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The Challenge of Adopting Sexual Orientation Resolutions at the UN Human Rights Council

Eduard Jordaan*

Abstract

Since the mid-1990s, UN special procedures reports have increasingly addressed human rights violations related to sexual orientation. However, it was not until 2011 that the first UN resolution on human rights and sexual orientation was adopted. After considerable difficulty, a follow-up resolution was adopted in late 2014. This policy and practice note examines the challenges of adopting sexual orientation resolutions at the UN Human Rights Council. The discussion is organized around six challenges: the need for Southern leadership, the strong counter-reaction that sexual orientation and gender identity (SOGI) issues generate at the UN, finding a strong leader, divisions within civil society, securing the necessary votes, and the contents of the resolution. The paper concludes with a reflection on the practical and strategic implications of these challenges.

Keywords: human rights; human rights defenders; sexual orientation; United Nations; UN Human Rights Council

Introduction

In 1995, in a report on Colombia, the UN Special Rapporteurs on torture and on extrajudicial, summary or arbitrary executions reported that homosexuals and others ‘whose presence was considered undesirable’ were often killed, their murders preceded by torture so as to intimidate others and to make the victims unidentifiable ([International Commission of Jurists \(ICJ\) 2007: 102](#)). In 1997, the Special Rapporteur on violence against women reported that women ‘who live out their sexuality in ways other than heterosexuality are often subjected to violence and degrading treatment’ ([ICJ 2007: 128](#)). These are two early

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mentions of the link between human rights and sexual orientation in UN special procedures reports. By the mid-2000s, discussion of human rights violations against sexual minorities were also appearing in the reports of mandates on arbitrary detention, enforced disappearances, Iran, human rights defenders, minority issues, physical and mental health, freedom of religion, freedom of expression, the right to education, the independence of judges and lawyers, adequate housing, and others (ICJ 2007).

However, despite the UN's human rights investigators' increased reporting on sexual orientation and human rights, it was not until June 2011 that the UN Human Rights Council (HRC) adopted resolution 17/19, 'Human rights, sexual orientation and gender identity', the first UN resolution on sexual orientation (UN Human Rights Council 2011a). Resolution 17/19 came unexpectedly, the result of a South African miscalculation. By March 2012, the actions mandated by resolution 17/19—a report and a panel discussion—had been completed, but a follow-up resolution was nowhere in sight. South Africa, after resolution 17/19 the leader on sexual orientation and gender identity (SOGI) in the Human Rights Council, began to obstruct progress on the issue. South Africa eventually backed away and, in September 2014, Brazil, Chile, Colombia and Uruguay—the LAC4 (Latin American and Caribbean four)—sponsored a follow-up resolution. By this time, the exasperation of civil society organizations was palpable; the social media hashtag they used for the September 2014 session was '#ItsTimeHRC'. Nevertheless, resolution 27/32 (UN Human Rights Council 2014a) was adopted by a larger margin than was resolution 17/19, although it was a slightly weaker version of the 2011 text.

The brief overview above gives a sense of the difficulty of adopting (constructive) resolutions on SOGI and human rights at the UN. This policy and practice note examines these difficulties as they play out in the principal UN human rights agency, the Human Rights Council. Given the Council's youth—it began in 2006—it is necessary, in places, to pick up the story during the time of its predecessor, the UN Commission on Human Rights. The discussion is focused on sexual orientation resolutions in the Human Rights Council, but it should be noted that there are various other UN forums for addressing SOGI issues, including the Commission on the Status of Women, the treaty bodies (committees that interpret and monitor implementation of the main international human rights treaties) and the Universal Periodic Review, a four-and-a-half-yearly review of each UN member state's human rights record (Karsay 2014: 12–15).

Important as these other UN channels are, SOGI advocates see resolution 17/19 and the report it mandated as the 'most important achievements to date' in legitimizing the claims of LGBT (lesbian, gay, bisexual and transgender) persons (Karsay 2014: 2). Resolutions are also important in the creation of 'soft law', which, while non-binding, may give rise to binding 'hard law'. The resolution process is also important for it steers states towards dialogue, creates an entry point for NGOs, and leads to the dissemination of information and expertise (Freedman 2014: 136). Finally, resolutions matter for the actions they mandate.

