



## **OHCHR Report on Sexual Orientation and Gender Identity**

In November of 2011 the Office of the United Nations High Commissioner for Human Rights (OHCHR), as mandated by the Human Rights Council, released a report (A/HRC/19/41) addressing “*Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity.*” Unfortunately, rather than focus on preventing violence against LGBT people, which was the intent of the Human Rights Council’s mandate, the report builds on the Commissioner’s 2010-2011 strategic plan to have the world “embrace sexual minorities.”<sup>1</sup> The report does this by falsely claiming that international human rights law requires UN Member States to mainstream acceptance of LGBT behavior in every aspect of society, allegedly to prevent “discrimination.”

The purpose of this brief is to show how the OHCHR report presents a grave threat to national sovereignty, parental rights, cultural and moral values, religious liberty, and public health and safety of UN Member States. This brief will also provide facts to counteract a number of the false claims and harmful recommendations in the OHCHR report.

### **Violence Based on Sexual Orientation is Already Outlawed**

Violence, torture, or inhuman treatment of any person for any reason should not be tolerated. Indeed, people are wrongly mistreated and bullied for any number of reasons, ranging from a person’s weight, skin color, educational or socioeconomic background, gender, religion, etc. Efforts to stop violence and inhumane treatment toward any person should be encouraged, and most nations already have adequate laws against such actions. The OHCHR report is intended not just to stop violence against LGBT people; rather, it seeks to single out LGBT people for special protections and grant them controversial “rights” unrelated to violence.

International law already requires UN Member States to prevent and prohibit violence or other inhuman treatment of all human beings, LGBT or otherwise. As the OHCHR report accurately states, “The right to be free from torture and other cruel, inhuman or degrading treatment is *absolute.*”<sup>2</sup> Both Article 5 of the Universal Declaration of Human Rights (UDHR) and Article 7 of the International Covenant on Civil and Political Rights (ICCPR) provide that “*no one* shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

However, the Commissioner’s report inappropriately uses specific incidences of violence against members of the LGBT community as justification for proposing an activist agenda that would dramatically expand LGBT “rights” at the expense of national sovereignty, religious liberty, parental rights, moral values, and public health and safety. Ironically, in countries where

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<sup>1</sup> See Family Watch International Policy Brief on [The Office of the High Commissioner for Human Rights 2010-2011 Strategic Plan](#).

<sup>2</sup> “Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity,” Report of the United Nations High Commissioner for Human Rights, A/HRC/19/41, page 6 (17 November 2011) [hereinafter “OHCHR report”].

LGBT “rights” (specific protections) are expanding in the name of reducing violence and hatred, we are witnessing an ever-increasing animosity toward traditional moral values, including bigotry and violence toward religious groups and individuals proclaiming these values.<sup>3</sup>

### **Sexual Orientation is not a Protected Class in UN Conference Documents, and Member States Have Rejected All Proposals to Make it as Such**

According to the Commissioner, “The fact that someone is lesbian, gay, bisexual or transgender *does not limit their entitlement to enjoy the full range of human rights.*” (Par. 16.) Part of the Commissioner’s rationale is the erroneous conclusion that international law secures full equality not just for LGBT individuals, but also for their sexual behavior.

The OHCHR report claims that the words “*other status*” in the non-discrimination clauses of the UDHR, the ICCPR, and the ICESCR<sup>4</sup> now include protection for “*sexual orientation*,” thus justifying her attempts to mainstream homosexual lifestyles and eliminate all restrictions on private consensual sexual behavior engaged in by LGBT individuals. The Commissioner bases this position on various UN Committees’ non-binding and controversial interpretations of the words “*other status*” in the treaties previously mentioned. The Commissioner completely ignores the reality that (i) according to the UN charter, only UN Member States acting through the General Assembly have authority to develop international human rights,<sup>5</sup> and thus decide which classes of persons are entitled to special protection; and (ii) to date, the majority of UN Member States have specifically rejected repeated attempts to secure such special protections for LGBT individuals.

