



## Protection against discrimination and violence based on sexual orientation and gender identity

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### Introduction

#### *Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity*

Violence and discrimination against individuals due to their sexual orientation or gender identity has reached alarming proportions in recent years. The issue has sparked attention from the international community, with particular interest in raising awareness and protecting human rights.

In 2016, 73 countries still considered same-sex sexual activity to be a criminal act. It was regarded as an act punishable by death in 13 nations.<sup>1</sup> Even among states that have decriminalized same-sex relations, there remains wide discrepancy in the level of legal protection provided against sexual orientation and gender identity based discrimination and violence.

Despite efforts made by member nations, the UNHRC has not yet been able to decriminalize homosexuality and same-sex relations at the international level. Legalizing same-sex marriage is also an

issue that has not been addressed at the UN and could not be passed at this point in time due to significant opposition from member states. This opposition rests on the grounds of religious, cultural or moral objections to non-traditional sexual orientation and gender identity.

Though protecting against violence and discrimination would seem to be a straightforward agenda, there has been difficulty in passing international legislation regarding sexual orientation and gender identity. This is, in part, attributable to the complexity of definitions and the possible translatability of the law to domains of national sovereignty.

For this reason, statements and resolutions presented in the UN General Assembly and Human Rights Council have needed to purposely restrict their scope to the basic rights of life and protection against violence and persecution on the basis of gender identity and sexual orientation. Even still, significant opposition in the name of state sovereignty and cultural relativism continues to be voiced.<sup>2</sup> However, significant and historic strides have been made at the UNHRC in recent years, and there is a

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<sup>1</sup> International Lesbian, Gay, Bisexual, Trans and Intersex Association: Carroll, A., *State Sponsored Homophobia 2016: A world survey of sexual orientation laws: criminalization, protection and recognition* (Geneva; ILGA, May 2016).  
[http://ilga.org/downloads/02\\_ILGA\\_State\\_Sponsored\\_Homophobia\\_2016\\_ENG\\_WEB\\_150516.pdf](http://ilga.org/downloads/02_ILGA_State_Sponsored_Homophobia_2016_ENG_WEB_150516.pdf)

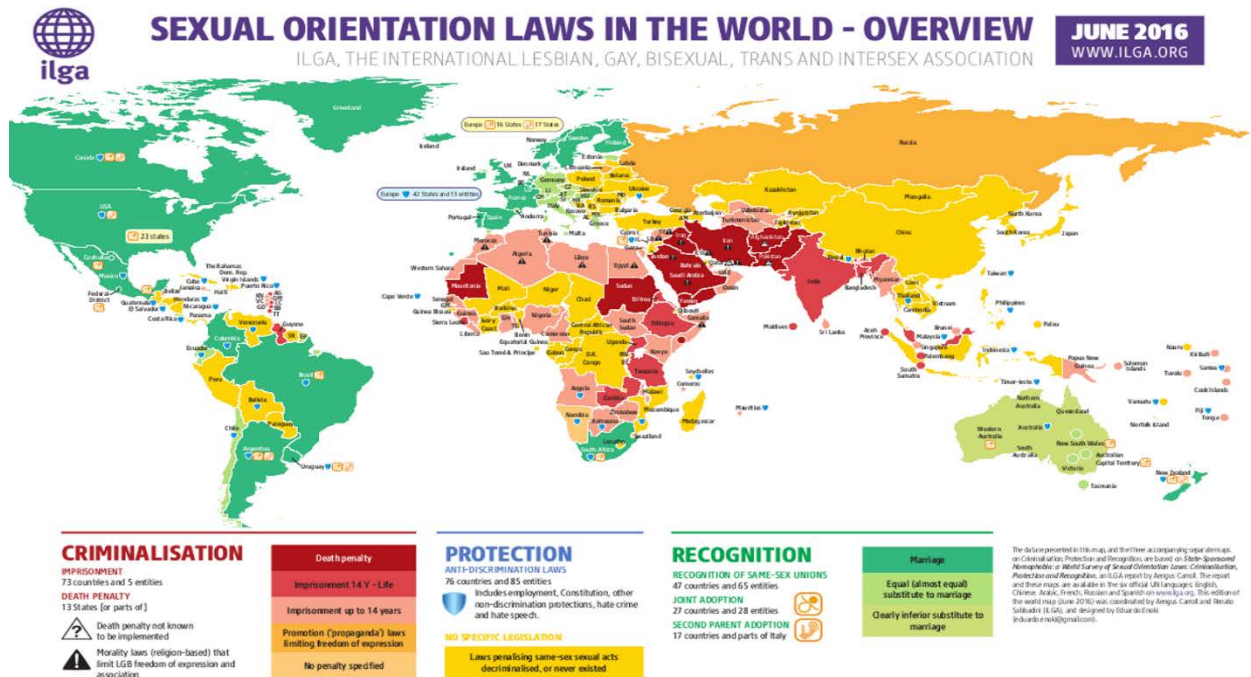
<sup>2</sup> Theodor Rathgeber, *Report on the 27<sup>th</sup> Session of the UN Human Rights Council*, 08-26 September 2014, [http://www.fes-globalization.org/geneva/documents/2014/2014\\_09\\_HRC\\_report\\_27\\_141214.pdf](http://www.fes-globalization.org/geneva/documents/2014/2014_09_HRC_report_27_141214.pdf)



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positive outlook for continued advancements  
 in the protection of LGBT human rights  
 internationally.



