

Defending the Independent Expert

On Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity

at the 71st Session of the
United Nations General Assembly

A Report by Civil Society

Outright International (Outright)

International Service for Human Rights (ISHR)

International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA)

ARC International





Outright International works together for better LGBTIQ lives. Outright is dedicated to working with partners around the globe to strengthen the capacity of the LGBTIQ human rights movement, document and amplify human rights violations against LGBTIQ people, and advocate for inclusion and equality. Founded in 1990, with staff in over a dozen countries, Outright works with the United Nations, regional human rights monitoring bodies, and civil society partners. Outright holds consultative status at the United Nations, where it serves as the secretariat of the UN LGBTI Core Group.

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Acronyms

CARICOM: Caribbean Community and Common Market

DNV: Did not vote

EEG: Eastern European Group of Countries

HRC: Human Rights Council

IE SOGI: Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

LAC: Latin American and Caribbean

OP: Operative Paragraph

LGBTI: Lesbian, Gay, Bisexual, Transgender or Intersex

OIC: Organisation of Islamic Cooperation

SOGI: Sexual Orientation and Gender Identity

SOGIESC: Sexual orientation, gender identity or expression or sex characteristics

UN: United Nations

UNGA: United Nations General Assembly

WEOG: Western Europe and Other Groups



01

Introduction

01 Introduction

Persons who are lesbian, gay, bisexual, transgender or intersex (LGBTI) experience human rights violations because of their real or perceived sexual orientation, gender identity and expression, or sex characteristics (SOGIESC).¹ These violations perpetrated against individuals based on their real or perceived SOGIESC include killings, violent attacks, torture, arbitrary detention, forced marriage, denial of rights to assembly and expression and discrimination in accessing health care, education, employment and housing.²

Thanks to the sustained efforts of civil society and supportive United Nations (UN) Member States, SOGIESC related human rights violations have received increased attention at the international level in recent years. Since 2010, the UN Human Rights Council (HRC) has adopted three resolutions on human rights, sexual orientation and gender identity.³ In 2016, HRC Resolution 32/2 on protection from violence and discrimination based on sexual orientation and gender identity established the first ever UN mandate holder on sexual orientation and gender identity, titled the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (IE SOGI).⁴

The HRC is a subsidiary body to the UN General Assembly (UNGA). As such, the resolutions adopted by the HRC over the course of a calendar year are compiled into one document, known as the Report of the Human Rights Council, for consideration by the UNGA. The decisions of the HRC are confirmed at the UNGA Session through the adoption of resolutions recognizing the Human Rights Council report and resolutions to approve associated financial resource implications.

The UNGA routinely adopts the Report on the Human Rights Council without much controversy.⁵ However, during the 71st Session of the UNGA in an extraordinary move, the African Group used the Report on the HRC to challenge the appointment of the IE SOGI mandate.

The following report provides an account of the successful defense of the IE SOGI mandate at the UNGA over the course of the 71st Session from October to December 2016. The process of defending the establishment of the IE SOGI by the HRC at the UNGA ultimately resulted in six separate votes on resolutions and resolution amendments, across two main General Assembly Committees and UNGA Plenary sessions.⁶

¹The authors of this publication support the right of people to refer to their sexual orientation, gender identity, and gender expression or sex characteristics as they feel comfortable. The authors also recognize that terminology can be strongly contested and differs across cultures, between people and over time. While this document refers to lesbian, gay, bisexual, transgender and intersex people, it is also relevant with regards to other people who face violence and discrimination on the basis of their actual or perceived SOGIESC, including those who may identify with other terms.

²United Nations, High Commissioner's report to the Human Rights Council on discrimination and violence against individuals based on their sexual orientation and gender identity (May 2015) A/HRC/29/23, High Commissioner's report to the Human Rights Council on violence and discrimination based on sexual orientation and gender identity (issued 15 December 2011) A/HRC/19/41.

³Human Rights Council, 'Resolution 32/2', A/HRC/RES/32/2 (12 July 2016); Human Rights Council, 'Resolution 27/32', A/HRC/27/L.27/Rev.1 (24 September 2014); Human Rights Council, 'Resolution 17/19', A/HRC/RES/17/19 (17 June 2011).

⁴A compilation of the key statements, documents and outcomes of the adoption of the Resolution establishing the IE SOGI in Geneva on 30 June 2016 can be found here: <http://ilga.org/compilation-adoption-2016-sogi-resolution/>

⁵There are two exceptions to this general trend. The most recent was the successful effort of the African Group to block Resolution 24/24 of the Human Rights Council which aimed to set up a focal group on reprisals. The Resolution moved by the African Group succeeded in deferring consideration of Resolution 24/24. In another instance, the HRC in Resolution 1/2 adopted a draft Declaration on the Rights of Indigenous Peoples and recommended it to the General Assembly for adoption. The GA decided to defer consideration and action on that draft.

⁶Openshaw, E. & Sinclair, M., *Third Committee of the United Nations General Assembly: A Practical Guide for NGOs*, The International Service for Human Rights (2017).

The aim of this report is to offer insight into the dynamics of debates on SOGIESC and human rights at the UNGA by providing an analysis of the voting records of UN Member States, transcripts of the debates that surrounded each vote and a snapshot of the pivotal role of civil society advocacy throughout the process.

It is our hope that this report will be used by multiple stakeholders to advocate for the human rights of LGBTI people within the UN system and beyond. It can be used

as a tool to hold UN Member States accountable for their words and actions at the UNGA and to international law, norms and standards on human rights. Civil society in particular may use it as an advocacy tool: to gain a snapshot on arguments used by different actors and in the future, support the defense of human rights of LGBTI people within the international system.

1.1 Background

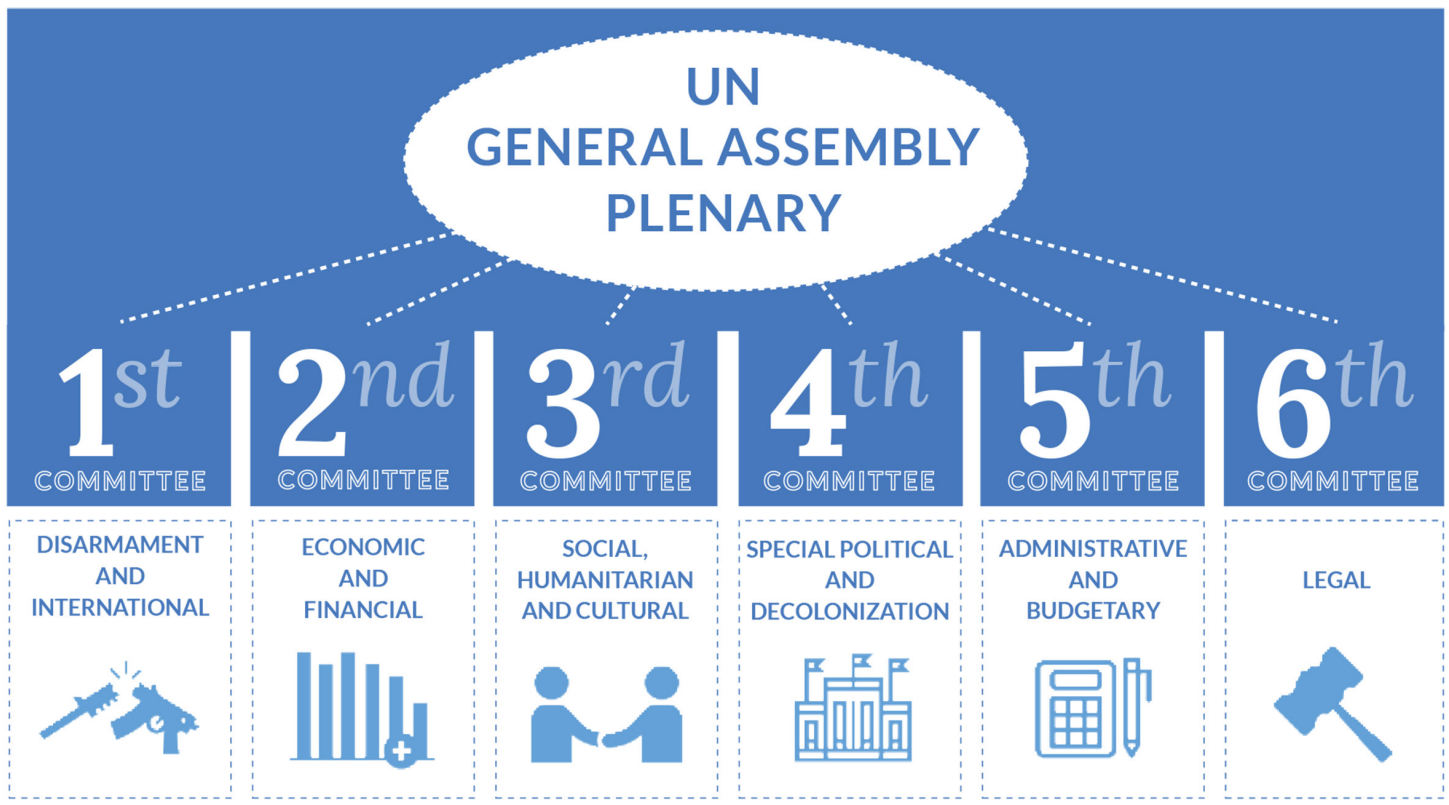
The UNGA is ‘the chief deliberative policy-making and representative organ of the United Nations.’⁷ It is the only principle organ of the UN with universal membership, with currently 193 members, often referred to as ‘Member States’. The UNGA allocates most of its work to its six main committees, which take up different issues and present draft resolutions and decisions to the plenary of the UNGA. Every UN Member State is a member of each of the six committees, meaning each of the 193 members has an equal vote on every decision.⁸

In recent years, the international system of human rights has come under increasing attack from some UN

Member States, supported at times by right-wing civil society organizations that are at best skeptical of and often hostile to the system. One locus for this debate is the Third Committee of the UNGA where some key UN Member States are specifically targeting a central pillar of the international human rights system, the Human Rights Council.

As a case study, the confirmation of the IE SOGI at the UNGA reveals important insights into both the attempt to undermine the integrity of the HRC and also the application of international human rights to LGBTI people.

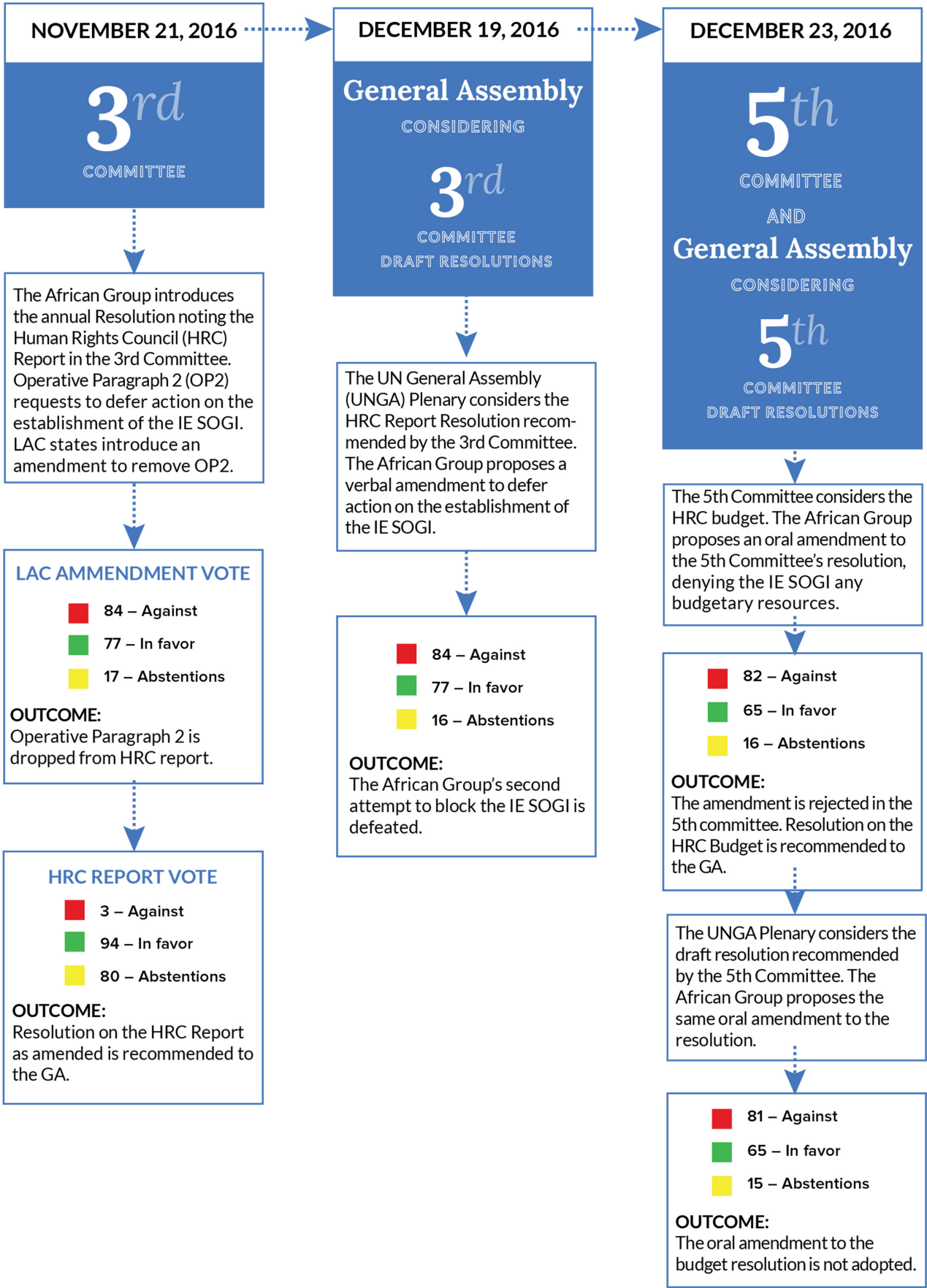
1.1.1 THE STRUCTURE OF THE UNGA



⁷ United Nations, ‘United Nations Millennium Declaration’, A/RES/55/2 (18 September 2000).

⁸ Openshaw, E. & Sinclair, M., *Third Committee of the United Nations General Assembly. A Practical Guide for NGOs*, The International Service for Human Rights (2017).

1.1.2 TIMELINE FOR DEFENDING THE IE SOGI AT THE UNGA



02

Summary

2.1 Defending the Mandate in the Third Committee

2.1.1 THE THIRD COMMITTEE

The General Assembly allocates to the Third Committee agenda items relating to a range of social, humanitarian affairs and human rights issues that affect people all over the world.⁹ The overwhelming majority of human rights work at the General Assembly occurs in the Third Committee, with approximately a third of the issues dealt with during the Committee relating to human rights.¹⁰

2.1.2 PROCEDURE AND TOPICS OF DEBATE

Led by the Africa Group, the Third Committee adopts a resolution every year noting the report of the Human Rights Council. The practice is contentious as some States believe the work of the Human Rights Council should be presented directly to the General Assembly Plenary rather than the Third Committee. The decision to continue the practice of presenting the report to the Third Committee was affirmed in the outcome of the five-year review of the Human Rights Council in 2011.¹¹

In early November 2016, during the 71st Session of the General Assembly, the African Group circulated draft resolution A/C.3/71/L.46 noting the Report of the Human Rights Council, as has been the practice in previous years. In a departure from previous practice, the Africa Group included a written amendment to the Human Rights Council's report by inserting Operative Paragraph 2 which read: *'decides to defer consideration 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.'*¹² In response to push back from some States and civil society organizations, the African Group later added a verbal amendment stipulating that the deferral would not be indefinite and would extend only to the next session of the General Assembly, the 72nd Session in 2017.

"The African Group is therefore wondering which international legal instruments defines the concept of sexual orientation and gender identity, for which reason we are being told to support this amendment. Madam Chair, the honest truth remains that these notions are not enshrined in any international human rights instrument. With no definitional basis in any international law instrument, the Africa Group is of the view that the mandate of the Independent Expert lacks the necessary specificity to be carried out fairly."

– BOTSWANA

In response to this draft resolution, Argentina, Chile, Colombia, Costa Rica, El Salvador, Mexico, Uruguay and Brazil, otherwise known as the 'LAC (Latin American Countries) 8 Group' tabled an amendment requesting the deletion of Operative Paragraph 2 of A/C.3/71/L.46. The LAC 8 Group, supported by statements from key States

⁹ United Nations General Assembly, 'Third Committee – Social, Humanitarian & Cultural'. <<http://www.un.org/en/ga/third/>>

¹⁰ Openshaw, E. & Sinclair, M., *Third Committee of the United Nations General Assembly: A Practical Guide for NGOs*, The International Service for Human Rights (2017).

¹¹ United Nations General Assembly, 'Review of the Human Rights Council', A/RES/65/281 (20 July 2011).

¹² Although not all African states supported the proposed amendment, as evidenced from the subsequent vote itself, the African Group successfully invoked the collective name to make multiple statements over the process misrepresenting group consensus on the issue.

argued that the establishment of the mandate had been resolved in the Human Rights Council. Members of the Africa Group and its supporters argued that the Third Committee had the mandate to question the appointment of the IE SOGI. The LAC Group and its supporters emphasized that the draft amendment was a serious affront to the principle of nondiscrimination and fundamental human rights. Their analysis and outreach was supported by strategic civil society coordination.

On November 21st 2016, the Third Committee met to discuss and vote on the African Group’s proposed resolution and the LAC 8 amendment to the proposed resolution. States discussed this in a session that lasted nearly two-and-a-half hours. (A full transcript of what States said can be found in section 3.1 of this report.) During the session, the LAC 8 amendment passed with a tight margin.

The vote was as follows:

“While we understand the concerns of other delegations and respect the difference of opinions among Member States on different issues, we believe that Paragraph 2 in its current form could set a precedent for other selective targeting of mandates or mechanisms in the future. This is not the first time a Special Procedure mandate has been created by means of a resolution adopted by a vote in the Human Rights Council. Several mandates faced opposition in the Council prior to their establishment. Moreover, an explicit treaty-based definition of the issue to be considered is not a requirement for a mandate to be established by the Council. There are over a dozen current mandates that fall under such a category, some of which were established by resolutions adopted by vote.”

– BRAZIL



Following this vote, the Resolution noting the Report of the Human Rights Council (as amended by the LAC 8 amendment) was brought to a vote and passed. The vote was as follows:



The voting patterns of UN Member States differ between the LAC 8 amendment and the final resolution. This is a reflection of the larger debate on the reporting line of the Human Rights Council and not on SOGIESC. Many UN Member States who support the adoption of the IE SOGI believe that the Report of the Human Rights Council should be placed directly before the UNGA rather than as an agenda item of the Third Committee.

The (amended) Third Committee resolution A/C.3/70/L.66 was placed before the UNGA on December 19th 2016 as a draft for its consideration. Civil society anticipated that there would be an attack on the mandate of the IE SOGI and had coordinated with state allies to strategize on responses.

The African Group introduced an oral amendment identical in content to that used in the Third Committee, reintroducing the language of Operative Paragraph 2 requesting a deferral of action on the resolution establishing the IE SOGI mandate (Resolution 32/2 of the Human Rights Council).

“The African Group amendment is limited to proposing that Member States should undertake new consultations on the matter so as to reach a common understanding of the notion of sexual orientation and gender identity. Given international law says nothing about this matter such understanding would eliminate all ambiguities with regards to this mandate. Sir, the African Group wishes to recall that if the international community wishes to achieve the needed solidarity and respect for all human rights it must prevent double standards. Let’s respect the sovereign right of each Member States of this organization to be able to take its own decisions that it judges relevant for its society.”

– BURKINA FASO

This proposed amendment was brought to a vote and was, by a close margin, defeated.

Voting Started | **12/19/2016** | **11:50:25 AM**

Item 63 A/71/479 Draft Amendment A/71/L.45
Draft amendment to the draft resolution recommended in the report of the Third Committee (A/71/479)

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IN FAVOUR: 77 | **AGAINST: 84** | **ABSTENTION: 16**

77 – Yes | 84 – No | 16 – Abstain

The General Assembly then went on to adopt the resolution noting the Report of the Human Rights Council, without the African Group's proposed amendment.

Voting Started | **12/19/2016** | **11:52:08 AM**

Item 63 A/71/479 Draft Resolution
Report of the Human Rights Council

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<input checked="" type="checkbox"/> AUSTRIA	<input checked="" type="checkbox"/> COSTA RICA	<input checked="" type="checkbox"/> GUINEA	<input checked="" type="checkbox"/> LUXEMBOURG	<input checked="" type="checkbox"/> PANAMA	<input checked="" type="checkbox"/> SOUTH SUDAN	<input checked="" type="checkbox"/> VIET NAM
<input checked="" type="checkbox"/> AZERBAIJAN	<input checked="" type="checkbox"/> COTE D'IVOIRE	<input checked="" type="checkbox"/> GUINEA-BISSAU	<input checked="" type="checkbox"/> MADAGASCAR	<input checked="" type="checkbox"/> PAPUA NEW GUINEA	<input checked="" type="checkbox"/> SPAIN	<input checked="" type="checkbox"/> YEMEN
<input checked="" type="checkbox"/> BAHAMAS	<input checked="" type="checkbox"/> CROATIA	<input checked="" type="checkbox"/> GUYANA	<input checked="" type="checkbox"/> MALAWI	<input checked="" type="checkbox"/> PARAGUAY	<input checked="" type="checkbox"/> SRI LANKA	<input checked="" type="checkbox"/> ZAMBIA
<input checked="" type="checkbox"/> BAHRAIN	<input checked="" type="checkbox"/> CUBA	<input checked="" type="checkbox"/> HAITI	<input checked="" type="checkbox"/> MALAYSIA	<input checked="" type="checkbox"/> PERU	<input checked="" type="checkbox"/> SUDAN	<input checked="" type="checkbox"/> ZIMBABWE
<input checked="" type="checkbox"/> BANGLADESH	<input checked="" type="checkbox"/> CYPRUS	<input checked="" type="checkbox"/> HONDURAS	<input checked="" type="checkbox"/> MALDIVES	<input checked="" type="checkbox"/> PHILIPPINES	<input checked="" type="checkbox"/> SURINAME	
<input checked="" type="checkbox"/> BARBADOS	<input checked="" type="checkbox"/> CZECH REPUBLIC	<input checked="" type="checkbox"/> HUNGARY	<input checked="" type="checkbox"/> MALI	<input checked="" type="checkbox"/> POLAND	<input checked="" type="checkbox"/> SWAZILAND	
<input checked="" type="checkbox"/> BELARUS	<input checked="" type="checkbox"/> DEM PR OF KOREA	<input checked="" type="checkbox"/> ICELAND	<input checked="" type="checkbox"/> MALTA	<input checked="" type="checkbox"/> PORTUGAL	<input checked="" type="checkbox"/> SWEDEN	
<input checked="" type="checkbox"/> BELGIUM	<input checked="" type="checkbox"/> DEM REP OF CONGO	<input checked="" type="checkbox"/> INDIA	<input checked="" type="checkbox"/> MARSHALL ISLANDS	<input checked="" type="checkbox"/> QATAR	<input checked="" type="checkbox"/> SWITZERLAND	
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<input checked="" type="checkbox"/> BHUTAN	<input checked="" type="checkbox"/> DOMINICA	<input checked="" type="checkbox"/> IRAQ	<input checked="" type="checkbox"/> MEXICO	<input checked="" type="checkbox"/> ROMANIA	<input checked="" type="checkbox"/> THAILAND	
<input checked="" type="checkbox"/> BOLIVIA (PLURINAT...	<input checked="" type="checkbox"/> DOMINICAN REP...	<input checked="" type="checkbox"/> IRELAND	<input checked="" type="checkbox"/> MICRONESIA (FS)	<input checked="" type="checkbox"/> RUSSIAN FED...	<input checked="" type="checkbox"/> THE FYR MACEDONIA	
<input checked="" type="checkbox"/> BOSNIA-HERZEGOVI...	<input checked="" type="checkbox"/> ECUADOR	<input checked="" type="checkbox"/> ISRAEL	<input checked="" type="checkbox"/> MONACO	<input checked="" type="checkbox"/> RWANDA	<input checked="" type="checkbox"/> TIMOR-LESTE	
<input checked="" type="checkbox"/> BOTSWANA	<input checked="" type="checkbox"/> EGYPT	<input checked="" type="checkbox"/> ITALY	<input checked="" type="checkbox"/> MONGOLIA	<input checked="" type="checkbox"/> SAINT KITTS-NEVIS	<input checked="" type="checkbox"/> TOGO	
<input checked="" type="checkbox"/> BRAZIL	<input checked="" type="checkbox"/> EL SALVADOR	<input checked="" type="checkbox"/> JAMAICA	<input checked="" type="checkbox"/> MONTENEGRO	<input checked="" type="checkbox"/> SAINT LUCIA	<input checked="" type="checkbox"/> TONGA	
<input checked="" type="checkbox"/> BRUNEI DARUSSAL...	<input checked="" type="checkbox"/> EQUATORIAL GUINEA	<input checked="" type="checkbox"/> JAPAN	<input checked="" type="checkbox"/> MOROCCO	<input checked="" type="checkbox"/> SAINT VINCENT-GR...	<input checked="" type="checkbox"/> TRINIDAD-TOBAGO	
<input checked="" type="checkbox"/> BULGARIA	<input checked="" type="checkbox"/> ERITREA	<input checked="" type="checkbox"/> JORDAN	<input checked="" type="checkbox"/> MOZAMBIQUE	<input checked="" type="checkbox"/> SAMOA	<input checked="" type="checkbox"/> TUNISIA	
<input checked="" type="checkbox"/> BURKINA FASO	<input checked="" type="checkbox"/> ESTONIA	<input checked="" type="checkbox"/> KAZAKHSTAN	<input checked="" type="checkbox"/> MYANMAR	<input checked="" type="checkbox"/> SAN MARINO	<input checked="" type="checkbox"/> TURKEY	
<input checked="" type="checkbox"/> BURUNDI	<input checked="" type="checkbox"/> ETHIOPIA	<input checked="" type="checkbox"/> KENYA	<input checked="" type="checkbox"/> NAMIBIA	<input checked="" type="checkbox"/> SAO TOME-PRINCIPE	<input checked="" type="checkbox"/> TURKMENISTAN	
<input checked="" type="checkbox"/> CABO VERDE	<input checked="" type="checkbox"/> FIJI	<input checked="" type="checkbox"/> KIRIBATI	<input checked="" type="checkbox"/> NAURU	<input checked="" type="checkbox"/> SAUDI ARABIA	<input checked="" type="checkbox"/> TUVALU	
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United Nations Webcast: webtv.un.org | **AGAINST: 2** | **ABSTENTION: 74**

106 – Yes | 2 – No | 74 – Abstain

2.2 Defending the Mandate in the Fifth Committee

2.2.1 THE FIFTH COMMITTEE

The Fifth Committee is the main committee of the General Assembly entrusted with responsibilities for administration and budgetary matters. The Fifth Committee makes decisions on the financial resourcing for decisions made over the UNGA and takes advice from an Advisory Committee.¹³

2.2.2 PROCEDURE AND TOPICS OF DEBATE

On December 23rd 2016, the African Group led another attempt to block the IE SOGI mandate, this time in the

Fifth Committee of the UNGA. Again, state allies and civil society were prepared. While the Fifth Committee usually considers the Human Rights Council Report as a whole and does not address substantive issues, in an unusual procedural move, the African Group, represented by Burkina Faso, proposed an oral amendment to section 15 of the draft resolution A/C.5/71/L.19. The aim of this amendment was to block any financial resourcing allocated to the IE SOGI created by resolution 32/2 at the Human Rights Council.

