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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

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FROM THE CO-SECRETARIES GENERAL

This issue of our annual report on state-sponsored homophobia builds up on improvements introduced in the last two editions, by increasing the number of articles – by either scholars or ILGA regional board members – devoted to specific issues or regions, and comes in a new format, which we hope will make the whole report (including the world map) easier to use and to read. For the first time, this report is released in all 6 UN official languages, in an effort both to increase the readership and to make it easier to quote from it in other reports by (inter)governmental agencies and NGOs.

2012 and 2013 will definitely be remembered as the years of same-sex marriage laws, as a sort of chain reaction seems to spread from continent to continent, from Latin America (Argentina, Uruguay) to Europe (France and most probably the UK) to Oceania (New Zealand), thus bringing the total of countries where same-sex couples can marry to 14, while in Brazil, Mexico, Australia and the USA progress seems to stall, as can be read in the articles on Oceania by Simon Margan and Joey Mataele, and on North America by Danielle Maccartney and by Stephen Seaborn and Haven Herrin.

Though, perhaps, the most visible sign of change in relation to equality, marriage laws are not the only field which sees advancements of LGBTI rights – at the national and at the local level, through regulations, litigation or even election of openly LGBTI council or parliament members, change is gradually taking place in many countries all over the world, as can be read in the articles by Douglas Sanders (Asia), Eric Gitari, Linda RM Baumann, Rev. Rowland Jide Macaulay (Africa) and Tamara Adrian (Latin America).

Despite these very encouraging developments though, little has changed in the proportion between countries criminalizing same-sex sexual acts between consenting adults and those which do not, i.e., respectively, 78 (roughly 40% of UN Members) versus 113 (roughly 60% of UN Members). While the efforts in the international LGBTI movement and among its allies (NGOs, certain governments, etc.) to change this state of affairs must and will continue, it is important to realize that this current division of the world – from the point of view of legislation – into an LGBTI-friendly field and an LGBTI-unfriendly field is the result of different cultural, social and political processes rooted in the histories of the countries and the history of their relations with one another. As it would be impossible to list all these processes here, we decided nevertheless to have an in-depth article on a particular region of the world each year, starting with one on the MENA region by Yahia Zaidi.

While criminalization is the most blatant form of state-sponsored homophobia, countries which decriminalized homosexuality in the recent past, such as Russia, as explained in the article by Maria Sjödin and Martin Christensen, are sadly seeking to re-legitimize discrimination based on sexual orientation both at the national level, by way of laws against LGBTI activism – preposterously defined as "homosexual propaganda" – and at the international level, in the name of "tradition".

We hope this year's issue to be most useful for activists, governmental agencies, academics and the media and are grateful to the authors, Lucas Paoli Itaborahy and Jingshu Zhu, and all those worked on it, particularly professors Kees Waaldijk and Robert Wintemute, our staff (Stephen Barris and Sebastian Rocca) and – last but not least – all our member organization who provided the updates on the legislation of their countries.

Gloria Careaga & Renato Sabbadini
Co-Secretaries General, ILGA

Brussels / Mexico City, 13 May 2013

ILGA is a world-wide network of national and local groups dedicated to achieving equal rights for lesbian, gay, bisexual, trans and intersex (LGBTI) people everywhere.

Founded in 1978, it now has more than 1000 member organizations.

Every continent and approximately 117 countries are represented.

Pan Africa ILGA, ILGA-Asia, ILGA-Europe, ILGA-LAC, ILGA-North America and ILGA-ANZAPI are regional chapters of ILGA.

ILGA is to this day the only international non-governmental community-based association focused on fighting discrimination on grounds of sexual orientation and gender identity as a global issue.

www.ilga.org

FROM THE AUTHORS

LUCAS PAOLI ITABORAHY[1] & JINGSHU ZHU[2]

> *"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 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. This

1 Lucas Paoli Itaborahy is a Brazilian LGBTI activist 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 United Nations Office in Geneva in 2012. He has produced many academic and legal researches, including ILGA's State-Sponsored Homophobia over the last three years. Moreover, he has been involved with other civil society organizations such as the Interights (London) and 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 research on the family law encounters of Chinese lesbians and gays in various relationships.

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 people.

The first part of the report presents a global overview of developments of LGB rights in a variety of legal matters: decriminalisation of consensual homosexual acts between adults; equalization 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.

The second part is comprised of a summary of countries that still maintain legal provisions criminalising same-sex sexual acts between consenting adults 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 organizations. If these were not found, other types of sources, like scholarly writings, were used. Afterwards, the first draft was reviewed and discussed by an advisory group composed of LGBTI experts Kees Waaldijk (Leiden Law School/ The Netherlands),3 Robert Wintemute (King's College/UK), and with Renato Sabbadini and Stephen Barris.

In this edition, we have updated the legal situations in many countries and/or regions. In particular, we have added some recent positive changes that were not covered by the previous editions:

3 Kees Waaldijk has also contributed immensely to this report, providing 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.

- Regarding prohibition of discrimination in employment: some parts of Philippines since 2003 up till 2013, Bolivia (2011), El Salvador (2010), Moldova (2012) and Uruguay (2004);
- Regarding hate crimes: Chile (2012), Georgia (2012) and Malta (2012); Honduras (2013)
- Regarding incitement to hatred: Malta (2012);
- Regarding same-sex marriage: Denmark (2012), part of Mexico (2010) and some parts of the United States (Maine in 2012, and Maryland and Washington in 2013); Uruguay (2013) and New Zealand (2013)
- Regarding same-sex couples offered most or all rights of marriage: some parts of the United State (Illinois and Rhode Island in 2011 Hawaii and Delaware in 2012, Colorado in 2013)
- Regarding same-sex couples offered some rights of marriage: Part of the United States (Wisconsin in 2009) and Poland (2012)
- Regarding joint adoption: New Zealand (2013)
- Regarding second-parent adoption: Slovenia (2012)

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 it happened previously with Benin. In past edition, Benin was placed under the Illegal category due to a misinterpretation of an unofficial English translation of the Penal Code. After reviewing other sources we realized that there was only a higher age of consent for same-sex sex.

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 six 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, and by Lucas Paoli Itaborahy in 2012.

REFUGEE CONTEXT CONSIDERED

The ILGA Report on State-Sponsored Homophobia is a comprehensive outline of the legal status of same-sex sexual activity. However, it is very important to keep in mind that the question of ***legality*** of same-sex sexual activity does not determine the question whether people may be at risk of being ***persecuted*** in their countries of origin for engaging in such activity. Knowing that there is a difference between these two questions is vital for legal practitioners, policy makers and adjudicators in the refugee context.

The 1951 Refugee Convention defines refugees in Article 1(A) as those who:

> *"owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."*

Criminalisation of same-sex activity may be relevant to the determination of risk of persecution in a number of ways. The imposition of criminal sanctions by the State in and of itself may constitute persecution (UNHCR 2002; 2008). Criminal laws prohibiting gay sex, whether or not regularly enforced, render sexual minorities vulnerable to extortion, exploitation and other forms of abuse at the hand of both state and non-state actors. Such criminal laws systematically contribute to a failure of State protection, by preventing victims of homophobic violence from seeking and being provided assistance. Furthermore, criminal laws of this kind, whether or not enforced, contribute to persecutory environments, by stigmatising LGBTI people through official means. However the absence of, or repeal of, criminal proscriptions absolutely must not be taken as establishing the reverse proposition. Lack of explicit criminalisation of same-sex sexual activity does not prevent LGBTI people from facing extreme violence. The absence of criminalisation does not demonstrate the absence of risk of persecution and/or sufficiency of state protection. The question of legality of gay sex is only one element, and cannot alone be taken as an answer to the question of risk of persecution based on sexuality.

ILGA has been given feedback that earlier incarnations of this report have been used in some refugee determination hearings as evidence that there is no real risk of persecution for lesbian or gay applicants from countries where either the law had been amended to decriminalise same-sex sexual activity or where there was no legal provision expressly criminalising the activity. This introduction urges readers of this document, in particular legal professionals, to think carefully and critically about its use in matters related to refugee and asylum claims. Specifically we urge readers to seek the most detailed, accurate and up to date country of origin information possible to place this information in context before use in any refugee determination.

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MENA, THE MIDDLE EASTERN & NORTH AFRICAN REGION: TERRA INCOGNITA

This region covers the territory South of the Mediterranean Sea, West of the Persian Gulf, East of the Atlantic Ocean and North of the Sahara desert. In the past it has been part of the Ancient Egyptian, Assyrian, Babylonian, Phoenician, Carthaginian, Mauritanian and Numidian civilizations and empires. Since the seventh century, the Arab Muslim civilization has dominated the region and has strongly impregnated many other local cultures and languages, including those of the Tamazight (Berbers), Copts, Nubians, Kurds, Assyrians, Aramaics, Somalis and Afars. The 22 modern-day countries which make up the region (excluding Israel) are all members of the Arab League.

The MENA region is covered by two ILGA regions: Asia and Africa. ILGA welcomed six new organisations from the region at its last world conference in Stockholm in December 2012. Today there are 9 MENA members in ILGA's Africa region (7 from the Maghreb and 2 from the Nile valley, but none from the Horn of Africa) and 5 MENA members in ILGA's Asia region (4 from the Levant and one from the Gulf).

The main characteristic of MENA region today is its youth. Young people are in a quest for freedom and self-expression, after centuries of colonial rule and decades of post-colonial dictatorships. The "Arab Spring" revolution in Tunisia in 2012 rapidly spread to Egypt, Libya and Syria. There were also uprisings at the same time in Bahrain and Yemen but they were suppressed by government forces before they could effect any significant changes. Since the Arab Spring, there has been frequent violence and suffering in all of these countries.

RELIGIONS, RELIGIONS, RELIGIONS

Although the population of the MENA region is overwhelmingly Sunni Muslim, there are Shia Muslim[1], Christian and Jewish minorities, particularly in Lebanon, a small country whose population includes followers of no less than 18 branches of Islam, Christianity and Judaism. Syria, Iraq and Jordan also have sizeable religious minorities.

1 The Shia (Arabic: شيعة, ***Shīʿah***) represent the largest schismatic sect in Islam, accounting for 10-20% of the world's normative body of Muslims.[1] Adherents of Shia Islam are called Shi'ites or Shias. «Shia» is the short form of the historic phrase ***Shīʿatul ʿAlī*** (شيعة علي), meaning «followers», «faction», or «party» of Muhammad's son-in-law and cousin Ali, whom the Shia believe to be Muhammad's successor in the Caliphate. Source : Wikipedia.

Many of the countries of the MENA region have legal systems based on sharia Islamic law, and many of their constitutions explicitly designate Islam as the state religion, even though non-Sunni-Muslim minorities account for up to 40% of their populations. The conflict between Sunni and Shia Muslims has been going on for centuries most obviously today in Iraq and Syria. The Shia are the religious minority most discriminated against in the region: for example many are denied entry to Egypt and, despite forming the majority of the population of the island state of Bahrain, they are subject to an oppressive minority Sunni Muslim regime. Sadly, violent homophobia seems to be the only issue that unites all the majority and minority religions in the MENA region.

"IT WAS ONLY ATTEMPTED RAPE..."

All the religions in the MENA region encourage a patriarchy where women are oppressed and treated as second-class citizens, requiring the permission of their husbands, fathers or brothers to engage in the most basic day-to-day activities. The preservation of their virginity, evidenced by their hymens, upholds their personal honour and that of their male relatives, regardless of the behaviour of these men.

When a 10-year-old girl called Wiam was attacked and disfigured with a sickle in 2013, the Moroccan daily newspaper Al-Massae reassured its readers: "it was only attempted rape, the girl is still a virgin".([2]) A year before, on 10 March 2012, a 16-year-old girl called Amina Fillali committed suicide after being forced by her family to marry the man who had raped her, as encouraged by Article 475 of the Moroccan Penal Code. Once again, women's rights are undermined by the status and privileges given to men by legislation.

Since the Muslim Brotherhood-dominated government assumed power in Egypt, sexual harassment and abuse of women, and rape have increased dramatically. Hania Moheeb and Yasmine Al-Borhamy were among the first courageous victims to speak publicly about their experiences of being gang-raped during a protest at Tahrir Square in Cairo. Their testimonies were widely reported and a new collective called *OpAntiSH* has been formed in Cairo to fight against sexual harassment and assaults and to directly intervene to prevent assaults by mobs.

Female Genital Mutilation ("FGM") is another severe issue facing women in the MENA region, particularly in Egypt, Sudan and Yemen. Its fundamental aims are to destroy female sexual pleasure and to control female sexuality.

The Gulf States remains the most backward part of the region in terms of

2 http://internationalpoliticalforum.com/in-morocco-being-raped-is-not-the-end-of-the-story/

women's rights. In the Gulf region ([3]), Kuwaiti women are considered to be the most emancipated, following changes in the law in May 2005 allowing them to vote and to stand as candidates in parliamentary and local elections. In neighbouring Saudi Arabia, women are not allowed to drive, nor to hold passports or identity cards without the consent of their fathers, husbands or brothers. In a surprise move in January 2013, King Abdullah of Saudi Arabia appointed 30 women to the previously all-male consultative "Shura" Council which has 150 members. In May 2013, the first ever campaign against domestic violence was held in Saudi Arabia.

The average number of female members in the national parliaments of the MENA region is 11.7%, but this is changing. For example, while only 7% of the members of the Algerian parliament elected in 2007 were women, at the 2013 general election, 145 women were elected, representing 31% of the 462 members.

FRUSTRATION

A depressing mix of conservative religious teaching, tradition, social order and ignorance has made any discussion of sexuality completely taboo in the MENA region. Only a few individuals have dared to talk about it with their families or community elders. Sex is strictly regulated under the sacred bond of marriage. For example, in April 2013, the Algerian police arrested many young girls who were walking in the street accompanied by boys in Algiers and Constantine and forced them to undergo virginity tests in hospital ([4]).

Control of female sexuality revolves around the hymen. In some parts of Algeria, Morocco and Tunisia, the bride's deflowering on her wedding night is proudly celebrated: the blood from her hymen is wiped onto a white cloth which is then exhibited to the wedding's guests, showing that her family's honour is intact. Brides whose hymens are found to be already broken on their wedding nights bring dishonour on their families and annulments or divorce follow.

The general mood of hysteria surrounding sexuality in Saudi Arabia was evidenced by the story widely reported in the media in April 2013 about the deportation by Saudi police of three male citizens of the United Arab Emirates. They were arrested at the Jenadrivah Heritage and Culture Festival in Riyadh for being "too handsome" and thus a threat to the honour and virginity of local women.

A direct result of the lack of any discussion of sexuality and of any sex education in schools is the frustration of young people in the MENA region,

3 "Women and Global Human Rights". Webster.edu. Retrieved 2012-10-10

4 Les policiers trop occupés par la virginité des algériennes pour courir apres les corrompus « Algerie-focus »

where they make up over 70% of the total population. This frustration feeds high levels of sexual harassment, rape, paedophilia, FGM and the forced marriage of pre-pubescent girls (for example in Yemen).

Gender separation is enforced, making it almost impossible for boys to have sexual relationships with women before marriage. The rising age at which people are getting married in the MENA region means that many of them find alternatives to "normal" sex that will preserve women's hymens, the most popular of which is heterosexual (and homosexual) anal sex.

In this context, being feminist is as political and courageous as being an LGBTI activist. Inspired by Tunisian women who started to organize in the late sixties, feminist organisations are well-consolidated in Algeria, Palestine, Egypt, Bahrain, Iraq, Lebanon and Syria where they inspire the LGBTI struggle together with other human and legal rights organizations.

COMMUNITY-BUILDING IN AN EVER-HOSTILE ENVIRONMENT

If we examine the history and literature of the MENA region, homosexuality has been present and illustrated for centuries. Examples include the Epic of Gilgamesh (around 1700 BC) in Mesopotamia (now Iraq), the homoerotic poems of Abu Nawas and stories and paintings by many other artists. Documentary evidence suggests that, in the past, homosexuality was often more socially accepted than it is nowadays, when most inhabitants of the MENA region consider it a sin and an abomination.

Homosexuality has never been criminalised in only a few of the MENA region's countries (i.e. Bahrain, Djibouti, Jordan and Palestine), and it still incurs the death penalty in Mauritania, Sudan, Saudi Arabia, Yemen and Southern Somalia. In a further 11 countries, mostly former British and French colonies, it can lead to lengthy imprisonment. In Arabic, the most common words used to describe homosexuals are "shodoud" ("pervert") and "lewath" ("sodomy" which always refers to "deviant" or "unnatural"), and so it is no surprise that most Arabic media still depict same-sex relationships very negatively. Homosexuality is largely seen as a threat to heterosexuality, to defined roles for men and women ("binarism") and to social order in general, because it challenges the restriction of sex to procreation and emphasises the pleasurable and satisfaction-giving aspects of sex, rather than its purely reproductive function.

The MENA region is a minefield for human-rights activists. Where does one start? More or less all basic human rights are breached regularly in almost all the MENA region countries! The struggle of LGBTIQ people in the region is unique in that it faces multiple sources of repression. The struggle is not limited

to gaining recognition for sexual minorities but to gaining the right to exist and to have basic human rights recognised and protected. As activists, we are struggling against occupation, racism, sexism and harassment, and for freedom of expression, freedom of association and basic human rights as individuals.

In many countries, the police prevents public meetings or discourse and so the internet has taken over as the main area for self-expression. Online activism has spread throughout the region, especially in those countries with the most oppressive regimes, such the Gulf states. Many LGBTIQ individuals have started blogs to speak out and to share their experiences and daily lives. Forced to "pass for straight" in public and only able to be gay online, they have to lead double lives. Some have managed to organise themselves unto groups such as Abu Nawas (Algeria), Bedayaa (Egypt/Sudan) and Arab Gay Pride ([5]),which unites many bloggers across the MENA region.

Helem, which fights for the protection of LGBT people in Lebanon, started in 1998 as an online group, and developed into an underground group, which applied to be recognised by the Lebanese Interior Ministry in 2004. Aswat in Palestine started as an online mailing list for women in 2002, and evolved just a year later into an association which held regular meetings for members. Aswat celebrated its 10th anniversary under the name of "Nasheeta" ("female activist") on the International Day Against Homophobia ("IDAHO") on 17 May 2012.

These associations have inspired and encouraged the formation of other, similar groups and have contributed to positive cultural change by creating Queer words in Arabic. The best examples are "Mithy" ("gay), "Mithya" ("lesbian"), "Motahawel, Motahawela" ("trans men and trans women"), "Mozdawej, Mozdaweja" ("bisexual men and women), "al moyol al jinsy " ("sexual orientation"), "Thunaeya" "Thunae" ("intersex people") and "Ahrar al jins" ("queer"), positive term which they are striving to have used by the media. In early May, the Lebanese TV station *Jadeed TV* reported that Marwan Charbel, the Lebanese Interior Minister, had declared that the government "*is against lewat*" ("sodomy" and "unnatural"). This led to the minister being wittily nicknamed "Mr So-Natural".

In the Western MENA region, community-building has been closely linked to HIV/AIDS prevention initiatives. An HIV/AIDS prevention campaign among male prostitutes in Morocco began in the early 1990s. A regional HIV/AIDS prevention campaign brought together 20 gay activists and allies from Morocco, Algeria, Tunisia and Lebanon in Casablanca in 2003 and Rabat in 2006. Representatives of mainstream HIV/AIDS prevention organisations such as ALCS (Morocco), APCS (Algeria), ATL (Tunisia), SIDC (Lebanon) and Helem (Lebanon, the only community organisation involved) gathered to identify needs and design programme strategies organised by the International HIV/AIDS Alliance.