**Background**

A 2015 report at the UNHRC on discrimination and violence based on sexual orientation and gender identity documented widespread violations of the fundamental human rights of LGBT individuals. This report concluded that current measures to protect LGBT human rights were insufficient and that more needed to be done.<sup>3</sup>

This information is nothing new for the hundreds, if not thousands, of non-governmental organizations (NGOs) that have been fighting for LGBT rights for decades. In fact, it is efforts by such NGOs that have played a major role in bringing the issue of LGBT rights to the UN and gaining positive votes. A campaign of 628 NGOs was crucial in urging the UN to consider the most recent LGBT human

<sup>3</sup> 'Report A/HRC/19/41 on Discrimination and Violence Against Individuals based on their Sexual Orientation and Gender Identity', 4 May 2015,

[http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Documents/A\\_HRC\\_29\\_23\\_en.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Documents/A_HRC_29_23_en.doc).

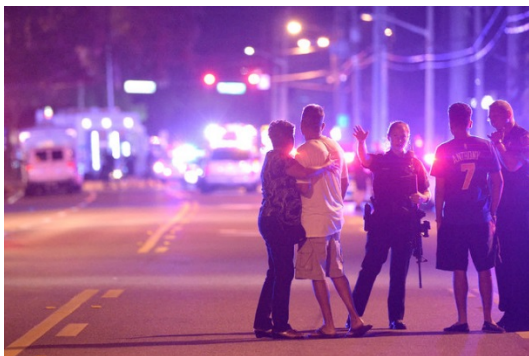


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rights resolution passed in 2016.<sup>4</sup> Such NGOs include the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), Human Rights Watch, Amnesty International, ARC International and many others.

Recent events have also played a role in the increased attention at the UN. They confirm the information from reports and demonstrate alarming levels of hate crimes and physical violence on the basis of sexual orientation and gender identity.



Police officers and survivors at the scene of the Orlando gay nightclub shooting in June 2016. Credit: Phelan M. Ebenhack/Associated Press

Specifically, statements were made at the UN highlighting the recent tragic events of June 2016 when a lone gunman, Omar Mateen, killed 49 people at a gay nightclub in Orlando, Florida. This incident was the largest attack on U.S. soil since September 11, 2001, and it represents the extreme threats to life and

safety being faced by the LGBT community in the U.S. and around the world.<sup>5</sup>

### **Current Situation**

Nations who do not recognize same-sex unions or ban them on religious, cultural or moral grounds view the adoption of an international law protecting LGBT human rights as an affront or threat to their national sovereignty or traditional society itself.

Part of the issue lies in the complexity of human rights definitions and degrees of legality and protections for LGBT individuals. There is wide variation and distinction globally – ranging from criminalization of homosexuality to protection limited to employment only to recognition of same-sex marriage.

In the discussion of amendments during the passing of a 2014 UNHRC resolution, attempts were made to completely remove the term “sexual orientation” and any reference to it from the resolution’s language. Extreme disapproval was voiced from opposing states who argued that the resolution was defining an entirely “new category of persons” that

<sup>4</sup> Human Rights Watch, *UN Makes History on Sexual Orientation, Gender Identity*, 30 June 2016, <https://www.hrw.org/news/2016/06/30/un-makes-history-sexual-orientation-gender-identity>

<sup>5</sup> Lizette Alvarez and Richard Pérez-Peña, ‘Orlando Gunman Attacks Gay Nightclub, Leaving 50 Dead’, *New York Times*, 12 June 2016, <http://www.nytimes.com/2016/06/13/us/orlando-nightclub-shooting.html>



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would disrupt the traditional values of family and society.<sup>6</sup>

Though the Human Rights Council has not adopted any legislation calling for measures beyond the basic human right of protection against violence and discrimination, how discrimination is internalized and interpreted from country to country is greatly varied.

For much of the Middle East, Africa, the Non-Aligned Movement, and all nations who politically uphold and enforce the notion that marriage is confined to a union between a man and a woman, the implications of an international law mandating non-discrimination policies toward LGBT individuals may appear to overstep the bounds of international jurisdiction and interfere with domestic affairs.