Argentina responded on behalf of the LAC 8 Group and called for a vote on the amendment. A vote was taken and the proposed oral amendment was clearly defeated:



¹³The Advisory Committee on Administrative and Budgetary Questions (ACABQ), is an expert committee of sixteen Members elected by the General Assembly for a period of three years, on the basis of a broad geographical representation. Members serve in a personal capacity and not as --- representatives of Member States. The Fifth Committee holds three sessions a year with a total meeting time of between nine and ten months per year. The Chairman and Vice-Chairman of the Committee are elected by the Members of the Advisory Committee: United Nations, 'Advisory Committee on Administrative and Budgetary Questions (ACABQ)' <<http://www.un.org/ga/acabq/>>

“We regret the adoption of budgetary implications that will allow the designated Independent Expert to conduct activities around the notion of sexual orientation and gender identity, which we believe does not yet have a legal basis in international law. The implementation of this resolution risks polarizing Member States because this resolution does not at all enjoy general consensus among Member States. Madam Chair, the African Group [...] disassociate themselves from the mandate of the Expert on the protection against violence and discrimination based on sexual orientation and gender identity established by Resolution 32/2 of the HRC.”

– BURKINA FASO

“[This proposed oral amendment] would seriously affect the work of the Independent Expert set up by the Human Rights Council through a validly adopted resolution which has now been given a number of functions in order to deal with issues related to violence and discrimination. [...] This, the Fifth Committee, as an administrative and budgetary body of the General Assembly, is not the appropriate forum to debate substantive issues related to decisions that have been adopted by other committees or bodies of the United Nations.”

– ARGENTINA

The LAC 8 Group, supported by statements from the EU, United States, Norway, Switzerland and Lichtenstein argued that the substantive component of the establishment of the mandate had been resolved in the Human Rights Council, and subsequently reexamined and resolved in both the Third Committee and the UNGA Plenary by a cross-regional majority. Supporters of the IE SOGI mandate also argued that the Fifth Committee was not the appropriate forum to debate substantive issues of the Human Rights Council report, and should limit its remit appropriately to matters of budget rather than issues of substance. Members of the Africa Group and its supporters argued that due to the ambiguity regarding the recognition of the term sexual orientation and gender identity in international human rights law, the allocation of resources to the IE SOGI mandate would be tantamount to a waste of UN resources.

On the same day, following the vote the Fifth Committee, Resolution A/C.5/71/L.19 was tabled at the UNGA Plenary. The vote occurred in the same room and, in most cases, the same diplomats cast their states' vote. Once again, an identical oral amendment was introduced by Burkina Faso, on behalf of the African Group, attempting to block the allocation of financial resources to the IE SOGI mandate. On behalf of the LAC 8 Group, Argentina again called for a vote on the proposed amendment. Argentina and other key States argued that Resolution 32/2 had been passed by the Human Rights Council, the Third Committee, the Fifth Committee and the UNGA. Furthermore, it was highlighted that the proposed amendment would seriously affect the independence of the Human Rights Council and its ability to establish such mandates in the future. The Member States of the General Assembly plenary voted and the proposed oral amendment was defeated, again with the same majority:

Voting Started 12/23/2016 9:23:56 PM

Item 134 A/71/716 Oral amendment by Burkina Faso to DR I
 Special subjects relating to the programme budget for the biennium 2016-2017

AFGHANISTAN	CAMEROON	FRANCE	KYRGYZSTAN	NETHERLANDS	SERBIA	UKRAINE
ALBANIA	CANADA	GABON	LAO PDR	NEW ZEALAND	SEYCHELLES	UNITED ARAB EMIR...
ALGERIA	CENTRAL AFR REP...	GAMBIA	LATVIA	NICARAGUA	SIERRA LEONE	UNITED KINGDOM
ANDORRA	CHAD	GEORGIA	LEBANON	NIGER	SINGAPORE	UNITED REP TANZA...
ANGOLA	CHILE	GERMANY	LESOTHO	NIGERIA	SLOVAKIA	UNITED STATES
ANTIGUA-BARBUDA	CHINA	GHANA	LIBERIA	NORWAY	SLOVENIA	URUGUAY
ARGENTINA	COLOMBIA	GREECE	LIBYA	OMAN	SOLOMON ISLANDS	UZBEKISTAN
ARMENIA	COMOROS	GRENADA	LIECHTENSTEIN	PAKISTAN	SOMALIA	VANUATU
AUSTRALIA	CONGO	GUATEMALA	LITHUANIA	PALAU	SOUTH AFRICA	VENEZUELA (BOLIV...
AUSTRIA	COSTA RICA	GUINEA	LUXEMBOURG	PANAMA	SOUTH SUDAN	VIET NAM
AZERBAIJAN	COTE D'IVOIRE	GUINEA-BISSAU	MADAGASCAR	PAPUA NEW GUINEA	SPAIN	YEMEN
BAHAMAS	CROATIA	GUYANA	MALAWI	PARAGUAY	SRI LANKA	ZAMBIA
SAUDI ARABIA	CUBA	HAITI	MALAYSIA	PERU	SUDAN	ZIMBABWE
BANGLADESH	CYPRUS	HONDURAS	MALDIVES	PHILIPPINES	SURINAME	
BARBADOS	CZECH REPUBLIC	HUNGARY	MALI	POLAND	SWAZILAND	
BELARUS	DEM PR OF KOREA	ICELAND	MALTA	PORTUGAL	SWEDEN	
BELGIUM	DEM REP OF CONGO	INDIA	MARSHALL ISLANDS	QATAR	SWITZERLAND	
BELIZE	DENMARK	INDONESIA	MAURITANIA	REP OF KOREA	SYRIAN ARAB REP...	
BENIN	DJIBOUTI	IRAN (ISLAMIC REP...)	MAURITIUS	REP OF MOLDOVA	TAJIKISTAN	
BHUTAN	DOMINICA	IRAQ	MEXICO	ROMANIA	THAILAND	
BOLIVIA (PLURINAT...)	DOMINICAN REP...	IRELAND	MICRONESIA (FS)	RUSSIAN FED...	THE FYR MACEDONIA	
BOSNIA-HERZEGOVI...	ECUADOR	ISRAEL	MONACO	RWANDA	TIMOR-LESTE	
BOTSWANA	EGYPT	ITALY	MONGOLIA	SAINT KITTS-NEVIS	TOGO	
BRAZIL	EL SALVADOR	JAMAICA	MONTENEGRO	SAINT LUCIA	TONGA	
BRUNEI DARUSSAL...	EQUATORIAL GUINEA	JAPAN	MOROCCO	SAINT VINCENT-GR...	TRINIDAD-TOBAGO	
BULGARIA	ERITREA	JORDAN	MOZAMBIQUE	SAMOA	TUNISIA	
BURKINA FASO	ESTONIA	KAZAKHSTAN	MYANMAR	SAN MARINO	TURKEY	
BURUNDI	ETHIOPIA	KENYA	NAMIBIA	SAO TOME-PRINCIPE	TURKMENISTAN	
CABO VERDE	FUJI	KIRIBATI	NAURU	SAUDI ARABIA	TUVALU	
CAMBODIA	FINLAND	KUWAIT	NEPAL	SENEGAL	UGANDA	

United Nations Webcast: webtv.un.org

IN FAVOUR: 65 AGAINST: 81 ABSTENTION: 15

65 – Yes 81 – No 15 – Abstain

2.3 Voting Analysis

There is a significant amount that can be learned from an analysis of the votes in the two Committees and the General Assembly Plenaries. At the end of this report, there is a table showing the voting position for all 193 UN Member States on each of the five relevant votes.

States can vote in three ways: in favor, against or abstain. If a State does not vote, it will be recorded as “Did not vote” (DNV).

Although it is tempting to speculate, uniformly accurate information on the motivation of States that did not vote across the Third Committee, Fifth Committee and UNGA Plenary votes is not available. The ‘did not vote’ category as distinct from an abstention does not necessarily indicate the potential for a swing vote. The absence of a State from a vote can be a deliberate choice. In other cases, it may be due to a lack of staff power and the need for a State’s mission representatives to cover concurrent UN mission functions, or given the time of year of mid- to late-December, the delegation in its entirety has sometimes left New York for holiday vacations.¹⁴

In general, the core architecture of State voting patterns remained expectedly similar across both the Fifth Committee and the Third Committee contexts. The voting records of a number of States revealed opportunities and challenges for future dialogue and engagement on SOGI at the United Nations. Support within Europe and Latin America remained strong, even if a few areas of concern surfaced. The Asia Pacific region revealed an area of opportunity, with countries previously disengaged on SOGI showing support, including a strong base across the Pacific Island States. The Caribbean region showed instability and diversity in its voting patterns and there may be long-term opportunities for change if driven by national advocacy. Despite a strong drive for unity in opposition to the mandate by the Africa

Group’s organizers, significant differences of opinion and approach were revealed within the group’s voting patterns. The same can even be said for the Organization of Islamic Cooperation (OIC) where there is no consensus on SOGI within the group.

2.3.1 WESTERN EUROPEAN AND OTHERS GROUP, AND EASTERN EUROPEAN GROUP

The notion of sexual orientation and gender identity is one that does not exist in international law. Therefore, some well-founded questions arise in this regard. What legal norms should guide the Independent Expert in carrying out his or her mandate? Without resolving this question, we believe that any activity on behalf of this Independent Expert and the special procedures established by resolution of the HRC 32/2 is not legally founded. In this regard, we must reaffirm our position, namely that the Russian delegation does not recognize this mandate and will not cooperate with the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.

— RUSSIA

Consistent support for the IE SOGI came from the entirety of Western Europe and Other Groups (WEOG) and from the majority of the Eastern European Group of Countries (EEG), with the exceptions of Azerbaijan, Belarus, and the Russian Federation, all of which voted in favor of the African Group amendment. Armenia, which abstained from voting in the Third Committee, did not vote in either

¹⁴Openshaw, E. & Sinclair, M., *Third Committee of the United Nations General Assembly. A Practical Guide for NGOs*, The International Service for Human Rights (2017).

the Fifth Committee or the second UNGA Plenary. The two other DNVs within the region (one for Moldova in the Third Committee UNGA Plenary and the other for Estonia for the Fifth Committee UNGA Plenary) appear to be anomalies out of sync with their prior voting records.

2.3.2 LATIN AMERICAN AND CARIBBEAN GROUP

While the vast majority of the Latin American countries voted to support the IE SOGI mandate, there were a number of notable exceptions. Nicaragua consistently voted against the IE SOGI on all votes, and Paraguay similarly abstained. Cuba, consistent in its approach to SOGI generally, did not vote. In a concerning development, Guatemala moved from support of the IE SOGI in the initial Third Committee vote to an abstention in both UNGA Plenaries and the Fifth Committee, and Honduras moved from supporting the IE SOGI in the Third Committee to an abstention in both the Fifth Committee and the second UNGA Plenary.

The voting patterns of the 15 Member States belonging to the Caribbean Community and Common Market (CARICOM) region remained diverse across both votes. The only full supporters of the IE SOGI mandate from the Caribbean were the Bahamas and Dominican Republic, which both voted consistently to protect the mandate. Conversely, OIC member State Guyana was the only Caribbean state to vote against the IE SOGIE mandate in all votes. The only other Caribbean State also in the OIC, Suriname, while opposing the IE SOGI in the first vote, did not vote in the GA plenary nor in either of the Fifth Committee votes. Encouragingly, Jamaica, Saint Kitts & Nevis, and Saint Lucia all abstained from voting in the Fifth Committee and second UNGA Plenary, following votes against the IE SOGI in the Third Committee and first UNGA plenary. Trinidad & Tobago, Barbados, Dominica, Grenada, and Haiti recorded a combination of abstentions or DNV. Antigua and Barbuda voted for the African Group amendment in the Third Committee, but then voted against them in the first UNGA Plenary, as well as in the Fifth Committee and second UNGA Plenary. Belize first voted in favor of the SOGIE mandate in the Third Committee, but then purportedly in mistake voted against

it in the first UNGA Plenary. In the Fifth Committee, Belize then once again supported the IE mandate by voting against the African Group amendment, but then did not vote in the final General Assembly Plenary. Saint Kitts & Nevis voted in favor of the African Group amendment in the Third Committee and then voted against it in the first UNGA Plenary. Both States then abstained from voting in the Fifth Committee session and then voted against the amendment in the second UNGA Plenary. Saint Lucia and Saint Vincent & the Grenadines both voted in favor of the African Group measures in the Third Committee but then both abstained from voting in the Fifth Committee and second UNGA Plenary.

The issue being that of the mandate of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. And I think here we need to clarify something very important, this is a very complex and delicate subject. This has been said, but I think it's worth reiterating here so that it is very clear: we're talking about nondiscrimination – nondiscrimination. And for us, it is extremely difficult to understand that anyone could question the human right to nondiscrimination on any basis whatsoever.

– MEXICO

2.3.3 ASIA AND PACIFIC GROUP

Most Asian Member States who are also OIC members did not vote in favor of the IE SOGI mandate at any point, but other Asian states have shown strong support, with potential opportunities for support based on the high amount of abstentions in the Fifth Committee and second UNGA Plenary votes.

In East Asia, Japan, the Republic of Korea and Mongolia voted for the LAC 8 amendment in the Third Committee and followed through with support across the Fifth Committee and plenary sessions. China and North Korea voted consistently against the mandate.

Thailand attaches importance to the work of the Human Rights Council and respects all the mandates decided by it, including that of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. ... Thailand values constructive engagement and dialogue on human right issues. We are confident that Dr. Vitit Muntarbhorn will carry out his work within his mandate in an objective and non-confrontational manner as stated in the said HRC resolution.

– THAILAND

In South East Asia, Cambodia, Thailand, Timor-Leste and Vietnam supported the mandate (with one DNV by Timor-Leste). Myanmar and the Philippines abstained throughout, and Laos appears to have adopted a DNV approach. OIC members Brunei, Indonesia and Malaysia each firmly opposed the mandate. Singapore also generally followed suit, abstaining on votes in the Fifth Committee and second UNGA Plenary only after it originally voted against the IE SOGI mandate in the Third Committee.

In South Asia, both Sri Lanka and Nepal voted consistently in favor of the mandate (after an initial abstention by Nepal in the Third Committee). India and Bhutan seemed to have chosen the path of abstaining (with one DNV by Bhutan). Afghanistan, Bangladesh and Pakistan, OIC members, consistently supported the African Group.

In West Asia, Lebanon did not vote. Israel voted consistently in favor of the mandate. The other countries in the region firmly opposed it.

In Central Asia, Kazakhstan abstained or DNV, and Turkmenistan did not vote throughout. The remaining three countries in the region—all OIC members—supported the African Group’s position. Nepal abstained in the Third Committee and voted for the LAC position in the UNGA Plenary.

The island states of the Pacific Region maintained their strong support, excluding a few who did not vote (Micronesia, Solomon Islands and Tonga). Nauru, the sole State in the Pacific who voted against the mandate at all points and provided an explanation of vote to that effect in the second UNGA Plenary.

2.3.4 AFRICAN GROUP

“After years of struggle our people black and white, straight and non-straight came together to bury discrimination once and for all. The Bill of Rights is very clear about the South Africa we fought for, were imprisoned for and were exiled for, a South Africa without discrimination. The question is one of our values and beliefs and even if we are alone on the continent we will stand and fight it (discrimination against LGBTI persons). South Africa will vote yes based on our constitutional imperative.

Even if we are alone on this one, we remain standing and fighting it, because with this one, we always disagree with most of our colleagues in the continent. [...] South Africa is still healing the wounds, deep wounds caused by discrimination racial discrimination. We are not going to add fresh wounds to those wounds we are trying to heal in South Africa.”

– SOUTH AFRICA

While the majority of the African Group members supported the group’s own measures to first delay action on the resolution creating the mandate and then strip the IE SOGI mandate of budgetary capabilities, the group was far from consistent in position.

A vocal dissenter within Africa was South Africa which moved from a recorded abstention in the HRC earlier in the year in Geneva to supporting the IE SOGI throughout all votes at the General Assembly session.

Other dissenting voices within the African Group were Cape Verde and Seychelles which both voted in favor of the LAC 8 amendment in the Third Committee and then continued to not support with DNVs in the Fifth Committee. Other African States abstained at various points in the process—Guinea-Bissau, Liberia, Rwanda and Somalia—and others simply did not vote—Equatorial Guinea, Mozambique, São Tome & Príncipe, Sierra Leone, South Sudan and Tunisia.

In total, thirteen members of the African group notably did not vote in both the Fifth Committee and the UNGA Plenary session. Cape Verde and Seychelles, which previously dissented from African Group block votes in the Third Committee and first UNGA Plenary both, did not vote in the Fifth Committee and the second UNGA Plenary. Liberia abstained from voting in the Fifth Committee and second UNGA Plenary.

“[Burkina Faso’s] amendment aims simply not to waste resources. This is the role of the Fifth Committee—to ensure that resources are not wasted. He didn’t raise any substantive issue related to this, so we were totally entitled to say that these amounts that have been requested do represent a waste of resources. This is what it’s all about.”

– CAMEROON

2.3.5 THE ORGANIZATION OF ISLAMIC COOPERATION

Although not a formal regional group—its 58 member States come from all five of the UN regions—substantial organized opposition to the IE SOGI was led by the Organization of Islamic Cooperation (OIC). While influential, the OIC did not have consensus within the group. Albania and Turkey both voted in favor of the LAC 8 amendment, with Kazakhstan abstaining and Lebanon, Mozambique, Suriname, Tunisia and Turkmenistan all not voting.

For a full overview of the debate and voting procedures refer to Section 3.

2.4 Civil Society Participation

International civil society played a central role in protecting the mandate of the IE SOGI throughout the process of the 71st Session of the UNGA. To protect the safety and anonymity of LGBTI activists and human rights defenders, only an outline of strategies used by civil society can be shared here. Notably, civil society mobilized vigorously across all aspects of the hostile attacks, including in the development and distribution of two open coordinated letters addressed to Member States of the United Nations urging their support for the IE SOGI.

The first letter—initiated during the debates in the Third Committee—was signed by over 850 organizations representing over 157 countries. The letter provided in full below urged Member States to ‘reject the attempt by some States at the United Nations General Assembly’s Third Committee to defer consideration of parts of the United Nations Human Rights Council report.’

An analysis of who the signatories were reveals that:

This table reinforces the view that there is significant cross-regional civil society support for this mandate, including heavy support from the Global South comprising African, LAC and the Asia Pacific regions. Sixty-eight percent of all signatories come from the Global South region. The fact that there are civil society groups in a majority of UN Member States asking that the mandate be protected reinforces the fact that SOGIESC issues are a matter of concern worldwide.

Apart from signing onto the open letters, individuals and organizations advocated to have their governments support the mandate of the IE SOGI through letters addressed to their governments and UN Missions and authored action alerts, press releases and articles for national and regional media.

This mobilization shows there is indeed a vibrant and diverse cross-regional LGBTI movement which has coordinated across country contexts and other differences to successfully advocate for the mandate.

LIST OF SIGNATORIES	COUNTRY	NO. OF SIGNATURES
Regional		37
Global		44
Africa	41	141
Asia-Pacific	41	213
Europe	42	187
LAC	31	189
North America	2	57
Total	157	870

2.5 Conclusion

Understanding the UNGA is vital for LGBTI civil society invested in the progress of human rights at the international level. As the primary deliberative policy-making and representative organ of the UN the UNGA elects the members of the HRC, confirms many of its decisions and approves the UN budget. The case study of defending the establishment of the IE SOGI mandate reveals a number of important insights into the challenges and opportunities for taking forward the human rights of LGBTI people at the UNGA.

Over the course of the 71st Session of the UNGA the majority of States at the UN supported the decision of the HRC to establish the IE SOGI. This decision was affirmed in multiple votes across the Third and Fifth Committees as well as two separate UNGA Plenaries. As a whole the outcome of the last 71st UNGA Session clearly lays solid foundation for the legitimacy of the mandate of the IE SOGI and for continued UN engagement on SOGI issues.

Opponents to the universality of human rights for LGBTI people at the UN claim that the world is regionally divided on the issue, and that SOGI are a set of constructs imposed unfairly by the Global North onto the Global South. The voting records in this report debunk this myth by clearly demonstrating genuine cross-regional support for the establishment of the IE SOGI. Importantly the voting records of member States within the Africa Group, CARICOM and the OIC also reveal that the groups cannot claim consensus in their opposition to SOGI. The leadership of the LAC 8 Group further affirms the support and mobilization of States within the Global South to defend the mandate and the principle of universality and non-discrimination.

The contents of this report offer an evidence base for countering arguments based on misinformation, fear and generalization. The voting records, analysis and transcripts can offer guidance for planning future international, regional and national advocacy on the human rights of LGBTI people.



03

How the Vote Unfolded

3.1 In the Third Committee

53rd Meeting of the Third Committee of the
71st Session of the General Assembly
21st November 2016

Chair: H.E. Ms. Maria Emma Mejia of Colombia

3.1.1 INTRODUCTION BY THE CHAIR

25:38

Chair: I invite the Committee and Excellencies, delegates, to resume consideration of Item 63, Report of the Human Rights Council, in order to take action on draft resolution A/C.3/71/L46 entitled "Report of the Human Rights Council" submitted under the sub-item. I have been advised that this draft resolution contains no program budget implications. I give the floor to the Secretary of the Committee.

26:20

Secretary: Thank you Madam Chairperson. I wish to recall that at its 49th meeting on the 15th of November, the main sponsor, Botswana, orally revised operative paragraph 2 of draft resolution L46 by inserting the words "to its 72nd session" after the word "identity." That was an oral revision. Thank you, Madam Chairperson.

26:50

Chair: I thank the Secretary of the Committee. Does the main sponsor, Botswana, through Ambassador Ntwaagae wish to make a statement on behalf of the African Group? You have the floor, Ambassador.

3.1.2 PRESENTATION OF RESOLUTION BY AFRICAN GROUP

27:07

Botswana: Thank you very much, Madam Chair. I have to reintroduce this resolution today in the light of amendments that have been made. Madam Chair, I have

the honor to take the floor again on behalf of the African Group. Just one moment. I'm terribly sorry, Madam Chair, I have the honor to take the floor on behalf of the African Group in explanation of the vote before the vote on draft amendment A/C3/7...

28:25

Chair: Ambassador, we haven't yet reached that point. It would be the time to make a general statement in support of the resolution on behalf of the African Group. We're not yet at the point of the amendment...I give the floor to the Secretary.

29:07

Secretary: Thank you, Madam Chairperson. Since the tabling of draft resolution L46, the following delegations joined the list of cosponsors: Pakistan, Qatar, the Russian Federation, Saudi Arabia, the United Arab Emirates, and Yemen. Does any other delegation wish to cosponsor draft resolution L46 at this stage? I see none. This concludes, Madam Chairperson, the list of cosponsors of draft resolution L46 at the present time. Thank you, Madam.

3.1.3 INTRODUCTION OF PROPOSED AMENDMENT BY LAC 8

29:59

Chair: I thank the Secretary of the Committee. I would like to draw the attention of the Committee to the draft amendment submitted to draft resolution L46 as contained in document A/C3/71/L52. I have been informed that this amendment contains no program budget implications. My understanding is that the distinguished delegation of Brazil wishes to take the floor to speak on behalf of the group of countries cosponsoring this resolution to make a statement. I give the floor to the Ambassador of Brazil.

30:45

Brazil: Thank you, Madam Chair. On behalf of Argentina, Chile, Colombia, Costa Rica, El Salvador, Mexico, Uruguay, and my own country, Brazil, I have the honor to introduce an amendment contained in document L52 to delete Operative Paragraph 2 of the draft resolution L46 on the Human Rights Council report. Madam Chair, operative Paragraph 2 seeks to defer consideration of an action on Human Rights Council Resolution 32/2 by questioning the legal basis for the creation of an Independent Expert.



This is being put forward despite the fact that the relevant mandate was established in accordance with the rules of procedure of the Human Rights Council. This amendment was tabled because we believe that the adoption of the draft resolution in its current formulation would severely jeopardize the Human Rights Council's ability to function.

The role of the Council as the main United Nations body for dealing with human rights issues is clearly articulated in its founding documents, General Assembly Resolution 60/251 and Human Rights Council Resolution 5/1. They state that the Council is responsible for promoting universal protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner. It is not within the Third Committee's purview to reopen the Human Rights Council annual report, nor should it interfere in which specific mandate should be confirmed or deferred. This would fundamentally undermine the authority granted to the Council by the General Assembly, thus having far reaching implications well beyond the specific resolution under consideration.

While we understand the concerns of other delegations and respect the difference of opinions among Member States on different issues, we believe that Paragraph 2 in its current form could set a precedent for other selective targeting of mandates or mechanisms in the future. This is not the first time a Special Procedure mandate has been created by means of a resolution adopted by a vote in the Human Rights Council. Several mandates faced opposition in the Council prior to their establishment. Moreover, an explicit treaty-based definition of the issue to be considered is not a requirement for a mandate to be established by the Council. There are over a dozen current mandates that fall under such a category, some of which were established by resolutions adopted by vote. Our delegations would also like to make it clear that the oral revision introduced by the African Group to OP2 does not modify the objective of the paragraph, which is to put on hold the decision of the Human Rights Council.

Madam Chair, last but not least, we are grateful to all 58 countries that have cosponsored the amendment to delete OP2 and for the support of a significant cross-regional group of countries in favor of preserving the mandate of the Human Rights Council. We believe that it is in the common interest of all states to protect the integrity and effectiveness of the human rights system, and for this reason we ask the delegations to vote in favor of the amendment by pressing the yes button. Thank you very much.

35:01

Chair: I thank the distinguished representative of Brazil, Ambassador Vieira for his statement. I now give the floor to the Secretary of the Committee.

35:12

Secretary: Thank you, Madam Chairperson. Since the tabling of draft amendment containing document L52, the following delegation joined the list of cosponsors: Bosnia & Herzegovina, Georgia, Hungary, Poland, Romania, Serbia, the Former Yugoslav Republic of Macedonia, and Ukraine. Does any other delegation wish to cosponsor draft amendment L52? Honduras. This concludes the list of cosponsors of draft amendment L52. Thank you, Madam Chairperson.

3.1.4 RESPONSE BY THE AFRICAN GROUP

36:21

Chair: I thank the delegation of Botswana, and would they at this time like to make a statement on this draft amendment? Ambassador, you have the floor.

36:53

Botswana: Yes, Madam Chair. I wish to make a statement on behalf of the African Group in explanation of the vote on this amendment before the vote on the amendment L...

37:10

Chair: Ambassador, once again, explanation of vote would happen after the voting takes place. A recorded vote has been requested. You have the floor, Ambassador.

37:34

Botswana: Thank you, Madam Chair. We thought we could make a general statement before the vote at this stage.

37:42

Chair: Yes, it's a general statement, not an explanation of vote, as we understand. A general statement, yes please.



37:48

Botswana: Thank you very much, Madam Chair. A general statement on behalf of the African Group. Madam Chair, as has been the practice since establishment of the United Nations Human Rights Council, the African Group tables this annual resolution recommending that part of the Human Rights Council to the General Assembly for adoption on the 3rd of November.

In this resolution, the African Group calls for the further consideration of an action of the Human Rights Council Resolution 32/2 of the 30th of June, which is entitled "Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity." And we request the deferment of this particular resolution to the 72nd session of the General Assembly in order to allow time for consultations. And, Madam Chair, we need to stress that we do not question the creation of independent mandates but simply asking for more time for further consultations on this very important resolution. The basis on which the Special Mandate Procedure was established as indicated by the distinguished delegate of Brazil.

