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STATE-SPONSORED HOMOPHOBIA

**A WORLD SURVEY OF SEXUAL ORIENTATION LAWS:
CRIMINALISATION, PROTECTION AND RECOGNITION**

12TH EDITION

MAY 2017

AENGUS CARROLL AND LUCAS RAMÓN MENDOS

ilga.org

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This report is available to download in Word or PDF formats.

Digital versions of the four ILGA maps of LGB legislation in the world are available for print.

State-Sponsored Homophobia and its world maps are published simultaneously in English and Spanish, and will be available in Arabic, Chinese, French and Russian.

Download the maps and reports at <http://ilga.org> or contact info@ilga.org

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CONTENT

| | |
|--|-----|
| FOREWORD: CO-SECRETARIES-GENERAL: RUTH BALDACCHINO AND HELEN KENNEDY | 5 |
| AUTHORS' PREFACE: AENGUS CARROLL AND LUCAS RAMÓN MENDOS | 7 |
| STRENGTHENING SOGI PROTECTION AND UNPACKING INTERSECTIONALITY AT THE UNITED NATIONS IN 2016: ANDRÉ DU PLESSIS, DIANA CAROLINA PRADO MOSQUERA AND KSENIYA KIRICHENKO | 13 |
| LGB LEGISLATION GLOBAL OVERVIEW | 25 |
| SAME-SEX SEXUAL ACTS LEGAL | 26 |
| SAME-SEX SEXUAL ACTS ILLEGAL..... | 37 |
| SAME-SEX SEXUAL ACTS - DEATH PENALTY | 40 |
| PROMOTION ('PROPAGANDA') AND 'MORALITY' LAWS | 41 |
| BARRIERS TO SOGI NGOS..... | 46 |
| CONSTITUTIONAL PROHIBITION OF DISCRIMINATION SPECIFYING SEXUAL ORIENTATION | 46 |
| PROHIBITION OF DISCRIMINATION IN EMPLOYMENT BASED ON SEXUAL ORIENTATION | 48 |
| HATE CRIMES BASED ON SEXUAL ORIENTATION CONSIDERED AN AGGRAVATING CIRCUMSTANCE | 60 |
| INCITEMENT TO HATRED BASED ON SEXUAL ORIENTATION PROHIBITED | 63 |
| BAN ON 'CONVERSION THERAPIES' | 67 |
| MARRIAGE OPEN FOR SAME-SEX COUPLES..... | 68 |
| PARTNERSHIP RECOGNITION FOR SAME-SEX COUPLES..... | 70 |
| JOINT ADOPTION BY SAME-SEX COUPLES | 73 |
| SECOND PARENT ADOPTION..... | 75 |
| CRIMINALISATION | 79 |
| AFRICA | 81 |
| ALGERIA..... | 81 |
| ANGOLA..... | 81 |
| BOTSWANA..... | 82 |
| BURUNDI | 83 |
| CAMEROON | 84 |
| COMOROS | 84 |
| EGYPT | 85 |
| ERITREA | 86 |
| ETHIOPIA | 87 |
| GAMBIA..... | 88 |
| GHANA | 89 |
| GUINEA | 90 |
| KENYA | 90 |
| LIBERIA | 91 |
| LIBYA..... | 92 |
| MALAWI | 93 |
| MAURITANIA | 94 |
| MAURITIUS | 95 |
| MOROCCO | 95 |
| NAMIBIA..... | 95 |
| NIGERIA | 96 |
| SENEGAL | 97 |
| SIERRA LEONE..... | 98 |
| SOMALIA..... | 98 |
| SOUTH SUDAN..... | 99 |
| SUDAN..... | 100 |
| SWAZILAND..... | 100 |
| TANZANIA | 101 |
| TOGO | 102 |
| TUNISIA..... | 103 |
| UGANDA | 104 |
| ZAMBIA | 105 |
| ZIMBABWE | 106 |
| AMERICAS | 108 |
| ANTIGUA AND BARBUDA..... | 108 |
| BARBADOS | 109 |
| DOMINICA..... | 110 |
| GRENADA..... | 111 |
| GUYANA..... | 112 |
| JAMAICA | 114 |
| ST KITTS & NEVIS | 116 |
| ST LUCIA..... | 117 |
| ST VINCENT & THE GRENADINES..... | 118 |
| TRINIDAD AND TOBAGO | 119 |

| | |
|--|------------|
| ASIA..... | 121 |
| AFGHANISTAN | 121 |
| BANGLADESH | 121 |
| BHUTAN | 122 |
| BRUNEI DARUSSALAM | 123 |
| GAZA (IN THE OCCUPIED PALESTINIAN TERRITORY) | 124 |
| INDIA | 124 |
| INDONESIA (SOUTH SUMATRA AND ACEH PROVINCE) | 125 |
| IRAN..... | 126 |
| IRAQ..... | 128 |
| KUWAIT | 129 |
| LEBANON..... | 130 |
| MALAYSIA..... | 130 |
| MALDIVES..... | 131 |
| MYANMAR | 132 |
| OMAN | 133 |
| PAKISTAN..... | 133 |
| QATAR..... | 134 |
| SAUDI ARABIA | 135 |
| SINGAPORE | 136 |
| SRI LANKA | 137 |
| SYRIA..... | 137 |
| TURKMENISTAN..... | 138 |
| UNITED ARAB EMIRATES | 139 |
| UZBEKISTAN..... | 139 |
| YEMEN | 140 |
| OCEANIA..... | 141 |
| COOK ISLANDS (ASSOCIATES TO NEW ZEALAND)..... | 141 |
| KIRIBATI | 141 |
| PAPUA NEW GUINEA..... | 142 |
| SAMOA | 143 |
| SOLOMON ISLANDS..... | 144 |
| TONGA..... | 145 |
| TUVALU..... | 146 |
| GLOBAL PERSPECTIVES..... | 147 |
| AFRICA REFERENCE CHART | 148 |
| LGBT VISIBILITY: A DOUBLE-EDGED SWORD: ANTHONY OLUOCH AND MONICA TABENGWA | 150 |
| AMERICAS REFERENCE CHART | 156 |
| THE AMERICAS IN 2016: A YEAR MARKED BY SIGNIFICANT ADVANCES, VIOLENCE AND ANTI-RIGHTS STAKEHOLDERS: FANNY GOMEZ-LUGO AND VÍCTOR MADRIGAL-BORLOZ | 158 |
| ASIA REFERENCE CHART | 164 |
| ASIA THESE DAYS – THREE PARTS: EAST & SOUTH EAST ASIA, SOUTH ASIA AND MIDDLE EAST: VARIOUS CONTRIBUTORS | 166 |
| EUROPE REFERENCE CHART | 178 |
| EUROPE – TIME TO IMPLEMENT PROTECTIONS: THE ILGA-EUROPE TEAM | 180 |
| OCEANIA REFERENCE CHART | 184 |
| OCEANIA: A YEAR OF STEADY PROGRESS TOWARDS EQUALITY: RAYMOND ROCA AND HENRY 'AHO..... | 186 |
| WORLD MAPS 2017 | 192 |
| READING ILGA MAPS | 192 |
| OVERVIEW MAP | 193 |
| CRIMINALISATION MAP..... | 194 |
| PROTECTION MAP..... | 195 |
| RECOGNITION MAP | 196 |

ILGA CO-SECRETARIES GENERAL' FOREWORD

RUTH BALDACCHINO AND HELEN KENNEDY

On reviewing this 12th edition of *State Sponsored Homophobia*, the ancient Arabic phrase, later to be adopted by everyone, comes to mind: 'knowledge itself is power'. This report offers a compilation of useful, credible data to human rights defenders, civil society organisations, governments, UN and regional agencies, media, and allies of our communities in the fight for a more just and inclusive society. The data is compiled with the express purpose of supplying precise detail and current sources.

As such, a single tool may be used for different purposes: this information can be useful to support advocacy and change processes in societies where sexual orientation intersects with other issues; institutions can take stock of human rights violations faced by LGBTQ people worldwide and accelerate efforts to end these atrocities; media and allies can find precise references to the actual content of laws, and then report and raise awareness of where this information leads.

Since the launch of our first edition in 2006, *State Sponsored Homophobia* has become increasingly richer in its content and more detailed. It is a unique document: it bridges the world of technical black-letter law provisions, tracks progress in global and regional human rights settings, and offers insight (and abundant sources) into the social conditions that LGBTQ people lived in and experienced over the past year.

In this edition, the theme of Protection of our Communities underpins the short essays and entries on countries. There is, therefore, significant attention paid to the concept of persecution and the necessity to flee, as well as to barriers to the founding, establishment and/or registration of sexual orientation-related NGOs, along with a new category about countries which have banned so-called 'conversion therapy'. As we witness threats to civil society spaces in countries traditionally known for their openness, and new pieces of legislation being adopted in more repressive societies, this is a much needed discussion. In times when basic democratic principles and even notions of respect for human rights, solidarity, and the rule of law are under threat, we witness everyday how the gains made by the broader human rights movement are never set in stone, and must be fought for and protected continuously.

The number of laws that safeguard our rights to express a different sexual-orientation (decriminalisation), protect us from violence and hatred, or that recognise us as human beings who need relationship, have expanded greatly over the years. This is why the value of having non-anecdotal information on how the situation facing our communities is evolving across the world can't be overstated. Comparative overviews like the one of *State Sponsored Homophobia* offer human rights defenders valuable learning on other States: how rights are denied or upheld, what scapegoating looks like, and how our issues become ideological battlefields in political spaces.

In the past twelve months, ILGA has produced more research in a number of areas: a *Trans Legal Mapping Report*, the ILGA-RIWI *Global Attitudes Survey on LGBTI People* in partnership with Logo, and very useful compilations of, and commentaries on, SOGIESC issues at various United Nations mechanisms. Together with this *State Sponsored Homophobia*, they all form an important and reliable corpus of information in the hands of individual activists, NGOs and allies, addressing lived realities and experiences of LGBTIQ people from all over the world.

Knowledge is itself power. There is wisdom in those words. In this case, it is the power to challenge norms and practices that continue to oppress our communities. It is the power of information, and the courage to use it that will indeed make this world a better place for everyone.

*Our thanks go to all those who worked on this report:
the co-authors, Aengus Carroll and Lucas Ramón Mendos;
the numerous contributors in this edition;
ILGA staff, translators, map-maker and designer
and particularly to all ILGA members whose knowledge continues to sustain this report.*

CO-AUTHORS' PREFACE

AENGUS CARROLL, LL.M., IS AN IRELAND-BASED AUTHOR AND CONSULTANT HUMAN RIGHTS RESEARCHER ON SOGIESC ISSUES.

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The fundamental purpose of producing ILGA's annual *State Sponsored Homophobia* publication is to compile information on the world's laws that are relevant to sexual orientation in one place. In addition to ILGA's membership of around 1300 SOGIESC-related organisations, this publication is primarily designed to provide a body of accurate and credible reference sources to researchers, human rights defenders, agencies, organisations, institutions and allies.

Building on the authorship of previous editions, this year the publication provides significantly more comprehensive coverage of each State where specific sexual orientation law pertains. Through the use of hyperlinks (in red font throughout) rather than footnotes, the digital form of this publication connects to a substantial body of primary and secondary sources.

We organise this proliferating data under three headings: criminalization, protection and recognition. Slowly but surely law that criminalises our sexual practice or our expression – **criminalisation** – is decreasing, with Belize and Seychelles being the most recent to repeal such laws in 2016. On the other hand, specific legislation that protects us from discrimination and violence – **protection** – has expanded greatly in recent years, and those laws that recognise us as beings who need relationship and family – **recognition** – are also on the increase.

Accompanying ILGA's red-green single snapshot map of the global legal situation regarding sexual orientation in the world, individual maps on these three overarching categories are included that enable the reader to glean more specific information at a glance. These maps are coded to allow a deeper, more precise reading of the legal environments in States across the world. Similarly, the five essays that conclude this publication in the Global Perspectives section – which focus on the socio-legal situations for sexual minorities in each continent – open with overview charts that illustrate comparative situations of those regions.

LEGAL DEVELOPMENTS IN 2016/2017

Through the regular desk-research channels of verification with individuals, NGOs and LGBTI organisations, as well as institutional sources, including government gazettes we are able to keep largely up to date with legal developments on the fourteen categories we chart in the 'Legislation Overview' and 'Criminalising States' sections of this publication.

As such, we are on a constant search to more meaningfully categorise the state of law pertaining to sexual orientation. For example, we reflect that although one of the most hostile States to LGBTI people on the planet, same-sex sexual relations *per se* are not criminalised in Egypt, and there is an equal age of consent for those relations. It is through the various inputs of readers and practitioners that we are able to pick up on winds of change, and we wholeheartedly welcome participation, correction and critique on the information we present.

As of May 2017, there are **124 States**, (122 UN member States as well as **Taiwan** and **Kosovo**) where there are no legal penalties levied for consenting same-sex sexual activity between adults in private. In this edition we sought to provide notation on each of these States, in most cases being able to link to texts of the black letter law, as well as other resources. This year we list **108** countries (including Egypt) with an equal age of consent law, and **16** that have an unequal age threshold: these age of consent notes are listed alongside the country entries.

There are **72 States** that we classify as criminalising States – we include Egypt where same-sex sexual relations are *de facto* severely outlawed. We note that in **45 of these States** (24 in Africa, 13, in Asia, six in the Americas and two in Oceania) the law is applied to women as well as men.

Reporting on the death penalty is quite complex, and throughout 2016 we saw it reported in media and elsewhere that 13 States ‘apply’ it. In fact, only **four sovereign** States apply the death penalty in 2017, while **regions** of two other States apply it under Shari’a, and **non-State actors** apply it across two more States. Therefore, it would be valid to say that the death penalty is ‘allowed’, or evidence of its existence, occurs in **eight (8)** States. Although its potential application by Shari’a courts in Pakistan, Afghanistan, the United Arab Emirates, Qatar and Mauritania, emits a chill factor, these States have less severe penalties encoded in their penal laws, and there appears to be no data to suggest the death penalty has been implemented in those States for consensual same-sex sexual acts between adults and in private. Further, **Brunei Darussalam** has not yet triggered its criminal procedure code, thereby stalling the introduction of its second and third phases of the 2014 Syariah Penal Code Order, and as such the threatened death penalty has not yet been implemented.

This year, we list **19 States** in North Africa and the Middle East (and Tanzania) where ‘morality’ laws or ‘promotion’ laws actively target public promotion or expression of same-sex and trans realities. With the rise in the use of digital devices in these parts of the world, deployment of these laws becomes all the more sinister. Further, in this edition we have opened a category looking at the barriers to the formation, establishment or registration of sexual orientation- related NGOs: we record **25 States** in total: 11 of these in Africa, 13 in Asia and one in Europe. As widely discussed about the 2017 laws in **China**, these laws function to limit civil society participation and their ability to bring their issues to public attention and be included at the policy and political levels.

In our comprehensive review of how we categorise, our listing of Constitutions is limited to those **nine (9) States** that actually refer to the sexual orientation or some such unambiguous term in their black-letter text, but we provide some discussion on sources on other’s where constitutional protection is assumed. Laws on discrimination in the workplace have substantial impact on those who are protected by them: allowing not only a basic independent income but the ability to flourish in their work. This year we list **72 States** (including Taiwan and Kosovo) that offer such protection.

This year the authors had the opportunity to delve further into a generalist ('various') non-discrimination category: we list **63 States** with provisions that are either comprehensive or are specific non-discrimination laws (such as the 2017 anti-bullying law in Japan). This broad category includes several subcategories which may be developed in detail in future editions of this report, such as bans on blood donation, legal protection from partner violence for same-sex couples, and protection against SOGI-based bullying in schools. Regarding hate crime and incitement to hatred we list **43** and **39 States** respectively in 2017 that we identify as enacting such protections, at least in law. This year we opened a category on those States that ban so-called 'conversion therapies' – the harmful practice often linked to religious practice - we list only **three (3) States**, but expect this list will increase in future years.

There are currently **22 States** in the world that recognise and provide for same-sex marriage, with the law Finland coming into force at the start of 2017. We include **Brazil** and **Mexico** as marriage States in this edition because in both cases, through one legal route or another, it appears to be possible to marry in most jurisdictions within those States. As regards legislation that protects partnership relationships, as of May 2017 we list **28 States**: we include **Taiwan** in this year's count because around 80% of the population live in areas where such partnership is available to them. **Austria**, **Finland** and parts of **Australia** introduced joint adoption laws in 2016 and 2017, and we find there are currently **26 States** that provide for this in the world. A further **27 UN States** allow for same-sex second parent adoption, not counting **Italy** where there have been significant developments in regional courts.

THIS EDITION

In this edition, we have focused on providing black-letter law sources for each of the States that fall into the fourteen categories listed. To do this, we have provided short annotations discussing or explaining the law and its context. This approach allows us to more assuredly count States where most of a population benefit (or suffer) under a law, alongside those that have such a law enacted. It also allows us to notate exceptions – where, for example, parts of a country allow certain provisions. As such, the result is a Legislation Overview section that is comprehensive in its reach.

As last year, we include symbols on each of the 72 States listed in the Criminalisation section of this publication. Whether the text of a law that penalizes same-sex sexual activity applies to men only, or to both male- and female-identified individuals is indicated by the inclusion of such a symbol.

Whether an existing national human rights institution (NRHI) includes sexual orientation within the scope of its work is symbolised in each country entry (green dot for yes, red for no, etc). NRHIs take various forms - national human rights commissions, equality authorities, Ombudsman offices, Public Defenders, etc – and have varying degrees of impact and influence as standard bearers in States. But they generally act as bridges between civil society, the domestic political establishment, potential ally organisations, and regional and international mechanisms, and are often an early engagement in legal change processes.

The last symbol – handcuffs – is included to indicate whether our research has produced evidence of arrests in the criminalizing State in the past three years. These indicate the active deployment of the law to intimidate and suppress sexual minorities, thus acknowledging the chill factor that the very

existence of such law provokes. Often arrests are made by police in order to extract bribes or coerce sex from vulnerable individuals and do not lead to prosecutions. The authors are mindful that there are, anecdotally, numerous situations that never get documented, and which our desk-based research does not reach.

To comprehend more easily what a given law actually penalises, we have noted the actual terms used ('acts against nature', 'buggery', 'sodomy', etc, and 'promotion of non-traditional values' or 'morality') beside the text of the black letter law listed in criminalising States. In entries on some States, we also include the text of misdemeanors (gross indecency, etc) where such provisions appear to be activated. There is a specific criminalisation map that codifies all of this data.

Throughout the Criminalisation section there is a heightened focus on how the United Nations mechanisms - the Treaty Bodies and the Universal Periodic Review - have urged States regarding sexual orientation issues in recent years on both single and intersectional LGBTI-related issues. Numerous links to secondary sources (NGO, organisations, or media reports) are also provided throughout these texts, indicated in red font.

CONTRIBUTORS

In commissioning and researching the content of this edition, the issue of protection was at the forefront of the authors' minds. Over recent years, despite significant gains in States, we see fundamental challenges to human rights principles at national and international levels, and increased threats to human rights defenders, as well as a somewhat closing civil society space.

In light of this, ILGA's UN staff, **André du Plessis, Diana Carolina Prado Mosquera and Kseniya Kirichenko**, have written on the role of new UN SOGI Independent Expert's role, developments at the Universal Periodic Review mechanism in 2016, and a comprehensive overview of expanding activity at seven of the ten UN Treaty Bodies focusing on where sexual orientation issues were addressed.

This year our 'Global Perspectives' section is written for us by teams of co-authors from the world's regions. **Anthony Oluoch** and **Monica Tabengwa** address the double-edged sword of LGBT visibility on the African continent: regarding increased confidence and organization on one hand, and the plight of SOGI human rights defenders and individuals who are forced into silence or forced to flee.

Regarding the situation of LGB people in the Americas, **Fanny Gómez-Lugo** and **Víctor Madrigal-Borloz** provide insights into advances in 2016 at the regional level at the Organisation of American States (OAS) and the Inter-American Court of Human Rights, and locate some positive developments regarding education, relationships and other forms of protection in this period. However, they also point to the increasing violence against LGBT persons, and the manner in which resources are being rallied to exclude LGB people from protections in policy and law.

Professor **Douglas Sanders** authored the section on East and South-East Asia, with invaluable inputs from a number of correspondents: **Anna Arafin, Jean Chong, Jack Lee, Mingke Liu, Daniele Paletta, Yuli Rustinawati, Minhee Ryu, Azusa Yamashita, and Bin Xu**. Their insights describe regions where there are buoyant dialogues currently in play regarding protections from discrimination, contrasted with increased institutionalized and political homophobia. We received on-site information from **Joyjayanti**

Chatterjee, Namrata Mukherjee, Nitika Khaitan, Nivedita Saksena, Shohini Sengupta and Shruti Ambast in the South Asia region that point to regressive attitudes towards criminalizing laws, yet strong advocacy in these countries in 2016. Perhaps illustrating the dangers, the authors of this Middle East section have asked for anonymity in information on the Middle East region, describing the scale of vulnerability of numerous people on account of their sexual orientation.

The team at **ILGA-Europe** supplied the overview of developments in Europe in 2016 and early-2017, drawn from research for their Annual Overview and Rainbow Index. They focus on some of the intersectional realities faced by LGBTI persons in asylum situations and in the face of growing political populism in the region. They point to the fact that the pace of new legislative provisions regarding LGB people has slowed down, and how the focus needs to further shift to implementation of those legal gains.

Regarding legal environments for LGB people in Oceania, **Raymond Roca** and **Henry 'Aho** provide insight into where developments have occurred in the past year, particularly regarding discrimination and progress in protection of economic, social and cultural rights. Although repeal of laws that criminalise same-sex sexual activity are not expected any time soon, it is notable that cohesion in regional and national advocacy is growing in strength annually.

Finally, in addition to extending ILGA's most sincere thanks to the wide variety correspondents we connected with in making the publication, and most special thanks to the contributors to this edition named above, the authors would like to extend particular thanks to a number of individuals that were instrumental to this edition: Renato Sabbadini, Natalia Voltchkova, Daniele Paletta and André de Plessis of ILGA, Maks Klamer (independent social science researcher), Maria von Kaenel (NEFLA), Tashwill Esterhuizen and Anneke Meerkotter (SALC), Eric Gitari, Faith Gaitho, Ty Cobb (HRC), Danish Sheik, as well as George Robotham and Santiago Ramayo, amongst many others. We would like to acknowledge sources we relied on extensively including the Kaleidoscope Trust's publication *Speaking Out*, ARC-International online resources, the *Erasing 76 Crimes* news resource (Colin Stewart), the UPR-info database, the World Policy Analysis Centre, the Civic Freedom Monitor and Human Rights Watch, and various others. We gratefully acknowledge the assistance of Professors Robert Wintemute (King's College, UK) and Kees Waaldijk (Grotius Centre, Leiden) over the years.

Particular thanks are also due to Renné Ramos for designing and typesetting this edition, and to Eduardo Enoki for his precision in this year's map-making.

We are hugely grateful to the individuals who have taken on the task of translating this text into Spanish (María Laura Speziali and Lucas Ramón Mendos), French (Emmanuel Lauray), Arabic (Ezzedin Fadel), Russian (Inna Iryskina), and Chinese ((Hou Ping and Gong Yu). Also, we extend thanks to Kseniya Kirichenko, Ghaith Arar, Yiu Tung Suen, Christelle Vieux, Ruby Young Yuk Chau and Eliz Wong Miu Yin for further translation work.

This 12th edition of the report was researched and written by Aengus Carroll and Lucas Ramón Mendos, evolved from the original report which was researched and compiled by Daniel Ottosson from 2006 until 2010, by Eddie Bruce-Jones and Lucas Paoli Itaborahy in 2011, by Lucas Paoli Itaborahy in 2012, and by Lucas Paoli Itaborahy and Jingshu Zhu in 2013 & 2014, Aengus Carroll and Lucas Paoli Itaborahy in 2015, and Aengus Carroll in 2016.

STRENGTHENING SOGIESC PROTECTION AND UNPACKING INTERSECTIONALITY AT THE UNITED NATIONS IN 2016

ANDRÉ DU PLESSIS, DIANA CAROLINA PRADO MOSQUERA AND KSENIYA KIRICHENKO

Activity around the protection of SOGIESC human rights within the various parts of the United Nations has never been higher than it was in 2016. The proliferation of consciousness that human rights encompass all persons regardless of any status brings concurrent responses of inclusion and denial amongst UN States. These short insight pieces by ILGA's UN Programme staff into some of what is happening at the UN reflects the nature and relevance of the new UN Independent Expert on SOGI, the Universal Periodic Review and the UN Treaty Body system to the advancement of the human rights of people regardless of their sexual orientation, gender identity, gender expression or their sex characteristics (SOGIESC).

THE UNITED NATIONS' INDEPENDENT EXPERT ON SEXUAL ORIENTATION AND GENDER IDENTITY

ANDRÉ DU PLESSIS

ILGA's Head of UN Programme and Advocacy

Undoubtedly the single biggest progression regarding SOGIESC at the United Nations in 2016 was the **creation** of a new Special Procedure: the United Nations Independent Expert on Sexual Orientation and Gender Identity. ILGA was central in the tremendous advocacy efforts to have the position instated despite strong opposition from Member States, and now works closely with the first appointee to the post, Professor **Vitit Muntarbhorn**.

THE CREATION OF THE MANDATE

At the beginning of 2016, despite the great work that has been carried out by **OHCHR** and other UN agencies over many years, it was clear that the arrangements to protect the human rights of LGBT and intersex persons were inadequate. There was no dedicated human rights mechanism at the international level that had a systematic and comprehensive approach to the human rights situation of LGBT persons.

A unanimous decision of the ILGA World Board in March 2016 paved the way for ILGA to call for the creation of the new mandate, building on the many years of advocacy in coalition with other civil society from all regions.

In June, ILGA was **joined** by defenders from around the world in a truly global advocacy outreach effort that **secured** the requisite number of votes for the position to be created at the Human Rights Council in Geneva. 628 NGOs from 151 countries worldwide, **called** on the UN to take meaningful action to end abuses on the basis of sexual orientation and gender identity, and create the Independent Expert position.

Shortly after Professor Muntarbhorn started his work on 1 November, ILGA and fellow defenders were again **fighting** to ensure the very existence of the mandate in **four** separate votes brought to the United Nations General Assembly in New York by governments intent on destroying it. Advocates from around the world worked tirelessly together to **successfully** protect the very existence of the position.

THE WORK OF THE MANDATE

There were many reasons that civil society wanted this mandate. The final ‘instructions’ from UN States to Professor Muntarbhorn are **set-out** in the resolution establishing the position itself, effectively mandating the Independent Expert to get on with the work of being an international focal point on violence and discrimination on the basis of SOGI. It asks him to report annually to both the Human Rights Council in Geneva and the General Assembly in New York, as well as authorising him to conduct country visits (as agreed with the concerned country) and to receive and act on communications received from individuals who have human rights issues they wish to raise with him.

At ILGA there were several parts of the resolution that we were particularly happy to see included. For example, in para. 3(b) it asks the Independent Expert to raise awareness of the violence and discrimination faced on the basis of SOGI and **to identify and address the root causes**. This matters to us deeply. For example, the violence faced by lesbians cannot be addressed by simply looking at physical violence on its own. Rather, the violence and discrimination they face can only be addressed by digging deep into issues related to the causes of poverty, lesbian invisibility in society, gender power imbalances, the lack of autonomy over bodies, and the use and abuse of notions of gender to subjugate. We are very pleased that he has been asked to dig deep here.

At para. 3(d), the Independent Expert is asked to address the **multiple, intersecting and aggravated forms of violence and discrimination** faced by persons on the basis of their sexual orientation and gender identity. Again for ILGA, this paragraph is key, recognising that SOGI issues are connected with a broad range of issues such as gender equality, poverty, class, bodily autonomy, sexual health and rights, among many others.

This approach allows deep examination, and address, of the origins of discrimination and violence in a given society, and thereby focuses on issues that otherwise might fall outside the scope of this new mandate.

DIALOGUE WITH STATES

The third paragraph we particularly note in the resolution: para. 3(c), asks the Independent Expert to engage in dialogue with States. Establishing such dialogue is so clearly needed as a matter of urgency in many States, especially with those who felt that they could not support the creation of the mandate, and those that are particularly hostile to the visibility of sexual and gender diversity.

When ILGA called for the creation of this mandate, we noted that an Independent Expert could help firstly, to depolarize the issue of SOGI by highlighting that all countries and regions face challenges in addressing violence and discrimination on these grounds.

Secondly, we noted that the mandate could help by highlighting and supporting positive developments in States, as well as addressing violations. The Independent Expert – as with SOGI advocates everywhere – has to enter into deep, principled, respectful and wise dialogue with many who may find even talking about SOGI issues difficult or uncomfortable.

He would be wise to continue to reach out to the experts in these conversations, namely SOGIESC human rights defenders who live and work in the most hostile and difficult situations. They know how to have these conversations.

Many of us are engaged in lifelong change movements where the slow and steady change of hearts and minds of our fellow human beings is at the core of our strategies. We know, often and sadly, that what we work for today will not be realised in our lifetimes. This is a movement with a long-term view.

ENGAGING ON THE DIFFICULT STUFF

The SOGI Independent Expert resolution doesn't just contain the operational instructions by States to the mandate described above. It also includes preambular paragraphs that set the tone of the resolution.

The second preambular paragraph, straight after a reference to the Universal Declaration of Human Rights (UDHR), refers to the 1993 [Vienna Declaration and Programme of Action](#): “while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms”.

This is at the core of the human rights framework. That [obligation](#) to promote and protect all human rights remain on States regardless of these cultural and other systems.

Through the contentious voting process that established the SOGI Independent Expert's on mandate, however, those opposed to the resolution successfully managed to add a series of preambular paragraphs that highlight their areas of concern. Whether we like them or not, what we hear voiced in these paragraphs are fears about even discussing these issues.

Importantly, none of these inserted paragraphs mention SOGI. They focus rather on *how* the conversations happen, and other geo-political factors that impact on such discussions.

They appear to focus on a number issues:

- that human rights are for all people and not the few
- that attention needs to be given to racism, xenophobia, and other forms of intolerance as much as other issues
- that local, traditional and religious values systems matter

- that discussions are also happening at local levels
- that external pressures on a country, especially withholding international development aid, is not welcome
- that some concepts or notions are not to be discussed internationally
- that States are different.

There are fears and concerns expressed behind these paragraphs that are far wider than anything about a person's sexual orientation and their gender identity. We may disagree with some or all of them; we may baulk at one or two. But we know that these issues come up again and again in our work. These paragraphs are ignored at our peril, and can actually be seen as a tool for navigating the more difficult dialogue that the Independent Expert – and us all – will inevitably be engaged in.

CLOSING THOUGHTS

No LGBTI person chooses by birth to be drawn into these geo-political discussions. We are, after all, simply human beings born free and equal in dignity and rights just like any other human being.

As we head into the coming years of this mandate, we hope that the Independent Expert will come back to this fundamental point. In the difficult discourse he will face, we hope he will focus on the **persons**, and not the issues. After all, the very first preambular paragraph is the UDHR itself. All *persons*. All.

THE UNITED NATIONS' UNIVERSAL PERIODIC REVIEW (UPR)

DIANA CAROLINA PRADO MOSQUERA

ILGA's UN Programme and Advocacy Officer

In March 2006 the Universal Periodic Review (UPR) mechanism was **established** by the United Nations, commencing its **calendar** in early-2008. It was – and continues to be – a unique and valuable human rights accountability mechanism. As its name suggests, it is universal in that it applies to each of the 193 Member States of the UN, and is thereby the only geographically universal human rights mechanism available. But it is also universal in its scope of coverage: it accommodates address of all human rights issues, including those relating to a person's sexual orientation, gender identity and expression, and sex characteristics. The UPR is also a review process designed to be cyclically periodic, rotating every four to five years for every State and it does not permit scheduling delays. Its most unique feature is that the UPR offers States an opportunity to review their peers' human rights records, and be reviewed by them. In this light, the UPR has opened up new dialogic opportunities to address SOGIESC issues from what is essentially a political and diplomatic perspective. In early-2017, its third cycle began, meaning that to date every State has been reviewed twice.

Concluding Observations and General Comments of the UN human rights **Treaty Bodies** are designed to be more specific and technical in nature than the types of recommendations found in the UPR. As guidance on the application of international law, Treaty Body recommendations are made by human rights experts operating in their personal capacities, and not as government representatives weighing many other considerations in their choice of words or approaches. However, crucially, the UPR has demonstrated that it is dialogic: it can be a space to start having conversations with many different governments on SOGIESC issues where they otherwise might not welcome or tolerate such discussion. As one government representative recently said, the UPR is sometimes the only space where SOGIESC issues can be addressed without triggering alarms.

Civil society actors have learned much about the operation of the UPR through these years of engagement with it, as reflected in our **joint research** published in late-2016. The merits of a reliable reporting calendar and a system that does not wholly rely on the willingness of a sometimes-reluctant state are significant factors in ILGA's advocacy strategy (the Philippines **considered** postponing in 2017, and Israel **failed** to appear at their review in 2013). Further, we have often witnessed how the UPR has acted as an entry point for advocates to both utilize international human rights standards to craft arguments at the national level, and to access other UN and regional human rights mechanisms.

Over the past ten years, more than 1,100 UPR recommendations have been made on SOGIESC issues – 2.5% of the total number of recommendations made (see p.28 of **joint report**). Of these, about half were specifically on issues related to sexual orientation, while the vast majority of the rest were on 'LGBT' or 'LGBTI' generally. Only a handful specifically focused on gender identity and expression, and in 2016 there was just one on intersex issues (Australia to **Iceland** regarding non-discrimination, at 115.44).

The UPR has helped trigger both visible and less visible State actions on SOGIESC issues. For example, this mechanism has been recognized by SOGIESC human rights defenders as one of the tools that helped to bring about the following changes: the decriminalization of same-sex relationships in both the Seychelles and Nauru (both of whom committed to decriminalization in their 2011 reviews, and announced around the time of their 2nd reviews in 2016); the inclusion of sexual orientation and gender identity in protective legislation in Suriname and Greece; the addition of hate crimes based on SOGI into the criminal codes in Honduras and the Netherlands. In other cases, institutions that tackle violence and discrimination that were called for at the UPR have in fact been created, such as the Fiji Human Rights & Anti-Discrimination Commission. Whether with public impact or with less prolific attention, we **recognize** (at p. 86) that the UPR mechanism has been useful as a catalyst for public debate and consideration around SOGIESC issues.

The effectiveness of the UPR has demonstrable limits. Although it has served as a point to continue nascent discussions, or even to create the first space to have such discussions, there has not been much evidence that those conversations have been adequately followed-up by civil society, recommending States as well as the States under review. Secondly, the follow-up on the implementation of the recommendations received is difficult to evaluate as only 64 States and three other stakeholders have submitted the voluntary **mid-term report** on implementation that was envisaged in the system.

In regards to **mid-term reporting**, it is clear that for States to fulfill their commitments and build on the dialogues that happen at their UPR sessions, an ongoing and systematic monitoring of implementation

is required. Civil society has a significant role to play in providing data and relationship-building in the period between UPR reviews and in the implementation reporting process.

By way of example, one of the few States that presented a mid-term report at the beginning of 2017 was [Albania](#). They reported on their positive implementation of the three SOGI recommendations that they accepted (made by Argentina, France and Portugal): in 2015, the parliament had approved a resolution on the protection of the rights and freedoms of LGBT persons, in 2016 Albania adopted an action plan on the rights of LGBT persons, and the labour and criminal codes both added "gender identity" their in anti-discrimination provisions or as aggravating circumstances in cases of crimes.

The challenges of creating dialogue in States around SOGIESC issues often gets articulated at the UPR. For example, Suriname's delegation in 2016 [stated](#) that "[a]s a multicultural society, the subject of [SOGIE] is one that requires a broad based consultation process at the national level, involving all sectors of society, including the civil society". While offers of dialogue should be welcomed cautiously – as sometimes it might be interpreted as suggesting human rights are somehow negotiable – such dialogue provides opportunity for civil society to educate, inform and assist States give effect to international human rights law at home.

The UPR process has been useful to allow governments that still criminalize same-sex relationships to consider other protective provisions. For example, both Saint Vincent and the Grenadines and Swaziland have stated at UPR [Working Group sessions](#) that 'despite' their criminalization of sexual acts legislation, they respect the civil rights of LGBTI persons as constitutionally protected and do not apply the current laws that criminalizes same-sex relationships between consenting adults. For longer-term SOGIESC advocacy such statements are a definite positive step forward in public-awareness and education work.

The UPR has a tangible role to play in advancing the rights of lesbian, gay, bisexual, trans and intersex persons. It is clear that the UPR mechanism facilitates deepening dialogue between civil society, which in turn can lead to action on meaningful implementation. Legal and policy change are areas that demonstrate the effectiveness of the mechanism, but equally important is the opportunity it offers human rights defenders to dialogue and build bridges with their governments and State institutions.

THE UNITED NATIONS' TREATY BODIES

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This section focuses on how homophobic violence and discrimination have featured within the UN Treaty Body (TB) monitoring system in 2016. It further looks at the where the TBs have in 2016 viewed sexual orientation discrimination as it intersects with poverty, race, migrant or other status. Please note that the following text is supplemented by a more technical version ([here](#)) that supplies comprehensive links to the source documents supporting all observations made in this truncated essay.

As ILGA **reported** in its reviews of **2014** and **2015**, there were quantifiable increases in authoritative references to SOGIESC across the Treaty Bodies in recent years: rising from 41 mentions in 2014 to 66 in 2015. In 2016, such mentions appeared for the first time in over half of the TB hearings: we calculate 79 mentions in **Concluding Observations** of 155 countries, across seven of the ten TBs (Human Rights Committee (HRCtee), Committee on Economic, Social and Cultural Rights (CESCR), Committee against Torture (CAT), Committee on the Rights of the Child (CRC), Committee on the Elimination of Discrimination against Women (CEDAW), Committee on the Elimination of Racial Discrimination (CERD) and Committee on the Rights of Persons with Disabilities (CRPD).

VIOLENCE

In 2016, the TBs examined different forms of homophobic violence and ill-treatment, including hate crimes, domestic violence and non-consensual medical treatment.

Hate Crimes: The TBs have referred to various aspects of violence: that committed by state representatives, including law enforcement officials, military servants and private individuals; killings, physical attacks, sexual violence and other ill-treatment; the situation in both general and references to **particular cases**. Regarding **Macedonia**, **Mongolia** and **Côte d'Ivoire**, for example the TBs expressed concern about police misconduct regarding reporting and investigating cases of hate-motivated violence that could lead to victims' **reluctance** to file complaints, and abuse of gay men by law enforcement personnel and blackmailing in **Namibia** and **Azerbaijan**. Governments were asked about the statistics of complaints on hate-motivated violence, investigations, prosecutions, convictions and punishments, as well as reparations provided to victims, and their responses to issues related to hate crime.

The types of responses to the identified problems related to hate crimes that the TBs proposed included ensuring prompt, thorough and impartial investigation and bringing perpetrators to justice in for example **Belarus**, **Ecuador**, **Turkey** and **USA**; adopting hate crimes legislation in **Poland** mentioning homophobic motivation of violence as an aggravating circumstance; providing redress in **Haiti**, access to justice and complaints mechanisms: training for law enforcement and health service personnel regarding domestic and gender-based violence, and violence based on sexual orientation in **South Africa**.

Non-consensual medical procedures: The practice of so-called "conversion therapy" was extensively analyzed in the **CAT** and **HRCtee** reviews of Ecuador, regarding investigations of involuntary placement and ill-treatment of women in private drug addiction treatment centers that practiced "sexual reorientation or dehomosexualization therapies", and the fact that the perpetrators of such activity had not been brought to justice, or compensation paid. **CESCR** and **CRC** 2016 General Comments also condemn the practice. In a review of Tunisia, non-consensual forensic anal examination to establish proof of [criminalized] same-sex sexual acts, **CAT** recommended the State outlaw the practice.

Domestic violence: The TBs also referred to domestic violence covering two types of situations: **partner violence** in same-sex relations and violence **committed** by parents, siblings or other family members that do not accept their LGBTI relative, **including** forced marriages and honor killings.

Hate Speech: Incitement of homophobic hatred, or hate speech, were also frequently discussed by the TBs in 2016, for example in **Mongolia** and **Poland**, utterances by politicians, State officials, religious

actors and the media (e.g. [Burkina Faso](#)), regarding impunity ([Estonia](#)), effective solutions to the issue ([Serbia](#)) and protection of victims ([Ghana](#)). It is notable that the TBs referred to “digital” forms of homophobic hate speech, including acts on hostility on social media, on the internet and online forums ([Slovakia](#), [Slovenia](#), [Azerbaijan](#)). Many responses have been offered by the TBs (see [here](#))

DISCRIMINATION

In 2016, the TBs expressed their concerns about discrimination on ground of sexual orientation in different spheres, such as health care (e.g. [Kenya](#), [Namibia](#) and [Jamaica](#)), sexual and reproductive health services (e.g. [Paraguay](#) and [General Comment 22](#) [2016]), employment (amongst many, [Togo](#) and [Thailand](#)), provision of services ([Norway](#)), education (amongst many, [Thailand](#) and [Jamaica](#)), and housing (e.g. [Togo](#) and [Namibia](#)).

On several occasions in 2016, the TBs asked governments to adopt a comprehensive policy to combat discrimination (for example, [Costa Rica](#) and [Dominica](#)) – repeatedly the TBs have made it clear that comprehensive anti-discrimination legislation plays a central role in the protection of citizens on grounds of their sexual orientation (sources [here](#)). Such legislation should explicitly include sexual orientation in the list of protected grounds, should define direct and indirect discrimination, as well as multiple discrimination, should prohibit discrimination in both the public and the private spheres, and should establish mechanisms for reparation in cases of discrimination and, if needed, temporary special measures. Alongside the adoption of anti-discrimination legislation, States were recommended to remove any existing discriminatory legislative provisions.

A system of measures against discrimination on ground of sexual orientation, as articulated by the HRCtee to [Denmark](#) and [Poland](#) in 2016, should comprise a working complaint mechanism and ensuring access of persons affected to effective remedies, including courts and National Human Rights Institutions.

The above-mentioned measures and instruments could be accompanied by awareness-raising activities for the general public, revising university textbooks convey negative stereotypes, as well as awareness-raising and trainings for professional groups such as health-care providers, social workers and law enforcement and other public officials (list of 2016 TB recommendations [here](#)).

INTERSECTIONALITY

In the 2015 [edition](#) of *State Sponsored Homophobia*, the Sexual Rights Initiatives wrote about the significance and necessity to taking intersectional approaches to SOGIE advocacy.

The UN Treaty Bodies are not the exception in this regard, and all of them have uncovered, to a greater or lesser degree, effects and consequences of multiple and/or intersectional discrimination when sexual orientation is accompanied by other grounds, such as gender, race, disability, HIV/AIDS, detention/imprisonment, migrant and asylum-seeker status, age or involvement in human rights activism.

Obviously, relevant issues were raised mostly by more specialised committees: for instance, intersections between sexual orientation and gender – by CEDAW, race and sexuality – CERD, age and sexual

orientation – CRC, etc. However, different dimensions of multiple-discrimination have been addressed by the TBs outside of their primary themes as well.

Disability: Significant progress has been made by CRPD in addressing SOGIESC issues in its Lists of Issues and Concluding Observations on six States (Colombia, Cyprus, Iran, Italy, Lithuania and Uganda), which comprises 43% of 14 States reviewed in 2016 (only one State in 2015 had SOGIESC-inclusive recommendations from CRPD, and none in 2014). See a detailed referenced listing of TB sources for disability and SOGIESC [here](#).

HIV/AIDS: Quite surprisingly, the TBs have not examined intersectionality between HIV/AIDS and sexual orientation frequently in 2016. Only one country-specific question was asked of Costa Rica by HRCtee, and CRC also mentioned this issue in its General Comment (at para. 62) on the implementation of the rights of the child during adolescence.

Detention/imprisonment: The intersections between sexual orientation and detention/imprisonment has drawn the TB's attention on numerous occasions in 2016 in various countries. They have called for action in regard to LGBTI people in detention, segregation, discrimination, hate speech, violence and humiliating and degrading treatment of "homosexual prisoners" by other prisoners. As a result of country examinations, CAT called on the authorities to put an end to the discrimination and violence against "homosexual prisoners", abolish the practice of their degrading and involuntary segregation and all other degrading and humiliating practices, and to investigate effectively all such allegations, and bring perpetrators to justice. Further, of those countries that criminalize same sex sexual activity, issues of arbitrary arrests and detention based on sexual orientation, were raised. See a detailed referenced listing of TB sources for detention/imprisonment and SOGIESC [here](#).

Race: Intersections between racial discrimination and discrimination on the grounds of sexual orientation were examined in the CRPD's review of Uruguay. The Committee expressed its concerns on the situation of LGBTI Afro-Uruguayans and recommended the State party to implement measures to combat the multiple forms of discrimination faced by LGBTI individuals, including by mainstreaming an ethno-racial dimension in its measures to combat discrimination based on sexual orientation and gender identity.

Migrant status: In 2016, the Committee on Migrant Workers (CMW) that has been excluded from our analysis so far, started to address issues related to sexual orientation. Relevant references have been made in its periodic review of Honduras and Mexico in 2016.

Asylum seekers: In 2016, the HRCtee and CEDAW addressed the situation of asylum seekers fleeing their countries because of the violence and harassment based on their sexual orientation. The State parties were asked if persons persecuted because of their sexual orientation may apply for asylum, and what steps have been taken to ensure that refugee status determination procedures are fully gender-sensitive, including the adoption of guidelines on gender-based persecution and persecution based on SOGI for first-instance asylum officials. Further, the principle of *non-refoulement* was examined in 2016 (Australia and Namibia) in relation to persecutions based on sexual orientation.

Age: Unsurprisingly, intersections between age and sexual orientation were addressed mainly by CRC. On numerous occasions, the CRC expressed its concerns and made subsequent recommendations

on discrimination against LGBTI children that have general application, rather than specific (see list of sources [here](#)). However, it also gave extensive recommendations to more than 17 States in 2016 concerning such discriminatory issues as lack of access to information, structural discrimination (education, and other basic services, such as health care), and social stigmatization through the media, bullying, cyber bullying, hate speech, discrimination against same sex parents. The CRC analyzed as well how criminalization of same sex sexual acts affected children/adolescents in [Maldives](#) and [Iran](#). The CRC also released [General Comment 20](#) (2016) on adolescents that contains important guidance. The full list and links to sources for this section may be found [here](#).

Human rights defenders: In 2016, the TBs paid particular attention to the situation and risks faced by LGBTI activists and human rights defenders noting harassment, intimidation and violence against them as a result of their activities, amongst them [Israel](#), [Turkey](#), [Ghana](#), [South Africa](#), [Togo](#), [Haiti](#), [Argentina](#) and [Belarus](#). In some cases, including [Montenegro](#) and [Turkey](#), the UN experts asked State parties to provide information on specific cases, such as violent attacks against LGBTI demonstrations and centers. Several questions and recommendations were related to realization of the rights to freedom of peaceful assembly and association by LGBTI groups (see [Azerbaijan](#), [Honduras](#), [Mongolia](#) and [Poland](#)).

Gender: While in 2016 CAT and HRCtee raised problems related to homophobic violence aimed at women in 2016 (for example, in [Croatia](#) and [Namibia](#)), most of work in this field was done by CEDAW. Conceptually, CEDAW puts LGBTI women into the category of “disadvantaged groups of women” usually including relevant paragraphs of its Concluding Observations in the sections under this title (find links to sources [here](#)).

Among topics mostly covered by CEDAW in relation to intersections between gender and sexual orientation, were hate crimes and lack of due investigation and prosecution for such acts (six States, see [here](#)). In the case of [Turkey](#), CEDAW offered in-depth analysis of the various forces weighing against LGBT women, particularly regarding issues to do with hate crimes and the concept of “unjust provocation” in the Penal Code that can operate to mitigate perpetrators of such crimes. In the review of [Armenia](#), CEDAW also addressed hate speech against LGBTI women, while in general this topic was not discussed in 2016 by the Committee. In many cases, CEDAW examined problems related to discrimination of LGBTI women, including in specific areas such as education, employment, health care and adequate housing or through specific means such as “anti-propaganda” laws. Finally, CEDAW also addressed issues of stereotypes and access to justice in 2016 (all sources [here](#)).

Despite these numerous references to SOGIESC, it is not clear that CEDAW has yet come to fully embrace or often even understand the realities of LGBT women. Specific issues like so-called ‘corrective rape’ may fall outside the range of legislative reforms recommended by CEDAW, as might issues to do with reproductive health literacy amongst lesbian women. To date, it appears that although the Committee has repeatedly called for such information, neither States nor civil societies have demonstrated the capacity to generate such disaggregated data for the most part.

FINAL WORD

It is undisputable that protection from violence and discrimination based on SOGIESC have become points of focus and within the scope of the various UN Treaty Bodies. However, ILGA would assess that

interesting and important opportunities for the development of advocacy strategies lie in increasingly in-depth analysis of intersectional problems when sexual orientation is linked with other grounds such as gender, disability, race, etc.

However, credible quantitative and qualitative data on SOGIESC issues must support the work of engagement with the TBs. Strong advocacy strategies would aim to direct petitions to work with the strengths of any Committee or other UN mechanism. Often intersectional issues, because of the nature of TB Concluding Observations and General Comments, may best be deeply analysed by **Special Procedures** mandate holders, or by the TBs through individual communications.



LEGISLATION OVERVIEW

LEGALITY OF SAME-SEX SEXUAL ACTS

This overview presents annotated entries on those 124 States where same-sex sexual acts are not criminalised (122 UN States as well as Taiwan and Kosovo). Some of these States never contained a criminalising provision in their Penal Codes, while others consciously removed the offending law, initiated within parliaments or by the imperatives set by courts. Needless to say, in many of these States social stigmatisation of persons who are, or perceived to be, belonging to a sexual minority runs high. On each entry, links to the texts of the law online (mostly in English, typeface in red) are provided along with other ancillary material. This section also confirms the legal age of consent in these States, and points to where they are equal or unequal for same-sex and different-sex sexual acts. Unequal ages of consent (AoC) exist in eight (8) African States, six (6) in the Americas, two (2) in Asia, one (1) in Europe, and in none of the States in Oceania.

Same-sex acts: legal (124) [including non-UN States Taiwan and Kosovo]

63% of UN States

AFRICA (22)

| Country Age of Consent (AoC) | Provisions in law |
|--|---|
| BENIN Unequal AoC: 21 | 1877 Despite a number of draft amendments to the existing Criminal Code of Benin , none passed into law. There are numerous impediments to the realisation of rights in Benin, as recorded in 2014 . The age of consent is 13 for different-sex sexual activity, and 21 for same-sex (Article 331). |
| BURKINA FASO Equal AoC: 13 | 1960 Prior to and since independence from France in 1960, Burkina Faso has no law outlawing same-sex sexual relations for men or women in its Penal Code . |
| CAPE VERDE Equal AoC: 14 | 2004 The Penal Code does not criminalise consensual same-sex sexual acts between adults. However, until it came into force, Article 71 of the 1886 penal code provided for 'security measures' for people who habitually practice 'vice against the nature'. |
| CENTRAL AFRICAN REPUBLIC Equal AoC: 18 | 1961 Since independence from France, the Penal Code of CAR has not outlawed consensual same-sex sexual acts between adults in private. |
| CHAD Unequal AoC: 21 | 1967 Although the legal status of consensual same-sex sexual activity between adults is not currently clear, it is classified here as legal because there appears to be no official verification that the black letter law has in fact changed from its 1967 original. Under French rule (1900-1960) such sexual acts were not penalised in Chad. Although Article 272 of the first Penal Code of 1967 penalised those who commit "unnatural acts" with persons under the age of 21 (the age of consent for different-sex is 14), there are no criminalising provisions for consensual sexual activity. A Bill of 2014 to impose severe penalties (Article 361bis) of up to 20 years incarceration was debated , but did not pass into law. The issue of penalisation re-emerged in parliament in December 2016, now framing "unnatural acts" amongst consenting adults as a mere 'misdemeanour' triggering a small fine, but the outcome of these deliberations is currently unclear and unverified, and as such we classify Chad as 'legal'. |
| CONGO Unequal AoC: 21 | 1940 In the Republic of Congo Brazzaville, the text of the 1940 Penal Code , as amended in 2006 , only prohibits same-sex sexual behaviour with a person younger than 21 years, while the age of consent for different-sex is 18. |
| CÔTE D'IVOIRE Unequal AoC: 18 | 1960 Post-independence from France's rule in 1960, Côte d'Ivoire did not criminalise consensual same-sex sexual activity between adults in its Penal Code , yet the age of consent differs (Sections 356 and 358) – 15 for different-sex, and 18 for same-sex. However, in 2014 Côte d'Ivoire rejected three non-discrimination recommendations regarding SOGI in its 2 nd cycle UPR. Further, in late-2016, for the first time in the country an indecent law was used to jail gay persons . Concurrently, 76 Crimes reports formal reviews of the Penal Code are on-going. |
| DEM. REP. CONGO Equal AoC: 18 | 1940 There are no evident provisions outlawing consensual same-sex sexual behaviour between adults in the 2004 Penal Code of the DRC. |

| Country Age of Consent (AoC) | Provisions in law |
|---|--|
| DJIBOUTI Equal AoC: 18 | 1995 The Djibouti Penal Code of 1995 contains no provisions prohibiting consensual same-sex sexual activity between adults. |
| EGYPT Equal AoC: 18 | 1937 There are no legal provisions in Egyptian Penal Code that outlaw consensual same-sex sexual activity between adults.. However, this is really just a technical distinction because such activity, and related expression, is outlawed under debauchery, indecency and other laws (see Egypt in the 'Criminalisation' section in this edition). |
| EQUATORIAL GUINEA Equal AoC: 18 | 1963 The Criminal Code in force in Equatorial Guinea is a 1963 revision of the Spanish Criminal Code that dates back to the Francoist era. This Code does not contain specific provisions on same-sex sexual acts between adults. However, there is evidence (p.27) that State intimidation of sexually diverse individuals persists, and at its 2nd UPR review (para. 135.51) in 2014 Equatorial Guinea rejected a recommendation to foster acceptance of LGBT persons through awareness-raising. |
| GABON Unequal AoC: 21 | 1960 Prior to and following its independence from France in 1960, the Gabon Criminal Code does not criminalise consensual same-sex sexual acts between adults, yet the age of consent for different-sex sexual acts is 15, and for same-sex it is 21. However, as alluded to (para.12) by the Committee on Economic, Social and Cultural Rights in 2013, it is a highly discriminatory environment for LGBT people, which may be why LGBT reporting of incidences is so low (p. 19). In August 2016, the UN Committee of the Rights of the Child reiterated (para. 23) the need for non-discrimination legislation inclusive of SOGI. |
| GUINEA-BISSAU Equal AoC: 16 | 1993 Same-sex sexual activity is only referred to in Articles 133-138 in the context of sexual offences in the Penal Code of 1993. Consensual, same-sex sexual activity between adults in private is not in itself criminalised. |
| LESOTHO Equal AoC: 16 | 2010 In Article 52 of the 2010 Penal Code Act (into force in 2012), sodomy is not mentioned: this article erases the punitive enumeration of [male] sodomy indicated in Section 185(5) of the 1939 Criminal Procedure and Evidence Act. |
| MADAGASCAR Unequal AoC: 21 | 1960 Prior to and following its independence from France in 1960, the Criminal Code of Madagascar does not prohibit consensual same-sex sexual relations between adults. However, Article 331 establishes that the age of consent is 14 for different-sex sexual acts, and 21 for same-sex. |
| MALI Equal AoC: 18 | 1961 Neither the 2001 Penal Code (nor its predecessor, the 1961 Penal Code) stipulates provisions targeting consensual same-sex sexual relations between adults. |
| MOZAMBIQUE Equal AoC: 18 | 2014 In July 2014, the Parliament approved Law 35/2014 by consensus that removed earlier criminalising provisions. (Articles 70 and 71 of the 1886 Penal Code had imposed penalties on people who habitually practiced "vices against nature".) This revised Penal Code came into force in June 2015. |
| NIGER Unequal AoC: 21 | 1961 The Penal Code (with amendments up to 2003) does not specify provisions against consensual same-sex sexual relations, yet Sections 278 and 282 specify that the age of consent differs: 21 for same-sex sexual acts, and 13 for different-sex. |
| RWANDA Unequal AoC: 18 | 1980 The Rwanda Penal Code of 1980 does not contain same-sex criminalising provisions, yet Sections 358 and 362 set the age of consent as unequal: 16 for different-sex and 18 for same-sex sexual activity. The legal and social situation of LGBT people in Rwanda is captured in a 2016 report (Agaciro) produced by the East African Sexual Health and Rights Initiative, which points to severe stigmatisation. |
| SÃO TOMÉ & PRÍNCIPE Equal AoC: 14 | 2012 Sao Tomé and Príncipe's Penal Code , adopted in 2012, contains no provision for criminalisation of consensual same-sex sexual activity between adults.. This 2012 text drops former references to "acts against nature" that were contained in the earlier colonial-era Penal Code. |
| SEYCHELLES Equal AoC: 18 | 2016 In July 2016, Seychelles amended Sections 151(a and c) to the 1955 Penal Code came into force, thereby decriminalising "(a) ...carnal knowledge of any person against the order of nature" that is consensual and amongst adult persons. |

| Country Age of Consent (AoC) | Provisions in law |
|---|---|
| SOUTH AFRICA Equal AoC: 16 | 1998 Following a case taken at the Constitutional Court of South Africa, the State abrogated laws carried through from the 1955 Penal Code in which Article 600(1) and 601 criminalised consensual same-sex sexual conduct between adults, including the common-law crime of sodomy. |

AMERICAS (25)

| Country Age of Consent (AoC) | Provisions in law |
|--|---|
| ARGENTINA Equal AoC: 18 | 1887 Law 1,920 enacted Argentina's first federal Penal Code, which entered into force in 1887 and made no reference to consensual sexual acts between adults. However, until very recently local regulations issued by provincial, municipal and local authorities targeted "homosexuality" and/or regulated morality, vice and mores. LGBT people were heavily persecuted under these regulations. |
| BAHAMAS Unequal AoC: 18 | 1991 Same-sex sexual acts in private were decriminalized by amendment to the Sexual Offences Act (1989) , and came into force in 1991, although the age of consent differs for same-sex (18) and different-sex (16) sexual acts (see Section 16(1)(2) of the Sexual Offences and Domestic Violence Act (1991)). Section 107(4) (j) of the Bahamas Penal Code justifies the use of force against a person, extending, in the case of extreme necessity even to killing, for the prevention of a "forcible unnatural crime", as reflected in relevant case law . |
| BELIZE Equal AoC: 16 | 2016 The country's colonial-era sodomy law was declared unconstitutional by the Belize Supreme Court in <i>Caleb Orozco v. Attorney General of Belize</i> . The Court revised the language of Section 53 of the Belize Criminal Code and ordered the insertion of a clause to exclude consensual sexual acts between adults in private. According to University of West Indies Rights Advocacy Project (U-RAP) , irrespective of Government appeals, Section 53 is inconsistent with the Constitution (see article and video). Interestingly, the court dismissed the National Evangelical Association of Belize (NEAB) to join the litigation, although the Catholic church continues to oppose the ruling. For more information on the decision, see: Press conference offered by litigants at UWI Campus (article and video); U-RAP detailed Q&A on the case; " Belize scraps law targeting gay men ", <i>Human Dignity Trust</i> ; Inter-American Commission on Human Rights (IACHR) statement on the decision. In March 2014, Caleb Orozco co-presented the situation of human rights of LGBTI people in Belize at a public hearing before the IACHR. |
| BOLIVIA Equal AoC: 14 | 1832 The first Criminal Code of Bolivia (1831) entered into force in 1832. This Code largely followed the Spanish Criminal Code of 1822 that contained no provision on sodomy. There are no criminalising provisions for same-sex sexual acts between consenting adults in private in the current (2010) Penal Code of Bolivia . |
| BRAZIL Equal AoC: 14 | 1831 The first Criminal Code of Brazil contained no provision on sodomy. It has been indicated that other provisions of that Code were used to persecute persons who engaged in same-sex sexual acts. The Inter-American Commission on Human Rights reported (fn. 129) that there is a lawsuit pending before the Supreme Court requesting that Article 235 of the 1969 Military Penal Code be declared unconstitutional, as the term "pederasty" has been used to restrict same-sex activity. |
| CANADA Unequal AoC: 18 | 1969 The enactment of the Criminal Law Amendment Act (Bill C-150) in 1969 introduced an exception that decriminalized "buggery" between spouses or two persons over 21 years of age who had consented to the commission of the act. In 1988, Section 159(2)(b) of the Criminal Code replaced that buggery law altogether, but retained a different age of consent: 18 for "acts of anal intercourse" and 16 for non-anal sex. This provision has been declared unconstitutional by five provincial courts (end of page). In 2016, the Toronto police Chief apologized for 1981 gay bathhouse raids. In early-2017, the Canadian government announced that it intended to review many historical gay conviction cases. |
| CHILE Unequal AoC: 18 | 1999 Article 10 of Law 19,617 amended Article 365 of the Penal Code by decriminalizing consensual same-sex sexual acts between consenting adults. However, that same Article sets the age limit at 18 for "same-sex carnal access", and 14 for other sexual acts. Local organizations denounce that Article 373, which criminalises "acts against decency and good mores" is used as a tool to criminalise LGBT people. In its 2nd cycle of the UPR, the Government of Chile committed to derogating this Article (para. 105) in a forthcoming Penal Code revision. |

| Country Age of Consent (AoC) | Provisions in law |
|--|---|
| COLOMBIA Equal AoC: 14 | 1981 Decriminalisation of 'homosexual carnal knowledge' occurred through repeal of Article 323(2) in the 1980 Penal Code (effective January 1981). In 1999, the Constitutional Court Decision C-507 of 1999 repealed (or reinterpreted) certain provisions of Executive Order No. 85/1989 which established that "being homosexual" or "committing acts of homosexuality" were affronts against Military Honour. |
| COSTA RICA Equal AoC: 15 | 1971 The 1941 Penal Code criminalized sodomy under Article 233 . With the enactment of the 1971 Penal Code , consensual same-sex acts in private were decriminalised. However, "scandalous sodomy" remained a misdemeanour under Article 378(15) , until it was repealed by Section 2 of Law 8,250 in 2002. In 2013, the last provisions which provided for security measures in cases of "homosexuality" were repealed by Resolución N° 010404 issued by the Constitutional Chamber. In 2008, the Committee against Torture noted (para. 11) that local provisions in Costa Rica on "public morals" granted the police and judges discretionary power to discriminate on the basis of sexual orientation. |
| CUBA Equal AoC: 15 | 1979 The Social Defence Code, which deemed "homosexual practices" as a "social threat" and imposed preventive measures to combat it, was repealed in 1979 by the New Criminal Code of Cuba. This Code did not criminalise homosexuality <i>per se</i> . However, Article 359(1) criminalised those who made "public display of their homosexual condition" (repealed by Article 303(1) of Law No. 62 of 1987) or bothered or solicited others with "homosexual requests" (amended by Executive Order-Law No. 175 in 1997 to refer only to "sexual" requests). |
| DOMINICAN REPUBLIC Equal AoC: 18 | 1822 The first Criminal Code in force in the Dominican Republic, imposed after the Haitian invasion in 1822, did not criminalise consensual same-sex sexual acts between adults in private. The new 2007 Criminal Code does not innovate in this regard. However, Article 210 of the 1966 Police Justice Code (download here) still outlaws sodomy (defined as a "sexual act between persons of the same-sex") among members of police forces. |
| ECUADOR Equal AoC: 14 | 1997 Article 516(1) of the Penal Code imposed a penalty of 4-8 years in prison for "acts of homosexuality" which did not fall under the crime of rape. This provision was repealed by the 1997 Constitutional Court decision in Case No. 111-97-TC . In 2014, the new Organic Integral Penal Code entered into force. In 2016, the Inter-American Court of Human Rights issued its decision in the <i>Homero Flor Freire</i> case (in Spanish only) regarding the powers of dismissal encoded in the 1997 Rules of Military Discipline for consensual same-sex sexual acts between adults. |
| EL SALVADOR Equal AoC: 18 | 1822 The first Penal Code of El Salvador was enacted in 1826 following the Spanish Criminal Code of 1822 that contained no provisions on consensual same-sex sexual acts between adults... In 2003, the Human Right Committee noted (at para.16) that local provisions ("ordenanzas contravencionales") were being used to discriminate against people on account of their sexual orientation. |
| GUATEMALA Equal AoC: 18 | 1871 According to Guatemalan historian Manuel Fernandez, consensual same-sex sexual acts were decriminalized as a result of the 1871 Revolution "on the constitutional grounds that private sexual acts between consenting adults were not the concern of the state". The new Penal Code (updated version) entered into force in 1877. |
| HAITI Equal AoC: 18 | 1804 When Haiti became independent from France in 1804, no law that criminalising consensual same-sex sexual acts was introduced, and no such law has come into the Penal Code since. France repealed its sodomy laws in 1791 (see entry below). |
| HONDURAS Equal AoC: 15 | 1899 Consensual same-sex sexual acts between adults have been legal since the entry into force of the 1899 Penal Code of Honduras. |
| MEXICO Equal AoC: 17 | 1872 The first federal Penal Code of Mexico was approved in 1871 and entered into force in 1872. This Code made no reference to consensual same-sex acts between adults. |
| NICARAGUA Equal AoC: 18 | 2008 In 2007, the New Penal Code repealed the 1974 Penal Code that had criminalised "sodomy" under Article 204. |

| Country Age of Consent (AoC) | Provisions in law |
|---|---|
| PANAMA Equal AoC: 18 | 2008 Presidential Executive Order No. 332 of 31 July 2008 repealed section 12 of Executive Order No. 149 of 20 May 1949, which criminalised “sodomy”. The Executive Order states that “sodomy was the term by which homosexuality was referred to prior to 1973”. |
| PARAGUAY Unequal AoC: 16 | 1880 The first Penal Code of Paraguay was adapted from that in force in the Argentine province of Buenos Aires (in force there since 1877). This code made no reference to consensual same-sex acts between adults. However, Article 138 of the Penal Code currently in force specifies the age of consent for “homosexual acts” is 16, while it is set at 14 for different-sex sexual acts. |
| PERU Equal AoC: 14 | 1924 Article 272 of the 1863 Penal Code criminalized sodomy. Since the inception in the 1924 Penal Code, same-sex sexual acts have been legal. However, civil society indicates (page 31) that Article 183 of the Penal Code on “obscene exhibitions and publications”, provides the legal basis for State discrimination regarding issues such as public display of affection. |
| SURINAME Unequal AoC: 18 | 1975 When Suriname became fully independent from the Netherlands in 1975, no sodomy law was in force and no such law has been reintroduced since then. Sodomy was repealed in the Netherlands in 1811. However, Section 302 of the Criminal Code stipulates that the age of consent for same-sex acts is 18 (limit established at “minority age”), while it is 16 for different-sex sexual relations. |
| UNITED STATES OF AMERICA AoC: varies by State (16 to 18); 3 unequal. | 1962-2003 Under the USA federal system, all 50 States enact their own Criminal Codes (listed here). “Sodomy” was criminalized throughout the USA until 1962, when Illinois became the first State to decriminalise consensual same-sex sexual acts between adults. In 2003 all remaining sodomy statutes —still in force in 14 States— were invalidated by the Supreme Court verdict in <i>Lawrence v. Texas</i> (2003). Age of consent laws also vary across the USA. Only three States still keep laws establishing unequal laws of consent: Alabama , Kansas and Texas . In early 2017 outgoing U.S. Secretary of State, John Kerry, issued a formal apology to employees and their families who were discriminated against on the basis of their perceived sexual orientation. |
| URUGUAY Equal AoC: 15 | 1934 The 1934 amendment of the Penal Code repealed the crime of ‘sodomy’ in Uruguay. It bears mentioning that this provision was placed under the section on ‘rape’: this, together with other indicia in local case law , suggests that the crime of ‘sodomy’ repealed in 1934 referred to non-consensual same-sex acts. |
| VENEZUELA Equal AoC: 16 | 1836 Since 1836, when Venezuela produced its first Penal Code , consensual same-sex sexual activity has not been criminalised. As reported by the IACHR (see fn. 239), in 1997, the Supreme Court of Venezuela declared the unconstitutionality of the Law on Vagrants and Crooks , which had been reportedly used to persecute and abuse LGBT persons. |

