



## Summary of References re. Sexual Orientation and Gender Identity by CEDAW, Other UN Treaty Bodies and Special Rapporteurs

This list is being provided for CEDAW Committee deliberations on sexual orientation and gender identity at the 42<sup>nd</sup> CEDAW session, October 2008.

### CEDAW Precedent

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By including sexual orientation and gender identity in regards to the scope of Art. 2 of the Convention, the CEDAW Committee will observe the precedent it already has set by **explicitly referencing sexual orientation in several concluding observations** on the following topics:

– **Criminalization of consensual sexual relations among women**

- Kyrgyzstan, A/54/38, August 20, 1999
- Mexico A/53/38, May 14, 1998

– **Anti-discrimination legislation protections**

- Ireland, A/54/38, July 1, 1999
- Canada, A/52/38/Rev.1, August 12, 1997
- New Zealand, A/49/38, April 12, 1994

– **Asylum**

- Sweden, A/56/38, July 31, 2001

Please see exact references for CEDAW Precedent in Appendix 1 of July 16, 2008 – “Recommendation to the CEDAW Committee from IGLHRC and ILGA-Europe on the scope of art. 2 of CEDAW on Equality”

[[[http://www.iglhrc.org/files/iglhrc/program\\_docs/iglhrc-IE-cedaw-16Jul2008.pdf](http://www.iglhrc.org/files/iglhrc/program_docs/iglhrc-IE-cedaw-16Jul2008.pdf)]

### Precedent from Other UN Treaty Bodies

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The following UN human rights treaty bodies have **referred explicitly to sexual orientation in General Comments**:

- CESCR, *General Comment No. 18: The Right to Work (Art. 6)* U.N. Doc. E/C.12/GC/18, 6 February 2006
- CESCR, *General comment No. 15 (2002): The Right to Water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, U.N. Doc. E/C.12/2002/11, 20 January 2003

- CESCR, *General Comment No. 14 (2000): The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, U.N. Doc. E/C.12/2000/4, 11 August 2000
- Committee on the Rights of the Child, *General Comment No. 4 (2003): Adolescent health and development in the context of the Convention on the Rights of the Child*, U.N. Doc. CRC/GC/2003/4, 1 July 2003
- Committee on the Rights of the Child, *General Comment No. 3 (2003): HIV/AIDS and the rights of the child*, U.N. Doc. CRC/GC/2003/3, 17 March 2003
- The Human Right Committee, the Committee Against Torture, and the Committee on the Elimination of Racial Discrimination made explicit reference to **sexual orientation or gender identity** in Concluding Observations, Communications, and Reports.

Please see exact references to sexual orientation by other UN Treaty Bodies in Appendix 2 of July 16, 2008 – “Recommendation to the CEDAW Committee from IGLHRC and ILGA-Europe on the scope of art. 2 of CEDAW on Equality” [[http://www.iglhrc.org/files/iglhrc/program\\_docs/iglhrc-IE-cedaw-16Jul2008.pdf](http://www.iglhrc.org/files/iglhrc/program_docs/iglhrc-IE-cedaw-16Jul2008.pdf)]

The following UN human rights treaty bodies have **referred explicitly to sexual orientation in Concluding Observations**:

### **Human Rights Committee**

- **Criminalization by law of consensual sexual relations among persons of the same sex**
  - Chile (welcomes repeal of criminal provisions), CCPR/C/CHL/CO/5, May 18, 2007; (requests repeal of criminal provisions), CCPR/C/79/Add.104, March 30, 1999
  - Barbados (requests repeal of criminal provisions), CCPR/C/BRB/CO/3, May 11, 2007
  - United States of America (welcomes Supreme Court decision on decriminalization/Lawrence v. Texas, 2003), CCPR/C/USA/CO/3, September 15, 2006; (concerns over criminal provisions), A/50/40, October 3, 1995
  - Kenya (requests repeal of criminal provisions), CCPR/CO/83/KEN, March 28, 2005
  - Egypt (requests repeal of criminal provisions), CCPR/CO/76/EGY, November 28, 2002
  - Australia (welcomes repeal of criminal provisions/implementation of Committee’s decision in the Toonen case of 1994), A/55/40, July 24, 2000
  - Romania (requests repeal of criminal provisions), CCPR/C/79/Add.111, July 28, 1999
  - Lesotho (requests repeal of criminal provisions), CCPR/C/79/Add.106, April 8, 1999
  - Ecuador (welcomes Constitutional Court decision on decriminalization), CCPR/C/79/Add.92, August 18, 1998
  - Cyprus (requests repeal of criminal provisions), CCPR/C/79/Add.88, April 6, 1998
- **Discrimination in laws, policies, or practices**
  - Chile (discrimination before courts and in access to health) CCPR/C/CHL/CO/5, May 18, 2007
  - Austria (requests repeal of discrimination in the age of consent), CCPR/C/79/Add.103, November 9, 1998
  - Zimbabwe (requests repeal of discrimination in immigration law), CCPR/C/79/Add.89, April 6, 1998

