

Concept paper on follow-up to Human Rights Council resolution 17/19, entitled “Human rights, sexual orientation and gender identity”

Background

The adoption of Human Rights Council resolution 17/19, entitled “Human rights, sexual orientation and gender identity”, led to the subsequent Panel Discussion which was held during the Nineteenth Session of the Human Rights Council, March 7, 2012. The High Commissioner’s report (A/HRC/19/41) entitled “Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity” dated 11 November 2011, provided a basis for the identification of issues.

This concept paper is intended to provide a framework for future engagement with the issue of sexual orientation and gender identity.

Key Issues

The main issues emanating from both the High Commissioner’s report and the ensuing Panel Discussion, and which appear to generate greatest consensus were violence against LGBTI persons, absence of legal measures to protect LBGTI persons, universality and non-discrimination, training, sensitization and anti-discrimination campaigns.

The issue of violence against LGBTI persons is clearly indisputable. The increasing violence against persons based on their sexual orientation or gender identity cannot be condoned in whatever context. Equally, the issue of legislation to promote and protect the rights of all people, including LGBTI people has been identified as an area of concern in the High Commissioner’s report and during the Panel Discussion.

Challenges

The initiative has largely overcome the notion that there is a North-South divide on this issue. However, scepticism still exists amongst several developing countries that this issue is not a priority for the Human Rights Council, and issues are consistently raised relating to personal convictions about culture, religion and beliefs. These obstacles can be eroded by awareness campaigns and education. Reaching out should be part of this process within the Human Rights Council and outside. This is the essence of promoting the values and principles of universality and non-discrimination of the Vienna Declaration and Programme of Action. The “friends of the resolution 17/19” may wish to engage in promoting the contents of the report and the outcome of the Panel Discussion, in Geneva and other centres.

Approach

The overarching goal is to address these violations and ensure the sustainability of the initiative at the Human Rights Council. It is imperative for supporters of the initiative to develop a common sense of purpose by reaching out cross-regionally, through dialogue and engagement to ensure support for continued follow-up. It is also important that the initiative is not seen to be targeting any specific countries, which would invariably be counter-productive, but instead addresses human rights issues of common cross-regional concern. Equally, short-term gains which lack coherence in approach with the broader collective group will undermine the initiative. It is for these reasons that working collaboratively with civil

society representatives and UN bodies together with other member states, becomes imperative.

This requires an incremental approach, while ensuring continued progress, taking into account that the Human Rights Council membership will change in future. This approach must also be based on the issues identified in the report of the High Commissioner, to avoid detracting from the essence of the report.

Short-term goal – regional seminars

The method proposed includes holding regional seminars or workshops, based on offers from proposed host countries, to popularise and strengthen engagement with both the Report of the High Commissioner and the summary outcome of the Panel Discussion.

Annexed is information on the regional seminars/workshops, which provides general guidelines on a consistent approach.

Follow up at the HRC

The second phase is the identification of a medium-term approach and goal to address the issues identified in the High Commissioner's report, the HRC Panel discussion, and the regional seminars. As part of an incremental approach, a decision or resolution within the Council may be considered, to mandate further attention to the issues in greater depth and in a more systematic way.

The principle that the approach should be constructive, and not target specific countries should be upheld, and will be informed by consultations with all concerned. At this stage, it is important to keep all options open. While the regional seminars are independent stand-alone events, the discussions may be helpful in informing future approaches.

An assessment of the new membership of the Human Rights Council and the potential success will require additional work. Indications at this stage are that a future decision or resolution has the potential of succeeding, and in the unlikely event that it does not succeed, an analysis of what remains in the Council will have to be assessed.

Conclusion

In conclusion, there is consensus that the initiative should be Geneva-based, anchored in the Human Rights Council, and informed by the High Commissioner's report and the regional seminars. This could be further considered by the Council at its 23rd session in June 2013, which will mark two years since the adoption of HRC 17/19. As indicated during the Twentieth Session of the Human Rights Council, as a collective, there may be a need to engage further with all interested parties in pursuing discussions on the challenging issues highlighted in the summary of Panel proceedings. The ultimate goal is to address human rights violations based on sexual orientation and gender identity in a more systematic way through enhancing compliance by the Council with its mandate to "be 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" (GA res 60/251).