UN Member States have rejected “*sexual orientation*” as a distinct class entitled to equal treatment in all cases because (i) LGBT individuals are best defined by their sexual behavior (as the OHCHR report indicates<sup>6</sup>), which is a changeable condition rather than a fixed characteristic like race, and therefore does not merit special protection; and (ii) providing sexual minorities with special protections would undermine the institutions of marriage and the family, as well as conflict with religious and cultural values in many countries. More specifically, as explained further below, granting special rights to LGBT individuals may undermine and even enable their rights to trump well-established parental, religious, and other rights critical to a successful and orderly society.

“Sexual orientation” has never been defined by UN Member States, another essential reason it cannot be a protected class under international law. Mental health professionals identify at least 23 different characteristics and conditions that can be considered as sexual orientations (including bestiality and pedophilia), most of which are still considered mental disorders. The Commissioner fails to indicate in her report which of those conditions she considers as being worthy of special protection and why.

These important decisions involving international human rights can only be made by a majority of UN Member States, and not by UN agencies or committees that are incapable of

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<sup>3</sup> For at least one extensive list of examples of such animosity during the Proposition 8 campaign in California, see Thomas Messner, *The Price of Prop 8* (Oct. 22, 2009), available at <http://www.heritage.org/research/reports/2009/10/the-price-of-prop-8>.

<sup>4</sup> ICESCR stands for the International Covenant on Economic, Social and Cultural Rights (1976).

<sup>5</sup> The Charter of the United Nations (1945), Articles 13, 62. The Economic and Social Council and UN agencies act under the direction and supervision of the General Assembly. *Id.* Articles 60, 63, 66, 96.b.

<sup>6</sup> OHCHR report, footnote 2.

binding national governments.<sup>7</sup> The Commissioner and UN committees should not be allowed to do the bidding of sexual rights activists who want to protect and thus mainstream all sexual behaviors. These entities are not satisfied with UN resolutions that already prevent discrimination on any basis, which would apply to all people, including LGBT individuals. Instead, they want “*sexual orientation*” to be a protected class so that they can advance their highly controversial sexual rights agenda.

### **Adding Sexual Orientation and Gender Identity to Anti-discrimination Legislation is Unnecessary and Inappropriate**

The High Commissioner calls upon Member States to “[e]nact comprehensive anti-discrimination legislation that includes discrimination on grounds of sexual orientation and gender identity among prohibited grounds and recognizes intersecting forms of discrimination.” (Par. 84(e).) This is not an attempt to further protect LGBT individuals from violence or inhuman treatment since, as stated before, the UDHR and ICCPR already require *all* governments to accomplish that objective for *all* people. Rather, the Commissioner wants to establish a foundation for coercing UN Member States into granting a host of benefits and privileges to LGBT individuals that many of those states have repeatedly refused to grant because of the negative impact high risk sexual behaviors have on both those who engage in them and on society at large.

Such special legislation for LGBT individuals has been the source of countless problems for morally conscientious people living in affected areas. Several bed and breakfast owners in Canada, the United States, and the United Kingdom have now been sanctioned for refusing service to homosexual couples<sup>8</sup> based on their personal beliefs that such relations are immoral. A photographer in New Mexico was fined \$6,000 for refusing to photograph a homosexual “commitment ceremony.”<sup>9</sup> A husband and wife in Britain were denied the ability to become foster parents because their Christian beliefs made them unwilling to tell children that a homosexual lifestyle was acceptable.<sup>10</sup> A police officer in California was allegedly demoted after including anti-homosexual themes in a private, off-duty sermon he preached as the minister of his local religious congregation.<sup>11</sup> Various doctors have been sanctioned for refusing, on the grounds that it would violate their conscience, to perform in-vitro fertilization on lesbian patients.<sup>12</sup> Some universities have sanctioned their professors and students for opposing

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<sup>7</sup> See *supra* note 5.

<sup>8</sup> See, e.g., Richard Allen Green, *Christian B&B Owners Discriminated Against Gays, UK Court Finds*, CNN.com, Jan. 18, 2011, <http://religion.blogs.cnn.com/2011/01/18/christian-bb-owners-discriminated-against-gays-uk-court-finds/>; Chris Johnson, *Va. B&B Rejects Gays, Couple Claims*, WashingtonBlade.com, Mar. 22, 2011, <http://www.washingtonblade.com/2011/03/22/va-bb-rejects-gays-couple-claims/>.

