

Human Rights, Sexual Orientation and Gender Identity

Guidelines for the Norwegian Foreign Service



NORWEGIAN MINISTRY
OF FOREIGN AFFAIRS

Norway is a staunch defender of human rights, including the rights of lesbian, gay, bisexual and transgender persons (LGBT). We will have the courage to speak out when others are silent.

The starting point for Norway's efforts is that human rights apply to everyone, regardless of gender, social background, ethnicity, religion or sexual orientation. It is therefore important to cooperate with other countries and organisations to ensure that everyone's human rights are respected, with no exception for LGBT people.

The UN High Commissioner for Human Rights has documented that sexual minorities are subject to massive rights violations, including murder, violent assault, torture, harassment and discrimination. States have a duty to institute measures to combat hate crime and torture, prohibit discrimination and decriminalise homosexuality. These are issues that Norwegian foreign missions encounter in their work. We can help by supporting local human rights defenders who work to protect the rights of this group. We can also support initiatives by the UN, other organisations and authorities that promote non-discrimination and a heightened respect for human dignity.

The purpose of this guide is to show how Norway, through our foreign missions, can help sustain, systematise and strengthen efforts to advance human rights for LGBT persons.

We are proud that Norway has contributed to placing this issue on the agenda in the UN and internationally. Norway supports brave people the world over as they stand up for the human rights of LGBT people. For some, it may be a matter of life and death, and we have an obligation to support their work.

Despite bleak statistics, we are approaching a historic turning point as an increasing number of countries recognise the need for action. We look forward to continued solid efforts to ensure that human rights apply to all, regardless of sexual orientation or gender identity.

Sincerely,



Espen Barth Eide



Heikki Holmås

A handwritten signature in black ink that reads "Espen Barth Eide".

A handwritten signature in black ink that reads "Heikki Holmås".

Norwegian policy on sexual minorities

Norway's commitment to fighting discrimination internationally is enshrined in the governmental action plan «Improving quality of life among lesbians, gays, bisexuals and trans persons» (2009–2012). In addition, the 2011–2012 white paper “Norway and the UN: Common future, common solutions” asserts clearly that our efforts must target discrimination based on sexual orientation and gender identity. Delivering on this commitment requires a broad and unequivocal approach in sensitive policy areas. Norway also supports the Yogyakarta Principles, which address a number of human rights and how they should be implemented in relation to sexual minorities.

In the Human Rights Council, the UN General Assembly, other UN forums, the Council of Europe and the Organisation for Security and Cooperation in Europe (OSCE), as well as in individual countries, Norway has worked actively to place rights for LGBT persons on the political agenda. We have contributed to a historic shift: In 2006, a Norwegian statement on this issue at the UN gained support from 54 countries. In 2008 a similar statement received support from 66 countries, and in 2010 the number increased to 88. In 2011, Norway played a major role in the UN Human Rights Council's adoption of the first resolution on human rights, sexual orientation and gender identity. The historic resolution was championed by South Africa, and was followed up by a report from the High Commissioner for Human Rights. The report maps massive and systematic human rights violations related to sexual orientation and gender identity.

The first debate on how the UN can contribute to combating violence and discrimination against sexual minorities was held in March 2012. UN Secretary General Ban Ki-moon opened the debate by stating that we see a pattern of violence and discrimination directed at people just because they are gay, lesbian, bisexual or transgender, and that this represents a grave violation of human rights.

As a follow-up to this process, Norway took the initiative, together with South Africa, Brazil and other friends of the Human Rights Council resolution, to reach out cross-regionally and arrange a series of regional seminars. Drawing on these seminars, South Africa and Norway co-hosted an international conference on Human Rights, Sexual Orientation and Gender Identity in Oslo 15–16 April 2013. The conference gathered over 200 participants from all regions and aimed to gather support for LGBT rights at the 23rd session of the Human Rights Council.

In the Council of Europe, Norway was a driving force behind the Committee of Ministers' unanimous approval of a recommendation to member states on 31 March 2010 on measures to combat discrimination on the basis of sexual orientation and gender identity. The right to be free of such discrimination is enshrined in the European Convention on Human Rights.

A number of embassies and foreign missions endeavour to put the issue on the agenda as well to protect the rights of LGBT people.

Terminology

Terms in current usage are:

LGBT: Lesbian, Gay, Bisexual and Transgender people.

LGBTI: Lesbian, Gay, Bisexual, Transgender and Intersex people.

Terms such as “transgender”, “third gender” and “intersex» are used for people who do not fall under the traditional definition of woman/man.

MSM: men who have sex with men – a term used in health related contexts to describe behaviour rather than sexual orientation.



