

## Letterhead of IGLHRC

Paper No. CB(2)435/00-01(10)

December 7, 2000

Members of the Home Affairs Panel of the Legislative Council  
c/o Ms. Flora Tai  
Clerk to Home Affairs Panel  
8 Jackson Road  
Central, Hong Kong

Sent by fax to: 852-2509-9055

Dear Members of the Home Affairs Panel of the Legislative Council,

I am writing on behalf of the International Gay and Lesbian Human Rights Commission (IGLHRC), a San Francisco-based non-governmental organization. IGLHRC's mission is to protect and advance the human rights of all people and communities subject to discrimination or abuse on the basis of sexual orientation, gender identity, or HIV status. We understand that the Home Affairs Panel of the Legislative Council is examining the issue of protection from discrimination on the basis of sexual orientation. It is first important to commend the serious attention that the Hong Kong government has demonstrated in regards to this issue-as reflected in the studies, surveys, and community consultations sponsored by the Home Affairs Panel and Home Affairs Bureau during the past five years. At the same time, as a member of the international human rights community, IGLHRC is very concerned about the conclusions drawn in the recent Home Affairs Panel report on Discrimination on the Ground of Sexual Orientation. IGLHRC urges the Home Affairs Panel to take all necessary steps to ensure equal protection and non-discrimination for the Tongzhi community in Hong Kong through legislative measures.

The report concluded that stereotypes and prejudices lie at the root of the problem of discrimination on the ground of sexual orientation. This is true. We differ, however, with the conclusion that self-regulation and education are the preferred response. The remedy for violations of rights is stronger protection of rights. The goal of human and civil rights standards is to protect all persons equally, without distinction or discrimination. Recognizing the need for protection against sexual orientation-based discrimination and abuse is an indispensable means by which the promise of universality can be fulfilled. The claims made on such a basis are neither to "new rights" nor to "special rights" but rather promote the extension of protections for human freedom and dignity to include the most vulnerable groups, and to publicize and prevent even the least visible and most easily concealed abuses and violations. Certainly, it is in this spirit that in November 1995 the United Nations Human Rights Committee, in reviewing Hong Kong's compliance to its obligations as a signatory to the International Covenant on Civil and Political Rights, called on the government to adopt anti-discrimination legislation prohibiting discrimination on the ground of sexual orientation.

Presenting its interpretation of the 1996 consultation process, the report stated that an "overwhelming majority" of the 10,014 submissions received in response to the "Equal Opportunities" consultation paper was strongly opposed to legislation in respect of sexual orientation-with many in the educational and religious sectors considering this a form of "'reverse discrimination' against the rights of the majority who choose not to accept non-heterosexuality."

It is disappointing that, rather than examining the content of the submissions received, the paper condensed the views and responses of thousands of individuals and community groups into 4-5 sentences and a rough vote. Matters of respect and rights are trivialized when subjected to a popular vote. Indeed, even if a vast majority of people in a society dislike or disprove of a certain group, governments have the responsibility to take the stand that discrimination in all its forms is wrong. What the statistics in the report in fact reveal is the overwhelming strength of prejudice and bias within Hong Kong society-attitudes that, when acted upon, result in discrimination. The fact that so many respondents in the consultation process stated that they do not want the government of Hong Kong to provide protection to a particular group-an open display of resistance to providing or guaranteeing equality for all-itself provides a compelling case for the need for equal protection.

