

MAKING THE MOUNTAIN MOVE:

An Activist's Guide to How International Human Rights Mechanisms Can Work for You

CONTENTS:

- I. Thinking Beyond Borders: Reasons to Care About International Institutions
- II. The United Nations Human Rights System
 - A. Treaty-Based Mechanisms
 1. The Committee on the Elimination of Racial Discrimination
 2. The Committee on the Elimination of Discrimination Against Women
 3. The Committee Against Torture
 4. The Committee on Economic, Social, and Cultural Rights
 5. The Committee on the Rights of the Child
 6. The Human Rights Committee
 - B. Extra-Conventional Mechanisms
 1. Special Rapporteurs
 2. Working Groups
 - C. Other Work of the Commission on Human Rights, and the High Commissioner's Office
- III. The Inter-American Human Rights System
 - A. The Inter-American Commission on Human Rights
 - B. The Inter-American Court of Human Rights
- IV. Human Rights in Europe
 - A. Three European Organizations
 1. The European Union
 2. The Organization for Security and Cooperation in Europe
 3. The Council of Europe
 - B. The European Court of Human Rights
 - C. Other Human Rights Work Within the Council of Europe System
- V. The African Human Rights System
 - A. The African Charter on Human and People's Rights
 - B. The African Commission on Human and People's Rights

APPENDIX: Rights Protected in Major International Instruments

International Covenant on Civil and Political Rights
International Covenant on Economic, Social, and Cultural
Rights
Convention on the Elimination of All Forms of Discrimination
Against Women
Convention on the Rights of the Child
American Convention on Human Rights
European Convention for the Protection of Human Rights and
Fundamental Freedoms
African Charter on Human and People's Rights

I. Thinking Beyond Borders: Reasons to Care About International Institutions

This is a guide to accessing and utilizing the international systems that have been created to defend human rights.

Treaties govern these systems: promises made by governments to respect the freedoms and lives of their peoples. At the end of this guide, you will find a list of the rights each major treaty protects. Of course, these promises are only words. The words of the treaties are often dull and dry. But as you look at these lists, try for a moment to imagine what the world we experience now—dominated and driven by blood, prejudice, prisons, hatred—would look like if these rights existed for everyone in lived reality, not just on paper. Would the bloodshed still be defended? Would the prisons as we know them persist?

If you can imagine such a world, its dignity and value, you have sensed something of the power international human rights can bear. The problem is to move from mere promise through the portals of reality. This guide is one small step in that journey and direction. It is meant for use by activists working to defend the rights of lesbian, gay, bisexual, and transgender (LGBT) people, as well as people living with HIV/AIDS. However, anyone engaged in human rights work may find this information useful.

First, why should activists try to use these international mechanisms? Can these remote institutions really be valuable tools?

Some people speak of "international human rights" as though it were a single word, as though the rights cannot be talked about separately from the international framework. But rights do not begin at the international level. They begin with local problems and local lives, with individuals who realize their dignity has been injured, and strive to imagine remedies and solutions. The fact that so many of the non-governmental and intergovernmental organizations defending human rights—from Amnesty International to the United Nations—have their headquarters in the North, in London or New York or Geneva, leads many people to believe that rights somehow belong there or flow from there. But the most important place to defend your rights is the place where you actually are. The old cliché is true: freedom, like most good things, begins at home.

There are thus dangers as well as opportunities in taking one's case to the international level. Activists and organizations should think hard before investing time and energy in working with the UN and other

intergovernmental human rights mechanisms. Some may find that the new work gives them fresh perspectives and possibilities. Others may find themselves distracted from the local issues that give their activism meaning, as they try to fit their message to a global audience.

The main disadvantage of appealing to international human rights mechanisms, though, is simple. *The UN and other international bodies can condemn human rights violations—but they cannot truly enforce their condemnations.* Their rhetoric about unacceptable practices by States is backed by infinite idealism, but minimal compulsion. No "global policeman" patrols the human rights system. Only a handful of global preachers wander, spreading a gospel of good intentions. A few powerful countries, such as the United States, may try to set themselves up as global private detectives prying into the practices of other States. But their interest is highly partial, and almost always politically motivated. In a very few cases, where appalling patterns of human rights violations exist, the UN or some of its member countries may agree to apply economic pressure to the violators. But this only happens with great rarity: and, again, politics often takes precedence over genuine concern for human rights.

For the most part, international human rights work is confined to producing pieces of paper which the writers hope will shame offending countries into changing their violent ways. But the pieces of paper have little practical power to back them up.

So why should you care? Even if you persuade human rights mechanisms to take note of violations against LGBT people, what good will it do?

It can do good: and there is good cause to care. There are several reasons why you should still consider speaking out before the international community.

- First: *sometimes the shaming effect works.* Some governments worry about their international image. Some governments are easily embarrassed, and unfavorable attention can actually push them to change their ways. You should think about how much your government cares about its international reputation, and how much effect embarrassment would have on it. What kind of embarrassment is it most afraid of? You can learn something about this from other advocacy groups who have tried the same route.
- Second: having your issues, and perhaps your own activism, recognized by an official body such as the UN can give immense credibility. It can transform how seriously those issues are taken in

- your own country. It can also open new possibilities for your organization to build coalitions, fundraise, and expand.
- Third: you can make contact with other activists taking similar issues before international bodies; you can create alliances with other groups and NGOs that have their own agendas in pressuring those bodies. You can help expand the frontiers of our international movement.
 - Fourth: by making sure that human rights systems hear about human rights abuses against LGBT people, you help overcome their institutional inertia and their belief that these abuses are not common. Even if you do not achieve satisfactory results with your own case, you will be making it easier to press similar cases in future. That in itself may be a great victory.
 - Fifth: for many individual people who suffer human rights violations, there is some measure of vindication in understanding that their stories are heard by an international community. Even if no concrete justice is done, even if no redress is achieved, to have their voices reach a global audience ---to have their fates known to so many so far away---can be a meaningful thing, can carry consolation and hope.

Ultimately, though, the most important value of approaching the UN or other international bodies, and the most important test of whether you should do so, is: *if the results will help with your own local advocacy*. You should not assume that the UN alone will bring about change in your country. But it can be a megaphone for what you want to say: it can help you make those changes happen. It may give you just the muscle--and motivation--you need to move the mountain standing in your path.

If you present documentation of human rights abuses to a United Nations Special Rapporteur, and that rapporteur mentions those abuses in her annual report, the responsibility will, to a great extent, rest with you to use that mention in a way which moves the cases closer to a remedy. There are many ways you can do this. You can bring the rapporteur's condemnation to the attention of other NGOs in your country, to build alliances. You can use it in a media campaign, and publicize how your government has been criticized by the international community. You can use it to lobby the government directly. The language produced by a body like the UN can have real resonance. But its most important effect is to amplify your own voice.

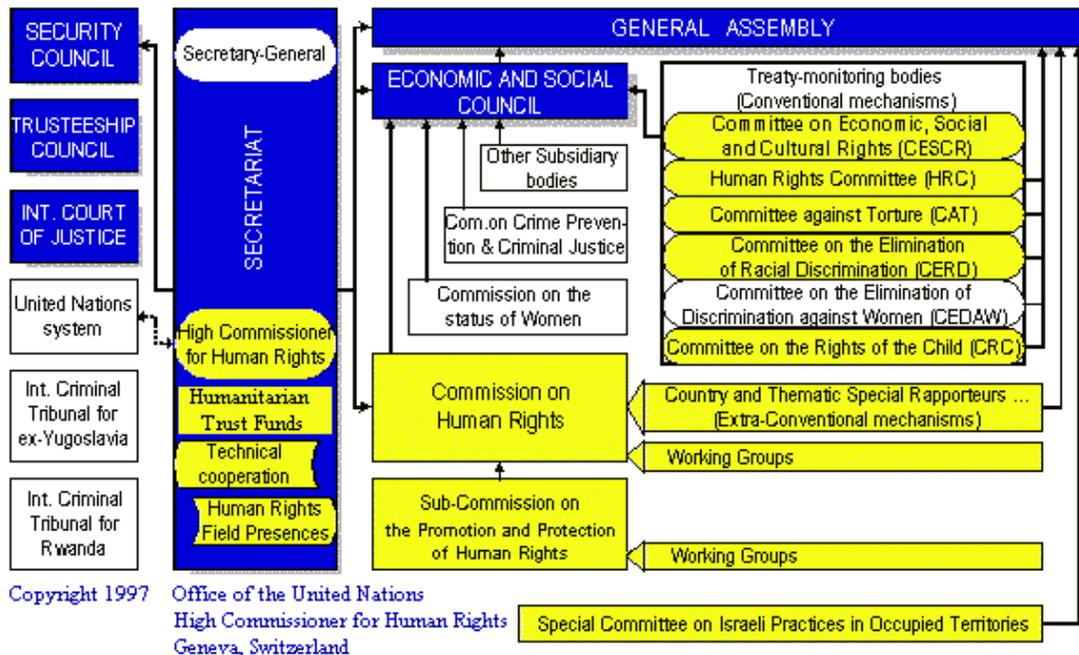
This guide will begin by discussing the United Nations human rights mechanisms, which protect human rights everywhere around the world. Other systems have been agreed upon by countries in different regions.

One human rights system embraces the Americas, another covers the European continent, and another was created through the Organization of African Unity. (There is not a regional human rights system for Asia, but Asians can nonetheless appeal to the UN system.) We will explain each of these systems in turn.

These systems may seem remote, but in fact you can approach them easily. All you need is the information most of us already have about human rights violations in our countries—plus the energy to put a stamp on a letter, or send an e-mail. And, by investing even more time and thought and effort, you may be able to make those systems produce important results for you.

II. The United Nations Human Rights System

The UN is huge, and confusing. Its human rights systems, shown in the chart below, look labyrinthine, half snake-pit, half spaghetti. No explanation can make them seem simple.



But the UN, however intricate, should not be intimidating. It is not like Kafka's castle, locked and unapproachable. Rather, the UN is confusing—or at least its human rights mechanisms are—because there are so many different paths to approach it, so many ways to get in. The challenge lies in choosing which door, which entry, is right for you.

The UN has addressed human rights issues since it was founded, at the end of the Second World War. Basically, it works through two different sets of mechanisms. They are called the "treaty-based" mechanisms, and the "extra-conventional" (or "non-treaty-based") mechanisms. Let's start by explaining how each one works.

