



STATE-SPONSORED HOMOPHOBIA

GLOBAL LEGISLATION OVERVIEW UPDATE

December
2019

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ILGA Co-Secretaries General' Foreword

By Tuisina Ymania Brown¹ and Luz Elena Aranda.²

As we prepare to start a new year —and a new decade— we are proud to present our member organisations and the general public with an update of the Global Legislation Overview of the *State-Sponsored Homophobia* report. This end-of-year update will help us keep up to date with the progress (and the backtracking) that we have seen take place around the world in terms of sexual orientation law since the launch of the latest edition of our report.

In the last few years we have seen unprecedented progress as a result of our advocacy work at the national, regional and global level. Never before had our communities achieved such level of legal protection in so many countries around the world and we have numerous reasons to celebrate and rejoice. In more than 70 countries “sexual orientation” has been explicitly enshrined in local regulations, national laws and constitutions to protect us from discrimination. Rainbow families are being recognized in an ever-increasing number of jurisdictions and a global tendency towards decriminalisation of consensual same-sex sexual acts has now been established.

However, this is a time when being complacent about our achievements is one of the worst mistakes we can ever make. The polarizing trends that are taking place at a global scale mean that while more and more of us have seen our rights legally recognized, more LGBTI people are also in greater danger of being discriminated, attacked, persecuted and even murdered. As we grow

stronger, the opposition we have always encountered is now coupled and reinvigorated with a new wave of resistance from old and new detractors. Our achievements are being attacked and maliciously presented by anti-rights, right wing and conservative actors as threatening blows to society and as a disgrace to humankind as such. Sophisticated fear-mongering tactics are being used to present us as an obscure force aiming to use, recruit or indoctrinate children, as a conspiracy driven by an ideology that seeks to destroy the moral fabric of society. A menace that needs to be stopped. And even if these outlandish claims do not sound new to us (we survive them every single day of our lives), we are now --more than ever-- starting to see how their strategic use as a repetitive mantra in all corners of the world is gathering momentum.

As much as we would love to report about uncontested progress, we issue this update of the Global Legislation Overview of our *State-Sponsored Homophobia* report with an eerie feeling.

Soon after we launched the 13th edition of the report, Brunei shocked our communities —and the whole world— by enacting one of the most egregious pieces of legislation of the last few decades. Soon after, yet another African country joined the list of criminalising countries: Gabon. Another one has inexplicably defended and retained such laws (Kenya) and, in Asia and Africa, at least three other countries are currently considering criminalising bills which may soon see the light (Indonesia, Equatorial Guinea, and Egypt).

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Europe and North America, two regions of the world that had shown clear signs of steady progress, are failing to keep up with that trend and show distressing signs of backtracking in the form of restrictive caselaw, relentless violence, fierce opposition to legal initiatives to protect our rights, so-called “licences” to discriminate based on religious beliefs, and unseen levels of hate speech that are making headlines. Decriminalisation efforts seemed to have gone wrong in Oceania and yet no criminalising country in the region seems to be taking clear steps to support our claims. In this context, we deeply regret having to report that since March 2019 more of us have been allegedly executed for whom we love, and effectively imprisoned or arrested under existing laws in several countries.

In any case, being aware of all these intense battlefronts does not make our accomplishments any less important. We are a resilient movement and we have always been thriving even in great adversity. Our siblings in Botswana gave us all an invaluable dose of hope when they managed to scrap the legal provisions that made us all criminals in that country. Our siblings in Taiwan further reinforced that feeling of joy when marriage equality became a reality for the first time in Asia thanks to their tireless work and after courageously surviving the heavy blow of a hateful referendum

that was so devastating for the local community that even claimed the lives of some of our most valued youth. More countries now protect us from discrimination based on sexual orientation in their constitutions and have legal provisions against hate crimes and incitement to hatred, violence and discrimination. The challenge with these laws will now be fighting for their effective implementation.

Now, as more and more of us organise and take to the streets for our cause, as we file well-researched lawsuits before local and international courts and as we tenaciously advocate before national governments and international organisations, we are also committing to protect one another and to take more time for self-care and healing: a much needed priority in times of vicious backlash.

We enthusiastically look forward to what lies ahead, hoping for numerous opportunities for change and improvement, but we are also realistically aware that challenges are becoming more frequent and more demanding. This realisation, far from deterring us, will lead us to outdo ourselves and achieve even more. Because our lives are at stake.

*To all those involved in the production of this update,
our sincere appreciation.*

Author's Preface

By Lucas Ramón Mendos¹

ILGA World is now preparing for the start of a new decade: a new strategic plan, a renovated governing structure, and new board and staff members that are coming from all corners of the world to keep up the organisation's work and further its global leadership role on SOGIESC issues.

In line with this, in 2018 ILGA World decided to open an in-house staff position to focus on research and set up a strategy on how to better assist our member organisations —and the whole world— in having access to key data to boost and improve our advocacy efforts globally. Since then, and as anticipated by our former Co-Secretaries General in their foreword of the 13th edition of *State-Sponsored Homophobia*, ILGA World's research has entered a transition stage as we devote time and effort to rethink and redesign the ways in which the information collected by ILGA World's global office in Geneva is made available to the world.

In the last few years, information technologies have radically changed the way in which we access, produce and share information. Today, massive amounts of data are at the reach of a fingertip and have become easily available for a large portion of the world's population. In the era of fake news and false claims against us, the real challenge lies in having access to reliable, evidence-based and up-to-date information. As our detractors become more sophisticated and aggressive in their attacks against our quest for equality, we need to develop more specific and versatile tools to better inform our efforts, our arguments and our strategies.

The development of these tools will take a considerable amount of time and effort from all our

team. But because we know that many of us out there constantly need to track how the world is moving on these issues, while those new tools are being developed, ILGA World will keep updating the core sections of the *State-Sponsored Homophobia* report with a view towards producing more analytical research in the future.

We are very excited and looking forward to a very promising future and to all the fabulous opportunities that lie ahead in our way. It will not be simple, easy or free of difficulties, but we know it will be worth the effort.

About this update

This update to the *Global Legislation Overview*² tracks the laws in force in all 193 UN Member States and other non-UN Member jurisdictions under four categories: criminalisation, restriction, protection and recognition.

The first category covers the provisions that criminalise consensual same-sex sexual intercourse or other kinds of same-sex sexual acts (usually captured under vague terms such as “indecent” or “immoral acts”).

Under “Restriction”, we track the laws that represent legal barriers to freedom of expression on SOGI issues and freedom of association (registration or operation of sexual orientation related (SOR) civil society organisations).

Under “Protection”, the report lists countries under six categories related to protection from discrimination at different levels (constitutional protection, broad protection and employment

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² This chapter evolved from the original “LGBTI rights global overview” included in the third edition of *State-Sponsored Homophobia* report in 2008, which was researched and compiled by Daniel Ottosson until 2010; by Eddie Bruce-Jones and Lucas Paoli Itaborahy in 2011; by Lucas Paoli Itaborahy in 2012; by Lucas Paoli Itaborahy and Jingshu Zhu in 2013 & 2014 by Aengus Carroll and Lucas Paoli Itaborahy in 2015; by Aengus Carroll in 2016; by Aengus Carroll and Lucas Ramón Mendos in 2017, and by Lucas Ramón Mendos in 2019.

protection), criminal liability for offences committed on the basis of sexual orientation, prohibition of incitement to hatred, discrimination or violence based on sexual orientation, and bans on “conversion therapies”.

Finally, under “Recognition”, we list countries under four categories: same-sex sex marriage, partnership recognition for same-sex couples, joint

adoption by same-sex couples and second parent adoption by same-sex couples.

In the last section of the report, “The World at a Glance” we provide a reference chart that includes information on the laws in force in all 193 UN Member States and non-UN Member jurisdictions.

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- Olena Shevchenko (Insight NGO, Ukraine);
- Tamás Dombos (Hungarian LGBT Alliance);

Sexual Orientation Law at the Doorsteps of a New Decade

By Lucas Ramón Mendos¹ and Enrique López de la Peña.²

The second decade of the twenty-first century is coming to an end and the world map of sexual orientation law is active and changing as it has ever been. As we look back on an intense year, we realise how the dynamics of progress and backtracking are becoming more complex and more nuanced, making it impossible to reduce the multiple dimensions of this subject to one single line of analysis.

In this article we will explore the most salient developments around sexual orientation issues that took place at a global scale in 2019. Our aim is to provide our readers with a snapshot of this year's major victories, defeats and challenges in the hope that this outlook on the current state of things will be of use in our reflections and debates to face what lies ahead.

To this aim, we will follow the structure of the legal categories covered by ILGA World, namely criminalisation, restriction, protection and recognition.

CRIMINALIZATION

Keeping up with the global trend to decriminalise

On 11 June 2019, the High Court of **Botswana** decriminalized consensual same-sex sexual acts.³ This highly expected decision was celebrated around the world as one of the major legal victories in our quest for equality in 2019.⁴

The local human rights advocacy group Lesbians, Gays, and Bisexuals of Botswana ("LEGABIBO") had been admitted as *amicus curiae* ("a friend of the court") and thus became a key player in the judicial proceedings by presenting factual and legal evidence on how criminalisation perpetuates stigma, intolerance and violence against members of the LGBT community.⁵

The unanimous decision handed down by judges Tafa, Meburu and Dube determined that the provisions that criminalised "carnal knowledge against the order of nature" were incompatible

with the Constitution of Botswana⁶ and, more specifically, that they collided with its fundamental freedoms clause (Article 3), with the right to privacy (Article 9) and, most interestingly, with the non-discrimination clause (Article 15).⁷ In line with numerous precedents, the Court ruled that the term "sex" in this clause, should be "generously and purposively interpreted to include 'sexual orientation'".⁸

In reaction to the ruling, the UN Independent Expert on SOGI stressed that decisions like this one show gay, lesbian, bisexual, trans and other gender-diverse people in Botswana that "they are in a country in which their dignity and integrity are valued and effectively protected under the rule of law".⁹

Good news also came from **Hong Kong** (China) when, after numerous litigation attempts, the High Court finally struck down and re-interpreted several provisions under the Crimes Ordinance that discriminatorily imposed higher penalties for offences committed by gay men.¹⁰

Last, but not least, **Canada** equalised the age of consent for all kinds of sex when Bill C75 received royal assent,¹¹ thereby eliminating a discriminatory provision on consent for anal sex that disproportionately affected non-heterosexual men.

By mid-year, encouraging news came from the Kingdom of **Bhutan**, where the National Assembly made a decisive step towards decriminalisation of consensual same-sex intimacy when it approved the Penal Code (Amendment) Bill by an overwhelming majority on June 10. The bill now needs to be approved by the upper house of Bhutan's bicameral Parliament (the National Council) before it comes into force.¹²

Appeals lurking on the horizon

The enthusiasm and joy that the decision in Botswana brought about was partly shadowed by the fact that the Government decided to appeal the decision shortly after.¹³ This appeal means that the provisions that were struck down by the High Court might be reinstated if the appellate decision turns out to be negative.

In at least two other cases, decisions that have decriminalised consensual same-sex sexual acts between adults have been appealed either by the State or by the Roman Catholic Church: **Trinidad and Tobago** and **Belize**. The former is a case that may even reach the Privy Council (with a potential impact on numerous Commonwealth countries);¹⁴ in the latter, the limited appeal filed by the State does not have the potential to reinstate the criminalising provisions. However, the Roman Catholic Church is still appealing to question the whole content of the decision.¹⁵

The Roman Catholic Church has appealed the judicial decision that decriminalised consensual same-sex sexual acts in Belize

Decriminalisation efforts continue to be among the priorities of numerous ILGA member organisations in many parts of the world, but strategies and decisions as to how and when to question criminalising laws vary greatly according to region. Local organisations continue to strategise, discuss and advocate for change relying on their own expertise but also gathering internationally to share and exchange experiences on how victories were achieved in different part of the globe.

In 2019, lawsuits were filed in the Caribbean island nation of **Dominica**¹⁶ and in the African island nation of **Mauritius**.¹⁷

In the same line, in November 2019, the Eastern Caribbean Alliance for Diversity and Equality (ECADE) announced the launch of a set of five legal challenges to criminalising laws in **Barbados**, **Saint Kitts and Nevis**, **Antigua and Barbuda**, **Grenada**, and **Saint Lucia**.¹⁸

In **Singapore**, another lawsuit has been brought before local courts, adding to other pre-existing legal challenges that are currently being heard by Singaporean courts.¹⁹

The excitement and hope generated by the Supreme Court of India decision in *Navtej* still lingers with us.²⁰ Not only did this decision reduce considerably the number of people living under criminalising laws,²¹ but it also created momentum to discuss further change, as in India there is still no national law to protect people from discrimination based on sexual orientation.

On the road to the wrong side of history

For the last ten years, ILGA only had to report on countries *repealing* laws that criminalise consensual sexual conduct. In fact, the last edition in which we had to regrettably report that a country had decided to contravene international human rights standards to make consensual same-sex acts a criminal conduct was in 2010, after Burundi enacted a Penal Code criminalising “sexual relations with someone of the same sex”.²²

In March 2019 we had to report again that **Chad** had gone down the same lamentable path, enacting a new Penal Code with a specific provision for consensual same-sex acts.²³

Most worryingly, we now have to report that yet another country has followed suit. On July 5, 2019, **Gabon** adopted a new Penal Code that criminalizes consensual same-sex sexual relations,²⁴ thus becoming the latest case of legal regression in this regard. Earlier this year, African activists Julie Makuala Di Baku and Jean Paul Enama had reported that arrests for “moral attacks” based only on the form of dressing “translating sexual orientation” were taking place in Gabon, even before this law was enacted,²⁵ so now there is even less hope for improvement in the short run.

Gabon adopted a new Penal Code that criminalizes consensual same-sex sexual relations

Besides Gabon’s entry into the list of criminalizing countries, one of the most disturbing news our communities learnt this year came from **Brunei**. In early April, the sultanate officially announced the enactment of its Syariah Penal Code, which, among other worrying aspects, imposes the death penalty by stoning for consensual same-sex sexual acts.²⁶

The uproar caused by this Code prompted government officials to state that they would extend the existing moratorium on the death penalty to the newly enacted Criminal Code.²⁷ Even though this announcement alleviated the extreme nature of the measure to a certain extent, this law is still in place and in full force, hence, there is no reassurance of non-enforcement given by any official that will relax our state of alert. Needless to say, such statements do not in any way counter or alter the abhorrent social message that a law like this sends out to the local community and to the whole world.

In one of the most lamentable events of the year, in May 2019, the High Court of **Kenya** upheld the country's law criminalizing consensual same-sex sexual activity.²⁸ In the aftermath of this major blow to local LGBT communities, the Government of Kenya issued a grim statement in response to a UNAIDS press release condemning this decision,²⁹ declaring that the court's decision must be respected, as it is an effective method to contain the country's HIV epidemic, and that UNAIDS' language is "unbecoming of a United Nations organization".³⁰

Last, but not least, no major development seemed to have taken place with regard to decriminalisation in Oceania. In November 2019, an attempt to decriminalize same-sex sexual activity in the **Cook Islands** was u-turned, reportedly due to pressure from local churches.³¹

More criminalising bills under discussion

Our communities are in state of alert and extremely concerned by the information coming from several other countries in which criminalising laws have been introduced and are being discussed in local legislatures.

Even though in **Egypt** consensual same-sex sexual acts are already heavily prosecuted and penalised under a number of laws forbidding "debauchery" and "scandalous acts", a draft law that would make such acts officially punishable by a minimum prison sentence of 7 years has advanced to the Parliament's Legislative and Constitutional Committee.³² While there are no updates on this bill as of December 2019, Egyptian authorities have continued arresting several people for consensual sexual activity with people of the same sex, deemed "sexual perversion" (see section below).

Secondly, in the aftermath of Gabon's enactment of its new Penal Code, it was reported that the neighbouring **Equatorial Guinea** was in the process of preparing a draft bill that would also criminalize consensual same-sex sexual activity.³³ Thirdly, a draft Penal Code introduced in Indonesia would be easily used to prosecute people on the grounds of their sexual orientation.³⁴

In **Uganda**, news about the possibility of the reintroduction of the bill that would, among other things, impose the death penalty for "aggravated homosexuality" (popularly known as the "kill the gays" bill) stirred anxiety both at the local level and internationally.³⁵ Earlier this year, the Parliament of Uganda informed that a group of so-called "ex-gays" had petitioned the Speaker of Parliament, Rebecca Kadaga, saying that they thought the bill "would help create awareness about sexual orientation".³⁶ A few months later, the Ugandan Minister of Ethics and Integrity, Simon Lokodo, reportedly declared that there were plans

to reintroduce the bill,³⁷ as several MPs gave favourable opinions, expressing the need for such law.³⁸ However, the plans to reinstate the bill were subsequently denied by the government.³⁹

In response to this situation, Sexual Minorities Uganda (SMUG) issued a statement and a clarion call specifically addressed to the local LGBTQI+ community and to local and international allies.⁴⁰

Equatorial Guinea is in the process of preparing a draft bill that would also criminalize consensual same-sex sexual activity

For its part, the European Parliament issued a resolution expressing grave concern and urged the government to stand by the statement made by President Museveni's spokesperson.⁴¹

Furthermore, SMUG's statement and media sources coincide on the ostensible raise of violence and hostility against sexual and gender diversity in the country, including instances of brutal killings and mob attacks.⁴²

Criminalisation in armed or security forces

In parallel to criminal provisions that apply to the population at large, in many countries, armed and security forces still have internal regulations that punish consensual same-sex intimacy or establish harsher penalties for same-sex sexual interaction when sanctions are imposed on all kinds of sexual activity.

ILGA World does not yet systematically compile these discriminatory provisions, but different sources have brought a few of these provisions to our attention.

For instance, since 1998, same-sex sexual activity has been banned in the military in the **Bolivarian Republic of Venezuela** under Article 565 of the Military Justice Code, which proscribes "sexual acts against the order of nature".⁴³

In **South Korea**, a provision amended as recently as 2013, still punishes consensual anal sex with two years' imprisonment with labour. In July 2019, Amnesty International launched a report documenting the existence of these laws and the abuse and harassment they legitimise and urged the government of South Korea to repeal all of these discriminatory provisions still in force.⁴⁴

In **India**, LGBT people are banned from serving in the military, although not explicitly.⁴⁵ Following the 377 decision, several high-ranking members of the army resented the Supreme Court decision,⁴⁶ and a bill that would explicitly allow LGBT people to openly serve in the military was introduced to the Indian Parliament in December 2018.⁴⁷

In **Indonesia**, a 29-year-old police officer lodged a challenge against his dismissal from the National Police on the basis of discrimination against his sexual orientation.⁴⁸ In response, the National Police spokesperson said that the decision was justified on the basis of religion and morality.⁴⁹

Anything but dormant laws

It is not uncommon for government to argue that laws that criminalise consensual same-sex sexual acts are only dormant regulations that are not actually enforced. However, in 2019 ILGA was able to collect information from almost 20 countries where the State has either arrested, charged, prosecuted, sentenced, jailed and even executed individuals for crimes or allegations consisting of, or related to, consensual same-sex sexual activity. If we add to this list the number of countries in which ILGA was able to track instances of enforcement in 2018, the total rises to more than 35 UN Member States.

The following paragraphs recapitulate the extremely limited information that ILGA World was able to collect on how several UN Member States are still actively using the law and the apparatus of the State to criminalise consenting adults because of their sexual orientation. In these reports, it becomes apparent how the affronts to dignity and equality posed by the mere existence of these laws are coupled with abuse, humiliation and violence when they are actively enforced. In fact, these instances of enforcement constitute a legitimised way of translating social prejudice into destructive violence with the complicity of the law.

As a major caveat, we need to clearly state that we are aware that what we compile in this section is only *the tip of the iceberg*: with the only exception of the official information published by the Kingdom of Morocco, the cases that we report are only those that made it to media reports or came to the knowledge of organisations or activists who document these violations.

An even greater number of these instances of enforcement regularly fly under the radar and go unaccounted for several reasons. In many countries, especially in non-urban settings, the reach of the media can be almost non-existent or the interest in reporting on these issues can be marginal. Judicial systems can also be extremely opaque in many countries, and clear information on

legal proceedings can be extremely difficult to access.

Due process —and even the rule of law— are highly compromised in certain parts of the world and in several countries large parts of the territory are not controlled by the central government: under these circumstances, it is almost impossible to keep track of enforcement instances.

Instances of enforcement constitute a legitimised way of translating social prejudice into destructive violence with the complicity of the law

Linguistic issues may also complicate accurate reporting as, in many countries, news reports tend to refer to consensual same-sex activity between adults using unclear, disparaging or ambiguous terms. In other contexts, when these laws are enforced, it is common practice that no formal proceedings are actually initiated and, therefore, no official record is kept. In fact, testimonies show that law enforcement agents tend to use these laws as tools to blackmail or extort victims without practising a formal arrest, let alone informing judicial authorities.

Additionally, victims rarely have the possibility to denounce arrests or unfair proceedings, out of fear of reprisals or suffering the stigma of being associated with homosexuality. Family honour codes also contribute to their almost non-existent possibilities of seeking redress.

Enforcement today

In April 2019, media reports indicated that a mass execution carried out in **Saudi Arabia** included 5 men who had been convicted of “homosexual acts” after they were allegedly coerced to confess.⁵⁰ The country also arrested a gay man for posting a photo wearing shorts on social media,⁵¹ as well as two men for kissing in public.⁵² Shortly after, a national promo video labelled homosexuality as a form of “extremism”.⁵³

Furthermore, reports indicate that a well-known gay Kurdish singer was charged for “spreading corruption on earth” and could face execution in **Iran**.⁵⁴ In June, when Iran’s Foreign Minister was asked about the execution of homosexuals in his country he simply responded: “Our society has moral principles. And we live according to these

principles. These are moral principles concerning the behaviour of people in general. And that means that the law is respected, and the law is obeyed.”⁵⁵ In September, an openly gay journalist from Argentina who was visiting on holidays was arrested and denied entry in the country after being asked about this sexual orientation.⁵⁶

Official records published by the government of **Morocco** show that a striking number of 170 individuals were charged with “homosexuality” in 2018.⁵⁷

In **Egypt**, reports indicate that several men have been arrested for alleged “homosexual acts” during 2019.⁵⁸ In January, Egyptian TV presenter Mohammed al-Ghaity was found guilty of “contempt of religion” and “incitement to debauchery” and sentenced to one year in prison for interviewing a gay man on his TV show.⁵⁹ In March 2019, Egyptian authorities arrested Malak al-Kashif, a female transgender activist, who was subjected to forced anal examinations and kept in a prison for male inmates.⁶⁰

Convictions on the grounds of sodomy in **Tunisia** have reportedly been on the rise.⁶¹ In early 2019, media outlets reported that a 23-year-old Tunisian man who had been raped was subjected to a judicial forced anal examination upon reporting the crime. However, he was eventually sentenced to six months in prison on charges of “homosexual conduct”.⁶² Shams, the country’s leading LGBT organization, sent a letter to Tunisia’s Head of Government asking for the young man’s acquittal.⁶³ According to All Out, the Court of Appeals upheld the conviction in May, but lawyers managed to have him released on parole shortly after.⁶⁴

In late-November, the Lusaka High Court in **Zambia** affirmed a 15-year prison sentence imposed on two gay men for having consensual sex.⁶⁵ The couple had been found guilty for “acts against the order of nature” by a lower court in August 2018 after being reported to the police by an employee of the hotel where they were staying. Forced anal examinations were conducted on the accused as an evidentiary requirement.⁶⁶ A few days after the decision was published, the Young African Leaders initiative (YALI) expressed that the couple had been given “leniency” by the sentencing judge, “who administered the *minimum* sentence of 15 years when he could have opted for the maximum life imprisonment” as allowed by Zambian laws in force.⁶⁷

In **Senegal**, a man was sentenced to six months in prison for consensual sex with another man in late 2018. He was arrested and sentenced after a video showing him having sex with another man went viral in Dakar. The woman who filmed them without their knowledge, and then shared the video, was sentenced to 2 years (3 months effective) for distribution of content against morality.⁶⁸ LGBTI

group Arc-en-Ciel Senegal pointed out that the “hunt” for sexual minorities in the country had increased considerably in late 2018.⁶⁹

Similarly, two men were reported to the police by their family members in **Sierra Leone**, after being caught having sex in their house. The couple was able to escape and managed to leave the country before they were arrested. As of November 2019, their location is uncertain.⁷⁰

In November 2019, the **Nigerian** police arrested two women rumoured to be in a couple in the city of Edo and declared a “war” on lesbians.⁷¹ In the lack of protective laws, LGBT people in the country are harassed and humiliated with total impunity.⁷²

In August 2019, donors and activists joined forces to achieve the early release of a gay man who was serving a three-year sentence for homosexuality in **Cameroon**.⁷³

A Court in Zambia affirmed a 15-year prison sentence imposed on two gay men for having consensual sex

In September, 3 gay men were arrested in **Kenya** for consensual same-sex acts.⁷⁴ In April, following calls from local residents and religious figures, State authorities issued a warning and vowed to prosecute the allegedly growing number of individuals engaging in public displays of affection (PDA) with people of their same sex in the town of Juja, Kiambu County.⁷⁵

In the weeks following the announcement that harsher legislation would be revived in **Uganda** (see subsection above for more details), 16 men were arrested on suspicion of homosexuality.⁷⁶ In November 2019, 125 people were arrested and 67 imprisoned for “nuisance” in a bar, but rights activists said it was a bid to intimidate the LGBT community. Local reports indicated that detainees were brutally thrown into patrol cars, beaten and dragged, and kept locked in inhumane conditions.⁷⁷ The Ugandan police reportedly performed at least 16 forced anal examinations among those who remained in detention.⁷⁸

In **Malaysia**, five men were jailed for “attempting intercourse against the order of nature”, and four of them were subsequently caned.⁷⁹ In November, two Vietnamese men, aged 22 and 29, pleaded guilty and were consequently fined by a local Court for “immoral activities” in a hotel room in Penang, Malaysia. The couple had been arrested by the

State Immigration Department several days before.⁸⁰

In **Turkmenistan**, a 24-year-old doctor, Kasymberdy Garayev, disappeared for several days after he was summoned to a police station in Ashgabat on October 24.⁸¹ According to reports, he was summoned after he shared his experience as a gay man with a local media outlet, hoping that by telling his story he could help others in Turkmenistan who were in a similar situation.⁸² During the interview, he also explained how he had been entrapped by an undercover police officer in 2018: after corresponding with him online he was arrested upon meeting with him at a public place, taken to a police station, humiliated and tortured.⁸³ Even though he had used a pseudonym for the interview, he was located by Turkmen authorities a few days later, after the security service launched a search in the health sector in Ashgabat. In response to his disappearance, Amnesty International issued a call for urgent action.⁸⁴ Garayev finally reappeared a few days later and retracted from all of his previous statements.⁸⁵ The Turkmen authorities then demanded all medical personnel to get tested for STIs, after deeming Garayev as immoral and a dishonour to the medical profession.⁸⁶

Chechnya – the plight goes on

In May 2019, Human Rights Watch issued an updated report on the critical situation in Chechnya.⁸⁷ At least 23 gay men are said to have been arrested by the local police and being subjected to abuse, electroshock torture, and even rape.⁸⁸ Since the beginning of the region's crackdown on the LGBT community in 2017, over 70 people have found refuge in Canada and Western Europe.⁸⁹

Also since then, unknown people identifying as Chechen police officers have been regularly contacting activists of the Russian LGBT Network and uttering death threats, ostensibly due to the organisation's work with Chechen LGBT survivors. Notably, on May 17, seven unknown people (three of them Chechens) broke into the apartment of one of the volunteers working with the organisation. Four of the men said they were police officers but refused to identify themselves.⁹⁰ The men were apparently looking for the Emergency Help Program coordinator, who had been a vital element in the escape of several survivors of the persecution in Chechnya. In May 2019, the case of a survivor was brought before the European Court of Human Rights.⁹¹

RESTRICTION

Criminalisation of consensual same-sex sexual acts is by no means the only legal tool that hostile States embrace. State-sponsored prejudice against sexual diversity can also take the form of illegitimate barriers to certain human rights based on provisions of law.

These barriers –either explicit or otherwise– not only constitute effective obstacles for the exercise of rights today, but they also severely curtail any prospect of change for the future, as they usually attack three key rights that are instrumental to any advocacy activity: the right to freedom of expression, freedom of peaceful assembly and freedom of association.⁹² In 2019, numerous states have enacted new legal barriers while others have continued to enforce existing ones. The following is only an enumeration of the main instances of restriction of rights that ILGA World could identify throughout the year.

Attacks against organisations

In March 2019, ILGA World found that *at least* 41 UN Member States have introduced or interpreted legal provisions to restrict the possibilities of registering or running NGOs that work on sexual orientation issues.⁹³ The justification for these restrictions is usually on the basis that these organisations' activities are "illegal", "immoral" or "against public interest". On top of these legal impediments, several States have continued to actively ban or question the activities of organisations.

All LGBTQ-related activities were banned by the Palestinian Authority in the West Bank

In August, all LGBTQ-related activities were banned by the Palestinian Authority in the **West Bank**.⁹⁴ As reported by alQaws, a local LGBT organisation, the spokesperson for the PA police issued a statement declaring that they prohibited any event organised or held by alQaws for gender and sexual diversity in Palestine, on the basis that they go against "traditional Palestinian values", and accused the organisation of being "foreign agents". Furthermore, the police called on citizens to report any "suspicious" activities.⁹⁵ Soon after the statement was released, persecution and threats increased considerably.⁹⁶

The **Tunisian** government has continued to oppose the right to association of LGBT people, especially after Shams, a local LGBT organisation, received a favourable judicial decision. In January 2019, the head of State litigation argued that “the concept of sexual minorities that Shams adopts is illegal and contrary to our religious dictates and our society’s Arabic and Islamic culture.”⁹⁷ This was the government’s seventh attempt to disband the human rights organisation.⁹⁸ On May 20, the Tunis Court of Appeal ruled in favour of Shams.⁹⁹

In September, a court in **Russia** ordered the disbandment of the Russian LGBT Network and the Russian LGBT Community because their posts on social media “deny family values, propagate non-traditional sexual relations and cause disrespect to parents and other family members.” The Russian LGBT Network announced their intention to appeal to the St. Petersburg City Court.¹⁰⁰

In **Tanzania**, the shrinking of the civil society space has continued to impact groups working on LGBTQ issues, including police raids of meetings and workshops, arrests of participants, and the destruction and confiscation of property.¹⁰¹ In the same line, media reports indicate that in November 2019, the **Ugandan** government shut down 73% of the country’s NGOs whose work was allegedly “not in line with the current administration’s values”.

Among the organisations whose work was terminated were NGOs working on LGBT issues.¹⁰²

In **Zambia**, a Member of Parliament raised a motion to ban all political parties supporting LGBT rights in the country. Even though the initiative appeared to be politically motivated, the discussion in Parliament led to crossed accusations which included extremely hostile speeches demonising sexual and gender diversity.¹⁰³

Restriction of parades and events

Restrictions imposed by governments on the right to peaceful assembly not only hinder advocacy and visibility efforts but they also legitimate social prejudice against sexual and gender diversity. These barriers deny our right to gather, to come together, to demonstrate and to empower our communities.

In Ankara, **Turkey**, LGBT public events have been banned since November 2017.¹⁰⁴ In April 2019, the 12th Administrative Court lifted this ban,¹⁰⁵ but in November, 19 activists were charged with “participating in unlawful assembly” after attending a Pride march at the Middle East Technical University campus.¹⁰⁶ The case was adjourned to 12 March 2020, but the defendants face up to 3 years in prison if convicted.¹⁰⁷ In Istanbul, the frequency and violence of similar attempts to disband LGBT events have also increased. On June 30, police fired tear gas at attendants of Istanbul

Pride, which was being held in defiance of authorities after being banned for the fifth year in a row.¹⁰⁸ In August, the Turkish police, armed with water cannons and riot vehicles, forced the cancellation of the “Queer Olympix” LGBTQ sports festival in Istanbul moments before it was set to begin.¹⁰⁹ Pride marches were also banned in the southern province of Mersin,¹¹⁰ as well as in the cities of Antalya and Izmir, by their respective governors.¹¹¹ In the latter city, a court suspended the ban a few days later,¹¹² but this did not stop police from intervening in the march and detaining 17 to 20 people.¹¹³

In September 2018, General Security officers attempted to unlawfully shut down a conference on gender and sexuality in **Lebanon** and took names of all conference participants from the hotel registry, including those from countries with severely hostile anti-LGBT legislation.¹¹⁴ Human Rights Watch raised a complaint before UN human rights officials, but in August 2019, the organisation reported that participants of the conference had been banned from re-entering Lebanon. General Security justified its decision on grounds of “state security” and “protecting society from imported vices” that “disrupt the security and stability of society.”¹¹⁵

The local police, armed with water cannons and riot vehicles, forced the cancellation of an LGBTQ sports festival in Istanbul

In October, after a long battle, the organisers of Montego Bay Pride in **Jamaica** were granted permission to host a forum at the Montego Bay Cultural Centre.¹¹⁶ However, their permission was ultimately revoked by a local court and the event could not be held.¹¹⁷

In **Russia**, a theatre festival was banned for promoting “hatred against men and non-traditional family relations” under the law that prohibits “gay propaganda”.¹¹⁸ In August, at least 11 LGBT activists were detained at an unauthorised Pride event in Saint Petersburg.¹¹⁹

In late September, the Mayor of the Hernandarias district, **Paraguay**, signed a resolution banning an LGBT pride parade in his jurisdiction.¹²⁰ Amnesty International filed an unconstitutionality action against the aforementioned resolution before Paraguay’s Supreme Court of Justice.¹²¹

In May, several people were arrested in **Cuba** for holding a pride march in Havana that had not been

authorised by the government.¹²² A few days prior, the Organising Committee of the twelfth edition of the Cuban Conferences against Homophobia and Transphobia announced that Cuban Conga against Homophobia and Transphobia would not be held in 2019.¹²³ While Cenesex explained that there were indications that foreign organisations were planning to use the Conga to oppose the Cuban government,¹²⁴ speculations on the unexpected change in the program referred to an increasing influence of the Catholic and Evangelical churches in the country's politics.¹²⁵

On occasion, hostile countries cancel events or ban the entry of people whose presence in the country would allegedly “undermine local values”. For instance, in October, the government of **Kuwait** cancelled a performance by a Korean pop band based on rumours that the band's members were gay, thus going against Kuwait's alleged morals and values.¹²⁶ In **Zambia**, openly gay South African media personality Somizi Mhlomo was banned from attending an event in Lusaka because he could “tear the country apart” and undermine its morals.¹²⁷

Attacks on freedom of expression

Effective enjoyment of the right to freedom of expression—including both the possibility of disseminating and having access to ideas—is a fundamental requirement to advocate for change, to share critical ideas and to debunk myths, stereotypes and preconceptions, among many other elements that are key components of our strategies. In 2019, numerous governments continued to enforce restrictive laws and policies that impaired or obstructed the possibilities of openly speaking or sharing unbiased information about sexual orientation issues.

An Iranian activist was prosecuted and charged with “collusion against national security by normalising same-sex relations”

In **Russia**, more activists have been charged under Federal Law No 135-FZ, commonly known as “anti-gay propaganda law”.¹²⁸ In July, Alexander Yubors was charged with spreading “homosexuality propaganda among minors” after participating in a series of activities focused on the rights of LGBT people.¹²⁹ In September, the Ural State University

of Economics (USUE) reportedly threatened a student with expulsion after his pink phone case and membership in pro-LGBT social media groups fuelled suspicions about his alleged sexual orientation.¹³⁰

In February, Iranian activist Rezvaneh Mohammadi was prosecuted and charged with “collusion against national security by normalising same-sex relations”. As 6Rang reports, she was interrogated for 26 days and later transferred to a women's ward. This appears to be the first time that an activist faces such an accusation in Iran with the possibility of being sentenced to up to five years imprisonment.¹³¹

In February, the Ministry of Religious Affairs and National Guidance of **Zambia** ordered the cancellation of a television programme for allegedly “promoting homosexuality”. Justifying the measure, Minister Godfridah Sumaili stated: “Our stand as a Christian nation is clear and the laws of the land speak louder.”¹³²

In **Brazil**, national and local authorities ordered the cancellation and terminated the funding of a number of artistic displays and materials (such as films, books, seminars, performances, and television series) addressing LGBT-related topics. In Rio de Janeiro, the mayor censored the display and sale of a comic book containing a same-sex romance on the pretence of the “protection of the children”.¹³³ The Supreme Court considered the mayor's act discriminatory and ordered its suspension.¹³⁴ President Jair Bolsonaro declared that these actions did not constitute censorship, but were merely an attempt to “preserve (Brazil's) Christian values”,¹³⁵ and described funding for LGBT-related screenplays as “throwing money away”.¹³⁶ Right after his statement a funding procedure for four LGBT-related movies was suspended.¹³⁷ On October 7, 2019, the Federal Justice of Rio de Janeiro, determined that the government had acted in a discriminatory way and ordered *Ancine* (the National Audiovisual Agency) to resume its call for the production of LGBT-related public television content¹³⁸. However, the government could appeal this decision.¹³⁹

In numerous countries, films with references to same-sex relations were censored. The British-American film “Rocketman”, based on the life of Sir Elton John, was completely banned or heavily cut at least in **Samoa**,¹⁴⁰ **Russia**,¹⁴¹ **Malaysia**,¹⁴² **Egypt**,¹⁴³ and the **Cook Islands**.¹⁴⁴ Responding to questions from a media outlet, the Ministry of Justice and Courts Administration Principal Censor of Samoa explained that the film contained “acts that are not good for public viewing, and against the law”.¹⁴⁵

In **China**, it was reported that the film “Bohemian Rhapsody” would only be released after scenes of same-sex couples kissing were removed from the film.¹⁴⁶ Only a few days earlier, Mango TV, a local

TV streaming service, had reportedly substituted the phrase “gay man” with “special group” in its subtitles of actor Rami Malek’s speech at the Academy Awards Ceremony.¹⁴⁷

In **Indonesia**, several films and other artistic materials with LGBT-related content have also been censored under the argument that “they could damage the morale of Indonesia’s young generation”.¹⁴⁸ In June 2019, the head of Indonesia’s National Population and Family Planning Agency (BKKBN) referred to homosexuality as “a disease” and labelled LGBTI citizens the “main enemy of national development”.¹⁴⁹

PROTECTION

During 2019 more laws against discrimination based on sexual orientation were enacted in some UN Member States.

Constitutional protection

In most countries around the world, the level of protection granted by a constitutional clause is usually the highest possible. This is so because constitutions are regularly set at the summit of the normative hierarchy, meaning that the entire legal framework of a country should abide by it. In other words, no law or regulation can contravene what is written in the constitution. However, it should be noted that the inclusion of an antidiscrimination clause in the Constitution explicitly including “sexual orientation” does not automatically translate into full equality.

For example, prohibitions of incitement to hatred or violence, legal protections for same-sex unions or adoption rights will require the enactment of specific laws providing for those particular rights. In any case, advocating for those laws when there is a constitutional clause prohibiting discrimination based on sexual orientation should, in principle, be considerably easier.

The list of countries that have *explicitly* included protection against discrimination based on sexual orientation in their constitutions now includes **Cuba** and **San Marino**, raising the total number to 11 UN Member States.¹⁵⁰

In early 2019, Cuba went through a legislative process by which the constitution was heavily reformed. Among the new provisions is an antidiscrimination clause that explicitly forbids discrimination based on sexual orientation.

Likewise, San Marino made a constitutional amendment to include sexual orientation among the prohibited grounds of discrimination.

Protections against discrimination

A total of 57 UN Member States have laws that protect people from discrimination based on sexual orientation in the provision of goods and services, education, health and employment.

In late 2018, the **Federated States of Micronesia** amended Section 107 of its penal code to forbid the enactment of any law that is discriminatory towards LGB people.

In **Kosovo** —where constitutional protection has existed since 2008— the new Penal Code enacted this year makes it a crime for anyone to deny or restrict any of the rights defined by the Constitution, the law or any other provisions based on their sexual orientation (among other grounds).

North Macedonia enacted the Law on Prevention of and Protection against Discrimination, which offers broad protections against discrimination on the grounds of sexual orientation.

The list of countries that have *explicitly* included protection against discrimination based on sexual orientation in their constitutions now includes Cuba and San Marino

Adding to the protection afforded by the constitution and other laws, in September, the **Portuguese** Parliament passed Law No. 83/2019, which forbids discrimination on the basis of sexual orientation in housing.

As we reported earlier this year, in January 2019 **Angola** made considerable progress on legal protections against discrimination. The Penal Code that repealed the provisions that criminalised consensual same-sex sexual acts included broad protections against discrimination.

In the **United States of America** —where protections against discrimination vary greatly in each state¹⁵¹— the Supreme Court announced it would discuss and deliberate whether LGBT employees are protected by currently existing federal employment discrimination laws.¹⁵² Meanwhile, the governors of Kansas and Ohio signed executive orders to protect LGBT state employees from discrimination within their respective jurisdictions.¹⁵³ Indeed, as of October 2019, half of LGBT adults in the USA lived in states

(29 in total) where no legal protection against employment discrimination existed.¹⁵⁴

Protection from so-called “conversion therapies”

A number of subnational level bills banning so-called “conversion therapies” were enacted throughout 2019, notably in the **United States of America**.

In effect, this harmful practice was effectively outlawed in the states of Colorado, Maine, Massachusetts, and New York, as well as in Puerto Rico. Furthermore, on August 2, Gov. Roy Cooper signed an executive order to forbid public funding for “conversion therapy” for minors in North Carolina.¹⁵⁵ The state of Utah, USA, is set to approve a bill to ban “conversion therapy” in January 2020.¹⁵⁶ Similar bills are pending or soon to be introduced in **Canada** (federal),¹⁵⁷ **France**,¹⁵⁸ **Germany**,¹⁵⁹ and **Poland**,¹⁶⁰ among others.

In late November, a bill that would have punished performers of “conversion therapy” with up to three years in prison was initially approved by the State Congress of Jalisco in **Mexico**.¹⁶¹ However, discussion of this bill was adjourned until January 2020 due to pressure from socially conservative groups.¹⁶²

Brazil: Court battles against the ban on “conversion therapies”

Brazil was the first UN Member State to enact a nationwide ban by means of a resolution issued by the Federal Council of Psychology (known for its acronym in Portuguese as “CFP”).¹⁶³

The CFP resolution faced resistance from the moment it was issued in 1999, especially from the Organisation of Christian Psychologists and Psychiatrists (locally known as CPPC - Corpo de Psicólogos e Psiquiatras Cristãos) known for their pathologizing views on “healing homosexuality”.¹⁶⁴

In one of the rare instances of enforcement, in 2009, the CFP punished Rozângela Alves Justino, a Christian psychologist, with public censure. Since then, Justino has led several lawsuits at the local and federal level in repeated attempts to have Resolution 1/99 repealed or partially invalidated. Additionally, as she continued to offer conversion therapies, the CFP finally revoked her license in 2017. Later on, Justino became an adviser for MP Sóstenes Cavalcante (DEM-RJ) in the Federal Chamber of Deputies.¹⁶⁵

As a result of an *actio popularis* filed by Justino in the Federal District, two conflicting judicial decisions were issued in 2017 by a federal judge, questioning the interpretation of the ban and opening the door for psychologists to offer confidential “sexual reorientation”.¹⁶⁶

In 2019, a member of the Supreme Federal Tribunal (STF) issued an interim decision to suspend the effects of the lower federal magistrate, thereby reinstating the ban in full force.¹⁶⁷ The case is still pending before the Supreme Federal Tribunal.

Backtracking in protection?

Despite this encouraging news, unsettling information came from countries in which legal safeguards are already in place: **Switzerland** and **South Korea**.

Article 8 of the Swiss Constitution includes the expression “way of life” as a prohibited ground of discrimination. Even though this expression had been largely interpreted as encompassing “sexual orientation”, in 2019 the Swiss Federal Court issued a judgment saying the Equality Act does not include “homosexual persons” and, therefore, there would not exist protection against discrimination based on sexual orientation.¹⁶⁸

In November 2019, members of the South Korean National Assembly proposed an amendment to the National Human Rights Commission Act (one of the few laws explicitly mentioning “sexual orientation”) to eliminate the term “sexual orientation” as a protected ground against discrimination. The bill would also restrict the definition of “gender” to gender assigned at birth. Amnesty International labelled this initiative “a shameful amendment”.¹⁶⁹

RECOGNITION

Same-sex marriage

In 2019, more jurisdictions legalised same-sex marriage, both by means of judicial decisions or laws enacted by local legislatures.

Taiwan’s same-sex marriage victory was one of the most celebrated achievements in 2019

On May 24, 2017, the Constitutional Court of **Taiwan** issued Judicial Yuan Interpretation No. 748, which asserted that the Civil Code’s clauses pertaining to marriage were unconstitutional and gave the Parliament two years to grant marriage rights to same-sex couples. Despite this constitutional interpretation, Christian groups in Taiwan were able to garner enough support to conduct a referendum on November 24, 2018, for

Taiwanese voters to either accept or reject marriage equality, *inter alia*.¹⁷⁰ With roughly 3 million people voting in favour of same-sex marriage and 7 million people voting against it,¹⁷¹ the referendum was unfavourable for LGBT people, causing severe mental health issues, such as suicidal ideation, to a significant number of members of the Taiwanese LGBT community.¹⁷² Notwithstanding the negative precedent set by the referendum, a draft bill to enforce Judicial Yuan Interpretation No. 748 was approved by the Executive Yuan on May 17, 2019.¹⁷³ After its due process, same-sex marriage in Taiwan thus became legal on May 24. Taiwan's victory was one of the most celebrated achievements in 2019, especially after the negative outcome of the 2018 referendum, and raised hopes for further progress in the region.

In **Ecuador**, following the publication of two Constitutional Court rulings from June in the official gazette, same-sex marriage became legal on July 8.¹⁷⁴ The decision in Ecuador largely follows the standards set by the Advisory Opinion issued by the Inter-American Court of Human Rights, adding yet another victory to its legacy.

The decision in Ecuador largely follows the standards set by the Advisory Opinion issued by the Inter-American Court of Human Rights, adding yet another victory to its legacy

Throughout 2019, same-sex marriage was also legalised in several states of Mexico (Baja California Sur, Hidalgo, Nuevo León, Oaxaca, and San Luis Potosí).¹⁷⁵

On the other side of the Atlantic, on October 21, legislation came into force requiring Northern Ireland to legalise same-sex marriage.¹⁷⁶ In January 2020, Northern Ireland will become the last constituent country of the **United Kingdom** to extend marriage to same-sex couples. On March 29, same-sex marriage in the Cayman Islands (an autonomous British Overseas Territory in the western Caribbean Sea) was legalised, in line with a call for action by the House of Commons Foreign Affairs Committee for all British Overseas Territories (OT) to do so.¹⁷⁷ However, this legalisation was reversed after a government appeal in November.¹⁷⁸

On a similar note, the city of Yokohama in **Japan** began issuing certificates recognising same-sex partnerships on December 2.¹⁷⁹

Assisted Reproduction

In October 2019, the French National Assembly approved *in vitro* fertilization (IVF) for lesbian couples and single women. Nonetheless, this initiative is yet to receive approval at the Senate, which is set to debate the issue in January 2020.¹⁸⁰

Conversely, in June 2019, the Constitutional Court of Italy ruled that assisted fertilization was not a right for same-sex couples and may be legally refused.¹⁸¹

Our Families are Not Welcome Here

In contrast to the progress achieved in several parts of the world in terms of protections for our families, some countries are moving in the opposite direction.

