



ADVANCING SEXUAL RIGHTS FOR ALL

The Sexual Rights Initiative (SRI) is a coalition of organizations from Canada, Poland, India, Egypt, Argentina and South Africa that have been advocating together for the advancement of human rights related to gender, sexuality and reproduction at the UN Human Rights Council since 2006. We are committed to and strongly in support of rights related to sexual orientation, gender identity and expression. Many of us are directly affected as people who are non-conforming in terms of our gender identity and expression and our sexual orientation.

We believe the violations, abuses, discrimination and oppression faced by lesbian, gay, bisexual, transgender and intersex (LGBTI) persons would be most effectively addressed through a political and legal framing that recognizes the full range of sexual rights as inherent to the constellation of human rights to which every person is entitled. We work together to encourage the UN and Member States to protect and promote the **human rights of all people to bodily integrity and autonomy, and the rights to have full control over and to decide freely upon all matters related to our sexual lives, reproductive lives, sexual and reproductive health, gender expression and identity and our bodies, free from coercion, violence or discrimination.** These rights affect everyone, everywhere. Failure to protect these rights has grave consequences for those of us who are criminalised or subject to other forms of punitive regulation based on our sexuality and gender.

CONTEXT

We recognize and affirm the political momentum on rights related to sexual orientation and gender identity (SOGI) at the UN Human Rights Council in recent years. This has been due to the work done separately and collectively as States and social movements participating in the work of the Council and elsewhere. There has been **agreement** that discrimination and violence as well as other violations against LGBTI persons are widespread and must be addressed through local, national, regional and global efforts. Further, there has been **agreement** that the range of interventions needed are both legal and social and require sustained political commitment in intergovernmental spaces, by civil society and movements at all geographic levels.

Alongside this agreement, there are **divergent views** on a medium term goal for this work. One perspective currently receiving a lot of attention is that the UN Human Rights Council should establish a Special Rapporteur focused exclusively on SOGI. Another perspective, supported by the SRI, is that such a mechanism would not provide adequate protection for those most in need, could fail to address the root causes of violence and discrimination against LGBTI persons, would segregate and create hierarchies of human rights violations related to gender and sexuality, and potentially set back decades of work in this area. As such, this perspective envisions a broader and more inclusive mandate which would work to protect and promote the human rights of all people **to make and carry out informed and independent decisions about our sexual lives, reproductive lives, sexual and reproductive health, gender and gender expression and gender identity and our bodies, free from coercion, violence or discrimination.**

Both perspectives unequivocally support the advancement of sexuality and gender related human rights. However, the main differences relate to the scope of any UN mandate, a narrower focus on SOGI on the one hand, or a broader focus on bodily autonomy and sexual rights for all people, on the other. The SRI believes that the articulation of this latter position at the Council and within various

movements is important so that States and civil society actors have an opportunity to consider alternate analyses and viewpoints. Furthermore, the SRI believes that such articulation is not intended to and should not be seen to diminish the areas of agreement between progressive movements working on gender and sexuality issues, rather it is healthy part of movement building that seeks to include the experiences of different people, many of whom will be directly impacted by the establishment of any new UN special mechanism.

WE MUST BUILD UPON, NOT COMPARTMENTALIZE, THE VITAL WORK UNDERTAKEN BY THE UN SYSTEM

“...awareness of the need to counter the “single-axis thinking” and essentialism that characterise the formulation of the non-discrimination provisions within most of the international human rights instruments is steadily growing.”¹

An increasing number of UN treaty monitoring bodies, including the Committees for CEDAW, CERD, CRC and CESCR, address multiple or intersectional discrimination within their work and identify various oppressions related to sexual rights that share commonality in their root causes. The CESCR General Comment 14 affirms that the right to health include[s] the right to control one’s health and body, including sexual and reproductive freedom.² The CESCR Committee recently expanded on this in its General Comment 22: **“The right to sexual and reproductive health is also indivisible from and interdependent with other human rights.** It is intimately linked to civil and political rights underpinning the physical and mental integrity of individuals and their autonomy, such as the right to life; liberty and security of person; freedom from torture and other cruel, inhuman or degrading treatment; privacy and respect for family life; and non-discrimination and equality.”³