Madam Chair, in its decision to table this resolution, the Group has been guided by the principles of international law, the purposes and principles enshrined in the Charter of the United Nations, and the universally accepted principles of respect for the independence and sovereignty of Member States. Madam Chair, allow me first of all to correct the often-repeated refrain that references that the African Group seeks to question the authority and mandate of the Human Rights Council. With regard to this appointment under the Special Mandate Procedures, the African Group is by no means attempting such action by the tabling of this resolution, Madam Chair. Rather, the Group fully affirms that it is within the mandate of the Human Rights Council to establish special procedures. In affirming the authority granted by the Human Rights Council under its founding resolution, it is equally important to highlight the rights of the General Assembly enshrined in that very same resolution which marked the foundation of the Council, United Nations General Assembly Resolution 60/251. This resolution clearly established the Human Rights Council as a subsidiary body of the General Assembly, hence the need for the Council to report on an annual basis to the universal membership of the General Assembly.

This designation of the Council's status as a subsidiary body of the General Assembly was subsequently reaffirmed in OP3 of General Assembly Resolution 65/281. Further to this, Madam Chair, Article 10 of the Charter of the United Nations affirms that the General Assembly may discuss any questions or matters within the scope of the present Charter, or relating to the powers and functions of any organs provided for in the present

Charter. It is therefore absurd to claim that the decision of the General Assembly to review the decision of a subsidiary body is an attempt to question the mandate and authority of the Council.

Madam Chair, it has been argued that the General Assembly has never before challenged a Human Rights Council resolution of this nature, and that a decision so to do would create a dangerous precedent of picking and choosing. This is not the position, Madam Chair. I want to recall, Madam Chair, that in 2006, General Assembly Resolution 61/178 decided to defer consideration of an action of the United Nations Declaration on the Rights of Indigenous Peoples, which had been adopted by the Human Rights Council in Geneva under Resolution 1/2 of the 29th of June 2006. In order to allow for further consultations, in the same manner that we're calling for deferment of this particular Resolution 32/2 in order to allow for further consultations. Furthermore, Madam Chair, besides the precedent set by the resolution on the Rights of Indigenous Peoples, in 2013 the General Assembly adopted Resolution 68/144, deferring consideration of Human Rights Council Resolution 24/24 which was intended to create a focal point on reprisals. Whilst there are differences in the scope of Resolution 24/24 and the current resolution before us, what is significant here is that the General Assembly exercised this authority to guide the overall work of the organization as enshrined in the Charter of the United Nations.

Madam Chair, a few days ago, specifically on Friday, November 18th, in this very hall during the consideration of the resolution on the Right to Peace, we heard from some of our colleagues who today are cosponsors of this amendment that there is no recognized international agreement on the right to peace, for which reason they refused to join consensus in the adoption of that resolution. The African Group is therefore wondering which international legal instruments defines the concept of sexual orientation and gender identity, for which reason we are being told to support this amendment. Madam Chair, the honest truth remains that these notions are not enshrined in any international human rights instrument. With no definitional basis in any international law instrument, the Africa Group is of the view that the mandate of the Independent Expert lacks

the necessary specificity to be carried out fairly. This also runs contrary to Human Rights Council Resolution 5/1, which states that new mandates should be "clear and as specific as possible so as to avoid ambiguity."

I'm just about to conclude my general statement, Madam Chair, and to say that the African Group wishes to reiterate that if the international community wishes to garner the necessary solidarity and support in fulfillment of all human rights, then it must purge itself of such double standards as being exhibited in this very instance. Let us respect the sovereign right of each and every member of this organization to be able to take decisions that they deem fit in their own circumstances. No nation or group of nations should pretend to hold the monopoly over cultural norms and therefore seek to impose those values on others. The United Nations has come this far because it has always believed and upheld the principle of unity and diversity. Let us not take decisions at this stage that would only divide our great organization.

The African Group, therefore, Madam Chair, merely proposes that further consultations be undertaken by Member States on the issue in order to come to a common understanding on the very controversial notion of sexual orientation and gender identity, given that international law is silent on the definition of this issue. Such an understanding would clear all ambiguities on the mandate of this office. In conclusion, Madam Chair, I wish to reaffirm that members of the African Group do not subscribe to any form of violence or discrimination against any group of people. We subscribe universally to all human rights as enshrined in the Charter of the United Nations and the Universal Declaration of Human Rights. In this regard, Madam Chair, the Group would vote against the amendment that is being put forward and we naturally urge all other delegations to do the same in order to preserve the respect for the principles of international law and the Charter of the United Nations and the universally accepted principles of respect for the independence and sovereignty of all Member States. I thank you for the opportunity, Madam Chair, for me to make this general statement before action on the proposed amendment. Thank you very much, Madam Chair.

3.1.5 STATEMENTS BEFORE THE VOTE ON THE AMENDMENT

47:22

Chair: I thank the distinguished delegation of Botswana on behalf of the African Group, Ambassador Ntwaagae. Thank you for your statement. A recorded vote has been requested on the draft amendment contained in A/C.3/71/L52. Before we proceed to the vote, I will first give the floor to any delegation wishing to make a general statement in connection with the draft amendment and thereafter to any delegation wishing to make a statement in explanation of vote. The delegations are also reminded that in accordance with Rule 128, proposers of a proposal are not permitted to explain their vote on their own proposal. I understand that there's a point of order from the distinguished delegation of Mexico before we proceed to general statements. Yes, Ambassador Gomez please.

48:28

Mexico: Thank you very much, Madam Chair. I would like to make a brief general statement if I may. My understanding is that this would be the time to do so.

48:42

Chair: We will be doing general statements in just one moment. Thank you very much. I therefore open the floor to general statements and I give the floor first to the distinguished delegation of Slovakia on behalf of the Group of European Countries. Ambassador Ružička, you have the floor.

49:00

Slovakia: This is the general EU statement to be made in advance of the vote on the amendment that was presented. Madam Chair, I have the honor to speak on behalf of the European Union and its Member States. The European Union is extremely concerned by the attempts of some UN Member States to reopen a discussion on the Human Rights Council, the UN's primary human rights forum, on the matter that is clearly within the remit of the HRC. Regrettably, this is not the first time this has happened. We would like to reiterate our view that to question, defer, or reopen a decision of the HRC is to question an institutional relationship that exists between the Human Rights Council and the General Assembly.

If states start using the General Assembly to object to decisions made by the HRC, the Council's ability to function will be completely undermined.



Previously, other UN delegations have argued that the HRC did not have authority to issue a mandate beyond its realm of competence, but this is not the case here. Resolution 32/2 was adopted by majority vote at the Human Rights Council in Geneva in June and the Independent Expert was appointed in September. All 47 members of the HRC had the opportunity to put their views on record then. Many other mandate holders have been appointed on the basis of voted resolutions.

The creation of special procedures is well within the competence of the HRC and there is no basis for it to be reopened by the General Assembly. Opposition to the subject matter of a Special Procedure's mandate is not a valid reason to compromise the effectiveness of the entire work of the Human Rights Council. It is clear that this mandate is not being changed on valid legal procedural grounds, rather they are merely a pretext for efforts to cordon consideration of the subject matter. We underline that no one should face violence or discrimination simply because of who they are or who we are. Acts of violence and discrimination not only demean victim and perpetrator, they demean us all. They serve to diminish our common humanity. Challenging the work of any Special Procedure mandate holder goes against the spirit of the United Nations and against the universal duty and inalienability of human rights. We understand and acknowledge that sexual orientation and gender identity is a delicate subject for a number of UN Member States, but nondiscrimination is fundamental to the work of the United Nations. As is the case with other resolutions, we do not have to agree on every issue that comes before us at the United Nations. But this HRC resolution

passed legitimately and that should be respected. For this reason, the Member States of the European Union will vote in support of the amendment proposed by Argentina, Brazil, Chile, Colombia, Costa Rica, El Salvador, Mexico, and Uruguay. I thank you Madam Chair.

52:07

Chair: I thank the distinguished delegation of Slovakia, speaking on behalf of the European Union. I now give the floor to the distinguished delegation of the United States. Ambassador Mendelson, you have the floor.

52:32

United States: Thank you Madam Chair. The United States fully supports the amendment before us today tabled by Argentina, Brazil, Chile, Colombia, Costa Rica, El Salvador, Mexico, and Uruguay. If there is to be a Third Committee resolution noting the report of the Human Rights Council, it should take note of the report in its entirety and not undermine the Council by attempting to re-litigate a mandate. There are many mandates that were created by the Human Rights Council that various countries oppose, but no country has sought to re-litigate those mandates in the Third Committee once a mandate holder has been appointed and started their work.

Seeking to re-open any HRC mandate that some states may deem objectionable under the guise of legal concerns is inconsistent with respect for the Human Rights Council's ability to function. The mandate created in HRC 32/2 is consistent with international human rights law and well within the mandate of the Human Rights Council. Resolution 32/2 was duly passed with cross-regional support. The lack of consultation with all regional groups in the preparation of the resolution before us today is inconsistent with the working methods of this body and contrary to the spirit of international cooperation that we must strive for in the UN, as was demonstrated by the HRC when Resolution 32/2 was debated and adopted. We urge all countries to vote in favor of the amendment before us now, which will preserve the integrity of the Human Rights Council and the work it undertakes. Thank you very much.

53:58

Chair: I thank the distinguished ambassador of the United States, Ambassador Mendelson. I now give to floor to the ambassador of the Republic of Korea.



54:10

Republic of Korea: Thank you Madam Chair. My delegation is delighted to express the support of the amendment L52. Operative Paragraph 2 of the draft resolution contains an unprecedented attempt at reopening and overturning what has been already adopted and implemented by the Human Rights Council, within its purview following extensive discussions. Such an adoption of the draft resolution that includes OP2 will undermine the institutional basis of the Human Rights Council. My delegation is also concerned about similar attempts that can potentially follow this and their negative ramifications across the entire UN system. Fundamentally, with the establishment of the Human Rights Council 10 years ago, we all made collective commitments to strengthen the human rights machinery, not weakening, for effective enjoyment of all human rights by all. Let us not take a decision that will damage this precious mechanism we created together. We hope that the other delegations will support the amendment as well. Thank you.

55:18

Chair: I thank the distinguished ambassador of the Republic of Korea. I now give the floor to the distinguished ambassador of Mexico. Ambassador Gomez, you have the floor.



55:34

Mexico: Thank you very much, Madam Chair. I haven't intended to make any general statement but I listened very carefully the comments of my colleague, the Ambassador of Botswana on behalf of the African Group, expressing the Group's position. I would like to make two general comments in that regard. First of all, I would like to underscore my enormous respect for my African Group colleagues and for their position and for their considerations and concerns.

I think it's fairly clear in the room, Madam Chair, that this resolution and amendment are addressing two different issues and it's crucial that each is very clear. We should not be confusing or mixing these two issues. First, the decisions of the Human Rights Council, as to whether or not they should be reviewed by the Third Committee—this is one issue. Mexico agrees with the two or three speakers who took the floor before me in that regard but we understand the reasonable nature of bringing this issue to the Third Committee for discussion. We don't agree with this but we understand it and this is a discussion we feel we could have. Nothing prevents us from having such a discussion as my colleague mentioned. Nothing prevents the Third Committee from discussing or reviewing a Human Rights Council decision. So, we could have that discussion—that's all very well.

But the second issue is one that is of much greater concern to us, and here I don't know if it would be possible to have a sufficiently rational discussion, and that is about the substance of this resolution. The issue being that of the mandate of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. And I think here we need to clarify something very important, this is a very complex and delicate subject. This has been said, but I think it's worth reiterating here so that it is very clear: we're talking about nondiscrimination, nondiscrimination. And for us, it is extremely difficult to understand that anyone could question the human right to nondiscrimination on any basis whatsoever. Whether or not we agree on the scope of or the interpretation of issues pertaining to sexual orientation or gender identity, this is something we have differences on and we can discuss them. As I said earlier, it's reasonable. But with regard to nondiscrimination, we cannot call this into question. We cannot call into question the right to not be discriminated against owing to disability or gender

or for sexual orientation. This is really the issue, Madam Chair. I do agree with almost everything that my friend the Ambassador of Botswana has said on behalf of the African Group and I reiterate my respect for his position. We understand. We understand that it is a delicate matter. But this is a delicate matter within the Human Rights Council as well. The discussion was a very—great pains were taken to refer to nondiscrimination in general. And care was taken to not use any language that would create more controversy. And the Council is still discussing the human right to sexual orientation. This is a controversial issue. It is still being discussed. But we believe that every human being has the right to not be discriminated against for any reason whatsoever. Finally, Madam Chair, I think we need to understand that what we're talking about here is nondiscrimination and nondiscrimination alone. Thank you.

1:01:02

Chair: I thank the distinguished ambassador of Mexico, Ambassador Gomez, for his statement. I now give the floor to the distinguished delegation of Japan. You have the floor.

1:01:16

Japan: Thank you, Madam Chair. In order to save time, I would like to focus my general statement on the independence of the Human Rights Council. We must bear in mind that the mandate of the Human Rights Council was provided by the General Assembly. Therefore, it is our obligation to respect the decision made by the Human Rights Council. Picking and choosing the outcomes of the Human Rights Council and blocking the ones which are not favorable for some of the delegations in the General Assembly undermines the discussions and the decisions made in the Human Rights Council and it therefore sets a dangerous precedent. My delegation is not in the position to support such an attempt. My delegation would like to support the amendment tabled by the distinguished delegation of Argentina, and I strongly urge other delegations to do so. Thank you, Madam Chair.

1:02:22

Chair: I thank the distinguished delegation of Japan. I will now turn to those delegations wishing to make a statement in explanation of vote before the voting and I will give the floor first to the delegation of Egypt.



1:02:45

Egypt: Thank you Madam Chair. I'm taking the floor on behalf of the Member States of the Organization Islamic Cooperation with one exception in support of the draft resolution put forth by the African Group on the Report of the Human Rights Council. This statement is a continuation of the debate held in Geneva on HRC Resolution 32/2 which did not enjoy consensus. The OIC has always upheld the principles and values of nonviolence and nondiscrimination on any grounds against any individual or group in accordance with the well-established principles set forth in the international human rights law. We condemn violence and discrimination in all its forms and manifestations against individuals and we uphold the inherent dignity of all individuals. We believe that protection against violence should be granted to all individuals based on race, birth, color, sex, language, religion, political or other opinions, national or social origin, property or other status.

The OIC is disturbed with the introduction in the United Nations of concepts of new notions that have no legal foundation in any international human rights law, including the Universal Declaration of Human Rights and other human rights instruments. As such, we note that the introduction of such controversial norms are not universally agreed upon, and represent a very particular set of values and lifestyles that directly impinges on the social, cultural, and religious sensitivities of a large number of countries and promises to polarize and undermine the work of the UN in the field of human rights.

The OIC would like to echo the assertions made by the statement of the African Group regarding the subsidiary nature of the Human Rights Council vis-a-vis the United Nations General Assembly as stipulated in Resolution 60/251. This resolution clearly established the HRC

as a subsidiary body of UNGA where we need for the Council to report on an annual basis on the universal membership of the General Assembly. We also find the statement that the General Assembly has never before challenged the Human Rights Council resolution of this nature to be factually incorrect. This does not, in no way or form, set a dangerous precedent of picking and choosing as was highlighted in the African Group statement.

We would like to further remind the esteemed Committee that Resolution 32/2 was in fact adopted by a smaller majority than two years ago and that only 19 Member States voted in favor of the retention of the creation of this mandate. This reflects a strong and persistent objection to this initiative, which will only remain and will grow. Equally important, let us remember that the seven important principles that were included as an integral part of text on the basis of the amendment proposed by the OIC which included:

1. Maintaining the joint ownership of international human rights agenda and to consider human rights issues on an objective and non-confrontational manner;
2. The importance of respecting regional culture and religious value systems as well as particularities in considering human rights issues;
3. The fundamental importance of respecting the relevant domestic debates in national level on matters associated with historical, cultural, social, and religious sensitivities;
4. Deploring the use of external pressures and coercive measures against states, particularly developing countries, with the aim of influencing the relevant domestic debates and decision-making processes at the national level;
5. Concerned by any attempt to undermine the international human rights system by seeking to impose concepts or notions pertaining to social matters including private individual context which fall outside the internationally agreed upon human rights framework.

We urge all Member States to vote against the amendment of draft resolution on report of the Human Rights Council and to defer consideration of the action on Human Rights Council Resolution 32/2 of 30th of June

2016, in order to allow time for the further consultations to determine the legal basis upon which the mandate for the Special Procedure established therein will be defined. Failing to do so means that the OIC will continue in its position to boycott the Independent Expert and affirms also that OIC will not be in a position to interact or cooperate with that expert. I thank you Madam Chair.

1:06:45

Chair: I thank the distinguished delegation of Egypt. I now give the floor to the distinguished delegation of Thailand. Ambassador, you have the floor.



1:06:55

Thailand: Thank you very much. I'm taking the floor to make an explanation of vote before the vote with regard to the amendment contained in document A/C.3/71/L52. As a matter of principle, Thailand respects the right of Member States to discuss any matter within the scope of the present Charter of the General Assembly. At the same time, as a matter of principle, Thailand attaches importance to the work of the Human Rights Council and respects all the mandates decided by it, including that of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.

This said, HRC mandate was established by the HRC Resolution 32/2 in accordance with the Council's rules and procedures. In this regard, Thailand does not agree with deferring consideration of this mandate to a later day. Noting that the Independent Expert has already been formally endorsed by the Human Rights Council and commenced his work. We will therefore be voting for the amendment to delete OP2. Notwithstanding this, Thailand values constructive engagement and dialogue on human right issues. We are confident that Dr. Vitit

Muntarbhorn will carry out his work within his mandate in an objective and non-confrontational manner as stated in the said HRC resolution. Thank you.

1:08:38

Chair: I thank the distinguished ambassador of Thailand for her statement. I now give the floor to the distinguished delegate of Congo.

1:08:51

Congo: Thank you, Madam Chair. The statement made by Botswana on behalf of the African Group in presenting draft resolution on the Human Rights Council Report eloquently and precisely stated the arguments contained in favor of this resolution and my delegation joins that statement. The Committee is called upon today to take action on draft amendment L52 which calls for deleting operative Paragraph 2 L46, thus the authors of the amendment in L52 have decided to ignore the legitimate concerns of the African Group on an issue that also happens to be legally unclear. We cannot fail to recognize that this issue has caused divides in the HRC and continues to divide delegations because it is lacking in internationally agreed legal basis. The mandate to establish an Independent Expert on the protection against violence and discrimination based on sexual orientation and gender identity failed to reach a significant majority and we voted against it. Many delegations also abstained. Thus, 23 members of the HRC expressed their doubts on this matter and we should not turn away from this deep divide on the issue of this Independent Expert on sexual orientation and gender identity.

We thus call for more substantial consultations to reach a just outcome. We should not rush to take action on this issue, which still needs a more specific legal definition. We want to create the most favorable conditions for the work of the Independent Expert, which is not possible at the present time. Madam Chair, my delegation does not wish to question the legitimacy and the authority of the HRC, which provides valuable input on human rights. Rather, we are questioning the legal basis of this Independent Expert. The General Assembly has the prerogative to consider all issues relating to the mandate and authority of subsidiary bodies and the General Assembly is in fact the highest representative and deliberative body of this organization. We will therefore

vote against amendment L52 and urge other delegations to wisely do the same. Thus, we will be able to seek consensus on the matter and resume its consideration at the 72nd session. I thank you.

1:12:20

Chair: I thank the distinguished delegate of Congo for her statement. I now give the floor to the delegation of Singapore. Ambassador Gafoor, you now have the floor.



1:12:28

Singapore: Thank you very much. Thank you very much Madam Chair. We wish to make an explanation of vote before the vote on the proposed amendment contained in document L52. I'd like to start by reaffirming Singapore's strong commitment to and support for the Human Rights Council, which has an important responsibility to promote and protect all human rights and fundamental freedoms. Madam Chair, we have studied carefully the explanatory note circulated by the African Group as well as by the group of Latin American countries, which have proposed the amendment. I've also listened very carefully to the various general statements made this morning and have listened to them with great respect. So, this is not a decision that we in Singapore have taken very lightly but we have only done so after very careful consideration.

From Singapore's point of view, the decision facing us today is essentially a decision on the nature of the relationship between the General Assembly and the Human Rights Council. For Singapore, the issue boils down to a fundamental question: can the General Assembly pronounce itself on the work of the Human Rights Council? In our view, the answer is yes. The Human Rights Council is a subsidiary organ of the General Assembly as clearly stated in GA Resolution 60/251 and

reaffirmed in GA Resolution 65/281. The UN Charter clearly affirms that the General Assembly may discuss any questions or any matters within the scope of the Charter or relating to the powers and functions of any organs provided for in the Charter. Accordingly, we believe that the General Assembly has the right and the responsibility to pronounce itself on the work of the HRC, including on the work of the Special Procedure mandate holders.

Furthermore, as the only United Nations body with universal membership, the General Assembly has an important role to play in promoting dialogue, bridging differences, and building consensus to find solutions that reflect the views of the wider UN membership. As a country that has never served on the Human Rights Council, and given the increasing challenges faced by many small states in securing a seat in the Human Rights Council, we believe strongly that the General Assembly has the prerogative and the responsibility to discuss important issues relating to the work of the Human Rights Council, particularly when there are questions and concerns raised by a large number of states.

Singapore opposes the amendment because we believe it is important to reaffirm the right of the General Assembly to express its views on the work of the Human Rights Council. The deletion of OP2 will also have the effect, in our view, of preventing discussion among wider UN membership on an important issue.

Additionally, from a legal and institutional point of view, the deletion of OP2 would imply that the General Assembly's role as the overseeing body of the Human Rights Council is nothing more than symbolic. We do not see OP2 as questioning the mandate and authority of the Human Rights Council to create special procedure mandate holders. Instead, we look at OP2 as a proposal that seeks further information and dialogue on an important issue: namely the issue of sexual orientation and gender identity. We do not see the inclusion of OP2 in L46 as prejudging the outcome of consultations on these concerns. We believe that the integrity, credibility, and legitimacy of the human rights system will be strengthened, not weakened, if we allow for greater dialogue in order to widen the circle of consensus on difficult and challenging issues.

Madam Chair, for all the reasons I have explained, Singapore will vote against the amendment in L52

which calls for the deletion of OP2 in L46. Madam Chair, I wish to place on record the position of my government that we do not see the decision on whether to retain OP2 as relating to the substance of the issue of sexual orientation and gender identity. We do not condone the discrimination of any group, any individual, in any society. In Singapore, we respect the LGBTI community as an integral part of our society. In this regard, we wish to reiterate that Singapore strongly opposes violence and discrimination against LGBTI persons. In Singapore, we have laws to protect our citizens from such acts and we enforce these laws strictly and impartially. In our view, violence against any group in any form is not acceptable and the Singapore government will act decisively as it has always done if there is a threat of violence against any one or any group. The issue of the rights of LGBTI persons is one upon which international opinion is clearly divided. We believe that this is an issue best left to each society to deal with in its own way taking into account its evolving social and cultural context. I thank you very much Madam Chair.

1:18:50

Chair: I thank the distinguished delegation of Singapore, Ambassador Gafoor, and I now give the floor to the distinguished delegation of Israel.

1:19:00

Israel: Thank you, Madam Chair. In 1993, the Vienna Declaration and Plan of Action recognized and affirmed that all human rights derived from the dignity and was inherent in the human person. With the adoption of the 2030 Agenda and establishing the new SDGs, states reaffirmed this commitment by agreeing to fight against inequality and towards inclusiveness with a clear aim to leave no one behind. However, LGBT persons are still victims of violence and discrimination in many parts of the world. It is clear that there is still a long way to go. The Secretary-General has described the fight against homophobia and transphobia as one of the great, neglected human rights challenges of our time. Fighting this discrimination and violence against LGBT persons does not imply creating new rights to a new group, but rather guaranteeing the same rights to all people equally. It is a struggle in which the whole international community should be involved.

Madam Chair, as a member of the United Nations LGBT Core Group and a member to the Equal Rights Coalition, launched last July at the global LGBTI human rights conference, Israel is at the forefront of the struggle to end violence and discrimination against individuals based on their sexual orientation and gender identity. We have cosponsored the Human Rights Council resolutions dealing with LGBT rights as well as the HRC Resolution 32/2 from last June, welcoming the creation of the mandate on the special expert on SOGI. The international community should not back off and must continue to respect, protect, and fulfill human rights of all persons, including LGBT persons. Israel firmly objects to any attempt to undermine these efforts. This is why we support the amendment to the draft resolution. We will vote in favor of the amendment and call on all states to do the same. Thank you, Madam Chair.

1:21:23

Chair: I thank the distinguished representative of Israel. I call on the distinguished ambassador of Jamaica. Ambassador Rattray, you have the floor.

1:21:35

Jamaica: Thank you Madam Chair. My delegation takes the floor to explain Jamaica's vote on the amendment contained in L52. In arriving at our decision, we have not questioned the substance of the HRC resolution on the reference, but have focused attention on the procedural nature and implications of the decision before us. The issue before the Committee is a complex matter, which does not appear to have sufficient consensus for either the perspectives advanced by the proponents of the amendment or of the original draft resolution L46. Jamaica will therefore vote against the amendment in support of the view that additional time for broader consultation is required in order to allow for more in-depth deliberation on the matter. I thank you Madam Chair.

1:22:29

Chair: I thank the distinguished ambassador of Jamaica for his statement. I now give the floor to the distinguished delegation of Yemen.



1:22:39

Yemen: Thank you, Madam Chair. We align ourselves with the statement made by the Permanent Representative of Egypt on behalf of the OIC. We also support the statement made by the representative of the African Group. We affirm that our delegation associates itself with the values and principles of nonviolence and nondiscrimination on the basis of an established culture of rejection of violence and peace. In strict compliance with the rules and principles of international human rights law and law in general, we believe that all individuals should enjoy protection against violence.

Madam Chair, the Human Rights Council is a subsidiary of the General Assembly and paragraph 1 of the decision establishing the HRC states that the Council, headquartered in Geneva, is being established to replace the Commission of Human Rights, which was and remains a subsidiary body of the General Assembly. Moreover, Article 10 of the UN Charter states that the General Assembly has the right to consider and discuss any questions or matters within the scope of the Charter or its mandate, including reviewing the mandates for subsidiary bodies such as the Human Rights Council to ensure that these bodies are in conformity with international law as well as the purposes of the United Nations. Madam Chair, the African Group therefore asks to defer the consideration and action on the HRC resolution on protection against violence and discrimination based on sexual orientation and gender identity in order to allow further time to determine the legal basis upon which the mandate of the Independent Expert will be defined.

We therefore ask ourselves the following question: how will this Independent Expert enjoy and fulfill his mandate without a lack of international consensus on the definition of sexual orientation and gender identity. There is no international convention that defines these terms. There is no definition for them in international law. Therefore, how can a mandate be defined and established without a legal basis and how can we establish a mandate that is unclear and that is not based on international consensus? How can this Independent Expert fulfill his or her role in accordance with OP3 without international consensus on the work of the expert? How can we accept and consider the reports that this Independent Expert will submit to the HRC and the General Assembly without a clear definition of sexual orientation and gender identity and international consensus there on? For all of these above reasons, my delegation will vote against this draft amendment and we urge all delegations to do the same.

1:26:57

Chair: I thank the distinguished representative of Yemen and I now give the floor to the distinguished delegation of Cameroon, member of the Bureau.

1:27:05

Cameroon: Thank you, Madam Chair. I'm taking the floor on behalf of his excellency, Ambassador Tommo Monthe, Permanent Representative, who presents his apologies for being unable to be present here but he sends you his regards and appreciation for your work. That said, Madam Chair, regarding the agenda item and the report under consideration and the amendment thereto on which we are about to vote, I would like to reiterate the commitment of the government of Cameroon to the promotion and protection of human rights for all in all circumstances.