5 http://arabgaypride.blogspot.be/

Since 2007, UNDP and UNAIDS have used their networks of regional offices to pioneer ground-breaking work: reaching out to religious leaders, judges, police officers, journalists and young people and funding work and research among men who have sex with men in Djibouti, Sudan, Oman, Yemen and Syria, to name but a few.

Many other LGBT groups saw the light in the years that followed and their activities at local, national, regional and international levels were big successes. Since the re-launch of IDAHO in 2005, Helem has organised the "I exist" visibility campaign, which developed in 2012, into the "I vote too, the law must protect me" campaign ([6]). Since 2007, "TenTen" a national LGBTIQ day has been held in Algeria, where supporters are invited to light candles symbolising the end of isolation among the LGBTIQ community. Photos of the TenTen candles were taken in every district of the country and then published in an online album. On TenTen Day in 2012, ([7]) the two main campaigning groups in Algeria, Alouen and Abu Nawas collaborated.

The arrest, humiliation and torture of 52 gay men in Cairo during the so-called "Queen Boat affair" on 11 May 2001 is commemorated by a week of activism leading to May 17th, Egyptian Day Against Homophobia ([8]) since 2012. The "Love for All" campaign in Morocco is the most recent addition to these visibility campaigns.

An offshoot of Helem Banat, the women-only group Meem attracted much international attention when it published in 2009 Bareed Mistajil ("Express Mail"), a book telling the stories of 41 lesbian, bisexual, transgender and queer women, a hidden reality in the region. Meem is the letter "m" in Arabic and is an abbreviation of Majmouaat Mou'azara Lil-mar'a al-Mithliya ("support group for lesbian women")

Trans-sexuals in the MENA region face double discrimination, not only from the general public but also from within the lesbian and gay communities, which accuse them of presenting a bad image to the outside world. Their visibility also makes them, especially female trans-sexuals, easy targets for rapists. Often, they have been raped by police officers, for example in Kuwait[9], the only country in the region where transvestism is a criminal offence (article 198 of the Penal code amended in 2007).

The memoirs of Randa the Trans is a rare example of a book which sheds light on the hardship suffered by transgender women in the region. The book's author, an Algerian activist, was forced to flee to Lebanon and is now living in Sweden.

6 http://al-manshour.org/node/1784

7 https://www.facebook.com/TentenJourneeNationaleDesLgbtAlgeriens?fref=ts

8 https://www.facebook.com/pages/Edaho-IDAHO/263671820445723?fref=ts

9 Kuwait: End Police Abuses Against Transgender Women. Human Rights Watch: http://www.hrw.org/news/2012/01/15/kuwait-end-police-abuses-against-transgender-women

The advent of international satellite television channels has been enormously useful in challenging the prevailing mentalities in the region. Programmes broadcast by Lebanese satellite TV stations such as LBCTV, have helped to spread a more positive image of the LGBT community throughout the region and have revolutionised the quality, neutrality and positivity of content of other programmes which talk about LGBTIQ people. Some regional newspapers have published very positive articles, such as the coverage of the 2012 TenTen Day by the Algerian Al-Watan and the Moroccan Hesspress. However, many journalists continue to feed the social myths and received ideas that LGBTIQ people are sick or deviant. The most homophobic newspaper in the region is undoubtedly Al-Jarass in Lebanon.

In 2013, a Tunisian opposition party leader was arrested in the Sheraton Hotel in Tunis ([10]) and charged with sodomy, which is outlawed by Article 230 of the Tunisian Penal Code. Many similar arrests have been made in the region recently. In May 2013, the Casablanca police arrested many individuals and charged them with homosexuality, but the arrests were not reported in the media. On May 4, the Algerian newspaper daily Al-Khabar reported that a court in Oran had sentenced two men to a short term of imprisonment for stating that they were "married" on Facebook. ([11]). In a move never seen before in Algeria, a Salafist group then called for their execution.

In 2012, the Lebanese press reported the arrest of 36 men in a cinema in Beirut following earlier reports that the cinema was a venue for gay sexual encounters. The arrested men suffered anal examinations but protests from Helem, Meem and other Human rights organisations led the Lebanese Medical Association to ban this practice thus depriving the Lebanese police of its most humiliating tool against the gay community.

The lack of visibility of LGBTIQ activists and community representatives in the MENA region has encouraged outsiders to act as "saviours" and to talk to the international media on their behalf. Examples include Amna Araf ([12]) and the London based Israeli-linked Gay Middle East group ([13]). Individual activists, LGBT and human-rights groups from the MENA region endorsed a statement criticizing GayMiddleEast.com for its "unwelcome and unsolicited intervention; co-optation of Arab voices; violations of the Palestinian civil society call for Boycott, Divestment and Sanctions (BDS) and pinkwashing Israel". Under this term, they resent the practice of depicting Israel as a gay paradise with a

10 http://www.tunisia-live.net/2013/04/19/politician-arrested-on-sodomy-charges-remains-in-jail/

11 http://www.elkhabar.com/ar/nas/334385.html

12 Amina Abdallah Arraf al Omari was a fictional character or hoax persona created and maintained by American Tom MacMaster

13 A group of Arab activists and human rights organizations issued a statement about Israeli-linked group GayMiddleEast.com. In the statement, endorsed by a growing list of organizations across the Arab world and globally, the authors take GayMiddleEast.com to task for four issues: unwelcome and unsolicited intervention; co-optation of Arab voices; pinkwashing Israel; and violations of the Palestinian civil society call for boycott, divestment and sanctions (BDS).

positive attitude to LGBTIQ issues, while ignoring the political struggle of the Palestinians. Some LGBTIQ Palestinians seeking asylum in Israel have been blackmailed by the Israeli Secret Service who threatened to out them to their families if they did not cooperate.

However, there is an increasing amount of Queer media in the region, both online and in print, including titles such as Baraa, Mithly, Bekhsoos and Lebanese Media Monitor in Lebanon; LeXo Fanzine in Algeria, Mawaleh in Syria; My Kaly in Jordan; Ashtar and Qadita in Palestine; Aswat in Morocco (not to be confused with the Palestinian gay women group) which launched the "Love for all" campaign and published photos of LGBT slogans in the main Moroccan cities and My Gay Day in Tunisia, which created the "Minister of Human Rights, I too am human!" campaign in response to the declaration by Minister Samir Dilou that the right to be homosexual was not a human right. ([14])

The similar social conditions faced by activists across the region has fostered a strong sense of solidarity among individuals and organisations. The bringing together and empowering of LGBTIQ communities in the region is mainly undertaken by two regional organisations, which network with human rights, women's rights and HIV/AIDS awareness organisations to create alliances. Regional gatherings have been held in each of the last three years which provide opportunities for more than 160 activists in different fields in 17 countries to share their experiences, create new strategies, network and support each other.

I never cease to be amazed by the courage of activists and organisations in the region in continuing their activities in the face of considerable threats, or even by risking their lives, to change hearts and minds in their countries and to create safer societies for individuals with non conforming sexual orientation and gender identity and expression. Many of them (including myself) have been, and will be, forced into exile by the threat of violence and torture if they are not willing to remain silent. There is so much more to say about LGBTIQ activism in the region but I do not in any way wish to jeopardize the efforts of my courageous colleagues and their allies.

Yahia Zaidi

Pan-Africa ILGA Board Member

14 http://www.tunisia-live.net/2012/03/02/human-rights-minister-refuses-to-retract-homophobic-comments/

LGB RIGHTS 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.

Homosexual acts legal (113 countries)

Africa	Benin[1], Burkina Faso, Cape Verde (2004),[2] Central African Republic, Congo,[3] Chad, Côte d'Ivoire, Democratic Republic of Congo, Djibouti,[4] Equatorial Guinea,[5] Gabon, Guinea-Bissau (1993),[6] Madagascar, Mali, Niger,[7] Rwanda,[8] South Africa (1998)
Asia	Bahrain (1976)[9], Cambodia, China (1997),[10] East Timor (1975), most parts of Indonesia, Israel (1988), Japan (1882), Jordan (1951), Kazakhstan (1998), Kyrgyzstan (1998), Laos, Mongolia (1961),[11] Nepal (2008),[12] North Korea, Philippines, South Korea, Taiwan (1896),[13] Tajikistan (1998), Thailand (1957), Vietnam, as well as the West Bank (1951) in the Occupied Palestinian Territory

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

2 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.

3 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. 331 can be found at p. 218.

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

5 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%20SurveyAIhomosexuality.pdf.

6 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: www.rjcplp.org/RJCPLP/sections/informacao/legislacao-nacional/anexos/gb-codigo-penal/downloadFile/file/GuineBissau.CodigoPenal.pdf).

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

8 See the Rwanda Penal Code of 1980 available at: http://www.amategeko.net/display_rubrique.php?ActDo=ShowArt&Information_ID=947&Parent_ID=3070640&type=public&Langue_ID=Fr&rubID=30691315.

9 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 in the 2008 edition of the report, the Penal Code allows sodomy from the age of 21, and therefore sodomy was decriminalised as of adoption of the new code..See http://www.track.unodc.org/LegalLibrary/LegalResources/Bahrain/Laws/Bahrain%20Penal%20Code%201976.pdf

10 In 1997, the "crime of hooliganism" was abolished in the Criminal Law. Although controversial, the 1997 Criminal Law is often deemed as a sign of decriminalization. See Xiao-fei, Guo "Did China Ever Decriminalize Homosexual?" Law and Social Development 4 (2007): 008. Homosexual acts are also legal in all Chinese associates: Hong Kong (1991) and Macau (1996).

11 See Article 125 of the Criminal Code of Mongolia of 2002, available at: http://www.unhcr.org/refworld/pdfid/3ed919fd4.pdf. See also, Butler, William Elliott. The Mongolian Legal System: Contemporary Legislation and Documentation. Brill,1982: 595.

12 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.

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

Europe	Albania (1995), Andorra (1990), Armenia (2003), Austria (1971), Azerbaijan (2000), Belarus (1994), Belgium (1795), Bosnia and Herzegovina (1998-2001),[14] Bulgaria (1968), Croatia (1977), Cyprus (1998), Czech Republic (1962), Denmark (1933), Estonia (1992), Finland (1971), France (1791), Georgia (2000), Germany (1968-69),[15] Greece (1951), Hungary (1962), Iceland (1940), Ireland (1993), Italy (1890), Kosovo (1994)[16], Latvia (1992), Liechtenstein (1989), Lithuania (1993), Luxembourg (1795), Macedonia (FYROM) (1996), Malta (1973), Moldova (1995), Monaco (1793), Montenegro (1977), Netherlands (1811),[17] 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 (see foot note for the UK and associates),[18] Vatican City[19]
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),[20] El Salvador (1800's), Guatemala (1800's), Haiti (1800's), Honduras (1899), Mexico (1872), Nicaragua (2008), Panama (2008),[21] Paraguay (1880), Peru (1836-1837), Suriname (1869), Uruguay (1934), Venezuela (1800's)
North America	Canada (1969), the United States (2003)[22]
Oceania	Australia,[23] Fiji (2010),[24] 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, Central African Republic, Chad, Congo, Côte d'Ivoire, Democratic Republic of Congo, Gabon, Madagascar, Mali, Niger and Rwanda.

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

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

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

17 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.

18 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.

19 The Vatican is not a member state of the United Nations

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

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

22 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.

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

24 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, Comoros, Egypt, Eritrea, Ethiopia, Gambia, Ghana, Guinea, Kenya, Lesotho, Liberia, Libya, Malawi, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Nigeria, São Tomé and Principe,[25] Senegal, Seychelles, Sierra Leone, Somalia, South Sudan, Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia, Zimbabwe
Asia	Afghanistan, Bangladesh, Bhutan, Brunei, 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), Turkish Republic of Northern Cyprus (internationally unrecognised), South Sumatra and Aceh Province (Indonesia)
Legal status of homosexual acts unclear or uncertain (2 countries)	
Asia	Iraq; India[26] (see these sections on these countries in second part of this report);
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

25 It appears that a new Penal Code was adopted in 2012, without these provisions. However, it is not clear whether or not the new Penal Code has already entered into force. See, Texto Final da Proposta de Lei n.º 13/IX/11, available at: http://www2.camara.gov.br/saotomeeprincipe/diarios-da-an/ii-serie/3.a-sessao/DAN17-IIS.pdf/at_download/file.

26 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, available at: http://www.tarshi.net/downloads/The_right%20that_Dares_to_Speak_its_Name.pdf. Pending appeal of this judgment in the Delhi High Court, the Court has rejected requests to stay the judgment in the interim period. See http://www.indianexpress.com/news/sc-declines-to-stay-hc-verdict-on-homosexual/491686/.

27 See article 71(4) of the Código Penal, available at http://www.saflii.org/mz/legis/codigos/cp90/.

28 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/JO/2006/JO.01.08.2006.C.P.P..pdf).

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

30 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.

31 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: www.rjcplp.org/RJCPLP/sections/informacao/legislacao-nacional/anexos/gb-codigo-penal/downloadFile/file/GuineBissau.CodigoPenal.pdf.

Equal age of consent for homosexual and heterosexual acts (99 countries)

Africa	Burkina Faso (1996), Cape Verde (2004),[27] Democratic Republic of Congo (2006),[28] Djibouti,[29] Equatorial Guinea (1931), Mali (1961),[30] Guinea-Bissau (1993),[31] South Africa (2007)[32]
Asia	Cambodia, China(1997-2006),[33] 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),[34] Bulgaria (2002), Croatia (1998), Cyprus (2002), Czech Republic (1990), Denmark (1976),[35] Estonia (2002), Finland (1999), France (1982),[36] Georgia (2000), Germany (1994/89),[37] 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),[38] 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),[39] Vatican City
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,[40] Fiji (2010), Marshall Islands, Micronesia, Vanuatu (2007) and some parts of New Zealand (1986)[41]

32 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://www.amategeko.net/display_rubrique.php?ActDo=ShowArt&Information_ID=947&Parent_ID=3070640&type=public&Langue_ID=Fr&rubID=30691315.

33 In mainland of China since decriminalisation in 1997; also in Hong Kong (2005/2006) and in Macau (1996).

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

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

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

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

38 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).

39 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) lowering the latter age limit to 16. See www.stonewall.org.uk/information_bank/criminal_law/66.asp (accessed 30 September 2008). Akrotiri & Dhekelia (2003), Falkland Islands (2005), Isle of Man (2006), Jersey (2007), Guernsey (2010); see http://news.bbc.co.uk/2/hi/europe/guernsey/8587205.stm), 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.

40 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).

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

Un-equal age of consent for homosexual and heterosexual acts (15 countries)

Africa	Benin (1947),[42] Chad, Congo (1947)[43], Côte d'Ivoire,[44] Gabon (1969)[45], Madagascar,[46] Niger,[47] Rwanda[48]
Asia	Indonesia
Europe	Greece,[49] as well as some United Kingdom associates[50]
Latin America & Caribbean	Bahamas, Chile, Paraguay, Suriname as well as some United Kingdom associates,[51]
North America	Canada, two states of the United States[52]
Oceania	Some Parts of Australia (1899)[53]

42 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).

43 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 p. 218.

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

45 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. NYU Press, 2009: 128), the age of consent for homosexual sex was raised from 15 to 21 in 1969.

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

47 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.

48 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.

49 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, which sexual acts are legal from the age of 15 heterosexuals (Article 339). Original text is available at: http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CEUQFjAC&url=http%3A%2F%2Fwww.yen.gr%2Fphp%2Fdownload_xitem.php%3Fxitem%3D24745%2Fpd_fek106_85.pdf&ei=Ck9xUc_gJKmO0AWlxoG4CQ&usg=AFQjCNHKGKTimR1OAI93Y9T5sD6vHxdDlQ.

50 Bailiwick of Guernsey

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

52 Nevada (only in seduction cases) and Virginia.

53 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 is16. Text is available at: http://www.legislation.qld.gov.au/Bills/48PDF/1996/CriminalLawAmdB96.pdf.

Prohibition of discrimination in employment based on sexual orientation (52 countries)

Africa	Botswana (2010),[54] Cape Verde (2008),[55] Mauritius (2008),[56] Mozambique (2007),[57] Seychelles (2006),[58] South Africa (1996)[59] (Namibia repealed such a law in 2004)[60]
Asia	Israel (1992), some parts of Philippines,[61] Taiwan (2007)[62]
Europe	Albania (2010), Andorra (2005), Austria (2004), Belgium (2003), Bosnia and Herzegovina (2003),[63] Bulgaria (2004), Croatia (2003), Cyprus (2004), Czech Republic (1999), Denmark (1996),[64] Estonia (2004), Finland (1995), France (2001), Georgia (2006), Germany (2006), Greece (2005),[65] Hungary (2004), Iceland (1996), Ireland (1999), Italy (2003), Kosovo (2004), Latvia (2006), Lithuania (2003), Luxembourg (1997), Macedonia (FYROM) (2005),[66] Malta (2004), Moldova(2012),[67] Montenegro (2010),[68] Netherlands (1992), Norway (1998), Poland (2004), Portugal (2003), Romania (2000), Serbia (2005), Slovakia (2004), Slovenia (1995)[69], Spain (1996), Switzerland (2000)[70], Sweden (1999), United Kingdom (2003, for associates see foot note)[71]

54 See Bonela Applauds New Employment Act – Government Scraps Sexual Orientation and Health as Basis for Dismissal, 30 August 2010, available at: http://www.bonela.org/index.php?option=com_k2&view=item&Itemid=223&id=74:30-august-2010.

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

56 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.

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

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

59 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.info.gov.za/view/DownloadFileAction?id=70985); in the Employment Equity Act of 1998 (www.info.gov.za/view/DownloadFileAction?id=70714; and in the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 (www.info.gov.za/view/DownloadFileAction?id=68207).

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

61 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.

62 See articles 2 and 12-15 of Gender Equity Education Act, available at: http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=H0080067

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

64 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.

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

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

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

68 See Articles 2, 18 and 19 of the Law on Prohibition of Discrimination. The text is available at: http://www.legislationline.org/topics/country/57/topic/84..

69 See Art. 141 of the Penal Code, original text 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

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

71 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)[72] The city of Rosario (1996) in Argentina, some parts of Brazil,[73] Colombia (2007), Costa Rica (1998), Ecuador (2005),[74] Mexico (2003),[75] Nicaragua (2008), Venezuela (1999), El Salvador (2010),[76] Uruguay (2004)[77]
North America	Canada (1996), some parts of the United States[78]
Oceania	Australia (1996),[79] Fiji (2007),[80] New Zealand (1994)

72 See Article 281 ter of the Penal Code (Título VIII del Libro Segundo del Código Penal), as amended by Article 23 of the Ley Contra el Racism y Toda Forma de Discriminación of 2011. See also Articles 5 and 12 to 14 of the latter law. Original text is available at: http://www.rree.gob.bo/webmre/Documentos//d385.pdf.

73 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.

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

75 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.

76 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, July 2012, International Human Rights Law Clinic, University of California, Berkeley, School of Law, at: http://www.law.berkeley.edu/files/LGBT_Report_English_Final_120705.pdf.

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

78 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 D.C. (1973) as well as a number of cities and towns.

79 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).

