Flygtningenævnets baggrundsmateriale

Bilagsnr.:	**161**
Land:	Diverse emner
Kilde:	ILGA
Titel:	Annual report on State-Sponsored Homophobia. A world survey of laws: Criminalisation, protection and recognition of same-sex love
Udgivet:	Maj 2015
Optaget på baggrundsmaterialet:	8. august 2016

STATE-SPONSORED HOMOPHOBIA

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

11TH EDITION

AENGUS CARROLL

www.ilga.org

UPDATED TO JUNE 2016

COPYRIGHT PAGE

Suggested citation: International Lesbian, Gay, Bisexual, Trans and Intersex Association: Carroll, A., *State Sponsored Homophobia 2016: A world survey of sexual orientation laws: criminalisation, protection and recognition* (Geneva; ILGA, May 2016).

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

Separate PDFs of each region are also available.

Digital versions of the map of LGB legislation in the world are available for print.

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

Download the maps and reports at www.ilga.org or contact information@ilga.org

Coordination: Renato Sabbadini

Design and typesetting: Renné Ramos

Maps: Eduardo Enoki

CONTENT

FOREWORD: CO-SECRETARIES-GENERAL: RUTH BALDACCHINO AND HELEN KENNEDY 5

AUTHOR'S PREFACE: AENGUS CARROLL 7

SOGIESC AT THE UN: HELEN NOLAN AND DIANA CAROLINA PRADO MOSQUERA 13

DEVELOPMENT AND HUMAN RIGHTS: TWO COMPLEMENTARY FRAMEWORKS: ANDREW PARK AND LEE BADGETT .. 23

SUMMARY OF THE PROCESS TO DEVELOP THE 'UNDP LGBTI INCLUSION INDEX': SUKI BEAVERS 30

LGB LEGISLATION GLOBAL OVERVIEW 32

SAME-SEX SEXUAL ACTS LEGAL 34

SAME-SEX SEXUAL ACTS ILLEGAL 36

SAME-SEX SEXUAL ACTS - DEATH PENALTY 37

EQUAL AGE OF CONSENT FOR SAME AND DIFFERENT SEX SEXUAL ACTS 38

UNEQUAL AGE OF CONSENT FOR SAME AND DIFFERENT SEX SEXUAL ACTS 39

PROMOTION ('PROPAGANDA') AND 'MORALITY' LAWS THAT TARGET FREEDOM OF EXPRESSION RELATED TO SEXUAL ORIENTATION 40

PROHIBITION OF DISCRIMINATION IN EMPLOYMENT BASED ON SEXUAL ORIENTATION 42

CONSTITUTIONAL PROHIBITION OF DISCRIMINATION BASED ON SEXUAL ORIENTATION 44

OTHER NON-DISCRIMINATION PROVISIONS SPECIFYING SEXUAL ORIENTATION 46

HATE CRIMES BASED ON SEXUAL ORIENTATION CONSIDERED AN AGGRAVATING CIRCUMSTANCE 46

INCITEMENT TO HATRED BASED ON SEXUAL ORIENTATION PROHIBITED 49

MARRIAGE OPEN FOR SAME-SEX COUPLES 50

SAME-SEX COUPLES OFFERED MOST RIGHTS ATTACHED TO MARRIAGE, [CIVIL PARTNERSHIPS, REGISTERED PARTNERSHIPS, CIVIL UNIONS, ETC] 51

SOME RECOGNITION OF SAME-SEX RELATIONSHIPS IN LAW 52

JOINT ADOPTION BY SAME-SEX COUPLES 53

SECOND PARENT ADOPTION 54

CRIMINALISATION 55

AFRICA 57

ALGERIA 57

ANGOLA 58

BOTSWANA 59

BURUNDI 60

CAMEROON 61

COMOROS 62

EGYPT 62

ERITREA 64

ETHIOPIA 65

GAMBIA 66

GHANA 68

GUINEA 69

KENYA 70

LIBERIA 72

LIBYA 72

MALAWI 73

MAURITANIA 75

MAURITIUS 76

MOROCCO 76

NAMIBIA 78

NIGERIA 78

SENEGAL 81

SIERRA LEONE 82

SOMALIA 82

SOUTH SUDAN 83

SUDAN 84

SWAZILAND 85

TANZANIA 86

TOGO 87

TUNISIA 88

UGANDA 89

ZAMBIA 91

ZIMBABWE 93

ASIA 94

AFGHANISTAN 94
BANGLADESH 95
BHUTAN 96
BRUNEI DARUSSALAM 96
GAZA (*IN THE OCCUPIED PALESTINIAN TERRITORY*) 97
INDIA 98
INDONESIA (SOUTH SUMATRA AND *ACEH PROVINCE*) 100
IRAN 102
IRAQ 104
KUWAIT 106
LEBANON 107
MALAYSIA 108
MALDIVES 109
MYANMAR 110
OMAN 111
PAKISTAN 112
QATAR 113
SAUDI ARABIA 114
SINGAPORE 115
SRI LANKA 116
SYRIA 117
TURKMENISTAN 118
UNITED ARAB EMIRATES 119
UZBEKISTAN 120
YEMEN 120

AMERICAS 122

ANTIGUA AND BARBUDA 122
BARBADOS 123
BELIZE 124
DOMINICA 125
GRENADA 126
GUYANA 122
JAMAICA 128
ST KITTS & NEVIS 129
ST LUCIA 130
ST VINCENT & THE GRENADINES 131
TRINIDAD AND TOBAGO 131

OCEANIA 133

COOK ISLANDS (ASSOCIATES TO NEW ZEALAND) 133
KIRIBATI 133
PAPUA NEW GUINEA 134
SAMOA 135
SOLOMON ISLANDS 136
TONGA 138
TUVALU 139

GLOBAL PERSPECTIVES 141

KEY DEVELOPMENTS TOWARDS INCREASED RECOGNITION OF THE HUMAN RIGHTS OF LGBTI PEOPLE IN AFRICA TASHWILL ESTERHUIZEN, ANNEKE MEERKOTTER AND YAHIA ZADI 144

ASIA THESE DAYS: DOUGLAS SANDERS AND ANNA ARAFIN. 152

THE AMERICAS: STEADY PROGRESS TOWARDS EQUALITY FOR LESBIANS, GAYS AND BISEXUALS IN 2015: LUCAS RAMÓN MENDOS AND TAMARA ADRIÁN. 164

EUROPE: HIGHLIGHTS, KEY DEVELOPMENTS AND TRENDS IN 2015: THE ILGA-EUROPE TEAM 174

STATE SPONSORED HOMOPHOBIA IN OCEANIA: PROGRESS, EMERGING CHALLENGES AND FUTURE DIRECTIONS: ANNA BROWN AND ISIKELI VULAVOU. 182

WORLD MAPS 2016 189

ILGA CO-SECRETARIES-GENERAL'S FOREWORD

RUTH BALDACCHINO[1] AND HELEN KENNEDY[2]

This 11th edition of the *State-Sponsored Homophobia* report sees a remarkable increase in the amount of information and analysis provided when compared to the previous editions, but it also organises this information in a clearer and more reader-friendly format.

Human rights defenders, legal experts, NGOs, allies, governmental and UN agencies, and media agencies will find the core information in relation to legislation affecting people on the basis of their sexual orientation, additional information and articles providing the necessary context to understand the impact of said legislation on the lives of people, and ways to initiate or follow up the process leading to change where needed.

For the first time, a wealth of maps and charts makes it easier to see how each country is faring in terms of lesbian, gay, bisexual-related legislation and to compare one country with another. The importance of these tools cannot be overstated: they allow us to measure progress (or setbacks) in the course of the years, while the comparison exposes the arbitrariness of laws persecuting individual on the basis of their sexual orientation.

For the first time you will also find the partial results of the ILGA-RIWI 2016 Global Attitudes Survey on LGBTI People in partnership with Logo (US-based LGBT media organisation). The survey, carried out in 65 countries generated the data (a tiny part of which is presented in this edition in 17 criminalising States) allows us to see whether or not a certain piece of legislation enjoys the support of the public in a given country. While more analysis of the survey will be provided in the course of 2016, it is important to highlight the innovative character of the methodology used, thanks to the technology of RIWI Corp., a global survey technology company based in Canada. Through this technology we were able to obtain randomized and statistically valid samples of the population for each country, and to reach countries (like Saudi Arabia) that are normally very difficult to survey in relation to LGBTI issues.

The combined information of the *State-Sponsored Homophobia* report and the Global Attitudes Survey on LGBTI People – which will continue over the next years – together with a new report on Trans-related legislation that we will present at the next ILGA World Conference in Bangkok (28 November – 2 December 2016), will provide a powerful set of indicators for individual activists, NGOs and allies, to measure the effectiveness of their campaigns and initiatives over the years.

1 Ruth Baldacchino (Malta) is a genderqueer activist and academic, with extensive experience in international LGBTIQ activism and research focusing on queer migration, trans and intersex human rights and movements, and intersectional social justice.

2 Helen Kennedy is the Executive Director of Egale Canada Human Rights Trust, Canada's national LGBTI Human Rights organization. As a queer human rights activist, Helen has over 20 years of experience in politics with a reputation as an advocate, negotiator and consensus-builder.

This information and knowledge serves also as an indispensable tool to plan or modify their work to ensure the social and cultural changes needed to improve the lives of hundreds of millions of LGBTIQ people throughout the world.

This publication continues to address some of the realities of the lives and experiences of LGBTIQ people, and whilst noting the challenges encountered when trying to capture the complexities of people's realities, it provides a valuable legal analysis that highlights and reminds us of the barriers and battles that are yet to be overcome and fought.

We believe in the powerful and liberating acts that information and knowledge produce, and are convinced that this report continues to provide an opportunity to change and challenge norms and practices that continue to oppress LGBTIQ people around the world.

Finally, our thanks go to all those who worked on this report: the author, Aengus Carroll; the contributors in this edition; ILGA staff, translators and all our members whose knowledge continue to sustain this report.

AUTHOR'S PREFACE[3]

State Sponsored Homophobia started out in 2006 as a comprehensive listing of the black letter law in the world's then 92 criminalising States regarding same-sex sexual activity.[4] By 2016, on its 11th edition, that number is at 73 States,[5] and the variety of law relevant to sexual orientation has expanded greatly: law that criminalises our sexual practice or our expression [criminalisation], specific law that protects us from harms and hatred [protection], and law that recognises us as beings who need relationship [recognition]. This year, along with our usual single snapshot map of the global LGB legal situation in the world, we have generated specific maps on each of these three overarching categories, and included them at the end pages of this report.

CONTRIBUTORS

The profusion of inclusive or protective laws this publication tracks year-on-year share commonality in that they reflect international human rights standards. It is these standards (and their regionally-expressed versions) that those SOGIESC advocates working on legal and policy changes generally refer to. Increasingly, we see the value of international work at the UN as assisting in triggering dialogues at national levels, particularly around non-discrimination. These mechanisms, institutions and allies lend support to advocates seeking accountability from their States on the commitments they have made at global human rights Conventions and other UN forums. In the first essay following this introduction, **Helen Nolan** and **Diana Carolina Prado Mosquera** present some interesting analysis drawn from their work at ILGA with advocates working with the UN Treaty Bodies and with the Universal Periodic Review. Amongst other observations, they focus on the growing specificity of language in recommendations given to and by States, and the role advocates have in monitoring implementation and illuminating the various expressions of socio-legal discrimination they encounter.

But, as everyone working in this field is well aware, the presence or absence of laws is only part of the picture in our efforts towards inclusion in our own societies. As documented in this publication last year (10th edition) by our colleagues at the Sexual Rights Initiative in their article on 'Intersectionality in LGBTI Advocacy', many LGBTI people fall between the provisions of law as they face discrimination or exclusion in multiple inter-dependent ways.[6] As such, how policies and programs are actually conceived and implemented matters greatly in the lived experience of those people they reach and those they fail to reach.

---

3 Aengus Carroll, LLM, is an author and consultant researcher on SOGIESC-related socio-legal subjects, affiliated with the School of Law at University College Cork, Ireland.

4 Although there are, necessarily, multiple references made to SOGI, SOGIE, SOGIESC, LGBT and LGBTI within this document, the laws cited here pertain to sexual orientation. The subject of this global survey relates to the sexual orientation of all people, including trans-identified and intersex people, but it is beyond the scope of this this global survey to gather other laws relevant to gender identity, gender expression and intersex/sex characteristics: these deserve unique publications to comprehensively overview their various dimensions.

5 Egypt does not technically penalise same-sex sexual behaviour *per se*, but we include it in our 'Criminalisation' section because that State's deployment of other legislative provisions against same-sex sexual activity and expression is extreme.

6 In April 2016, SRI launched the National Sexual Rights Law and Policy Database, with global maps and up to date data on a wide number of criteria, see: http://sexualrightsdatabase.org/#page/welcome

In this regard, **Andrew Park** and **Lee Badgett**'s essay in this edition on the overlaps and relationship between the human rights and human development frameworks has great relevance. They argue that both frameworks are important for understanding and actually addressing the challenges faced by LGBTI people in societies, and that NGOs represent an important component of both systems. These authors' insights are valuable in the year following the launch of the Sustainable Development Goals (2015-2030) and the attendant reconfiguration of resource allocations.

Relatedly, in 2015, ILGA and various other international and national SOGIESC NGOs, engaged at the seminal stages of a new initiative introduced by the United Nations Development Programme and the Office of the High Commissioner of Human Rights. **Suki Beavers** of the UNDP, one of the architects of a process to develop a *Global LGBTI Inclusion Index*, gives a brief account of what has happened to date, describing the comprehensive consultation processes undertaken, and the resultant priority areas identified.

This year our 'Global Perspectives' section is written for us by teams of co-authors from the world's regions. **Tashwill Esterhuizen** and **Anneke Meerkotter** from the Southern Africa Litigation Centre provide an overview of sub-Saharan Africa over the past year, describing significant litigation successes in Kenya, Botswana and Zambia, and pointing to regressive tendencies in other States. **Yahia Zadi** of the MantiQitna Network for Gender and Sexuality in Algeria reflects the brutality with which same-sex sexual activity is being responded to in parts of North Africa, but also some positive events, such as the registration of SHAMS in Tunisia.

Professor **Douglas Sanders** in Bangkok, Thailand and **Anna Arafin** of the Indonesian NGO Arus Pelangi in Jakarta, provided the overview of Asia this year. Amongst their concise accounts of States across central and eastern Asia they describe the current situation in Indonesia in some detail, and discuss various facets and socio-legal environments where discourses on non-discrimination emerged in the last year. **Fadi Saleh**, Board Member of the MantiQitna Network describes some recent developments in Lebanon and Oman, and the terrifying persecutions that many LGBTI people are subject to from which they are fleeing Syria and Iraq.

An Argentinian legal scholar, former member of the LGBTI Rapporteurship at the Inter-American Commission on Human Rights, and currently based at the William's Institute in the University of California Los Angelus (UCLA), **Lucas Ramón Mendos** and Venezuela's first trans member of parliament, legal scholar **Tamara Adrián** provided the overview of the Americas for this edition (all parts of the continent). They focus on how strategies at the regional, national, and local levels have deepened States' focus on addressing violence against LGBT people, and the need to secure economic, social and cultural rights, including freedom from discrimination, access to justice, and family rights.

In the spirit of facilitating a variety of voices on the pages of this ILGA publication, the **team at ILGA-Europe** are to be collectively thanked for supplying the overview of developments in Europe over the past year. Drawn from the body of their substantial research into the legal and policy environments relating to SOGIESC in the European region, and derived from their Annual Overview and Rainbow Index, this essay regards the contrasts emerging in Europe. These range from the success of marriage equality, self-determined gender identity recognition, and increased cognisance of intersex-related issues in human rights discourses, to the numerous

acute 'reminders' of just how starkly regressive tendencies in country-level socio-legal contexts can impact individuals' freedom across the continent.

The final regional perspective in this edition comes from **Anna Brown**, Director of Advocacy & Strategic Litigation at the Human Rights Law Centre (LGBTI Unit), and **Isikeli Vulavou**, Executive Director of the Rainbow Pride Foundation, Fiji. They describe an overall improving environment in most States in Oceania: of the criminalisng States there are some positive dialogues and initiatives opening. However, there are some on-going deeply negative conditions in States, with one such emerging area concerning those claiming asylum on the basis of sexual orientation or gender identity.

THIS EDITION

In this edition the entries on the 73 criminalising States are accompanied by some new elements that seek to indicate the current socio-legal contexts in which advocacy is happening particularly in regard to sexual orientation. Information on human rights institutions, recent arrests, precise terms of law, State presence at UN mechanisms, and some new public opinion data (sourced by ILGA) is gathered on these pages.

In addition to ILGA's membership of over 1200 SOGIESC-related organisations, this publication is primarily designed to provide a body of accurate and credible reference sources to researchers, human rights defenders, agencies, institutions and allies.

NATIONAL HUMAN RIGHTS INSTITUTIONS

Whether an existing national human right institution (NRHI) includes sexual orientation within the scope of its core function addressing non-discrimination and equality is symbolised in each country entry. NRHIs take various forms - national human rights commissions, equality authorities, Ombudsman offices, Public Defenders, etc – and have varying degrees of impact in States. But they generally act as bridges between civil society, the domestic political establishment, potential ally organisations, and regional and international mechanisms, and their influence as standard bearers in States is generally sizeable.

RECENT IMPLEMENTATION OF THE PENAL LAW

A second element symbolised in each country entry in this edition is on arrests or prosecutions in the last three years. These indicate the active deployment of the law to intimidate and suppress sexual minorities, thus acknowledging the chill factor that the very existence of such law provokes. Often arrests are made by police in order to extract bribes or coerce sex from vulnerable individuals and do not lead to prosecutions.

PRECISE PENALISING LANGUAGE

To comprehend more easily what a given law actually penalises, we have noted the actual terms used ('acts against nature', 'gross indecency', 'sodomy', etc, and 'promotion of non-traditional values' or 'morality') beside the text of the black letter law listed in criminalising States. We would be collectively well-served if the increased reportage on LGBTI issues around the world could

achieve a level of precision in disseminating language into public discourse on sexual orientation (not homosexuality), gender identity (or transgender) and sex characteristic (or intersex) issues.

There are regional overview charts of sexual orientation-related laws at the start of each regional essay, in the Global Perspectives section of this edition. The final pages are given over to separate maps on criminalisation, protection and recognition.

TREATY BODIES AND THE UNIVERSAL PERIODIC REVIEW

Relatedly, such linguistic concerns matter in the work with international mechanisms undertaken by SOGIESC advocates. In the entries on the criminalising States, and throughout the document, there is a heightened focus on how the United Nations Treaty Bodies have urged States regarding sexual orientation issues in the past two years. These entries also include information on how these States have responded to recommendations made in their 1st and 2nd cycle Universal Periodic Review processes. This is a particularly useful space for SOGIESC advocates who, with the help of ally States, speak directly back to their government to addresses the entire human rights situation in a country, thus facilitating both single issue and intersectional presentations on LGBTI-related issues.

ILGA-RIWI 2016 GLOBAL ATTITUDES SURVEY ON LGBTI PEOPLE IN PARTNERSHIP WITH LOGO

The final new element in this edition relates to an annual World LGBTI Survey[7] on public attitudes to disaggregated sexual orientation, gender identity and sex characteristic issues that ILGA initiated this year. Surveying 65 countries this year (ILGA plans to survey all world States in time), data has been established for 53 of them at time of writing – nine from Africa, 15 in Asia, 15 from the Americas, 12 in Europe and two in Oceania.[8] The project partners are a RIWI Corp., a global survey technology company, and corporate media partners, Logo.[9] For this edition, ILGA has drawn out data on three questions in 17 criminalising States we surveyed getting a sense of the attitudes of the public which that law regulates: 1. Being gay, lesbian, bisexual, trans, or intersex should be a crime, 2. Same-sex desire is a Western phenomenon, 3. How would you feel if your neighbour is gay or lesbian? We present the quantitative data, without comment, on these questions for readers to assess in light of these States' responses to international forums and the presence of the penalising law. ILGA, and various partners, will be publishing extensive insights from this Survey in 2016.

LEGAL DEVELOPMENTS IN 2015/2016

Through the regular desk-research channels of verification with individuals, NGOs and LGBTI organisations, as well as institutional sources, and by checking legal gazettes of States we are

7 The title of this survey for purposes of reference is: ILGA-RIWI 2016 Global Attitudes Survey on LGBTI People in partnership with Logo. See www.ilga.org for more on our work on this.

8 The survey has 26 substantial questions on attitudes to SOGIESC issues, and there are five respondent profile ones that allow the data to be cut by gender identity, sexual orientation and sex characteristic status, age group and geography. The sample size per country ranges between 700 and 3200 respondents. 65 countries were surveyed: some did not reach the threshold, while others are still in the field at time of writing.

9 Logo is a leading entertainment brand inspired by the LGBT community and reflects the creative class across television, digital and social platforms. Logo is part of Viacom's Music & Entertainment Group including VH1, MTV, MTV2, Comedy Central and Spike.

able to keep largely up to date with legal developments on the categories we chart in the 'Global Overview' and 'Criminalisation' sections of this publication. As such, we are on a constant search to more precisely categorise the state of law pertaining to sexual orientation. For example, we reflect that although one of the most hostile States to LGBTI people on the planet, same-sex sexual relations per se are not criminalised in Egypt, and there is an equal age of consent for those relations. It is through the various inputs of readers and practitioners that we are able to pick up on winds of change, and we wholeheartedly welcome participation, correction and critique on the information we present.

In June 2016, there are **121 UN member States** where there are no legal penalties levied for consensual, private, same-sex sexual activity (there are a further two countries *Taiwan* and *Kosovo* that we list, that are not UN member States). There are **73 States** that we classify as criminalising States: it should be noted that some of these States either have no law, or have such repressive regimes (like Egypt, Qatar and Iraq) that same-sex sexual relations are functionally severely outlawed. We note that in **45 of these States** (24 in Africa, 13, in Asia, six in the Americas and two in Oceania) the law is applied to women as well as men. This year we list **105** countries (including Egypt) with an equal age of consent law, and **16** that have an unequal age threshold: a 2015 law in **Chile** stipulates the sexual act with someone of the same sex below the age of 18 constitutes rape, while for different sex sexual activity the age is 14.

As regards the death penalty, we made three changes to the list this year – we are led to understand that the death penalty in **Mauritania** for "act[s] against nature with an individual of his sex" has not been implemented for many years. Further, it appears that **Brunei Darussalam** has not in fact bought the third phase of the 2014 Syariah Penal Code Order, and there is no sign that the threatened death penalty is to be implemented (for the crime of *Liwat* that includes same sex relations between consenting same sex partners). However, although is understood that the **United Arab Emirates** has not implemented it under the Sharia code, it remains a possibility under interpretations current in the Emirates. The number of UN States (or parts thereof) where the death penalty might be applied for same-sex sexual acts stands at 13: four applied State-wide, two in specific provinces, five not applied, and two brutally applied by non-State actors.

Last year we included only four countries within the 'propaganda laws' category, one of which was **Algeria** that had revised its Penal Code in 2014 to include publications that comprise 'breach of modesty'. Researchers at OutRight Action International provided us with information on **13 more States** in North Africa and the Middle East where similar laws actively target public promotion or expression of same-sex and trans realities. With the rise in the use of digital devices in these parts of the world, deployment of these laws becomes all the more sinister. Regarding what are known as 'propaganda laws', a Russian translator we work with tells us that calling them by that name may be quite inaccurate and somewhat misleading, but that the Russian law actually speaks about 'promotion' of non-traditional sexual relations. We are again seeing a rise in proposals for their adoption: at an advanced stage in **Kyrgyzstan**, and being strongly mooted in 2016 in **Kazakhstan**, **Ukraine**, **Belarus, Bulgaria** and **Latvia**.

Laws on discrimination in the workplace have substantial impact on those who are protected by them: allowing not only a basic independent income, but importantly the ability to flourish in their work. This year we list 71 UN States along with *Taiwan* and *Kosovo* that offer such protection,

most recently Ukraine in late-2015. **Angola** included it in 2015, and we discovered **Indonesia**, **Thailand** and **Vanuatu** also have such provisions. Likewise some research allowed us to see that there are actually **14 States** that contain Constitutional provisions that specify sexual orientation in their discrimination protections.

We opened another category regarding non-discrimination to catch other provisions – these could be in education, health or general non-discrimination laws. We are aware that this category could be filled out more, and that this category can also slip into one where administrative or local law may apply in the implementation of non-discrimination provisions. We list **39 States** in this category. Regarding hate crime and incitement to hatred we list **40** and **36 States** respectively in 2016 that we identify as enacting such protections, at least in law.

There are currently 22 States in the world that recognise and provide for same-sex marriage. The **United States**, after years of litigation at the state-level, finally achieved a Supreme Court ruling in June 2015. We include **Brazil** and **Mexico** as marriage States in this edition because in both cases, through one legal route or another, it appears to be possible to marry in most provinces of those States. **Greece** and **Cyprus** both enacted strong partnership legislation in 2015, **Italy** in May 2016, and **Estonia**'s 2014 law came into force at the beginning of 2016. This brings the number of States with some civil partnership recognition to 25. **Colombia** and **Portugal** both passed joint adoption laws in 2015 and 2016, and we find there are currently 26 States that provide for this, and a further 23 UN States that allow for same-sex second parent adoption.

Finally, in addition to extending ILGA's most sincere thanks to the wide variety correspondents we connected with in making the publication, and most special thanks to the contributors to this edition named above, the author would like to extend particular thanks to a number of individuals that were instrumental to this edition: Renato Sabbadini, Natalia Voltchkova, and André de Plessis of ILGA, George Robotham (consultant), Kevin Schumacher of OutRight Action International, Téa Braun of the Human Dignity Trust, Claire House, Edgar Trujillo, Jenna Vinson and Roy Peterson of Stonewall, UK, for valuable and voluntary research. We would like to acknowledge sources we relied on heavily including the Kaleidoscope Trust's publication *Speaking Out*, ARC-International online resources, the *Erasing 76 Crimes* news resource (Colin Stewart), and the database of UPR-info. We acknowledge the assistance of Professors Robert Wintemute (King's College, UK) and Kees Waaldijk (Grotius Centre, Leiden) over the years. Particular thanks are also due to Renné Ramos for designing and typesetting this edition, and to Eduardo Enoki for his precision in this year's map-making. We are hugely grateful to the individuals who have taken on, in a voluntary capacity, the task of translating this text into Spanish (Lucas Ramón Mendos and Victoria Chávez) French (Emmanuel Lauray), Arabic (Ezzedin Fadel), and Chinese (Hou Ping and Gong Yu).

This edition of the report was researched and written by Aengus Carroll. It the 11th updated version, evolved from the original report which was researched and compiled by Daniel Ottosson from 2006 until 2010, by Eddie Bruce-Jones and Lucas Paoli Itaborahy in 2011, by Lucas Paoli Itaborahy in 2012, and by Lucas Paoli Itaborahy and Jingshu Zhu in 2013 & 2014, and Aengus Carroll Lucas Paoli Itaborahy in 2015.

SEXUAL ORIENTATION, GENDER IDENTITY AND EXPRESSION, AND SEX CHARACTERISTICS AT UN HUMAN RIGHTS MECHANISMS IN 2015

HELEN NOLAN[10] AND DIANA CAROLINA PRADO MOSQUERA[11]

LGBTI human rights work at the United Nations often focuses on the political system: the Human Rights Council, where governments vote on issues of concern to the world, or the Universal Periodic Review where States peer-review each other on their human rights record. However, there is an entire system of human rights oversight that has been taking place at UN taking place outside these governmental for half a century: the UN Treaty Bodies – the independent organs that monitor State compliance with international human rights law treaties.

TREATY BODIES

Since May 2015, ILGA has launched a programme to better engage with these bodies and has been gathering information on their work to ensure that where relevant they will include issues of sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC). Through assisting LGBTI civil society engagement, we've gained insight into the approach of seven of the Committees to SOGIESC:

- The Committee on Economic, Social and Cultural Rights (CESCR)
- The Human Rights Committee (HRCee)
- The Committee on the Elimination of Discrimination against Women (CEDAW)
- The Committee on the Rights of the Child (CRC)
- The Committee against Torture (CAT)
- The Committee on the Elimination of Racial Discrimination (CERD)
- The Committee on the Rights of Persons with Disabilities (CRPD).

Later in 2016, ILGA will publish a review of 2014 and 2015 documentation: civil society submissions (shadow reports), the Treaty Bodies' Concluding Observations (country-specific recommendations), as well as their General Comments (interpretations of the international human rights treaties) and Individual Communications (cases brought by individuals). The present article is a preview of this broader work: firstly a section on trends and language in Concluding Observations and General Comments, then considerations on how to get SOGIESC on the agenda, followed by some observations on thematic opportunities, and finally a few achievements.

10 Helen Nolan is a UN Programme Officer for ILGA, responsible for the Treaty Bodies Programme.

11 Diana Carolina Prado Mosquera is a UN Programme Officer for ILGA, responsible for the Universal Periodic Review Programme.

In doing so, we are aware that UN work is only meaningful to the lives of LGBTI people if the Committees' recommendations are actually implemented in the States concerned, and this can only be done if local SOGIESC advocates are equipped with the knowledge and skills to do so. We hope this article will assist in this.

DEVELOPMENTS IN 2014-2015

Between 2014 and 2015, there was an overall increase in the number of country reviews that resulted in Concluding Observations containing SOGIESC issues: from 34% of country reviews to 46%.[12] There was an increase in the proportion of relevant recommendations for five of the seven Committees[13], although the Human Rights Committee (HRCee) and the Committee for the Elimination of Discrimination against Women (CEDAW) both saw a slight decrease.

Within those Concluding Observations, there was also a significant increase in the number of references to **intersex** persons: from seven in 2014 to 31 in 2015. It should be noted that only eight of these were specific to intersex, the rest being folded into the LGBTI acronym (as were all of 2014's). It is, of course, progress to have mention of the particular human rights violations against intersex persons mentioned at all in the Treaty Bodies, even in 'LGBTI' references. A crucial learning we note is that civil society advocates need to ensure that the specific human rights violations targeted at each population within the LGBTI acronym are articulated in their submissions and work with the Treaty Bodies.

This learning about the specificity civil society must demand similarly comes through when considering the greater visibility of **gender identity and gender expression** (GIGE) issues in the Treaty Bodies' country reviews. In that context, there was an absolute increase to 53 from 32, yet, the number of Trans-specific recommendations remained as low at eight (as opposed to six in 2014). Thus, again, while it seems that the Committees are open to including Trans persons within broader LGB(I) Concluding Observations, they have been less active in examining the particular challenges faced by this population.

One interesting observation over the period is the increased change in **language** used by the Committee Members: LGBTI rather than LGBT, and SOGII instead of SOGI. This, of course, demonstrates a deeper understanding of diversity beyond sexual orientation, as well as improvements in visibility and attention to different populations, but it also comes with complications of conflation of issues. Similarly, limited framings such as "transsexual" or "transsexuality" have decreased in the two years,[14] likewise with "homosexual" or "homosexuality".[15]

We have seen evidence of Committees reflecting the language and expressions submitted by civil society to some degree. However, in the past two years, the Committees have not used any

12 From 2014 to 2015, the total number of SOGIESC-relevant Concluding Observations increased (from 41 to 66), as did the number of reviews (from 122 to 145). As a result, increases in references may not be as high proportionally as they seem numerically.

13 In the case of the Committee for Economic, Social and Cultural Rights (CESCR) they more than doubled.

14 From references in nine reviews to references in only three.

15 CESCR, HRCee, CEDAW and CRC.

of the terms for diverse sexualities, genders and sex characteristics that exist in local languages of countries reviewed, such as *Kateoy* in Thailand or *Hijra* in India. Moreover, in some cases, the problem may be a lack of understanding or sensitivity among particular Committee Members responsible for drafting Concluding Observations.

Another aspect that should be highlighted is that language within LGBTI communities is constantly evolving, but Treaty Bodies will always be slower to adapt to such shifts. For example, the CRC is the only Treaty Body to have used the term "sex characteristics" – and on one occasion only.[16] However, as the Committees deal with vast amounts of terminology, to ensure that our language is reflected back to the world in Concluding Observations, LGBTI human rights defenders need to be mindful of these limitations, ensuring submissions are clear and articulate the language we want, aware that we are working with those who are not experts on SOGIESC terminology.

In terms of **General Comments** (broad overviews on specific aspects of a Committee's remit) produced in 2015, all bar one Treaty Body published or produced drafts that contained reference to LGBTI persons or SOGIESC issues. In 2014, however, only two of six had made such mentions. It is extremely positive to see that the Treaty Bodies are including SOGIESC in their standard non-discrimination language or identifying LGBTI persons as groups that may be in particularly vulnerable situations. As the General Comments are documents that have general application, they are used, for example, in countries that have not received SOGIESC recommendations in their reviews.

BALANCING VARIABLES

Mapping trends, approaches and attitudes of the Treaty Bodies is a less complicated process than figuring out why a SOGIESC recommendation was or was not included in a given country review. There is a very high number of variables affecting whether a Committee discusses a topic, including the type of information submitted, the timing of a submission, participation at the review session, the relative importance of other human rights issues, and the views of individual Committee Members.

Firstly, while there are a considerable number of **civil society submissions** that mention LGBTI persons, many of them do not explore the issues in detail. As the Treaty Body Committees will usually be receiving information on a very wide range of human rights issues in a country, they may miss brief or fleeting references to SOGIESC.

It is unusual for a Treaty Body to pick up a SOGIESC issue without having received any information on the matter: for example, in 2014, the Committee on the Rights of the Child issued SOGIESC-relevant Concluding Observations on Hungary, Kyrgyzstan, Portugal, Russia and Venezuela, despite having only formally received such civil society information for Kyrgyzstan and Russia. Observers do not necessarily, therefore, know what information Committee Members are receiving, and it is most usual that they will only ask about an area that has been flagged – formally or informally – and for which they have many different sources of information to turn to. Sometimes information

16 In a review of Chile in 2015, CRC/C/CHL/CO/4-5, at para. 25, 70th Session, 14 September – 2 October 2015.

they receive is confidential (that from other UN agencies and bodies, and at times civil society submissions), and there is no record of the informal briefings with which they engage during sessions.

A second core issue in considering the variable in this work is the **timing of a submission**. For example, if the Human Rights Committee has not raised a topic in its List of Issues (the questions that the Committee sends to the State prior to a review), it is highly unlikely that the topic will be raised in later sessions. A case in point is the review of Canada by the Human Rights Committee in 2015, where an LGBTI human rights defender submitted information in advance of the session, briefed Committee Members and attended the review, but the Treaty Body made no mention of SOGIESC issues. The defender had not, however, made a submission to the List of Issues. Other Treaty Bodies are more flexible in this context, but the best practice for human rights defenders is to initially submit information to shape the List of Issues going to the State, and then again in time for the session where its review is being held.

The third consideration on variables follows from this point on timing: submitting written information alone, whatever the timing, may not be sufficient to ensure that SOGIESC topics are raised by the Committee. The most effective method of obtaining a recommendation on LGBTI persons is to **attend the session** in person, and to present the information to the Committee at formal and informal briefings. Personal testimonies and information coming directly from those working on-the-ground bears great weight with Treaty Bodies. And crucially, through their questioning, Committee Members gain deeper insight into unfamiliar areas that may outside their realm of experience; a cognisance that informs their ongoing work.

The final observation we make on the variables human rights defenders face in working with the Treaty Bodies is the potential **lack of openness of some Committee Members to SOGIESC issues** – often stemming from unawareness to the issues or LGBTI people. It is for this reason that ongoing outreach and sensitisation efforts with the Committees are essential.

Engaging with the Treaty Bodies is more of a fine art than a science and all LGBTI civil society can do is take all the different factors into account, and try to improve the odds in our favour.

OPPORTUNITIES FOR ENGAGEMENT

The Committees have shown some sensitivity to a number of issues of importance to LGBTI human rights defenders, which still require elaboration: LGBTI children, the SDGs and family diversity, for example. Civil society, should take advantage of these opportunities, and also increase the use of other available tools, such as individual communication, influencing the content of General Comments, and using two other Committees, CERD and CRPD, that are open to SOGIESC issues coming before them.

CRC and CESCR, in particular are clearly positively inclined to examine the scope of non-discrimination provisions regarding **LGBTI children** in particular. CRC encourages LGBTI information to come in for its country reviews, and has shown its willingness to examine the specific challenges faced by Trans and intersex children during the sessions. Interesting examples

include a discussion on access to legal gender recognition in the context of the right to identity in the review of Chile in October 2015,[17] and earlier in the year the Committee made a call for the prohibition on all unnecessary medical or surgical treatment on infants and children, as well as the protection of "bodily integrity, autonomy and self-determination" in its examination of Switzerland.[18] LGBTI children and adolescents are receiving increasing attention within LGBTI communities globally, so it would be hugely valuable to bring more domestic and regional experiences of best practices into the international sphere.

Another important, and as yet unexplored opportunity for deepening SOGIESC issues within the UN human rights system is the 2030 Agenda for Sustainable Development. As UN Member States decided that monitoring the achievement of the **Sustainable Development Goals** (SDGs) would be done through existing mechanisms, the Treaty Bodies represent one of the best avenues for doing so. Some Committee Members of CESCR, in particular, are open to including SDG language, so long as the issues are explicitly tied to specific economic, social or cultural rights. This could also be a useful way to examine the bridge between human rights and development as they relate to LGBTI persons (see Park and Badgeett's essay on this subject in this publication), through elaborating the human rights basis of the SDGs themselves.

Family diversity is a topic that could also benefit from further attention by LGBTI human rights defenders working in the Treaty Body context. This is both because Committees are open to examining issues of recognition of same sex partnerships, for example, and because it provides a space to counter-balance discourses on 'protection of the family' that have gained traction in other spheres, such as the Human Rights Council, General Assembly, Commission on the Status of Women and Organisation of American States. CEDAW, CESCR, CRC and HRCee have all raised concerns regarding the failure to recognise diverse forms of families, and our advocacy should aim to reinforce these human rights-based recommendations.

In the last two years, only a single **individual communication** – a case concerning a specific person or organisation – was examined by a Treaty Body. CAT found that the *refoulement* of a LGBTI human rights defender to Uganda would breach the Convention against Torture.[19] This CAT finding, in addition to directly benefiting the human rights defender, demonstrates how useful these mechanisms can be in highlighting a particular situation or government policy. However, individual communications may not be an accessible tool for all LGBTI defenders in jurisdictions hostile to LGBTI people; their country must have signed up to the relevant Treaty, and then agreed to being bound by the mechanism for petitions.

The other main activity of Treaty Bodies is the drafting of **General Comments**, which are the Committees' interpretations of a particular right (e.g. the right to life)[20] or its application (e.g.

17 CRC/C/CHL/CO/4-5, at paras. 32-33, 70th Session, 14 September - 2 October 2015.

18 CRC/C/CHE/CO/2-4, at paras. 41-42, 68th Session, 12 - 30 January 2015.

19 Communication No. 562/2013, adopted during the 56th Session.

20 HRCee is reviewing a draft General Comment on Article 6 (Right to life), available here: www.ohchr.org/Documents/HRBodies/CCPR/Draft_GC_115thsession.doc

environment and development).[21] These interpretations apply to all States who have signed onto the relevant Treaty (unlike Concluding Observations, which, as discussed earlier, concern a single country). Secondly, depending on the topic, these can be particularly relevant to LGBTI populations: for example, CESCR recently released a General Comment on sexual and reproductive health rights, which discusses SOGIESC issues in some detail. Civil society actors have the opportunity to make submissions to the Committees to suggest areas to be included or possible amendments in each General Comment, which offers another method to ensure that SOGIESC topics are included in mainstream human rights documents.

The final tools to highlight are two Treaty Bodies that have received very little attention from civil society, but which are very open to examining SOGIESC themes: **CERD** and **CRPD**. CERD is not restricted to examining issues of race or ethnicity, and also deals with discrimination on the basis of real or perceived identity, such as homo/lesbo/bi/trans/intersex-phobias. CRPD, on the other hand, is not limited to considering the situation of persons with disabilities as traditionally understood, but also discusses the rights to "individual autonomy — including the freedom to make one's own choices,"[22] which opens the door for discussions of pathologisation and bodily integrity, highly relevant to both Trans and intersex human rights defenders. Both Committees, moreover, have a deep understanding of multiple discrimination and intersectional realities. Potentially, the approaches of these two Committees can be very helpful to some of the most marginalised and invisible members of LGBTI populations.

RECENT ACHIEVEMENTS AT THE TREATY BODIES

Recommendations from Treaty Bodies take various forms: here we highlight a few examples of notable successes at the Treaty Bodies regarding four areas: economic, social & cultural rights, intersex persons, gender identity recognition, and violence.

In June 2015, Uganda received several SOGIE recommendations that touched on interesting areas during its review by **CESCR**:[23] in addition to a general call to "combat and prevent discrimination and societal stigma," and to guarantee enjoyment of economic, social rights, including "access to housing, employment, social security, health care and education," the Committee examined the rights to housing and health in the context of LGBTI persons. The Committee expressed concern regarding evictions that occurred following the passage of the Anti-Homosexuality Act in 2014, and the denial of healthcare to LGBTI persons (including HIV/AIDS treatment for "same-sex partners"). Thus, in this case we see the Committee developing its non-discrimination recommendation into one tailored to specific [LGBTI] circumstances in Uganda.

The Committee against Torture has issued very detailed recommendations on **intersex persons** that were shaped by submissions and briefings made by intersex human rights defenders. The

21 CESCR is currently preparing an outline for a General Comment on this topic.

22 General comment No. 1 on Article 12: Equal recognition before the law (2014), CRPD/C/GC/1, at para. 4.

23 The Committee also discussed the Anti-Homosexuality Act, arbitrary detention and police abuse. E/C.12/UGA/CO/1, at paras. 15, 16, 30 and 32, 55th Session, 1 - 19 June 2015.

recommendations vary, but call on states to "guarantee the respect for the physical integrity and autonomy of intersex persons," and to prohibit unnecessary medical surgical procedures during infancy or childhood. CAT emphasises that "full, free and informed consent" must be respected, and any "non-urgent, irreversible medical interventions" must be postponed until a child is sufficiently mature to provide such consent. The Committee also highlights the need to provide "adequate redress" for persons subjected to these practices, as well as counselling services for intersex children and their parents.[24] It will be interesting to see if these recommendations are, in time, echoed by the HRCee, which also examines situations of torture, cruel and inhuman or degrading treatment within its remit.[25]

In some cases, CAT has applied a similar, though less detailed, approach for **gender recognition**. In the Concluding Observations on Hong Kong, CAT expressed concern the requirements that Trans persons complete "sex-reassignment surgery" to obtain legal gender recognition, and called for the removal of all "abusive preconditions."[26]

The Committees also frequently raise the issue of **violence**. For example, during its review of Iraq,[27] the HRCee called on the State to take "robust measures to effectively prevent acts of discrimination and violence" against persons because of their actual or perceived SOGI, and ensure effective investigations, that those responsible are brought to justice and that victims are compensated. Finally, the Committee called for data collection on such violence. Such recommendations go beyond simply encouraging that States combat violence: they give guidance on the framework required.

ONGOING WORK

ILGA's work since 2015 has shown us that, although there has been progress in terms of each Committee's understanding of SOGIESC, as well as regular inclusion of LGBTI persons in their work, the reasons for individual successes or disappointments can be obscure, and there is an inevitable level of unpredictability in this work. Securing a Concluding Observation on SOGIESC themes is a great victory, but often it just heralds the starting point for work in the home country. Treaty Bodies provide significant authority to guide States' actions, but their recommendations will only be effective where civil society has some capacity in place to follow up on the recommendations, and then move key stakeholders towards concrete changes at home. ILGA will continue to draw on the work we do with human rights defenders at the UN level to create cogent and useful analysis to enhance our collective work.

24 Taken from the Concluding Observations on Denmark, CAT/C/DNK/CO/6-7, 56th Session, 16 - 17 November 2015, at paras. 42-43. The Committee made similar recommendations for Austria (CAT/C/AUT/CO/6, at para. 44), Hong Kong (CAT/C/CHN-HKG/CO/5, at paras. 28-29) and Switzerland (CAT/C/CHE/CO/7, at para. 20) during the same year.

25 International Covenant on Civil and Political Rights, Article 7.

26 Hong Kong, CAT/C/CHN-HKG/CO/5, 56th Session, 16 - 17 November 2015, at paras. 28-29. It is worth noting again, however, the danger of conflating issues of gender identity recognition and prohibiting surgeries on intersex persons.

27 Iraq, CCPR/C/IRQ/CO/5, 115th Session, 26 October – 27 November 2015, at paras. 11-12.

THE UNIVERSAL PERIODIC REVIEW 2015 – 2016

The United Nation's Universal Periodic Review is what it says it is: a comprehensive human rights review that is universal – all 193 Member States of the UN are subject to it – and it is periodic, taking place every 4 to 5 years. Unlike the UN Treaty Bodies, where the review is done by experts, in the UPR the States review one another by making recommendations to each other on what should be done to amend the human rights situation in a certain country: for example, Benin recommends to Samoa to pass a certain law, or train its security forces, or something else.

Civil society is involved in the process every step of the way: from helping its own government to better understand the situation on the ground, to writing shadow reports, to encouraging other governments to make recommendations that will make a difference, through to the helping its government implement the recommendations made to it. ILGA assists human rights defenders as they take this journey, and we also monitor, document and report on the UPR process generally, working with States and UN institutions.

The two cycles of the Universal Periodic Review (UPR) – all States were reviewed first between 2008 and 2012, and then again from 2012 to 2016 – have therefore been a process of learning not only for States, but also for ILGA and other civil society groups. Later in 2016, ILGA – working with some key partners[28] – will jointly publish a review of the second cycle of the UPR, looking at how SOGIESC civil society has engaged in the process, which SOGIESC recommendations were made and what changes have happened on the ground as a result.

At this stage, however, ILGA would like to highlight a few of the factors that we have observed over these eight years: a new openness to accept SOGIESC recommendations, the complexity of recommendations on the family, and the need for recommendations to be more specific to be of real use. We also explore examples of some countries that have implemented recommendations and of some others, who despite formally accepting such recommendations, have failed to live up to their commitments. In all these areas, ILGA is striving to develop and enhance its work and, crucially, to support local civil society as we move into the third cycle of the UPR that is about to commence at the beginning of 2017.

INCREASED OPENNESS?

The UPR process has demonstrated that it can be an agent of change on SOGIESC concerns. It has facilitated the voices of national-level LGBTI human rights defenders to be heard, thereby increasing their own, and other, governments' sensitivity around sexual orientation, gender identity and expression, and sex characteristics. Importantly, it has acted as a trigger moment for institutional, policy and legal change.

We are seeing an increase in SOGIESC recommendations both being made and also accepted. For example, whilst not receiving any recommendations in the first cycle, States like Georgia, Croatia, Liberia, Armenia and Guinea, did do so in their second reviews. Other States, like Kenya, only noted receommendations (noting is a diplomatic term used in the UPR that effectively means "reject")

28 ARC-International and the International Bar Association's Human Rights Institute.

in their first UPR, but did accept a recommendation that touched on SOGIESC in their second. Likewise, Guyana received 17 recommendations in January 2015, accepting three of them related to non-discrimination, having rejected similar recommendations in their first UPR in 2010.

PROTECT THE FAMILY?

During the second cycle UPR, there has also been an interesting – and perhaps worrying – phenomenon of recommendations in various forms being made to States to provide protection to the family, sometimes termed "traditional family". Made by more conservative States, there is a concern that this is being used to undermine family diversity: a concern to sexual and gender minorities. It's an area fraught with difficulty as no State wants to be 'anti-family', even those who wish to ensure that the reality of the diversity of family forms in their own and all countries be respected. Over 20 of these recommendations have been accepted by States, with some more progressives ones explaining their decision and explicitly stating that they accept the recommendations on the understanding that it includes diverse family forms.[29] Others have rejected these recommendations.

NEW FRONTIERS?

It's been interesting to see new countries *making* SOGIESC recommendations, for example, Greece, Madagascar, East Timor and Montenegro.[30] There is also a trend to use general recommendations on non-discrimination as a gateway to more LGBTI-specific language, for example including SOGI as one of the prohibited grounds of discrimination. Currently around 30% of SOGIESC recommendations are of this type.

However, there is a need for recommendations to be much more specific as the third cycle opens. This means ensuring States make more specific gender identity and gender expression recommendations. It also means getting a State to make the first intersex/sex characteristics -specific recommendation. In this regard, LGBTI human rights defenders have a strategic role in not only documenting LGBTI situations for reporting purposes, but also shaping the content, language, terminology and tone that States making recommendations adopt.

MAKING IT REAL

Success has been visible on SOGIESC recommendation implementation. For example, in 2011, at its first UPR review, the Seychelles committed to the decriminalisation of consensual sexual relations between adults of the same sex in response to five recommendations (Australia, Canada,

29 These are some of the States that have accepted these recommendations: Albania, Armenia, Bangladesh, Bhutan, Bolivia, Bosnia & Herzegovina, Bulgaria, Cambodia, China, Ethiopia, Germany, Italy, Kazakhstan, Laos, Maldives, Malta, New Zealand, Norway, Portugal, Russian Federation, Slovenia, Uzbekistan, Viet Nam and Kuwait. Sweden has been the only State that has noted these recommendations.

30 In 2015, Madagascar made a recommendation to Honduras on legal gender recognition and to Liberia to condemn discrimination, particularly that based on sexual orientation and identity. Greece recommended, in 2013, that Senegal repeal all laws criminalising sexual orientation and gender identity and take concrete measures for the protection of sexual minorities, and that Israel continue to eliminate discrimination based on SOGI. In 2015, Montenegro urged Jamaica and Kyrgyzstan to implement non-discrimination provisions to combat violence. See: www.upr-info.org database and country information.

France, Norway, and Spain). In January 2016, at its second UPR review the delegation said, "the Government was conducting an overarching review of the Penal Code, under which Section 151 would also be considered".[31] Although there is no guarantee of repeal, it is expected that the Seychelles will soon act on its UPR commitment. In 2014, both Sao Tomé & Principe and Palau decriminalised same-sex sexual relations following their acceptance of UPR recommendations.

In another context, in January 2013, Luxembourg accepted the Netherlands's recommendation to "[a]dopt and comprehensively implement the draft law on the marriage among same-sex persons": the law came into effect on 1 January 2015.

And it's not just decriminalisation of same-sex acts or the implementation of marriage equality. For example, in 2013, Australia recommended that Montenegro take additional concrete steps to combat discrimination on the basis of race, sexual orientation, disability and gender identity: in 2014 Montenegro passed such a comprehensive non-discrimination Bill into law.[32]

SOME QUIRKS

There is no guarantee that a recommendation accepted will actually be implemented. This happened in the case of Poland's UPR in 2012 where the UK and Slovenia gave recommendations on hate speech and hate crime that were accepted, but to date have not been implemented.[33]

Sometimes national developments mean that an accepted recommendation is not implemented as seen in Kyrgyzstan's 2015 acceptance of a Brazilian recommendation to ensure that national legislation conform to international human rights standards on non-discrimination regarding SOGIE. Only eight months later, however, the parliament voted almost unanimously (90-2) in favour of a Bill to penalise promotion of 'non-traditional' sexual orientation.

INTO 2017...

This is just a snapshot of some of the lessons we and others are learning as we enter the third cycle of the UPR. We are looking forward to publishing the results of the joint project later this year where there will be a more in-depth analysis of the participation and advocacy efforts that civil society has made during the second cycle, how well these recommendations cover the range of topics that matter to LGBTI persons and the degree to which they have been implemented and followed-up. One thing we can be sure of: the UPR will continue to be an important vehicle for advancing the rights of LGBTI persons the world over.

31 See: http://www.upr-info.org/sites/default/files/document/seychelles/session_24__january_2016/a_hrc_wg.6_24_l.10.pdf

32 *Law on Prohibition of Discrimination* See: http://www.legislationline.org/topics/country/57/topic/84

33 See:: http://www.upr-info.org/sites/default/files/document/poland/session_13_-_may_2012/ahrc2114polande.pdf

DEVELOPMENT AND HUMAN RIGHTS: TWO COMPLEMENTARY FRAMEWORKS

ANDREW PARK[34] AND LEE BADGETT[35]

In the past few years issues related to sexual orientation and gender identity have gained serious attention and increasing support in the human rights arena. However, these issues have not received the same momentum in discussions about development. This article compares the human rights approach to the development approach, and suggests how a development approach may be useful to those seeking improvements in the lives of LGBT people.

DIFFERENCES

Development and human rights constitute, along with peace and security, the pillars of the United Nations system. As discussed in more detail below, the development and human rights frameworks have close ties to each other, both conceptually and operationally. However, despite recent efforts to harmonise these two approaches, the UN Special Rapporteur on extreme poverty and human rights has called them "ships passing in the night."[36] Below we argue that both are important for understanding and addressing the needs of LGBT people, and we suggest ways of drawing on the strengths of both approaches.

A. ORIGINS: SEPARATE HISTORIC PATHS

In 1948 the United Nations General Assembly adopted the Universal Declaration of Human Rights, which identified the core human rights standards. Since then, member States have adopted treaties addressing civil and political rights, economic, social, and cultural rights, racial discrimination, and the rights of children, migrant workers, and people with disabilities. For the past several years, LGBT advocates have been seeking to have their human rights recognised under these and other human rights treaties. Initially, these efforts were not successful. In a survey of global and regional LGBT leaders, the "Brazil Resolution" was identified as the turning point.[37] In 2003, Brazil introduced a resolution at the meeting of the Human Rights Commission

34 Andrew S. Park, Esq., Director, International Programs, Williams Institute UCLA School of Law.

35 Professor of Economics, Director, School of Public Policy, University of Massachusetts, Amherst; Distinguished Scholar, Williams Institute UCLA School of Law.

36 Philip Alston, "Ships Passing in the Night: the Current State of the Human Rights and Development Debate Seen Through the Lens of the Millennium Development Goals," *Human Rights Quarterly* 27(3) (2005).

37 Dodo Karsay, *How Far Has SOGII Advocacy Come at the UN and Where Is It Heading? Assessing Sexual Orientation, Gender Identity, and Intersex Activism and Key Developments at the UN, 2003-2014* (ARC International, 2014), at 8.

(now the "Council") to recognise that human rights and freedoms belong to all people, regardless of their sexual orientation. Though the measure was not adopted, it received enough support to move LGBT issues from the margin into the mainstream of human rights discussions.

UN officials began asking the question "Which international human rights standards apply to LGBT people?" Three years later the Yogyakarta Principles were launched. They articulate "... the existent state of international human rights law, ... and affirm binding international legal standards with which all States must comply."[38] According to the survey of LGBT leaders, the Principles "played a crucial role in establishing the language on SOGI that is now used by a growing number of UN actors and States."[39]

In contrast to the advancement of sexual and gender minority issues in the field of human rights, these issues have not advanced to the same extent in the field of human and economic development. The development agencies that we now know as the World Bank Group were initially created in the 1944 Breton-Woods Conference in which the allied nations established the post-war financial system. The following year the United Nations Charter was adopted. The Preamble identifies the need to promote "...social progress and better standards of living..." to "...employ international machinery for the promotion of economic and social advancement of all peoples",[40] and Article 55 calls upon states to create "...solutions of international economic, social health and related problems."[41] In the following decades other development agencies were established, both by the UN and by individual donor countries.

For several decades, development agencies used national-level economic indicators to gauge standard-of-living. Measures such as Gross Domestic Product (GDP) can be uniformly tracked in all countries and captures the overall value of goods and services produced in a nation's economy, providing one measure of economic development. Yet, GDP does not tell us the full story about how all individuals are faring within an economy, how healthy they are, whether they can read, whether they are learning, or whether they are safe. In the late-1980s, Indian economist Amartya Sen developed an approach to development which focused on individual freedoms rather than national economic results. He defined development as the "process of enlarging people's choices. The most critical of these wide-ranging choices are to live a long and healthy life, to be educated and to have access to resources needed for a decent standard of living". [42]

In 1990, economist Mahbub ul Haq introduced one of many indices -- the Human Development Index. The HDI is intended to reflect a simplified measurement of standard-of-living by consolidating measurements of longevity, education and income. Health, knowledge and income are three central capabilities that underlie a person's freedom to make other choices.

38 Sonia Onufer Correa, Vitit Muntarbhorn, *Yogyakarta Principles*, Introduction, 7 March, 2007, http://www.yogyakartaprinciples.org/principles_en.pdf

39 Karsay, *How Far Has SOGII Advocacy Come*, at 8.

40 The United Nations Charter, Preamble, 26 June 1945.

41 The United Nations Charter, Article 55, 26 June 1945.

42 *Human Development Report*, "United Nations Development Programme", (New York: Oxford University Press, 1990), at 1.

Because sexual and gender minorities have had gender roles and sexual norms forced on them, being able to choose their own path in life is a vital priority. The human development approach defines a process in which an individual can formulate their own sexual orientation and gender identity and seek support to live a life of their choosing.

Since then, a series of world conferences and summits has produced sets of development goals which, all together, have come to be known as the development agenda. In 2015, the Sustainable Development Goals were adopted, replacing the Millennium Development Goals that had been adopted 15 years earlier. The SDGs include goals of ending hunger, promoting access to efficient energy, enhancing economic growth, promoting health and well-being, and achieving gender equality. Increasingly, concerns about equity for marginalised groups have emerged to shape development priorities, particularly around gender equity, but also for people with disabilities and for ethnic and racial minorities. LGBT people are included in the development goals, as are all people, and would likely benefit from achievement of general development goals. However, none of the goals have been created to specifically respond to the development needs of LGBT people.

Research indicates that LGBT people face many barriers to full human development that are related to their sexual orientation and/or gender identity. Studies around the world have shown that when compared with non-LGBT people, LGBT people earn less, have fewer job opportunities, live in poverty, experience poorer health outcomes, face obstacles to education, and experience violence and family rejection.[43]

In the past few years, more development agencies have begun launching programs to respond. The United Nations Development Programme has initiated a process to create an LGBTI Inclusion Index which will measure aspects of economic, social and political exclusion. These efforts constitute some of the first attempt to measure human development on a global level.[44]

B. HUMAN RIGHTS AND DEVELOPMENT: DIFFERENT SYSTEMS

Seeking a development response to LGBT issues involves more than trying to transplant human rights priorities into a development context. Because the two frameworks are different, a development agenda requires a separate analysis.[45]

First, and most obvious, is the fact that, operationally, the two frameworks are managed by separate entities. The UN human rights system, as it is sometimes called, includes the Office of the High Commissioner of Human Rights, the Human Rights Council, the treaty systems, UN member states, and regional treaty bodies.

43 M.V.L. Badgett, et al., *LGBT Inclusion and Economic Development: An Analysis of Emerging Economies* (Los Angeles: The Williams Institute, 2014), at 20-27.

44 Clifton Cortez, "When people are counted, no one is left behind," *Our Perspectives*, United Nations Development Programme website, December 10, 2015, see: http://www.undp.org/content/undp/en/home/blog/2015/12/10/When-people-are-counted-no-one-is-left-behind.html

45 Nordic Trust Fund (GHK Consulting Ltd), *Human Rights and Economics: Tensions and Positive Relationships* (Washington D.C., The World Bank, 2012), at 6-9.

The global development system includes the many development agencies that distribute roughly $140 billion in development assistance each year, about one-fifth of which goes through multi-lateral agencies such as the World Bank. At the United Nations, the system includes the large array of agencies in the United Nations Development Group and constitutes 60% of the UN budget.[46]

NGOs constitute an important component of each system, conducting advocacy, partnering with governments, implementing programs, and distributing funding. Globally, LGBT organisations have focused primarily on human rights issues.

Studies of LGBT NGOs and LGBT funders show that most operate under a human rights approach and prioritised issues of civil and political rights. Advocacy and public education activities related to human rights predominate over services related to development.

However, neither human development nor economic development appear among the top categories of funding for LGBT issues, and in one study "economic development" received less than one percent of total funding.[47]

C. FOCUS: INSTITUTIONS VERSUS INDIVIDUALS

The human rights framework focuses primarily on state actors and social or economic institutions, such as schools, healthcare providers, employers, and landlords. The question asserted by the human rights system is whether a State and other important institutions are in compliance with human right standards.

Human development, on the other hand, is people-centered. Institutions are seen as a means to an end, the ultimate goal being an improvement in individual outcomes and well-being. The question guiding the development system is whether LGBT people are able to experience life in a particular way, including the capability to have full health, decent work, and a complete education. The development system uses many kinds of interventions that could also be used to improve LGBT's well-being.

For example, the right to equality is one of the most recognised of the human rights, and is arguably the central right claimed by LGBT advocates. A government that is treating LGBT people poorly could still be complying with human rights-based requirements of equality if it treats everyone equally poorly. A development approach would seek to improve the level of outcomes of individual LGBT people at whatever level they are at, and regardless of whether they are experiencing disparities.

46 United Nations General Assembly, Economic and Social Council, *Implementation of General Assembly resolution 67/226 on the quadrennial comprehensive policy review of operational activities for development of the United Nations system, Report of the Secretary General*, A/69/63–E/2014/10, 6 February 2014, at 8.

47 Robert Espinoza, *A Global Gaze: Lesbian, Gay, Bisexual, Transgender and Intersex Grantmaking in the Global South and East, 2010*, Funders for LGBTQ Issues (2011), at 13-14; Robert Espinoza, *A Global Gaze: Lesbian, Gay, Bisexual, Transgender and Intersex Grantmaking in the Global South and East, 2005*, Funders for LGBTQ Issues (2007), see: https://www.lgbtfunders.org/files/FLGI%20LGBTI_GFRprWeb.pdf

D. EVIDENCE: LAWS VERSUS LIVED EXPERIENCE

One simple way to assess whether a government is upholding human rights standards is to look at the country's laws. The present ILGA *State-Sponsored Homophobia* report lists both laws that violate human rights norms (such as laws criminalising same-sex sexual acts or forbidding LGBT people from adopting) as well as laws that comply with human rights standards (such as law prohibiting discrimination and laws permitting gender change). However, some of the laws listed in this publication may not be the best measures of the lived experience of LGBT people in those countries.

As indicated in the report, countries like South Africa, Serbia, Brazil, Kosovo, and the US have some of the best legal protections in the world. Judging by the laws alone, one might conclude that life for LGBT people in these countries is flourishing. However, research focusing on the lived experience of LGBT people in those countries demonstrates that they face more violence and economic inequality than non-LGBT people. Conversely, one might conclude that being LGBT in India, Kenya, and Lebanon is impossible given that these countries have criminal prohibitions on same-sex sexual activity and gender non-conformity. But vibrant social movements have emerged that are improving the quality of life for LGBT people in those countries.

Those using a development approach would look at data about development outcomes to assess the lived experience of LGBT people. Some development measures are based on individual-level outcomes, such as health status, expected life-span, income levels, educational attainment, job skill levels, rates of violence, and ability to obtain food and housing.

Say, for instance, that there are indications that LGBT people are facing barriers in the workplace. As a starting point, the human rights approach might look at the policies of the employer, the relevant laws, and whether there are any patterns of unfair treatment by the employer. A development approach might start by looking at LGBT workers themselves, seeking information about rates of joblessness, underemployment, job skills, and work availability.

The two approaches overlap in their attention to measures of opportunities available to LGBT people, and the effect that state policies have on those opportunities. In the human rights framework the lived experience of LGBT people, as rights-holders, can serve as a basis to question states about their commitment to LGBT human rights. In the development framework, State policies often determine whether LGBT people have the opportunity to live lives of dignity and can make choices that enhance their well-being.

E. ABSOLUTES V. TRADE-OFFS

Both the development framework and the human rights framework can be used to evaluate policies and activities of governments and private actors. The goal of good policy, according to the human rights framework, is to fully comply with human rights standards, sometimes without regard to trade-offs and costs of compliance. For example, giving and LGBT person a fair trial is

an absolute obligation, even if the cost of setting up the necessary judicial structures would take money away from other, possibly more successful, efforts to fulfill the human rights of others. Though some progressively realisable rights, like the highest attainable standard of health, can be calibrated for budgetary limitations, many rights are absolute.

Many in the development field rely on economic methods and are able to use those methods to balance trade-offs that may occur as a result of policy choices. According to these methods, a policy is preferred if it makes some people better off and no one is worse off (or, relatedly, those made worse off can be fully compensated). For example, a labor policy might prioritise the ability of an aggrieved LGBT worker to sue their employer. Though this may vindicate the rights of someone fired from a job, in the long run placing the same resources into a job-training program may be a better strategy to improve their ability to earn a living. Similarly, a policy to evacuate LGBT from hostile countries may recognise their legal status as a refugee though ultimately it may place them in a less favorable housing and work situations in a foreign country.

Other goals within the development framework might include moving toward equality in outcomes (as with the Sustainable Development Goals), avoiding environmental harms, or promoting democracy. Given multiple goals, development policy must incorporate potential trade-offs of each of those goals. Furthermore, policies might face constraints related to cost, feasibility and time limitations. Not surprisingly, goals and targets of development policy are often stated in incremental terms.

SIMILARITIES AND OVERLAP

Economics and human rights are related to one another. Freedoms and rights can set the stage for increased productivity. For example, a young LGBT person who is free of discrimination is more likely to be able to get a better education and to contribute more to the economy. Similarly, an LGBT person in a country with enough funding to properly train its police force will be able to live life more freely and with more dignity. A recent study of 39 emerging economies found a positive correlation between rights for LGBT people and per capita GDP. That positive correlation is likely a result of greater inclusion of LGBT people promoting greater productivity, and of richer countries being more likely to pass laws granting LGBT rights.[48]

Additionally, many so-called 'second generation' rights call for an economic analysis on the part of the human rights analyst. For example, rights to the highest attainable standard of health or education require a determination of what a state can provide given budgetary constraints and resource trade-offs.

48 M.V.L. Badgett, et al., *LGBT Inclusion and Economic Development: An Analysis of Emerging Economies* (Los Angeles: The Williams Institute, 2014), 2-3.

CONCLUSION

The human rights framework and the development framework are complementary and can accomplish much that could not be accomplished by either framework alone. LGBT human rights practitioners should understand economic methods to identify when governments have violated human rights, particularly for determining the level of burden on a government as part of progressively realised rights. Additionally, development strategies can be used in communities where anti-LGBT hostilities may be so high that changes in legal standards seem unlikely.

Development practitioners should understand human rights standards in order to ensure that development programs include marginalised populations and, where necessary, to target those populations, such as LGBT people. Also, development programs can use human rights standards as goals to be accomplished by programs which include State and non-State actors.

Each of these approaches requires a significant increase in efforts to collect data from individuals and communities. These efforts should be undertaken in ways which comply with the highest concerns of the development and human rights field.

SUMMARY OF THE PROCESS TO DEVELOP THE *UNDP LGBTI INCLUSION INDEX*

SUKI BEAVERS, UNDP

In September 2015, as a contribution to the implementation of the new 2030 sustainable development agenda, UNDP and OHCHR convened a multi-sectorial expert group meeting, which brought together UN representatives, LGBTI activists, data collection experts, including from the key private sector. These participants agreed on a working 'process' definition of LGBTI inclusion, which includes both access to opportunities and achievement of outcomes as measures of LGBTI inclusion. Four priority development 'dimensions' were agreed as a starting point for tracking progress on LGBTI inclusion around the world: 1) economic well-being, 2) civic and political participation, 3) personal security and violence, and 4) health. The kinds of proxy indicators that could be used to gather national data on each of these dimensions were also identified.

The two global SOGIESC organisations with ECOSOC consultative status, ILGA and OutRight Action International, then facilitated additional consultations with organisations from around the world to test and validate these suggested priorities. First, in October 2015, an online Survey was distributed to the contact bases of both organisations. It gathered 352 responses from LGBTI organisations (representing about half of the respondents), individual activists and allies from 81 countries, on the definition of, and the priority dimensions and indicators required to measure LGBTI inclusion.

