

How to Promote and Protect the Human Rights of LGBT People - a toolkit for the FCO

"Nothing justifies the abuse of basic human rights and fundamental freedoms - neither culture, nor religion, nor tradition. The Government is committed to promoting human rights and fundamental freedoms in all its foreign policies as much as its domestic ones. We include the rights of gay, lesbian, bisexual and transgender people in these efforts."

Joint statement issued by Meg Munn MP (then DCLG Minister) and Ian McCartney MP (then FCO Minister) marking the international day against homophobia on 17 May 2007.

1. In December 2007, the FCO agreed a programme for promoting the human rights of lesbian, gay, bisexual and transgender (LGBT) people. That includes providing this guidance note to Posts on how they can implement the Programme in their work with host governments.

Who are LGBT people?

2. Lesbians and gay men are homosexuals, people whose sexual orientation is towards the same gender. Bisexuals are people whose sexual orientation is towards both genders. Transgender is the state of one's "gender identity" (self-identification as male, female, both or neither) not matching one's "assigned gender" (identification by others as male or female based on physical gender). "Transgender" does not imply any specific form of sexual orientation.¹
3. Sexual orientation is distinct from sexual activity. Sexual orientation is a sexual attraction towards others that may or may not involve sexual activity. Some people engage in sexual activity with others of the same gender without identifying themselves as being homosexual or bisexual.
4. LGBT people are found among all peoples. But among many peoples there are social, cultural, religious, legal or traditional restrictions on people being able to realise their sexual orientation or gender identity where this differs from the majority. This prevents LGBT people from living their lives openly and without discrimination, and from enjoying their human rights.

What are the human rights that concern LGBT people?

5. All human rights treaties (and many national constitutions) contain lists of protected rights. States are prohibited from violating these rights, as well as required to ensure that rights are given real effect, e.g. through national laws and administrative practices. All human rights treaties include a general prohibition on discrimination in their enjoyment, similar to that mentioned in Article 2 of the Universal Declaration of Human Rights. This states that:

¹ These terms were devised in Western States and are not used everywhere. But they are used for convenience in this toolkit.

"Everyone is entitled to all the rights and freedoms set forth in this Declaration, 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."

6. The UK position is that, just like all other human beings, LGBT people are entitled to enjoy the full range of human rights, without discrimination. But this attitude is not universally shared.

What specific human rights involving LGBT people are at stake?

7. While all human rights apply to LGBT people, some are of particular importance. The right to life is violated when LGBT people are murdered with impunity either by or with the connivance of the police or other security officials, as happens in a number of countries. LGBT people who are detained are sometimes subjected to torture, cruel, inhuman or degrading treatment. Freedom of expression is essential for LGBT people to argue in favour of ending discrimination in the content and application of the law.
8. Freedom of information is necessary both to obtain information from others about how to organise and campaign for equality, as well as medical and sociological information to enable people to protect themselves. Freedom of Association and Assembly are necessary for LGBT people to form organisations that work for self-help and equality, including through public manifestations, such as gay pride marches. The right to privacy is necessary to enable transsexuals to have their new gender recognised by law.
9. Religious belief is often used by some to justify discrimination, but freedom of religion guarantees to individuals the right to manifest their beliefs only to the extent that this does not violate the rights of others. Nothing in human rights treaties can be relied upon to deny others the equal enjoyment of their human rights.
10. Article 2 of the Convention on the Rights of the Child requires States to ensure that children do not suffer discrimination because of the status of their parents.
11. The right to work is essential to enable people to meet their basic needs and to lead a fulfilling life.
12. In 2006, a meeting of 29 human rights experts from 25 countries developed a set of international legal principles on the application of international law to human rights violations based on sexual orientation and gender identity to bring greater clarity and coherence to States' human rights obligations. These are known as The Yogyakarta Principles². The UK welcomed these as an important contribution to increasing understanding of these issues, but some of the Principles exceed current UK positions on human rights.

² Available at www.yogyakartaprinciples.org

Why does the FCO work for the human rights of LGBT people?

