

UN GENERAL ASSEMBLY JOINT STATEMENT ON SEXUAL ORIENTATION & GENDER IDENTITY: BUILDING ON THE PAST, LOOKING TO THE FUTURE

I. Building on the past

The joint statement on human rights, sexual orientation and gender identity, delivered before the UN General Assembly in December 2008, represented a historic landmark, and an important step in the ongoing struggle for recognition of the human rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) people.

For many years, LGBTI people have been engaging with the United Nations to build cross-regional awareness and support for human rights concerns based on sexual orientation and gender identity. An increasing number of States from all regions have also been engaging in support of these important human rights issues. Some of the significant steps in the journey that brought us to this point include:

➤ United Nations World Conference on Women, Mexico City (1975)

One of the first opportunities for global engagement around issues of sexuality, the 1975 UN World Conference on Women in Mexico City saw the formation of an International Lesbian Caucus, impromptu lesbian workshops, and brought together lesbians from the North and South, engaging the feminist movement on issues of sexual orientation, and fostering the development of networks which were to play a key role throughout the International Women's Decade to follow.

➤ International Women's Decade (1975-1985)

Six lesbian workshops formed part of the NGO Forum of the 1980 World Conference on Women in Copenhagen, and the 1985 end-of-decade Women's Conference in Nairobi saw NGO Forum workshops on lesbians in relationship to employment, health, racism, education and international lesbian networking, and produced a "Third World lesbian statement" challenged the notion that this was a "white, western" issue. Significantly, this increased NGO visibility and advocacy resulted in a statement of support for lesbian rights by the Dutch government delegation - marking the first mention of lesbians, and of sexual orientation issues, in a United Nations governmental forum.

➤ World Conference on Human Rights, Vienna (1993)

The Vienna Conference saw sexual orientation issues move into the mainstream. Three non-governmental organisations working on sexual orientation and gender identity issues were accredited to the World Conference, and six statements were made by lesbian and gay activists in the plenary. Five States made interventions referring positively to sexual orientation issues, and Canada proposed adding "sexual orientation" to the listed grounds of discrimination in the draft conference Declaration. In response, the paragraph was rewritten as a general, open-ended prohibition of discrimination, without a list.

➤ **International Conference on Population and Development, Cairo (1994)**

The ICPD brought the issue of sexuality clearly onto the agenda in the context of women's reproductive health. The Cairo Declaration and Programme of Action embraced the concept of reproductive rights, and refers to "sexual health", including the ability to have a satisfying and safe sex life, as an integral part of reproductive health.

➤ **4th World Conference on Women, Beijing (1995)**

Widely considered a watershed moment in international lesbian visibility, eleven explicitly lesbian or gay organisations were accredited to the Conference. Activists set up a lesbian tent at the NGO Forum, held a standing-room only workshop titled "Lesbianism for the Curious", organized a lesbian march and delivered a powerful statement to the Main Committee plenary. Although four references to sexual orientation in the draft Beijing Platform for Action were ultimately dropped, the document significantly affirmed the right of women "to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence".

➤ **UN Resolution on Extrajudicial Executions (2000 – present)**

In 2000, the former UN Commission on Human Rights adopted a resolution on extrajudicial, summary and arbitrary executions, calling upon States to investigate promptly and thoroughly killings "committed for any discriminatory reason, including sexual orientation". The resolution was subsequently adopted by the UN Third Committee and General Assembly, and represents the first time that "sexual orientation" has been explicitly included in a United Nations resolution. From 2002 to the present, this resolution has consistently maintained the reference to sexual orientation, most recently during a vote at the GA in December 2008.

➤ **UN Resolution on the Death Penalty (2002 – present)**

Since 2002, the resolution on the death penalty, adopted by the UN General Assembly, has called upon States "to ensure that the death penalty is not imposed for non-violent acts such as ... sexual relations between consenting adults."

