

INTRODUCTION TO HUMAN RIGHTS PRINCIPLES AND ADVOCACY

Background material for workshops presented by the

INTERNATIONAL GAY AND LESBIAN HUMAN RIGHTS COMMISSION



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INTERNATIONAL GAY & LESBIAN HUMAN RIGHTS COMMISSION

1. INTRODUCTION TO HUMAN RIGHTS

A. PRINCIPLES OF HUMAN RIGHTS

"All human beings are born free and equal in dignity and rights."
Preamble to the Universal Declaration of Human Rights (UDHR).

SUMMARY: *The essence of human rights is the recognition of the **dignity and equality** of every human being, **without discrimination**. Every person, by the sole virtue of being a human being, possesses certain **rights** whose enjoyment no one can impede, that all governments are obliged to guarantee.*

Human rights provide universal standards: a common ideal for all communities and nations. a government without borders. They define what governments can do to us, cannot do to us, and should do for us.

Human rights are inalienable: you cannot be deprived of these rights just as you cannot cease to be a human being.

Human rights is an evolving framework: it expands to incorporate the emerging claims of oppressed groups.

Human rights offer a critique of the existing order: a vision of a "just world" in contrast to the way it is now.

Human rights are interdependent: they are part of a complementary and interlocking network.

Anyone can claim them.

B. LEVELS OF HUMAN RIGHTS ACCOUNTABILITY

Human rights as a framework provides a powerful tool because it can operate at many different levels—from the grassroots to the UN. Understanding these levels is important in building a strategy for human rights advocacy.

• State-State

Mechanisms within the United Nations allow governments ("states" in the language of human rights) to raise concern about human rights abuses for which other states are responsible.

• Individual-State

Individual persons can make claims to their governments demanding recognition of their rights.

• Group/Community-State

Groups of people may together demand recognition of their rights from a government.

• Within and Between Groups

Human rights can serve as the "glue" or foundation for oppressed or marginalized communities to organize together. The human rights framework can also serve as a coalition-building tool between groups—for example, human rights can provide a common ground between indigenous people's groups and women's groups.

HUMAN RIGHTS PRINCIPLES AND ADVOCACY

C. GOVERNMENT ACCOUNTABILITY

HISTORY OF HUMAN RIGHTS: FOUR GENERATIONS

It is important to remember that in most cases it is the states—not individuals, families, corporations—that are obligated to comply with international legislation in matters of human rights. Governments have three distinct obligations in relation to human rights:

- To **respect** human rights: not to violate them directly
- To **protect** human rights: prevent violations by non-state actors and provide redress that people know about and can access.
- To **fulfill** human rights: take all appropriate measures to promote a right and create an environment conducive to enjoyment and fulfillment of rights.

We tend to think most naturally of the first function—to respect human rights—but, in cases where we cannot actively document violations by governments, it is possible to show that they fail to meet their obligations by not offering protection or providing an atmosphere for the fulfillment of rights. For example, if we are investigating family violence against LGBT people, we must show not only that there are persons who commit the abuses but also that the state does not do anything in response. The human rights violation, therefore, is not only the family violence itself, but also the state inaction in failing to prevent it, punish the perpetrators, or enact proactive equal protection legislation. At times it is very difficult to demonstrate the role of the state in relation to a human rights violation, but it is always important to have at least an approximate idea of the nature and dynamics of the violation. The process of investigation will help us to formulate questions and remain alert to information that confirms or denies our initial assumptions.

D. THE UNITED NATIONS AND HUMAN RIGHTS:

A BRIEF OVERVIEW AND HISTORY

In 1945, after the horror of World War II and amid the poverty of many nations emerging from colonial rule, 51 States signed a letter establishing the United Nations and proclaiming "faith in the fundamental rights of men, in the dignity and the value of the human being." They wanted to create a document that would embody the hopes, aspirations, and protections to which every person is entitled, and to create "a common standard of achievements for all peoples and all nations". In December 1948, in Paris, the United Nations proclaimed the **Universal Declaration of Human Rights (UDHR)**, which was signed initially by 48 countries. The UDHR remains the most important and far-reaching of all United Nations declarations and a foundation for national and international efforts to promote human rights and fundamental freedoms. While the UDHR is a **declaration** or **proclamation** and not a legally binding document, its widespread legal and political application by States at the national and international levels demonstrates its significant influence.

