

HEALTH AND HUMAN RIGHTS RESOURCE GUIDE



FXBCENTER
FOR HEALTH & HUMAN RIGHTS

HARVARD SCHOOL OF PUBLIC HEALTH | HARVARD UNIVERSITY

HEALTH AND HUMAN RIGHTS RESOURCE GUIDE

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Health and Human Rights Resource Guide

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Cover photograph courtesy of Sven Torfinn - Panos for the Open Society Foundations, "A paralegal nurse named Mercy and a lawyer named Johnson, both with Nyeri Hospice in Nyeri, Kenya talk with Elizabeth (center) about her health and property. She has cancer and is cared for by her granddaughter Caroline (to her left). She wants to ensure her granddaughters can inherit her property even though other relatives are trying to claim it."

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CHAPTER 8



LGBTI, HEALTH AND HUMAN RIGHTS

“...[T]here is nothing new or special about the right to life and security of the person, the right to freedom from discrimination. These and other rights are universal ... enshrined in international law but denied to many of our fellow human beings simply because of their sexual orientation or gender identity.”

— United Nations High Commissioner for Human Rights Navi Pillay, 2012

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Cover photograph courtesy of U.S.Consulate General Chennai, “LGBT activists at Chennai’s fourth annual Pride March at Elliot’s Beach on Sunday, June 24, 2012.”

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INTRODUCTION

This chapter will introduce you to key issues and resources in the health and human rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons. This chapter is organized into six sections that answer the following questions:

1. How is health a human rights issue for LGBTI persons?
2. What are the most relevant international and regional human rights standards related to LGBTI health?
3. What is a human rights-based approach to advocacy, litigation and programming?
4. What are some examples of effective human rights-based work in the area of LGBTI health?
5. Where can I find additional resources on health and human rights for LGBTI persons?
6. What are key terms related to health and human rights for LGBTI persons?

I. HOW IS HEALTH A HUMAN RIGHTS ISSUE FOR LGBTI PERSONS?

What are the issues and how are they human rights issues?

There is a plethora of issues that affect the health of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons, many of which are issues relating to human rights. Around the world and in all societies, LGBTI persons face discrimination and marginalisation which puts them at risk of not being able to attain the highest attainable standard of health. This chapter does not intend to be comprehensive in its coverage of the human rights issues that affect the health of LGBTI persons – there are simply too many; however, it will provide the reader with an overview and a starting point to understand some of the human rights issues affecting LGBTI persons' health.¹ The chapter also intends to leave the reader with an understanding that a respect for human rights, which apply equally to all people, can be a strong driver for effecting positive change in health issues of LGBTI persons.

Problems posed by heteronormativity

As a starting point, it is important to understand the problems that are posed by heteronormativity. Most societies are structured around two binary genders, male and female, and only one 'normal' sexual orientation, heterosexual. Medical practitioners, health care workers, policy-makers, and educators often fail to talk about, or even consider, those who fall outside of this norm. LGBTI persons are those who are not heterosexual (sexual orientation) and/or those whose identity is not gender conforming by societal norms (gender identity). LGBTI refers to gay, lesbian and/or bisexual persons (sexual orientation) and transgender or intersex persons (gender identity). When the issues of sexual orientation or gender identity are considered, often little or no thought is given to how the right to health of these individuals could be better protected, or is being violated. This invisibility, and associated isolation and marginalization, can have tragic consequences for the health and wellbeing of many members of LGBTI communities.

¹ See, Mahon C, "Sexual Orientation, Gender Identity and the Right to Health" in Clapham C et al, eds., *Realizing the Right to Health*, Swiss Human Rights Book, Vol. 3 (Zurich: Rüffer & Rub, 2009). http://www.swisshumanrightsbook.com/etc/medialib/downloads/edazen/topics/human/srbook.Par.0065.File.tmp/14_453_Mahon.pdf.

LGBTI people have long been the victims of violations of their human rights. They have been subjected to direct violations, whereby their physical or mental health is compromised because of their actual or perceived sexual orientation² or gender identity³. Lesbians, gays, bisexuals, transgender and intersex persons have been attacked,⁴ arrested,⁵ tortured,⁶ killed,⁷ sentenced to death,⁸ committed to medical or psychiatric institutions and treated with ‘aversion therapy’ including electroshock therapy or forced rape.⁹ Intersex individuals, especially those with visibly atypical anatomy, have been subjected to surgery against their will, for example, to ‘correct’ their ‘ambiguous genitalia’.¹⁰ LGBTI persons are also indirectly victimized through failures to recognize and consider this diverse group as healthcare recipients with specific needs resulting in denial of access to the full enjoyment of their right to the highest attainable standard of health.

LGBTI persons experience frequent human rights violations based solely upon their LGBTI status, which has major impacts upon the health of LGBTI persons. For example, LGBTI persons often suffer violations of the right to privacy, the right to education, the right to family life, even housing and employment rights, particularly when they are discriminated against on the grounds of their sexual orientation or gender identity.¹¹

This situation is an unacceptable affront to human dignity, particularly given the startling statistics that have been well known for many years: LGBTI people, especially LGBTI youth, are highly susceptible to poor

- 2 This chapter draws on the definition of ‘sexual orientation’ used in the Yogyakarta Principles: “‘sexual orientation’ ... refer[s] to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.” *Yogyakarta Principles: The Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity* (March 2007). <http://www.yogyakartaprinciples.org/>.
- 3 This chapter draws on the definition of ‘gender identity’ used in the Yogyakarta Principles: “‘gender identity’ ... refer[s] to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.” *Yogyakarta Principles: The Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity* (March 2007). <http://www.yogyakartaprinciples.org/>.
- 4 See, e.g., UN Committee Against Torture, *Conclusions and recommendations of the Committee against Torture: Venezuela*, CAT/C/CR/29/2 (December 23, 2002) at para. 10(d).
- 5 UN Commission on Human Rights, *Question of the Human Rights of All Persons Subjected to any Form of Detention or Imprisonment, In Particular: Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1992/32*, E/CN.4/1995/34 (January 12, 1995).
- 6 See, UN Committee Against Torture, *Conclusions and recommendations of the Committee against Torture: Argentina*, CAT/C/CR/33/1 (December 10, 2004) at para. 6(g); UN Committee Against Torture, *Conclusions and recommendations of the Committee against Torture: Egypt*, CAT/C/CR/29/4 (December 23, 2002) at para. 5(e).
- 7 UN Commission on Human Rights, *Internally displaced persons: Report of the Representative of the Secretary-General, Mr. Francis Deng, submitted pursuant to Commission on Human Rights resolution 1993/95: Addendum: Profiles in displacement: Colombia*, E/CN.4/1995/50/Add.1 (October 3, 1994); UN Commission on Human Rights, *Joint report of the Special Rapporteur on the question of torture, Mr. Nigel S. Rodley, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights resolutions 1994/37 and 1994/82: Visit by the Special Rapporteurs to the Republic of Colombia from 17 to 26 October 1994*, E/CN.4/1995/111 (January 16, 1995).
- 8 UN Commission on Human Rights, *Report on the situation of human rights in the Islamic Republic of Iran, prepared by the Special Representative of the Commission on Human Rights, Mr. Maurice Copithorne (Canada), pursuant to Commission resolution 1995/68 of 8 March 1995 and Economic and Social Council decision 1995/279 of 25 July 1995*, E/CN.4/1996/59 (March 21, 1996).
- 9 See, UN Commission on Human Rights, *The right of everyone to the enjoyment of the highest attainable standard of physical and mental health: Report of the Special Rapporteur, Paul Hunt*, E/CN.4/2004/49 (February 16, 2004) at para. 38; UN General Assembly, *Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment*, A/56/156 (July 3, 2001); UN Commission on Human Rights, *Torture and other cruel, inhuman or degrading treatment or punishment: Report of the Special Rapporteur, Theo van Boven*, E/CN.4/2004/56 (December 23, 2003); International Commission of Jurists, *Sexual Orientation and Gender Identity in Human Rights Law: References to Jurisprudence and Doctrine of the United Nations Human Rights System* (July 2007). <http://www.refworld.org/docid/4ad5b83a2.html>; Amnesty International, *Crimes of Hate, Conspiracy of Silence: Torture and Ill-Treatment based on Sexual Identity*, AI Index ACT 40/016/2001 (2001). <http://www.amnesty.org/en/library/info/ACT40/016/2001>; Amnesty International, *Breaking the Silence: Human Rights Violations Based on Sexual Orientation*, (London: Amnesty International Publications, 1994); Human Rights Watch, *Hated to Death: Homophobia, Violence and Jamaica’s HIV/AIDS Epidemic* (November 2004). <http://hrw.org/reports/2004/jamaica1104/jamaica1104.pdf>; Human Rights Watch and The International Gay and Lesbian Human Rights Commission, *More Than A Name: State-Sponsored Homophobia and its Consequences in Southern Africa* (2003). <http://www.iglhrc.org/sites/default/files/160-1.pdf>.
- 10 O’Flaherty M and Fisher J, “Sexual Orientation, Gender Identity and International Human Rights Law: Contextualising the Yogyakarta Principles,” 8(2) *Human Rights Law Review* (2008) 207-248, at 213; Intersex Society of North America, “Frequently Asked Questions,” <http://www.isna.org/faq/>; Morris E, “The self I will never know,” 364 *New Internationalist* (2004). <http://newint.org/features/2004/02/01/self/>.
- 11 Amnesty International, *Breaking the Silence: Human Rights Violations Based on Sexual Orientation*, (London: Amnesty International Publications, 1994).

health and health risks.¹² Male teenagers who identify as gay are 2-3 times more likely than their peers to attempt suicide (although some studies put this figure as high as 6-30 times more likely¹³), and suicide attempts amongst LGBTI youth in general are reportedly 3-7 times higher than for heterosexual youth.¹⁴ For these young people, family or social pressure to conform to the heterosexual norm makes them highly susceptible to mental health problems and places their personal safety at risk. The rate of suicide and suicide attempts amongst LGBTI adults is also higher than in the heterosexual community.

Studies have also shown that ‘sexual minorities’ have a higher rate of other mental health problems including depression, bipolar disorder, panic attacks, as well as substance abuse including tobacco, alcohol and drug addictions and other ‘unhealthy behaviours’ such as high-risk/unsafe sex, and higher infection rates for HIV/AIDS and other sexually transmitted diseases.¹⁵ For example, it has been shown lesbian women are more likely to smoke, abuse alcohol, weigh more, and suffer stress, than heterosexual women, placing them in a higher risk category for heart disease, stroke, cervical and other forms of cancer.¹⁶ Also, lesbians usually have fewer pregnancies and live births than their heterosexual counterparts which results in greater hormone exposure and increases their risk of breast, uterine and ovarian cancer.¹⁷

What are LGBTI health rights?

This section reviews some of the human rights that, when respected, can help protect LGBTI persons’ health. It looks at the right to the highest attainable standard of health, the right to be free from discrimination, the right to life and security of the person, and the right to be free from torture or cruel, inhuman or degrading treatment. As noted above, there are many other rights that, when violated can have major impacts on the health of LGBTI persons. Section two of this chapter sets out many more human rights and provides examples of violations of each human right.

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- 12 See, inter alia, Kroll and Warneke, *The Dynamics of Sexual Orientation and Adolescent Suicide: A Comprehensive Review and Development Perspective* (Calgary: University of Calgary, 1995).
- 13 White R, “Growing Up as a Gay Young Person in Ireland – So What’s the Story?” in Rainbow Project, and “Carers are Ignoring Gay Teens,” *Irish News*, 5 June 1988, both cited in Northern Ireland Human Rights Commission, *Enhancing the Rights of Lesbian, Gay and Bisexual People in Northern Ireland* (August 2001). <http://www.nihrc.org/documents/research-and-investigations/lgbt/enhancing-right-lesbian-gay-people-northern-ireland-2001.pdf>.
- 14 See, Russell ST and Joyner K, “Adolescent Sexual Orientation and Suicide Risk: Evidence From a National Study,” 91 *American Journal of Public Health* (2001) 1276; Arriola ER, “The Penalties for Puppy Love: Institutionalized Violence Against Lesbian, Gay, Bisexual and Transgendered Youth,” 1 *Journal of Gender, Race and Justice* (1998) 429, at 439-47; Paul J et al, “Suicide Attempts Among Gay and Bisexual Men: Lifetime Prevalence and Antecedents,” 92 *American Journal of Public Health* (2002) 1338; Boucai MD, “Legal Remedy for Homophobia: Finding a Cure in the International Right to Health,” 6 *Georgia Journal of Gender and Law* 21 (2005).
- 15 Boucai MD, “Legal Remedy for Homophobia: Finding a Cure in the International Right to Health,” 6 *Georgia Journal of Gender and Law* 21 (2005).
- 16 University of Washington Women’s Health, “Lesbian Health: Getting the care you deserve.” <http://depts.washington.edu/uwcoe/healthtopics/lesbian-health.html>.
- 17 Mahon C, “Sexual Orientation, Gender Identity and the Right to Health” in Clapham C et al, eds., *Realizing the Right to Health*, Swiss Human Rights Book, Vol. 3 (Zurich: Rüffer & Rub, 2009). http://www.swisshumanrightsbook.com/etc/medialib/downloads/edazen/topics/human/srbook.Par.0065.File.tmp/14_453_Mahon.pdf. See also, Committee on Lesbian, Gay, Bisexual, and Transgender Health Issues and Research Gaps and Opportunities; Board on the Health of Select Populations, *The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding* (2011).

The right to the highest attainable standard of health

The human right with the most obvious links to LGBTI health is the right to the enjoyment of the highest attainable standard of physical and mental health (often referred to simply as ‘the right to health’). The right to health is protected under international human rights law through article 25 of the Universal Declaration of Human Rights (UDHR), article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and other international and regional treaties and conventions.¹⁸ All of these international legal protections apply to people of all sexual orientations and gender identities because the right to health contained in the UDHR and ICESCR is “the right of everyone to the highest attainable standard of physical and mental health,” not just the right of heterosexual males and females.¹⁹

The United Nations Committee on Economic, Social and Cultural Rights (CESCR) explains in General Comment No. 14 on the right to the highest attainable standard of health, that discrimination on any basis, including on the basis of sex and sexual orientation, is contrary to article 2(2) (non-discrimination) and article 3 (equal rights of men and women) of ICESCR.²⁰ CESCR later confirms in General Comment No. 20, that the “other status” listed in ICESCR article 2(2) on non-discrimination, includes sexual orientation and gender identity.²¹ Therefore ICESCR prohibits discrimination on the basis of sexual orientation or gender identity. This is consistent with the case law of the United Nations Human Rights Committee, which decided in the matter of *Toonen v Australia*, that the prohibition against discrimination on the basis of ‘sex’ includes discrimination on the basis of sexual orientation.²² The European Court of Human Rights has also confirmed that discrimination in treatment due to a person’s sexual orientation is the “embodi[-ment of] a predisposed bias on the part of a heterosexual majority against a homosexual minority, [and] these negative attitudes cannot of themselves be considered by the Court to amount to sufficient justification for the differential treatment any more than similar negative attitudes towards those of a different race, origin or colour”.²³

On March 26, 2007, The Yogyakarta Principles on the Application of Human Rights Law in Relation to Sexual Orientation and Gender Identity (the Yogyakarta Principles) were launched. They comprehensively examine the human rights for all persons, regardless of sexual orientation or gender identity and identify the relevant obligations under international human rights law. The preamble states that the Yogyakarta Principles are based on the premise that:

... international human rights law affirms that all persons, regardless of sexual orientation or gender identity, are entitled to the full enjoyment of all human rights, [and] that the application of existing human rights entitlements should take account of the specific situations and experiences of people of diverse sexual orientations and gender identities.²⁴

18 Including, inter alia, the Convention on the Rights of the Child (article 24); the International Convention on the Elimination of All Forms of Racial Discrimination (article 24); the International Convention on the Elimination of all Forms of Discrimination Against Women (article 11); the Convention on the Rights of Persons with Disabilities (article 25); the African Charter on Human and Peoples’ Rights (article 16); the African Charter on the Rights and Welfare of the Child (article 14); the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa; the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (the Protocol of San Salvador) (article 10); the Arab Charter on Human Rights (article 39); and the European Social Charter (common article 11).

19 International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 12(1), emphasis added. See also, International Commission of Jurists (ICJ), *Sexual Orientation and Gender Identity: A Practitioner’s Guide* (Geneva: ICJ, 2008), in particular ‘Chapter 8: Right to Health’; and Heinze E, *Sexual Orientation – A Human Right: An Essay on International Human Rights Law* (Dordrecht: Martinus Nijhoff Publishers, 2005).

20 Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14, E/C.12/2000/4 (August 11, 2000).

21 Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 20*, E/C.12/GC/20 (July 2, 2009).

22 UN Human Rights Committee, *Toonen v Australia*, Communication No. 488/1992, CCPR/C/50/D/488/1992 (March 31, 1994).

23 *Case of S.L. v Austria*, Application No. 45330/99 (January 1, 2003), at para. 44. <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60877>. This case concerns the differing age of consent for homosexuals and heterosexuals.

24 International Commission of Jurists (ICJ), *Yogyakarta Principles: The Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity* (March 2007), preambular paragraph 6. <http://www.yogyakartaprinciples.org/>.

The Yogyakarta Principles were signed by 29 international human rights experts, after a draft process and workshop organized by the International Commission of Jurists and the International Service for Human Rights.

Principles 17 and 18 address the right to the highest attainable standard of health and protection from medical abuses. Principle 17 of the Yogyakarta Principles states: “Everyone has the right to the highest attainable standard of physical and mental health, without discrimination on the basis of sexual orientation or gender identity. Sexual and reproductive health is a fundamental aspect of this right.” This Principle details nine aspects of state obligations related to this right, including:

1. the duty to take legislative and other measures to ensure the right to health and access to healthcare;
2. the treatment of medical records with confidentiality;
3. the design and development of healthcare resources and programmes to improve the health status of LGBTI people and address discrimination and prejudice;
4. the need for informed and empowered decisions regarding medical treatment and care;
5. non-discrimination and respect for the diversity of sexual orientations and gender identities in sexual health, education, prevention, care and treatment, including recognition of next of kin;
6. facilitating access to gender reassignment treatments; and
7. adopting policy-making and education and training programmes for healthcare workers to improve treatment for LGBTI people.

Principle 18, which addresses the need for LGBTI persons to be protected from medical abuses, states:

No person may be forced to undergo any form of medical or psychological treatment, procedure, testing, or be confined to a medical facility, based on sexual orientation or gender identity. Notwithstanding any classifications to the contrary, a person’s sexual orientation and gender identity are not, in and of themselves, medical conditions and are not to be treated, cured or suppressed.

Principle 18 is broken down into a set of five obligations for states, including:

1. taking the necessary legislative and other measures to ensure protection against harmful medical practices, including the irreversible alteration of a child’s body through attempts to impose a gender identity;
2. establishing child protection mechanisms to reduce risk of medical abuse;
3. ensuring LGBTI people are not used to unethically or involuntarily test medical procedures or conduct research, and reversing funding programmes that would enable such abuses; and
4. ensuring medical and psychological treatment does not treat sexual orientation and gender identity as a pathology.

These provisions in the Yogyakarta Principles provide guidance on how international human rights law can be applied in the specific context of respecting, protecting and promoting the right to health for LGBTI persons.

Violations of the right to the highest attainable standard of health

The United Nations Special Rapporteur on the right to the highest attainable standard of physical and mental health explained in his 2004 report:

*The legal prohibition of same-sex relations in many countries, in conjunction with a widespread lack of support or protection for sexual minorities against violence and discrimination, impedes the enjoyment of sexual and reproductive health by many people with lesbian, gay, bisexual, or transgender identities or conduct.*²⁵

It is not only sexual and reproductive health that is impeded – all forms of physical and mental health can be affected by discriminatory policies and practices, and the homophobia or heterosexism of society in general and medical practitioners in particular.

