ADF International White Paper

The Rise of Faux Rights:

How the UN went from recognizing inherent freedoms to creating its own rights

Meghan Grizzle Fischer

Summary

The United Nations and its various entities are supposed to be committed to the protection and promotion of fundamental, universal human rights. Yet increasingly, individual UN entities promote new conceptions of rights not universally agreed by Member States. This white paper examines how the UN promotes 'sexual and reproductive rights,' including abortion and comprehensive sexuality education, at the same time it disparages the exercise of fundamental rights, such as parental rights, and impugns cultural and religious values. It also highlights the UN's advocacy for 'sexual orientation and gender identity' (SOGI), which does not enjoy Member State consensus. The paper concludes with a plan of action to combat the UN's push for the recognition of these controversial 'rights.'

About the Author

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1) Introduction

The United Nations and its various entities are supposed to be committed to the protection and promotion of fundamental, universal human rights. The preamble of the Charter, which established the United Nations, recognizes that 'we the people of the United Nations [are] determined [. . .] to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small[.]'[1] However, as the UN has expanded its bureaucratic web of agencies, commissions, councils, and experts, it has strayed from this original mission.

Increasingly, individual entities promote new conceptions of rights agreed not universally by all States, but only a small number of Western countries. To the world, this gives the impression that the UN favors 'rights' to abortion and same-sex 'marriage,' and even that the recognition of such 'rights' is now required by international law. For developing countries, this adds pressure to change their laws and policies, even despite the lack of international agreement. This increased focus detracts from efforts to promote and protect true fundamental rights.

This white paper examines how the UN promotes 'sexual and reproductive rights,' including abortion and comprehensive sexuality education, at the same time it disparages the exercise of fundamental rights, such as parental rights, and impugns cultural and religious values. It also highlights the UN's advocacy for 'sexual orientation and gender identity' (SOGI), which does not enjoy Member State consensus. The paper concludes with a plan of action to combat the UN's push for the recognition of these controversial 'rights.'

[1] U.N. Charter preamble.

2) International human rights

Before looking at the UN documents and activities, it is necessary to understand how international law is created, particularly in the area of human rights. There are two ways in which a State becomes bound to follow international law: treaties and custom.[2]

When a State signs and ratifies or accedes to a treaty, it agrees to be bound by it. In the case of human rights treaties, it agrees to guarantee the rights enumerated therein. There are several core international human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child.[3]

On the other hand, customary international law 'results from a general and consistent practice of states followed by them from a sense of legal obligation.'[4] Unlike with treaties, it is unclear when a so-called 'right' becomes an actual obligation on States under customary international law.

UN entities issue a number of non-binding documents in many forms: resolutions by the General Assembly and the Human Rights Council, recommendations by the Human Rights Committee and other human rights treaty bodies, and reports by the United Nations Population Fund and other agencies. None of these documents has been recognized as creating customary international law. They are instead 'soft law' documents, meaning that they are considered informative and sometimes persuasive. However, because UN entities have issued and continue to issue a significant number of soft-law documents that assert the existence of certain rights not enumerated in international treaties,

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[2] Paul Coleman et al., The Global Human Rights Landscape 4-5 (2014).

[3] OHCHR, The Core International Human Rights Instruments and their monitoring bodies, http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx (last visited Jan. 18, 2017).

[4] Restatement (Third) of the Law of Foreign Relations of the U.S. § 102 (2) (1987).

there is an increasing threat that these documents will create 'hard law,' or binding law.

It is therefore critical to monitor closely what UN entities do and say, and to prevent them from issuing soft-law documents that contravene or have no basis in international treaties carefully negotiated by States. Ignoring these documents and allowing them to proliferate can result in the creation of new rights.

3) Promotion of 'sexual and reproductive rights'

Central to the UN's efforts to promote 'sexual and reproductive rights' is its focus on abortion and comprehensive sexuality education. At the same time, it disparages other rights that conflict with this agenda.

(a) Promotion of abortion

Various entities of the United Nations are proponents of 'sexual and reproductive rights,' which is widely understood to include a right to abortion, even though such a right is not recognized in international law.[5] The promotion of abortion manifests in many ways at the UN, through agencies, human rights treaty bodies, Special Rapporteurs, and the Universal Periodic Review (UPR).

The United Nations Population Fund (UNFPA) considers itself 'the lead UN agency for delivering a world where every pregnancy is wanted, every childbirth is safe and every young person's potential is fulfilled'[6]; according to UNFPA, to fulfill their potential these young people 'require a wide range of sexual and reproductive health services, including [. . .] safe abortion care'[7]; they also 'particularly need' emergency contraception.[8] UNFPA also pressures countries directly to change their positions on abortion,[9] disregarding State sovereignty, and has staffed small country

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[5] MEGHAN GRIZZLE, WORLD YOUTH ALLIANCE WHITE PAPER ON REPRODUCTIVE HEALTH (2012), *available at* https://www.wya.net/wp-content/uploads/2014/04/WYA_Reproductive_Health_White_Paper.pdf.

[6] UNFPA, About us, http://www.unfpa.org/about-us (last visited Jan. 18, 2017).

[7] UNFPA, THE POWER OF 1.8 BILLION: ADOLESCENTS, YOUTH AND THE TRANSFORMATION OF THE FUTURE, STATE OF WORLD POPULATION 2014 37 (2014) [hereinafter UNFPA, STATE OF WORLD POPULATION 2014], *available at* http://www.unfpa.org/sites/default/files/pub-pdf/EN-SWOP14-Report_FINAL-web.pdf.

[8] *Id.* at 38.

[9] *See, e.g.*, Stefano Gennarini, *Nigeria refuses to give in to UN pressure on abortion, 'sexual rights'*, LIFESITENEWS, Sept. 18, 2015; Parliamentary Network for Critical Issues, Push for SRHR Derailed at UN CPD Meeting, Apr. 23, 2015, http://www.pncius.org/update.aspx

delegations at Economic and Social Council commissions with ardent sexual and reproductive rights advocates.[10]

The World Health Organization (WHO) issued a report decrying abortion restrictions as causing unsafe abortion.[11] The report asserts, 'The fulfilment of human rights requires that women can access safe abortion when it is indicated to protect their health.'[12] Meanwhile, UN Women lamented in a 2015 report that the United States' Affordable Care Act 'fails to address a major strategic health need of women by precluding any federal funding for abortion. As a result, the 'right to choose' will remain unaffordable for many, particularly those on low incomes.'[13]

Human rights treaty bodies, which monitor States' implementation of treaties, repeatedly tell countries to liberalize any restrictive abortion laws or policies.[14]

?id=129 (describing how UNFPA pressured the small island country of Nauru).

[10] Elyssa Koren, *UN Uses LGBT Rights as 'Bargaining Chip' to Pressure Nations Into Abortion*, ZENIT, Apr. 25, 2014, https://zenit.org/articles/un-uses-lgbt-rights-as-bargaining-chip-to-pressure-nations-into-abortion/.

[11] *See, e.g.*, WHO, SAFE ABORTION: TECHNICAL AND POLICY GUIDANCE FOR HEALTH SYSTEMS 17 (2d ed. 2012), *available at* http://apps.who.int/iris/bitstream/10665/70914/1/9789241548434_eng.pdf?ua=1.

[12] *Id.* at 92.

[13] UN WOMEN, PROGRESS OF THE WORLD'S WOMEN 2015-2016: TRANSFORMING ECONOMIES, REALIZING RIGHTS 162 (2015).