In 1966, two conventions were approved: the **International Covenant on Civil and Political Rights (ICCPR)** and **International Covenant on Economic, Social, and Cultural Rights (ICESCR)**. These **entered into force** in 1976 when the required number of Member States, 35, ratified them. As of January 2000, 144 countries had ratified the ICCPR and 142 countries had ratified the ICESCR. It is significant that the ICCPR also provided an international mechanism for dealing with communications from individuals claiming to be victims of human rights violations established in this covenant. While the UDHR is a declaration of principles, the ICCPR and



INTERNATIONAL GAY & LESBIAN HUMAN RIGHTS COMMISSION



INTERNATIONAL GAY & LESBIAN HUMAN RIGHTS COMMISSION

ICESCR are legally binding documents; governments that sign these are bound by their provisions.

Together, the UDHR, ICPR, and ISESCR form the International Bill of Human Rights, the foundations of the international human rights movement.

The process by which human rights become incorporated into the laws of individual countries and enter into force as international human rights law is as follows:

- The countries, gathered in the United Nations, come to an agreement and sign a Convention that recognizes and describes specific rights. This is adopted by majority vote in the UN General Assembly.
- Each country **ratifies** it, or declares publicly its agreement with the Convention. By ratifying the Convention, they agree to refrain from acts that would violate its objectives.
- The rights recognized in the Convention are incorporated into the laws of the country. By being a **state party** to a Convention, the government takes on responsibility to:
 - Abide by the provisions of that document;
 - Change any laws in the country that violate the convention;
 - Submit regular reports to the United Nations on how it is meeting its treaty obligations;
 - Agree to be monitored by the United Nations on how it complies with the convention.
- In some cases, a government will agree to the intent of a Convention but will object to one or more of its articles. It may then ratify the convention but make specific **reservations** about these articles.
- When a pre-determined number of Member States ratify a Convention, it **enters into force**, becoming part of the body of international human rights law that may be used to claim and protect human rights. Unlike the UDHR, these Conventions are legally binding for States that sign them.

Since the adoption of the UDHR, more than twenty multilateral human rights treaties have been formulated. These include the International Convention on the Elimination of All Forms of Racial Discrimination (CERD, 1965), Convention on the Elimination of Discrimination Against Women (CEDAW, 1979), the Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT, 1985), and the Convention on the Rights of the Child (CRC, 1989). The IGLHRC publication *Making the Mountain Move: An Activist's Guide to How International Human Rights Mechanisms Can Work for You* provides more detailed information on how specific treaties can be used to advance rights on the basis of sexual orientation and gender identity.

Each treaty, besides recognizing certain rights, establishes international mechanisms to evaluate how those countries that ratify a treaty comply in respecting those rights. Within the United Nations, the **Economic and Social Council** is the body responsible for matters related to human rights, and oversees several bodies to investigate Member States to see how they are following the terms of specific treaties. One of these is the United Nations **Human Rights Committee**, which monitors compliance to the International Covenant on Civil and Political Rights (ICCPR). Approximately every four years, the Committee asks a rotating list of Member States to provide information about conditions related to civil and political rights in those countries. Non-governmental organizations (NGOs) also take advantage of this opportunity to send their own



HUMAN RIGHTS PRINCIPLES AND ADVOCACY

reports—called 'shadow reports'—that are often very critical of the actions of these governments. The Committee evaluates the situation and may ask the Economic and Social Council to do a public condemnation of that country, to recommend that the country modify some of its laws, to send a delegation to investigate the human rights situation, etc. Within the Committee, several agencies are devoted to specific violations of rights; e.g., the Sub-Commission for the Prevention of Discrimination and the Protection of Minorities focuses on modern forms of slavery and the situations of indigenous people.

There are also bodies within the United Nations that are not linked to specific human rights treaties; these are called **Extra-Conventional Mechanisms**. Of key importance to activists concerned with issues of gender identity and sexual orientation are an expanding list (currently six) of thematic Special Rapporteurs that are tasked with examining particular areas of human rights violations. Anyone can write to these Special Rapporteurs to tell them about specific violations related to their mandates; they can be requested to communicate with the government in question, either to seek additional information or to request specific action, or to initiate an investigation. For example, the Special Rapporteur on Extra-Judicial and Arbitrary Executions visited Mexico in 2001 to investigate murders of transvestites and gays.

For more comprehensive information about how the United Nations works, and how activists can use its systems to advance human rights protections, see the IGLHRC guide *Making the Mountain Move: An Activist's Guide to How International Human Rights Mechanisms Can Work for You*, available at the website <http://www.ighrc.org>.