Freedom from discrimination

LGBTI persons experience multiple forms and manifestations of discrimination. For the purpose of illustrating the issue of discrimination, this section will examine homophobia as a form of discrimination that affects the health of LGBTI persons.

LGBTI student activists have described some of the problems they see resulting from heterosexism:²⁶

*“Once the heterosexist assumption is made, many gay men feel the necessity to maintain it. If you can’t talk to your doctor about who you have sex with, you won’t get the information you need ...”*²⁷

*“One health challenge is that providers don’t necessarily know the sexual orientation of their patients. This can prevent them from asking certain questions, probing for certain risk behaviors, or looking for indications of a particular illness – which does a disservice to their patients ...”*²⁸

*“There’s another potential barrier to health care ... regarding “coming out:” Is your provider friendly? How do you know that what you say to them will be private? What are the implications of whether or not you have privacy? ... It’s a greater risk for youth because if you come out to your doctors, are they going to tell your parents or the people you’re living with? With teens coming out at a younger age, the risk of homelessness has skyrocketed for adolescents whose parents aren’t ready for their coming out even if the person is young. That’s a major health concern right there.”*²⁹

25 UN Commission on Human Rights, *The right of everyone to the enjoyment of the highest attainable standard of physical and mental health: Report of the Special Rapporteur, Paul Hunt*, E/CN.4/2004/49 (February 16, 2004) at para. 38.

26 Heterosexism refers to the presumption that everyone is heterosexual and that opposite-sex attractions and relationships are the norm.

27 Danni (interview subject), “Sexual Orientation and Other Sexual Minorities,” in *Healthy Maine 2010: Opportunity For All*, at 62. <http://www.maine.gov/dhhs/boh/files/hm2010/oppforall/b1osexor.pdf>.

28 Galena R (interview subject), *Ibid.* at 63.

29 Burns P (interview subject), *Ibid.* at 62.

Sharing your sexual orientation or gender identity with others, by ‘coming out’, is important for positive mental health. A society that discourages coming out, discourages recognition of each individual’s worth and dignity. It also fosters a culture where, from an early age, LGBTI people are unlikely to be able to properly access the full range of health services and health information that should be available to them, because traditional views about sexuality create obstacles to the provision of health services.³⁰ Researchers have found that in health care situations LGBTI patients suffer “ostracism, invasive questioning, rough physical handling, derogatory comments, breaches of confidentiality, shock, embarrassment, unfriendliness, pity, condescension, and fear”.³¹ They “respond to this mistreatment by delaying medical care or risking potential misdiagnosis by hiding their sexual orientation.”³² Homophobia, ignorance and fear are not just impediments to accessing healthcare, but also to research,³³ further perpetuating the cycle of mistreatment.

Homophobic societies also inhibit education and advocacy about safe sex and other health matters. In places where homosexual activities are criminalized, HIV/AIDS education and other forms of preventive health care that should be tailored to LGBTI communities are suppressed. For example, non-governmental organizations (NGOs) such as Human Rights Watch have reported that the crackdown on lesbians and gays in Uganda, prompted by “state homophobia”, is “undermining Uganda’s efforts to combat the spread of HIV/AIDS”.³⁴ Amnesty International reports that the arrest, detention, and compulsory testing of men suspected of having HIV in Egypt “not only violates the most basic rights of people living with HIV ... [i]t also threatens public health, by making it dangerous for anyone to seek information about HIV prevention or treatment.”³⁵ Marginalizing LGBTI people undermines public health initiatives, leaving this significant sector of the community underserved and often afraid to seek treatment, even if they could, due to stigmatization or criminalization.³⁶ Other prejudices, such as those associated with HIV/AIDS, may reinforce and exacerbate discrimination on the grounds of sexual orientation or gender identity, or vice versa, making it less likely that those in need access health services, even if such services are available.³⁷

30 UN Commission on Human Rights, The right of everyone to the enjoyment of the highest attainable standard of physical and mental health: Report of the Special Rapporteur, Paul Hunt, E/CN.4/2004/49 (February 16, 2004) at para. 14.

31 Stevens PE and Hall JM, as quoted in Gartner N, “Articulating Lesbian Human Rights: The Creation of a Convention on the Elimination of All Forms of Discrimination Against Lesbians,” 14 *UCLA Women’s Law Journal* (2005) 61, at 82-3. See also, Boucai MD, “Legal Remedy for Homophobia: Finding a Cure in the International Right to Health,” 6 *Georgia Journal of Gender and Law* 21 (2005), at 32.

32 Stevens PE and Hall JM, as quoted in Gartner N, “Articulating Lesbian Human Rights: The Creation of a Convention on the Elimination of All Forms of Discrimination Against Lesbians,” 14 *UCLA Women’s Law Journal* (2005) 61, at 83.

33 Dean L, et al., ‘Lesbian, Gay, Bisexual and Transgender Health: Findings and Concerns’ 4 *Journal of the Gay and Lesbian Medical Association* (2000) 101. See also, Boucai MD, “Legal Remedy for Homophobia: Finding a Cure in the International Right to Health,” 6 *Georgia Journal of Gender and Law* 21 (2005).

34 Human Rights Watch, Uganda: State Homophobia Threatens Health and Human Rights: Government Persecution Contributing to HIV Pandemic (August 23, 2007). <http://hrw.org/english/docs/2007/08/22/uganda16729.htm>.

35 Amnesty International, Egypt: Spreading Crackdown on HIV Endangers Public Health: Rights Violations Drive Those in Need Underground (February 19, 2008). <http://www.hrw.org/news/2008/02/14/egypt-spreading-crackdown-hiv-endangers-public-health>.

36 Wilets J, “Using International Law to Vindicate the Civil Rights of Gays and Lesbians in United States Courts,” 27 *Columbia Human Rights Law Review* (1995) 33, 34; Boucai MD, “Legal Remedy for Homophobia: Finding a Cure in the International Right to Health,” 6 *Georgia Journal of Gender and Law* 21 (2005).

37 UN Commission on Human Rights, The right of everyone to the enjoyment of the highest attainable standard of physical and mental health: Report of the Special Rapporteur, Paul Hunt, E/CN.4/2004/49 (February 16, 2004) at para. 35.

Right to life and security of the person

LGBTI persons are vulnerable to targeted violence on the basis of their sexual orientation or gender identity. Five countries impose the death penalty for same-sex conduct. This is a violation of Article 6 of the ICCPR, which states that a sentence of death may be imposed only for the most serious crimes. The United Nations Office of the High Commissioner for Human Rights (OHCHR) has stated that same-sex conduct does not qualify as a most serious crimes, thus it should not be penalised by death.³⁸

Violence against LGBTI persons is also often perpetrated by non-state actors. Documentation of violence against LGBTI persons because of their LGBTI status has included extrajudicial killings, killings of transgender individuals, “honour killings”³⁹ perpetrated by family or community members, rape and sexual violence and other hate-motivated violence. For example, the Trans Murder Monitoring Project reported in March 2013 that there have been “1,123 reported killings of trans people in 57 countries worldwide from January 1st 2008 to December 31st 2012.”⁴⁰

With respect to sexual violence, lesbians, bisexual women, and transgender peoples’ risk of rape may be even higher than the risk for heterosexual women because they may be special targets for punitive or corrective rape. Corrective rape is “a phenomenon in which men rape people they presume or know to be lesbians in order to ‘convert’ them to heterosexuality,” and it is a common form of sexual violence against LGBTI women.⁴¹

Violence on the basis of sexual orientation or gender identity is usually hate-motivated.⁴² Under international law, states are obligated to protect individuals from violence and to prosecute those who perpetrate violence against individuals. The ICCPR provides every human being the inherent right to life. Under the ICCPR, State Parties are obligated to protect the right to life (Article 6). The ICCPR also provides everyone the right to liberty and security of person (Article 9). This includes the obligation to investigate all hate crimes and incidence of violence against an individual and to punish each perpetrator.

Freedom from torture or cruel, inhuman or degrading treatment

Actual or perceived LGBTI persons are subjected to torture in many countries, often perpetrated because of stigma associated with LGBTI persons. The OHCHR explains that sexual violence “may constitute torture when it is carried out by, or at the instigation of, or with the consent or acquiescence of public officials.”⁴³ Police and prison guards are often perpetrators of torture against LGBTI persons or are complicit in permitting torture to be perpetrated by others.

38 See, UN Office of the High Commissioner for Human Rights, *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law*, HR/PUB/12/06 (2012) at 34. <http://www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes.pdf>.

39 “Honour killings” are murders undertaken by a family or community against an individual who has brought shame on a family through their actions. The murders are thought to purge the family of the dishonor brought upon them by the individuals.

40 TGEU, “More than 1100 murdered trans people reported: TGEU Press Release” (March 2013), http://www.tgeu.org/More_than_1100_trans_murders_reported_in_5_years_TGEU_Press_Release.

41 Human Rights Watch, “We’ll Show You You’re a Woman”: *Violence and Discrimination against Black Lesbians and Transgender Men in South Africa* (2011). <http://www.hrw.org/sites/default/files/reports/southafrica1211.pdf>.

42 UN Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, A/HRC/14/20* (April 27, 2010). <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.pdf>; UN Office of the High Commissioner for Human Rights, *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law*, HR/PUB/12/06 (2012). <http://www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes.pdf>.

43 UN Office of the High Commissioner for Human Rights, *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law*, HR/PUB/12/06 (2012). <http://www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes.pdf> [quoting UN General Assembly, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, A/HRC/7/3 (Jan. 15, 2008)].

Another form of documented torture against LGBTI persons is the use of non-consensual anal or vaginal examinations on suspected LGBTI persons in attempt to obtain physical evidence of suspected sexual behavior. For example, anal and vaginal examinations, dubbed “Tests of Shame” in Lebanon are used to investigate a suspect’s sexual behaviour. These tests constitute a form of torture and—as utilized by law enforcement and the courts—are humiliating and degrading acts.⁴⁴ Likewise, in Egypt in 2002, Egyptian authorities used forensic anal examinations on 52 men who were arrested for “debauchery” in a nightclub.⁴⁵ These practices constitute torture and exacerbate discrimination and violence against LGBTI individuals.

The Committee against Torture (CAT) explains that “[t]he protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment.”⁴⁶ The CAT goes on to explain that “insofar as the obligations arising under the Convention are concerned, their laws are in practice applied to all persons, regardless of ... sexual orientation.”⁴⁷ The CAT further explains that ensuring the protection of marginalized groups who are especially at risk of torture includes “fully prosecuting and punishing all acts of violence and abuse against these individuals and ensuring implementation of other positive measures of prevention and protection...”⁴⁸

The Special Rapporteur on torture explains in a recent report with regard to lesbian, gay, bisexual, transgender and intersex persons that:

*There is an abundance of accounts and testimonies of persons being denied medical treatment, subjected to verbal abuse and public humiliation, psychiatric evaluation, a variety of forced procedures such as sterilization, State-sponsored forcible anal examinations for the prosecution of suspected homosexual activities, and invasive virginity examinations conducted by health-care providers, hormone therapy and genital normalizing surgeries under the guise of so called “reparative therapies”. These procedures are rarely medically necessary, can cause scarring, loss of sexual sensation, pain, incontinence and lifelong depression and have also been criticized as being unscientific, potentially harmful and contributing to stigma.*⁴⁹

The Special Rapporteur further explains that many intersex and transgender persons are subjected to involuntary procedures. Often these procedures are conducted only “because [the individuals] fail to conform to socially constructed gender expectations”⁵⁰ and that, “[i]ndeed, discrimination on grounds of sexual orientation or gender identity may often contribute to the process of the dehumanization of the victim, which is often a necessary condition for torture and ill-treatment to take place.”⁵¹ For example, children with atypical sex characteristics are often subjected to “irreversible sex assignment, involuntary sterilization, involuntary genital normalizing surgery, performed without their informed consent, or that of their parents, ‘in an attempt to fix their sex’.”⁵² While transgender persons are required to undergo unwanted sterilization surgeries, ‘gender-confirming surgery,’ or ‘gender reassignment surgery,’ “as a prerequisite to enjoy legal recognition of their preferred gender.”⁵³

44 Human Rights Watch, *Lebanon: Stop “Tests of Shame”: Authorities Order Anal Examinations of Men Charged with Homosexuality* (August 10, 2012). <http://www.hrw.org/news/2012/08/10/lebanon-stop-tests-shame>.

45 Human Rights Watch, *In a Time of Torture: The Assault on Justice in Egypt’s Crackdown on Homosexual Conduct* (March 1, 2004). <http://www.hrw.org/reports/2004/02/29/time-torture-o>.

46 UN Committee against Torture, *General Comment 2, CAT/C/GC/2* (January 24, 2008), para. 21.

47 Ibid.

48 Ibid.

49 Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/22/53* (Feb 2013), at para. 76. http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf.

50 Ibid. at para. 77, 78.

51 Ibid. at para. 79.

52 Ibid. at para. 77.

53 Ibid. at para. 78.

What are human rights-based approaches for upholding the health rights of LGBTI persons?

This section provides some examples of human rights-based approaches that can be effective in upholding the health rights of LGBTI persons.

Allow for LGBTI persons to affirm their gender identity in state documents

Allowing people to affirm their gender identity in state documents and other administrative procedures is necessary to achieve the highest attainable standard of health. Upholding a right to privacy in relation to past and present gender identity, and the ability to change legal identity to protect this privacy, also helps to ensure that LGBTI persons are less likely to be subjected to unlawful discrimination, harassment, and psychological harm. The ability to affirm ones' gender identity in state documents has been questioned in a number of courts, including the European Court of Human Rights. In a variety of cases, the Court has addressed issues that are highly relevant to the enjoyment of the right to the highest attainable standard of health for LGBTI persons, although this has usually been achieved through applying the right to privacy. For example, in the cases of *Goodwin v United Kingdom*⁵⁴ and *I. v United Kingdom*,⁵⁵ the Court ruled that the United Kingdom (UK) Government's refusal to recognize the post-operative genders of two transsexual women was discriminatory and a violation of their right to privacy and right to a family.

The Right to Receive Appropriate, Gender-Affirming Health Care

Another aspect of LGBTI health is the right to receive appropriate, gender-affirming health care that is adequately provided for by the State. This includes the freedom to change one's gender through the use of medical procedures. It is also important when considering what the content of the right to health means for transgender persons. The European Court of Human Rights describes a case about a female-to-male gender re-assignment patient unable to complete his transformation because "there [was] no law regulating full gender reassignment surgery."⁵⁶ While the State had passed a Gender Reassignment Bill entitling transsexuals to have civil documents changed after full gender reassignment, there was no enactment of the Bill because no "legal instrument regulated the conditions and procedure for gender reassignment."⁵⁷ While the patient, having undergone partial surgery, could not access full gender reassignment surgery and therefore, could not change civil-status documents to reflect his change of gender. The patient alleged that:

[H]is continuing inability to complete gender-reassignment surgery left him with a permanent feeling of personal inadequacy and an inability to accept his body, leading to great anguish and frustration. Furthermore, due to the lack of recognition of his perceived, albeit pre-operative, identity, the applicant constantly faced anxiety, fear, embarrassment and humiliation in his daily life. He has had to submit to severe hostility and taunts in the light of the general public's strong opposition, rooted in traditional Catholicism, to gender disorders. Consequently, he has had to follow an almost underground life-style, avoiding situations in which he might have to disclose his original identity, particularly when having to provide his personal code. This has left him in a permanent state of depression with suicidal tendencies.⁵⁸

54 *Case of Christine Goodwin v. the United Kingdom*, Application No. 28957/95 (July 11, 2002). <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60596>.

55 *Case of I. v. the United Kingdom*, Application No. 25680/94 (July 11, 2002). <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60595>.

56 *Case of L. v Lithuania*, Application No. 27527/03 (September 11, 2007). <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-82243>.

57 *Ibid.*

58 *Ibid.*

The Court ruled that the lack of implementing legislation violated the applicant's right to private life. Indeed, the Court ruled that it was necessary for a state, in this instance Lithuania, to make changes to their civil code in order to protect the right to full gender-reassignment surgery, and allocate budgetary measures to facilitate the fulfilment of this right.⁵⁹

Also, European Court of Human Rights has addressed the issue of providing funding for transition-related procedures. The European Court of Human Rights said that freedom to define one's own gender identity is "one of the most basic essentials of self-determination."⁶⁰ This belief was enumerated in a recent case from 2003, where the Court ruled that Germany had failed to respect the freedom to define one's gender identity (part of the right to privacy) when its civil courts refused a woman's appeal against her health insurance company and its rejection of her claim for reimbursement of the costs of her sex-reassignment surgery.⁶¹ This could be seen as part of a positive obligation to facilitate the self-determination of gender identity, including through the provision and funding of relevant health care procedures.

Require Full and Informed Consent for Medical Procedures

LGBTI persons are vulnerable to undergoing coerced medical procedures. This is particularly true for intersex and transgender persons, for whom obtaining gender-correct identification is predicated on undergoing specific medical procedures. The Special Rapporteur on torture recently recommended, regarding LGBTI persons specifically, that all States "repeal any law allowing intrusive and irreversible treatments, including forced genital-normalizing surgery, involuntary sterilization, unethical experimentation, medical display, "reparativetherapies" or "conversion therapies", when enforced or administered without the free and informed consent of the person concerned."⁶² The right to informed consent protects the right of the patient to be involved in medical decision-making and requires a voluntary and sufficiently informed decision.⁶³

Take Into Account LGBTI Persons in Health Policy Setting

Another way in which LGBTI persons' health can be impacted is through a failure to adequately take into account their specific needs, and tailor health care systems, including training for health care practitioners, to be more sensitive to the concerns of the LGBTI community. For example, some health providers and health systems focus on treating the identity of the patient rather than their body. Also, gays and lesbians are "overlooked and underserved" when it comes to their unique health care needs.⁶⁴ For example, the sexual and reproductive health needs, including fertility, of same-sex practicing couples is often overlooked or misunderstood. Likewise, transgender persons face many obstacles in accessing 'gender-appropriate services,'⁶⁵ which may be complicated when insurance refuses to pay for gender-specific services for transgender or intersex patients. Health policy makers simply fail to prioritise this particular group of consumers of health services, along with other LGBTI people.

59 *Case of L. v Lithuania*, Application No. 27527/03 (September 11, 2007). <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-82243>.

60 *Case of Van Kück v. Germany*, Application No. 35968/97 (June 12, 2003). <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61142>.

61 *Ibid.*

62 Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/22/53 (Feb 2013), at para. 88. http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf.

63 UN General Assembly, *Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/64/272 (August 10, 2009).

64 Gartner N, "Articulating Lesbian Human Rights: The Creation of a Convention on the Elimination of All Forms of Discrimination Against Lesbians," 14 *UCLA Women's Law Journal* (2005) 61.

65 O'Flaherty M and Fisher J, "Sexual Orientation, Gender Identity and International Human Rights Law: Contextualising the Yogyakarta Principles," 8(2) *Human Rights Law Review* (2008): 207-248, at 211.

