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**Preparation Paper/Study Guide:**

**Human Rights Council (HRC)**

**“Preventing Violence and Discrimination based on Sexual  
Orientation and Gender Identity”**

## **Presentation of the Chairs**

Dear Delegates,

It is our pleasure to welcome you to the Human Rights Council at VIMUN 2017. We congratulate you for being part of this peculiar MUN, which will take place at the United Nations Office at Vienna. Vienna, beside its rich cultural heritage especially in music or fine arts, has been for many centuries the center of the Habsburg Empire and very well known for Vienna Congress that brought peace and freedom to our World. These conditions make the perfect environment for filling yourselves with energy and commitment during the sessions and the whole conference.

### **Chair - Playing the Role of President (El Salvador)**



Sakr, I am originally from Cairo, Egypt but I was born in Vienna, Austria. I am about to commence my last year at the Faculty of Political Science, at University of Vienna. My first MUN experience was VIMUN 2016. This turned out to be an incredibly fruitful and instructional decision. I have since attended conferences in Vienna, Agadir, Cairo, Sousse and Warsaw amongst others and established a social network that spans across the globe. After this, I became addicted and passionate about MUNs. Currently, I am serving as the President of MENAMUN in Tunisia to create opportunities in Africa. In addition to my studies, I also serve as the international Ambassador of the Arab Organization of Public Relations and Popular Diplomacy. I am very excited about the opportunity to chair this year's HRC and cannot wait to meet you all in person. Please do not hesitate to get in touch.

### **Co-Chair - Playing the Role of Vice President (Egypt)**



Fatima, I am a Law student from Bosnia and Herzegovina and member of Women's Forum of the Cantonal Committee of SBB and the Secretary of Women's Forum of the Municipal Committee of SBB. Throughout my vast intellectual progress in Germany and Bosnia, I have participated in numerous social as well as leadership internships and activities such as Youth Forum, Equality Academy of Friedrich Ebert Stiftung, Association of Law Students in Sarajevo and ELSA. These invaluable experiences enabled me to understand how to not only interact with different individuals regardless of ages, religions, nationalities, and disabilities but also cherish long-lasting relationships. To sum up, I stand out as a motivated individual and being flexible when working in a team at the same time.

We both invite you to immerse in the process starting from the moment you will receive the Study Guide line until the very end. In addition, we encourage you to engage passionately in the debates, during the formal and informal sessions, there will be no punishments for bringing the discussions outside the formal venue, which the conference takes place in.

At the end of the conference we expect to break up in a diplomatic manner, both of us having gained more insight about the issues discussed, developed and practiced our public speaking and diplomatic skills.

Diplomatically yours,

Sakr & Fatima [hrc.vimun@afa.at](mailto:hrc.vimun@afa.at)

## **1) Introduction to the Committee and its History**

The United Nations General Assembly created the Human Rights Council on 15 March 2006 by resolution 60/251. Its first session took place from 19 to 30 June 2006. One year later, the Council adopted its "Institution-building package" to guide its work and set up its procedures and mechanisms.

The Human Rights Council also works with the UN Special Procedures established by the former Commission on Human Rights and now assumed by the Council. The Human Rights Council is an inter-governmental body within the United Nations system responsible for strengthening the promotion and protection of human rights around the globe and for addressing situations of human rights violations and make recommendations on them. It has the ability to discuss all thematic human rights issues and situations that require its attention throughout the year.

The Council has 47 United Nations Member States that have been selected by the UN General Assembly. The Human Rights Council replaced the former United Nations Commission on Human Rights.<sup>1</sup>

## **2) Introduction to the Topic**

Deeply embedded homophobic and transphobic attitudes, often combined with a lack of adequate legal protection against discrimination on grounds of sexual orientation and gender identity, expose many lesbian, gay, bisexual and transgender (LGBT) people of all ages and in all regions of the world to egregious violations of their human rights. They are discriminated in the markets, schools and in hospitals, mistreated and disowned by their own families. They are singled out for physical attack – beaten, sexually assaulted, tortured and killed. In several countries, law against cross-dressing is used to punish transgender people based on their gender identity and expression. In addition, in about 77 countries, discriminatory laws criminalize private, consensual same-sex relationships - exposing individuals to the risk of arrest, prosecution, imprisonment - even, in at least five countries, the death penalty.