A. Treaty-Based Mechanisms

The "treaty-based" mechanisms are committees. When a State ratifies one of the UN's human rights treaties, it agrees to be investigated periodically to see how it is obeying the treaty's terms. The committees--also called "treaty bodies"-- do this investigating. The UN has produced six human rights treaties, so there are six committees:

- **The Human Rights Committee (HRC)** monitors States' compliance with the International Covenant on Civil and Political Rights (ICCPR).
- **The Committee on Economic, Social, and Cultural Rights (CESCR)** monitors States' compliance with the International Covenant on Economic, Social, and Cultural Rights.
- **The Committee on the Elimination of Discrimination against Women (CEDAW)** monitors States' compliance with the Convention on the Elimination of All Forms of Discrimination against Women (the Women's Convention).
- **The Committee Against Torture (CAT)** monitors States' compliance with the Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment.
- **The Committee on the Elimination of Racial Discrimination (CERD)** monitors States' compliance with the International Convention on the Elimination of All Forms of Racial Discrimination.
- **The Committee on the Rights of the Child (CRC)** monitors States' compliance with the Convention on the Rights of the Child (the Children's Convention)

These committees are composed of experts, usually lawyers experienced in human rights work. The seats on the committee are usually rotated among member countries of the UN. Each expert is nominated by his or her government; but she sits on the committee as an independent person, and is not meant to take further instructions from her government.

How do the committees work?

First: they can only report on States which have ratified the relevant treaty. If you want to find out whether your country has ratified a particular treaty, you can get this information from the UN's human rights website, at

<http://www.unhchr.ch/html/menu2/convmech.htm>; or by clicking under individual treaties at the University of Minnesota's human rights library website, at <http://www1.umn.edu/humanrts/>. If your State has not ratified a particular treaty, the relevant committee can do nothing.

Second: each State which has ratified a treaty has its record reviewed by the relevant committee at periodic intervals—approximately every four years. Each committee meets two or three times per year; some time in advance, it releases a list of the countries it will be reviewing during the upcoming year. You can find out which States are coming up for review by a committee, by clicking on the committee's name at the UN's human rights website, at <http://www.unhchr.ch/hrostr.htm>. Unfortunately, some of the committees do better than others at publicizing their schedules well in advance. (You can also find further information on the schedule of CEDAW at the website of the UN Division for the Advancement of Women, at <http://www.un.org/womenwatch/daw/cedaw/>.)

Third: when a State is up for review by a committee, it is expected to produce a report showing how it has complied with the provisions of that treaty since the time it was last reviewed. If the State refuses to produce a report when it is reviewed, there is little the committee can do: it has nothing to respond to. Most states do report, however: not to do so would seem like admitting failure.

Fourth: the committee reviews the State's report, questions the State's representatives, and issues its own comments. These comments are the committee's "judgment" on the State's compliance. They become part of the UN's permanent record.

Here is the opportunity for activists like you to intervene. While a committee is considering a State's record and preparing its own judgment, it welcomes comments by NGOs on whether the State has complied with the treaty. Any NGO can submit such comments. These comments are called "shadow reports" because they "shadow" the report that the State itself submits to the committee.

These reports can be very simple—a letter of a page or two detailing a specific complaint. Or they can be longer reports pointing to a pattern of violations. They should be addressed to the Chairperson of the relevant Committee, at the office of the UN High Commissioner for Human Rights in Geneva (address below).

Most people who have worked with the treaty bodies agree on the following guidelines for making a shadow report useful to the committee's members.

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- **The Committee on the Elimination of Discrimination against Women (CEDAW)** monitors States' compliance with the Convention on the Elimination of All Forms of Discrimination against Women (the Women's Convention).
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Some of the committees are open to working with NGO representatives during their sessions. For you, this would mean sending a representative to New York or Geneva (depending on where the meeting is held): it would also give you a direct link to the experts on the committee. However, even without such direct contact, a well-organized shadow report can have an effect. If you are successful, the final comments of the committee will incorporate your concerns. You can use its written criticisms of your government as an advocacy tool to pressure the government to comply.

We will now discuss each committee individually.

1) We begin with perhaps the least useful committee for raising LGBT concerns. The **Committee on the Elimination of Racial Discrimination (CERD)** should be a very important committee. It addresses a crucial issue. However, its membership at the moment is conservative, and they have been slow to examine the relationship between racial discrimination and other forms of prejudice.

2) The **Committee on the Elimination of Discrimination Against Women (CEDAW)** monitors compliance with the Women's Convention. While

limited to questions of discrimination, the Convention's articles address many aspects of women's lives, from the family to economic and cultural life to the political sphere. Issues of discrimination against lesbian women should be reported to the Committee.

3) The **Committee against Torture (CAT)** monitors compliance with the Convention Against Torture. It also has the power, outside its regularly scheduled reviews, to investigate "reliable information which appears . . . to contain well-founded indications that torture is being systematically practiced in the territory of a State" which has ratified the treaty. This expanded power is important: even if your country is not up for review, you can send the Committee any documentation which indicates that torture happens in your country. In such cases, the Committee may even delegate some of its members to visit the State and investigate. The State, however, is not required to cooperate with such an investigation, even if it has ratified the treaty.

An important question about torture is whether it can be committed by so-called "non-State actors"—including private individuals—or only by the State and its officials, as some would claim. Is rape committed by a policeman torture, while rape committed by a private person is not? The Convention Against Torture defines torture broadly, as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." This definition is important. The reference to "discrimination of any kind" allows the Committee to consider hate-based violence, including sexual violence and abuse. And the Convention's definition of torture (unlike some other definitions) does not require that it be committed by State officials. Exactly what the Convention means by the "consent or acquiescence" of State officials remains to be established; but it seems that the Committee has some scope to consider violence by private actors, when the State does not act to punish it—or prevent it.

4) The **Committee on Economic, Social, and Cultural Rights (CESCR)** monitors compliance with that Convention. The Convention was written as a twin to the ICCPR, balancing the latter's focus on civil and political rights with a roster of other rights, including the rights to health, a living wage, education, and freedom from hunger. Its provisions are not

phrased as mandates in the same way that other human rights treaties are, however. The Convention does not require that States fulfil or enforce economic, social, and cultural rights. It only asks that the States' reports show "progress made in achieving" these rights. And many States can thus point vaguely to "progress" while part of their population starves.

Despite this weak language, the Committee has nonetheless criticized some States for showing far too little progress—or for actually retracting some economic and social rights. Documentation on the effects of poverty or structural adjustment programs on LGBT people; on discrimination in health care, access to medications, education, or other social benefits; on inequality in labor rights; or on denial of the right to participate in cultural life, would be of interest to the Committee.

5) The **Committee on the Rights of the Child (CRC)** monitors compliance with the Children's Convention. The Children's Convention is only ten years old. However, it has been more widely ratified than any other human rights treaty. States anxious to put themselves on paper as "protecting children" have thus, often unwittingly, promised to obey the many progressive provisions of this remarkable treaty.

In many countries, LGBT people have been insulted and stigmatized by being identified as "pedophiles." The effects of this charge have made some LGBT activists reluctant to speak of children's rights at all. The Children's Convention, however, is a wide-ranging document which not only affirms the rights and freedoms of children, but requires States to create open, diverse, and tolerant environments into which those children can grow. As such, it is an important document for all of us who want to see those environments achieved—for our children's sake, and for our own.

The Convention instructs States to protect children. It forbids discrimination against children—both because of who they are, and because of who their parents or family might be. Its provisions protect LGBT children; they also help protect the relationships of care which LGBT people, and LGBT parents, form. The Convention also envisions "the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples." These values make the Convention an important global instrument for fostering democracy and defending diversity.

Cases of discrimination against LGBT children or parents; cases of child exploitation or abuse (including abuse by the medical profession or schools); discriminatory age of consent laws; and hate-filled or homophobic content in education, among other issues, should be sent to

the CRC. For more information on the uses of the Children's Convention, see IGLHRC's report, *Conceiving Parenthood: Parenting and the Rights of Lesbian, Gay, Bisexual, and Transgender People and their Children* .

6) Perhaps the most important committee is the **Human Rights Committee**. Even though it only deals with violations of civil and political rights—the rights contained in the ICCPR, the treaty which it monitors—it is the most prestigious of the treaty bodies. As its name shows, its issues have been identified with human rights in general. You can send it shadow reports about violations of any of the rights in the ICCPR.

This committee is also unique in that it does more than simply monitoring States on a regular schedule. *This committee has a special power to turn itself into something like a court, and hear complaints that individuals make against States—whether those States are scheduled for review, or not.* The other committees must wait for States to make their reports, and then comment on them. With the Human Rights Committee, however, you can "file a lawsuit," under certain circumstances, and ask for an intervention.

The Human Rights Committee has this power because of something called an *Optional Protocol*. The Optional Protocol is really an amendment to the International Covenant on Civil and Political Rights. It allows individuals to take cases directly to the Human Rights Committee, as a sort of court of final appeal. *The Optional Protocol is only binding on States that have ratified it.* The US, for instance, has not ratified it (though it has ratified the ICCPR): so a person whose rights were violated by the US cannot take her case to the Human Rights Committee. But many States have ratified it; and they are obliged to "appear in court" if the Human Rights Committee agrees to hear a case against them. You can find a list of these countries on the UN's human rights website. (An Optional Protocol to the Women's Convention has also been drafted; it would allow individual complaints to be heard by the Committee on the Elimination of Discrimination Against Women. This Optional Protocol has to be ratified by a certain number of States before CEDAW can begin hearing such complaints.)

Before agreeing to hear a case, the Human Rights Committee requires that all "local remedies" be exhausted. This usually means that the complainant has to have received a negative answer from the highest court or authority in her country. In some cases, however, the Committee may hear a case which is stalled by inaction, if there is no sign that the domestic courts or authorities will move on it.

