

MAY 2014
9TH EDITION



ilga

STATE-SPONSORED HOMOPHOBIA

**A world survey of laws: Criminalisation,
protection and recognition of same-sex love**

Lucas Paoli Itaborahy & Jingshu Zhu

ILGA - International Lesbian Gay Bisexual Trans and
Intersex Association

www.ilga.org

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FOREWORD BY CO-SECRETARIES

GENERAL

This 2014 issue of our annual report on State-Sponsored Homophobia is released slightly later than usual (i.e. on 30 May instead of the traditional IDAHOT day of 17 May), because, for the first time, the official launch is taking place at the Palais des Nations in Geneva. The UN High Commissioner for Human Rights H.E. Navanethem Pillay is launching the report, and at the same event we are proudly awarding her with the honour of 'LGBTI Friend of the Year 2014' for her game-changing engagement on LGBTI rights in the years of her mandate.

As was the case last year, the report is released in all six UN official languages, in an effort both to increase the readership and to make it easier to quote or cite in (inter)governmental agencies' and NGOs' reports. The authors, Lucas Paoli Itaborahy & Jingshu Zhu have provided an extensive and up-to-date body of sources and commentary to support the content in this report. Apart from the world overview of legislation affecting the rights of LGB people and the individual regional sections devoted to the criminalising legislation of Africa, Asia, Latin America & the Caribbean and Oceania, the content of this 2014 report contains a series of articles by Anthony Oluoch (Africa), Douglas Sanders (Asia) and Björn van Roozendaal (Europe), each highlighting the developments in those regions. There is also an article by Aengus Carroll on the Universal Periodic Review (UPR) process at the UN Human Rights Council, and UPR information has been included in the content of various country comments. A small section on countries adopting or considering 'anti-propaganda' legislation has been created to take into account this recent – and worrying – attempt to re-criminalise (or further criminalise) same-sex sexual activities between consenting adults under a different name, and to limit the freedom of expression and assembly of LGBTI activists.

In recent years we have remarked how this report inevitably consists of a mixture of good and bad news, though we cannot but state that 2013 was a very painful year for the human rights of LGBTI people, not only for the sad ruling of the Supreme Court in India, rejecting the ground-breaking and hopeful interpretation of section 377 by the Delhi High Court, but especially because of the developments in Uganda, Nigeria and in Russia, with their risks of 'contagion' on their respective bordering countries. One cannot but have the impression that the forces of conservatism, faced with the gradual expansion of advancements in LGBTI legislation around the world, are escalating their efforts against what they consider to be a clash of civilizations and/or "values",

regardless of the cost – the human rights violations - that so many LGBTI people are forced to bear in their everyday lives.

In recent inter-governmental discussions it has become clear to all that there is a new geopolitical map in which politics and economics are playing a complex game among governments and alliances. For instance, Latin America, with the leadership of Argentina and Uruguay, seems to be the progressive region that stands in contrast to a very conservative neighbour in the Caribbean (with the exception of Cuba), known to be allied with conservative forces from other regions. Likewise, the African Coalition (with the exception of South Africa) opposes any SOGI (sexual orientation/gender identity) mention, as do the Arabic countries (led by Egypt), with Russia and the Vatican not far behind. Accusations of “agenda intervention” and “western vision imposition” usually follow, as if to indicate that certain States would rather publicise their diplomatic distaste for atypical bodies, genders and sexualities instead of endorsing the protection of human rights and wellbeing of everyone.

We can only renew our efforts to build a better world for everyone and hope, as always, that this report and its related map can be most useful for activists, governmental agencies, academics and the media. As always, we are grateful to the authors, Lucas Paoli Itaborahy and Jingshu Zhu, and all those worked on it, particularly Aengus Carroll, Alessia Valenza, André du Plessis and Renato Sabbadini. and – last but not least – all our member organisations who provided the updates on the legislation of their countries.

Gloria Careaga & Azusa Yamashita
Co-Secretaries General, ILGA

Geneva, 30 May 2014

FOREWORD BY THE AUTHORS

LUCAS PAOLI ITABORAHY¹ & JINGSHU ZHU²

“It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair, we had everything before us, we had nothing before us, we were all going direct to heaven, we were all going direct the other way.”

Charles Dickens’ insight lingers on till today, when we are looking, with mixed feelings, at the world’s laws on LGBTI issues. Since the last edition of this report, we have been overwhelmed by loads of good news in some parts of the world. However, there are still more than one-third countries criminalising same-sex conducts between consenting adults in private. In many places, LGBTI people are still living under intensive situations of homophobia which is directly or implicitly sponsored by unfavourable state law.

Knowing the law is a very important part of any effective human rights work to counteract homophobia. Access to this knowledge is a particular challenge when it comes to LGBTI issues. This can be due to rapidly changing legal provisions, contradicting sources, and the inaccessibility of certain legal provisions in the public domain. The aim of this report is therefore to consolidate the latest research on a range of lesbian and gay legal issues all around the world, providing activists, lawyers, judges, academics, public officials, or anyone else interested in the subject with the most updated information.

This report has become an important tool for the defence of LGBTI human rights throughout the years and it has been increasingly used and cited by a variety of media sources, NGOs, institutions, and most recently by UN agencies.

¹ Lucas Paoli Itaborahy is a Brazilian LGBTI activist and international human rights specialist who holds a bachelor’s degree in International Relations and a master’s degree in Human Rights Practice from the University of Gothenburg (Sweden), Roehampton University (UK) and University of Tromsø (Norway). Lucas has also participated in a summer school on Sexual Orientation Law at the University of Barcelona and has acquired a diverse professional experience with LGBT issues, both in Brazil and abroad. He has already worked for governmental agencies like the Ministry for Human Rights in Brazil in 2009-2010 and the Permanent Mission of Brazil to the UN Office in Geneva in 2012. He has produced many academic and legal research outputs, including ILGA’s State-Sponsored Homophobia over the last four years. Moreover, he has consulted with other civil society organisations, including ARC International (Geneva). He is currently based in the city of Rio de Janeiro working for Micro Rainbow International as an International Reseracher and Business Development Coordinator.

² Jingshu Zhu is a Chinese lawyer, who obtained her Advanced LL.M Degree in Public International Law at Leiden University in the Netherlands. She has followed a course on Comparative Sexual Orientation Law given by Professor Kees Waaldijk during her Master’s, and has participated in a summer school on Sexual Orientation Law co-organised by the Williams Institute of UCLA and University of Barcelona. She has been assisting Professor Waaldijk with comparative and international legal research in sexual orientation law since April 2012. Currently she is preparing for her PhD thesis in law and anthropology on the family law encounters of Chinese lesbians and gay men in three types of relationships.

This has only motivated us to keep improving its quality so it can produce useful resources and bring symbolic – and hopefully material - benefits to people's lives. After all, legal changes, particularly concerning LGBTI issues, generate further social and pedagogical effects, educating the society on the protection and promotion of the rights of such minorities.

The first part of the report presents a global overview of developments of LGB legislation in a variety of legal matters: criminalisation and decriminalisation of consensual homosexual acts between adults; the emergence of so-called “homosexual propaganda” laws; equalisation of ages of consent for homosexual and heterosexual acts; prohibitions of discrimination based on sexual orientation in employment and constitutional bans as such; hate crimes based on sexual orientation considered as aggravating circumstance; incitement to hatred based on sexual orientation; prohibition of incitement to hatred based on sexual orientation; marriage and partnership rights for same-sex couples; and joint adoption by same-sex couples. Laws on gender identity issues are no longer included here since ILGA is producing a separate report exclusively on transgender rights. When we speak of “countries” in this report regarding the above list of issues, the numeric totals presented are derived from those that are full UN members only. Non-UN members, and various Entities are not included in the calculations, and neither are circumstances that pertain only to a part of a country – a province or a region - although these are recorded in this text.

The second part is comprised of a summary of countries that still maintain legal provisions criminalising same-sex sexual acts between consenting adults and who engage in sexual activity in private. Laws related to such acts done in public, with minors, by force or otherwise outlawed are not included.

The compilation of this year's report followed the same methodological procedures introduced in the 2011 version. A call to ILGA members in more than 110 countries was made to collect the most accurate data, which were combined with news articles and material we have been collecting for the past year regarding LGB legal developments. For each new development, we first searched for the original text of the law in penal codes or other relevant legislation. If that was not available or not very clear, we then looked for other sources, such as official reports from governmental or non-governmental agencies, the UN or other international organisations. If these were not found, other types of sources, like scholarly writings, were used.

Afterwards, we interpreted the texts of the laws and provided some quasi-legal/quasi-social analysis throughout the numerous footnotes in order to help the reader understand better the content, and whenever appropriate, the context of such laws. This year, we had a new addition to our team and our drafts were

reviewed and supplemented by Aengus Carroll³ and discussed with ILGA's Executive Director Renato Sabbadini and the Communication and Membership Officer Alessia Valenza.⁴

1. As of May 2014, there are 113 countries (UN Members) where homosexual acts between adults in private are legal. Besides, **Turkish Republic of Northern Cyprus** has decriminalised homosexuality in 2014 and **São Tome & Príncipe** in 2012.
2. There are 78 countries where homosexual acts are illegal. The legal situation in **India** has been changed from “unclear” to “illegal”, because of the new ruling of the Supreme Court in 2013. In **Uganda** and **Nigeria** the situation got worse with the passing of new anti-gay laws.
3. There are 5 countries that we know of (**Iran, Mauritania, Sudan, Saudi Arabia** and **Yemen**), and some parts of **Nigeria** and **Somalia**, that punish homosexual acts with the death penalty. There are a further 4 countries where it is not entirely clear if the Sharia code stipulating the death penalty is being implemented – **Brunei Darussalam, Iraq, Pakistan** and **Qatar**.
4. In 2013 and early 2014, 9 countries, including **Belarus, Kyrgyzstan** and **Tanzania**, have either passed laws, or parliaments are considering Bills, regarding so-called “homosexual propaganda” laws. However, it is notable that in 2013, parliaments in **Moldova, Hungary** and **Armenia** variously rejected such Bills.
5. Discrimination in employment based on sexual orientation is now prohibited in 61 countries, among which **Cuba** and **Puerto Rico** (an incorporated territory of the United States) passed laws in that respect in 2013 and **El Salvador** in 2010.
6. Hate crimes based on sexual orientation are considered an aggravating circumstance in 27 countries. **East Timor** has amended its Penal Code in this regard in 2009, and the Regional Court of Appeal of Debrecen in **Hungary** found homophobic murder an aggravating circumstance in 2014.

³ Aengus Carroll is a professional editor and writer based in Ireland who holds a LL.M in international human rights law and public policy. He's currently looking at sexual orientation and gender identity in the UN's UPR mechanism with an eye to PhD study. Since 2007, he has written a number of LGBT titles (for ILGA-Europe and other institutions) concerned with human rights advocacy, mostly in Eastern Europe and Eurasia. He volunteers with Outhouse, Dublin's LGBTI centre.

⁴ Kees Waaldijk from Leiden Law School (The Netherlands) has also contributed immensely to this report, providing legal advice as well as a draft version of Legal recognition of homosexual orientation in the countries of Africa from March 2011, as well as his 2009 paper “Legal recognition of homosexual orientation in the countries of the world”, which is available at: <http://hdl.handle.net/1887/14543>.

7. Incitement of hatred based on sexual orientation is prohibited in 28 countries. **Finland** has introduced a such law in 2011, and **Slovenia** in 2008.
8. Marriage is open for same-sex couples in 14 countries, including some parts of **United Kingdom** (2013/14), and in **Martinique** (2014) and **Guadeloupe** (2014), both overseas departments of France in the Caribbean.
9. **Malta** has introduced a same-sex union law in 2014, and now there are 11 countries where same-sex couples offered most or all rights of marriage.
10. Same-sex couples are offered some rights of marriage in 8 countries, including **Czech Republic** (2006), and **Costa Rica** (2013).
11. Joint adoption by same-sex couples is legal 15 countries. It is legalised in **France** in 2013, and in **Uruguay** in 2009. Second-parent adoption, but not full adoption, by same-sex couples is also legal in 5 countries, most recently **Austria** (2013).

There are some other corrections and updates in several footnotes, including replacement of all dead links and addition of quotes of the original texts of the laws which were not written in English. The aim here is to avoid misinterpretation of such laws, as happens on occasion.

We would like to thank ILGA member organisations and other scholars for their significant comments, suggestions and assistance. If you have any additional information or further sources not available in this report, please contact ILGA at information@ilga.org and we will investigate the matter.

The report has been researched and edited by Lucas Paoli Itaborahy and Jingshu Zhu. It is an updated version of the seven annual editions of this report that were researched and compiled by Daniel Ottosson until 2010, by Eddie Bruce-Jones and Lucas Paoli Itaborahy in 2011, by Lucas Paoli Itaborahy in 2012, and by Lucas and Jingshu Zhu in 2013.

Lucas Paoli Itaborahy & Jingshu Zhu

SOGII ADVOCACY AND THE UN UNIVERSAL PERIODIC REVIEW

In light of increased Sexual Orientation, Gender Identity and Intersex (SOGII) activism in all regions of the world we thought it might be timely to look at a United Nations human rights mechanism that is a key site for such advocacy – the Universal Periodic Review (UPR).

The UPR is a process whereby the human rights situation of every country in the world is peer-reviewed by other States at the United Nations. These other States make recommendations that the State under Review (SuR) then accepts or rejects. The Universal Periodic Review process,⁵ completed its first four and a half year cycle in 2011. The second cycle began in 2012 and, at the time of writing, around 70 States have been through it.

SOME VALUES OF THE UPR

The nature of the UPR mechanism of the UN Human Rights Council is dialogic⁶ – civil society organisations (CSOs), including NGOs, submit information that provides particular insight and data about the human rights situation provided by the State under Review. Over the months that the process lasts there are a number chances to expand on a country's human rights situations in the UPR process. SOGII NGOs have made such submissions over the past few years and sought to persuade governments to make the right recommendations.

In terms of human rights norm production, in combination with other UN and regional mechanisms, the UPR is facilitating the global elaboration of how human rights relate to SOGII. As a universal human rights mechanism, the UPR is of significant import, the process does appear to mobilise advocates and activists to take-stock of the human rights situation in their country as they partake in the various stages of the UPR process, which gives them opportunities for direct input. Although the UPR is a State-centric process, the dialogic structure appears to facilitate an expansive understanding of the multiple perspectives existing in any one State on human rights issues,⁷ and how they

⁵ <http://www.upr-info.org/en/search/google/UPR%20Process?query=UPR%20Process&cx=006126235852558856633%253A5hpzlcehnbg&cof=FORID%253A11&sitesearch=&hl=en#>

⁶ UN General Assembly, Human Rights Council: resolution / adopted by the General Assembly, 3 April 2006, A/RES/60/251, available at: <http://www.refworld.org/docid/4537814814.htm>

⁷ For example, see Cowell and Milon, "Decriminalisation of Sexual Orientation through the Universal Periodic Review" *Human Rights Law Review* (2012) 2.

intersect or relate to each other. This differs from other UN mechanisms that limit submissions by theme (disability, civil and political rights, race, etc). The careful preparation for, and follow on from, the act of articulating such perspectives in the UPR reporting cycle, builds capacity for civil society organisations (CSOs), including NGOs.

The UPR enhances a potential already long-realised by SOGII advocates with UN mechanisms: use the international space as an amplifier to get issues heard at their own national levels.⁸ The UPR process, then, acts as a 'loudspeaker' for CSOs' reports and data that expose how, in the case of SOGII, the over-arching issues of discrimination and criminalisation lead to violations of positive and negative obligations under international human rights law in domestic settings regarding LGBTI people. The process can, and frequently does, open human rights defenders and particular minorities to considerable risk, often State-sponsored and citizen-led.⁹ Regarding the efficacy of the UPR mechanism to directly cause legislative change, particularly around decriminalisation of homosexuality, the outcomes to date appear negligible.¹⁰

A Mid-term Implementation Assessment is an informal stock-taking opportunity at the midpoint between a country's UPR reviews, that can act as focal points for the various strands of a country's SOGII activism. It is interesting to observe the very large increase in SOGII-related content in submissions from civil society actors and allies from the first cycle compared to the second, and in particular how the number of State SOGII recommendations have simultaneously increased.¹¹ It is clear that the various stages of the UPR process allows civil society voices to be heard both by their own governments and those States who will review their country, and that the recommendations made and responses to them both reflect and provide focal points for activism on the national and local levels. The issue of follow-up is currently a central weakness of the mechanism¹² – although encouraged, States are not obliged to deliver mid-term assessments or develop other tracking mechanisms with CSOs between UPR cycles (such as that recently developed in India).¹³

⁸ O'Flaherty, M., & Fisher, J., "Sexual Orientation, Gender Identity and International Human Rights Law: Contextualising the Yogyakarta Principles" *Human Rights Law Review* 8(2) (2008) 207; Saiz, I., *Bracketing Sexuality: Human Rights and Sexual Orientation - A Decade of Development and Denial at the UN SPW Working Papers*, N.2, November 2005 (Sexuality Policy Watch, 2005, Rio de Janeiro).

⁹ For example, CAMFAIDS (Cameroon) reported, in regard to delegates going to the 24th session of the HRC where Cameroon responded to recommendations received in the second cycle of the UPR, that on 4 September 2013 on a national radio station, the Chairwoman of the National Human Rights Commission issued a warning to any Cameroonian human rights activists "who denigrate their country abroad" and appeal for help from international bodies. "If they do that, she said, they shouldn't expect to be safe when they return to Cameroon ... they themselves are responsible for what happens".

¹⁰ The only country to act on an accepted UPR (1st cycle) recommendation to decriminalise homosexuality was Sao Tomé & Principe in 2012. As yet, no such commitment has been made in the 2nd cycle UPR.

¹¹ For example, regarding Russia there were two recommendations directly referencing SOGI in its 1st cycle UPR, while there were 13 in the 2nd cycle that made direct reference and a further 47 that have direct impact on the LGBTI situation in that State.

¹² <http://www.upr-info.org/followup/index.php>

¹³ See <http://wghr.org/wp-content/uploads/2013/10/WGHR-Press-Release-with-Introduction-to-the-Monitoring-tool.pdf>

ACTION CATEGORIES

Through the UPR process, ‘action level’ categories have been designed by analysts that are indicated by the type of primary action verb used by the Recommending State (hereafter RS).¹⁴ These can be divided into five types, ranked on a scale from 1 (minimal action), 2 (continue doing), 3 ((to consider), 4 (general action) to 5 (specific action) - an extensive and interesting list of verbs fall under each level.¹⁵ The verb used defines whether the State under Review is requested only to ‘consider’ the action or to complete it. In his recent analysis of the HRC, Rathberger notes that amongst all the recommendations issued through the first cycle of the UPR (sessions 1-12),¹⁶ the more specific or action-oriented the recommendations the lower the acceptance rate. Further, he notes that explicit or outright rejections of recommendations tended not to be articulated, reluctance being coded in such terms as “taking note of recommendations” or other general responses.

However, this conciliatory or diplomatic approach appears to apply to SOGII much less often, the subject of which has frequently elicited strong and unambiguous rejection from many States, and where, in direct contrast to Rathberger’s findings of the general trend, the more specific recommendations are those that are most accepted. States’ responses to recommendations often reflect issues of sovereignty and tradition, most often in terms of protecting public morality.¹⁷ These rationales for rejection are often in unison with concerns aired at the Human Rights Council when human rights issues regarding SOGII are under discussion:¹⁸ a significant number of States reject that SOGII is a status protected by international human rights law at all.¹⁹ The overall acceptance rate for all recommendations in the first cycle of the UPR was 73% according to Schlanbusch,²⁰ however acceptance of the recommendations related to recognition of SOGI-related human rights was only 36%.

¹⁴ McMahon, E. R., *The Universal Periodic Review: A Work in Progress An Evaluation of the First Cycle of the New UPR Mechanism of the United Nations Human Rights Council* (Friedrich-Ebert-Stiftung, February 2013, Berlin) http://www.upr-info.org/sites/default/files/general-document/pdf/mcmahon_a_work_in_progress.13.09.2012.pdf: UPR-info “Action Categories” 2012 (webpage) http://www.upr-info.org/IMG/pdf/Database_Action_Category.pdf.

¹⁵ Ibid: Category 1 includes recommendations requiring ‘minimal action’ (indicated by verbs such as ‘call on’, ‘seek’, ‘share’); category 2 includes recommendations requiring states to ‘continue’ a certain action indicated with verbs such as ‘continue’, ‘maintain’, ‘persevere’, ‘persist’, ‘pursue’); category 3 recommendations require states to ‘consider’ a certain action (‘analyse’, ‘consider’, ‘envisage’, ‘envision’, ‘examine’, ‘explore’, ‘reflect upon’, ‘revise’, ‘review’, ‘study’); category 4 recommendations request states to undertake a general action (‘accelerate’, ‘address’, ‘encourage’, ‘engage with’, ‘ensure’, ‘guarantee’, ‘intensify’, ‘promote’, ‘speed up’, ‘strengthen’, ‘take action’, ‘take measures or steps towards’); and finally category 5 recommendations ask for specific action from states (‘conduct’, ‘develop’, ‘eliminate’, ‘establish’, ‘investigate’, ‘undertake’, as well verbs that indicate direct legal action: ‘abolish’, ‘accede’, ‘adopt’, ‘amend’, ‘implement’, ‘enforce’, ‘ratify’).

¹⁶ Rathgeber, T., *Performance and Challenges of the UN Human Rights Council: An NGOs’ View* (Friedrich-Ebert-Stiftung, February 2013, Berlin).

¹⁷ Generally, see <http://www.upr-info.org/database/>

¹⁸ See the various “traditional values of humankind” HRC resolutions from 2009 - 2012 <http://arc-international.net/global-advocacy/human-rights-council/hrc-advisory-committee>.

¹⁹ Levesque, B., “Arab, African delegates walk out on U.N. LGBT rights conference” *LGBTQ Nation*, 7 March 2012 (website) <http://www.lgbtqnation.com/2012/03/arab-african-delegates-walk-out-on-u-n-lgbt-rights-conference/>.

²⁰ Schlanbusch, M.D., “Sexual Orientation and Gender Identity Rights in the Universal Periodic Review”, Dissertation submitted in partial fulfillment for the degree: Master in Human Rights Practice. School of Global Studies, University of Gothenburg School of Business and Social Sciences, University of Roehampton Department of Archaeology and Social Anthropology, University of Tromsø, Spring 2013 . http://www.upr-info.org/IMG/pdf/schlanbusch_-_sogi_rights_in_the_upr_-_2013.pdf.