– **Anti-discrimination legislation protections**

- United States of America (concerns over lack of explicit protection), CCPR/C/USA/CO/3, September 15, 2006
- Greece (welcomes adoption of legislation, voices concerns about discrimination in practice), CCPR/CO/83/GRC, March 31, 2005
- Poland (concerns over lack of explicit protection), CCPR/CO/82/POL, December 2, 2004
- Finland (welcomes adoption of legislation), CCPR/CO/82/FIN, December 2, 2004
- Namibia (request for anti-discrimination measures), CCPR/CO/81/NAM, July 30, 2004
- Philippines (request for anti-discrimination measures), CCPR/CO/79/PHL, December 1, 2003
- Slovakia (welcomes adoption of legislation), CCPR/CO/78/SVK, August 22, 2003
- Trinidad and Tobago (request for anti-discrimination measures), CCPR/CO/70/TTO, November 3, 2000
- UK (request for anti-discrimination measures), CCPR/C/79/Add.119, March 27, 2000
- Hong Kong (China) (request for anti-discrimination measures), CCPR/C/79/Add.117, November 12, 1999
- Poland (concerns for removal of reference to sexual orientation protection from draft constitution), CCPR/C/79/Add.100, July 29, 1999

– **Anti-hate crime legislation protections**

- United States of America (concerns over lack of explicit protection), CCPR/C/USA/CO/3, September 15, 2006

– **Murder/violence**

- El Salvador (requests effective protection), CCPR/CO/78/SLV, August 22, 2003
- Sudan (requests not to apply death penalty for homosexual acts), CCPR/C/79/Add.85, July 29, 1997
- Columbia (concerns for lack of effective protection), CCPR/C/79/Add.76, May 5, 1997

– **Same sex partnership**

- Norway (welcomes adoption of legislation), CCPR/C/79/Add.27, November 4, 1993

**Committee on Economic, Social, and Cultural Rights**

– **Criminalization by law of consensual sexual relations among persons of the same sex**

- Kyrgyzstan (requests repeal of criminal provisions), E/C.12/1/Add.49, September 1, 2000
- Cyprus (welcomes repeal of criminal provisions), E/C.12/1/Add.28, December 4, 1998

– **Anti-hate crime protections**

- Monaco (welcomes adoption of legislation), E/C.12/MCO/CO/1, June 13, 2006

– **Anti-discrimination legislation protections**

- Liechtenstein (welcomes anti-discrimination mechanism), E/C.12/LIE/CO/1, June 9, 2006
- China (concerns over lack of explicit protection, welcomes plan for anti-discrimination mechanism), E/C.12/1/Add.107, May 13, 2005
- Poland (welcomes anti-discrimination body), E/C.12/1/Add.82, December 19, 2002
- Trinidad and Tobago (concerns over lack of explicit protection), E/C.12/1/Add.80, June 5, 2002
- Sweden (welcomes anti-discrimination body), E/C.12/1/Add.70, November 30, 2001
- (Hong Kong) China (concerns over lack of explicit protection), E/C.12/1/Add.58, May 21, 2001
- Ireland (welcomes adoption of legislation), E/C.12/1/Add.35, May 14, 1999

**Committee on the Elimination of Racial Discrimination**

– **Discrimination**

- Czech Republic (concerns over citizenship discrimination in draft law on same sex partnership), CERD/C/CZE/CO/7, April 11, 2007
- Ireland (notes legislation and mechanism against discrimination), CERD/C/IRL/CO/2/Add.1, June 16, 2006
- Lithuania (welcomes antidiscrimination law), CERD/C/LTU/CO/3, April 11, 2006

