

Antidiscrimination Legislation

April 1999
a worldwide summary

1. What do we mean by discrimination?

Discrimination occurs when governments, institutions, or individuals treat people differently based on their personal characteristics--such as (but hardly limited to) sex, sexual orientation, gender identity, racial or ethnic identity, age, or health (including HIV status). Discrimination can be *direct*-- an explicit policy or law which generates unequal treatment; or it can be *indirect*--an implicit side-effect of another policy or decision.

2. What is the position of international law on discrimination?

The Universal Declaration of Human Rights (UDHR, 1948)--the first and fundamental international instrument setting forth a body of protected rights--contains two provisions addressing discrimination. Article 2 states:

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.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 7 is broader. It lists no specific set of characteristics on the basis of which discrimination is banned (a list which might imply that other forms of discrimination may be acceptable). It also prohibits *any* form of discrimination--not just discriminatory enjoyment of the rights specified in the Declaration:

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Most (though not all) international human-rights treaties contain provisions similar to these. No such treaty specifically mentions "sexual orientation" anywhere in its text. However, a 1994

decision by the United Nations Human Rights Committee, *Nicholas Toonen v. Australia*, held that "sex"--in a list of protected categories in the International Covenant on Civil and Political Rights, similar to that in Article 2 of the UDHR--should be understood to include "sexual orientation."

3. Which nations offer protection from discrimination based on sexual orientation?

The following table, while thorough to the best of our knowledge, is not meant to be comprehensive. If you have additional information, please forward it to IGLHRC.

Countries	Legal provision	What	What protections are offered?
Australia			
Capital	Anti-discrimination	Heterosexuality.	Protection against discrimination in
State of New	Anti-Discrimination	Homosexuality.	Protection against discrimination in
Northern	Anti-Discrimination	Sexuality	Part I (3) states as an object of the

			discrimination.
State of Queensland	Anti-discrimination Act (1991)	Heterosexuality, homosexuality, bisexuality	<p>Protection against discrimination in work, education, provision of goods, services and facilities, accommodation.</p> <p>Complaints are mediated by the Anti-Discrimination Commission which plays the role of a mediator and conciliator between the claimant and the person or service accused of discrimination. The aim is to find a solution that is fair to both sides involved in the conflict.</p> <p>Victimisation of the claimant such as harassment or threats coming from the other side are subject to heavy penalties.</p>
State of South Australia	Equal Opportunity Act (1984)	Homosexuality, bisexuality, transsexuality	Protection against discrimination in employment, education, provision of goods and services, accommodation.
State of Tasmania	Anti-Discrimination Act (1998)	Sexual orientation	Protection against discrimination. Prohibition of incitement of hatred or severe ridicule of a person or group on one of the protected grounds.
State of Victoria	Equal Opportunity Act (1995), Part 2, Section 6	Lawful sexual activity Marital status	Discrimination is unlawful in employment, education, accommodation, sport, local government. A Commission is responsible for conciliation between the claimants and the respondents of discriminatory behaviour. Cases which cannot be settled by conciliation can be referred to the Tribunal.
Brazil			
State of Mato Grosso	Constitution, Article 10.3(1989)	Sexual orientation	Protection against discrimination
State of Sergipe	Constitution, Article 3.2(1989)	Sexual orientation	Protection against discrimination
Canada	Canadian Charter of Rights and	Sexual orientation	The Charter reads: Every individual is equal before and under the law and