SOGII IN THE 1ST CYCLE OF THE UPR

From a total of 21,353 recommendations to all States in the first cycle, 493 (2.3%) referred to sexual orientation and gender identity (across the five action types). The UPR-info database shows that of these 179 (36%) were ‘accepted’. These 493 recommendations were issued by only 39 States in total.²¹ The UPR-info database shows 314 (63.5%) of those recommendations that elicited negative responses regarding SOGI - where no meaningful action might be expected - were either ‘rejected’, given a ‘general response’ or received ‘no response’ at all.

Of those 314 responses that can be read as negative, 223 are outright rejections and 91 responses comprise general responses or no comment at all.. Regarding the question of what evidence is there of the actual effect of the UPR on national legislations, 7% of States (five countries; Seychelles; Nauru, Palau, Solomon Islands, Sao Tomé & Príncipe) accepted Action level 5 recommendations (take specific action) to decriminalise sexual orientation in the first cycle of the UPR. However, although parliamentary and other dialogues have emerged in each of these countries, to date only Sao Tomé & Príncipe repealed its legislation at the date of this publication.

The UPR offers NGOs and CSOs a most effective way to bring human rights standards to SOGI issues into the national dialogue supported by the weight of international human rights law. In the first cycle WEOG States were the most prolific regional bloc producing SOGI-related recommendations, but in the second cycle GRULAC States significantly increased their participation in this regard. There appears to be evidence that ally States carefully examine the stakeholder submissions that they accept: certain points of focus tend to appear in a couple of recommendations - for example, the word “persecution” in the recommendations to Iraq appears twice, but hardly anywhere else amongst the body of SOGI 1st cycle recommendations.²²

SOGII IN THE 2ND CYCLE UPR

Of the 78 countries that criminalise same sex sexual relations, nineteen (19) of them have responded to second cycle recommendations.²³ Of these, aside from St Kitts and Nevis that gave a ‘General response’, all of the other eighteen

²¹ A recommendation to Tonga from Bangladesh demonstrated a particularly novel (and ominous) use of the UPR by recommending denial of human rights by recommending that Tonga’s criminal laws regarding “consensual same sex” remain as it is “outside the purview of human rights norms”!

²² See Iraq’s appearance at the UPR’s 7th Session, where both Human Rights Watch and the Canadian HIV/AIDS Legal Network used this particular term, see <http://arc-international.net/global-advocacy/universal-periodic-review/i/iraq>.

²³ Africa (Algeria, Botswana, Burundi, Cameroon, Ghana, Zambia), Asia (Bangladesh, Indonesia, Iraq, Lebanon, Sri Lanka, Turkmenistan, United Arab Emirates, Uzbekistan), Latin America and the Caribbean (Barbados, St Kitts and Nevis, Trinidad and Tobago), and Oceania (Tonga, Tuvalu).

(18) criminalising States rejected all recommendations calling for general non-discrimination and 'decriminalisation'.

However, very interestingly, highly targeted specific aspects of discrimination were accepted by five of these criminalising States:

- Cameroon rejected 15 SOGI recommendations regarding discrimination and decriminalisation relating to SOGI, but accepted one relating to looking into police violence targeting diverse SOGI (Action Level 5 - specific action);
- Barbados accepted two recommendations for human rights education (Action Level 5 – one about informing police and the other about setting up a public forum for dialogue around SOGI issues) and two for discrimination (Action Levels 2 (continue doing) and the other at Action Level 4) but oddly, rejected a further two concerning discrimination, as well as seven concerning decriminalisation;
- Ghana accepted two UPR Action Level 4 (general action) recommendations regarding protection against violence based on SOGI, while rejecting 10 others on decriminalisation and other forms of discrimination and homophobia.
- Tonga accepted an Action Level 3 (to consider) recommendation regarding eliminating discrimination based on SOGI, while rejecting a further five recommendations to decriminalise.
- Zambia rejected all seven recommendations for decriminalisation but did accept one (Action Level 4) on impartial investigations into claims of violence based on SOGI.

CONCLUSION

It appears that highly targeted recommendations in relation to SOGI appear to be accepted by States more frequently than the more generalist recommendations regarding decriminalisation and non-discrimination. That Action Level 4 and 5 recommendations in both UPR cycles seem to be picked up more frequently might also help guide the shape of what advocates, both in and out of regional alliances, advise ally States to recommend. Finally, advocates could, with other civil society allies, push their States to undergo processes to produce Mid-term Implementation Assessments when working with their own State at the local and national levels.

Aengus Carroll

LGB LEGISLATION GLOBAL OVERVIEW

The year in brackets refers to the year when the reform came into force. If no year is stated, either there has never been any regulation in the relevant area or no information could be found about the year the law took effect. Countries and entities that are not Members of the UN are indicated in this text by use of *Italics*.

Homosexual acts legal (113 countries)

Africa Benin,²⁴ Burkina Faso, Cape Verde (2004),²⁵ Congo,²⁶ Chad, Côte d'Ivoire, Democratic Republic of Congo, Djibouti,²⁷ Equatorial Guinea,²⁸ Gabon, Guinea-Bissau (1993),²⁹ Madagascar, Mali, Niger,³⁰ Rwanda,³¹ São Tome & Principe,³² South Africa (1998).

Asia Bahrain (1976),³³ Cambodia, China (1997),³⁴ East Timor (1975), most parts of Indonesia, Israel (1988), Japan (1882), Jordan (1951), Kazakhstan (1998), Kyrgyzstan (1998), Laos, Mongolia (1961),³⁵ Nepal (2008),³⁶ North Korea, Philippines, South Korea, Taiwan (1912),³⁷ Tajikistan (1998), Thailand (1957), Vietnam, as well as the West Bank (1951) in the *Occupied Palestinian Territory*.

²⁴ In previous editions, Benin was placed under the *Illegal* category due to a misinterpretation of an unofficial translation of the Penal Code. After reviewing other sources we realised that there was only a higher age of consent for gay and lesbian sex.

²⁵ The 2004 Penal Code does not criminalise homosexual acts. 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.

²⁶ In the Republic of Congo Brazzaville, the text of the Penal Code is the one that was in force when the country was still a colony of France. Art. 331 of this Code (as amended in 1947) only prohibits homosexual acts 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.

²⁷ See Djibouti Penal Code of 1995, available at: <http://www.djibouti.mid.ru/doc/UK.htm>.

²⁸ However, according to Amnesty International's 2006 report "Sexual Minorities and the Law: A World Survey", homosexual acts are still illegal in Equatorial Guinea. Text available at: <http://www.asylumlaw.org/docs/sexualminorities/World%20SurveyAHomosexuality.pdf>.

²⁹ Articles 133-138 on sexual offences in the new Penal Code of 1993 do not seem to criminalise homosexual acts more than heterosexual acts. Text of the law is available at: <http://www.rjcplp.org/sections/informacao/anexos/legislacao-guine-bissau4332/codigos-e-estatutos9979/codigo-penal-e/>.

³⁰ The 1961 Penal Code with amendments up to 2003 is available at: <http://www.unhcr.org/refworld/docid/47fb8e642.html>.

³¹ See the Rwanda Penal Code of 1980. Original text of the law is available at: http://www.wipo.int/wipolex/en/text.jsp?file_id=221101.

³² 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: <http://www.rjcplp.org/sections/informacao/anexos/legislacao-sao-tome-e-2539/codigos-e-estatutos-sao2859/codigo-penal-sao-tome-e/>.

³³ A new Penal Code was enacted in 1976 and this repealed the old Penal Code of the Persian Gulf imposed by the British. Contrary to the second-hand source used an earlier edition of this report (2008), the Penal Code allows sodomy from the age of 21, and therefore sodomy was decriminalised as of adoption of the new code. Text of the law is available at: <http://www.track.unodc.org/LegalLibrary/LegalResources/Bahrain/Laws/Bahrain%20Penal%20Code%201976.pdf>.

³⁴ In China from 1979 (when "hooliganism" was penalised in its first official criminal law) to 1997 ("hooliganism" was decriminalised), and probably also in earlier periods since 1912 (the end of the Qing Dynasty), there was no explicit prohibition of sexual acts between persons of the same sex. A broader word "hooliganism" was used against non-consenting homosexual acts or those with minors. Explicit prohibitions of "consenting jijian (sodomy)" were abolished in China around 1912. Homosexual acts are also legal in all Chinese associates: Hong Kong (1991) and Macau (1996).

³⁵ 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: http://www.unodc.org/res/cld/document/mng/2001/criminal_code_of_mongolia.html/Mongolia_Criminal_Code_2002.pdf.

³⁶ The Supreme Court of Nepal ruled in 2008 that LGBTI people would be regarded as "natural persons" under law. While legislation to this effect was anticipated in 2010, there has been no legislation adopted as yet. See <http://www.gaylawnet.com/laws/np.htm>.

³⁷ Taiwan is not a member state of the United Nations.

Europe

Albania (1995), Andorra (1990), Armenia (2003), Austria (1971), Azerbaijan (2000), Belarus (1994), Belgium (1975), Bosnia and Herzegovina (1998-2001),³⁸ Bulgaria (1968), Croatia (1977), Cyprus (1998), Czech Republic (1962), Denmark (1933), Estonia (1992), Finland (1971), France (1791), Georgia (2000), Germany (1968-69),³⁹ Greece (1951), Hungary (1962), Iceland (1940), Ireland (1993), Italy (1890), Kosovo (1994)⁴⁰, Latvia (1992), Liechtenstein (1989), Lithuania (1993), Luxembourg (1795), Macedonia (FYROM) (1996), Malta (1973), Moldova (1995), Monaco (1793), Montenegro (1977), Netherlands (1811),⁴¹ Northern Cyprus (2014),⁴² 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), Ukraine (1991), United Kingdom (and associates),⁴³ Vatican City.⁴⁴

Latin America and Caribbean

Argentina (1887), Bahamas (1991), Bolivia, Brazil (1831), Costa Rica (1971), Chile (1999), Colombia (1981), Cuba (1979), Dominican Republic (1822), Ecuador (1997),⁴⁵ El Salvador (1800s), Guatemala (1800s), Haiti (1800's), Honduras (1899), Mexico (1872), Nicaragua (2008), Panama (2008),⁴⁶ Paraguay (1880), Peru (1836-1837), Suriname (1869), Uruguay (1934), Venezuela (1800s).

North America

Canada (1969), the United States (2003).⁴⁷

Oceania

Australia,⁴⁸ Fiji (2010),⁴⁹ Marshall Islands (2005), Micronesia, New Zealand (1986), Vanuatu and the New Zealand associates of Niue (2007) and Tokelau (2007).

Note that same-sex sexual activities between adults have never been criminalised in several countries, including Burkina Faso, Chad, Congo, Côte d'Ivoire, Democratic Republic of Congo, Gabon, Madagascar, Mali, Niger and Rwanda.

³⁸ 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), Brčko District (2001). Text of the law is available at: <http://www.ohr.int/ohr-dept/legal/crim-codes/>.

³⁹ East Germany (1968) and West Germany (1969).

⁴⁰ Kosovo is not a member state of the United Nations.

⁴¹ Homosexual 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.

⁴² 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 homosexual acts, and three years' imprisonment for "attempts to commit [these] crimes", see <http://www.lgbt-ep.eu/press-releases/northern-part-of-cyprus-decriminalises-homosexuality/>.

⁴³ 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 (2001) and all other territories.

⁴⁴ The Vatican is not a member state of the United Nations.

⁴⁵ On 27 November 1997, the Ecuador's Constitutional Court declared Article 516 of the Penal Code unconstitutional, which criminalised homosexual acts. See CCPR/C/ECU/5, available at: <http://www2.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/CCPR-C-ECU-5.doc>.

⁴⁶ Decree No. 332, Official Gazette of 31 July 2008.

⁴⁷ By Supreme Court verdict, it also struck down the sodomy law in Puerto Rico, which was later repealed in 2005. Previously in: 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), Vermont (1977), Washington (1976), West Virginia (1976), Wisconsin (1983), Wyoming (1977) and District of Columbia (1993), as well as the associates of 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.

⁴⁸ New South Wales (1983), Norfolk Island (1993), Northern Territory (1984), Queensland (1991), South Australia (1972), Tasmania (1997), Victoria (1981), Western Australia (1990).

⁴⁹ The sodomy statutes were repealed by the Crimes Decree 2009, which came into force on 1 February 2010.

Homosexual acts illegal (78 countries)

Africa Algeria, Angola, Botswana, Burundi, Cameroon, Central African Republic, Comoros, Egypt, Eritrea, Ethiopia, Gambia, Ghana, Guinea, Kenya, Lesotho, Liberia, Libya, Malawi, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Nigeria, Senegal, Seychelles, Sierra Leone, Somalia, South Sudan, Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia, Zimbabwe.

Asia Afghanistan, Bangladesh, Bhutan, Brunei Darussalam, India, Iran, Kuwait, Lebanon, Malaysia, Maldives, Myanmar, Oman, Pakistan, Qatar, Saudi Arabia, Singapore, Sri Lanka, Syria, Turkmenistan, United Arab Emirates, Uzbekistan, Yemen.

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

Oceania Kiribati, Nauru, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu.

Entities Cook Islands (New Zealand), Gaza (in the Occupied Palestinian Territory), South Sumatra and Aceh Province (Indonesia).

Legal status of homosexual acts unclear or uncertain (1 country)

Asia Iraq.

Homosexual acts punishable with death penalty (5 countries and some parts of Nigeria and Somalia)

Africa Mauritania, Sudan, as well as 12 northern states in Nigeria and the southern parts of Somalia.

Asia Iran, Saudi Arabia, Yemen

Homosexual acts punishable with death penalty - unclear (4 countries)

In the case of Iraq, unlike the other three countries in this category, it appears the State is unwilling or unable to intervene in areas of the country where militias (non-State actors) target LGBTI people for persecution, including enacting a death penalty. According to a Human Rights Watch report *"They Want Us Exterminated" Murder, Torture, Sexual Orientation and Gender in Iraq* (New York: HRW, 2009) at 5, "[i]n Iraq, armed groups still are free to persecute and kill based on prejudice and hatred; the state still greets their depredations with impunity".

Asia Brunei Darussalam, Iraq, Pakistan and Qatar.

"Homosexual propaganda" laws (and proposals) (9 countries)

The concept of introducing anti-homosexuality propaganda laws to support existing criminal laws (for example in Uganda or Nigeria), or as stand-alone pieces of legislation in non-criminalising countries (such as former Soviet States), became significantly more widespread in 2013. The logic presented in defence of such proposals revolves around the protection of public morality, particularly as pertaining to children, presents serious problems for advocates and activists in the affected territories. The use of bold font in this section indicates legislation in force, whereas non-bold indicates that the legislation is still being discussed.

Europe Belarus (2013),⁵⁰ Latvia (2013),⁵¹ **Lithuania** (2014),⁵² **Russian Federation** (2013)⁵³ and Ukraine (2013).⁵⁴

Asia Kyrgyzstan (2014).⁵⁵

Africa **Nigeria** (2013),⁵⁶ Tanzania (2014)⁵⁷ and **Uganda** (2013).⁵⁸

Note: in Armenia (2013),⁵⁹ Hungary (2013)⁶⁰ and Moldova (2013)⁶¹ such legislative proposals were rejected by respective Parliaments, while in Georgia (2013)⁶² and Kazakhstan (2013)⁶³ strong calls for such legislation have been voiced.

50 "In July 2013, members of the Belarusian parliament began discussions on the proposal of a gay propaganda law in the name of protecting traditional family values ... the law is planned to be introduced into the National Assembly in late 2014", quoted from <http://www.humanrightsfirst.org/resource/spread-russian-style-anti-propaganda-laws>.

51 In November 2013, Latvia's Central Election Commission allowed anti-LGBT groups to begin collecting signatures for a referendum introducing a measure banning gay propaganda. The proponents of the referendum need to collect 30,000 signatures by this coming November to move forward in the legal process; see, <http://www.humanrightsfirst.org/resource/spread-russian-style-anti-propaganda-laws>.

52 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 are done 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 Nepilnamecių apsaugos nuo neigiamo viešosios informacijos poveikio įstatymas", No. IX-1067, 21 October 2011, available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=410367). A draft version is available in English at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=363137.

53 Federal Law No 50-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, see 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.

54 A shelved 2011 Draft Federal Law No. 0945 'Regarding Protection of Children's Rights in the Safe Information Sphere' (previously known as Bill No. 8711), proposed to ban the promotion of homosexuality in media is expected to be reconsidered at the parliamentary level, as is the Draft Law No.1155 'On the Prohibition of Propaganda of Homosexuality Aimed at Children', see Nash Mir's *On the Threshold: The situation of LGBT people in Ukraine in 2013* at http://gay.org.ua/publications/lgbt_ukraine_2013-e.pdf.

55 On March 26, 2014, Kyrgyzstan's national parliament (*Zhogorku Kenesh*) published a draft bill that imposes criminal sanctions for spreading information about homosexuality or LGBT issues. According to Human Rights Watch, this Bill needs to be withdrawn as incompatible with international human rights obligations; see, <http://www.hrw.org/news/2014/03/27/kyrgyzstan-withdraw-draconian-homophobic-bill>.

56 Section 5 of the Same-Sex Marriage (Prohibition) Act (passed December 2013) prohibits "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: <http://www.refworld.org/docid/52f4d9cc4.html>.

57 In March 2014, a Tanzanian MP proposed a Bill to strengthen the criminalisation laws, see <http://www.theeastafrican.co.ke/news/Dar-plans-to-introduce-tougher-anti-gay-Bill-/-/2558/2262374/-/iq7xix/-/index.html>.

58 Section 13 (1) and (2) of the Anti-Homosexuality Act 2014 refers to "promotion of homosexuality"; Text of the law is available at: <http://cryptome.org/2014/02/uganda-anti-gay.pdf>.

59 In August 2013, a proposal for legislative amendment was put forward, but soon withdrawn, that there would be a ban on "promoting" "non-traditional sexual relationships" in Armenia's administrative offenses law; see http://www.ilga-europe.org/home/guide_europe/country_by_country/armenia/police_propose_gay_propaganda_ban.

60 Three Bills were introduced in 2013 by the far-right opposition party Jobbik, all related to "propagation" of homosexuality – all of which were rejected; Bill 6719; available at: http://www.mkogy.hu/internet/plsql/ogy_irom.irom_adat?p_ckl=39&p_izon=6719
Bill 6720; available at: http://www.mkogy.hu/internet/plsql/ogy_irom.irom_adat?p_ckl=39&p_izon=6720
Bill 6721; available at: http://www.mkogy.hu/internet/plsql/ogy_irom.irom_adat?p_ckl=39&p_izon=6721.

61 In May 2013, the Moldovan parliament adopted Law Nr. 117 on 'Completing the Contravention Code' amending it with Article 901 'Public activities with negative impact on minors' (entered in force on 12 July 2013) but this law was rejected by parliament and annulled in October 2013 (see http://www.ilga-europe.org/home/guide_europe/country_by_country/moldova/genderdoc_m_on_law_on_article_901_public_activities_with_negative_impact_on_minors).

62 During an IDAHOT demonstration in Tbilisi on 17 May 2013 where thousands of supporters of the Georgian Orthodox Church rallied against a small LGBT contingent, both church and political leaders have spoken directly against the "promotion" of homosexuality, but it appears to date that no serious legislative initiatives have been undertaken in this regard; see, <http://www.humanrightsfirst.org/resource/spread-russian-style-anti-propaganda-laws>.

63 "Anti-homosexual rhetoric is increasing among lawmakers, but proposed anti-LGBT laws have received negligible traction and do not seem to have strong support from President Nursultan Nazarbayev" quoted from "Spread of Russian-Style Anti-Propaganda Law", Humanrightsfirst, 27 February 2014, at <http://www.humanrightsfirst.org/resource/spread-russian-style-anti-propaganda-laws>.

Equal age of consent for homosexual and heterosexual acts (95 countries)

Africa	Burkina Faso (1996), Cape Verde (2004), ⁶⁴ Central African Republic, Democratic Republic of Congo (2006), ⁶⁵ Djibouti, ⁶⁶ Equatorial Guinea (1931), Mali (1961), ⁶⁷ Guinea-Bissau (1993), ⁶⁸ South Africa (2007). ⁶⁹
Asia	Cambodia, China (1997-2006), ⁷⁰ East Timor (2009), Israel (2000), Japan (1882), Jordan (1951), Kazakhstan (1998), Kyrgyzstan (1998), Laos, Mongolia (1961), Nepal (2007), North Korea, Philippines, South Korea, Taiwan (1896), Tajikistan (1998), Thailand (1957), Vietnam, as well as the West Bank (1951) in the Palestinian Authority.
Europe	Albania (2001), Andorra, Armenia (2003), Austria (2002), Azerbaijan (2000), Belarus (2000), Belgium (1985), Bosnia & Herzegovina (1998-2001), ⁷¹ Bulgaria (2002), Croatia (1998), Cyprus (2002), Czech Republic (1990), Denmark (1976), ⁷² Estonia (2002), Finland (1999), France (1982), ⁷³ Georgia (2000), Germany (1994/89), ⁷⁴ 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), ⁷⁵ 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), ⁷⁶ Vatican City.

⁶⁴ 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.

⁶⁵ Articles 167 and 172 of the Penal Code, as amended by law 06/018 of 20 July 2006, do not distinguish between homosexual and heterosexual 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/IO/2006/IO.01.08.2006.C.P.P..pdf).

⁶⁶ See Djibouti Penal Code of 1995, available at: <http://www.djibouti.mid.ru/doc/UK.htm>.

⁶⁷ See Article 180 of the Code Pénal of 1961. Original text is available at: http://www.wipo.int/wipolex/en/text.jsp?file_id=193676.

⁶⁸ Articles 133-138 on sexual offences in the new Penal Code of 1993 do not seem to criminalise homosexual acts more than heterosexual acts. Text of the law is available at: <http://www.rjcplp.org/sections/informacao/anexos/legislacao-guine-bissau4332/codigos-e-estatutos9979/codigo-penal-e/>.

⁶⁹ 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: <http://www1.umn.edu/humanrts/research/Penal%20Code%20%28English%29.pdf>.

⁷⁰ In mainland China the age was equalised with the decriminalisation of hooliganism in 1997; also in Hong Kong (2005/2006) and in Macau (1996).

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), Brčko District (2001); see <http://www.ohr.int/ohr-dept/legal/crim-codes/>.

⁷² The Faeroe Islands (1988), Greenland (1979).

⁷³ The law applies to the following overseas departments and territories upon adoption: French Guiana, Martinique, Guadeloupe, Reunion, St Barthélemy, St Martin & Miquelon, as well as to French Polynesia, New Caledonia and Wallis & Futuna since 1984, and also to Mayotte.

⁷⁴ East Germany (GDR) in 1989 and the rest of Germany in 1994, text of the 1994 law available at: <http://lexetius.com/StGB/175>.

⁷⁵ 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).

⁷⁶ 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 <http://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. 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), and was therefore set at 16 for all at that date. The Government is currently undertaking a consultation exercise to decide the final age of consent under law.