80 Section 6(2) of the Employment Relations Promulgation 2007 (www.paclii.org/fj/promu/promu_dec/erp2007381) 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

Constitutional prohibition of discrimination based on sexual orientation (6 countries)	
Africa	South Africa (1994 and 1997)[81]
Europe	Kosovo (2008), Portugal (2004), Sweden (2003), Switzerland (2000), as well as some parts of Germany[82]
Latin America & Caribbean	Bolivia (2009),[83] Ecuador (2008),[84] some parts of Argentina[85], some parts of Brazil[86], the United Kingdom associate of British Virgin Islands (2007)[87]
Oceania	None (Fiji previous constitution, adopted in 1997, included such a provision, but this constitution was repealed in 2009)

81 Prohibition of sexual orientation discrimination was included on the interim Constitution that came into force on 27 April 1994 (article 8), and later added to article 9 of the 1997 Constitution (both texts are available at: www.info.gov.za/documents/constitution/index.htm).

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

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

84 A new constitution was adopted by referendum in 2008. This protects people from discrimination based both on sexual orientation and gender identity. Text of the constitution is available at: http://www.asambleanacional.gov.ec/documentos/Constitucion-2008.pdf.

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

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

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

Hate crimes based on sexual orientation considered an aggravating circumstance (19 countries)

Europe	Albania (2013),[88] Andorra (2005), Belgium (2003), Croatia (2006), Denmark (2004), France (2003),[89] Georgia (2012),[90] Greece [91], Malta (2012),[92] Netherlands (2003),[93] Portugal (2007), Romania (2006), San Marino (2008),[94] Spain (1996), Sweden (2003), United Kingdom (2004-2010)[95]
Latin America & Caribbean	Bolivia (2011),[96] Chile (2012),[97] Colombia (2011)[98], Ecuador (2009),[99] Honduras (2013)[100], Nicaragua (2008), Uruguay (2003)[101], some parts of Mexico [102]
North America	Canada (1996) and United States (2009) [103]
Oceania	New Zealand (2002)

88 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, color, ethnicity, language, gender identity, sexual orientation, political opinions, religious or philosophical beliefs, health status, genetic predisposition, or disability". See, http://www.ilga-europe.org/home/guide_europe/country_by_country/albania/historical_for_lgbt_albania_has_a_hate_crime_legislation

89 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.

90 See, Article 1 of the March 27, 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.

91 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_sogi_greece. The Act was passed on 12 March 2013, and entered into force upon publication.

92 See Articles 83B, 222A, 215D and 325A of the Criminal Code of Malta, text 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.

93 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 at : www.om.nl/organisatie/beleidsregels/overzicht/discriminatie.

94 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.

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

96 See Articles 40 bis and 281 ter of the Penal Code (Título VIII del Libro Segundo del Código Penal), as amended by Articles 21 and 23 of the Ley Contra el Racism y Toda Forma de Discriminación of 2011. Original text is available at: http://www.rree.gob.bo/webmre/Documentos//d385.pdf.

97 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=/cont_actividades_listado.html&idcat=621&titulo_categoria_listado=Noticias&nseccion=actividades%20y%20noticias%20%3A%20Noticias%20%3A%20Ley%20N%BA%2020.609%20que%20establece%20medidas%20contra%20la%20discriminaci%F3n.

98 See Law 1482 of 30 November 2011, which also covers incitement to hatred based on sexual orientation. Original text available at: http://www.secretariasenado.gov.co/senado/basedoc/ley/2011/ley_1482_2011.html

99 See articles 6, 7, 8 and 21 of the section Reformas al Código Penal of the Ley Reformatoria Al Codigo de Procedimiento Penal y al Codigo Penal, original text available at: http://www.carlosparma.com.ar/index.php?option=com_content&view=article&id=347:ley-reformatoria-al-codigo-penal-codigo-de-procedimiento-penal-codigo-de-la-ninez-y-adolescencia-y-codigo-de-ejecucion-de-penas-y-rehabilitacion-social&catid=41:parte-especial&Itemid=27.

100 The Congress approved in 21 February 2013 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.

101 See law 17.677, Solicitation to Hate, Contempt or Violence or Commission of These Acts Against Certain Persons, original text available at: http://200.40.229.134/Leyes/AccesoTextoLey.asp?Ley=17677&Anchor=

102 Coahila (2005) and the Federal District (2009). See Article 350 of Coahila's Penal Code, available at: www2.scjn.gob.mx/LegislacionEstatal/Textos/Coahuila/15146019.doc and article 138 of the Federal District, available at: www2.scjn.gob.mx/Leyes/ArchivosLeyes/25361036.doc.

103 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).

Incitement to hatred based on sexual orientation prohibited (24 countries)	
Africa	South Africa (2000)
Europe	Albania (2013),[104] Belgium (2003), Croatia (2003), Denmark (1987),[105] Estonia (2006), France (2005),[106] Iceland (1996), Ireland (1989), Lithuania (2003), Luxembourg (1997), Malta (2012)[107], Monaco (2005)[108], Netherlands (1992), Norway (1981), Portugal (2007), Romania (2000), San Marino (2008), Serbia (2009), Spain (1996), Sweden (2003), some parts of the United Kingdom (2004-10)[109]
Latin America & Caribbean	Bolivia (2011)[110], Colombia (2011), Ecuador (2009), some parts of Mexico,[111] Uruguay (2003)[112]
North America	Canada (2004)
Oceania	Some parts of Australia[113]

104 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."

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

106 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.

107 See Articles 82A and 82C of the Criminal Code of Malta, text 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.

108 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/db3b0488a44ebcf9c12574c7002a8e84/29ad7325e3a152a4c125773f003d2e4e!OpenDocument.

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

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

111 Coahila (2005) and the Federal District (2009).

112 The law included also "Sexual identity".

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

Marriage open for same-sex couples (10 countries)	
Africa	South Africa (2006)
Europe	Belgium (2003), Denmark (2012), France (2013)[114], Iceland (2010,[115], Netherlands (2001), Norway (2009), Portugal (2010),[116] Spain (2005), Sweden (2009)
Latin America & Caribbean	Argentina (2010),[117] some parts of Brazil (2011)[118], some Parts of Mexico (2010)[119], Uruguay (2013)[120]
North America	Canada (2005), as well some parts of the United States[121]
Oceania	New Zealand (2013)[122]

114 The bill that approves same-sex marriage and adoption was passed by 321 votes to 225 in the French parliament. The date of entry into force has not been decided as of the publication of this report.

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

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

117 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

118 Alagoas, Bahia, Ceará, Espírito Santo, Federal District, Mato Grosso do Sul, Paraíba, Paraná, Piauí, Rondônia, Santa Catarina, São Paulo and Sergipe allow same-sex marriages in a manner that is equal to opposite-sex marriages, while Rio de Janeiro allows local judges to perform same-sex marriages if they agree to do so. See http://en.wikipedia.org/wiki/Recognition_of_same-sex_unions_in_Brazil.

119 The Federal District (2010).

120 The Marriage Equality Bill was passed in the Senate on 2 April 2013 by a 23-8 vote, waiting for the signature of the President. See, http://edition.cnn.com/2013/04/02/world/americas/uruguay-same-sex-marriage

121 They are:
Connecticut (2008): http://www.cga.ct.gov/2009/ACT/Pa/pdf/2009PA-00013-R00SB-00899-PA.pdf, 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, Iowa (2009): http://www.lambdalegal.org/sites/default/files/legal-docs/downloads/varnum_ia_20090403_decision-ia-supreme-court.pdf, Massachusetts (2004) http://www2.law.columbia.edu/faculty_franke/Gay_Marriage/Goodridge%20Decision%20edited%20Fundamental%20Right.pdf , Maine (2012): http://www.freedomtomarry.org/blog/entry/victory-in-maine-weve-made-history-by-winning-marriage-at-the-ballot, Maryland (2013): http://www.freedomtomarry.org/blog/entry/maryland-passes-marriage-at-the-ballot, New Hampshire (2010): http://www.gencourt.state.nh.us/legislation/2009/HB0436.html, New York (2011): http://www.governor.ny.gov/assets/marriageequalitybill.pdf,Vermont (2009): http://www.leg.state.vt.us/docs/2010/bills/Passed/S-115.pdf. , Rhode Island (2013):"http://abcnews.go.com/US/wireStory/ri-lawmakers-vote-gay-marriage-19028313" \l ".UYFohpXvcjM"http://abcnews.go.com/US/wireStory/ri-lawmakers-vote-gay-marriage-19028313#.UYFohpXvcjM (entry into force 2013 August 1st). and Washington (2012): http://www.freedomtomarry.org/blog/entry/going-4-for-4-voters-in-washington-affirm-the-freedom-to-marry.

122 See, Marriage (Definition of Marriage) Amendment Act 2013, 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. For information about it coming into force on 19 August 2013, see http://www.dia.govt.nz/press.nsf/d77da9b523f12931cc256ac5000d19b6/c0685831ea8712d7cc257b55001ece30!OpenDocument.

Same-sex couples offered most or all rights of marriage (Civil Partnerships, Registered Partnerships, Civil Unions etc.) (14 countries)	
Europe	Austria (2010), Finland (2002), Germany (2001), Hungary (2009), Ireland (2011),[123] Liechtenstein (2011),[124] Switzerland (2007), United Kingdom (2005)[125]
Latin America & Caribbean	Brazil (2011)[126], Colombia (2009)[127] and some Parts of Mexico (2007)[128]
North America	Some parts of the United States[129]
Oceania	Some parts of Australia[130]
Same-sex couples offered some rights of marriage (8 countries)	
Europe	Andorra (2005), Czech Republic (2006), Croatia (2003), Luxemburg (2004), Slovenia (2006)
Asia	Israel (1994)
Latin America & Caribbean	Ecuador (2009)
North America	Some Parts of the United States [131]
Oceania	Some states in Australia [132]

123 See Civil Partnership and Certain Rights and Obligations of Cohabitants act of 2010 passed, available at http://www.irishstatutebook.ie/pdf/2010/en.act.2010.0024.PDF.

124 See http://en.wikipedia.org/wiki/Recognition_of_same-sex_unions_in_Liechtenstein.

125 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.

126 On 5 May 2011, the Supreme Court ruled in favour of recognizing 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 here: 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 it so. The text of this decision is available here: http://www.gontijo-familia.adv.br/direito-de-familia-casamento-civil-entre-pessoas-do-mesmo-sexo/. So far, 10 states have applied this decision and allowed marriage conversion: São Paulo, Alagoas, Rio Grande do Sul, Mato Grosso do Sul, Espírito Santo, Piauí, Sergipe, Bahia, Paraná and Rio de Janeiro.

127 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). See: http://www.corteconstitucional.gov.co/relatoria/2009/c-029-09.htm. On another decision of 26 July 2011 the Court recognized same-sex couples as family entities and ordered the Congress to legislate on the matter of same-sex marriage until June 20th 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 here: http://www.corteconstitucional.gov.co/comunicados/No.%2030%20comunicado%2026%20de%20julio%20de%202011.php

128 The state of Coahuila (2007), text of the law is available at: http://sgob.sfpcoahuila.gob.mx/admin/uploads/Documentos/modulo3/PactoCivilSolidaridad.pdf

129 They are: California (several acts from 2000 and onwards): http://www.leginfo.ca.gov/cgi-bin/displaycode?section=fam&group=00001-01000&file=297-297.5, Colorado (1 May 2013): http://www.leg.state.co.us/clics/clics2013a/csl.nsf/fsbillcont3/35CE5FDC5F040FF487257A8C0050715D?open&file=011_enr.pdf, Delaware (2012): http://delcode.delaware.gov/title13/c002/index.shtml, Illinois (2011): http://www.ilga.gov/legislation/BillStatus.asp?DocNum=1716&GAID=10&DocTypeID=SB&LegID=44423&SessionID=76&SpecSess=&Session=&GA=96, Hawaii (2012): http://www.capitol.hawaii.gov/session2011/bills/GM1101_.PDF, Nevada (2009): http://www.leg.state.nv.us/NRS/NRS-122A.html, New Jersey (2007): http://www.njleg.state.nj.us/2006/Bills/PL06/103_.HTM, and Oregon (2008): http://www.leg.state.or.us/07reg/measures/hb2000.dir/hb2007.en.html.

130 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.

131 Wisconsin (2009): http://wilawlibrary.gov/topics/familylaw/domesticpartner.php.

132 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 (12 countries)	
Africa	South Africa (2002)[133]
Asia	Israel (2008)
Europe	Belgium (2006), Denmark (2010), Iceland (2006), Netherlands (2001), Norway (2009), Spain (2005), Sweden (2003), some parts of the United Kingdom (2005)[134]
Latin America & Caribbean	Argentina (2010), Brazil (2010),[135] Some Parts of Mexico (2010)[136]
North America	Most parts of Canada,[137] and some parts of the United States[138]
Oceania	Some parts of Australia,[139] New Zealand (2013)[140]

Moreover, second-parent adoption, but not full adoption, by same-sex couples is also legal in Finland (2009), Germany (2005) and Slovenia (2010)[141], Tasmania (2004) in Australia, Alberta (1999) in Canada, as well as Montana and Pennsylvania in the United States.[142]

133 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), available at: http://www.saflii.org/za/cases/ZACC/2002/20.pdf

134 Such a law entered into force in England and Wales in 2005, while in Scotland on 28 September 2009. In other parts of the United Kingdom, joint adoption by same-sex couples is not permitted.

135 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.

136 The Federal District (2010).

137 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).

138 Up to May 2013, there are 19 states plus District of Colombia that fully allow joint adoption: California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, 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/joint_adoption_laws.

139 Capital Territory (2004): http://www.austlii.edu.au/au/legis/act/consol_act/aa1993107/s14.html, New South Wales (2010): http://www.legislation.nsw.gov.au/fullhtml/inforce/act+19+2010+cd+0+N.The, and Western Australia (2002): http://www.austlii.edu.au/au/legis/wa/consol_act/aa1994107/..

140 See Marriage (Definition of Marriage) Amendment Act 2013, which amended Adoption Act 1955 (1955 No 93), 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. For information about it coming into force on 19 August 2013, see http://www.dia.govt.nz/press.nsf/d77da9b523f12931cc256ac5000d19b6/c0685831ea8712d7cc257b55001ece30!OpenDocument.

141 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 et al, eds. Confronting Homophobia in Europe (2012), pp. 198-199.

142 See Movement Advancement Project, Second-Parent Adoption Laws, at http://www.lgbtmap.org/equality-maps/second_parent_adoption_laws.

AFRICA

Political and State-Sponsored Homophobia on the increase in the last decade

Over the last ten years, the focus on equal rights, law reforms, community cohesion, diversity, families and migrations for Lesbian, Gay, Bisexual, Trans and Intersex (LGBTI) Africans has gone from bad to worse. The possibility for legal liberation on the grounds of sexual orientation and gender identity has been further thrown into chaos. This assessment is a universal representation of the lives of LGBTI people in Africa, including South Africa with its enviable constitution on same-sex rights.

Human Rights defenders across Africa have faced serious threats to their lives, and many have fled the continent to safety in Europe and America. Many of those who represent "the face of the faceless and the voice of the voiceless" are scattered abroad. This bears painful consequences for activism in Africa and for activists in the Diaspora.

Thirty-six countries in Africa have laws criminalizing homosexuality, some with the death penalty, and many more with harsh jail sentences. By far, it's the continent with the worst laws on the books when it comes to homosexuality and other sexual minorities, a phenomenon which is in part rooted in bad colonial-era laws and political situations, religious autonomy, strong negative belief in cultural and family values, and the evil of patriarchy.

POLITICS AND STATE-SPONSORED HOMOPHOBIA

More than 50% of African governments have taken action and steps to formally criminalise same-sex unions. There is an increased awareness of homophobia in the continent with many African media adding to the furore. Nonetheless, anti-gay laws in Uganda are now weakened due to human rights opposition and Malawi witnessed the presidential pardon of a gay couple.

In March 2011, at the second recall at the United Nations Assembly in Geneva on the Joint declaration to decriminalize homosexuality, the number of African countries who signed rose from six to eleven including Gabon, Sao Tome and Principe, Mauritius, Central Africa Republic, Cape Verde, Guinea Bissau, Angola, South Africa, Seychelles, Rwanda and Sierra Leone, thirteen countries abstained

and twenty-eight opposed Joint Statement on Sexual Orientation and Gender Identity (SOGI).

The popularity of gay rights and advocacy for the social status of same-sex relationships have provoked politicians and governments in Africa to react. Recent cases of criminalisation of same-sex relationships have worsened a situation already characterized by harassment, humiliation, extortion, arbitrary arrests, judicial violence, imprisonment, torture, hate crimes and honour killings on the grounds of sexual orientation and gender identity all over Africa. These abuses are happening whether we like it or not, whether we admit it or not. Every year, there are numerous cases of hate crimes towards LGBTI people and LGBTI advocates working to deliver more justice. The abuse is escalating.

AFRICAN LGBTI ASYLUM SEEKERS

In the last five years, there has been a sharp increase and terrible concerns for many fleeing persecution in their own countries, the number of LGBTI migrants fleeing to foreign countries have increased, and the attitude towards asylum seekers based on sexual orientation and gender identity (SOGI) in some cases have largely been shameful. Many have been met with many challenges and horrendous outcomes. Attention is drawn to people fleeing Cameroon, Senegal, Nigeria, Gambia, Liberia, Sierra Leone, Uganda and Tanzania (to mention just a few) due to the nations' political leaders and the forceful introduction of anti-gay legislations and failure to repeal discriminatory laws. We are dealing with cases of African LGBTI seeking asylum as far as Australia, North America and Western Europe, we believe that the international community on migration equality could foster a better reception under international law and give credence to the cases of those marked with discrimination based on SOGI.

TRADITION/CULTURE

Homosexuality in Africa has been blamed on Western European influence and colonialism. It has also been blamed on the radical intervention of technology, but homosexuality has been present in the African culture throughout history. In many African societies, it is not uncommon to acknowledge same-sex relationships. Unfortunately, modern sceptics are ignoring factual history. African leaders believe that behaviours deviating from the normal gender roles are phases that the children encounter and can be addressed only through ensuring regulatory laws to prevent the unknown and unacceptable sexual behaviours.

Historically, Africa has always been the friendliest and most tolerant continent, homosexuality and same-gender behaviours dating back to time before

colonialism and the intervention of religion. The arrival of colonialism contributed to the mass hatred and also the influence of religious fundamentalism has contributed to the debased argument for homophobia. Christianity teaches a faith that encourages "Love thy neighbour as thyself"; sadly, this concept has been abandoned for the sake of "hate missions" propelled by the religious leaders, such examples can be found in many places in Africa: Botswana, Uganda, Nigeria, Malawi, where the Churches, Mosques and other popular religious communities are aiding and abetting their governments to pass laws that would criminalise homosexuality and some as far as the death penalty.

The LGBTI African communities have defied oppression and discrimination both at home and abroad, in the last 12 months alone, there has been a public celebration of the first African Zulu gay wedding in South Africa, another gay couple of Ugandan origin married in Sweden, gay men and women continue to step out in politics as in the case of David Kuria in Kenya, LEGABIBO is Botswana is currently challenging its government in the court of justice and more African gay men took part in the Mr Gay Africa competition 2012.

Social network has played a crucial and formidable role in enhancing visibility for the Africa communities. Pan Africa ILGA and several other institutions collaborated to represent Africa on SOGI issues at Oslo Human Right conference 2013 with a catalogue of SOGI breach and contravention on the continent.