	Freedoms Section 15(1), (1982)	included by court decision	has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. In <i>Egan v. Canada</i> (1995), the Canadian Supreme Court recognized sexual orientation as a ground analogous to those explicitly protected.
	Human Rights Act (1996)	Sexual orientation	The law forbids discrimination by federally regulated employers, landlords and services. It applies to the federal government, banks, broadcasters, the telephone and telecommunications industry, railways, airlines, shipping, and inter-provincial transportation.
<i>Comment:</i> <i>Canada</i>	Prince Edward Island is now the only province that does not protect gays and lesbians from discrimination. All other provinces have amended their human rights legislation to comply with the Federal Human Right Act and Charter of Rights. Most recently, the Canadian Supreme Court declared in <i>Vriend v. Alberta</i> (1995) that Alberta has to include sexual orientation in the non-discrimination clause of its Constitution. In <i>Rosenberg v. Canada</i> (April 98), the Ontario Court of Appeals struck down a federal income tax provision which denied pensions to same sex couples; the Federal Government did not appeal.		
Colombia	Case brought by the lawyer German Humberto Rincn Perfetti (Sept. 98)	Homosexuality	The Constitutional Court overturned as discriminatory a 1979 law which made a teachers homosexuality grounds for dismissal.
Costa Rica	Law No 7771, Art. 48	Sexual option	Protection against discrimination: Whoever practices any form of discrimination, based on race, nationality, gender, age, political option, sexual orientation, social position, or economic situation, marriage status, or diseases will be sanctioned by the law with twenty to sixtv days in jail

Denmark	Penal Code (1987)	Sexual orientation	Act 626 of 1987, Article 266b, declares that Persons who publicly or deliberately disseminate statements or other reports by which any group of people are threatened, ridiculed or degraded on account of their racial origin, skin colour, national or ethnic origin, beliefs or sexual orientation, are liable to fines, short-term detention or imprisonment for up to two years. The same law changed an anti-discrimination provision to include sexual orientation, imposing a punishment of fines, short-term detention, or imprisonment for up to six months.
	Act 459 (1996)	Sexual orientation	However, it was not until 1996 that Denmark introduced a law banning such discrimination in the private labor market. The law (Act 459, 1996) forbids an employer to discriminate against an employee or a person seeking employment on hiring, firing, replacement, promotion, salary or other work conditions. It further it forbids discrimination with regard to access to education and training and in-service-training .
Ecuador	Constitution (1998), Article 23	Sexual orientation	Equality before the law is guaranteed to all citizens regardless of their birth, age, sex, ethnicity, color, social origin, language, religion, political affiliation, economic position, sexual orientation, health status, disability, or difference of any kind.
Fiji	Constitution, Section 38(2) of the Bill of Rights (1998)	Actual or supposed [...] sexual orientation	Equality before the law: A person may not be unfairly discriminated against, directly or indirectly, on the ground of his or her: (a) actual or supposed personal characteristics, including race, ethnic

			<p>origin, colour, place of origin, gender, sexual orientation, birth, primary language, economic status, age or disability; or (b) opinions or beliefs, except to the extent that those opinions or beliefs involve harm to others of the diminution of the rights and freedom of others; or on any other ground prohibited by this Constitution.</p>
Finland	<p>Constitution (1995), Section 5</p>	<p>Any other reason related to the person</p>	<p>All persons shall be equal before the law. No one shall, without acceptable grounds, be accorded a different status on account of sex, age, origin, language, religion, conviction, opinion, state of health, disability or any other reason related to the person.</p> <p>The text accompanying the Government bill cited sexual orientation as an example of an other reason related to the person. This explanatory text also stressed that not all instances of prohibited discrimination are mentioned in the Constitution itself, and the list is not to be deemed exhaustive.</p>
	<p>Penal Code (1995), Section 9</p>	<p>Sexual preference</p>	<p><u>Discrimination:</u></p> <p>Any person who, without a good reason, in exercising their trade or profession, serving the general public, exercising official authority or other public function, or arranging public events or meetings:</p> <ol style="list-style-type: none"> 1. refuses someone service generally accorded; 2. refuses someone entry to the event or meeting or ejects them; or 3. places someone in an unequal or an

			<p>essentially inferior position</p> <p>on grounds of race, national or ethnic origin, color, language, gender, age, family ties, sexual preference, state of health, religion, political orientation, political or industrial activity or another comparable circumstance shall be sentenced, unless the act is punishable as industrial discrimination, for discrimination to a fine or to up to six months imprisonment.</p>
Finland (cont)	Penal Code (1995), Chapter 47, Section 3	Sexual preference	<p><u>Labor Offences:</u></p> <p>Employment discrimination: Any employer or representative acting for an employer who, without good reason, discriminates against a jobseeker when advertising a vacancy or recruiting staff or against an employee</p> <ol style="list-style-type: none"> 1. on grounds of race, national or ethnic origin, colour, language, gender, age, relations, sexual preference or state of health; or 2. on grounds of religion, political opinion, political or industrial activity or a comparable circumstance, shall be sentenced for employment discrimination to a fine or up to six months imprisonment.
France	Penal Code (1985) and Code of Labor (1986, 1990)	Moeurs (lifestyle)	<p>Discrimination on the basis of lifestyle has been prohibited in employment or service, public or private, since 1985 (Art. 225-1,2 of the Penal Code). No one may be denied employment or dismissed from it on grounds of his or her lifestyle (moeurs). No hiring procedure may use information on the lifestyles of applicants (Code du travail, Articles L. 122-45, L. 121-6). An</p>