That said, I am taking the floor to resolutely support the statement made by the Permanent Representative of Botswana, who is President of the African Group, as well as the statement by Egypt on behalf of the OIC, and I would like to explain Cameroon's vote before the vote. It would be useful in this particular situation, Madam Chair, to recall that the Human Rights Council was created to promote the universal respect and protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner. And I would add, without seeking to establish superiority or castes. Madam Chair, Resolution 60/251 of the General Assembly, which established the Human Rights Council, clearly defined its mandate and its status as a subsidiary body of the General Assembly, reaffirmed in GA Resolution 65/281 reviewing the Council and which recalls, in addition, the competencies of the Third Committee in this regard. The authority of the General Assembly is unquestionable and it is therefore logical that it is also within its remit, when necessary, to review the work of the Human Rights Council. Madam Chair, Resolution 32/2 of the HRC was adopted, I will once again recall, in an atmosphere of division and heightened tension. I will not once again restate the arguments clearly set forth by our group in that context. The Council must create clear, specific mandates that are unambiguous if the principle of protection against violence and discrimination is a clear concept that is universally recognized and understood by all.

This does not, however, apply to the terms sexual orientation and gender identity, which remain undefined in international law. I would like to reiterate the need for the Human Rights Council to take into account all the views expressed by Member States, particularly in the General Assembly, which is a universal representative body. We must also recall the appeal launched some time ago for further consideration to reach a common understanding of the concepts being discussed. The African Group, in seeking to defer consideration of Resolution 32/2, calls once again for continued discussion and honest dialogue on the matter.

I would like to reiterate here that the Human Rights Council, in order to preserve its credibility, must refrain from giving primacy to a small group of states who seek to use it to advance their agenda. States must engage in open dialogue, taking into account the numerous points of view without imposing anything

upon others. It is, in addition, necessary to avoid any unilateral pushes in this regard. This resolution would have far reaching implications on a large number of states, hence the need to reopen dialogue, and this is the thrust of the draft resolution presented by the African Group. The co-sponsors of the amendment propose an amendment that would not meet the interests of all states and Cameroon recalls that this amendment was emphatically rejected when it was presented in the Council and would not change the spirit of the resolution and the aims intended by its authors. We therefore call for dialogue and cooperation based on mutual respect for sovereignty of states, for diversity, and differences, which in fact make up the strength of the United Nations. Cameroon will vote against this amendment and, following the example of the other statements made on behalf of the African Group, we urge on the continuation of true debate and conversation on the matter. I thank you.

1:33:08

Chair: I thank the distinguished delegate of Cameroon, member of the Bureau. I now give the floor to the distinguished delegation of the Russian Federation.

1:33:18

Russian Federation: Thank you, Madam Chair. We had not intended to speak at this stage of the process, however, having listened to statements made by delegations that supported this amendment, we deemed it necessary to also say a few words on the matter. The way in which the delegations, who supported the amendment, or at least many of them, spoke adamantly about the need to respect the mandates of subsidiary bodies, respect for their independence, for the need to follow the principle of cooperation, all of this sounds to us as a reflection of certain double standards. I will recall that those same delegations actively take advantage of the opportunity to review decisions made by subsidiary bodies and here I refer specifically to decisions on the Committee on NGOs, which is a subsidiary body of the Economic and Social Council. And those same delegations who call upon the General Assembly now to respect the mandate of the Human Rights Council for some reason are not prepared to respect the mandate of the no-less important body, which is the Committee on Non-Governmental Organizations. What is the explanation for this approach? We don't know the answer.

We believe that the proposal of the African Group to defer consideration of Resolution 32/2 in order to allow time to further consult on the legal basis of the mandate of the Special Procedure is well justified, well founded, and fully in line with the regular principles and procedures that govern the relations between the main and subsidiary bodies. We have not forgotten that the General Assembly is the only and in fact unique UN body with universal representation. In this regard, we would like to state that the Russian Federation will vote against the draft amendment. I thank you.

1:36:20

Chair: I thank the distinguished representative of the Russian Federation. I now call upon the distinguished delegation of South Africa. Ambassador, you have the floor.

1:36:28

South Africa: Thank you Madam Chairman for giving the floor. Madam Chairperson, I was really not intending to speak, and it is the first time you hear my voice in this Committee. I will like to explain how South Africa will vote for this resolution before us. And Madam Chairperson, our position is not based on whether we are for or against. It's a principled position because of our Constitution; it is a Constitutional prerogative that we have to vote either way, or this way.



Madam Chairperson, this is a very difficult subject. And it's a matter very close to our hearts in South Africa. It's a matter that many people have laid their lives, who have died and imprisoned, the question of discrimination. Discrimination [tore] South Africa apart for over 350 years. And our people, both black and white, straight and not straight, came together after many, many years of painful struggles, to bury discriminations once and for all.

And that's why the very first chapter of our Constitution, the Bill of Rights, is very, very clear on the type of South Africa we fought for, were imprisoned for, were exiled for. It is a South Africa without discrimination. We do not want to see discrimination to anyone under whatever circumstances whatsoever. We will fight discrimination, Madam Chair, everywhere, every time. We cannot discriminate against people because of their own lifestyle or orientation—that we cannot do in South Africa. We cannot discriminate against people because they are LGBTIs. We cannot do that, Madam Chair. South Africa will not do that.

It is a position that sometimes we don't agree with most of our friends in the continent. But it is a position that we resolve and always take. It is not a question of the position of the majority of states in the continent; it is a question of our values and beliefs. It is something we have died for and will keep all the time. Even if we are alone on this one, Madam Chair, we remain standing and fighting it. Madam Chair, I say this thing with a heavy heart, because with this one, we always disagree with most of our colleagues in the continent. And it is no secret, it is well known. South Africa is still healing the wounds, deep wounds, caused by discrimination. Racial discrimination. We are not going to add fresh wounds to these wounds we are trying to heal in South Africa, Madam Chairperson. And I am sure all of you will understand this position. I'm sure my colleagues from Africa, from developing countries, from the West, from the East, from the South, you will understand this position. We are not going to add more wounds when we are healing wounds in South Africa because of discrimination. And therefore Chair, Madam Chair, we will vote based on our Constitutional imperative. Thank you.

1:40:53

Chair: I thank the distinguished ambassador of South Africa for his statement. I now call on the distinguished ambassador of Burundi, Ambassador Shingiro.

1:41:10

Burundi: Thank you. Thank you very much, Madam Chair. Before I get into the details, I would like to fully endorse the statement delivered by my colleague from Botswana on behalf of the African Group, as well as the statements of those delegations endorsing the position, and supporting the position, of the African Group on this

draft amendment proposed by a number of Member States in the General Assembly. I would like to highlight my country's commitment, first of all, to the values and principles of nondiscrimination in all forms and manifestations. We place particular importance on the Human Rights Council, of which Burundi is currently a member. I would like to join those delegations that have opposed this draft amendment. We do not believe that we should be forcing the adoption of a resolution that politically would be very weak and one that would not be supported by the General Assembly. One year is not an eternity, Madam Chair. The African Group is asking for a deferment of one year in order to carry out additional consultations so that we can have a solid and legitimate resolution that reflects the will of the General Assembly. Madam Chair, I think that international law is something that will defend states that can be perceived as being weak in some manner, and this is why I want to defend our position.

The Human Rights Council is a subsidiary body of the General Assembly. All decisions of the Council must be passed through the GA. These decisions can be reviewed. They can be adjusted. This is the first argument. The second is that you're aware that jurisprudence is a source of law. We do have precedence that support our position, precedence from not that long ago. The third argument, and this is very important, is that there is no legal basis in the mandate proposed by the Human Rights Council. We require more time in order to have a universal definition that can be accepted by all Member States so that next year we could then have a legitimate resolution that enjoys the support of the majority of Member States. This amendment, Madam Chair, is seeking to divide the General Assembly. It is an amendment that seeks to create two blocs, one that is in favor and that supports the upholding rights, and the other that does not. That is why, Madam Chair, my delegation will vote to reject this draft amendment. Thank you.

1:45:03

Chair: I thank the distinguished ambassador of Burundi, Ambassador Shingiro, for his statement. I now give the floor to the distinguished representative of Nigeria.

1:45:15

Nigeria: Thank you very much, Madam Chair. I think Nigeria has to come in at this time in order to underline our position concerning this very important resolution. Nigeria supports the statement made by the African Group. I want to remind that we all have responsibility to protect the integrity of the UN Charter and the Universal Declaration of Human Rights. We resonate the sentiments expressed earlier that the General Assembly has implicit rights to regulate the work of the Human Rights Council. We subscribe to the view that there is need to allow for wider consultation on the subject of sexual orientation and gender identity. Nigeria has been the vanguard of promoting and protecting the norms of human rights and we continue to do so with all of its abilities. However, the subject at this time is not about commitment to human rights or discrimination has been imputed by some members, even among us, but that through which a particular mandate should operate through a consensual arrangement. It is in line with that that Nigeria will vote against the amendment being proposed now and we urge other delegates to do so in order to allow for comprehensive deliberation on the subject and protect integrity of the General Assembly and the UN as a whole. We strongly defend the stand of the African Group on this subject and want to place on record that when we talk about racial discrimination or other discrimination, Nigeria's credentials stand tall. I thank you.

3.1.6 THE VOTE ON THE AMENDMENT

1:46:47

Chair: I thank the distinguished delegation of Nigeria. With that, we conclude statements by delegations in explanation of vote before the voting. A recorded vote has been requested on this oral amendment A/C3/71/L52. I now give the floor to the Secretary of the Committee.

1:47:23

Secretary: Thank you, Madam Chairperson. The Committee shall now vote on draft amendment contained in document A/C3/71/L52. I repeat, the Committee shall now vote on draft amendment contained in document A/C3/71/L52. Delegations

wishing to vote in favor of the draft amendment, please press button #2, the yes button. Those opposing the amendment, please press button #3, the no button. And those abstaining, button #4. [Voting takes place] Have all delegations voted? Please ensure that your vote is correctly reflected on the screens.

The vote is now completed. Please lock the machine.

1:49:30

Chair: The result of the vote is as follows: In Favor: 84; Against: 77; Abstention: 17. The draft amendment is adopted.

3.1.7 STATEMENTS AFTER THE VOTE ON THE AMENDMENT

Does any delegation wish to make a statement in explanation of vote after the voting? Does any other delegation wish to make a general statement? Egypt, in explanation of vote after the voting, you have the floor.

1:50:03

Egypt: Thank you. Pardon me, Honorable, I do not think that is the right time to make the statement.

1:50:17

Chair: Does any other delegation wish to make a general statement? I call on the distinguished ambassador of Norway. Ambassador, you have the floor.

1:50:33

Norway: Madam Chair, let me just say a couple of words on behalf of Australia, Canada, Iceland, Liechtenstein, New Zealand, Switzerland, and my own country, Norway. I will not go into any detail of what we did, but let me just emphasize one point which I believe is important since this is an important issue with very strong opinions. And that is the issue about whether there needs to be an explicit treaty-based definition, that that is the requirement for a valid mandate. I think that is indeed not the case. Indeed, we believe that an Independent Expert or Special Rapporteur could help to generate an understanding that is not there before. And, Madam Chair, let me remind you that indeed this has been the practice of the Human Rights Council so far.



There are over a dozen current mandates of the Human Rights Council that may be considered to fall under such a category where there is no explicit treaty-based definition beforehand. And that some of these mandates have been adopted by vote. The adoption of those mandates were not reopened by this Committee and were not challenged on the basis that more time was needed to further elaborate on the international legal basis. We are therefore very pleased with the vote that took place now and are looking forward to continue to work with all parties in how we work on this very important issue. Thank you.

1:52:10

Chair: I thank the distinguished representative of Norway for his statement. I now call on the distinguished delegation of Paraguay.



1:52:22

Paraguay: Thank you very much, Madam Chair. Paraguay would like to provide an explanation of vote after the voting on the draft amendment contained in document L52, which was just adopted. We express our full support for the work of the Human Rights Council

and its resolutions and recommendations. Paraguay reaffirms the mandate of the Human Rights Council as established by the General Assembly in Resolution 60/251 to protect and promote human rights. The Republic of Paraguay voted in favor of Resolution 32/2 of the Human Rights Council in the conviction that this would contribute to international efforts to eradicate violence and discrimination. Nevertheless, we witness the discussions and debates around this issue in New York. We thought that the proposal of the African Group did not undermine the role of the Human Rights Council in that it requested more time or a deferment of consideration in order to further discuss the mandate of the Independent Expert and we hope that this will occur in the next session. We hope that there will be progress. Paraguay reaffirms its commitment to fundamental freedoms and the protection of human rights around the world and to fighting all types of violence and discrimination. Thank you very much, Madam Chair.

1:54:10

Chair: I give the floor to the distinguished delegation of Malaysia.

1:54:20

Malaysia: Madam Chair, the government of Malaysia continues to protect and promote human rights as laid down in the federal constitution and laws of Malaysia and taking into account of elements and characteristics which are unique to Malaysia, including its diverse social and cultural values, religions, and domestic sensitivities. The cultural or religious beliefs of a society have a direct bearing and influence on the societal and normative views and outlook, including the condition of the moral ethos of communities and questions of law regarding sexual behavior. In a democratic society where the overwhelming majority are against and do not accept same-sex practices, such behaviors and acts are governed and prohibited by legislation. Malaysia is concerned with the introduction of concepts and notions that have no legal foundation in any international human rights instrument, including the UDHR, which have the unfortunate effect of polarizing and undermining the work of the UN and the field of human rights. My delegation, therefore, voted against the amendment. Thank you, Madam Chair.

1:55:20

Chair: I thank the distinguished delegation of Malaysia. I call on the distinguished ambassador of Chile. Ambassador Barros, you have the floor.

1:55:36

Chile: Thank you very much, Madam Chair. Chile wishes to make a general statement on behalf of Argentina, Brazil, Colombia, Costa Rica, El Salvador, Mexico, Uruguay, and my own country, Chile. We would like to express gratitude for the support of those delegations for the amendment presented in document L52 that was just adopted by this Committee. Our countries are convinced that this result is of paramount importance. All Member States thus reaffirm the importance of the Human Rights Council, its role, and its powers. Particularly this year, in which we commemorate its 10th anniversary, the 10th anniversary of the establishment of the Human Rights Council and its important role in promoting human rights and defending the human freedoms of all persons around the world. We do not support any motion or steps that would try to undermine the Council's role in this regard. Thank you.

1:56:47

Chair: I thank the representative of Chile, the ambassador, for his statement. I now invite the Committee to take action on draft resolution A/C.3/71/L.46 in its amended form. I now give the floor to the Secretary.

1:57:15

Secretary: Thank you very much, Madam Chairperson. In view of the adoption of the draft amendment contained in document L52, I would like to make a very brief statement regarding financial implications. All financial implications emanating from the resolutions and decisions contained in the annual report of the Council will be brought to the attention of the General Assembly in its 71st session in the context of the annual report of the Secretary-General on the revised estimates resulting from resolutions and decisions adopted by the Human Rights Council in accordance with General Assembly Resolution 65/281. Since I have the floor, may I also ask at this stage, in view of the adoption of the draft amendment, if any other delegation wishes to join the list of cosponsors of draft resolution L46 as already revised and as amended. I see none. Thank you, Madam Chairperson.

3.1.8 STATEMENTS BEFORE THE VOTE ON THE AMENDED RESOLUTION

1:58:24

Chair: I thank the Secretary and I now invite the Committee to proceed with a recorded vote on draft resolution L46 as contained in document A/C3/71/L46. Before proceeding to vote, I shall give the floor to delegations who would like to make a general statement and then I will give the floor to those who wish to make an explanation of vote. I recall that in accordance with Article 128, delegations that are the authors of a proposal or amendment cannot explain their vote on the same proposal or amendment. Is there a delegation who wishes to take the floor to make a general statement at this stage? I give the floor to the Russian Federation.



1:59:25

Russian Federation: Thank you. The Russian delegation supported the draft resolution prepared by the African Group, which proposed to defer consideration of the mandate of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity to consider the legal basis, and we believe that this proposal was well justified. The notion of sexual orientation and gender identity is one that does not exist in international law. Therefore, some well-founded questions arise in this regard. What legal norms should guide the Independent Expert in carrying out his or her mandate? Without resolving this question, we believe that any activity on behalf of this Independent Expert and the special procedures established by resolution of the HRC 32/2 is not legally founded. In this regard, we must reaffirm our position. Namely that the Russian delegation does not recognize this mandate and will not cooperate with the

Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. At the same time, we would like to re-affirm our commitment to combatting all forms of violence and discrimination. We would also like to withdraw our co-sponsorship of the draft resolution and request that this be reflected in the meeting record. I thank you.

2:01:36

Chair: I thank the distinguished delegation of the Russian Federation and I give the floor to the delegation of Botswana. Ambassador, you have the floor.

2:01:47

Botswana: Thank you very much, Madam Chair. I'll be very brief. Madam Chair, we have just witnessed adoption of an amendment in a manner which is almost neck and neck. A situation which is reflective of what was experienced when Resolution 32/2 was adopted by the Human Rights Council on the 30th of June, 2016. Madam Chair, I deeply appreciate the opportunity you have given me to comment briefly, make a general statement, before we actually vote on the resolution itself. And to say that the effect of the adopted amendments actually change the complexion of the resolution completely, as far as the African Group is concerned. As a group, we maintain our principled position, and we actually disassociate ourselves with the adopted amendments and we wanted to make that statement for the record before action is taken on the resolution itself. Thank you very much.

2:03:02

Chair: I thank the distinguished delegation of Botswana. I call on the distinguished delegation of Egypt.

2:03:12

Egypt: Thank you, Honorable Chair. I'm taking the floor on behalf of the Member States of the Organization of Islamic Cooperation with one exception. While reaffirming our commitment to combat different forms of violence and discrimination against all people, on any grounds, we strongly oppose the adoption of this draft resolution as contained in the report and hereby disassociate from it. The OIC group unequivocally rejects the establishment of the mandate of an Independent Expert through this resolution. We believe this resolution,

taking note of the report, is highly divisive and aims to impose a set of values on the world, which does not enjoy international consensus, as seen in the current voting. Due to these fundamental differences, OIC members are not in the position to cooperate or engage with the Independent Expert established through HRC 32/2. Thank you.

2:04:06

Chair: I thank the distinguished delegation of Egypt. I call on the distinguished delegate of Nigeria.

2:04:16

Nigeria: Thank you, Madam Chair. I thank you for giving me the floor. Nigeria subscribes to the universality of all human rights as enshrined in the Charter of the United Nations and the Universal Declaration of Human Rights. My delegation reaffirms its commitment to combatting discrimination. We concur with the statement made by the African Group on the appointment of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, which in our view has no legal basis whatsoever in international law. Nigeria has consistently objected to the introduction of any norms into the Third Committee deliberations that do not have international consensus and the possibility that it could be used to introduce other obligations and commitments that go against our national outlook.

In view of the new interpretation given to the concept of sexual orientation and gender identity, it has become necessary to object to this concept and mechanism arising from it due to its negative implications given that it conflicts with the constitution of a vast majority of African countries, including in my own country, as well as the legislative, political system, religious beliefs, juridical tenants, and other fundamental principles. However, with the sad outcome of this vote, Nigeria wishes to disassociate itself from this mandate given to the Independent Expert on SOGI and to state that we remain resolute in our resolve to support, assist, and cooperate with any mandate holder that derives their legitimacy from the UN Charter, international law, and that of the generally agreed norms, and the Universal Declaration of Human Rights.

We affirm our commitment to the sovereign capacity of states to define their national objectives and priorities, including recognition of mandate holders that derive their legitimacy from internationally agreed norms and rules. Nigeria, further, wants to remind all delegates and underscore that the adoption of Resolution 32/2 that created this mandate was not a consensus one. In fact, the number of votes that have voiced concerns far outweigh that of the concurrence.

For the purposes of the aforementioned, Nigeria voices dissociation from the mandate of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity as established by Human Rights Council Resolution 32/2. We would like the Secretary-General to place this on the record of this meeting that of the Third Committee. Thank you.

2:06:54

Chair: I thank the delegation of Nigeria. Are there any delegations wishing to make a statement in explanation of vote before the voting? I give the floor to the distinguished delegation of Israel.

2:07:15

Israel: Thank you, Madam Chair. Last June, we have marked two anniversaries: 10th anniversary of the Human Rights Council, and unfortunately, also the 10th anniversary of Council's bias against Israel. Although the Human Rights Council is mandated to be guided by the principles of universality, impartiality, objectivity, and non-selectivity, and to work in a constructive, unbiased, transparent, and non-politicized manner, unfortunately, when it comes to Israel, all of these important principles suddenly disappear. Special agenda item, seven special sessions out of a total of 25, 66 resolutions which amount to over a third of all of the geographical resolutions, a Special Rapporteur with a bias and infinite mandate as well as endless reports, all targeting Israel reflect the Council's real attitude towards my county. It's almost as if there are not other challenges in this world. But this is not the case.

As the High Commissioner for Human Rights himself has recently said, our world today is suffering from so many atrocities, terrible humanitarian crises, increased

xenophobia, racism, and prejudice, greater than any we have experienced since the end of World War II. Instead of focusing on the real, pressing human rights situations around the globe, instead of devoting its time, personnel, and resources in direct proportion to the severity of this crisis, when it comes to Israel, the Council prefers again and again to trample in the political swamp and to neglect so many vulnerable people who need real and urgent assistance. Madam Chair, it is crucial that the Human Rights Council finally focuses on its real mandate to protect human rights. The bias against Israel is widespread and needs to stop. The most urgent change would require an immediate end to the resources allocated to deal with the infamous Item 7 that only serves to single out Israel. Eliminating Item 7 will be a first step toward allowing the Human Rights Council to better address the immediate concerns of the international community.

Madam Chair, the Human Rights Council's report displays prejudice towards one Member State and severely damages the credibility of the Council. This is why Israel calls for a vote against the adoption of the Human Rights Council's report and will vote against it. Thank you, Madam Chair.

2:10:06

Chair: I thank the distinguished representative of Israel and I now call on the delegation of Liechtenstein.

2:10:17

Liechtenstein: Thank you very much, Madam Chair. I have the honor of speaking on behalf of Australia, Canada, Iceland, New Zealand, Norway, Switzerland, and my own country, Liechtenstein. We welcome the decision of the Committee to accept the amendment to delete operative Paragraph 2 of resolution L46. Any other outcome would have gravely undermined the mandate of the Human Rights Council and the institutional relationship between the General Assembly and the Council. We would also like to take this opportunity to express our strong support for the newly created mandate for the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. We would like to congratulate Mr. Muntarbhorn on his appointment as Independent Expert.

The mandate is a reflection of the commitments we have all made towards nondiscrimination and the prevention of violence. Its core goal is to ensure that all people are entitled and granted the same set of rights, irrespective of gender, race, religious and political background, or indeed sexual orientation and gender identity. These rights exist already through inter alia the Covenants on Civil and Political Rights and on Economic, Social, and Cultural Rights, and a number of other human rights treaties. We also call on all countries to cooperate with all special procedures including by issuing standing invitations and to enable them to conduct their work independently and without interference.

Unfortunately, our delegations are again compelled to abstain on this resolution on procedural grounds. We would like to remind this Committee that in conformity with the outcome of the review of the Human Rights Council GA Resolution 65/281, it is up to the plenary of the General Assembly, and not of its Third Committee, to take note of the entire report of the Council. We note that the outcome of the review contains the understanding that the Third Committee will consider and act on recommendations of the Human Rights Council to the GA, which is, however, not the case here. We must express disappointment that the present resolution continues to disregard the understanding contained in GA Resolution 65/281, as have its predecessors, by noting the report of the Council in the Third Committee. Thank you.

2:12:31

Chair: I thank the delegation of Liechtenstein. I now call on the Secretary of the Committee.

3.1.9 THE VOTE ON THE AMENDED RESOLUTION

2:12:38

Secretary: Thank you, Madam Chairperson. The Committee shall now vote on draft resolution L46 as orally revised and as amended. Delegation wishing to vote in favor of the draft resolution should press button #2, the yes button. Those voting against the draft resolution, button #3, the no button. And those abstaining, the abstain button. Have all delegations voted?

Please ensure that your vote is correctly reflected on the board. The voting is now completed. Please switch off the machine.

2:14:20

Chair: The result of the vote is as follows. In favor: 94. Against: 3. Abstentions: 80. The draft resolution is passed.

3.1.10 STATEMENTS AFTER THE VOTE ON THE AMENDED RESOLUTION

2:16:00

Slovakia: Human Rights Council and General Assembly resources should be used on preventing rights violations and abuses occurring around the world. The European Union reiterates its view that the General Assembly does not need to adopt the report of the Human Rights Council by means of this resolution and, as such, abstained in the vote. The EU looks forward to working with the Independent Expert on Sexual Orientation and Gender Identity. We hope that all states and stakeholders will find the value in cooperating with him as well as all other UN special procedures as a means to better protect and promote human rights. We recall notably that the members elected to the Human Rights Council will and shall fully cooperate with the Council. I thank you, Madam Chair.

2:16:50

Chair: I thank Ambassador Ružička on behalf of the European Union for his statement. I now call on the representative of Costa Rica. Ambassador Mendoza, you have the floor.

2:17:03

Costa Rica: Thank you very much, Madam Chair. Costa Rica would like to express its full support for the work of the Human Rights Council as well as its resolutions and recommendations. As a country committed to human rights and the mechanisms set up by the Council to promote and protect human rights, Costa Rica believes it important to uphold and support the Council's work through the resolution and decisions of this assembly. We place high importance on human rights and we decided to abstain in the voting on this resolution for procedural reasons. It is a traditional position of my country that the report of the Human Rights Council must be considered

in the plenary of the General Assembly and not in the Third Committee. This position is based on operative Paragraph 5J of Resolution 60/251 which created the Human Rights Council and which establishes that the Council will present its annual report to the General Assembly. This has been reaffirmed in the resolutions of the Council during the 65th session, and in particular in the context of one resolution which stipulated that the Council's report should be considered by the General Assembly and that only some reports should be considered by the Third Committee.



2:18:44

Chair: I thank the representative of Costa Rica for his statement. I now call on upon the representative of the United Kingdom. Ambassador, you have the floor.

2:18:53

United Kingdom: Thank you very much, Madam Chair. Let me first of all align with the statement given by the Permanent Representative of Slovakia on behalf of the European Union. Two important issues were at stake today. First, the Human Rights Council's new Independent Expert on Sexual Orientation and Gender Identity, a mandate which the UK considers important, proportionate, and well-defined and fully within the remit of the Human Rights Council. We take this opportunity to renew our pledge to cooperate with the Independent Expert. We wish him well in his future important work and we encourage all countries to cooperate with the Independent Expert and his mandate with its focus on protection from violence and discrimination.

The second issue at stake was the independence of the Human Rights Council and whether the Third Committee and the General Assembly should seek to

reopen its decisions. We do not dispute the rights of delegations to criticize the outcome of action at the Human Rights Council, nor their right to debate any aspect of its work. But we strongly believe that mandates properly generated and agreed in Geneva should not be reopened here. We welcome the reaffirmation of that principle today and we welcome the decisive action taken by Argentina, Brazil, Chile, Colombia, Costa Rica, El Salvador, Mexico, and Uruguay, as well as their supporters in tabling their amendment. Looking to the future, we again encourage all countries to engage with the Independent Expert as they would with any other Special Procedure of the Human Rights Council. The United Kingdom is confident that they will find his mandate sound, his approach reasonable, and his objectives vital to help the international community end discrimination and violence and promote equal rights for all. Thank you very much, Madam Chair.