### **Landmark UN Resolutions**

The protection of lesbian, gay, bisexual and transgender (LGBT) human rights was first formally brought to the attention of the UN Human Rights Commission by Brazil in 2003, but no resolution was passed. The issue did not begin to gain traction within the UN until 2006 when Norway presented an official statement to the UN Human Rights Council urging for further discussion and action addressing human rights violations on the basis of sexual orientation and gender identity.

In 2011, this statement was followed by the first resolution to be passed at the UN regarding this issue. This resolution called for better documentation of discriminatory laws and violent acts against persons due to sexual orientation and gender identity.

The third and most recent resolution on this topic was passed in the Human Rights Council during its thirty-third session in June of 2016. The resolution for “Protection against violence and discrimination based on sexual orientation and gender identity” first recognized that there are fundamental human rights for all persons regardless of ethnic, religious, political, racial, sexual or any other distinctions. It then condemned acts of violence or discrimination committed on the basis of sexual orientation or gender identity. Most importantly, the resolution established a new position of an Independent Expert. This Expert is tasked with raising awareness and collaborating with states to implement better measures for the protection individuals from gender and sexual identity based violence and discrimination.

The Independent Expert will serve for a term of three years and will provide an annual report to both the Human Rights Council and the General Assembly. States were urged to cooperate with the Independent Expert and to head his or her recommendations.

The resolution was adopted with a vote of 23 countries in favor, 18 opposed and 6

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<sup>6</sup> ARC International, *Sexual Orientation, Gender Identity and Expression and Intersex Related Developments at the 27<sup>th</sup> Session of the UN Human Rights Council*, 8-26 September 2014,

<http://arc-international.net/wp-content/uploads/2014/09/ARC-report-HRC27.pdf>



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abstentions. It was proposed to the Council by Argentina, Brazil, Chile, Columbia, Costa Rica, Mexico and Uruguay and presented by an additional 41 nations. The passing vote makes this resolution the third successful resolution at the Human Rights Council addressing this issue, the first and second occurring in 2011 and 2014.<sup>7</sup>

Several amendments were added in the final version of the document. Such amendments presented arguments of cultural relativism in an attempt to limit the scope and efficacy of the resolution.

Despite these amendments, the resolution has been widely acclaimed by governments and NGOs as a historic accomplishment for advancing human rights in general and for the LGBT community. It marks a significant step forward in the recognition of gender/sexual identity-based rights and the implementation of concrete mechanisms for further addressing the problem in the form of an appointed Independent Expert.

Secretary of State John Kerry stated in an official press release that the U.S. was pleased to support the resolution, though “disappointed that several hostile amendments to the resolution were adopted”.<sup>8</sup>

“The UN took a historic step forward,” said Human Rights Watch director, John Fisher.

- *Votes in Favor of the Resolution:* Albania, Belgium, Bolivia, Cuba, Ecuador, El Salvador, France, Georgia, Germany, Latvia, Macedonia, Mexico, Mongolia, Netherlands, Panama, Paraguay, Portugal, Republic of Korea, Slovenia, Switzerland, United Kingdom, Venezuela, Vietnam
- *Votes in Opposition to the resolution:* Algeria, Bangladesh, Burundi, China, Congo, Cote d’Ivoire, Ethiopia, Indonesia, Kenya, Kyrgyzstan, Maldives, Morocco, Nigeria, Qatar, Russia, Saudi Arabia, Togo, United Arab Emirates
- *Abstentions:* Botswana, Ghana, India, Namibia, Philippines, South Africa

### Country and Bloc Positions

**China:** Though decriminalized, homosexuals remain vulnerable to violence and discrimination in China. China does not recognize same-sex unions or marriages, and there are no laws protecting the rights of LGBT individuals. There are also no anti-discrimination

<sup>7</sup> ‘Resolution A/HRC/32/L.2/Rev.1 on *Protection against violence and discrimination based on sexual orientation and gender identity*’, [http://ap.ohchr.org/documents/dpage\\_e.aspx?i=A/HRC/32/L.2/Rev.1](http://ap.ohchr.org/documents/dpage_e.aspx?i=A/HRC/32/L.2/Rev.1)

<sup>8</sup> US Department of State. *UN Human Rights Council Resolution on Sexual Orientation and Gender Identity*. John Kerry, 30 June 2016; <http://www.state.gov/secretary/remarks/2016/06/259257.htm>



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employment policies regarding sexual or gender identity under Chinese Labor Law, though the laws do include protections on the basis of ethnicity, gender and religion.