13. The UK record on promoting equality and non-discrimination for LGBT people domestically over the previous decade has brought an end to most discrimination in the content and the application of the law inside the UK. The Government has done this as part of its commitment to human rights, and particularly their enjoyment on the basis of equality and non-discrimination. The UK has also supported the efforts at EU level to ensure that all citizens of the EU enjoy equal rights.
14. The UK's commitment to promoting human rights as part of its foreign policy is an inclusive one. As we do not accept that there should be distinctions in the enjoyment of human rights at home, so we do not accept this elsewhere. We do not think that democratic governance and sustainable development can take place where groups of people are excluded from enjoying their human rights. In many countries, the laws regulating same sex relations remain unchanged from the British colonial period. The UK may be in a better position to influence change there than some other countries.

Do other countries also work for LGBT rights as part of their foreign policy?

15. Within Europe, Sweden and the Netherlands have specific foreign policies to promote the human rights of LGBT people. Other member states of the EU may not have specific foreign policies but they provide support through the EU common foreign and security policy, and in other international organisations.
16. The EU obtained competence to tackle discrimination on the grounds of sexual orientation when Article 13 of the Amsterdam Treaty came into force on 1 May 1999. Since then, the EU has addressed the issue in international fora such as the UN, and in regard to individual country situations through démarches co-ordinated by the Council Working Group on Human Rights, COHOM.
17. Outside Europe, Australia, Brazil and Canada have played a leading role in raising equality and sexual orientation at the UN. Brazil has also played a leading role in persuading Mercosur states (Argentina, Brazil, Bolivia, Chile, Colombia, Ecuador, Paraguay, Peru, Uruguay, Venezuela) to consider sexual orientation discrimination as a human rights issue. Argentina and Uruguay (along with Brazil) sponsored the launch of the Yogyakarta Principles. Altogether, some 60 countries have publicly supported positive statements concerning sexual orientation at the UN Commission on Human Rights/Human Rights Council between 2003 and 2008³. Of these, all except Turkey have also supported positive statements about gender identity.

³ Albania, Andorra, Argentina, Austria, Australia, Belgium, Bolivia, Bosnia, Brazil, Bulgaria, Canada, Chile, Colombia, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Germany, Greece, Guatemala, Hungary, Iceland, Ireland, Italy, Rep. Korea, Latvia, Lichtenstein, Lithuania, Luxembourg, Macedonia, Malta, Mexico, Moldova, Montenegro, Netherlands, New Zealand, Norway, Panama, Paraguay, Peru, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Timor Leste, Turkey, Ukraine, UK, Uruguay, USA, Venezuela

What practical steps can a Post take?

Support efforts of civil society to change laws and social attitudes by –

- Providing messages of support when requested;
- Providing public information on the situation of laws and practices regarding LGBT people in the UK;
- Encouraging The British Council to include LGBT information in its public information centres;
- Hosting occasional debates and seminars on relevant issues and including LGBT aspects and speakers;
- Ensuring that the LGBT aspects are included in local activities promoting British cultural life;
- Using Post funds to support civil society work for LGBT rights

Use international mechanisms

Suggest that visiting UN special rapporteurs, EU Special Representatives and equivalent figures from the Council of Europe, the OSCE and other regional human rights bodies, meet local NGOs that support LGBT equality and non-discrimination. Encourage local groups to include information on the situation of LGBT people in their alternative reports to regional human rights mechanisms as well as the UN bodies. Include such information in material for use in the Universal Periodic Review mechanism of the UN Human Rights Council.

Briefing to visiting UK dignitaries

Include information on the situation of LGBT people in briefing materials for visiting dignitaries and encourage them to raise the issue with local counterparts.

Charting LGBT rights

Use the analysis in Annex 3 to track the situation of LGBT people so as to identify progress and setbacks.

Champion for LGBT rights within EU CFSP

Posts should work alone and/or with other sympathetic EU member states (especially Sweden and the Netherlands) to ensure that the issues relevant to LGBT rights are adequately addressed through CFSP. Such action could include suggesting démarches on egregious human rights abuses. Some member states may actively resist this for their own ideological reasons.

