



arc@arc-international.net • www.arc-international.net

Report on sexual orientation and gender identity at the 21st session of the Human Rights Council

10 – 28 September 2012

SUMMARY

Human rights issues relating to sexual orientation and gender identity (SOGI) were consistently raised during the 21st session of the Human Rights Council. The session was opened by the UN Secretary General Ban Ki-Moon, who expressed his support for Council engagement with SOGI issues. The human rights of LGBT people in Russia was raised as an issue of concern under item 4 of the Council's agenda. States also debated SOGI issues in the interactive dialogue with the Special Rapporteur on water and sanitation, who had focused her thematic report on stigma as obstacle to the realisation of rights. A major point of debate during the session was the Russian initiative on "traditional values". Unfortunately a third resolution on the topic was adopted, despite vigorous lobbying by NGOs. ARC organised two side events at the session, on the High Commissioner's report on SOGI, and on traditional values, respectively, which provided an opportunity for human rights defenders from diverse regions to share their perspectives. We were also pleased to be involved in an ISHR training course, which brought focus this session to activists working on SOGI issues and those from the MENA region.

Opening of the session

Address by UN Secretary General Ban Ki-Moon

During his remarks to the opening plenary session of the Council, the Secretary General stated:

"I commend the progress made by the Council in various thematic areas. In particular, I welcome the groundbreaking, first-ever intergovernmental discussion, in March this year, on discrimination and violence based on sexual orientation and gender identity. This should not be a one-time event. I urge you to deepen your engagement on this issue so that protection and dignity truly reach all members of the human family."

Full text of his remarks can be found here:

http://www.un.org/apps/news/infocus/sqgspeeches/statments_full.asp?statID=1643

General Debates

Item 3 – General Debate on the promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Cyprus, speaking on behalf of the European Union, condemned intimidation and persecution against civil society representatives, human rights defenders and journalists, and was alarmed by acts of torture, arbitrary detention and policies that violated freedom of expression, association and assembly. All States should protect their own people, including lesbian, gay, bisexual and transgender persons, against violence and discrimination on all grounds.

Spain reiterated its engagement in favour of human rights. The systematic violation of the human rights of vulnerable groups, like sexual minorities, continued to be committed in many parts of the world. Spain also considered as unacceptable that women still did not enjoy equal rights with men and continued to face violence.

Item 4 – General Debate on human rights situations that require the Council's attention

The human rights situation in Russia was of concern to Switzerland and ILGA-Europe, particularly the adoption of numerous regional laws against "propaganda of homosexuality", which have been used to violate the right to freedom of expression and association of LGBT persons. Russia did not respond to these references.

Switzerland was concerned by some recent, restrictive legal provisions adopted by Russia that related to freedom of expression and the right to peaceful assembly, and called on Russia to ensure that fundamental rights were respected during the implementation of these.

Maria Kozlovskaya, on behalf of the Russian LGBT Network, LGBT organisation "Coming Out" and ILGA Europe said that a law against propaganda defending homosexual persons which had been adopted in nine Russian regions, was used as a tool to detain activists and to limit freedom of expression and violate the rights of persons on the basis of sexual orientation. In Saint Petersburg the administration had refused to accept peaceful demonstrations under the pretext that those ran the risk of breaching the law. Reports had also been received of attacks being carried out in several regions in Russia, and none of those had been investigated as hate crimes.

Item 8 – Follow up and implementation of the VDPA

The General Debate under agenda item 8 held a few references to the debate around "traditional values" and human rights.

Cyprus, speaking on behalf of the European Union, said that 20 years after the adoption of the Vienna Declaration it remained as relevant in guiding decision makers and practitioners in their efforts to respond to today's global human rights challenges. The Vienna Declaration had stood the test of time because it reaffirmed the principle of universality, but the European Union was concerned about occasional misunderstandings of this principle. The Declaration called upon States not to create a hierarchy of rights and reminded States not to justify human rights violations on the basis of cultural particularities. What was universal were the rights enshrined in international instruments and the European Union was committed to strengthening the universality of human rights and rejected the use of cultural relativism as a pretext to divert from the standards set by the international community.

Russia said that the obstacles to the implementation and realization of the Vienna Declaration and Programme of Action included too little respect for human rights and values, including their moral dimension.

Iran said that attempts were being made to disregard cultural diversity and backgrounds of Member States and to impose concepts which were at odds with cultures and basic norms of many societies.

Stuart Halford, on behalf of Action Canada for Population and Development and the Sexual Rights Initiative was very concerned about the draft resolution of Russia on promoting human rights through a better understanding of traditional values. There was no agreed term on “traditional values” which was a highly subjective term; better understanding of the negative impact of traditional values was needed, as those could include human rights abuses such as killings in the name of honour, marital rape, child and forced marriage, or female genital mutilation.