– **Protection in Criminal Law**

- Denmark (welcomes protections in criminal law), CERD/C/DEN/CO/17, October 19, 2006

**Committee Against Torture** (references to both sexual orientation and gender identity)

– **Criminalization of same sex consensual relations**

- Egypt (request repeal of criminal provisions), CAT/C/CR/29/4, December 23, 2002

– **Violence/Torture**

- Italy (requests adoption of legislation), CAT/C/ITA/CO/4, May 18, 2007
- Poland (requests hate crimes legislation), CAT/C/POL/CO/4, May 16, 2007
- United States of America (requests measures against violence in detention), CAT/C/USA/CO/2/ July 25, 2006
- Ecuador (requests investigation of torture), CAT/C/ECU/CO/3, February 8, 2006
- Argentina (concerns over torture), CAT/C/CR/33/1, December 10, 2004
- Venezuela (concerns over violence against sexual minorities and transgender activists), CAT/C/CR/29/2, December 23, 2002
- Brazil (ill-treatment and discrimination), A/56/44, May 16, 2001

## **Committee on the Rights of the Child**

### **– Criminalization of same sex consensual relations**

- Chile (concerns over criminal provisions) CRC/C/CHL/CO/3, April 23, 2007

### **– Discrimination and anti-discrimination efforts**

- Slovakia (concerns over discrimination and lack of legal protection) CRC/C/SVK/CO/2, June 8, 2007
- Malaysia (concern over insufficient efforts against discrimination), CRC/C/MYS/CO/1, February 2, 2007
- China (requests adoption of antidiscrimination measures), CRC/C/CHN/CO/2, November 24, 2005
- Belgium (welcomes antidiscrimination body), CRC/C/15/Add. 178, June 13, 2002
- UK (Overseas Territories; discrimination, including in age of consent), CRC/C/15/Add.135, October 16, 2000
- UK (Isle of Man; discrimination in the age of consent, requests explicit legal protection), CRC/C/15/Add.134, October 16, 2000

### **– Access to information/adolescent health**

- UK (lack of access to appropriate information), CRC/C/15/Add.188, October 9, 2002

## **Other References in the U.N. System to Violence On The Basis of Sexual Orientation And Gender Identity**

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The following Special Rapporteurs have made references in their reports to cases of discrimination and violence on the basis of sexual orientation and/or gender identity.

### **– Being Targeted for Threats and Violence**

- Report of the Special Representative of the Secretary-General on the situation of human rights defenders, mission to Brazil, A/HRC/4/37/Add.2, December 19, 2006

### **– Murders**

- Report of the High Commissioner for Human Rights on the situation of human rights in Sierra Leone, E/CN.4/2005/113, February 2, 2005
- Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mission to Guatemala, A/HRC/4/20/Add.2, February 19, 2007
- Report of the Special Rapporteur on violence against women, its causes and consequences, Communications to and from Governments, A/HRC/4/34/Add.1, March 19, 2007

### **– Torture and Rape**

- Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2000/9, February 2, 2000, Brazil
- Report of the Special Rapporteur on violence against women, its causes and consequences, “Integration of the human rights of women and the gender perspective: violence against women; Intersections of violence against

women and HIV/AIDS”, E/CN.4/2005/72, January 17, 2005

- Report of the Special Rapporteur on violence against women, its causes and consequences: “Cultural practices in the family that are violent towards women”, E/CN.4/2002/83, January 31, 2002

– **Legal Discrimination**

- Report of the Special Rapporteur on violence against women, its causes and consequences, E/CN.4/2000/68/Add.5, February 24, 2000

– **Suicides**

- Report of the Special Rapporteur on violence against women, its causes and consequences, E/CN.4/2003/75/Add.1, February 27, 2003

– **Imprisonment**

- Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, E/CN.4/2001/64, February 13, 2001, Kuwait

– **Housing Discrimination**

- Study by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, "Women and adequate housing", E/CN.4/2005/43, February 25, 2005

Please see text for these references in the document, “CEDAW Debates Equality,” July 18, 2008.

[<http://www.iglhrc.org/site/iglhrc/section.php?id=5&detail=880>]