A 2015 report at the UNHRC on discrimination and violence based on sexual orientation and gender identity documented widespread violations of the fundamental human rights of LGBT individuals. This report concluded that current measures to protect LGBT human rights were insufficient and that more needed to be done.<sup>2</sup>

Concerns about these violations and related issues have been addressed repeatedly by United Nations human rights mechanisms since the early 1990s. These mechanisms include the treaty bodies established to monitor States compliance with international human rights treaties, as well as the special rapporteurs and other independent experts appointed by the Human Rights Council to investigate and report on pressing human rights challenges.

Protecting LGBT people from violence and discrimination does not require the creation of a new set of LGBT-specific rights, nor does it require the establishment of new international human rights standards. The legal obligations of States to safeguard the human rights of LGBT people are well established in the international human rights law and especially in the Universal Declaration of Human Rights from 1948 that will have its first 100 years anniversary next year, and subsequently agreed international human rights treaties.

All people irrespective of sex or sexual orientation or gender identity are entitled to enjoy the provided protections by international human rights law. Including the rights to live, security and privacy, the right to be free from torture, arbitrary arrest and detention, the right to be free from any discrimination and the right of the freedom of expression

The core legal obligations of States with respect to protecting the human rights of LGBT people include obligations to:

- Protect individuals from homophobic and transphobic violence.
- Prevent torture and cruel, inhuman and degrading treatment.

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<sup>1</sup> <http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx>

<sup>2</sup> 'Report A/HRC/19/41 on Discrimination and Violence Against Individuals based on their Sexual Orientation and Gender Identity', 15 July 2017, [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Documents/A\\_HRC\\_29\\_23\\_en.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Documents/A_HRC_29_23_en.doc)

- Repeal laws criminalizing homosexuality and transgender people.
- Prohibit discrimination based on sexual orientation and gender identity.
- Safeguard freedom of expression, association and peaceful assembly for all LGBT people.<sup>3</sup>

Recent events have also played a role in the increased attention at the UN. They confirm the information from reports and demonstrate alarming levels of hate crimes and physical violence based on sexual orientation and gender identity. Specifically, statements were made at the UN highlighting the recent tragic events of June 2016 when a lone gunman, Omar Mateen, killed 49 people at a gay nightclub in Orlando, Florida. This incident was the largest attack on U.S. soil since September 11, 2001, and it represents the extreme threats to life and safety being faced by the LGBT community in the U.S. and around the world.<sup>4</sup>

- Violence
- Discrimination
- Sexual Orientation
- Gender Identity

### **3) Legal Aspects/Relevant UN Action**

In recent years, many States have made a determined effort to strengthen human rights protection for LGBT people. An array of new laws has been adopted - including laws banning discrimination, penalizing homophobic and transphobic hate crimes, granting recognition of same-sex relationships, and making it easier for transgender individuals to obtain official documents that reflect their preferred gender. Training programs have been developed for police, prison staff, teachers, social workers and other personnel, and anti-bullying initiatives have been implemented in many schools.

The issue is also receiving unprecedented attention at an inter-governmental level. Since 2003, the General Assembly has repeatedly called attention to the killings of persons because of their sexual orientation or gender identity through its resolutions<sup>5</sup> on extrajudicial, summary or arbitrary executions. In June 2011, the Human Rights Council adopted resolution 17/19<sup>6</sup> - the first United Nations resolution on sexual orientation and gender identity - expressing "grave concern" at violence and discrimination against individuals based on their sexual orientation and gender identity. Its adoption paved the way for the first official United Nations report on the issue prepared by the Office of the High Commissioner for Human Rights (A/HRC/19/41<sup>7</sup>). The report's findings formed the basis of a panel discussion that took place at the Council in March 2012 - the first time a United Nations intergovernmental body had held a formal debate on the subject. In September 2014, the Human Rights Council adopted a new resolution (27/32<sup>8</sup>), once again expressing grave concern at such human rights violations and requesting the High Commissioner to produce an update of report A/HRC/19/41 with a view to sharing good practices and ways to overcome violence and discrimination, in application of existing international human rights law and standards, and to present it to the 29th session of the Human Rights Council. The Human Rights Council resolution is a significant moment for global LGBTI movements, and for people around the world who have worked tirelessly for human rights for everyone.