To take a case to the Human Rights Committee, you must argue that a right protected in one or more of the articles of the ICCPR has been violated by something your government has done, or failed to do. Like any lawsuit, this can take up time, and energy, and often money. It is not a route likely to achieve quick results. But it is a route that has produced one of the greatest international victories for the LGBT movement. Australian activist Nicholas Toonen asked the Human Rights Committee to hear a case against the state of Tasmania, which refused to repeal its "sodomy law" punishing male homosexual sexual acts. In 1994, in the resultant case—*Toonen v Australia*—the Committee held that laws against adult, consensual homosexual sex violate protections against discrimination in the ICCPR. By finding that "sexual orientation" was implicitly included in those anti-discrimination protections, the Committee created a precedent for the rest of the UN's human rights mechanisms to address all forms of discrimination against LGBT people. Moreover, as a result, the Tasmanian sodomy law was at last repealed.

B. Extra-Conventional Mechanisms

Most of the "treaty-based" mechanisms move slowly. They document patterns of abuses, and remind States of their standing obligations. But they are not the best places to turn when an urgent situation arises—when someone faces immediate violence or danger, when you need to put quick pressure on a State to act.

The "extra-conventional" mechanisms are the place to turn for more urgent action. Their name simply means that they are not tied to treaties, or "conventions:" they operate independently. At the center of the extra-conventional mechanisms is the United Nations' *Commission on Human Rights*, and we should begin by explaining what that Commission is.

First of all, the Commission on Human Rights is different from the Human Rights Committee—this is only one of many ways in which the UN can be confusing! The Commission on Human Rights is a large, highly politicized body which meets once a year, for several weeks, in Geneva. (See the chart above for an idea of its place in the overall UN structure.) Its membership rotates among the countries that belong to the UN. Each member government appoints a delegation to attend the Geneva meeting; these are not independent experts (unlike the treaty body members), but very much represent their governments' positions.

The Commission is the central UN forum for discussing human rights. During its annual meeting, testimony is heard from NGOs; deals are struck between delegations; resolutions are passed, and suggestions are given

to the General Assembly, and to the UN's Economic and Social Council (ECOSOC) for further action. There are winners, and losers. Some States are condemned, others are praised.

But the Commission also sets out priority areas for the UN's work on human rights. When new treaties are proposed, or new declarations are to be drafted, the work usually begins in the Commission. The Commission tries to see that the UN gets information about urgent as well as long-standing abuses around the world. It also tries to make sure that the UN can respond.

The principal ways the Commission has devised for getting information, and for responding, are the *Special Rapporteurs* and *Working Groups*. We will consider each in turn.

1) The *Special Rapporteurs* are individuals appointed by the Commission to look into particular subjects or areas of human rights violations. They serve for a set term, which can sometimes be renewed. They present an annual report to the Commission, with the results of their investigations over the year, and with recommendations for action. In the meantime, they communicate constantly with governments, and undertake fact-finding missions where possible. When they are told about urgent situations, they can write to the relevant government directly. Whatever they learn in the process becomes part of their annual report.

There are two kinds of Special Rapporteurs. Some investigate the human rights situation in a particular *country*. Some investigate a particular *theme*—for instance, a cause or contributing factor to human rights violations, or a group that is particularly vulnerable to them.

A Special Rapporteur is appointed to investigate a *country* when there is reason to think that serious human rights abuses are taking place there—and when a majority of the Commission's member States agree. Countries under such investigation now include Afghanistan, the Democratic Republic of the Congo, Haiti, Myanmar, and former Yugoslavia.

A *thematic* Special Rapporteur is appointed when a majority of the Commission's members agree that a subject merits special attention, and investigation. These Rapporteurs are among the most accessible parts of the UN's human rights structure. And some of them deal with issues which are closely connected to LGBT rights.

You can write to a Special Rapporteur (in care of the UN High Commissioner for Human Rights in Geneva) at any time to tell her about abuses which you believe fall within her mandate. You can also ask the Rapporteur to communicate with the government in question, either to get more information or to request specific action. Many of the Rapporteurs perform fact-finding missions to various countries. If a Special Rapporteur is coming to your country, try (by contacting the High Commissioner's office in Geneva) to arrange a meeting; then you can raise your concerns directly.

Here are some of the most relevant Special Rapporteurs and their mandates.

- The **Special Rapporteur on Extrajudicial, Arbitrary, or Summary Executions**: presently Ms. Asma Jahangir (Pakistan). This Rapporteur has a broad mandate to address cases of people killed by, or with the connivance of, governments or government officials. The Rapporteur can address killings or death threats not just at the State's hands, but at the hands of paramilitary groups or private individuals whose actions are tolerated by the government. Moreover, the Rapporteur has also called attention to so-called "honor killings" of women, and other cases where the State has failed, or refused, to prevent or investigate killings. The Rapporteur also addresses deaths in custody due to torture, neglect, use of force, or conditions of detention; cases of the death penalty imposed in a discriminatory way or after an unfair trial; and cases where States forcibly return refugees to countries where their lives are in danger. Ms. Jahangir has repeatedly called attention in her reports to murders of and death threats against LGBT people, and has voiced her strong commitment to pursue this issue. Any such cases should be reported to the Rapporteur.
- The **Special Rapporteur on Freedom of Opinion and Expression** : presently Mr. Abid Hussein (India). This Rapporteur was appointed to examine how threats, violence, harassment, and other forms of persecution, are directed at people exercising their freedoms of opinion and expression. Particular issues of concern have included laws that criminalize expressing beliefs or communicating information; discrimination, violence, or retaliation for the expression of political opinion; edicts by religious authorities inviting or ordering retaliation for the expression of ideas of beliefs; closing of press offices or broadcasting stations, and confiscation of publications or audiovisual material; and freedom of expression in the workplace or in detention. Censorship or harassment directed at LGBT people--

- particularly at the expression, or defense, or LGBT identity--should be reported to the Rapporteur.
- The **Special Rapporteur on the Independence of Judges and Lawyers**: presently Mr. Param Cumaraswamy (Malaysia). This Rapporteur was appointed with a mandate focusing on four types of cases: attacks against lawyers; attacks against judges; denial of rights to a fair trial; and violations of the rights of legal professionals to associate, including forming professional associations. Cases where LGBT people have been denied fair trials; cases where homophobic arguments have been successfully used by either prosecution or defense; and cases where LGBT people have been excluded from or discriminated against within the legal profession, should be reported to the Rapporteur.
 - The **Special Rapporteur on Religious Intolerance**: presently Mr. Abdelfattah Amor (Tunisia). The Special Rapporteur's mandate is governed by the UN's "Declaration on the Elimination of All Forms of Religious Intolerance and Discrimination Based on Religion and Belief." The mandate includes not only intolerance *against* religious belief, but intolerance and extremism *based on* it. Cases where religious intolerance has targeted LGBT people, particularly if it incited discrimination or violence, should be reported to the Rapporteur; so should cases of hatred targeting LGBT people's own religious expression.
 - The **Special Rapporteur on Torture**: presently Mr. Nigel Rodley (United Kingdom). The Rapporteur was appointed to "examine questions" of torture, "seek and receive reliable and credible information" about cases, and "respond effectively." Abuses in detention, or by security and paramilitary forces, have formed the majority of cases received by the Rapporteur over the years. The Rapporteur has identified rape and sexual abuse against women in detention as a form of torture. For the Rapporteur, as for the CAT, torture exists when the State has a responsibility for the abuse. However, allegations of torture and ill-treatment by private persons should also be reported to the Rapporteur whenever there is evidence that the State has not acted effectively either to prevent or to respond to the abuse.
 - The **Special Rapporteur on Violence Against Women**: presently Ms. Radhika Coomaraswamy (Sri Lanka). The Rapporteur was appointed to collect information on violence against women, its causes, and consequences, and to recommend ways of eliminating and remedying it. The mandate includes violence in both public and private life. Ms. Coomaraswamy has, in successive reports, concentrated on *violence in the family*—including domestic violence and the effects of traditional practices; *violence in the*

community, including rape and sexual violence, sexual harassment, trafficking and forced prostitution, violence against migrant workers, and the effects of religious extremism; and *violence perpetrated and condoned by the State*, including violence against women in custody, in situations of armed conflict, and against refugee and internally displaced women. The Rapporteur has repeatedly drawn attention to "restrictions on and regulations of female sexuality," as well as to how women "who live out their sexuality in ways other than heterosexuality, are often subjected to violence and degrading treatment." Violence against lesbian women, or women suspected of non-conforming sexuality, as well as violence targeting persons because of their gender identity, should be reported to the Rapporteur.

2) The *Working Groups* are small committees appointed by the Commission on Human Rights, to look into particular issues. Two are of particular interest to LGBT activists. Their job is to write to governments about urgent cases. They will send out letters almost immediately, in hope of getting quick answers, and possibly saving lives.

- The **Working Group on Enforced or Involuntary Disappearances** has five members; its chair is Mr. Ivan Tosevski (Macedonia). It investigates cases of people whose fate or whereabouts are unknown, after they have been arrested, detained, or abducted, either by government officials or by people acting with government permission. Its goal is to get governments to reveal where these people are or to find out what has happened to them. Once contacted about a case, the Working Group rapidly writes an official letter to the government, asking about the missing person. Traditionally, the Working Group only accepts requests from family members of the missing person. "Family member" is loosely defined; it is not clear whether it would include same-sex partners, for instance. The Working Group will accept requests for action from NGOs if they state clearly that they are acting on behalf of family, or explain why immediate family of the missing person cannot place a request.
- The **Working Group on Arbitrary Detention** also has five members; its chair is Mr. Kapil Sibal (India). It investigates three kinds of cases where people are detained: a) cases where the right to fair trial has been violated in any way (for example, by prejudicial treatment, forced confessions, or lack of legal assistance); b) cases where people have been detained for exercising their human rights (such as freedom of expression); c) cases where detention is purely

arbitrary, with no legal basis or process. Once contacted about a case, this Working Group quickly sends the government an official communication. It asks why the person or people in question are being detained, and urges their release.

Your communications to the Special Rapporteurs and to the Working Groups should contain all the information that you have on hand about a case—but you should write to them even if you do not have all the details you would like! If possible, give:

- Your own name and address;
- As much information as possible about the victim or victims (if you are writing about a law or government action which affects a larger group, explain the way it affects them);
- Description of the violation: if it is a particular incident, give dates and locations; if you are writing about a law or policy, cite it and explain how it is employed;
- Any information you have about the persons who committed the violation;
- Information about any steps the victims or their representatives may have taken to obtain a remedy;
- Information about whether any official response or investigation has taken place;
- Your own recommendation for a response, or for measures to prevent future violations;
- What you want the Rapporteur or Working Group to do, and why. Remember, Rapporteurs can communicate with the government, but can also visit countries to investigate serious situations directly. Working Groups generally just ask governments—quickly and urgently—for information, or for the release of detained persons.