<sup>9</sup> Jeff Johnson, *New Mexico Commission Orders \$6,000 Fine for Christian Beliefs*, Onenewsnow.com, Apr. 11, 2008, <http://www.onenewsnow.com/Legal/Default.aspx?id=75547>.

<sup>10</sup> Maria Mackay, *U.K. High Court Upholds Bar on Christian Foster Parents over Homosexual Views*, Christianpost.com, Feb. 28, 2011, <http://www.christianpost.com/news/uk-high-court-upholds-bar-on-christian-foster-parents-over-homosexual-views-49219/>.

<sup>11</sup> *Holyfield v. City of Los Angeles*, Case No. BC392939, compl. at 2-13 (C.D. Cal 2008), available at <http://www.alliancealert.org/2008/20080703.pdf>.

<sup>12</sup> See, e.g., *North Coast Women's Care Medical Group v. San Diego Superior Court*, 189 P.3d 959, 968 (Cal. 2008) (holding that the State's overwhelming interest in prohibiting sexual orientation discrimination prevented the doctor from referring, on religious grounds, a lesbian couple elsewhere for fertilization services).

homosexual ideals.<sup>13</sup> Christian counselors, students, and counseling services are under attack in England, Canada, the United States, and elsewhere for refusing to participate in gay-affirming therapies,<sup>14</sup> and for providing reorientation therapies.<sup>15</sup>

When sexual orientation and gender identity are specifically listed in legislation among categories requiring special protection, those interests can be claimed to trump religious beliefs and call into question actions based on those beliefs, even though religion is always included among the categories listed in anti-discrimination language.<sup>16</sup> This is not to say that discrimination based on sexual orientation or gender identity is always appropriate, but there is nothing inherently wrong with some forms of discrimination for religious, moral, or health reasons, or for the general well-being of society.<sup>17</sup>

For example, many places ban smoking in public buildings. Minors often do not enjoy the right to contract, marry, own property or drink alcohol. People convicted of certain crimes lose their liberty; depending on the crime, those people may be fined or imprisoned. Certain behaviors (not individuals) are stigmatized, and liberty is restricted in countless ways, in order to protect the health and general well-being of society.<sup>18</sup> Literal freedom from all forms of sexual or other discrimination cannot possibly hold up as a human right, not for *any* category of individuals. In brief, certain forms of discrimination on the basis of sexual orientation or gender identity are necessary and appropriate in order to protect the health, morals, religious beliefs, and general well-being of society. Some of these reasons will be further explained in the section that discusses issues related to the decriminalization of all adult consensual sex acts.

### **Comprehensive Sexuality Education Should Not Be a Part of the Right to Education**

Paragraph 61 of the OHCHR report states: “The right to education includes the right to receive *comprehensive*, accurate and age-appropriate information regarding human sexuality in order to ensure young people have access to information needed to lead healthy lives, make

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<sup>13</sup> See, e.g., *Professor Fired For Teaching Catholic Doctrine On Homosexuality Is Reinstated*, CHRISTIAN L. J. (Aug. 29, 2010), <http://www.christianlawjournal.com/featured-articles/professor-fired-for-teaching-catholic-doctrine-on-homosexuality-is-reinstated/> (describing how a professor at the University of Illinois was fired for teaching that homosexuality was contrary to natural law, and how he was later reinstated after the threat of a law suit).

<sup>14</sup> See, e.g., *Ward v. Eastern Michigan University*, 2010 U.S. Dist. LEXIS 33056 (E.D. Mich. 2010) (upholding the schools decision to dismiss a counseling student when she refused to affirm that homosexual practices were morally acceptable); *Christian Sex Therapist Gary McFarlane Loses Appeal Bid*, BBC, Apr. 29, 2010, [http://news.bbc.co.uk/2/hi/uk\\_news/england/bristol/somerset/8651417.stm](http://news.bbc.co.uk/2/hi/uk_news/england/bristol/somerset/8651417.stm) (describing a case in which a religious therapist was fired in England for refusing to counsel gay couples about sex).

<sup>15</sup> Lynn D. Wardle, *When Dissent is Stifled: The Same-Sex Marriage and Right to Treatment Debates*, NARTH Collected Papers (1999), available at <http://www.narth.com/docs/wardle.html> (describing challenges and opposition faced by Christian counselors offering therapies to help overcome same-sex attraction).

