

International Human Rights References to Sexual and Reproductive Health and Rights

(regarding LGBT populations and
HIV/AIDS and STIs)

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Table of contents

Introduction	3
Glossary of terms used in this document	5
Human rights	8
Treaties and other international standards	10
Timeline for sexual and reproductive health and rights references in the international context (table)	17
Language	18
Sexual orientation in the UN (table)	26
Core Documents relating to sexual and reproductive rights and health for lesbian, gay, bisexual and transgendered people	
1 The right to health in the International Bill of Human Rights	28
2 The right to health in the core international human rights instruments	32
3 The International United Nations Conference on Population and Development, Cairo, 1994	34
4 The Fourth World Conference on Women, Beijing, 1995	38
5 The Joint United Nations Programme on HIV/AIDS (UNAIDS)	40
6 The United Nations General Assembly (UNGASS)	46
7 The UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health – resolution E/CN.4/2004/49	48
8 The Human Rights Council (formerly the Commission on Human Rights)	52
9 The World Health Organization	57
10 The Universal Declaration of Human Rights	59
11 The International Covenant on Economic, Social and Cultural Rights	63
12 General Comment No. 14 (2000). Committee of Economic, Social and Cultural Rights (CESCR), The right to the highest attainable standard of health. E/C.12/2000/4.	71
13 Chapter VII of the International Conference on Population and Development's Programme of Action: Reproductive Rights and Reproductive Health	92
14 The UNGASS Declaration of Commitments on HIV/AIDS, 2001	104
15 The OHCHR/UNAIDS Guidelines on HIV/AIDS	121
16 Resolution E/CN.4/2004/49 The UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health	135
17 The Commission on Human Rights - Resolution 2005/84 The protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS)	158
18 ANNEX 8: UNAIDS epidemic updated reports December 2006, press release	163
19 Millennium Development Goals and the Three Ones	165

**Supporting Documents relating to sexual and reproductive rights
and health for lesbian, gay, bisexual and transgendered people**

Youth	168
Women and gender	168
Sexual and reproductive health and rights	170
Sex work	172
Regional overviews	172
Monitoring and surveillance	174
Migration	174
MSM	174
LGBT	175
Human rights and HIV	175
Global perspectives	176
International statements	178
Discrimination	179
Language	179
Armenia	180
Azerbaijan	180
Georgia	181
Kazakhstan	181
Kyrgyzstan	181
Moldova	182
Ukraine	182

Introduction

ILGA-Europe has commissioned the production of this reference guide within a joint project “Prevention and Empowerment in the Commonwealth of Independent States (PRECIS)”, coordinated by COC Netherlands and financed by the Ministry of Foreign Affairs of the Netherlands. The project aims at improving the sexual and reproductive health and enhancing the human rights of LGBT people in seven countries of Eastern Europe and Central Asia: Armenia, Azerbaijan, Georgia, Kyrgyzstan, Kazakhstan, Moldova and Ukraine. Thus the primary target audiences of the guide are LGBT advocates in the countries belonging to the PRECIS partnership. However, the guide is applicable to, and can be used by, a wide international readership. The production of the reference guide has also been supported by Sigrid Rausing trust.

This document is structured in a simple way as follows:

- **Opening Lines**
- **Core Documents**
- **Supporting Documents**

This section, **Opening Lines**, explains the purpose of this compilation of international human rights standards and describes its overall structure. It provides a short explanation of how international human rights instruments work and their status in international law. It also outlines a number of cross-cutting human rights instruments and texts which are raised in the context of HIV and AIDS. Having set out some core definitions as used throughout this compilation, the section concludes with a short analysis of how the term “sexual orientation” has developed in different United Nations forums.

Texts in blue italics are direct quotations from the instruments and the texts themselves

The second section **Core Documents** comprises two parts;

1 – 9 place the following instruments and texts in context, quoting from the documents themselves

- 1 Bill of Human Rights – the right to health
 - 1.1 The Universal Declaration of Human Rights, 1948
 - 1.2 The International Covenant On Economic, Social and Cultural Rights, 1966 (into force 1976)
 - 1.3 The International Covenant On Civil and Political Rights, 1966 (into force 1976)
- 2 International Human Rights Instruments – the right to health
 - 2.1 The International Convention on the Elimination of all forms of Racial Discrimination (ICERD, 1965, into force 1969)
 - 2.2 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979, into force since 1981)
 - 2.3 Convention on the Rights of the Child, 1989 (into force 1990)
- 3 The International United Nations Conference on Population and Development, 1994
- 4 The Fourth World Conference on Women, Beijing, 1995

8 The former Commission on Human Rights (today Human Rights Council), 1946/2006

9 The World Health Organization strategy, 2004

10–17 present the full texts of some core international documents on health and SRHR

10 Universal Declaration of Human Rights, 1948

11 International Covenant on Economic, Social and Cultural Rights, 1966

12 General Comment No. 14 (2000). The right to the highest attainable standard of health, 2000

13 Chapter VII of the International Conference on Population and Development's Programme of Action: reproductive rights and reproductive health, 1994

14 The UNGASS Declaration of Commitments on HIV/AIDS, 2001

15 The OHCHR/UNAIDS Guidelines on HIV/AIDS, 1998

16 Resolution E/CN.4/2004/49, 2004

17 Resolution 2005/84, 2005

18 UNAIDS epidemic updated reports December 2006, press release

19 The Millennium Development Goals and the Three Ones, 2000

The final part of this document, **Supporting Documents, 1-75**, is a collection of references, all web linked, from a variety of organisations and agencies, arranged under the following headings: youth, women and gender, sexual health and rights, sex work, regional overviews, monitoring and surveillance, migration, MSM, LGBT, human rights and HIV, global perspectives and discrimination. Relevant keywords (e.g. gay, sexual health, etc) have been highlighted under the title/explanation, and if any of the countries (Armenia, Azerbaijan, Georgia, Kyrgyzstan, Kazakhstan, Moldova and Ukraine) have been mentioned, it is noted in the entry.

