

AG/RES. 2863 (XLIV-O/14)

HUMAN RIGHTS, SEXUAL ORIENTATION, AND GENDER IDENTITY
AND EXPRESSION^{1/ 2/ 3/ 4/ 5/ 6/ 7/ 8/ 9/ 10/ 11/ 12/ 13/}

(Adopted at the fourth plenary session, held on June 5, 2014)

THE GENERAL ASSEMBLY,

TAKING INTO ACCOUNT resolutions AG/RES. 2435 (XXXVIII-O/08), AG/RES. 2504 (XXXIX-O/09), AG/RES. 2600 (XL-O/10), AG/RES. 2653 (XLI-O/11), AG/RES. 2721 (XLII-O/12), and AG/RES. 2807 (XLIII-O/13), “Human Rights, Sexual Orientation, and Gender Identity and Expression”;

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1. Saint Vincent and the Grenadines is unable to join consensus on the approval of this resolution. Saint Vincent and the Grenadines is of the view that the term “gender expression” is one that is not...
 2. The State of Guatemala declares that it promotes and defends all human rights and, regarding the provisions of this resolution, reaffirms the equality of all human beings, as is recognized under the ...
 3. Ecuador declares that it promotes and defends all human rights and, regarding the provisions of this resolution, does not discriminate for any reason on the grounds of race, creed, sex ...
 4. The Republic of Paraguay reiterates its commitment to the principles of the Universal Declaration of Human Rights and international...
 5. The Government of Belize is unable to join consensus on this resolution given the fact that several of the issues and principles addressed therein, directly or indirectly, are at present the subject ...
 6. The Government of Jamaica is unable to join the consensus on the approval of this resolution, given that the terminology of gender expression, as proposed, is ambiguous and has the potential...
 7. The Government of Honduras notes its commitment to human rights and to the international conventions that it has signed to that effect. Furthermore, it does not consider itself obligated ...
 8. The Government of the Republic of Suriname is unable to join consensus on this resolution at this time, due to the fact that some of the terms and elements addressed in the resolution ...
 9. The Government of Guyana is unable to join consensus on the approval of this resolution given the fact that several of the issues addressed herein are currently the subject of deliberation ...
 10. In the context of existing policy and legislation, the Republic of Trinidad and Tobago is unable to support the resolution. However, Trinidad and Tobago is signatory to the ...
 11. The Government of Barbados is unable to join consensus on the approval of this resolution given that a number of the issues and terms contained in the Resolution are neither reflected in its national ...
 12. Saint Lucia is unable to join consensus on the approval of this resolution since we are of the view that the term “gender expression” is one that is not thoroughly defined or accepted ...
 13. Panama will implement this resolution in accordance with the provisions contained in the Political Constitution of the Republic of Panama.

REITERATING:

That the Universal Declaration of Human Rights affirms that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth in that instrument, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status; and

That the American Declaration of the Rights and Duties of Man establishes that every human being has the right to life, liberty, and security of his person without distinction as to race, sex, language, creed, or any other factor;

CONSIDERING that the Charter of the Organization of American States proclaims that the historic mission of the Americas is to offer to man a land of liberty and a favorable environment for the development of his personality and the realization of his just aspirations;

REAFFIRMING the principles of universality, indivisibility, and interdependence of human rights;

TAKING NOTE:

Of the creation, in November 2013, by the Inter-American Commission on Human Rights of the Rapporteurship for the Rights of Lesbian, Gay, Bisexual, Trans, and Intersex (LGBTI) Persons, which will continue with the work of the IACHR Unit on those same topics, including the preparation of a hemispheric report on this issue;

Of the signing, on June 5, 2013, of the Inter-American Convention against all Forms of Discrimination and Intolerance;

Of the Second Report of the IACHR on the Situation of Human Rights Defenders in the Americas, according to which organizations that promote and defend the human rights of LGBTI persons play a fundamental role in the region in terms of public oversight to ensure compliance with the states' obligations vis-à-vis the rights to privacy, equality, and nondiscrimination, and are faced with obstacles, among them, "murder, threats, criminalization of their activities, the failure to take a different approach to the investigation of violations committed against them, and discourse calculated to discredit"; and

Of the Declaration on Sexual Orientation and Gender Identity, presented to the United Nations General Assembly on December 18, 2008;

NOTING WITH CONCERN the acts of violence and related human rights violations as well as discrimination practiced against persons because of their sexual orientation and gender identity;

TAKING NOTE of the report of the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/22/53), which states, "Children who are born with atypical sex characteristics are often subject to irreversible sex assignment, involuntary sterilization, involuntary genital normalizing surgery, performed without their informed consent, or that of their parents, 'in an attempt to fix their sex,' leaving them with permanent, irreversible infertility and causing severe mental suffering;" and

TAKING NOTE, FINALLY, of the terminological study “Sexual Orientation, Gender Identity, and Gender Expression: Some Terminology and Relevant Standards,” prepared by the IACHR and published on April 23, 2012, in keeping with resolution AG/RES. 2653 (XLI-O/11), “Human Rights, Sexual Orientation, and Gender Identity,”

RESOLVES:

1. To condemn all forms of discrimination against persons by reason of their sexual orientation and gender identity or expression, and to urge member states within the parameters of the legal institutions of their domestic systems to eliminate, where they exist, barriers faced by lesbian, gay, bisexual, trans, and intersex (LGBTI) persons in equal access to political participation and in other areas of public life, and to avoid interferences in their private life.

2. To encourage member states to consider, within the parameters of the legal institutions of their domestic systems, adopting public policies against discrimination by reason of sexual orientation and gender identity or expression.

