



The Permanent Missions of Argentina, Brazil, Chile, Colombia, Costa Rica, El Salvador, Mexico and Uruguay present their compliments to all Permanent Missions to the United Nations and have the honor to refer to draft amendment A/71/L.45 to the draft resolution recommended in paragraph 17 of the report of the Third Committee under the item 63 to the General Assembly.

The amendment will be considered in the upcoming 65th plenary meeting of the General Assembly on Monday December 19, 2016 with the intention to insert a new OP in the resolution on the report of the Human Rights Council to defer consideration and action on HRC Resolution 32/2. A similar attempt **was rejected** in the Third Committee with the support of countries from all five regional groups.

In the Third Committee deliberations, our countries clearly stated our concerns on the risks to undermine the work of the Human Rights Council, as well as its integrity and independence.

There are some key differences between resolution 32/2 and resolutions 1/2 and 24/24, invoked as precedents by the proponents of the amendment. HRC resolution 1/2 recommended to the General Assembly the adoption of a draft resolution; therefore it was the Council itself that referred the issue to the General Assembly. HRC 24/24 created a focal point for the issue of reprisals, recommending to the General Assembly the involvement of the Office of the Secretary-General and other bodies.

This is the **first time** that a group of countries has attempted to challenge a special procedures mandate holder of the Human Rights Council, already appointed and fully functioning, on an issue completely under the purview of the Council.

An argument repeatedly used by the proponents of the amendment is the lack of a definition of "sexual orientation and gender identity". An explicit treaty-based definition is not a requirement for a mandate to be established by the Human Rights Council, as several existing and fully functional mandates show. Besides, the concept of sexual orientation and gender identity is well known to the international community, in particular in the field of human rights law.



The issue of violence and discrimination based on sexual orientation and gender identity has been the object of three resolutions of the Human Rights Council, reports of the Office of the High Commissioner on Human Rights and of recommendations and decisions of human rights treaty bodies (Human Right Committee¹, Committee on the Rights of the Child²; Committee on the Economic, Social and Cultural Rights³; and Committee on the Elimination of Discrimination against Women⁴).

In addition, many existing mandate holders have addressed issues related to sexual orientation and gender identity (Special Rapporteur on extrajudicial, summary or arbitrary executions⁵; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment⁶; Special Rapporteur on violence against women, its causes and consequences⁷; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment⁸; Special Rapporteur on the right to education⁹; among others).

Moreover, on September 29, 2015 a call to end violence and discrimination based on sexual orientation and gender identity was issued by 12 United Nations entities (ILO, OHCHR, UNAIDS Secretariat, UNDP, UNESCO, UNFPA, UNHCR, UNICEF, UNODC, UN Women, WFP and WHO)¹⁰ stressing the urgency of addressing this issue.

More than 100 countries already received and accepted recommendations related to violence and discrimination based on sexual orientation and gender identity under the Universal Periodic Review. Since the UPR was established, there have been almost 1,300 recommendations on the issue of sexual orientation and gender identity.

Since 2002, the General Assembly resolution on extrajudicial, summary or arbitrary executions has included a reference to sexual orientation and gender identity and this past June, the Security Council "*condemned in the strongest terms the terrorist*

¹ HR Committee. Toonen versus Australia. Communication 488/1992. April 4, 1994;

² Committee on the Rights of the Child. Concluding Comments 13 (2011) and 14 (2013).

³ Committee on the Economic, Social and Cultural Rights. General Comments 14, 15, 18, 19 and 20.

⁴ Committee on the Elimination of Discrimination against Women. General Comment 29

⁵ Reports E/CN.4/1999/39; E/CN.4/2000/3; E/CN.4/2001/9; A/57/138

⁶ Reports E/CN.4/2001/66/Add.2; A/HRC/31/57

⁷ Reports E/CN.4/2002/83; A/HRC/14/22/Add.2; A/HRC/17/26/Add.2

⁸ Report A/HRC/14/20

⁹ Report A/65/162

¹⁰ http://www.ohchr.org/Documents/Issues/Discrimination/Joint_LGBTI_Statement_ENG.PDF



attack in Orlando, Florida, on 12 June 2016, targeting persons as a result of their sexual orientation" in its press release SC/12399.

At the regional level, it has also been addressed at length. In Latin America and the Caribbean, there are OAS General Assembly resolutions and several Inter American regional and sub-regional political declarations. The European Court of Human Rights has included the term sexual orientation in several decisions since 1999 and the African Commission on Human and Peoples Rights mentioned it for the first time in 2006 in the findings of a case¹¹. More recently, in 2014, the African Commission issued Resolution 275 on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity, making a strong call to all Members States to stop violence and discrimination on those bases.

The mandate of the Independent Expert created by HRC resolution 32/2 is not on sexual behaviors or new rights. Nor is it a mandate with a hidden agenda. This is a mandate on a universal issue that should bring together all Members States of the United Nations: the fight against violence and discrimination.

Finally, in line with arguments exposed, we cannot agree with the idea that a valid decision of the Human Rights Council on an issue as essential as the fight against violence and discrimination could undermine the States sovereignty or be contrary to the Charter of the United Nations.

For the reasons above, our countries, call for your support to the resolution as adopted by the Third Committee and therefore for your **vote AGAINST amendment A/71/L.45**.

The Permanent Missions of Argentina, Brazil, Chile, Colombia, Costa Rica, El Salvador, Mexico and Uruguay avail themselves of the opportunity to renew to all permanent missions to the United Nations the assurances of their highest consideration.

New York, December 16, 2016

¹¹ "Zimbabwe Human Rights NGO Forum vs Zimbabwe". Findings. Page 169.