While national health systems are often poorly designed to serve the needs of ‘sexual minorities’, likewise international health care programming is not effectively targeting these groups in need. For example, in 2007 the International Gay and Lesbian Human Rights Commission (IGLHRC) published a study that analysed how the international funding community, governments, and NGOs are failing LGBTI people because HIV/AIDS programming is not addressing same-sex practicing people, and only leads to denying further LGBTI patients’ access to effective HIV prevention, counselling and testing, treatment, and care.⁶⁶ “Moving the mountain” is how the group has described the epic struggle to get HIV programmers and policymakers to address how anti-gay discrimination fuels the HIV/AIDS crisis in Africa and elsewhere.⁶⁷

The failure to protect health rights for LGBTI people is as much a failure of human rights practitioners and the human rights system, as it is a failure of health practitioners and health systems, because “[h]uman rights law has developed ... while keeping the issues of sexuality firmly in the closet.”⁶⁸ Even as human rights law has developed, it has continued to marginalize LGBTI people and it has failed to adequately integrate the rights of LGBTI people.⁶⁹

Provide LGBTI health education

Health education is an important aspect of the right to health for LGBTI individuals. However, school curricula often fail to address LGBTI health education needs. In many countries, educational materials that address sexual orientation and gender identity issues, or even acknowledge the existence of LGBTI concerns, are banned from schools. In many countries around the world the hetero-norm is reinforced through withholding education about sexual and gender diversity,⁷⁰ and risking the health of young LGBTI people in the process.⁷¹

66 International Gay and Lesbian Human Rights Commission (IGLHRC), *Off the Map: How HIV/AIDS Programming is Failing Same-Sex Practicing People in Africa* (2007). <http://www.iglhrc.org/sites/default/files/6-1.pdf>.

67 International Gay and Lesbian Human Rights Commission (IGLHRC), “Moving the Mountain: Getting HIV Programmers and Policymakers to Pay Attention to the Needs of Men Who Have Sex with Men in Kenya,” Press Release (March 8, 2007); International Gay and Lesbian Human Rights Commission (IGLHRC), “IGLHRC’s New Study Reveals How Anti-Gay Discrimination Fuels HIV/AIDS Crisis in Africa,” Press Release (March 1, 2007). <http://www.iglhrc.org/content/africa-iglhrcs-new-study-reveals-how-anti-gay-discrimination-fuels-hiv-aids-crisis-africa>.

68 Morgan W, “Queering International Human Rights” in Stychin C and Herman D, eds., *Law and Sexuality: The Global Arena* (Minneapolis: University of Minnesota Press, 2001) at 208, 209.

69 For example, Nadine Gartner writes of how the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) “fails to adequately represent lesbians ... [t]he woman who emerges from CEDAW is heterosexual, married, with children, and primarily focused on her home” in Gartner N, “Articulating Lesbian Human Rights: The Creation of a Convention on the Elimination of All Forms of Discrimination Against Lesbians,” 14 *UCLA Women’s Law Journal* (2005) 61.

70 Armstrong KK, “The Silent Minority Within a Minority: Focusing on the Needs of Gay Youth in our Public Schools,” 24 *Golden Gate University Law Review* (1994) 67.

71 Pedrioli CA, “Lifting the Pall of Orthodoxy: The Need for Hearing a Multitude of Tongues in and Beyond the Sexual Education curricula at Public High Schools,” 13 *UCLA Women’s Law Journal* (2005) 209, at 211-2.

2. WHICH ARE THE MOST RELEVANT INTERNATIONAL AND REGIONAL HUMAN RIGHTS STANDARDS RELATED TO LGBTI HEALTH?

How to read the tables

Tables A and B provide an overview of relevant international and regional human rights instruments standards in so far as they relate to the health of the LGBTI community. They provide a quick reference to the rights instruments and refer you to the relevant articles of each listed human right or fundamental freedom that will be addressed in this chapter.

From Table 1 on, each table is dedicated to examining a human right or fundamental freedom in detail as it applies to LGBTI health. The tables are organized as follows:

Human right or fundamental freedom	
Examples of Human Rights Violations	
Yogyakarta Principle Provides the Yogyakarta principle and their origins.	
Human rights standards	UN treaty body interpretation This section provides general comments issued by UN treaty bodies as well as recommendations issued to States parties to the human right treaty. These provide guidance on how the treaty bodies expect countries to implement the human rights standards listed on the left.
Human rights standards	Case law This section lists case law from regional human rights courts only. There may be examples of case law at the country level, but these have not been included. Case law creates legal precedent that is binding upon the states under that court's jurisdiction. Therefore it is important to know how the courts have interpreted the human rights standards as applied to a specific issue area.
Other interpretations: This section references other relevant interpretations of the issue. It includes interpretations by: <ul style="list-style-type: none"> • UN Special Rapporteurs • UN working groups • International and regional organizations • International and regional declarations 	

The tables provide examples of human rights violations as well as legal standards and precedents that can be used to redress those violations. These tools can assist in framing common health or legal issues as human rights issues, and in approaching them with new intervention strategies. In determining whether any human rights standards or interpretations can be applied to your current work, consider what violations occur in your country and whether any policies or current practices in your country contradict human rights standards or interpretations.

Human rights law is an evolving field, and existing legal standards and precedents do not directly address many human rights violations. Through ongoing documentation and advocacy, advocates can build a stronger body of jurisprudence on human rights and LGBTI health.

Abbreviations

In the tables, we use the following abbreviations to refer to the twelve treaties and their corresponding enforcement mechanisms:

Treaty	Enforcement Mechanism
Universal Declaration of Human Rights (UDHR)	None
International Covenant on Civil and Political Rights (ICCPR)	Human Rights Committee (HRC)
International Covenant on Economic, Social, and Cultural Rights (ICESCR)	Committee on Economic, Social and Cultural Rights (CESCR)
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	Committee on the Elimination of Discrimination Against Women (CEDAW Committee)
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	Committee on the Elimination of Racial Discrimination (CERD)
Convention on the Rights of the Child (CRC)	Committee on the Rights of the Child (CRC Committee)
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT)	Committee against Torture (CAT)
African Charter on Human and Peoples' Rights and Protocols (ACHPR)	African Commission on Human and Peoples' Rights (ACHPR Commission)
[European] Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)	European Court of Human Rights (ECtHR)
1996 Revised European Social Charter (ESC)	European Committee of Social Rights (ECSR)
American Convention on Human Rights (ACHR)	Inter-American Court of Human Rights (IACHR)
American Declaration of the Rights and Duties of Man (ADRDM)	Inter-American Court of Human Rights (IACHR)

Also cited are the former Commission on Human Rights (**CHR**) and various UN Special Rapporteurs (**SR**) and Working Groups (**WG**).

Table A: International Human Rights Instruments and Protected Rights and Fundamental Freedoms

	UDHR	ICCPR	ICESCR	CEDAW	ICERD	CRC	Yogyakarta Principles
Life	Art. 3	Art. 6(1)				Art. 6(1)	Principle 4
Torture or Cruel, Inhuman or Degrading Treatment*	Art. 5	Art. 7				Art. 37(a)	Principle 10
Bodily Integrity							
Non-Discrimination and Equality	Art. 1 Art. 2	Art. 2(1), Art. 3	Art. 2(2), Art. 3	Art. 2, All	Art. 2, Art. 5 All	Art. 2	Principle 2
Health	Art. 25		Art. 12	Art. 12	Art. 5(e) (iv)	Art. 24	Principle 17
Privacy	Art. 12	Art. 17				Art. 16	Principle 6
Arbitrary Arrest and Detention	Art. 9	Art. 9				Art. 37(b)	Principle 7
Assembly and Association	Art. 20	Art. 21, Art. 22			Art. 5(d) (ix)	Art. 15	Principle 20
Expression and Information	Art. 19	Art. 19			Art. 5(d) (viii)	Art. 12, Art. 13, Art. 17	Principle 19
Marry and Form a Family	Art. 16	Art. 23		Art. 16	Art. 5(d) (iv)		Principle 24
Education	Art. 26		Art. 13	Art.10	Art. 5(e) (v)	Art. 28, Art. 29	Principle 16
Work	Art. 23		Art. 6, Art. 7	Art.11	Art.5(e) (i)		Principle 12
Social security	Art. 22		Art. 9	Art. 14(2)(c)	Art5(e) (iv)	Art. 26	Principle 13

*See also Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 2.

Table B: Regional Human Rights Instruments and Protected Rights and Fundamental Freedoms

	Africa: ACHPR	Europe: ECHR	Europe: ESC	Americas: ADRDM	Americas: ACHR
Life	Art. 4	Art. 2		Art. I	Art. 4
Torture or Cruel, Inhuman or Degrading Treatment	Art. 5	Art. 3			Art. 5(2)
Bodily Integrity					
Non-Discrimination and Equality	Art. 2, Art. 19	Art. 14	Art. E	Art. II	Art. 1(1)
Health	Art. 16		Art. 11, Art. 13	Art. XI	
Privacy		Art. 8		Art. V	Art. 11
Arbitrary Arrest and Detention	Art. 6	Art. 5		Art. XXV	Art. 7(3)
Assembly and Association	Art. 10, Art. 11	Art. 11		Art. XXI, Art. XXII	Art 15, Art. 16
Expression and Information	Art. 9	Art. 10		Art. IV	Art. 13
Marry and Form a Family		Art. 12		Art. VI	Art. 17
Education	Art.17			Art. XII	
Work	Art. 15		Art. 1	Art. XIV	
Social Security				Art. XVI	

Table I: LGBTI Health and the Right to Life

Examples of Human Rights Violations	
<ul style="list-style-type: none"> National laws which impose the death penalty for sexual activity between persons of the same sex. Police officers are not tried or prosecuted for the rape and murder of a homeless transgender person. LGBTI communities are denied access to services to prevent HIV. No laws are in place prohibiting hate crimes, including violence against LGBTI persons, which means police fail to investigate murders of LGBTI persons. 	
Yogyakarta Principle	
<p>Principle 4: Everyone has the right to life. No one shall be arbitrarily deprived of life, including by reference to considerations of sexual orientation or gender identity. The death penalty shall not be imposed on any person on the basis of consensual sexual activity among persons who are over the age of consent or on the basis of sexual orientation or gender identity.</p> <p>States shall:</p> <ul style="list-style-type: none"> Repeal crimes that have the purpose or effect of prohibiting consensual sexual activity among persons of the same sex who are over the age of consent and, until such provisions are repealed, never impose the death penalty on any person convicted under them; Remit sentences of death and release all those currently awaiting execution for crimes relating to consensual sexual activity among persons who are over the age of consent; and Cease any State-sponsored or State-condoned attacks on the lives of person based on sexual orientation or gender identity, and ensure that all such attacks, whether by government officials or by an individual or group, are vigorously investigated, and that, where appropriate evidence is found, those responsible are prosecuted, tried and duly punished. 	
Human Rights Standards	Treaty Body Interpretation
<p>ICCPR 6(1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.</p> <p>ICCPR 6(2) In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.</p>	<p>HRC General Comment 6 and 31: States have an obligation to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by deprivations of life by private entities. They must also prevent deprivation of life by their own agents. This includes where victims are deprived of life on the basis of their sexual orientation or gender identity. HRC General Comment No. 6 (1982) at para. 3; and HRC General Comment 31, CCPR/C/21/Rev.1/Add. 13 (2004) at para. 8.</p> <p>HRC: recommending that El Salvador “should provide effective protection against violence and discrimination based on sexual orientation.” CCPR/CO/78/SLV (2003) at para. 16.</p> <p>HRC: recommending that the United States “should ensure that its hate crime legislation, both at the federal and state levels, address sexual orientation-related violence.” CCPR/C/USA/CO/3 (2006) at para. 25.</p> <p>HRC: recommending that Mongolia “should ensure that LGBT persons have access to justice, and that all allegations of attacks and threats against individuals targeted because of their sexual orientation or gender identity are thoroughly investigated.” CCPR/C/MNG/CO/5 (2011) at para. 9.</p> <p>HRC: recommending that Jamaica should ensure that individuals, who incite violence against LGBTI persons, are investigated, prosecuted and properly sanctioned. CCPR/C/JAM/CO/3 (2011) at para 8.</p> <p>HRC: noting to Colombia that the Committee deplores systematic operations targeted at executing homosexuals. CCPR/C/79/Add.76 (1997) at para. 16.</p>

Table I (cont.)

Human Rights Standards	Treaty Body Interpretation
CRC 6 (1) States Parties recognize that every child has the inherent right to life.	CRC General Comment No. 3: The obligation to realize the right to life, survival and development also highlights the need to give careful attention to sexuality as well as to the behaviors and lifestyles of children, even if they do not conform with what society determines to be acceptable under prevailing cultural norms. CRC/GC/2003/3 (2003) at para. 11.

Human Rights Standards	Case Law
ECHR 2(1) Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.	
ACHR 4(1) Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.	

Other Interpretations

SR on Extrajudicial, Summary or Arbitrary Executions: Capital punishment should not be applied to “moral” offences. States must prevent and investigate the killing of sexual minorities by non-state actors.

SR on Extrajudicial, Summary or Arbitrary Executions: “Acts of murder and death threats should be promptly and thoroughly investigated regardless of the sexual orientation of the victims. Measures by the State to protect the security and right to life of sexual minorities should include policies and programmes geared towards overcoming hatred and prejudice against homosexuals and sensitizing public officials and the general public to crimes and acts of violence directed against members of sexual minorities ... Matters of sexual orientation should under no circumstances be punishable by death.” Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, E/CN.4/2000/3 (2002) at para. 116.

SR on Health: “Sanctioned punishments by States reinforce existing prejudices and legitimizes community violence and police brutality directed at affected individuals ... The Special Rapporteur believes that the imposition of the death penalty for consensual same sex conduct is not only unconscionable, but further represents arbitrary deprivation of life, constituting an infringement of the right to life recognized in article 6 of the International Covenant on Civil and Political Rights.” Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/HRC/14/20 (2010) at para. 20.

Table 2: LGBTI Health and Freedom from Torture or Cruel, Inhuman, or Degrading Treatment

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • A psychiatrist provides “treatment” to an LGBTI person with electric shock or hormone therapy without consent. • A gay man in prison is denied a bed and repeatedly assaulted and raped by cell mates, with the complicity or inaction of prison guards and correctional officials. • Police torture a lesbian couple, because of their sexual orientation, and there is a failure to investigate the actions of the police officers. 	
Yogyakarta Principle	
<p>Principle 10: Everyone has the right to be free from torture and from cruel, inhuman or degrading treatment or punishment, including for reasons relating to sexual orientation or gender identity.</p> <p>States shall:</p> <ul style="list-style-type: none"> • Take all necessary legislative, administrative and other measure to prevent and provide protection from torture and cruel, inhuman or degrading treatment or punishment, perpetrated for reasons relating to the sexual orientation or gender identity of the victim, as well as the incitement of such acts; • Take all reasonable steps to identify victims of torture and cruel, inhuman or degrading treatment or punishment, perpetrated for reasons relating to sexual orientation or gender identity, and offer appropriate remedies including redress and reparation and, where appropriate, medical and psychological support; • Undertake programmes of training and awareness-raising for police, prison personnel and all other officials in the public and private sector who are in a position to perpetrate or to prevent such acts. 	
Human Rights Standards	Treaty Body Interpretation
<p>ICCPR 7 No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.</p>	<p>HRC General Comment No. 31: The failure to investigate and bring to justice perpetrators of torture or ill treatment in and of itself can give rise to a separate breach of international law. CCPR/C/21/Rev.1/Add.13 (2004) at para 18.</p> <p>HRC: recommending that Ecuador “should take preventive and protective measures to ensure that persons of a different sexual orientation are not detained in private clinics or rehabilitation centres in order to be subjected to ‘sexual reorientation’ treatments” and “investigate the alleged detentions and torture and adopt the necessary remedial measures in accordance with the Constitution.” CCPR/C/ECU/CO/5 (2009) at para. 12.</p>

Table 2 (cont.)

Human Rights Standards	Treaty Body Interpretation
<p>CAT 2(1) Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.</p>	<p>CAT General Comment 2: “The protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment. States parties must ensure that ... their laws are in practice applied to all persons, regardless of ... gender, sexual orientation, transgender identity... States parties should ensure the protection of members of groups especially at risk of being tortured, by fully prosecuting and punishing all acts of violence and abuse against these individuals and ensuring implementation of other positive measures of prevention and protection, including but not limited to those outlined above.” CAT/C/GC/2 (2008) at para. 21.</p> <p>CAT: expressing concern that in the United States “that there are numerous reports of sexual violence perpetrated by detainees on one another, and that persons of differing sexual orientation are particularly vulnerable” and recommending that it “design and implement appropriate measures to prevent all sexual violence in all their detention centres.” CAT/C/USA/Co/2 (2006) at paras. 32</p> <p>CAT: recommending that the United States “ensure that reports of brutality and ill-treatment of members of vulnerable groups by its law-enforcement personnel are independently, promptly and thoroughly investigated and that perpetrators are prosecuted and appropriately punished.” CAT/C/USA/Co/2 (2006) at paras. 37.</p> <p>CAT: recommending to Egypt that it “remove all ambiguity in legislation which might underpin the persecution of individuals because of their sexual orientation. Steps should also be taken to prevent all degrading treatment during of body searches.” Here the Committee is referring to use of anal exams to ‘prove’ homosexuality as degrading treatment. CAT/C/CR/29/4 (2002) at para. 6(k).</p> <p>CAT: expressing concern to Argentina at “[a]llegations of torture and ill-treatment of certain other vulnerable groups, such as members of the indigenous communities, sexual minorities and women.” CAT/C/CR/33/1, para 6(g).</p> <p>CAT: recommending that Mongolia “establish a comprehensive legal framework to combat discrimination, including hate crimes and speech. The State party should take measures to bring perpetrators of such crimes to justice. The State party should ensure the protection of vulnerable groups such as sexual minorities, persons living with HIV/AIDS, and some foreigners. The State party should establish effective policing, enforcement and complaints mechanisms with a view to ensuring prompt, thorough and impartial investigations into allegations of attacks against persons on the basis of their sexual orientation or gender identity in line with the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity.” CAT/C/MNG/CO/1, para. 25.</p> <p>CAT: recommending that Kuwait “investigate crimes related to discrimination directed towards all vulnerable groups and pursue ways in which hate crimes can be prevented and punished. The Committee is concerned at reports that vulnerable groups such as lesbian, gay, bisexual and transgender (LGBT) persons are subjected to discrimination and ill-treatment, including sexual violence, both in public and domestic settings. (arts. 2 and 16).” CAT/C/KWT/CO/2, para. 25.</p>

Human Rights Standards	Case Law
<p>ECHR 3 No one shall be subjected to torture or to inhuman or degrading treatment or punishment.</p>	<p>ECtHR: finding discharge from the armed services on account of applicant’s sexuality “undoubtedly distressing and humiliating [.]” but not a violation of Art. 3. <i>Smith and Grady v. The United Kingdom</i>, 33985/96 (Sep. 27,1999), emphasis added.</p>

Table 2 (cont.)

Other Interpretations

SR Torture: Has expressed concern at torture and cruel, inhuman or degrading treatment directed at persons because of their sexual orientation or gender identity or expression, noting that torture and cruel, inhuman or degrading treatment protections apply in criminal detention as well as to health and immigration facilities.

WG on Arbitrary Detention: "... Forced anal examinations contravene the prohibition of torture and other cruel, inhuman and degrading treatment, whether if, like in the present cases, they are employed with a purpose to punish, to coerce a confession, or to further discrimination." WG on Arbitrary Detention, A/HRC/16/47/Add.1, Opinion No. 25/2009 on Egypt at paras. 23, 28-29.

Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>.

Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 37/194, UN Doc. No. A/RES/37/194 (Dec. 18, 1982). <http://www2.ohchr.org/english/law/medicalethics.htm>.

Code of Conduct for Law Enforcement Officials, G.A. Res. 34/169, UN Doc. A/RES/34/169 (Dec. 17, 1979). <http://www2.ohchr.org/english/codeofconduct.pdf>.

Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Declaration Against Torture"), adopted by consensus by the UN Assembly (UN G.A. Res. 3452 [XXX] (Dec. 9, 1975)).

Vienna Declaration and Programme of Action, Para. 56: "[U]nder human rights law and international humanitarian law, freedom from torture is a right which must be protected under all circumstances, including in times of internal or international disturbance or armed conflicts."

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *opened for signature* Nov. 26, 1987, E.T.S. No. 126 (entered into force Jan. 2, 1989). Available at <http://www.cpt.coe.int/en/documents/ecpt.htm>

Inter-American Convention to Prevent and Punish Torture (1985)

Inter-American Commission on Human Rights, press release (August 15, 2013). http://oas.org/en/iachr/media_center/PReleases/2013/060.asp.

The Inter-American Commission recalls that it is the States' obligation to investigate killings and other acts of violence against LGBTI persons and sanction those responsible. The IACHR urges the States to open lines of investigation that take into account whether these murders and acts of violence were committed because of the gender identity, gender expression and/or sexual orientation of the victims. In general terms, the Commission notes that there are problems in the investigation of these crimes. In this regard, the Inter-American Commission reiterates that the ineffectiveness of the state's response fosters high rates of impunity, which in turn lead to the chronic repetition of such crimes, leaving the victims and their families defenseless.

Table 3: LGBTI Health and the Right to Bodily Integrity

Examples of Human Rights Violations
<ul style="list-style-type: none"> • A transsexual or transgender person is raped or assaulted by police. • A lesbian is raped by family friends to “make her straight”. • The police fail to investigate beatings and sexual assaults of men having sex with men. • Schools fail to protect students from attacks for sexual or gender non-conformity. • A transgender person is sterilized against his or her will. • Forced anal exams of men who have sex with men (MSM) as part of arrest procedure. • Transgendered person is denied services or insurance coverage for services such as hormone replacement therapy and gender reassignment surgery.
Note On Bodily Integrity in International and National Treaties
<p>The right to bodily integrity is not explicitly set out in the Yogyakarta Principles, but is implicitly included in the right to life, right to security of the person, freedom from torture and cruel, degrading treatment and right to highest attainable standard of health, which are included in the Yogyakarta Principles.</p> <p>The right to bodily integrity is not specifically recognized under the ICCPR or ICESCR, but has been interpreted to be part of the right to security of the person, to freedom from torture and cruel, inhuman, and degrading treatment, and the right to the highest attainable standard of health. Similarly, the right to bodily integrity is not specifically recognized in CEDAW, although CEDAW has been widely interpreted to include the right to protection from violence against women.</p>

Other Interpretations

WG Enforced or Involuntary Disappearances: An aspect of disappearances that has been underreported in the past and continues at the present time relates to the way in which acts of disappearance are perpetrated in conjunction with other gross violations, with targets drawn from among the most vulnerable groups in society...Common examples include: disappearances, combined with ‘social cleansing,’ the urban poor, the unemployed, and the so-called ‘undesirables,’ including prostitutes, petty thieves, vagabonds, gamblers and homosexuals as the victims.

Inter-American Commission on Human Rights (August 15, 2013), http://oas.org/en/iachr/media_center/PReleases/2013/060.asp:

The Inter-American Commission urges States to take all necessary measures to apply due diligence in preventing, investigating and sanctioning violence against LGBTI persons, regardless of whether it occurs in the family, the community, or the public sphere, including education and health facilities. This includes the adoption of policies and public campaigns to promote awareness and respect for the human rights of LGBTI persons, in all sectors, including the educational and family settings, as a means to combat the prejudices that underlie violence related to sexual orientation and gender identity and expression. Finally, the Commission urges States to take action to prevent and respond to these human rights violations and to ensure that LGBTI persons can effectively enjoy their right to a life free from discrimination and violence.

Inter-American Commission on Human Rights (October 29, 2012), http://oas.org/en/iachr/media_center/PReleases/2012/129.asp:

The Commission continues to receive information on killings, torture, arbitrary arrests, and other forms of violence and exclusion against lesbians, gays, and trans, bisexual, and intersex persons. In addition, the Commission notes that problems exist in the investigation of those crimes, which involve, in part, failures to open lines of investigation into whether the crime was committed by reason of the victim’s gender identity or sexual orientation. The ineffectiveness of the state response fosters high rates of impunity, which in turn lead to the chronic repetition of such crimes, leaving the victims and their families defenseless.

The IACHR urges the States to take action to prevent and respond to these human rights abuses and to ensure that LGBTI people can effectively enjoy their right to a life free from discrimination and violence, including the adoption of policies and public campaigns and the amendments necessary to bring laws into line with the inter-American instruments on human rights.

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (2001), No. 126: Stated that Every competent patient...should be given the opportunity to refuse treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances.

Table 4: LGBTI Health and the Right to Non-discrimination

Examples of Human Rights Violations
<ul style="list-style-type: none"> • A person is denied a job, housing, health care, education, or access to goods and services because of sexual orientation, gender identity or gender expression. • A TV program is prohibited by authorities because it features a same-sex kiss while allowing different-sex kisses to be aired regularly. • An organization for boys (e.g, Boy Scouts) denies membership to LGBTI people.
Yogyakarta Principle
<p>Principle 2: Everyone is entitled to enjoy all human rights without discrimination on the basis of sexual orientation or gender identity. Everyone is entitled to equality before the law and the equal protection of the law without any such discrimination whether or not the enjoyment of another human right is also affected. The law shall prohibit any such discrimination and guarantee to all persons equal and effective protection against any such discrimination.</p> <p>Discrimination on the basis of sexual orientation or gender identity includes any distinction, exclusion, restriction or preference based on sexual orientation or gender identity which has the purpose or effect of nullifying or impairing equality before the law or the equal protection of the law, or the recognition, enjoyment or exercise, on an equal basis, of all human rights and fundamental freedoms. Discrimination based on sexual orientation or gender identity may be, and commonly is, compounded by discrimination on other grounds including gender, race, age, religion, disability, health and economic status.</p> <p>States shall:</p> <ul style="list-style-type: none"> • Embody the principles of equality and non-discrimination on the basis of sexual orientation and gender identity in national constitutions or other appropriate legislation; • Repeal legal provisions that have the effect of prohibiting consensual sexual activity between people of the same sex who are over the age of consent, and to ensure that an equal age of consent applies to all, regardless of their sexual orientation or gender identity; • Adopt legislation and other measures to prohibit and eliminate discrimination on the basis of sexual orientation and gender identity; • Take appropriate measures to secure adequate advancement of persons of diverse sexual orientation and gender identities as may be necessary to ensure such groups have equal enjoyment of human rights; • When responding to discrimination based on sexual orientation and gender identity, take into account the manner in which such discrimination intersects with other forms of discrimination; and • Take all appropriate action to achieve elimination of prejudicial or discriminatory attitudes or behaviours related to the idea of inferiority or superiority of any sexual orientation or gender identity.

Table 4 (cont.)

Human Rights Standards	Treaty Body Interpretation
<p>ICCPR 2(1) Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</p>	<p>HRC: expressing concern to Chile “about the discrimination to which some people are subject because of their sexual orientation, for instance, before the courts and in access to health care” and recommending that it “guarantee equal rights to all individuals, as established in the Covenant, regardless of their sexual orientation, including equality before the law and in access to health care. CCPR/C/CHL/CO/5 (2007) at para. 16.</p> <p>HRC: expressing concern to Ireland that it “has not recognized a change of gender by transgender persons by permitting birth certificates to be issued for these persons” and recommending that Ireland “should recognize the right of transgender persons to a change of gender by permitting the issuance of new birth certificates.” Birth certificates provide legal recognition to changes of an individual’s gender identity. CCPR/C/IRL/CO/3 (2008) at para. 8.</p> <p>HRC: recommending that Iran “should also take all necessary legislative, administrative and other measures to eliminate and prohibit discrimination on the basis of sexual orientation, including with respect to access to employment, housing, education and health care, and to ensure that individuals of different sexual orientation or gender identity are protected from violence and social exclusion within the community.” CCPR/C/IRN/CO/3 (2011) at para. 10.</p> <p>HRC [Jurisprudence]: Has recognized the right to non-discrimination on the basis of sexual orientation in relation to privacy (<i>Toonen v. Australia</i>, HRC Communication No. 488/1992 (CCPR/C/50/D/488/1992)), and access to benefits (<i>Young v. Australia</i>, HRC Communication No. 941/2000 (CCPR/C/78/O/941/2000)), but not access to marriage (<i>Joslin v. New Zealand</i>, HRC Communication No. 902/1999 (CCPR/C/75/D/902/1999)).</p> <p>HRC: expressing concern to Poland that “discriminatory acts and attitudes against persons on the ground of sexual orientation are not adequately investigated and punished” and recommending that Poland “should provide appropriate training to law enforcement and judicial officials in order to sensitize them to the rights of sexual minorities.” CCPR/CO/82/POL (2004) at para. 18.</p> <p>HRC: recommended that the United States “acknowledge legal obligation under articles 2 and 26 to ensure to everyone rights recognized by ICCPR, as well as equality before law and equal protection of law, without discrimination on basis of sexual orientation [and] ensure that its hate crime legislation, both at federal and state levels, address sexual orientation-related violence and that federal and state employment legislation outlaw discrimination on basis of sexual orientation.” CCPR/C/USA/CO/3 (HRC, 2006)</p> <p>HRC: recommended that Mongolia “should ensure that LGBT persons have access to justice, and that all allegations of attacks and threats against individuals targeted because of their sexual orientation or gender identity are thoroughly investigated.” CCPR/C/MNG/CO/5 (HRC, 2011)</p>

Table 4 (cont.)

Human Rights Standards	Treaty Body Interpretation
<p>ICESCR 2(2) The States Parties to the present Covenant undertake to guarantee the rights enunciated in the present Covenant shall be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, birth or other status.</p>	<p>CESCR General Comment No. 20: The prohibited grounds of discrimination in ICESCR Article 2(2) includes ‘other status’. In General Comment 20, CESCR establishes that ‘other status’ includes sexual orientation and gender identity. Therefore, sexual orientation and gender identity are prohibited grounds of discrimination under ICESCR. E/C.12/GC/20 (2009) at para 32.</p> <p>CESCR: urging Germany to “step up measures, legislative or otherwise, on the identity and the health of transsexual and inter-sex persons with a view to ensuring that they are no longer discriminated against and that their personal integrity and sexual and reproductive health rights are respected. The Committee calls on the State party to fully consult transsexual and inter-sexed persons for this purpose.” E/C.12/DEU/CO/5 (2011) at para. 26.</p> <p>CESCR: recommending to Poland that it should adopt legislative and other measures to eliminate and prohibit discrimination against LGBTI persons in the enjoyment of their economic, social and cultural rights. E/C.12/POL/CO/5 (2009) at para. 12.</p>
<p>CRC 2(1) States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.</p> <p>CRC 2(2) States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.</p>	<p>CRC General Comment No. 13: explaining that “States parties must address discrimination against vulnerable or marginalized groups of children ... and make proactive efforts to ensure that such children are assured their right to protection on an equal basis with all other children.” Explaining that vulnerable children includes children “who are lesbian, gay, transgender or transsexual.” CRC/C/GC/13 (2011) at paras. 60 and 72(g).</p> <p>CRC General Comment No. 4: “States parties have the obligation to ensure that all human beings below 18 enjoy all the rights set forth in the Convention without discrimination (art. 2), including with regard to “race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status”. These grounds also cover adolescents’ sexual orientation and health status (including HIV/AIDS and mental health). Adolescents who are subject to discrimination are more vulnerable to abuse, other types of violence and exploitation, and their health and development are put at greater risk. They are therefore entitled to special attention and protection from all segments of society.” CRC/GC/2003/4 (2003) at para. 6.</p> <p>CRC Committee: recommending that the United Kingdom of Great Britain and Northern Island should strengthen its “awareness-raising and other preventative activities against discrimination and, if necessary, taking affirmative actions” for LGBTI children. CRC/C/GBR/CP/4 at paras. 24-25.</p> <p>CCRC Committee: expressing concern to Chile “that homosexual relations, including those of persons under 18 years old, continue to be criminalized, indicating discrimination on the basis of sexual orientation.” CRC/C/CHL/CO/3</p>
<p>CAT 1(1) For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person...for any reason based on discrimination of any kind...</p>	<p>CAT General Comment No. 2: States must ensure that their laws are in practice applied to all persons, regardless of their sexual orientation or transgender identity. CAT/C/GC/2 (2007) at para. 21.</p>

Table 4 (cont.)

Human Rights Standards	Treaty Body Interpretation
<p>CEDAW 2 States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women...</p>	<p>CEDAW General Recommendation No. 28: “The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as...sexual orientation and gender identity...States parties must legally recognise such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them.” CEDAW/C/GC/28 (2010), at para. 18.</p> <p>CEDAW: recommending that Uganda “decriminalize homosexual behaviour and to provide effective protection from violence and discrimination against women based on their sexual orientation and gender identity, in particular through the enactment of comprehensive anti-discrimination legislation that would include the prohibition of multiple forms of discrimination against women on all grounds, including on the grounds of sexual orientation and gender identity.” CEDAW/C/UGA/CO/7</p>

Other Interpretations

Inter-American Convention Against All Forms of Discrimination and Intolerance, AG/RES. 2804 (XLIII-O/13), (June 6, 2013).

Article 1(1) Discrimination shall mean any distinction, exclusion, restriction, or preference, in any area of public or private life, the purpose or effect of which is to nullify or curtail the equal recognition, enjoyment, or exercise of one or more human rights and fundamental freedoms enshrined in the international instruments applicable to the States Parties. Discrimination may be based on nationality; age; sex; **sexual orientation; gender identity and expression**; language; religion; cultural identity; political opinions or opinions of any kind; social origin; socioeconomic status; educational level; migrant, refugee, repatriate, stateless or internally displaced status; disability; genetic trait; mental or physical health condition, including infectious-contagious condition and debilitating psychological condition; or any other condition.

Charter of Fundamental Rights of the European Union (“European Charter”) 21(1): Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, or sexual orientation shall be prohibited.

Lisbon Treaty: In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

Inter-American Commission on Human Rights, press release (August 15, 2013). http://oas.org/en/iachr/media_center/PReleases/2013/060.asp:

The Inter-American Commission urges States to take all necessary measures to apply due diligence in preventing, investigating and sanctioning violence against LGBTI persons, regardless of whether it occurs in the family, the community, or the public sphere, including education and health facilities. This includes the adoption of policies and public campaigns to promote awareness and respect for the human rights of LGBTI persons, in all sectors, including the educational and family settings, as a means to combat the prejudices that underlie violence related to sexual orientation and gender identity and expression. Finally, the Commission urges States to take action to prevent and respond to these human rights violations and to ensure that LGBTI persons can effectively enjoy their right to a life free from discrimination and violence.

Table 5: LGBTI Health and the Right to the Highest Attainable Standard of Health

Examples of Human Rights Violations
<ul style="list-style-type: none"> • A national health system fails to provide anti-retroviral treatment to LGBTI people while making it accessible to others. • Perceived LGBTI persons are treated with stigma and judgmental attitudes in the health system and therefore are not providing equal levels of health. • Because of stigma in the health system LGBTI individuals do not feel comfortable accessing health care facilities. • Men who have sex with men (MSM) and other marginalized populations are regularly left out of national health and budget plans, thereby ensuring that services are not funded and available. Because of stigma in the health system, LGBTI individuals do not feel comfortable.
Yogyakarta Principle
<p>Principle 17: Everyone has the right to the highest attainable standard of physical and mental health, without discrimination on the basis of sexual orientation or gender identity. Sexual and reproductive health is a fundamental aspect of this right.</p> <p>States shall:</p> <ul style="list-style-type: none"> • Take all legislative, administrative and other measures to ensure enjoyment of the right and to ensure all persons have access to healthcare facilities, goods and services, and to their own medical records; • Ensure healthcare facilities, goods and services are designed to improve the health status of, and respond to the needs of all persons without discrimination on the basis of, and taking into account, sexual orientation and gender identity; • Develop and implement programmes to address discrimination, prejudicial and social factors which undermine the health of persons because of their sexual orientation and gender identity; • Ensure all persons are informed and empowered to make their own decisions regarding medical treatment and care, on the basis of genuinely informed consent; • Ensure that all sexual and reproductive health, education, prevention, care and treatment programmes and services respect the diversity of sexual orientations and gender identities, and are equally available to all without discrimination; • Facilitate access by those seeking body modifications related to gender reassignment to competent, non-discriminatory treatment, care and support; • Ensure that all health service providers treat clients and their partners without discrimination on the basis of sexual orientation or gender identity, including with regard to recognition as next of kin; and • Adopt policies, and programmes of education and training, necessary to enable persons working in the healthcare sector to deliver the highest attainable standard of healthcare to all persons, with full respect for each person's sexual orientation and gender identity.

Human Rights Standards	Treaty Body Interpretation
<p>ICESCR 12(1) The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.</p> <p>ICESCR 12(2) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: . . . (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases.</p>	<p>CESCR General Comment 14: The right to health is not to be understood as a right to be healthy. The right to health contains both freedoms and entitlements. The freedoms include the right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. By contrast, the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable standard of health. E/C.12/2000/4 (2000) at para. 8.</p> <p>CESCR General Comment 14: It is prohibited to discriminate against access to health care and the underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of sexual orientation. E/C.12/2000/4 (2000) at para. 18.</p> <p>CESCR: States have an immediate obligation to ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalised groups. E/C.12/2000/4 (2000) at para. 43(a).</p>

Other Interpretations

SR Health: “Criminal laws concerning consensual same-sex conduct, sexual orientation and gender identity often infringe on various human rights, including the right to health. These laws are generally inherently discriminatory and, as such, breach the requirements of a right-to-health approach, which requires equality in access for all people. The health related impact of discrimination based on sexual conduct and orientation is far-reaching, and prevents affected individuals from gaining access to other economic, social and cultural rights. In turn, the infringement of other human rights impacts on the realization of the right to health, such as by impeding access to employment or housing.” Report of the SR on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/HRC/14/20 (2010) at para. 6.

The Declaration on the Promotion of Patients’ Rights in Europe: Patients have the right to a quality of care which is marked both by high technical standards and by a humane relationship between the patient and health care provider.

WHO 1978 Declaration of Alma-Ata: The Conference strongly reaffirms that health, which is a state of complete physical, mental and social wellbeing, and not merely the absence of disease or infirmity, is a fundamental human right and that the attainment of the highest possible level of health is a most important world-wide social goal, which requires the action of many other social and economic sectors in addition to the health sector to be fully realized.

World Health Organization Constitution, Preamble: The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988) (“Protocol of San Salvador”), Art. 10(1): Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being.

European Convention on Social and Medical Assistance (1953), Art. 1: Each of the Contracted Parties undertake to ensure that nationals of the other Contracting Parties who are lawfully present in any part of its territory to which the Convention applies, and who are without sufficient resources, shall be entitled equally with its own nationals and on the same conditions to social and medical assistance . . . provided by the legislation in force from time to time in that part of its territory.