IMPLICATIONS FOR SEXUALITY, HIV/AIDS & HEALTH

The struggle against HIV/AIDS is also undermined by criminalization of same-sex relationships. The Human Rights Committee has noted that laws criminalizing homosexuality "run counter to the implementation of effective education programmes in respect of HIV/AIDS prevention" by driving marginalized communities underground. A finding supported by UNAIDS: Former president of Botswana Festus Mogae and UN Special Envoy for HIV/AIDS in Africa Elizabeth Mataka have spoken out firmly and forcefully against criminalization of homosexuality in Africa. African LGBTI people have been struggling to have access to public health services, the level of double discrimination faced being fuelled by state-sponsored homophobia.

Over the past twenty years, there has been a growing recognition of the relativity of sexual norms and of the difficulties of accepting Western conceptions of sexuality in Africa, including gay rights and public recognition of same-sex families.

- An implication in our view is that homophobia is "deep-rooted" in culture, religion, music and law. Expressions of homosexuality are repressed by condemning homosexuals, their families and friends.

- Mocking, shame, ostracism, scorn, violence and prayers for salvation are reported means of keeping homosexuals in the closet or making them "normal." Some homosexuals respond to this stigmatization by moving away from their countries, communities, families; others build supportive networks outside their communities; while others struggle to keep it a secret by "pretending to be heterosexuals".

- Same-sex loving people often lead multiple secretive lives, men or women on the Down Low, also known as DL. Men who have sex with men (MSM) often do not admit they are gay or bisexual; these are largely married men.

- Homosexuality is often aligned with occultism.

- Many African governments have no mandate or projected plans to include Lesbians, Gays, Bisexuals and Trans in sexual health provisions and services.

- Inaccurate media publications, unethical reporting, dubious and negative publicity on matters of HIV and homosexuality in Africa need to be addressed to change attitudes.

THE WAY FORWARD/RECOMMENDATIONS

- Legal and policy reform is urgently needed on all these fronts to legally reinforce same-sex relationships, the legal status of same-sex love and the full protection of human rights in the context of HIV/AIDS.

- Address underlying prejudices and discrimination through education programmes in schools and community dialogue to help create a more supportive environment for same-sex unions

- Promote media training, explicitly designed to discourage attitudes of discrimination and stigmatisation towards sexual reproductive health and rights and same-sex relationships, especially in respect of HIV/AIDS. Encourage the media to adopt ethical rules of conduct that prohibit disclosure of confidential patient information.

We hope that in sharing this brief overview, we give a clear understanding of the issues of same-sex relationships, LGBTI human rights in Africa and their implications for sexuality and HIV/AIDS.

Linda Baumann & Rowland Jide Macaulay

Pan Africa ILGA board members, African representatives on ILGA's World Board.

Liberation is within reach

THE STING OF CRIMINALIZATION CONTINUES TO BITE BUT THE LIBERATION AND MORAL CITIZENSHIP IN THE UNIVERSE OF EQUALS IS WITHIN REACH, KEEP WALKING

Continued criminalization of homosexual sex conduct in 38 of 54 African countries[143] and the introduction of stiffer laws in some of these countries[144] continue to occasion discrimination, persecution and asylum flight for many Lesbian, Gay, Bisexual, Trans, Intersex and Queer (LGBTIQ) individuals across Africa[145]. This is in spite of the holding by the African Commission on Human and Peoples Rights in Zimbabwe Human Rights NGO Forum vs Zimbabwe that discrimination on the basis of sexual orientation was against the African Charter on Human and Peoples Rights (ACHPR)[146] which more than 98% of African states are party to[147].

Additionally, more UN treaty monitoring bodies continue to recognize sexual orientation as a protected ground from non discrimination with UN agencies such as the UN Human Rights Council in 2011 asking states that criminalize homosexual sex conduct to repeal sodomy laws in order to curb discrimination on the ground of sexual orientation. There have also been legislative strides on the equality of marriages in France, the United Kingdom and American states such as New York and Uruguay. There are also ongoing judicial hearings on equal marriages in Chile and USA.

These international efforts run in parallel against many legal, political and cultural hurdles to equality within many African states who are party to the ACHPR and major UN human rights treaties. Illustratively, continued criminalization of homosexual sex in 38 of 54 African states, introduction of sodomy laws in Burundi, stiffer same sex relationship penalties in Liberia, Uganda and Nigeria[148] and political and religious rhetoric in Kenya are some of the factors accentuating discrimination and hindering equality for LGBTIQ.

143 ILGA (2012) State Sponsored Homophobia . Page 22. Retrieved January 5, 2013 from http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2012.pdf . South Sudan and Benin increased the list of African Countries that criminalise homosexuality from 36 to 38

144 Human Rights Watch (2009, July), 'Forbidden: institutionalizing discrimination against gays and lesbians in Burundi'. Further in November 2011, the Nigerian senate passed a law banning same sex marriage, see (http://edition.cnn.com/2011/11/30/world/africa/africa-gay-rights) Retrieved March 20,2013. In 2012, the Liberian senate passed a law that punishes same sex relationships with death (http://en.wikipedia.org/wiki/LGBT_rights_in_Liberia#Legislation_considered_in_2012)last Retrieved March 30, 2013

145 HIAS (2012) Invisible in the City: Protection Gaps Facing Sexual Minority Refugees and Asylum seekers in Urban Ecuador, Ghana, Israel and Kenya. Page 4. Also available at (http://www.hias.org/uploaded/file/Invisible-in-the-City_full-report.pdf)

146 ACHPR (2008) 245/02 : Zimbabwe Human Rights NGO Forum v Zimbabwe. Paragraph 169. Also available at (http://www.achpr.org/files/sessions/39th/comunications/245.02/achpr39_245_02_eng.pdf)

147 ACHPR (2012) Ratification Table. Available at (http://www.achpr.org/instruments/achpr/ratification/)

148 UN (2011) UN issues first report on human rights of gay and lesbian people. Also available at (http://www.un.org/apps/news/story.asp?NewsID=40743#.UVtNOBf-H-0)

Further, diplomatic ties of aid to 'gay rights' by western allies to African countries have perpetuated greater homophobia in Africa with 'gays' being viewed as the stumbling block to access public welfare funding for health, education, shelter and other basic public amenities tied to western funding.

It must be mooted from the foregoing that the legal and political space for LGBTIQ persons in Africa has shrunk in the last one year, however, there are gains towards strengthening equality inclusive of LGBTIQ persons. For example, in the last few years, countries like Botswana, Mozambique, Mauritius and Seychelles have introduced legislation that forbids discrimination in employment on the basis of sexual orientation. Kenya has also been taking strides to implement a constitution passed in 2010 which has sweeping equality provisions, the Kenyan government has also bought, branded and distributed free condom lubricants to gay clinics across the country, slow but valid recognition. Ugandan activists have been prosecuting state officers for violating their right to assemble. Within the last two years, there has been a surge of LGBTIQ equality players strategizing on incrementally using locally available legal provisions and mechanisms to achieve equality. While this can be attributed to modeled equality championing from the West, there is also a regional awakening by African equality players seeking more equality reforms from their three arms of government.

I suggest through observatory learning and practice, that activists in African are slowly learning two things: One, decriminalization might be achieved through aristocratic judicial institutional avenues but culture, politics and religion might present draw backs and thus shrinking the space to enjoy the new found freedoms. So they have started training state agents, civil society, informal workers, trade unions and allied professional associations on diversity and inclusion and many other public dialogue programs. Two, and of focus in this paper is that while criminalization of homosexual sex conduct occasions human rights violations, there is no law limiting the application of fundamental rights and freedoms to homosexuals. The significance of the ruling in Victor Juliet Mukasa and Yvonne Oyoo vs. the Attorney General of Uganda has finally silted. The valiant spirit of David Kato and his compatriots in the case of of Kasha Jacqueline, Pepe Onziema & David Kato vs. Giles Muhame and The Rolling Stone Publications Ltd[149] speaks to many across the continent.

Collectives are organizing towards using regional legal mechanisms such as the African commission on human and peoples' rights and the east African court of justice to enhance equality. This vibrancy among lawyers and NGO activists towards judicial avenues is a good precondition that nurtures change. It is further strengthened by the fact that more and more queer persons, especially

149 AHRLR 248 (UgHC 2008) Mukasa and Another v Attorney-General. Also available at (http://www1.chr.up.ac.za/index.php/browse-by-subject/490-uganda-mukasa-and-another-v-attorney-general-2008-ahrlr-ughc-2008-.html)

the emerging urban youth, are becoming more confident to cash their public trust with state officers demanding equal concern for all.

These regional constellations when viewed together with equality developments in the west continue to entrench civic dispositions among African LGBTI individuals to put their governments to account. Just like the Arab uprising, it reinforces duty to more individuals to participate in realizing change towards an egalitarian society. These developments continue to spur hope that believes in the butterfly effect of liberation across countries however slow the wave surges. Of greater significance is that when these developments are reported in public media, they enhance civic education among public that gay is human and human is sovereign as to dignity and rights. International equality politics have also imbued defiance towards cultural sovereignty resulting to proud ownership of native gay words like shoga in Kenya and Kuchu in Uganda. Whenever equality features in news, the news have reportedly humanized many struggling questioning queer teens in their villages with understanding that they are not alone and that someone is fighting for their confused human self. Because equality unites nations, cultures identities and peoples.

Decriminalization of homosexual sex conduct must and shall be achieved in Africa, the questions of when finds answer in incremental litigation. Besides lobbying and advocating for acceptance, respect for difference and decriminalization, LGBTIQ Africans are learning the value of actively engaging their third arms of government in incremental litigation towards protecting the already available human rights in their national constitutions. There is a growing conscious process of learning, consulting, observing and utilizing local judicial and quasi judicial mechanisms (in parallel to other mechanisms) towards combating discrimination on the ground of sexual orientation.

In the coming year or two, my legal crystal ball predicts litigation in many African courts on fundamental matters like the freedom of association (most African LGBTI organizations have been denied registration by their governments), the right to education (when students suspected of engaging in homosexual sex are expulsed from learning institutions when those who engage in heterosexual sex are not expelled), freedom of assembly (due to denial of assembly permits/break of meetings as seen in Uganda), private prosecution of violence, blackmail and extortion (when police fail to follow up) , and; protection from discrimination on the ground of sexual orientation (for example when persons are dismissed from work on account of their sexual orientation) and many others.

The incremental litigation approaches being undertaken and those planned will have many benefits: they will increase levels of civic awareness and disposition among the public; they will build a body of judicial evidence on patterns

of discrimination targeting homosexuals, such judicial evidence will carry immense guiding value during decriminalization suits; This process promises to build equality law through judicial law making powers especially in the commonwealth, and a vibrant social justice movement through amicus curiae.

The call is to activists and equality workers. To build partnerships with strategic government agencies and civil society, to dare risk but with valiant caution, to keep engaging duty bearers without relent and to celebrate victories however small. The sting of criminalization continues to bite but the liberation and moral citizenship in the universe of equals is within reach, keep walking.

@Eric Gitari, April 2013.

The writer is a director at the National Gay and Lesbian Human Rights Commission in Kenya.

ALGERIA

MALE/MALE: ILLEGAL

FEMALE/FEMALE: ILLEGAL

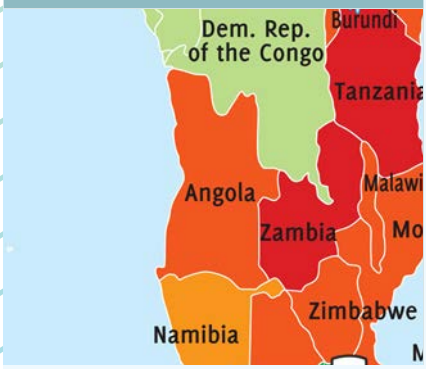
Penal Code (Ordinance 66-156 of June 8, 1966) [150]

> 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."[151]

ANGOLA

MALE/MALE: ILLEGAL

FEMALE/FEMALE: ILLEGAL



Penal Code of September 16, 1886, as amended in 1954 (inherited from the Portuguese colonial era) [152]

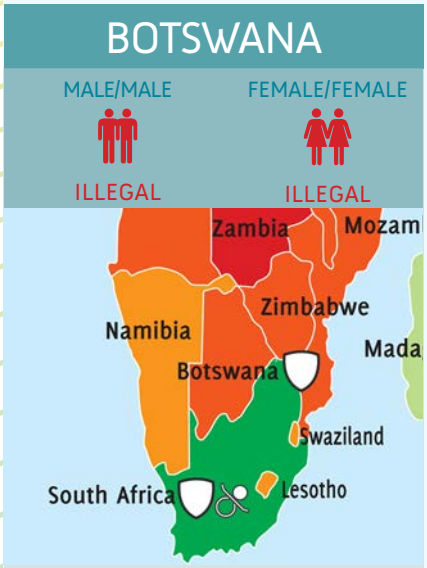
Articles 70 and 71(4) provide for the imposition of security measures on people who habitually practice acts against nature. For more information, including the text of these articles, see the section on Mozambique.

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

151 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."

152 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).

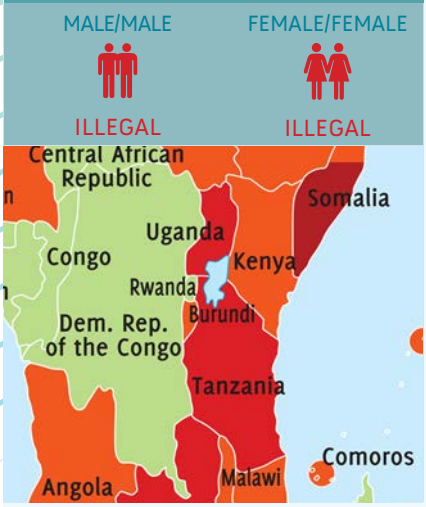
BOTSWANA



Penal Code [Chapter 08:01][153], amended by the Penal Code Amendment Act 5, 1998[154].

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 offences 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



Law No. 1/05 of 22 April 2009 concerning the revision of the Penal Code [155]

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."[156]

(Unofficial translation)

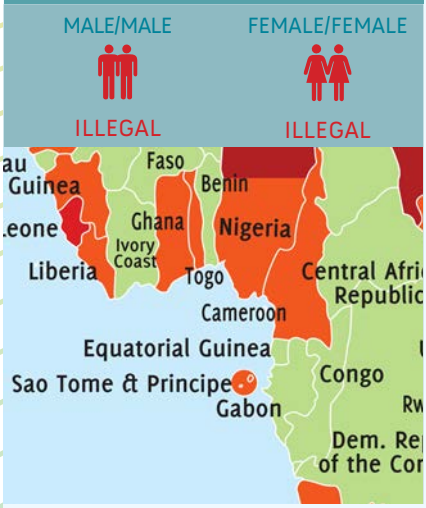
153 Text of the law is available at : http://www.wipo.int/wipolex/en/details.jsp?id=10486

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

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

156 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



Penal Code of 1965 and 1967, as amended in 1972 [157]

The French text of article 347bis is:

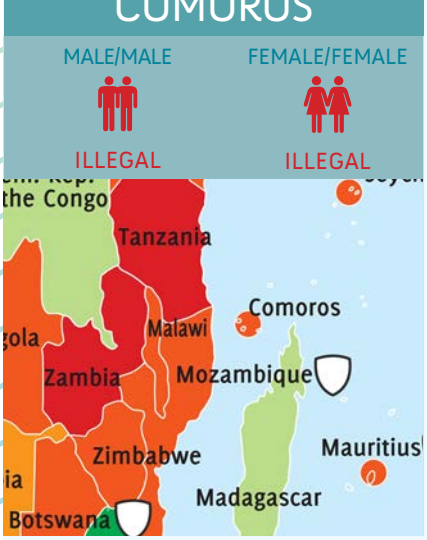
> 'Est puni d'un emprisonnement de six mois à cinq ans et d'une amende de 20.000 à 200.000 francs toute personne qui a des rapports sexuels avec une personne de son sexe.'[158]

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.'[159]

According to Waaldijk,[160] it is unclear whether this is the official English version, or only an unofficial translation of the French version.

COMOROS



Penal Code of the Federal Islamic Republic of Comoros [161]

> 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."[162]

157 German Bundestag; Printed Paper 16/3597, p. 8. http://www.gaylawnet.com/ezine/crime/16_3597_minor_interpellation.pdf.

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

159 See Criminalizing Identities – Rights Abuses in Cameroon based on Sexual Orientation and Gender Identity, 2010, p. 10, note 9, available at: www.hrw.org/en/reports/2010/11/04/criminalizing-identities-0.

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

161 Text of the law is available at : http://www.comores-droit.com/code/penal.

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

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.[163]

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." [164]

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." [165]

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." [166]

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.

163 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.

164 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. Whether it is up to date is unclear. 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.

165 Text of the law is available at: www.ugandaonlinelawlibrary.com/files/constitution/Constitutional_Amendment_Act,_2005.pdf 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.

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

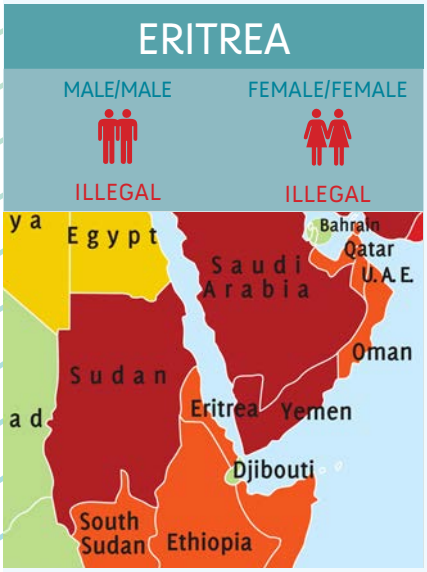
EGYPT

(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. […]" [167]

ERITREA



Penal Code of 1957 (inherited from Ethiopian rule) [168]

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."

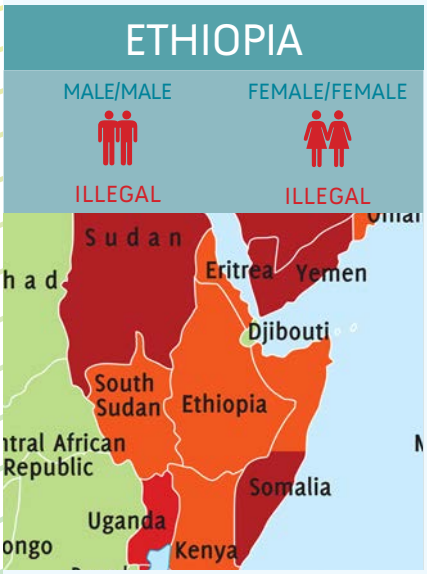
Art.105. - Simple Imprisonment.
"(1) simple imprisonment is a sentence applicable to offences of a not very serious nature committed by persons who are not a serious danger to society.
It is intended as a measure of safety to the general public and as a punishment to the offender.
Subject to any special 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."

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

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

ETHIOPIA



The Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No. 414/2004 [169]

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).

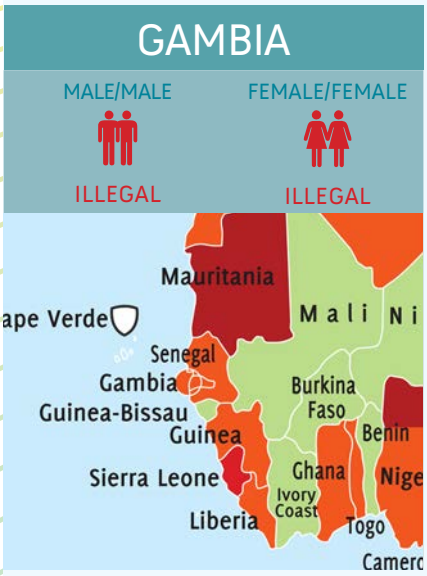
(2) The punishment shall be rigorous imprisonment from three years to fifteen years, where:
a) the criminal uses violence, intimidation or coercion, trickery or fraud, or takes unfair advantage of the victim's inability to offer resistance or to defend himself or of his feeble-mindedness or unconsciousness; 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."