[14] *See* Kelsey Zorzi, *The Impact of the United Nations on National Abortion Laws*, 65 CATH. U. L. REV. 409, 416 nn.48-54 and accompanying text. *See also* IPAS, COUNTRY-SPECIFIC TREATY MONITORING COMMITTEE CONCLUDING OBSERVATIONS, UNIVERSAL PERIODIC REVIEW WORKING GROUP RECOMMENDATIONS, AND RECOMMENDATIONS BY SPECIAL RAPPORTEURS, COMMISSIONS, AND COURTS: COUNTRIES A–L, PART 3 (2014), *available at* http://www.ipas.org/~/media/Files/Resources/IHRCOMPCE14%20pdf.ashx?utm_source=resource&utm_medium=meta&utm_campaign=IHRCOMPCE14%20pdf; IPAS, COUNTRY-SPECIFIC TREATY MONITORING COMMITTEE CONCLUDING OBSERVATIONS, UNIVERSAL PERIODIC REVIEW WORKING GROUP RECOMMENDATIONS, AND RECOMMENDATIONS BY SPECIAL RAPPORTEURS, COMMISSIONS, AND COURTS: COUNTRIES M-Z, PART 4 (2014), *available at* http://www.ipas.org/~/media/Files/PubsManual/IHRCOMPDE14%20pdf.ashx?utm_source=resource&utm_medium=meta&utm_campaign=IHRCOMPDE14%20pdf.

For example, the Committee on the Elimination of Discrimination against Women (CEDAW) told Chile in 2012 to '[r]eview its existing legislation on abortion with a view to decriminalizing it in cases of rape, incest or threats to the health or life of the mother.'[15] The Committee on the Rights of the Child (CRC) urged the Holy See in 2014 'to review its position on abortion, which places obvious risks on the life and health of pregnant girls.'[16] In 2016, the Committee on Economic, Social and Cultural Rights (CESCR) told Poland to '[r]econsider the 'stop abortion' bill, since it is not compatible with other fundamental rights, such as the woman's right to health and life, and it is not consistent with the dignity of women.'[17]

Human rights treaty bodies also have issued general recommendations that emphasize that abortion should be legal, even though no international human rights treaty mentions abortion. The CRC 'urges States to decriminalize abortion to ensure that girls have access to safe abortion and post-abortion services.'[18] The recommendation also states, 'All adolescents should have access to free, confidential, adolescent-responsive and non-discriminatory sexual and reproductive health services, information education, available both online and in person, including on family planning, contraception, including emergency contraception [. . .].'[19] The recommendation specifically addresses girls as young as 10 years.[20]

The Human Rights Committee issued a draft comment on the right to life that essentially claims there is a right to take the life of the unborn:

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[15] Comm. on the Elimination of Discrimination against Women (CEDAW), *Concluding observations of the Committee on the Elimination of Discrimination against Women: Chile*, ¶ 35(d), U.N. Doc. CEDAW/C/CHL/CO/5-6 (Oct. 24, 2012).

[16] Comm. on the Rights of the Child (CRC), *Concluding observations on the second periodic report of the Holy See*, ¶ 55, U.N. Doc. CRC/C/VAT/CO/2 (Feb. 25, 2014).

[17] Comm. on Economic, Social and Cultural Rights (CESCR), *Concluding observations on the sixth periodic report of Poland*, ¶ 47(c), U.N. Doc. E/C.12/POL/CO/6 (Oct. 26, 2016).

[18] CRC, *General comment No. 20 (2016) on the implementation of the rights of the child during adolescence*, ¶ 60, U.N. Doc. CRC/C/GC/20 (Dec. 6, 2016) [hereinafter CRC, *General comment No. 20*].

[19] *Id.*, ¶ 59.

[20] *Id.*, ¶ 5.

> Although States parties may adopt measures designed to regulate terminations of pregnancy, such measures must not result in violation of the right to life of a pregnant woman or her other rights under the Covenant, including the prohibition against cruel, inhuman and degrading treatment or punishment. Thus, any legal restrictions on the ability of women to seek abortion must not, inter alia, jeopardize their lives or subject them to physical or mental pain or suffering which violates article 7. States parties must provide safe access to abortion to protect the life and health of pregnant women, and in situations in which carrying a pregnancy to term would cause the woman substantial pain or suffering, most notably where the pregnancy is the result of rape or incest or when the foetus suffers from fatal impairment. States parties may not regulate pregnancy or abortion in a manner that runs contrary to their duty to ensure that women do not have to undertake unsafe abortions. [For example, they should not take measures such as criminalizing pregnancies by unmarried women or applying criminal sanctions against women undergoing abortion or against physicians assisting them in doing so, when taking such measures is expected to significantly increase resort to unsafe abortions]. Nor should States parties introduce humiliating or unreasonably burdensome requirements on women seeking to undergo abortion. The duty to protect the lives of women against the health risks associated with unsafe abortions requires States parties to ensure access for women and men, and, in particular, adolescents, to information and education about reproductive options, and to a wide range of contraceptive methods. States parties must also ensure the availability of adequate prenatal and post-abortion health care for pregnant women. [21]

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[21] Human Rights Comm. (HRC), General comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the right to life: Revised draft prepared by the

The Committee is still debating the draft,[22] but given its pro-abortion bent in its concluding observations, it is unlikely to change its stance.

The CESCR's General Comment No. 22 repeatedly asserts the importance of legal abortion in ensuring the so-called 'right to sexual and reproductive health,' which is not mentioned in any international human rights treaty. The Comment claims, 'There exists a wide range of laws, policies and practices that undermine the autonomy and right to equality and non-discrimination in the full enjoyment of the right to sexual and reproductive health, for example criminalization of abortion or restrictive abortion laws,'[23] and declares, 'States must reform laws that impede the exercise of the right to sexual and reproductive health. Examples include laws criminalizing abortion [. . .].'[24]

Special procedures of the Human Rights Council, including special rapporteurs and working groups, who are considered 'independent experts' in particular areas of human rights, have also promoted abortion. The Special Rapporteur on health declared that 'criminal laws and legal restrictions on sexual and reproductive health [. . .] interfer[e] with human dignity.'[25] The UN Working Group on the issue of discrimination against women in law and in practice lamented in a 2016 report, 'Criminalization of termination of pregnancy is one of the most damaging ways of

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Rapporteur, ¶ 9 (2017) (*prepared by* Rapporteur) (footnotes omitted) [hereinafter HRC, Draft general comment No. 36], *available at* http://www.ohchr.org/Documents/HRBodies/CCPR/GCArticle6/GCArticle6_EN.pdf

[22] *Human Rights Committee continues to discuss draft general comment on the right to life*, Nov. 2, 2016, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20817&LangID=E.

[23] CESCR, *General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, ¶ 35, U.N. Doc. E/C.12/GC/22 (May 2, 2016) [hereinafter CESCR, *General comment No. 22*].

[24] *Id.*, ¶ 40.

[25] UNGA, *Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, ¶ 15, U.N. Doc. A/66/254 (Aug. 3, 2011) (*prepared by* Anand Grover).

instrumentalizing and politicizing women's bodies and lives, subjecting them to risks to their lives or health in order to preserve their function as reproductive agents and depriving them of autonomy in decision-making about their own bodies.'[26]

The Working Group went on to summarize some of the pro-abortion activities of UN entities:

International and regional human rights bodies have called on States to decriminalize access to termination of pregnancy and to liberalize laws and policies in order to guarantee women's access to safe services. Treaty bodies, including the Committee on the Elimination of Discrimination against Women and the Committee on Economic, Social and Cultural Rights, have requested States, through their jurisprudence, their general comments/recommendations and their concluding observations, to review national legislation with a view to decriminalizing termination of pregnancy and to ensure a woman's right to termination of pregnancy where there is a threat to her life or health, or where the pregnancy is the result of rape or incest. The Committee against Torture and the Human Rights Committee have determined that, in some cases, being forced to carry an unwanted pregnancy to term amounts to cruel and inhuman treatment.[27]

Member States have used the Universal Periodic Review (UPR) process, a Human Rights Council mechanism through which States are supposed to give recommendations to other States on protecting and promoting human rights, to tell other countries to legalize abortion.[28] El Salvador has received recommendations to change its ban on abortion or other components of its abortion laws from Australia, the Czech Republic,

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[26] UNHRC, *Report of the Working Group on the issue of discrimination against women in law and in practice*, ¶ 79, U.N. Doc. A/HRC/32/44 (2016).
[27] *Id.*, ¶ 83.
[28] *See* Zorzi, *supra* note 14, at 417-18.