Charter of Fundamental Rights of the European Union, Art. 35: Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Table 6: LGBTI Health and the Right to Privacy

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • A penal code that punishes non-reproductive sex, such as any form of anal or oral sex, or same-sex sexual behaviour. • Police officials keep lists of “suspected homosexuals” with photographs and fingerprints. • A newspaper publishes an article condemning the sexual orientation of a teacher or journalist. • Police or public health officials release the photos of suspected gay men to the media. 	
Yogyakarta Principle	
<p>Principle 6: Everyone, regardless of sexual orientation or gender identity, is entitled to the enjoyment of privacy without arbitrary or unlawful interference, including with regard to their family, home or correspondence as well as to protection from unlawful attacks on their honour and reputation. The right to privacy ordinarily includes the choice to disclose or not to disclose information relating to one’s sexual orientation or gender identity, as well as decisions and choices regarding both one’s own body and consensual sexual and other relations with others.</p> <p>States shall:</p> <ul style="list-style-type: none"> • Take all necessary legislative, administrative, and other measures to ensure the right of each person, regardless of sexual orientation or gender identity, to enjoy the private sphere, intimate decisions, and human relations including consensual sexual activity among persons who are over the age of consent, without arbitrary interference; • Repeal all laws that criminalise consensual sexual activity among person of the same sex who are over the age of consent, and ensure that an equal age of consent applies to both same-same-sex and different-sex sexual activity; • Ensure the criminal and other legal provisions of general application are not applied to <i>de facto</i> criminalised consensual sexual activity among persons of the same sex who are over the age of consent; • Repeal any law that prohibits or criminalises the expression of gender identity, including through dress, speech or mannerisms, or that denies to individuals the opportunity to change their bodies as a means of expressing their gender identity; • Release all those held on remand or on the basis of criminal conviction, if their detention is related to consensual sexual activity among persons who are over the age of consent, or is related to gender identity; and • Ensure the right of all persons ordinarily to choose when, to whom and how to disclose information pertaining to their sexual orientation or gender identity, and protect all persons from arbitrary or unwanted disclosure, or threat of disclosure of such information by others. 	
Human Rights Standards	Treaty Body Interpretation
<p>ICCPR 17(1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.</p> <p>ICCPR 17(2) Everyone has the right to the protection of the law against such interference or attacks.</p>	<p>HRC [Jurisprudence]: The penalization of same-sex behaviour is a violation of privacy and non-discrimination under ICCPR articles 2 and 17. <i>Toonen v. Australia</i>, HRC Communication No. 488/1992 (CCPR/C/50/D/488/1992).</p> <p>HRC: recommending to Togo that it “should decriminalize sexual relations between consenting adults of the same sex” because such “criminalization violates the rights to privacy and to protection against discrimination set out in the Covenant.” CCPR/C/TGO/CO/4 (2011) para 14.</p> <p>HRC: recommending that “the State party should decriminalize sexual relations between consenting adults of the same sex, and repeal the offense of imitating the opposite sex, in order to bring its legislation in line with the covenant.” Kuwait CCPR/C/KWT/CO/2 (HRC, 2011); Togo CCPR/C/TGO/CO/4 (HRC, 2011); Barbados CCPR/C/BRB/CO/3 (HRC, 2007); Jamaica CCPR/C/JAM/CO/3 (HRC, 2011); Cameroon CCPR/C/CMR/CO/4 (HRC, 2010); Uzbekistan (CCPR/C/UZB/CO/3); Grenada (CCPR/C/GRD/CO/1).</p> <p>HRC: Explaining to Togo that “As pointed out by the Committee and other international human rights bodies, such criminalization violates the rights to privacy and to protection against discrimination set out in the Covenant.” CCPR/C/TGO/CO/4 (2011) para 14.</p>

Table 6 (cont.)

Human Rights Standards	Treaty Body Interpretation
CRC 16 (1) No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.	<p>CRC General Comment 4: “In order to promote the health and development of adolescents, States parties are encouraged to strictly respect adolescent rights to privacy and confidentiality, including with respect to advice and counselling on health matters (article 16). Health-care providers have an obligation to keep confidential medical information concerning adolescents, bearing in mind the basic principles of the CRC. Such information may only be disclosed with the consent of the adolescent, or in the same situations applying to the violation of an adult’s confidentiality. Adolescents deemed mature enough to receive counselling without the presence of a parent or other person are entitled to privacy and may request confidential services, including treatment.” CRC/GC/2003/4 (2003) at para. 11.</p> <p>CRC General Comment 4: “The realization of the right to health of adolescents is dependent on the development of youth-sensitive health care, which respects confidentiality and privacy and includes appropriate sexual and reproductive health services.” CRC/GC/2003/4 (2003) at para. 40.</p>

Human Rights Standards	Case Law
<p>ECHR 8(1) Everyone has the right to respect for his private and family life, his home and his correspondence.</p> <p>ECHR 8(2). There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.</p>	<p>ECTHR: the Court held that the law in Northern Ireland creating criminal liability for homosexual conduct amounts to an unjustified interference with Dudgeon’s right to respect for his private life. <i>Case of Dudgeon v. The United Kingdom</i>, 7525/76 (Oct. 22, 1981).</p> <p>ECTHR: the Court affirmed that the penalization of same sex behaviour violates the right to privacy (Dudgeon v. UK and later cases), and protected the right to transition from one gender to another, although not to remain between genders. <i>Case of Christine Goodwin v. The United Kingdom</i>, 28957/95 (July 11, 2002).</p> <p>ECTHR: the defendants were prosecuted and convicted for assault and wounding in the course of consensual sado-masochistic activities between breaches. The applicants argued that this violated their right to privacy under Article 8. The Court held that “the national authorities were entitled to consider that the prosecution and conviction of the applicants were necessary in a democratic society for the protection of health within the meaning of Article 8 para. 2.” <i>Laskey, Jaggard and Brown v. The United Kingdom</i>, 21627/93 (Feb. 19, 1997).</p> <p>ECTHR: the applicant was born and registered with the civil status register as a male. The applicant now lives as a female and was denied her application to correct the indication of her sex in the civil status register and on her official identity documents. The Court held that the State violated Article 8, because it did not strike a fair balance between the general interest and the interests of the individual. <i>Case of B v. France</i>, 13343/87 (Mar. 25, 1992).</p> <p>ECTHR: the Court held that the State violated Article 8 because of its investigation into the applicants’ homosexuality and their subsequent discharge from the Royal Air Force. <i>Case of Smith and Grady v. The United Kingdom</i>, 33985/96 (Sep. 27, 1999).</p>

Other Interpretations

Declaration on the Promotion of Patients’ Rights in Europe Art. 4.1: All information about a patient’s health status ... must be kept confidential, even after death. Art. 4.8: Patients admitted to health care establishments have the right to expect physical facilities which ensure privacy.

European Convention on Human Rights and Biomedicine Art 10(1): “Everyone has the right to respect for private life in relation to information about his or her health.”

- Explanatory Report, para. 63: “The first paragraph establishes the right to privacy of information in the health field, thereby reaffirming the principle introduced in Article 8 of the European Convention on Human Rights and reiterated in the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. It should be pointed out that, under Article 6 of the latter Convention, personal data concerning health constitute a special category of data and are as such subject to special rules.”
- Explanatory Report, para. 64: “However, certain restrictions to the respect of privacy are possible for one of the reasons and under the conditions provided for in under Article 26.1. For example, a judicial authority may order that a test be carried out in order to identify the author of a crime (exception based on the prevention of a crime) or to determine the filiation link (exception based on the protection of the rights of others).”

Table 7: LGBTI Health and Freedom from Arbitrary Arrest and Detention

Examples of Human Rights Violations
<ul style="list-style-type: none"> • A gay man is arrested without charge by undercover police officers. • A lesbian adolescent is detained without charge after her parents discover her sexual orientation and call the police. • A transgender is detained at a border for “suspicious behavior.” • A transgender person suffers from illegal profiling.
Yogyakarta Principle
<p>Principle 7: No one shall be subjected to arbitrary arrest or detention. Arrest or detention on the basis of sexual orientation or gender identity, whether pursuant to a court order or otherwise, is arbitrary. All persons under arrest, regardless of their sexual orientation or gender identity, are entitled, on the basis of equality, to be informed of the reasons for arrest and the nature of any charges against them, to be brought promptly before a judicial officer and to bring court proceedings to determine the lawfulness of detention, whether or not charged with any offence.</p> <p>States shall:</p> <ul style="list-style-type: none"> • Take all necessary legislative, administrative and other measures to ensure that sexual orientation or gender identity may under no circumstances be the basis for arrest or detention, including the elimination of vaguely worded criminal law provisions that invite discriminatory application or otherwise provide scope for arrests based on prejudice; • Take all necessary legislative, administrative and other measures to ensure that all persons under arrest, regardless of their sexual orientation or gender identity, are entitled, on the basis of equality, to be informed of the reasons for arrest and the nature of any charges against them, and whether charged or not, to be brought promptly before a judicial officer and to bring court proceedings to determine the lawfulness of detention; • Undertake programmes of training and awareness-raising to educate police and other law enforcement personnel regarding the arbitrariness of arrest and detention based on a person’s sexual orientation or gender identity; and • Maintain accurate and up to date records of all arrests and detentions, indicating the date, location and reason for detention, and ensure independent oversight of all places of detention by bodies that are adequately mandated and equipped to identify arrests and detentions that may be motivated by the sexual orientation or gender identity of a person.

Other Interpretations

WG Arbitrary Detention: The arrest and detention of men on the grounds that, by their sexual orientation, they incited ‘social dissention’ constitutes an arbitrary deprivation of liberty. The detention of people on the basis of their sexual orientation, even when the laws under which they are detained do not refer to homosexual conduct, violates human rights. E/CN.4/2003/8/Add.1, Opinion No. 7/2002 on Egypt, pg. 68.

Code of Conduct for Law Enforcement Officials (1979)

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990)

Arab Charter on Human Rights, art. 14(1). Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest, search or detention without a legal warrant.

Table 8: LGBTI Health and Freedom of Assembly and Association

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • A government prohibits and criminalizes any associations for promotion of LGBTI rights, or refuses to register an LGBTI association. • A gay pride parade is banned by city authorities. • Police allow individuals opposing a LGBTI rights protest to commit violent acts against those protesting. 	
Yogyakarta Principle	
<p>Principle 20: Everyone has the right to freedom of peaceful assembly and association, including for the purposes of peaceful demonstrations, regardless of sexual orientation or gender identity. Persons may form and have recognised, without discrimination, associations based on sexual orientation or gender identity, and associations that distribute information to or about, facilitate communication among, or advocate for the rights of, persons of diverse sexual orientations and gender identities.</p> <p>States shall:</p> <ul style="list-style-type: none"> • Take all necessary legislative, administrative and other measures to ensure the rights to peacefully organise, associate, assemble and advocate around issues of sexual orientation and gender identity, and to obtain legal recognition for such associations and groups, without discrimination on the basis of sexual orientation or gender identity; • Ensure in particular that notions of public order, public morality, public health and public security are not employed to restrict any exercise of the rights to peaceful assembly and association solely on the basis that it affirms diverse sexual orientations or gender identities; • Under no circumstances impede the exercise of the rights to peaceful assembly and association on grounds relating to sexual orientation or gender identity, and ensure that adequate police and other physical protection against violence or harassment is afforded to persons exercising these rights; • Provide training and awareness-raising programmes to law enforcement authorities and other relevant officials to enable them to provide such protection; and • Ensure that information disclosure rules for voluntary associations and groups do not, in practice, have discriminatory effects for such associations and groups addressing issues of sexual orientation or gender identity, or for their members. 	
Human Rights Standards	Treaty Body Interpretation
<p>ICCPR 21 The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.</p> <p>ICCPR 22 Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.</p>	<p>HRC General Comment 34: Where States rely on restrictions to the right to freedom of assembly and association, they must ensure that the laws restricting the rights are compatible with the provisions, aims and objectives of the ICCPR and must not violate the non-discrimination provisions of the Covenant. CCPR/C/GC/34 (2011) at para 26.</p> <p>HRC: recommending that Russia should “take all necessary measures to guarantee the exercise and practice of the right to peaceful association and assembly for the LGBT community.” CCPR/C/RUS/CO/6 (2009) at para. 27(c).</p>

Table 8 (cont.)

Human Rights Standards	Case Law
<p>ECHR 11(1) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.</p> <p>ECHR 11(2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.</p>	<p>ECtHR: the Court held that refusal to grant permission for proposed demonstration on LGBT rights violated the Convention. <i>Genderdoc-M v. Moldova</i>, 9106/06 (June 12, 2012).</p> <p>ECtHR: the Court held that banning the Pride March in 2006, 2007 and 2008 interfered with the applicant’s freedom of assembly guaranteed by the Convention. <i>Alekseyev v. Russia</i>, 4916/07, 25924/08, 14599/09 (Oct. 21, 2010).</p> <p>ECtHR: the Court declared the ban on LGBT pride march in Warsaw in 2005 illegal and discriminatory. <i>Baczkowski and Others v. Poland</i>, 1543/06 (May 3, 2007).</p>

Other Interpretations

Special Representative of the Secretary-General on human rights defenders: In numerous cases from all regions, police or government officials are the alleged perpetrators of violence and threats against defenders of LGBTI rights. In several of these cases, the authorities have prohibited demonstrations, conferences and meetings, denied registration of organizations working for LGBTI rights and police officers have, allegedly, beaten up or even sexually abused these defenders of LGBTI rights. The authorities have generally attempted to justify action against these defenders by arguing that “the public” does not want these demonstrations to take place, or these organizations need to be registered, or that “the people” do not want LGBTI people in their community. The Special Representative recalls articles 2 and 12 of the Declaration on Human Rights Defenders to remind States of their responsibility for protecting defenders against violence and threats. States are also responsible for, inter alia, ensuring that all programmes for training of law enforcement officers and public officials include appropriate elements of human rights teaching (art. 15). A/HRC/4/37 (2007) at para. 96.

SR on contemporary forms of racism: Laws that prohibit public promotion of homosexuality or homosexual propaganda may silence any discussion of sexuality in the public sphere. States should ensure that LGBTI marches, parades and other gatherings are not denied permits because of their sexual orientation or gender identity, and States should take steps to stop violence from spectators of such gatherings. E/CN.4/2006/16/Add.1 at para. 72.

Special Representative of Human Rights Defenders, SR Racism, SR Violence against Women, and SR Health: Laws that criminalize persons seeking same sex relationships and marriage, as well as organizations working on or speaking about such issues contravene the right to freedom of assembly and association. UN Press Release, Independent UN experts express serious concern over draft Nigerian bill outlawing same-sex relationships (HR/07/25), 23 February 2007.

Table 9: LGBTI Health and Freedom of Expression and Information

Examples of Human Rights Violations

- Young people are denied information about HIV and AIDS, safer sex, and condoms, as well as about sexual behaviors such as homosexuality.
- A state agency in charge of newspaper distribution refuses to distribute an LGBTI publication.
- A trans-gender student is forced by school authorities to dress according to his “biological sex.”

Yogyakarta Principle

Principle 19: Everyone has the right to freedom of opinion and expression, regardless of sexual orientation or gender identity. This includes the expression of identity or personhood through speech, deportment, dress, bodily characteristics, choice of name, or any other means, as well as the freedom to seek, receive and impart information and ideas of all kinds, including with regard to human rights, sexual orientation and gender identity, through any medium and regardless of frontiers.

States shall:

- Take all necessary legislative, administrative and other measures to ensure full enjoyment of freedom of opinion and expression, while respecting the rights and freedoms of others, without discrimination on the basis of sexual orientation or gender identity, including the receipt and imparting of information and ideas concerning sexual orientation and gender identity, as well as related advocacy for legal rights, publication of materials, broadcasting, organisation of or participation in conferences, and dissemination of and access to safer-sex information;
- Ensure that the outputs and the organisation of media that is State-regulated is pluralistic and non-discriminatory in respect of issues of sexual orientation and gender identity and that the personnel recruitment and promotion policies of such organisations are nondiscriminatory on the basis of sexual orientation or gender identity;
- Take all necessary legislative, administrative and other measures to ensure the full enjoyment of the right to express identity or personhood, including through speech, deportment, dress, bodily characteristics, choice of name or any other means;
- Ensure that notions of public order, public morality, public health and public security are not employed to restrict, in a discriminatory manner, any exercise of freedom of opinion and expression that affirms diverse sexual orientations or gender identities;
- Ensure that the exercise of freedom of opinion and expression does not violate the rights and freedoms of persons of diverse sexual orientations and gender identities; and
- Ensure that all persons, regardless of sexual orientation or gender identity, enjoy equal access to information and ideas, as well as to participation in public debate.

Table 9 (cont.)

Human Rights Standards	Treaty Body Interpretation
<p>ICCPR 21 (1) Everyone shall have the right to hold opinions without interference.</p> <p>ICCPR 21 (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.</p> <p>ICCPR 21 (3) The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:</p> <ul style="list-style-type: none"> (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals. 	<p>HRC General Comment No. 34: explaining that where States rely on restrictions to the right to freedom of expression and information, they must ensure that the laws restricting the rights are compatible with the provisions, aims and objectives of the ICCPR and must not violate the non-discrimination provisions of the Covenant. CCPR/C/GC/34 (2011) at para 26.</p> <p>HRC: recommending that Russia “take all necessary measures to guarantee the exercise in practice of the right to peaceful association and assembly for the LGBT community.” CCPR/C/RUS/CO/6 (2009) at para 27.</p>
<p>CRC 13(1) The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice.</p> <p>CRC 17 States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.</p>	<p>CRC General Comment 3: explaining that adolescent’s right to information about HIV and AIDS is part of the right to information. CRC/GC/2003/3 (2003) at para. 4.</p>

Other Interpretations

SR Education: “In order to be comprehensive, sexual education must pay special attention to diversity, since everyone has the right to deal with his or her own sexuality without being discriminated against on grounds of sexual orientation or gender identity. Sexual education is a basic tool for ending discrimination against persons of diverse sexual orientations.” A/65/162 (July 23, 2010), para. 22.

SR Freedom of Expression and Information: Has commented on or expressed concern about: the abuse of the rights of sex workers and LGBTI persons; restrictions on public speech and denial of HIV and AIDS information to these communities; detention of persons in Kuwait because of a letter mentioning a lesbian relationship, and the arrests and harassment of two gender-non-conforming women in Uganda.

SR Human Rights Defenders, SR Racism, SR Violence against Women, and SR Health: Collectively criticized a Bill in Nigeria that would criminalize persons seeking same sex relationships and marriage, as well as organizations working on or speaking about such issues (2007). HR/07/25 (FEB. 23, 2007). <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=5599&LangID=E>.

Table 10: LGBTI Health and the Right to Marry and Found a Family

Examples of Human Rights Violations

- A government refuses to accord to unmarried same-sex couples the same rights and responsibilities it accords to unmarried different-sex couples.
- A lesbian woman is denied the right to artificial insemination services.
- A single gay man is denied the right to adopt a child.

Applicable Yogyakarta Principle

Principle 24: Everyone has the right to found a family, regardless of sexual orientation or gender identity. Families exist in diverse forms. No family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members.

States shall:

- Take all necessary legislative, administrative and other measures to ensure the right to found a family, including through access to adoption or assisted procreation (including donor insemination), without discrimination on the basis of sexual orientation or gender identity;
- Ensure that laws and policies recognise the diversity of family forms, including those not defined by descent or marriage, and take all necessary legislative, administrative and other measures to ensure that no family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members, including with regard to family-related social welfare and other public benefits, employment, and immigration;
- Take all necessary legislative, administrative and other measures to ensure that in all actions or decisions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration, and that the sexual orientation or gender identity of the child or of any family member or other person may not be considered incompatible with such best interests;
- In all actions or decisions concerning children, ensure that a child who is capable of forming personal views can exercise the right to express those views freely, and that such views are given due weight in accordance with the age and maturity of the child;
- Take all necessary legislative, administrative and other measures to ensure that in States that recognise same-sex marriages or registered partnerships, any entitlement, privilege, obligation or benefit available to different-sex married or registered partners is equally available to same-sex married or registered partners;
- Take all necessary legislative, administrative and other measures to ensure that any obligation, entitlement, privilege, obligation or benefit available to different-sex unmarried partners is equally available to same-sex unmarried partners;
- Ensure that marriages and other legally-recognised partnerships may be entered into only with the free and full consent of the intending spouses or partners.