ASIA (20 [inc. Taiwan])

| Country Age of Consent (AoC) | Provisions in law |
|--|---|
| BAHRAIN Unequal AoC: 21 | 1976 Repealing the colonial British code that had pervaded the Persian Gulf, Bahrain’s current Penal Code was enacted in 1976. This code decriminalised consensual adult same-sex sexual behaviour, yet set the age of consent at 20 for different-sex and 21 for same-sex sexual acts. |
| CAMBODIA Equal AoC: 15 | 1953 Following royal request, in 1867 Cambodia became a French Protectorate, thereby coming under French law, which had decriminalised same-sex sexual activity between consenting adults in private in 1791. Following 1946, and Independence in 1953, no criminalising provisions were added to the Penal Code in this regard. |
| CHINA Equal AoC: 14 | 1997 China’s current Penal Code of 1997 contains no explicit prohibition of consensual sexual acts between persons of the same-sex. Explicit prohibitions of “consenting jijian” (sodomy) were abolished in China around 1912 (end of Qing Dynasty). A ‘hooliganism’ provision in the 1979 Penal Code was used to target male same-sex activity until the code was repealed in 1997. Although China accepted SOGI non-discrimination UPR recommendations in 2013, no such provisions have been enacted to date as reported in 2016. Same-sex sexual acts were decriminalised in the Chinese associates of Hong Kong in 1991 and Macau in 1996 respectively. |

| Country Age of Consent (AoC) | Provisions in law |
|-------------------------------------|--|
| EAST TIMOR Equal AoC: 14 | 1975 On Independence from Portuguese rule in 1975, the new Penal Code (2009 revision) made no mention of a prohibition on same-sex sexual acts between consenting adults in private. |
| INDONESIA Unequal AoC: 18 | 1976 <i>Most parts.</i> Having achieved independence from Dutch governance in 1945, the Indonesian Penal Code has no provisions outlawing same-sex sexual relations. The 2002 Law on Child Protection sets an unequal age of consent for same-sex (18) and different-sex (16) acts. Although the country has many traditional variations of sexual and gender expression , Sharia interpretations prevail in certain provinces, as outlined in the 'Criminalisation' section below. |
| ISRAEL Equal AoC: 16 | 1988 Although the 1977 Penal Law contained a sodomy provision, at Section 347, the parliament repealed that provision in 1988. |
| JAPAN Equal AoC: 13 | 1882 According to 2014 scholarship , consensual same-sex sexual activity was never criminalised in modern Japan (except a very short period 1873-1881). |
| JORDAN Equal AoC: 16 | 1960 Jordan is one the few Middle Eastern countries where same-sex sexual acts are not criminalised, see Penal Code of 1960. However, although relatively safe in the region, levels of stigma and discrimination directed at LGBT people is significant . |
| KAZAKHSTAN Equal AoC: 16 | 1998 With recent autonomy from the USSR, Kazakhstan's Criminal Code of 1997 (in force 1998) removed earlier provisions that penalised consensual same-sex sexual acts. |
| KYRGYZSTAN Equal AoC: 16 | 1998 With recent autonomy from the USSR, Kyrgyzstan's Criminal Code of 1997 (in force 1998) removed earlier provisions that penalised consensual same-sex sexual acts. |
| LAOS Equal AoC: 15 | 1954 Following independence from France in 1954 (with subsequent non-criminalisation), the 1989 Penal Code made no provisions to criminalise consensual same-sex sexual acts. |
| MONGOLIA Equal AoC: 16 | 1961 In 1961, under the Mongolian People's Revolutionary Party, consensual same-sex sexual relations were decriminalised. This position remained through the 2002 Criminal Code . For its 2nd cycle UPR in 2015, Mongolian advocates produced an excellent factsheet , and the UPR submission from the LGBT Centre of Mongolia offers a snapshot of current LGBT focus. In September 2016, the Committee Against Torture pointed to a hostile environment for LGBTI people (para. 29). |
| NEPAL Equal AoC: 16 | 2008 In its finding of 2008 , the Nepal Supreme Court ruled that "LGBTI persons" would be regarded as "natural persons" under the law. A 2014 report looks at the situation of LGBT persons in Nepal. Under Articles 18(3) and 41 (rights equality and social justice) in the Nepali Constitution of 2015, gender and sexual minorities" are comprehensively included as protected status. |
| NORTH KOREA Equal AoC: 15 | 1950 There appears to be no laws penalising consensual same-sex sexual activities between adults in the Criminal Code of 1950, which was updated in 2009. |
| PHILIPPINES Equal AoC: 12 | 1932 The 1932 Revised Penal Code (RPC) does not criminalise consensual same-sex activities between adults. In line with the adoption of the Napoleonic Code, when the Philippines came under Spanish control in 1822, 'sodomy' provisions were first repealed. |
| SOUTH KOREA Equal AoC: 13 | 1962 The 1962 Criminal Act (updated 2009) of South Korea contains no provisions criminalising consensual same-sex sexual acts between adults. Article 305 (amended 1995) indicates 13 as the age of consent (information verified by practioners in South Korea, as there are English versions of the Crimnial Act that state 15 as the age of consent). The fact that such equal age protection is not afforded to the crime of rape is highlighted in Rainbow Action against Sexual Minority Discrimination's Shadow Report to CAT in March 2017. |

| Country Age of Consent (AoC) | Provisions in law |
|------------------------------------|--|
| TAIWAN Equal AoC: 16 | 1954 Taiwan's Criminal Code of 1954 contained no provisions prohibiting consensual same-sex sexual activity between adults. (Taiwan is not a member State of the United Nations). |
| TAJIKISTAN Equal AoC: 16 | 1998 There are no restrictions on adult, consensual same-sex sexual relations between adults in the 1998 Criminal Code of Tajikistan (amended to 2010). |
| THAILAND Equal AoC: 15 | 1957 The Thai Penal Code of 1956 came into force in 1957: it has no criminalising provision on consensual same-sex sexual activity between adults. |
| VIETNAM Equal AoC: 18 | 1945 Following independence from France in 1945 (with subsequent non-criminalisation), the 1999 Penal Code made no provisions to criminalise consensual same-sex sexual acts between adults. |
| WEST BANK Equal AoC: 16 | 1960 West Bank in the Occupied Palestinian Territory aligns with the Jordanian Penal Code of 1960, where consensual same-sex sexual acts are not penalised under the law. However, clearly public discussion about sexual diversity is severely limited, as reported in early-2017 . The West Bank is not a member State of the United Nations. |

EUROPE (49 [inc. Kosovo])

| Country Age of Consent (AoC) | Provisions in law |
|--|---|
| ALBANIA Equal AoC: 14 | 1995 Prior to its repeal by Article 116 of the Criminal Code , the previous Article 137 penalised "homosexuality" amongst men with up to 10 years imprisonment. |
| ANDORRA Equal AoC: 16 | 1791 As a co-principality with France, Andorra was subject to the same Penal Code provisions that decriminalised "sodomy" in 1791. |
| ARMENIA Equal AoC: 16 | 2003 Armenia's former Soviet Union provision that punished consensual sex between adult men with five years imprisonment (under Article 116), was repealed in the 2003 Criminal Code . |
| AUSTRIA Equal AoC: 14 | 1971 The previous Penal Code of 1852 penalised (with five years imprisonment) "sodomy" between men, and unusually in Europe, amongst women. The 1971 Criminal Code lifted all such sanctions. |
| AZERBAIJAN Equal AoC: 16 | 2000 Prior to 1988, aligned to the Soviet Union provisions, Article 113 criminalised "anal intercourse between men". This was repealed by a new Criminal Code that came into force in 2000. |
| BELARUS Equal AoC: 16 | 1994 'Homosexual acts' were criminalised with up to five years imprisonment under Article 119(1) in line with the Soviet Union code, and was repealed under the Belarus 1994 Criminal Code . |
| BELGIUM Equal AoC: 16 | 1830 Neither the Napoleonic Code of 1810 (which Belgium operated under until independence in 1830) nor the Belgian Penal Code of 1867 conferred penal sanctions for consensual same-sex sexual activity between adults. |
| BOSNIA & HERZEGOVINA Equal AoC: 14 | 1998/2001 The three parts of Bosnia and Herzegovina decriminalised 'homosexuality' separately: Federation of Bosnia and Herzegovina (1998), Republika Srpska (2000), Brcko District (2001). |
| BULGARIA Equal AoC: 14 | 1968 The Criminal Code of 1968 repealed the sodomy provisions contained in Bulgaria's first Penal Code of 1896. |

| Country Age of Consent (AoC) | Provisions in law |
|--|--|
| CROATIA Equal AoC: 15 | 1977 The provisions of 1951 Yugoslavia Criminal Code regarding consensual same-sex relations were rescinded in the Croatian Penal Code of 1977, and the age of consent was equalised in 1998. |
| CYPRUS Equal AoC: 17 | 1998 Under Section 171 of the 1959 Criminal Code , male/male sexual 'unnatural acts' could be punishable with five year's imprisonment. This clause was removed in the 1998 following the <i>Modinas v Cyprus</i> case. Northern Cyprus decriminalised in 2014, the last part of Europe to do so. |
| CZECH REPUBLIC Equal AoC: 15 | 1961 The current Criminal Code came into force in 1962, which removed sodomy provisions from previous ruling codes (that of Austria ruled Bohemia and Moravia, and Slovakia used the Hungarian penal code). |
| DENMARK Equal AoC: 15 | 1933 Replacing a Criminal Code and a series of laws that criminalised sodomy, the 1933 Penal Code removed provisions on consensual adult same-sex sexual relations. |
| ESTONIA Equal AoC: 14 | 1992 On dissolution from the Soviet Union in 1991, Estonia created its own Penal Code that removed criminalising sanctions on same-sex sexual intimacy. |
| FINLAND Equal AoC: 16 | 1971 The 1889 Criminal Code was revised in 1971 to remove Chapter 20 'Unlawful sexual intercourse and other lewdness'. |
| FRANCE Equal AoC: 15 | 1791 The newly-formed constitutional monarchy of France adopted a Penal Code that removed sodomy provisions, thus becoming the world's first country to decriminalise same-sex sexual acts between consenting adults. The law applies to the Overseas Departments of Martinique , Guadeloupe , Saint Barthélemy , French Guyana , Mayotte , and Réunion, and to the islands of Saint Pierre and Miquelon. |
| GEORGIA Equal AoC: 16 | 2000 The Criminal Code of Georgia removed the pre-existing sodomy provisions that were carried through from the Soviet Union period. |
| GERMANY Equal AoC: 14 | 1968/1969 Although East Germany and West Germany stopped applying its Criminal Code provisions (Paragraph 175 – "lewd and lascivious acts") in 1968 and 1969 respectively, the black letter law was not abolished until 1994. |
| GREECE Unequal AoC: 17 | 1951 Prior to the post-war 1951 Penal Code , consensual male same-sex sexual acts were outlawed. Articles 339 and 347 stipulate the age of consent: 'contact against nature between males' is 17, while for different-sex that age is 15. |
| HUNGARY Equal AoC: 14 | 1962 The Criminal Code of Hungary removed the 1878 provisions that referred to 'crimes against nature'. |
| ICELAND Equal AoC: 15 | 1940 The General Penal Code of 1940 removed the provisions of 1869 Penal Code, Clause 178 that stipulated, "[u]nnatural forms of sexual intercourse are punishable by a term in prison". |
| IRELAND Equal AoC: 17 | 1993 Section 2, Criminal Law (Sexual Offences) Act 1993 removed the 'buggery' provisions Ireland inherited from British rule. |
| ITALY Equal AoC: 14 | 1890 The first Italian Penal Code in 1889 had no prohibition on consensual same-sex sexual acts between adults in private. |
| KOSOVO Equal AoC: 16 | 1994 The Criminal Code of the Republic of Kosovo repealed the 1951 Yugoslav provisions regarding same-sex sexual acts. Kosovo is not a member State of the United Nations. |

| Country Age of Consent (AoC) | Provisions in law |
|---|---|
| LATVIA Equal AoC: 16 | 1992 Following dissolution of the Soviet Union, Latvia's Criminal Law removed its punitive provisions under Paragraph 124(1) regarding consensual same-sex sexual relations between adults. |
| LIECHTENSTEIN Equal AoC: 14 | 1989 The Criminal Code was revised in 1989 to remove Sections 129 and 130 "lewdness against the order of nature". |
| LITHUANIA Equal AoC: 16 | 1993 Following independence from the Soviet Union, Lithuania abolished Articles 121 and 122(1) of its Criminal Code , thereby decriminalising consensual same-sex sexual relations between adults. |
| LUXEMBOURG Equal AoC: 16 | 1795 As Luxembourg came into the possession of France, any sodomy provisions from its Criminal Code were removed in 1795. |
| MACEDONIA (FRYOM) Equal AoC: 16 | 1996 The Criminal Code of 1996 removed provisions regarding consensual [male] same-sex relations (penalised with one year in jail) that were previously encoded under Article 101. |
| MALTA Equal AoC: 18 | 1973 Malta removed the offence of "unnatural carnal connection" from Article 201 of the Criminal Code in 1973. |
| MOLDOVA Equal AoC: 16 | 1995 The Criminal Code of Moldova removed the pre-existing sodomy provisions (at Article 106) that were carried through from the Soviet Union period. |
| MONACO Equal AoC: 15 | 1793 As Monaco was in the possession of France, it removed any sodomy provisions from its Penal Code in 1795. |
| MONTENEGRO Equal AoC: 14 | 1977 The Criminal Code of 1977 repealed the 1951 Yugoslav provisions regarding same-sex sexual acts. |
| NETHERLANDS Equal AoC: 16 | 1811 When the Kingdom of Holland became annexed to France in 1811, the Napoleonic Penal Code of 1810 came into operation containing no provision on sodomy, and that standard applies in the current Penal Code , as well as to the three Netherlands Associates (Aruba, Curaçao and St Maarten) and in the their Territories of Bonaire, Saba and St Eustatius. |
| NORWAY Equal AoC: 15 | 1972 "Indecent intercourse" between men was decriminalised by repeal of Paragraph 213 in Norway's Penal Code of 1972. |
| POLAND Equal AoC: 15 | 1932 After its independence in 1918, Poland returned to the Napoleonic tradition that it had enjoyed in the early-19th century, and subsequently its 1932 Penal Code contains no criminalising provisions regarding consensual same-sex sexual relations amongst adults. |
| PORTUGAL Equal AoC: 14 | 1983 Under the reign of Louis 1 from 1886 on, Portugal criminalised consensual same-sex sexual relations between men, but that law was repealed in the 1983 Penal Code . |
| ROMANIA Equal AoC: 15 | 1996 Prior to 1996, Section 200 of the Penal Code had penalised "sexual relations between persons of the same-sex" with 1-5 years imprisonment. This was then repealed, but replaced with a clause "committed in public or producing a public scandal", which was itself removed in 2001. |

| Country Age of Consent (AoC) | Provisions in law |
|--|--|
| RUSSIA Equal AoC: 16 | 1993 Article 121(1) of the 1934 Criminal Code of the Soviet Union (discussed here) had stated “[s]exual relations of a man with a man (pederasty)” was punishable with up to five years imprisonment. This is the model language that was transposed into penal codes in States throughout the former-Soviet Union. The 1993 Criminal Code removed such provisions from the Russian law. However, as has been widely reported over the past decade, a variety of repressive legal provisions on areas critical to SOGI-related advocacy (regarding expression, assembly and funding) have been implemented and societal stigmatisation is high . The Russian LGBT Network reported on the persecution of gay men in Chechnya in March 2017 that has had fatal results, an issue that (at time of writing) has been recorded by media , but cynically denied by officialdom. |
| SAN MARINO Equal AoC: 14 | 2004 Although San Marino decriminalised ‘sodomy’ in 1865, it was re-introduced at Article 274 into the Penal Code in 1975, targeting those who “habitually” practice (not known to have been ever implemented). This was finally repealed in the 2004 Penal Code . |
| SERBIA Equal AoC: 14 | 1994 In its modern history, and as part of the Kingdom of Yugoslavia in 1918, “lewdness against the order of nature” in Serbia was banned. The 1994 Criminal Code removed that prohibition. |
| SLOVAKIA Equal AoC: 15 | 1962 The current Criminal Code came into force in 1962, and removed sodomy provisions from previous ruling codes (Slovakia relied on the Hungarian law that had previously referred to “crimes against nature”). |
| SLOVENIA Equal AoC: 15 | 1977 When Slovenia was still a part of Yugoslavia in 1976, work on the Criminal Code to remove provisions penalising consensual same-sex sexual relationships commenced, and the resultant law came into force in 1977. |
| SPAIN Equal AoC: 16 | 1979 Following the re-establishment of constitutional democracy in Spain after Franco, consensual same-sex sexual intercourse amongst males was removed as an offence in the Penal Code (download in English here). |
| SWEDEN Equal AoC: 15 | 1944 Sweden removed its ‘sodomy’ provisions from the Penal Code in 1944, specifying freedom for both men and women in the subsequent revision. |
| SWITZERLAND Equal AoC: 16 | 1942 Although various cantons had remained with the Napoleonic Code since 1798 in not penalising same-sex sexual relations, the entire country became free from such criminalisation by way of the Penal Code that came into force in 1942. |
| TURKEY Equal AoC: 18 | 1858 The Turkish Imperial Penal Code of 1858 (thought to be based on the 1810 French Penal Code) makes no mention of consensual same-sex sexual acts between adults, and neither does the current Penal Code . |
| UKRAINE Equal AoC: 16 | 1991 ‘Homosexual acts’ were criminalised with up to five years imprisonment in line with the Soviet Union code of 1934: this was repealed under the Ukraine Criminal Code of 1991. |
| UNITED KINGDOM Equal AoC: 16 | 1967 In 1861, the death penalty for ‘buggery’ was abolished across the United Kingdom, but the offence was codified in Section 61 of the Offences Against the Person Act 1861 as life sentence, and the lesser misdemeanor of gross indecency was codified in Section 11 of the Criminal Law Amendment Act 1885 , with a penalty of up to two years imprisonment, hard labour possible. These were the model laws that spread throughout the Commonwealth. England and Wales removed the provisions in 1967, Scotland in 1981, and Northern Ireland in 1982 (following the Dudgeon case at the European Court of Human Rights). Various entities attached to the UK similarly repealed: Akrotiri & Dhekelia (2000), Anguilla (2001), Bailiwick of Guernsey (1983), Bermuda (1994), British Virgin Islands (2001), Cayman Islands (2001), Falkland Islands (1989), Gibraltar (1993), Isle of Man (1992), Jersey (1990), Montserrat (2001), Pitcairn, South Georgia, St Helena, Turks & Caicos Islands, and all other territories (2001). |

OCEANIA (8)

| Country Age of Consent (AoC) | Provisions in law |
|---|--|
| AUSTRALIA Equal AoC: 16 | 1975-1997 Decriminalisation of consensual same-sex sexual acts took place variously across the eight provinces of Australia between 1975 and 1997. In 1975, South Australia abolished the offences of buggery, gross indecency and soliciting for immoral sexual purposes, and 22 years later the last state to decriminalise was Tasmania in 1997. Following the seminal UN Human Rights Committee's finding of incompatibility in <i>Toonen v. Australia</i> in 1994 (primarily on the basis of privacy), the federal government introduced Section 4(1) of the <i>Human Rights (Sexual Conduct) Act 1994</i> to uphold that principle in Australian law. |
| FIJI Equal AoC: 16 | 2010 In 2005, in its decision in <i>Dhirendra Nadan and Thomas McCosker v. The State</i> , the High Court of Fiji invalidated two convictions based on sections 175(a), 175(c) and 177 of the <i>Penal Code</i> which criminalised "carnal knowledge against the order of nature" and indecent practices. These provisions were finally repealed by the <i>Crimes Decree 2009</i> , which came into force in February 2010. |
| MARSHALL ISLANDS Equal AoC: 16 | 2005 The Criminal Code (Amendment) Act 2005 amended the <i>Criminal Code</i> to decriminalise consensual same-sex sexual activity between adults in private. |
| MICRONESIA [FEDERATED STATES OF] Equal AoC: 14 | 1982 The first 1982 legal code of the FSM (which included criminal provisions) did not contain any provision criminalising same-sex consensual sexual acts between adults and no such provision has been introduced since. It has been reported (para. 5) that culture stigmatizes public acknowledgement or discussion of certain sexual matters, including sexual orientation and gender identity, and it was rare for individuals to identify themselves publicly as LGBT persons. |
| NAURU Equal AoC: 17 | 2016 In May 2016 the <i>Crimes Act 2016</i> repealed the Criminal Code 1899 that itself was drawn from the 1899 Queensland Criminal Code. The Government of Nauru stated that this law —by far the most comprehensive new law in the country— removed homosexuality as an offence. Nauru had previously accepted three recommendations to decriminalise same-sex sexual activity in its 1st cycle of the UPR in 2011. |
| NEW ZEALAND Equal AoC: 16 | 1986 The General Assembly passed the <i>Homosexual Law Reform Act 1986</i> which decriminalised sexual relations between men aged 16 and over. Same-sex activity between women was not illegal. In February 2017, the government of New Zealand announced that it would introduce legislation to open an application process to quash historical convictions for consensual sex between men. In 2007 Niue (associated state) and Tokelau (dependent territory) decriminalised same-sex consensual relations as a result of the amendment of the Niue Act by the <i>Niue Amendment Act 2007</i> . The act came into force on 20 September 2007. |
| PALAU Equal AoC: 16 | 2014 Palau repealed its legal provisions that criminalised consensual same-sex sexual activity between gay men, introducing a new <i>Penal Code</i> with no such provisions, signed by the President in April 2014. Palau had previously accepted three recommendations to decriminalise same-sex sexual activity in its 1st cycle of the UPR in 2011. In 2014, a bill on hate crimes, including those based on sexual orientation, was rejected and not passed into law. It has been reported that the LGBTI community faces security threats and made calls for government action. |
| VANUATU Equal AoC: 15 | 1981 Soon after becoming an independent State in 1980, Vanuatu enacted its first Criminal Code (in force 1981), which did not criminalise (see page 122) same-sex activity between persons over 18 years of age. The <i>2006 Consolidation of the Criminal Code</i> maintained the same provision under Section 99. In that same year, the <i>Penal Code (Amendment) Act 2006</i> (in force March 2007) repealed section 99 altogether, which had the effect of equalising ages of consent for same-sex and different-sex sexual acts at 15. |

Same-sex acts: illegal (71)

37% of UN States

This section provides a quick-reference overview of all the States that criminalise same-sex sexual activity. In the first column it lists the country name and if the symbol indicates if the law applies to men and to women, or just to men only. The second column supplies a link to the text of the law, and the appropriate provision reference. Each entry in this listing is linked to more comprehensive country entries in the Criminalisation section of this document.

AFRICA (32)

| Country | M/F | Provisions in law |
|------------------------------|-----|--|
| ALGERIA | ♂♀ | 1996 Penal Code Articles 333, 333bis, 338. |
| ANGOLA | ♂♀ | 1886 Penal Code Articles 70, 71(4). |
| BOTSWANA | ♂♀ | 1964 Penal Code Sections 164, 165, 167. |
| BURUNDI | ♂♀ | 2009 Penal Code Article 567. |
| CAMEROON | ♂♀ | 1965 Penal Code Article 347-1. |
| COMOROS | ♂♀ | 1981 Penal Code Article 318. |
| ERITREA | ♂♀ | 1957 Penal Code Article 600. |
| ETHIOPIA | ♂♀ | 1957 Criminal Code Articles 629, 630. |
| GAMBIA | ♂♀ | 1965 /2014 Criminal Code Articles 144, 144A, 147(2) . |
| GHANA | ♂ | 1960 Criminal Code Articles 99, 104. |
| GUINEA | ♂♀ | 1988 Penal Code Article 325. |
| KENYA | ♂ | 1948 Penal Code Section 162. |
| LIBERIA | ♂♀ | 1978 Penal Law Article 14.74. |
| LIBYA | ♂♀ | 1976 Law 70 of 1976 (amending Articles 407 and 408 of 1953 Penal Code) |
| MALAWI | ♂♀ | 1930 Penal Code Sections 153, 137A. |
| MAURITANIA | ♂♀ | 1983 Penal Code Articles 306, 308. |
| MAURITIUS | ♂ | 1838 Criminal Code Section 250. |
| MOROCCO | ♂♀ | 1962 Penal Code Article 489. |
| NAMIBIA | ♂ | Common Law Offence |
| NIGERIA | ♂♀ | 1990 Criminal Code Act Sections 214, 215, 217. |
| SENEGAL | ♂♀ | 1965 Penal Code Article 319(3). |
| SIERRA LEONE | ♂ | 1861 Offences against the Person Act Section 61. |
| SOMALIA | ♂♀ | 1962 Penal Code Article 409. |

| Country | M/F | Provisions in law |
|--------------------|-----|---|
| SOUTH SUDAN | ♂♀ | 2008 Penal Code Sections 148. |
| SUDAN | ♂♀ | 1991 Penal Code Sections 148, 151. |
| SWAZILAND | ♂ | Common law offence |
| TANZANIA | ♂ | 1945 Penal Code Section 154. |
| TOGO | ♂ | 1980 Penal Code Article 88. |
| TUNISIA | ♂♀ | 1913 Penal Code Article 230. |
| UGANDA | ♂♀ | 1950 Penal Code Section 145. |
| ZAMBIA | ♂♀ | 1930 Penal Code Sections 155, 156. |
| ZIMBABWE | ♂ | 1996 Criminal Law Section 73. |

AMERICAS (10)

| Country | M/F | Provisions in law |
|---|-----|---|
| ANTIGUA AND BARBUDA | ♂♀ | 1995 Sexual Offences Act (Act No. 9) , Sections 12, 15. |
| BARBADOS | ♂♀ | 1992 Sexual Offences Act , Chapter 154, Sections 9, 12. |
| DOMINICA | ♂♀ | 1998 Sexual Offences Act , Sections 14, 16. |
| GRENADA | ♂ | 1993 Criminal Code , Section 431. |
| GUYANA | ♂ | 1893 Criminal Law (Offences) Act , Sections 352, 353, 354. |
| JAMAICA | ♂ | 1864 Offences Against the Person Act , Sections 76, 77, 78, 79. |
| SAINT KITTS AND NEVIS | ♂ | 1873 Offences against the Person Act , Sections 56, 57. |
| SAINT LUCIA | ♂♀ | 2005 Criminal Code , Sections 132, 133. |
| SAINT VINCENT AND THE GRENADINES | ♂♀ | 1990 Criminal Code , Section 146, 148. |
| TRINIDAD AND TOBAGO | ♂♀ | 1986 Sexual Offences Act 1986 , as amended by the Sexual Offences (Amendment) Act (No. 31 of 2000) , Sections 13, 16. |

ASIA (23)

| Country | M/F | Provisions in law |
|--------------------|-----|-------------------------------------|
| AFGHANISTAN | ♂♀ | 1976 Penal Code Article 427. |
| BANGLADESH | ♂ | 1860 Penal Code Section 377. |
| BHUTAN | ♂ | 1959 Penal Code Section 213. |

| Country | M/F | Provisions in law |
|-------------------|-----|--|
| BRUNEI DARUSSALAM | ♂ | 1951 Penal Code Section 377. |
| GAZA (OPT) | ♂ | 1936 Criminal Code Ordinance No. 74 Section 152. |
| INDIA | ♂ | 1860 Penal Code Section 377. |
| INDONESIA | ♂♀ | Indonesia [two provinces only]. |
| IRAN | ♂♀ | 2013 Islamic Penal Code Articles 233-241. |
| IRAQ | ♂♀ | 1969 Penal Code Article 404. |
| KUWAIT | ♂ | 1960 Penal Code Article 193. |
| LEBANON | ♂ | 1943 Penal Code Articles 209, 532, 534. |
| MALAYSIA | ♂♀ | 1976 Penal Code Section 377A. |
| MALDIVES | ♂♀ | 2014 Penal Code Articles 410, 411, 412. |
| MYANMAR | ♂ | 1860 Penal Code Section 377. |
| OMAN | ♂♀ | 1974 Penal Code Articles 33, 223. |
| QATAR | ♂♀ | 2004 Penal Code Articles 296, 298. |
| PAKISTAN | ♂ | 1860 Penal Code Section 377. |
| SAUDI ARABIA | ♂♀ | Sura 7:80/81. |
| SINGAPORE | ♂ | 1872 Penal Code Section 377A. |
| SRI LANKA | ♂♀ | 1885 Penal Code Articles 365, 365A |
| SYRIA | ♂♀ | 1949 Penal Code Article 520 |
| TURKMENISTAN | ♂ | 1997 Criminal Code Article 135. |
| UAE | ♂♀ | 1987 Penal Code Article 356. |
| UZBEKISTAN | ♂ | 1994 Criminal Code Article 120. |
| YEMEN | ♂♀ | 1984 Penal Code Articles 264, 268. |

OCEANIA (6)

| Country | M/F | Provisions in law |
|---|-----|--|
| COOK ISLANDS [NEW ZEALAND ASSOCIATE] | ♂ | 1969 Crimes Act 1969, Sections 154, 155. |
| KIRIBATI | ♂♀ | 1977 Penal Code, Sections 153, 154. |
| PAPUA NEW GUINEA | ♂ | 1974 Criminal Code, Sections 210, 212. |

| Country | M/F | Provisions in law |
|------------------------|-----|--|
| SAMOA | ♂ | 2013 Crimes Act , Sections 67, 68, 71. |
| SOLOMON ISLANDS | ♂♀ | 1996 Penal Code , Sections 160, 161, 162. |
| TONGA | ♂♀ | 1988 Criminal Offences Act , Sections 136, 139, 140, 142. |
| TUVALU | ♂ | 1978 Penal Code , Sections 153, 154, 155. |

Death penalty for same-sex sexual acts

There is significant inconsistency in reportage of how the death penalty for same-sex sexual acts is applied.

By our reckoning, as charted below, there are **eight** (8) States where the death penalty is **activated**: **four** (4) at country level, **two** (2) only in certain provinces, and in **two** (2) States a death penalty is carried out by non-State actors. We recommend that this is the most accurate manner to report on the current situation on the death penalty for consensual same-sex sexual activity between adults in private.

Further, there are another **five** (5) States where interpretation of Sharia, or where black letter law, permits the death penalty technically, but where it is **not invoked** to our knowledge, and indeed where governments have made statements to that effect in forums, such as the UN's Universal Periodic Review. Further, these States operate civil codes where lesser penalties are indicated.

| | ASIA | AFRICA |
|--|---|---|
| Codified under Sharia and implemented countrywide (4) | Iran Saudi Arabia Yemen | Sudan |
| Codified under Sharia and implemented provincially (2) | | Somalia (southern parts) Nigeria (12 states) |
| Implemented by local courts / vigilantes / non-state actors (2) | Iraq Daesh -held ((ISIS / ISIL) territories in northern Iraq and northern Syria; | |
| Codified in the law, but not implemented for same-sex behaviour specifically (5) | Afghanistan Pakistan Qatar UAE | Mauritania |

PROMOTION ('PROPAGANDA') AND 'MORALITY' LAWS THAT TARGET FREEDOM OF EXPRESSION RELATED TO SEXUAL ORIENTATION (19)

10% of UN States

Morality codes pertaining to public discussion have long been in force in some Arabic States. However, a new legal vehicle has been employed more laterally where we are witnessing the framing of 'propagation' of certain values to children as a criminal offence (often [inaccurately] framed as 'propaganda').

AFRICA (8)

| | |
|-----------------|--|
| ALGERIA | 2014 Article 333 (Reiterated) of the Penal Code penalises the possession, dissemination or display of anything that would constitute a breach of modesty with imprisonment from two months to two years and a fine. |
| EGYPT | 1937 Penal Code No. 58 of 1937, speaks Article 178 of purveyance of materials "against public morals" (see country entry on Egypt). |
| LIBYA | 1953 Article 421 of the 1953 Penal Code refers to distribution of "articles of an indecent nature". |
| MOROCCO | 1962 Article 483 of the 1962 Penal Code speaks of public indecency through "obscenity in his actions", which is understood to include promoting 'obscenity'. |
| NIGERIA | 2014 Section 5, Same-sex Marriage (Prohibition) Act , 2013 (17 December 2013, signed into law in January 2014) provides that a person who "directly or indirectly makes public show of same-sex amorous relationship[s]" may receive a penal sentence of up to ten years imprisonment. |
| SOMALIA | 1964 Article 406 of the 1964 Penal Code prohibits dissemination of material that "incites to lewd acts". |
| TANZANIA | 1981 Article 175 of the Penal Code stipulates materials that are intended to "corrupt morals" may not be shared or sold. |
| TUNISIA | 1913 Amended in 2004, Article 226 <i>bis</i> of the Penal Code of 1913 speaks of the manner of inviting "debauchery". |

AMERICAS (0)

In the **United States of America** **several states** have enacted local laws—informally referred to as '**No Promo Homo Laws**'—which in some way restrict or condition the discussion of same-sex sexual activity and relations. In some States course material and instruction must: emphasise that "homosexuality is not a lifestyle acceptable to the general public" (Alabama and Texas); refrain from suggesting that "homosexual sex" can be ever be safe (Arizona); explain that "engaging in homosexual activity" is now known to be "primarily responsible for contact with the AIDS virus" (Oklahoma); refer to "homosexual relationships" only when teaching about sexually transmitted diseases (South Carolina), among others. Human Rights Watch documented the effects of these laws in its **report** on school bullying against LGBT students in the United States (see especially page 11). In March 2017, the governor of Utah signed **SB 196**, revising the state law that prohibited the "advocacy of homosexuality" in schools. The **National Center for Lesbian Rights (NCLR)** was involved in strategic litigation to have these laws repealed (see legal brief [here](#)).

ASIA (9)

| | |
|------------------|---|
| INDONESIA | 2016 The Circular to All Broadcasting Companies on Effeminate Men prohibits all broadcasting companies from representing sexual and gender diversity in men. The State also used 2012 Broadcasting Program Standards to limit LGBT expression on TV, with the logic of protecting children. Further, there are growing threats to the continuance of online LGBT content in the country. |
| IRAQ | 1969 Article 404 of Islamic Penal Code states, "Any person who himself or through some mechanical means sings or broadcasts in a public place obscene or indecent songs or statements is punishable by a period of detention not exceeding 1 year or by a fine not exceeding 100 dinars". |
| IRAN | 1986 The Press Law contains a variety of limitations on material that may be considered offensive to the public. |

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| JORDAN | 1962 Article 320 of Penal Code states, "Anyone who commits an act incompatible with modesty or expresses signs incompatible with modesty in a public place or a public assemblage or by manner that could be seen by those in a public place shall be punished with imprisonment not exceeding 6 months or a fine not exceeding 50 Dinars". |
| KUWAIT | 1960 Article 198 of the Penal Code , Law No.16 of 2 June 1960, as amended in 1976, states: "Whoever makes a lewd signal or act in a public place or such that one may see it or hear it from public place, or appears like the opposite sex in any way, shall be punished for a period not exceeding one year and a fine not exceeding 1000 Dinar or one either of these punishments". |
| LEBANON | 1943 Article 523 of the Penal Code speaks of possession, making, distributing materials that may be considered a "breach of modesty shall be punished with ... imprisonment from one month to one year and a fine ...". |
| QATAR | 2004 Article 296 of the 2004 Penal Code states, "One is convicted to no less than a year and no more than three years in prison in case of [<i>inter alia</i>] 3- Leading, instigating or seducing a male anyhow for sodomy or immorality. 4- Inducing or seducing a male or a female anyhow to commit illegal or immoral actions". |
| SAUDI ARABIA | 2001 According to the Council of Ministers Resolution in 2001: "All internet users in the Kingdom of Saudi Arabia shall refrain from publishing or accessing data containing some of the following: 1. Anything contravening a fundamental principle or legislation, or infringing the sanctity of Islam and its benevolent Shari'ah, or breaching public decency...". |
| SYRIA | 1948 Article 208 of the Syrian Penal Code (stipulating that offensive public utterances in writing, graphics, images, etc., are outlawed) in combination with Article 517 (which states, "[p]unish crimes against public decency in any of the ways mentioned in paragraph 1 of Article 208 [any act carried out in a public or open area where one could possibly see, intentionally or accidentally, the act] with imprisonment of three months to three years" comprises a morality clause that is overly restrictive to LGB-identified individuals. |

EUROPE (2)

Bills that target 'propagation' of 'non-traditional sexual relations' have been introduced in parliaments of **Moldova** and **Kyrgyzstan** in 2016.

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|-----------|---|
| LITHUANIA | 2014 In January 2014, the Lithuanian Parliament introduced amendments to the Code of Administrative Violations of Law (at Section 214 and elsewhere) penalising activities or publication that violate so-called constitutionally established family values. These amendments were enacted in the context of the Law on the Protection of Minors against the Detrimental Effect of Public Information that came into effect in March 2010. |
| RUSSIA | 2013 Article 6.21 (Promotion of Non-Traditional Sexual Relations Among Minors) of Federal Law No 135-FZ was used to prosecute the St Petersburg LGBT youth work organisation Children 404 in 2015, and has emitted a strong 'chill factor' across LGBT organising, and has detrimental effects on children and society. |

BARRIERS TO THE FORMATION, ESTABLISHMENT OR REGISTRATION OF [SEXUAL ORIENTATION-RELATED] NGOS (25)

13 % of UN States

By possessing the status of NGO (non-governmental organisation), civil society mission-driven advocacy or service organisations in the non-profit sector are enabled to formally represent at national and international forums alongside the State. But increasingly that right, or the ability to exercise it, for SOGI-based groups and organisations (CSO - civil society organisations/CBO –community-based organisations) is being threatened by the introduction of burdensome or prohibitive provisions in law. However, despite criminalisation of same-sex sexual activity, in recent years courts in Kenya, Botswana, Zimbabwe and Tunisia have rejected such *de facto* censure and upheld petitioners' claims regarding the right to advocate for fundamental rights, regardless of sexual orientation. The following list locates States and their statutes of particular relevance to sexual orientation: a comprehensive and in-depth profile of the wider legal environments these laws operate in, is provided by the Civic Freedom Monitor. It is important to note that there are many States that have restrictive NGO laws but where no SOGI-based NGOs or civil society groups are known to exist, or where they do exist, nothing is known the fate of applications they may have made. There are numerous others, where for various reasons (exposure, governance, interference, cost, etc) groups choose not to pursue NGO status, and opt for other creative partnerships to be able to operate at the policy level.

AFRICA (11)

| | |
|---------|--|
| ALGERIA | 1990 According to ICNL (International Centre for Non-profit Law), the Law on Associations (Law 12-06 of 2012) replaces the highly restrictive Law on Associations (Law 90-31 of 1990), “but still fails to adequately guarantee the right to freedom of association consistent with Algeria’s international obligations. The new law affords the government broad discretion to refuse to register an association and suspend the activities of an association, places restrictions on the founders of associations, limits associations’ ability to receive foreign funds, imposes heavy fines and criminal penalties for members or leaders of informal associations, and fails to provide associations with an adequate remedy to appeal the rejection of their registration”. This combined with the Law on Information (Law 12-05 of 2012) and the Law on Public Meetings and Gatherings (Law 19-91 of 1990), along with the fact of criminalisation, produces an environment where it is not possible to register a SOGI-based NGO. |
| EGYPT | 1964 Article 14(2) of the 1964 Law on Private Associations and Foundations (revised 2016) was the foundational legal formulation that was used by many Middle East and North African States in subsequent years: “The practice of activities that result in destabilizing the national unity, national security, public law and order, and public morals”. The law in Egypt was amended in 2016 to include some ‘novel’ provisions, such as, requiring government permission to accept foreign funding or expertise or consulting with a foreign organisation, to conduct surveys or publish reports, and at the same time increasing penalties for violation. |
| LIBYA | 1928 Various articles within the Law of 21 April 1928 (amended 2016) on associations and non-profit foundations in Libya make the registration of a SOGI-based NGO completely impossible. Libya had a series of highly restrictive laws on associations (for example, Law 71 of 1972) prior to the 2011 revolution, and the level of hostility to sexual and gender diversity has severely increased in recent years, forcing individuals to flee. |
| MALAWI | 2000 Although civil society participation is often welcomed by the government, Section 5 of the NGO Act of 2000 gives the State the discretion to refuse or rescind licences for groups to become incorporated, classified as “specially exempted”. In recent years, SOGI issues are being raised at the political level, causing significant backlash. It is reported (at p.122) that the government threatened to close CSOs because of their advocacy on behalf of SOGI-related rights. |

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|-------------------|---|
| MAURITANIA | 1964 As quoted from CERD's 7th Periodic Report on Mauritania, Article 3 of Act No. 64-098 of 9 June 1964 on associations (no online text of law located) limits the freedom to legally engage in activities unless prior authorisation has been granted from the Ministry of the Interior, whereby Article 4 states members must not "cause public demonstrations, armed or otherwise, compromising public order or security, receive subsidies from abroad or engage in antinational propaganda, undermine the State's credit through their activities or exercise an improper influence over the minds of the populace". Article 13 allows the Ministry to dissolve an association if it "conducts propaganda offending the state" or if the association "violate(s) the state's credibility," among other reasons, while Article 8 penalises individuals working for an unregistered association with up to three years in jail. The passage of a revised law is currently unclear. |
| MOROCCO | 1958 Article 3 of the Decree Regulating the Right of Association Decree 1-58-376 of 1958 prohibits associations from engaging in activities that, <i>inter alia</i> , "breach the laws or public morals; offend Islam". Further amendments to the 1958 law were made in Decree 2-04-969 of 2005 , which include prohibitive provisions, such as capacities of the association at start-up. |
| MOZAMBIQUE | 1991 The Law on Associations Law No. 8/91 appears not to accommodate the only SOGI-based organisation in Mozambique (a country that decriminalised same-sex sexual acts in 2014). In 2016, Human Rights Watch highlighted the case of Lambda that has been applying for eight years to be provided with legal registration, but has met with refusal around issues regarding the "urgency and the pertinence" of the registration: a standard that appears not to be applied to other applications. |
| NIGERIA | 2013 Article 4(1) of Nigeria's Same-sex Marriage (Prohibition) Act , prohibits "the registration of gay clubs, societies and organisations, their sustenance, processions and meetings". Articles 5(2) and (3), imposes a 10-year prison sentence on anyone who "registers, operates or participates in gay clubs, societies organization" or "supports" the activities of such organisations, see HRW report . Human Dignity Trust assessed the "chilling effect on civil society by starving organisations of funding and other forms of support" having "a seriously adverse impact on bodies dedicated to addressing the HIV/AIDS and other public health needs of sexual minorities". |
| SUDAN | 2006 Sudan applies the death sentence for some consensual same-sex sexual activity, and as such, it is virtually impossible for any SOGI-based group to even consider registering as a NGO. A rigorous registration process is mandated in Section 8(1) of the Voluntary and Humanitarian Work (Organization) Act, 2006 , and other sections impose restrictions on the work of NGOs operating in Sudan (see ICNL), and grants discretionary regulatory power to the government over the operations of NGO. |
| TANZANIA | 2002 Article 14(1)(a) of the Non-Governmental Organisations Act prohibits registration if "the activities of a Non Governmental Organization are not for public interest or are contrary to any written law". As Tanzania has particularly harsh penalisations for both male and female same-sex sexual activity, the barriers to existing SOGI-based groups to survive are currently ominous . Further, using a protection of 'culture' argument within the current crackdown on SOGI expression, in late-2016 the Deputy Minister for Health has reportedly vowed to discontinue any current recognition of groups that support "homosexuality". |
| UGANDA | 2016 Section 30(1)(a) of the Non-Governmental Organizations Act states that an "organisation shall not be registered under this Act, where the objectives of the organisation as specified in its constitution are in contravention of the laws of Uganda". Further sections lay out detailed corporate governance requirements for NGO registration: the act came into force in 2016. SMUG and HRAFP initiated a legal challenge (analysed in Third Issue of HRA), which is currently in process. |

ASIA (13)

Although there is no formal ban on a SOGI-based NGO in **South Korea**, there have been 'technical' issues registering [Beyond the Rainbow Foundation](#), seemingly for reasons of the work they do. They have been [bounced](#) from one Ministry to another, as responsibility for registration is not centralised. There is currently a case pending at the Supreme Court level to establish who is to take responsibility for registration of this LGBT group, [noted](#) by a UN rapporteur in 2016.

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|--------------|--|
| BAHRAIN | 1989 Article 3 of Law 21 of 1989 stipulates that a group that is deemed to “contradicts the public order or moral “ or undermines the “social order” is considered illegal. There are many restrictions and conditions set and as decision-making on what construes these is dispersed across government agencies, it is highly likely a SOGI-based application would be instantly rejected. |
| BANGLADESH | 1961 There are significant barriers to registering as a NGO in Bangladesh, along with the fact that there has been a significant rise in threats to LGBT human rights defenders: many who have been forced to flee the country. The Voluntary Social Welfare Agencies Ordinance of 1961 requires the societies under this category to “render welfare services” but does not provide the capacities of a NGO. |
| CHINA | 2016 Attitudes towards SOGI have been characterised as having moved from taboo to tolerance in China. Although there are over 190 LGBT groups and organisations with an online presence in China, none appear to have NGO status, and there are numerous barriers to achieving that status (see explainer). In offering ideas on volunteer-based alternatives, this article explains , “any organization is subject to the review of a “ governing unit ” (i.e., a governmental agency) and they must be approved by a government department . Both of these are highly problematic when sexual minorities are still treated as violating ‘traditional Chinese culture and the social construction of morality ’”. China’s Law on the Management of the Activities of Overseas NGOs within Mainland China came into force in January 2017, which severely impedes funding capabilities, and under the 2016 Charities Law , only by charitable organisations certified by the government should conduct public fund-raising , which means that uncertified people or organisations could be penalised for their fundraising activities. |
| JORDAN | 2008 Articles 6, 7 and 16 of the 2008 Law on Societies requires registration, personal information and annual oversight, and proposed revisions to it in 2016 regarding registration and funding will close civil society space even further, as HRW point out . The terms of the 2008 already effectively prohibits such registration for SOGI-based groups, at the reviewing Board’s discretion (with reason supplied), particularly the provision that the Registry of Societies must be informed and can send a representative to any general assembly meeting. |
| KAZAKHSTAN | 1996 Although a Russian-type ‘propagation’ Bill passed parliament, it did not get through the Constitutional Court in mid-2015. The 1996 Law on Public Assembly already created a restricted space for SOGI-based groups and organisations achieving NGO status, but developments since mid-2015 are only limiting that space further. |
| KUWAIT | 1962 Article 6(4) of the 1962 Law No. 24 on Clubs and Public Welfare Societies states, “[s]ocieties and clubs are not allowed to seek achieving any purpose that is illegal or defies ethics or related to purposes stipulated in the statute”. NGO registration is mandatory (Articles 2 and 3) and an implausible prospect for SOGI-based groups. |
| NORTH KOREA | Civil society human rights activity of the type that would produce a SOGI-based NGO is not possible in North Korea, although there is no mention of ‘illegal societies’ in the Criminal Code of 1950, which was updated in 2009. |
| OMAN | 2000 The provisions of Law No. 14 of 2000 support an already deeply oppressive environment for sexual and gender minorities. Quoted from the Survey of Arab NGO Laws : “The Ministry of Social Affairs and Labor in Oman has the right to prevent an association from registering if it finds that the services to be provided by the association are not needed...[or] reject an application for any other reasons... an association may not ... “hold public festivals or public lectures without obtaining a prior permission and may be dissolved if i[t is determined] that it has violated public ‘norms’. |
| QATAR | 2004 Articles 1 and 35 of the Law No. 12 of 2004 on Private Associations and Foundations disallow associations from being “involved in political issues”, as human rights advocacy is often framed as. Also, Article 2 stipulates that 20 persons are required for a group to register. Further, no organisation is permitted to propagate illegal behaviour, a caution evident in this 2016 news article . |
| SAUDI ARABIA | 2016 The terms of the Law on Associations and Foundations [linked is the 2008 draft in English], into force in January 2017, clearly forbid SOGI-based NGOs. In the Kingdom, the death penalty is employed for same-sex sexual activity, and no records of SOGI-based groups or organisations exist: in fact, the morality law enforcement agency is known to be particularly vicious regarding LGBT people. |

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|--------------|--|
| SYRIA | 1958 Various articles of Law No. 19/1958 (amended 1969) allow the Ministry to appoint or remove board members, disallow political participation, foreign funding, and allow the registration to be rescinded at will. Further, Article 35 allows any Board decision to be suspended “if it deems it to be against the law, the public order or morals”. No SOGI-based group could hope to operate with these restrictions, despite the onset of war and the presence of Daesh and other militia that make Syria one of the most dangerous places on earth for sexual and gender minorities. |
| UAE | 2008 Article 27 of Federal Law 2 of 2008 confers broad powers of supervision, including sending representatives to meetings. Registration compliance is demanding and requires a degree of corporate governance. Importantly, Articles 17 and 18 state that NGOs cannot engage in “conferences, forums, assemblies or meetings outside the State”, or invite foreigners in without receiving first permission from the Ministry of Social Affairs. |
| YEMEN | 2001 Although Article 58 of the Constitution asserts the rights on citizens to form associations, the criminal law confers the death penalty for male and female “homosexuality” and life for sexual and gender minorities is extremely challenging . However, Article 2 of Law No. 1 of 2001 mandates that at least 20 people are required as a condition of registration. Ironically, according to ICNL this is one of the most enabling pieces of law on the Arabian peninsula. |

EUROPE (1)

Propositions for laws that would severely limit the ability of SOGI groups and organisation to register as NGOs were introduced in parliaments in **Belarus** (pending) and **Kazakhstan** in 2015, **Moldova** and **Kyrgyzstan** in 2016, and **Hungary** in 2017.

| | |
|---------------|---|
| RUSSIA | 2012 The 2012 Foreign Agents Law imposes severe limits on foreign funding of activities while requiring organisational accountability to the State: Maximum in Murmansk was fined under the law in 2015. The Council of Europe Member States passed Resolution 1948 (2013) Tackling discrimination on the grounds of sexual orientation and gender identity clearly identifying the dangers of the State employing inherently discriminatory legal and policy instruments that target SOGI, citing recent examples in Russia. |
|---------------|---|

CONSTITUTIONAL PROHIBITION OF DISCRIMINATION BASED ON SEXUAL ORIENTATION (9) [inc. Kosovo]

5% of UN States

Most Constitutions **contain** general equality and non-discrimination provisions that apply to “all” persons, but do not specify sexual orientation as a protected ground: see the World Policy Analysis Centre’s in-depth 193 Constitutions **mapping** project. Jurisprudence often reads in sexual orientation into those general equality provisions (e.g. *Egan v Canada*), thus triggering inclusion of the term in State practice and in law. In some cases, the background documents (*travaux préparatoires*) reveal the intended meaning or scope of a term: for example, it is understood that the ground of “sex” (‘phet’) **denotes** gender, sexual identity, and gender and sexual diversity in the 2007 Constitution of **Thailand**. Further, although supreme sources of law for nearly all States (excepting the **UK**, **New Zealand** that have ‘unwritten Constitutions’ protective of sexual orientation, Israel that does not have a codified Constitution, and **Saudi Arabia** where the Qur’an is given that status, at Article 1), constitutional change occurs through very different means and traditions (as illustrated in **O’Mahony** on recent US/Ireland marriage reforms). In the following list, only those that spell out an unambiguous term in a provision of the Constitutional text are listed.

AFRICA (1)

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| SOUTH AFRICA | 1994 Prohibition of sexual orientation discrimination was first included at Section 8 of the Interim Constitution that came into force in April 1994, and was carried through Section 9(3) of the Constitution of South Africa , 1996. |
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AMERICAS (3)

The Constitution of **Argentina** does not contain an explicit prohibition of discrimination based on sexual orientation. However, such prohibition is contemplated in the Constitution of the **Autonomous City of Buenos Aires** (Art. 11, 1996). The Constitution of **Brazil** does not contain an explicit prohibition of **discrimination** based on sexual orientation. However, several jurisdictions within the country do. These include the Constitutions of the States of **Alagoas** (Art. 2.1; 2001), **Federal District** (Art. 2.5; 1993), **Mato Grosso** (Art. 10.3; 1989), **Pará** (Art. 3.4; 2007), **Santa Catarina** (Art. 4.4; 2002) and **Sergipe** (Art. 3.2; 1989). In **Canada**, protection against discrimination based on sexual orientation was **introduced** in paragraph 15(1) of the **Canadian Charter of Rights and Freedoms** by a 1995 decision issued by the Supreme Court of Canada in *Egan v. Canada*. See [commentary](#) [here](#)

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| BOLIVIA | 2009 Article 14 of the Constitution of Bolivia prohibits discrimination based on sexual orientation (among other grounds). |
| ECUADOR | 1998 Article 11(2) of the Constitution of Ecuador prohibits discrimination based on, <i>inter alia</i> , sexual orientation. Furthermore, the Constitution contains several other relevant provisions: Article 66(9) enshrines the right of every person to make free, informed, voluntary and responsible decisions with regard to their sexuality, life and sexual orientation. Article 66(11) protects the rights of every person to the confidentiality of information on their sexual life. Article 83(14) establishes as a “duty” and a “responsibility” of every Ecuadorian to respect and acknowledge diverse sexual orientations. |
| MEXICO | 2011 Article 1 of the Political Constitution of the United Mexican States (federal constitution) prohibits discrimination based on “sexual preferences”. Several State Constitutions also prohibit such discrimination: Campeche (Art. 7, 2015); Chihuahua (Art. 4, 2013); Coahuila (Art. 7, 2013) (Art. 4, 2013); Colima (Art. 1; 2012); Durango (Art. 5, 2013); Guanajuato (Art. 1, 2015); Michoacán (Art. 1, 2012); Morelos (Art. 1bis, 2016); Nuevo Leon (Art. 1, 2016); Oaxaca (Art. 4, 2016); Puebla (Art. 11, 2011); Querétaro (Art. 2, 2016); Quintana Roo (Art. 13, 2010); San Luis Potosí (Art. 8, 2014); Sinaloa (Art. 4bis, 2013); Sonora (Art. 1, 2013); Tlaxcala (Art. 14, 2012); Veracruz (Art. 4, 2016); Yucatan (Art. 2, 2014) and Zacatecas (Art. 21, 2012). |

ASIA (1)

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| NEPAL | 2015 Section 18(3) of the Constitution of Nepal specifically explains that the State shall not discriminate against, <i>inter alia</i> , “sexual minorities”. |
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EUROPE (4) [inc. Kosovo]

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| KOSOVO | 2008 Article 24(2) of the Constitution of Kosovo determines that “[n]o one shall be discriminated against on grounds of...”, <i>inter alia</i> , of their “...sexual orientation”. Kosovo is not a UN Member State. |
| MALTA | 2014 Article 32 of the Constitution of Malta entitles the individual fundamental rights and freedoms “whatever his... sexual orientation or gender identity”, and Article 45(3) specifies such protection from discrimination. |
| PORTUGAL | 2005 Article 13(2) of the Constitution of Portugal concerning principles of equality, states that “[n]o one shall be privileged, favoured, prejudiced, deprived of any right or exempted from any duty on the basis of... sexual orientation”. |
| SWEDEN | 2003 Article 2 of the Constitution of Sweden mandates all organs of the State to exercise and promote equality and non-discrimination in health, employment, housing and education, and to promote social care and social security on the basis, <i>inter alia</i> , of sexual orientation. |

OCEANIA (1)

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| FIJI | 1997/2013 Section 38(2) of the 1997 Constitution of Fiji prohibited discrimination based on a person’s “actual or supposed personal characteristics or circumstances” including sexual orientation (among other grounds). This Constitution was repealed in 2009. However, in 2013, the prohibition was kept under section 26(3)(a) of the 2013 Constitution of Fiji . |
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PROHIBITION OF DISCRIMINATION IN EMPLOYMENT BASED ON SEXUAL ORIENTATION (72)

37% of UN States

A person's ability to earn a living, and the opportunity to flourish in one's work life without discrimination based on a personal characteristic (sexual orientation), has increasingly been recognised as a fundamental right in States across the globe. We note where significant parts of a country have provincial ordinances that offer similar or partial protections, but where the law is not in force at the national or federal level.

AFRICA (6)

Although sexual orientation may be **understood** to be included in general provision relating to employment equality, Angola's 2015 **employment law** does not actually specify sexual orientation, as we erroneously listed in 2016.

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| BOTSWANA | 2010 Section 23(d) of the Employment (Amendment) Act added sexual orientation as a prohibited grounds for discrimination regarding contracts of employment. |
| CAPE VERDE | 2008 Section 45(2) of the New Labour Code of Cabo Verde forbids an employer from requesting information about the employee's "sexual life". Section 406(3) imposes sanctions on employers who dismiss employees based on their sexual orientation. |
| MAURITIUS | 2008 Sections 5, 7 and 8 of the expansive Equal Opportunities Act 2008 , establish general rules on discrimination based on the "status" of the aggrieved person. Section 2 includes "sexual orientation" in the definition of "status" and defines it as "homosexuality (including lesbianism), bisexuality or heterosexuality". |
| MOZAMBIQUE | 2007 Sections 4(1) and 108(3) of the Labour Law No. 23/2007 (in English [unofficial translation]) prohibit discrimination based on sexual orientation. Section 5 establishes the employer's obligation to respect the employee's privacy, including their sexual life. |
| SEYCHELLES | 2006 Sections 2, 46A(1) and 46B of the Employment Act 1995 (as amended by Act 4 of 2006) prohibit discrimination and harassment based on sexual orientation. |
| SOUTH AFRICA | 1996 Section 187(f) of the Labour Relations Act of 1995 establishes sexual orientation as a ground for dismissal as "automatically unfair". Section 6(1) of the Employment Equity Act of 1998 establishes prohibits direct or indirect discrimination on the basis of sexual orientation. Section 1 of the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 includes sexual orientation as one of the prohibited grounds of discrimination and within the definition of harassment. |

AMERICAS (17)

At the federal level in **Argentina** there is no general law prohibiting discrimination based on sexual orientation in Argentina. Article 34(o) of **Executive Order 214/2006** prohibits discrimination on the basis of "sexual orientation or preference" (applicable only to employees in the National Administration Service only). The **Autonomous City of Buenos Aires** (2015) and the **City of Rosario** (1996) have enacted broad antidiscrimination laws that prohibit discrimination based on sexual orientation, and therefore apply to employment. In the **United States of America**, at the federal level there is no general law prohibiting discrimination based on sexual orientation. **Executive Order 13,087 (May 28, 1998)** prohibits discrimination in employment by the federal government on the basis of sexual orientation. In March 2017, the US Court of Appeals for the 7th Circuit became the first federal appeals court to **determined** that the **Civil Rights Act of 1964** protects workers from discrimination based on sexual orientation. Several states have enacted laws that prohibit such discrimination with varying levels of protection (see full list **here** by MAP).

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| BOLIVIA | 2010 Article 281 sexies of the Penal Code of Bolivia criminalises any act of discrimination based on, <i>inter alia</i> , sexual orientation. Additionally, Law 45 of 2010 (Law against Racism and All Forms of Discrimination) also prohibits discrimination based on sexual orientation, and provides for a variety of specific remedies (particularly Articles 5, 12, 13 and 14). |
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| BRAZIL | 2000 - 2015 At the federal level in Brazil there is no general law explicitly prohibiting employment discrimination based on sexual orientation. However, around 70% of the population reside in jurisdictions where local laws provide such protection. Article 8 of the Executive Order (Portaria) No. 41/2007 issued by the Ministry of Labour and Employment prohibits employers to request documents or information related to the employee's sexuality. Several jurisdictions have enacted local laws which prohibit discrimination based on sexual orientation with varying levels of protections. The following explicitly include employment discrimination: Amazonas (Art. 4(8), 2006); Distrito Federal (Art. 2(7), 2000); Espírito Santo (Art. 2(6), 2014); Maranhão (Art. 2(6), 2006); Mato Grosso do Sul (Art. 2(9), 2005); Minas Gerais (Art. 2(6), 2002); Pará (Art. 2(10), 2011); Paraíba (Art. 2(10), 2003); Piauí (Art. 2(6), 2004); Rio de Janeiro (Arts. 2(5) and 2(6), 2015); Rio Grande do Norte (Art. 2(6), 2007); Rio Grande do Sul (Art. 2(6), 2002); Santa Catarina (Art. 2(6), 2003); São Paulo (Art. 2(6), 2001); as well as a number of cities such as Fortaleza (Ceará) and Recife (Pernambuco). |
| CANADA | 1996 Article 7 of the Canadian Human Rights Act prohibits discrimination in employment based on prohibited grounds of discrimination. Article 3(1) includes sexual orientation among such grounds. |
| CHILE | 2017 Article 1(1) of Law 20,940 (Modernization of Labour Relations) amends the Article 2 of the Labour Code to include "sexual orientation" among the prohibited grounds of discrimination. |
| COLOMBIA | 2007 Decision T-152/07 of the Colombian Constitutional Court decided on a case of employment discrimination in which sexual orientation was considered a prohibited ground of discrimination. Article 134A of the Penal Code (introduced by Law 1,482 of 30 November 2011) criminalises acts of discrimination based on sexual orientation (among other grounds). |
| COSTA RICA | 1998 Article 10 of Law No. 7,771 (General Law on HIV/AIDS) prohibits discrimination in employment and Article 48 incorporates "sexual option" as one of the prohibited grounds of discrimination. In 2015, Article 1 of the Executive Order No. 38,999 prohibits discrimination against the "sexually diverse population" (applicable in the Executive Branch only). Other articles of this norm provide for measures to combat this discrimination. |
| CUBA | 2014 Article 2(b) of the Labour Code establishes the right of every person to have a job according to the needs of the economy and their personal choice without discrimination based on sexual orientation (among other grounds). |
| ECUADOR | 2005 Article 79 of the Labour Code establishes the right to equal remuneration without discrimination based on sexual orientation (among other grounds). Article 195(3) (introduced by the Organic Law on Labour Justice and the Recognition of Domestic Work of 2015) provides for special compensation in cases of discriminatory dismissal based on, <i>inter alia</i> , sexual orientation. |
| EL SALVADOR | 2010 Section 1 of Executive Order No. 56 prohibits discrimination based on sexual orientation (applicable to employees in the Executive Branch only). |
| HONDURAS | 2013 Article 321 of the Penal Code (as amended by Decree No. 23-2013) criminalises acts of discrimination based on sexual orientation, among other grounds. This law prohibits discrimination in broad terms and therefore applies to employment. |
| MEXICO | 2003 Article 9(4) of the Federal Law to Prevent and Eliminate Discrimination prohibits employment discrimination. Article 1(3) includes "sexual preferences" as one of the prohibited grounds of discrimination. Article 149ter(2) of the Federal Penal Code criminalises employment discrimination based on sexual orientation and aggravates penalties for employers. |
| NICARAGUA | 2008 Article 315 of the Penal Code of Nicaragua (Title 10, Crimes against Labour Rights) criminalises employment discrimination based on "sexual option". |
| PERU | 2002 Article 37(1) of the Constitutional Procedural Code establishes that the writ of <i>amparo</i> is the adequate remedy in cases of discrimination based on sexual orientation. In force in 2017, Article 323 of the Penal Code (as amended by Legislative Order No. 1323) criminalises acts of discrimination based on sexual orientation. This law prohibits discrimination in broad terms and therefore applies to employment. Penalties are aggravated if act is perpetrated by civil servants or using violence. |
| SAINT LUCIA | 2006 Section 131(1)(a), Labour Code prohibits unfair dismissal based on an employee's sexual orientation. |

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| SURINAME | 2015 Article 500a of the Penal Code (as amended by S.B. 2015 no. 44) criminalises discrimination based on sexual orientation (among other grounds). This law prohibits discrimination in broad terms and therefore applies to employment. |
| URUGUAY | 2004 Article 2 of Law No. 17,817 (Combat Racism, Xenophobia and Discrimination) includes “sexual orientation and identity” among prohibited grounds of discrimination. This law prohibits discrimination in broad terms and therefore applies to employment. Since 2013, Article 2(a) of Law 19,133 (Law on Youth Employment) also prohibits discrimination based on sexual orientation. |
| VENEZUELA | 2012 Article 21 of the Organic Labour Law prohibits employment discrimination based on sexual orientation, among other grounds. |

ASIA (4) [inc. Taiwan]

Last year we mistakenly included Indonesia within this category - see 2017 [report](#) on the economic effects of LGBT exclusion in Indonesia.

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| ISRAEL | 1992 Section 2(a) of the Employment (Equal Opportunities) Law provides that “an employer shall not discriminate among his employees or among persons seeking employment on account of their [...] sexual tendencies”. |
| SOUTH KOREA | 2001 Article 30(1) and (2) of the National Human Rights Commission Act specifies the ground of sexual orientation. It mandates the Commission to investigate any “[a]ny act of favorably treating, excluding, differentiating or unfavorably treating a particular person in employment (including recruitment, appointment, training, assignment of tasks, promotion, payment of wages and payment of commodities other than wages, financing, age limit, retirement, and dismissal, etc.)” that are protected under Articles 10-22 of the Constitution . A 2016 report on the Human Rights Situation of LGBTI in South Korea provides a comprehensive overview of range of administrative law and policy regarding SOGIESC currently in operation. |
| TAIWAN | 2004 Articles 2 and 12-15 of Gender Equity Education Act that specify discrimination against teaching staff based on sexual orientation in educational settings is forbidden. Taiwan is not a UN Member State. |
| THAILAND | 2007 The Ministry of Labour Regulation on Thai Labour Standards, Social Responsibility of Thai Businesses B.E. 2547 (2007) (discussed here) prohibits discrimination against workers on numerous grounds, including “nationality, ethnicity, religion, language, age, sex, marital status, personal sexual attitude...”. |

EUROPE (40) [inc. Kosovo]

Council Directive 2000/78/EC of 27 November 2000 establishes a general framework for equal treatment in employment and occupation regarding direct or indirect discrimination based on sexual orientation: see FRA 2015 [report](#).