In July, **Russia's** Investigative Committee launched a criminal case against officials who allowed a man cohabiting with another man to adopt children in 2010. The incident began when one of the man's two adopted boys, 12 years old, was taken to a Moscow hospital with a stomachache and a doctor called the police after the boy mentioned that he was living with two fathers.¹⁸²

In May 2019, the **Zimbabwe** Cabinet approved a bill to ban same-sex marriages, in line with the national Constitution.¹⁸³

Likewise, on October 17, the National Assembly of **Panama** approved a constitutional amendment that defines marriage exclusively as the union between one man and one woman.¹⁸⁴ This led to heated protests by LGBT activists in the country, and while there are no further legal updates as of December 2019, the Panamanian President has declared that his government will petition to revoke the discriminatory articles within the constitutional amendment.¹⁸⁵

In **Mexico**, the state congresses of Sinaloa (in June), Yucatán (in July), Zacatecas (in August), and Puebla (in October) rejected proposals to amend their local legislation to allow same-sex couples to marry, despite the fact that the National Supreme Court of Justice considers same-sex marriage bans unconstitutional.¹⁸⁶

In the same month, the Minister of Home Affairs and Immigration of **Namibia** declared that Namibia would remain firm in its non-recognition of same-sex marriages, in spite of a recent decision to grant a permanent residence permit to a South African woman married to a Namibian woman.¹⁸⁷

In August, following the legalization of same-sex marriage in Taiwan, and despite pressure from activists, a spokesperson of the Chinese Parliament declared that the **People's Republic of China** would remain firm in its limitation of marriage to a man

and a woman.¹⁸⁸ Similarly, in October, Hong Kong's Court of First Instance ruled against a lesbian activist that had challenged the city's ban on same-sex unions.¹⁸⁹

UN Eyes set on the Venezuelan Crisis

The UN High Commissioner for Human Rights has been paying special attention to the ongoing crisis in Venezuela. In a recent report, she indicated that, even though key economic indicators began to decline dramatically well before 2017,¹⁹⁰ the economic and social situation continued to rapidly deteriorate in 2019, limiting the enjoyment of economic and social rights of millions of people.¹⁹¹ In this context, hyperinflation is affecting the ability to purchase basic foods, medicine, and other essential goods.¹⁹²

The UN High Commissioner has also expressed concern about recent actions taken to pass a law that criminalizes activities of domestic human rights organizations that receive funds from abroad. She stressed that “this law, if passed and applied, would further reduce the democratic space”.¹⁹³

Among the most serious consequences of the ongoing crisis, especially for LGBTI people, is the current lack of access to all types of contraceptives, with several cities facing a 100% shortage, increasing the risk of contracting HIV.¹⁹⁴ In this regard, UNAIDS has indicated that HIV treatment coverage “has plummeted” in Venezuela and people living with HIV are emigrating to other countries to seek access to HIV treatment and other health-related care.¹⁹⁵

In light of the scale of the migration process triggered by the crisis, the Regional Inter-Agency Coordination Platform was established pursuant to the request by the UN Secretary-General to

UNHCR and IOM in 2018. In fact, the exodus of Venezuelan nationals is already the largest in the modern history of Latin America: it is estimated that there will be 5.3 million refugees and migrants from Venezuela by the end of December 2019.¹⁹⁶ The Platform has identified LGBTI people among those exposed to higher risks of being victims of sexual assault, trafficking networks for sexual exploitation and survival sex, as well as HIV/AIDS, other sexually transmitted infections and ostracism by family and communities.¹⁹⁷ Additionally, this massive emigration phenomenon has generated a sensitive reduction of the number of LGBTI activists involved in advocacy in the country.¹⁹⁸ In June 2019, civil society organisations from all over the region reacted to this complex situation by creating the First Regional Network for the Protection of LGBTI + Refugees, asylum seekers and migrants from Latin America and the Caribbean.¹⁹⁹

In 2016, during its second cycle UPR, the State of Venezuela admitted that protecting the rights of Venezuelans of diverse sexual orientation and gender identity was still a “major challenge”.²⁰⁰ Several UN Treaty Bodies, including the Human Rights Committee,²⁰¹ the Committee on Economic, Social and Cultural Rights²⁰² and the Committee on the Rights of the Child,²⁰³ had previously warned about the lack of comprehensive legislation protecting people based on their sexual orientation and gender identity and urged the State to take action in this regard. Despite this, no laws have been enacted since then.

Notes & Sources

- 1 Lucas Ramón Mendos is ILGA World's Senior Research Officer
- 2 Enrique López de la Peña is ILGA World's current Research Intern. He earned his Bachelor of Arts in Political Science, with minors in Linguistics and Arabic, from New York University Abu Dhabi in May 2019. In 2017, he served as the International Press Manager for TLVFest (the Tel Aviv International LGBT Film Festival). He has conducted research on areas such as political psychology, international conflict resolution and prevention, diversity, interculturalism, and LGBTQ rights. His undergraduate thesis project, titled "Perspective Taking to Reduce Implicit Homophobic Behaviour in Mexico", was a survey experiment aiming to discover whether fostering empathy towards LGBTQ people among Mexican adults could increase their displays of solidarity towards the LGBTQ community.
- 3 "Botswana: Another country strikes down its anti-gay laws", *The African Human Rights Media Network*, 11 June 2019; "Reaction to court's decision on homosexuality in Botswana: Tashwill Esterhuizen" *SABC Digital News (YouTube Channel)*, 11 June 2019.
- 4 Expectations increased considerably after a set of delays postponed the hearings and the final date of the decision. See: Roberto Igual, "Botswana | Frustration as decriminalisation case postponed", *Mamba Online*, 4 June 2018.
- 5 "LM v Attorney General of Botswana: Challenging Criminalisation of Same-sex Sexual Relationships: Fact Sheet", *Southern Africa Litigation Centre (website)*; See also: Kitty Grant and Anneke Meerkotter, "The law needs to change, we want to be free": *The impact of laws criminalising same-sex relationships in Botswana* (United Nations Development Programme, Southern Africa Litigation Centre & Lesbians, Gays and Bisexuals of Botswana, 2018).
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GLOBAL LEGISLATION OVERVIEW

CRIMINALISATION

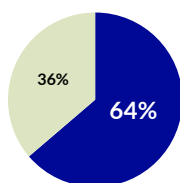
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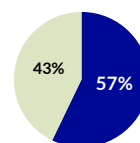
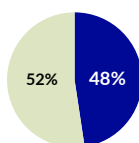
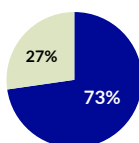
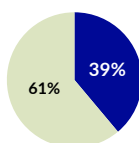
Consensual Same-Sex Sexual Acts: LEGAL

Highlights

123 UN Member States
64% UN Member States



AFRICA	LAC	NORTH AMERICA	ASIA	EUROPE	OCEANIA
21 / 54	24 / 33	2 / 2	20 / 42	48 / 48	8 / 14



Introduction

This section presents annotated entries on the **123 UN Member States** where consensual same-sex sexual acts are not criminalised. Information on several non-UN Member jurisdictions is also included.

Some of these States never contained a criminalising provision in their Penal Codes, while others consciously removed the relevant law, initiated within parliaments or by the imperatives set by courts of law.

NOTE Legality of same-sex sexual acts cannot be read as evidence of a safer living environment for people with diverse sexual orientations or gender identities or expressions. In many of the States listed below, social stigmatisation of people who are perceived as non-heterosexual or non-cisgender remains alarmingly high. In fact, in many of them, early decriminalisation dates can be explained by historical reasons completely unrelated to activism or lower hostility towards non-heterosexual forms of sexuality.

What does International Human Rights Law say?

Everyone has the right to be free from criminalisation and any form of sanction arising directly or indirectly from that person's actual or perceived sexual orientation, gender identity, gender expression or sex characteristics.

Yogyakarta Principle 33.

States shall repeal criminal and other legal provisions that prohibit or are, in effect, employed to prohibit consensual sexual activity among people of the same sex who are over the age of consent.

Yogyakarta Principles 2(b) and 6(b).

Africa (21)

1		Angola	2019	In January 2019, Angola enacted a new Penal Code that does not criminalise same-sex sexual acts. Angola started the revision of its criminal law in 2004 through a presidential order that created the Commission for the Reform of Justice and Law. This commission mandated, among other things, the drafting of a new Penal Code for the country. ¹
2		Benin	1877	The Penal Code of Benin does not criminalise consensual same-sex sexual acts between adults. A number of amendments trying to criminalise have failed to pass into law. Since 1947, article 331 of the Penal Code sets the age of consent for different-sex sexual activity at 13 but at 21 for same-sex consensual activity.
3		Botswana	2019	On 11 June 2019, the High Court of Botswana decriminalized consensual same-sex sexual acts. ² The decision determined that the provisions that criminalised “carnal knowledge against the order of nature” were incompatible with the Constitution of Botswana ³ and, more specifically, that they collided with the right to privacy (Article 9) and the non-discrimination clause (Article 15). ⁴ In line with numerous precedents, the Court ruled that the term “sex” in this clause, should be “generously and purposively interpreted to include ‘sexual orientation’.” ⁵
4		Burkina Faso	1960	Prior to and since independence from France in 1960, Burkina Faso has no law outlawing consensual same-sex sexual acts for men or women in its Penal Code .
5		Cape Verde	2004	The Penal Code does not criminalise consensual same-sex sexual acts between adults. However, before it came into force, Article 71 of the now-obsolete 1886 penal code provided for “security measures” for people who habitually practice “vice against the nature”.
6		Central African Republic	1961	Since independence from France, the Penal Code of the CAR has not outlawed consensual same-sex sexual acts between adults in private. However, article 85 criminalizes “acts <i>against nature</i> committed in public”, defining them as “attacks on public morals” and imposing harsher penalties compared to other attacks on morals. Local CSOs indicate that these provisions have been used to blackmail and arbitrarily arrest LGBT people. ⁶
7		Congo	1940	In the Republic of Congo Brazzaville, the text of the 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.

¹ Presidential Order No. 124/12, 27 November 2004.

² “Botswana: Another country strikes down its anti-gay laws”, *The African Human Rights Media Network*, 11 June 2019; “Reaction to court’s decision on homosexuality in Botswana: Tashwill Esterhuizen” *SABC Digital News (YouTube Channel)*, 11 June 2019.

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⁴ High Court of Botswana, *Letsweletse Motshidiemang v. Attorney General* (2019), para. 228.

⁵ *Id.*, para. 156.

⁶ Alternatives Centrafrique, *Rapport sur la situation des minorités sexuelles et de genre en Centrafrique* (2018).

8		Côte d'Ivoire	1960	Post-independence from France's rule in 1960, Côte d'Ivoire did not criminalise consensual same-sex sexual acts between adults in its Penal Code, yet the age of consent differs under sections 356 and 358: 15 for different-sex, and 18 for same-sex. Despite the fact that no law exists which criminalises consensual same-sex sexual relations among adults, at the end of 2016 a judge in the city of Sassandra used article 360 of the Penal Code to condemn 2 men to 18 months imprisonment. ⁷ They were caught in the act by the uncle of one of the men and, after having been reported to the authorities, they admitted before the judge that they were in a loving relationship. ⁸
9		Democratic Republic of the Congo	1940	There are no provisions outlawing consensual same-sex sexual acts between adults in the 2004 Penal Code of the DRC. However, Article 176 of that code—which criminalizes activities against public decency—has been used as the legal basis to criminalize LGBT persons. ⁹ The Human Rights Committee expressed concern about this and recommended that the State ensure that no person is prosecuted under Article 176 of the Penal Code because of their sexual orientation or gender identity, as well as enact anti-discrimination legislation that expressly includes sexual orientation and gender identity. ¹⁰
10		Djibouti	1995	The Penal Code contains no provisions prohibiting consensual same-sex sexual acts between adults.
11		Equatorial Guinea	1963	The Penal 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. ► In the aftermath of Gabon's enactment of its new Penal Code (which criminalised consensual same-sex sexual acts), it was reported that Equatorial Guinea was in the process of preparing a draft bill that would also criminalize consensual same-sex sexual activity. ¹¹
12		Guinea Bissau	1993	The Penal Code which remained in force after the independence from Portugal was repealed in 1993 with the enactment of a new Penal Code which contains no provisions criminalising consensual same-sex sexual acts between adults.
13		Lesotho	2012	In Article 52 of the 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.

⁷ Penal Code (Ivory Coast), article 360: "Whoever commits acts which constitute an affront to public modesty will be sentenced to imprisonment of between three **months** and two years, and with a fine of between 50,000 and 500,000 francs. If the affront to public modesty is considered an indecent act or against nature with a person of the same sex, the sentence will be imprisonment of between six months and two years, and a fine of 50,000 to 300,000 francs".

⁸ See the following: "Justice : première condamnation pour pratique homosexuelle en Côte d'Ivoire", *Abidjan Net*, 14 November 2016; "Pour la première fois, la Côte d'Ivoire condamne deux hommes pour homosexualité", 18 November 2016; "Côte d'Ivoire : des homosexuels condamnés à 18 mois de prison", *Afrique sur 7*, 16 November 2016; "Ivory Coast officials refuse to explain why two gay men were jailed", *The Guardian*, 26 January 2017.

⁹ **Penal Code** of the DRC, article 176: "A person who engages in activities against public decency will be liable to a term of imprisonment of eight days to three years and/or fined twenty-five to one thousand zaires".

¹⁰ Human Rights Committee, *Concluding observations on the fourth periodic report of the Democratic Republic of the Congo*, CCPR/C/COD/CO/4, 30 November 2017, para. 14.

¹¹ "Guinea Ecuatorial Prepara un Anteproyecto de Ley para Penalizar la Homosexualidad", *Diario Rombe*, 24 September 2019.

14		Madagascar	1960	Prior to and following its independence from France in 1960, the Criminal Code does not prohibit consensual same-sex sexual acts between adults. However, since 1999, article 331 sets the age of consent at 14 for different-sex sexual acts and 21 for same-sex.
15		Mali	1961	Neither the 2001 Penal Code (nor its predecessor, the 1961 Penal Code) stipulates provisions targeting consensual same-sex sexual relations between adults.
16		Mozambique	2014	In July 2014, the Parliament approved Law 35/2014 repealing 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.
17		Niger	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.
18		Rwanda	1980	The Rwanda Penal Code (1980) does not contain consensual same-sex acts criminalising provisions, yet articles 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, which points to severe stigmatisation. ¹²
19		São Tomé & Príncipe	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.
20		Seychelles	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.
21		South Africa	1998	Following a case decided by the Constitutional Court of South Africa, ¹³ 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.

Latin America and the Caribbean (24)

1		Argentina	1887	Law No. 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
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¹² Irwin Iradukunda and Roselyn Odoyo, *Agaciro: A landscape analysis of the human rights of sex workers and LGBT communities in Rwanda* (2016).

¹³ *National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others* (CCT11/98) [1998] ZACC 15.

			mores. ¹⁴ LGBT people were heavily persecuted under these regulations.
2	 Bahamas	1991	Same-sex sexual acts in private were decriminalized by amendment to the Sexual Offences Act (1989) , and came into force in 1991. Under Section 16(1)(2) of the Sexual Offences and Domestic Violence Act (1991) the age of consent differs for same-sex (18) and different-sex (16) sexual acts.
3	 Belize	2016	The country's colonial-era sodomy law was declared unconstitutional by the Belize Supreme Court. ¹⁵ The Court revised the language of Section 53 of the Criminal Code and ordered the insertion of a clause to exclude consensual sexual acts between adults in private. Interestingly, the court dismissed the National Evangelical Association of Belize (NEAB) to join the litigation, although the Catholic church appealed the decision. ¹⁶
4	 Bolivia	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 .
5	 Brazil	1831	The first Criminal Code of Brazil contained no provision on sodomy. However, it has been indicated that other provisions of that Code were used to persecute persons who engaged in same-sex sexual acts. ¹⁷ In 2015 the Supreme Court of Brazil declared that the expressions "pederasty or not" and "homosexual or not" under article 235 of the 1969 Military Penal Code are not constitutional. ¹⁸ These provisions had been used to restrict same-sex activity. ¹⁹
6	 Chile	1999	Article 10 of Law No. 19,617 amended Article 365 of the Penal Code by decriminalizing consensual same-sex sexual acts between consenting adults. However, that same provision 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 2 nd cycle of the UPR, the Government of Chile committed to repealing this article in a forthcoming Penal Code revision. ²⁰

¹⁴ Federación Argentina LGBT, *Informe sobre códigos contravencionales y de faltas de las provincias de la República Argentina y la Ciudad Autónoma de Buenos Aires en relación con la discriminación y la represión a gays, lesbianas, bisexuales y trans* (2008).

¹⁵ *Caleb Orozco v AG of Belize* Supreme Court Claim No. 668 of 2010. For more information on the decision, see: "UNIBAM: And Justice For All", 7 News Belize, 10 August 2016; Ion Cacho, "Orozco vs AG 2016", YouTube (website), 11 August 2016; "About Orozco v AG", URAP Project (website), accessed 5 March 2019; IACHR Hails Unconstitutionality Decision on Criminalization of Consensual Sexual Relations between Same Sex Adults in Belize", OAS (website), 22 August 2016.

¹⁶ "Evangelical Application for Appeal Dismiss, They Must Pay Caleb's Costs", 7 News Belize, 4 October 2016.

¹⁷ James N Green, "Gay Rio", *Brazzil* (website), March 2000.

¹⁸ Supremo Tribunal Federal, *Arguição de descumprimento de preceito fundamental 291*, 28 October 2015.

¹⁹ Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the America* (2015), OAS/Ser.L/V/II.rev.1 Doc. 36, fn. 129.

²⁰ Human Rights Council, *Draft report of the Working Group on the Universal Periodic Review on Chile*, A/HRC/WG.6/18/L.3, 30 January 2014.

7		Colombia	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-507/1999 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.
8		Costa Rica	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 article 2 of Law No. 8,250 in 2002. In 2013, the last provisions which provided for security measures in cases of “homosexuality” were repealed by Resolution N° 010404 issued by the Constitutional Chamber. In 2008, the Committee against Torture noted that local provisions in Costa Rica on “public morals” granted the police and judges discretionary power to discriminate on the basis of sexual orientation.²¹
9		Cuba	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).
10		Dominican Republic	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 still outlaws sodomy (defined as a “sexual act between persons of the same-sex”) among members of police forces.
11		Ecuador	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 regarding the powers of dismissal encoded in the 1997 Rules of Military Discipline for consensual same-sex sexual acts between adults.²²

²¹ Committee against Torture, *Conclusions and recommendations of the Committee against Torture for Costa Rica*, CAT/C/CRI/CO/2, 7 July 2008.

²² I/A Court H.R., *Case of Flor Freire v. Ecuador*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2016. Series C No. 315.

12		El Salvador	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 that local provisions ("ordenanzas contravencionales") were being used to discriminate against people on account of their sexual orientation.²³
13		Guatemala	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".²⁴ The new Penal Code (updated version) entered into force in 1877.
14		Haiti	1804	When Haiti became independent from France in 1804, no law 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).
15		Honduras	1899	Consensual same-sex sexual acts between adults have been legal since the entry into force of the 1899 Penal Code of Honduras.
16		Mexico	1872	The first federal Penal Code of Mexico was approved in 1871 and entered into force in 1872.²⁵ This Code made no reference to consensual same-sex acts between adults.
17		Nicaragua	2008	In 2007, the New Penal Code repealed the 1974 Penal Code that had criminalised "sodomy" under article 204.
18		Panama	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".
19		Paraguay	1880	The first Penal Code of Paraguay of 1880 was adapted from the Penal Code of the Province of Buenos Aires (Argentina), 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 that the age of consent for "homosexual acts" is 16, while it is set at 14 for different-sex sexual acts.
20		Peru	1924	Article 272 of the 1863 Penal Code criminalized sodomy. Since the inception in the 1924 Penal Code, consensual same-sex sexual acts have been legal. However, civil society indicates 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.²⁶

²³ Human Rights Committee, *Concluding observations of the Human Rights Committee for El Salvador*, CCPR/CO/78/SLV, 22 August 2003.

²⁴ Manuel Fernandez, "Guatemala", *GLBTQ Encyclopedia* (website), 2004.

²⁵ Kathryn A Sloan, "The Penal Code of 1871: From Religious to Civil Control of Everyday Life." In *A Companion to Mexican History and Culture*, edited by William H Beezley, 302 – 315. Blackwell Publishing: 2011.

²⁶ Manuel Forno, Liurka Otsuka and Alberto Hidalgo, *Annual Report on Human Rights of LGBT People in Peru 2015-2016* (Peruvian Network TLGB and Promsex, 2016), p 31.

21		Suriname	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.
22		Trinidad & Tobago	2018	The 2018 High Court of Trinidad and Tobago ruling in <i>Jason Jones v AG of Trinidad and Tobago</i> ²⁷ established that buggery and serious indecency laws were unconstitutional in Trinidad and Tobago. This decision follows the line of <i>Caleb Orozco v The AG of Belize</i> .
23		Uruguay	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. ²⁸
24		Venezuela	1836	Since 1836, when Venezuela produced its first Penal Code, consensual same-sex sexual activity has not been criminalised. As reported by the IACHR, in 1997, the Supreme Court of Venezuela declared the unconstitutionality of the Law on Vagrants and Crooks, which had been used to prosecute LGBT persons.²⁹ However, same-sex sexual activity continues to be criminalized in the military under Article 565 of the Military Justice Code. Cases of harassment and dismissal of LGBTQ members of the army in recent years have been reported.³⁰

North America (2)

1		Canada	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 was impugned by five provincial courts. In 2019, the age of consent for all kinds of sex was equalised when Bill C75 received royal assent, thereby eliminating a discriminatory provision on consent for anal sex that disproportionately affected non-heterosexual men.
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²⁷ Supreme Court of Trinidad and Tobago, *Jason Jones vs Attorney General of Trinidad & Tobago and others*, H.C.720/2017. CV.2017-00720, 4 April 2018.

²⁸ José Pedro Barrán, “**Vision Social de la homosexualidad**”, *Relationships*, accessed 5 March 2019.

²⁹ Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the America* (2015), OAS/Ser.L/V/II.rev.1 Doc. 36, fn 239.

³⁰ “**En Venezuela ser gay es un delito militar**”, *Fundación Reflejos de Venezuela*, 20 May 2016.

2		United States of America	1962 2003	Under the USA federal system, all 50 States enact their own Criminal Codes. ³¹ “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. ³² Three States still keep laws establishing unequal laws of consent: Alabama, Kansas and Texas .
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Asia (20) + Taiwan (China) + Palestine (West Bank only)

1		Bahrain	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 same-sex sexual acts between adults. However, it set the age of consent at 20 for different-sex and at 21 for same-sex sexual acts.
2		Cambodia	1953	Following royal request, in 1867 Cambodia became a French Protectorate, thereby coming under French law, which had decriminalised same-sex sexual acts between consenting adults in 1791. Following 1946, and Independence in 1953, no criminalising provisions were added to the Penal Code in this regard.
3		China	1997	China’s current Penal Code (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). However, a ‘hooliganism’ provision in the 1979 Penal Code was used to target male same-sex activity until the code was repealed in 1997. ³³ Same-sex sexual acts were decriminalised in the territories of Hong Kong in 1991 and Macau in 1996 respectively.
4		East Timor	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.
5		India	2018	On 6 September 2018, the Supreme Court of India declared that Section 377 of the Penal Code is unconstitutional. ► For more information on the Supreme Court decision, see: “ Decriminalising the Right to Love: Navtej Singh Johar v. Union of India ” by Arvind Narrain in the Global Perspectives section of this report.

³¹ George Painter, “The Sensibilities of Our Forefathers: The History of Sodomy Laws in the United States”, GLAPN, 2 February 2005.

³² Hannah Cartwright, *Legal Age of Consent for Marriage and Sex for the 50 United States* (Global Justice Initiative, 2011).

³³ UNDP and USAID, *Being LGBT in Asia: China Country Report* (2014), p.23.

6	 Indonesia	1976	Most parts. 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. ► Several jurisdictions in Indonesia criminalise consensual same-sex sexual acts between adults. See: entry for Indonesia in the “Criminalisation” chapter of this report.
7	 Israel	1988	Although the 1977 Penal Law contained a sodomy provision, at Section 347, the parliament repealed that provision in 1988.
8	 Japan	1882	According to some scholarship, consensual same-sex sexual activity was never criminalised in modern Japan (except a very short period 1873-1881).³⁴
9	 Jordan	1960	Jordan is one the few Middle Eastern countries where consensual same-sex sexual acts are not criminalised. See: Penal Code of 1960. However, levels of stigma and discrimination directed at LGBT people is significant.³⁵
10	 Kazakhstan	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.
11	 Kyrgyzstan	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.
12	 Laos	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.
13	 Mongolia	1961	In 1961, under the Mongolian People's Revolutionary Party, consensual same-sex sexual acts were decriminalised. This position remained through the 2002 Criminal Code.
14	 Nepal	2007	Article 1 of Chapter 16 of Part 4 of the Muluki Ain (National Code) enacted in 1963 criminalises “unnatural sexual intercourse”, a term which was undefined and open to different interpretations.³⁶ The uncertainty however was clarified in <i>Sunil Babu Pant and Others v Nepal Government and Others</i>, where the Nepal Supreme Court ruled that same-sex sexual intercourse was not to be construed as “unnatural”.³⁷ Though the new Criminal Codes Act which replaced the Muluki Ain appears to continue to criminalise “unnatural sex”,³⁸ it should be read in light of this case.
15	 North Korea	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.

³⁴ Yuki Arai, “Is Japan Ready to Legalize Same-Sex Marriage?” (2014) Cornell Law School LL.M. Student Research Papers. Paper 4, 127.

³⁵ Jacob Wirtschafter, “In much of the Middle East, it’s getting more dangerous to be gay”, *PRI*, 30 August 2016.

³⁶ Kyle Knight, *Bridges to Justice: Case Study of LGBTI Rights in Nepal* (Astraea Lesbian Foundation for Justice, 2015), p. 19.

³⁷ Kyle Knight, *Bridges to Justice: Case Study of LGBTI Rights in Nepal* (Astraea Lesbian Foundation for Justice, 2015), p. 23.

³⁸ UNDP and USAID, *Being LGBT in Asia: Nepal Country Report* (2014), p. 29; ICJ, *Serious Crimes in Nepal’s Criminal Code Bill, 2014: A Briefing Paper* (2017), p. 20.

	Palestine (West Bank)	1960	The West Bank (Palestine) aligns with the Jordanian Penal Code of 1960, where consensual same-sex sexual acts between adults are not penalised under the law. ³⁹
16	 Philippines	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.
17	 South Korea	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 practitioners in South Korea, as there are English versions of the Criminal 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. ⁴⁰
	Taiwan (China)	1954	The Criminal Code of 1954 contains no provisions prohibiting consensual same-sex sexual activity between adults.
18	 Tajikistan	1998	There are no restrictions on adult, consensual same-sex sexual acts between adults in the 1998 Criminal Code of Tajikistan (amended to 2010).
19	 Thailand	1957	The Thai Penal Code of 1956 came into force in 1957 and has no criminalising provision on consensual same-sex sexual acts between adults.
20	 Vietnam	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.

Europe (48) + Kosovo

1	 Albania	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.
2	 Andorra	1791	As a co-principality with France, Andorra was subject to the same Penal Code provisions that decriminalised “sodomy” in 1791.
3	 Armenia	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 .
4	 Austria	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.

³⁹ Mohammed Daraghme, “[Book with gay character confiscated in Palestine, writer might be arrested](#)”, *LGBTQ Nation*, 11 February 2017.

⁴⁰ Rainbow Action Against Sexual Minority Discrimination, *Human Rights Violations on the Basis of Sexual Orientation, Gender Identity, and HIV Status in the Republic of Korea* (2017).

5		Azerbaijan	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.
6		Belarus	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 .
7		Belgium	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.
8		Bosnia & Herzegovina	1998 2001	The three parts of Bosnia and Herzegovina decriminalised ‘homosexuality’ separately: Federation of Bosnia and Herzegovina (1998), Republika Srpska (2000), Brcko District (2001).
9		Bulgaria	1968	The Criminal Code of 1968 repealed the sodomy provisions contained in Bulgaria’s first Penal Code of 1896.
10		Croatia	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.
11		Cyprus	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. ⁴¹
12		Czechia	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).
13		Denmark	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.
14		Estonia	1992	On dissolution from the Soviet Union in 1991, Estonia created its own Penal Code that removed criminalising sanctions on same-sex sexual intimacy.
15		Finland	1971	The 1889 Criminal Code was revised in 1971 to remove Chapter 20 ‘Unlawful sexual intercourse and other lewdness’.
16		France	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. Pursuant to Article 73 of the French Constitution , 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.

⁴¹ “Northern part of Cyprus decriminalises homosexuality”, *EU Intergroup on LGBT rights* (website), 27 January 2014.

17	 Georgia	2000	The Criminal Code of Georgia removed the pre-existing sodomy provisions that were carried through from the Soviet Union period.
18	 Germany	1968 1969	Although East Germany and West Germany stopped applying its Criminal Code provisions (Paragraph 175 – “lewd and lascivious acts”) among consenting adults in 1968 and 1969 respectively, the black letter law was not abolished until 1994. ⁴²
19	 Greece	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.
20	 Hungary	1962	The Criminal Code of Hungary removed the 1878 provisions that referred to ‘crimes against nature’.
21	 Iceland	1940	The General Penal Code of 1940 removed the provisions of 1869 Penal Code, Clause 178 that stipulated, “unnatural forms of sexual intercourse are punishable by a term in prison”.
22	 Ireland	1993	Section 2, Criminal Law (Sexual Offences) Act (1993) removed the ‘buggery’ provisions Ireland inherited from British rule.
23	 Italy	1890	The first Italian Penal Code in 1889 had no prohibition on consensual same-sex sexual acts between adults in private.
	Kosovo	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.
24	 Latvia	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.
25	 Liechtenstein	1989	The Criminal Code was revised in 1989 to remove Sections 129 and 130 “lewdness against the order of nature”.
26	 Lithuania	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.
27	 Luxembourg	1795	As Luxembourg came into the possession of France, any sodomy provisions from its Criminal Code were removed in 1795.
28	 Malta	1973	Malta removed the offence of “unnatural carnal connection” from Article 201 of the Criminal Code in 1973.
29	 Moldova	1995	The Criminal Code of Moldova removed the pre-existing sodomy provisions (at Article 106) that were carried through from the Soviet Union period.
30	 Monaco	1793	As Monaco was in the possession of France, it removed any sodomy provisions from its Penal Code in 1793.

⁴² “Germany to pay convicted gays 30 million euros – media”, DW News, 8 October 2016.

31		Montenegro	1977	The Criminal Code of 1977 repealed the 1951 Yugoslav provisions regarding same-sex sexual acts.
32		Netherlands	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.
33		North Macedonia	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.
34		Norway	1972	“Indecent intercourse” between men was decriminalised by repeal of Paragraph 213 in Norway’s Penal Code of 1972.
35		Poland	1932	After its independence in 1918, Poland returned to the Napoleonic tradition that it had enjoyed in the early-19 th century, and subsequently its 1932 Penal Code contains no criminalising provisions regarding consensual same-sex sexual relations amongst adults.
36		Portugal	1983	Under the reign of Louis I from 1886 on, Portugal criminalised consensual same-sex sexual acts between men, but that law was repealed in the 1983 Penal Code .
37		Romania	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.
38		Russian Federation	1993	Article 121(1) of the 1934 Criminal Code of the Soviet Union had stated “sexual relations of a man with a man (pederasty)” was punishable with up to five years imprisonment. ⁴³ 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.
39		San Marino	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 .
40		Serbia	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.
41		Slovakia	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”).

⁴³ Adrian Chan-Wyles, “[The USSR and Homosexuality Part 1 \(Article 121\)](#)”, *The Sanghakommune*, 28 December 2016.

42	 Slovenia	1977	When Slovenia was still a part of Yugoslavia in 1976, work on the Criminal Code to remove provisions penalising consensual same-sex sexual acts commenced, and the resultant law came into force in 1977.
43	 Spain	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 .
44	 Sweden	1944	Sweden removed its 'sodomy' provisions from the Penal Code in 1944, specifying freedom for both men and women in the subsequent revision.
45	 Switzerland	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.
46	 Turkey	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 .
47	 Ukraine	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.
48	 United Kingdom	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 misdemeanour 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)

1	 Australia	1975 1997	Decriminalisation of consensual same-sex sexual acts took place variously across the eight provinces of Australia between 1975 and 1997.⁴⁴ In 1975, South Australia abolished the offences of “buggery”, “gross indecency” and “soliciting for immoral sexual purposes”, and 22 years later the last jurisdiction 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 Human Rights (Sexual Conduct) Act 1994 to uphold that principle in Australian law.
2	 Fiji	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 Penal Code which criminalised “carnal knowledge against the order of nature” and indecent practices. These provisions were finally repealed by the Crimes Decree 2009, which came into force in February 2010.
3	 Marshall Islands	2005	The Criminal Code (Amendment) Act 2005 amended the Criminal Code to decriminalise consensual same-sex sexual activity between adults in private.
4	 Micronesia [Federated States of]	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.
5	 Nauru	2016	In May 2016 the Crimes Act 2016 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.⁴⁵ Nauru had previously accepted three recommendations to decriminalise same-sex sexual activity in its 1st cycle of the UPR in 2011.⁴⁶
6	 New Zealand	1986 2007	The General Assembly passed the Homosexual Law Reform Act 1986 which decriminalised sexual acts between consenting men aged 16 and over. Same-sex sexual acts between consenting women were not illegal. 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 Niue Amendment Act 2007. The act came into force on 20 September 2007. 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.⁴⁷

⁴⁴ Graham Carbery, “Towards homosexual equality in Australian criminal law – A brief history” (Australian Lesbian and Gay Archives, 2014).

⁴⁵ “Nauru decriminalises homosexuality”, *RadioNZ*, 27 May 2016.

⁴⁶ *Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review* (Nauru), A/HRC/17/3/Add.1, 30 May 2011.

⁴⁷ “New Zealand to quash historical gay sex convictions”, *BBC News*, 9 February 2017.

7	 Palau	2014	Palau repealed its legal provisions that criminalised consensual same-sex sexual activity between gay men, introducing a new Penal Code with no such provisions, signed by the President in April 2014. ⁴⁸ Palau had previously accepted three recommendations to decriminalise same-sex sexual activity in its 1 st cycle of the UPR in 2011. ⁴⁹
8	 Vanuatu	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. ⁵⁰ The 2006 Consolidation of the Criminal Code maintained the same provision under Section 99. In that same year, the Penal Code (Amendment) Act 2006 (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.

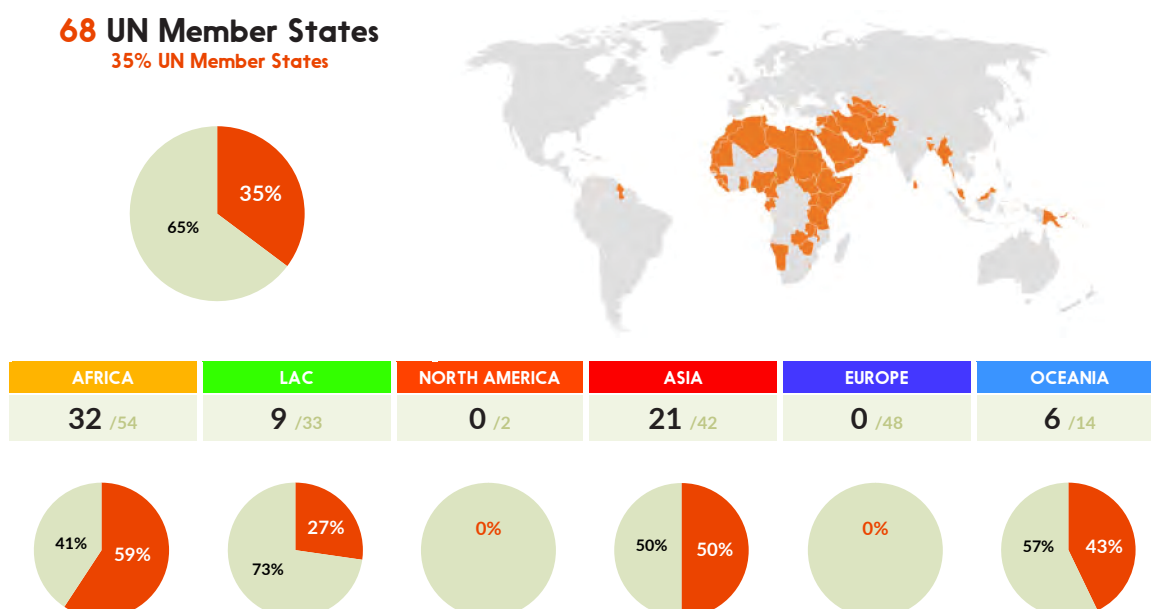
⁴⁸ "Palau decriminalises homosexuality", *Human Dignity Trust*, 15 October 2014.

⁴⁹ Human Rights Council, *Draft report of the Working Group on the Universal Periodic Review: Palau*, A/HRC/WG.6/11/L.3, 6 May 2011.

⁵⁰ D E Paterson, "Vanuatu Penal Code" (1986) 2(2) QIT Law Journal 119.

Consensual Same-Sex Sexual Acts: ILLEGAL

Highlights



Introduction

This section provides an overview of the countries that still criminalise consensual same-sex sexual acts between adults.

The chart specifies the specific terms used by the provisions in force to refer to such acts. In several cases, the law is very specific as to what conduct falls under the scope of the provision. In others, vague terms such as “acts against nature”, “indecentcy”, “immoral acts”, leave the door open to arbitrary interpretation, which frequently leads to the discretionary use of these norms to persecute LGBT people.

Singapore is the only country that does not criminalise sexual intercourse itself, but still keeps laws against “acts of gross indecency”. The rest of the countries have provisions that, one way or another, criminalise same-sex intercourse.

As recorded in the “Criminalisation” section of this report, instances of judicial prosecution and conviction for consensual same-sex sexual acts between adults in private still take place in several criminalising countries.

What does International Human Rights Law say?

Everyone has the right to be free from criminalisation and any form of sanction arising directly or indirectly from that person’s actual or perceived sexual orientation, gender identity, gender expression or sex characteristics.

Yogyakarta Principle 33.

States shall repeal criminal and other legal provisions that prohibit or are, in effect, employed to prohibit consensual sexual activity among people of the same sex who are over the age of consent.

Yogyakarta Principles 2(b) and 6(b).

N	CN	COUNTRY	SAME-SEX SEXUAL INTERCOURSE							SAME-SEX SEXUAL ACTS OTHER THAN INTERCOURSE					
			PROVISION IN FORCE	LAST AMEND	TERMS OF PROVISION	GENDER/S	MAX PRISON PENALTY	DEATH PENALTY	FINE / OTHER	PROVISION IN FORCE	LAST AMEND	TERMS OF PROVISION	GENDER/S	MAX PRISON PENALTY	FINE / OTHER
AFRICA															
1	1	Algeria	Penal Code, Article 338.	1966	Homosexual acts	ALL GENDERS	2 years	No	Yes	Penal Code, Article 333	1982	Indecent act against the order of nature	ALL GENDERS	3 years	Yes
2	2	Burundi	Penal Code, Article 590.	2017	Sexual relations with a person of the same sex	ALL GENDERS	2 years	No	Yes	Penal Code, Article 572.	-	Acts of indecency contrary to Burundian morals	ALL GENDERS	2 years	Yes
3	3	Cameroon	Penal Code, Article 347-1.	2016	Sexual relations with a person of the same sex	ALL GENDERS	5 years	No	Yes						
4	4	Chad	Penal Code, Article 354.	2017	Sexual relations with a person of the same sex	ALL GENDERS	2 years	No	Yes						
5	5	Comoros	Penal Code, Article 318(3).	1981	Unnatural acts with a person of the same sex	ALL GENDERS	5 years	No	Yes	Penal Code 1981, Article 318(3).	-	Improper or unnatural act	ALL GENDERS	5 years	Yes
6	6	Eritrea	Penal Code, Article 310(1).	2015	Homosexual acts/ Sexual act with person of same sex	ALL GENDERS	7 years	No	No						
7	7	Eswatini	Common law offence	1907	Sodomy	MALE	Not specified	No	No						
8	8	Ethiopia	Penal Code, Article 629.	2004	Homosexual acts	ALL GENDERS	5 years	No	No						
9	9	Gambia	Criminal Code, Article 144.	2005	Homosexual act; carnal knowledge through anus or mouth	ALL GENDERS	14 years	No	No	Criminal Code, Article 147(2).	2005	Gross indecency	FEMALE	5 years	No
10	10	Gabon	Criminal Code, Article 402(5).	2019	Sexual relations with a person of the same sex	ALL GENDERS	6 months	No	Yes						
11	11	Ghana	Criminal Code, Section 99.	2003	Unnatural carnal knowledge	MALE	3 years	No	No						
12	12	Guinea	Penal Code, Article 274.	2016	Act against nature	ALL GENDERS	3 years	No	Yes	Penal Code, Articles 274, 275, 276.	2016	Indecent acts	ALL GENDERS	2 years	Yes
13	13	Kenya	Penal Code, Section 162.	2003	Carnal knowledge against the order of nature	ALL GENDERS	14 years	No	No	Penal Code, Section 165.	2003	Gross indecency	MALE	5 years	No
14	14	Liberia	Penal Code, Article 14.74.	2008	Sodomy / Deviate sexual intercourse	ALL GENDERS	1 year	No	No						

N	CN	COUNTRY	SAME-SEX SEXUAL INTERCOURSE							SAME-SEX SEXUAL ACTS OTHER THAN INTERCOURSE					
			PROVISION IN FORCE	LAST AMEND	TERMS OF PROVISION	GENDER/S	MAX PRISON PENALTY	DEATH PENALTY	FINE / OTHER	PROVISION IN FORCE	LAST AMEND	TERMS OF PROVISION	GENDER/S	MAX PRISON PENALTY	FINE / OTHER
15	15	Libya	Penal Code, Article 407(4).	1976	Illicit sexual intercourse	ALL GENDERS	5 years	No	No	Penal Code, Article 408(4).	-	Disgrace the honour	UNCLEAR	<i>Not specified</i>	No
16	16	Malawi	Penal Code, Article 153.	2011	Carnal knowledge against order of nature	ALL GENDERS	14 years	No	<i>Corporal Punishment</i>	Penal Code, Arts. 137(a) and 156.	2011	Gross indecency	ALL GENDERS	5 years	Corporal Punishment
17	17	Mauritania	Penal Code, Article 308.	1984	Acts against nature	ALL GENDERS	2 years (female)	<i>Possible</i> (men)	Yes (female)						
18	18	Mauritius	Penal Code, Article 250	1838	Sodomy	MALE	5 years	No	No						
19	19	Morocco	Penal Code, Article 489	1962	Lewd or unnatural acts	ALL GENDERS	3 years	No	Yes						
20	20	Namibia	<i>Common law offence</i>	-	Unlawful sexual relations per annum between males	MALE	<i>Not specified</i>	No	No						
21	21	Nigeria	Criminal Code, Section 214.	1990	Carnal knowledge against order of nature	ALL GENDERS	14 years	Yes	No	Criminal Code Act, Section 217	-	Gross indecency	MALE	3 years	No
22	22	Senegal	Penal Code, Article 319(3).	1965	Unnatural acts	ALL GENDERS	5 years	No	Yes						
23	23	Sierra Leone	OAP Act, Section 61.	1861	Buggery	MALE	<i>No max</i>	No	No						
24	24	Somalia	Penal Code, Article 409.	1962	Homosexuality / Carnal intercourse with person of same sex	ALL GENDERS	3 years	Yes	No						
25	25	South Sudan	Penal Code, Article 248.	2009	Carnal intercourse against order of nature	ALL GENDERS	10 years	No	Yes						
26	26	Sudan	Penal Code, Article 148.	1991	Sodomy	MALE	5 years	Yes	Flogging	Penal Code, Section 151.	-	Gross indecency	ALL GENDERS	1 year	Yes
27	27	Tanzania	Penal Code, Article 154.	1998	Carnal knowledge against order of nature	ALL GENDERS	Life	No	No	Penal Code, Sections 138a and 157.	1998	Gross indecency	ALL GENDERS	5 years	Yes
28	28	Togo	Penal Code, Article 392.	2015	Indecent or unnatural acts with a person of same sex	ALL GENDERS	3 years	No	Yes						
29	29	Tunisia	Penal Code, Article 230.	2012	Sodomy	ALL GENDERS	3 years	No	No						

N	CN	COUNTRY	SAME-SEX SEXUAL INTERCOURSE							SAME-SEX SEXUAL ACTS OTHER THAN INTERCOURSE					
			PROVISION IN FORCE	LAST AMEND	TERMS OF PROVISION	GENDER/S	MAX PRISON PENALTY	DEATH PENALTY	FINE / OTHER	PROVISION IN FORCE	LAST AMEND	TERMS OF PROVISION	GENDER/S	MAX PRISON PENALTY	FINE / OTHER
30	30	Uganda	Penal Code, Article 145.	2000	Carnal knowledge against order of nature	ALL GENDERS	Life	No	No	Penal Code, Article 158	2000	Gross indecency	ALL GENDERS	7 years	No
31	31	Zambia	Penal Code, Article 155.	2005	Carnal knowledge against order of nature	ALL GENDERS	Life	No	No	Penal Code, Article 158	-	Gross indecency	ALL GENDERS	14 years	No
32	32	Zimbabwe	Penal Code, Article 73.	2006	Sodomy or any other act regarded by a reasonable person to be indecent	MALE	1 year	No	Yes						
THE CARIBBEAN															
33	1	Antigua & Barbuda	SO Act, Article 12.	1995	Buggery	MALE	15 years	No	No	SO Act, Section 15	1995	Act of serious indecency	ALL GENDERS	5 years	No
34	2	Barbados	SO Act, Section 9.	1992	Buggery	ALL GENDERS	Life	No	No	SO Act, Section 12	1992	Act of serious indecency	ALL GENDERS	10 years	No
35	3	Dominica	SO Act, Section 16.	1998	Buggery	MALE	10 years	No	Psych. Treat.	SO Act, Section 14.	1998	Act of gross indecency	ALL GENDERS	5 years	No
36	4	Grenada	Criminal Code, Article 431.	1897	Unnatural connexion	ALL GENDERS	10 years	No	No	Criminal Code, Articles 137(28), 430.	1897	Grossly indecent act	ALL GENDERS		Yes
37	5	Guyana	Criminal Law (Offences) Act, Section 354.	2010	Buggery	ALL GENDERS	Life	No	No	Criminal Law (Offences) Act, S. 352.	2010	Act of gross indecency	MALE	2 years	No
38	6	Jamaica	OAP Act, Article 76.	1969	Buggery	MALE	10 years	No	Hard labour	OAP Act, Section 79	1864	Act of gross indecency	MALE	2 years	Hard labour
39	7	St. Kitts & Nevis	OAP Act, Article 56.	1873	Buggery	ALL GENDERS	10 years	No	Hard labour						
40	8	St. Lucia	Criminal Code, Section 133.	2004	Buggery	MALE	10 years	No	No	Criminal Code, S. 132.	2004	Act of gross indecency	ALL GENDERS	10 years	No
41	9	St. Vincent & Greds.	Criminal Code, Section 146.	1988	Buggery	ALL GENDERS	10 years	No	No	Criminal Code, S. 148	1988	Act of gross indecency	ALL GENDERS	5 years	No
ASIA															
42	1	Afghanistan	Penal Code Section 645 – 650.	2017	Lavat (anal penetration with male sexual organ),	MALE	2 years	Possible	No	Penal Code Section 645 / 649.	2017	Tafkhiz and Mosahegheh	ALL GENDERS	1 year	No
43	2	Bangladesh	Penal Code, Section 377.	-	Intercourse against the order of nature	ALL GENDERS	Life	No	Yes						