Supporting Documents 76-104 contain country reports, summary profiles, a shadow report (Ukraine) and a variety of other documents specific to these countries in relation to their work on HIV/AIDS.

Glossary of terms used in this document

AIDS	Acquired Immuno-Deficiency Syndrome
CESCR	Committee of Economic, Social and Cultural Rights
CHR	Commission on Human Rights
CPD	Commission on Population & Development
ECOSOC	Economic and Social Council
GA	(United Nations) General Assembly
HIV	Human Immunodeficiency Virus
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICPD	International Convention on Population and Development (Cairo)
IPPF	International Planned Parenthood Federation
ILO	International Labour Organization
LGBT (IQ)	Lesbian, Gay, Bisexual, Transgender (Intersex and Queer /or/ Questioning)
MDG	Millennium Development Goals
MSM	Men who have Sex with Men
NGO	Non-Governmental Organisation
OHCHR	Office of the High Commissioner for Human Rights
PfA	Platform for Action (Beijing)
PoA	Programme of Action (Cairo)
SRH	Sexual and Reproductive Health
SRHR	Sexual and Reproductive Health and Rights
STI	Sexually Transmitted Infection
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNAIDS	United Nations AIDS (programme)
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNGASS	United Nations General Assembly Special Session
UNHCR	United Nations Human Rights Council
UNODC	United Nations Office of Drugs and Crime
WFP	World Food Programme
WHO	World Health Organization
WSW	Women who have Sex with Women

ILGA-Europe has created this compilation of international human rights references to sexual and reproductive health and rights (SRHR) to assist advocates locate, interpret and utilise existing international instruments and standards in their own work. There is a particular focus throughout this compilation on statements and progress made in relation to HIV/AIDS and other sexually transmitted infections (STIs) as relevant to LGBT persons.

It is hoped that this compilation will help advocates use international human rights instruments more effectively in their work domestically and regionally, and at the same time increase their knowledge of the references themselves and their place within international human rights law and discourse.

Sexual and reproductive health and rights are constituent parts of the fundamental **right to health**. As many international bodies, and as various international human rights instruments dealing with health and human rights have underlined, the right to health does not only include the right to be healthy (as in, an absence of illness or disease), but “***the right of everyone to the enjoyment of the highest attainable standard of physical and mental health***” (e.g. Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 – see **Core Documents 1.2** and **10**).

“Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health. States should take all appropriate measures to ensure, on a basis of equality of men and women, universal health care services, including those related to reproductive health care, which includes family planning and sexual health. Reproductive health care programmes should provide the widest range of services without any form of coercion.”

(**Principle 8** of the International Conference on Population and Development’s Programme for Action, ICPD, Cairo, 1994 - see **Core Documents 3** and **14**)
<http://www.iisd.ca/cairo/program/p07002.html>

Historically, the right to health has been considered as belonging to a group of rights known as social, economic and cultural rights as this right was originally enshrined in the ICESCR. However, in the mid-1990s international institutions, such as the United Nations Population Fund (UNFPA), the World Health Organization (WHO) and the International Planned Parenthood Association (IPPA), elaborated a Charter of Sexual and Reproductive Rights (<http://www.unfpa.org/swp/1997/box8.htm>) which sought to bring together relevant economic and social rights on the one hand and civil and political rights on the other, in the context of sexual and reproductive rights. Relevant civil and political rights included the right to life, the right to privacy, as well as the right to freedom of thought and association.

For many years there was a tendency to regard civil and political rights as having primacy over economic, social and cultural rights even though lip service was paid to the idea of the indivisibility of all human rights. Partly this view resulted from the belief that economic, social and cultural rights could not be enforced through the courts in the same way that civil and political rights might. The balance between these sets of rights was partly redressed as a result of the, the Vienna Declaration, adopted by the World Conference on Human Rights on 25 June 1993, which confirmed that human rights are “***indivisible, interdependent and interrelated***” (<http://www.unhcr.ch/huridocda/huridoca>).

[nsf/\(Symbol\)/A.CONF.157.23.En?OpenDocument](#)). Moreover, increasingly courts have been willing to recognize that economic, social and cultural rights can be made subject to judicial scrutiny.

The term sexual and reproductive health and rights (SRHR) normally covers four different, albeit interlinked, components - reproductive health, reproductive rights, sexual health and sexual rights. Definitions for each of these are given below.

Reproductive health and reproductive rights were the first of these expressions to be employed, although in different contexts. The term 'reproductive health' was first developed by institutions, such as the World Health Organization, in the early-1980s, while the earliest references to 'reproductive rights' are mostly found in non-institutional frameworks, and among women's groups of the 1970s and 1980s.

In terms of advocacy, LGBT people and sex workers have shared concerns in that they are all particularly vulnerable to violations of their rights, including sexual health rights (as well as the fact that many sex workers are LGBT). These violations place them at particular risk of HIV and other STIs. The protection of the sexual health and human rights of sexually marginalized groups is important both for their rights as individuals (to determine their own sexual practice and identities) and as a contribution to the global struggle against HIV/AIDS.

(Paragraph adapted from texts of the Open Society Institute, <http://www.soros.org/>)

The Cairo and the Beijing Conferences (1994 and 1995 - **Core Documents 3** and **4**) established and legitimized notions of reproductive rights, as well as 'sexual health' and 'sexual rights'. Paragraph 7.3 of the Cairo conference Program of Action speaks about reproductive and sexual health and reproductive rights: "**[...] reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other relevant United Nations consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. [...]**" (see full text in **Core Document 12**, paragraph 7.3).