The online global Survey was followed in mid-December 2015 by a three-day meeting held in New York and attended by approximately 70 LGBTI organisations and activists. These participants reviewed the outcomes of the multi-sectorial expert meeting and the online Survey, and then undertook in-depth discussions to provide additional inputs to the definition and the dimensions and indicators of inclusion that should ideally be prioritised in the UNDP LGBTI Inclusion Index. They reaffirmed that, given the diversity within and between LGBTI people and others who identify outside that acronym, each population needs to be addressed separately, as well as collectively. Participants proposed that this could be captured by having indicators that focus on each population (as much as is possible), thereby allowing a more intersectional analysis that reflects lived realities.

This need for disaggregation data and separate approaches was made particularly clear by intersex activists, who demonstrated how key sex characteristic issues, for example unnecessary surgical interventions on intersex people (particularly children and adolescents) have not traditionally been prioritised by LGBT movements. Likewise in discussions on the civic and political participation and health, it was stressed that while the overarching priority of non-discrimination applies to all, legal gender recognition is a specific priority of trans people. Various alternative titles for the civic and political participation dimension were suggested and while the title of the Index reflects

the overall goal of ensuring the inclusion of LGBTI people in development, it was recommended that SOGIESC terminology also be used, to highlight that discrimination and stigma and exclusion are experienced on the basis of sexual orientation, gender identity/expression and/or sex characteristics.

The participants concluded that education needed to be added as a fifth priority dimension, as had also been suggested in many Survey responses. The kinds of proxy indicators that could be used to measure the five priority dimensions were also discussed for both components of data collection: the collection and analysis of existing data, and the generation of new data on LGBTI inclusion.

The UNDP representatives clarified that just as the UN's Sustainable Development Goals (SDGs) are universal in their scope, this LGBTI Inclusion Index seeks to be global in nature, and confirmed that consultations with civil society would continue throughout its development, implementation and evaluation. It was clear to all that as this LGBTI Inclusion Index will be developed within the perimeters of the resources available, and in accordance with UNDP's organisational mandate, it will need to evolve over time in order to foster the inclusion of LGBTI people in development, and contribute to ensuring that no one is left behind.

GLOBAL LEGISLATION OVERVIEW

Same-sex sexual acts legal (121 States) 63% of UN States

Africa (21)

Benin[49], Burkina Faso,[50] Cape Verde (2004)[51] Central African Republic,[52] Chad, Congo,[53] Côte d'Ivoire,[54] Democratic Republic of Congo, Djibouti,[55] Egypt,[56] Equatorial Guinea, Gabon, Guinea-Bissau (1993),[57] Lesotho,[58] Madagascar, Mali, Mozambique,[59] Niger,[60] Rwanda,[61] São Tomé & Principe, Seychelles (2016) and South Africa (1998).[62]

49 Despite a number of draft amendments to the existing Penal Code of Benin (around Article 88) none of which passed into law, the only piece of law that explicitly determines same-sex sexual relations is the provision regarding age of consent (see below). For a referenced overview of LGBT life in Benin up to 2014, see: Philip P. Rodenbough, *Being LGBT in West Africa*, July 2014, USAID at 15-17: http://blogs.cuit.columbia.edu/rightsviews/files/2015/03/The-Being-LGBT-in-West-Africa-Project-Final-Report.pdf

50 Ibid, Rodenbough at 18-21.

51 The 2004 Penal Code does not criminalise same-sex sexual acts. However, until it came into force, Article 71 of the previous code of 1886 provided for 'security measures' for people who habitually practice 'vice against the nature'. Text of the new Penal Code is available at: www.mj.gov.cv/index.php?option=com_docman&task=doc_download&gid=38&&Itemid=66

52 The law of CAR only outlaws same-sex sexual activity in a public place, and not same-sex sexual activity *per se*. The text of the code reads: *"Est puni d'un emprisonnement de quinze à 20 ans ct d'une amende de 50.000fcs à 500.000fcs, quiconque a des rapports sexuels avec les personnes de son sexe".*

53 In the Republic of Congo Brazzaville, the text of the Penal Code only prohibits same-sex sexual behaviour with a person younger than 21 years. The text of the Penal Code (inherited from France) has been published by the Ministère de la Justice (République du Congo, Brazzaville) in the book *Codes d'Audience – Recueil de Codes et Textes Usuels* (Paris: Éditions Giraf, 2001), Art. 33 at 218.

54 Despite decriminalisation, Cote d"Ivoire rejected three non-discrimination recommendations regarding SOGI in its 2nd cycle UPR in April 2014, see: http://www.upr-info.org/sites/default/files/document/cote_d039ivoire/session_19_-_april_2014/recommendations_and_pledges_cote_d_ivoire_2014.pdf

55 See Djibouti Penal Code of 1995, available at: www.djibouti.mid.ru/doc/UK.htm

56 There are no legal provisions in Egypt that outlaw same-sex sexual activity. However, this is really just a technical distinction because such activity, and related expression, is outlawed under other laws (see country entry in the 'Criminalisation' section of the present edition).

57 See Articles 133-138 on sexual offences in the new Penal Code of 1993, online at: www.rjcplp.org/sections/informacao/anexos/legislacao-guine-bissau4332/codigos-e-estatutos9979/codigo-penal-e/

58 In Article 52 of the Penal Code Act 2010, which entered into force on 9 March 2012, there is no mention of sodomy: this article replaces section 185(5) of the 1939 Criminal Procedure and Evidence Act which had previously enumerated [male] sodomy as a punishable act. As such, same-sex sexual relations amongst consenting adult males in Lesotho was decriminalised by this 2010 Act. The text of the new Code is available at: www.lesotholii.org/ls/legislation/act/2012/6

59 On 11 July 2014, the Parliament approved Law 35/2014, by consensus, which replaces their former Penal Code from 1886. The new Penal Code removed Articles 70 and 71, which provided for the imposition of security measures on people who habitually practiced "vices against nature", and thereby criminalised same-sex acts between consenting adults. The revised Penal Code was published on 31 December 2014 and came into force in June 2015. Text of the law is available at: www.wlsa.org.mz/wp-content/uploads/2014/11/Lei-35_2014Codigo_Penal.pdf

60 The 1961 Penal Code with amendments up to 2003 is available at: www.unhcr.org/refworld/docid/47fb8e642.html

61 See the Rwanda Penal Code of 1980. Original text of the law is available at: www.wipo.int/wipolex/en/text.jsp?file_id=221101

62 A new Penal Code was approved by Law 6/2012 and entered into force on 6 November 2012, which does not contain any provisions criminalising same-sex consensual acts. Text of the law is available at: www.rjcplp.org/sections/informacao/anexos/legislacao-sao-tome-e2539/codigos-e-estatutos-sao2859/codigo-penal-sao-tome-e/

Asia (19)

Bahrain (1976),[63] Cambodia, China (1912 and 1997),[64] East Timor (1975), most parts of Indonesia, Israel (1988), Japan (1882), Jordan (1951), Kazakhstan (1998), Kyrgyzstan (1998), Laos, Mongolia (1961),[65] Nepal (2008),[66] North Korea, Philippines, South Korea, *Taiwan (1912)*,[67] Tajikistan (1998), Thailand (1957), Vietnam, as well as the *West Bank* (1951) in the *Occupied Palestinian Territory*.

Americas (24)

Argentina (1887), Bahamas (1991), Bolivia, Brazil (1831), Costa Rica (1971), Chile (1999), Colombia (1981), Cuba (1979), Dominican Republic (1822), Ecuador (1997),[68] El Salvador (1800s), Guatemala (1800s), Haiti (1800's), Honduras (1899), Mexico (1872), Nicaragua (2008), Panama (2008),[69] Paraguay (1880), Peru (1836-1837), Suriname (1869), Uruguay (1934), Venezuela (1800s), Canada (1969) and United States (2003).[70]

Europe (48)

Albania (1995), Andorra (1990), Armenia (2003), Austria (1971), Azerbaijan (2000), Belarus (1994), Belgium (1795), Bosnia and Herzegovina (1998-2001),[71] Bulgaria (1968), Croatia (1977), Cyprus (1998), Czech Republic (1962), Denmark (1933),

---

63 A new Penal Code was enacted in 1976 that decriminalised consensual adult same-sex sexual behaviour, and this repealed the old Penal Code of the Persian Gulf imposed by the British. This Penal Code allows same-sex sexual relations from the age of 21. Text of the law in English at: www.track.unodc.org/LegalLibrary/LegalResources/Bahrain/Laws/Bahrain%20Penal%20Code%201976.pdf, and in Arabic, at: www.genderclearinghouse.org/upload/Assets/Documents/pdf/penalcode-bahrein-ar.pdf. It should be noted that there is a morality or 'public decency' law in place in Bahrain that could be interpreted to include LGB and trans persons: Article 324 of Law No. 15 of 1976 states, "Every person who entices a male or a female *to commit acts of immorality* or prostitution or assists in such acts in any manner whatsoever shall he liable for a prison sentence".
كل من حرض ذكراً أو أنثى على ارتكاب الفجور أو الدعارة, أو ساعد على ذلك بأية طريقة كان بقاعي بالحبس.

64 Explicit prohibitions of "consenting jijian (sodomy)" were abolished in China around 1912 (the end of the Qing Dynasty). Since then there was no explicit prohibition of sexual acts between persons of the same sex. However, between 1979 and 1997 (the period of China's first penal code), non-consenting same-sex sexual acts came under the broader term "hooliganism" (itself decriminalised in 1997). Same-sex sexual behaviour has also been decriminalised in all Chinese associates: Hong Kong (1991) and Macau (1996). It is notable that in its 2nd cycle UPR in October 2013, China accepted recommendations from the Netherlands and Ireland to introduce non-discrimination laws inclusive of SOGI in the field of employment and education.

65 See Article 125 of the Criminal Code of Mongolia of 2002, in which "satisfaction of sexual desire in an unnatural manner" is a crime only when it is done by violence or threat of violence or by taking advantage of the helpless situation of the victim, as well as by humiliation. Text of the law is available at: www.unodc.org/res/cld/document/mng/2001/criminal_code_of_mongolia_html/Mongolia_Criminal_Code_2002.pdf. For its 2nd cycle UPR, Mongolian advocates produced an excellent factsheet with recommendations to government on various areas, including LGBTI, see: www.upr-info.org/sites/default/files/general-document/pdf/upr_advocacy_factsheets_mngof_en.pdf

66 The Supreme Court of Nepal ruled in 2008 that LGBTI people would be regarded as "natural persons" under law. In September 2015, a new Constitution of Nepal came into force that comprehensively includes sexual orientation and gender identity in its purview. Also see, *Being LGBT in Asia: Nepal Country Report*, 2014 (UNDP/USAID), at: www.usaid.gov/sites/default/files/documents/1861/Being_LGBT_in_Asia_Nepal_Country_Report.pdf

67 Taiwan is not a member State of the United Nations.

68 On 27 November 1997, Ecuador's Constitutional Court declared Article 516 of the Penal Code unconstitutional, thereby decriminalising same-sex sexual acts. See CCPR/C/ECU/5, available at: www2.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/CCPR-C-ECU-5.doc

69 Decree No. 332, Official Gazette of 31 July 2008.

70 By Supreme Court verdict, it also struck down the sodomy law in Puerto Rico, which was later repealed in 2005. Previously repealed: Alaska (1980), Arizona (2001), Arkansas (2002), California (1976), Colorado (1972), Connecticut (1971), Delaware (1973), Georgia (1998), Hawaii (1973), Illinois (1962), Indiana (1977), Iowa (1977), Kentucky (1992), Maine (1976), Minnesota (2001), Montana (1997), Nebraska (1978), Nevada (1993), New Hampshire (1975), New Jersey (1979), New Mexico (1975), New York (1980/2001), North Dakota (1975), Ohio (1974), Oregon (1972), Pennsylvania (1980/1995), Rhode Island (1998), South Dakota (1977), Tennessee (1996), Texas (2003), Vermont (1977), Washington (1976), West Virginia (1976), Wisconsin (1983), Wyoming (1977) and District of Columbia (1993), as well as the USA associates American Samoa (1980), American Virgin Islands (1985), Guam (1978) and Northern Mariana Islands (1983). Thereto, Missouri repealed its sodomy law from the books in 2006.

71 The three parts of Bosnia and Herzegovina decriminalised 'homosexuality' in three different years, each by enacting a new Criminal Code that introduced an equal age of consent: Federation of Bosnia and Herzegovina (1998), Republika Srpska (2000), Brcko District (2001). Text of the law is available at: www.ohr.int/ohr-dept/legal/crim-codes/

Estonia (1992), Finland (1971), France (1791), Georgia (2000), Germany (1968-69),[72] Greece (1951), Hungary (1962), Iceland (1940), Ireland (1993), Italy (1890), *Kosovo (1994)*,[73] Latvia (1992), Liechtenstein (1989), Lithuania (1993), Luxembourg (1795), Macedonia (FYROM) (1996), Malta (1973), Moldova (1995), Monaco (1793), Montenegro (1977), Netherlands (1811),[74] *Northern Cyprus (2014)*,[75] Norway (1972), Poland (1932), Portugal (1983), Romania (1996), Russia (1993), San Marino (1865), Serbia (1994), Slovakia (1962), Slovenia (1977), Spain (1979), Sweden (1944), Switzerland (1942), Turkey (1858),[76] Ukraine (1991), United Kingdom (and *associates*)[77] and *Vatican City*.[78]

Oceania (7)

Australia,[79] Fiji (2010),[80] Marshall Islands (2005), Micronesia, New Zealand (1986) and some associates,[81] Nauru (2016), Palau (2014) [82] and Vanuatu.

Same-sex sexual acts illegal (72 States) 37% of UN States

Africa (33 States: 24 of which apply to women)

Algeria, Angola, Botswana, Burundi, Cameroon, Comoros, Eritrea, Ethiopia, Gambia, Ghana, Guinea, Kenya, Liberia, Libya, Malawi, Mauritania, Mauritius, Morocco, Namibia, Nigeria, Senegal, Sierra Leone, Somalia, South Sudan, Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia and Zimbabwe.

Asia (23 States: 13 of which apply to women)

Afghanistan, Bangladesh, Bhutan, Brunei Darussalam, *Gaza* (*in the Occupied Palestinian Territory*), India, *South Sumatra* and

72 East Germany (1968) and West Germany (1969).

73 Kosovo is not a member State of the United Nations.

74 Same-sex sexual acts are also legal in the three Netherlands associates (Aruba, Curaçao and St Maarten) and in the Netherlands territories of Bonaire, Saba and St Eustatius.

75 Turkish Republic of Northern Cyprus is not a member of the United Nations. On 27 January 2014, its parliament voted to abolish Article 171 and 173 of the Criminal Code that foresaw five years' imprisonment for same-sex sexual behaviour, and three years' imprisonment for "attempts to commit [these] crimes", see: www.lgbt-ep.eu/press-releases/northern-part-of-cyprus-decriminalises-homosexuality/

76 The Turkish Imperial Penal Code of 1858 considered sodomy within rape a specific crime, but there is no mention of consensual sodomy. The criminalising law is said to have been a translation of 1810 French Penal Code and was in effect till 1926, see: http://archive.org/stream/TheImperialOttomanPenalCode/OttomanPenalCode_djvu.txt

77 England & Wales (1967), Northern Ireland (1982), Scotland (1981), 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).

78 The Vatican is not a member State of the United Nations.

79 New South Wales (1983), Norfolk Island (1993), Northern Territory (1984), Queensland (1991), South Australia (1972), Tasmania (1997), Victoria (1981), Western Australia (1990).

80 The sodomy statutes were repealed by the Crimes Decree 2009, which came into force on 1 February 2010.

81 *Niue* (2007) and *Tokelau* (2007).

82 See: www.humandignitytrust.org/pages/NEWS/News?NewsArticleID=300

Aceh Province (in Indonesia), Iraq,[83] Iran, Kuwait, Lebanon, Malaysia, Maldives,[84] Myanmar, Oman, Pakistan, Qatar,[85] Saudi Arabia, Singapore, Sri Lanka, Syria, Turkmenistan, United Arab Emirates, Uzbekistan and Yemen.

Americas (11 States: 6 of which apply to women)

Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St Kitts & Nevis, St Lucia, St Vincent & the Grenadines and Trinidad & Tobago.

Oceania (6 States: 2 of which apply to women)

Cook Islands (associates to New Zealand), Kiribati, Papua New Guinea, Samoa, Solomon Islands, Tonga and Tuvalu.

Same-sex sexual acts - death penalty (13 States [or parts of]**)** 6% of UN States

Africa and Asia

Death penalty for same-sex sexual behaviour codified under Sharia[86] and implemented countrywide (4):

Africa: Sudan.

Asia: Iran, Saudi Arabia, and Yemen.

Death penalty for same-sex sexual behaviour codified under Sharia and implemented provincially (2):

12 northern states in Nigeria[87] and the southern parts of Somalia.

Death penalty for same-sex sexual behaviour codified under Sharia but not known to be implemented for same-sex behaviour specifically (5):

Africa: Mauritania.

Asia: Afghanistan, Pakistan, Qatar and UAE.[88]

Death penalty for same-sex sexual behaviour codified under Sharia implemented by local courts/vigilantes/non-State actors (2):

Asia: Iraq and Daesh (ISIS / ISIL)-held territories in northern Iraq and northern Syria.[89]

---

83 Although Iraq's Penal Code does not specify same-sex sexual behaviour, we include Iraq in this list because the rule of law is in disarray, and non-State actors – militias, and local Sharia judges - target those known (or perceived) to be of diverse sexual orientation with extreme penalties. See country entry on Iraq.

84 Maldives introduced a new Penal Code in 2014 that came into force in July 2015, Law No. 6/2014 explicitly outlaws same-sex sexual behaviour between consenting adults, both male and female. This Penal Code transposes the Sharia code within the civil law, and it now applies to all citizens regardless of their personal faith. See country entry on Maldives.

85 The Qatari Penal Code of 2004 does not outlaw consensual same-sex sexual behaviour *per se*, but the Sharia code runs in parallel with the civil code which does target same-sex sexual behaviour.

86 For discussions on punitive responses to same-sex sexual relations under Sharia codes, see Javaid Rehman and Eleni Polymenopoulou, "Is Green a Part of the Rainbow? *Sharia*, Homosexuality and LGBT Rights in the Muslim World", *Fordham International Law Journal* 37(1) (2013), at: http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2322&context=ilj; and Sara Omar "From Semantics to Normative Law: Perceptions of Liwāt (Sodomy) and Sihāq (Tribadism) in Islamic Jurisprudence (8th-15th Century CE)", *Islamic Law and Society* 19(3) 222-256 (2012), at: http://phdtree.org/pdf/36951928-from-semantics-to-normative-law-perceptions-of-liwat-sodomy-and-sihaq-tribadism-in-islamic-jurisprudence-8th-15th-century-ce/ (free download).

87 While there are no recently publicised incidences of the death penalty being applied in the Sharia courts of Northern Nigeria, the BBC report from the province of Bauchi in February 2014 (www.bbc.com/news/world-africa-26065392) attest to the climate of extreme antagonism around same-sex sexual relations. In the asylum claim of Aderonke Apata to the United Kingdom, (finalised and failed) in January 2016 (*Apata v Home Office* [2015] EWHC 888 (Admin), Judge Bowers accepted the threat of death penalty is a reality (at para.20, at www.bailii.org/ew/cases/EWHC/Admin/2015/888.html), the applicant points out her lesbian status is what will get her stoned rather than her alleged adultery. Stoning (rajm) is a Shariah law punishment applied in some northern Nigerian states and reserved for Muslims (in Bauchi (the year 2001), Borno (2000), Gombe (2001), Jigawa (2000), Kaduna (2001), Kano (2000), Katsina (2000), Kebbi (2000), Niger (2000), Sokoto (2000), Yobe (2001) and Zamfara (2000)). The punishment applies broadly for adultery, rape (if the offender is married), incest (if the offender is married) and homosexual sodomy. Evidentiary requirements for demonstrating these offenses, if enforced, are very demanding.

88 ILGA is informed that executions for same-sex sexual conduct (generally referring to hadd punishments) have not been implemented in either Qatar or UAE, and that it is questionable whether we should include these States in this category.

89 See: OutRight *Timeline of Publicized Executions for "Indecent Behavior" by IS Militias* (retrieved 10 April 2016), at: https://www.outrightinternational.org/dontturnaway/timeline

Equal age of consent for same and different sex sexual acts (105 States)[90]
(54% of UN States)

Africa (13)

Burkina Faso (1996), Cape Verde (2004) ,[91] Central African Republic, Democratic Republic of Congo,[92] Djibouti,[93] Egypt, Equatorial Guinea (1931), Lesotho (2010), Mali (1961), [94] Guinea-Bissau (1993) ,[95] Mozambique, São Tome & Principe, Seychelles (2016) and South Africa (2007).[96]

Asia (17)

Cambodia, China (1996-2006),[97] East Timor (2009), Israel (2000), Japan (1882), Jordan (1951), Kazakhstan (1998), Kyrgyzstan (1998), Laos, Mongolia, Nepal, North Korea, Philippines, South Korea, *Taiwan,* Tajikistan (1998), Thailand (1957), Vietnam and the *West Bank* (1951) in the *Palestinian Authority*.

Americas (19)

Argentina (1887), Bolivia, Brazil (1831), Colombia (1981), Costa Rica (1999), Cuba, Dominican Republic, Ecuador (1997), El Salvador, Guatemala, Haiti, Honduras, Mexico (1872), Nicaragua (2008), Panama (2008), Peru (1836-37), Uruguay (1934), Venezuela and most parts of the US.

Europe (47)

Albania (2001), Andorra, Armenia (2003), Austria (2002), Azerbaijan (2000), Belarus (2000), Belgium (1985), Bosnia & Herzegovina (1998-2001),[98] Bulgaria (2002), Croatia (1998), Cyprus (2002), Czech Republic (1990), Denmark (1976),[99] Estonia

90 Equal or unequal age of consent only applies to States that do not criminalise same-sex sexual relations. However, although we include Egypt in the list of criminalising States because of its deployment of other laws used to target sexual minority populations, the actual age of consent of same-sex and different-sex sexual relations is the same.

91 The 2004 Penal Code does not impose different ages of consent for sexual acts. See: Chapter 5 of Section II, available at: www.mj.gov.cv/index.php?option=com_docman&task=doc_download&gid=38&&Itemid=66

92 Articles 167 and 172 of the Penal Code, as amended by Law 06/018 of 20 July 2006, do not distinguish the sexual orientation of the contacts, and both apply to indecent or immoral behaviour with respect to persons under 18: text of the law is available at: www.leganet.cd/Legislation/JO/2006/JO.01.08.2006.C.P.P..pdf

93 See: Djibouti Penal Code of 1995, available at: www.djibouti.mid.ru/doc/UK.htm

94 See: Article 180 of the Code Pénal of 1961. Original text is available at: www.wipo.int/wipolex/en/text.jsp?file_id=193676

95 Articles 133-138 on sexual offences in the new Penal Code of 1993 appears to apply regardless of sexual orientation. Text of the law is available at: www.rjcplp.org/sections/informacao/anexos/legislacao-guine-bissau4332/codigos-e-estatutos9979/codigo- penal-e/

96 Article 362 of the Penal Code prohibits any act against nature or any indecent act with someone of the same-sex under the age of 18, while Article 358 contains a general prohibition of indecency with children of either sex under the age of 16. Text of the law available at: www1.umn.edu/humanrts/research/Penal%20Code%20%28English%29.pdf

97 In mainland China, the age was equalised with the decriminalisation of hooliganism in 1997; also in Hong Kong (2005/2006) and in Macau (1996).

98 The three parts of Bosnia and Herzegovina decriminalised same-sex sexual relations in three different years, each by enacting a new Criminal Code that introduced an equal age of consent: Federation of Bosnia and Herzegovina (1998), Republika Srpska (2000), Brčko District (2001); see: www.ohr.int/ohr-dept/legal/crim-codes/

99 The Faeroe Islands (1988), Greenland (1979).

(2002), Finland (1999), France (1982),[100] Georgia (2000), Germany (1994/89)[101], Hungary (2002), Iceland (1992), Ireland (1993), Italy (1890), *Kosovo* (2004), Latvia (1999), Liechtenstein (2001), Lithuania (2003), Luxembourg (1992), Macedonia (1996), Malta (1973), Moldova (2003), Monaco (1793), Montenegro (1977), Netherlands (1971), [102] Norway (1972), Poland (1932), Portugal (2007), Romania (2002), Russia (1997), San Marino (1865), Serbia (2006), Slovakia (1990), Slovenia (1977), Spain (1979), Sweden (1978), Switzerland (1992), Turkey (1858), Ukraine (1991), United Kingdom (2001-2008) [103] and *Vatican City*.

Oceania (7)

Most parts of Australia,[104] Fiji (2010), Marshall Islands, Micronesia, Nauru (2016), Palau, Vanuatu (2007) and New Zealand (1986).[105]

Unequal age of consent for same and different sex sexual acts (16 States)

8% of UN States

Africa (8)

Benin (1947),[106] Chad, Congo (1947),[107] Côte d'Ivoire,[108] Gabon,[109] Madagascar,[110] Niger[111] and Rwanda.[112]

Asia (2)

Bahrain and Indonesia.

100 The law applies to the following overseas departments and territories upon adoption: French Guiana, Martinique, Guadeloupe, Reunion, St Barthélemy, St Martin, St Pierre & Miquelon, as well as to French Polynesia, New Caledonia and Wallis & Futuna since 1984, and also to Mayotte.

101 East Germany (GDR) in 1989 and the rest of Germany in 1994, text of the 1994 law available at: lexetius.com/StGB/175

102 The age of consent is also equal in the three Netherlands associates: Aruba (2003), Curaçao (2000) and St Maarten (2000), and also in the three Netherlands' territories of Bonaire (2000), Saba (2000) and St Eustatius (2000).

103 Legislation equalising the age of consent (at 16 in England & Wales and Scotland; at 17 in Northern Ireland) entered into force January 2001. The Sexual Offences Order 2008 (Northern Ireland) lowered the latter age limit to 16 (see: www.legislation.gov.uk/nisi/2008/1769/contents), Akrotiri & Dhekelia (2003), Falkland Islands (2005), Isle of Man (2006), Jersey (2007), Guernsey (2010), Pitcairn, South Georgia, St Helena as well as all more or less uninhabited islands. As to Gibraltar, the Supreme Court made a declaration in 2011 to the effect that an unequal age of consent is unconstitutional under Gibraltar law (previously 18 for gay men but 16 for heterosexuals and lesbians. Therefore, an equal age of consent of 16 was set for all.

104 All states and territories but Queensland: New South Wales (2003), Norfolk Island (1993), Northern Territory (2004), South Australia (1975), Tasmania (1997), Victoria (1981), Western Australia (2002).

105 New Zealand itself had equal age since 1986; New Zealand associates of Niue (2007) and Tokelau (2007).

106 Benin has a higher age limit for same-sex sexual acts. Since a 1947 amendment of Article 331 of the Penal Code of 1877 the first paragraph of Article 331 has fixed a general age limit of 13 for sex with a child of either gender, but the third paragraph has penalised any act that is indecent or against nature if committed with a person of the same sex under 21. Text of the amendment is available at: www.legifrance.gouv.fr/jopdf/common/jo_pdf.jsp?numJO=0&dateJO=19471123&pageDebut=11567&pageFin=&pageCourante=11569

107 According to Art. 331 of the Penal Code (as amended in 1947), the age of consent is 13 for heterosexual sex, but: "anyone who has committed an indecent act or an act against nature with an individual of the same sex younger than 21 years, will be punished with imprisonment of six months to three years and with a fine of 4 000 francs up to 1 000 000 francs". The text of the Penal Code (inherited from France) has been published by the Ministère de la Justice (République du Congo, Brazzaville) in the book *Codes d'Audience – Recueil de Codes et Textes Usuels* (Paris: Éditions Giraf, 2001); Art. 331 can be found at 218.

108 See: Article 356 and 358 of the Code Pénal. Original text is available at: www.wipo.int/wipolex/en/details.jsp?id=6480

109 See: Article 258 of the Code Pénal. Original text is available at: www.wipo.int/wipolex/en/text.jsp?file_id=266824. According to Scott Barclay, Mary Bernstein and Anna-Maria Marshall *Queer mobilizations: LGBT activists confront the law* (New York: NYU Press, 2009) at 128, the age of consent for same-sex sexual relations was raised from 15 to 21 in 1969.

110 See: Article 331 of the Code Pénal. Original text is available at: www.vertic.org/media/National%20Legislation/Madagascar/MG_Code_Penal.pdf

111 See: Articles 278 and 282 of the Code Pénal. Original text is available at: www.vertic.org/media/National%20Legislation/Niger/NE_Code_Penal.pdf

112 See: Articles 358 and 362 of the Code Pénal. Original text is available at: www.wipo.int/wipolex/en/text.jsp?file_id=221101

Americas (5)

Bahamas, Chile (2015),[113] Paraguay, Suriname, some United Kingdom associates,[114] Canada and some parts of the United States.

Europe (1)

Greece[115] and one United Kingdom associate.[116]

Oceania (1)

Australia (part).[117]

Promotion ('Propaganda') and 'morality' laws that target freedom of expression related to sexual orientation118 (17 States) 9% of UN States

Africa (7)

Algeria (2014),[119] Egypt (1937),[120] Libya,[121] Morocco,[122] Nigeria (2014),[123] Somalia (1962)[124] and Tunisia (1913).[125]

113 See Article 365 of the Chilean Penal Code that stipulates same-sex sexual relations with a person under the age of 18 is punishable as rape or statutory rape: "Art. 365. El que accediere carnalmente a un menor de dieciocho años de su mismo sexo, sin que medien las circunstancias de los delitos de violación o estupro, será penado con reclusión menor en sus grados mínimo a medio". Age of consent for heterosexual sexual acts in Chile is 14. See, www.leychile.cl/Navegar?idNorma=1984

114 Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Montserrat, Turks & Caicos Islands.

115 See: Article 347 of the Greek Penal Code, which criminalises 'contact against nature between males' in several circumstances including when it is committed through 'seduction' of a person younger than seventeen, and in which sexual acts are legal from the age of 15 for heterosexuals (Article 339). Original text is available at: www.yen.gr/php/download_xitem.php?xitem=24745/pd_fek106_85.pdf

116 Bailiwick of Guernsey.

117 See: State of Queensland, Criminal Code Act 1899 (and Criminal Law Amendment Bill 1996), Section 208 and Section 213, indicating the age of consent for same-sex sexual acts is 18, while that of heterosexual acts is 16. Text of the 1996 law is available at: www.legislation.qld.gov.au/Bills/48PDF/1996/CriminalLawAmdB96.pdf

118 As mentioned in the introduction to this edition, we have widened the category of so-called 'propaganda laws', or more properly 'promotion laws' existing in Russia, Lithuania and Nigeria, to include morality laws that directly impede the freedom of expression of the lives and interests related to the status of sexual orientation or gender identity. These laws are framed under 'morality laws' in 13 Middle East and North African countries, and Somalia. Also note that Russian-style propaganda laws are being proposed in Ukraine, Belarus, Bulgaria, Latvia and Kazakhstan. Kyrgyzstan is poised to pass such a severe law – at time of writing, the Bill has reached its second stage in the parliament, see: http://thediplomat.com/2016/03/kyrgyzstans-ngo-and-lgbt-crackdown/. There are provisions in other jurisdictions that limit information, particularly to children, for example see *Think Progress* 2014 article on nine US states, at: http://thinkprogress.org/lgbt/2014/02/03/3241421/9-state-gay-propaganda-laws/

119 See: country entry on Algeria for explanation of Article 333 (new).

120 Penal Code No. 58 of 1937, Article 178 (see country entry on Egypt).

121 Article 421 of 1953 states that "anyone who commits an act of indecency in a public place will be liable to detention for up to one year and a fine of up to 50 Dinars. The same penalty will apply to anyone who offends public decency by the distribution of writings, pictures or other articles of an indecent nature, or who publicly exposes the same for sale".

122 Article 483 states, "whoever commits an act of public indecency, whether by nudity or obscenity in his actions, shall be punished by imprisonment of one month to two years and a fine of 200 to 500 dirhams."

123 Section 5 of the Same-Sex Marriage (Prohibition) Act (passed December 2013 and signed into law in January 2014) provides that a person who "directly or indirectly makes public show of same-sex amorous relationship[s]" may receive a penal sentence of up to ten years imprisonment; text of the law available at: www.refworld.org/docid/52f4d9cc4.html

124 Article 406 of 1962 (see country entry on Somalia).

125 Article 230 of 1913 states, "Anyone who intentionally and publicly promotes "indecency" is punishable by imprisonment for six months and subject to a fine of 48 dinars (about US $30)" http://www.loc.gov/law/help/criminal-laws-on-homosexuality/homosexuality-laws-in-african-nations.pdf (Library of Congress), see country entry on Tunisia.

Asia (8)

Iraq,[126] Iran,[127] Jordan,[128] Kuwait,[129] Lebanon,[130] Qatar,[131] Saudi Arabia[132] and Syria.[133]

Europe (2)

Lithuania (2014) [134] and the Russian Federation (2013).[135]

126 Article 404 of No. 111 (1969) states, "Any person who himself or through some mechanical means sings or broadcasts in a public place obscene or indecent songs or statements is punishable by a period of detention not exceeding 1 year or by a fine not exceeding 100 dinars".

127 The Press Law (1986), at: http://www.iranhrdc.org/english/english/human-rights-documents/iranian-codes/3201-the-press-law.html?p=1

128 Article 320 states, "Anyone who commits an act incompatible with modesty or expresses signs incompatible with modesty in a public place or a public assemblage or by manner that could be seen by those in a public place shall be punished with imprisonment not exceeding 6 months or a fine not exceeding 50 Dinars", see: http://www.refworld.org/pdfid/4f5defd92.pdf

129 Article 198 of the Penal Code, Law No.16 of 2 June 1960, as amended in 1976, states: "Whoever makes a lewd signal or act in a public place or such that one may see it or hear it from public place, or appears like the opposite sex in any way, shall be punished for a period not exceeding one year and a fine not exceeding 1000 Dinar or one either of these punishments".

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

131 Article 296 of 2004 states, "One is convicted to no less than a year and no more than three years in prison in case of *[inter alia]* 3- Leading, instigating or seducing a male anyhow for sodomy or immorality. 4- Inducing or seducing a male or a female anyhow to commit illegal or immoral actions.

132 According to the Council of Ministers Resolution in 2001: "All internet users in the Kingdom of Saudi Arabia shall refrain from publishing or accessing data containing some of the following: 1. Anything contravening a fundamental principle or legislation, or infringing the sanctity of Islam and its benevolent Shari'ah, or breaching public decency." See: http://www.al-bab.com/media/docs/saudi.htm

133 Article 208 of the Syrian Penal Code (stipulating that offensive public utterances in writing, graphics, images, etc, are outlawed) in combination with Article 517 (which states, "[p]unish crimes against public decency in any of the ways mentioned in paragraph 1 of Article 208 [any act carried out in a public or open area where one could possibly see, intentionally or accidentally, the act] with imprisonment of three months to three years" comprises a morality clause that is overly restrictive to LGB-identified individuals.

134 In January 2014, the Lithuanian Parliament introduced amendments to the Code of Administrative Violations of Law that would levy harsh fines against participants in public demonstrations 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 2010, see: 'Lietuvos Respublikos Nepilnameciu apsaugos nuo neigiamo viešosios informacijos poveikio istatymas', No. IX-1067, 21 October 2011, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=410367. A draft version is available in English at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=363137. Interestingly, ILGA-Europe reports in November 2014 that the Union of Lithuanian Psychologists claim it is the *censorship* of material on the rights of LGBT people that harms children, see: www.ilga-europe.org/media_library/rainbow_digest/2014/november/freedom_of_expression/lithuanian_psychologists_say_censoring_information_on_lgbt_issues_does_harm_to_minors

135 Federal Law No 135-FZ; 'On Amendments to Certain Legislative Acts of the Russian Federation with regard to limiting the spread of information about minors, victims of illegal actions (inaction)', at Article 6.21 - Promotion of Non-Traditional Sexual Relations Among Minors; also for an in-depth contextual analysis of the law, copied in Appendix (in English) of: Heiss, Brian M. "Russian Federation Anti-Gay Laws: An Analysis & Deconstruction", 21 January 2014, at: http://static.prisonplanet.com/p/images/february2014/white_paper.pdf. In January 2015, the St Petersburg LGBT youth work organisation Children 404 were found in breach of Article 6.21, see: www.humanrightsfirst.org/press-release/russian-court-fines-children-404-founder-violating-lgbt-propaganda-law. Further, at a court hearing on 5 March 2015, the LGBT organisation, Maximum, was found guilty of failure to register under the 2012 Foreign Agents Law (see, text of law at: http://asozd2.duma.gov.ru/main.nsf/%28SpravkaNew%29?OpenAgent&RN=102766-6&02) by the Court of Murmansk. This is the first LGBT organisation to be charged under this law, and it was and fined 300,000 rubles.

Prohibition of discrimination in employment based on sexual orientation (71 States)[136] 38% of UN States

Africa (8)

Angola (2015),[137] Botswana (2010),[138] Cape Verde (2008),[139] Mauritius (2008),[140] Mozambique (2007),[141] Seychelles (2006)[142] and South Africa (1994).[143]

Asia (4)

Indonesia (2003),[144] Israel (1992), some parts of Philippines,[145] *Taiwan* (2007)[146] and Thailand (2007).[147]

136 Section 139 of the Namibian Labour Act of 2004 repealed the Labour Act of 1992 that had prohibited sexual orientation discrimination in its Section 107. Text of the 2004 law is available at: www.commonlii.org/na/legis/num_act/la200484.pdf

137 Angolan law sets down the general principle of equality of rights between employees regardless of their sexual orientation and therefore prohibits discrimination based on sexual orientation. On 15 June 2015, the new general Labour Law ("*Lei Geral do Trabalho*" or "new GLL"), enacted by Act no.7/15, of June was published in the Angolan Official gazette (*Diário da República*), The GLL entered into force 90 (ninety) days after the date of its publication and must be regulated by the government within six (6) months after the date of entering into force. See: http://www.lexology.com/library/detail.aspx?g=05ac98ab-c50a-4f4f-9efe-73705ea11829

138 Botswana Employment Amendment Act: 10 of 2010 amended the Employment Act to add sexual orientation and health status (including HIV/AIDS status) as prohibited grounds of discrimination, see: www.icj.org/sogi-legislative-database/botswana-sogi-legislation-country-report-2013/

139 See: Article 45(2) and Article 406 (3) of the *Novo Código Laboral Cabo-Verdiano.* Text of the law is available at: https://portoncv.gov.cv/dhub/porton.por_global.open_file?p_doc_id=786

140 See: page 8 of the Equal Opportunities Act 2008, which prohibits discrimination in employment and other activities on many grounds, including sexual orientation. Text of the law is available at: www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_126781.pdf

141 See: Articles 4, 5 and 108 of the Labour Law 23/2007. Text of the law is available at: www.tipmoz.com/library/resources/tipmoz_media/labour_law_23-2007_1533E71.pdf

142 See: Articles 2, 46A (1) and 46B of the Employment Act 1995, amended by Act 4 of 2006. Text of the law is available at: https://staging.ilo.org/dyn/natlex/docs/ELECTRONIC/40108/90799/F1128259675/SYC40108.pdf

143 Such a prohibition can be found in the Constitution (since 1994), and also in the Labour Relations Act of 1995, in force 11 November 1996, at: www.acts.co.za/labour-relations-act-1995/; in the Employment Equity Act of 1998: www.acts.co.za/employment-equity-act-1998/; and in the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000: www.acts.co.za/promotion-of-equality-and-prevention-of-unfair-discrimination-act-2000/person.php

144 Little known: theoretically there is a guarantee of protection against discriminatory practices based on any ground in the Constitution and the Human Rights Law (No. 39/1999). Similarly, the Labor Law (No. 13/2003) prohibits discrimination in employment, *Being LGBT in Asia: Indonesia Country Report: Indonesia* (UNDP/USAID, 2014), at p.24, para 3, see: www.asia-pacific.undp.org/content/dam/rbap/docs/Research%20&%20Publications/hiv_aids/rbap-hhd-2014-blia-indonesia-country-report-english.pdf

145 Some cities in Philippines, including: Quezon City (Ordinance No. SP-1309, 2003) at: www.quezoncitycouncil.ph/ordinance/SP/sp-1309,%20s%202003-1.pdf; Dagupan City (Ordinance No. 1953, 2010); Naga City (Ordinance No. 2012-035) at: www.naga.gov.ph/sp-matters/ordinances/ordinance-no-2012-035/; Angeles City (Executive Order No. 37, 2011) at: http://210.4.99.20/lis/ExecDetails.aspx?execcode=E0000000031; Cebu City (2012) at: http://bayanmuna.net/casino-welcomes-anti-discrimination-ordinances/; Davao City (Anti-discrimination Ordinance, 2013) at: www.sunstar.com.ph/davao/local-news/2013/02/14/anti-discrimination-ordinance-now-city-hall-268100. On 21 July 2014, the Province of Agusan del Norte approved Ordinance No. 358-2014, thus becoming one of the first provinces in the Philippines to pass an anti-discrimination ordinance that protects people irrespective of their sexual orientation and gender identity and expression: http://outragemag.com/agusan-del-norte-passes-ado/

146 See: Articles 2 and 12-15 of Gender Equity Education Act. Text of the law is available at: http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=H0080067

147 The Ministry of Labour Regulation on Thai Labour Standards, Social Responsibility of Thai Businesses B.E. 2547 (2007), prohibits discrimination against workers on numerous grounds, including "nationality, ethnicity, religion, language, age, sex, marital status, personal sexual attitude..."

Americas (14)

Bolivia (2009),[148] some parts of Argentina,[149] some parts of Brazil,[150] Canada (1996), Chile (2012), Colombia (2007), Costa Rica (1998), Cuba (2014),[151] Ecuador (1998),[152] El Salvador (2010),[153] Mexico (2003),[154] Nicaragua (2008), Venezuela (1999), Uruguay (2004),[155] *British Virgin Islands* (2007), *associate of the United Kingdom,*[156] and some parts of the United States.[157]

Europe (40)

Albania (2010), Andorra (2005), Austria (2004), Belgium (2003), Bosnia and Herzegovina (2003),[158] Bulgaria (2004), Croatia (2003),[159] Cyprus (2004), Czech Republic (1999), Denmark (1996),[160] Estonia (2004), Finland (1995), France (1985), Georgia (2006, amended 2014),[161] Germany (2006), Greece (2005),[162] Hungary (2004), Iceland (1996), Ireland (1999), Italy (2003), *Kosovo* (2004), Latvia (2006), Lithuania (2003), Luxembourg (1997), Macedonia (FYROM) (2005),[163] Malta (2004), Moldova

---

148 See: Article 281 *ter* of the Penal Code (*Título VIII del Libro Segundo del Código Penal*), as amended by Article 23 of the *Ley Contra el Racism y Toda Forma de Discriminación* of 2011. See: also Articles 5 and 12 to 14 of the latter law. Original text is available at: www.acnur.org/t3/fileadmin/Documentos/BDL/2014/9502.pdf?view=1

149 The city of Rosario (1996) and the city of Buenos Aires (2015).

150 Bahia (1997), Federal District (2000), Minas Gerais (2002), Paraíba (2003), Piauí (2004), Rio de Janeiro (2000), Rio Grande do Sul (2002), Santa Catarina (2003), São Paulo (2001), Mato Grosso (2005), Maranhão (2006), as well as a number of cities.

151 See: Article 2b of the new *Código del Trabajo*, signed into law on 17 June 2014. The text of the law is available at: www.cubadebate.cu/wp-content/uploads/2014/06/codigo-del-trabajo-de-la-republica-de-cuba.pdf

152 See: Article 79 of the *Código del Trabajo , Codificación 2005-17*, available at: www.unemi.edu.ec/rrhh/images/archivos/codtrab.pdf

153 Decreto No. 56 [Decree 56], Diario Oficial (DO), No. 86, Tomo 387, entered into force 19 May 2010, original text is available at: http://biblioteca.utec.edu.sv/siab/virtual/DiarioOficial_/20100512.pdf. See: also, Sexual Diversity in El Salvador*, A Report on the Human Rights Situation of the LGBT Community*, (USA: International Human Rights Law Clinic, University of California, Berkeley, School of Law, July 2012) at: www.law.berkeley.edu/files/LGBT_Report_English_Final_120705.pdf

154 See: Article 9 of Federal Law to Prevent and Eliminate Discrimination, available at: www2.ohchr.org/english/bodies/cerd/docs/CERD.C.MEX.15-17_en.doc

155 See: Law No. 17,817, Combat Racism, Xenophobia and Discrimination, original text available at: http://archivo.presidencia.gub.uy/sci/leyes/2013/05/mec_913.pdf

156 Article 26 of the Virgin Islands Constitution Order 2007. Text of the law is available at: www.legislation.gov.uk/uksi/2007/1678/contents/made.

157 United States: California (1993), Colorado (2007), Connecticut (1991), Delaware (2009), Hawaii (1992), Illinois (2006), Iowa (2007), Maine (2005), Maryland (2001), Massachusetts (1990), Minnesota (1993), Nevada (1999), New Hampshire (1998), New Jersey (1992), New Mexico (2003), New York (2003), Oregon (2008), Rhode Island (1995), Vermont (1992), Washington (2006), Wisconsin (1982) and District of Columbia (1973), as well as a number of cities and towns. On 24 May 2013, the Senate approved a bill that outlaws employment discrimination based on gender or sexual orientation. Text of the law is available at: http://noticiasmicrojuris.files.wordpress.com/2013/05/ps238-24mayo2013.pdf

158 Such laws are available also in Republika Srpska (2000, 2003).

159 For the text of the 2003 Act on Amendments to Labour Act (Official Gazette 114/03) see: www.ilo.org/dyn/natlex/docs/SERIAL/41244/72720/F484034153/HRV41244.PDF; and for the general discrimination provisions added to the Croatian Code in 2008, see: http://minoritycentre.org/sites/default/files/antidiscrimination_law_croatia.pdf

160 The law is not applicable to the Faeroe Islands or Greenland. However, incitement to hatred based on sexual orientation is prohibited in the Faeroe Islands since 2007, and in Greenland from 1 January 2010.

161 See: Article 1 of the "Law of Georgia on the Elimination of All Forms of Discrimination", approved on 2 May 2014, which explicitly prohibits every form of discrimination, including those based on "sexual orientation, gender identity and expression". The text of the law available at: https://matsne.gov.ge/en/document/view/2339687

162 See: Law no. 3304/2005 (Act Against Discrimination), available at: www.non-discrimination.net/content/main-principles-and-definitions-6

163 Law on Labour Relations, Article 6. See: the COE's 'Legal Report' on Macedonia, at 18, see: www.coe.int/t/Commissioner/Source/LGBT/FYROMLegal_E.pdf

(2012),[164] Montenegro (2010),[165] Netherlands (1992), Norway (1998), Poland (2004), Portugal (2003), Romania (2000), Serbia (2005), Slovakia (2004), Slovenia (1995),[166] Spain (1996), Switzerland (2000),[167] Sweden (1999), Ukraine (2015)[168] and the United Kingdom (2003).[169]

Oceania (5)

Australia (1996),[170] Fiji (2007),[171] Samoa (2013),[172] New Zealand (1994) and Vanuatu (2013).[173]

Constitutional prohibition of discrimination based on sexual orientation (14 States) 7% of UN States

Africa (1)

South Africa (1994 and 1997).[174]

164 See: Article 7 of the Law on Equal (nr. 121). Text of the law available at: http://lawsmd.blogspot.nl/2012/10/law-on-equal.html

165 See: Articles 2, 18 and 19 of the Law on Prohibition of Discrimination. Text of the law is available at: www.legislationline.org/topics/country/57/topic/84

166 See: Art. 141 of the Penal Code, original text is available at: www.uradni-list.si/1/objava.jsp?urlid=199463&stevilka=2167; English text of this Article at www.wipo.int/wipolex/en/text.jsp?file_id=180880

167 Since 2000, Switzerland used the words 'mode de vie' to cover sexual orientation.

168 See November 2015 law at: http://zakon3.rada.gov.ua/laws/show/785-19/paran2#n2

169 Bailiwick of Guernsey (20§05), Gibraltar (2006), Isle of Man (2007). For Gibraltar, see: www.gibraltarlaws.gov.gi/articles/2006-37o.pdf

170 At the level of the Commonwealth of Australia, various sections of the Workplace Relations Act 1996 prohibits discrimination based on 'sexual preference', available at: www.ajml.com.au/downloads/resource-centre/laws/Workplace%20Relations%20Act%201996/WorkplaceRelations1996Vol3_WD02.pdf. Capital Territory (1992), New South Wales (1983), Northern Territory (1993), Queensland (1992), South Australia (1986), Tasmania (1999), Victoria (1996), Western Australia (2002).

171 Section 6(2) of the Employment Relations Promulgation 2007 provides: "No person shall discriminate against any worker or prospective worker on the grounds of (...) sexual orientation, (...) marital status, (...) state of health including real or perceived HIV status, (...) in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment relationship." The Promulgation entered into force on 1 October 2007. Text of the law is available at: www.paclii.org/fj/promu/promu_dec/erp2007381

172 Both sexual orientation and perceived or actual HIV status were added as protected grounds to employment laws in Samoa in 2013 through enactment of the Labour & Employment Relations Act 2013. The text of the law is at: www.parliament.gov.ws/new/wp-content/uploads//01.Acts/Acts%202013/Labour_and_Employment_Relations_Act_2013_-_Eng.pdf

173 The Teaching Service Act 2013, Sec. 18(2)(f) states, "... ensure that the recruitment, promotion, professional development, transfer and all other aspects of the management of its employees is carried out without discrimination on the basis of ... sexual preference...", at: http://moet.gov.vu/docs/acts/Teaching%20Service%20Act_No.%2038%20of%202013.pdf

174 Prohibition of sexual orientation discrimination was included on the interim Constitution that came into force on 27 April 1994 (Article 8), text of the law available at: www.constitutionalcourt.org.za/site/constitution/english-web/interim/. It is also included in Article 9 of the 1997 Constitution, at: www.constitutionalcourt.org.za/site/theconstitution/thetext.htm

Asia (2)

Nepal (2015)[175] and Thailand (2007).[176]

Americas (4)

Bolivia (2009),[177] Canada (1995),[178] Ecuador (1998),[179] some parts of Argentina,[180] some parts of Brazil,[181] *British Virgin Islands* (2007), associate of the United Kingdom[182] and Mexico (2011).[183]

Europe (6)

Finland (2014), *Kosovo* (2008), Malta (2014), Portugal (2004), Slovenia (2009), Sweden (2003), Switzerland (2000) and some parts of Germany.[184]

Oceania (1)

Fiji (2013).

175 Nepal's new Constitution is overtly inclusive of sexual and gender minorities. It came into force on 20 September 2015, see: www.constitutionnet.org/files/draft_constitution_of_nepal_2015_idea_tranlation_0.pdf

176 Although Article 30 does not spell out the words 'sexual orientation and gender identity, its *travaux preparatoire*, or "intentions" document, does. According to the International Labour Organisation: "[t]he Intentions of the Constitution of the Kingdom of Thailand (2007) [...] that provides clarifications and guidelines for applications to specific articles in the Constitution. The "intention" for Section 30 of the Constitution clarifies the definition of the ground "sex" to include "gender," "sexual identity," and "sexual diversity" as agreed upon by the Constitution Drafting Committee following the negotiation by LGBT rights advocates. This was a compromise as the Constitution Drafting Committee could not agree unanimously to include the term "sexual diversity" as another ground for prohibited discrimination in Section 30", see: http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_356950.pdf; The November 2012 National Social Welfare Promotion Commission (NSWPC) Regulation issued under the 2007 amendment of the Social Welfare Promotion Act B.E. 2546 (2003)43 identifies "persons of diverse sexualities" among 13 target population groups deemed "facing difficulties" (i.e., disadvantaged or facing discrimination) and requiring special assistance to access social services, see: Busakorn Suriyasarn, *Gender identity and sexual orientation in Thailand* ILO Country Office for Thailand, Cambodia and Lao People's Democratic Republic, Bangkok, 2014, at 22, see: http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_356950.pdf

177 See: Article 14 of the *Constituición Política del Estado*, of 7 February 2009. Text of the law is available at: http://bolivia.infoleyes.com/shownorm.php?id=469

178 The judgment in *Egan v Canada* read sexual orientation into Canada's Charter of Rights and Freedoms, see commentary at: http://ualawccsprod.srv.ualberta.ca/ccs/index.php/constitutional-issues/the-charter/democratic-rights-sections-3-5/669-egan-v-canada-1995-equality-rights-and-same-sex-spousal-benefits

179 See: Article 23(3) of the 1998 Constitution, available at: http://pdba.georgetown.edu/constitutions/Ecuador/ecuador98.html. A new Constitution was adopted by referendum in 2008, which also protects people from discrimination based on gender identity, available at: www.asambleanacional.gov.ec/documentos/Constitucion-2008.pdf

180 Art. 11 of the Constitution of the Autonomous City of Buenos Aires (1996), see: www.legislatura.gov.ar/assets/documentos/constituciones/constitucion-ciudad.pdf?iframe=true&width=99%&height=100%.

181 Alagoas (2001), Federal District (1993), Mato Grosso (1989), Pará (2003), Santa Catarina (2002), Sergipe (1989).

182 Article 26 of the Virgin Islands Constitution Order 2007. Text of the law is available at: www.legislation.gov.uk/uksi/2007/1678/contents/made

183 Article 1 prohibits discrimination based on "sexual preferences". Text of the law is available at: http://info4.juridicas.unam.mx/ijure/tcfed/9.htm?s

184 Berlin (1995), Brandenburg (1992), Thuringia (1993).

Other non-discrimination provisions specifying sexual orientation (39 States)
20% of UN States

Africa (1)

Mauritius (2008).[185]

Asia (2)

Mongolia (2012)[186] and Philippines (2012).[187]

Americas (2)

Costa Rica (2014)[188] and United States[189]

Europe[190] (32)

Albania, Andorra, Austria (Vienna only), Belgium, Bosnia & Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Finland, France, Georgia, Germany, Hungary, Iceland, Ireland, *Kosovo,* Lithuania, Luxembourg, FYR Macedonia, Malta, Monaco, Montenegro, Netherlands, Norway, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

Oceania (1)

Australia (2013)[191] and New Zealand (1993).[192]

Hate crimes based on sexual orientation considered an aggravating circumstance (40 States) 21% of UN States

Asia (1)

East Timor (2009).[193]

185 Equal Opportunities Act, at: www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_126781.pdf

186 Law on Prevention of Human Immunodeficiency Virus Infection and Acquired Immune Deficiency Syndrome, 2012.

187 In May 2012, the Department of Education (DepEd) issued DepEd Order No. 40 (The DepEd Child Protection Policy), which seeks to guarantee the protection of children in schools from any form of violence, abuse or exploitation regardless of SOGI, at Section 2(J), see: www.pap.org.ph/includes/view/default/uploads/dep_ed.pdf

188 Social security benefits extended to same-sex couples, see: www.ticotimes.net/2014/05/23/in-landmark-vote-costa-rica-social-security-system-to-guarantee-same-sex-couples-same-rights-as-other-couples

189 Other than sodomy and marriage laws, there are no federal laws that prohibit discrimination based on sexual orientation (most often inclusive of gender identity). However, at the individual state level, there are numerous laws and administrative codes inclusive of these statuses, for example, see the Movement Advancement Project's 'Non-Discrimination Laws', at: www.lgbtmap.org/equality-maps/non_discrimination_laws

190 This European listing refers primarily to non-discrimination in the provision of goods and services, but in some cases to housing, access to health care and public administration. For more detail on these laws see ILGA-Europe's *Rainbow Europe 2015* and 2016, at: http://www.ilga-europe.org/resources/rainbow-europe/2015

191 The Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act, 2013 provides for overarching non-discrimination provisions, see Australian Human Rights Commission Information Sheet with links to the text of the law, at: https://www.humanrights.gov.au/sites/default/files/Information%20sheet%20on%20new%20protections%20in%20the%20Sex%20Discrimination%20Act%20-%20FINAL.pdf

192 The Human Rights Act (1993) provides for an over-arching ban on discrimination based on sexual orientation, see: http://www.legislation.govt.nz/act/public/1993/0082/latest/DLM304475.html

193 See: Article 52.2(e) of the Penal Code, available at: www.wipo.int/wipolex/en/text.jsp?file_id=243617

Americas (11)

Argentina (2012),[194] Bolivia (2011),[195] Canada (1996), Chile (2012),[196] Colombia (2011),[197] Ecuador (2009),[198] Honduras (2013),[199] Nicaragua (2008), Uruguay (2003),[200] some parts of Mexico[201] and the United States (2009).[202]

Europe (27)

Albania (2013),[203] Andorra (2005),[204] Belgium (2003), Bosnia and Herzegovina (most),[205] Croatia (2006), Denmark (2004),

194 Applies only to homicide, see: Criminal Code, Section 80(4), as amended by Art. 1, Law No. 26.791, Official Gazette 14 December 2012. Text available at: http://www.infoleg.gov.ar/infolegInternet/anexos/15000-19999/16546/texact.htm#15

195 See: Articles 40 *bis* and 281 *ter* of the Penal Code (*Título VIII del Libro Segundo del Código Penal*), as amended by Articles 21 and 23 of the *Ley Contra el Racism y Toda Forma de Discriminación* of 2011. Original text is available at: www.noracismo.gob.bo/index.php/leyes-y-normativas/122-ley-n-045-contra-el-racismo-y-toda-forma-de-discriminacion

196 See: Article 12 (21) of the Código Penal of Chile, as amended by Article 17 of Ley Nº 20.609, which establishes measures against discrimination. Original text of the latter law: www.colegioabogados.cl/cgi-bin/procesa.pl?plantilla=/archivo.html&bri=colegioabogados&tab=art_1&campo=c_archivo&id=1191

197 See: Law 1482 of 30 November 2011, which also covers incitement to hatred based on sexual orientation. Original text is available at: www.vicepresidencia.gov.co/Programas/Documents/121431-LEY-ANTIDISCRIMINACION.pdf

198 See: Articles 6, 7, 8 and 21 of the section *Reformas al Código Penal* of the *Ley Reformatoria Al Codigo de Procedimiento Penal y al Codigo Penal*. Original text is available at: www.hsph.harvard.edu/population/.../ecuador.sexdiscrim.09.doc.www.carlosparma.com.ar/index.php?option=com_content&view=article&id=347:ley-reformatoria-al-codigo-penal-codigo-de-procedimiento-penal-codigo-de-la-ninez-y-adolescencia-y-codigo-de-ejecucion-de-penas-y-rehabilitacion-social&catid=41:parte-especial&Itemid=27

199 On 21 February 2013, the Congress approved an amendment to the Penal Code that prohibits hate crimes based on sexual orientation and gender identity. Text of the decision is available at: www.insurrectasypunto.org/index.php?option=com_content&view=article&id=6799:lgbti-logra-reforma-al-codigo-penal-en-honduras&catid=3:notas&Itemid=3. However, homophobia in Honduras has risen to extraordinary levels, according to Xindex in April 2016, see: https://www.indexoncensorship.org/2016/04/magazine-honduras-rainbow-warriors-the-dangers-of-being-an-lgbt-activist/

200 See: Article 149 *ter* of Law 17.677 of 29 July 2003, Solicitation to Hate, Contempt or Violence or Commission of These Acts Against Certain Persons. Original text is available at: www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=17677&Anchor=.www.gparlamentario.org/spip/IMG/pdf/Ley_17677_de_29-7-2003_Actos_Violentos_fundados_en_Identidad_Sexua_-_Uruguay.pdf

201 Coahila (2005) and the Federal District (2009). See: Article 350 of Coahila's Penal Code, available at: http://docs.mexico.justia.com.s3.amazonaws.com/estatales/coahuila/codigo-penal-de-coahuila.pdf, and Article 149 *bis* of the Federal District, available at:. http://info4.juridicas.unam.mx/ijure/tcfed/8.htm?s

202 Also applied at state level in Arizona (1995), California (1988), Colorado (2005), Connecticut (1990), Delaware (1997), Florida (1991), Hawaii (2001), Illinois (1991), Iowa (1990), Kansas (2002), Kentucky (1998), Louisiana (1997), Maine (1995), Maryland (2005), Massachusetts (1996), Minnesota (1989), Missouri (1999), Nebraska (1997), Nevada (1989), New Hampshire (1991), New Jersey (1990), New Mexico (2003), New York (2000), Oregon (1990), Rhode Island (1998), Tennessee: (2000), Texas (2001), Vermont (1990), Washington (1993), Wisconsin (1988) and District of Columbia (1990), as well as Puerto Rico (2005).

203 Albania's parliament amended on 4 May 2013 Section 50/j of its Criminal Code to strictly punish a crime "when the offense is committed due to reasons related to gender, race, colour, ethnicity, language, gender identity, sexual orientation, political opinions, religious or philosophical beliefs, health status, genetic predisposition, or disability". Text of the law is available at: http://legislationline.org/documents/section/criminal-codes

204 Criminal Code, 2005, "Criminal Code of Andorra: Article 30: Aggravating circumstances
The following are considered aggravating circumstances of the crime: 6. when committed the crime on the grounds of racism, xenophobia or related ideology, religion, nationality, ethnicity, sex, sexual orientation, illness or the physical or mental disability of the victim".

205 Republika Srpska Criminal Code RS last amended 2013, Article 147; and Criminal Code of the Brcko District of Bosnia and Herzegovina (Brcko District Official Gazette nos.10/03, 45/04 and 6/05), Article 2, texts at: www.legislationline.org/topics/country/40/subtopic/79

Finland (2011),[206] France (2003),[207] Georgia (2012),[208] Greece (2013),[209] Hungary (2014),[210] Iceland (1940, amended 2004),[211] *Kosovo (2013),*[212] Lithuania (2009),[213] Luxembourg (1997),[214] Malta (2012),[215] Montenegro (2010), Netherlands (2003),[216] Norway (1994),[217] Portugal (2007), Romania (2006), San Marino (2008),[218] Serbia (2012),[219] Slovakia (2013),[220] Slovenia (2013),[221] Spain (1996), Sweden (2003) and the United Kingdom (2004-2010).[222]

Oceania (1)

New Zealand (2002).

---

206 See: Finnish Crime Code (chapter 6, section 5) at: www.finlex.fi/en/laki/kaannokset/1889/en18890039.pdf

207 The law applies to the following overseas departments and territories upon adoption: French Guiana, French Polynesia, Guadeloupe, Martinique, Mayotte, New Caledonia, Réunion, St Barthélemy, St Martin, St Pierre & Miquelon and Wallis & Futuna.

208 See: Article 1 of 27 March 2012, Legislative Amendment. Original text is available at: Article 53(3) amendment of March 2012 that includes sexual orientation in the scope of non-discrimination protections, see: https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=1637963; see: also http://lgbt.ge/?p=4679 and www.legislationline.org/documents/action/popup/id/15732. In January 2015, the director of the LGBT organisation Identoba received death threats following his criticism of a Christmas speech by the Patriarch of Georgia, see: http://identoba.com/2015/01/08/identoba-under-attack/

209 According to Article 66 of the Act of Addictive Substances and Other Provisions, the second paragraph of section D, paragraph 3 of Article 79 of the Criminal Code should include "sexual orientation" as a ground of hatred. Original text is available at: www.ilga-europe.org/media_library/ilga_europe/guide_to_europe/country_by_country/files_for_legal_summary/greece/hatecrime_legislation_on_sogi_greece. The Act was passed on 12 March 2013, and entered into force upon publication.

210 Hungarian Criminal Law does not explicitly make hate crime based on sexual orientation an aggravating circumstance, but the Regional Court of Appeal of Debrecen found homophobic murder an aggravating circumstance in its decision. See: http://debreceniitelotabla.birosag.hu/sajtokozlemeny/20140210/aljas-indokbol-kulonos-kegyetlenseggel-olt-elefogytiglant-kapott; see: also, http://en.hatter.hu/news/homophobic-murderer-gets-life-imprisonment-in-hungary. http://en.hatter.hu/news/homophobic-murderer-gets-life-imprisonment-in-hungary. In February 2016, the Háttér Society (LGBTQI organisation in Hungary) reported that two individuals were convicted for a homophobic hate crime (attack on two Brazilian students perceived to be gay), see: http://en.hatter.hu/news/gay-brazilian-students-assaulted-in-budapest-court-finds-perpetrators-guilty-of-hate-crime

211 General Penal Code of Iceland No. 19, February 12, 1940 (as of 1 March 2004), Article 233a, see: www.legislationline.org/topics/country/24/subtopic/79

212 Criminal Code of Kosovo (promulgated 13 July 2012, into force on 1 January 2013), Article 74 (para. 2.12) and Article 333 (para. 4).

213 See: the Excerpts from The Criminal Code of the Republic of Lithuania of 26 September 2000 No VIII-1968 (as last amended on 9 July 2009 – No XI-330), online at: www.legislationline.org/topics/country/17/subtopic/79

214 See Penal Code: http://www.legilux.public.lu/leg/textescoordonnes/codes/code_penal/codepenal.pdf

215 See: Articles 83B, 222A, 215D and 325A of the Criminal Code of Malta. Text of the law available at: www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8574&l=1. The Criminal Code was amended by ACT No. VIII of 2012, at: www.justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=23426&l=1

216 This concerns an instruction on the basis of Article 130(4) of the Wet Rechterlijke Organisatie [Act on the Judicial System]. The text of the current (2007) version of the instruction, original text is available at: www.om.nl/organisatie/beleidsregels/overzicht-0/index/@86289/aanwijzing/

217 Criminal Code of the Kingdom of Norway (Act of 22 May 1902 No. 10 as subsequently amended, most recently by Act of 1 July 1994 No. 50), Articles 232 and 292.

218 Law no. 66 on *Disposizioni in materia di discriminazione razziale, etnica, religiosa e sessuale* of 28 April 2008, available at: www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_128030.pdf

219 Criminal Code ("Official Gazette of the Republic of Serbia", nos. 85/2005, 88/2005 - corrigendum, 107/2005 - corrig., 72/2009, 111/2009 and 121/2012), Article 54a.

220 Criminal Code, Act No. 300/2005, Effective 1 January 2006. Last amendments added sexual orientation (in May 2013, in force 31 July 2013), at Article 140(f), see: www.legislationline.org/topics/country/4/subtopic/79

221 Criminal Code of Slovenia published in official gazette: Uradni list RS, št. 55/2008 (OJ RS, No. 55/2008), Article 297, see: www.legislationline.org/topics/country/3/subtopic/79

222 Such laws have been adopted in England and Wales (2005), Northern Ireland (2004) and Scotland (effective 2010).

Incitement to hatred based on sexual orientation prohibited (36 States)

19% of UN States

Africa (1)

South Africa (2000).

Americas (6)

Bolivia (2011),[223] Canada (1996), Colombia (2011), Ecuador (2009), some parts of Mexico[224] and Uruguay (2003).[225]

Europe (28)

Albania (2013),[226] Austria (2011),[227] Belgium (2003), Croatia (2003), Cyprus (2011)[228] Denmark (1987),[229] Estonia (2006), Finland (2011),[230] France (2005),[231] Greece (2014),[232] Hungary (2013),[233] Iceland (1996), Ireland (1989), Lithuania (2003), Luxembourg (1997), Malta (2012),[234] Monaco (2005),[235] Montenegro (2010),[236] Netherlands (1992), Norway (1981), Portugal (2007), San Marino (2008), Serbia (2009), Slovenia (2008),[237] Spain (1996), Sweden (2003), Switzerland (2015) and the United Kingdom (2004-10).

223 See: Articles 28 *quater*, 281 *septieser* and 281 *octies* of the Penal Code (*Título VIII del Libro Segundo del Código Penal*), as amended by Article 23 of the *Ley Contra el Racism y Toda Forma de Discriminación* of 2011. Original text is available at: www.rree.gob.bo/webmre/Documentos//d385.pdf

224 Coahuila (2005) and the Federal District (2009).

225 See: Article 149 *bis* of Law 17.677 of 29 July 2003, Solicitation to Hate, Contempt or Violence or Commission of These Acts Against Certain Persons. Original text is available at: www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=17677&Anchor=.www.gparlamentario.org/spip/IMG/pdf/Ley_17677_de_29-7-2003_Actos_Violentos_fundados_en_Identidad_Sexua_-_Uruguay.pdf

226 Albania's parliament amended its Criminal Code on 4 May 2013. Article 119/a: "Providing to the public or distribution of deliberate materials containing racist, homophobic or xenophobic content, through the communication and information technology, is punishable by a fine or imprisonment up to two years". Text of the law is available at: http://legislationline.org/documents/section/criminal-codes

227 Criminal Code of Austria (1974, amended 2011); Incitement to violence § 283 StGB (Penal Code) – incitement to hatred and violence (FLG 1974/60, last amended by FLG I 2011/103), Article 1.