The discussion in this paper is organized around six challenges related to passing a Human Rights Council resolution in support of SOGI and human rights: the need for Southern leadership, the strong counter-reaction that SOGI generates, finding a strong leader, divisions within civil society, securing the necessary votes, and the contents of the resolution. The concluding section considers the practical and strategic implications of these difficulties. The research draws on interviews with diplomats, activists and international civil servants familiar with SOGI-related matters in the Council. These took place

between February and May 2014 and again in May 2015. Most were conducted face-to-face in Geneva and Pretoria, while a few were held over the phone.

The need for Southern leadership

The claim that human rights are a Western imposition on and incompatible with non-Western traditions is frequently used to resist human rights pressure (Freedman 2014: 37–46). One response to this ‘imperialism’ argument has been to seek cross-regional leadership on Human Rights Council resolutions (Donahue 2013). Although African and Latin American human rights documents recognize the human rights dimensions of SOGI (African Commission on Human and Peoples’ Rights 2014; Organization of American States 2008), the Western imperialism argument continues to be applied to SOGI issues (Saudi Arabia 2011) and to be taken seriously. There is widespread agreement that to counter this narrative, leadership should be cross-regional or from the developing world (interview 2015a). However, given the unwillingness of Asian states like Thailand, Philippines, Japan, South Korea and Viet Nam to join cross-regional leadership (interview 2015c), the only acceptable option is sole leadership from the global South.

Leadership on an issue in the Human Rights Council may entail actions such as hosting a ‘side-event’, preparing a joint statement, sponsoring a draft resolution, negotiating its contents, fending off opposition, lobbying for support, and, should the draft get adopted, organizing further initiatives. Such activities require resources such as enough diplomatic staff in Geneva and a large network of national embassies, which many developing countries lack (Freedman 2014: 52). The requirement that SOGI leadership should be from the global South has shrunk the pool of possible leaders. Resource constraints shrink it further, as does the heat generated by SOGI issues at the UN, the topic of the next section.

Vehement pushback

At the UN, efforts to press SOGI causes generate tremendous resistance. The causes of such resistance seem multiple, with scholars pointing to religiosity, a lack of modernity, a counter-reaction to Western LGBT activism, and states scapegoating LGBT persons for political goals such as nation-building, diverting attention from other problems, shoring up authority, or to use as an international bargaining chip (Rahman 2014; Weiss and Bosia 2013). Whatever the reason, it has made states reluctant to lead on the issue (interview 2014g).

Brazil’s experience is instructive. In 2003, Brazil tabled the resolution ‘Human Rights and Sexual Orientation’ in the Commission on Human Rights (UN Commission on Human Rights 2003a), the first ever draft resolution on sexual orientation at the UN. Brazil saw its resolution as an innocent expression of the non-discrimination principle and thus was not prepared for the response (Girard 2004: 342). The Holy See claimed the draft resolution condoned paedophilia. Ridiculous as the accusation was, Brazil had not anticipated it (ibid: 344). Opponents of the draft resolution managed to defer it until the Commission’s 2004 session and then used the reprieve to pile pressure on Brazil. The Catholic Church stoked domestic opposition in Brazil, while Islamic states threatened to boycott an upcoming trade summit in the country (ibid: 347). In 2004, Brazil declined to resubmit the resolution because it ‘didn’t want a discussion that divides rather than unites’ (quoted in ibid: 347). In 2005, the draft resolution lapsed.

In June 2011, when South Africa led on resolution 17/19, it too came under heavy fire. Before the vote on resolution 17/19, the African Group spokesperson was called to order for his criticism of South Africa. Nine months later, all was still not forgiven, with the African Group spokesperson making a statement on behalf of the ‘majority of the member states of the African Group’ (Senegal 2012). South Africa’s ambassador admitted the SOGI leadership had lost his country ‘friends and allies’ (Independent Online 2011). As will be discussed below, South Africa’s strategy after resolution 17/19 was designed to mend fences with these lost friends, but resistance was so strong that it paralysed South Africa and stalled progress on SOGI.

As South Africa withdrew, various Latin American countries felt it was up to them to take the initiative, but no one wanted to go it alone. In the end, Brazil, Chile, Colombia and Uruguay combined to lead the Human Rights Council to adopt its second SOGI resolution in September 2014. The LAC4 did not escape sharp criticism—they were called mere Western instruments (interview 2015e)—but their cooperation allowed for easier absorption of such criticism.