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| ALBANIA | 2010 Sexual orientation and gender identity are protected grounds from discrimination by Section 16 of the Labour Code following a 2010 amendment. Further, the comprehensive 2010 Law on Protection from Discrimination provides employment protection at Articles 12-16. |
| ANDORRA | 2003 Law 8/2003 primarily concerns employment contracts and is inclusive of sexual orientation. |
| AUSTRIA | 2012 The Equal Treatment Act is a federal, comprehensive anti-discrimination measure that is inclusive of sexual orientation: Chapter 2 deals with employment. |
| BELGIUM | 2003 The Federal Anti-Discrimination Law applies to employment, as specified at Article 5. |
| BOSNIA & HERZEGOVINA | 2009 Law on Prohibition of Discrimination is inclusive of sexual orientation in terms of non-discrimination in employment (Articles 5 and 6). Also, the Law on Gender Equality specifies that “[d]iscrimination based on sex and sexual orientation is hereby prohibited” at Article 2. |
| BULGARIA | 2004 Section 1 of the Protection Against Discrimination Act (Protection in Exercising the Right to Work – Articles 12-28) applies to sexual orientation. |

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| CROATIA | 2003 Article 2 of the Act on Amendments to Labour Act names sexual orientation as a protected ground, and Article 8 of the 2008 Anti-Discrimination Act concerns employment. |
| CYPRUS | 2004 Section 6(1)(a) of the Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law, 2004 specifies non-discrimination in employment based on sexual orientation (as set out in Section 3(1)(c)). The Equal Treatment in Employment and Occupation Act 2004 also specifies sexual orientation. |
| CZECH REPUBLIC | 1999 The Labour Code of 1999 (Section 316, updated 2006), the Employment Act of 2004, and the 2009 Anti-Discrimination Act (Section 1) all specify sexual orientation. |
| DENMARK | 1996 The Act on Prohibition on Discrimination on the Labour Market prohibits both direct as well as indirect discrimination and is inclusive of sexual orientation in its scope (not applicable to the Faeroe Islands or Greenland). |
| ESTONIA | 2008 Section 10 of the Employment Contracts Act and the Equal Treatment Act (Section 2) are inclusive of sexual orientation. |
| FINLAND | 1995 Chapter 11, Section 11 (on discrimination in "... trade, profession or service...") of the Penal Code was revised to include "sexual preference". Section 2 of the 2004 Non-Discrimination Act sets out a range of employment contexts to which the Act applies: Section 6 confirms that "[n]obody may be discriminated against on the basis of ... sexual orientation...". |
| FRANCE | 1985 Sexual orientation was first codified in 1985 (and in 2008, gender identity was included) as named grounds protected against discrimination in the Labour Code of 2008. |
| GEORGIA | 2014 Article 1 of the 2014 Law of Georgia on the Elimination of All Forms of Discrimination explicitly prohibits every form of discrimination, including those based on "sexual orientation, gender identity and expression", which applies to employment. |
| GERMANY | 2006 The General Law on Equal Treatment (Part 2, Ch. 1-4) has combined previous labour legislation, streamlining non-discrimination, <i>inter alia</i> , based on sexual orientation. |
| GREECE | 2005 Articles 1, 4 and 8 of the Law no. 3304/2005 (Act Against Discrimination) sets out that its scope applies to "employment and occupation" regarding direct and indirect discrimination. |
| HUNGARY | 2003 Article 8 of Act on Equal Treatment and Promotion of Equal Opportunities (Act CXXV of 2003) sets out sexual orientation and 'sexual identity' as grounds covered by the Act, and Article 21 – 23 set out employment criteria. |
| ICELAND | 1996 Although the Labour Law covers sexual orientation, it is not explicitly enumerated in the 1996 document (we include it here because State and judicial practice is positive). |
| IRELAND | 1999 The Employment Equality Act ensures non-discrimination in the workplace on the basis of sexual orientation. |
| ITALY | 2003 The Legislative Decree of July 9, 2003, n. 216 addressed a number of gaps in pre-existing labour laws in Italy, and instituted sexual orientation as a protected ground within employment. |
| KOSOVO | 2004 The Anti-Discrimination Law set out its scope in Article 4, which much reflects that of 2015 Law No. 05/L-021 on the Protection from Discrimination sets out non-discrimination conditions regarding employment (Article 2), regarding SOGI. |
| LATVIA | 2006 The Labour Law (Darba Likums) was amended at Article 7 to include sexual orientation in line with the EU Employment Directive 2000/78/EC. The Law on Prohibition of Discrimination of Natural Persons Engaged in Economic Activity specifies sexual orientation as a protected ground in economic activities. |
| LITHUANIA | 2005 Article 7 of the Law on Equal Treatment lists the non-discrimination duties of employers regarding <i>inter alia</i> , sexual orientation. Article 169 of the Criminal Code specifies that discrimination on grounds of, <i>inter alia</i> , sexual orientation can be prosecuted with three years imprisonment. |

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| LUXEMBOURG | 1997 Articles 455(5-7) and 456 of the Criminal Code envisage sexual orientation discrimination violations regarding employment and the rights of employees, as punishable by a fine or up to three years imprisonment. |
| MALTA | 2004 Equal Treatment in Employment Regulations (Malta/LN 461/2004) sets out sexual orientation as a named ground of protection against discrimination in employment. |
| MOLDOVA | 2012 Article 7 of the Law on Ensuring Equality (Law nr. 121) specifies that the law apply to sexual orientation in employment only. Moldova rejected (“ noted ”) calls to expand the non-provision to other areas at its 2nd UPR. |
| MONTENEGRO | 2010 Article 16 of the Law on Prohibition of Discrimination specifies discrimination in employment, having set out that SOGI is included in the law at Article 2. |
| NETHERLANDS | 1994 Section 5(1) of the General Equal Treatment Act deals with various employment relationships and provides a series of derogations to the terms of this law at Section 5(2). |
| NORWAY | 1998 The Working Environment Act of 2005 consolidated various labour laws, and under Sections 13-1(7) and 13-4(3), SOGI is protected from direct and indirect discrimination. |
| POLAND | 1999 Article 11 of the Labour Code prohibits direct or indirect discrimination on the basis of sexual orientation, puts a responsibility on employers to act against such discrimination (Article 94(2)(b)), and Article 18 specifies equal treatment. Also, the 2010 Act on equal treatment Journal of Laws of 2010, No. 254, item 1700 enumerates employment. |
| PORTUGAL | 2009 Article 24 on the right to equal access to employment and work of the Labour Code , and Article 16 on privacy explicitly protect the status of sexual orientation and gender identity. |
| ROMANIA | 2000 Articles 5-8 of the Anti-Discrimination Law stipulates the various conditions in which discrimination on the grounds of sexual orientation in employment is forbidden. |
| SERBIA | 2010 The Law on the Prohibition of Discrimination is a comprehensive anti-discrimination act that applies to SOGI in the sphere of employment (Articles 16 and 51). |
| SLOVAKIA | 2008 Section 2.1 of the Act on Equal Treatment in Certain Areas and Protection against Discrimination determines sexual orientation as within the scope of this law. Sections 7 and 13 concern employer’s duties. |
| SLOVENIA | 1995 Article 2(1) of the 2016 Law on Protection against Discrimination (unofficial translation) includes protection from discrimination in “Employment conditions and working conditions, including termination of employment and wages”. |
| SPAIN | 1996 Law 62/2003 is a comprehensive anti-discrimination measure that covers many aspects of employment (subsuming 1996 provisions). Article 314 of the Penal Code (download in English here) penalises “serious discrimination in public or private employment” with up to two years imprisonment. |
| SWEDEN | 1999 Various employment Acts were combined into the 2008 Discrimination Act of which Chapter 2, Sections 1-4 directly address employment. |
| SWITZERLAND | 2007 Since registered partnerships became a possibility, there are various employment protections based on sexual orientation in the amendments to the 1911 Code of Obligations . It is understood that sexual orientation has been read into numerous laws because of the protections afforded to that status in the country’s Constitution , where the words “way of life” at Article 8 have been interpreted to include SOGI. |
| UKRAINE | 2015 Article 2(1) of the 1971 Labour Code was amended and came into force in November 2015 to include sexual orientation and gender identity. |
| UNITED KINGDOM | 2003 To align with Directive 2000/78/EC , the UK’s Employment Equality (Sexual Orientation) (Amendment) Regulations was introduced to protect against discrimination in the sphere of employment (a similar provision was enacted in Northern Ireland). In 2010, this was superseded by the Equality Act , of which Chapter 1 deals with employment. Gibraltar passed the Equal Opportunities Act in 2006. |

OCEANIA (5)

There is no general prohibition of employment discrimination based on sexual orientation in **Vanuatu**. However, Section 18(2)(f) of the **Teaching Service Act 2013** establishes the obligation of the Vanuatu Teaching Service Commission not to discriminate the recruitment, promotion, professional development, transfer and all other aspects of the management of its employees on the basis of “sexual preference” (among other grounds) [this provision has a very limited scope].

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| AUSTRALIA | 1996 At the level of the Commonwealth of Australia, Section 3(m) of the Workplace Relations Act 1996 includes “sexual preference” among the grounds of discrimination that the law aims at preventing and eliminating. Furthermore, Section 659(f) prohibits termination of employment based on the employee’s sexual orientation. Since 2009, Section 351 of the Fair Work Act 2009 prohibits any discrimination against an employee based on sexual orientation. Several jurisdictions have enacted local laws in this regard: Australian Capital Territory (1992), New South Wales (1983), Northern Territory (1993), Queensland (1992/2016), South Australia (1984), Tasmania (1999), Victoria (1996/2010), Western Australia (2002). |
| FIJI | 2007 Section 6(2) of the Employment Relations Promulgation 2007 (Promulgation No. 36 of 2007) prohibits discrimination based on sexual orientation (among other grounds) in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment relationship. Articles 10B(2) and 10C of the Public Service (Amendment) Decree 2011 (Decree No. 36 of 2011) prohibit discrimination based on sexual orientation (among other grounds) within public service. |
| KIRIBATI | 2015 Article 107(2)(b) of the Employment and Industrial Relations Code 2015 prohibits discrimination against any employee or prospective employee in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment, or other matters arising out of the employment relationship based on sexual orientation. |
| NEW ZEALAND | 1993 Section 21(1)(m) of the Human Rights Act 1993 includes sexual orientation among the prohibited grounds of discrimination. Article 22 prohibits discrimination in employment. Since 2000, Article 105(1)(m) of the Employment Relations Act 2000 also prohibits employment discrimination based on sexual orientation. In the Cook Islands (a Stated associated to New Zealand), Article 55(e) of the Employment Relations Act 2012 prohibits employment discrimination based on “sexual preference”. |
| SAMOA | 2013 Section 20(2) of the Labour & Employment Relations Act 2013 prohibits discrimination against an employee or an applicant for employment in any employment policies, procedures or practices based on sexual orientation (among other grounds). |

VARIOUS NON-DISCRIMINATION PROVISIONS SPECIFYING SEXUAL ORIENTATION (63)

33% of UN States

We are aware that there are many pieces of specific sectorial legislation (e.g. youth, blood ban, personal data, etc.) that mention sexual orientation that are not listed here. In States where there are few such provisions we list those specific laws. In States that have comprehensive non-discrimination laws, we recognise the scope of those provisions are applicable in various fields.

AFRICA (1)

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| MAURITIUS | 2008 Sexual orientation (Section 2) is a status (Sections 5, 7 and 8) recognised in the Equal Opportunities Act . As specified in Section 3(2), the law applies “to employment, education, qualifications for a profession, trade or occupation, the provision of goods, services, facilities or accommodation, the disposal of property, companies, partnerships, “sociétés”, registered associations, sports, clubs and access to premises which the public may enter or use”. In the section “Personal and Professional Behaviour” of the 2015 Code of Ethics for Public Officers , non-discrimination on grounds of sexual orientation is listed. |
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AMERICAS (19)

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| ARGENTINA | 2009 Article 2(a) of Law 26,529 (Law on Rights of Patients in their Relation with Health Professionals and Health Institutions) prohibits discrimination based on sexual orientation in the assistance provided by health professionals. 2013 Article 8 of Law 26,862 (Law on Assisted Reproduction) prohibits discrimination on grounds of sexual orientation in the access to assisted reproduction techniques. 2015 Health Ministry Resolution 1,507/2015 lifted the ban on gay men to donate blood with nationwide effects. |
| BAHAMAS | 2003 Section 1 of the Data Protection (Privacy of Personal Information) Act includes “sexual life” among the protected sensitive personal data. |
| BOLIVIA | 2001 Article 7 of Law 2,298 (Law on Criminal Enforcement) prohibits discrimination based on sexual orientation in the enforcement of criminal penalties. 2006 Article 1 of Ministerial Resolution No. 0668/06 prohibits discrimination based on sexual orientation in access to health care. |
| BRAZIL | 2001 Article 1 of Law 10,216 prohibits discrimination against mentally disabled people based on their sexual orientation (among other grounds). 2006 Article 2 of Law 11,340 (locally known as “ Maria da Penha ” law) establishes the right of every woman to a life free of violence, regardless of her sexual orientation. 2010 Article 4(2) of Executive Order No. 7,272 includes the development of actions which are respectful of sexual diversity as on the objectives of the National Plan on Nutritional and Food Security (locally referred to as “ PNSAN ”). 2011 Article 3(3)(1) of Law 12,414 includes “sexual orientation” among the sensitive data which commercial credit history databases are not allowed to register. 2013 Article 17(2) of Law 12,852 (Statute of Youth) protects youth (aged 18 to 29, as per Article 1 of the law) from discrimination based on sexual orientation (among other grounds). 2015 Article 18(4)(6) of Law 13,146 (Statute of People with Disabilities) establishes that public health services for people with disabilities must ensure due respect for the persons’ sexual orientation. 2016 Article 6(3) of Law 13,344 provides for the protection of victims of human trafficking, catering for their specific needs based on their sexual orientation (among other grounds). Several jurisdictions (states and cities) in Brazil have enacted laws prohibiting discrimination based on sexual orientation (see different sources: 1 , 2 , 3). |
| CANADA | 1996 Sections 2 and 3(1) of the Canadian Human Rights Act (R.S.C., 1985, c. H-6) prohibits discrimination on the basis of “sexual orientation”. The Act was amended in 1996 to expressly include sexual orientation. 1999 Section 44(1)(b) of the Extradition Act (S.C. 1999, c. 18) establishes that the Minister of Justice shall refuse to make a surrender order if the Minister is satisfied that the request for extradition is made for the purpose of prosecuting or punishing the person by reason of their sexual orientation. 2004 Section 2(e) of the Assisted Human Reproduction Act (S.C. 2004, c. 2) prohibits discrimination on the basis of sexual orientation against persons who seek to undergo assisted reproduction procedures. 2016 As of 15 August, 2016, MSM are eligible to donate blood if they have not had sexual contact with a man for at least one year. |

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| COSTA RICA | 2001 Article 123 <i>bis</i> of the Penal Code (as amended by Law 8,189) criminalises torture based on “sexual option”. 2007 Executive Order No. 33877-S repealed Executive Order N° 19933-S which prohibited gay and bisexual men from donating blood. 2015 Article 5 of Executive Order No. 38,999 stipulates that the relevant agencies of the Executive Branch must regulate same-sex <i>de facto</i> unions, ensuring they are afforded sick leaves to care for their partner or attend their funeral. |
| CHILE | 2010 Article 3 of Law 20,418 establishes that every person has a right to the confidentiality of their “sexual choices” and “sexual conduct”. 2012 Article 2 of Law 20,609 (Law on Measures against Discrimination) includes “sexual orientation” in the definition of arbitrary discrimination. 2013 Health Ministry Technical General Rule No. 146 , which regulates blood donation procedures, establishes that the selection of donors must be done without any discrimination based on sexual orientation. 2014 Article 1 of Law 18,838 (as amended by Law 20,750), which creates the National Television Council, defines “pluralism” as including respect towards diverse sexual orientations. 2016 Article 150A of the Penal Code criminalizes any act of torture based on the sexual orientation of the victim (among other grounds). 2016 Article 7(c) of Law 20,845 (Law on School Inclusion) includes sexual orientation among the prohibited grounds of discrimination in schools by referring to all groups under the scope of Law No. 20,609 (Law on Measures against Discrimination). |
| COLOMBIA | 1993-2016 Much of the progress made in Colombia on rights for LGB people was achieved through decisions of the Constitutional Court. The Mayorality of the City of Bogotá has summarised most of the Court’s decisions in this chart (updated 2016). The city of Bogotá has implemented public policy regulations to further equality at the local level, amongst which is Agreement 371 of 2009 . |
| DOMINICAN REPUBLIC | 2000 Article 2 of Law 49/2000 (General Law on Youth), prohibits discrimination on the basis of sexual orientation. 2007 Article 11 of the Code of Criminal Procedure establishes that judges and prosecutors must take into account the particular circumstances of each person involved in each case but cannot base their decisions solely based on their sexual orientation (among other grounds). 2011 Article 2 of Law 135/2011 , Law on HIV/AIDS, prohibits discrimination on the basis of sexual orientation. |
| ECUADOR | 2003 Article 6 of Law 100 of 2003 (Code on Youth and Adolescence) prohibits discrimination based on sexual orientation (among other grounds). 2006 Article 27 of Law 67 of 2006 (Organic Law on Health) prohibits discrimination on sexual orientation with regard to the dissemination of information of sexual and reproductive health. 2013 Article 61 of Law 0 of 2013 (Organic Law on Communications) defines “discriminatory content” as including that which is discriminatory based on sexual orientation (among other grounds). 2014 Article 12(1) of the Penal Code prohibits any form of violence based on sexual orientation against persons deprived of their liberty. 2014 Article 151(3) of the Penal Code criminalizes any act of torture (defined in broad terms) perpetrated with the intention of modifying a persons’ sexual orientation (see also, section on “Ban on Conversion Therapy” below). |
| EL SALVADOR | 2004 Articles 3(1) and 6 of the Executive Order No. 40 , which regulates the Law on HIV, prohibits discrimination based on sexual orientation in public health issues. 2009 Agreement No. 202 , issued by the Ministry of Health and Social Assistance, provides for measures to eradicate all forms of discrimination based on sexual orientation in public health services. |
| GUATEMALA | 1996 Article 10 of the Code of Childhood and Youth prohibits discrimination of children based on their sexual orientation or that of their parents (among other grounds). |
| MEXICO | 2003 Article 1(3) of the Federal Law to Prevent and Eliminate Discrimination includes “sexual preferences” as one of the prohibited grounds of discrimination. This makes all provisions of the law applicable to acts of discrimination based on this ground. In 2014 Article 9(28) was amended to prohibit any kind of violence based on ways of dressing, talking, and gesticulating, or publicly assuming one’s “sexual preferences”. 2012 NOM-253-SSA1-2012 , issued by the Mexican Secretariat on Health, lifted the ban on gay and bisexual men to donate blood. 2013 Article 5 of the General Law on Victims provides for a differential and specialized approach to reparations afforded to victims of crimes which were based on sexual orientation (among other grounds). |
| NICARAGUA | 2012 Article 3(l) of Law 820 (Law on HIV and AIDS) prohibits discrimination based on sexual orientation (among other grounds). 2014 Article 1 of Ministerial Resolution 671-2014 prohibits discrimination based on sexual orientation in access to health services. |

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| PANAMA | 2002 Article 1(5) of Law 6 of 2002 (Law on Habeas Data) includes “sexual orientation” among the confidential information granted special protection under Article 13 of the law. 2002 Article 3 of Law 16 of 2002 (Law on the Right to Admission to Public Venues) prohibits discrimination based on sexual orientation. |
| PERU | 2015 Article 19 of Executive Order N° 027-2015-SA prohibits discrimination based on sexual orientation in access to health services and treatment. 2009-2016 Numerous jurisdictions (districts, provinces and regions) have enacted local antidiscrimination regulations (“ordenanzas”) which prohibit discrimination based on sexual orientation. These include: Amazonas (Art. 5, 2010); Ancón (Art. 2, 2013); Apurímac (Art. 5, 2008); Ayacucho (Annex, 2009); Castilla (Art. 2, 2012); Chacayo (Art. 2, 2012); Chanchamayo (Art. 2, 2008); Cutervo (Art. 2, 2015); Huamanga (Art. 2, 2008); Huancavelica (Art. 5, 2009); Huancayo (Art. 2, 2008); Huánuco (Art. 1, 2016); Ica (Preamble, 2013); Jesús María (Art. 2, 2008); Jesús Nazareno (Art. 2, 2008); Junín (2009); La Libertad (Art. 2, 2014); Lamas (Art. 2, 2011); Loreto (Art. 1, 2010); Madre de Dios (Annex, 2009); Matahuasi (Art. 1, 2008); Miraflores (Art. 2, 2008); Moquegua (Art. 1, 2012); Morropón (Art. 2, 2014); Nueva Requena (Art. 2, 2015); Pachacámac (Art. 2, 2013); Picota (Art. 2, 2014); Piura (Art. 1, 2016); Pueblo Libre (Art. 2, 2012); San Martín (Art. 2, 2010); San Miguel (Art. 3, 2014); Santa Anita (Art. 2, 2015); Santa María del Mar (Art. 2, 2014); Santiago de Surco (Art. 2, 2014); Ucayali (Art. 1, 2010), among others. |
| SURINAME | 2015 Article 500a of the Criminal Code (as amended by S.B. 2015 no. 44) criminalises discrimination based on sexual orientation. This law prohibits discrimination in broad terms and therefore applies to employment. |
| UNITED STATES OF AMERICA | 2000 Executive Order 13,160 (June 23, 2000) prohibits discrimination on the basis of sexual orientation (among other grounds) in federally conducted education and training programs and activities. 2012 The Department of Housing and Urban Development’s issued an Equal Access Rule to ensure equal access to housing in programs offered by the Department regardless of sexual orientation. Several States have enacted legislation prohibiting discrimination based on sexual orientation in housing (see full list here by MAP). 2016 USAID Rule § 752.7038 on non-discrimination against end-users of supplies or services requires that USAID contractors not discriminate against any end-user of the contract supplies or services (i.e., the beneficiaries of the supplies or services) in implementation on the basis of sexual orientation (among other grounds). |
| URUGUAY | 2006 Article of Law 18,026 (Cooperation with International Criminal Court) explicitly includes “sexual orientation” among the grounds listed in the definition of genocide. 2008 Article 2 of Law 18,335 (Law on Patients and Health Service Users) prohibits discrimination based on sexual orientation. 2009 Article 18 of Law 18,437 (General Law on Education) establishes that one of the guiding principles of public education is to promote the transformation of discriminatory stereotypes based on sexual orientation (among other grounds). 2015 Article 5(d) of Law 19,353 (Law on the National Care System) protects people who are dependent on assistance from discrimination based on sexual orientation (among other grounds). |
| VENEZUELA | 2010 Article 4 of the Organic Law of the People’s Power states that “the Popular Power is designed to ensure the life and welfare of the people” ensuring equal conditions for everyone freely develop their personality without discrimination on grounds of sexual orientation (among other grounds). 2011 Article 5 of the Law for the Regulation and Control of Housing Leasing bans discrimination on the basis of sexual orientation (among others). |

ASIA (6)

At time of writing, consequential discussions on a comprehensive non-discrimination law inclusive of SOGIE have **reportedly** commenced in **Nepal**. It should also be noted that across the Asian continent there are numerous efforts and political conversations currently at play regarding non-discrimination and SOGIESC.

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| EAST TIMOR | 2009 Article 183 of the 2009 revisions to the 1975 Penal Code protects against the unjustified public disclosure of “the private or sexual life of another person” with penalisation of one year in prison or a fine. |
| JAPAN | 2017 The national Basic Policy for the Prevention of Bullying (no link available at time of writing) mentions sexual orientation and builds on a number of local provisions that had an inclusive reach, see HRW . |
| MONGOLIA | 2012 The Law on Prevention of Human Immunodeficiency Virus Infection and Acquired Immune Deficiency Syndrome means to define the powers of State bodies and local self-administrative organisations, responsibilities of the health organisations, medical doctors and health workers, rights and responsibilities of citizens, and persons living with HIV. |

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| PHILIPPINES | 2012 In May 2012, the Department of Education issued DepEd Order No. 40 (the DepEd Child Protection Policy), to guarantee the protection of children in schools from any form of violence, abuse or exploitation regardless of SOGI, at Section 2(J). There have been a variety of proposals for a comprehensive non-discrimination law in recent years. In late-2016, a Bill was presented to parliament. |
| SOUTH KOREA | 2001 Article 30 of the National Human Rights Commission Act specifies the ground of sexual orientation. It mandates the Commission to investigate any “discriminatory act of violating the right of equality” regarding “2. Any act of favorably treating, excluding, differentiating or unfavorably treating a particular person in the supply or use of goods, services, transportation, commercial facilities, land and residential facilities; and ...3. ... in the use of educational facilities or vocational training institutions” that are protected under Articles 10-22 of the Constitution . A 2016 report on the Human Rights Situation of LGBTI in South Korea provides a comprehensive overview of range of administrative law and policy regarding SOGIESC currently in operation. A list of non-discrimination laws inclusive of sexual orientation can be found here . |
| THAILAND | 2012 Articles 51-56 2012 National Social Welfare Promotion Commission (NSWPC) Regulation that identifies “persons of diverse sexualities” among 13 target population groups deemed “facing difficulties” (i.e., disadvantaged or facing discrimination) and requiring special assistance to access social services, see ILO report . |

EUROPE (33) [inc. Kosovo]

Comprehensive anti-discrimination is clearly called for across the 48 Council of Europe Member States in Section 9.1.3 of **Resolution 1948 (2013) Tackling discrimination on the grounds of sexual orientation and gender identity**. States should “introduce, without delay, civil legislation protecting against discrimination on grounds of sexual orientation and gender identity in all areas of life, including employment, education, health, access to goods and services, housing, access to social security and social advantages”.

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| ALBANIA | 2010 The comprehensive 2010 Law on Protection from Discrimination provides discrimination protections to sexual orientation regarding employment, education, goods and services, social protection schemes including housing. |
| AUSTRIA | 2012 The Equal Treatment Act is a federal, comprehensive anti-discrimination measure that is inclusive of sexual orientation and covers education and social benefits. |
| BELGIUM | 2003 The Federal Anti-Discrimination Law (revised 2007) applies to employment, social protection (social security and healthcare), education; and access to and the supply of goods and services, including housing at Article 5. |
| BOSNIA & HERZEGOVINA | 2009 Article 2 of the Law on Prohibition of Discrimination is inclusive of sexual orientation in terms of non-discrimination in, <i>inter alia</i> , “employment, membership in professional organisations, education, training, housing, health, social protection, goods and services designated for public and public places together with performing economic activities and public services”. |
| BULGARIA | 2004 The Protection Against Discrimination Act (PADA) transposes appropriate European Directives into law, and applies to sexual orientation in employment, social protection (social security and healthcare), education; and access to and the supply of goods and services, including housing. |
| CROATIA | 2008 Article 8 of the Anti-Discrimination Act sets out the wide scope of this Act that apply to sexual orientation, including employment, social protection (social security and healthcare), education, and access to and the supply of goods and services, including housing. |
| CYPRUS | 2004 Section 6 of the Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law specifies sexual orientation discrimination various fields. |
| CZECH REPUBLIC | 2009 Anti-Discrimination Act applies to employment rights, social protection (social security and healthcare), education, and access to and the supply of goods and services, including housing. |
| DENMARK | 2009 The Board of Equal Treatment oversees discrimination issues upheld in a number of Danish laws. It appears to respond to claims relating to sexual orientation in employment and education only. |

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| ESTONIA | 2008 The Equal Treatment Act (Section 2) is inclusive of sexual orientation, but limited to employment and education. |
| FINLAND | 2004 The scope of protections to which the Non-Discrimination Act can be applied is set out in Section 2: social welfare, health care services, social security benefits, military service, and housing. Education is not listed. |
| FRANCE | 1985 Various sections of French law contains equal treatment legislation on the ground of sexual orientation and these are overseen by the <i>Haute autorité de lutte contre les discriminations et pour l'égalité</i> , or HALDE . |
| GEORGIA | 2014 Article 1 of the 2014 Law of Georgia on the Elimination of All Forms of Discrimination explicitly prohibits every form of discrimination, including those based on "sexual orientation, gender identity and expression". |
| GERMANY | 2006 Part 1, Sections 1 and 2 of the General Law on Equal Treatment set out the target and scope of this law within employment, social protection, including social security and healthcare, education, and access to and supply of goods and services, including housing. |
| GREECE | 2015 Article 29 in the 2015 Government Gazette adds Article 361B to the Penal Code that includes the offence of withholding good and services on the basis of, <i>inter alia</i> , SOGI is to be punished with a fine or up to three to six months incarceration. |
| HUNGARY | 2003 Article 8 of Act on Equal Treatment and Promotion of Equal Opportunities sets out sexual orientation and 'sexual identity' as grounds covered by the Act, and Articles 24–30 within the employment area and in relation to social protection, (including social security and healthcare), education and access to and supply of goods and services, including housing. |
| ICELAND | 2004 Article 180 of the General Penal Code specifies SOGI as being protected from discrimination in the provision of goods and services generating a penal sentence of up to six months. |
| IRELAND | 2000 The Equal Status Act 2000 refers to non-discrimination based on sexual orientation in housing, provision of goods and services and education (with provisos favoring religious educational establishments). |
| KOSOVO | 2015 Law No. 05/L-021 on the Protection from Discrimination is ambitious in its scope (Article 2), covering 16 areas that apply to SOGI. Kosovo is not a UN Member State. |
| LITHUANIA | 2005 The Law on Equal Treatment applies to sexual orientation in the named spheres of employment, health-care, education, and access to and supply of goods and services, including housing. Further, Article 169 of the Criminal Code specifies that discrimination on grounds of, <i>inter alia</i> , sexual orientation can be prosecuted with three years imprisonment. |
| LUXEMBOURG | 1997 Article 455(1-4) of the Criminal Code (with amendments) defines the scope of non-discrimination in the supply of goods and services, as punishable by a fine. |
| MALTA | 2017 Article 6(1) of the Equality Act clarifies that direct or indirect discrimination ("ordinary or intersectional"), on the basis of SOGIESC (Article 2) is unlawful in educational 'guidance', and access to goods and services (Article 5). In 2015, Malta adopted the progressive Gender Identity, Gender Expression and Sex Characteristics Act , the first of its kind in Europe. |
| MONTENEGRO | 2010 Amongst a variety of sites of discrimination based, <i>inter alia</i> , on SOGI the Law on Prohibition of Discrimination Article 11 deals with 'service delivery, Article 12 with health conditions, and Article 15 with education. |
| NETHERLANDS | 1994 Section 7(1)(c) of the General Equal Treatment Act defines the scope as applying to "housing, social services, health care, cultural affairs or education" and Section 5 deals with employment. |
| NORWAY | 1994 Article 349(a) of the Penal Code states that a six month sentence may be given for discrimination n goods and services" because of his homosexual inclination, lifestyle or orientation". The 2013 Act (No. 58 of 2013) prohibiting discrimination based on sexual orientation, gender identity and gender expression specifically focuses on employment and education (Section 14). |

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| POLAND | 2010 Article 1 of the “ACT of 3rd December, 2010 on the implementation of some regulations of European Union regarding equal treatment” <i>Journal of Laws of 2010, No. 254, item 1700</i> specifies sexual orientation is within the scope of the law protecting against discrimination in employment, social security, health care, education and higher education, services, including residential services (Article 4), and Article 2 specifies equal treatment. In 2016, it was reported that government moved against the Council mandated to uphold the Act. |
| ROMANIA | 2000 Articles 10-16 of the Anti-Discrimination Law stipulates the various conditions in which discrimination on the grounds of sexual orientation in, <i>inter alia</i> , housing, education, provision of services and healthcare are forbidden. |
| SERBIA | 2010 The Law on the Prohibition of Discrimination is a comprehensive anti-discrimination act that applies to SOGI in employment, education, social welfare and all other “public administration organs” (Article 2). |
| SLOVAKIA | 2008 Section 2.1 of the Act on Equal Treatment in Certain Areas and Protection against Discrimination determines sexual orientation as within the scope of this law: and Article 5 lists housing, social security, education and goods and services. |
| SLOVENIA | 2016 Law on Protection against Discrimination (unofficial translation) fully includes SOGIE within its mandate. It is applicable to housing, social benefit, social protection, education, employment, goods and services, and involvement in organisations. Further, Article 131 (Violation of Right to Equality) of the Penal Code provides a wide ranging non-discrimination provision on grounds of sexual orientation (breaches of which may carry up to three years imprisonment) |
| SPAIN | 2003 Law 62/2003 is a comprehensive anti-discrimination measure that covers many aspects of discrimination that applies to sexual orientation: employment, social protection, social security and healthcare, education, and access to and supply of goods and services, including housing. |
| SWEDEN | 2008 Various laws were combined into the comprehensive 2008 Discrimination Act that at Chapter 2, Sections 5-19 directly address social protection, social security and healthcare, education; access to and supply of goods and services, including housing. Also Chapter 16, Section 9 of the Penal Code penalises a “businessman” who discriminates in provision of services with a fine or up to one year in prison. |
| UNITED KINGDOM | 2010 The Equality Act comprises Chapters on employment, education, social protection, housing, etc., compiling prior non-discrimination provisions laws into one legal instrument. Gibraltar passed the Equal Opportunities Act in 2006 that operates similarly. |

OCEANIA (4)

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| AUSTRALIA | 1996 Section 151(3)(b) of the Workplace Relations Act 1996 establishes that the Employment Advocate must have particular regard to the need to prevent and eliminate discrimination based on sexual orientation (among other grounds). 2007 Section 55-5(2)(b) of the Private Health Insurance Act 2007 prohibits private health insurers to discriminate against people who are or wish to be insured on the basis of sexual orientation. 2013 The Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013 inserts new grounds into the Sex Discrimination Act 1984 . 2014 Section 5J(3)(c)(vi) of the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014 establishes that the assessment of the well-founded fear in an asylum petition cannot consider the possibility of requiring the petitioner to alter or conceal their sexual orientation to avoid persecution. |
| FIJI | 2000 Article 19(2)(a) of the Fundamental Rights and Freedoms Decree 2000 prohibits discrimination based on sexual orientation (among other grounds). 2009 Section 19 of the Human Rights Commission Decree 2009 prohibits discrimination based on sexual orientation and stipulates specific protections against discrimination on such ground in various aspects of employment [ss. 3(a), (b) and (f)], education [ss. 3(e) and (j)], trade and services [ss. 3(c), (d) and (g)], public accommodations [ss. 3(h)], and housing [ss. 3(i)]. 2010 Articles 6(a) and 6(b) of Schedule 2 of the Media Industry Development Decree 2010 (Decree No. 29 Of 2010) establishes that media organisations shall avoid discriminatory or denigrating references, or in a prejudicial or pejorative context, to people’s sexual orientation or preference (among other characteristics). 2011 Article 3(1)(a) of the HIV/AIDS Decree 2011 (Decree No. 5 of 2011) prohibits discrimination based on “gender orientation or sexual orientation”. |

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| NEW ZEALAND | 1993 The Human Rights Act (1993) provides for an over-arching ban on discrimination based on sexual orientation. 2008 Section 10(g) of the Cook Islands Disability Act 2008 (Act No. 10) prohibits discrimination against persons with disability based on sexual orientation. 2015 Section 6 of the Harmful Digital Communications Act 2015 establishes the guiding principle that digital communications should not denigrate an individual by reason of their sexual orientation (among other grounds). |
| TONGA | 2010 Principle 5 of the Judicial Code of Conduct Rules 2010 prohibits judges to discriminate against any person based on “irrelevant grounds”. Principle 5(1) includes sexual orientation as one of those grounds. |

HATE CRIMES BASED ON SEXUAL ORIENTATION CONSIDERED AN AGGRAVATING CIRCUMSTANCE (43)

23% of UN States

The UN Human Rights Committee has **urged** States to specifically criminalise acts of violence that are based on sexual orientation or gender identity, for example, by enacting hate crimes legislation concerning sexual orientation and gender identity).

AMERICAS (13)

In **Mexico**, there are no federal provisions aggravating penalties for crimes motivated by the victim's sexual orientation. Some jurisdictions have included such provisions in their local Penal Codes, such as **Coahuila** (Art. 103(A)(5), 2005), **Colima** [*homicide only*] (Art. 123bis, 2015); **Federal District** (Art. 138(8), 2009); **Michoacán** [*homicide only*] (Art. 121, 2014); **Puebla** (Art. 330bis, 2012); and **Querétaro** (Art. 131(4), 2015).

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| ARGENTINA | 2012 Article 80(4) of the Penal Code establishes aggravated penalties only for homicides and assaults motivated by “hate towards the sexual orientation of the victim” (among other grounds). |
| BOLIVIA | 2010 Articles 40bis of the Penal Code aggravates the penalties of crimes motivated by any of the discriminatory grounds included in Article 281 <i>quinquies</i> and <i>sexies</i> (the latter includes sexual orientation). |
| BRAZIL | There are no federal provisions aggravating penalties for crimes motivated by the victim's sexual orientation in Brazil, although around 78% of the population live in jurisdictions where local laws specify such protection. Some states have enacted local laws that impose penalties —such as fines and revocation of licences— to acts of violence and/or acts of discrimination based on sexual orientation. These include: Amazonas (2006); Bahía (1997), Distrito Federal (2000); Espírito Santo (2014); Maranhão (2006); Mato Grosso do Sul (2005); Minas Gerais (2002); Pará (2011); Paraíba (2003); Piauí (2004); Rio de Janeiro (2015); Rio Grande do Norte (2007); Rio Grande do Sul (2002); Santa Catarina (2003); São Paulo (2001); as well as cities such as Fortaleza (Ceará) and Recife (Pernambuco). |
| CANADA | 1996 Article 718.2(a)(i) of the Canadian Criminal Code establishes that a sentence should be increased if there is evidence that the offence was motivated by bias, prejudice or hate based on sexual orientation (among other grounds). |
| CHILE | 2012 Article 12(21) of the Penal Code (as amended by Article 17 of Law No. 20,609) includes “sexual orientation” among the aggravating circumstances that trigger harsher penalties. |

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| COLOMBIA | 2000 Article 58(3) of the Penal Code determines that motivation based on the victim's sexual orientation constitutes an aggravating circumstance. Furthermore, Article 134A (introduced by Law 1,482 of 30 November 2011) criminalises acts of racism and discrimination, including those based on sexual orientation. |
| ECUADOR | 2009 Article 177 of the Penal Code criminalises acts of hate, whether physical or psychological, based on sexual orientation. This provision also establishes aggravated penalties for physical harm and death caused by acts of hate based on sexual orientation (among other grounds). |
| EL SALVADOR | 2015 Article 129(11) of the Penal Code (as amended by D.L. No. 106/2015) aggravates the crime of homicide when it is perpetrated based on the victim's sexual orientation. |
| HONDURAS | 2013 Article 27(27) of the Penal Code (as amended by Decree No. 23-2013) establishes that motivation based on the victim's sexual orientation (among other grounds) operates as an aggravating circumstance. |
| NICARAGUA | 2008 Article 36(5) of the Criminal Code of Nicaragua establishes aggravated penalties for crimes motivated by the victim's sexual orientation. |
| PERU | 2017 Article 46(d) of the Penal Code (as amended by Legislative Order No. 1,323) aggravates penalties for crimes motivated by the victim's sexual orientation. |
| UNITED STATES OF AMERICA | 2009 Section 249(a)(2) of the United States Code provides for enhanced penalties for crimes motivated by perceived or actual sexual orientation (also known as the <i>Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act</i>). Numerous States have enacted hate crimes laws that include sexual orientation (see full list here by MAP). |
| URUGUAY | 2003 Article 149ter of the Penal Code (as amended by Law 17.677 of 2003) provides for enhanced penalties for crimes motivated by "sexual orientation" or "sexual identity". |

ASIA (1)

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| EAST TIMOR | 2009 Article 52.2(e) of the Penal Code 2009 lists hate crime motivated by, <i>inter alia</i> , sexual orientation as an aggravating factor. |
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EUROPE (27) [inc. Kosovo]

Two parts of **Bosnia-Herzegovina**, representing around 35% of the population, have enacted hate crime legislation that is inclusive of sexual orientation: see **Criminal Code of Republika Srpska (2013) (excerpts)** and **Criminal Code of the Brcko District (2003, amended 2006) (excerpts)**. The Federation of Bosnia and Herzegovina has no such legislation.

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| ALBANIA | 2013 Albania's parliament amended Section 50(j) of its Criminal Code to strictly punish a crime "when the offense is committed due to reasons related to "... gender identity, sexual orientation..." |
| ANDORRA | 2005 Article 30 of the Criminal Code considers sexual orientation an 'aggravating circumstance' for crimes motivated by hate or bias. |
| BELGIUM | 2003 Section 285 of the Penal Code , specifies the aggravating circumstances of crimes that include a 'discriminatory motive'. |
| CROATIA | 2006 Article 151a of the 1977 Penal Code (amended 2006) specifies a criminal offence (act motivated by hatred) based on, <i>inter alia</i> , "sexual preference". |
| DENMARK | 2004 The Criminal Code was revised to include sexual orientation regarding hate crimes: at Section 266(b)(1) - hateful speech and Section 81(6) - hate motive as an aggravating circumstance. |
| FINLAND | 2011 Legislative changes to Chapter 6, Section 5(1)(4) of the Criminal Code extended the possibility to use aggravating circumstances in sentencing hate crime motivated by, <i>inter alia</i> , sexual orientation. |

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| FRANCE | 2003 Article 222-12 of the Criminal Code criminalises violence specifically on the grounds of sexual orientation. Article 132-77 makes discrimination on the grounds of sexual orientation an aggravating factor. (The law applies to overseas departments and territories: French Guiana, French Polynesia, Guadeloupe, Martinique, Mayotte, New Caledonia, Réunion, St Barthélemy, St Martin, St Pierre & Miquelon and Wallis & Futuna.) |
| GEORGIA | 2012 Article 53(3) of the Penal Code applies that the law to SOGI, and hate crimes are referenced in the provisions of Articles 117-126 regarding various forms of violence. |
| GREECE | 2013 Article 79 of the Penal Code includes “sexual orientation” within its scope as an aggravating circumstance of an “act of hatred”, penalised with up to three years imprisonment. |
| HUNGARY | 2013 The Criminal Code of Hungary was amended to include Section 216: Violence Against a Member of the Community, which explicitly lists SOGI. |
| KOSOVO | 2012 Article 74 (2.12) and Article 333(4) of the Criminal Code of Kosovo penalises crimes motivated by animus towards, <i>inter alia</i> , sexual orientation, with up to one year in prison. |
| LITHUANIA | 2009 Article 60(12) of the Criminal Code lists sexual orientation under ‘aggravating circumstances’, under murder (Article 129), severe and not severe health impairments (Article 138, 138), with various sentences. |
| LUXEMBOURG | 1997 (with 2007 amendments) Article 457(1)(1) of the Criminal Code may penalise acts of hatred or violence motivated by, <i>inter alia</i> , sexual orientation with five to ten year’s imprisonment. |
| MALTA | 2012 Articles 83B, 222A, 215D and 325A(1) of the Criminal Code of Malta (amended by ACT No. VIII of 2012) set out the circumstances and penalties for hate crimes based on, <i>inter alia</i> , sexual orientation. |
| MONACO | 2005 Article 16 of the Law on Public Freedom of Expression stipulates up to five years imprisonment or a significant fine for those who cause violence to be perpetuated because of actual or perceived sexual orientation. |
| MONTENEGRO | 2013 Amendments to the Criminal Code in 2013 introduced the named categories of sexual orientation and gender identity as aggravating circumstances at Article 42a. |
| NETHERLANDS | 2008 Article 137(c, d and e) of the Dutch Penal Code that penalises incitement based on “homosexual orientation” was amended to include sexual orientation as an aggravating factor. |
| NORWAY | 1994 Article 117(a) Penal Code specifies hatred and violence motivated by sexual orientation. |
| PORTUGAL | 2007 The Penal Code considers sexual orientation an aggravating factor at Article 132 (homicide) and Articles 143, 144 and 145(1)(a), concerning assault. Sentences range from a fine up to ten years imprisonment. |
| ROMANIA | 2006 Article 77 of the Penal Code recognises a homophobic motive as an aggravating factor in the commission of a criminal offence of violence or hatred. |
| SAN MARINO | 2008 Law no. 66 amends Article 179 the Penal Code of San Marino to include sexual orientation as an aggravating factor regarding hate crimes (Article 179bis). |
| SERBIA | 2012 Article 54a of the Criminal Code stipulates that sexual orientation and gender identity, <i>inter alia</i> , are aggravating circumstances for hate crime, and punishable with imprisonment (Article 45). |
| SLOVAKIA | 2013 Article 140(f) of the 2006 Criminal Code was updated in 2013 to include sexual orientation as an aggravating factor. |
| SPAIN | 2003 Articles 510 and 511 of the Penal Code (download in English here) penalises “[t]hose who provoke discrimination, hate or violence” on the grounds of “sexual preference” with up to two years imprisonment. |
| SWEDEN | 2003 Due to the Constitutional protections afforded to sexual orientation in 2003, the text of the Penal Code is taken to automatically read in sexual orientation. Chapter 29, Section 2 contains provisions regarding aggravated penalties regarding crime motivated by hate or bias. |

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| SWITZERLAND | 2017 Article 261 <i>bis</i> of the Criminal Code is to be read to include 'sexual identity' following a decision by the Legal Affairs Committee . |
| UNITED KINGDOM | 2004 In England and Wales, Section 146 of the Criminal Justice Act 2003 empowers courts to impose enhanced sentences for offences motivated or aggravated by the victim's sexual orientation. Section 2 of the Scottish Offences (Aggravation by Prejudice) (Scotland) Act 2009 (into force 2010) pertains to SOGI and "intersexuality" (8(a)) on a similar basis. |

OCEANIA (2)

There is no federal law in **Australia** establishing that motivation based on sexual orientation is an aggravating circumstance. **New South Wales** (Art. 21A(2)(h), 2002) appears to be the sole state with such provisions in force.

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| NEW ZEALAND | 2002 Article 9 of the Sentencing Act 2002 determines that it is an aggravating factor that the offender committed the offence partly or wholly because of hostility towards a group of persons who have an enduring common characteristic such as sexual orientation (among other grounds). |
| SAMOA | 2016 Section 7(1)(h) of the Sentencing Act 2016 aggravates penalties for crimes committed partly or wholly because of hostility towards a group of persons who have an enduring common characteristic such as sexual orientation (among other grounds). |

INCITEMENT TO HATRED BASED ON SEXUAL ORIENTATION PROHIBITED (39)

21% of UN States

AFRICA (1)

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| SOUTH AFRICA | 2000 The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 , prohibits unfair discrimination, hate speech and harassment and requires the State to promote the constitutional imperatives enshrined in section 9 of the Constitution . In September 2016, on the basis of protecting individuals from hate speech, the Minister for Home Affairs forbid entry to South Africa of an American evangelical preacher who makes virulently anti-LGBT sermons. |
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AMERICAS (9)

Although there is no provision in the Penal Code of **Brazil** criminalizing incitement to hatred based on sexual orientation, several jurisdictions have enacted local provisions that expressly prohibit such conduct. These include: **Amazonas** (Art. 4(7) 2006); **Mato Grosso do Sul** (Art. 2(8), 2005); **Pará** (Arts. 2(8) and 2(9), 2011); **Paraíba** (Art. 2(9), 2003); **Rio de Janeiro** (Arts. 2(9), 2015); and the city of **Recife** (Pernambuco).

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| BOLIVIA | 2010 Article 281 <i>septies</i> of the Penal Code of Bolivia criminalises any act of dissemination or incitement to hatred based on sexual orientation (among other grounds). Sexual orientation is included by reference to Article 281 <i>quinquies</i> . |
| CANADA | 1996 Section 318(4) of the Penal Code includes "sexual orientation" within the definition of "identifiable group" against which genocide may be perpetrated. Section 319(7) applies the same definition of "identifiable group" with regard to the crime of public incitement of hatred. Under Section 320 publications deemed to be hate propaganda can be confiscated. |
| COLOMBIA | 2011 Article 134B of the Penal Code (as amended by Law 1,482 of 30 November 2011) criminalises any incitement to acts of harassment aimed at causing harm based on a person's (or a group of persons') sexual orientation. |
| ECUADOR | 2009 Article 176 of the Penal Code criminalises the incitement to discrimination based on sexual orientation. |

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| HONDURAS | 2013 Article 321-A of the Penal Code (as amended by Decree No. 23-2013) criminalises incitement to hatred or discrimination based on sexual orientation. |
| MEXICO | 2014 In 2014 Article 9(27) of the Federal Law to Prevent and Eliminate Discrimination was amended to outlaw incitement to hatred and violence. Article 1(3) of this law includes “sexual preferences” as one of the prohibited grounds. |
| PERU | 2017 Article 323 of the Penal Code (as amended by Legislative Order No. 1323), entitled “discrimination and incitement to discrimination,” criminalises acts of discrimination based on sexual orientation carried out “by means of third persons”. |
| SURINAME | 2015 Articles 175a and 176 of the Criminal Code (as amended by S.B. 2015 no. 44) criminalise incitement to hatred based on sexual orientation (by reference to Article 175 which includes the list of prohibited grounds). |
| URUGUAY | 2003 Article 149bis of the Penal Code (as amended by Law 17.677 of 2003) criminalises the incitement to hatred or any form of violence against a person or group of persons based on their sexual orientation or “sexual identity”. Since 2015, Article 28 of Law 19,307 (Law on Audio Visual Communication Services) prohibits the dissemination of contents which promote or incite to violence based on sexual orientation (among other grounds). |

EUROPE (29)

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| ALBANIA | 2013 Section 19(a) of the Criminal Code penalises those who provide or distribute “deliberate materials” targeting “... gender identity, sexual orientation...” with a fine or imprisonment up to two years”. |
| AUSTRIA | 2011 Section 283(1-4) of Criminal Code of Austria (1974, amended 2011); lists sexual orientation as a protected ground against incitement to hatred. |
| BELGIUM | 2007 Articles 22(1-4) of the Anti-Discrimination Law specify various forms of incitement and penalties, reflecting those of Article 137 the Belgian Penal Code . |
| BOSNIA & HERZEGOVINA | 2013 The 2003 Criminal Code (amended 2013) includes both sexual orientation and gender identity as protected grounds regarding incitement to hatred. Article 30 (Incitement) read against Article 145 (Crimes against the citizen – right to equality), penalises offences with up to five years imprisonment. |
| BULGARIA | 2004 The Protection Against Discrimination Act “harassment” (which includes hate speech and incitement) applies to sexual orientation, at Articles 1(1) and 5. |
| CROATIA | 2006 Article 151a of the 1977 Penal Code (amended 2006) specifies incitement to hatred based on, <i>inter alia</i> , “sexual preference”. |
| CYPRUS | 2011 Incitement to hatred based on sexual orientation was added to existing law through the Combating of Certain Forms and Expression of Racism and Xenophobia by means of Criminal Law in 2011. |
| DENMARK | 1987 The Criminal Code at Section 266(b)(1) includes “sexual inclination” in the statuses which a person who “makes a statement or imparts” threats may get up to two year’s imprisonment. The law is applicable to Faeroe Islands (2007) and to Greenland (2010). |
| ESTONIA | 2006 Section 151(1) of the Penal Code specifies sanctions for incitement to hatred on the basis of sexual orientation. |
| FINLAND | 2011 Chapter 24, Sections 8 -11 of the Criminal Code specifies various conditions of hate speech, see 2014 report (at 20) for in-depth discussion. |
| FRANCE | 2005 Article 222-18-1 of the Criminal Code allows specific incrimination for a threat based upon the “victim’s true or supposed sexual orientation”, with a penalty of up to seven years imprisonment. The law applies to the overseas departments and territories: French Guiana, French Polynesia, Guadeloupe, Martinique, Mayotte, New Caledonia, Réunion, St Barthélemy, St Martin, St Pierre & Miquelon and Wallis & Futuna. |

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| GREECE | 2013 Article 79 of the Penal Code includes incitement to hatred regarding sexual orientation. The prior law (2008/913 / JHA) was modified in 2013 to include homophobic hate. |
| HUNGARY | 2013 The Criminal Code of Hungary was amended to include Section 332 Incitement Against a Community (up to three years in prison), which lists sexual orientation. |
| ICELAND | 2004 Article 233a of the General Penal Code (1940, amended 2003) (excerpts) General Penal Code specified “sexual inclination” as being protected from “[a]nyone who publicly mocks, defames, denigrates or threatens”, generating a penal sentence of up to two years. The Code was amended in 2014 to include both sexual orientation and gender identity. |
| IRELAND | 1989 The Prohibition of Incitement to Hatred Act 1989 penalises incitement to hatred, violence or discrimination on the ground, <i>inter alia</i> , of sexual orientation, with six months to two years imprisonment. |
| LITHUANIA | 2005 Article 170 of the Criminal Code , Incitement to Violence, specifies if a person incites a group or a person to violence on the basis, <i>inter alia</i> , of sexual orientation they may be liable to three years imprisonment. |
| LUXEMBOURG | 1997 (with amendments) Article 457(1)(1) of the Criminal Code outlaws incitement to hatred or violence based on, <i>inter alia</i> , sexual orientation. |
| MALTA | 2012 Articles 82A and 82C of the Criminal Code of Malta (amended by ACT No. VIII of 2012) set out the circumstances and penalties for incitement to hatred based on, <i>inter alia</i> , sexual orientation. |
| MONACO | 2005 See: Articles 24, 25, and 44 of the Law on Public Freedom of Expression (amended 2014) protect against defamation and ‘insult’ regarding sexual orientation. |
| MONTENEGRO | 2013 Amendments to the Criminal Code in 2013 introduced the named categories of sexual orientation and gender identity as protected against incitement to hatred at Article 443. |
| NETHERLANDS | 1994 Article 137(c, d and e) of the Dutch Penal Code penalises incitement based on “homosexual orientation”. |
| NORWAY | 1981 Article 135(a) Penal Code specifies “[a] discriminatory or hateful expression here means threatening or insulting anyone, or inciting hatred or persecution of or contempt for anyone because of his or her... c) homosexuality, lifestyle or orientation”. |
| PORTUGAL | 2007 Article 240(1) and (2) of the Portuguese Penal Code address homophobic incitement to hatred with prison terms of up to eight years. |
| SAN MARINO | 2008 Law no. 66 amends Article 179 the Penal Code of San Marino to include sexual orientation within protections from incitement to hatred and violence (Article 179bis). |
| SERBIA | 2010 The Law on the Prohibition of Discrimination is a comprehensive anti-discrimination act that applies to SOGI in regarding incitement to hatred and humiliating treatment (Articles 11 and 12). |
| SLOVENIA | 2008 Article 297(1) of the 2008 Penal Code enumerates sexual orientation within its protection, penalising infringements with three to five years imprisonment. Article 10(1) of the 2016 Law on Protection against Discrimination (unofficial translation) enumerates incitement to hatred. |
| SPAIN | 2003 Articles 510, 511 and 515 of the Penal Code (download in English here) penalises “[t]hose who provoke discrimination, hate or violence” on the grounds of “sexual preference” with up to two years imprisonment. Article 22 establishes sexual orientation as grounds for aggravated circumstance. |
| SWEDEN | 2003 Due to the Constitutional protections afforded to sexual orientation in 2003, the text of the Penal Code is taken to automatically read in sexual orientation. Chapter 16, Section 8 states that those who “disseminate statement or communication, threatens or expresses contempt” may be subject to a fine or up to two years in jail. |

UNITED KINGDOM

2010 Section 74 and Schedule 16 of the [Criminal Justice and Immigration Act 2008](#) (into force 2010) protects from hatred being incited on the ground of sexual orientation, as explained [here](#). Section 2 of the [Scottish Offences \(Aggravation by Prejudice\) \(Scotland\) Act 2009](#) (into force 2010) pertains to SOGI and “intersexuality” (8(a)) on a similar basis. In 2004, Section 8 of the [Public Order \(Northern Ireland\) Order 1987](#) was amended to comprehensively deal with incitement to hatred based on sexual orientation (Sections 9 -13).

OCEANIA (0)

There is no federal provision prohibiting incitement to hatred based on sexual orientation in **Australia**, and less than half (41%) the population live in areas where provincial laws specify such protection. However, Article 123(3)(e) of the [Broadcasting Services Act 1992](#) stipulates that Codes of Practice should take into account “the portrayal in programs of matter that is likely to incite or perpetuate hatred against, or vilifies, any person or group” on the basis of sexual orientation (among other grounds). Furthermore, several states have enacted laws which prohibit incitement based on sexual orientation: [Australian Capital Territory](#) (Art. 67A(1)(f), 2004); [New South Wales](#) (Sec 49ZT(1), 1993); [Queensland](#) (Sec. 124A(1), 2003); [Tasmania](#) (Sec. 19(c), 1999).

BAN ON 'CONVERSION THERAPIES' (3)

1,5% of UN States

The importance of ensuring protection of vulnerable individuals from the unregulated and often torturous processes entailed in 'techniques' of so-called 'conversion therapy' cannot be understated. However, discourse on the use of such practices is frequently **normalised** in States, with little informed dissent.

AMERICAS (2)

In **Argentina**, Section 3(c) of **Law 26,657**, Law on Mental Health, of 2010 establishes that a person cannot be diagnosed on their mental health exclusively on the basis of their "sexual choice or identity". This law does not ban conversion therapies explicitly. However, prohibiting a diagnosis based exclusively on a person's sexual orientation prevents health professionals, in general, and psychiatrists, in particular, from legally engaging in sexual orientation change efforts (SOCE). In **Canada** there is no federal ban on conversion therapies, although around 42% of the population live under local laws that contain such prohibition. However, **Manitoba** (2015) and **Ontario** (2015) have taken steps to prohibit them at the provincial level. In the **United States of America**, there is no federal law banning conversion therapies, and it appears that only just over 20% of the population live in areas where such practices are outlawed. However, several States have enacted local bans which prevent licensed professionals from legally providing these "therapies" to minors: **California** (2012); **District of Columbia** (2014); **Illinois** (2015); **New Jersey** (2013); **New Mexico** (2017); **Oregon** (2015) and **Vermont** (2016). For a detailed explanation and a full list of jurisdictions with bans in force and proposed bills, see **The Growing Regulation of Conversion Therapy**.

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| BRAZIL | 1999 Resolution 1/99 , issued by the Federal Council of Psychology , prohibits pathologisation of homoerotic behaviours and practices and orders all licenced psychologists to refrain from coercive or unsolicited treatment to homosexuals. It also prohibits their participation in events or services offering a "gay cure". In 2013, the Commission for Human Rights of Brazil's lower house of Congress approved a bill that would repeal Resolution 1/99. The proposal was later abandoned. |
| ECUADOR | 2012 Section 20(a) of the Ministerial Order No. 767 prohibits conversion therapies in rehabilitation institutions. 2014 Article 151(3) of the Penal Code criminalizes any act of torture (defined in broad terms) perpetrated with the intention of modifying a persons' sexual orientation. |

ASIA (0)

Even though so-called 'conversion therapy' is not expressly banned by law, a few countries in the region have seen some progress in this regard. In December 2014 in **China**, the court **determined** that the conversion therapy to which a 30-year-old man had been subjected was illegal, and demanded that the clinic give 3,500 yuan (£359) in compensation and post an apology to its website. In late-2016 the Ministry of Health and Welfare in **Taiwan** published a draft regulation listing 'conversion therapy' as a prohibited treatment. According to **Central News Agency** the ministry could issue regulations based on the draft in early-2017, after holding a 60-day public consultation. In 2014, the Ministry of Health in **Israel** issued a **statement** against sexual reorientation therapy. However, it should be noted that negative developments are occurring in this area also, for example the Psychiatrists Association in **Indonesia** **appears** to be moving towards the promotion of such pseudo-scientific treatments.

EUROPE (1)

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| MALTA | 2016 The Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act (<i>an act to prohibit conversion therapy, as a deceptive and harmful act or practice against a person's sexual orientation, gender identity and, or gender expression, and to affirm such characteristics</i>) prohibits the performance of conversion therapy both by professionals (Section 3(b)) and by non-professionals (Section 3(a)). See press release issues by the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties. |
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OCEANIA (0)

As in the case of Argentina, there are laws that do not ban 'conversion therapies' explicitly in this region. However, prohibiting a diagnosis based exclusively on a person's sexual orientation prevents health professionals, in general, and psychiatrists in particular, from legally engaging in sexual orientation change efforts (SOCE). In **Fiji**, Section 3(1)(d) of the **Mental Health Decree 2010** (Decree No. 54 of 2010) establishes that a person is not to be considered mentally ill because they express or refuse or fail to express a particular sexual preference or sexual orientation. In **Samoa**, Section 2 of the **Mental Health Act 2007** establishes that a person is not to be considered mentally ill because they express or refuse or fail to express a particular sexual preference or sexual orientation. Last, but not least, in February 2017, the state of Victoria in **Australia** enacted the **Health Complaints Act** that, according to a **press release** published by the Health Ministry, creates a new watchdog for cracking down on providers of "gay conversion therapy".

MARRIAGE FOR SAME-SEX COUPLES (22)

12% of UN States

AFRICA (1)

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| SOUTH AFRICA | 2006 Despite the title of the law, the Civil Union Act, 2006 confers the right to marriage to persons of the same-sex. |
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AMERICAS (7)

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| ARGENTINA | 2010 Law 26,618 (Law on Marriage Equality) is the federal law that provides for same-sex marriage nation-wide. |
| BRAZIL | 2013 Resolution No. 175 of 14 May 2013 , issued by the National Council of Justice states that notaries from all over the country can no longer refuse to register same-sex marriage. Previously in May 2011, the Supreme Federal Court of Brazil had issued a decision indicating that same-sex 'stable unions' should be converted to marriage and recommended the Congress to do so (no legislative action has been taken so far). Another decision (Ação Direta de Inconstitucionalidade 4.277 Distrito Federal) recognised same-sex couples living in 'stable unions' as "family units" and therefore entitled to the same rights of heterosexual couples living in the same kind of unions. |
| CANADA | 2005 The Civil Marriage Act 2005 is the federal law by which same-sex marriage was recognised nation-wide. Starting with Ontario in 2003, most jurisdictions (provinces and territories) allowed for same-sex marriage before the federal law was enacted. The provinces of Alberta and Prince Edward Island, and the territories of Nunavut and the Northwest Territories were the only jurisdictions without such laws before 2005. |
| COLOMBIA | 2016 After several years of legal uncertainty, on 7 April 2016, Colombia's Constitutional Court issued Decision SU214/16 , establishing that notaries could no longer refuse to register same-sex marriages. In 2011, the Court had issued Decision C-577/11 recognising same-sex couples as "family entities" and ordered the Congress to legislate on the matter. To date, no law has been adopted by that legislative body. |
| MEXICO | There is no federal law on same-sex marriage in Mexico. The current state of the law in Mexico regarding same-sex marriage is complex. Some jurisdictions have enacted local laws providing for this right, including Campeche (2016); Coahuila (2014), Colima (2016), Mexico City (2009); Michoacán (2016); Morelos (2016) [constitutional amendment]; and Nayarit (2015). In Quintana Roo (2011) same-sex marriages were allowed by local authorities through a progressive construction of local regulations. In several other States, judicial decisions have ordered the celebration of same-sex marriages. However, the lack of <i>erga omnes</i> effect of these decisions (they do not repeal legislation) means that same-sex marriages have been celebrated on a case-by-case basis in States where legislation still does not provide for such unions. Furthermore, in June 2015, the Supreme Court of Mexico declared that it was against the Constitution for any state to deny recognition to marriages between persons of the same sex validly celebrated in another state. |
| UNITED STATES OF AMERICA | 2015 The Supreme Court of the United States rules that same-sex couples had a constitutional right to marry in <i>Obergefell v. Hodges</i> , making same-sex marriage available in all 50 states. Prior to this decision, only 13 of the 50 states still outlawed same-sex marriage. Same-sex marriage is also legal in US territories: Guam (2015), Puerto Rico (2015), Northern Mariana Islands (2015), US Virgin Islands (2015), except for American Samoa. |
| URUGUAY | 2013 Law 19,075 (Law on Marriage Equality) redefined marriage as the union of two persons "of different or same-sex". |

EUROPE (13)

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| BELGIUM | 2003 Article 143 of the Belgian Civil Code was, by act of Parliament, amended to read; "Marriage is contracted by two persons of different-sex or of the same-sex" in 2003. |
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| DENMARK | 2012 Section 2 of Law No.532 of 6 June 2012 incorporates marriage between “two persons of different sexes and between two people of the same sex” into existing marriage laws. As a part of the Danish Realm and a sub-autonomous entity, same-sex marriage came into force in Greenland in early April 2016. At the end of the same month, the Faroe Islands became the last Nordic region to legalise same-sex marriage, coming into force in December 2016. |
| FINLAND | 2017 In February 2015, the Finnish government signed a gender-neutral marriage law that amends the text of the law through Act 156/2015 to the marriage of “two persons” and which came into force on 1 March 2017. |
| FRANCE | 2013 Article 1 of LOI n° 2013-404 du 17 mai 2013 ouvrant le mariage aux couples de personnes de même sexe , in force 17 May 2013, establishes marriage as available to persons of the same, or different, sex. The discussion on the Law Providing for Same-Sex Marriage of the Constitutional Committee describes the process of developing the changes to the Civil Code . The law also applies to the overseas regions of Guadeloupe and Martinique . |
| ICELAND | 2010 In 2010, the parliament passed Bill 138 on changes to the Marriage Act , of which Article 3.1 establishes the right to marry regardless of gender, thereby repealing the 1996 registered partnership law. |
| IRELAND | 2015 In October 2015, the Marriage Act 2015 was signed into law specifying its application to same-sex couples. The law replaced the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 . Interestingly, the 2015 law was enacted six months after the success of a legally binding Constitutional referendum to alter Article 41(4) to reframe marriage as gender –neutral. |
| LUXEMBOURG | 2015 Article 143 of the Civil Code was amended in 2014 (in force 1 January 2015) to simply say that two people of the same-sex can marry. |
| NETHERLANDS | 2001 Article 30 of the Act on the Opening up of Marriage states “[a] marriage can be contracted by two persons of different-sex or of the same-sex”, thereby making the Netherlands the first country in the world to enact same-sex marriage laws. |
| NORWAY | 2009 Chapter 1, Section 1 of the 1993 Marriage Act (amended 2009) states “[t]wo persons of opposite sex or of the same-sex may contract marriage”. |
| PORTUGAL | 2010 Article 1 of Law No 9/2010 of 31 May states that the law allows for marriage of persons of the same-sex. |
| SPAIN | 2005 The 2005 amendments made to Article 44(2) of the Civil Code state that marriage confers the same rights and responsibilities on same-sex couples as it does on spouses of different-sex. |
| SWEDEN | 2009 In 2009 the 1987 Swedish Marriage Code was revised to be gender-neutral, as described in this factsheet . |
| UNITED KINGDOM | 2014 Section 1(1) of the Marriage (Same-sex Couples) Act 2013 (in force 2014) simply states “[m]arriage of same-sex couples is lawful”. This Act is only applicable in England and Wales, where it repealed the Civil Partnership Act 2004 . The Scottish Marriage and Civil Partnership (Scotland) Act of 2014 defines ‘spouse’ as being both different as well as same-sex. Northern Ireland does not enjoy marriage equality. The Crown Dependencies of the Isle of Man introduced the Marriage and Civil Partnership (Amendment) Act 2016 , and Guernsey approved the Same-sex Marriage (Guernsey) Law 2016 . In British Overseas Territories: in Pitcairn, same-sex marriage was voted for in 2015, and in Gibraltar the Civil Marriage Amendment Act 2016 was introduced (supplanting the Civil Partnership Act 2014), but in Bermuda a non-binding referendum on same-sex marriage failed in June 2016. |

OCEANIA (1)

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| NEW ZEALAND | 2013 Marriage (Definition of Marriage) Amendment Act of 2013 amended the Marriage Act 1955 to allow for marriage between 2 people “regardless of their sex, sexual orientation, or gender identity”. This law is not effective in any of New Zealand territories (Cook Islands, Niue or Tokelau). |
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PARTNERSHIP FOR SAME-SEX COUPLES (28) [inc. Taiwan]

15% of UN States

Previous editions of this publication have differentiated between forms of relationship recognition between those that offer a minimum protection and those conferring many of rights enshrined in heterosexual traditional marriage (although often not dealing with parental and family rights). However, we find that this distinction is no longer as active as it was since the concept of recognition of same-sex couples' relationships first emerged through the 1990s and 2000s, as the status of those relationships have generally been strengthened. As such, we title this category simply as "Partnership for Same-Sex Couples"

AFRICA (1)

SOUTH AFRICA

2006 The **Civil Union Act, 2006** confers the right to civil unions to persons of the same-sex. This is the same piece of legislation that allows for same-sex marriage.

AMERICAS (5)

There is no federal law providing for civil unions in **Argentina**. However, civil unions are recognised in the **Province of Río Negro** (2003), and the cities of **Buenos Aires** (2002), **Villa Carlos Paz** (2007) and **Rio Cuarto** (2009). Besides marriage (see entry above), civil unions, domestic partnerships and other forms of unions are available to same-sex couples in several jurisdictions in **Canada**: **Alberta** (2002); **Manitoba** (2001/2002); **Nova Scotia** (2001); **Quebec** (2002). In **Costa Rica**, a **2013 amendment** to the **2002 Law on Youth** inserted a non-discrimination clause with regard to *de facto* unions which appeared to allow for same-sex civil unions (even though **progressive caselaw** used this clause as the legal basis to recognise same-sex *de facto* unions, **Article 242** of the Family Code still restricts these unions to different-sex couples). In recent years considerable progress has been made: in 2014, Governmental Social Security Agency (CCSS) granted health insurance benefits for same-sex couples, and in 2015 the **Executive Order No. 38,999** was issued, addressing agencies within the Executive Branch to regulate certain rights for same-sex *de facto* unions (sick leave, care-leave, etc). In 2016, survivor's pensions were **granted** to same-sex couples. In May, the government submitted a **request for an advisory opinion** to the Inter-American Court of Human Rights on same-sex patrimonial rights under the **ACHR**. There is no federal law providing for civil unions in **Mexico**. However, civil unions and other forms of registered partnerships are recognised in several jurisdictions within Mexico, such as **Campeche** (2013); **Coahuila** (2007); **Colima** (2013); **Jalisco** (2013); **Federal District** (2007); **Morelos** (2016); **Nayarit** (2015). There is no federal law providing for civil unions in the **United States of America**, although several states do provide them – see, **report** by the National Center for Lesbian Rights (NCLR) and this **webpage** of the National Conference of State Legislatures.

BRAZIL

2011 Supreme Federal Court of Brazil recognised same-sex civil unions with *erga omnes* effects in two joint decisions (**Ação Direta de Inconstitucionalidade 4,277** and **Arguição de Descumprimento de Preceito Fundamental 132**).

