



JCHS Policy Brief on Resolution 32/2 of the UN Human Rights Council

Summary: The Jamaica Coalition for a Healthy Society (JCHS) expresses its grave concern with the intent and content of Resolution 32/2 of the UN Human Rights Council and calls on the Government of Jamaica to contest and reject adoption of this Resolution. The Resolution is to be tabled on Friday morning, 4 November 2016 at the General Assembly Hall, Plenary meeting, Report of the Human Rights Council (A/71/53 and A/71/53/Add.1) [item 63].

Resolution 32/2 which was adopted at the June 30, 2016 meeting of the Human Rights Council, calls for the appointment, for a period of three years, of an Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.

Mr Vitit Muntarbhorn, Professor Emeritus of Law at Chulalongkorn University in Bangkok, Thailand, was appointed as the Independent Expert.¹ He will have the authority to investigate, evaluate and make recommendations to Governments and the United Nations, regarding claims of violence and discrimination against persons self-identifying as lesbian, gay, bisexual and transgender (LGBT) across the globe. UN member states are asked “to cooperate with the Independent Expert in the discharge of the mandate” through the provision of requested information, accept visits to the countries and to consider implementing his recommendations.²

The JCHS asserts that supporting this Resolution will facilitate an erosion of existing fundamental freedoms and human rights of all Jamaican citizens including freedom of conscience, speech, religious liberty and parental rights. There are valid legal, scientific, political and social grounds on which to oppose this Resolution for the reasons provided below:

1. The Jamaican Parliament has expressly rejected constitutional protection of the term ‘sexual orientation’.
2. ‘Sexual orientation’ and ‘gender identity’ are controversial terms that are not part of agreed international human rights principles or laws.
3. There is no scientific evidence to support claims of sexual orientation and gender identity.

¹ https://www.washingtonpost.com/world/europe/un-appoints-first-expert-on-lgbt-violence-and-discrimination/2016/09/30/8d4fb4e2-8762-11e6-b57d-dd49277af02f_story.html. Accessed.2/11/16

² Paragraph 5, Resolution 32/3

4. The inherent dignity and worth of every human being is to be affirmed and all violence against persons must be denounced and existing channels for recourse utilised.
5. Persons self-identifying as lesbian, gay, bisexual, transsexual, or otherwise currently enjoy all human rights and fundamental freedoms as all other members of society.
6. There is no international obligation on States to enact laws that give individuals any special benefits or protections on the basis of their sexual preferences, feelings and behaviour.
7. The terms 'sexual orientation' and 'gender identity' are based on a philosophy that is contrary to the Judeo-Christian ethic undergirding Jamaica's laws and policies as well as the social and religious values of the nation of Jamaica.
8. Legally recognising 'sexual orientation' and 'gender identity' will directly undermine the freedoms of conscience, speech, parental rights and religious liberty of Jamaicans citizens.
9. Jamaica has the sovereign right to determine national laws and policies that are in the best interests of all its citizens.³ Jamaica has the right to implement standard public health practices to advocate responsible behaviour by appropriately discriminating between practices that lead to healthy or poor outcomes.
10. The United Nations has no authority "to intervene in matters which are essentially within the domestic jurisdiction of any state."⁴
11. The 'Yogyakarta Principles' are not part of accepted international, customary law or Jamaican law.

Sexual orientation and gender identity are controversial terms that do not enjoy international consensus, are not part of agreed international human rights principles or laws, and lack scientific support.

The Center for Family and Human Rights (C-FAM) writes that "until now "sexual orientation and gender identity" had not been part of the mandate of any UN agency, official, or other UN mandate holder. Agencies and UN staff that have concentrated on these notions have done so on their own initiative and through voluntary contributions.

The creation of this position within the UN human rights machinery is therefore intended to "promote the sexual preferences and behaviors of individuals who identify as lesbian, gay, bisexual, transsexual, or otherwise (LGBT) as a distinct human rights priority throughout the UN system."⁵

The concept of **sexual orientation** is "a complex and amorphous phenomenon that often defies consistent and uniform definition."⁶ It commonly includes but is not limited to

³ Based on Article 2:1, UN Charter, 1945

⁴ Article 2:7, UN Charter

⁵ *UNGA71 Action Alert, Sexual Orientation and Gender Identity*, 3rd Committee Resolution on the Report of the Human Rights Council, Stefano Gennarini, Center for Family and Human Rights, <https://c-fam.org/>

⁶ Dr. Paul McHugh, Distinguished Professor of Psychiatry and Behavioural Sciences at the John Hopkins University School of Medicine, *Brief in support of Hollingsworth and Bipartisan Legal Advocacy Group addressing the merits and supporting reversal*, Supreme Court docket, Nos. 12-144. 12-307 (2012)

persons self-identifying as lesbian gay, bisexual and transgender (LGBT). It also encompasses statistically demonstrable unhealthy and abnormal behaviours. The claim of identity fluidity through the term **gender identity** is in fact gender dysphoria (confusion about one's sexuality), which is a mental disorder.⁷

The JCHS avers that the term 'human rights' is not ordinarily understood to include the right to engage in all kinds of unwholesome behaviours, including sexual behaviours, without limitation.

International law also does not recognize sexual rights or protect sexual autonomy, or any kind of sexual preferences or conduct between consenting adults other than in the context of the right to freely marry and found a family between a man and a woman.⁸

There is also no scientific evidence to support legal recognition and protection of the terms 'sexual orientation' 'gender identity'. Further details are provided in the JCHS policy brief: *Protecting SOGI-not what Parlia-meant,*' September 2016.⁹

The Jamaican Parliament has expressly rejected recognition and protection of the term 'sexual orientation'. Protecting 'sexual orientation' would legalise behaviours prohibited in Jamaican law.