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

GAMBIA



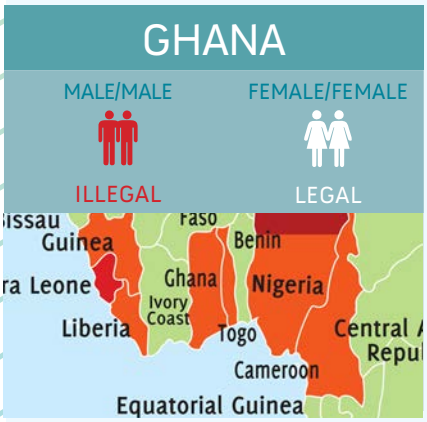
Criminal Code 1965, as amended in 2005[170]

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

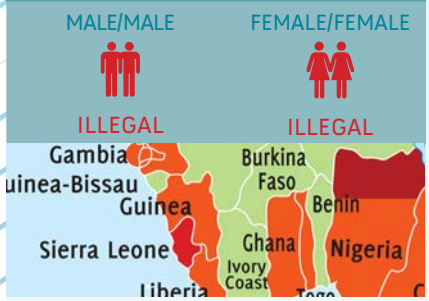


Criminal Code, 1960 (Act 29), as amended to 2003 [171]

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 misdemeanor shall be liable to imprisonment for a term not exceeding three years.[172]

GUINEA



Penal Code of 1998 [173]

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."[174]

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

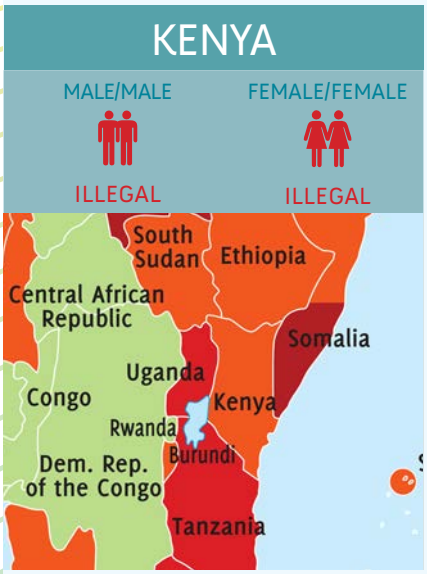
171 Text of the law is available at : http://www.imldb.iom.int/viewDocument.do?id=%7B3856B76B-1B0E-47BB-B967-C88B8F0534C7%7D

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

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

174 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



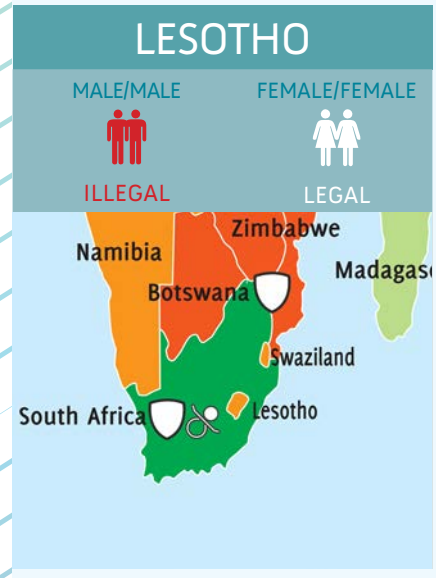
The Penal Code (as amended by Act No. 5 of 2003) [175]

> "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



Sodomy is prohibited as a common-law offence. It is defined as "unlawful and intentional sexual relationship through the anus between two human males". [176]

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

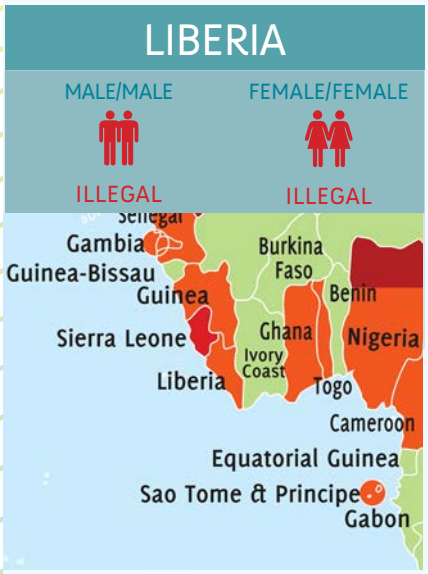
> "Any person charged with sodomy or assault with intent to commit sodomy may be found guilty of indecent assault or common assault, if such be the facts proved."

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.[177]

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

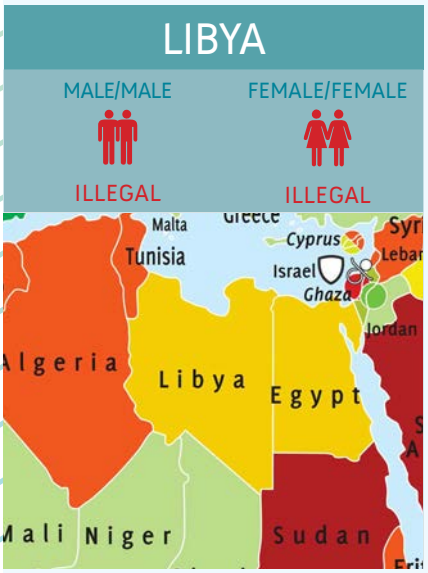
176 Concluding observations of the Human Rights Committee : Lesotho. 1999-04-08. CCPR/C/79/Add.106, available at: http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.79.Add.106.En?Opendocument.

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



New Penal Law, Volume IV, Title 26, Liberian Code of Laws Revised, Approved in 1976 and Published in 1978.[178]

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.



Penal Code of 1953 as amended by Law 70 of 2 October 1973 [179]

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 legal ban has been violated.[180]

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.[181]

Article 408
(4) Whoever commits an indecent act with a person with his consent will be punished with his partner with imprisonment.

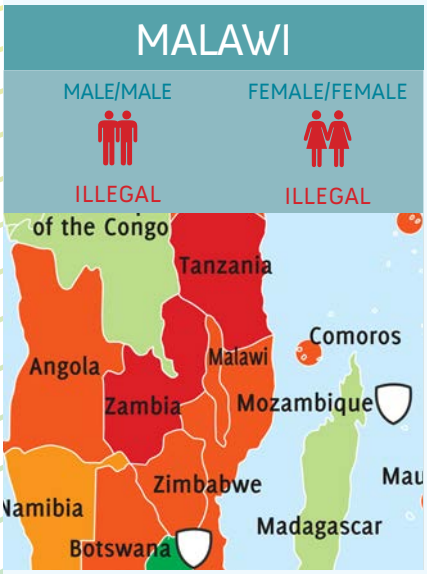
178 See Jayweh, F. "Gays and the Laws of Liberia: Do Liberians have Laws to Prohibit Lesbian and Gay's Practices in Liberia?", available at: http://www.concern-liberians.org/chat_room/view_post.php?post_id=779197

179 Text of the law is available at : http://ia700704.us.archive.org/25/items/LibyanPenalCodeenglish/LibyanPenalCode.pdf.

180 Mayer, A. E. (1980). Libyan legislation in defense of Arabo-Islamic sexual mores. The American Journal of Comparative Law, 28(2), 287-313: 295.

181 Ibid, 302.

MALAWI



Penal Code Cap. 7:01 Laws of Malawi [182]

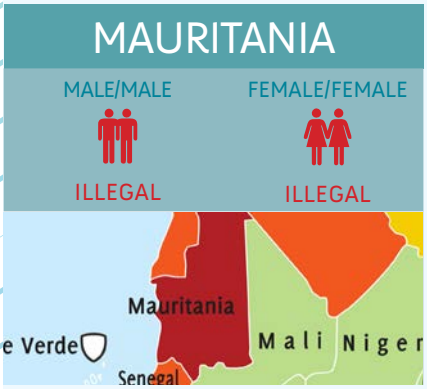
"Section 153 Unnatural offences
Anyone who –
(a) has carnal knowledge of any person against the order of nature; or
(b) has carnal knowledge of any animal; or
(c) permits a male person to have carnal knowledge of him or her against the order of nature,
shall be guilty of a felony and shall be liable 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.[183]

MAURITANIA



Penal Code of 1984 [184]

"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".[185]

(Unofficial translation)

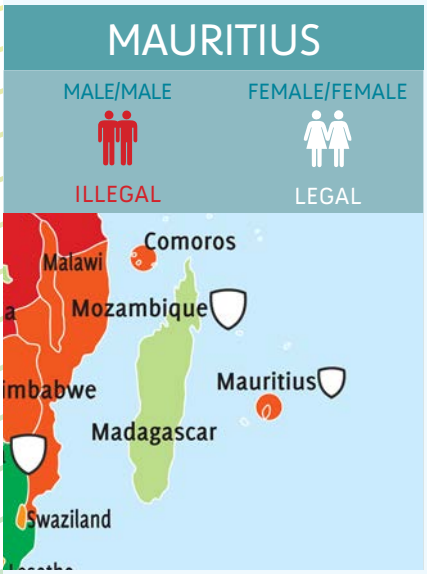
182 Text of the law (not yet including the amendement of 2011) is available at : http://www.malawilii.org/files/mw/legislation/consolidated-act/7:01/penal_code_pdf_14611.pdf

183 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.iglhrc.org/sites/default/files/488-1.pdf.

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

185 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

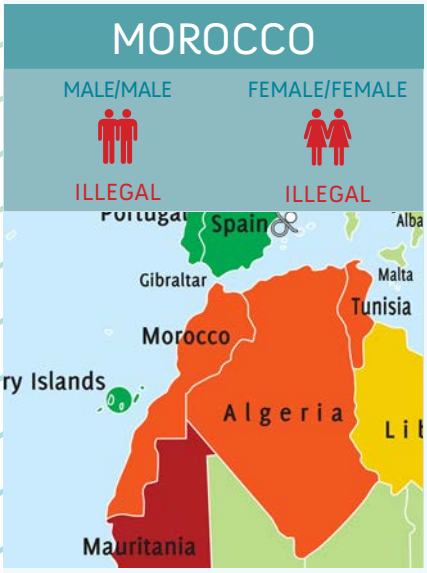


Criminal Code of 1838 [186]

> 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)[187], in 2007 the Sexual Offences Bill[188] 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



Penal Code of November 26, 1962 [189]

> 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."[190]

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

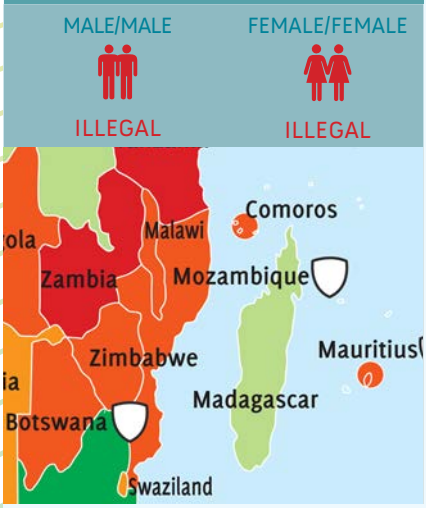
187 Waaldijk, Kees. Legal recognition of homosexual orientation in the countries of Africa, March 2011.

188 Text of the bill is available at: www.gov.mu/portal/goc/assemblysite/file/bill0607.pdf.

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

190 Original text: "Est puni de l'emprisonnement de six mois à trois ans et d'une amende de 200 à1.000 dirhams, à moins que le fait ne constitue une infraction plus grave, quiconque commet un acte impudique ou contre nature avec un individu de son sexe."

MOZAMBIQUE



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

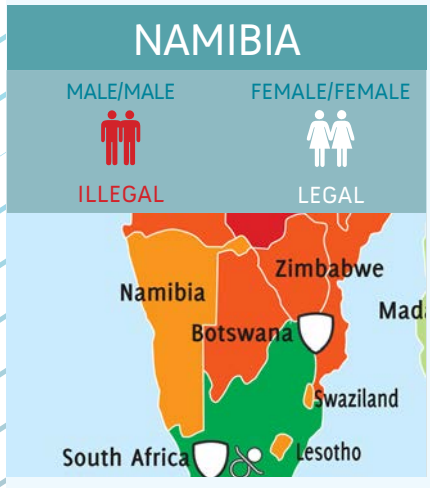
Articles 70 and 71(4°) provide for the imposition of security measures on people who habitually practice acts against nature. The security measures may include: a bond of good behavior, being put on probation for a certain period, or even internment in a workhouse or agricultural colony (from 6 months to 3 years).

Original Text in Portuguese:

"Artigo 70° (Medidas de segurança)
São medidas de segurança:
1°. – O internamento em manicómio criminal;
2°. – O internamento em casa de trabalho ou colónia agrícola;
3°. – A liberdade vigiada;
4°. – A caução de boa conduta;
5°. – A interdição do exercício de profissão;
[…]"

"Artigo 71°
(Aplicação de medidas de seguranças)
São aplicáveis medidas de segurança:
[…]
4°. – Aos que se entreguem habitualmente à pratica de vícios contra a natureza;
[…]
§ 1°. – O internamento, nos termos do n°. 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°s. 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

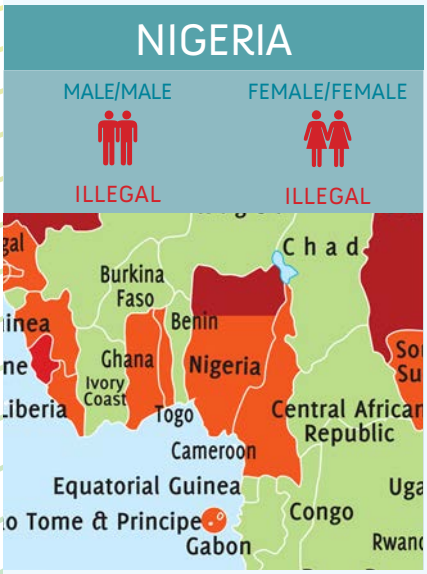


Sodomy remains a crime in Namibia according to the Roman-Dutch common-law, which was imposed by the South Africans. Common-law is a legal tradition based mainly on precedent court verdicts, while there is no codified sodomy provision in Namibia.[192]

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

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

NIGERIA



Criminal Code Act, Chapter 77, Laws of the Federation of Nigeria 1990 [193]

> 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, criminalizing 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.[194]

The states which have adopted such laws are:[195]

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).

According to Waaldijk (2011)[196], both in 2006 and 2009, a legislative proposal has been introduced to further criminalise homosexuality. The 'Same Gender Marriage (Prohibition) Bill' received approval in the House of Representatives of Nigeria in January 2009, and among other things would make it a crime for people of the same sex to live together[197]. Apparently, that bill did not succeed in becoming law.

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

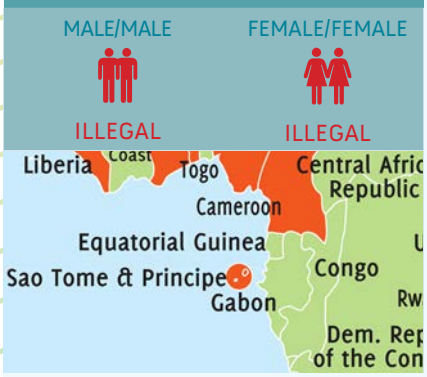
194 See Alok Gupta, This Alien Legacy – The Origins of "Sodomy" Laws in British Colonialism, New York: Human Rights Watch 2008 (available at www.hrw.org/en/reports/2008/12/17/alien-legacy-0, p. 60-61) and 'Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook' (available at: www.sharia-in-africa.net/pages/publications/sharia-implementation-in-northern-nigeria.php).

195 See The Unfizzled Sharia Vector in the Nigerian State, available at: http://www.nigerdeltacongress.com/uarticles/unfizzled_sharia_vector_in_the_n.htm .

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

197 Human Rights Watch (2009), Nigeria: Reject 'Same Gender' Marriage Ban. Available at: www.hrw.org/en/news/2009/01/26/nigeria-reject-same-gender-marriage-ban)

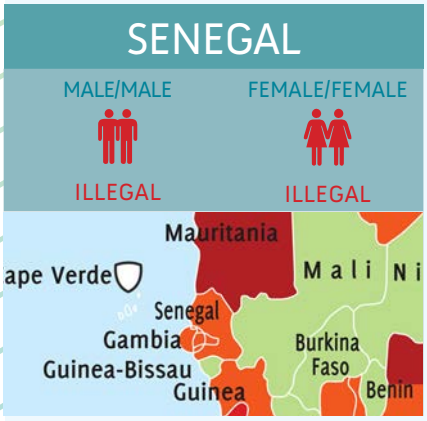
SÃO TOMÉ AND PRINCIPE



Penal Code of September 16, 1886, as amended in 1954 (inherited from the Portuguese colonial era and also still in force in Mozambique). For the text of Articles 70 and 71 of the law in Portuguese – see Mozambique section.

It appears that a new Penal Code was adopted in 2012, without these provisions. However, it is not clear whether or not the new Penal Code has already entered into force.[198]

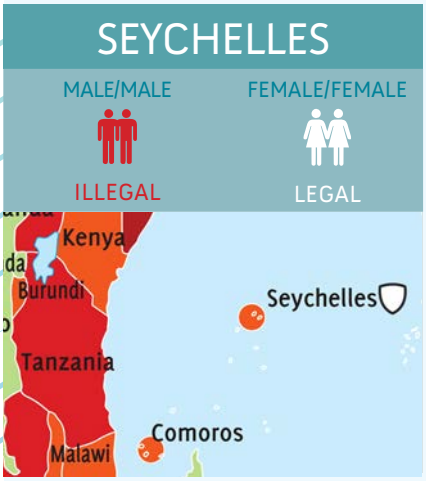
SENEGAL



Penal Code of 1965 [199]

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."[200]

SEYCHELLES



Criminal Code of 1955 [201]

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."

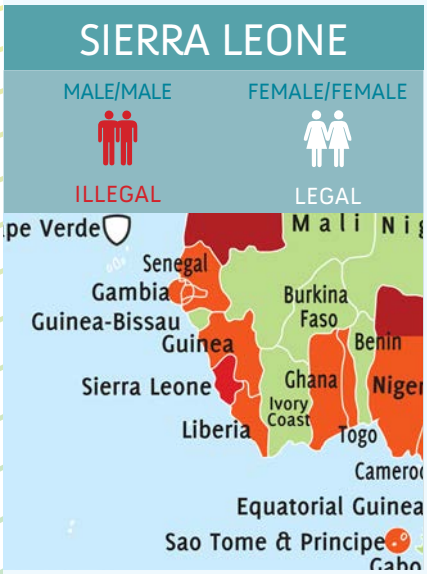
198 See, Texto Final da Proposta de Lei n.º 13/IX/11, available at: http://www2.camara.gov.br/saotomeeprincipe/diarios-da-an/ii-serie/3.a-sessao/DAN17-IIS.pdf/at_download/file.

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

200 Original text: "Sans préjudice des peines plus graves prévues par lês alinéas qui précédent ou par les articles 320 et 321 du présent Code, sera puni d'un emprisonnement d'un à cinq ans et d'une amende de 100.000 à 1.500.000 francs, quiconque aura commis um acte impudique ou contre nature avec un individu de son sexe. Si l'acte a été commis avec un mineur de 21 ans, le maximum de la peine sera toujours prononcé."