E. GENERATIONS OF HUMAN RIGHTS

Roots (Pre-1700 Trajectories)

In this phrase, distinct philosophers and religious traditions formulated concepts that would eventually give rise to the idea of "human rights". The so-called "Oriental" religions (Buddha in India, Confucius in China, Zoroastrianism in Persia) described how each person reflects the Divine and therefore possesses a fundamental dignity that should be respected. The Stoics (group of philosophers in ancient Greece) were the first to say that all persons have a series of rights that are inherent, and possess these by virtue of being human. Christianity (Jesus Christ in Middle East) declared the equality of all persons because they are made "in the image of God" and stated that equality involves a duty, that of loving the neighbor. At the same time, there were thinkers that were preoccupied with the relationship between the government and the people. They came to the conclusion that society enters into agreement with the government to maintain harmony, and that society has the right to rebel if the government does not fulfill this duty.

First Generation Rights: Rights of Liberty (Civil and Political Rights)

A new social class arose in the 1600s and 1700s, the bourgeoisie, which felt oppressed by the absolute power of the kings and called it into question. The first statements of human rights were developed in this context: The *Writ of Habeas Corpus* (1679), The Declaration of Rights (1689, England), The Declaration of Independence (1776, United States), and The Declaration of Rights of the Man and the Citizen (1789, France). These statements:

- Eliminate the privileges of blood, and all persons become equal before the law.
- Protect individuals from the arbitrary exercise of power by the State.
- Give all men the right to participate in political life.

It is important to recognize that, in principle, these rights were conferred to men who possessed property (middle class and nobility); all women and poor men would have to wait centuries before obtaining these rights.



Since these categories of rights place limits on State power—with the result that individuals can be left alone to happiness and prosperity—civil and political rights are often called “negative” rights. Civil rights include “physical integrity” rights, such as the right to life and protection against torture, as well as “due process” rights, such as the right to a fair trial, the presumption of innocence before the law, and the right to legal representation. Political rights include freedom of expression, freedom of association and assembly, and the right to vote in free and genuine elections.

Second Generation Rights: Rights of Equality, (Economic, Social, and Cultural Rights)

The end of the 1700s saw the beginning of the Industrial Revolution and the formation of a new social class, the “proletariat”, which worked in factories, often in inhuman conditions of exploitation. Socialist thinkers began to demand other rights that went beyond the rights of liberty; many of these rights, which focus on the material, social, and cultural welfare of persons, were incorporated into the constitutions of certain countries in the 20th century.

Economic, social, and cultural rights

are often called “positive” or “distributive” rights, as they suggest a progressive response by the State to ensure the provision of basic goods and services, such as housing, clothing, food, education, or social security. These rights include the right to work, the right to a salary providing basic conditions for existence, the right to form and affiliate with unions, the right to strike, the right to social security, the right to health, the right to education.

Third Generation Rights: Rights of the People (Group or Solidarity Rights)

During the 1960s, the countries of Africa, Asia, and Latin America—many of these still colonies of Europe or the United States, others already freed—began to gather and to articulate their rights as people or groups. These countries were aware of their situation of dependence to more powerful countries, a relationship that impedes the guarantee of employment of rights to its inhabitants (for example, as is common practice today, governments may devote the majority of its money to pay external debt, and what little margin remains can then be invested in the health and education of its citizens). People from these global South countries wanted to defend the right to peace, self-determination, and the right to enjoyment of a healthy environment.

Group or solidarity rights (gathered in the Declaration of the Rights of People in Angel, 1976) include: the right of existence of peoples; the right of the peoples freely to manage their natural resources; the right to self-determination; the right to a basic standard of health; the rights to information and communication; and the right to development. It is not at all clear that this category of rights has any status in international law. Group or solidarity rights should not be seen as overtaking or displacing the universally accepted categories of civil, political, economic, social, and cultural rights.

CLASSES OF RECOGNIZED RIGHTS IN HUMAN RIGHTS TREATIES

Due to historic reasons, the categories of rights have been split into civil and political rights, on the one hand, and economic, social, and cultural rights, on the other. While the UDHR contains both sets of rights, the emergence of Cold War politics saw a split between these two classes of rights, with the United States embracing those considered civil and political rights, and the Soviet Union those considered economic, social, and cultural rights.

The Eastern side of the Iron Curtain emphasized the supremacy of economic, social, and cultural rights, following a Marxist argument that saw civil and political rights as bourgeois constructs that

HUMAN RIGHTS PRINCIPLES AND ADVOCACY

focused too heavily on the individual's place in society. These governments saw collective rights as validating state dominance of economic and social life, often at the expense of the individual. This often led to the undermining of the civil and political rights of individuals, such as the right to vote and the right to due process. The state, then, entrusted with ensuring collective rights, could see itself as legitimately restricting civil and political rights.