➤ **Brazilian Resolution on Sexual Orientation and Human Rights (2003-2005)**

In 2003, Brazil introduced a resolution on sexual orientation and human rights at the UN Commission on Human Rights. A "no action" motion to prevent further consideration of the resolution was narrowly defeated, and the resolution was deferred to the 2004 session of the Commission. The 2004 session of the Commission saw more than 50 lesbian, gay, bisexual and transgender activists gather in support of the resolution, from every region of the world. In the face of continued opposition, however, the resolution was again deferred until 2005, and ultimately withdrawn.

➤ **New Zealand Joint Statement on Sexual Orientation and Human Rights (2005)**

When it became clear at the 2005 session of the Commission that the Brazilian resolution would be withdrawn, New Zealand delivered a joint statement on behalf of a cross-regional grouping of 32 States cross-regionally. This statement declared that "we cannot ignore the mounting evidence of serious human rights violations against individuals on the basis of their sexual orientation ... These human rights violations have been brought to our attention, and we must respond. To remain silent, is to condone some of the worst forms of discrimination." This was the first use of a joint statement to demonstrate a broad base of State support for sexual orientation issues.

➤ **Norwegian Joint Statement on Sexual Orientation, Gender Identity and Human Rights (2006)**

A further joint statement was delivered at the Human Rights Council on 1 December, 2006 by Norway on behalf of 54 States from four of the five UN regions. The Norwegian joint statement demonstrated a significant increase in State support, and was the first to specifically highlight human rights violations based on gender identity. It condemned human rights violations based on sexual orientation and gender identity, called upon all Special Procedures and treaty bodies to integrate these issues within their relevant mandates, and urged the Human Rights Council to address these issues.

➤ **Regional Joint Statements (2006-2008):**

A number of regional joint statements on issues of sexual orientation and gender identity have also been delivered at the Human Rights Council. For example, on 3 October 2006, Finland delivered a joint statement on sexual orientation and human rights on behalf of a broad range of EU, candidate, accession and related countries, including the European Union, Bulgaria, Romania, Turkey, Croatia, the former Yugoslav Republic of Macedonia, Bosnia and Herzegovina, Serbia, Ukraine and the Republic of Moldova.

Argentina also delivered a joint statement on behalf of 10 Mercosur Member and Associated States (Argentina, Brazil, Paraguay, Uruguay, Bolivia, Chile, Colombia, Ecuador, Peru and Venezuela), representing the first statement on sexual orientation by a regional grouping of Latin American States.

On 5 March, 2008, Slovenia on behalf of the EU also referenced the *Yogyakarta Principles on the application of International Human Rights Law in relation to Sexual Orientation and Gender identity* during a Human Rights Council panel discussion on human rights voluntary goals, representing the first affirmation of the Yogyakarta Principles by the EU as a whole.

➤ **OAS Resolution (2008)**

In 2008, a resolution on sexual orientation, gender identity and human rights was adopted unanimously by all 34 States in the Organization of American States, throughout North and Central America, Latin America and the Caribbean.

II. Current situation: the GA Joint Statement

➤ **The GA Joint Statement:**

On 17 May, 2008, the International Day against Homophobia, France affirmed its intention to present a joint statement on sexual orientation, gender identity and human rights at the UN General Assembly. A cross-regional Core Group of States was assembled to advance the initiative, including representatives from all 5 UN regions (Argentina, Brazil, Croatia, France, Gabon, Japan, the Netherlands and Norway). A broad range of civil society groups worked closely with the Core Group to build support for the joint statement.

Timed to coincide with the 60th Anniversary of the Universal Declaration of Human Rights, the statement reaffirms the principle of universality: that human rights truly are the birthright of all human beings, regardless of their sexual orientation or gender identity. It places gender identity squarely on an equal footing with sexual orientation, calls for the worldwide repeal of criminal sanctions, and addresses a broad range of other human rights violations, including violence, torture, arbitrary arrest and discrimination in accessing economic, social and cultural rights, including the right to health. The statement concludes by calling for perpetrators of human rights abuses to be held accountable, and emphasises the importance of protecting human rights defenders working on issues of sexual orientation and gender identity.