228 See: Combating of Certain Forms and Expression of Racism and Xenophobia by means of Criminal Law, Law of 2011 (Law 134(I)/2011).

229 The law is applicable to Faeroe Islands (2007) and to Greenland (2010).

230 Chapter 11, Section 10 of the Penal Code makes "incitement against certain group" an offence. In June 2011, sexual orientation was added to the list of protected characteristics. Text of the law is available at: www.finlex.fi/en/laki/kaannokset/1889/en18890039.pdf

231 The law applies to the following overseas departments and territories upon adoption: French Guiana, French Polynesia, Guadeloupe, Martinique, Mayotte, New Caledonia, Réunion, St Barthélemy, St Martin, St Pierre & Miquelon and Wallis & Futuna.

232 See: Combating of Certain Forms and Expression of Racism and Xenophobia by means of Criminal Law, Law of 2011 (Law 134(I)/2011).

233 Criminal Code of Hungary Excerpts from Act IV of 1978 on the Criminal Code (as amended 2013),
Section 216: Violence Against a Member of the Community, see: www.legislationline.org/topics/country/25/subtopic/79

234 See: Articles 82A and 82C of the Criminal Code of Malta, text of the law is available at: www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8574&l=1. The Criminal Code was amended by ACT No. VIII of 2012 at: www.justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=23426&l=1

235 See: Articles 16, 24, 25, 44 of the *Loi n° 1.299 du 15 juillet 2005 sur la liberté d'expression publique*, available at: www.legimonaco.mc/305/legismclois.nsf/db3b0488a44ebcf9c12574c7002a8e84/29ad7325e3a152a4c125773f003d2e4e!OpenDocument.www.legimonaco.mc/305/legismclois.nsf/db3b0488a44ebcf9c12574c7002a8e84/29ad7325e3a152a4c125773f003d2e4e!OpenDocument

236 Criminal Code of Montenegro ("Official Gazette of the Republic of Montenegro " no. 70/2003, and Correction, no. 13/2004), Article 370.

237 See: Article 297(1) of the Penal Code at: www.policija.si/eng/images/stories/Legislation/pdf/CriminalCode2009.pdf

Oceania (1)

Some parts of Australia.[238]

Marriage open for same-sex couples (22 States) 11% of UN States

Africa[239] (1)

South Africa (2006).

Americas (6)

Argentina (2010),[240] Brazil (2011/2013), [241] Colombia (2009),[242] some parts of Mexico,[243] Uruguay (2013).[244] Canada (2005) and the United States.[245]

238 Australian Capital Territory (2004), New South Wales (1993), Queensland (2003), Tasmania (1999).

239 It is notable that some States have legal provisions that legislatively or constitutionally prohibit same-sex marriage in Africa including Angola (Family Code), Burkino Faso (Constitution), Burundi (Constitution), Cape Verde (Civil Code), DRC (Constitution), Ethiopia (Family Code), Guinea Bisseau (Civil Code), Malawi (Marriage, Divorce and Family Relations Act, 2015), Mozambique (Family Law), Nigeria (Same Sex Marriage (Prohibition) Act, 2013) and Uganda (Constitution).

240 Text of the law is available at: www.sigla.org.ar/index.php?option=com_content&view=article&catid=81:legislacion-y-jurisprudencia&id=438:ley-matrimonio-gay&Itemid=101

241 On 5 May 2011, the Supreme Court in Brazil ruled in favour of recognising same-sex couples living in 'stable unions' as family units and therefore entitled to the same rights of heterosexual couples living in the same kind of unions. The original text of the decision is available at: http://direitohomoafetivo.com.br/anexos/juris/2011.05.05_-_stf_-_adi_4.277.pdf. In another decision of 25 October 2011, the Court indicated that same-sex 'stable unions' should be converted to marriage and recommended the Congress to do so (however to date [April 2016] no legislative action has been taken in Congress). The text of this decision is available at: www.gontijo-familia.adv.br/direito-de-familia-casamento-civil-entre-pessoas-do-mesmo-sexo/). Nevertheless, on 14 May 2013, the National Council of Justice passed Resolution No.175, which states that notaries from all over the country can no longer refuse to register same-sex marriage. It appears that this edict has had effect throughout the country. The text of the resolution is available at: www.cnj.jus.br/images/imprensa/resolução_n_175.pdf

242 On 7 April 2016, Colombia's Constitutional Court ruled in favour of extending full marriage rights to same-sex couples 29 January 2009, see: http://www.semana.com/nacion/articulo/corte-constitucional-permite-matrimonio-igualitario/464772. In 2009, the Constitutional Court ruled in favour of giving cohabitating same-sex couples the same rights offered to unmarried heterosexual couples see: text of the law at: www.corteconstitucional.gov.co/relatoria/2009/c-029-09.htm. In a further decision of 26 July 2011, the Court recognised same-sex couples as family entities and ordered the Congress to legislate on the matter of same-sex marriage before the date of 20 June 2013. In case they failed to do so, same-sex couples would be granted marriage rights automatically (see: the decision at: www.corteconstitucional.gov.co/comunicados/No.%2030%20comunicado%2026%20de%20julio%20de%202011.php. As the government did fail to legislate and have not yet delivered, the first couple registered their civil marriage in Bogota on 24 July 2013, see: www.matrimonioigualitario.org/2013/07/por-primera-vez-jueza-de-colombia_3133.html

243 In Mexico, same-sex marriage is available in the Federal District (Mexico City) and the states of Coahuila and Quintana Roo -- and, for some couples who filed legal cases, in the states of Aguascalientes, Baja California, Baja California Sur, Campeche, Chiapas, Chihuahua, Colima, Guanajuato, Jalisco, México, Michoacán, Morelos, Nayarit, Nuevo León, Oaxaca, Querétaro, San Luis Potosí, Sinaloa, Sonora, Tabasco, Tamaulipas, Veracruz and Yucatán. Mexico has 31 states. This list contains 25 of them. An up-to-date, complex and evolving picture on the legal status of marriage equality in Mexico is described by Rex Wokner at: http://wockner.blogspot.ie

244 The Marriage Equality Bill was signed by the President on 3 May 2013, and entered into force on 1 August 2013. Original text of the law is available at: www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=18590&Anchor=.www0.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=19075

245 Supreme Court ruling, 2015: *Obergefell v. Hodges*, No. 14-556, slip op. at 23 (U.S. June 26, 2015), at: www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf. In Puerto Rico, having delayed the outcome of a marriage case until *Obergefell* was adjudicated (see: www.washingtonblade.com/2015/04/14/federal-appeals-court-delays-puerto-rico-marriage-case/), the judge in the [ongoing] case then said the Supreme Court Ruling does not apply, see comment at: www.slate.com/blogs/outward/2016/03/09/puerto_rico_ruling_against_marriage_equality_will_be_overturned.html?wpsrc=sh_all_mob_tw_bot

Europe (13)

Belgium (2003), Denmark (2012),[246] Finland (2015, in force March 2017),[247] France (2013),[248] Iceland (2010),[249] Ireland (2015),[250] Luxembourg (2015),[251] Netherlands (2001), Norway (2009), Portugal (2010),[252] Spain (2005), Sweden (2009) and the United Kingdom (2014) (most parts).[253]

Oceania (1)

New Zealand (2013).[254]

Same-sex couples offered most rights attached to marriage, [civil partnerships, registered partnerships, civil unions, etc] (19 States) 9% of UN States

Americas (4)

Brazil (2011), Chile (2015),[255] Ecuador (2014)[256] and some parts of Mexico (2007).

246 As a part of the Danish Realm and a sub-autonomous entity, same-sex marriage came into force in Greenland on 1 April 2016, see: https://theperchybird.wordpress.com/2016/04/01/same-sex-weddings-begin-in-greenland-today/. On 29 April 2016, the Faroe Islands became the last Nordic State to legalise same-sex marriage, see: http://cphpost.dk/news/faroe-islands-says-yes-to-same-sex-marriage.html

247 The new Finnish legislation, due into force on 1 March 2017, allows for gender-neutral marriage in Finland, see: http://yle.fi/uutiset/president_signs_gender-neutral_marriage_law/7818157

248 See: Law Providing for Same-Sex Marriage, passed on 17 May 2013, effective 29 May 2013. Text of the law is available at: www.conseil-constitutionnel.fr/conseil-constitutionnel/english/case-law/decision/decision-no-2013-669-dc-of-17-may-2013.137411.html. As overseas Departments of France (which legislated for marriage equality in 2013), same-sex marriage is available in both Martinique and Guadeloupe. See: www.guadeloupe.franceantilles.fr/regions/grande-terre-sud-et-est/le-premier-mariage-gay-celebre-a-sainte-anne-226029.php; and www.rewmi.com/martinique-premier-mariage-homosexuel-celebre-deux-femmes-se-sont-dit-oui_a79551.html

249 On 11 June 2010, the Icelandic Parliament approved the law which repeals the registered partnership law and allow couples to marry regardless of gender. Text of the law is available at: www.althingi.is/altext/138/s/0836.html

250 On 22 May 2015, a Constitutional referendum (popular vote) to allow for marriage equality passed by 61%-39%. The Marriage Act 2015 was signed into law on 29 October, 2015, see: www.irishstatutebook.ie/eli/2015/act/35/enacted/en/html

251 See: http://jurist.org/paperchase/2014/06/luxembourg-legalizes-same-sex-marriage-adoption.php

252 Text of the law is available at: http://dre.pt/pdf1sdip/2010/05/10500/0185301853.pdf

253 For England and Wales, see: Marriage (Same Sex Couples) Act 2013 (in force 2014), available at: www.legislation.gov.uk/ukpga/2013/30/contents/enacted. For Scotland, see: Marriage and Civil Partnership (Scotland) Act 2014, available at: www.legislation.gov.uk/asp/2014/5/contents/enacted. The British territory of the Pitcairn Islands (population: 48 persons) introduced marriage equality in December 2015, see: http://www.theguardian.com/global/2015/jun/22/pitcairn-island-population-48-passes-law-to-allow-same-sex-marriage; on 26 April 2016 the Isle of Man's Upper House approved the Marriage and Civil Partnership (Amendment) Bill 2016, see: https://theperchybird.wordpress.com/2016/04/26/isle-of-man-approves-same-sex-marriage/

254 See: Marriage (Definition of Marriage) Amendment Act 2013, entry into force on 19 August 2013. Text of the law is available at: www.legislation.govt.nz/act/public/2013/0020/latest/DLM4505003.html?search=ts_act%40bill%40regulation%40deemedreg_Definition+of+marriage_resel_25_a&p=1

255 On 28 January 2015, the Chilean congress approved the 'Acuerdo de Unión Civil', which allows same-sex couples and unmarried heterosexual couples to enter into civil unions. The summary of the law is available at: www.gob.cl/2015/01/30/acuerdo-de-union-civil-nuevos-beneficios-para-convivientes/. The bill, which was introduced in 2011, was signed into law on 13 April 2015 and is expected to enter into force in September 2015. The legal proceedings of the law can be followed here: www.senado.cl/appsenado/templates/tramitacion/index.php?boletin_ini=7873-07 (See: 'Oficio de ley al Ejecutivo', dated 28/01/15 for the final text of the law).

256 On 22 August 2014, President Rafael Correa signed an order requiring the Civil Registry to allow same-sex *de facto* couples to register their unions. The law took effect on September 15 in Quito, Guayaquil and Cuenca only, though it has been announced it will be gradually implemented all over the country, see: www.andes.info.ec/es/noticias/15-septiembre-reconoceran-uniones-hecho-estado-civil.html. On 21 April 2015, the National Assembly approved the 'Ley reformatoria del Código Civil', which amends the Civil Code finally allowing same-sex couples to register their *de facto* unions, without having to prove they had been in a relationship for at least two years, see: http://ilga-lac.org/ecuador-reconoce-la-union-de-hecho-homosexual-como-un-estado-civil/

Europe (14)

Andorra (2014), Austria (2010), Croatia (2014),[257] Cyprus (2015),[258] Estonia (2014 in force January 2016),[259] Germany (2001), Greece (2015), Hungary (2009), Italy (2016), Liechtenstein (2011),[260] Malta (2014) ,[261] Netherlands (1997), Switzerland (2007) and parts of United Kingdom (2005).

Oceania (1)

Some parts of Australia.[262]

Some recognition of same-sex relationships in law (6 States) 3% of UN States

Asia[263] (1)

Israel (1994)

Americas (1)

Costa Rica (2013).[264]

Europe (2)

Czech Republic (2006) and Slovenia (2006).[265]

Oceania (1)

Some parts of Australia.[266]

257 See, reportage on the Life Partnership Act of July 2014, at; http://wwwa.ansa.it/ansamed/en/news/nations/croatia/2014/07/15/croatia- passes-law-on-same-sex-unions_64fe4604-9706-44fb-a8ce- d48129ba01e1.html

258 Civil partnership came into force on 9 December 2015 in Cyprus. See text of law at: www.mof.gov.cy/mof/gpo/gpo.nsf/All/13619D477EE08945C2257F16002C668D/$file/4543%209%2012%202015%20PARARTIMA%201o%20MEROS%20I.pdf

259 See text of the new Estonian law, entered into force on 1 January 2016, at: https://www.riigiteataja.ee/en/eli/527112014001/consolide

260 See: Registered Partnership Bill (Lebenspartnerschaftsgesetz), passed on 16 March 2011, and published on 21 March 2011. Original text of the law is available at: www.llv.li/pdf-llv-rk_vernehml._lebenspartnerschaftsgesetz.pdf

261 See: http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=26024&l=1

262 Australian Capital Territory (2008), New South Wales (2010), Tasmania (2004) and Victoria (2008). See: the Family Law Amendment Act 2008, available at www.comlaw.gov.au/Details/C2008A00115

263 See Saurav Jung Thapa, 'Marriage Equality: Is Asia the Next Frontier?', Human Rights Campaign, at: www.hrc.org/blog/marriage-equality-is-asia-the-next-frontier

264 On 4 July 2013, the President signed into law the *'Ley de la Persona Jovenen'*, which recognises the rights of unions without "any kind of discrimination against the human dignity", as stated in Article 2, thus allowing same-sex *de facto* unions to claim for their rights in court. Text of the law is available at: www.gaceta.go.cr/pub/2013/07/08/COMP_08_07_2013.pdf

265 In December 2015, a Constitutional referendum on same-sex marriage failed in Slovenia – marriage can only be recognised as being between a man and a woman.

266 Norfolk Island (2006), Northern Territory (2004), Queensland (several acts from 1999 and onwards), South Australia (2003, 2007), Western Australia (2002).

Joint adoption by same-sex couples (26 States) 14% of UN States

Africa (1)

South Africa (2002).[267]

Asia (1)

Israel (2008).

Americas (6)

Argentina (2010), Brazil (2010),[268] Colombia (2015),[269] some parts of Mexico (2010),[270] Uruguay (2009).[271] Canada[272] and some parts of the United States.[273]

Europe (16)

Andorra (2014),[274] Belgium (2006),[275] Denmark (2010),[276] France (2013),[277] Finland (2015/2017),[278] Iceland (2006),[279] Ireland

267 *Du Toit and Another v Minister of Welfare and Population Development and Others* (CCT40/01) [2002] ZACC 20; 2002 (10) BCLR 1006; 2003 (2) SA 198 (CC) (10 September 2002). Text of the law is available at: www.saflii.org/za/cases/ZACC/2002/20.pdf

268 The Superior Court of Justice of Brazil 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. See: www.athosgls.com.br/noticias_visualiza.php?contcod=29208

269 See text of the Constitutional Court of Colombia's decision "DECISION SU 617 DE 2014 Right of homosexual couples to adopt a child when he is the son of one of the partners.

270 The Federal District (2010), and Coahuila (2014).

271 Text of the law is available at: www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=18590&Anchor=

272 Alberta, British Columbia (1996), Manitoba (2002), New Brunswick (2008), Newfoundland & Labrador (2003), Northwest Territories (2002), Nova Scotia (2001), Nunavut, Ontario (2000), Prince Edward Island (2009), Quebec (2002), Saskatchewan (2001).

273 Mississippi is the only US state that does not permit LGBT parents to petition for joint adoption: www.lgbtmap.org/equality-maps/foster_and_adoption_laws. However, in a case adjudicated in March 2016, *EL v VL* 577 U. S. (2016), the US Supreme Court's ruling refers to the U.S. Constitution's Full Faith and Credit Clause, which requires states to abide by rulings and regulations established in other states, and thereby to recognise same-sex adoption nationwide, see text of ruling at: www.supremecourt.gov/opinions/15pdf/15-648_d18e.pdf; see case summary here: www.nclrights.org/cases-and-policy/cases-and-advocacy/case-e-l-v-v-l/

274 Text of law, at: https://www.bopa.ad/bopa/026071/Pagines/lq26071006.aspx

275 On 1 January 2015, a new law came into force in Belgium which allows the non-biological mother in a lesbian couple to be automatically recognised as the legal mother following the birth of their child, see: www.marriagequality.ie/news/2014/12/06/positive-developments-for-lesbian-couples-in-belgium/

276 Text of law, at: https://www.retsinformation.dk/Forms/R0710.aspx?id=131779

277 Text of law, at: https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000027414540&dateTexte=&categorieLien=id

278 The new Finnish legislation, due into force on 1 March 2017, allows for gender-neutral marriage and joint adoption in Finland, see: http://yle.fi/uutiset/president_signs_gender-neutral_marriage_law/7818157

279 Text of law, at: http://www.althingi.is/altext/132/s/1445.html

(2015),[280] Luxembourg (2014),[281] Malta (2014),[282] Netherlands (2001), Norway (2009), Portugal (2016),[283] Slovenia (2011), Spain (2005), Sweden (2003) and the United Kingdom (2005-2013).[284]

Oceania (2)

Australia (most)[285] and New Zealand (2013).[286]

Second parent adoption (23 States) 9% of UN States

Africa (1)

South Africa (2006)

Americas (4)

Argentina (2010), Canada (205), United States (2015)[287] and Uruguay.

Europe (17)

Andorra (2014), Austria (2016), Belgium (2006), Denmark (2008), Estonia (2014), Finland (2009), France (2013), Germany (2005), Iceland (2006),[288] part of Italy (2016),[289] Luxembourg (2014), Netherlands (2001), Norway (2009), Slovenia (2011), Spain (2005), Sweden (2003) and United Kingdom (2005-2013).

Oceania (1)

New Zealand (2015)

280 Some weeks prior to the 22 May Constitutional referendum on marriage equality in Ireland, the Children and Family Relationships Act 2015, allowing for joint adoption by same-sex couples, was signed into law in April 2015, text of Act at: www.irishstatutebook.ie/eli/2015/act/9/enacted/en/html

281 Text of law, at: http://www.legilux.public.lu/leg/a/archives/2014/0125/a125.pdf

282 Text of law, at: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=26024&l=1

283 Text of law, at: http://app.parlamento.pt/webutils/docs/doc.pdf?path=6148523063446f764c3246795a5868774d546f334e7a67774c336470626e526c654852766331396863484a76646d466b62334d764d6a41784e69394d587a4a664d6a41784e6935775a47593d&fich=L_2_2016.pdf&Inline=true

284 Such a law entered into force in England and Wales in 2005, in Scotland on 28 September 2009, and in Northern Ireland in 2013. Among British Associates, Gibraltar (2014), Isle of Man (2011) and Jersey (2012) also allow joint adoption.

285 Only the Australian states of Queensland and South Australia do not have adoption equality.

286 See: Marriage (Definition of Marriage) Amendment Act 2013, which consequentially amended the Adoption Act (1995 No. 93). Text of the law is available at: www.legislation.govt.nz/act/public/2013/0020/latest/DLM4505003.html?search=ts_act%40bill%40regulation%40deemedreg_Definition+of+marriage_resel_25_a&p=1

287 Since the marriage law changed in the US in 2015, 2nd parent adoption for married same-sex couples are available throughout the country. For second parents who are not married petition can be made in 15 States (Montana, Idaho, Oregon, Colorado, California, Oklahoma, Illinois, Indiana, Florida, Pennsylvania, Vermont, Maine, New York, Massachusetts, Connecticut, New Jersey, and the District of Columbia), see: www.lgbtmap.org/equality-maps/foster_and_adoption_laws

288 Text of law, at: www.althingi.is/altext/132/s/1445.html

289 The Court of Appeal of Naples ordered full recognition of second-parent adoptions on 5 April 2016, see: http://nelfa.org/wp-content/uploads/2016/04/050406_NELFA_PRESS_RELEASE_NAPLES_COURT_DECISION.pdf

CRIMINALISATION

Male-identified individuals who have same-sex sexual relations with another male are criminalised, shown by this symbol	
Throughout these text where female-identified individuals are **not** criminalised by the existing penal law.	
And where illegal, this is used	
We indicate whether a National Human Rights Institution (human rights commission, ombudsman office, public defender, equality authority, etc) includes sexual orientation concerns in its work:	
Yes it does	
No it does not	
It is unclear	
There is no NRHI	
If there have been arrests, either leading to prosecution or not, in the past **three years** that our research can find:	
There have been known arrests	
There have not been known arrests	
It is possible but unknown for sure	

ALGERIA

Penal Code (Ordinance 66-156 of 8 June 1966).[291]

Art. 338 *[ABNORMAL SEXUAL ACTS]*

"A breach of decency punished by two months to two years in prison and a fine of 500 to 2000 Algerian dinar. The punishment for those convicted of "abnormal sexual acts" is six months to three years in prison and a fine of 1,000 to 10,000 Algerian dinars."

Article 333 Reiterated *[BREACH OF MODESTY - MORALITY CODE LIMITING SOGI PUBLIC EXPRESSION]*

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

In the 2014 and 1982 revisions of this gender-neutral Penal Code,[292] Article 338 outlaws "d'homosexualité", while Article 333 Reiterated public decency makes the publication of writings, images, etc, contrary to this standard punishable. This then goes beyond the scope of traditional sexual behaviour-based regulation, and is more akin to the 'promotion' of non-heterosexual identity found in Russia, Nigeria and other States. Article 338 finds root in the French colonial legal system in place prior to the adaptation of the first national penal code in 1966.[293]

In its 2nd cycle UPR in May 2012, Algeria 'noted' (functionally rejected) two recommendations (Spain and Canada) to decriminalise same-sex sexual relations, "and take measures to ensure equality and non-discrimination on all grounds" in conformity with Articles 17 and 26 (privacy and non-discrimination) of the International Covenant on Civil and Political Rights (ICCPR).[294] Algeria's 3rd cycle UPR will commence in January 2017.

GLOBAL ATTITUDES SURVEY ON LGBTI PEOPLE 2016

	STRONGLY AGREE	SOMEWHAT AGREE	NEITHER	SOMEWHAT DISAGREE	STRONGLY DISAGREE
Being gay, lesbian, bisexual, trans, or intersex should be a crime?	**30%**	**13%**	**23%**	**9%**	**26%**
Same-sex desire is a Western phenomenon	**28%**	**19%**	**21%**	**9%**	**23%**

290 In 2016, a gay Algerian man's refugee asylum claim to the UK was not accepted in part based on the lack of prosecutions or arrests in recent years, [OO (Gay Men) Algeria CG [2016] UKUT 00065 (IAC)], at www.refworld.org/pdfid/56b34af34.pdf

291 Text of the law is available at: www.wipo.int/wipolex/en/details.jsp?id=7998

292 The original text of the codes is available at: www.joradp.dz/trv/apenal.pdf

293 See: Muftah, "The Emergence of a Movement", for a good overview of the SOGI situation in Algeria at end of 2014, available at: muftah.org/gay-and-lesbian-mobilization-in-algeria/#.VPnU4inA4y4

294 See Report of the Working Group on the Universal Periodic Review; Algeria, A/HRC/21/13, 5 July 2012, at: www.upr-info.org/sites/default/files/document/algeria/session_13_-_may_2012/ahrc2113algeriae.pdf

	NO CONCERNS	SOMEWHAT UNCOMFORTABLE	VERY UNCOMFORTABLE
How would you feel if your neighbour is gay or lesbian?	**34%**	**22%**	**44%**

ANGOLA

Penal Code of 16 September 1886, as amended in 1954 (inherited from the Portuguese colonial era).[295]

Articles 70 and 71(4°) ***[ACTS AGAINST NATURE]***

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

It is notable that the African Commission on Human and Peoples' Rights Resolution 275: *Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity* was adopted at the 55th Ordinary Session of the African Commission on Human and Peoples' Rights in Luanda, Angola, 28 April - 12 May 2014.[296]

In 2013, the Angolan delegation to the UN Human Rights Committee replied to a query about societal discrimination of individuals based on their sexual orientation, saying: "The principle of equality was enshrined in the Constitution, but measuring discrimination against homosexuals in society was difficult. Cultural attitudes seemed to be changing, however: for example, the portrayal of two same-sex couples in a soap opera on Angolan television had not been condemned by the viewing public."[297]

Even though Angola rejected two recommendations related to the decriminalisation of same-sex sexual relations made by France and the Czech Republic at its first UPR in 2010,[298] there is no mention (recommendations or Interactive Dialogue) of SOGI in its 2nd UPR review in October 2014.[299] Angola's next UPR review is in April 2019.

295 Text of the law is not available online, but there is a proposal for a new Penal Code that would no longer have these provisions, available at: www.wipo.int/wipolex/en/text.jsp?file_id=244267

296 This historic Resolution for the first time provides human rights standards for African Union States regarding SOGI: *Resolution 275 - Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity*, at: www.achpr.org/sessions/55th/resolutions/275

297 Human Rights Committee, Initial Report on Angola, CCPR/C/SR.2957, 18 March 2013, at para. 24, see: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsm0BTKouDPNIMXWAuPwondHi6TXtHrlYXdc%2FL20ffpx6iXhdlTjxvFbyCRuAL7gJgKFQLiqktbrsQpe73V8a0gXpGcGB%2F9onUcwMvwM2VEbI

298 See, A/HRC/14/L.10, 18 June 2010.

299 See, Draft report of the Working Group on the Universal Periodic Review: Angola, A/HRC/WG.6/20/L.8, 3 November 2014, www.upr-info.org/sites/default/files/document/angola/session_20_-_october_2014/a_hrc_wg.6_20_l.8.pdf

BOTSWANA

Penal Code [Chapter 08:01],[300] amended by the Penal Code Amendment Act 5, 1998.[301]

Section 164. Unnatural offences ***[AGAINST ORDER OF NATURE]***

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

Section 165. Attempts to commit unnatural offences[302] ***[ATTEMPTED UNNATURAL OFFENCE]***

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

Section 167. Indecent practices between persons ***[GROSS INDECENCY]***

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

A case about the right of a SOGI-related organisation, LeGaBiBo, to register as a NGO dates back to 2012, with a decisive win in late-2014 where the High Court said not allowing it to register would be an unconstitutional violation of the applicants' right to freedom of expression, freedom of association and free assembly.[303] The State then appealed the decision on the grounds that its recognition would erode public morality, and that appeal was heard in mid-January 2016. In mid-March 2016, judgment from that appeal was successful – as discussed in the short essay on Africa in the Global Perspectives section of this report.

In both of its UPR sessions to date (December 2008, and January 2013) Botswana refused all recommendations for decriminalisation and non-discrimination based on SOGI (7 recommendations in 2008, and 8 in 2013).[304] In its response to recommendations the delegation for Botswana said that other than including sexual orientation in the amended Employment Act of 2010, "[r]egarding cultural sensitivities that have a bearing on existing legislation, the delegation confirmed Botswana's commitment to comply with its treaty obligations. In this regard, the Government was determined to undertake educational awareness campaigns with a view to bring up these issues, including sexual orientation…".[305]

300 Text of the law is available at: www.wipo.int/wipolex/en/details.jsp?id=10486

301 *See:* Scott Long, "Before the law: Criminalizing sexual conduct in colonial and post-colonial southern African societies", in *More than a name: State-Sponsored Homophobia and Its Consequences in Southern Africa* (New York: Human Rights Watch & International Gay and Lesbian Human Rights Commission, 2003), at 272-274, see: www.hrw.org/en/reports/2003/05/13/more-name-0

302 In an appeal of a 1991 case [*Gaolete v. the State* 1991 BLR 325 (HC)], the court found that: "a conviction of attempted carnal knowledge of a person against the order of nature would therefore be substituted for the substantive offence" in the situation where the "carnal knowledge" went unrealised (in this case a prisoner who attacked another but did not succeed in penetration).

303 *Rammoge and Others v Attorney General of Botswana*, High Court of Botswana, Case No. MAHGB 175-13, Judgment 14 November 2014. The judgment is available at: www.southernafricalitigationcentre.org/1/wp-content/uploads/2014/11/LEGABIBO-judgment-low-resolution.pdf

304 See, UPR-info at: www.upr-info.org/en/review/Botswana

305 See, Draft Report of the Working Group on the Universal Periodic Review: Botswana, A/HRC/WG.6/15/L.5, 25 January 2013, at para. 92: www.upr-info.org/sites/default/files/document/botswana/session_15_-_january_2013/a_hrc_wg.6_15_l.5_botswana.pdf

BURUNDI

Law No. 1/05 of 22 April 2009 concerning the revision of the Penal Code.[307]

Article 567 ***[SEXUAL RELATIONS WITH... SAME SEX]***

"Whoever has sexual relations with someone of the same sex shall be punished with imprisonment for three months to two years and a fine of fifty thousand to one hundred thousand francs or one of those penalties."[308]
(Unofficial translation)

Burundi received 11 direct recommendations in its 2nd UPR in 2015 regarding sexual orientation, the majority regarding decriminalisation, to which the delegation is recorded as saying: "With regard to discrimination against homosexuals, the delegation acknowledged that the Criminal Code of 2009 still punished homosexuality. That situation was in line with the country's customs and values, and the delegation asked for the international community's understanding while Burundian society prepared for a change in mentality. The head of the delegation did emphasise, however, that he would raise the issue with the Government." Burundi's 3rd UPR will be in October 2017.[309]

The Human Rights Committee that oversees the ICPPR, in November 2014 quite stridently stated that Burundi, "... should decriminalize homosexuality; amend the ministerial order of the Minister of Basic Education in order to forestall its discriminatory application to young homosexuals; remove any de *jure* or *de facto* obstacle to or any restriction on the establishment of associations by homosexuals; and take all necessary steps to provide effective protection for homosexuals from threats to their physical integrity and from discrimination of any kind".[310]

In December 2014, the Committee Against Torture (CAT) spoke directly to discrimination based on SOGI, referring to Article 16 of the Convention: "[t]he State party should decriminalize homosexuality and take all necessary measures to effectively protect homosexuals from threats and any form of violence [...]: and ... investigate any cases involving violations of their physical integrity".[311]

Finally, in relation to Burundi's presence at United Nations human rights mechanisms in the recent past, Burundi was examined by the Committee on Economic, Social and Cultural Rights in October 2015, which "recommends that the State party repeal all provisions that could lead to the discrimination, prosecution or punishment of individuals on the basis of their sexual orientation or gender identity and that it take all appropriate steps to ensure that lesbian, gay, bisexual and transgender individuals may exercise all the rights enshrined in the Covenant".[312]

---

306 Recommendations have been made that Independent National Commission on Human Rights in Burundi add SOGI to their monitoring mechanisms. See Moli, Rainbow Candle Light, Heartland Alliance and Vermont Law School Shadow Report to the ICCPR, September 2014 at 12: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/BDI/INT_CCPR_CSS_BDI_18263_E.pdf

307 Text of the law is available at: www.oag.bi/IMG/rtf/code_penal_burundais-2.rtf

308 Original text: *"Quiconque fait des relations sexuelles avec la personne de même sexe est puni d'une servitude pénale de trois mois à deux ans et d'une amende de cinquante mille francs à cent mille francs ou d'une de ces peines seulement"*.

309 Report of the Working Group on the Universal Periodic Review: Burundi, A/HRC/23/9, 25 March 2013, at www.upr-info.org/sites/default/files/document/burundi/session_15_-_january_2013/ahrc239e.pdf

310 Human Rights Committee , Concluding observations on the second periodic report of Burundi, CCPR/C/BDI/CO/2, 21 November 2014, at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/BDI/CO/2&Lang=En

311 Committee against Torture Concluding observations on the second periodic report of Burundi, CAT/C/BDI/CO/2, 12 December 2014, at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/242/05/PDF/G1424205.pdf?OpenElement

312 Committee on Economic, Social and Cultural Rights, Concluding observations on the initial report of Burundi, E/C.12/BDI/CO/1. 16 October 2015, at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fBDI%2fCO%2f1&Lang=en

CAMEROON

Penal Code of 1965 and 1967, as amended in 1972.[313]

Article 347bis ***[SEXUAL RELATIONS WITH... SAME SEX]***

'Est puni d'un emprisonnement de six mois à cinq ans et d'une amende de 20.000 à 200.000 francs toute personne qui a des rapports sexuels avec une personne de son sexe.'[314]
An English version of this article given by Human Rights Watch is: 'Whoever has sexual relations with a person of the same sex shall be punished with imprisonment from six months to five years and fine of from 20,000 to 200,000 francs.'[315]

The country's three leading (and only) lawyers who represent LGBT people described a certain softening of official attitudes to same-sex sexual relations in the recent period, following international pressure and national advocacy.[316] However, Cameroon remains hostile and dangerous to LGBT people, according to a year-end report from Humanity First, a Yaoundé-based organisation seeking improved health care for LGBTI Cameroonians and recognition of their human rights.[317]

Cameroon rejected all seven SOGI recommendations in its first UPR in April 2008. Other than accepting one recommendation to, "[i]nvestigate police violence that took place on persons because of their actual or perceived sexual orientation", it rejected a further 14 recommendations on non-discrimination and decriminalisation made in its 2nd UPR in January 2013, amidst a violent period in the country regarding SOGI issues.[318] The State voluntarily pledged the following: "[f]or instance, regarding the issue of homosexuality, Cameroon was committed not to aggravate current criminal penalties, to continue to apply legal provisions, guarantee a fair trial to alleged homosexuals, and continue not to apply any discriminatory measure against them".

In February 2014, , in its concerns about LBT women, the Committee on the Elimination of Discrimination against Women urged that Cameroon should "[r]aise awareness among political, traditional and religious leaders, as well as members of civil society, about the possible withdrawal of article 347*bis* of the Penal Code".[319]

313 German Bundestag, Criminal law provisions on homosexuality and their application around the world, Printed Paper 16/3597, 28 November 2006 at 8. See: www.gaylawnet.com/ezine/crime/16_3597_minor_interpellation.pdf

314 Available at: www.glapn.org/sodomylaws/world/cameroon/cameroon.htm

315 See: *Criminalizing Identities – Rights Abuses in Cameroon based on Sexual Orientation and Gender Identity* (New York: Human Rights Watch, 2010) at 10, note 9, available at: www.hrw.org/reports/2010/11/04/criminalizing-identities-0

316 Erasing 76 Crimes, 'Avocat au Cameroun: Il est temps d'abroger la loi anti-LGBTI', 5 March 2016, http://76crimesfr.com/2016/03/05/avocat-au-cameroun-il-est-temps-dabroger-la-loi-anti-lgbti/

317 Erasing 76 Crimes, '91 anti-LGBT attacks and violations: Cameroon's 2015 tally', 1 January 2016, at: http://76crimes.com/2016/01/01/91-anti-lgbt-attacks-and-violations-cameroons-2015-tally/

318 See, Carroll, A., *Acknowledging the SOGI norm: the politics of its recognition in the HRC and the politics for its recognition through the UPR*, (UPR-info, Geneva) at 60: www.upr-info.org/sites/default/files/general-document/pdf/-carroll_-_acknowledging_the_sogi_norm_2013_0.pdf

319 Concluding observations on the combined fourth and fifth periodic reports of Cameroon, CEDAW/C/CMR/CO/4-5, 28 February 2014 at para. 37(c): http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/CMR/CO/4-5&Lang=En

COMOROS

Penal Code of the Federal Islamic Republic of Comoros.[320]

Article 318: ***[UNNATURAL ACT]***

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

The Government of Comoros rejected its 2nd UPR cycle recommendations to "review provisions of the criminal law penalising consensual same-sex activity between adults" (Czech Republic) and to "initiate a debate on the decriminalisation of homosexuality" (Spain).[322] The Netherlands reminded Comoros of its international law commitments by referring it to the Office of the High Commissioner for Human Rights' report *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*,[323] and Brazil called for the country to "take step to avoid discrimination and violation of the human rights of the LGBT population". The State responded that there is no political energy (or "currently a political majority" against this "invisible minority", or will to change the law at this time.[324]

EGYPT

[325]

Sexual relations between consenting adult persons of the same sex in private are not prohibited as such. However, the Law on the Combating of Prostitution, and the law against debauchery[326] have been used to imprison gay men in recent years.[327]

Law 58/1937 amended by Law 95-2003[328]

---

320 Text of the law is available at: http://comoresdroit.comores-droit.com/wp-content/dossier/code/penal.pdf

321 Original text: *"Sans préjudice des peines plus graves prévues par les alinéas qui précédent ou par les Articles 320 et 321 du présent code, sera puni d'un emprisonnement d'un à cinq ans et d'une amende de 50 000 à 1 000 000 francs, quiconque aura commis un acte impudique ou contre 65 nature avec un individu de son sexe. Si l'acte a été commis avec un mineur, le maximum de la peine sera toujours prononcé."*

322 See: Comoros' UPR page: www.ohchr.org/EN/HRBodies/UPR/Pages/KMSession18.aspx

323 See, A/HRC/19/41, 17 November 2011, at: www.ohchr.org/Documents/Issues/Discrimination/A.HRC.19.41_English.pdf

324 "Il n'y pas de politique pénale contre les homosexuels. Comme il n'y a pas de minorité homosexuelle visible. Effectivement, le Code pénal réprime l'homosexualité. Il n'y a pas actuellement de majorité politique à l'Assemblée pour changer la loi.", see Draft report of the Working Group on the Universal Periodic Review: Comoros, A/HRC/WG.6/18/L.9, at para. 73: www.upr-info.org/sites/default/files/document/comoros/session_18_-_january_2014/a_hrc_wg.6_18_l.9_comoros_e.pdf

325 There are currently over 250 LGBT people serving time in Egyptian prisons, see 'From Regeni to LGBT rights: that's what Egypt became', 4 April 2016, at: www.ilgrandecolibri.com/2016/04/egypt-regeni-rights.html

326 See: Scott Long, "Victory" *a paper bird* piece on the court case of 26 men following a hamman raid in December 2014, filmed by Mona Iraqi: http://paper-bird.net/2015/01/12/victory/, and more stories he has penned on Egypt more generally at: http://paper-bird.net/tag/egypt/. Mona Iraqi, initially found guilty of defamation, was later acquitted by an Appeals Court, see: Lester Feder, 'Egyptian Broadcaster Let Off The Hook For Televising A Bathhouse Raid', Buzzfeed News, 20 January 2016, at: www.buzzfeed.com/lesterfeder/egyptian-broadcaster-let-off-the-hook-for-televising-a-bathh#.fr12WmoL1

327 Following the release of a same-sex wedding video in August 2014, activists reported a crack-down, see: www.buzzfeed.com/lesterfeder/why-egypts-regime-has-launched-a-mass-crackdown-on-lgbt-righ#.wc0QjJM4K

328 The text of the Penal Code is available (in Arabic) at: http://pt.scribd.com/doc/30928964/%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A7%D9%84%D8%B9%D9%82%D9%88%D8%A8%D8%A7%D8%AA-%D8%A7%D9%84%D9%85%D8%B5%D8%B1%D9%8A-1-EGYPTIAN-PENAL-CODE-1.

Article 98(f): ***[PROPAGATION]***

"Detention for a period of not less than six months and not exceeding five years, or paying a fine of not less than five hundred pounds and not exceeding one thousand pounds shall be the penalty inflicted on whoever exploits and uses the religion in advocating and propagating by talk or in writing, or by any other method, extremist thoughts with the aim of instigating sedition and division or disdaining and contempting any of the heavenly religions or the sects belonging thereto, or prejudicing national unity or social peace."[329]

Article 269 bis: ***[INCITEMENT TO INDECENCY]***

"Whoever is found on a public road or a traveled and frequented place inciting the passersby with signals or words to commit indecency shall be punished with imprisonment for a period not exceeding one month. If the felon recurs to committing this crime within one year of the first crime, the penalty shall become imprisonment for a period not exceeding six months and a fine not exceeding fifty pounds. A ruling of conviction shall necessitate placing the convict under police supervision for a period equal to that of the penalty."[330]

Article 278: ***[SCANDALOUS ACT]***

"Whoever commits in public a scandalous act against shame shall be punished with detention for a period not exceeding one year or a fine not exceeding three hundred pounds."[331]

Law 10/1961 on the Combating of Prostitution

Article 9: ***[PRACTICING OR INCITEMENT TO DEBAUCHERY]***

"Punishment by imprisonment for a period not less than three months and not exceeding three years and a fine not less than 25 LE and not exceeding 300 LE [...] or one of these two punishments applies in the following cases:
(a) Whoever lets or offers in whatever fashion a residence or place run for the purpose of debauchery or prostitution, or for the purpose of housing one or more persons, if they are to his knowledge practicing debauchery or prostitution.
(b) Whoever owns or manages a furnished residence or furnished rooms or premises open to the public and who facilitates the practice of debauchery or prostitution, either by admitting persons so engaged or by allowing on his premises incitement to debauchery or prostitution.
(c) Whoever habitually engages in debauchery or prostitution.
Upon the apprehension of a person in the last category, it is permitted to send him for a medical examination. If it is discovered that he is carrying an infectious venereal disease, it is permitted to detain him in a therapeutic institute until his cure is completed.
It is permitted to determine that the convicted person be placed, upon completion of his sentence, in a special reformatory until the administrative agency orders his release. This judgment is obligatory in cases of recidivism, and the period spent in the reformatory is not allowed to be more than three years. [...]".[332]

Article 178[333] ***[PUBLIC DECENCY - MORALITY CODE LIMITING SOGI PUBLIC EXPRESSION]***

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

> Article 178 restrictions explain why there is so little positive or balanced discussion of same-sex relationships in Egypt. In 2016, Egyptian novelist Ahmed Naji was sentenced to two years in jail following the publication of a "sexually explicit" [heterosexual] excerpt from his novel *The Use of Life* in state-owned literary magazine Akhbar

329 An unofficial translation of the Penal Code is available at: http://track.unodc.org/LegalLibrary/LegalResources/Egypt/Laws/Egypt%20The%20Penal%20Code%20Law%201937.pdf

330 Text of the law is available at: www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_isn=57560 ; See: the unofficial English translation – and the explanations – in the report, *In a Time of Torture: The Assault on Justice In Egypt's Crackdown on Homosexual Conduct*, Appendix: Laws Affecting Male Homosexual Conduct in Egypt (New York: Human Rights Watch, 2004): www.hrw.org/reports/2004/egypt0304/egypt0304.pdf

331 See: the Appendix at: www.hrw.org/reports/2004/egypt0304/egypt0304.pdf

332 Ibid.

333 Penal Code No. 58 of 1937 [Egypt], August 1937.

al-Adab.[334] Public morality is recognised by international law as grounds for limiting expression, but that limitation must not be overly broad or vague and must be necessary and proportionate relative to the harm that may be incurred. Likewise, individuals who, through their sexual or gender expression, disrupt conservative binary gender models are especially vulnerable in Egypt.[335] Through 2015 and 2016, widely publicised arrests continue.

Egypt's 2nd cycle UPR began in November 2014. Of the 28 NGO submissions to this session, only four mention sexual orientation directly.[336] However, there is no mention of sexual orientation in recommendations to Egypt or in that State's formal responses to its 2nd UPR.[337]

GLOBAL ATTITUDES SURVEY ON LGBTI PEOPLE 2016

	STRONGLY AGREE	SOMEWHAT AGREE	NEITHER	SOMEWHAT DISAGREE	STRONGLY DISAGREE
Being gay, lesbian, bisexual, trans, or intersex should be a crime?	**32%**	**12%**	**21%**	**8%**	**27%**
Same-sex desire is a Western phenomenon	**23%**	**24%**	**21%**	**10%**	**22%**
	NO CONCERNS	SOMEWHAT UNCOMFORTABLE		VERY UNCOMFORTABLE	
How would you feel if your neighbour is gay or lesbian?	**26%**	**20%**		**53%**	

ERITREA

Penal Code of 1957 (inherited from Ethiopian rule).[338]

Art. 600. Unnatural Carnal Offences ***[SAME SEX ACT]***

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

In its first UPR cycle in 2009, the Government of Eritrea rejected the recommendations made by Canada and the USA to repeal the above-mentioned article, arguing that it is "... in direct conflict with the values and traditions of the Eritrean people".[339]

A joint submission to its second UPR described the situation in Eritrea as of June 2014: "(Attacks on Lesbian Gay Bisexual and Transgender Intersex (LGBTI) Activists) Consensual same-sex conduct is criminalised under the Eritrean Transitional Penal Code and punishable by prison terms ranging from 10 days to three years. It is noted

334 *Al Aribya*, 'Egyptian writer who 'violated public decency:' An open-and-shut case?', 5 March 2016, www.english.alarabiya.net/en/perspective/analysis/2016/03/05/Egyptian-writer-who-violated-public-decency-An-open-and-shut-case-.html

335 See Scott Long's address on the role of human rights regarding LGBT people in Egypt, at Princeton University, March 2016, "Local and Global activists: easing the tension": conversation with Scott Long, https://www.youtube.com/watch?v=kT549opwo8I

336 Find list of submissions at: www.upr-info.org/en/review/Egypt/Session-20---October-2014/Civil-society-and-other-submissions#top.in Egypts: easing the tension" GBT people in March 2016ntersex Associationt national and regional levels.oE region.f mediaan be

337 See, www.upr-info.org/sites/default/files/document/egypt/session_20_-_october_2014/a_hrc_wg.6_20_l.13.pdf

338 Text of the law is available at: www.unhcr.org/refworld/docid/49216a0a2.html

339 See: Eritrea's UPR summary at: http://arc-international.net/global-advocacy/universal-periodic-review/e/eritrea/

that the Eritrean Government rejected a recommendation by the Working Group on the Universal Periodic Review in 2010 to legalise same-sex activity. No LGBTI organisations publically exist in Eritrea and it is reported that the authorities have carried out periodic round-ups of LGBTI people".[340]

At their 2nd cycle UPR, the Eritrean delegation stated that "consensual same sexual conduct was against the values and culture of the Eritrean society" in answer to the only SOGI recommendation it received (Italy): "Launch a national dialogue, as well as a campaign through media and in the schools, to tackle all forms of discrimination against lesbian, gay, bisexual and transgender (LGBT) persons".[341] Eritrea's next UPR review is October 2018.

The Concluding Observations delivered to Eritrea by the United Nations Committee on the Rights of the Child in May/June 2015, make direct reference to SOGI: "Repeal the legal provisions criminalizing homosexuality and, by raising public awareness of equality and non-discrimination on the basis of sexual orientation, ensure that children who belong to groups of lesbian, gay, bisexual and transsexual persons or children from families formed by such persons are not subject to any form of discrimination", (para. 25(d)).[342]

ETHIOPIA

The Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No. 414/2004.[343]

Article 629. Homosexual and other Indecent Acts ***[HOMOSEXUAL ACT]***

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

Article 630. General Aggravation to the Crime

"(1) The punishment shall be simple imprisonment for not less than one year, or, in grave cases, rigorous imprisonment not exceeding ten years, where the criminal:
a) takes unfair advantage of the material or mental distress of another or of the authority he exercises over another by virtue of his position, office or capacity as guardian, tutor, protector, teacher, master or employer, or by virtue of any other like relationship, to cause such other person to perform or to submit to such an act; or
b) makes a profession of such activities within the meaning of the law (Art. 92).
(2) The punishment shall be rigorous imprisonment from three years to fifteen years, where:
a) the criminal uses violence, intimidation or coercion, trickery or fraud, or takes unfair advantage of the victim's inability to offer resistance or to defend himself or of his feeble-mindedness or unconsciousness; or
b) the criminal subjects his victim to acts of cruelty or sadism, or transmits to him a venereal disease with which he knows himself to be infected; or
c) the victim is driven to suicide by distress, shame or despair."

At its 2nd cycle UPR that commenced in April 2014, Ethiopia 'noted' (did not accept) three Level 5 (act immediately)

340 Civicus, and CDRIE (Citizens for Democratic Rights in Eritrea), "The State of Eritrea Submission to the UN Universal Periodic Review", 24 June 2014, at: www.upr-info.org/sites/default/files/document/eritrea/session_18_-_january_2014/js2_upr18_eri_e_main.pdf

341 Draft report of the Working Group on the Universal Periodic Review: Eritrea, A/HRC/WG.6/18/L.11, 5 February 2014: www.upr-info.org/sites/default/files/document/eritrea/session_18_-_january_2014/a_hrc_wg.6_18_l.11_eritrea_e.pdf

342 Concluding observations on the fourth periodic report of Eritrea, CRC/C/ERI/CO/4, 2 July 2015. https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/142/98/PDF/G1514298.pdf?OpenElement

343 Text of the law is available at: www.ilo.org/dyn/natlex/docs/ELECTRONIC/70993/75092/F1429731028/ETH70993.pdf

recommendations from France, Portugal and Argentina to decriminalise same-sex sexual activity.[344] Ethiopia made no responses to the decriminalisation issue in the UPR Interactive Dialogue or in its formal responses to recommendations in this regard.[345]

In its submission to the 56th session of the African Commission on Human and Peoples' Rights on the situation of human rights defenders the International Service for Human Rights (ISHR) points out: "... that Ethiopia's repressive laws provoke fear and self-censorship among HRDs and that HRDs frequently face threats, acts of intimidation, judicial harassment and arbitrary arrest", with "...surveillance and official restrictions on the movement of HRDs." The document goes on to say: "Defenders of lesbian, gay, bisexual, transgender and intersex (LGBTI) rights in Ethiopia operate in a particularly hostile environment, with organised anti-homosexuality organisations calling upon the government to close spaces for the LGBTI rights movement and tighten 'anti-gay' legislation, punishing 'homosexual acts' with the death penalty. LGBTI organisations have been consistently accused of being Western proxies seeking to subvert Ethiopian cultural values. Many clerical leaders have made statements against sexual diversity in a country where 'homosexual acts' are punishable with one to fifteen years imprisonment pursuant to Articles 629 and 630 of Ethiopia's Criminal Code".[346]

GAMBIA

Criminal Code 1965, as amended in 2005.[347]

Article 144: Unnatural offences ***[AGAINST ORDER OF NATURE]***

"(1) Any person who—
(a) has carnal knowledge of any person against the order of nature; or
(b) has carnal knowledge of an animal; or
(c) permits any person to have carnal knowledge of him or her against the order of nature;
is guilty of a felony, and is liable to imprisonment for a term of 14 years.
(2) In this section- "carnal knowledge of any person against the order of nature" includes-
(a) carnal knowledge of the person through the anus or the mouth of the person;
(b) inserting any object or thing into the vulva or the anus of the person for the purpose of simulating sex; and
(c) committing any other homosexual act with the person."

[ATTEMPTED UNNATURAL OFFENCE]

Gambia's Criminal Code states that a "person who has carnal knowledge of any person against the order of nature ... or permits any person to have carnal knowledge of him or her against the order of nature" commits a felony known as an "unnatural offense", and on conviction is punishable by a fourteen-year prison term.[348] An attempt to commit an unnatural offense is also a felony, on conviction, punishable by seven years of imprisonment.[349]

Article 145 An attempt to commit an unnatural offense is also a felony, on conviction, punishable by seven years of imprisonment. ***[ATTEMPTED UNNATURAL OFFENCE]***

344 See, Draft Working Group Report A/HRC/WG.6/19/L.12, at: www.upr-info.org/sites/default/files/document/ethiopia/session_19_-_april_2014/a_hrc_wg.6_19_l.12_0.pdf

345 Report of the Working Group on the Universal Periodic Review: Ethiopia, A/HRC/27/14, 7 July 2014, at: www.upr-info.org/sites/default/files/document/ethiopia/session_19_-_april_2014/a_hrc_27_14_e.pdf

346 See: https://www.ishr.ch/sites/default/files/article/files/ethiopia_-_achpr_briefing_paper_on_hrds_april_2015.pdf

347 Text of the code is available at: www.ilo.ch/dyn/natlex/docs/SERIAL/75299/78264/F1686462058/GMB75299.pdf

348 See Criminal Code of 1934, s.44, 3 Laws of Gambia, Cap. 8:01 (rev. ed. 2009).

349 Ibid s.145

Article 147(2) (as amended by the 2005 Act) *[GROSS INDECENCY]*

provides: that - "any female person who, whether in public or private, commits any act of gross indecency with another female person, or procures another female person to commit any act of gross indecency with her, or attempts to procure the commission of any such act by any female person with herself or with another female person, whether in public or private, is guilty of a felony and liable to imprisonment for a term of five years. Section 147(3) further specifies that act of indecency includes any homosexual act."[350]

On 25 August 2014, the Parliament approved the **Criminal Code (Amendment) Act 2014**,[351] which punishes 'aggravated homosexuality' with imprisonment for life. The Act came into effect on 9 October 2014 and includes the following article:

144A. Aggravated homosexuality *[SERIAL OFFENDER]*

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

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

In its significant report on The Gambia (February 2016), Human Rights Watch observes that section 144A 'Aggravated homosexuality', "is taken literally verbatim from section three of Uganda's Anti-Homosexuality Act, [352] which was overturned by Uganda's Constitutional Court in August 2014 on technical grounds". [353] It is also clear that The Gambia is increasingly embracing Islamic law in its governance practices.[354]

Although The Gambia recieved and rejected ('noted') 12 recommendations regarding decriminalisation and non-discrimination based on SOGI at it's 2nd cycle UPR process in October 2014, the State made no reference at all to this issue.[355] Gambia's 3rd UPR will be in April 2019.

In February 2015, the Committee on the Rights of the Child entreated The Gambia to, "[e]nsure that children who belong to LGBTI groups and children from LGBTI families are not subjected to any form of discrimination, and repeal the legal provisions criminalizing homosexuality".[356]

In March 2015, the Committee on Economic Social and Cultural Rights (CESCR) recommended that The Gambia

350 www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=GMB&p_classification=01.04&p_origin=COU NTRY&p_sortby=SORTBY_COUNTRY

351 The text of the law is available at: www.refworld.org/docid/54759cd04.html

352 See: Ugandan Anti-Homosexuality Act – 2014, www.refworld.org/pdfid/530c4b

353 Human Rights Watch, *State of Fear: Arbitrary Arrests, Torture, and Killings*, 16 September 2015, at 53: https://www.hrw.org/sites/default/files/report_pdf/gambia0915_4up_0.pdf

354 Global Voices, 'Signs of Islamic Law Taking Root in The Gambia', 10 January 2016, https://globalvoices.org/2016/01/10/signs-of-islamic-law-taking-root-in-the-gambia/

355 Draft report of the Working Group on the Universal Periodic Review: Gambia, A/ HRC/WG.6/20/L.3, 30 October 2015: www.upr-info.org/sites/default/files/document/gambia/session_20_-_october_2014/a_hrc_wg.6_20_l.3.pdf

356 Concluding observations on the combined second and third periodic reports of the Gambia CRC/C/GMB/CO/2-3, 20 February 2015 at para.29: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsoUkdxD%2FM2g5KRyp6BadhBlCkz293vU%2FeHAsIR2OBNGOAiqv0%2Fid2eWq%2FcIqFeHrQpRmwSdyrsf1ETlSgMmdRvgBNpVzUhIqJVyUTfKcLsBS

adopt non-discrimination legislation in line with its obligations under the Treaty (Art. 2(2)), and in light with its general Comment 20. It also urged the State to repeal or amend all legislation that could "result in discrimination, prosecution and punishment" to people based on SOGI, and to "take all the necessary steps to combat and prevent discrimination" for LGBT people.[357]

In July 2015, the CEDAW Committee "... urges the State party to repeal the provisions of the Criminal Code on "unnatural offences" and "aggravated homosexuality", end the arbitrary detention of lesbians and provide them with effective protection from violence and discrimination and provide appropriate training to law enforcement officials".[358]

GHANA

Criminal Code, 1960 (Act 29), as amended to 2003.[359]

Section 99. Evidence of Carnal Knowledge.

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

Section 104. Unnatural Carnal Knowledge ***[UNNATURAL CARNAL KNOWLEDGE]***

"(1) Whoever has unnatural carnal knowledge—
(a) of any person of the age of sixteen years or over without his consent shall be guilty of a first degree felony and shall be liable on conviction to imprisonment for a term of not less than five years and not more than twenty-five years; or
(b) of any person of sixteen years or over with his consent is guilty of a misdemeanour; or
(c) of any animal is guilty of a misdemeanour.
(2) Unnatural carnal knowledge is sexual intercourse with a person in an unnatural manner or with an animal."

Article 296(4) of the Criminal Procedural Code

"A misdemeanor shall be liable to imprisonment for a term not exceeding three years."[360]

In December 2012, the Working Group on Ghana's 2nd cycle UPR reported the State's delegation as follows: "Concerning whether Ghana will end its policy of non-equal treatment of homosexuals and lesbian, gay, bisexual and transgender (LGBT) people in general (Germany) and how Ghana will apply the principle of non-discrimination in relation to the issue of homosexuality, (the Netherlands), the delegation emphasised that Ghana does not have a policy of non-equal treatment of its citizens. The Constitution entrenches the fundamental principles of non-discrimination and equality. It also guarantees the freedom of religion and the rights of persons to practise that religion. The Constitution also provides for the legislature to enact laws that further the social cohesion and economic development of the people".[361]

357 Committee on Economic, Social and Cultural Rights, Concluding observations on the initial report of the Gambia, E/C.12/GMB/CO/1, 20 March 2015 at para. 12: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/059/98/PDF/G1505998.pdf?OpenElement

358 Committee on the Elimination of Discrimination against Women, Concluding observations on the combined fourth and fifth periodic reports of the Gambia, CEDAW/C/GMB/CO/4-5, 24 July 2015:
www.acdhrs.org/wp-content/uploads/2015/07/CEDAW-Concluding-Observations-July-2015-1.pdf

359 Text of the law is available at: www.wipo.int/wipolex/en/text.jsp?file_id=339612

360 Available at: www.vertic.org/media/National%20Legislation/Ghana/GH_Criminal_Procedure_Code.pdf

361 Report of the Working Group on the Universal Periodic Review: Ghana, A/HRC/22/6, 13 December 2012, at para 75, see: www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/AHRC226_English.pdf

Although Section 104 of the Act is understood to apply to males only, there have been media reports of mob attacks on lesbians,[362]. Incidents of violence and responses to that violence have been recorded in Ghana,[363] and the social hostility is described in an October 2015 shadow report to the UN Human Rights Committee,[364] while an overview of LGBT life in Ghana to early-2014 is described in *Being LGBT in West Africa*.[365] Information to February 2016 is contained in the UK Home Office's 'Country Information and Guidance Ghana: Sexual orientation and gender identity'.[366] Fears of 'backlash' following the Ghanaian Prime Minister's visit to Scotland in March 2016, where he was pressurised by activists, have been expressed.[367]

GLOBAL ATTITUDES SURVEY ON LGBTI PEOPLE 2016

	STRONGLY AGREE	SOMEWHAT AGREE	NEITHER	SOMEWHAT DISAGREE	STRONGLY DISAGREE
Being gay, lesbian, bisexual, trans, or intersex should be a crime?	**43%**	**11%**	**21%**	**5%**	**20%**
Same-sex desire is a Western phenomenon	**38%**	**11%**	**21%**	**3%**	**25%**
	NO CONCERNS	SOMEWHAT UNCOMFORTABLE		VERY UNCOMFORTABLE	
How would you feel if your neighbour is gay or lesbian?	**46%**	**18%**		**37%**	

GUINEA

Penal Code of 1998.[368]

Article 325: ***[ACT AGAINST NATURE]***

"Any indecent act or act against nature committed with an individual of the same sex will be punished by six months to three years of imprisonment and a fine of 100,000 to 1,000,000 Guinean francs.
If the act was committed with a minor under 21 years of age, the maximum penalty must be pronounced.
If the act was consummated or attempted with violence, the guilty will suffer the penalty of imprisonment for period of 5 to 10 years ".[369]

362 Starrfmonline.com, 'Homophobic residents flood town with posters of alleged lesbians', 7 March 2015 www.ghanaweb.com/GhanaHomePage/NewsArchive/Homophobic-residents-flood-town-with-posters-of-alleged-lesbians-349426

363 *Speaking Out 2015: The Rights of LGBTI People across the Commonwealth*, Kaleidoscope Trust in association with Kaleidoscope Australia Human Rights Foundation (London, 2015), at 16: http://kaleidoscopetrust.com/usr/library/documents/main/2015_speakingout_241115_web.pdf

364 See: Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Ghana:
A Shadow Report, 115th Session of the Human Rights Committee, October 2015, at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/GHA/INT_CCPR_ICO_GHA_21415_E.pdf

365 P. Rodenbough, *Being LGBT in West Africa*, July 2014, USAID at 31: http://blogs.cuit.columbia.edu/rightsviews/files/2015/03/The-Being-LGBT-in-West-Africa-Project-Final-Report.pdf

366 See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/498046/CIG_Ghana_SOGI.pdf

367 See: www.kaleidoscot.com/holyroods-intervention-regarding-lgbti-rights-backfires-in-ghana-6805

368 Text of the law available at: www.unhcr.org/refworld/docid/44a3eb9a4.html

369 Original text: "*Article 325: Tout acte impudique ou contre nature commis avec un individu de son sexe sera puni d'un emprisonnement de 6 mois à 3 ans et d'une amende de 100.000 à 1.000.000 de Francs guinéens. Si l'acte a été commis avec un mineur de moins de 21 ans, le maximum de la peine sera toujours prononcée*. peine de la réclusion criminelle à temps de 5 à 10 ans".

The atmosphere within which nascent LGBT organising has been happening in the recent period is both volatile and hostile.[370] Amnesty's 2015/2016 report on Guinea notes: "[a]t least three people were arrested because of their perceived sexual orientation. Two men were arrested on 22 April in Conakry. In May, the Tribunal of Mafanco sentenced them to three months' imprisonment".[371]

In its 2nd cycle UPR in January 2015, Guinea 'noted' two recommendations from Italy and Argentina to remove discriminatory measures based on SOGI, including criminalisation. The State's delegation appeared not to have made any comment regarding SOGI.[372]

KENYA

The Penal Code (as amended by Act No. 5 of 2003).[373]

Section 162 ***[AGAINST ORDER OF NATURE]***

"Any person who:
(a) has carnal knowledge of any person against the order of nature; or
(b) has carnal knowledge of an animal; or
is guilty of a felony and is liable to imprisonment for fourteen years:
Provided that, in the case of an offence under paragraph (a), the offender shall be liable to imprisonment for twenty-one years if—
(i) the offence was committed without the consent of the person who was carnally known; or
(ii) the offence was committed with that person's consent but the consent was obtained by force or by means of threats or intimidation of some kind, or by fear of bodily harm, or by means of false representations as to the nature of the act."

Section 163 ***[ATTEMPTED ACTS AGAINST THE ORDER OF NATURE]***

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

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

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

The Criminal Procedure and Evidence Act, 1939

Section 185(5) ***[SODOMY]***

provides: "Any person charged with sodomy or assault with intent to commit sodomy may be found guilty of indecent assault or common assault, if such be the facts proved." Under Schedule 1 Part II of the same Act, the common law offence of sodomy has been listed as one of the offences in respect of which arrests may be made without a warrant."

370 See, P. Rodenbough, *Being LGBT in West Africa*, July 2014, USAID at 34: http://blogs.cuit.columbia.edu/rightsviews/files/2015/03/The-Being-LGBT-in-West-Africa-Project-Final-Report.pdf

371 See: https://www.amnesty.org/en/countries/africa/guinea/report-guinea/

372 Draft report of the Working Group on the Universal Periodic Review: Guinea, A/HRC/WG.6/21/L.3, 22 January 2015: www.upr-info.org/sites/default/files/document/guinea/session_21_-_january_2015/a_hrc_wg.6_21_l.3.pdf

373 Text of the law is available at: www.kenyalaw.org/Downloads/GreyBook/8.%20The%20Penal%20Code.pdf

On 24 April 2015, the High Court of Kenya found that the State (in the form of the Non-Governmental Organisations Co-ordination Board and the Attorney General)[374] had violated Article 36 (Freedom of Association) of the newly (2010) Constitution of Kenya,[375] by frustrating the process of registering the NGO, the National Gay & Lesbian Human Rights Commission (NGLHRC). The Court found that LGBTI people are a constituent part of the "every person" enumerated in Article 36, that the limitation of the current criminalising legislation refers to same-sex sexual acts and not one's sexual orientation *per se* (quoting *Kasha Jaqueline v Rolling Stone*, 2010, Uganda). It said, at paragraph 121, it appears that, "the Board has acted in a manner that is both unconstitutional and unlawful, and amounts to an abuse of power", (para. 136) and also that the Board's reliance on its "own moral convictions as a basis for rejecting an application is outside the Board's mandate and a negation of its constitutional obligations," (para. 127) and cannot be used to deny others their constitutional rights.

As Jonah Chinga of the Gay and Lesbian Coalition of Kenya (GALCK) remarked in late-2015 "[d]espite ... barriers [such as homophobic remarks made by President Kenyatta, amongst others], Kenya has a somewhat exceptional position in the region and stands out as an East African country with a thriving LGBQ movement. Unlike neighbouring countries, there are strong ongoing initiatives and growing activism".[376] For example, see 'Research on the Lived Experiences of LBQ Women in Kenya' report produced by GALCK in February 2016.[377]

It is notable that Kenya's first appearance at its 2nd cycle UPR was in January 2015, where according to the report of the Working Group, Chile and Poland recommended decriminalising "... consenting relationships between adults of the same sex", and both Denmark and Chile referred to enacting legislation combatting hatred, while France and Sweden referenced non-discrimination, and Brazil referenced freedom of association and expression "and rights of LGBT persons". The State responded that, "it had come through a long period of national dialogue on the new Constitution. Critical social issues were put to the various fora [...] particularly the use of criminal law in these cases. These issues were really divisive and the requisite political and social consensus on these issues was a working [sic] progress [...] On the rights of LGBT, not a single individual could confirm the application of the criminal law on the basis of his/her sexual orientation".[378]

GLOBAL ATTITUDES SURVEY ON LGBTI PEOPLE 2016

	STRONGLY AGREE	SOMEWHAT AGREE	NEITHER	SOMEWHAT DISAGREE	STRONGLY DISAGREE
Being gay, lesbian, bisexual, trans, or intersex should be a crime?	**40%**	**6%**	**16%**	**7%**	**30%**
Same-sex desire is a Western phenomenon	**35%**	**13%**	**23%**	**7%**	**21%**

374 Text of the judgment at: http://kenyalaw.org/caselaw/cases/view/108412/

375 Text of Constitution is at: https://www.kenyaembassy.com/pdfs/The%20Constitution%20of%20Kenya.pdf

376 *Speaking Out 2015: The Rights of LGBTI People across the Commonwealth*, Kaleidoscope Trust in association with Kaleidoscope Australia Human Rights Foundation (London, 2015), at 17: http://kaleidoscopetrust.com/usr/library/documents/main/2015_speakingout_241115_web.pdf

377 Research on the Lived Experiences of LBQ Women in Kenya, February 2016, at: https://issuu.com/galckkenya/docs/research_on_the_lived_experiences_o

378 Draft report of the Working Group on the Universal Periodic Review: Kenya A/HRC/WG.6/21/L.7, 26 January 2015, at: https://www.privacyinternational.org/sites/default/files/Report%20A_HRC_WG.6_21_L.7_Kenya%20(1)_0.pdf

	NO CONCERNS	SOMEWHAT UNCOMFORTABLE	VERY UNCOMFORTABLE
How would you feel if your neighbour is gay or lesbian?	**46%**	**18%**	**37%**

LIBERIA

Penal Law of 1976, §§ 14.74 & 50.7, IV Liberian Codes Revised tit. 26 (rev. ed. 1998).[379] ***[SODOMY]***

Articles 14.74, 14.79 and 50.7 consider "voluntary sodomy" as a first degree misdemeanor, with a penalty of up to one year imprisonment, with sodomy being defined as "deviate sexual intercourse" between human beings who are not (living as) husband and wife, that consists of contact between penis and anus, mouth and penis, or mouth and vulva. A sexual contact involves "touching of the sexual or other intimate parts of a person for the purpose of arousing or gratifying a sexual desire".