Interactive Dialogues

Interactive Dialogue with Special Rapporteur on water and sanitation

The theme of the Special Rapporteur’s annual report to the session was on “stigma and the realization of the human rights to water and sanitation”. The report contained numerous references on the effect of stigma on the rights of LGBTI persons, for example, noting that “the use of public bathrooms, which are often sex-segregated, has been associated with exclusion, denial of access, verbal harassment, physical abuse and sometimes even the arrest of transgender and intersex individuals”.

Senegal, speaking said on behalf of the African Group, said it could not endorse the highly controversial notions linked to discrimination described by the Special Rapporteur on safe drinking water and sanitation, but it encouraged the efforts at prevention, information and awareness-raising in order to find durable solutions to the problems described in the report.

Spain agreed that stigma and discrimination had a negative impact on the right to access to water of different groups, including on grounds of sexual orientation.

Pakistan, speaking on behalf of the Organization of Islamic Cooperation, said that all people without discrimination should enjoy the rights to safe drinking water and sanitation, and that legislative measures to tackle the phenomenon of stigma needed to be established by States. Regarding the prohibited grounds for discrimination referred to in the report of the Special Rapporteur on the human right to safe drinking water and sanitation, the Organization of Islamic Cooperation objected to the notion of sexual orientation and gender identity, as it had no agreed upon definition in international law.

Interactive Dialogue with the vice-chair of the Advisory Committee

A key focus of the interactive dialogue with the Advisory Committee vice-chair was the development of the study on “traditional values”. The study was due to be presented to the HRC during this session, but was postponed to the 22nd regular session ([read more...](#))

Jean Ziegler, Vice-Chairperson of the Human Rights Council Advisory Committee, introducing the reports of the Advisory Committee, said a key issue was looking at were the better understanding of traditional values and their relationship with human rights, which needed more time to be completed and would be submitted next year. Human rights and their universality could not be downplayed while traditional values were to be used to understand these norms.

European Union said that the revised draft report on traditional values now reflected a more balanced view of the negative impacts they could have on human rights and was concerned about the potential misuse of the non-defined concept of traditional values. The value added of the work of the Advisory Committee was in its focus on human rights and not in expanding its remit without mandate.

Switzerland welcomed the efforts made in order to balance the preliminary study on traditional values and, in particular, concerning the negative impact some of them may have on the enjoyment of human rights in the case of women or minority groups. State obligations derived from international instruments were not up for interpretation and Switzerland hoped that the principles of universality, objectivity and non-selectivity would appear in the final report of the Advisory Committee.

Russia said it was necessary to make greater use of the potential of the Advisory Committee, welcomed the proposals put forward by Mr. Ziegler and hoped that the work of the Advisory Committee would be fully consistent with its mandate. Russia informed the Committee that in the draft resolution which Russia intended to submit to this session concerning traditional values, it intended to note that the work of the Advisory Committee was carried out within its mandate and to propose to the Council to give the Advisory Committee additional time to prepare the report.

Algeria took note of the new research proposals by the Advisory Committee and said that traditional values could not be invoked to justify human rights violations. The Advisory Committee should move forward and finalize this study.

Kene Esom, on behalf of African Men for Sexual Health and Rights (AMSHer) and ILGA Europe said that it was deeply concerned about the profound disrespect for the work of the Advisory Committee evidenced in the draft resolution on traditional values being presented this session by Russia. The Federation called upon the Human Rights Council to respect its own mechanisms and to reject attempts at this session to devalue the work of the Advisory Committee in pursuit of a narrow political agenda that would undermine human rights.

Kseniya Kirichenko, on behalf of the Russian LGBT Network, LGBT organisation "Coming Out" and COC Netherlands said that 'tradition' and 'culture' were invoked in all societies by those with power to deny the rights of people living in marginalized communities. Ideas about tradition were easily manipulated to suppress dissent and freedom of association and expression. COC Netherlands encouraged States to comply with the Council's procedures and to base decision-making on those issues with the guidance of the Advisory Committee's report.

JEAN ZIEGLER, Vice-Chairperson of the Human Rights Council Advisory Committee, said that non-governmental organizations had expressed concerns about the work and final report of the Committee concerning traditional values and their possible use to justify repression. Mr. Ziegler would communicate these concerns to the Committee to ensure that they were addressed before the presentation of the final report.

UPR Report adoptions

The session saw the adoption of UPR reports on the following countries: Bahrain, Ecuador, Tunisia, Morocco, Indonesia, Finland, United Kingdom, India, Brazil, Philippines, Algeria, Poland, Netherlands, and South Africa. Of note:

Finland accepted a recommendation to "Increase its efforts in the field of discrimination on grounds of sexual orientation and gender identity, inter alia, by review of national legislation and administration with a view to eliminate discrimination against LGBTI people with regard to family and parental rights and the right to security and integrity of the person".

