

# GLOBAL RECOGNITION OF HUMAN RIGHTS FOR LESBIAN, GAY, BISEXUAL, AND TRANSGENDER PEOPLE

*Suzanne M. Marks, MPH, MA*

The interdependent relationship between health and human rights is well recognized. Human rights are indivisible and inalienable rights due to all people. Articles 1, 2, 3, 5, 6, 7, and 16 of the Universal Declaration of Human Rights (UDHR) address, respectively, the rights to equality; freedom from discrimination; life, liberty, and personal security; freedom from torture and degrading treatment; recognition as a person before the law; equality before the law; and the rights to marry and have a family.<sup>1</sup> Some people, specifically lesbian, gay, bisexual, and transgender (LGBT) individuals, are in many places and circumstances denied their claim to the full set of human rights. This puts LGBT people in many countries at risk for discrimination, abuse, poor health, and death — the ultimate human rights violation.

Denial of the recognition of human rights for any group of individuals is a denial of their humanity, which has a profound impact on health. For LGBT people, it may result in discrimination in housing and jobs (affecting the ability to purchase food, shelter, and health care); lack of benefits (affecting the ability to pay for health care and financial security); harassment and stress (affecting mental health and/or prompting substance abuse, smoking, overeating, or suicide);

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*Suzanne M. Marks, MPH, MA, is an epidemiologist and member of the Health and Human Rights Work Group and the Gay, Lesbian, Bisexual, Transgender Populations Work Group at the US Centers for Disease Control and Prevention. The findings and conclusions in this commentary are those of the author and do not necessarily represent the views of the Centers for Disease Control and Prevention or those of the Agency for Toxic Substances and Disease Registry. Please address correspondence to the author at [Smarks@cdc.gov](mailto:Smarks@cdc.gov).*

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isolation (leading to depression); sexual risk-taking (exposing oneself and loved ones to sexual health risks, including HIV); physical abuse and injuries; and/or torture and death.<sup>2-14</sup> If health care organizations take a rights-based approach to health provision for LGBT people by explicitly recognizing their existence and targeting health interventions to their needs, it may alleviate fear of discrimination and discrimination itself, as well as improving health outcomes.<sup>15-18</sup>

LGBT people in many societies are subjected to discrimination, abuse, torture, and sometimes state-sponsored execution. For many human rights violations, there exist laws under which countries punish perpetrators of such abuses. For LGBT people in most countries, abuses perpetrated against them are not viewed as human rights violations. Some countries, such as Iran and Saudi Arabia, have laws calling for the execution of “practicing homosexuals.”<sup>19</sup> At least 40 countries criminalize same-sex behavior for both men and women, and an additional 35 or more criminalize it just for men.<sup>20</sup> Countries most recently in the news in this respect include Uzbekistan, India, Nigeria, and Saudi Arabia.<sup>21-24</sup> In many Muslim countries, both civil law and *shari’a* (the rules governing the practice of Islam) criminalize homosexual activity. Police abuse of LGBT people is common and pervasive in many places, including the United States.<sup>25</sup> Recent notable abuse cases have occurred in Nepal, Guatemala, Ecuador, Honduras, Colombia, Peru, India, Taiwan, Cameroon, Uganda, and Zimbabwe.<sup>26-36</sup> Many countries legalize and condone discrimination in housing and employment. Laws providing citizens with benefits, including those in the US, do not provide equal benefits to LGBT couples. For example, a report by the US Government Accountability Office (GAO) documented more than 1,000 benefits, rights, and privileges that the federal government provides to opposite-sex married couples but not same-sex couples, including taxation and social security survivor benefits.<sup>37</sup> Protections under the law are similarly lacking. Thirty-four of the 50 US states and the District of Columbia do not prohibit discrimination on the basis of sexual orientation. Twenty do not have “hate-crime” laws that include sexual orientation among their protected categories. Protection for transgender identity is even more limited.<sup>38</sup>

Legal marriage conveys many additional benefits and protections to couples. Only a few governments (to date, Canada, Belgium, the Netherlands, and Spain) recognize LGBT rights to marry and form a family.<sup>39</sup> South Africa, which in 1996 became the first country to include sexual orientation in its Constitution as a status protected from discrimination, is expected to allow same-sex marriage by the end of 2006.<sup>40</sup> In Brazil, where state and federal laws prohibit discrimination based on sexual orientation, inheritance rights are provided to same-sex couples. Several European countries (Denmark, Sweden, Norway, Finland, the UK, France, Germany, Switzerland, Portugal, Slovenia, Croatia, and Iceland) as well as Israel and New Zealand have some benefits for same-sex couples, but not equal to those for heterosexual couples.<sup>41</sup> Within the US, only one state (Massachusetts as of May 2004) grants civil marriage rights to same-sex couples; however these are only the rights provided by the state, not the more than 1,000 federal benefits mentioned above. California, Connecticut, the District of Columbia, Hawaii, Maine, New Jersey, and Vermont have either civil unions laws or other domestic partnership laws to provide some benefits to unmarried couples (again, not equal to marriage rights).