Latin America & Caribbean	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) and Venezuela.
North America	Most parts of the United States.
Oceania	Most parts of Australia, ⁷⁷ Fiji (2010), Marshall Islands, Micronesia, Vanuatu (2007) and New Zealand (1986). ⁷⁸
Unequal age of consent for homosexual and heterosexual acts (16 countries)	
Africa	Bahrain, Benin (1947), ⁷⁹ Chad, Congo (1947), ⁸⁰ Côte d'Ivoire, ⁸¹ Gabon (1969), ⁸² Madagascar, ⁸³ Niger, ⁸⁴ Rwanda. ⁸⁵
Asia	Indonesia
Europe	Greece, ⁸⁶ as well as some United Kingdom associates. ⁸⁷
Latin America & Caribbean	Bahamas, Chile, Paraguay, Suriname, as well as some United Kingdom associates. ⁸⁸
North America	Canada, two states of the United States. ⁸⁹
Oceania	Some parts of Australia (1899). ⁹⁰

⁷⁷ 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).

⁷⁸ New Zealand itself had equal age since 1986; New Zealand associates of Niue (2007) and Tokelau (2007).

⁷⁹ Benin has a higher age limit for homosexual 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.

⁸⁰ 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.

⁸¹ See Article 356 and 358 of the Code Pénal. Original text is available at: <http://www.wipo.int/wipolex/en/details.jsp?id=6480>.

⁸² See Article 258 of the Code Pénal. Original text is available at http://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 homosexual sex was raised from 15 to 21 in 1969.

⁸³ See Article 331 of the Code Pénal. Original text is available at: http://www.vertic.org/media/National%20Legislation/Madagascar/MG_Code_Penal.pdf.

⁸⁴ See Articles 278 and 282 of the Code Pénal. Original text is available at: http://www.vertic.org/media/National%20Legislation/Niger/NE_Code_Penal.pdf.

⁸⁵ See Articles 358 and 362 of the Code Pénal. Original text is available at: http://www.wipo.int/wipolex/en/text.jsp?file_id=221101.

⁸⁶ 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.

⁸⁷ Bailiwick of Guernsey.

⁸⁸ Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Montserrat, Turks & Caicos Islands.

⁸⁹ Nevada (only in seduction cases) and Virginia.

⁹⁰ See State of Queensland, Criminal Code Act 1899 and Criminal Law Amendment Bill 1996, Section 208 and Section 213, indicating the age of consent of homosexual acts is 18, while that of heterosexual acts is 16. Text of the 1996 law is available at: <http://www.legislation.qld.gov.au/Bills/48PDF/1996/CriminalLawAmdB96.pdf>.

Prohibition of discrimination in employment based on sexual orientation (61 countries)

Africa Botswana (2010),⁹¹ Cape Verde (2008),⁹² Mauritius (2008),⁹³ Mozambique (2007),⁹⁴ Seychelles (2006),⁹⁵ South Africa (1996).⁹⁶ (Namibia repealed such a law in 2004.)⁹⁷

Asia Israel (1992), some parts of Philippines,⁹⁸ Taiwan (2007).⁹⁹

Europe Albania (2010), Andorra (2005), Austria (2004), Belgium (2003), Bosnia and Herzegovina (2003),¹⁰⁰ Bulgaria (2004), Croatia (2003), Cyprus (2004), Czech Republic (1999), Denmark (1996),¹⁰¹ Estonia (2004), Finland (1995), France (2001), Georgia (2006), Germany (2006), Greece (2005),¹⁰² Hungary (2004), Iceland (1996), Ireland (1999), Italy (2003), Kosovo (2004), Latvia (2006), Lithuania (2003), Luxembourg (1997), Macedonia (FYROM) (2005),¹⁰³ Malta (2004), Moldova (2012),¹⁰⁴ Montenegro (2010),¹⁰⁵ Netherlands (1992), Norway (1998), Poland (2004), Portugal (2003), Romania (2000), Serbia (2005), Slovakia (2004), Slovenia (1995),¹⁰⁶ Spain (1996), Switzerland (2000),¹⁰⁷ Sweden (1999), United Kingdom (2003).¹⁰⁸

91 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 <http://www.icj.org/sogi-legislative-database/botswana-sogi-legislation-country-report-2013/>.

92 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.

93 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: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_126781.pdf.

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

95 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>.

96 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 (<http://www.acts.co.za/labour-relations-act-1995/>); in the Employment Equity Act of 1998 (<http://www.acts.co.za/employment-equity-act-1998/>); and in the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 (<http://www.acts.co.za/promotion-of-equality-and-prevention-of-unfair-discrimination-act-2000/person.php>).

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

98 Some cities in Philippines, including: Quezon City (Ordinance No. SP-1309, 2003): <http://quezoncitycouncil.ph/ordinance/SP/sp-1309.%20s%202003-1.pdf>; Dagupan City (Ordinance No. 1953, 2010); Naga City (Ordinance No. 2012-035): <http://naga.gov.ph/sp-matters/ordinances/ordinance-no-2012-035/>; Angeles City (Executive Order No. 37, 2011): <http://210.4.99.20/lis/ExecDetails.aspx?execcode=E0000000031>; Cebu City (2012): <http://bayanmuna.net/casino-welcomes-anti-discrimination-ordinances/>; Davao City (Anti-discrimination Ordinance, 2013): <http://www.sunstar.com.ph/davao/local-news/2013/02/14/anti-discrimination-ordinance-now-city-hall-268100>.

99 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>.

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

101 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.

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

103 Law on Labour Relations, Article 6. See Legal Report: "The former Yugoslav Republic of Macedonia" at: http://www.coe.int/t/Commissioner/Source/LGBT/FYROMLegal_E.pdf

104 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>.

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

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

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

108 Bailiwick of Guernsey (2005), Gibraltar (2006), Isle of Man (2007). For Gibraltar, see www.gibraltarlaws.gov.gi/articles/2006-37o.pdf.

Latin America & Caribbean	Bolivia (2011), ¹⁰⁹ <i>The city of Rosario</i> (1996) in Argentina, some parts of Brazil, ¹¹⁰ Colombia (2007), Costa Rica (1998), Cuba (2014), ¹¹¹ Ecuador (2005), ¹¹² El Salvador (2010), ¹¹³ Mexico (2003), ¹¹⁴ Nicaragua (2008), Venezuela (1999), Uruguay (2004). ¹¹⁵
North America	Canada (1996), some parts of the United States. ¹¹⁶
Oceania	Australia (1996), ¹¹⁷ Fiji (2007), ¹¹⁸ New Zealand (1994).
Constitutional prohibition of discrimination based on sexual orientation (6 countries)	
Africa	South Africa (1994 and 1997). ¹¹⁹
Europe	Kosovo (2008), Portugal (2004), Sweden (2003), Switzerland (2000), as well as some parts of Germany. ¹²⁰

¹⁰⁹ 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 Racismo y Toda Forma de Discriminación* of 2011. See also Articles 5 and 12 to 14 of the latter law. Original text is available at: <http://www.rree.gob.bo/webmre/Documentos/d385.pdf>.

¹¹⁰ 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.

¹¹¹ On 21 December, 2013, the Parliament approved a new Labour Code which prohibits sexual orientation discrimination in employment. The final text is being drafted and is expected to be signed into law in the first half of 2014. See: http://www.ipsucuba.net/index.php?option=com_k2&view=item&id=8636%3Acuba-tiene-un-nuevo-c%C3%B3digo-de-trabajo-m%C3%A1s-inclusivo&Itemid=5.

¹¹² See Article 79 of the *Código del Trabajo*, Codificación 2005-17, available at: <http://www.unemi.edu.ec/rrhh/images/archivos/codtrab.pdf>.

¹¹³ 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: http://www.law.berkeley.edu/files/LGBT_Report_English_Final_120705.pdf.

¹¹⁴ See Article 9 of Federal Law to Prevent and Eliminate Discrimination, available at: http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.MEX.15-17_en.doc.

¹¹⁵ See Law No. 17,817, Combat Racism, Xenophobia and Discrimination, original text available at: <http://www0.parlamento.gub.uy/leyes/ AccesoTextoLey.asp?Ley=17817>.

¹¹⁶ 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>.

¹¹⁷ At the level of the Commonwealth of Australia, various sections of the Workplace Relations Act 1996 prohibits discrimination based on 'sexual preference', available at: http://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).

¹¹⁸ 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.pacii.org/fj/promu/promu_dec/erp2007381

¹¹⁹ 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: <http://www.constitutionalcourt.org.za/site/constitution/english-web/interim/>. It is also included in Article 9 of the 1997 Constitution at <http://www.constitutionalcourt.org.za/site/theconstitution/thetext.htm>.

¹²⁰ Berlin (1995), Brandenburg (1992), Thuringia (1993).

Latin America & Caribbean	Bolivia (2009), ¹²¹ Ecuador (1998), ¹²² some parts of Argentina, ¹²³ some parts of Brazil, ¹²⁴ the United Kingdom associate of British Virgin Islands (2007). ¹²⁵
Oceania	None (Fiji's previous Constitution, adopted in 1997, included such a provision, but this Constitution was repealed in 2009).
Hate crimes based on sexual orientation considered an aggravating circumstance (27 countries)	
Asia	East Timor (2009). ¹²⁶
Europe	Albania (2013), ¹²⁷ Andorra (2005), Belgium (2003), Croatia (2006), Denmark (2004), France (2003), ¹²⁸ Georgia (2012), ¹²⁹ Greece (2013), ¹³⁰ some parts of Hungary (2014), ¹³¹ Malta (2012), ¹³² Netherlands (2003), ¹³³ Portugal (2007), Romania (2006), San Marino (2008), ¹³⁴ Spain (1996), Sweden (2003), United Kingdom (2004-2010). ¹³⁵

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

122 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: <http://www.asambleanacional.gov.ec/documentos/Constitucion-2008.pdf>.

123 Art. 11 of the Constitution of the Province of Buenos Aires (1996).

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

125 Article 26 of the Virgin Islands Constitution Order 2007. Text of the law is available at: <http://www.legislation.gov.uk/ukxi/2007/1678/contents/made>.

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

127 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>.

128 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.

129 See Article 1 of 27 March 2012, Legislative Amendment. Original text is available at: https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=1637963; see also <http://lgbt.ge/?p=4679>.

130 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: http://www.ilga-europe.org/media_library/ilga_europe/guide_to_europe/country_by_country/files_for_legal_summary/greece/hatecrime_legislation_on_sog_i_greece. The Act was passed on 12 March 2013, and entered into force upon publication.

131 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://debreceniitotabla.birosag.hu/sajtokozlemenye/20140210/aljas-indokbol-kulonos-kegyetlenseggel-olt-elefogytiglant-kapott>; see also, <http://en.hatter.hu/news/homophobic-murderer-gets-life-imprisonment-in-hungary>.

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

133 This concerns an instruction on the basis of Article 130(4) of the *Wet Rechterlijke Organisatie* [Act on the Judicial System]. For the text of the current (2007) version of the instruction, original text is available at: www.om.nl/organisatie/beleidsregels/overzicht/discriminatie.

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

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

Latin America & Caribbean	Bolivia (2011), ¹³⁶ Chile (2012), ¹³⁷ Colombia (2011), ¹³⁸ Ecuador (2009), ¹³⁹ Honduras (2013), ¹⁴⁰ Nicaragua (2008), Uruguay (2003), ¹⁴¹ some parts of Mexico. ¹⁴²
North America	Canada (1996) and United States (2009). ¹⁴³
Oceania	New Zealand (2002)
Incitement to hatred based on sexual orientation prohibited (28 countries)	
Africa	South Africa (2000).
Europe	Albania (2013), ¹⁴⁴ Belgium (2003), Croatia (2003), Denmark (1987), ¹⁴⁵ Estonia (2006), Finland (2011), ¹⁴⁶ France (2005), ¹⁴⁷ Iceland (1996), Ireland (1989), Lithuania (2003), Luxembourg (1997), Malta (2012), ¹⁴⁸ Monaco (2005), ¹⁴⁹ Netherlands (1992), Norway (1981), Portugal (2007), Romania (2000), San Marino (2008), Serbia (2009), Slovenia (2008), ¹⁵⁰ Spain (1996), Sweden (2003), some parts of the United Kingdom (2004-10). ¹⁵¹

¹³⁶ 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 Racismo y Toda Forma de Discriminación* of 2011. Original text is available at: <http://www.rree.gob.bo/webmre/Documentos/d385.pdf>.

¹³⁷ See Article 12 (21) of the Código Penal of Chile, as amended by Article 17 of Ley N° 20.609, which establishes measures against discrimination. Original text of the latter law: http://www.colegioabogados.cl/cgi-bin/procesa.pl?plantilla=archivo.html&bri=colegioabogados&tab=art_1&campo=c_archivo&id=1191.

¹³⁸ See Law 1482 of 30 November 2011, which also covers incitement to hatred based on sexual orientation. Original text is available at: <http://www.vicpresidencia.gov.co/Programas/Documents/121431-LEY-ANTIDISCRIMINACION.pdf>.

¹³⁹ See Articles 6, 7, 8 and 21 of the section *Reformas al Código Penal* of the *Ley Reformativa Al Código de Procedimiento Penal y al Código Penal*. Original text is available at: http://www.carlosparma.com.ar/index.php?option=com_content&view=article&id=347:ley-reformativa-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.

¹⁴⁰ 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: http://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.

¹⁴¹ 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: http://www.gparlamentario.org/spip/IMG/pdf/Ley_17677_de_29-7-2003_Actos_Violentos_fundados_en_Identidad_Sexua_-_Uruguay.pdf.

¹⁴² 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>.

¹⁴³ Also available on 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).

¹⁴⁴ 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>.

¹⁴⁵ The law is applicable to Faeroe Islands (2007) and to Greenland (2010).

¹⁴⁶ 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: <http://www.finlex.fi/en/laki/kaannokset/1889/en18890039.pdf>.

¹⁴⁷ 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.

¹⁴⁸ See Articles 82A and 82C of the Criminal Code of Malta, text of the law is available at: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8574&l=1>. The Criminal Code was amended by ACT No. VIII of 2012 at <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=23426&l=1>.

¹⁴⁹ See Articles 16, 24, 25, 44 of the *Loi n° 1.299 du 15 juillet 2005 sur la liberté d'expression publique*, available at: <http://www.legimonaco.mc/305/legismclois.nsf/db3b0488a44ebcf9c12574c7002a8e84/29ad7325e3a152a4c12573f003d2e4e!OpenDocument>.

¹⁵⁰ See Article 297(1) of the Penal Code at <http://www.policija.si/eng/images/stories/Legislation/pdf/CriminalCode2009.pdf>.

¹⁵¹ Such laws have only been adopted in Northern Ireland (2004) and England and Wales (2010).

Latin America & Caribbean	Bolivia (2011), ¹⁵² Colombia (2011), Ecuador (2009), some parts of Mexico, ¹⁵³ Uruguay (2003). ¹⁵⁴
North America	Canada (2004).
Oceania	Some parts of Australia. ¹⁵⁵
Marriage open for same-sex couples (14 countries)	
Africa	South Africa (2006).
Europe	Belgium (2003), Denmark (2012), France (2013), ¹⁵⁶ Iceland (2010), ¹⁵⁷ Netherlands (2001), Norway (2009), Portugal (2010), ¹⁵⁸ Spain (2005), Sweden (2009), some parts of United Kingdom (2013/2014). ¹⁵⁹
Latin America & Caribbean	Argentina (2010), ¹⁶⁰ some parts of Mexico (2010), ¹⁶¹ Uruguay (2013). ¹⁶²

¹⁵² See Articles 281 *quater*, 281 *septies* 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 Racismo y Toda Forma de Discriminación of 2011. Original text is available at: <http://www.rree.gob.bo/webmre/Documentos//d385.pdf>.

¹⁵³ Coahuila (2005) and the Federal District (2009).

¹⁵⁴ 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: http://www.gparlamentario.org/spip/IMG/pdf/Ley_17677_de_29-7-2003_Actos_Violentos_fundados_en_Identidad_Sexua_-_Uruguay.pdf

¹⁵⁵ Australian Capital Territory (2004), New South Wales (1993), Queensland (2003), Tasmania (1999).

¹⁵⁶ See Law Providing for Same-Sex Marriage, passed on 17 May 2013, effective 29 May 2013. Text of the law is available at: <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/english/case-law/decision/decision-no-2013-669-dc-of-17-may-2013.137411.html>. After France approved the equal marriage law in 2013, it has been reported that Martinique and Guadeloupe (both overseas department of France) have begun to perform same-sex marriage. See <http://www.guadeloupe.franceantilles.fr/regions/grande-terre-sud-et-est/le-premier-mariage-gay-celebre-a-sainte-anne-226029.php>; see also http://www.rewmi.com/martinique-premier-mariage-homosexuel-celebre-deux-femmes-se-sont-dit-oui_a79551.html.

¹⁵⁷ 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: <http://www.althingi.is/altext/138/s/0836.html>.

¹⁵⁸ Text of the law is available at <http://dre.pt/pdf1sdip/2010/05/10500/0185301853.pdf>.

¹⁵⁹ For England and Wales, see Marriage (Same Sex Couples) Act 2013, available at: <http://www.legislation.gov.uk/ukpga/2013/30/contents/enacted>. For Scotland, see Marriage and Civil Partnership (Scotland) Act 2014, available at: <http://www.legislation.gov.uk/asp/2014/5/contents/enacted>.

¹⁶⁰ Text of the law is available at: http://www.sigla.org.ar/index.php?option=com_content&view=article&catid=81:legislacion-y-jurisprudencia&id=438:ley-matrimonio-gay&Itemid=101.

¹⁶¹ The Federal District (2010), and Quintana Roo (2012).

¹⁶² 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: <http://www0.parlamento.gub.uy/leyes/ AccesoTextoLey.asp?Ley=19075>.

North America

Canada (2005), as well some parts of the United States.¹⁶³

Oceania

New Zealand (2013).¹⁶⁴

Same-sex couples offered most or all rights of marriage (Civil Partnerships, Registered Partnerships, Civil Unions, etc.) (11 countries)

Europe

Austria (2010), Finland (2002), Germany (2001), Hungary (2009), Ireland (2011),¹⁶⁵ Liechtenstein (2011),¹⁶⁶ Malta (2014),¹⁶⁷ Switzerland (2007), United Kingdom (2005).¹⁶⁸

163 They are:

- 1) California (2013): http://freemarry.3cdn.net/f3c291f543be541150_4dm6b90ql.pdf,
- 2) Connecticut (2008): <http://www.cga.ct.gov/2009/ACT/Pa/pdf/2009PA-00013-R00SB-00899-PA.pdf>,
- 3) Delaware (2013): <http://delcode.delaware.gov/sessionlaws/ga147/chp019.shtml>,
- 4) District of Columbia (2010): http://dcclims1.dccouncil.us/mendelson//archive_pr/COMMITTEE%20PRINT%20-%20Bill%2018-482,%20Religious%20Freedom%20and%20Civil%20Marriage%20Equality%20Amendment%20Act%20of%202009.pdf,
- 5) Illinois (2013): <http://ilga.gov/legislation/billstatus.asp?DocNum=10&GAID=12&GA=98&DocTypeID=SB&LegID=68375&SessionID=85>,
- 6) Iowa (2009): http://www.lambdalegal.org/sites/default/files/legal-docs/downloads/varnum_ia_20090403_decision-ia-supreme-court.pdf,
- 7) Hawaii (2013): <http://www.freedomtomarry.org/blog/entry/20-years-in-the-making-hawaii-stands-on-the-verge-of-the-freedom-to-marry>,
- 8) Massachusetts (2004) http://www2.law.columbia.edu/faculty/franke/Gay_Marriage/Goodridge%20Decision%20edited%20Fundamental%20Right.pdf,
- 9) Maine (2012): <http://www.freedomtomarry.org/blog/entry/victory-in-maine-weve-made-history-by-winning-marriage-at-the-ballot>,
- 10) Maryland (2013): <http://www.freedomtomarry.org/blog/entry/maryland-passes-marriage-at-the-ballot>,
- 11) Minnesota (2013): <http://www.leg.state.mn.us/rl/issues/issues.aspx?issue=gay>,
- 12) New Hampshire (2010): <http://www.gencourt.state.nh.us/legislation/2009/HB0436.html>,
- 13) New Jersey (2013): http://freemarry.3cdn.net/9007341ef66aa40d39_eum6vrd3p.pdf,
- 14) New Mexico (2013): <http://www.freedomtomarry.org/page/-/files/pdfs/NMCourtRuling121913.pdf>,
- 15) New York (2011): <http://www.governor.ny.gov/assets/marriageequalitybill.pdf>,
- 16) Rhode Island (2013): <http://abcnews.go.com/US/wireStory/ri-lawmakers-vote-gay-marriage-19028313#.UYFohpXvcjM> (entry into force 1 August 2013t),
- 17) Vermont (2009): <http://www.leg.state.vt.us/docs/2010/bills/Passed/S-115.pdf>, and
- 18) Washington (2012): <http://www.freedomtomarry.org/blog/entry/going-4-for-4-voters-in-washington-affirm-the-freedom-to-marry>.

164 See Marriage (Definition of Marriage) Amendment Act 2013, entry into force on 19 August 2013. Text of the law is available at: http://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.

165 See Civil Partnership and Certain Rights and Obligations of Cohabitants Act of 2010. Text of the law is available at <http://www.irishstatutebook.ie/pdf/2010/en.act.2010.0024.PDF>.

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

167 See, <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=26024&l=1>.

168 The United Kingdom associate Isle of Man (2011), see http://en.wikipedia.org/wiki/Recognition_of_same-sex_unions_in_the_Isle_of_Man; Jersey (2012), see <http://www.bbc.co.uk/news/world-europe-jersey-17583000>; Gibraltar (2014), see <http://www.pinknews.co.uk/2014/03/21/gibraltar-approves-civil-partnerships-bill/>.

Latin America & Caribbean	Brazil (2011/2013), ¹⁶⁹ Colombia (2009) ¹⁷⁰ and some parts of Mexico (2007). ¹⁷¹
North America	Some parts of the United States. ¹⁷²
Oceania	Some parts of Australia. ¹⁷³
Same-sex couples offered some rights of marriage (8 countries)	
Asia	Israel (1994).
Europe	Andorra (2005), Croatia (2003), Czech Republic (2006), Luxemburg (2004), Slovenia (2006).
Latin America & Caribbean	Costa Rica (2013), ¹⁷⁴ Ecuador (2009).
North America	Some parts of the United States. ¹⁷⁵
Oceania	Some states in Australia. ¹⁷⁶

169 On 5 May 2011, the Supreme Court 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. The text of this decision is available at: <http://www.gontijo-familia.adv.br/direito-de-familia-casamento-civil-entre-pessoas-do-mesmo-sexo/>. 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. The text of the resolution is available at: http://www.cnj.jus.br/images/imprensa/resolucao_n_175.pdf.