The pro- and anti-LGBT atmosphere in Liberia since 2011 is well described in a country information note by the UK Home Office (December 2015),[380] and in Rodenbough (2014).[381]

Liberia received 12 recommendations, three of which they accepted, regarding SOGI in their UPR review in May 2015, concerning criminalisation, non-discrimination. Interestingly, Madagascar, another African Union (UN bloc) member State, made the recommendation to "condemn discrimination", and the US made a call to implement the terms of their new National Human Rights Action Plan, which is inclusive of LGBT people, while Italy's call for Liberia to "combat all forms of discrimination and abuse against LGBTI persons" were all accepted.[382]

CEDAW made an unusual call on Liberia in its latest Concluding Observations in November 2015, recognising the actuality of lesbian lives in Liberia: "The Committee (...) also calls upon the State Party to adopt necessary legislative measures to ensure to protect the economic rights of women in *de facto* unions".[383]

LIBYA

Penal Code of 1953 as amended by Law 70 of 2 October 1973, ***[ZINA]***

"Regarding the Establishment of the Hadd Penalty for Zina and Modifying Some of the Provisions of the Penal Law". The law of 1973 added a fourth paragraph to Articles 407 and 408 respectively that criminalizes consensual same-sex behavior.[384]

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

379 Text of law at: www.liberlii.org/lr/legis/codes/plt26lcolr367/ ; Also see: Jayweh, F. "Gays and the Laws of Liberia: Do Liberians have Laws to Prohibit Lesbian and Gay's Practices in Liberia?", available at: http://xa.yimg.com/kq/groups/16308019/1339627977/name/GAYS+AND+THE+LAWS+OF+LIBERIA.docx

380 Country Information and Guidance Liberia: Sexual Orientation and Gender Identity, UK Home Office, December 2015, at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/485922/CIG_Liberia_Sexual_Orientation_and_Gender_Identity_v1_0.pdf

381 See, P. Rodenbough, *Being LGBT in West Africa*, July 2014, USAID at 34: http://blogs.cuit.columbia.edu/rightsviews/files/2015/03/The-Being-LGBT-in-West-Africa-Project-Final-Report.pdf

382 Draft report of the Working Group on the Universal Periodic Review: Liberia. A/HRC/WG.6/22/L.2, 6 May 2015, at: www.upr-info.org/sites/default/files/document/liberia/session_22_-_mai_2015/a_hrc_wg.6_22_l.2.pdf

383 Concluding observations on the combined seventh and eighth periodic reports of Liberia CEDAW/C.LBR/CO/7-8, 20 November 2015, at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLBR%2fCO%2f7-8&Lang=en

384 Text of the Penal Law is available in Arabic at: www.aladel.gov.ly/main/modules/sections/item.php?itemid=62

"Whoever has [illicit] sexual intercourse with another person with his consent shall be punished along with his partner with imprisonment for a period not exceeding 5 years".[385]

Article 408(4) of 1953 states,

"Whoever disgraced the honor of a person with his consent shall be punished along with his partner with imprisonment".[386]

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

"anyone who commits an act of indecency in a public place will be liable to detention for up to one year and a fine of up to 50 Dinars. The same penalty will apply to anyone who offends public decency by the distribution of writings, pictures or other articles of an indecent nature, or who publicly exposes the same for sale".[387]

SOGI issues appear not to have been bought up in recommendations to Libya of their 1st or 2nd UPR cycles (November 2010 or May 2015).[388] However, ARC International, IGLHRC and ILGA made a joint submission in 2010,[389] and Amnesty International made mention of SOGI.[390] Again in 2015, Amnesty repeated its earlier mention,[391] and a newly-formed (2014) online organisation of LGBT Libyan activists, Quzah, submitted a report on the current SOGII situation in Libya, demonstrating how LGBTI Libyans are forced to hide their identities and go without protection from discrimination.[392]

MALAWI

Penal Code Cap. 7:01 Laws of Malawi.[393]

Section 153. Unnatural offences ***[AGAINST THE ORDER OF NATURE]***

"Anyone who –
has carnal knowledge of any person against the order of nature; or
has carnal knowledge of any animal; or
permits a male person to have carnal knowledge of him or her against the order of nature,
shall be guilty of a felony and shall be liable to imprisonment for fourteen years, with or without corporal punishment."

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

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

---

385 Original Arabic: وكل من واقع إنساناً برضاه يعاقب هو وشريكه بالسجن مدة ال تزيد على خمس سنوات.

386 Original Arabic: وكل من هتك عرض إنسان برضاه يعاقب هو وشريكه بالحبس.

387 Original Arabic: الأفعال أو الأشياء الفاضحة
كل من ارتكب فعلاً فاضحاً في محل عام مفتوح أو معروض للجمهور يعاقب بالحبس مدة ال تزيد على سنة وبغرامة ال تجاوز خمسين جنيهاً.
وتطبق العقوبة ذاتها على من أخل بالحياء بتوزيع رسائل أو صور أو أشياء أخرى فاضحة أو بعرضها على الجمهور أو طرحها للبيع، ولا يعد شيئاً فاضحاً

388 See range of UPR documents on Libya's UPR cuycles at: www.upr-info.org/en/review/Libya/Session-09---November-2010/Civil-society-and-other-submissions#top (2010); and, www.upr-info.org/en/review/Libya/Session-22---May-2015 (2015).

389 See, www.upr-info.org/sites/default/files/document/libya/session_9_-_november_2010/arciarcinternational.pdf

390 See, www.upr-info.org/sites/default/files/document/libya/session_9_-_november_2010/aiamnestyinternational.pdf

391 www.upr-info.org/sites/default/files/document/libya/session_22_-_mai_2015/ai_upr22_lby_e_main.pdf

392 See, www.upr-info.org/sites/default/files/document/libya/session_22_-_mai_2015/quzah_upr22_lby_e_main.pdf

393 Text of the law (not yet including the amendment of 2011) is available at: www.malawilii.org/files/mw/legislation/consolidated-act/7:01/penal_code_pdf_14611.pdf

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

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

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

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

captioned "Indecent practices between females" provides that any female person who, whether in public or private, commits "any act of gross indecency with another female" shall be guilty of an offence and liable to a prison term of five years.[394] The term "gross indecency" remains undefined in this legislation.

In the year following the introduction of Section 137A, the government introduced a suspension on arrests under the Unnatural offences Articles. However, as widely reported, two men were arrested (filed under 'sodomy') in December 2015, which then led to a reaffirmation of the moratorium.[395]

As SOGI issues have got greater visibility in Malawi (for example decriminalisation is called for in the National Strategic Plan for HIV and AIDS 2015-2020),[396] with strengthening advocacy from within the country, increasing attention from outside it and more calls for Malawi to regularise its legislation in line with its international law commitments,[397] in January 2016 the United Nations cautioned against a rising backlash.[398] Regarding the failure to prosecute a politician for blatant hate speech, the UN said "this case sends a dangerous message that inciting others to kill gay people is legitimate and will be tolerated by the authorities – in effect encouraging violent threats and attacks on the gay and lesbian community in Malawi".[399]

Of the 18 recommendations concerning SOGI that Malawi received in it 2nd UPR in May 2015, the State accepted two: the first agreeing to "take effective measures to protect" LGBTI persons from violence and to prosecute perpetrators (Austria), and the second guaranteeing "effective access" to health services (Honduras).[400]

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

394 See: International Commission of Jurists, "Sex Between Women Now a Crime in Malawi: New Law Violates Human Rights Obligations of Malawi", available at: www.iglhrc.org/sites/default/files/488-1.pdf

395 See, Human Rights Watch, 'Malawi: Moratorium on Anti-Gay Arrests Reaffirmed', 21 December 2015, at: https://www.hrw.org/news/2015/12/21/malawi-moratorium-anti-gay-arrests-reaffirmed for a clear narration of this situation.

396 National AIDS Commission, National Strategic Plan for HIV and AIDS 2015-2020, at 50, www.aidsmalawi.org.mw/index.php/downloads-2?download=132..

397 See country entry on Malawi for a brief but insightful description of how SOGI issues were impacting the socio-political climate in 2015, in *Speaking Out 2015: The Rights of LGBTI People across the Commonwealth*, Kaleidoscope Trust in association with Kaleidoscope Australia Human Rights Foundation (London, 2015), at 19: http://kaleidoscopetrust.com/usr/library/documents/main/2015_speakingout_241115_web.pdf

398 Spokesman for the High Commissioner for Human Rights, 22 January 2016, at: www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16985&LangID=E#sthash.zJY9dTVu.4hZChmA0.dpuf

399 See more on developments in early-2016 at: *Erasing 76 Crimes*, 'Malawi: Judge seeks renewed gay arrests; gay man attacked', 11 February 2016, at: http://76crimes.com/2016/02/11/malawi-judge-seeks-renewed-gay-arrests-gay-man-attacked/ ; *Erasing 76 Crimes* ,'Gay Malawian Appeals for Justice – Now He's In Hiding', 2 January 2016, at: http://76crimes.com/2016/01/02/gay-malawian-appeals-for-justice-now-hes-in-hiding/

400 Draft report of the Working Group on the Universal Periodic Review: Malawi, A/HRC/WG.6/22/L.1 7 May 2015, at: www.upr-info.org/sites/default/files/document/malawi/session_22_-_mai_2015/a_hrc_wg.6_22_l.3.pdf

positively raise public awareness, and finally guarantee "effective access" to health services for LGBTI people.[401]

In November 2015, the Committee on the Elimination of Discrimination against Women welcomed the adoption of the Gender Equality Act that prohibits discrimination, but were concerned about the 2011 amendments to the Penal Code that "criminalizes same-sex relationships between women", and it recommended that Malawi "Envisage decriminalizing sexual relationships between adult women".[402]

MAURITANIA

Penal Code of 1984.[404]

"Article 308. ***[ACT AGAINST NATURE]***

- Any adult Muslim man who commits an indecent act or an act against nature with an individual of his sex will face the penalty of death by public stoning. If it is a question of two women, they will be punished as prescribed in article 306, first paragraph" [Three months to two years imprisonment and a fine of 5,000 to 60,000 UM].[405]
(Unofficial translation)

Both in its 1st UPR (November 2010) and in its 2nd UPR (November 2015) sessions, Mauritania was urged to remove criminalisation of same-sex sexual relations. Importantly, in both the interactive dialogue and in written recommendations in 2015, it received numerous calls to uncouple the death penalty from same-sex sexual behavior.[406] At time of writing (March 2016), the State has not given its formal response to the various recommendations it received, but indicated a wish to have the OHCHR work with them in-country, and: "[t]he delegation emphasized that the Government had cooperated with all partners in developing an action plan against racial discrimination, xenophobia and intolerance and in drafting a national strategy for promoting social cohesion".[407]

401 Human Rights Committee, Concluding observations on the initial periodic report of Malawi, CCPR/C/MWI/CO/1/Add.1, 19 August 2014, at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fMWI%2fCO%2f1%2fAdd.1&Lang=en

402 Concluding observations on the seventh periodic report of Malawi, CEDAW/C/MWI/CO/7, 24 November 2015 at paras. 10 and 11.

403 Arrests are known, not implementation of the death penalty.

404 Text of the law is available at: www.droit-afrique.com/images/textes/Mauritanie/Mauritanie%20-%20Code%20penal.pdf, and www.justice.gov.mr/Textes%20justice/TextesArabe/CodepenalArabe.pdf (Ministry of Justice of Mauritania; in Arabic).

405 Original text Article 308*: "Tout musulman majeur qui aura commis un acte impudique ou contre nature avec un individu de son sexe sera puni de peine de mort par lapidation publique. S'il s'agit de deux femmes, elles seront punies de la peine prévue à l'article 306, paragraphe premier."* Article 306 (1): "Toute personne qui aura commis un outrage public à la pudeur et aux mœurs islamiques ou a violé les lieux sacrés ou aidé à les violer, si cette action ne figure pas dans les crimes emportant la Ghissass ou la Diya, sera punie d'une peine correctionnelle de trois mois à deux ans d'emprisonnement et d'une amende de 5.000 à 60.000 UM."

406 Report of the Working Group on the Universal Periodic Review: Mauritania (Unedited version), A/HRC/31/6, 18 November 2015, at: www.upr-info.org/sites/default/files/document/session_23_-_november_2015/a_hrc_31_6.pdf

407 Report of the Working Group on the Universal Periodic Review: Mauritania, A/HRC/31/6, 23 December 2015, at: www.upr-info.org/sites/default/files/document/mauritania/session_23_-_november_2015/a_hrc_31_6_e.pdf

MAURITIUS

Criminal Code of 1838.[408]

Section 250. Sodomy and bestiality ***[SODOMY]***

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

In 2007, the Government introduced the Sexual Offences Bill,[409] which *would delete the crime of sodomy (see* Section 24) and *set an equal age limit of 16 years for sexual acts (Sections 11 to 14).*

However, the bill was never passed in the Parliament and the Government announced in 2013 its decision to amend the Criminal Code instead, "in order to make better provisions for the criminalisation of various acts of sexual perversion".[410]

It its second UPR cycle in 2013, the State of Mauritius received three recommendations (Ireland, Australia and Canada) to decriminalise sodomy, but responded that further consultations on the matter were necessary.[411]

In the section "Personal and Professional Behaviour' of the 2015 "Code of Ethics for Public Officers", non-discrimination on grounds of sexual orientation is listed.[412] Following a complaint to the Equal Opportunities Commission of Mauritius in 2012,[413] the ban on men who have sex with men giving blood was lifted in 2013.

MOROCCO

Penal Code of 26 November 1962.[414]

Article 489 ***[UNNATURAL ACTS]***

"Any person who commits lewd or unnatural acts with an individual of the same sex shall be punished with a term of imprisonment of between six months and three years and a fine of 120 to 1,000 dirhams, unless the facts of the case constitute aggravating circumstances."[415]

---

408 Text of the law is available at: www.wipo.int/edocs/lexdocs/laws/en/mu/mu008en.pdf

409 Text of the bill is available at: www.santac.org/eng/Media/Files/Mauritius-Sexual-Offences-Bill,-2007

410 See: paragraph 17 of Mauritius' national report submitted at their 2013 UPR, available at: www.ohchr.org/EN/HRBodies/UPR/Pages/MUSession17.aspx. This view was somewhat rephrased in the State's version given for adoption at the plenary session, where the reason for proceeding with the Criminal Code (Amendment) Bill "to provide, *inter alia*, for marital rape", see Report of the Working Group on the Universal Periodic Review: Mauritius, A/HRC/25/8, 26 December 2013, at para. 121, at: www.upr-info.org/sites/default/files/document/mauritius/session_17_-_october_2013/a_hrc_25_8_mauritius_e.pdf

411 See: Mauritius' UPR summary at: http://arc-international.net/global-advocacy/universal-periodic-review/m/mauritius/2nd-cycle/

412 See, p.5, at: http://amb.intnet.mu/English/Downloads/Documents/Code%20of%20Ethics%20for%20Public%20Officers.pdf

413 See, https://theenlighteneddarkmage.files.wordpress.com/2012/11/lgbt-hiv-aids-blood-donation-in-mauritius-a-compilation-of-data-and-information-fokeerbux-n.pdf

414 Text of the law is available in French and Arabic here: www.wipo.int/wipolex/en/text.jsp?file_id=190447

415 Original text: *"Est puni de l'emprisonnement de six mois à trois ans et d'une amende de 200 à1.000 dirhams, à moins que le fait ne constitue une infraction plus grave, quiconque commet un acte impudique ou contre nature avec un individu de son sexe".*

Article 483 *[MORALITY CODE LIMITING SOGI PUBLIC EXPRESSION - OBSCENITY]*

"[W]hoever commits an act of public indecency, whether by nudity or obscenity in his actions, shall be punished by imprisonment of one month to two years and a fine of 200 to 500 dirhams."[416]

Although there were no direct references to SOGI in Morocco's 2nd UPR sessions in October 2015, the USA made a recommendation to "Promptly approve the license applications for all civil society organisations that meet legal requirements, including those organisations advocating for minority populations".[417]

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

In para. 14. The Committee said that "(d) Ensure that [...] homosexuals can enjoy the rights recognized in the Covenant, particularly access to employment, social services, health care and education". In para. 15, "the Committee is concerned that the State party criminalizes consensual sexual relations between same-sex adults (art. 489 of the Criminal Code). The Committee expresses its concern about discrimination on grounds of sexual orientation and gender identity and about the stigmatisation and violence to which these persons are subjected."[418] Numerous reports of arrests and police intimidation appeared in the recent period,[419] with a particularly alarming event recorded in Rabat, March 2016.[420]

GLOBAL ATTITUDES SURVEY ON LGBTI PEOPLE 2016

	STRONGLY AGREE	SOMEWHAT AGREE	NEITHER	SOMEWHAT DISAGREE	STRONGLY DISAGREE
Being gay, lesbian, bisexual, trans, or intersex should be a crime?	**26%**	**13%**	**22%**	**9%**	**30%**
Same-sex desire is a Western phenomenon	**23%**	**19%**	**22%**	**9%**	**27%**
	NO CONCERNS	SOMEWHAT UNCOMFORTABLE		VERY UNCOMFORTABLE	
How would you feel if your neighbour is gay or lesbian?	**33%**	**24%**		**43%**	

416 Original Arabic:
من ارتكب إخلال علني بالحياء، وذلك بالعري المتعمد أو بالبذاءة في الإشارات أو الأفعال، يعاقب بالحبس من شهر واحد إلى سنتين وبغرامة من مائة وعشرين إلى خمسمائة درهم.

417 Report of the Working Group on the Universal Periodic Review: Morocco, A/HRC/21/3, 6 July 2012 at para. 39, at: www.upr-info.org/sites/default/files/document/morocco/session_13_-_may_2012/ahrc213moroccoe.pdf

418 Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of Morocco, E/C.12/MAR/CO/4, 22 October 2015, at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fMAR%2fCO%2f4&Lang=en

419 See, for example: http://76crimes.com/page/2/?s=morocco

420 Erasing 76 Crimes, "Prison for victim of Morocco attack, not for attackers", 4 April 2016, see: http://76crimes.com/2016/04/04/prison-for-victim-of-morocco-attack-not-for-attackers/

NAMIBIA

Sodomy remains a crime in Namibia according to the Roman-Dutch common-law, which was imposed by the South Africans.[421] Common-law is a legal tradition based mainly on precedent court verdicts, while there is no codified sodomy provision in Namibia.[422]

> The calls for legal congruence with the country's 1990 Constitutional principles (Articles 8, 10 and 13 – dignity, equality and non-discrimination, and privacy)[423] have been repeatedly echoed, as has consistency with its international law obligations. However, despite the fact that the country has accepted LGBT Ugandan asylum seekers in the last two years,[424] there have been worrying utterances by political and religious representatives in Namibia, according to advocates.[425]
>
> At its 2nd UPR session in January 2016 the Namibian government claimed in its responses to recommendations, "Namibia has also not yet extended the grounds for non-discrimination in the Constitution.[426] They remain quite restricted and do not include grounds such as sexual orientation or disability. The 1992 Labour Act included both sexual orientation and disability as a ground for non-discrimination, but sexual orientation was removed from the 2007 Labour Act."[427] The [Namibian] delegation stated that LGBT persons were not victimized or persecuted for practicing their preferred sexual orientation. Article 13 of the Constitution protects the right to privacy. No person is requested to disclose his or her preferred sexual orientation in any official Government form or document and no person can be refused access to public or private services based on their preference. The laws do not make provision for marriage between same sex adults." [428]

NIGERIA

Criminal Code Act, Chapter 77, Laws of the Federation of Nigeria 1990.[429]

Section 214 ***[AGAINST ORDER OF NATURE]***

"Any person who-
(1) has carnal knowledge of any person against the order of nature; or
(2) has carnal knowledge of an animal; or
(3) permits a male person to have carnal knowledge of him or her against the order of nature;
is guilty of a felony, and is liable to imprisonment for fourteen years."

---

421 Dianne Hubbard 'Why the law on sodomy should be repealed', 2000 www.lac.org.na/news/inthenews/pdf/sodomy.pdf

422 See: Submission in the UPR review of Namibia at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/NA/JS1_JointSubmission-eng.pdf

423 The Constitution of the Republic of Namibia www.gov.na/constitution

424 The Namibian, 'Asylum Based on Sexual Orientation' 12 August 2014, www.namibian.com.na/index.php?id=126719&page=archive-read

425 Ibid.

426 Article 10(2), "No persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status."

427 Section 5(2)(e) of the Labour Act, 11 of 2007 which deals with prohibition of discrimination and sexual harassment.

428 Draft report of the Working Group on the Universal Periodic Review Namibia (18-29 January 2016), A/HRC/WG.6/24/L.1, at para 41, see: www.upr-info.org/sites/default/files/document/namibia/session_24_-_january_2016/a_hrc_wg.6_24_l.1.pdf

429 Text of the law is available at: www.nigeria-law.org/Criminal%20Code%20Act-Tables.htm

Section 215 *[ATTEMPTED CARNAL KNOWLEDGE]*

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

Section 217 *[GROSS INDECENCY]*

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

Note that several Northern Nigerian states have adopted Islamic Sharia laws, criminalising sexual activities between persons of the same sex. The maximum penalty for such acts between men is death penalty, while the maximum penalty for such acts between women is a whipping and/or imprisonment. These laws differ from the federal law, as most of these prohibit also sexual relations between women.[430] The states which have adopted such laws are:[431] Bauchi (the year 2001), Borno (2000), Gombe (2001), Jigawa (2000), Kaduna (2001), Kano (2000), Katsina (2000), Kebbi (2000), Niger (2000), Sokoto (2000), Yobe (2001) and Zamfara (2000).

The Same-Sex Marriage (Prohibition) Act *[LAWS LIMITING SOGI PUBLIC EXPRESSION]*

passed on 17 December 2013,by the Senate and the House of Representatives and signed by the President on 7 January 2014. According to the law:[432]

"§1. (1) A marriage contract or civil union entered into between persons of same sex:
(a) is prohibited in Nigeria; and
(b) shall not be recognised as entitled to the benefits of a valid marriage.
(2) A marriage contract or civil union entered into between persons of same sex by virtue of a certificate issued by a foreign country is void in Nigeria, and any benefit accruing there-from by virtue of the certificate shall not be enforced by any court of law.
§2. (1) A marriage contract or civil union entered into between persons of same sex shall not be solemnized in a church, mosque or any other place of worship of Nigeria.
(2) No certificate issued to persons of same sex in a marriage or civil union shall be valid in Nigeria.
§3. Only a marriage contracted between a man and a woman shall be recognised as valid in Nigeria.
§4. (1) The registration of gay clubs, societies and organisations, their sustenance, processions and meetings is prohibited.
(2) The public show of same sex amorous relationship directly or indirectly is prohibited.
§5. (1) A person who enter into a same-sex marriage contract or civil union commit an offence and are each liable on conviction to a term of 14 years in prison.
(2) A person who registers, operates or participates in gay clubs, societies and organisations or directly or indirectly makes public show of same-sex amorous relationship in Nigeria commits an offence and shall each be liable on conviction to a term of 10 years in prison.
(3) A person or group of persons who administers, witnesses, abets or aides the solemnisation of same-sex marriage or civil union, or supports the registration, operation and sustenance of gay clubs, societies, organisations, processions or meetings in Nigeria commits and offence and is liable on conviction to a term of 10 years of imprisonment."[433]

430 See: Alok Gupta, *This Alien Legacy – The Origins of "Sodomy" Laws in British Colonialism* (New York: Human Rights Watch, 2008) at: www.hrw.org/en/reports/2008/12/17/alien-legacy-0 at 60-61; and 'Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook' at: www.sharia-in-africa.net/pages/publications/sharia-implementation-in-northern-nigeria.php

431 See: 'The Unfizzled Sharia Vector in the Nigerian State' at: www.dawodu.com/aluko5.htm

432 Text of the law available at: www.refworld.org/docid/52f4d9cc4.html

433 In 2015, an effort was made to challenge this law from abroad, in *Mr Teriah Joseph Ebah v Federal Government of Nigeria* Suit FHC/ABJ/CS/197/2014,), "the Federal High Court dismissed a case against the new law on the ground that the complainant lacked the required *locus standi* to present the claim on behalf of other Nigerians because he, himself, had not suffered from the action of the Federal State under the Act". See, A. Rudman., 'The protection against discrimination based on sexual orientation under the African human rights system' (2015) 15 *African Human Rights Law Journal* 1-27, at 3, see: www.ahrlj.up.ac.za/rudman-a

In 2011[434], 2012,[435] and in 2007 Special Rappoerteurs on the rights to freedom of peaceful assembly and of association highlighted human rights violations, torture and other cruel, inhuman or degrading treatment or punishment,[436] human rights defenders,[437] and punishment. Likewise, since 2007 there has been a focus on human rights defenders in Nigeria, starting with a Joint Statement on the [then] proposed prohibition in a 2007 Bill outlawing same-sex marriage.[438]

Regarding Nigeria's responses to its international human rights law obligations in United Nations fora regarding SOGI, the country offered 'no response' to its 1st cycle Universal Periodic Review recommendations in 2009 to decriminalise and to withdraw its prohibition of same-sex marriage.[439] In its 2nd cycle in October 2013, the Government rejected all 12 LGBTI-related recommendations to do with decriminalisation, discrimination, international law obligations and the release of individuals imprisoned because of their sexual practice.[440]

An overview of the country situation to late-2015 in Nigeria was produced in November 2015.[441] Kaleidoscope Trust's *Speaking Out* report provides an insightful snapshot of the socio-political context in which SOGI issues are being responded to currently.[442] In March 2016, the Nigerian SOGI and HIV/AIDS activist, Mr Ifeanyi Orazulike, succeeded in his case on unlawful detention against the Abuja police.[443] The Federal High Court accepted his evidence of violence, humiliation, and attempted extortion, eliciting a monetary award and public apology by the police force.[444]

434 Nigeria: Alleged restrictions on the rights to freedom of association and of peaceful assembly of groups defending lesbian, gay, bisexual, and transgender (LGBT) rights, 228. JAL 20/12/2011. Case no. NGA 5/2011. See: http://freeassembly.net/rapporteurreports/nigeria-communications/

435 Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/67/357, 7 September 2012, available at: www.ohchr.org/en/HRBodies/SP/Pages/GA67session.aspx

436 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Addendum: Mission to Nigeria, A/HRC/7/3/Add.4, 22 November 2007; available at: http://www2.ohchr.org/english/bodies/chr/special/sp_reportshrc_7th.htm

437 Report of the Special Representative of the Secretary-General on the situation of human rights defenders. Addendum: Summary of cases transmitted to Governments and replies received, A/HRC/4/37/Add.1, 27 March 2007; available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/4session/A-HRC-4-37-Add-1.pdf

438 Joint Statement from the Special Representative of the Secretary-General on Human Rights Defenders, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the Special Rapporteur on violence against women, its causes and consequences, and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 23 February 2007.

439 See: http://arc-international.net/global-advocacy/universal-periodic-review/n/nigeria

440 See: Nigeria's UPR summary at: http://arc-international.net/global-advocacy/universal-periodic-review/n/nigeria/2nd-cycle/

441 Canada: Immigration and Refugee Board of Canada, Nigeria: Treatment of sexual minorities, including legislation, state protection, and support services; the safety of sexual minorities living in Lagos and Abuja (February 2012-October 2015), Research Directorate, Immigration and Refugee Board of Canada, Ottawa, 13 November 2015. http://irb-cisr.gc.ca/Eng/ResRec/RirRdi/Pages/index.aspx?doc=456219&pls=1

442 *Speaking Out 2015: The Rights of LGBTI People across the Commonwealth*, Kaleidoscope Trust in association with Kaleidoscope Australia Human Rights Foundation (London, 2015), at 22: http://kaleidoscopetrust.com/usr/library/documents/main/2015_speakingout_241115_web.pdf

443 See commentary and links to documents, at http://oblogdeeoblogda.me/2014/11/03/nigerian-human-rights-activist-brings-lawsuit-after-unlawful-detention/

444 http://76crimes.com/2016/03/30/cheers-and-praise-for-victory-in-nigerian-court/

GLOBAL ATTITUDES SURVEY ON LGBTI PEOPLE 2016

	STRONGLY AGREE	SOMEWHAT AGREE	NEITHER	SOMEWHAT DISAGREE	STRONGLY DISAGREE
Being gay, lesbian, bisexual, trans, or intersex should be a crime?	**51%**	**8%**	**19%**	**6%**	**17%**
Same-sex desire is a Western phenomenon	**38%**	**13%**	**21%**	**6%**	**23%**
	NO CONCERNS	SOMEWHAT UNCOMFORTABLE		VERY UNCOMFORTABLE	
How would you feel if your neighbour is gay or lesbian?	**41%**	**17%**		**43%**	

SENEGAL

Penal Code of 1965.[445]

Article 319(3) ***[UNNATURAL ACT]***

"Without prejudice to the more serious penalties provided for in the preceding paragraphs or by articles 320 and 321 of this Code, whoever will have committed an improper or unnatural act with a person of the same sex will be punished by imprisonment of between one and five years and by a fine of 100,000 to 1,500,000 francs. If the act was committed with a person below the age of 21, the maximum penalty will always be applied."[446]

On 24 December 2015, 11 men were arrested on suspicion of offenses under Section 319. The court released them four days later, but their faces and identities had been shared on social media, stirring huge public homophobia. The backlash to their release was led by the Islamic organisation, Jamra. Around 90% of the population is estimated to be Muslim (Sufi), and its neighbor, Gambia, recently declared itself an Islamic state.[447]

In its second UPR cycle in October 2013, the Government of Senegal received 13 SOGI recommendations, seven of them (from Belgium, Greece, Germany, Ireland, Netherlands, Switzerland and Mexico) to repeal the above-mentioned article. The Government rejected them and argued that Article 319 must be interpreted as a punishment for "unnatural acts committed in public", and that nobody has been imprisoned for "homosexuality" in the country.[448]

445 Text of the Penal Code, which entered into force on 1 February 1966, is available at: www.justice.gouv.sn/droitp/CODE%20PENAL.PDF

446 Original text: *"Sans préjudice des peines plus graves prévues par lês alinéas qui précédent ou par les articles 320 et 321 du présent Code, sera puni d'un emprisonnement d'un à cinq ans et d'une amende de 100.000 à 1.500.000 francs, quiconque aura commis um acte impudique ou contre nature avec un individu de son sexe. Si l'acte a été commis avec un mineur de 21 ans, le maximum de la peine sera toujours prononcé."*

447 See, The Daily Beast, '11 Arrested for Being Gay in Senegal—Is President Obama to Blame?', at: www.thedailybeast.com/articles/2015/12/30/11-arrested-for-being-gay-in-senegal-is-president-obama-to-blame.html; and Jeune Afrique, 'Sénégal : « mariage gay » à Kaolack ou cabale homophobe?' at: www.jeuneafrique.com/296689/societe/senegal-mariage-gay-a-kaolack-ou-cabale-homophobe/

448 See: Senegal's UPR summary at: http://arc-international.net/global-advocacy/universal-periodic-review/s/senegal/2nd-cycle/

SIERRA LEONE

Offences against the Person Act 1861.[449] ***[BUGGERY]***

Section 61 of the above named act, criminalises buggery and bestiality, with a penalty of life imprisonment, and not less than 10 years.

Both *Being LGBT in West Africa*,[450] and Kaleidoscope Trust's *Speaking Out*[451] describe very hostile socio-political environments in Sierra Leone.

In April 2014, the Human Rights Committee made a strong clear statement to Sierra Leone in its first Concluding Observations for that State under the ICCPR: "The State party should review its Constitution and legislation to ensure that discrimination on the grounds of sexual orientation and gender identity is prohibited, including by decriminalizing sexual relations between consenting adults of the same sex, in order to bring its legislation into line with the Covenant. The State party should also take the necessary steps to put an end to the social stigmatisation of homosexuality and send a clear message that it does not tolerate any form of harassment, discrimination or violence against persons based on their sexual orientation or gender identity".[452]

In its second UPR in January 2016, six States are reported as having made SOGI-related recommendations (three Latin American, three European). At time of writing, the State's response to these has not yet been made.[453]

SOMALIA

Penal Code, Legislative Decree No. 5/1962.[454]

Article 409. Homosexuality ***[INTERCOURSE WITH A PERSON OF THE SAME SEX]***

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

Article 410. Security Measures

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

---

449 Text of law at: www.legislation.gov.uk/ukpga/Vict/24-25/100/enacted. Also see: Joint submission in the UPR review of Sierra Leone, available at: http://lib.ohchr.org/HRBodies/UPR/Documents/session11/SL/JS2_JointSubmission2-eng.pdf

450 P. Rodenbough, *Being LGBT in West Africa*, July 2014, USAID at 63: http://blogs.cuit.columbia.edu/rightsviews/files/2015/03/The-Being-LGBT-in-West-Africa-Project-Final-Report.pdf

451 *Speaking Out 2015: The Rights of LGBTI People across the Commonwealth*, Kaleidoscope Trust in association with Kaleidoscope Australia Human Rights Foundation (London, 2015), at 24: http://kaleidoscopetrust.com/usr/library/documents/main/2015_speakingout_241115_web.pdf

452 Human Rights Committee, Concluding observations on the initial report of Sierra Leone, CCPR/C/SLE/CO/1, 17 April 2014, at 11, see: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSLE%2fCO%2f1&Lang=en

453 Draft report of the Working Group on the Universal Periodic Review: Sierra Leone, A/HRC/WG.6/24/L.13, 4 February 2016, at: www.upr-info.org/sites/default/files/document/sierra_leone/session_24_-_january_2016/a_hrc_wg.6_24_l.13.pdf

454 Original text of the law is not available online, but the table of content is available at: www.somalilandlaw.com/criminal_law.html. An unofficial English translation is available at: www.somalilandlaw.com/Penal_Code_English.pdf

Article 400

Under the heading of sexual violence, specifies increased punishment when such violence is done to a person of the same sex in the context of "against nature".[455]

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

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

The political situation in Somalia has been complicated since the fall of the dictator Mohamed Siad Barre in 1991, and the enforcement of the national Penal Code can be questioned.[456] However, Somaliland in the north has declared itself independent, and it still applies the Penal Code.[457]

However, further south and central in the country, as recorded in Christman's 2016 report, "Al-Shabaab's beliefs stem from a Salafi-Wahhabi strand of Sunni Islam (an ultra conservative movement within Sunni Islam). They enforce a strict interpretation of Shariah law. Shariah law explicitly forbids homosexuality - the punishment for those 'found guilty' is at a judge's discretion, and may be punished by death."[458]

Writing in 2014, the Somali artist and writer Diriye Osman, now resident in the UK, says to come out in Somalia one must be prepared for, "... physical abuse, ceaseless harassment, imprisonment or death". Osman's own family threatened him with violence upon learning that he is gay.[459]

In its 2nd UPR in early-2016, Somalia appears to have received only one recommendation (Canada) regarding SOGI: "Address widespread impunity—including for attacks against journalists, civil society and human rights defenders, women and LGBTI persons—by conducting timely and impartial investigations, investigating threats of violence, and prosecuting perpetrators". At time of writing, the State's response is not yet recorded.[460]

SOUTH SUDAN

Penal Code Act No. 9 of 2008, § 248, 1(1) Acts Supplement to the Southern Sudan Gazette (Feb. 10, 2009).[461]

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

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

455 Article 399 of 1962 states, "Whoever by, employing the means or under the condition specified in the preceding article, commits upon a person of the other sex acts of lust other than carnal intercourse, shall be punished with imprisonment from one to five years." Then, Article 400 of 1962 states, "Where any of the acts referred to in articles 398 and 399 is committed against a person of the same sex or a person of different sex, against nature, the punishment shall be increased."

456 There have been reports from different parts of Somalia that Islamic Sharia law has been used to punish same-sex sexual acts, see: for example: www.huffingtonpost.com/2013/03/21/gay-teen-stoned-somalia-sodomy_n_2916655.html

457 See: Somaliland Penal Code, available at: www.somalilandlaw.com/Criminal_Law/body_criminal_law.html

458 Ben Christman, 'Report on the Treatment of Gay Persons in Somalia' (Law Centre NI, 2016), available at: http://somalilandmonitor.net/wp-content/uploads/2016/02/Report_on_the_Treatment_of_Gay_Persons_i-1.pdf

459 Muslims for Progressive Values (MPV), 2015, Written Submission for the Universal Periodic Review (UPR) of Somalia, at: www.wluml.org/sites/wluml.org/files/Muslims%20for%20Progressive%20Values%20-%20UPR%20Stakeholder%20Report%20for%20Somalia%20-%20FINALv2.pdf

460 Draft report of the Working Group on the Universal Periodic Review: Somalia, A/HRC/WG.6/24/L.9, 1 February 2016, at: www.upr-info.org/sites/default/files/document/somalia/session_24_-_january_2016/a_hrc_wg.6_24_l.9.pdf

461 Available at: www.gurtong.net/LinkClick.aspx?fileticket=eLPDLffO3HE%3D&tabid=342

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

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

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

157 Qadhf (Casting Accusation of Inchastity) ***[QADHF]***

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

South Sudan achieved its independence from Sudan on 9 July 2011, three months after Sudan's 1st cycle UPR. Therefore, South Sudan did not in fact get an independent first review. Its next (functionally its first as an independent State) review is due November 2016.

SUDAN

The Penal Code 1991 (Act No. 8 1991).[462]

Section 148. Sodomy ***[SODOMY]***

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

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

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

157 Qadhf (Casting Accusation of Inchastity) ***[QADHF]***

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

In its 1st cycle UPR, the State made no mention of the range of civil society submissions that were available to it that referenced sexual orientation or gender identity.[463] Its next review is due November 2016.

462 Available at: www.ecoi.net/file_upload/1329_1202725629_sb106-sud-criminalact1991.pdf; and Penal Code of 1991, §148, www.parliament.gov.sd/ar/activity/view_law.php?law_id=112

463 Mutawinat. Joint submission 7 www.upr-info.org/sites/default/files/document/south_sudan/session_11_-_may_2011/js7_jointsubmission_7-eng.pdf 4 women's rights organisations, Joint submission 5, www.upr-info.org/sites/default/files/document/south_sudan/session_11_-_may_2011/js5_jointsubmission_5-eng.pdf: ARC, ILGA, ILGA-Europe & Pan-Africa ILGA, Joint submission 11 www.upr-info.org/sites/default/files/document/south_sudan/session_11_-_may_2011/js11_jointsubmission11-eng.pdf

SWAZILAND 

Sodomy [sexual intercourse per anus between two human males] is prohibited in the Criminal Law and Procedure Act (1939) under the "Charge of rape, etc.", at s.185(5): ***[SODOMY]***

"Any person charged with sodomy or assault with intent to commit sodomy may be found guilty of indecent assault or common assault, if such be the facts proved".[464] It appears that sodomy is a charge for which arrest can be made without a warrant (see First Schedule at p.130 of the Act) and that the sentence should not be less than nine years imprisonment without an option for a fine or suspended sentence (185*bis*).[465]

Previously, same sex sexual relations were understood as being a common law offence.[466] There has been a considerable lack of clarity whether lesbian sexual activity is outlawed, and by all analysis to date, it appears not.[467]

In its 1st cycle UPR review in 2011,[468] the Government clearly stated its position on the matter of decriminalisation of same-sex sexual relations by rejecting five UPR recommendations (Spain, USA, Portugal) to decriminalise sodomy. However, Swaziland did accept two further recommendations to, "[i]mplement measures to prevent violence against the LGBT community, through training and advocacy campaigns" (USA) and to ensure access to health without discrimination based on SOGI (Portugal).[469]

There is no mention of sexual orientation or SOGI in the State's report to its voluntary Mid-term Implementation Assessment (MIA) in early 2015.[470] In their commentary on the Government's activity in relation to recommendations they accepted at the UPR in 2011, Lawyers for Human Rights in Swaziland (LHRS) explain the State's non-action as being based on the homophobia inherent in indigenous tradition in the country, and they observe "Homosexuality is not a priority for Swaziland at the moment it seems".[471] Swaziland's second UPR review is due to commence in May 2016. Homophobic violence appears to be on the rise in the country.[472]

464 Text of the Criminal Law and Procedure Act (1939), at: https://www.unodc.org/res/cld/document/swz/1938/criminal_procedure_and_evidence_act_html/Swaziland_Criminal_Procedure_and_Evidence_Act_1938.pdf

465 Ibid.

466 See: the information provided at: www.humandignitytrust.org/uploaded/Map/Commonwealth_Country_Reports/Swaziland.pdf

467 See, www.observer.org.sz/news/74449-'no-legislation-against-lesbianism'.html

468 See: Submission for the UPR of Swaziland, available at: http://lib.ohchr.org/HRBodies/UPR/Documents/session12/SZ/JS5-JointSubmission5-eng.pdf

469 See: Swaziland UPR's summary at: http://arc-international.net/global-advocacy/universal-periodic-review/s/swaziland/

470 See, www.upr-info.org/followup/assessments/session25/swaziland/MIA-Swaziland.pdf

471 See MIA outcomes, at: www.upr-info.org/followup/assessments/session25/swaziland/MIA-Swaziland.pdf

472 *Speaking Out 2015: The Rights of LGBTI People across the Commonwealth*, Kaleidoscope Trust in association with Kaleidoscope Australia Human Rights Foundation (London, 2015), at 26: http://kaleidoscopetrust.com/usr/library/documents/main/2015_speakingout_241115_web.pdf

TANZANIA


Penal Code of 1945[473] (as amended by the Sexual Offences Special Provisions Act, 1998).[474]

Chapter XV: Offences Against Morality

Section 154. Unnatural offences ***[AGAINST THE ORDER OF NATURE]***

"(1) Any person who—
(a) has carnal knowledge of any person against the order of nature; or
(b) has carnal knowledge of an animal; or
(c) permits a male person to have carnal knowledge of him or her against the order of nature,
commits an offence, and is liable to imprisonment for life and in any case to imprisonment for a term of not less than thirty years.
(2) Where the offence under subsection (1) of this section is committed to a child under the age of ten years the offender shall be sentenced to life imprisonment."

Section 155. Attempt to commit unnatural offences ***[ATTEMPTED UNNATURAL OFFENCE]***

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

Section 157. Gross indecency ***[GROSS INDECENCY]***

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

Section 138A. Gross indecency ***[GROSS INDECENCY]***

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

The Penal Decree (Amendment) Act, 2004 of Zanzibar

Section 145: ***[LESBIANISM]***

"Any woman who commits an act of lesbianism with another woman whether taking an active or passive role shall be guilty of an offence and liable on conviction to a term not exceeding five years or to a fine not exceeding 500,000 shillings".[475]

Tanzania 'noted' three recommendations to decriminalise and provide equal opportunity legislation across its civil code n its 1st cycle UPR in 2011. Interestingly, although there were no recommendations for same-sex marriage given, in its responses to recommendations the delegation for Tanzania mentioned, "Tanzania had no law on same-sex marriage, as the practice of homosexuality went against its traditional, cultural and religious rights. Homosexuality was illegal and punishable by law".[476] Tanzania's 2nd cycle UPR commences May 2016.

473 Text of the 1945 Penal Code: www.ilo.org/dyn/natlex/docs/ELECTRONIC/59637/104199/F-1839757965/TZA59637.pdf

474 Text of the 1998 amendments, available at: www.hsph.harvard.edu/population/trafficking/tanzania.sexoffenses.98.pdf

475 See text of the Zanzibar law at: www.zanzibarassembly.go.tz/act_2004/act_6.pdf

476 Report of the Working Group on the Universal Periodic Review: United Republic of Tanzania, A/HRC/19/4, 8 December 2011, at: www.zanzibarassembly.go.tz/act_2004/act_6.pdf

The Concluding Observations of the Committee for the Rights of the Child in March 2015, at Tanzania's 3rd review, overtly specified sexual orientation, when the CRC spoke of being, "... concerned about reports that attitudes towards the sexual orientation of some HIV-infected children prevent these children from seeking and receiving proper HIV services and community health services (para 56). It thus recommended, *inter alia*, that Tanzania "(d) Ensure access to proper HIV services and community health services for all children, regardless of their sexual orientation, throughout the territory of the State party; and (e) Engage in public-education campaigns to combat discriminatory attitudes towards children on the grounds of their sexual orientation".[477] The Human Dignity Trust records a number of arrests made in recent years.[478]

TOGO

Penal Code of 13 August 1980 (revised April 2000)[479]

Article 88 ***[CRIMES AGAINST NATURE]***

– "Impudent acts or crimes against nature with an individual of the same sex are punished with imprisonment from one to three years and 100,000-500,000 franc in fine".[480]
(Unofficial translation)

The socio-political environment for discourse on SOGI in Togo has been challenging over the past number of years, while there is some organising and activity around SOGI.[481] However, police are known to crack down on the LGBT community at certain times, but according to a recent article, "... the biggest threat to the Togo LGBT community is the church and religious leaders. The Catholic church is very powerful there, strongly influencing moral, political and other issues".[482]

Togo's 1st cycle UPR was in October 2011, where the State received five recommendations relating to sexual orientation. It 'noted' all of them. However, in its response to the recommendations, the delegation said, "Togo was not prepared to legislate on the question of homosexuality, given that homosexuals were not subject to any form of discrimination. Such legislation might in fact be counterproductive, given the attitude of the population". It did not address the recommendation by Spain to "... launch public awareness-raising campaigns on this issue".[483] Togo's next UPR (2nd) commences in November 2016.

477 Committee on the Rights of the Child, Concluding observations on the combined third to fifth periodic reports of the United Republic of Tanzania, CRC/C/TZA/CO/3-5, 3 March 2015, at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/TZA/CO/3-5&Lang=En

478 See: www.humandignitytrust.org/uploaded/Map/Country_Reports/Tanzania.pdf

479 Text of the law is available at: www.wipo.int/wipolex/en/details.jsp?id=8148

480 Original text: *"Sera puni d'un emprisonnement d'un à trois ans et d'une amende de 100 000 à 500 000 francs quiconque aura commis un acte impudique ou contre nature avec un individu de son sexe."*

481 P. Rodenbough, *Being LGBT in West Africa*, July 2014, USAID at 66: http://blogs.cuit.columbia.edu/rightsviews/files/2015/03/The-Being-LGBT-in-West-Africa-Project-Final-Report.pdf

482 Davis Mac-Iyalla, 'Voices from LGBT Catholics in Western Africa', Washington Blade, 31 August 2015, at: www.washingtonblade.com/2015/08/31/voices-from-lgbt-catholics-in-western-africa/

483 Report of the Working Group on the Universal Periodic Review: Togo, A/HRC/19/10, 14 December 2011, at: www.upr-info.org/sites/default/files/document/togo/session_12_-_october_2011/ahrc1910togoe.pdf

TUNISIA

Penal Code of 1913 (as modified).[484]

Article 230. ***[SODOMY]***

"The sodomy, that is not covered by any of the other previous articles, is punished with imprisonment for three years."[485] (Unofficial translation) [The Arabic version of the text verifies that sexual acts between women are included within the restriction.]

Article 230 also states: ***[MORALITY CODE LIMITING SOGI PUBLIC EXPRESSION]***

"Anyone who intentionally and publicly promotes "indecency" is punishable by imprisonment for six months and subject to a fine of 48 dinars (about US $30)."[486]

Despite ardent opposition following its formation as a NGO in June 2015, the Tunisian organisation SHAMS (Sun) managed to get accredited, as the deadline for complaint had expired in May 2015.[487] However, the organisation was court ordered to suspend its activities for 30 days in early-January 2016.[488] SHAMS came to prominence around its December demonstrations centered on a young gay Tunisian man arrested in September 2015 who had been jailed after undergoing a forced anal exam to establish his sexual orientation.[489] On Human Rights Day 2015 (Dec. 10), six students were each given three years jail time under Article 230, but following an Appeals Court ruling in early-March 2016, their sentences were reduced to time already served.[490] Similar violations have continued to happen.[491]

Tunisia's last session at the UPR was in May 2012, where it received three recommendations to decriminalise same-sex sexual relationships and repeal the Article 230. It rejected all these recommendations, but did give the somewhat positive response that, "Regarding the decriminalization of homosexuality, Tunisia stated that it would be possible to conduct an objective and transparent national dialogue on the subject. However, it was not ready at this stage to adopt a decision".[492] Tunisia's 3rd UPR commences in January 2017.

---

484 Text of the law is available at: www.ilo.org/dyn/natlex/docs/ELECTRONIC/61250/60936/F1198127290/TUN-61250.pdf

485 Original text: *"La sodomie, si elle ne rentre dans aucun des cas prévus aux articles précédents, est punie de l'emprisonnement pendant trois ans":* Original Arabic:
اللواط أو المساحقة اذا لم يكن داخلا في أي صورة من الصور المقرّرة بالفصول المتقدّمة يعاقب مرتكبه بالسجن مدة ثلاثة أعوام.

486 See: www.loc.gov/law/help/criminal-laws-on-homosexuality/homosexuality-laws-in-african-nations.pdf

487 See, www.tunisia-live.net/2015/05/24/gay-rights-tunisia/ and www.huffpostmaghreb.com/2015/10/05/tunisie-shams-homosexuels_n_8240198.html (in French).

488 See, https://www.hrw.org/news/2016/01/16/tunisia-lgbt-group-suspended

489 See, www.al-monitor.com/pulse/originals/2015/12/tunisia-lgbt-community-fight-for-equal-rights.html#

490 See, http://76crimes.com/2016/03/04/6-tunisians-prison-time-reduced-to-time-already-served/

491 See, www.independent.co.uk/news/world/africa/tunisia-is-jailing-men-for-having-gay-sex-and-forcing-them-to-undergo-anal-examinations-human-rights-a6959846.html

492 Report of the Working Group on the Universal Periodic Review: Tunisia, A/HRC/21/5, 9 July 2012, at para. 40, at: www.upr-info.org/sites/default/files/document/tunisia/session_13_-_may_2012/ahrc215tunisiae.pdf

UGANDA

Penal Code of 1950, VI Laws of Uganda, Cap. 120 (rev. ed. 2000).[493]

Section 145. Unnatural offences *[AGAINST THE ORDER OF NATURE]*

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

Section 146. Attempt to commit unnatural offences *[ATTEMPTED UNNATURAL OFFENCE]*

"Any person who attempts to commit any of the offences specified in section145 commits a felony and is liable to imprisonment for seven years."

Section 148. Indecent practices: *[GROSS INDECENCY]*

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

On 20 December 2013, the Parliament adopted the Anti-Homosexuality Act, which sought to punish same-sex sexual relations with imprisonment for life, and prohibited same-sex marriage and homosexual propaganda.[494] However, on 18 August 2014, the Act was annulled by the Constitutional Court, which ruled that parliament lacked a required quorum when the law was approved.[495]

On 29 October 2014, members of Uganda's ruling party circulated a draft of a new bill entitled, "The Prohibition of Promotion of Unnatural Sexual Practices Bill",[496] which was intended to replace the annulled Act by criminalising same-sex acts and diminishing human rights related to SOGI even further. The Human Rights Awareness and Promotion Forum sought a ruling from the East African Court of Justice in February 2015, to clarify that laws such as the Ugandan Anti-homosexuality Act, are unacceptable and violate human rights.[497] In July 2015, the Uganda Consortium on Monitoring Violations Based on Sex Determination, Gender Identity and Sexual Orientation published a detailed report on violations based on SOGI in 2014 with targeted recommendations.[498]

The Human Dignity Trust records that in September 2015, the Prime Minister on being asked about the passage of that Bill stated: "That law [anti-homosexuality legislation] was not necessary, because we already have a law which was left by the British which deals with this issue". Convictions were on-going in 2015.[499] In late-February 2016, it was reported that the re-elected President, Yoweri Museveni, has signed a law that imposes harsh restrictions on

493 Text of the law is available at: www.wipo.int/wipolex/en/details.jsp?id=5241

494 Text of the law is available at: www.refworld.org/pdfid/530c4bc64.pdf

495 The copy of the judgment is available at: www.hrapf.org/sites/default/files/publications/ruling_on_the_anti-homosexuality_act.pdf

496 The copy of the bill is available at: http://sexualminoritiesuganda.com/wp-content/uploads/2014/11/The-Prohibition-of-Promotion-of-Unnatural-Sexual-Practices-Bill-of-2014.pdf

497 See, http://eacj.org/wp-content/uploads/2016/02/Appl.-No.3-of-2015-Ruling-of-the-Court.pdf

498 See: https://www.outrightinternational.org/sites/default/files/15_02_22_lgbt_violations_report_2015_final.pdf

499 Human Dignity Trust, "Criminalisation of homosexuality: Uganda", 25 October 2015, at: www.humandignitytrust.org/uploaded/Map/Country_Reports/Uganda.pdf

'outcasts', which includes LGBTI groups and persons.[500]

Uganda has been directly addressed by various UN mandate-holders, amongst which the following are of relevance to the current legislation: criminal laws, human rights defenders, HIV/AIDS in relation to SOGI in 2010,[501] criminal laws, hate crime in 2010,[502] hate crimes, death, human rights defenders in 2011,[503] death and criminal laws in 2012,[504] and human rights defenders in 2013.[505] In July 2015, the Concluding Observations of the Committee on Economic, Social and Cultural Rights, identified that the lack of anti-discrimination law that is aligned to Article 2 of the Covenant is not in place combatting societal discrimination generally, and specifically in "access to housing, employment, social security, health care and education". Also, "[t]he Committee urges the State party to withdraw the draft law on the "prohibition of promotion of unnatural sexual practices" and to urgently take steps to amend the Penal Code to decriminalize consensual same-sex sexual conduct", as well as to prevent discrimination against LGBTs [sic] and "bring perpetrators to justice".[506]

In October 2011, at its 1st UPR review, Uganda received 19 recommendations, only three of which it accepted (all to do with prosecution of individuals who perpetrate violence against LGBT people). The rest of the recommendations concerned existing and proposed new legislations.[507] Uganda's 2nd UPR is in November 2016.

In light of the Anti-Homosexuality Act, it may be surprising to note that the universal principle of non-discrimination was evident in the ruling given in the High Court of Uganda in *Mukasa and Oyo*,[508] where although acts of "carnal knowledge against the order of nature" were penalised,[509] the sexual orientation of the plaintiffs was not at issue, but what was being adjudicated on was the police ill-treatment (search and seizure of property and physical abuse) of them based on that sexual orientation. Likewise, two years later in *Kasha Jacqueline, David Kato, and Onziema*

500 *Erasing 76 Crimes*, 'New Uganda law opens door to anti-LGBTI repression', February 25, 2016, at: http://76crimes.com/2016/02/25/new-uganda-law-opens-door-to-anti-lgbti-repression/; also see Adrian JJuuko, 'Museveni's assent to NGO Act will cost us all', 26 February 2016, www.observer.ug/viewpoint/42802-museveni-s-assent-to-ngo-act-will-cost-us-all

501 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions. Addendum: Communications to and from Governments, A/HRC/14/24/Add.1, 18 June 2010; available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/145/06/PDF/G1014506.pdf?OpenElement

502 Uganda, CEDAW/C/UGA/CO/7, 5 November 2010; available at: http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-UGA-CO-7.pdf

503 Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. Addendum: Summary of cases transmitted to Governments and replies received, A/HRC/17/27/Add.1, 27 May 2011; available at: available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27.Add.1_EFSonly.pdf

504 Report of the Special Rapporteur on the situation of human rights defenders. Addendum: Observations on communications transmitted to Governments and replies received, A/HRC/19/55/Add.2, 23 February 2012; available at: available at: www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A.HRC.19.55.Add.2_EFSonly.pdf

505 Report of the Special Rapporteur on the situation of human rights defenders, A/HRC/22/47, 16 January 2013; available at: www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.47_en.pdf

506 Committee on Economic, Social and Cultural Rights, Concluding observations on the initial report of Uganda, E/C.12/UGA/CO/1, 8 July 2015, at paras. 15 and 16: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/150/73/PDF/G1515073.pdf?OpenElement

507 Report of the Working Group on the Universal Periodic Review: Uganda, A/HRC/19/16, 22 December 2011, at: www.upr-info.org/sites/default/files/document/uganda/session_12_-_october_2011/ahrc1916ugandae.pdf

508 *Mukasa and Oyo v. Attorney General*, High Court of Uganda at Kampala (22 December 2008), available at: http://www1.chr.up.ac.za/index.php/browse-by-subject/490-uganda-mukasa-and-another-v-attorney-general-2008-ahrlr-ughc-2008-.html

509 The actual act of same-sex sexual relations indicated by the word 'carnal' as set out in Section 145 of the Penal Code of Uganda is criminalised with a maximum term of life imprisonment. The analysis of the legislation presented here relies on *Sexual orientation and gender identity in international human rights law: The ICJ UN compilation*, 2013 Fifth updated edition ((International Commission of Jurists, Geneva, 2013) at: http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2013/06/SOGI-UN-Compil_electronic-version.pdf: and *Sexual Orientation, Gender Identity and Justice: A Comparative Law Casebook* (International Commission 1of Jurists, Geneva, 2011) at: www.icj.org/sexual-orientation-gender-identity-and-justice-a-comparative-law-casebook/

Patience v. Rolling Stone,[510] the question was about whether, in the heightened atmosphere around the proposed Anti-Homosexuality Bill (AHB) in Uganda,[511] the constitutional rights of the plaintiffs had been breached, and not about "homosexuality *per se*".[512] Despite widespread institutionalised and public discrimination in the country, the guarantees of universal human rights were asserted in this case regardless of SOGI.

GLOBAL ATTITUDES SURVEY ON LGBTI PEOPLE 2016

	STRONGLY AGREE	SOMEWHAT AGREE	NEITHER	SOMEWHAT DISAGREE	STRONGLY DISAGREE
Being gay, lesbian, bisexual, trans, or intersex should be a crime?	**47%**	**10%**	**15%**	**5%**	**26%**
Same-sex desire is a Western phenomenon	**42%**	**12%**	**19%**	**5%**	**23%**
	NO CONCERNS	SOMEWHAT UNCOMFORTABLE		VERY UNCOMFORTABLE	
How would you feel if your neighbour is gay or lesbian?	**40%**	**15%**		**45%**	

ZAMBIA

[513] [514]

The Penal Code Act (as amended by Act No. 15 of 2005).[515]

Section 155. Unnatural offences ***[AGAINST THE ORDER OF NATURE]***

"Any person who-
(*a*) has carnal knowledge of any person against the order of nature; or
(*b*) has carnal knowledge of an animal; or
(*c*) permits a male person to have carnal knowledge of him or her against the order of nature;
commits a felony and liable, upon conviction, to imprisonment for a term not less than fifteen years and may be liable to imprisonment for life:

510 *Kasha Jacqueline, David Kato Kisule and Onziema Patience v. Rolling Stone Ltd and Giles Muhame*, High Court of Uganda at Kampala (30 December 2010); available at: http://iglhrc.org/sites/default/files/2010%20Kasha%20Jacqueline%20v%20Rolling%20Stone.pdf

511 The Anti Homosexuality Bill, Bill No.18, Uganda, 25 September 2009.

512 The respondents were the publishers of a newspaper called "Rolling Stone". On 2 October 2010, an article with the title "100 Pictures of Uganda's top homos leak" was published in the newspaper. The article accused the gay community of trying to recruit "very young kids" and "brainwash them towards bisexual orientation". It called on the government to take a bold step against this threat by hanging dozens of homosexuals. The article published the names and pictures of several members of the Ugandan LGBT community and provided information about them and, in some cases, their home addresses. David Kato, one of those named taking the action and advocacy officer for Sexual Minorities Uganda (SMUG), was found murdered in his home on 27 January 2011: results of the official investigation into his death remain 'inconclusive'.

513 See "Human Rights Commission and gay rights", para 3, July 2012 www.hrc.org.zm/index.php/latest-news/61-human-rights-commission-on-gay-rights

514 Amongst others, see a *76 Crimes* report of a 15 year prison sentence handed down to a trans woman in October 2015, at: http://76crimes.com/2015/11/02/zambian-trans-woman-convicted-faces-15-years-to-life/

515 Text of the law is available at: www.unodc.org/res/cld/document/zmb/1931/the_penal_code_act_html/Zambia_Penal_Code_Act_1930_as_amended_2005.pdf. The Penal Code (Amendment) Act (No. 15, of 28 September 2005) which increased the maximum sentences in sections 155 and 156, and introduced a prohibition of sex between women in section 158 is included in this copy of the Code.

Provided that where a person-
(i) has carnal knowledge of a child against the order of nature;
(ii) causes a child to have carnal knowledge of an animal; or
(iii) permits a male person to have carnal knowledge of a male or female child against the order of nature;
that person commits an offence and is liable, upon conviction, to imprisonment for not less than twenty-five years and may be liable to imprisonment for life."

Section 156. Attempt to commit unnatural offences ***[ATTEMPTED UNNATURAL OFFENCE]***

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

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

"(1) Any male who, whether in public or private, commits any act of gross indecency with a male child or person, or procures a male child or person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male child or person, whether in public or private, commits a felony and is liable, upon conviction, to imprisonment for a term of not less than seven years and not exceeding fourteen years.
(2) Any female who, whether in public or private, commits any act of gross indecency with a female child or person, or procures a female child or person to commit any act of gross indecency with her, or attempts to procure the commission of any such act by any female person with himself or with another female child or person, whether in public or private, commits a felony and is liable, upon conviction, to imprisonment for a term of not less than seven years and not exceeding fourteen years.
(3) A child who, whether in public or private, commits any act of gross indecency with another child of the same sex or attempts to procure the commission of any such act by any person with the child's self or with another child or person of the same sex, whether in public or private, commits an offence and is liable, to such community service or counseling as the court may determine in the best interests of the child."

Despite having received 11 recommendations – only one which was accepted (regarding "impartial investigations" on attacks against LGBT people) – Zambia made no mention of sexual orientation issues in its responses to the recommendations at its 2nd cycle UPR in December 2012. In reference to HIV/AIDS, it said that: "Protection and promotion of human rights was intended to be one of the guiding pillars in the construction and implementation of the new national HIV and AIDS policy", but otherwise directly or indirectly no mention of SOGI-related content was referenced.[516] Zambia's 3rd cycle UPR will commence in November 2017.

In April 2013, having spoken on national television about the need to repeal Articles 155, 156 and 158 of the Penal Code (which are categorised under 'Offences Against Morality'), activist Paul Kasonkomona was arrested and stood before Lusaka Magistrates Court.[517] On 25 February 2014, the court acquitted him of charges of "soliciting for immoral purposes in a public place" (which is a Nuisance offence under Article 178(g) of the Penal Code),[518] holding that the State has failed to present a sufficient case for the defence to answer resulting in the acquittal of Kasonkomona. The State appealed this ruling to the High Court. On 15 May 2015, Justice Mulongoti confirmed the acquittal of Kasonkomona and ruled that the State had not made out a case against Kasonkomona.[519]

516 Report of the Working Group on the Universal Periodic Review: Zambia, A/HRC/22/13, 31 December 2012, at: www.upr-info.org/sites/default/files/document/zambia/session_14_-_october_2012/ahrc2213zambiae.pdf

517 *The People v. Paul Kasonkomona*, CR No. 9/04/13, at: www.southernafricalitigationcentre.org/1/wp-content/uploads/2014/03/Kasonkomona-Ruling.pdf

518 Ibid, at 178(*g*) "every person who in any public place solicits for immoral purposes".

519 See, Southern African Law Centre account of the case, at: www.southernafricalitigationcentre.org/cases/completed-cases/zambia-activist-defends-right-to-freedom-of-expression/ ; and Columbia's University's case analysis, at: https://globalfreedomofexpression.columbia.edu/cases/case-of-paul-kasonkomona/

ZIMBABWE

Criminal Law (Codification and Reform) Act (Effective 8 July 2006).[520]

Section 73. Sodomy ***[SODOMY]***

"(1) Any male person who, with the consent of another male person, knowingly performs with that other person anal sexual intercourse, or any act involving physical contact other than anal sexual intercourse that would be regarded by a reasonable person to be an indecent act, shall be guilty of sodomy and liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding one year or both.
(2) Subject to subsection (3), both parties to the performance of an act referred to in subsection (1) may be charged with and convicted of sodomy.
(3) For the avoidance of doubt it is declared that the competent charge against a male person who performs anal sexual intercourse with or commits an indecent act upon a young male person—
(a) who is below the age of twelve years, shall be aggravated indecent assault or indecent assault, as the case may be; or
(b) who is of or above the age of twelve years but below the age of sixteen years and without the consent of such young male person, shall be aggravated indecent assault or indecent assault, as the case may be; or
(c) who is of or above the age of twelve years but below the age of sixteen years and with the consent of such young male person, shall be performing an indecent act with a young person."

In its first UPR in October 2011, Zimbabwe received only one recommendation: to repeal the 2006 law "as soon as possible" (France) – this was, unsurprisingly, rejected and the State made no reference to SOGI in its final report or in its Interactive Dialogue.[521] Zimbabwe's second UPR commences November 2016.

Despite the atmosphere of severe socio-political hostility and rhetoric directed at sexual and gender minorities over the past years, in October 2016 the country's Labour Court (based in Bulawayo) accepted the plea of a youth worker who had been fired from the civil service because he had been arrested and paid a fine following a police raid on a party held by GALZ in 2014. This court found that the dismissal based on sexual orientation was unconstitutional (although sexual orientation is not expressly named in the Constitution document).[522]

GLOBAL ATTITUDES SURVEY ON LGBTI PEOPLE 2016

	STRONGLY AGREE	SOMEWHAT AGREE	NEITHER	SOMEWHAT DISAGREE	STRONGLY DISAGREE
Being gay, lesbian, bisexual, trans, or intersex should be a crime?	**38%**	**11%**	**22%**	**10%**	**23%**
Same-sex desire is a Western phenomenon	**32%**	**15%**	**31%**	**4%**	**18%**
	NO CONCERNS	SOMEWHAT UNCOMFORTABLE		VERY UNCOMFORTABLE	
How would you feel if your neighbour is gay or lesbian?	**49%**	**20%**		**31%**	

520 Text of the law is available at: www.kubatana.net/docs/legisl/criminal_law_code_050603.pdf

521 Report of the Working Group on the Universal Periodic Review: Zimbabwe, A/HRC/19/14, 19 December 2011, at: www.upr-info.org/sites/default/files/document/zimbabwe/session_12_-_october_2011/ahrc1914zimbabwee.pdf

522 www.voazimbabwe.com/a/zimbabwe-sexual-orientation-sex-marriage-unconstitutional/3024732.html

AFGHANISTAN

Penal Code, 1976.[524]

Chapter Eight: Adultery, Pederasty, and Violations of Honour

Article 427: ***[INTERCOURSE BETWEEN MALES]***

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

The Afghan Penal Code does not contain any explicit provisions on the criminality of consensual same-sex sexual acts. Article 130 of the Constitution allows recourse to be made to Sharia law, which prohibits same-sex sexual activity in general. Afghanistan's Sharia law criminalises same-sex sexual acts with a maximum of death penalty. However, no known cases of death sentences have been handed out for such behaviour since the end of Taliban rule.[525]

In Afghan legal terminology "pederasty" appears to refer to intercourse between males regardless of age. The fact that paedophilia - or sexual relations with persons under the age of consent - falls under subsection 2(a) of article 427 indicates that this is the case. Terming sexual acts between adult men "pederasty" has previously not been uncommon; this occurred for example in the translations of the Criminal Codes of Albania (1977) and Latvia (1933), and in the old Russian legal tradition a "pederast" usually referred to a male who had anal intercourse with another male, regardless of age.