N	CN	COUNTRY	SAME-SEX SEXUAL INTERCOURSE							SAME-SEX SEXUAL ACTS OTHER THAN INTERCOURSE					
			PROVISION IN FORCE	LAST AMEND	TERMS OF PROVISION	GENDER/S	MAX PRISON PENALTY	DEATH PENALTY	FINE / OTHER	PROVISION IN FORCE	LAST AMEND	TERMS OF PROVISION	GENDER/S	MAX PRISON PENALTY	FINE / OTHER
44	3	Bhutan	Penal Code, Section 213.	-	Sodomy	ALL GENDERS	1 year	No	No						
45	4	Brunei	Penal Code, Section 82.	2019	Livat (sexual intercourse between men)	ALL GENDERS	-	Possible	Whipping	Penal Code, article 92 and others.	2019	Musaheqeh y cualquier otro acto homosexual	ALL GENDERS	10 years	Whipping
46	5	Iran	Penal Code, Articles 233 – 234.	2013	Livat (penetration of man's penis into another male person's anus)	MALE	-	Yes	Caning	Islamic Penal Code Articles 235 - 240	2013	Tafkhiz, Musaheqeh and any other homosexual act	ALL GENDERS	100 lashes	No
		Certain Provs. in Indonesia	See entry for "Certain Provinces in Indonesia" in the "Criminalisation" section of this report.												
47	6	Kuwait	Penal Code, Article 193.	1976	Consensual intercourse between men	MALE	7 years	No	No	Penal Code Article 198	1976	Lewd signal or act in a public place	ALL GENDERS	1 year	Yes
48	7	Lebanon	Penal Code, Article 534.	-	Intercourse against nature	ALL GENDERS	1 year	No	No						
49	8	Malaysia	Penal Code, Sections 377A - 377B.	1989	Intercourse against the order of nature	ALL GENDERS	20 years	No	Whipping	Penal Code Section 377D	-	Act of gross indecency	ALL GENDERS	2 years	No
50	9	Maldives	Penal Code, Section 411.	-	Intercourse with a person of the same sex	ALL GENDERS	8 years	No	No	Penal Code Section 412	-	Indecent acts	ALL GENDERS	8 years	No
51	10	Myanmar	Penal Code, Section 377.	-	Intercourse against the order of nature	ALL GENDERS	10 years	No	Yes						
52	11	Oman	Penal Code, Article 223.	-	Erotic acts with a person of the same sex	ALL GENDERS	3 years	No	No						
53	12	Pakistan	Penal Code, Section 377.	-	Intercourse against the order of nature	ALL GENDERS	10 years	Possible	Yes	Penal Code Section 294	-	Obscene act in public	ALL GENDERS	3 months	Yes
		Palestine (Gaza)	Criminal Code Ordinance, Section 152(2).	-	Carnal knowledge against the order of nature	ALL GENDERS	10 years	No	No						
54	13	Qatar	Penal Code, Article 295.	-	Intercourse with a person of the same sex	MALE	Life	Possible	No						
55	14	Saudi Arabia	Sura 7:80/ 81	-	Reference to sexual intercourse between men	-	-	Yes	-						
56	15	Singapore								Penal Code Section 377A	2008	Act of gross indecency	Male	2 years	

N	CN	COUNTRY	SAME-SEX SEXUAL INTERCOURSE							SAME-SEX SEXUAL ACTS OTHER THAN INTERCOURSE					
			PROVISION IN FORCE	LAST AMEND	TERMS OF PROVISION	GENDER/S	MAX PRISON PENALTY	DEATH PENALTY	FINE / OTHER	PROVISION IN FORCE	LAST AMEND	TERMS OF PROVISION	GENDER/S	MAX PRISON PENALTY	FINE / OTHER
57	16	Sri Lanka	Penal Code, Article 365,	1995	Intercourse against the order of nature	ALL GENDERS	10 years	No	No	Penal Code Article 365A	1995	Act of gross indecency	ALL GENDERS	2 years	Yes
58	17	Syria	Penal Code, Article 520.	-	Intercourse against the order of nature	ALL GENDERS	3 years	No	No	Penal Code Article 517	-	Crimes against public indecency	ALL GENDERS	3 years	
59	18	Turkmenistan	Criminal Code, Section 135.	-	Homosexual acts	ALL GENDERS	2 years	No	No						
60	19	UAE	Penal Code, Article 356.	-	Voluntary debasement	ALL GENDERS	15 years	Possible	No						
61	20	Uzbekistan	Criminal Code, Article 120.	-	<i>Besoqolbozlik</i> (male sexual intercourse).	MALE	3 years	No	No						
62	21	Yemen	Penal Code, Arts. 264 / 268.	-	Homosexuality and lesbianism.	ALL GENDERS	3 years	Yes	100 lashes						
OCEANIA															
63	1	Kiribati	Penal Code, Article 153.	1977	Buggery	ALL GENDERS	14 years	No	No	Penal Code Revised Edition 1977 Section 155	1977	Act of gross indecency	MALE	5 years	No
64	2	Papua New Guinea	Criminal Code. Section 210.	2016	Unnatural Offences against the order of nature	ALL GENDERS	14 years	No	No	Criminal Code 1974, Section 212	2016	Indecent practices between males	MALE	3 years	No
65	3	Samoa	Crimes Act 2031 Section 67		Sodomy	MALE	5 years	No	No						
66	4	Solomon Islands	Penal Code 1996 Section 160	2016	Buggery	ALL GENDERS	14 years	No	No	Penal Code 1996 Section 162	2016	Indecent practices between persons of the same sex	ALL GENDERS	5 years	No
67	5	Tonga	Criminal Offences Act Section 136	2015	Sodomy	MALE	10 years	No	Whipping						
68	6	Tuvalu	Penal Code Revised Edition 1978 Section 153	2016	Unnatural offences	ALL GENDERS	14 years	No	No	Penal Code Revised Edition 1978 Section 155	2015	Indecent practices between males	MALE	5 years	No
		Cook Islands	Crimes Act, Section 155.		Sodomy	MALE	14 years	No	No	Crimes Act, Section 154.		Indecency between males	MALE	5 years	No

GLOBAL LEGISLATION OVERVIEW

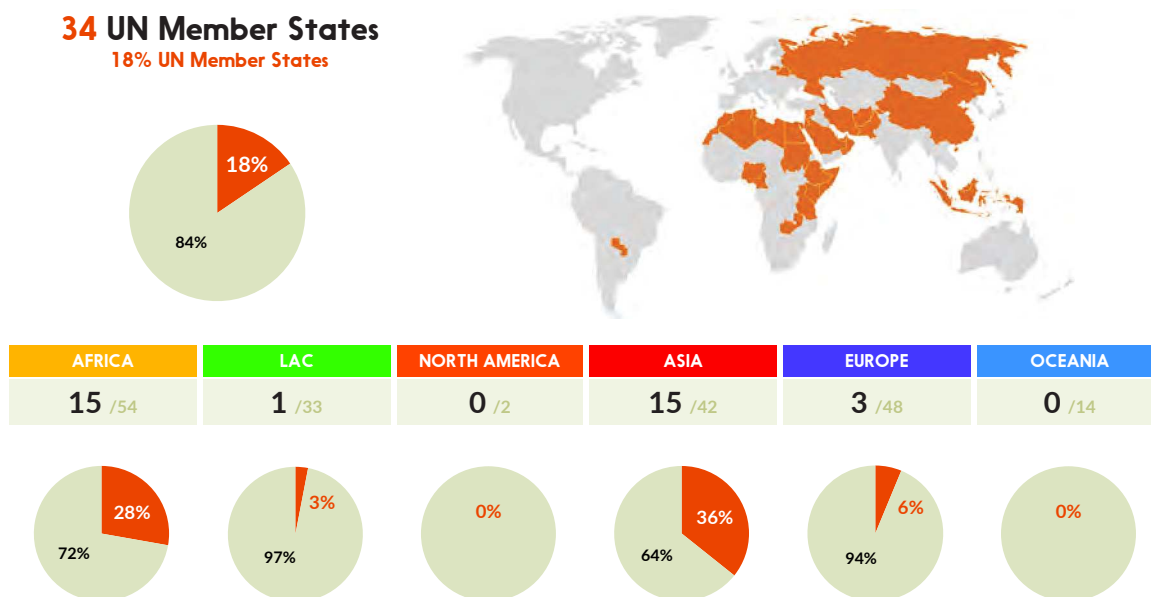
RESTRICTION

STATE-SPONSORED HOMOPHOBIA (UPDATE) 2019



Legal Barriers to Freedom of Expression on SOGIESC issues

Highlights



Introduction

This section covers laws and regulations that have been enacted to restrict the right to freedom of expression in relation to sexual orientation issues.

This can take several forms: restrictions on expressions of same-sex intimacy and restrictions on expressions of support or positive portrayals of non-heterosexual identities and relationships. These restrictions can be imposed on individuals generally, as well as educators and the media.

Morality codes pertaining to public discussion have long been in force in some Arabic States. However, a new legal vehicle has been employed more recently to criminalise expressions of affirmation or support for homosexuality, known as “propaganda laws”.

Some countries have also recently introduced laws that criminalise communications between individuals on same-sex dating applications or websites and even aggravate penalties if that communication leads to sexual encounters.

What does International Human Rights Law say?

Everyone has the right to freedom of opinion and expression, regardless of sexual orientation, gender identity, gender expression or sex characteristics.

Yogyakarta Principle 19

States shall [...] take all necessary legislative, administrative and other measures to ensure full enjoyment of freedom of opinion and expression, [...] including the receipt and imparting of information and ideas concerning sexual orientation, gender identity, gender expression and sex characteristics [...].

Yogyakarta Principle 19.a

Africa (15)

1		Algeria	2014	Article 333 bis (<i>Reiterated</i>) of the Penal Code penalises the possession, dissemination or display of anything contrary to “decency” with imprisonment from 2 months to 2 years and a fine between 500 Da to 2000 Da. Under the second paragraph of article 333 (<i>Modified</i>) the “indecent exposure of an act against the order of nature” constitutes aggravated crime against good mores.
2		Cameroon	2010 2016	Article 83 of the Law on Cybersecurity and Cybercrime (Law No. 2010/12 of 2010) criminalises electronic communication between individuals of the same sex for the purpose of sexual proposition. Penalties are enhanced when the communication is actually followed by sexual intercourse. Sections 264 of the Penal Code (2016) criminalises the public utterance of any immoral speech and the drawing of the public’s attention to any occasion of immorality. In light of the criminalisation of same-sex intimacy, a legal scholar has suggested that a publicly uttered speech advocating “unnatural sexual indulgence” would be considered immoral. ¹
3		Egypt	1937 2018	Individuals have been prosecuted for publicly <i>expressing support</i> for LGBTQI communities under article 86bis of the Penal Code (1937). ² Article 25 of the Law on Cyber Crimes (Law No. 175/2018) states that “anyone who publishes online content that threatens society’s and family’s values shall be punished for at least six months of prison and a fine of at least fifty thousand pounds.” In 2017, the Supreme Council for Media Regulation (SCMR) released an order to ban all forms of support towards the LGBT community on media outlets. ³
4		Ethiopia	2004	Article 640 of the Penal Code criminalises the possession or dissemination of grossly indecent material, including providing information on how to procure them. A wide range of websites are reported to be blocked in Ethiopia, including the websites LGBTI groups and organisations. ⁴
5		Kenya	2009	Section 12 of the Film and Stage Plays Act restricts the exhibition of films according to the discretion of the Kenya Film Classification Board. According to the Board’s Classification Guidelines (2012) films with themes that “glamorise a homosexual lifestyle” are either age-restricted to those above 18 years old or banned. →

¹ Carlson Anyangwe, *Criminal Law in Cameroon: Specific Offences* (African Books Collective, 2011), 282.

² For more information see the essay “Rights of LGBTQ people in Egypt: Between State, Society, and de facto Criminalization” written by an anonymous group/collective working on LGBTQI issues in the MENA region in the entry for Egypt in the “Criminalisation” section of this report.

³ “All Forms of Support to the LGBT Community to be Banned on Media Outlets: SCMR”, *Egyptian Streets*, 1 October 2017.

⁴ Freedom House, *Freedom on the Net: Ethiopia* (2017).

			In April 2018, the Board issued a ban against the film “Rafiki” on the basis that it was intended to promote lesbianism in Kenya though this was temporarily lifted for seven days by a High Court judge after the film was nominated at the Academy Awards. ⁵ In 2014, the Board also banned another film, “Stories of Our Lives” similarly for “promoting homosexuality”.
6	 Libya	1953	Article 421 of the Penal Code refers to distribution of “articles of an indecent nature”. As Article 410 criminalises <i>indecent</i> acts between persons of the same sex, content relating to same-sex intimacy would fall under the definition of “articles of an indecent nature”.
7	 Morocco	1962	Article 483 of the Penal Code criminalises acts or gestures of public obscenity and indecency. In 2015, two men were prosecuted under this law for kissing in public as an act of protest. ⁶
8	 Nigeria	2014	Section 5(2) of the Same-sex Marriage (Prohibition) Act (2014) provides that a person who “directly or indirectly makes public show of same-sex amorous relationships” may receive a penal sentence of up to 10 years imprisonment.
9	 Somalia	1964	Article 402 prohibits the commission of any obscene act while Article 403 of the Penal Code (1964) prohibits the sale, distribution and exhibition of any obscene object. Article 404 deems acts and objectives as obscene where they, in the general opinion, are <i>offensive to modesty</i> . Article 409, which criminalises same-sex intimacy, is part of the same chapter on offences against modesty in the legislation.
10	 Sudan	1991	Article 152 of the Penal Code criminalises the making, portrayal, possession or dissemination of any material contrary to public morals. The National Telecommunications Corporation (NTC) blocks websites considered “offensive to public morality”. Sources indicate that while pornography is the primary target of this censorship, LGBT content and dating sites are also subject to it. ⁷
11	 Tanzania	1981	Article 175 of the Penal Code stipulates materials that are tending to “corrupt morals” may not be distributed, sold or exhibited. Article 154 which criminalises same-sex intimacy is located in Chapter XV, titled “Offences Against Morality”. In 2017, 12 people were arrested for “promoting homosexuality”. ⁸
12	 Togo	1980	Article 392 and 394 of the Penal Code penalise the publication and distribution of materials “contrary to public morals”, “decency”. Offences against morality include “unnatural acts” with a person of the same sex under Article 392.

⁵ “Kenya: Censorship by film classification board limiting free expression”, *Article 19*, 17 May 2018.

⁶ “Moroccan men ‘jailed for four months for kissing in public”, *The Telegraph*, 19 June 2015.

⁷ Association for Progressive Communications (APC) and Humanist Institute for Cooperation with Developing Countries (Hivos) *Global Information Society Watch 2015: Sexual rights and the internet* (APC & Hivos, 2015).

⁸ Katherine Swindells, “12 arrested in Tanzania for ‘promoting homosexuality’”, *Pink News*, 18 October 2017.

13	 Tunisia	2004	Amended in 2004, Article 226bis of the Penal Code of 1913 criminalises any act that publicly draws attention to the opportunity to commit debauchery through any form of writing, audio or visual recording. This law is found in the same section titled "Section III: attacks on morals" where the law criminalising same-sex intimacy is located.
14	 Uganda	1995	Under Section 9 of the Press and Journalist Act 1995, the Media Council is authorised to censor films, plays and other media content for public consumption. In 2017, the Media Council banned a Dutch film for "glorifying homosexuality".⁹ The Broadcasting Council, established under the Electronic Media Act, is similarly empowered to regulate radio content pursuant to the minimum broadcasting standards of First Schedule which prohibits programmes that are contrary to "public morality"; in 2004, it fined a radio station for hosting gay men during a live talk show on the basis that it was "contrary to public morality."¹⁰ The Ugandan government has also tried to explicitly prohibit the "promotion" of homosexuality under the defunct Anti-Homosexuality Act 2014 (struck down in August 2014) and The Prohibition of Promotion of Unnatural Sexual Practices Bill.
15	 Zambia	2005	Article 178(g) of the Zambian Penal Code criminalises any act of soliciting for immoral purposes in a public place. This provision was used as the legal basis to arrest and prosecute Paul Kasonkomona. In 2013, he was arrested after he appeared on a television programme arguing that the rights of sexual minorities and sex workers, should be recognised in order to effectively address the HIV epidemic. Kasonkomona was eventually acquitted two years later.¹¹ In 2019, the Minister of Religious Affairs and National Guidance, Godfridah Sumaili, ordered the cancellation of a television programme for allegedly "promoting homosexuality".¹²

⁹ "Uganda bans Dutch film for 'glorifying homosexuality'", *BBC News*, 16 May 2017.

¹⁰ "Fine for Uganda radio gay show", *BBC News*, 3 October 2004.

¹¹ For more information see: "Zambia: Activist Defends Right to Freedom of Expression" Southern Africa Litigation Centre (website), 25 February 2014.

¹² "Sumaili tells Zambezi Magic to cancel 'Lusaka Hustle'", *Zambian Eye*, 2 February 2019.

Latin American and the Caribbean (1)

1	 Paraguay	2017	The Ministry of Education and Sciences issued Resolution No. 29,664/2017 prohibiting the dissemination and use of educational materials referring to “gender theory and/or ideology”.¹³ The Inter-American Commission on Human Rights (IACHR) noted that this measure “represents a setback for the rights of women, people with diverse sexual orientations and gender identities, and children to receive an education free of stereotypes that are based on ideas of inferiority or subordination”.¹⁴
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Is there more in LAC?

Brazil	In 2019, local authorities ordered the cancellation and terminated the funding of a number of artistic displays and materials (such as films, books, seminars, performances, and television series) addressing LGBT-related topics, notably in Rio de Janeiro.¹⁵ President Jair Bolsonaro declared that these actions did not constitute censorship, but were merely an attempt to “preserve (Brazil’s) Christian values”,¹⁶ and described funding for LGBT-related screenplays as “throwing money away”.¹⁷ On October 7, 2019, the Federal Public Prosecutor of Rio de Janeiro determined that the government had acted in a discriminatory way and ordered <i>Ancine</i> (the National Audiovisual Agency) to resume its call for the production of LGBT-related public television content. However, the government could appeal this decision.¹⁸
Jamaica	In Jamaica, approval is required from the Cinematograph Authority under the Cinematograph Act to present a film. In 2013, a film about two lesbians who were murdered by their boyfriends was banned though no reason was given by the Cinematograph Authority.¹⁹ Though the Cinematograph Authority has the power to make rules to approve or ban films, those rules are not publicly available.²⁰
Haiti	In 2017, the Senate voted to ban marriage equality as well as “any public demonstration of support for homosexuality and proselytizing in favour of such acts.”²¹

¹³ Ministerio de Educación y Ciencias (Paraguay), [Resolución No. 29.664/2017](#), por la cual se prohíbe la difusión y la utilización de materiales impresos como digitales, referentes a la teoría y/o ideología de género, en instituciones educativas dependientes del ministerio de educación y ciencias, 5 de octubre de 2017; Teo Armus, “[Paraguay Bans Material on 'Gender Ideology' in Public Schools](#)”, NBC News, October 18, 2017.

¹⁴ “[Press Release: IACHR Regrets Ban on Gender Education in Paraguay](#)”, *Organisation of American States (webpage)*, 15 December 2017.

¹⁵ Eduardo Miranda and Vivian Virissimo, “[Censura de Bolsonaro: governo sofre revés com filmes e peças de temática LGBT](#)”, *Brasil de Fato*, 15 October 2019.

¹⁶ “[Bolsonaro diz que veto a obras culturais não é 'censura', mas sim 'preservar valores cristãos'](#)”, *O Globo*, 5 October 2019.

¹⁷ Lydia Smith, “[Brazil’s president Jair Bolsonaro just slashed funding for LGBT films and screenplays](#)”, *Pink News*, 22 August 2019.

¹⁸ Lily Wakefield, “[Brazil must reinstate funding for LGBT films because they 'deserve protection', judge rules](#)”, *Pink News*, 9 October 2019.

¹⁹ “[Jamaica bans movie with lesbian scenes featuring Dominican actress](#)”, *Dominica News Online*, 29 May 2013.

²⁰ Camille Royes, “[Rating a film — Jamaican-style](#)”, *Jamaica Observer*, 14 March 2012.

²¹ “[Haïti: le sénat interdit le mariage gay](#)”, *Tribune de Genève*, 3 August 2017.

North America (0)

Is there more in North America?

United States of America

In the United States of America, seven states (that make up around 17.4% of the total population) have enacted local laws—informally referred to as ‘No Promo Homo Laws’—which prohibit educators from discussing same-sex intimacy in an affirming or positive manner.²² For example, in **Alabama** and **Texas**, educators must emphasise that “homosexuality is not a lifestyle acceptable to the general public”.

In Arizona, educators cannot promote or portray homosexuality as a “positive alternative lifestyle”. In **South Carolina**, educators cannot discuss non-heterosexual relationships except in the context of sexually transmitted diseases. The other states with such laws are **Oklahoma**, **Louisiana** and **Mississippi**.

In March 2017, the governor of Utah signed SB 196, revising the state law that prohibited the “advocacy of homosexuality” in schools. Because less than half of the country’s population is affected by these laws, the US is not included in the list.

In April 2019, Arizona lawmakers voted in favour of **Senate Bill 1346**, which effectively barred a 1991 law that forbade HIV and AIDS instruction due to its alleged “promotion of a homosexual lifestyle”.²³

Asia (15)

1	 Afghanistan	1965 2006	Articles 32 and 33 of the Afghanistan Press Law (1965) prohibit the use of the press to incite others to commit an offense or to “seek depravity” (which includes the publication of articles which tend to debase public morals). Additionally, article 31(1) of the Law on Mass Media (2006) also prohibits the publication of matters “contrary to principles of Islam”. In 2014, the Afghan government threatened to prosecute a gay activist for using social media to advocate for LGBT issues.²⁴ In 2009, it was reported that a memoir by a gay Afghan man could not be distributed in the country.²⁵
2	 China	2015	Following the removal of a gay-themed web series, China issued the General Rules for Television Series Content Production banning content which “expresses or displays abnormal sexual relations or sexual behaviour, such as homosexuality”.²⁶ In 2017, a directive was circulated that prohibits content relating to homosexuality as well.²⁷ In 2018, China’s top social networking site, Weibo, announced a plan to censor gay-related content but reversed its decision after public backlash.²⁸ In October 2018, a novelist whose work included homoerotic content was sentenced to 10 years’ imprisonment for making and selling “obscene material” for profit.²⁹

²² “No Promo Homo” Laws (webpage), GLSEN (website), accessed 27 January 2019.

²³ KTAR.com, “Ducey signs law repealing teaching restriction considered anti-LGBTQ”, *KTAR News*, 11 April 2019.

²⁴ Nemat Sadat, “Afghanistan’s ‘coming out’ for LGBT rights can pave the road to peace”, *Public Radio International*, 30 April 2014.

²⁵ Tahir Qadiri, “Gay Afghan defies tradition to expose identity”, *BBC News*, 20 February 2013.

²⁶ Josh Horwitz et al., “China’s new television rules ban homosexuality, drinking, and vengeance”, *Quartz*, 3 March 2016.

²⁷ Steven Lee Myers and Amy Cheng, “66 things you cannot say on China’s internet”, *New York Times*, 24 September 2017.

²⁸ Wang Yanan, “China’s Weibo site backtracks on gay censorship after outcry”, *AP News*, 17 April 2018.

²⁹ Alison Flood, “Chinese writer Tianyi sentenced to decade in prison for gay erotic novel”, *The Guardian*, 20 November 2018.

3	 Indonesia	2016	In February 2016, the Indonesian Broadcasting Commission (KPI) released the Circular to All Broadcasting Companies on Effeminate Men which prohibits all broadcasting companies from representing sexual and gender diversity in men. In the same month, it also released a statement banning TV and radio programmes that “promoted” the LGBT lifestyle on the basis that it was in violation of the Broadcasting Program Standards (2012) in the name of protecting children.³⁰ In 2016, the Indonesian Ulema Council released a <i>fatwa</i> that rejected “all forms of propaganda, promotion and support towards lesbian, gay, bisexual and transgender (LGBT) in Indonesia”, with the Council’s chairman, Maruf Amin, declaring that “LGBT activities and campaign are forbidden in Islam and other Abrahamic religions.”³¹ Over the past few years, the Communications Ministry has been trying to ban same-sex dating applications on mobile phones albeit unsuccessfully.³²
4	 Iran	1986 2009	The Press Law contains a variety of limitations on material that may be considered offensive to the public. The government has used this law and the Law on Computer Crimes (Law No. 71,063 of 2009) to shut down newspapers and websites with content related to sexual orientation.³³
5	 Jordan	1988	Article 37 of the Press and Publication Law prohibits the publication of content that “encourages perversion or lead to moral corruption”. In July 2017, the Jordanian Audiovisual Commission blocked access to an LGBTQIA-inclusive online magazine on the basis that they had not applied for a license.³⁴
6	 Kuwait	1960	Article 21 of the Press and Publications Law prohibits the publication of anything that would insult the public morals or instigate others to violate the public order or to violate the laws or to commit crimes, even if the crime did not occur. This law was extended to include online publications pursuant to the Law Regulating Electronic Media (Law No. 8 of 2016). In 2017, the Ministry of Information prohibited the screening of a Disney film (<i>The Beauty and the Beast</i>) that contained a same-sex kiss.³⁵ In October 2019, the same Ministry gave a last-minute order to cancel a performance by a Korean pop band in Kuwait for its alleged “failure to adhere to local customs and values”.³⁶ While no further details were officially provided, several media outlets reported that the cancellation was due to a false rumor that all of the band’s members were gay.³⁷

³⁰ Fedina S Sundaryani, “Commission wants TV, radio free of LGBT”, *The Jakarta Post*, 14 February 2016.

³¹ “MUI Rejects All Forms of LGBT Promotion”, *Tempo.Co*, 18 February 2016.

³² Adi Renaldi, “Indonesia Wants to Ban Gay Dating Apps, Again”, *Vice News*, 5 February 2018.

³³ Iranian Queer Organization et al, “The Violations of the Economic, Social, and Cultural Rights of Lesbian, Gay, Bisexual, and Transgender (LGBT) Persons in the Islamic Republic of Iran: A Shadow Report Submitted to the Committee on Economic, Social, and Cultural Rights 50th Session (29 April – 17 May 2013)”, March 2013, 18 – 19.

³⁴ “Jordan blocks access to LGBTQ online magazine”, *Committee to Protect Journalists*, 8 August 2017.

³⁵ Kate Feldman, “‘Beauty and the Beast’ pulled from theaters in Kuwait by censors”, *New York Daily News*, 20 March 2017.

³⁶ “The reason why the Korean band D-Crunch was not allowed to perform in Kuwait”, *Arab Times*, 28 October 2019.

³⁷ “Because You’re GAY! K-Pop Band ‘D-Crunch’ Got Kicked off Stage in Kuwait. Watch Their Devastated Reaction!”, *Al Bawaba*, 28 October 2019.

7	 Lebanon	1943	Article 532 of the Penal Code prohibits the possession, making, or distributing of materials that may incite others to immorality. In May 2018, an organiser of Beirut Pride was detained for organising a demonstration that incite immorality.³⁸ In January 2019, the Ministry of Telecom reportedly ordered a ban on Grindr (an online dating app mostly used by gay men).³⁹
8	 Malaysia	2018	In 2010, the Film Censorship Board (LPF) relaxed its ban on “homosexual content” pursuant to the Film Censorship Act, provided that gay characters became straight at the end.⁴⁰ In 2018, in a response to a parliamentary question and following a national controversy over a gay kiss in a Disney film, the deputy home minister reiterated that LGBT content will be banned from broadcast unless there were “lessons to be learnt”, pursuant to guidelines set by the LPF.⁴¹
9	 Oman	1984	Articles 25 and 28 of the Publications and Publishing Law (1984) prohibit the publication of anything that “disrupt the public order or call people to embrace or promote anything deemed in contravention of the principles of the Islamic religion” or “that might prejudice the public code of conduct, moral norms or divine religions”. Article 42 of the 2007 Executive Regulations promulgated under the Telecommunications Regulation Law prohibits a person from using telecommunication services that contain data or information which are “contrary to the public ethic system, infringe the religious practice or upset others or promote any subject breaching the law”. In September 2013, the newspaper <i>The Week</i> was shut down for one week after printing an article about the country’s LGBT community.⁴² In 2015, the Ministry of Information was purportedly taking legal action against a French radio station based in Oman that hosted a gay Omani activist who spoke about the challenges of being gay in the country.⁴³
10	 Pakistan	2016	Section 34 of the Prevention of Electronic Crimes Act (2016) grants the Pakistan Telecommunication Authority the power to remove or block access to content if it considers it necessary in the interest of the glory of Islam, public order, decency, or morality. Prior to this law, the government has already been banning LGB-related content online and in the media.⁴⁴

³⁸ Hugo Lautissier, “Beirut Pride’s Hadi Damien Q&A: Lebanon’s LGBT movement is ‘growing’”, *Middle East Eye*, 19 May 2018.

³⁹ Samuel Leighton-Dore, “Grindr has reportedly been banned in Lebanon”, *SBS News*, 23 January 2019.

⁴⁰ “It’s OK to be gay in Malaysian movies - as long as you go straight”, *Herald Sun*, 22 March 2010.

⁴¹ “Censorship board to snip LGBT elements, scenes from films, dramas”, *FMT News*, 11 December 2018.

⁴² “Oman’s government sues newspaper over story about gays”, *Reuters*, 5 September 2013; “**Oman: Freedom of the Press 2014**”, *Freedom House Website*.

⁴³ Fahad Al Mukrashi, “Interview with gay Omani lands radio station in hot water”, *Gulf News*, 29 October 2015.

⁴⁴ Zofeen T Ebrahim, “Pakistan’s gay website ban reflects bigotry”, *Index on Censorship*, 15 October 2013; “**The gay kiss that was censored in Pakistan**”, *GayTimes*, 1 February 2016.

11	 Qatar	2004	Article 296 (3)-(4) of the Penal Code (2004) states, “One is convicted to no less than a year and no more than three years in prison in case of (3) Leading, instigating or seducing a male anyhow for sodomy or immorality and (4) Inducing or seducing a male or a female anyhow to commit illegal or immoral actions”. In 2018, it was reported that LGB-content were censored in international newspapers.⁴⁵
12	 Saudi Arabia	2007	Article 6 of the Anti-Cyber Crime Law (2007) prohibits the production, publication and promotion of online content or webpages that the government deems to be pornographic or in violation of religious values or public morals or order. For instance, in January 2018, Saudi police arrested a group of men who had uploaded a video of a “gay wedding”.⁴⁶
13	 Singapore	2016	The Info-communications Media Development Authority promulgated a series of Codes of Practices for broadcast media, radio, films and the internet, all of which prohibit the positive portrayal or advocacy of homosexuality and lesbianism. The authorities may also censor the media or impose age restrictions based on these regulations and have done so many times.⁴⁷
14	 Syria	1948	Article 208 of the Syrian Penal Code prohibits offensive public utterances in writing, graphics, images, etc. Prior to the civil war, it was reported that films on LGBT content were censored.⁴⁸
15	 United Arab Emirates	2003	Article 3(5)(4) of Law on Combating Cybercrimes (Law No. 5 of 2012) criminalises the condoning, provoking or promoting of sin through the computer network or any information technology means or a website. The Telecommunications Regulatory Authority also blocks websites that “promote destructive principles such as homosexuality” as part of its Internet Access Management Regulatory Policy. In 2018, the Knowledge and Human Development Authority of the Dubai Government banned a textbook used in a private international school for “violating the religious and traditional norms in the UAE” because it featured a family with two mothers.⁴⁹

⁴⁵ Nick Duffy, “[Qatar is censoring LGBT news coverage ahead of 2022 World Cup](#)”, *Pink News*, 21 July 2018.

⁴⁶ “[Saudi Arabia police arrest men over 'gay wedding' video](#)”, *BBC News*, 9 January 2018.

⁴⁷ Yip Wai Yee, “[Singapore cuts Obama’s LGBT comments on Ellen](#)”, *The Straits Times*, 25 February 2016; “[Singapore censor fines TV station for showing gay family](#)”, *The Sydney Morning Herald*, 25 April 2008.

⁴⁸ “[Syria: Ban on TV series and films about homosexuality](#)”, *Free Muse*, 23 May 2012.

⁴⁹ “[Dubai Bans Private School Book on Homosexual Parents](#)”, *Albawaba The Loop*, 9 October 2018.

16	 Yemen	1990	Article 103 of the Law on the Press and Publications (Law No. 25 of 1990) prohibits the publication or dissemination of “anything which undermines public morals”. In 2004, a court sentenced three journalists to imprisonment for publicly discussing homosexuality and interviewing men jailed for homosexuality.⁵⁰ In 2012, a government-funded cultural magazine, <i>Al Thaqafiya</i>, was shut down for publishing a review of an Egyptian film that contained a scene depicting lesbian sex.⁵¹
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Is there more in Asia?

Kazakhstan	Kazakhstan’s Constitutional Council announced on May 26, 2015, that a proposed legislation on “propaganda of non-traditional sexual orientation” is unconstitutional.⁵² On a more positive note, on July 30, 2019, the Supreme Court of Kazakhstan ruled that a Facebook user violated the privacy rights of two women after posting, without their consent, a video of the women kissing to solicit hostile reactions from other users. This ruling invalidated a lower court’s decision that justified the public shaming on the grounds that what was shown in the video was against the “moral foundations of society”.⁵³
Kyrgyzstan	In 2014, the government of Kyrgyzstan had introduced a bill that copied Russia’s legislation against “gay propaganda”, with additional jail sentences for people who “promote homosexual relations” through the media.⁵⁴ The bill had a second reading in June 2015 with little discussion, no questions asked of the 28 MPs who sponsored it, and 90 votes in favour. However, in May 2016, the Parliamentary Committee on Law, Order and Fighting Crime withdrew the draft legislation for further consideration, and to date, it has not been put back before the parliament.⁵⁵
Lebanon	In May 2019, OGERO (the Lebanese state’s fixed network owner & maintainer) blocked Grindr, a popular dating app for gay men, on the orders of the Public Prosecutor’s Office. Shortly after, it was announced that all internet service providers in the country would follow suit.⁵⁶ The ban on Grindr came after a similar but more short-lived block in January 2019.⁵⁷ Lebanese authorities acknowledged their decision to ban Grindr but never provided an explanation for it. It is unclear whether the ban is still enforced as of November 2019.

Europe (3)

1	 Belarus	2017	The Bill on the Protection of Children from Information Harmful to their Health and Development was passed and came into effect in July 2017 as Law No. 362-ZZ. Similar to Russia’s propaganda law, Article 37 prohibits the dissemination of information that “discredits the institution of family and marriage”.⁵⁸
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⁵⁰ “Journalists convicted for gay report”, *Al Jazeera*, 19 May 2004.

⁵¹ “Yemeni Magazine Dares Exploit a Fine Cinematic Work to Promote Radical Gay Agenda”, *Queerty*, 30 April 2010.

⁵² Joanna Lillis, “Kazakhstan Strikes Down ‘Gay Propaganda’ Law After Olympics Outcry”, *Eurasianet*, 27 May 2015.

⁵³ Kyle Knight, “Kazakhstan Supreme Court Upholds Privacy Rights”, *Human Rights Watch*, 24 September 2019.

⁵⁴ Juliet Jacques, “Fear and loathing in Kyrgyzstan: how the LGBTQI community is fighting back against rising discrimination”, *Open Democracy*, 20 September 2018.

⁵⁵ Amnesty International, *Less Equal: LGBTI Human Rights Defenders in Armenia, Belarus, Kazakhstan, and Kyrgyzstan* (2017), 32.

⁵⁶ “Lebanon’s Ban of Gay Dating App ‘Grindr’ Sets Dangerous Precedent”, *Al Bawaba*, 24 January 2019.

⁵⁷ Richard Hall, “Lebanon blocks Grindr in latest attack on LGBT+ community”, *The Independent*, 28 May 2019.

⁵⁸ “Less Equal: LGBTI Human Rights Defenders in Armenia, Belarus, Kazakhstan, and Kyrgyzstan” (Amnesty International, December 2017), 24.

2	 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.
3	 Russian Federation	2013	Federal Law No 135-FZ which prohibits the promotion of non-traditional sexual relations among minors has been used to prosecute a range of people since it was enacted, including activists,⁵⁹ websites and the media.⁶⁰ ► For more information on this law, read <i>"The Censorship "Propaganda" Legislation in Russia"</i> by Alexander Kondakov at page 213 of the 13th edition of <i>State-Sponsored Homophobia</i>. In March 2019, it was reported that a theatre festival was banned in the Far East region of Komsomolsk-on-Amur for promoting "hatred against men and non-traditional family relations". The festival organizer and the underage actors in her collective were questioned by a police anti-extremism unit. Local reports stated that authorities were alerted by the use of the words "blue" and "pink" in one of the plays' titles, as these colours are colloquially used as synonyms of LGBTQ community in the country.⁶¹ On July 1, 2019, an LGBT activist was charged with spreading "homosexuality propaganda among minors" because of his participation in various events related to LGBT rights in Russia.⁶²

Is there more in Europe?

Armenia	In Armenia, an attempt was made in 2013 to introduce an amendment to the Administrative Offences Code to impose fines for "propaganda of non-traditional sexual relations" but subsequently withdrawn. ⁶³ In October 2018, a similar law was introduced in the legislature. ⁶⁴
Hungary	The Hungarian government issued a decree in 2018 to revoke accreditation and funding for gender studies programmes at the two universities that offer them in the country. This was because the Hungarian government believed that there are only two genders and did not wish to spend public funds in this area. ⁶⁵
Latvia	The Latvian parliament successfully passed amendments to the Education Law in 2015 which obliges education institutions to provide students with 'moral' education that mirrors constitutional values, especially regarding marriage and family. ⁶⁶ It had previously failed to enact an anti-gay propaganda law in 2013, which aimed to prohibit children as participants or spectators of events aimed at the promotion of LGBT relations. ⁶⁷

⁵⁹ "Russian Court Fines Children-404 Founder for Violating LGBT Propaganda Law", *Human Rights First*, 23 January 2015.

⁶⁰ Trudy Ring, "LGBT Website Gay.ru Blocked Within Russia", *The Advocate*, 2 April 2018.

⁶¹ Dorian Batycka, "Russian Authorities Cancel Theatre Festival Under "Gay Propaganda" Law", *Hyperallergic*, 19 March 2019.

⁶² "LGBT Activist From Yaroslavl is Accused of "Propaganda of Homosexual Relations Among Minors"", *Russian LGBT Network*, 2019.

⁶³ "Less Equal: LGBTI Human Rights Defenders in Armenia, Belarus, Kazakhstan, and Kyrgyzstan" (Amnesty International, December 2017), 20.

⁶⁴ Ani Meijumyan, "Ahead of elections, Armenia's opposition attacks LGBT right", *Eurasianet*, 31 October 2018.

⁶⁵ "Hungary to stop financing gender studies courses: PM aide", *Reuters*, 14 August 2018.

⁶⁶ "Saeima approves lessons in 'constitutional morality' for schoolchildren", *Latvian Public Broadcasting*, June 18, 2015.

⁶⁷ Anhelita Kamenska, "1705-LV-9 Attempts to ban homosexual propaganda", *European Network of Legal Experts in the Non-Discrimination Field*, 25 November 2014.

Moldova	In 2013, the Moldovan government first enacted then repealed an anti-gay propaganda law inspired by the Russian law in its bid to join the European Union. ⁶⁸ Two bills were tabled in 2016 and 2017 to ban “propaganda of homosexual relations among minors” and censor public distribution of information about non-heterosexual relationships and identities and remain under legislative consideration. ⁶⁹
Poland	In March 2017, draft propaganda legislation was proposed in Poland to ban homosexual people from the teaching profession. ⁷⁰ The proposed bill was never voted on due to a change in the party compositions of the Polish parliament following new elections. In late 2018, the Polish president said that he would “seriously” consider a law banning “homosexual propaganda” in schools. ⁷¹
Turkey	In Ankara, a ban on LGBT public events remains in force since November 2017, when Turkey was declared under state of emergency. ⁷² However, the ban was not lifted after situation was normalized in July 2018. On the contrary, the Ankara governor’s office informed law enforcement and other authorities that it remained in force. Human Rights Watch indicated that this ban means that all public LGBTI-related discussions are banned in Ankara province. ⁷³
Ukraine	Ukraine had tried to “protect” children from “propaganda” about homosexual relations with Draft Law 1155 and Draft Law 0945. However, after international pressure, they were removed from parliamentary consideration in April 2014. ⁷⁴

Oceania (0)

Is there more in Oceania?

Samoa	In 2019 the movie “Rocketman” was censored in Samoa. Responding to questions from a media outlet, the Ministry of Justice and Courts Administration Principal Censor of Samoa explained that the movie contained “acts that are not good for public viewing, and against the law”. ⁷⁵
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⁶⁸ Joseph Patrick McCormick, “Moldova overturns anti-gay ‘propaganda’ law with hopes of joining EU”, *Pink News*, 14 October 2013.

⁶⁹ “Moldova’s LGBT Community Faces a Russia-Inspired Media Crackdown”, *World Politics Review*, 16 August 2017.

⁷⁰ “Expression Abridged: A Legal Analysis of Anti-LGBT Propaganda Laws”, *IGLYO*, April 2018, 13.

⁷¹ Patrick Kelleher, “Polish president Andrzej Duda considering ‘gay propaganda’ ban”, *Pink News*, 11 November 2018.

⁷² “Yasaklama Kararına İlişkin Basın Duyurusu” (Press Release on Prohibition Decision), *Governor of Ankara (Website)*, 19 November 2017.

⁷³ “Turkey: End Ankara Ban on LGBTI Events”, *Human Rights Watch*, 14 February 2019.

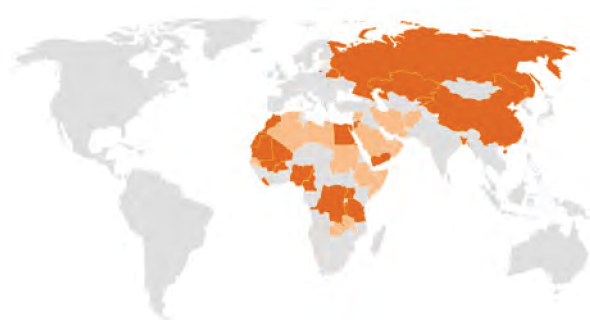
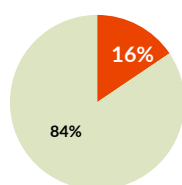
⁷⁴ “Expression Abridged: A Legal Analysis of Anti-LGBT Propaganda Laws”, *IGLYO*, April 2018, 13.

⁷⁵ “Principal Censor stands by decision to ban *Rocketman*”, *Samoa Observer*, 10 June 2019.

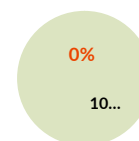
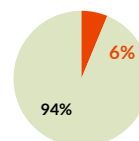
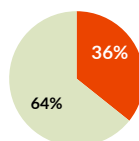
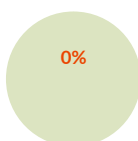
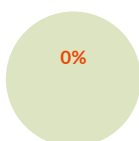
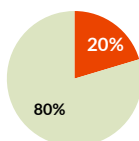
Legal Barriers to the Registration or Operation of Sexual Orientation-Related CSOs

Highlights

41 UN Member States
21% UN Member States



AFRICA	LAC	NORTH AMERICA	ASIA	EUROPE	OCEANIA
20 / 54	0 / 33	0 / 2	18 / 42	2 / 48	1 / 14



Introduction

The ability of sexual orientation-related (SOR) civil society organisations (CSOs) to formally register and operate in a country allows them to more effectively serve and advocate for SOR issues.

Registration refers to the ability of organised groups to be recognized as independent legal entities under the law, which would allow them to receive funding and conduct their activities formally. In this section, a SOR CSO is defined as one that is *explicitly* sexual orientation-related, whether in its name or registration documents. While some NGOs may achieve registration by using non-explicit names or descriptions (e.g. as “human rights” or “sexual health” groups), they would not be regarded as SOR CSOs for the purpose of ascertaining the existence of legal barriers to registration.

Additionally, even if SOR CSOs may be able to get formal registration, they may also be prevented from effectively conducting their activities and advocacy. In this section we also include States with laws that may seriously interfere or obstruct the work of SOR CSOs. This may include legal restrictions on funding or the types of activities that are permitted.

What does International Human Rights Law say?

Everyone has the right to freedom of peaceful assembly and association, including for the purposes of peaceful demonstrations, regardless of sexual orientation, gender identity, gender expression or sex characteristics.

Persons may form and have recognised, without discrimination, associations based on sexual orientation, gender identity, gender expression and sex characteristics, and associations that distribute information to or about, facilitate communication among, or advocate for the rights of, persons of diverse sexual orientations, gender identities and expressions and sex characteristics.

Yogyakarta Principle 20

Methodology Note

Mapping the legal barriers to the registration or operation of sexual orientation-related civil society organisations can be quite challenging. Unlike other laws, which may be more straightforward in their wording or in its effects, the barriers that usually prevent the registration or operation of organisations can be more difficult to trace in the abstract.

Therefore, in order to confirm the existence of a legal barrier, additional information needs to be gathered with regard to the official response or explanation given to a failed attempt to register an organisation. In this regard, this section does not pretend to be exhaustive. Other countries with legal barriers may be included if more information becomes available.

In this section ILGA lists States in two tiers:

- **TIER 1: confirmed legal barriers.**

ILGA has found that there may be an explicit prohibition against SOR activities or associations, where the law specifically forbids SOR NGOs from registering. Although this kind of prohibitions exist, they are quite rare.

Most cases include countries with NGO laws that prohibit the registration of groups that engage in illegal, immoral or “undesirable” activities or purposes. These provisions may be interpreted to prohibit SOR NGOs, what is often the case in countries where consensual same-sex sexual acts are criminalised. Tier 1 countries are those for which ILGA was able to corroborate that local groups have been actually denied registration of a SOR CSO based on a provision of law. Reference to the source in which the rejection was documented is always provided.

- **TIER 2: legal barriers very likely to exist.**

This tier includes countries for which ILGA was not able to find evidence of official rejection but where criminalisation of same-sex intimacy, restrictive NGO laws and generalised hostility (state-sponsored or otherwise) make it very unlikely that a request for registration will be accepted.