Although the Platform for Action of the Beijing Conference does not explicitly mention sexual rights, paragraph 96 (see point 52 of **Core Document 16** Resolution E/CN.4/2004/49 and its footnote 32) spells out what their elements should be: "**The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health [...]**".

Human rights

Discrimination on the ground of sexual orientation or gender identity can take a multitude of forms and may involve violations of any of the rights guaranteed by international human rights instruments. These may range from civil and political rights, such as the right to life, freedom from torture and inhuman and degrading treatment or freedom of assembly, association or expression, as well as economic, social and cultural rights, such as the right to education, the right to social security and health.

A major issue of concern that remains largely ignored in human rights discourse is that of multiple discrimination: race, gender, disability, age, poverty and sexual orientation or gender identity. People suffering from multiple discrimination may be even more exposed to human rights violations and even less in a position to claim their rights and to obtain remedies. For example, as highlighted by the Special Rapporteur on Violence Against Women, lesbian women could ***“be targeted for rape specifically because of their sexual orientation in order for the aggressor to prove [the victim’s] womanhood”***.

(Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, 2005.
www.icj.org/IMG/pdf/soos.pdf)

Current indicators used by UNAIDS, the WHO and other international agencies are not able to develop information regarding the needs of individuals in the context of sexual and reproductive health based on multiple forms of discrimination, such as an injecting drug user who is also a sex worker and lesbian, gay, bisexual or transgendered. In the absence of such data it is difficult for activists to make the case for the allocation of additional financial resources from governments and development agencies to address the specific needs of such groups. As the World AIDS Campaign (WAC) put it ‘What gets measured, gets done’ – see **Supporting Document 44**.

However, it should be noted that in January 2007, the Special Rapporteur on the right to the highest attainable standard of health, Paul Hunt, has said ***‘More specifically, however, when looking at a health system from the right-to-health perspective, what are the key components that need to be present? For example, from a human rights perspective a health system will have to include an adequate system for the collection of health data; otherwise, it will be impossible for the State, or any other interested party, to monitor the progressive realization of the right to health. Moreover, the data must be disaggregated on certain grounds, such as sex, age and urban/rural, otherwise it will be impossible to monitor the progressive realization of the right to health in relation to vulnerable populations, such as women, children and those living in remote rural communities.’***

see A/HRC/4/28 of 17/01/2007 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.
<http://daccessdds.un.org/doc/UNDOC/GEN/G07/102/97/PDF/G0710297.pdf?OpenElement>

The social stigmatization of human beings on the grounds of their real or perceived sexual orientation or gender identity leaves them more exposed to violence and human rights abuses. This social

stigmatization also increases the climate of impunity and indifference to human rights violations committed against LGBT victims.

adapted from the ***Joint Oral Statement by the International Commission of Jurists (ICJ) and International Federation for Human Rights Leagues (FIDH)***

to the CHR on 21 November 2006 re;/ sexual orientation and human rights

http://www.fidh.org/article.php3?id_article=2539

and

International Human Rights References to Human Rights Violations on the grounds of Sexual Orientation and Gender identity

International Commission of Jurists, Geneva, October 2006

www.icj.org/IMG/UN_references_on_SOGI.pdf

Treaties and other international standards

International legal instruments take the form of a **Treaty** (also called **agreement, convention, covenant** or **charter**), which is binding on the contracting States. When negotiations are completed, the text of a treaty is established as authentic and definitive and is “signed” to that effect by the representatives of States. There are various means by which a State expresses its consent to be bound by a treaty. The most common are **ratification** or **accession**. A new treaty is “ratified” by those States which have negotiated the instrument. A State which has not participated in the negotiations may, at a later stage, “accede” to the treaty. The treaty enters into force when a pre-determined number of States have ratified or acceded to the treaty.

When a State ratifies or accedes to a treaty, that State may make **reservations** to one or more articles of the treaty, unless reservations are prohibited by the treaty.

Some treaties have **Protocols** attached to them that qualify the terms of that treaty. Some of these are compulsory and some are optional (for example, the ICCPR and CRC). When acceding to or ratifying a treaty, all States will need to review their domestic laws, policies and practices to ensure that they are consistent with their obligations under the treaty. Often existing laws will need to be amended or new legislation passed.

Treaties and other conventions create legally binding obligations upon the States signing them. All treaties are of equal legal effect with the exception of the UN Charter (Article 103), which prevails in the case of conflict with another treaty (i.e. between states).

During the last 40 years, a range of international commitments has developed and has been confirmed by a variety of instruments that do not fall into the traditional categories of “treaty” or “custom” or “general principles.” The legal status of these instruments, which are often referred to as “**soft law**”, has been a major subject of discussion among legal scholars and human rights activists. The instruments include **Declarations, Codes of Conduct, Guidelines** and other promulgations of the political organs of the United Nations system, **Operational Directives** of the multilateral development institutions, and **Resolutions** and other statements by non-governmental organisations. Although they do not possess the strict characteristic of recognized enforceability as commonly understood for law, depending on the circumstances, they may possess significant normative weight.

Soft laws, also known as **non-binding international standards**, are important because, as States concur that certain principles bind them, in statements of acceptance or the evolution of State practice following them, they can ‘harden’ and become ‘law’ at some point in both the international and domestic contexts.

Many “soft law” instruments are the product of international meetings organized under the auspices of international organisations, such as International Conference on Population and Development, 1994 (**Core Document 3**), and the Fourth World Conference on Women in Beijing in 1995 (**Core Document**

4). These meetings typically conclude with the issuance of instruments entitled “Declaration”, “Programme of Action”, or “Platform for Action”. The instruments are the product of long and often contentious negotiations, and are, perhaps, the most important work products of conferences attended by representatives of almost all nations in the world. They are not drafted in the form of legally enforceable instruments, however, and can best be understood as political pronouncements; that at least to some degree represent official decisions of the States which drafted and signed them.