The report's claim that complaints of discrimination on the ground of sexual orientation have been "few and far between" in the past 3-4 years is also highly questionable. The struggles and difficulties reported by many in the Tongzhi community do not support this conclusion. Instead, that a government body would find only negligible discrimination toward a group that admittedly faces widespread prejudice and bias seems to reflect not the facts but the methodological bias of the government's study itself: it demonstrates a lack of sensitivity to identifying, acknowledging, and addressing such discrimination within existing government systems. As many Tongzhi community groups rightly point out, the Equal Opportunities Commission (EOC) is not expressly mandated to receive or handle cases that constitute a violation of civil rights based on sexual orientation protected under the Bill of Rights. As a result, fewer such claims reach the EOC: people do not present their cases to a body which seems not to guarantee effective action. In a society with limited social acceptance of a particular group of people, a person who wishes to make a discrimination claim must face the prospect of "going public", receiving intense scrutiny, and, in many cases, opening oneself to the possibility for further discrimination. Thus, without both explicit anti-discrimination measures in law and an express mandate by the EOC or another government body to examine and provide redress in cases of discrimination based on sexual orientation, any intention to extend legal protections to embrace widely stigmatized, vulnerable, or disadvantaged groups is meaningless. Likewise, however well-written, a Code of Practice against discrimination in employment on the ground of sexual orientation proves ineffective without corresponding legal codification and government systems of enforcement and redress.

The report claims that "not many" overseas countries adopt anti-discrimination legislation to tackle sexual discrimination based on sexual orientation. Yet this is hardly the case. The rapidly growing list of countries that recognize the importance of explicit anti-discrimination legislation for the fulfillment of international human rights standards includes not only several Western countries, but also many others throughout the world: South Africa, Costa Rica, Ecuador, Fiji, Brazil, and Israel are among them. It is especially

significant that in November, after a process in which the lesbian and gay communities were consulted for the development of human rights guidelines, the government of Tokyo reportedly decided to include protection for "homosexuals" within its human rights legislation-thus becoming the first Asian municipality to set this progressive example. We urge the Panel on Home Affairs to examine these precedents

as models for possible anti-discrimination protections in Hong Kong. I have attached a fact sheet produced by IGLHRC that provides a global perspective on the growing number of anti-discrimination laws offering protection on the basis of sexual orientation in different countries around the world.

We encourage the Panel on Home Affairs to continue and expand its efforts to promote equal opportunities on the ground of sexual orientation through studies, publicity, and education, particularly with the active input and participation of Tongzhi community members at all steps in the process-and with transparency in how this work is funded and executed. Yet such non-legislative measures should complement, rather than substitute for, legislative enactment of equal protection on the basis of sexual orientation. Indeed, within an atmosphere of stigma and lack of social acceptance toward any given social group, codifying protection in law is essential as a statement of values, a deterrent to discrimination, and an educative tool in itself.

If there is any way the International Gay and Lesbian Human Rights Commission can be helpful in providing assistance or technical resources as the Panel on Home Affairs works to ensure equal protection and non-discrimination for the Tongzhi community in Hong Kong, please do not hesitate to contact us.

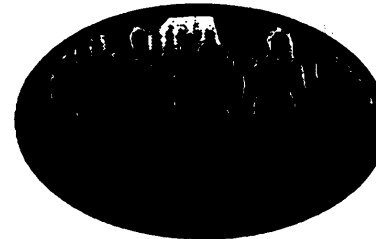
Thank you very much for your attention.

Sincerely,

Daniel J. Lee  
Asia/Pacific Regional Program Officer

# Antidiscrimination Legislation

April 1999  
a worldwide summary



I G L H R C

## 1. What do we mean by discrimination?

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

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

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

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

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

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

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

Most (though not all) international human-rights treaties contain provisions similar to these. No such treaty specifically mentions "sexual orientation" anywhere in its text. However, a 1994 decision by the United Nations Human Rights Committee, *Nicholas Toonen v. Australia*, held that "sex"--in a list of protected categories in the International Covenant on Civil and Political Rights, similar to that in Article 2 of the UDHR--should be understood to include "sexual orientation."