2:20:35

Chair: I thank the delegation of the United Kingdom. I now call on the distinguished delegation of Nauru.

2:20:43

Nauru: Thank you, Madam Chair. We welcome the adoption of the resolution entitled "The Report of the Human Rights Council." However, with regard to Human Rights Council Resolution 32/2 entitled, "Protection against violence and discrimination based on sexual orientation and gender identity," we would like to indicate our concern with the creation of the Independent Expert on sexual orientation and gender identity. Due to the lack of international legal instruments on this topic and corresponding divergence of member state positions on this issue, it is the opinion of our government that the mandate of the Independent Expert lacks the necessary specificity to be carried out. Specifically, discrimination on the basis of sexual orientation or gender identity has never been defined by international law. So it is therefore unclear what basis the expert will use to determine which laws do or do not constitute discrimination in this regard. This lack of specificity is contrary to Human Rights Council Resolution 5/1, which states that the new mandates should be as clear and specific as possible so as to avoid ambiguity. As a consequence of the lack of definitional basis in international human rights law, we would like the record to reflect that we disassociate ourselves from HRC's Resolution 32/2 and do not

recognize the Independent Expert created therein. I thank you.

2:22:25

Chair: I thank the delegation of Nauru. I now call upon the delegation of Singapore.

2:22:31

Singapore: Thank you, Madam Chair. My delegation wishes to make an explanation of vote after the vote on Resolution A/C3/71/L46. We note that a majority of states have decided to vote in favor of the amendment proposing to delete OP2 from L46. In our view, this is a missed opportunity to engage in consultations on an important issue that has been dividing the UN membership and to seek a way forward based on consensus. Nevertheless, Singapore has consistently supported and voted in favor of African Group's annual resolution on the Report of the Human Rights Council. In view of the fact that the HRC is a subsidiary body of the General Assembly, as stipulated by GA Resolution 60/251 and 65/281, and is required to submit an annual report to the General Assembly, it is only appropriate for the General Assembly to continue to take note of the Report of the HRC as it does every year. For this reason, Singapore voted in favor of Resolution L46 as amended. I thank you Madam Chair.

2:23:31

Chair: I thank Singapore for their statement. I now call upon the delegation of Belarus.



2:23:38

Belarus: Thank you, Madam Chair. The Human Rights Council is an important body and unique in essence, as it is the only body with the Universal Periodic Review,

a mechanism that examines human rights situations in all countries without exception. This is the value of the HRC and this is its undisputed contribution to human rights around the world. Unfortunately, the Human Rights Council continues to engage in counterproductive and politicized activity. We once again reaffirm our principled position against country-specific mandates. The decisions being taken by the HRC today are almost all not being consensually supported by its membership. We would like to once again also recall that the HRC is a subsidiary body of the General Assembly, which has the right to evaluate and review the decisions of the HRC, hence we could not support this resolution. Thank you.

2:24:50

Chair: I thank the distinguished representative of Belarus. I now call on those delegations wishing to make a general statement. And I will begin with the distinguished representative of Nigeria.

2:25:08

Nigeria: [No response, did not intend to be called upon]

2:25:18

Chair: I continue then with the distinguished Ambassador of Botswana, who requested the floor. You have the floor, sir.

2:25:23

Botswana: Thank you very much, Madam Chair. Madam Chair, I take the floor on behalf of the African Group and to just express our appreciation to all delegations that have voted in favor of this resolution and to also stress the point, Madam Chair, that adoption of this resolution is without prejudice to our opposition to the amendments that were adopted prior to the vote on this resolution. And to finally say to you, Madam Chair, that the African Group remains open for further engagement on this subject matter and to thank you very much.

2:26:02

Chair: I thank the ambassador of Botswana, Ambassador Ntwaagae for your statement on behalf of the African Group. I now call on the distinguished delegation of Mauritania.

2:26:19

Mauritania: Thank you, Madam Chair. Mauritania would simply like to reaffirm its support for the position of the African Group expressed by Botswana, as well as Egypt on behalf of the OIC. Therefore, Mauritania disassociates itself from the mandate of the Independent Expert on sexual orientation and gender identity as contained in Resolution 32/2 of the Human Rights Council. I thank you.

2:26:53

Chair: I thank the delegation of Mauritania. I now call on the delegation of Mali.

2:26:58

Mali: Thank you, Madam Chair. The delegation of Mali had asked for the floor to correct its vote. We have made a mistake and have voted to abstain, whereas we are in solidarity with the African Group and we wish to have voted yes. Yes, because our national position is in line with the African Group. Thank you.

2:27:36

Chair: I thank the distinguished delegate of Mali. I give the floor to the Secretary.

2:27:42

Secretary: We have duly taken note of the statement made by Mali and his intention of voting in favor of the draft resolution but as this Committee would know, once a result has been proclaimed, the voting record cannot be altered. Thank you, Madam Chairperson.

2:27:57

Chair: I now call on the distinguished delegation of the Islamic Republic of Iran.



2:28:07

Islamic Republic of Iran: Thank you, Madam Chairperson. In fact, I pushed the button during in the stage of explanation of vote and this is an explanation of vote after the vote to express the position of my delegation, which is in regard to the Resolution A/C3/71/L46 entitled “Report of the Human Rights Council.”

Guided by the principles of the UN Charter and international law, the Human Rights Council is highly expected to refrain from imposing a single lifestyle as well as non-consensual concepts. With such understanding, we supported the deferral of action on the HRC Resolution 32/2, on both procedural and substantive grounds. As it has been the case in the past, the General Assembly is the relevant body and has the authority to guide the work of its subsidiary bodies, like the Human Rights Council. The mandate provisioned by the HRC Resolution 32/2 is inconsistent with internationally recognized human rights and would provoke confrontation among Member States in place of dialogue and cooperation. What the African Group was asking was a one-year deferral so legal basis for the mandate could be further elaborated. In fact, when we considered another draft resolution just last Friday, some countries who were arguing in favor of this mandate invoked the absence of clear, legal definition to object to the issue at hand. As we reaffirm that all human rights for all should be respected without discrimination on any grounds, we reiterate our position of non-recognition of and noncooperation with such mandates that are created by the Council out of this fear of the internationally recognized human rights.

Madam Chairperson, despite the existence of the Universal Periodic Review, it is regrettable that certain countries are persistent to continue their worn-out policy of confrontation and recrimination. Their sinister insistence on politicization and polarization of human rights including through introduction of country specific resolutions would lead the Human Rights Council to take the same path as the former Commission on Human Rights. Thus, the Islamic Republic of Iran disassociates itself from the part of the Human Rights Council’s report contained in document A/71/53, which includes the resolutions of so-called Situation of human rights in the Islamic Republic of Iran. My delegation, therefore,

abstained from voting on Resolution L46. We kindly request that this statement be reflected on record and reports of the Committee. I thank you very much, Madam Chair.

2:31:12

Chair: I thank the distinguished delegation of the Islamic Republic of Iran, and I now call on the distinguished ambassador of Jamaica. Ambassador Rattray you have the floor.

2:31:22

Jamaica: Madam Chair, Jamaica’s vote in favor of draft resolution L46 Rev. 1 as amended is reflective of the support we have traditionally given to the adoption of the annual resolution tabled by the African Group, which takes note of the report of the HRC. I thank you, Madam Chair.

2:31:41

Chair: I thank Ambassador Rattray of Jamaica for his statement. I now call on the distinguished delegation of Libya.



2:31:52

Libya: Thank you, Madam Chairperson. I am making a statement on L46, entitled “Report of the Human Rights Council,” adopted right now. At the outset, my delegation would like to support the statement made by the PR of Botswana on behalf of the African Group, as well as the statement of Egypt on behalf of OIC. Libya emphasizes its commitments and obligations by virtue of international covenants, conventions, and instruments on human rights, which it ratified. We emphasize our belief in the

worth and value and dignity of human beings with no discrimination. We deplore all kinds of stereotypes, discrimination, violence against individuals, groups, and peoples for whatever reason.

My delegation voices its regret over the disparate attempts by some to impose controversial concepts in UN resolutions, particularly HRC 32/2 where there is no international consensus or legal basis for it. Such does not take into consideration legislative and religious as well as social disagreements among the different societies. They ignore cultural diversity as well. Accordingly, Libya disassociates itself with HRC Res 32/2 entitled "Protection against violence and discrimination based on sexual orientation and gender identity," contained in the report of HRC A/71/53. We also boycott so-called mandate of the Independent Expert on sexual orientation and gender identity. We are not in a position to cooperate or interact with him. In conclusion, Madam, my delegation requests that this statement be reflected in the minutes of the meeting. Thank you.

2:35:08

Chair: I thank the distinguished representative of Libya. I now give the floor to the representative of Uganda.

2:35:14

Uganda: Madam Chair, my delegation supports the statement made by the delegation of Botswana on behalf of the African Group to support the adoption of the report of the Human Rights Council. However, it is regrettable that this Committee has today decided to affirm the decision of the Human Rights Council with the appointment of an Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity in Resolution L46 on concept that has no legal basis in international law. Such a decision stands to further polarize Member States as it does not enjoy the general consensus of all Member States. With no definitional basis in any international instrument, my delegation Uganda disassociates itself with adoption of Resolution 32/2 since it will be difficult to work with this special mandate with undefined notion. This statement should be reflected in the record of this Committee. I thank you.

2:36:37

Chair: I thank the distinguished delegation of Uganda. I now call upon the distinguished representative of Cameroon, member of the bureau.

2:36:49

Cameroon: Thank you, Madam Chair. I'll be brief. Cameroon lends itself with the statements made by Botswana on behalf of the African Group and Egypt on behalf of the OIC. I would like to say that the President of the African Group launched an appeal to open dialogue on the matter dividing us here today and I would like to say to the Committee that this appeal must be, in fact, taken very seriously. With that said, Cameroon would also like to reiterate its commitment to promoting and protecting all human rights, human rights for all, in all circumstances. Nonetheless, Cameroon disassociates itself from the mandate of the Independent Expert established by Resolution 32/2, which we do not recognize. And I wish for this statement to be reflected in the meeting report. Thank you.

2:37:57

Chair: I thank the distinguished representative of Cameroon. I now call on the distinguished delegation of Yemen.

2:38:04

Yemen: Thank you, Madam Chair. It is regretful and disappointing that the amendment to A/C3/71/L46 has been adopted, which calls for deferring consideration of the Human Rights Council Resolution 32/2 of 30 June 2016 on protection against violence and discrimination based on sexual orientation and gender identity, to give further time to specify the procedural and legal bases on which mandate will be given to the Independent Expert. The result of the vote indicates international division over the mandate of the Independent Expert. This will be reflected on dealing with the expert. This will also belittle the outputs of HRC. Case in point is that the Independent Expert will deal with half of the membership of the UN. And my country, for that, disassociates itself with Resolution 32/2 and will not carry it out or its consequences. It also will boycott the mandate of so-called Independent Expert. I want this statement to be reflected in the records of the Committee.

2:39:51

Chair: I thank the representative of Yemen. I now call upon the delegation of Sudan.

2:39:57

Sudan: Thank you very much, Madam Chairman. We would like to also align ourselves with the statements delivered by the African Group and the OIC. We would also like to disassociate ourselves from the mandate of the Independent Expert established by Resolution 32/2. We would like our position to be clearly reflected in the records of the Third Committee. Thank you very much.

2:40:26

Chair: I thank the delegation of Sudan. I now call on the delegation of the United Republic of Tanzania.

2:40:36

United Republic of Tanzania: Thank you, Madam Chair. Like other delegates, Tanzania wishes to associate itself with the statement made by Botswana on behalf of the African Group and also we wish to disassociate ourselves with the Human Rights Council Resolution 32/2 on protection against violence and discrimination based on sexual orientation and gender identity. Tanzania will not cooperate with this mandate holder. We ask the Secretary to reflect this statement in the report. Thank you.

2:41:16

Chair: I thank the delegation of the United Republic of Tanzania. I now call on the delegation of Niger.

2:41:25

Niger: Madam Chair, I would like at the outset to express my delegation's appreciation for your capable leadership of our work. I would also like to quickly explain our vote on draft resolution L46. Niger voted against the amendment but approved the draft resolution L46. Nonetheless, Niger aligns itself with the statement made by Botswana on behalf of the African Group and Egypt on behalf of the OIC and rejects the mandate of the Independent Expert established by the Human Rights Council on the establishment of an Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. These concepts are not recognized in our national legal system and they are not currently the subject on consensus on the level of the United Nations, and we therefore ask that you record this reserve in the meeting record. I thank you, Madam Chair.

2:43:14

Chair: I thank the distinguished delegation of Niger. And with that, we conclude. I would like to thank all those delegations.

3.2 In the UNGA Plenary on the Third Committee

65th Plenary Meeting of the
71st Session of the General Assembly
19th December 2016

President: H.E. Mr. Peter Thomson of Fiji

3.2.1 INTRODUCTION BY PRESIDENT

37:10

President: The Assembly will consider the report of the Third Committee on agenda item 63 entitled "Report of the Human Rights Council." Issued as Document A/71479. The Assembly has before it a draft resolution recommended by the Third Committee in paragraph 17 of its report. I go now to the speakers list and give the floor to the distinguished representative of Burkina Faso.

3.2.2 PRESENTATION OF AMENDMENT BY THE AFRICAN GROUP

37:57

Burkina Faso: Thank you, President. It is my honor to take the floor on behalf of the group of African states to introduce the draft amendment as follows. The amendment submitted by the African Group has the goal of deferring consideration of Resolution 32/2 of the Human Rights Council of 30 June 2016 entitled "Protection against violence and discrimination based on sexual orientation and gender identity" to the 72st session of the General Assembly in order to give time for new consultations in order to determine the basis on which the mandate of the special procedures which have been established for it will be defined.

Now as you know it's not the first time that the Group has proposed deferring consideration of a resolution, sadly the African Group's request of being granted more time for consultations and a mutual understanding of the concept were deliberately misinterpreted and distorted

to be presented as being a breach of the mandate and authority of the Human Rights Council. Far from it. The African Group had no such idea in mind in proposing this amendment we merely wish to affirm fully that it is down to the Human Rights Council to establish special procedures.

President, while the African Group affirms the authority granted to the committee on human rights pursuant to its founding resolution it's also important to highlight the rights of the General Assembly enshrined in the same resolution which mark the creation of the Council, in this case Resolution 60/251 of the UN General Assembly. This resolution clearly established the Human Rights Council as a subsidiary body of the General Assembly, hence the need for the Council to be held accountable on an annual basis to the universal composition of the GA. This status of the Council as a subsidiary body of the GA was further reaffirmed in paragraph 3 of Resolution 65/281 of the General Assembly. Furthermore, Article 10 of the UN Charter affirms that the General Assembly can discuss any issue or issues relating to the present Charter or relating to the powers and functions of any organ envisioned by this Charter. Therefore, we cannot claim that the decision of the General Assembly to consider the decision of a subsidiary body is any attempt to call into question its mandate or authority. The African Group reiterates therefore its decision to submit this amendment drawing on the principles of international law, the purposes and principles of the UN Charter, and universally recognized principles of respect for independence and sovereignty of Member States.

President, it has been put to us that the General Assembly has never contested a Human Rights Council resolution of this kind and the decision to do so would set a dangerous precedent. In response, we would say that this perception consequently clouds the real issue at stake since the facts do not support this affirmation. Now in

2006, the General Assembly decided in Resolution 61/178 to defer consideration of the UN Declaration on the Rights of Indigenous Peoples adopted by the Human Rights Council in its resolution of 29 June 2006 to open the path for further consultations. In 2013 the General Assembly adopted Resolution 68/144 which deferred consideration of Resolution 24/24 of the Human Rights Council and took measures with a view to creating a focal point on reprisals. These decisions well reflect the fact that General Assembly has exercised its authority to guide the overall work of the organization as enshrined in the UN Charter.

The African Group is troubled by the fact that the Independent Expert has already begun his tasks even before the General Assembly could consider the establishment of his mandate in defining a completely different mandate. During the recent global conference of the International Association of Lesbians, Gays, Bisexuals, Trans and Intersexuals held in Bangkok, Thailand 30 November 2016 he set out his mandate with clear objectives such as the decriminalization, depathologization, cultural inclusion and empathization. This clearly shows that the mandate has already been violated by the Independent Expert to promote new rights without legal grounds which are not internationally recognized by actions which cultivate and foster hostility between UN Member States and creates acrimony within the UN system.

The African Group amendment is limited to proposing that Member States should undertake new consultations on the matter so as to reach a common understanding of the notion of sexual orientation and gender identity. Given international law says nothing about this matter such understanding would eliminate all ambiguities with regards to this mandate. Sir, the African Group wishes to recall that if the international community wishes to achieve the needed solidarity and respect for all human rights it must prevent double standards. Let's respect the sovereign right of each Member States of this organization to be able to take its own decisions that it judges relevant for its society. The United Nations today are globally respected because they have always believed and supported the principle of unity and diversity. Let's not take decisions at this stage which would only divide this organization since in truth these notions are not enshrined in any international instrument on human rights.

In conclusion, I wish to reiterate that the members of the African Group do not support any form of violence or discrimination against any group of people. We support universality for all human rights enshrined in the UN Charter and in the Universal Declaration of Human Rights. In that respect, the Group will vote in favor of this amendment and calls on all other delegations to do so to maintain the respect for the principles of international law, of the UN Charter and of universally recognized principles of the respect and independence and sovereignty of all Member States. What is at stake here concerns the very heart of the foundation of the principles and credibility of the United Nations. I thank you.

3.2.3 STATEMENTS BEFORE THE VOTE

45:01

President: I thank the distinguished permanent representative of Burkina Faso speaking on behalf of the group of African states. I now give the floor to the distinguished permanent representative of Slovakia who will speak on behalf of the European Union.

45:20

Slovakia: Thank you, Mr. President, I would like to make the explanation of vote before the vote. Mr. President it's my honor to speak on behalf of the European Union and its Member States. The European Union and its Member States are deeply concerned by the fresh attempt of some UN Member States to reopen the decision of the Human Rights Council.

Resolution 32/2, which mandated the Independent Expert, was adopted by majority vote in Geneva. All 47 members of the Human Rights Council had the opportunity to put their views on record then. The creation of a special procedure lies firmly within the competence of the Human Rights Council. Many other mandate holders have been already appointed on the basis of voted resolutions. We recognize that sexual orientation and gender identity is a sensitive issue for a number of the UN Member States. But the European Union, once again, would like to highlight that the Independent Expert's mandate is solely about equal protection from violence and discrimination, a core principle of the United Nations.

We all accept the universality of human rights. This is clearly set out in Article 2 of the UN Declaration of Human Rights which state that everyone is entitled to all rights and freedoms set out in the Declaration without distinction of any kind. So why do we once again find ourselves in a position where some UN Member States are calling into question the ability of the Human Rights Council to take steps to uphold this fundamental principle. Only last month the Third Committee voted in favor of an amendment tabled by a number of Latin American countries to protect the mandate of the Independent Expert. All Member States then had the chance to set out their views and to exercise their right to vote. In supporting this amendment, the Third Committee voted to uphold the integrity of the UN and the authority of the Human Rights Council to appoint mandate holders.

The European Union and its Member States believe that if the General Assembly votes to use a selective approach to consider which Human Rights Council resolutions to support, to block, or to defer indefinitely it would fundamentally undermine the authority granted to the Council by the General Assembly and have far reaching implications well beyond the mandate of the UN Independent Expert on sexual orientation and gender identity. This can only have negative implications for the work of the Council and of the UN as a whole. We therefore once again urge the United Nations Member States to respect the authority of the Human Rights Council and to vote against the current amendment. It is vital that the integrity of the Human Rights Council remains intact and is not undermined by the General Assembly in this way. I thank you, Mr. President.

48:18

President: And I thank the distinguished permanent representative of Slovakia speaking on behalf of the European Union and I give the floor to the distinguished permanent representative of the United States.

48:31

United States: Thank you, Mr. President. The United States will vote no on the amendment proposed by the African Group to delay part of the report by the Human Rights Council and we strongly encourage other countries to join us in rejecting this amendment.

You have heard and may hear more so called procedural arguments made by other countries for adopting this amendment. These arguments are unsubstantiated, unjustified and unprecedented. The UN Human Rights Council currently has 57 mandate holders under special procedures: 43 on thematic issues and 14 on countries or territories. Yet never before has the General Assembly sought to challenge a special procedures mandate holder after it has been appointed and is fully functioning.



The supporters of this amendment say that they have concerns about what they call the legal basis for the mandate for the Independent Expert on sexual orientation and gender identity. On the surface, raising concerns about one out of the more than 100 resolutions adopted this year by the Human Rights Council may not seem like such a big deal. But for the General Assembly to seek to open the Human Rights Council's report over the contents of a single resolution, a resolution creating a mandate that is squarely within the Council's authority, would set a hugely problematic precedent.

In previous years, the purpose of this General Assembly resolution has been simply to take note of the Human Rights Council's annual report. Were this amendment to be adopted it would, going forward, be fair game for the General Assembly to open up and relitigate resolutions that have long history of going into effect immediately. That would undermine the authority the independence and the efficiency of the Human Rights Council.

In addition to setting this dangerous procedural precedent this amendment is deeply flawed on the merits. The proponents of the amendment argue in their explanatory note that their reason for seeking delay

was that “there was no international agreement on the definition of the concept of sexual orientation and gender identity.” That is patently false. The issue of violence and discrimination based on sexual orientation and gender identity is well established and well understood. It has been referred to in resolutions and statements adopted by the Human Rights Council, the UN Security Council and the UN General Assembly. It has been the focus of nearly 1,300 recommendations under the Universal Periodic Review leading to recommendations that have been accepted by more than 100 UN Member States including several of the countries that proposed this amendment. And it has been addressed repeatedly by various regional bodies including the Organization of American States, the European Court of Human Rights, and the African Commission on Human Rights and People’s Rights.

In reality, this amendment has little to do with questions around the definition of sexual orientation and gender identity. Instead this amendment is rooted in a real disagreement over whether people of a certain sexual orientation and gender identity are in fact entitled to equal rights. And it is being driven by a group of Member States that believe it is acceptable to treat people differently because of who they are or who they love. For our part, the United States believes that discriminating against people on the basis of their sexual orientation and gender identity is no different from discriminating against people for the color of their skin, for discriminating against them because of their sex, or because of their nationality. It is wrong. Such discrimination cuts against the very essence of the UN Charter and the Universal Declaration of Human rights. This is not an issue of the North trying to impose its values on the South. It is an issue of respecting the dignity and human rights of all people, everywhere. That is what we mean when we say that LGBTI rights are universal human rights.

The United States also believes that the resolution creating the Independent Expert to address violence and discrimination based on sexual orientation and gender identity is well merited by the facts on the ground. For who here today would argue that LGBTI people are treated equally around the world or that they are not subject to violence and discrimination. Nobody could argue that on the basis of the facts. This is a world we live in which according to a report issued in 2015 by the UN High Commissioner for Human Rights, “the overall picture remains one of continuing pervasive violent

abuse, harassment and discrimination affecting LGBT and intersex persons in all regions often perpetrated with impunity.” A world today in which it is still considered acceptable in certain places to throw people off of the rooftops of buildings or to prevent them from forming a local organization or to deny them a seat in a classroom simply because of who they are or who they love. In that world, in our world, the world of today we have every reason to want an Independent Expert to monitor and seek to prevent violence and discrimination based on sexual orientation and gender identity.

That includes addressing the issue right here in the United States. For while LGBTI people no longer have to hide who they love to serve in our nation’s military or our foreign service people in the United States can still be fired from a job because of their sexual orientation and an estimated four in every ten transgender people in America attempt suicide. Approximately 30 times the national average. We too have seen our share of horrific violence against LGBT people. As many of you will remember, on June 12th of this year a gunman attacked innocent civilians at a nightclub in Orlando, Florida killing 49 innocent people. These individuals were targeted simply because they were LGBT people. Let me close, one of the victims in that attack was 32-year-old Christopher Leinonen. Who as a teenager was brave enough to be the only student to come out of the closet in his high school of 2500 people. Christopher endured taunts, harassments and even threats for telling people who he was and for founding his school’s first Gay Straight Alliance. Tell me, why would any member state stand in the way of trying to prevent violence like the attack at that Orlando nightclub. If you believe that people should not be discriminated against or harassed or attacked or killed for who they are and for who they love please join the United States in voting against this amendment. Thank you.

55:45

President: And I thank the distinguished permanent representative of the United States and I give the floor to the distinguished permanent representative of Brazil.

55:57

Brazil: Thank you, Mr. President. My delegation is delivering this statement on behalf of Argentina, Chile, Colombia, Costa Rica, El Salvador, Mexico, Uruguay, and my own country Brazil.

Mr. President, on November 21st the Third Committee adopted an amendment introduced by our group of countries to delete operative paragraph two of draft resolution L46 on the Human Rights Council report. The amendment was formally tabled immediately after the issuance of draft resolution L46 and enjoyed broad cross-regional support through the co-sponsorship of 59 countries and received 84 votes in favor. Through this vote, the committee agreed that deferring consideration of an action on Human Rights Council Resolution 32/2 would severely jeopardize the Human Rights Council's ability to function and undermine the authority granted to the Council by the General Assembly.

The establishment of the mandate of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity was fully within the mandate and the authority of the Human Rights Council and in accordance with the rules of procedure of the Council as determined by General Assembly Resolution 60/251 and Human Rights Council Resolution 5/1. The mandate does not seek to create new rights or standards but simply to address violence and discrimination within the existing framework provided by the Universal Declaration of Human Rights and relevant rules of international human rights law.

Mr. President, as we have stated in the Third Committee, the General Assembly should not reopen the Council's annual report on a selective basis with the purpose to decide which mandates should be confirmed or deferred. In effect this would open all Council resolutions to renegotiations and has far reaching implications well beyond the specific resolution currently under consideration. Mr. President, we believe that it is in the common interest of all states to protect the integrity and effectiveness of human rights system and for this reason our group of countries has called for a vote on the amendment just introduced and asked the delegation to vote against the amendment L45. Thank you.

58:50

President: And I thank the distinguished representative of Brazil and I give the floor to the distinguished representative of Israel.

58:58

Israel: Thank you, Mr. President. I would like to address the expected action to be taken on the whole report of the Human Rights Council and was advised by Secretariat that this is the right time to do it.

Last June we have marked two anniversaries: the 10th anniversary of the Human Rights Council and, unfortunately, also the 10th anniversary of the Council's bias against Israel. Although the Human Rights Council is mandated to be guided by the principles of impartiality, objectivity and non-selectivity and to work in a constructive unbiased and non-politicized manner, unfortunately, when it comes to Israel all of these important principles suddenly disappear. A special agenda item only dedicated to Israel, almost a third out of all special sessions on Israel and over a third of all geographical resolutions on us. A special rapporteur with a bias and infinite mandate as well as endless reports all targeting Israel reflect the Council's real attitude towards my country. It's almost as if there are no other challenges in the world.

Mr. President, this one sided biased approach reached new heights during its 31st session as the Council adopted Resolution 36/31 that de facto calls for the boycott of Israel and the creation of a database of companies and enterprises by the High Commissioner. Acts which remind us dark times in history. The request to create such a database as appears in Resolution 36/31 falls outside of the purview of the Human Rights Council and blatantly exceeds the mandate of the High Commissioner for Human Rights. This is nothing other than an attempt by the Human Rights Council to continue its one-sided policy against Israel, this time by making efforts to implement a boycott. Israel condemns these efforts.