India accepted a recommendation to "study the possibility of eliminating any criminalisation of same sex relations", but did not accept a recommendation to "take measures to address violence and discrimination directed towards persons based on their sexual orientation, especially related to employment".

Poland accepted a wide range of recommendations to “guarantee the full enjoyment of the rights of the LGBT community”; “recognize gender identity as possible ground for discrimination and gender identity and sexual orientation as an aggravating circumstance for hate crime”; “adopt regulations recognising the rights of same-sex couples and of self-defined gender or transgender persons”; “strengthen anti-discrimination laws with regard to a better protection of LGBT persons and persons with disabilities”, and; “institute outreach by police and law enforcement to LGBT persons and communities to increase reporting of hate crimes”.

However, they also accepted a recommendation by the Holy See to “continue to protect the natural family and marriage, formed by a husband and a wife, as the basic cell of society, as well as the right to life”.

South Africa had received a large number of SOGI related recommendations. It accepted 11, including recommendations to combat discrimination and violence based on sexual orientation and gender identity, including through awareness-raising for police and other law enforcement officials; to enhance prevention, investigation and prosecution of hate crimes based on SOGI, and to ensure that victims of violence and discrimination receive support.

NGOs were active in taking the floor to commend or challenge their governments to go further. NGO statements on SOGI issues were delivered at the report adoptions of Indonesia (Canadian HIV/AIDS Legal Network), Finland (ILGA Europe), UK (ILGA-Europe), India (ACPD and HRW), Brazil (ILGA), Poland (ILGA Europe and COC Netherlands), the Netherlands (COC Netherlands) and South Africa (ACPD).

Resolutions

Unfortunately, despite significant efforts by NGOs to defeat it, the traditional values resolution was adopted by a vote of 25-15, with 7 States abstaining. Particularly troubling were Russia’s repeated assertion that the resolution was needed to restore the “moral dimension” of human rights, its failure to even consider significant concerns raised by the HRC Advisory Committee in a preliminary report, and the willingness of several delegations, including Uruguay, Chile, Guatemala and Peru, to take no position against the resolution despite sharing the serious misgivings.

The resolution (A/HRC/RES/21/3) “Requests the Office of the United Nations High Commissioner for Human Rights to collect information from States Members of the United Nations and other relevant stakeholders on best practices in the application of traditional values while promoting and protecting human rights and upholding human dignity, and to submit a summary thereon to the Human Rights Council before its twenty-fourth session”.

Side events

ARC organized two side events at the session. One side event on LGBT rights brought focus to the High Commissioner’s report on SOGI issues. Facilitated by Jeff Ogwaro of the Civil Society Coalition on Human Rights and Constitutional Law, Uganda, the panel featured presentations from Haitao Huang of the Sex/Gender Education Forum in China, Florence Khaxas from Young Feminists Movement, Namibia and CAL, Germaine Trittle of Rainbow Rights Project in the Philippines, and Maria Kozlovskaya of Coming Out, St Petersburg.

A second side event, titled “Undermining human rights and fundamental freedoms through a misunderstanding of traditional values of humankind”, provided a human rights defenders’ perspective on the threat posed by the Russian resolution on traditional values. Facilitated by Sandeep Prasad of ACPD and the Sexual Rights Initiative, the panel featured Ksenya Kirichenko of the Russian LGBT Network, Masa Amir of Nazra for Feminist Studies, Egypt, Kene Esom of AMSHeR in South Africa, and Alli Jernow of the ICJ.

ISHR Training Course

ARC was pleased to support an ISHR course for human rights defenders, which brought focus this session to activists working on SOGI issues and those from the MENA region. It was a huge privilege to work with such committed human rights activists from around the world, supporting them in their plenary statements, participation in side events, and meetings with government delegations.

End of the 6th HRC cycle

The session was also the last one to be presided over by the Uruguayan President of the Council, who has been active in protecting space for NGOs, and speaking out against reprisals. The next session, will take place in March 2013, under a President from the Eastern European Group, and 2013 will also see a shift in the Council membership, with some significant players (eg China, Russia, Cuba) coming off, due to a requirement that Members cannot serve more than two consecutive terms.

A list of retiring Human Rights Council members and candidates for 2013 can be found at: <http://www.un.org/en/ga/67/meetings/elections/hrc.shtml#draft>. Next year's membership is likely to be more favourable to SOGI issues, a factor that will prove significant as we collectively work towards a follow-up SOGI resolution in mid-2013.