

FACT SHEET

WORLDWIDE ANTIDISCRIMINATION LAWS AND POLICIES BASED ON SEXUAL ORIENTATION

This *Fact Sheet* reviews the antidiscrimination laws and policies based on sexual orientation of various countries and international organizations.

It was adapted with permission from a *Fact Sheet* of the International Gay and Lesbian Human Rights Commission (IGLHRC), 1360 Mission Street, San Francisco, CA 94103; Phone: 415/255-8680; Fax: 415/255-8662; E-mail: <iglhrc@iglhrc.org>; Web site: <www.iglhrc.org>.

That *Fact Sheet* was based on data from these sources: D. Sanders, "Getting Lesbian and Gay Issues on the International Human Rights Agenda," *Human Rights Quarterly* 18 (1996), pp. 67-106; "Promoting Lesbian and Gay Rights through International Human Rights Law" (New York: Center for Constitutional Rights); J. D. Wilets, "International Human Rights Law and Sexual Orientation," *Hastings International and Comparative Law Review*, vol. 18, no. 1, pp. 1-120.

Also J. D. Wilets, "Using International Law to Vindicate the Civil Rights of Gays and Lesbians in United States Courts," *Columbia Human Rights Law Review*, Fall 1995, vol. 27, no. 1, pp. 33-56; L. R. Helfer and A. M. Miller, "Sexual Orientation and Human Rights: Toward a United States and Transnational Jurisprudence," *Harvard Human Rights Journal*, Spring 1996, vol. 9, pp. 61-103; Communications with the Magnus Hirschfeld Center for Human Rights and other human rights organizations, and IGLHRC files.

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COUNTRIES

Fourteen countries have national laws that protect gays, lesbians, and bisexuals from discrimination:

- **Canada.** The Canadian Human Rights Act forbids discrimination based on sexual orientation by federally regulated employers, landlords, and services. The law applies to the federal government, banks, broadcasters, the phone and telecommunications industry, railways, airlines, and shipping and inter-provincial transportation. Federal constitutional protections are provided by the Canadian Charter of Rights and Freedoms. Provincial human rights laws provide protection based on sexual orientation in all Canadian provinces except Alberta, Newfoundland, and Prince Edward Island.
- **Denmark.** The Danish Penal Code has an antidiscrimination clause dealing with sexual orientation. It includes public employment and the private labor market.
- **Finland.** The Finnish Penal Code protects individuals from discrimination based on their sexual orientation in terms of public or commercial services or access to public meetings. The law also prohibits discrimination in hiring and working conditions.
- **France.** The French Penal Code prohibits discrimination based on "moeurs" (morals, habits, or lifestyles). This includes sexual orientation. The Code of Labor law prohibits discrimination based on sexual orientation in the workplace, including civil service and armed forces positions.
- **Iceland.** The Icelandic Penal Code criminalizes actions that defame, slander, humiliate, or degrade a person or a group because of their sexual orientation and makes it illegal to deny goods or services based on a person's sexual orientation.
- **Ireland.** The Irish Employment Discrimination Law protects against dismissal from employment based on sexual orientation. The Prohibition of Incitement to Hatred Act protects against hate in speeches.
- **Israel.** Israel's Knesset has passed a law prohibiting employers from discriminating against employees and job applicants because of sexual orientation.
- **The Netherlands.** The Dutch Penal Code bans discrimination on the basis of "hetero- or homosexual orientation." Article One of the Constitution also prohibits discrimination based on sexual orientation. The Equal Treatment Commission provides redress from discrimination in work-, education- and service-related situations.
- **New Zealand.** The New Zealand Human Rights Act includes protection based on sexual orientation in employment, education, access to public places, provision of goods and services, and housing and accommodation.

- **Norway.** The Norwegian Penal Code prohibits discrimination based on sexual orientation in the provision of goods and services and in access to public gatherings. It also prohibits hate speech directed at sexual minorities.
- **Slovenia.** The Slovenic Penal Code includes protection based on sexual orientation and denounces anyone who “denies someone his human rights or fundamental freedoms recognized by the international community or set by the Constitution or a law.”
- **South Africa.** The South African Constitution includes sexual orientation as a protected category.
- **Spain.** The Spanish Penal Code declares the right to express one’s sexual orientation as a fundamental freedom and bans discrimination based on sexual orientation in housing, employment, public services, and professional activities. It also criminalizes hatred and violent acts against individuals based on their sexual orientation.
- **Sweden.** The Swedish government has passed laws forbidding commercial organizations from discriminating on the grounds of homosexuality.

Many municipalities and states within nations extend legal protection to sexual minorities.

