Background material for workshops presented by the
Sydney Gay Games - October 2002
Many precedents within the United Nations system establish that sexual orientation is a human rights issue, with governments around the world recognizing that this issue falls under their jurisdiction. These precedents are grounded in the Universal Declaration of Human Rights (UDHR) (1948), which proclaims that all human beings are free and equal in dignity and rights. The UDHR (Article 2) states that "all human beings are born free and equal in dignity and rights. They are entitled to life, liberty, and the enjoyment of all other rights set forth in the United Nations Charter."

1. The United Nations Human Rights Committee ruled in Toonen v. Australia (1994) that laws prohibiting sexual contact between consenting adults were a violation of the fundamental human rights to privacy and family. It ruled that the protected category of 'sex' in 2 of the ICCPR "is to be taken as including sexual orientation." The United Nations Human Rights Committee also, in the Toonen decision, ruled that this protection extends to same-sex relations.

2. The United Nations Special Rapporteurs on Extrajudicial, Summary or Arbitrary Executions (Ms. Asma Jahangir), Violence Against Women (Ms. Radhika Coomaraswamy), and the Special Rapporteur on Human Rights Bodies (Ms. C.5) have called on human rights organizations to report on human rights violations based on sexual orientation and gender identity. The Special Rapporteur on torture (Mr. Nils Melzer) has also called for more information about human rights violations based on sexual orientation and gender identity.

3. The United Nations Committee on Economic, Social and Cultural Rights has held, through the General Comment 14 (2000), on the right to the highest attainable standard of mental and physical health (Article 25), that sexual orientation is a protected basis of discrimination under the Covenant on Economic, Social and Cultural Rights. The Human Rights Committee has also recognized that discrimination based on sexual orientation is a violation of the Covenant on Economic, Social and Cultural Rights.

4. Other treaty bodies such as the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Committee on the Rights of the Child (CRC) have recognized that sexual orientation is a human rights issue. The Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) has held, through its General Comment 19 (2019), on the right to the highest attainable standard of mental and physical health (Article 25), that sexual orientation is a protected basis of discrimination under the Covenant on Economic, Social and Cultural Rights.

5. The United Nations Committee on Economic, Social and Cultural Rights has held, through the General Comment 14 (2000), that the right to the highest attainable standard of mental and physical health (Article 25) includes protection against discrimination based on sexual orientation. The Committee has also recognized that discrimination based on sexual orientation is a violation of the Covenant on Economic, Social and Cultural Rights.

6. Other treaty bodies such as the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Committee on the Rights of the Child (CRC) have expressed concern about human rights violations based on sexual orientation and gender identity. The Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) has held, through its General Comment 19 (2019), that the right to the highest attainable standard of mental and physical health (Article 25) includes protection against discrimination based on sexual orientation.
HUMAN RIGHTS AND SEXUAL ORIENTATION

A. LAWS, POLICIES AND PRACTICES USED BY GOVERNMENTS TO CONTROL OR REGULATE SEXUALITY

• Sodomy laws
• Age of consent laws
• Laws against vagrancy/loitering
• Laws on prostitution (a range of forms: criminalizing the act itself, criminalizing keeping of brothels or quarters for "immoral purposes," criminalizing solicitation, criminalizing pimping, criminalizing johns)
• Laws prohibiting acts which "offend public morals" or "cause public scandal"
• Laws penalizing those wearing clothing of opposite sex
• Laws criminalizing STD/HIV transmission
• Dress codes (particularly for women)
• Restrictive laws on registration of NGOs
• Restrictive laws on freedoms of association or assembly
• Obscenity/pornography laws, other laws restricting freedom of expression
• Internet regulation codes
• Badly written rape/sexual violence laws (failing to penalize marital rape, defining rape in strictly heterosexual terms)
• Badly written laws on domestic violence
• Marriage laws (denial of marriage to same-sex partners, denial of marriage to trans people, divorce laws, laws on marriage for people living with HIV and AIDS [PLWHA])
• Criminalization of adultery/ fornication
• Laws on parenting/adoption

B. FOCUS ON ANTI-DISCRIMINATION LAWS

Types of provisions providing protections against discrimination:

1. A general statement about the right to equality and respect for the dignity and worth of each individual. This represents a positive recognition of the right to equality, rather than an active protection against discrimination.
2. A prohibition of discrimination on specified grounds, such as sex, gender identity, or sexual orientation. These provisions are more active in nature, as they specifically enumerate the prohibited grounds of discrimination and require equal protection of the law for all people.
3. A general prohibition of discrimination in all areas, such as education, employment, and public services, regardless of the specific prohibited grounds.

INTERNATIONAL GAY & LESBIAN HUMAN RIGHTS COMMISSION

ON THE BASIS OF SEXUAL ORIENTATION AND GENDER IDENTITY

INTERNATIONAL GAY & LESBIAN HUMAN RIGHTS COMMISSION

2.

B. FOCUS ON 'SODOMY' LAWS

Many countries around the world—not to mention 13 states within the US—continue to maintain sodomy laws. A sodomy law is any law that makes any sexual activity between two men, two women, or a man and a woman illegal, regardless of the presence of consent, the nature of the activity, or the age of the participants.