The UN uses the terms sexual orientation and gender identity (SOGI), which are defined in the Yogyakarta Principles:

- Sexual orientation is understood to refer to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relationships with, individuals of a different gender or the same gender or more than one gender.
- Gender identity is understood to refer to each person’s deeply felt internal and individual experience of gender, which may or may not correspond to the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.

Long-term rights advocacy

Norway speaks out when others are silent. Where the rights of sexual minorities are controversial, Norway should therefore assume a special responsibility. However, as these are sensitive questions in many countries, our foreign missions must consider the local context when taking action so as to achieve the best possible result for the target group. Promoting rights is a long-term project. Sometimes it is argued that existing human rights obligations do not extend to the LGBT community, or that the agenda is Western-driven. Faced with such objections it may be useful to emphasise that our effort is aimed at making sure that existing rights and obligations are extended to sexual minorities.

It may be relevant to take a historical look at Norway's own journey towards equality, during which women and LGBT people both adopted unconventional methods to be heard. Change has come rapidly. In less than 40 years, Norway has moved from a ban on homosexuality to a marriage law that treats heterosexual and homosexual couples equally.

STATES' OBLIGATIONS:

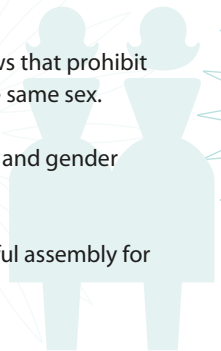
According to the UN High Commissioner for Human Rights, states have five core commitments to members of the LGBT community:

1. Protect them from hate crimes.
2. Prevent torture and other cruel, inhuman or degrading treatment or punishment.
3. Repeal laws criminalising homosexuality, including all laws that prohibit private sexual conduct between consenting adults of the same sex.
4. Prohibit discrimination on the basis of sexual orientation and gender identity.
5. Safeguard freedom of expression, association and peaceful assembly for LGBTI people.

LGBT ACTIVISM AND THE MINISTRY'S SUPPORT FOR HUMAN RIGHTS DEFENDERS

LGBT activists who work to counteract discrimination and promote their own rights are human rights defenders. Guidance on assisting human rights defenders is available here:

<http://www.regjeringen.no/upload/UD/Vedlegg/Menneskerettigheter/Menneskerettighetsforkjaempere/VeiledningMRforkjengelskFIN.pdf>



Useful lessons on rights promotion from our foreign missions

Embassies and foreign missions that have worked to advance human rights for LGBT people point to the following experiences:

- As the coalition supporting LGBT rights grows, look for partners and establish networks in the country you are posted to (other embassies, civil society, etc.).
- Visibility is important – in the right contexts. Public statements by the foreign mission or attendance at conferences and Pride parades can contribute to lively discussion in the media and society as a whole. Open support also highlights the responsibility of local authorities to protect sexual minorities. To avoid adverse reactions, act in close consultation with local LGBT activists and human rights organisations.
- Encourage locally based UN agencies, national human rights organisations and commissions to include LGBT rights in their activities, and to cooperate on the issue in a way the political climate is ready for. Cooperate with human rights commissioners or ombudsmen in countries that have them.
- At official functions, consider using the video of Ban Ki-moon’s powerful speech supporting LGBT rights: <http://www.allout.org/thetimehascome>



“Lesbian, gay, bisexual and transgender people are entitled to the same rights as everyone else. I stand shoulder-to-shoulder with them in the struggle for human rights.”

UN Secretary General Ban-ki Moon

- Sensitising police and security personnel can reduce harassment and abuse.
- Recognise gender differences: lesbian, bisexual and transgender women are more likely to face sexualised violence and assault. Sexual relations between men are more often criminalized and/or punishable by longer prison sentences.
- Dialogue with journalists can contribute to more balanced media coverage and solve misunderstandings.

“Support from Norway in recent years has had a direct impact on the lives of lesbian, gay, bisexual and transgender people in all parts of the world.

This strong stand in defence of basic human rights for all, regardless of sexual orientation and gender identity, has affected lives in Nicaragua, Kenya, Uganda, Malawi, Nepal and numerous other countries.”

Bård Nylund, Director, Norwegian LGBT Association



- Advocating decriminalisation and constitutional amendments can help prevent the legal framework from legitimising a climate of discrimination and abuse. Contact with MPs may be important.
- Provide financial support; often only small amounts are required, as in the case of a seminar that brings together various groups to define common objectives. This may also help avoid rivalries within communities or between sexual minorities.
- Where organisations are more established, support for a resource centre or gathering place for LGBT groups may be useful. Such a base may strengthen the community’s ability to fight for its rights in an otherwise hostile landscape.
- Contributing to a mutual understanding of concepts and increased knowledge about legal and national human rights obligations may facilitate a more productive debate. Discrimination is partly a result of lack of knowledge, different approaches to understanding the issue, and misleading claims that gays recruit children.
- It is important to provide support to relevant, non-stigmatizing health services for all. UNAIDS has found that HIV infection rates among men who have sex with men (MSM) are higher than in the general population in all parts of the world, and that access to health care is important, also for this group.
- Refrain from supporting organisations that promote attitudes or activities that are hostile to LGBT people.