- Human Rights Council resolution - Human rights, sexual orientation and gender identity (adopted 17 June 2011) - A/HRC/RES/17/19
- Human Rights Council resolution - Human rights, sexual orientation and gender identity (adopted 26 September 2014) - A/HRC/RES/27/32
- Protection against violence and discrimination based on sexual orientation and gender identity (adopted 30 June 2016) - A/HRC/RES/32/2
- Universal Declaration of Human Rights- Bearing in mind that Universal Declaration of Human Rights will celebrate anniversary next year, we have to refer to its Article 1, which is appropriate for this topic.

<sup>3</sup> <http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBT.aspx>

<sup>4</sup> Lizette Alvarez and Richard Pérez-Peña, 'Orlando Gunman Attacks Gay Nightclub, Leaving 50 Dead', New York Times, 15 July 2017, <http://www.nytimes.com/2016/06/13/us/orlando-nightclub-shooting.html>

<sup>5</sup> <http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTUNResolutions.aspx>, 12 July 2017.

<sup>6</sup> <http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTUNResolutions.aspx>, 12 July 2017.

<sup>7</sup> <http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTUNReports.aspx> 12 July 2017.

<sup>8</sup> <http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTUNResolutions.aspx> 12 July 2017.

- Article I All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.<sup>9</sup>

#### **4) Current Situation**

Nations who do not recognize same-sex unions or ban them on religious, cultural or moral grounds view the adoption of an international law protecting LGBT human rights as an affront or threat to their national sovereignty or traditional society itself. Part of the issue lies in the complexity of human rights definitions and degrees of legality and protections for LGBT individuals. There is wide variation and distinction globally - ranging from criminalization of homosexuality to protection limited to employment only to recognition of same-sex marriage. In the discussion of amendments during the passing of a 2014 UNHRC resolution, attempts were made to completely remove the term “sexual orientation” and any reference to it from the resolution’s language. Extreme disapproval was voiced from opposing states who argued that the resolution was defining an entirely “new category of persons” that would disrupt the traditional values of family and society.<sup>6</sup> Though the Human Rights Council has not adopted any legislation calling for measures beyond the basic human right of protection against violence and discrimination, how discrimination is internalized and interpreted from country to country is greatly varied. For much of the Middle East, Africa, the Non-Aligned Movement, and all nations who politically uphold and enforce the notion that marriage is confined to a union between a man and a woman, the implications of an international law mandating non-discrimination policies toward LGBT individuals may appear to overstep the bounds of international jurisdiction and interfere with domestic affairs.<sup>10</sup>

#### **5) Country and Bloc Positions**

China: Though decriminalized, homosexuals remain vulnerable to violence and discrimination in China. China does not recognize same-sex unions or marriages, and there are no laws protecting the rights of LGBT individuals. There are also no anti-discrimination employment policies regarding sexual or gender identity under Chinese Labor Law, though the laws do include protections on the basis of ethnicity, gender and religion. China voted against the 2016 UNHRC resolution on “Protection against violence and discrimination on the basis of sexual orientation and gender identity” and also joined Russia in its unsuccessful attempt in 2015 to ban equal employment benefits for UN staff members in same-sex unions/marriages.<sup>11</sup>

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

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

<sup>9</sup> [http://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf) 12 July 2017.