Many Member States also share our concerns regarding the creation of such a database by the high commissioner and expressed objection during the Human Rights Council's 31st session. Even the Secretary-General has admitted last Friday that there is a bias against Israel at the UN and I quote, "decades of political maneuvering have created a disproportionate volume of resolutions, reports, and conferences criticizing Israel. The Human

Rights Council is one example of a UN body displaying prejudice towards one member state and severely damages the credibility of the Council. To conclude, Israel will vote against the amendment and against the adoption of the Human Rights Council report. Thank you, Mr. President.

1:01:37

President: And I thank the distinguished representative of Israel and I give the floor to the distinguished representative of New Zealand.



1:01:45

New Zealand: Thank you, Mr. President. I'm making this explanation of vote before the vote on amendment A/71/L.45 on behalf of Australia, Canada, Iceland, Lichtenstein, Norway, Switzerland, and my own country New Zealand. These are seven Member States that are strong supporters of the Human Rights Council and actively contribute towards works.

The amendment presented today undermines the mandate we have given the Human Rights Council in Resolution 60/251 and reaffirmed in Resolution 65/281. According to these decisions, it is within the Council's competence to appoint and renew special procedures. By interfering with this competence by trying to undo not only the creation of such a mandate but also the appointment of a mandate holder we not only question the authority of the Council we also jeopardize the institutional balance of the entire human rights system of the United Nations.

There is no basis for questioning the legal validity of the mandate referred to in this amendment. The validly adopted Human Rights Council Resolution 32/2 was in

full conformity with the mandate and procedure of the Human Rights Council. The content of the mandate is clear and unambiguous. An explicit treaty based definition is not a requirement for a valid mandate and indeed an Independent Expert or a special rapporteur can help generate an understanding and an international agreement where there may be ambiguities. There are over a dozen current mandates of the Human Rights Council that may be considered to fall under such a category some of which were adopted by vote. The adoption of those mandates were not reopened and they were not challenged on the basis that more time was needed to fully elaborate the international legal basis.

We regret that this amendment has been brought. It is inconsistent with and undermines the Council's mandates and the understanding reached in the review reflected in Resolution 65/281. We strongly urge all delegations to vote against the amendment in front of us to preserve the independence of the Human Rights Council and the credibility of the human rights system of the United Nations.

1:04:07

President: I thank the distinguished representative of New Zealand and I give the floor to the distinguished permanent representative of the Netherlands.

1:04:16

Netherlands: Thank you very much Mr. President. I align myself with the statement made earlier by the European Union. We will vote against this amendment because we are greatly concerned about the amendment because of two reasons.

Our first main concern is of an institutional nature. In the history of the United Nations there is no precedent, never before has there been an attempt to question the appointment of a special mandate holder who has already assumed office after a fully legitimate and procedurally sound appointment by the Human Rights Council. If the General Assembly allows for a selective picking and choosing of decisions by the Human Rights Council we will effectively undercut the functioning, the authority, and the effectiveness of the Council and it will undermine the credibility of the United Nations as a whole. That is in the interest of none of us.



Mr. President, our second concern is the topic of the mandate. We understand the discomfort about the terms sexual orientation and gender identity for some of us and we understand the sensitivity of the topic. This topic used to be controversial in my own country and to some extent for some of my country it still is. We therefore welcome all attempts to a dialogue on this issue in order to at least better understand each other. But no matter the comfort level with a topic the reality is that people around the world are being bullied, are being jailed, are being beaten, are being killed for no other reason other than which gender they identify with most or for whom they happen to love. And that is what the mandate of the Independent Expert is all about. This type of violence and discrimination is an infringement of the rights and freedoms that all people are entitled to and let me quote from the Universal Declaration of Human Rights, "without distinction of any kind." These are the human rights standards we are all bound to uphold set forth in the Universal Declaration of Human Rights.

And let me refer in this context also to the impressive statement by our South African colleague during the vote in the Third Committee on this issue, "we strongly feel there are no valid legal objections to the appointment of an Independent Expert" and this view was shared by the Human Rights Council when it agreed on a mandate of an Independent Expert and was furthermore confirmed by the Third Committee last month. In conclusion Mr. President, in order to protect people from discrimination and violence the kingdom of the Netherlands supports the appointment of an Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. Human rights apply to each and every individual. In order for the UN to effectively protect all human rights globally, the kingdom of the Netherlands strongly objects to challenging any

legitimate decision taken by the Human Rights Council in Geneva. It is for these reasons that the Kingdom of the Netherlands will vote against the amendment before us and we strongly encourage other states to do the same. Thank you very much Mr. President.

1:07:58

President: I thank the distinguished permanent representative of the kingdom of the Netherlands and I now give the floor to the distinguished representative of Thailand.

1:08:08

Thailand: I am taking the floor in explanation of vote before the vote to reaffirm Thailand's principle position as stated in the Third Committee on the resolution report of the Human Rights Council in support of the mandate of the Independent Expert on SOGIE and a procedure for its establishment which was conducted in accordance with the rules and practices of the Human Rights Council. Once again, while Thailand fully respects the rights of Member States to exercise their prerogative at the General Assembly on human rights issues, Thailand does not agree with deferring consideration of this mandate to a later date, noting that the Independent Expert has already been formally endorsed and commenced his work. We will therefore be voting against the proposed amendment and express our wish that the membership can continue to engage in a constructive dialogue on this issue regardless of the outcome of the vote. Thailand is confident that professor Vitit Muntarbhorn will carry out his mandate in an objective and non-confrontational manner in line with the said HRC resolution. Thank you.

1:09:40

President: I thank the distinguished representative of Thailand and I now would like to give the floor to the distinguished permanent representative of Finland.

1:09:50

Finland: Thank you, Mr. President. Finland is taking the floor in order to explain why we will vote against this amendment. This statement is aligned with the statement made by the European Union.

Finland is deeply concerned by the renewed attempt to reopen the decision of the Human Rights Council to

appoint an Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. Resolution 32/2 which mandated the Independent Expert was adopted by a majority vote in Geneva. All 47 members of the Human Rights Council had the opportunity to express their views then and the creation of a special procedure lies firmly within the competence of the Human Rights Council. Other mandate holders have been appointed on the basis of voted resolutions. The reason why this mandate has been the subject of such opposition is solely because of the subject matter, protection against violence and discrimination on the grounds of sexual orientation or gender identity.

We would like to highlight that the Independent Expert's mandate is about equal protection from violence and discrimination. The universality of human rights is clearly set out in Article 2 of the UN Declaration of Human Rights which states that everyone is entitled to all the rights and freedoms set out in the Declaration without distinction of any kind. Still some UN Member States are questioning the ability of the Human Rights Council to take steps to uphold this fundamental principle. All Member States had the chance to express their views and to exercise their right to vote during the Third Committee vote last month when the Third Committee voted to uphold the integrity of the UN and the authority of the Human Rights Council to appoint mandate holders.

Finland believes that if the General Assembly votes selectively on which Human Rights Council resolutions to support, to block or to defer indefinitely it would fundamentally undermine the authority granted to the Council by the General Assembly and have far reaching implications well beyond the mandate of the UN Independent Expert on sexual orientation and gender identity. This can only have negative implications for the work of the Council and of the UN as a whole. We therefore urge UN Member States to respect the authority of the Human Rights Council and to vote against the current amendment. The integrity of the Human Rights Council cannot be undermined by the General Assembly in this way. Thank you, Mr. President.

1:12:55

President: And I thank the distinguished permanent representative of Finland and give the floor to the distinguished representative of France.

1:13:02

France: We align ourselves with the statement delivered by the European Union. In our national capacity, we would like to underscore once again the importance of upholding an institutional balance between the United Nations General Assembly and the Human Rights Council. This balance might be called into question if the resolution adopted by the Human Rights Council and such resolutions can subsequently be contested before the General Assembly. Resolution 32/2 of the Human Rights Council specifically sets forth the mandate of the Independent Expert on the protection against violence and discrimination based on sexual orientation and gender identity. This mandate of the Independent Expert, which amendment A/71/L45 seeks to revisit, is legally founded; it is part of a broader text on human rights. It is also based on procedure; it is incumbent upon the Human Rights Council to set forth a special procedure for the protection of human rights. Hence it is critical to uphold the authority and the effectiveness of the Human Rights Council. It was set forth to protect and promote human rights of all individuals without discrimination of any kind. Introduction of such an amendment would undermine the balance of the edifice for the protection of human rights for all. For these reasons, France shall vote against amendment L45. We invite Member States to vote against this amendment. Thank you.

3.2.4 THE VOTE

1:14:48

President: I thank the distinguished representative of France. We have heard the last of the explanations of vote before the vote. Now we proceed to take a decision on the draft resolution. In connection with the draft resolution the General Assembly has before it a draft amendment circulated in document A/71/L45. In connection with draft amendment A/71/L45 I'd like to give the floor to the representative of the Secretariat.

1:15:36

Secretariat: Mr. President the following statement is made in accordance with rule 153 of the Rules of Procedure of the General Assembly and has been distributed desk to desk as well as made available on the PaperSmart portal. Under the terms of the operative paragraph of the draft amendment A/71/L45 the General Assembly will decide to

defer consideration of an 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. All financial implications emanating from the resolutions and decisions contained in the annual report of the Council are brought to the attention of the General Assembly in the context of the annual report of the secretary general on the revised estimates resulting from resolutions and decisions adopted by the Human Rights Council in accordance with General Assembly Resolution 65/281. The revised estimates report is currently under consideration by the Fifth Committee of the General Assembly which includes the resource requirements arising from Human Rights Council Resolution 32/2. Should the draft resolution recommended by the committee be amended and then adopted the resource requirements arising from Human Rights Council Resolution 32/2 would be removed from the overall resource requirements of the revised estimates report. I thank you, Mr. President.

1:17:30

President: And I thank the representative of the Secretariat. We turn to the draft resolution recommended by the Third Committee. In connection with draft resolution the General Assembly has before it a draft amendment circulated in document A/71/L45. In accordance with rule 90 of the rules of procedure the assembly should first take a decision on the proposed draft amendment. A recorded vote has been requested on the proposed amendment. Those in favor of the amendment please signify, those against and abstentions.

1:18:12

Secretariat: The General Assembly is now voting on draft amendment A/71/L45 which is a draft amendment concerning the draft resolution recommended by the Third Committee in document A/71/479. Will all delegations confirm their votes on draft amendment L45 are accurately reflected on the screen. The voting has been completed, please lock the machine.

1:19:22

President: So, the result of the vote is as follows: those in favor 77, those against 84, and abstentions 16. The draft amendment contained in document A/71/L45 is not adopted. I now put to a vote the draft resolution as a whole. A recorded vote has been requested those in favor of draft resolution as a whole please signify, those against and abstentions.

1:20:10

Secretariat: The General Assembly is now voting on draft resolution entitled "Report of the Human Rights Council" as a whole recommended in document A/71/479. Will all delegations confirm the votes on draft resolution as a whole are accurately reflected on the screen. The voting has been completed, please lock the machine.

1:21:02

President: And the result of the vote is as follows: those in favor 106, those against 2, and abstentions 74. The draft resolution as a whole is adopted.

3.2.5 STATEMENTS AFTER THE VOTE

1:21:20

President: We now proceed to explanations of vote after the vote. And I give the floor to the distinguished representative of Eritrea.

1:21:37

Eritrea: Thank you, Mr. President, for giving me the floor. This is a general statement after the vote. The co-sponsor of draft resolution titled 'Report of the Human Rights Council' A/71/479, my delegation is voting in favor of this resolution as a whole, and this support is unquestionable. My delegation would, however, like to draw the attention of delegations that Eritrea has serious concerns with parts of the report, particularly the report or country-specific resolutions that concerns Eritrea.

The targeting of countries for extraneous objectives under the guise of human rights is unacceptable and in disregard. My delegation disassociates itself with the part of the report that targets Eritrea. The Human Rights Council should exercise utmost caution and vigilance

to not allow its noble mandate to be abused at will. The practice of double standards must be rejected, and we should all abide by the principles of non-selectivity and non-politicization of human rights. Eritrea shall remain committed to cooperation and constructive dialogue in the promotion and protection of human rights. Thank you, Mr. President.

1:22:53

President: And I thank the distinguished representative of Eritrea and I give the floor to the distinguished permanent representative of Poland.

1:23:04

Poland: Thank you, Mr. President. Poland has been a staunch supporter of Human Rights Council since its establishment. After a decade of its activities, the Council has clearly proven its crucial role as the UN body exclusively devoted to the promotion and protection of human rights. Apart from many important areas of the Council's mandated responsibilities, one of its major tasks is to bring a wide array of pressing issues in the field of human rights to the attention of the international community. Poland was seriously concerned about the deferral of Human Rights Council Resolution 24/24 decided by the GA Resolution on the Report of the Human Rights Council in 2013. We express even stronger regret that new steps in this respect were initiated once again this year. In our opinion, this practice is harmful to the human rights protection system, as well as to the position of the Human Rights Council.

At the same time, with regards to the Independent Expert on the protection against violence and discrimination based on sexual orientation and gender identity, Poland would like to stress the fact that it did not support the establishment of this mandate, as our delegation in Geneva did not join the list of co-sponsors of the Resolution HRC 32/2. It is clear that Poland rejects any attempts to discriminate any person on any ground, including their sexual orientation. It is also clear that Poland combats staunchly any attempts to use violence against LGBT persons. Moreover, we believe that the creation of the mandate of the Independent Expert, the decision which was not taken by consensus, will not serve the cause of fighting discrimination, but will rather lead to the further polarization of positions within the Human Rights Council. We believe that the mandate on

a topic which many delegations view as highly sensitive should have been approached in a manner conducive to the elaboration of a consensual outcome, which was unfortunately not the case. Thank you very much for your attention.

1:25:40

President: And I thank the distinguished representative of Poland and I now give the floor to the distinguished permanent representative of Croatia.

1:25:50

Croatia: Thank you very much, Mr. President. In accordance with the common position of the European Union, Croatia stresses the importance of preserving the autonomy of the Human Rights Council. And therefore, our vote should first and foremost be viewed as a matter of principle on the institutional relationship between the UN General Assembly and the Human Rights Council, and not of substance with regards to the arguments raised by the African Group. As a country which will start serving its term as a member of the Human Rights Council in less than two weeks, Croatia will pay due attention to all the issues within the Council's mandate, including the work of the Independent Expert. In that sense, Croatia firmly believes that sexual orientation should not be a subject for criminal prosecution. At the same time, Croatia firmly defends the right of every UN member state to define marriage as a union of a woman and man. As a member of the Human Rights Council, Croatia will insist that the scope of activities carried out by the Independent Expert is based on international law and internationally recognized human rights. Thank you.

1:27:15

President: And I thank the distinguished permanent representative of Croatia and I give the floor to the distinguished permanent representative of Hungary.

1:27:23

Hungary: Thank you, Mr. President. Hungary strongly supports the autonomy of the Human Rights Council and deems fundamentally important preserving the institutional balance between the latter and the General Assembly. Hungary, in line with all EU member countries, voted against the draft amendment presented by the African Group on the basis of this principled approach.

As a future member of the Human Rights Council from the 1st of January 2017, Hungary will follow closely and deal with all the issues within the Human Rights Council's mandate and competence, including the work of human rights special procedures and mandate holders. Hungary strongly rejects all forms of discrimination or violence based on any ground or status, including on sexual orientation and gender identity. In the meantime, Hungary reserves its sovereign right to define the personal scope and the content of family relations and of marriage in accordance with its national legislation. In this context, Hungary will be attentive in the Human Rights Council that the mandate and activities carried out by the Independent Expert observe international law and internationally recognized human rights standards. I thank you, Mr. President.



1:29:07

President: And I thank the distinguished permanent representative of Hungary and I give the floor to the distinguished representative of Costa Rica.

1:29:15

Costa Rica: Thank you, President. Costa Rica would like to state its full support for the work of the Human Rights Council and its resolutions and recommendations. As a country committed to human rights and the mechanisms of the organizations for their promotion and protection, we think it's vital to maintain the work and decisions of the Council on the decisions of members elected to this organization.

The traditional position of my country has been that the report of that Council, an essential body of the organization in this field, should be considered in the plenary of the GA and not in the Third Committee. That position is based on OP 5J of Resolution A/RES/60/251 that

created the Human Rights Council and which specifically decided that the Council would present an annual report to the GA. That decision was reaffirmed with the agreements reached during the Council review process during the 65th Session and in line with OP 16 of Resolution A/RES/65/281. Specifically, it was agreed that the report as such should be considered by the GA plenary and only the recommendations should be considered by the Third Committee. In that respect, legally it's not up to the Third Committee to recommend to this plenary the adoption of a resolution in this matter. Also, and given the discussions we've had on the content of the resolution, it's inappropriate from a political and institutional point of view that the commission or the plenary should question the integrity of the work of the Human Rights Council.

For those reasons, we think that a resolution as brought before the plenary is unnecessary and inappropriate. Nevertheless, given that we are in a plenary vote and to send a strong message of support, and the importance that my delegation assigns to all the work of the Human Rights Council, we decided to vote in favor of the resolution in the plenary. Thank you.

1:31:37

President: I thank the distinguished representative of Costa Rica and I give the floor to the distinguished representative of Spain.

1:31:47

Spain: Thank you very much, President. Spain supports what was stated by the EU. Also, we'd briefly like to reiterate our negative vote on the amendment proposed by the African Group. Spain rejects any attempt to call into question persons, mandate holders or Independent Experts appointed by the Human Rights Council, when moreover that person has already been appointed and is already discharging his functions. The fact is that his mandate has been questioned, for procedural themes apparently, but what has been called into question is the substance of his mandate. And the argument of the lack of definition of what sexual orientation or gender identity is, that seems to be an excuse, since what we've got here is a notion that the international community recognizes, in particular when it comes to the field of human rights. We're not speaking of creating new rights, or of addressing sexual conduct, it's a matter simply of not discriminating, not carrying out violence against any

human being, not for any excuse and without wasting time. Thank you.

1:33:03

President: Thank you, the distinguished representative of Spain, and I give the floor to the distinguished representative of Paraguay.

1:33:10

Paraguay: Thank you very much, President. Paraguay would like to make an explanation of its vote for the amendment just considered. We voted in abstention on the understanding that the amendment needed more time to define the necessary legal framework for implementing the work of the Independent Expert created under Resolution 32/2 of the Human Rights Council, without ignoring the mandate created or the competence of the Human Rights Council. Paraguay states its full support for the work of the HRC, and as a result supports its resolutions and recommendations. Thank you.

1:33:50

President: I thank the distinguished representative of Paraguay and I give the floor to the distinguished permanent representative of Burkina Faso. You have the floor, sir.

1:34:06

Burkina Faso: Mr. President, thank you. I should like to take the floor following the vote to thank very much those delegations who voted in favor of the proposed amendment to the draft resolution on the Report of the Human Rights Council. In so doing, delegations affirmed the guiding principles of the organization and upheld and respected international law.

We respect the outcome of the vote, 77 for 84 against, yet we regret the confirmation of the decision of the Human Rights Council to designate an Independent Expert on violence and discrimination based on sexual orientation and gender identity. This, for us, does not yet have a legal foundation in international law. Such a decision is liable to further polarize Member States insofar that it does not enjoy consensus amongst all States. Indeed, the Group believes that it is premature to nominate a mandate holder on a concept that has no consensus amongst Member States yet. Hence, during the discussion, we advocated a deferral so as to provide sufficient time for Member States to discuss this concept so as to reach an agreement on the basis of the mandate. Without this understanding amongst states, how can the mandate of the Independent Expert be carried out? How can a balanced evaluation be carried out in any state if there is no explicitly set forth framework amongst states as regards to this concept? These are but some of our concerns which remain unanswered.

Sir, in light of the above mention, members of the African Group disassociate themselves from the mandate of the Independent Expert on violence and discrimination based on sexual orientation and gender identity as set forth by Resolution 32/2 of the Human Rights Council. Thank you.

1:36:02

President: I thank the distinguished permanent representative of Burkina Faso. We've had the last of the explanations of vote after the vote, so may I take it that it is now the wish of the General Assembly to conclude its consideration of Agenda Item 63? It's so decided.

3.3 In the Fifth Committee

23rd Meeting of the Fifth Committee of the
71st Session of the General Assembly
23rd December 2016
**Chair: H.E. Ms. Inga Rhonda King of Saint Vincent
and the Grenadines**

3.3.1 INTRODUCTION BY CHAIR

20:03

Madam Chair: Are there any comments on draft resolution A/C.5/71/L.19? I recognize the request for the floor from the distinguished representative of Burkina Faso on behalf of the African Group.

3.3.2 PRESENTATION OF AMENDMENT BY THE AFRICAN GROUP

20:31

Burkina Faso: Madam Chair, on behalf of the African Group, I take the floor to submit a verbal amendment to section 15 of A/C.5/71/L.19. The African Group is proposing an OP2 bis as follows—decides to not allocate budgetary resources for the implementation of the Resolution 32/2 of the Human Rights Council against violence and gender related violence. Thank you.

3.3.3 STATEMENTS BEFORE THE VOTE

21:27

Madam Chair: The distinguished representative of Burkina Faso, speaking on behalf of the African Group, has proposed an oral amendment to section 15 of draft resolution contained in document A/C.5/71/L.19. Are there any delegations wishing to take the floor? I recognize a request from the distinguished representative from Argentina.

22:07

Argentina: Thank you, Madam Chair. It's my honor to speak on behalf of Brazil, Chile, Colombia, Costa Rica, El Salvador, Mexico, Uruguay and my own country Argentina. Our countries wish to express our concern at the oral amendment submitted by Burkina Faso representing the African Group to include an operative paragraph on the resolution on the revised estimates of the Human Rights Council so as not to approve of additional resources related to Resolution 32/2 of the Human Rights Council.

Now, this language, were it to be included, would seriously affect the work of the Independent Expert set up by the Human Rights Council through a validly adopted resolution which has now been given a number of functions in order to deal with issues related to violence and discrimination. In this regard, our countries would like to record the fact that previous attempts to delay the consideration and the adoption of measures related to Resolution 32/2 of the Human Rights Council was submitted at the Third Committee and in the General Assembly. And in both cases the majority of Member States of the organization, including representatives of the five regional groups, rejected such attempts. They recognized and defended the integrity and independence of the Human Rights Council to adopt and to put into place Resolution 32/2.

This, the Fifth Committee, as an administrative and budgetary body of the General Assembly, is not the appropriate forum to debate substantive issues related to decisions that have been adopted by other committees or bodies of the United Nations. A vote on the revised estimates of the Human Rights Council would have no precedence and it would contradict the very principle that the Fifth Committee should approve

the resources agreed for all programs and activities in order to ensure the full and effective implementation. In this specific case, Resolution 32/2 has not only been approved by the Human Rights Council in conformity with its mandate and its regulations, but also its been expressly confirmed by the Third Committee and the General Assembly.

Now, for these reasons, our eight countries, as main sponsors of Resolution 32/2 in Geneva, ask for a recorded vote on this amendment. Madam Chair, we wish to express our concern at the implications that would be involved for the integrity and the independence of the budgetary process and the system of protecting and promoting human rights in the United Nations were the amendment submitted by the delegation of Burkina Faso be adopted. And for that reason, we will vote against the amendment and we would respectfully invite other delegations to vote in the same manner. Thank you very much, Madam Chair.



25:45

Madam Chair: A recorded vote has been requested by the representative of Argentina on the oral amendment proposed by the representative of Burkina Faso speaking on behalf of the African Group. Does any delegation wish to make a statement in explanation of vote before the vote? I recognize the request for the floor from the distinguished representative of Norway.

26:23

Norway: Madam Chair, Norway will vote against the proposed amendment to the resolution on the revised estimates of the Human Rights Council in regards to Resolution 32/2 protections against violence and discrimination based on sexual orientation and gender identity. The role of the Fifth Committee is to deliberate and decide on the administrative and budgetary

questions of this organization. Norway is of the opinion that the mandates adopted by the Human Rights Council will be funded and therefore will support the draft resolution submitted by the chair. Thank you, Madam Chair.

27:11

Madam Chair: I now recognize the distinguished representative of the United States.

27:17

United States: Thank you, Madam Chair. The United States will vote no on the amendment by the Africa Group to decide not to appropriate funds for the Independent Expert on the protection against violence based on sexual orientation and gender identity. Our delegation would like to reaffirm its commitment to this crucial mandate. This Human Rights Council mandate represents a strong step forwards toward improving the living conditions and safety of hundreds of thousands of LGBTI individuals across our globe.

However, despite the fact that this mandate was well within the HRC's authority to create, and the fact that the General Assembly rejected the attempts to reopen the mandate, some delegations still wish to undermine its implementation. In voting against this amendment, the United States would like to reiterate our objection to relitigating this issue. The creation of a special procedure by the HRC is something it has done time and again, and with an office holder now in position no less, through various UN bodies. Such actions threaten to undermine the way in which this organization conducts its business. Our delegation appreciates the efforts of the Independent Expert to properly implement this mandate and we look forward to learning of the Expert's contributions in the near future. The United States hopes that all Member States will join us in opposing this amendment. Thank you, Madam Chair.

28:38

Madam Chair: I now recognize the distinguished representative of Slovakia.

28:45

Slovakia: Thank you, Madam Chair. I have the honor to speak on behalf of the Member States of the European Union. Madam Chair, the Fifth Committee is the main

committee of the General Assembly entrusted with responsibilities for administrative and budgetary matters. It is not the forum to discuss substantive issues related to decisions adopted by the other committees or bodies of the United Nations. A vote on the Human Rights Council revised estimates would be unprecedented. Resolution 32/2 has been adopted by the Human Rights Council in accordance with its mandate and rules of procedures. We strongly believe that consensus based decision-making is one of the most important and longstanding working practices of the Fifth Committee of the United Nations. We regret the specific resolution and mandate from the Human Rights Council has been singled out in this regard. We believe that the amendment that requests as to not approve the resources stemming from adoption of Human Rights Council Resolution 32/2 on protection against violence and discrimination based on sexual orientation and gender identity is not based on any technical or budgetary considerations but rather on political ones. We are concerned that introducing political elements into the work of the Fifth Committee will hamper our collective ability to consider our agenda items under budgetary and administrative merits alone. For this reason, we will vote against the amendment and call on other delegations to do the same. Thank you, Madam Chair.

30:20

Madam Chair: I now recognize the distinguished representative of Switzerland.

30:27

Switzerland: Madam Chair, it's my honor to speak on behalf of Switzerland and Liechtenstein. Our delegations will vote against the proposed amendment to the resolution on the revised budget estimates for the Human Rights Council with regard to 32/2 protection against violence and discrimination based on sexual orientation and gender identity. The Fifth Committee's role is to make decisions on administrative and budgetary issues related to this organization and therefore it must ensure that the organization does have the necessary resources to implement the mandates given. So, it's important that we do provide the United Nations with adequate resources to allow the organization to fulfill its mandates in an effective and efficient manner. We consider that this committee is not

the proper forum to discuss mandates that have been given, and finally we do regret the fact that we must have a vote in the committee where normally decisions are taken by consensus. For the various reasons that we've raised we would like to encourage other delegations to vote against the proposed amendment that has been submitted to us. Thank you.

31:49

Madam Chair: In accordance with Rule 130 of the Rules of Procedure of the General Assembly, the committee shall first take a decision on the inclusion of the amendment on draft resolution contained in section 15 of document A/C.5/71/L.19. Before proceeding, I recognize the request for the floor from the distinguished representative of the Cameroon.

32:26

Cameroon: Thank you, Madam Chair. I do apologize for interrupting. I also wish to make a statement before the vote. Two arguments have been raised as far as I understand. The representative of Burkina Faso has submitted a proposed amendment affecting an administrative and budgetary issue. His amendment aims simply not to waste resources. This is the role of the Fifth Committee—to ensure that resources are not wasted. He didn't raise any substantive issue related to this, so we were totally entitled to say that these amounts that have been requested do represent a waste of resources. This is what it's all about.