Iceland, Luxembourg, Norway, Germany, Slovenia, Spain, and Sweden.[29] Chile has received recommendations to change its ban on abortion from Belgium, the Czech Republic, France, Germany, Norway, Slovenia, Sweden, and Switzerland.[30] Slovenia and Norway have each chided 14 countries over their abortion laws and practices, and the Netherlands has chided nine countries.[31]

The Secretary-General called for access to 'the safe termination of pregnancies for survivors of conflict-related rape' in refugee camps,[32] which he said was 'in line with'[33] a Security Council resolution that notes 'the need for access to the full range of sexual and reproductive health services, including regarding pregnancies resulting from rape, without discrimination.'[34]

In several cases, countries have changed their laws under influence or pressure from UN entities.[35]

(b) Promotion of children's autonomy from their parents

International law recognizes the important rights, roles, and duties of parents in the care of their children. Article 18(1) of the Convention on the Rights of the Child recognizes that 'parents [. . .] have the primary responsibility for the upbringing and development of the child.'[36] Article

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[29] UPR Info, Database of recommendations, https://www.upr-info.org/database/ (last visited Jan. 19, 2017) (running searches for the terms 'abortion' and 'reproductive rights').

[30] *Id.*

[31] *Id.*

[32] The Secretary-General, *Report of the Secretary-General on women and peace and security*, ¶ 62, *delivered to the Security Council*, U.N. Doc. S/2014/693 (Sept. 23, 2014).

[33] *Id.*

[34] S.C. Res. 2122, preamble, U.N. Doc. S/RES/2122 (Oct. 18, 2013).

[35] Zorzi, *supra* note 14, at 418-28.

[36] Convention on the Rights of the Child art. 18, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3.

14(1) recognizes children's right to freedom of religion, but article 14(2) requires that States 'respect the rights and duties of the parents [. . .] to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.'[37] The ICCPR requires in article 18(4) that States 'undertake to have respect for the liberty of parents [. . .] to ensure the religious and moral education of their children in conformity with their own convictions.'[38] This guarantee is repeated in article 13(3) of the International Covenant on Economic, Social and Cultural Rights.[39]

This means that the UN should give much deference to parents when it comes to raising their children, particularly with respect to matters that involve religious and moral values, such as abortion and sexuality. Yet UN entities repeatedly take the attitude that parents' views are a detriment to their children when those views are intolerant of premarital sex, adolescent contraceptive use, and abortion, and that children must instead be exposed to information and attitudes from a 'human rights perspective.'

The UN frequently promotes the autonomy of children in health care, despite the right of parents to be informed about, influence, and direct the health care of their children. For example, the CRC in its General Comment No. 15 on the right to health calls on States to 'review and consider allowing children to consent to certain medical treatments and interventions without the permission of a parent, caregiver, or guardian, such as HIV testing and sexual and reproductive health services, including education and guidance on sexual health, contraception and safe

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[37] *Id.*, art. 14.

[38] International Covenant on Civil and Political Rights (ICCPR) art. 18, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171.

[39] International Covenant on Economic, Social, and Cultural Rights art. 13, *opened for signature* Dec. 19, 1966, 993 U.N.T.S. 3.

abortion.'[40] The CESCR in its General Comment No. 22 says States must 'repeal, and refrain from enacting, laws and policies that create barriers in access to sexual and reproductive health services. This includes [. . .] parental [. . .] authorization requirements for access to sexual and reproductive health services and information, including for abortion and contraception.'[41]

Again, treaty bodies' concluding observations directly challenge State laws and pose significant threats to religious freedom and respect for cultural values through their condemnation of laws and practices protecting parental rights in the provision of abortion services and contraception.[42]

UNFPA also challenges parental rights. It decries the existence of '[a]ge of consent laws that require adolescents to get the permission of a parent or guardian to use a service, or that limit access to people under a certain age,' as they 'are barriers to information and services for adolescents.'[43] It laments 'adult attitudes and behaviours' as 'obstacles

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[40] CRC, *General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24),* ¶ 31, U.N. Doc. CRC/C/GC/15 (Apr. 17, 2013.

[41] CESCR, *General comment No. 22*, *supra* note 23, ¶ 41.

[42] *See, e.g.*, CEDAW, *Concluding observations on the combined initial to fifth periodic reports of Seychelles*, ¶¶ 34(a), 35(a), U.N. Doc. CEDAW/C/SYC/CO/1-5 (Oct. 29, 2013); CRC, *Concluding observations on the consolidated second and third periodic reports of Namibia, adopted by the Committee at its sixty-first session (17 September–5 October 2012)*, ¶¶ 57(b), 60(a), U.N. Doc. CRC/C/NAM/CO/2-3 (Oct. 16, 2012); CEDAW, *Concluding observations of the Committee on the Elimination of Discrimination against Women: Samoa*, ¶ 32, U.N. Doc. CEDAW/C/WSM/CO/4-5 (Aug. 7, 2012); CRC, *Concluding observations: Bulgaria*, ¶¶ 47, 48(d), U.N. Doc. CRC/C/BGR/CO/2 (June 23, 2008); CRC, *Concluding observations: Georgia*, ¶¶ 47-48, U.N. Doc. CRC/C/GEO/CO/3 (June 23, 2008).

[43] UNFPA, STATE OF WORLD POPULATION 2014, *supra* note 7, at 45. UNFPA also says in its 2012 State of World Population report, 'States must refrain from interfering in the enjoyment of the right to family planning by, for example, restricting access through spousal or parental consent laws.' UNFPA, BY CHOICE, NOT BY CHANCE: FAMILY PLANNING, HUMAN RIGHTS AND DEVELOPMENT, STATE OF WORLD POPULATION 2012 9 (2012), *available at*

faced by young people'[44] and calls for 'policy interventions, such as those that loosen age or parental-consent restrictions on adolescents' access to services.'[45] It laments that 'religious and traditional leaders, parents, teachers, and others regulate their access to information and services,' with 'the strongest opposition to comprehensive sexuality education com[ing] from community groups and religious institutions.'[46]

Negotiated UN documents also repeatedly call for 'full respect for [young people's] privacy and confidentiality' in the provision of reproductive health services,[47] which is understood to mean ensuring that young people can receive abortion services and contraception without the knowledge or consent of their parents. In the past, sexuality education language would not be included in negotiated documents without accompanying parents' rights language, but more recently, language on parents' roles has weakened.[48]

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http://www.unfpa.org/sites/default/files/pub-pdf/EN_SWOP2012_Report.pdf.

[44] UNFPA, STATE OF WORLD POPULATION 2014, *supra* note 7, at 45.

[45] *Id.* at 51.

[46] *Id.* at 42.

[47] Adolescents and youth, Comm'n on Population and Development Res. 2012/1, ¶ 26 [hereinafter CPD 2012 Resolution].