<sup>16</sup> For further examples of how including sexual orientation and gender identity in anti-discrimination language trumps religious liberty, see Hans C. Clausen, *Note: The "Privilege of Speech" in a "Pleasantly Authoritarian Country": How Canada's Judiciary Allowed Laws Proscribing Discourse Critical of Homosexuality to Trump Free Speech and Religious Liberty*, 38 VAND. J. TRANSNAT'L L. 443 (2005).

<sup>17</sup> See Jacob Stewart, *Referenda and the District of Columbia's Human Rights Act: Voting on Same-Sex Marriage in the Nation's Capital*, 3 LEG. & POL'Y B. 175, 184-88 (2011), available at <http://digitalcommons.wcl.american.edu/lpb/vol13/iss2/4/> for a more complete discussion of appropriate and accepted forms of discrimination, even for universally-accepted rights such as life, liberty, and property.

<sup>18</sup> For a more complete discussion of lawful discrimination and fundamental rights, see *id.*

informed decisions and protect themselves and others from sexually-transmitted infections” (emphasis added). Exactly what type of “comprehensive human sexuality education” are we talking about?

In a footnote, the OHCHR report refers to the UNESCO International Technical Guidance on Sexuality Education, which contains highly inappropriate comprehensive sexuality education standards.<sup>19</sup> As advocated by several UN agencies and activists, comprehensive sexuality education has been known to include explicit, graphic explanations and illustrations of homosexual sex; encourage promiscuity among youth; promote condom use, as 100 percent safe; and encourage masturbation as healthy, among other issues. (See Family Watch’s special report on comprehensive sexuality education.<sup>20</sup>) Here are a few recent examples of the impact of comprehensive sexuality education when implemented in schools:

- In Switzerland, a school board introduced a “sex box” into the curriculum for four-year-olds.<sup>21</sup> The box contains “fabric models of human genitalia in order to teach them that ‘contacting body parts can be pleasurable.’” As a result of over 3,000 parental protests, school officials changed the name of the box but refused to change its contents or the related curriculum.
- In the United States, California has added the mandatory study of gay and lesbian history to its core education curriculum.
- When gay marriage was instituted in Massachusetts, schools began to freely teach children as young as five years old that gay and lesbian relationships are normal and healthy expressions of love. When parents demanded informed consent for all sexuality education issues and an opportunity for their children to opt out of such instruction, the school board refused. The school’s decision was upheld by U.S. federal courts.

When comprehensive sexuality education becomes a mandatory part of a school curriculum, parental power to direct the moral and religious upbringing of their children is seriously or completely undermined, as evidenced by the Massachusetts case. Furthermore, this radical education encourages sexual activity and experimentation from a young age. When early sexual experimentation occurs, there is an increase in serious mental and physical health problems among young people, including sexual addictions, sexually transmitted infections, teenage pregnancies, future marriage problems, poverty, and any number of other related social ills such as increased drug and alcohol abuse and suicide.<sup>22</sup>

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<sup>19</sup> See Family Watch’s policy brief on these guidelines found at [http://www.familywatchinternational.org/fwi/documents/fwipolicybriefunesco\\_REVISED\\_after\\_new\\_guidelines\\_000.pdf](http://www.familywatchinternational.org/fwi/documents/fwipolicybriefunesco_REVISED_after_new_guidelines_000.pdf)

<sup>20</sup> Special Report, Comprehensive Sexuality Education: Sexual Rights vs. Sexual Health, available at [http://www.familywatchinternational.org/fwi/documents/Special\\_Report\\_CSE\\_Revised\\_1\\_12.pdf](http://www.familywatchinternational.org/fwi/documents/Special_Report_CSE_Revised_1_12.pdf).

<sup>21</sup> Hilary White, ‘Sex Box’ for Swiss Kindergarteners Has Genitalia Toys: Will Teach Sexuality Is Pleasurable, LifeSiteNews.com (August 25, 2011), <http://www.lifesitenews.com/news/sex-box-for-swiss-kindergarteners-has-genitalia-toys-will-teach-sexuality-i/>.