Lack of evidence of official rejection can be attributed to various reasons. First, in several countries no SOR CSO or civil society groups are known to exist on the ground. In others, for various reasons (exposure, governance, interference, cost, etc.), groups expressly choose not to pursue NGO status, and opt for other creative strategies to be able to operate at the policy level.

For example, in countries with the death penalty or harsh penalties for same-sex consensual acts, where activists may find it too dangerous even to organise or come out, it is highly likely that any attempt at registration will be denied. Additionally, when the legal terminology used to criminalise same-sex intimacy is the same or similar to that used in the provisions on CSO registration, the likelihood of a legal barrier increases.

Additionally, as most laws on NGOs and associations prohibit the registration of organisations with “illegal purposes”, the criminalisation of same-sex activity can be indicative of a legal barrier to register a SOR CSO. However, this cannot be taken as a hard and fast rule given that in many countries that still criminalise, local courts have argued that advocating for the rights of LGBT people cannot be equated with the sexual acts that fall under sodomy laws. Therefore, not every criminalising country is included in this second tier.

Africa (12)

TIER 1: CONFIRMED LEGAL BARRIERS

1		Burkina Faso	2015	Article 16 of Law 064-2015/CNT on freedom of association allows authorities to reject the registration of groups that are based on a cause or object that is “illicit, or contrary to laws and good morals”. Repeated attempts by LGBT organizations to register with the Ministry of Territorial Administration, Decentralization, and Security were not approved though no explanation was provided for the refusals.¹
2		Burundi	1992	Decree-Act No. 1/11 of 18 April 1992² allows the authorities to deny registration when the object of the association is contrary to the law, public order or morality.³ Activists have reported being unable to register their groups except when they focus on HIV/AIDS issues.⁴
3		Cameroon	1999	Law no 99/014 of 22 of December 1999⁵ regulates NGOs in Cameroon, which are required to pursue aims that are in the “public interest”.⁶ Groups report that they face obstacles in the process of obtaining legal recognition and some groups have had to exclude any reference to LGBT people to become legally registered.⁷
4		Democratic Republic of Congo	2001	Article 3 of the Decree-Law No. 004 of 20 July 2001 requires organisations seeking registration to undergo a two-tiered process, with legal personality granted by the Minister of Justice after a favourable opinion is received from the ministry responsible for the sector in which the organization is engaged. According to a joint submission by 6 SOR NGOs to the 2017 UPR, most organisations have been denied registration when they make reference to LGBT persons in their constitutions.⁸
5		Egypt	1964 2017	Article 14(2) of The Law of Associations and Other Foundations Working in the Field of Civil Work (Law No. 70 of 2017) prohibits associations from any “activities that result in destabilizing the national unity, national security, public law and order, and public morals”. As a result of hostile state and social attitudes, groups have not been able to register their organisations officially and often have to work secretly and anonymously to avoid state persecution.⁹

¹ ISHR, *Briefing Paper for Universal Periodic Review: The Situation of Human Rights Defenders in Burkina Faso*, October 2017.

² No online text of law could be located.

³ *Report of the Special Rapporteur on the situation of human rights defenders on his mission to Burundi*, A/HRC/31/55/Add.2, 30 December 2015, para 30.

⁴ MOLI et al., *The Status of Lesbian, Gay, Bisexual and Transgender Rights in Burundi: A Shadow Report* (2014), 20; Marc Epprecht, “Sexual Minorities, Human Rights, and Public Health Strategies in Africa” *African Affairs* 111, 443 (2012): 223–243.

⁵ No online text of law could be located.

⁶ “Country Reports: Sub-Saharan Africa” *The International Journal of Not-for-Profit Law* 2, no 3 (March 2000).

⁷ Acodevo et al., *The Violations of the Rights of Lesbian, Gay, Bisexual, and Transgender Individuals in Cameroon* (2017), 14.

⁸ MOPREDS et al., *Human Rights Violations Against LGBT People in the Democratic Republic of the Congo (DRC)* (2017), 16.

⁹ MS Mohamed, “Sexuality, Development and Non-conforming Desire in the Arab World: The Case of Lebanon and Egypt”, *Sexuality, Poverty, and Law Evidence Report No 158*, Institute of Development Studies, October 2015; “Underground LGBTQ Group Defies Rough Egyptian Reality” (webpage), *Arab Foundation for Freedoms and Equality* (website), March 29, 2016.

6	 Liberia	1977	Section 21(1) of the Associations Law of 1977 provides that a non-for-profit corporation may be formed for “any lawful purposes”. In November 2016, the Trans Network of Liberia (TNOL) sought registration as a legal entity with the Liberia Business Registry but was refused on the basis that its articles of incorporation include activity which is not allowed in Liberia.¹⁰
7	 Mali	2004	Article 4 of the Law on Associations (Law No. 04-038 of 5 August, 2004) prohibits the recognition of associations that are based on a purpose that is contrary to law and morality. In June 2005, the governor of the District of Bamako cited this law to refuse official recognition of a gay rights association.¹¹
8	 Mauritania	1964	Article 3 of Act No. 64-098 of 9 June 1964 on associations¹² limits the freedom to legally engage in activities unless prior authorisation has been granted from the Ministry of the Interior. A request for official recognition of the Nouakchott Solidarity Association, the country’s only LGBT group, has been denied by local authorities.¹³
9	 Morocco	1958 2005	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” or “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. Akaliyat, a Moroccan organization, attempted to register in 2016 but authorities refused even to take the application and hustled those applying out of the registration office.¹⁴
10	 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) impose a 10-year prison sentence on anyone who “registers, operates or participates in gay clubs, societies organization” or “supports” the activities of such organisations. In 2018, a group called “Lesbian Equality and Empowerment Initiatives” lost their appeal challenging the refusal of the Corporate Affairs Commission (CAC) to register them under the Companies and Allied Matters Act.¹⁵ The judge held that the group’s name was “in collision with an existing and operational law”, referring to the Same-sex Marriage (Prohibition) Act).

¹⁰ Stop AIDS in Liberia et al, “Human Rights Violations Against Lesbian, Gay, Bisexual and Transgender (LGBT) People in Liberia” (2018), 6.

¹¹ United States, Department of State, *Mali 2006 Human Rights Report* (2007).

¹² No online text of law could be located.

¹³ “Germany keeps blocking activist training — this time for a Mauritanian”, *Erasing 76 Crimes*, 20 February 2017.

¹⁴ “Audacity in Adversity: LGBT Activism in the Middle East and North Africa”, *Human Rights Watch (website)*, 1 May 2018.

¹⁵ Ikechukwu Nnochiri, “Court throws out suit seeking registration of lesbian group”, *Vanguard News (Nigeria)*, 18 November 2018.

11	 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". Sexual Minorities Uganda's (SMUG) application for registration was rejected on the ground that its name and objectives were unacceptable because same-sex sexual relations were criminalised in the country.¹⁶ They sued the Uganda Registration Services Bureau in 2016 and the judgment is pending.¹⁷ https://eastafricamonitor.com/uganda-bans-thousands-of-charities-in-crackdown/
12	 Zambia	1958	Section 8 of the Societies Act 1958 empowers the Registrar of Societies to refuse to register any society that is prejudicial to or incompatible with the peace, welfare or good order in Zambia. In 1998, the Registrar of Societies refused to entertain activists who tried to register their group, Lesbians Gays and Transgender Association (LEGATRA), and said that he could not register the group "any more than I could a Satanic organisation".¹⁸ While there are several LGBTI human rights organisations, they operate underground and strategically negotiate the dangerous legal landscape.¹⁹ In 2016, several UN Special Procedures²⁰ expressed concern regarding undue delays, the subsequent refusal to register and arrests of civil society and defenders in the registration of the Engender Rights Centre for Justice on grounds of "soliciting for immoral purposes".²¹ In October 2019, a Member of Parliament raised a motion seeking to ban political parties and organizations that support LGBT rights in Zambia. The motion eventually expired because of time.²²
TIER 2: LEGAL BARRIERS VERY LIKELY TO EXIST			
13	 Algeria	2012	The Law on Associations (Law 12-06 of 2012) affords the government broad discretion to refuse to register an association with an object that is contrary to "good mores" (<i>bonnes mœurs</i>). The title of the section of the Penal Code that criminalises "homosexual acts" uses the same terminology. The law also imposes heavy fines and criminal penalties for members or leaders of informal associations.²³ Local LGBT groups have reported that gathering publicly or registering an organisation under this legal framework is

¹⁶ "SMUG v URSB Returns to High Court on 28 April 2017", *Sexual Minorities Uganda (webpage)*, 24 March 2017.

¹⁷ "Update on SMUG v URSB Court Case" *Sexual Minorities Uganda (webpage)*, 29 May 2017.

¹⁸ Scott Long et al, *More Than a Name: State-Sponsored Homophobia in Southern Africa* (Human Rights Watch, 2003), 46.

¹⁹ Lily Phiri, *Canaries in the coal mines: an analysis of spaces for LGBTI activism in Zambia* (The Other Foundation, 2017), 18.

²⁰ Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders.

²¹ For more information, see [ZMB 4/2015](#).

²² "MP moves Motion in Parliament to Ban Political Parties that support Gay, Lesbian, Bisexual and Transgender rights", *Lusaka Times*, 10 October 2019

²³ The Law on Public Meetings and Gatherings (**Law 91-19 of 1990**), contributes to a repressive legal environment. Article 9 of this law 91-91 prohibits any gathering that opposes "good mores" (*bonnes mœurs*). The title of the section of the Penal Code that criminalises "homosexual acts" uses the same terminology.

			impossible. ²⁴ Human rights activists have also expressed the fear that supporting or advocating LGBT rights will “result in the immediate withdrawal of accreditation”. ²⁵
14	 Ethiopia	2009	In Ethiopia, Article 69 of the Charities and Societies Proclamation Law (Law No. 621/2009) prohibits the registration of any group that is contrary to “public morality” or is illegal. This has led activists in Ethiopia to believe that they cannot be legally registered though it has not been tested. ²⁶
15	 Libya	2016	Various articles within the Law of on associations and non-profit foundations of 21 April 1928 (amended 2016) could make the registration of a SOGI-based NGO virtually impossible.
16	 Malawi		In Malawi, organisations working on LGBT issues were able to receive legal status after they strategically chose to register as a human rights organisation and used non-descriptive names to avoid additional scrutiny. ²⁷ Even then, they have been faced with significant obstacles to operate: in April 2011, the Ministry of Information and Civic Education held a string of press conferences to “expose” a funding proposal for SOGI issues it had ‘unearthed’, which had been submitted to the Norwegian Embassy. The Council for Non-Government Organisations in Malawi (CONGOMA) publicly denounced LGBT activism in May 2011 after a meeting with the President. ²⁸
17	 Senegal		In Senegal, <i>Prudence</i> is the only SOR NGO to have obtained registration with explicit language on sexual minorities in their by-laws. However, they are hesitant to renew their registration, fearing it could be rescinded when the documents are resubmitted. ²⁹ Some activists have also faced police harassment though their charges for “establishing an illegal organization” were eventually overturned on appeal. ³⁰
18	 Somalia	2010	In Somalia, the danger of coming out makes it practically impossible to even attempt registration though it is highly unlikely that registration would be successful anyway. Article 10 of the Law on Welfare (or Charitable) Non-Governmental Organisations, (Law No. 43/2010) which imposes a duty on NGOs to “respect the culture and belief of the people” while Article 11 prohibits NGOs from engaging in any act that violates the country’s laws. A community group of Somali activists based in Ethiopia has not been able to attempt registration due to the dangerous climate in the country. ³¹
19	 Sudan	2006	In Sudan, the threat of the death penalty coupled with a rigorous registration process mandated under Section 8(1) of the

²⁴ Alouen, *Préoccupations de l'Association Alouen concernant la Situation du Droit à la Non-Discrimination et à l'Égalité : Cas des LGBTI Algérien-ne-s* (2017); Sarah Jean-Jacques, “Gay and Lesbian Mobilisation in Algeria: the Emergence of a Movement”, *Muftah*, 15 December 2014.

²⁵ *Summary of other stakeholders' submissions on Algeria*, A/HRC/WG.6/27/DZA/3, 20 February 2017, para. 15.

²⁶ “Interview with Beki Abi of DANA Social Club, Ethiopia” (webpage), *Institute of Development Studies* (website), 24 June 2016.

²⁷ Ashley Currier and Tara McKay, “Pursuing Social Justice through Public Health: Gender and Sexual Diversity Activism in Malawi”, *Critical African Studies* 9, No. 1 (2017).

²⁸ Undule Mwakasungula, “The LGBT situation in Malawi: an activist perspective” in *Human Rights, Sexual Orientation and Gender Identity in The Commonwealth*, Corinne Lennox, Matthew Waites (eds.) (London: University of London, 2013).

²⁹ Mariam Armisen, “We Exist: Mapping LGBTQ Organizing in West Africa” (Foundation for a Just Society), 19.

³⁰ “Senegal: Nine Released, Charges Dropped”, *amfAR Website*, 29 April 2009; Robbie Corey-Boulet, “5 women arrested under Senegal's anti-gay law”, *Yahoo News*, 13 November 2013.

³¹ Faro, “Death hangs over Somali Queers”, *Behind The Mask* (website), 3 May 2004.

		Voluntary and Humanitarian Work (Organization) Act, 2006 makes it highly unlikely that an SOR CSO would be registered.	
20	 Tanzania	2016	Though there are existing registered organizations working on issues related to sexual orientation, in August 2016, the justice minister announced controversial new plans to suspend the registration of any charity or non-governmental organisation that supports homosexuality.³² In the same year, the health ministry shut down community-based HIV programmes that served men who have sex with men.³³ There has been continued threats of violence against LGBT people and a taskforce was set up in late 2018 to “hunt” LGBT people, which have forced activists to hide for their own safety.³⁴

Is there more in Africa?

Kenya	In March 2019, the Court of Appeal of Kenya ordered the Non-Governmental Organizations (NGOs) Coordination Board to register the National Gay Lesbian Human Rights Commission (NGLHRC) as a non-profit organization. However, this decision could still be appealed by the government in the Supreme Court. ³⁵
Mozambique	In 2017, the Mozambique Constitutional Council ruled in favour of an LGBT advocacy group after it had been refused registration on the basis of Law on Associations (Law No. 8/91) and held that the government's interpretation of the law violated the principle of non-discrimination under the Constitution. ³⁶
Tunisia	In May 2019, the Court of Appeal upheld a 2016 ruling in favour of LGBT rights group Shams after the government had appealed against the decision that it should register the organisation. ³⁷ This followed another attempt to shut down the group on the basis of sharia law in April 2019, ³⁸ and it should mean that LGBT-related objectives are not any more a legal ground for refusing registration to SOR CSOs.

Latin American and the Caribbean (0)

Is there more in LAC?

Cuba	Even though the Cuban Law on Associations (Law No. 54) guarantees the constitutional right to freedom of association, the actual implementation of the law presents its nuances. The largest groups of LGBTI activism in the country, although without legal personality, work under the umbrella of the state-run National Center for Sex Education (CENESEX) and have relative autonomy to draw their bases and objectives, and even in some cases are already members of ILGA. The main limitation to the creation of new associations has to do with alignment with governmental directives.
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³² “‘Seeds of hate’ sown as Tanzania starts LGBT crackdown”, *The Guardian*, 8 August 2016.

³³ “Now Tanzania also ends vital HIV programmes targeting gay men”, *Mamba Online*, 4 November 2016.

³⁴ Nick Charity, “Tanzania taskforce to start ‘witch hunt’ to round up and imprison LGBT community”, *Evening Standard*, 1 November 2018.

³⁵ Nita Bhalla, “Victory for Kenya's LGBT+ community as charity wins right to be recognized”, *Reuters*, 22 March 2019.

³⁶ Constitutional Council, *Judgment No. 07/CC/2017*, 31 October 2017.

³⁷ Eilizia Volkmann, “Tunisian court victory boosts push to end gay sex ban”, *Reuters*, 21 May 2019.

³⁸ Saeed Kamali Dehghan, “Tunisia invokes sharia law in bid to shut down LGBT rights group”, *The Guardian*, 30 April 2019.

Haiti

A pending bill aims to prohibit public demonstrations of “support for homosexuality”, which would severely restrict the freedom of association and speech among LGBT activists.³⁹ In 2016, the Massimadi arts and film festival that celebrates Haiti’s Afro-Caribbean LGBT community was shut down by the commissioner of Port-au-Prince on the basis that he was protecting public morals.⁴⁰

Venezuela

The UN High Commissioner for Human Rights has expressed concern about recent actions taken to pass a law that criminalizes activities of domestic human rights organizations that receive funds from abroad. She stressed that “this law, if passed and applied, would further reduce the democratic space”.⁴¹

Asia (18)**TIER 1: CONFIRMED LEGAL BARRIERS**

1	 Bangladesh	1860	Only specific types of societies may be registered under the Societies Registration Act (1860) pursuant to Section 20 and activists have reported that registration of their groups have been rejected on the basis of the criminalisation of same-sex sexual conduct. ⁴² In addition, due to threats to the safety of activists by state officials and citizens, activists have been unable to complete the registration process which requires them to meet with government officials. ⁴³
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³⁹ “In Haiti, Slight Progress for LGBT Rights Seen as Victory”, VOA, 14 August 2018.

⁴⁰ “Haiti LGBT festival cancelled due to threats”, BBC World, 28 September 2016.

⁴¹ Human Rights Council, *Oral Update on the Human Rights Situation in the Bolivarian Republic of Venezuela: Statement by Michelle Bachelet, UN High Commissioner for Human Rights*, 42nd Session, 9 September 2019.

⁴² United States Department of State, *Bangladesh 2017 Human Rights Report* (2017).

⁴³ Roopbaan, *Submission to 30th Universal Periodic Review* (2018), 6.

2  China	1998 2016 2017	Article 11 of the Interim Regulations on the Registration and Administration of Private Non-enterprise Units confers a discretion on the relevant authorities to approve the registration of associations, of which one ground is violation of Article 4. Article 4 specifies that such groups shall not endanger the “social interest” as well as the lawful rights and interest of other organizations and citizens, and shall not breach “social ethics” and “morality”. While some NGOs have been successful in registering, others have reported being rejected because their names or activities explicitly referred to issues on sexual orientation.⁴⁴ Furthermore, under the Charities Law (2016) only charitable organisations certified by the government are permitted to conduct public fundraising and uncertified individuals may be severely penalised for doing so. Also, in January 2017 the Law on the Management of the Activities of Overseas NGOs within Mainland China came into force, severely impeding funding capabilities. These restrictions severely restrict the ability of CSOs, particularly those that have had their registration rejected, to raise funds and organise.⁴⁵ In January 2019, the Municipal Affairs Bureau in the southern metropolis of Guangzhou shut down two organisations for “failure to register properly” by not explicitly declaring their objectives and activities related to sexual orientation.⁴⁶
3  Jordan	2008	Article 3 of the Law of Societies (Law No. 51 of 2008 as amended by Law No. 22 of 2009) prohibits the registration of any society which has illegal goals or purposes. In 2009, a registration application was rejected and a ministry official explained to the media that if the government authorized such an organization, it “would violate ‘public morals’ and ‘decency’.”⁴⁷
4  Kazakhstan	1996	Article 5 of the Law on Public Assembly (1996) states that the formation and operation of public association infringing the health or moral principles of the citizens, as well as the activity of unregistered public associations are not allowed. <i>Feminita</i>, a queer feminist collective, has been rejected multiple times since 2015 allegedly because of their focus on LGBT rights,⁴⁸ the most recent of these refusals having occurred in September 2019.⁴⁹ According to an Amnesty International report, there is no registered SOR CSO in operation as “obtaining registration for an NGO is a bureaucratically arduous process, and registration is often refused on spurious grounds.”⁵⁰

⁴⁴ Outright Action International, *The Global State of LGBTIQ Organising: The Right to Register* (2018), 31.

⁴⁵ “China’s Complicated LGBT Movement”, *The Diplomat*, 1 June 2018.

⁴⁶ Rik Glauert, “China shuts down two LGBTI organizations”, *Gay Star News*, 11 January 2019.

⁴⁷ Aaron Magid, “Little protection for gays in Jordan”, *AL-Monitor*, 12 August 2014.

⁴⁸ “Kazakhstan’s Queer Feminist Uprising is Now”, *Queer Here*, 5 October 2015.

⁴⁹ “Kazakhstan: Feminist Group Denied Registration”, *Human Rights Watch*, 13 September 2019.

⁵⁰ Amnesty International, *Less Equal: LGBTI Human Rights Defenders in Armenia, Belarus, Kazakhstan, and Kyrgyzstan* (2017), 29.

5	 Kyrgyzstan	1999	Article 12 of the Law on Non-commercial Organizations states that non-commercial organizations shall have the right to conduct “any type of activity which is not prohibited by Law”. While there are several registered groups,⁵¹ the Ministry of Justice of the Kyrgyz Republic denied registration to the public association Alliance and Social Services of Gays and Lesbians Pathfinder in January 2011 because it deemed that the “designation of the words ‘gay and lesbian’ in a name of the legal entity promotes the destruction of moral norms and national traditions of the people of Kyrgyzstan”.⁵²
6	 Lebanon	1909	The Ottoman Law on Associations prohibits organisations that are founded on an “unlawful basis” and requires notification to the government upon the founding of an organisation, which will respond with a receipt that officially recognises the organisation. However, an LGBT group which applied for registration in 2004 never received any receipt though subsequent groups which did not describe themselves using any term related to sexual orientation or gender identity were successfully recognised.⁵³ In May 2018, Lebanese General Security officers attempted to shut down a conference on LGBT Rights organised by the Arab Foundation for Freedoms and Equality (AFE) on the basis that it “promoted homosexuality” and drug abuse.⁵⁴
7	 Malaysia	1966	Under Section 7(3)(a) of the Societies Act 1966, the Registrar of Societies shall refuse to register a local society where it appears that such a local society is unlawful or is likely to be used for “unlawful purposes”. In 2017, LGBTI group Pelangi Campaign’s application for registration was rejected without any reason and its appeal was also rejected in 2018, citing section 7 of the Act, which empowers the Registrar of Societies to reject applications without the need to provide any reasons.⁵⁵
8	 Singapore	1966	Section 4(2)(b) of the Societies Act allows the Registrar of Societies to refuse to register a society that it considers to be “likely to be used for unlawful purposes or for purposes prejudicial to public peace, welfare or good order in Singapore”. A gay advocacy group, People Like Us, was not allowed to register in 1997 and 2004, and the reason given in 2004 was on the basis of that provision.⁵⁶

TIER 2: LEGAL BARRIERS VERY LIKELY TO EXIST

⁵¹ *Id.*, 33.

⁵² Kyrgyz Indigo and Labrys, *Alternative Report on the Implementation of the Provisions of ICCPR Related to LGBT People in Kyrgyzstan*, (2014), 16.

⁵³ Outright Action International, *The Global State of LGBTIQ Organising: The Right to Register* (2018), 36.

⁵⁴ “**Lebanon: Security Forces Try to Close LGBT Conference**”, *Human Rights Watch (website)*, 4 October 2018.

⁵⁵ The Coalition for SOGIESC Human Rights in Malaysia, *Stakeholder Report on the Status of Human Rights of LGBTI Persons in Malaysia* (2018), 13.

⁵⁶ Stephan Ortmann, *Politics and change in Singapore and Hong Kong: Containing contention* (Routledge, 2009), 154.

9	 Afghanistan	2005	Article 7 of the Law on Non-Governmental Organizations and article 5 of the Association Law prohibit groups from engaging in activities that are illegal or against the “national interest”. Reports suggest that LGBT advocates largely function underground out of fear of persecution due to the threat of severe punishment. ⁵⁷
10	 Bahrain	1989	Article 3 of Law No. 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.
11	 Kuwait	1962	Article 6(4) of the Law on Clubs and Public Welfare Societies (Law No. 24 of 1962) states that “societies 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 under articles 2 and 3 and an implausible prospect for SOR CSOs groups.
12	 Iran	1979 2005	Article 8 of the Executive Regulations Concerning the Formation and Activities of Non-Governmental Organizations (2005) provides that the organisation’s constitution and activities must not be in violation of the Constitution. Article 26 of the Constitution of the Islamic Republic of Iran (1979) provides for the freedom of association provided that they do not violate “Islamic standards” and “the basis of the Islamic Republic”.
13	 Oman	2000	Law No. 14 of 2000 confers the Ministry of Social Affairs and Labour the power to deny registration when it considers that the services to be provided by the association “are not needed” (or for “any other reasons”). ⁵⁸ Though there are no SOR CSOs in operation in Oman, it is likely that even if there was one, it would be refused registration in light of the hostile environment in the country.
14	 Qatar	2004	Articles 1 and 35 of the Law on Private Associations and Foundations (Law No. 12 of 2004) disallow associations from being “involved in political issues”, as human rights advocacy is often framed as. This limited margin of action coupled with the harsh penalties imposed to consensual same-sex sexual acts makes it very unlikely that a SOR NGO will get formal registration.
15	 Saudi Arabia	2016	Article 8 of the Civil Society Associations and Organisations Law (Royal Decree No. M/8, 19.2.1437H) prohibits the establishment of an association if its charter conflicts with the provisions of Shariah, “public policy” or “public morality”.
16	 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”. This legal framework appears to pose severe barriers to the formal registration and the operation of a SOR NGO.

⁵⁷ [“Afghanistan: Events of 2016”](#), Human Rights Watch Website; Frud Bezhan, [“Fake Life’: Being Gay In Afghanistan”](#), RadioFreeEurope RadioLiberty, 12 September 2017.

⁵⁸ [“Introduction: Civil Society and Development in the Arab World”](#), *Global Trends in NGO Law* 1, No 4 (2010).

17	 United Arab Emirates	2008	Besides the possible imposition of the death penalty under Shariah Law, local Penal Codes impose harsh penalties to consensual same-sex sexual acts. ⁵⁹ Moreover, Federal Law No. 2 (2008) confers broad powers of supervision (including sending representatives to meetings) and heavily restricts the activities that organisations can carry out without receiving first permission from the Ministry of Social Affairs. This legal framework appears to pose severe barriers to the formal registration of a SOR NGO.
18	 Yemen	2001	Although Article 58 of the Constitution asserts the rights on citizens to form associations, the Penal Code in force imposes the death penalty for consensual same-sex sexual acts. Such provision coupled with the hostile situation on the ground makes it very unlikely that a request to formally register an organisation to advocate on issues of sexual orientation will be accepted.

Is there more in Asia?

Mongolia	The first LGBT NGO in Mongolia was denied registration in 2007 and was only granted legal status after domestic and international pressure in 2009. ⁶⁰
North Korea	Civil society human rights activity of the type that would produce a SOGI-based NGO does not appear to be possible in North Korea. However, the amended Penal Code of 2009 does not refer to “illegal societies” as did the 1950 Code.
Palestine	In August 2019, in response to a planned gathering in Nablus by Palestinian LGBT group Al-Qaws, the Palestinian Authority banned LGBT groups from meeting in the West Bank under the pretense that they are “harmful to the higher values and ideals of Palestinian society”. ⁶¹

Europe (2)

TIER 1: CONFIRMED LEGAL BARRIERS			
1	 Belarus	1994	Article 7 of Law on Public Associations prohibits the operation of unregistered associations. Attempts to register LGBT groups have been unsuccessful.⁶² Activists have also faced harassment by State officials after submitting their registration application.⁶³ The head of Gay Belarus, fearing for his personal safety, was forced to flee the country with his family in 2013.⁶⁴

⁵⁹ For more information, see the entry for the United Arab Emirates in the Criminalisation section of this report.

⁶⁰ Anne Leach, “Coming out for LGBT rights in outer Mongolia”, *Gay Star News*, 26 April 2013.

⁶¹ Khaled Abu Toameh, “PA Bans LGBTQ Activities In West Bank”, *The Jerusalem Post*, 19 August 2019.

⁶² GayBelarus and Sexual Rights Initiative, *Joint Submission by GayBelarus and Sexual Rights Initiative for 22nd Session of Universal Periodic Review of Belarus* (2015), 5.

⁶³ “Attempt To Register A LGBT Organisation in Belarus Provokes Police Raids”, *Belarus Digest*, 6 February 2013.

⁶⁴ Vital Tsyhankou and Aleh Hruzdilovich, “Pressure Mounts on Belarusian LGBT Community”, *Radio Free Europe - Radio Liberty*, 10 December 2013.

2		Russian Federation	2012	The “Foreign Agent” legislation has been employed to fine several LGBT organisations, which activists have criticised for discrediting the work that they carry out.⁶⁵ Being labelled as a “foreign agent” also imposes further restrictions on funding and introduces bureaucratic burdens like extensive audits. It also confers supervisory powers on the state to interfere in the organisation’s affairs. On July 16, 2019, the European Court of Human Rights ordered Russia to pay a fine of 42,500 euros for its refusal to give official recognition to three LGBT associations.⁶⁶ Notwithstanding this ruling, in October 2019, a St. Petersburg court ordered the disbandment of the Russian LGBT Network and the Russian LGBT Community for posting information for the community on social media. The Russian LGBT Network then announced its plans to appeal to the St. Petersburg City Court.⁶⁷
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Is there more in Europe?

Turkey

Reflecting increasing tensions, in 2013, a Turkish court rejected an application by the authorities to shut down an organisation on the basis that it included a clause stating that it “may work in the field of sexual orientation”.⁶⁸ In April 2019, the 12th administrative court lifted a ban on LGBT events in the capital city after an initial appeal to the court was rejected in November 2018.⁶⁹ The ban was imposed using a law enacted during the state of emergency following the 2016 coup attempt.

Oceania (1)

TIER 1: CONFIRMED LEGAL BARRIERS

1		Fiji	1978	LGBT groups cannot be registered under the Charitable Trusts Act due to the limited scope of what constitutes a “charitable purpose”. In 2014, several LGBT advocacy groups called on the government to revise the law to allow LGBT groups to register as legal entities.⁷⁰
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⁶⁵ “Russian member organisation fined as ‘foreign agent’”, LGL National LGBT Rights Organisation Website, 9 March 2015.

⁶⁶ Kyle Knight, “Russia Fined for Anti-LGBT Actions”, Human Rights Watch, 17 July 2019.

⁶⁷ Kyle Knight, “Russia Censors LGBT Online Groups”, Human Rights Watch, 8 October 2019.

⁶⁸ “Ekogenç’s Closure Case Ends: Work in the area of sexual orientation is not “contrary to morality”, LGBTI News Turkey, December 19, 2014.

⁶⁹ Alex MacDonald, “Court lifts ban on LGBT Pride events in Ankara”, Middle East Eye, 19 April 2019.

⁷⁰ Oceania Pride et al, “UN Universal Periodic Review – Fiji National Civil Society Joint Submission” (2014), 2.

GLOBAL LEGISLATION OVERVIEW

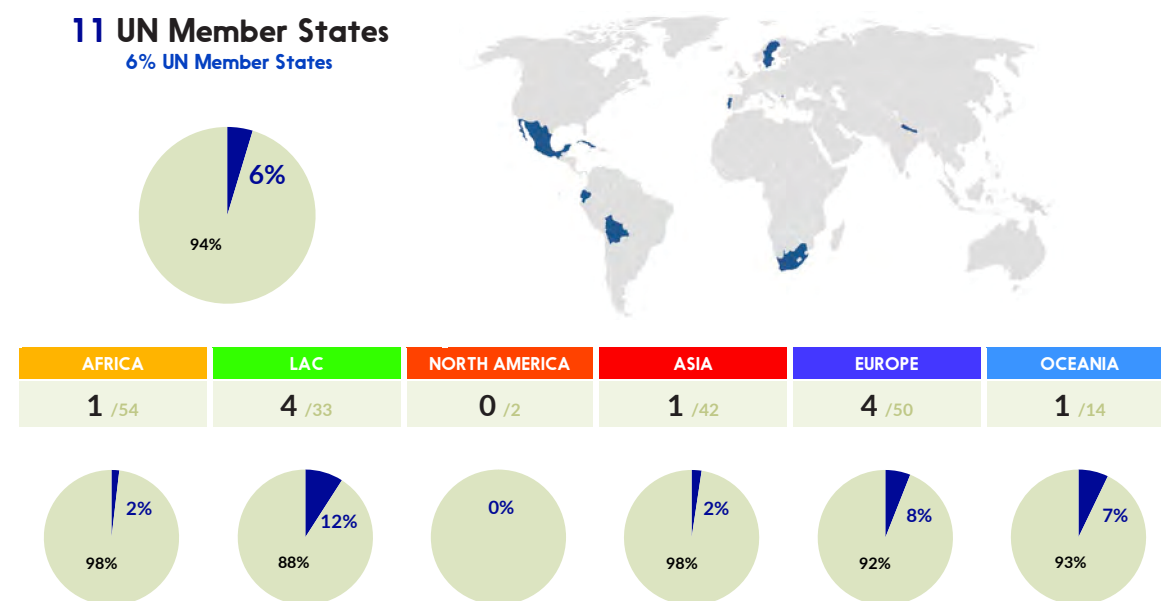
PROTECTION

STATE-SPONSORED HOMOPHOBIA (UPDATE) 2019



Constitutional Protection against Discrimination based on Sexual Orientation

Highlights



Introduction

Constitutions are the legal texts that collect the most fundamental legal principles of any given State. They usually set the organizational basis of the government and establish general rules that laws and regulations cannot contravene.

Additionally, most constitutions contain a list of fundamental rights and non-discrimination provisions. These provisions may be written in “broad” terms to apply to “all” people or may list a number of protected characteristics which cannot be the basis of discrimination in law (*de jure*) or in practice (*de facto*).

A few States have explicitly included the term “sexual orientation” in their non-discrimination clauses to protect people against discrimination based on that characteristic. This also means that the entire legal framework should abide by that legal principle. However, this is not always the case. Local courts can also read in “sexual orientation” into those general equality provisions, thus triggering inclusion of the term in State practice and in law.

In the following list, only those constitutions that spell out the term “sexual orientation” in an unambiguous way are listed.

What does International Human Rights Law say?

Everyone is entitled to enjoy all human rights without discrimination on the basis of sexual orientation, gender identity, gender expression or sex characteristics.

Everyone is entitled to equality before the law and the equal protection of the law without any such discrimination whether or not the enjoyment of another human right is also affected.

The law shall prohibit any such discrimination and guarantee to all persons equal and effective protection against any such discrimination. [...]

Yogyakarta Principle 2

Africa (1)

- | | | | | |
|---|---|---------------------|--------------|---|
| 1 |  | South Africa | 1994
1996 | 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 . |
|---|---|---------------------|--------------|---|

Is there more in Africa?

Botswana

Section 3 of the **Constitution of Botswana** entitles every person in the country to fundamental rights and freedoms regardless of "race, place of origin, political opinions, colour, creed or sex". In June 2019, the High Court of Botswana ruled that "sex" in this section, should be "generously and purposively interpreted to include 'sexual orientation'".¹ This decision has been appealed by the government.

Latin American and the Caribbean (4)

- | | | | | |
|---|---|----------------|------|---|
| 1 |  | Bolivia | 2009 | Article 14 of the Constitution of Bolivia prohibits discrimination based on sexual orientation (among other grounds). |
| 2 |  | Cuba | 2019 | Article 42 of the Constitution of Cuba establishes that no person shall be discriminated on the basis of sexual orientation (among other grounds). |
| 3 |  | 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. |
| 4 |  | 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). |

¹ High Court of Botswana, *Letsweletse Motshidiemang v. Attorney General* (2019), 156.

Is there more in Latin America and the Caribbean?

Argentina	The Federal Constitution 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).
Belize	The Constitution forbids discrimination on the grounds of “sex, race, place of origin, political opinions, colour or creed” (Section 16(3), 1981). In August 2016, the Supreme Court of Belize ruled that this section is to be interpreted to extend to “sexual orientation”. ²
Brazil	The Federal Constitution 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).
Costa Rica	The Constitutional Chamber of the Supreme Court of Justice has established that discrimination based on sexual orientation is contrary to the concept of dignity enshrined in the Political Constitution of Costa Rica. ³

North America (0)*Is there more in North America?*

Canada	Constitutional 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 <i>Egan v. Canada</i> .
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Asia (1)

1  Nepal	2015	Section 18(3) of the Constitution of Nepal specifically explains that the State shall not discriminate against, inter alia, “sexual minorities”.
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Is there more in Asia?

Taiwan (China)	In 2017, the Taiwanese Constitutional Court issued J.Y. Interpretation No. 748 , which declares that Article 7 of the Constitution also contemplates “sexual orientation”, thereby prohibiting discrimination on these grounds. Article 7 of the Constitution of the Republic of China (Taiwan) reads “All citizens of the Republic of China, irrespective of sex, religion, race, class, or party affiliation, shall be equal before the law.” This decision is binding upon all institutions of Taiwan.
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² Supreme Court of Belize, *Caleb Orozco v. Attorney General of Belize* (2016), 94.

³ Constitutional Chamber of the Supreme Court of Justice (Costa Rica), *Resolution N° 18660 – 2007*, 21 December 2007.

Europe (4) + Kosovo

	Kosovo	2008	Article 24(2) of the Constitution of Kosovo establishes that no one shall be discriminated against on grounds of their sexual orientation, among other grounds.
1	 Malta	2014	Article 32 of the Constitution of Malta entitles the individual fundamental rights and freedoms regardless of sexual orientation, and Article 45(3) specifies such protection from discrimination.
2	 Portugal	2004	The sixth constitutional revision incorporated the prohibition of discrimination on the basis of sexual orientation to article 13(2) of the Constitution of Portugal .
3	 San Marino	2019	Article 4 of the Declaration of Citizen Rights of 1974 (one of the documents that are part of the Constitution of San Marino) was amended after a national referendum to explicitly include “sexual orientation” as a prohibited ground of discrimination.
4	 Sweden	2011	Article 2 in Chapter 1 of the Constitution of Sweden mandates all organs of the State to exercise and promote equality and non-discrimination in health, employment, housing, education, and social security on the basis of sexual orientation. Similarly, Article 12 in Chapter 2 states that “No act of law or other provision may imply the unfavourable treatment of anyone” on account of their sexual orientation.

Is there more in Europe?

Andorra	Article 6 of the Andorran Constitution establishes that “no one shall be discriminated against on the basis of birth, race, sex, origin, religion, opinion, or any other personal or social condition”. On December 20, 2008, the Constitutional Court of Andorra ruled that sexual orientation is included in “any other (...) condition”. ⁴
Estonia	An interpretation from 2011 by the Chancellor of Justice confirmed that Article 12 of the Estonian Constitution covers protection against discrimination based on sexual orientation, even if it is not explicitly mentioned there. ⁵
Germany	Discrimination on the basis of sexual orientation or sexual identity is constitutionally forbidden in five German states: Berlin (Art. 10), Thüringen (Art. 2), Bremen (Art. 2), Saarland (Art. 12), and Brandenburg (Art. 12).
Slovenia	In 2009, the Constitutional Court interpreted Article 14 of the Constitution as including “sexual orientation” among the protected grounds against discrimination. ⁶ Furthermore, according to an official interpretation from 2015 by the Parliamentary Commission for Constitutional Affairs, the clause “any other personal circumstance” in Article 14 of the Slovenian Constitution includes individuals who are attracted to members of their same sex. ⁷

⁴ Constitutional Court of Andorra, *Causa 2008-17 RE* (2008), 1.

⁵ Reimo Mets, *Seisukoht vastuolu mittetuvastamise kohta* (2011), 8-9.

⁶ Republika Slovenija Ustavno Sodišče, *U-I-425/06-10* (2 July 2009).

⁷ National Assembly of the Republic of Slovenia, *Sklep o zavrnitvi razpisa zakonodajnega referendumu o zakonu o spremembah in dopolnitvah zakona o zakonski zvezi in družinskih razmerjih* (ZZZDR-D, EPA 257-VII) (2015), 5-6.

Switzerland

Article 8 of the **Swiss Constitution** includes the expression “way of life” as a prohibited ground of discrimination. Even though this expression had been largely interpreted as encompassing “sexual orientation”,⁸ in 2019 the Swiss Federal Court issued a judgment saying the **Equality Act** does not include “homosexual persons” and, therefore, there would not exist protection against discrimination based on sexual orientation.⁹

United Kingdom

The constitution of the UK is made up of a mixture of convention, legislation, common law, international treaty obligations and the Royal Prerogative. There is no clear way of identifying which laws, if any, have ‘constitutional’ status. However, the government, parliament and courts of the UK have consistently and for several years upheld rights that protect LGBT people, which is akin to ‘constitutional’ protection on the grounds of sexual orientation.¹⁰ In particular, the **Equality Act 2010** was passed with the primary purpose of codifying and supplementing the multiple documents that comprise the basis of anti-discrimination law in the UK. This document includes sexual orientation as a protected characteristic.

Oceania (1)1  **Fiji**1997
2013

Section 38(2) of the **Constitution of Fiji** (1997) 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.

In 2013, the prohibition was kept under section 26(3)(a) of the **Constitution of Fiji** (2013).

*Is there more in Oceania?***New Zealand**

The Constitution of New Zealand incorporates multiple written and unwritten sources, such as court decisions, statutes, and Orders in Council, as opposed to a single document. Thus, Article 21 of the **Human Rights Act 1993** (in Māori: *Te Ture Tika Tangata 1993*), which bans discrimination on the basis of sexual orientation, is akin to “constitutional protection” in other countries.

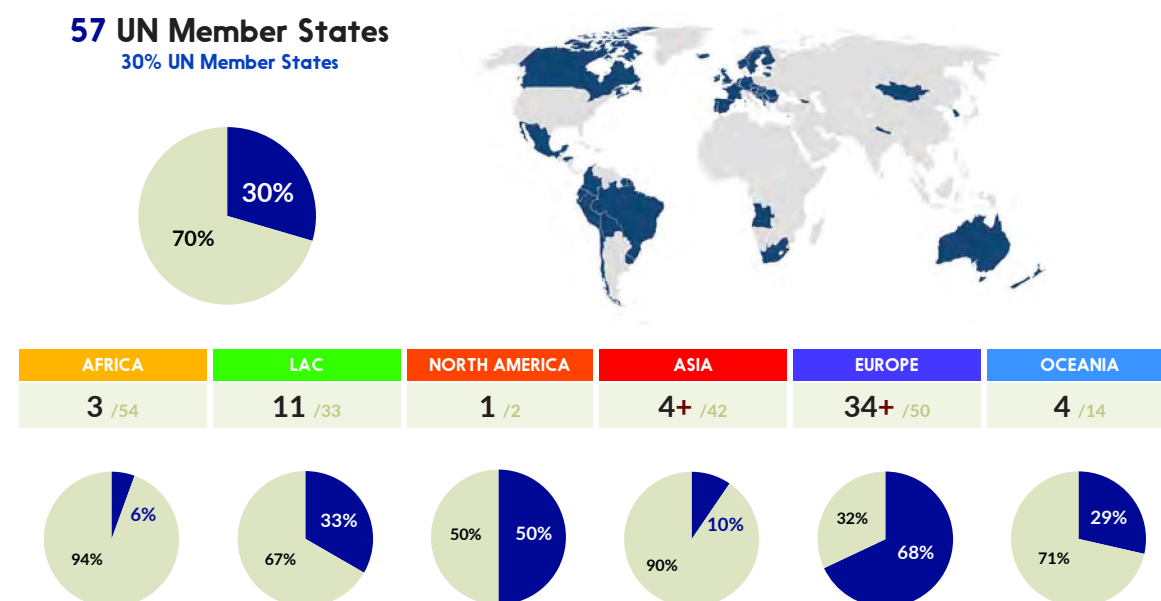
⁸ Alecs Recher, *Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity Legal Report: Switzerland* (2010), 8.

⁹ “Highest Swiss court says sexual orientation not protected under equality law”, *Swissinfo.ch*, 30 April 2019.

¹⁰ ILGA Europe, *Rainbow Europe: United Kingdom* (2019).

Broad Protections against Discrimination based on Sexual Orientation

Highlights



Introduction

Legal protections against discrimination are a key element in the human rights legal framework of every country. They serve to ensure that the principle of equality before the law is fully observed and provide remedies to victims of acts of discrimination.

Despite the fact that the 1948 Universal Declaration of Human Rights was categorical in that “every person” is born free and equal in dignity and in rights, international and domestic non-discrimination clauses have had to enumerate the grounds on which unfair distinctions cannot be made. These grounds usually reflect the reasons why people have been historically discriminated (i.e., race, religion, nationality, language, sex/gender, etc.). As these grounds can vary greatly and can be difficult to enumerate exhaustively, equality laws generally contain “open clauses” (generally phrased “or any other ground”) into which other grounds can be read.

However, in many contexts there is strong resistance against including “sexual orientation” in those open clauses. Therefore, explicit protection on grounds of sexual orientation becomes of key importance to effectively protect people from discrimination.

What does International Human Rights Law say?

Everyone is entitled to enjoy all human rights without discrimination on the basis of sexual orientation, gender identity, gender expression or sex characteristics.

Everyone is entitled to equality before the law and the equal protection of the law without any such discrimination. [...]

The law shall prohibit any such discrimination and guarantee to all persons equal and effective protection against any such discrimination. [...]

States shall adopt appropriate legislative and other measures to prohibit and eliminate discrimination in the public and private spheres on the basis of sexual orientation, gender identity, gender expression or sex characteristics.

Yogyakarta Principle 2

Africa (3)

1		Angola	2019	Section 197 of the Penal Code criminalises acts of discrimination based on sexual orientation with regard to the provision of goods and services, employment and obstructing economic activities. ¹
2		Mauritius	2008	Sections 5, 6, 7 and 8 of the 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”. Section 3(2) establishes that the act applies to employment, education, qualifications for a profession, trade or occupation, the provision of goods and services, facilities or accommodation, among others.
3		South Africa	2000	Section 1 of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 includes sexual orientation as one of the prohibited grounds of discrimination.

Latin American and the Caribbean (11)

1		Bolivia	2010	Article 5 of the Law against Racism and All Forms of Discrimination (Law No. 45 of 2010) prohibits discrimination on the ground of sexual orientation (among others). Furthermore, Article 281 <i>sexies</i> of the Criminal Code (as amended by said Act) criminalises any act of discrimination based on, <i>inter alia</i> , sexual orientation and aggravates the penalty if it is committed by public servants or by private individuals providing public services.
2		Brazil	1998 2015	At the federal level, there is no law prohibiting discrimination on the basis of sexual orientation in broad terms. However, around 70% of the population resides in jurisdictions where local laws provide for such protection. Several jurisdictions have enacted laws banning discrimination based on sexual orientation with varying levels of protection: Amapá (2009); Amazonas (2006); Distrito Federal (2000); Espirito Santo (2014); Maranhão (2006); Mato Grosso do Sul (2006); Minas Gerais (2002); Pará (2007); Paraíba (2003); Piauí (2004); Rio de Janeiro (2015); Rio Grande do Norte (2007); Rio Grande do Sul (2002); Rondônia (2018); Santa Catarina (2003); Sao Paulo (2001); as well as a number of cities such as Fortaleza (1998), Recife (2002) and Vitoria (2014).
3		Chile	2012	Law No. 20,609 (on the adoption of measures against discrimination) ² affords protection against discrimination based on sexual orientation (among other grounds) with regard to any constitutional right.