[48] See, for example, a recent Commission on Population and Development resolution on adolescents and youth, which does not mention parents in a paragraph on sexuality education:

> *Calls upon* Governments, with the full involvement of young people and with the support of the international community, to give full attention to meeting the reproductive health-service, information and education needs of young people, with full respect for their privacy and confidentiality, free of discrimination, and to provide them with evidence-based comprehensive education on human sexuality, sexual and reproductive health, human rights and gender equality to enable them to deal in a positive and responsible way with their sexuality.

Id.

(c) Promotion of comprehensive sexuality education

The UN also promotes comprehensive sexuality education, a highly contentious topic among Member States[49] because of its threats to religious and cultural values, religious freedom, and parental rights. It is promoted throughout the UN system, by UNFPA,[50] the Commission on Population and Development,[51] the Human Rights Council,[52] special rapporteurs,[53] and human rights treaty bodies,[54] among others.

The United Nations Educational, Scientific and Cultural Organization (UNESCO) has taken the lead among UN agencies in developing and promoting comprehensive sexuality education, including particular curriculum content. Its International Sexuality Guidelines, issued in 2009 in conjunction with UNFPA and after consultation with UNAIDS, the United

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[49] *See, e.g.*, U.N., *Heatedly Debating Girls' Rights, Third Committee Sends 10 Drafts, Including New Text on Children, to General Assembly*, U.N. Doc. GA/SHC/4124 (Nov. 21, 2014), http://www.un.org/press/en/2014/gashc4124.doc.htm.

[50] *See, e.g.*, UNFPA, Comprehensive sexuality education, http://www.unfpa.org/comprehensive-sexuality-education (last visited Dec. 12, 2016).

[51] CPD 2012 Resolution, *supra* note 47, ¶ 26.

[52] *See, e.g.*, UNHRC Res. 29/14, ¶ 8(h), U.N. Doc. A/HRC/29/L.16/Rev.1 (July 1, 2015) ('Calls upon States to take effective action to prevent domestic violence, including by: [. . .] Taking measures to empower women by, inter alia, strengthening their economic autonomy and ensuring their full and equal participation in society and in decision-making processes by adopting and implementing social and economic policies that guarantee women full and equal access to quality education, including comprehensive sexuality education [. . .].').

[53] *See, e.g.*, UNGA, *Report of the United Nations Special Rapporteur on the right to education*, ¶ 19, U.N. Doc. A/65/162 (July 23, 2010) (*prepared by* Werner Muñoz) [hereinafter Muñoz, *Right to education report*] ('The right to education includes the right to sexual education, which is both a human right in itself and an indispensable means of realizing other human rights, such as the right to health, the right to information and sexual and reproductive rights.').

[54] For a number of treaty body comments and observations on sexuality education, see Melissa Curvino & Meghan Grizzle Fischer, *Claiming Comprehensive Sex Education is a Right Does Not Make It So: A Close Reading of International Law*, 20 THE NEW BIOETHICS 72, 76-85 (2014).

Nations Children's Fund (UNICEF), and WHO staff,[55] advise teaching 5- to 8-year-olds about masturbation and how '[b]odies can feel good when touched.'[56] In the 'pregnancy prevention' module, 9- to 12-year-olds should learn about contraception and '[o]ptions available to teenagers who are unintentionally pregnant,' the only provided example of which is abortion.[57] They should learn that '[l]egal abortion performed under sterile conditions by medically trained personnel is safe.'[58] Under the culture, society, and law concept, 5- to 8-year-olds learn that '[p]eople receive messages about sex, gender and sexuality from their cultures and religions,' while 12- to 15-year-olds discuss '[s]pecific messages people receive about sexuality from their culture, religion and society' at the same time they learn about '[d]iversity of sexual expression, orientation and cultural restrictions' and '[r]ights of and respect for people with diverse sexual expression and orientation.'[59] The idea is that young people learn to dispel the myths they learn through religious instruction, such as the fact that sexual intercourse is meant only for marriage. WHO Europe issued similar guidelines in 2010, which recommend adolescents ages 15 years and up learn to develop 'a critical view of different cultural/religious norms related to pregnancy, parenthood, etc.'[60]

Sexual education programming as envisioned by the UN is clearly meant to make children, even as young as 5, cognizant of the 'biases' they develop through exposure to their parents' and communities' religious

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[55] UNESCO, INTERNATIONAL GUIDELINES ON SEXUALITY EDUCATION: AN EVIDENCE INFORMED APPROACH TO EFFECTIVE SEX, RELATIONSHIPS AND HIV/STI EDUCATION iii (2009), *available at* http://www.refworld.org/docid/4a69b8902.html.

[56] *Id.* at 48.

[57] *Id.* at 51.

[58] *Id.*

[59] *Id.* at 39.

[60] WHO REGIONAL OFFICE FOR EUROPE & BZGA, STANDARDS FOR SEXUALITY EDUCATION IN EUROPE 48 (2010), *available at* http://www.bzga-whocc.de/?uid=072bde22237db64297daf76b7cb998f0&id=Seite4486.

values. A UNESCO technical guidance on sexuality education, issued with UNAIDS, UNFPA, UNICEF, and WHO, addresses the understandably common concern that '[s]exuality education is against our culture or religion' by acknowledging that there is a 'need for cultural relevance and local adaptations' and the inclusion of religious leaders, but there is also a 'need to change social norms and harmful practices that are not in line with human rights and increase vulnerability and risk, especially for girls and young women.'[61] Considering the values the Guidelines promote outlined above, such as respect for alternative sexual lifestyles, it is not difficult to imagine that the 'social norms and harmful practices' that UNESCO believes need to be changed are ones that are actually held by many religious people. UNESCO acts as if the effect of 'cultural values and religious beliefs' on young people needs to be erased through '[e]ffective sexuality education.'[62]

In a display of authority that exceeded his mandate, according to many States,[63] Verner Muñoz, the Special Rapporteur on the right to education, issued a report in 2010 in which he identified an international right to comprehensive sexuality education.[64] He recognized the need 'to involve families and communities,'[65] but at the same time indicated that

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[61] UNESCO, INTERNATIONAL TECHNICAL GUIDANCE ON SEXUALITY EDUCATION: AN EVIDENCE-INFORMED APPROACH FOR SCHOOLS, TEACHERS AND HEALTH EDUCATORS, VOL I: THE RATIONALE FOR SEXUALITY EDUCATION 8 (2009), *available at* http://unesdoc.unesco.org/images/0018/001832/183281e.pdf.

[62] UNESCO, INTERNATIONAL TECHNICAL GUIDANCE ON SEXUALITY EDUCATION: AN EVIDENCE-INFORMED APPROACH FOR SCHOOLS, TEACHERS AND HEALTH EDUCATORS, VOL II: TOPICS AND LEARNING OBJECTIVES 2 (2009), *available at* http://unesdoc.unesco.org/images/0018/001832/183281e.pdf.

[63] Int'l Service for Human Rights, Majority of GA Third Committee unable to accept report on the human right to sexual education (Oct. 26, 2012), http://www.ishr.ch/news/majority-ga-third-committee-unable-accept-report-human-right-sexual-education.

[64] Muñoz, *Right to education report*, *supra* note 53, ¶¶ 19-20. There is, however, no international right to comprehensive sex education. Curvino & Fischer, *supra* note 54.