<sup>22</sup> For evidence of how early sexual experimentation leads to some of these social ills, see Robert E. Rector, et al., *The Harmful Effects of Early Sexual Activity and Multiple Sexual Partners Among Women: A Book of Charts 11* (2003), available at [http://s3.amazonaws.com/thf\\_media/2003/pdf/wm303.pdf](http://s3.amazonaws.com/thf_media/2003/pdf/wm303.pdf); Scott DeNicola and Jeff Hooten, *The High Cost of Promiscuity*, Focus on the Family Citizen 6, 6-21 (February 1998).

The Commissioner cites to paragraph 7.47 of the ICPD, a UN committee ruling, and a CPD resolution as support for his recommendation to implement “*comprehensive*, accurate and age-appropriate information regarding human sexuality....” However, the ICPD does not mention a right to comprehensive sexuality education and the other support cited in the report does not constitute binding international law.

The general population (particularly parents) must be informed of the global push by the UN and sexual rights activists to integrate comprehensive sexuality education in public schools, and parents should be provided with available social science data to demonstrate the harmful effects of teaching explicit sexuality to children. In doing so, sovereign nations and concerned citizens everywhere must help people to become engaged with their governments to push back on such curricula. Direct, active involvement by parents and pro-family governmental officials is the only means for effectively combating the push for comprehensive sexuality education. Unfortunately, wherever robust LGBT rights have been established, there is no longer much that can be done to keep comprehensive sexuality education out of schools; the two seem to go hand-in-hand.

Since sexuality education touches on extremely sensitive and controversial subjects, if it is implemented at all it certainly should reflect the values and culture of the society in which it is offered and should respect the universal rights and responsibilities of parents to guide their children’s education.<sup>23</sup> When instruction on human sexuality does not meet these basic tests, it cannot be claimed to be “education” but must be recognized for what it is – “indoctrination” that often runs counter to the norms and values of a society’s culture. There is no authority in any UN treaty that allows such an imposition on Member States and their societies. Indeed, if and when the time comes that all available schools in a relevant geographical area mandate comprehensive sexuality education, parents will be denied their “prior right” in UDHR Article 26(3) “to choose the kind of education that shall be given to their children.”

### **The Commissioner’s Push for Legal Recognition of Same-Sex Couples, Including Mandatory Benefits, Will Subvert Religious Liberty and Parental Rights**

Paragraphs 68 and 69 of the OHCHR report decry the “[l]ack of official recognition of same-sex relationships.” Although the report does not expressly call for legalizing same-sex marriage, various statements and references (such as the footnote endorsing the Yogyakarta Principles) in the OHCHR report suggest that the lack of an official marital status for same-sex couples is unacceptable. (See FWI’s policy brief on the serious problems with the radical Yogyakarta Principles.<sup>24</sup>)

Nations that have established legal recognition for same-sex couples have inevitably experienced a number of the serious issues cited previously in this brief where the purported sexual “rights” of LGBT people have clashed with the religious liberty rights of other citizens. Further problems have included the denial of commercial or professional licenses for people

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<sup>23</sup> See, e.g., UDHR Article 26(3) (“Parents have a prior right to choose the kind of education that shall be given to their children.”)

<sup>24</sup> The Yogyakarta Principles: The “Magna Charta” of the Sexual Rights Movement, <http://www.familywatchinternational.org/fwi/documents/FWIpolicybriefyogyakartarevision12-09.pdf>

who espouse religious views opposing sexual “rights” (i.e., food licenses, liquor licenses, licenses to operate childcare or mental health facilities, counseling, legal, or medical licenses, etc.),<sup>25</sup> loss of government funding<sup>26</sup> or tax exempt status,<sup>27</sup> additional limits on the use of public accommodations (parks, camps, retreats, etc.) by religious groups,<sup>28</sup> loss of the ability to exclude individuals who don’t abide by the same morals from private groups (religious employment, clubs, schools, etc.),<sup>29</sup> and deleterious effects on other areas of life.<sup>30</sup> In short, increased recognition of “sexual rights” can and already has adversely affected religious groups and individuals in many and varied ways, even when specific protections for religious interests are originally included in national legislation. Increasingly across the world, where sexual rights and religious rights come into conflict, courts often are ruling in favor of sexual rights.