Cross-Regional/ International SOGI Seminars

1. Goals/objectives:

The objective is to increase support for addressing LGBT-related human rights violations. Specific goals could be to: (1) present OHCHR report; (2) gather evidence of human rights abuses, focusing on violence and discrimination, through victim testimony; (3) generate dialogue on LGBT human rights with potential allies; and (4) raise awareness on the report of the High Commissioner for Human Rights and issues contained therein (Report A/HRC/19/41 entitled “Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity” dated 11 November 2011). The seminars could also be used as an opportunity to present international, regional and domestic legal and political developments (such as Human Rights Council resolution, OHCHR report and follow-up panel, OAS resolutions, ECHR jurisprudence, Asia Pacific Forum Workshop and Conclusions, high level political statements and support, national-level legislation and jurisprudence).

Calling these events “seminars” rather than conferences implies a smaller-scale and more manageable event, given the tight time frame. Seminar also conveys a learning and discussion purpose.

2. Organisation:

South Africa, together with close friends of the initiative, could form a small organising committee or ad-hoc secretariat that includes members of delegations from hosting countries and civil society. However, friends of the initiative should be aware of potential backlash, and so whilst information sharing between the meetings and organisers is encouraged, each event should be able to be seen as a stand alone event.

The advantage of having an organising committee/ad-hoc secretariat would be to centralize communications and to ensure that the seminars have a common theme/structure/purpose, to the extent possible given regional variations and context specific requirements. A secretariat would ensure institutional continuity and could facilitate the engagement of other stakeholders. The secretariat would also be responsible for developing terms of reference, taking into consideration the issues noted below.

3. Locations:

These events could be international or cross-regional meetings that are hosted in different regions, or they could be regionally specific events. It is important that events be hosted in all the UN regions, including the West, Asia, South or Central America and the Caribbean, Africa, and Eastern Europe. States might also consider presentation of the seminar discussions in Geneva as a prelude to the June session of the Human Rights Council.

4. Participants:

The number and type of participants depends on the goal of the event, the size, and the funding. The scale should be modest, in light of timing and planning constraints.

The audience and participants should include high-level government officials. It is important to invite and engage with a range of other actors including: civil society organisations; staff from UN agencies; individual victims of violations; researchers and academics; lawyers; NHRIs; UN and regional special rapporteurs and members of working groups; representatives of regional human rights systems; and supportive religious and faith-based leaders. The organisers could consider an application process to ensure that participants are engaged and knowledgeable, although the process of selecting the applicants could itself be resource intensive.

5. Agenda/structure:

The seminars could consist of a series of panels with a plenary opening and closing event. The Secretary General's video message could be used in the opening event, or he might be invited to record a new message specifically tailored to the SOGI seminars.

The adaptability of a series of panels is that the event could be as short as one day or a half day or extend to two days, again depending on funding and goals. A series of panels means that some panels could be devoted to common themes across the regions and some panels could be tailored to regional and national priorities.

For example, there could be a panel on international/regional/domestic developments and a panel devoted to victim testimony at each SOGI seminar. There could be a panel devoted to international human rights law and the existing legal framework. The content and participants of other panels could vary.

The organisers should consider what materials (reports, resolutions, cases, studies) should be made available to participants. A web page could be dedicated to gathering appropriate materials and resources.

6. Outcome:

There should be a report of the seminars that can then be used to inform future Human Rights Council related work. The report should be a summary of discussions, an overview of violations identified, and an outline of key issues, as well as areas of maximum agreement. This could then be a basis for follow up work at the Council. To ensure that the report reflects discussions at each seminar in a way that is coherent and useful, it is suggested to use a consistent Rapporteur, who might attend all the seminars in this capacity.

7. Timetable:

Friends of the SOGI resolution agree that the regional meetings should take place in the first quarter of 2013, where possible. The organising States should keep in mind that the seminars can unfold more or less simultaneously rather than concurrently (although without actual conflicting dates). For example, the seminars could be spaced closely together in February-March. All the seminars should be concluded by mid April 2013, so that they can inform consideration of potential follow-up by the Council at its June 2013 session (which will mark 2 years since the adoption of HRC 17/19). However, HRC follow-up should not be contingent on the timetable of regional meetings.