170 On 29 January 2009, the Constitutional Court ruled in favour of giving cohabitating same-sex couples the same rights offered to unmarried heterosexual couples (which enjoy most rights of marriage). Text of the law is available at: <http://www.corteconstitucional.gov.co/relatoria/2009/c-029-09.htm>. On another 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 until 20 June 2013. In case they fail to do it, same-sex couples will be granted all marriage rights automatically. The original text of this decision is available at: <http://www.corteconstitucional.gov.co/comunicados/No.%2030%20comunicado%2026%20de%20julio%20de%202011.php>

171 The state of Coahuila (2007), text of the law is available at: <http://sgob.sfpcoahuila.gob.mx/admin/uploads/Documentos/modulo3/PactoCivilSolidaridad.pdf>; the state of Colima (2013), text of the law is available at: http://stj.col.gob.mx/Centro_de_Estudios_Judiciales/assets/docs/reformas/2013/03-agosto-2013-Constituci%C3%B3n%20Pol%C3%ADtica%20del%20Estado%20Libre%20y%20Soberano%20de%20Colima.pdf.

172 They are:

- 1) Colorado (2013): http://www.leg.state.co.us/clics/clics2013a/csl.nsf/fsbillcont3/35CE5FDC5F040FF487257A8C0050715D?open&file=011_enr.pdf.
- 2) Nevada (2009): <http://www.leg.state.nv.us/NRS/NRS-122A.html>.
- 3) Oregon (2008): <http://www.leg.state.or.us/07reg/measures/hb2000.dir/hb2007.en.html>.

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

174 On 4 July 2013, the President signed into law the 'Ley de la Persona Joven', 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: http://www.gaceta.go.cr/pub/2013/07/08/COMP_08_07_2013.pdf.

175 Wisconsin (2009): <http://wilawlibrary.gov/topics/familylaw/domesticpartner.php>.

176 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 legal (15 countries)

Africa	South Africa (2002). ¹⁷⁷
Asia	Israel (2008).
Europe	Belgium (2006), Denmark (2010), France (2013), Iceland (2006), Netherlands (2001), Norway (2009), Spain (2005), Sweden (2003), some parts of the United Kingdom (2005). ¹⁷⁸
Latin America & Caribbean	Argentina (2010), Brazil (2010), ¹⁷⁹ some parts of Mexico (2010), ¹⁸⁰ Uruguay (2009). ¹⁸¹
North America	Canada, ¹⁸² and some parts of the United States. ¹⁸³
Oceania	Some parts of Australia, ¹⁸⁴ New Zealand (2013). ¹⁸⁵

Moreover, second-parent adoption, but not full adoption, by same-sex couples is also legal in Austria (2013),¹⁸⁶ Finland (2009), Germany (2004), Israel (2005), and Slovenia (2010),¹⁸⁷ Greenland (2009), Tasmania (in Australia) (2004), Alberta (in Canada) (1999), as well as some parts of United States.¹⁸⁸

¹⁷⁷ *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: <http://www.saflii.org/za/cases/ZACC/2002/20.pdf>.

¹⁷⁸ 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 (2013), Isle of Man (2011) and Jersey (2012) also allows joint adoption.

¹⁷⁹ 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 http://www.athosgls.com.br/noticias_visualiza.php?contcod=29208.

¹⁸⁰ The Federal District (2010), and Coahuila (2014).

¹⁸¹ Text of the law is available at: <http://www.parlamento.gub.uy/leyes/ AccesoTextoLey.asp?Ley=18590&Anchor=>.

¹⁸² 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).

¹⁸³ Up to May 2014, there are 22 states plus District of Columbia that fully allow joint adoption: Arkansas, California, Colorado, Connecticut, Delaware, Guam, Hawaii, Illinois, Indiana, Iowa, Maine, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New York, Oregon, Rhode Island, Vermont, Washington and District of Columbia. For the latest information, see Movement Advancement Project, 'Joint Adoption Laws' at http://www.lgbtmap.org/equality-maps/foster_and_adoption_laws.

¹⁸⁴ Joint adoption by same-sex couples is legal in:

- 4) Capital Territory (2004): http://www.austlii.edu.au/au/legis/act/consol_act/aa1993107/s14.html.
- 5) New South Wales (2010): <http://www.legislation.nsw.gov.au/fullhtml/inforce/act+19+2010+cd+0+N.The>,
- 6) Tasmania (2013): http://www.parliament.tas.gov.au/bills/Bills2013/reprint/6_of_2013.pdf, and
- 7) Western Australia (2002): http://www.austlii.edu.au/au/legis/wa/consol_act/aa1994107/.

¹⁸⁵ See Marriage (Definition of Marriage) Amendment Act 2013, which consequentially amended the Adoption Act (1995 No. 93). Text of the law is available at: http://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.

¹⁸⁶ See the amendment to the Civil Code and the Registered Partnership Act (Bundesgesetz, mit dem das Allgemeine bürgerliche Gesetzbuch und das Eingetragene Partnerschaft-Gesetz geändert werden), passed on 18 July 2013, entered into force on 1 August 2013. The original text is available at: http://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2013_I_179/BGBLA_2013_I_179.pdf.

¹⁸⁷ The 1976 Marriage and Family Relations Act, as interpreted by the Slovenian Supreme Court in a decision of 28 January 2010 (Conclusion of the Supreme Court of the Republic of Slovenia no II Ips 462/2009-9, point 15), implicitly allows for second-parent adoption by a same-sex partner. See Neža Kogovšek Šalamon, "Traits of Homophobia in Slovenian Law: From Ignorance Towards Recognition?" in Luca Trappolin, Alessandro Gasparini and Robert Wintemute (eds.), *Confronting Homophobia in Europe – Social and Legal Perspectives* (Oxford: Hart, 2011) at 198-199.

¹⁸⁸ They are: California, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Washington. See Movement Advancement Project, Second-Parent Adoption Laws at http://www.lgbtmap.org/equality-maps/foster_and_adoption_laws.

ALGERIA

MALE/MALE



ILLEGAL

FEMALE/FEMALE



ILLEGAL



Penal Code (Ordinance 66-156 of 8 June 1966).¹⁸⁹

Art. 338 - "Any person guilty of a homosexual act shall be punished with a term of imprisonment of between two months and two years and a fine of between 500 and 2,000 Algerian dinars."¹⁹⁰

ANGOLA

MALE/MALE

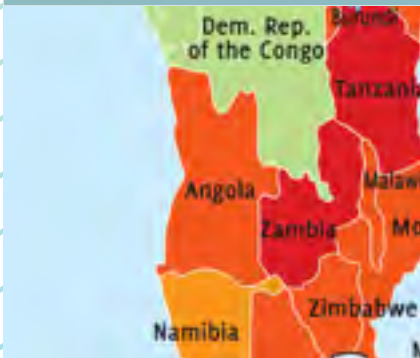


ILLEGAL

FEMALE/FEMALE



ILLEGAL



Penal Code of 16 September 1886, as amended in 1954 (inherited from the Portuguese colonial era).¹⁹¹

Articles 70 and 71(4) provide for the imposition of security measures on people who habitually practice acts against nature. For more information, including the text of these articles, see the section on Mozambique.

¹⁸⁹ Text of the law is available at: <http://www.wipo.int/wipolex/en/details.jsp?id=7998>.

¹⁹⁰ Original text: "Tout coupable d'un acte d'homo- sexualité est puni d'un emprisonnement de deux (2) mois à deux (2) ans et d'une amende de cinq cents (500) à deux mille (2.000) DA."

¹⁹¹ 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 (see the proposal at: http://www.wipo.int/wipolex/en/text.jsp?file_id=244267).

BOTSWANA

MALE/MALE



ILLEGAL

FEMALE/FEMALE



ILLEGAL



Penal Code [Chapter 08:01],¹⁹² amended by the Penal Code Amendment Act 5, 1998.¹⁹³

Section 164. Unnatural offences

“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 offence and is liable to imprisonment for a term not exceeding seven years.”

Section 165. Attempts to commit unnatural offences

“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

“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.”

BURUNDI

MALE/MALE



ILLEGAL

FEMALE/FEMALE



ILLEGAL



Law No. 1/05 of 22 April 2009 concerning the revision of the Penal Code.¹⁹⁴

Article 567:

“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.”¹⁹⁵

(Unofficial translation)

¹⁹² Text of the law is available at: <http://www.wipo.int/wipolex/en/details.jsp?id=10486>.

¹⁹³ 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), available at www.hrw.org/en/reports/2003/05/13/more-name-0 at 272-274.

¹⁹⁴ Text of the law is available at: http://www.oag.bi/IMG/rtf/code_penal_burundais-2.rtf.

¹⁹⁵ 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.”

CAMEROON

MALE/MALE

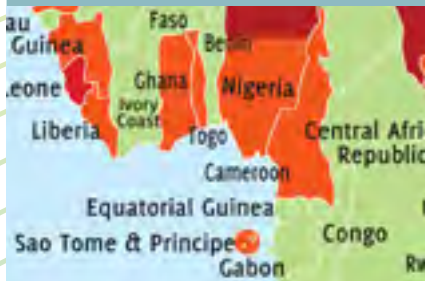


ILLEGAL

FEMALE/FEMALE



ILLEGAL



Penal Code of 1965 and 1967, as amended in 1972.¹⁹⁶

The French text of article 347bis is:

*'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.'*¹⁹⁷

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.'*¹⁹⁸ According to Waaldijk,¹⁹⁹ it is unclear whether this is the official English version, or only an unofficial translation of the French version.

CENTRAL AFRICAN REPUBLIC

MALE/MALE

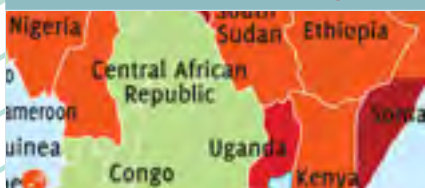


ILLEGAL

FEMALE/FEMALE



ILLEGAL



Penal Code of 2007.²⁰⁰

The French text of Article 115: "Tout acte contre nature commis dans un lieu ouvert au public avec un individu du même sexe sera considéré comme outrage public à la pudeur et puni d'un emprisonnement de six mois à deux ans et d'une amende de 150.000 à 600.000 francs."

Unofficial translation: "Any act against nature committed in a public place with a person of the same sex will be considered public outrage against decency and punished by imprisonment of six months to two years and a fine of 150,000 to 600,000 francs."

COMOROS

MALE/MALE

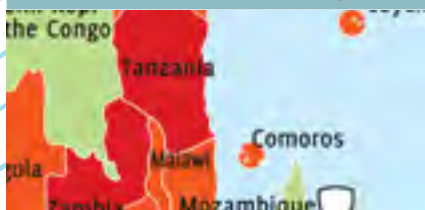


ILLEGAL

FEMALE/FEMALE



ILLEGAL



Penal Code of the Federal Islamic Republic of Comoros.²⁰¹

Article 318:

"(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."²⁰²

¹⁹⁶ German Bundestag, Criminal law provisions on homosexuality and their application around the world, Printed Paper 16/3597, 28 November 2006 at 8. http://www.gaylawnet.com/ezone/crime/16_3597_minor_interpellation.pdf.

¹⁹⁷ Available at: www.glapn.org/sodomylaws/world/cameroon/cameroon.htm.

¹⁹⁸ 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: <http://www.hrw.org/reports/2010/11/04/criminalizing-identities-0>

¹⁹⁹ Waaldijk, Kees. Legal recognition of homosexual orientation in the countries of Africa, March 2011 ("whit authors").

²⁰⁰ <http://www.track.unodc.org/LegalLibrary/pages/LegalResources.aspx?country=Central%20African%20Republic> (see Anti-Corruption Law Criminal/Penal Law or Criminal/Penal Procedure Law, 2007 on this page).

²⁰¹ Text of the law is available at: <http://comoresdroit.comores-droit.com/wp-content/dossier/code/penal.pdf>.

²⁰² Original text: "Sans préjudice des peines plus graves prévues par les alinéas qui précèdent 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 nature avec un individu de son sexe. Si l'acte a été commis avec un mineur, le maximum de la peine sera toujours prononcé."

EGYPT

MALE/MALE



ILLEGAL

FEMALE/FEMALE



UNCLEAR



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 several articles of the Penal Code, have been used to imprison gay men in recent years.²⁰³

Law 58/1937 promulgating The Penal Code

Article 98(f): “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.”²⁰⁴

Article 269 bis: “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.”²⁰⁵

Article 278: “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.”²⁰⁶

Law 10/1961 on the Combating of Prostitution

Article 9: “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.

²⁰³ 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>.

²⁰⁴ 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>. (it is unclear if this is up-to-date). Some sources on imprisonment of gay men refer to other Articles of the Penal Code than the three quoted here, including an “Article 98(w)” that does not seem to be part of this unofficial translation.

²⁰⁵ Text of the law is available at: http://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): <http://www.hrw.org/reports/2004/egypt0304/egypt0304.pdf>.

²⁰⁶ See the Appendix at: <http://www.hrw.org/reports/2004/egypt0304/egypt0304.pdf>.

EGYPT

MALE/MALE



ILLEGAL

FEMALE/FEMALE



UNCLEAR



(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. [...]”.²⁰⁷

ERITREA

MALE/MALE



ILLEGAL

FEMALE/FEMALE



ILLEGAL



Penal Code of 1957 (inherited from Ethiopian rule).²⁰⁸

Art. 600. Unnatural Carnal Offences

“(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.

(2) The provisions of Art. 597 are applicable where an infant or young person is involved.”

Art.105. Simple Imprisonment

“(1) simple imprisonment is a sentence applicable to offences of a not very serious nature committed by persons who are not a serious danger to society.

It is intended as a measure of safety to the general public and as a punishment to the offender.

Subject to any special provision of law and without prejudice to conditional release, simple imprisonment may extend for a period of from ten days to three years; such period shall be fixed by the court.

(2) The sentence of simple imprisonment shall be served in such prison or in such section thereof as is appointed for the purpose.”

²⁰⁷ See the Appendix at: <http://www.hrw.org/reports/2004/egypt0304/egypt0304.pdf>.

²⁰⁸ Text of the law is available at: <http://www.unhcr.org/refworld/docid/49216a0a2.html>.

ETHIOPIA

MALE/MALE



ILLEGAL

FEMALE/FEMALE



ILLEGAL



The Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No. 414/2004.²⁰⁹

Article 629. Homosexual and other Indecent Acts

“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.”

Article 106. Simple Imprisonment

“(1) Simple imprisonment is a sentence applicable to crimes of a not very serious nature committed by persons who are not a serious danger to society.

Without prejudice to conditional release, simple imprisonment may extend for a period of from ten days to three years.

However, simple imprisonment may extend up to five years where, owing to the gravity of the crime, it is prescribed in the Special Part of this Code, or where there are concurrent crimes punishable with simple imprisonment, or where the criminal has been punished repeatedly.

The Court shall fix the period of simple imprisonment in its judgment.

(2) The sentence of simple imprisonment shall be served in such prison or in such section thereof as is appointed for the purpose.”

²⁰⁹ Text of the law is available at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/70993/75092/F1429731028/ETH70993.pdf>.

GAMBIA

MALE/MALE



ILLEGAL

FEMALE/FEMALE



ILLEGAL



Criminal Code 1965, as amended in 2005.²¹⁰

Article 144: Unnatural offences

“(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.”

GHANA

MALE/MALE

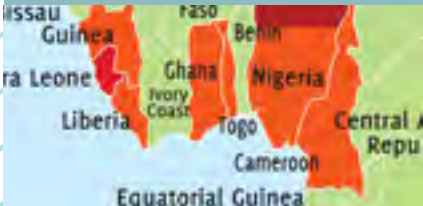


ILLEGAL

FEMALE/FEMALE



LEGAL



Criminal Code, 1960 (Act 29), as amended to 2003.²¹¹

Section 104. 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.”

According to Article 296 (4) of the Criminal Procedural Code, a misdemeanour shall be liable to imprisonment for a term not exceeding three years.²¹²

GUINEA

MALE/MALE



ILLEGAL

FEMALE/FEMALE



ILLEGAL



Penal Code of 1998.²¹³

Article 325: “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.”²¹⁴

²¹⁰ Text of the code is available at: <http://www.ilo.ch/dyn/natlex/docs/SERIAL/75299/78264/F1686462058/GMB75299.pdf>.

²¹¹ Text of the law is available at: <http://www.refworld.org/pdfid/44bf823a4.pdf>.

²¹² Available at: http://www.vertic.org/media/National%20Legislation/Ghana/GH_Criminal_Procedure_Code.pdf.

²¹³ Text of the law available at: <http://www.unhcr.org/refworld/docid/44a3eb9a4.html>.

²¹⁴ 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.”

KENYA

MALE/MALE



ILLEGAL

FEMALE/FEMALE



ILLEGAL



The Penal Code (as amended by Act No. 5 of 2003).²¹⁵

“Section 162. 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. 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. 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.”

LESOTHO

MALE/MALE

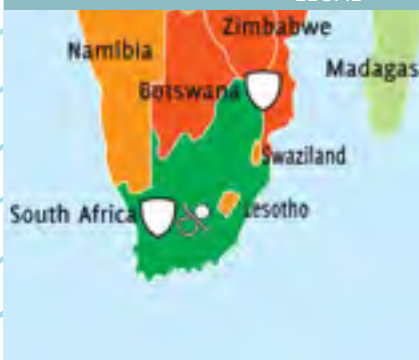


LEGAL

FEMALE/FEMALE



LEGAL



Sodomy is prohibited as a common-law offence. It is defined as “unlawful and intentional sexual relationship through the anus between two human males”.²¹⁶

The Criminal Procedure and Evidence Act, Date of commencement: 1 January 1939, has implied the existence of sodomy law. Section 185 (5) 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.²¹⁷

²¹⁵ Text of the law is available at: <http://www.kenyalaw.org/Downloads/GreyBook/8.%20The%20Penal%20Code.pdf>.

²¹⁶ Concluding observations of the Human Rights Committee: Lesotho. 1999-04-08. CCPR/C/79/Add.106, available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.79.Add.106.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.79.Add.106.En?Opendocument).

²¹⁷ Text of the law is available at: <http://www.acc.gov.sz/legislation/Criminal%20procedure%20and%20evidence%20act.pdf>.

LIBERIA

MALE/MALE



ILLEGAL

FEMALE/FEMALE



ILLEGAL



New Penal Law, Volume IV, Title 26, Liberian Code of Laws Revised, Approved in 1976 and Published in 1978.²¹⁸

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.

LIBYA

MALE/MALE



ILLEGAL

FEMALE/FEMALE



ILLEGAL



Penal Code of 1953 as amended by Law 70 of 2 October 1973:

‘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. The focus of the law is on determining whether the absolute legal ban on extramarital sexual relations has been violated.²¹⁹

Article 407

(4) Whoever has intercourse with a person with his consent will be punished with his partner by imprisonment of not more than five years.²²⁰

Article 408

(4) Whoever commits an indecent act with a person with his consent will be punished with his partner with imprisonment.²²¹

²¹⁸ 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>.

²¹⁹ Mayer, A. E. Libyan legislation in defense of Arabo-Islamic sexual mores. *The American Journal of Comparative Law*, (1980) 28(2) at 295 and 304.

²²⁰ Ibid, 302.

²²¹ Ibid, 304.

MALAWI

MALE/MALE



ILLEGAL

FEMALE/FEMALE



ILLEGAL

Penal Code Cap. 7:01 Laws of Malawi.²²²

"Section 153. Unnatural offences

Anyone who –

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

"Section 154. Attempt to commit unnatural offences

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

"Section 156 Indecent practices between males

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, 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.²²³

MAURITANIA

MALE/MALE



ILLEGAL

FEMALE/FEMALE



ILLEGAL

Penal Code of 1984.²²⁴

"Article 308. - 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".²²⁵

(Unofficial translation)

²²² Text of the law (not yet including the amendment of 2011) is available at : http://www.malawilii.org/files/mw/legislation/consolidated-act/7:01/penal_code_pdf_14611.pdf.

²²³ See International Commission of Jurists, "Sex Between Women Now a Crime in Malawi: New Law Violates Human Rights Obligations of Malawi", available at: <http://www.ighrc.org/sites/default/files/488-1.pdf>.

²²⁴ Text of the law is available at: <http://www.droit-afrique.com/images/textes/Mauritanie/Mauritanie%20-%20Code%20penal.pdf>.

²²⁵ 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."

MAURITIUS

MALE/MALE

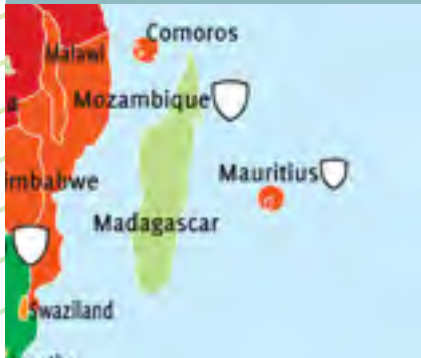


ILLEGAL

FEMALE/FEMALE



LEGAL

Criminal Code of 1838.²²⁶

Section 250. Sodomy and bestiality

“(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.”

According to Waaldijk (2011),²²⁷ in 2007, the Sexual Offences Bill²²⁸ was proposed, 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). Nevertheless, it is unclear if this Bill has become law yet.

MOROCCO

MALE/MALE



ILLEGAL

FEMALE/FEMALE



ILLEGAL

Penal Code of 26 November 1962.²²⁹

Article 489. “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.”²³⁰

²²⁶ Text of the law is available at: <http://www.gov.mu/portal/sites/legaldb/files/criminal.pdf>.

²²⁷ Waaldijk, Kees. Legal recognition of homosexual orientation in the countries of Africa, March 2011.

²²⁸ Text of the bill is available at: <http://mauritiusassembly.gov.mu/English/Documents/bill0607.pdf>.

²²⁹ The text of the law is available in French and Arabic here: http://www.wipo.int/wipolex/en/text.jsp?file_id=190447.

²³⁰ Original text: “Est puni de l’emprisonnement de six mois à trois ans et d’une amende de 200 à 1.000 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”.

MOZAMBIQUE

MALE/MALE



ILLEGAL

FEMALE/FEMALE



ILLEGAL



Penal Code of 16 September 1886, as amended in 1954 (inherited from the Portuguese colonial era).²³¹

Articles 70 and 71(4°) 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).

Original Text in Portuguese:

“Artigo 70° (Medidas de segurança)

São medidas de segurança:

- 1° – O internamento em manicômio criminal;
- 2° – O internamento em casa de trabalho ou colônia agrícola;
- 3° – A liberdade vigiada;
- 4° – A caução de boa conduta;
- 5° – A interdição do exercício de profissão;

[...]