### **Legal Identification Changes for Transsexual People Would Give Mentally Ill Individuals Free Reign in the Public Sector**

The High Commissioner calls upon Member States to “[f]acilitate legal recognition of the preferred gender of transgender persons and establish arrangements to permit relevant identity documents to be reissued reflecting preferred gender and name.” (Para. 84(h).)

The most serious cases of gender confusion that the Commissioner is referring to are indications of “Gender Identity Disorder,” which is recognized as a mental illness by both the International Statistical Classification of Diseases and Related Health Problems and the Diagnostic and Statistical Manual of Mental Disorders. Many mental health professionals agree that appearing to officially “affirm” these individuals can actually make their condition worse.

In addition to the harms inherent in implementing the special recognitions the Commissioner is trying to require, a number of questions about the practical impact on societies must be asked. Would it really be prudent to allow mentally ill men into a women’s locker room, dressing room, college dormitory, or restroom simply because their legal identification document now labels them as a woman? Is it wise to allow teachers, daycare workers, and people in other positions of trust and responsibility to change their sexual identity at will and continue to work with children? What kind of society would allow these changes, much less mandate them?

Think of the ramifications and opportunities for abuse that such a policy, enabling relevant identity documents to be changed at will, would bring in our society. In addition to the moral and general safety considerations, religious schools, organizations, and individuals would no longer have legal grounds for distinguishing between genders. They would be forced to accept the most current legal identification presented by the person in question regardless of his or her sex, and that identification could change multiple times over the course of a lifetime.

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<sup>25</sup> Marc D. Stern, *Same-Sex Marriage and the Churches*, in SAME-SEX MARRIAGE AND RELIGIOUS LIBERTY: EMERGING CONFLICTS 1, 27-28 (Douglas Laycock, Anthony R. Picarello, Jr. & Robin Fretwell Wilson eds., 2008).

<sup>26</sup> *Id.* at 24-25.

<sup>27</sup> See generally Jonathan Turley, *An Unholy Union: Same-Sex Marriage and the Use of Governmental Programs to Penalize Religious Groups with Unpopular Practices*, in SAME-SEX MARRIAGE AND RELIGIOUS LIBERTY 59, (Douglas Laycock, Anthony R. Picarello, Jr. & Robin Fretwell Wilson eds., 2008).

<sup>28</sup> Stern at 37-39.

<sup>29</sup> *Id.* at 31-37.

<sup>30</sup> *Id.* at 39-57.

## **Decriminalization of All Forms of Adult Consensual Sex Would Open Up the Path to Further Promote LGBT Rights and Create More Harm to Individuals and Society**

According to the High Commissioner, States should “[r]epeal laws used to criminalize individuals on grounds of homosexuality for engaging in consensual same-sex sexual conduct.” (Para. 84(d).) Seventy-six countries currently criminalize homosexual conduct,<sup>31</sup> but the Commissioner calls their laws “relics of colonial-era legislation.” (Par. 40.)

Sovereign nations, however, are entitled to legislate in accordance with the various religious and ethical values, cultural backgrounds, and philosophical convictions of individuals and their communities, taking into account the right to development and established human rights. (Habitat 1996, Par. 24.) Sovereignty is one of the most fundamental rights established by international law in multiple UN treaties and documents. Further, most criminal codes are founded upon moral principles and certain actions are criminalized because they harm people. For example, it is commonly accepted that it is harmful and wrong to steal, kill, or otherwise injure anyone, including oneself. Likewise, homosexual conduct, consensual or not, can be harmful to individuals, families, and society. Many and varied sources discuss the diseases and psychological and social ills associated with homosexual sex, and in particular anal sex, which is one of the highest risk behaviors for transmitting the deadly HIV virus. Research shows that in addition to risk of HIV, people who engage in the homosexual lifestyle are at higher risk for anal cancer, chlamydia, hepatitis, syphilis, psychological illnesses such as depression, increased drug and alcohol abuse, an increased likelihood of suicide.<sup>32</sup>