And secondly, the African Group has not asked for a vote either—it's someone else that has asked for a vote. Therefore, if normally in this committee resolutions are adopted on the basis of consensus, it is not the African Group that has broken this tradition. Now, according to Resolution 41213 in this annex, a vote is not prohibited, so let's not be afraid of a vote. If we have to vote we'll vote. It's just merely the fact that practice has been that the Fifth Committee does operate on the basis of consensus but it's the right of each delegation to request a vote. Now, in this specific case, it was not actually the African Group that called for a vote, so we have not broken the consensus on this. The resources requested will simply be wasted, and also because the representative of Burkina Faso has submitted a draft amendment which is administrative, and for that reason we will vote in favor of the amendment. Thank you.

3.3.4 VOTING

34:20

Madam Chair: In accordance with Rule 130 of the Rules of Procedure of the General Assembly, the committee shall first take a decision on the inclusion of the amendment in the draft resolution contained in section 15 of document A/C.5/71/L.19. Before we begin the voting process, I should like to remind members that pursuant to Rule 128 of the Rules of Procedure of the General Assembly, no representative shall interrupt the voting except on a point of order on the actual conduct of the voting. We shall now proceed to the vote. I now put to the vote the oral amendment as submitted by the representative of Burkina Faso on behalf of the African Group to the draft resolution contained in section 15 of document A/C.5/71/L.19. Those in favor of inclusion of the proposed amendment please press 2, those against press 3, and abstentions press 4.

36:01

Committee Secretary: Will delegations please confirm their votes are accurately reflected on the board? The voting has been completed and the machine is locked.

36:41

Madam Chair: The result of the vote is as follows: in favor 65, against 82, abstentions 16. The amendment is rejected. Does any delegation wish to make a statement in explanation of vote after the vote? I recognize Burkina Faso.

3.3.5 STATEMENTS AFTER VOTING

37:20

Burkina Faso: Madam Chair, I am taking the floor once again on behalf of the African Group to thank the 65 delegations who voted in favor of the proposed amendment to resolution A/C.5/71/L.19 section 15 on the budgetary implications for the implementation of Resolution 32/2 of the Human Rights Council on the protection against violence and discrimination based on sexual orientation and gender identity. Those delegations have thus affirmed the principles that guide the work of this organization and have shown respect for international law. While we respect the result of the vote as we have in the past, we regret the adoption of budgetary implications that will allow the designated Independent Expert to conduct activities around the notion of sexual orientation and gender identity, which we believe does not yet have a legal basis in international law. The implementation of this resolution risks polarizing Member States because this resolution does not at all enjoy general consensus among Member States. Madam Chair, the African Group therefore expresses its deepest concerns on the activities envisioned by the Independent Expert and the members of the African Group disassociate themselves from the mandate of the Expert on the protection against violence and discrimination based on sexual orientation and gender identity established by Resolution 32/2 of the HRC and the allocated budget, and we reserve the right to take all necessary and practical arrangements necessary to ensure the respect of national legislations. Thank you.

3.4 In the UNGA Plenary on the Fifth Committee

68th Plenary Meeting of the
71st Session of the General Assembly
23rd December 2016

President: Substitute for H.E. Mr. Peter Thomson of Fiji

3.4.1 INTRODUCTION BY PRESIDENT

1:00:37

President: The assembly will consider the report of the Fifth Committee on agenda item 134 entitled 'program budget for the biennium 2016/2017'. Document A/71/716, a report of the Fifth Committee, for the time being is contained in document A/C.5/71/L.20. The assembly has before it two draft resolutions recommended by the Fifth Committee in paragraph 52 of its report, and a draft decision recommended by the committee in paragraph 53 of the same report. The assembly will first take a decision on draft resolution 1 entitled 'special subjects relating to the program budget for the biennium 2016/2017', the text of which for the time being is contained in document A/C.5/71/L.20. I now give the floor to the distinguished representative of Burkina Faso on behalf of the African Group.

3.4.2 PRESENTATION OF AMENDMENT BY THE AFRICAN GROUP



1:01:46

Burkina Faso: Thank you very much, President. President, I'm speaking on behalf of the African Group to propose an oral amendment. This is an OP2 bis in section 15 of the draft resolution A/C.5/71/L.20. This is on budgetary resources for the implementation of Resolution 32/2 of the Human Rights Council. This is on protection against violence and discrimination because of sexual orientation or gender. Thank you.

1:02:37

President: I thank the distinguished representative of Burkina Faso. The representative of Burkina Faso has submitted an oral amendment to section 15 of draft resolution 1. In accordance with Rule 90 of the Rules of Procedure, the assembly shall first take a decision on the amendment submitted by the representative of Burkina Faso on behalf of the African Group. Next speaker on my list is Argentina, I give the floor to the distinguished representative of Argentina.

3.4.3 STATEMENTS BEFORE THE VOTE

1:03:11

Argentina: Thank you, Mr. President. I do not wish to prolong our deliberations at this very late hour in the General Assembly but in presenting the amendment in that presentation by Burkina Faso I wanted to speak on behalf of Brazil, Chile, Colombia, Costa Rica, El Salvador, Mexico, Uruguay and my own country Argentina.

Burkina Faso, as I said, has just put forward an amendment to reopen an issue which was duly decided upon by the Human Rights Council, the Third Committee, the Fifth Committee and this General Assembly. Our countries wish to reiterate their serious concern with that amendment, the purpose of which is not to adopt

additional resources related to Resolution 32/2 of the Human Rights Council. And given the precedent this type of amendment puts forward with regard to financing the organization and resources provided for its proposals, a similar amendment has just been rejected by the Fifth Committee just a few hours ago by the vast majority of Member States of this organization, including representatives from the five regional groups. That rejection is recognition of the independence of the Human Rights Council to adopt and implement Resolution 32/2.



The language proposed would seriously affect the independence of this body set up by the Human Rights Council, which has already been appointed and is fully functioning. That mandate was established through a resolution adopted legitimately by the Human Rights Council within the framework of its own prerogatives. And for these reasons, our 8 countries, as primary sponsors of Resolution 32/2 in Geneva, are going to request a recorded vote of this amendment. And before concluding let me reiterate our concern at the implications which this proposal may have for the independence for the budgeting of the protection and promotion system within the United Nations if we were to adopt the amendment put forward by the delegation of Burkina Faso. For that reason, the 8 countries which I have just mentioned are going to vote against that amendment, and respectfully we invite other delegations to vote along the same lines. Thank you very much, Mr. President.

1:06:11

President: I thank the distinguished deputy permanent representative of Argentina for this explanation of vote. I should like to remind Member States that in accordance with Article 18 of the United Nations Charter and Rule 83 of the Rules of Procedure of the General Assembly, decisions on budgetary questions constitute important questions which shall be made by an affirmative vote of two thirds majority of the members present and voting, and Rule 84 of the Rules of Procedure, decisions of the General Assembly on amendments to proposals relating to important questions and/or parts of such proposals put to the vote separately shall be made by two thirds majority of the members present and voting. We will therefore proceed on that basis. A recorded vote has been requested, those in favor of the oral amendment proposed by the delegation of Burkina Faso to section 15 of the draft resolution 1 please signify yes, those against and abstentions.

3.4.4 VOTING

1:07:08

Secretary: The General Assembly is now voting on the oral amendment proposed by the delegation of Burkina Faso, draft resolution 1 entitled 'special subjects relating to the program budget for the biennium 2016/2017' recommended in document A/71/272. Will all delegations confirm their votes are accurately reflected on the screen? The voting has been completed, please lock the machine.

1:07:37

President: The result of the vote is as follows: in favor 65, against 81, abstentions 15. The oral amendment submitted by the representative of Burkina Faso on behalf of the African Group is not adopted.

04

Notes

Prepared

by States

4.1 Third Committee

4.1.1 AFRICAN GROUP STATEMENT ON THE PRESENTATION OF THE REPORT OF THE HRC TO THE GA, 5 NOVEMBER 2016

REPUBLIC OF
BOTSWANA



PERMANENT MISSION OF THE REPUBLIC OF
BOTSWANA TO THE UNITED NATIONS
154 EAST 46TH STREET • NEW YORK, N.Y. 10017
TEL. (212) 389-2277

**STATEMENT OF THE AFRICAN GROUP
ON THE PRESENTATION OF THE ANNUAL REPORT OF THE UNITED
NATIONS HUMAN RIGHTS COUNCIL**

**DELIVERED BY
H.E. MR. CHARLES T. NTWAAGAE
AMBASSADOR AND PERMANENT REPRESENTATIVE
OF BOTSWANA TO THE UNITED NATIONS
71 SESSION OF THE UNITED NATIONS
GENERAL ASSEMBLY**

**4 NOVEMBER 2016
NEW YORK**

Madam Chairperson,

I have the honor to deliver this statement on behalf of the African Group.

The African Group welcomes the President of the Human Rights Council, H.E. Mr. Choi Kyonglim and wishes to extend our appreciation for the opportunity to dialogue with him on the activities of the Council presented in document A/721/53 and its addendum¹. The Group commends the President for his leadership and commitment to the work of this august body, as well as the professionalism and constructiveness in the manner in which he conducted the work of the Council. The Group assures him of its continuous support and co-operation in the execution of his duties. .

Madam Chairperson,

The African Group wishes to reaffirm the Council's mandate as contained in UNGA resolution 60/251 in 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 and make recommendations thereon. It is on this basis that the Group has been consistently supportive of the work of the Council.

The Group views the principles on which the Council's mandate is underpinned as extremely important, particularly with respect to the principle of cooperation and genuine dialogue aimed at strengthening the capacity of Member States to comply with their human rights obligations. It is therefore incumbent upon the Council in discharging its mandate to firmly apply the principles of universality, objectivity and non-selectivity in the consideration of human rights issues.

Madam Chairperson,

The African Group is convinced that the Universal Periodic Review (UPR) remains the most effective mechanism of universal application to assist States in fulfilling their human rights obligations. In our view, this mechanism remains relevant and key towards the promotion and protection

of human rights. The Group would like to reaffirm the need to preserve the cooperative nature and principle of dialogue of this mechanism. The group firmly believes that it is critical that the UN Voluntary Trust Fund for Financial and Technical Assistance for the Implementation of the UPR be properly resourced for the purpose of assisting States to develop national capacity and expertise for the implementation of the Agreed Recommendations.

While the African Group reiterates its support for the Mechanisms and Special Procedures of the Council and the important work they undertake in the promotion and protection of human rights and fundamental freedoms, the Group believes that there is a need for the rationalization of these Mechanisms and Special Procedures in order for them to be effective. The Group would like to emphasize also the need for the procedures to comply with the Institution-Building Package, the code of conduct of mandate holders and their respective mandates.

In this regard, we would like to express our support to agenda item 10 of the Human Rights Council on technical cooperation and capacity building in the field of human rights. We seize the opportunity to stress that item 10 should not be abused for other objectives, including monitoring and investigation. Advisory services on human rights issues should only be upon the request of the State concerned, based on its priorities and national ownership, with full respect for sovereignty and political independence.

Madam Chairperson,

The Annual Report tabled before the Committee presents comprehensively the resolutions that were adopted by the Council during its yearly deliberations. The Group is also cognizant of the provisions of UNGA resolution 60/251 operational paragraph 5(i) which provides for recommendations to be made by the Council to the Third Committee of the General Assembly, hence its support for the universal membership of the UNGA.

We are alarmed that the Council is delving into matters which fall essentially within the domestic jurisdiction of States counter to the commitment in the United Nations Charter to respect the sovereignty of States and the principle of non-intervention. More importantly, it arises owing to the ominous usage of the two notions: sexual orientation and gender identity. We wish to state that those two notions are not and should not be linked to existing international human rights instruments. In this regard, the African Group has tabled a resolution to defer the consideration and action on Human Rights Council resolution 32/2 of 30 June, 2016 in order to engage in further discussion and consultations on the legality of the creation of this mandate. We therefore call for the suspension of the activities of the appointed Independent Expert pending the determination of this issue.

We 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 and call upon all Member States to continue to step up their efforts towards the total eliminating of all forms of racism, racial discrimination, xenophobia and related intolerance.

Madam Chairperson,

In conclusion, the African Group wishes to reassure you, Mr. President of our support and reaffirm our commitment to the fundamental principles of human rights for all as enshrined in the Charter of the United Nations.

I thank you for your attention.

Permanent Observer Mission of the
AFRICAN UNION to the
United Nations

الاتحاد الأفريقي



Mission Permanente d'Observation
de l'UNION AFRICAINE auprès
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Reference: NY/AU/AG/1/ 554/16

The Permanent Observer Mission of the African Union to the United Nations presents its compliments to All Permanent Missions to the United Nations and, at the request of the Chair of the African Group for the month of November 2016, (Botswana), has the honor to circulate the attached **African Group Explanatory Note on draft resolution A/C.3/71/L.46 on the Report of the "Human Rights Council.**

The Permanent Observer Mission of the African Union to the United Nations avails itself of this opportunity to renew to All Permanent Missions to the United Nations the assurances of its highest consideration.

New York, November 9, 2016

All Permanent Missions to the United Nations
New York, N.Y. 10017

Encl. 04 pages



**AFRICAN GROUP EXPLANATORY NOTE ON DRAFT RESOLUTION
A/C.3/71/L.46 ON THE REPORT OF THE HUMAN RIGHTS COUNCIL**

The African Group (AG) has the honour to refer to its draft resolution entitled "Report of the Human Rights Council," contained in document A/C.3/71/L.46 and to seek your support and vote in favour of this draft.

As is traditionally the practice since the establishment of the 47-Member United Nations Human Rights Council, the Group has been presenting the resolution entitled "Report of the Human Rights Council" in the Third Committee of the General Assembly. On 3 November 2016, the African Group tabled its annual resolution recommending the report of the Human Rights Council (HRC) to the General Assembly (GA) for adoption.

The AG resolution calls for the deferral of consideration of and action on HRC resolution 32/2 of 30 June 2016 entitled "protection against violence and discrimination based on sexual orientation and gender identity" in order to allow time for further consultations to determine the basis upon which the mandate of the special procedure established therein will be defined."

Currently, there is no international agreement on the definition of the concept of "sexual orientation and gender identity". These notions are not enshrined in any international human rights treaty, and cannot be fairly implied from them. With no definitional basis in international human rights law, the group is of the view that the mandate of the Independent Expert which is not grounded in any internationally recognized human rights obligation, lacks the necessary specificity to be carried out and also runs contrary to HRC resolution 5/1, which states that new mandates "should be as clear and specific as possible, so as to avoid ambiguity".³ The AG is therefore wondering on what foundation of international law would the mandate of this Independent Expert be defined.

The Group therefore proposes that in order to garner consensus on the very foundation on which this mandate has been created, it is imperative that there are further consultations by member states on this issue. A clear example of the lack of universal understanding and appreciation of this concept is seen in the very resolution which established this mandate. Resolution 32/2 was adopted in the Human Rights Council by 23 votes in favor, 18 against and 6 Abstentions, after the presentation of number of amendments. This clearly reflects the fact that the Human Rights Council was very divided on the issue.

In seeking this action, the Group reaffirms the importance it attaches to the framework of United Nations General Assembly (UNGA) resolution 60/251, including the subsequent institution-building package, which marked the foundation of the HRC and its mandate. The Group is also mindful that the HRC was created as a subsidiary body of the UNGA, hence the need for the Council to report on an annual basis to the universal membership of the GA. In this context, the group remains firmly committed towards ensuring that the provisions of OP5(c), (i) and (j) of UNGA resolution 60/251 are adhered to. The Council's status as a subsidiary body of the UNGA was further reaffirmed in OP 3 of GA resolution 65/281.

Moreover, Article 10 of the Charter of the United Nations affirms that "the General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter". In this regard, the General Assembly has the authority to guide the overall work of the organization, including by reviewing the mandates established by subordinate bodies like the Human Rights Council to ensure they are consistent with international law, internationally recognized Human Rights, and the purposes for which the UN was founded.

It has been argued that the GA has never before challenged an HRC resolution of this nature. However, the facts do not support that claim. In 2006 the GA by its resolution 61/178, decided to defer consideration of and action on the United Nations Declaration on the right on indigenous peoples adopted by the Human Right Council by its resolution 1/2 of 29th June 2006, in order to allow time for further consultations. Furthermore, in 2013, the GA adopted its resolution 68/144 deferring consideration of and action on HRC resolution 24/24 to create a focal point on reprisal.

The Africa Group also wishes to put on record that this action is not to question the mandate and authority of the Human Rights Council to create special mandate holders. It is fully within the mandate of the HRC to establish special procedures, and the AG resolution does not challenge the legality of the HRC's actions in this regard. Rather, the resolution seeks to allow Member States time to come to common understanding on the notion of "sexual orientation and gender identity" given that international law is silent on this issue, and that that the mandate for the office subsequently is ambiguous.

Since the tabling of this draft resolution by AG, a group of countries have tabled an amendment calling for the deletion of the AG draft resolution that, seeks to defer consideration and action on Human Rights Council resolution 32/2 of 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 rapporteur established therein will be defined.

The African Group is therefore seeking the support of your delegation to vote against the amendment in order to keep the integrity of the resolution tabled by the group and stands ready to engage constructively with all Member States and all interested parties on the way forward.

The Group wishes to reiterate that it is taking this action in line with the principles of international law, the purposes and principles enshrined in the Charter of the United Nations and the universally accepted principles of respect for the independence and sovereignty of member states.

Thank you!



The Permanent Missions of Argentina, Brazil, Chile, Colombia, Costa Rica, El Salvador, Mexico and Uruguay present their compliments to all Permanent Missions to the United Nations and have the honor to circulate an explanatory note on amendment L.52 to draft resolution A/C.3/71/L.46 on the report of the Human Rights Council, to be considered by the Third Committee.

The Permanent Missions of Argentina, Brazil, Chile, Colombia, Costa Rica, El Salvador, Mexico and Uruguay avail themselves of the opportunity to renew to all permanent missions to the United Nations the assurances of their highest consideration.

New York, November 15th 2016

Note on amendment L.52 introduced to draft resolution L.46 on the Report of the Human Rights Council

The Permanent Missions of Argentina, Brazil, Chile, Colombia, Costa Rica, El Salvador, Mexico and Uruguay to the United Nations seek your urgent support to preserve the ability of the Human Rights Council to function.

Draft resolution L.46 on the Human Rights Council report includes additional language deferring the consideration of and action on Human Rights Council Resolution 32/2, by objecting to the legal basis for the creation of an Independent Expert, despite the fact that the mandate had been established in accordance with rules of procedure.

Regrettably, since no informal consultations were convened, our governments, as main sponsors of resolution 32/2 at the Human Rights Council, introduced amendment L.52 requesting deletion of OP2 from draft resolution L.46. The OP2 of the draft resolution L.46 as proposed states:

OP2 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 seriousness of the consequences that OP2 would engender lies in the fact that never before has a country or group of countries attempted to challenge a special procedures mandate by the Human Rights Council with an appointed and fully functioning mandate holder.

Our countries believe that OP2 would undermine the independence and integrity of the Human Rights Council and weakens the United Nations Human Rights system in numerous ways.

The role of the Council, as the main United Nations body for dealing with human rights issues, is clearly articulated in its founding documents: General Assembly resolution 60/251 and Human Rights Council resolution 5/1. In particular, General Assembly resolution 60/251 states that the Council is “responsible for promoting universal 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 extensive deliberation, debate and substantive negotiations, the Human Rights Council adopts numerous resolutions, mandating panels, reports, special procedures and other mechanisms. If the General Assembly reopens the Council’s annual report and use a selective approach to which resolution it seeks to block or defer indefinitely it would fundamentally undermine the authority granted to the Council by the General Assembly, thus having far reaching implications well beyond the specific resolution under consideration.

This is not the first time a special procedure mandate has been created through a voted resolution in the Human Rights Council. Several mandates faced opposition in the Council prior to establishment. It is however the first time that an attempt has been made to re-litigate in the Third Committee a mandate created by a valid, adopted resolution of the Human Rights Council. If it succeeds, nothing would prevent countries from targeting other existing mandate holders or mechanisms related to other sensitive issues.

GA resolution 60/251 provides the legal basis for the Council to address any human rights issue, including protection against violence and discrimination of any kind.

An explicit treaty-based definition of the issue to be considered is not a requirement for a mandate to be established by the Human Rights Council. There are over a dozen current mandates of the Council that may be considered to fall under such a category, some of which were adopted by voted resolutions. Therefore, the Human Rights Council can decide to use the special procedures mechanism to address discrimination against individuals on particular bases, even if those bases are not expressly referred to in an international human rights treaty, as it has done in the cases of albinism, minorities, internally displaced persons, and others.

The Independent Expert of Res 32/2 HRC has already commenced his work

Following the adoption of resolution 32/2, an open call for applications was publicly made on the website of the Office of the High Commissioner for Human Rights. A total of 21 individuals applied for the position. The Consultative Group of the Human Rights Council, composed of one country representative per region interviewed shortlisted candidates and submitted the top three candidates who met the general criteria and possessed the highest qualification for the mandate.

Based on this list, and after consultations with regional groups, the President of the Council chose to appoint the first choice of the Consultative Group: Vitit Muntarbhorn from Thailand. In accordance with the rules of procedure, the proposal was presented to the Human Rights Council by formal communication 31 days before the scheduled appointment date. The Human Rights Council endorsed the choice of the President at its 33rd session, in September 2016.

No state formally objected to his appointment in the Council. Some countries voiced their intention not to cooperate with the Independent Expert.¹ Following the appointment by the Council, Vitit Muntarbhorn has already commenced his work as Independent Expert.

There are some key differences between resolution 32/2 and resolutions 1/2 and 24/24, invoked as precedents by the proponents of L.46. HRC resolution 1/2 recommended to

¹ Russia and Saudi Arabia (on behalf of OIC, except Albania) made statements expressing their non-cooperation with this mandate, and refusal to engage in any way with the Independent Expert

the General Assembly the adoption of a draft resolution; therefore it was the Council itself that refer the Declaration on the rights of indigenous peoples for consideration of the General Assembly. HRC 24/24 created a focal point for the issue of reprisals, recommending to the General Assembly the involvement of the Office of the Secretary-General and other bodies. HRC resolution 32/2 is squarely about the appointment of a special procedures mandate holder, an issue completely under the purview of the Council itself.

Resolution 32/2 does not create new rights.

Resolution 32/2 was adopted by the Human Rights Council in June 2016 to establish a mandate for an Independent Expert on protection against violence and discrimination based on sexual orientation and or gender identity. The resolution was adopted after several preparatory informal meetings, four hours of discussions at the Council and the defeat of a no action motion.

Resolution 32/2 of the Human Rights Council reaffirms that all human beings are born free and equal in dignity and rights. While deploring violence on the basis of sexual orientation and gender identity, Res 32/2 focuses on the creation of a mechanism whose first task is to assess the implementation of existing international human rights instruments, while identifying both best practices and gaps.

It should also be noted that Resolution 32/2 incorporated several amendments addressing the concerns of Member States. In particular, our countries would like to highlight PP8 and PP11 of Resolution 32/2:

PP8 Underlining the fundamental importance of respecting relevant domestic debates at the national level on matters associated with historical, cultural, social and religious sensitivities;

PP11 Underlining that the present resolution should be implemented while ensuring respect for the sovereign right of each country as well as its national law, development priorities, the various religious and ethical values and cultural backgrounds of its people, and should also be in full conformity with universally recognized international human rights;

In this vein, our countries believe that it is in the common interest of all States to protect the integrity and effectiveness of the human rights system, and in this regard, we are grateful for the support received to the amendment, co-sponsored, to this date, by 56 countries.

For all the above-mentioned reasons and considerations, the Delegations of Argentina, Brazil, Chile, Colombia, Costa Rica, El Salvador, Mexico and Uruguay seek your support to the amendment L.52 by co-sponsoring and voting in favor of the amendment.



BURKINA FASO
Unité – Progrès – Justice

*Mission Permanente
auprès des Nations Unies*

MIPER / BF N° **16.674**

_____/PCS/ac

New York, **DEC 15 2016**

The Permanent Mission of Burkina Faso to the United Nations in its capacity as chair of the African group for the month of December 2016 presents its compliments to all Permanent Missions to the United Nations and has the honor to circulate the attached African Group Explanatory Note on the amendment proposed by the group on the resolution on the Report of Human Rights Council.

In this regard the African Group would deeply appreciate the widest possible cross-regional support for this amendment.

The Permanent Mission of Burkina Faso to the United Nations avails itself of this opportunity to renew to all Permanent Missions to the United Nations, the assurances of its highest consideration

**Permanent Missions
to the United Nations**

NEW YORK



Amendment submitted by the African Group to the Resolution on the Report of the Human Rights Council A/C.3/71.L.46

Inserts the following paragraph as OP2.

OP2. 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.

**AFRICAN GROUP EXPLANATORY NOTE ON DRAFT RESOLUTION
A/C.3/71/L.46 ON THE REPORT OF THE HUMAN RIGHTS COUNCIL TO
BE ADOPTED BY THE GENERAL ASSEMBLY**

The African Group (AG) has the honour to refer to its draft resolution entitled "Report of the Human Rights Council," contained in document A/C.3/71/L.46.

As you are aware, the African Group presented its traditional resolution entitled "Report of the Human Rights Council" in the Third Committee recommending the report of the Human Rights Council (HRC) to the General Assembly (GA) for adoption. In that resolution the AG called for the deferral of consideration of and action on HRC resolution 32/2 of 30 June 2016 entitled "protection against violence and discrimination based on sexual orientation and gender identity" in order to allow time for further consultations to determine the basis upon which the mandate of the special procedure established therein will be defined.

Unfortunately, the call for a deferral of the resolution was challenged through an amendment tabled by a group of countries. Sadly, the amendment passed by a narrow margin of **84 in favour, 77 against and 17 abstaining** which effectively deleted OP2 of the original draft resolution. In line with its deep convictions on the issue and in keeping with the principles and purposes of the Charter of the United Nations, the African would propose the re-instatement of the deleted paragraph through an amendment it will propose during the adoption of the Report of the Third Committee in the General Assembly.

The call for the deferral was premised on the fact that there is no international agreement on the definition of the concept of "sexual orientation and gender identity". Since international law is silent on the issue, the Africa Group is of the view that the mandate of the Independent Expert lacks the necessary specificity to be carried out and also runs contrary to HRC resolution 5/1,

which states that new mandates “should be as clear and specific as possible, so as to avoid ambiguity”.

However, the proposal of the AG was deliberately misrepresented and misconstrued as an attack on the mandate and authority of the Human Rights Council (HRC). The group avers that it is fully within the mandate of the HRC to establish special procedures, and the AG resolution does not challenge the legality of the HRC’s actions in this regard. Rather, the resolution seeks to allow Member States time to come to common understanding on the notion of “sexual orientation and gender identity” given that there is no international definition on the concept.

Even as we acknowledge the mandate of the HRC, the Group is also mindful that the HRC was created as a subsidiary body of the UNGA, hence the need for the Council to report on an annual basis to the universal membership of the GA. In this context, the group remains firmly committed towards ensuring that the provisions of OP5(c), (i) and (j) of UNGA resolution 60/251 are adhered to. The Council’s status as a subsidiary body of the UNGA was further reaffirmed in OP 3 of GA resolution 65/281.