Finding a good leader

Progress towards the two sexual orientation resolutions to date has been hampered by the reluctance of states to take the lead and, in cases where leaders did emerge, by their unreliability and questionable strategies. This section describes the lack of firm, reliable leadership and how it has set back the adoption of sexual orientation resolutions.

Prior to Brazil’s 2003 draft resolution, the focus of delegations that supported sexual orientation rights was to raise the issue through existing processes, such as the Beijing process on women or the mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions (Girard 2004: 342). Brazil’s draft resolution in the Commission on Human Rights upset this gradual approach. As mentioned, Brazil had underestimated the opposition its draft would encounter. Moreover, Brazil’s diplomacy was bumbling. Before tabling the resolution, Brazil had not consulted or shared its draft with potential allies. Brazil’s surprise initiative annoyed countries like Canada and Sweden which had traditionally been prominent on sexual orientation issues. Brazil had also failed to invite civil society organizations to Geneva to support the resolution, leaving NGOs present in Geneva to scramble what support they could (ibid: 341–3). After opponents managed to defer Brazil’s draft, civil society organizations mobilized to support a resubmitted draft to the 2004 session of the Commission. However, Brazil, faced with intense opposition, ‘disappeared’ on these civil society groups. Again, civil society organizations were left with too little time to repair the damage. They tried in vain to persuade the European Union (EU) and South Africa to take over the resolution (ibid: 347).

The failure of Brazil’s draft resolution was ‘extremely damaging’ to the SOGI cause at the international level, leaving states unwilling to push the issue too hard (International Service for Human Rights 2011). Only in June 2011 did a new leader on SOGI emerge: South Africa. An African leader on SOGI was ideal, but South Africa was deeply conflicted on the SOGI issue. South Africa’s leadership stemmed from a miscalculated attempt in March 2011 to obstruct the SOGI cause. The source of South Africa’s confusion was, on the one hand, a Constitution that prohibited discrimination on the grounds of sexual orientation and, on the other, a foreign policy that held good relations with Africa as central.

On 17 March 2011, three minutes before the deadline, South Africa tabled a draft resolution on sexual orientation. Pro-SOGI delegations were surprised to learn of such a resolution (interview 2014a). Normal practice at the Human Rights Council is for a state to signal its intention to table a resolution and to discuss the resolution in open meetings. However, South Africa had restricted discussion of its draft resolution to the African Group. South Africa wanted to table the resolution on behalf of the African Group, but after initial support, the African Group withdrew its backing (interview 2014b). Although the term ‘sexual orientation’ is in South Africa’s Constitution, South Africa’s draft resolution proposed the creation of a working group to define this ‘new concept’ and its relation to international human rights law. Furthermore, there was to be no discussion of sexual orientation throughout the UN until the working group had finished its assignment (UN Human Rights Council 2011b). As for the deadline, South Africa thought in terms of the UN Working Group on Indigenous Populations, formed in 1982 and terminated in 2007. In short, the future new leader on SOGI was trying to bury the issue for decades.

At the end of the March 2011 session, South Africa deferred its draft resolution because neither the opponents nor the supporters of sexual orientation rights would support it. African opposition meant that tabling another regressive resolution was not an option. South Africa could either lose face by withdrawing the resolution altogether or it could present a more progressive resolution. At the June 2011 session, South Africa chose the latter course (UN Human Rights Council 2011c). In contrast to its behaviour three months before, South Africa now adopted an open and consultative approach. South Africa was receptive when civil society groups gave it a ‘reality check’ on the extent of violence against LGBT persons (interview 2014c). South Africa was also convinced to delete the working group idea that was still present in its redrafted resolution (UN Human Rights Council 2011c). Brazil and Norway worked closely with South Africa, and because South Africa was not a Human Rights Council member in 2011, Brazil tabled the resolution on South Africa’s behalf.