It is widely known that HIV/AIDS spreads most quickly in communities that accept and welcome homosexual behavior.<sup>33</sup> All of these problems impose extraordinarily high costs on the community,<sup>34</sup> affecting a nation’s right to development. (Habitat 1996, Par. 24.) Furthermore, the trend toward decriminalizing all consensual adult sex acts opens up the door to legalizing other harmful activities, such as prostitution which is more common in the LGBT community.<sup>35</sup>

National sovereignty is a primary principle of international law.<sup>36</sup> To tell a nation that it must decriminalize homosexual sex (including threatening to withhold vital funding until laws are changed), or suggest that a nation is somehow “old-fashioned” for not doing so, violates its sovereignty – especially where so much evidence supports banning harmful sex acts. According to the U.S. Centers for Disease Control, “men having sex with men” in the U.S. are 44 times

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<sup>31</sup> See par. 40 of the OHCHR Report.

<sup>32</sup> For further details and sources, see Jacob Stewart, *Referenda and the District of Columbia’s Human Rights Act: Voting on Same-Sex Marriage in the Nation’s Capital*, 3 LEG. & POL’Y B. 175, 209-215 (2011), available at <http://digitalcommons.wcl.american.edu/lpb/vol3/iss2/4/>.

<sup>33</sup> See Theo Sandford et al., *Same-Sex Sexual Behavior and Psychiatric Disorders*, 58 ARCHIVES OF GENERAL PSYCHIATRY 85, 89 (2001).

<sup>34</sup> See Scott DeNicola and Jeff Hooten, *The High Cost of Promiscuity*, FOCUS ON THE FAMILY CITIZEN 6, 6-21 (February 1998).

<sup>35</sup> See, e.g., See Pauline Mason, *Sex Workers of the World Unite*, BBC News, <http://news.bbc.co.uk/2/hi/business/3818713.stm> (June 20, 2004) (describing a convention in Canada where sex worker unions were calling for the decriminalization of prostitution).

<sup>36</sup> See, e.g., World Summit 2005, 5; ICPD +5 (1999), Preamble 5; Beijing +5 (2000), 89; Social Summit (1995), 3; Beijing (1995), 131; ICPD (1994), Principles, par. 1; and Habitat (1996), 24.

more likely to be infected by HIV and that only in this population are HIV prevalence rates rising. In France, where sodomy is legal, the rate of HIV infections among “men having sex with men” has been characterized as “out of control.” Scientists from the French National Institute for Public Health Surveillance found that nearly half of the 7,000 people newly infected with HIV were gay men, and the incidence among homosexual men is 200 times higher than in the heterosexual population.

Thus legalizing sodomy, and encouraging it as healthy and normal, has very serious life and death implications for countries that already have high HIV prevalence rates. Such countries should be free to determine how best to minimize the drastic consequences of the AIDS pandemic to their society without interference from the United Nations and other developed countries, even if it means legally restraining high-risk sexual behavior. Many developing countries already suffer from an over-burdened health care delivery infrastructure that is inadequate to deal with existing public health needs, let alone the AIDS pandemic.

### **Withdrawing Limitations on Freedom of Assembly and Expression for LGBT Groups Would Sanction Public Obscenity and Threaten Public Safety and Morals**

The Commissioner also recommends that states “[e]nsure that individuals can exercise their rights to freedom of expression, association and peaceful assembly in safety without discrimination on grounds of sexual orientation and gender identity.” (Para. 84(f).) One example of such expression included in the report is “equality marches,” otherwise known as “pride parades.” (Para. 64.) The Commissioner seems to scoff at the fact that states deny such events for reason of public morals or safety, suggesting that those reasons are simply pretexts for unfair prejudice.

“Equality marches,” which are increasingly being held around the world, are notorious for being anything but peaceful, respectable demonstrations. Quite to the contrary, LGBT events are often extraordinarily obscene.<sup>37</sup> For example, nudity (full or partial), sexual graphics, obscene gestures, and vulgar words are all commonly present at LGBT parades and demonstrations.<sup>38</sup> Surely any city, state, or nation should be able to ban such displays just as they would ban an obscene billboard or a lewd publication.