They also may record the content of existing customary international law on particular matters. As such, although they are not “hard law,” they evince official governmental positions on particular issues, may articulate the substance of existing legal norms and/or create expectations for the future development of international law in the areas being addressed. Often they are at the beginning of a continuum emphasizing increasingly higher degrees of normative specificity that eventually may culminate in conventional binding treaty obligations.

Room for difference

With the exception of a small group of so-called “non-derogable” rights, the human rights provided for in international instruments are neither absolute nor precise in their meaning. It is essential that one recognizes this. Human rights as they are expressed in international law are limited. Typically, the very instrument that guarantees certain rights also expressly provides for their qualification. Thus, for example, many of the rights covered by the International Covenant on Civil and Political Rights (**Core Document 1.3**) are first stated in the starkest of terms – everyone has the right to liberty, and everyone has the right to freedom of expression and security (articles 9 and 19). There then follows a paragraph in each article outlining in broad terms the conditions under which the right can be limited – for example, where necessary to protect public health or morals, or as necessary in a democracy, or to safeguard national security.

There are a number of reasons why this qualified expression of human rights has been adopted. The most direct reason is that it is simply not possible or desirable for individual human rights to be defined precisely, nor for their application to countless different circumstances to be predicted. In any case, it would not be desirable to insist upon any particular human right being rigidly complied with in every single case.

For these reasons, degrees of discretion are provided for in all international treaties in respect of how, and to what degree, human rights are protected. This “elbow room” or “margin of appreciation” (as it is referred to in legal terms) is, of course, exercised by the States themselves. Laws enacted domestically in order to meet international obligations may, therefore, differ from State to State, and yet still comply with the basic terms of the right. The scope for such discretion before it is considered to have gone “too far” is a moot point. Indeed, it is not an exaggeration to say that the search for where that line is the never-ending task of lawmakers (including judges) in both the international and domestic arenas.

The so-called “non-derogable” group of rights includes rights such as the freedom from torture, freedom from slavery and the arbitrary deprivation of life.

In November 2006, 29 Human Rights experts (including a former United Nations High Commissioner

for Human Rights, as well as UN independent experts, members of UN treaty bodies, judges, activists, and academics) met to confirm legal standards for how governments and other actors should end violence, abuse, and discrimination against lesbian, gay, bisexual, and transgender people, and ensure full equality. They produced a set of 29 principles, known as the Yogyakarta Principles. Economic, social and cultural rights are discussed under principles 12-18, where the concern has been expressed about laws that “prohibit gender reassignment surgery for transsexuals or require intersex persons to undergo such surgery against their will”.

see <http://yogyakartaprinciples.org/> for the text of the Principles and the list of members of the group

Respecting, Protecting and Fulfilling rights

A useful framework has been developed under international human rights conventions that oblige States that are parties to undertake three kinds of duties. These are to respect rights by not violating them, to protect rights by taking positive action against third party violators, and to fulfil rights by employing governmental means to afford individuals the full benefit of human rights. These duties affect SRHR in a variety of ways.

The duty to **respect** individuals’ rights to SRHR obliges States and those that they employ to be guarded when taking action that may restrict individuals’ reproductive and sexual autonomy. For example, misuse of individuals’ identifiable health information on HIV/AIDS or STI’s by government offends those individuals’ rights to privacy as expressed in the ICCPR.

The duty to **protect** rights requires States to take action to prevent violations of rights committed by private persons or organisations. This is an area of growing concern to human rights tribunals, at both domestic and international levels, as States downsize governmental bureaucracies by giving over State functions to private agencies, as can be seen in many areas of health care services. States cannot evade their human rights obligations by delegating power to private sector agencies. States whose governments leave private violations of human rights unattended or unaddressed are in breach of their own duty to protect human rights, as articulated in the Bill of Rights (UDHR, ICCPR and ICESCR).

The duty to **fulfil** rights requires States to take appropriate legislative, administrative, judicial, budgetary, economic and other measures to achieve individuals’ full realization of their human rights. Discharge of the duty to fulfil human rights sometimes requires States to balance competing human rights or to find a basis of maximum accommodation of the human rights of individuals that may be in conflict with each other. For instance, respect for individuals’ religious convictions compels States to allow conscientious objection to participate in such procedures as artificial contraception or abortion, but the human rights of women require that reasonable provision be made for their access (actual or informational) to such services. Where health services are available only through facilities provided by religious institutions in a certain country, the PoA of the 1994 IPCD (Chapter VII – see **Core Document 13**) obliges that State to provide such services through a public clinic or some such provider.

Accountability

An increasingly important process for developing State accountability for SRHR is the publication of Concluding Observations by treaty monitoring bodies on reports submitted by States. The United Nations Human Rights System works through two different sets of mechanisms. They are called the “treaty-based” mechanisms, and the “extra-conventional” (or “non-treaty-based”) mechanisms.

“Treaty-based” mechanisms

The “treaty-based” mechanisms are committees. When a State ratifies one of the UN’s human rights treaties, it agrees to be monitored periodically to see how it is obeying the treaty’s terms. The committees – also called “treaty bodies” - do this investigating (its members are experts in the particular field). This document mentions six of the human rights treaties, which the UN has produced, with six committees:

- The Human Rights Committee (HRC) monitors States’ compliance with the International Covenant on Civil and Political Rights (ICCPR).
- The Committee on Economic, Social, and Cultural Rights (CESCR) monitors States’ compliance with the International Covenant on Economic, Social, and Cultural Rights.
- The Committee on the Elimination of Discrimination against Women (CEDAW) monitors States’ compliance with the Convention on the Elimination of All Forms of Discrimination against Women.
- The Committee Against Torture (CAT) monitors States’ compliance with the Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment.
- The Committee on the Elimination of Racial Discrimination (CERD) monitors States’ compliance with the International Convention on the Elimination of All Forms of Racial Discrimination.
- The Committee on the Rights of the Child (CRC) monitors States’ compliance with the Convention on the Rights of the Child (the Children’s Convention)

See *Making the Mountain Move: An Activist’s Guide to How International Human Rights Mechanisms Can Work for You*,

www.iglhrc.org/files/iglhrc/reports/unguide.pdf for an elaboration on the work of each of these committees.