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

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

Countries	Legal provision	Who is discriminated against?	What protections are offered?
Australia Capital Territory	Anti-discrimination Act (1991)	Heterosexuality, homosexuality, bisexuality, transsexuality	Protection against discrimination in work, education, access to premises, provision of goods, services and facilities, accommodation.
State of New South Wales	Anti-Discrimination Act (1977, 1998)	Homosexuality, transsexuality	Protection against discrimination in work, education, provision of goods and services, accommodation.
Northern Territory	Anti-Discrimination Act (1986)	Sexuality	Part 1 (3) states as an object of the Act: "b) to eliminate discrimination against persons on the ground of race, sex, sexuality, age, marital status, pregnancy, parenthood, breastfeeding, impairment, trade union or employer association, religious belief or activity, political opinion, affiliation or activity, irrelevant medical record or irrelevant criminal record in the area of work, accommodation or education or in the provision of goods, services and facilities, in the activities of clubs or in insurance and superannuation . . ." A Commissioner is appointed to conciliate the conflicts between plaintiffs and people who have been subjected to discrimination.
State of Queensland	Anti-discrimination Act (1991)	Heterosexuality, homosexuality, bisexuality	Protection against discrimination in work, education, provision of goods, services and facilities, accommodation. Complaints are mediated by the Anti-Discrimination Commission which plays the role of a mediator and conciliator between the claimant and the person or service accused of discrimination. The aim is to find a solution that is fair to both sides involved in the conflict. Victimization of the claimant such as harassment or threats coming from the other side are subject to heavy penalties.
State of South Australia	Equal Opportunity Act (1984)	Homosexuality, bisexuality, transsexuality	Protection against discrimination in employment, education, provision of goods and services, accommodation.
State of Tasmania	Anti-Discrimination Act (1998)	Sexual orientation	Protection against discrimination. Prohibition of incitement of hatred or severe ridicule of a person or group on one of the protected grounds.
State of Victoria	Equal Opportunity Act (1995), Part 2, Section 6	Lawful sexual activity Marital status	Discrimination is unlawful in employment, education, accommodation, sport, local government. A Commission is responsible for conciliation between the claimants and the respondents of discriminatory behaviour. Cases which cannot be settled by conciliation can be referred to the Tribunal.
Brazil State of Mato Grosso	Constitution, Article 10.3(1988)	Sexual orientation	Protection against discrimination
State of Sergipe	Constitution, Article 3.2(1988)	Sexual orientation	Protection against discrimination
Canada	Canadian Charter of Rights and Freedoms Section 15(1), (1982)  Human Rights Act (1996)	Sexual orientation included by court decision  Sexual orientation	The Charter reads: "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability." In <i>Egan v. Canada</i> (1995), the Canadian Supreme Court recognized sexual orientation as a ground analogous to those explicitly protected. The law forbids discrimination by federally regulated employers, landlords and services. It applies to the federal government, banks, broadcasters, the telephone and telecommunications industry, railways, airlines, shipping, and inter-provincial transportation.
<b>Comment: Canada</b>	Prince Edward Island is now the only province that does not protect gays and lesbians from discrimination. All other provinces have amended their human rights legislation to comply with the Federal Human Right Act and Charter of Rights. Most recently, the Canadian Supreme Court declared in <i>Viand v. Alberta</i> (1995) that Alberta has to include sexual orientation in the non-discrimination clause of its Constitution. In <i>Rosenberg v. Canada</i> (April 98), the Ontario Court of Appeals struck down a federal income tax provision which denied penalties to same sex couples; the Federal Government did not appeal.		