201 The text of the law is available at: http://www.seylii.org/sc/legislation/consolidated-act/158

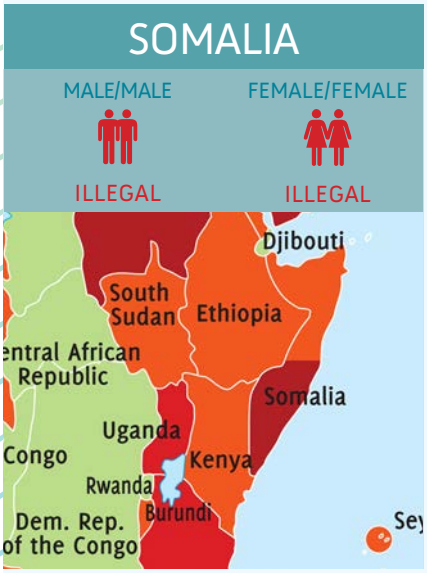
SIERRA LEONE



Offences against the Person Act 1861 [202]

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

SOMALIA



Penal Code, Legislative Decree No. 5/1962[203]

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 ommitted 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.[204] However, Somaliland in the north has declared itself independent, and it still applies the Penal Code.[205]

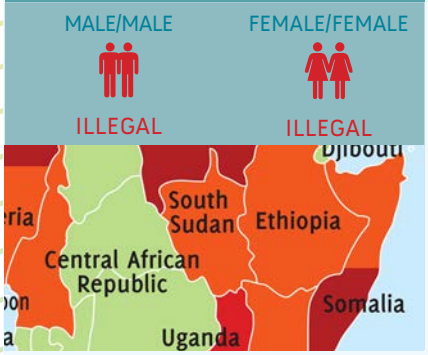
202 See Submission in the UPR review of Sierra Leone, available at: http://lib.ohchr.org/HRBodies/UPR/Documents/session11/SL/JS2_JointSubmission2-eng.pdf

203 Original text of the law is not available online, but the table of content is available at: http://www.somalilaw.org/Documents/Somali%20Penal%20Code.pdf. An unofficial English translation is available at: http://www.somalilandlaw.com/Penal_Code_English.pdf.

204 There have been reports from different parts of Somalia that Islamic Sharia law has been used to punish homosexual acts, see for example, https://identitykenya.com/index.php/homepage/featured/1487-gay-man-allegedly-stoned-to-death-in-somalia, and http://www.asylumlaw.org/docs/sexualminorities/Somaila023201.pdf.

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

SOUTH SUDAN

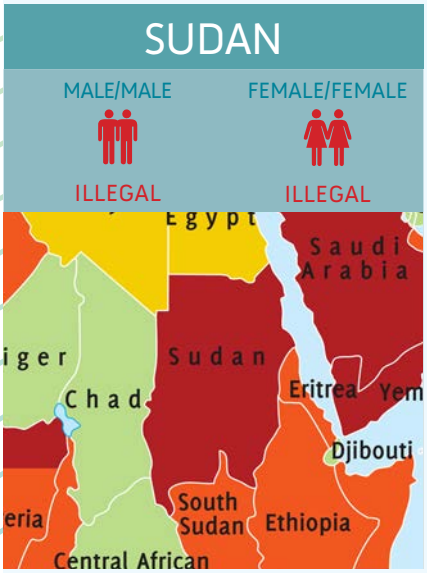


Penal Code Act 2008 [206]

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



The Penal Code 1991 (Act No. 8 1991) [207]

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."

In 2003 the south parts of Sudan (also known as New Sudan) gained some autonomy, and adopted its own Penal Code the same year. As the federal Penal Code, this Penal Code criminalizes sodomy, however with a milder punishment, according to the following section:

Section 318. Unnatural Offences: "Whoever has carnal intercourse against the order of nature with any person and whoever allows any person to have such intercourse with him commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding ten years and may also be liable to fine; and if such intercourse is done without consent he shall be punished with imprisonment for a term not exceeding fourteen years and may also be liable to fine; provided that a consent given by a person below the age of eighteen years to such intercourse shall not be deemed to be a consent within the meaning of this section.

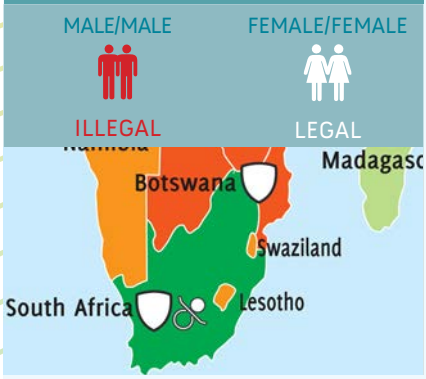
Explanation: Penetration is sufficient to constitute the carnal knowledge necessary to the offence described in this section." [208]

206 Available at: http://www.goss-online.org/magnoliaPublic/en/Laws--Legislation--Policies/mainColumnParagraphs/0/content_files/file12/15.pdf.

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

208 See the Penal Code of New Sudan, available at: http://www.unhcr.org/refworld/docid/469e1f0a2.html.

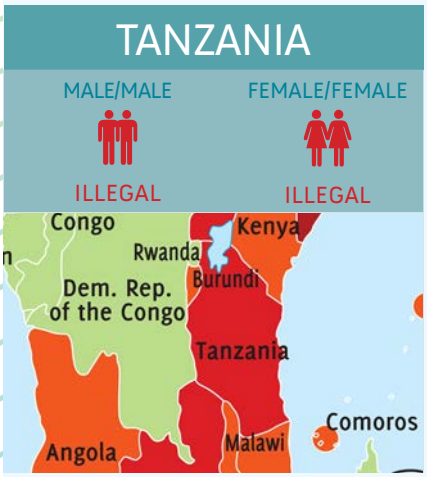
SWAZILAND



Sodomy – sexual intercourse per anus between two human males – is prohibited as a common law offence.[209]

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.[210]

TANZANIA



Penal Code of 1945 (as amended by the Sexual Offences Special Provisions Act, 1998) [211]

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."

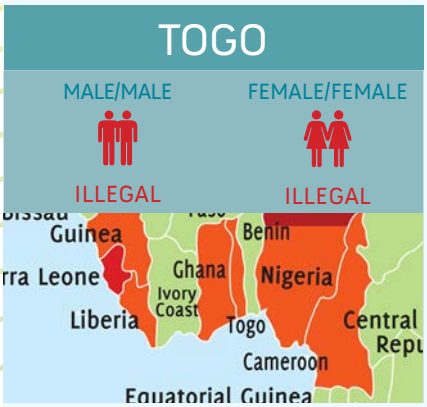
Section 138A. Gross indecency
"Any person who, in public or private commits, or is party to the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person, commits an offence and is liable on conviction to imprisonment for a term 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."

209 See the information provide at: https://secure.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaSwaziland.pdf.

210 See Swaziland Government warns homosexuals are liable to imprisonment, available at: http://www.africanveil.org/Swaziland.htm.

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

TOGO

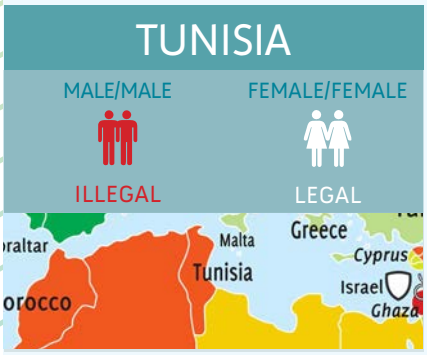


Penal Code of 13 August 1980 [212]

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."[213]

(Unofficial translation)

TUNISIA

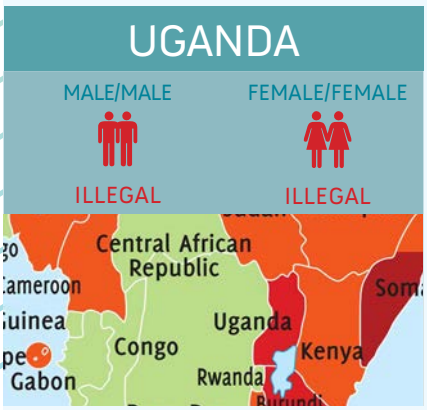


Penal Code of 1913 (as modified) [214]

Article 230. "The sodomy, that is not covered by any of the other previous articles, is punished with imprisonment for three years". [215]

(Unofficial translation)

UGANDA



The Penal Code Act of 1950 (Chapter 120) (as amended) [216]

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 section145 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."

In 2009 the "Anti Homosexuality Bill" was proposed to greatly intensify the criminalization of homosexuality.[217] Nevertheless, strong opposition has (so far) stopped the bill from becoming law.

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

213 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."

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

215 Original text: "La sodomie, si elle ne rentre dans aucun des cas prévus aux articles précédents, est punie de l'emprisonnement pendant trois ans."

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

217 The text of the bill is available at: www.iglhrc.org/binary-data/ATTACHMENT/file/000/000/445-1.pdf.

ZAMBIA

MALE/MALE
ILLEGAL

FEMALE/FEMALE
ILLEGAL

The Penal Code Act (as amended by Act No. 15 of 2005) [218]

"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."

218 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 July 8, 2006) [219]

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."

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

ASIA

Asia these days

ASIA IS BECOMING MORE LGBTI FRIENDLY. CHANGE IS NOT DRAMATIC. BIT BY BIT. INCREMENTAL.

In 2009 the Delhi High Court 'read down' section 377, the colonial era anti-homosexual criminal law. It could no longer apply to sexual activity by consenting adult males. The national government was content to do nothing – let the section fade away without any appeal, without any embracing of gay 'human rights'. But religious zealots made sure there was an appeal to the Supreme Court. After more than a year from the apex court hearing we are still waiting a decision.

Meanwhile the Singapore version of the gay sex prohibition has been challenged in two cases. In April, 2013, the first decision upheld the law as representing moral views in Singapore. There will be an appeal. Discriminatory criminal laws are gone in Hong Kong, but survive in other former British colonies – Bangladesh, Brunei, Malaysia, Myanmar, Pakistan, Sri Lanka – and in parts of Central Asia.

LGBTI visibility remains low. But now there is an out gay man elected in Tokyo and another in Hong Kong. The pioneers were an elected lesbian in Osaka and a trans-woman in greater Tokyo. Hijra are running for office in a couple of campaigns in India. Some have been local mayors in the past, and one a member of a state assembly.

Taiwan remains the only jurisdiction in Asia that prohibits employment discrimination on the basis of sexual orientation. But at least three local governments now have such laws in the Philippines.

Public gay pride events are a bit more common. The "Pink Dot" in Singapore has become world famous, as a clever way around the laws prohibiting public demonstrations. Let's all meet in the park, have a picnic, wear pink. The result is an annual publicity shot of a thousand pink people gathered together. In Vietnam people tied rainbow ribbons and flags to their motor bikes and roared around Hanoi in a colorful non-demonstration. That broke the ice, and official pride events have followed. Head to Hanoi for the next one, August 2 and 3, 2013. Phuket and Pattaya in Thailand still have "pride" events, but Bangkok

gave up on any parade years ago (been there, done that). There are still bitter memories of the forced closure of the pride parade in Chiang Mai four or five years ago. Lots of pride parades in India these days – I've lost count.

Trans can get document change in many jurisdictions now. They can marry in their chosen sex (usually under restrictive conditions) in China, Indonesia, Japan, Singapore, South Korea, Taiwan, and at least parts of central Asia. Hong Kong will change personal identity documents, but not the birth certificate, which governs marriage rights there. A court challenge lost at trial and on appeal – but is now before the final court of appeal.

Foreign governments and funders are increasingly LGBTI friendly in Asia. The UN Development Program, together with other partners, including US AID, launched a "Being LGBT in Asia" program late in 2012, building on programs and studies that have in the past been driven by health agendas.

In 2012, to worldwide rainbow applause, the Minister of Justice in Vietnam said they really should move to open up marriage if they were serious about human rights. A long process of consultations and discussions on a number of reforms to family law is currently underway. We could see either civil unions or marriage in Vietnam in 2014. And the same issue is hot in Taiwan and Thailand at the moment. A committee of the Thai parliament held four regional hearings on a proposal for equal partnership rights in the early part of 2013. One of these days, there will be a breakthrough. Which country will lead? The horse race at the moment features Nepal, Taiwan, Thailand, and Vietnam. Place you bets!

Myo Min has returned to Myanmar from exile, and the new organization is Color Rainbow, with freshly opened offices in Yangon. 25 sparkling young delegates from Myanmar were at the ILGA Asia conference in Bangkok in March, 2013.

For years I have lamented the lack of "out" figures in my beloved Thailand. But now there are three popular out pop stars! Wow! That's a change. And two great Tom-Dee movies over the last couple of years that got mainstream distribution. And four magazines with mainstream distribution, including the fabulous "Tom Act" lifestyle mag.

Douglas Sanders is Professor Emeritus in Law.

AFGHANISTAN

Penal Code, 1976 [220]

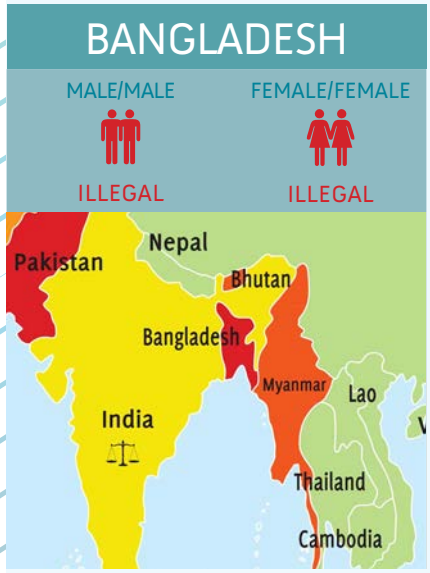
CHAPTER EIGHT: Adultery, Pederasty, and Violations of Honour

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.
b. …"

In Afghan legal terminology "pederasty" appears to refer to intercourse between males regardless of age. The fact that pedophilia 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.[212]

Islamic Sharia law, criminalizing 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



Penal Code, 1860 (Act XLV of 1860) [222]

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."

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

221 Healey, Dan, 2001, Homosexual Desire in Revolutionary Russia. Chicago: Chicago University Press, p. 272.

222 Text of the law is available at; http://bdlaws.minlaw.gov.bd/sections_detail.php?id=11&sections_id=3233.

BHUTAN

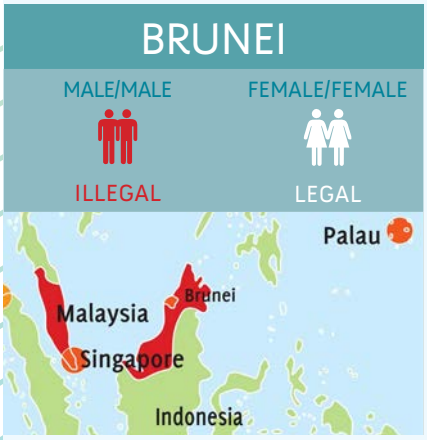
Penal Code 2004 [223]

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



Penal Code, Chapter 22, revised edition 2001[224]

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."

GAZA - OCCUPIED PALESTINIAN TERRITORY

The British Mandate Criminal Code Ordinance, No. 74 of 1936 is in force in Gaza.[225]

Section 152(2) of the Code criminalizes sexual acts between men with a penalty of up to 10 years.[226]

This Code was in force also in Jordan till 1951 and in Israel till 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.

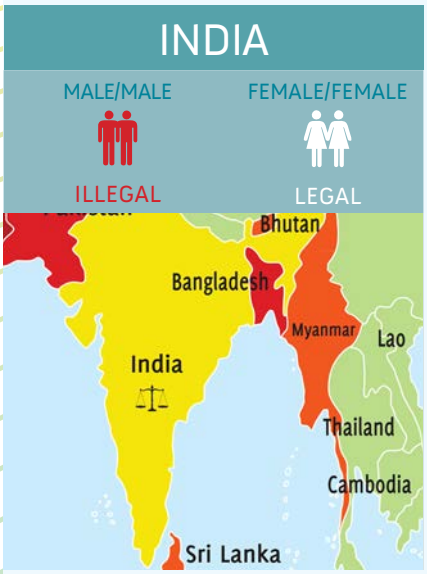
223 Text of the law is available at: http://www.judiciary.gov.bt/html/act/PENAL%20CODE.pdf.

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

225 Text of the law is available at: http://www.unhcr.org/refworld/pdfid/4d384ae32.pdf.

226 Human Rights and Legal Position of Palestinian "Collaborators". Supreme Court of Israel. Schmitt/Sofer, 1992, p. 137-138.

INDIA



In most of India, the Indian Penal Code is applicable.

> 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.[227]

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.

However, in the Indian state of Jammu and Kashmir, the Indian Penal Code is not applicable, but rather the Ranbir Penal Code (adapted from the Indian Penal Code) is applicable. Since the judgment of the Delhi High Court applies only where the Indian Penal Code is applicable, it does not change comparable provisions in Jammu and Kashmir. Therefore, Section 377 of the Ranbir Penal Code remains in effect, prohibiting same-sex sexual activity. If Section 377 of the Indian Penal Code is struck down by the Supreme Court, then the corresponding provision in the Ranbir Penal Code will be automatically struck down as well – following precedents of the case Jankar Singh v State.[228]

INDONESIA

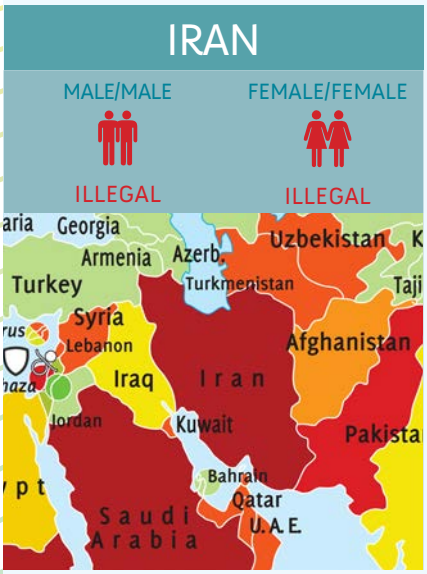
Same-sex relations are not prohibited according to the national Penal Code. The only provision to deal with such relations is article 292 which prohibits sexual acts between persons of the same sex, if committed with a minor.[229] However, in 2002 the national parliament gave the Aceh province the right 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.[230]

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

228 Jankar Singh vs State snd Others, 1995 CriLJ 3263, Jammu High Court, Judgment, 9 April 1995, available at: http://www.indiankanoon.org/doc/578524/.

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

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



Islamic Penal Code of Iran of 1991[231]

"Part 2: Punishment for Sodomy

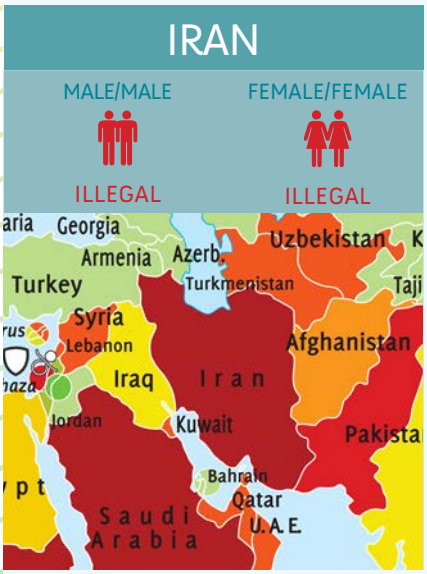
Chapter 1: Definition of Sodomy

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).
Article 119: Testimony of women alone or together with a man does not prove sodomy.
Article 120: The Shariajudge may act according to his own knowledge which is derived through customary methods.
Article 121: Punishment for Tafhiz (the rubbing of the thighs or buttocks) and the like committed by two men without entry, shall be hundred lashes for each of them.
Article 122: If Tafhizand 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.