			<p>emergency redress procedure, for use in instances of infringement of individual liberties at the workplace, was created in 1992 (Code du travail, Art. L. 422-1-1).</p> <p>France currently has no law protecting gays and lesbians as a group from verbal hatred on grounds of their sexual orientation. Only natural and legal persons are protected by an anti-defamation law. By contrast, verbal hatred on grounds of racial or ethnic origin, nationality or religion is forbidden by law (Art. R-624-3,4,7 of the penal code).</p>
Iceland	Penal Code (1996)	Sexual orientation	The law criminalizes actions that defame , slander, humiliate, or degrade a person or a group because of sexual orientation, in addition, it is illegal to deny goods or services based on a persons sexual orientation.
Ireland	Prohibition of Incitement to Hatred Act (1989)	Sexual orientation	The law creates a number of offences outlawing stirring up hatred against groups or persons on the grounds of certain characteristics, including sexual orientation. It is an offence to publish or distribute materials or use words or behavior which are threatening, abusive or insulting and are intended or, having regard to all the circumstances, are likely to stir up hatred. There is a similar provision in the Video Recordings Act.
	The Unfair Dismissals (Amendment) Act (1993)	Sexual orientation	Prohibits dismissal on the grounds of an employees sexual orientation.
	The Health Insurance Act (1994)	Sexual orientation	Provides that premiums payable under health insurance contracts shall not vary owing to the age, sex or sexual orientation of a person, or his or her

			suffering or prospective suffering from a chronic disease, illness or other medical condition.
Israel	Equal Opportunities in Employment Act (1992)	Sexual orientation	Prohibits discrimination against employees and job applicants.
Luxembourg	Penal Code, Art. 454-457 (1997)	Sexual orientation	<p>The list of non-discrimination categories in <u>Article 454</u> of the Penal Code also contains sexual orientation.</p> <p>The following kinds of discrimination based on one of these categories, directed at physical or legal persons, groups ,or communities of persons, are illegal according to Article 455 and punishable by prison terms of between eight days and two years, or fines between 10,001 and 1,000,000 Luxembourg Francs: to refuse the provision of goods and services, to publicly announce to deliver goods and services under certain restrictions relevant to Article 454, and to impede the normal performance of any economical activity.</p> <p><u>Article 455</u> also covers discrimination in the labor market, imposing the same punishment on anyone who discriminates against a person on the grounds listed in Article 454 with regard to hiring, promotion, and dismissal of employees. Additionally, it is forbidden to restrict an offer of employment in a way relevant to Article 454.</p> <p><u>Article 456</u> provides for punishments-- which are one-third higher than those provided in Articles 444 and 455--for discrimination committed by civil servants in performance of their</p>

			<p>functions, or by persons charged with a public mission who are in performance of this mission.</p> <p><u>Article 457</u> of the penal code regulates hate crimes. It provides the same punishments as Article 455 for any public form of incitement to the crimes prohibited by Article 455, or to hate and violence against individuals or groups characterised by one of the attributes protected under Article 454.</p>
The Netherlands	Constitution, Article 1 DC (1983)	Any grounds whatsoever	All forms of discrimination are prohibited, although neither the term sexual preference nor any synonym was explicitly mentioned as grounds for protection . However, other parliamentary documents and legal precedents place sexual orientation under the protection of the first article of the Constitution
	Penal Code (1992) Articles 137c, d, e and f Article 429quater	Homosexual and heterosexual orientation	<p>In 1992, the terms homosexual and heterosexual orientation were added to the existing articles on racial discrimination. As a result, mistreatment and inciting discrimination, as well as violence targeted at an individual because of his or her homosexuality (or heterosexuality), are an offence. The same applies to publicly expressed discriminatory remarks, as well as to participating in or encouraging discrimination.</p> <p>Discrimination based on sexual orientation by a person in the performance of his/her public function, profession or business is also banned.</p>
	The General Equal Treatment Act (1994)	Homosexual and heterosexual	The law prohibits discrimination on the grounds of an individuals religion, belief, political conviction, race, sex,