¹ The final version of the 2019 Penal Code has not yet been published. The number of the section may differ in the final version. The draft that was approved can be accessed [here](#).

² This law is informally referred to as “Zamudio Law” in honour of Daniel Zamudio, a young gay man, who was brutally tortured and murdered because of his sexual orientation in Santiago de Chile in 2012.

4		Colombia	2011	Article 134A of the Criminal Code (as amended by Act No. 1.482 of 2011) criminalises acts of discrimination based on sexual orientation (among other grounds). Articles 136C(3) and 136C(4) aggravate the penalty if such are committed by public servants or while providing public services.
5		Cuba	2019	Even though there is no national law prohibiting discrimination in broad terms, the protection afforded by article 42 of the Constitution applies to all rights and duties.
6		Ecuador	1998	Even though there is no national law against discrimination based on sexual orientation, the constitutional prohibition of such discrimination applies to all rights and therefore offers broad legal protections.
7		Honduras	2013	Article 321 of the Criminal Code (as amended by Act No. 23 of 2013) criminalises acts of discrimination based on sexual orientation (among other grounds) and aggravates the penalty if they are committed by public servants.
8		Mexico	2011 2003	The constitutional prohibition of discrimination based on sexual orientation is binding upon states and its local authorities. At the level of the federal government authorities, article 1(3) of the Federal Act to Prevent and Eliminate Discrimination includes “sexual preferences” as one of the prohibited grounds of discrimination. This law applies to employment, goods and services, health, and education, among others.
9		Peru	2004 2017	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. Article 323 of the Criminal Code (as amended by Executive Order No. 1,323 of 2017) criminalises acts of discrimination on the basis of, <i>inter alia</i> , sexual orientation and aggravates the penalty if such acts are committed by public servants.
10		Suriname	2015	Article 175 of the Criminal Code (as amended by S.B. No. 44 of 2015) criminalises discrimination based on sexual orientation (among other grounds).
11		Uruguay	2004	Article 2 of the Law to combat Racism, Xenophobia and Discrimination (Law No. 17,817) includes “sexual orientation” among the prohibited grounds of discrimination. As per article 2, this law applies to all human rights and to all spheres of public life.

Is there more in Latin America and the Caribbean?

Argentina

At the federal level, there is no law against discrimination on the basis of sexual orientation in broad terms. At least since 2005, several attempts to incorporate sexual orientation to the antidiscrimination law currently in force have failed.³ However, the Provinces of **Chaco** (2006); **Córdoba** (2007); **Río Negro** (2008); **San Juan** (2007); **Santiago del Estero** (2008) and the cities of **Buenos Aires** (1996, 2015) and **Rosario** (1996) have enacted local norms that grant different levels of protection.

³ See: Asociación por los Derechos Civiles, *Los Derechos LGBT: Estándares Internacionales y Nacionales* (2017), 58-66.

North America (1)

1	 Canada	1996	Section 3(1) of the Canadian Human Rights Act (as amended in 1996) includes “sexual orientation” as a prohibited ground of discrimination. This law applies to goods and services, employment and health, among others.
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Is there more in North America?

United States of America

Protections against discrimination based on sexual orientation vary according to state.⁴ However, overall, less than 50% of the U.S. population lives in states where discrimination protection based on sexual orientation is offered in broad terms.

On May 17, 2019, the House of Representatives passed the **Equality Act**, which forbids discrimination on the grounds of sexual orientation, *inter alia*, in the provision of various goods and services, including healthcare.

In March 2019, the U.S. Supreme Court ruled in favour of a lesbian couple who was turned away by a B&B owner in Hawaii.⁵ On October 8, 2019, the U.S. Supreme Court began an evaluation of three cases to determine whether the Civil Rights Act of 1964 should be interpreted to prohibit employment discrimination on the basis of sexual orientation.⁶

Asia (4) + Taiwan (China)

1	 Israel	2000 2014	A set of laws offer protection against discrimination based on sexual orientation various settings. Section 3(a) of the Prohibition of Discrimination in Products, Services and Entry into Places of Entertainment and Public Places Law (2000) includes sexual orientation among the prohibited grounds of discrimination. In education, Section 5 of the Pupils' Rights Law (2000) was amended in 2014 to include sexual orientation. Local laws also protect people in employment (<i>see section below</i>). In February 2019, a pizzeria in Jerusalem was fined 16,000 new shekels after the Jerusalem Small Claims Court found it guilty of denying service to a man in August 2018 (during the city's Pride festival) on the grounds of his sexual orientation.⁷
2	 Mongolia	2017	Section 14(1)(1) of the Penal Code criminalises acts of discrimination based on sexual orientation. Section 14(1)(2)(3) aggravates penalties if such acts are committed by public officials.
3	 Nepal	2015	Even though there is no law expressly prohibiting discrimination based on sexual orientation, the constitutional prohibition enshrined in Section 18(3) of the Constitution of Nepal (proscribing discrimination against “sexual minorities”) offers broad protection against discrimination.

⁴ See “**Non-Discrimination Laws**”, Movement Advancement Project (MAP) Website.

⁵ John Riley, “U.S. Supreme Court rejects appeal from Hawaii B&B owner who turned away lesbian couple”. *Metro Weekly*. 18 March 2019.

⁶ Kimberly Alters, “Supreme Court to revisit gay rights in landmark workplace discrimination case”. *Mic*. 24 September 2019.

⁷ Nick Duffy, “Jerusalem pizzeria fined \$4500 for refusing to serve gay man”. *Pink News*. 27 February 2019.

4		South Korea	2001	Article 30(2) of the National Human Rights Commission Act (2001) defines “unreasonable discrimination” based on sexual orientation (among other grounds) as a violation of the right to equality. This law applies to employment, provision of goods and services, education and more. ► In November 2019, members of the South Korean National Assembly proposed an amendment to this Act that would eliminate “sexual orientation” as a protected ground against discrimination. The bill would also restrict the definition of “gender” to gender assigned at birth. Amnesty International condemned this discriminatory amendment.⁸
		Taiwan (China)	2017	Even though there is no national law prohibiting discrimination in broad terms, the judicial interpretation issued by the Constitutional Court in J.Y. Interpretation No. 748 – which declares that Article 7 of the Constitution also contemplates “sexual orientation” – applies to all rights and duties.

Is there more in Asia?

Japan	In 2018, the Tokyo Metropolitan Government enacted a law that prohibits discrimination on the basis of sexual orientation. ⁹
Philippines	Several provinces in The Philippines have enacted ordinances against discrimination based on sexual orientation: Albay (2002), Agusan del Norte (2014), Batangas (2015), Cavite (2014), Dinagat Islands (2017), Ilocos Sur (2017), Iloilo (2016). Additionally, several cities and <i>barangays</i> (villages) have also enacted local norms that forbid such discrimination: Angeles (Province of Pampanga, 2013), Antipolo (Province of Rizal, 2015), Bacolod (Province of Negros Occidental, 2013), Baguio (Province of Benguet, 2017), Batangas (Province of Batangas, 2016), Butuan (Caraga Region, 2016), Candon (Province of Ilocos Sur, 2014), Cebu (Province of Cebu, 2012), Dagupan (Province of Pangasinan, 2010), Davao (Province of Davao del Sur, 2012), General Santos (Province of South Cotabato, 2016), Iloilo (Province of Iloilo, 2018), Malabon (National Capital Region, 2018), Mandaluyong (National Capital Region, 2018), Mandaue (Province of Cebu, 2016), Orani (municipality in the Province of Bataan, 2019), Puerto Princesa (Province of Palawan, 2015), Quezon (National Capital Region, 2014), San Juan (National Capital Region, 2017), San Julian (municipality in the Province of Eastern Samar, 2014), Vigan (Province of Ilocos Sur, 2014); Barangay Bagbag (Quezon City, Metro Manila, 2009), Barangay Greater Lagro (Quezon City, Metro Manila, 2014), Barangay Pansol (Quezon City, Metro Manila, 2008). Since 2001, a bloc of lawmakers in the Philippines have been attempting to pass a comprehensive bill that would ban discrimination on the grounds of sexual orientation, <i>inter alia</i>. Several drafts of this bill have expired after being blocked and becoming stalled in the senate, the most recent one being in July 2019.¹⁰ A new version of the bill was introduced a month later and is in the process of being discussed. President Rodrigo Duterte expressed mild support for the bill, stating his preference for a more general anti-discrimination law.¹¹

⁸ "South Korea: Lawmakers should reject shameful anti-LGBTI amendment", *Amnesty International*, 21 November 2019.

⁹ "Tokyo: New Law Bars LGBT Discrimination", *Human Rights Watch (website)*, 8 October 2018.

¹⁰ Rik Glauert, "Long-awaited anti-discrimination bill flounders in Senate of the Philippines", *Gay Star News*, 5 June 2019.

¹¹ Christina Mendez, "Duterte favors anti-discrimination law over SOGIE", *The Philippine Star*, 12 September 2019.

Europe (34) + Kosovo

1	 Albania	2010	Article 5 of the Protection from Discrimination Act (Law No. 10,221) prohibits discrimination on the basis of, <i>inter alia</i> , sexual orientation, both in the public and private sectors (Article 7.1). The scope of this protection includes employment (Chapter II), education (Chapter III) and goods and services (Chapter IV), among other contexts.
2	 Andorra	2005	Article 338 of the Penal Code criminalises acts of discrimination based on sexual orientation (among other grounds) with regard to goods and services and employment, among others.
3	 Austria		Each province (Burgenland, Carinthia, Salzburg, Styria, Tyrol, Upper Austria, Lower Austria, Vienna and Vorarlberg) has provisions prohibiting discrimination on grounds of sexual orientation with regard to goods and services offered by the provinces and communities, including social protection, social advantages, education and self-employment.
4	 Belgium	2003 2007	Article 4 of the Anti-Discrimination Law (2003) ¹² proscribed discrimination in the provision of goods and services, employment, economic, social, cultural and political activities and other matters, and Article 2 included sexual orientation as one of the protected categories. This law was substituted by Anti-Discrimination Law (2007). Articles 2 and 4 of the Anti-Discrimination Law (2007) ¹³ ban discrimination based on, <i>inter alia</i> , sexual orientation. Article 5 determines that the prohibition applies, among other settings, to goods and services, including social protection (education) employment in the public and private spheres.
5	 Bosnia and Herzegovina	2003 2009 2016	Article 2 of the Gender Equality Act (2003) prohibits sexual orientation discrimination, both in the public and private sectors (Article 1), with regard to education (Chapter IV), employment (Chapter V), health (Chapter VII) and other matters. Article 2 of the Act of Prohibition of Discrimination (2009) proscribes discrimination on the basis of, <i>inter alia</i> , sexual expression or sexual orientation within the private and public spheres concerning employment, education, health and goods and services, among other matters (Article 6 also refers to the scope of application of the law). In 2016 this law was amended to include other groups, among other improvements.
6	 Bulgaria	2004	Section 4(1) of the Law on Protection Against Discrimination (supplemented by SG No. 70 of 2004) bans direct and indirect discrimination based on sexual orientation (among other grounds) in employment (Section I), education (Section II), the field of goods and services (Article 37) and more.

¹² Original title: 25 Février 2003. - Loi tendant à lutter contre la discrimination et modifiant la loi du 15 février 1993 créant un Centre pour l'égalité des [chances] et la lutte contre le racisme. (Erratum, voir M.B. 13.05.2003, p. 23578). Dossier numéro : 2003-02-25/37.

¹³ Original title: 10 Mai 2007. - Loi tendant à lutter contre certaines formes de discrimination. Dossier numéro : 2007-05-10/35.

7		Croatia	2009	Articles 1, 2 and 9 of the Anti-Discrimination Act prohibit direct and indirect discrimination because of sexual orientation (among other grounds) regarding employment, education, health, goods and services and other matters in the public and private sectors. Article 125 of the Penal Code criminalises acts of discrimination in the provision of goods and services and in employment based, <i>inter alia</i>, on sexual orientation.
8		Cyprus	2004	Article 6(1) of the Combating Racism and Other Forms of Discrimination (Commissioner) Act proscribes direct and indirect discrimination in the public and private spheres based on, <i>inter alia</i>, sexual orientation in matters such as employment, education, health and goods and services.
9		Czechia	2009	Sections 2 and 3 of the Anti-Discrimination Act proscribe discrimination on the basis of sexual orientation (among other grounds). As per Section 1, the law applies to employment, health, education and goods and services.
10		Estonia	1999 2006 2009	Article 19(2)(12) of the Chancellor of Justice Act includes sexual orientation among the protected grounds for which claims on discrimination in the public and private spheres can be brought before the Chancellor of Justice. Article 152(1) of the Penal Code (as amended in 2006) proscribes the unlawful restriction of any right on the basis of, <i>inter alia</i>, sexual orientation. Sections 1 and 3 of the Equal Treatment Act (2009) prohibit direct and indirect discrimination based on sexual orientation (among other grounds). Section 2 determines that the law applies to employment, education, health, goods and services and others.
11		Finland	2014	Section 8 of the Non-Discrimination Act prohibits any discriminatory act on the basis of sexual orientation within public and private activities. The law applies to education and employment and allows victims of discrimination to receive compensation from the authorities, education providers or suppliers of goods or services who discriminated against them.
12		France	2001	Articles 225-1 and 225-2 of the Penal Code (as amended by Act No. 1066 of 2001) prohibit discrimination based on, <i>inter alia</i>, sexual orientation with regard to goods and services and employment, among other fields. Article 432-7 aggravates the penalty when committed by public authority or public service.
13		Georgia	2014	Articles 1 and 2(1) of the Act on the Elimination of All Forms of Discrimination prohibits every form of discrimination, including that based on sexual orientation. As per Article 3, the scope of this protection comprises all public and private fields of action.
14		Germany	2006	Sections 1 and 2 of the General Act on Equal Treatment prohibit discrimination based on, <i>inter alia</i>, sexual orientation and determine that the protection applies to employment, social protection (including health), education and the access to and supply of goods and services.

15	 Hungary	2004	Articles 7(1), 8(m) and 9 of the Equal Treatment and Promotion of Equal Opportunities Act (No. CXXV of 2003) prohibit discrimination on the basis of sexual orientation. Under articles 4 and 5 the law applies to both public and private relationships in employment (Articles 21-23), health (Articles 24-25) and education (Articles 27-30), among others. Before the entry into force of this law, discrimination in health was already proscribed by Act No. CLIV of 1997 (Article 7:4).
16	 Iceland	1996 2008 2018	Article 180 of the General Penal Code was amended by Act No. 135 (1996) to criminalise discrimination based on sexual orientation in the provision of goods and services. Article 24 of the Compulsory School Act (2008) reinforces the prohibition in education. Article 7 of the Act on Equal Treatment in the Workplace (2018) prohibits sexual orientation discrimination in employment.
17	 Ireland	2000	Section 3(2)(d) of the Equal Status Act defines sexual orientation as a prohibited ground of discrimination. Chapter II lists the activities to which the ban on discriminatory acts applies: the disposal of goods and the provision of services (Section 5), education (Section 7) and others.
	Kosovo	2004 2019	The constitutional prohibition of discrimination based on sexual orientation is reinforced by Articles 1 and 2 of the Anti-Discrimination Act which include “sexual orientation” among the prohibited grounds. As per article 4, the protection applies to employment, health, education, access to and supply of goods and services and more. Furthermore, the new Penal Code (2019) makes it a crime for anyone to deny or restrict any of the rights defined by the Constitution, the law or any other provisions based on their sexual orientation (among other grounds).
18	 Liechtenstein	2016	Article 283(4) of the Penal Code proscribes acts of discrimination based on sexual orientation in broad terms. Article 283(6) refers to the denial of services based on sexual orientation.
19	 Lithuania	2000 2003	Article 169 of the Criminal Code penalises discrimination on the ground of, <i>inter alia</i> , sexual orientation in political, economic, social, cultural, labour and other activities. Articles 1 and 2 of the Equal Treatment Act (2003) ban direct and indirect discrimination because of sexual orientation (among other grounds). The law applies to education (Articles 4 and 8), employment (Articles 5 and 7), consumer protection (Articles 6 and 9) and other spheres. Article 1(2)(3) of the Law on the Rights of Patients and Compensation of the Damage to their Health (2010) reinforces this protection in health environments.
20	 Luxembourg	2006	Article 1 of the Equality Act (No. 28 of 2006) prohibits discrimination based on sexual orientation (among other grounds). Article 2 states that the protection applies to the public and private sectors with regard to, <i>inter alia</i> , employment, health, education and the access to and provision of goods and services. Furthermore, Article 21 amends Article 454 of the Penal Code to criminalise acts of discrimination based, <i>inter alia</i> , on sexual orientation.

21	 Malta	2012	The broad protection afforded by article 13(2) of the Constitution is complemented by the Equality for Men and Women Act which prohibits discrimination based on sexual orientation in employment and education, among others. Article 2(6) of the Teachers (Code of Ethics and Practice) Regulations (2012) and Chapter 525 Art 3(1)(a) of the Mental Health Act (2017) reinforces this protection in education and health environments respectively.
22	 Montenegro	2010	Article 2 of the Act on Prohibition of Discrimination proscribes discrimination based on, <i>inter alia</i>, sexual orientation. The law applies to public service delivery, education and labour, among others. Article 19 states that everyone has the right to express their sexual orientation as well as the right not to declare it.
23	 Netherlands	1994	Section 1 of the Equal Treatment Act includes sexual orientation as a prohibited ground of direct and indirect discrimination (among others). Such protection concerns, <i>inter alia</i>, employment (Sections 5-6a) and goods and services (Section 7). Section 137(f) of the Penal Code proscribes taking part or supporting activities aimed at discrimination against persons because of “their hetero or homosexual orientation”.
24	 North Macedonia	2019	Article 5 of the Law on Prevention of and Protection against Discrimination forbids discrimination on the grounds of sexual orientation.
25	 Norway	2008 2013 2018	In 2008, Article 186 of the new Penal Code (2005) was amended by Law No. 4 (2008) to criminalise discrimination in the provision of goods and services based on sexual orientation. The Sexual Orientation Anti-Discrimination Act (2013) prohibited direct and indirect discrimination based on sexual orientation under Chapter 2 in all sectors and fields of action (Section 2). This law was repealed by the Equality and Anti-Discrimination Act (2018), which now proscribes any type of discriminatory act based on, <i>inter alia</i>, sexual orientation under Section 6. As per Section 2, the law applies to all sectors of society.
26	 Portugal	2005 2012 2019	Even though there is no national law prohibiting discrimination in broad terms, the protection afforded by Article 13(2) of the Constitution applies to all rights and duties. Furthermore, Article 7 of the Students' Statute - Lei 51/2012 reinforces this protection in education environments. In September 2019, the Portuguese Parliament passed Law 83/2019, which forbids discrimination on the basis of sexual orientation in housing.

27	 Romania	2000 2014	Article 2(1) of the Ordinance on the Prevention and Punishment of All Forms of Discrimination (Law No. 137/2000) bans discrimination on the basis of sexual orientation (among other grounds). As per Article 1, such protection applies, <i>inter alia</i>, to employment, education and health. Under article 297(2) of the Penal Code (approved in 2009, in force since 2014), it is an offence for a civil servant to impede the exercise of a right of a person or to create for them a situation of inferiority on the basis of their sexual orientation.
28	 San Marino	2019	Even though there is no national law prohibiting discrimination in broad terms, the protection afforded by Article 4 of the Declaration of Citizen Rights of 1974 (one of the documents that are part of the Constitution of San Marino) applies to all rights and duties.
29	 Serbia	2010	Articles 1 and 2 of the Prohibition of Discrimination Act ban any discriminatory act, direct or indirect, on the basis of sexual orientation (among other grounds). The law applies to employment, public services, and education, among others.
30	 Slovakia	2008	Section 2.1 of the Act on Equal Treatment in Certain Areas and Protection against Discrimination (as amended by Act No. 85 of 2008) prohibits sexual orientation discrimination. Section 3.1 determines that the law applies to everyone in the field of employment and similar legal relations, health, goods and services and education, among others.
31	 Slovenia	2016	Article 1 of the Protection against Discrimination Act (2016) prohibits discrimination on the basis of sexual orientation (among other grounds) in the public and private spheres concerning all activities in the political, economic, social, cultural, civil and other fields. As per Article 2, some of these are: employment, health, education and good and services.
32	 Spain	2010 2011 2013	Article 511 and 512 of the Penal Code penalises the discriminatory denial of services on the basis of sexual orientation. Furthermore, article 314 criminalises acts of discrimination in employment. Article 6(1) of Law No. 33/2011 on Public Health (2011) and Article 124(2) of the Organic Law No. 8/2013 for the improvement of education (2013) reinforce the prohibition of discrimination in health and education respectively. Several autonomous communities and regions offer broad protection against discrimination based on sexual orientation under local laws: Andalusia (2014/2018), Aragón (2018), Islas Baleares (2007), Catalonia (2014), Canarias (2014), Madrid (2016), Navarra (2017), Valencia (2018), Extremadura (2015), Galicia (2016), Basque Country (2012), and Murcia (2016).
33	 Sweden	1987 2003 2009	Discrimination based on sexual orientation in the provision of goods and services was outlawed for the first time under the Penal Code in 1987 (as amended by Law 1987:610). Sections 1 and 3 of the Prohibition of Discrimination Act (2003) included sexual orientation as one of the protected categories against discrimination in employment, provision of goods and services and health, among other contexts.

			That law was repealed by the Discrimination Act (2009), which also prohibits direct and indirect discrimination based on, <i>inter alia</i> , sexual orientation. This law applies to employment (Sections 1-4 and 9), education (Sections 5-8), provision of goods and services (Section 12-12c), health (Sections 13-13b), among others.
34	 United Kingdom	2007 2010	The Equality Act (Sexual Orientation) Regulations 2007 (No. 1263) and the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 (No. 439), laid under Part 3 of the Equality Act 2006, protected against discrimination on the basis of sexual orientation with regard to goods, facilities and services and education, among other fields. This law was revoked by Equality Act 2010. The Equality Act 2010 lists sexual orientation as a protected category (Section 4) and prohibits direct (Section 13) and indirect (Section 19) discrimination. Section 25(9) defines sexual orientation discrimination. Such protection applies to services and public functions, employment and education.

Is there more in Europe?

Denmark	Article 1 of the Act on Prohibition of Unequal Treatment on the Grounds of Race etc (1987) offers protection against discrimination in the provision of goods and services. Ordinance no. 182 (2007) prohibits discrimination based on sexual orientation in broad terms in the autonomous country of the Faeroe Islands.
Italy	A bill that would offer broad protections against discrimination based on sexual orientation is still pending before the Senate. ¹⁴
Switzerland	Even though there is no federal law explicitly proscribing discrimination based on sexual orientation, article 28 of the Civil Code technically provides the legal basis for the protection of “personality”. However, in April 2019, the Federal Court held in a case involving a former unit commander in the Swiss Armed Forces that the Law on Equality did not apply to discrimination on the basis of sexual orientation.¹⁵ In 2018, Article 261bis of the Criminal Code was amended to penalise discrimination based on sexual orientation in the provision of goods and services. This amendment will be subject to a popular vote (which will be held in February 2020).¹⁶

¹⁴ Senato della Repubblica, *Atto Senato No. 404*, XVII Legislatura.

¹⁵ Bundesgericht, *Medienmitteilung des Bundesgerichts Urteil vom 5. April 2019* (8C_594/2018); “Highest Swiss court says sexual orientation not protected under equality law”, *Swissinfo.ch*, 30 April 2019.

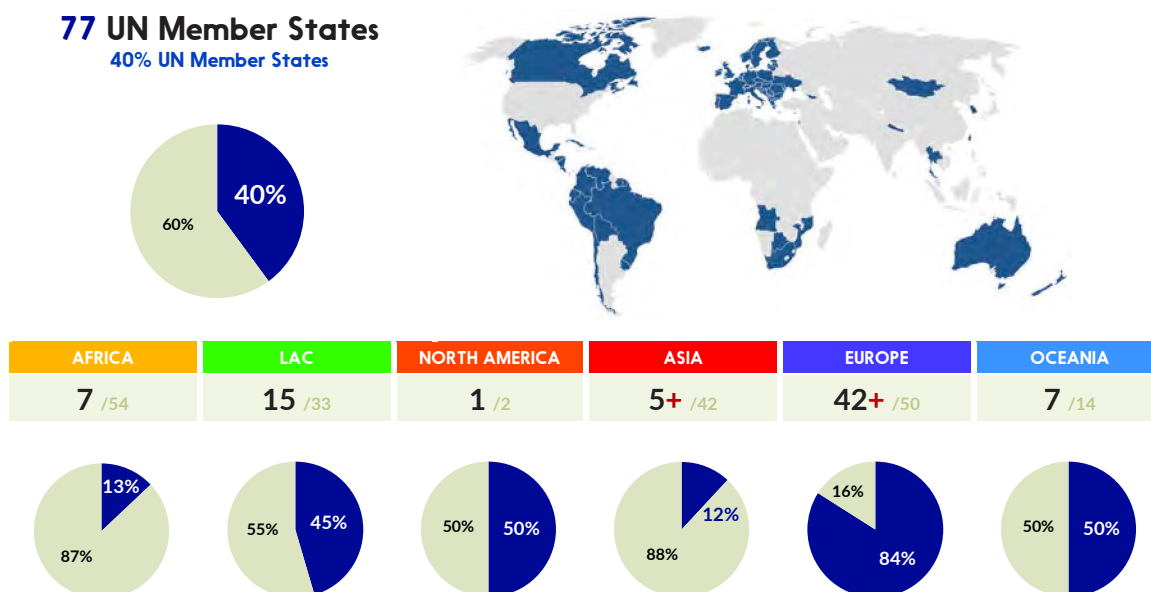
¹⁶ Confederation Suisse, *Votation Populaire: 9 février 2020* (Deuxième objet: Interdiction de la discrimination en raison de l'orientation sexuelle).

Oceania (4)

1	 Australia	2013	The Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act (2013) provides nationwide legal protection against discrimination on the grounds of sexual orientation, gender identity, and sex characteristics. Nevertheless, religious-owned private schools and religious-owned hospitals are exempt from this law's provisions on sexual orientation and gender identity. Several jurisdictions have enacted laws prohibiting discrimination at a state level: 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).
2	 Fiji	1997 2013	Even though there is no law expressly prohibiting discrimination based on sexual orientation, the constitutional prohibition of discrimination based on sexual orientation enshrined in section 26(3)(a) of the Constitution of Fiji (2013) offers broad protection against discrimination.
3	 Micronesia (Federated States of)	2018	On November 12, 2018, the Micronesian Congress passed Bill 20-258, updating the country's anti-discrimination law to include sexual orientation in Section 107 of Chapter 1 of the Code of the Federated States of Micronesia.
4	 New Zealand	1993	Section 21(1)(m) of the Human Rights Act 1993 includes sexual orientation ("heterosexual, homosexual, lesbian or bisexual") among the prohibited grounds of discrimination. This law applies to employment, goods and services and education, among others.

Protection against Discrimination based on Sexual Orientation in Employment

Highlights



Introduction

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.

Notably, legal protections against unfair dismissal motivated by one's sexual orientation (as well as other employment related protections) have been enacted even in countries where consensual same-sex sexual acts are still criminalised.

We also 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.

Even though progressive case law may have extended employment protections based on open equality clauses, in the following list, only those laws that spell out the term "sexual orientation" in an unambiguous way are listed.

What does International Human Rights Law say?

Everyone has the right to decent and productive work, to just and favourable conditions of work and to protection against unemployment, without discrimination on the basis of sexual orientation, gender identity, gender expression or sex characteristics.

States shall take all necessary legislative, administrative and other measures to eliminate and prohibit discrimination in public and private employment, including in relation to vocational training, recruitment, promotion, dismissal, conditions of employment and remuneration;

Yogyakarta Principle 12.

Africa (7)

1	 Angola	2019	Section 197 of the Penal Code criminalises acts of discrimination based on sexual orientation, including with regard to employment. ¹
2	 Botswana	2010	Section 23(d) of the Employment Act (2010) prevents employers from terminating contracts of employment on the basis of sexual orientation (among other grounds).
3	 Cape Verde	2008	Article 45(2) of the Labour Code forbids an employer from requesting information about the employee's "sexual life". Article 406(3) imposes sanctions on employers who dismiss employees based on their sexual orientation.
4	 Mauritius	2008	Part III of the Equal Opportunities Act (2008) prohibits discrimination in employment and Section 2 refers to sexual orientation as one of the protected classes.
5	 Mozambique	2007	Articles 4(1) and 108(3) of the Labour Act No. 23 of 2007 prohibit discrimination based on, <i>inter alia</i> , sexual orientation. Moreover, Article 5 establishes the employer's obligation to respect the employee's privacy, including their "sexual life".
6	 Seychelles	2006	Sections 2, 46(A)(1) and 46(B) of the Employment Act 1995 (as amended by Act No. 4 of 2006) prohibit discrimination based on sexual orientation (among other grounds).
7	 South Africa	1996 1998	Section 187(1)(f) of the Labour Relations Act (1995) establishes a dismissal is "automatically unfair" when based on the employee's sexual orientation (among other grounds). Section 6(1) of the Employment Equity Act (1998) prohibits direct and indirect discrimination on the basis of, <i>inter alia</i> , sexual orientation.

Is there more in Africa?

Namibia

(PROTECTION
REPEALED)

Namibia is one of the rare cases in which a provision protecting people from discrimination based on sexual orientation was repealed by a legislative body.

As early as 1992, local activists successfully lobbied to include "sexual orientation" among the prohibited grounds of discrimination in the Labour Act. In 2004, a new labour law was discussed in Parliament and the inclusion of the term was a topic of heated debates, resulting in the exclusion of the term from the final text.² However, this law never came to force. The **Labour Law** currently in force was enacted in 2007 and does not include "sexual orientation" among the prohibited grounds of discrimination.

¹ The final version of the 2019 Penal Code has not yet been published. The number of the section may differ in the final version. The draft that was approved can be accessed [here](#).

² "Justice Minister scorns homosexuality as 'criminal'", *The Namibian*, 7 May 2004.

Latin American and the Caribbean (15)

1	 Bolivia	2010	Article 5 of the Law against Racism and All Forms of Discrimination (Law No. 45 of 2010) prohibits discrimination on the ground of sexual orientation (among others). Furthermore, article 281sexies of the Criminal Code (as amended by said Act) criminalises any act of discrimination based on, <i>inter alia</i>, sexual orientation. These laws ban sexual orientation discrimination in broad terms and therefore apply to employment.
2	 Brazil		At the federal level, there is no piece of legislation prohibiting employment discrimination on the basis of sexual orientation. However, around 70% of the population reside in jurisdictions where local laws provide such protection. Several jurisdictions have enacted laws banning discrimination based on sexual orientation with varying levels of protection that explicitly specify they apply to employment: Amazonas (2006); Distrito Federal (2000); Espírito Santo (2014); Maranhão (2006); Mato Grosso do Sul (2006); 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); Sao Paulo (2001); as well cities such as Fortaleza (1998) and Recife (2002). Article 8 of the Regulation (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.
3	 Chile	2017	Article 2 of the Labour Code (as amended by the Modernization of Labour Relations Act No. 20.940 of 2016) includes sexual orientation among the prohibited grounds of discrimination.
4	 Colombia	2011	Article 134A of the Criminal Code (as amended by Act No. 1.482 of 2011) criminalises acts of discrimination based on sexual orientation (among other grounds) while Article 136C(3) and (4) aggravates the penalty if such are committed by public servants or while providing public services. These provisions ban sexual orientation discrimination in broad terms and therefore apply to employment. Article 136C(6) also includes the motive of denying or restricting labour rights as an aggravating factor.
5	 Costa Rica	2016	Article 2 of the Labour Procedural Reform Act (Act No. 9.343 of January 25, 2016) amended Article 404 of the Labour Code to include "sexual orientation" among prohibited grounds for discrimination in employment.
6	 Cuba	2014	Article 2(b) of the Labour Code (Act No. 116) establishes the right of every person to have a job, either in the private or the public sector, according to the needs of the economy and their personal choice without discrimination based on sexual orientation (among other grounds).

7	 Ecuador	1998 2005 2015	The constitutional prohibition of discrimination based on sexual orientation enacted in 1998 applies to all rights and, therefore, to employment. Since 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 Labour Justice and Recognition of Domestic Work Organic Act No. 483 of 2015) provides for special compensation in cases of discriminatory dismissal based on, <i>inter alia</i>, sexual orientation.
8	 Honduras	2013	Article 321 of the Criminal Code (as amended by Act No. 23 of 2013) criminalises acts of discrimination based on sexual orientation (among other grounds) and aggravates the penalty if they are committed by public servants. This provision bans sexual orientation discrimination in broad terms and therefore applies to employment.
9	 Mexico	2003	The Federal Act to Prevent and Eliminate Discrimination prohibits employment discrimination in Article 9(IV) and lists “sexual preferences” as a protected class in Article 1(III). Article 149ter(II) of the Federal Criminal Code criminalises employment discrimination based on sexual orientation and aggravates penalties for employers and public servants.
10	 Nicaragua	2008	Article 315 of the Criminal Code (Title 10, Crimes against Labour Rights) criminalises employment discrimination based on “sexual option”.
11	 Peru	2004 2017	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 (among other grounds). This law provides a remedy for sexual orientation discrimination in broad terms and therefore applies to employment. Article 323 of the Criminal Code (as amended by Executive Order No. 1323 of 2017) criminalises discrimination on the basis of, <i>inter alia</i>, sexual orientation and aggravates the penalty if such acts are committed by public servants. This applies to employment.
12	 Saint Lucia	2006	Section 131(1)(a) of the Labour Code prohibits unfair dismissal based on an employee’s sexual orientation (among other grounds).
13	 Suriname	2015	Article 175 of the Criminal Code (as amended by S.B. 2015 No. 44) criminalises discrimination based on sexual orientation (among other grounds). This provision bans sexual orientation discrimination in broad terms and therefore applies to employment.
14	 Uruguay	2004 2013	Article 2 of the Act to combat Racism, Xenophobia and Discrimination (Law No. 17,817) includes “sexual orientation and identity” among the prohibited grounds of discrimination. This provision bans sexual orientation discrimination in broad terms and therefore applies to employment. Article 2(A) of the Promotion of Youth Employment Act (Law No. 19,133) bans discrimination on the basis of sexual orientation (among other grounds) in employment.

15		Venezuela	2012	Article 21 of the Organic Labour Act prohibits employment discrimination based on sexual orientation (among other grounds).
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Is there more in Latin America and the Caribbean?

Argentina	Articles 34(o) and 35(j), 37(h) and 121 of the Executive Order No. 214 (2006), which is applicable only within the National Administration Service, prohibit discrimination in employment on the basis of sexual orientation (<i>limited scope ban</i>). At the federal level, there is no piece of legislation prohibiting discrimination on the basis of sexual orientation in broad terms (see section above).
El Salvador	Article 1 of the Executive Order No. 56 of 2010 prohibits discrimination based on sexual orientation within the Public Administration Service only (<i>limited scope ban</i>).

North America (1)

1		Canada	1996	Section 7 of the Canadian Human Rights Act proscribes direct and indirect discrimination in employment and Section 3(1) protects sexual orientation.
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Is there more in North America?

United States of America	At the federal level, there is no piece of legislation prohibiting employment discrimination on the basis of sexual orientation. Several states have enacted laws that do so with varying levels of protection. ³ Barely under 50% of the population of the USA lives in States which grant protection against discrimination in employment. Furthermore, Executive Order No. 13,087 of 1998 prohibits discrimination in employment by the federal government on the basis of sexual orientation (<i>limited scope ban</i>). In March 2017, the US Court of Appeals for the 7 th Circuit became the first federal appeals court to determine that the Civil Rights Act 1964 protects workers from discrimination based on sexual orientation. ⁴ In February 2018, the US Court of Appeals for the 2 nd Circuit followed suit. ⁵
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Asia (5) + Taiwan and Macau

1		Israel	1992	Section 2(a) of the Law on Employment (Equal Opportunities) (Law No. 5748-1988) as amended in 1992 provides that “an employer shall not discriminate among his employees or among persons seeking employment on account of their [...] sexual tendencies”.
		Macau (China)	2008	Article 6(2) of Law No. 7/2008 prohibits discrimination based on sexual orientation in employment.

³ “State Employment Non-Discrimination Laws”, Movement Advancement Project (MAP) Website.

⁴ United States Court of Appeals for the Seventh Circuit, *Kimberly Hively v. Ivy Tech Community College of Indiana*, 4 April 2017.

⁵ United States Court of Appeals for The Second Circuit, *Zarda v. Altitude Express, Inc.*, 26 February 2018.

2	 Mongolia	2017	Section 14(1)(1) of the Penal Code criminalises acts of discrimination based on sexual orientation. Section 14(1)(2)(3) aggravates penalties when such acts are committed by public officials. This provision bans sexual orientation discrimination in broad terms and therefore applies to employment.
3	 Nepal	2015	Even though there is no law expressly prohibiting discrimination based on sexual orientation in employment, the constitutional prohibition enshrined in Section 18(3) of the Constitution of Nepal (proscribing discrimination against “sexual minorities”) necessarily applies to employment.
4	 South Korea	2001	Article 30(2) of the National Human Rights Commission Act (2001) mandates the Commission to investigate acts of discrimination based on sexual orientation in employment.
	Taiwan (China)	2004 2007 2008	Article 12 of the Gender Equity Education Act (2004) specifies that both private and public schools of all levels shall respect faculty and staff’s sexual orientation. Article 5 of the Employment Service Act (as amended by Presidential Order No. 09600064151 of 2007) and Chapter 2 of the Gender Equality in Employment Act (as amended by Presidential Order No. 09700003951 of 2008) prohibit employment discrimination on the basis of sexual orientation.
5	 Thailand	2007	The Ministry of Labour’s Regulation on Thai Labour Standards and Social Responsibility of Thai Businesses B.E. 2547 (discussed here) prohibits discrimination against workers on numerous grounds, including “personal sexual attitude”. ⁶

Is there more in Asia?

Timor Leste

(PROTECTION
REPEALED)

In an another rare case of legal regression,⁷ **Regulation No. 2002/5 (On the Establishment of a Labour Code for East Timor)**, which prohibited discrimination in employment on the basis of sexual orientation, was repealed in 2012 by **Law No. 4/2012 on Labour**. The new labour law does not contemplate such prohibition.

Europe (42) + Kosovo

1	 Albania	2010 2015	Articles 12-16 of the Law on Protection from Discrimination (Law No. 10,221) provide for protection from discrimination in employment. Article 5 includes “sexual orientation” as one of the prohibited grounds of discrimination. Additionally, Article 9(2) of the Labour Code (as amended by Law No. 135/2015) prohibits discrimination in employment.
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⁶ Busakorn Suriyasarn, *Promoting Rights, Diversity and Equality in the World of Work (PRIDE): Gender identity and sexual orientation in Thailand* (Bangkok: ILO Country Office for Thailand, Cambodia and Lao People’s Democratic Republic, 2014), 22.

⁷ See entry for Namibia in “Is there more in Africa” above.

2	 Andorra	2003 2009	Section 3 of the Employment Contract Act (No. 8/2003) listed “sexual orientation” as a protected ground within labour relations. This law was repealed in 2009 by the Labour Relations Code which prohibits discrimination based on sexual orientation under Articles 3, 75 and 76(5). Under Article 95(3), discriminatory treatment by the employer based on sexual orientation (among other grounds) is considered a “very serious” infraction.
3	 Austria	2004	The Equal Treatment Act (as amended by Act No. 65 of 2004) bans sexual orientation discrimination in employment (Chapter 2).
4	 Belgium	2003 2007	Article 4 of the Anti-Discrimination Law (2003) proscribed discrimination and Article 2 included sexual orientation as one of the protected categories. This law was substituted by Anti-Discrimination Law (2007). Articles 2 and 4 of the Anti-Discrimination Law (2007) ban discrimination based on “sexual orientation”. Articles 5(1)(5) and 5(2) refer to labour relations.
5	 Bosnia and Herzegovina	2003 2009	Article 2 of the Gender Equality Act prohibits sexual orientation discrimination. Chapter V deals with discrimination in employment. Article 2 of the Act on Prohibition of Discrimination (2009) proscribes discrimination on the basis of “sexual expression or sexual orientation” within the private and public spheres. Article 6(1)(a) states that such prohibition applies to employment.
6	 Bulgaria	2005	Section 4(1) of the Law on Protection Against Discrimination (supplemented by SG No. 70 of 2004) bans direct and indirect discrimination based on sexual orientation (among others).
7	 Croatia	2003 2009	Article 2 of the Labour Act (as amended by Act No. 1574 of 2003) names sexual orientation as a protected ground of discrimination in employment. Article 9 of the Anti-Discrimination Act (2009) prohibits discrimination based on sexual orientation. Article 8(1) establishes that such prohibition applies to employment.
8	 Cyprus	2004 2009	Article 6(1) of the Combating Racism and Other Forms of Discrimination (Commissioner) Act proscribes direct and indirect discrimination based on sexual orientation. The Equal Treatment in Employment and Occupation Act 2004 (as amended by Act No. 86(I) of 2009) protects sexual orientation against discrimination in employment (Articles 3, 4 and 6).
9	 Czechia	1999 2004 2009	Section 316(4)(c) of the Labour Code (as amended in 1999) prevents employers from requiring employees information about their sexual orientation, Section 4 of the Employment Act prohibits sexual orientation discrimination in employment. Section 12 reinforces such protection by stating that employers cannot request information about their employees’ sexual orientation. Sections 2 and 3 of the Anti-Discrimination Act (2009) proscribe all types of sexual orientation discrimination.

10	 Denmark	1996 2007	The Act on Prohibition against Discrimination in respect of Employment (1996) bans both direct and indirect employment discrimination on the basis of, <i>inter alia</i>, sexual orientation. Ordinance No. 182 (2007) prohibits discrimination based on sexual orientation in the autonomous country of the Faeroe Islands.
11	 Estonia	2004 2009 2011	Article 19(2)(12) of the Chancellor of Justice Act includes “sexual orientation” among the protected grounds for which claims on discrimination can be brought before the Chancellor of Justice. Articles 1(1) and 2 of the Equal Treatment Act prohibit employment discrimination based on sexual orientation. Article 152(1) of the Penal Code proscribes the unlawful restriction of any right on the basis of sexual orientation.
12	 Finland	1995 2014	Section 9 (Chapter 11) of the Criminal Code (as amended by Act No. 578 of 1995) protects, <i>inter alia</i>, “sexual preference” against discrimination in trade or profession. Section 3 (Chapter 47, on labour offences), criminalises work discrimination based on sexual orientation (among other grounds). Section 8 of the Non-Discrimination Act (2014) prohibits any discriminatory act on the basis of sexual orientation (among other grounds) and Section 7 sets out a range of employment contexts to which such ban applies.
13	 France	1985 2001 2008	Protection against discrimination based on sexual orientation was first codified in 1985. Today, article L1132-1 of the Labour Code (introduced by Act No. 67 of 2008 ratifying Ordinance No. 329 of 2007), prohibits discrimination based on sexual orientation in employment. This provision replaced article L122-45 (amended by Act No. 1066 of 2001).
14	 Georgia	2014	Articles 1 and 2(1) of the Act on the Elimination of All Forms of Discrimination prohibits discrimination based on sexual orientation. These provisions ban sexual orientation discrimination in broad terms and therefore apply to employment.
15	 Germany	2006	Sections 1 and 2 of the General Act on Equal Treatment prohibit discrimination based on sexual orientation (among other grounds). Part 2 (Chapters 1-4) describes a range of employment contexts in which such ban applies.
16	 Greece	2005 2016	Articles 1, 4 and 8 of the Act Against Discrimination (Law No. 3304 of 2005) prohibit discrimination based on sexual orientation in employment. Additionally, Article 2(2)(b) of Law 4443/2016 also includes “sexual orientation” among other prohibited grounds.
17	 Hungary	2004	Articles 7(1), 8(m) and 9 of the Equal Treatment and Promotion of Equal Opportunities Act (No. CXXV of 2003) define direct and indirect discrimination on the basis of sexual orientation as a violation of the equal treatment principle. Articles 21-23 deal with employment.

18	 Iceland	2018	Article 7 of the Act on Equal Treatment in the Workplace prohibits discrimination in the labour market on the basis of, <i>inter alia</i> , sexual orientation (Article 1). Articles 8 and 9 specify what constitutes discrimination in employment.
19	 Ireland	1999 2015	The Employment Equality Act (1998), amended in 2015 by the Equality (Miscellaneous Provisions) Act (2015), ensures non-discrimination in the workplace on the basis of sexual orientation (among other grounds).
20	 Italy	2003	Legislative Decree No. 216 of 2003 instituted sexual orientation as a protected ground of discrimination (among others) within employment.
	Kosovo	2004	Article 2 of the Anti-Discrimination Act prohibits direct and indirect discrimination based on sexual orientation (among other grounds). Article 2(1-4) defines employment in the public and private sectors as a sphere covered by such protection.
21	 Latvia	2006 2013	Article 7(1-2) of the Labour Act (as amended in 2006) establishes the right to work, to a fair, safe and healthy working environment and to a fair wage without any direct or indirect discrimination based on, <i>inter alia</i> , sexual orientation. Article 2 of the Act on Prohibition of Discrimination of Natural Persons Engaged in Economic Activity (2013) specifies sexual orientation as a protected ground of discrimination in economic activities.
22	 Liechtenstein	2016	Article 283(4) of the Penal Code proscribes acts of discrimination based on sexual orientation in broad terms and, therefore, applies to employment.
23	 Lithuania	2000 2002 2005	Article 169 of the Criminal Code penalises discrimination on the ground of, <i>inter alia</i> , sexual orientation. This provision bans sexual orientation discrimination in broad terms and therefore applies to employment. Article 129 of the 2002 Labour Code (2002) also prohibits discrimination based on sexual orientation (among other grounds) in employment. This is reinforced by Articles 1 and 2 of the Equal Treatment Act (2005).
24	 Luxembourg	1997 2006	Articles 454 and 455(5-6) of the Criminal Code (as amended by Act No. 19 of 1997) criminalise sexual orientation discrimination within the exercise of an economic activity and employment. Article 456 aggravates the penalty if the acts are committed by public servants or individuals carrying out public functions. Article 1 of the Equality Act (No. 28 of 2006) bans discrimination based on sexual orientation (among other grounds). Article 2(1)(a-d) applies to employment. Title IV of the Labour Code also proscribes discrimination on the basis of, <i>inter alia</i> , sexual orientation.
25	 Malta	2004	The Equal Treatment in Employment Regulations (Legal Notice 461 of 2004) prohibit discriminatory treatment based on, <i>inter alia</i> , sexual orientation in relation to employment (Sections 1(3), 2(a), 3), both within the public and private sectors.