[65] Muñoz, *Right to education report*, *supra* note 53, ¶ 71.

the State must 'guarantee education that is free from prejudices and stereotypes,'[66] hinting that it is the responsibility of the State to guide children to overcome the religiously conservative or traditional views of their parents. Parents' right to choose their children's education is subject to the 'best interests of the child' principle, such that children must be exposed to 'all options and opinions.'[67] He also 'noted with particular concern various instances in which sexual education has been obstructed in the name of religious ideas.'[68] In the end, a majority of Third Committee Member States rejected the report.[69]

Despite, or perhaps because of, the negative reaction of Member States to comprehensive sexuality education, treaty bodies have also repeatedly recommended States adopt comprehensive sexuality education.[70] The CRC's general comment on the rights of adolescents as young as 10 years old[71] also calls for '[a]ge-appropriate, comprehensive and inclusive sexual and reproductive health education, based on scientific evidence and human rights standards and developed with adolescents [. . .].'[72] It calls for this education to be 'part of the mandatory school curriculum,' suggesting that under the CRC model parents may not have the ability to opt out, which is especially concerning given that the CRC recommends '[a]ttention should be given to gender equality, sexual diversity, sexual and reproductive health rights, responsible parenthood and sexual behavior and violence prevention, as well as to preventing early pregnancy and sexually transmitted infections.'[73]

Essentially, the message sent by the UN entities that promote comprehensive sexuality education is that if sexuality education is not

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[66] *Id.*, ¶ 72.
[67] *Id.*, ¶ 73.
[68] *Id.*, ¶ 79.
[69] Int'l Service for Human Rights, *supra* note 63.
[70] *See* Curvino & Fischer, *supra* note 54, at 78, n.55, 79, nn.58-59, 80, n.77, 81, n.78, 82, n.90, 83, n.97, 86, n.118, 97, n.217.
[71] CRC, *General comment No. 20*, *supra* note 18, ¶ 5.
[72] *Id.*, ¶ 61.
[73] *Id.*

taught in such a way that children learn to accept and respect various sexual and reproductive choices and behaviors, it does not embrace human rights. The involvement of parents and religious leaders and institutions is seen as one component of sexuality education, but primarily such that to the extent their values clash with those the UN decides are tolerant, they must change.

Comprehensive sexuality education also demonstrates the link between sexual and reproductive rights and sexual orientation and gender identity (SOGI) issues. The pro-sexual and reproductive rights attitude emphasized in comprehensive sexuality education curricula, an attitude that embraces personal choice over religious and cultural values, encourages alternative sexual lifestyles and expression, with the desired result a breakdown of traditional gender norms and religious practices. The idea is that just as anyone should be free to choose an abortion, anyone should be free to marry the person of his or her choosing, regardless of what international law clearly states. Section IV below discusses more fully how the UN prioritizes SOGI promotion.

(d) Negativity toward religion and religious autonomy

In its advocacy for sexual and reproductive rights, UN entities often have a negative attitude toward religious views that do not accept the UN's identification of abortion, contraception, and same-sex conduct as human rights. This is despite the fact that the 1994 Programme of Action of the International Conference on Population and Development (ICPD), which directs the work of UNFPA and is a foundational document on reproductive health, says there must be 'full respect for the various religious and ethical values and cultural backgrounds of [the] people.'[74]

[74] International Conference on Population and Development, Sept. 5-13, 1994, *Report of the International Conference on Population and Development*, Ch. I, Res, 1, Annex, Ch. II, Principles, U.N. Doc. A/CONF.171/13/Rev.1 (Oct. 18, 1994).

At the same time, the UN disproportionately supports and promotes faith-based organizations that accept the promotion of sexual and reproductive rights, as compared to other faith-based organizations that do not accept it. In 2014, UNFPA highlighted a group of faith leaders' call to include sexual and reproductive health and reproductive rights in the post-2015 development agenda.[75] Dr. Azza Karam, UNFPA Senior Advisor on Culture and coordinator with faith-based partners, has praised organizations that 'pioneer and champion answers based on human rights, which may well be – and sometimes are – in direct confrontation with their own religious hierarchy.'[76] She provided the example of 'Catholic organizations that are working to support women's right to choose their own destiny over their own number of children, their bodies, and their families.'[77] She also praised 'Muslim organizations that are venturing into other taboo territories, for example urging equality of men and women in rights and access to resources in their own communities.'[78]

Although more traditional faith-based organizations are often granted NGO status and are allowed to host 'side events' at the UN, they are rarely given official support or recognition by UNFPA and other UN entities.

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[75] *Religious leaders call for action on sexual and reproductive health and reproductive rights at UN*, UNFPA (Sept. 19, 2014), http://www.unfpa.org/news/religious-leaders-call-action-sexual-and-reproductive-health-and-reproductive-rights-un.

[76] Berkley Ctr. for Religion, Peace & World Affairs, Georgetown Univ., A Discussion with Azza Karam, Senior Advisor on Culture, UNFPA, Oct. 28, 2011, http://berkleycenter.georgetown.edu/interviews/a-discussion-with-azza-karam-senior-advisor-on-culture-unfpa.

[77] *Id.* One such organization is Catholics for Choice, which promotes a right to abortion and contraception, in contravention of the teaching of the Roman Catholic Church. *See* Sonali Salgado, *POPULATION: UNFPA Partners with Faith-Based Groups*, INTER PRESS SERV. NEWS AGENCY, Aug. 13, 2009, http://www.ipsnews.net/2009/08/population-unfpa-partners-with-faith-based-groups/.

[78] *Id.*

4) Promotion of 'sexual orientation and gender identity' (SOGI)

The UN has invested considerable resources in 'combatting violence and discrimination against individuals based on sexual orientation and gender identity' (SOGI). For example, the Office of the High Commissioner for Human Rights (OHCHR) has an 18-page list detailing efforts by UN entities to support SOGI initiatives,[79] and the UN hosted a high-level ministerial meeting to promote State support.[80] In September 2015, twelve UN agencies issued a statement condemning 'violence and discrimination against adults, adolescents, and children' who self-identify as lesbian, gay, bisexual, and transgender (LGBT).[81] The UN's focus on SOGI distracts from promoting universally agreed, fundamental rights and violates state sovereignty.

(a) OHCHR and the focus on SOGI

The OHCHR has taken the lead among UN entities in promoting support for SOGI initiatives. The General Assembly created the position of the High Commissioner for Human Rights in Resolution 48/141 '[t]o promote and protect the effective enjoyment by all of all civil, cultural, economic, political and social rights,' but this must be 'within the framework of the overall competence, authority and decisions of the General Assembly, the

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[79] *See* OHCHR, *The Role of the United Nations in Combatting Discrimination and Violence against Individuals Based on Sexual Orientation or Gender Identity: A Programmatic Overview* (Nov. 25, 2015), http://www.ohchr.org/Documents/Issues/Discrimination/UN_SOGI_summary25Nov2015.pdf.

[80] OHCHR, Unprecedented ministerial meeting on LGBT rights protection (Oct. 7, 2013), http://www.ohchr.org/EN/NewsEvents/Pages/MinisterialMeetingOnLGBT.aspx.

[81] United Nations entities call on States to act urgently to end violence and discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) adults, adolescents and children. (Sept. 2015), http://www.ohchr.org/Documents/Issues/Discrimination/Joint_LGBTI_Statement_ENG.PDF.

Economic and Social Council and the Commission on Human Rights [the predecessor to the Human Rights Council].'[82] However, recent High Commissioners have used the OHCHR to promote controversial 'rights' that are not agreed on by States, and are not promoted by the General Assembly, ECOSOC, or the HRC, as shown in the development of the Free & Equal campaign discussed below, but also in the promotion of 'reproductive rights.'[83] The OHCHR website's 'Issues' tab links to a detailed page on 'Combatting discrimination and violence against sexual orientation and gender identity,'[84] which itself has links to OHCHR fact sheets and infographics,[85] speeches and statements,[86] feature stories, and op-eds.[87] It has a detailed list of OHCHR activities in combating SOGI discrimination and violence; the list, in addition to working with UN

[82] G.A. Res. 48/141, ¶ 4, U.N. Doc. A/RES/48/141 (Dec. 20, 1993).