		orientation	<p>heterosexual or homosexual orientation or civil status in the fields of labour, housing, medical care and access to goods and services.</p> <p>Individuals can seek redress from discrimination based on the above grounds through the <u>Equal Treatment Commission</u>. Unequal treatment is illegal in any area related to work, in offering goods and services, and in receiving advice about educational and career opportunities.</p>
New Zealand	Human Rights Act, section 21 (m) (1993)	Sexual orientation	Offers protection in employment, education, access to public places, provision of goods and services, housing, and accommodation. Property rights accorded heterosexual common-law relationships do not apply to same sex couples.
Norway	Penal Code, Paragraph 135a (1981)	Sexual orientation	<p>The law states that anyone who in any way publicly spreads information that threatens, insults, or spreads hatred, persecution, or contempt toward any person or group of persons because of their religious faith, race, colour of skin, or their national or ethnic origin, as well as sexual orientation, can be fined or received a prison sentence of up to two years in prison.</p> <p>This clause has been employed once since its passage: in a case ultimately decided by the Norwegian Supreme Court, a minister of a conservative church was sentenced to 30 days in prison, for stating in a radio program that lesbians and gay men should be removed from all federal and government employment.</p>
	Work Environment Law (Clause	Sexual orientation	The anti-discrimination clause applies both to private and public labour

	added in 1998)		<p>market and protects employees against dismissal because of unfair discrimination.</p> <p>Additionally, Clause 55a gives anyone the right to appeal if they believe that they have been denied employment on the grounds of unjustified discrimination. However, the burden of proof lies on the would-be employee and even if the court decides in favour of the employee , no financial compensation can be claimed. This is the case for all plaintiffs in discrimination cases, whether or not based on sexual orientation.</p>
Slovenia	Penal Code (1996) Article 141	Sexual orientation	Sanctions with a fine or up to one year of prison to anyone who denies someone his human rights or fundamental freedoms recognized by the international community or set by the Constitution or a law because of a difference in nationality, race, colour, religion, ethnic background, gender, language spoken, political or other persuasion, sexual orientation, material status, birth, education, social status or any other personal circumstance.
	Law About Work Relations, Article 6 (1998)	Sexual orientation	<p>Article 6 states: "Employer may not put employment-seeker in unequal position because of his/her race, skin colour, gender, age, medical condition, religious, political or other belief, membership in an union, national or social origin, family status, wealth status, sexual orientation or other personal circumstances".</p> <p>The law also explicitly sanctions same-sex harassment in workplace.</p>
South Africa	Constitution (1996)	Sexual orientation	Section 9--the Equality Clause--of the Bill of Rights reads: The State may not

	<p>Bill of Rights and Equality Clause</p> <p>_@</p> <p><i>South Africa was the first country in the world to include sexual orientation in its constitution as a protected category</i></p>		<p>unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth.</p> <p>The Equality Clause bans private-sector discrimination, specifying that No other person may unfairly discriminate directly or indirectly against anyone on one or more of the [above] grounds.</p> <p>In October, 1998, South Africa's highest court, the Constitutional Court, declared sodomy laws unconstitutional on the basis of the Equality Clause, finding them to violate basic rights to dignity and equality as well as privacy. Further challenges to discriminatory treatment before the law are underway.</p>
<p>Spain</p>	<p>Penal Code (1995)</p> <p>Articles 22, 314, 510, 511, 512, 515</p>	<p>Sexual orientation</p>	<p>Protection against discrimination is provided in the following areas:</p> <p>--an additional penalty is imposed for crimes involving discrimination on the grounds of race, antisemitism, or any other discrimination based on the ideology, religion or creed of the victim, as well as their ethnic or racial origin, sex, or sexual orientation, health, or disability status (Art. 22)</p> <p>-- public or private employers engaging in discrimination at the workplace face six months to two years of imprisonment, or fines and financial redress (Art. 314)</p> <p>- -hate crimes against groups or</p>