Table 10 (cont.)

Human Rights Standards	Case Law
<p>ECHR 8 Everyone has the right to respect for his private and family life, his home and his correspondence.</p> <p>ECHR 14 The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.</p>	<p>ECtHR: held Portugal's denial of custody rights to a biological father in a same-sex relationship violated the right to private life (Art. 8) in conjunction with the right to non-discrimination (Art. 14). <i>Salgueiro Da Silva Mouta v. Portugal</i>, 33290/96 (Dec. 21, 1999).</p> <p>ECtHR: held that the State cannot justify discrimination of unmarried same-sex couples by "protection of traditional family", thus saying that the State should give same rights to same-sex and different-sex unmarried couples. The Court held that there was a violation of Article 14 (right to non-discrimination) in conjunction with Article 8 (right to privacy). <i>Karner v. Austria</i>, 40016/98 (July 24, 2003).</p> <p>ECtHR: found that the State's refusal to grant the applicant authorization to adopt was based upon considerations of the applicant's sexual orientation. The court held that this violated Article 14 in conjunction with Article 8. Case of <i>E.B. v. France</i>, 43546/02 (Jan. 22, 2008).</p> <p>ECtHR: the effect of an adoption by the applicant's mother's co-habitant partner severed the mother-daughter relationship of the applicant because the mother and her male partner were not married. The Court held that the effect of the adoption violated the applicant's right to respect for their family life under Article 8. Case of <i>Emonet and Others v. Switzerland</i>, 39051/03 (Dec. 13, 2007).</p>
<p>ECHR 12 Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.</p>	<p>ECtHR: The applicant is a male-to-female transsexual and wished to marry a man. The Court considered under Art 12, whether the registering of gender at birth is a limitation impairing the right to marriage. The Court found no justification for barring transsexuals from enjoying the right to marriage and that there was a violation of Art. 12. Case of <i>Christine Goodwin v. The United Kingdom</i>, 28957/95 (July 11, 2002).</p>
<p>ACHR 5(1) Every person has the right to have his physical, mental, and moral integrity respected.</p> <p>ACHR 11(1) Everyone has the right to have his honor respected and his dignity recognized.</p>	<p>IACHR: Concerning a lesbian mother denied custody of her daughters because of her sexual orientation. <i>Caso Atala Riffo y Nias vs. Chile</i>, Judgment of February 24, 2012. http://corteidh.or.cr/docs/casos/articulos/seriec_239_ing.pdf.</p>

Other Interpretations

SR Human Rights Defenders, SR Racism, SR Violence against Women, and SR Health: Collectively criticized a Bill in Nigeria that would criminalize persons seeking same sex relationships and marriage, as well as organizations working on or speaking about such issues (2007).—HR/07/25 (FEB. 23, 2007). <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=5599&LangID=E>

Table II: LGBTI Health and the Right to Education

Examples of Human Rights Violations
<ul style="list-style-type: none"> No information in school curriculum about LGBTI health/sexual health education for future protection against sexually transmitted illnesses such as HIV and AIDS. Sexual education should be broadened to include specific information about the health of LGBTI persons. LGBTI communities do not have access to opportunities and resources for lifelong knowledge because of discrimination based on their sexual orientation or gender identity. Secondary schooling does not provide information on LGBTI health issues, nor the equivalent of the preventative health education that is provided on heterosexual health. Secondary schools do not uphold LGBTI health education in their curriculum. As a result, LGBTI youth are not exposed to crucial information in regards to their health, which is necessary as a tool for their future growth and health.

Yogyakarta Principle
<p>Principle 16: Everyone has the right to education, without discrimination on the basis of, and taking into account, their sexual orientation and gender identity.</p> <p>States shall:</p> <ul style="list-style-type: none"> Take all necessary legislative, administrative and other measures to ensure equal access to education, and equal treatment of students, staff and teachers within the education system, without discrimination on the basis of sexual orientation or gender identity; Ensure that education is directed to the development of each student's personality, talents, and mental and physical abilities to their fullest potential, and responds to the needs of students of all sexual orientations and gender identities; Ensure that education is directed to the development of respect for human rights, and of respect for each child's parents and family members, cultural identity, language and values, in a spirit of understanding, peace, tolerance and equality, taking into account and respecting diverse sexual orientations and gender identities; Ensure that education methods, curricula and resources serve to enhance understanding of and respect for, inter alia, diverse sexual orientations and gender identities, including the particular needs of students, their parents and family members related to these grounds; Ensure that laws and policies provide adequate protection for students, staff and teachers of different sexual orientations and gender identities against all forms of social exclusion and violence within the school environment, including bullying and harassment; Ensure that students subjected to such exclusion or violence are not marginalised or segregated for reasons of protection, and that their best interests are identified and respected in a participatory manner; Take all necessary legislative, administrative and other measures to ensure that discipline in educational institutions is administered in a manner consistent with human dignity, without discrimination or penalty on the basis of a student's sexual orientation or gender identity, or the expression thereof; Ensure that everyone has access to opportunities and resources for lifelong learning without discrimination on the basis of sexual orientation or gender identity, including adults who have already suffered such forms of discrimination in the educational system.

Human Rights Standards	Treaty Body Interpretation
<p>ICESCR 13 The State Parties recognise the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.</p>	<p>HRC [Jurisprudence]: observing that “[c]riminalisation of homosexual activity would appear to run counter to the implementation of effective education programmes in respect of HIV/AIDS prevention.” <i>Toonen v. Australia</i>, HRC Communication No. 488/1992 (CCPR/C/50/D/488/1992).</p>

Table II (cont.)

Human Rights Standards	Case Law
<p>ESC 11 With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed inter alia:</p> <p>(2) to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health.</p>	<p>ESCR: finding “that certain specific elements of the educational material used in the ordinary curriculum are manifestly biased, discriminatory and demeaning, notably in how persons of non-heterosexual orientation are described and depicted These statements stigmatize homosexuals and are based upon negative, distorted, reprehensible and degrading stereotypes about the sexual behaviour of all homosexuals. ... In the context of the right to protection of health through the provision of sexual and reproductive health education as set out in Article 11§2, this positive obligation extends to ensuring that educational materials do not reinforce demeaning stereotypes and perpetuate forms of prejudice which contribute to the social exclusion, embedded discrimination and denial of human dignity often experienced by historically marginalised groups such as persons of non-heterosexual orientation. ... By permitting sexual and reproductive health education to become a tool for reinforcing demeaning stereotypes, the authorities have failed to discharge their positive obligation not to discriminate in the provision of such education, and have also failed to take steps to ensure the provision of objective and non-exclusionary health education.” Resolution CM/ResChS (2009) 7, Collective Complaint No. 45/2007, <i>International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia</i>.</p>

Other Interpretations

SR on the Right to Education: Difficulties facing LGBTI youth are often aggravated by their sexual preferences. SR mentions cases of discrimination and exclusion where young girls have been dismissed permanently from educational institutions for displaying affections for same sex classmates.

Table 12: LGBTI Health and the Right to Work

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • LGBTI individuals are not able to challenge employment decisions based on their sexual orientation and gender identity. • An LGBTI individual is dismissed, harassed or denied promotion as a result of their sexual orientation or gender identity. • The right to work with equal opportunities is denied to LGBTI persons because of their sexual orientation or gender identity. 	
Yogyakarta Principle	
<p>Principle 12: Everyone has the right to decent and productive work, to just and favourable conditions of work and to protection against unemployment, without discrimination on the basis of sexual orientation or gender identity.</p> <p>States shall:</p> <ul style="list-style-type: none"> • Take all necessary legislative, administrative and other measures to eliminate and prohibit discrimination on the basis of sexual orientation and gender identity in public and private employment, including in relation to vocational training, recruitment, promotion, dismissal, conditions of employment and remuneration; • Eliminate any discrimination on the basis of sexual orientation or gender identity to ensure equal employment and advancement opportunities in all areas of public service, including all levels of government service and employment in public functions, including serving in the police and military, and provide appropriate training and awareness-raising programmes to counter discriminatory attitudes. 	
Human Rights Standards	Treaty Body Interpretation
<p>ICESCR 6 State Parties are to recognize the right to work, which includes the right of everyone to the opportunity to gain a living by work that he freely chooses or accepts.</p>	<p>CESCR General Comment No.18: “The exercise of work in all its forms and at all levels requires direct consideration by each State party to the following:</p> <p>(i) Accessibility - The labour market must be open to everyone under its’ States’ jurisdiction.</p> <p>Under article 2(2) and article 3, the covenant prohibits any discrimination in access to and maintenance of employment on sexual orientation status, which has the intention or effect of impairing or nullifying exercise of the right to work on basis of equality.” E/C.12/GC/18 (2006).</p>

Table 12 (cont.)

Human Rights Standards	Case Law
<p>ECHR 8 (1) Everyone has the right to respect for his private and family life, his home and his correspondence.</p> <p>(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.</p>	<p>ECtHR: Two of the applicants were employees of the Royal Navy and both were dismissed after their sexual orientation was made known to their employers. The applicants were dismissed pursuant to the Ministry of Defence's policy against homosexuals serving in the armed forces. The Court stated their dismissals constituted direct interferences with the applicants' right to respect for their private life. The status of the applicants' sexual orientation should not interfere with their right to work and be equal to others in employment. The Court concluded there was a violation of the ECHR article 8 in regard to each applicant. <i>Perkins and R. v. The United Kingdom</i>, 43208/98 and 44875/98 (October 22, 2002).</p>

Other Interpretations

European Council, Council Directive establishing a General Framework for Equal Treatment in Employment and Occupation [Equality Employment Framework Directive], 2000/78/EC (November 27, 2000).

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:HTML>.

(11) Discrimination based on religion or belief, disability, age or **sexual orientation** may undermine the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and social protection, raising the standard of living and the quality of life, economic and social cohesion and solidarity, and the free movement of persons.

(12) To this end, any direct or indirect discrimination based on religion or belief, disability, age or sexual orientation as regards the areas covered by this Directive should be prohibited throughout the Community. ...

(26) The prohibition of discrimination should be without prejudice to the maintenance or adoption of measures intended to prevent or compensate for disadvantages suffered by a group of persons of a particular religion or belief, disability, age or sexual orientation, and such measures may permit organisations of persons of a particular religion or belief, disability, age or sexual orientation where their main object is the promotion of the special needs of those persons.

Table 13: LGBTI Health and the Right to Social Security

Examples of Human Rights Violations and failures to progressively realise the human right
<ul style="list-style-type: none"> • Health benefits and insurances are not made available to LGBTI individuals, because of their sexual orientation or gender identity, including funds for body modifications. • Parental benefits must be equal and accessible to homosexual couples without any discrimination on the basis of their sexual orientation.
Yogyakarta Principle
<p>Principle 13: Everyone has the right to social security and other social protection measures, without discrimination on the basis of sexual orientation or gender identity.</p> <p>States shall:</p> <ul style="list-style-type: none"> • Take all necessary legislative, administrative and other measures to ensure equal access, without discrimination on the basis of sexual orientation or gender identity, to social security and other social protection measures, including employment benefits, parental leave, unemployment benefits, health insurance or care or benefits (including for body modifications related to gender identity), other social insurance, family benefits, funeral benefits, pensions and benefits with regard to the loss of support for spouses or partners as the result of illness or death; <ul style="list-style-type: none"> • Ensure that children are not subject to any form of discriminatory treatment within the social security system or in the provision of social or welfare benefits on the basis of their sexual orientation or gender identity, or that of any member of their family; • Take all necessary legislative, administrative and other measures to ensure access to poverty reduction strategies and programmes, without discrimination on the basis of sexual orientation or gender identity.

3. WHAT IS A HUMAN RIGHTS-BASED APPROACH TO ADVOCACY, LITIGATION, AND PROGRAMMING?

What is a human rights-based approach?

“Human rights are conceived as tools that allow people to live lives of dignity, to be free and equal citizens, to exercise meaningful choices, and to pursue their life plans.”⁷²

A human rights-based approach (HRBA) is a conceptual framework that can be applied to advocacy, litigation, and programming and is explicitly shaped by international human rights law. This approach can be integrated into a broad range of program areas, including health, education, law, governance, employment, and social and economic security. While there is no one definition or model of a HRBA, the United Nations has articulated several common principles to guide the mainstreaming of human rights into program and advocacy work:

- The integration of human rights law and principles should be visible in all work, and the aim of all programs and activities should be to contribute directly to the realization of one or more human rights.
- Human rights principles include: “universality and inalienability; indivisibility; interdependence and interrelatedness; non-discrimination and equality; participation and inclusion; accountability and the rule of law.”⁷³ They should inform all stages of programming and advocacy work, including assessment, design and planning, implementation, monitoring and evaluation.
- Human rights principles should also be embodied in the processes of work to strengthen rights-related outcomes. Participation and transparency should be incorporated at all stages and all actors must be accountable for their participation.

A HRBA specifically calls for human rights to guide relationships between rights-holders (individuals and groups with rights) and the duty-bearers (actors with an obligation to fulfill those rights, such as States).⁷⁴ With respect to programming, this requires “[a]ssessment and analysis in order to identify the human rights claims of rights-holders and the corresponding human rights obligations of duty-bearers as well as the immediate, underlying, and structural causes of the non-realization of rights.”⁷⁵

A HRBA is intended to strengthen the capacities of rights-holders to claims their entitlements and to enable duty-bearers to meet their obligations, as defined by international human rights law. A HRBA also draws attention to marginalized, disadvantaged and excluded populations, ensuring that they are considered both rights-holders and duty-bearers, and endowing all populations with the ability to participate in the process and outcomes.

⁷² Yamin AE, “Will we take suffering seriously? Reflections on what applying a human rights framework to health means and why we should care,” *Health and Human Rights* 10, no. 1 (2008).

⁷³ For a brief explanation of these principles, see UN Development Group (UNDG), *The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies* (May 2003), available at: www.undg.org/archive_docs/6959-The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf.

⁷⁴ Ibid.

⁷⁵ Ibid.

What are key elements of a human rights-based approach?

Human rights standards and principles derived from international human rights instrument should guide the process and outcomes of advocacy and programming. The list below contains several principles and questions that may guide you in considering the strength and efficacy of human rights within your own programs or advocacy work. Together these principles form the acronym PANELS.

- **Participation:** Does the activity include participation by all stakeholders, including affected communities, civil society, and marginalized, disadvantaged or excluded groups? Is it situated in close proximity to its intended beneficiaries? Is participation both a means and a goal of the program?
- **Accountability:** Does the activity identify both the entitlements of claim-holders and the obligations of duty-bearers? Does it create mechanisms of accountability for violations of rights? Are all actors involved held accountable for their actions? Are both outcomes and processes monitored and evaluated?
- **Non-discrimination:** Does the activity identify who is most vulnerable, marginalized and excluded? Does it pay particular attention to the needs of vulnerable groups such as women, minorities, indigenous peoples, disabled persons and prisoners?
- **Empowerment:** Does the activity give its rights-holders the power, capacity, and access to bring about a change in their own lives? Does it place them at the center of the process rather than treating them as objects of charity?
- **Linkage to rights:** Does the activity define its objectives in terms of legally enforceable rights, with links to international, regional, and national laws? Does it address the full range of civil, political, economic, social, and cultural rights?
- **Sustainability:** Is the development process of the activity locally owned? Does it aim to reduce disparity? Does it include both top-down and bottom-up approaches? Does it identify immediate, underlying and root causes of problems? Does it include measurable goals and targets? Does it develop and strengthen strategic partnerships among stakeholders?

Why use a human rights-based approach?

There are many benefits to using a human rights-based approach to programming, litigation and advocacy. It lends legitimacy to the activity because a HRBA is based upon international law and accepted globally. A HRBA highlights marginalized and vulnerable populations. A HRBA is effective in reinforcing both human rights and public health objectives, particularly with respect to highly stigmatizing health issues.⁷⁶ Other benefits to implementing a human rights-based approach include:

- **Participation:** Increases and strengthens the participation of the local community.
- **Accountability:** Improves transparency and accountability.
- **Non-discrimination:** Reduces vulnerabilities by focusing on the most marginalized and excluded in society.
- **Empowerment:** Capacity building.
- **Linkage to rights:** Promotes the realization of human rights and greater impact on policy and practice.
- **Sustainability:** Promotes sustainable results and sustained change.

⁷⁶ Gauri V & Gloppen S, *Human Rights Based Approaches to Development: Concepts, Evidence, and Policy*, World Bank Policy Research Working Paper 5938 (Jan. 2012). <http://elibrary.worldbank.org/content/workingpaper/10.1596/1813-9450-5938>.

How can a human rights-based approach be used?

A variety of human rights standards at the international and regional levels applies to patient care. These standards can be used for many purposes including to:

- Document violations of the rights of patients and advocate for the cessation of these violations.
- Name and shame governments into addressing issues.
- Sue governments for violations of national human rights laws.
- File complaints with national, regional and international human rights bodies.
- Use human rights for strategic organizational development and situational analysis.
- Obtain recognition of the issue from non-governmental organizations, governments or international audiences. Recognition by the UN can offer credibility to an issue and move a government to take that issue more seriously.
- Form alliances with other activists and groups and develop networks.
- Organize and mobilize communities.
- Develop media campaigns.
- Push for law reform.
- Develop guidelines and standards.
- Conduct human rights training and capacity building
- Integrate legal services into health care to increase access to justice and to provide holistic care.
- Integrate a human rights approach in health services delivery.

4. WHAT ARE SOME EXAMPLES OF EFFECTIVE HUMAN RIGHTS PROGRAMMING IN THE AREA OF LGBTI AND HEALTH?

In this section, you are presented with five examples of human rights-based work in the area of LGBTI health and human rights. These are:

1. Gay rights advocacy in Romania
2. Lesbian right and women's rights in Namibia
3. Transgender rights in the Netherlands
4. Criminalization of same-sex sexual activity in Belize
5. The rights of children born with variations of reproductive or sexual anatomy in the US

Example I: Gay rights advocacy in Romania

Project Type

Advocacy

The Organization

Formed in 1994, ACCEPT Association (ACCEPT) is the first LGBT (lesbian, gay, bisexual, transgender) nongovernmental organization to operate in Romania. Its mission is to “defend[] and promote the rights of LGBT in Romania as human rights.”

The Problem

LGBT persons in Romania faced rampant discrimination and state-sponsored homophobia. With the support of religious and nationalist groups, the Romanian Penal Code penalized same-sex relations and associations (see Art. 200) with terms of imprisonment lasting from one to five years. One of the effects of the law was to drive same-sex activity underground and to impede HIV prevention and outreach efforts among men having sex with men.

Actions Taken

Romanian and international groups working to protect the rights and health of LGBT persons developed a range of claims within European and international human rights frameworks. Specifically, they:

- Issued two major reports on LGBT rights in Romania, one by Human Rights Watch and the International Gay and Lesbian Human Rights Commission, and the other commissioned by UNAIDS.
- In 1995, ACCEPT was officially registered as a human rights nongovernmental organization. ACCEPT had to register as a human rights organization, not as an LGBT organization, because the law denied LGBT persons the right to freedom of assembly and association.
- Pressured Romania to conform to European Union and Council of Europe standards on non-discrimination on the basis of sexual orientation, as part of Romania’s process of accession to the EU.