<sup>10</sup> ARC International, Sexual Orientation, Gender Identity and Expression and Intersex Related Developments at the 27th Session of the UN Human Rights Council, 15 July 2017., pg.4, <https://www.odu.edu/content/dam/odu/offices/mun/2017/ib-2017-hrc-orientation-rights-final.pdf> 23:11,

<sup>11</sup> Tom Mountford, China: The Legal Position and Status of Lesbian, Gay, Bisexual and Transgender People in the People’s Republic of China, 15 July 2017., <https://www.outrightinternational.org/content/china-legal-position-and-status-lesbiangay-bisexual-and-transgender-people-people's>

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

Russia: Officially, homosexuality has been decriminalized in Russia since 1993 and Vladimir Putin claims that there is no LGBT discrimination in Russia. However, in 2013, Russia banned “gay propaganda” toward children in a move that received backlash from the international community on the grounds of being antifree speech. Though decriminalized, same-sex unions and marriages are not recognized in Russia and there are no laws protecting LGBT individuals from violence or discrimination including with regard to employment. Russia voted against the June 2016 HRC resolution. Additionally, Russia attempted to block the UN from providing equal benefits to its married LGBT staff members in 2015.<sup>12</sup>

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

## **6) Conclusion**

The discrimination and violence that persons face on grounds of sexual orientation and gender identity is of course also fundamentally linked with other forms of discriminatory repression: on the basis of HIV status, disability, race, occupation, sex, gender, class, language and many others. Understanding and addressing the root causes of discrimination and oppression of all persons is at the core of any response, and accordingly civil society is pushing for the resolution to include language that recognizes and gives effect to this fundamental principle.

The fact is that you know your own country the best. Feel free to tailor this information to the context of your country or region, while maintaining a constructive approach.

• Where possible and appropriate, work in coalition with other civil society, both LGBT civil society and more widely. A united NGO approach to your government is often strongest.

## **7) Points to be Addressed**

- Do concepts of sexual orientation and gender identity have a place in the international legal framework of the UN? If so, in which capacity and under which definitions,
- Do these issues undermine cultural relativism or the rights of sovereign states to uphold more traditional familial and social structures,
- What is the United Nations doing to protect the human rights of LGBT persons,
- What is being done in terms of raising awareness of the issue,
- What is being done in terms of action to reduce violence and discrimination based on sexual orientation and gender identity? Is it enough? Is it too much,
- Non-governmental organizations (NGOs) have been at the forefront of the fight for LGBT rights worldwide. Are their efforts effective? Are they more influential at the UN or better served at the state-level?

Point out that an Independent Expert would focus systematic and much-needed attention to help address violations based on sexual orientation and gender identity and related issues, while also emphasizing that an Independent Expert would also engage in constructive dialogue, share good practices, build awareness and provide support to governments open to addressing these issues.

If your government has abstained on these issues in the past, encourage them to support the resolution. If your government has opposed previous consideration of SOGI issues, encourage them to support the resolution - or at least to abstain or refrain from voting against human rights. If your government has

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<sup>12</sup> Michelle Nichols, ‘Russia Fails in Bid to Stop U.N. Staff Benefits for All Gay Couples’, Reuters, 15 July 2017., <http://www.reuters.com/article/us-un-gaymarriage-russia-idUSKBNOMK1UW20150324>

supported previous SOGI initiatives, encourage them to co-sponsor the text and ask them to urge other States to also vote in favor of the resolution.

Do the current legal standards that were designed to protect the refugees and migrants suffice? Are those legal frameworks implemented efficiently in all parts of the world?

How can the HRC guarantee that current international laws, which should protect refugees and migrants, are adequately implemented?

Should the non-refoulement provision be revised and redefined (e.g. extended, limited, special rules for situation of mass influx, specific rules for temporary protection)?

Should there be global or regional quotas as guidelines for the distribution of refugees and asylum seekers?

Can the HRC conceive a suitable recommendation for such a plan?

What responsibilities should more economically developed countries have in dealing with the situation of economic migrants?

How can the HRC react more adequately to human rights violations of migrants and refugees?

**Delegates are highly encouraged to engage in profound substantial research on the overall topic as well as on their respective country position.**