C. Other Work of the Commission on Human Rights, and the High Commissioner's Office

You should be aware of a few other ways of approaching the UN Commission on Human Rights. One of these is usually called the "1503 procedure," because it was created by Resolution Number 1503 of ECOSOC (the Economic and Social Council of the UN). That resolution allowed people to write direct petitions to the Commission, asking it to investigate patterns of human rights violations. Anyone can write such a petition. And many people do. In most years, the Commission on Human Rights receives tens of thousands of such petitions; in some years, it gets up to 200,000. As you can imagine, only a very tiny percentage of these ever receive any attention, much less result in an investigation.

Some LGBT activists have devoted much time to writing these petitions to the UN under the "1503 procedure." Such complaints indeed sensitize the UN to sexual-orientation issues. Yet the petitions are unlikely to get any answer. Contacting a Special Rapporteur about a case relevant to her mandate takes no more effort than writing such a petition. The Special Rapporteur, though, is far more likely to take notice of the information than the Commission's overburdened staff.

Another way to influence the Commission on Human Rights is actually to testify at its annual meeting. The Commission sets aside time on each of its agenda items for NGOs to speak their minds.

This opportunity is only available to NGOs which have official consultative status with ECOSOC. In 1994, the International Lesbian and Gay Association became the first LGBT organization ever to win that status; but its status was soon suspended indefinitely, because of unfair accusations of "pedophilia."

Yet any NGO, international or national, can apply for ECOSOC status; local LGBT organizations can put in applications as well. The process is time-consuming, and our movements should strategize over it together—it is probably important that the first such applications come from strong local groups with extremely effective records.

If you are interested in testifying before the Commission on Human Rights, though, you should find out whether other NGOs in your country, or other international organizations you work with, have ECOSOC consultative status. (A list of NGOs with this status, as well as information about what the status means, can be found at <http://www.un.org/esa/coordination/ngo/>.) Some of these NGOs might be willing to "sponsor" you to speak to the Commission, and lobby its members, on LGBT concerns. The best way to learn about the UN is to see it first hand: and visiting Geneva, watching the Commission at work, and meeting its members can be a fascinating introduction to the way local experience is translated into international action. In the long run, the Commission will only take LGBT issues seriously if its members meet LGBT people, and hear their stories directly. A few people are already beginning to argue that the Commission should appoint a Special Rapporteur on issues of sexual orientation. Such a development is years, perhaps decades, away. If it ever happens, though (and no one can even say with certainty that it would be a good thing), it will only happen after years of slow preparatory work, familiarizing the Commission and all the mechanisms around it with the kinds of violations LGBT people confront.

Nor do you need to go to Geneva to begin doing this work. On the UN website, you can find the names of members of all the treaty bodies. See if there are representatives from your country; and consider meeting with those persons, to discuss their position on sexual orientation and human rights. Or ask your government who will serve on their delegation to the Commission on Human Rights when it meets next spring. Then ask to meet members of the delegation, to discuss LGBT issues and human rights. All these steps represent a beginning.

This overview of the UN's human rights work omits quite a few things for simplicity's sake. The Office of the UN High Commissioner for Human Rights, however, is too important to omit. Mary Robinson, the former Irish President, is the High Commissioner. How does her office fit into these structures?

The different UN human rights mechanisms developed piecemeal over the years. Coordination was infrequent between them; the treaty bodies and the Special Rapporteurs, for instance, often had little to do with one another, even though many of their issues overlapped.

In 1993, the Secretary-General created the post of High Commissioner for Human Rights, to serve as a coordinating office for all the UN's human rights activities. The first High Commissioner was Mr. Jose Ayala-Lasso of Ecuador. At first the job had little power. The present Secretary-General, however, appointed Mary Robinson to the post, and gave her broad authority to centralize all the work the UN does in the human rights field.

This centralization is not total. Neither the treaty bodies nor the Commission on Human Rights (nor its Rapporteurs and Working Groups) actually "work for" the High Commissioner, for instance. But the High Commissioner's office now furnishes the support staff—including researchers and legal experts—who actually make the day-to-day work of those bodies possible. Thus the High Commissioner has a good deal of authority.

While president of Ireland, Mary Robinson was a strong voice for gender equality. She also campaigned for lesbian and gay rights even before her electoral career began. The task of making sure the UN recognizes those rights fully is a demanding one. We can help by making sure all the UN mechanisms receive information, and reminders, about the range and severity of abuses LGBT people constantly face.

You can write to any of the UN's human rights mechanisms in care of the Office of the High Commissioner for Human Rights. Tell them to which committee, Rapporteur or other mechanism you want your communication forwarded:

OHCHR-UNOG
8-14 Avenue de la Paix
1211 Geneva 10, Switzerland
Telephone Number (41-22) 917-9000
Fax Number (41-22) 917-9016
E-mail: secrethchr@unog.ch

Information can be sent to the UN in any language.

III. The Inter-American Human Rights System

The Inter-American human rights system is quite simple, when compared to the bureaucracies of the UN. Yet the American system is actually the older of the two. The American Declaration of the Rights and Duties of Man was adopted in Bogota, Colombia in May 1948-- several months before the UN adopted the Universal Declaration of Human Rights.

The American system has set precedents and patterns in other ways. It has created an effective way to force States to sit down and negotiate with the people making complaints against them. Even more importantly, it has established that States can be held responsible not only for violations they commit themselves, but for failing to prevent individuals or groups from violating others' rights.

How can LGBT people make this system work for them?

The simplest way is: by sending petitions about human rights violations to the Inter-American Commission on Human Rights.

The Commission is the first of two bodies set up by the Inter-American system to hear cases. The Commission is the place to which petitioners initially appeal. Usually, the Commission tries to make the two parties--the petitioner and the State in question--come to an agreement. If it fails, the case can be forwarded to the second body, the Inter-American Court of Human Rights. This is the system's court of final appeal.

A. The Inter-American Commission on Human Rights

The Commission was created in 1959, as part of the Organization of American States (OAS). Originally it was not allowed to investigate individual complaints. Its main task was to compile reports on OAS member states where repeated human rights violations happened. It could ask member governments for information, visit their countries, and make recommendations.

The Commission's job changed significantly in 1978, when a new treaty, the American Convention on Human Rights, came into force. This is a sweeping treaty, which tries (like the UN's treaties) to turn the statements of the Universal Declaration, and the American Declaration of the Rights of Man, into concrete State obligations. The Commission's task is now to enforce that Convention, as well as the American Declaration.

The main way in which it does this is by hearing complaints, alleging that a State has violated the American Convention. An individual can bring such a complaint. A State can also complain against another State.

The Commission still has its old responsibility for reporting on general human rights conditions in States. It also promotes human rights through conferences, seminars, and other events. Much of its time and energy, though, is taken up with hearing individuals' complaints.

The Commission has seven members. They are nominated by member governments of the OAS, and elected by the OAS general assembly. They serve as individuals, however, not as government representatives. The Commission is headquartered in Washington, D.C., in the US.

How can you bring a petition to the Commission?

First of all: you should look at both the American Declaration on Human Rights, and the American Convention on Human Rights. The two documents are different: for one thing, the Convention concentrates on civil and political rights (for instance, freedoms of expression and opinion), while the Declaration also protects social and economic rights (including the rights to health, work, and education). *The Commission enforces both these documents—but its powers are much stronger under the Convention than the Declaration.* Has your country ratified the American Convention? (A list of countries which have ratified it, as well as other relevant information, can be found on the Commission's website, at <http://www.cidh.oas.org/spanish.htm>.) If your country has not ratified the Convention, you can still claim a violation of the Declaration: but in this case, the Commission has less power to force the government to participate in its processes.

Second: you should identify which rights in the Convention (or Declaration) have been violated in your case.

Third: you should determine whether your case meets the requirements for the Commission to hear it. These are:

- You must have exhausted all legal remedies in the State in which the violation happened. (This does not apply if the victim has been denied access to legal remedies—or is kept from using them by intimidation or lack of money; if local laws do not permit making claims or appeals; or if the State has stalled unjustifiably in making a final decision in the case.)
- You must file your petition *within six months* of exhausting all legal remedies, or of determining you cannot obtain further legal remedies within the State.
- You must not be simultaneously pursuing your case through some other international legal procedure. If, for instance, you have asked the United Nations Human Rights Committee to hear your case under the Optional Protocol, you cannot also appeal to the Inter-American Commission. (Giving information to Special Rapporteurs or to other non-treaty-based UN mechanisms does not count; nor does including the information in a shadow report to a treaty body, as these are not formal legal procedures.

Both individuals and NGOs are allowed bring a petition on behalf of someone else. *You do not need a lawyer to write a petition to the Commission*—though if an attorney is available, they can help you with arguments to prove that a right in the Convention or Declaration has been violated. But you can easily compose a petition yourself. It must be in writing, in English, Spanish, Portuguese, or French. It should contain:

- The name, address, occupation, and signature of the person (or persons) presenting the claim. (NGOs should include the names and signatures of their legal representatives.)
- A description of the violation of human rights, including date and place and the names (where possible) of all victims, witnesses, and perpetrators.
- Any other documentation that supports your claim, such as testimonies by witnesses or victims, medical evidence, or police or newspaper reports.
- A statement of which right or rights in the American Convention or the American Declaration you believe to have been violated.
- Information demonstrating that all legal remedies in the State have been exhausted, or indicating why this was not possible.

- Information on all attempts made so far to obtain redress from State authorities, and the replies received.
- In cases where someone is in detention, if a claim of *habeas corpus* (demanding that the State justify the detention) has been made, you need to include a copy of this request and state the reply received.
- If someone's life or bodily integrity is in immediate danger, say so, and ask the Commission to take action quickly.

The Commission prefers that each petition deal with a single incident in which rights were violated, rather than grouping several different violations together.

What will the Commission do with your petition?

The Commission will try to determine the facts. It will ask the State to reply to the charges; the petitioner has the right to see this reply, and to answer it. The Commission may ask the petitioner for more information as well. If the situation is serious, it may even send someone to visit the country to find out more.