Moreover, Article 10 of the Charter of the United Nations affirms that “the General Assembly may discuss any questions or any matters within the scope of the present Charter relating to the powers and functions of any organs provided for in the present Charter”. In this regard, the General Assembly has the authority to guide the overall work of the organization, including by reviewing the mandates established by subordinate bodies like the Human Rights Council to ensure they are consistent with international law, internationally recognized Human Rights, and the purposes for which the UN was founded. The group is therefore surprised at attempts by some delegations to frame this discussion as a vote on the mandate of the HRC.

The African Group further wishes reiterate that this will not be the first time the GA will re-open a decision of the HRC. In 2006 the GA by its resolution 61/178, decided to defer consideration of and action on the United Nations Declaration on the right on indigenous peoples adopted by the Human Right Council by its resolution 1/2 of 29th June 2006, in order to allow time for further consultations. Furthermore, in 2013, the GA adopted its resolution 68/144 deferring consideration of and action on HRC resolution 24/24 to create a focal point on reprisal.

The Africa Group also wishes to bring to the attention of all concerned, the recent press release from the OHCHR regarding the keynote address of the Independent Expert at the recently held world conference of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) in Bangkok, Thailand on 30 November, 2016. In his address to the Conference, Mr. VititMuntarbhorn defined his mandate by five key goals – “decriminalization, depathologization, recognition of gender identity, cultural inclusion and empathization.” This shows clearly that the mandate is already being abused by the independent expert to promote legally baseless new rights that are not internationally recognized through actions that antagonize UN member states and create acrimony within the UN system. Also, nowhere in HRC resolution 32/2 which established his office has such a mandate been granted him.

The Group is alarmed at latest attempt to re-define the mandate of the Independent Expert and once again propose that in order to garner consensus on the very foundation on which this mandate has been created, it is imperative that there are further consultations by member states on this issue. This call is aimed at safeguarding the principles of internal law, the purposes and principles enshrined in the charter of the United Nations and the universally accepted principles of respect for the independence and sovereignty of member states.

The African Group is therefore seeking the support of your delegation to vote in support of the amendment to re-instate OP 2 calling for a deferral of consideration and action on HRC Resolution 32/2. Member States of the African Group once again re-affirm their commitment to the promotion and protection of all Human Rights and abhor any form of violence or discrimination on any group of people regardless of their race, religion, sex, geographical origin or economic status.

Thank you!



The Permanent Missions of Argentina, Brazil, Chile, Colombia, Costa Rica, El Salvador, Mexico and Uruguay present their compliments to all Permanent Missions to the United Nations and have the honor to refer to draft amendment A/71/L.45 to the draft resolution recommended in paragraph 17 of the report of the Third Committee under the item 63 to the General Assembly.

The amendment will be considered in the upcoming 65th plenary meeting of the General Assembly on Monday December 19, 2016 with the intention to insert a new OP in the resolution on the report of the Human Rights Council to defer consideration and action on HRC Resolution 32/2. A similar attempt **was rejected** in the Third Committee with the support of countries from all five regional groups.

In the Third Committee deliberations, our countries clearly stated our concerns on the risks to undermine the work of the Human Rights Council, as well as its integrity and independence.

There are some key differences between resolution 32/2 and resolutions 1/2 and 24/24, invoked as precedents by the proponents of the amendment. HRC resolution 1/2 recommended to the General Assembly the adoption of a draft resolution; therefore it was the Council itself that referred the issue to the General Assembly. HRC 24/24 created a focal point for the issue of reprisals, recommending to the General Assembly the involvement of the Office of the Secretary-General and other bodies.

This is the **first time** that a group of countries has attempted to challenge a special procedures mandate holder of the Human Rights Council, already appointed and fully functioning, on an issue completely under the purview of the Council.

An argument repeatedly used by the proponents of the amendment is the lack of a definition of "sexual orientation and gender identity". An explicit treaty-based definition is not a requirement for a mandate to be established by the Human Rights Council, as several existing and fully functional mandates show. Besides, the concept of sexual orientation and gender identity is well known to the international community, in particular in the field of human rights law.



The issue of violence and discrimination based on sexual orientation and gender identity has been the object of three resolutions of the Human Rights Council, reports of the Office of the High Commissioner on Human Rights and of recommendations and decisions of human rights treaty bodies (Human Right Committee¹, Committee on the Rights of the Child²; Committee on the Economic, Social and Cultural Rights³; and Committee on the Elimination of Discrimination against Women⁴).

In addition, many existing mandate holders have addressed issues related to sexual orientation and gender identity (Special Rapporteur on extrajudicial, summary or arbitrary executions⁵; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment⁶; Special Rapporteur on violence against women, its causes and consequences⁷; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment⁸; Special Rapporteur on the right to education⁹; among others).

Moreover, on September 29, 2015 a call to end violence and discrimination based on sexual orientation and gender identity was issued by 12 United Nations entities (ILO, OHCHR, UNAIDS Secretariat, UNDP, UNESCO, UNFPA, UNHCR, UNICEF, UNODC, UN Women, WFP and WHO)¹⁰ stressing the urgency of addressing this issue.

More than 100 countries already received and accepted recommendations related to violence and discrimination based on sexual orientation and gender identity under the Universal Periodic Review. Since the UPR was established, there have been almost 1,300 recommendations on the issue of sexual orientation and gender identity.

Since 2002, the General Assembly resolution on extrajudicial, summary or arbitrary executions has included a reference to sexual orientation and gender identity and this past June, the Security Council "*condemned in the strongest terms the terrorist*

¹ HR Committee. Toonen versus Australia. Communication 488/1992. April 4, 1994;
² Committee on the Rights of the Child. Concluding Comments 13 (2011) and 14 (2013).
³ Committee on the Economic, Social and Cultural Rights. General Comments 14, 15, 18, 19 and 20.
⁴ Committee on the Elimination of Discrimination against Women. General Comment 29
⁵ Reports E/CN.4/1999/39; E/CN.4/2000/3; E/CN.4/2001/9; A/57/138
⁶ Reports E/CN.4/2001/66/Add.2; A/HRC/31/57
⁷ Reports E/CN.4/2002/83; A/HRC/14/22/Add.2; A/HRC/17/26/Add.2
⁸ Report A/HRC/14/20
⁹ Report A/65/162
¹⁰ http://www.ohchr.org/Documents/Issues/Discrimination/Joint_LGBTI_Statement_ENG.PDF



attack in Orlando, Florida, on 12 June 2016, targeting persons as a result of their sexual orientation" in its press release SC/12399.

At the regional level, it has also been addressed at length. In Latin America and the Caribbean, there are OAS General Assembly resolutions and several Inter American regional and sub-regional political declarations. The European Court of Human Rights has included the term sexual orientation in several decisions since 1999 and the African Commission on Human and Peoples Rights mentioned it for the first time in 2006 in the findings of a case¹¹. More recently, in 2014, the African Commission issued Resolution 275 on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity, making a strong call to all Members States to stop violence and discrimination on those bases.

The mandate of the Independent Expert created by HRC resolution 32/2 is not on sexual behaviors or new rights. Nor is it a mandate with a hidden agenda. This is a mandate on a universal issue that should bring together all Members States of the United Nations: the fight against violence and discrimination.

Finally, in line with arguments exposed, we cannot agree with the idea that a valid decision of the Human Rights Council on an issue as essential as the fight against violence and discrimination could undermine the States sovereignty or be contrary to the Charter of the United Nations.

For the reasons above, our countries, call for your support to the resolution as adopted by the Third Committee and therefore for your **vote AGAINST amendment A/71/L.45**.

The Permanent Missions of Argentina, Brazil, Chile, Colombia, Costa Rica, El Salvador, Mexico and Uruguay avail themselves of the opportunity to renew to all permanent missions to the United Nations the assurances of their highest consideration.

New York, December 16, 2016

¹¹ "Zimbabwe Human Rights NGO Forum vs Zimbabwe". Findings. Page 169.

05

Civil Society Advocacy

5.1 Joint Letters from Civil Society Organizations to All Government Representatives in New York

5.1.1 LETTER FROM 850 CIVIL SOCIETY ORGANIZATIONS, 21 NOVEMBER 2016

Your Excellencies,

We are writing to urge you to reject the attempt by some States at United Nations General Assembly's Third Committee to defer consideration of parts of the United Nations Human Rights Council report. As civil society organizations from all regions of the world, we look to the Human Rights Council for protection of the human rights of all.

Every year, after much deliberation, debate and substantive negotiations, the Council adopts numerous resolutions, mandating panels, reports, Special Procedures, Commissions of Inquiry and other tools and mechanisms. The proposed resolution A/C.3/71/L.46 attempts to set a worrying precedent. If the Third Committee were able to reopen the Council's annual report and select which resolutions it supports and which it seeks to block, even through the pretext of deferment, it would fundamentally undermine the authority granted to the Council by the General Assembly. In effect, this would open all Council resolutions up to renegotiation and debate at Third Committee every year, and have far-reaching implications well beyond the specific resolution currently under consideration.

While the proposed resolution specifically targets the creation by the Council at its June session of an Independent Expert to address violence and discrimination based on sexual orientation and gender identity, the same reasoning could apply to undermine any decision validly taken by the Council at any time.

The creation of a Special Procedure at the June session was fully within the mandate and authority of the Council. The decision was based on the findings in two reports A/HRC/19/41 that the Council requested of the UN High

Commissioner for Human Rights. The Council concluded that protection against violence and discrimination on the basis of sexual orientation and gender identity merited particular attention. A mandate-holder was appointed at the September session without a vote, and has already assumed office and commenced work as of 1st November 2016.

There is no basis in the attempt to now prevent the mandate holder from continuing his important work. The suggestion that there is a need to consider the legal basis for the mandate is clearly a pretext. Those States proposing further consideration of the legal basis have already issued public statements at the Council indicating that they don't recognize and don't intend to cooperate with the new mandate holder under any circumstances.

The legal basis for the mandate is exactly the same as the legal basis on which all three sexual orientation and gender identity (SOGI) resolutions adopted by the Council were founded, including that presented by South Africa in 2011. The establishment of the Independent Expert does not seek to create new standards, but simply to address within the existing framework provided by established international human rights law a protection gap for individuals facing violence and discrimination on the basis of their sexual orientation and gender identity. Special Procedures mandates have been created in recent years by the Council focusing on systemic discrimination, marginalization and violations of a number of populations that have no explicit reference in the Universal Declaration of Human Rights, such as persons with albinism and older persons. We encourage States to support the amendment by the Latin American and Caribbean (LAC) countries and we look to all states to uphold and defend institutional integrity of United Nations human rights system.

Yours faithfully

06

Comparison of Votes on the IE SOGI at the 71st Session of the GA

06 Comparison of Votes on the IE SOGI at the 71st Session of the GA

STATE	LAC 8 AMENDMENT THIRD COMMITTEE	AFRICAN AMENDMENT TO BLOCK THE IE SOGI MANDATE in the UNGA PLENARY	AFRICAN AMENDMENT TO BLOCK THE IE SOGI MANDATE in the FIFTH COMMITTEE	AFRICAN AMENDMENT TO BLOCK THE IE SOGI MANDATE in the UNGA PLENARY
AFRICAN GROUP				
ALGERIA	N	Y	Y	Y
ANGOLA	N	DNV	Y	Y
BENIN	N	Y	Y	Y
BOTSWANA	N	Y	Y	Y
BURKINA FASO	N	Y	Y	Y
BURUNDI	N	Y	Y	Y
CABO VERDE	Y	N	DNV	DNV
CAMEROON	N	Y	Y	Y
CENTRAL AFRICAN REP.	N	DNV	Y	Y
CHAD	N	Y	Y	Y
COMOROS	N	Y	DNV	Y
CONGO	N	Y	Y	Y
CÔTE D'IVOIRE	N	Y	Y	Y
DEMOCRATIC REP. OF THE CONGO	N	Y	DNV	DNV
DJIBOUTI	N	Y	Y	Y
EGYPT	N	Y	Y	Y
EQUATORIAL GUINEA	DNV	Y	Y	Y
ERITREA	N	Y	Y	Y
ETHIOPIA	N	Y	Y	Y
GABON	N	Y	Y	Y
GAMBIA	N	DNV	DNV	DNV
GHANA	N	Y	Y	Y
GUINEA	N	Y	Y	Y
GUINEA-BISSAU	A	Y	DNV	DNV
KENYA	N	Y	Y	Y
LESOTHO	N	Y	Y	Y
LIBERIA	A	A	A	A
LIBYA	N	Y	Y	Y
MADAGASCAR	N	Y	Y	Y
MALAWI	N	Y	DNV	DNV
MALI	N	Y	Y	Y
MAURITANIA	N	Y	Y	Y
MAURITIUS	N	Y	Y	Y
MOROCCO	N	Y	Y	Y
MOZAMBIQUE	DNV	DNV	DNV	DNV
NAMIBIA	N	Y	Y	Y
NIGER	N	Y	Y	Y

STATE	LAC 8 AMENDMENT THIRD COMMITTEE	AFRICAN AMENDMENT TO BLOCK THE IE SOGI MANDATE in the UNGA PLENARY	AFRICAN AMENDMENT TO BLOCK THE IE SOGI MANDATE in the FIFTH COMMITTEE	AFRICAN AMENDMENT TO BLOCK THE IE SOGI MANDATE in the UNGA PLENARY
NIGERIA	N	Y	Y	Y
RWANDA	A	A	DNV	DNV
SÃO TOMÉ AND PRÍNCIPE	DNV	DNV	DNV	DNV
SENEGAL	N	Y	Y	Y
SEYCHELLES	Y	DNV	DNV	DNV
SIERRA LEONE	DNV	Y	Y	Y
SOMALIA	A	Y	DNV	DNV
SOUTH AFRICA	Y	N	N	N
SOUTH SUDAN	DNV	Y	DNV	DNV
SUDAN	N	Y	Y	Y
SWAZILAND	N	Y	DNV	DNV
TOGO	N	Y	Y	Y
TUNISIA	DNV	DNV	DNV	DNV
UGANDA	N	Y	Y	Y
UNITED REP. OF TANZANIA	N	Y	Y	Y
ZAMBIA	N	Y	DNV	DNV
ZIMBABWE	N	Y	Y	Y
ASIA PACIFIC GROUP				
AFGHANISTAN	N	Y	DNV	Y
BAHRAIN	N	Y	Y	Y
BANGLADESH	N	Y	Y	Y
BHUTAN	A	A	DNV	A
BRUNEI DARUSSALAM	N	Y	Y	Y
CAMBODIA	Y	N	N	N
CHINA	N	Y	Y	Y
CYPRUS	Y	N	N	N
DEMOCRATIC PEOPLE'S REP. OF KOREA	N	Y	Y	DNV
FIJI	Y	N	N	N
INDIA	A	A	A	A
INDONESIA	N	Y	Y	Y
IRAN (ISLAMIC REP. OF)	N	Y	Y	Y
IRAQ	N	Y	Y	Y
JAPAN	Y	N	N	N
JORDAN	N	Y	Y	Y
KAZAKHSTAN	A	A	A	DNV
KIRIBATI	Y	N	N	N
KUWAIT	N	Y	Y	Y
KYRGYZSTAN	N	Y	Y	Y
LAO PEOPLE'S REP.	DNV	DNV	DNV	DNV
LEBANON	DNV	DNV	DNV	DNV
MALAYSIA	N	Y	Y	Y
MALDIVES	N	Y	Y	Y
MARSHALL ISLANDS	Y	N	N	N
MICRONESIA (FED. STATES OF)	DNV	DNV	DNV	DNV

STATE	LAC 8 AMENDMENT THIRD COMMITTEE	AFRICAN AMENDMENT TO BLOCK THE IE SOGI MANDATE in the UNGA PLENARY	AFRICAN AMENDMENT TO BLOCK THE IE SOGI MANDATE in the FIFTH COMMITTEE	AFRICAN AMENDMENT TO BLOCK THE IE SOGI MANDATE in the UNGA PLENARY
MONGOLIA	Y	N	N	N
MYANMAR	A	A	A	A
NAURU	N	Y	Y	Y
NEPAL	A	N	N	N
OMAN	N	Y	Y	Y
PAKISTAN	N	Y	Y	Y
PALAU	Y	N	N	N
PAPUA NEW GUINEA	A	A	A	A
PHILIPINES	A	A	A	A
QATAR	N	Y	Y	Y
REP. OF KOREA	Y	N	N	N
SAMOA	Y	N	N	DNV
SAUDI ARABIA	N	Y	Y	Y
SINGAPORE	N	Y	A	A
SOLOMAN ISLANDS	DNV	DNV	DNV	DNV
SRI LANKA	Y	N	N	N
SYRIAN ARAB REP.	N	Y	Y	Y
TAJKISTAN	N	Y	Y	Y
THAILAND	Y	N	N	N
TIMOR-LESTE	Y	N	DNV	N
TONGA	DNV	DNV	DNV	DNV
TURKMENISTAN	DNV	DNV	DNV	DNV
TUVALU	Y	N	DNV	DNV
UNITED ARAB EMIRATES	N	Y	Y	Y
UZBEKISTAN	N	Y	Y	Y
VANUATU	Y	N	N	N
VIETNAM	Y	N	N	N
YEMEN	N	Y	Y	DNV
EASTERN EUROPEAN GROUP				
ALBANIA	Y	N	N	N
ARMENIA	A	A	DNV	DNV
AZERBAIJAN	N	Y	Y	Y
BELARUS	N	Y	Y	Y
BOSNIA AND HERZEGOVINA	Y	N	N	N
BULGARIA	Y	N	N	N
CROATIA	Y	N	N	N
CZECH REPUBLIC	Y	N	N	N
ESTONIA	Y	N	N	DNV
GEORGIA	Y	N	N	N
HUNGARY	Y	N	N	N
LATVIA	Y	N	N	N
LITHUANIA	Y	N	N	N
MONTENEGRO	Y	N	N	N

STATE	LAC 8 AMENDMENT THIRD COMMITTEE	AFRICAN AMENDMENT TO BLOCK THE IE SOGI MANDATE in the UNGA PLENARY	AFRICAN AMENDMENT TO BLOCK THE IE SOGI MANDATE in the FIFTH COMMITTEE	AFRICAN AMENDMENT TO BLOCK THE IE SOGI MANDATE in the UNGA PLENARY
POLAND	Y	N	N	N
REP. OF MOLDOVA	Y	DNV	N	N
ROMANIA	Y	N	N	N
RUSSIAN FED.	N	Y	Y	Y
SERBIA	Y	N	N	N
SLOVAKIA	Y	N	N	N
SLOVENIA	Y	N	N	N
THE FORMER YUGOSLAV REP. OF MACEDONIA	Y	N	N	N
UKRAINE	Y	N	N	N
LATIN AMERICA AND CARIBBEAN GROUP				
ANTIGUA AND BARBUDA	N	N	N	N
ARGENTINA	Y	N	N	N
BAHAMAS	Y	N	N	N
BARBADOS	A	A	A	A
BELIZE	Y	Y	N	DNV
BOLIVIA (PLURINATIONAL STATE OF)	Y	N	N	N
BRAZIL	Y	N	N	N
CHILE	Y	N	N	N
COLOMBIA	Y	N	N	N
COSTA RICA	Y	N	N	N
CUBA	DNV	DNV	N	N
DOMINICA	DNV	A	DNV	DNV
DOMINICAN REP.	Y	N	N	N
ECUADOR	A	N	N	N
EL SALVADOR	Y	N	N	N
GRENADA	DNV	A	DNV	DNV
GUATEMALA	Y	A	A	A
GUYANA	N	Y	Y	Y
HAITI	A	A	DNV	DNV
HONDURAS	Y	N	A	A
JAMAICA	N	Y	A	A
MEXICO	Y	N	N	N
NICARAGUA	N	Y	Y	Y
PANAMA	Y	N	N	N
PARAGUAY	A	A	A	A
PERU	Y	N	N	N
SAINT KITTS AND NEVIS	N	N	A	N
SAINT LUCIA	N	Y	A	A
SAINT VINCENT AND THE GRENADINES	N	Y	A	A
SURINAME	N	DNV	DNV	DNV
TRINIDAD AND TOBAGO	A	A	A	A
URUGUAY	Y	N	N	N

STATE	LAC 8 AMENDMENT THIRD COMMITTEE	AFRICAN AMENDMENT TO BLOCK THE IE SOGI MANDATE in the UNGA PLENARY	AFRICAN AMENDMENT TO BLOCK THE IE SOGI MANDATE in the FIFTH COMMITTEE	AFRICAN AMENDMENT TO BLOCK THE IE SOGI MANDATE in the UNGA PLENARY
VENEZUELA (BOLIVARIAN REP. OF)	Y	N	N	N
WESTERN EUROPEAN AND OTHERS GROUP				
ANDORRA	Y	N	N	N
AUSTRALIA	Y	N	N	N
AUSTRIA	Y	N	N	N
BELGIUM	Y	N	N	N
CANADA	Y	N	N	N
DENMARK	Y	N	N	N
FINLAND	Y	N	N	N
FRANCE	Y	N	N	N
GERMANY	Y	N	N	N
GREECE	Y	N	N	N
ICELAND	Y	N	N	N
IRELAND	Y	N	N	N
ISRAEL	Y	N	N	N
ITALY	Y	N	N	N
LIECHTENSTEIN	Y	N	N	N
LUXEMBOURG	Y	N	N	N
MALTA	Y	N	N	N
MONACO	Y	N	N	N
NETHERLANDS	Y	N	N	N
NEW ZEALAND	Y	N	N	N
NORWAY	Y	N	N	N
PORTUGAL	Y	N	N	N
SAN MARINO	Y	N	N	N
SPAIN	Y	N	N	N
SWEDEN	Y	N	N	N
SWITZERLAND	Y	N	N	N
TURKEY	Y	N	N	N
UNITED KINGDOM	Y	N	N	N
UNITED STATES OF AMERICA	Y	N	N	N
RESULTS				
YES	84	77	65	65
NO	77	84	82	81
ABSTENTION	17	16	16	15
DID NOT VOTE	15	16	30	32
FINAL RESULT	Y	N	N	N

07

Annexures

7.1 Draft Resolution of the Report of the Human Rights Council in the Third Committee

United Nations

A/C.3/71/L.46



General Assembly

Distr.: Limited
3 November 2016

Original: English

Seventy-first session
Third Committee

Agenda item 63

Report of the Human Rights Council

Botswana:* draft resolution

Report of the Human Rights Council

The General Assembly,

Recalling its resolutions [60/251](#) of 15 March 2006, by which it established the Human Rights Council, and [65/281](#) of 17 June 2011 on the review of the Council,

Recalling also its resolutions [62/219](#) of 22 December 2007, [63/160](#) of 18 December 2008, [64/143](#) of 18 December 2009, [65/195](#) of 21 December 2010, [66/136](#) of 19 December 2011, [67/151](#) of 20 December 2012, [68/144](#) of 18 December 2013, [69/155](#) of 18 December 2014 and [70/136](#) of 17 December 2015,

Having considered the recommendations contained in the report of the Human Rights Council,^{1,2}

1. *Takes note* of the report of the Human Rights Council,¹ including the addenda thereto,² and its recommendations;

2. *Decides* to defer consideration of and action on Human Rights Council resolution 32/2 of 30 June 2016³ 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.

* On behalf of the States Members of the United Nations that are members of the Group of African States.

¹ *Official Records of the General Assembly, Seventy-first Session, Supplement No. 53 (A/71/53).*

² *Ibid.*, Supplement No. 53 (A/71/53/Add.1 and Add.2).

³ *Official Records of the General Assembly, Seventy-first Session, Supplement No. 53 (A/71/53)*, chap. V, sect. A.



7.2 LAC8 Amendment of the Report of the Human Rights Council in the Third Committee

United Nations

A/C.3/71/L.52



General Assembly

Distr.: Limited
8 November 2016

Original: English

Seventy-first session
Third Committee

Agenda item 63

Report of the Human Rights Council

Albania, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, Colombia, Costa Rica, Croatia, Cyprus, Czechia, Denmark, El Salvador, Estonia, Finland, France, Germany, Greece, Guatemala, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Monaco, Montenegro, Netherlands, New Zealand, Norway, Palau, Panama, Portugal, Republic of Korea, Republic of Moldova, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America and Uruguay: amendment to draft resolution A/C.3/71/L.46

Report of the Human Rights Council

Delete operative paragraph 2.

16-19524 (E) 091116

Please recycle



7.3 Adopted Resolution Taking Note of the Report of the Human Rights Council in the Third Committee

United Nations

A/C.3/70/L.66



General Assembly

Distr.: Limited
16 November 2015

Original: English

Seventieth session
Third Committee
Agenda item 67
Report of the Human Rights Council

Sierra Leone:* draft resolution

Report of the Human Rights Council

The General Assembly,

Recalling its resolutions 60/251 of 15 March 2006, by which it established the Human Rights Council, and 65/281 of 17 June 2011 on the review of the Council,

Recalling also its resolutions 62/219 of 22 December 2007, 63/160 of 18 December 2008, 64/143 of 18 December 2009, 65/195 of 21 December 2010, 66/136 of 19 December 2011, 67/151 of 20 December 2012, 68/144 of 18 December 2013 and 69/155 of 18 December 2014,

Having considered the recommendations contained in the report of the Human Rights Council,^{1,2}

Takes note of the report of the Human Rights Council,¹ including the addendum thereto,² and its recommendations.

* On behalf of the States Members of the United Nations that are members of the Group of African States.

¹ *Official Records of the General Assembly, Seventieth Session, Supplement No. 53 (A/70/53).*

² *Ibid., Supplement No. 53A (A/70/53/Add.1).*



7.4 Oral Amendment Proposed by the African Group in the GA Plenary Discussion of the Third Committee

Oral Amendment Proposed by the African Group in the GA Plenary Discussion of the Third Committee on December 19th, 2016

“Decides to defer consideration of and action on Human Rights Council resolution 32/2 of 30 June 20163 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.”

7.5 Resolution Adopted by the General Assembly on the Report of the Human Rights Council

United Nations

A/RES/71/174



General Assembly

Distr.: General
18 January 2017

Seventy-first session
Agenda item 63

Resolution adopted by the General Assembly on 19 December 2016

[on the report of the Third Committee (A/71/479)]

71/174. Report of the Human Rights Council

The General Assembly,

Recalling its resolutions 60/251 of 15 March 2006, by which it established the Human Rights Council, and 65/281 of 17 June 2011 on the review of the Council,

Recalling also its resolutions 62/219 of 22 December 2007, 63/160 of 18 December 2008, 64/143 of 18 December 2009, 65/195 of 21 December 2010, 66/136 of 19 December 2011, 67/151 of 20 December 2012, 68/144 of 18 December 2013, 69/155 of 18 December 2014 and 70/136 of 17 December 2015,

Having considered the recommendations contained in the report of the Human Rights Council,^{1,2}

Takes note of the report of the Human Rights Council,¹ including the addenda thereto,² and its recommendations.

*65th plenary meeting
19 December 2016*

¹ *Official Records of the General Assembly, Seventy-first Session, Supplement No. 53 (A/71/53).*

² *Ibid., Supplement No. 53A and corrigendum (A/71/53/Add.1 and Corr.1); and ibid., Supplement No. 53B and corrigendum (A/71/53/Add.2 and Corr.1).*



7.6 Oral Amendment Proposed by the African Group in the Fifth Committee and its GA Plenary

Oral Amendment by the African Group in the Fifth Committee and its GA Plenary on December 23rd, 2016

“Decides to not allocate budgetary resources for the implementation of the resolution 32/2 of the human rights council against violence and gender related violence.”¹

¹Proposed language for *Special Subjects relating to the programme budget for the biennium 2016-2017*, A/C/5/71/L.19, Fifth Committee, Page 16 Section XV; proposed language for *71/272 Special subjects relating to the programme budget for the biennium 2016-2017*, A/RES/71/272, General Assembly, Page 16 Section XV.

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