In June 2012, the actions mandated by resolution 17/19—a High Commissioner’s report on SOGI-related violence and discrimination and a panel discussion of the report—completed, South Africa presented a two-step plan. The first step was to use outreach, dialogue, education and awareness campaigns to break down resistance to the SOGI issue. Towards this goal, South Africa proposed that each of the five UN regions hold a seminar to further engage with the High Commissioner’s report. These workshops were to be held by early 2013. As a second step, scheduled for the Human Rights Council’s June 2013 session, ‘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’. Significantly, South Africa stated that ‘follow-up should not be contingent on the timetable of the regional meetings’ (South Africa 2012).

In April 2013, South Africa and Norway co-chaired a conference in Oslo to summarize the preceding regional workshops. However, no African seminar had been held, presumably because of too much resistance. Further, there was disagreement over the urgency of follow-up action in the Human Rights Council. Whereas South Africa’s June 2012 proposal had explicitly identified the Council’s June 2013 session for a resolution or a decision, South Africa would now agree to nothing more than ‘a relevant mechanism, at the appropriate time’ (Norway 2013a: 5). Norway, however, wanted a resolution as soon as possible (ibid: 3).

Before the Council's June 2013 session, South Africa quashed rumours of a SOGI resolution at that session; there could be no resolution until Africa had also held a seminar. South Africa announced the holding of the African seminar before the end of 2013 and a concluding conference in Geneva in early 2014 ([interview 2014d](#)). By making a resolution contingent on the timing of a regional seminar, South Africa was deviating from its June 2012 plan, but also was handing African states a veto over progress on SOGI. Western and Latin American countries were very frustrated with South Africa. Unmoved, South Africa reiterated the need for dialogue ([interview 2014d](#)).

At the Council's June 2013 session, the simmering disagreement between South Africa and other pro-SOGI delegations boiled over. Norway had approached Brazil and South Africa to make a joint statement. South Africa wrote the first draft, but Norway dismissed it as 'weak' ([interview 2014b](#)). [Norway \(2013b\)](#) pressed ahead with a joint statement on behalf of 33 states, which South Africa declined to join. Norway's statement did not stray beyond the language South Africa and itself had agreed to in Oslo two months before. Nevertheless, [South Africa \(2013\)](#) responded angrily. Addressing Norway directly—considered rude by Human Rights Council standards—South Africa explained that its decision not to join Norway's statement was down to a disagreement between those who felt 'the need to adopt immediate measures' and those who wanted to promote further 'cooperation'. South Africa again committed to an African seminar and a subsequent conference in Geneva, but did not mention any dates or a future resolution.

Frustrated as others were with South Africa's stalling, there was no other state to take over as leader. Argentina emerged as the most likely replacement. Argentina told civil society groups that although South Africa should remain the lead state, something should happen. In September 2013, in a meeting between Argentina, South Africa and a civil society organization, South Africa said that there would be an African seminar in December 2013, a concluding conference in early 2014, and a resolution in March 2014 ([interview 2014d](#)). However, by mid-November 2013 South Africa was saying that a workshop before the end of 2013 was not possible (*ibid.*). Part of the reason for South Africa's inaction was that elections to the Human Rights Council were taking place in mid-November 2013 ([interviews 2014a, 2014d](#)). South Africa was running for a seat. Support for SOGI would have diminished its chances. In March 2014, South Africa's foreign minister made a speech to the Council. The initial official version contained a commitment to hosting the African seminar 'during the first half of this year' ([DeBarros 2014](#)). However, she omitted this part when she spoke and the version on the foreign ministry's website was changed to reflect the omission ([South Africa 2014](#)).

South Africa's initial SOGI leadership seemed heaven-sent, but in 2013 it began to hold the issue hostage. Only after the Human Rights Council's March 2014 session did South Africa admit that it was not able to lead ([interviews 2015a, 2015d](#)). South Africa was out of the way, but there was no clear successor. After almost three years without a follow-up to resolution 17/19, the issue was in danger of falling off the agenda ([interview 2014a](#)). The adoption of an anti-SOGI 'Protection of the family' resolution at the Council's June 2014 session added to the pressure. New leadership had to come from the South. There was no African state to do this. Thailand, though supportive of SOGI issues, was very consensus-oriented and thus would not lead ([interviews 2014e, 2015a, 2015c](#)). Civil society increasingly looked to the Latin American Group. Argentina, Brazil, Chile, Colombia, Mexico and Uruguay—the LAC6—were particularly committed to the issue. Still, it was not clear who would lead. Of the six, Argentina had been the most active, but did not want to go it alone.