- **Australia.** The Australian Parliament is considering federal legislation to prohibit discrimination based sexual orientation. Such protections against employment discrimination are already part of the Australian Human Rights and Equality Commission Act. Several states—including New South Wales, South Australia, Northern Territory, and Capital Territory—have passed antidiscrimination legislation based on sexual orientation.
- **United States.** California, Connecticut, Hawaii, Massachusetts, Minnesota, New Jersey, Rhode Island, Vermont and Wisconsin have passed civil rights laws that include sexual orientation. The U. S. Supreme Court has ruled that an amendment to the Colorado State Constitution that would have banned antidiscrimination laws based on sexual orientation violated the equal protection clause of the U. S. Constitution and was, therefore, unlawful. This ruling is a landmark victory for equal rights and may provide an important precedent for future U.S. anti-discrimination cases.

INTERNATIONAL JURISPRUDENCE AND POLICY PRECEDENTS

These governmental organizations, international conferences, and non-governmental organizations working in the context of international and regional human rights protections have recognized the duty of governments to protect persons against discrimination based on sexual orientation.

United Nations

- **The United Nations Human Rights Commission** monitors steps taken by state parties to carry out their obligations to protect human rights as guaranteed by the International Covenant on Civil and Political Rights (ICCPR). It can hear and issue opinions on cases filed by individuals alleging violations of their rights.

United Nations Programmes

- **The International Labour Office** has conducted a survey examining issues of discrimination in employment based on sexual orientation and is recommending the inclusion of sexual orientation in a new protocol to extend application of its 1958 Convention.
- **The Development Program** has introduced a “Human Freedom Index” in its *Human Development Report*. This index ranks 88 countries by 40 indicators of democracy, including the personal right of consenting adults to have same-sex relationships.

United Nations

High Commissioner For Refugees

- **The High Commission for Refugees** states in its publication, *Protecting Refugees* that “homosexuals may be eligible for refugee status on the basis of persecution because of their membership of a particular social group. It is the policy of [the High Commission] that persons facing attack, inhumane treatment, or serious discrimination because of their [sexual orientation], and whose governments are unable or unwilling to protect them, should be recognized as refugees.”

United Nations Conference Resolutions

- **The Fourth World Conference on Women** has recognized in its *Platform for Action* that women and men must be able to decide freely on all matters relating to their sexuality, free from coercion, discrimination, or violence.
- **The Economic Council of Europe’s Regional Platform for Action** includes as one of its principles that the promotion, protection, and realization of the human rights of women must reflect diversity...including sexual orientation. It also directs governments to include lesbian organizations in developing and implementing strategies for the advancement of women.
- **The International Conference on Population and Development’s Plan of Action** acknowledges the necessity of recognizing the diversity of family structures.
- **The Habitat II Summit’s Global Plan of Action** reinforces

the anti-discrimination language of the Beijing Platform and other United Nations documents by including “other status” (encompassing sexual orientation) in clauses which guarantee protection from discrimination in housing and human settlements.

REGIONAL HUMAN RIGHTS BODIES

Council of Europe

- **The Council of Europe** encourages respect for human rights among member states through a treaty—the *European Convention for the Protection of Human Rights and Fundamental Freedom*—and through resolutions of its Parliamentary Assembly.

Complaints of human rights violations under the European Convention are adjudicated by the European Court of Human Rights in Strasbourg. The European Convention establishes a right to privacy, and the European Court of Human Rights has ruled that state signatories to the European Convention cannot criminalize same-sex sexual relations because such laws violate the personal right to privacy.

European Union

Human rights issues are addressed in the European Union by its legislative body, the European Parliament, and by its judicial body, the European Court of Justice. These bodies act to secure human rights primarily in relation to economic issues such as protection from discrimination in the workplace.

The European Parliament has adopted a resolution that calls on member states to abolish all laws that criminalize

same-sex activity; equalize age of consent laws for all sexual activity; end unequal treatment of gays, lesbians, and bisexuals in social security systems, adoption laws, inheritance laws, and housing and criminal law; take measures to reduce violence against gays, lesbians, and bisexuals; prosecute those who commit such violence; initiate campaigns to combat social discrimination against gays, lesbians, and bisexuals; and provide funding to gay, lesbian, and bisexual social and cultural organizations.

NON-GOVERNMENTAL ORGANIZATIONS

The decisions and actions taken by these organizations exemplify the human rights advocacy efforts undertaken by many non-governmental organizations worldwide:

- **Amnesty International** has included in its definition of prisoners of conscience those individuals who have been incarcerated for their sexual orientation.
- **The International Human Rights Law Group** has worked to promote the applications of international human rights standards to persons facing violence or discrimination because of their sexual orientation.
- **The Human Rights Watch** has declared that it opposes “state-sponsored and state-tolerated violence, detention and prosecution of individuals because of their sexual identity, sexual orientation, or private sexual practices.”
- **The International Planned Parenthood Federation** has approved a *Charter on Sexual and Reproductive Rights* which recognizes, among other rights, the rights of women to privacy, to equality, and to freedom from all forms of discrimination. This *Charter* includes protection based on sexual orientation in providing information, health care, and reproductive health services.