In a landmark decision for the lesbian, gay, bisexual, and transgender human rights movement, the United Nations Human Rights Committee in 1994 ruled that the existence of a sodomy law violates the rights to privacy and non-discrimination enshrined in international law. This decision affirmed that sodomy laws are a form of discrimination based on sexual orientation and gender identity, and that they violate fundamental human rights.

Countries that maintain these so-called sodomy laws violate the international standards of human rights. These laws can lead to the harassment, intimidation, and arrest of gay men, lesbians, bisexuals, and transgender people. They are often used as a justification for discrimination and violence against these communities.

Moreover, sodomy laws are often used by law enforcement and other authorities to justify the use of violence and abuse against these communities. They are also used to justify the denial of basic human rights, such as access to healthcare, education, and employment.

To control or regulate sexuality and gender identity, governments may adopt sodomy laws. Some grounds of discrimination that are not covered by the law may still be affected by the law, either directly or indirectly. Some grounds of discrimination that are not covered by the law may still be affected by the law, either directly or indirectly. Some grounds of discrimination that are not covered by the law may still be affected by the law, either directly or indirectly.

A. LAWS, POLICIES AND PRACTICES USED BY GOVERNMENTS TO CONTROL OR REGULATE SEXUALITY AND GENDER IDENTITY

2.

BENCHMARKS FOR ASSESSING HUMAN RIGHTS
HUMAN RIGHTS AND SEXUAL ORIENTATION
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REGIONAL OVERVIEW:
A. OVERVIEW OF 'SODOMY' LAWS

1. Countries with laws criminalizing homosexual acts:
   ASIA PACIFIC
   Bangladesh Cook Islands Bhutan Fiji Brunei Kiribati India Tuvalu Myanmar (Burma) Western Samoa Malaysia Nepal Pakistan Singapore Sri Lanka

2. Countries with campaigns to repeal 'sodomy' laws:
   Fiji India Sri Lanka

Focus on India: Late last year, Naz Foundation India, an HIV/AIDS organization in Delhi, and Lawyer's Collective-HIV/AIDS Unit, a legal advocacy partner, jointly filed a legal suit against the Indian government, challenging the constitutional validity of Section 377. Despite the Indian government's attempt to delay the case, the Delhi High Court ordered the government to file its response by the end of June 2002. The hearing date is scheduled for August 26, 2002.

In another attempt to overturn Section 377, the Delhi-based women's organization Sakshi asked the Law Commission of India (LCI), a branch of the government making recommendations for legal reform, to examine a law that would decriminalize gay sex. The LCI's report, expected to be released by the end of this year, will consider this case, despite the tremendous logjams the Indian legal system. In order to have a say in the drafting of Section 377, the Indian government will need to consider this case, even though it is unlikely to be heard before 2003.

3. Countries that have repealed 'sodomy' laws:
   Hong Kong (1991)
   Burma* (by Government-In-Exile, 2001)

Focus on Burma: Last year, the Burma National Democratic Front (BNDF), a group of Karen, Shans, and Karen in northern Burma, published a list of demands that included the repeal of Section 377. The list, which was signed by over 100,000 people, called for the end of all forms of discrimination against sexual minorities. The Burmese government has so far refused to acknowledge the list or take any action to address the issue.

B. OVERVIEW OF ANTI-DISCRIMINATION LAWS

1. Anti-discrimination at the Constitutional Level
   Fiji stands out as one of only three countries in the world—along with South Africa and Ecuador—with explicit protections on the basis of sexual orientation in the national Constitution. The 1998 Fiji Constitutional Change Commission, which was appointed by the government to review the Constitution, recommended the inclusion of protections for sexual orientation.

These landmark protections have been challenged by right-wing Christian forces. In 1999, they introduced a proposed amendment that would extend the definition of marriage to include only a union of one man and one woman. The amendment was defeated, but the government has yet to take any action to address the issue.
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Change, the only gay rights advocacy group in Fiji, fought valiantly against these amendments, working with IGLHRC and other international groups on an international letter-writing campaign. The protections also survived a political coup when gang members led by George Speight held elected leaders hostage in Parliament, seizing control of government in 2000. Speight and co. declared the reinstatement of all laws and freedoms, and the protections have remained in place ever since, making Fiji the only country in Asia or the Pacific with national-level anti-discrimination protection.

2. Anti-discrimination at the Metropolitan Level

In November 2000, the city of Tokyo, Japan set an important precedent when it included sexual orientation as a category protected from discrimination in its new human rights guidelines, making it the first major metropolitan area to do so. This was a significant achievement for the Japan Association for the Lesbian and Gay Movement (OCCUR), which has been advocating for the rights of the LGBTQ community for over 20 years. The association has been working hard to educate the general public as well as garner support for their cause, and it has received support from the Japanese government as well. In addition, the group has been involved in several international campaigns to support the rights of people who identify as LGBTQ.

In Thailand, in 2001, a Commissioner of the National Human Rights Commission commented that the right to equality is a fundamental right that is recognized in the new Thai Constitution. The commission has been working to ensure that this right is respected by all governmental agencies, and has even issued a statement condemning homophobia and transphobia.

In summary, there has been significant progress in the fight for LGBTQ rights in the past few years, and there is still a long way to go. But with the support of organizations like Change, IGLHRC, and others, we can continue to make progress and ensure that everyone has the right to live their life as they choose, without fear of discrimination or violence.