The recent report of the Global Commission on HIV and the Law is an excellent example of an intersectional approach to sexual rights and health. It calls on states, inter alia, to decriminalise private and consensual adult sexual behaviours, including same-sex sexual acts and voluntary sex work.⁴ Together with similar calls from the WHO⁵, UNDP, UNFPA and UNAIDS,⁶ it significantly advances holistic understandings of sexual rights.

It is vital to assert SOGI issues, not as a stand-alone concern, but as part of a call for bodily autonomy and sexual rights as inherent to the constellation of human rights. To do otherwise would be a missed opportunity to further these issues across communities, groups and identities and would deny many the recognition of their rights.

EXCLUSIVITY CAN CAUSE HARM

The momentum on SOGI related issues at the Council over the last decade was preceded and informed by work on sexual and reproductive rights, and bodily autonomy more broadly, with a focus on women’s

¹ I. Truscan and J. Bourke-Martignoni, “International Human Rights Law and Intersectional Discrimination,” *The Equal Rights Review*, Vol. 16 (2016)

² UN CESCR. General Comment 14: The Right to the Highest Attainable Standard of Health, Article 12, UN Doc. E/C.12/2000/4, 11 August 2000, at 8.

³ UN CESCR, General Comment 22: The Right to Sexual and Reproductive Health, Article 12, UN Doc E/C.12/GC/22, 4 March 2016, at 9 and 10.

⁴ UNDP, Global Commission on HIV and the Law, *HIV and the Law: Risks, Rights and Health*, final report, 9 July 2012, p. 10.

⁵ WHO, *Human rights, sexual health and the law*, 2015.

⁶ UNDP Asia-Pacific Regional Centre and UNFPA Asia-Pacific Regional Office, in partnership with UNAIDS and the Asia Pacific Network of Sex Workers (APNSW), *Sex Work and the Law in Asia and the Pacific: Laws, HIV and human rights in the context of sex work*, October 2012.

rights and including issues of sexual orientation and gender identity and expression, and spanning more than two decades. Thus, there is an organic conceptual and political link between these strands of work. **Ignoring, circumventing or severing this link would be to the mutual disadvantage of everyone.**

We cannot afford to keep SOGI issues in a segregated silo. Doing so causes harm and separation within communities and struggles that are firmly linked. The world needs a mandate that will carry a connected analysis more deeply and effectively into the Council's work. A mandate exclusively focused on SOGI will emphasize some sexual rights issues over others and will provide protections for one group based on the right to bodily integrity and autonomy whilst failing to recognize and even denying attention to the same rights to autonomy of other groups such as **sex workers, women seeking abortion services and those providing abortion services, young people, people living with HIV and others**. In practice, some states promoting a SOGI-specific mandate expressly reject these linkages, and this broad vision of bodily integrity and sexual and personal autonomy, supporting, for example, various punitive measures to suppress sex work and women seeking abortion as well as those providing these services.

It is important that the UN continue to produce contextualized analyses of sexuality and gender and to find mechanisms for protection that expand the range of people and groups which are able to access protections under a single mandate.

INTERSECTIONALITY IS THE KEY

Because gender and sexuality are deeply symbolic, culturally meaningful concepts, they affect and are affected by many other aspects of human life. The lens of *intersectionality* is crucial to understanding how sexuality and gender work, in life and, overwhelmingly, in law. To defend people effectively from abuses targeting their sexuality and gender requires thinking about their lives and bodies as a whole because race, ethnicity, class, faith, geography and so on, shape how people experience their sexualities and genders. Sexuality and gender, in turn, shape how individuals, communities and states interpret their environments, laws and policies.