Country	Legal provision	What categories are protected?	What protections are offered?
Colombia	Case brought by the lawyer German Humberto Rincón Parfetti (Sept. 98)	Homosexuality	The Constitutional Court overturned as discriminatory a 1979 law which made a teacher's homosexuality grounds for dismissal.
Costa Rica	Law No 7771, Art. 48	Sexual option	Protection against discrimination: "Whoever practices any form of discrimination, based on race, nationality, gender, age, political option, sexual orientation, social position, or economic situation, marriage status, or diseases will be sanctioned by the law with twenty to sixty days in jail."
Denmark	Penal Code (1987)  Act 458 (1996)	Sexual orientation  Sexual orientation	Act 826 of 1987, Article 280b, declares that "Persons who publicly or deliberately disseminate statements or other reports by which any group of people are threatened, ridiculed or degraded on account of their racial origin, skin colour, national or ethnic origin, beliefs or sexual orientation, are liable to fines, short-term detention or imprisonment for up to two years." The same law changed an anti-discrimination provision to include sexual orientation, imposing a punishment of "fines, short-term detention, or imprisonment for up to six months." However, it was not until 1996 that Denmark introduced a law banning such discrimination in the private labor market. The law (Act 458, 1996) forbids an employer to discriminate against an employee - or a person seeking employment - on hiring, firing, replacement, promotion, salary or other work conditions. It further forbids discrimination with regard to access to education and training and in-service-training.
Ecuador	Constitution (1998), Article 23	Sexual orientation	Equality before the law is guaranteed to all citizens regardless of their "birth, age, sex, ethnicity, color, social origin, language, religion, political affiliation, economic position, sexual orientation, health status, disability, or difference of any kind."
Fiji	Constitution, Section 38(2) of the Bill of Rights (1998)	Actual or supposed [...] sexual orientation	Equality before the law: "A person may not be unfairly discriminated against, directly or indirectly, on the ground of his or her: (a) actual or supposed personal characteristics, including race, ethnic origin, colour, place of origin, gender, sexual orientation, birth, primary language, economic status, age or disability; or (b) opinions or beliefs, except to the extent that those opinions or beliefs involve harm to others of the diminution of the rights and freedom of others; or on any other ground prohibited by this Constitution."
Finland	Constitution (1995), Section 5  Penal Code (1995), Section 9	"Any other reason related to the person"  Sexual preference	"All persons shall be equal before the law. No one shall, without acceptable grounds, be accorded a different status on account of sex, age, origin, language, religion, conviction, opinion, state of health, disability or any other reason related to the person." The text accompanying the Government bill cited sexual orientation as an example of an "other reason related to the person". This explanatory text also stressed that not all instances of prohibited discrimination are mentioned in the Constitution itself, and the list is not to be deemed exhaustive. <b>Discrimination:</b> "Any person who, without a good reason, in exercising their trade or profession, serving the general public, exercising official authority or other public function, or arranging public events or meetings: 1. refuses someone service generally accorded; 2. refuses someone entry to the event or meeting or rejects them; or 3. places someone in an unequal or an essentially inferior position on grounds of race, national or ethnic origin, color, language, gender, age, family ties, sexual preference, state of health, religion, political orientation, political or industrial activity or another comparable circumstance shall be sentenced, unless the act is punishable as industrial discrimination, for discrimination to a fine or to up to six months' imprisonment."