During the Parliamentary debates on the Charter of Rights in 1999, the Constitutional Commission and Jamaican Parliament considered and rejected legal recognition and protection of 'sexual orientation' on the grounds that the controversial term would impact the definition of marriage and parenting.¹⁰

Accepting Resolution 32/3 would bypass the express decision by the Jamaican Parliament and led to legitimizing in the Jamaican policy space, controversial terms that advocate behaviours that are contrary to sound public health practices and Jamaica's laws.

Jamaica's laws are formulated within the Judeo-Christian philosophy which defines human sexuality in accordance with design, that is, biology and anatomy. For example, the Jamaican Constitution and law recognise only two sexes, that is, male or female. Several behaviours that are prohibited in Jamaican law are included in the boundary-less notion of 'sexual orientation' and 'gender identity' such as pedophilia, incest and buggery.

Claims of violence and discrimination against persons identifying as LGBT

The JCHS urges the Government of Jamaica to affirm the inherent dignity of every human person and to categorically denounce all violence. We also affirm that every human being including persons self-identifying as LGBT, are entitled to, and already enjoy the free exercise of fundamental human rights.

⁷ WHO Fact sheet No. 403, August 2015. <http://www.who.int/mediacentre/factsheets/fs403/en/> . Last accessed September 7, 2016.

⁸ Universal Declaration of Human Rights, 1948, Article 16(1) and 16(2)

⁹ Policy briefs available at <http://www.jchs.org.jm/>

¹⁰ Report of Joint Select Committee Constitutional and Electoral Reform, 2001, page 31- 32

States also have no obligation to enact laws that give individuals any special benefits or protections on the basis of their sexual preferences and behavior or to sanction an individual's feeling about their 'gender identity'.

Regarding claims of 'discrimination', it should be appreciated that 'discrimination' is defined as making a distinction between two options.¹¹ 'Discrimination' is often a morally neutral exercise that is necessary and important in many everyday activities in order to ensure the safe, appropriate and effective operation of life. On the other hand, arbitrary discrimination that has no valid and legitimate purpose ought to be eliminated.

Laws that are for the common good will by nature discriminate between right and wrong, and seek to promote conditions that benefit all of society. Ethical behavior towards all human beings is a human right. However, discrimination against behaviour is absolutely essential. The Jamaican Government has the right in light of public interest, public health and security, to actively discourage behaviours that have been established as harmful and destructive through findings of robust, credible, scientific and epidemiological research.

The Yogyakarta Principles are not part of accepted international, customary law or Jamaican law.

The Independent Expert Professor Muntarbhorn was the co-chair of a privately convened committee that drafted the 2006 *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity* ('the principles') These 'principles' were the outcome of a privately convened meeting in 2006 in Yogyakarta, Indonesia, attended by self-selected representatives from various non-governmental organizations and United Nations treaty monitoring committee members who are activists for the lesbian gay, bisexual and transgender community. The 'principles' have not been formally recognised by the UN General Assembly, nor adopted as binding in any international Treaty or human rights Treaty.

Resolution 32/2 and its mandate presume an acceptance of the Yogyakarta Principles in UN discussions and will very likely be incorporated into the work of the Independent Expert. As the Yogyakarta 'principles' are neither part of customary international law, common law nor Jamaican law, the JCHS asserts that Jamaica is under no obligation to recognize or adhere to these flawed philosophies which must be wholly rejected.

Inherent contradictions of Resolution 32/2

Many UN member states such as the members of the African Group have repeatedly objected to the UN Secretary-General and the UN Secretariat's support and promotion of LGBT claims within the UN. They cite these actions as contravening the UN Charter's principle of the sovereignty of States and the principle of non-intervention.¹²

¹¹ Concise Oxford Dictionary

¹² Statement by Sierra Leone on behalf of the African Group, 70UNGA, November 2015, Agenda item 67, Report of Human Rights Council.

The JCHS supports this position by the African Group and further holds the view that endorsement of this Resolution by the UN General Assembly and implementation of the mandate will in effect nullify the overarching principles stated in the Resolution's preamble, namely,

- to respect relevant domestic debates at the national level on matters associated with historical, cultural, social and religious sensitivities,
- deploring the use of external pressure and coercive measures against States, and
- undermining the international human rights system by seeking to impose concepts or notions pertaining to social matters, including private individual conduct, that fall outside the internationally agreed human rights legal framework and taking into account that such attempts constitute an expression of disregard for the universality of human rights.”

Conclusion:

The Jamaica Coalition for a Healthy Society holds the view that should Resolution 32/2 and its mandate be accepted by the UN General Assembly, it will be used to force Jamaica and other nations around the world, to repeal laws that protect children and the family, and that establish necessary boundaries around unnatural, abnormal and unhealthy lifestyles and behaviours.

Resolution 32/2 will be used to set in train the erosion of existing freedoms of conscience, speech, parental rights and religious liberty of citizens. It will also facilitate demands for legalizing same sex marriage and same sex parent adoption.

The JCHS calls on the Jamaican Government to contest Resolution 32/2 and to object to its adoption. We urge our national policy-makers and international representatives to be vigilant in protecting our values as a people from the introduction of concepts that are contrary to the philosophical basis of our laws and Constitution.



The Jamaica Coalition for a Healthy Society (JCHS), incorporated in 2012 is a local non-profit organisation seeking to respond to social development challenges from the perspective of Judeo-Christian principles and values.

www.jchs.org.jm

jchsadvocate@gmail.com

Tel: (876) 779-6219