			<p>associations engaged in on any of the above grounds are punishable by one to three years imprisonment (Art. 510)</p> <p>--the same penalty applies for defamation or other false claims directed at groups or associations on the same grounds (Art. 510, see also Art. 515)</p> <p>--discrimination in providing services both in the public and private sector is prohibited, with a penalty of six months to four years imprisonment (Art. 511)</p> <p>--discrimination in provision of employee benefits, with a penalty of cancellation of professional license or commercial or industrial permit for one to four years (Art. 512)</p>
Sweden	Penal Code (1987)	Homosexuality	<p>Chapter 16, paragraph 9, which deals with discrimination, provides that businesses (individuals and companies) commit an offence if they fail to provide their normal level of service to someone because of his/her homosexuality; this constitutes discrimination. The penalty for such discrimination is a fine or up to one years imprisonment. The law also applies to the following categories of staff: employees of businesses, civil servants, organisers of public events, and staff at such events.</p> <p>The law applies only if the discrimination is directed at individual gay men or lesbians. It is not illegal to discriminate against homosexual associations or organisations.</p> <p>The Penal Code does not offer</p>

			<p>protection in the private labor market.</p> <p>A new law, to take effect May 1999 will reportedly ban all labor discrimination, including in the private sector.</p> <p>Both defamation and insulting of individuals are punishable offences. To defame a persons is to speak ill of them to another person; to insult them is to use the offending expression to their face. Only extreme expressions, severe defamation or accusations are prohibited. Minor malicious remarks or common words of abuse do not come within the scope of the law. This provision does not cover incitement to hatred against lesbians and gay men as a group, but only as individuals.</p>
United States of America	Equal Employment Opportunity in the Federal Government (1998)	Sexual orientation	An Executive Order, entitled Further Amendment to Executive Order 11478, signed by President Clinton in 1998, institutes a uniform policy by which discrimination based on sexual orientation is prohibited in the Federal Governments civilian workforce.
USA (cont) Ten States: California, Connecticut, Hawaii, Massachusetts, Minnesota, New Hampshire, New Jersey, Rhode Island, Vermont, Wisconsin; also in the District of	Civil Rights Laws	Sexual orientation	Discrimination in the workplace prohibited (applies to private employers)

Columbia			
<i>Comment:</i> USA	The Supreme Court found in 1996 that Colorado violated the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution, with an amendment to the state Constitution that would have banned anti-discrimination legislation based on sexual orientation. The majority decision in <i>Romer v. Evans</i> reads, in part, Central both to the idea of the rule of law and to our own Constitutions guarantee of equal protection is the principle that government and each of its parts remain open on impartial terms to all who seek its assistance. The court concluded that Amendment 2 classifies homosexuals not to further a proper legislative end but to single out and stigmatize them in relation to the rest of the population. This Colorado cannot do. This ruling is a landmark victory for equal rights in the United States; although its precise implications are unclear--including the level of scrutiny to which discrimination based on sexual orientation will be subjected to determine whether it is legally justifiable--the decision may provide an important precedent for future anti-discrimination cases in the United States.		

Note 1: The fact that a country has adopted a Constitutional article banning discrimination on grounds of sexual orientation does not mean that the legislation of that country contains no provisions which discriminate against gays and lesbians (for example, in the spheres of marriage and immigration). Even in the rare cases where such explicit Constitutional protection exists, bringing the legal system into line with those provisions may require years of battles in court and in legislatures.

Note 2: Many municipalities and some provinces within nations extend legal protections to sexual minorities. Examples of such local legislation are too numerous to list exhaustively.

4. What about freedom from discrimination in family life?

Please request copies of the IGLHRC fact sheet on registered partnership, domestic partnership, and marriage.

5. Does international human rights law provide other protections for gays and lesbians?

Please request a copy of the IGLHRC fact sheet on international jurisprudence and policy precedents regarding sexual orientation.