In its 2nd cycle UPR in January 2014, the only recommendation regarding SOGI to Afghanistan (not accepted: "noted"), Norway called for the "repeal the provisions of the penal code that criminalise sexual relations between consenting adults of the same sex". No mention was made of the death penalty in relation to same-sex behaviour directly, although ten recommendations calling for the abolition of the death penalty in line with civil and political rights were made: under international human rights law these necessarily include SOGI in their scope.[526] A joint submission (SRI, IFPP, and AFGA) made a reference to men who have sex with men (MSM),[527] and this appears to be the only mention of SOGI-related material through Afghanistan's entire 2nd cycle UPR process. Its next review is October 2018.

523 A senior member of Afghanistan Independent Human Rights Commission attended the Workshop on the Role of NHRIs in Promoting and Protecting the Rights and Health of LGBTI in Asia and the Pacific, February 2015, see: www.asiapacificforum.net/human-rights/sogi/

524 Text of the law is available at: http://aceproject.org/ero-en/regions/asia/AF/Penal%20Code%20Eng.pdf/view

525 Healey, Dan *Homosexual Desire in Revolutionary Russia* (Chicago: Chicago University Press, 2001) at 272.

526 See: www.ohchr.org/EN/HRBodies/UPR/Pages/AFSession18.aspx

527 www.upr-info.org/sites/default/files/document/afghanistan/session_18_-_january_2014/js1_upr18_afg_e_main.pdf

BANGLADESH

Penal Code, 1860 (Act XLV of 1860).[528]

Section 377. "Unnatural Offences" ***[AGAINST THE ORDER OF NATURE]***

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

While referencing family values at its 2nd cycle UPR in April 2013, the Bangladeshi Minister for Foreign Affairs concurred with the newly-found position of the National Human Rights Commission that LGBT people should be protected from violence and discrimination in law.[529]

There are no SOGI-based NGOs in Bangladesh (although there are impressive CSOs, such as Boys of Bangladesh and the Bhandu Social Welfare Society, and online communities such as Roopbaan, Shambhab (a lesbian network) and Vivid Rainbow), and such an organisation may not be allowed to register because of the existing laws;[530] a view endorsed in 2011 by one of Bangladesh's only barristers concerned with SOGI issues, Sara Hossain.[531]

Bangladesh accepted a recommendation to carry out sensitisation training with public officials regarding SOGI discrimination at its 1st UPR, but this issue was not picked up at its 2nd cycle review.[532] The capacities of seven South Asian National Human Rights Institutions (NHRIs) to respond to LGBTI concerns were assessed in 2013, amongst them that of Bangladesh.[533] Bangladesh's 3rd cycle UPR will be in January 2018.

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

In January 2013, Bangladesh's first ever LGBTI magazine, Roopbaan was published and it has expanded its initiatives into organising awareness and advocacy, including two public events - 'Rainbow rally' - to promote friendship and diversity in Dhaka in 2014 and 2015.[534] However, in April 2016 organisers had to call off the rally because of threats and opposition from Islamists, and four arrests were reported.[535]

In February 2015, author of Bangladesh's first scientific book (2010) on same-sex sexual identity, Avijit Roy, was

528 Text of the law is available at: http://bdlaws.minlaw.gov.bd/sections_detail.php?id=11&sections_id=3233

529 YouTube, Clip of Minister's Statement on SOGI in Bangladesh, 29 April 2013 (webpage) www.youtube.com/watch?v=_BQkJm34KzQ

530 Section 377 extends to membership of a SOGI-based organisation according to the compilation by the University of Toronto "Bangladesh: Country Report for Use in Refugee Claims Based on Persecution Relating to Sexual Orientation and Gender Identity" March 2011 (online) http://ihrp.law.utoronto.ca/utfl_file/count/documents/SOGI/Bangladesh_SOGI_2011.pdf

531 *Infra* JS3, n.538, at 8, (Sara Hossain presented the Human Rights Forum's submission to the UPR in May 2013).

532 See, United Nations Human Rights Council *Draft report of the Working Group on the Universal Periodic Review: Bangladesh* A /HRC/WG.6/16/L.10, 1 May 2013.

533 See: *The Capacity of National Human Rights Institutions to Address Human Rights in Relation to Sexual Orientation, Gender Identity and HIV* at: http://mercury.ethz.ch/serviceengine/Files/ISN/175698/ipublicationdocument_singledocument/69ba3ef6-03f4-4404-aff9-1eedac5bec36/en/RegionalReportGenderHIV.pdf

534 *Speaking Out 2015: The Rights of LGBTI People across the Commonwealth*, Kaleidoscope Trust in association with Kaleidoscope Australia Human Rights Foundation (London, 2015), at 40: http://kaleidoscopetrust.com/usr/library/documents/main/2015_speakingout_241115_web.pdf

535 *See:* https://76crimes.com/2016/04/14/four-arrests-of-lgbt-activists-at-bangladesh-celebration/

gruesomely murdered on the streets of Dhaka, by religious fundamentalists.[536]

On 25 April 2016, the editor of Roopban, Xulhaz Mannan, and fellow activist Mahbub Rabbi Tonoy were gruesomely murdered in Dhaka.[537]

BHUTAN

Penal Code 2004.[538]

Chapter 14: Sexual Offences

Unnatural sex ***[AGAINST THE ORDER OF NATURE]***

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

Grading of unnatural sex

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

Chapter 2: Classes of crime

Section 3. "For the purpose of this Penal Code, the classes of crimes shall be as follows:
(c) A crime shall be petty misdemeanor, if it is so designated in this Penal Code or other laws and provides for a maximum term of imprisonment of less than one year and a minimum term of one month for the convicted defendant."

Bhutan did not accept any of the four recommendations to decriminalise same-sex sexual behavour in its 2nd cycle UPR in April 2014.[539] In its 1st cycle UPR in late-2009, the representative of Bhutan had claimed, "[h]owever, I wish to share that the provisions concerning unnatural acts in the Penal Code of Bhutan have never since its enactment been evoked for acts between two consenting adults of the same sex. The provisions can be revised when there is felt need and desire from our people".[540] There appears to have been no reference to this or related matters in its 2nd cycle UPR in 2014. Bhutan's next review is in January 2019.

BRUNEI DARUSSALAM

Penal Code, Chapter 22, revised edition 2001.[541]

Unnatural offences ***[AGAINST THE ORDER OF NATURE]***

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

---

536 See: https://lgbtbangladesh.wordpress.com/2010/07/17/samakamita-the-first-bengali-book-analysing-the-issues-of-homosexuality/

537 See: https://76crimes.com/2016/04/25/two-lgbt-activists-murdered-in-bangladesh/.

538 Text of the law is available at: www.judiciary.gov.bt/html/act/PENAL%20CODE.pdf

539 Report of the Working Group on the Universal Periodic Review: Bhutan, A/HRC/27/8, 1 July 2014, at: www.upr-info.org/sites/default/files/document/bhutan/session_19_-_april_2014/a_hrc_27_8_e.pdf

540 Report of the Working Group on the Universal Periodic Review: Bhutan, A/HRC/13/11, 4 January 2010, at: www.upr-info.org/sites/default/files/document/bhutan/session_6_-_november_2009/ahrc1311bhutane.pdf

541 Text of the law is available at: https://www.unodc.org/tldb/pdf/Brunei_Penal_Code_1951_Full_text.pdf

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

Brunei Darussalam rejected ('noted') the five recommendations made in its 2nd cycle Universal Periodic Review in April 2014. Unlike its 1st UPR cycle rejections in 2009 (mostly on non-discrimination),[542] the major concerns of the 2nd cycle were decriminalisation (France, Canada, Spain and Czech Republic), and the revised Penal Code (Cap 22) that reintroduces the death penalty for same-sex sexual behaviour (Spain and Czech Republic). Bangladesh, however, used the UPR process to encourage Brunei Darussalam to uphold its social policies in line with traditional family values.[543]

In 2014, IGLHRC submitted a shadow report to the Convention on the Elimination of Discrimination Against Women (CEDAW) Committee describing in detail how "the enforcement of SPC Order 2013 is likely to result in even tighter family control and increased violence to force Bruneian lesbians, tomboys, masculine-looking women, bisexual women and transgender women to conform to social norms (and now criminal law) on sexuality and gender".[544] In para. 13(a) of its Concluding Observations, the CEDAW committee urged the State to, "immediately review the new Sharia Penal Code Order 2013 with a view to repealing its direct and indirect discriminatory provisions affecting women".[545]

Since 2014, Brunei Darussalam has been phasing in its Syariah Penal Code Order (SPC Order 2013), and the second and third phases of it were due to be in place in 2015 and 2016 (at which point the death penalty for consensual same-sex sexual behaviour was due to apply – for both men and women).[546] However, it appears that Brunei has not bought the third phase in and there is no sign that the threatened death penalty is to be implemented (for the crime of Liwat that includes same-sex relations between consenting same-sex partners). It is also the case that the last execution by the State in Brunei was in 1957.

GAZA – OCCUPIED PALESTINIAN TERRITORY

The British Mandate Criminal Code Ordinance, No. 74 of 1936 is in force in Gaza.[547]

Section 152(2) of the Code criminalises sexual acts between men with a penalty of up to 10 years.[548] ***[SEXUAL ACTS BETWEEN MEN]***

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

---

542 Full SOGI profile at: http://arc-international.net/global-advocacy/universal-periodic-review/b/brunei-darussalam.

543 See: http://arc-international.net/wp-content/uploads/2014/05/UPR19-SOGI-report.pdf at 10.

544 See: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/BRN/INT_CEDAW_NGO_BRN_18370_E.pdf

545 Committee on the Elimination of Discrimination against Women, Concluding observations on the combined initial and second periodic reports of Brunei Darussalam, CEDAW/C/BRN/CO/1-2, November 2014, at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fBRN%2fCO%2f1-2&Lang=en

546 Text of the law is available at: www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2013/EN/syariah%20penal%20code%20order2013.pdf ; See:also, the open letter from International Commission of Jurists to the Prime Minister of Brunei Darussalam at: http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/01/Brunei-Open-letter-on-2013-Penal-Code.pdf

547 Text of the law is available at: www.nevo.co.il/law_html/law21/PG-e-0633.pdf

548 'Human Rights and Legal Position of Palestinian "Collaborators"', Supreme Court of Israel. Schmitt, Arno and Sofer, Jehoeda, *Sexuality and Eroticism Among Males in Moslem Societies* (Binghamton: Harrington Park Press, 1992) at 137-138.

Since the 2007 governance of Gaza by Hamas, the Gazan legislative body has attempted to amend or replace the British Mandatory Penal Code. The proposal from 2013 purported to be "Islamic based", and included flogging for adultery and cutting off an offender's right hand for theft. While a complete draft of the proposal was never published, it is highly likely its treatment of same-sex acts would have been far more severe than even the current law. The code failed to pass the Gazan legislature.[549]

INDIA

Section 377.

Unnatural offences[550] ***[AGAINST THE ORDER OF NATURE]***

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

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

In 2009, Section 377 of the Indian Penal Code was given a more limited interpretation by the Delhi High Court, lifting the ban on same-sex sexual activity among consenting adult men in private.[551] However, on 11 December 2013, in *Koushal v. Naz Foundation*, a two-judge bench of the Supreme Court of India upheld Section 377 as constitutional. [552] Therefore, private consensual sexual activity between two men is still a crime in India.

In terms of India's recent performance regarding international human rights law at the UN, its 2nd cycle UPR responses (May 2012) suggest the country's current regard to its obligations: India accepted a level 3 (i.e. 'to consider') recommendation to "[s]tudy the possibility of eliminating any criminalisation of same-sex relations", [553] despite the concerns expressed by Action Canada for Population and Development Statement to the UPR that the Criminal Law (Amendment) Bill 2012 that was approved by the Cabinet retained Section 377 of the India Penal Code.[554] In the same UPR session, India rejected a general recommendation for non-discrimination, particularly in employment, based on sexual orientation. India's 3rd UPR cycle commences in January 2017, with NGO submissions required by 1 June 2016.

549 See: www.al-monitor.com/pulse/ar/originals/2013/05/islamic-penal-code-proposed-gaza.html# (in Arabic). We thank OutRight Action International researchers for this clarification.

550 Text of the law is available at: http://punjabrevenue.nic.in/crime13.htm

551 Judgment of the Delhi High Court available at: htt. For more information on the judgment, see: Alternative Law Forum, "The Right that Dares Speak its Name" at: www.tarshi.net/downloads/The_right%20that_Dares_to_Speak_its_Name.pdf

552 In the Supreme Court of India Civil Appellate Jurisdiction Review Petition (C) Nos. 41-55 of 2014, in Civil Appeal No.10972, 10974, 10986, 10981, 10983, 10984, 10975, 10973, 10985, 10976, 10980, 10982, 10977, 10978 and 10979 of 2013, text of the order is available at: http://supremecourtofindia.nic.in/outtoday/rc4114.pdf

553 See: Report of the Working Group on the Universal Periodic Review: India A/HRC/21/10, 9 July 2012, at: www.upr-info.org/sites/default/files/document/india/session_13_-_may_2012/ahrc2110indiae.pdf

554 See: http://arc-international.net/global-advocacy/universal-periodic-review/i/india-2nd-cycle

In *Naz Foundation* (2009),[555] the Ministry of Home Affairs justified retention of Section 377 on the grounds of protection of health and morals, but the High Court of New Delhi found that public morality is not a legitimate State interest and held that, although protection of public health was a legitimate State interest, the law at issue was not rationally connected to this legislative end.[556] In this case, the High Court relied on *Dudgeon*[557] and *Toonen* (practice of regional and international human rights mechanisms) to derive this important principle.[558]

The Supreme Court has issued two contrasting judgments. The Section 377 judgment in 2013 refused to apply fundamental constitutional rights to decriminalise same-sex sexual conduct, stating that decriminalisation is a question for parliament, not the courts. On the other hand, a Supreme Court judgement a few months later found that transgender people do enjoy constitutional rights and the Supreme Court required the government to implement measures in recognition of these rights.[559] On April 15, 2014, in the case of *National Legal Services Authority v. Union of India and other*s, the Supreme Court of India upheld the Constitutional rights of transgender persons under Articles 14, 15, 19 and 21, which guarantee the right to equality, the right against discrimination, freedom of speech and expression, and the right to life with dignity respectively.[560]

The UN Rapporteur on Human Rights Defenders has twice noted problems in relation to SOGI in India, in 2009[561] and 2012.[562] In 2014, the Committee for the Elimination of all forms of Discrimination Against Women (CEDAW) urged India "[t]o make efforts to eliminate any criminalization of same-sex relations by studying the possibility, as accepted by the State party during its [U}niversal [P}eriodic [R]eview [...],[563] and to take note of the ruling of the Supreme Court (*Suresh Kumar Koushal and another v. NAZ Foundation*, 2013) in this regard".[564] In April 2016, the International Commission of Jurists (ICJ) released a Briefing Paper on the Section 377 Curative Petition laying out the validity of the Supreme Court reversing its earlier decision.[565]

555 *Naz Foundation v. Government of NCT of Delhi and Others*, High Court of Delhi at New Delhi, India, 2009.

556 See: *Sexual Orientation, Gender Identity and Justice: A Comparative Law Casebook* (Geneva: International Commission of Jurists, 2011) at 11: http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2012/05/Sexual-orientation-gender-identity-and-Justice-report-2011.pdf

557 *Dudgeon v. United Kingdom*, Application No. 7525/76, Judgment of 22 October 1981 (finding that the sodomy laws of Northern Ireland violated the right to privacy under the European Convention).

558 *Toonen v. Australia*, Communication No. 488/1992, Views of 4 April 1994 (finding that the sodomy laws of Tasmania violated the rights to privacy and non-discrimination under the ICCPR).

559 National Legal Services Authority v. Union of India and others, Supreme Court of India, No. 604, (2013) available at http://supremecourtofindia.nic.in/outtoday/wc40012.pdf

560 See, *Speaking Out 2015: The Rights of LGBTI People across the Commonwealth*, Kaleidoscope Trust in association with Kaleidoscope Australia Human Rights Foundation (London, 2015), at 42: http://kaleidoscopetrust.com/usr/library/documents/main/2015_speakingout_241115_web.pdf

561 Report of the Special Representative of the Secretary-General on the situation of human rights defenders. Addendum: Summary of cases transmitted to Governments and replies received, see: A/HRC/10/12/Add.1, 4 March 2009.

562 Report of the Special Rapporteur on the situation of Human Rights Defenders. Addendum: Mission to India, A/HRC/19/55/Add.1, 6 February 2012.

563 See, www.un.org/ga/search/view_doc.asp?symbol=A/HRC/21/10/Add.1

564 Committee on the Elimination of Discrimination against Women, Concluding observations on the combined fourth and fifth periodic reports of India, CEDAW/C/IND/CO/4-5, 24 July 2014, at para. 11(i), see: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fIND%2fCO%2f4-5&Lang=en

565 See: http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2016/03/India-QA-art-377-Advocacy-Analysis-brief-2016-ENG.pdf

GLOBAL ATTITUDES SURVEY ON LGBTI PEOPLE 2016

	STRONGLY AGREE	SOMEWHAT AGREE	NEITHER	SOMEWHAT DISAGREE	STRONGLY DISAGREE
Being gay, lesbian, bisexual, trans, or intersex should be a crime?	21%	10%	20%	11%	39%
Same-sex desire is a Western phenomenon	28%	18%	25%	6%	24%
	NO CONCERNS	SOMEWHAT UNCOMFORTABLE		VERY UNCOMFORTABLE	
How would you feel if your neighbour is gay or lesbian?	62%	17%		22%	

INDONESIA (TWO PROVINCES ONLY)

[566]

Same-sex sexual relations between consenting adults are not prohibited according to the Indonesian Penal Code (which finds root in the Netherlands Indies Penal Code).[567] However, at the national level there are stigmatising Regulations that apply nationwide: for example, **Government Regulation 61/2014 on Reproductive Health** stipulates that a "Healthy sexual life … includes social life that is: a. free from sexually transmitted diseases, b. free from sexual orientation dysfunction or deviance, c. free from physical and mental abuse, d. capable to control pregnancy, and e. in accordance with ethics and morals".[568]

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

- **Provincial Ordinance on the Eradication of Immoral Behavior (No. 13/2002) in South Sumatra**: classifies and penalises same sex relations as "immoral behavior".
- **Local Regulation** [City Ordinance] **Batam City No. 6/2002 about Social Ordinance, Social Order Article 9**: forbids the setting up of LGBT associations (explicitly mentioned).
- **Local Regulation** [City Ordinance] **Palembang City No. 2/2014 about the Abomination of Prostitution, Chapter V. Prohibition Provisions, Article 8**: outlaws "homosexual" "prostitution".
- **Local Regulation** [City Ordinance] **about Prevention, Eradiction and Action toward Social Ills (No. 9/2010) in Padang Panjang, West Sumatera**: its definition includes same sex relationships within its scope (paid, or not paid for).
- **District Ordinance on Social Order (No. 10/2007) in Banjar, South Kalimantan Province**: mentions "abnormal" homosexual and heterosexual acts (in addition to "normal" ones) in its definition of "prostitute". No explanation is given for "normal" or "abnormal" acts. It also prohibits the formation of organisations "…leading to immoral acts", that are "…unacceptable to the culture of [local] society". These are later explained by giving examples of lesbian and gay organisations "and the like".[569]
- **City Ordinance on the Development of a Value System in Social Life Based on the Teachings of Islam and Local Social Norms (No. 12/2009) in Tasikmalaya, West Java**: prohibits adultery and prostitution, both heterosexual and homosexual.[570]
- **Aceh Regulation No. 6/2014** [Provincial Ordinance] on criminal offenses under Syariah law, passed in 2014, came into

566 In Aceh.

567 Text of the law is available at: www.unhcr.org/refworld/country,,,LEGISLATION,TMP,4562d8cf2,3ffbcee24,0.html

568 Source of translation with author.

569 Canada: Immigration and Refugee Board of Canada, *Indonesia: Situation of sexual minorities, including legislation, treatment by society and authorities, state protection and support services available (2013 - June 2015)*, 8 July 2015, at www.refworld.org/docid/55b602fa4.html

570 Sources for above section: sources with author; UNDP, USAID, *Being LGBT in Asia: Indonesia Country Report*, Bangkok, 2014, at: www.asia-pacific.undp.org/content/dam/rbap/docs/Research%20&%20Publications/hiv_aids/rbap-hhd-2014-blia-indonesia-country-report-english.pdf

effect on 23 October 2015.[571] The law stipulates a punishment of 100 lashes and/or up to approximately eight years in prison. The regulation applies to local residents and to foreigners in the province for the crime of Liwat (male penetration) and Musahaqah (female same-sex sexual activity) in article 63 and 64.[572]

In 2002, the national parliament gave the province of Aceh the right to adopt Islamic Sharia laws. Such laws apply to Muslims only. In the city of Palembang in South Sumatra one can receive jail time and hefty fines for same-sex relations.[573] In recent years, there has been no abatement in the anti-SOGI demands of Muslim clerics as reported by Human Rights Watch in March,[574] and in the essay 'Asia These Days' in the current edition.

At its most recent UPR, 2nd cycle in May 2012, Indonesia was very specifically asked to address violence against SOGI human rights defenders against whom threats were on the increase. Indonesia responded to Spain's call to "eliminate the legislation" that criminalises and discriminates against same-sex people, particularly in the Aceh province by saying,[575] "[t]he recommendations do not reflect the actual situation in the Provinces they refer to".[576] Here, the State representatives may have been referring to the fact that Qanun Jinayah Aceh (Syariah Law) is legal guidance on regulations about forbidden acts or wrongdoings according to the teaching of Islam (Syariah), from which interpretations flows, rather than a book of rigid statutes that overtly outlaw same-sex sexual relations, *per se*.

Among its principle concerns, the United Nations Committee on Economic, Social and Cultural Rights "...notes with concern that laws and by-laws which discriminate against women and marginalized individuals and groups such as sex workers, and lesbian, gay, bisexual and transgender persons are in force in provinces, districts and autonomous regions, in spite of the review mechanism in place in the State party (art. 2.1)", and made recommendations on how to rectify these Convention violations.[577]

On 3 March 2016, Indonesia's Parliamentary Commission for Defense, Foreign Affairs and Information (known as Commission I) recommended "measures for the [Indonesian Broadcasting Commission, or KPI] to tighten controls over broadcasting LGBT-related content, as well as sanctioning strict punishment for violation of LGBT content delivery."[578] Reports in March 2016 document a worsening socio-political environment for LGBT advocacy and development.[579]

571 See, http://www1-media.acehprov.go.id/uploads/Qanun_Aceh_Nomor_6_Tahun_2014_tentang_Hukum_Jinayat.pdf

572 Library of Congress, 'Indonesia: Aceh Province Law Expands Caning Punishment to Adultery and Homosexual Acts' 28 October 2015, Global Legal Monitor, at www.loc.gov/law/foreign-news/article/indonesia-aceh-province-law-expands-caning-punishment-to-adultery-and-homosexual-acts/

573 See, 'Special Report: Indonesia - Exchanging Pluralism For An Islamist State', available at: http://pancasilaislam.blogspot.sg/2012/10/special-report-indonesia-exchanging.html

574 See: www.hrw.org/news/2015/03/17/dispatches-challenging-indonesia-s-intolerant-muslim-clerics

575 See: Report of the Working Group on the Universal Periodic Review: Indonesia, A/HRC/21/7/add.1, 5 September 2012, at para.6.5, see: www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-7-Add1_en.pdf

576 See: http://arc-international.net/global-advocacy/universal-periodic-review/i/indonesia-2nd-cycle/

577 Committee on Economic, Social and Cultural Rights, Concluding observations on the initial report of Indonesia, E/C.12/IDN/CO/1, 19 June 2014, at para. 6, see: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fIDN%2fCO%2f1&Lang=en

578 See, HRW, at: https://www.hrw.org/news/2016/03/09/indonesia-dont-censor-lgbt-speech; and Global Legal Monitor, "Indonesia: Political Party Proposes Anti-LGBT Law" 9 March 2016, at: www.loc.gov/law/foreign-news/article/indonesia-political-party-proposes-anti-lgbt-law/?loclr=eaglm.

579 For example, see Channelnewsasia, 'Under attack, Indonesian LGBT groups set up safehouses, live in fear', 9 March, 2016, at: www.channelnewsasia.com/news/asiapacific/under-attack-indonesian/2585572.html?cid=twtcna

GLOBAL ATTITUDES SURVEY ON LGBTI PEOPLE 2016

	STRONGLY AGREE	SOMEWHAT AGREE	NEITHER	SOMEWHAT DISAGREE	STRONGLY DISAGREE
Being gay, lesbian, bisexual, trans, or intersex should be a crime?	**27%**	**11%**	**25%**	**15%**	**22%**
Same-sex desire is a Western phenomenon	**28%**	**17%**	**20%**	**14%**	**21%**
	NO CONCERNS	SOMEWHAT UNCOMFORTABLE		VERY UNCOMFORTABLE	
How would you feel if your neighbour is gay or lesbian?	**26%**	**32%**		**41%**	

IRAN

Islamic Penal Code of Iran of 1991.[580]

"Part 2: Punishment for Sodomy

Chapter 1: Definition of Sodomy ***[SODOMY]***

Article 108: Sodomy is sexual intercourse with a male.
Article 109: In case of sodomy both the active and the passive persons will be condemned to its punishment.
Article 110: Punishment for sodomy is killing; the Sharia judge decides on how to carry out the killing.
Article 111: Sodomy involves killing if both the active and passive persons are mature, of sound mind and have free will.
Article 112: If a mature man of sound mind commits sexual intercourse with an immature person, the doer will be killed and the passive one will be subject to Ta'azir of 74 lashes if not under duress.
Article 113: If an immature person commits sexual intercourse with another immature person, both of them will be subject to Ta'azir of 74 lashes unless one of them was under duress.

Chapter 2: Ways of proving sodomy in court

Article 114: By confessing after four lashes to having committed sodomy, punishment is established against the one making the confession.
Article 115: A confession made before receiving four lashes (to having committed sodomy) does not involve punishment of "Had" but the confessor will be subject to Ta'azir (lesser punishments).
Article 116: A confession is valid only if the confessor is mature, of sound mind, has will and intention.
Article 117: Sodomy is proved by the testimony of four righteous men who might have observed it.
Article 118: If less than four righteous men testify, sodomy is not proved and the witnesses shall be condemned to punishment for Qazf (malicious accusation).
Article 119: Testimony of women alone or together with a man does not prove sodomy.
Article 120: The Shariajudge may act according to his own knowledge which is derived through customary methods.
Article 121: Punishment for Tafhiz (the rubbing of the thighs or buttocks) and the like committed by two men without entry, shall be hundred lashes for each of them.
Article 122: If Tafhiz and the like are repeated three lashes without entry and punishment is enforced after each time, [SIC] the punishment for the fourth time would be death.
Article 123: If two men not related by blood stand naked under one cover without any necessity, both of them will be subject to Ta'azir of up to 99 lashes.
Article 124: If someone kisses another with lust, he will be subject to Ta'azir of 60 lashes.

580 Text of the 1991 Penal Code in English is available at: http://mehr.org/Islamic_Penal_Code_of_Iran.pdf. The Penal Code was revised in 2012, and although none of the same-sex sexual behaviour provisions for men and women were changed (Arts. 108-134), the English translation of them provided by the Iran Human Rights Documentation Centre is somewhat more nuanced, see: www.iranhrdc.org/english/human-rights-documents/iranian-codes/3200-islamic-penal-code-of-the-islamic-republic-of-iran-book-one-and-book-two.html#20

Article 125: If the one committing Tafhiz and the like or a homosexual man, repents before the giving of testimony by the witnesses, his punishment will be quashed; if he repents after the giving of testimony, the punishment will not be quashed.
Article 126: If sodomy or Tafhizis proved by confession and thereafter he repents the Sharia judge may request the leader (Valie Amr) to pardon him.

Part 3: Lesbianism ***[HOMOSEXUALITY – WOMEN]***

Article 127: Mosaheqeh (lesbianism) is homosexuality of women by genitals.
Article 128: The ways of proving lesbianism in court are the same by which the homosexuality (of men) is proved.
Article 129: Punishment for lesbianism is hundred (100) lashes for each party.
Article 130: Punishment for lesbianism will be established vis-à-vis someone who is mature, of sound mind, has free will and intention.
Note: In the punishment for lesbianism there will be no distinction between the doer and the subject as well as a Muslim or non-Muslim.
Article 131: If the act of lesbianism is repeated three lashes and punishment is enforced each time, [SIC] death sentence will be issued the fourth time.
Article 132: If a lesbian repents before the giving of testimony by the witnesses, the punishment will be quashed; if she does so after the giving of testimony, the punishment will not be quashed.
Article 133: If the act of lesbianism is proved by the confession of the doer and she repents accordingly, the Sharia judge may request the leader (ValieAmr) to pardon her.
Article 134: If two women not related by consanguinity stand naked under one cover without necessity, they will be punished to less than hundred (100) lashes (Ta'azir). In case of its repetition as well as the repetition of punishment, hundred (100) lashes will be hit the third time."

The Press Law (1986)[581] ***[MORALITY CODE LIMITING SOGI PUBLIC EXPRESSION]***

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

> While reviewing a periodic report of the Islamic Republic of Iran in 2013, the Committee on Economic, Social and Cultural Rights expressed concern over the criminalisation of consensual same-sex sexual activity and the possibility that convicted male persons may be subject to the death penalty. "The Committee recommends that the State party repeal or amend all legislation that results or could result in discrimination, prosecution and punishment of people because of their sexual orientation or gender identity. The Committee recommends that the State party take steps to combat and prevent discrimination and societal stigma against members of the lesbian, gay, bisexual, and transgender community, and ensure their enjoyment of all the rights enshrined in the Covenant, including unhindered access to employment, social services, health care, and education, in line with article 2(2) of the Covenant and the Committee's General Comment No.20 (2009) on non-discrimination in economic, social and cultural rights."[582]
>
> At its 1st cycle UPR in February 2010, Iran received three recommendations regarding decriminalisation and discrimination based on SOGI, while at its 2nd cycle review in October 2014, there were 14 SOGI recommendations. These mostly centered on decriminalisation, persecution and discrimination. At its Interactive Dialogue session the delegation of Iran justified his country's position on 'homosexuality', by saying it was not so long ago that same-sex sexual relations had been "subject to prosecution in most Western countries in the not too distant past".[583] Iran will be before the UPR again in April 2019 for its 3rd cycle sessions.
>
> The situation for LGBTI in Iran people is well illustrated in a 2014 interview recorded on the website *76 Crimes*.[584]

581 See, www.iranhrdc.org/english/english/human-rights-documents/iranian-codes/3201-the-press-law.html?p=1

582 Committee on Economic, Social and Cultural Rights *Concluding observations on the second periodic report of the Islamic Republic of Iran*, adopted by the Committee at its 50th session (29 April-17 May 2013) E/C.12/IRN/CO2, at para. 7, available at: http://www2.ohchr.org/english/bodies/cescr/docs/co/E-C-12-IRN-CO-2.doc

583 Report of the Working Group on the Universal Periodic Review: Islamic Republic of Iran, A/HRC/28/12, 22 December 2014, at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/248/22/PDF/G1424822.pdf?OpenElement

584 See: http://76crimes.com/tag/iran/page/2/; and: http://76crimes.com/2014/12/28/living-dangerously-what-its-like-to-be-gay-in-iran/

In April 2015, ILGHRC noted that Ayatollah Hassan Sanei, a senior cleric known for his progressive views, said he does not support the imposition of Hudud for 'morality crimes', including sodomy.[585]

However, on 4 April 2014, Iran's Supreme Leader described homosexuality as "moral bankruptcy" and "libidinous behaviour".[586] On 24 September 2014, the Iranian Speaker of Parliament described "homosexuality" as "modern Western barbarism".[587] The Supreme Council of National Security (SCNS) censored official journalists, forbidding them from covering certain topics including SOGIESC-related rights, in the name of ensuring national security.[588]

The Committee on the Rights of the Child addressed Iran in February 2016. It spoke of being "concerned that children who belong to the LGBTI group face continuous discrimination because of their real or perceived sexual orientation or identity and that the same sex sexual behaviour of adolescents above the actual age of criminal responsibility is criminalized and punished with penalties ranging from flogging to death penalty" [para. 31]. It also expressed concern that young people have no information on LGBTI issues, and trans people are forced into surgery [para.71], and urges reversal of such policies [para.72].[589]

These, and other, concerns were more fully elaborated in the joint submission at the Interactive Dialogue with the Special Rapporteur on the situation of human rights in Iran, delivered by ARC-International in March 2016.[590]

IRAQ

After the American invasion in 2003 the Penal Code of 1969 was reinstated in Iraq. This code does not prohibit same-sex relations.[591]

\Article 404 ***[MORALITY CODE LIMITING SOGI PUBLIC EXPRESSION]***

states, "Any person who himself or through some mechanical means sings or broadcasts in a public place obscene or indecent songs or statements is punishable by a period of detention not exceeding 1 year or by a fine not exceeding 100 dinars."[592]

Non-State actors in Iraq including Sharia judges, are known to order executions of men and women for same-sex sexual behaviour, despite the fact that Iraq's civil code makes no reference to same-sex sexual behaviour, does not criminalise it, and neither does the country's (civil law) legal system defer to the Sharia court. It is also known that

585 See (in Arabic): http://mardomsalari.com/Template1/News.aspx?NID=215130

586 See (in Arabic): www.leader.ir/fa/speech/11526 ; and IGLHRC and IRQO's submission to Iran's 2014 UPR at: www.iglhrc.org/sites/default/files/UPRSubmission.pdf

587 See: www.icana.ir/Fa/News/209725

588 ARTICLE 19 and PEN International, Joint Submission to the UN Universal Periodic Review of the Islamic Republic of Iran, 15 March 2014, at: www.pen-international.org/wp-content/uploads/2013/05/Iran-submission.pdf

589 Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of the Islamic Republic of Iran, CRC/C/IRN/CO/3-4, 29 January 2016, at: http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/IRN/CRC_C_IRN_CO_3-4_23040_E.pdf.

590 See, http://arc-international.net/interactive-dialogue-with-the-special-rapporteur-on-the-situation-of-human-rights-in-iran/

591 Text of the law is available (in Arabic) at: www.wipo.int/edocs/lexdocs/laws/ar/iq/iq070ar.pdf, and (in English), at: www.refworld.org/cgi-bin/texis/vtx/rwmain?page=country&docid=452524304&skip=0&category=LEGAL&coi=IRQ&querysi=penal%20code&searchin=title&sort=date

592 Original Arabic:

زاهج ةطساوب وأ هسفنب ءايحلاب ةلخم وأ ةشحاف لاوقا وأ ناغاب رهج نم لك رانيد ةئام ىلع ديزت ال ةمارغب وأ ةنس ىلع ديزت ال ةدم سبحلاب بقاعي
.ماع لحم يف كلذ ناكو يلآ

both police and militias have frequently kidnapped, threatened and killed LGBT people.[593]

The Daesh (or ISIS / ISIL) held areas of northern Iraq and northern Syria, are known to target men and women on account of their gender expression, gender identity and their sexual orientation. The *Nusr* ['*Victory*' in Arabic] website, which claims to be the website of the Islamic Caliphate, has a section on Legal Jurisprudence (evidence-based rules and the Penal Code). One of the pages under this section is dedicated to "Punishment for Sodomy", which states: "The religiously-sanctioned penalty for sodomy is death, whether it is consensual or not. Those who are proven to have committed sodomy, whether sodomizer or sodomized, should be killed...".[594]

Iraq accepted the only recommendation given to it (from France) with SOGI content in 2nd UPR in October 2014: "Guarantee equality of civil and political rights. Avoid all forms of discrimination based on ethnicity, religion, gender or sexual orientation". No mention of SOGI was made in its formal response.[595]

In 2015, the United Nation Human Rights Committee that oversees the International Covenant on Civil and Political Rights (ICCPR) issued its Concluding Observations to Iraq. These included concerns on the stigmatisation and social exclusion of people on the basis of SOGI, and their inability to publicly demonstrate peacefully. The Committee acknowledged "... diversity of morality and cultures must [...] always be subject to the principles of universality of human rights and non-discrimination". The State should, therefore, "vigorously" combat stereotypes, ensure enjoyment of Covenant rights to all, investigate, prosecute perpetrators and compensate victims, collect data on SOGI-related crime, and create anti-discrimination legislation that lists SOGI as a ground for protection. [596]

Earlier in 2015, the United Nations Committee Against Torture - in relation to reliable reports before it - expressed concern that these attacks occur regularly and with impunity, at times leading to death. As such, Iraq should "take effective measures to prevent violence based on real or perceived sexual orientation and gender identity and ensure that all acts of violence are investigated and prosecuted promptly, effectively and impartially, perpetrators brought to justice and victims provided redress".[597]

593 In November 2014, the International Lesbian and Gay Human Rights Commission (ILGHRC) launched two important reports on the situations of LGBT people in Iraq, "When Coming Out Is A Death Sentence" and "We're Here: Iraqi LGBT People's Accounts of Violence and Rights Abuses", both of which are available at: http://iglhrc.org/content/exposing-persection-lgbt-individuals-iraq

594 See: http://nusr.net/1/index.php/ar/nthm/nthm-oqoobat/319-nthm-oqoobat-6; and ILGHRC timeline on killings in the region, at: http://iglhrc.org/dontturnaway/timeline

595 Report of the Working Group on the Universal Periodic Review: Iraq, A/HRC/28/14, 12 December 2014, at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/241/84/PDF/G1424184.pdf?OpenElement

596 Human Rights Committee, Concluding observations on the fifth periodic report of Iraq, CCPR/C/IRQ/5, 3 December 2015, at paras. 11, 12, see: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/IRQ/CO/5&Lang=En

597 Committee against Torture, Concluding observations on the initial report of Iraq, CAT/C/IRQ/CO/1, 7 September 2015, at para. 25, see: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/201/57/PDF/G1520157.pdf?OpenElement

GLOBAL ATTITUDES SURVEY ON LGBTI PEOPLE 2016

	STRONGLY AGREE	SOMEWHAT AGREE	NEITHER	SOMEWHAT DISAGREE	STRONGLY DISAGREE
Being gay, lesbian, bisexual, trans, or intersex should be a crime?	**31%**	**12%**	**23%**	**9%**	**26%**
Same-sex desire is a Western phenomenon	**32%**	**18%**	**19%**	**8%**	**22%**
	NO CONCERNS	SOMEWHAT UNCOMFORTABLE		VERY UNCOMFORTABLE	
How would you feel if your neighbour is gay or lesbian?	**40%**	**22%**		**39%**	

KUWAIT

Penal Code, Law No.16 of 2 June 1960, as amended in 1976.[598]

Article 193 ***[CONSENSUAL INTERCOURSE BETWEEN MEN]***

"Consensual intercourse between men of full age (from the age of 21) shall be punishable with a term of imprisonment of up to seven years."

Such relations with a man under 21 years of age are criminalised by article 192.

Article 198 ***[MORALITY CODE LIMITING SOGI PUBLIC EXPRESSION]***

of the same law states, "Whoever makes a lewd signal or act in a public place or such that one may see it or hear it from public place, or appears like the opposite sex in any way, shall be punished for a period not exceeding one year and a fine not exceeding 1000 Dinar or one either of these punishments".[599]

Kuwait 'noted' (rejected) a recommendation from Brazil to decriminalise same-sex relations between consenting adults at its 2010 UPR (1st cycle). At its 2nd UPR in January 2015, Uruguay and Iceland recommended Kuwait decriminalise same-sex sexual relations, and the Netherlands also iterated this and a call for non-discrimination in the country's law. This call for non-discrimination was echoed by Argentina and Chile.[600] Without alluding to SOGI, at para. 29 of the State's formal acceptance of the report of the Working Group, the delegation justified that looking after public morals does not contravene Article 21 of the ICCPR (peaceful assembly).

In September 2013, Kuwaiti immigration authorities put forward a proposal to screen people to identify whether they are LGBT,[601] and in May 2014 it was reported that vice police raided a "sex party" and arrested 32 people, both men and women ("tomboys").[602]

598 German Bundestag, *Criminal law provisions on homosexuality and their application around the world*, Printed Paper 16/3597, 28 November 2006 at 15: www.gaylawnet.com/ezine/crime/16_3597_minor_interpellation.pdf

599 Original Arabic: رخآلا سنجلاب هبشت وأ ماع ناكم يف ناك نم هعمسي وأ هاري ثيحب وأ ماع ناكم يف ءايحلاب الخم العف وأ ةراشإ ىتأ نم
نيتبوقعلا نيتاه ىدحإب وأ رانيد فلأ زواجت ال ةمارغبو ةدحاو ةنس زواجت ال ةدم سبحلاب بقاعي ،روصلا نم ةروص يأب

600 See: Report of the Working Group on the Universal Periodic Review: Kuwait, A/ HRC/29/17, 13 April 2015, at: www.upr-info.org/sites/default/files/document/kuwait/session_21_-_january_2015/a_hrc_wg.6_21_l.14.pdf

601 See: www.independent.co.uk/news/world/gays-are-delinquent-deviants-who-destroy-humanity-kuwait-mps-attack-amnesty-international-for-protecting-lgbt-community-8884348.html

602 See: http://76crimes.com/2014/05/11/kuwait-police-raid-gay-party-arrest-32/

LEBANON

Penal Code of 1943.[604]

Article 534 ***[SEXUAL INTERCOURSE AGAINST NATURE]***

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

Article 209 ***[MORALITY CODE LIMITING SOGI PUBLIC EXPRESSION - BREACH OF MODESTY]***

"The making or possession, importing or attempts to import for trade, distribution, for payment, copying, exhibition or display or attempts to display to the public, or for selling or attempts to sell, or distribution or engaged in the distribution of each publication, an editor or a drawing or a declaration or pictures or paintings or photographs, or the origin of the image or its template or produced anything in breach of modesty shall be punished with imprisonment from imprisonment from one month to one year and a fine from 20,000 Lira to 100,000 Lira".[605]

Article 532 of 1943

states, "The exposing of public morals by any of the ways mentioned in paragraphs 2 or 3 of Article 209 shall be punished with imprisonment from one month to one year and a fine from 20,000 Lira to 100,000 Lira".[606]

Although Lebanon passed its Penal Code the same year it gained independence from France (1943), Helem, the major Lebanese LGBT advocacy group, identifies current Article 534 as a legacy of the colonial law.

In 2010, at Lebanon's 1st cycle UPR, Norway recommended they decriminalise and "ensure non-discrimination on the basis of sexual orientation and gender identity", the response to which was 'noted' (refused). However, it is reported that in March 2014, a court read down Article 534 by ruling in favour of a transgender woman and her male partner.[607] In contrast, in August 2014, it is reported that 27 men were arrested at a Hammam allegedly for same-sex sexual behaviour.[608]

At the Interactive Dialogue session in Lebanon's 2nd cycle UPR in November 2015, the delegation, in response to the six strong recommendations that the State received said: "As for sexual orientation, although article 534 of the Penal Code stated that sexual intercourse contrary to nature was punishable, two court decisions had indicated that article 534 did not apply to homosexuals [referring to the above]. The judiciary had played an important role in preventing and opposing acts of violence or discrimination against lesbian, gay, bisexual and transgender persons".[609] Public attitudes to LGBT people in Lebanon are caught in an excellent report produced in 2015.[610]

---

603 In November 2011, a draft law establishing a National Human Rights Institution (NHRI) was introduced in Parliament, but remains pending before the Chamber of Deputies due to the political stalemate prevailing in the country.

604 Original text is available at: www.wipo.int/wipolex/en/text.jsp?file_id=243255 (in Arabic); also see: Helem's legal analysis of Art. 534 at: https://wayback.archive-it.org/1475/20121020013016/www.bekhsoos.com/web/2010/04/new-publication-provides-analysis-on-article-534/

605 Original Arabic: يعاقب على التعرض للأخلاق العامة بإحدى الوسائل المذكورة في الفقرتين الثانية والثالثة من المادة 209 بالحبس من شهر إلى سنة وبالغرامة من عشرين ألف إلى مائتي ألف ليرة.

606 Original Arabic: يعاقب على التعرض للأخلاق العامة بإحدى الوسائل المذكورة في الفقرتين الثانية والثالثة من المادة 209 بالحبس من شهر إلى سنة وبالغرامة من عشرين ألف إلى مائتي ألف ليرة.

607 Source: www.dailystar.com.lb/News/Lebanon-News/2014/Mar-05/249261-landmarkruling-rubbishes-anti-gay-lawin-lebanon.ashx#axzz2v8zsB9YB; and http://muftah.org/lebanon-just-whole-lot-legalize-gay/#.VuBnwlLYoy5

608 See: http://76crimes.com/2014/08/26/12-still-in-lebanese-jail-17-days-after-turkish-bath-raid/

609 Report of the Working Group on the Universal Periodic Review: Lebanon, A/HRC/31/5, 15 November 2015, at: www.upr-info.org/sites/default/files/document/lebanon/session_23_-_november_2015/a_hrc_31_5_e.pdf

610 Nour Nasr & Tarek Zeidan, *Exploring Lebanese Attitudes Towards Sexualities and Gender Identities,* Arab Foundation for Freedoms and Equality, (Beirut, 2015), at: http://gsrc-mena.org/gsrc/as-long-as-they-stay-away-exploring-lebanese-attitudes-towards-sexualities-and-gender-identities/

MALAYSIA

[611]

Penal Code (Consolidated version 1998).[612]

Unnatural Offences ***[AGAINST THE ORDER OF NATURE]***

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

"Any person who has sexual connection with another person by the introduction of the penis into the anus or mouth of the other person is said to commit carnal intercourse against the order of nature.
Explanation: Penetration is sufficient to constitute the sexual connection necessary to the offence described in this section."

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

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

Section 377D. Outrages on decency ***[GROSS INDECENCY]***

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

Moreover, several states in Malaysia have instated Islamic Sharia laws, applying to male and female Muslims, criminalising male/male and female/female sexual acts with up to three years imprisonment and whipping.[613] The Sharia Penal law in the Malaysian state of **Pulau Pinang** prescribes penalties for sodomy *[Liwat]* and lesbian relations *[Musahaqat]* with fines of RM5,000.00, three years imprisonment and 6 lashes of the whip. All these penalties can be combined.[614]

> Having received seven recommendations from States to decriminalise in its 2nd cycle UPR in October 2013, the Government stated that matters involving lesbian, gay, bisexual, and transgender persons and adherents of other schools of Islamic thought would be handled carefully and consistent with cultural traditions, religious doctrine and societal norms, and domestic laws and regulations.[615]

> In February 2015, leading opposition leader, and former Deputy Prime Minister Anwar Ibrahim was jailed for five years after losing his appeal against his conviction on sodomy charges – charges widely understood to be politically motivated.[616] Reflecting the tone of much public utterance, on 11 September 2015, the Malaysian tourism minister, Datuk Seri Nazri Aziz, said that lesbian, gay, bisexual or transgender Malaysians would never have equal rights.[617]

611 A staff member of the Human Rights Commission of Malaysia attended the Workshop on the Role of NHRIs in Promoting and Protecting the Rights and Health of LGBTI in Asia and the Pacific, February 2015, see: www.asiapacificforum.net/human-rights/sogi/

612 Text of the law is available at: www.agc.gov.my/Akta/Vol.%2012/Act%20574.pdf

613 Convictions for sodomy follow unfair trials, available at: www.amnesty.org/en/library/asset/ASA28/028/1998/en/9e941894-d9b0-11dd-af2b-b1f6023af0c5/asa280281998en.pdf

614 See, Article 25 of *Enakmen Kesalahan Jenayah Syariah*. Original text is available at: http://jaipp.penang.gov.my/images/pdf/enakmen_kesalahan_jenayah_syariah_neg_p_pg_1996.pdf

615 Report of the Working Group on the Universal Periodic Review: Malaysia, A/HRC/25/10, 4 December 2013, para 9, at: www.upr-info.org/sites/default/files/document/malaysia/session_17_-_october_2013/a_hrc_25_10_malaysia_e.pdf

616 See, http://uk.reuters.com/article/2015/02/10/uk-malaysia-anwar-ruling-idUKKBN0LE09G20150210

617 Kamal, Shazwan Mustafa "LGBT community will never have equal rights in Malaysia, tourism minister says," Published by Malay Mail Online, (11 September, 2015, quoted in *Speaking Out 2015: The Rights of LGBTI People across the Commonwealth*, Kaleidoscope Trust in association with Kaleidoscope Australia Human Rights Foundation (London, 2015), at 43: http://kaleidoscopetrust.com/usr/library/documents/main/2015_speakingout_241115_web.pdf

GLOBAL ATTITUDES SURVEY ON LGBTI PEOPLE 2016

	STRONGLY AGREE	SOMEWHAT AGREE	NEITHER	SOMEWHAT DISAGREE	STRONGLY DISAGREE
Being gay, lesbian, bisexual, trans, or intersex should be a crime?	**14%**	**11%**	**25%**	**12%**	**28%**
Same-sex desire is a Western phenomenon	**27%**	**15%**	**29%**	**9%**	**19%**
	NO CONCERNS	SOMEWHAT UNCOMFORTABLE		VERY UNCOMFORTABLE	
How would you feel if your neighbour is gay or lesbian?	**52%**	**19%**		**29%**	

MALDIVES

Section 410 – Offences against the family *[SAME SEX MARRIAGE]*

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

Section 411 *[UNLAWFUL SEXUAL INTERCOURSE]*

"(2) he engages in sexual intercourse with a person of the same sex.
Definitions: (2) "Same- sex intercourse means";
(A) Insertion by a man his sexual organ or any object into the anus of another man for sexual gratification. Or the insertion into another mans mouth the penis of a man or
(B) Insertion of a woman's organ or any object into the vagina or anus of another woman for sexual gratification.
The offenses in this Section range from Class 1 misdemeanors to Class 3 felonies that carry a jail term of between 6 months and 8 years (when same-sex involving incest or adultery)."

Section 412 *[INDECENT ACTS]*

"(a) Unlawful Intercourse. A person commits an offense if:
(5) if the person married or unmarried has sexual contact with a person prohibited for marriage by virtue of being a close relative, or being breast fed by the same mother, or due to marriage. The offense is a Class 5 felony.
(b) Offense Defined. A person engaging in sexual contact with a person of the same is committing an offense. [sic]
(c) Prohibition. "prohibited sexual contact" means indecent acts other than the offenses prescribed under Section 411 (a) of this Code, with a person of same sex, or with a person of the opposite sex other than with a person to whom he is married, or with an animal, for obtaining sexual gratification.
The offenses in this Section range from Class 1 misdemeanors to Class 3 felonies that carry a jail term of between 6 months and 8 years (when same-sex involving incest or adultery)."

Until a new Penal Code came into force in July 2015,[618] consensual same-sex sexual conduct went unregulated in the Maldives under the civil law.[619] But the existing Sharia code criminalises same-sex sexual acts for both men and women. For men, the punishment is banishment for nine months to one year or a whipping of 10 to 30 strokes, while the punishment for women is house arrest for nine months to one year.[620]

In its conception, Law No. 6/2014 sets out its range of offences and defences according to a Sharia scheme. This

618 Maldives' Penal Code - Law No. 6/2014: https://www.law.upenn.edu/live/files/4203-maldives-penal-code-2014

619 Text of the law is available at: www.lexadin.nl/wlg/legis/nofr/oeur/lxwemdv.htm

620 Sexual Orientation / Gender Identity References, US Department of State, *Human Rights Reports* for 2011 (Released 24 May 2012) at 80, available at: www.weebly.com/uploads/1/2/3/0/12302675/2011-hr-report-sogi-references.pdf

scheme then embraces the entire population and not just those of the Muslim faith.[621] Less than two months after the new Penal Code came into force, arrests of gay men have been reported.[622] Testimony in Kaleidoscope Trust's publication portrays the Maldives as highly hostile to LGBTI persons.[623]

At its 1st cycle UPR in November 2010, recommendations to Maldives were to decriminalise, protect against violence and remove discrimination based on sexual orientation and gender identity in national laws. Maldives rejected all of five these recommendations. In a Briefing Paper submitted to Maldives' 2nd cycle UPR in May 2015, the International Service for Human Rights (ISHR) says, "[u]ncodified Muslim Sharia Law criminalises homosexual conduct, thus making the Maldives a very insecure place to advocate for the rights of persons who identify themselves as LGBTI."[624] A panel of refugee appeals officers in the Immigration New Zealand Agency recognised that individuals are forced to flee persecution based on their sexual orientation throughout Maldives in 2014.[625] In finalising its 2nd UPR process in September 2015, the Maldives rejected ('noted') two recommendations made to it – concerning discrimination and decriminalisation (Chile and Argentina).[626]

MYANMAR

Penal Code, Act 45/1860, Revised Edition.[628]

Section 377 ***[AGAINST THE ORDER OF NATURE]***

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

Sexual orientation and gender identity was not mentioned in Myanmar's 1st cycle UPR in November 2010. However, the National Human Rights Commission was established in 2011 and given force in 2014. One commissioner attended the UN Asia-Pacific conference on Human Rights, Sexual Orientation and Gender Identity in 2013,[629] and although state-sponsored homophobia continues, there appears to be new energy building in LGBTI advocacy.[630]

621 "The general purpose of this Code is to establish a system of prohibitions and penalties to deal with conduct that unjustifiably and inexcusably causes or threatens harm to those individual or public interests entitled to legal protection, including Islam, life, lineage, mind, and property" [s.10(b)].

622 *Erasing 76 Crimes,* "Maldives: Lenient no more, island nation arrests 2", 1 September 2015, see: http://76crimes.com/2015/09/01/maldives-lenient-no-more-island-nation-arrests-2/

623 *Speaking Out 2015: The Rights of LGBTI People across the Commonwealth*, Kaleidoscope Trust in association with Kaleidoscope Australia Human Rights Foundation (London, 2015), at 43: http://kaleidoscopetrust.com/usr/library/documents/main/2015_speakingout_241115_web.pdf

624 See: www.ishr.ch/news/maldives-briefing-paper-situation-human-rights-defenders at 2.

625 See: http://globalvoicesonline.org/2014/06/06/homosexual-assylum-seekers-from-maldives-face-prosecution-upon-return/

626 See UPR-info, 'Maldives' responses to recommendations (as of 30.09.2015)' [n 144.6 and n.144.7] at: www.upr-info.org/sites/default/files/document/maldives/session_22_-_may_2015/recommendations_and_pledges_maldives_2015.pdf

627 A commissioner of the Myanmar National Human Rights Commission attended the Workshop on the Role of NHRIs in Promoting and Protecting the Rights and Health of LGBTI in Asia and the Pacific, February 2015, see: www.asiapacificforum.net/human-rights/sogi/

628 Text of the law is available at: www.wipo.int/wipolex/en/text.jsp?file_id=181185

629 See: www.asiapacificforum.net/support/issues/sexual-orientation/downloads/role-of-nhris-in-promoting-and-protecting-the-rights-and-health-of-lgbti-in-asia-and-the-pacific-february-2015/workshop-briefing-paper at 21.

630 See: Douglas Sanders, "Asia These Days" in the 9th edition (2014) of this publication at: http://old.ilga.org/Statehomophobia/ILGA_SSHR_2014_Eng.pdf at 86.

In its 2nd cycle UPR in November 2015, two recommendations were made to repeal Section 377 by Australia and Spain. It appears that the delegation made no response to these, other than 'noting' (rejecting) them.[631]

OMAN

Omani Penal Code of 1974.[632]

Article 33 ***[DISGRACING CRIMES]***

"The following are deemed as disgracing crimes:
I. All felonies punishable by a coercive sentence.
II. All misdemeanours stated hereafter:
1. Bribery; 2. Embezzlement; 3 .False testimony; 4. Perjury; 5. Forgery and use, with knowledge, of forged items; 6. Incitement to prostitution; 7. Homosexual and lesbian intercourses; 8. Drug trafficking; 9. Theft; 10. Rape and assault; 11. Fraud; 12. Flash Cheque; 13. Breach of trust; 14. Counterfeit; 15. Trespass."

Homosexual and Lesbian Intercourses

Article 223. ***[HOMOSEXUAL AND LESBIAN EROTIC ACTS]***

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

At its 1st cycle UPR, Sweden made two recommendations that Oman 'noted' (i.e. rejected) – one to decriminalise same-sex sexual relations, and the other to abolish discrimination based on SOGI. Although there are no morality laws that specify SOGI in regard to limits on the freedom of expression in Oman, in September 2013 the English-language newspaper *The Week* was shut down for one week after printing an article about the country's LGBT community. The content was deemed to fall under "public discord", which carries a three-year prison sentence. The article's author and the paper's editor were charged with violating the highly restrictive 1984 Press and Publications Law. Under pressure from the government, the newspaper removed the article from its website, though the print issue continued to circulate.[633]

Oman's 2nd cycle UPR was in November 2015. Only one civil society submission mentioned decriminalising "homosexuality",[634] and both Mexico and Brazil made recommendations for Oman to repeal its legislation (or at least not apply it [Brazil]). The State 'noted' (rejected) these recommendations.[635]

631 Report of the Working Group on the Universal Periodic Review: Myanmar, A/HRC/31/13, 23 December 2015, at: www.upr-info.org/sites/default/files/document/myanmar/session_23_-_november_2015/a_hrc_31_13_e.pdf

632 Text of the law is available at: https://www.unodc.org/tldb/showDocument.do?documentUid=6409&country=OMA&language=ENG.

633 See: https://freedomhouse.org/report/freedom-press/2014/oman#.VNs7Of-nF_To ; and, http://jonathanturley.org/2013/09/04/oman-newspaper-shut-down-after-publishing-a-sympathetic-article-on-homosexuals-in-country/

634 International Service for Human Rights (ISHR), see: www.upr-info.org/sites/default/files/document/oman/session_23_-_november_2015/ishr_upr23_omn_e_main.pdf

635 Report of the Working Group on the Universal Periodic Review: Oman, A/HRC/31/11, 6 January 2016, at: www.upr-info.org/sites/default/files/document/oman/session_23_-_november_2015/a_hrc_31_11_e.pdf

PAKISTAN

Penal Code (Act XLV of 1860).[636]

Section 377. 'Unnatural offences' ***[AGAINST THE ORDER OF NATURE]***

"Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which shall not be less than two years nor more than ten years, and shall also be liable to a fine.
Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section."

Section 294. 'Obscene Acts and Songs' ***[OBSCENE ACTS]***

"Whoever to the annoyance of others---a) does any obscene act in any public place, or b) sings, recites or utters any obscene songs, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both."

Section 12 (Ordinance No. VII of 1979) ***[UNNATURAL LUST]***

This provision was amended in 1980 by an ordinance that raised the minimum punishment to ten years and a fine. Under Section 12 of the Hudood Ordinances, "Whoever kidnaps or abducts any person in order that such person may be subjected [...] to [...] unnatural lust [...] shall be punished with death or [...] imprisonment for a term which may extend to twenty-five years, and shall also be liable to a fine [...]"[637]

There were no direct mentions of SOGI in either of Pakistan's UPR outcome documents in May 2008 and October 2012. Only in 2008 were there civil society submissions on the issue[638] (it appears that of the 38 civil society submissions made in 2012, none had a SOGI context). However, there were recommendations concerning the protection of human rights defenders and the training of public employees (judges, police, etc) in international human rights standards in their 2nd cycle UPR.[639] Pakistan's 3rd cycle UPR will be in April 2017.

Pakistan has been particularly vocal at the Human Rights Council and at various UN fora in its refusal to embrace SOGI within the scope of the various human rights Treaty Bodies, and in its promotion of the 'traditional values of human kind' resolutions at the Human Rights Council.[640] In June 2012, at the 19th session of the HRC, at the reading of a report mandated by the first SOGI resolution (A/HRC/19/42) of September 2011, Pakistan led a walkout by member States of the Organisation of Islamic Cooperation, which was unprecedented behaviour in that forum. They were objecting to "attempts to create" "new standards" regarding SOGI that "seriously jeopardise[s] the entire international human rights framework".[641] Pakistan continues to object to the application of international human rights standards to SOGI in UN forums.

According to Kaleidoscope Trust, in April 2014, a serial killer confessed to killing three gay men because of their

636 Text of the law is available at: www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html

637 See The Offence of Zina (Enforcement Of Hudood) Ordinance, 1979, at: www.pakistani.org/pakistan/legislation/zia_po_1979/ord7_1979.html

638 See ILGA, at www.upr-info.org/sites/default/files/document/pakistan/session_2_-_may_2008/ilgapakuprs22008internationallesbianandgayassociationuprsubmissionjoint.pdf ; and IGLHRC, at www.upr-info.org/sites/default/files/document/pakistan/session_2_-_may_2008/iglhrpakuprs22008internationalgayandlesbianhumanrightscommissionuprsubmission.pdf

639 Report of the Working Group on the Universal Periodic Review: Pakistan, A/HRC/22/12, 26 December 2012, at: www.upr-info.org/sites/default/files/document/pakistan/session_14_-_october_2012/ahrc2212pakistane.pdf

640 At the Beijing + 10 conference in 2005, the Pakistani delegate accused Western delegations of "holding the women of the world hostage to one term, 'sexual orientation', when their real needs were clean water and help in overcoming illiteracy", in D. Sanders, "Getting Lesbian and Gay Issues on the International Human Rights Agenda," *Human Rights Quarterly*, 18(1) (1996) 67, at 71.

641 B. Levesque "Arab, African delegates walk out on U.N. LGBT rights conference" *LGBTQ Nation* (website), 7 March 2012, at: www.dw.de/african-arab-delegates-walk-out-of-un-gay-rights-meeting/a-15794719

sexual orientation, yet Pakistani media depicted the serial killer as "the epitome of righteousness."[642] Section 294 is reportedly often deployed to target male and trans sex workers.[643]

GLOBAL ATTITUDES SURVEY ON LGBTI PEOPLE 2016

	STRONGLY AGREE	SOMEWHAT AGREE	NEITHER	SOMEWHAT DISAGREE	STRONGLY DISAGREE
Being gay, lesbian, bisexual, trans, or intersex should be a crime?	**41%**	**13%**	**18%**	**6%**	**22%**
Same-sex desire is a Western phenomenon	**43%**	**18%**	**15%**	**7%**	**17%**

	NO CONCERNS	SOMEWHAT UNCOMFORTABLE	VERY UNCOMFORTABLE
How would you feel if your neighbour is gay or lesbian?	**60%**	**15%**	**25%**

QATAR

Qatar's 1971 Penal Code (Law Number 14 in 1971 at Art.201) penalised consensual same-sex relations with up to 5 years in prison.[644] The Qatari criminal law was changed in 2004,[645] and according to law Number 11 in 2004, [646] sodomy itself is no longer a crime.

However, under the Penal Code's **Article 296**, 'pimping' same-sex acts is punishable by 1--5 years in jail, and **Article 298** specifies that same-sex sex work is punishable by up to 10 years.[647] This means that as of 2004, there is no civil law criminalising consensual same-sex sexual activity, although the terms "... leading, instigating..." in the statute could potentially be applied to the dissemination of information on SOGI issues.[648]

Article 296 of 2004 ***[MORALITY CODE LIMITING SOGI PUBLIC EXPRESSION]***

states, "One is convicted to no less than a year and no more than three years in prison in case of *[inter alia]* 3 - Leading, instigating or seducing a male anyhow for sodomy or immorality. 4 - Inducing or seducing a male or a female anyhow to commit illegal or immoral actions.

Qatar also runs Sharia courts, where technically it is possible that Muslim men could be put to death for same-sex sexual behaviours, but there appears to be no evidence that has been applied to date (noting that UNHCR guidance

642 *Speaking Out 2015: The Rights of LGBTI People across the Commonwealth*, Kaleidoscope Trust in association with Kaleidoscope Australia Human Rights Foundation (London, 2015), at 45: http://kaleidoscopetrust.com/usr/library/documents/main/2015_speakingout_241115_web.pdf

643 Correspondence with author.

644 See: (in Arabic) www.almeezan.qa/LawArticles.aspx?LawArticleID=34068&LawId=2505&language=ar.

645 See, www.qfiu.gov.qa/files/Law%2011%20for%20the%20year2004-E.pdf

646 Original text of the law is available at: www.almeezan.qa/LawArticles.aspx?LawTreeSectionID=254&lawId=26&language=ar, and English text at: www.qfiu.gov.qa/files/Law%2011%20for%20the%20year2004-E.pdf

647 See: www.almeezan.qa/SearchLawArticle.aspx?ArticleText=%D8%A7%D9%84%D9%84%D9%88%D8%A7%D8%B7&id=26&language=ar&num=0&name= (in Arabic)

648 The authors thank Hossein Alizadeh of the ILGHRC (MENA region) for this clarification.

explains norms that do not confirm with international human rights law can be seen to be persecutory "*per se*").[649] The offence of "Zina" makes any sexual act by a married person outside of marriage punishable by death, while sexual acts by non-married persons are punishable by flogging – both are offences, no matter if they were same-sex or different-sex.[650]

In its 1st UPR in February 2010, only Sweden made a recommendation regarding SOGI to Qatar (which they 'noted'): "To ensure that LGBT persons are not discriminated against and, as an immediate step, to amend the provisions of the penal code criminalizing consensual sexual activity among persons of the same sex and to ensure that no one is punished for such activity under Sharia law". This recommendation was repeated at the Interactive Dialogue session, but the State gave no response to either. At its 2nd cycle UPR in mid-2014, only one mention of LGBT workers is made in relation to the upcoming World Cup, to which it appears the State made no response at all.[651]

SAUDI ARABIA

There is no codified Penal Law in Saudi-Arabia.

Instead, the country applies strict Islamic Sharia law. According to the interpretation, **Sura 7:80/81**, which describes sexual intercourse between men as a misdemeanour, but does not specify a punishment. The penalty to be imposed is therefore a matter of dispute. Some call for whipping, and others believe they are quoting the Prophet that "both men to be killed".[652] However, same-sex sexual behaviour is not listed in the Sharia as one of the crimes deserving of death – as are murder, adultery, apostasy, or highway robbery.

For a married man the penalty is death by stoning, while the penalty for an unmarried man is 100 blows of the whip as well as banishment for a year.

For a non-Muslim, who commits sodomy with a Muslim, the penalty is death by stoning. Moreover, all sexual relations outside of marriage are illegal in Saudi-Arabia according to the Sharia law, including sexual relations between women.[653]

In its 1st cycle UPR in February 2009, there were four brief mentions of sexual orientation-related content in civil society submissions, yet no recommendations to Saudi Arabia from other States or any other mentions of SOGI.[654] However, in its October 2013 review (2nd cycle UPR), there were no civil society inputs on SOGI, no recommendations and no mentions by the State on SOGI-related issues.[655]

---

649 United Nations High Commissioner for Refugees Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/02/01, 7 May 2002, paras. 57, 59: "[a] law can be considered as persecutory per se, where an applicant can show a well-founded fear of persecution based on laws that reflect "social or cultural norms which are not in conformity with international human rights standards".

650 See: Amnesty International, "Love, hate and the law: decriminalizing homosexuality" at 51, available at: https://www.amnesty.org/en/documents/POL30/003/2008/en/

651 Report of the Working Group on the Universal Periodic Review: Qatar, A/HRC/27/15, 27 June 2014, at: www.upr-info.org/sites/default/files/document/qatar/session_19_-_april_2014/a_hrc_27_15_e.pdf

652 See: www.gaylawnet.com/ezine/crime/16_3597_minor_interpellation.pdf

653 Schmitt, Arno and Sofer, Jehoeda, *Sexuality and Eroticism Among Males in Moslem Societies* (Binghamton: Harrington Park Press, 1992) at 141.

