



MEMORANDUM

**To:** Nancy Nicol, Principle Investigator, York University, Envisioning Global LGBT Human Rights (funded by the Social Science and Humanities Research Council of Canada)\*  
**From:** Atrisha Lewis (3L) & Zahra Ahmed (LL.M.), International Human Rights Clinic  
**Date:** January 2<sup>nd</sup>, 2012  
**Re:** **Canada's Interactions with the UN System on the Issue of LGBT Rights**

This document was prepared by law students and highlights publicly-accessible information available at the time it was prepared. It is not exhaustive, nor is it updated on a regular basis. The information provided here is not a substitute for legal advice or legal assistance, and the International Human Rights program at the University of Toronto, Faculty of Law cannot provide such advice or assistance.

**Overview of the UN System**

There are two major human rights systems at the United Nations (the "UN"): the Treaty based system and the Charter based system. The treaty-based human rights system consists of nine treaty bodies that monitor state compliance with the obligations under their respective conventions. Each treaty body is comprised of a committee of independent experts that interpret and apply the convention in reviewing and commenting on periodic state reports and individual complaints. The treaty bodies are not judicial institutions and there is debate as to the nature of the body of law that the treaty bodies produce.<sup>1</sup> Regardless of whether these normative findings are actually law, they have legal significance as they are referenced in international and domestic decisions.<sup>2</sup>

The Charter based human rights system derives its authority from the UN Charter itself. The UN Human Rights Council, the successor to the Human Rights Commission is the main organ in this Charter based system. The mandate of the Human Rights Council is to make recommendations on situations of human rights violation, while being guided by principles of "universality, impartiality, objectivity, and non-selectivity."<sup>3</sup> This intergovernmental body, which meets in Geneva 10 weeks a year, is composed of 47 elected United Nations Member States who serve for an initial period of 3 years, and cannot be elected for more than two consecutive terms. The Human Rights Council oversees the Universal Periodic Review (UPR), which is a process that involves a review of the human rights records of all 192 UN Member States once every four years.

While not a human rights system, the General Assembly also deals with human rights issues through its broad mandate. Established in 1945 under the Charter of the United Nations, the General Assembly is the chief deliberative, policymaking and representative organ of the United

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<sup>1</sup> Burgenthal, *The Evolving International Human Rights System* 100 A.J.I.L. 788, 787-791

<sup>2</sup> *Ibid*

<sup>3</sup> G.A. Res. 60/251 (March 15, 20006)



Nations. Comprising all 193 Members of the United Nations, it provides a unique forum for multilateral discussion of the full spectrum of international issues covered by the Charter.

**Canada**

1. Summary

- Canada has been a champion of SOGI issues, voting for SOGI rights at every instance and signing on to positive statements affirming SOGI rights.
- The only negative report relating to SOGI issues has to do with discrimination with respect to housing.

2. Treaty/ Convention Status

The following chart highlights the international treaties that are germane to the protection of sexual orientation and gender identity rights. Canada has ratified all relevant treaties. The chart highlights when Canada ratified the relevant conventions.

<b>Treaty</b>	<b>Date of Ratification</b>
Convention on the Elimination of all forms of Racial Discrimination ("CERD")	14 Oct 1970
International Covenant on Civil and Political Rights ("ICCPR")	19 May 1976 a
Optional Protocol to the ICCPR	19 May 1976 a
International Covenant on Economic, Social and Cultural Rights ("ICESCR")	19 May 1976 a
Convention on the Elimination of all forms of Discrimination Against Women ("CEDAW")	10 Dec 1981
Convention against Torture ("CAT")	24 June 1987
Convention on the Rights of the Child ("CRC")	13 Dec 1991

a=accession

**Reporting to Treaty-based bodies**

The following chart outlines when Canada has reported to the various treaty-based bodies. None of the bodies discussed the issue of sexual orientation.

<b>Treaty-based bodies</b>	<b>Date of Review</b>	<b>Comments</b>
Human Rights Committee (CCPR)	2006	None relating to SOGI issues
Committee on the Elimination of Racial Discrimination ("CERD")	2002, 2007, 2012	None relating to SOGI issues
Committee on Economic, Social and Cultural Rights ("ICESCR")	2006	None relating to SOGI issues
Committee on the Elimination of all forms of Discrimination Against Women ("CEDAW")	1997, 2003, 2008	None relating to SOGI issues
Committee against Torture ("CAT")	2000, 2005, 2012	None relating to SOGI issues
Committee on the Rights of the Child ("CRC")	2003, 2006, 2012	None relating to SOGI issues



3. All Official State Positions on LGBT Rights as Reflected in Voting Patterns and Statements at the UN

General Assembly Resolutions

The votes on the draft resolutions relating to the *Special Rapporteur on Extra-judicial executions* are tracked in the following chart. The resolution relates to whether the scope of investigation should specifically include investigating extra-judicial killings on the basis of sexual orientation. The chart tracks draft resolutions because this is where the clear statements and votes relating to include or remove the explicit reference to “sexual orientation” actually occur. The final resolutions are typically passed without any discussion relating to the inclusion or removal of the words “sexual orientation.”