Most importantly, though, the Commission will try to bring about a friendly settlement between the State and the complaining party. This may even mean holding a hearing in Washington, DC, in the US, at which the State's and the petitioner's representatives will present their cases and the Commission will try to mediate. If such a hearing is held, you should try to bring legal representation.

If a settlement cannot be reached by these means, the Commission will issue its conclusions on the case. If it finds that the State is at fault, it will recommend that the government take action to remedy what happened.

Remember: the Commission cannot really "enforce" its findings. Its only actual power is to embarrass governments by public exposure. Governments which do not follow the Commission's recommendations may find themselves strongly criticized in the Commission's yearly report to the OAS. This report is public, and activists can use it to embarrass their government at home as well as internationally.

The Commission has a further option. It can refer the case to the Inter-American Court of Human Rights, for a final decision. States which are unhappy with the settlement that the Commission proposes can also refer the case to the Court. Unfortunately, individual petitioners do not have

the right to take their cases to the Court if the Commission does not agree.

B. The Inter-American Court of Human Rights

This Court is the highest body in the Inter-American human rights system. It has seven judges, and meets in San Jose, Costa Rica.

The Court can issue orders, not just recommendations. In particular, it can order governments to pay damages or offer other redress to victims of human rights violations, or their representatives. By treaty, these orders can be directly enforced in the courts of the State concerned. While the Court still relies on governments' susceptibility to shame in ensuring that its decisions are carried out, its prestige, and the treaty provisions backing it up, make it a powerful body.

Perhaps the most important of the Court's decisions was also its first--its first, that is, in a so-called "contentious case" which the Commission referred to it because the parties could not reach agreement. This 1988 case is called *Velasquez Rodriguez v Honduras*. The Court recognized that "The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation." Human rights violations consist not only in what States *commit*, but in what they *omit* to do: for instance, failing to investigate or punish crimes, or failing to take essential steps to prevent them. This is an important decision for LGBT people, who often suffer from violence committed by private individuals or groups--and from the State authorities' indifference to that violence. *Velasquez Rodriguez* means that activists can document State indifference and hold the State responsible for it in the Inter-American system.

Neither the Commission nor the Court has had much experience in dealing with LGBT issues. Only a few such cases have come before them in their history. Hence, it is important to make them--and particularly the Commission--aware of LGBT people's lives and concerns. You can do this simply by trying to meet with a Commission member, if there is one from your country, to talk about the discrimination and abuse that LGBT people face. You can also do this by sending Commission members information -- *not* in the form of petitions--about human rights violations against LGBT people, even though legal remedy has not been exhausted and the situations are not admissible as cases. Such "background" information will help Commission members better understand how human rights

protections can help LGBT people. The information will help prepare them to respond to actual petitions from LGBT people, as more of those arrive.

You can send a petition to the Inter-American Commission, or contact its members, at:

Comisión Interamericana de Derechos Humanos
1889 F Street, N.W.
Washington, D.C., 20006 U.S.A.
Telephone: 1-(202)458-6002
Fax: 1-(202)458-3992.
E-mail: cidhoea@oas.org

IV. Human Rights in Europe

A. Three European Organizations

Europe is organized. It contains many groupings of nations, and many of these organizations work to promote and protect rights. It is important to understand the differences between the *European Union* (EU); the *Organization for Security and Cooperation in Europe* (OSCE); and the *Council of Europe* (CoE). The Council of Europe will take up most of our attention, as it offers the most tested mechanisms for defending human rights. All three organizations, though, have a role in rights.

1. The European Union

The *European Union* (EU) began as an economic alliance between wealthy Western European countries. It now embraces 15 countries, but is only open to States which meet certain economic as well as political standards. The European Union has become increasingly centralized, a kind of super-State unique in the world.

The EU has a democratically elected legislature, the European Parliament, composed of representatives from all member States. Most power in the EU, however, rests with the European Commission, a small committee chosen by governments (with a large bureaucracy working beneath it). The Commission rather than the Parliament actually legislates, producing the EU's own body of laws, called European Community law.

Originally, these laws dealt primarily with trade issues; but they now address areas such as labor rights, freedom of movement, equality in pay

and services, and environmental protection. The Union also has its own Court, the European Court of Justice, to enforce this body of law—which supersedes the national law of member States. (For more information on the European Union, see its website at www.europa.eu.int.)

Sexual orientation issues have been raised within the EU in several ways. The European Parliament has often passed resolutions on the rights of gays and lesbians. A 1984 resolution called for an end to workplace discrimination based on sexual orientation. In 1994, the so-called "Roth Resolution" called for an end to sodomy laws and unequal ages of consent, along with all discrimination against homosexuals in social benefits, adoption, inheritance, housing, or other areas of law or policy; for campaigns to end violence and prejudice against lesbians and gays; and for equal rights to marriage and parenting. Information about these and other resolutions can be found on the website of the International Gay and Lesbian Association—Europe (ILGA-Europe), at <http://www.steff.suite.dk/ilgaeur.htm>. Unfortunately, the European Parliament has little practical power. Its statements can be used to support your activism and advocacy; but they have not always been translated into EU policy.

More importantly, in 1997, the EU adopted a new version of its founding treaty—a new constitution, in effect. The Treaty of Amsterdam states, in Article 13, that the EU's governing bodies "may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation." *The Treaty of Amsterdam is the first major international treaty ever to mention, and protect, sexual orientation.* This language means that discriminatory policies or laws in member States may be challenged before EU institutions, including the European Court of Justice.

The EU is also considering a draft Charter of Fundamental Rights—a bill of rights for citizens of the Union. The draft now being considered would expressly prohibit discrimination based on sexual orientation.

Activists from EU member countries should contact ILGA-Europe to learn about and support its work. They should also consider meeting with their members of the European Parliament, to discuss human rights issues and how the EU can address them. Activists in countries which are applying for EU membership should remind their governments that the EU will not tolerate unequal treatment based on sexual orientation.

2. *The Organization for Security and Cooperation in Europe*

The *Organization for Security and Cooperation in Europe* (OSCE) arose during the Cold War. As the only European institution with members from both Eastern and Western Europe, it was meant to ease a conflict cutting through the continent's heart. It was created by a treaty signed in 1975 by the US, Canada, the then Soviet Union, and almost all European countries. This treaty—signed in Finland, and called the Helsinki Final Act—contained a promise to "respect . . . human rights and fundamental freedoms, including freedom of thought, conscience and religion and belief," as well as "equal rights and self-determination of peoples."

The fact that Soviet-bloc States had signed such a commitment was an important advocacy tool for embattled dissidents throughout Eastern Europe; and Helsinki Committees were founded (illegally) in many Communist countries to monitor human rights violations. The so-called "Helsinki Movement" became a symbol of the struggle for human rights throughout Europe.

The OSCE grew into an umbrella organization of all European countries, as well as the US and Canada, to discuss shared security issues and defuse tensions, as well as to monitor compliance with the Helsinki treaty. Its role has shifted after the Cold War's end, but it still concentrates on preventing and controlling conflicts and crises on the continent. Among its other activities, it monitors elections, and sponsors training programs for police and criminal justice officials, particularly in Eastern Europe. If there is an OSCE office in your country, you may want to meet with its officials, and find out whether issues of sexual orientation, gender identity, and HIV/AIDS are being addressed in its programs. (You can learn about the OSCE on its website, at www.osce.org.)

3. *The Council of Europe*

The *Council of Europe* (CoE) should not be confused with either of the preceding organizations. It was founded after the Second World War as a forum for European nations to discuss common problems. Its stated aims are:

- to protect human rights, pluralist democracy and the rule of law;
- to promote awareness and encourage the development of Europe's cultural identity and diversity ;
- to seek solutions to problems facing European society (discrimination against minorities, xenophobia, intolerance, environmental protection, human cloning, AIDS, drugs, organised crime, etc.);

- to help consolidate democratic stability in Europe by backing political, legislative and constitutional reform.

The Council of Europe is thus directly engaged in human rights issues. Unlike the EU, it is a loosely-knit body, meant to promote democratic principles while exercising little formal power. Originally its membership was confined to the countries of Western Europe. After the fall of Communist authoritarianism in Eastern Europe, however, the Council expanded to include many newly democratic States. It is far larger than the EU, and now numbers 41 member countries. Its headquarters are in Strasbourg, France. (For more information on the Council, see its website at www.coe.int).

The highest authority in the CoE is a Committee of Ministers, composed of the foreign ministers of all member States. However, this Committee also takes guidance from the CoE's Parliamentary Assembly. The Assembly is made up of delegations sent by the Parliament of each member country.

Immediately after its founding, the Council of Europe decided to create a regional human rights treaty for Europe. This treaty, the European Convention for the Protection of Human Rights and Fundamental Freedoms, came into force in 1953. It closely follows the provisions of the International Covenant on Civil and Political Rights, with some differences; and it has now been ratified by almost all European countries, West and East. The treaty has also been amended by several Protocols, containing additional rights protections; not all countries have accepted these. The treaty is enforced by the European Court of Human Rights, the most important institution in Europe's human rights systems. All States joining the Council of Europe must ratify the European Convention, and subject themselves to the decisions of the European Court.

B. The European Court of Human Rights

The European Court of Human Rights has the longest record of any international human rights body in addressing issues of sexual orientation. It has handed down several landmark decisions defending the rights of lesbians and gays. It has not done so because it takes a particular interest in sexual orientation. Rather, it has done so because activists, especially in Western Europe, have kept sending it cases to decide. These activists should be a model for activists elsewhere in Europe (and in other regions): they have shown the importance and impact that a single complaint can have. Many laws—and lives—have changed because a few individuals sent petitions to the European Court.

The European Court was the first international body to decide that "sodomy laws" violate human rights. In the 1981 case of *Dudgeon v United Kingdom*, the Court held that a law against consensual adult homosexual behavior in the British province of Northern Ireland violated the right to respect for private and family life, in Article 8 of the European Convention. In two subsequent cases, *Norris v Ireland* (1988) and *Modinos v Cyprus* (1993), the Court reaffirmed this. More recently, in *A. D. T. v United Kingdom* (2000) the Court held that a man convicted of "gross indecency" for having homosexual group sex in his home had also suffered a violation of his right to privacy.