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

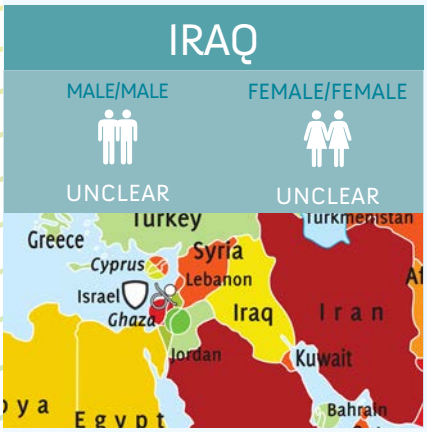


Article 125: If the one committing Tafhiz and the like or a homosexual man, repents before the giving of testimony by the witnesses, his punishment will be quashed; if he repents after the giving of testimony, the punishment will not be quashed.
Article 126: If sodomy or Tafhizis proved by confession and thereafter he repents the Shariajudge may request the leader (Valie Amr) to pardon him.

Part 3: Lesbianism

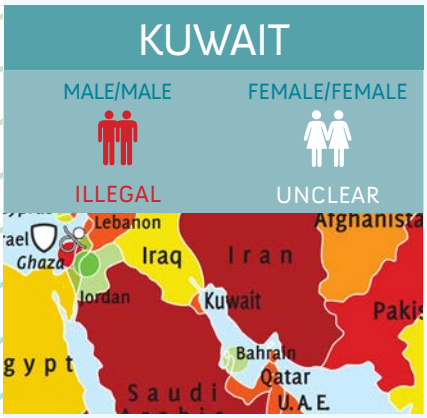
Article 127: Mosaheqeh (lesbianism) is homosexuality of women by genitals.
Article 128: The ways of proving lesbianism in court are the same by which the homosexuality (of men) is proved.
Article 129: Punishment for lesbianism is hundred (100) lashes for each party.
Article 130: Punishment for lesbianism will be established vis-a -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 (ValieAmr) to pardon her.
Article 134: If two women not related by consanguinity stand naked under one cover without necessity, they will be punished to less than hundred (100) lashes (Ta'azir). In case of its repetition as well as the repetition of punishment, hundred (100) lashes will be hit the third time."

IRAQ



After the American invasion in 2003 the Penal Code of 1969 was reinstated in Iraq. This code does not prohibit same-sex relations.[232] 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. [233] [234] [235] [236]

KUWAIT



Penal Code, Law No. 16 of June 2, 1960, as amended in 1976 [237]

> 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

Penal Code of 1943 [238]

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

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

233 See Death squads targeting gays in Iraq, available at: http://www.advocate.com/news/2006/03/25/death-squads-targeting-gays-iraq.

234 See Iraqi LGBT, available at: http://iraqilgbtuk.blogspot.com/.

235 See UNAMI Human Rights report 1 November – 31 December 2006, available at: http://www.uniraq.org/FileLib/misc/HR%20Report%20Nov%20Dec%202006%20EN.pdf.

236 See They want us exterminated - Murder, Torture, Sexual Orientation and Gender in Iraq, available at: http://www.hrw.org/node/85050.

237 German Bundestag; Printed Paper 16/3597, p. 15. http://www.gaylawnet.com/ezine/crime/16_3597_minor_interpellation.pdf

238 Available at: http://www.bekhsoos.com/web/2010/04/new-publication-provides-analysis-on-article-534/.

MALAYSIA

MALE/MALE
ILLEGAL

FEMALE/FEMALE
ILLEGAL

Penal Code (Consolidated version 1998) [239]

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

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."

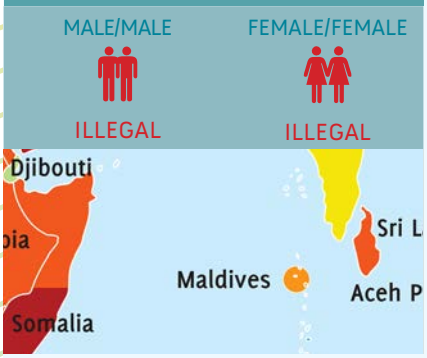
Moreover, several states in Malaysia have instated Islamic Sharia laws, applying to male and female muslims, criminalising homosexual and lesbian acts with up to three years imprisonment and whipping.[240] The Sharia Penal law in the Malaysian state of Pulau Pinang prescribes penalties for sodomy (Liwat) 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.[241]

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

240 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.

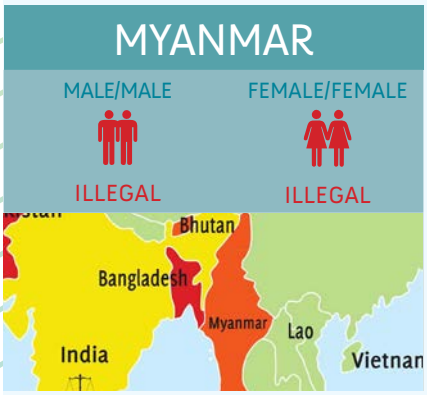
241 See Article 25 of Enakmen Kesalahan Jenayah Syariah. Original text is available at: http://jaipp.penang.gov.my/images/pdf/enakmen_kesalahan_jenayah_syariah_neg_p_pg_1996.pdf.

MALDIVES



The Penal Code of Maldives does not regulate sexual conduct.[242] 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.[243]

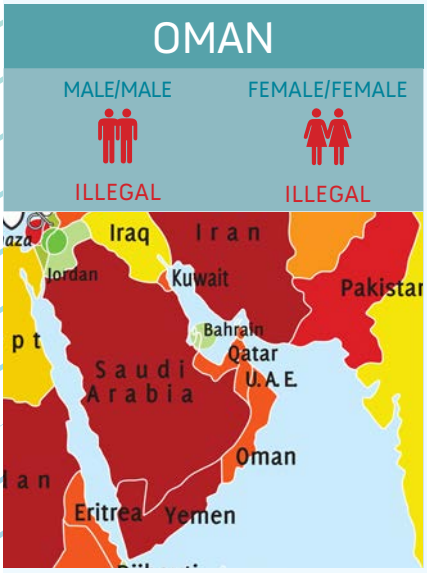
MYANMAR



Penal Code, Act 45/1860, Revised Edition [244]

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



Omani Penal Code of 1974 [245]

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."

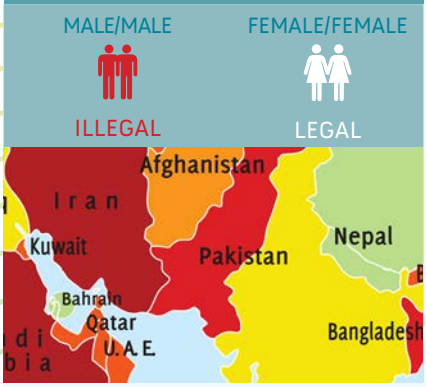
242 Text of the law is available at: http://www.lexadin.nl/wlg/legis/nofr/oeur/lxwemdv.htm.

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

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

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

PAKISTAN

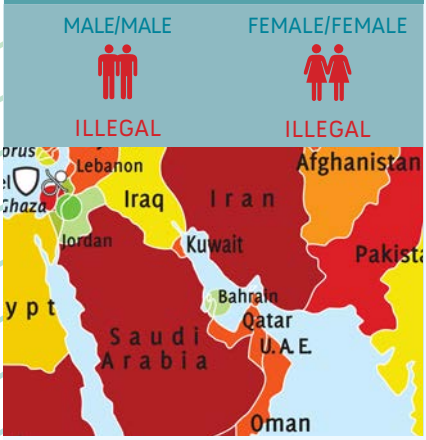


Penal Code (Act XLV of 1860) [246]

> 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



The Penal Code (Law No. (II) of 2004) [247]

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.[248]

SAUDI-ARABIA

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 are all sexual relations outside of marriage illegal in Saudi-Arabia according to the Sharia law, including sexual relations between women. [249]

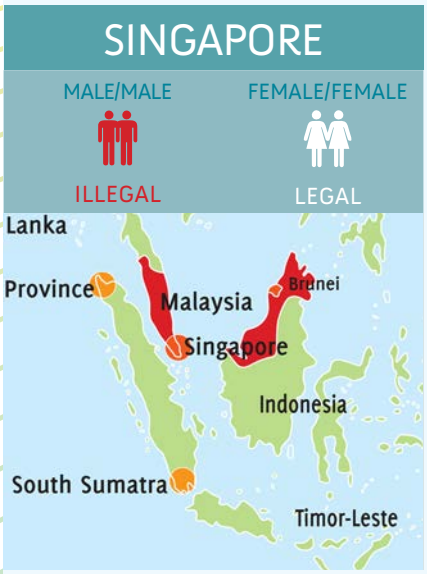
246 Text of the law is available at: http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html.

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

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

249 Schmitt, Arno and Sofer, Jehoeda, 1992, Sexuality and Eroticism Among Males in Moslem Societies. Binghamton: Harrington Park Press, p. 141.

SINGAPORE

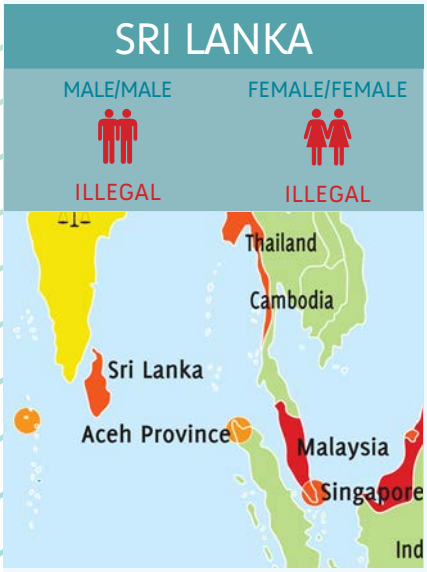


Penal Code (Chapter 22), Revised Edition 2008 [250]

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 criminalizing "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



Penal Code (as amended by the Penal Code (Amendment) Act, No. 22 of 1995)[251]

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 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 worth 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."

250 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.

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

SYRIA

Penal Code of 1949 [252]

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

TURKMENISTAN

Criminal Code of 1997 (Effective January 1, 1998) [253]

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)

252 German Bundestag. Printed Paper 16/3597, p. 27. http://www.gaylawnet.com/ezine/crime/16_3597_minor_interpellation.pdf

253 Criminal Code of the Republic of Turkmenistan. Original text available 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.[254] However, whether sodomy is punished with death penalty remains in dispute. The Arabic text of article 354 is ambiguously phrased and can be translated in different ways. Some sources indicate that the article punishes rape of a woman or forced sodomy with a man, while others indicate that it punishes rape on 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.[255] 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."[256] Sofer, on the other hand, means that the article can be translated differently; "Whoever commits rape on a female or sodomy with a male".[257] Amnesty International, finally, considers article 354 to apply to rape only, and not to consensual same-sex acts. However, the organization 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.[258]

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.[259]

254 See United Arab Eminates section on Sexual Offences Laws, Interpol. https://secure.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaUnitedArabEmirates.pdf

255 Schmitt, Arno and Sofer, Jehoeda, 1992, Sexuality and Eroticism Among Males in Moslem Societies. Binghamton: Harrington Park Press, p. 144.

256 German Bundestag; Printed Paper 16/3597, p. 29. http://www.gaylawnet.com/ezine/crime/16_3597_minor_interpellation.pdf

257 Schmitt, Arno and Sofer, Jehoeda, 1992, Sexuality and Eroticism Among Males in Moslem Societies. Binghamton: Harrington Park Press, p. 144.

258 Love, hate and the law: decriminalizing homosexuality.

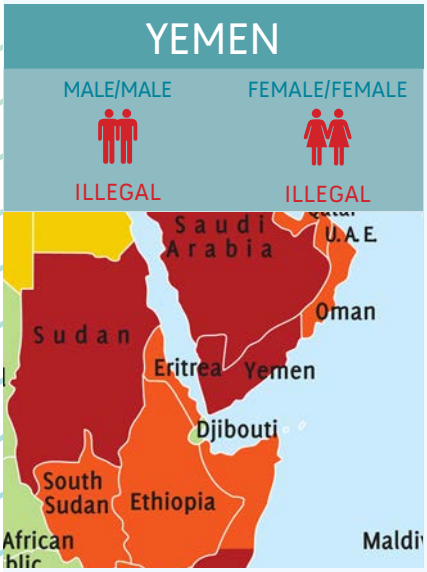
259 Schmitt, Arno and Sofer, Jehoeda, 1992, Sexuality and Eroticism Among Males in Moslem Societies. Binghamton: Harrington Park Press, p. 145.

UZBEKISTAN

Criminal Code of 1994 [260]

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



Penal Code 1994 [261]

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."

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

261 German Bundestag; Printed Paper 16/3597, p. 31. http://www.legislationline.org/documents/id/8931

Moves towards criminalization in Europe

While the general trend around legal and policy developments in Europe continues to point towards greater recognition of LGBTI people, there have been some negative developments in in the last year that require attention. For the first time in decades homophobic legislation has been enacted by or tabled in a number of parliaments.

Northern Cyprus is the only place in Europe which still criminalises same-sex sexual relationship between consenting adults, but in April 2013 the government put forward a proposal to parliament to legalise homosexuality by amending the Criminal Code.

RUSSIA AND THE REGIONAL AND FEDERAL ANTI-PROPAGANDA LAWS

In March 2012, the Governor of St. Petersburg, Georgy Poltavchenko, signed the law prohibiting the so-called 'propaganda of sodomy, lesbianism, bisexuality, transgenderism and paedophilia to minors' (the 'Anti-Propaganda Law'). The law defines propaganda as "the targeted and uncontrolled dissemination of generally accessible information, which can damage the health, moral and spiritual development of the under aged." The legislation does not define the terms 'bisexualism' or 'transgenderism' leaving room for different interpretations. Any public mention of homosexuality may be considered as an administrative offense.

Also in March 2012, the initiative of a federal ban of 'propaganda of homosexuality' to the Duma. The voting in the first reading took place in January 2013 and the second reading is scheduled for later in the summer.

By the end of 2012, six other regions had enacted legislative provisions similar to the law adopted in St. Petersburg, namely Kostroma, Novosibirsk, Samara, Bashkortostan, Magadan, and Krasnodar. This means that following the developments of this year, the number of Russian regions with homophobic laws reached nine in total.

Also, the Moscow City Duma passed a law banning "all forms of sexual propaganda to minors". The provisions adopted by the different regions are on

the whole similar, some only refer to homosexuality while others also mention "sodomy, lesbianism, bisexuality and transgenderism". Some regional laws also provide for higher levels of fines up to 500,000 rubbles (approx. €12,500). Most of the regional laws follow the same model, with the exception of Bashkortostan where no fine is imposed on people considered as offenders under the new law.

The laws have since been used to ban prides in St. Petersburg and several other places in Russia.

UKRAINE AND THE PROPOSED LAW AGAINST PROMOTION OF HOMOSEXUALITY

The Draft Law 8711 prohibiting the so-called 'promotion of homosexuality' that was introduced to the parliament 2012 would criminalise any positive depiction of same-sex relations in public if adopted.

In May 2012, the Committee of Freedom of Speech and Information had recommended the adoption of the bill. The initial voting for the Bill scheduled for July was postponed and in October the Ukrainian parliament voted with an overwhelming majority to support the Bill.

The second hearing of the Bill has been postponed for a later date due to the elections in the parliament at the end of the year. Various human rights organisations, official representatives of the European Union, the Council of Europe, the UN and the OSCE, the Ukrainian Ombudsperson and the official representative of the Ukrainian Foreign Ministry as well as several politicians and public figures have condemned the bill.

If passed in the second hearing and signed by the President, the Bill will amend existing laws on 'the protection of morals', media and publishing, as well as the Criminal Code making any public mentioning of homosexuality a criminal offense. This would effectively limit the freedom of speech of mass media and criminalise LGBT human rights work in Ukraine.

In reaction to the adoption of the Bill 8711 prohibiting 'promotion of homosexuality' in its first reading, the European Commission has stated that Ukraine's proposed anti-gay law would jeopardise prospects of visa liberalisation with the European Union. On behalf of the Commission, Štefan Füle, Commissioner for Enlargement and European Neighbourhood Policy, stated that "such legislative initiative stands in contradiction to the requirements of the relevant benchmarks of the [EU-Ukraine Visa Liberalisation] Action Plan".

HUNGARY'S NEW DEFINITION OF FAMILY

In January 2013, a new Constitution entered into force. It does not specifically list sexual orientation as a ground in the prohibition of discrimination clause, and thus sexual orientation and gender identity are only implicitly covered under 'other status'.

The new constitution also restricts the definition of marriage as a union between a man and a woman. Additionally, the new Family Protection Act also came into force that defines the family unit as heterosexual and states that preparing for family life should be part of the school curriculum.

Maria Sjödin & Martin K.I. Christensen

European Representatives to the ILGA World Board

TURKISH REPUBLIC OF NORTHERN CYPRUS (UNRECOGNISED STATE)

MALE/MALE

ILLEGAL

FEMALE/FEMALE

LEGAL

Criminal Code, Chapter 154 [262]

Article 171. "Whoever –
(a) has sexual intercourse against the order of nature with any person, or
(b) allows sexual intercourse against the order of nature with a male, commits a heavy crime and is punished with up to five years imprisonment."

Article 173. "Whoever attempts to commit one of the crimes mentioned above in art. 171, commits a heavy crime and is punished with up to three years imprisonment."

There are plans to repeal these articles[263], but such a reform has not occurred as of publication of this report.

262 Text of law is available at: http://www.mahkemeler.net/ifasil/Cap154.pdf.

263 The original text of the draft amendment of the Penal Law is available at: HYPERLINK "http://www.cm.gov.nc.tr/Yasalar/ceza%20y.t.doc"ceza y.t.doc.

LATIN AMERICA AND THE CARIBBEAN

When Latin American "Cosmic race" starts to lead LGBTI issues

JOSÉ VASCONCELOS CALDERON WROTE "THE COSMIC RACE. MISSION OF THE IBEROAMERICAN RACE" IN 1925. HE DESCRIBED THE LATIN AMERICAN POPULATION AS THE FIRST "RACE OF SYNTHESIS IN THE GLOBE" HAVING THUS THE POWER TO TRANSFORM THE WORLD.

Human Rights are innate to human beings, and they should apply equally and universally without discrimination. But how often human rights are no more than human desires! Nevertheless human rights are not for governments to bestow upon citizens, but rather something all human beings are entitled to for the sole fact of their existence. But how often many States deprive their populations (or part of them) of such rights because of traditional prejudices! In this sense, one can say that whereas the fight for equal rights in legislation has been a battle against segregationist laws on the basis of race, gender, sexual orientation, gender identity or other condition, the fight for equal rights in everyday life has been a battle against prejudices and so-called traditional cultural values based on such prejudices.

José Vasconcelos Calderon wrote in 1925 a philosophical essay called "The Cosmic Race. Mission of the Iberoamerican Race" where he described the Latin American population as the first "race of synthesis in the globe" having thus the power to transform the world.