CHILE

2015 Law 20,830 (Law on Civil Union Agreement) provides for civil unions, open to all couples (same-sex or not) that share a home, with the purpose of regulating the legal effects derived from their common affective life, and with a stable and permanent nature.

COLOMBIA

2007-2011 Several decisions issued by the Constitutional Court of Colombia have granted rights to same-sex couples since 2007. For a complete list of these decisions and links to the decisions, see this **summary** prepared by Colombia Diversa.

ECUADOR

2008 Article 68 the **Constitution of Ecuador** provides for civil unions regardless of the gender of spouses and establishes that these unions will be granted the same rights afforded to married couples, with the exception of adoption. On 22 August 2014, the Civil Registry issued **Resolution No. 174** to allow same-sex couples to register their unions. On 21 April 2015, the National Assembly approved the **Civil Code Amendment Law**, which amends the Civil Code to incorporate the regulation of civil unions.

URUGUAY

2008 Law 18,246 affords same-sex couples the right to have their union recognized (locally referred to as "union concubinaria").

ASIA (2) [inc. Taiwan]

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| ISRAEL | 1994 No single law has been created in Israel to recognise same-sex partnership (seen as merely a contract), which may give the impression such protections are weak in Israel. In fact, the rights of same-sex 'reputed spouses' (all extra-marital cohabitants) have equivalence to those of married couples, as has been established through case law . |
| TAIWAN | Currently, around 80% of the population in Taiwan live under local and provisional rules that do in fact recognise very basic forms of civil partnership, therefore we include Taiwan in this category. In December 2016 a parliamentary committee approved the preliminary amendment of the legal proposals of marriage equality . |

EUROPE (17)

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| ANDORRA | 2014 In November 2014, the General Council of Andorra introduced Law 34/2014 that recognised same-sex civil unions as holding equivalence to marriage in terms of most rights and the basis on which family can be founded. |
| AUSTRIA | 2010 The Registered Partnership Act (Text No. 135/2009) that came into force in 2010 has strong contractual and financial securities enshrined, but offers no recognition of family life, including in family name (see below at 'joint adoption'). |
| CROATIA | 2014 The Same-sex Life Partnership Act of July 2014 provides comprehensive civil union protections regarding recognition and maintenance, but in regards to parenting the law is weak . |
| CYPRUS | 2015 The Civil Partnership Law (L184(1)/2015) applies to same-sex and different-sex couples regarding financial and accommodation issues, but with limited familial protection. |
| CZECH REPUBLIC | 2006 The Registered Partnership Act (Law No. 115/2006) confers comprehensive civil union protections to same-sex partners only, but not same-sex adoption rights, as tested in a 2016 case . Article 3020 of the 2012 Civil Code makes the provision that "the rights and responsibilities of spouses shall apply <i>mutatis mutandis</i> to registered partnership and the rights and obligations of partners" (referring to the first, third and fourth part of section on Marriage at Section 655). |
| ESTONIA | 2016 The Registered Partnership Act 2014 that entered into force on 1 January 2016 is open to same-sex and different-sex couples and contains limited adoption rights, but 'family' in Estonian law requires a union between a man and a woman. |
| FRANCE | 1999 Law 99-944 of 15 November 1999 (on the Civil Solidarity Pact) offered same-sex couples some level of legal recognition. |
| GERMANY | 2001 The Act on Registered Life Partners provides significant protections for same-sex partners (to whom the Act is limited), and some familial scope regarding adoption (Section 9). A late-2016 study finds that 83% of respondents support marriage equality. |
| GREECE | 2015 Article 1 of Law No. 4356 on Covenant Partnership of December 2015 confers gender-neutral partnership rights, and limited co-parenting provisions. |
| HUNGARY | 2009 Section 6:514 of the 2009 Civil Code sets out quite limited provisions pertaining to gender-neutral civil partnership in Hungary. |
| ITALY | 2016 Article 1 of Law May 20 n. 76 regarding civil partnership and cohabitation establishes it is limited to same-sex couples. This legislation provides for equality in matters of tax, social security and inheritance. In 2012, the Court of Cassation denied a petition to recognise a same-sex marriage, but with a reasoning that represented a fundamental change in approach to the issue. |
| LIECHTENSTEIN | 2011 The Act on Registered Life Partnership confers limited protections to same-sex partners, but overtly denies joined parental rights at Section 9. |

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| MALTA | 2014 Section 4(1) of the Civil Unions Act confers “the corresponding effects and consequences in law of civil marriage”, and applies to same-sex and different couples equally (Section 3(2)). |
| NETHERLANDS | 1998 Co-existing with same-sex marriage, Article 1:80(a)-(e), Book 1 of the Civil Code confers comprehensive protections to both same-sex and of different-sex civil partners, analysed as virtually equivalent to marriage. The Netherlands’ constituent country, Aruba, does not allow same-sex marriage, but in September 2016 voted to allow civil partnerships. |
| SLOVENIA | 2006/2016 Following a 2015 referendum that failed to secure marriage equality in Slovenia, the Civil Partnership Registration Act 2016 passed through parliament, coming into force February 2017. This Act strengthens the legal position of same-sex partners from that which existed under the weak 2006 partnership legislation, but it is still silent on issues of adoption. |
| SWITZERLAND | 2004 The Federal Law on Registered Partnership Between Persons of the Same-sex (RS 211.231) contains protective financial and property provisions. |
| UNITED KINGDOM | 2005 The UK’s Civil Partnership Act 2004 was adopted in Northern Ireland in 2005, but not rescinded when marriage equality emerged in all other parts of the UK in 2013. In 2012, the Crown Dependency of Jersey introduced Civil Partner (Jersey) Law . In the UK in early 2017, the High Court rejected a challenge to allow different-sex civil partnership. |

OCEANIA (2)

| | |
|--------------------|--|
| AUSTRALIA | 2008 In 2008, the Australian Government introduced reforms to remove the discriminations between <i>de facto</i> same-sex and different-sex <i>de facto</i> couples. Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008 and Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008 . <i>Civil unions</i> are available (only to same-sex couples) in the Australian Capital Territory (2012) [domestic partnerships had been available in the ACT since 1994]. <i>Registered partnerships</i> are available in New South Wales (2010); Queensland (2012); South Australia (2016); Tasmania (2003); Victoria (2008). <i>Domestic partnerships</i> are available in South Australia (2007). <i>De facto relationships</i> are also recognized in Western Australia (2002) and in the Northern Territory (2004). For more information, see Chapter 2 of the Advisory Report by the Standing Committee on Social Policy and Legal Affairs of the Australian House of Representatives. |
| NEW ZEALAND | 2005 The Civil Union Act 2004 provides for civil unions, available to same-sex or different-sex couples. |

JOINT ADOPTION BY SAME-SEX COUPLES (26)

14% of UN States

AFRICA (1)

| | |
|---------------------|---|
| SOUTH AFRICA | 2002 In the 2002 Constitutional Court case <i>Du Toit & Or</i> , it was ordered that the words “or by a person whose permanent same-sex life partner is the parent of the child” be adjoined to bring Section 17(c) of the 1983 <i>Child Care Act</i> in line with the <i>Constitution</i> . |
|---------------------|---|

AMERICAS (6)

There is no federal law allowing for joint adoption by same-sex couples in **Mexico**. The situation of same-sex marriage is legally complex (see marriage entry above). In some jurisdictions, which cover around 15% of the nation's population, legislation provides for joint adoption of married couples: *Campeche* (Art. 407, 2016); *Coahuila* (Art. 253, 2014); *Chihuahua* (2015); *Colima* (Art. 391(b), 2016); *Mexico City* (2010); *Michoacán* (2016); *Morelos* (2016); *Nayarit* (Art. 385, 2016); *Veracruz* (2011).

| | |
|---------------------------------|--|
| ARGENTINA | 2010 <i>Law 26,618</i> (Law of Marriage Equality) grants same-sex couples all rights derived from marriage, including joint adoption. |
| BRAZIL | 2010 The Superior Court of Justice of Brazil (STJ) <i>ruled</i> in April 2010 that same-sex couples may adopt children. This judgment was upheld in the Supreme Federal Court of Brazil in August 2010. |
| CANADA | 1996-2011 Joint adoption by same-sex couples is legal in all Canadian provinces and territories. Every jurisdiction has its own laws and regulation on the matter. <i>Alberta</i> (2007), <i>British Columbia</i> (1996), <i>Manitoba</i> (2002), <i>New Brunswick</i> (2008), <i>Newfoundland & Labrador</i> (2003), <i>Northwest Territories</i> (2002), <i>Nova Scotia</i> (2001), <i>Nunavut</i> (2011), <i>Ontario</i> (2000), <i>Prince Edward Island</i> (2009), <i>Quebec</i> (2002), <i>Saskatchewan</i> (2001). |
| COLOMBIA | 2015 In November 2015, the Constitutional Court issued <i>Decision C-683/15</i> that same-sex couples in Colombia can jointly adopt children. This <i>page</i> prepared by Colombia Diversa explains the implications and reach of this decision and compares it to other similar cases decided by the Court. |
| UNITED STATES OF AMERICA | 2015 As a result of the Supreme Court decision in <i>Obergefell v. Hodges</i> , joint adoption by same-sex married couples is now available in all 50 states. However, as <i>MAP reports</i> , there are several states that have laws permitting state-licensed child welfare agencies to discriminate against LGBT people, including married couples (see full list <i>here</i>). <i>Mississippi</i> was the last State in the USA to remove blocks to joint adoption. |
| URUGUAY | 2013 <i>Law 19,075</i> (Law on Marriage Equality) redefines marriage as the union of two persons “of different or same-sex”, thereby granting same-sex couples all rights derived from marriage, including joint adoption. |

ASIA (1)

| | |
|---------------|---|
| ISRAEL | 2008 Although revisions to the 1981 Adoption Law make no reference to ‘reputed spouses’, in 2008 the Attorney General declared it should nonetheless be interpreted as also relating to them, see <i>Einhorn</i> (at p.230). Further, in its 2nd periodic report concerning the implementation of the Convention on the Rights of the Child, at paragraph 242 the State <i>claim</i> that the status same-sex couples is equal to that of legally married couples. |
|---------------|---|

EUROPE (16)

On 6 December 2016, the European Parliament adopted a *Report* calling for the automatic recognition of domestic adoption orders to non-biological parents across EU Member States. The report stresses that refusing to recognise an adoption order, as countries can do through a ‘public order’ argument, may lead *de facto* to discrimination prohibited by Article 21 of the *Charter of Fundamental Rights of the European Union*, an article that prohibits discrimination, including that based on sexual orientation. The report highlights that the lack of provisions for such recognition currently causes significant problems, and exposes families to multiple legal risks if they move from one Member State to another.

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|----------------|--|
| ANDORRA | 2014 Article 1(2-4)) of the <i>Law 34/2014</i> recognises same-sex civil unions as holding direct equivalence to marriage, and Article 24 applies this to adoption rights of same-sex couples. |
| AUSTRIA | 2016 In late-2014, the Constitutional Court in Austria <i>ruled</i> that provisions <i>barring</i> joint adoption by same-sex couples contravened the right to equality, and not in the best interest of the child. As such, Articles 178-185 of <i>Civil Code</i> are applicable to same-sex couples as of early-2016. |

| | |
|-----------------------|--|
| BELGIUM | 2006 Articles 4 and 5 of the “Law amending certain provisions of the Civil Code with a view to enabling adoption by persons of the same-sex” primarily concern Article 353 of the Civil Code and ensures full joint-parental rights. |
| DENMARK | 2010 Section 5.1 of 2010 Adoption Act (updated Adoption (Consolidation) Act 2014) sets out that a partner or spouse can jointly adopt. Greenland enacted such legislation in 2016. |
| FINLAND | 2017 Section 9 of the 2012 Adoption Act stipulates that only persons who are married may adopt. On 1 March 2017, amendments to the Marriage Act that allow for gender-neutral marriage came into force. |
| FRANCE | 2013 Articles 7-9 of the LOI n° 2013-404 du 17 mai 2013 ouvrant le mariage aux couples de personnes de même sexe updates at Articles 345(1), 360 and 371(4) in the Civil Code regarding joint adoption. |
| ICELAND | 2010 Articles, 2, 8 and 29 of the 2010 Marriage Act stipulate the joint parental responsibilities of spouses: these apply to adoption. |
| IRELAND | 2015 Part 11 of the Children and Family Relationships Act 2015 (introduced a month before a Constitutional referendum on same-sex marriage) amends prior legislation to allow for joint adoption by same-sex couples. |
| LUXEMBOURG | 2015 With the introduction of full marriage equality in force in January 2015, Article 203 of the Civil Code was amended in 2014 (in force 1 January 2015) to assert the obligation of parents to their children, including those jointly adopted. |
| MALTA | 2014 As reflected in Section 12 the Civil Unions Act 2014, Article 100B(1) of the Civil Code was amended to guarantee full joint adoption rights to same-sex partners, with the first same-sex adoption approved by the Maltese Family Court in July 2016. |
| NETHERLANDS | 2001 Article 1 of the Dutch law on adoption by persons of the same-sex amends Article 227(1) of the Civil Code to allow for joint adoption by same-sex couples. |
| NORWAY | 2009 In line with recent marriage provisions, Section 5 of the Adoption Act was amended to include same-sex partners as eligible to jointly adopt. |
| PORTUGAL | 2016 Articles 1-7 of the Law No.2/2016 establish that same-sex couples enjoy all the adoption rights of different-sex couples, and amends the appropriate areas of the Civil Code. |
| SPAIN | 2005 Article 67(7) of Law 13/2005 amends Article 175 of the Civil Code to specify spouses can jointly adopt. |
| SWEDEN | 2003 Articles 4-8 of the 2003 Act on Parenting lay out the conditions for joint adoption for married couples, same-sex and different-sex. |
| UNITED KINGDOM | 2005 Sections 144 and 150 of the Adoption and Children Act 2002 that entered into force in England and Wales in 2005, establish that joint adoption applies to same-sex couples. Section 2 of the Adoption Agencies (Scotland) Regulations 2009 in Scotland defines civil partners as subject to the law, and in 2013 in Northern Ireland, the Court of Appeal mandated that civil partners can jointly adopt. Among British Overseas Territories, Section 3(3) of the Adoption of Infants Ordinance 2015 of Pitcairn Islands, and the Civil Partnership Act 2014 (converted to marriage in 2016) in Gibraltar both allow joint adoption, as does the law in Bermuda following a 2015 decision. The Crown Dependencies of the Isle of Man introduced joint adoption in 2011 to civil partners, and Jersey legislated for joint adoption in 2012 through the Civil Partner (Jersey) Law. |

OCEANIA (2)

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|--------------------|---|
| AUSTRALIA | 2002-2017 Joint adoption by same-sex couples is currently possible in all Australian States and Territories, except in the Northern Territory. Australian Capital Territory (2004); New South Wales (2010); Queensland (2016); South Australia (2017); Tasmania (2013); Victoria (2016); Western Australia (2002). |
| NEW ZEALAND | 2013 Schedule 2 of the Marriage (Definition of Marriage) Amendment Act of 2013 amended the Adoption Act 1955 to allow for joint adoption by same-sex married couples. This law is not effective in any of New Zealand territories (Cook Islands, Niue or Tokelau). |

SECOND PARENT ADOPTION (27)

15% of UN States

AFRICA (1)

| | |
|---------------------|---|
| SOUTH AFRICA | 2006 Section 231(1)(c) of the Children's Act of 2005 stipulates that married persons or those in life partnerships are eligible to adopt, and the Civil Union Act, 2006 confers those status to persons of the same-sex. |
|---------------------|---|

AMERICAS (5)

In **Mexico**, second parent adoption for same-sex couples is not available in all states. Some jurisdictions have local regulations on the matter, among them: **Campeche** (Art. 408B, 2016); **Federal District** (Art. 391(5), 2010); **Coahuila** (Art. 377, 2015), **Colima** (Art. 391(b), 2016); **Nayarit** (Art. 389(2), 2016).

| | |
|---------------------------------|---|
| ARGENTINA | 2010 Law 26,618 (Law of Marriage Equality) grants same-sex couples all rights derived from marriage, including adoption. Article 631 of the Civil Code lays out the conditions by which the spouse of the biological parent may adopt their child. As per Article 621, courts may decide on the subsistence of links with other parents. |
| CANADA | 2005 Adoption is regulated at the provincial level in Canada. Second parent adoption is available in several provinces and territories, including Alberta (1999), British Columbia (1996), Manitoba (2002), New Brunswick (2008), Newfoundland & Labrador (2003), Northwest Territories (2002), Nova Scotia (2001), Nunavut (2011), Ontario (2000), Prince Edward Island (2009), Quebec (2002), Saskatchewan (2001). |
| COLOMBIA | 2014 The Constitutional Court of Colombia determined in its Decision SU-617 of 2014 that same-sex couples have the right to adopt the biological child of their partner. |
| UNITED STATES OF AMERICA | 2015 The availability and conditions for second parent adoption vary by state. For detailed information see this datasheet prepared by the National Center for Lesbian Rights (NCLR). |
| URUGUAY | 2013 Law 19,075 (Law on Marriage Equality) grants same-sex couples all rights derived from marriage, including adoption. Article 139 of Law 17,823 (as amended by Law 18,590) establishes that adoption by the spouse of the biological parent is possible only if the link with the child and the other parent is terminated. |

ASIA (1)

| | |
|---------------|---|
| ISRAEL | 2005 In <i>Yaros-Hakak v. Attorney General</i> two women had each given birth via ART and were raising their children together. The Supreme Court of Israel judged that the State's adoption law permitted second-parent adoption (without curtailing the first parent's rights), according to the "supreme principle" that the best interests of the child should prevail, see ICJ . |
|---------------|---|

EUROPE (18)

In **Croatia**, Articles 45-49 of **Same-sex Partnership Act** 2014 falls short of providing second parent adoption rights, but the court can be petitioned to establish the right *de facto*. In **Italy**, there are no federal laws protecting second parent adoption, but there has been important activity at the court level in this regard. A high profile case involving the adoption of the birth daughter of a lesbian partner was **resolved** in the couple's favour in late 2016. The Court of Appeal of Naples **ordered** full recognition of second-parent adoptions on 5 April 2016, and the Court of Appeal in Trento **recognised** the second father as a co-parent of twins through surrogacy.

| | |
|----------------|---|
| ANDORRA | 2014 Article 2 of the Law 34/2014 recognises same-sex civil unions as holding direct equivalence to marriage: and Article 24 applies this to adoption rights of same-sex couples, revising the 1996 Adoption Law . |
| AUSTRIA | 2013 Following the return of <i>X. and others v. Austria</i> to the European Court of Human Rights in early 2013, Article 182 of the Civil Code was amended to allow same-sex second parent adoption. |

| | |
|--------------------|---|
| BELGIUM | 2006 Articles 8 of the “ Law amending certain provisions of the Civil Code with a view to enabling adoption by persons of the same-sex ” primarily concern Article 353 of the Civil Code and ensures second-parent adoption rights. |
| DENMARK | 1999 Section 4(1) of the Law amending the law on Registered Partnership expressly sets out that a registered partner may adopt their partner’s child. Greenland enacted second parent adoption to same sex couples in 2009. The Faroe Islands passed second parent adoption legislation which will comes into force later in 2017. Section 4a(2) of 2010 Adoption Act (updated Adoption (Consolidation) Act 2014) sets out that a partner or spouse can adopt the other’s child. |
| ESTONIA | 2016 Section 15(1-4) of the Registered Partner Act offer limited joint adoption rights to same-sex couples, but court appeal may be made regarding a third party adoption to avoid the creation of an “extremely unfair” situation. |
| FINLAND | 2009 Section 9 of the 2001 Registered Partnership Act was amended in 2001 to clarify that civil partners could adopt, but not as constructed in adoption legislation. However, since coming into force in March 2017 Act 156/2015 confers full joint adoption rights to same-sex couples in Finland. |
| FRANCE | 2013 Article 7 of LOI n° 2013-404 du 17 mai 2013 ouvrant le mariage aux couples de personnes de même sexe , inserted a paragraph (345(1)(a) to the existing Civil Code that establishes second parent adoption. The law also applies to the overseas regions of Guadeloupe and Martinique . |
| GERMANY | 2005 Act on Registered Life Partners at Section 9(7) (to be read in conjunction with Title 2 [Adoption] of the Civil Code) allows for second parent adoption by same-sex ‘spouses’. |
| ICELAND | 2000 Section 6 of the 2000 Law amending the 1996 Registered Partnership Act specifies that civil partners can adopt one another’s children. |
| IRELAND | 2015 Article 5 of the Children and Family Relationships Act 2015 (introduced a month before a Constitutional referendum on same-sex marriage) defines the civil partner and spouse under ‘parentage’. |
| LUXEMBOURG | 2015 With the introduction of full marriage equality in force in January 2015, Article 203 of the Civil Code was amended to assert the obligation of parents to their children, including those in second parent adoption. |
| NETHERLANDS | 2001 Article 1 of the Dutch law on adoption by persons of the same-sex amends Article 228(f) of the Civil Code to allow for second parent adoption by same-sex couples, but only through a court application procedure which was eased in 2014. |
| NORWAY | 2002 The 1993 Adoption Act was amended to include civil partners by a 2001 Act . |
| PORTUGAL | 2016 Articles 1-7 of the Law No.2/2016 establish that same-sex couples enjoy all the adoption rights of different-sex couples, and amends the appropriate areas of the Civil Code . |
| SLOVENIA | 2011 The right to step-parent adoption was recognized by the Ministry of Labour, Family, Social Affairs and Equal Opportunities in 2011 on the basis of the 1976 Law on Marriage and Family Relations , despite the fact that Article 135 stipulates adopters must be married. |
| SPAIN | 2005 Article 67(7) of Law 13/2005 amends Article 175(4) of the Civil Code to specify that spousal second-parents can adopt. |
| SWEDEN | 2003 Article 8 of the 2003 Act on Parenting lay out the conditions for second parent adoption for married couples, same-sex and different-sex. |

UNITED KINGDOM

2005 Sections 144 and 150 of the [Adoption and Children Act 2002](#) that entered into force in England and Wales in 2005, establish that second parent adoption applies to same-sex couples. Section 2 of the [Adoption Agencies \(Scotland\) Regulations 2009](#) in Scotland defines civil partners as subject to the law, and in 2013 in Northern Ireland, the Court of Appeal [mandated](#) that civil partners enjoy second parent adoption. Among British Overseas Territories, Section 3(4) of the [Adoption of Infants Ordinance 2015](#) of Pitcairn Islands, and the [Civil Partnership Act 2014](#) (converted to marriage in 2016) in Gibraltar both accommodate second parent adoption. The Crown Dependencies of the Isle of Man introduced second parent adoption at Section 98 of the [Civil Partnership Act 2011](#), Jersey legislated for second parent adoption in 2012 through the [Civil Partner \(Jersey\) Law](#), and Guernsey approved second parent adoption coming into force in 2017 through the [2016 Same-Sex Marriage Law](#).

OCEANIA (2)

AUSTRALIA

2002-2017 Second parent adoption by same-sex couples is currently possible in all Australian States and Territories, except in the Northern Territory. [Australian Capital Territory](#) (2004); [New South Wales](#) (2010); [Queensland](#) (2016); [South Australia](#) (2017); [Tasmania](#) (2013); [Victoria](#) (2016); [Western Australia](#) (2002).

NEW ZEALAND

2013 A step-parent in a same-sex couple is able to adopt their spouse's child under the [Adoption Act 1955](#) (as amended by the [Marriage \(Definition of Marriage\) Amendment Act of 2013](#)). This law is not effective in any of New Zealand territories (Cook Islands, Niue or Tokelau).



CRIMINALISATION

KEY / SYMBOLS

Throughout this section, we use several symbols to communicate key information regarding the socio-legal situations in those States that criminalise consensual same-sex sexual activity between adults in private.

CRIMINALIZATION OF SEXUAL ACTIVITY: WHICH GENDER DOES THE LAW TARGET?

In many countries where the law criminalises same-sex sexual activity between consenting adults in private, criminalising provisions are expressed in gender neutral terms, thus targeting sexual activity both between men and between women. In some others, the law specifically targets one gender alone (generally men). Criminalizing laws do not see beyond the fixed categories of the gender binary (male/female) so it is not always easy to ascertain how these provisions would play out for adults who are trans and engage in sexual activity with persons who were assigned the same sex marker at birth.



When this symbol appears next to the name of the country, it means that sexual acts between consenting **male** adults in private are in some way criminalized.



When this symbol appears next to the name of the country, it means that sexual acts between consenting **female** adults in private are in some way criminalized.

ENFORCEMENT OF CRIMINALISING PROVISIONS

Information on actual enforcement of criminalising provisions can be very hard to gather. Most of the information regarding enforcement in this report comes from media outlets or reports by civil society organisations working on the ground. Official records are rarely available and when they are, they may not fully reflect actual enforcement of criminalising provisions. Furthermore, in many contexts, media reports use the word “sodomy” or “buggery” in *broad* terms to refer to “anal intercourse”, which may include non-consensual sexual activity or sexual activity involving minors. This report focuses **exclusively** on same-sex sexual activity between consenting adults in private.



When this symbol appears next to the name of the country, it means that our research was able to find information on **arrests** (either leading to prosecution or not) in the past **three (3) years**, based on provisions which criminalise same-sex consensual activity between adults in private and *enforced* on consenting adults. Note: where there is no arrest symbol on a country, this does **not** mean there have not been arrests – it just means our limited research has not located documentation of any.

DOES THE NATIONAL HUMAN RIGHTS INSTITUTION INCLUDE SEXUAL ORIENTATION CONCERNS IN ITS WORK?

National Human Rights Institutions (NHRIs) are independent bodies with a mandate to protect, promote, and monitor the human rights situation in a given country and operate under the [Paris Principles](#). They have varying denominations (human rights commission, ombudsman office, public defender, equality authority, etc.) and operate in most countries in the world (see full list [here](#)). NHRIs may play a crucial role in the furtherance of equality with regard to sexual orientation issues if they include this topic in their working agenda. We indicate whether a NHRI includes sexual orientation concerns in its work in the following way:



NRHI Yes, it does



NRHI No, it does not



NRHI Unclear



NRHI There is no NHRI

ALGERIA



Penal Code (Ordinance 66-156 of 8 June 1966).

Art. 338

[HOMOSEXUAL ACT]

“Any person who commits an act of homosexuality against a person of the same sex shall be punished with imprisonment from two months to two years and a fine of 500 to 2,000 dinars.”

Article 333 (modified) [in 1982]

[INDECENT ACT]

“When the indecent exposure consisted of an act against nature with an individual of the same sex, the penalty is imprisonment for six months to three years and a fine of 1,000 to 10,000 dinars.”

Article 333 Reiterated

[BREACH OF MODESTY - LIMITING SOGI PUBLIC EXPRESSION]

“The making or possession, importing or attempts to import for trade, distribution, for payment, copying, exhibition or display or attempts to display to the public, or for selling or attempts to sell, or distribution or engaged in the distribution of each publication, an editor or a drawing or a declaration or pictures or paintings or photographs, or the origin of the image or its template or produced anything in breach of modesty shall be punished with imprisonment from two months to two years and a fine of 500 to 2,000 dinars. A breach of decency punished by two months to two years in prison and a fine of 500 to 2000 Algerian dinar. The punishment for those convicted of “abnormal sexual acts” is six months to three years in prison and a fine of 1,000 to 10,000 Algerian dinars.”

In the 2014 and 1982 revisions of this gender -neutral Penal Code, Article 338 outlaws “d’homosexualité”, while Article 333 (modified) increases the penalty for public indecency if it is same-sex. The second part of Article 333 (new) makes the publication of writings, images, etc, contrary to ‘modesty’ punishable. This provision goes beyond the scope of traditional sexual behaviour-based regulation, and akin to the codes of other MENA States, targets expression of around sexual and gender diversity.

An overview of the SOGI situation in Algeria in late-2014 was provided by [Muftah](#). However, an [article](#) from October 2015 points to a resilient LGBT community despite their vilification by some religious leaders. In 2016, a gay Algerian man’s [refugee asylum claim](#) to the UK was rejected, in part based on the lack of prosecutions or arrests in recent years, but it evidently did not account for the extremes of family and societal shame, threats and violence that [pervades](#) rural and urban Algeria regarding diverse sexual orientations in men and women.

In its 2nd cycle UPR in May 2012, Algeria ‘noted’ (functionally rejected) two recommendations (Spain and Canada) to decriminalise same-sex sexual relations, “and take measures to ensure equality and non-discrimination on all grounds” in conformity with Articles 17 and 26 (privacy and non-discrimination) of the International Covenant on Civil and Political Rights (ICCPR). Algeria’s 3rd cycle UPR commences in May 2017.

ANGOLA



Penal Code of 16 September 1886, as amended in 1954 (inherited from the Portuguese colonial era).

Articles 70 and 71(4) [text not available]

[ACTS AGAINST NATURE]

These Articles provide for the imposition of ‘security measures’ on people who habitually practice acts against nature. The security measures may include: a bond of good behavior, being put on probation for a certain period, or even internment in a workhouse or agricultural colony (from 6 months to 3 years).

In 2006 the first draft of a new Penal Code was mooted in Angola, and in 2014 a final [draft](#) was [submitted](#) to Cabinet. In

late-February 2017, the Angolan parliament went through the first phase of **adopting** this version of the draft Penal Code (125 in favour, none against and 36 abstentions). This Code does not outlaw consenting, same-sex sexual activity between adults in private, and therefore when it does come into force (currently unknown), Angola will have repealed such offending provisions. Further, Article 197 of the new Code proposes up to two year's imprisonment for discrimination in employment and in the supply of goods and services on the basis [*inter alia*] of sexual orientation. However, at time of writing, the parliamentary process is not complete and, as such, the old Penal Code remains in force.

It is notable that the African Commission on Human and Peoples' Rights **Resolution 275: Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity** was adopted at the 55th Ordinary Session of the African Commission on Human and Peoples' Rights in Luanda, Angola, 28 April - 12 May 2014.

In 2013, the Angolan delegation to the UN Human Rights Committee **replied** to a query about societal discrimination of individuals based on their sexual orientation, saying: "The principle of equality was enshrined in the Constitution, but measuring discrimination against homosexuals in society was difficult. Cultural attitudes seemed to be changing, however: for example, the portrayal of two same-sex couples in a soap opera on Angolan television had not been condemned by the viewing public."

Even though Angola rejected two recommendations related to the decriminalisation of same-sex sexual relations made by France and the Czech Republic at its 1st cycle UPR, there is no mention (recommendations or Interactive Dialogue) of SOGI in its 2nd **cycle UPR** in October 2014. Angola's 3rd UPR is in April 2019.

BOTSWANA

Penal Code [Chapter 08:01], 1964 (**amended** by the Penal Code Amendment Act 14, 2005).

Section 164. Unnatural offences

[AGAINST ORDER OF NATURE]

"Any person who;

- (a) has carnal knowledge of any person against the order of nature;
 - (b) has carnal knowledge of any animal; or
 - (c) permits any other person to have carnal knowledge of him or her against the order of nature,
- is guilty of an offences and is liable to imprisonment for a term not exceeding seven years."

Section 165. Attempts to commit unnatural offence

[ATTEMPTED UNNATURAL OFFENCE]

"Any person who attempts to commit any of the offences specified in section 164 is guilty of an offence and is liable to imprisonment for a term not exceeding five years."

Section 167. Indecent practices between persons

[GROSS INDECENCY]

"Any person who, whether in public or private, commits any act of gross indecency with another person, or procures another person to commit any act of gross indecency with him or her, or attempts to procure the commission of any such act by any person with himself or herself or with another person, whether in public or private, is guilty of an offence."

A **case** about the right of a SOGI-based organisation, LeGaBiBo, to register as a NGO dates back to 2012, with a decisive win in late-2014 where the High Court said not allowing it to register would be an unconstitutional violation of the applicants' right to freedom of expression, freedom of association and free assembly. The State then appealed the decision on the grounds that its recognition would erode public morality, and that appeal was heard in mid-January 2016. In mid-March 2016, **judgment** from that appeal was unsuccessful and that NGO is now registered, thereby providing an example of positive jurisprudence regarding the reach of the State.

In both of its UPR sessions to date (December 2008, January 2013) Botswana refused all recommendations for decriminalisation and non-discrimination based on SOGI (7 recommendations in 2008, and 8 in 2013). In its response to recommendations the delegation for Botswana said (at para. 92) that other than including sexual orientation in the amended Employment Act of 2010, “[r]egarding cultural sensitivities that have a bearing on existing legislation, the delegation confirmed Botswana’s commitment to comply with its treaty obligations” and “determined to undertake educational awareness campaigns...”. Despite a CCPR recommendation (at para. 22) that Botswana should amend Section 164, and the *Kanane* case of 2003 that found the provisions at Sections 164 and 167 discriminatory, the law has remained in place.

It is notable that Botswana’s ambassador to the UN led the second wave of opposition to the establishment of the SOGI Independent Expert to the UN in November 2016, saying “[n]o nation or group of nations should pretend to hold a monopoly over cultural norms and therefore seek to impose those values on others”.

BURUNDI



Law No. 1/05 of 22 April 2009 concerning the revision of the Penal Code.

Article 567

[SEXUAL RELATIONS WITH... SAME SEX]

“Whoever has sexual relations with someone of the same sex shall be punished with imprisonment for three months to two years and a fine of fifty thousand to one hundred thousand francs or one of those penalties.”

Burundi received 11 direct recommendations in its 2nd UPR in 2015 regarding sexual orientation, the majority regarding decriminalisation, to which the delegation is recorded as saying: “With regard to discrimination against homosexuals, the delegation acknowledged that the Criminal Code of 2009 still punished homosexuality. That situation was in line with the country’s customs and values, and the delegation asked for the international community’s understanding while Burundian society prepared for a change in mentality. The head of the delegation did emphasise, however, that he would raise the issue with the Government.” Burundi’s 3rd UPR will be in October 2017.

A Shadow Report to the Human Rights Committee (HRCee) that oversees the ICPPR describes the repressive conditions under which LGBT people live in Burundi. In November 2014, the HRCee unambiguously stated that Burundi, “... should decriminalise homosexuality; amend the ministerial order of the Minister of Basic Education in order to forestall its discriminatory application to young homosexuals; remove any *de jure* or *de facto* obstacle to or any restriction on the establishment of associations by homosexuals; and take all necessary steps to provide effective protection for homosexuals from threats to their physical integrity and from discrimination of any kind”.

In December 2014, the Committee Against Torture (CAT) spoke directly to discrimination based on SOGI, referring to Article 16 of the Convention: “[t]he State party should decriminalize homosexuality and take all necessary measures to effectively protect homosexuals from threats and any form of violence [...]; and ... investigate any cases involving violations of their physical integrity”.

In relation to Burundi’s presence at United Nations human rights mechanisms in the recent past, Burundi was examined by CESCR (the Committee on Economic, Social and Cultural Rights) in October 2015, which “recommends that the State party repeal all provisions that could lead to the discrimination, prosecution or punishment of individuals on the basis of their sexual orientation or gender identity and that it take all appropriate steps to ensure that lesbian, gay, bisexual and transgender individuals may exercise all the rights enshrined in the Covenant”.

The legal and social situation of LGBT people in Burundi is captured in a 2016 report produced by the East African Sexual Health and Rights Initiative.

CAMEROON



Penal Code of 1965 / 2016.

Article 347bis

[SEXUAL RELATIONS WITH... SAME SEX]

‘Whoever has sexual relations with a person of the same sex shall be punished with imprisonment from 6 (six) months to 5 (five) years and fine of from CFAF 20,000 (twenty thousand) to CFAF 200,000 (two hundred thousand).’

The country’s three leading (and only) lawyers who represent LGBT people **described** a slight moderation of official attitudes to same-sex sexual relations in the recent period, following international pressure and national advocacy. However, Cameroon remains extremely hostile and dangerous to LGBT people, according to a year-end **report** from Humanity First, a Yaoundé-based organisation seeking improved health care for LGBTI Cameroonians and recognition of their human rights.

Cameroon rejected all seven SOGI recommendations in its 1st cycle UPR in April 2008. Other than accepting one recommendation to, “[i]nvestigate police violence that took place on persons because of their actual or perceived sexual orientation”, it rejected a further 14 recommendations on non-discrimination and decriminalisation made in its 2nd UPR in January 2013, amidst a violent period in the country regarding SOGI issues. The State voluntarily pledged the following: “[f]or instance, regarding the issue of homosexuality, Cameroon was committed not to aggravate current criminal penalties, to continue to apply legal provisions, guarantee a fair trial to alleged homosexuals, and continue not to apply any discriminatory measure against them”.

In February 2014, in its concerns about LBT women, the Committee on the Elimination of Discrimination against Women at para. 37(c) **urged** that Cameroon should “[r]aise awareness among political, traditional and religious leaders, as well as members of civil society, about the possible withdrawal of article 347bis of the Penal Code”.

In its review of 2016, 76 *Crimes* reports that anti-gay Cameroonians **threatened and harassed** LGBTI rights advocates in Douala, Cameroon, driving some of them from their homes. In Yaoundé, Cameroon, Jules Eloundou, president of Humanity First, was the **target** of two homophobic attacks in the guise of burglaries. In early-2017, efforts commenced to **create** a Human Rights Observatory that will act as a urgently needed watchdog against violations of the rights of LGBT people and human rights defenders.

COMOROS



Penal Code of the Federal Islamic Republic of Comoros, 1981.

Article 318:

[UNNATURAL ACT]

“(3) Without prejudice to the more serious penalties provided for in the preceding paragraphs or by articles 320 and 321 of this Code, whoever will have committed an improper or unnatural act with a person of the same sex will be punished by imprisonment of between one and five years and by a fine of 50 000 to 1 000 000 francs. If the act was committed with a minor, the maximum penalty will always be applied.”

The Government of Comoros **rejected** its 2nd cycle UPR recommendations to “review provisions of the criminal law penalizing consensual same-sex activity between adults” (Czech Republic) and to “initiate a debate on the decriminalization of homosexuality” (Spain). The Netherlands reminded Comoros of its international law commitments by referring it to the Office of the High Commissioner for Human Rights’ **report** of 2011, and Brazil called for the country to “take step to avoid discrimination and violation of the human rights of the LGBT population”. The State **responded** (at para. 73) that there is no political energy (or “currently a political majority”) against this “invisible minority”, or will to change the law at this time.

EGYPT



Sexual relations between consenting adult persons of the same sex in private are not prohibited in Egyptian law. However, as recorded the Law on the Combating of Prostitution, and the law against debauchery have been used liberally to imprison gay men in recent years.

Law 58/1937 amended by Law 95-2003 (English translation download)

Article 98(f):

[PROPAGATION]

“Detention for a period of not less than six months and not exceeding five years, or paying a fine of not less than five hundred pounds and not exceeding one thousand pounds shall be the penalty inflicted on whoever exploits and uses the religion in advocating and propagating by talk or in writing, or by any other method, extremist thoughts with the aim of instigating sedition and division or disdaining and contempting any of the heavenly religions or the sects belonging thereto, or prejudicing national unity or social peace.”

Article 269 bis:

[INCITEMENT TO INDECENCY]

“Whoever is found on a public road or a traveled and frequented place inciting the passersby with signals or words to commit indecency shall be punished with imprisonment for a period not exceeding one month. If the felon recurs to committing this crime within one year of the first crime, the penalty shall become imprisonment for a period not exceeding six months and a fine not exceeding fifty pounds. A ruling of conviction shall necessitate placing the convict under police supervision for a period equal to that of the penalty.”

Article 278:

[SCANDALOUS ACT]

“Whoever commits in public a scandalous act against shame shall be punished with detention for a period not exceeding one year or a fine not exceeding three hundred pounds.”

Law 10/1961 on the Combating of Prostitution

Article 9:

[PRACTICING OR INCITEMENT TO DEBAUCHERY]

“Punishment by imprisonment for a period not less than three months and not exceeding three years and a fine not less than 25 LE and not exceeding 300 LE [...] or one of these two punishments applies in the following cases:

- (a) Whoever lets or offers in whatever fashion a residence or place run for the purpose of debauchery or prostitution, or for the purpose of housing one or more persons, if they are to his knowledge practicing debauchery or prostitution.
- (b) Whoever owns or manages a furnished residence or furnished rooms or premises open to the public and who facilitates the practice of debauchery or prostitution, either by admitting persons so engaged or by allowing on his premises incitement to debauchery or prostitution.
- (c) Whoever habitually engages in debauchery or prostitution.

Upon the apprehension of a person in the last category, it is permitted to send him for a medical examination. If it is discovered that he is carrying an infectious venereal disease, it is permitted to detain him in a therapeutic institute until his cure is completed.

It is permitted to determine that the convicted person be placed, upon completion of his sentence, in a special reformatory until the administrative agency orders his release. This judgment is obligatory in cases of recidivism, and the period spent in the reformatory is not allowed to be more than three years. [...]”

Article 178

[PUBLIC DECENCY - MORALITY CODE LIMITING SOGI PUBLIC EXPRESSION]

“A penalty of up to two years in prison and/or a fine of between 5,000 and 10,000 Egyptian pounds shall be imposed on anyone who produces or procures for the purpose of marketing, distributing, leasing, advertising or offering printed matter, files, pictures, advertisements, graphic or engraved images, hand-made drawings, photographs, signs, or any other articles or images which offend against public decency.”

Article 178 restrictions explain why there is so little positive or balanced discussion of same-sex relationships in Egypt. In 2016, Egyptian novelist Ahmed Naji was sentenced to two years in jail following the publication of a “sexually explicit” [heterosexual] excerpt from his novel ‘The Use of Life’ in state-owned literary magazine *Akhbar al-Adab*. Public morality is recognised by international law as grounds for limiting expression, but that limitation must not be overly broad or vague, and it must be necessary and proportionate relative to the harm that may be incurred. Likewise, individuals who, through

their sexual or gender expression, disrupt conservative binary gender models are especially vulnerable in Egypt, according to an activist who was based in Egypt through recent years. Through 2015 and 2016, widely publicised arrests continue.

Egypt's 2nd cycle UPR began in November 2014. Of the 28 NGO submissions to this session, only four mentions sexual orientation directly. However, there is no mention of sexual orientation in recommendations to Egypt or in that State's formal responses to its 2nd UPR.

According to *76 Crimes*, the largest reported number of arrests of LGBT people has been in Egypt, where a crackdown has been under way since 2013 as part of a larger government effort to arrest and harass political opponents, human rights defenders and journalists. In late-2016, LGBT community leaders estimate that as many as 500 LGBT people have been sent to prison.

ERITREA

Penal Code of 1957 (inherited from Ethiopian rule).

Art. 600. Unnatural Carnal Offences

[SAME SEX ACT]

"(1) Whosoever performs with another person of the same sex an act corresponding to the sexual act, or any other indecent act, is punishable with simple imprisonment".

In its 1st cycle UPR in 2009, the Government of Eritrea rejected the recommendations made by Canada and the USA to repeal the above-mentioned article, arguing that repeal is "...in direct conflict with the values and traditions of the Eritrean people".

A Joint Submission to its 2nd cycle UPR described the situation in Eritrea as of June 2014: "(Attacks on Lesbian Gay Bisexual and Transgender Intersex (LGBTI) Activists) Consensual same-sex conduct is criminalised under the Eritrean Transitional Penal Code and punishable by prison terms ranging from 10 days to three years. It is noted that the Eritrean Government rejected a recommendation by the Working Group on the Universal Periodic Review in 2010 to legalise same-sex activity. No LGBTI organisations publically exist in Eritrea and it is reported that the authorities have carried out periodic round-ups of LGBTI people".

At their 2nd cycle UPR, the Eritrean delegation stated that "consensual same sexual conduct was against the values and culture of the Eritrean society" in answer to the only SOGI recommendation it received (Italy): "Launch a national dialogue, as well as a campaign through media and in the schools, to tackle all forms of discrimination against lesbian, gay, bisexual and transgender (LGBT) persons". Eritrea's next UPR review is October 2018.

The Concluding Observations delivered to Eritrea by the United Nations Committee on the Rights of the Child in June 2015, make direct reference to SOGI: "Repeal the legal provisions criminalizing homosexuality and, by raising public awareness of equality and non-discrimination on the basis of sexual orientation, ensure that children who belong to groups of lesbian, gay, bisexual and transsexual persons or children from families formed by such persons are not subject to any form of discrimination", (para. 25(d)).

ETHIOPIA



The **Criminal Code** of the Federal Democratic Republic of Ethiopia, Proclamation No. 414/2004.

Article 629. Homosexual and other Indecent Acts

[HOMOSEXUAL ACT]

“Whoever performs with another person of the same sex a homosexual act, or any other indecent act, is punishable with simple imprisonment.”

Article 630. General Aggravation to the Crime

“(1) The punishment shall be simple imprisonment for not less than one year, or, in grave cases, rigorous imprisonment not exceeding ten years, where the criminal:

- a) takes unfair advantage of the material or mental distress of another or of the authority he exercises over another by virtue of his position, office or capacity as guardian, tutor, protector, teacher, master or employer, or by virtue of any other like relationship, to cause such other person to perform or to submit to such an act; or
- b) makes a profession of such activities within the meaning of the law (Art. 92).

(2) The punishment shall be rigorous imprisonment from three years to fifteen years, where:

- a) the criminal uses violence, intimidation or coercion, trickery or fraud, or takes unfair advantage of the victim’s inability to offer resistance or to defend himself or of his feeble-mindedness or unconsciousness; or
- b) the criminal subjects his victim to acts of cruelty or sadism, or transmits to him a venereal disease with which he knows himself to be infected; or
- c) the victim is driven to suicide by distress, shame or despair.”

At its 2nd cycle UPR that commenced in April 2014, Ethiopia ‘noted’ (did not accept) three Level 5 (act immediately) recommendations from France, Portugal and Argentina to decriminalise same-sex sexual activity. Ethiopia made no responses to the decriminalisation issue in the UPR Interactive Dialogue or in its formal responses to recommendations in this regard.

In its submission to the 56th session of the African Commission on Human and Peoples’ Rights on the situation of human rights defenders the International Service for Human Rights (ISHR) observes: “... that Ethiopia’s repressive laws provoke fear and self-censorship among HRDs and that HRDs frequently face threats, acts of intimidation, judicial harassment and arbitrary arrest”, with “...surveillance and official restrictions on the movement of HRDs.” The document goes on to say: “Defenders of lesbian, gay, bisexual, transgender and intersex (LGBTI) rights in Ethiopia operate in a particularly hostile environment, with organised anti-homosexuality organisations calling upon the government to close spaces for the LGBTI rights movement and tighten ‘anti-gay’ legislation, punishing ‘homosexual acts’ with the death penalty. LGBTI organisations have been consistently accused of being Western proxies seeking to subvert Ethiopian cultural values. Many clerical leaders have made statements against sexual diversity in a country where ‘homosexual acts’ are punishable with one to fifteen years imprisonment pursuant to Articles 629 and 630 of Ethiopia’s Criminal Code”.

The difficult legal and social situation of LGBT people in Ethiopia in 2014 and 2015 is described in a 2016 report produced by the East African Sexual Health and Rights Initiative, and the immense challenges faced by LGBT refugees is described in an article of March 2017.

GAMBIA



Criminal Code 1965, as amended in 2005

Article 144: Unnatural offences

[AGAINST ORDER OF NATURE]

“(1) Any person who—

- (a) has carnal knowledge of any person against the order of nature; or
 - (b) has carnal knowledge of an animal; or
 - (c) permits any person to have carnal knowledge of him or her against the order of nature;
- is guilty of a felony, and is liable to imprisonment for a term of 14 years.

(2) In this section- “carnal knowledge of any person against the order of nature” includes-

- (a) carnal knowledge of the person through the anus or the mouth of the person;
- (b) inserting any object or thing into the vulva or the anus of the person for the purpose of simulating sex; and
- (c) committing any other homosexual act with the person.”

[ATTEMPTED UNNATURAL OFFENCE]

Gambia’s Criminal Code states that a “person who has carnal knowledge of any person against the order of nature ... or permits any person to have carnal knowledge of him or her against the order of nature” commits a felony known as an “unnatural offense”, and on conviction is punishable by a fourteen-year prison term. An attempt to commit an “unnatural offense” is also a felony, on conviction, punishable by seven years of imprisonment.

Article 147(2) (as amended by the 2005 Act)

[GROSS INDECENCY]

“Any female person who, whether in public or private, commits any act of gross indecency with another female person, or procures another female person to commit any act of gross indecency with her, or attempts to procure the commission of any such act by any female person with herself or with another female person, whether in public or private, is guilty of a felony and liable to imprisonment for a term of five years. Section 147(3) further specifies that act of indecency includes any homosexual act.”

On 25 August 2014, the Parliament approved the **Criminal Code (Amendment) Act 2014**, which punishes ‘aggravated homosexuality’ with imprisonment for life. The Act came into effect on 9 October 2014 and includes the following article:

144A. Aggravated homosexuality

[SERIAL OFFENDER]

“(1) A person commits the offence of aggravated homosexuality where the –

- (a) person against whom the offence is committed is below the age of eighteen years;
- (b) offender is a person living with HIV;
- (c) offender is a parent or guardian of the person against whom the offence is committed;
- (d) offender is a person in authority over the person against whom the offence is committed;
- (e) victim of the offence is a person with disability;
- (f) offender is a serial offender; or
- (g) offender applies, administers or causes to use by any man or woman any drug, matter this with intent to stupefy or overpower him or her, so as to enable any person to have unlawful carnal connection with any person of same sex.

(2) A person who commits the offence of aggravated homosexuality is liable on conviction to imprisonment for life.”

Although The Gambia received and rejected (‘noted’) 12 recommendations regarding decriminalisation and non-discrimination based on SOGI at its 2nd cycle UPR process in October 2014, the State made no reference to this issue. Gambia’s 3rd UPR will be in April 2019.

In February 2015, the Committee on Rights of the Child **entreated** (at para. 29) The Gambia to, “[e]nsure that children who belong to LGBTI groups and children from LGBTI families are not subjected to any form of discrimination, and repeal the legal provisions criminalizing homosexuality”.

In March 2015, the Committee on Economic Social and Cultural Rights (CESCR) **recommended** (para.12) that The Gambia adopt non-discrimination legislation in line with its obligations under the Treaty (Art. 2(2)), and in line with its general Comment 20. It also urged the State to repeal or amend all legislation that could “result in discrimination, prosecution and punishment” to people based on SOGI, and to “take all the necessary steps to combat and prevent discrimination” for LGBT people.

In July 2015, the **CEDAW** Committee urged “... the State party to repeal the provisions of the Criminal Code on “unnatural offences” and “aggravated homosexuality”, end the arbitrary detention of lesbians and provide them with effective protection from violence and discrimination and provide appropriate training to law enforcement officials”.

In its significant report on The Gambia (February 2016), Human Rights Watch **observes** that section 144A ‘Aggravated homosexuality’, “is taken literally verbatim from section three of Uganda’s **Anti-Homosexuality Act**, which was later overturned by Uganda’s Constitutional Court in August 2014 on technical grounds”. It is **also clear** that The Gambia is increasingly embracing Islamic law in its governance practices, which will lead to further erasure of the rights of sexually diverse people in a country where they are **already** vilified, suspected and targeted in a climate of political unsteadiness.

GHANA

Criminal Code, 1960 (Act 29), as amended to 2003.

Section 99. Evidence of Carnal Knowledge.

“Whenever, upon the trial of any person for an offence punishable under this Code, it is necessary to prove carnal knowledge or unnatural carnal knowledge, the carnal knowledge or unnatural carnal knowledge shall be deemed complete upon proof of the least degree of penetration.”

Section 104. Unnatural Carnal Knowledge

[UNNATURAL CARNAL KNOWLEDGE]

“(1) Whoever has unnatural carnal knowledge—

- (a) of any person of the age of sixteen years or over without his consent shall be guilty of a first degree felony and shall be liable on conviction to imprisonment for a term of not less than five years and not more than twenty-five years; or
- (b) of any person of sixteen years or over with his consent is guilty of a misdemeanour; or
- (c) of any animal is guilty of a misdemeanour.

(2) Unnatural carnal knowledge is sexual intercourse with a person in an unnatural manner or with an animal.”

Article 296(4) of the Criminal Procedural Code

“A misdemeanour shall be liable to imprisonment for a term not exceeding three years.”

In December 2012, the Working Group on Ghana’s 2nd cycle UPR **reported** the State’s delegation as follows: “Concerning whether Ghana will end its policy of non-equal treatment of homosexuals and lesbian, gay, bisexual and transgender (LGBT) people in general (Germany) and how Ghana will apply the principle of non-discrimination in relation to the issue of homosexuality, (the Netherlands), the delegation emphasised that Ghana does not have a policy of non-equal treatment of its citizens. The Constitution entrenches the fundamental principles of non-discrimination and equality. It also guarantees the freedom of religion and the rights of persons to practise that religion. The Constitution also provides for the legislature to enact laws that further the social cohesion and economic development of the people”.

Although Section 104 of Act 29 is understood to apply to males only, there have been media reports of **mob attacks** on lesbians. Incidents of violence and responses to that violence have been **recorded** in Ghana, and the social hostility is described in an October 2015 **Shadow Report** to the UN Human Rights Committee (HRCee), while an overview of LGBT life in Ghana to early-2014 is **described** in Being LGBT in West Africa. Information to February 2016 is **contained** in the

UK Home Office's 'Country Information and Guidance Ghana: Sexual orientation and gender identity'. Fears of a 'backlash' following the Ghanaian Prime Minister's visit to Scotland in March 2016, where he was pressurised by activists, have been expressed.

In August 2016, the HRCee's **Concluding Observations** (paras. 43 and 44) expressed concern at the "discrimination, intimidation and harassment" directed at LGBT people, as well as at the State's laconic response that same sex sexual activity falls under Section 104. The HRCee recommended the law be revised and efforts to address discrimination be instituted.

GUINEA



Penal Code of 1988.

Article 325:

[ACT AGAINST NATURE]

"Any indecent act or act against nature committed with an individual of the same sex will be punished by six months to three years of imprisonment and a fine of 100,000 to 1,000,000 Guinean francs.

If the act was committed with a minor under 21 years of age, the maximum penalty must be pronounced.

If the act was consummated or attempted with violence, the guilty will suffer the penalty of imprisonment for period of 5 to 10 years".

The atmosphere within which nascent LGBT organising has been happening in the recent period is both **volatile** and **hostile**. Amnesty's 2015/2016 **report** on Guinea notes: "[a]t least three people were arrested because of their perceived sexual orientation. Two men were arrested on 22 April in Conakry. In May, the Tribunal of Mafanco sentenced them to three months' imprisonment".

In its 2nd cycle UPR in January 2015, Guinea 'noted' two recommendations from Italy and Argentina to remove discriminatory measures based on SOGI, including criminalisation. The State's delegation appeared not to have made any comment regarding SOGI.

KENYA



Penal Code (as amended by Act No. 5 of 2003).

Section 162

[AGAINST ORDER OF NATURE]

"Any person who:

- (a) has carnal knowledge of any person against the order of nature; or
- (b) has carnal knowledge of an animal; or
- (c) permits a male person to have carnal knowledge of him or her against the order of nature, is guilty of a felony

is liable to imprisonment for fourteen years:

Provided that, in the case of an offence under paragraph (a), the offender shall be liable to imprisonment for twenty-one years if—

- (i) the offence was committed without the consent of the person who was carnally known; or
- (ii) the offence was committed with that person's consent but the consent was obtained by force or by means of threats or intimidation of some kind, or by fear of bodily harm, or by means of false representations as to the nature of the act."

Section 163

[ATTEMPTED ACTS AGAINST THE ORDER OF NATURE]

"Any person who attempts to commit any of the offences specified in section 162 is guilty of a felony and is liable to imprisonment for seven years."

Section 165**[SODOMY / GROSS INDECENCY]**

"Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a felony and is liable to imprisonment for five years." Sodomy is prohibited as a common-law offence. It is defined as "unlawful and intentional sexual relationship through the anus between two human males".

On 24 April 2015, in *Gitari v Non-Governmental Organisations Co-ordination Board* the High Court of Kenya found that the State had violated Article 36 (freedom of association) of the newly (2010) Constitution of Kenya, by frustrating the process of registering the NGO, the National Gay & Lesbian Human Rights Commission (NGLHRC). The Court found that LGBTI people are a constituent part of the "every person" enumerated in Article 36, that the limitation of the current criminalising legislation refers to same-sex sexual acts and not one's sexual orientation *per se* (quoting *Kasha Jaqueline v Rolling Stone*, 2010, Uganda). It said it appears that, "the Board has acted in a manner that is both unconstitutional and unlawful, and amounts to an abuse of power", (para. 136) and also that the Board's reliance on its "own moral convictions as a basis for rejecting an application is outside the Board's mandate and a negation of its constitutional obligations" (para. 127), and cannot be used to deny others their constitutional rights.

As Jonah Chinga of the Gay and Lesbian Coalition of Kenya (GALCK) remarked in late-2015 "[d]espite ... barriers [such as homophobic remarks made by President Kenyatta, amongst others], Kenya has a somewhat exceptional position in the region and stands out as an East African country with a thriving LGBTQ movement. Unlike neighbouring countries, there are strong ongoing initiatives and growing activism". For example, see 'Research on the Lived Experiences of LBQ Women in Kenya' report produced by GALCK in February 2016.

It is notable that Kenya's first appearance at its 2nd cycle UPR was in January 2015, where according to the report of the Working Group, Chile and Poland recommended decriminalising "... consenting relationships between adults of the same sex", and both Denmark and Chile referred to enacting legislation combatting hatred, while France and Sweden referenced non-discrimination, and Brazil referenced freedom of association and expression "and rights of LGBT persons". The State responded that, "it had come through a long period of national dialogue on the new Constitution. Critical social issues were put to the various fora [...] particularly the use of criminal law in these cases. These issues were really divisive and the requisite political and social consensus on these issues was a working [sic] progress [...] On the rights of LGBT, not a single individual could confirm the application of the criminal law on the basis of his/her sexual orientation".

At paras. 21 and 22 of its Concluding Observations on Kenya in March 2016, the Committee on Economic, Social and Cultural Rights (CESCR) cites LGBTI, decriminalisation, discrimination, health, and stigmatisation. In April, the National Gay and Lesbian Human Rights Commission filed a case to challenge the law penalising same sex sexual relations, whilst making security provisions for staff. In June 2016, the Mombasa High Court ruled that forced anal examinations and forced HIV and Hepatitis B tests of men suspected of same sex sexual conduct, are constitutional. According to the National Gay and Lesbian Human Rights Commission (NGLHRC) the ruling sets a "devastating precedent" that allows suspicion of someone's sexual orientation as grounds for "stripping them of their dignity and their fundamental rights".

LIBERIA

Penal Law of 1976, §§ 14.74 & 50.7, IV Liberian Codes Revised tit. 26 (rev. ed. 1998).

Section 14.74. Voluntary sodomy.**[SODOMY]**

"A person who engages in deviate sexual intercourse under circumstance not stated in Section 14.72 or 14.73 has committed a first-degree misdemeanour."

Section 14.79. Definitions relating to sections on sexual crimes against the person

In this subchapter: “sexual intercourse” occurs upon penetration, however slight; ejaculation is not required;

“deviate sexual intercourse” means sexual contact between human beings who are not husband and wife or living together as man and wife though not legally married, consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and vulva;

“sexual contact” means any touching of the sexual or other intimate parts of a person for the purpose of arousing or gratifying sexual desire.”

Section 50.7. Sentence to imprisonment for misdemeanour.

“A person who has been convicted of a misdemeanour may be sentenced to imprisonment for the following terms:

For a misdemeanour of the first degree, to a definite term of imprisonment to be fixed by the court at no more than one year;

For a misdemeanour of the second degree, to a definite term of imprisonment to be fixed by the court at no more than thirty days.”

The forces motivating and resisting sexual and gender diversity in Liberia since 2011 are well described in a country information note by the UK Home Office (December 2015), and in Rodenbough (2014).

Liberia received 12 recommendations, three of which they accepted, regarding SOGI in their 2nd UPR review in May 2015, concerning criminalisation, non-discrimination. Interestingly, Madagascar, another African Union (UN bloc) member State, made the recommendation to “condemn discrimination”, and the US made a call to implement the terms of their new National Human Rights Action Plan, which is inclusive of LGBT people, while Italy’s call for Liberia to “combat all forms of discrimination and abuse against LGBTI persons” were all accepted.

CEDAW made an unusual call (at para. 43) in its latest Concluding Observations in November 2015, recognising the actuality of lesbian lives in Liberia: “The Committee (...) also calls upon the State Party to adopt necessary legislative measures to ensure to protect the economic rights of women in *de facto* unions”.

LIBYA

**Penal Code of 1953 as amended by Law 70 of 1976****[ZINA]**

“Regarding the Establishment of the Hadd Penalty for Zina and Modifying Some of the Provisions of the Penal Law”. The law of 1976 added a fourth paragraph to Articles 407 and 408 respectively that criminalises consensual same-sex behavior.

Article 407(4) of 1953**[ILLICIT SEXUAL INTERCOURSE]**

“Whoever has [illicit] sexual intercourse with another person with his consent shall be punished along with his partner with imprisonment for a period not exceeding 5 years”.

Article 408(4) of 1953

“Whoever disgraced the honor of a person with his consent shall be punished along with his partner with imprisonment”.

Article 421 of 1953**[MORALITY CODE LIMITING SOGI PUBLIC EXPRESSION]**

“Anyone who commits an act of indecency in a public place will be liable to detention for up to one year and a fine of up to 50 Dinars. The same penalty will apply to anyone who offends public decency by the distribution of writings, pictures or other articles of an indecent nature, or who publicly exposes the same for sale”.

SOGI issues appear not to have been bought up in recommendations to Libya in either of their 1st or 2nd UPR cycles (November 2010 or May 2015). However, ARC International, IGLHRC and ILGA made a Joint Submission in 2010, and Amnesty International made mention of SOGI. Again in 2015, Amnesty repeated its earlier mention, and a recently-formed (2014) online organisation of LGBT Libyan activists, Quzah, submitted a report on the current SOGIESC situation in Libya, demonstrating how LGBTI Libyans are forced to hide their identities and go without protection from discrimination.

MALAWI

**Penal Code Cap. 7:01 Laws of Malawi.****Section 153. Unnatural offences****[AGAINST THE ORDER OF NATURE]**

“Anyone who –

(a) has carnal knowledge of any person against the order of nature; or

(b) has carnal knowledge of any animal; or

(c) permits a male person to have carnal knowledge of him or her against the order of nature,

shall be guilty of a felony and shall be liable to imprisonment for fourteen years, with or without corporal punishment.”

Section 154. Attempt to commit unnatural offences**[ATTEMPTED UNNATURAL OFFENCE]**

“Any person who attempts to commit any of the offences specified in the last preceding section shall be guilty of a felony and shall be liable to imprisonment for seven years, with or without corporal punishment.”

Section 156 Indecent practices between males**[GROSS INDECENCY - MALE]**

“Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, shall be guilty of a felony and shall be liable to imprisonment for five years, with or without corporal punishment.”

In December 2010, the Parliament passed a bill amending the Penal Code of Malawi. In late January 2011, President Bingu Wa Mutharika assented to the bill, thus completing its enactment into law.

The new Section 137A:**[GROSS INDECENCY - FEMALE]**

captioned “Indecent practices between females” provides that any female person who, whether in public or private, commits “any act of gross indecency with another female” shall be guilty of an offence and liable to a prison term of five years. The term “gross indecency” remains undefined in this legislation.”

In the year following the introduction of Section 137A, which had expanded the reach of the law to women, the government introduced a suspension on arrests under the ‘Unnatural offences’ provisions. However, as widely reported, two men were arrested (filed under ‘sodomy’) in December 2015, which then led to a reaffirmation of the moratorium. In 2016, arrests were made under the Act, while acts of violence against LGBT have gone unaddressed by authorities.

While SOGI issues have got greater visibility in Malawi (for example decriminalisation is called for in the National Strategic Plan for HIV and AIDS.2015–2020), with strengthening advocacy from within the country, there has been an increasing political hostility by political and religious opposition. In this context, increasing attention from other States is reflected in the appeals to Malawi to regularise its legislation in line with its international law commitments.

In January 2016, the United Nations cautioned against a rising backlash in the country. Regarding the failure to prosecute a politician for blatant hate speech, the UN said “this case sends a dangerous message that inciting others to kill gay people is legitimate and will be tolerated by the authorities – in effect encouraging violent threats and attacks on the gay and lesbian community in Malawi”. At time of writing, this case, certified as a constitutional case, is ongoing. 76 Crimes reports on a variety of developments in Malawi in this past year.

Of the 18 recommendations concerning SOGI that Malawi received in its 2nd UPR in May 2015, the State accepted two: the first agreeing to “take effective measures to protect” LGBTI persons from violence and to prosecute perpetrators (Austria), and the second guaranteeing “effective access” to health services (Honduras).

The Human Rights Committee that oversees the ICCPR expressed concern in 2014 that the newly-formed Human Rights Commission did not include SOGI within its mandate. It said Malawi “should review” its discrimination legislation to include SOGI, decriminalise same-sex sexual relations, implement a monitoring mechanism for violence directed at LGBTI people

and prosecute perpetrators, ensure public officials do not incite violence and should positively raise public awareness, and finally guarantee “effective access” to health services for LGBTI people.

In November 2015, the Committee on the Elimination of Discrimination against Women welcomed the adoption of the Gender Equality Act that prohibits discrimination, but **expressed** concern about the 2011 amendments to the Penal Code that “criminalizes same-sex relationships between women”, and it recommended that Malawi “Envisage decriminalizing sexual relationships between adult women” (paras. 10 and 11).

MAURITANIA



Penal Code of 1984 (Francais).

Article 308.

[ACT AGAINST NATURE]

“Any adult Muslim man who commits an indecent act or an act against nature with an individual of his sex will face the penalty of death by public stoning. If it is a question of two women, they will be punished as prescribed in article 306, first paragraph” [Three months to two years imprisonment and a fine of 5,000 to 60,000 UM].

Both in its 1st UPR (November 2010) and in its 2nd UPR (November 2015) sessions, Mauritania was urged to remove criminalisation of same-sex sexual relations. Importantly, in both the interactive dialogue and in written recommendations in 2015, it **received** numerous calls to uncouple the death penalty from same-sex sexual behavior. The State addressed the issues of death penalty by mentioning (at para. 54) that the country “had observed a *de facto* moratorium” for the past 28 years, but did not commit to remove it from the statute. It appears that the issue of criminalizing same sex sexual relations was not addressed despite various recommendations. However, the delegation **indicated** a wish to have the OHCHR work with them in-country (para.16), and: “[t]he delegation emphasised that the Government had cooperated with all partners in developing an action plan against racial discrimination, xenophobia and intolerance and in drafting a national strategy for promoting social cohesion”.

MAURITIUS



Criminal Code of 1838.

Section 250. Sodomy and bestiality

[SODOMY]

“(1) Any person who is guilty of the crime of sodomy or bestiality shall be liable to penal servitude for a term not exceeding 5 years.”

In 2007, the Government introduced the **Sexual Offences Bill**, which *would delete the crime of sodomy (see Section 24) and set an equal age limit of 16 years for sexual acts (Sections 11 to 14).*

*However, the bill was never passed in the Parliament, and in 2013 the Government **announced** its decision (at para 17) to amend the Criminal Code instead, “in order to make better provisions for the criminalisation of various acts of sexual perversion” (this was later **clarified** (at para. 121) to refer to such acts as marital rape).*

*It its 2nd cycle UPR cycle in 2013, the State of Mauritius received three recommendations (Ireland, Australia and Canada) to decriminalise sodomy, but **responded** that further consultations on the matter were necessary.*

In the section “Personal and Professional Behaviour” of the 2015 “Code of Ethics for Public Officers”, non-discrimination on grounds of sexual orientation is **listed**. Following a **complaint** to the Equal Opportunities Commission of Mauritius in 2012, the ban on men who have sex with men giving blood was lifted in 2013.

MOROCCO



Penal Code of 26 November 1962.

Article 489

[UNNATURAL ACTS]

“Any person who commits lewd or unnatural acts with an individual of the same sex shall be punished with a term of imprisonment of between six months and three years and a fine of 120 to 1,000 dirhams, unless the facts of the case constitute aggravating circumstances.”

Article 483

[MORALITY CODE LIMITING SOGI PUBLIC EXPRESSION- OBSCENITY]

“[W]hoever commits an act of public indecency, whether by nudity or obscenity in his actions, shall be punished by imprisonment of one month to two years and a fine of 200 to 500 dirhams.”