Final Resolution	Draft Resolution	Vote/ Comments
57/214	2002 Draft Resolution <sup>4</sup>	
	New reference to "sexual orientation"	In Favour
59/197	2004 Draft resolution <sup>5</sup>	
	Retain words "sexual orientation"	In Favour
63/182	2009 Amendment <sup>6</sup> to Draft Resolution <sup>7</sup>	
	Remove words "sexual orientation"	Against
65/208	2010 Amendment <sup>8</sup> to Draft Resolution <sup>9</sup>	
	Remove words "sexual orientation"	Against
	2010 Amendment <sup>10</sup> to Draft Resolution <sup>11</sup>	
	Re-include "sexual orientation"	In Favour
	Comments	Mr. McNee: “Canada is deeply concerned by the continuing violations all over the world of human rights and fundamental freedoms based on sexual orientation or gender identity, as well as by the violence, harassment, discrimination, exclusion, stigmatization and prejudice directed against persons

<sup>4</sup> A/C.3/57/L.56/Rev.1

<sup>5</sup> A/C.3/59/L.57/Rev.1

<sup>6</sup> A/C.3/63/L.75

<sup>7</sup> A/C.3/63/L.35/Rev.1

<sup>8</sup> A/C.3/65/L.65

<sup>9</sup> A/C.3/L.29/Rev.1

<sup>10</sup> A/65/L.53

<sup>11</sup> A/C.3/L.29/Rev.1



		because of sexual orientation or gender identity. Canada is particularly concerned that individuals should not be targeted for killing or execution because of their real or perceived sexual orientation and gender identity. We urge all States to take all necessary measures, including legislative and administrative measures, to under no circumstances be the basis for criminal penalties, in particular, executions, arrests or detention. We encourage all States to prevent extrajudicial, arbitrary or summary executions and to prosecute those who commit such acts” <sup>12</sup>
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Canada also signed on to the following positive statements affirming SOGI rights:

<b>Joint Statements</b>	<b>Canada's Position</b>
<p>March 2011 Joint Statement at Human Rights Council by 85 countries<sup>13</sup> which stated:</p> <p>“We call on States to take steps to end acts of violence, criminal sanctions and related human rights violations committed against individuals because of their sexual orientation or gender identity, encourage Special Procedures, treaty bodies and other stakeholders to continue to integrate these issues within their relevant mandates, and urge the Council to address these important human rights issues.”</p>	Supported
<p>Dec 2008 Joint Statement at UN General Assembly by 66 countries<sup>14</sup> in which the States called upon States and international human rights mechanisms to:</p> <p>“commit to promote and protect human rights of all persons, regardless of sexual orientation and gender identity”.</p>	Supported
<p>Dec 2006 Joint Statement at Human Rights Council by 54 countries<sup>15</sup> in which the countries stated:</p> <p>“We express deep concern at these ongoing human rights violations. The principles of universality and non-discrimination require that these issues be addressed. We therefore urge the Human Rights Council to pay due attention to human rights violations based on sexual</p>	Supported

<sup>12</sup> A/65/PV.71

<sup>13</sup> For the complete text of the Joint Statement go to <http://arc-international.net/global-advocacy/human-rights-council/hrc16/joint-statement>

<sup>14</sup> For the complete text of the Joint Statement go to <http://arc-international.net/global-advocacy/sogi-statements/2008-joint-statement>

<sup>15</sup> For the complete text of the Joint Statement go to <http://arc-international.net/global-advocacy/sogi-statements/2006-joint-statement>



orientation and gender identity, and request the President of the Council to provide an opportunity, at an appropriate future session of the Council, for a discussion of these important human rights issues.”	
March 2005 Joint Statement at Commission on Human Rights by 32 countries <sup>16</sup> calling for the recognition of:  “Sexual orientation is a fundamental aspect of every individual’s identity and an immutable part of self.”	Supported

**The Economic and Social Council (ECOSOC)**

The Economic and Social Council (ECOSOC) is a Charter based UN organ that serves as the central forum for discussing international economic and social issues. States are elected to serve three year terms and seats with different geographical areas getting a certain allotment of seats. There are 54 member Governments at any time. In 2006, ECOSOC granted consultative status to the first LGBT NGO. The following chart outlines the voting patterns of Canada with respect to granting consultative status to LGBT NGOs.