Correct information in EU HOMs Report

Ensure that the EU heads of mission report on human rights in your country is an accurate reflection of the legal and social situation, and that, when updated, it identifies any trends towards equality.

Use political dialogue to raise LGBT rights

Raise more general issues of equality and non-discrimination in the domestic implementation of human rights standards during regular political dialogue, including under the EU's Partnership and Co-operation Agreements, and the Cotonou Agreement.

Co-operation with DFID

In some countries DFID has programmes that include LGBT people, whether as part of HIV/AIDS prevention or the socially excluded. Posts could work with DFID to help address the underlying causes and support their efforts.

Co-operation in multilateral fora

Posts working with multilateral fora should join with like-minded States to identify opportunities to advance LGBT equality in the enjoyment of human rights.

ANNEX 1

How are the rights of LGBT people interpreted under international human rights law?

- a) In recent years, several of the international bodies responsible for monitoring and adjudicating international human rights treaties have interpreted the non-discrimination clause in these treaties to include sexual orientation.
- b) In 1994, the **UN Human Rights Committee** (established under the International Convention on Civil and Political Rights) examined the law of Tasmania forbidding male homosexual acts for its compatibility with Article 17 of the ICCPR. This forbids "arbitrary or unlawful interference" with privacy. The Committee decided that this law was "arbitrary", as it did not meet the test of reasonableness. More importantly, it held that the term "sex" in Article 26 ICCPR, which requires equality and non-discrimination in the law, "is to be taken as including sexual orientation."⁴
- c) The Committee now regularly scrutinises States Parties compliance reports in the light of this interpretation, which has also been increasingly followed by other UN bodies such as the UN Committee on Torture and the UN Working Group on Arbitrary Detention.
- d) In taking this decision, the Committee followed the jurisprudence of the **European Court of Human Rights**. In 1981, the Court ruled that the law in Northern Ireland criminalising male homosexual acts was an unreasonable interference in private life. It stated that hostility on moral grounds towards male homosexuality was not a sufficient ground to justify prohibition, as tolerance and broadmindedness are characteristics of a democratic society to which it had to have regard.⁵ In subsequent years, it has ruled against discrimination in the age of consent to sexual activity, discharging people from the armed forces because of their sexual orientation, refusing child custody to a father because of his sexual orientation, and refusing to allow a same sex partner to inherit a tenancy in circumstances where an opposite sex partner could do so.
- e) In 2002, the Court ruled that a transgender person who had undergone gender reassignment was entitled to have this change recorded in her birth certificate, and was entitled to marry in her new gender.⁶
- f) There are no decided cases under the **American Convention on Human Rights** or **African Charter on Human and Peoples' Rights** relating to discrimination on the grounds of sexual orientation at present.
- g) The **International Labour Organisation (ILO)** in 1998 agreed a Declaration on Fundamental Principles and Rights at Work. Principle four requires ILO members to promote and realise the elimination of discrimination in respect of employment and occupation. The ILO includes discrimination on the ground of sexual orientation in this principle.

⁴ Nicholas Toonen v. Australia, Opinion of 4 April 1994

⁵ Jeffrey Dudgeon v. UK Judgment of 22 October 1981

⁶ Christine Goodwin v. UK Judgment of 11 July 2002

Can discrimination on the grounds of sexual orientation ever be justified under international human rights law?