3. To condemn acts of violence and human rights violations committed against persons by reason of their sexual orientation and gender identity or expression; and to urge states to strengthen their national institutions with a view to preventing and investigating these acts and violations and ensuring due judicial protection for victims on an equal footing and that the perpetrators are brought to justice.

4. In addition, to urge states, within their institutional capacities, to produce data on homophobic and transphobic violence, with a view to fostering public policies that protect the human rights of LGBTI persons.

5. To urge member states to ensure adequate protection for human rights defenders who work in the area of violence, discrimination, and human rights violations committed against individuals on the basis of their sexual orientation and gender identity or expression.

6. To urge member states to afford appropriate protection to intersex people and to implement policies and procedures, as appropriate, to ensure medical practices that are consistent with applicable human rights standards.

7. To request the Inter-American Commission on Human Rights (IACHR) to pay particular attention to its work plan titled “Rights of LGBTI People” and, in keeping with its established practice, to continue with its work to prepare a hemispheric study on the subject; and to urge member states to support the efforts of the Commission in this area.

8. To request the IACHR to continue preparing a study on legislation and provisions in force in the member countries of the Organization of American States that restrict the human rights of individuals by reason of their sexual orientation or gender identity or expression and to prepare, based on that study, a guide aimed at promoting the decriminalization of homosexuality and practices related to gender identity or expression.

9. To urge member states that have not yet done so to consider signing, ratifying, or acceding to, as the case may be, the inter-American human rights instruments, including the Inter-American Convention against All Forms of Discrimination and Intolerance.^{14/}

10. To request the Permanent Council to report to the General Assembly on the implementation of this resolution. Execution of the activities envisaged in this resolution will be subject to the availability of financial resources in the program-budget of the Organization and other resources.

14. The United States strongly supports this resolution but wishes to make one clarification as it relates to the Inter-American Convention against All Forms of Discrimination and Intolerance. ...

FOOTNOTES

1. ... thoroughly defined internationally or that Saint Vincent and the Grenadines is unable to join consensus on the approval of this resolution. Saint Vincent and the Grenadines is of the view that the term "gender expression" is one that is not thoroughly defined internationally or that has international acceptance. St. Vincent and the Grenadines considers that the terminology is heavily nuanced and moreover, that it is currently not defined in its domestic law. Since the discussion on the human rights of LGBT persons is an ongoing one at the level of the United Nations, St. Vincent and the Grenadines is of the view that the discourse at the OAS should be confined only to language which has been recognized or approved by the United Nations.

2. ... Political Constitution of the Republic, and does not discriminate for any reason on the grounds of race, creed, sex, etc. It also considers that not legally recognizing marriage between persons of the same sex is not a discriminatory practice. Accordingly, Guatemala dissociates itself from those parts that are incompatible with and contrary to the national laws that it has in force and reserves the right to interpret the terms of this resolution.

3. ... etc. However, Ecuador considers that not legally recognizing marriage between persons of the same sex does not constitute a discriminatory practice.

4. ... conventions concluded on the subject, reaffirming the provisions of Title II "On Rights, Duties, and Guarantees"; Chapter III "On Equality"; and Chapter IV "On the Rights of the Family" of the National Constitution and concordant provisions. It also enters its reservation with respect to the text of the resolution.

5. ... of legal proceedings in the Supreme Court of Belize. The Government of Belize is unable to join consensus on this resolution given the fact that several of the issues and principles addressed therein, directly or indirectly, are at present the subject of legal proceedings in the Supreme Court of Belize.

6. ... to impose one value system over another. Furthermore, this term and other new terminologies used in the text, have not gained international acceptance nor are they defined in Jamaica's domestic law.

7. ... by any provision contained in this draft that could contravene the provisions of those conventions or its domestic laws.

8. ... require broad-based national discussions. The Republic of Suriname remains committed to promoting and defending all human rights for all and, based on the principle of equality, under which all who are within the territory of Suriname have an equal claim to protection of person and property, does not discriminate on the grounds of birth, sex, race, language, religious origin, education, political beliefs, economic position or any other status, as enshrined in the Constitution of Suriname. The Republic of Suriname is guided by the ongoing discussions on the rights of LGBTI persons at the international level and is in favor of the use of inter-governmentally agreed human rights and fundamental freedoms as enshrined in the various human rights instruments adopted by the United Nations.

9. ... by a special select committee of the National Assembly.

10. ... Universal Declaration of Human Rights. The Equal Opportunity Act 2000 which aims to “prohibit certain kinds of discrimination, to promote equality, opportunity between persons of different status”, ensures that persons cannot be discriminated against in employment, education, health, protection and other social good based on characteristics including their religion, race, class, sex and socio-economic status. Under the Sexual Offences (Amendment) Act (No. 31 of 2000) the act of sodomy whether between same sex partners or heterosexual partners is illegal. However, this legislation is rarely enforced”.

11. ... laws nor the subject of national consensus. As such, Barbados would not be in a position to meet these requirements. However, the Government of Barbados remains committed to protecting the rights of all from harm and violence in keeping with the rule of law and the provisions of its Constitution.

12. ... internationally. Moreover, not only is the expression heavily nuanced but most importantly it is currently not defined in domestic law.

14. ... The United States has consistently objected to the negotiation of new legally binding instruments against racism, racial discrimination and other forms of discrimination or intolerance. We reiterate our longstanding concerns with that exercise within the OAS and the resulting conventions. We are concerned that some provisions of these conventions could undermine, or are incompatible with, international human rights law protections including those related to freedoms of expression and association. The United States believes that – rather than promoting these new instruments -- the resources of the OAS and of its member states should be focused on identifying practical steps to combat racism, racial discrimination and other forms of discrimination and intolerance, including best practices in the form of national legislation and enhanced implementation of existing global instruments.