The West, on the other hand, held the view that the state has no inherent responsibility to guarantee or advance economic, social, and cultural rights. Here, the basic role of government is to ensure the protection of individual rights so there would be a free, orderly, and secure society for each individual to pursue her or his individual interests. These states view the pursuit of collective goals as allowing each person to make their own pursuit according to individual talent and capacity. Yet the emphasis by Western governments on the state refraining from specific actions—such as not restricting the right to vote or right to due process, or avoidance of torture and arbitrary arrest—is a different matter from guaranteeing basic conditions of health or housing. This perspective fails to account for the vast inequalities evident within free market domestic economies and between the Global North and South.

Since the fall of the Iron Curtain, there has been growing recognition that all rights are interdependent: it is impossible to enjoy some of others are lacking (for example, if a person does not have one's basic needs satisfied—food, dwelling, etc.—the right to vote is not guaranteed as the person may have to sell her vote for food or may be so focused on survival that voting is not a priority in her hierarchy of needs).

RIGHTS INCLUDED IN THE INTERNATIONAL BILL OF RIGHTS

The rights indicated in italics are considered absolute or “non-derogable” (ICCPR, Article 4).

CIVIL AND POLITICAL RIGHTS	ECONOMIC, SOCIAL, AND CULTURAL RIGHTS
Self-determination (to decide political status; to seek cultural, social, and economic development)	Self-determination
<i>Freedom from discrimination</i>	<i>Freedom from discrimination</i>
Equal enjoyment of rights by men and women	Equal enjoyment of rights by men and women
<i>Life</i>	Work
<i>Freedom from torture and cruel, inhuman, or degrading treatment or punishment</i>	Just and favorable working conditions
<i>Freedom from slavery or involuntary servitude</i>	Freedom to form trade unions
Liberty and security of person	Social security
	Protection and assistance for the family, mothers, children, and young persons
	An adequate standard of living



INTERNATIONAL GAY & LESBIAN HUMAN RIGHTS COMMISSION



INTERNATIONAL GAY & LESBIAN HUMAN RIGHTS COMMISSION

Humane and dignified conditions of confinement (for those deprived of liberty)

Freedom from imprisonment for failure to fulfill a contractual obligation

Freedom of movement

Equal treatment before the law

Freedom from retroactive criminal prosecution

Recognition as a person before the law

Freedom from arbitrary or unlawful interference with privacy

Freedom of thought, conscience, and religion

Freedom of opinion, expression, and information

Peaceful assembly

Freedom of association

Protection of the family

Freedom to marry and found a family

Protection as a minor, to a name and a nationality (for children)

Freedom to participate in public life, vote, and stand for election in free and fair elections

Equal protection of the law

Freedom to enjoy or use one's own culture, religion, and language (for ethnic, religious, or linguistic minorities)

The highest attainable standard of physical and mental health

Education

Share in cultural life and enjoy the benefits of scientific progress.

HUMAN RIGHTS PRINCIPLES AND ADVOCACY

Human rights are evolving to fulfill the initial promise of universality expressed in the Universal Declaration of Human Rights, as these protections expand to embrace the most vulnerable groups and prevent the most easily overlooked or concealed abuses. Integral to this progress is the recognition of the claims of different groups that organize around the world. During the past few decades, women, indigenous groups, disabled persons, human rights defenders, and other groups have produced their own statements and articulations of their rights.



2. HUMAN RIGHTS ADVOCACY

A. HUMAN RIGHTS AS A TOOL FOR ADVOCACY

The experiences of human rights movements around the world suggest that human rights can best serve as an effective advocacy tool under these conditions:

1. A human rights activist or group learns about an incident or pattern of violations.
2. These individuals or groups use this information to make a claim that their governments should respect, protect, or fulfill human rights.
3. The governments involved are responsive to political pressure or embarrassment.

B. STRATEGIES FOR HUMAN RIGHTS ADVOCACY

1. DOCUMENTATION OF HUMAN RIGHTS VIOLATIONS

No matter what kind of activist work you choose to do, it is fundamental to document the human rights violations that you want to denounce. What kind of things can we consider 'documentation'?

- Interviews with affected persons, including victims and eyewitnesses (transcripts, audio tapes, or video)
- Interviews with those who violate human rights (government officials, police, doctors, etc.)
- Official documents: police reports, autopsies, judicial verdicts, medical reports, etc.
- Photos or videos that show violations

Media reports can also be helpful, but these tend to be the least reliable and require additional corroboration; these do not serve, in and of themselves, as documentation to present to governments or the United Nations.