Although there were no direct references to SOGI in Morocco's 2nd UPR sessions in October 2015, the USA made a recommendation to “Promptly approve the license applications for all civil society organisations that meet legal requirements, including those organisations advocating for minority populations” (para. 39)

The Committee on Economic, Social and Cultural Rights made specific SOGI recommendations in their Concluding Observations on Morocco in October 2015

In para. 14. The Committee said that “(d) Ensure that [...] homosexuals can enjoy the rights recognized in the Covenant, particularly access to employment, social services, health care and education”. In para. 15, “the Committee is concerned that the State party criminalizes consensual sexual relations between same-sex adults (art. 489 of the Criminal Code). The Committee expresses its concern about discrimination on grounds of sexual orientation and gender identity and about the stigmatisation and violence to which these persons are subjected”.

Numerous reports of arrests and police intimidation appeared in the recent period with a particularly alarming event recorded in Rabat, March 2016. In August 2016, in its Concluding Observations, the Human Rights Committee said “11. The Committee expresses its concern about the criminalization of homosexuality punishable by up to three years’ imprisonment and the arrests made on that basis. It is also concerned about allegations of incitement to hatred, discrimination and violence against persons on the grounds of their sexual orientation or gender identity (Arts.2, 9 and 26).”

NAMIBIA



Sodomy remains a crime in Namibia according to the Roman-Dutch common law. There is no codified sodomy provision in Namibia, although despite the fact that the provision has been triggered (see Ch. 4) extremely rarely its ‘chill factor’ has effect. Section 299 of the 2004 Criminal Procedure Act groups sodomy together with a list of other crimes for which police are authorised to make an arrest without a warrant or to use of deadly force in the course of that arrest.

The calls for legal congruence with the country’s 1990 Constitutional principles (Articles 8, 10 and 13 – dignity, equality and non-discrimination, and privacy) have been repeatedly echoed, as has consistency with its international law obligations. However, despite the fact that the country has accepted LGBT Ugandan asylum seekers in the last three years, there have been worrying utterances by political and religious representatives in Namibia, according to advocates.

At its 2nd UPR session in January 2016 the Namibian government rejected five recommendations for decriminalization, and accepted two to do with strengthening of institutional capacities to address violence, and the adoption of measures to combat violence. A Shadow Report by SALC and other groups pointed out that: “Namibia has also not yet extended

the grounds for non-discrimination in the Constitution. They remain quite restricted and do not include grounds such as sexual orientation or disability. The 1992 Labour Act included both sexual orientation and disability as a ground for non-discrimination, but sexual orientation was removed from the 2007 **Labour Act**".

The [Namibian] delegation **stated** that, "LGBT persons were not victimized or persecuted for practicing their preferred sexual orientation. Article 13 of the Constitution protects the right to privacy. No person is requested to disclose his or her preferred sexual orientation in any official Government form or document and no person can be refused access to public or private services based on their preference. The laws do not make provision for marriage between same sex adults."

In April 2016 in its **Concluding Observations** on Namibia, the Human Rights Committee that oversees the ICCPR made substantial recommendations regarding non-discrimination policy and law in key areas, awareness-raising, police ill-treatment, and *refoulement* of refugees regarding SOGI. In its **Concluding Observations** on Namibia in April 2016, the Committee on Economic, Social and Cultural Rights (CESCR) recommends the Constitutional provision against discrimination be extended to enumerate sexual orientation (GI is not named), as well as HIV status. Comprehensive anti-discrimination legislation is also called for, as is the call for decriminalisation of sexual relations between consenting individuals of the same sex. In November 2016, the **Committee Against Torture** spoke (para. 30) of severe issues regarding detention, harassment, police brutality, sexual violence, stigmatisation, violence, access to justice, and criminalisation.

NIGERIA



Criminal Code Act, Chapter 77, Laws of the Federation of Nigeria 1990.

Section 214

[AGAINST ORDER OF NATURE]

"Any person who-

- (1) has carnal knowledge of any person against the order of nature; or
- (2) has carnal knowledge of an animal; or
- (3) permits a male person to have carnal knowledge of him or her against the order of nature;

is guilty of a felony, and is liable to imprisonment for fourteen years."

Section 215

[ATTEMPTED CARNAL KNOWLEDGE]

"Any person who attempts to commit any of the offences defined in the last preceding section is guilty of a felony, and is liable to imprisonment for seven years. The offender cannot be arrested without warrant."

Section 217

[GROSS INDECENCY]

"Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a felony, and is liable to imprisonment for three years. The offender cannot be arrested without warrant."

Note that several Northern Nigerian states have adopted Islamic Sharia laws, criminalising sexual activities between persons of the same sex. The maximum penalty for such acts between men is death penalty, while the maximum penalty for such acts between women is a whipping and/or imprisonment. As **scholarship** shows (see p. 60) these laws **differ** from the federal law, as most of these prohibit also sexual relations between women. The states which have **adopted** such laws are: Bauchi (the year 2001), Borno (2000), Gombe (2001), Jigawa (2000), Kaduna (2001), Kano (2000), Katsina (2000), Kebbi (2000), Niger (2000), Sokoto (2000), Yobe (2001) and Zamfara (2000).

The Same-Sex Marriage (Prohibition) Act

[LAWS LIMITING SOGI PUBLIC EXPRESSION]

Passed on 17 December 2013, by the Senate and the House of Representatives and signed by the President on 7 January 2014.

- “§1. (1) A marriage contract or civil union entered into between persons of same sex:
 (a) is prohibited in Nigeria; and
 (b) shall not be recognised as entitled to the benefits of a valid marriage.
 (2) A marriage contract or civil union entered into between persons of same sex by virtue of a certificate issued by a foreign country is void in Nigeria, and any benefit accruing there-from by virtue of the certificate shall not be enforced by any court of law.
 §2. (1) A marriage contract or civil union entered into between persons of same sex shall not be solemnised in a church, mosque or any other place of worship of Nigeria.
 (2) No certificate issued to persons of same sex in a marriage or civil union shall be valid in Nigeria.
 §3. Only a marriage contracted between a man and a woman shall be recognised as valid in Nigeria.
 §4. (1) The registration of gay clubs, societies and organisations, their sustenance, processions and meetings is prohibited.
 (2) The public show of same sex amorous relationship directly or indirectly is prohibited.
 §5. (1) A person who enter into a same-sex marriage contract or civil union commit an offence and are each liable on conviction to a term of 14 years in prison.
 (2) A person who registers, operates or participates in gay clubs, societies and organisations or directly or indirectly makes public show of same-sex amorous relationship in Nigeria commits an offence and shall each be liable on conviction to a term of 10 years in prison.
 (3) A person or group of persons who administers, witnesses, abets or aides the solemnisation of same-sex marriage or civil union, or supports the registration, operation and sustenance of gay clubs, societies, organisations, processions or meetings in Nigeria commits an offence and is liable on conviction to a term of 10 years of imprisonment.”

In 2011, 2012 and in 2007, the Special Rapporteur on the rights to freedom of peaceful assembly and of association highlighted human rights violations, torture and other cruel, inhuman or degrading treatment or punishment, and the Special Representative of the Secretary-General on the situation of human rights defenders, issued a Joint Statement on the [then] proposed prohibition in a 2007 Bill outlawing same-sex marriage.

Regarding Nigeria's responses to its international human rights law obligations in United Nations fora regarding SOGI, the country offered 'no response' to its 1st cycle Universal Periodic Review recommendations in 2009 to decriminalise and to withdraw its prohibition of same-sex marriage. In its 2nd cycle in October 2013, the Government rejected all 12 LGBTI-related recommendations to do with decriminalisation, discrimination, international law obligations and the release of individuals imprisoned because of their sexual practice.

An overview of the country situation to late-2015 in Nigeria was produced in November 2015, and a discussion of the 2014 legislation is provided by Rudman. Kaleidoscope Trust's *Speaking Out* report (at 22) provides an insightful snapshot of the socio-political context in which SOGI issues are being responded to currently. In a very rare case of accountability, in March 2016, the Federal High Court accepted evidence of violence, humiliation, and attempted extortion, eliciting a monetary award and public apology by the police force of Abuja against a well-known HIV activist.

In May 2016, TIERS published a review of the previous year regarding human rights violations against LGBTI people in Nigeria, recording at least 152 violations against 232 persons. In January 2017, survey results concerning the current life situations of LGBT Nigerians were published, illustrating the great pressures that LGBT Nigerians live under whilst going about daily lives.

SENEGAL



Penal Code of 1965.

Article 319(3)

[UNNATURAL ACT]

“Without prejudice to the more serious penalties provided for in the preceding paragraphs or by articles 320 and 321 of this Code, whoever will have committed an improper or unnatural act with a person of the same sex will be punished by imprisonment of between one and five years and by a fine of 100,000 to 1,500,000 francs. If the act was committed with a person below the age of 21, the maximum penalty will always be applied.”

On 24 December 2015, 11 men were **arrested** on suspicion of offenses under Section 319. The court released them four days later, but their faces and identities had been shared on social media, stirring huge public homophobia. The **backlash** to their release was led by the Islamic organisation, Jamra. Around 90% of the population is estimated to be Muslim (Sufi), but Senegal borders with Northern Nigeria where Boko Haram are active, and its neighbor, Gambia, recently declared itself an Islamic state.

In its 2nd cycle UPR cycle in October 2013, the Government of Senegal received 13 SOGI recommendations, seven of them (from Belgium, Greece, Germany, Ireland, Netherlands, Switzerland and Mexico) to repeal the above-mentioned article. The Government **rejected** them and argued that Article 319 must be interpreted as a punishment for “unnatural acts committed in public”, and that nobody has been imprisoned for same-sex sexual activity in the country.

In March 2016, in the context of discussions around Constitutional reform, the President of Senegal was **unequivocal** that the law penalising same sex sexual relations will never be repealed under his tenure. Later in March, campus **violence** broke out concerning a young gay man.

SIERRA LEONE



Offences against the Person Act 1861.

[BUGGERY]

Section 61

“Whosoever shall be convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than ten years.”

Both the *Being LGBT in West Africa report* (at 63) and Kaleidoscope Trust’s *Speaking Out* (at 24) describe very hostile socio-political environments in Sierra Leone.

In April 2014, the Human Rights Committee made a strong clear **statement** to Sierra Leone in its first Concluding Observations for that State under the ICCPR: “The State party should review its Constitution and legislation to ensure that discrimination on the grounds of sexual orientation and gender identity is prohibited, including by decriminalizing sexual relations between consenting adults of the same sex, in order to bring its legislation into line with the Covenant. The State party should also take the necessary steps to put an end to the social stigmatisation of homosexuality and send a clear message that it does not tolerate any form of harassment, discrimination or violence against persons based on their sexual orientation or gender identity”.

In its 2nd UPR in January 2016 six States made recommendations to Sierra Leone (three Latin American, three European). Four of these **urged** the State to repeal the 1861 Act (decriminalise), while five contain language urging non-discrimination or anti-stigmatisation initiatives. The Sierra Leone delegation ‘noted’ (functionally rejected) all six recommendations.

SOMALIA



Penal Code, Legislative Decree No. 5/1962.

Article 409. Homosexuality

[INTERCOURSE WITH A PERSON OF THE SAME SEX]

“Whoever has carnal intercourse with a person of the same sex shall be punished, where the act does not constitute a more serious crime, with imprisonment from three months to three years. Where the act committed is an act of lust different from carnal intercourse, the punishment imposed shall be reduced by one-third.”

Article 410. Security Measures

"A security measure may be added to a sentence for crimes referred to in Articles 407, 408, and 409." (Unofficial Translation)

Article 400

Under the heading of sexual violence, specifies increased punishment when such violence is done to a person of the same sex in the context of "against nature".

Article 406**[MORALITY CODE LIMITING SOGI PUBLIC EXPRESSION]**

"Whoever, in a public place or a place open to the public, incites anyone to lewd acts, even in an indirect manner, shall be punished, where the act does not constitute a more serious offence, with imprisonment up to one year or with fine up to Sh.So. 2,000."

The political situation in Somalia has been complicated since the fall of the dictator Mohamed Siad Barre in 1991, and the appropriate enforcement of the national Penal Code is **questionable**. However, Somaliland in the north has declared itself independent, and it still **applies** the Penal Code.

However, further south and central in the country, as **recorded** in Christman's 2016 report, "Al-Shabaab's beliefs stem from a Salafi-Wahhabi strand of Sunni Islam (an ultra conservative movement within Sunni Islam). They enforce a strict interpretation of Shariah law. Shariah law explicitly forbids homosexuality - the punishment for those 'found guilty' is at a judge's discretion, and may be punished by death".

Writing in 2014, the Somali artist and writer Diriye Osman, now resident in the UK, **says** to come out in Somalia one must be prepared for, "...physical abuse, ceaseless harassment, imprisonment or death". Osman's own family threatened him with violence upon learning that he is gay. In early 2017, it is **reported** that al Shabaab (a militant group allied to al-Qaeda) murdered two individuals on account of their sexual orientation.

In its 2nd UPR in early-2016, Somalia appears to have received only one recommendation (Canada) regarding SOGI: "Address widespread impunity—including for attacks against journalists, civil society and human rights defenders, women and LGBTI persons—by conducting timely and impartial investigations, investigating threats of violence, and prosecuting perpetrators". The State 'noted' this recommendation, and no other comment was recorded in the Working Group's **report**.

SOUTH SUDAN



Penal Code Act No. 9 of 2008, § 248, 1(1) Acts Supplement to the Southern Sudan Gazette (Feb. 10, 2009).

Section 248. Unnatural Offences**[AGAINST THE ORDER OF NATURE]**

"(1) Whoever, has carnal intercourse against the order of nature with any person and whoever allows any person to have such intercourse with him or her commits an offence, and upon conviction, shall be sentenced to imprisonment for a term not exceeding ten years and may also be liable to a fine. [...]"

Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section."

Section 151. Indecent Acts**[GROSS INDECENCY]**

"Whoever commits an act of gross indecency upon the person of another person or any sexual act which does not amount to Zina or Sodomy shall be punished with not more than forty lashes and shall also be liable for imprisonment for a term which may not exceed one year or fine."

157 Qadhf (Casting Accusation of In chastity)**[QADHF]**

"(1) Whoever imputes to any honourable living or dead person by express words, implicitly, by writing or indicative signs accusation of Zina or Sodomy or illegitimacy is said to commit Qadhf.

(2) A person is said to be honourable (Chaste) if he has not been convicted for Zina, Sodomy, Rape, Incest or Practising Prostitution.

(3) Whoever commits Qadhf shall be punished with flogging eighty lashes."

South Sudan achieved its independence from Sudan on 9 July 2011, three months after Sudan's 1st cycle UPR. Therefore, South Sudan did not in fact get an independent first review. At the 2nd cycle UPR, South Sudan's first review was **reported** on in November 2016. It appears that no civil society organisations raised SOGI issues in their submissions to South Sudan, and only Uruguay made a recommendation (128.33) to decriminalise same sex sexual relations between consenting adults. In its **responses**, the State indicated that Uruguay's and other recommendations were "in conflict with the national laws, government structures, policies or customs".

SUDAN



Penal Code 1991 (Act No. 8 1991).

Section 148. Sodomy

[SODOMY]

- "(1) Any man who inserts his penis or its equivalent into a woman's or a man's anus or permitted another man to insert his penis or its equivalent in his anus is said to have committed Sodomy.
- (2) (a) Whoever commits Sodomy shall be punished with flogging one hundred lashes and he shall also be liable to five years imprisonment.
- (b) If the offender is convicted for the second time he shall be punished with flogging one hundred lashes and imprisonment for a term which may not exceed five years.
- (c) If the offender is convicted for the third time he shall be punished with death or life imprisonment."

Section 151. Indecent Acts

[GROSS INDECENCY]

"Whoever commits an act of gross indecency upon the person of another person or any sexual act which does not amount to Zina or Sodomy shall be punished with not more than forty lashes and shall also be liable for imprisonment for a term which may not exceed one year or fine."

157 Qadhf (Casting Accusation of In chastity)

[QADHF]

- "(1) Whoever imputes to any honourable living or dead person by express words, implicitly, by writing or indicative signs accusation of Zina or Sodomy or illegitimacy is said to commit Qadhf.
- (2) A person is said to be honourable (Chaste) if he has not been convicted for Zina, Sodomy, Rape, Incest or Practising Prostitution.
- (3) Whoever commits Qadhf shall be punished with flogging eighty lashes."

In its 1st cycle UPR in 2011, the State made no mention of the civil society submissions (JS 5, JS 7 and JS 11) that were **available** to it that referenced sexual orientation or gender identity. In its 2nd cycle review in May 2016, Sudan '**noted**' (declined to accept) two recommendations given by Honduras ("Adopt measures in the legislative and political spheres, including appropriate budget allocation, to guarantee, prevent and eradicate discrimination on religious grounds, ethnic composition, gender or sexual orientation"), and Chile ("Push forward for the elimination of discriminatory provisions affecting lesbian, gay, bisexual, transgender and intersex persons"). In early-2017, an insightful short **video** on LGBT life in Sudan was released, illustrating an underlying brutality in social attitudes towards sexual and gender diversity.

SWAZILAND



Same-sex sexual relations are a **common law offence** in Swaziland, under which there have been **convictions**. There has been a considerable lack of clarity whether lesbian sexual activity is outlawed, and by **analysis** to date it appears not to be, although violence against gay and lesbian persons is **evident**.

In its 1st cycle UPR review in 2011, the Government clearly **stated** its position on the matter of decriminalisation of same-sex sexual relations by rejecting five UPR recommendations (Spain, USA, Portugal). However, Swaziland did **accept** two

further recommendations to, “[i]mplement measures to prevent violence against the LGBT community, through training and advocacy campaigns” (USA) and to ensure access to health without discrimination based on SOGI (Portugal).

There is no mention of sexual orientation or SOGI in the State’s report to its voluntary Mid-term Implementation Assessment (MIA) in early-2015. In their commentary on the Government’s activity in relation to recommendations they accepted at the UPR in 2011, Lawyers for Human Rights in Swaziland (LHRS) **explain** the State’s non-action as being based on the homophobia inherent in indigenous tradition in the country, and they observe “[h]omosexuality is not a priority for Swaziland at the moment it seems”. A 2015 **report** (at p.26) suggests that homophobic violence is on the rise in the country. In 2016, a ‘**gay group**’ was set up to create a support network and help **counter** stigmatisation.

In its 2nd cycle UPR review in May 2016, Swaziland **received** three recommendations, but accepted only two of them: “Prohibit discrimination on the basis of sexual orientation and gender identity, particularly concerning the enjoyment of the right to health” (Slovenia) and “Ensure and guarantee non-discriminatory access to health services, education, justice and employment for all persons, irrespective of their actual or perceived sexual orientation or gender identity” (Spain). However, it again rejected a recommendation to decriminalise “same sex relations”, also from Slovenia.

TANZANIA



(Zanzibar)



Penal Code of 1945 (as amended by the **Sexual Offences Special Provisions Act, 1998**).

Chapter XV: Offences Against Morality

Section 154. Unnatural offences

[AGAINST THE ORDER OF NATURE]

“(1) Any person who—

(a) has carnal knowledge of any person against the order of nature; or

(b) has carnal knowledge of an animal; or

(c) permits a male person to have carnal knowledge of him or her against the order of nature,

commits an offence, and is liable to imprisonment for life and in any case to imprisonment for a term of not less than thirty years.

(2) Where the offence under subsection (1) of this section is committed to a child under the age of ten years the offender shall be sentenced to life imprisonment.”

Section 155. Attempt to commit unnatural offences

[ATTEMPTED UNNATURAL OFFENCE]

“Any person who attempts to commit any of the offences specified under section 154 commits an offence and shall on conviction be sentenced to imprisonment for a term of not less than twenty years.”

Section 157. Gross indecency

[GROSS INDECENCY]

“Any male person who, whether in public or private, commits any act of gross indecency with another male person or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person, with himself or with another male person, whether in public or private, commits an offence and is liable to imprisonment for five years.”

Section 138A. Gross indecency

[GROSS INDECENCY]

“Any person who, in public or private commits, or is party to the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person, commits an offence and is liable on conviction to imprisonment for a term of not less than one year and not exceeding five years or to a fine not less than one hundred thousand shillings and not exceeding three hundred thousand shillings; save that where the offence is committed by a person of eighteen years of age or more in respect of any person under eighteen years of age, a pupil of a primary school or a student of a secondary school the offender shall be liable on conviction to imprisonment for a term not less than ten years, with corporal punishment, and shall also be ordered to pay compensation of an amount determined by the court to the person in respect of whom the offence was committed for any injuries caused to that person.”

The Penal Decree (Amendment) Act, 2004 of Zanzibar

Section 145:

[LESBIANISM]

"Any woman who commits an act of lesbianism with another woman whether taking an active or passive role shall be guilty of an offence and liable on conviction to a term not exceeding five years or to a fine not exceeding 500,000 shillings".

Tanzania 'noted' three recommendations to decriminalise and provide equal opportunity legislation across its civil code in its 1st cycle UPR in 2011. Interestingly, although there were no recommendations for same-sex marriage given, in its responses to recommendations the delegation for Tanzania mentioned, "Tanzania had no law on same-sex marriage, as the practice of homosexuality went against its traditional, cultural and religious rights. Homosexuality was illegal and punishable by law".

At its 2nd cycle UPR in May 2016, Tanzania received six recommendations regarding decriminalisation, non-discrimination and access to justice, health and rights to assembly and expression. Further, Canada called for the implementation of Tanzania's National Human Rights Action Plan (2013-2017) and for the State to publicly call for an end to attacks. The delegation 'noted' (functionally rejected) all recommendations.

The Concluding Observations of the Committee for the Rights of the Child in March 2015, at Tanzania's 3rd review, overtly specified sexual orientation when the CRC spoke of being, "... concerned about reports that attitudes towards the sexual orientation of some HIV-infected children prevent these children from seeking and receiving proper HIV services and community health services (para 56). It thus recommended, *inter alia*, that Tanzania "(d) Ensure access to proper HIV services and community health services for all children, regardless of their sexual orientation, throughout the territory of the State party; and (e) Engage in public-education campaigns to combat discriminatory attitudes towards children on the grounds of their sexual orientation".

The Human Dignity Trust records a number of arrests made in recent years. The harsh legal and social situation of LGBT people in Tanzania in 2015/2016 is captured in a 2016 report 'The Other Tanzania' produced by the East African Sexual Health and Rights Initiative. Reports in late-2016 and early-2017 suggest an increased State-representative hostility, with raids on HIV organisations for 'promotion' activities, and specific targeting of [gay] male sex workers. LGBT people have had to conceal their identities under the pressure of the law, thereby few voices have been able to advocate. But the marked escalation of political attention regarding SOGI, and a severe and dangerous crackdown on activities are currently intensifying in Tanzania.

TOGO



Penal Code of 13 August 1980 (revised April 2000)

Article 88

[CRIMES AGAINST NATURE]

"Impudent acts or crimes against nature with an individual of the same sex are punished with imprisonment from one to three years and 100,000-500,000 franc in fine".

The socio-political environment for discourse on SOGI in Togo has been challenging over the past number of years, while there is some organising and activity around SOGI. Further, police are known to crack down on the vulnerable LGBT community at certain times, and according to a recent article (at 66), "... the biggest threat to the Togo LGBT community is the church and religious leaders. The Catholic church is very powerful there, strongly influencing moral, political and other issues".

Togo's 1st cycle UPR was in October 2011, where the State received five recommendations relating to sexual orientation. It 'noted' all of them. However, in its response to the recommendations, the delegation said, "Togo was not prepared to

legislate on the question of homosexuality, given that homosexuals were not subject to any form of discrimination. Such legislation might in fact be counterproductive, given the attitude of the population". It did not address the recommendation by Spain to "... launch public awareness-raising campaigns on this issue".

At Togo's 2nd UPR in November 2016, Australia, Argentina, Brazil, Mexico, Spain, Slovenia, France and Belgium all made **recommendations** to decriminalise same sex sexual activity. Slovenia and Argentina also made recommendation regarding discrimination, and Uruguay called for Togo to "[i]nvestigate all allegations of attacks and arbitrary detentions of LGBTI persons and bring the perpetrators to justice". The Netherlands noted restrictions on the right to peaceful assembly, especially for women and those advocating for LGBTI rights, and the excessive use of force on demonstrators. At time of writing, the State's response is pending, but without evidence of a positive alteration in attitude to date.

TUNISIA



Penal Code of 1913 (as modified)

Article 230.

[SODOMY]

"The sodomy, that is not covered by any of the other previous articles, is punished with imprisonment for three years. (Unofficial translation) [The Arabic version of the text verifies that sexual acts between women are included within the restriction.]

Article 230 also states:

[MORALITY CODE LIMITING SOGI PUBLIC EXPRESSION]

"Anyone who intentionally and publicly promotes "indecency" is punishable by imprisonment for six months and subject to a fine of 48 dinars (about US \$30)."

Despite ardent opposition following its formation as a NGO in June 2015, the Tunisian organisation SHAMS (Sun) managed to get NGO accreditation as the deadline for complaint had expired in May 2015. However, the organisation was court-ordered to **suspend** its activities for 30 days in early-January 2016.

SHAMS came to prominence around its December 2015 demonstrations **centered** on a young gay Tunisian man arrested in September 2015 who had been jailed after undergoing a **forced anal exam** to establish his sexual orientation. On Human Rights Day 2015 (10 December), six students were each given three years jail time under Article 230, but following an Appeals Court **ruling** in early-March 2016, their sentences were reduced to time already served. It is reported that one of these students refused to undergo a forced anal examination, and was subsequently **tortured**. Similar **violations** have since been reported, such as the **arrest** of two young men in Sousse in December 2016 and their **conviction** in early 2017.

Tunisia's last session at the UPR was in May 2012, where it **received** (at para. 40) three recommendations to decriminalise same-sex sexual relationships and repeal the Article 230. It rejected all these recommendations, but did give the somewhat positive response that, "Regarding the decriminalization of homosexuality, Tunisia stated that it would be possible to conduct an objective and transparent national dialogue on the subject. However, it was not ready at this stage to adopt a decision". Tunisia's 3rd UPR commences in May 2017.

In its **Concluding Observations** on Tunisia in October 2016, the Committee on Economic, Social and Cultural Rights (CESCR) recommends that the State immediately repeal article 230 of the Penal Code, and train law enforcement officials to respect the diversity of sexual orientation and gender identities (discussion had been raised around freedom of expression regarding SOGI). The Committee Against Torture's **Concluding Observations** of November 2016 also called for decriminalization but also stressed the States should "prohibit intrusive medical examinations" [to determine sexual activity] "that have no medical justification and cannot be performed with the free and informed consent of the persons subjected to them, who consequently will then be prosecuted".

UGANDA



Penal Code of 1950, VI Laws of Uganda, Cap. 120 (rev. ed. 2000).

Section 145. Unnatural offences

[AGAINST THE ORDER OF NATURE]

“Any person who—

- (a) has carnal knowledge of any person against the order of nature;
- (b) has carnal knowledge of an animal; or
- (c) permits a male person to have carnal knowledge of him or her against the order of nature, commits an offence and is liable to imprisonment for life.”

Section 146. Attempt to commit unnatural offences

[ATTEMPTED UNNATURAL OFFENCE]

“Any person who attempts to commit any of the offences specified in section 145 commits a felony and is liable to imprisonment for seven years.”

Section 148. Indecent practices:

[GROSS INDECENCY]

“Any person who, whether in public or in private, commits any act of gross indecency with another person or procures another person to commit any act of gross indecency with him or her or attempts to procure the commission of any such act by any person with himself or herself or with another person, whether in public or in private, commits an offence and is liable to imprisonment for seven years.”

On 20 December 2013, the Parliament adopted the **Anti-Homosexuality Act**, which sought to punish same-sex sexual relations with imprisonment for life, and prohibited same-sex marriage and “homosexual propaganda”. However, on 1 August 2014, the Act was **annulled** by the Constitutional Court, which ruled that parliament lacked a required quorum when the law was approved, thereby retaining the previous 1950 Penal Code.

On 29 October 2014, members of Uganda’s ruling party circulated a draft of a **new bill** entitled, “The Prohibition of Promotion of Unnatural Sexual Practices Bill”, which was intended to replace the annulled 2013 Act by categorizing same-sex sexual acts alongside pedophilia, bestiality and other heinous acts. The Human Rights Awareness and Promotion Forum **sought** a ruling from the East African Court of Justice in February 2015, to clarify that laws such as the Ugandan Anti-homosexuality Act, are unacceptable and violate human rights. That Court **found** that because the law was not enacted, the case was moot, but under a public interest exception the court did not find the [government] evidence sufficient to “... establish the degree of public importance attached to the practice of homosexuality in Uganda....”.

In July 2015, the Uganda Consortium on Monitoring Violations Based on Sex Determination, Gender Identity and Sexual Orientation **published** a detailed report on violations based on SOGI in 2014 with targeted recommendations, and in September 2016 produced a **report** outlining 171 recorded violations in the previous period.

The Human Dignity Trust **records** that in September 2015, the Prime Minister on being asked about the passage of the 2014 Bill stated: “That law [anti-homosexuality legislation] was not necessary, because we already have a law which was left by the British which deals with this issue”. Convictions were on-going in 2015.

In March 2016, the **NGO Act** entered into force, representing “**legalised repression**” according to an article in the Third Issue of the *Human Rights Advocate* (download [here](#)), produced by the Human Rights Awareness and Promotion Forum (HRAPF) in December 2016.

Sexual Minorities Uganda (SMUG) launched an important **case** regarding the effects of the evangelical pastor Scott Lively anti-LGBT rhetoric, which is ongoing. In August 2016, Pride week in Kampala was **violently upset** by police raids and **planning**.

Uganda has been directly addressed by various UN mandate-holders, amongst which the following are of relevance to the current legislation: criminal laws, human rights defenders, HIV/AIDS in relation to SOGI in 2010, criminal laws, hate crime

in 2010, hate crimes, death, human rights defenders in 2011, death and criminal laws in 2012, and human rights defenders in 2013. In July 2015, the Concluding Observations of the Committee on Economic, Social and Cultural Rights, identified (paras. 15 and 16) that the lack of anti-discrimination law called for Uganda to urgently take steps to amend the Penal Code to decriminalize consensual same-sex sexual conduct”, as well as to prevent discrimination against LGBTs [sic] and “bring perpetrators to justice”.

In October 2011, at its 1st UPR review, Uganda received 19 recommendations, only three of which it accepted (all to do with prosecution of individuals who perpetrate violence against LGBT people). The rest of the recommendations concerned existing and proposed new legislations. At Uganda’s 2nd UPR in November 2016, the Draft Report of the Working Group appears to contain 18 sexual orientation recommendations that the State received – at time of writing (March 2017) the Delegation has not yet delivered its responses. However, in its Interactive Dialogue it claimed that LGBTI people are not discriminated against and can petition any complaint like all citizens (para. 56).

In May 2016, the Committee overseeing the Convention of the Rights of People with Disabilities noted “the absence of concrete measures to prevent and eradicate discrimination against women and girls with disabilities... especially on the grounds of sexual orientation and gender identity.”

In light of the extreme repression visited on LGBTI people in Uganda, the universal principle of non-discrimination was evident in the ruling given in the High Court of Uganda in *Mukasa and Oyo*, where although acts of “carnal knowledge against the order of nature” were penalised, the sexual orientation of the plaintiffs was not at issue, but what was being adjudicated on was the police ill-treatment (search and seizure of property and physical abuse) of them based on that sexual orientation. Likewise, two years later in *Kasha Jacqueline, David Kato, and Onziema Patience v. Rolling Stone*, the question was about whether, in the heightened atmosphere around the proposed Anti-Homosexuality Bill (AHB) in Uganda, the constitutional rights of the plaintiffs had been breached, and not about “homosexuality *per se*”.

ZAMBIA



Penal Code Act (as amended by Act No. 15 of 2005).

Section 155. Unnatural offences

[AGAINST THE ORDER OF NATURE]

“Any person who-

- (a) has carnal knowledge of any person against the order of nature; or
- (b) has carnal knowledge of an animal; or
- (c) permits a male person to have carnal knowledge of him or her against the order of nature;

commits a felony and liable, upon conviction, to imprisonment for a term not less than fifteen years and may be liable to imprisonment for life:

Provided that where a person-

- (i) has carnal knowledge of a child against the order of nature;
- (ii) causes a child to have carnal knowledge of an animal; or
- (iii) permits a male person to have carnal knowledge of a male or female child against the order of nature;

that person commits an offence and is liable, upon conviction, to imprisonment for not less than twenty-five years and may be liable to imprisonment for life.”

Section 156. Attempt to commit unnatural offences

[ATTEMPTED UNNATURAL OFFENCE]

“Any person who attempts to commit any of the offences specified in section one hundred and fifty-five commits a felony and is liable, upon conviction of not less than seven years but not exceeding fourteen years.”

Section 158. Indecent practices between persons of the same sex**[GROSS INDECENCY]**

“(1) Any male who, whether in public or private, commits any act of gross indecency with a male child or person, or procures a male child or person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male child or person, whether in public or private, commits a felony and is liable, upon conviction, to imprisonment for a term of not less than seven years and not exceeding fourteen years.

(2) Any female who, whether in public or private, commits any act of gross indecency with a female child or person, or procures a female child or person to commit any act of gross indecency with her, or attempts to procure the commission of any such act by any female person with himself or with another female child or person, whether in public or private, commits a felony and is liable, upon conviction, to imprisonment for a term of not less than seven years and not exceeding fourteen years.

(3) A child who, whether in public or private, commits any act of gross indecency with another child of the same sex or attempts to procure the commission of any such act by any person with the child’s self or with another child or person of the same sex, whether in public or private, commits an offence and is liable, to such community service or counseling as the court may determine in the best interests of the child.”

Despite having received 11 recommendations – only one which was accepted (regarding “impartial investigations” on attacks against LGBT people) – Zambia made no mention of sexual orientation issues in its responses to the recommendations at its 2nd cycle UPR in December 2012. In reference to HIV/AIDS, it said that: “Protection and promotion of human rights was intended to be one of the guiding pillars in the construction and implementation of the new national HIV and AIDS policy”, but otherwise directly or indirectly no mention of SOGI-related content was referenced. Zambia’s 3rd cycle UPR will commence in November 2017.

In April 2013, having spoken on national television about the need to repeal Articles 155, 156 and 158 of the Penal Code (which are categorised under ‘Offences Against Morality’), activist Paul Kasonkomona was arrested and stood before Lusaka Magistrates Court. On 25 February, the court acquitted him of charges of “soliciting for immoral purposes in a public place” (which is a Nuisance offence under Article 178(g) of the Penal Code), holding that the State has failed to present a sufficient case for the defence to answer resulting in the acquittal of Kasonkomona. The State appealed this ruling to the High Court. On 15 May 2015, Justice Mulongoti confirmed the acquittal of Kasonkomona and ruled that the State had not made out a case against Kasonkomona.

ZIMBABWE**Criminal Law (Codification and Reform) Act (Effective 8 July 2006).****Section 73. Sodomy****[SODOMY]**

“(1) Any male person who, with the consent of another male person, knowingly performs with that other person anal sexual intercourse, or any act involving physical contact other than anal sexual intercourse that would be regarded by a reasonable person to be an indecent act, shall be guilty of sodomy and liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding one year or both.

(2) Subject to subsection (3), both parties to the performance of an act referred to in subsection (1) may be charged with and convicted of sodomy.

(3) For the avoidance of doubt it is declared that the competent charge against a male person who performs anal sexual intercourse with or commits an indecent act upon a young male person—

(a) who is below the age of twelve years, shall be aggravated indecent assault or indecent assault, as the case may be; or

(b) who is of or above the age of twelve years but below the age of sixteen years and without the consent of such young male person, shall be aggravated indecent assault or indecent assault, as the case may be; or

(c) who is of or above the age of twelve years but below the age of sixteen years and with the consent of such young male person, shall be performing an indecent act with a young person.”

In its 1st cycle UPR in October 2011, Zimbabwe **received** only one recommendation: to repeal the 2006 law “as soon as possible” (France) – this was, unsurprisingly, rejected and the State made no reference to SOGI in its final report or in its Interactive Dialogue. At Zimbabwe’s 2nd UPR session in November 2016, the State receives 12 SOGI-related recommendations, mostly to do with decriminalisation. At date of writing the State has not yet delivered its response to these, while the Report of the Working Group **records** no mention of sexual or gender minorities in the State’s Interactive Dialogue.

Despite the atmosphere of severe socio-political hostility and rhetoric directed at sexual and gender minorities over the past years, in October 2016 the country’s Labour Court (based in Bulawayo) accepted the plea of a youth worker who had been fired from the civil service because he had been arrested and paid a fine following a police raid on a party held by GALZ in 2014. This court **found** that the dismissal based on sexual orientation was unconstitutional (although sexual orientation is not expressly named in the Constitution document).

In April 2016 in its **Concluding Observations**, the UN Committee on the Rights of the Child expressed concern that national legislation “remains inconsistent with the non-discrimination of the Constitution”, regarding, *inter alia*, LGBTI children.

ANTIGUA AND BARBUDA



Sexual Offences Act of 1995 (Act No. 9)

Article 12. Buggery

[BUGGERY]

“(1) A person who commits buggery is guilty of an offence and is liable on conviction to imprisonment—

- (a) for life, if committed by an adult on a minor;
- (b) for fifteen years, if committed by an adult on another adult;
- (c) for five years, if committed by a minor.

(2) In this section “buggery” means sexual intercourse per anum by a male person with a male person or by a male person with a female person.”

Article 15. Serious indecency

[SERIOUS INDECENCY]

“(1) A person who commits an act of serious indecency on or towards another is guilty of an offence and is liable on conviction to imprisonment—

- (a) for ten years, if committed on or towards a minor under sixteen years of age;
- (b) for five years, if committed on or towards a person sixteen years of age or more,

(2) Subsection (1) does not apply to an act of serious indecency committed in private between—

- (a) a husband and his wife; or
- (b) a male person and a female person each of whom is sixteen years of age or more;

(3) An act of “serious indecency” is an act, other than sexual intercourse (whether natural or unnatural), by a person involving the use of genital organ for the purpose of arousing or gratifying sexual desire.”

During its 1st cycle UPR in 2011, the delegation of Antigua and Barbuda **stated** (para. 35) that although “criminalisation was on the books... it was only in the very rare instances that the law had actually been enforced”. Citing “society’s leanings” and “public opinion” they spoke of the need for “extensive public consultation” and “the current pre-disposition of its people and their religious influences and indoctrination” [these two last arguments were added in its **final response** (para. 29)]. The State received eight **recommendations** directly related to SOGI, rejecting six (decriminalisation and public awareness campaigns on discrimination), while it accepted two (condemning SOGI-related acts of violence and instituting policies and initiatives addressing discrimination). The delegation **indicated** (para. 48) that “the government would continue its efforts on education and information to ensure that the public opinion would in time adopt the international standards”.

In its 2nd cycle UPR in 2016, the delegation **insisted** on the fact that “it would take time to sensitize Antiguan society, which was very moral and religious”, and that “if the Government were to force these issues, the reaction from society would be negative and regressive” (para. 53), while **acknowledging** criminalising laws “had to change at some point if the Government was serious about human rights” (para. 39). The State received 13 SOGI-related **recommendations**, accepting only one generalist recommendation regarding discrimination, while rejecting ten which specifically referred to decriminalisation and a further two on specific SOGI discrimination. Antigua and Barbuda’s next UPR cycle will take place in January 2021.

Antigua and Barbuda has joined all the resolutions on Human Rights, Sexual Orientation, and Gender Identity and Expression adopted by the General Assembly of the Organisation of American States (OAS). Most notably, it has not joined other OAS Member States in adding footnotes in an attempt to limit or reject the content of these resolutions (see all **OAS-GA Resolutions** since 2008).

In 2011, the Antiguan Attorney General **openly supported** buggery laws. Media outlets (see [here](#) and [here](#)) quoted him stating: “There will be no change in the law on buggery in Antigua & Barbuda, at least not if I can help it. Being gay is morally wrong, and to be honest personally, I am still homophobic.” A **detailed report** of 2014 describes the legal and living conditions of “sexual minorities”, and a 2015 Kaleidoscope Trust report, *Speaking Out*, **illustrates** a very mixed landscape of strong societal and official homophobia, some official address (in terms of limited police training), and limited advocacy resources.

In May 2016, Minister of Social Transformation, Samantha Marshall, **defined** the buggery law as “antiquated,” and resolved to advance a decriminalisation recommendation to Cabinet. In September the government **issued a statement** that “[a]ll persons irrespective of sex, sexual orientation, or gender identity are entitled to enjoy in Antigua & Barbuda the protections provided for by our constitution and by international human right law”. This **public statement**—‘*Policy on Protection from violence and discrimination of persons of the LGBTI community*’—reminded the public of the State’s international law obligations. However, even after these statements, and in the aftermath of the decriminalisation of same-sex sexual acts between consenting adults in Belize, in August 2016, the Cabinet of Antigua and Barbuda **proclaimed** that “the buggery law will remain unchanged” in the country.

BARBADOS



Sexual Offences Act 1992, Chapter 154.

Section 9. Buggery

[BUGGERY]

“Any person who commits buggery is guilty of an offence and is liable on conviction on indictment to imprisonment for life.”

Section 12. Serious indecency

[SERIOUS INDECENCY]

“(1) A person who commits an act of serious indecency on or towards another or incites another to commit that act with the person or with another person is guilty of an offence and, if committed on or towards a person 16 years of age or more or if the person incited is of 16 years of age or more, is liable on conviction to imprisonment for a term of 10 years.

(2) A person who commits an act of serious indecency with or towards a child under the age of 16 or incites the child under that age to such an act with him or another, is guilty of an offence and is liable on conviction to imprisonment for a term of 15 years.

(3) An act of “serious indecency” is an act, whether natural or unnatural by a person involving the use of the genital organs for the purpose of arousing or gratifying sexual desire.”

At its 2nd cycle UPR in January 2013, Barbados received 13 SOGI-related **recommendations**. None of the recommendations that urged decriminalisation of same-sex sexual acts (7) were accepted. Barbados argued “because it is a democracy,” the Government “was hesitant to go against the wishes of its people” (para. 22). Furthermore, the delegation alleged that “prosecution [of same-sex sexual activity] could only occur if a minor was involved or a non-consenting adult”. Of the remaining recommendations, two related to discrimination were also rejected, and one accepted in part.

The three **recommendations** that were accepted urged the Government to protect “all human rights, including those LGBT [sic]”; to “protect the LGBT population from harassment, discrimination and violence”; and to provide “human rights education, including related to sexual orientation and gender identity, to all law enforcement officials.” Barbados’ next UPR cycle will take place in January 2018.

As a member of the General Assembly of the Organisation of American States (OAS), Barbados has joined the resolutions on Human Rights, Sexual Orientation, and Gender Identity and Expression adopted by that body since 2008 (see all **OAS-GA Resolutions** since 2008). However, since 2013 Barbados has included footnotes to these annual resolutions in an attempt to limit or reject their content, alleging “a number of the issues and terms contained therein are neither reflected in its national law nor the subject of national consensus”.

The 2015 Inter-American Commission on Human Rights (IACHR) report on violence against LGBTI persons **states** that the so-called “gay panic” defence (defined as the attempt to justify the killing of a person by arguing that the violence was prompted by alleged same-sex sexual advances made by the victim) has been accepted by local courts in Barbados (see paras. 491, 494).

In May 2015, *76 Crimes* published an **article** by lawyer and HIV activist Maurice Tomlinson that provides incisive insight into how national and institutional dialogues on SOGI-related issues are developing in Barbados, as well as a description

of some recent institutional initiatives. A few months later, the Immigration and Refugee Board of Canada published an updated **report** on the legal and living situation of “sexual minorities” in Barbados, including social attitudes towards bisexuality (see also previous report [here](#)). In early-2016, during debate on the Domestic Violence Amendment Bill, the Minister of Education **declared** that the time has come for Barbadians “to stop turning a blind eye and accept the fact that gay relationships were now part of Barbadian culture”.

In May 2016, *Nation* newspaper—one of the most widely read newspapers in Barbados— **trivialised** the rape of a person who was either a gender non-conforming woman or transgender man and referred to the crime as “male medicine”. B-GLAD, a local LGBT civil society organisation, **condemned** the piece stating that it was a “perfect example” of the lack of value placed on LGBT lives and more specifically of the lives of masculine-expressive lesbians in Barbados. UN Women also **issued a statement** showing concern about the article. Massive public outcry forced the newspaper to **offer** an apology.

In early-2017, a **study** was published probing public views in Barbados, Guyana and Trinidad and Tobago regarding the usefulness of the anti-gay laws in: reflecting moral standards, stopping ‘the spread of homosexuality’, importance in terms of public health, and effectiveness in protecting young people from abuse.

DOMINICA

Sexual Offences Act 1998.

Section 14. Gross Indecency

[GROSS INDECENCY]

- “(1) Any person who commits an act of gross indecency with another person is guilty of an offence and liable on conviction to imprisonment for five years.
- (2) Subsection (1) does not apply to an act of gross indecency committed in private between an adult male person and an adult female person, both of whom consent.
- (3) For the purposes of subsection (2)—
- (a) an act shall be deemed not to have been committed in private if it is committed in a public place; and
 - (b) a person shall be deemed not to consent to the commission of such an act if—
 - (i) the consent is extorted by force, threats or fear of bodily harm or is obtained by false and fraudulent representations as to the nature of the act;
 - (ii) the consent is induced by the application or administration of any drug, matter or thing with intent to intoxicate or stupefy the person; or
 - (iii) that person is, and the other party to the act knows or has good reason to believe that the person is suffering from a mental disorder.
- (4) In this section “gross indecency” is an act other than sexual intercourse (whether natural or unnatural) by a person involving the use of genital organs for the purpose of arousing or gratifying sexual desire.”

Section 16. Buggery

[BUGGERY]

- “(1) A person who commits buggery is guilty of an offence and liable on conviction to imprisonment for—
- (a) twenty-five years, if committed by an adult on a minor;
 - (b) ten years, if committed by an adult on another adult; or
 - (c) five years, if committed by a minor;
- and, if the Court thinks it fit, the Court may order that the convicted person be admitted to a psychiatric hospital for treatment.
- (2) Any person who attempts to commit the offence of buggery, or is guilty of an assault with the intent to commit the same is guilty of an offence and liable to imprisonment for four years and, if the Court thinks it fit, the Court may order that the convicted person be admitted to the psychiatric hospital for treatment.
- (3) In this section “buggery” means sexual intercourse per anum by a male person with a male person or by a male person with a female person.”

Dominica rejected all (7) the **recommendations** to repeal the above-mentioned articles that it received in its 1st cycle UPR in 2010. It also rejected a series of recommendations to address discrimination in relation to HIV, engage in sensitivity training with judiciary and security forces, and to employ the **Yogyakarta Principles** to guide such work. In its response, Dominica conceded (para.33) that the law is “discriminatory” and that there is a “certain element of discrimination in the society”. It also **stated** that its 2003 HIV/AIDS strategy was inclusive “regardless... of sexual persuasion” (para. 20).

Dominica’s 2nd cycle UPR in May 2014 generated 12 strong **recommendations** to decriminalise and strengthen anti-discrimination provisions within the country in relation to LGBT populations. The only mention of sexual orientation during the interactive dialogue was linked to HIV: a mere reiteration of the fact that its 2003 AIDS strategy did not discriminate on grounds of sexual orientation (para. 24). No other address was given to four very strong comments made about Dominica’s duties in regards to protection of human rights defenders doing SOGI-related work. Dominica’s next UPR cycle will take place in May 2019.

As a member of the General Assembly of the Organisation of American States (OAS), Dominica has joined the resolutions on Human Rights, Sexual Orientation, and Gender Identity and Expression adopted by this body since 2008. In 2013, Dominica decided to introduce a joint footnote—together with Saint Vincent and the Grenadines and San Kitts and Nevis—stating that the delegations of these three countries were “unable to join consensus on the approval of [the] resolution” (see all **OAS-GA Resolutions** since 2008). Since 2014, Dominica has withdrawn from the list of countries inserting footnotes aiming to limit or reject the content of these resolutions.

The 2015 Inter-American Commission on Human Rights (IACHR) report on violence against LGBTI persons **states** that the so-called “gay panic” defence (defined as the attempt to justify the killing of a person by arguing that the violence was prompted by alleged same-sex sexual advances made by the victim) has been accepted by local courts in Dominica (paras. 491, 494).

In 2014, Minority Rights Dominica (MiRiDom) and the Sexual Rights Initiative, submitted a **report** for the country’s UPR examination, indicating that human rights defender groups in Dominica “are forced to operate underground because of fear that their members will be victimised”, and “those who are openly gay complain of acts of physical abuse, and are often victims of vandalism committed against their positions, as well as being ejected from house and home”. Moreover, Kaleidoscope Trust **reports** that the media climate in Dominica is not particularly hostile, probably due to a lack of knowledge about SOGI-related groups and issues. For its part, the 2015 US Dept. of State Report **indicates** that “societal and employment discrimination against persons due to their real or perceived sexual orientation or gender identity was common in the socially conservative society.” Additionally, social stigma was identified as a cause for the low levels of crime reporting among LGBTI victims.

In 2016, Senator Isaac Baptiste **spoke against** the criminalisation of buggery in Dominica. During his contribution to the Parliamentary debate on the introduction of a Bill to amend the Sexual Offences Act, Mr. Baptiste stated that “the continued criminalization of buggery as it is now provided for, to the extent that the court can subject that person to psychiatric observation and treatment, is not consistent with what is happening internationally”.

GRENADA

Criminal Code of 1987, as amended in 1993.

Article 431

[UNNATURAL CONNEXION]

“If any two persons are guilty of unnatural connexion, or if any person is guilty of an unnatural connexion with any animal, every such person shall be liable to imprisonment for ten years.”

At its 1st cycle UPR in May 2010, Grenada received five **recommendations** to decriminalise same-sex sexual relations, all of which it refused. However, it did note that the current law “could be viewed as discriminatory”, and with time “growing tolerance on the part of the people would help in addressing this issue”, which would have to be deliberated by the Cabinet. It was noted that there was no discrimination in the provision of health and other services in that regard (para. 26).

In January 2015, Grenada’s 2nd cycle UPR concluded. The State had received 16 **recommendations** that were SOGI-related, mostly concerning decriminalisation, but also non-discrimination in services and the protection of LGBT human rights defenders. Each of these were rejected (‘noted’), and in the interactive dialogue, the State explained that it had been looking at discrimination against LGBT people in the context of Constitutional provisions, but a platform of public consultations is now advised to consider legislative provisions regarding workplaces, as Constitutional ones may fail to adequately gain public support (para. 35). Grenada’s next UPR is in October 2019.

As a member of the General Assembly of the Organisation of American States (OAS), Grenada has joined the resolutions on Human Rights, Sexual Orientation, and Gender Identity and Expression adopted by this body since 2008 (the list of all OAS-GA Resolutions since 2008, among other resources, is available [here](#)).

In October 2014 Groundation Grenada Directors **presented** at the National Consultation on Constitution Reform, proposing an expansion of the bill of rights of Grenada to include protections for LGBT People. In late-September 2015, a **three-day conference** was organised by the Organization of Eastern Caribbean States (OECS) around the possibility of using litigation to move the laws in the region. In October 2015, a **public hearing** was held at the Inter-American Commission on Human Rights (IACHR) at the request of **Groundation Grenada** and **GrenCHAP** on the subject of same-sex sexual relations and the law.

In October 2016, the Government **announced** that it would postpone the referendum for a new Constitution amid growing concerns raised about one of the bills to be voted, which was **said** to allow for recognition of gay relationships. Grenada’s Attorney General had to **clarify** that the Rights and Freedoms Bill would not introduce same sex marriage in the island.

GUYANA

Criminal Law (Offences) Act, 1983.

Section 352. Committing acts of gross indecency with male person

[GROSS INDECENCY]

“Any male person, who in public or private, commits, or is a party to the commission, or procures or attempts to procure the commission, by any male person, of an act of gross indecency with any other male person shall be guilty of misdemeanour and liable to imprisonment for two years.”

Section 353. Attempt to commit unnatural offences

[ATTEMPTED BUGGERY]

“Everyone who—

- (a) attempts to commit buggery; or
 - (b) assaults any person with the intention to commit buggery; or
 - (c) being a male, indecently assaults any other male person,
- shall be guilty of felony and liable to imprisonment for ten years.”

Section 354. Buggery

[BUGGERY]

“Everyone who commits buggery, either with a human being or with any other living creature, shall be guilty of felony and liable to imprisonment for life.”

At its 1st cycle UPR in May 2010, Guyana received seven **recommendations** to decriminalise and include SOGI as a named ground for non-discrimination. In its responses the State said that no cases stemming from the law had come before the courts, and that “[c]hanges to laws required widespread consultation and a major change in attitude on the part of the

populace". The delegation also indicated that attempts to include the phrase "sexual orientation" in the anti-discrimination clause of the Constitution "had been met with widespread consternation and protest".

Guyana received 17 **recommendations** in its 2nd cycle UPR in January 2015, of which it accepted three: to strengthen protections, to ensure that hate crimes and discrimination based on sexual orientation or gender identity are vigorously investigated and appropriately prosecuted, and further review of legislative non-discrimination provisions relating to SOGI. All other recommendations had a call to decriminalise, and all 14 were rejected ('noted'). In its responses the Guyana delegation pointed out that prior to elections the Parliamentary Special Select Committee had a mandate to look at reviewing the legislation, but that process had ceased. It stressed there had been "unfettered freedom" in regards to freedom of expression for LGBT groups, and that the State did not discriminate based on sexual orientation, as provided by the Constitution.

As for UN Treaty Bodies, both the **CEDAW Committee**, in 2012 and the **CESCR** in 2015 have urged Guyana to decriminalise consensual adult same-sex relations. Both bodies have also expressed concern at the high levels of discrimination based on sexual orientation and gender identity. Additionally, in 2013, the **CRC** urged the State to ensure that its programmes address the situation of discrimination against children because of their sexual orientation and/or gender identity.

As one of the 35 Member States of the Organisation of American States (OAS) Guyana has subscribed to the resolutions on Human Rights, Sexual Orientation, and Gender Identity and Expression adopted by the OAS General Assembly since 2008. However, in 2013 and 2014, Guyana requested the insertion of footnotes in an attempt to limit or reject the content of the resolutions approved in those two years respectively. In 2013 the Government **declared** it was "unable to join consensus" given the fact that several of the issues addressed in the Resolution were the subject of deliberation "by a special select Committee of the National Assembly". The exact same footnote was **inserted** in 2014. However, in 2016, Guyana withdrew from the list of countries requesting such "declarations" (see all **OAS-GA Resolutions** since 2008).

In late 2013, a **public hearing** on reports of discrimination and violence against children based on sexual orientation and gender identity in Guyana was held before the Inter-American Commission on Human Rights (IACHR). In 2015, **another public hearing** was held, focusing on access to social, economic and cultural rights (focus on the situation of LGBT people starts at minute 19.00).

Guyanese NGO Society Against Sexual Orientation Discrimination (SASOD) and the Sexual Rights Initiative (SRI) **submitted** a detailed shadow report to Guyana's 2nd cycle UPR that illustrates the main local challenges in terms of legal and societal bias and reports that "in a national survey 25% of Guyanese admitted to being homophobic while 18% approved of using violence against LGBT persons" (para. 8).

As **reported** in *76 Crimes* in January 2016, Prime Minister Granger has **said** that he is "prepared to respect the rights of any adult to indulge in any practice which is not harmful to others". Previously in 2015, he **noted** that his government would not allow religious imposition to trump the human rights of LGBT people in Guyana. A month earlier, the former Health Minister **had spoken** about Guyana showing leadership and repealing the archaic law, within the context of the United Nations Sustainable Development Goals (2015-2030).

Also in 2016, representatives of a human rights organisation **met** with the Ministry of Social Protection and recommended that the government extend workplace discrimination protection to include sexual orientation, gender identity and health status. More **recommendations** to decriminalise consensual same-sex relations came from the European Union and the British Government and from the Guyana's Country Coordinator for the **President's Emergency Plan For AIDS Relief** (PEPFAR), a United States governmental initiative to address the global HIV epidemic.

In early-2017, a **study** was published probing public views in Barbados, Guyana and Trinidad and Tobago regarding the usefulness of the anti-gay laws in: reflecting moral standards, stopping 'the spread of homosexuality', importance in terms of public health, and effectiveness in protecting young people from abuse.

JAMAICA

**Offences Against the Person Act, 1864.****Article 76. Unnatural Crime****[BUGGERY]**

“Whosoever shall be convicted of the abominable crime of buggery committed either with mankind or with any animal, shall be liable to be imprisoned and kept to hard labour for a term not exceeding ten years.”

Article 77. Attempt**[ATTEMPTED BUGGERY]**

“Whosoever shall attempt to commit the said abominable crime, or shall be guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, shall be guilty of a misdemeanour, and being convicted thereof shall be liable to be imprisoned for a term not exceeding seven years, with or without hard labour.”

Article 78. Proof of Carnal Knowledge

“Whenever upon the trial of any offence punishable under this Act, it may be necessary to prove carnal knowledge, it shall not be necessary to prove the actual emission of seed in order to constitute a carnal knowledge, but the carnal knowledge shall be deemed complete upon proof of penetration only.”

Article 79. Outrages on Decency**[GROSS INDECENCY]**

“Any male person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for a term not exceeding 2 years, with or without hard labour.”

In 2009, Jamaica introduced a new **Sexual Offences Act** which establishes the rules for the ‘Sex Offender Register and Sex Offender Registry’ at Sections 29 – 35, operative as of October 2011). Under this law, anyone convicted of a “specified offence” must be registered as a “sex offender” and comply with specific obligations. Articles 76, 77 and 79 of the Offences Against the Person Act (cited above) fall under the category of “specified offences” as per Article 2 of the law’s First Schedule.

To provide law enforcement agencies with appropriate LGBT sensitisation training was the only **recommendation** accepted by Jamaica in its 1st cycle UPR in October 2010. All other 11 recommendations were rejected – calls for decriminalisation, non-discrimination and protection of LGBT human rights defenders. In its Final Report, the Working Group **recorded** the State’s response: “Jamaica stressed that the issue of male homosexuality was one of great sensitivity in Jamaican society, in which cultural norms, values, religious and moral standards underlay a rejection of male homosexual behaviour by a large majority of Jamaicans; and that the Government was committed to ensuring that all citizens were protected from violence” (para. 32).

At its 2nd cycle UPR in May 2015, Jamaica received 18 **recommendations** from States, of which it accepted only three: all of which were to do with the investigation and prosecution of violence acts against LGBT people and those defending their rights. The rejected, or ‘noted’, recommendations were primarily to do with criminalisation, but also many to do with codifying non-discrimination provisions relevant to LGBT people. The State mentioned that “several initiatives had been put in place” in order to create better understanding of SOGI-related issues in Jamaica, giving the example of police sensitisation in regards to in-force education on human rights, diversity training and support to LGBT people in the reporting of crime.

The UN Treaty Bodies **HRCee** (2011, para. 8) and **CESCR** (2013, paras. 8, 9) urged Jamaica to repeal its buggery laws, to send a strong message that harassment, discrimination or violence against LGBT persons will not be tolerated, and to swiftly and effectively investigate, prosecute and sanction individuals for such acts. The **CRC** (2015) expressed concern about gaps in the overall data collection in Jamaica, in particular with respect to LGBT children (para. 16). In his **report on his mission to Jamaica** in 2010, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, touched upon the harsh living conditions of gay men deprived of their liberty.

As a member of the Organisation of American States (OAS), Jamaica is under the jurisdiction of the Inter-American Commission on Human Rights (IACHR). The IACHR has recently been monitoring the situation of human rights in Jamaica, dedicating a full chapter (chapter 6) to discrimination based on sexual orientation and gender identity in its [2012 Jamaica Country Report](#). In 2014 the Commission held two *ex officio* public hearings, one [in March](#) and another one [in October](#), to follow up on the Report. In both hearings, civil society organisations and the State submitted updated information with regard to the issues discussed in that 2012 Report.

At the General Assembly of the OAS, Jamaica joined the resolutions on Human Rights, Sexual Orientation, and Gender Identity and Expression adopted by that body since 2008. However, since 2013, Jamaica has introduced footnotes to every resolution on the matter approved since then, in an attempt to limit or reject the content of these international instruments. The [footnote inserted in 2013](#) (fn. 3) reads: “The Government of Jamaica is unable to join the consensus on the approval of this resolution, given that the terminology of gender expression, as proposed, is ambiguous and has the potential to impose one value system over another. Furthermore, this term and other new terminologies used in the text, have not gained international acceptance nor are they defined in Jamaica’s domestic law.” The exact same footnote was [repeated in 2014](#) (fn. 6). However, in 2016 (there was no resolution in 2015), Jamaica slightly shifted the tone of its footnote and [declared](#): “The Government of Jamaica is fully committed to protecting the human rights of all its citizens including from any form of violence in accordance with the rule of law and the Jamaican Constitution. Jamaica, however expresses its reservation regarding terminologies such as gender identity and gender expression which are not defined in Jamaican law and have not gained international acceptance” (fn. 1).

Despite striking [reports](#) showing that up to 91% of Jamaicans believe lawmakers should make no attempt to repeal buggery laws, decriminalisation efforts are also being [channelled](#) through [strategic litigation](#) before local courts. The first [hearing](#) in this case was held in January 2016.

The human rights situation of LGBT people in Jamaica has been documented by several organizations: Kaleidoscope Trust (2015); Human Rights Watch (2014 and 2004); J-FLAG ([shadow report](#) for Jamaica’s 2nd UPR cycle; [shadow report](#) and [replies to LOIs](#)—together with other organisations—for the 2016 HRCee review). In 2016, J-FLAG also published a [study](#) showing how gays in Jamaica are exposed to increased levels of hate or rejection and how conversion “therapy” enjoys high levels of acceptance, especially among politicians and employers. After their [video report](#) on the “Gully Queens,” Vice [documented](#) the challenges on running a queer shelter in Jamaica. Another [report](#) focused on the experience of LGBT persons in Jamaica, how fleeing the country is a frequently considered alternative, and how these experiences jeopardise the country’s human, social and economic development. In fact, regarding the issue of asylum, [a gay Jamaican refugee](#) living in Canada is now working with [Rainbow Canada](#) to help other LGBT people flee persecution in Jamaica.

In terms of visibility, in 2016 a number of activities [were organised](#) in Kingston, in celebration of the Jamaica Pride. Other pride events also [took place](#) in the city of Montego Bay. During his visit to Jamaica, former President of the United States, Barack Obama, [openly supported](#) Angeline Jackson, a local activist fighting for LGBT equality and [against corrective rape](#) in Jamaica. In January 2017, the University of West Indies [organised](#) “Beyond Homophobia: Centring LGBT Experiences in the Caribbean,” the second conference on the subject matter.

With regard to statements by public officials, even though the Minister of Education [stated](#) that there was “no place” for school bullying based on sexual orientation in Jamaica, the head of the country’s Teachers’ Association (JTA) [said](#) he could not ask counsellors to assist LGBT students as long as same-sex sexual acts remain criminalised.

In January 2017, Jamaican cable companies [censored](#) the American docudrama series “When We Rise” (a US mini-series about rights recognition for LGBT people). Many other films and series have been banned in Jamaica, including an [advertisement](#) promoting love and respect for LGBT people. The Jamaican Court of Appeal has yet to rule on the [lawsuit](#) brought forward by Maurice Tomlison against two TV stations that refused to air the ad (see case factsheet [here](#)).

SAINT KITTS AND NEVIS

**Offences against the Person Act, 1990.****Part XII – Unnatural Offences****Article 56. Sodomy and bestiality****[BUGGERY]**

“Any person who is convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall be liable to be imprisoned for a term not exceeding ten years, with or without hard labour.”

Article 57. Attempt to commit an infamous crime

“Any person who attempts to commit the said abominable crime, or is guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, commits a misdemeanour, and, on conviction, shall be liable to be imprisoned for a term not exceeding four years, with or without hard labour.”

Saint Kitts and Nevis did not accept any of the eight **recommendations** regarding decriminalisation and non-discrimination at its 1st cycle UPR in January 2011, the State delegation noted that it protects, not excludes, MSM in its HIV programming, and that despite the existence of the criminalising legislation, LGBT people enjoyed the same freedoms as everyone else in the “tolerant society” that is Saint Kitts and Nevis. It also asserted that LGBT persons did enjoy the same rights and privileges as everyone else, and no reports had been received about violence against LGBT people or exclusion from employment (para. 35).

At its 2nd UPR cycle in 2015, the State also received eight **recommendations** concerning the same issues: decriminalisation and non-discrimination. During the interactive dialogue, the delegation completely denied the existence of any formal or positive legal discrimination against persons based on their sexual orientation or gender identity in Saint Kitts and Nevis and reiterated that even though no laws prohibited such discrimination, the Government had received no reports of violence or discrimination on that basis (para. 16). The delegation added that the Ministry of Education had adopted the *Health and Family Life Education* (HFLE) core curriculum in schools, supported by UNICEF and that a “theme unit of that document addressed sexuality and sexual health, whereby students learned about sexuality in terms of the total expression of who they are as human beings.” Interestingly, the delegation indicated “it was envisaged that gaining an understanding about this critically important topic would prevent any discrimination against persons on the basis of their sexual orientation or sexual identity” (para. 87).

As a member of the General Assembly of the Organisation of American States (OAS), Saint Kitts and Nevis has joined the resolutions on Human Rights, Sexual Orientation, and Gender Identity and Expression adopted by this body since 2008 (see all **OAS-GA Resolutions** since 2008). However, in 2013, Saint Kitts and Nevis joined Dominica and Saint Vincent and the Grenadines to insert a joint footnote stating that the delegations of these three countries were “unable to join consensus on the approval of this resolution” (fn. 2). It bears mentioning that Saint Kitts and Nevis withdrew from the list of countries that inserted further footnotes in 2014 and 2016 resolutions (there was no resolution in 2015).

In 2013, the Inter-American Commission on Human Rights (IACHR) **welcomed** the statement delivered by the Prime Minister of St. Kitts and Nevis, Denzil Douglas, at a press conference regarding discrimination, stigma and HIV. In fact, he **recommended** “having a very serious look” at laws that criminalise “those who are engaged in sex work for pay”, and “those who are considered to be homosexuals”. However, less optimistic press reports **indicated** that, despite giving pro-LGBT comments to international audiences, Douglas had done nothing to remove the laws while he was in office, and that he had even been caught on camera making homophobic statements.

In late-2015, a media outlet **spoke** to three gay men from St Kitts and Nevis who said that “violence and harassment against the LGBT community is common and that police do little to stop it”. The 2016, US Department of State Human Rights Report **indicates** that “negative societal attitudes towards the LGBTI community impeded the operation of LGBTI

organizations and the free association of LGBTI persons”. In fact, it has been **reported** that the country’s first LGBT organisation, the **St Kitts/Nevis Gay-Straight Alliance for Progress**, had its first meeting in January 2016. Moreover, the US DOS report **explains** that LGBT people are reluctant to report incidents of violence or abuse for fear of retribution or reprisal and an increase in threats of blackmail and fear of discrimination.

The publication *Speaking Out* **offers** a snapshot of some progress in the socio-political sphere through 2015 in this State, pointing out to **trainings** of State agents and statements by public officials (see page 37).

SAINT LUCIA



Criminal Code, No. 9 of 2004 (effective 1 January 2005).

Section 132. Gross Indecency

[GROSS INDECENCY]

“(1) Any person who commits an act of gross indecency with another person commits an offence and is liable on conviction on indictment to imprisonment for ten years or on summary conviction to five years.

(2) Subsection (1) does not apply to an act of gross indecency committed in private between an adult male person and an adult female person, both of whom consent.

(3) For the purposes of subsection (2) —

(a) an act shall be deemed not to have been committed in private if it is committed in a public place; and

(b) a person shall be deemed not to consent to the commission of such an act if —

(i) the consent is extorted by force, threats or fear of bodily harm or is obtained by false and fraudulent representations as to the nature of the act;

(ii) the consent is induced by the application or administration of any drug, matter or thing with intent to intoxicate or stupefy the person; or

(iii) that person is, and the other party to the act knows or has good reason to believe that the person is suffering from a mental disorder.

(4) In this section “gross indecency” is an act other than sexual intercourse (whether natural or unnatural) by a person involving the use of the genital organs for the purpose of arousing or gratifying sexual desire.”