In the human rights arena, major international human rights organizations have only committed to including the rights of LGBT people within the past decade or so. Human rights organizations such as Amnesty International and Human Rights Watch now have campaigns to address LGBT human rights violations. Specialized LGBT human rights groups have been active for much longer. For example, the International Gay and Lesbian Human Rights Commission (IGLHRC) has existed for the past 16 years to secure the full enjoyment of the human rights of LGBT people and communities subject to discrimination or abuse on the basis of sexual orientation or expression, gender identity or expression, and/or HIV status.<sup>42</sup> Likewise, for the past 28 years the International Lesbian and Gay Association (ILGA) has been fighting for equal rights for LGBT people.<sup>43</sup>

There is some support for LGBT human rights at the United Nations (UN). UN Secretary-General Kofi Annan expressed his support in August 2003 for LGBT nondiscrimi-

nation, stating, "the United Nations cannot condone any persecution of, or discrimination against, people on any grounds."<sup>44</sup> The UN Human Rights Committee, which monitors compliance with the International Covenant on Civil and Political Rights, found that laws punishing adult consensual homosexual acts violate the Covenant's guarantees of nondiscrimination and privacy and held that discrimination on the basis of sexual orientation is prohibited under Articles 2 and 26 of the Covenant.<sup>45</sup>

However, advocates still have trepidation about using UN fora to claim the human rights of LGBT populations because of the threat of opposition from several sectors, including the Vatican, countries in the Organization of Islamic Cooperation (OIC), and, recently, the US.<sup>46</sup>

This year, LGBT advocates were not allowed to join discussions at the UN Economic and Social Council (ECOSOC) when the Council dismissed the applications of the ILGA and the Danish Association of Gays and Lesbians for observer status.<sup>47</sup> This was the first time in its history that the Council, at the request of Iran, Sudan, and the US, dismissed the application of a nongovernmental organization (NGO) without the hearings usually given to applicants.<sup>48</sup> The US action was a reversal of policy, as it had voted for ILGA observer status in 2002. Forty-one human rights organizations wrote a joint letter to US Secretary of State Condoleezza Rice condemning the US action.<sup>49</sup> In 2003 and 2004, the US refused to endorse a Brazilian draft resolution to the UN Commission on Human Rights that would have condemned discrimination on the basis of sexual orientation, citing ideological values opposed to the resolution.<sup>50</sup> The recent US action at the UN makes a mockery of the increased documentation by the US Department of State of LGBT human rights abuses around the globe. In the Department of State's annual report to Congress, entitled *Country Reports on Human Rights Practices*, both the reported number of human rights abuses and the reported number of countries in which such abuses have occurred have increased.<sup>51</sup>

Egregious human rights abuses against LGBT people continue. Two recent examples highlight the nature of the abuses and their impact. The brutal murder of lesbian ac-

tivist FannyAnn Eddy in the office of the Sierra Leone Lesbian and Gay Association occurred only a few months after she gave an impassioned speech to the UN Commission on Human Rights in 2004.<sup>52</sup> The following quotations paraphrase her speech about the dangers that LGBT people face in Sierra Leone and throughout Africa.<sup>53</sup> She first talked about the use of “culture, tradition, religion, and societal norms to deny our existence,” sending “a message that tolerates discrimination, violence, and overall indignity.” She next talked about the constant fear experienced by LGBT people, “. . . fear of the police and officials with the power to arrest and detain us simply because of our sexual orientation . . . fear that our families will disown us . . . [that we will be] forced out of [our] family homes . . . with nowhere else to go, and thus become homeless, have no food, and resort to sex work in order to survive . . . fear within our communities, where we face constant harassment and violence from neighbors and others [while the] . . . homophobic attacks go unpunished by authorities.”

Then Eddy spoke about the connection between the denial of LGBT existence and the risk of HIV transmission: “According to a recent research study published in December 2003 by the Sierra Leone Lesbian and Gay Association in collaboration with Health Way Sierra Leone, 90% of men who have sex with men also have sex with women, either their wives or girlfriends. Of that group, 85% said that they do not use condoms. Clearly, the message of sexual education and transmission of HIV is not delivered to these men in Sierra Leone. It is clear that many men get married not because that is what their inner being desires, but because that is what society demands—because they live in a society which forces them to fear for their freedom or their lives because of their sexual orientation. The silence surrounding them—the refusal to acknowledge their existence or address their health care needs—endangers not . . . only them but their wives and girlfriends.” She concluded, “. . . respect for human rights can transform society. It can lead people to understand that in the end, we are all human and all entitled to respect and dignity. . . . Silence creates vulnerability. . . . We exist, throughout Africa and on every continent, and human rights violations based on sexual ori-

entation or gender identity are committed every day. You can help us combat those violations and achieve our full rights and freedoms, in every society, including my beloved Sierra Leone."

In February 2006, another deadly attack took place, this time in South Africa. Zoliswa Nkonyana, a lesbian who was walking down a street in a Cape Flats township with her partner, was stoned and killed by a mob.<sup>54</sup> This occurred despite South Africa's constitutional protection against discrimination.

Human rights are the fundamental rights of every human being, regardless of culture or societal norms. Working for the recognition of LGBT human rights is about ensuring access to health services, but also involves speaking out and acting to ensure the visibility of LGBT people, understanding LGBT issues, and being aware of the range of human rights violations that occur. Principles must be codified into policies and laws, both international and country-specific, for LGBT human rights to be recognized, and prejudices must be challenged so that others treat LGBT people as human beings deserving of all human rights.

*I have written this piece in memory of a prominent civil rights activist and supporter of LGBT human rights, Coretta Scott King, wife of slain civil rights activist Martin Luther King, Jr. Mrs. King stated at the 2000 annual conference of the National Gay and Lesbian Task Force, "Freedom from discrimination based on sexual orientation is surely a fundamental human right in any great democracy, as much as freedom from racial, religious, gender, or ethnic discrimination."*<sup>55</sup>

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