While a committee is considering a State’s record and preparing its own judgment, it welcomes comments by NGOs on whether the State has complied with the treaty. Any NGO can submit such comments. These comments are called “shadow reports” because they “shadow” the report that the State itself submits to the committee.

It must be pointed out that within the general relationship of international and domestic laws, international human rights instruments occupy a singularly important position. This is largely due to the fact that a number of international human rights instruments provide for the right of individual petition or complaint. This allows certain individuals to lodge a petition or complaint with the relevant supervisory body to the effect that their individual rights have been infringed by the action or inaction of the State. This mechanism has proved over time to be a particularly important agent for change within signatory states (the prime example of this mechanism being the individual complaint system under the European Convention of Human Rights).

There are several reasons why advocates could consider bringing individual cases before international tribunals and courts. These include:

1. They may offer victims of human rights violations a remedy, which cannot otherwise be obtained from the State
2. They may help to set valuable precedents as regards the protection of the human rights of LGBT people as well as other groups
3. They may involve recognition of individual violations of human rights and as such both serve to shame the state in question and lend credibility to the issue being raised in the advocates' own country
4. They may help to tackle the impunity of state and by doing so lend moral support to those whose rights are being violated in different signatory states.

There are naturally a number of risks involved in litigation at the international or regional levels. Litigation can be a lengthy process (normally involving exhaustion of domestic remedies) and can involve discussion of complex legal arguments. Not all cases will be won, and some cases - perhaps due to poor fact patterns or because they are premature - can lead to negative judgments which set back advocacy efforts at the international or regional level.

Extra-conventional (or non-treaty based) mechanisms

Most of the "treaty-based" mechanisms move slowly. They document patterns of abuses, and remind States of their standing obligations. But they are not the best places to turn when an urgent situation arises - when someone faces immediate violence or danger, when you need to put quick pressure on a State to act. The "extra-conventional" mechanisms are the place to turn for more urgent action. Their name simply means that they are not tied to treaties, or "conventions" - they operate independently.

At the centre of the extra-conventional mechanisms is the UN Human Rights Council (established in 2006 to replace the overly politicized and heavily criticized UN Commission on Human Rights (1946-2006)) (see **Core Document 8**). Under the terms of General Assembly Resolution 60/251, the Human Rights Council is a subsidiary body of the General Assembly that reports directly to the General Assembly instead of ECOSOC (as the Commission did). It is composed of 47 member States elected in a secret ballot by an absolute majority of the General Assembly (as opposed to the previous Commission which had a rotating membership appointed by respective governments to represent their positions), taking into account candidates' contribution to the promotion and protection of human rights and voluntary pledges and commitments, and according to equitable geographic distribution amongst the five regional groups 13 States from the African Group, 13 from the Asian Group; six from the Eastern European Group, eight from GRULAC, and seven from WEOG. For a list of members see <http://www.un.org/ga/60/elect/hrc/>). After serving two consecutive terms, members are not re-eligible for election for one year. Any member that commits gross and systematic violations of human rights can be suspended by the General Assembly by a two-thirds majority.

This Council is the central UN forum for discussing human rights. It has assumed all the mandates, mechanisms, functions, and responsibilities of the former Commission and is required to maintain a

system of special procedures, expert advice, and a complaint procedure. It is expected to review these mandates, mechanisms, functions, and responsibilities in order to improve and, where necessary, rationalize them. The arrangements and practices of the Commission on NGO and NHRI (National Human Rights Institutions) participation are carried over to the Council, which is expected to ensure their most effective contribution. The Council will submit an annual report to the General Assembly, which is also required to review the status of the Council within five years of its creation. The Council met for the first time on 19 June 2006.

(See the International Service for Human Rights for more information on this, as well as a manual for NGO advocates written in the months of the HRC's inception in 2006 at <http://www.ishr.ch/>)

The principle ways that have been devised for getting information to the Council, and for the Council to respond to such information, are the Special Rapporteurs and Working Groups (the scope and function of the Working Groups are being reviewed and adjusted at the time of writing this Compilation of References, but can be looked at through the UN Human Rights Council webpage <http://www.ohchr.org/english/bodies/>). Special Rapporteurs can be written to and approached directly and advocates should be aware that this is often the most effective mechanism to get issues included, heard and included by the relevant Committee. This in turn can advance the particular concern in the domestic national setting, as making such submissions to a UN forum can have a shaming effect on the offending government, and the weight of UN official statement or sanction on the issue can create both pressure to act for the national government, as well as lend immense credibility to the advocates' claim. In the case of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur: Mr Paul Hunt (New Zealand), and the Secretariat is Ms Dragana Korljan (Tel: (41 22) 917 9721, Fax: (41 22) 917 9010, E-mail: <mailto:dkorljan@ohchr.org>).

One of the most important innovations of the new HRC is be the **Universal Periodic Review** (UPR) of governments' human rights records. All countries are subject to review under this process, which will be a major step away from the selectivity that so often afflicted the Commission on Human Rights in the identification of countries to be scrutinized.

The GA resolution creating the HRC provides the basic guidelines for the UPR: universality, objectivity, cooperation and interactivity.

As set out in the GA resolution, members of the HRC must be reviewed during their term of membership. Because the terms of the initial members will be staggered, those with the shortest terms should be reviewed first in order to complete their reviews during their abbreviated term of membership (see **Core Document 8** for how the information that comes into the UPR process is analyzed).