- h) For discrimination (i.e. a difference in treatment) to be permitted by law, it has to be based on "reasonable and objective criteria". What such criteria might cover is still evolving under international human rights law, which is a living instrument that is constantly being developed by judicial bodies. Courts have repeatedly stated that where sexual orientation is in issue, there is a need for particularly convincing and weighty reasons to justify a difference in treatment.
- i) In 2003, the **UN Human Rights Committee** decided⁷ that the law restricting an army pension to a heterosexual spouse or a heterosexual couple living as partners, and which excluded homosexual couples, violated Article 26 ICCPR as it had no objective and reasonable justification. The State did not attempt to justify the difference in treatment. In 2007, the Committee followed this decision in another case⁸ by deciding that a provision in Colombian law that did not permit the transfer of pension benefits between homosexual partners (unlike heterosexual partners) also violated Article 26. The Committee rejected the State's argument that it was trying to protect heterosexual unions rather than to discriminate against other types of union.
- j) The **UN Special Rapporteurs** have increasingly included specific reference to the human rights of LGBT people in their reports. In 1999, the Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions, Asma Jahangir, was the first to include individual cases of severe persecution of sexual minorities in her reports to the UN Commission on Human Rights. In consequence, some members of the Commission accused her of going beyond her mandate. She has continued to investigate violations of the right to life of sexual minorities in her reports and missions to various countries. Ms Jahangir has studied issues such as the climate of impunity surrounding crimes against LGBT people, laws prescribing capital punishment for homosexual relationships, and the link between violence and the criminalisation of matters involving sexual orientation.
- k) In 2001, the Special Rapporteur on Freedom of Expression, Abid Hussain, held a groundbreaking meeting with transgender activists while on an official mission to Argentina. In November, 2001, the Special Representative on Human Rights Defenders, Hina Jilani, met with Colombian LGBT organisations working with members of sexual minorities, people living with HIV/AIDS and sex workers during her stay in the country. Also in November 2001, the then Special Rapporteur on Torture, Sir Nigel Rodley, raised the issue of torture and discrimination against sexual minorities for the first time before the UN General Assembly in New York. The Special Rapporteur on the Right to Health, Paul Hunt has also explored the issue of sexual orientation discrimination in some of his annual reports (notably the 2004 Report to the UN Commission on Human Rights⁹). Although the reports of UN Special Rapporteurs do not carry the same weight as decisions of the UN Human Rights Committee or Courts, they are nonetheless useful as tools to interpret

⁷ Young v. Australia, Communication no. 941/2000;

⁸ X v. Colombia, Communication no. 1361/2005

⁹ E/CN.4/2004/49

human rights standards.

Approaches to "discrimination" within regional human rights bodies

- l) In Europe, in applying the reasonable and objective test, the **European Court of Human Rights** has condemned discrimination on the grounds of sexual orientation usually when considering the right to respect for private life¹⁰, but not when considering the right to respect for family life¹¹.
- m) Within the **European Union**, there is a general prohibition on discrimination on the grounds of sexual orientation in employment¹². Article 21 of the 2000 **Charter of Fundamental Rights of the European Union** calls for the prohibition of any discrimination, including on the ground of sexual orientation. But this Charter is not yet binding on member states. As regards the legal recognition of same sex partnerships, the situation within the EU is still evolving. Three member states have the right to marry (Belgium, the Netherlands, Spain). Nine member states have legal partnerships that mirror marriage (Czech Republic, Denmark, Finland, Germany, Hungary, Portugal, Slovenia, Sweden, UK). Two member states have civil contracts (France, Luxembourg). The remaining thirteen member states have no legal provisions.
- n) Under the American Convention of Human Rights, the **Inter-American Commission of Human Rights** declared admissible a complaint against Colombia about prison rules that allowed conjugal visits for unmarried heterosexual couples but not homosexual ones.¹³ But the case did not go on to a full hearing as the Supreme Court of Colombia overturned the prohibition on homosexual conjugal visits in October 2001 on the ground that it was unlawful discrimination.
- o) This brief survey demonstrates that laws that impose a blanket prohibition on consensual homosexual activity are not compatible with international human rights law. Where legal discrimination exists, the onus is on the State to prove that it is reasonable and objective. This is an evolving area of law but the trend is to limit the scope of discrimination.

¹⁰ Discrimination in the age of consent for male sexual acts - Sutherland v. UK (1996)
Discharging homosexuals from the armed forces - Lustig-Prean & Beckett v UK (1999)
Refusing child custody to a father because of his sexual orientation - Salgueiro Da Silva Mouta v. Portugal (1999)

Refusing to recognise the gender status of transsexuals - Goodwin v. UK (2002)
Refusing to recognise a surviving same-sex partner as a "life companion", akin to a spouse, who could inherit a tenancy - Karner v. Austria (2003).