26	 Moldova	2013	Article 7 of the Law on Equality (Act No. 121) specifies that discrimination on the basis of sexual orientation is banned in the employment sphere only.
27	 Montenegro	2010	Article 16 of the Act on Prohibition of Discrimination refers to discrimination in employment, having set out in Articles 2 and 19 that sexual orientation is protected against it.
28	 Netherlands	1994	While Section 1 of the Equal Treatment Act bans sexual orientation discrimination, Sections 5(1), 6 and 6a deal with discrimination in employment. Section 8(1) renders invalid a termination of employment if based on a prohibited ground.
29	 North Macedonia	2019	Article 6 of the Law on Labour Relations (2005), as amended in 2019, prohibits discrimination based on sexual orientation in employment. It also affords protection to job seekers.
30	 Norway	1998 2006 2013 2018	Section 55(A) of the Act relating to Worker Protection and Working Environment (No. 4 of 1977) (as amended in 1998) protected employees from discrimination based on sexual orientation. This law was repealed by the Working Environment Act (2005), which prohibits sexual orientation discrimination in employment under Sections 13-1(7) and 13-4(3). The Sexual Orientation Anti-Discrimination Act, which aims to promote equality irrespective of sexual orientation, bans discrimination in employment in Chapter 4. This law was repealed by Equality and Anti-Discrimination Act. Section 6 of the Equality and Anti-Discrimination Act proscribes sexual orientation discrimination. Sections 25, 26 and 26a deal with employers' and employer and employee organizations' duties to promote equality. Chapter 5 contains provisions relating to employment relationships.
31	 Poland	2004 2010	Articles 11(3) and 18(3)(a) of the Labour Code prohibit direct or indirect discrimination on the basis of sexual orientation in employment. Article 94(2b) establishes the employer's duty to act against such discrimination. According to Article 8(a), the prohibition on sexual orientation discrimination contained in the Act on Equal Treatment (2010) applies only to employment.
32	 Portugal	2003 2009	Article 23 of Law 99/2003 included "sexual orientation" among the prohibited grounds of discrimination in employment. This law was repealed in 2009 by the new Labour Code. Articles 24 (on the right to equal access to employment and work), and 16 (on the right to privacy) of the Labour Code explicitly protect the status of sexual orientation (among others).
33	 Romania	2000 2005	Article 2(1) of the Ordinance on the Prevention and Punishment of All Forms of Discrimination (No. 137/2000) bans discrimination on the basis of sexual orientation (among other grounds). Articles 5-9 refer to discrimination in employment. Article 5 (among other provisions) of the Labour Code (2005) also protects employees from discrimination based on sexual orientation.

34	 San Marino	2019	The broad protection afforded by Article 4 of the Declaration of Citizen Rights of 1974 (one of the documents that are part of the Constitution of San Marino) applies to all rights and duties, including employment.
35	 Serbia	2010 2015	Articles 1, 2, 13, and 21 of the Prohibition of Discrimination Act ban any discriminatory act, direct or indirect, on the basis of sexual orientation. Articles 16 and 51 deal with employment discrimination. Article 18 of the Labour Law (2015) complements this protection.
36	 Slovakia	2008	Section 2.1 of the Act on Equal Treatment in Certain Areas and Protection against Discrimination (as amended by Act No. 85/2008) prohibits sexual orientation discrimination. Sections 6 and 13 deal with discrimination within labour relations.
37	 Slovenia	2003 2016	Article 6 of the Employment Relationships Act (2003) introduced protection against discrimination in employment based on sexual orientation. Articles 1 and 2(1) of the Protection against Discrimination Act (2016) set out sexual orientation protection from discrimination in employment.
38	 Spain	1996 2004	Since 1996, Article 314 of the Criminal Code criminalises employment discrimination in the public and private spheres. In 2003, Article 37 of Law No. 62/2003 (in force Jan. 1, 2014) amended the Statute of Workers to include “sexual orientation” among the prohibited grounds of discrimination under Article 4 of the Statute.
39	 Sweden	1987 1999 2003 2009	Chapter 16, Section 9 of the Penal Code (as amended in 1987) criminalises discrimination based on sexual orientation in employment. The Prohibition of Discrimination in Working Life because of Sexual Orientation Act (1999) combated direct and indirect discrimination due to sexual orientation in employment. This law was repealed by the Discrimination Act. Sections 1 and 3 of the Prohibition of Discrimination Act (2003) included sexual orientation (defined in Section 4 as “homosexual, bisexual or heterosexual”) as one of the categories protected against discrimination. This law was repealed by the Discrimination Act. Chapter 1, Sections 1 and 4 of the Discrimination Act (2007) include sexual orientation (defined in Section 5 as “homosexual, bisexual or heterosexual”) as a protected ground of discrimination (among others). Chapter 2, Sections 1-4 prohibit discrimination in employment.
40	 Switzerland	2000	Since registered partnerships became a possibility, there are various employment protections based on sexual orientation in the amendments to the Code of Obligations . ⁸

⁸ 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. However, in April 2019, the Federal Court held in a **case** involving a former unit commander in the Swiss Armed Forces that the **Law on Equality** did not apply to discrimination on the basis of sexual orientation (see section on broad protection against discrimination above).

41	 Ukraine	2015	Article 2(1) of the Labour Code (as amended by Act No. 785-VIII of 2015) includes sexual orientation as one of the prohibited grounds for employment discrimination.
42	 United Kingdom	2003 2007 2010	The Employment Equality (Sexual Orientation) Regulations 2003 (No. 1661) and The Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003 (No. 497), were introduced to protect against sexual orientation discrimination in the sphere of employment. Revoked by Equality Act 2010. Equality Act (Sexual Orientation) Regulations 2007 (No. 1263) and Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 (No. 439), laid under Part 3 of the Equality Act 2006, protected against discrimination on the basis of sexual orientation. Revoked by Equality Act 2010. These regulations banned sexual orientation discrimination in broad terms and therefore applied to employment. Part 5 of the Equality Act 2010 deals with employment discrimination. Sections 4, 13, 19, 25(9) and 26 define sexual orientation as one of the prohibited grounds. In Gibraltar, Part III of the Equal Opportunities Act 2006 refers to discrimination in employment. Sections 3 and 10 protect sexual orientation against any act of discrimination.

Oceania (6) + Cook Islands

1	 Australia	1996 2009	Section 3(m) of the Workplace Relations Act 1996 includes "sexual preference" among the grounds of discrimination that the law intends to prevent and eliminate. Furthermore, Section 659(f) prohibits termination of employment based on the employee's sexual orientation (among other grounds). Section 351 of the Fair Work Act 2009 bans any act of discrimination against an employee on the basis of sexual orientation (among other grounds). Several jurisdictions have enacted 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).
2	 Fiji	2007 2011	Section 6(2) of the Employment Relations Promulgation 2007 (Promulgation No. 36 of 2007) proscribes 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. Section 75 also includes sexual orientation as a prohibited ground (among others) for discrimination in employment. Articles 10(b)(2) and 10(c) of the Public Service (Amendment) Decree 2011 (Decree No. 36 of 2011) prohibit discrimination based on sexual orientation (among other grounds) within public service

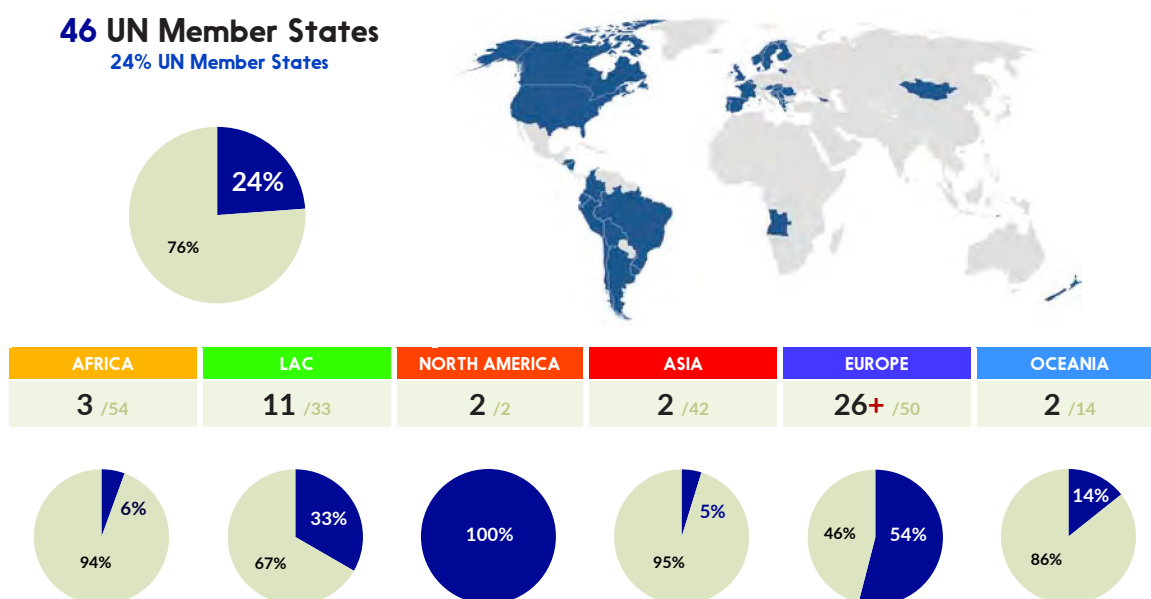
3	 Kiribati	2015	Article 107(2)(b) of the Employment and Industrial Relations Code 2015 bans discrimination based on sexual orientation (among other grounds) in employment.
4	 Micronesia (Federate States of)	2018	On November 12, 2018, the Micronesian Congress passed Bill 20-258 , updating the country's anti-discrimination law to include sexual orientation in Section 107 of Chapter 1 of the Code of the Federated States of Micronesia , which applies to employment.
5	 New Zealand	1993 2000	Section 21(1)(m) of the Human Rights Act (1993) includes sexual orientation ("heterosexual, homosexual, lesbian or bisexual") among the prohibited grounds of discrimination. Article 105(1)(m) of the Employment Relations Act (2000) bans employment discrimination based on sexual orientation (among other grounds).
	Cook Islands	2012	Article 55(e) of the Employment Relations Act (2012) prohibits employment discrimination based on "sexual preference" (among other grounds).
6	 Samoa	2013	Section 20(2) of the Labour and Employment Relations Act (2013) proscribes discrimination against an employee or an applicant for employment in any employment policies, procedures or practices based on sexual orientation (among other grounds).
7	 Tuvalu	2017	Section 5 of the Labour and Employment Relations Act (2017) ⁹ prohibits discrimination at the workplace, including on the basis of sexual orientation. ¹⁰

⁹ The online version of the text could not be located.

¹⁰ [Tuvalu National Report for third cycle of UPR](#), A/HRC/WG.6/30/TUV/1, 28 March 2018, para. 54.

Criminal Liability for Offenses Committed on the Basis of Sexual Orientation

Highlights



Introduction

Some states have introduced two legal vehicles to address the violence motivated by sexual orientation, popularly known as “hate crimes”.

The first is the enactment of a stand-alone criminal offence that criminalises the infliction of violence or harm on a victim motivated by their sexual orientation (real or perceived).

The second is the introduction of a legal provision that confers on the judiciary the power to enhance the criminal punishment where the offence was committed motivated by the victim’s sexual orientation. These legal provisions are often referred to as “aggravating circumstances”. The scope of these provisions can extend to specific types of crimes, such as murder and assault, or apply generally to all criminal offences.

The UN Human Rights Committee has recommended 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.¹

What does International Human Rights Law say?

Everyone, regardless of sexual orientation, gender identity, gender expression or sex characteristics, has the right to security of the person and to protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual or group.

States shall: [...] Take all necessary legislative measures to impose appropriate criminal penalties for violence, threats of violence, incitement to violence and related harassment, based on the sexual orientation, gender identity, gender expression or sex characteristics.

Yogyakarta Principle 5

¹ *Consideration of reports submitted by States parties under article 40 of the Covenant, Concluding observations of the Human Rights Committee: Poland*, CCPR/C/POL/CO/6, 15 November 2010, para. 8.

Africa (3)

1		Angola	2019	Section 71(1)(c) of the Penal Code includes “discrimination based on sexual orientation” among the aggravating circumstances for all crimes established in the code. ²
2		Cape Verde	2015	Article 123 of the Penal Code aggravates the penalty for homicides committed on the basis of the victim’s sexual orientation.
3		Sao Tomé e Príncipe	2012	Article 130(2)(d) of the Penal Code aggravates the crime of homicide when motivated by hatred towards the sexual orientation of the victim.

Latin American and the Caribbean (11)

1		Argentina	2012	Article 80(4) of the Penal Code establishes aggravated penalties only for homicides motivated by “hate towards the sexual orientation of the victim” (among other grounds). Article 90 aggravates the crime of injuries under the same aggravating circumstances.
2		Bolivia	2010	Articles 40 <i>bis</i> of the Penal Code aggravates the penalties of crimes motivated by any of the discriminatory grounds included in Article 281 <i>quinques</i> and <i>sexies</i> (the latter includes sexual orientation).
3		Brazil	2019	On June 13, 2019, the Federal Supreme Court ruled that Brazil’s Law on crimes motivated by racial prejudice (Law No. 7,761) will encompass crimes motivated by the victim’s sexual orientation and gender identity until the National Congress drafts a more specific law. ³
4		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.
5		Colombia	2000	Article 58(3) of the Penal Code states 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.
6		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).

² The final version of the 2019 Penal Code has not yet been published. The number of the section may differ in the final version. The draft that was approved can be accessed [here](#).

³ “STF enquadra homofobia e transfobia como crimes de racismo ao reconhecer omissão legislativa”, *Supremo Tribunal Federal (website)*, 13 June 2019.

7		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.
8		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.
9		Nicaragua	2008	Article 36(5) of the Penal Code establishes aggravated penalties for crimes motivated by the victim's sexual orientation.
10		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.
11		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".

Is there more in Latin America and the Caribbean?

Mexico

There are no provisions aggravating penalties for crimes motivated by the victim's sexual orientation at the federal level.

However, some jurisdictions have included such provisions in their local Penal Codes, such as **Baja California Sur** (Arts. 131, 138, 192; 2017); **Coahuila** (Art. 103(A)(5), 2005), **Colima** [homicide only] (Art. 123bis, 2015); **Mexico City** (Art. 138(8), 2009); **Michoacán** [homicide only] (Art. 121, 2014); **Puebla** (Art. 330bis, 2012); and **Querétaro** (Art. 131(4), 2015).

North America (2)

1		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).
2		United States of America	2008	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 Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act). Numerous states have enacted hate crimes laws that include sexual orientation (see full list here by MAP).

Asia (2)

1		East Timor	2009	Article 52(2)(e) of the Penal Code 2009 includes motivation on discriminatory sentiment on grounds of, <i>inter alia</i> , sexual orientation as a general aggravating circumstance for all crimes.
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2	 Mongolia	2017	Section 10(1)(2)(14) of the Penal Code aggravates penalties for homicides motivated by hate towards the victim's sexual orientation.
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Europe (26) + Kosovo

1	 Albania	2013	Article 50(j) of the Criminal Code establishes that motivation related to sexual orientation is an aggravating circumstance for all crimes.
2	 Andorra	2005	Article 30 of the Criminal Code considers sexual orientation an aggravating circumstance for crimes motivated by hate or bias.
3	 Austria	2016	Article 33(1)(5) of the Criminal Code aggravates crimes motivated by the victim's sexual orientation, by reference to Article 283(1)(1).
4	 Belgium	2007	Various offences in the Criminal Code were amended by Law No. 2007-05-10/35 to establish enhanced punishments where the motive of the crime is hatred against, contempt for or hostility to a person based on their sexual orientation. This includes indecent assault and rape (Article 377 <i>bis</i>) and manslaughter and intentional injury (Article 405 <i>quater</i>).
5	 Bosnia and Herzegovina	2006 2013 2016	All three constituent units of Bosnia and Herzegovina have enacted hate crime legislation that is inclusive of sexual orientation: Federation of Bosnia and Herzegovina (2016), Republika Srpska (2013), Brcko District (2006).
6	 Croatia	2006 2013	Article 151(a) of the old Penal Code (2006) specified a criminal offence based on, <i>inter alia</i> , "sexual preference". Since 2011, Article 87(20) of the new Penal Code (in force since 2013) establishes that penalties shall be aggravated when crimes are committed based, <i>inter alia</i> , on the victim's sexual orientation.
7	 Cyprus	2017	The Criminal Code (Amendment) Law (Law 31(I)/2017) amended the Criminal Code to insert Article 35A, which provides for the aggravation of penalties when crimes are committed because of the victim's sexual orientation.
8	 Denmark	2004	Section 81(6) of the Criminal Code recognises as an aggravating circumstance the situation where the offence stems from the victim's sexual orientation.
9	 Finland	2011	Chapter 6, Section 5(1)(4) of the Criminal Code includes sexual orientation as an aggravating circumstance in sentencing.
10	 France	2001	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 circumstance.

11	 Georgia	2012	Article 53(3) of the Penal Code provides that the commission of a crime on the grounds of, <i>inter alia</i> , sexual orientation constitutes an aggravating circumstance for all crimes under the Code.
12	 Greece	2008 2019	Article 23 of Law No. 3,719/2008 amended Article 79 of the old Penal Code to include the motivation by the victim's "sexual orientation" as an aggravating circumstance. Under the new Penal Code (enacted in 2019) this aggravating circumstance is set forth under Article 82A.
13	 Hungary	2013	The Criminal Code of Hungary was amended to include Section 216 ("Violence Against a Member of the Community"), which explicitly lists sexual orientation. This law criminalises the display of apparently anti-social behaviour as well as assault.
	Kosovo	2012 2019	Article 74(2)(12) and Article 333(4) of the old Penal Code penalised crimes motivated by animus towards, <i>inter alia</i> , sexual orientation, with up to one year in prison. Article 70(2)(12) of the new Penal Code (2019) provides for the aggravation of penalties when the crime is a hate act committed on the basis of the victim's sexual orientation (among other grounds) or because of their affinity with persons of diverse sexual orientations. Furthermore, several provisions aggravate specific crimes when motivated by the victim's sexual orientation: Article 173(1)(10) for murder; Article 184 for assault; Article 185 for light bodily injury; Article 186 for grievous bodily injury.
14	 Lithuania	2009	Article 60(12) of the Criminal Code provides that where an act was committed in order to express hatred towards a group of persons or a person belonging thereto on grounds of sex or sexual orientation, it would be considered an aggravating circumstance.
15	 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.
16	 Montenegro	2013	Article 42(a) of the Criminal Code provides that where a criminal offence is committed from hate on the basis of a person's sexual orientation (among other grounds), the court shall consider such circumstance as aggravating.
17	 North Macedonia	2018	Article 142(42) of the Penal Code (2018) includes "sexual orientation" among the characteristics that may constitute a "hate crime" under the provisions of the Code.
18	 Norway	2004 2008	In the old Penal Code (1902), article 117 was amended by Law No. 52 (2004) to include aggravated form of torture. One of the subsections referred to the victim's sexual orientation. In 2008, Article 77 of the new Penal Code (2005) was amended by Law No. 4 (2008) to include an aggravating circumstance to any crime committed because of the victim's homosexual inclination.
19	 Portugal	2007	The Penal Code considers sexual orientation as an aggravating factor at Article 132 (homicide) and Articles 143, 144 and 145(1)(a), which concern assault.

20	 Romania	2006 2014	In 2006, Article 75 the old Penal Code (1968) was amended by Law No. 278 (2006) to incorporate aggravate crimes when committed because of the victim's sexual orientation, among other grounds. In 2014, a new Penal Code (adopted in 2009) entered into force. The provision containing the aggravating circumstances is now found under Article 77. Subsection (h) contains the specific reference to the victim's "sexual orientation".
21	 San Marino	2008	Law no. 66 introduced Article 179 bis to the Penal Code of San Marino, which recognises circumstances of discrimination on the basis of sexual orientation as an aggravating factor in criminal sentencing.
22	 Serbia	2013	Article 54a of the Criminal Code recognises the commission of an offence on the basis sexual orientation and gender identity, <i>inter alia</i> , as aggravating circumstances in relation to hate crimes.
23	 Slovakia	2013	Article 140(f) of the 2006 Criminal Code was updated in 2013 to include the commission of an offence on the basis of sexual orientation as an aggravating factor.
24	 Spain	2010	Article 22(4) of the Penal Code was amended by Law No. 5/2010 to include "sexual orientation" as an aggravating circumstance of criminal responsibility.
25	 Sweden	2010	Article 29(2) of the Penal Code states that in the assessment of a crime's penalty value, special consideration must be given if the crime was motivated by a person or group's sexual orientation.
26	 United Kingdom	2003 2004 2010	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. Article 3 of The Criminal Justice (No. 2) (Northern Ireland) Order 2004 amended Part III of The Public Order (Northern Ireland) Order 1987, to incorporate "sexual orientation" into the definition of "hatred". Section 2 of the Scottish Offences (Aggravation by Prejudice) (Scotland) Act (2009) (in force 2010) incorporates sexual orientation to the reasons that aggravates penalties.

Is there more in Europe?

Netherlands

Neither the Criminal Code nor the Criminal Procedure Code provide for aggravating circumstances based on the victim's sexual orientation. However, the *Instruction on Discrimination* (in force since 2007) issued by the Public Prosecution Service establishes that the public prosecutor must increase the sentence they demand by 25 per cent when such motivation is present in any given case.⁴

Switzerland

In September 2019, the Swiss Parliament narrowly approved a motion to collect statistical data on hate crimes against LGBTQ people.⁵

⁴ Rick Lawson et al., *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation – Netherlands* (Leiden, 2008), 32.

⁵ "Schweizer Parlament für statistische Erfassung von Hassverbrechen gegen LGBT". GGG.at. 27 September 2019.

Oceania (2)

1	 New Zealand	2002	Article 9 of the Sentencing Act 2002 provides that it is an aggravating factor where 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).
2	 Samoa	2016	Section 7(1)(h) of the Sentencing Act 2016 increases the 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).

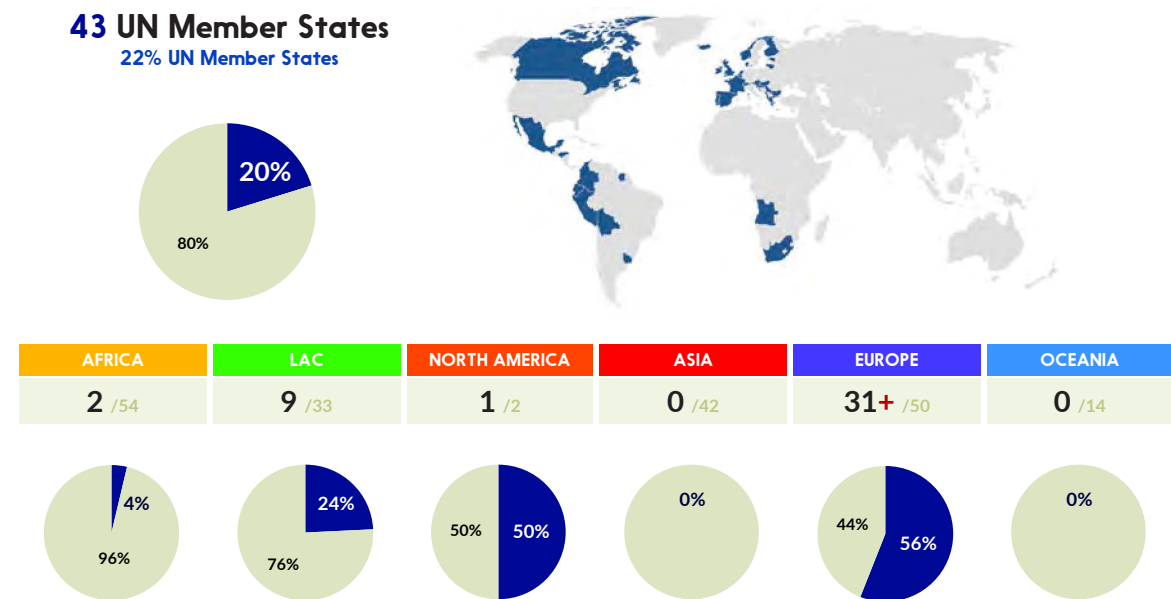
Is there more in Oceania?

Australia

There is no federal law 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.

Prohibition of Incitement to Hatred, Violence or Discrimination based on Sexual Orientation

Highlights



Introduction

In some states, it is an offence to incite to hatred, violence or discrimination on the basis of sexual orientation. In restricting the freedom of such forms of speech, these laws recognise the paramount importance of securing the safety and protection of marginalised communities.

The wording and scope of these laws vary greatly. Some statutes aim to prohibit “hate speech” or speech with the ability to directly incite people to commit “violence”, while others include a wide array of terms such as “hatred”, “harassment”, “discrimination”, “intolerance” or “segregation”.

A few states have enacted laws that proscribe debasing or humiliating a specific social group, either in broad terms or in statutes regulating broadcasting services.

As with many other laws, judicial interpretations may have widened the enumerated groups of people protected by statutes, especially when they have an open clause to that effect. However, the following list includes States that have enacted laws explicitly including sexual orientation among protected grounds.

What does International Human Rights Law say?

Everyone, regardless of sexual orientation, gender identity, gender expression or sex characteristics, has the right to State protection from violence, discrimination and other harm, whether by government officials or by any individual or group.

Yogyakarta Principle 30

States shall: [...] Take appropriate and effective measures to eradicate all forms of violence, discrimination and other harm, including any advocacy of hatred that constitutes incitement to discrimination, hostility, or violence on grounds of sexual orientation, gender identity, gender expression or sex characteristics, whether by public or private actors [...].

Yogyakarta Principle 30(b)

Africa (2)

1		Angola	2019	Incitement to discrimination based on sexual orientation is criminalised under article 382 of the new Penal Code. ¹
2		South Africa	2000	The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 , prohibits unfair discrimination, hate speech and harassment. Section 1(22) includes “sexual orientation” within the definition of “prohibited grounds”.

Is there more in Africa?

Tanzania

In March 2018, the Tanzanian Government published **The Electronic And Postal Communications (Online Content) Regulations, 2018**, which forbid online publishing of hate speech and contemplate sexual orientation as a protected characteristic.

Latin American and the Caribbean (9)

1		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>quinqüies</i> .
2		Brazil	2019	On June 13, 2019, the Federal Supreme Court ruled that Brazil's Law on crimes motivated by racial prejudice (Law No. 7,761) will encompass crimes motivated by the victim's sexual orientation and gender identity until the National Congress drafts a more specific law. ² Under Article 20 of this law, incitement to hatred is criminalised. Furthermore, several jurisdictions have enacted local administrative (non-criminal) provisions that proscribe incitement explicitly mentioning “sexual orientation”: Amazonas (2006); Mato Grosso do Sul (2005); Pará (2011); Paraíba (2003); Rio de Janeiro (2015); and the city of Recife (Pernambuco).
3		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 sexual orientation.
4		Ecuador	2009	Article 176 of the Penal Code criminalises the incitement to discrimination based on sexual orientation.
5		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.

¹ The final version of the 2019 Penal Code has not yet been published. The number of the section may differ in the final version. The draft that was approved can be accessed [here](#).

² "STF enquadra homofobia e transfobia como crimes de racismo ao reconhecer omissão legislativa", *Supremo Tribunal Federal (website)*, 13 June 2019.

6	 Mexico	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. This law only applies to federal authorities.
7	 Peru	2017	Article 323 of the Penal Code (as amended by Legislative Order No. 1,323) criminalises acts of discrimination based on sexual orientation either by the perpetrator or through another person.
8	 Suriname	2015	Articles 175(a) 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).
9	 Uruguay	2003 2006 2015	Article 149bis of the Penal Code (as amended by Law 17.677 of 2003) criminalises the incitement to hatred or any form of violence based on sexual orientation. Article 17 of Law No. 18.026 criminalises the incitement to the crime of genocide, a crime contemplated under article 16 of the same law (“sexual orientation” is explicitly included in the definition). Since 2015, Article 28 of the Law on Audio Visual Communication Services (Law No. 19,307) prohibits the dissemination of content which promotes or incites to violence based on sexual orientation (among other grounds).

Is there more in Latin America and the Caribbean?

Argentina

Although Article 212 of the **Penal Code** provides for the crime of incitement to violence without explicit reference to sexual orientation, Article 70 of the Law on Audiovisual Communication Services (**Law No. 26.522**) states that content that promotes or incites discriminatory treatment based on sexual orientation (among other reasons) should be avoided. The latter is not a criminal provision.

North America (1)

1	 Canada	1996	Section 319 of the Penal Code proscribes public incitement of hatred. By reference to Section 318(4), Section 319(7) includes “sexual orientation” among the “identifiable group” against which this crime can be committed. Under Section 320, publications deemed to be hate propaganda can be confiscated.
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Europe (31) + Kosovo

1	 Albania	2013	Section 265 of the Criminal Code (as amended by Law No. 44 of 2013) penalises those who incite hate or disputes on grounds of sexual orientation, as well as those who intentionally prepare, disseminate or preserve writings with such content for purposes of distributing by any means or forms.
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2	 Austria	2011	BGBI. I No. 103/2011 amended Article 283 of Criminal Code to include “sexual orientation” as a protected ground against incitement to violence.
3	 Belgium	2003 2007	Article 4 of the Anti-Discrimination Law (2003) ³ penalised the incitement to discrimination, hatred or violence based on sexual orientation (among other grounds). Article 22 of the Anti-Discrimination Law (2007) ⁴ prohibits the incitement to discrimination, hate, segregation or violence on the basis of a protected criteria. Article 4(4) includes “sexual orientation” among the list of protected criteria.
4	 Bulgaria	2004	The Protection Against Discrimination Act states that “harassment” (which includes hate speech and incitement) applies to sexual orientation, according to Articles 4(1) and 5.
5	 Croatia	2006 2013	Article 151(a) of the old Penal Code (amended 2006) criminalised incitement to hatred based on, <i>inter alia</i> , “sexual preference”. Article 325 of the new Penal Code (in force since 2013) criminalises the incitement to violence or hatred directed against a group of people or a member of the group because of their sexual orientation.
6	 Cyprus	2015	Article 2 of Law No. 87(I)/2015 inserted Article 99A in the Penal Code to criminalise the incitement to violence or hatred directed against a group of persons or members of a group of person for their sexual orientation.
7	 Denmark	1987	Article 1 of Law No. 357 (1987) amended Article 266(b) of the Penal Code to include “sexual orientation” among the grounds for protection against statements or information by which a group of people are threatened, insulted or degraded.
8	 Estonia	2006	Section 151(1) of the Penal Code specifies sanctions for incitement to hatred on the basis of sexual orientation.
9	 Finland	2011	Chapter 11, Section 10 of the Criminal Code criminalises the public expression of an opinion or message that threatens, defames or insults a certain group on the basis of, <i>inter alia</i> , sexual orientation. Section 10(a) provides for enhanced punishment where that speech involves incitement or enticement to genocide, murder or serious violence.
10	 France	2005	Article 20 of Law No. 1486 of 2004 amended article 24 of the Law on Freedom of the Press (Law No. 24 of 1881) to criminalise the incitement to hatred or violence against a person or group of persons on the grounds of their sexual orientation (among other grounds). Article 32 of the same law criminalises defamation on the basis of sexual orientation and Article 33 criminalises insult on the basis of sexual orientation (among other reasons).

³ Original title: 25 Fevrier 2003. - Loi tendant à lutter contre la discrimination et modifiant la loi du 15 février 1993 créant un Centre pour l'égalité des [chances] et la lutte contre le racisme. (Erratum, voir M.B. 13.05.2003, p. 23578). Dossier numéro : 2003-02-25/37.

⁴ Original title: 10 Mai 2007. - Loi tendant à lutter contre certaines formes de discrimination. Dossier numéro : 2007-05-10/35.

11	 Greece	2014 2019	Article 1 of Law No. 4.285/2014 amended Article 1 of the Law on Public Incitement to Violence or Hatred (Law No. 927/1979) to criminalise the incitement to discrimination, hatred or violence based on sexual orientation (among other grounds). Under the new Penal Code (enacted in 2019), incitement to violence based on sexual orientation is set forth under Article 184(2).
12	 Hungary	2013	Article 332 of the Criminal Code was amended to include "incitement against a community". This clause lists sexual orientation as a prohibited ground.
13	 Iceland	1996 2013	Article 2 of Law No. 135 (1996) amended Article 233 of the General Penal Code to include sexual orientation among the protected grounds against publicly mockery, defamation, denigration or threat. This provision is now found under Article 233(a). Furthermore, Act No. 54 (2013) amended Article 27 of the Law on Media (Law No. 38, 2011) to prohibit the promotion of hatred based on sexual orientation.
14	 Ireland	1989	The Prohibition of Incitement to Hatred Act (Law No. 19, 1989) penalises incitement to hatred, violence or discrimination on the ground of, <i>inter alia</i> , sexual orientation.
	Kosovo	2019	Article 141 of the new Penal Code (2019) penalizes those who publicly incite or spread hatred, discord and intolerance based on sexual orientation (among other grounds).
15	 Liechtenstein	2012	Article I of the Law on the Amendment of the Media Law (2012) amended Article 6(2)(e) of the Media Law (2005) to prohibit media content that incites, encourages or endorses hate or discrimination based on sexual orientation (among other on grounds). The 2012 law also amended Article 41(1)(b) to prohibit advertising that contains discrimination based on sexual orientation.
16	 Lithuania	2009	Article 1 of Law No. XI-330 (2009) amended Article 170 of the Criminal Code (which proscribes incitement to hatred, violence and discrimination) to include "sexual orientation" among the protected grounds. Article 2 of the same law added Article 170-1 which criminalises the creation of a group of accomplices, an organised group, or an organisation aiming at discriminating a group of persons on grounds of their sexual orientation.
17	 Luxembourg	1997	Article III of Law of 19 July 1997 inserted Article 457-1 into the Criminal Code to penalise acts of incitement to hatred or violence motivated by, <i>inter alia</i> , sexual orientation (by means of reference to grounds listed under Article 454).
18	 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 and violence based on, <i>inter alia</i> , sexual orientation.

19	 Moldova	2019	Article 1 of the Code of Audio-visual Media Services (2019) defines “hate speech” as a message that propagates, incites, promotes or justifies hatred based on sexual orientation (among other grounds). Article 17(3) prohibits such hate speech in the national audio-visual space. Additionally, under Article 63, commercials cannot include or promote any discrimination based on sexual orientation.
20	 Monaco	2005	Article 16 of the Law on Public Freedom of Expression proscribes incitement to hatred or violence based on sexual orientation.
21	 Montenegro	2013	Article 443 of the Criminal Code proscribes incitement to hatred based on sexual orientation.
22	 Netherlands	1994	Section 137(c) of the Penal Code prohibits the intentional making of an insulting statement about a group of persons based on, <i>inter alia</i> , their sexual orientation. Section 137(d) prohibits the incitement of hatred or discrimination about a group of persons based on, <i>inter alia</i> , their sexual orientation.
23	 Norway	1981 2008	Law No. 14 (1981) amended Article 135(a) of the old Penal Code to criminalise the public utterance of a discriminatory or hateful expressions, defined as speech that is “threatening or insulting anyone, or inciting hatred or persecution of or contempt for anyone” because of their “homosexuality, lifestyle or orientation”. In 2005, a new Penal Code entered into force. This code was amended by Law No. 4 (2008) to criminalises hate speech and incitement to hatred and violence based on sexual orientation under Article 185(c).
24	 Portugal	2007	Article 1 of Law No. 59 (2007) amended Articles 240(1) and (2) of the Penal Code to proscribe incitement to discrimination, hatred or violence based on sexual orientation, among other grounds.
25	 San Marino	2008	Law No. 66 (2008) amended Article 179 of the Penal Code of San Marino to include sexual orientation as a protected ground from incitement to hatred and violence (Article 179 bis).
26	 Serbia	2010 2014	Articles 13 of the Law on the Prohibition of Discrimination (2010) proscribes “severe forms of discrimination” consisting of incitement of inequality, hatred and enmity on the grounds of, <i>inter alia</i> , sexual orientation. Article 75 of the Law on Public Information and Media (2014) establishes that ideas, opinions or information published in the media should not encourage discrimination, hatred or violence against a person or group of persons because of their sexual orientation (among other grounds).
27	 Slovakia	2013	Article 424(1) of the Slovak Criminal Code criminalises the incitement to violence, hatred or restrictions on their rights and freedoms against a group of persons or an individual for their “actual or suspected” sexual orientation.
28	 Slovenia	2008	Article 297(1) of the Penal Code criminalises the public provocation or stirring up of hatred, strife or intolerance on the basis of sexual orientation.

29	 Spain	1996 2015	Article 510(1) of the Penal Code was amended in 1995 (entered into force in 1996) to criminalise incitement to discrimination, hatred or violence based on sexual orientation. In 2015, Organic Law No. 1 (2015) amended (among others) Article 510 to criminalise, under Article 510(2), actions that involve humiliation, contempt or discredit based on sexual orientation and the exaltation or justification of crimes committed against a group for their sexual orientation (among other grounds).
30	 Sweden	2002	Law 2002:800 (2002) amended Article 8 of Chapter 16 of the Penal Code to include “sexual orientation” (among other grounds) as a protected characteristic against threats and expressions of disrespect. Article 4(11) of Law 2002:908 (2002) on the Freedom of the Press complements such protection in similar terms.
31	 United Kingdom	2004 2008	Section 74 and Schedule 16 of the Criminal Justice and Immigration Act (2008) prohibits the incitement to hatred on the ground of sexual orientation. 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).

Is there more in Europe?

Poland	In mid-2019, the Warsaw District Court ordered <i>Gazeta Polska</i> , a government-aligned newspaper, to stop distributing hateful “LGBT-Free Zone” stickers in its publications. ⁵
Romania	Article 25 of Law No. 278 (2006) amended Article 317 of the old Penal Code (1968) to penalise incitement to hatred based on sexual orientation (among other grounds). Under the new Penal Code (approved in 2009, in force since 2014) the crime of incitement to hatred or discrimination is found under Article 369. However, this provision does not mention any specific ground or characteristic for protection.
Switzerland	Article 261bis of the Criminal Code was amended to include “sexual orientation” in the provision that criminalises public incitement to hatred or discrimination, as well as the public dissemination of ideologies that systematically denigrate or defame members belong to a protected group. This amendment will be subject to a popular vote which will be held in February 2020. ⁶

⁵ Kyle Knight, “Polish Court Rebukes “LGBT-Free Zone” Stickers”, *Human Rights Watch*, 1 August 2019.

⁶ Confederation Suisse, *Votation Populaire: 9 février 2020* (Deuxième objet: Interdiction de la discrimination en raison de l’orientation sexuelle).

Oceania (0)

Is there more in Oceania?

Australia

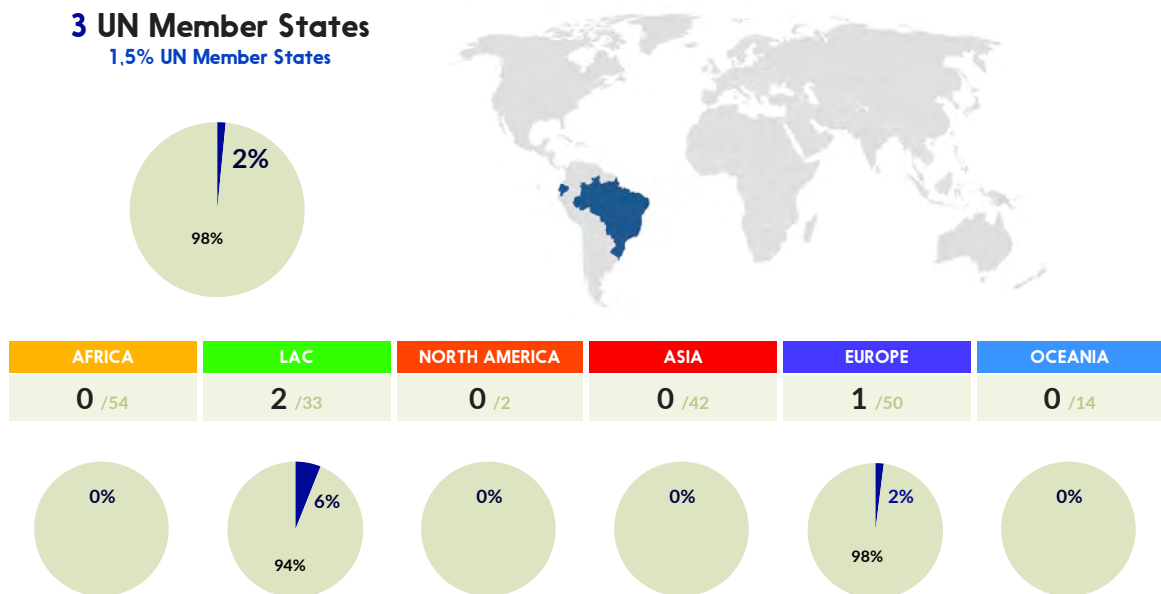
There is no federal provision prohibiting incitement to hatred based on sexual orientation in Australia, and less than half (41%) the population live in areas where provincial laws specify such protection.

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).

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).

Bans against "Conversion Therapy"

Highlights



Introduction

The number of States that prohibit the pseudo-scientific practices of so-called "conversion therapy" is strikingly low.

Since our 2017 edition, there has been growing attention on this issue. Although we still have to report that only 3 UN Member States have nationwide bans, considerable progress has been made, especially at the subnational level.

Below we include the list of countries that have enacted bans against "conversion therapies" by means of a law (either civil or criminal) or other types of *legal/official instruments*. These do not include official position statements or directives issued by private professional associations or organisations.

Additionally, we map a few countries that have not enacted explicit bans on "conversion therapies" but have prohibited mental health diagnosis based exclusively on sexual orientation. Even though these laws do not ban these therapies explicitly, they may prevent licenced health professionals from administering some types of sexual orientation change efforts.

What does International Human Rights Law say?

Everyone has the right to the highest attainable standard of physical and mental health, regardless of sexual orientation, gender identity, gender expression or sex characteristics.

Yogyakarta Principle 17

States shall: Prohibit any practice [...] allowing intrusive and irreversible treatments [...] including [...] "reparative" or "conversion" therapies, when enforced or administered without the free, prior, and informed consent of the person concerned.

Yogyakarta Principle 10.e

Latin American and the Caribbean (2)

1	 Brazil	1999	Resolution 1/99 issued by the Federal Council of Psychology, prohibits the "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. In 2017, a federal judge first overruled then reaffirmed Resolution 1/99 in a case brought by an evangelical Christian psychologist whose licence was revoked in 2016 after she offered "conversion therapy".¹ On 24 April 2019, a senior jurist of the Federal Supreme Court suspended a lower court's decision to allow psychologists to perform "conversion therapy". This suspension will remain valid until the matter is resolved by the Federal Supreme Court.²
2	 Ecuador	2013	Section 20(a) of the Ministerial Order No. 767 prohibits conversion therapies in rehabilitation institutions. Article 151(3) of the Comprehensive Organic Penal Code of 2014 also criminalizes any act of torture (defined in broad terms) perpetrated with the intention of modifying a persons' sexual orientation.

Is there more in Latin America and the Caribbean?

Argentina	Section 3(c) of the Law on Mental Health (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, but it prevents health professionals, particularly psychiatrists, from legally engaging in sexual orientation change efforts (SOCE).
Mexico	A bill that would prohibit sexual orientation and gender identity change efforts was introduced in October 2018 and debated by the Federal Senate in February 2019. ³
Uruguay	Article 4 of the Mental Health Law (2017) prohibits any mental health diagnosis on the exclusive basis of sexual orientation and gender identity. This law does not ban conversion therapies explicitly, but it prevents health professionals, particularly psychiatrists, from legally engaging in sexual orientation change efforts (SOCE).

¹ Don Philips, 'Brazilian judge approves 'gay conversion therapy, sparking national outrage,' *The Guardian* (London, United Kingdom), September 19, 2017, World section; Mateus Rodrigues and Raquel Morais, 'Juiz federal do DF altera decisão que liberou 'cura gay' e reafirma normas do Conselho de Psicologia', *Globo.com* (Brazil), December 15, 2017, Federal District section.

² Jack Arnhold, "Brazilian Federal Supreme Court Jurist Carmen Lucia Suspends 'Gay Cure'", *The Rio Times*, 25 April 2019.

³ "Senado va contra terapias para 'curar' homosexualidad", *Excelsior*, 17 February 2019.

North America (0)

Is there more in North America?

Canada	While there are no nationwide bans on "conversion therapy" in Canada, an increasing proportion of cities and provinces have adopted or are considering adopting such bans. This includes the provinces of Manitoba (2015), Ontario (2015), Nova Scotia (2018), the city of Vancouver (2018), and the city of St. Albert (2019). Therefore, around 46% of the Canadian population lives in areas with legal bans in force. The Respect for Sexual Orientation and Gender Identity Bill was introduced in Nova Scotia in September 2018. ⁴ A petition to ban "conversion therapy" nationally was presented to the Canadian House of Commons in January 2019. ⁵ As a result of this petition, Liberal senator Serge Joyal tabled Bill S-260 in April. As of October 2019, the bill is still under consideration. ⁶
United States of America	There is no federal law banning "conversion therapy" at the federal level. However, by October 2019, a total of 18 states, in addition to the District of Columbia (2014) and Puerto Rico , had local laws proscribing these practises: California (2012); Colorado (2019); Connecticut (2017); Delaware (2018); Hawaii (2018); Illinois (2015); Maine (2019); Maryland (2018); Massachusetts (2019); Nevada (2017); New Hampshire (2018); New Jersey (2013); New Mexico (2017); New York (2019); Oregon (2015); Rhode Island (2017); Vermont (2016); Washington (2018). A number of counties and cities have also enacted local bans. ⁷ In California, Bill AB-2943 , which considered advertising, offering to engage in, engaging in for sale, or selling services constituting sexual orientation change efforts (SOCE) an unlawful practice prohibited under the Consumer Legal Remedies Act, was withdrawn after being brought before its State assembly. ⁸

Asia (0)

Is there more in Asia?

China	Several court decisions have ruled in favour of victims of "conversion therapy" though there has not been a legislative ban against such practices. In December 2014, a Beijing court ruled that the electronic shock "therapy" the claimant received was not necessary because homosexuality did not require treatment and ordered the psychiatric clinic to pay 3,500 yuan in compensation and post an apology to its website. ⁹ In December 2017, a court in Henan province ordered a city psychiatric hospital to publish an apology in local newspapers and pay the 38-year old male claimant 5,000 yuan in compensation on the basis that he was forcibly treated. ¹⁰
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⁴ Michael Gorman, 'Bill passes banning conversion therapy in Nova Scotia', *CBC News*, 25 September 2018; Liam Bretten, 'Vancouver to ban businesses offering conversion therapy', *CBC News*, 6 June 2018.

⁵ Katie Dangerfield, 'Petition to ban conversion therapy across Canada gains steam, survivor says it's 'long overdue'', *Global News*, 9 October 2018.

⁶ Arvin Joaquin, 'The Canadian government considers reforming the Criminal Code to ban conversion therapy'. *Xtra*, 12 July 2019.