Section 133. Buggery

[BUGGERY]

“(1) A person who commits buggery commits an offence and is liable on conviction on indictment to imprisonment for —

(a) life, if committed with force and without the consent of the other person;

(b) ten years, in any other case.

(2) Any person who attempts to commit buggery, or commits an assault with intent to commit buggery, commits an offence and is liable to imprisonment for five years.

(3) In this section “buggery” means sexual intercourse per anus by a male person with another male person.”

At its 1st cycle UPR in January 2011, St Lucia received eight **recommendations**. It accepted two which both concerned investigation and protection of SOGI-related human rights defenders. Having asserted that non-discrimination in the Constitution was inclusive of all St Lucians, the delegation made an interesting comment during its Interactive Dialogue: “Matters regarding how a society interacts, what principles it is governed by and how it will evolve in the future clearly reveal a need for advocacy and changes in attitude of certain sectors of society. The question remains, however, whether such advocacy should be the role of the Government, or whether it should be carried out by those who believe they are discriminated against” (para. 65).

In its 2nd cycle UPR in November 2015, the State revealed that it was “considering enacting ordinary legislation addressing discrimination on the grounds of sexual orientation”, as suggested by the Constitutional Reform Commission, referencing its 2006 Labour Code that already outlaws such discrimination (para. 18). Furthermore, the delegation indicated that “all Saint Lucians, including LGBT persons, were afforded full protection under the Constitution”, and that judicial redress was afforded to “any individual” regardless of sexual orientation (para. 19). Saint Lucia received a total of 13 SOGI-related

recommendations. All recommendations to repeal laws criminalising same-sex consensual acts or legislation that may otherwise discriminate against LGBT people were rejected. Only three recommendations (and one in part) were accepted, all of them referring to awareness-raising campaigns and “strengthening the fight” against discrimination based on sexual orientation and gender identity.

As a member of the General Assembly of the Organisation of American States (OAS), Saint Lucia has joined the resolutions on Human Rights, Sexual Orientation, and Gender Identity and Expression adopted by this body since 2008 (see all **OAS-GA Resolutions** since 2008). However, in 2013, Saint Lucia announced it would insert a footnote to that year’s resolution (fn. 7). The following year, Saint Lucia inserted a footnote that reads as follows: “Saint Lucia is unable to join consensus on the approval of this resolution since we are of the view that the term ‘gender expression’ is one that is not thoroughly defined or accepted internationally. Moreover, not only is the expression heavily nuanced but most importantly it is currently not defined in domestic law” (fn. 12). Saint Lucia inserted no footnote in the 2016 resolution (there was no resolution in 2015).

Local human rights organisations called on political parties “to make a full position statement on the issue of LGBT discrimination”, after a video showing the Minister of Tourism using a derogatory word sparked outrage on social media. In fact, in 2015, the interplay of buggery laws and tourism had been the subject of a **special report** by Telesur.

The 2016 US Department of State Human Rights Report **explains** that there was widespread social discrimination against LGBTI persons in the deeply conservative Saint Lucian society during 2015, and that the few openly LGBTI persons faced daily verbal harassment. However, very few incidents of violence or abuse appear to have been reported, mainly due to reluctance to report for fear of retribution or reprisal. No progress had been made in the investigation of the killing of Marvin Anthony Augustin, which appears to have been a hate crime. Furthermore, in terms of economic, social and cultural rights, LGBTI persons were denied access to rental homes or were forced to leave rental homes, and were denied jobs or left jobs due to a hostile work environment.

Despite this adverse environment, several courageous activists publicly shared their stories of survival in Saint Lucia (see among others, **Jessica St Rose** and **Donavan Monerville**).

SAINT VINCENT AND THE GRENADINES



Criminal Code, 1990 Edition.

Section 146

[BUGGERY]

“Any person who —

- (a) commits buggery with any other person;
- (b) commits buggery with an animal; or
- (c) permits any person to commit buggery with him or her;

is guilty of an offence and liable to imprisonment for ten years.”

Section 148

[GROSS INDECENCY]

“Any person, who in public or private, commits an act of gross indecency with another person of the same sex, or procures or attempts to procure another person of the same sex to commit an act of gross indecency with him or her, is guilty of an offence and liable to imprisonment for five years.”

At its 1st cycle UPR in May 2011, the State rejected 11 **recommendations** to lift discriminatory laws and practices, including the repeal of Section 146 (in line with the **Human Rights Committee** Concluding Observations in 2008). In response, the State said that its current legislation was supported by society and there was no call to repeal it, “[in] the context of the moral, societal and cultural make-up of the State”. In this vein, Saint Vincent and the Grenadines compared its own legal situation to that of the United Kingdom arguing that it had taken “hundreds of years” for the UK to repeal similar legislation, and “the harsh nature of the sentences imposed under British law,” comparing them to the “relatively short

period of time that Saint Vincent and the Grenadines has been an independent state, and the less punitive sanctions involved” (para. 29).

In its 2nd cycle UPR, Saint Vincent and the Grenadines once again rejected all SOGI-related **recommendations**. During the interactive dialogue, the delegation indicated that criminalising provisions “had existed for a long time and that the precepts underlying them had overwhelming public support in the country’s Christian society espousing Judaeo-Christian values in the Caribbean context”. However, changes in those values were acknowledged as “occurring, particularly among sections of young people”. The delegation went on to stress that “there had been no imprisonments” based on the criminalising provisions, but at the same time, as it did in its 1st cycle, insisted on the fact that there was “no public or legislative appetite to revise any of [these] laws” (para. 44).

In 2015, the CEDAW Committee **noted** that women in same-sex relationships are not covered by the 2015 Domestic Violence Act, and recommended this exclusion be rectified.

As a member of the General Assembly of the Organisation of American States (OAS), Saint Vincent and the Grenadines has joined the resolutions on Human Rights, Sexual Orientation, and Gender Identity and Expression adopted by this body since 2008 (see all **OAS-GA Resolutions** since 2008). In 2013, Saint Vincent and the Grenadines, along with Dominica and San Kitts and Nevis, inserted a footnote stating that the delegations of these three countries were “unable to join consensus on the approval of this resolution” (fn. 2). The Government further stated that “the term ‘gender expression’ is one that is not thoroughly defined internationally or that has international acceptance” and suggested that the discourse at the OAS “should be confined only to language which has been recognized or approved by the United Nations”. In 2016, Saint Vincent and the Grenadines withdrew from the list of countries inserting footnotes. Further, at the OAS General Assembly in June 2016, Minister of Economic Planning and Sustainable Development of Saint Vincent and the Grenadines, Camillo Gonsalves, **described** the Orlando shooting as a “tragic and heinous event” and said that his country offered its “support in ridding the world of hate and the tools of hate”.

In 2015, opposition Senator Vynnette Frederick **stated** that Saint Vincent needed to discuss the issues of same-sex relationships and that she was well positioned to lead the discussion because of her perceived sexuality. In 2010, Prime Minister Ralph Gonsalves, made disparaging comments about her, suggesting she was a lesbian. Based on those remarks, Senator Vynnette Frederick brought a claim against the Prime Minister and stated that those comments had negatively impacted her performance at the elections. The 2015 Kaleidoscope Trust’s report **illustrates** a socio-political environment that appears to be improving incrementally, as discussions about what impedes full citizenship in a discriminatory environment take place.

The 2016 US Department of State Human Rights Report **indicates** that anecdotal evidence suggested there was social discrimination against LGBTI persons, although local observers believed such attitudes of intolerance were slowly improving. Still, members of professional and business classes were more inclined to conceal their LGBTI sexual orientation.

TRINIDAD AND TOBAGO



Sexual Offences Act 1986, as amended by the **Sexual Offences (Amendment) Act (No. 31 of 2000)**.

Section 13.

[BUGGERY]

“(1) A person who commits buggery is guilty of an offence and is liable on conviction to imprisonment—

- (a) if committed by an adult on a minor, for life;
- (b) if committed by an adult on another adult, for twenty-five years;
- (c) if committed by a minor, for five years.

(2) In this section “buggery” means sexual intercourse per anum by a male person with a male person or by a male person with a female person.”

Section 16.

[SERIOUS INDECENCY]

“(1) A person who commits an act of serious indecency on or towards another is guilty of an offence and is liable on conviction to imprisonment—

- (a) if committed on or towards a minor under sixteen years of age for ten years for a first offence and to imprisonment for fifteen years for a subsequent offence;
- (b) if committed on or towards a person sixteen years of age or more for five years.

(2) Subsection (1) does not apply to an act of serious indecency committed in private between—

- (a) a husband and his wife; or
- (b) a male person and a female person each of whom is sixteen years of age or more, both of whom consent to the commission of the act.

(3) An act of “serious indecency” is an act, other than sexual intercourse (whether natural or unnatural), by a person involving the use of the genital organ for the purpose of arousing or gratifying sexual desire.”

In October 2011, Trinidad and Tobago commenced its 1st UPR sessions. The State had received six **recommendations**, and had accepted two of these: to undertake policies to promote the rights of LGBT people, and to institute policy to prevent and prosecute crimes based on SOGI. Three of the remaining four recommendations that were ‘noted’ (rejected) concerned repeal of the criminalising law, and the fourth rejection called for wide-ranging legislative and political reforms to address discrimination, including public awareness campaigns, based on “sexual preference”.

In its 2nd cycle UPR, the State received 14 SOGI-related **recommendations**, all of which were rejected. Ten of these recommendations referred to decriminalisation. During the interactive dialogue, the delegation did not answer any of the comments made by other countries on SOGI issues. Trinidad and Tobago’s next UPR is in May 2021.

As a member of the General Assembly of the Organisation of American States (OAS), Trinidad and Tobago has joined the resolutions on Human Rights, Sexual Orientation, and Gender Identity and Expression adopted by this body since 2008 (see all **OAS-GA Resolutions** since 2008).. However, in 2013, Trinidad and Tobago announced, along with Saint Lucia and Honduras, it would insert a footnote to that year’s resolution (fn. 7). The following year, Trinidad and Tobago did so stating it was unable to support the resolution and recalled that “the act of sodomy whether between same sex partners or heterosexual partners is illegal” (fn. 10). In the 2016 resolution (there was no resolution in 2015), the State slightly shifted the tone of its footnote stating that Trinidad and Tobago was unable to join the consensus “as some areas are contrary to the laws of the Republic”, but that it remained “firmly committed to the promotion and preservation of the rule of law; the protection of human rights and fundamental freedoms of all people as enshrined in the Constitution of Trinidad and Tobago”.

In June 2016, Prime Minister, Keith Rowley, **stressed** that there were no plans to change the buggery law. However, he stated that the police should protect every citizen “regardless of who they sleep with, they don’t sleep with or how they do it”. Moreover, the Caribbean Court of Justice delivered its **judgment** in a case brought forward by Maurice Tomlinson seeking to invalidate immigration laws which prohibit the entry of “homosexuals” into Belize and into Trinidad & Tobago. Although the decision safeguarded the right of CARICOM gay nationals to enter those two countries, it **failed to declare these laws invalid**. The decision has been analysed by **Andre Bagoo** and **Colin Robinson**.

Although the Equal Opportunities Commission **urged** the inclusion of sexual orientation in the State’s non-discrimination provision, no legislative developments have been enacted to protect the rights of LGBT people in Trinidad and Tobago. In fact, the Coalition Advocating for Inclusion of Sexual Orientation (CAISO) along with other organisations, submitted a detailed **shadow report** for the State’s 2nd cycle UPR which follows up on the recommendations made to Trinidad and Tobago in 2011.

In early 2017, Jason Jones, a Trinidad-born **gay human rights activist**, brought a **claim** before local courts seeking to repeal the buggery laws. After filing his brief, Jones **reported receiving** dozens of death threats.

AFGHANISTAN



Penal Code, 1976.

Chapter Eight: Adultery, Pederasty, and Violations of Honour

Article 427:

[INTERCOURSE BETWEEN MALES]

- “(1) A person who commits adultery or pederasty shall be sentenced to long imprisonment.
 (2) In one of the following cases commitment of the acts, specified above, is considered to be aggravating conditions:
 a) In the case where the person against whom the crime has been committed is not yet eighteen years old.”

Although the Afghan Penal Code does not contain any explicit provisions on the criminality of consensual same-sex sexual acts. Article 130 of the Constitution does allow recourse to be made to Sharia law, which prohibits same-sex sexual activity in general, and indeed any sexual contact outside marriage. Afghanistan's Sharia law criminalises same-sex sexual acts with a maximum of the death penalty. A BBC article of late-2016 **confirms** that LGBT people live in constant fear of this or other severe persecutory penalties and they are forced to hide their identities. A high-profile scholar is quoted “there was broad consensus amongst scholars that execution was the appropriate punishment if homosexual acts could be proven”, and this is consistent with a **history** of such repression in Afghanistan.

In Afghan legal terminology “pederasty” appears to refer to intercourse between males regardless of age. The fact that paedophilia - or sexual relations with persons under the age of consent - falls under subsection 2(a) of article 427 indicates that this is the case. Terming sexual acts between adult men “pederasty” has previously not been uncommon; this occurred for example in the translations of the Criminal Codes of Albania (1977) and Latvia (1933), and in the old Russian legal tradition a “pederast” usually referred to a male who had anal intercourse with another male, regardless of age. Further, the traditional practice of keeping Bacha Bazi (teenage boys typically aged 14-18) for sexual use and as symbols of status amongst older men is **reported** to be currently widespread.

In its 2nd cycle UPR in January 2014, the only recommendation regarding SOGI that Afghanistan received was **not accepted** (‘noted’), Norway called for the “repeal the provisions of the penal code that criminalise sexual relations between consenting adults of the same sex”. No mention was made of the death penalty in relation to same-sex behaviour directly, although ten recommendations calling for the abolition of the death penalty in line with civil and political rights were made: under international human rights law these necessarily include SOGI in their scope. A Joint Submission (SRI, IFPP, and AFGA) made a **reference** to men who have sex with men (MSM), and this appears to be the only mention of SOGI-related material through Afghanistan's entire 2nd cycle UPR process. Its next review is October 2018.

Although a senior member of Afghanistan Independent Human Rights Commission **attended** the Workshop on the Role of NHRIs in Promoting and Protecting the Rights and Health of LGBTI in Asia and the Pacific, February 2015, but to date there has been **no mention** of sexual orientation or SOGI in the work of that Commission.

BANGLADESH



Penal Code, 1860 (Act XLV of 1860).

Section 377. “Unnatural Offences”

[AGAINST THE ORDER OF NATURE]

“Whoever voluntary has carnal intercourse against the order of nature with man, woman, or animal, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to 10 years, and shall also be liable to fine.
Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.”

While referencing family values at its 2nd cycle UPR in April 2013, the Bangladeshi Minister for Foreign Affairs **concurred** with the newly-found position of the National Human Rights Commission that LGBT people should be protected from violence and discrimination in law. However, throughout 2016 the levels of violence and threat from religious radicals that LGBT people have been exposed to have exponentially risen, and the State has not offered protection. As such, many have been forced to leave their homes and flee the country for fear of their lives.

There are no SOGI-based NGOs in Bangladesh, although there are some long-standing CSOs, such as Boys of Bangladesh and the Bhandu Social Welfare Society, and online communities such as Roopbaan, Shambhab (a lesbian network) and Vivid Rainbow. It is unlikely that these groups can register as NGOs as it is understood that Section 377 **extends** to membership of a SOGI-based organisation, a view **endorsed** (at p.8) by one of Bangladesh's only barristers concerned with SOGI issues, Sara Hossain.

Bangladesh **accepted** a recommendation to carry out sensitisation training with public officials regarding SOGI discrimination at its 1st UPR, but this issue was not picked up at its 2nd cycle review, nor is there evidence that such sensitisation has significantly occurred. The **capacities** of seven South Asian National Human Rights Institutions (NHRIs) to respond to LGBTI concerns were assessed in 2013, amongst them that of Bangladesh. Bangladesh's 3rd cycle UPR will be in January 2018.

On 15 November 2013, Bangladesh legally **recognised** the Hijras population as being a 'third sex' for purposes of voting, travel, identification and other core civil rights.

In January 2013, Bangladesh's first ever LGBTI magazine, *Roopbaan* was published and it has expanded its **initiatives** (at p.40) into organising awareness and advocacy, including two public events - 'Rainbow rally' - to promote friendship and diversity in Dhaka in 2014 and 2015. However, in April 2016 organisers had to **cancel** the rally because of threats and opposition from Islamists, and four arrests were reported. On 25 April 2016, the editor of *Roopbaan*, Xulhaz Mannan, and fellow activist Mahbub Tonoy, were **gruesomely executed** in an apartment in Dhaka.

In February 2015 Avijit Roy, the author of Bangladesh's first scientific book (2010) on same-sex sexual identity, was **savagely murdered** on the streets of Dhaka, seemingly by religious fundamentalists.

BHUTAN



Penal Code 2004.

Chapter 14: Sexual Offences

Unnatural sex

[AGAINST THE ORDER OF NATURE]

Section 213. "A defendant shall be guilty of the offence of unnatural sex, if the defendant engages in sodomy or any other sexual conduct that is against the order of nature."

Grading of unnatural sex

Section 214. "The offence of unnatural sex shall be a petty misdemeanor."

Chapter 2: Classes of crime

Section 3. "For the purpose of this Penal Code, the classes of crimes shall be as follows:

(c) A crime shall be petty misdemeanor, if it is so designated in this Penal Code or other laws and provides for a maximum term of imprisonment of less than one year and a minimum term of one month for the convicted defendant."

In its 1st cycle UPR in late-2009, the representative of Bhutan had **claimed**, “[h]owever, I wish to share that the provisions concerning unnatural acts in the Penal Code of Bhutan have never since its enactment been evoked for acts between two consenting adults of the same sex. The provisions can be revised when there is felt need and desire from our people”.

There appears to have been no reference to this or related matters in its 2nd cycle UPR in 2014.

Bhutan did **not accept** any of the four recommendations to decriminalise same-sex sexual behaviour in its 2nd cycle UPR in April 2014. Bhutan’s next review is in January 2019.

BRUNEI DARUSSALAM



Penal Code, Chapter 22, revised edition 2001.

Unnatural offences

[AGAINST THE ORDER OF NATURE]

Section 377. “Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment for a term which may extend to 10 years, and shall also be liable to fine. [S 12/97]

Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.”

Brunei Darussalam rejected (‘noted’) the five recommendations made in its 2nd cycle Universal Periodic Review in April 2014. Unlike its 1st UPR cycle **rejections** in 2009 (mostly on non-discrimination), the major concerns of the 2nd cycle were decriminalisation (France, Canada, Spain and Czech Republic), and the revised Penal Code (Cap 22) that reintroduces the death penalty for same-sex sexual behaviour (Spain and Czech Republic). Bangladesh, counter-intuitively to human rights, used the UPR process to **encourage** (at p.10) Brunei Darussalam to uphold its social policies in line with ‘traditional family values’.

In 2014, IGLHRC (now OutRight) submitted a **Shadow Report** to the Convention on the Elimination of Discrimination Against Women (CEDAW) Committee describing in detail how “the enforcement of SPC Order 2013 is likely to result in even tighter family control and increased violence to force Bruneian lesbians, tomboys, masculine-looking women, bisexual women and transgender women to conform to social norms (and now criminal law) on sexuality and gender”. In para. 13(a) of its Concluding Observations, the CEDAW committee **urged** the State to, “immediately review the new Sharia Penal Code Order 2013 with a view to repealing its direct and indirect discriminatory provisions affecting women”.

Since 2014, Brunei Darussalam has been phasing in its **Syariah Penal Code Order** (SPC Order 2013), despite learned **critiques** of its human rights deficits. The second and third phases of it were due to be in place in 2015 and 2016 (at which point the death penalty for consensual same-sex sexual behaviour was due to apply – for both men and women). To date, it appears that Brunei has not produced its procedural code, without which it cannot proceed to the second and third phases. It is also the case that the last execution by the State in Brunei was in 1957. However, Human Rights Watch **warn** that the current Sultan is particularly ardent.

In its **Concluding Observations** on Brunei Darussalam in February 2016, the Committee on the Rights of the Child) recommends that, repeating earlier recommendations to the State, efforts are stepped up to address, *inter alia*, discrimination based on SOGI, and it recommended improving awareness-raising on such issues.

GAZA – OCCUPIED PALESTINIAN TERRITORY



The British Mandate Criminal Code Ordinance, No. 74 of 1936 is in force in Gaza.

Section 152(2) of the Code criminalises sexual acts between men with a penalty of up to 10 years. **[SEXUAL ACTS BETWEEN MEN]**

“(2) Any person who:—

- (a) has carnal knowledge of any person against the order of nature; or
- (b) has carnal knowledge of an animal; or
- (c) permits a male person to have carnal knowledge of him or her against the order of nature, is guilty of a felony, and is liable to imprisonment for ten years.”

This Code was in force also in Jordan until 1951 and in Israel until 1977, before they adopted their own Penal Codes. Note that in the West Bank (including East Jerusalem) the Jordanian Penal Code of 1951 (modified in 1960) is in force, having no prohibition on sexual acts between persons of the same sex.

Since the 2007 governance of Gaza by Hamas, the Gazan legislative body has attempted to amend or replace the British Mandatory Penal Code. The proposal from 2013 purported to be “Islamic based”, and included flogging for adultery and cutting off an offender’s right hand for theft. While a complete draft of the proposal was never published, it is highly likely its treatment of same-sex acts would have been far more severe than even the current law. The code failed to pass the Gazan legislature.

INDIA



Penal Code, 1860. Section 377.

Unnatural offences

[AGAINST THE ORDER OF NATURE]

“Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description or a term which may extend to ten years and shall also be to fine.

Explanation: Penetration is sufficient to candidate the carnal intercourse necessary to the offence described in this section.”

Although the law is technically only applicable to men, women in India are in fact **subject** to it (at p. 12), and are subject to its significant ‘chill factor’, and resultant stigmatisation. In 2009, Section 377 of the Indian Penal Code was given a more limited interpretation by the Delhi High Court, **lifting** the ban on same-sex sexual activity among consenting adult men in private (see **comment**). However, on 11 December 2013, in *Koushal v. Naz Foundation*, a two-judge bench of the Supreme Court of India **upheld** Section 377 as constitutional. Therefore, private consensual sexual activity between two men is still a crime in India. The judgment also said that the legislature should decide on this issue, not the courts, yet attempts at **introducing** such a Bill before parliament have not been unsuccessful.

In terms of India’s recent performance regarding international human rights law at the UN, its 2nd cycle UPR **responses** (May 2012) suggest the country’s current regard to its obligations: India accepted a level 3 (i.e. ‘to consider’) recommendation to “[s]tudy the possibility of eliminating any criminalisation of same-sex relations”, despite the **concerns** that the Criminal Law (Amendment) Bill 2012 that was approved by the Cabinet retained Section 377 of the India Penal Code. In the same UPR session, India rejected a general recommendation for non-discrimination, particularly in employment, based on sexual orientation. India’s 3rd UPR cycle commences in May 2017.

In *Naz Foundation* (2009), the Ministry of Home Affairs justified retention of Section 377 on the grounds of protection of health and morals, but the High Court of New Delhi **found** (at p. 11) that public morality is not a legitimate State interest and held that, although protection of public health was a legitimate State interest, the law at issue was not rationally connected to this legislative end. In this case, the High Court relied on the practice of regional and international human rights mechanisms, via *Dudgeon* and *Toonen*, to derive this important principle.

The Supreme Court has issued two contrasting judgments. The Section 377 judgment in 2013 refused to apply fundamental constitutional rights to decriminalise same-sex sexual conduct, stating that decriminalisation is a question for parliament, not the courts. On the other hand, a Supreme Court judgment in *National Legal Services Authority v. Union of India and others* a few months later **found** that transgender people do enjoy constitutional rights and the Supreme Court required the government to implement measures in recognition of these rights. On April 15, 2014, in this case, the Supreme Court of India upheld the constitutional rights of transgender persons under Articles 14, 15, 19 and 21, which guarantee the right to equality, the right against discrimination, freedom of speech and expression, and the right to life with dignity respectively.

The UN Rapporteur on Human Rights Defenders has twice noted problems in relation to SOGI in India, in 2009 and 2012. In 2014, the Committee for the Elimination of all forms of Discrimination Against Women (CEDAW) **urged** India “[t]o make efforts to eliminate any criminalization of same-sex relations by studying the possibility, as accepted by the State party during its [U]niversal [P]eriodic [R]eview [...], and to take note of the ruling of the Supreme Court (*Suresh Kumar Koushal and another v. NAZ Foundation*, 2013) in this regard”. In April 2016, the International Commission of Jurists (ICJ) released a **Briefing Paper** on the Section 377 Curative Petition laying out the validity of the Supreme Court reversing its earlier decision.

It was **reported** that nearly 1500 people were arrested under Section 377 in 2015. However, it appears that over 800 of these were assaults on minors, and a further number were arrests of under-age persons.

INDONESIA (TWO PROVINCES ONLY)



Same-sex sexual relations between consenting adults are not prohibited according to the 1982 Indonesian **Penal Code** (which finds root in the Netherlands Indies Penal Code). However, at the national level there are stigmatising Regulations that apply nationwide: for example, Government Regulation 61/2014 on Reproductive Health stipulates that; a “Healthy sexual life ... b) free from sexual orientation dysfunction or deviance,, ... and e) in accordance with ethics and morals”. Reports throughout 2016 and early 2017 indicate a heightened threat from both State and non-State actors to LGBTI human rights defenders and their work.

At the provincial level (between two bordering provinces Aceh and Sumatra), there are **areas** and municipalities that penalise same sex sexual relations through local Ordinances amongst which:

- **Provincial Ordinance on the Eradication of Immoral Behavior (No. 13/2002) in South Sumatra:** classifies and penalises same sex relations as “immoral behavior”.
- **Local Regulation [City Ordinance] Batam City No. 6/2002 about Social Ordinance, Social Order Article 9:** forbids the setting up of LGBT associations (explicitly mentioned).
- **Local Regulation [City Ordinance] Palembang City No. 2/2014 about the Abomination of Prostitution, Chapter V. Prohibition Provisions, Article 8:** outlaws “homosexual” “prostitution”.
- **Local Regulation [City Ordinance] about Prevention, Eradiction and Action toward Social Ills (No. 9/2010) in Padang Panjang, West Sumatera:** its definition includes same sex relationships within its scope (paid, or not paid for).
- **District Ordinance on Social Order (No. 10/2007) in Banjar, South Kalimantan Province:** mentions “abnormal” homosexual and heterosexual acts (in addition to “normal” ones) in its definition of “prostitute”. No explanation is given for “normal” or “abnormal” acts. It also prohibits the formation of organisations “...leading to immoral acts”, that are “...unacceptable to the culture of [local] society”. These are later **explained** by giving examples of lesbian and gay organisations “and the like”.

- **City Ordinance on the Development of a Value System in Social Life Based on the Teachings of Islam and Local Social Norms (No. 12/2009) in Tasikmalaya, West Java:** prohibits adultery and prostitution, both heterosexual and homosexual.
- **Aceh Regulation No. 6/2014** [Provincial Ordinance] on criminal offenses under Syariah law, passed in 2014, came into effect on 23 October 2015. The law **stipulates** a punishment of 100 lashes and/or up to approximately eight years in prison. The regulation applies to local residents and to foreigners in the province for the crime of Liwat (male penetration) and Musahaqah (female same-sex sexual activity) in article 63 and 64.

In 2002, the national parliament gave the province of Aceh the right to adopt Islamic Sharia laws. Such laws apply to Muslims only. In the city of Palembang in South Sumatra one can **receive** jail time and hefty fines for same-sex relations. In recent years, there has been no abatement in the anti-SOGI demands of Muslim clerics as **reported** by Human Rights Watch in March 2016.

At its most recent UPR, 2nd cycle in May 2012, Indonesia was specifically **asked** (at para. 6.5) to address violence against SOGI human rights defenders against whom threats were on the increase. Indonesia responded to Spain's call to "eliminate the legislation" that criminalises and discriminates against same-sex people, particularly in the Aceh province by **saying**, "[t]he recommendations do not reflect the actual situation in the Provinces they refer to". Here, the State representatives may have been referring to the fact that Qanun Jinayah Aceh (Syariah Law) is legal guidance on regulations about forbidden acts or wrongdoings according to the teaching of Islam (Syariah), from which interpretations flows, rather than a book of rigid statutes of black letter law that overtly outlaw same-sex sexual relations, *per se*.

Among its principle concerns, the United Nations Committee on Economic, Social and Cultural Rights "... notes with concern that laws and by-laws which discriminate against women and marginalized individuals and groups such as sex workers, and lesbian, gay, bisexual and transgender persons are in force in provinces, districts and autonomous regions, in spite of the review mechanism in place in the State party (art. 2.1)", and made **recommendations** on how to rectify these Convention violations.

On 3 March 2016, Indonesia's Parliamentary Commission for Defense, Foreign Affairs and Information (known as Commission I) **recommended** "measures for the [Indonesian Broadcasting Commission, or KPI] to tighten controls over broadcasting LGBT-related content, as well as sanctioning strict punishment for violation of LGBT content delivery" – representing another repressive **legal vehicle** targeting LGBT people. HRW and other **reports** in 2016 and 2017 document a worsening socio-political environment for LGBT advocacy and development, a situation that also has **economic** consequences for the State.

IRAN

Islamic Penal Code of Iran, 2013

Article 147- The age of maturity for girls and boys are, respectively, a full nine and fifteen lunar years.

Article 172 clarifies that in the cases of *zina*, *livat*, *tafkhez*, and *musaheqeh*, confessions must be made four times, and Article 200 specifies that regarding testimony in cases of *zina* or *livat*, the witness must have personally seen the act, otherwise cases of *zina* (adultery) or *livat* shall be considered as *qazf* (accusation) and responded to by a *hadd* (divine) punishment.

Article 232- Where a man or woman confesses to *zina* less than four times, s/he shall be sentenced to thirty-one to seventy-four lashes of ta'zir punishment of the sixth grade. The same punishment mentioned in this article shall be applicable in the cases of *livat*, *tafkhez*, and *musaheqeh*.

Book Two – Hudud (divine punishments)**Part Two- Offenses punishable by Hadd (particular punishment)****Chapter Two- Livat, Tafkhiz, and Musaheqeh****[HOMOSEXUAL AND LESBIAN ACTS]**

Article 233- *Livat* is defined as penetration of a man's sex organ (penis), up to the point of circumcision, into another male person's anus.

Article 234- The *hadd* punishment for *livat* shall be the death penalty for the insertive/active party if he has committed *livat* by using force, coercion, or in cases where he meets the conditions for *ihsan*; otherwise, he shall be sentenced to one hundred lashes. The *hadd* punishment for the receptive/passive party, in any case (whether or not he meets the conditions for *ihsan*) shall be the death penalty.

Note 1- If the insertive/active party is a non-Muslim and the receptive/passive party is a Muslim, the *hadd* punishment for the insertive/active party shall be the death penalty.

Note 2- *Ihsan* is defined as a status that a man is married to a permanent and pubescent wife and whilst he has been sane and pubescent has had a vaginal intercourse with the same wife while she was pubescent, and he can have an intercourse with her in the same way [vaginal] whenever he so wishes.

Article 235- *Tafkhiz* is defined as putting a man's sex organ (penis) between the thighs or buttocks of another male person.

Note- A penetration [of a penis into another male person's anus] that does not reach the point of circumcision shall be regarded as *tafkhez*.

Article 236- In the case of *tafkhez*, the *hadd* punishment for the active and passive party shall be one hundred lashes and it shall make no difference whether or not the offender meets the conditions of *ihsan* [mentioned in note 2 of article 234], or whether or not [the offender] has resorted to coercion.

Note- If the active party is a non-Muslim and the passive party is a Muslim, the *hadd* punishment for the active party shall be the death penalty.

Article 237- Homosexual acts of a male person in cases other than *livat* and *tafkhez*, such as kissing or touching as a result of lust, shall be punishable by thirty-one to seventy-four lashes of ta'zir punishment of the sixth grade.

Note 1- This article shall be equally applicable in the case of a female person.

Note 2- This article shall not be applicable in the cases punishable by a *hadd* punishment under Shari'a rules.

Article 238- *Musaheqeh* is defined as where a female person puts her sex organ on the sex organ of another person of the same sex.

Article 239- The *hadd* punishment for *musaheqeh* shall be one hundred lashes.

Article 240- Regarding the *hadd* punishment for *musaheqeh*, there is no difference between the active or passive parties or between Muslims and non-Muslims, or between a person that meets the conditions for *ihsan* and a person who does not, and also whether or not [the offender] has resorted to coercion.

Article 241- In the cases of indecent offenses, in the absence of admissible legal evidence and with denial of the accused, any type of investigation and interrogation in order to discover hidden affairs and things concealed from the public eye shall be prohibited. In cases with the possibility of commission of an offense with force, coercion, assault, abduction, or deception, or cases which are considered as commission [of an offense] with resorting to force, this rule shall not be applicable.

The Press Law (1986)**[MORALITY CODE LIMITING SOGI PUBLIC EXPRESSION]**

There are a number of articles within the Press Law that directly impede freedom of expression to do with sexual orientation, gender identity and sex characteristics.

While reviewing a periodic report of the Islamic Republic of Iran in 2013, the Committee on Economic, Social and Cultural Rights (at para. 7) expressed concern over the criminalisation of consensual same-sex sexual activity and the possibility that convicted male persons may be subject to the death penalty.

At its 1st cycle UPR in February 2010, Iran received three recommendations regarding decriminalisation and discrimination based on SOGI, while at its 2nd cycle review in October 2014, there were 14 SOGI recommendations. These mostly centered on decriminalisation, persecution and discrimination. At its Interactive Dialogue session the delegation of Iran justified his country's position on 'homosexuality', by saying it was not so long ago that same-sex sexual relations had been "subject

to prosecution in most Western countries in the not too distant past". Iran will be before the UPR again in April 2019 for its 3rd cycle sessions.

The situation for LGBTI in Iran people is well illustrated in a 2014 [interview](#) recorded on the website *76 Crimes*. Outright Action International have produced a series of reports on the situations of sexual and gender minorities in Iran, and keep an up to date [archive](#) of relevant information from the country.

However, on 4 April 2014, Iran's [Supreme Leader](#) described "homosexuality" as "moral bankruptcy" and "[libidinous behaviour](#)". On 24 September 2014, the Iranian Speaker of Parliament [described](#) "homosexuality" as "modern Western barbarism". The Supreme Council of National Security (SCNS) censored official journalists, forbidding them from [covering certain topics](#) including SOGIESC-related rights, in the name of ensuring national security.

The Committee on the Rights of the Child [addressed](#) Iran in February 2016. In line with civil society [submissions](#), it spoke of being concerned with on-going discrimination of LGBTI children, and punishments of same-sex sexual behaviour of adolescents who are above the age of criminal responsibility "ranging from flogging to death penalty" [para. 31]. It also expressed concern that young people have no information on LGBTI issues, and trans people are forced into surgery [para.71], and urges reversal of such policies [para.72].

These, and other, concerns were more fully elaborated in the [Joint Submission](#) at the Interactive Dialogue with the Special Rapporteur on the situation of human rights in Iran, delivered by ARC-International in March 2016.

IRAQ



After the American invasion in 2003 the [Penal Code](#) of 1969 was reinstated in Iraq. This code does not prohibit same-sex relations.

Article 404

[MORALITY CODE LIMITING SOGI PUBLIC EXPRESSION]

"Any person who himself or through some mechanical means sings or broadcasts in a public place obscene or indecent songs or statements is punishable by a period of detention not exceeding 1 year or by a fine not exceeding 100 dinars."

Non-State actors in Iraq including Sharia judges, are known to order executions of men and women for same-sex sexual behaviour, despite the fact that Iraq's civil code is silent on same-sex sexual behaviour, and the country's legal system does not defer to the Sharia court. It is also known that both police and militias have frequently kidnapped, threatened and killed LGBT people, as [documented](#) by OutRight since 2014, and charted on their [Timeline](#).

The Daesh (or ISIS / ISIL) held areas of northern Iraq and northern Syria, are known to target men and women on account of their gender expression, gender identity and their sexual orientation. The *Nusr* ['Victory' in Arabic] [website](#), which claims to be the website of the Islamic Caliphate, has a section on Legal Jurisprudence (evidence-based rules and the Penal Code). One of the pages under this section is dedicated to "Punishment for Sodomy", which states: "The religiously-sanctioned penalty for sodomy is death, whether it is consensual or not. Those who are proven to have committed sodomy, whether sodomiser or sodomised, should be killed..."

Iraq accepted [the only](#) recommendation given to it (from France) with SOGI content in 2nd UPR in October 2014: "Guarantee equality of civil and political rights. Avoid all forms of discrimination based on ethnicity, religion, gender or sexual orientation": this remained unaddressed in the delegation's formal response.

In 2015, the United Nation Human Rights Committee that oversees the International Covenant on Civil and Political Rights (ICCPR) issued its Concluding Observations to Iraq. These included (at paras. 11 and 12) **concerns** on the stigmatisation and social exclusion of people on the basis of SOGI, and their inability to publicly demonstrate peacefully. The Committee acknowledged, "... diversity of morality and cultures must [...] always be subject to the principles of universality of human rights and non-discrimination". The State should, therefore, "vigorously" combat stereotypes, ensure enjoyment of Covenant rights to all, investigate, prosecute perpetrators and compensate victims, collect data on SOGI-related crime, and create anti-discrimination legislation that lists SOGI as a ground for protection".

Earlier in 2015, the United Nations Committee Against Torture - in relation to reliable reports before it – at para. 25 **expressed** concern that these attacks occur regularly and with impunity, at times leading to death. As such, Iraq should "take effective measures to prevent violence based on real or perceived sexual orientation and gender identity and ensure that all acts of violence are investigated and prosecuted promptly, effectively and impartially, perpetrators brought to justice and victims provided redress".

KUWAIT



Penal Code, Law No.16 of 2 June 1960, as amended in 1976.

Article 193

[CONSENSUAL INTERCOURSE BETWEEN MEN]

"Consensual intercourse between men of full age (from the age of 21) shall be punishable with a term of imprisonment of up to seven years." Such relations with a man under 21 years of age are criminalised by article 192.

Article 198

[MORALITY CODE LIMITING SOGI PUBLIC EXPRESSION]

"Whoever makes a lewd signal or act in a public place or such that one may see it or hear it from public place, or appears like the opposite sex in any way, shall be punished for a period not exceeding one year and a fine not exceeding 1000 Dinar or one either of these punishments".

Kuwait 'noted' (rejected) a recommendation from Brazil to decriminalise same-sex relations between consenting adults at its **1st cycle UPR** in 2010. At its **2nd UPR** in January 2015, Uruguay and Iceland recommended Kuwait decriminalise same-sex sexual relations, and the Netherlands also iterated this and a call for non-discrimination in the country's law. This call for non-discrimination was echoed by Argentina and Chile. **Without alluding** to SOGI, at para. 29 of the State's formal acceptance of the report of the Working Group, the delegation justified that looking after public morals does not contravene Article 21 of the ICCPR (peaceful assembly).

In May 2014, it was **reported** that vice police raided a "sex party" and arrested 32 people, both men and women ("tomboys").

In August 2016 in its **Concluding Observations** to Kuwait the Human Rights Committee that oversees the ICCPR stated that: "13. The State party should take the measures necessary to decriminalize sexual relations between consenting adults of the same sex and repeal the offence of imitating members of the opposite sex, in order to bring its legislation into line with the Covenant. It should also take measures to put an end to the social stigmatization of homosexuality and the harassment, discrimination and violence perpetrated against persons based on their real or perceived sexual orientation or gender identity".

LEBANON



Penal Code of 1943.

Article 534

[SEXUAL INTERCOURSE AGAINST NATURE]

“Any sexual intercourse against nature is punished with up to one year of imprisonment”.

Article 209

[MORALITY CODE LIMITING SOGI PUBLIC EXPRESSION - BREACH OF MODESTY]

“The making or possession, importing or attempts to import for trade, distribution, for payment, copying, exhibition or display or attempts to display to the public, or for selling or attempts to sell, or distribution or engaged in the distribution of each publication, an editor or a drawing or a declaration or pictures or paintings or photographs, or the origin of the image or its template or produced anything in breach of modesty shall be punished with imprisonment from imprisonment from one month to one year and a fine from 20,000 Lira to 100,000 Lira”.

Article 532 of 1943

“The exposing of public morals by any of the ways mentioned in paragraphs 2 or 3 of Article 209 shall be punished with imprisonment from one month to one year and a fine from 20,000 Lira to 100,000 Lira”.

In 2010, at Lebanon’s 1st cycle UPR, Norway recommended they decriminalise and “ensure non-discrimination on the basis of sexual orientation and gender identity”, the response to which was ‘noted’ (refused). The organisation Helem offer an analysis of the criminalising law. However, it is reported that in March 2014, a court read down Article 534 by ruling in favour of a transgender woman and her male partner. In contrast, in August 2014, it is reported that 27 men were arrested at a Hammam allegedly for same-sex sexual behaviour.

At the Interactive Dialogue session in Lebanon’s 2nd cycle UPR in November 2015, the delegation, in response to the six strong recommendations that the State received said: “As for sexual orientation, although article 534 of the Penal Code stated that sexual intercourse contrary to nature was punishable, two court decisions had indicated that article 534 did not apply to homosexuals [referring to the above]. The judiciary had played an important role in preventing and opposing acts of violence or discrimination against lesbian, gay, bisexual and transgender persons”. Public attitudes to LGBT people in Lebanon are caught in an excellent report produced in 2015, and an October 2016 short animated video advises on the rights a person who is arrested can assert.

In its Concluding Observations on Lebanon in October 2016, the Committee on Economic, Social and Cultural Rights (CESCR) addresses issues of discrimination based on SOGI, recommending the State adopts a legal framework for combatting discrimination, enshrines the principle in the Constitution, conducts campaigns to combat prejudices and stigmatisation and establishes mechanisms to ensure victims can seek effective remedies.

In reference to the 2014 case mentioned above, in January 2017 the Court of Cassation (the highest court in Lebanon) looked at the reasoning of the lower court and found in favour of it. The question of what comprises ‘natural’ in human sexuality was central to the issue.

MALAYSIA



Penal Code (Consolidated version 1998).

Unnatural Offences

[AGAINST THE ORDER OF NATURE]

Section 377A. Carnal intercourse against the order of nature.

“Any person who has sexual connection with another person by the introduction of the penis into the anus or mouth of the other person is said to commit carnal intercourse against the order of nature.

Explanation: Penetration is sufficient to constitute the sexual connection necessary to the offence described in this section."

Section 377B. Punishment for committing carnal intercourse against the order of nature

"Whoever voluntarily commits carnal intercourse against the order of nature shall be punished with imprisonment for a term which may extend to twenty years, and shall also be liable to whipping."

Section 377D. Outrages on decency

[GROSS INDECENCY]

"Any person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person, shall be punished with imprisonment for a term which may extend to two years."

Several states in Malaysia have **instated** Islamic Sharia laws, applying to male and female Muslims, criminalising male/male and female/female sexual acts with up to three years imprisonment and whipping. The Sharia Penal law in the Malaysian state of Pulau Pinang **confers** penalties for sodomy [*Liwat*] and lesbian relations [*Musahaqat*] with fines of RM5,000.00, three years imprisonment and 6 lashes of the whip. All these penalties can be combined.

Having received seven recommendations from States to decriminalise in its **2nd cycle UPR** in October 2013, the Government **stated** (at para. 9) that matters involving lesbian, gay, bisexual, and transgender persons and adherents of other schools of Islamic thought would be handled carefully and consistent with cultural traditions, religious doctrine and societal norms, and domestic laws and regulations.

In February 2015, leading opposition leader, and former Deputy Prime Minister Anwar Ibrahim was jailed for five years after losing his appeal against his conviction on sodomy charges – charges widely **understood** to be politically motivated. Reflecting the tone of much public utterance, on 11 September 2015, the Malaysian tourism minister, Datuk Seri Nazri Aziz, **said** that lesbian, gay, bisexual or transgender Malaysians would never have equal rights : see, **Human Dignity Trust**.

MALDIVES



Penal Code, Law No. 6/2014

Section 410 – Offences against the family

[SAME SEX MARRIAGE]

"Unlawful Marriage. A person commits an offense if:[...] (8) two persons of the same sex enter into a marriage; The offenses in this Section are Class 1 misdemeanors which carry a jail term of 1 year or less but more than 6 months."

Section 411

[UNLAWFUL SEXUAL INTERCOURSE]

"(2) he engages in sexual intercourse with a person of the same sex.

Definitions: (2) "Same- sex intercourse means";

(A) Insertion by a man his sexual organ or any object into the anus of another man for sexual gratification. Or the insertion into another mans mouth the penis of a man or

(B) Insertion of a woman's organ or any object into the vagina or anus of another woman for sexual gratification.

The offenses in this Section range from Class 1 misdemeanors to Class 3 felonies that carry a jail term of between 6 months and 8 years (when same-sex involving incest or adultery)."

Section 412

[INDECENT ACTS]

"(a) Unlawful Intercourse. A person commits an offense if:

(5) if the person married or unmarried has sexual contact with a person prohibited for marriage by virtue of being a close relative, or being breast fed by the same mother, or due to marriage. The offense is a Class 5 felony.

(b) Offense Defined. A person engaging in sexual contact with a person of the same is committing an offense. [sic]

(c) Prohibition. "prohibited sexual contact" means indecent acts other than the offenses prescribed under Section 411 (a) of this Code, with a person of same sex, or with a person of the opposite sex other than with a person to whom he is married, or with an animal, for obtaining sexual gratification.

The offenses in this Section range from Class 1 misdemeanors to Class 3 felonies that carry a jail term of between 6 months and 8 years (when same-sex involving incest or adultery)."

Until a new Penal Code came into force in July 2015, consensual same-sex sexual conduct went unregulated in the Maldives under the civil law. But the existing Sharia code has been transposed into the civil code by this 2014 law, and it criminalises same-sex sexual acts for both men and women. For men, the punishment is banishment for nine months to one year or a whipping of 10 to 30 strokes, while the punishment for women is house arrest for nine months to one year.

In its conception, Law No. 6/2014 sets out its range of offences and defences according to a Sharia scheme. This scheme then embraces the entire population and not just those of the Muslim faith. Less than two months after the new Penal Code came into force, arrests of gay men have been **reported**. Testimony in Kaleidoscope Trust's publication (p.43) **portrays** the Maldives as highly hostile to LGBTI persons.

At its 1st cycle UPR in November 2010, recommendations to Maldives were to decriminalise, protect against violence and remove discrimination based on sexual orientation and gender identity in national laws. Maldives **rejected** all of five these recommendations.

In a **Briefing Paper** (at p.2) submitted to Maldives' 2nd cycle UPR in May 2015, the International Service for Human Rights (ISHR) says, "[u]ncodified Muslim Sharia Law criminalises homosexual conduct, thus making the Maldives a very insecure place to advocate for the rights of persons who identify themselves as LGBTI."

A panel of refugee appeals officers in the Immigration New Zealand Agency **recognised** that individuals continue to be forced to flee persecution based on their sexual orientation throughout Maldives.

In finalising its 2nd UPR process in September 2015, the Maldives **rejected** ('noted') two recommendations made to it – concerning discrimination and decriminalisation (Chile and Argentina).

In April 2016, **Concluding Observations** of the Committee on the Rights of the Child recommended the State to "amend its legislation in order to eliminate any discrimination against girls, children born out of wedlock or following out-of-court marriages, and lesbian, gay, bisexual, transgender or intersex children", and "to use legislative, policy and educational measures, including sensitization and awareness-raising, to end stigmatization" of such children.

MYANMAR



Penal Code, Act 45/1860, Revised Edition.

Section 377

[AGAINST THE ORDER OF NATURE]

"Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

Sexual orientation and gender identity was not mentioned in Myanmar's 1st cycle UPR in November 2010. However, the National Human Rights Commission was established in 2011 and given force in 2014. One commissioner **attended** the UN Asia-Pacific conference on Human Rights, Sexual Orientation and Gender Identity in 2015, although state-sponsored homophobia **continues** to the present time.

In its 2nd cycle UPR in November 2015, two recommendations were made to repeal Section 377 by Australia and Spain. It appears that the delegation **offered** no response to these, other than 'noting' (rejecting) them.

OMAN

**Omani Penal Code of 1974.****Article 33****[DISGRACING CRIMES]**

"The following are deemed as disgracing crimes:

I. All felonies punishable by a coercive sentence.

II. All misdemeanours stated hereafter:

1. Bribery; 2. Embezzlement; 3. False testimony; 4. Perjury; 5. Forgery and use, with knowledge, of forged items; 6. Incitement to prostitution; 7. Homosexual and lesbian intercourses; 8. Drug trafficking; 9. Theft; 10. Rape and assault; 11. Fraud; 12. Flash Cheque; 13. Breach of trust; 14. Counterfeit; 15. Trespass."

Homosexual and Lesbian Intercourses**Article 223.****[HOMOSEXUAL AND LESBIAN EROTIC ACTS]**

"Anyone who commits erotic acts with a person of the same sex shall be sentenced to imprisonment from six months to three years. The suspects of homosexual or lesbian intercourse shall be prosecuted without a prior complaint, if the act results in a public scandal. The suspects of lesbian intercourse among ascendants, descendants or sisters shall only be prosecuted upon a complaint from a relative or a relative by marriage forth-degree removed."

At its 1st cycle UPR, Sweden made two recommendations that Oman 'noted' (i.e. rejected) – one to decriminalise same-sex sexual relations, and the other to abolish discrimination based on SOGI.

Although there are no morality laws that specify SOGI in regard to limits on the freedom of expression in Oman, in September 2013 the English-language newspaper *The Week* was shut down for one week after printing an article about the country's LGBT community. The content was deemed to fall under "public discord", which carries a three-year prison sentence. The article's author and the paper's editor were charged with violating the highly restrictive 1984 Press and Publications Law. Under pressure from the government, the newspaper removed the article from its website, though the print issue continued to circulate.

Oman's 2nd cycle UPR was in November 2015. Only one civil society submission mentioned decriminalising "homosexuality", and both Mexico and Brazil made recommendations for Oman to repeal its legislation (or at least not apply it [Brazil]). The State 'noted' (rejected) these recommendations.

PAKISTAN

**Penal Code (Act XLV of 1860).****Section 377. 'Unnatural offences'****[AGAINST THE ORDER OF NATURE]**

"Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which shall not be less than two years nor more than ten years, and shall also be liable to a fine.

Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section."

Section 294. 'Obscene Acts and Songs'**[OBSCENE ACTS]**

"Whoever to the annoyance of others---a) does any obscene act in any public place, or b) sings, recites or utters any obscene songs, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both."

Section 12 (Ordinance No. VII of 1979)**[UNNATURAL LUST]**

This provision was **amended** in 1980 by an ordinance that raised the minimum punishment to ten years and a fine. Under Section 12 of the Hudood Ordinances, “Whoever kidnaps or abducts any person in order that such person may be subjected [...] to [...] unnatural lust [...] shall be punished with death or [...] imprisonment for a term which may extend to twenty-five years, and shall also be liable to a fine [...]”

There were no direct mentions of SOGI in either of Pakistan’s UPR outcome documents in **May 2008** and **October 2012**. Only in 2008 were there civil society submissions (ILGA and ILGHRC) on the issue (it appears that of the 38 civil society submissions made in 2012, none had a SOGI context). However, there were recommendations concerning the protection of human rights defenders and the training of public employees (judges, police, etc) in international human rights standards in their 2nd cycle UPR. Pakistan’s 3rd cycle UPR will be in November 2017.

Pakistan has been particularly vocal at the Human Rights Council and at various UN fora in its refusal to embrace SOGI within the scope of the various human rights Treaty Bodies, and in its promotion of the ‘traditional values of humankind’ **resolutions** at the Human Rights Council. Most recently, throughout 2016, Pakistan took the lead in **opposing** the appointment of a United Nations SOGI mandate holder, Vitit Muntabhorn. In June 2012, at the 19th session of the HRC, at the reading of a report mandated by the first SOGI resolution (A/HRC/19/42) of September 2011, Pakistan led a **walkout** by member States of the Organisation of Islamic Cooperation, which was unprecedented behaviour in that forum. They were objecting to “attempts to create” “new standards” regarding SOGI that “seriously jeopardise the entire international human rights framework”. Pakistan continues to object to the application of international human rights standards to SOGI in UN forums.

According to Kaleidoscope Trust, in April 2014, a serial killer confessed to killing three gay men because of their sexual orientation, yet Pakistani media depicted the serial killer as “the epitome of righteousness”. Section 294 is **reportedly** often deployed to target male and trans sex workers.

QATAR

Qatar’s 1971 Penal Code (Law Number 14 in 1971 at Art.201) penalised consensual same-sex relations with up to 5 years in prison. The Qatari criminal law was changed in 2004, and according to **Law No. 11** in 2004, sodomy itself is no longer a crime.

However, under the 2004 **Penal Code’s Article 296**, ‘pimping’ same-sex acts is punishable by 1--5 years in jail, and **Article 298** specifies that same-sex sex work is punishable by up to 10 years. This means that as of 2004, there is no civil law criminalising consensual same-sex sexual activity, although the terms “... leading, instigating...” in the statute could potentially be applied to the dissemination of information on SOGI issues.

Article 296 of 2004**[MORALITY CODE LIMITING SOGI PUBLIC EXPRESSION]**

“One is convicted to no less than a year and no more than three years in prison in case of [*inter alia*] 3 - Leading, instigating or seducing a male anyhow for sodomy or immorality. 4 - Inducing or seducing a male or a female anyhow to commit illegal or immoral actions.”

Qatar also runs Sharia courts, where technically it is possible that Muslim men could be put to death for same-sex sexual behaviours, but there appears to be no evidence that has been applied to date. The ‘chill factor’ of these provisions, are covered by UNHCR guidance of 2002 that **explains** (at paras. 57 and 59) norms that do not confirm with international human rights law can be seen to be persecutory “*per se*”. The offence of “Zina” **renders** any sexual act by a married person outside of marriage punishable by death, while sexual acts by non-married persons are punishable by flogging – both are offences, no matter if they were same-sex or different-sex.

In its 1st UPR in February 2010, only Sweden made a recommendation regarding SOGI to Qatar (which was ‘noted’): “To ensure that LGBT persons are not discriminated against and, as an immediate step, to amend the provisions of the penal code criminalizing consensual sexual activity among persons of the same sex and to ensure that no one is punished for such activity under Sharia law”. This recommendation was repeated at the Interactive Dialogue session, but the State gave **no response** to either. At its 2nd cycle UPR in mid-2014, only one mention of LGBT workers was made in relation to the upcoming World Cup, to which it appears the State made **no response** at all.

SAUDI ARABIA



There is no codified Penal Law in Saudi-Arabia.

Instead, the country applies strict Islamic Sharia law. According to the interpretation, **Sura 7:80/81**, describes sexual intercourse between men as a misdemeanour, but does not specify a punishment. However, just as all sexual relations outside of marriage are illegal, the penalty for a married man is generally understood to be death by stoning. The penalty to be imposed for same sex sexual acts is a matter of dispute. According to a **report** to the German parliament “some call for whipping, and others believe they are quoting the Prophet that “both men to be killed”. However, same-sex sexual behaviour is not listed in the Sharia as one of the crimes deserving of death – as are murder, adultery, apostasy, or highway robbery”.

In its 1st cycle UPR in February 2009, there were four **brief mentions** of sexual orientation-related content in civil society submissions, yet no recommendations to Saudi Arabia from other States or any other mentions of SOGI. However, in Saudi Arabia’s October 2013 **review** (2nd cycle UPR), there were no civil society inputs on SOGI, no recommendations and no mentions by the State on SOGI-related issues. At the United Nations, Saudi Arabia has continually **refused** to accept that the human rights framework includes SOGI issues.

Although Saudi Arabia does not have a codified criminal code, there is a morality law enforcement **agency** called the ‘Committee for the Propagation of Virtue and the Prevention of Vice’, that arrests and detains people who violate the traditional teachings of Wahhabism, including same-sex sexual behaviour and diverse gender expression. They operate in-person and online, and are known to be particularly **vicious** regarding LGBT people.

There are no LGBT groups or organisations operating in Saudi Arabia that are known in the region, and opportunities for people to meet have been severely restricted. According to the Council of Ministers **Resolution** in 2001, “[a]ll internet users in the Kingdom of Saudi Arabia shall refrain from publishing or accessing data containing some of the following: 1. Anything contravening a fundamental principle or legislation, or infringing the sanctity of Islam and its benevolent Shari’ah, or breaching public decency”.

Authorities in Saudi Arabia **arrested** several people on “suspicion of homosexuality” in raids on two parties in the city of Jeddah in June 2015. In March 2016, it is **reported** that a doctor in Jeddah was arrested by the Committee for Promotion of Virtue and the Prevention of Vice for flying the rainbow flag, although he had been unaware of its meaning. Also in March 2016, from Jeddah, **ominous attention** has been brought to online communications amongst sexual and gender minorities. However, in May 2016, regarding the death penalty for same sex sexual relations, a leading cleric **noted**, “[b]y condemning homosexuals to death they are committing a graver sin than homosexuality itself”.

In October 2016, the **Concluding Observations** of the Committee on the Rights of the Child observed a worry that, *inter alia*, LGBT children are subject to persistent discrimination in Saudi Arabia. As such it was recommended that the State adopt “a proactive and comprehensive strategy to eliminate *de jure* and *de facto* discrimination”.

The Saudi authorities **raided** a resort south of Saudi capital, Riyadh in February 2017, and detained 35 Pakistani citizens, describing them as “faggots”, and releasing photographs of some of the individuals who were cross-dressing. Corroboration of the event has not been obtained, but it is **reported** that two members of the group were brutally **killed** by the authorities, a claim that the State **denies**.

SINGAPORE



Penal Code (Chapter 22), 1872, Revised Edition 2008.

Outrages on decency

Section 377A

[GROSS INDECENCY]

“Any male person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be punished with imprisonment for a term which may extend to 2 years.”

Section 377 criminalising “carnal knowledge against the order of nature” has been already repealed by the **Penal Code (Amendment) Act 2007, No. 51**, which came into force on 1 February 2008.

Section 294

[OBSCENE ACT]

“Whoever, to the annoyance of others —

- (a) does any obscene act in any public place; or
- (b) sings, recites or utters any obscene song, ballad or words in or near any public place, shall be punished with imprisonment for a term which may extend to 3 months, or with fine, or with both.”

Section 354

[OUTRAGE MODESTY]

“Whoever assaults or uses criminal force to any person, intending to outrage or knowing it to be likely that he will thereby outrage the modesty of that person, shall be punished with imprisonment for a term which may extend to 2 years, or with fine, or with caning, or with any two of such punishments.”

In October 2014, Singapore’s highest court, the Court of Appeal, **found** that Section 377A infringed the rights of individuals of diverse sexual orientation, and felt that the legislature should **address** the issue, and law should not be made by the Court. Reportedly, an internet blogger **commenting** that one of the judges acted with bias (his text is available in this article), was sentenced with a fine of approximately €6,000, upheld at his appeal in December 2015. Kaleidoscope Trust **reports** (at 46) that section 377A is rarely used now to prosecute LGB people, but sections 354 and 294 are deployed more frequently

In June 2015, the Pink Dot rally **attracted** more than 28,000 participants in Hong Lim Park.. Similar number of attendees populated the June 2016 rally, but it is notable that there was a particular **emphasis** by the State on ensuring ‘foreign entities’ are not funding this agenda (2016 saw significant new funding partners for this event).

In January 2016, at its 2nd cycle UPR, Singapore **received** 12 recommendations, 11 of which called for repeal of Section 377A, and one of which focused on bias in media representation of LGBTI persons and issue, and another which called for general non-discrimination. Singapore “noted” (effectively rejected) all 12 recommendations.

SRI LANKA



Penal Code 1885 (as amended by the Penal Code (Amendment) Act, No. 22 of 1995).

Article 365. Unnatural offences

[AGAINST THE ORDER OF NATURE]

“Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment of either description for a term which may extend to ten years [...]

Explanation – penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.”

Article 365A. Acts of gross indecency between persons

[GROSS INDECENCY]

“Any person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any person of any act of gross indecency with another person, shall be guilty of an offence and shall be punished with imprisonment of either description for a term which may extend to two years or with a fine, or with both and where the offence is committed by a person over eighteen (18) years of age in respect of any person under sixteen (16) years of age shall be punished with rigorous imprisonment for a term not less than 10 years and not exceeding 20 years and with a fine and shall also be ordered to pay compensation of amount determined by court to the person in respect of whom the offence was committed for the injuries caused to such a person.”

At Sri Lanka’s 2nd cycle UPR in November 2012, only two States (Argentina and Canada) made specific recommendations regarding decriminalisation in the Penal Code. Sri Lanka ‘noted’ them. The State’s next review will be in November 2017.

Although the 1995 amendments broadened the scope of the law to be gender-neutral, according to Kaleidoscope Trust (at p. 47), the law is essentially seen to be a dead law (unenforced although legally valid). However, it is important to note that the presence of the law creates a significant ‘chill factor’ on LGBT people who continue to be subject to extortion and violence. This organisation also reports that at its appearance at the Human Rights Committee, the State acknowledged constitutional protection regarding discrimination in relation to SOGI, amidst a somewhat softening tone regarding SOGI. However, Sri Lanka voted against the creation of a SOGI mandate holder at the UN in late-2016.

Also, in a January 2017 interview the Minister for Justice, basing his argument on the religious nature of Sri Lankan society has said regarding 365 and 365A, “under no circumstance are we going to change that law”. Elsewhere he called “homosexuality” a “mental disorder”, a comment that initiated public outcry. There are pressing concerns, that despite earlier consultations, there appears to be moves to remove references to sexual orientation and gender identity from the nation’s National Human Rights Action Plan for 2017-2021.

SYRIA



Penal Code of 1949.

Article 520

[UNNATURAL SEXUAL INTERCOURSE]

“Any unnatural sexual intercourse shall be punished with a term of imprisonment of up to three years.”

Article 517

“Punish crimes against public decency in any of the ways mentioned in paragraph 1 of Article 208 [any act carried out in a public or open area where one could possibly see, intentionally or accidentally, the act] with imprisonment of three months to three years.”

Despite the provisions of the black letter law, since 2011 Syria has become one of the most dangerous places on earth for sexual and gender minorities, with frequently complex responses to same sex sexual activity. Of the relatively few

testimonies that have emerged out of the war-ravaged country, scenes of torture, persecution, summary execution carried out by State and non-State actors, and often extended family members are **reported**.

In its 1st cycle UPR, in 2011, Amnesty International was the **only** NGO that made a submission about the repeal of Article 520. No States made recommendations on this issue, and there is **no reference** to SOGI in the concluding documents from the first cycle.

Only two civil society submissions were made to Syria's 2nd UPR in November 2016, including this **observation** by MADRE (para 11): "Women and girls can be killed because of mere suspicion of an affair or romantic liaison, a false accusation, or for being raped or sexually assaulted. Victims of "honor" killings also include LGBT individuals".

AWASUR (Joint Submission 12) **state**: "LGBT identified individuals are persecuted and stigmatized socially and legally, where they are denied equal opportunities to education and work through the denial of employment in public services and sometimes in private establishments. They are also persecuted by the law through security trailing and detention, where many men have been beaten, tortured, and raped – individually and in groups – at checkpoints due to their sexual orientation".

In its preliminary Interactive Dialogue to date (March 2017), the Syrian delegation has made **no mention** of the multiple societal and official attacks and persecution of sexual or gender minorities in its responses.

TURKMENISTAN



Criminal Code of 1997 (effective 1 January 1998).

Chapter 18: Crimes against morality

Section 135: Homosexual acts

[HOMOSEXUAL ACTS]

- "(1) Homosexual acts, i.e. sexual intercourse between men, shall be punished with a term of imprisonment of up to two years.
 (2) Homosexual acts involving physical force, the threat of force and the exploitation of the victim's need for assistance shall be punished with a term of imprisonment of between three and six years.
 (3) The offence that is specified in subsection (2) of this Section, where:
 (a) it is committed more than once;
 (b) it is committed by three or more persons without collusion or by several persons in collusion;
 (c) it is committed consciously against a minor;
 (d) it has infected the victim with a sexual disease;
 shall be punished with a term of imprisonment of between five and ten years.
 (4) The offence that is specified in subsections (2) and (3) of this Section, where:
 (a) it has been committed consciously against a person who has not yet reached the age of 14;
 (b) it has, due to negligence, caused the death of the victim, caused severe damage to their health or infected them with AIDS;
 shall be punished with a term of imprisonment of between ten and 20 years."

Section 137. Coercion to engage in sexual relations

[COERCION]

"The coercion of a person to engage in sexual relations, homosexual acts or other acts of a sexual nature by means of blackmail, threats to destroy assets or the exploitation of a material or other dependency shall be punished with a term of correctional labour of up to two years or a term of imprisonment of up to two years."

"Homosexuality" is considered a **mental disorder** in the country, and as such, punishment for same-sex sexual acts between men or perceived 'homosexual' behaviour can also include placement in psychiatric institutions to be 'cured' of their sexual preferences. The law criminalising same-sex sexual acts between males is enforced selectively, and while there are reports of arrests, individuals are rarely prosecuted under this law. The Criminal Code does not mention female same-sex sexual acts.

In its 1st cycle UPR in December 2008, Turkmenistan **rejected** two recommendations (Sweden and Czech Republic) to decriminalise, without offering any rationale for that refusal. Again at its April 2013 review, it rejected Slovenia's recommendation, which referred to other international human rights mechanisms: "Decriminalize sexual relations between consenting adults of the same sex, as recommended by the Human Rights Committee".

In its Concluding Observations on Turkmenistan in 2012, the Human Rights Committee **said** that, "[t]he State party should decriminalize sexual relations between consenting adults of the same sex in order to bring its legislation in line with the Covenant. The State party should also take the necessary steps to put an end to the social stigmatisation of homosexuality and send a clear message that it does not tolerate any form of discrimination against persons based on their sexual orientation or gender identity".

UNITED ARAB EMIRATES



All sexual acts outside of heterosexual marriage are banned in the United Arab Emirates. No article in **Federal Law No (3)** of 1987 on Issuance of the Penal Code specifically discusses consensual same-sex relations, although various scholars translate this article otherwise.

It is through the Sharia code that the death penalty theoretically can apply to same-sex sexual relations through the offence of Zina (Article 356) which applies to sexual relations outside of marriage of any sort. However, **research** by leading human rights organisations concludes that although in some cases courts have gone beyond codified laws and imposed harsher sentences of stoning and flogging for Zina crimes, it **appears** that the law is used in rape cases only.

Different Emirates within the UAE have anti-sodomy laws: Article 80 of the Criminal Code in Abu Dhabi (the Emirate that is the seat of the UAE), criminalises "[unnatural sex with another person]", punishable up to 14 years in jail. (This law was passed in 1970, before Abu Dhabi was an independent entity). Article 177 of the Emirate of Dubai (also passed in 1970) imposes 10 years of imprisonment for [sodomy].

The UAE received two State recommendations regarding SOGI in its 2013 2nd cycle UPR: "Protect the human rights of all individuals, including LGBT individuals, and take appropriate steps to help ensure that protection is provided to the victim and perpetrators are identified and prosecuted" (USA), and "Repeal the criminalization of sexual relations between persons of the same sex" (Argentina). It 'noted' both and appears to have made **no comment** at any session on these issues.

UZBEKISTAN



Criminal Code of 1994.

Article 120

[HOMOSEXUAL ACTS - MALE]

"Homosexual acts, which are defined as the gratification of a man's sexual drive with another man without the use of force, shall be punishable with a term of imprisonment of up to three years."

At its 2nd cycle UPR in late-April 2013, Uzbekistan '**noted**' (rejected) two calls to decriminalise same-sex sexual relations (Netherlands and Uruguay), and two others to enact non-discrimination legislation (Spain and Argentina). The State's **response** to these calls was unambiguous: "On questions regarding the decriminalization of homosexuality, the Criminal Code forbids consensual sexual relations between men, but this does not apply to women. There are no plans in the near

future to repeal this law which reflects traditions that have developed over more than 1,000 years. Uzbekistan in this respect shares the position of the Muslim countries expressed during the discussions of this issue within the Human Rights Council" [para 88]. Uzbekistan's next UPR will be in January 2018.

In August 2015, the Human Rights Committee issued its Concluding Observations on Uzbekistan. At paras. 6 and 7, it **noted** that for the State to align with Convention obligations, its legal framework needs to ensure, *inter alia*, full protection from discrimination in all spheres, inclusive of SOGI and it provides for effective remedies in cases of violations. It also reiterated a previous recommendation concerning "any form of social stigmatization, hate speech, discrimination or violence" based on SOGI, ensuring "the investigation, prosecution and punishment of such violent acts", and the repeal of Article 120.

