

BACKGROUND NOTE

Reject attempt to undermine institutional integrity of Human Rights Council and to block Independent Expert on Sexual Orientation & Gender Identity at the Third Committee of the UN General Assembly

Importance of respecting the Human Rights Council's institutional integrity

The Human Rights Council was established as the UN's primary human rights body in 2006. It derives its mandate from GA resolution 60/251, which provides that "the Council shall 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".

Every year, after much deliberation, debate and substantive negotiations, the Human Rights Council adopts numerous resolutions, mandating panels, reports, Special Procedures, Commissions of Inquiry and other tools and mechanisms. Unlike its predecessor body, the Commission on Human Rights, the Council is not a subsidiary body of the ECOSOC, nor Third Committee, and makes decisions not recommendations.

If the Third Committee were able to reopen the Council's annual report and cherry-pick which resolutions it supports and which it seeks to block or defer indefinitely, it would fundamentally undermine the authority granted to the Council by the General Assembly, open all HRC resolutions up to renegotiation and debate at Third Committee every year, and have far-reaching implications well beyond the specific resolution currently under consideration. If this resolution can be re-opened, whose resolution will be next?

About the resolution appointing the Independent Expert

Human Rights Council resolution 32/2 on *Protection against violence and discrimination based on sexual orientation and gender identity* was jointly presented at the 32nd regular session of the Human Rights Council in June 2016 by Argentina, Brazil, Chile, Colombia, Costa Rica, Mexico and Uruguay. The resolution was adopted with 23 votes in favour, 18 against and 6 abstentions.

The text builds upon two previous resolutions: the first presented by South Africa in 2011, and the second by Brazil, Chile, Colombia and Uruguay in 2014. These previous resolutions mandated two reports by the UN High Commissioner for Human Rights, which documented both serious violations and positive developments in all regions of the world. The High Commissioner highlighted, however, serious protection gaps, and noted the need for a mechanism to bring more systematic attention to the issues. In response to this, resolution 32/2 created an Independent Expert tasked to engage in dialogue to address these issues constructively.

About the appointment

At the 33rd session of the Human Rights Council in September 2016, Prof. Vitit Muntarbhorn, an experienced UN mandate-holder, was appointed as Independent Expert. This appointment followed the Human Rights Council's rules of procedures, including an open call for applications, review by the HRC's Consultative Group of the 21 candidates, interviews of shortlisted candidates, recommendation of the top three candidates who met the criteria and possessed the highest qualification for the mandate, nomination by the President of the top-ranked candidate, presentation of the President's proposal to the Human Rights Council by formal communication 31 days before the scheduled appointment date, consultations on the list with all regional groups, and endorsement of the President's nomination by the Human Rights Council without opposition (some States, notably Russia and the OIC except Albania, chose to make a statement distancing themselves from the mandate, but did not seek to block the appointment).

Following the appointment by the Council, Prof. Vitit Muntarbhorn commenced his work as the Independent Expert on 1 November 2016.

The attempt to block the Independent Expert from carrying out his functions

Resolutions adopted by the Human Rights Council, in their regular and special sessions, are brought to the attention of the General Assembly's Third Committee through a report. It has been a practice for several years that the African Group introduces a resolution at the Third Committee taking note of the report of the Council.

Regrettably, the African Group is now seeking to undermine HRC resolution 32/2, through a draft resolution which '*decides to defer consideration of and action on Human Rights Council resolution 32/2 of 30 June 2016 on protection against violence and discrimination based on sexual orientation and gender identity, in order to allow time for further consultations to determine the legal basis upon which the mandate of the special procedure established therein will be defined.*'

The proposed resolution seeking to block the Independent Expert from fulfilling his mandate should be opposed for the following reasons:

- The proposed resolution is tantamount to a no-action motion, seeking to defer action on HRC resolution 32/2 indefinitely. The Human Rights Council already rejected a no-action motion brought by Saudi Arabia when the resolution arose for consideration in Geneva.
- The adoption of the proposed resolution would be very harmful to anti-violence and non-discrimination efforts in relation to LGBT persons. It would also send out the dangerous message that LGBT persons are not entitled to full protection under international human rights law, and imperil the rights of LGBT persons worldwide.
- There is no basis for questioning the legal validity of the SOGI mandate – the legal basis is exactly the same as the legal basis on which all three SOGI resolutions adopted by the Human Rights Council were founded: the principles of universality and non-discrimination enshrined in the UDHR, and the Council's responsibility, under OP2 of GA resolution 60/251, 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." The legal basis underpinning the rights of LGBT persons to be protected from violence and discrimination are also fully articulated in the two reports [A/HRC/19/41](#) and [A/HRC/29/23](#) that the HRC requested of the UN High Commissioner for Human Rights.
- While differing views on the resolution exist, it was validly adopted at the Council after an open and vibrant debate by a vote of 23-18 (about the same degree of support as for the 2011 SOGI resolution brought by South Africa, which also had 23 votes in favour and one more vote in opposition). It is clear that the creation of a Special Procedure at the June session was fully within the mandate and authority of the Human Rights Council, and a mandate-holder was appointed at the September session without a vote, and has already assumed office and begun work.
- If the Third Committee now attempted to undo a decision validly taken by the Human Rights Council, it would essentially mean that any Council resolution could be re-opened and the Council's authority to fulfill its mandate would be substantially undermined. It would further be contrary to the established institutional relationship between the General Assembly and the Human Rights Council, as outlined in resolution 60/251 which established the Council and affirmed by resolution 65/281 which reviewed the Council's work and functioning.