[83] For example, in response to the recent Zika microcephaly crisis in Latin America, Prince Zeid stated, 'Laws and policies that restrict [women's] access to these services [contraception and abortion] must be urgently reviewed in line with human rights obligations in order to ensure the right to health for all in practice.' OHCHR, Upholding women's human rights essential to Zika response – Zeid (Feb. 5, 2016), http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=17014&LangID=E#sthash.Ipq3BZ2d.dpuf. OHCHR has promoted abortion in other forums as well. *See, e.g.*, UNFPA ET AL., REPRODUCTIVE RIGHTS ARE HUMAN RIGHTS: A HANDBOOK FOR NATIONAL HUMAN RIGHTS INSTITUTIONS (2014), *available at* http://ohchr.org/Documents/Publications/NHRIHandbook.pdf (written in conjunction with OHCHR).

[84] OHCHR, Combatting discrimination based on sexual orientation and gender identity, http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBT.aspx (last visited Dec. 12, 2016).

[85] OHCHR, Combatting discrimination based on sexual orientation and gender identity - Fact Sheets, http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTFactSheets.aspx (last visited Dec. 12, 2016).

[86] OHCHR, Combatting discrimination based on sexual orientation and gender identity - Speeches and statements, http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTSpeechesandstatements.aspx (last visited Dec. 12, 2016).

[87] OHCHR, Combatting discrimination based on sexual orientation and gender identity - Op-eds/Articles, http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTOpinioneditorials.aspx (last visited Dec. 12, 2016).

partners and supporting the special procedures, the treaty bodies, and the UPR, includes:

> - Privately raising concerns and putting forward recommendations for reform in the context of dialogue with Governments.
> - Monitoring and bringing to light patterns of human rights violations affecting LGBT persons, including reporting produced by OHCHR field presences.
> - Engaging in public advocacy of decriminalization and other measures necessary to strengthen human rights protection for LGBT persons, including through speeches and statements, newspaper articles, video messages, fact sheets and distribution of various other materials.[88]

By way of comparison, the OHCHR website pages on combatting other forms of discrimination, such as against indigenous peoples, migrants, minorities, people with disabilities, and women indicate much less proactive advocacy on the part of OHCHR.[89] For example, many of the pages state that OHCHR simply supports the work of special rapporteurs and special working groups, whereas on the issue of SOGI discrimination it boasts that it takes the lead in lobbying for changes in laws and policies. The OHCHR has determined that promoting LGBT 'rights'—not recognized in international law and not agreed on by Member States—is more important than promoting fundamental rights.

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[88] OHCHR, Combatting discrimination based on sexual orientation and gender identity, *supra* note 84.

[89] For a list of OHCHR discrimination pages, see OHCHR, A special focus on discrimination, http://www.ohchr.org/EN/Issues/Discrimination/Pages/discrimination.aspx (last visited Dec. 12, 2016).

The OHCHR has created the Free & Equal 'campaign' to change public opinion on SOGI, the name of which is taken from the UDHR declaration in Article 1 that '[a]ll human beings are born free and equal in dignity and rights.' Free & Equal asserts that 'depriving people of their human rights [cannot] be justified on grounds of religion, culture or tradition' because '[h]uman rights are universal; every human being is entitled to the same rights, no matter who they are or where they live.'[90] Consequently, States 'have a legal duty to promote and protect the human rights of all.'[91]

Human rights are certainly universal, as acknowledged in the UDHR. However, Free & Equal, as a campaign geared toward 'opening hearts,'[92] is largely deliberately vague in its catchy materials and Bollywood videos as to what 'LGBT acceptance' entails and 'LGBT rights' constitute,[93] leading the average member of the public to assume that the UN is promoting the recognition of same-sex 'marriage,' and that if one's religious views are opposed to this idea, one contravenes international consensus. This deliberate vagueness prevents the campaign from being scrutinized—and stopped—by UN Member States that oppose such recognition.

Indeed, the OHCHR recently issued UN Free & Equal stamps promoting 'LGBT equality,'[94] a matter that clearly does not have consensus among Member States. Member States responded that the OHCHR had overstepped its mandate, but not until after the stamps had already been printed. They had been unable to tackle Free & Equal before

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[90] Free & Equal, Fact Sheet: LGBT Rights: Frequently Asked Questions, http://www.ohchr.org/Documents/Issues/Discrimination/LGBT/FactSheets/unfe-28-UN_Fact_Sheets_English.pdf.

[91] *Id.*

[92] Free & Equal, Changing the World By Opening Hearts, https://www.unfe.org/en/actions/uprising-of-rights (last visited Dec. 12, 2016).

[93] The Free & Equal website declares that the UN asserts, 'LGBT rights are human rights.' Free & Equal, Believe in Equality? This Quote Says It All., https://www.unfe.org/en/actions/human-rights (last visited Dec. 12, 2016).

[94] UN News Centre, New stamps promoting LGBT equality worldwide unveiled at UN (Feb. 4, 2016), http://www.un.org/apps/news/story.asp?NewsID=53168#.VvrFwBIrLoA.

this point because of its ambiguity. As a result, Member States with clear opposition to same-sex 'marriage,' often based on the religious convictions of citizens, were forced to fund an initiative that violates their principles and values.

While condemnation of the denial of the right to life of *any* person is necessary given that in some countries individuals who self-identify as LGBT risk death, Free & Equal, the OHCHR, and the UN go beyond traditional understandings of violence and discrimination on the basis of SOGI to a broad interpretation that threatens to create new 'rights.' The campaign's apparent focus on ending violence and discrimination, a deliberate attempt to mask that it promotes legal and moral norms, also makes it difficult for States to challenge it, as no country wants to be seen as accepting what are labeled 'violence' and 'discrimination,' even if they are only considered as such by the UN.

(b) Promotion of anti-discrimination laws

At the request of the Human Rights Council in its Resolution 27/32,[95] High Commissioner for Human Rights Prince Zeid produced a report on SOGI discrimination and violence. The report hails 'positive developments since 2011,' including the introduction of legal recognition of same-sex relationships in at least 12 additional countries,[96] and recommends that States 'address discrimination' by '[p]roviding legal recognition to same-sex couples,'[97] even while recognizing that 'States are not required under international law to recognize same-sex marriage.'[98]

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[95] *See* UNHRC Res. 27/32, ¶ 2, U.N. Doc. A/HRC/RES/27/32 (Oct. 2, 2014).

[96] UNHRC, *Discrimination and violence against individuals based on their sexual orientation and gender identity: Report of the Office of the United Nations High Commissioner for Human Rights*, ¶ 73, U.N. Doc. A/HRC/29/23 (May 4, 2015) (*prepared by* OHCHR) [hereinafter OHCHR, *SOGI report 2015*].

[97] *Id.*, ¶ 79(h).

[98] *Id.*, ¶ 67.