¹¹ Refusing recognition of a female-to-male transsexual as the legal "father" of his partner's child conceived by AID - X, Y & Z v. UK (1997); Refusing to allow a gay man to adopt a child - Frette v. France (2002), although where domestic law does allow single parent adoption, an adverse decision based on sexual orientation would violate Article 8 – EB v. France (2008). This issue is the subject of a case pending (May 2008) before the Court – Schalk & Kopf v. Austria.

¹² Council Directive 2000/78/EC. In the Maruko case, the European Court of Justice ruled that this directive required that any benefits connected with employment had to apply equally to homosexual as to heterosexual couples where there is legal recognition of such couples in a member state – judgment of 1 April 2008.

¹³ Marta Lucia Alvarez Giraldo v. Colombia Report 71/99

ANNEX 2

Some common questions you may meet and suggested lines for answers

Q. Why should we allow homosexuality here, as it is a Western practice?

A. Homosexuality exists among all people and has done so since the start of recorded history. It was not something invented, or is only practised, in Western countries.

Q. Our culture and traditions do not accept homosexuality.

A. Customs and traditions are constantly changing with time, in the light of new knowledge and understanding. This happens everywhere. Once women were treated as inferior to men in every culture and tradition, but very few have that attitude nowadays. Culture and tradition cannot justify denying people their human rights.

Q. Our laws are based on traditional beliefs and should continue to reflect these.

A. Governments should lead their people and not simply follow public opinion. For example, many countries once tolerated female circumcision, but nowadays all governments are leading their people to reject this - by making it illegal, by educating them and by publicity. International human rights treaties provide for the equal treatment under the law of people who have different characteristics – such as race, gender, ethnic origin, and so on. This includes sexual orientation. So human rights provisions require that States work to end legal discrimination on the grounds of sexual orientation.

Q. If we accept these changes, we will open the door to immorality.

A. Human rights do not depend on - and are not subject to – different interpretations of morality. In any event, immorality is a changing concept. For example, slavery was once considered to be morally acceptable and was lawful in most countries, including the UK. But nowadays all countries regard slavery as totally immoral and have outlawed it.

Q. If we allow homosexuality, we will be encouraging the spread of HIV/AIDS.

A. HIV is transmitted in several different ways. In many parts of the world, for example, transmission of the virus is overwhelmingly through heterosexual sex. The evidence from medical experts, accepted by the UN WHO, is that it is more difficult to prevent the spread of HIV if people who are at risk - including gay and bisexual men who do not practise "safe sex" - are deterred from getting tested if their relationships are outlawed. Legally banning gay sex won't stop it happening, but it will increase the risk of people not hearing the message about safe sex.

Q. Our religion forbids homosexuality/bisexuality/ transgenderism, and our laws reflect our religion.

A. Religions require their own adherents to do or refrain from specific things, but these requirements do not apply to people of other faiths or of no faith. The law should guarantee the same rights to everyone in the territory. Your State has committed itself to guarantee human rights to everyone. If people of any religion choose not to exercise their rights, that is their business. But if LGBT people– including those of your religion – wish to exercise their rights they should be able to do so.

Q. Accepting this will undermine marriage, which is the cornerstone of our society.

A. Recognising the human rights of one group of people does nothing to undermine the human rights of others. The right of people to marry will not be affected in any way, so it is difficult to see how marriage can be undermined in such circumstances. No one should be pressurised into unwanted marriage; that is not likely to lead to a successful marriage.