The best the LAC6 could muster was a joint statement at the Council's June 2014 session that urged the Council to 'continue working' on the SOGI issue (ARC International 2014: 35).

By August 2014, the LAC6 still had no leader. Argentina had ruled itself out. It was bringing a resolution on culture funds in the General Assembly, which enjoyed priority. Towards this resolution, it needed Russian and African support (interviews 2015a, 2015b, 2015c). Mexico also stepped back, apparently because some in the government were working to get the Pope to visit the country (interview 2015a). It took an intervention from civil society in Geneva to get the Latin American countries together because it seemed as though there was some miscommunication between these states (ibid.). Finally, Uruguay and Colombia announced they were ready to lead. Chile joined, followed by Brazil a few days later (interview 2015e). The four led the Human Rights Council to adopt a new SOGI resolution.

The LAC4's success is encouraging because it provides a way of ensuring continuity of leadership. The LAC4's leadership was also marked by very able and thorough diplomacy, with a detailed plan for every foreseeable eventuality (interview 2015e). The LAC4 worked closely with civil society, for instance, asking them for information and to lobby their respective governments (interview 2015d). The LAC4 also worked closely with the United States and the EU, which had put their extensive diplomatic networks at the LAC4 disposal. If the LAC4's leadership does have a weakness, it is in their reliance on Western diplomatic networks. A future Republican US president is much less likely to support SOGI initiatives and to have the US canvas on behalf of Latin American countries.

Divided civil society

In the wake of resolution 17/19, a further obstacle to progress towards a new SOGI resolution emerged: division among pro-SOGI civil society organizations. The problem broke out at the Oslo conference in April 2013. ARC International, an important LGBT voice in Geneva, had assumed that civil society organizations wanted the creation of a special procedures mandate on SOGI (special procedures are independent human rights experts mandated to report and advise on thematic or country-specific human rights issues). However, some organizations from Africa—the Coalition of African Lesbians (CAL) most notably—spoke from a post-colonial perspective and, in light of the fact that an African regional workshop had not taken place, insisted that Africa's voice should first be heard (interview 2014d). CAL further argued that such a special procedures mandate would be too confrontational and would cause a backlash against LGBT persons in the countries that a special rapporteur would investigate (interview 2014d). CAL supported South Africa's incremental approach and argued for the provision of guidance and assistance to governments to help them ameliorate violence against sexual minorities (CAL 2013). These disagreements were appearing as South Africa's SOGI leadership began to stall, weakening pro-SOGI civil society's ability to hold South Africa to account. Moreover, South Africa cynically justified its lack of action by citing support from some in civil society for its incremental approach (interviews 2014c, 2014f).

Civil society disagreements over South Africa's leadership reflect a deeper tension between two overlapping sets of SOGI activists. First, there is a division between local activists and those doing UN advocacy, with the former concerned that domestic concerns are not visible enough at the international level. Second, some local SOGI activists have pointed

out that those who engage in UN advocacy remain disproportionately white, male and Western, with the consequence that non-Western perspectives are not adequately taken into account (Karsay 2014: 24–30).

Getting the votes

Obtaining enough votes to adopt a resolution is crucial, not only because a resolution mandates UN action, but also because it confirms support for a certain moral outlook. However, getting enough votes to adopt a sexual orientation resolution has been and remains a major challenge.

Having lacked the votes to adopt the Brazilian resolution of 2003, pro-SOGI states adopted another strategy: building support for the issue by making joint statements on sexual orientation and human rights. In 2005, New Zealand made such a statement in the Commission on Human Rights on behalf of 32 states. In 2006, there was a Norwegian statement to the Human Rights Council on behalf of 54 states. In 2008, Argentina presented a statement to the General Assembly on behalf of 66 states. This statement was initially intended as a resolution, but it lacked the necessary votes. (At the same session, Syria led a counter-statement on behalf of 60 states.) In March 2011, Colombia made a statement to the Human Rights Council on behalf of 85 states.