State implementation of the specific recommendations of the High Commissioner's report, echoed in a Free & Equal fact sheet,[99] would be problematic. For example, the High Commissioner 'recommends that States address violence by: [. . .] [p]rohibiting incitement of hatred and violence on the grounds of sexual orientation and gender identity, and holding to account those responsible for related hate speech.'[100] This is a vague standard, and 'hate speech' laws have been used several times to punish people who express the view that marriage as designed by God is between one man and one woman.[101]

The report also notes discriminatory practices in the areas of health care, education, employment, housing, and recognition of relationships[102] and recommends the passage of 'comprehensive anti-discrimination legislation that includes sexual orientation and gender identity among protected grounds,'[103] although neither sexual orientation nor gender identity is mentioned in any international human rights treaty. The anti-discrimination legislation envisioned by the High Commissioner would put religious freedom and respect for cultural values at risk. For example, comprehensive anti-discrimination legislation in the field of employment may prevent churches, faith-based schools, and faith-based nonprofits from hiring only people who uphold the religious ethos and mission of the organization.[104] Anti-bullying policies[105] can violate students' rights by

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[99] *See* Free & Equal, Fact Sheet: Equality and non-discrimination, https://www.unfe.org/system/unfe-8-UN_Fact_Sheets_v6_-_Equality.pdf.
[100] OHCHR, *SOGI report 2015*, *supra* note 96, ¶ 78(d).
[101] *See, e.g.*, PAUL B. COLEMAN, CENSORED: HOW EUROPEAN 'HATE SPEECH' LAWS ARE THREATENING FREEDOM OF SPEECH (2012).
[102] OHCHR, *SOGI report 2015*, *supra* note 96, ¶¶ 50-70.
[103] *Id.*, ¶ 16. *See also id.*, ¶ 79.
[104] Paul Coleman, *'Sexual orientation' and 'gender identity' at the UN: From obscurity to primacy in ten years*, 6 INT'L J. RELIG. FREEDOM 136-40 (2013).
[105] *See* OHCHR, *SOGI report 2015*, *supra* note 96, ¶¶ 56, 79(f).

unnecessarily restricting their ability to express their views.[106] In housing, anti-discrimination legislation on SOGI grounds[107] could prevent religious landlords from renting their spare bedroom to only married heterosexual couples or one unmarried individual at a time. Providing comprehensive sexuality education in schools, suggested by the High Commissioner to combat discrimination in education,[108] would put the religious freedom and cultural values of students and their parents in peril, especially if they are unable to opt out or to present or hear alternative viewpoints.

(c) Pressure on states to change laws

The United Nations has been largely unsuccessful in promoting SOGI language in forums in which Member States vote, indicating the intense disagreement among States on the issue. The only General Assembly resolutions with SOGI language condemn killings of persons because of their sexual orientation[109] and, in an additional two resolutions, their gender identity.[110] The only two HRC resolutions with SOGI language merely call for a report by the High Commissioner on Human Rights on

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[106] See Alliance Defending Freedom, Students' Rights, https://www.adflegal.org/issues/religious-freedom/k-12/key-issues/students-rights (last visited Dec. 12, 2016); ALLIANCE DEFENDING FREEDOM, ANTI-BULLYING POLICY YARDSTICK (2012), https://adflegal.blob.core.windows.net/web-content-dev/documents/religious-freedom---education-k-12---anti-bullying-policy-yardstick-a-guide-to-good-and-bad-policies.pdf?sfvrsn=12.

[107] *See* OHCHR, *SOGI report 2015*, *supra* note 96, ¶ 79(g).

[108] *See id*., ¶¶ 57, 79(f).

[109] *See* G.A. Res. 65/208, ¶ 6(b), U.N. Doc. A/RES/65/208 (Mar. 30, 2011); G.A. Res. 63/182, ¶ 6(b), U.N. Doc. A/RES/63/182 (Mar. 16, 2009); G.A. Res. 61/173, ¶ 5(b), U.N. Doc. A/RES/61/173 (Mar. 1, 2007); G.A. Res. 59/197, ¶ 8(c), U.N. Doc. A/RES/59/197 (Mar. 10, 2005); G.A. Res. 57/214, ¶ 6, U.N. Doc. A/RES/57/214 (Feb. 25, 2003).

[110] *See* G.A. Res. 69/182, ¶ 6(b), U.N. Doc. A/RES/69/182 (Jan. 30, 2015); G.A. Res. 67/168, ¶ 6(b), U.N. Doc. A/RES/67/168 (Mar. 15, 2013).

violence and discrimination against individuals on the basis of sexual orientation or gender identity.[111]

Yet States resistant to redefining marriage in their laws have been pressured directly through UN processes. Treaty bodies have told countries to grant legal recognition or benefits to same-sex relationships.[112] For example, the Committee on Economic, Social and Cultural Rights recommended to Slovakia in 2012 that it 'consider adopting legislation that would grant legal recognition to homosexual couples.'[113] That same year it told Bulgaria 'to legally recognize same-sex couples.'[114]

Several countries have used the UPR process to tell other countries to change their laws to recognize same-sex 'marriage' or same-sex civil unions. For example, Norway told Estonia to '[re]cognize same-sex marriages'[115] and Australia to '[a]mend the Marriage Act to allow same-sex partners to marry and to recognize same-sex marriages from overseas.'[116] Iceland told Colombia to '[f]urther recognize the rights of same-sex couples by legalizing same-sex marriage and adoption.'[117] Spain told Ireland to '[f]urther reform the law on same-sex marriage and

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[111] *See* UNHRC Res. 27/32, *supra* note 95; UNHRC Res. 17/19, U.N. Doc. A/HRC/RES/17/19 (July 14, 2011).

[112] *See, e.g.*, HRC, *Concluding observations of the Human Rights Committee: Japan*, ¶ 29, U.N. Doc. CCPR/C/JPN/CO/5 (Oct. 30, 2008).

[113] CESCR, *Concluding observations of the Committee on Economic, Social and Cultural Rights: Slovakia*, ¶ 10, U.N. Doc. E/C.12/SVK/CO/2 (June 8, 2012)

[114] CESCR, *Concluding observations on the combined fourth and fifth reports of Bulgaria*, ¶ 17, U.N. Doc. E/C.12/BGR/CO/4- 5 (Dec. 11, 2012).

[115] UNHRC, *Report of the Working Group on the Universal Periodic Review: Estonia*, ¶ 80.16, U.N. Doc. A/HRC/17/17 (Mar. 28, 2011) [hereinafter UPR Estonia].

[116] UNHRC, *Report of the Working Group on the Universal Periodic Review: Australia*, ¶ 86.70, U.N. Doc. A/HRC/17/10 (Mar. 24, 2011). Norway also recommended Slovenia take action on same-sex relationships. UNHRC, *Report of the Working Group on the Universal Periodic Review: Slovenia*, ¶ 111.8, U.N. Doc. A/HRC/14/15 (Mar. 15, 2010).

[117] UNHRC, *Report of the Working Group on the Universal Periodic Review: Colombia*, ¶ 117.4, U.N. Doc. A/HRC/24/6 (July 4, 2013).

change the concept of the traditional family as enshrined in the Constitution.'[118] Over 160 recommendations on same-sex relationships have been made in the two cycles of the UPR.[119]

Although UN entities have not officially and explicitly promoted a right to same-sex 'marriage,' the push within the UN for normalizing LGBT 'rights' will ultimately lead to a clash because many Member States have no intention of ever legalizing same-sex 'marriage.'

[118] UNHRC, *Report of the Working Group on the Universal Periodic Review: Ireland*, ¶ 107.44, U.N. Doc. A/HRC/19/9 (Dec. 21, 2011).
[119] UPR Info, *supra* note 29 (running searches for the term 'same-sex').

5) Plan of action

The promotion of 'sexual and reproductive rights' and SOGI language at the UN highlights how the UN operates in two different ways. On the one hand, Member States negotiate and pass resolutions, primarily through the 193-member General Assembly but also through smaller bodies like the Security Council and the Human Rights Council. On the other hand, independent, unelected, or unaccountable entities, such as the Secretary-General, the Office of the High Commissioner for Human Rights, agencies, human rights treaty bodies, and special rapporteurs, dictate what the UN should be doing and how Member States should meet their international obligations. It is through these entities, rather than consensus-based bodies, that Member States are most often pressured to promote controversial 'rights' and values, such as ensuring adolescents can access abortion without their parents' knowledge or requiring doctors to refer patients for abortions. With that in mind, there are several strategies for States to defeat this push at the UN:

(a) Assert that international law does not guarantee these controversial 'rights' and that states have national sovereignty in these areas

States have no obligation to promote or protect rights that do not exist in international law and that they have not obligated themselves to promote or protect. For example, international human rights treaties do not mention abortion or sexual orientation. Therefore, under a proper reading of international law, States have no obligation to legalize abortion or create special LGBT 'rights.' Far-reaching treaty bodies that develop broad and even counterintuitive interpretations—for example, that the right to life

in the ICCPR includes a right to abortion[120]—should not bully States to violate their national sovereignty.