“Artigo 71°

(Aplicação de medidas de segurança)

São aplicáveis medidas de segurança:

[...]

- 4° – Aos que se entreguem habitualmente à prática de vícios contra a natureza;

[...]

§ 1° – O internamento, nos termos do n.º 2o e § 2° do artigo 70°, só poderá ter lugar pela primeira vez quando aos indivíduos indicados nos nos. 1o, 2°, 7o e 9o.

Aos indivíduos indicados nos n.ºs. 3°, 4°, 5°, 6°, e 8° será imposta, pela primeira vez, a caução de boa conduta ou a liberdade vigiada e, pela segunda, a liberdade vigiada com caução elevada ao dobro, ou o internamento.

[...]

NAMIBIA

MALE/MALE



ILLEGAL

FEMALE/FEMALE



LEGAL



Sodomy remains a crime in Namibia according to the Roman-Dutch common-law, which was imposed by the South Africans. Common-law is a legal tradition based mainly on precedent court verdicts, while there is no codified sodomy provision in Namibia.²³²

²³¹ Text of the law is available at: http://www.portaldogoverno.gov.mz/Legisla/legisSectores/judiciaria/codigo_penal.pdf.

²³² See Submission in the UPR review of Namibia at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/NA/JS1_JointSubmission-eng.pdf.

NIGERIA

MALE/MALE



ILLEGAL

FEMALE/FEMALE



ILLEGAL



Criminal Code Act, Chapter 77, Laws of the Federation of Nigeria 1990.²³³

Section 214.

“Any person who-

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

Section 215. “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. “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.²³⁴

The states which have adopted such laws are:²³⁵

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).

In addition, on 17 December 2013, the Same-Sex Marriage (Prohibition) Act was passed by the Senate and the House of Representatives and signed by the President on 7 January 2014. According to the law:²³⁶

“§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.

²³³ Text of the law is available at: <http://www.nigeria-law.org/Criminal%20Code%20Act-Tables.htm>.

²³⁴ 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.

²³⁵ See ‘The Unfizzled Sharia Vector in the Nigerian State’ at: <http://www.dawodu.com/aluko5.htm>.

²³⁶ Text of the law available at: <http://www.refworld.org/docid/52f4d9cc4.html>.

NIGERIA

MALE/MALE



ILLEGAL

FEMALE/FEMALE



ILLEGAL



§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 enters into a same-sex marriage contract or civil union commits an offence and is 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 aids the solemnisation of same sex marriage or civil union, or supports the registration, operation and sustenance of gay clubs, societies, organisations, processions or meetings in Nigeria commits an offence and is liable on conviction to a term of 10 years of imprisonment."

On the issue of how Nigeria has responded to its international human rights law obligations in United Nations fora regarding SOGI, the country offered 'no response' to its first cycle Universal Periodic Review recommendations in 2009 to decriminalise and to withdraw its prohibition of same sex marriage.²³⁷ Further, in 2011²³⁸ and 2012,²³⁹ the Special Rapporteur on the rights to freedom of peaceful assembly and of association highlighted human rights violations, torture and other cruel, inhuman or degrading treatment or punishment,²⁴⁰ human rights defenders,²⁴¹ and Joint Statement on the [then] proposed prohibition on a Bill outlawing same sex marriage.²⁴²

²³⁷ <http://arc-international.net/global-advocacy/universal-periodic-review/n/nigeria>.

²³⁸ 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.

²³⁹ 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.

²⁴⁰ 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.

²⁴¹ 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.

²⁴² 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.

SENEGAL

MALE/MALE



ILLEGAL

FEMALE/FEMALE



ILLEGAL

Penal Code of 1965.²⁴³

Article 319 (third paragraph). “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.”²⁴⁴

SEYCHELLES

MALE/MALE

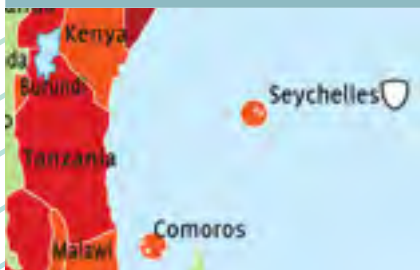


ILLEGAL

FEMALE/FEMALE



LEGAL

Criminal Code of 1955.²⁴⁵

Section 151: “Any person who –
 a. has carnal knowledge of any person against the order of nature; or
 b. has carnal knowledge of an animal; or
 c. permits a male person to have carnal knowledge of him or her against the order of nature,
 is guilty of a felony, and is liable to imprisonment for fourteen years.”

²⁴³ Text of the Penal Code, which entered into force on 1 February 1966, is available at: <http://www.justice.gouv.sn/droitp/CODE%20PENAL.PDF>

²⁴⁴ Original text: “Sans préjudice des peines plus graves prévues par les alinéas qui précèdent 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 un 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.”

²⁴⁵ The text of the law is available at: <http://www.refworld.org/docid/4d67afc82.html>.

SIERRA LEONE

MALE/MALE



ILLEGAL

FEMALE/FEMALE



LEGAL



Offences against the Person Act 1861.²⁴⁶

Section 61 of the above named act, criminalises buggery and bestiality, with a penalty of life imprisonment.

SOMALIA

MALE/MALE



ILLEGAL

FEMALE/FEMALE



ILLEGAL



Penal Code, Legislative Decree No. 5/1962.²⁴⁷

Article 409. Homosexuality

“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)

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.²⁴⁸ However, Somaliland in the north has declared itself independent, and it still applies the Penal Code.²⁴⁹

²⁴⁶ See Submission in the UPR review of Sierra Leone, available at: http://lib.ohchr.org/HRBodies/UPR/Documents/session11/SL/JS2_JointSubmission2-eng.pdf.

²⁴⁷ Original text of the law is not available online, but the table of content is available at: http://www.somalilandlaw.com/criminal_law.html. An unofficial English translation is available at: http://www.somalilandlaw.com/Penal_Code_English.pdf.

²⁴⁸ There have been reports from different parts of Somalia that Islamic Sharia law has been used to punish homosexual acts, see for example, http://www.huffingtonpost.com/2013/03/21/gay-teen-stoned-somalia-sodomy_n_2916655.html and <http://www.asylumlaw.org/docs/sexualminorities/Somalia023201.pdf>.

²⁴⁹ See Somaliland Penal Code, available at: http://www.somalilandlaw.com/Criminal_Law/body_criminal_law.html.

SOUTH SUDAN

MALE/MALE



ILLEGAL

FEMALE/FEMALE



ILLEGAL



Penal Code Act 2008.²⁵⁰

Section 248. Unnatural Offences

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

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

SUDAN

MALE/MALE



ILLEGAL

FEMALE/FEMALE



ILLEGAL



The Penal Code 1991 (Act No. 8 1991).²⁵¹

Section 148. 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

"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."

²⁵⁰ Available at: http://www.wipo.int/wipolex/en/text.jsp?file_id=250684.

²⁵¹ Available at: http://www.ecoi.net/file_upload/1329_1202725629_sb106-sud-criminalact1991.pdf.

SWAZILAND

MALE/MALE

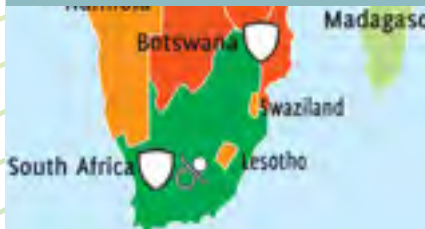


ILLEGAL

FEMALE/FEMALE



LEGAL



Sodomy - sexual intercourse per anus between two human males - is prohibited as a common law offence.²⁵²

In 2005, the Government planned to include prohibitions of all male homosexual acts and lesbian acts in its revision of the Sexual Offences laws. The proposed penalties were imprisonment for a minimum period of two years, or a minimum fine of E5 000. The proposal has, however, not been adopted as of publication of this report.²⁵³

TANZANIA

MALE/MALE



ILLEGAL

FEMALE/FEMALE



ILLEGAL



Penal Code of 1945 (as amended by the Sexual Offences Special Provisions Act, 1998).²⁵⁴

Section 154. Unnatural of offences

“(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

“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 138A. 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.”

²⁵² See the information provided at: <https://secure.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaSwaziland.pdf>.

²⁵³ ‘See Swaziland Government’ warns homosexuals are liable to imprisonment, available at: <http://www.africanveil.org/Swaziland.htm>.

²⁵⁴ Text of the law is available at: www.lrct.go.tz/?wpfb_dl=170.

TOGO

MALE/MALE

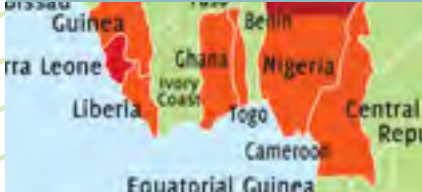


ILLEGAL

FEMALE/FEMALE



ILLEGAL



Penal Code of 13 August 1980.²⁵⁵

Article 88 – “Impudent acts or crimes against the 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.”²⁵⁶

(Unofficial translation)

TUNISIA

MALE/MALE



ILLEGAL

FEMALE/FEMALE



LEGAL



Penal Code of 1913 (as modified).²⁵⁷

Article 230. “The sodomy, that is not covered by any of the other previous articles, is punished with imprisonment for three years.”²⁵⁸

(Unofficial translation)

UGANDA

MALE/MALE

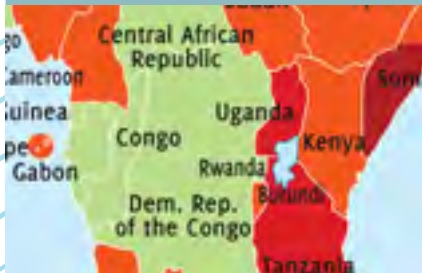


ILLEGAL

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ILLEGAL



The Penal Code Act of 1950 (Chapter 120) (as amended).²⁵⁹

Section 145. Unnatural offences

“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

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

Section 148. Indecent practices

“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.”

²⁵⁵ Text of the law is available at: <http://www.wipo.int/wipolex/en/details.jsp?id=8148>.

²⁵⁶ 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.”

²⁵⁷ Text of the law is available at: <http://www.jurisitetunisie.com/tunisie/codes/cp/menu.html>.

²⁵⁸ Original text: “La sodomie, si elle ne rentre dans aucun des cas prévus aux articles précédents, est punie de l’emprisonnement pendant trois ans.”

²⁵⁹ Text of the law is available at: <http://www.wipo.int/wipolex/en/details.jsp?id=5241>.

UGANDA

MALE/MALE

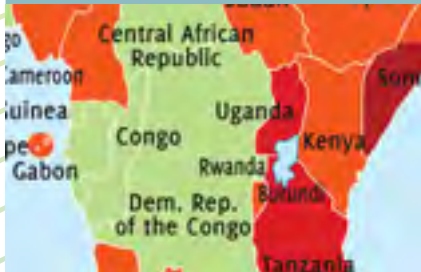


ILLEGAL

FEMALE/FEMALE



ILLEGAL



On 20 December 2013, the Parliament adopted the Anti-Homosexuality Act, signed by the President on 24 February 2014. According to the law:²⁶⁰

PART II—HOMOSEXUALITY AND RELATED PRACTICES.

2. The offence of homosexuality.

(1) A person commits the offence of homosexuality if
 (a) he penetrates the anus or mouth of another person of the same sex with his penis or any other sexual contraption;
 (b) he or she uses any object or sexual contraption to penetrate or stimulate sexual organ of a person of the same sex;
 (c) he or she touches another person with the intention of committing the act of homosexuality.

(2) A person who commits an offence under this section shall be liable, on conviction, to imprisonment for life.

3. Aggravated homosexuality.

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

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

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

(3) Where a person is charged with the offence under this section, that person shall undergo a medical examination to ascertain his or her HIV status.

PART III—RELATED OFFENCES AND PENALTIES.

12. Same sex marriage.

(1) A person who purports to contract a marriage with another person of the same sex commits the offence of homosexuality and shall be liable, on conviction, to imprisonment for life.

(2) A person or institution commits an offence if that person or institution conducts a marriage ceremony between persons of the same sex and shall, on conviction, be liable to imprisonment for a maximum of seven years for individuals or cancellation of licence for an institution.

13. Promotion of homosexuality.

(1) A person who—

- (a) participates in production, procuring, marketing, broadcasting, disseminating, publishing of pornographic materials for purposes of promoting homosexuality;
- (b) funds or sponsors homosexuality or other related activities;
- (c) offers premises and other related fixed or movable assets for purposes of homosexuality or promoting homosexuality;
- (d) uses electronic devices which include internet, films, mobile phones for purposes of homosexuality or promoting homosexuality; or
- (e) who acts as an accomplice or attempts to promote or in any way abets homosexuality and related practices; commits an offence and is liable, on conviction, to a fine of five thousand currency points or imprisonment of a minimum of five years and a maximum of seven years or both fine and imprisonment.

²⁶⁰ The text of the Law is available at: <http://cryptome.org/2014/02/uganda-anti-gay.pdf>.

UGANDA

MALE/MALE

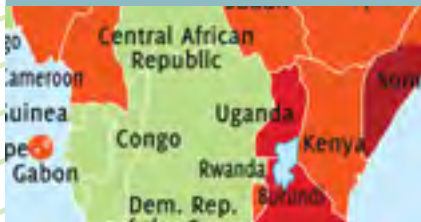


ILLEGAL

FEMALE/FEMALE



ILLEGAL



(2) Where the offender is a corporate body or a business or an association or a non-governmental organisation, on conviction its certificate of registration shall be cancelled and the director, proprietor or promoter shall be liable, on conviction, to imprisonment for seven years.

The law also provides penalties for anyone who attempts to commit the offence of homosexuality (section 4), who aids, abets, counsels, conspires, procures or detent another to engage in acts of homosexuality (sections 7, 8, 9 and 10). Moreover, it provides measures of protection, assistance, payment of compensation to and confidentiality of victims of homosexuality (section 5).

As regards Uganda's compliance with its international law obligations at the UN, in March 2012, Uganda rejected 16

of the 19 recommendations it had received in its first cycle Universal Periodic Review. The three recommendations accepted concerned two Action Level 5 (specific actions) responses in regard to violence against LGBT people, and one Action Level 4 (general action) on the same issue.²⁶¹ The 16 rejections mostly concern decriminalisation and scrapping the proposed legislation.²⁶²

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 2010,²⁶³ criminal laws, hate crime in 2010,²⁶⁴ hate crimes, death, human rights defenders in 2011,²⁶⁵ death and criminal laws in 2012,²⁶⁶ and human rights defenders in 2013.²⁶⁷

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*,²⁶⁸ where although acts of "carnal knowledge against the order of nature" were penalised,²⁶⁹ the sexual orientation of the plaintiffs was not at issue, but what was being adjudicated on was the police ill-treatment (search and seizure of property and physical abuse) of them based on that sexual orientation. Likewise, two years later in *Kasha Jacqueline, David Kato, and Onziema Patience v. Rolling Stone*,²⁷⁰ the question was about whether, in the heightened atmosphere around the proposed Anti-Homosexuality Bill (AHB) in Uganda,²⁷¹ the constitutional rights of the plaintiffs had been breached, and not about "homosexuality *per se*".²⁷² Despite widespread institutionalised and public discrimination in the country, the guarantees of universal human rights were asserted in this case regardless of SOGI.

²⁶¹ See UPR-info database (search under Uganda: Sexual orientation and gender identity) <http://www.upr-info.org/database/>.

²⁶² See <http://arc-international.net/global-advocacy/universal-periodic-review/u/uganda>.

²⁶³ 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.

²⁶⁴ Uganda, CEDAW/C/UGA/CO/7, 5 November 2010.

²⁶⁵ 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.

²⁶⁶ 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.

²⁶⁷ Report of the Special Rapporteur on the situation of human rights defenders, A/HRC/22/47, 16 January 2013.

²⁶⁸ *Mukasa and Oyo v. Attorney General*, High Court of Uganda at Kampala (22 December 2008).

²⁶⁹ 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) 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 of Jurists, Geneva, 2011) <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2012/05/Sexual-orientation-gender-identity-and-justice-report-2011.pdf>.

²⁷⁰ *Kasha Jacqueline, David Kato Kisule and Onziema Patience v. Rolling Stone Ltd and Giles Muhame*, High Court of Uganda at Kampala (30 December 2010).

²⁷¹ The Anti Homosexuality Bill, Bill No.18, Uganda, 25 September 2009.

²⁷² 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'.

ZAMBIA

MALE/MALE



ILLEGAL

FEMALE/FEMALE



ILLEGAL



The Penal Code Act (as amended by Act No. 15 of 2005).²⁷³

“Section 155. Unnatural offences

Any person who-

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

(b) has carnal knowledge of an animal; or

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

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

Provided that where a person-

(i) has carnal knowledge of a child against the order of nature;

(ii) causes a child to have carnal knowledge of an animal; or

(iii) permits a male person to have carnal knowledge of a male or female child against the order of nature;

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

“Section 156. Attempt to commit unnatural offences

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

(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.”

²⁷³ Text of the law is available at: <http://www.parliament.gov.zm/downloads/VOLUME%207.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, can be found at: http://www.parliament.gov.zm/dmdocuments/Act_No_15_2005.pdf.

ZIMBABWE

MALE/MALE



ILLEGAL

FEMALE/FEMALE



LEGAL



Criminal Law (Codification and Reform) Act (Effective 8 July 2006).²⁷⁴

Section 73. 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.”

²⁷⁴ Text of the law is available at: http://www.kubatana.net/docs/legisl/criminal_law_code_050603.pdf.

AFGHANISTAN

MALE/MALE



ILLEGAL

FEMALE/FEMALE



ILLEGAL



Penal Code, 1976.²⁷⁵

CHAPTER EIGHT: Adultery, Pederasty, and Violations of Honour

Article 427:

“(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.”

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.²⁷⁶

Islamic Sharia law, criminalising homosexual acts with a maximum of death penalty, is applied together with the codified Penal law. However, no known cases of death sentences have been handed out for homosexual acts after the end of Taliban rule.

BANGLADESH

MALE/MALE



ILLEGAL

FEMALE/FEMALE



ILLEGAL



Penal Code, 1860 (Act XLV of 1860).²⁷⁷

Section 377. “Unnatural Offences”

“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.”

²⁷⁵ Text of the law is available at: <http://aceproject.org/ero-en/regions/asia/AF/Penal%20Code%20Eng.pdf/view>.

²⁷⁶ Healey, Dan *Homosexual Desire in Revolutionary Russia* (Chicago: Chicago University Press, 2001) at 272.

²⁷⁷ Text of the law is available at: http://bdlaws.minlaw.gov.bd/sections_detail.php?id=11§ions_id=3233.

BHUTAN

MALE/MALE



ILLEGAL

FEMALE/FEMALE



ILLEGAL

Penal Code 2004.²⁷⁸

Chapter 14: Sexual Offences

Unnatural sex –

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.”

BRUNEI
DARUSSALAM

MALE/MALE

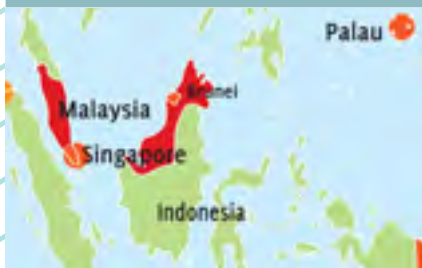


ILLEGAL

FEMALE/FEMALE



LEGAL

Penal Code, Chapter 22, revised edition 2001.²⁷⁹

Unnatural offences

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

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

Moreover, Brunei Darussalam has passed Syariah Penal Code Order on 2 October 2013, which took effect on 1 April 2014 that appears to allow stoning to death for same sex sexual relations:²⁸⁰

Liwat

82. (1) Any person who commits *liwat* is guilty of an offence and shall be liable on conviction to the same punishment as provided for the offence of zina.²⁸¹

(2) For the purposes of this Order, “*liwat*” means sexual intercourse between a man and another man or between a man and a woman other than his wife, done against the order of nature that is through the anus.

²⁷⁸ Text of the law is available at: <http://www.judiciary.gov.bt/html/act/PENAL%20CODE.pdf>.

²⁷⁹ Text of the law is available at: https://www.unodc.org/tldb/pdf/Brunei_Penal_Code_1951_Full_text.pdf.

²⁸⁰ Text of the law is available at: http://www.agc.gov.bn/agc1/images/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>.

²⁸¹ The same way as Zina means that he/she may be liable to death by stoning (section 69(1)(a)).

BRUNEI
DARUSSALAM

MALE/MALE



ILLEGAL

FEMALE/FEMALE



LEGAL



Attempt to commit Liwat

84. Any person who attempts to commit *liwat* or attempts to cause the commission of *liwat* is guilty of an offence and shall be liable on conviction to the same punishment as provided under the section 71 or 71, as the case may be.

Regarding international law obligations at the UN, in its first round Universal Periodic Review (6th Session of the UPR) in November 2009,²⁸² Brunei rejected all five SOGI recommendations – four of which concerned decriminalisation and one of which related to non-discrimination.²⁸³ There is no mention of SOGI in the national report,²⁸⁴ stakeholder submissions²⁸⁵ or the OHCHR Compilation for Brunei's second round (19th Session of the UPR) in May 2014, although the UN

office of the High Commissioner of Human Rights has expressed concern at the revised Penal Code (Cap 22) due to come into force 22 April 2014.²⁸⁶ ARC international reports on the recommendations that were given to Brunei Darussalam, but it will not be known until September 2014 how this country will respond to them: France, Canada, Spain and Czech Republic called for the decriminalisation of same sex sexual relations, with Spain and Czech Republic noting the recent revisions to the Penal Code. Bangladesh, however, used the UPR process to encourage Brunei Darussalam to uphold its social policies in line with traditional family values.²⁸⁷ Brunei is a member of the UN grouping the Organisation of Islamic Co-operation (OIC).

GAZA - OCCUPIED
PALESTINIAN
TERRITORY

MALE/MALE

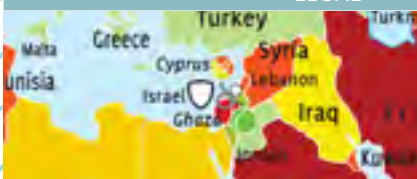


ILLEGAL

FEMALE/FEMALE



LEGAL



The British Mandate Criminal Code Ordinance, No. 74 of 1936 is in force in Gaza.²⁸⁸

Section 152(2) of the Code criminalises sexual acts between men with a penalty of up to 10 years.²⁸⁹

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.

²⁸² Full SOGI profile at <http://arc-international.net/global-advocacy/universal-periodic-review/b/brunei-darussalam>

²⁸³ http://www.upr-info.org/database/index.php?limit=0&f_SUR=25&f_SMR=All&order=&orderDir=ASC&orderP=true&f_Issue=All&searchReco=&resultMax=25&response=&action_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges=RecoOnly

²⁸⁴ A/HRC/WG.6/19/BRN/1

²⁸⁵ A/HRC/WG.6/19/BRN/3

²⁸⁶ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14501&LangID=E>. The date of implementation of this law was actually 1 May 2014..