Conflict

Romanian Penal Code Art. 200, law. No. 140/1996 (repealed 2001) (prohibiting consensual same sex-conduct, as well as speech and associations promoting homosexual identity)

European Convention on Human Rights

Article 8. Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Results & Lessons Learned

- Romania’s admission to the Council of Europe on October 7, 1993 was predicated upon its abolishment of Art. 200, which was in violation of Art. 8 of the European Convention on Human Rights. After promising repeal of the Art. 200, Romania was granted admission to the Council of Europe in October 1993. Romania did not repeal Art. 200, but instead amended it, allowing continued prosecution of homosexuality. The Council, therefore, called once again upon Romania to change or repeal its law so as to bring Romania into compliance with the Convention. Also, the Council created two new special rapporteurs to make reports every six months “until all undertakings have been honored.”
- Prior to the change to the law, it was illegal for ACCEPT or other LGBT groups operating in Romania to engage in domestic gross root organizing because Article 200 denied LGBT populations the right to freedom of assembly and association. Therefore, ACCEPT and other similar LGBT organizations focused their energy on addressing the many human rights abuses against the LGBT populations in Romania, instead of community building exercises.
- ACCEPT successfully registered as a human rights group. While it was illegal to advocate for LGBT rights, it created alliances with other human rights groups working on freedom of expression and association. It was less successful at connecting with advocacy groups working on gender inequality, violence against women, and transgender rights.
- The penal code of Romania was amended in 2000 and further revised again in 2001. With guidance from the EU, Romania adopted a comprehensive anti-discrimination mechanism that included protection from discrimination on the grounds of both sexual orientation and HIV status.
- In 2004 ACCEPT organized the Festival of Diversity, the first Romanian gay festival and in 2005 it organized the first Gay Pride in Bucharest. Every year since, ACCEPT has hosted GayFest which is a Pride festival recognizing and celebrating diversity and includes Gay Prde. See, <http://www.gay-fest.ro/>.
- It was accession to the European Union on January 1, 2007, and pressure to prevent HIV/AIDS—especially when voiced by international agencies—that provided important leverage for reforming the penal law.
- Some religious and political leaders continue to foment anti-gay prejudice and violence. With the collapse of Communism in Eastern Europe, the influence of religion has risen. This is particularly true in Romania, where the Orthodox Church has powerful influence over the drafting of “moral” legislation, including those laws relating to LGBT populations.

Additional Resources

- Human Rights Watch and the International Gay and Lesbian Human Rights Commission, *Public Scandals: Sexual Orientation and Criminal Law in Romania* (1998). http://accept-romania.ro/images/stories/public_scandals.pdf.
- ACCEPT, *About us. Sexual minorities in Romania* (2003). http://accept-romania.ro/images/stories/despre_noi_minoritati_sexuale_in_romania.pdf [Avaliable in Romani language only].

ACCEPT Association

Romania

E-mail: irena@acceptromania.ro

Web: <http://accept-romania.ro/>

Example 2: Lesbian rights and women's rights in Namibia

Project Type

Advocacy

The Organization

Sister Namibia is a nongovernmental organization (NGO) committed to gender and racial equality.

The Problem

The elimination of all forms of discrimination against women, the protection of gender equality, and the promotion of women's health must include lesbian as well as heterosexual women. Yet it can be challenging to include lesbians in the women's movement, particularly when they are politically useful targets for politicians claiming to protect "national values."

Actions Taken

In the Southern African country of Namibia, a network of women's organizations led by the NGO Sister Namibia included lesbian rights in a national Manifesto on women's rights. Many political attacks followed, but the network continued to advocate for lesbian rights as part of women's rights. Sister Namibia undertook a series of actions to include lesbian rights in their advocacy. Specifically, they:

- Included references to lesbian rights in a 90-page Manifesto on women's rights, following a broad national consultation beginning in 1999.
- Challenged numerous attacks by the dominant political party in Namibia, the South West African People's Organization (SWAPO), that lesbians and homosexuals are selfish, individualistic, and anti-Namibian.
- Continued to advance the rights of lesbians by, *inter alia*, creating a lesbian working group to work with Black women in townships, beginning a continent-wide Coalition of African Lesbians and exploring how the Women's Protocol to the ACHPR can be used to advance lesbian rights.

Results & Lessons Learned

- The government attacks created more support for lesbian rights and increasing solidarity among women's rights and lesbian rights advocates. At workshops in rural areas, participants found new and creative arguments to defend the Manifesto and the rights of lesbians. But advocacy for lesbian rights has not attracted the same attention in Africa as advocacy against sodomy laws and for the rights of gay men.
- Lesbians become politically useful targets when governments—including some feminist-identified government officials who are anti-lesbian—wanted a target to blame while they were claiming to protect "African values."
- A founding member of *Sister Namibia* became a member of Parliament. But, the presidential and parliamentary elections held in November 2009 resulted in the re-election of President Hifikepune Pohamba and the continued rule of SWAPO. Violence based on sexual orientation and gender identity continues.

- The constitution and laws of Namibia protect freedom of association, and according to the U.S. Department of State's Annual Human Rights Report (2010), "the government generally respected this right in practice." The report goes on to find that, unlike the prior year, "[a] number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases."
- Homophobia in Namibia is based, in part, on a fear of ethnic extinction. For instance, in a 2003 statement, President Nujoma declared that: "Homosexuality is against nature and our culture In Namibia we have a small population; we need to multiply." Political leaders in Namibia also breed fear of homosexual conversion. Also, they described homosexuality as European and distinctively not African.
- Collaboration between LGBT and feminist activists is almost unique to Namibia. Feminist groups in other African countries often do not collaborate with LGBT groups because feminists groups fear being discredited as un-African by nationalist leaders.
- Sister Namibia has, at times, struggled to find funding to support its continued operation. Obtaining domestic funding was difficult, given scarce resources and a SWAPO-led government that opposed LGBT rights. Sister Namibia, therefore, received a large share of its funding from Northern donors; but by April 2006, expectations that Sister Namibia would eventually be self-sustaining, combined with shifting priorities, led to reduced funding from Northern sources.

Sister Namibia

Windhoek, Namibia

E-mail: media@sisternamibia.org

Web: <http://www.sisternamibia.org/>

Example 3: The rights of transgender persons in The Netherlands

Project Type

Advocacy

The Organisation

Transgender Netwerk Nederland (TNN), 'works towards a gender-diverse society, for the emancipation of transgender people and for their well being as well as their relatives.'

The Problem

The Netherlands generally has progressive policy with regards to the rights of gay and lesbian people. However, the focus on those who wish to change their gender has not been given the same level of attention. For this example, TNN focussed on the official requirement of forced sterilization of a person once they have undergone sex reassignment surgery.

Actions Taken

TNN drew attention to the Government's endorsement of the Yogyakarta principles in relation to international LGBT policy. TNN highlighted the inconsistencies that existed in the government's policy decisions with regards to the rights of transgender persons and the Yogyakarta principles.

- TNN consulted with Ministry staff and parliamentarians from all parties and lobbied the Minister to abolish the requirement for forced sterilization. The Minister soon announced that the Government would bring the law in line with the Yogyakarta principles.
- After a period of inactivity on the issue, TNN took the opportunity to raise the issue again in 2008, when the Dutch Minister for Foreign Affairs was in New York for the presentation of a statement on sexual orientation, gender identity and human rights at the United Nations. In a move to shame the Ministry at a side event, the then Chair of TNN produced his passport proclaiming that he had had to prove sterilisation to get it and stating that the Minister should apply the Yogyakarta Principles domestically as well as internationally.

Results & Lessons Learned

- After these advocacy events, the Ministry announced that a change of law was imminent and wrote to TNN stating that a proposal would come to parliament by the end of 2009
- The relevant Ministry acknowledged its lack of knowledge on the issue of rights of transgender persons.
- It identifies that the initial aim of having forced sterilisation was to prevent children from having parents of the same gender, but this purpose is now redundant given the legalisation of same sex marriages.
- The Dutch Government adopted the Yogyakarta as a guide to its LGBTI policy, and then TNN was able to draw attention to the incoherency between the Government's domestic and international policy.
- This action also enabled the specifics of the Yogyakarta principles to be brought into Government for a more in depth discussion.
- However, the Netherlands has yet to introduce the new laws, and so sterilisation is still part of the requirements of a legal change in gender.

Transgender Network Netherland (TNN)

Amsterdam, Netherlands

E-mail: info@transgendernetwerk.nl

Web: <http://transgendernetwerk.nl/>

Example 4: Criminality of same-sex sexual activity in Belize

Project Type

Advocacy

The Organisation

United Belize Advocacy Movement (UNIBAM) is the only organisation in Belize working on issues of sexual orientation. Their work focuses mainly on HIV/AIDS prevention and access to treatment for men who have sex with men (MSM), as well as on advocacy for legal reform and public education to confront discrimination and homophobia in the country.⁷⁷

The Problem

The law of Belize criminalizes both private and public same-sex sexual activity punishable with imprisonment up to 10 years. Belizean law also prohibits prostitutes and homosexuals from immigrating to the country. Also, as defined in the criminal law, only women may be considered victims of rape and so men are not protected against it.

These laws, coupled with a society that is ridden with prejudice, discrimination, and police violence towards LGBTI persons, prevent men who have sex with men from accessing proper health care and prevention services in Belize.

Actions Taken

In 2008, UNIBAM commissioned a report called *Show No Mercy: Barriers that Exist for Men who Have Sex with Men to Access Sexual and Reproductive Services*, which was targeted towards the National AIDS Commission (NAC). The focus of the report was not to lobby against the country's laws of criminalization of same sex activity in great length. Instead it focused on the negative health effects which derive from criminalisation, specifically the heightening rate of HIV infection and barriers to access of information on health. From this UNIBAM were able to make the argument that international law and public health mandated the repeal of the law against same-sex activity.

In 2010, the University of the West Indies Rights Advocacy Project (URAP) initiated the case with local senior counsel Lisa Shoman. Caleb Orozco and UNIBAM jointly filed suit with the Belize Supreme Court claiming that the criminalization of same sex activity violates the Belize Constitution which recognizes the right to human dignity, to be free from arbitrary or unlawful interference with one's privacy, and to equal protection under the law.

⁷⁷ Yogyakarta principles in action, p 104

Results & Lesson Learned

The 2008 report was written alongside the NAC process of legislative and policy review of HIV/AIDS prevention and treatment; aimed at highlighting the situation of MSM, and increasing access to treatment and prevention programs.

- The report identifies the Yogyakarta principles as complementary to public health principles, in a human rights framework.
- It highlights the basic claim that discrimination and stigma based on sexual orientation deny MSM the fundamental human right to the highest attainable standard of health.
- In incorporating the Yogyakarta principles in the report, human rights classes at the University of Belize have been able to demonstrate the breadth and provision of the principles within human rights law.

The case brought by Orozco and UNIBAM in 2010 is currently pending before the Court. While Orozco remains a complainant, UNIBAM has been removed as the second complainant and is now an interested party. Human Dignity Trust, Commonwealth Lawyers Association, and the International Commission of Jurists are also interested parties. A ruling on the case is expected anytime in 2013.

Resources:

- Orozco C, *Show No Mercy: Barriers that Exist for Men who Have Sex with Men to Access Sexual and Reproductive Services* (UNIBAM and UNPF, February 2008). http://ypinaction.org/files/01/25/No_Mercy.pdf.
- Southern Poverty Law Center, *Dangerous Liaisons: The American Religious Right and the Criminalization of Homosexuality in Belize* (July 2013). http://www.splcenter.org/sites/default/files/downloads/publication/dangerous_liaisons_full_report_o.pdf.

United Belize Advocacy Movement (UNIBAM)

Belize

E-mail: unibambusiness@gmail.com

Web: <http://unitedbelizeadvocacymovement.blogspot.com/>

Example 5: The rights of children born with variations of reproductive or sexual anatomy in the US

Project Type

Advocacy and Litigation

The Organisation

Advocates for Informed Choice (AIC) is an organisation based in the US, which uses innovative legal strategies to advocate for the rights of children born with variations of reproductive or sexual anatomy.

The Problem

Some children who are born with variations of reproductive or sexual anatomy undergo ‘corrective’ surgery to create an ostensible approximation of either male or female genitalia. The issue is that this non-consensual surgery can have devastating impacts on the child’s development, even when the child’s developing gender identity conforms to the surgical outcome.

Actions Taken

AIC uses traditional legal and non-legal tools domestically and advocates internationally to protect the rights of children born with intersex conditions or “disorders of sex development” (DSD). On May 14th, 2013, Advocates for Informed Choice, with other affiliates, filed a lawsuit in South Carolina called MC v. Aaronson. The case is filed against various bodies and individual employees for performing an irreversible and medically unnecessary surgery on an infant who was in the state’s care at the time of the surgery.

Results and Lessons Learned

The case is unresolved as of yet, however it should prove to be important for the rights of intersex persons regardless of the outcome as it highlights many relevant intersex issues:

- The case is important as it illustrates a radical shift in perspective about who is able to consent to what is done to intersex bodies, specifically during childhood.
- It highlights that although there may be actual health problems associated with some forms of intersex persons, this does not necessarily mean that being born with variations of reproductive or sexual anatomy is a medical problem.
- The case will raise awareness of intersex issues, and help shift the view away from a sensationalised and an often stigmatising point of view.
- As AIC also operates from an international advocacy standpoint, they will be able to use the findings and nuances of the case to further advocate for the rights of intersex persons. The case could create some useful guidance for other Countries when analysing similar issues.
- The case has already received attention from other sections of civil society, for example the Organisation Intersex International Australia (OII Australia) are following the case and anticipating the decision. Such a case could provide for some strong persuasive advocacy points for organisations similar to AIC on an international level.
- 10 days after MC v. Aaronson was filed another ground-breaking lawsuit was filed to protect an intersex child in Kenya. For more information, see: <http://www.the-star.co.ke/news/article-121590/intersex-child-5-sues-state-birth-certificate>.

Additional Resources

- Resources on the case *MC v. Aaronson*:
 - o AIC blog post, with links to newspaper articles, available at: <http://aiclegal.org/aics-landmark-lawsuit-makes-history/>.
 - o Federal and state case complaints available at: <http://www.splcenter.org/get-informed/case-docket/mc-v-aaronson#.UZVREbVQGCK>.

Advocates for Informed Choice

California, United States

Web: <http://aiclegal.org/>

Facebook: www.facebook.com/aicl原因

5. WHERE CAN I FIND ADDITIONAL RESOURCES ON HEALTH AND HUMAN RIGHTS FOR LGBTI PERSONS?

A list of commonly used resources on health and human rights of LGBTI persons follows. It is organized into the following categories:

- A. International Instruments
- B. Regional Instruments
- C. Other Statements and Declarations
- D. LGBTI and Human Rights
- E. LGBTI and Discrimination
- F. LGBTI and the Right to Health
- G. Violence and Torture against LGBTI Persons
- H. Networks
- I. Websites

A. International Instruments

- UN Commission on Human Rights, *Report of the Special Rapporteur, Nigel S. Rodley, on the question of the human rights of all persons subjected to any form of detention or imprisonment, in particular: torture and other cruel, inhuman or degrading treatment or punishment*, E/CN.4/1995/34 (January 12, 1995).
- UN Commission on Human Rights, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt*, E/CN.4/2004/49 (February 16, 2004).
- UN Committee Against Torture, *General Comment 2: Implementation of article 2 (prevention of acts of torture) by States parties*, CAT/C/GC/2 (January 24, 2008). <http://www2.ohchr.org/english/bodies/cat/comments.htm>.
- UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14 on the right to the highest attainable standard of health*, E/C.12/2000/4 (August 11, 2000).
- UN General Assembly, *Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, Nigel S. Rodley*, A/56/156 (July 3, 2001). <http://www.un.org/documents/ga/docs/56/a56156.pdf>.
- UN Human Rights Council, *Human Rights, Sexual Orientation and Gender Identity*, A/HRC/RES/17/19 (July 14, 2011).
- UN Human Rights Council, *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health: examining the relationship between the right to the highest attainable standard of health and the criminalization of same-sex conduct and sexual orientation, sex work, and HIV transmission*, A/HRC/14/20 (April 27, 2010). <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.pdf>.

B. Regional Instruments

- Council of Europe, *Council of Europe Convention on preventing and combating violence against women and domestic violence*, CETS No.: 210, Open for signature November 5, 2011 [Not entered into force as of July 29, 2013]. <http://www.conventions.coe.int/Treaty/EN/Treaties/Html/210.htm>.
 - Article 4(3) prohibits discrimination on the basis of sexual orientation or gender identity.
- Council of Europe, *Recommendation CM/Rec(2010)5 of the Committee of Ministers for member states on measures to combat discrimination on grounds of sexual orientation or gender identity* (March 31, 2010). <https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec%282010%295&Language=lanEnglish&Ver=original&BackColorInternet=C3C3C3&BackColorIntranet=EDBo21&BackColorLogged=F5D383>.
 - Council of Europe, *Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity – Explanatory Memorandum*, CM(2010)4 add 3 final (March 21, 2010). <https://wcd.coe.int/ViewDoc.jsp?id=1570957&Site=COE>.
- Council of Europe, *Committee on Equality and Non-Discrimination, Tackling discrimination on the grounds of sexual orientation and gender identity, Revised Memorandum* (March 15, 2013). http://www.assembly.coe.int/Communication/aega17_2013.pdf.
- Council of Europe, *Parliamentary Assembly, Discrimination on the basis of sexual orientation and gender identity, Resolution 1728* (2010). <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta10/ERES1728.htm>.
- *Council of Europe, Parliamentary Assembly, Discrimination on the basis of sexual orientation and gender identity, Recommendation 1915* (2010). <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta10/EREC1915.htm>.
- *Council of Europe, Working Party on Human Rights, Toolkit to Promote and Protect the Enjoyment of all Human Rights by Lesbian, Gay, Bisexual and Transgender (LGBT) People*, 11179/10 (June 17, 2010). http://eeas.europa.eu/human_rights/lgbt/docs/toolkit_en.pdf.
- *Council of the European Union, Guidelines to Promote and Protect the Enjoyment of All Human Rights by Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons* (June 24, 2013). http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/137584.pdf.
- *European Parliament, Resolutions on Racism and Homophobia in Europe* (January 2006). www.ilga.org/news_results.asp?FileID=736.
- *European Union, Council Directive 2000/78/EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation* (November 27, 2000). <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:HTML>.
- *Organisation of American States, Inter-American Convention Against All Forms of Discrimination and Intolerance*, AG/RES. 2804 (XLI/III-O/13), (June 6, 2013). <http://www.oas.org/consejo/GENERAL%20ASSEMBLY/AG43regul-ar.asp>.

C. Other Statements and Declarations

- *Yogyakarta Principles: The Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity* (March 2007). <http://www.yogyakartaprinciples.org/>.
- International Conference on LGBT Human Rights, *The Montreal Declaration* (July 2006). www.declarationofmontreal.org.

- International Lesbian, Gay, Bisexual, Trans and Intersex Association, *ADEFRA Declaration: Violence Against Lesbian Women in Africa* (Oct. 20, 2006). www.ilga.org/news_results.asp?LanguageID=1&FileCategoryID=1&FileID=901&ZoneID=4/.

