are no binding international treaties or human rights instruments that establish rights based on sexual orientation or gender identity (SOGI).** The Human Rights Council must establish a valid basis upon which to appoint an independent expert or rapporteur.
- The proposed mandate for the independent expert in this resolution is not just to address violence based on SOGI but also to address discrimination, yet there is no definition for what would constitute discrimination based on SOGI. **Nations cannot be held accountable to standards of nondiscrimination they have never agreed to or that are vague, controversial or undefined.**
- Would the proposed expert's mandate involve addressing laws or policies regulating such controversial issues as marriage, school curricula, sex change surgeries for minors, or private bathroom and shower use based on biological sex? **These are all highly controversial topics upon which Member States do not have consensus. To move forward with such would be to disrespect a large number of UN Member States.**
- Paragraph 3a of the resolution mandates an independent expert to “assess the implementation of existing international human rights laws and standards with regard to ways to overcome violence and discrimination against persons on the basis of their sexual orientation or gender identity while identifying both best practices and gaps” (based on Res 24/20 op 5a) yet **there are no international human rights laws or standards that establish sexual orientation and gender identity as a protected class for all UN Member States.**
- If resolution sponsors are relying on opinions of UN treaty bodies as the authority for this resolution and for establishing an independent SOGI expert, these opinions are exactly that—opinions that are nonbinding and do not provide any legal basis for such action.

Member States are not bound by any ultra vires interpretations of UN treaties related to SOGI that have never been agreed to by treaty signatories.

- The UN Charter makes it very clear that “*nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state ...*” (UN Charter, Article 2.7), yet this is exactly what a SOGI independent expert or rapporteur would be mandated to do according to this resolution. **In violation of the UN Charter, the expert would be mandated to interfere in sensitive issues relating to sexuality that touch deeply upon domestic cultural, religious, and family norms.**
- Some claim that because the HRC appointed an independent expert on albinism, this establishes a precedent that should be followed to appoint an expert on controversial SOGI issues. However, **unlike SOGI, albinism is an inborn, genetic condition relating to the “colour” of a person.** “Colour” is a protected class in international non-discrimination law (see The International Convention on the Elimination of All Forms of Racism as well as the Universal Declaration of Human Rights). SOGI is based on an individual’s internal perceptions regarding their gender or sexual attraction or preference, not on genetic determination (race, ethnicity or color).
- Sexual orientation and gender identity are conditions relating to a person’s sexual attraction or their internal perceptions relating to their maleness or femaleness, which are nontangible and changeable characteristics and deal with conditions on which there is no universal acceptance of definitions or diagnoses, therefore, they cannot easily be measured or quantified. **How can government regulate laws or policies that are based on internal perceptions in people’s minds?**
- **How will gender identity be defined or qualified? Facebook has recognized as many as 70 genders.** Do we really expect nations to recognize rights based on 70 different genders? Would the independent expert recognize only some or all of these genders? And who would decide which of these 70 genders the expert would monitor and report on?
- In the U.S. state of Oregon, minors, without the knowledge and consent of parents, have been granted rights to hormone treatment and sex reassignment surgeries in the name of alleged rights based on a person’s gender identity. Will this be considered a right by the proposed independent expert? **If a government does not provide such hormones and sex reassignment surgeries, will this be considered discrimination by governments according to the appointed independent SOGI expert? Will designating bathrooms based on sex be considered discrimination? Will maintaining laws defining marriage as a man/woman institution be considered discrimination?**