From the perspective of the SRI and our many partners and allies, **a political platform and movement is needed that recognizes sexuality and gender politics as also a politics of race, economics, class, religion, and more**. We need a protection system that acknowledges, understands and works with these connections.

Many people face intersecting forms of discrimination, exclusion, marginalisation or oppression as a result of their lived realities, identities, status, expressions and ways of being in the world. Our experiences are seldom the effect of one separate aspect of our complex selves. For some, most of their characteristics place them in a dominant social position, leaving only one or two aspects of their lives in which they experience marginalisation or discrimination. By definition, they have **relative or significant privilege**, are able to articulate a politics specifically around the restricted aspects where they experience inequality and are often hegemonic voices in some social movements. However, for many people in the world, their **experiences of violence and violation result from intersecting factors, characteristics and identities that render their struggles invisible, their voices unheard and their rights unfulfilled**.

Rights protections must be organized within a framework of multiple oppressions to ensure the genuine commitment of states and civil society to advancing rights related to sexuality and gender are **advanced for all**.

THERE ARE NO QUICK FIXES

It is dangerous to assume that quick fixes will further the goal of broad protections for sexual rights and bodily autonomy. It is clear that for a wide range of protections related to human sexuality and gender

diversity, additional work and significant political and economic investments are necessary. This will enable the international community to scale up the work on sexual rights and foster resilience to ensure a continuous forward momentum.

It is vital that any new mandate has broad support of civil society and states. It must provide the maximum protection possible given the deeply hostile context globally as well as the context of what is possible at the Council, building on other initiatives and recent advances. Progressive States and civil society must lead this process and not seek short-cuts. Genuine commitment to advancing equality, dignity and freedom linked with human sexuality and gender demands more of us all.

The process that led up to the 1994 creation of the Special Rapporteur on violence against women, its causes and consequences, offers an instructive avenue for a successful mandate. Questions about that mechanism – its focus, its scope, and its possible holders – were debated extensively by the international women’s movement. Discussions took place both within organizations and at open regional and international fora, especially the meetings leading up to the 1993 Vienna World Conference on Human Rights. The campaign was not dominated by any groups. Regional and domestic women’s movements shared leadership or took the lead in facilitating debate, making decisions, and carrying out advocacy. A broad consensus surrounded the eventual shape of the mandate and names of possible mandate-holders emerged from the women’s movement itself. At the State level, no country dominated the process, and global South governments were partners in the push for majority support. As a result of this process, the resulting mechanism has been widely accepted even in light of some of the key sensitive issues examined within the scope of the mandate.

THE WAY FORWARD

How can we envision sexuality and gender politics in such a way that it helps strengthen and broaden existing movements so that there is solidarity for the range of interconnected and linked struggles in which the interests of those marginalized will be of paramount importance?

In response, the SRI recommends:

1. The Council should build on and strengthen the existing thematic resolution on sexual orientation and gender identity by expanding its scope and to guide existing mechanisms in their continuing work on bodily integrity and personal and sexual autonomy for all people, including LGBTI persons and those who are non- conforming in terms of their sexual orientation and/or gender identity and/or expression.
2. The resolution should mandate the OHCHR to investigate the root causes of discrimination, violence and other violations based on sexual orientation and gender identity and expression, and expand the analysis to include legal and social practices that empower as well as laws and policies restricting bodily integrity and personal and sexual autonomy for a range of people, including sex workers, members of LGBTI communities, women seeking abortion, adolescents, HIV-positive persons and transgender persons, and others stigmatised because of their sexual and gender expressions or behaviours.
3. Progressive states from across all regions of the world should envision and plan for a Working Group or similar mechanism on “Human Rights related to Sexuality and Gender”, or a variation thereof, that approaches sexuality and gender from a holistic and intersectional perspective. This would be best advanced through a cross-regional core group led by states already working on some of the most complex sexual rights, including reproductive rights, issues.

-ENDS-
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