YEMEN



Penal Code 1994.

Article 264

[HOMOSEXUALITY – MEN]

"Homosexuality between men is defined as penetration into the anus. Unmarried men shall be punished with 100 lashes of the whip or a maximum of one year of imprisonment, married men with death by stoning."

Article 268

[HOMOSEXUALITY – WOMEN]

"Homosexuality between women is defined as sexual stimulation by rubbing. The penalty for premeditated commission shall be up to three years of imprisonment; where the offence has been committed under duress, the perpetrator shall be punishable with up to seven years detention."

Following the unification of north and south Yemen, the 1994 Yemeni Penal Code (the Republic's Rule number 12) requires stoning to death for consensual same-sex relations for men (Art. 264) and three to seven years imprisonment for women (Art. 268).

The situation in Yemen has become progressively worse for sexual and gender minorities since the takeover of much of the country by the Houthi militia in 2013. An **article** from August 2015 goes into some detail on the environment for LGBT people in Yemen. Murders of gay men **continue** to be reported.

In its 2nd cycle UPR in January 2014, there were no recommendations made by States to Yemen in regards to SOGI. In fact, it appears that there was only one passing **mention** of SOGI in the 18 civil society and other submissions. Unlike at its 1st cycle UPR in May 2009 where there was **one**, there were no oral statements made at the close of Yemen's 2nd cycle UPR. Yemen's next UPR will be in October 2018.

COOK ISLANDS (NEW ZEALAND ASSOCIATE)



Crimes Act 1969.

Section 154. Indecency between males

[INDECENT ACT]

“(1) Everyone is liable to imprisonment for a term not exceeding five years who, bring a male,—

- (a) Indecently assaults any other male; or
- (b) Does any indecent act with or upon any other male; or
- (c) Induces or permits any other male to do any indecent act with or upon him.

(2) No boy under the age of fifteen years shall be charged with committing or being a party to an offence against paragraph (b) or paragraph (c) of subsection (1) of this section, unless the other male was under the age of twenty-one years.

(3) It is not defence to a charge under this section that the other party consented.”

Section 155. Sodomy

[SODOMY]

“(1) Everyone who commits sodomy is liable—

- (a) Where the act of sodomy is committed on a female, to imprisonment for a term not exceeding fourteen years;
- (b) Where the act of sodomy is committed on a male, and at the time of the act that male is under the age of fifteen years and the offender is of over the age of twenty-one years, to imprisonment for a term not exceeding fourteen years;
- (c) In any other case, to imprisonment for a term not exceeding seven years.

(2) This offence is complete upon penetration.

(3) Where sodomy is committed on any person under the age of fifteen years he shall not be charged with being a party to that offence, but he may be charged with being a party to an offence against section 154 of this Act in any case to which that section is applicable.

(4) It is no defence to a charge under this section that the other party consented.”

The Cook Islands is a New Zealand associate, and as such, the laws in the Cook Islands are only applicable to the islands, and not to New Zealand. The LGBT organisation, the *Te Tiare Association*, is pushing for decriminalisation in light of developments at the international (UN) level. Even though representatives of the local traditional royal family have spoken against criminalisation of same-sex intimacy, it is reported that the political establishment are not as yet entirely on board.

KIRIBATI



Penal Code [Cap 67] Revised Edition 1977.

Section 153. Unnatural Offences

[BUGGERY]

“Any person who—

- (a) commits buggery with another person or with an animal; or
 - (b) permits a male person to commit buggery with him or her,
- shall be guilty of a felony, and shall be liable to imprisonment for 14 years.”

Section 154. Attempts to commit unnatural offences and indecent assaults

[ATTEMPTED BUGGERY]

“Any person who attempts to commit any of the offences it specified in the last preceding section, or who is guilty of any assault with intent to commit the same, or any indecent assault upon any male person shall be guilty of a felony, and shall be liable to imprisonment for 7 years.”

Section 155. Indecent practices between males

[GROSS INDECENCY]

“Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, shall be guilty of a felony, and shall be liable to imprisonment for 5 years.”

Kiribati 'noted' (rejected) two **recommendations** to decriminalise, and four to include SOGI into its Constitutional provisions for non-discrimination in its 1st cycle UPR in May 2010. However, the State did attempt to explain its position: "Concerning the issue of sexual orientation, the delegation appreciated the existence of homosexuality and the need to include it as a prohibited discriminatory ground in the Constitution. However, the delegation reiterated the high threshold required in order to adopt an amendment to the Bill of Rights. The same would apply to the issue of discrimination against women" (para. 61). Local organisations **reported** that a Private Member's Bill calling for such Constitutional inclusion was then rejected in the Parliament in 2014.

In its 2nd cycle UPR in January 2015, Kiribati received **recommendations** from France, Slovenia, Chile, Canada and Uruguay to decriminalise same-sex sexual relations, and to ensure SOGI is a ground that is protected in anti-discrimination legislation. In the final Working Group **report** for Kiribati, there is no mention of the State's reasons for rejecting ('noted') all SOGI-related recommendations. It is notable that the State created a Gender Equality and Women's Development Policy in light of the problem it identified in its 2010 UPR (quoted above).

Finally, Boutokaan, Inaomataia ao Mauriia Binabinaine Association (BIMBA), the first Kiribati LGBT NGO, was founded in September 2016. The establishment of **BIMBA** is likely to lead to increased effort towards decriminalising same-sex sexual conduct and broader law reform in the country.

PAPUA NEW GUINEA



Criminal Code 1974, as amended in 2002.

Section 210. Unnatural Offences

[AGAINST THE ORDER OF NATURE]

"(1) A person who—

- (a) sexually penetrates any person against the order of nature; or
- (b) sexually penetrates an animal; or
- (c) permits a male person to sexually penetrate him or her against the order of nature, is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 14 years.

(2) A person who attempts to commit an offence against Subsection (1) is guilty of a crime.

Penalty: imprisonment for a term not exceeding seven years."

Section 212. Indecent Practices between Males

[GROSS INDECENCY]

"(1) (1) A male person who, whether in public or private—

- (a) commits an act of gross indecency with another male person; or
- (b) procures another male person to commit an act of gross indecency with him; or
- (c) attempts to procure the commission of any such act by a male person with himself or with another male person, is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years."

In its 1st cycle UPR in June 2011, Papua New Guinea rejected two **recommendations** to decriminalise sexual relations between consenting adults of the same sex, and one to include "sexual orientation and gender" in non-discrimination legislation.

In its 2nd cycle UPR in July 2016, Papua New Guinea did not accept five SOGI related **recommendations**, four of which referred to the decriminalisation of same-sex sexual activity, and included a **footnote** explicitly stating that "LGBT [sic] is currently not a priority of the Government" (see fn. 53). During the interactive dialogue, the delegation **stated** that the rights of lesbian, gay, bisexual, transgender and intersex persons, "needed to be understood by the population" and that a "national consultation process was required in order to address the issue in a comprehensive way".

Kapul Champions, the first local registered gay, bisexual and transgender human rights NGO in the country came into being in 2013 and, in 2015, it submitted its own report for the UPR. The organisation indicated that former Member of Parliament, Dame Carol Kidu, described gay Papua New Guineans as being forced to live lives of secrecy, calling —unsuccessfully— on the government to decriminalise ‘homosexuality’. The report also shows that Prime Minister Peter O’Neill stated that there were ‘strong feelings’ against ‘homosexuality’ in the country, which was “yet to accept such sexual openness”. Other civil society organisations submitted information on SOGI issues, namely *Kaleidoscope Trust* and the *Sexual Rights Initiative*, focusing on criminalisation, discrimination, access to justice, health services and employment regarding LGBTI people, and *Human Right Watch*, with regard to the plight of gay asylum seekers in Papua New Guinea.

Regarding actual enforcement of laws criminalising same-sex sexual relations, Kaleidoscope Trust reported that in March 2015, Malalaua district resident Mr Joe Sevese was prosecuted and pleaded guilty to indecent acts between males (see *State v. Sevese* at 2). In that matter, the sentencing judge found that “homosexual acts or this type of behaviour is quite prevalent in society” despite the lack of reported cases, and sentenced the accused to a suspended sentence, mandatory counselling and community work.

SAMOA

Crimes Act 2013

Section 67. Sodomy

[SODOMY]

“(1) A person who commits sodomy is liable:

- (a) where the act of sodomy is committed on a female, to imprisonment for a term not exceeding 7 years; or
- (b) where the act of sodomy is committed on a male, and at the time of the act that male is under the age of 16 years and the offender is of or over the age of 21 years, to imprisonment for a term not exceeding 7 years; or
- (c) in any other case, to imprisonment for a term not exceeding 5 years.

(2) Sodomy is complete upon penetration.

(3) It is no defence to a charge under this section that the other party consented.”

Section 68. Attempts to commit sodomy

[ATTEMPTED SODOMY]

“A person is liable to imprisonment for a term not exceeding 5 years who:

- (a) attempts to commit sodomy; or
- (b) assaults any person with intent to commit sodomy.”

Section 71. Keeping place of resort for homosexual acts

[FACILITATES INDECENT ACTS]

“A person is liable to imprisonment for a term not exceeding 7 years who:

- (a) keeps or manages, or knowingly acts or assists in the management of, any premises used as a place of resort for the commission of indecent acts between males; or
- (b) being the tenant, lessee or occupier of any premises, knowingly permits the premises or any part thereof to be used as a place of resort for the commission of indecent acts between males; or
- (c) being the lessor or landlord of any premises, or the agent of the lessor or landlord, lets the premises or any part of the premises with the knowledge that the premises are to be used as a place of resort for the commission of indecent acts between males, or that some part of the premises is to be so used, or is wilfully a party to the continued use of the premises or any part thereof as a place of resort for the commission of the indecent acts.”

At its 1st cycle UPR in May 2011, Samoa rejected three Level 5 (act immediately) recommendations to decriminalise same-sex sexual activity from Canada, France and Norway, but it did accept a Level 2 (“continue its reconsideration”) soft recommendation from the United States. However, Samoa’s rejection is worthy of note: Paragraph 22 of the report of the Working Group reads: “Samoa noted the gaps and weaknesses in its legislative framework on upholding equality and non-discrimination based on sexual orientation, and that relevant legislation was being reviewed by the Samoa Law

Reform Commission. Samoa indicated that *Faafafine*, gays and lesbians were integral members of Samoan society and were heirs to family chiefly titles and lands through extended family consensus, as done for all men and women of its society. However, sexual orientation was a sensitive issue in Samoa given the religious and cultural beliefs of mainstream society. Nonetheless, Samoa was confident that education, awareness and sensitisation would pave the way for societal acceptance and prevention of discrimination that might arise out of sexual orientation”.

In its 2nd cycle UPR, Samoa received seven SOGI-related **recommendations**, six of which were rejected and only one accepted (to reduce violence against women and girls and violence based on sexual orientation and gender identity). During the interactive dialogue the delegation touched upon “discriminatory practices on sexual matters”, stating that Samoa had worked to increase awareness among the population, stressing that issues like this one are especially difficult to face, as they involve “cultural and religious sensitivities”.

In 2013, Samoa voted in favour of the **Asian and Pacific Ministerial Declaration on Population and Development**, which included several references to SOGI-related issues, such as violence and discrimination against LGBT people, and included policy directions on the matter. Furthermore, the **Labour & Employment Relations Act of 2013** banned discrimination against employees or applicants for employment based on sexual orientation (among other grounds). Also in 2013, Samoa enacted the **Crimes Act 2013**, amending Section 58D of the **Crimes Ordinance 1961**, which decriminalised ‘indecent acts’ between males.

However, this progress is eclipsed by the fact that sodomy provisions survived the 2013 amendment. Criminalisation of same-sex consensual act between adults was kept on the books despite the **recommendation to decriminalise** made by the Samoa Law Reform Commission (Recommendation 12). As organisations **point out**, the existence of the law means that Samoa’s criminal provisions can still be used to target gay and bisexual men, and potentially transgender and intersex persons.

SOLOMON ISLANDS



Penal Code (Revised Edition 1996).

Section 160. Unnatural offences

[BUGGERY]

“Any person who—

- (a) commits buggery with another person or with an animal; or
- (b) permits a male person to commit buggery with him or her, shall be guilty of a felony, and shall be liable to imprisonment for fourteen years.”

Section 161. Attempts to commit unnatural offences

[ATTEMPTED BUGGERY]

“Any person who attempts to commit any of the offences specified in the last preceding section, or who is guilty of any assault with intent to commit the same, or any indecent assault indecent assaults upon any male person shall be guilty of a felony, and shall be liable to imprisonment for seven years.”

Section 162. Indecent practices between persons of the same sex (*Inserted by Act 9 of 1990, s. 2*)

[GROSS INDECENCY]

“Any person who, whether in public or private—

- (a) commits any act of gross indecency with another of the same sex;
- (b) procures another of the same sex to commit any act of gross indecency; or
- (c) attempts to procure the commission of any act of gross indecency by persons of the same sex, shall be guilty of a felony and be liable to imprisonment for five years.”

Although the Solomon Islands accepted Norway’s recommendation to decriminalise same-sex sexual activity between consenting adults in its 1st cycle UPR in May 2011, in the same session it ‘noted’ (rejected) three other **recommendations** that advised exactly the same thing (from Slovenia, France and Spain). The Working Group report states: “The delegation

reported that the cultural context of society did not condone same-sex relationships. Any commitment to removing Penal Code provisions criminalising sexual relations between consenting adults of the same sex must be subject to consultations. However, there had not been any submissions to the Law Reform Commission in their review of the Penal Code to repeal those sections.”

In its 2nd cycle UPR, the Solomon Islands’ rejected six **recommendations** regarding decriminalisation and anti-discrimination legislation inclusive of SOGI. In a cursory response, the delegation responded that much still remained to be achieved with regard to sexual orientation and gender identity, but this would take time, resources and commitment.

In 2016, the Equal Rights Trust published a **report** on discrimination and inequality in the Solomon Islands that includes a section on sexual orientation discrimination (p. 104 onwards). The oppressive environment in which LGB people live in the islands is reflected in testimonies gathered in focus groups. Participants spoke of verbal, physical and sexual abuse in public places and lack of protection from police officers.

TONGA

Criminal Offences Act [Cap 18] 1988 Edition.

Section 136. Sodomy and bestiality

[SODOMY]

“Whoever shall be convicted of the crime of sodomy with another person or bestiality with any animal shall be liable at the discretion of the Court to be imprisoned for any period not exceeding ten years and such animal shall be killed by a public officer (Substituted by Act 9 of 1987).”

Section 139. Attempted sodomy, indecent assault upon a male

[ATTEMPTED SODOMY]

“Whoever shall attempt to commit the said abominable crime of sodomy or shall be guilty of an assault with intent to commit the same or of any indecent assault upon any male person shall be liable at the direction of the Court to imprisonment for any term not exceeding 10 years.”

Section 140. Evidence

“On the trial of any person upon a charge of sodomy or carnal knowledge it shall not be necessary to prove the actual emission of seed but the offence shall be deemed complete on proof of penetration only.”

Section 142. Whipping for certain offences

“Whenever any male person shall be convicted of any offence against sections 106, 107, 115, 118, 121, 122, 125, 132, 136 and 139 of this Act the Court may, in its discretion in lieu of or in addition to any sentence of imprisonment authorised under this Act order the person so convicted to be whipped in accordance with the provisions of section 31 of this Act.” (Substituted by Act 9 of 1987).

Interestingly, in its 1st cycle UPR in May 2008, having received three other States’ **recommendations** to decriminalise same-sex sexual relations (all of which were ‘noted’), Bangladesh used the opportunity of the UPR to recommend that Tonga *retain* its criminalising law—a recommendation that is anathema to international human rights standards - but Tonga also rejected this advice. The delegation noted “[o]n the issue of the right to privacy... [she] indicated that Tonga is an inclusive society with tolerant Christian values that require respect across differences”.

In January 2013, at its 2nd cycle UPR Tonga accepted a **Level 3** (“to consider”) **recommendation** regarding, “strengthening measures to eliminate all discriminatory treatment” based on SOGI from Argentina. However, it then went on to reject a further five recommendations to decriminalise same-sex sexual relations between consenting adults. The delegation did not address the six SOGI recommendations directly in its response to the UPR, but in a response to its ratification of Convention on the Elimination of Discrimination Against Women (CEDAW) mentioned that one of its reservations may be about same-sex marriage. Tonga’s next UPR will be in October 2017.

In 2013, Tonga voted in favour of the [Asian and Pacific Ministerial Declaration on Population and Development](#), which included several references to SOGI-related issues, such as violence and discrimination against LGBT people, and included policy directions on the matter. In May 2015, the Pacific Sexual Diversity Network (PSDN) [held its first conference](#) (“*Our Voices, Our Communities, Our Rights!*”) in Tonga, with the support of the State and the Tongan royal family. [Ninety-six delegates](#) (73 of whom work for LGBT CSOs or individual activists from 12 Pacific Islands) attended. Despite [vitriolic rhetoric](#) by religious groups, the local LGBT organisation *Tonga Leitis Association* (TLA) has been active on the ground [urging](#) the government to repeal sodomy laws still in force.

TUVALU



Penal Code [Cap 8] Revised Edition 1978

Section 153. Unnatural offences

[BUGGERY]

“Any person who—

(a) commits buggery with another person or with an animal; or

(b) permits a male person to commit buggery with him or her,

shall be guilty of a felony, and shall be liable to imprisonment for 14 years.”

Section 154. Attempts to commit unnatural offences and indecent assault

[ATTEMPTED BUGGERY]

“Any person who attempts to commit any of the offences specified in the last proceeding section [sic], or who is guilty of any assault with intent to commit the same, or any indecent assault upon any male person shall be guilty of a felony, and shall be liable to imprisonment for 7 years.”

Section 155. Indecent practices between males

[GROSS INDECENCY]

“Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, shall be guilty of a felony, and shall be liable to imprisonment for 5 years.”

Despite the Czech Republic’s 1st cycle UPR [recommendation](#) to Tuvalu to decriminalise, as an act that would foster tolerance and assist with dealing with HIV, the delegation made reference to the difficulties of Constitutional change which, “... will need to be carefully considered”, rather than the legislative amendments that were being sought (para. 14).

Again, at its 2nd cycle UPR in June 2013, Tuvalu repeated the phrase “carefully considered” in relation to legislative repeal. It rejected [recommendations](#) from the United States and the United Kingdom to decriminalise consensual same-sex sexual activity, and responded by saying that, “... people with different sexual orientation did not suffer social discrimination but the question of legal protection in the law was controversial and would need to be carefully considered. Tuvalu was open to discussion”.

In 2013, Tuvalu voted in favour of the [Asian and Pacific Ministerial Declaration on Population and Development](#), which included several references to SOGI-related issues, such as violence and discrimination against LGBT people, and included policy directions on the matter. In fact, in its oral statement, Tuvalu’s delegation stressed that the country turned a new page in its efforts to address key population issues and that it was addressing human issues that are inclusive in nature, upholding the human rights of every individual in this region. However, the 2016 US Department of State Report on Human Rights still [indicates](#) that social stigma or intimidation may prevent reporting of incidents of discrimination or violence based on sexual orientation.



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GLOBAL PERSPECTIVES

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| Country | Legal | Age of consent | | Illegal | | Penalising text | | | | | Expression | | Max Sentences (M)onths and (Y)ears | | | | |
| | All genders | Equal | Unequal | Male | Female | Sexual act | Sodomy | Against nature | Buggery | Indecency/other | Promotion law | Morality code | 1 M - 2 Y | 3 Y - 7 Y | 8 Y - 14 Y | 15-Y - Life | Death |
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| Arrests in past three (3) years | NGO Ban | NRHI - inclusive of sexual orientation? | | | | Discrimination protection | | | | | CT BAN | Relationship recognition | | | | Country |
| Yes | Yes | Yes | No | Unclear | None | Constitution | Employment | Other | Hate Crime | Incitem. | Yes | Marriage | Civil recognition | Joint adoption | 2nd parent adoption | |
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LGBT VISIBILITY: A DOUBLE-EDGED SWORD

ANTHONY OLUOCH AND MONICA TABENGWA

Anthony Oluoch is a Kenyan lawyer and in 2017 became Program Manager for Pan Africa ILGA (PAI), and Monica Tabengwa, a barrister from Botswana, is PAI's Executive Director.

The African lesbian, gay, bisexual, and transgender (LGBT) movement has grown exponentially over the last decade. Many organisations fighting for the rights of sexual and gender minorities have been formed and are developing. Numerous brave individuals across the continent have come out and stood up to the violence, stigma and discrimination faced by those of diverse sexual orientation or gender identity. Their voices for equality, and what its absence looks like, have become stronger and clearer. Concurrently, opposition to the existence of such African voices and the ideas they speak has become more strategic and frequently more violent.

The cultural, religious and political barriers to the achievement of LGBT equality and non-discrimination have been made visible in many African countries time and time again. The visibility of our issues and our bodies presents a double-edged sword: on the one hand that visibility serves the necessary purpose of de-mystifying LGBT persons and their human rights concerns. On the other hand it creates a backlash towards many of those bodies who put themselves out in the open.

Our visibility frequently serves to create an enabling environment for State and non-State actors to stigmatise, violate and discriminate against people due to their sexual orientation or gender identity. This persecution can be so severe that the individuals involved have no choice but to seek safety elsewhere. It is, therefore, to this issue that we focus our attention in looking at Africa over the past year, discussing the possible causes of so many African LGBT persons' displacement and migration.

The United Nation's 1948 Universal Declaration of Human Rights (UDHR) was declared as a common standard of achievement for all peoples and all nations. For the first time in global history, an agreement was reached setting out fundamental human rights as worthy of universal protection. In terms of international standards and guidance on asylum, Article 14 of the UDHR states that "[e]veryone has the right to seek and to enjoy in other countries asylum from persecution". The 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees are multilateral treaties defining who a refugee is, and setting out the rights of individuals who are granted asylum. They also set out the responsibilities of nations that grant asylum, but these treaties are not legally binding, although they have been ratified by a majority of the United Nations (UN) member states. Guidance on how to interpret these standards in regards to sexual orientation and gender identity are set out in UNHCR guidelines 2008 and 2012.

While these international instruments set out guidelines for dealing with refugees and asylum seekers, most States have set out their own regulations on the issue. For instance, France became the first country to recognise the constitutional right to asylum under Article 120 of the Constitution of 1793 and the Netherlands admits people who would be in danger if they were to return to their own country. The principle of *non-refoulement* – not sending people back to where they would be in danger of

persecution - underpins international treaties dealing with asylum, and is implicit in Article 3 of the European Convention on Human Rights (ECHR): “[n] No one shall be subjected to torture or to inhuman or degrading treatment or punishment”.

Although the asylum granting process in the United States has been characterised as being a game of ‘refugee roulette’ due to the outcome depending largely on the personality of the adjudicator, the country does recognise the right of asylum, and has admitted a significantly large number of refugees including those belonging to sexual and gender minorities. Likewise, many other countries recognise the right of asylum and have admitted individuals on various grounds including persecution on the grounds of actual or perceived sexual orientation or gender identity.

At the 55th Ordinary Session of the African Commission on Human and Peoples’ Rights (the African Commission) in Luanda, Angola, in 2014, a ‘*Resolution on Protection against Violence and Other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity*’ (Resolution 275) was adopted. Resolution 275 condemned “the increasing incidences of violence and other human rights violations, including murder, rape, assault, arbitrary imprisonment and other forms of persecution of persons on the basis of their real or imputed sexual orientation or gender identity”. It specifically condemned the situation of systematic attacks by State and non-State actors against person on said basis. It called on all States Party to ensure that human rights defenders work in an enabling environment that is free of stigma, reprisals or criminal prosecution as a result of their human rights protection activities, including the rights of sexual minorities. It also strongly urged States to end all acts of violence and abuse, whether committed by State or non-State actors including by enacting and effectively applying appropriate laws prohibiting and punishing all forms of violence, including those targeting persons on the basis of their sexual orientation or gender identities.

Three years after the adoption of the Resolution 275, cases of violence, stigma and discrimination towards individuals based on their real or imputed sexual orientation or gender identity persist across the African continent. States continue to deny basic fundamental rights and freedoms to individuals. Some African States have gone ahead to further criminalise same-sex conduct and limit civil society spaces, thereby increasing instances of discrimination, and impeding the development and functioning of SOGI human rights defenders work. Lesbian, gay, bisexual and transgender individuals continue to be arbitrarily arrested, detained and subjected to cruel and inhuman treatment by State and non-State actors alike: crimes that are very rarely punished and render LGBT people highly vulnerable.

In Tanzania, there has been an ongoing witch-hunt for LGBT persons since July 2016. The Deputy Minister for Health threatened to publish known LGBT people in the country in early-2017. On 15 August 2016, he oversaw a raid on the offices of Community Health Education Services and Advocacy (CHESA), confiscating a number of sensitive documents and compelling some staff members to report to the police for interrogation. The Deputy Minister also announced that the country will ban HIV/AIDS outreach projects aimed at gay men especially the supply of lubricant, a move which forced the temporary closure of US funded programs that provide testing, condoms and medical care to gay men. Noting that about 30% of gay men in Tanzania are HIV-positive, this move will put many lives at the risk of HIV-related health problems, and deeper social stigmatisation.

In 2016, it became widespread knowledge that **police** in Egypt use online **dating applications** (including Grindr) to arrest and detain LGBT people. While consensual same sex sexual activity in private is not illegal in Egypt, authorities have arrested and detained LGBT individuals under the '**debauchery law**', whose vague provisions allow for these arrests to happen. As **reported** in April 2016, 11 individuals were sentenced to a total of 101 years in prison under this law.

The Egyptian 1964 **Law on Private Associations and Foundations** is another regressive law used to police and restrict the work of NGOs, and it was a 'blueprint' legislation adopted by other North African States. It decrees that the practice of activities that result in destabilising the national unity, national security, public law and order and public morals are criminal. A 2016 amendment added provisions including requiring government permission to accept foreign funding or expertise or consulting with a foreign organisation, to conduct surveys or publish reports, and at the same time, increasing penalties for violation. These provisions make it **increasingly difficult** for human rights defenders to operate in these countries.

In east Africa, the police **raided** a gay pride event in Kampala, Uganda in August 2016. This raid led to the arrest of about 20 LGBT-identified individuals. The group was released more than two hours later without being charged although some of the detainees alleged to have been mistreated by the police officers while in custody. This raid and others forms of **intimidation and persecution** of LGBT people in the country was made possible by the enactment of the 2014 **Anti-Homosexuality Act**, that further criminalised same-sex conduct proposing life sentences for persons found guilty. While this law was later **repealed** on a technicality, the extant Section 145 of the Penal Code contains overly-harsh penalties (up to life imprisonment) for same-sex conduct, and there are **many recorded** cases of human rights violations based on sexual orientation and gender identity in Uganda. The enactment of the law saw an increase in these violations causing many LGBT Ugandans to **flee the country** for fear of persecution.

In December 2015, four men in Tunisia were **forced** to undergo anal examinations the results of which were used to convict them of same-sex sexual conduct. While these tests have been invalidated by experts in the medical profession and are **considered** a form of torture, cruel, inhuman and degrading treatment, they have been used and continue to be used as a source of evidence in cases of same-sex conduct in **countries including** Cameroon, Egypt, Uganda, Zambia and Kenya. Unfortunately, the High Court in Kenya in 2016 denied a **petition** seeking to find these tests to violate the rights to privacy and dignity. Instead the court ruled that the tests are a legal means of acquiring evidence to prove same-sex conduct.

The denial of the freedom of association and expression is not only limited to countries that criminalise same-sex conduct. Mozambique decriminalised same-sex conduct in 2015, however it remains difficult for the LGBT organisation, LAMBDA, to obtain legal recognition as a NGO. The organisation has been **endeavouring** for more than eight years for official recognition to no avail. This situation is unfortunately more common than not for many organisations in Africa, as new legal vehicles that act to narrow the civic space are being considered or introduced (via amendments to existing laws) in States including Nigeria, Uganda and Kenya (see NGO section in the Legislation Overview of this edition).

In the midst of all these hardships, the Botswana Court of Appeal in 2016 issued a landmark ruling

in *Attorney General v Thuto Rammoge & Others*, ordering the Botswana government to register the organisation LEGABIBO (Lesbians, Gays and Bisexuals of Botswana). The court reaffirmed the Court of First Instance's ruling that the refusal to register the organisation was both irrational and in violation of the right to freedom of association.

The formal and informal persecution of LGBT persons remains unchallenged in most African countries, and in those States community organising is severely limited, oppressed and unattainable. For example, Sudan **applies** the death penalty for consensual same-sex sexual activity, and as such, it is virtually impossible for any organisation working on sexual orientation or gender identity to **develop**, although there has been **some activity**. In terms of organising, a rigorous registration process is mandated in Section 8(1) of the *Voluntary and Humanitarian Work (Organization) Act, 2006*, and other sections impose restrictions on the work of NGOs operating in Sudan. The laws in the country grant discretionary regulatory powers to the government over the operations of these organisations. The few individuals who, in spite of the laws in place, attempt to provide services directed towards LGBT people in the country were forced to flee the country due to the threats that were directed at them (source: authors' personal interviews). The death penalty is also applied for same-sex conduct in parts of Somalia and 12 States in northern Nigeria. Although not applied, the presence of the death penalty in Mauritania emits a strong chill factor for LGBT people in that country.

In August 2016, the President of Humanity First Cameroon, a Yaoundé-based advocacy group was a **victim** of two burglaries where the perpetrators left threatening homophobic notes. The same cost him a large sum of money and valuable property. Humanity First Cameroon released a **statement** stating that the attacks were focused and intended to harm the victim. This is just one of many cases of LGBT people being attacked in their homes, much like that of **Eric Lembembe** in 2012. There have been **reported cases** of individuals evicted from their places of dwelling due to their actual or imputed sexual orientation or gender identities in many African countries.

It is because of these and various other reasons that a significant number of African individuals have fled persecution their home countries and sought asylum elsewhere. Asylum-seeking processes differ by country, yet all are bound by the 1951 Geneva Convention Relating to the Status of Refugees. Asylum-seekers must show that they have a well-founded fear of persecution due to their race, religion, political opinion or membership of a particular social group, and that they are unable or unwilling to seek protection from authorities in their own country. It is possible for a person to apply to remain in some European countries if removing them would be in breach of their rights laid down in the 1950 European Convention on Human Rights. This claim is a "human rights claim".

Following the enactment of the defunct 2014 law in Uganda, discussed above, many LGBT individuals fled to Kenya, a country that also criminalises same-sex conduct, but is considered relatively friendly. However, while in Kenya the individuals have been persecuted and **mistreated** by, among others, their fellow asylum-seekers because they are LGBT. According to a UNHCR **study**, asylum-seekers and refugees with a diverse sexual orientation or gender identity face distinct vulnerabilities. In addition to severe discrimination and violence in their countries of origin - including sexual abuse, lack of police protection, exclusion from access to basic services, arbitrary detention and social and familial ostracism and execution - LGBT asylum-seekers are frequently **subject** to continued harm while in forced displacement.

The situation is not very different in countries like the United Kingdom where an asylum seeker has to prove their claim to sexual or gender diversity. Individuals are often detained in detention centres where they are **forced** to live alongside other homophobic refugees for long periods of time. To test the claim about an asylum seeker's sexual orientation, officials are **known** to ask a series of invasive questions that degrade the individual's dignity. Although the Court of Justice of the European Union (ECJ) **ruled** that authorities, when verifying the sexual orientation of an asylum seeker, should always **comply** with the EU's Charter of Fundamental Rights, invasive, traumatising behaviours are still played out on asylum seekers. The ECJ ruled that while declarations by the applicant are the starting point of the assessment, they may require confirmation. However, in verifying the sexual orientation of the applicant, human dignity and the right for private and family life should be respected.

In spite of the harsh conditions for LGBT people in the African states described here, the countries in which these individuals seek sanctuary continue to deport them sending them back to their home countries where they face threats of violence, stigma, as tragically seen with the **death** of Jackie Nanyonjo,. While there have been some positive developments in African countries regarding the rights of sexual and gender minorities, there are still cases that force those involved to flee and seek safer spaces. Seeking asylum is usually a **last resort** for many.

So many of the problems that this short article points to are a result of the backlash, or pushback, to the increasing visibility of LGBT issues and bodies both in Africa and globally. Increasingly, African activists are actively engaging the existing human rights mechanisms at the UN and the African Commission. SOGI recommendations to African States from the UPR, the Treaty Bodies and Special Procedures, largely resulting from civil society reporting are impacting on States. The utterances from these human rights bodies supply LGBT civil societies with valuable tools to hold their countries accountable for violations of their fundamental rights and freedoms. African human rights advocacy networks must continue facilitating this engagement, and particularly work on further strengthening the skills and capacities of LGBT people to remain strong and visible. The opposition is growing strong and bold, but the knowledge that the support of the international and regional human rights bodies must strengthen the resistance, and inspire more strategic planning and engagement.

| | CRIMINALISATION | | | | | | | | | | | | | | | | |
|-----------------------------|-----------------|----------------|---------|---------|--------|-----------------|--------|----------------|---------|------------------|---------------|---------------|------------------------------------|-----------|------------|-------------|-------|
| Country | Legal | Age of consent | | Illegal | | Penalising text | | | | | Expression | | Max Sentences (M)onths and (Y)ears | | | | |
| | All genders | Equal | Unequal | Male | Female | Sexual act | Sodomy | Against nature | Buggery | Indecency/ other | Promotion law | Morality code | 1 M - 2 Y | 3 Y - 7 Y | 8 Y - 14 Y | 15-Y - Life | Death |
| Antigua and Barbuda | | | | | | | | | | | | | | | | | |
| Argentina | | | | | | | | | | | | | | | | | |
| Bahamas | | | | | | | | | | | | | | | | | |
| Barbados | | | | | | | | | | | | | | | | | |
| Belize | | | | | | | | | | | | | | | | | |
| Bolivia | | | | | | | | | | | | | | | | | |
| Brazil | | | | | | | | | | | | | | | | | |
| Canada | | | | | | | | | | | | | | | | | |
| Costa Rica | | | | | | | | | | | | | | | | | |
| Chile | | | | | | | | | | | | | | | | | |
| Colombia | | | | | | | | | | | | | | | | | |
| Cuba | | | | | | | | | | | | | | | | | |
| Dominica | | | | | | | | | | | | | | | | | |
| Dominican Republic | | | | | | | | | | | | | | | | | |
| Ecuador | | | | | | | | | | | | | | | | | |
| El Salvador | | | | | | | | | | | | | | | | | |
| Grenada | | | | | | | | | | | | | | | | | |
| Guatemala | | | | | | | | | | | | | | | | | |
| Guyana | | | | | | | | | | | | | | | | | |
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| Honduras | | | | | | | | | | | | | | | | | |
| Jamaica | | | | | | | | | | | | | | | | | |
| Mexico | | | | | | | | | | | | | | | | | |
| Nicaragua | | | | | | | | | | | | | | | | | |
| Panama | | | | | | | | | | | | | | | | | |
| Paraguay | | | | | | | | | | | | | | | | | |
| Peru | | | | | | | | | | | | | | | | | |
| St Kitts & Nevis | | | | | | | | | | | | | | | | | |
| St Lucia | | | | | | | | | | | | | | | | | |
| St Vincent & the Grenadines | | | | | | | | | | | | | | | | | |
| Suriname | | | | | | | | | | | | | | | | | |
| Trinidad and Tobago | | | | | | | | | | | | | | | | | |
| United States | | | | | | | | | | | | | | | | | |
| Uruguay | | | | | | | | | | | | | | | | | |
| Venezuela | | | | | | | | | | | | | | | | | |

| | | PROTECTION | | | | | | | | | | RECOGNITION | | | | Country |
|---------------------------------|---------|---|----|---------|------|---------------------------|----------|-------|------------|----------|--------|--------------------------|-------------------|----------------|---------------------|-----------------------------|
| Arrests in past three (3) years | NGO Ban | NRHI - inclusive of sexual orientation? | | | | Discrimination protection | | | | | CT BAN | Relationship recognition | | | | |
| Yes | Yes | Yes | No | Unclear | None | Constitution | Employm. | Other | Hate Crime | Incitem. | Yes | Marriage | Civil recognition | Joint adoption | 2nd parent adoption | |
| | | | | | | | | | | | | | | | | Antigua and Barbuda |
| | | | | | | | | | | | | | | | | Argentina |
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THE AMERICAS IN 2016: A YEAR MARKED BY SIGNIFICANT ADVANCES, VIOLENCE AND ANTI-RIGHTS STAKEHOLDERS

FANNY GOMEZ-LUGO AND VÍCTOR MADRIGAL-BORLOZ

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There have been a number of developments in various countries in the Americas related to the human rights of lesbian, gay, bisexual, trans and intersex (LGBTI) people in 2016. This article will only address the rights of lesbian, gay and bisexual populations. In effect, significant advances in the continent were consolidated of which this article focuses on measures of recognition and protection against discrimination. More extensive analysis would reveal progress in other areas such as health, asylum, and employment such as [guidance for health professionals](#) in Uruguay, asylum-granting policies in Canada and Uruguay, and employment [public policy actions](#) in El Salvador. Despite these gains, there was an increase in the existing gap among the region States' level of recognition of LGB people's rights. Even in the States where there were significant advances, anti-rights sectors or leaders generate regression risks.

ADVANCES: REGIONAL LEVEL

OAS AND OTHER MULTI-STATE INITIATIVES

At the Organisation of American States (OAS), in the omnibus resolution adopted by the 46th General Assembly ([AG/RES. 2887 XLVI-O/16](#)), commitments on sexual orientation, identity and gender expression were inserted. In particular, the section of this Resolution on torture and other cruel, inhuman or degrading treatment or punishment included SOGI-related language. In turn, the Permanent Council of the organisation commemorated the International Day against Homophobia, Transphobia and Biphobia in its [May calendar](#). Argentina, Brazil, Canada, Chile, Colombia, the United States of America, Mexico and Uruguay [founded the OAS LGBTI Core Group](#), which held several activities in 2016, including an event on [LGBT people and human trafficking](#).

A large number of States in the Americas, as well as regional, multilateral and civil society organisations and the private sector took part in establishing the [Equal Rights Coalition](#) to promote human rights of LGBTI people at the international level. The leadership and perseverance of several OAS Member States was also instrumental in the creation of the [Independent Expert mandate](#) on protection against violence and discrimination based on sexual orientation or gender identity issues at the United Nations, defending the initiative from attempts made by other groups of States aimed at debilitating the

mandate. In turn, over the course of 2016, the World Bank **adopted measures** to further the work done involving LGBTI people.

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (IACHR)

On 11 June 2016, a friendly settlement agreement was signed in the **Peralta Wetzel case** by which Chile admitted responsibility in denying access to civil marriage to three same-sex couples and to legally recognise marriages entered into in other countries. In the agreement, Chile took up significant responsibilities, such as promoting the equal marriage initiative as a matter of legitimate interest in a democratic and inclusive society and the revision of several articles of the Criminal Code.

On 3 July 2016, the IACHR requested the adoption of precautionary measures for **Juana Mora Cedeño and Mario José Delgado González**, based on their complaints reporting the harassment they had suffered as a result of defending LGBT people's human rights in Cuba.

In December 2016, the IACHR held a **public hearing** on case 12,982 (*Luis Alberto Rojas Marín vs. Peru*) regarding the alleged sexual violence and torture of Rojas Marín due to his sexual orientation and related situations involving discrimination and impunity. In this case, there is a discussion of State obligations regarding prevention, investigation and reparation of torture originated in sexual orientation perceptions.

Through the work of its LGBTI Rapporteurship, the IACHR continued to promote the Report on Violence against LGBTI People in the region, issued 23 press releases, sent four (4) letters requesting confidential information to countries in the region, held five (5) **thematic hearings**, gave training on the Inter-American System and protection standards related to the rights of LGBTI people in several countries in the region addressed to different stakeholders. In addition, it included the perspective of human rights of LGBT people in several **thematic** and **country reports** approved or published in 2016.

INTER-AMERICAN COURT OF HUMAN RIGHTS (COURT)

In 2016, the Court issued two sentences related to sexual orientation. In the **Duque case** (in Spanish only), the Court found Colombia responsible for the violation of the right to equality and non-discrimination by not allowing Mr. Duque to equally benefit from a survivor's pension after the death of his partner. In the **Flor Freire case** (in Spanish only), the first case on discrimination due to perceived sexual orientation, the Court found Ecuador responsible for applying an administrative sanction based on military disciplinary regulations sanctioning "homosexual acts" with more severity than sexual acts between a woman and a man. Finally, Costa Rica requested the Court to issue an **advisory opinion** on the interpretation of the Convention in relation to SOGI-related rights, including on the equity benefits for same-sex couples.

ADVANCES: NATIONAL LEVELS

FAMILIES AND INTER-PERSONAL RELATIONS

Although in the Caribbean the threat of criminalisation is still being faced, in August 2016 the Supreme Court of Justice of Belize **declared** Article 53 of the Criminal Code unconstitutional. This article criminalises “carnal access against the order of nature” and imposes a penalty of up to ten (10) years of prison. The Supreme Court ruled that the provision violated the right to human dignity, intimacy, freedom of expression, non-discrimination and equality, and excluded consensual sexual acts between adults taking place in private from its scope. In addition, the Supreme Court stated that the definition of “sex” contemplated in article 16.3 of the Constitution of Belize includes “sexual orientation”, in agreement with the international obligations taken up by the country.

The Belizean case is a good example of how jurisdictional actions seem to catalyse other processes of social change. In conversation with the authors, Caleb Orozco, the activist behind the case, points out that the words showing support to this decision by the Prime Minister’s wife and the Presidency of the National Commission on AIDS have caused “oceanic changes” in political thought. Similar observations can be made about other countries in the continent: in **Antigua and Barbuda**, the Social Transformation Minister spoke in favour of the decriminalisation of sodomy, in **Canada** and the **United States of America**, measures were implemented to commemorate and apologise for historical violations, and in **Mexico**, the participation of the President at the commemoration of the International Day against Homophobia is considered a historical event by some civil society sectors. In conversation with the authors, Josefina Valencia, a Mexican activist, indicates that at different levels of public policy, this event accelerated and triggered the work done by government agencies to guarantee the rights of LGBTI populations.

There were advances in the whole continent regarding the recognition of same-sex couples’ rights: in **Aruba**, the Parliament passed a law that extended civil union; in **Colombia**, the Constitutional Court endorsed same-sex marriage and the Office of the Registrar in Bogota **authorised** the minor daughter of a same-sex couple to be registered; in **Costa Rica**, in June 2016, the Social Security Governmental Agency (Caja Costarricense del Seguro Social, “CCSS”) agreed to grant survivor pensions to same-sex couples; in Ecuador, *de facto* partnerships were recognised as “civil status” and same-sex couples were included in the Organic Act of Management of Identity and Civil Data; in the United States, a Wisconsin judge **recognised** the right of two lesbian women to be registered as mothers in their son’s birth certificate, and in Arizona, presumption of maternity was **recognised** for both mothers; in Mexico, same-sex marriage was approved in the states of **Michoacán**, **Campeche** and **Jalisco**; and in Peru, the 7° Constitutional Court **ordered** the National Registry of Identification and Civil Status (RENIEC, as per its Spanish acronym) to register the marriage of a same-sex couple that had been entered into abroad.

EDUCATION

In the United States, California approved that country’s first **regulatory framework** addressed at public schools for the inclusion of the contributions of American LGBT people and people with disabilities in **History and Social Sciences classes**; and in Peru, the Education Ministry adopted a **new national syllabus** for lower education aimed at boosting **gender equality** and respect for people regardless of their sexual orientation and/or gender identity, guaranteeing the same duties, rights and opportunities for all people.

OTHER MEASURES TO PREVENT DISCRIMINATION AND PATHOLOGISATION

In several States of the continent, significant measures were adopted in this regard: in Chile, the Health Ministry **took an official stand** against the so-called reparative therapies; in Costa Rica, **circular No. 003-2016** issued by the Ministry of Justice ordered the modification of regulatory instruments that may incur in discrimination as well as the creation of a protocol to assist sexually diverse people deprived of freedom; in Colombia, the National Penitentiary Institute adopted a pioneer **regulation** in the region which contemplates direct protection measures for LGBTI people deprived of freedom; and in the United States, a federal judge in Mississippi **blocked** the implementation of a law that would allow for discrimination based on moral or religious convictions, and in **Miami** and **Seattle** measures were adopted against the so-called “conversion therapies”.

CHALLENGES

VIOLENCE

In 2016, at least two massacres in gay bars were recorded: in the city of Orlando, in the United States, **49 LGB people** lost their lives and in Mexico, **five LGB people** were murdered at a bar in the city of Xalapa.

The absence of comprehensive statistical information on the violence indexes that affected LGB people in the region continues to be one of the most significant challenges. Even in this lacking context, the figures that are recorded—particularly by civil society organisations—are reason of great concern. For instance, the following murders have been recorded: 340 LGBT people in **Brazil**, 11 LGBT people in **El Salvador** and seven LGBT people and human rights advocates in Honduras (see IACH Press Releases **27/16** and **78/16**). In other countries, the following murders of LGB people were recorded: two LG victims in Chile (see reports by MOVILH **1** and **2**), three LG people—one of them a human rights defender—in Colombia (see reports by Caribe Afirmativo **1** y **2**), and two gay men in **Jamaica**.

On the other hand, one of the paradigmatic advances in terms of systematic violence against LGBT people took place in Colombia with the inclusion of LGBT victims in Peace Agreements signed by the State and FARC-EP guerrilla groups. In communication with the authors, Marcela Sánchez, a Colombian defender, explained:

[f]or the first time in the world, some peace agreements include a gender perspective, place victims at the core of the debate and recognize a differential approach in their texts. In particular, agreements include a clause implying that in the regulatory development of the peace agreements nobody could be discriminated against for their sexual orientation.

DOORS CLOSED AND ATTACKS BY GROUPS AND PEOPLE AGAINST LGB PEOPLE'S HUMAN RIGHTS

Even in the countries showing significant advances, there were concerning regression tendencies and/or attempts to block the recognition of LGBT people's rights in **Brazil**, **Colombia**, **Mexico**, **Guatemala**, **Peru**, **Belize** and **Bolivia**.

For instance, with respect to the meeting between the President of Mexico and LGBT activists in May 2016, Josefina Valencia pointed out to the authors that “conservative groups organised large demonstrations and used a vast number of resources to block the advances of LGBTI people and women rights”. Also in communication with the authors, Gloria Careaga added that “the articulation between local conservative forces and international networks has been very strong. Local business groups are also involved and have established a strong position from which to stop any advance”. The National Congress decision not to support the presidential initiative to formally recognise equal marriage in the whole country was probably the result, among other things, of the opposition by conservative groups that demonstrated openly and massively.

Marcela Sánchez adds that in Colombia, the year 2016 was contradictory, since despite the advances regarding equal marriage and the inclusion in the Peace Agreements, this very same year and perhaps due to the advances that have been taking place throughout the country in the last decade, the existence of an unprecedented anti-rights movement led by evangelical groups wishing to generate regression in education, children rights and peace building in Colombia became evident.

In Argentina, the new administration did not openly oppose LGBTI people’s rights but, Marcelo Ferreyra, an Argentine activist, brought to the attention of the authors the fact that the government “is not willing to make the necessary investments required by public policies”. Even more, it appears to be ready to “tolerate a dissident policy, what has led police repression to worsen, limitations in terms of access to justice or discriminatory prosecutions”.

In a reflection on the importance of coalitions and joining forces, Caleb Orozco from Belize states that

while right-wing forces are everywhere, a social transformation process is going on in which families are not ashamed of supporting and loving their family members... LGBT coalitions in Latin American and Caribbean countries are everywhere and the thematic platform helps... demonstrations are taking place and repressive environments, violence and fear are no longer stopping us from voicing our thoughts... They may kill us, but they won’t stop us!

FINAL WORD

In 2016, there was significant progress in the recognition of lesbian, gay and bisexual people’s human rights in the Americas. However, violence due to bias against people with diverse sexual orientation continues to be the norm. Focus should be placed on the progress made, managing the great tension generated by regressive forces and processes, and making new breakthroughs.

AMERICA'S UNPROMISING START TO 2017

(NOTED BY AUTHORS OF THIS EDITION)

Throughout the 2016 election in the United States, American LGBT **organisations** and some **media outlets** expressed growing concern about the implications that Donald Trump's electoral victory would have in the quest for LGBT equality. Then-candidate Trump had given confusing, even contradictory, statements on his stance on this issue. In his acceptance speech at the 2016 Republican National Convention, he **pledged** to defend "LGBTQ [American] citizens from the violence and oppression of the hateful foreign ideology". However, in the days following the election, **hundreds of violent incidents**, many of them targeting LGBTQ people, were widely **reported**.

A few days later, GLAAD launched the **Trump Accountability Project** (TAP), an exceptional initiative which closely follows the Trump administration on issues affecting LGBTQ people and catalogues the anti-LGBTQ statements and actions of President Donald Trump and those in his circle.

As reported by TAP, one of the very first official SOGI-related actions took place minutes after Trump took office, when all references to the **work of the presidency** towards LGBTQ equality were **deleted** from the White House website. However, within the first three months of the new administration, several less symbolic and more substantive regressive measures ensued.

Among the most concerning is the **removal** of the federal guidelines **which protected transgender students** by providing schools different useful resources, such as best practices and practical advice on complying with case law under the Title IX sex discrimination law (see also, IACHR **statement**). President Trump's **appointment** of Judge Neil Gorsuch to the Supreme Court was also a major cause for concern. As **explained** by the Williams Institute, Judge Gorsuch is a conservative justice in the tradition of late Justice Scalia and he is likely to reach decisions that negatively impact the LGBT community. Moreover, "sexual orientation" and "gender identity" were **removed** as proposed subjects for possible inclusion on the Decennial Census and/or American Community Survey in the future.

Further initiatives and proposals have raised growing concern among LGBTQ activists and scholars. The Williams Institute **reported** that if the proposed changes to the Affordable Care Act are eventually enacted, almost a million LGBT adults may lose health insurance by 2026. It has also been **reported** that the proposed budget for the U.S. Congress would reduce funding for the **research** and the **worldwide initiative to help people with HIV and AIDS**, known as PEPFAR.

In this unpromising context, most organisations on the ground have launched campaigns and programs to resist both federal and state anti-LGBTQ initiatives.

| | CRIMINALISATION | | | | | | | | | | | | | | | | |
|----------------------|-----------------|----------------|---------|---------|--------|-----------------|--------|----------------|---------|------------------|---------------|---------------|------------------------------------|-----------|------------|-------------|-------|
| Country | Legal | Age of consent | | Illegal | | Penalising text | | | | | Expression | | Max Sentences (M)onths and (Y)ears | | | | |
| | All genders | Equal | Unequal | Male | Female | Sexual act | Sodomy | Against nature | Buggery | Indecency/ other | Promotion law | Morality code | 1 M - 2 Y | 3 Y - 7 Y | 8 Y - 14 Y | 15-Y - Life | Death |
| Afghanistan | | | | | | | | | | | | | | | | | X |
| Bahrain | | | | | | | | | | | | | | | | | |
| Bangladesh | | | | | | | | | | | | | | | | | |
| Bhutan | | | | | | | | | | | | | | | | | |
| Brunei Darussalam | | | | | | | | | | | | | | | | | |
| Cambodia | | | | | | | | | | | | | | | | | |
| China | | | | | | | | | | | | | | | | | |
| East Timor | | | | | | | | | | | | | | | | | |
| Gaza (OPT) | | | | | | | | | | | | | | | | | |
| India | | | | | | | | | | | | | | | | | |
| Indonesia (most) | | | | | | | | | | | | | | | | | |
| Sumatra/Aceh | | | | | | | | | | | | | | | | | |
| Iraq | | | | | | | | | | | | | | | | | |
| Iran | | | | | | | | | | | | | | | | | |
| Israel | | | | | | | | | | | | | | | | | |
| Japan | | | | | | | | | | | | | | | | | |
| Jordan | | | | | | | | | | | | | | | | | |
| Kazakhstan | | | | | | | | | | | | | | | | | |
| Kuwait | | | | | | | | | | | | | | | | | |
| Kyrgyzstan | | | | | | | | | | | | | | | | | |
| Laos | | | | | | | | | | | | | | | | | |
| Lebanon | | | | | | | | | | | | | | | | | |
| Malaysia | | | | | | | | | | | | | | | | | |
| Maldives | | | | | | | | | | | | | | | | | |
| Mongolia | | | | | | | | | | | | | | | | | |
| Myanmar | | | | | | | | | | | | | | | | | |
| Nepal | | | | | | | | | | | | | | | | | |
| North Korea | | | | | | | | | | | | | | | | | |
| Oman | | | | | | | | | | | | | | | | | |
| Pakistan | | | | | | | | | | | | | | | | | X |
| Philippines | | | | | | | | | | | | | | | | | |
| Qatar | | | | | | | | | | | | | | | | | X |
| Saudi Arabia | | | | | | | | | | | | | | | | | |
| Singapore | | | | | | | | | | | | | | | | | |
| South Korea | | | | | | | | | | | | | | | | | |
| Sri Lanka | | | | | | | | | | | | | | | | | |
| Syria | | | | | | | | | | | | | | | | | |
| Taiwan | | | | | | | | | | | | | | | | | |
| Tajikistan | | | | | | | | | | | | | | | | | |
| Thailand | | | | | | | | | | | | | | | | | |
| Turkmenistan | | | | | | | | | | | | | | | | | |
| Vietnam | | | | | | | | | | | | | | | | | |
| United Arab Emirates | | | | | | | | | | | | | | | | | X |
| Uzbekistan | | | | | | | | | | | | | | | | | |
| West Bank(OPT) | | | | | | | | | | | | | | | | | |
| Yemen | | | | | | | | | | | | | | | | | |

| | | PROTECTION | | | | | | | | | | RECOGNITION | | | | |
|---------------------------------|---------|---|----|---------|------|---------------------------|----------|-------|------------|----------|--------|--------------------------|-------------------|----------------|---------------------|----------------------|
| Arrests in past three (3) years | NGO Ban | NRHI - inclusive of sexual orientation? | | | | Discrimination protection | | | | | CT BAN | Relationship recognition | | | | Country |
| Yes | Yes | Yes | No | Unclear | None | Constitution | Employm. | Other | Hate Crime | Incitem. | Yes | Marriage | Civil recognition | Joint adoption | 2nd parent adoption | |
| | | | | | | | | | | | | | | | | Afghanistan |
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| | | | | | | | | | | | | | | | | Gaza (OPT) |
| | | | | | | | | | | | | | | | | India |
| | | | | | | | | | | | | | | | | Indonesia (most) |
| | | | | | | | | | | | | | | | | Sumatra/Aceh |
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| | | | | | | | | | | | | | | | | Vietnam |
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| | | | | | | | | | | | | | | | | Uzbekistan |
| | | | | | | | | | | | | | | | | West Bank (OPT) |
| | | | | | | | | | | | | | | | | Yemen |

ASIA THESE DAYS – THREE PARTS: EAST & SOUTH EAST ASIA, SOUTH ASIA AND MIDDLE EAST

EAST AND SOUTH-EAST ASIA

ANNA ARAFIN, JEAN CHONG, JACK LEE, MINGKE LIU, DANIELE PALETTA, YULI RUSTINAWATI, MINHEE RYU, DOUGLAS SANDERS (MAIN AUTHOR), AZUSA YAMASHITA, AND BIN XU.

Some changes. Some progress. Firstly, this section looks at separate developments in Indonesia, China and Taiwan and also progress at the Asia Pacific Forum (APF). It then turns to record some overarching issues such as discrimination, freedom of expression and other themes of relevance to East and South-east Asian States over the past year.

DEVELOPMENTS IN INDONESIA, CHINA, TAIWAN AND AT THE APF

INDONESIA

The outbreak of elite homophobia, **noted** in last year's 'Asia These Days' essay, continued in much of 2016. The demands by various political, educational, medical and religious figures for criminal laws and compulsory treatment were not, in fact, implemented in new legislation. Restrictions aimed at public media were reinforced. The president and vice-president did not condemn the blatant homophobia of cabinet ministers and other elites, only saying there should be no violence or discrimination. The flood of anti-LGBT statements only eased off when other issues came to dominate public discussion (reassessing the mass killings in 1965-6, and the campaign against the Chinese Christian candidate for governor of Jakarta).

The **Family Love Alliance** appealed to the constitutional court to expand the existing criminal law prohibitions of sexual activity to cover all acts outside of heterosexual marriage, as a way, it seems, to criminalize homosexual same sex sexual acts. The court allowed the challenge to proceed, and has heard numerous 'expert' witnesses. One witness, a noted psychiatrist, Dadang Hawari, **said** "homosexuals" could be 'cured' by psychiatric treatment. Indonesian Child Protection Commission (KPAI) chairman Asrorun Ni'am Sholeh, former law and human rights minister Yusril Ihza Mahendra and a commissioner from the National Commission on Human Rights have **testified** for the Alliance. The constitutional court hearing concluded in February, 2017.

CHINA

Two quite liberal Chinese based media sources, *Global Times* and *Sixth Tone* (launched to enhance China's '**soft power**' capacity) give ongoing coverage in English of developments for international audiences, and the English language version of *China Daily* has been largely positive about LGBT issues in recent years. Will these apparently liberalizing patterns continue – when media stories in early 2017 repeatedly tell of crackdowns on human rights lawyers?

The last year has confirmed the unexpected pattern of court cases in China. Observers were surprised that the cases could be heard. Did the courts actually have some independence on sexuality issues? The issues did not seem to threaten any strategic governmental concerns (and there was no conservative religious lobby with any influence). There was support from a loose **group** of 'Rainbow Lawyers', volunteering legal services. Made up of around 60 lawyers and legal workers, the group was set up in 2014. It runs a national hotline. Subjects of leading court cases include:

Conversion therapy: In a landmark decision in December, 2014, a District Court **ruled** that a medical clinic in Chongqing, that had administered electroshock therapy and hypnosis to 'cure' an individual of 'homosexuality', was liable to pay damages. It ruled that homosexuality was not an illness and the treatment was abusive. China had removed homosexuality from the list of mental disorders in 2001, following **international** patterns. The clinic was ordered to apologize and pay compensation of 3,500 yuan (\$536). Despite the verdict, clinics continue to offer electroshock therapy, as undercover activists proved in a 2015 **documentary** by Britain's Channel 4. A new conversion therapy case **began** in May 2016 against a hospital in Henan province for administering unwanted treatment to an individual to 'cure' his homosexuality. The hospital had accepted an involuntary committal of the man by his family, including his wife, from whom he was separated. The hospital refused access to the individual, until police became involved, and secured his release. The lawsuit asks for an apology and compensation.

Website censorship: Fan Popo **sued** the government in 2015 after his film *Mama Rainbow*, on mothers of LGBT children, was removed from online sites. He won a ruling that the state agency had issued no ban.

Same-sex marriage: In late-June 2015, two gay men were **denied** marriage registration in the city of Changsha. Both the trial court and the appeals court rejected their case.

Textbooks: Qiu Bai found that many of the medical texts in her university library called homosexuality a psychological disorder. But China had declassified homosexuality as a disorder in 2001. Qiu Bai and classmates wrote to relevant government agencies. Getting no satisfaction, she **sued** the Ministry of Education. On November 24th, 2015, a judicial hearing took place. In lieu of a trial, Chen was given a two hour meeting with education officials, presided over by a judge. That did not resolve the issues, and a court hearing **began** in September, 2016. Meanwhile Beijing Normal University **issued** a new set of textbooks for primary grades that described same-sex attraction as "a completely normal phenomenon" and said there should be no discrimination.

Employment discrimination: Mr C identifies as male, though his national identity card indicates he is female. He reported to work at a Health Checkup Centre in the city of Guiyang dressed as a man. He was fired after a one-week probation period. After attending a seminar held by Wider Pro Bono Legal Center in Shenzhen, he began a lawsuit with the center's support. Article 12 of China's **Labor Law** contains an anti-discrimination clause that includes ethnicity, religion, and sex, but not sexual orientation or gender identity. The employer denied acting on bias. A lawyer from the 'Rainbow Lawyers' network **took** the case, and Professor Liu Xiaonan from the Law School at China University of Political Science and Law in Beijing appeared as an expert witness to discuss issues of workplace discrimination. The initial decision in May 2016, simply ordered payment for the probation period. An appeal decision in December 2016, **ordered** additional compensation, saying the firing had been

unlawful, but did not find discrimination on grounds of transgender identity. A re-hearing is scheduled for late-April 2017. The case received extensive publicity in China and internationally.

TAIWAN

Taiwan has been the leading jurisdiction in Asia on LGBT rights. It has a prohibition of discrimination on grounds of sexual orientation and gender identity in employment and education. It has the best transgender recognition **law** in Asia. It has been debating opening marriage, off and on, for twenty years. Activists have long speculated as to where marriage would be opened first in Asia – would it be Nepal, Thailand or Taiwan? It looks like Taiwan, and it looks like 2017.

The first draft of a Bill to open marriage by amending the civil code was **passed** by a committee in Taiwan's parliament in December 2016. This opened a period of debate and negotiations. Some legislators want a separate registration law for same-sex couples, not the opening of marriage. Taiwan's president, Tsai Ing-wen **supports** marriage equality.

There is also a judicial challenge. Fourteen grand justices of the Taiwan constitutional court **heard** the case on 24 March, 2017. The call for opening marriage was brought by long-time activist **Chi Chia-wei**, whose litigation has been before the courts for a decade. He was supported by the Taipei city government, which already has a registry where couples can have their relationships formally recognized (with very limited legal or administrative consequences).

Taiwan activists **hosted** the 2015 ILGA Asia conference. In spite of the contested international status of Taiwan, there was an enthusiastic contingent in Taipei from Mainland China.

NATIONAL HUMAN RIGHTS INSTITUTIONS

National Human Rights Commissions exist in eight countries in East and Southeast Asia: Indonesia, South Korea, Malaysia, Mongolia, Myanmar, Philippines, Thailand and Timor-Leste. Some of these bodies have played valuable and active roles on SOGIE issues, and all have addressed SOGIE issues at some point. The **Asia Pacific Forum** of National Institutions for the Promotion and Protection of Human Rights (APF) is an umbrella organization linking 24 national bodies in the Asia-Pacific region. In June 2016, it published a major **report**: *Promoting and Protecting Human Rights: Sexual Orientation, Gender Identity and Sexual Characteristics: A Manual for National Human Rights Institutions*. It contains a comprehensive analysis of LGBTI issues, international human rights law and the role that national commissions can play. The APF organized a regional conference to mark the 10th anniversary of the **Yogyakarta Principles** in Bangkok in late-April, 2017. Featured at the conference was Thai Professor Vitit Muntarbhorn, the first UN **Independent Expert** on SOGIE issues. He had long served on the Advisory Committee of Jurists of the APF.

DEVELOPMENTS ON OVERARCHING ISSUES IN ASIA

CRIMINAL PROHIBITIONS

British colonial era prohibitions of male-male sexual acts continued in force in Brunei, Malaysia, Myanmar and Singapore. In Malaysia the offence had been extended to female-female acts, and that continued in force.

Anwar Ibrahim, who heads an opposition political party in Malaysia, **continues** serving his prison sentence for alleged consensual same-sex sexual acts. It seems that no one else is in jail under the provision in the country.

A prohibition against male-male sexual acts for military personnel in South Korea was **upheld** by the Constitutional Court in July, 2016, for the third time. The court divided, with four of the nine judges willing to strike down the law.

Three prisons in Thailand have **arranged** separate zones to house self-identified LGBT prisoners.

SHARIA LAW

The first of three phases of a new Syariah penal code in the Malay Muslim Sultanate of Brunei, on the north coast of Borneo, came into force in May 2014. A procedural code needs to be enacted next for the following two phases to commence, but a text for that has yet to surface. When such a text emerges, and after a break of one year, phase two of the code can come into force, followed by phase three a year later. Phase three includes the death penalty for male-male sexual acts. There has been no explanation for the **long delay** in moving forward with the law (and the Sultan has criticized the impasse). The Brunei Syariah provisions of concern apply to Muslims and non-Muslims.

Aceh, the autonomous Indonesian province at the northern tip of the island of Sumatra, has unique authority in Indonesia to enact Shariah law. It has a prohibition of male-male homosexual acts (though the Indonesian national criminal code has no ban). The punishment includes a public caning – one hundred strokes. The first **prosecution** of gay men for having sex in Aceh occurred in April 2017, as a result of suspicious neighbors breaking into a room where the two men were living, and filming them together in the nude. The couple admitted they were partners, so the high evidentiary standards required by sharia law were easily met.

The decision in Malaysia limiting a state level Shariah prohibition of cross-dressing was **overturned** on procedural grounds by the highest court. No new challenge to these state-level Shariah laws has been launched.

DISCRIMINATION

Laws against discrimination on SOGIE grounds exist in Taiwan (employment and education) and Macau (employment). Such laws exist in eight or more cities or provinces in the Philippines.

The 2015 **Gender Equality Act** in Thailand prohibits discrimination on the basis of being male or female, or on the basis having a different appearance from the person's sex at birth (Section 3). The law is primarily designed to implement the constitutional prohibition of discrimination on the basis of 'sex'. It clearly covers transwomen and transmen as well. A 2016 government booklet, explaining the law, suggests it could apply to a person harassed by a boss for being 'gay'. Maybe. Maybe not.

As **noted** in last year's 'Asia These Days' essay, two studies on SOGIE discrimination were available in Hong Kong in early 2016. The 2017 'Policy Agenda' of the Hong Kong SAR government avoided promising a SOGIE non-discrimination law, **promising** instead special training of personnel and the drafting of "a charter on non-discrimination of sexual minorities for voluntary adoption by relevant organizations and individuals". (at p. 198). The document acknowledged the **support** of the government's Equal Opportunities Commission for the **development** of a SOGIE-inclusive anti-discrimination law.

A study on discrimination on SOGIE grounds in China was commissioned by the United Nations Development Programme (UNDP), and **released** in May 2016. The report shows that it is "within the family where the deepest forms of rejection and abuse reside, followed by schools and the workplace." With almost 30,000 responses, the survey was the largest to date on the topic in China.

The China University of Political Science and Law in Beijing has drafted an Employment Non-Discrimination Law, including SOGIE grounds, but its **not yet clear** which department may be in charge of promoting the draft law. There was some support for such a law in the 2015 sessions of the National People's Congress and the Chinese People's Political Consultative Conference. In 2016, the Ministry of Human Resources and Social Security consulted the draft.

A set of criminal law amendments, which **included** a prohibition of acts limiting the rights and freedoms of individuals on grounds of sexual orientation and gender identity, was enacted by the national parliament in Mongolia in December 2015. The whole package of amendments was to come into force in September 2016. However, the June 2016 national election threw out the governing coalition government, and gave the more conservative Mongolian Peoples' Party a commanding majority. A result has been a further delay for the criminal law reform package. Opposition is not focused on the SOGIE provisions, but on corporate liability (corruption) issues. There has been no discussion or publicity about the SOGIE reforms, which would die if the reform package is dropped.

SCHOOLS

In 2016 the Chinese Ministry of Education and eight other state departments issued the "Guiding Opinion of Prevention and Control of Bullying and Violence of Students of Primary and Secondary School". There was no mention of SOGIE, a common factor in bullying. The new national sex education curriculum in South Korea also avoids any mention of sexual orientation, gender identity and expression.

Japan's updated **Basic Policy for the Prevention of Bullying** of March 2017, for the first time, expressly **protects** sexual and gender minority students. This follows from a 2015 directive on transgender students and a 2016 guidebook for teachers about LGBT students. Japan chaired the 2016 UNESCO **conference** on LGBT bullying.

In the fall of 2016, the second volume of *Human Rights in Southeast Asia* was **published**, including a chapter 'Sex and Gender Diversity', produced by **SEAHRN** (the Southeast Asian Human Rights and Peace Studies Network). The goal was to bring together regionally produced materials for the teaching of human rights in post-secondary programs in Southeast Asia.

EXPRESSION AND MEDIA

In June 2016, the South Korean erotic psychological thriller, **The Handmaiden**, was released that tells a complex story of seduction and betrayal in Japanese occupied Korea in the 1930s. It features lesbian sex scenes and throughout portrays lesbians positively.