654 Report of the Working group on the Universal Periodic Review: Saudi Arabia, A/HRC/11/23, 9 February 2009, at: www.upr-info.org/sites/default/files/document/saudi_arabia/session_4_-_february_2009/ahrc1123saue.pdf

655 Report of the Working group on the Universal Periodic Review: Saudi Arabia, A/HRC/25/3, 26 December 2013, at: www.upr-info.org/sites/default/files/document/saudi_arabia/session_17_-_october_2013/a_hrc_25_3_saudiarabia_e.pdf

Although Saudi Arabia does not have a codified criminal code, there is a law enforcement agency called, "Committee for the Propagation of Virtue and the Prevention of Vice (هيئة الأمر بالمعروف و النهي عن المنكر)" to arrest and detain people who violate the traditional teachings of Wahhabism, including same-sex sexual behaviour and diverse gender expression.

According to the Council of Ministers Resolution in 2001, "[a]ll internet users in the Kingdom of Saudi Arabia shall refrain from publishing or accessing data containing some of the following: 1. Anything contravening a fundamental principle or legislation, or infringing the sanctity of Islam and its benevolent Shari'ah, or breaching public decency."[656]

Authorities in Saudi Arabia arrested several people on suspicion of homosexuality in raids on two parties in the city of Jeddah in June 2015.[657] In March 2016, it is reported that a doctor in Jeddah was arrested by the Committee for Promotion of Virtue and the Prevention of Vice for flying the rainbow flag, although he had been unaware of its meaning.[658] Also in March 2016, from Jeddah, ominous attention has been bought to online communications amongst sexual and gender minorities.[659]

GLOBAL ATTITUDES SURVEY ON LGBTI PEOPLE 2016

	STRONGLY AGREE	SOMEWHAT AGREE	NEITHER	SOMEWHAT DISAGREE	STRONGLY DISAGREE
Being gay, lesbian, bisexual, trans, or intersex should be a crime?	**35%**	**14%**	**20%**	**10%**	**22%**
Same-sex desire is a Western phenomenon	**28%**	**18%**	**20%**	**10%**	**24%**
	NO CONCERNS	SOMEWHAT UNCOMFORTABLE		VERY UNCOMFORTABLE	
How would you feel if your neighbour is gay or lesbian?	**32%**	**22%**		**46%**	

SINGAPORE

Penal Code (Chapter 22), Revised Edition 2008.[660]

Outrages on decency

Section 377A ***[GROSS INDECENCY]***

"Any male person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be punished with imprisonment for a term which may extend to 2 years."
Section 377 criminalising "carnal knowledge against the order of nature" has been already repealed by the Penal Code (Amendment) Act 2007, No. 51, which came into force on 1 February 2008.

656 Source: www.al-bab.com/media/docs/saudi.htm

657 Source: www.ibtimes.com/gay-parties-raided-saudi-arabia-religious-police-arrest-several-people-suspicion-1968038

658 See: www.independent.co.uk/news/world/middle-east/saudi-man-arrested-for-flying-pretty-rainbow-flag-unaware-it-symbolised-lgbt-pride-a6955886.html

659 See: www.washingtonblade.com/2016/03/28/report-saudi-authorities-seek-death-penalty-for-coming-out/

660 Text of the law is available at: http://statutes.agc.gov.sg/aol/search/display/view.w3p;page=0;query=Id%3A%221107d768-db70-488f-9fbb-f5a12c9da49e%22%20Status%3Ainforce;rec=0

Section 294 *[OBSCENE ACT]*

"Whoever, to the annoyance of others —
(*a*) does any obscene act in any public place; or
(*b*) sings, recites or utters any obscene song, ballad or words in or near any public place, shall be punished with imprisonment for a term which may extend to 3 months, or with fine, or with both."

Section 354 *[OUTRAGE MODESTY]*

"Whoever assaults or uses criminal force to any person, intending to outrage or knowing it to be likely that he will thereby outrage the modesty of that person, shall be punished with imprisonment for a term which may extend to 2 years, or with fine, or with caning, or with any two of such punishments."

In October 2014, Singapore's highest court, the Court of Appeal, found that Section 377A infringed the rights of individuals of diverse sexual orientation,[661] and felt that the legislature should address the issue.[662] Reportedly, an internet blogger commenting that one of the judges acted with bias (his text is available in this article),[663] was sentenced with a fine of approximately €6,000, upheld at his appeal in December 2015.[664]

In June 2015, the Pink Dot rally attracted more than 28,000 participants in Hong Lim Park.[665] Kaleidoscope Trust reports that section 377A is rarely used now to prosecute LGB people, but sections 354 and 294 are deployed more frequently.[666]

SRI LANKA

Penal Code (as amended by the Penal Code (Amendment) Act, No. 22 of 1995).[667]

Article 365. Unnatural offences *[AGAINST THE ORDER OF NATURE]*

"Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment of either description for a term which may extend to ten years [...]
Explanation – penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section."

Article 365A. Acts of gross indecency between persons *[GROSS INDECENCY]*

"Any person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any person of any act of gross indecency with another person, shall be guilty of an offence and shall be punished with imprisonment of either description for a term which may extend to two years or with a fine, or with both and where the offence is committed by a person over eighteen (18) years of age in respect of any person under sixteen (16) years of age shall be punished with rigorous imprisonment for a term not less than 10 years and not exceeding 20 years and with a fine and shall also be ordered to pay compensation of amount determined by court to the person in respect of whom the offence was committed for the injuries caused to such a person."

---

661 See: http://76crimes.com/2014/10/29/singapore-court-rejects-appeal-of-anti-gay-law/

662 *Lim Meng Suang and another v Attorney-General* and another appeal and another matter [2014] SGCA 53, 28 October 2014, at para. 189, at: www.singaporelaw.sg/sglaw/laws-of-singapore/case-law/free-law/court-of-appeal-judgments/15754-lim-meng-suang-and-another-v-attorney-generaland-another-appeal-and-another-matter-2014-sgca-53

663 See: http://76crimes.com/2015/01/26/blogger-risks-jail-for-comments-on-singapore-anti-gay-law/

664 See, www.todayonline.com/singapore/apex-court-throws-out-alex-aus-appeal

665 See, www.straitstimes.com/singapore/record-28000-gather-at-hong-lim-park-for-annual-pink-dot-rally

666 *Speaking Out 2015: The Rights of LGBTI People across the Commonwealth*, Kaleidoscope Trust in association with Kaleidoscope Australia Human Rights Foundation (London, 2015), at 46: http://kaleidoscopetrust.com/usr/library/documents/main/2015_speakingout_241115_web.pdf

667 Text of the law is available at: www1.umn.edu/humanrts/research/srilanka/statutes/Penal_Code.pdf. The 1995 amendments broadened the law to be gender-neutral to apply to men and to women.

At Sri Lanka's 2nd cycle UPR in November 2012, only two States (Argentina and Canada) made specific recommendations regarding decriminalisation in the Penal Code. The State 'noted' them.[668] The State's next review will be in April 2017.

According to Kaleidoscope Trust, the law is essentially seen to be a dead law (unenforced although legally valid), although extortion and violence are still targeted against LGBT people. This organisation also reports that at its appearance at the Human Rights Committee, the State acknowledged constitutional protection regarding discrimination in relation to SOGI. It also reports that the tone the State has adopted to SOGI issues (internationally) has shifted (e.g. not supporting the Russian rejection of partner rights for UN employees), which was ushered in by the election of a less authoritarian president in 2015.[669]

SYRIA

Penal Code of 1949.[671]

Article 520 ***[UNNATURAL SEXUAL INTERCOURSE]***

"Any unnatural sexual intercourse shall be punished with a term of imprisonment of up to three years."

Article 517

"Punish crimes against public decency in any of the ways mentioned in paragraph 1 of Article 208 [any act carried out in a public or open area where one could possibly see, intentionally or accidentally, the act] with imprisonment of three months to three years."[672]

Mawaleh, the LGBT Syrian group, argues that the words 'same-sex' or 'sodomy' or 'cross dressing' are not refereed to in any law, therefore sodomy is not criminalised in the Syrian law.[673] In its 1st cycle UPR, in 2011, Amnesty International was the only NGO that made a submission about the repeal of Article 520.[674] No States made recommendations on this issue, and there is no reference to SOGI in the concluding documents from the first cycle.[675] Syria's 2nd cycle UPR commences in November 2016.

---

668 Report of the Working Group on the Universal Periodic Review: Sri Lanka, A/HRC/22/16, 18 December 2012, at: www.upr-info.org/sites/default/files/document/sri_lanka/session_14_-_october_2012/ahrc2216srilankae.pdf

669 *Speaking Out 2015: The Rights of LGBTI People across the Commonwealth*, Kaleidoscope Trust in association with Kaleidoscope Australia Human Rights Foundation (London, 2015), at 47: http://kaleidoscopetrust.com/usr/library/documents/main/2015_speakingout_241115_web.pdf

670 See: www.care2.com/causes/things-are-getting-increasingly-desperate-for-gay-people-in-syria.html

671 German Bundestag, *Criminal law provisions on homosexuality and their application around the world,* Printed Paper 16/3597, 28 November 2006 at 27, see: www.gaylawnet.com/ezine/crime/16_3597_minor_interpellation.pdf; and: www.wipo.int/wipolex/en/text.jsp?file_id=243237 (in Arabic).

672 Translation by IGLHRC staff; Orginal Arabic:
المادة 517: يعاقب على التعرض للآداب العامة بإحدى الوسائل المذكورة في الفقرة الأولى من المادة 208 بالحبس من ثلاثة أشهر إلى ثلاث سنوات.

673 See: http://mawaleh.net/2013/06/08/المثلية-الجنسية-في-القانون-السوري/comment-page-1/

674 See: www.upr-info.org/sites/default/files/document/syrian_arab_republic/session_12_-_october_2011/ai-amnestyinternational-eng.pdf

675 Report of the Working Group on the Universal Periodic Review: Syria, A/HRC/19/11, 24 January 2012, at: www.upr-info.org/sites/default/files/document/syrian_arab_republic/session_12_-_october_2011/a.hrc.19.11syriae.pdf

TURKMENISTAN

Criminal Code of 1997 (Effective 1 January 1998).[676]

Chapter 18: Crimes against morality

Section 135: Homosexual acts ***[HOMOSEXUAL ACTS]***

"(1) Homosexual acts, i.e. sexual intercourse between men, shall be punished with a term of imprisonment of up to two years.
(2) Homosexual acts involving physical force, the threat of force and the exploitation of the victim's need for assistance shall be punished with a term of imprisonment of between three and six years.
(3) The offence that is specified in subsection (2) of this Section, where:
(a) it is committed more than once;
(b) it is committed by three or more persons without collusion or by several persons in collusion;
(c) it is committed consciously against a minor;
(d) it has infected the victim with a sexual disease;
shall be punished with a term of imprisonment of between five and ten years.
(4) The offence that is specified in subsections (2) and (3) of this Section, where:
(a) it has been committed consciously against a person who has not yet reached the age of 14;
(b) it has, due to negligence, caused the death of the victim, caused severe damage to their health or infected them with AIDS;
shall be punished with a term of imprisonment of between ten and 20 years."

Section 137. Coercion to engage in sexual relations ***[COERCION]***

"The coercion of a person to engage in sexual relations, homosexual acts or other acts of a sexual nature by means of blackmail, threats to destroy assets or the exploitation of a material or other dependency shall be punished with a term of correctional labour of up to two years or a term of imprisonment of up to two years."

"Homosexuality" is considered a mental disorder in the country, and as such, punishment for same-sex sexual acts between men or perceived 'homosexual' behaviour can also include placement in psychiatric institutions to be 'cured' of their sexual preferences. The law criminalising same-sex sexual acts between males is enforced selectively, and while there are reports of arrests, individuals are rarely prosecuted under this law. The Criminal Code does not mention female same-sex sexual acts.[677]

In its 1st cycle UPR in December 2008, Turkmenistan rejected two recommendations (Sweden and Czech Republic) to decriminalise, without offering any rationale for that refusal. Again at its April 2013 review, it rejected Slovenia's recommendation, which referred to other international human rights mechanisms: "Decriminalize sexual relations between consenting adults of the same sex, as recommended by the Human Rights Committee".[678]

In its Concluding Observations on Turkmenistan in 2012, the Human Rights Committee said that, "[t]he State party should decriminalize sexual relations between consenting adults of the same sex in order to bring its legislation in line with the Covenant. The State party should also take the necessary steps to put an end to the social stigmatisation of homosexuality and send a clear message that it does not tolerate any form of discrimination against persons based on their sexual orientation or gender identity".[679]

676 Original text available is at: www.wipo.int/wipolex/en/text.jsp?file_id=249493.

677 www.refugeelegalaidinformation.org/turkmenistan-lgbti-resources

678 Report of the Working Group on the Universal Periodic Review: Turkmenistan, A/HRC/24/3, 5 July 2013, at: www.upr-info.org/sites/default/files/document/turkmenistan/session_16_-_april_2013/ahrc243e.pdf

679 Concluding Observations Human Rights Committee: Turkmenistan, CCPR/C/TKM/CO/1, 19 April 2012 http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/TKM/CO/1&Lang=En

UNITED ARAB EMIRATES

All sexual acts outside of heterosexual marriage are banned in the United Arab Emirates.[680] The 1987 Federal Penal Code (Article 354) only criminalises sodomy in the context of rape, according to ILGHRC and Amnesty.[681] No article in the 1987 law specifically discusses consensual same-sex relations,[682] although some scholars translate this article otherwise.[683]
Both on-the-ground organisations concur that it is through the Sharia code that the death penalty applies to same-sex sexual relations. Firstly, in *[ZINA]*, which applies to sexual relations outside of marriage of any sort. Amnesty has said that the death penalty could apply in the UAE, although it is not aware of any such death sentences for consensual same-sex conduct.[684]
Secondly, **Law Number 3 of 1996** allows the Sharia court to implement different aspects of the Sharia law that is not mentioned in the Federal Penal Code.[685] This includes consensual same-sex relations.[686]
Different Emirates within the UAE have anti-sodomy laws: **Article 80 of the Criminal Code in Abu Dhabi** (the Emirate that is the seat of the UAE), criminalises "*[UNNATURAL SEX WITH ANOTHER PERSON]*", punishable up to 14 years in jail. (This law was passed in 1970, before Abu Dhabi was an independent entity). **Article 177 of the Emirate of Dubai** (also passed in 1970) imposes 10 years of imprisonment for *[SODOMY]*.[687]

> The UAE received two State recommendations regarding SOGI in its 2nd cycle UPR: "Protect the human rights of all individuals, including LGBT individuals, and take appropriate steps to help ensure that protection is provided to the victim and perpetrators are identified and prosecuted" (USA), and "Repeal the criminalization of sexual relations between persons of the same sex" (Argentina). It 'noted' both and appears to have made no comment at any session on these issues.[688]

GLOBAL ATTITUDES SURVEY ON LGBTI PEOPLE 2016

	STRONGLY AGREE	SOMEWHAT AGREE	NEITHER	SOMEWHAT DISAGREE	STRONGLY DISAGREE
Being gay, lesbian, bisexual, trans, or intersex should be a crime?	**32%**	**13%**	**23%**	**8%**	**24%**
Same-sex desire is a Western phenomenon	**25%**	**18%**	**24%**	**9%**	**24%**

	NO CONCERNS	SOMEWHAT UNCOMFORTABLE	VERY UNCOMFORTABLE
How would you feel if your neighbour is gay or lesbian?	**38%**	**24%**	**38%**

680 See: Federal Law No (3) of 1987 on Issuance of the Penal Code, available at: https://www.icrc.org/ihl-nat/6fa4d35e5e30253941256 73e00508143/e656047207c93f99c12576b2003ab8c1/$FILE/Penal%20Code.pdf. (English), and: www.gcc-legal.org/BrowseLawOption.aspx?LawID=2767&country=2 (Arabic).

681 See: Amnesty International "Love, hate and the law: decriminalizing homosexuality", at 51, available at: https://www.amnesty.org/en/documents/POL30/003/2008/en/

682 OutRight Action International, MENA region in correspondence with authors.

683 German Bundestag, *Criminal law provisions on homosexuality and their application around the world*, Printed Paper 16/3597, 28 November 2006, at 29, see: www.gaylawnet.com/ezine/crime/16_3597_minor_interpellation.pdf ; and Schmitt, Arno and Sofer, Jehoeda, *Sexuality and Eroticism Among Males in Moslem Societies* (Binghamton: Harrington Park Press, 1992), at 144.

684 See: Amnesty International, "Love, hate and the law: decriminalizing homosexuality" https://www.amnesty.org/en/documents/POL30/003/2008/en/ at 51,

685 See: http://theuaelaw.com/vb/showthread.php?t=623

686 See: http://sljournal.uaeu.ac.ae/issues/52/images/7%20Ahkam.pdf

687 See: http://fanack.com/ar/countries/uae/society-media-culture/society/gay-rights/

688 Report of the Working Group on the Universal Periodic Review: United Arab Emirates, A/HRC/23/13, 21 March 2013, at: www.upr-info.org/sites/default/files/document/united_arab_emirates/session_15_-_january_2013/ahrc2313e.pdf

UZBEKISTAN

Criminal Code of 1994.[689]

Article 120 ***[HOMOSEXUAL ACTS - MALE]***

"Homosexual acts, which are defined as the gratification of a man's sexual drive with another man without the use of force, shall be punishable with a term of imprisonment of up to three years."

[There are no provisions that criminalise sexual acts between women].[690]

At its 2nd cycle UPR in late-April 2013, Uzbekistan 'noted' (rejected) two calls to decriminalise same-sex sexual relations (Netherlands and Uruguay), and two others to enact non-discrimination legislation (Spain and Argentina). The State's response to these calls was unambigious: "On questions regarding the decriminalization of homosexuality, the Criminal Code forbids consensual sexual relations between men, but this does not apply to women. There are no plans in the near future to repeal this law which reflects traditions that have developed over more than 1,000 years. Uzbekistan in this respect shares the position of the Muslim countries expressed during the discussions of this issue within the Human Rights Council" [para 88].[691] Uzbekistan's next UPR will be in January 2018.

In August 2015, the Human Rights Committee issued its Concluding Observations on Uzbekistan. It said the State, to align with Convention obligations, needs to ensure its legal framework that ensures, *inter alia*, full protection from discrimination in all spheres, is inclusive of SOGI and it provides for effective remedies in cases of violations. It also reiterated a previous recommendation concerning "any form of social stigmatization, hate speech, discrimination or violence" based on SOGI, ensuring "the investigation, prosecution and punishment of such violent acts", and the repeal of Article 120.[692]

YEMEN

Penal Code 1994.[693]

Article 264 ***[HOMOSEXUALITY – MEN]***

"Homosexuality between men is defined as penetration into the anus. Unmarried men shall be punished with 100 lashes of the whip or a maximum of one year of imprisonment, married men with death by stoning."

Article 268 ***[HOMOSEXUALITY – WOMEN]***

"Homosexuality between women is defined as sexual stimulation by rubbing. The penalty for premeditated commission shall be up to three years of imprisonment; where the offence has been committed under duress, the perpetrator shall be punishable with up to seven years detention."

---

689 Text of the law is available at: www.legislationline.org/documents/id/8931

690 Source of translation: www.gaylawnet.com/ezine/crime/16_3597_minor_interpellation.pdf at 31.

691 Report of the Working Group on the Universal Periodic Review: Uzbekistan, A/HRC/24/7, 5 July2013, at: www.upr-info.org/sites/default/files/document/uzbekistan/session_16_-_april_2013/ahrc247e.pdf

692 Human Rights Committee, Concluding observations on the fourth periodic report of Uzbekistan, CCPR/C/UZB/CO/4, 17 August 2015, at paras. 6, 7, see: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/UZB/CO/4&Lang=En

693 Text of the law is available at: www.ilo.org/dyn/natlex/docs/ELECTRONIC/83557/92354/F1549605860/YEM83557.pdf (in English).

Following the unification of north and south Yemen, the 1994 Yemeni Penal Code (the Republic's Rule number 12) requires stoning to death for consensual same-sex relations for men (Art. 264) and three to seven years imprisonment for women (Art. 268).[694]

The situation in Yemen has become progressively worse for sexual and gender minorities since the takeover of much of the country by the radical Houthi militia in 2013.[695] Murders of gay men continue to be reported.[696]

In its 2nd cycle UPR in January 2014, there were no recommendations made by States to Yemen in regards to SOGI. In fact, it appears that there was only one passing mention of SOGI in the 18 civil society and other submissions.[697] Unlike at its 1st cycle UPR in May 2009,[698] there were no oral statements made at the close of Yemen's second UPR. Yemen's next UPR will be in October 2018.

694 See: https://www1.umn.edu/humanrts/arabic/Yemeni_Laws/Yemeni_Laws14.pdf (in Arabic).

695 An article from August 2015, goes into some detail on the environment for LGBT people in Yemen, see: Ben Gladstone, 'Will Yemen's Gay Community Survive the Iran-Backed Militias Trying to Take Over?', The Tower, August 2015, at: www.thetower.org/article/will-yemens-gay-community-survive-the-iran-backed-militias-trying-to-take-over/

696 See, *Erasing 76 Crimes*, Four murders of gay men in Yemen, 16 September 2015, at: http://76crimes.com/2015/09/16/four-murders-of-gay-men-in-yemen/

697 See, Amnesty International, www.upr-info.org/sites/default/files/document/yemen/session_18_-_january_2014/ai_upr18_yem_e_main.pdf

698 See, ILGA-Europe's and the Canadian HIV/AIDS Legal Network's, joint statement, at: www.upr-info.org/sites/default/files/document/yemen/session_05_-_may_2009/ilga_yemen.pdf

ANTIGUA AND BARBUDA

Sexual Offences Act of 1995 (Act No. 9).[699]

Buggery ***[BUGGERY]***

Article 12.
"(1) A person who commits buggery is guilty of an offence and is liable on conviction to imprisonment -
(a) for life, if committed by an adult on a minor;
(b) for fifteen years, if committed by an adult on another adult;
(c) for five years, if committed by a minor.
(2) In this section "buggery" means sexual intercourse per *anum* by a male person with a male person or by a male person with a female person."

Serious indecency ***[SERIOUS INDECENCY]***

Article 15.
"(1) A person who commits an act of serious indecency on or towards another is guilty of an offence and is liable on conviction to imprisonment -
(a) for ten years, if committed on or towards a minor under sixteen years of age;
(b) for five years, if committed on or towards a person sixteen years of age or more,
(2) Subsection (1) does not apply to an act of serious indecency committed in private between -
(a) a husband and his wife; or
(b) a male person and a female person each of whom is sixteen years of age or more;
(3) An act of "serious indecency" is an act, other than sexual intercourse (whether natural or unnatural), by a person involving the use of genital organ for the purpose of arousing or gratifying sexual desire."

At its 1st cycle UPR in October 2011, the State received eight recommendations directly related to SOGI: six were to do with decriminalisation and public awareness campaigns on discrimination which were rejected ('noted'), while the two that were accepted urged the State to condemn acts of violence based on perceived SOGI or the defence of related rights, and the institution of policies and initiatives to address discrimination.[700]

The final response to its 1st cycle UPR, as recorded in the Working Group Report, states: "There was a certain amount of public acceptance of homosexual conduct, although generally in a silent way. Antigua and Barbuda, however, did not have a political mandate with respect to changing the law, notwithstanding the fact that enforcement of those laws was not actually sought. The Government would continue its efforts on education and information to ensure that the public opinion would in time adopt the international standards".[701]

The 2015 Kaleidoscope Trust report, *Speaking Out*, illustrates a very mixed landscape of strong societal and official homophobia, some official address (in terms of limited police training), and limited advocacy resources.[702]

699 Text of the law is available at: www.laws.gov.ag/acts/1995/a1995-9.pdf

700 Report of the Working Group on the Universal Periodic Review: Antigua and Barbuda, A/HRC/19/5, 14 December 2011, at: www.upr-info.org/sites/default/files/document/antigua_and_barbuda/session_12_-_october_2011/a_hrc_19_5_antigua-and-barbuda_e.pdf

701 Ibid, at para. 48.

702 *Speaking Out 2015: The Rights of LGBTI People across the Commonwealth*, Kaleidoscope Trust in association with Kaleidoscope Australia Human Rights Foundation (London, 2015), at 29: http://kaleidoscopetrust.com/usr/library/documents/main/2015_speakingout_241115_web.pdf

BARBADOS

Sexual Offences Act 1992, Chapter 154.[703]

Buggery ***[BUGGERY]***

Section 9.

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

Serious indecency ***[SERIOUS INDECENCY]***

Section 12.

"(1) A person who commits an act of serious indecency on or towards another or incites another to commit that act with the person or with another person is guilty of an offence and, if committed on or towards a person 16 years of age or more or if the person incited is of 16 years of age or more, is liable on conviction to imprisonment for a term of 10 years.
(2) A person who commits an act of serious indecency with or towards a child under the age of 16 or incites the child under that age to such an act with him or another, is guilty of an offence and is liable on conviction to imprisonment for a term of 15 years.
(3) An act of "serious indecency" is an act, whether natural or unnatural by a person involving the use of the genital organs for the purpose of arousing or gratifying sexual desire."

At its 2nd cycle UPR in January 2013, Barbados received 13 recommendations from States regarding SOGI. Of these Barbados accepted four, and 'noted' nine. The Netherlands made a highly specific Level 5 (immediate action) recommendation regarding calling for leadership to be shown by guaranteeing freedom of expression and association for human rights defenders, and societal "organizing a dialogue" on, *inter alia*, LGBT issues.

Recommendations to eliminate discriminatory treatment based on sexual orientation, protection from violence and human rights education regarding SOGI to law enforcement agents were also accepted. Decriminalisation and other non-discrimination recommendations were rejected.[704]

Making the argument that despite criminalisation, "persons who engaged in same-sex relationships were not prosecuted, since without a complaint there could be no successful prosecution of such acts", and that there was "no consensus" on repeal, the delegation said the government was "hesitant to go against the wishes of the people". In the next sentence it said that "[h]owever, it was committed to ensuring that the rights of all persons were protected from harm".[705]

In May 2015, *76 Crimes* published an article by lawyer and HIV activist Maurice Tomlinson that provides incisive insight into how national and institutional dialogues on SOGI-related issues are developing in Barbados, as well as a description of some recent institutional initiatives.[706]

703 Text of the law is available at: http://www2.ohchr.org/english/bodies/hrc/docs/ngos/lgbti2.pdf

704 Report Group on the Universal Periodic Review: Barbados, A/HRC/23/11, 12 March 2013, at: www.upr-info.org/sites/default/files/document/barbados/session_15_-_january_2013/ahrc2311e.pdf

705 Ibid, at paras. 21, 22.

706 Maurice Tomlinson, 'Will tourist-dependent Barbados risk staying anti-gay?', *Erasing 76 Crimes*, 11 May 2015, at: http://76crimes.com/2015/05/11/will-tourist-dependent-barbados-risk-staying-anti-gay/

BELIZE

Criminal Code (Revised edition 2000).[707]

Unnatural Crime ***[AGAINST THE ORDER OF NATURE]***

Section 53.
"Every person who has carnal intercourse against the order of nature with any person or animal shall be liable to imprisonment for ten years."

Since 2010, lawyers and activists have been challenging the constitutionality of this section. In *Caleb Orozco v. Attorney General of Belize* the plaintiff argues that section 53 violates the Constitution of Belize to the extent it criminalises consensual adult conduct in private. The case is still awaiting a judgment following the last hearing in May 2013.[708]

Belize rejected each of the 14 recommendations it received at its 2nd cycle UPR in May 2013 (both in relation to the criminalisation of same-sex acts and non-discrimination). It rejected various direct recommendations to decriminalise, including the US recommendation to "reform existing laws that can be used to discriminate against lesbian, gay, bisexual, and transgender persons, including the provision of 'unnatural crime' laws prohibiting 'carnal intercourse against the order of nature'."[709] The context of the delegation's references to sexual orientation was in relation to a new Gender Equality statutory instrument that Evangelical churches were strongly objecting to because of the inclusion of sexual orientation and reproductive rights.[710] Earlier, in March 2013, the Revised National Gender Policy was published which contains a reference to sexual orientation under the Guiding Principle of 'respect for diversity'.[711]

A travel ban on 'undesirable people',[712] that includes LGBT people, is the subject of a 2015 case bought by Maurice Tomlinson to the Caribbean Court of Justice (CCJ). The court granted Tomlinson special leave to commence proceedings,[713] where he will declare that the law violates his right to dignity, freedom of movement, and non-discrimination as a national in the Caribbean Community and Common Market (CARICOM). In September 2015, Belize hosted its first week-long Pride activities.

707 Text of the law is available at: www.oas.org/juridico/mla/en/blz/en_blz-int-text-cc.pdf

708 See: summary of the case, available at: www.humandignitytrust.org/pages/OUR%20WORK/Cases/Belize/. Latest update from September 2015 and complete case history, at: www.u-rap.org/web2/index.php/2015-09-29-00-40-03/orozco-v-attorney-general-of-belize/item/2-caleb-orozco-v-attorney-general-of-belize-and-others

709 See: Report of the Working Group on the Universal Periodic Review: Belize, A/HRC/25/13, 11 December, 2013, at: www.upr-info.org/sites/default/files/document/belize/session_17_-_october_2013/a_hrc_25_13_belize_e.pdf

710 Ibid, at para. 96.

711 National Women's Commission, The Revised National Gender Policy (Part 2), Updated Version 2013, March 2013, at: www.nationalwomenscommission.org/Publications/NGP_final.pdf

712 Section 5.1.(e) of Belize's Immigration Act includes, "any prostitute or homosexual or any person who may be living on or receiving or may have been living on or receiving the proceeds of prostitution or homosexual behavior" as prohibited immigrants.

713 See: www.caribbeancourtofjustice.org/wp-content/uploads/2014/05/OA-001-002-of-2013-Tomlinson-v-Belize-Trinidad-and-Tobago-Judgment-7-May14.pdf

DOMINICA

Sexual Offences Act 1998.[714]

Section 14. Gross Indecency ***[GROSS INDECENCY]***

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

Section 16. Buggery ***[BUGGERY]***

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

The Government of Dominica rejected the UPR recommendations to repeal the above-mentioned articles in its 1st cycle UPR (seven recommendations) in 2010, and it also rejected a series of recommendations to address discrimination in relation to HIV, engage in sensitivity training with judiciary and security forces, and to employ the Yogyakarta Principles to guide such work. In its responses to the recommendation Dominica conceded that the law is "discriminatory" and that there is a "certain element of discrimination in the society".[715] It also said its 2003 HIV/AIDS strategy was inclusive "regardless ... of sexual persuasion".[716]

Dominica's 2nd cycle UPR in May 2014 generated 12 strong recommendations to decriminalise and strengthen anti-discrimination provisions within the country in relation to LGBT populations. The only response given in its final responses to SOGI was a reiteration that its 2003 AIDS strategy did not discriminate on grounds of sexual orientation. No other address was given to four very strong comments made at the Interactive Dialogue about

714 Text of the law is available at: www.dominica.gov.dm/laws/1998/act1-1998.pdf

715 Report of the Working Group on the Universal Periodic Review: Dominica, A/HRC/13/12, 4 January 2010, at para. 33, see: www.upr-info.org/sites/default/files/document/dominica/session_06_-_november_2009/a_hrc_13_12_dominica_e.pdf

716 Ibid, at para. 20.

Dominica's duties in regards to protection of human rights defenders doing SOGI-related work.[717]

Kaleidoscope Trust reports that the media climate in Dominica is not particularly hostile, probably due to a lack of knowledge about SOGI-related groups and issues.[718]

GRENADA

Criminal Code of 1987 as amended in 1993.[719]

Article 431 ***[UNNATURAL CONNEXION]***

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

At its 1st cycle UPR in May 2010, Grenada received five recommendations to decriminalise same-sex sexual relations, all of which it refused. However, it did note that the current law "could be viewed as discriminatory", and with time "growing tolerance on the part of the people would help in addressing this issue", which would have to be deliberated by the Cabinet. It was noted that there was no discrimination in the provision of health and other services in that regard.[720]

In January 2015, Grenada's 2nd UPR concluded. The State had received 16 recommendations that were SOGI-related, mostly concerning decriminalisation, but also non-discrimination in services and the protection of LGBT human rights defenders. Each of these were rejected ('noted'), and in the Interactive Dialogue, the State explained that it had been looking at discrimination against LGBT people in the context of Constitutional provisions, but a platform of public consultations are now advised to consider legislative provisions regarding workplaces, as Constitutional ones may fail to adequately gain public support.[721] Grenada's next UPR is in October 2019.

In late-September 2015, a three-day conference was organised by the Organization of Eastern Caribbean States (OECS) around the possibility of using litigation to move the laws in the region.[722] In October 2015, a public session was held at the Inter-American Commission on Human Rights on the subject of same-sex sexual relations and the law.[723]

717 Report of the Working Group on the Universal Periodic Review: Dominica, A/HRC/27/9, 26 June 2014, at: www.upr-info.org/sites/default/files/document/dominica/session_19_-_april_2014/a_hrc_27_9_e.pdf

718 *Speaking Out 2015: The Rights of LGBTI People across the Commonwealth*, Kaleidoscope Trust in association with Kaleidoscope Australia Human Rights Foundation (London, 2015), at 34: http://kaleidoscopetrust.com/usr/library/documents/main/2015_speakingout_241115_web.pdf

719 Text of the law is available at: www.oas.org/juridico/spanish/mesicic2_grd_criminal_code.PDF

720 Report of the Working Group on the Universal Periodic Review, A/HRC/15/12, 16 June 2010, at para. 26, see: www.upr-info.org/sites/default/files/document/grenada/session_08_-_may_2010/a_hrc_15_12_e.pdf

721 Report of the Working Group on the Universal Periodic Review, A/HRC/29/14, 9 April 2015, at para. 35, see: www.upr-info.org/sites/default/files/document/grenada/session_21_-_january_2015/a_hrc_29_14_e.pdf

722 See, http://groundationgrenada.com/2015/09/23/oecs-discuss-litigation-advocacy-strategy-on-lgbt-discrimination/

723 See, http://repeatingislands.com/2015/10/18/grenada-at-the-inter-american-commission-on-human-rights/

GUYANA

Criminal Law (Offences) Act.[724]

Section 352. Committing acts of gross indecency with male person ***[GROSS INDECENCY]***

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

Section 353. Attempt to commit unnatural offences ***[ATTEMPTED BUGGERY]***

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

Section 354. Buggery ***[BUGGERY]***

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

At its 1st cycle UPR in May 2010, Guyana received seven recommendations to decriminalise and include SOGI as a named ground for non-discrimination. In its responses the State said that no cases stemming from the law had come before the courts, and: "Changes to laws required widespread consultation and a major change in attitude on the part of the populace. The Government's attempt to include the phrase "sexual orientation" in the anti-discrimination clause of the Constitution had been met with widespread consternation and protest".[725]

Guyana received 17 recommendations in its 2nd cycle UPR in January 2015, of which it accepted three: to strengthen protections, vigorous protection from and prosecution of hate crimes, and further review of legislative non-discrimination provisions relating to SOGI. All other recommendations had a call to decriminalise, and all 14 were 'noted' (rejected). In its responses the Guyana delegation pointed out that prior to elections the Parliamentary Special Select Committee had a mandate to look at reviewing the legislation, but that process had ceased. It stressed there had been "unfettered freedom" in regards to freedom of expression for LGBT groups, and that the State did not discriminate based on sexual orientation, as provided by the Constitution.[726]

As reported in *Erasing 76 Crimes* in January 2016, Prime Minister Granger has said that he is "prepared to respect the rights of any adult to indulge in any practice which is not harmful to others". Previously in 2015, he noted that his government would not allow religious imposition to trump the human rights of LGBT people in Guyana. A month earlier, the former Health Minister had spoken about Guyana showing leadership and repealing the archaic law, within the context of the United Nations Sustainable Development Goals (2015-2030).[727]

724 Text of the law is available at: www.oas.org/juridico/MLA/en/guy/en_guy-int-text-cl_act.pdf

725 Report of the Working Group on the Universal Periodic Review: Guyana, A/HRC/15/14, 21 June 2010, at para. 17, see: www.upr-info.org/sites/default/files/document/guyana/session_8_-_may_2010/ahrc1514e.pdf

726 Report of the Working Group on the Universal Periodic Review: Guyana, A/HRC/29/16, 13 April 2015, at paras. 13, 14, see: www.upr-info.org/sites/default/files/document/guyana/session_21_-_january_2015/a_hrc_29_16_e.pdf

727 Colin Stewart, 'Guyana president takes aim at his nation's anti-gay law', *Erasing 76 Crimes*, 7 January 2016, at: http://76crimes.com/2016/01/07/guyana-president-takes-aim-at-his-nations-anti-gay-law/

JAMAICA 

The Offences Against the Person Act.[728]

Article 76. Unnatural Crime ***[BUGGERY]***

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

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

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

Article 78. Proof of Carnal Knowledge

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

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

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

To provide law enforcement agencies with appropriate LGBT sensitisation training was the only recommendation accepted by Jamaica in its 1st cycle UPR in October 2010. All other 11 recommendations were rejected – calls for decriminalisation, non-discrimination and protection of LGBT human rights defenders. In its Final Report, the Working Group record the State's response: "Jamaica stressed that the issue of male homosexuality was one of great sensitivity in Jamaican society, in which cultural norms, values, religious and moral standards underlay a rejection of male homosexual behaviour by a large majority of Jamaicans; and that the Government was committed to ensuring that all citizens were protected from violence".[729]

At its 2nd cycle UPR in May 2015, Jamaica received 18 recommendations from States, of which it accepted only three: all of which were to do with the investigation and prosecution of violence acts against LGBT people and those defending their rights. The rejected, or 'noted', recommendations were primarily to do with criminalisation, but also many to do with codifying non-discrimination provisions relevant to LGBT people. The State mentioned that "several initiatives had been put in place" in order to create better understanding of SOGI-related issues in Jamaica, giving the example of police sensitisation in regards to in-force education on human rights, diversity training and support to LGBT people in the reporting of crime.[730]

The socio-political situation in Jamaica continues to be challenging, but headway was made in 2015 with the country's first Pride week, the production of materials on homophobic bullying in schools, and training of healthcare workers. However, NGOs continue to report very high levels of violence and abuse.[731]

728 Text of the law is available at: www.vertic.org/media/National%20Legislation/Jamaica/JM_Offences_against_the_Person_Act.pdf

729 Report of the Working Group on the Universal Periodic Review: Jamaica, A/HRC/16/14, 4 January 2011, at para. 32, see: www.upr-info.org/sites/default/files/document/jamaica/session_9_-_november_2010/ahrc1614jamaicae.pdf

730 Report of the Working Group on the Universal Periodic Review: Jamaica, A/HRC/30/15, 20 July 2015, at para. 35, see: www.upr-info.org/sites/default/files/document/jamaica/session_22_-_may_2015/a_hrc_30_15_en.pdf

731 See, *Speaking Out 2015: The Rights of LGBTI People across the Commonwealth*, Kaleidoscope Trust in association with Kaleidoscope Australia Human Rights Foundation (London, 2015), at 36: http://kaleidoscopetrust.com/usr/library/documents/main/2015_speakingout_241115_web.pdf

GLOBAL ATTITUDES SURVEY ON LGBTI PEOPLE 2016

	STRONGLY AGREE	SOMEWHAT AGREE	NEITHER	SOMEWHAT DISAGREE	STRONGLY DISAGREE
Being gay, lesbian, bisexual, trans, or intersex should be a crime?	**14%**	**6%**	**32%**	**9%**	**38%**
Same-sex desire is a Western phenomenon	**16%**	**13%**	**45%**	**7%**	**19%**
	NO CONCERNS	SOMEWHAT UNCOMFORTABLE		VERY UNCOMFORTABLE	
How would you feel if your neighbour is gay or lesbian?	**70%**	**15%**		**14%**	

SAINT KITTS AND NEVIS

Offences against the Person Act.[732] ***[BUGGERY]***

The Revised Laws prescribe terms of imprisonment of up to ten years, with or without hard labor, upon conviction for engaging in anal sex, described as "the abominable crime of buggery." Attempted "buggery" is sanctioned by up to four years imprisonment, with or without hard labor, as is "any indecent assault upon any male person".[733] [Note: The latter, which is in no way defined, is subject to arbitrary interpretation. It could potentially encompass any behavior perceived as a homosexual advance.]

Having received and rejected all eight recommendations regarding decriminalisation and non-discrimination at its 1st cycle UPR in January 2011, the State delegation noted that it protects, not excludes, MSM in its HIV programming, and that despite the existence of the criminalising legislation, LGBT people enjoyed the same freedoms as everyone else in the "tolerant society" that is St Kitts and Nevis. It also asserted its non-discrimination provisions are universal, and no reports had been received about violence against LGBT people or exclusion from employment.[734]

At its 2nd UPR cycle in 2015, the State also received eight recommendations concerning the same issues: decriminalisation and non-discrimination. At time of writing it is not known which will be accepted or rejected: but we note that an unedited Working Group report records the State's re-usage of virtually identical wording to its 1st cycle UPR.[735] However, later on in the Interactive Dialogue section of the UPR in the context of sexuality education, the delegation made reference to gaining a greater understanding of "sexual orientation and sexual identity issues".[736] The publication *Speaking Out* offers a snapshot of the progress in the socio-political sphere through 2015 in this State.[737]

732 Immigration and Refugee Board of Canada, *Saint Kitts and Nevis: The situation of homosexuals; state protection and availability of support groups*, 26 June 2008, KNA102823.E, available at: www.unhcr.org/refworld/docid/49b92b2614.html

733 See: Saint Kitts-Nevis-Anguilla. & Lewis, P. C *The Revised Laws of St. Christopher, Nevis and Anguilla: Prepared under the authority of the Revised edition of the laws ordinance, 1959* (London: 1964). See: also, Reding, A. *Sexual orientation and human rights in the Americas* (New York: World Policy Institute, 2003), available at: www.worldpolicy.org/sites/default/files/uploaded/image/WPR-2003-Sexual%20Orientation%20and%20Human%20Rights%20in%20the%20Americas.pdf

734 Report of the Working Group on the Universal Periodic Review; St Kitts and Nevis, A/HRC/31/16, 20 November 2015, Unedited Version, at para. 16, see: www.upr-info.org/sites/default/files/document/session_23_-_november_2015/a_hrc_31_16.pdf

735 Ibid, at para. 16.

736 Ibid, at para. 87.

737 *Speaking Out 2015: The Rights of LGBTI People across the Commonwealth*, Kaleidoscope Trust in association with Kaleidoscope Australia Human Rights Foundation (London, 2015), at 37: http://kaleidoscopetrust.com/usr/library/documents/main/2015_speakingout_241115_web.pdf

ST LUCIA

Criminal Code, No. 9 of 2004 (Effective 1 January 2005).[738]

Gross Indecency *[GROSS INDECENCY]*

Section 132.

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

Buggery *[BUGGERY]*

Section 133.

"(1) A person who commits buggery commits an offence and is liable on conviction on indictment to imprisonment for —
(*a*) life, if committed with force and without the consent of the other person;
(*b*) ten years, in any other case.
(2) Any person who attempts to commit buggery, or commits an assault with intent to commit buggery, commits an offence and is liable to imprisonment for five years.
(3) In this section "buggery" means sexual intercourse per anus by a male person with another male person."

At its 1st cycle UPR in January 2011, St Lucia received eight recommendations. It accepted two which both concerned investigation and protection of SOGI-related human rights defenders. Having asserted that non-discrimination in the Constitution was inclusive of all St Lucians, the delegation made an interesting comment during its Interactive Dialogue: "Matters regarding how a society interacts, what principles it is governed by and how it will evolve in the future clearly reveal a need for advocacy and changes in attitude of certain sectors of society. The question remains, however, whether such advocacy should be the role of the Government, or whether it should be carried out by those who believe they are discriminated against".[739] In the almost-five-year period between reviews, there has been significant advocacy, capacity building, and community development amongst the LGBTI community in St Lucia.[740]

Following its 13 recommendations made to it in its 2nd UPR in November 2015, the State revealed that it is "considering enacting ordinary legislation addressing discrimination on the grounds of sexual orientation, as suggested by the Constitutional Reform Commission (referencing its 2006 Labour Code that already outlaws such discrimination). It then stated the Constitution protects LGBT people in that should they encounter discrimination, there is no bar on individuals seeking judicial redress.[741]

738 Text of the law is available at: www.rslpf.com/site/criminal%20code%202004.pdf

739 Report of the Working group on the Universal Periodic Review: St Lucia, A/HRC/17/6, 11 March 2011, at para. 65, see: www.upr-info.org/sites/default/files/document/saint_lucia/session_10_-_january_2011/a_hrc_17_6_saint_lucia_e.pdf

740 See website for United and Strong, at: https://unitedandstrongstlucia.wordpress.com

741 Report of the Working group on the Universal Periodic Review: St Lucia, A/HRC/31/10, 15 December 2015, at paras. 18, 19, see: www.upr-info.org/sites/default/files/document/saint_lucia/session_23_-_november_2015/a_hrc_31_10_e.pdf

SAINT VINCENT AND THE GRENADINES

Criminal Code, 1990 Edition.[742]

Section 146 ***[BUGGERY]***

"Any person who —
(a) commits buggery with any other person;
(b) commits buggery with an animal; or
(c) permits any person to commit buggery with him or her;
is guilty of an offence and liable to imprisonment for ten years."

Section 148 ***[GROSS INDECENCY]***

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

At its 1st cycle UPR in May 2011, the State rejected 11 recommendations to lift discriminatory laws and practices, including the repeal of Section 146 in line with the Human Rights Committee Concluding Observations recommendations in 2008.[743] In response, the State said that its current legislation was supported by society and there was no call to repeal it, "[in] n the context of the moral, societal and cultural make-up of the State". The State's next review is in May 2016.

The Kaleidoscope Trust's report illustrates a socio-political environment that appears to be improving incrementally, as discussions about what impedes full citizenship in a discriminatory environment take place.[744] The Committee on the Elimination of all forms of Discrimination Against Women (CEDAW) noted that women in same-sex relationships are not covered by the 2015 Domestic Violence Act, and recommended this exclusion is rectified.[745]

742 See: Immigration and Refugee Board of Canada, *Saint Vincent and the Grenadines: Sections of the criminal code that outline provisions for bodily harm and assault causing bodily harm*, 11 September 2007, VCT102596.E, available at: www.refworld.org/docid/47d654822.html

743 See: Human Rights Committee, Concluding Observations: Saint Vincent and the Grenadines, CCPR/C/VCT/CO/2, 24 April 2008, at para. 8, see: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/VCT/CO/2&Lang=En

744 *Speaking Out 2015: The Rights of LGBTI People across the Commonwealth*, Kaleidoscope Trust in association with Kaleidoscope Australia Human Rights Foundation (London, 2015), at 38: http://kaleidoscopetrust.com/usr/library/documents/main/2015_speakingout_241115_web.pdf

745 CEDAW, Concluding observations on the combined fourth to eighth periodic reports of Saint Vincent and the Grenadines, CEDAW/C/VCT/CO/4-8, 28 July 2015 at para. 20(c), see: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fVCT%2fCO%2f4-8&Lang=en

TRINIDAD AND TOBEGO

Sexual Offences Act 1986, Consolidated Version 2000.[747]

Section 13. ***[BUGGERY]***

"(1) A person who commits buggery is guilty of an offence and is liable on conviction to imprisonment—
(a) if committed by an adult on a minor, for life;
(b) if committed by an adult on another adult, for twenty-five years;
(c) if committed by a minor, for five years.
(2) In this section "buggery" means sexual intercourse per *anum* by a male person with a male person or by a male person with a female person."

Section 16. . ***[SERIOUS INDECENCY]***

"(1) A person who commits an act of serious indecency on or towards another is guilty of an offence and is liable on conviction to imprisonment—
(a) if committed on or towards a minor under sixteen years of age for ten years for a first offence and to imprisonment for fifteen years for a subsequent offence;
(b) if committed on or towards a person sixteen years of age or more for five years.
(2) Subsection (1) does not apply to an act of serious indecency committed in private between—
(a) a husband and his wife; or
(b) a male person and a female person each of whom is sixteen years of age or more, both of whom consent to the commission of the act.
(3) An act of "serious indecency" is an act, other than sexual intercourse (whether natural or unnatural), by a person involving the use of the genital organ for the purpose of arousing or gratifying sexual desire."

In October 2011, Trinidad and Tobego commenced its 1st UPR sessions. The State had received six recommendations, and had accepted two of these: to undertake policies to promote the rights of LGBT people, and to institute policy to prevent and prosecute crimes based on SOGI. Three of the remaining four recommendations that were 'noted' (rejected) concerned repeal of the criminalising law, and the fourth rejection called for wide-ranging legislative and political reforms to address discrimination, including public awareness campaigns, based on "sexual preference".[748] The State's next UPR is in May 2016. For some information on some 2015 developments in the country, see *Speaking Out*.[749]

GLOBAL ATTITUDES SURVEY ON LGBTI PEOPLE 2016

	STRONGLY AGREE	SOMEWHAT AGREE	NEITHER	SOMEWHAT DISAGREE	STRONGLY DISAGREE
Being gay, lesbian, bisexual, trans, or intersex should be a crime?	**14%**	**6%**	**28%**	**10%**	**42%**
Same-sex desire is a Western phenomenon	**14%**	**10%**	**39%**	**10%**	**26%**
	NO CONCERNS	SOMEWHAT UNCOMFORTABLE		VERY UNCOMFORTABLE	
How would you feel if your neighbour is gay or lesbian?	**76%**	**14%**		**10%**	

746 The Equal Opportunities Commission recently urged sexual orientation inclusion in the State's non-discrimination provision, see: www.trinidadexpress.com/20160327/news/eoc-looks-forward-to-action-on-sexual-orientation-discrimination

747 The text of the law is available at: http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/11.28.pdf. See: also Immigration and Refugee Board of Canada, *Trinidad and Tobago: Situation of homosexuals; state protection; whether Sections 13 and 16 of the Sexual Offences Act and Paragraph 8(1)(e) of the Immigration Act are enforced (January 2003- July 2009)*, 30 July 2009, TTO103215.E, available at: www.unhcr.org/refworld/docid/4b20f03423.html

748 Report of the Working Group on the Universal Periodic Review: Trinidad and Tobego, A/HRC/19/7, 14 December 2011, at: www.upr-info.org/sites/default/files/document/trinidad_and_tobago/session_12_-_october_2011/ahrc197trinidadandtobagoe.pdf

749 *Speaking Out 2015: The Rights of LGBTI People across the Commonwealth*, Kaleidoscope Trust in association with Kaleidoscope Australia Human Rights Foundation (London, 2015), at 39: http://kaleidoscopetrust.com/usr/library/documents/main/2015_speakingout_241115_web.pdf

COOK ISLANDS (NEW ZEALAND ASSOCIATES)

Crimes Act 1969.[750]

Section 154. Indecency between males *[INDECENT ACT]*

"(1) Every one is liable to imprisonment for a term not exceeding five years who, bring a male,-
(a) Indecently assaults any other male; or
(b) Does any indecent act with or upon any other male; or
(c) Induces or permits any other male to do any indecent act with or upon him.
(2) No boy under the age of fifteen years shall be charged with committing or being a party to an offence against paragraph (b) or paragraph (c) of subsection (1) of this section, unless the other male was under the age of twenty-one years.
(3) It is not defence to a charge under this section that the other party consented."

Section 155. Sodomy *[SODOMY]*

"(1) Every one who commits sodomy is liable-
(a) Where the act of sodomy is committed on a female, to imprisonment for a term not exceeding fourteen years;
(b) Where the act of sodomy is committed on a male, and at the time of the act that male is under the age of fifteen years and the offender is of over the age of twenty-one years, to imprisonment for a term not exceeding fourteen years;
(c) In any other case, to imprisonment for a term not exceeding seven years.
(2) This offence is complete upon penetration.
(3) Where sodomy is committed on any person under the age of fifteen years he shall not be charged with being a party to that offence, but he may be charged with being a party to an offence against section 154 of this Act in say case to which that section is applicable.
(4) It is no defence to a charge under this section that the other party consented."

The Cook Islands is a New Zealand associate, and as such, the laws in the Cook Islands are only applicable to the islands, and not to New Zealand. The LGBT organisation, the Te Tiare Association, is pushing for decriminalisation in light of developments at the international (UN) level.[751] However, it is reported that the political establishment are not as yet entirely on board.[752]

KIRIBATI

Penal Code [Cap 67] Revised Edition 1977.[753]

Unnatural Offences

Section 153 *[BUGGERY]*

"Any person who-
(a) commits buggery with another person or with an animal; or
(b) permits a male person to commit buggery with him or her,
shall be guilty of a felony, and shall be liable to imprisonment for 14 years."

Attempts to commit unnatural offences and indecent assaults

750 Text of the law is available at: www.paclii.org/ck/legis/num_act/ca196982/

751 See: www.cookislandsnews.com/national/local/item/53592-gay-rights-campaign-misunderstood/53592-gay-rights-campaign-misunderstood

752 *Speaking Out 2015: The Rights of LGBTI People across the Commonwealth*, Kaleidoscope Trust in association with Kaleidoscope Australia Human Rights Foundation (London, 2015), at 55: http://kaleidoscopetrust.com/usr/library/documents/main/2015_speakingout_241115_web.pdf

753 Text of the law is available at: www.paclii.org/ki/legis/consol_act/pc66/

Section 154 *[ATTEMPTED BUGGERY]*

"Any person who attempts to commit any of the offences it specified in the last preceding section, or who is guilty of any assault with intent to commit the same, or any indecent assault upon any male person shall be guilty of a felony, and shall be liable to imprisonment for 7 years."

Indecent practices between males *[GROSS INDECENCY]*

Section 155.

"Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, shall be guilty of a felony, and shall be liable to imprisonment for 5 years."

Kiribati 'noted' (rejected) two recommendations to decriminalise, and four to include SOGI into its Constitutional provisions for non-discrimination in its 1st cycle UPR in May 2010. However, the State did attempt to explain its position: "Concerning the issue of sexual orientation, the delegation appreciated the existence of homosexuality and the need to include it as a prohibited discriminatory ground in the Constitution. However, the delegation reiterated the high threshold required in order to adopt an amendment to the Bill of Rights. The same would apply to the issue of discrimination against women".[754] A Private Member's Bill calling for such Constitutional inclusion was then rejected in the Parliament in 2014.

The unedited version of Report of the Working Group for its 2nd cycle UPR in January 2015,[755] shows recommendations from France, Slovenia, Chile, Canada and Uruguay to decriminalise same-sex sexual relations, and to ensure SOGI is a ground that is protected in anti-discrimination legislation. In the final Working Group report for Kiribati, there is no mention of the State's reasons for rejecting ('noted') all SOGI-related recommendations.[756] It is notable that the State created a Gender Equality and Women's Development Policy in light of the problem it identified in 2010 (quoted above).

PAPUA NEW GUINEA

Criminal Code 1974, as amended in 2002.[757]

Section 210. Unnatural Offences *[AGAINST THE ORDER OF NATURE]*

"(1) A person who–
(*a*) sexually penetrates any person against the order of nature; or
(*b*) sexually penetrates an animal; or
(*c*) permits a male person to sexually penetrate him or her against the order of nature, is guilty of a crime.
Penalty: Imprisonment for a term not exceeding 14 years.
(2) A person who attempts to commit an offence against Subsection (1) is guilty of a crime.
Penalty: imprisonment for a term not exceeding seven years."

754 Report of the Working Group on the Universal Periodic Review: Kiribati, A/HRC/15/3, 17 June 2010 at para. 61, see: www.upr-info.org/sites/default/files/document/kiribati/session_8_-_may_2010/ahrc153e.pdf

755 See, UN Human Rights Council, A/HRC/WG.6/21/L.2 at 84.50 – paras. 84.54.

756 Report of the Working Group on the Universal Periodic review: Kiribati, A/HRC/29/5, 13 April 2015, at: www.upr-info.org/sites/default/files/document/kiribati/session_21_-_january_2015/a_hrc_29_5_e.pdf

757 Text of the law is available at: www.paclii.org/pg/legis/consol_act/cca1974115//

Section 212. Indecent Practices between Males *[GROSS INDECENCY]*

"(1) A male person who, whether in public or private—
(*a*) commits an act of gross indecency with another male person; or
(*b*) procures another male person to commit an act of gross indecency with him; or
(*c*) attempts to procure the commission of any such act by a male person with himself or with another male person, is guilty of a misdemeanour.
Penalty: Imprisonment for a term not exceeding three years."

The Kapul Champions, the first registered gay, bisexual and transgender human rights NGO in the country, came into being in 2013.[758] On 24 July 2014, it was announced that the country's Health Minister, Michael Malabag, committed to introducing legislation to decriminalise sex work as a key reform to tackling HIV/AIDS at an UNAIDS-AFPPD forum at the 20th International AIDS Conference in Melbourne; "I will bring in the legislation. We must remove the stigma. We are all equal".[759]

There were no reports of prosecutions for same-sex behaviour in the last five years. However, in March 2015, Malalaua district resident Mr Joe Sevese was prosecuted and pleaded guilty to indecent acts between males.[760] In that matter, the sentencing judge found that "homosexual acts or this type of behaviour is quite prevalent in society" despite the lack of reported cases, and sentenced the accused to a suspended sentence of two years imprisonment in order to "*deter [him] and others from indulging in this type of behavior*".[761]

In its 1st cycle UPR in June 2011, Papua New Guinea rejected recommendations to decriminalise its law targeting same-sex relations between men, and to include SOGI in non-discrimination legislation. At time of writing, Papua New Guinea's 2nd cycle UPR (April 2016) is being heard. A number civil society submissions have included SOGI issues in their content, namely Kaleidoscope Trust and the Sexual Rights Initiative who focus on decriminalisation, discrimination, access to justice, health services and employment regarding LGBTI people,[762] and Human Right Watch who make mention of the plight of "gay asylum seekers" on Papua New Guinea.[763]

SAMOA

Crimes Act 2013[764]

67. Sodomy *[SODOMY]*

"(1) A person who commits sodomy is liable:
(a) where the act of sodomy is committed on a female, to imprisonment for a term not exceeding 7 years; or
(b) where the act of sodomy is committed on a male, and at the time of the act that male is under the age of 16 years and the

758 See, http://psdnetwork.org/2013/05/papua-new-guinea-launches-kapul-champions/

759 See: press release from the Asian Forum of Parliamentarians on Population and Development (AFPPD), at: https://www.facebook.com/afppd/posts/768096593247263

760 *State v Sevese*, (2015) PGNC 42; N5961 (5 March 2015), at 2.

761 This paragraph is lifted from *Speaking Out 2015: The Rights of LGBTI People across the Commonwealth*, Kaleidoscope Trust in association with Kaleidoscope Australia Human Rights Foundation (London, 2015), at 55: http://kaleidoscopetrust.com/usr/library/documents/main/2015_speakingout_241115_web.pdf

762 See: http://sexualrightsinitiative.com/wp-content/uploads/KALEIDOSCOPE_SRI-Papua-New-Guinea-Joint-Submission-April-May-2016.pdf

763 See: https://www.hrw.org/news/2015/09/21/papua-new-guinea-upr-submission-2015#_ednref14

764 Text of Act at: www.paclii.org/ws/legis/consol_act/ca201382/

offender is of or over the age of 21 years, to imprisonment for a term not exceeding 7 years; or
(c) in any other case, to imprisonment for a term not exceeding 5 years.
(2) Sodomy is complete upon penetration.
(3) It is no defence to a charge under this section that the other party consented."

68. Attempts to commit sodomy ***[ATTEMPTED SODOMY]***

"A person is liable to imprisonment for a term not exceeding 5 years who:
(a) attempts to commit sodomy; or
(b) assaults any person with intent to commit sodomy."

Article 71. Keeping place of resort for homosexual acts ***[FACILITATES INDECENT ACTS]***

"A person is liable to imprisonment for a term not exceeding 7 years who:
(a) keeps or manages, or knowingly acts or assists in the management of, any premises used as a place of resort for the commission of indecent acts between males; or
(b) being the tenant, lessee or occupier of any premises, knowingly permits the premises or any part thereof to be used as a place of resort for the commission of indecent acts between males; or
(c) being the lessor or landlord of any premises, or the agent of the lessor or landlord, lets the premises or any part of the premises with the knowledge that the premises are to be used as a place of resort for the commission of indecent acts between males, or that some part of the premises is to be so used, or is wilfully a party to the continued use of the premises or any part thereof as a place of resort for the commission of the indecent acts."

At its 1st cycle UPR in May 2011, Samoa rejected three Level 5 (act immediately) recommendations to decriminalise same-sex sexual activity from Canada, France and Norway, but it did accept a Level 2 ("continue its reconsideration") soft recommendation from the United States.

However, Samoa's rejection is worthy of note: Paragraph 22 of the Report of the Working Group reads: "Samoa noted the gaps and weaknesses in its legislative framework on upholding equality and non-discrimination based on sexual orientation, and that relevant legislation was being reviewed by the Samoa Law Reform Commission. Samoa indicated that *Faafafine*, gays and lesbians were integral members of Samoan society and were heirs to family chiefly titles and lands through extended family consensus, as done for all men and women of its society. However, sexual orientation was a sensitive issue in Samoa given the religious and cultural beliefs of mainstream society. Nonetheless, Samoa was confident that education, awareness and sensitisation would pave the way for societal acceptance and prevention of discrimination that might arise out of sexual orientation".[765]

As Samoa's 2nd UPR is imminent (April 2016), it is notable that the State's first human rights overview "For Samoa by Samoa", makes no mention or reference to SOGI, including the Fa'afafine population,[766] although there is a LGBT presence on the NHRI's Advisory Council. A number of NGO submissions to this 2016 review focus on decriminalisation, LGBT youth issues and partnership rights for LGBT people.[767] Currently advocates on-the-ground are focused on increasing institutional and public comprehension of what non-discrimination based on SOGI looks like.

765 Report of the Working Group on the Universal Periodic Review: Samoa, A/HRC/18/14, 11 July 2011, at para. 22, see: http://www.upr-info.org/sites/default/files/document/samoa/session_11_-_may_2011/ahrc1814samoae.pdf

766 Office of the Ombudsman & Samoa National Human Rights Institute, "For Samoa, by Samoa: State of Human Rights report" (2015), at: www.ombudsman.gov.ws/images/20150806_stateofhumanrightsreport_english.compressed.pdf

767 For example, see Kaleidoscope Trust submission, at: www.kaleidoscopeaustralia.com/wp-content/uploads/2015/09/Samoa-UPR-Shadow-Report-14-September-2015.pdf

SOLOMON ISLANDS

Penal Code (Revised Edition 1996).[768]

Section 160. Unnatural offences ***[BUGGERY]***

"Any person who-
(a) commits buggery with another person or with an animal; or
(b) permits a male person to commit buggery with him or her, shall be guilty of a felony, and shall be liable to imprisonment for fourteen years."

Section 161. Attempts to commit unnatural offences ***[ATTEMPTED BUGGERY]***

"Any person who attempts to commit any of the offences specified in the last preceding section, or who is guilty of any assault with intent to commit the same, or any indecent assault indecent assaults upon any male person shall be guilty of a felony, and shall be liable to imprisonment for seven years."

Section 162. Indecent practices between persons of the same sex (Inserted by Act 9 of 1990, s. 2) ***[GROSS INDECENCY]***

"Any person who, whether in public or private -
(a) commits any act of gross indecency with another of the same sex;
(b) procures another of the same sex to commit any act of gross indecency; or
(c) attempts to procure the commission of any act of gross indecency by persons of the same sex, shall be guilty of a felony and be liable to imprisonment for five years."

Although the Solomon Islands accepted Norway's recommendation to decriminalise same-sex sexual activity between consenting adults in its 1st cycle UPR in May 2011, in the same session it 'noted' (rejected) three other recommendations that advised exactly the same thing (from Slovenia, France and Spain). The Working Group report states: "The delegation reported that the cultural context of society did not condone same-sex relationships. Any commitment to removing Penal Code provisions criminalising sexual relations between consenting adults of the same sex must be subject to consultations. However, there had not been any submissions to the Law Reform Commission in their review of the Penal Code to repeal those sections".[769]

It should be noted that there are no reports of the penal law being applied in the case of same-sex sexual relations in this State, despite ardent resistance to suggestions at decriminalisation.[770] The Solomon Islands' 2nd cycle UPR commenced in January 2016, where six States recommended decriminalisation, comprehensive anti-discrimination legislation inclusive of SOGI, and where perpetrators are prosecuted. In a cursory response, as recorded in the Draft Working Group report, the delegation responded as follows: "With respect to sexual orientation and gender identity, the delegation stated that the Government maintained the same position".[771]

768 Text of the law is available at: www.paclii.org/sb/legis/consol_act/pc66/

769 Report of the Working Group on the Universal Period Review: Solomon Islands, A/HRC/18/8, 18 July 2011, at para 26, see: www.upr-info.org/sites/default/files/document/solomon_islands/session_11_-_may_2011/ahrc188solomonislandse.pdf

770 *Speaking Out 2015: The Rights of LGBTI People across the Commonwealth*, Kaleidoscope Trust in association with Kaleidoscope Australia Human Rights Foundation (London, 2015), at 58: http://kaleidoscopetrust.com/usr/library/documents/main/2015_speakingout_241115_web.pdf

771 Draft Report of the Working Group on the Universal Period Review: Solomon Islands, A/HRC/ WG.6/24/L.11, 5 February 2016, at para. 99, see: www.upr-info.org/sites/default/files/document/solomon_islands/session_24_-_january_2016/a_hrc_wg.6_24_l.11.pdf

TONGA

Laws of Tonga, Criminal Offences [Cap 18] 1988 Edition.[772]

Sodomy and bestiality ***[SODOMY]***

Section 136.
"Whoever shall be convicted of the crime of sodomy with another person or bestiality with any animal shall be liable at the discretion of the Court to be imprisoned for any period not exceeding ten years and such animal shall be killed by a public officer." (Substituted by Act 9 of 1987.)

Attempted sodomy, indecent assault upon a male. ***[ATTEMPTED SODOMY]***

Section 139.
"Whoever shall attempt to commit the said abominable crime of sodomy or shall be guilty of an assault with intent to commit the same or of any indecent assault upon any male person shall be liable at the direction of the Court to imprisonment for any term not exceeding 10 years."

Evidence.

Section 140.
"On the trial of any person upon a charge of sodomy or carnal knowledge it shall not be necessary to prove the actual emission of seed but the offence shall be deemed complete on proof of penetration only."

Whipping for certain offences.

Section 142.
"Whenever any male person shall be convicted of any offence against sections 106, 107, 115, 118, 121, 122, 125, 132, 136 and 139 of this Act the Court may, in its discretion in lieu of or in addition to any sentence of imprisonment authorised under this Act order the person so convicted to be whipped in accordance with the provisions of section 31 of this Act." (Substituted by Act 9 of 1987.)

Interestingly, in its 1st cycle UPR in May 2008, having received three other States' recommendations to decriminalise same-sex sexual relations (all of which were 'noted'), Bangladesh used the opportunity of the UPR to recommend that Tonga *retain* its criminalising law – a recommendation that is anathema to international human rights standards - but Tonga also rejected this advice. The delegation noted "On the issue of the right to privacy... [she] indicated that Tonga is an inclusive society with tolerant Christian values that require respect across differences".[773]

In January 2013, at its 2nd cycle UPR Tonga accepted an Action Level 3 (to consider) recommendation regarding, "strengthening measures to eliminate all discriminatory treatment" based on SOGI, from Argentina. However, it then went on to reject a further five recommendations to decriminalise same-sex sexual relations between consenting adults. The delegation did not address the six SOGI recommendations directly in its response to the UPR, but in a response to its ratification of Convention on the Elimination of Discrimination Against Women (CEDAW) mentioned that one of its reservations may be about same-sex marriage.[774]

In May 2015, the Pacific Sexual Diversity Network (PSDN) held its first conference (Our Voices, Our Communities, Our Rights!) in Tonga, with the support of the State and the Tongagn royal family.[775] Ninety-six delegates (73 of

772 Text of the law is available at: www.paclii.org/to/legis/consol_act/co136/

773 Report of the Working Group on the Universal Periodic Review: Tonga, A/HRC/8/48, 5 June 2008, at para. 45, see: www.upr-info.org/sites/default/files/document/tonga/session_2_-_may_2008/ahrc848tongae.pdf

774 Report of the Working Group on the Universal Periodic Review: Tonga, A/HRC/23/4, 21 March 2013, at para. 17, see: www.upr-info.org/sites/default/files/document/tonga/session_15_-_january_2013/ahrc234e.pdf

775 *Speaking Out 2015: The Rights of LGBTI People across the Commonwealth*, Kaleidoscope Trust in association with Kaleidoscope Australia Human Rights Foundation (London, 2015), at 58: http://kaleidoscopetrust.com/usr/library/documents/main/2015_speakingout_241115_web.pdf

whom work for LGBT CSOs or individual activists from 12 Pacific Islands) attended.[776] Tonga's next UPR (3rd cycle) will be in October 2017.