Country	Legal provision	What attributes are protected?	What protections are offered?
Finland (cont)	Penal Code (1995), Chapter 47, Section 3	Sexual preference	<b>Labour Offences:</b> Employment discrimination: "Any employer or representative acting for an employer who, without good reason, discriminates against a jobseeker when advertising a vacancy or recruiting staff or against an employee 1. on grounds of race, national or ethnic origin, colour, language, gender, age, relations, sexual preference or state of health; or 2. on grounds of religion, political opinion, political or industrial activity or a comparable circumstance, shall be sentenced for employment discrimination to a fine or up to six months' imprisonment."
France	Penal Code (1985) and Code of Labor (1986, 1990)	"Moeurs" (lifestyle)	Discrimination on the basis of lifestyle has been prohibited in employment or service, public or private, since 1985 (Art. 225-1,2 of the Penal Code). No one may be denied employment or dismissed from it on grounds of his or her lifestyle ("moeurs"). No hiring procedure may use information on the lifestyles of applicants (Code du travail, Articles L. 122-45, L. 121-8). An emergency redress procedure, for use in instances of infringement of individual liberties at the workplace, was created in 1992 (Code du travail, Art. L. 422-1-1). France currently has no law protecting gays and lesbians as a group from verbal hatred on grounds of their sexual orientation. Only natural and legal persons are protected by an anti-defamation law. By contrast, verbal hatred on grounds of racial or ethnic origin, nationality or religion is forbidden by law (Art. R-624-3,4,7 of the penal code).
Iceland	Penal Code (1996)	Sexual orientation	The law criminalizes actions that defame, slander, humiliate, or degrade a person or a group because of sexual orientation. In addition, it is illegal to deny goods or services based on a person's sexual orientation.
Ireland	Prohibition of Incitement to Hatred Act (1989)  The Unfair Dismissals (Amendment) Act (1993) The Health Insurance Act (1994)	Sexual orientation  Sexual orientation  Sexual orientation	The law creates a number of offences outlawing stirring up hatred against groups or persons on the grounds of certain characteristics, including sexual orientation. It is an offence to publish or distribute materials or use words or behavior which "are threatening, abusive or insulting and are intended or, having regard to all the circumstances, are likely to stir up hatred". There is a similar provision in the Video Recordings Act. Prohibits dismissal on the grounds of an employee's sexual orientation.  Provides that premiums payable under health insurance contracts shall not vary owing to the age, sex or sexual orientation of a person, or his or her suffering or prospective suffering from a chronic disease, illness or other medical condition.
Israel	Equal Opportunities in Employment Act (1982)	Sexual orientation	Prohibits discrimination against employees and job applicants.
Luxembourg	Penal Code, Art. 454-457 (1997)	Sexual orientation	The list of non-discrimination categories in Article 454 of the Penal Code also contains "sexual orientation." The following kinds of discrimination based on one of these categories, directed at physical or legal persons, groups or communities of persons, are illegal according to Article 455 and punishable by prison terms of between eight days and two years, or fines between 10,001 and 1,000,000 Luxembourg Francs: "to refuse the provision of goods and services, to publicly announce to deliver goods and services under certain restrictions relevant to Article 454, and to impede the normal performance of any economical activity." Article 455 also covers discrimination in the labor market, imposing the same punishment on anyone who discriminates against a person on the grounds listed in Article 454 with regard to hiring, promotion, and dismissal of employees. Additionally, it is forbidden to restrict an offer of employment in a way relevant to Article 454. Article 456 provides for punishments-- which are one-third higher than those provided in Articles 444 and 455--for discrimination committed by civil servants in performance of their functions, or by persons charged with a public mission who are in performance of this mission. Article 457 of the penal code regulates hate crimes. It provides the same punishments as Article 455 for any public form of incitement to the crimes prohibited by Article 455, or to hate and violence against individuals or groups characterized by one of the attributes protected under Article 454.