(b) Assert that UN entities have no binding authority on states

Likewise, States must assert that these entities have no authority to create rights and no binding authority over the States themselves.[121] Although agencies like UNFPA and WHO have no position of authority over States, they nevertheless tell States what they have to do to meet their international obligations, and because these agencies have support from powerful governments, NGOs, and foundations, States feel bullied. Treaty bodies and special rapporteurs are the most egregious at claiming false rights exist and at assuming authority over sovereign States.

It is especially important that States resist pressure from UN entities to prevent the creation of customary international law, which occurs when a rule is followed as general practice and that rule is accepted as law.[122] If many States accept a treaty body's interpretation as law, it can become custom and that practice then becomes binding on States.[123] States must be encouraged to follow their treaty obligations strictly and disregard broad, unsubstantiated interpretations provided by UN entities.

(c) Ensure that UN entities do not exceed their mandates

In addition to resisting pressure from UN entities through not changing their own laws and practices, Member States need to ensure these

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[120] *See* HRC, *Draft general comment No. 36*, *supra* note 21. For a response to this claim, see ADF Int'l, *Contribution to the General Discussion on the preparation for General Comment No.36 Article 6 of the ICCPR: Right to life* (June 12, 2015), *available at* http://www.ohchr.org/Documents/HRBodies/CCPR/Discussion/2015/ADF_International.docx.

[121] For example, the human rights treaties that establish treaty bodies to monitor adherence to the treaties give those bodies limited duties, among which the creation of rights is not included. *See, e.g.*, ICCPR, *supra* note 38, arts. 40-42.

[122] DAVID J. BEDERMAN, INTERNATIONAL LAW FRAMEWORKS 16 (2d ed. 2006).

[123] *Id.*

entities adhere to their limited mandates and authority. UN entities have become increasingly bolder in their promotion of laws, policies, and practices that are not agreed on by Member States. Instead of being a union of nations, the UN has become groups of bureaucrats advancing their own agendas on sexual and reproductive rights and sexual orientation and gender identity, with significant repercussions for fundamental rights. These entities are making incremental moves toward broad interpretations of international treaties, as with the Free & Equal stamps promoting 'LGBT equality,' which are easily understood as promoting a right, albeit unfounded, to marriage for individuals who self-identify as LGBT. Going forward, Member States must be proactive in fighting these kinds of initiatives.

The evidence for limited authority is clear. For example, the Secretary-General, established by the UN Charter,[124] is supposed to perform the functions entrusted to him by the General Assembly, the Security Council, and ECOSOC.[125] As the 'chief administrative officer' of the UN, he does not have the authority to determine the human rights the UN should be promoting and protecting. Likewise, the High Commissioner for Human Rights is subject to the direction of the General Assembly, ECOSOC, and the HRC, all consensus bodies.[126] Nothing in its mandate indicates the OHCHR should act as an independent authority. On the contrary, the General Assembly has agreed that 'the responsible organs for decision- and policy-making for the promotion and protection of all human rights' are the General Assembly, ECOSOC, and the Human Rights Council.[127]

Further, UN agencies depend on funding from Member States,[128] yet agencies often ignore the sovereignty of States. Member States should consider withholding funding from agencies that exceed their mandates.

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[124] U.N. Charter art. 97.
[125] *Id.*, art. 98.
[126] G.A. Res. 48/141, *supra* note 82, ¶ 4.
[127] *Id.*, preamble.
[128] *See, e.g.*, UNFPA, Funds and funding, http://www.unfpa.org/funds-and-funding (last visited Dec. 12, 2016).

Even though Western countries who promote sexual and reproductive rights and SOGI language are usually the primary donors to these agencies, the public refusal by several States to fund these agencies on account of their overstepping will send a clear message to the agencies and to fellow States. At the same time, Member States need to demand transparency from agencies on how funding is used and the sources of additional funding.

(d) Ensure that the OHCHR, treaty bodies, and the UPR focus exclusively on universally agreed, fundamental rights

This is a subset of the previous strategy, but it deserves independent acknowledgement. The High Commissioner for Human Rights and the OHCHR have strayed from their roles as promoters of universally agreed, fundamental human rights. For example, freedom of religion is readily identifiable as a fundamental, non-derogable right in ICCPR articles 4 and 18, yet the OHCHR has chosen to focus massive resources instead on 'rights' that are not recognized by most Member States and are not found in international law. States must demand transparency from OHCHR on its funding, especially funding for the Free & Equal campaign, and cease funding its initiatives until it returns to its core obligations.

Likewise, treaty bodies do not adhere to their mandates to ensure implementation of obligations as stated in human rights treaties. Instead, they use dubious argumentation to broaden the original, common understanding of these obligations—such as interpreting a right to abortion from the right to life—and then bully States to adhere to these new, non-agreed interpretations. In addition to reasserting that treaty bodies have no authority to invent rights, Member States must insist that treaty bodies return to their original roles as safekeepers of fundamental human rights, as agreed in treaties.

The Universal Periodic Review's process, which has been criticized for allowing too many recommendations for States realistically to implement, must also focus on universally agreed rights and not on an ever-

broadening understanding by individual States of what is required by international law. Western States have taken advantage of the UPR mechanism to force their expansive interpretations of law on small and developing countries. Requiring a refocusing of the UPR to fundamental rights will necessarily decrease the number of recommendations and afford States greater opportunities to meet their responsibilities—and will prevent them from increasingly using the large number of recommendations as an excuse for not even trying to improve their human rights records.

(e) Ensure that documents include language respecting state sovereignty and religious, cultural, and ethical values

In negotiations, States must be encouraged to resist pressure from other States and from agencies like UNFPA to include controversial language. Wherever necessary, negotiated documents must include language on State sovereignty and respect for religious, cultural, and ethical values. For example, positive language that is often included in resolutions from ECOSOC's Commission on Population and Development reaffirms

> the sovereign right of each country to implement the recommendations of the Programme of Action or other proposals in the present resolution, consistent with national laws and development priorities, with full respect for the various religious and ethical values and cultural backgrounds of its people, and in conformity with universally recognized international human rights.[129]

This language, with origins in the ICPD Programme of Action,[130] emphasizes States' right to set policy related to sexual and reproductive health according to their own priorities. However, while including

[129] CPD 2012 Resolution, *supra* note 47, ¶ 3.
[130] *See supra* n.74 and accompanying text.

sovereignty language is necessary, it is not sufficient. Sovereignty language does not negate controversial language. States that want to protect the right to life of the unborn in their laws and policies should not compromise by allowing controversial language simply because sovereignty will be acknowledged. The fact that sovereignty language commonly has accompanied controversial language in negotiated documents also does not mean that these States should accept the combination as a given. The best course of action is for States to have true consensus on fundamental rights and leave out contentious issues on which there is no agreement.

ADF INTERNATIONAL

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We operate at institutions of strategic international importance—the United Nations, the European Union, the Council of Europe, the Organization of Security and Cooperation in Europe, the European Court of Human Rights, and the Organization of American States—while also working alongside Member States to protect the fundamental values that these organizations were founded to uphold. ADF International's influence at these key institutions means we are instrumental in shaping policy around the world.

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