²⁸⁷ See <http://arc-international.net/wp-content/uploads/2014/05/UPR19-SOGI-report.pdf> at 10.

²⁸⁸ Text of the law is available at: http://www.nevo.co.il/law_html/law21/PG-e-0633.pdf.

²⁸⁹ 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.

INDIA

MALE/MALE



ILLEGAL

FEMALE/FEMALE



LEGAL



Indian Penal Code

Section 377. Unnatural offences

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.²⁹⁰

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.²⁹¹

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.²⁹² 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 second cycle responses to the Universal Periodic Review (Session 13, 24 May 2012) suggest the country's current regard to its obligations:

- India did accept a level 3 (i.e. 'to consider') recommendation to "[s]tudy the possibility of eliminating any criminalisation of same sex relations",²⁹³ despite the concerns expressed by Action Canada for Population and Development to the UPR that the Criminal Law (Amendment) Bill 2012 that was approved by the Cabinet retained Section 377 of the India Penal Code.²⁹⁴ In the same UPR session, India rejected a general recommendation on non-discrimination, particularly in employment, based on sexual orientation.
- In *Naz Foundation*,²⁹⁵ 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.²⁹⁶ In this case, the High Court relied on *Dudgeon*²⁹⁷ and *Toonen* to derive this important principle.²⁹⁸
- The UN Rapporteur on Rights Defenders has twice noted problems in relation to SOGI in India, in 2009²⁹⁹ and 2012.³⁰⁰

²⁹⁰ Text of the law is available at: <http://punjabrevenue.nic.in/crime13.htm>.

²⁹¹ Judgment of the Delhi High Court available at <http://lobis.nic.in/dhc/APS/judgement/02-07-2009/APS02072009CW74552001.pdf>. For more information on the judgment, see Alternative Law Forum, "The Right that Dares Speak its Name" at: http://www.tarshi.net/downloads/The_right%20that_Dares_to_Speak_its_Name.pdf.

²⁹² 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://supremecourtindia.nic.in/outtoday/rc4114.pdf>.

²⁹³ <http://www.upr-info.org/database/>, (search UPR database for India and sexual orientation).

²⁹⁴ <http://arc-international.net/global-advocacy/universal-periodic-review/i/india-2nd-cycle>

²⁹⁵ *Naz Foundation v. Government of NCT of Delhi and Others*, High Court of Delhi at New Delhi, India, 2009.

²⁹⁶ 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>.

²⁹⁷ *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).

²⁹⁸ *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).

²⁹⁹ 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/10/12/Add.1, 4 March 2009.

³⁰⁰ 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.

INDONESIA

MALE/MALE



LEGAL

FEMALE/FEMALE



LEGAL



Same-sex relations are not prohibited according to the national Penal Code. The only provision to deal with such relations is Article 292, which prohibits sexual acts between persons of the same sex if committed with a minor.³⁰¹ However, in 2002 the national parliament gave the Aceh province the right to adopt Islamic Sharia laws. Such laws do apply to Muslims only. Moreover, for example the city of Palembang in South Sumatra has introduced jail time and hefty fines for same-sex relations.³⁰²

IRAN

MALE/MALE



ILLEGAL

FEMALE/FEMALE



ILLEGAL



Islamic Penal Code of Iran of 199.³⁰³

“Part 2: Punishment for Sodomy

Chapter 1: Definition of 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).

³⁰¹ Text of the law is available at: <http://www.unhcr.org/refworld/country,...LEGISLATION,TMP,4562d8cf2,3ffbcee24,0.html>.

³⁰² See ‘Special Report: Indonesia - Exchanging Pluralism For An Islamist State’, available at: <http://pancasilaislam.blogspot.sg/2012/10/special-report-indonesia-exchanging.html>.

³⁰³ Text of the law in English is available at: http://mehr.org/Islamic_Penal_Code_of_Iran.pdf.

IRAN

MALE/MALE



ILLEGAL

FEMALE/FEMALE



ILLEGAL



Article 119: Testimony of women alone or together with a man does not prove sodomy.

Article 120: The Sharia judge 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, 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.

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 Tafhiz is proved by confession and thereafter he repents the Sharia judge may request the leader (Valie Amr) to pardon him.

Part 3: Lesbianism

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, 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 (Valie Amr) 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."

IRAQ

MALE/MALE

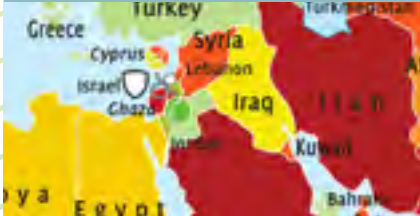


UNCLEAR

FEMALE/FEMALE



UNCLEAR



After the American invasion in 2003 the Penal Code of 1969 was reinstated in Iraq. This Code does not prohibit same-sex relations.³⁰⁴ However, various reports have shown that self-proclaimed Sharia judges have sentenced people to death for committing homosexual acts and that militias frequently have kidnapped, threatened and killed LGBT people. For example, in August 2009 Human Rights Watch published a report documenting a wide-reaching campaign of extrajudicial executions, kidnappings, and torture of gay men that began in Iraq in the beginning of 2009.³⁰⁵

KUWAIT

MALE/MALE

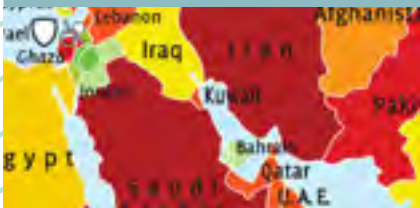


ILLEGAL

FEMALE/FEMALE



UNCLEAR



Penal Code, Law No. 16 of 2 June 1960, as amended in 1976.³⁰⁶

Article 193. "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.

LEBANON

MALE/MALE

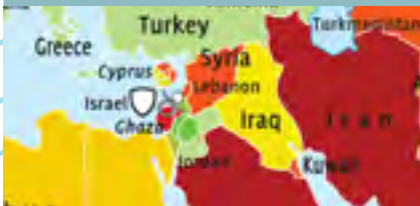


ILLEGAL

FEMALE/FEMALE



ILLEGAL



Penal Code of 1943.³⁰⁷

Article 534. "Any sexual intercourse against nature is punished with up to one year of imprisonment".

³⁰⁴ Text of the law is available at: <http://www.unhcr.org/refworld/docid/452514424.html>.

³⁰⁵ See 'They want us exterminated - Murder, Torture, Sexual Orientation and Gender in Iraq', available at: <http://www.hrw.org/node/85050>. See also 'Death squads targeting gays in Iraq', available at: <http://www.advocate.com/news/2006/03/25/death-squads-targeting-gays-iraq>.

³⁰⁶ German Bundestag, *Criminal law provisions on homosexuality and their application around the world*, Printed Paper 16/3597, 28 November 2006 at 15. http://www.gaylawnet.com/ezone/crime/16_3597_minor_interpellation.pdf.

³⁰⁷ Original text is available at: http://www.wipo.int/wipolex/en/text.jsp?file_id=243255; see also, <http://www.bekhsos.com/web/2010/04/new-publication-provides-analysis-on-article-534/>.

MALAYSIA

MALE/MALE



ILLEGAL

FEMALE/FEMALE



ILLEGAL



Penal Code (Consolidated version 1998).³⁰⁸

Unnatural Offences

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 377C. Committing carnal intercourse against the order of nature without consent, etc

“Whoever voluntarily commits carnal intercourse against the order of nature on another person without the consent, or against the will, of the other person, or by putting other person in fear of death or hurt to the person or any other person, shall be punished with imprisonment for a term of not less than five years and not more than twenty years, and shall also be liable to whipping.”

Section 377D. Outrages on decency

“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 homosexual and lesbian acts with up to three years imprisonment and whipping.³⁰⁹ 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.³¹⁰

³⁰⁸ Text of the law is available at: <http://www.agc.gov.my/Akta/Vol.%2012/Act%20574.pdf>.

³⁰⁹ Convictions for sodomy follow unfair trials, available at: <http://www.amnesty.org/en/library/asset/ASA28/028/1998/en/9e941894-d9b0-11dd-af2b-b1f6023af0c5/asa280281998en.pdf>.

³¹⁰ 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.

MALDIVES

MALE/MALE

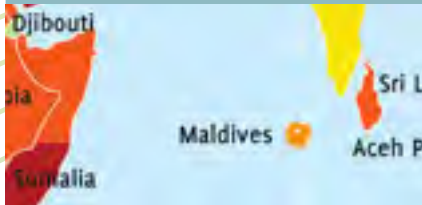


ILLEGAL

FEMALE/FEMALE



ILLEGAL



The Penal Code of Maldives does not regulate sexual conduct.³¹¹ It is instead regulated by uncodified Muslim Sharia law, which criminalises homosexual acts between both men and between 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.³¹²

MYANMAR

MALE/MALE



ILLEGAL

FEMALE/FEMALE



ILLEGAL



Penal Code, Act 45/1860, Revised Edition.³¹³
Section 377.

“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.”

OMAN

MALE/MALE



ILLEGAL

FEMALE/FEMALE



ILLEGAL



Omani Penal Code of 1974.³¹⁴

Article 33.

“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.

“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.”

³¹¹ Text of the law is available at: <http://www.lexadin.nl/wlg/legis/nofr/oeur/lxwemdv.htm>.

³¹² Sexual Orientation / Gender Identity References, US Department of State, *Human Rights Reports for 2011* (Released 24 May 2012) at 80, available at: <http://www.weebly.com/uploads/1/2/3/0/12302675/2011-hr-report-sogi-references.pdf>.

³¹³ Text of the law is available at: http://www.wipo.int/wipolex/en/text.jsp?file_id=181185.

³¹⁴ Text of the law is available at: <https://www.unodc.org/tldb/showDocument.do?documentUId=6409&country=OMA&language=ENG>.

PAKISTAN

MALE/MALE



ILLEGAL

FEMALE/FEMALE



LEGAL



Penal Code (Act XLV of 1860).³¹⁵

Section 377. 'Unnatural offences'

"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."

QATAR

MALE/MALE



ILLEGAL

FEMALE/FEMALE



ILLEGAL



The Penal Code (Law No. (II) of 2004).³¹⁶

Sexual acts with a female over the age of 16 are prohibited by Article 281, while sexual acts with a male are prohibited by article 281 and 285. The penalty is up to seven years imprisonment for both female and male acts.

Along with the civil Penal Code also Islamic Sharia law is in force in Qatar, although only applicable to Muslims. 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 offences no matter if they were heterosexual or homosexual.³¹⁷

SAUDI-ARABIA

MALE/MALE

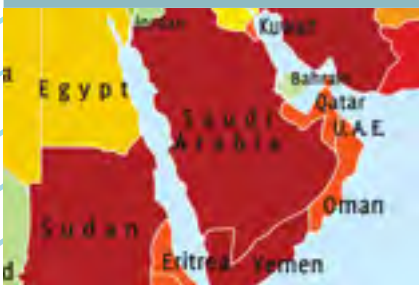


ILLEGAL

FEMALE/FEMALE



ILLEGAL



There is no codified Penal Law in Saudi-Arabia. Instead, the country applies strict Islamic Sharia law. According to the interpretation sodomy is criminalised. 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 illegal in Saudi-Arabia according to the Sharia law, including sexual relations between women.³¹⁸

³¹⁵ Text of the law is available at: <http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>.

³¹⁶ Original text of the law is available at: <http://www.almeezan.qa/LawArticles.aspx?LawTreeSectionID=254&lawId=26&language=ar>, and English text at: <http://www.qfu.gov.qa/files/Law%2011%20for%20the%20year2004-E.pdf>.

³¹⁷ See Amnesty International, "Love, hate and the law: decriminalizing homosexuality" at 51, available at: <http://www.amnesty.org/en/library/asset/POL30/003/2008/en/d77d0d58-4cd3-11dd-bca2-bb9d43f3e059/pol300032008eng.html>.

³¹⁸ Schmitt, Arno and Sofer, Jehoeda, *Sexuality and Eroticism Among Males in Moslem Societies* (Binghamton: Harrington Park Press, 1992) at 141.

SINGAPORE

MALE/MALE



ILLEGAL

FEMALE/FEMALE



LEGAL



Penal Code (Chapter 22), Revised Edition 2008.³¹⁹

Outrages on decency

Section 377A. "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 repealed by the Penal Code (Amendment) Act 2007, No. 51, which came into force on 1 February 2008.

SRI LANKA

MALE/MALE

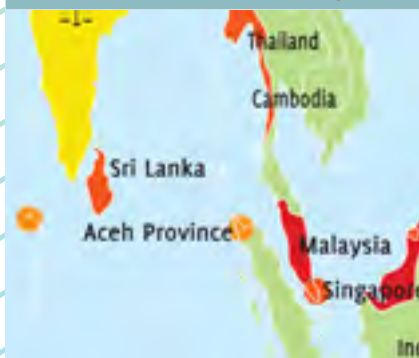


ILLEGAL

FEMALE/FEMALE



ILLEGAL



Penal Code (as amended by the Penal Code (Amendment) Act, No. 22 of 1995).³²⁰

Article 365. Unnatural offences

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, and shall also be punished with fine and where the offence is committed by a person over eighteen years of age in respect of any person under sixteen years of age shall be punished with rigorous imprisonment for a term not less than ten years and not exceeding twenty years and with fine and shall also be ordered to pay compensation of an amount determined by court to the person in respect of whom the offence was committed for injuries caused to such person.

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
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."

³¹⁹ Text of the law is available at: <http://statutes.agc.gov.sg/aol/search/display/view.w3p?page=0;query=CompId%3Ae40d5913-c2dc-4284-bf68-eb315c55c8fa;rec=0>.

³²⁰ Text of the law is available at: http://www1.umn.edu/humanrts/research/srilanka/statutes/Penal_Code.pdf.

SYRIA

MALE/MALE



ILLEGAL

FEMALE/FEMALE



ILLEGAL



Penal Code of 1949.³²¹

Article 520. “Any unnatural sexual intercourse shall be punished with a term of imprisonment of up to three years.”

TURKMENISTAN

MALE/MALE



ILLEGAL

FEMALE/FEMALE



LEGAL



Criminal Code of 1997 (Effective 1 January 1998).³²²

Article 135. Sodomy

“(1) Sodomy, that is the sexual relations of the man with the man, is punished by imprisonment for the term of up to two years.”

(Unofficial translation)

³²¹ German Bundestag, *Criminal law provisions on homosexuality and their application around the world*, Printed Paper 16/3597, 28 November 2006 at 27. http://www.gaylawnet.com/ezine/crime/16_3597_minor_interpellation.pdf.

³²² Original text available is at http://www.wipo.int/wipolex/en/text.jsp?file_id=249493.

UNITED ARAB EMIRATES

MALE/MALE

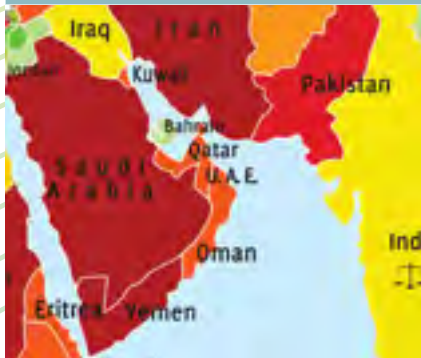


ILLEGAL

FEMALE/FEMALE



ILLEGAL



All sexual acts outside of heterosexual marriage are banned in the United Arab Emirates.³²³ However, whether sodomy is punished with death penalty remains in dispute. The text of articles 354 and 356 appears to be ambiguously phrased and can be translated in different ways. Some sources indicate that article 354 punishes rape of a woman or forced sodomy with a man, while others indicate that it punishes rape of women and sodomy between men.

The semi-official translation used by attorneys in the Emirates states that “any individual who forcibly compels a woman to carnal copulation or a man to sodomy” is punished by death.³²⁴ In a German parliamentary report the article has been translated as follows: “Irrespective of the provisions of the Act on Delinquent and Vagrant Juveniles, any person who forcibly engages in sexual intercourse with a woman, or a homosexual act with a homosexual, shall be punished with the death penalty. Coercion shall be recognised if the condemned person was fourteen years of age at the time of the commission of the offence.”³²⁵ Sofer, on the other hand, suggests that article 354 can be translated differently; “Whoever commits rape on a female or sodomy with a male”.³²⁶ Amnesty International, finally, considers article 354 to apply to rape only, and not to consensual same-sex acts. However, the organisation states that the “Zina” provision according to Sharia law, punishing sexual acts by married persons outside of marriage by death, could possibly apply in the UAE, although it is not aware of any such death sentences for consensual same-sex conduct.³²⁷

Apart from federal law, consensual sodomy is criminalised in the emirates of Dubai and Abu Dhabi. Article 80 of the Dubai Penal Code punishes sodomy with a penalty of up to 14 years imprisonment, while article 177 of the Abu Dhabi Penal Code punishes such acts with a penalty of up to ten years imprisonment.³²⁸

³²³ See Federal Law No (3) of 1987 on Issuance of the Penal Code, available at: [http://www.icrc.org/ihl-nat/6fa4d35e5e3025394125673e00508143/e656047207c93f99c12576b2003ab8c1/\\$FILE/Penal%20Code.pdf](http://www.icrc.org/ihl-nat/6fa4d35e5e3025394125673e00508143/e656047207c93f99c12576b2003ab8c1/$FILE/Penal%20Code.pdf).

³²⁴ *Id.*

³²⁵ German Bundestag, *Criminal law provisions on homosexuality and their application around the world*, Printed Paper 16/3597, 28 November 2006 at 29. http://www.gaylawnet.com/ezone/crime/16_3597_minor_interpellation.pdf.

³²⁶ Schmitt, Arno and Sofer, Jehoeda, *Sexuality and Eroticism Among Males in Moslem Societies* (Binghamton: Harrington Park Press, 1992) at 144.

³²⁷ See Amnesty International, “Love, hate and the law: decriminalizing homosexuality” at 51, available at: <http://www.amnesty.org/en/library/asset/POL30/003/2008/en/d77d0d58-4cd3-11dd-bca2-bb9d43f3e059/pol300032008eng.html>.

³²⁸ Schmitt, Arno and Sofer, Jehoeda, *Sexuality and Eroticism Among Males in Moslem Societies* (Binghamton: Harrington Park Press, 1992) at 145.

UZBEKISTAN

MALE/MALE



ILLEGAL

FEMALE/FEMALE



LEGAL



Criminal Code of 1994.³²⁹

Article 120. Besoqolbozlik* (Homosexual Intercourse)

“Besoqolbozlik, that is, voluntary sexual intercourse of two male individuals – shall be punished with imprisonment up to three years.”

YEMEN

MALE/MALE



ILLEGAL

FEMALE/FEMALE



ILLEGAL



Penal Code 1994.³³⁰

Article 264. “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 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.”

³²⁹ Text of the law is available at: <http://www.legislationline.org/documents/id/8931>.

³³⁰ Text of the law is available at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/83557/92354/F1549605860/YEM83557.pdf>.

ANTIGUA AND BARBUDA

MALE/MALE

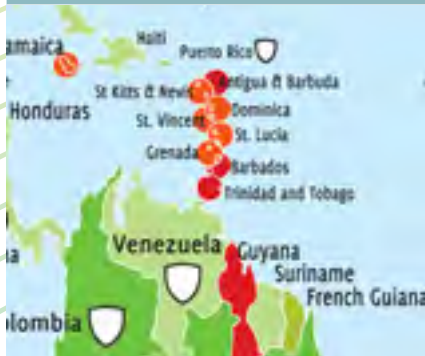


ILLEGAL

FEMALE/FEMALE



ILLEGAL



Sexual Offences Act of 1995 (Act No. 9).³³¹

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

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.”

BARBADOS

MALE/MALE

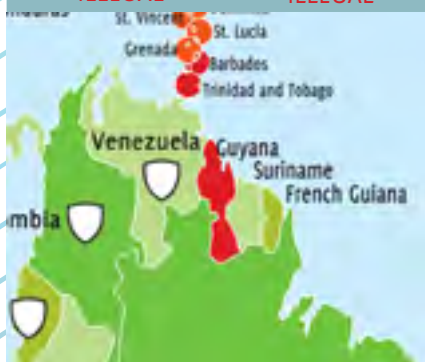


ILLEGAL

FEMALE/FEMALE



ILLEGAL



Sexual Offences Act 1992, Chapter 154.³³²

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

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.”

³³¹ Text of the law is available at: <http://www.laws.gov.ag/acts/1995/a1995-9.pdf>.

³³² Text of the law is available at: <http://www2.ohchr.org/english/bodies/hrc/docs/ngos/lgbti2.pdf>.

BELIZE

MALE/MALE



ILLEGAL

FEMALE/FEMALE



ILLEGAL



Criminal Code (Revised edition 2000).³³³

Unnatural Crime

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.”

DOMINICA

MALE/MALE

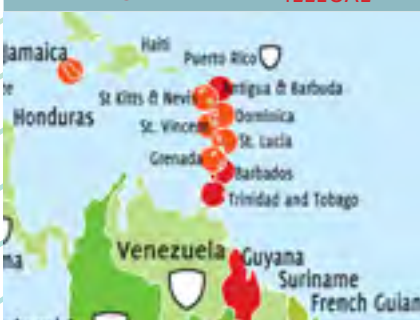


ILLEGAL

FEMALE/FEMALE



ILLEGAL



Sexual Offences Act 1998.³³⁴

Section 14. 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

“(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.”

³³³ Text of the law is available at: http://www.oas.org/juridico/mla/en/blz/en_blz-int-text-cc.pdf.

³³⁴ Text of the law is available at: <http://www.dominica.gov.dm/laws/1998/act1-1998.pdf>.

LATIN AMERICA AND THE CARIBBEAN

GRENADA

MALE/MALE

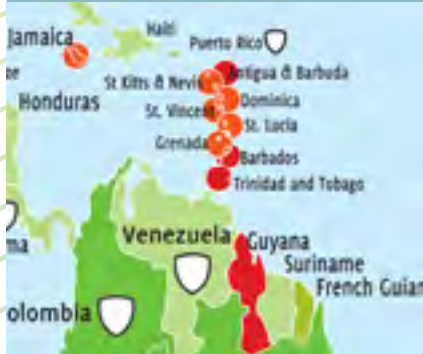


ILLEGAL

FEMALE/FEMALE



LEGAL



Criminal Code of 1987 as amended in 1993.³³⁵

Article 431. “If any two persons are guilty of unnatural connexion [sic], or if any person is guilty of an unnatural connexion with any animal, every such person shall be liable to imprisonment for ten years”.