TUVALU

Laws of Tuvalu, Penal Code [Cap 8] Revised Edition 1978.[777]

Unnatural offences ***[BUGGERY]***

Section 153.
"Any person who-
(a) commits buggery with another person or with an animal; or
(b) permits a male person to commit buggery with him or her,
shall be guilty of a felony, and shall be liable to imprisonment for 14 years."

Attempts to commit unnatural offences and indecent assault ***[ATTEMPTED BUGGERY]***

Section 154.
"Any person who attempts to commit any of the offences specified in the last proceeding section [sic], or who is guilty of any assault with intent to commit the same, or any indecent assault upon any male person shall be guilty of a felony, and shall be liable to imprisonment for 7 years."

Indecent practices between males ***[GROSS INDECENCY]***

Section 155.
"Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, shall be guilty of a felony, and shall be liable to imprisonment for 5 years."

Although the Czech Republic's 1st cycle UPR recommendation to Tuvalu to decriminalise, as an act that would foster tolerance and assist with dealing with HIV, the delegation made reference to the difficulties of Constitutional change which, "... will need to be carefully considered", rather than the legislative amendments that were being sought.[778]

Again, at its 2nd cycle UPR in June 2013, Tuvalu repeated the phrase "carefully considered" in relation to legislative repeal. It rejected recommendations from the United States and the United Kingdom to decriminalise consensual same-sex sexual activity, and responded by saying that, "... people with different sexual orientation did not suffer social discrimination but the question of legal protection in the law was controversial and would need to be carefully considered. Tuvalu was open to discussion".[779]

776 See: https://www.eiseverywhere.com/file_uploads/cf45ccc65413d2484eecbcd7c199742a_KenMoala.pdf

777 Text of the law is available at: http://tuvalu-legislation.tv/cms/images/LEGISLATION/PRINCIPAL/1965/1965-0007/PenalCode_1.pdf

778 Report of the Working Group on the Universal Periodic Review: Tuvalu, A/HRC/10/84, 9 January 2009, at para. 14, see: www.upr-info.org/sites/default/files/document/tuvalu/session_3_-_december_2008/ahrc1084tuvalue.pdf

779 Report of the Working Group on the Universal Periodic Review: Tuvalu, A/HRC/24/8, 15 July 2013, at para. 17, see: www.upr-info.org/sites/default/files/document/tuvalu/session_16_-_april_2013/ahrc248e.pdf

GLOBAL PERSPECTIVES

AFRICA

Country	CRIMINALISATION																
	Legal	Age of consent		Illegal		Penalising text					Expression		Max Sentences (M)onths and (Y)ears				
	All genders	Equal	Unequal	Male	Female	Sexual act	Sodomy	Against nature	Buggery	Indecency/ other	Promotion law	Morality code	1 M - 2 Y	3 Y - 7 Y	8 Y - 14 Y	15-Y - Life	Death
Algeria																	
Angola																	
Benin																	
Botswana																	
Burkina Faso																	
Burundi																	
Cameroon																	
Cape Verde																	
Central African Republic																	
Chad																	
Comoros																	
Congo																	
Côte d'Ivoire																	
Dem. Rep. of Congo																	
Djibouti																	
Egypt																	
Equatorial Guinea																	
Eritrea																	
Ethiopia																	
Gabon																	
Gambia																	
Ghana																	
Guinea																	
Guinea-Bissau																	
Kenya																	
Lesotho																	
Liberia																	
Libya																	
Madagascar																	
Malawi																	
Mali																	
Mauritania																	
Mauritius																	
Morocco																	
Mozambique																	
Namibia																	
Niger																	
Nigeria																	
Rwanda																	
São Tomé & Principe																	
Senegal																	
Seychelles																	
Sierra Leone																	
Somalia																	
South Africa																	
South Sudan																	
Sudan																	
Swaziland																	
Tanzania																	
Togo																	
Tunisia																	
Uganda																	
Zambia																	
Zimbabwe																	

	PROTECTION										RECOGNITION					
Arrests in past three (3) years			NRHI - inclusive of sexual orientation?				Discrimination protection					Relationship recognition					Country
Yes	No	Unknown	Yes	No	Unclear	None	Employment	Constitution	Other	Hate Crime	Incitemenrt	Marriage	Civil recognition	Minimal CP	Joint adoption	2nd parent adoption	
																	Algeria
																	Angola
																	Benin
																	Botswana
																	Burkina Faso
																	Burundi
																	Cameroon
																	Cape Verde
																	Central African Republic
																	Chad
																	Comoros
																	Congo
																	Côte d'Ivoire
																	Democratic Republic of Congo
																	Djibouti
																	Egypt
																	Equatorial Guinea
																	Eritrea
																	Ethiopia
																	Gabon
																	Gambia
																	Ghana
																	Guinea
																	Guinea-Bissau
																	Kenya
																	Lesotho
																	Liberia
																	Libya
																	Madagascar
																	Malawi
																	Mali
																	Mauritania
																	Mauritius
																	Morocco
																	Mozambique
																	Namibia
																	Niger
																	Nigeria
																	Rwanda
																	São Tome & Principe
																	Senegal
																	Seychelles
																	Sierra Leone
																	Somalia
																	South Africa
																	South Sudan
																	Sudan
																	Swaziland
																	Tanzania
																	Togo
																	Tunisia
																	Uganda
																	Zambia
																	Zimbabwe

TASHWILL ESTERHUIZEN AND ANNEKE MEERKOTTER, SOUTHERN AFRICA LITIGATION CENTRE[780] (SUB-SAHARA), AND YAHIA ZADI, MANTIQITNA NETWORK FOR GENDER AND SEXUALITY IN ALGERIA (NORTH AFRICA)[781]

KEY DEVELOPMENTS TOWARDS INCREASED RECOGNITION OF THE HUMAN RIGHTS OF LGBTI PEOPLE IN AFRICA

OVERVIEW

The majority of countries in Africa, 34 of 54, maintain laws that criminalise consensual same-sex sexual practices between males, with 24 of these applying to sexual relations between women. These laws most often perpetuate stigma, persecution and discrimination on the basis of a person's sexual orientation and gender identity, and they form the basis upon which governments deny activists their right to freely associate with like-minded individuals. Moreover, the criminalisation of consensual same-sex sexual practices pushes vulnerable people away from important health services and information about their sexual and reproductive health needs. As such, these laws impede programs focused on societal development.

In many countries, the political climate makes it difficult for the issue of decriminalisation of consensual same-sex sexual acts to be raised in parliaments outside of broader criminal law reform processes. Trends over the past few years suggest that where such issues are raised, there is actually a significant lobby in favour of enhanced criminalisation. In this context, the need for LGBTI advocacy to increase knowledge and understanding amongst allies, the State and the general public about sexual orientation, gender identity and sex characteristics issues is crucial. LGBTI organisations, however, find it difficult to operate in environments in which same-sex sexual acts are criminalised and discrimination is pervasive. In this respect, there have been both positive and negative developments in the region over the past year.

NEGATIVE DEVELOPMENTS IN SUB-SAHARAN AFRICA

Over the past year, hostility towards LGBTI people and organisations has increased in many countries in the region, often following pronouncements by the United States or European countries on LGBTI issues. There are numerous examples of increased anti-gay rhetoric by political leaders, more recently in Ghana after the visit by the First Minister of Scotland in March 2016; and notably in various countries in Africa following President Obama's trip to East Africa

780 Tashwill Esterhuizen is the LGBT and Sex Worker Rights Programme Lawyer at the Southern Africa Litigation Centre. Anneke Meerkotter is the Litigation Director at the Southern Africa Litigation Centre. Both authors are qualified attorneys with extensive experience in human rights litigation and advocacy in the region.

781 Yahia Zadi is an Algerian Board Member of the MantiQitna Network for Gender and Sexuality, and Co-Chair of Pan-Africa ILGA.

in 2015. Arbitrary arrests and detention were reported in many countries in the region in 2015, including in Cameroon, Gambia, Senegal and Malawi.

In December 2015, members of a neighbourhood group in Malawi forced their way into a private home, arrested two men and handed them over to police. Police authorities forced the men to undergo medical tests for HIV and other sexually transmitted diseases, before finally charging them with the offence of 'unlawful carnal knowledge against the order of nature'. The HIV tests were conducted contrary to a Malawi High Court judgment of May 2015, which declared such tests unlawful. The charges against the two men were later withdrawn. Following the arrests, the Minister of Justice publicly confirmed the continuation of a 2012 moratorium against the prosecution of persons for consensual same-sex sexual practices.

The arrests however ignited intense and inflammatory debate in the country, which eventually resulted in the initiation of a private prosecution against a local politician for inciting hatred and violence against LGBTI persons. The charge was controversially withdrawn by the Director of Public Prosecutions. Subsequently, a group of religious leaders obtained an interim order to stay the operation of the moratorium on arrests for same-sex sexual practices pending a hearing on the legality of the moratorium. Currently, another case is pending before the High Court of Malawi challenging the constitutionality of the offence of 'unlawful carnal knowledge against the order of nature'.

Despite the recognition of freedom of association in the African Charter on Human and Peoples' Rights and in countries' Constitutions, there have been recent law reforms that signal a blatant disregard of the right to freedom of association.

In January 2014, Nigeria's then President, signed into law the Same-Sex Marriage (Prohibition) Act.[782] The controversial law explicitly outlaws marriage between persons of the same sex, but curiously also targets the right to freedom of association of LGBTI persons even though that is not the stated purpose of the Act. The Act provides that "the registration of gay clubs, societies and organisations, their sustenance, processions and meetings is prohibited", and the offence attracts a penalty of 10 years' imprisonment. The constitutionality of the Act was challenged in the case of *Teriah Joseph Ebah v Federal Government of Nigeria*, but in late-2014, a Federal Court ruled that the applicant, who resides in the UK, had no legal standing to bring the case.

In January 2016, Uganda's President assented to the Non-Governmental Organisations Act which states that the registration of an organisation shall be refused where its objectives are contrary to the laws of Uganda. The Act further prohibits an organisation from engaging in any act, "which is prejudicial to the security and laws of the country", or "to the interests of Uganda and the dignity of the people of Uganda". These vague provisions, whilst not expressly targeting LGBTI organisations, raise concerns about whether the provisions will be interpreted to disallow the registration of groups that advocate for the human rights of LGBTI persons.

782 See: http://www.placng.org/new/laws/Same%20Sex%20Marriage%20(Prohibition)%20Act,%202013.pdf

POSITIVE DEVELOPMENTS IN SUB-SAHARAN AFRICA

The past year has however also seen progress in both law reform efforts and litigation on the rights of LGBTI persons.

After a protracted law reform period, Mozambique's revised Penal Code came into effect in June 2015. The new Penal Code does not contain any provisions criminalising consensual same-sex sexual activity. The process of reforming penal codes is important as many penal codes in the region date back to the colonial era and some offences are no longer in accordance with constitutional rights, principles of criminal justice and international law. Cape Verde previously removed the prohibition against consensual same-sex sexual acts during an overhaul of its Penal Code in 2004, whilst Lesotho did the same in 2010. In March 2016, Seychelles' cabinet indicated its willingness to similarly remove the prohibition against same-sex sexual acts from its Penal Code.

Mozambique joins 19 other countries in the region in which consensual same-sex sexual acts are not prohibited through criminal law – Benin, Burkina Faso, Cape Verde, Central African Republic, Chad, Congo, Cote d'Ivoire, Democratic Republic of Congo, Djibouti, Guinea, Gabon, Guinea-Bissau, Lesotho, Madagascar, Mali, Niger, Rwanda, São Tomé & Principe and South Africa. Despite the absence of legal provisions criminalising same-sex sexual acts, stigma, discrimination, and harassment remains pervasive in many of these countries.

Two judgments on freedom of association will be of great value to LGBTI activists in the region. The judgments, from the Kenya High Court and the Botswana Court of Appeal, both relate to instances where the government had refused to register an organisation that purported to advocate for rights of LGBTI people. In both cases, activists have publicly insisted (in environments in which consensual same-sex sexual practices remain criminalised) that their rights should be respected. In both countries, as is usually the case, the Constitution provides that "every person" is entitled to the right to freedom of association. The governments sought to advance the argument that LGBTI persons are not included under "every person" when interpreting constitutional rights. Such an argument subverts the purpose of rights provisions in such Constitutions and the courts rejected this argument out of hand.

On 24 April 2015, the Kenya High Court in the case of *Eric Githari v Non-Governmental Organisation Board and Others*,[783] held that the refusal of the NGO Coordination Board to register the National Gay and Lesbian Human Rights Commission as an organisation was unlawful. The Court held that it was obvious that a human being, regardless of gender or sexual orientation, is a person for the purpose of the Constitution of Kenya and should be afforded the protections therein. The Court emphasised that the rights to equality and dignity would not be advanced if people were discriminated against based on their sexual orientation.

On 16 March 2016, in the case of *Rammoge and 19 Others v Attorney General* at the Botswana Court of Appeal,[784] held that the refusal to register the organisation *Lesbians, Gays and Bisexuals*

783 See: http://kenyalaw.org/caselaw/cases/view/108412/

784 See judgment at: http://www.southernafricalitigationcentre.org/1/wp-content/uploads/2016/03/LEGBIBO-CoA-judgment.pdf

of Botswana (LEGABIBO) was not only unlawful, but a violation of the right of LGBTI activists to freely assemble and associate. The Court of Appeal emphasised that "all persons, whatever their sexual orientation, enjoy an equal right to form associations with lawful objectives for the protection and advancement of their interests", and that fundamental rights applied to "every member of every class of society". Significantly, the Court of Appeal recognised that members of the gay, lesbian and transgender community, whilst a minority, "form part of the rich diversity of any nation" and are fully entitled to the constitutional protection of their dignity.

The Botswana Court of Appeal's judgment signifies the first time an apex court in Africa has provided an authoritative interpretation of the effect of criminal laws affecting lesbian and gay individuals, and clarified the common misconception that 'homosexuality' itself is a crime. Referring to the offence of 'carnal knowledge against the order of nature', the Court observed that whilst the offence has the practical effect of limiting sexual activity, "it is not, and never has been, a crime in Botswana to be gay". Throughout the region, similar criminal provisions prohibit consensual sexual acts committed between persons of the same sex. The Court emphasised that such criminal provisions do not extend to criminalising LGBTI persons themselves, and it is indeed contrary to the principles of criminal law to criminalise persons' status as opposed to their actions.

The distinction that the Botswana Court of Appeal sought to draw between the prohibition of specific sexual acts and recognition of the human rights of a person is significant because it creates an important space within which LGBTI individuals can campaign for their rights. Careless statements such as that "homosexuality is a crime" are incorrect and deny the fact that all persons are entitled to the rights enshrined in the Constitution, irrespective of their sexual orientation.

The Botswana Court of Appeal further noted that LEGABIBO's objectives which include advocating for the decriminalisation of consensual same-sex sexual acts, is not illegal and held that advocating for the laws to be changed is the democratic right of every citizen. A similar conclusion was reached by the Zambia High Court in the case of *People v Paul Kasonkomona*,[785] in which the accused had been charged with soliciting for an immoral purpose after advocating for the recognition of rights of gay people on television. In May 2015, the Court confirmed Kasonkomona's acquittal, and distinguished between soliciting someone to engage in same-sex sexual acts, which is a criminal offence in Zambia, and advocating for the rights of LGBTI persons.

The decisions of the judiciary in these cases cut through the anti-gay rhetoric and provide a more nuanced and balanced engagement on how LGBT people may access their rights in the region. These law reform and litigation victories are however hollow if they do not lead to improvements in the daily lives of LGBTI individuals in region. However, the acknowledgement that criminal laws prohibiting consensual same-sex sexual acts are not a bar to advocating for the rights of LGBTI people is an important step towards the recognition of the fundamental principle of non-discrimination on the basis of status, including sexual orientation, gender identity and expression, and sex characteristics. For example, in some countries, such as Botswana, these criminal laws have not deterred parliaments from enacting laws that prohibit discrimination based on sexual orientation, and policies that recognise the increased vulnerability of LGBTI individuals.

785 See judgment at: http://www.southernafricalitigationcentre.org/1/wp-content/uploads/2016/01/Kasonkomona-High-Court-judgment.pdf

The successes and challenges of the past year illustrate the importance of holding the ground that has been achieved. It is unfortunate that where governments have sought to exclude specific groups from the definition of "every person" there has not been a public outcry against it. Much more can be done to broaden solidarity between different human rights groupings and to jointly fight to maintain the integrity and meaning of the rights to freedom of association, assembly and expression.

TENTATIVE DEVELOPMENTS IN NORTH AFRICA

This last year has witnessed multiple degrading human rights violations of LGBTI people in Tunisia. Amongst the most prominent cases were those of 'Merwen' in September 2015 and the arrests of six students in December. In 'Merwen's case, he was not only arrested, but also was forced to undergo an anal exam: an archaic practice through which the police claims to be able to confirm that the person has had same sex penetrative sex.[786] The same practice was implemented in the case of six students who were arrested in December 2015.[787]

While the on-the-ground situation seems to get worse for many individuals, there were some positive developments on the organisational level. On 29 December 2015, the Court of First Instance issued a decision of a 30-day suspension of SHAMS on the grounds that it advocates for the decriminalisation of sodomy (the penal name) and the rights of sexual and gender minorities. The government claimed that the original organisational aim submitted by SHAMS at the time of its registration had been changed without acquiring their prior legal permission.[788] However, SHAMS challenged this decision, and their claim against the government order was accepted, representing a landmark victory for the realisation of human rights of LGBTI people in Tunisia.[789]

Post-revolution Libya continues to endure a significant security deterioration across the State, one where there is an absence of police protection and the rule of law. As a result, the door has opened for non-State agents, such as Militias Doroh and IS (Daesh), to apply severe interpretation of Sharia law across Libya. Thus, LGBTI people have become an easy and unprotected target. One example of such targeting is that of 'Noor' who is a transgender woman who was tortured, but succeeded in escapeing to Egypt where she is still awaiting resettlement by the UNHCR in Cairo.[790] Another example of the severity of this rule concerns three gay men from Derna city who were publicly executed on 29 April 2015 by IS.[791]

In Algeria, where numerous human rights abuses occur frequently but mostly remain undocumented, there has been an on-going media hate campaign against LGBTI people in the past

786

787 See: https://www.hrw.org/news/2015/12/16/tunisia-3-year-sentence-homosexuality

788 See: https://www.hrw.org/news/2016/01/16/tunisia-lgbt-group-suspended

789 See: http://76crimes.com/2016/02/23/victory-in-tunisia-activist-group-shams-wins-in-court/

790 See: https://quzah.wordpress.com/2014/10/21/%D8%A7%D9%83%D8%AA%D8%A8%D9%88%D8%A7-%D9%88%D8%A7%D9%86%D8%B4%D8%B1%D9%88%D8%A7-%D9%86%D8%AD%D9%86-%D9%87%D9%86%D8%A7-%D9%85%D9%8F%D8%B3%D8%AA%D9%85%D8%B1%D9%8A%D9%86/

791 See: http://www.maltatoday.com.mt/printversion/52467/#.Vwtsj_mLSUk

year. Various national TV channels had programs that described "homosexuality" as a perversion, and a social problem that needs to be cured from society – actions that amount to incitement to hatred. They frequently conflate same-sex sexual desire and activity with pedophelia, rape and the killing of children.[792] Further, these media outlets invite influential guests who have called on the State to open centers to cure LGBTI people with either psychologists or torture. All these homophobic statements have led to an increase of societal violence against LGBTI persons.[793]

In its capacity as a UN member State, Egypt has been particularly outspoken on concepts such as the 'protection of the family' and 'traditional values' in their rejection of including sexual orientation and gender identity within the remit of the work of the Human Rights Council. Consistently, the State has been systematically cracking down on LGBTI persons, especially gay men and trans women. The most prolific case regarding the pressure exerted on sexual and gender minorities in the recent period started in December 2014, when a TV journalist, Mona Iraqi, led a police troupe to arresting thirty-three men in a bathhouse in Cairo. These men were initially charged under a law designed to 'counter prostitution' (Law 10/1961 on the Combating of Prostitution, Article 9: Practicing or incitement to debauchery), but they were all later acquitted. In an unprecedented ruling that came in 2015, the TV journalist was sentenced to six months in jail for defamation and spreading false information,[794] although she too was acquitted of all charges in January 2016.[795] More generally, it is considered that the repression of the State regarding LGBTI is ever-increasing, and the overall situation worsening.

Following IDAHO in May 2015, two young men were arrested for 'unnatural acts' and 'obscenity' in Rabat, Morocco. The day after the arrest, the Ministry of the Interior outed them in a public statement on a national television. Aswat Collectif, a Moroccan LGBT human rights organisation, made interventions to ensure legal assistance and defence for the two people arrested. Despite 78,000 signatures gathered though an international online petition, in June 2015 the two men were sentenced to four months imprisonment and a 500-dirham fine each (50USD). It is understood that the men suffered torture and violence while being held in detention, and were forced to sign documents.

On 24 March 2016, an online video of two young men being exposed to homophobic and degrading treatment by a number of attackers was widely viewed. This atrocity was filmed in one of the victim's home in the city of Beni Mella. Following the release of this video on social media Aswat, and 19 other Moroccan and international NGOs based in Morocco, prepared a statement urging the authorities to release the victims of this aggression from detention, to open an investigation and criminal proceedings against the perpetrators, and finally to repeal Article 489 of the Penal Code that criminalises 'unnatural acts' in Morocco.

792 See: https://www.youtube.com/watch?v=-9B6wh7_eBI

793 See: https://www.youtube.com/watch?v=VPreXTctIFA

794 See: http://www.pinknews.co.uk/2015/11/30/journalist-behind-gay-bath-house-raid-sentenced-to-six-months-in-jail/

795 See: http://www.egyptindependent.com/news/controversial-host-mona-iraqi-acquitted-defamation-bathhouse-case

	CRIMINALISATION																
Country	Legal	Age of consent		Illegal		Penalising text					Expression		Max Sentences (M)onths and (Y)ears				
	All genders	Equal	Unequal	Male	Female	Sexual act	Sodomy	Against nature	Buggery	Indecency/ other	Promotion law	Morality code	1 M - 2 Y	3 Y - 7 Y	8 Y - 14 Y	15-Y - Life	Death
Afghanistan				■	■	■											■
Bahrain	■		■														
Bangladesh				■				■							■		
Bhutan				■				■					■				
Brunei Darus-salam				■				■							■		
Cambodia	■	■															
China	■	■															
East Timor	■	■															
Gaza (in the Occupied Palestinian Territory)				■		■									■		
India				■				■								■	
Indonesia (most)	■		■														
South Sumatra and Aceh Provinces (Indonesia)				■	■					■						■	
Iraq				■	■					■		■					■
Iran				■	■		■			■		■					■
Israel	■	■															
Japan	■	■															
Jordan	■	■															
Kazakhstan	■	■															
Kuwait				■		■						■		■			
Kyrgyzstan	■	■															
Laos	■	■															
Lebanon				■				■				■	■				
Malaysia				■	■			■							■		
Maldives				■	■	■										■	
Mongolia	■	■															
Myanmar				■				■							■		
Nepal	■	■															
North Korea	■	■															
Oman				■	■	■										■	
Pakistan				■				■									■
Philippines	■	■															
Qatar	■	■		■	■							■		■			■
Saudi Arabia				■	■	■						■					■
Singapore				■						■			■				
South Korea	■	■															
Sri Lanka				■	■			■							■		
Syria				■	■			■				■					■
Taiwan	■	■															
Tajikistan	■	■															
Thailand	■	■															
Turkmenistan				■		■							■				
Vietnam	■	■															
United Arab Emirates				■	■		■								■		■
Uzbekistan				■		■								■			
West Bank in the Occupied Palestinian Territory	■	■															
Yemen				■	■	■											■

	PROTECTION											RECOGNITION					
Arrests in past three (3) years			NRHI - inclusive of sexual orientation?				Discrimination protection					Relationship recognition					Country
Yes	No	Unknown	Yes	No	Unclear	None	Employment	Constitution	Other	Hate Crime	Incitemenrt	Marriage	Civil recognition	Minimal CP	Joint adoption	2nd parent adoption	
																	Afghanistan
																	Bahrain
																	Bangladesh
																	Bhutan
																	Brunei Darussalam
																	Cambodia
																	China
																	East Timor
																	Gaza (in the Occupied Palestinian Territory)
																	India
																	Indonesia (most)
																	South Sumatra and Aceh Provinces (Indonesia)
																	Iraq
																	Iran
																	Israel
																	Japan
																	Jordan
																	Kazakhstan
																	Kuwait
																	Kyrgyzstan
																	Laos
																	Lebanon
																	Malaysia
																	Maldives
																	Mongolia
																	Myanmar
																	Nepal
																	North Korea
																	Oman
																	Pakistan
																	Philippines
																	Qatar
																	Saudi Arabia
																	Singapore
																	South Korea
																	Sri Lanka
																	Syria
																	Taiwan
																	Tajikistan
																	Thailand
																	Turkmenistan
																	Vietnam
																	United Arab Emirates
																	Uzbekistan
																	West Bank in the Occupied Palestinian Territory
																	Yemen

WRITTEN BY DOUGLAS SANDERS (BANGKOK),[796] ANNA ARAFIN (JAKARTA) [797] AND FADI SALEH- MANTIQITNA (SYRIA & GERMANY)[798]

ASIA THESE DAYS

STORMY DAYS IN INDONESIA

The most surprising Asian story of 2015-2016 was the flood of homophobic statements from cabinet ministers, politicians and clerics in Indonesia that began in January 2016. No one could remember any equivalent display of hostility from leading figures.

Over the last decade there had been sporadic vigilante attacks on LGBTI events by the *Islamic Defenders Front* and other local fundamentalist Muslim groupings, including the blocking of the *ILGA Asia* regional conference in Surabaya in 2010. The vigilantes were never condemned or prosecuted. They acted without open prompting or support from officials.

In March 2015, the *Council of Indonesian Ulama* (*Majelis Ulama Indonesia*, or *MUI*) issued a fatwa (or religious ruling) that called homosexuality 'haram' (forbidden) and told the government to criminalise homosexual acts. The *MUI* had been created in 1975 under former president Suharto with a goal of improving relations between Muslim leaders and the military backed government. It has issued many fatwas. These have no legal standing in Indonesia, but are important.

> *The fatwa claimed that homosexuality is a disease that needs to be cured and proposed a series of brutal penalties, ranging from caning to death. Hasanuddin AF, the head of the MUI's fatwa commission said: "Sodomy, homosexuals, gays and lesbians in Islamic law are forbidden and [it] is a vile act that is punishable by the death penalty." He added: "It doesn't matter that they love each other. The law still prohibits it. In Islamic law, it's a sexual act that must be heavily punished. It would be bad if the government allows same-sex marriage".*[799]

As a former Dutch colony, Indonesia had inherited no criminal prohibition of homosexual acts. The only national jurisdictions in Asia that have criminal prohibitions are former British colonies, or are part of Central Asia or the Middle East. At the time it was hard to take the March 2015, *MUI* fatwa seriously – the call for criminalising homosexual acts seemed so out of line with the Indonesian government's general patterns of ignoring LGBT.

---

796 Douglas Sanders is Professor of *Human Rights Law at Mahidol University, Thailand.*

797 Anna Arafin is *Head of Programs Division with Arus Pelangi in Jakarta.*

798 Fadi Saleh is a board member of the *MantiQitna Network for Gender and Sexuality.*

799 Antonia Molloy, 'Indonesia's highest Islamic clerical body issues fatwa proposing death penalty for people caught having gay sex', *The Independent*, 15 April 2015.

The flood of hostile statements began in January 2016, when the Minister of Technology, Research and Higher Education, Muhammad Nasir said homosexuals should be barred from Indonesian universities. He was reacting to the existence of an LGBT "Support Group and Resource Center on Sexuality Studies" (SGRC) on the campus of the University of Indonesia, the leading national university.[800]

> *Muhammad Nasir said the LGBTIQ community should be barred from university campuses as they corrupted the morals of the nation when a university was meant to uphold moral values and the values of the ancestors of Indonesia. The statement was followed by various responses from other officials, including Culture and Elementary and Secondary Education Minister Anies Baswedan, People's Consultative Assembly chairman Zulifli Hasan, House of Representatives member Rene Marliawali and Bandung Mayor Ridwan Kamil, who all made similar discriminatory statements against LGBTIQ people*.[801]

In January 2016, the Mayor of Bandung, the third largest city, said any discussions of LGBT on social media should be banned.[802] And the websites of *OutRight Action International* and the Indonesian LGBT blog and video site *CONQ* have both been blocked.[803] The *Indonesian Broadcasting Commission* has discouraged broadcasters, television and radio stations from running programs promoting the activities of the LGBT community.[804]

In total, seven cabinet ministers were quoted in media as condemning LGBT, and calling for restrictions and perhaps compulsory treatment (ministers of Higher Education, Primary Education, Security, Religious Affairs, Legal and Human Rights Affairs, Defense, and Administration). The Minister of Defense called LGBT more of a threat than nuclear warfare (whose destruction was limited to specific areas, not threatening a whole nation). Representatives of at least five political parties joined in (Golkar, Prosperous Justice, National Awakening, United Development, Peoples' Conscience). The Indonesian Psychiatrists Association called homosexuality a mental health issue (prompting rebuttals from international organisations).

Some official voices expressed opposition to the UN Development Programme being involved in LGBTI issues in Indonesia. Vice President Jusuf Kalla, a moderate voice, asked UNDP to not be active on these issues. President Jokowi remained silent (perhaps because he had been challenged by a smear campaign in the national election that he was not Muslim).

We can expect legislative proposals to censor websites. The University of Indonesia did not ban

800 Minister on back foot over anti-gay remarks, Jakarta Post, 25 January 2016. The SGRC was not an official University initiative, but a project of some alumni, faculty and students. It had functioned for a few years without apparent controversy, but had put up posters offering counselling services.

801 Marguerite Afra Sapia, Govt officials' LGBTIQ statements labeled unconstitutional, *Jakarta Post*, 28 January 2016.

802 'Bandung Mayor: You can support LGBT rights, just don't do it on social media or I'll have you blocked', *Coconuts Jakarta*, 27 January 2016.

803 'IGLHRC Website banned', *OutRight Action International*, Press Release, 19 October 2015; 'The Indonesian government has censored LGBT video and blog CONQ', *Coconuts Jakarta*, 11 September 2015.

804 'Govt demands UNDP remove funding for LGBT programs', *Jakarta Post*, 16 February 2016.

the on-campus research and counseling group, but told it to not use the name of the university or the university logo.

CRIMINAL LAWS

In February 2016, the Indian Supreme Court was asked to reconsider the decision in which it had restored 377 (the famous prohibition of 'carnal intercourse against the order of nature').[805] A rejection was expected. The hope was for a three-judge bench to conduct the review. Petitioners were given a five-judge panel, an outcome that one writer called "gloriously unprecedented". Many have commented on the apparent clash between Supreme Court decisions – upholding 377 on the one hand – and recognising Hijra as a third sex, on the other.

British era criminal laws survive in most former British colonies, but are rarely directly enforced. A report noted that "no single case of punishment has happened under Section 377" in Bangladesh and that the section was "rarely used in prosecutions" in India. There was no evidence that the law has been invoked in recent years in Pakistan, and some in Sri Lanka called it a 'dead law'.[806] Still its survival often means police harassment and demands for bribes. In Malaysia the section has been used against opposition leader Anwar Ibrahim and almost no one else. He is serving a five-year prison sentence.

The second and third stages of the promised Shariah criminal law in the tiny Sultanate of Brunei have missed the originally announced dates for implementation. They are not in force. No stoning for adultery and sodomy. No amputations for theft. Opposition within Brunei and international protests seem to have been effective. 100 strokes of the cane as a public punishment for homosexual acts came into force in Aceh, north Sumatra, in September 2015. There have been no media reports of the punishment being inflicted.

On 27 January 2016, Singapore responded to UN Universal Periodic Review recommendations to repeal its colonial era prohibition of acts of "gross indecency" between males, saying that Singapore is "basically a conservative society" and that, anyway, authorities do not "proactively enforce" the provision.

In March 2016, Prime Minister David Cameron of the UK called upon members of the Commonwealth (basically former British colonies) to "narrow the divide" on LGBT rights, noting that 40 of the 53 Commonwealth member states continue to criminalise homosexual acts.

DISCRIMINATION

LGBTI activists in the Philippines have concentrated for many years on a campaign for a national anti-discrimination law. The small party-list party Akbayan in Congress was supportive, but the bills they sponsored never got to a debate on the floor of Congress. Quezon City in Metro Manila

805 377 had been declared unconstitutional by the Delhi High Court.

806 Kaleidoscope Trust, *Speaking Out 2015: The Rights of LGBTI People across the Commonwealth*, 40, 42, 45 and 47.

pioneered an anti-discrimination ordinance, and in the last few years that precedent has been followed in other parts of the country. There are now anti-discrimination ordinances that address SOGIE in two provinces, nine cities, one municipality and three barangays (neighborhood governments within Quezon City), enacted in the years 2003 to 2015.[807] In the Philippines non-discrimination (including on the basis of sexual orientation) is stated as one of the 'principles of human rights of women', and public social workers have the right to protection from discrimination by reason of sexual orientation, as a result of provisions of the *Magna Carta of Women,* and the *Magna Carta of Social Workers*.

Etta Rosales was an Akbayan member of Congress who actively supported a national anti-discrimination law on SOGI grounds. She went on to become chair of the national human rights commission, and in early 2016 she was named as the Philippine's representative on the *ASEAN Intergovernmental Commission on Human Rights*.

In other parts of Asia, anti-discrimination laws covering sexual orientation exist in Taiwan (for employment and in education) and in Macau (for employment and in regard to personal data). The new *Gender Equality Act* law in Thailand covers discrimination on grounds of gender identity and probably sexual orientation as well.

In Central Asia, in a climate of growing intolerance and discrimination against the LGBTI community, Kazakhstan and Kyrgyzstan advanced laws prohibiting "propaganda of non-traditional sexual relations". While both laws have been withdrawn on procedural grounds, those laws are expected to be returned to the respective Parliaments.[808]

COMPETING REPORTS IN HONG-KONG

In January 2013, Chief Executive Leung Chun-ying announced that the government would not hold a public consultation on enacting an anti-discrimination law dealing with sexual orientation (which would join other anti-discrimination laws dealing with race, family status, sex and disability). His decision may have been influenced by thousands of Christians demonstrating outside the venue of his first policy address. He subsequently appointed two anti-LGBT representatives to the government's Sexual Minorities Forum, which led to the LGBT groups abandoning the forum *en masse* in protest. In its stead, the Chief Executive appointed an Advisory Group on the Elimination of Discrimination against Sexual minorities, but again with two opponents included. The Advisory Group released a report on 31 December 2015. It looked at arrangements in six other jurisdictions, including Taiwan. Forty percent of respondents to a survey reported discrimination in the workplace. The report called for voluntary non-discrimination standards, and sensitivity training for teachers, medical practitioners, social workers and human resources professionals. It did not call for an anti-discrimination law.

807 Updates on these ordinances can be found at: http://pages.upd.edu.ph/ejmanalastas/policies-ordinances

808 Amnesty International, Press Release on issuance of its annual world report, 25 February 2016.

Quite separately, a study was done for the government's Equal Opportunities Commission, which is responsible for the existing anti-discrimination laws. It was released a few weeks after the Advisory Group's report. It had conducted the most representative study on public attitudes yet undertaken in Hong Kong, concluding that a majority now supported an anti-discrimination law. It reported on experience in Taiwan, Macau, Canada and other jurisdictions. Commission chairman York Chow Yat-ngok called for a public consultation on how to implement a new anti-discrimination law (not whether it should be introduced). He said there were far-reaching consequences for not acting, including the loss of local talent and the failure to attract foreign talent. The excellent report is available on the website of the HK Equal Opportunities Commission. Chairman Chow completed his term, and the new chairman Alfred Chan Cheung-ming said he would continue discussion on gay rights, but would take a 'non-confrontational' approach, in contrast to his predecessor's 'high profile' campaign in support of sexual minorities.

RELATIONSHIPS

A court case in Korea was filed in July 2015, seeking the opening of marriage to same-sex couples. One party was the famous Korean director Kim Jho Gwang-soo whose film No Regrets was the first Korean film of contemporary gay life to gain general release. He and his partner had staged a wedding celebration in a park in central Seoul in 2013, attended by 2,000 friends and supporters. A documentary film, Our Wedding, records the event, and has featured at film festivals.809

Changes may be coming in Taiwan. The newly elected president, taking office in May 2016, Tsai Ing-wen, unequivocally supports equal marriage. Her Democratic Progressive Party (DPP) has a clear majority in the legislature, but we wait to see if the party follows the leaders lead. Polls show a majority supporting same-sex marriage.

Hong Kong refused to grant a dependent visa to a woman who was the registered partner (under British law) of a woman who is legally working in Hong Kong. A trial judge upheld the refusal in March 2016. Two business associations have backed her case, seeing the issue for them as Hong Kong being open to international talent. The decision is being appealed. The major issue is getting a status which allows the 'dependent' to work.

In 2015, Chinese internet shopping giant Alibaba partnered with Blued, the enormous Chinese gay-dating app, to sponsor the West Hollywood marriages of eight Chinese same-sex couples. The couples enjoyed an all-expenses-paid journey, marriage and honeymoon in California. The mayor of gay-friendly West Hollywood acted as a witness at the legal marriage ceremonies.

809 Darren Wee, 'Korea's first gay married couple launches first challenge to marriage law', *GayStarNews*, 6 July 2015.

REGISTRATION BY LOCAL GOVERNMENTS

The mayor of Shibuya, a district within sprawling Tokyo, announced in March 2015, a proposed statute authorising the issuance of certificates recognising same-sex relationships as "equivalent to marriage". The first certificate was issued in November 2015. Registration of same-sex relationships was subsequently approved for Setagawa ward in Tokyo, and the cities of Takarazuka and Iga in the Kansai region of Honshu. The mayor of Takarazuka called it a "step forward to encourage the drive for recognising same-sex marriage across Japan...". Registration itself gives no new rights.

> In May 2015, Kaohsiung city in Taiwan began allowing same-sex couples to register their relationships in the city's household registration information system. If the couple agrees, public agencies will be able to access the information "which would allow registered partners to act as legal representatives for their spouses, for example, giving consent for emergency surgery". The City of Taipei opened registration in June 2015. Others followed. In March 2016, Chiayi city became the seventh city in Taiwan to allow same sex couples to register. Taipei and Kaohsiung have agreed to mutually recognise such registrations.

PUBLIC EVENTS

In October 2015, ILGA Asia held a successful regional conference in Taiwan, coinciding with the annual pride parade, the largest in Asia. There were 300 delegates from 30 countries.

The seventh annual "Pink Dot" celebration in Singapore was held on 13 June 2015, with 28,000 participants. LGBTI, friends and supporters gathered in a local park, the only place where public free speech is allowed (as long as you don't talk about race or religion). A 'wear white' counter-movement entered its second year, started by conservative Muslims and joined in by evangelical Christians. Pink Dot 2015 had nine corporate sponsors, including Barclays, JP Morgan, Goldman Sachs, BP and Bloomberg.

On 29 September 2015, over 15,000 people gathered in Tamar Park to celebrate Hong Kong's 'Pink Dot', under the theme "Love is Love". It was followed, starting 10 October, with the Pink Season - a couple of weeks of events, including the 26th Hong Kong Lesbian and Gay Film Festival.

Given evangelical Christian opposition, the police banned the annual gay pride parade in Seoul, Korea, that dated back to a festival held 15 years earlier. In 2014, some Christian activists disrupted the parade by lying down on the street. In 2015, they made multiple applications for parade permits to block the LGBTI event. Police banned the LGBTI parade citing public safety concerns and traffic disruptions. In June 2015, the Seoul Administrative Court invalidated the police ban, allowing the parade to proceed in the central area of Seoul on 9 June 2015.

Pride marches (variously named) now occur without incidents in a number of cities in India, as well as in Manila, Phuket, Taipei, Tokyo and other Japanese cities. A 'Rainbow Rally' was held in

Dhaka, capital of Bangladesh, in 2014 and 2015 to coincide with the Bengali new year. In Nepal transgender Metis join in an annual Hindu festival march of women, as they have for a number of years. Hanoi has a bicycle rally, not a parade. HCM City has a rainbow walk, not a parade.

TRANSGENDER

The sharia law in the Malaysian state of Negeri Sembilan had been declared unconstitutional in 2014, on grounds that it failed to recognise medical grounds for cross-dressing (for individuals who could be diagnosed with gender dysphoria). That decision was reversed by the Federal Court (the final court of appeal) in 2015 on procedural grounds. The sharia prohibition went back into effect. On 2 March 2016, 12 transgender women in the State of Penang were arrested under Penang sharia law provisions against cross-dressing.

In November 2015, Vietnam ended the prohibition on sex reassignment surgery in the country, and began to allow document change for individuals who had completed genital surgery. This moved the country into line with similar laws in China, Hong Kong, Indonesia, Japan, Korea and Singapore. In Asia only Taiwan has moved beyond this older model of reform – a model now widely condemned as inadequate in the West and at the UN. The requirement of genital surgery was removed in Taiwan in early 2015.

In March 2016, the Japanese Society for Gender Identity Disorder certified the first group of doctors in the specialty, initially nine physicians. The organisation will seek to have the national health insurance system cover the costs of therapy and surgery, which currently are covered wholly by the patient.

There was some progress in India in implementing the Supreme Court decision on recognition of transgender individuals as a distinct category of marginalised people:

On 24 April 2015, the Upper House of the Indian Parliament passed The Rights of Transgender Persons Bill, 2014.

> *This landmark bill secures the rights and entitlements of transgender Indians, allowing for reserved places in education and government, prohibition of discrimination in employment, access to a raft of benefits and the establishment of welfare boards at the centre and State level, and for transgender Rights Courts.*[810]

Aceh banned openly trans staff from working in beauty parlors in early-2016, with protests coming from Arus Pelangi and the National Human Rights Commission.

Transmen have gained new recognition, with groups established in a number of countries. Tom Act, the famous Thai lesbian magazine, ran a cover with a transman and his female partner, a first for the magazine.

810 Kaleidoscope Trust, *Speaking Out 2015: The Rights of LGBTI People across the Commonwealth*, 42.

SCHOOLS/EDUCATION

There has been new attention to bullying in various parts of Asia. Schools in Hong Kong S.A.R. prohibit discrimination based on sexual orientation, and the Education Bureau of Hong Kong has conducted workshops on anti-bullying that address gender awareness, sexual orientation, understanding the concerns of gay and lesbian students, cyber-bullying and how to launch anti-bullying campaigns in schools.[811] Hong Kong's Equal Opportunity Commission announced in 2015 that it would work with the Education Bureau to encourage the formulation of policies to tackle discrimination in schools on the grounds of sexual orientation and gender identity.[812]

Sex education and school textbooks are being examined. Schools in Taiwan Province of China have introduced discussion of sexual orientation issues in classes since the commencement of a gender equality policy in 2011, which was introduced to address high rates of bullying and to counter discrimination. Taiwan's Ministry of Education requires elementary and secondary school textbooks to promote acceptance of gays and lesbians as part of the gender equality curriculum. NGOs, including the Taiwan Tongzhi Hotline Association, have supported inclusion of sexual orientation issues in the school curriculum.

ACCESS TO SURROGACY

India and Thailand have brought in new restrictions on surrogacy. A gay couple (US and Spain) were caught by the change in Thailand. Their child, Carmen, was born in January 2015, with the US partner as the biological father and a donated egg, and carried by a Thai woman (who had no biological link to the child). After the birth, the child was given to the couple, but then the Thai woman refused to sign the necessary papers to allow the child to leave the country. A new surrogacy law made the surrogacy irregular, and the couple remained in Thailand fighting for the right to leave with the child. The couple has publicised their dilemma and gained crowd-funding. A court hearing began in March 2016 in Bangkok.

MEDIA

Low budget Thai films with gay or trans characters continued to be produced. LGBTI film festivals were held in perhaps ten countries and cities.

Some regulatory bodies have issued official media standards requiring non-discrimination. For example, guidelines issued by the Government of the Philippines state: "Media practitioners should not ridicule and stigmatise or give less importance to people, by reason of gender, sexual orientation, and physical attributes." Similarly, the Indonesian Broadcast Commission issued guidelines in 2012 prohibiting programmes that stigmatise people because of their sexual orientation and gender identity.

811 Stotzer R., Lau H. "Sexual orientation based violence in Hong Kong", *Asia Pacific Law and Policy Journal*, 14:2, 84 (2013), at 101.

812 Hong Kong Equal Opportunity Commission (2015), EOC Statement in response to media enquiries about the findings of the study on "Gender and Sexual Orientation Harassment and Discrimination Experiences of LGBTQ students in secondary schools", 27 May 2015.

In Cambodia the Ministry of Information issued a directive to all media agencies to stop public mockery of LGBTI persons.

The first Chinese gay movie to be shown in theaters in China was *Seek McCartney*, a joint French-Chinese production, first screened in Europe in 2014, and starring French actor Jeremie Elkaim and Chinese pop singer and actor Han Geng. *The Imitation Game* was shown in Chinese theatres without the gay part of the story being cut. In February 2016, video streaming sites dropped a 15 episode drama *Addiction*, about the love between two male teenage high school students.[813] In December 2014, the same thing had happened to Fan Popo's documentary *Mama Rainbow*, about the mothers of gay sons, which had been viewed 100,000 times before it disappeared.[814] In the past *The King and the Clown* from Korea and *Brokeback Mountain* from the US were banned in China.

HEALTH AND SOCIAL SERVICES

In Singapore, a study, published in the International Social Work Journal in November 2015, on 89 registered social workers found that 77% felt they did not have adequate skills to attend to LGBT issues. Another study carried out by the Singapore LGBT counseling group Oogachaga in 2011 found that 78% of 91 social workers had not received training despite 40% of them having dealt with LGBT clients.

Since 2009, Oogachaga has conducted more than 50 training sessions and workshops. Attendees are taught sexuality orientation and gender identity, how to work with young LGBT adults and parents of LGBT children. So far they have trained around 1,500 counselors.[815]

BUSINESS

The second annual China Pink Market Conference was held in Shanghai in November 2015, attracting 170 participants. It released the 2015 *China LGBT Community Report*, in part based on a survey of over 18 thousand people in the LGBT community in China. Business is interested in the spending habits of these people, according to the government's English language newspaper, *Global Times*.

ASIA: MIDDLE-EAST REGION

A 2014 challenge to Article 534 of the Lebanese Penal Code that penalises "sexual intercourse against nature" with up to one year in jail, provided some valuable insights to potentials for legal advocacy in Lebanon, and with possible resonance for the region. The trans woman who took this

813 Li Ruohan, 'Gay TV series reportedly removed from several video streaming sites', *Global Times*, 24 February , 2016; Darren Wee, 'China bans gay content in TV dramas', *GayStarNews*, 3 March 2016.

814 Zhang Yiqian, 'Director sues SARFT after his LGBT movies were removed from internet', *Global Times*, 29 September 2015.

815 'Social workers in Singapore not trained to deal with LGBT issues', fridae.asia, 15 February 2016.

case succeeded in gaining a judgment that stated that same-sex sexual practice is intrinsically not 'unnatural', and therefore cannot be considered within criminal provisions. However, Article 534 has not been repealed to date and there appears to be no sign of such an initiative. Further, at street-level, news of arrests and violations continued in 2015: for example, two men perceived as being gay were allegedly imprisoned and tortured for some weeks by the Lebanese police, having been arrested on the pretext of possession of drugs (one gram of marijuana).

A further positive development in a Lebanese court is worth noting: in January 2016, the Court of Appeals ruled in favour of allowing a trans man to legally change his gender in the official registry.[816] The basis of this decision rested on the realisation of personal freedoms and a person's right to necessary treatment, privacy, and respect fundamental rights, and it also regarded the psychological toll the process of denial had on the plaintiff.[817] Although not addressing the stigmatising issues attached to trans pathologisation in law, this ruling has been widely celebrated in Lebanon.

In Daesh (ISIL)-controlled areas of Syria and Iraq, the persecution of LGB people continues: it is unclear exactly how many gay men have been thrown from high buildings, or women stoned, if they are perceived as having same-sex desire or partaking in same-sex sexual activity, but we know there are many. Moreover, the issue of Syrian and Iraqi LGBTI refugees fleeing the on-going war, ISIL, or other groups in the many conflict areas in the region has become the focus of attention on the regional and global levels. In August 2015, the first Security Council meeting on LGBT-related issues highlighted the plight of gay men living under ISIL. However, these LGBTI individuals and other asylum-seekers from the MENA region, face undue difficulties, particularly in resettlement countries with weak SOGI protections. At all levels, national, regional, and international, more attention was being paid to this issue in 2015, but with calls for increased resources not as yet being heeded.

The Sultanate of Oman is regionally known as the most open-minded State regarding attitudes to sexuality, particularly in comparison to the membership of the its fellow Gulf Cooperation Council States. However, in October 2015, the *Monte Carlo Doualya radio* station broadcasted an interview with Clark Aziz (pseudoname of an Omani LGBTI activist). His description, and support of, LGBTI issues in Oman triggered extensive outrage amongst the public, and online forums called for the closure of the radio station and the targeting of Aziz himself.

816 See: http://www.aljazeera.com/indepth/features/2016/02/transgender-ruling-lebanon-empowering-moment-160206125311413.html

817 See: http://europe.newsweek.com/transgender-lebanon-court-middle-east-416380?rm=eu

AMERICAS

	CRIMINALISATION																
Country	Legal	Age of consent		Illegal		Penalising text					Expression		Max Sentences (M)onths and (Y)ears				
	All genders	Equal	Unequal	Male	Female	Sexual act	Sodomy	Against nature	Buggery	Indecency/ other	Promotion law	Morality code	1 M - 2 Y	3 Y - 7 Y	8 Y - 14 Y	15-Y - Life	Death
Antigua and Barbuda				■	■				■							■	
Argentina	■	■															
Bahamas	■		■														
Barbados				■	■				■							■	
Belize				■				■							■		
Bolivia	■	■															
Brazil	■	■															
Costa Rica	■	■															
Chile	■		■														
Colombia	■	■															
Cuba	■	■															
Dominica				■	■				■						■		
Dominican Republic	■	■															
Ecuador	■	■															
El Salvador	■	■															
Grenada				■				■							■		
Guatemala	■	■															
Guyana				■					■							■	
Haiti	■	■															
Honduras	■	■															
Jamaica				■					■						■		
Mexico	■	■															
Nicaragua	■	■															
Panama	■	■															
Paraguay	■		■														
Peru	■	■															
St Kitts & Nevis				■					■					■			
St Lucia				■	■				■							■	
St Vincent & the Grenadines				■	■				■						■		
Suriname	■		■														
Trinidad and Tobago				■	■				■							■	
Uruguay	■	■															
Venezuela	■	■															
Canada	■		■														
United States	■	■															

	PROTECTION											RECOGNITION					
Arrests in past three (3) years			NRHI - inclusive of sexual orientation?				Discrimination protection					Relationship recognition					Country
Yes	No	Unknown	Yes	No	Unclear	None	Employment	Constitution	Other	Hate Crime	Incitemenrt	Marriage	Civil recognition	Minimal CP	Joint adoption	2nd parent adoption	
																	Antigua and Barbuda
																	Argentina
																	Bahamas
																	Barbados
																	Belize
																	Bolivia
																	Brazil
																	Costa Rica
																	Chile
																	Colombia
																	Cuba
																	Dominica
																	Dominican Republic
																	Ecuador
																	El Salvador
																	Grenada
																	Guatemala
																	Guyana
																	Haiti
																	Honduras
																	Jamaica
																	Mexico
																	Nicaragua
																	Panama
																	Paraguay
																	Peru
																	St Kitts & Nevis
																	St Lucia
																	St Vincent & the Grenadines
																	Suriname
																	Trinidad and Tobago
																	Uruguay
																	Venezuela
																	Canada
																	United States

LUCAS RAMÓN MENDOS[818] AND TAMARA ADRIÁN[819]

THE AMERICAS: STEADY PROGRESS TOWARDS EQUALITY FOR LESBIANS, GAYS AND BISEXUALS IN 2015

The Americas can be described as the region in the world which concentrates - together with Europe - most of the progress achieved in the global fight for legal equality. In many countries the legal situation of LGBTI people is much more advanced than in the Global North countries. Notions such as co-maternal or co-paternal rights since birth, or legal recognition of the identity of trans population without pathologising requirements and the need of any kind of medical treatments or intervention, are becoming the rule. However, at the same time, the region shows the highest levels of violence and murder against LGBTI population, and in the most of the cases impunity is the rule.

Strategies at the regional, national, and local levels have therefore focused on investigating and disclosing the alarming levels of violence experienced by LGBT people and the need to secure civil rights, including freedom from discrimination, access to justice, and family rights. 2015 has seen a steady increase in the tendency to focus debates and discussions on securing access to economic, social and cultural rights on an equal footing. This has been reflected in the work carried out by civil society organisations on the ground, in their advocacy for new legislation, in their approach to strategic litigation, and in the agenda brought forward at the United Nations (UN) and the Organization of American States (OAS). The fight for equality in the region has gained major traction and visibility. Indeed, in several countries, an increasing number of lesbian, gay and bisexual people have been elected or otherwise designated in high-ranking government positions.[820]

According to the Americas Quarterly Social Inclusion Index 2015, Uruguay, Argentina and Brazil have scored the best qualifications in LGBT inclusion, followed by Colombia, Ecuador, Mexico, and the United States.[821] Furthermore, Uruguay, Canada and Argentina are the only three countries in the Americas among the top 15 nations in the Gay Happiness Index.[822]

818 Lucas Ramón Mendos is an Argentine human rights lawyer, lecturer on human rights and gay activist. He currently works at the Williams Institute (Los Angeles), and is also doing post-grad studies at UCLA. He previously worked with the LGBTI Rapporteurship at the Inter-American Commission on Human Rights (OAS-IACHR) and the Office of the Defender General in Argentina.

819 Tamara Adrián is a Venezuelan law lecturer, politician, and human rights activist, elected to the National Assembly of Venezuela in 2015. She is the current Chairperson of the Board of Directors of the IDAHO-T Committee, the Alternate Co-Secretary General on ILGA's Executive Board, Female Copresident of the International Lesbian, Gay, Bi, Trans, and Intersex Law Association (ILGLaw) and female co-president of the Gay, Lesbian and Trans International Sport Association (GLISA).

820 In Argentina, María Alejandra Aranda (Marita Curi) became the first lesbian elected as a communal representative in the City of Buenos Aires. In Canada, openly gay MP Scott Brison was appointed President of the Treasury Board of Canada by the newly installed Prime Minister, Justin Trudeau. In the United States, Kate Brown became first out bisexual governor when she took office in Oregon, and Jackie Biskupski, an out lesbian, was elected mayor of Salt Lake City, Utah.

821 At the bottom ranks of the scale, Honduras, Paraguay, Guatemala and Panama obtained the lowest scores. Canada and the Caribbean were not included in this index. The report is available at: http://www.americasquarterly.org/charticles/social-inclusion-index-2015/

822 This index is produced by the Johannes Gutenberg University of Mainz in Germany and Planet Romeo. For more information on this index, visit: https://www.planetromeo.com/en/lgbt/gay-happiness-index/

REGIONAL ADVOCACY

Within the framework of the OAS, the Summit of the Americas took place in Panama City in April. Presidents Barack Obama and Dilma Rousseff referred to the issue of discrimination against LGBT people in their speeches. The OAS LGBTTTI[823] Coalition reported an unprecedented level of lobbying by religious organisations, which systematically blocked efforts to include references to sexual and gender diversity at the Civil Society Forum.

Strong lobbying by these organisations was also reported on the rise at the 45th Regular Session of the OAS General Assembly in June. Even so, the Assembly adopted the Inter-American Convention on Protecting the Human Rights of Older Persons, which expressly prohibits discrimination against older people on the basis of sexual orientation and gender identity. Argentina, Brazil, Chile, Costa Rica and Uruguay were the first countries to sign the treaty.[824] Furthermore, Bolivia and Chile joined the group of signatories of the Inter-American Convention against All Forms of Discrimination that included, for the very first time in a multinational treaty, protection against discrimination on the basis of sexual orientation and gender identity.[825] However, there may be a long way ahead until such treaties become effective in the region.

LGBT civil society organisations held several regional meetings in 2015 to share and exchange best practices and to strategise on international advocacy for equality at the national and international levels.[826]

FAMILY RELATIONS

The region has seen considerable progress in the legal recognition of family relations of lesbian, gay and bisexual people. In June, the United States Supreme Court determined that same-sex couples have a constitutional right to marry in all 50 states of the Union.[827] Same-sex marriage also became legal in several Mexican states, and the Supreme Court of Justice decided that a marriage entered into with any state of the union is valid in the other states, even if they do not

823 This group was founded back in 2006, in order to participate as organised civil society in the spaces of the Inter-American system. Back in that time there was a distinctive difference between Transgender, Transsexual and Travestite persons, that has practically disappeared since then, particularly because the Gender Identity Laws enacted in many countries do not require for surgeries in order to legally recognise the identity.

824 For more information on signatory states and ratifications, visit: http://www.oas.org/en/sla/dil/inter_american_treaties_A-70_human_rights_older_persons_signatories.asp

825 This is the other OAS human rights treaty which contemplates sexual orientation and gender identity as prohibited grounds of discrimination. The explicit mention of sexual and gender diversity in these binding instruments is the result of several years of successful lobbying by the OAS LGBTTTI Coalition. For more information on signatory states and ratifications, visit: http://www.oas.org/en/sla/dil/inter_american_treaties_A-69_discrimination_intolerance_signatories.asp

826 In September, numerous Caribbean LGBT activists met in Grenada for the OECS Litigation and Advocacy Strategy Meeting. In October, LGBT political leaders from all over the hemisphere met in Tegucigalpa, Honduras, for an intensive two-day regional conference. In December, gay male leaders met in Curitiba, Brazil, and founded Gay Latino, a regional network for the advancement of gay men's rights in Latina America.

827 This decision also legalised same-sex marriage in Puerto Rico and other US overseas territories. It remains still uncertain if the decision will have effect in the American Samoa. It bears mentioning that religious organisations have actively tried to undermine the Supreme Court decision by passing Religious Freedom Restoration Acts (RFRAs) or introducing similar bills, which would open the possibility to discriminate against LGBT people due to "religious objections." In fact, the United States did not accept a UPR recommendation to take affirmative steps to ensure that individuals' religious refusals are regulated to conform with international human rights standards that protect sexual and reproductive rights and the rights to equality and non-discrimination on the basis of sex, gender, sexual orientation or gender identity.

legally recognise the right to marry in their territories. It also said that it is unconstitutional for a state of the union prohibit or limit the right to marry for same-sex couples.[828]

Moreover, same-sex civil unions became legal in Chile and Ecuador. In Costa Rica, a judicial decision granted certain rights to a same-sex couple, making it the first *de facto* union legally recognised in Central America. In Brazil, the Superior Tribunal of Justice granted to one of the partners of a same-sex *de facto* union the right to request alimony after separation. And in 2016, the Constitutional Court decided that it was unconstitutional to deny the right to marry to same-sex couples, and granted the right with immediate effects.

As it relates to parentage, same-sex adoption became legal in Colombia, in the Mexican State of Campeche, and in the British Overseas Territory of Bermuda. Most notably, the first case of triple parentage in Latin America was registered in Argentina.

However, in some other countries, the fight for equal family rights suffered major defeats. In Nicaragua, the newly enacted Family Code prohibits same-sex marriage and adoption. In El Salvador, the national legislature took the first steps towards a constitutional ban same-sex marriage. In Peru, a same-sex civil union bill was defeated in Congress. Quite surprisingly, in the United States, a Utah juvenile court ordered a baby to be removed from the care of a lesbian couple and be placed with a heterosexual couple, stating, "it was for the child's wellbeing". In Jamaica and Paraguay, hundreds rallied against same-sex marriage even though the issue was not part of any parliamentary debate or proposal.

MEASURES TO CURVE DISCRIMINATION

Although the eradication of prejudice against sexual and gender diversity is generally considered the ultimate way to put an end to discrimination against lesbian, gay and bisexual people, anti-discrimination laws are a key tool towards this major goal. On the one hand, they grant victims with a legal course of action to seek remedies and invalidate acts of discrimination and, on the other hand, they set a legal standard under which no other law or public policy may restrict rights on the basis of sexual orientation.

In Argentina, a comprehensive anti-discrimination law, which explicitly bans discrimination based on sexual orientation and gender identity, was passed in Buenos Aires.[829] In the United States, the White House publicly supported the Equality Act, which would amend the 1964 Civil Rights Act to ban discrimination on the basis of sexual orientation.[830] In Peru, several local governments issued regulations which included the prohibition of discrimination based on sexual orientation.[831]

828 These include Jalisco, Nayarit, Chihuahua, and Mexico State. The legality of same-sex marriage was determined either by legislative action or by means of judicial decisions. Even though the Mexican Supreme Court declared that any law banning same-sex marriage throughout the country is unconstitutional, the decision does automatically strike down legal bans in force. In this line, the National Human Rights Commission of Mexico issued in December a recommendation to all Mexican states, requesting them to allow same-sex marriages in their jurisdictions.

829 This law applies only to the City of Buenos Aires, the Capital of Argentina. Local LGBT organisations have denounced that a similar federal bill (which would gran nationwide protection) is being blocked by members of the National Congress.

830 However, local organisations have stated that it is very unlikely that this bill will be approved with Republicans now in control of both chambers of Congress.

831 These include the Municipalities of Miraflores and Santa Anita, in Lima, and the district of Belén, in Iquitos.

In 2015, different UN Treaty Bodies have urged certain Latin American States to enact this kind of legislation to combat stereotypes and prejudice against LGBT people.[832] Similar recommendations formulated in the context of the United Nations Universal Periodic Review (UPR) were accepted by Honduras and, most notably, by Jamaica and Guyana. However, Grenada and Saint Kitts and Nevis decided not to accept any of the recommendations on the subject formulated to them in their respective UPR evaluations.

VIOLENCE

In December 2015, the Inter-American Commission on Human Rights (IACHR) launched its first thematic report on violence against LGBTI people in the Americas, presenting the world with copious - oftentimes disturbing - information on the levels and forms of violence against LGBTI people in the hemisphere.[833] Extrajudicial executions and killings, sexual violence and police brutality were among the most serious issues of concern to the IACHR.

Along these same lines, in 2015 the UN Committee against Torture (CAT) and several UN Special Rapporteurs expressed concern about police brutality and homophobic violence in certain Latin American countries.[834] Moreover, bills to increase the penalties for crimes committed on the basis of sexual orientation were introduced in Panama and Honduras.

Numerous initiatives to train and sensitise law enforcement officials on human rights of LGBT people were implemented across the Americas, including in Antigua and Barbuda, Argentina, Brazil, Canada, Chile, Colombia, Cuba, Guatemala, Grenada, Jamaica, Mexico, Saint Kitts and Nevis and the United States. Notably, a good number of these trainings took place in countries of the English-speaking Caribbean. The United States Department of Justice issued new guidelines to identify and prevent gender bias in law enforcement response to sexual assault and domestic violence, which includes specific considerations for crimes committed against LGBT people.[835]

Most regrettably, the head of the Venezuelan Presidential Commission for Police Reform delivered homophobic statements on TV, saying gay men willing to serve for the Venezuelan police cannot publicly declare their homosexuality.

A controversial judicial decision by an Argentine court - which considered the purported sexual orientation of a six year old boy as an extenuating circumstance for the sexual abuse he had

832 The Human Rights Committee urged Venezuela (CCPR/C/VEN/CO/4) to redouble its efforts to combat stereotypes of and prejudice against LGBTI persons and ensure that acts of discrimination are prevented and that acts of violence against such persons are investigated effectively. The Committee on Economic, Social and Cultural Rights urged Venezuela (E/C.12/VEN/CO/3) and Paraguay (E/C.12/PRY/CO/4) to enact legislation to provide protection against discrimination in the access to ESCR, in particular access to employment, social security, health care and education.

833 The IACHR report is available (in Spanish only) at http://www.oas.org/es/cidh/informes/pdfs/ViolenciaPersonasLGBTI.pdf

834 The Committee against Torture urged Colombia to investigate these crimes and to provide mandatory training to law enforcement officers on the prosecution of cases involving the commission of acts of violence motivated by a person's sexual orientation or gender identity (CAT/C/COL/CO/5). The UN Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the rights to freedom of peaceful assembly and of association expressed concern about violence against LGBT people and LGBT defenders in Honduras and Ecuador (A/HRC/28/63/Add.1 and A/HRC/29/25/Add.3). The Special Rapporteur on the situation of human rights defenders also brought up the use of anti-terrorist legislation to deprive LGBT defenders of their liberty (A/HRC/28/63/Add.1).

835 A full text copy of the document is available at: https://www.justice.gov/opa/file/799366/download

suffered - created an uproar among local LGBT organisations, academic institutions and even governmental agencies. The IACHR also issued a press release in reaction to it.[836] A few months later the decision was quashed by the Supreme Court of the Province of Buenos Aires.

CRIMINALISATION OF SAME-SEX RELATIONS IN THE CARIBBEAN

The 11 countries in the western hemisphere that still keep laws criminalising same-sex relations are located in the English-speaking Caribbean, and there is still strong political resistance to eliminate these laws.[837] This was reflected in the fact that none of the Caribbean countries evaluated in the 2015 UPR sessions accepted recommendations to move towards that goal.[838] However, in many of them, local organisations are actively engaged in advocacy to have these laws repealed. In 2015, Jamaican activist Maurice Tomlinson brought forward a new challenge against local sodomy laws, after a similar lawsuit was dropped in 2014.

Despite the strong sentiment against sexual and gender diversity in a large part of Caribbean societies, several public officials issued positive statements with regard to LGBT equality.[839] Furthermore, several LGBT pride events were held throughout the Caribbean.[840] The work of two outstanding lesbian activists, Donnya Piggott and Angeline Jackson, was publicly acknowledged by Queen Elizabeth II and Barack Obama, respectively.[841]

EQUALITY IN ECONOMIC, SOCIAL AND CULTURAL RIGHTS

In 2015, the OAS Working Group on the Protocol of San Salvador celebrated its first sessions to analyse national reports on the progress made by OAS Member States on economic, social and cultural rights.[842] Several governments included variables on sexual orientation in their reports regarding social security, health, and education. Moreover, the UN Committee on Economic Social

836 The press release is available at: http://www.oas.org/en/iachr/media_center/PReleases/2015/059.asp

837 These countries have laws that are applicable to the general population. Other countries in the Americas still have similar regulations applicable only to members of security or armed forces. Panama for instance, did not accept a recommendation to repeal such regulation. For its part, the IACHR took a case before the Inter-American Court on Human Rights concerning Ecuador's international responsibility as a result of the decision to discharge the alleged victim from the army after he was allegedly found engaging in same-sex relations (Case *Homero Flor Freire v. Ecuador*). Moreover, several countries in the Americas still keep laws and regulations on 'public morals', which are used by law enforcement officials to persecute and abuse LGBT people. For more information on this issue, see IACHR Report on Violence against LGBTI people, available at: http://www.oas.org/es/cidh/informes/pdfs/ViolenciaPersonasLGBTI.pdf

838 These include Grenada, Guyana, Jamaica, Saint Kitts and Nevis, and Saint Lucia.

839 These include Senator Vynnette Frederick from Saint Vincent and the Grenadines; Jamaican Minister of Justice, Mark Golding, and the Mayor of Kingston, Angela Brown Burke; Belizean Minister of Housing, Michael Finnegan; the Grenadian Prime Minister, Keith Mitchell; and Leslie Ramsammy, former Health Minister of Guyana.