### **Conclusion and Recommendations**

The Office of the High Commissioner for Human Rights has overstepped its bounds by promoting fictitious, controversial “sexual rights” over rights that have been clearly defined in international treaties and other binding consensus documents. Nations and individuals of conscience must resist this effort. We must stand for the family so that the family may continue

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<sup>37</sup> See, e.g., Kara L. Kramaer, *Firefighters Subjected to Gross Gestures and Obscenities at “Gay Pride” Parade*, EXAMINER (Nov. 6, 2010), available at <http://www.examiner.com/conservative-in-yakima/firefighters-subjected-to-gross-gestures-and-obscenities-at-gay-pride-parade>; see also <http://blog.beliefnet.com/watchwomanonthewall/?p=3761>.

<sup>38</sup> See, e.g., Kara L. Kramaer, *Firefighters Subjected to Gross Gestures and Obscenities at “Gay Pride” Parade*, EXAMINER (Nov. 6, 2010), available at <http://www.examiner.com/conservative-in-yakima/firefighters-subjected-to-gross-gestures-and-obscenities-at-gay-pride-parade>; see also <http://blog.beliefnet.com/watchwomanonthewall/?p=3761>.

to serve as the irreplaceable foundation of society, the institution upon which morals, values, and national prosperity are built.

If all of the OHCHR report's recommendations were to be implemented, they would undermine national sovereignty, parental rights, cultural and moral values, religious liberty, and public health and safety. Therefore, to protect those rights, national sovereignty, and the institution of the family, governments should reject the report of the OHCHR in a written statement to the UN along the following lines:

The report distorts the current status of international law by erroneously asserting that it provides special protections for sexual orientation and gender identity when it clearly does not. More specifically:

- There is no universally agreed upon definition for sexual orientation and gender identity.
- In seeking to dictate to member states what sexual behaviors should be protected as human rights, the OHCHR report relies on UN committee rulings that are not binding on UN Member States.
- The majority of UN Member States have repeatedly rejected attempts to include specific protection and rights for sexual orientation in binding UN consensus language.
- The Commissioner's report goes well beyond its mandate by trying to assert the existence of new international human rights that can only be created by UN Member States.
- The report fails to address or even acknowledge strong existing protections in binding international law for religious liberty and ethical and cultural values; its recommendations are an assault on the sovereign right of states to promote and protect the morality of its people.
- It is clear that this OHCHR report is meant to be a stepping stone to impose a number of controversial sexual rights on countries that may run counter to their rights to protect religious and cultural values. As an example, the report refers to the Yogyakarta Principles, a radical sexual rights document that falsely claims to reflect existing obligations under international laws to protect sexual minorities and grant them all kinds of rights and privileges never before granted.
- The OHCHR report seeks to advance controversial claimed rights for people to engage in sexual behaviors that have been shown to be at extremely high risk for spreading the HIV virus. The report is based on the false premise, which has been scientifically disproved with a wealth of research (see "What the Research Shows" at [www.narth.org](http://www.narth.org)), that sexual orientation and gender identity are genetic and cannot be changed. Therefore, the report ignores the rights of individuals who struggle with unwanted same-sex attraction to enjoy the highest standard of health, which they can exercise by receiving therapy to change their orientation and help them to discontinue engaging in unhealthy high-risk sexual behaviors.
- In calling for the decriminalization of sodomy laws, the report also ignores the sovereign rights of nations to development and to protect the health of its citizens (*see, e.g.*, Habitat

1996, Par. 24) in the ways they deem to be most effective given the drastic negative impact the AIDS pandemic has had on many societies across the world.

- The OHCHR report is an assault on the innocence of children since it seeks to establish and mandate controversial sexuality education as a right, when such education is known to sexualize children and put them at risk for early pregnancy and infectious diseases. The report ignores the fact that “Parents have a prior right to choose the kind of education that shall be given to their children.” (UDHR Art. 26 (3).)
- In calling for changes in laws and policies related to individuals suffering from Gender Identity Disorder, the report seeks to normalize what is universally recognized by the mental health profession as a mental disorder.

It is recommended that UN Member States which share the common goal to protect the institution of the family as the fundamental unit of society should call for a special session of the Human Rights Council to issue a *joint* statement rejecting the report of the OHCHR for all of the reasons enumerated above. It is further recommended that such States decline to participate in any panel discussions relating to the OHCHR report, and that each such government make an individual statement rejecting the report on behalf of their governments.