GUYANA

MALE/MALE

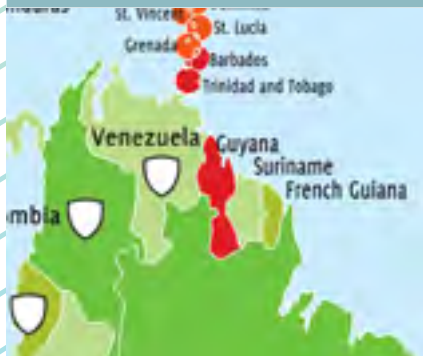


ILLEGAL

FEMALE/FEMALE



LEGAL



Criminal Law (Offences) Act.³³⁶

Section 352. Committing acts of gross indecency with male person

“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

“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

“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.”

³³⁵ Text of the law is available at: http://www.oas.org/juridico/spanish/mesicic2_grd_criminal_code.PDF.

³³⁶ Text of the law is available at: http://www.oas.org/juridico/MLA/en/guy/en_guy-int-text-cl_act.pdf.

LATIN AMERICA AND THE CARIBBEAN

JAMAICA

MALE/MALE



ILLEGAL

FEMALE/FEMALE



LEGAL



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

“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.”

The Offences Against the Person Act.³³⁷

Article 76. Unnatural Crime

“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

“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 misdemeanor, and being convicted thereof shall be liable to be imprisoned for a term not exceeding seven years, with or without hard labour.”

SAINT KITTS AND NEVIS

MALE/MALE



ILLEGAL

FEMALE/FEMALE



LEGAL



Offences against the Person Act.³³⁸

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.” The latter, which is in no way defined, is subject to arbitrary interpretation. It could potentially encompass any behavior perceived as a homosexual advance.³³⁹

³³⁷ Text of the law is available at: http://www.vertic.org/media/National%20Legislation/Jamaica/JM_Offences_against_the_Person_Act.pdf.

³³⁸ 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: <http://www.unhcr.org/refworld/docid/49b92b2614.html>.

³³⁹ 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: <http://www.worldpolicy.org/sites/default/files/uploaded/image/WPR-2003-Sexual%20Orientation%20and%20Human%20Rights%20in%20the%20Americas.pdf>.

SAINT LUCIA

MALE/MALE



ILLEGAL

FEMALE/FEMALE



ILLEGAL



Criminal Code, No. 9 of 2004 (Effective 1 January 2005).³⁴⁰

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

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.”

³⁴⁰ Text of the law is available at: <http://www.rslpf.com/site/criminal%20code%202004.pdf>.

SAINT VINCENT & THE GRENADINES

MALE/MALE

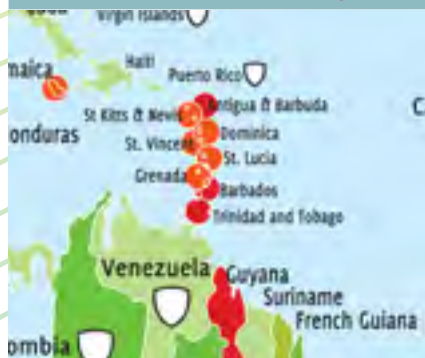


ILLEGAL

FEMALE/FEMALE



ILLEGAL



Criminal Code, 1990 Edition.³⁴¹

Section 146.

“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.

“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.”

TRINIDAD AND TOBAGO

MALE/MALE

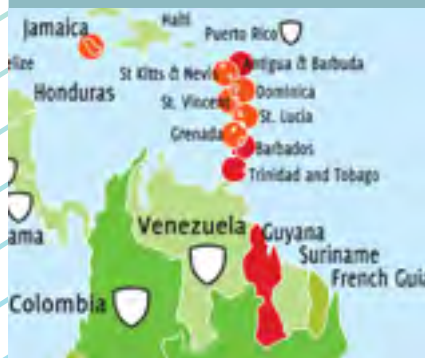


ILLEGAL

FEMALE/FEMALE



ILLEGAL



Sexual Offences Act 1986, Consolidated Version 2000.³⁴²

Section 13. “(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. “(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.”

³⁴¹ 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: <http://www.refworld.org/docid/47d654822.html>.

³⁴² 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: <http://www.unhcr.org/refworld/docid/4b20f03423.html>.

COOK ISLANDS (NEW ZEALAND ASSOCIATE)

MALE/MALE



ILLEGAL

FEMALE/FEMALE



LEGAL



Section 155. 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.”

Note that Cook Islands is a New Zealand associate, and that the laws in Cook Islands are only applicable to the islands, and not to New Zealand.

Crimes Act 1969.³⁴³

Section 154. Indecency between males

“(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.”

KIRIBATI

MALE/MALE

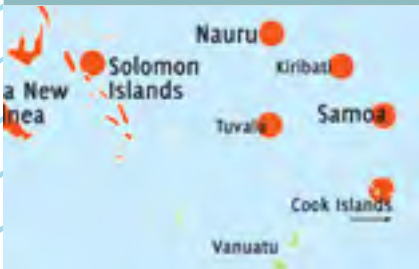


ILLEGAL

FEMALE/FEMALE



LEGAL



Penal Code [Cap 67] Revised Edition 1977.³⁴⁴

Unnatural Offences

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 assaults

Section 154. “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

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.”

³⁴³ Text of the law is available at: http://www.pacii.org/ck/legis/num_act/ca196982/.

³⁴⁴ Text of the law is available at: http://www.pacii.org/ki/legis/consol_act/pc66/.

NAURU

MALE/MALE



ILLEGAL

FEMALE/FEMALE



LEGAL

Criminal Code 1899.³⁴⁵

Section 208. Unnatural Offences

“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 crime, and is liable to imprisonment with hard labour for fourteen years”

Section 209. Attempt to commit Unnatural Offences

“Any person who attempts to commit any of the crimes defined in the last preceding section is guilty of a crime, and is liable to imprisonment with hard labour for seven years. The offender cannot be arrested without warrant.”

Section 211. Indecent Practices between Males

“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 misdemeanour, and is liable to imprisonment with hard labour for three years.”

PALAU

MALE/MALE

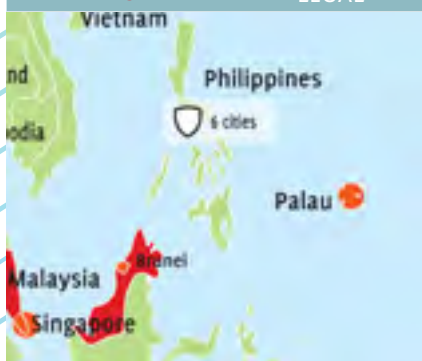


ILLEGAL

FEMALE/FEMALE



LEGAL

Palau National Code; Penal Code.³⁴⁶

§ 2803. Sodomy

“Every person who shall unlawfully and voluntarily have any sexual relations of an unnatural manner with a member of the same or the other sex, or shall have any carnal connection in any manner with a beast, shall be guilty of sodomy, and upon conviction thereof be imprisoned for a period of not more than 10 years; provided, that the term “sodomy” shall embrace any and all parts of the sometimes written “abominable and detestable crime against nature””.

³⁴⁵ Text of the law available at: http://ozcase.library.qut.edu.au/qhlc/documents/CrimCode1899_63Vic_9.pdf.

³⁴⁶ Text of the law is available at: <http://www.oecd.org/site/adboecdanti-corruptioninitiative/46816862.pdf>.

PAPUA NEW GUINEA

MALE/MALE



ILLEGAL

FEMALE/FEMALE



LEGAL



Criminal Code 1974, as amended in 2002.³⁴⁷

Section 210. Unnatural Offences

“(1) A person who–

- (a) sexually penetrates any person against the order of nature; or
- (b) sexually penetrates an animal; or
- (c) permits a male person to sexually penetrate him or her against the order of nature, is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 14 years.

(2) A person who attempts to commit an offence against Subsection (1) is guilty of a crime.

Penalty: imprisonment for a term not exceeding seven years.”

Section 212. Indecent Practices between Males

“(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.”

SAMOA

MALE/MALE

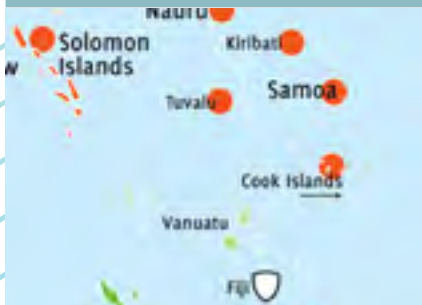


ILLEGAL

FEMALE/FEMALE



LEGAL



Crimes Ordinance 1961, Consolidated Acts of Samoa 2007-2008.³⁴⁸

Section 58D. Indecency between males

“(1) Everyone is liable to imprisonment for a term not exceeding 5 years who, being 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 16 years shall be charged with committing or being a party to an offence against paragraph (b) or paragraph (c) of subsection (1), unless the other male was under the age of 21 years.

(3) It is no defence to a charge under this section that the other party consented.”

Section 58E. Sodomy

“(1) Everyone who commits sodomy is liable:

(a) Where the act of sodomy is committed on a female, to imprisonment for a term not exceeding 7 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 16 years and the offender is of or over the age of 21 years, to imprisonment for a term not exceeding 7 years.

(c) In any other case, to imprisonment for a term not exceeding 5 years.

(2) This offence is complete upon penetration.

(3) Where sodomy is committed on any person under the age of 16 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 58D of this Act in any case to which that section is applicable.

(4) It is no defence to a charge under this section that the other party consented.”

³⁴⁷ Text of the law is available at: http://www.pacii.org/pg/legis/consol_act/cca1974115/.

³⁴⁸ Text of the ordinance is available at: http://www.pacii.org/ws/legis/consol_act/co1961135/.

SOLOMON ISLANDS

MALE/MALE



ILLEGAL

FEMALE/FEMALE



ILLEGAL

Penal Code (Revised Edition 1996).³⁴⁹

Section 160. Unnatural offences

“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

“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 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)

“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.”

TONGA

MALE/MALE

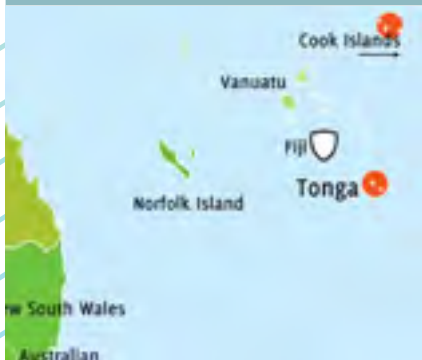


ILLEGAL

FEMALE/FEMALE



LEGAL

Laws of Tonga, Criminal Offences [Cap 18] 1988 Edition.³⁵⁰

Sodomy and bestiality

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.

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.)

³⁴⁹ Text of the law is available at: http://www.pacii.org/sb/legis/consol_act/pc66/.

³⁵⁰ Text of the law is available at: http://www.pacii.org/to/legis/consol_act/co136/.

TUVALU

MALE/MALE



ILLEGAL

FEMALE/FEMALE



LEGAL

Laws of Tuvalu, Penal Code [Cap 8] Revised Edition 1978.³⁵¹

Unnatural offences

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

Section 154. "Any person who attempts to commit any of the offences specified in the last proceeding 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

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."

³⁵¹ Text of the law is available at: <http://www.tuvalu-legislation.tv/tuvalu/DATA/PRIN/1990-008/PenalCode.pdf>.

AFRICA

We are all African

On 13 January 2014, a Bill that was passed by the Senate of Nigeria in November 2011 and the House of Representatives of Nigeria in May 2013 was enacted into law by the President, H.E Goodluck Jonathan. The Same Sex Marriage (Prohibition) Act, among other things, prohibits the “*public show of same sex amorous relationships directly or indirectly*”. On 24 February 2014, the President of Uganda, H.E Yoweri Museveni signed into law the Uganda Anti-Homosexuality Act which was passed by parliament in December 2013 and introduced as a private members Bill in 2009 by Member of Parliament, David Bahati. This law, among other things, prescribes a life sentence for *repeat homosexuality*.

Africa has over time been perceived as the continent that is almost entirely against rights for lesbian, gay, bisexual, transgender and intersex people. The reasons for this have often been cited as religion, culture and the general ‘unAfricanness’ of homosexuality. A large section of the African society considers homosexuality as a western import.

This really isn’t the case.

Stephen O. Murray and Will Roscoe in their book “Boy-Wives and Female Husbands: Studies in African Homosexualities” list a broad array of instances of homosexuality in Africa before colonisation;

*Tutsi boys of Rwanda and Burundi during their training away from the village to become warriors often have sexual relationships together, some of which last into adulthood. Among the Iteso of Kenya, people of hermaphroditic instincts are very numerous. The men are impotent and have the instincts of women and become ‘women’ for all intents and purposes; their voices are feminine and their manners of walking and of speech are feminine.*³⁵²

These are just two examples from a large number of anthropological studies done on homosexuality in Africa. The passing of the two laws, in Nigeria and Uganda, have created what could be seen as a possible domino effect in Africa. Suddenly homosexuality became the main topic of discussion in the

³⁵² Murray, S & Roscoe, W “Boy-Wives and Female Husbands: Studies of African Homosexualities” (London: St. Martin’s Press, 1998)

media and in Parliamentary circles across Africa. In Nairobi, Kenya, an anti-homosexuality protest was held on 23 February 2014. The head of the group that organised this protest was quoted as saying that homosexuality “is an affront to nature, religious and biological norms. It is a disgrace to the men and women victims who are supposed to be role models with upright morals in society”. A group of Kenyan Members of Parliament on 18 February 2014 launched a parliamentary caucus against homosexuality. They vowed to ensure the enforcement of existing laws against gay sex and strengthening of the laws, if need be. To that end, they sought explanation from the Attorney-General, the Director of Public Prosecutions, and the Registrar-General as to why openly gay people are not being charged with criminal offences and why they are being allowed to form lobby groups.

In Tanzania, a Member of Parliament from the main opposition party has submitted a proposal for enactment of a law called “*The Bill to Prohibit and Control any Form of Sexual Relations between Persons of the Same Sex, 2014*”. He claims that the existing laws are not strong enough and wants the country to mirror Uganda’s Anti-homosexuality Law. The Member of Parliament, much like the cases in Uganda and Nigeria, wants the law to punish people who “induce others” to become gay or “promote” homosexuality.

In Ethiopia, where same sex conduct is illegal and punishable with up to 15 years in prison, a Bill has been endorsed by Ethiopia’s Council of Ministers making homosexual acts “unpardonable”. A presidential pardon is granted to thousands of prisoners every year on the Ethiopian New Year. However, if the new law is approved, the president will no longer have the power to carry out these pardons. The head of the Ethiopian Human Rights Commission, Mr. Tiruneh Zena, said that a pardon is a privilege, not a right. Therefore, he said, passing the Bill would not be harmful to gays and lesbians, and he stated that it should not affect the LGBT community in any significant way.

A Member of Parliament in the Democratic Republic of Congo, where homosexuality is not directly banned but where there is a lot of discrimination against lesbian and gay people, introduced a draft Bill to the Congolese National Assembly that would explicitly criminalise homosexuality. The proposed penalty for engaging in homosexual acts is 3 to 5 years in prison and a fine of 1 million Congolese francs (about \$1,000), while a transgender person would face the same fine and a jail sentence of 3 to 12 years.

These enacted laws and those being considered come into a space where there already exist laws criminalising same sex conduct and in some cases, like the Democratic Republic of Congo, there are no laws explicitly criminalising the same. In most cases, the existing laws only criminalise the same sex conduct.

- Section 162 of Kenya's Penal Code Act talks of carnal knowledge against the order of nature;
- So does section 145 of Uganda's Penal Code Act;
- Chapter 14 of the Penal Law of Liberia criminalises voluntary sodomy.

These are laws that have existed before the introduction of new laws further criminalising homosexuality. The difference between these two sets of laws is that sexual act was always criminalised, while the Anti-Homosexuality Act in Uganda and the Same-Sex Marriage (Prohibition) Act in Nigeria go further and criminalise the individual.

The effect of the abovementioned further criminalisation is an increase in the following;

- Instances of human rights abuses for gay and lesbian people;
- Access to health becomes incredibly difficult as a result of these laws because individuals are not able to openly speak about their sexual partners;
- People get evicted from their dwelling places due to the fact that they are gay or lesbian;
- Gay and lesbian individuals become targets of attacks in the streets and in social spaces;
- The society effectively considers the individuals criminal due to their sexual orientation or gender identity.

Activists in Nigeria have reported instances of mobs attacking people they believed to be homosexual and beating some of the victims to near death. These victims, on being taken to the police station are then further roughed up by resident officers.

In order to reduce the negative effects of the laws and to stop further discriminatory laws from being enacted, several measures have been taken, both locally and internationally. The Nigerian activists who informed this short overview said that the key responses to the laws should be continued and increased support for the organisations and the community on the ground in Nigeria. This is mainly to quell the rhetoric that homosexuality is a western import. There is a need to build the community's capacity to speak out against the Act. They insisted on quiet diplomacy - use the contacts that the international community has in their respective countries to speak to high-level persons in Nigeria and abroad about the negative effects of the Act.

Incremental strategic litigation has been seen as a way in which such laws can be quelled. Indeed in Kenya, there is an ongoing case against the NGO Co-ordination Board and the Attorney General on the refusal to register an organisation with the words “gay and lesbian” in its name. When more such cases are strategically brought to court, a collection of favourable judgements will go a long way in challenging the laws as they come up. Supporting strategic litigation by building the capacity of the activists on the ground in Africa on the same and assisting in establishing the grounds in which this can be done is one other response to the increased intolerance by the States towards gay and lesbian people.

International multi-national corporations form a big part of Africa’s business sector. These corporations usually have non-discrimination clauses in their policies and in most cases these clauses include non-discrimination on grounds of sexual orientation, gender identity and expression. Activists at the local level and the international community can push these multi-national corporations and foreign embassies to speak out publicly about the negative effects of these laws and the level of discrimination these laws bring about. They should liaise with the local organisations to find out the effects of these laws and how human rights are curtailed due to the existence of the same.

The Civil Society Coalition for Human Rights and Constitutional Law in Uganda called for a number of responses before and after the law was signed by the president. Among the responses they called for was a recall of United States, European and other ambassadors from the country. This is meant to highlight the deteriorating human rights condition in the country. They called for travel bans for politicians, religious leaders and other public figures who support the law. They asked the International community to engage the African Union and the leadership of other African nations such as Rwanda and South Africa to speak out against the law and the discrimination of sexual and gender minorities.

But perhaps what could be seen as the most controversial of the responses sought would be aid conditionality. In October 2011, during the Commonwealth Meeting of Heads of State, David Cameron, the UK Prime Minister, threatened to reduce development aid to countries that criminalise homosexuality. Shortly after the statement was made, the United States also announced that they would use all available mechanisms, including measures related to development cooperation, to promote the rights of lesbian, gay, bisexual and transgender persons. In February this year, the World Bank postponed a US\$90 million loan due to the signing of the Anti-Homosexuality Act. Norway said it would be withholding \$8m in development aid to Uganda, and Denmark will divert \$9m away from the Ugandan government saying that they couldn’t distance themselves too strongly from the law and the signal

that the Ugandan government now sends to not only persecuted minority groups, but to the whole world. Austria said it was reviewing its assistance to Uganda.

Most African countries rely heavily on international aid for development, for improvement of infrastructure, for health care for their people and even for day to day running of sectors of government. It follows, therefore, that placing a condition for aid on the protection of human rights, even explicitly on gay and lesbian rights, would be a great incentive for the States to promote these rights. However, this is not always the case. Two things will happen once conditions are placed on aid to protect or promote rights of LGBT persons.

Firstly, homosexuality is widely viewed by states and the society in Africa as a phenomenon that comes from the West: one that did not exist in the continent until the infiltration of the West. This means that when Western nation's condition aid on promotion of LGBT rights, the false rhetoric of homosexuality being a western import is further crystalised. As much as this is often done in good faith, it will appear as the West pushing a Western agenda onto Africa. Ugandan government spokesman Ofwono Opondo termed the postponement of the World Bank's loan to his country as "*blackmail*". This greatly undermines the efforts of the activists on the ground and has them having to work even harder to convince the society that there are those among them who are of diverse sexual orientation and gender identity who are not influenced by the West but belong to the same society.

The second thing that happens is a backlash on the LGBT community. Following the statement by UK Prime Minister David Cameron in 2011, there was a spike in violence against LGBT people in Tanzania and Kenya. The reason for this was that the LGBT community was blamed for the potential deterioration of living standards caused by the reduction in aid.

States will not relent on rights for LGBT people once aid is cut or even threatened to be cut. They will react to popular opinion of the people and the popular opinion will always be that Africans' actions should not be dictated to by the needs of the West. This will always bring back the ugly head of colonisation. Aid conditionality has severally been compared to neo-colonialism, which is something that is incredibly unpopular in Africa. And that is putting it lightly.

What ought to be done is that for all the recommendations given on responses to discrimination on the grounds of sexual orientation and gender identity, focus should not only be placed on lesbian, gay, bisexual and transgender people but also to all the other atrocities that are happening in Africa. Withdraw ambassadors from Zambia because of violence and discrimination

against women, child abuse, trafficking in persons, and discrimination against persons with disabilities and based on sexual orientation and gender identity. Issue travel bans to Uganda because of corruption, abuse by security forces and discrimination against sexual and gender minorities. The LGBT community should not be perceived by the society as a special group seeking special rights. After all, we are all human beings, we are all citizens of our respective countries in Africa. We all suffer from the same injustices our States put us through. We are all African.

Anthony Oluoch

ASIA

Asia these days

Asia is becoming more LGBTI friendly. Most of the time change is not dramatic. Bit by bit. Incremental. A burst here and there. Status quo elsewhere.

Contradictions are common. Tolerant, open, LGBTI friendly Thailand has no laws against discrimination or supporting gender identity. Two judges in the Indian Supreme Court in December, 2013, reinstated an 1860 criminal prohibition on gay sex, then in April, 2014, a different set of two judges, on the same court, issued a dramatic opening on transgender rights. Now the Indian Congress Party has LGBTI rights in their platform, a first in Indian history. But in April they were predicted to lose the 2014 national election to the BJP, which does not support reform. Two steps forward. One step back.

CRIMINAL LAWS

Criminal prohibitions in Asia in general do not reflect local decisions, but colonial era impositions. There are no prohibitions in Japan, China, Indonesia, or the Philippines. Discriminatory criminal laws are gone in Hong Kong, but survive in other former British colonies – Bangladesh, Brunei, India, Malaysia, Myanmar, Pakistan, Singapore, Sri Lanka. Prohibitions survive in at least parts of Central Asia from the period of the Soviet Union. Mongolia ended a criminal prohibition in 2002. A ban survives for members of the military in South Korea. There is a mix of patterns in the Middle East, with prohibitions, for example, in Iran and Lebanon.