Other cases in the European human rights system have directly addressed discrimination against gays and lesbians. A 1997 case, *Sutherland v United Kingdom*, held that unequal ages of consent for homosexual and heterosexual sex created discriminatory enjoyment of the right to privacy. On similar grounds, in *Siguero da Silva Mouta v Portugal* (1999) the Court overturned a decision denying a father custody of his child on the basis of his homosexuality. In 2000, in *Lustig-Prean and Beckett v United Kingdom*, the Court held that investigating soldiers' sexual orientation, and discharging gays and lesbians from the armed forces, also violated the right to privacy.

European Court decisions on gay and lesbian issues have relied heavily on the right to privacy. This is partly because protections against discrimination are weaker in the European Convention than in other major treaties: the Convention has no broad affirmation of equality before the law. Privacy arguments do not always work, however. In a widely criticized decision in *Laskey, Jaggard, and Brown v United Kingdom* (1997) the Court held that gay sadomasochistic activity, even when completely consensual, can be outlawed on health grounds. The Court observed that "not every sexual activity carried out behind closed doors necessarily falls within the scope" of the right to privacy.

The Court's record on transgender issues has been far from friendly. The Court has generally refused to require States to change the recorded sex of a postoperative transgender person in official ID documents. In *X., Y., and Z. v United Kingdom* (1997), moreover, the Court upheld Britain's decision that "only a biological male," not a female-to-male transgender person, could legally be recognized as a father. In all these cases the Court decided that the right to "respect for privacy and family life" did not extend to transgender identities, or transgender people's relationships.

Even if the Court's record is imperfect, it is clearly becoming more progressive. Moreover, a new Protocol, or amendment, has recently been

introduced, which will strengthen protections against discrimination in the European Convention. This should make it easier for the Court to use arguments other than privacy in examining the rights of LGBT people. It may even change the Court's stand on some transgender issues. For all these reasons, *it is important for LGBT people in Europe to use the Court as a resource, and recourse.* In particular, activists in the new member States of Eastern Europe will find the Court a powerful lever to change discriminatory laws and policies.

How does the European Court of Human Rights operate? How can you file a complaint with the Court?

Initially, the European human rights system worked similarly to the Inter-American system: a European Commission of Human Rights heard cases and made an initial judgment, while the European Court heard final appeals. This has now changed. As Eastern European countries joined the CoE in the 1990s, almost doubling its membership, the systems became overburdened. Cases brought under the Convention more than doubled.

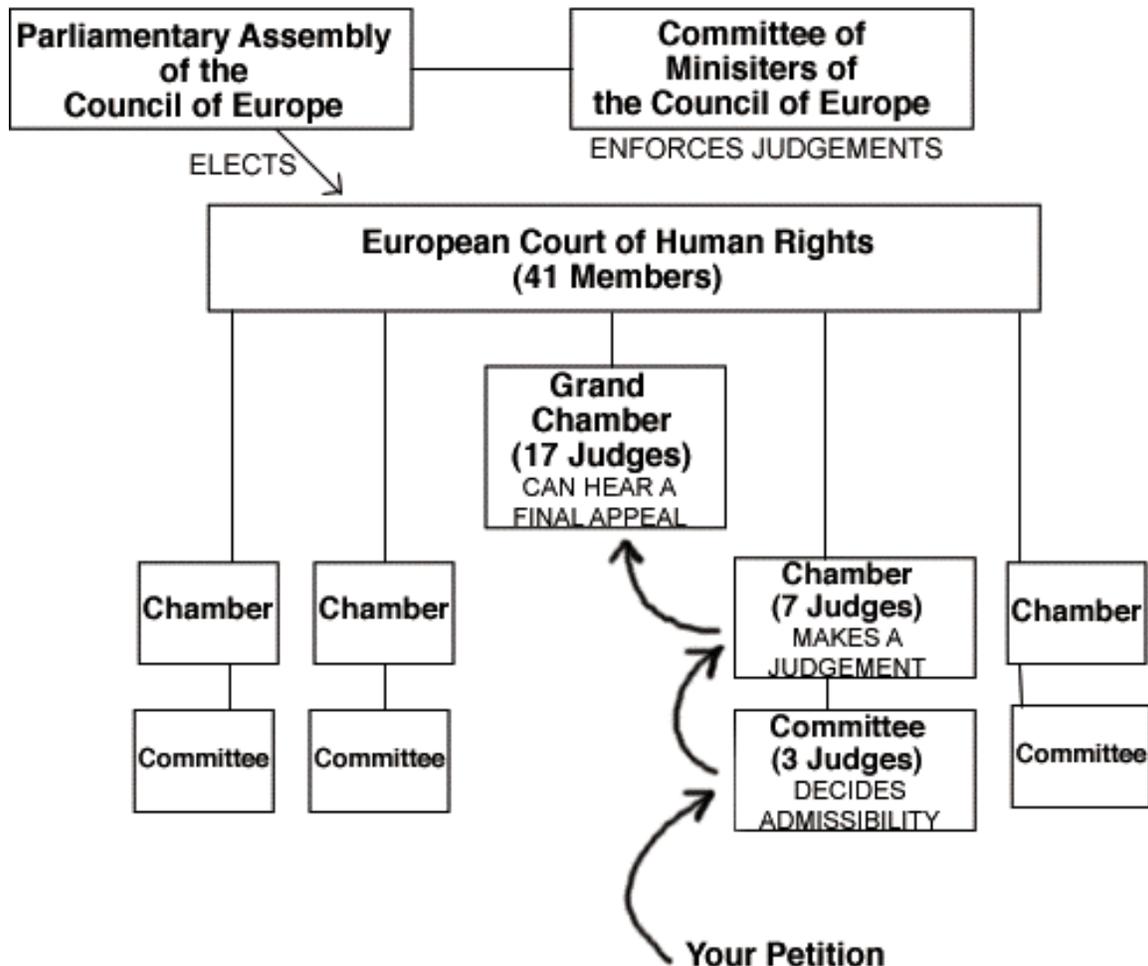
In the mid-1990s, the Council of Europe passed a Protocol to the European Convention on Human Rights restructuring the system for hearing complaints. Under the new system, the Commission has been abolished: and the European Court has been greatly expanded.

The Court now consists of 41 judges, one for each State in the Council of Europe. They are elected by the Parliamentary Assembly of the CoE, and serve as individuals, not as representatives of their national governments.

This huge Court is divided into four Sections. Each of these sections, in turn, contains a *Committee* and a *Chamber*. Committees have three judges: they are a "filter" which hears most cases first. Cases found admissible are then referred to a Chamber, composed of seven judges. This body makes a judgement on the case.

The Court also contains a Grand Chamber, made up of seventeen judges. This serves as a body of final appeal within the Court system.

How the European Court Works



In order to petition the Court, you should determine which right under the European Convention has been violated—as well as whether your country is subject to the Convention. You can find a list of countries which have ratified the Convention and its Protocols on the European Court's website at <http://www.echr.coe.int/eng/general.htm>.

Your petition must meet several conditions:

- The petitioner must be an individual, group of individuals, or NGO claiming to be a direct victim of the alleged violation—not just a witness or interested party.
- The complaint must be directed at a State, not a private individual or organization.

- The petitioner must have exhausted all legal remedies in the State concerned—such as an appeal to the highest court there.
- Ordinarily the complaint must be filed *within six months* of the time when all domestic remedies were exhausted.

A simple letter to the European Court is enough to begin the complaint procedure. It can be in any of the languages used by the Council of Europe, but it will be acted on faster if it is in French or English. (If a hearing is held, it will be in these languages.) Although you may need a lawyer later in the hearings, you can write a petition yourself. It should contain:

- A brief summary of your complaint;
- A statement of which rights under the Convention you believe have been violated;
- A list of the domestic remedies you have tried to use;
- Any official decisions in the case, including the date of each, the court or authority which took it, and a summary of the decision;
- Copies of these decisions (do not send the original)

Your petition will be sent to a Committee within the Court, which will first determine whether the case meets the above requirements. If the case is admissible, it will proceed to a Chamber.

The Chamber may invite both the applicant and the State to submit further evidence. It may hold a public hearing. If a hearing is held, you should be represented by a lawyer; the Council of Europe offers funds to help applicants who cannot afford legal representation.

The Chamber will decide on the case by majority vote. If the applicant, or the State, are dissatisfied with this judgment, they have three months to appeal to the Grand Chamber of the European Court. However, the Grand Chamber only hears appeals which raise "serious questions" of interpretation or application of human rights law.

The Committee of Ministers of the CoE is charged with enforcing European Court decisions. Countries which refuse to comply can be threatened with suspension or even expulsion from the CoE. The Council of Europe requires that its member States be democracies, and hence responsive to public opinion as well as international pressure. This means that the threat of such embarrassment is often more than enough to make States change course.

You can write to the European Court of Human Rights at:

The Registrar
European Court of Human Rights
Council of Europe
F-67075 Strasbourg CEDEX
FRANCE

A. Other Human Rights Work in the Council of Europe System

Other treaties also protect human rights within the Council of Europe system. The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment came into effect in 1984. A European Committee for the Prevention of Torture monitors States under the Convention. The Committee is not a judicial but a preventive body—meaning that it does not address or remedy particular cases of torture; that work is done by the European Court. Instead, the Committee makes visits to member States, investigating conditions of detention and making recommendations. It therefore relies completely on the cooperation of States. It does not respond to individual communications: but if you have evidence that a pattern of torture exists in a European society, you can send it to the Committee.

The European Social Charter is a wide-ranging treaty protecting economic and social rights. A European Committee of Social Rights examines States' records of progress. Individuals cannot petition the Committee: it only hears "collective complaints" from groups such as trade unions and NGOs which (like ILGA-Europe) have consultative status with the Council of Europe.

The CoE also has educational programs to combat racism and intolerance, promote gender equality, train police in human rights, and defend national minorities, among other concerns.

In 1999, the CoE created the post of a Council of Europe Commissioner of Human Rights, to coordinate many of these activities. The Commissioner is Mr. Alvaro Gil-Robles. He has far less power than the UN High Commissioner for Human Rights. However, he can receive individual complaints and make a public comment on them if necessary.

The Commissioner can be reached at:

Commissioner for Human Rights
Council of Europe
F-67075 Strasbourg CEDEX
FRANCE

Telephone: 33(0)3 90 21 50 63; Fax: 33(0)3 90 21 50 53
E-mail : commissioner.humanrights@coe.int

The Parliamentary Assembly of the Council of Europe also performs important work in monitoring human rights situations in member countries.