⁷ According to Movement Advancement Project (MAP), these are the counties and cities with local bans in force. (1) Counties: Albany County, NY (2018); Broward County, FL (2018); Erie County, NY (2018); Palm Beach County, FL (2017); Pima County, AZ (2017); Ulster County, NY (2017); Westchester County, NY (2018). (2) Cities: Albany, NY (2018); Allentown, PA (2017); Athens, OH (2017); Bay Harbor Islands, FL (2016); Bellefonte, PA (2018); Bethlehem, PA (2018); Boca Raton, FL (2017); Boynton Beach, FL (2017); Cincinnati, OH (2015); Columbus, OH (2017); Dayton, OH (2017); Delray Beach, FL (2017); Doylestown, PA (2017); Eau Claire, WI (2018); El Portal, FL (2017); Gainesville, FL (2018); Greenacres, FL (2017); Key West, FL (2017); Lake Worth, FL (2017); Lakewood, OH (2018); Madison, WI (2018); Miami, FL (2016); Miami Beach, FL (2016); Milwaukee, WI (2018); New York City, NY (2017); North Bay Village, FL (2016); Oakland Park, FL (2017); Philadelphia, PA (2017); Pittsburgh, PA (2016); Reading, PA (2017); Riviera Beach, FL (2017); Rochester, NY (2018); Seattle, WA (2016); State College, PA (2018); Tampa, FL (2017); Toledo, OH (2017); Wellington Village, FL (2017); West Palm Beach, FL (2016); Wilton Manors, FL (2016); Yardley, PA (2018).

⁸ 'California Assemblyman Drops So-Called 'Gay Conversion Therapy Ban' Bill', *CBN News*, 31 August 2018.

⁹ 'China orders payout in 'gay shock therapy' case', *BBC News*, 19 December 2014.

¹⁰ 'Chinese man wins forced gay conversion therapy lawsuit', *The Guardian*, 4 July 2017.

India	In December 2018, a doctor was summoned by the Delhi High Court for allegedly violating the Indian Medical Council Act, after he was banned by the Delhi Medical Council for engaging in “conversion therapy”. ¹¹
Israel	A bill which would have banned “conversion therapy” performed on minors was rejected by the legislature in 2016. ¹² However, the Israel Medical Association (which represents around 90% of the country’s doctors) issued a ban on “conversion therapy” that would result in the expulsion of any doctor who performs such practices. ¹³
Taiwan (China)	On February 22, 2018, the Ministry of Health and Welfare issued a public announcement (Yi-Zih No. 1071660970) ¹⁴ stating that while legislative amendments to the Physicians Act to include “conversion therapy” as prohibited treatment were being debated, individuals and organisations carrying out such practices could be liable for an offence under the Children and Youth Welfare Act or the Criminal Code of the Republic of China. ¹⁵
Indonesia Negative development	In 2016, the Indonesian Psychiatrists Association (PDSKJI) classified “homosexuality”, “bisexuality” and “transsexualism” as mental disorders, which “can be cured through proper treatment”. ¹⁶
Malaysia Negative development	In 2017, the federal government’s Islamic Development Department endorsed and promoted “conversion therapy”. ¹⁷ According to local sources, State officials have been organising “conversion therapy” courses aimed at transgender women. ¹⁸

Europe (1)

1	 Malta	2016	The Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act (an act to prohibit “conversion therapy”, as a deceptive and harmful act or interventions against a person’s sexual orientation, gender identity and, or gender expression, and to affirm such characteristics) prohibits the performance of “conversion therapy” both by professionals (Section 3.b) and by non-professionals (Section 3.a).
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Is there more in Europe?

European Union	In March 2018, the European Parliament of the European Union approved a resolution that “welcomes initiatives prohibiting LGBTI ‘conversion therapies’” and called on member states to outlaw such practices. ¹⁹
Germany	Following a statement against “gay conversion therapy” by German Health Minister Jens Spahn, a commission working towards ending these practices was created in April 2019. It is expected that a draft bill will be formally introduced before the end of 2019. ²⁰

- ¹¹ “Delhi HC Summons Doctor Treating Homosexual Patients Using Electric Shocks”, *Outlook India*, December 8, 2018.
- ¹² Marissa Newman, ‘Day after marking LGBT rights, Knesset nixes 5 gender equality bills’, *The Times of Israel*, 24 February 2016.
- ¹³ Rachel Savage, ‘Israeli doctors ban gay conversion therapy as risks ‘mental damage’’, *Thomas Reuters Foundation News*, January 9, 2019.
- ¹⁴ A free English translation of the official document can be accessed [here](#). This translation was offered to ILGA World by *Marriage Equality Coalition Taiwan*.
- ¹⁵ “性傾向扭轉治療爭議，衛福部最新函釋確定禁止”, *Apple Daily Taiwan*, 22 February 2018.
- ¹⁶ Liza Yosephine, ‘Indonesian psychiatrists label LGBT as mental disorders’, *The Jakarta Post*, 24 February 2016.
- ¹⁷ ‘Sexual orientation can be changed, Jakim says in new LGBT video’, *Malay Mail*, 13 February 2017.
- ¹⁸ ‘Malaysian transgender conversion plan sparks alarm’, *Malay Mail*, 30 December 2017.
- ¹⁹ ‘European Parliament takes a stance against LGBTI conversion therapies for the first time’, *Integroup on LGBT Rights (web page)*, 1 March 2018.
- ²⁰ Deborah Berlioz, “Homosexualité: l’Allemagne veut mettre fin aux thérapies de conversion”. *Les Voix du Monde*. 24 September 2019

Poland	In February 2019, a group of MPs and activists submitted a draft bill to the Sejm (the lower house of the Polish parliament) to ban "gay conversion therapy". The Polish Parliament is expected to hold its first reading of this bill sometime soon. ²¹
Spain	Even though there is no nationwide ban, several jurisdictions within Spain have prohibited "conversion therapy", including Madrid (2016), Murcia (2016), Valencia (2017) and Andalusia (2017).
Switzerland	The Federal Council has stated its opposition to banning "conversion therapies" in Switzerland, under the pretence that existing legislation is sufficient to protect people from them. ²²
United Kingdom	While the Counsellors and Psychotherapists (Regulation) and Conversion Therapy Bill 2017-19 is still making its way through the UK Parliament, a Memorandum of Understanding was signed by both NHS England and NHS Scotland to commit to ending the practice of "conversion therapy". ²³

Oceania (0)

Is there more in Oceania?

Australia	Though there is no federal ban on "conversion therapy" in Australia, in September 2018, the Australian Senate passed a motion seeking to ban them across the country. Though not legally binding, the motion urges the federal government to pressure states to ban the practice. In Victoria, under the Health Complaints Act, the Health Complaints Commissioner has the power to investigate and issue temporary or permanent bans on unregistered health providers, including those providing "conversion therapy".²⁴ In May 2018, the state government also launched an inquiry into such practices.²⁵
Fiji	Section 3(1)(d) of the Mental Health Decree 2010 (Decree No. 54 of 2010) provides 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. While this does not explicitly prohibit the practice of "conversion therapy", it prevents health professionals, particularly psychiatrists, from legally engaging in sexual orientation change efforts (SOCE).
Nauru	Nauru's Mentally Disordered Persons Act was amended in 2016 to introduce Section 4A(1)(d) under which a person cannot be regarded as mentally disordered if they express, exhibits or refuses or fails to express a particular sexual preference or sexual orientation. While this does not explicitly prohibit the practice of "conversion therapy", it prevents health professionals, particularly psychiatrists, from legally engaging in sexual orientation change efforts (SOCE).
Samoa	Section 2 of the Mental Health Act 2007 provides 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. While this does not explicitly prohibit the practice of "conversion therapy", it prevents health professionals, particularly psychiatrists, from legally engaging in sexual orientation change efforts (SOCE).

²¹ Lydia Smith, "Poland moves step closer to banning gay conversion therapy". Pink News. 22 February 2019.

²² "Councillors, advocates criticise Swiss government's refusal to ban 'gay conversion therapy'". *The Local*. 4 October 2019.

²³ 'Memorandum of Understanding on Conversion Therapy in the UK', UK Council for Psychotherapy (web page) (2017).

²⁴ 'Gay conversion therapy, fake doctors to be banned in Victoria', ABC News, 9 February 2016.

²⁵ Danny Tran, 'Gay conversion therapy to be investigated by Victoria's health watchdog', ABC News, 17 May 2018.

GLOBAL LEGISLATION OVERVIEW

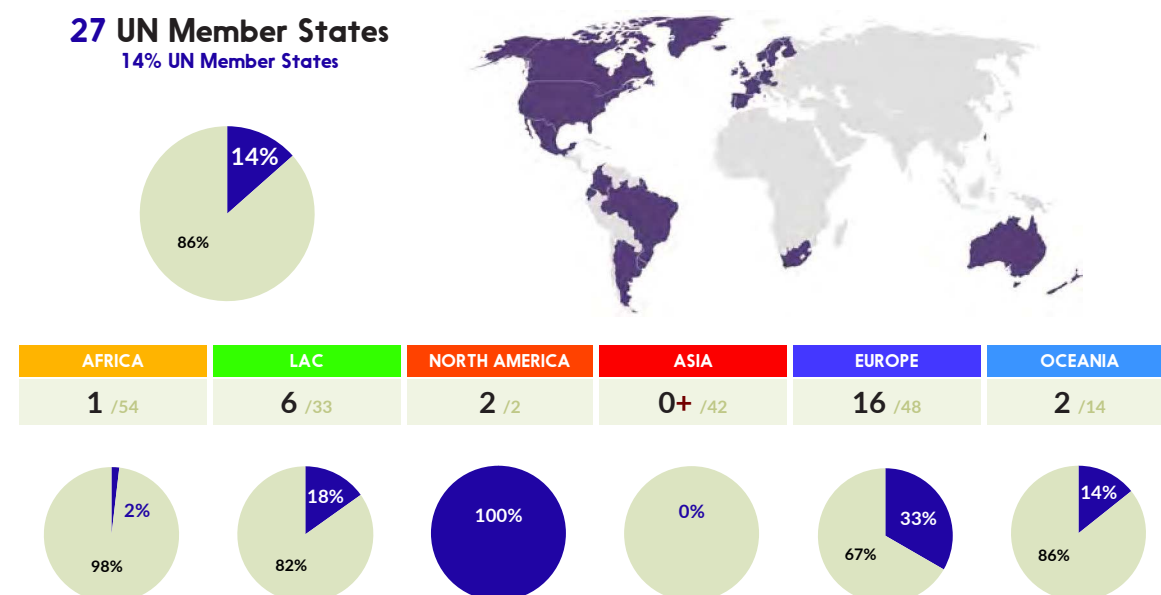
RECOGNITION

STATE-SPONSORED HOMOPHOBIA (UPDATE) 2019



Same-Sex Marriage

Highlights



Introduction

Since 2001, an ever-increasing number of States have extended the definition of marriage to include same-sex couples. These amendments have been the result of the organised advocacy efforts carried out by civil society organisations in each country, regionally and internationally.

In most legal frameworks, the institution of marriage remains the most comprehensive legal vehicle for the official recognition of a loving relationship and the one that affords the largest number of benefits, rights and duties.

Therefore, the possibility of having access to such protection on an equal footing offers same-sex couples the stability and protection traditionally afforded to heterosexual people only.

What does International Human Rights Law say?

States shall ensure that laws and policies recognise the diversity of family forms [...] and take all necessary legislative, administrative and other measures to ensure that no family may be subjected to discrimination [...].

Everyone has the right to found a family, regardless of sexual orientation, gender identity, gender expression or sex characteristics. [...].

Yogyakarta Principle 24

Africa (1)

- | | | | | |
|---|---|---------------------|------|--|
| 1 |  | 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. In December 2018, the Civil Union Amendment Act (2018) repealed Section 6, which allowed a marriage officer to inform the Minister that they objected on the ground of conscience, religion, and belief to solemnising a civil union between persons of the same sex. |
|---|---|---------------------|------|--|

Latin American and the Caribbean (6)

1		Argentina	2010	The Law on Marriage Equality (Law No. 26,618) is the federal law that provides for same-sex marriage nationwide.
2		Brazil	2013	Resolution No. 175 (2013) issued by the National Council of Justice states that notaries 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 though no legislative action has been taken so far. Another decision recognised same-sex couples living in “stable unions” as “family units” and entitled to the same rights as heterosexual couples living in that kind of unions.
3		Colombia	2016	After several years of legal uncertainty, in 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.
4		Ecuador	2019	Same-sex marriage legalized on June 12, 2019 by means of two judgments issued by the Constitutional Court (10-18-CN/19 and 11-18-CN/19) which followed the standards set by the 2017 Advisory Opinion No. 24 of the I/A Court of Human Rights.
5		Mexico		There is no federal law on same-sex marriage.¹ Some jurisdictions have enacted local laws providing for this right, including Baja California Sur (2019); Campeche (2016); Coahuila (2014); Colima (2016); Hidalgo (2019); Mexico City (2009); Michoacán (2016); Morelos (2016) [constitutional amendment]; Nayarit (2015); Nuevo León (2019); Oaxaca (2019); and San Luis Potosí (2019). In Quintana Roo (2012), same-sex marriages were allowed by local authorities through a progressive construction of local regulations.² Similarly, in Baja California (2018) and Chihuahua (2017), local authorities have administratively allowed same-sex marriages to be performed.³ In several other States, judicial decisions have ordered the recognition of same-sex marriages: Aguascalientes (2019); Chiapas (2017); Jalisco (2016); Puebla (2017).⁴ In October 2019, however, legislators in Puebla modified the state’s Civil and Penal codes to ban same-sex marriage.⁵ Similarly, in August 2019, the congress of Zacatecas rejected a bill to legalize same-sex marriage. This case is now being revised by the Supreme Court.⁶

¹ In June 2015, the Supreme Court of Mexico **declared** that bans on marriage equality were unconstitutional and states must recognise the marriage of same-sex couples conducted in other states. However, the lack of *erga omnes* effect of these decisions (they do not repeal legislation) means that same-sex marriages have been celebrated on a case-by-case basis (generally after a judicial decision) in States where legislation still does not provide for such unions.

² Adriana Varillas, “**Revocan anulación de bodas gay en Q Roo**”, *El Universal*, Estados, 3 May 2012.

³ “**Aún sin avances en derechos de LGBTI en Baja California, CEDH interviene para 50 bodas**”, ZETA, 22 June 2018; “**Van 6 matrimonios igualitarios en Oaxaca durante 2018**”, *NVI Noticias*, 27 August 2018; “**Reitera corral: Nadie puede negar el matrimonio igualitario**”, *Entrelineas*, 12 April 2017.

⁴ “**Celebran primera boda igualitaria en Chiapas**”, *El Universal*, 31 July 2017; Víctor Hugo Ornelas, “**Oficial el primer matrimonio igualitario en Jalisco**”, *Milenio*, 20 February 2016; “**Corte avala bodas gay en Puebla**”, *Excelsior*, 1 August 2017.

⁵ Gabriela Hernández, “**Legisladores poblanos cierran paso a la despenalización del aborto y al matrimonio igualitario**”, *Proceso*, 5 October 2019.

⁶ Raquel Ollaquindia, “**Rechazo al matrimonio igualitario en Zacatecas llegará a la Suprema Corte la próxima semana**”, *La Jornada*, 12 September 2019.

In May 2019, Mexico's foreign affairs secretary announced that all Mexican consulates will allow citizens to marry regardless of gender. ⁷ In September 2019, the Senate received a draft bill that would provide constitutional endorsement to same-sex marriages. ⁸		
6	 Uruguay	2013 Law on Marriage Equality (Law No. 19,075) redefined marriage as the union of two persons "of different or same-sex". In September 2019, the government of Uruguay drafted a law project to allow foreign LGBT citizens to marry in the country. ⁹

Is there more in Latin America and the Caribbean?

Costa Rica	Following the Advisory Opinion issued by the Inter-American Court of Human Rights, the Supreme Court of Costa Rica held in August 2018 that sections of the Family Code prohibiting same-sex marriage are unconstitutional and ordered the Legislative Assembly to reform the law, failing which the ban would be abolished automatically by 26 May 2020. ¹⁰ In October 2019, a project that would have only legalized civil unions, as opposed to marriages, for same-sex couples was abandoned. ¹¹
Chile	A marriage equality bill has been pending in Congress since 2017 despite the government's commitment to introduce marriage equality under a 2016 settlement agreement before the Inter-American Commission on Human Rights (IACHR). ¹² Following a Supreme Court ruling that affirmed the right to marry and found a family, a same-sex couple filed an appeal in January 2019 to be granted marriage by the Civil Registry. ¹³ On February 14, 2019, the Supreme Court ruled in favour of the couple. ¹⁴
Cuba	The government had initially planned to include a constitutional amendment that would introduce a gender-neutral definition of marriage but such text was removed from the final draft. ¹⁵
El Salvador	The Constitutional Chamber of the Supreme Court of Justice rejected a marriage equality case in January 2019 on technical grounds. ¹⁶ This followed the Supreme Court's ruling that blocked lawmakers from ratifying a constitutional change that would bar same-sex marriage and prohibit same-sex couples from adopting children in early 2018, similarly due to procedural issues. ¹⁷
Honduras	Local activists filed two lawsuits with the Supreme Court to legalise same-sex marriage on the authority of the Advisory Opinion issued by the Inter-American Court of Human Rights. One was dismissed due to technical errors and the other case remains pending before the court. ¹⁸

⁷ "Mexican consulates to perform same-sex marriages", *The Tribune*, 16 May 2019.

⁸ "Llega al Senado iniciativa para que el matrimonio gay sea avalado constitucionalmente", *LaVerdad*, 24 September 2019.

⁹ "Uruguay busca legalizar matrimonio LGBT para extranjeros", *Radio Zero*, 12 September 2019.

¹⁰ Sala Constitucional de la Corte Suprema de Justicia (Costa Rica), *Sentencia No. 2018-12782*, Expte. 15-013971-0007-CO, 8 August 2018; "Con este comunicado, Sala IV anunció decisiones sobre matrimonio y uniones gays", *La Nación*, 9 August 2018.

¹¹ Esteban Arrieta, "Comunidad LGBT celebra pérdida de apoyo para proyecto de uniones civiles para parejas del mismo sexo". *La República*, 2 October 2019.

¹² "Press Release: Friendly Settlement before the IACHR Furthers Progress on Marriage Equality in Chile", *Organisation of American States (website)*, 2 February 2017.

¹³ Rosario Gallardo, "Homosexual couple will file an appeal for protection for rejection of the Civil Registry to grant time for marriage", *Latercera*, 15 January 2019.

¹⁴ "Hito: Corte Suprema ordena tramitar recurso sobre el matrimonio igualitario", *MOVILH*, 14 February 2019

¹⁵ "Cuba decides to scrap same-sex marriage law in new constitution despite majority support", *The Telegraph*, 19 December 2018.

¹⁶ Sala de lo Constitucional de la Corte Suprema de Justicia, *Sentencia 18-2018*, 11 January 2019.

¹⁷ "El Salvador: Constitutional ban on same-sex marriage blocked", *WTOP news*, 21 January 2018.

¹⁸ "Justicia de Honduras rechazó recurso por matrimonio igualitario", *Agencia Presentes*, 13 November 2018.

Peru

In December 2016, March 2019 and August 2019, the National Registry of Identification and Civil Status (RENIEC) was ordered to recognize and register same-sex marriages celebrated abroad.¹⁹ The same-sex marriage bill remains unpassed.²⁰

North America (2)

1	 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.
2	 United States of America	2015	The Supreme Court of the United States rules that same-sex couples had a constitutional right to marry in Obergefell v. Hodges, 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. On 1 October 2018, a Trump Administration policy denying visas to unmarried, same-sex partners of foreign diplomats, officials and United Nations employees came into effect.²¹ In February 2019, the Social Security Administration validated the marriage of a gay couple from Minnesota who was able to obtain a marriage license in 1971 thanks to a clerk's mistake. They are thought to be the longest-married same-sex couple in the United States, and perhaps in the world.²² In May 2019, to accommodate judges who felt uncomfortable issuing marriage licenses for same-sex couples, Alabama lawmakers passed a bill replacing marriage licenses with marriage certificates that do not need to be signed by judges before weddings.²³

Asia (0) + Taiwan (China)

	Taiwan (China)	2019	In May 2019, Taiwan legalised same-sex marriage after the legislature passed the Enforcement Act of Judicial Yuan Constitutional Interpretation No. 748 . →
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¹⁹ Séptimo Juzgado Constitucional, *Expediente No. 22863-2012-0-1801-JR-CI-08*, 21 December 2016. Décimo Primer Juzgado Constitucional, *Expediente 10776 -2017*, 22 March 2019. Séptimo Juzgado Constitucional, *Expediente No. 20900-2015-0-1801-JR-CI-02*, 1 August 2019.

²⁰ "Peru gay marriage bill 'doomed' this year: congressman", *Reuters*, 17 de mayo de 2019.

²¹ Daniel Villarreal Saturday, "Trump just started denying visas to same-sex partners of diplomats", *LGBTQ Nation*, 6 October 2018.

²² Julie Compton, "After decades-long legal battle, gay couple's 1971 marriage officially recognized", *NBC News*, 7 March 2019.

²³ The Associated Press, "Alabama lawmakers pass workaround bill on same-sex marriage", *Montreal Gazette*, 23 May 2019

This followed the referendum that prohibited legislators from amending the Civil Code to recognise same-sex marriages and required the enactment of a separate legislation to give effect to the judicial decision in 2017 that recognised a constitutional right to marry for same-sex couples.

In October 2019, a man from Macau and his partner, a Taiwanese citizen, announced their plans of filing an administrative appeal against the Taipei City Government after their attempt to register their marriage was rejected due to the couple's transnational nature.²⁴

Is there more in Asia?

Cambodia

Same-sex marriage is banned by the **Constitution** (Article 45), the **Civil Code** (Book 7) and the **Law on the Marriage and Family** (Article 3). Media reports have indicated that the current King, Norodom Sihamoni, supports the legalisation of same-sex marriage.²⁵ With the help of local authorities, Rainbow Community Kampuchea (the country's leading LGBT organization) created the "Declaration of Family Relationship" (DoFR), which is "a civil contract between two people who are willing to be together and share responsibility taking care of the family, children and distribute the joint asset, as legal spouses do". As of May 2018, DoFR had been introduced to 50 communes in 15 out of Cambodia's 24 provinces, and 21 couples had entered into such unions.²⁶ However, in February 2018, police arrested a Cambodian-French same-sex (male) couple who was about to perform a wedding ceremony in the town of Kratié.²⁷ Most notably, in July 2019, during its third Universal Periodic Review (UPR), Cambodia accepted recommendations from Iceland, the Netherlands and Canada to legalize same-sex marriage.²⁸

Israel

Same-sex marriage is not legal in Israel but such marriages celebrated abroad can be registered before the Israeli Population Registry according to a 2006 ruling of the Israeli High Court, which renders the civil (legal) status of reputed and/or same-sex couples equal to that of legally married couples (see section *Partnership Recognition for Same-Sex Couples* below).²⁹

Japan

In recent years, same-sex couples have filed a series of lawsuits challenging the constitutionality of Japan's ban on same-sex marriage. In September 2019, a member of the National Diet called for a revision of the Constitution of Japan to extend marriage rights to same-sex couples.³⁰

Nepal

In October 2017, Nepal's Supreme Court **ruled** that foreign same-sex spouses of Nepali citizens can apply for non-tourist visas as dependents.³¹ In August 2018, former Prime Minister Baburam Bhattarai called for the legalization of same-sex marriage in Nepal.³² Already in February 2017, it was reported that the government intended to draft certain provisions to address the issue directly.³³ However, as of November 2019, there are no updates regarding the same-sex marriage bill.³⁴

²⁴ Ann Maxon, "Same-sex couple file administrative appeal". Taipei Times, 2 October 2019.

²⁵ Paul Millar and Leng Len, "Whatever Happened to Same-Sex Marriage in Cambodia", *Southeast Asia Globe*, February 28, 2018; "Cambodian King gives thumbs up to same-sex marriage", *The Globe and Mail*, 20 February 2004.

²⁶ Shannon Power, "Same-sex couples tie the knot in Cambodia in a stunning public ceremony", *Gay Star News*, 24 May 2018.

²⁷ Buth Reaksmeay Kongkea, "Police prevent same-sex wedding ceremony", *Khmer Times*, 5 February 2018.

²⁸ See: *Report of the Working Group on the Universal Periodic Review: Cambodia. Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, A/HRC/41/17/Add.1, 18 April 2019, para. 2; *Report of the Working Group on the Universal Periodic Review: Cambodia*, A/HRC/41/17, 5 April 2019.

²⁹ *Combined second, third and fourth periodic reports of States parties due in 2008: Israel*, CRC/C/ISR/2-4, 28 August 2012, paras. 324-325. For more information, see: Talia Einhorn, "Same-sex family unions in Israeli law" *Utretch Law Review* 4 no. 2 (2008), 222.

³⁰ Linda Sieg, "Parlamentario pide revisar Constitución de Japón para permitir unión de personas del mismo sexo". Reuters, 4 October 2019.

³¹ Pradhan, Ghimire & Associates, "Client Briefing: Suman Panta v. Ministry of Home Affairs et. al.", June 2018.

³² "Ensure the marriage rights of LGBTI: BRB", *Pahichan*, 27 August 2018.

³³ "Govt to introduce special laws to address the same-sex marriage", *Pahichan*, 25 February 2017.

³⁴ Binaj Gurubacharya, "Nepal's sexual minorities say progress in rights has stalled", *AP News*, 18 September 2019.

South Korea

After rejecting an application by a gay couple who had married abroad and sought recognition of their relationship, the National Human Rights Commission of South Korea said that it does not “deny” same-sex marriage but must conduct a review before marriage equality can be recognised.³⁵

Europe (16)

1	 Austria	2019	Following a decision by the Constitutional Court, same-sex marriage came into effect from 1 January 2019. ³⁶ The court had held that the distinction between marriage and a registered partnership constituted discrimination against same-sex couples.
2	 Belgium	2003	In 2003 Belgium became the second UN Member State (after the Netherlands) to legalise same-sex marriage. An Act of Parliament amended Article 143 of the Civil Code to read: “Marriage is contracted by two persons of different-sex or of the same-sex”.
3	 Denmark	2012	Section 2 of Law No.532 (2012) incorporates marriage between “two people of the same sex” into existing marriage laws. Same-sex marriage came into force in Greenland in early April 2016 ³⁷ and in The Faroe Islands in 2017. ³⁸
4	 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.
5	 France	2013	Article 1 of the Law Opening Marriage to Same-Sex Couples (Law No. 2013-404 of 17 May 2013) amended Article 143 of the Civil Code to establish that marriage is available to persons of the same or different sex. The law also applies to the overseas territories of French Polynesia, Guadeloupe and Martinique .
6	 Germany	2017	The German parliament, adopted a law on marriage equality in July 2017, with the first marriages solemnized in October of that year. ³⁹ The law gives same-sex couples the same rights as different-sex couples, including the right to joint adoption.
7	 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.
8	 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 . The 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.

³⁵ Kim So-hyun, “Rights panel says it doesn’t “deny” same-sex marriage” *Korea Herald*, 27 February 2019.

³⁶ “Distinction between marriage and registered partnership violates ban on discrimination”, *Constitutional Court of Austria* (website), 5 December 2017.

³⁷ Constance Johnson, “Greenland: Same-sex Marriage Bill Passes”, *Library of Congress* (website), 11 June 2015.

³⁸ Eir Nolsøe, “Same-sex marriage legalised in the Faroe Islands”, *Faroeisland.fo*, 16 June 2017

³⁹ “German president signs gay marriage bill into law”, *DW.com*, 21 July 2017.

9	 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.
10	 Malta	2017	The Marriage Act and other Laws (Amendment) Act was signed into law on 1 August 2017 and entered into operation on 1 September 2017. Amendments included eliminating any reference to “husband and wife.” In the term’s place is the gender-neutral “spouse” to cover all situations such that same-sex marriage is made equal to heterosexual marriage.
11	 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.
12	 Norway	2009	Chapter 1, Section 1 of the 1993 Marriage Act (amended by Act of 27 June 2008 No. 53) states that “[t]wo persons of opposite sex or of the same-sex may contract marriage”.
13	 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.
14	 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.
15	 Sweden	2009	In 2009 the 1987 Swedish Marriage Code was amended to be gender-neutral, thereby legalising same-sex marriage.
16	 United Kingdom	2014	Section 1(1) of the Marriage (Same-sex Couples) Act 2013 (in force 2014) simply states that “marriage 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. As per the provisions of the Northern Ireland (Executive Formation etc) Act 2019, same-sex marriage will be legalized in Northern Ireland by 13 January 2020. Same-sex marriage is also available in several British Overseas Territories.⁴⁰ In 2019, the House of Commons Foreign Affairs Committee called for all British Overseas Territories to legalize same-sex marriages.⁴¹

⁴⁰ Pitcairn Islands (2015), Ascension Island (2016), Isle of Man (2016), British Antarctic Territory (2016), Gibraltar (2016), Guernsey (2017), Falkland/Malvinas Islands (2017), Tristan da Cunha (2017), Saint Helena (2017), Jersey (2018) and Alderney (2018). In Bermuda, same-sex marriage was **legalized** by the Bermuda Supreme Court in May 2017 but the legislature passed the **Domestic Partnership Act** in December 2017 to limit marriage to between a man and a woman. However, the Supreme Court **struck down** the prohibition in June 2018 and **dismissed** the government’s appeal in November 2018. In December 2018, the government mounted a last-ditch legal attempt to appeal to the Privy Council. On May 29, 2019, **the appeal was granted**. Note: ILGA is aware of the sovereignty dispute between Argentina and the United Kingdom over the Falkland Islands/Islands Malvinas. Under Argentine law, same-sex marriage is legal since 2010. The British administration of the Islands, with effective control over that territory, legalised same-sex marriage in 2017.

⁴¹ “British parliamentary committee calls for overseas territories to legitimise same sex marriages”, *National News*, 22 February 2019.

Is there more in Europe?

Armenia	The Ministry of Justice stated in July 2017 that all marriages performed abroad are valid in Armenia, including marriages between people of the same sex pursuant to Article 143 of the Family Code of Armenia .
Bulgaria	Same-sex marriage has been banned by Article 46 of the Constitution since 1994. In January 2018, the Sofia Administrative Court ruled against a lesbian couple who attempted to have their marriage (celebrated in the United Kingdom) recognized. ⁴² In July 2019, following the <i>Coman-Hamilton</i> case by the Court of Justice of the European Union, the Supreme Court of Bulgaria upheld a 2018 ruling by a lower court that allowed an Australian-French lesbian couple (married in France) to reside legally in Bulgaria. ⁴³
Latvia	Same-sex marriage in Latvia is prohibited by Article 110 of the Constitution since 2006. Several attempts to legalize registered partnerships by same-sex couples since 1999 have been rejected, the most recent one being on 20 June 2019. ⁴⁴ Following the <i>Coman-Hamilton</i> case issued by the Court of Justice of the European Union, Latvia has granted residency rights to at least one same-sex couple married in Portugal. ⁴⁵
Lithuania	Same-sex marriage in Lithuania has been banned by Article 38 of the Constitution since 1992, as well as by Article 3(12) of the Lithuanian Civil Code . On 11 January 2019, in compliance with the European Court of Justice's ruling on the <i>Coman-Hamilton</i> Case, Lithuania's Constitutional Court ruled that the migration department must grant residence permits to foreign, same-sex spouses. ⁴⁶
Romania	Same-sex marriage in Romania is banned by Article 227(1) of the Romanian Civil Code since 2009. In June 2018, the Court of Justice of the European Union (CJEU) ruled in favour of Adrian Coman,⁴⁷ a Romanian citizen who –with support from the Romanian group ACCEPT– had filed a lawsuit before a Romanian court, seeking recognition of his marriage to Claibourn Hamilton (an American citizen) which had been celebrated in Belgium.⁴⁸ The CJEU ruled that EU Member States were required to recognise same-sex marriages conducted in another EU Member State for the purpose of residency rights.⁴⁹ In light of this decision, in September 2019, the Constitutional Court of Romania ruled that the State must grant residency rights to same-sex spouses of EU citizens⁵⁰ and that same-sex couples enjoy the same rights to a private and family life, as different sex couples. A few days later, a referendum to amend the constitution in order to ban same-sex marriage failed due to poor turnout in October 2018.⁵¹

⁴² "The Court did not Recognize a Marriage Between Bulgarian Women in the UK", *Novinite.com*, 12 January 2018.

⁴³ Reiss Smith, "Bulgaria court recognises same-sex marriage in landmark ruling", *Pink News*, 25 July 2019.

⁴⁴ "Saeima rejects civil partnership bill", *LSM*, 20 June 2019.

⁴⁵ Laura Dzērve, "ES Tiesas spriedums: laulāto draugu Adriana un Kleija izcīnītā kopābūšana", *DELFI Plus*, 15 June 2018.

⁴⁶ Shakhil Shah, "Lithuanian Constitutional Court rules same-sex spouses be granted residence permits". *Emerging Europe*, 14 January 2019.

⁴⁷ Court of Justice of the European Union, *Coman and Others v Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne*, ECLI:EU:C:2018:385, 5 June 2018.

⁴⁸ "Romania must give residency rights to same-sex spouses, court rules", *Reuters*, 18 July 2018; "Curtea de Justiție a Uniunii Europene: Cuplurile gay căsătorite au dreptul de a circula ca soți. România, obligată să țină cont de decizie", *Liber Tatea*, 5 June 2018.

⁴⁹ For more information on the decision and its impact, see: Constantin Cojocariu, "A Brief Overview of the Latest Decisions by the Court of Justice of the European Union on SOGI issues" in ILGA World: Lucas Ramón Mendos, *State-Sponsored Homophobia 2019* (Geneva: ILGA, 2019), 76.

⁵⁰ "Căsătoriile între persoane de același sex, repuse pe rol la CCR. Curtea Constituțională discută dosarul pe 5 iulie", *Liber Tatea*, 7 June 2018.

⁵¹ "Romanian referendum to ban same sex marriage fails on low turnout", *CBC News*, 7 October 2018; Luiza Ilie, "Romanian constitutional ban on same sex marriage fails on low vote turnout", *Reuters*, 7 October 2018.

Oceania (2)

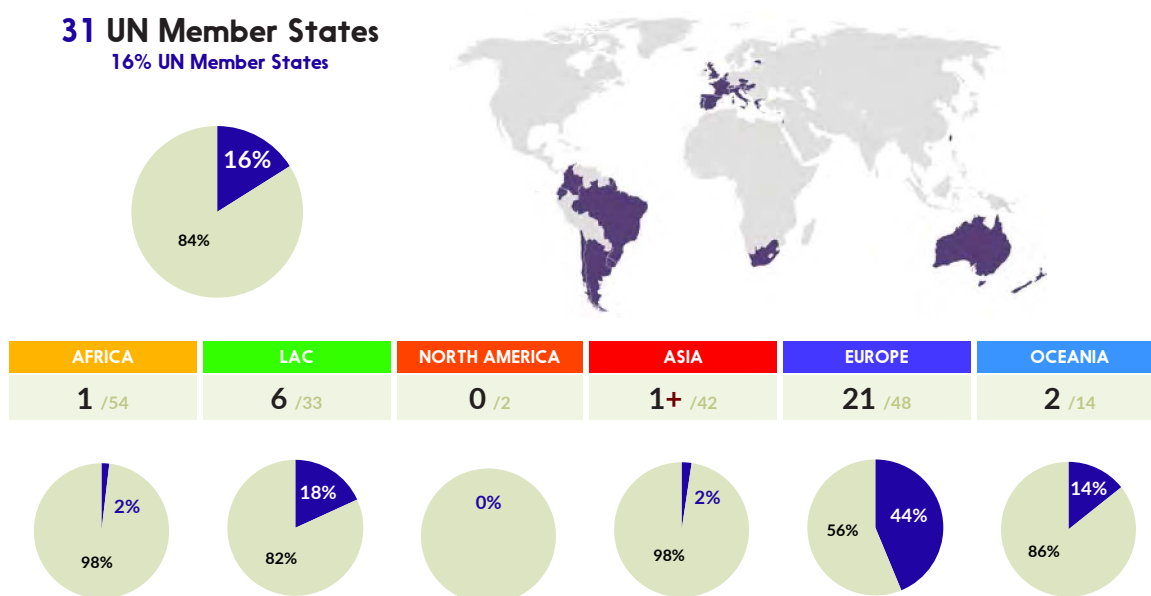
1		Australia	2017	The Marriage Amendment (Definition and Religious Freedoms) Act 2017 legalized marriage between two persons of marriageable age, regardless of their gender. In 2019, the Department of Prime Minister and Cabinet proposed a series of amendments to the 2017 Marriage Act that would allow religious institutions to refuse certain services to LGBT people, including the use of venues for marriage ceremonies.⁵² The amendments would also prevent employers from dismissing employees who express disagreement with homosexuality, as was the case with a national rugby player in May 2019.⁵³
2		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).

⁵² Josh Taylor, "[Coalition wants to amend Marriage Act as part of new laws to protect religious freedom](#)", *The Guardian*, 3 July 2019.

⁵³ Sarah Martin Chief, "[Religious discrimination bill will safeguard people of faith, says attorney general](#)", *The Guardian*, 7 July 2019.

Partnership Recognition for Same-Sex Couples

Highlights



Introduction

Several states have progressively recognised legal effects to stable relationships of two people of the same gender. Advocacy efforts by local organisations have led to various forms of recognition around the world. Legal recognition of rights and duties for same-sex couples was achieved through different legal vehicles, with different names and varying levels of recognition of rights.

Historically, partnership recognition for same-sex couples was achieved before same-sex marriage. Starting in Denmark in 1989 with the first “registered partnership” entered into by same-sex couples,¹ an ever-increasing number of jurisdictions have made these unions available.

Previous editions of this publication have differentiated between forms of relationship recognition between those that offer a *minimum* protection and those conferring many of the rights enshrined in marriage between different sex couples. However, we find that this distinction is no longer as relevant as it used to be, as the status of those relationships have generally been strengthened.

What does International Human Rights Law say?

States shall ensure that laws and policies recognise the diversity of family forms, including those not defined by descent or marriage, and take all necessary legislative, administrative and other measures to ensure that no family may be subjected to discrimination [...].

Yogyakarta Principle 24(b)

States shall take all necessary legislative, administrative and other measures to ensure that any obligation, entitlement, privilege, obligation or benefit available to different-sex unmarried partners is equally available to same-sex unmarried partners.

Yogyakarta Principle 24(f)

¹ Sheila Rule, “Rights for Gay Couples in Denmark”, *The New York Times*, 2 October 1989.

Africa (1)

- | | | | | |
|---|---|---------------------|------|---|
| 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. |
|---|---|---------------------|------|---|

Is there more in Africa?

Namibia

In January 2018, the Namibian government agreed to allow the same-sex partner of a Namibian man to remain in the country on a visitor's permit just before his temporary work visa expired.² The couple had applied to the High Court to issue a certificate of identity that would recognise the non-citizen partner as the spouse. No decision has been released yet.

While several cases regarding residency rights for same-sex partners await final decisions before the High Court, in October 2019 the Minister of Home Affairs declared that the Namibian government upholds its non-recognition of same-sex marriages.³

Latin American and the Caribbean (6)

- | | | | | |
|---|---|------------------|--------------|---|
| 1 |  | Argentina | 2002
2014 | Civil unions were made available nationwide both for same-sex and different-sex couples by the new Civil and Commercial Code of 2014. Prior to this reform, they were recognised in the Province of Río Negro (2003), and the cities of Buenos Aires (2002), Villa Carlos Paz (2007) and Rio Cuarto (2009). |
| 2 |  | Brazil | 2011 | Supreme Federal Court of Brazil recognised same-sex civil unions with <i>erga omnes</i> effects in two joint decisions (Ação Direta de Inconstitucionalidade 4,277 and Arguição de Descumprimento de Preceito Fundamental 132). |
| 3 |  | Chile | 2015 | The Law on Civil Union Agreement (Law 20,830) 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. |
| 4 |  | Colombia | 2011 | In C-577/11 , the Constitutional Court held that while marriage may be defined as between a man and a woman under the Constitution, same-sex couples cannot be prohibited from legal recognition of their relationship. This <i>de facto</i> led to the judicial recognition of civil partnerships though no legislative reform has been introduced. |
| 5 |  | Ecuador | 2008 | Article 68 of 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. |

² Roberto Igual, "Namibia: Small victory for gay couple suing for marriage recognition", *Mamba Online*, 10 January 2018.

³ Werner Menges, "Govt sticks to stance on same-sex marriage". *The Namibian*. 3 October 2019.

6		Uruguay	2008	Law 18,246 affords same-sex couples the right to have their union recognized (locally referred to as “ <i>unión concubinaria</i> ”).
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Is there more in Latin America and the Caribbean?

Costa Rica	A 2013 amendment to the 2002 Law on Youth inserted a non-discrimination clause with regard to <i>de facto</i> 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 <i>de facto</i> 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 <i>de facto</i> unions (sick leave, care-leave, etc). In 2016, survivor's pensions were granted to same-sex couples.
Mexico	There is no federal law providing for civil unions. 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); Mexico City (2007); Morelos (2016); Nayarit (2015).

North America (0)

Is there more in North America?

Canada	Besides marriage (see previous section), civil unions, domestic partnerships and other forms of unions are available to same-sex couples in several jurisdictions: Alberta (2002); Manitoba (2001/2002); Nova Scotia (2001); and Quebec (2002).
United States of America	Even though there is no federal law providing for civil unions, they are locally recognised in several states.⁴

Asia (1) + Taiwan (China)

1		Israel	1994	According to a submission by the State of Israel before the UN, two alternatives to the traditional institution of marriage exist for same-sex couples: 1. Recognition of “Reputed Couples” (common-law partners), which enjoy similar legal rights and duties as legally married couples; 2. Registration before the Israeli Population Registration of marriages celebrated abroad (according to a ruling of the Israeli High Court ruling in November 2006), which renders the civil (legal) status of reputed and/or same-sex couples equal to that of legally married couples.⁵
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⁴ “Marriage, Domestic Partnerships, and Civil Unions: Same-Sex Couples Within the United States”, *National Center for Lesbian Rights* (2017), accessed 22 January 2019.

⁵ *Combined second, third and fourth periodic reports of States parties due in 2008: Israel*, CRC/C/ISR/2-4, 28 August 2012, paras. 324-325. For more information, see: Talia Einhorn, “Same-sex family unions in Israeli law”, *Utretch Law Review* 4, No. 2 (2008), 222.

Taiwan (China)	2015	Over 80% of the population lives in jurisdictions that allow same-sex couples to administratively register their relationships. ⁶ The registration is archived in a partnership registry and some city governments have entered into agreements to share their registries so that partnerships recognized in one city or municipality would be recognized in the others. The registration confers on same-sex couples limited rights such as medical decision-making and other areas.
	2016	

Is there more in Asia?

China	In mid-2019, a same-sex couple married overseas became the first in Beijing to be named as each other's legal guardian, a status which can be considered fairly similar to a civil union. More than 10 LGBT couples in other cities (such as Shanghai, Guangzhou and Chengdu) have gone through similar procedures. ⁷ However, the guardianship appointment process for same-sex couples is said to be too complex and time-consuming, ⁸ as well as a sign of the Chinese government's "Three NO's" policy on LGBT issues: "No approval, no disapproval, and no promotion". ⁹
Hong Kong (Special Administrative Region of the People's Republic of China)	In June 2019, the Court of Final Appeal held that it was discriminatory for the government to bar same-sex partners from spousal benefit. ¹⁰ This concluded a four-year legal battle by the plaintiffs, after the High Court's decision in their favour was overruled by the Court of Appeal in June 2018. ¹¹ In September 2019, the Hong Kong Court of Appeals called for an immediate review of the laws and policies that discriminate against same-sex couples. ¹² However, the following month, the Court of First Instance upheld Hong Kong's ban on same-sex marriage. ¹³
Japan	Various cities and city wards have recognized civil partnerships by issuing partnership certificates, including Sapporo (2017), Fukuoka (2018) and Osaka (2018). ¹⁴ In September 2019, a court ruling determined that domestic partners of the same sex should be covered, to a certain extent, by the same legal protections afforded to common-law marriages. ¹⁵
Thailand	Following a petition signed by 60,000 people in 2017, a bill that would allow same-sex couples to register as "life partners" and grant a limited number of the rights of heterosexual marriage was drafted and approved by the Cabinet of Thailand in 2018. The bill is expected to pass by late 2019 or early 2020. ¹⁶

⁶ Lee Bing-shen, "All Taiwan Municipalities To Recognize Same-Sex Relationships", *The News Lens*, March 7, 2016; 徐亚旻, "全台同婚注册女同婚比男同婚多近4倍", *Huaxia News*, 9 August 2017.

⁷ Mandy Zuo, "Gay couple in Beijing become first to take advantage of new legal rights", *South China Morning Post*, 9 August 2019.

⁸ Phoebe Zhang, "Why are so few LGBT Chinese couples taking advantage of laws that could protect their rights?", *South China Morning Post*, 8 September 2019.

⁹ Xu Chen and Wilfred Wang, "How China is legally recognising same-sex couples, but not empowering them", *The Conversation*, 1 October 2019.

¹⁰ Government of the Hong Kong Special Administrative Region (Department of Justice), *Summary of Judicial Decision: Leung Chun Kwong ("Applicant") v Secretary for the Civil Service ("Secretary") and Commissioner of Inland Revenue ("Commissioner") (collectively "Respondents")* FACV8 / 2018; [2019] HKCFA 19 (2019).

¹¹ High Court of the Hong Kong Special Administrative Region, Court of Appeal, Civil Appeal No. 126 of 2017, *Leung Chun Kwong v. Secretary for the Civil Service and Commissioner of Inland Revenue*, CACV 126/2017 [2018] HKCA 318, 1 June 2018.

¹² Jasmine Siu, "Hong Kong Court of Appeals calls for immediate review of laws and policies that discriminate against same-sex relationships", *South China Morning Post*, 25 September 2019.

¹³ Chris Lau, "Hong Kong court turns down first judicial challenge for same-sex marriage but urges government to review policies to avoid legal action arising from discrimination against LGBT people", *South China Morning Post*, 18 October 2019.

¹⁴ Josh Jackman, "Japanese city of two million becomes biggest to recognise same-sex partnerships", *Pink News*, 1 June 2017; Josh Jackman, "Japanese city of 1.5 million recognises same-sex partnerships in landmark move", *Pink News*, 2 April 2018; "Osaka to start recognizing LGBT couples from July", *Nikkei Asian Review*, 27 June 2018.

¹⁵ "Time to discuss same-sex marriage", *Japan Times*, 28 September 2019.

¹⁶ Zsombor Peter, "Thailand's New Government Revives Proposal for Same-Sex Unions", *VOA Cambodia*, 23 August 2019.

Europe (21)

1	 Andorra	2005 2014	Under Law 4/2005 same-sex couples have been able to enter into registered partnerships which granted limited rights. 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.
2	 Austria	2010	The Registered Partnership Act (Text No. 135/2009) originally set the legal framework for same-sex registered partnerships. The rights granted by the law were subsequently expanded both by legislative reform and judicial decisions.
3	 Belgium	1998	The Law Establishing Legal Cohabitation of November 1998 confers limited rights to partners, although it was initially intended to address the falling marriage rates rather than to give rights to same-sex couples.
4	 Croatia	2014	The Same-sex Life Partnership Act of July 2014 provides comprehensive civil union protections regarding recognition and maintenance, but the law has been criticized for being weak in relation to parenting rights. ¹⁷
5	 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.
6	 Czechia	2006	The Registered Partnership Act (Law No. 115/2006) confers comprehensive civil union protections to same-sex partners only but same-sex couples were not allowed to adopt children. In 2016, the Czech Constitutional Court struck down the ban and ruled that individuals in a same-sex partnership may adopt individually, but not as a couple. ¹⁸ 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).
7	 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 for joint adoption by a second parent, but ‘family status’ in Estonian law requires a union between a man and a woman. ¹⁹
8	 France	1999	Law 99-944 of 15 November 1999 (on the Civil Solidarity Pact – locally known as “PACS”) modified Article 515 of the Civil Code to offer same-sex couples some level of legal recognition.
9	 Greece	2015	Article 1 of Law No. 4356 on Covenant Partnership of December 2015 confers gender-neutral partnership rights, and limited co-parenting provisions. This law does not grant the possibility for same-sex couples to adopt.