It is worth noting that the joint statement is not a formal decision or resolution, and was not subject to a vote. It does not create new rights, but simply affirms the application of existing human rights standards to those who are lesbian, gay, bisexual, transgender and intersex.

The statement was delivered by Argentina on 18 December, 2008 on behalf of 66 States, making it the largest-ever UN statement addressing human rights violations based on sexual orientation and gender identity, the first to include support from all 5 UN regional groups, and the first to be delivered at the UN General Assembly, the UN's highest political body.

➤ **The Syrian alternative joint statement:**

Syria delivered an alternative joint statement on behalf of 57 States, questioning the "so-called notions" of sexual orientation and gender identity, suggesting that these notions "have no legal foundation", and expressing concern that "the notion of orientation spans a wide range of personal choices that expand way beyond the individual's sexual interest in copulatory behaviour with normal consenting adult human beings, thereby ushering in the social normalisation, and possibly legitimisation, of many deplorable acts including paedophilia".

Significantly, even the Syrian text acknowledges that no human being should face human rights violations, stating: "We strongly deplore all forms of stereotyping, exclusion, stigmatisation, prejudice, intolerance, discrimination and violence directed against people, communities and individuals on any ground whatsoever, wherever they occur." It concludes with the words: "We also urge all States and relevant international human rights mechanisms to intensify their efforts to consolidate the commitment to the promotion and protection of human rights of everyone on an equal footing, without exception."

➤ **The Vatican position:**

In a separate individual intervention, the Holy See stated:

"The Holy See appreciates the attempts made in the declaration on human rights, sexual orientation and gender identity to condemn all forms of violence against homosexual persons, as well as urge States to take necessary measures to put an end to all criminal penalties against them".

At the same time, the Holy See felt that the wording of the joint statement “goes well beyond [this] shared intent”. In particular, it felt that the categories “sexual orientation” and “gender identity” have “no recognition or clear definition in international law”, and could give rise to “serious uncertainty” in the law. It concluded:

“the Holy See continues to advocate that every sign of unjust discrimination towards homosexual persons should be avoided, and urges States to do away with criminal penalties against them.”

This is the first time that the Vatican has called for an end to discrimination against homosexuals, and urged States to decriminalise homosexuality.

➤ **Message from the High Commissioner for Human Rights:**

On the same day that the statement was delivered, a high-level panel took place in conjunction with the GA in New York, featuring a video presentation by the UN High Commissioner for Human Rights, Ms. Navanetham Pillay. Amongst other things, the High Commissioner stated:

“As we celebrate this month the 60th Anniversary of the Universal Declaration of Human Rights, it is timely to remember the spirit and intent behind that most vital of instruments ... No human being, simply because of their perceived sexual orientation or gender identity, may be denied their human rights. No human being, simply because of their perceived sexual orientation or gender identity, may be subject to discrimination, violence, criminal sanctions, or abuse. ...

Sadly, ... there remain too many countries which continue to criminalize sexual relations between consenting adults of the same sex in defiance of established human rights law. Ironically many of these laws, like Apartheid laws that criminalized sexual relations between consenting adults of different races, are relics of the colonial era and are increasingly becoming recognized as anachronistic and as inconsistent both with international law and with traditional values of dignity, inclusion and respect for all.

... It is our task and our challenge to move beyond a debate on *whether* all human beings have rights – for such questions were long ago laid to rest by the Universal Declaration – and instead to secure the climate for implementation Those who are lesbian, gay or bisexual, those who are transgender, transsexual or intersex, are full and equal members of the human family, and are entitled to be treated as such.”

➤ **Subsequent support:**

Although it did not endorse the joint statement in December 2008, the United States announced at the March 2009 session of the UN Human Rights Council in Geneva that it was joining the statement, bringing the total number of signatories to 67:

“The United States is proud to join the 66 other United Nations member States that support the UN Statement on ‘Human Rights, Sexual Orientation and Gender Identity’. We share the document’s condemnation of human rights violations based on sexual orientation and gender identity and welcome its call for an end to criminalization on the basis of sexual orientation.”