Advocates should be aware of a few other ways of approaching the Human Rights Council. One of these is called the '1503 procedure' as it was set up by the ECOSOC under Resolution 1503 and was last amended in 2000 (under the auspices of the Commission on Human Rights). This procedure allows for people to write directly to the Council, asking it to investigate patterns of human rights violations.

At the moment, anyone can write such a petition, but because there is currently a backlog of around 200,000 complaints on file, the Council will only get to a tiny percentage of these each year.

Another way to influence the Council is to actually testify at its meetings. Again, the relatively newly formed HRC is adjusting the mechanisms and regulations of such an approach, but essentially it sets aside time on each of its agenda items for NGOs to speak. Currently, this opportunity is only available to NGOs that have consultative status with ECOSOC (e.g. ILGA-Europe). However, many of those NGOs who do have consultative status may be willing to speak out on LGBT issues provided they fall within their own respective mandates.

This section is partially adapted from International Lesbian and Gay Human Rights Commission's

***Making the Mountain Move: An Activist's Guide to How
International Human Rights Mechanisms Can Work for You,***
www.iglhrc.org/files/iglhrc/reports/unguide.pdf

Timeline for sexual and reproductive health and rights references in the international context

Year	Mechanism	Organisation	Relevance
1948	Declaration	UDHR	Source of all future human rights documents
1966	Treaty	ICESCR	Defines and binds nations to respect health rights
1996	Treaty	ICCPR	Defines attendant conditions, such as privacy, which allow health
1965	Treaty	ICERD	Health in context of non-discrimination
1979	Treaty	CEDAW	Duty to protect the health of women
1989	Treaty	CRC	Nation's duty to protect health of children- education of parents, etc
1994	PoA	IPCD	Defines SRH in international context
1995	PfA	BEIJING	Defines SRHR and gender roles in relation to spread of HIV
1998	Guidelines	OHCHR/UNAIDS	Extensive mention of MSM re: human rights and HIV – core guidance document
2000	Policy	MDG	Sixth goal - reverse trend in spread of AIDS by 2015 – requires capacity building
2001	Declaration	UNGASS	Declares link between human rights and HIV/AIDS – stigmatisation, etc
2004	Comment	UNCHR (Spec Rapp)	Points to sexual orientation and reminds States of their duty to respect, protect and fulfil health rights
2004	Strategy	WHO strategy	5 key actions defined, MSM recognised, national failures and homophobia noted
2005	Resolution	CHR – res 2005/84	Resolution to push States to support HIV & human rights re SRHR
1946/ 2006	Resolutions	UNCHR/HRC	Urges States to put SRHR into their HIV prevention strategies and to fight HIV-related discrimination.

Language

Core definitions

Sexual health

Sexual health is a state of physical, emotional, mental and social wellbeing in relation to sexuality; it is not merely the absence of disease, dysfunction or infirmity. Sexual health requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination and violence.

(World Health Organization, 2004)

Sexual rights

Sexual rights embrace human rights that are already recognized in national laws, international human rights documents and other consensus statements. They include the right of all persons, free of coercion, discrimination and violence, to:

- *the highest attainable standard of sexual health, including access to sexual and reproductive health care services;*
- *seek, receive and impart information related to sexuality;*
- *sexuality education;*
- *respect for bodily integrity;*
- *choose their partner;*
- *decide to be sexually active or not;*
- *consensual sexual relations;*
- *consensual marriage;*
- *decide whether or not, and when, to have children; and*
- *pursue a satisfying, safe and pleasurable sexual life.*

The responsible exercise of human rights requires that all persons respect the rights of others.

(World Health Organization, 2004)

Further, according to Resolution E/CN.4/2004/49 [see **Core Document 15**, paragraph 54] (endorsement by the ECOSOC of the Special Rapporteur: Report on reproductive and sexual rights) *“Sexual rights include the right of all persons to express their sexual orientation, with due regard for the well-being and rights of others, without fear of persecution, denial of liberty or social interference”.*

Reproductive health

“Reproductive health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this last condition are the right of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods of their choice for the regulation of fertility which are not against the law, and the right of access to appropriate health-care services

that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant. In line with the above definition of reproductive health, reproductive health care is defined as the constellation of methods, techniques and services that contribute to reproductive health and well-being by preventing and solving reproductive health problems. It also includes sexual health, the purpose of which is the enhancement of life and personal relations, and not merely counselling and care related to reproduction and sexually transmitted diseases.” (Paragraph 7.2, of the Programme of Action of the International Conference on Population and Developmentt, 1994, **Core Documents 3** and **12**)

Reproductive rights

“Bearing in mind the above definition, reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents. ...” (Paragraph 7.3, of the Programme of Action of the International Conference on Population and Developmentt, 1994 Core **Documents 3** and **12**)

Sexual orientation

Sexual orientation refers 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;

Heterosexuality refers to those whose primary attractions are to people of the different sex. Such individuals are sometimes referred to as straight.

- *Homosexuality* refers to those whose primary attractions are to people of the same sex. Typically, men who are attracted to men are referred to as gay and women who are attracted to women are referred to as lesbians (though they may also identify as gay).
- *Bisexuality* refers to those who are attracted to both sexes; such individuals are often referred to as bisexual or bi.
- Some individuals avoid labels such as straight, gay, or bi and may refer to themselves as same-gender loving or use no label at all.
- *Queer* is now used more often as an all-encompassing term that refers to all individuals who defy sexual or gender norms, including transgender or transsexual individuals.
- *LGBT(IQ)* is also used to refer to those within this group and stands for lesbian-gay-bisexual-transgender (intersex and queer /or/ questioning).

Gender Identity

Gender identity refers 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;

The umbrella term **transgender** is used 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. ILGA-Europe is aware that the issues relating to intersex people can be significantly different and need to be addressed separately where relevant.