¹⁷ “[LGBT Parenting](#)” (webpage), *Životno Partnerstvo* (website).

¹⁸ [Pl. ÚS 7/15](#).

¹⁹ Peter Roudik, “[Estonia: Legalization of Civil Partnerships](#)”, *Library of Congress*, 14 January 2016.

10	 Hungary	2009	Act XXIX of 2009 on Registered Partnership and Related Legislation provide for same-sex registered partnerships, affording same-sex couples rights equal to marriage except for taking the partner's name, joint and second parent adoption, assisted reproduction and presumption of paternity. Additionally, Section 6:514 of the 2009 Civil Code sets out the provisions pertaining to gender-neutral limited <i>de facto</i> partnership not based on State registration.
11	 Italy	2016	Article 1 of Law No. 76 (2016) 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,²⁰ but with a reasoning that represented a fundamental change in approach to the issue.²¹
12	 Liechtenstein	2011	The Act on Registered Life Partnership confers limited protections to same-sex partners and overtly denies joint parental rights at Section 9.
13	 Luxembourg	2004	Civil unions for same-sex couples have been available since 2004 after the enactment of Law of 9 July 2004 . They remain available to same-sex couples and they grant largely the same rights as marriage. ²²
14	 Malta	2014	Section 4(1) of the Civil Unions Act confers “the corresponding effects and consequences in law of civil marriage” and, as per Section 3(2), applies to same-sex and different couples equally.
15	 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. These unions are virtually equivalent to marriage. The Netherlands' constituent country, Aruba, does not allow same-sex marriage, but in September 2016 voted to allow civil partnerships.²³
16	 Portugal	2001	Under Law no. 7/2001 <i>de facto</i> unions were legalised for same-sex couples. This type unions have not been repealed since the enactment of same-sex marriage.
17	 San Marino	2018	In December 2018, the Law on the Regulation of Civil Unions (Law No. 147 of 20 November 2018) came into effect, allowing same-sex and opposite-sex couples to enter into a union and enjoy certain rights with regard to residency, social security, pension, healthcare and survivorship.

²⁰ “Italy, Corte di Cassazione, Rights of same-sex couples, judgment n. 4184/12”, *Centre for Judicial Cooperation (website)*, accessed 22 January 2019.

²¹ Massimo Fichera and Helen Hartnell, “All you Need is Law: Italian Courts Break New Ground in the Treatment of Same-Sex Marriage” *International Journal of Human Rights and Constitutional Studies* 2, No. 2 (2014): 171.

²² “Understanding the legal implications of entering into a civil partnership (PACS)”, *Guichet.lu*, accessed 10 June 2019.

²³ Wendy Zeldin, “Aruba: Same-Sex Partnerships Recognized by Law”, *Library of Congress*, 23 September 2016.

18	 Slovenia	2017	Article 8(1) of the Civil Partnership Registration Act (in force since February 2017) confers the rights to subsistence and maintenance, jointly owned property, occupancy, inheritance and partner healthcare, but is silent on joint or second parent adoption provisions (see <i>Second Parent Adoption</i> below).
19	 Spain	1998	Since 1998, civil unions between people of the same sex have been legalized in several jurisdictions in Spain: Andalusia (2002), Aragon (1999), Asturias (2002), Balearic Islands (2001), Castilla la Mancha (2000), Canary Islands (2003), Cantabria (2005), Catalonia (1998, amended in 2011), ²⁴ Extremadura (2003), Galicia (2006), Madrid (2001), Navarra (2000) and Valencia (2001, amended in 2012). Because of their territorial scope, these rules are available to more than half of Spain's total population.
20	 Switzerland	2007	The Federal Law on Registered Partnership Between Persons of the Same-sex (RS 211.231) contains protective financial and property provisions.
21	 United Kingdom	2005	The Civil Partnership Act 2004 granted same-sex couples access to legal recognition of their relationships. These unions were originally offered only to same-sex couples but are now being extended to different-sex couples. In 2012, the Crown Dependency of Jersey introduced Civil Partner (Jersey) Law .

Is there more in Europe?

Denmark (REPEALED AFTER SAME-SEX MARRIAGE)	Denmark was the first UN Member State to enact a nationwide law that legally recognized registered partnerships between two people of the same sex. The Danish Registered Partnership Act came into effect on 1 October 1989. On that same day, Eigil and Axel Axlil, who had lived together since 1950, were the first same-sex couple to have their relationship legally recognized by the Danish State. ²⁵ This pioneering law was repealed in June 2012 after marriage became available for same-sex couples.
Finland (REPEALED AFTER SAME-SEX MARRIAGE)	The Act on Registered Partnerships legalised same-sex unions in 2002. However, after the law on marriage was amended to allow for same-sex marriage it is no longer possible to register a relationship under this law in Finland (see section above).
Germany (REPEALED AFTER SAME-SEX MARRIAGE)	The Act on Registered Life Partners provided significant protections for same-sex partners (to whom the Act is limited), and some familial scope regarding adoption (Section 9). This law was repealed when same-sex marriage was legalised (see section above). Therefore, no new registered partnerships can be formalised.
Ireland (REPEALED AFTER SAME-SEX MARRIAGE)	The Civil Partnership and Certain Rights and Obligations of Cohabitants Act legalised same-sex civil partnerships in 2010. Following the enactment of the Marriage Act 2015 these partnerships are no longer available. If a couple decides to apply for marriage, their civil partnership is dissolved automatically.
Lithuania	In May 2017, a bill to grant limited partnership rights to same-sex couples was preliminarily approved. ²⁶ As of November 2019, it is still pending in the Parliament.

²⁴ "La primera ley de parejas de hecho de España entra en vigor mañana", *El Mundo*, 22 October 1998.

²⁵ Sheila Rule, "Rights for Gay Couples in Denmark", *New York Times*, 2 October 1989.

²⁶ Virginija Prasmickaitė, "Seimas Approves the Proposal on "Cohabitation Agreements" as Alternative to Partnership Law", *National LGBT Rights Organization (LGL)*, 31 May 2017.

Norway (REPEALED AFTER SAME-SEX MARRIAGE)	With enactment of Act No. 40 of 30 April 1993 relating to Registered Partnership, Norway became the second country in the world (after Denmark) to legalise same-sex registered partnerships in 1993. With the enactment of same-sex marriage in 2009 (see section above) couples who had entered into registered partnerships were given the possibility of modifying their civil status to marriage, but no new registered partnerships can be formalised.
Poland	A bill to regulate registered partnerships (including same-sex partnerships) was introduced to the Polish parliament in April 2018. As of November 2019, the bill has not been approved. ²⁷
Romania	Several bills aiming to regulate same-sex civil partnerships have failed in the last few years. ²⁸ In 2018, the National Council for Combating Discrimination introduced a bill that would allow couples who cannot or do not want to marry to formally register their consensual union with civil status officers. ²⁹

Oceania (2)

1	 Australia	2002- 2016	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 under the 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).
2	 New Zealand	2008	The Civil Union Act (2004) provides for civil unions, available to same-sex or different-sex couples.

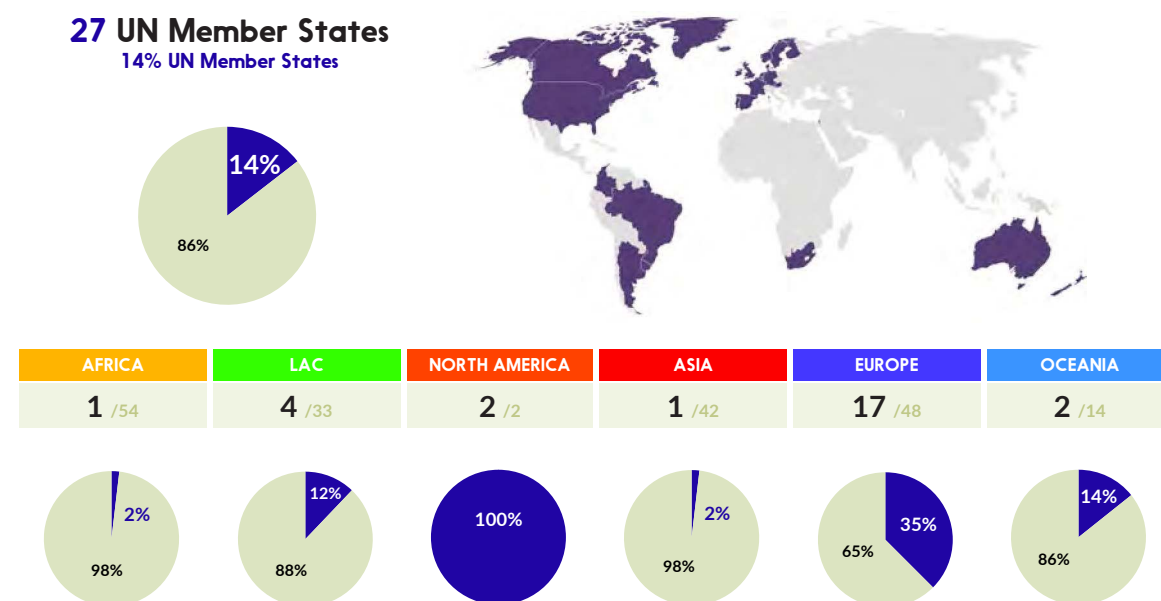
²⁷ "Kolejny projekt Nowoczesnej. Proponuje wprowadzenie związków partnerskich", *Wiadomości*, 24 April 2018.

²⁸ "Parteneriatul civil a fost respins de Senat", *Digi24.ro*, 29 October 2018.

²⁹ Clarice Dinu, "O nouă inițiativă pentru legalizarea parteneriatelor civile: uniune consensuală pentru persoanele de același sex, dar și pentru heterosexuali. Cuplurile gay NU vor putea adopta copii. PROIECT CNCD". *Gândul*, 29 March 2018.

Joint Adoption by Same-Sex Couples

Highlights



Introduction

An ever-increasing number of States and jurisdictions have fully recognised the right to found a family and the possibility to jointly-adopt children to same-sex couples.

Depending on the legal requirements of joint adoption in each country, marriage (or even a formalised union) may not be a requirement. In countries where joint adoption is only possibly for married couples, the enactment of same-sex marriage laws automatically extended adoption rights, while in others specific amendments were subsequently made.

What does International Human Rights Law say?

States shall take all necessary legislative, administrative and other measures to ensure the right to found a family, including through access to adoption [...].

Yogyakarta Principle 24(a)

Africa (1)

- | | | | | |
|---|---|---------------------|------|---|
| 1 |  | South Africa | 2002 | In the 2002 Constitutional Court case <i>Du Toit & Or.</i> ¹ 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> . |
|---|---|---------------------|------|---|

Latin American and the Caribbean (4)

1		Argentina	2010	The Law on Marriage Equality (Law No. 26,618) grants same-sex couples all rights derived from marriage, including joint adoption.
2		Brazil	2010	The Superior Court of Justice of Brazil (STJ) ruled in April 2010 that same-sex couples may adopt children. This judgment was upheld in the Supreme Federal Court of Brazil in August 2010.
3		Colombia	2015	In November 2015, the Constitutional Court issued Decision C-683/15 that same-sex couples in Colombia can jointly adopt children. ¹
4		Uruguay	2009 2013	Law N° 18.590/Code of Childhood and Adolescence modified clauses in other laws related to adoption, thereby facilitating adoption by same-sex couples in civil unions. Law on Marriage Equality (Law No. 19,075) redefined marriage as the union of two people "of different or same sex" and granted same-sex couples all rights derived from marriage, including joint adoption.

Is there more in Latin America and the Caribbean?

Chile	In May 2019, the Chamber of Deputies approved a bill for the comprehensive reform to the adoption system in Chile that would enable joint adoption for same-sex couples. The bill must be approved by the House of Senators so that it can take effect. ²
Costa Rica	Article 103 of the Family Code provides for joint adoption at the request of both spouses. When same-sex marriage enters into force in May 2020 (see section on same-sex marriage), same-sex married couples will be able to jointly adopt under this provision. While the law in Costa Rica currently states that the father's surname should be recorded first and the mother's in second order, the Legislative Assembly is in the process of amending the Civil Code so that the order of surnames is decided by common agreement. ³
Ecuador	Despite the legalization of same-sex marriage in Ecuador, article 68 of the Constitution limits the adoption of couples of different sexes.
Mexico	There is no federal law allowing for joint adoption by same-sex couples. In some jurisdictions legislation provides for joint adoption of married couples: Campeche (Art. 407, 2016); Chihuahua (2015); Coahuila (Art. 253, 2014); Colima (Art. 391(b), 2016); Jalisco (2016); Mexico City (2010); Michoacán (2016) Morelos (2016); Nayarit (Art. 385, 2016); and Veracruz (2011); among others. In 2019, as of October, four additional states have legalized adoption by same-sex couples: Aguascalientes , Hidalgo , Nuevo León and San Luis Potosí . Despite these laws, same-sex couples often face challenges when intending to adopt children. For instance, in Baja California, where adoption by same-sex parents has technically been legal since 2017, it was until October 25, 2019 that the first same-sex parent adoption in the state was allowed. ⁴

¹ For more information, see: "Adopción igualitaria", *Colombia Diversa* (website) (In Spanish only).

² "Hito: Cámara de Diputados aprueba la adopción homoparental y la despacha al Senado", *MOVILH*, 9 May 2019.

³ Information provided to ILGA World by the Presidential Commissioner for LGBTIQ+ issues in Costa Rica.

⁴ EFE, "Una pareja de mujeres se convirtió en la primera familia homoparental, de Baja California, que adopta a un menor". *Infobae*. 25 October 2019.

North America (2)

1	 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. Alberta (2007), 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).
2	 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, there are several states that have laws permitting state-licensed child welfare agencies to discriminate against LGBT people, including married couples. ⁵ Mississippi was the last state in the USA to remove blocks to joint adoption. ⁶

Asia (1)

1	 Israel	2008 2018	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. ⁷ The right to joint adoption was affirmed in a 2018 decision by the High Court of Justice that ordered the Interior Ministry to list the names of a same-sex couple as the legal parents on the birth certificate of their adopted child. ⁸
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Is there more in Asia?

Taiwan (China)	The law on same-sex marriage allows same-sex couples to adopt children only if they are related to one of the partners. This limitation means that the only type of adoption that is currently available in Taiwan for same-sex couples is second parent adoption (see section below).
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Europe (17)⁹

1	 Andorra	2014	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.
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⁵ "Joint Adoption", Movement Advancement Project (website), accessed 22 January 2019.

⁶ Neal Broverman, "Nation's Last Gay Adoption Ban Falls", *The Advocate*, 3 May 2016.

⁷ Talia Einhorn, "Same-sex family unions in Israeli law" *Utretch Law Review* 4 No. 2 (2008): 222, 230.

⁸ Roberto Igual, "Israel | Gay dads must both be named on birth certificate", *Mamba Online*, 16 December 2018.

⁹ Greece was erroneously included under this section in the 13th edition of *State-Sponsored Homophobia*.

2	 Austria	2016	In late 2014, the Constitutional Court in Austria ruled that provisions barring joint adoption by same-sex couples contravened the right to equality, and not in the best interest of the child. ¹⁰ As such, Articles 178-185 of Civil Code are applicable to same-sex couples as of early 2016. The legalization of same-sex marriage in 2019 reaffirms the status of same-sex families as well.
3	 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.
4	 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.
5	 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.
6	 France	2013	Article 1 of the Law Opening Marriage to Same-Sex Couples (Law No. 2013-404 of 17 May 2013) updates Articles 345(1), 360 and 371(4) in the Civil Code regarding joint adoption.
7	 Germany	2017	The passage of marriage equality allows same-sex couples to adopt children who are not biologically related to them.
8	 Iceland	2010	Articles, 2, 8 and 29 of the 2010 Marriage Act stipulate the joint parental responsibilities of spouses: these apply to adoption.
9	 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.
10	 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.
11	 Malta	2014	As reflected in Section 12 of 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. ¹¹ The legalization of same-sex marriage (2019) reaffirms the status of same-sex families as well.
12	 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.
13	 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.

¹⁰ “[Constitutional Court Struck Down Joint Adoption Ban | Austria](#)”, *European Commission on Sexual Orientation Law (webpage)*, 15 January 2015.

¹¹ “[Malta’s first child adopted by a gay couple; parents appeal the public to educate others](#)”, *The Malta Independent*, 15 July 2016.

14	 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 .
15	 Spain	2005	Article 67(7) of Law 13/2005 amends Article 175 of the Civil Code to specify that same-sex spouses can jointly adopt.
16	 Sweden	2009	Articles 4-8 of the 2003 Act on Parenting lay out the conditions for joint adoption for married couples, same-sex and different-sex.
17	 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. Several British Overseas Territories recognise joint adoption by same-sex couples. ¹²

Is there more in Europe?

Czechia

In June 2016, the Constitutional Court [ruled](#) that people living in registered partnerships (regardless of their gender) should have no impediments to adopt children as individuals. However, joint and second parent adoption by same-sex couples remain illegal to date. A bill addressing this issue by attempting to legalize same-sex marriage was introduced to the Chamber of Deputies in June 2018.¹³ However, as of November 2019, the Chamber has failed to debate the bill.¹⁴

Greece

Article 8 of the Child Adoption Law ([Νόμος 4538/2018 - Μέτρα για την προώθηση των Θεσμών της Αναδοχής και Υιοθεσίας και άλλες διατάξεις](#)), ratified by the parliament in May 2018, grants same-sex couples the right to foster children, but not to adopt. As reported by local media, the the Greek Prime Minister explained that “fostering provides for the return of the child to its natural parents, who must retain contact with the child during its fostering time. It would not be an exaggeration to say that fostering is an act of altruism, solidarity, and service of those who choose it”.¹⁵

Poland

In 2018, the Supreme Administrative Court ruled in favour of a lesbian couple who sought to register their child under both their names after local administrators rejected their request.¹⁶

¹² 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 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](#).

¹³ Daniela Lazarová, “[Government Backs Same-Sex Marriage Bill, But Decisive Battle Looms in Parliament](#)”, *Radio Prague International*, 25 June 2018.

¹⁴ Daniela Lazarová, “[Supporters of Same-Sex Marriage Demonstrate in Prague](#)”, *Radio Prague International*, 13 September 2019.

¹⁵ “Greek MPs approve child fostering by same sex couples”, *China Daily*, 9 May 2018.

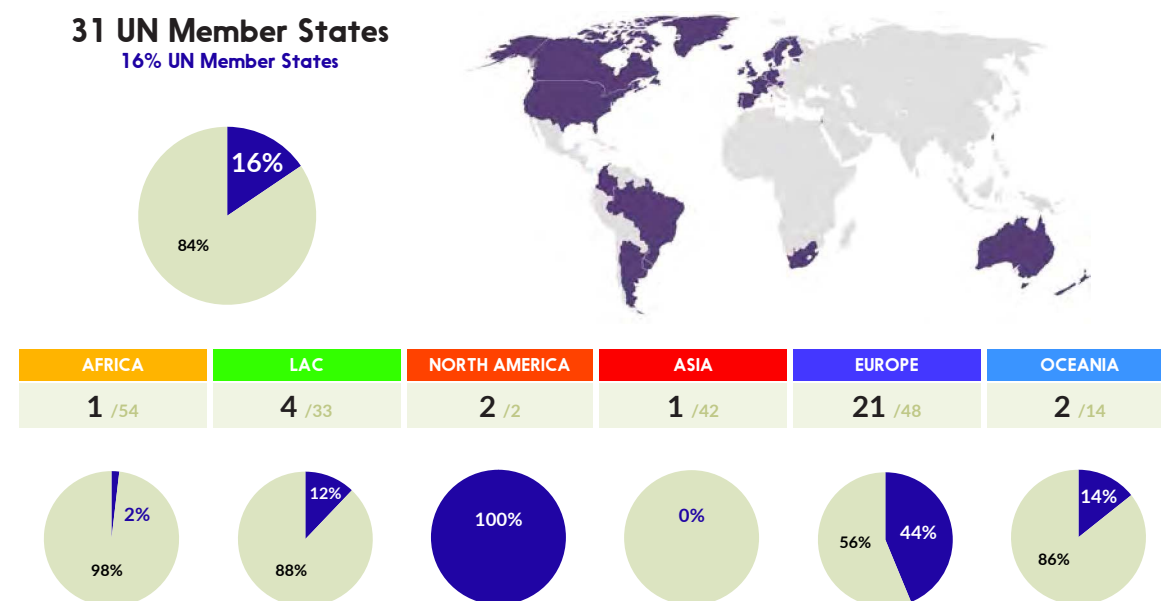
¹⁶ “[Lesbian Couple Granted The Right To Register Child As Their Own In Poland](#)”, *The Huffington Post*, 12 October 2018.

Oceania (2)

1	 Australia	2002- 2018	Joint adoption by same-sex couples is currently possible in all Australian States and Territories: Australian Capital Territory (2004); New South Wales (2010); Queensland (2016); South Australia (2017); Tasmania (2013); Victoria (2016); Western Australia (2002); Northern Territory (2018).
2	 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

Highlights



Introduction

Second parent adoption is an important legal vehicle by means of which a person adopts the child of their partner.

For children of people who are in a same-sex stable relationship, being adopted by the partner of their parent may have multiple beneficial effects, such as increasing their protection, as well as their economic security and support.

Furthermore, the recognition of the link between the child and the second parent protects their respective rights and duties towards each other on an equal footing.

What does International Human Rights Law say?

States shall take all necessary legislative, administrative and other measures to ensure the right to found a family, including through access to adoption [...].

Yogyakarta Principle 24(a)

Africa (1)

1		South Africa	2006	Section 231(1)(c) of the Children's Act (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.
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Latin American and the Caribbean (4)

1	 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.
2	 Brazil	2010	The Superior Court of Justice of Brazil (STJ) ruled in April 2010 that same-sex couples may adopt children. This judgment was upheld in the Supreme Federal Court of Brazil in August 2010.
3	 Colombia	2014	The Constitutional Court of Columbia determined in its Decision SU-167 of 2014 that same-sex couples have the right to adopt the biological child of their partner.
4	 Uruguay	2013	Law on Marriage Equality (Law No. 19,075) grants same-sex couples adoption rights. 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.

Is there more in Latin America and the Caribbean?

Costa Rica

Under the Costa Rican legal framework, the second parent adoption is possible as long as both parents are married. Once same-sex marriage takes effect in May 2020, this will also be possible for same-sex couples. While the law in Costa Rica currently states that the father's surname should be recorded first and the mother's in second order, the Legislative Assembly is in the process of amending the Civil Code so that the order of surnames is decided by common agreement.¹

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); **Coahuila** (Art. 377, 2015), **Colima** (Art. 391(b), 2016); **Mexico City** (Art. 391(5), 2010); **Nayarit** (Art. 389(2), 2016).

North America (2)

1	 Canada	2005	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).
2	 United States of America	2015	The availability and conditions for second parent adoption for same-sex couples varies by state. An NGO report states that about 29 states permit second parent adoption while 10 others have limited or prohibited adoption. ²

¹ Information provided to ILGA World by the Presidential Commissioner for LGBTIQ+ issues in Costa Rica.

² "Adoption by LGBT Parents", *National Center for Lesbian Rights (website)*, accessed January 22, 2019.

Asia (1) + Taiwan (China)

1	 Israel	2005	In <i>Yaros-Hakak v. Attorney General</i> 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. ³
	Taiwan (China)	2019	The Law on Same-Sex Marriage allows same-sex couples to adopt children only if they are related to one of the partners. This limitation means that the only type of adoption that is currently available in Taiwan for same-sex couples is second parent adoption.

Is there more in Asia?

Singapore

In December 2018, Singapore's High Court exceptionally allowed a gay man to adopt a child born via surrogacy in the United States.⁴ However, the following month, Singapore's Minister for Social and Family Development, stated that the government does not support "the formation of family units with children of homosexual parents through institutions and processes such as adoption" and is looking to strengthen adoption laws to prevent more same-sex adoption cases.⁵

Europe (21)

1	 Andorra	2014	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.
2	 Austria	2013	Following the return of X. and others v. Austria 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. The legalization of same-sex marriage in 2019 reaffirms the status of families formed by same-sex couples.
3	 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.
4	 Denmark	1999 2009 2010 2017	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. Section 4(a)(2) of 2010 Adoption Act (updated Adoption (Consolidation) Act 2014) sets out that a partner or spouse can adopt the other's child. Greenland enacted second parent adoption to same-sex couples in 2009. The Faroe Islands passed second parent adoption legislation which came into force in 2017.

³ "Yaros-Hakak v. Attorney General, Supreme Court of Israel (10 January 2005)", *International Commission of Jurists (website)*, accessed 22 January 2019.

⁴ Sandi Sidhu and Lauren Said-Moorhouse, "Gay Singaporean man can adopt son born via surrogacy, court rules". CNN. 17 December 2018.

⁵ Fathin Ungku, "Singapore may tighten adoption law after gay father adopted son". Reuters. 14 January 2019.

5	 Estonia	2016	Section 15(1-4) of the Registered Partner Act offer second-parent adoption rights to same-sex couples, where an individual may adopt the natural or adopted child of their partner.
6	 Finland	2009	Section 9 of the 2001 Registered Partnership Act was amended in 2009 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.
7	 France	2013	Article 1 of the Law Opening Marriage to Same-Sex Couples (Law No. 2013-404 of 17 May 2013) 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.
8	 Germany	2005 2017	Article 9(7) of the Act on Registered Life Partnerships (2005) (to be read in conjunction with Title 2 [Adoption] of the Civil Code) legalised second parent adoption for same-sex couples. Following the passage of marriage equality which granted the same adoption rights to same-sex couples, the Federal Court of Justice held that being in a same-sex marriage does not automatically make the wife of the mother of a child the co-parent. The wife would have to apply to adopt the child, a process which has been described as “difficult and bureaucratic” and can take up to 18 months. ⁶
9	 Iceland	2000	Section 6 of Law amending the Registered Partnership Act (1996) specifies that civil partners can adopt one another’s children. ⁷
10	 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’.
11	 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.
12	 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. The legalization of same-sex marriage reaffirmed the status of same-sex families as well.
13	 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.

⁶ Damien McGuinness, “Gay Germans’ joy mixed with adoption angst”, *BBC News*, 22 July 2017.

⁷ See also: “Adoption of Stepchildren in Gay and Lesbian Families in Iceland”, *Gay Ottawa Archive*, 13 June 2000.

14	 Norway	2009	Section 5 of the Adoption Act was amended to include same-sex partners as eligible to adopt. Section 13 regulates the adoption of the children of the spouse or cohabitant (stepchild adoption) and specifies that current or former same-sex spouses or cohabitants may not adopt a stepchild if the child has been adopted from a country that does not permit persons of the same sex to adopt together.
15	 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 .
16	 San Marino	2018	Article 10 of the Law no. 147 of 20/11/2018 on civil unions passed in November 2018 allows partners in a civil union to adopt their partner's children.
17	 Slovenia	2011	The right to step-parent adoption for same-sex couples 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. ⁸
18	 Spain	2005	Article 67(7) of Law 13/2005 amends Article 175(4) of the Civil Code to allow for second parent adoption.
19	 Sweden	2009	Article 8 of the Act on Parenting (2003) lay out the conditions for second parent adoption for married couples, same-sex and different-sex.
20	 Switzerland	2018	As of January 1, 2018, the Civil Code (as amended in 2017) allows same-sex couples and cohabitants in <i>de facto</i> marriage relationships to adopt the children of their partners. ⁹
21	 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. Several British Overseas Territories also recognize second-parent adoption. ¹⁰

Is there more in Europe?

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*.

⁸ "Ministry response in relation to the decision to adopt a biological child of a same-sex partner" [Odziv ministrstva v zvezi z odločbo o posvojitvi biološkega otroka istospolne partnerice], *Ministry of Labour, Family, Social Affairs and Equal Opportunities (website)*, 19 July 2011.

⁹ Conseil Federal, "**Le nouveau droit de l'adoption entrera en vigueur le 1er janvier 2018**", 10 July 2017.

¹⁰ 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**.

Italy

No law allows for second parent adoption, but there has been important judicial activity 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 2016.¹¹ The Court of Appeal of Naples ordered full recognition of second-parent adoption on 5 April 2016, and the Court of Appeal in Trento recognised the second father as a co-parent of twins through surrogacy.¹² In September 2018, the Bologna Court of Appeal also affirmed an adoption order granted in the United States on the basis that it was in the best interests of the child to do so.¹³

Oceania (2)

1	 Australia	2002-2018	Second parent adoption by same-sex couples is currently possible in all Australian States and Territories: Australian Capital Territory (2004); New South Wales (2010); Queensland (2016); South Australia (2017); Tasmania (2013); Victoria (2016); Western Australia (2002); Northern Territory (2018).
2	 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).

¹¹ "Supreme Court: Full Recognition of Two Mothers, Italy", *European Commission on Sexual Orientation Law (website)*, 30 June 2016.

¹² "In landmark ruling, Italy recognizes gay couple as dads to surrogate babies", *The Local.it*, 28 February 2017.

¹³ Elaine Allaby, "Italian appeals court upholds validity of US adoption by lesbian couple", *The Local.it*, 27 September 2018.

The World at a Glance

State-Sponsored Homophobia (Update) – DECEMBER 2019

N	CN	COUNTRY	CRIMINALISATION			PROTECTION						RECOGNITION			
			SAME-SEX SEXUAL ACTS LEGAL?	GENDER	MAX PENALTY	CONST.	BROAD PROT.	EMPLOY.	HATE CRIMES	INCITEMENT	BAN ON CTS	SAME SEX MARRIAGE	CIVIL UNIONS	JOINT ADOPTION	SECOND PARENT ADOPTION
AFRICA															
1	1	Algeria	NO	ANY GENDER	2	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
2	2	Angola	YES	DNA	DNA	NO	YES	YES	YES	YES	NO	NO	NO	NO	NO
3	3	Benin	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
4	4	Botswana	YES	DNA	DNA	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO
5	5	Burkina Faso	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
6	6	Burundi	NO	ANY GENDER	2	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
7	7	Cameroon	NO	ANY GENDER	5	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
8	8	Cape Verde	YES	DNA	DNA	NO	NO	YES	YES	NO	NO	NO	NO	NO	NO
9	9	Central Africa Republic	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
10	10	Chad	NO	ANY GENDER	2	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
11	11	Comoros	NO	ANY GENDER	5	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
12	12	Congo	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
13	13	Côte d'Ivoire	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
14	14	DRC	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
15	15	Djibouti	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
16	16	Egypt	DE FACTO	ANY GENDER	UNDETERM.	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
17	17	Equatorial Guinea	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
18	18	Eritrea	NO	ANY GENDER	7	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
19	19	Eswatini	NO	MALE ONLY	UNDETERM.	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
	20	Ethiopia	NO	ANY GENDER	3	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO

[illegible]

N	CN	COUNTRY	CRIMINALISATION			PROTECTION						RECOGNITION			
			SAME-SEX SEXUAL ACTS LEGAL?	GENDER	MAX PENALTY	CONST.	BROAD PROT.	EMPLOY.	HATE CRIMES	INCITEMENT	BAN ON CTS	SAME SEX MARRIAGE	CIVIL UNIONS	JOINT ADOPTION	SECOND PARENT ADOPTION
46	46	South Africa	YES	DNA	DNA	YES	YES	YES	NO	YES	NO	YES	YES	YES	YES
47	47	South Sudan	NO	ANY GENDER	10	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
48	48	Sudan	NO	ANY GENDER	DEATH (E)	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
49	49	Tanzania	NO	ANY GENDER	FOR LIFE	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
50	50	Togo	NO	MALE ONLY	3	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
51	51	Tunisia	NO	ANY GENDER	3	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
52	52	Uganda	NO	ANY GENDER	FOR LIFE	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
53	53	Zambia	NO	ANY GENDER	FOR LIFE	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
54	54	Zimbabwe	NO	MALE ONLY	1	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
LATIN AMERICA AND THE CARIBBEAN															
55	1	Antigua and Barbuda	NO	ANY GENDER	15	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
56	2	Argentina	YES	DNA	DNA	NO	NO	NO	YES	NO	NO	YES	YES	YES	YES
57	3	Bahamas	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
58	4	Barbados	NO	ANY GENDER	FOR LIFE	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
59	5	Belize	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
60	6	Bolivia	YES	DNA	DNA	YES	YES	YES	YES	YES	NO	NO	NO	NO	NO
61	7	Brazil	YES	DNA	DNA	NO	YES	YES	YES	YES	YES	YES	YES	YES	YES
62	8	Costa Rica	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
63	9	Chile	YES	DNA	DNA	NO	YES	YES	YES	NO	NO	NO	YES	NO	NO
64	10	Colombia	YES	DNA	DNA	NO	YES	YES	YES	YES	NO	YES	YES	YES	YES
65	11	Cuba	YES	DNA	DNA	YES	YES	YES	NO	NO	NO	NO	NO	NO	NO
66	12	Dominica	NO	ANY GENDER	10	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
67	13	Dominican Republic	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
68	14	Ecuador	YES	DNA	DNA	YES	YES	YES	YES	YES	YES	YES	YES	NO	NO
69	15	El Salvador	YES	DNA	DNA	NO	NO	NO	YES	NO	NO	NO	NO	NO	NO

[illegible]

N	CN	COUNTRY	CRIMINALISATION			PROTECTION						RECOGNITION			
			SAME-SEX SEXUAL ACTS LEGAL?	GENDER	MAX PENALTY	CONST.	BROAD PROT.	EMPLOY.	HATE CRIMES	INCITEMENT	BAN ON CTS	SAME SEX MARRIAGE	CIVIL UNIONS	JOINT ADOPTION	SECOND PARENT ADOPTION
93	4	Bhutan	NO	MALE ONLY	1	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
94	5	Brunei Darussalam	NO	MALE ONLY	10	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
95	6	Cambodia	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
96	7	China	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
97	8	East Timor	YES	DNA	DNA	NO	NO	NO	YES	NO	NO	NO	NO	NO	NO
		Palestine ¹	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
98	9	India	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
99	10	Indonesia ²	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
100	11	Iraq	DE FACTO	ANY GENDER	UNDETERM.	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
101	12	Iran	NO	ANY GENDER	DEATH (E)	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
102	13	Israel	YES	DNA	DNA	NO	YES	YES	NO	NO	NO	NO	YES	YES	YES
103	14	Japan	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
104	15	Jordan	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
105	16	Kazakhstan	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
106	17	Kuwait	NO	MALE ONLY	7	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
107	18	Kyrgyzstan	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
108	19	Laos	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
109	20	Lebanon	NO	MALE ONLY	1	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
		Macau	YES	DNA	DNA	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO
110	21	Malaysia	NO	ANY GENDER	20	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
111	22	Maldives	NO	ANY GENDER	8	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
112	23	Mongolia	YES	DNA	DNA	NO	YES	YES	YES	NO	NO	NO	NO	NO	NO
113	24	Myanmar	NO	MALE ONLY	10	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO

¹ Gaza still criminalises consensual same-sex sexual acts between adults. See "Criminalisation" section.

² Certain provinces in Indonesia criminalise consensual same-sex sexual acts between adults. See "Criminalisation" section.

[illegible]

N	CN	COUNTRY	CRIMINALISATION			PROTECTION						RECOGNITION			
			SAME-SEX SEXUAL ACTS LEGAL?	GENDER	MAX PENALTY	CONST.	BROAD PROT.	EMPLOY.	HATE CRIMES	INCITEMENT	BAN ON CTS	SAME SEX MARRIAGE	CIVIL UNIONS	JOINT ADOPTION	SECOND PARENT ADOPTION
137	6	Belarus	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
138	7	Belgium	YES	DNA	DNA	NO	YES	YES	YES	YES	NO	YES	YES	YES	YES
139	8	Bosnia and Herz.	YES	DNA	DNA	NO	YES	YES	YES	NO	NO	NO	NO	NO	NO
140	9	Bulgaria	YES	DNA	DNA	NO	YES	YES	NO	YES	NO	NO	NO	NO	NO
141	10	Croatia	YES	DNA	DNA	NO	YES	YES	YES	YES	NO	NO	YES	NO	NO
142	11	Cyprus	YES	DNA	DNA	NO	YES	YES	YES	YES	NO	NO	YES	NO	NO
143	12	Czechia	YES	DNA	DNA	NO	YES	YES	NO	NO	NO	NO	YES	NO	NO
144	13	Denmark	YES	DNA	DNA	NO	NO	YES	YES	YES	NO	YES	NO	YES	YES
145	14	Estonia	YES	DNA	DNA	NO	YES	YES	NO	YES	NO	NO	YES	NO	YES
146	15	Finland	YES	DNA	DNA	NO	YES	YES	YES	YES	NO	YES	NO	YES	YES
147	16	France	YES	DNA	DNA	NO	YES	YES	YES	YES	NO	YES	YES	YES	YES
148	17	Georgia	YES	DNA	DNA	NO	YES	YES	YES	NO	NO	NO	NO	NO	NO
149	18	Germany	YES	DNA	DNA	NO	YES	YES	NO	NO	NO	YES	NO	YES	YES
150	19	Greece	YES	DNA	DNA	NO	NO	YES	YES	YES	NO	NO	YES	NO	NO
151	20	Hungary	YES	DNA	DNA	NO	YES	YES	YES	YES	NO	NO	YES	NO	NO
152	21	Iceland	YES	DNA	DNA	NO	YES	YES	NO	YES	NO	YES	NO	YES	YES
153	22	Ireland	YES	DNA	DNA	NO	YES	YES	NO	YES	NO	YES	NO	YES	YES
154	23	Italy	YES	DNA	DNA	NO	NO	YES	NO	NO	NO	NO	YES	NO	NO
		Kosovo	YES	DNA	DNA	NO	YES	YES	YES	YES	NO	NO	NO	NO	NO
155	24	Latvia	YES	DNA	DNA	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO
156	25	Liechtenstein	YES	DNA	DNA	NO	YES	YES	NO	YES	NO	NO	YES	NO	NO
157	26	Lithuania	YES	DNA	DNA	NO	YES	YES	YES	YES	NO	NO	NO	NO	NO
158	27	Luxembourg	YES	DNA	DNA	NO	YES	YES	NO	YES	NO	YES	YES	YES	YES
159	28	Malta	YES	DNA	DNA	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
160	29	Moldova	YES	DNA	DNA	NO	NO	YES	NO	YES	NO	NO	NO	NO	NO

N	CN	COUNTRY	CRIMINALISATION			PROTECTION						RECOGNITION			
			SAME-SEX SEXUAL ACTS LEGAL?	GENDER	MAX PENALTY	CONST.	BROAD PROT.	EMPLOY.	HATE CRIMES	INCITEMENT	BAN ON CTS	SAME SEX MARRIAGE	CIVIL UNIONS	JOINT ADOPTION	SECOND PARENT ADOPTION
161	30	Monaco	YES	DNA	DNA	NO	NO	NO	NO	YES	NO	NO	NO	NO	NO
162	31	Montenegro	YES	DNA	DNA	NO	YES	YES	YES	YES	NO	NO	NO	NO	NO
163	32	Netherlands	YES	DNA	DNA	NO	YES	YES	NO	YES	NO	YES	YES	YES	YES
164	33	North Macedonia	YES	DNA	DNA	NO	YES	YES	YES	NO	NO	NO	NO	NO	NO
165	34	Norway	YES	DNA	DNA	NO	YES	YES	YES	YES	NO	YES	NO	YES	YES
166	35	Poland	YES	DNA	DNA	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO
167	36	Portugal	YES	DNA	DNA	YES	YES	YES	YES	YES	NO	YES	YES	YES	YES
168	37	Romania	YES	DNA	DNA	NO	YES	YES	YES	NO	NO	NO	NO	NO	NO
169	38	Russia	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
170	39	San Marino	YES	DNA	DNA	YES	YES	YES	YES	YES	NO	NO	YES	NO	YES
171	40	Serbia	YES	DNA	DNA	NO	YES	YES	YES	YES	NO	NO	NO	NO	NO
172	41	Slovakia	YES	DNA	DNA	NO	YES	YES	YES	YES	NO	NO	NO	NO	NO
173	42	Slovenia	YES	DNA	DNA	NO	YES	YES	NO	YES	NO	NO	YES	NO	YES
174	43	Spain	YES	DNA	DNA	NO	YES	YES	YES	YES	NO	YES	YES	YES	YES
175	44	Sweden	YES	DNA	DNA	YES	YES	YES	YES	YES	NO	YES	NO	YES	YES
176	45	Switzerland	YES	DNA	DNA	NO	NO	YES	NO	YES	NO	NO	YES	NO	YES
177	46	Turkey	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
178	47	Ukraine	YES	DNA	DNA	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO
179	48	United Kingdom	YES	DNA	DNA	NO	YES	YES	YES	YES	NO	YES	YES	YES	YES
		Vatican City	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
OCEANIA															
180	1	Australia	YES	DNA	DNA	NO	YES	YES	NO	NO	NO	YES	YES	YES	YES
		Cook Islands	N	M ONLY	5	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO
181	2	Fiji	YES	DNA	DNA	YES	YES	YES	NO	NO	NO	NO	NO	NO	NO
182	3	Kiribati	NO	MALE ONLY	14	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO

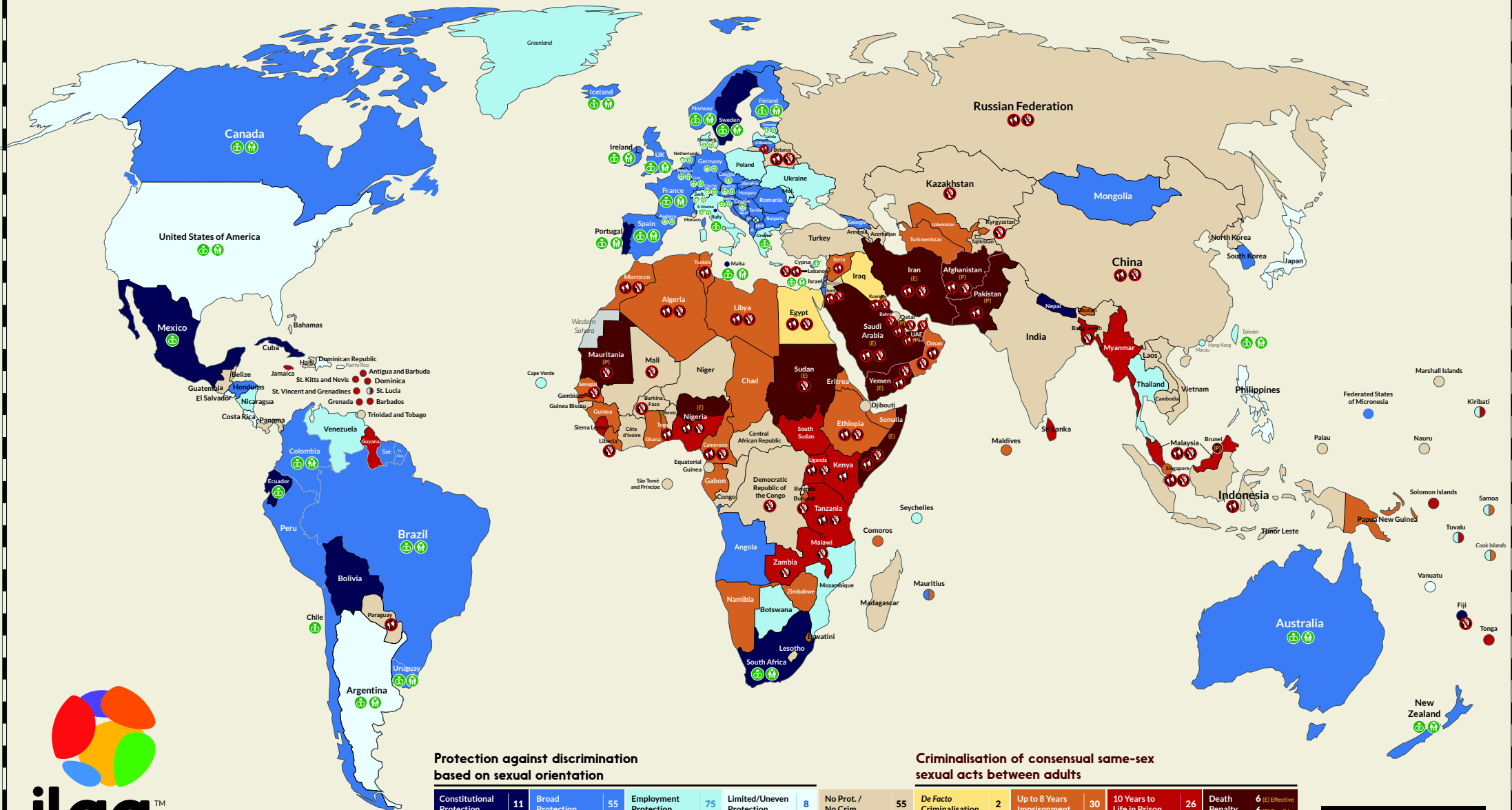
N	CN	COUNTRY	CRIMINALISATION			PROTECTION						RECOGNITION			
			SAME-SEX SEXUAL ACTS LEGAL?	GENDER	MAX PENALTY	CONST.	BROAD PROT.	EMPLOY.	HATE CRIMES	INCITEMENT	BAN ON CTS	SAME SEX MARRIAGE	CIVIL UNIONS	JOINT ADOPTION	SECOND PARENT ADOPTION
183	4	Marshall Islands	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
184	5	Micronesia	YES	DNA	DNA	NO	YES	NO	NO	NO	NO	NO	NO	NO	NO
185	6	New Zealand	YES	DNA	DNA	NO	YES	YES	YES	NO	NO	YES	YES	YES	YES
186	7	Nauru	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
187	8	Palau	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
188	9	Papua New Guinea	NO	MALE ONLY	7	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
189	10	Samoa	NO	MALE ONLY	7	NO	NO	YES	YES	NO	NO	NO	NO	NO	NO
190	11	Solomon Islands	NO	ANY GENDER	14	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
191	12	Tonga	NO	MALE ONLY	10	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
192	13	Tuvalu	NO	MALE ONLY	14	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
193	14	Vanuatu	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
						11	57	77	46	43	3	27	31	27	31
						6% UN Member States	30% UN Member States	40% UN Member States	24% UN Member States	22% UN Member States	2% UN Member States	14% UN Member States	16% UN Member States	14% UN Member States	16% UN Member States

DNA: Does not apply.

68	35%	UN Member States CRIMINALISE consensual same-sex sexual acts
2	1%	UN Member States DE FACTO CRIMINALISE consensual same-sex sexual acts
123	64%	UN Member States DO NOT CRIMINALISE consensual same-sex sexual acts
1		UN Member State has provinces with criminalising provisions (Indonesia)

SEXUAL ORIENTATION LAWS IN THE WORLD

From criminalisation of consensual same-sex sexual acts between adults to protection against discrimination based on sexual orientation



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