In addition, Mauritius, which endorsed the December 2008 statement, publicly reiterated its support and announced its intention to decriminalise homosexuality during its Universal Periodic Review by the Human Rights Council, in February 2009.

III. Looking to the future: some questions for consideration

The joint statement on human rights, sexual orientation and gender identity represents the largest and most regionally diverse statement on these issues ever in a UN context. Now is the time to identify a common strategy for moving this initiative forward in the year – and years – to come.

In this context, it is appropriate to reflect on what has worked well, what aspects could be strengthened, how this initiative fits into our broader UN advocacy, and where we go from here. Some of the questions it might be useful to explore include:

➤ Goals/objectives:

What is the purpose of the UN joint statement? Is it a stand-alone initiative, or part of a broader campaign? If so, what is the focus of such a campaign, e.g. decriminalisation, or a broader range of human rights concerns? How is the campaign structured, and how do we combine both UN and on-the-ground engagement to best ensure its goals are realised? Is the joint statement intended to lay the foundation for an eventual resolution, and if so, what will be the focus and approach underpinning such a resolution?

➤ Context:

In order to assess where we are going, it is useful to reflect on lessons learned from previous initiatives. What difficulties were faced in advancing the Brazilian resolution in 2003, and how might such obstacles be overcome in future? What accounts for the success of the two UN resolutions which have dealt with sexual orientation issues (i.e. the resolution on extrajudicial executions and the resolution on the death penalty). What enabled the 2008 OAS resolution to attract consensus within the Latin American, Caribbean and Central/North American regions? How might these experiences inform the future of the GA statement?

➤ Text:

The current text has attracted broad support from 67 States across all 5 UN regions. There is value in retaining the same text in order to maintain the existing base of support. At the same time, it would be useful to consider the pros and cons of any modifications which might attract increased support and/or respond to concerns being raised without detracting from the core focus of the statement.

➤ Structure:

It is clear that building support for this as a cross-regional initiative is key to its success. The leadership on this and previous joint statements of States such as France, the Netherlands, Norway and New Zealand has been critical, as has been the role of the Core Group, and the involvement of States such as Argentina and Gabon. Passing the leadership around different States in different years may help strengthen its cross-regional base of support, and leadership from the Global South is undoubtedly valuable. At the same time, it is important to ensure that any State or States assuming leadership for carrying the initiative forward have the resources

to make it a priority, and will be able to withstand the pressures that will be brought to bear by hostile States and regional/political groups.

➤ **Forum:**

The three options for presenting a joint statement include the GA, the Third Committee and the Human Rights Council. The authority of the GA lent powerful weight to the joint statement, although if there is felt sufficient support to present a resolution in future, such a resolution would need to be initiated in either the Third Committee or the Human Rights Council. It would be helpful to consider how any initiatives at the GA connect with our collective advocacy at the HRC or Third Committee, and what opportunities exist for continuing to strengthen the cross-regional relationships in each forum that are necessary to build support for the initiative.

➤ **Approach:**

This connects with the question of whether this is part of a broader campaign, how we involve groups at the national level in different regions, how the UN initiative supports and is guided by efforts at the national level to advocate for decriminalisation or to advance LGBTI rights more broadly, and measures to minimise backlash.

➤ **Media strategy:**

There is significant opportunity to raise greater awareness of these positive initiatives in future. With some collective planning, there would be considerable scope to approach “opinion leaders” in different regions in advance, and lay the groundwork for op ed articles, letters etc to help ensure a more favourable media response, and create positive public awareness around sexual orientation and gender identity issues.

➤ **Lobbying strategy:**

The 192 UN Member States are almost equally divided across three groups: those which are most supportive, those which are least supportive, and those which are undecided. A lobbying strategy needs to be individually tailored to each State which might support the initiative, and closely involve strong partnerships with groups within those countries and States within each region. A useful exercise might involve frank and respectful discussions with States that were undecided and which did not support the initiative, in order to better understand what their concerns might be, and what might assist them to support such a statement in future.