It is very important to preserve documentation and always keep several copies, in case the original is lost, damaged, stolen, etc.

[For more detailed tips about documenting human rights violations, see below.]

Once obtaining documentation, we suggest carrying out the steps that follow (to better understand these, it may be most useful to consider these in terms of a concrete problem or issue that you are facing).

HUMAN RIGHTS PRINCIPLES AND ADVOCACY

2. INVESTIGATING THE PROBLEM AND EXPLORING SOLUTIONS

It is important to consider the following questions:

- What is the protected right that is being violated?
- How is it being violated?
- How is it possible to prove the violation? Do we have documented cases that would serve this end?
- Who is violating the right? Does the State have direct or indirect responsibility in relation to this violation?
- Is the right in question clearly defined in the national Constitution? In human rights treaties?
- Are the national laws consistent with, or adapted to, international standards of human rights?
- Does the public understand that this is a matter of human rights violations? Does it tolerate the abuse, or does it not know that it is happening?
- Has recourse been taken in the national courts? Is it possible to do so?
- What possibilities are there to get a satisfactory solution at the national level?
- What international mechanisms can be used to address this problem? Is there direct access to these or not?

For each possibility, keep in mind the advantages and disadvantages of utilizing it, as well as the resources that must be mobilized (people, time, material resources).

3. ESTABLISHING OBJECTIVES AND DEMANDS

- What is possible to achieve in addressing this problem?
- Is it a matter of developing a better public understanding of the issue, or assuring the enjoyment of a right? Both?
- Is it a matter of getting a representative of the State to stop doing something, or getting the State to do something to comply with international human rights obligations? Both?
- What do we want to ask of the government? What would it take for us to feel satisfied?
- Do we have an objective at the national level? Does it involve the reform of a law?
- Do we have an objective at the international level? What do we want the agencies of the United Nations to do?

4. DESIGNING A STRATEGY

- Now that we know our objectives and demands, is our strategy going to be based on legal actions? If this is so, what steps do we need to take? Who will do it?
- Is it necessary to investigate more? To document more? Who will do it?
- Does our strategy involve reform of a given law? Must we draft or edit a government bill? Who will do so? Where would we present it?
- How are we going to educate the public about the issue, the legal action or the



HUMAN RIGHTS PRINCIPLES AND ADVOCACY

- government bill?
- At what moment will it be necessary to speak with legislators? What are the pros and cons of public demonstrations?
- Do we prefer to have an educational campaign directed at the public, at groups within our community, at other organizations, etc. Would it serve us better to appeal to the media? Both?
- At this point, it is important to define: the responsibilities of each participant; who will coordinate the actions; a timeline for each activity.

5. EDUCATING THE PUBLIC AND OBTAINING SUPPORT

- Who can be our allies? From whom can we obtain support? Who will we be up against?
- Where can we get in contact with these people (in institutions, neighborhoods, professional associations, public places, etc.)?
- Whom will we target in our education? What can we do to educate people?
- What medium can we use: protests, marches, seminars, speeches, the media, etc.?
- Will it serve our publicity to have an official launch of the campaign?
- What can we do to get people to support us?
- What can we do to counter those who are against us?
- Do we need different messages for different audiences? How would we handle ourselves with the media?
- What can we do over the long term to maintain pressure on those who are violating these rights; to disseminate information about the case, and to gain support from others?

6. DEVELOPING RESOURCES

- How much will the campaign cost?
- Are there people who can collaborate for free in specific areas, who are not part of the group that is organizing the campaign?
- Do we have the material and human resources that we need?
- Are there resources we do not have and need to gather before beginning?
- If we need money, how can we obtain it? Can we begin without money, or should we expect to have what we need beforehand?
- Among the persons who will contribute to the campaign, will some need training in human rights or in another capacity? How can we obtain this?

7. EVALUATING THE CAMPAIGN

It is advisable to evaluate the campaign not only after it concludes but also while it is being carried out:

- How much progress have we made toward our goals?
- Are our plans functioning well, or do they need revise them?
- Which parts are functioning well, and which parts are not?

- Is the information that we receive and distribute precise? Is the information "getting us where we need to go"?
- Are we continuing to exercise pressure on those who violate these rights?
- How are those who violate these rights responding?
- Are we being attacked for what we are doing?
- How well are those who oppose us organized?
- Are our claims being made visible to those who make decisions (at the legal or judicial level)?
- What is the final result of the campaign, and what meaning does it have for our community?