China voted against the 2016 UNHRC resolution on “Protection against violence and discrimination on the basis of sexual orientation and gender identity” and also joined Russia in its unsuccessful attempt in 2015 to ban equal employment benefits for UN staff members in same-sex unions/marriages.<sup>9</sup>

**European Union:** The European Union (EU) has legalized homosexuality and banned employment-based discrimination for LGBT individuals in all of its member states. There are differences among member states regarding the recognition of same-sex marriages, and also variations in the level of additional protections provided against gender or sexual identity based violence and discrimination. However, the majority of EU states (22 out of 28) recognize same-sex unions. The six nations to not recognize same sex marriage are Bulgaria, Latvia, Lithuania, Poland, Romania and Slovenia. Interestingly, Latvia and Slovenia were among the nations to vote in favor of the recent UNHRC resolution on the “Protection against violence and discrimination based on sexual orientation and gender identity”.

**Latin America:** Several Latin American states have been at the forefront of efforts

to put LGBT rights on the UNHRC agenda. Argentina presented a statement on behalf of 66 states at the General Assembly in 2008. Brazil, Chile, Colombia and Uruguay led the 2014 resolution at the UNHRC, the second resolution to be passed protecting the rights of LGBT persons. The third and most recent UNHRC resolution to be adopted in 2016 was headed by seven Latin American countries: Argentina, Brazil, Chile, Colombia, Costa Rica, Mexico and Uruguay. This represents an important and increasing role of Latin America in the advancement of LGBT human rights.

**Non-Aligned Movement (NAM):** UN members from the Non-Aligned Movement generally support the universality of human rights. However, they are firmly opposed to international law that may undermine regional practices and cultural diversity. The Non-Aligned Movement is therefore strongly opposed to introducing the notions of sexual orientation and gender identity to international law. They assert that these are social matters that should be managed at the state-level and should not be a part of international legal jurisdiction.

**Russia:** Officially, homosexuality has been decriminalized in Russia since 1993 and Vladimir Putin claims that there is no LGBT discrimination in Russia. However, in 2013, Russia banned “gay propaganda” toward children in a move that received backlash from the international

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<sup>9</sup> Tom Mountford, *China: The Legal Position and Status of Lesbian, Gay, Bisexual and Transgender People in the People’s Republic of China*, 24 March

2010, <https://www.outrightinternational.org/content/china-legal-position-and-status-lesbian-gay-bisexual-and-transgender-people-people’s>



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community on the grounds of being anti-free speech. Though decriminalized, same-sex unions and marriages are not recognized in Russia and there are no laws protecting LGBT individuals from violence or discrimination including with regard to employment.

Russia voted against the June 2016 HRC resolution. Additionally, Russia attempted to block the UN from providing equal benefits to its married LGBT staff members in 2015.<sup>10</sup>

**United States:** Homosexuality has been legal in the United States since 2003, and same-sex marriages became recognized in all 50 U.S. states in 2015. While there currently are no federal U.S. laws against the discrimination of persons based on their sexual orientation and gender identity, protection laws vary from state to state. The U.S. takes a welcoming and supportive stance toward pro-LGBT issues at the United Nations.

### Essential Issues and Questions

- Do concepts of sexual orientation and gender identity have a place in the international legal framework of the UN? If so, in what capacity and under what definitions?
- Do these issues undermine cultural relativism or the rights of sovereign states to uphold more

traditional familial and social structures?

- What is the United Nations doing to successfully protect the human rights of LGBT persons?
- What is being done in terms of raising awareness of the issue?
- What is being done in terms of action to reduce violence and discrimination based on sexual orientation and gender identity? Is it enough? Is it too much?
- Non-governmental organizations (NGOs) have been at the forefront of the fight for LGBT rights worldwide. Are their efforts effective? Are they more influential at the UN or better served at the state-level?

### Future Directions for the UN

Several possible courses of action exist for the UN regarding the issue of protecting LGBT individuals from discrimination and violence.

- Repealing all action. The UN may decide that sexual orientation and gender identity are unique definitions that do not have a place in international human rights law.

<sup>10</sup> Michelle Nichols, 'Russia Fails in Bid to Stop U.N. Staff Benefits for All Gay Couples', *Reuters*, 24 March 2015,

<http://www.reuters.com/article/us-un-gaymarriage-russia-idUSKBNOMK1UW20150324>



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- No further action. The UN may choose to keep the Independent Expert role in order to further understand and address issues of violence and discrimination on the basis of sexual orientation and gender identity. However, in the interest of protecting cultural relativism, the UN may opt to refrain from future resolutions on this issue. This would appease states wishing to protect their sovereign policies and national definitions of gender roles and anti-discrimination.
- Continued, but limited action. The UN may continue to adopt resolutions regarding the protection of LGBT individuals, but explicitly limit this protection to the basic rights of life and safety from hate crimes.
- Continued, extensive action. The UN may continue to adopt resolutions regarding the protection of LGBT individuals, and gradually extend definitions of sexual orientation and gender identity human rights to include protection from all forms of violence and discrimination, including employment and marriage equality.





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