840 Pride events took place in Barbados, Belize, Curacao, Jamaica, and Suriname.

841 Donnya Piggott, director of Barbados Gays and Lesbians Against Discrimination (BGLAD), was awarded the Queen's Young Leaders Award for her activism for the rights of LGBT people in Babrados; Angeline Jackson, founder and executive director of Quality of Citizenship Jamaica (QCJ) was acknowledged by Barack Obama in his speech at the University of the West Indies in Kingston as one of the island's "remarkable young leaders".

842 The Protocol of San Salvador is the additional protocol to the American Convention on Human Rights to ensure Economic Social and Cultural Rights. Pursuant to the provisions of the Article 19 the States Parties to this Protocol undertake to submit periodic reports on the progressive measures they have taken to ensure due respect for the rights set forth in this Protocol. For more information, visit: http://www.oas.org/en/sedi/dsi/protocol-ssv/

and Cultural Rights (CESCR) urged certain Latin American governments to enact legislation to provide protection against discrimination in the access to employment, social security, education, health care and education.[843] For its part, the UN Committee on the Rights of the Child expressed concern about discrimination against LGBT children, particularly affecting their right to education and health.

EDUCATION

Homophobic bullying represents one of the major obstacles in the access to education for LGBT people, especially children. In Colombia, the Constitutional Court determined that higher education institutions could not discriminate, among other grounds, on the basis of sexual orientation, and ordered the inclusion of sexual and gender diversity in schools codes of conduct and, most notably, in the curriculum of all national schools.[844] In Chile, local sources reported that a teacher was dismissed after being accused of having bullied a lesbian student. This is in accord with UNICEF's Position Paper 9 concerning the rights of LBTI youth and their families.

Less encouraging news came from the United States, where there has been a rise in applications filed by religiously affiliated colleges for exemptions from federal anti-discrimination laws, which allow institutions to openly discriminate against LGBT students. Furthermore, in Canada, a group of religious parents organised the 'Parents & Students on Strike' to protest against the new comprehensive sexuality education curriculum in Ontario, which included lessons on sexual diversity.

PHYSICAL AND MENTAL HEALTH

The region has seen considerable progress in the fight against so-called conversion "therapies." Bans against these practices were enacted in the United States[845] and Canada.[846] In this line, a court in New Jersey ruled against a Jewish group offering these questionable "treatments." Public prosecutors in Brasilia had to interrupt an ongoing training course on the topic. In Ecuador, the CEDAW Committee stated that despite the efforts made by the government, the practice of "de-homosexualisation" in clinics still continues.[847]

In Brazil, the Ministry of Health and the University of Brasilia launched a major study to assess the access to health services by lesbian and bisexual women. In Argentina, the ban on LGBT blood donors was definitively lifted by means of a resolution issued by the Ministry of Health. In the

843 See the Committee's Concluding observations on Chile (E/C.12/CHL/CO/4), Venezuela (E/C.12/VEN/CO/3) and Paraguay (E/C.12/PRY/CO/4).

844 Decision T-478/15. This judicial decision determined reparative measures in the case of Sergio Urrego, a 16 year old student who attended a Catholic school and was subject to homophobic bullying by school administrators after they had discovered his relationship with his boyfriend. The full-text version of the decision is available at: http://www.corteconstitucional.gov.co/inicio/T-478-15%20ExpT4734501%20(Sergio%20Urrego).pdf. See also: Decision T-141/15, available at: http://www.corteconstitucional.gov.co/relatoria/2015/t-141-15.htm

845 Bans on conversion therapy were enacted in Illinois and Oregon, and in the city of Cincinnati. Furthermore, the Substance Abuse and Mental Health Services Administration (SAMHSA) issued a report calling to put an end to these practices.

846 The ban was enacted in the Canadian province of Ontario. Further efforts to ban these practices were reported in the province of Manitoba. Moreover, a member of the Conservative Party was expelled after he openly supported conversion therapies.

847 The Committee also urged Ecuador to ensure the implementation of legislation that prohibits these practices (CEDAW/C/ECU/CO/8-9).

United States, the Food and Drug Administration modified its policies on blood donation, but local activists have stated that the new policy in place is still discriminatory.[848] In Peru, even though the Ministry of Health officially stated that LGBT people were not barred from donating blood, the rejection of a lesbian woman because of her sexual orientation prompted the intervention of the Ombudsperson.

RIGHT TO WORK AND SOCIAL SECURITY BENEFITS

Several countries have seen major achievements in the protection of lesbian, gay and bisexual people in the labor market. In the United States, the Equal Employment Opportunity Commission (EEOC) issued a landmark decision declaring that discrimination based on sexual orientation falls within the scope of existing legislation prohibiting discrimination based on sex.[849] In Mexico, the National Council against Discrimination (Conapred) issued a directive on standards for labor equality and non-discrimination expressly including sexual orientation as a prohibited ground of discrimination.[850]

The International Labor Organization (ILO) and the Argentine LGBT Federation launched a study on discrimination in employment against LGBT people in Argentina. In Chile, a court ordered the city council of Talca to compensate three former employees who had been dismissed because of their sexual orientation. The decision also determined that officials of that city council had to receive specific training in human rights. Furthermore, Fundacion Iguales and the Chilean Ministry of Labor launched a major survey to assess the situation of LGBT people in the workplace.

The UN Special Rapporteur on violence against women indicated that, in Honduras, lesbian women are often bullied, harassed or overlooked for promotions, and may even be denied employment due to their style of dress. Moreover, the IACHR admitted a case presented by a Chilean teacher who was allegedly dismissed from a Catholic school for being a lesbian.[851] For its part, the Inter-American Court of Human Rights held a public hearing in a case concerning the rights of same-sex partners to have access to pension rights.[852]

In Cuba, celebrations on the Day against Homophobia and Transphobia, which were led by Mariela Castro, focused on the right not to be discriminated at work. In the United States, Louisiana's governor-elect, John Bel Edwards, confirmed he will issue an executive order outlawing anti-LGBT discrimination for State employees and government contractors.[853]

---

848 In fact the FDA lifted its 32-year-old lifetime ban on blood donations from gay and bisexual men, but has established a bar which prevents men who have had sex with another man in the previous year from donating.

849 This is the current EEOC interpretation of Title VII of the Civil Rights Act of 1964. See *David Baldwin v. Department of Transportation*, EEOC Appeal No. 120133080 (July 15, 2015), available at: http://www.eeoc.gov/decisions/0120133080.pdf

850 The National Institute of Women (Inmujeres) and the Department of Labor and Social Security (STPS) also took part in the preparation of the document. The directive can be downloaded from: http://www.economia-nmx.gob.mx/normas/nmx/2010/nmx-r-025-scfi-2015.pdf

851 The admissibility report can be downloaded from http://www.oas.org/es/cidh/decisiones/2015/CHAD1236-08EN.pdf

852 The I/A Court is expected to issue its decision on the merits of the case in 2016 (Case *Angel Alberto Duque v. Colombia*). The hearing is available at: https://vimeo.com/137318897

853 It bears mentioning that Louisiana is one the states in which it is still legal to fire an employee based on their sexual orientation.

HOUSING

Access to adequate housing has been reported in the Americas as one the main challenges faced by lower-income lesbian, gay and bisexual people, especially youth.

In Jamaica, homeless LGBT youth where violently evicted by a mob from the sewers in which they had been forced to live for the past two years.[854] In Venezuela, LGBT families started a protest to demand their inclusion in the National Housing Plan. In the United States, the Urban Institute issued a study on the living experiences of almost 300 LGBT homeless youth who engage in sex in exchange for food and shelter in New York City. Almost two thirds stated that they were frequently subject to police abuse and to invasive searches in public areas.

Access to housing is also a major challenge in the context of human mobility. In 2015, the UN Special Rapporteur on the human rights of internally displaced persons highlighted the lack of access to shelter protection for LGBTI individuals in Haiti.[855]

CONCLUSION

Lesbian, gay and bisexual activists in the Americas are more active than ever before, and 2015 proved to be an effervescent year in the fight for equality. The courage and determination showed by the first and second generations of leaders throughout the hemisphere has inspired many others who are now standing up for their rights, even in countries where their love for others and their identities are criminalised or otherwise rejected with violence and disdain. There is evidence of alliances and strong support for our battles by civil society at large, and particularly by human rights activist in various fields.

In 2015, far too many have continued to pay with their own lives the price of confronting our societies and fighting for a dignified life. Backlash for the victories of equality came in the form of newly enacted restrictive legislation, religious exemptions, and even more discrimination and violence. However, the struggle goes on.

854 The mob attack took place even when a local court had ruled that loitering in a public sewer was "not a problem," as they are technically public places.

855 A/HRC/29/34/Add.2

	CRIMINALISATION																
Country	Legal	Age of consent		Illegal		Penalising text					Expression		Max Sentences (M)onths and (Y)ears				
	All genders	Equal	Unequal	Male	Female	Sexual act	Sodomy	Against nature	Buggery	Indecency/ other	Promotion law	Morality code	1 M - 2 Y	3 Y - 7 Y	8 Y - 14 Y	15-Y - Life	Death
Albania																	
Andorra																	
Armenia																	
Austria																	
Azerbaijan																	
Belarus																	
Belgium																	
Bosnia and Herzegovina																	
Bulgaria																	
Croatia																	
Cyprus																	
Czech Republic																	
Denmark																	
Estonia																	
Finland																	
France																	
Georgia																	
Germany																	
Greece																	
Hungary																	
Iceland																	
Ireland																	
Italy																	
Kosovo																	
Latvia																	
Liechtenstein																	
Lithuania																	
Luxembourg																	
Macedonia (FYROM)																	
Malta																	
Moldova																	
Monaco																	
Montenegro																	
Netherlands																	
Norway																	
Poland																	
Portugal																	
Romania																	
Russia																	
San Marino																	
Serbia																	
Slovakia																	
Slovenia																	
Spain																	
Sweden																	
Switzerland																	
Turkey																	
Ukraine																	
United Kingdom (and associates)																	

			PROTECTION									RECOGNITION					
Arrests in past three (3) years			NRHI - inclusive of sexual orientation?				Discrimination protection					Relationship recognition					Country
Yes	No	Unknown	Yes	No	Unclear	None	Employment	Constitution	Other	Hate Crime	Incitemenrt	Marriage	Civil recognition	Minimal CP	Joint adoption	2nd parent adoption	
			■				■		■	■	■						Albania
						■	■		■	■			■		■	■	Andorra
				■													Armenia
			■				■		■	■	■		■			■	Austria
				■													Azerbaijan
				■													Belarus
			■				■		■	■	■	■			■	■	Belgium
			■				■		■	■							Bosnia and Herzegovina
			■				■		■								Bulgaria
			■				■		■	■	■		■				Croatia
			■				■		■		■		■				Cyprus
			■				■		■					■			Czech Republic
			■				■		■	■	■	■			■	■	Denmark
			■				■				■		■			■	Estonia
			■				■	■	■	■	■	■			■	■	Finland
			■				■		■	■	■	■			■	■	France
			■				■		■	■							Georgia
			■				■		■				■			■	Germany
			■				■			■	■		■				Greece
			■				■		■	■	■		■				Hungary
						■	■		■	■	■	■			■	■	Iceland
			■				■		■		■	■			■		Ireland
			■				■				■		■			■	Italy
			■				■	■	■	■							*Kosovo*
			■				■										Latvia
						■							■				Liechtenstein
			■				■		■	■	■						Lithuania
			■				■		■	■	■	■			■	■	Luxembourg
				■			■		■								Macedonia (FYROM)
			■				■	■	■	■	■		■		■		Malta
			■				■		■								Moldova
				■					■		■						Monaco
			■				■		■	■	■						Montenegro
			■				■		■	■	■	■	■		■	■	Netherlands
			■				■		■	■	■	■			■	■	Norway
			■				■										Poland
			■				■	■	■	■	■	■			■		Portugal
			■				■		■	■							Romania
■				■													Russia
						■	■	■		■	■						San Marino
			■				■		■	■	■						Serbia
			■				■		■	■							Slovakia
			■				■	■	■	■	■			■	■	■	Slovenia
				■			■		■	■	■	■			■	■	Spain
			■				■	■	■	■	■	■			■	■	Sweden
						■	■	■			■		■				Switzerland
				■													Turkey
				■			■										Ukraine
			■				■		■	■	■	■	■		■	■	United Kingdom (and associates)

WRITTEN BY THE ILGA-EUROPE TEAM

EUROPE: HIGHLIGHTS, KEY DEVELOPMENTS AND TRENDS IN 2015

2015 was a year of conflicting emotions – from the dizzying highs that grabbed global headlines to the sobering reminders that many LGBTI communities had very little to celebrate since our last Annual Review was published.

Arguably the most dramatic changes came from unexpected places. Malta, the smallest EU country rose to the top of our Rainbow Index country ranking in 2015 - buoyed by an irresistible combination of determined activism and unprecedented political leadership at national level - adopted ground-breaking legislation and comprehensive public policies. Ireland shook off its mantle as a socially conservative State, inextricably linked to Catholic doctrine, when an overwhelming majority of Irish people from all over the country, not only voted in favour of marriage equality but also embraced the change. Both islands gave valuable gifts to the European LGBTI movement: hope and inspiration. Hope springs from the fact that profound political and social change really is possible. Witnessing the tangible power of civil society mobilisation combined with political leadership was truly inspirational.

However, 2015 overall was the year of 'the reminder'. Several times we were prompted to recognise that the news headlines from Ireland and Malta inevitably attracted often masked the more complex situation across many parts of Europe. Achieving equality in one facet of life, such as equal marriage, does not signal the end of our advocacy journey. It should provoke more action, not represent a reason for political leaders to ease off.

Some of the most important developments again related to the growing recognition of the human rights of trans and intersex people. 2015 was a year when national and European institutions stepped up their efforts to learn about and to take action to protect the rights of intersex people. In many ways, Malta again led the way with its visionary Gender Identity, Gender Expression and Sex Characteristics Act, which made it the first country in the world to prohibit any unnecessary surgical procedure on the sex characteristics of a person without their consent. Human rights ideals were also put into practice in schools through a comprehensive policy for trans, intersex and gender variant students.

The Maltese focus is indicative of a growing impetus all over Europe to be proactive about protecting the rights of intersex people. In addition to the advances made in Malta, Greece also introduced explicit protection from discrimination on the grounds of sex characteristics on 24 December. Finland's updated Gender Equality Act now includes a reference to "gender features of the body" which is intended to protect intersex people against discrimination. A court in Tours, France, recognised an intersex person as gender neutral, the first time a French court has recognised an individual as having a gender other than male or female.

At European level, two high-level publications gave the issues faced by intersex people valuable public exposure. Launched on the same day in May, both the EU Fundamental Rights Agency and Council of Europe Human Rights Commissioner's papers contained human rights-based recommendations to improve the lives of intersex people. Both these publications put intersex issues firmly at the heart of the European agenda, as well as serving as a timely reminder to policy-makers to include the voices of intersex people in their work – "nothing about us without us".

When it comes to the rights of trans people, as we already mentioned, Malta's GIGESC Act was revolutionary in a European context, as it contains provisions relating to adults and minors alike. Ireland also introduced the long-awaited Gender Recognition Act based on a self-determination model (for people aged 18 and older) following years of campaigning by national trans activists, inspired by the persistence of Dr Lydia Foy. More countries are expected to follow suit: Sweden is currently planning amendments to its gender recognition process and the French authorities are examining proposals to remove the need for surgery from their own practice. Several politicians in Belgium spoke out in favour of abolishing medical intervention criteria and potential changes to existing legislation were also raised by expert groups in Finland, Greece, Germany and Norway. At Council of Europe-level, the ECtHR ruled that sterilisation is not a necessary precondition for individuals undergoing gender reassignment surgery to have their gender legally recognised in the case of *YY v Turkey*.

That said, the journey for many trans people in Europe is another useful reminder for the wider LGBTI community. We must continue to highlight milestones while not allowing these achievements to render us oblivious to the work that still need to be completed. It is worth remembering that Lithuania is still trying to find a way to implement the *L v Lithuania* judgment from the European Court of Human Rights. That decision was handed down in 2007; trans people in Lithuania are still waiting for practical answers. Poland's Gender Recognition Act had passed both houses of parliament in the summer of 2015, but a presidential veto was not overturned and the trans community was left without a codified legal recognition process.

On a positive note, the Eurobarometer survey – the first EU wide public opinion survey to cover trans issues – did reveal that 63% of people questioned thought that trans people should be able to change civil documents to reflect their gender identity. However, when you analyse the individual country reactions, only 34% of the Hungarian respondents agreed, with 29% support reported in Bulgaria and Romania. These figures demonstrate two things: how vital it is to continue advocating for the rights of trans people and how important it is to communicate this need for change among the general public.

During 2015, we saw more countries increase protection for LGBTI families. Ireland became the 12th country (not counting Finland where the law will come into effect in January 2017) in Europe to adopt marriage equality, following the extraordinary result of the May referendum and the widespread public and political support mobilised by the Irish *Yes Equality* campaign. This result was particularly notable, given Ireland's relatively swift journey from criminalisation to marriage equality. Same-sex couples in Luxembourg could marry and jointly adopt from 1 January; their own prime minister was among the first couples to take advantage of the

introduction of equal marriage. Cyprus and Greece joined the group of countries with civil partnership; LGBTI activists in both countries had to wait until the closing stages of 2015 before their celebrations could begin.

In July 2015, he European Court of Human Rights ruled in *Oliari v Italy* that denying same-sex couples legal recognition of their relationships is a human rights violation; this decision increased expectation and pressure on other European governments to act. The debate around Italian civil unions culminated in a Senate vote in February 2016 moving the bill to the next legislative stage, although at the cost of the second parent adoption provisions which were dropped. This said, parenting rights were progressed in Austria, as its constitutional court struck down a ban on same-sex couples jointly adopting and the country expanded access to medically assisted insemination. In Portugal, joint and second parent adoption recently became a reality when the parliament overturned a presidential veto in February 2016.

But 2015 provided many reminders that the Irish referendum was the exception to many rules. In several other European countries – namely Slovakia, Slovenia and Switzerland – referendums and constitutional changes on LGBTI issues were framed in negative terms. While an inspiring public mobilisation, led by proactive LGBTI organisations, helped to avoid limiting the rights of same-sex couples in Switzerland, the end result was not as encouraging in Slovenia. There, a referendum was used to override parliamentary decision-making; the parliament approved an equal marriage bill in March that was rejected by popular vote in December. In Armenia, following a December referendum on a large package of constitutional changes, marriage was defined as a union between different-sex couples only. FYR Macedonia is another country where the government attempted to constitutionally define marriage as a union between men and women only, but the final implementing vote had still not taken place at time of writing. In other countries, procedural barriers were erected in an attempt to block positive change. The implementing legislation required to get Estonia's celebrated Registered Partnership Act 2014 up and running was slowed down by anti-equality parliamentarians. Anti-equality groups called for a repeal of Finland's equal marriage act, due to enter into force in 2017.

The treatment of LGBTI asylum seekers had always been an issue of concern, but it became an altogether more urgent priority for LGBTI organisations in 2015. As many European countries dealt with the arrival of many more refugees, LGBTI NGOs were also trying to provide support to LGBTI asylum seekers, either travelling through their countries or settling there as refugees. The language of "safe third countries" was on the agenda at several political levels; both at never-ending summits in Brussels and in national parliaments. Asylum-related developments once again are noted in ILGA-Europe's Annual Review 2016; Malta granted asylum on gender identity grounds for the first time, the Dutch government changed its asylum policy for LGBT applicants from Russia and detention conditions in the UK were critiqued by a parliamentary group report. It is a theme which we anticipate will only increase in relevance.

One of the most concerning ongoing trends is the closing space for civil society. We have seen restrictions being placed on NGOs, including LGBTI groups, in a growing number of countries. Governments are erecting legal and administrative barriers and increasingly fail to include civil society in decision-making processes. This makes it more difficult for civil society to receive

foreign support and funding to operate, to influence policy making, to hold public gatherings or set up new organisations. Event organisers in Turkey, Ukraine and Montenegro, to name a few, were confronted by restrictions on their rights to freely assemble, with the violent policing of the Istanbul Pride march, violent attacks on Kyiv Pride and a ban on the march in Odesa, and the multiple cancellations of the Niksic Pride walks respectively.

The practical day-to-day advocacy work of LGBTI activists was hampered by the claustrophobic atmosphere created by continual audits and inspections in countries such as Hungary and Slovenia. In addition to this, incidents of intimidation and harassment against human rights defenders are on the rise. An activist in Kosovo was added to a human rights defender safety/monitoring programme, NGO staff in Moldova were threatened by the Occupy Paedophilia vigilante group, and regional Ukrainian activists were reported to be moving to Kyiv or emigrating.

Civil society continued to face obstruction within Russia, as LGBTI groups were targeted under existing 'anti-propaganda' and 'foreign agent' laws. In addition to this, foreign organisations deemed to be a security risk can be branded as an 'undesirable organisation' and banned from working under new legislation passed in May 2015. In this context, LGBTI people faced persistent attacks, ranging from physical violence and hate speech to the closure of businesses or loss of their jobs. Broader geo-politics also largely influenced the situation in Ukraine, where the fortunes of LGBTI people remained tied to political developments in the country. On one hand, NGOs and individuals found it increasingly difficult to work in the occupied territories of Crimea and Southern Donbas. On the other hand, the promise of a visa-free travel within the EU significantly contributed to the inclusion of an anti-discrimination provision protecting people on the basis of sexual orientation and gender identity in the labour law.

Hate speech also continued to stain the records of countries at all levels of our Rainbow Europe ranking; for example, there were reports of public figures (such as politicians or religious leaders) making bias-motivated remarks in Bulgaria, Germany, Greece, Sweden and Turkey, to name but a few. The European Parliament's resolution on Azerbaijan in September condemned political hate speech against LGBTI people. The existence of such remarks is disturbing enough but their impact can be exponentially increased when victims have no legal recourse. Many European countries, EU member states and non-EU states, still lack legislation that outlaws hate speech against people based on their sexual orientation and/or gender identity. The OSCE Office for Democratic Institutions and Human Rights commented on the need for political leaders to step up on this issue in March – there really is not a moment to lose.

Sadly, the high incidence of homophobic and transphobic violence across the European region appears as a recurring feature of our annual analysis. Again this year, we are reporting on serious hate crimes in several countries, from Azerbaijan and Greece to Georgia, Moldova and Russia. One disturbing parallel trend is the apparent impunity attached to these attacks as a bias-related motive is often not taken into account at all. The LGBTI community, in particular trans people, continued to be the target of extreme violence in Turkey. A well-known LGBTI activist was raped in their own home in Ankara and was mistreated by police officers when they reported the incident. As the Annual Review was going to print in April, we learned that the prosecutor's office, examining the activist's complaint, ruled that the police officers would not be prosecuted.

But there were attempts made to fight back against hatred. The European Court of Human Rights spoke out against the violent disruption of a Pride march in *Identoba and Others vs Georgia* (May 2015). In April 2015, the first sentence for a homophobic crime under existing Hungarian hate crime legislation had been handed down by a court in Budapest. Politicians in Bosnia and Herzegovina also began discussions on how to improve hate crime legislation, potentially affecting all three federal levels. Amendments introduced in Greece at the very end of 2015 aim to protect people against hate crime based on their sexual orientation, gender identity or gender characteristics.

Overall, as mentioned above, 2015 was the year of reminders. Firstly, a reminder that progress is not inevitable and that regression is all too possible. We must remember that when we think our work is over, that is when we are at our most vulnerable. This point was all too apparent in several countries, where the early optimism that abounded in the opening weeks and months of the year had all but evaporated by December. This overview of Europe in the past year has already mentioned the emotional experiences endured by LGBTI activists in Poland, Slovenia, Estonia and Finland. These events are vital reminders that things can sometimes change overnight. They show how quickly situations can develop and turn into something unexpected.

Secondly, change is not automatic. One positive development in a country does not mean that improvements will flow naturally. Nor does positive change in one country guarantee automatic change in others. The adoption of concrete legislative and policy measures to make equality a daily reality for LGBTI people is stagnating in too many countries. This is despite the fact that public support for the human rights of LGBTI people is growing. The 2015 edition of the EU's Eurobarometer survey showed us that 71% of the survey respondents agreed that LGB people should have the same rights as heterosexual people.

Active political leadership, in national parliaments and in EU institutions, is essential for progress. The relentless commitment to advancing equality for LGBTI people (and as a result, creating a more equal society for all its citizens) shown by the current Maltese government is quite unique. But at too many levels in 2015, political leadership seems to have been distracted when it comes to LGBTI issues. Whether that is out of genuine preoccupation or for a more insidious reason, the end result is ultimately the same. The Italian education ministry published anti-bullying guidelines only to drop measures to combat homophobic bullying from the National LGBT Strategy weeks later. MPs who voted down a civil union proposal for different-sex couples in Lithuania said they did so to avoid having to give similar rights to same-sex couples in the future. Slovakia's government dropped a promised Action Plan on LGBTI Equality in January, seemingly abandoning their LGBTI population and leaving the responsibility to act to the next government. Calls on German decision-makers to push for progress on marriage equality or the EU's proposed anti-discrimination directive once again seemed to fall on deaf ears.

Finally, creating permanent change requires sustained effort. It is the efficacy and durability of the change that we must continue to monitor. We might have new laws – but how are they being implemented? In the days after a new piece of legislation is passed, it can be easy for politicians to bask in the glow of achievement. New policies have been published – but do they include all LGBTI people or are groups missing out on protection? There is growing awareness that it is as

important to think about who is left out of a particular policy initiative as it is to think about those who are included. If we truly want to advance LGBTI equality, then laws must include the needs of older LGBTI people, LBTI women, people of colour, LGBTI people of faith and members of our community from a mix of socio-economic backgrounds. Profound changes are only possible if these laws are useful in practice. The laws must work for everyone in our community, not just a subset. The change must be cemented in reality. Otherwise it runs the risk of being no use to LGBTI people once the media spotlight fades away or the 'novelty wears off'.

OCEANIA

	CRIMINALISATION																
Country	Legal	Age of consent		Illegal		Penalising text					Expression		Max Sentences (M)onths and (Y)ears				
	All genders	Equal	Unequal	Male	Female	Sexual act	Sodomy	Against nature	Buggery	Indecency/ other	Promotion law	Morality code	1 M - 2 Y	3 Y - 7 Y	8 Y - 14 Y	15-Y - Life	Death
Australia																	
Cook Islands (associates to New Zealand)																	
Fiji																	
Kiribati																	
Marshall Islands																	
Micronesia																	
New Zealand																	
Nauru																	
Palau																	
Papua New Guinea																	
Samoa																	
Solomon Islands																	
Tonga																	
Tuvalu																	
Vanuatu																	

OCEANIA

			PROTECTION									RECOGNITION					
Arrests in past three (3) years			NRHI - inclusive of sexual orientation?				Discrimination protection					Relationship recognition					Country
Yes	No	Unknown	Yes	No	Unclear	None	Employment	Constitution	Other	Hate Crime	Incitemenrt	Marriage	Civil recognition	Minimal CP	Joint adoption	2nd parent adoption	
																	Australia
																	Cook Islands (associates to New Zealand)
																	Fiji
																	Kiribati
																	Marshall Islands
																	Micronesia
																	New Zealand
																	Nauru
																	Palau
																	Papua New Guinea
																	Samoa
																	Solomon Islands
																	Tonga
																	Tuvalu
																	Vanuatu

ANNA BROWN[856] AND ISIKELI VULAVOU[857]

STATE SPONSORED HOMOPHOBIA IN OCEANIA: PROGRESS, EMERGING CHALLENGES AND FUTURE DIRECTIONS

INTRODUCTION

This year the ILGA Oceania conference was held in New Zealand, the land of the birds, and the Oceania region was said to have enormous potential to "take off" just like the country's namesake.[858] This potential for change is thanks to the energy and momentum achieved by an increasingly vibrant civil society.

While the present report is focused on discrimination on the basis of sexual orientation, it should be noted that the terms "homosexual" and "transgender" do not align neatly with concepts of gender and sexuality in the Pacific. For example, in Tonga the word *Leiti* is used as an inclusive term for both transgender women and gay and bisexual men. There are varied and diverse sexual and gender identities within the Pacific that are particular to local cultures with origins in tradition and mythology. An analysis of these identities and related social norms is outside the scope of this article. However, it should be understood that criminalisation of homosexuality in the Oceania region is largely a legacy of colonialism rather than a legal tradition drawn from indigenous cultural practices.

POSITIVE DEVELOPMENTS

Pacific

Over the past year there has been some positive law reform in the US territories and the necessary preconditions for achieving change across the Pacific are growing steadily.

While legal change over the past year has been modest, the last 12 months has seen and unprecedented level of mobilisation of LGBT civil society and increase in visibility and support for the LGBT movement for equality. The first ever Pacific human rights conference on sexual

856 Anna Brown is the Director of Advocacy & Strategic Litigation at the Human Rights Law Centre (Australia) where she manages the LGBTI Rights Unit. She is currently a board member of the Victorian Gay & Lesbian Rights Lobby, National LGBTI Heath Alliance (Australia) and is an outgoing board member of ILGA Oceania.

857 Isikeli Vulavou is founder and Executive Director of the Rainbow Pride Foundation, Fiji, Deputy Chair of the Pacific Sexual Diversity Network (PSDN), and Regional Advisory Group member of the Asia Pacific Coalition on Male Sexual Health (APCOM).

858 Speech by ILGA Executive Director, Renato Sabbadini, at the opening of the ILGA Oceania Regional Conference on 9 March 2016, http://ilga.org/ilga-oceania-rainbow-human-rights-and-health-conference-keynote-speech/

orientation and gender identity, held in Tonga in May 2014, represented a landmark gathering of 96 delegates representing 12 Pacific island nations, supported by the State and the Tongan royal family.[859]

The launch of the Pacific Free and Equal Campaign – a regional campaign against homophobia and transphobia – took place in August 2015, attended by official representatives of Samoa, Tonga and Fiji. At the launch, the President of Fiji, H.E. Ratu Epeli Nailatikau, appealed to other Pacific states to join the fight for LGBTI equality.[860]

Finally, the second-ever regional ILGA conference was held in Wellington, New Zealand in March 2016. This level of mobilisation amongst civil society and visibility for the LGBT movement is unprecedented and promises greater support and momentum for law reform and social change into the future.

Unfortunately, this increase in visibility has not come without backlash, given the widespread popularity of Christian religions in many countries. For example, the conference in Tonga was met with public protests,[861] and concern that the ratification of CEDAW would lead to abortion and same-sex marriage resulted in the King of Tonga announcing that the country would withdraw from the Convention.[862] In Vanuatu, the establishment of a LGBT community group was publicly criticised by religious leaders.[863] There is still much homophobia in the media, schools and across society more broadly.

Australia and New Zealand

In Australia and New Zealand, lesbian, gay, and bisexual people continue to enjoy many legal rights denied to their comrades across the vast majority of the Pacific. New Zealand is the first and only country in Oceania to legalise same-sex marriage, and is the 13th in the world. Recently, Australian Prime Minister Malcolm Turnbull has promised to hold a plebiscite on same-sex marriage, and over the past year a number of states have reformed laws to remove discrimination and strengthen protections for same-sex couples and their families.

DECRIMINALISATON

Much work remains to be done to achieve decriminalisation across the region: currently seven UN member States and one non-member island country (Cook islands) have such laws on their statute books. Of these, only two States' criminalising provisions apply to women: Solomon Islands and

859 See: www.eiseverywhere.com/file_uploads/cf45ccc65413d2484eecbcd7c199742a_KenMoala.pdf

860 United Nations Office of the High Commissioner, 'United Nations Launches Pacific Campaign against Homophobia and Transphobia' (Press Release, online) 6 August 2015, at: www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16298&LangID=E

861 Oceania TV 'Conference on gays and lesbian rights in Tonga sparks public uproar', 13 May 2015, at: www.oceaniatv.net/2015/05/13/conference-on-gays-and-lesbian-rights-in-tonga-sparks-public-uproar/

862 Bruce Hill, 'King of Tonga annuls CEDAW', *ABC Online*, 30 June 2015, at: www.abc.net.au/news/2015-06-30/king-of-tonga-annuls-cedaw/6584744

863 Radio New Zealand, 'Vanuatu churches will not accept LGBT community – Bishop', 16 May 2014, at: www.radionz.co.nz/international/programmes/datelinepacific/audio/2596089/vanuatu-churches-will-not-accept-lgbt-community-bishop

Kiribati. Unfortunately, at the time of writing there were no positive legal developments to report for this 12-month period and, indeed, some weakening of the position in some jurisdictions. In 2014, Palau joined Fiji (2010), Vanuatu and the New Zealand associates Nieu and Tokelau (all in 2007), the Marshall Islands (2005), Australia (1997) and New Zealand (1986) in legalising same-sex sexual conduct. However, there remain eight jurisdictions in Oceania that criminalise private, consensual sexual conduct between adults of the same sex: Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and the Cook Islands.

The Cook Islands

The small island nation of the Cook Islands (with a land mass of just 237 square kilometres, looks set to be the next jurisdiction to achieve decriminalisation. The local LGBTI Association in the Cook Islands, Te Tiare, began a campaign in 2015 that shed light on the issue and pushed for law reform. The Prime Minister has said the government is not considering the issue despite its promise to do so during its UPR in 2011. However, the Cook Islands will be hosting the Pacific Human Rights Conference for Sexual Orientation and Gender Identity in 2017, and hopefully this event might prove to be a useful lever for change.

Nauru

While Nauru pledged to take action to decriminalise same-sex conduct in 2011,[864] there have been no public reports of progress since that time. Worse still, during Nauru's 2nd UPR in December 2015, the state "noted" rather than "accepted" continued calls to decriminalise same-sex conduct. The Government acknowledged that it was an emerging matter globally and, taking into account the long-held social and religious feelings of the Nauruans, the Government believed that a national open consultation would be the best way to address the matter.[865]

Papua New Guinea

Signs of regression are also evident in Papua New Guinea. After no reports of prosecutions for five years, unfortunately in March 2014 in the Malalaua district of Papua New Guinea, a local resident was sentenced to two years of imprisonment for 'indecent acts between males'. The sentencing judge stated that despite the prevalence of homosexual acts in society, the order is warranted to 'deter [him] and others from indulging in this type of behaviour'.[866] This is a concerning development in a country that has explicitly rejected recommendations made through its first UPR to decriminalise its laws targeting same-sex relations between men. It remains to be seen whether there will be any change to PNG's position on decriminalisation in its upcoming UPR process started in April 2016.

864 Report of the Working Group on the Universal Periodic Review: Nauru, A/HRC/17/3, 8 March 2011, at para. 9, see: http://www.upr-info.org/sites/default/files/document/nauru/session_10_-_january_2011/ahrc173naurue.pdf

865 Ibid, at para. 66.

866 *Speaking Out 2015: The Rights of LGBTI People across the Commonwealth*, Kaleidoscope Trust in association with Kaleidoscope Australia Human Rights Foundation (London, 2015), at 55: http://kaleidoscopetrust.com/usr/library/documents/main/2015_speakingout_241115_web.pdf

Samoa

While historically Samoa has rejected recommendations from the international community to decriminalise same-sex sexual activity the country has witnessed some positive legal reforms in recent years. In 2013, the Samoan Government updated its criminal law in the *Crimes Act 2013*, including sexual offences, defining "sexual connections" under s.49(3) to include oral and anal sex, and by inference allowing sexual contact between males if it is "consented to, and voluntarily." However s.67 of the new act continues to criminalise sodomy. Importantly, the 2013 changes included the decriminalisation of female impersonation, affirming the Samoan Fa'afafine community. Fa'afafine is a third gender subculture (commonly found in Polynesian cultures), traditionally disposing Samoan culture to be tolerant of transgender people and, by extension, same-sex attracted people within that context.

In last year's SSH Report, we reported that the leading LGBTI organisation in Samoa has been appointed a member of the country's newly formed advisory board to the National Human Rights Institute. However, disappointingly, the State report for Samoa's 2016 UPR makes no mention or reference to sexual orientation or gender identity issues, including the country's *Fa'afafine* population.[867]

Solomon Islands

The Solomon Islands faces an uphill battle to achieve decriminalisation after a Law Reform Commission report recommending decriminalisation in 2008 was fiercely opposed. It should be noted that there are no reports of the penal law being applied in the case of same-sex sexual relation in this State, despite ardent resistance to suggestions for reform.[868]

Tonga

While there have been no positive moves towards decriminalisation in Tonga signaled through engagement with UN human rights mechanisms, it was significant that Tonga hosted the inaugural Pacific Sexual Diversity Network (PSDN) Human Rights Conference on Sexual Orientation and Gender Identity and Expression in June 2015. The support for the event from the State and the Tongan royal family bodes well for building increased support for social change and reform.[869]

Tuvalu

Tuvalu has refused to accept recommendations to repeal these laws through two cycles of its Universal Periodic Review, although the state has at least signaled that it was open to discussion.[870]

867 Office of the Ombudsman & Samoa National Human Rights Institute, "For Samoa, by Samoa: State of Human Rights report" (2015), at: http://www.ombudsman.gov.ws/images/20150806_stateofhumanrightsreport_english.compressed.pdf

868 *Speaking Out 2015: The Rights of LGBTI People across the Commonwealth*, Kaleidoscope Trust in association with Kaleidoscope Australia Human Rights Foundation (London, 2015), at 58: http://kaleidoscopetrust.com/usr/library/documents/main/2015_speakingout_241115_web.pdf

869 *Speaking Out 2015: The Rights of LGBTI People across the Commonwealth*, Kaleidoscope Trust in association with Kaleidoscope Australia Human Rights Foundation (London, 2015), at 58: http://kaleidoscopetrust.com/usr/library/documents/main/2015_speakingout_241115_web.pdf

870 Report of the Working Group on the Universal Periodic Review: Tuvalu, A/HRC/24/8, 15 July 2013, at para. 17, see: http://www.upr-info.org/sites/default/files/document/tuvalu/session_16_-_april_2013/ahrc248e.pdf

TREATMENT OF ASYLUM SEEKERS

A significant human rights challenge facing the region is Australia's harsh and punitive treatment of LGBT people fleeing persecution. Any asylum seeker arriving in Australia or Australian territory by boat continues to be sent to the Republic of Nauru, or Manus Island,(part of Papua New Guinea), even if the basis of their asylum claim is due to fear of persecution based on sexual orientation or gender identity. Currently, two Iranian refugees who sought asylum in Australia have been resettled in Nauru and have been subjected to physical attacks and harassment by the local community, as they have been identified as being in a same-sex relationship. The couple are virtual prisoners in their room and do not leave for fear of violence and further attack.[871]

The plight of gay asylum seekers sent from Australia to PNG's Manus Island has been highlighted by the Human Rights Law Centre and Human Rights Watch, which report that gay asylum seekers are subjected to abuse - including sexual abuse - in the detention facility on the island.[872] It is understood that a number of gay asylum seekers sent to Papua New Guinea are considering changing their refugee claims, from claims based on their sexual orientation to false claims based on some other Convention grounds such as religion or political opinion. There are also reportedly a number of asylum seekers who have chosen to return home despite the risks they face in their country of origin. Ultimately, there is concern that asylum claims based on sexual orientation may not even be recognised by some decision-makers in Papua New Guinea.

Australia

Discriminatory treatment of homosexual acts under the criminal law remains a problem across a small number of states in Australia. Queensland law provides for a differential age of consent in relation to anal intercourse, which indirectly discriminates against men who have sex with men. In 2014, New South Wales legislated to remove the so-called 'gay panic' defence but this partial defence to murder remains available in Queensland and South Australia, although both governments are currently reviewing the issue. The partial defence allows a suspect to be found guilty of manslaughter rather than murder if they can prove they were provoked into killing as a result of a sexual advance from a member of the same sex.

RELATIONSHIP RECOGNITION

Pacific

Marriage equality is highly controversial in many Pacific nations and opposed by political leaders. In Fiji, the Prime Minister and Attorney General have publicly stated their opposition to same-sex marriage several times, and the Prime Minister has recently said that gay people should

871 Nicole Hasham, 'Gay refugees on Nauru 'prisoners' in their home Nauru as Australia prepares to celebrate Mardi Gras', *The Age*, 5 March 2016: http://www.smh.com.au/federal-politics/political-news/gay-refugees-on-nauru-prisoners-in-their-home-as-australia-prepares-to-celebrate-mardi-gras-20160304-gnam2h.html

872 HRLC & HRW, *Australia & Papua New Guinea: A Pacific Non-Solution,* July 2015: https://www.hrw.org/news/2015/07/15/australia/papua-new-guinea-pacific-non-solution

move to Iceland if they want to get married.[873] The US Supreme Court's landmark decision in June 2015, which held that the US Constitution guarantees the right to marry for same-sex couples, prompted political leaders in American Samoa to publicly speak out against same-sex marriage.[874] However, not all US territories have followed America Samoa's lead. The US territory of Guam passed a bill in August 2015 that recognises marriage equality and protects against employment discrimination on the basis of sexual orientation, gender identity and gender expression. The Northern Mariana Islands also recognise marriage equality following the US Supreme Court's decision. The first same-sex marriage in the Northern Mariana Islands was performed in the capital, Saipan, on 2 July 2015.[875]

Australia

In Australia, the recognition of *de facto* same-sex relationships under federal law and the availability of formal relationship recognition schemes in states and territories means that achieving marriage equality will be largely a symbolic victory. Nevertheless, the issue continues to occupy much of the public debate on the rights of LGBTI people in the country. The Coalition Government has committed to holding a national plebiscite on the issue, if re-elected. The Labor Opposition has committed to introducing marriage equality legislation.[876] With public support of marriage equality sitting at around 70%, it is likely that Australia will achieve marriage equality within the next year whether by way of a plebiscite or parliamentary vote.

In the past year state level relationship recognition schemes have also been strengthened such as Queensland reinstating 'civil partnerships' legislation, including the right to hold ceremonies and Victoria amending its relationships scheme to ease residency requirements and to automatically recognise overseas marriages and civil unions of same-sex couples under Victorian law.

Victoria passed legislation in 2015 to remove discrimination against same-sex couples from adoption laws and there is positive movement towards similar reform in Queensland and South Australia, the last remaining states yet to achieve adoption equality. South Australia is also investigating the removal of discriminatory provisions in assisted reproductive laws. Laws relating to surrogacy vary greatly across Australian jurisdictions but in some states where surrogacy is permitted access is restricted to heterosexual couples. The federal parliament is currently conducting an inquiry into regulation of both domestic and international surrogacy practices.

873 Darren Wee, 'Fiji PM – gays should go to Iceland and stay there', Gay Star News, 6 January 2016, at: http://www.gaystarnews.com/article/fiji-pm-gays-should-go-to-iceland-and-stay-there/

874 Jack Flanagan,'American Samoa don't want the marriage equality decision to apply to them', *Gay Star News*, 15 July 2015, at: http://www.gaystarnews.com/article/american-samoa-dont-want-the-marriage-equality-decision-to-apply-to-them/#gs.xYc17i4

875 Raymond Roca, *Micronesia: A diverse region with diverse LGBTI laws*, 14 December 2014, at: http://www.starobserver.com.au/news/international-news-news/micronesia-a-diverse-region-with-diverse-lgbti-laws/143887

876 Mark Kenny, 'Same-sex marriage Labor stance may be a curveball for reform', *The Age*¸ 27 July 2015, at: www.smh.com.au/federal-politics/political-news/samesex-marriage-labor-stance-may-be-a-curveball-for-reform-20150727-gilnvp.html

An incident in South Australia in late-2015 sparked international outcry, when the husband of a gay man from the United Kingdom tragically died while the two men were on their honeymoon ad the deceased was described as 'never married' on his death certificate. The incident has prompted the South Australian premier to announce that the law would be amended to remedy to allow for such recognition in the future.

ANTI-DISCRIMINATION

While there is a general dearth of discrimination protections in the majority of the Pacific, there have been a small number of positive developments. in the past 12 months. Namely, the US territory of Guam passed a bill in August 2015 that protects against employment discrimination on the basis of sexual orientation, gender identity and gender expression. This means Guam has joined Samoa and Fiji in prohibiting discrimination in employment. Increasingly, the efforts of civil society have focused on advocating for anti-discrimination laws as a means of providing practical protections from unfair treatment experienced in the daily lives of LGBTI people and promoting greater respect for sexual and gender diversity.

As part of Australia's recent Universal Periodic Review, the Government announced that it would be ending a blanket discrimination for state and territory laws currently in place under federal LGBTI discrimination laws. From 1 August 2016, a number of state and territory laws (such as those currently enshrining discrimination against same-sex couples in adoption services) will be vulnerable to legal challenge if they remain unamended, providing a significant lever for reform across the country.

CONCLUSION

While New Zealand and Australia are well advanced towards achieving equality for lesbian, gay and bisexual people and their families, there remains significant ground to be made up in the Pacific. We've witnessed unprecedented mobilisation of LGBTI civil society in the Pacific over the past year and an encouraging increase in visibility of the movement and public support from officials, which will hopefully translate to greater accountability and progress in the years ahead.

READING ILGA WORLD MAPS

THERE ARE FOUR MAPS ON THE FOLLOWING PAGES, AND THIS OVERVIEW IS DESIGNED TO FACILITATE INITIAL READING OF THEM, BY BRIEFLY GOING THROUGH THEIR 'LANGUAGE' ONE BY ONE

These maps are best viewed in PDF format.

The first of these is an **Overview** map that looks (from a red to green spectrum) at laws that criminalise same-sex sexual relations, laws that include the protection of sexual minorities, and laws that recognize our relationships and families.

1. As explained on the map's legend in more detail, in the criminalising countries different punishments are indicated in shades of red: for example, death is deep red, and 'propaganda laws are orange.
2. Countries that have decriminalised, or where same sex relations were never penalised, are coloured yellow.
3. There are small blue shields across this map that indicate there is some form of protection in law, for example, from hate crime or non-discrimination in employment.
4. The countries in shades of green represent those where marriage or civil unions of some form are recognised. On a number of these, small icons represent the presence of joint adoption or second parent adoption that do not discriminate against same sex couples.

Reading this Overview map, and looking at the Seychelles – the coding reads that it is a criminalisng country, with a penalty of under 14 years, but it also has some non-discrimination provisions that are inclusive of sexual orientation.

The second map in this series focuses on **Criminalisation**.
Having indicated the categories in the first map, this delves deeper into the nature of the criminalisation:

1. The base colour of a country indicates the nature of the actual crime – sodomy, acts against nature, buggery, etc. This is explained in the legend in more depth.
2. The second element - maximum sentences - is indicated by a capital letter A through E – ranging from death (A) to 1 month in jail or a fine (E).
3. There are male/female icons for men and for women to indicate which of the binary genders (or those perceived to be in one category or the other by law) is included within the scope of that law.
4. The final element – represented by handcuffs – indicates whether there have been arrests in the past three years (as found in our research).

Reading this Criminalisation map, and looking at Tanzania, one sees the charge is 'against nature', with a sentence of between 15 years and life, where the law only applies to men, and where there have been arrests in the past there years.

The third map (blue) concerns **Protection**.
The Overview map indicated protection with a shield – this map explains the nature of those protections in detail.

1. Where a country is coloured blue, it has employment law that protects against discrimination on grounds of sexual orientation.
2. A pink dot signifies Constitutional protection, and an orange dot means there are other protections (health, education, housing, etc) that include sexual orientation in their texts.
3. The letter **A** indicates hate crime legislation inclusive of sexual orientation.
4. **B** means laws that protect from incitement to hatred (hate speech).
5. **C** indicates that there is a national human rights institution active. These are often important sites for the early development of what will become laws and policies in States.

Reading this Protection map, and looking at Germany, one sees that it has protective employment law (blue), some other non-discrimination law (orange dot), but no hate crime or incitement to hatred laws (absence of A and B), while it does have a human rights institution inclusive of sexual orientation (C). Luxembourg on the other hand has the same, but has both hate laws (A and B).

The final map is on **Recognition**.
Much as the Overview map, this specifies

1. The status of relationship recognition: marriage, strong or weak civil partnership.
2. Where joint adoption and second parent adoption exist in Europe (the most dense area).

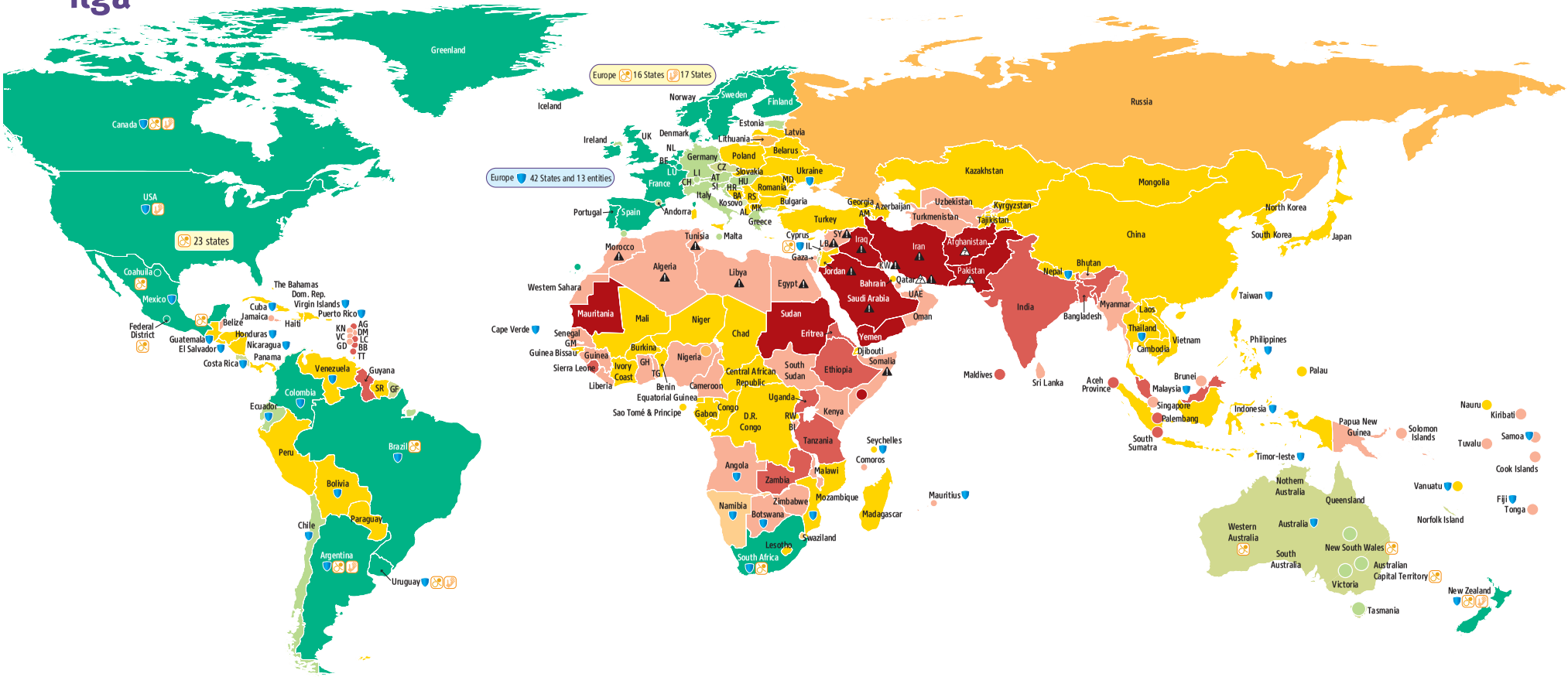
Reading this Recognition map, and looking at Iceland, one sees there is marriage equality in that State, and both joint adoption and second parent adoption are available to same sex couples.

The data represented in these maps are based on *State-Sponsored Homophobia: a World Survey of Sexual Orientation Laws: Criminalisation, Protection and Recognition*, an ILGA report by Aengus Carroll. The report and these maps are available in the six official UN languages: English, Chinese, Arabic, French, Russian and Spanish on www.ilga.org. This edition of the world map (May 2016) was coordinated by Aengus Carroll and Renato Sabbadini (ILGA), and designed by Eduardo Enoki (eduardo.enoki@gmail.com).

SEXUAL ORIENTATION LAWS IN THE WORLD - OVERVIEW

ILGA, THE INTERNATIONAL LESBIAN, GAY, BISEXUAL, TRANS AND INTERSEX ASSOCIATION

JUNE 2016
WWW.ILGA.ORG



CRIMINALISATION

IMPRISONMENT
73 countries and 5 entities

DEATH PENALTY
13 States [or parts of]

Death penalty not known to be implemented

Morality laws (religion-based) that limit LGB freedom of expression and association

- Death penalty
- Imprisonment 14 Y - Life
- Imprisonment up to 14 years
- Promotion ('propaganda') laws limiting freedom of expression
- No penalty specified

PROTECTION

ANTI-DISCRIMINATION LAWS
76 countries and 85 entities

Includes employment, Constitution, other non-discrimination protections, hate crime and hate speech.

NO SPECIFIC LEGISLATION

Laws penalising same-sex sexual acts decriminalised, or never existed

RECOGNITION

RECOGNITION OF SAME-SEX UNIONS
47 countries and 65 entities

JOINT ADOPTION
27 countries and 28 entities

SECOND PARENT ADOPTION
17 countries and parts of Italy

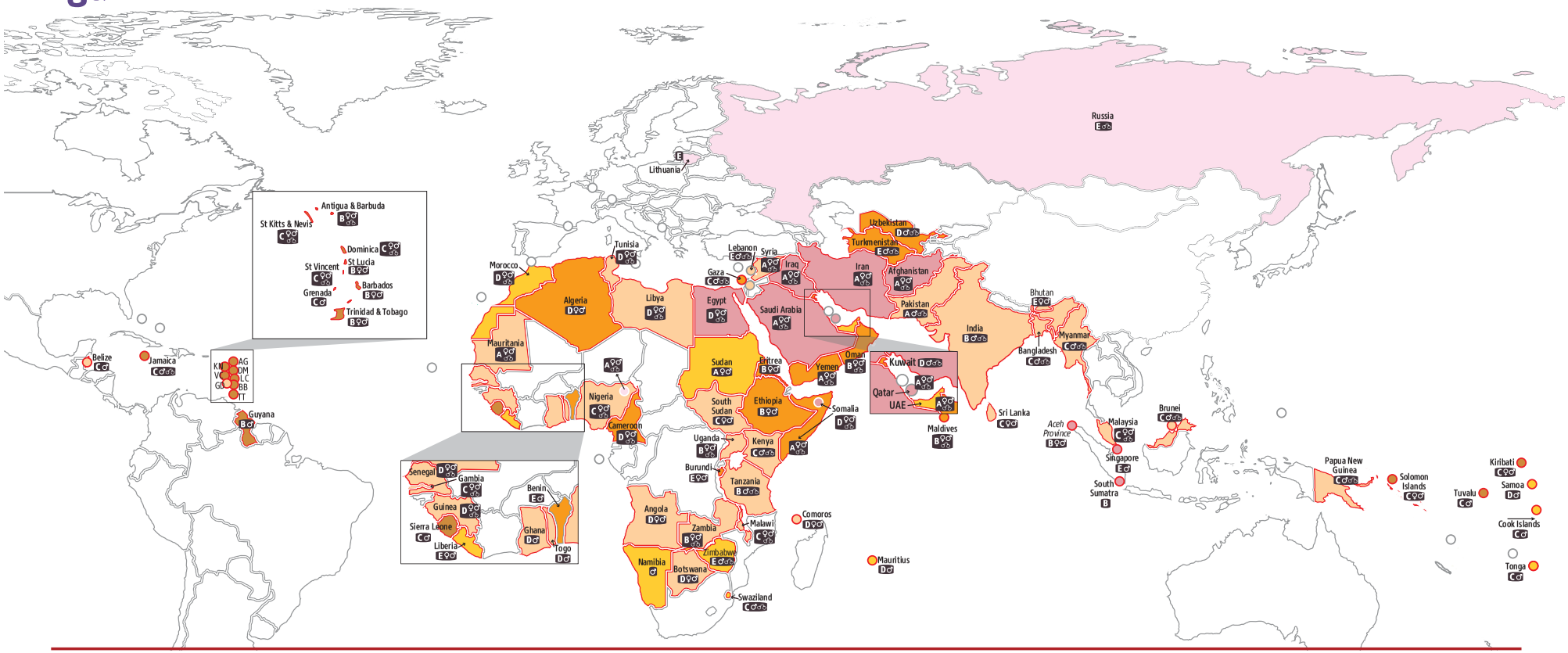
- Marriage
- Equal (almost equal) substitute to marriage
- Clearly inferior substitute to marriage

The data represented in this map, and the three accompanying separate maps on Criminalisation, Protection and Recognition, are based on *State-Sponsored Homophobia: a World Survey of Sexual Orientation Laws: Criminalisation, Protection and Recognition*, an ILGA report by Aengus Carroll. The report and these maps are available in the six official UN languages: English, Chinese, Arabic, French, Russian and Spanish on www.ilga.org. This edition of the world map (June 2016) was coordinated by Aengus Carroll and Renato Sabbadini (ILGA), and designed by Eduardo Enoki (eduardo.enoki@gmail.com).

SEXUAL ORIENTATION LAWS IN THE WORLD - CRIMINALISATION

ILGA, THE INTERNATIONAL LESBIAN, GAY, BISEXUAL, TRANS AND INTERSEX ASSOCIATION

JUNE 2016
WWW.ILGA.ORG



ACTUAL OFFENCE THAT GENERATES MAXIMUM SENTENCES

Promotion ("propaganda") laws 2 States	Against nature 30 States
Sexual act 11 States	Buggery 13 States
Sodomy 11 States	Morality law: LGB expression 7 States (and some provinces)

CATEGORIES OF MAXIMUM SENTENCES

- **A** Death (13 States [or parts of])
- **B** 15 years to Life (14 States)
- **C** 8 to 14 years (23 States)
- **D** 3 to 7 years (19 States)
- **E** 1 month – 2 years (or a fine) (8 States)

♀ Relationship between females is illegal (45 States)

♂ Relationship between males is illegal (73 States)

There were arrests, prosecutions etc. in the last 3 years (49 States)

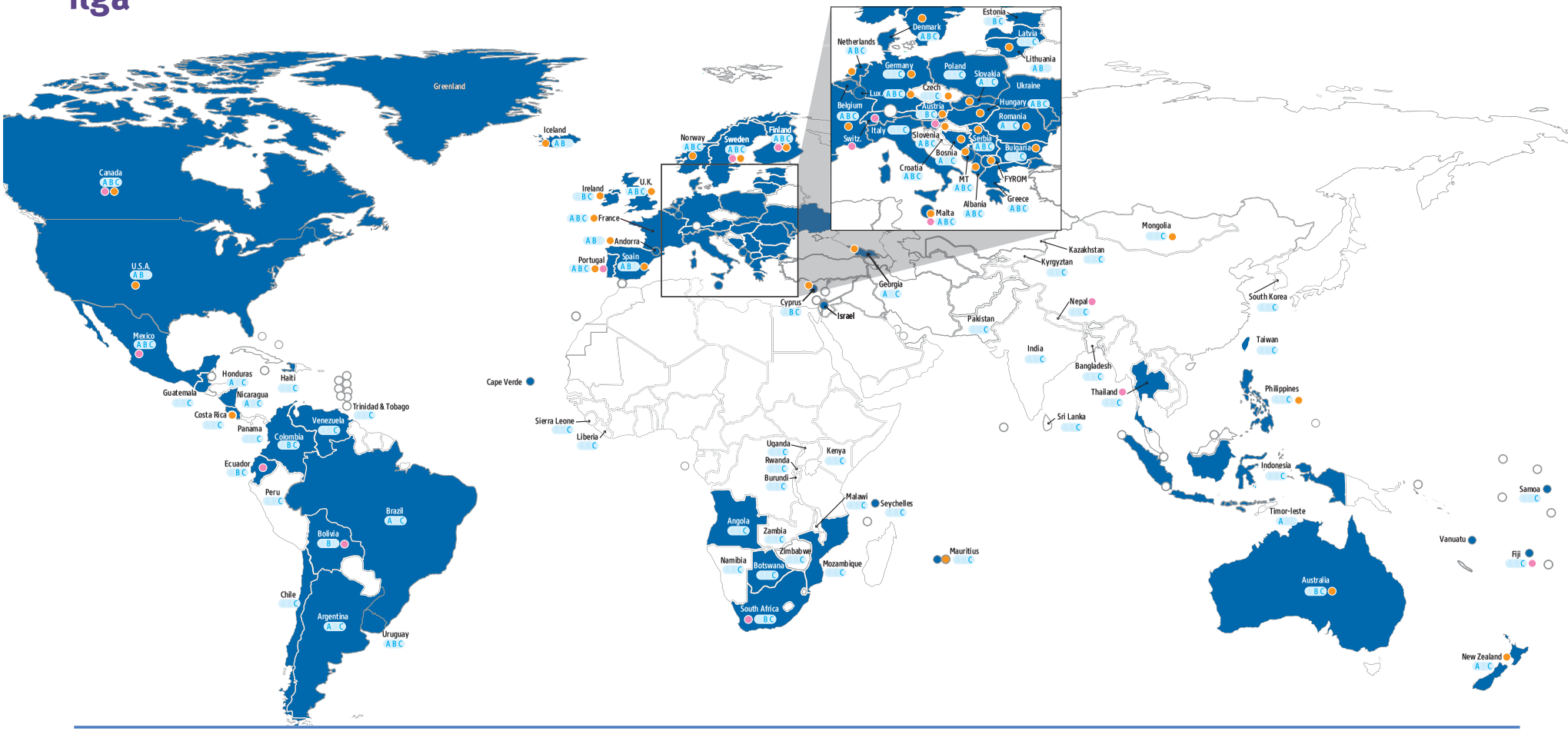
Note: the country entries on these criminalizing States in *State Sponsored Homophobia* outline the full range of penal provisions and sanctions under which same-sex sexual relations are targeted. In this map we chart only the category in which **maximum sentences** fall.

The data represented in this map are based on ***State-Sponsored Homophobia: a World Survey of Sexual Orientation Laws: Criminalisation, Protection and Recognition***, an ILGA report by Aengus Carroll. The report and these maps are available in the six official UN languages: English, Chinese, Arabic, French, Russian and Spanish on www.ilga.org. This edition of the world map (June 2016) was coordinated by Aengus Carroll and Renato Sabbadini (ILGA), and designed by Eduardo Enoki (eduardo.enoki@gmail.com).

SEXUAL ORIENTATION LAWS IN THE WORLD - PROTECTION

ILGA, THE INTERNATIONAL LESBIAN, GAY, BISEXUAL, TRANS AND INTERSEX ASSOCIATION

JUNE 2016
WWW.ILGA.ORG



PROTECTION

Non-discrimination in employment
71 States

- **A** B C — Hate crimes based on sexual orientation considered an aggravating circumstance (40 States)
- A **B** C — Incitement to hatred based on sexual orientation prohibited (36 States)
- A B **C** — Presence of a National Human Rights Institution [NHRI] that **includes sexual orientation** in its human rights work (88 States)

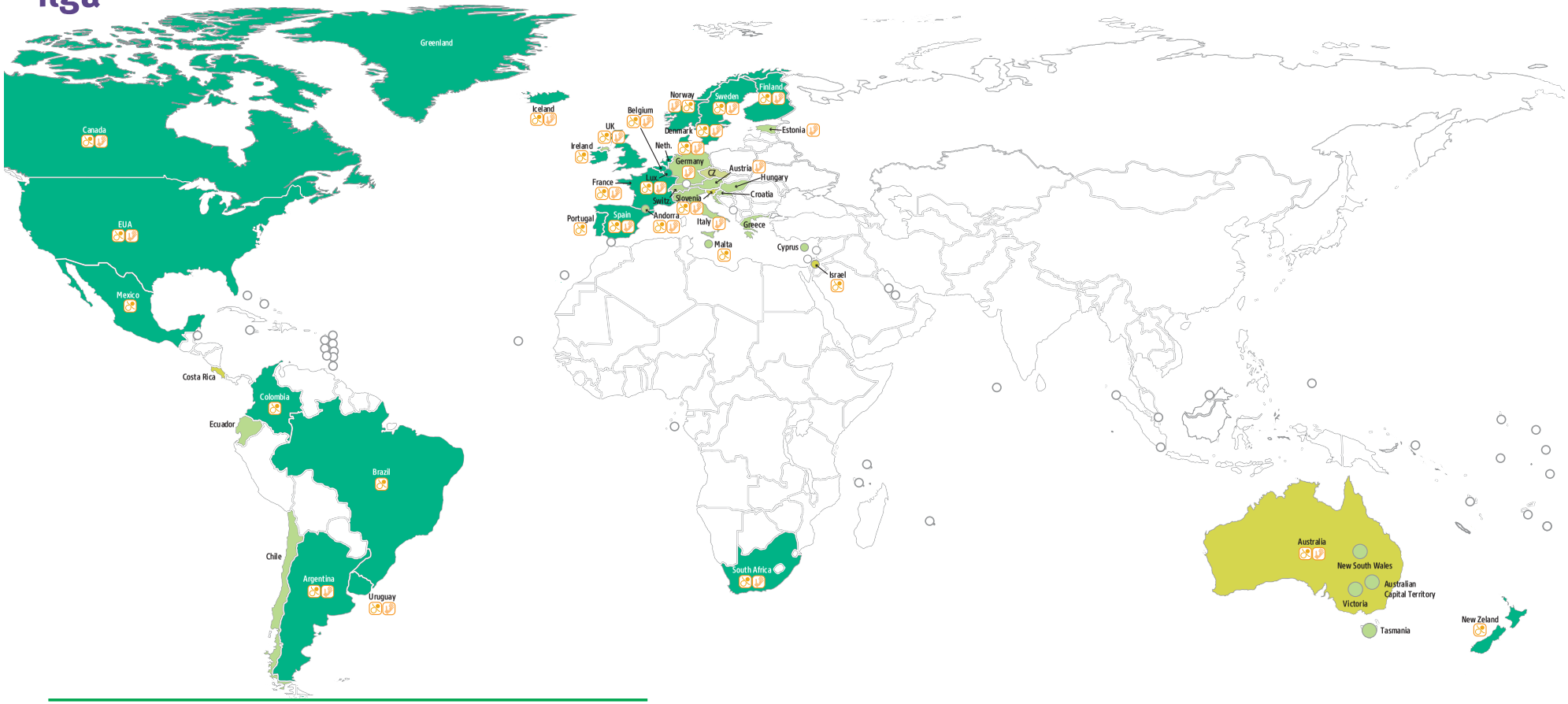
- Constitutional prohibition of discrimination based on sexual orientation (14 States)
- Other non-discrimination provisions specifying sexual orientation (39 States)

The data represented in this map are based on *State-Sponsored Homophobia: a World Survey of Sexual Orientation Laws: Criminalisation, Protection and Recognition*, an ILGA report by Aengus Carroll. The report and these maps are available in the six official UN languages: English, Chinese, Arabic, French, Russian and Spanish on www.ilga.org. This edition of the world map (June 2016) was coordinated by Aengus Carroll and Renato Sabbadini (ILGA), and designed by Eduardo Enoki (eduardo.enoki@gmail.com).

SEXUAL ORIENTATION LAWS IN THE WORLD - RECOGNITION

ILGA, THE INTERNATIONAL LESBIAN, GAY, BISEXUAL, TRANS AND INTERSEX ASSOCIATION

JUNE 2016
WWW.ILGA.ORG



RECOGNITION

Marriage 22 States
Equal (almost equal) substitute to marriage 19 States
Clearly inferior substitute to marriage 6 States

Joint Adoption [26 States]

Second parent adoption [33 States]

The data represented in this map are based on *State-Sponsored Homophobia: a World Survey of Sexual Orientation Laws: Criminalisation, Protection and Recognition*, an ILGA report by Aengus Carroll. The report and these maps are available in the six official UN languages: English, Chinese, Arabic, French, Russian and Spanish on www.ilga.org. This edition of the world map (June 2016) was coordinated by Aengus Carroll and Renato Sabbadini (ILGA), and designed by Eduardo Enoki (eduardo.enoki@gmail.com).