Date	Organization	Vote
25-Jul-11	International Lesbian and Gay Association	In Favour <sup>17</sup>
19-Jul-10	International Gay and Lesbian Human Rights Commission	In Favour <sup>18</sup>
27-Jul-09	Associação Brasileira de Gays, Lésbicas e Transgêneros	In Favour <sup>19</sup>
21-Jul-08	COC Netherlands; Federación Estatal de Lesbianas, Gays, Transexuales y Bisexuales	In Favour <sup>20</sup>
23-Jul-07	Coalition gaie et lesbienne du Québec; Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights	In Favour <sup>21</sup>
24-Jul-06	The Danish National Association for Gays and Lesbians; ILGA-Europe; The Lesbian and Gay Federation in Germany	In Favour <sup>22</sup>

<sup>16</sup> For the complete text of the Joint Statement go to <http://arc-international.net/global-advocacy/sogi-statements/2005-joint-statement>

<sup>17</sup> E/2011/SR.43

<sup>18</sup> E/2010/SR.39

<sup>19</sup> E/2009/SR.37

<sup>20</sup> E/2008/SR.38

<sup>21</sup> E/2007/SR.38

<sup>22</sup> E/2006/SR.47



4. All UN Statements on the situation of LGBT rights in the countries of focus

**Universal Periodic Review**

The Universal Periodic Review (UPR) is a unique process which involves a review of the human rights records of all 192 UN Member States once every four years. The Universal Periodic Review process began in 2006 and the first round will be completed by 2011. The documents on which the reviews are based are: 1) information provided by the State under review, which can take the form of a “national report”; 2) information contained in the reports of independent human rights experts and groups (Special Procedures), human rights treaty bodies, and other UN entities; 3) information from other stakeholders including non-governmental organizations and national human rights institutions. Following the State review, a report referred to as the “outcome report” is produced. This report consists of the questions, comments and recommendations made by States to the country under review, as well as the responses by the reviewed State. In 2009, Canada underwent its UPR.

**Canada’s National Report**

The only reference to sexual orientation in Canada’s National Report was in reference to Canada’s measures to combat racism:

“Governments in Canada have enacted legislative protections as well as policies against racism and the promotion of hatred. For example, under the Criminal Code of Canada, it is a crime to advocate or promote genocide, to incite hatred in a public place likely to lead to a breach of the peace, and to wilfully promote hatred when directed against groups distinguished by race, colour, religion or ethnic origin. In 2004, these offences were extended to apply to groups distinguished by sexual orientation”<sup>23</sup>

Recommendations	Outcome
The Netherlands “welcomed the extension of equal rights to same-sex couples and protection from hate crimes on grounds including sexual orientation, recommending (d) that the Yogyakarta principles be applied as a guide to assist in further policy development.” <sup>24</sup> (Recommendation 29)	“Canada accepts recommendation 29. The rights and freedoms addressed by the Yogyakarta principles will continue to be considerations in the implementation of international human rights obligations in Canada”

**Reports of Special Rapporteurs**

The report of the *Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context* made reference to discrimination that LGBT people face with respect to housing:

Date	UN Official	Comment	Response
17 February 2009	Miloon Kothar, Report of the <i>Special Rapporteur on</i>	“Despite the legal prohibition of discrimination with respect to housing, investigations into social	No Response

<sup>23</sup> A/HRC/WG.6/4/CAN/1 at para 98

<sup>24</sup> A/HRC/11/1 at para 33



	<p><i>adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context</i><sup>25</sup></p>	<p>and private housing in Canada reveal the persistence of discrimination against some groups, including on the basis of race, country of origin, sex, age, marital status, family status, sexual orientation, disability and social condition(including poverty and reliance on social assistance).”<sup>26</sup></p>	
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5. Individual Complaints

Canada respects the competency of the Committee on the Elimination of all forms of Discrimination against Women to hear individual complaints under CEDAW; the competency of the Human Rights Committee to hear individual complaints under the ICCPR; and the competency of the Committee against Torture to hear individual complaints under CAT. There have been no individual complaints relating to sexual orientation under any of the Committees.

6. Domestic Court Decisions

The most notable case relating to SOGI issues in Canada is *Vriend v. Alberta*, ( 1998 ) 1 S.C.R. 493, where the Supreme Court of Canada held that sexual orientation was a ground analogous to those listed in section 15(1) of the Canadian Charter of Rights and Freedoms.

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<sup>25</sup> A/HRC/10/7/Add.3

<sup>26</sup> A/HRC/10/7/Add.3 at para 50