These numbers point to increased support for sexual orientation rights. Voting patterns related to sexual orientation resolutions have also moved towards greater support. Although Brazil's 2003 draft resolution was not put to a vote, the three procedural votes show inadequate backing for the progressive side. When the Brazilian draft was due for discussion on the penultimate day of the 2003 session of the Commission on Human Rights, Pakistan proposed to not discuss the resolution. Pakistan's motion was defeated 24–22 (six abstentions) (the Commission had 53 members). After the failure of Pakistan's proposal, five Islamic countries tried to delay the debate by each proposing extensive amendments to the resolution (UN Commission on Human Rights 2003b). The chairperson then cited a shortage of time and proposed discussing the amendments the next day. Brazil and its allies opposed a postponement, but lost the vote 26–21 (six abstentions) (UN Commission on Human Rights 2003c: 12–14). Brazil's draft finally came up for discussion late on the last afternoon of the Commission's annual session, but became ensnared in procedural disputes. At 6 p.m., the chairperson proposed deferring Brazil's resolution to 2004. Brazil and its allies opposed the motion, but lost 24–17 (ten abstentions). Eight years later, however, the progressive side had enough votes: Human Rights Council resolution 17/19 was adopted 23–19 (three abstentions), while resolution 27/32 (UN Human Rights Council 2014a) was adopted more convincingly 25–14 (seven abstentions).

The above trends suggest that a future SOGI resolution will be adopted with relative ease, but caution is necessary. First, the margins on the votes on the seven hostile amendments to resolution 27/32 were tighter. Five amendments were rejected 21–16 (seven abstentions), while the other two were rejected 21–17 (six abstentions). Second, states face competing pressures and sometimes deal with these by adopting contradictory positions. For instance, four countries (Philippines, South Africa, Venezuela and Viet Nam) that voted for resolution 27/32 also voted for the anti-SOGI 'Protection of the family' resolution three months before. The ironing out of such inconsistency might not necessarily be resolved in favour of a future SOGI resolution. Third, votes are often difficult to predict. Despite having been the leader on SOGI, many were worried that South Africa would not support the

LAC4's September 2014 resolution ([Human Rights Watch 2014](#)). South Africa was determined not to declare its hand. It is highly unusual for ambassadors to attend Human Rights Council 'informals', meetings where diplomats discuss the details of a draft resolution. However, the South African ambassador attended an informal on the September 2014 SOGI text. To add to the awkwardness, the ambassador did not speak during the meeting or indicate how South Africa might vote. Still on the topic of unpredictable voting, one Western diplomat noted her surprise that Viet Nam and the Philippines supported resolution 27/32. She mentioned that on this same resolution an African state had promised her a yes vote but then voted no, whereas another African state promised an abstention but voted no ([interview 2015b](#)). Fourth, support for a SOGI resolution is sensitive to the membership of the Human Rights Council, which changes annually. According to one LGBT advocacy group, the make-up of the Council in 2012 was such that it was probably better that no SOGI resolution was tabled during that year. Whereas 2013 would have been a good year for a SOGI resolution ([interview 2014c](#)), the 2014 membership profile was thought to be 'tricky' ([interview 2014e](#)). Further, Japan, a reliable SOGI supporter, left the Council at the end of 2015. Such stalwart support will not be matched by Asian states available to take Japan's place ([interview 2015a](#)). Fifth, support for the resolution depends on the strength of the resolution, an issue discussed below.

The resolution

The vote count on resolution 27/32 augurs well for the next SOGI resolution, but future votes will be sensitive to the strength of the resolution. Brazil's 2003 draft resolution lies at the weak end of possible resolutions. It 'encouraged' special procedures mandate holders and 'requested' the High Commissioner to pay attention to human rights violations on the basis of sexual orientation, but did not call for a dedicated report ([UN Commission on Human Rights 2003a](#)).

Resolution 17/19 was much stronger in that it called for a High Commissioner's report ([UN Human Rights Council 2011d](#)) and a panel discussion thereof. The once-off report documented serious and extensive SOGI-based violence and discrimination and demonstrated the need for such violations to be 'systematically monitored, documented and reported'. Accumulated evidence will make denial impossible, provide a basis for discussion, and spur states into taking action domestically ([Pillay 2013: 35](#)). SOGI advocacy groups regarded the inclusion of regular reporting in the 2014 SOGI resolution as non-negotiable ([interview 2015a](#)).