D. LGBTI and Human Rights

- Council of Europe, Commissioner for Human Rights, *Human Rights and Gender Identity* (July 29, 2009). <https://wcd.coe.int/ViewDoc.jsp?id=1476365>.
- Ettelbrick PL and Zerán AT, *The Impact of the Yogyakarta Principles on International Human Rights Law Development: A Study of November 2007 – June 2010* (September 10, 2010). http://ypinaction.org/files/02/57/Yogyakarta_Principles_Impact_Tracking_Report.pdf.
- Heinze E, *Sexual Orientation – A Human Right: An Essay on International Human Rights Law* (Dordrecht: Martinus Nijhoff Publishers, 2005).
- International Commission of Jurists, *Sexual Orientation and Gender Identity in International Human Rights Law: The ICJ UN Compilation* (2013). http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2013/06/SOGI-UN-Compil_electronic-version.pdf.
- International Commission of Jurists, *Sexual Orientation, Gender Identity and International Human Rights Law: Practitioners' Guide No. 4* (July 22, 2009). [Available in English, Spanish, French, and Nepali]. <http://www.icj.org/practitioners-guide-no-4-sexual-orientation-gender-identityand-international-human-rights-law/>.
- International Commission of Jurists, *Sexual Orientation, Gender Identity and Justice: A Comparative Law Casebook* (Sep. 6, 2011). <http://www.icj.org/sexual-orientation-gender-identity-and-justice-a-comparative-law-casebook/>.
- International Commission of Jurists and the International Human Rights Program at the University of Toronto Faculty of Law, *Sexual Orientation and Gender Identity Legislative Database* (2013). <http://www.icj.org/sogi-legislative-database/>.
- International Conference on Human Rights, Sexual Orientation and Gender Identity, Oslo 15-16 April 2013, *Summary and Toolkit*. <http://www.hrsogi.org/pop.cfm?FuseAction=Doc&pAction=View&pDocumentId=48103>.
- International Gay and Lesbian Human Rights Commission, *Gender Expression and Human Rights* (April 30, 2007). <http://www.iglhrc.org/content/international-gender-expression-and-human-rights>.
- International Gay and Lesbian Human Rights Commission, *Intersexuality Is a Human Rights Issue* (April 30, 2007). <http://www.iglhrc.org/content/international-intersexuality-human-rights-issue>.
- International Gay and Lesbian Human Rights Commission, *Making the Mountain Move: An Activist's Guide to How International Human Rights Mechanisms Can Work for You* (Dec. 18, 2000). <http://www.iglhrc.org/binary-data/ATTACHMENT/file/000/000/179-1.pdf>.
- ILGA-Europe Reports: http://www.ilga-europe.org/home/publications/reports_and_other_materials. Including:
 - *Rainbow Europe Map and Index* (January 2012).
 - *Human Rights and Gender Identity: Best Practice Catalogue* (December 2011).
 - *Toolkit for Training Police Officers on Tackling LGBTI-phobic crime* (October 2011).
 - *Annual Review: The Human Rights Situation of LGBTI People in Europe* (2011).
 - *6 steps to effective LGBT Human Rights Advocacy* (2010).

- O’Flaherty M and Fisher J, “Sexual Orientation, Gender Identity and International Human Rights Law: Contextualising the Yogyakarta Principles,” 8(2) *Human Rights Law Review* (2008): 207-248.
- Saiz I, *Bracketing Sexuality: Human Rights and Sexual Orientation-A Decade of Development and Denial at the UN*, SPW Working Paper No. 2 (November 2005). <http://sxpolitics.org/wp-content/uploads/2009/03/workingpaper2.pdf>.
- UN Free and Equal Campaign, Fact Sheets [*LGBT Rights: Frequently Asked Questions, International Human Rights Law, Equality and Non-Discrimination, Criminalization, Violence*]. <https://www.unfe.org/en/fact-sheets>.
- UN Office of the High Commissioner for Human Rights, *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law* (2012). <http://www.ohchr.org/Documents/Publications/BornFree-AndEqualLowRes.pdf>.

E. LGBTI and Discrimination

- Council of Europe, *Combating discrimination on grounds of sexual orientation or gender identity: Council of Europe Standards* (June 2011). http://www.coe.int/t/dghl/standardsetting/hrpolicy/Publications/LGBT_en.pdf.
- Council of Europe, *Discrimination on grounds of sexual orientation and gender identity in Europe*, 2nd Edition (September 2011). http://www.coe.int/t/Commissioner/Source/LGBT/LGBTStudy2011_en.pdf.
- European Union Agency for Fundamental Rights, LGBT Publications: <http://fra.europa.eu/en/theme/lgbt?page=publications>.
 - *EU LGBT survey - European Union lesbian, gay, bisexual and transgender survey - Results at a glance* (May 2013)
 - *Homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity in the EU Member States* (June 2011)
 - *Homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity* (November 2013)
 - *Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States Part I – Legal Analysis* (June 2008)
- United Nations High Commissioner for Refugees, *Guidelines on International Protection NO.9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees* (October 23, 2012). <http://www.unhcr.org/509136ca9.pdf>.

F. LGBTI and the Right to Health

- Gooren LJC, “Hormonal Sex Reassignment,” *International Journal of Transgenderism*, 3 (1999).
- Guterman L, *Why are doctors still performing genital surgery on infants?* (Open Society Foundations, January 2012). <http://www.opensocietyfoundations.org/voices/why-are-doctors-still-performing-genital-surgery-on-infants>.
- The International Lesbian, Gay, Bisexual, Transgender and Queer Youth and Student Organisation, *The health and wellbeing of LGBTQI youth*. <http://www.iglyo.com/wp-content/uploads/2012/04/Health-and-Wellbeing-of-LGBTQI-Youth-.pdf>.
- International Gay and Lesbian Human Rights Commission (IGLHRC), *Off the Map: How HIV/AIDS Programming is Failing Same-Sex Practicing People in Africa* (2007). <http://www.iglhrc.org/sites/default/files/6-1.pdf>.

- Mahon C, “Sexual Orientation, Gender Identity and the Right to Health,” in Clapham A, Robinson M, Mahon C and Jerbi S, eds., *Realizing the Right to Health*, Swiss Human Rights Book, Vol. 3 (Zurich: Rüffer & Rub, 2009). http://www.swisshumanrightsbook.com/etc/medialib/downloads/edazen/topics/human/srbook.Par.0065.File.tmp/14_453_Mahon.pdf.
- National Coalition for LGBT Health (US), *Guiding Principles for Lesbian, Gay, Bisexual and Transgender Inclusion in Health Care*. <http://lgbthealth.webolutionary.com/sites/default/files/LGBT%20Health%20Manifesto.pdf>.
- Open Society Foundations, *Transforming Health: International Rights-Based Advocacy for Trans Health* (February 2013). <http://www.opensocietyfoundations.org/reports/transforming-health>.
- Sheilds A, *Access to Health Care for LGBT People in Kyrgyzstan* (Open Society Foundations, July 2007). <http://www.opensocietyfoundations.org/reports/access-health-care-lgbt-people-kyrgyzstan>.
- The Knowledge for Health (K4Health) Project, *LGBTI Populations and HIV Prevention Toolkit* (last updated August 13, 2013). <http://www.k4health.org/toolkits/lgbti-hivprevention>.
- The International Lesbian, Gay, Bisexual, Transgender and Queer Youth and Student Organisation, *Guidelines for LGBTQ-Inclusive Education* (2012). http://www.iglyo.com/wp-content/uploads/2012/06/IGLYO_Guidelines.pdf.

G. Violence and Torture against LGBTI Persons

- Amnesty International, *Crimes of Hate, Conspiracy of Silence: Torture and Ill-Treatment based on Sexual Identity* (June 21, 2001). <http://www.amnesty.org/en/library/info/ACT40/016/2001>. [Available in English, Arabic, Spanish and French].
- Balzer C, Hutta JS, et al., *Transrespect versus Transphobia Worldwide: A Comparative Review of the Human-rights Situation of Gender-variant/Trans People* (November 2012). http://www.transrespect-transphobia.org/uploads/downloads/Publications/TvT_research-report.pdf.
- Boucai MD, ‘Legal Remedy for Homophobia: Finding a Cure in the International Right to Health’ 6 *Georgia Journal of Gender and Law* 21 (2005). [Not open source]
- Human Rights Watch and International Gay and Lesbian Human Rights Commission (IGLHRC), *More than a Name: State-Sponsored Homophobia and Its Consequences in Southern Africa* (January 2003). <http://www.iglhrc.org/cgi-bin/iowa/article/publications/reportsandpublications/573.html>.
- Human Rights Watch
 - *Controlling Bodies, Denying Identities: Human Rights Violations against Trans People in the Netherlands* (September 13, 2011). <http://www.hrw.org/reports/2011/09/13/controlling-bodies-denying-identities-o>.
 - *Fear for Life: Violence against Gay Men and Men Perceived as Gay in Senegal* (November 30, 2010). <http://www.hrw.org/reports/2010/11/30/fear-life-o>.
 - *Forbidden: Institutionalizing Discrimination against Gays and Lesbians in Burundi* (July 29, 2009). <http://www.hrw.org/reports/2009/07/30/forbidden-o>.
 - *Guilty by Association: Human Rights Violations in the Enforcement of Cameroon’s Anti-Homosexuality Law* (March 21, 2013). <http://www.hrw.org/reports/2013/03/21/guilty-association>.
 - *Hated to Death: Homophobia, Violence and Jamaica’s HIV/AIDS Epidemic* (November 2004). <http://hrw.org/reports/2004/jamaica1104/jamaica1104.pdf>.
 - *Hatred in the Hallways: Violence and Discrimination against Lesbian, Gay, Bisexual, and Transgender Students in U.S. Schools* (May 1, 2001). <http://www.hrw.org/reports/2001/05/01/hatred-hallways>.

- *In a Time of Torture: The Assault on Justice In Egypt's Crackdown on Homosexual Conduct* (March 2004). <http://www.hrw.org/reports/2004/02/29/time-torture-o>.
- *Lebanon: Stop Tests of Shame: Authorities Order Anal Examinations of Men Charged with Homosexuality* (August 10, 2012), <http://www.hrw.org/news/2012/08/10/lebanon-stop-tests-shame>.
- “Not Worth a Penny”: *Human Rights Abuses against Transgender People in Honduras* (May 29, 2009). <http://www.hrw.org/reports/2009/05/29/not-worth-penny-o>.
- *These Everyday Humiliations: Violence Against Lesbians, Bisexual Women, and Transgender Men in Kyrgyzstan* (October 6, 2008). <http://www.hrw.org/reports/2008/10/06/these-everyday-humiliations-o>.
- “They Hunt Us Down for Fun”: *Discrimination and Police Violence Against Transgender Women in Kuwait* (January 15, 2012). <http://www.hrw.org/reports/2012/01/15/they-hunt-us-down-fun>.
- “They Want Us Exterminated”: *Murder, Torture, Sexual Orientation and Gender in Iraq* (August 17, 2009). <http://www.hrw.org/reports/2009/08/17/they-want-us-exterminated-o>.
- *Together, Apart: Organizing around Sexual Orientation and Gender Identity Worldwide* (June 11, 2009). <http://www.hrw.org/reports/2009/06/10/together-apart>. “We are a Buried Generation”: *Discrimination and Violence against Sexual Minorities in Iran* (December 15, 2010). <http://www.hrw.org/reports/2010/12/15/we-are-buried-generation>.
- *Uganda: State Homophobia Threatens Health and Human Rights* (August 23, 2007). <http://www.hrw.org/news/2007/08/21/uganda-state-homophobia-threatens-health-and-human-rights>.
- “We Have the Upper Hand”: *Freedom of assembly in Russia and the human rights of lesbian, gay, bisexual and transgender people* (June 13, 2007). <http://www.hrw.org/reports/2007/06/13/we-have-upper-hand>.
- “We Need a Law for Liberation”: *Gender, Sexuality, and Human Rights in a Changing Turkey* (May 22, 2008). <http://www.hrw.org/reports/2008/05/21/we-need-law-liberation-o>.
- “We’ll Show You You’re a Woman”: *Violence and Discrimination against Black Lesbians and Transgender Men in South Africa* (2011), available at: <http://www.hrw.org/sites/default/files/reports/southafrica1211.pdf>.
- International Gay and Lesbian Human Rights Commission, *Violations of the Rights to Freedom of Expression, Assembly, and Association Related to Sexual Orientation, Gender Identity, and Gender Expression: A report prepared by the International Gay and Lesbian Human Rights Commission for the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression and the Special Representative of the Secretary General for Human Rights Defenders* (October 30, 2007). <http://www.iglhrc.org/sites/default/files/155-1.pdf>.
- TGUE, *Trans Murder Monitoring Project*. <http://www.tgeu.org/node/53>.
- UN Human Rights Council, *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* (November 17, 2011). <http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTUNReports.aspx>.

H. Networks

- ARC International, SOGI listserv: <http://arc-international.net/network-development/sogi-listserv>.
 - “The SOGI list provides a space for global advocacy, focusing on discussions and strategies related to sexuality, sexual rights, sexual orientation, gender, gender identity and gender expression, and seeks to situate these discussions within a broader human rights framework.”

I. Websites

- American Civil Liberties Union [United States]: <http://www.aclu.org/lgbt-rights>.
- ARC International: <http://arc-international.net>.
- The European Parliament’s Intergroup on LGBT Rights: <http://www.lgbt-ep.eu/>.
- Funders for LGBTQ Issues: <http://www.lgbtfunders.org/>.
- Human Rights Campaign [United States]: <http://www.hrc.org/>.
- Human Rights Watch, LGBT Rights: <http://www.hrw.org/topic/lgbt-rights>.
- Inter-American Commission on Human Rights, Unit on the Rights of Lesbian, Gay, Trans, Bisexual and Intersex Persons: <https://www.oas.org/en/iachr/lgtbi/default.asp>.
- International Commission of Jurists <http://www.icj.org/>
- International Gay and Lesbian Human Rights Commission (IGLHRC). www.iglhrc.org.
- International Gay and Lesbian Youth Organization <http://www.iglyo.com/>
- International Lesbian, Gay, Bisexual, Trans and Intersex Association: <http://ilga.org/>.
- International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) Europe: www.ilga-europe.org.
- International Lesbian, Gay, Bisexual, Transgender, Queer Youth and Student Organization: <http://www.iglyo.com/>.
- Russian LGBT Network. www.lgbtnet.ru.
- Sexual Rights Initiative: <http://sexualrightsinitiative.com/>.
- Transgender Europe (TGEU): <http://www.tgeu.org/>.
- UN Free and Equal Campaign: <https://www.unfe.org/en>.
- UN Human Rights Council Panel on Sexual Orientation and Gender Identity (March 2012): <http://www.ohchr.org/EN/Issues/Discrimination/Pages/PanelSexualOrientation.aspx>.
- UN OHCHR, Combatting discrimination based on sexual orientation and gender identity: <http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBT.aspx>.

6. WHAT ARE KEY TERMS RELATED TO HEALTH AND HUMAN RIGHTS FOR LGBTI PERSONS?

B

Bisexual

Refers to an emotional, affective and sexual attraction to persons of both the same or a different sex/gender.

C

Criminalization is the inclusion of same-sex relationships or related activities in the criminal legal code.

Cross Dresser

Persons who, to different extents and with different regularity, dress in clothes traditionally ascribed to persons of the different sex. Transvestites may have a homosexual, heterosexual or bisexual orientation. Transvestites are sometimes called cross-dressers. See also transgender below.

D

Decriminalization is the removal of same-sex relationships and related activities from the criminal legal code.

G

Gay

Can refer to either male or female-identified persons with homosexual orientations. In some cultural contexts the term gay only refers to male homosexuals.

Gender expression

A broader term than gender identity, referring to masculine or feminine expressions such as dress, mannerisms, role-playing in private or social groups, or speech patterns. Gender expression is not always associated with a fixed gender identity and often changes.

Gender identity

A personal identity each person creates from a deeply felt sense of being a man, a woman, or an identity spanning both or aspects of each, which may not correspond to the body. *Gender identity is distinct from sexual orientation.*

H

Heterosexual

Refers to an emotional, affective and sexual attraction to persons of a different sex/gender.

Homophobia

Typically used in a disapproving sense to refer to policies and individuals who display fear, avoidance, prejudice, or condemnation of same-sex sexual practices or homosexuality in general.

Homosexual

Refers to an emotional, affective and sexual attraction to a person of the same sex/gender.

I**Intersex**

Refers to a variety of conditions in which an individual is born with aspects of reproductive/sexual anatomy or physiology that do not fit the conventional assignment of having only a male or only female body.

L**Lesbian**

While the term gay can refer to either male or female-identified persons with homosexual orientations, many prefer the term **lesbian** for homosexual women, in part to ensure women's visibility in LGBTI rights advocacy.

LGBTI

An acronym that groups together sexual orientation-based identities (lesbian, gay, bisexual) with a non-sexual orientation created category (transgender or transsexual and intersex). In some contexts and policy documents a broader acronym LGBTIQ or LGBTIQQ is used (intersex and queer and/or questioning).

M**MSM (Men who have sex with men)**

A public health term describing any man who has sex with another man, whether occasionally, regularly, or as an expression of a gay identity. The term is meant to be *descriptive* without attaching an identity or meaning to the behaviour, so that health interventions—especially HIV/AIDS education and services—can be directed to persons on the basis of need. While useful, it can also be used to avoid or deny a right to an identity. Some men have begun to refer to themselves as “MSM,” suggesting the term is developing as an identity.

Q**Queer**

A term often used to refer to LGBTI persons. Depending on the use, the term may be perceived as derisive or offensive, or as self-empowering.

Questioning

Refers to a person who is questioning their sexuality, gender, gender identity, or sexual orientation.

S**Sex**

Refers to the biological characteristics that are used to define humans as female or male. Some individuals possess both female and male biological characteristics.

Sexual health

A state of physical, emotional, mental, and social well-being in relation to sexuality. Like health generally, it is not merely the absence of disease, but encompasses positive and complex experiences of sexuality as well as freedom to determine sexual relationships, as well as the possibility of having pleasurable sexual experiences, free of coercion, discrimination and violence.

Sexual minorities

A catch-all phrase referring to any group that adopts a sexual identity, gender identity, sexual orientation, or sexual behaviour that differs from a defined “majority.” Thus, in various cultural contexts, it may refer to homosexual or trans persons, or even persons who sell sex or practice sado-masochistic sex. It is always important to clarify which kind of people or practices are included in the “sexual minority” being referred to.

Sexual orientation

One of the components of sexuality distinguished by an enduring emotional, romantic, sexual or affectional attraction to individuals of a particular gender. Sexual orientation is different from sexual behavior because it refers to feelings and self-concept. Persons may or may not express their sexual orientation in their behaviors. The main terms used to describe sexual orientation are **homosexual, gay, lesbian, straight, and bisexual**.

Sexual rights

Human rights that are already recognized in national laws, international human rights documents and other consensus statements. Important sexual rights include the right to sexual and reproductive health services, sexuality education, respect for bodily integrity, rights of privacy and non-discrimination and expression that encompass the choice of sexual partner, consensual sexual relations, and consensual marriage without discrimination and the means to effect these decisions. *For sexual health to be attained and maintained, the sexual rights of all persons must be respected, protected, and fulfilled.*

Sexuality

Consists of thoughts, fantasies, desires, beliefs, attitudes, values, behaviours, practices, roles, and relationships related to sex, erotic desire. Sexuality is influenced by the interaction of biological, psychological, social, economic, political, cultural, ethical, legal, historical, religious and spiritual factors.

T**Transgender**

Most commonly used as the umbrella term for people whose gender identity and/or gender expression differs from the sex they were assigned at birth. The term may include, but is not limited to: transsexuals, intersex people, cross-dressers, and other gender variant people. **Transgender** (or “trans”) persons are those who move across genders, meaning their gender identity may span identities associated with men or women, or change between the two. Transgender persons are sometimes but not always transsexual (see above): they may transition by medical means (altering their physiology or hormones), or by way of dress, roles, or behaviour. Trans people can have any sexual orientation.

Transsexual (or “trans”)

Individuals who identify with a different sex than that associated with the biological sex that was ascribed to them at birth. A transsexual person can be male-to-female or female-to-male. Transsexual persons can have a homosexual, heterosexual, or bisexual orientation.