

Global human rights frameworks applicable to LGBTI migrants

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Sexual minorities leave home for a variety of reasons but their departure is often due to the identity-based violence, discrimination and harassment they face at the hands of state actors, family and community. Although no international legal instrument exists to specifically protect the human rights of LGBTI individuals, over recent years international legal bodies have interpreted basic human rights provisions to apply to LGBTI populations.

Various UN treaty bodies have echoed this message, including the Human Rights Committee which has stated that the principles of the International Covenant on Civil and Political Rights (ICCPR) apply equally to all without discrimination to LGBTI

populations, holding that the reference to 'sex' in Article 26 (the ICCPR's principal anti-discrimination provision) incorporates sexual orientation.¹ Similarly, the Committee on Economic, Social and Cultural Rights (the authoritative interpretive body of the International Covenant on Economic, Social and Cultural Rights – ICESCR) proscribes any discrimination on the basis of sexual orientation.² Consequently, States Parties to the ICCPR and the ICESCR must ensure protection of Covenant rights for all LGBTI people, including migrants, within their territories as set out in both treaties.

Beyond these international legal protections of LGBTI individuals, regional human rights bodies

have also affirmed that human rights law must apply to those discriminated against on the basis of sexual orientation or gender identity. Most recently, the European Court of Human Rights held that segregating LGBTI detainees violates their human rights and amounts to torture, inhuman or degrading treatment if it deprives them of meaningful access to detention centre services or is tantamount to penal solitary confinement.³ The Inter-American Commission on Human Rights' jurisprudence has increasingly addressed the human rights of LGBTI people, holding for the first time that the American Convention on Human Rights bars discrimination based on sexual orientation.⁴

In addition to these human rights standards, in 2006 a group of legal experts drafted the Yogyakarta Principles, guidelines that address how basic human rights tenets relate to sexual minorities.⁵ Although these principles are not

binding on states, they articulate the primary international law protections for sexual minorities and offer states guidance on best practices for ensuring human rights of LGBTI populations.

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1. See *Toonen v Australia*, HRC Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992, para. 8.7 (1994).
2. See Committee on Economic, Social and Cultural Rights, General Comment No. 14: The right to the highest attainable standard of health, August 11, 2000, E/C.12/2000/4. www.unhcr.org/refworld/docid/4538838d0.html
3. ECHR, *X v. Turkey* (application no. 24626/09)
4. www.cidh.oas.org/basicos/english/basic3.american%20convention.htm *Atala Riffo and Daughters v. Chile*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. 83-84 (February 24, 2012).
5. Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, 2006 www.unhcr.org/refworld/pdfid/48244e602.pdf