A State joining the CoE must accept "the principle of the rule of law and [guarantee] human rights and fundamental freedoms to everyone under its jurisdiction." In the early 1990s, States in Eastern Europe which had recently overthrown totalitarian governments and established democracy began applying to join the CoE. The Parliamentary Assembly wanted to determine whether laws in these countries were consistent with the European Convention on Human Rights.

Official rapporteurs—members of the Parliamentary Assembly—went to Romania in 1993, and expressed concern (among other issues) over the sodomy law in force there. When Romania was admitted to the CoE that year, it was made to promise that the law would be repealed. Although this has yet to occur, the Parliamentary Assembly has continued to press Romania to do so. Many other states in Eastern Europe, from Albania to Azerbaijan, have eliminated laws against homosexuality as part of their applications for CoE membership.

Investigation does not end when a State joins the CoE. In 1993, the Parliamentary Assembly adopted Order No. 488 (called the "Halonen Order"). This authorized committees to "monitor closely the honouring of commitments entered into by the authorities of new member States, and to report . . . at regular six monthly intervals until all undertakings have been honoured." The monitoring is done by three committees of the Parliamentary Assembly:

- The **Committee on Legal Affairs and Human Rights**, which examines and advises on legislation in applicant and member States.
- The **Committee on Political Affairs**, which measures the commitment of political systems to democracy.
- The **Monitoring Committee**, which can appoint rapporteurs to visit and investigate a particular country.

You can learn which countries are being monitored from the Parliamentary Assembly's website at http://stars.coe.fr/Synopsis_works.htm. Activists in these countries can ask rapporteurs to pressure governments for changes in law, policy, or

practice. You can also send information on injustices in any country—whether it is being monitored or not—to the Committee on Legal Affairs or on Political Affairs, asking it to take action.

You can contact the three committees at:

(Name of committee)
Parliamentary Assembly
Council of Europe
F-67075 Strasbourg CEDEX
FRANCE

The Parliamentary Assembly also passes numerous recommendations on human rights. These are not laws; they are not binding. But since they are passed by a gathering of lawmakers who are all members of the Parliaments of European States, they have considerable moral force. As long ago as 1981, the Parliamentary Assembly adopted Recommendation 924, a comprehensive call for an end to discrimination against homosexuals. In 2000, the Parliamentary Assembly adopted new resolutions reaffirming this. It also called on Member States to guarantee refugee status for persons persecuted because of their sexual orientation; to give residence and immigration rights to bi-national same-sex couples; and to provide registered partnership for same-sex couples. On HIV/AIDS issues, the Parliamentary Assembly has repeatedly defended privacy and condemned compulsory testing. Such recommendations can be used by local activists throughout Europe to advocate for their rights. Texts can be found on the Parliamentary Assembly's website, at http://stars.coe.fr/Synopsis_works.htm.

V. The African Human Rights System

A. The African Charter on Human and People's Rights

From its foundation in 1963, the Organization of African Unity (OAU) voiced a commitment to the freedoms embodied in the Universal Declaration of Human Rights.

However, almost twenty years passed before African governments agreed to an African treaty defending those human rights.

The need for such a treaty was underscored by growing human rights violations throughout the continent, and by the slowness of some (though not all) African leaders to condemn them. President Yoweri Museveni of Uganda strongly criticized the OAU in the 1980s for ignoring the sufferings

of Ugandans under previous regimes. "Ugandans felt a deep sense of betrayal that most of Africa kept silent," he said. "Tyranny is color-blind and should be no less reprehensible because it is perpetrated by one of our kind."

A draft Charter was at last prepared and proposed at a meeting of OAU ministers in Banjul, the Gambia, in 1980. (For this reason, the document is sometimes called the Banjul Charter.) It was adopted by the OAU assembly the following year.

The African Charter on Human and People's Rights is the newest of the major international rights treaties. However, it is also the most widely accepted regional rights pact, having been ratified by over fifty countries. (To learn which countries have ratified the Charter, see the University of Minnesota's human rights website at <http://www1.umn.edu/humanrts/instree/ratz1afchr.htm>.)

The authors of the Charter attempted to "reflect the African conception of human rights" and "African philosophy of law." The Charter tries to unite universal standards of human rights, recognized in other international documents, with what the framers believed were African values and traditions. It balances individual liberties against what it identifies as the needs of communities.

The African Charter is thus a unique treaty. In addition to specifying the rights of individuals, it also specifies their duties. The Charter includes a section on collective rights, or the rights of peoples. And it also lists duties which States have to their people.

The *rights of individuals* in the Charter include most of those contained in the International Covenant on Civil and Political Rights and similar documents. No version of the right to privacy is included, however: nor is the right to marry. Many of the articles contain ambiguous or limiting phrases: thus freedom of expression is protected "within the law," and an individual has the right to association "provided he abides by the law." Such language may make difficult in practice to use the Charter to evaluate, or change, many national laws.

The *rights of peoples* include the rights to self-determination, to peace and security, to dispose of wealth and natural resources, and to economic, social, and cultural development.

Various economic and social rights are protected, either for individuals or as part of the *duties of States*. It is here, however, that the community-

centered language of the document takes a strongly moralistic tone. States must "assist the family, which is the custodian of morals and traditional values recognized by the community" (Article 18). The Charter also holds that "The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State" (Article 17).

Finally, the *duties of individuals* are directed not only toward society and State, but toward the family: individuals must "work for the cohesion and respect of the family" (Article 29). The individual must also "respect and consider his fellow beings without discrimination," however (Article 28). And individuals have a duty to "preserve and strengthen positive African cultural values . . . in the spirit of tolerance, dialogue and consultation" (Article 29).

LGBT activists in Africa fear that the Charter's emphasis on morals and traditional values will keep it from addressing issues of sexual orientation or from advancing the rights of many vulnerable groups. The Charter indeed seems unsympathetic to people who desire, or are forced, to live outside traditional family structures. However, the Charter has several strengths. It sweepingly condemns discrimination (Articles 2 and 28) whether by individuals or States. It endorses equality between men and women. Moreover, the Charter repeatedly invokes ideals of tolerance and cooperation.

HIV/AIDS activists, meanwhile, may find the African Charter's protection of the right to health, as well as its non-discrimination provisions, usable tools for overcoming stigma and gaining access to treatment.

The Charter is still young: much depends on how it will be interpreted. Members of the African Commission, which is charged with giving meaning to its provisions, must be furnished with information--respectfully and gradually--on the identities, and needs, of vulnerable and often nearly-invisible populations in Africa.

B. The African Commission on Human and People's Rights

The African Commission is the monitoring and enforcing body of the African Charter. It is based in Banjul, the Gambia, and usually meets twice yearly for two-week sessions.

The African Commission has eleven members, elected by the Assembly of the OAU. They serve in an individual capacity, not as representatives of their governments. The Commission can only make recommendations, not

issue legally binding decisions. However, it still has considerable powers. The Commission can:

- Launch an investigation of any human rights issue.
- Review reports which States must submit every two years, detailing the steps they have taken to implement the Charter. The Commission can use background information from NGOs in questioning States about the reports they submit.
- Examine complaints by one State against another, and prepare a report for the OAU, stating its view of the facts and its recommendations.
- Consider complaints from individuals and NGOs about human rights violations.

In most human rights systems, the last power-hearing individual complaints-- is the most important. However, *we do not recommend sending formal complaints about violations based on sexual orientation or gender identity to the African Commission.* The Commission has never heard such a case. A complaint coming to it without prior preparation or lobbying might actually end with the Commission endorsing the idea that homosexuality is opposed to "African values." Such a precedent would be extremely difficult to reverse. (In 1995, the African Commission received a complaint about President Robert Mugabe's homophobic statements inciting hatred in Zimbabwe. At the request of Zimbabwean activists, however, this complaint was withdrawn--partly because they feared retaliation from their government, and partly because they feared the Commission would respond negatively.)

Instead, we recommend that African LGBT activists begin to lobby the Commission where possible--doing so respectfully and politely, since these are values to which the Commission attaches great importance. The best way to do this is to meet with Commission members personally. If you live in or visit the home country of a Commission member, try to arrange a meeting to discuss your own human-rights work and the situations LGBT people face in Africa.

African activists can also send the Commission information which will help its members understand LGBT issues. You might offer international precedents from other human rights systems (such as European Court decisions); information on countries such as South Africa, which respect and protect the rights of LGBT people; or information on serious human rights violations, in order to show the abuse and discrimination LGBT people face. Such information will carry particular weight when sent from an African country. But make clear that you are offering this for

informative purposes only. You are not asking the Commission to take action.

HIV/AIDS activists, however, may wish to use the complaints process. The Charter condemns discrimination, and protects the right to health. Cases of HIV-related discrimination, or violations of the right to health care, can be reported to the African Commission.

How can you petition the African Commission?

Almost anyone is allowed to submit a complaint to the Commission. Complaints can be received from:

- Victims of a human rights violation committed by the government or officials of a State which has ratified the African Charter;
- A person or NGO *anywhere* acting on behalf of such a victim, when the victim cannot act on her own behalf;
- A person or NGO offering evidence of serious or massive violations of human rights.

Complaints can be written in Arabic, English, French, or Portuguese. A complaint must meet seven conditions to be considered by the Commission.

- You must state your identity. An individual must give her name, address, age, and profession; an NGO should give its address and name its presiding officer. The Commission will protect your anonymity if you do not want your identity known to others.
- Your complaint must be about a violation of a right protected in the African Charter. And it must be directed at a State which had ratified the Charter before the date the violation took place.
- You must not use disparaging or insulting language about the State involved or about the OAU.
- The complaint must not be based solely on news reports. It must also contain evidence from personal knowledge, other witnesses, or official documents.
- The complaint must be sent only after remedies at the national level have been exhausted, "unless it is obvious that this procedure is unduly prolonged."
- The complaint must be sent "within a reasonable period" after the time domestic remedies are exhausted—probably not more than six months.
- You cannot complain about a case which has already been settled in a manner consistent with the African Charter or other

international human rights standards. And you must not be simultaneously pursuing your case through some other international legal procedure. If, for instance, you have asked the United Nations Human Rights Committee to hear your case under the Optional Protocol, you cannot also appeal to the African Commission. (Giving information to Special Rapporteurs or to other non-treaty-based UN mechanisms does not count; nor does including the information in a shadow report to a treaty body, as these are not formal legal procedures.)