Countries	Legal provision	What categories are protected?	What protections are offered?
The Netherlands	<p>Constitution, Article 1 DC (1983)</p> <p>Penal Code (1982) Articles 137c, d, e and f Article 429quater</p> <p>The General Equal Treatment Act (1994)</p>	<p>"Any grounds whatsoever"</p> <p>Homosexual and heterosexual orientation</p> <p>Homosexual and heterosexual orientation</p>	<p>All forms of discrimination are prohibited, although neither the term "sexual preferences" nor any synonym was explicitly mentioned as grounds for protection. However, other parliamentary documents and legal precedents place sexual orientation under the protection of the first article of the Constitution.</p> <p>In 1982, the terms "homosexual and heterosexual orientation" were added to the existing articles on racial discrimination. As a result, mistreatment and inciting discrimination, as well as violence targeted at an individual because of his or her homosexuality (or heterosexuality), are an offence. The same applies to publicly expressed discriminatory remarks, as well as to participating in or encouraging discrimination.</p> <p>Discrimination based on sexual orientation by a person in the performance of his/her public function, profession or business is also banned.</p> <p>The law prohibits discrimination on the grounds of an individual's religion, belief, political conviction, race, sex, heterosexual or homosexual orientation or civil status in the fields of labour, housing, medical care and access to goods and services.</p> <p>Individuals can seek redress from discrimination based on the above grounds through the <u>Equal Treatment Commission</u>. Unequal treatment is illegal in any area related to work, in offering goods and services, and in receiving advice about educational and career opportunities.</p>
New Zealand	Human Rights Act, section 21 (m) (1993)	Sexual orientation	Offers protection in employment, education, access to public places, provision of goods and services, housing, and accommodation. Property rights accorded heterosexual common-law relationships do not apply to same sex couples.
Norway	<p>Penal Code, Paragraph 135a (1981)</p> <p>Work Environment Law (Clause added in 1988)</p>	<p>Sexual orientation</p> <p>Sexual orientation</p>	<p>The law states that anyone who in any way publicly spreads information that threatens, insults, or spreads hatred, persecution, or contempt toward any person or group of persons because of their religious faith, race, colour of skin, or their national or ethnic origin, as well as sexual orientation, can be fined or received a prison sentence of up to two years in prison.</p> <p>This clause has been employed once since its passage: in a case ultimately decided by the Norwegian Supreme Court, a minister of a conservative church was sentenced to 30 days in prison, for stating in a radio program that lesbians and gay men should be removed from all federal and government employment.</p> <p>The anti-discrimination clause applies both to private and public labour market and protects employees against dismissal because of unfair discrimination.</p> <p>Additionally, Clause 56e gives anyone the right to appeal if they believe that they have been denied employment on the grounds of unjustified discrimination. However, the burden of proof lies on the would-be employee and even if the court decides in favour of the employee, no financial compensation can be claimed. This is the case for all plaintiffs in discrimination cases, whether or not based on sexual orientation.</p>
Slovenia	<p>Penal Code (1998) Article 141</p> <p>Law About Work Relations, Article 6 (1998)</p>	<p>Sexual orientation</p> <p>Sexual orientation</p>	<p>Sanctions with a fine or up to one year of prison to anyone who "denies someone his human rights or fundamental freedoms recognized by the international community or set by the Constitution or a law" because of a difference "in nationality, race, colour, religion, ethnic background, gender, language spoken, political or other persuasion, sexual orientation, material status, birth, education, social status or any other personal circumstance."</p> <p>Article 6 states: "Employer may not put employment-seeker in unequal position because of his/her race, skin colour, gender, age, medical condition, religious, political or other belief, membership in an union, national or social origin, family status, wealth status, sexual orientation or other personal circumstances".</p> <p>The law also explicitly sanctions same-sex harassment in workplace.</p>