There is also a question of who should do the reporting. Resolutions 17/19 and 27/32 mandated a High Commissioner's report. Some human rights groups favour the stronger option of creating a special rapporteur on SOGI ([interview 2014f](#)). A special rapporteur would be mandated to undertake country visits and address urgent appeals and letters of allegation to specific governments. South Africa, for instance, opposes the creation of a special rapporteur on SOGI because the rapporteur would 'target' developing countries ([interview 2014b](#)). While South Africa's opposition is not motivated by concern for LGBT persons, some SOGI activists also oppose a dedicated SOGI mandate. As mentioned, one reason is concern about a backlash against LGBT persons. Others argue that since SOGI matters do not exist in isolation, the focus should be on addressing SOGI through the various UN instruments that already exist (e.g. housing, health, race) ([Karsay 2014: 31](#)).

The first draft of the September 2014 resolution called for biennial reports by the Office of the UN High Commissioner for Human Rights (OHCHR) on SOGI-based discrimination and violence (UN Human Rights Council 2014b). The proposal was moderate—a more typical reporting cycle on thematic human rights issues is one year—yet China, India and South Africa lobbied to remove regular reporting from the draft (interviews 2015a, 2015d). In the end, the September 2014 resolution was slightly weaker than the June 2011 resolution. Whereas resolution 17/19 mandated an OHCHR report and a panel discussion, resolution 27/32 asks only for a once-off OHCHR report. SOGI advocacy groups were angered by the deletion of regular reporting, but recognized the political realities on the Human Rights Council (interview 2015a). While the adoption of another SOGI resolution in the near future is very likely, the institutionalization of reporting on SOGI-related human rights violations seems some way off.

Conclusion

From the above, four lessons present themselves. First, there should be recognition of political realities on the Human Rights Council. At the Council, civil society organizations typically demand the strongest possible action. However, the discussion above demonstrated the constraints on the SOGI cause. Progress is necessarily incremental. It is better to adopt a mild resolution than to have a stronger one rejected. Resolution 27/32 kept SOGI on the Council's agenda, rather than build momentum, but a rejected resolution would have set the cause back many years. The unfortunate truth is that many Human Rights Council members have a questionable commitment to human rights and to SOGI rights specifically. According to Freedom House (2016), only 19 out of the 47 Human Rights Council 2015 members were 'free'. Seventeen of the Council's 2015 members criminalize homosexuality (International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) 2015). With 13 members, the African Group, strongly opposed to SOGI rights, is the largest regional bloc on the Council.

Second, the delimitation of the issue is crucial. Although the two SOGI resolutions and subsequent reports have addressed SOGI-based violence and discrimination, the emphasis has been on violence. Brazil, for instance, faces considerable pressure domestically, and thus prefers to focus on violence rather than discrimination (interview 2014e). Too much emphasis on discrimination against, for instance, transgender persons would be very controversial and unlikely to gain enough support (ibid.). Furthermore, activists disagree whether SOGI issues should be placed under the umbrella of sexual rights (Mail Online 2015). The difficulty is that a sexual rights framework brings in matters related to abortion, an issue which Latin American countries, whose support on SOGI is essential, are less enthusiastic about (interview 2014f).

The Human Rights Council is a body run by states, but NGOs have influence and numerous points of access. A Latin American diplomat joked that on SOGI there is 'a new P5': United States, United Kingdom, France, ARC International, and ILGA (interview 2015a). Civil society pressure is significant. International NGOs were influential in getting South Africa to defer its destructive March 2011 draft, while South Africa-based NGOs were important in pushing South Africa towards a more constructive role at the Council's June 2011 session. NGOs can also play an important networking and coordinating role. Ahead of the 2014 SOGI resolution, Latin American diplomats used text messages to ask NGOs in their respective home countries to ask their civil society allies in third countries to

lobby their governments. NGOs also provide technical expertise. For instance, ARC International assisted states in formulating the legal arguments to address the hostile amendments against the September 2014 SOGI resolution (ibid.). More generally, states have sometimes approached SOGI advocacy groups for advice on what to do (interviews 2014a, 2014f, 2015a).

Finally, South Africa's exploitation of divisions among pro-SOGI civil society and civil society's struggle to pressure South Africa demonstrate the importance of civil society unity. Such unity might become harder to achieve as more NGOs engage the UN. Failure to achieve unity risks weakening advocacy messages, muddling goals, and producing an inability to respond proactively (Karsay 2014: 27).

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