The Commission will show the complaint (anonymously, if you have requested it) to the State concerned, for comment. It will then decide by majority vote whether the complaint meets these seven conditions and is admissible.

If the complaint is admitted, the State must respond to it within four months. The Commission will show the State's response to the author of the complaint, who can then offer additional information.

The Commission usually does not hold a hearing. Most of its deliberations are private; it generally holds only one public meeting per year. After considering the complaint and the State's reply, the Commission will offer its observations and recommendations on the case to the Assembly of Heads of State of the OAU. The Assembly must give its permission before the Commission can make these findings public.

The fact that the Commission's proceedings are usually closed to the public—and that its conclusions are often kept secret—helps protect the confidentiality of petitioners. But it makes it extremely difficult to use the findings to embarrass governments. The closed nature of the Commission's work threatens to destroy its effectiveness. African NGOs need to push to make the Commission's work more open and transparent: to ensure that the public can see it operate, and have access to its decisions.

Even under the current circumstances, though, there are advantages to making States answer complaints before the Commission. For one thing, hiring lawyers and preparing a defense cost the State time and money: they remind the State that its actions have costs and consequences. And States can be embarrassed even by being forced to reply in a closed, private proceeding.

The African human rights system may change significantly soon. A Protocol or amendment to the African Charter was approved by the OAU

in 1998. It would create an African Court of Human and People's Rights. The Court would be a panel of final appeal in the African system, hearing cases in which the Commission was unable to reach a friendly settlement—much as in the Inter-American system. Unlike the Commission, its findings would be legally binding rulings. And unlike the present Commission, its hearings and judgments would be public.

The Court will only be created if the Protocol is ratified by eleven African states. Passing the Protocol would make the African system a much more effective means of defending human rights.

A good place to find out about the African Commission's membership and work is the African Human Rights Resource Center web page in the University of Minnesota's human rights website, at <http://www1.umn.edu/humanrts/africa>.

You can contact the African Commission at:

Secretary of the African Commission on Human and People's Rights
Kairaba Avenue
P. O. Box 673
Banjul
The Gambia
Telephone +220 392 962 or +220 392964
Telex: 2346 OAU B JL GV
Fax: +220 390 764

APPENDIX:

Rights Protected In Major International Instruments

International Covenant on Civil and Political Rights (ICCPR)

Articles

2 Non-discrimination

6 Right to life

7 Freedom from torture or cruel, inhuman or degrading treatment

7 Freedom from slavery and forced labor

8 Right to liberty and security, and freedom from arbitrary arrest

10 Rights of detained persons

11 Freedom from imprisonment for debt or contractual obligation

12 Freedom of movement and choice of residence

13 Freedom of aliens from arbitrary expulsion

14 Right to a fair trial

15 Freedom from retroactive punishment under criminal law

16 Right to recognition as a person before the law

17 Right to privacy

18 Freedom of thought, conscience, and religion

19 Freedom of opinion and expression

20 Prohibition of propaganda for war and incitement of national, racial, or religious hatred

21 Right of peaceful assembly

22 Freedom of association

23 Right to marry and found a family

24 Rights of the child

25 Rights to participate in political and public life

26 Equality before the law

27 Rights of ethnic, linguistic, and religious minorities

International Covenant on Economic, Social, and Cultural Rights (ICESCR)

Articles

1 Right of peoples to self-determination

6 Right to work

7 Right to just and favorable conditions of work, including fair wages, equal pay for equal work, and holidays with pay

8 Right to form and join trade unions, including the right to strike

9 Right to social security

10 Protection of the family, including special assistance for mothers and children

11 Right to an adequate standard of living, including adequate food, clothing and housing and continuous improvement of living conditions

- 12 Right to the highest attainable standard of physical and mental health
- 13 Right to education
- 14 Right to participate in cultural life and enjoy the benefits of scientific progress

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

Articles

- 7 Right to participate in political and public life
- 8 Right to represent governments internationally, and participate in the work of international organizations
- 9 Right to acquire, change, or retain nationality
- 10 Rights to education
- 11 Right to work and social security and to equality in employment, including maternity leave and benefits
- 12 Right to equality in health care
- 13 Rights to equality in family benefits, access to credit, and participation in cultural life
- 14 Rights of rural women
- 15 Equality before the law
- 16 Non-discrimination in family life and marriage

Convention on the Rights of the Child (CRC)

Articles

- 2 Non-discrimination
- 6 Right to life
- 7 Right to birth registration, to nationality, and to knowledge of ones parents
- 8 Right to preserve identity and family relations
- 9 Protection against separation from parents
- 10 Right to family reunification and movement across national borders
- 11 Prohibition against illicit transfer of children abroad
- 12 Right to express views in accordance with age and maturity, and to be heard in judicial and administrative proceedings
- 13 Freedom of expression
- 14 Freedom of thought, conscience, and religion
- 15 Rights to association and assembly
- 16 Right to privacy
- 17 Right to access to information from the mass media
- 18 Right to parental care
- 19 Prohibition of violence, abuse, and neglect
- 20 Right to special assistance and care from the State, for children

- deprived of family environment
- 21 Rights in adoption
 - 22 Rights of refugee children
 - 23 Rights of mentally or physically disabled children
 - 24 Right to the highest attainable standard of health
 - 25 Right to periodic review of treatment for physical or mental health
 - 26 Right to social security
 - 27 Right to an adequate standard of living
 - 28 Right to education
 - 29 Goals of education of the child
 - 30 Rights of children in ethnic, religious, or linguistic minorities
 - 31 Rights to rest, leisure, recreation, and participation in cultural life
 - 32 Protection from economic exploitation
 - 33 Protection from narcotic drugs and psychotropic substances
 - 34 Protection from sexual exploitation and abuse
 - 35 Protection from trafficking
 - 36 Protection from other forms of exploitation
 - 37 Freedom from torture or cruel, inhuman, or degrading treatment
 - 38 Rights of children in situations of armed conflict
 - 39 Right to treatment for and recovery from abuse
 - 40 Rights of children accused before criminal law

American Convention on Human Rights

Articles

- 1 Non-discrimination
- 3 Right to recognition as a person before the law
- 4 Right to life
- 5 Freedom from torture or cruel, inhuman, or degrading treatment
- 6 Freedom from slavery and servitude
- 7 Right to liberty and security, and freedom from arbitrary arrest
- 8 Right to a fair trial
- 9 Freedom from retroactive punishment under criminal law
- 10 Right to compensation for miscarriage of justice
- 11 Right to privacy
- 12 Freedom of conscience and religion
- 13 Freedom of thought and expression
- 14 Right of reply
- 15 Freedom of assembly
- 16 Freedom of association
- 17 Right to marry and found a family
- 18 Right to a name
- 19 Rights of the child to protection
- 20 Right to a nationality

- 21 Right to use and enjoyment of property
- 22 Freedom of movement and residence, and rights of aliens
- 23 Right to participate in political and public life
- 24 Equality before the law
- 25 Right to an effective remedy if rights are violated

European Convention for the Protection of Human Rights and Fundamental Freedoms, and its relevant Protocols

Articles

- 2 Right to life
- 3 Freedom from torture or cruel, inhuman, or degrading treatment
- 4 Freedom from slavery and servitude
- 5 Right to liberty and security
- 6 Right to a fair trial
- 7 Freedom from retroactive punishment under criminal law
- 8 Right to respect for private and family life, the home and correspondence
- 9 Freedom of thought, conscience, and religion
- 10 Freedom of expression
- 11 Freedom of assembly and association
- 12 Right to marry and found a family
- 13 Right to an effective remedy if rights are violated
- 14 Non-discrimination

Protocol no. 1:

Articles

- 1 Right to property
- 2 Right to education, and of parents to ensure the education of their children in conformity with their own religious and philosophical convictions
- 3 Right to free elections

Protocol no. 4:

Articles

- 1 Freedom from imprisonment for debt or contractual obligation
- 2 Freedom of movement and residence
- 3 Freedom from exile, and the right to enter one's own country
- 4 Prohibition of collective expulsion of aliens

Protocol no. 6:

Articles

- 1-2 Prohibition of the death penalty in peacetime

Protocol no. 7:*Articles*

- 1 Right of alien not to be expelled from a State without due process
- 2 Right of appeal in criminal cases
- 3 Right to compensation for miscarriage of justice
- 4 Right not to be prosecuted twice for the same offense
- 5 Equality of rights and responsibilities between spouses

Protocol no. 12 (not yet in force):*Article*

- 1 Non-discrimination

African Charter on Human and Peoples Rights**Rights of the Individual:***Articles*

- 2 Non-discrimination
- 3 Equality before the law
- 4 Right to life
- 5 Right to dignity, and freedom from exploitation and slavery
- 6 Right to liberty and security, and freedom from arbitrary arrest
- 7 Right to a fair trial
- 8 Freedom of conscience and religion
- 9 Freedom of opinion and expression, and right to receive information
- 10 Freedom of association
- 11 Freedom of assembly
- 12 Freedom of movement and residence, and rights of aliens
- 13 Right to participate in political and public life
- 14 Right to property
- 15 Right to work, and to equal pay for equal work
- 16 Right to the best attainable standard of physical and mental health
- 17 Right to education, and to participate in the cultural life of ones community

Rights of peoples:*Articles*

- 19 Equality of peoples
- 20 Right to self-determination
- 21 Right to dispose of wealth and natural resources
- 22 Right to economic, social, and cultural development
- 23 Right to peace and security
- 24 Right to a general satisfactory environment favorable to development

Duties of States:*Articles*

17 Duty to promote and protect morals and traditional values

18 Duty to protect and assist the family; to eliminate discrimination against women; and to protect children, the aged, and the disabled

25 Duty to promote respect for rights

26 Duty to guarantee independence of Courts, and establish and improve appropriate national institutions

Duties of individuals:*Articles*

27 Duties toward the rights of others, collective security, morality, and common interest

28 Duty to refrain from discrimination and treat others with respect and tolerance

29 Duties to family, society, and State

ACKNOWLEDGEMENTS

in addition to the experience of IGLHRC's staff, this document draws on information compiled or published by Alliances–An African Women's Network; Amnesty International; CEJIL; Human Rights Watch; the International Human Rights Law Group; the International Lesbian and Gay Association; and the Lawyers Committee on Human Rights.