Country	Legal provision	What is applied as protected?	What remedies are offered?
South Africa	<p>Constitution (1996) Bill of Rights and Equality Clause</p> <p><i>South Africa was the first country in the world to include sexual orientation in its constitution as a protected category</i></p>	Sexual orientation	<p>Section 9--the Equality Clause--of the Bill of Rights reads: "The State may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth." The Equality Clause bans private-sector discrimination, specifying that "No other person may unfairly discriminate directly or indirectly against anyone on one or more of the (above) grounds." In October, 1998, South Africa's highest court, the Constitutional Court, declared sodomy laws unconstitutional on the basis of the Equality Clause, finding them to violate basic rights to dignity and equality as well as privacy. Further challenges to discriminatory treatment before the law are underway.</p>
Spain	<p>Penal Code (1985) Articles 22, 314, 510, 511, 512, 515</p>	Sexual orientation	<p>Protection against discrimination is provided in the following areas:</p> <ul style="list-style-type: none"> <li>--an additional penalty is imposed for crimes involving discrimination on the grounds of race, antisemitism, or any other discrimination based on the ideology, religion or creed of the victim, as well as their ethnic or racial origin, sex, or sexual orientation, health, or disability status (Art. 22)</li> <li>-- public or private employers engaging in discrimination at the workplace face six months to two years of imprisonment, or fines and financial redress (Art. 314)</li> <li>--hate crimes against groups or associations engaged in on any of the above grounds are punishable by one to three years' imprisonment (Art. 510)</li> <li>--the same penalty applies for defamation or other false claims directed at groups or associations on the same grounds (Art. 510, see also Art. 515)</li> <li>--discrimination in providing services both in the public and private sector is prohibited, with a penalty of six months' to four years' imprisonment (Art. 511)</li> <li>--discrimination in provision of employee benefits, with a penalty of cancellation of professional license or commercial or industrial permit for one to four years (Art. 512)</li> </ul>
Sweden	<p>Penal Code (1987)</p>	Homosexuality	<p>Chapter 16, paragraph 8, which deals with discrimination, provides that businesses (individuals and companies) commit an offence if they fail to provide their normal level of service to someone because of his/her homosexuality; this constitutes discrimination. The penalty for such discrimination is a fine or up to one year's imprisonment. The law also applies to the following categories of staff: employees of businesses, civil servants, organisers of public events, and staff at such events.</p> <p>The law applies only if the discrimination is directed at individual gay men or lesbians. It is not illegal to discriminate against homosexual associations or organisations.</p> <p>The Penal Code does not offer protection in the private labor market.</p> <p>A new law, to take effect May 1999 will reportedly ban all labor discrimination, including in the private sector. Both defamation and insulting of individuals are punishable offences. To defame a person is to speak ill of them to another person; to insult them is to use the offending expression to their face. Only extreme expressions, severe defamation or accusations are prohibited. Minor malicious remarks or common words of abuse do not come within the scope of the law. This provision does not cover incitement to hatred against lesbians and gay men as a group, but only as individuals.</p>
United States of America	<p>Equal Employment Opportunity in the Federal Government (1998)</p>	Sexual orientation	<p>An Executive Order, entitled Further Amendment to Executive Order 11478, signed by President Clinton in 1998, institutes a uniform policy by which discrimination based on sexual orientation is prohibited in the Federal Government's civilian workforce.</p>

Countries	Legal provision	What categories are protected?	What protections are offered?
USA (cont) Ten States: California, Connecticut, Hawaii, Massachusetts, Minnesota, New Hampshire, New Jersey, Rhode Island, Vermont, Wisconsin; also in the District of Columbia	Civil Rights Laws	Sexual orientation	Discrimination in the workplace prohibited (applies to private employers)
<i>Comment:</i> USA	The Supreme Court found in 1986 that Colorado violated the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution, with an amendment to the state Constitution that would have banned anti-discrimination legislation based on sexual orientation. The majority decision in <i>Romer v. Evans</i> reads, in part, "Central both to the idea of the rule of law and to our own Constitution's guarantee of equal protection is the principle that government and each of its parts remain open on impartial terms to all who seek its assistance." The court concluded that "Amendment 2 classifies homosexuals not to further a proper legislative end but to single out and stigmatize them in relation to the rest of the population. "This Colorado cannot do." This ruling is a landmark victory for equal rights in the United States; although its precise implications are unclear--including the level of scrutiny to which discrimination based on sexual orientation will be subjected to determine whether it is legally justifiable--the decision may provide an important precedent for future anti-discrimination cases in the United States.		

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

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

#### 4. What about freedom from discrimination in family life?

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

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

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

The information contained in this fact sheet is drawn from *The Third Pink Book* (1993), *Index on Censorship*, 24(1) Jan/Feb 1995, the *ILGA Euroletter*, the *ILGA Annual Report* 1996, the ILGA-Europe report "Equality for Lesbians and Gay Men" accessible on <http://inet.unif2.dk/~steff/report.htm>, additional ILGA information accessible at <http://www.ilga.org>, documentation by the Swiss Gay Federation (Pink Cross), Bern, and IGLHRC files. Please contact IGLHRC with any new information that can be used to update this fact sheet.

International Gay and Lesbian Human Rights Commission  
1380 Mission Street, Suite 200 • San Francisco, CA 94103 USA  
T: 1.415.255.8680 • F: 1.415.255.8682  
E: [ighrc@ighrc.org](mailto:ighrc@ighrc.org) • [www.ighrc.org](http://www.ighrc.org)