ANNEX 3 Analysis of situation regarding LGBT human rights issues

Human Rights Issue	Indicators	Sources of information
1. Right to privacy		
1.1 Is criminal law used to penalise consenting same sex relations?	Do police arrest people on suspicion of same sex relations? Are people tried and punished for such relations?	Criminal code; newspaper reports; crime statistics; NGOs, Blogs and Websites
1.2 Are other laws concerning morality or public order used to outlaw same sex relations, de facto?	Do the authorities raid private parties, or prevent people advertising for companions on internet sites?	Newspaper reports; NGOs; criminal code; associations of lawyers.
1.3 Are there differences in the age of consent for heterosexual and homosexual acts? Are these enforced?	Are there investigations and/or prosecutions? Do young people under the age of consent get punished for same sex acts where they would not be for sexual acts with the opposite sex?	Newspaper & website reports of court cases; NGOs; criminal codes; police reports.
1.4 Can transgender people change their gender designation in official documents?	Does the law and/or administrative regulation permit this?	Official registration agencies. LGBT NGOs.
1.5 Can transgender people marry in their reassigned sex?	Does the law on marriage permit this?	Legal associations. Officials authorised to conduct marriages.
2. Right to Association		
2.1 Can LGBT people establish associations to represent their interests?	Does the law forbid such associations? If not, are they effectively outlawed by official harassment? Does membership involve any adverse consequences for the members? Do associations feel obliged to conceal their true vocations by using euphemisms?	Law on NGOs/associations. Existence of websites. Reports of NGOs. Trades Unions.
3. Freedom of Assembly		
3.1 Can LGBT associations organize public events, like Gay Pride Marches or cultural or social events?	Do such events take place without excessive official obstacles? Do the police protect the events if there is public hostility? Is pressure put on owners not to hire premises for LGBT	News reports; NGO reports; websites of local civil liberties/ LGBT groups;

	events?	
4. Freedom of Information & Expression		
4.1 Does the law permit journals/websites/radio/TV programmes/films that feature LGBT subjects? Can these effectively operate?	Are journals available on public sale? Can radio, TV shows & films feature aspects of LGBT life? Is reporting LGBT issues intended to be informative or to incite hatred? Is there official pressure on distributors and broadcasters to discourage positive images of LGBT people?	Appearance on newsstands around the country. Newspaper & Website reports. Human rights & LGBT NGO reports. Discussions with media groups.
4.2 Do educational institutions provide objective information on sexual orientation & gender identity?	Does sex education in schools deal with this? Do text books include such information?	Teachers' Associations. Ministry of Education. Student Unions, Trades Unions
5. Right to Work		
5.1 Do people who are known, or suspected, to be LGBT suffer legal discrimination in the right to work?	Do LGBT people have to hide their sexual orientation/gender identity at the workplace? Are they lawfully dismissed if their LGBT status is discovered? Is there any legal protection against discrimination on the ground of sexual orientation?	Newspaper and website reports. LGBT groups & blogs. Trades Unions.
6. Right to health		
5.1 Do LGBT people enjoy equality in access to health facilities for issues relevant to them?	Is there adequate information on HIV/AIDS/STD prevention targeting LGBT people? Are some health services denied to LGBT people, e.g. reproductive health care for lesbians?	LGBT groups; professional medical associations; Ministry of Health.
5.2 Can transgender people obtain health care appropriate to their condition if it is available?	Are psychiatrists and doctors permitted to assist transgender people to change their gender?	Ministry of Health; professional associations of doctors and psychiatrists; patient organisations; LGBT groups.

Information resources on the Web

www.ilga.org

Website of the International Lesbian and Gay Association, a network of LGBT groups around the world. ILGA also has regional organisations with their own websites:

www.africa-ilga.org

www.america-latina-caribe.ilgo.org

www.asia.ilga.org

www.ilga-europe.org

www.ai-lgbt.org

Website of Amnesty International LGBT network

www.hrw.org/doc/?t=lgbt

Website of Human Rights Watch LGBT issues

www.mask.org.za

Website with focus on LGBT issues in Africa

www.icj.org/news_multi.php3?id_groupe=3&id_mot=447&lang=en

Website of the International Commission of Jurists, with many documents relating to LGBT and human rights.

www.iglhrc.org

Website of the International Gay & Lesbian Human Rights Commission

http://www.coe.int/t/commissioner/default_en.asp

Website of the Council of Europe's Commissioner for Human Rights, who has an adviser sexual orientation issues in his office.

www.pinknews.co.uk

Website of English-language e-news that has both international and national news about LGBT issues

Other websites of international organisations that are also working on issues concerning LGBT equality are:

www.osce.org

The Organisation for Security and Co-operation in Europe

www.ohchr.org

The Office of the UN High Commissioner for Human Rights