What steps should Norway's foreign missions take on behalf of lesbians, gays, bisexuals and transgender people?

1. Map the local situation for sexual minorities, such as legal and political factors, the extent of discrimination, security for LGBT people and activists, and media coverage of LGBT issues. Who are the potential partners among representatives from other countries, civil society and the media as well as political, traditional and religious leaders?
2. Foreign missions should maintain a list of organisations active on LGBT issues and meet their representatives. Financial support for organisations or conferences should be considered. The same applies to human rights ombudsmen or commissioners in countries where they exist, as well as to organisations that support human rights defenders and can offer temporary protection when necessary.
3. Norwegian missions should address LGBT rights in dialogue with local authorities and human rights organisations. The central message should be that the authorities have a responsibility to stop discrimination and protect vulnerable groups, such as those associated with LGBT issues. Further, we should emphasise that criminalisation of same-sex relationships and prohibition of “homosexual propaganda” violate international human rights principles. Include this broad topic when delivering speeches and attending conferences. The International Day Against Homophobia is 17th of May, thus providing a good opportunity to raise the subject.



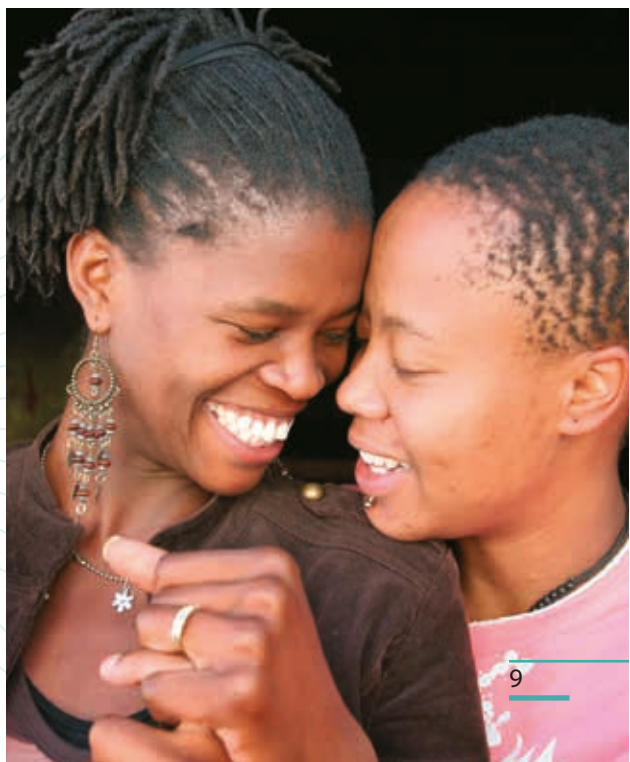
“No one should be excluded from our love, our compassion or our concern because of race or gender, faith or ethnicity – or because of their sexual orientation. Gay people, too, people are created in my God’s image. Hate has no place in the house of God.”

Arch Bishop Desmond Tutu, South Africa





4. Consider whether LGBT issues should be included in questions/recommendations during the country's Universal Periodic Review (UPR) process at the Human Rights Council, and follow through on any approved recommendations that touch on LGBT matters.
5. In situations involving arrests of or violence against LGBT persons, the mission should consider contacting other like-minded countries and coordinating a response. Useful steps may include monitoring court cases, protesting to the authorities or providing a statement of support for an arrestee. Calibrate the response in relation to the degree of benefit it will provide for the target group; strong consideration should be given to the LGBT organisations' own assessment of what is appropriate.
6. Local authorities should be encouraged to make sure that members of the LGBT community have equal access to medical treatment and preventative health services. This is feasible even in countries where sexual relations between persons of the same sex is criminalised, as it forms part of the fulfilment of the right to health.





"The case for extending the same rights to lesbian, gay, bisexual and transgender (LGBT) persons as those enjoyed by everyone else is neither radical nor complicated. It rests on two fundamental principles that underpin international human rights law: equality and non-discrimination. The opening words of the Universal Declaration of Human Rights are unequivocal: 'All human beings are born free and equal in dignity and rights.'"

Navi Pillay, UN High Commissioner for Human Rights



"We are human beings of transgender life experience. We are your children, your partners, your friends, your workers. Laws are not tools to eliminate those who are different from us, but are there to facilitate our harmonious relationship with each other."

Sass Rogando Sasot, transgender activist, Philippines



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