- **Transsexual** (or “trans”) persons are 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. Additionally, some people who are undergoing hormone therapy, but who do not intend to undergo surgery, also refer to themselves as transsexual.
- Transsexual women who were born biologically male are often referred to as *MTF*, which stands for male-to-female. Transsexual men who were born biologically female are often referred to as *FTM*, which stands for female-to-male.
- Transgender and transsexual people may identify as straight, gay, lesbian, bi or any other sexual orientation. In other words, sexual orientation and gender identity are independent of each other.

(The definitions presented here for sexual orientation and gender identity find source in definitions offered by the Centre for Women and Men at UCLA, <http://www.thecenter.ucla.edu/sexorien.html>)

MSM

MSM (men who have sex with men or ‘men having sex with men’, or ‘sex between men’) is 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. UNAIDS and other policy-makers use the term to describe one of four particularly ‘marginalized groups’ – the others being sex workers, injecting drug users and prison populations (UNAIDS Global Report 2006 – see **Core document 5**). While useful or strategic as a term (minimum offense to hetero-centered policy), it can also be used to avoid or deny a right to an identity. The equivalent term **WSW** does not appear in public policy documents, although it does in research – see **Supporting Document 7** – Amnesty’s *Women and HIV/AIDS*).

(MSM description adapted from texts from the Open Society Institute, 2007 <http://www.soros.org/>)

‘Coded’ references

The most commonly ‘coded’ references for LGBT populations in international documentation and referencing are as follows:

At risk populations (which include MSM, Sex Workers, Injecting Drug Users and Prison populations), At risk groups, Marginalized populations, Marginalized groups, High risk populations, High risk groups, Vulnerable groups, Vulnerable populations, MSM (men who have sex with men / men having sex with men, sex between men)

Lesbians, bisexual women and transgender persons' sexual and reproductive health and rights concerns are assumed under the *women's* and *gender equality* (or *discrimination based on gender*) headings, and sexual and reproductive health and rights are referred to without specifying the subject's sexual orientation or gender identity (i.e. a hetero-normative stance informs references for the most part).

Supporting Documents 72, 73 and 74
offer glossaries and usages of language from UNAIDS, UNESCO and the Panos institute.

Language – packed with values

For many years advocates in international fora have been promoting the inclusion of the term **sexual orientation** as part of a strategy to promote the recognition of the rights of LGBT. Since the 1994 *Toonen v. Australia* case (see **Core Document 7**), where the UN Human Rights Committee (HRC), which monitors State compliance with the International Covenant on Civil and Political Rights (ICCPR – see **Core Document 1.3**), ruled that sodomy laws punishing consensual adult homosexual conduct violate the rights to privacy and non-discrimination protected by the Covenant, many advocates and activists have been pushing for the term's inclusion in various other international fora, instruments and statements. In the case of *Toonen v. Australia*, the HRC held that the term "sex" in the ICCPR should be understood to include '**sexual orientation**', thereby ensuring that it too enjoyed protected status under the Covenant's equality clauses. It also noted that criminalization of homosexual practices hampered HIV prevention "**by driving underground many of the people at risk of infection**".

(see the Montreal Declaration, 2006

<http://www.declarationofmontreal.org/DeclarationofMontreal.pdf>)

The inclusion of this term has been highly controversial at the UN level not least because it has fed into an already acrimonious debate between different groups of States regarding a whole range of issues from the right to development, recognition of the rights of indigenous people, sexual and reproductive rights and racism. A number of UN member States, denying the existence of diverse sexual identities in their own cultures, have argued that the recognition of LGBT people runs contrary to their own societal, cultural and religious values. They have done so in terms which seek to dismiss the claims of LGBT people by associating them with Western traditions of individualism and decadence and casting themselves as the defenders of traditional values and the family. The fact that these countries have signed up to the Universal Declaration of Human Rights (1948 – see **Core Document 10**) does not preclude disagreement.

The first substantive discussion on sexual orientation at a UN forum took place in 1995 at the Beijing Conference on Women. The **draft** Platform for Action contained four references to sexual orientation, all of which were eventually deleted (at a notorious meeting that went until 4am on a Friday) because agreement could not be reached on their inclusion (33 States supported the inclusion and 20 objected).

Conservative States viewed the conference as being feminist-driven, representing a significant threat to traditional family models. Seeing this feminist agenda as anti-family, promoting homosexuality, allowing abortion on demand, and removing parental rights, they said the Platform appeared to be the vehicle through which feminist ideology would infiltrate governmental systems worldwide. For example, according to the Platform, gender roles are considered to be socially constructed, not innate. Furthermore, the majority of members at the Platform refused to define gender as either biologically male or female, thus allowing the inclusion of transsexuals by certain governments. The Platform also redefined the family by stating: "In different cultural, political and social systems, various forms of the family exist", thus paving the way for gay or lesbian partners to raise children as a family. The text also catered for reproductive rights, and undermined parental rights since it regarded children as

autonomous. Not surprisingly perhaps, the trend of recent UN human rights discourse to deconstruct and redefine the natural (traditional) family has prompted conservative NGOs to raise awareness to the supposed threats that this trend poses to society.

(The last three paragraphs are adapted from a paper *Irreverent or Irrelevant? The United Nations and Gay Rights*, by Lebanese diplomat Sami Zeidan, published in the Harvard Law School journal – The Record. <http://media.www.hlrecord.org/media/storage/paper609/news/2005/10/06/Opinion/Irreverent.Or.Irrelevant.The.United.Nations.And.Gay.Rights-1013429.shtml>)

Five years later in 2000, when Mary Robinson, UN High Commissioner for Human Rights, delivered a controversial statement substantially in favour of the right to free sexual orientation at the Beijing+5 review conference (see www.mwa.govt.nz/news-and-pubs/publications/international/beijing5.pdf – Supplemental Result) there was a revolt by many of the low- and middle income countries, expressed by the delegate from Pakistan who said that Western delegates were ‘holding the women of the world hostage to one term - sexual orientation - when their real needs are clean water and help in overcoming illiteracy’.