In early-2017, the Japanese film **Close-Knit** was released, telling of a girl who is abandoned by her alcoholic mother, but cared for by an uncle who lives with a transwoman named Rinko. A widely popular male actor, Toma Ikuta, plays Rinko.

In March 2017, the moments in which the Disney film **Beauty and the Beast** portrays an unambiguously gay character singing and dancing with another man were cut by the Malaysian censor.. Malaysia had an existing rule that 'homosexual' characters could only be depicted if they repented or died. As widely reported, after Disney said it would not release the film in Malaysia with the cut, Malaysia relented, and the film was released intact.

The 2016 Taiwanese documentary feature film, **Small Talk** explores the life of Anu, a lesbian Taoist priestess, in a film made by her estranged daughter. There are interviews with Anu's past and present lovers, and her siblings. The film has garnered much praise.

Seek McCartney, China's first gay-themed movie to get commercial release was approved by the country's regulators and will appear in theaters in late-2017. The film **follows** the relationship between two gay men, one Chinese and one French, travelling through Tibet.

It seems somewhat difficult to know what content will be banned from online sites in China. In 2016, the hit show **Addicted** – an online series featuring a gay romance – amassed over 10 million views within the first 24 hours of launch, but was taken down four weeks later by state censors. Another drama, **Go Princess Go**, in which a male time-travels to the past and changes into a woman, was also banned. Industry associations and individual sites have tried to formulate policies. LeTV **issued** guidelines that prohibited "wrong views on love and marriage ... such as gay, or having extramarital affairs". After **protests**, LeTV dropped the reference to banning gay content. LeTV itself was still giving access to the famous Chinese film **Farewell My Concubine**, with its central gay characters. Xiaogang Wei of the media production house **Queer Comrades** noted "there is so much **more** LGBT content **online** than ever before." A few famous gay-themed films, such as **Lan Yu** and **Brokeback Mountain**, can be seen on Chinese streaming websites, but never played in cinemas. A government official **said** that gay topics are not forbidden, but assessed as to whether they "promote, advocate or beautify...".

FREEDOM OF ORGANISATION AND ASSOCIATION

There are public pride parades in Hong Kong, Japan, Korea, Taiwan and Thailand. Vietnam has long had a rainbow bicycle rally and a rainbow walk (no permits required). The most repressive situation would be Laos: for a couple of years an event was held within the compound of the US Embassy, but it seems that has not been repeated. Singapore refuses to grant legal recognition to LGBTI organizations, but some function (always with no overseas funding).

The eighth annual *Pink Dot* celebration in Singapore was held at the start of June 2016, at the designated 'speakers corner' in an urban park. It is the only place where public free speech is allowed (other than on race or religion). It was never expected that the government's designation of the 'speakers corner' would lead to a mass event, focused on LGBTI people and issues. In 2015, there were 28,000 participants. Participation or sponsorship by foreigners is prohibited without a special permit. At time of writing, around fifty 'local corporate sponsors' have signed up for the 2017 event.

The new Law on the Management of the Activities of Overseas NGOs within China came into effect in January 2017. Local NGOs face potential legal risk if they accept foreign funding under the new law. Public fundraising is now allowed only by registered charities, certified by a government department.

RECOGNITION OF RELATIONSHIPS

As noted a year ago, a small number of local jurisdictions in Japan and Taiwan have established registries in which same-sex couples can be listed. This may assist them in certain situations, such as rentals, benefits or hospital visitation. No registration systems with clear legal effects exist yet in Asia. Some immigration recognition occurs, in practice, for partners of individuals who have working or residential visas (embassy staff, academics, employees of international businesses). The same-sex partner gains residency, but no right to work.

In Korea the high profile marriage case of the famous Korean film director Kim Jho Gwang-soo was rejected on appeal. The judgment in May 2016, said that the "raising of the next generation" was a factor in understanding the meaning of 'marriage'. The judgment notes the exclusion of same-sex partners from laws on inheritance, division of property, the giving of consent for medical emergencies, family care leave, survivor pension rights and family oriented tax provisions. The judge said that these exclusions mean that, "it is true that the situation they are in is regrettable", but any change was up to the legislature.

We wait for news from Taiwan.

SOUTH ASIA

JOYJAYANTI CHATTERJEE, NAMRATA MUKHERJEE, NITIKA KHAITAN, NIVEDITA SAKSENA, SHOHINI SENGUPTA AND SHRUTI AMBAST

An enduring colonial legacy has meant that lesbian, gay, bisexual and transgender (LGBT) communities continue to live under the shadow of oppressive criminal laws, even if they may not face actual prosecution by the State. A resurgence of right-wing conservatism and religious extremism has also led to an increase in incidence of violence against LGBT persons in several Asian countries. However, communities of LGBT persons and human rights groups have ensured that the conversation around the rights of persons belonging to minority sexualities is sustained. Accompanied by advocacy and the strategic use of the court system, these may potentially lead to incremental changes in the rights of LGBT communities.

BANGLADESH

The LGBT community in Bangladesh continues to be criminalised through section 377 of the Penal Code which prohibits ‘carnal intercourse against the order of nature’. The last year in Bangladesh has been marked by threats of homophobic violence against LGBT persons. The most prominent was the **murders** of Xulhaz Mannan and Mahbub Tonoy (leading LGBT activists) in April 2016. In response to this act of violence, an ‘Islamist militant’ was **arrested**, and the extremist group Ansar Al Islam was **banned**. However, LGBT persons have been **afraid to approach** the State for protection, even when they are receiving death threats on the basis of their sexual orientation.

In March 2017, the United Nations Human Rights Committee, in its report assessing Bangladesh’s compliance with the International Covenant on Civil and Political Rights, **expressed** concern at the stigmatisation, harassment and violence faced by the LGBT community. It recommended that Bangladesh should “[d]ecriminalize consensual sexual acts between same sex couples, provide protection to lesbian, gay, bisexual and transgender (LGBT) persons from violence and harassment by ensuring that all cases are promptly investigated, prosecuted, and punished with appropriate sanctions, and eliminate barriers to employment and violations to the dignity of “hijras”.

At the United Nations (UN), Bangladesh has generally voted against motions promoting the rights of LGBT persons. This includes **voting** in favor of a **motion** excluding LGBT communities from the UN’s ‘New Urban Agenda’, which sought to recognise LGBT persons and acknowledge homophobia. It also voted **against** a motion to set up an independent expert on LGBT rights, and **supported** a resolution drafted by Russia opposing benefits for same sex partners of UN staff.

BHUTAN

Same-sex sexual activity is still illegal in Bhutan under sections 213 and 214 of the Penal Code of Bhutan, 2004. These sections criminalise ‘unnatural sex’ as a petty offence inviting imprisonment for a period between one month to one year. Last year it was **reported** that the National Assembly’s committee for women, children and youth had recommended that these sections be removed. However, there appear

to have been no further developments on this front. Anecdotally, it has been **suggested** that this law is never used to prosecute anyone.

In 2015, it was **estimated** that there are close to 9000 LGBT persons in Bhutan. There are no protections in place for discrimination against LGBT persons in housing or employment. A health report found that health care workers are uncomfortable talking about sexuality, which may deter LGBT persons from seeking medical help. In 2016, a group of LGBT individuals in Bhutan gathered to mark the International Day Against Homophobia, Biphobia and Transphobia. They **reported** that their community still faces discrimination and stigmatisation.

INDIA

In February 2016, the Supreme Court heard a batch of 8 petitions asking it to **revisit** a 2014 judgement which re-criminalised same-sex sexual relations. Recognising that this was a matter of constitutional importance, it referred it to a five-judge constitutional bench. When the matter will be heard again is contingent on the constitutional bench.

In its executive decisions, however, India continues take a regressive stand on rights of sexual minorities. In March 2016, India **voted** in the United Nations General Assembly against extending marriage benefits to same sex couples working for the UN. Similarly, in September 2016, India abstained from **voting** on a United Nations Human Rights Council resolution to set up an office of an Independent Expert to end discrimination against LGBT persons. The Ministry for External Affairs clarified that this decision was taken in light of the fact that the matter on de-criminalisation is yet to be decided by the Supreme Court.

MALDIVES

Currently in the Maldives, same-sex sexual relations between men or between women are illegal: -for men triggering banishment for up to one year or whipping, and such acts between women invite house arrest for up to one year. With the **adoption of the Penal Code** in 2014, Sharia law prohibitions against same-sex sexual relations have been extended to the national sphere, which means that the law can be applied to non-Muslims and to visitors to the country. There are **no protections and rights** extended to same-sex marriages, housing, employment, adoption and the right to legal gender recognition. Societal stigma has forced members of the LGBTI community to **seek refuge** in Sri Lanka. Maldives also voted against the **Resolution** adopted by the Human Rights Council on the 'Protection against violence and discrimination based on sexual orientation and gender identity'.

NEPAL

The treatment of sexual minority populations in Nepal strikes several contradictory notes. Broadly worded laws, such as the *Public Offenses Act of 1970* are routinely **(mis)used** to harass and intimidate these groups. The proposed overhaul of the 1963 **Muluki Ain** (the General Code) has taken a regressive stand when it comes to **LGBT issues**. This is especially worrisome as same-sex relations are not considered a criminal offence at present. The proposed new law, which is in the final stages of being endorsed by the Parliament, does not recognize same-sex marriages and opens up the possibility of vague terms like “unnatural sex” being used to harass persons belonging to sexual minorities. This goes contrary to the spirit of **inclusiveness** in the landmark decision of the Supreme Court in *Sunil Babu*

Pant and others v. Nepal Government and others which set the ball rolling for recognition of same-sex marriages and provided protections for sexual minorities. Nepal has also enshrined various protections on the basis of sexual orientation and gender identity in its **new Constitution** (Articles 12, 18 and 42). The Nepalese Constitution is one of the **few in the world** to provide explicit protection against discrimination to LGBT persons and expressly recognize their rights.

PAKISTAN

Same-sex relations are criminalised through Section 377 of the Pakistan Penal Code (adopted from the colonial 1860 Indian Penal Code), though its implications for same-sex female relations are unclear.

According to 2014 **reports** by the United States State Department, and the Immigration and Refugee Board of Canada, the law is ‘rarely enforced in practice [in cases other than those involving children]’. The latter mentioned that the Neengar Society, an organisation working on religious and sexual minority rights in Pakistan, knew of ten cases under Section 377 in Punjab in 2011. Of these, two resulted in 10-year prison sentences, which were later commuted. However, its President cited how section 377 was frequently “used to threaten and blackmail people,” including police extortion.

No nationwide empirical data is available on discrimination against persons in same-sex relations, though Malaysian lawyer Shafi’i Abdul Azeez Bello has earlier **summarised** the situation, stating that rights for LGB persons are “close to non-existent.” Pakistan has opposed SOGI in international human rights fora.

SRI LANKA

Same-sex sexual relations are illegal in Sri Lanka as per Article 365 of the **Penal Code**. While there have been no known prosecutions under this provision for close to half a century (often considered to be dead law), the retention of language which stigmatizes diverse sexual orientation is problematic.

In January 2017, the Sri Lankan Government **rejected** a proposal in the National Human Rights **Action Plan** recommending decriminalisation of same-sex sexual relations, labelling the issue as cultural, rather than pertaining to human rights. This Action Plan was developed through an inter-ministerial process, with the leading role played by the Foreign Affairs Ministry. The conservative Buddhist clergy of this island nation is strongly opposed to repealing Article 365. The Health Minister **noted** that the Government is opposed to same-sex sexual activity, but will not prosecute anyone for practicing it. Perhaps, echoing this sentiment, an addendum has been included, in the draft Plan, banning discrimination against any person based on his or her sexual orientation. The members of the LGBT community have met this move with skepticism, and are fearful that they won’t stop facing abuse so long as the law of the land continues to treat any non-heteronormative sexual relations as wrong.

THE MIDDLE EAST

AUTHORS REMAIN ANONYMOUS

Currently in early-2017, across most of the Middle East region political and media discourse on sexual and gender diversity is severely limited and negative. Various interpretations of Shari'a are encoded into legal practices across the region, some resulting in death for same-sex sexual activity, others in brutal prison sentences, whipping and fines for even expressing positive opinions (see [Kuwait](#)) or advocating on such issues. However, [scholarship](#) points out that same-sex sexual relations have been culturally and historically rooted within the Islamic traditions amongst both men and [women](#). Despite this, there are cities where gay and lesbian community life can operate, albeit [underground](#). As a general rule in society, there is deep family shame when a person comes out, or is outed, in their sexual or gender diversity. This, by extension, translates as social stigma, discrimination, targeting and violence against LGBTI people.

Add to this, the very terminology used to refer to this [diversity](#) in international human rights advocacy (SOGI, LGBT, etc) does not fit easily with concepts of identity and cultural expression in much of the Middle East region. Such discourse frequently [triggers](#) ideological battles in the political sphere, fuelled by religious interpretation, geo-political interest and cultural history.

Currently, Iraq's humanitarian [crisis](#) has over 11 million people in need and three million internally displaced, while in Syria it is [estimated](#) that over 13 million people need humanitarian assistance and over five million are refugees. In Yemen in March 2017, [two-thirds](#) of the population - 18.8 million people - need aid and there are an [estimated](#) three million refugees. By the most conservative estimate, amongst these populations there are huge numbers of people whose romantic or sexual attraction resides with persons of the same sex, and/or who dress, act or express as a different gender to that which they were born, and/or who were born with a body that is not typically male or female, either at birth or puberty (LGBT and intersex).

Not only are these people [persecuted](#) in their home societies, but as asylum-seekers they face [particular](#) violence in countries of [temporary] refuge. In Iraq and northern Syria, there are a series of concurrent challenges contributing to the country's, and region's, uncertainty: war continues throughout these countries, numerous territories are under Daesh (ISIS/ISIL) [control](#) who [persecute](#) and kill LGBT people (a "[moral cleansing](#)" (see para. 30), and government is [being run](#) by brutal sectarian militias. Further, and crucially, in Iraq the judicial system remains critically [flawed](#) and [corrupt](#), producing a deep sense of fear amongst populations across the country, offering no respite to the [immense](#) discrimination and [persecution](#) happening at the community and family [level](#). For those who make it to IDP (Internally Displaced Persons) camps, the security screening centers are known to be sites of serious abuse and exposure to vulnerable LGBT people.

An [effect](#) of the political changes that the Middle East region has recently gone with the rise, influence and control of Islamic movements is increased pressure on sexual and gender minorities. This was evident in [Libya](#), [Egypt](#), [Turkey](#), [Morocco](#), and [Tunisia](#) in 2016, as well as in the historically Islamic

regimes of [Iran](#) and [Saudi Arabia](#), and others. In these States, online and in-person expression of sexual and gender diversity can be very dangerous.

However, despite what function as relatively hostile environments, there are a number of States with relatively relaxed attitudes, once individuals are not too “expressive”, and thereby breaking modesty laws in the public space (see Criminalisation, Promotion and morality laws, and Barriers to NGOs in this edition for details). Lebanon provides an example of a Middle-Eastern where jurisprudence is [developing](#) positively, but arrests under the 1943 Penal Code still take place. Further and first in the Arab countries, two major Lebanese health organisations [declassified](#) homosexuality as a mental disorder. Jordan, which is the only country within the region that does not penalise same-sex relations, does set restrictions on free expression (under modesty provisions) under [Article 320](#) of its 1960 Penal Code.

In the southern part of the Middle East, the death penalty is an ever-present issue facing sexual minorities particularly in [Saudi Arabia](#) and [Yemen](#). Although the death penalty is on the statute in Qatar and the UAE, it has not been implemented in recent years. In the UAE, persons in same-sex relationships can be sentenced to ten years in prison, and may be subjected to hormonal and other chemical “treatments”. In Qatar, under the revised 2004 [Penal Code](#), Article 296 speaks of “leading, instigating or seducing” to sodomy incurs a prison sentence.

Organisations such as [Helem](#) (Dream) in Lebanon, [Shams](#) (Sun) in Tunisia, and [Iraqueer](#) in Iraq represent a hope that change regarding sexual and gender minorities will come about in time. It is notable that some Middle Eastern media (TV and social networks) have altered their tone in recent times – from unreservedly damning to neutral-negative (allowing conversation). This may help forge a path towards equality for those people who have been persecuted, utilised or forgotten in the midst of the noise of war and political agendas.

| | CRIMINALISATION | | | | | | | | | | | | | | | | |
|---------------------------------|-----------------|----------------|---------|---------|--------|-----------------|--------|----------------|---------|------------------|---------------|---------------|------------------------------------|-----------|------------|-------------|-------|
| Country | Legal | Age of consent | | Illegal | | Penalising text | | | | | Expression | | Max Sentences (M)onths and (Y)ears | | | | |
| | All genders | Equal | Unequal | Male | Female | Sexual act | Sodomy | Against nature | Buggery | Indecency/ other | Promotion law | Morality code | 1 M - 2 Y | 3 Y - 7 Y | 8 Y - 14 Y | 15-Y - Life | Death |
| Albania | | | | | | | | | | | | | | | | | |
| Andorra | | | | | | | | | | | | | | | | | |
| Armenia | | | | | | | | | | | | | | | | | |
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| Turkey | | | | | | | | | | | | | | | | | |
| Ukraine | | | | | | | | | | | | | | | | | |
| United Kingdom (and associates) | | | | | | | | | | | | | | | | | |

| | | PROTECTION | | | | | | | | | | RECOGNITION | | | | |
|---------------------------------|---------|---|----|---------|------|---------------------------|----------|-------|------------|----------|--------|--------------------------|-------------------|----------------|---------------------|---------------------------------|
| Arrests in past three (3) years | NGO Ban | NRHI - inclusive of sexual orientation? | | | | Discrimination protection | | | | | CT BAN | Relationship recognition | | | | Country |
| Yes | Yes | Yes | No | Unclear | None | Constitution | Employm. | Other | Hate Crime | Inditem. | Yes | Marriage | Civil recognition | Joint adoption | 2nd parent adoption | |
| | | | | | | | | | | | | | | | | Albania |
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EUROPE – TIME TO IMPLEMENT PROTECTIONS

WRITTEN BY THE ILGA-EUROPE TEAM

Throughout 2016, the LGBTI movement in Europe witnessed just how much their own work at national level was inextricably linked with wider global events. No matter what the issue in the media headlines was, there was an element of LGBTI equality woven into it. Some were bluntly apparent; the impact of the horrific attack on the Latinx night at the Pulse club in Orlando in Florida reopened conversations in Europe about hate crime and whether governments and institutions are doing enough to keep LGBTI people safe.

Other headlines may not have been LGBTI-specific at first glance, but the experiences of LGBTI people in those scenarios cannot be overlooked. Behind discussions on asylum, immigration and the procedural issues associated with these processes were the stories of the very complex situations faced by LGBTI asylum-seekers. The news of the UK's decision to leave the European Union was followed by growing reports of rise in hate crimes, including homophobic and transphobic violence, in various parts of the UK. The spread of "populist" political discourse across Europe and beyond raises serious questions for the LGBTI community, as politicians either use the community as a scapegoat or directly appeal for their votes in an attempt to prove their 'human rights credentials'. Attacks on democratic institutions such as media and courts directly affect LGBTI activism too, as it limits activists' options for visibility and accessing justice.

When zooming in on the specific LGBTI landscape in Europe, it is clear that we have entered into a period where legislative processes are slowing down. Now is the time where the implementation of laws and policies on LGBTI equality gained over the past 15 years becomes vital. Not only is it a priority to ensure that the legal wins translate into real change in the lived experience of LGBTI people, but also to ensure that there is no 'rolling back' or erosion of those gains.

Although not the focus of this publication that focuses on sexual orientation-related law but is inextricably related, legal gender recognition is an area where legal progress is still moving forward at pace. In June 2016, Norway's parliament voted in favour of legislation based on the principle of self-determination, joining Denmark, Malta and Ireland. Various progressive developments relating to trans-related law are being enacted into law in France, Greece, Belgium, Luxembourg, Malta, the UK, Ukraine, Sweden and Portugal, and the European Court of Justice (see ILGA-Europe's Annual Review 2017). Jurisprudence is establishing clear principles to guide policymakers regarding implementation of core principles of dignity and equality to sexual orientation and gender identity.

Likewise, the visibility of the human rights of intersex people (a proportion of whom identify as LGB), has much increased in 2016: more institutions and governments explicitly included intersex issues in their work, for example Bosnia and Herzegovina added sex characteristics to its anti-discrimination law, and Belgium, Greece and the Netherlands initiated political discussions towards adopting more inclusive legislation.

Milestones continued to be marked in the area of family law in several European countries. Same-sex couples celebrated in [Greece](#) and [Cyprus](#) as the first partnerships were signed in both countries in early-2016. Italian lawmakers [passed](#) a historic civil unions law, after months of intense and divisive debate. Slovenia's long-awaited Bill to extend the rights and protections for couples in registered partnerships also became [effective](#) in early-2017. Even in the absence of all implementing legislation, [Estonia's](#) Registered Partnership Act became enforceable in 2016. Marriage equality came into force in [Finland](#), [Gibraltar](#), [Greenland](#) and the [Isle of Man](#). Joint and second parent adoption became an option for same-sex couples in [Portugal](#), and the same country also opened access to medically assisted reproduction to all women (ensuring automatic parental recognition for same-sex couples). Reforms to existing adoption law that will extend step-parent adoption to registered partners were also finalised during 2016 in [Switzerland](#).

The European courts also issued significant rulings in the area of family, as the European Court of Human Rights delivered verdicts in [Pajić v Croatia](#) (the first ruling by the Court on family reunification of same-sex couples) and [Taddeucci and McCall v Italy](#) (Italy's refusal to grant one partner in a same-sex couple a residence permit violated their rights). It is also noteworthy that in a few countries, deliberations around full recognition of all forms of rainbow families flourished. The Netherlands and Denmark are both currently discussing the possibility of inclusive laws to recognise families with more than two parents and different kinds of parenting roles, such as legal parents with parental rights and social parents who are recognised as part of the family. In [other countries](#), activists undertook awareness-raising around the very existence of rainbow families, as the first TV ad to feature a same-sex couple and their children was broadcast in Albania.

This good news sits in stark contrast to the ongoing discussions on restricting the definition of family life or marriage by referendum – in [Georgia](#), [Romania](#) and [Lithuania](#). Romania's very public referendum debate was also accompanied by an equally visible court case taken by a same-sex [couple](#) who wish to be recognised as spouses in the country. Currently, at time of writing, questions in the case are under consideration at the Court of Justice of the European Union. However, one vote on family issues had a positive result in the past year: popular initiative in [Switzerland](#), initially described as a vote on tax reform, was discovered to have potentially damaging consequences for same-sex couples. Following an intensive campaign by activists, voters opted not to amend the existing gender-neutral constitutional definition of marriage.

As things progressed in many countries, the ongoing gaps in neighbouring states become even more apparent. Marriage equality still eludes couples in places like Germany, Malta and Northern Ireland. As already alluded to, the civil union debate in Italy was memorable for many reasons. Sadly, one of the negative memories associated with the Bill's passage was the [derogatory](#) language used by parliamentarians and the eventual removal of second parent adoption from the law.

Sadly, there are several negative trends to report on from 2016. Civil society groups in several European countries faced additional stress imposed by their respective governments. Pressure on civil society was notably increased in [Turkey](#) in the wake of the attempted coup in July. The offices of LGBTI NGOs were [shut down](#) amidst apparent fears of terrorism. Multiple violent threats were publicly issued by extremist groups, attempting to intimidate Pride organisers and curtail LGBTI events; activities that subsequently fell foul of the authorities' bans. Their Polish activist counterparts saw their offices [attacked](#) on several

occasions. In Hungary, the southern village of **Ásotthalom** gained notoriety at the end of the year as it introduced an 'anti-propaganda' law targeting 'non-traditional' marriage.

In addition to this, counter-terrorism measures are increasingly being used to justify limiting fundamental freedoms, such as the right to peacefully protest, to form associations, organise public LGBTI events or speak out freely. The disruption caused to the 2016 Pride march in **Paris** or the fact that the authorities in two Italian cities only authorised Prides following heavy pressure are prime examples. LGBTI activists can never take the safeguarding of their spaces for granted. **Pride marches** have always been a visible symbol of fundamental human rights and an indicator of how well democracy is functioning. However, Europe's rapidly changing political context means that past successes are no guarantee for the future – **Istanbul** was a particularly shocking and physical regression. In many places, such as **Poland** and **Hungary**, Pride marches are still being held successfully but activists are working in a climate that is becoming more hostile to their work. Happily, the opposite can also be true; **Kiev Pride** saw its largest attendance and **Odessa** held its inaugural march in 2016. Prides have been viewed as litmus test for democracy, but this test cannot be one-off - it needs to be applied every year.

Bias-motivated speech by public figures (politicians, church leaders, media, to name a few) sadly continues to be a very prominent feature of each year we look back. There were several cases of derogatory comments about sexual orientation or how people choose to identify and express their gender made in a public forum. Such comments were identified in TV programmes in Armenia and Georgia, textbooks in FYR Macedonia and Poland, in Belarusian media following monitoring work by Journalists for Tolerance, and via social media in Bosnia and Herzegovina (see ILGA-Europe's **Annual Review** 2017 for detail).

When bias-motivated speech comes from the mouth of a well-known public figure, politician, or other influential leaders, its message is often widely disseminated – increasing the negative impact on LGBTI people who hear it, and potentially emboldening other who hold discriminatory views. LGBTI activists in Italy also emphasised the divisive and offensive nature of some of the arguments employed by politicians during the acrimonious civil union's debate. NGOs documented many examples of bias speech by elected officials, with the most callous remarks reserved for rainbow families. In 2016, examples of anti-LGBTI speech also could be found on election posters in Georgia, on the social media pages of politicians in FYR Macedonia (also in advance of elections), a high school professor in Serbia, and from church officials and the man who would become president by the end of the year in Moldova (see ILGA-Europe's **Annual Review** 2017 for detail).

One puzzling feature of this year's review concerns asylum. It is puzzling because despite the fact that it has become such a clear priority for many LGBTI organisations, there are limited positive developments to report on from the national and European authorities' side. **Latvia** finalised an asylum law with references to sexual orientation and gender identity, but in many other countries, activists spoke out with concerns. Swedish NGOs **criticised** the effect that legal changes could have on LGBTI asylum seekers and their families. Worries over the lack of safe housing for LGBTI asylum seekers started to be raised more systematically by civil society, for example in Spain, Finland, Iceland and the UK. The EU Fundamental Rights Agency started to **monitor** the situation. Civil society groups and NGOs across Europe stepped up the support provided to LGBTI asylum seekers throughout the application process, and beyond where possible. But there is clearly a need for public authorities to step in to address safety

concerns, as some **German** authorities started to do in 2016 by opening the first accommodation specifically for LGBTI asylum seekers.

ILGA-Europe is continually reminded of the scale of the work that still has to be done in some parts of Europe. Arbitrary detention, torture and extra-judicial killing sound (thankfully) like alien terms to most of us, but this is exactly the reality faced by (perceived) gay and bisexual men in **Chechnya**. The true enormity of what is happening is unfolding as we go to print, but hopefully next year we will be able to include updates on how the international community was able to support the LGBTI community there. Let us not shy away from these challenges. Parts of the human condition are terrifying, but our work as an activist movement requires us to face it. The LGBTI movement has demonstrated, time and time again, that it can withstand and counter even the most entrenched opposition. In 2017, the European movement needs to call on all its determination, strength, and resilience to create the change we would like to see in the world.

| | CRIMINALISATION | | | | | | | | | | | | | | | | |
|-------------------|-----------------|----------------|---------|---------|--------|-----------------|--------|----------------|---------|------------------|---------------|---------------|------------------------------------|-----------|------------|-------------|-------|
| Country | Legal | Age of consent | | Illegal | | Penalising text | | | | | Expression | | Max Sentences (M)onths and (Y)ears | | | | |
| | All genders | Equal | Unequal | Male | Female | Sexual act | Sodomy | Against nature | Buggery | Indecency/ other | Promotion law | Morality code | 1 M - 2 Y | 3 Y - 7 Y | 8 Y - 14 Y | 15-Y - Life | Death |
| Australia | | | | | | | | | | | | | | | | | |
| Cook Islands (NZ) | | | | | | | | | | | | | | | | | |
| Fiji | | | | | | | | | | | | | | | | | |
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| Nauru | | | | | | | | | | | | | | | | | |
| Palau | | | | | | | | | | | | | | | | | |
| Papua New Guinea | | | | | | | | | | | | | | | | | |
| Samoa | | | | | | | | | | | | | | | | | |
| Solomon Islands | | | | | | | | | | | | | | | | | |
| Tonga | | | | | | | | | | | | | | | | | |
| Tuvalu | | | | | | | | | | | | | | | | | |
| Vanuatu | | | | | | | | | | | | | | | | | |

| | | PROTECTION | | | | | | | | | | | RECOGNITION | | | | |
|---------------------------------|---------|---|----|---------|------|---------------------------|------------|-------|------------|--------|--------|--|--------------------------|-------------------|----------------|---------------------|-------------------|
| Arrests in past three (3) years | NGO Ban | NRHI - inclusive of sexual orientation? | | | | Discrimination protection | | | | | CT BAN | | Relationship recognition | | | | Country |
| Yes | Yes | Yes | No | Unclear | None | Constitution | Employment | Other | Hate Crime | Indem. | Yes | | Marriage | Civil recognition | Joint adoption | 2nd parent adoption | |
| | | | | | | | | | | | | | | | | | Australia |
| | | | | | | | | | | | | | | | | | Cook Islands (NZ) |
| | | | | | | | | | | | | | | | | | Fiji |
| | | | | | | | | | | | | | | | | | Kiribati |
| | | | | | | | | | | | | | | | | | Marshall Islands |
| | | | | | | | | | | | | | | | | | Micronesia |
| | | | | | | | | | | | | | | | | | New Zealand |
| | | | | | | | | | | | | | | | | | Nauru |
| | | | | | | | | | | | | | | | | | Palau |
| | | | | | | | | | | | | | | | | | Papua New Guinea |
| | | | | | | | | | | | | | | | | | Samoa |
| | | | | | | | | | | | | | | | | | Solomon Islands |
| | | | | | | | | | | | | | | | | | Tonga |
| | | | | | | | | | | | | | | | | | Tuvalu |
| | | | | | | | | | | | | | | | | | Vanuatu |

OCEANIA: A YEAR OF STEADY PROGRESS TOWARDS EQUALITY

RAYMOND ROCA AND HENRY 'AHO

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The authors would like to thank Tetryanna Utanga of the Te Tiare Association (Cook Islands) and Tebeio Tamton (Kiribati) for their input into this chapter.

OVERVIEW

Several positive developments for the rights of lesbian, gay and bisexual (LGB) people in Oceania have taken place in the past 12 months. In Australia, significant progress has been achieved at the state and territory level, particularly in jurisdictions that had previously lagged behind on LGB equality. Queensland enacted adoption equality and an equal age of consent, while removing the ability for murderers of LGB people to use the “homosexual advance defence”. South Australia passed laws creating a registered relationship scheme, introducing adoption equality and allowing same-sex couples to access artificial reproductive technology and altruistic surrogacy, while Victoria introduced a new health complaints regime that allows more effective action to be taken against providers of gay conversion therapy. However, at the federal level, marriage equality legislation continued to stall, while the Safe Schools education inclusion program was significantly curtailed by the current Liberal-National Government. The New Zealand Government, having already achieved significant legal progress towards LGB equality in previous years, announced its intention to expunge the criminal records of persons convicted historically of consensual same-sex sexual conduct.

In the Pacific, law reform continued in some countries: Nauru decriminalised same-sex sexual conduct and Samoa introduced laws allowing for enhanced sentences for hate crimes based on sexual orientation. In jurisdictions that continue to criminalise same-sex sexual conduct, international human rights mechanisms such as the Universal Periodic Review are working together with local activists to maintain pressure for reform. Indeed, the past year has witnessed increased mobilisation and networking by activists both nationally and regionally, providing hope that, gradually, criminalisation will become less widespread across the region, while protective laws and policies will become more common.

CRIMINALISATION

Nauru **decriminalised** same-sex sexual conduct in May 2016 through the passage of a new Crimes Act. This reduced the number of criminalising jurisdictions within the Pacific to seven: the Cook Islands, Kiribati, Papua New Guinea, Samoa, the Solomon Islands, Tonga and Tuvalu.

However, the prospects for decriminalisation in the remaining seven jurisdictions remain relatively low. In 2016, Samoa, the Solomon Islands and Papua New Guinea underwent their Universal Periodic Review at the United Nations (UN) Human Rights Council. All three states received recommendations to decriminalise same-sex sexual conduct, but chose to “note” such recommendations rather than accepting them. In its response to the Human Rights Council, Samoa **stated** (para. 20) that the decriminalisation of “sodomy” was “not possible at this time because of cultural sensitivities and Christian beliefs of the Samoan society”. Papua New Guinea **noted** (fn. 53) that “LGBT is currently not a priority of the government”, while the Solomon Islands **mentioned** (para. 101) that recommendations regarding same-sex sexual conduct did not enjoy its support.

During national consultations with LGBTI activists in 2016 and early 2017, the Tongan government indicated its reluctance to support the decriminalisation of same-sex sexual conduct. However, the government emphasised the importance of sexual minorities to the fabric of Tongan society and recommended further consultations.

In the Cook Islands, the Crown Law Office has for the past few years been conducting a comprehensive review of the Crimes Act which may recommend the removal of criminal prohibitions on same-sex sexual conduct (among other reforms). Activists from the Te Tiare Association, the peak LGBTI rights body in the Cook Islands, have suggested that the review is still pending and that there is no confirmed date for the release of draft legislation or for a parliamentary vote on such draft legislation.

In November 2016, Kiribati, Samoa and Tuvalu **voted** in support of the mandate of the Independent Expert on Protection against Violence and Discrimination Based on Sexual Orientation and Gender Identity (IE-SOGI) at UN General Assembly, despite maintaining laws that criminalise same-sex sexual conduct. It is unclear if their supportive vote signifies a subtle shift in their stance towards the rights of LGB people (including decriminalisation) or is simply a reflection of voting bloc dynamics and alliances within the UN. This is not the first time that criminalising states in the Pacific have voted in favour of LGB rights at the UN level. Nauru, Palau, Samoa and Tuvalu supported the March 2011 Joint Statement on Ending Acts of Violence and Related Human Rights Violations Based on Sexual Orientation and Gender Identity at the UN Human Rights Council, despite criminalising same-sex sexual conduct at the time. The other Oceanian countries to vote in support of the IE-SOGI mandate were Australia, Fiji, New Zealand, Palau and Vanuatu, while Papua New Guinea abstained and the Federated States of Micronesia, Solomon Islands and Tonga were not present at the vote. Interestingly, Nauru voted in favour of abolishing the IE-SOGI mandate, despite only a few months ago decriminalising same-sex sexual conduct.

AGE OF CONSENT REFORM AND EXPUNGEMENT OF HISTORICAL CONVICTIONS

The only jurisdiction in the region to retain an unequal age of consent—the Australian state of Queensland—**reformed its laws** in September 2016, creating an equal age of consent of 16 for same-sex and opposite-sex sexual activity.

Australia and New Zealand also recorded progress regarding the expungement of the criminal records of persons convicted of consensual adult same-sex sexual conduct prior to decriminalisation. In July 2016,

the Government of Tasmania **introduced draft legislation** establishing an expungement scheme. The Queensland Government **announced** its intention to introduce an expungement scheme in November 2016, with legislation putting in place such a scheme expected to be introduced in the first half of 2017. In February 2017, the New Zealand Government similarly **announced** its intention to introduce an expungement scheme, with legislation to be introduced later in the year. The Australian states of New South Wales and Victoria, as well as the Australian Capital Territory, already have expungement schemes in place.

DISCRIMINATION AND PROTECTION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

ANTI-DISCRIMINATION LAWS

Across Oceania, criminal laws targeting same-sex sexual conduct are rarely enforced yet discrimination continues to significantly affect the lives of LGB people, including the realisation of their economic, social and cultural rights, such as their rights to work, education, health and housing. Laws prohibiting discrimination on the basis of sexual orientation exist in all major areas of social and economic life in Australia, Fiji and New Zealand, as well as in the Cook Islands and Samoa, in employment only. Fiji also prohibits sexual orientation discrimination in its Constitution (see full listing of laws and provisions in the “Overview Legislation” section above). Unfortunately, no significant progress in respect of anti-discrimination laws was made in the past 12 months.

Palau, the Marshall Islands and the Federated States of Micronesia received recommendations to enact laws prohibiting sexual orientation discrimination as part of during their Universal Periodic Review sessions in 2015–16. Palau **responded** (para. 21) that “[f]urther work and consultations” were needed in order to “further progress in this area”. The Federated States of Micronesia **noted** (para. 13) the importance of addressing “sexual orientation ... in our laws in order to be fully compliant with human rights standards” but provided no firm commitments. The Marshall Islands did not provide a specific response to recommendations regarding sexual orientation discrimination.

A significant challenge to the **adoption of LGB-inclusive anti-discrimination laws** in many Pacific jurisdictions is lack of capacity, particularly given that many countries do not have any legal frameworks for protecting against discrimination (even on other grounds, such as race or gender). This means that prohibiting discrimination on the basis of sexual orientation is not simply a matter of making minor amendments to existing laws, but instead requires creating a comprehensive legal regime, including new or expanded institutions, for tackling discrimination across all grounds. Accordingly, in many jurisdictions, an incremental strategy may be to push for anti-discrimination protections to be included in sector-specific regulations and policies (e.g. health and education policies or national gender policies). For example, in the Cook Islands, activists are pushing for the inclusion of sexual orientation and gender identity/expression within the National Gender Policy, which is due for review in April 2017. *Education inclusion*

In Australia, the past 12 months saw significant political controversy over the government-funded Safe Schools program, which provides resources and support to schools to create more inclusive environments for LGBTI students. Following a barrage of opposition to the Safe Schools program from the tabloid press and conservative parliamentarians, the Federal Government significantly curtailed the

program from March 2016 onwards. Certain resources have been removed or restricted, the program is now confined to secondary schools and parental consent is required for student participation in lessons or activities that are part of the program (see [official statement](#)). In addition, the Safe Schools Coalition Australia, which administers the program, [will not be funded](#) beyond 2017.

In response to the changes, the governments of [Victoria](#) and the [Australian Capital Territory](#) have announced that they will allocate funding to allow the program to go ahead in its original, more comprehensive form in their respective jurisdictions.

PROHIBITIONS ON GAY CONVERSION THERAPY

In February 2017, the [Health Complaints Act](#) came into force in Victoria (Australia), which provides new tools for cracking down on providers of “gay conversion therapy”. The Act requires the establishment of a new Health Complaints Commissioner who has the power to issue prohibition orders (and take other action) in respect of health service providers that violate the “General Code of Conduct in respect of General Health Services” (Section 95). This includes providers that misinform or misrepresent the services they provide, or that fail to provide services in a safe and ethical manner (Schedule 2). While the Act does not explicitly mention conversion therapy, the Minister for Health’s press release announcing the introduction of the proposed legislation into Parliament [made explicit reference](#) to the Health Claims Commissioner having the power to take action against persons offering gay conversion therapy.

HATE CRIMES AND VIOLENCE

Samoa enacted a new [Sentencing Act](#) in 2016 which treats a motive of hostility based on sexual orientation as an aggravating factor in the sentencing of crimes [Section 7(1)(h)]. This is a significant step forward, in a context where very few jurisdictions in the region make specific provisions for hate crimes against lesbian, gay and bisexual people (see section on “Hate crimes based on sexual orientation considered an aggravating circumstance” above).

In March 2017, the Queensland Legislative Assembly passed [legislation](#) to disallow the use of the homosexual advance defence (also known as the “gay panic defence”). Prior to this, a person who killed another in response to a non-violent same-sex sexual advance could plead the partial defence of provocation, which allows a murder charge to be downgraded to manslaughter. South Australia therefore remains the only Australian state to allow the use of the homosexual advance defence. The South Australian Government has signalled its willingness to reform the law, and the South Australian Law Reform Institute is currently preparing a [report](#) on amending the law of provocation, which is likely to recommend disallowing the use of the homosexual advance defence. The deputy director of the South Australian Law Reform Institute [has described](#) the homosexual advance defence as “offensive and discriminatory”.

In Fiji, a same-sex couple was attacked in the street in February 2017 and reported that they were too scared to reveal their names and report the attack to the police for fear of reprisals. The director of the Human Rights and Anti-Discrimination Commission, Ashwin Raj, [condemned](#) the attack and encouraged people to report sexual orientation-related violence to the Commission as well as to the police.

RELATIONSHIP RECOGNITION

AUSTRALIA

In Australia, several states and territories enacted reforms to improve the legal recognition of same-sex couples. [Queensland](#) and [South Australia](#) passed legislation allowing same-sex couples to adopt, which came into effect in November 2016 and February 2017, respectively. The Northern Territory now remains the only Australian jurisdiction to restrict adoption to different-sex couples, although the election of a Labor Government in August 2016 has improved prospects for adoption reform. Chansey Paech, a Labor member of the Northern Territory Legislative Assembly and Australia's first gay Indigenous parliamentarian, has publicly [called](#) on the Northern Territory Government to allow joint same-sex adoption.

Aside from adoption equality, South Australia has also enacted several pieces of legislation to increase the legal rights of same-sex couples. This includes a [registered relationship scheme](#) which broadly mirrors those already in place in the Australian Capital Territory, New South Wales, Queensland, Tasmania and Victoria and also allows same-sex couples married overseas to have their relationships recognised under South Australian law. In addition, after years of lagging behind on this issue, South Australia became the last Australian jurisdiction to allow same-sex couples to access [artificial reproductive technology](#) (as well as to enter into altruistic surrogacy arrangements) in March 2017.

Several areas of inequality for same-sex couples remain throughout Australia. Aside from the Northern Territory not recognising same-sex adoption, neither the Northern Territory nor Western Australia have any relationship registration schemes, which creates uncertainty as to whether same-sex couples fit the definition of a "de facto relationship". Altruistic surrogacy also remains unavailable for same-sex couples in Western Australia [[Surrogacy Act 2008](#), section 19(2)] while commercial surrogacy is illegal in all parts of Australia.

However, the most visible area of inequality for same-sex couples remains their inability to marry. After parliamentary elections in July 2016, both houses of Parliament have a majority of members in favour of marriage equality. However, the governing Liberal and National parties have refused to allow their members a free vote and instead made an election promise to hold a national plebiscite on same-sex marriage (which, if carried, would be followed by a free vote in Parliament). The plebiscite was [widely opposed](#) by the LGBTI communities, on the basis that it is legally unnecessary and would provide a platform for opponents of marriage equality to stigmatise same-sex couples and their children. In November 2016, legislation to allow the plebiscite to be carried out [was defeated](#) in the Senate, where the governing parties do not have a majority. Since then, LGBTI activists have continued to push for a free vote in Parliament, which the governing parties have so far refused to allow.

NEW ZEALAND

Given that New Zealand has allowed same-sex couples to marry since August 2013, no significant developments have taken place in the past 12 months regarding relationship recognition. New Zealand [continues to receive](#) a large number of same-sex couples visiting the country to get married: out of 2118 same-sex marriages which took place in New Zealand up until August 2016, 45.8% involved overseas residents (the majority of whom are from Australia).

PACIFIC ISLANDS

With the exception of certain territories under Chilean, French, UK or US jurisdiction, same-sex relationships are not recognised anywhere in the Pacific Islands. At its Universal Periodic Review in January 2016, Palau received a **recommendation** from Spain (para. 104.81) to “legislate in order to permit marriage between persons of the same sex”. In its response, Palau “took note” of this recommendation and **stated** that “[f]urther work and consultations need to be taken to further progress in this area in the Republic” (para. 21). Nevertheless, achieving marriage equality is likely to be difficult, as **Palau’s Constitution** (as amended in 2008) defines marriage as being between a man and a woman (Article IV, section 13).

REGIONAL AND NATIONAL ADVOCACY

In October 2016, the inaugural Pacific LGBTI Youth Forum was **held** in Sydney, Australia. The two-day event was organised by Kaleidoscope Human Rights Foundation with the support of the U.S. Embassy in Canberra and global law firm DLA Piper. The forum brought together 38 young activists from Australia, New Zealand and the Pacific and included a range of strategic sessions on advancing the rights of LGBTI people in the region. The forum also created significant opportunities for networking and experience-sharing among activists. In March 2016, Kaleidoscope also conducted a week-long capacity building program with Tongan LGBTI activists in Sydney and Canberra, which involved the activists meeting with politicians and community leaders to share experiences about LGBTI law reform and social change.

In December 2016, two milestone advocacy events took place for sexual and gender minorities in Tonga and Samoa. In Tonga, a national consultation on LGBTI rights was organised by the *Tonga Leitis Association* (TLA). The consultation took place between LGBTI activists and government and church representatives. The TLA **called on the government to repeal** laws criminalising same-sex sexual conduct, while calling on churches to adopt a more accepting attitude towards LGBTI people. The consultation offered decision-makers a snapshot into the lives of LGBTI people living in Tonga and how the current legislation has a negative impact on societal attitudes towards them. While the government and church leaders recognised the rampant discrimination against LGBTI people in Tonga, they were hesitant to support any legislative change. However, the government, church leaders and other working partners of the TLA called for further consultations, to continue a dialogue on fighting discrimination through law reform.

In Samoa, the **inaugural Fa’afafine Week** took place in December 2016. *Fa’afafine* is a traditional Samoan identity category describing persons who are assigned a male sex at birth but have a gender identity that is either primarily feminine or integrates elements of both femininity and masculinity. The event, organised by the Samoan Fa’afafine Association, did not only relate to *fa’afafine*, but also included LGBTI people more broadly. It involved a series of events aimed at celebrating sexual and gender diversity and raising awareness of discrimination, including visits to several schools.

Finally, in Kiribati, the first non-government organisation focusing on the rights of LGBTI people, *Boutokaan, Inaomataia ao Mauriia Binabinaine Association* (**BIMBA**), was established in September 2016. The establishment of BIMBA is likely to lead to increased effort towards decriminalising same-sex sexual conduct and broader law reform in Kiribati.

READING ILGA WORLD MAPS

THERE ARE FOUR MAPS ON THE FOLLOWING PAGES, AND THIS OVERVIEW IS DESIGNED TO FACILITATE INITIAL READING OF THEM, BY BRIEFLY GOING THROUGH THEIR 'LANGUAGE' ONE BY ONE

These maps are best viewed in PDF format.

The first of these is an **Overview** map that looks (from a red to green spectrum) at laws that criminalise same-sex sexual relations, laws that include the protection of sexual minorities, and laws that recognise our relationships and families.

1. As explained on the map's legend in more detail, in the criminalising countries different punishments are indicated in shades of red: for example, death is deep red, and 'promotion' laws are orange.
2. Countries that have decriminalised, or where same sex relations were never penalised, are coloured yellow.
3. There are small blue shields across this map that indicate there is some form of protection in law, for example, from hate crime or non-discrimination in employment.
4. The countries in shades of green represent those where marriage or civil unions of some form are recognised. On a number of these, small icons represent the presence of joint adoption or second parent adoption that are inclusive of same sex couples.

Example: reading this Overview map, and looking at Samoa – the coding reads that it is a criminalising country, with a penalty of under five years, but it also has some non-discrimination provisions that are inclusive of sexual orientation.

The second map focuses on **Criminalisation**. This map delves deeper into the nature of the criminalisation:

1. The base colour of a country indicates the nature of the actual crime – sodomy, acts against nature, buggery, etc. This is explained in the legend in more depth.
2. The second element - maximum sentences - is indicated by a capital letter A through E – ranging from death (A) to 1 month in jail or a fine (E).
3. There are male/female icons for men and for women to indicate which of the binary genders (or those perceived to be in one category or the other by law) is included within the scope of that law.
4. The handcuffs symbol indicates whether there have been arrests in the past three years (as found in our research).
5. The house symbol indicates whether laws create insurmountable barriers to the formation of SOGI-based NGOs.

Example: reading this Criminalisation map, and looking at Tanzania, one sees the charge is 'against nature', with a sentence of between 15 years and life, where the law only applies to men (except Zanzibar), and where there have been arrests in the past three years. Further, there are restrictions on the formation of SOGI-based NGOs, and penalties for 'morality'-based offences.

The third map (blue) concerns **Protection**. The Overview map indicated protection with a shield – this map explains the nature of those protections in detail.

1. Where a country is coloured blue, it has employment law that protects against discrimination on grounds of sexual orientation.
2. A pink dot signifies Constitutional protection, and an orange dot means there are other protections (health, education, housing, etc) that include sexual orientation in their texts. A purple dot signifies that the State outlaws so called "conversion therapy".
3. The letter **A** indicates hate crime legislation inclusive of sexual orientation.
4. **B** means laws that protect from incitement to hatred (hate speech).
5. **C** indicates that there is a national human rights institution active. These are often important sites for the early development of what will become laws and policies in States.

Example: reading this Protection map, and looking at Germany, one sees that it has protective employment law (blue), some other non-discrimination law (orange dot), but no hate crime or incitement to hatred laws (absence of A and B), while it does have a human rights institution inclusive of sexual orientation (C). Luxembourg on the other hand has the same, but has both hate laws (A and B).

The final map is on **Recognition**. Much as the Overview map, this specifies

1. The status of relationship recognition: marriage or some form of civil partnership recognition.
2. Where joint adoption and second parent adoption exist in the world in 2017.

Example: reading this Recognition map, and looking at Colombia, one sees there is marriage equality in that State, but also civil partnership (light green dot), and joint adoption as well as second-parent adoption are available to same-sex couples.

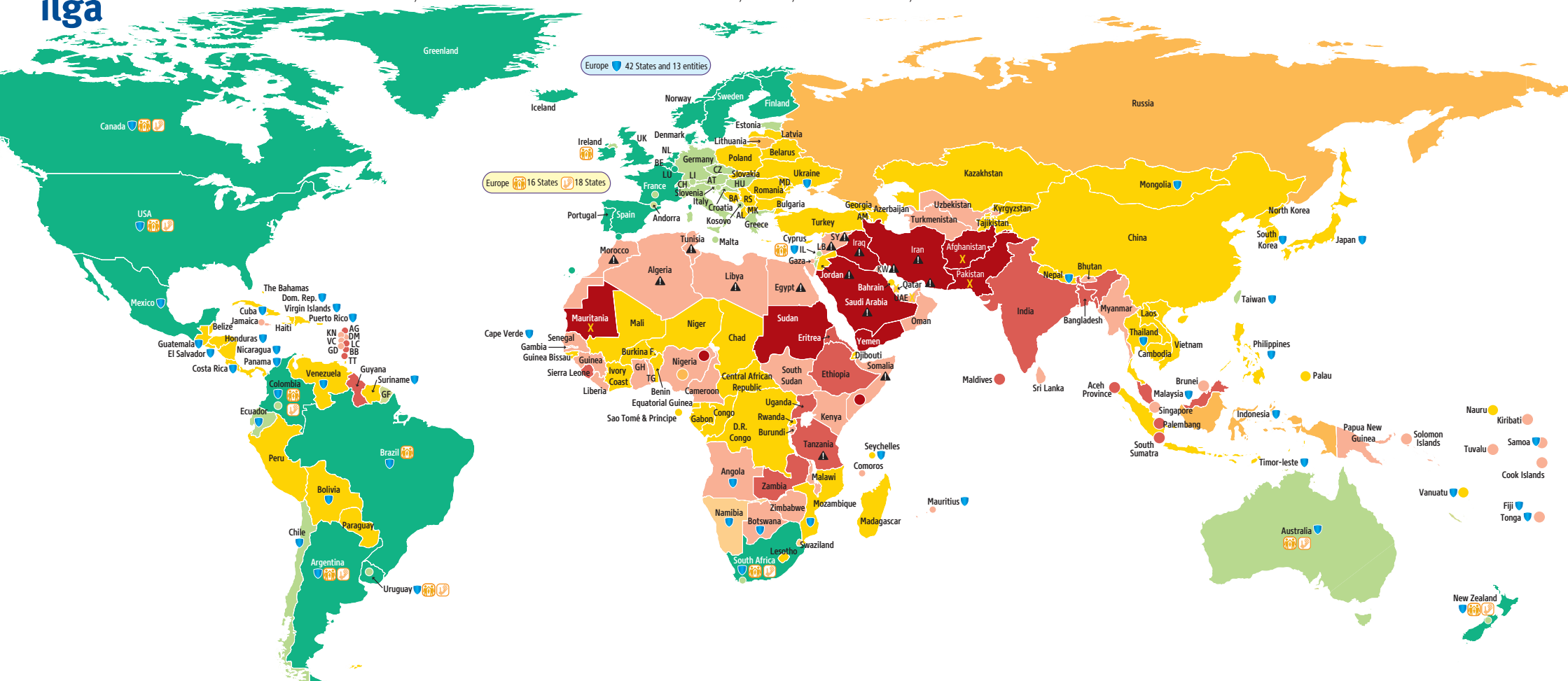
The data represented in these maps are based on *State-Sponsored Homophobia: a World Survey of Sexual Orientation Laws: Criminalisation, Protection and Recognition*, an ILGA report by Aengus Carroll and Lucas Ramón Mendos. The report and these maps are available in the six official UN languages: English, Chinese, Arabic, French, Russian and Spanish on ILGA.org. This edition of the world map (May 2017) was coordinated by Aengus Carroll and Lucas Ramón Mendos (ILGA), and designed by Eduardo Enoki (eduardo.enoki@gmail.com).



SEXUAL ORIENTATION LAWS IN THE WORLD - OVERVIEW

ILGA, THE INTERNATIONAL LESBIAN, GAY, BISEXUAL, TRANS AND INTERSEX ASSOCIATION

MAY 2017
ILGA.ORG



CRIMINALISATION

72 STATES

| | | | |
|-------|--|----------------------|-----------|
| DEATH | implemented in 8 States (or parts of) | 14 Y - life (prison) | 14 States |
| | not implemented in 5 States | Up to 14 Y | 57 States |
| | Religious-based laws alongside the civil code: 19 States | 'Promotion' laws | 3 States |
| | | No penalising law | |

In green, yellow and orange countries, same-sex sexual acts were decriminalised or never penalised: **123 States**

PROTECTION

85 States

Many States run concurrent protections

| | |
|-----------------------------|-----------|
| Constitution | 9 States |
| Employment | 72 States |
| Various | 63 States |
| Hate crime | 43 States |
| Incitement to hate | 39 States |
| Ban on 'conversion therapy' | 3 states |

RECOGNITION

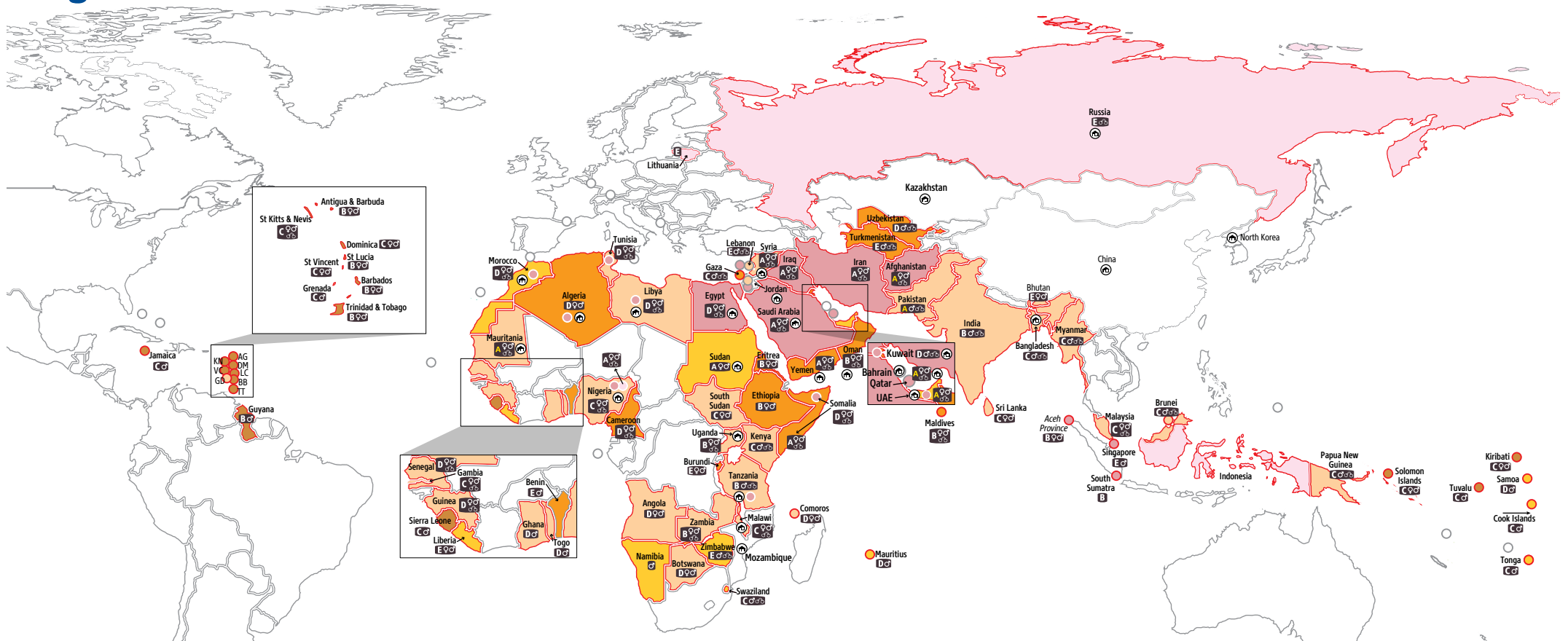
47 States

A small number of States provide for marriage and partnership concurrently

| | | | |
|-------------|-----------|---------------------|-----------|
| Marriage | 22 States | Joint adoption | 26 States |
| Partnership | 28 States | 2nd parent adoption | 27 States |

Separate detailed maps for these three categories are produced alongside this Overview map.

The data represented in these maps are based on *State-Sponsored Homophobia: a World Survey of Sexual Orientation Laws: Criminalisation, Protection and Recognition*, an ILGA report by Aengus Carroll and Lucas Ramón Mendos. The report and these maps are available in the six official UN languages: English, Chinese, Arabic, French, Russian and Spanish on ILGA.org. This edition of the world map (May 2017) was coordinated by Aengus Carroll and Lucas Ramón Mendos (ILGA), and designed by Eduardo Enoki (eduardo.enoki@gmail.com).




ACTUAL OFFENCE THAT GENERATES MAXIMUM SENTENCES


| | |
|---|--|
| Promotion ("propaganda") laws 3 States | Against nature 30 States |
| Sexual act 15 States | Buggery 13 States |
| Sodomy 11 States | Morality law: LGB expression 19 States (and some provinces) |

CATEGORIES OF MAXIMUM SENTENCES

- A** Death 8 States (implemented)
- A** Death 5 States (not implemented)
- B** 15 years to Life (12 States)
- C** 8 to 14 years (23 States)
- D** 3 to 7 years (20 States)
- E** 1 month – 2 years (or a fine) (10 States)

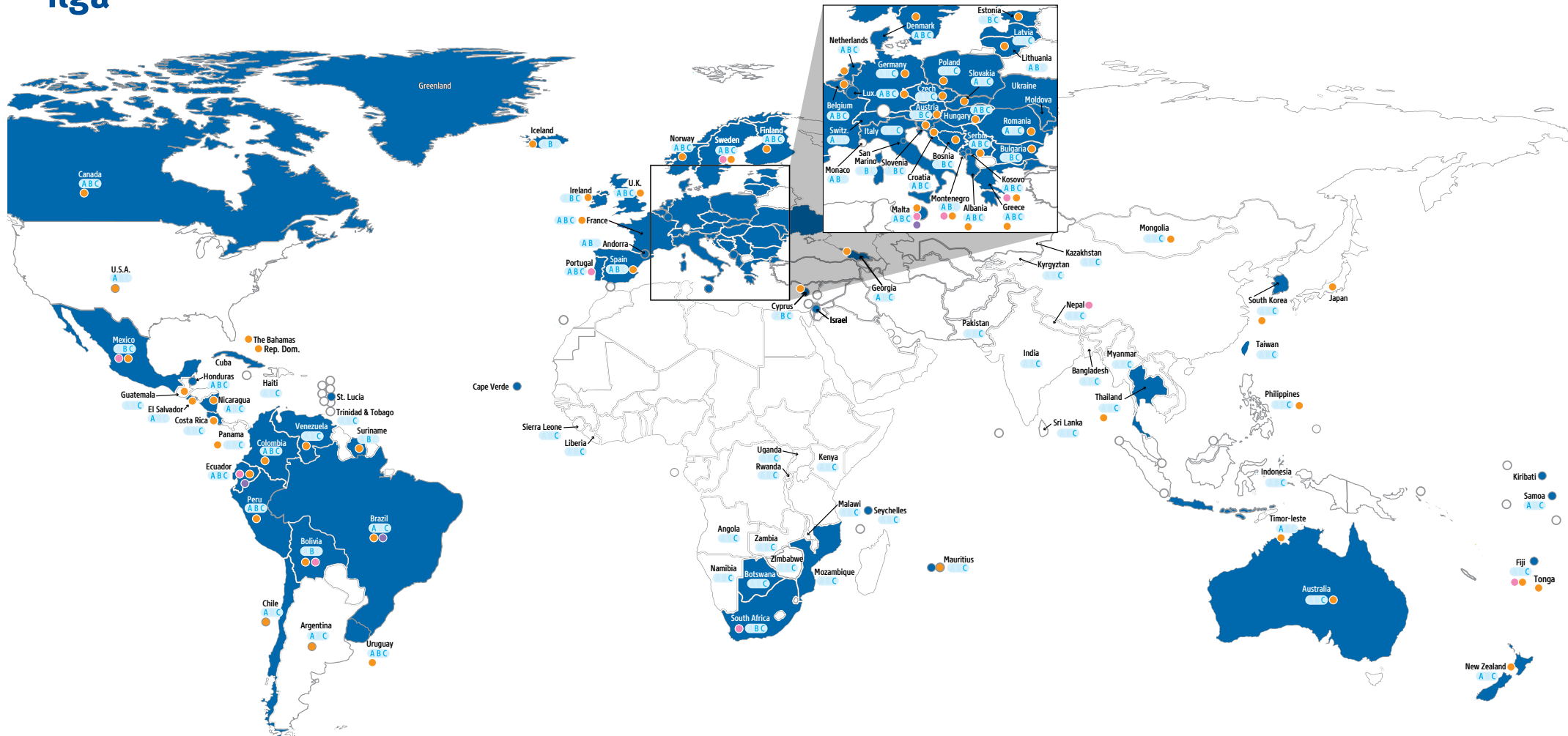
-  Relationship between females is illegal
45 States (including Egypt)
-  Relationship between males is illegal
72 States (including Egypt)

-  Arrests (documented) in the past 3 years (45 States)

-  Barriers to NGO formation, establishment or registration (25 States)

Note: the country entries on these criminalizing States in *State-Sponsored Homophobia* outline the full range of penal provisions and sanctions under which same-sex sexual relations are targeted. In this map we chart only the category in which **maximum sentences** fall.

The data represented in these maps are based on *State-Sponsored Homophobia: a World Survey of Sexual Orientation Laws: Criminalisation, Protection and Recognition*, an ILGA report by Aengus Carroll and Lucas Ramón Mendos. The report and these maps are available in the six official UN languages: English, Chinese, Arabic, French, Russian and Spanish on ILGA.org. This edition of the world map (May 2017) was coordinated by Aengus Carroll and Lucas Ramón Mendos (ILGA), and designed by Eduardo Enoki (eduardo.enoki@gmail.com).



PROTECTION

Non-discrimination in employment
72 States

- ABC** Hate crimes based on sexual orientation considered an aggravating circumstance (**43 States**)
- B** Incitement to hatred based on sexual orientation prohibited (**39 States**)
- ABC** Presence of a National Human Rights Institution [NHRI] that includes sexual orientation in its human rights work (**86 States**)

- ABC** Constitutional prohibition of discrimination based on sexual orientation (**9 States**)
- ABC** Ban on so-called 'conversion therapy' (**3 States**)
- ABC** Other non-discrimination provisions specifying sexual orientation (**63 States**)

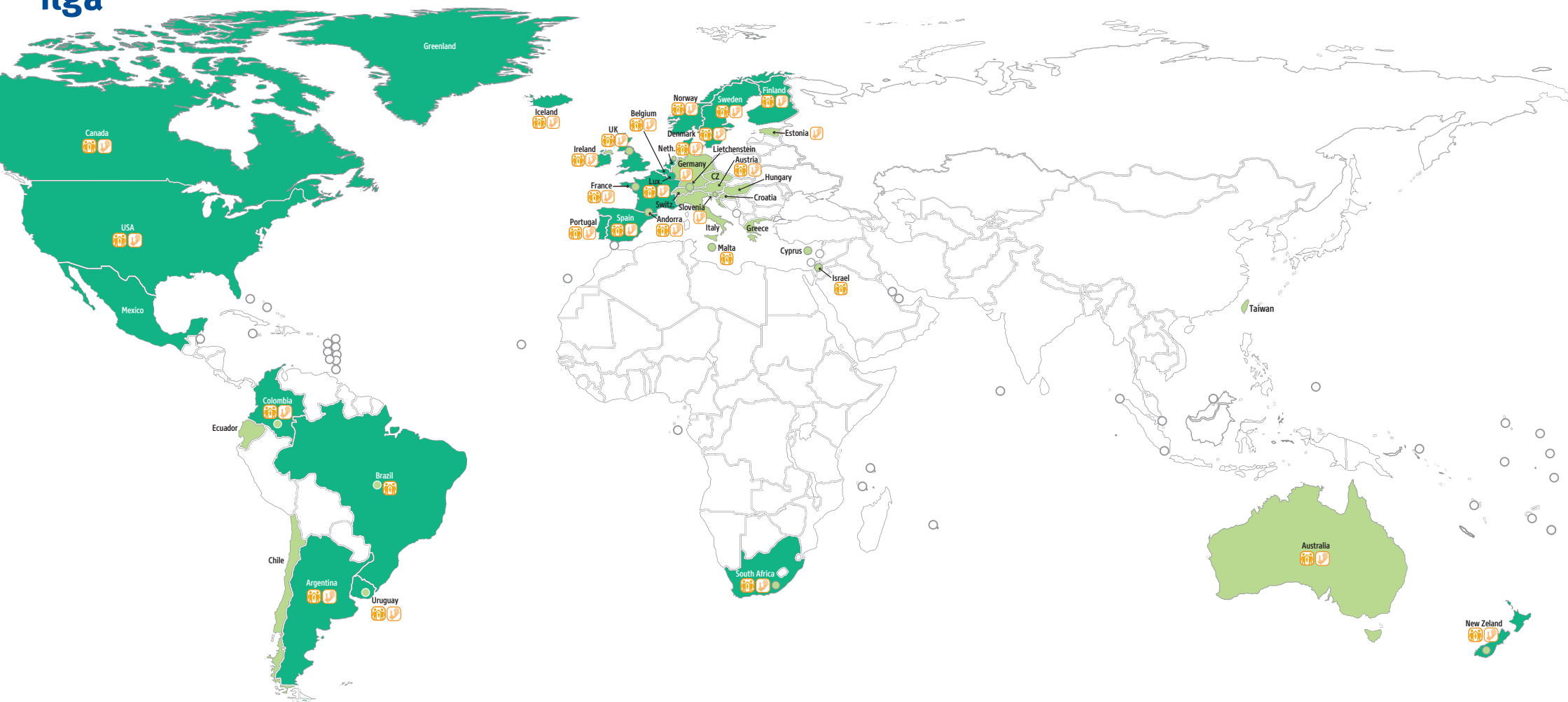
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SEXUAL ORIENTATION LAWS IN THE WORLD - RECOGNITION

ILGA, THE INTERNATIONAL LESBIAN, GAY, BISEXUAL, TRANS AND INTERSEX ASSOCIATION

MAY 2017
ILGA.ORG



RECOGNITION

Marriage
22 States

Partnership
28 States



Joint Adoption [26 States]



Second parent adoption [27 States]

The data represented in these maps are based on *State-Sponsored Homophobia: a World Survey of Sexual Orientation Laws: Criminalisation, Protection and Recognition*, an ILGA report by Aengus Carroll and Lucas Ramón Mendos. The report and these maps are available in the six official UN languages: English, Chinese, Arabic, French, Russian and Spanish on ILGA.org. This edition of the world map (May 2017) was coordinated by Aengus Carroll and Lucas Ramón Mendos (ILGA), and designed by Eduardo Enoki (eduardo.enoki@gmail.com).