In April, 2014, the tiny, rich, Malay Muslim Sultanate of Brunei, on the north coast of Borneo, announced they would introduce a new penal code with death by stoning as a possible punishment for Muslims guilty of rape, adultery, sodomy or extramarital sexual relations. Yet the Sultanate has had a moratorium on the use of the death penalty since 1957. UN officials, and others, have protested.

In 2009 the Delhi High Court ‘read down’ section 377, the colonial era anti-homosexual criminal law. As a result, the section could no longer apply to private sexual activity between consenting adults. The government was content to do nothing. It decided to let the trial judgment stand with no appeal and no official embrace of LGBTI ‘human rights’. Religious zealots made sure there

was an appeal to the Supreme Court. In December 2013, a two judge panel of the Supreme Court reversed the lower court decision, saying the law only applied to a “miniscule minority” and change should be left to parliament. The governing Congress Party immediately condemned the decision. Disorder in the parliament made immediate legislative repeal impossible. A request for a rehearing was made to the Supreme Court on 22 April, 2014. In the April 2014, election the platforms of the Congress Party and the new Common Man party both supported LGBTI rights, while the BJP, expected to win power, remained silent or opposed.

NON-DISCRIMINATION LAWS AND PRACTICES

Taiwan and Timor Leste are the only national jurisdictions in Asia that prohibit employment discrimination on the basis of sexual orientation. Now at least three local governments in the Philippines also have such laws. Hong Kong has mechanisms for addressing discrimination on grounds of sex and gender diversity, but they appear mostly ineffective. Work on raising awareness amongst corporate employers is ongoing there and in other parts of Asia. In Cambodia, to the surprise of outside observers, Prime Minister Hun Sen has called on Cambodians to end any discrimination against gays and lesbians.

The administrative court in Thailand, in two rulings, has held that the Constitution prohibits discrimination against transgender individuals, known in the country as Kathoey. They had been barred from participation in particular parades and festivals organised by the provincial government in the northern province of Chiang Mai.

NATIONAL HUMAN RIGHTS COMMISSIONS

National human rights commissions are supposed to have some independence and expertise, but are advisory only. There are now 13 national commissions which are recognised as full members of the Asia Pacific Forum of National Human Rights Institutions. At times, at least, the commissions in Nepal, South Korea, and Thailand have done excellent work on SOGI issues. Studies authorised by the APF on LGBT issues in the region are on the APF website (see www.asiapacificforum.net, and call up “sexual-orientation”).

VISIBILITY

LGBTI visibility remains low. The most visible ‘out’ politician in Asia has been Sunil Pant, a former member of the national parliament in Nepal. There are now two out gay men elected in Tokyo, Taiga Ishikawa (Toshima, Tokyo

ward), and Wataru Ishizaka (Nakano, Tokyo ward), and another in Hong Kong (Raymond Chan). Unelected opposition political candidate Vincent Wijesingha in Singapore came out as gay, and attended the 2013 “Pink Dot” event. Earlier pioneers were an elected lesbian, Kanako Otsuji, in Osaka and a trans-woman, Aya Kamikawa, in greater Tokyo. Both attended the ILGA Asia conference in Chiang Mai. Transgender Hijra run in local elections in India. Some have been local mayors in the past, and one a member of a state assembly.

The official government website of North Korea acknowledges the existence of homosexuals in the country (after an earlier denial). A breakthrough of sorts. But then the official news agency in April 2014, said the practice “can never be found” in North Korea, and labeled former Australian High Court judge Michael Kirby (a critic) a “disgusting lecher” for being homosexual.

There are now LGBTI organisations in most parts of Asia. The most effective at the moment seem to be those in Cambodia, Nepal and Vietnam. The first organisation in Mongolia was legally registered in 2009, after many government refusals. New organisations are active in Myanmar, with returned exiles actively involved. 25 young delegates from Myanmar were at the ILGA Asia conference in Bangkok in March 2013. ILGA Asia will meet in Taiwan in 2015.

An ongoing “ASEAN SOGIE Caucus” of organisations and activists has formed for the ten country grouping of ASEAN (the Association of South East Asia Nations). “We are ASEAN too!” they proclaim. ASEAN is the most developed regional inter-governmental organisation in Asia. It has a human rights declaration and a tame ASEAN Intergovernmental Commission on Human Rights. Follow the blog: [http:// aseansogie. wordpress.com](http://aseansogie.wordpress.com).

The University of Hong Kong press has been publishing a series of LGBTI books, in a “Queer Asia” series. As of 2014 there are eleven titles, dealing with China, Hong Kong, Indonesia, Japan, Singapore, Philippines, Taiwan and Thailand.

Pride parades occur annually in Hong Kong, India, Japan, South Korea, Philippines, Taiwan, and Thailand. Azerbaijan had its first pride parade in 2013, while Kyrgyzstan in 2013 had an “arts festival” with workshops on coming out and other issues. Hanoi and Ho Chi Minh City have seen ‘flash mobs,’ with demonstrators riding bicycles or motorcycles with flags and posters. Hanoi Pride, now in its third year, stages three days of panels, films and events, including a bicycle rally.

The “Pink Dot” in Singapore has become world famous, as a clever way around the laws prohibiting public demonstrations. In 2013 a photograph, taken from a helicopter, showed 21,000 pink people gathered together in a park, holding candles or flashlights, just after sunset, the lights of downtown in the distance. In July, 2013, Okinawa had its own “Pink Dot” with 500 demonstrators.

The annual “SeksualitiMerdeka” festival in Malaysia was banned in 2011. The courts refused to review the decision of the police. It has not been held since that time. But there are a couple of bars, and a long-standing gay run health (and rights) organisation. There is no history of prosecutions for gay sex (other than those directed at opposition leader Anwar Ibrahim). Prime Minister Najib Razak has said that “LGBTs, pluralism, liberalism” are all against Islam and “it is compulsory for us to fight these.”

In China a pride parade in Changsha, Hunan province, in 17 May, 2013, resulted in four arrests. 80 people from seven different areas of China participated, strolling along in a riverfront park. The main organiser was detained for twelve days. No charges were pursued. Queer Comrades made a documentary on the event.

The sixth Beijing LGBTI film festival in June 2013, was organised ‘guerilla style’, with showings at scattered locations and announcements of venues made at the last moment. More organised screenings were held at the French and Dutch embassies and the American center. There were 28 films from five countries. For the first time in the history of the festival there was no interference from authorities. In 2013 some ‘Shanghai Pride’ events were able to go ahead, including an opening party for 1,500 people (double the number organisers had expected).

In August 2013, Beijing groups hosted the second annual national conference of LGBTI activists with funding of US \$30,000 from a joint US AID-UN Development Program project “Being LGBT in Asia”. The national conference had the approval of Chinese government departments and the China Family Planning Association. There were more than 140 delegates from 28 regions, including Tibet, Xinjiang, Hong Kong and Taiwan. Local and foreign media were barred from the event.

TRANSGENDER

In some parts of Asia, transgender individuals living as women or as men, have access to document change and marriage in a post-transition sex. This is the pattern in China, Hong Kong, Japan, South Korea, Singapore, and Taiwan, all Confucian influenced societies. Usually there are quite restrictive conditions for recognition, though in South Korea, in recent practice, genital surgery has not been required in all cases. Indonesia follows this pattern of recognition, as well as at least parts of Central Asia. Iran sees sex reassignment surgery as appropriate for all homosexuals (and retains a possible death penalty for homosexual acts). Genital surgery is only available for intersexuals in Vietnam and Malaysia. Many trans people travel to Thailand for treatment.

In South Asia there are large communities with ‘third sex’ identities. They are seen, and see themselves, very much like ethnic minorities. The best known of these are the Hijra in India, Pakistan and Bangladesh (who have alternate regional names, such as Aravani in South India and Kinnar in Delhi). Hijra regularly assert that they are neither men nor women. Increasingly, they are recognised as economically and socially marginalised collectivities (in contrast to the very individual rights focus for trans people in other places).

In 2007 the Supreme Court of Nepal spoke of third gender individuals, whose identities should be recognised and respected by government. Some implementation of that decision has occurred. In 2008 the Supreme Court of Pakistan made a decision calling on the government to recognise third gender individuals, and extend government services to them. Reforms began in India in piecemeal fashion, first in the important south Indian state of Tamil Nadu. Aravani there were brought within government programs of subsidised foodstuffs and preferential admission to colleges and government employment (extending existing programs for the economically marginalised ‘backward classes’ to them). The Tamil Nadu reforms were copied in other states, and some reforms began at the national level, including the designation of sex in passports, voting cards, and in the new national identity cards.

In April 2014, the Indian Supreme Court, in a dramatic decision, ruled that members of the “Transgender Community” had to be recognised as equal citizens, and the government was required to work to end discrimination and marginalisation. The decision notes accounts of transgender individuals in historical Hindu and Jain religious mythology, and in the life of the Muslim Mughal court. While the Yogyakarta Principles are quoted at length, along with various Western reforms, the judgment sees Hijra, and other transgender groupings, as a distinctive part of historic Indian society, who have fallen on hard times. Discrimination and marginalisation were entrenched in the British colonial period, the court says, when Hijra were deemed a ‘criminal tribe.’

The experience in South Asia and Southeast Asia shows greater understanding or acceptance of gender identity variation, than of differences in sexual orientation. Transgender identities, such as kathoey, waria and bakla are known to everyone in Thailand, Indonesia and the Philippines.

Litigation and negotiation in Thailand convinced the military to end the practice of labeling MTF transsexuals as suffering from a ‘permanent mental disorder’ when they were exempted from compulsory military service. Employers always want to see military discharge papers, so the designation could be very damaging for those seeking jobs. The older terminology was replaced by “gender identity disorder”, the then official designation in DSM IV. DSM V now speaks of “gender dysphoria”, but the military has not updated its terminology.

Cross dressing in entertainment is common in parts of Asia. Queer Comrades in Beijing, has produced a video documentary on drag performers in Nanning, in SW China. Religious laws in some Malaysian States ban cross-dressing for Muslims. In the past media have covered stories of police raids on local trans beauty contests in the country.

RECOGNITION OF RELATIONSHIPS

Some legal recognition of same-sex relationships has occurred, informally, by immigration systems, in places like Hong Kong, Singapore and Thailand. Foreign same-sex partners of expatriate business people, academics and embassy staff are given residency rights based on the relationship. As well, same-sex relationships are recognised in laws focused on domestic violence in Hong Kong and Taiwan. So far there has been no other official legal recognition of same-sex relationships in Asia, although the issue is ongoing in Nepal, Taiwan, Thailand and Vietnam.

In 2012 Vietnam began a long process of reform of its family law, on a number of issues, including surrogacy, heterosexual cohabitation and same-sex relationships. The focus was on practical questions. There needed to be some legal rules to deal with issues of property and children. The Minister of Justice in Vietnam referred to same-sex marriage as 'inevitable' if one considered the question from the viewpoint of human rights, a statement that startled most observers. In July 2013, the government settled on a more modest reform. The rules on property and children that applied to married heterosexual couples, would apply to cohabiting heterosexual couples and to same-sex couples. The package of reforms had not been enacted as of April 2014.

In 2013 a draft 'civil unions' law for same-sex couples was prepared by a Parliamentary committee in Thailand after five public hearings. The national election in February, 2014, ended that process. It would have to be started again under a new government. Reform in Nepal, which for a few years looked like it would pioneer relationship recognition in Asia, has been stalled because of a much broader political deadlock in the country. A bill to open marriage in Taiwan is under consideration, with committee hearings and opposition demonstrations. Opinion polls suggest majority support for opening marriage, but opponents are very vocal and well organised.

Welcome to Asia. Do not expect that LGBTI issues are easy to understand in this region, which comes close to being half of the world.

Professor Douglas Sanders

EUROPE

State-sponsored homophobia – the European Region

RUSSIA

June 2013 saw the adoption of a Federal law banning ‘homosexual propaganda’ in Russia. The adoption of this law not only marked a new low point in the wider trend of cracking down on civil society organising, it also fuelled an intense and unprecedented international solidarity campaign in support of the Russian LGBT movement.

The law, just like its regional predecessors, is extremely vague in language, which makes its application arbitrary. In 2013, only a few charges were brought to court under the laws, including the case of the promoters that brought Lady Gaga’s concert to St Petersburg and that were found guilty of ‘homosexual propaganda’. The far-eastern newspaper ‘Molodoi Dalnevostochnik’ received a warning from the Federal Monitoring Service that identified an article in violation of the federal ‘propaganda’ law about a teacher who was fired because of his sexual orientation. Three activists were found guilty of ‘propaganda’ and fined; all of them publicly manifested themselves in support of LGBT equality.

The anti-propaganda law paved the way for the introduction of further homophobic laws. In July, a law prohibiting adoption of children from Russia by foreign same-sex couples was approved. In August, a deputy of the State Duma announced that he would introduce a draft law prohibiting blood donation by LGBTI persons. Another draft law proposing to withdraw parental rights from individuals who ‘allow for non-traditional sexual relations’ was submitted for consideration.

The adoption of a federal ‘anti-propaganda’ law contributed to further polarise a country already hostile to its civil society (e.g. most human rights organisations or political opponents to the regime in place), and led to an increase in violence -including inhumane and degrading treatment and hate-speech - against LGBTI individuals and the supporters of their rights. LGBTI individuals and organisations applied numerous times to organise public manifestations. In most cases organisers receive approval, but no protection by law enforcement

personnel. Several examples of violent counter-protests where human rights defenders were attacked demonstrate how the inaction of state authorities fuels further LGBTI-phobia in society. Combined, these developments have led to a climate of impunity, in which human rights violations against LGBTI individuals go unpunished.

REGIONAL BACKLASH

The introduction of the anti-propaganda law in Russia inspired other countries to consider similar steps. In June 2013, the Moldovan parliament passed a Bill banning the promotion of “Relationships other than those linked to marriage and family”. The clause was removed a few months later after extensive external pressure. Two Bills aiming to ban homosexual propaganda were introduced in the Ukrainian parliament in June. The Bills are currently not under further consideration. The Belarusian parliament started talking about the introduction of an anti-propaganda law in July 2013. In August, the Armenian government introduced a similar law, but quickly removed it after international pressure. The Latvian Central Election Commission, in November 2013, permitted anti-LGBT organisations to collect signatures in support of a referendum calling for the introduction of measures banning homosexual propaganda.

Similar Bills are also reported to be discussed in Kazakhstan and Kyrgyzstan.

LITHUANIA

Numerous violations of LGBTI people’s human rights occurred in 2013, mostly consisting of legal restrictions or proposals by State actors. Five parliamentary proposals were put forward to legally protect bias-motivated speech against LGBTI persons; limit freedom of speech and assembly for supporters of equality and non-discrimination; restrict the constitutional definition of ‘family life’ to married heterosexual couples and parents; prevent same-sex couples from adopting or fostering children (they currently cannot); and outlaw sexual reassignment surgery for trans people. Having raised every available legal obstacle to prevent the Baltic Pride from taking place in central Vilnius, the mayor was forced by a high court to allow the march. Two advertisements for the pride event were also partially censored on public television in application of the controversial Law on the Protection of Minors (similar to other ‘anti-propaganda’ laws), adopted in 2010.

CYPRUS

In the northern part of Cyprus, the local parliament after years of external pressure reformed the local Penal Code in January 2014 to abolish articles 171 and 173, which punished consensual acts between two adults of the same sex - or attempts to 'commit' them - with prison.

EUROPEAN UNION

In June 2013, the Council of the European Union adopted new Guidelines to promote and protect the enjoyment of all human rights by LGBTI persons. The binding guidelines replace the previously non-binding toolkit, and instruct EU diplomats to work towards eliminating discriminatory laws; promote equality and non-discrimination; combat state and non-state violence against LGBTI people; and support and protect human rights defenders. The guidelines are the first international instrument to explicitly incorporate 'intersex' as category of people that should be targeted to improve their human rights. Moreover, it includes the removal of discriminatory laws as a key priority for the foreign policy work of the European Union.

**Bjorn van Rozendaal, ILGA Europe's Programmes Director,
on the basis of reports by ILGA-Europe"**

RUSSIA AND THE UNITED NATIONS³⁵³

The number of recommendations by States at Russia's second cycle Universal Periodic Review interactive dialogue, as reported in the Working Group's *Final Report*,³⁵⁴ that directly reference SOGI is 13 (compared with two in 2009). What is especially interesting in the second cycle of the UPR is the number of State recommendations that do not directly mention the words 'homosexuality', 'LGBT', or 'SOGI', but the issue being brought up applies exactly to SOGI: these range in subject from increasing human rights training, protection of human rights defenders, removing restrictions on NGOs, repeal of the 'foreign agents' law, freedom of expression and assembly, and many that recommend bringing national laws into conformity with international human rights law and

³⁵³ These examples are given to signify the weight of UN global standards and binding law obligations on Russia only, and does not reference the range of European mechanisms and institutions for human rights that have addressed the situation of the human rights of LGBTI people in Russia to date.

³⁵⁴ United Nations Human Rights Council *Final Report of the Working Group on the Universal Periodic Review: Russian Federation* A/HRC/24/14, 8 July 2013, paras. 140.84, 140.86-140.97.

standards. In total, there are 47 further recommendations that fit this category, and a further 11 comments made at the Interactive Dialogue (10 of which come from the European Region, and one from Japan).

A Russian LGBT Network summary to the OHCHR on the concept of ‘traditional values’ illustrates the rising progression of the Russian Orthodox Church’s ideas entering public policy since the end of the Soviet era,³⁵⁵ logically resulting in a number of repressive federal laws as discussed above.

Importantly in the context of this rising State-sponsored homophobia, in *Fedotova v. Russian Federation*,³⁵⁶ in 2012 the Human Rights Committee that oversees the UN Covenant on Civil and Political Rights (CCPR) held that the ban on homosexual propaganda in the Ryazan Region violated Irina Fedotova’s rights to freedom of expression³⁵⁷ and non-discrimination. In doing so, the Human Rights Committee reversed its 1982 decision in the case of *Hertzberg v. Finland*.³⁵⁸ A key line of defence in this case involved the concept that a law must be neutral, and not specify a particular sexual orientation³⁵⁹ (without a countering reason of greater import), otherwise it is discriminatory,³⁶⁰ as was also asserted in *Romer v. Evans*,³⁶¹ although denied in Botswana and Zimbabwe national courts.³⁶²

³⁵⁵ Russian LGBT Network “‘Best Practice’ of Using the Concept of “Traditional Values” in Russia” 28 February 2012 (on OHCHR website) <http://www.ohchr.org/Documents/Issues/HRValues/RussianLGBTNetwork.pdf> (date accessed: 2 September 2013) [presents very informative milestones of Church successes of insinuating values into regional and federal legislations, including the current legislation].

³⁵⁶ United Nations Human Rights Committee *Fedotova v. Russian Federation*, Communication No. 1932/2010, 30 November 2012, at para. 10.5: “In this respect, the Committee recalls, as stated in its General Comment No. 34, that “the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations ... for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition’. Any such limitations must be understood in the light of universality of human rights and the principle of non-discrimination”, United Nations Human Rights Committee, General Comment 34, CCPR/C/GC/34, 12 September 2011, at para. 32.

³⁵⁷ Under Article 19.2 of the ICCPR, as found in United Nations Human Rights Committee *Laptsevich v. Belarus*, Communication No.780/1997, 20 March 2000, at para. 8.1.

³⁵⁸ United Nations Human Rights Committee *Hertzberg et al. v. Finland*, Communication No. 61/1979, 2 April 1982: this case, the first sexual orientation ever before the UN Human Rights Committee, was found in favour of the Finnish government that whoever “publicly encourages indecent behaviour between persons of the same sex” was subject to a six-month prison sentence or a fine, under Article 19, paragraph 3, of the Covenant. *Fedotova* eventually overturned this because jurisprudence “has developed” (para. 5.9(a)), the by 2012 well-recognised principle of non-discrimination in IHRL (para. 5.9(b)), and conceptions of public morality are open to change, here reflecting *supra* *Toonen*; and *Dudgeon*, para. 5.9(c).

³⁵⁹ This analysis is modified from that in the International Commission of Jurists’ *Sexual Orientation and Gender Identity in International Human Rights Law: the ICJ Compilation*, 5th ed., (Geneva: ICJ, 2013).

³⁶⁰ United Nations, Economic and Social Council *Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights*, annex, E/CN.4/1985/4 (1985), principle 2; United Nations Human Rights Committee’s *General Comment No. 22 on the Right to Freedom of Thought, Conscience and Religion*, Supplement No. 40 (A/48/40), annex VI (1993), at para. 8.

³⁶¹ *Romer, Governor of Colorado, et al. v. Evans et al.* (94-1039), 517 U.S. 620 (1996)

³⁶² In *Banana v. State*, Supreme Court of Zimbabwe (29 May 2000), the Chief Justice said, “I do not believe that this court, lacking the democratic credentials of a properly elected parliament, should strain to place a sexually liberal interpretation on the Constitution of a country whose social norms and values in such matters tend to be conservative”; *Kanane v. State*, Court of Appeal, Botswana (30 July 2003).

The situation of Human Rights Defenders in Russia has been raised by the UN Rapporteur who looks after that brief in 2007,³⁶³ 2010,³⁶⁴ and 2012³⁶⁵ racism and xenophobia in the same year,³⁶⁶ hate speech, police, violence, stigma in 2009,³⁶⁷ and lesbians and transgender women under CEDAW.³⁶⁸ The UN Committee on Economic, Social and Cultural Rights (CESCR) requested information on discrimination of LGBT people in 2011,³⁶⁹ and the Committee Against Torture (CAT) advised Russia of its obligations under the Covenant in 2012.³⁷⁰

(Additional text: Aengus Carroll)

³⁶³ 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: Russia (freedom of assembly/association).

³⁶⁴ Report of the Special Rapporteur on the situation of human rights defenders, A/HRC/16/44, 20 December 2010

³⁶⁵ 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.

³⁶⁶ Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. Addendum: Mission to Russian Federation, A/HRC/4/19/Add.3, 30 May 2007.

³⁶⁷ Russian Federation, CCPR/C/RUS/CO/6, 29 October 2009.

³⁶⁸ Russian Federation, CEDAW/C/USR/CO/7, 16 August 2010.

³⁶⁹ Russian Federation, E/C.12/RUS/CO/5, 1 June 2011.

³⁷⁰ Russian Federation, CAT/C/RUS/CO/5, 11 December 2012.

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Suggested citation: International Lesbian, Gay, Bisexual, Trans and Intersex Association: Itaborahy, L.P. & Zhu, J, State Sponsored Homophobia 2014: A world survey of laws: criminalisation, protection and recognition of same-sex love (Geneva; ILGA, May 2014).

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Coordination: Alessia Valenza, Aengus Carroll

Design and typesetting: Renné Ramos

Maps: Eduardo Enoki



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Founded in 1978, it now has more than 1000 member organizations. Every continent and approximately 110 countries are represented.

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