At the 59th session of the Commission on Human Rights in 2003, the Brazilian Government introduced a draft resolution on “Human Rights and Sexual Orientation”, which expressed concern at the occurrence of human rights violations against persons because of their sexual orientation, called upon States to promote and protect the human rights of all persons regardless of their sexual orientation and asked the High Commissioner for Human Rights and the Special Procedures to pay attention to the issue. The draft resolution did not attempt to create a new body of rights, but sought to reaffirm existing non-discrimination principles established under international human rights law. However, the draft faced strong opposition from the Organization of the Islamic Conference (OIC), and less vocally the Holy See, with the OIC proposing 55 amendments to the text (interestingly **Armenia** and **Ukraine** voted for inclusion of the term ‘sexual orientation’). Finally the Chair proposed that consideration of the draft be postponed until the following year.

In 2004, at the 60th session of the Commission, sexual rights had unprecedented visibility, but they also came under sustained attack. Issues of sexual autonomy, sexual orientation and sexual and reproductive health and rights were challenged at every turn, across four resolutions: extrajudicial, summary or arbitrary executions; violence against women; the right to everyone to the enjoyment of the highest attainable standard of physical and mental health, and human rights and sexual orientation; consideration of the latter was postponed until the 61st session in 2005.

At this 61st session, the Commission on Human Rights did not consider a resolution specifically on sexual orientation. However, many statements were made in support of non-discrimination on the basis of sexual orientation as well as in support of a specific resolution on sexual orientation. Notably, during the plenary debate under Item 17, New Zealand spoke on behalf of itself and 31 other countries stressing the need for action in this area and urging that the Commission “not be silent for too much longer” on matters of sexuality and non-discrimination on the basis of sexual orientation. Furthermore, during the High-Level Segment of the Commission, Canada’s address stressed the necessity to make progress in “fighting discrimination based on sexual orientation and gender

identity". Another significant development was the statement by Luxembourg under Agenda Item 6 stressing "the unacceptability of any discrimination based on sexual orientation" and its concern about continued human rights violations on the same basis.

On 15 March, 2006, the General Assembly adopted resolution A/RES/60/251 to establish the Human Rights Council (see **Core Document 8**). On 1st December, 2006, at the 3rd session of the HRC, the following joint statement on behalf of 54 States was delivered by Norwegian Ambassador, H.E Strommen:

I have the honour to make this statement on human rights violations based on sexual orientation and gender identity on behalf of the following 54 States... (including **Moldova** and **Ukraine**)

- At its recent session, the Human Rights Council received extensive evidence of human rights violations based on sexual orientation and gender identity, including deprivation of the rights to life, freedom from violence and torture.
- We commend the attention paid to these issues by the Special Procedures, treaty bodies and civil society. We call upon all Special Procedures and treaty bodies to continue to integrate consideration of human rights violations based on sexual orientation and gender identity within their relevant mandates.
- We express deep concern at these ongoing human rights violations. The principles of universality and non-discrimination require that these issues be addressed. We therefore urge the Human Rights Council to pay due attention to human rights violations based on sexual orientation and gender identity, and request the President of the Council to provide an opportunity, at an appropriate future session of the Council, for a discussion of these important human rights issues.

See full text (list of 54 countries, etc)

http://www.ilga.org/news_results.asp?LanguageID=1&FileCategory=44&ZoneID=7&FileID=944

In March 2007, a joint statement of LSVD Germany, ILGA-Europe and LBL Denmark was presented to the Human Rights Council (HRC). The High Commissioner's for Human Rights responded: "On a related question of discrimination, but from a different point of view, I'd like to address the issue that was put by the gay, lesbian, bisexual and transgender groups advocating the promotion of human rights in their environment. On that issue I wish to stress that all rights-holders are entitled to turn to their government to ensure their protection from violence, in particular from State-sponsored violence, and this principle of human security - protection of human life and security - suffers no exception, and has to be applied regardless of any personal characteristic, so that protection against violence, based in large part on prejudice, I think needs to be addressed by all governments. In the same way, it's incumbent on States to exercise restraint in the use of their criminal sanctions so as to not unduly invade rights of privacy"

Although the High Commissioner has been very supportive in the past, this is the first time that these issues have been addressed within the plenary chamber of the Council.

http://www.ilga.org/news_results.asp?FileID=1038

This account of the developments at the UN around the term "sexual orientation" since 1994, illustrates the scale of the challenge facing activists in getting sexual orientation overtly named (and

the distance that must be traversed before the words lesbian, gay, bisexual and transgender will be included) in international human rights instruments and standards, including those relating to sexual and reproductive health and rights. In the face of HIV/AIDS, it is hugely important that LGBT advocates can define for their own national governments where specific populations are being referred to in the international instruments so that lesbian, gay, bisexual and transgender people can play a central role in policies and practices in regards to their own health.

Sexual Orientation in the UN

Toonen v. Australia	1994	Word 'sex' in ICCPR interpreted to mean sexual orientation
Draft FWCW, Beijing	1995	Rejection of four appearances of the words 'sexual orientation'
Beijing+5	2000	Conservative states reject HCHR's call for free sexual orientation – debate occurs
UNCHR 59th session	2003	Debates and refuse Brazil's draft Resolution on human rights and sexual orientation
UNCHR 60th session	2004	Discussion postponed until next year
Special Rapporteur	2004	Resolution E.CN.4/2004/49 clearly identifies sexual orientation as a ground for discrimination re; HIV
UNCHR 61st session	2005	Unified call for specific resolution on sexual orientation made by 31 countries
Human Rights Council	2006	2006 Human rights violations re: sexual orientation – submission made by Norway (for 54 countries)
Human Rights Council	2007	HCHR responds at plenary session about the promotion of human rights for LGBT