Nowadays Latin America, at the international level, is among those leading the efforts to abolish segregationist laws against people on the basis of sexual orientation or gender identity, and it is leading the way in the promotion of LGBTI equality to the point that many laws or judicial decisions adopted here can be considered more advanced than those of other continents. We will point out here (I) some examples of these advanced laws or decisions, while at the same (II) we will draw the attention to fundamentalist forces, particularly of religious nature, like political movements associated to some evangelical churches, which are working to obstruct, reverse or impede such advancements and to make LGBTI population and its gains invisible again.

I. Some countries of Latin America are going far beyond other continents with regard to the legal recognition of gender identity. The Argentinean Gender Identity Law of 2012 permits to legally change name and sex of a person by means of the issuance of a new birth certificate recognizing his/her inner perception of gender identity. This procedure is made before the Civil Registry Officer by simple request of the person, without the need to present any evidence of hormone therapy, gender reassignment surgeries, medical or psychological reports, or any other proof, except for the simple will of the person to be legally considered of a certain sex and have a certain name. The Registrar Officer has no power to object this petition because it fully depends on the will of the petitioner. The procedure takes about ten working days and the person receives then a new birth certificate, a new identity card and passport, and may request for the change of all other documents issued on the previous name and sex. This procedure may also be initiated by persons under legal age with the participation of their parents. And gender identity recognition may be requested by foreigners legally residents of Argentina, provided however that they cannot achieve the recognition of their identity in their countries.

Other countries are following this example. In this regard, the Uruguayan Gender Identity Law of 2009 is now applied more easily, although it requires –as in the case of Mexico City- a judicial decision. Chile and Ecuador had approved in first discussion in their respective Congresses, a draft Gender Identity Law. And there is a similar initiative in Costa Rica.

In the absence of a Gender Identity Law, some judicial decisions have recognized the full legal identity of trans people without the need of a surgical reassignment in Chile, Bolivia, Brazil and Bolivia. On their side Colombia and Ecuador permit the free change of name –not sex- of any person by means of a simple administrative request.

As far as sexual orientation is concerned, several countries in Latin America recognize equal rights for same-sex couples and their families. In this regard, Argentina, Uruguay and Mexico City allow egalitarian marriage, co-maternity, co-paternity and joint adoption, while Colombia, Ecuador and Brazil recognize equal rights to all couples. These rights were recognized by means of Judicial Decisions of the Constitutional Court of Colombia and the Federal Supreme Tribunal of Brazil. Colombia is currently discussing in the Congress egalitarian marriage.

Other countries such as Bolivia have criminalized homophobia and other still have criminalized hate crimes, as in Costa Rica.

II. However, things are not so beautiful everywhere, not even in the above-mentioned countries. The religious fundamentalists are very active in the whole region. In Brazil a racist and homophobic religious leader was elected to head the Human Rights Committee of the Congress, where he is trying to

reverse all the improvements. In other countries few or no improvements have been achieved in order to get equal rights and opportunities, as in the case of Peru and Venezuela in South America and most of Central America and in the Caribbean countries. In Venezuela the recognition of gender identity of trans population is valid only for those born before 1977, as since 1998 no request of recognition of gender change has been granted. I believe these contradictions in the continent are somehow unrelated to the notions of left or right, so often used to explain support or lack of support to LGBTI equal rights.

In conclusion, we have strong signs that the "cosmic race" is proposing new and original solutions with regard to LGBTI rights. We are becoming a model for LGBTI rights in the world. We are even proposing to eliminate the mention of gender in legal documents, as it serves only to grant or deny rights to some persons, as before was the case for the mentions of race or religion. Is there an original cosmic answer to LGBTI struggles on its way?

However, despite these advances, there are also signs of a much stronger and coordinated fundamentalist movement, with the implication that advancements might be more difficult to achieve in the future.

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ANTIGUA AND BARBUDA

Sexual Offences Act of 1995 (Act No. 9) [264]

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

Sexual Offences Act 1992, Chapter 154 [265]

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."

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

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

BELIZE

Criminal Code (Revised edition 2000) [266]

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

Sexual Offences Act 1998 [267]

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."

266 Text of the law is available at: http://www.belizelaw.org/lawadmin/PDF%20files/cap101.pdf.

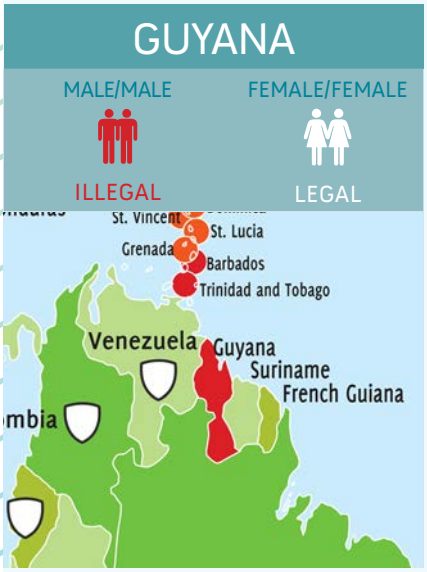
267 Text of the law is available at: http://www.dominica.gov.dm/laws/1998/act1-1998.pdf.

GRENADA

Criminal Code of 1987 as amended in 1993: [268]

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



Criminal Law (Offences) Act [269]

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."

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

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

JAMAICA

MALE/MALE — ILLEGAL

FEMALE/FEMALE — LEGAL

The Offences Against the Person Act [270]

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

Article 78 (Proof of Carnal Knowledge)
"Whenever upon the trial of any offence punishable under this Act, it may be necessary to prove carnal knowledge, it shall not be necessary to prove the actual emission of seed in order to constitute a carnal knowledge, but the carnal knowledge shall be deemed complete upon proof of penetration only."

Article 79 (Outrages on Decency)
"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."

SAINT KITTS AND NEVIS

MALE/MALE — ILLEGAL

FEMALE/FEMALE — LEGAL

Offences against the Person Act [271]

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.[272]

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

271 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.

272 See, Saint Kitts-Nevis-Anguilla., & Lewis, P. C. (1964). The Revised Laws of St. Christopher, Nevis and Anguilla: Prepared under the authority of the Revised edition of the laws ordinance, 1959. London. See also, Reding, A. (2003). Sexual orientation and human rights in the Americas. World Policy Institute, 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 January 1, 2005) [273]

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."

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

SAINT VINCENT & THE GRENADINES

Criminal Code, 1990 Edition [274]

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

Sexual Offences Act 1986, Consolidated Version 2000 [275]

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 through the anus 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."

274 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.

275 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

NORTH AMERICA

Advances must be viewed against the steady decline of key social and economic indicators

In the past year North American groups, organizations and individuals dedicated to LGBTI rights have been part of a significant acceleration in our struggle to advance basic human rights for lesbians, gays, bisexuals, intersex, trans and two-spirited peoples* of North America.

This change of pace is widely welcomed. Realistically however, current advances must be viewed against the backdrop of austerity-driven economic planning and the steady decline of key social and economic indicators affecting North America's LGBTI communities and particularly our most marginalized members.

Observers note that unequal and widening wealth distribution is developing hand in hand with public policy that dramatically undermines workplace organizing for the defence of human rights, and modifies public education systems to be increasingly stratified and disadvantaged by racism and economic injustice.

While public harassment of lesbian, gay and bisexual people appears to be decreasing in various urban centres hate crimes are reported to be on the increase across Canada. Violence aimed specifically against trans women from racialized communities is known to have increased dramatically. Across the United States these attacks are16 times that of the national rate.

Within Canada, a variety of government-funded community and health services for under-employed and poorly housed trans people have been among the first to be cut by cash-strapped government departments facing austerity-driven public policy.

After years of concerted community pressure in a number of provincial jurisdictions of Canada laws have been enacted:

- to end discrimination of trans persons based on gender identity. (Similar legislation is in its final days of debate at the national level.)

* North American indigenous peoples who are LGBTI identify as "two-spirited".

- to curtail violence against LGBTI youth and to combat homophobic / transphobic harassment and teen suicides.

It is extremely encouraging that there have been a healthy number of Canadian provincial education departments establishing pre-service teacher training on the rights of sexual minorities and an increasing number of police authorities calling on our national LGBTI organization, Egale Canada, to set up in-service anti-homophobia and anti-transphobia training for frontline officers.

Across the United States regionally-based LGBTI activists are now broadening their agenda to include work for racial justice, adoption rights, and equal housing opportunities. In the past year, during the run-up to presidential and state elections many LGBTI organizations developed strong alliances with NGO's working to stop the introduction of fraudulent regulations in the voting process, aimed at barring elderly, young, racialized and transgender voters. Several of these proposed regulations were resoundingly defeated in states across the country.

Much legislative reform campaigning remains state-based, with the exception of the United States Supreme Court case hearing on California's infamous Proposition 8 which restricted marriage rights to heterosexual Americans. The Supreme Court is also examining the issue of the 1996 national Defense of Marriage Act which does not require states to recognize marriages from other states and currently prevents federal recognition of LGBTI relationships. This case also includes a hearing on the constitutionality of denying marriage to LGBTI couples.

Finally, during the course of this year a key public policy tool which has become an increasingly dangerous threat to the rights of sexual minorities has taken root across the region. So-called "Right to Work" legislation established in southern US states is now being rolled out by conservative governments at the provincial, state and national levels across the industrial heartland of North America.

The introduction of such legislation contravenes workplace rights established by the International Labour Organization and related international covenants in the past 60 years. Key human rights are eliminated by this legislation. Once such laws are enacted homophobia , transphobia and other forms of discrimination have been increasingly used as a tool to weaken collective rights of assembly, the right to representation and the validity of collective bargaining as a guaranteed tool for negotiating safe, harassment-free and discrimination-free conditions of work.

NORTH AMERICA

Despite welcome reforms to laws and the positive impact of changing public opinion on the human rights of sexual minorities in North America, it is widely noted that the broad social forces that impact the daily lives of LGBTI people across the continent remain in place.

Haven Herrin, Stephen Seaborn

ILGA-North America board members, North American representatives on ILGA's World Board

The State of Same-Sex Marriage in the United States

The United States is not united in its position on same-sex marriage. However, several recent developments indicate growing support for LGBT legal equality. In fact, on May 9, 2012, President Barack Obama became the first United States President to endorse same-sex marriage when he said, "At a certain point, I've just concluded that for me personally it is important for me to go ahead and affirm that I think same-sex couples should be able to get married."

Currently, nine US states and the District of Columbia have legalized same-sex marriage, including Massachusetts (2004), Connecticut (2008), the District of Columbia (2009), Iowa (2009), Vermont (2009), New Hampshire (2010), New York (2011), Maine (2012), Washington (2012), and Maryland (2013). The Rhode Island Senate passed a marriage equality bill in 2013, which Governor Lincoln Chafee said he would sign. This would make Rhode Island the tenth US state to legalize same-sex marriage. Several other states have introduced marriage-like civil unions or registered partnerships – California (1999), New Jersey (2006), Oregon (2008), Colorado (2009), Nevada (2009), Wisconsin (2009), Illinois (2011), Rhode Island (2011), and Delaware (2012). On the other hand, 38 states prohibit same-sex marriage by statute or state constitutional amendment.

Recent legal cases raise the issue that prohibitions against same-sex marriage are unconstitutional, based primarily on the Equal Protection Clause of the Fourteenth Amendment, guaranteeing equal treatment under the law, and the Full Faith and Credit Clause of the Constitution, which ensures that judicial decisions in one state are recognized in other states. The legal status of same-sex marriage, however, remains contentious.

The same-sex marriage debate in the United States began in 1990 when the Hawaiian Department of Health denied marriage licenses to three gay couples. The couples sued and lost in 1991. The case was appealed in 1993, when the Hawaiian Supreme Court held that denial of marriage licenses to same-sex couples was unconstitutional and again in 1996, with the Circuit Court's ruling that prohibiting same-sex marriage violated the state's equal protection clause. In 1998, Hawaiian voters passed Constitutional Amendment 2, allowing the state legislature to ban same-sex marriage. The Hawaiian Legislature did not recognize same-sex marriage, but had, in 1997, passed legislation allowing same-sex couples to benefit from some marriage-like rights. This case led President Bill Clinton to sign the Defense of Marriage Act (DOMA) in 1996, which restricted the use of "marriage" and "spouse" to legal unions between one

man and one woman in federal law. Section 3 of this policy prevents same-sex couples from benefiting from over 1,110 federal marriage benefits, including being able to file joint federal taxes, inheriting Social Security survivor benefits, sponsoring a partner's immigration visa, deferring federal property taxes on a deceased spouse's estate, and so on.

On March 27, 2013, the Supreme Court of the United States heard arguments about the constitutionality of DOMA in *United States v. Windsor.* Edith Windsor, the widow and executor of the estate of her late spouse, Thea Clara Spyer, would have avoided $363,000 in federal estate taxes if their 2007 marriage in Toronto, Canada, which was recognized by New York state law, had been federally recognized. Windsor's suit sought a declaration that DOMA was unconstitutional. When she brought the suit in 2010, the official government position was to support DOMA and the restriction of marriage to one man and one woman; the Bipartisan Legal Advisory Group of the House of Representatives filed a petition to defend DOMA and urged dismissal of Windsor's case in 2011. The District Court denied the motion, holding that DOMA was unconstitutional. In total, eight federal courts (including the First and Second Circuit Court of Appeals) have found DOMA unconstitutional. The Obama administration has also decided not to enforce DOMA, but this does not resolve the legal restrictions in DOMA.

The Court has not rendered its ruling on this matter, but statements by the Justices during the March arguments suggest the Court may find DOMA unconstitutional. Justice Anthony Kennedy was concerned that the federal law intrudes on states' rights to regulate marriage and that the more than 1,100 federal rights of marriage meant that the federal government was "intertwined with citizens' daily lives." Many gay rights activists and lawyers use the argument that laws like DOMA violate the Fifth and Fourteenth Amendments' guarantee of legal equality, but many Justices did not seem convinced by this argument, particularly Justice Antonin Scalia, when he said "I'm curious, when did it become unconstitutional to exclude homosexual couples from marriage? 1791? 1868, when the 14th Amendment was adopted? Sometime after Baker, where we said it didn't even raise a substantial federal question? When did the law become this?"

Justice Scalia's comment is referring to the status of gays and lesbians in the legal system and the fact that gays and lesbians are not a "protected class" under the Equal Protection Clause of the Fourteenth Amendment, which ensures that state laws treat individuals similarly in similar circumstances and conditions. The Court relies on a three-tiered approach when deciding if a group can qualify for this most stringent legal protection. Most challenges to constitutionality are decided using the "rational basis test" – that is, a

discriminatory policy is arbitrary or irrational and serves no legitimate state need. The rational basis level of scrutiny has been used in most LGBT cases brought to the Court. When homosexual sodomy was decriminalized in *Lawrence v. Texas* 539 US 558 (2003), Justice Sandra Day O'Connor argued that criminalizing homosexual sodomy, but not heterosexual sodomy, did not pass the rational basis test because it made sodomy criminal only when engaged in by homosexuals, but not by heterosexuals.

The next stringent level of judicial review is intermediate-level judicial scrutiny. This level of review requires the state to prove that differential treatment under the law is substantially related to some state interest. The Court discussed intermediate scrutiny in *Romer v. Evans* 517 US 620 (1996), when it struck down a Colorado state amendment that would have prevented sexual orientation from being included in any anti-discrimination legislation in Colorado. The Court found that this policy did not protect a legitimate state interest because it was motivated by a desire to harm a politically unpopular group.

The most stringent level of judicial scrutiny, strict scrutiny, requires the state to show that different treatment under the law serves a necessary state interest and is used in cases when a claim is made by a protected group. To be classified as a protected group, the group must meet specific criteria, such as having "obvious, immutable, or distinguishing characteristics," being politically powerless, and having a history of discrimination. Different legal treatment by categories such as race, religion, and national origin are protected and cases involving these groups are subject to strict scrutiny. The classification of sexual orientation as a protected class has been difficult, in part, because gays and lesbians may not be perceived as politically powerless and the evidence of immutable characteristics or persistent discrimination have not been compelling, according to the Court. When the Court makes its decision on *United States v. Windsor,* it could decide that gays and lesbians are a protected group. If so, the US government would have to prove that violating the Fifth Amendment's guarantee of equal protection for same-sex couples who are legally married under the laws of their state serves an important and necessary state interest. However, based on the discussion during the March arguments, it seems most likely the Court will make its decision using the rational basis test – that is, determine if same-sex couples are being treated differently than heterosexual couples for no legitimate state interest.

The Court heard arguments on another significant case regarding same-sex marriage on March 26, 2013 in *Hollingsworth v. Perry*. In this case, a lesbian couple, Kristin Perry and Sandra Stier, and a gay couple, Paul Katami and Jeffrey Zarrillo, sued California state officials after being denied marriage licenses in 2009 on the basis that California's Proposition 8 violated their Fourteenth

Amendment right to equal protection under the law. Proposition 8 amended California's Constitution such that "only marriage between a man and a woman is valid or recognized by California." The statements in this case provide no clear evidence of how the Court will rule. Unlike the DOMA case, which concerns federally granted rights, this case involves a state-level matter of defining marriage; that point makes this case problematic because regulating marriage has historically been a state right, not a federal responsibility. Justice Kennedy wondered if "the case was properly granted" - if the Court had jurisdiction to hear *Hollingsworth* at all. Justice Scalia, however, argued that the Court had already "crossed that river;" they had already agreed to hear the case. If the Court decides it should not hear the case, the Ninth Circuit Court ruling striking down Proposition 8 as unconstitutional would prevail; alternatively, the Court could overturn the Circuit Court's decision (if the backers of Proposition 8 did not have "standing" – that is, they did not properly show that their personal legal interest had been violated by overturning Proposition 8). It is likely that the Court will make a decision on this case. And yet, if they do render a decision, it is unclear what impact it will have on the state of same-sex marriage in the United States. The Court could find that same-sex couples have the right to marry, it could deny same-sex couples the right of marriage, or it could decide this is a state-level issue.

No matter the outcome of both these cases before the Supreme Court, they indicate a growing concern with the state of same-sex marriage in the United States. Activists and lawyers on both sides of this issue argue passionately about the economic costs and consequences of marriage, the affect of parental marriage on children, the moral orientation towards homosexuality, and more. But for same-sex couples seeking relationship recognition, these are not simply legal or scholarly arguments. These are lived experiences of inequality.

Danielle MacCartney,

Professor of Sociology, Webster University, St Louis, MO, USA

OCEANIA

Australia: failed promises

ANTI-DISCRIMINATION

The Federal government has abandoned the anti-discrimination consolidation bill, despite the Liberals indicating they did not see LGBTI inclusion as a hurdle to the bill, due to the numerous limits and exemptions, especially religious ones, according to the Liberal party dissenting report. Consequently the Sex discrimination (Lesbian Gay Bisexual Transgender and Intersex) amendment bill has been introduced and seems likely to be passed into law in the June sitting of the Australian federal parliament. The submission period and committee stage will run for four weeks, closing on the 26 of April for the senate enquiry.

Where the proposed consolidation bill was quite tight on exemption, moving the majority of LGBTI provisions from that bill into the sex discrimination act means that LGBTI will be matched with those exemptions already existing in that act. The result is that LGBTI people will be subjected to new exemptions.

The sex discrimination act does not contain provisions against vilification. The move to the sex discrimination act will give us much weaker protections than those proposed in the consolidation bill, however it does propose anti-discrimination protection in Australian federal law for the first time and for Intersex for the first time in the world.

MARRIAGE EQUALITY

Two Marriage equality bills were put to the federal parliament, however, both failed. Both bills were nearly true equality bills in that they proposed a marriage should be between two consenting adults. Interestingly the issue of marriages between two people was consistently raised as a hot button issue for LGBTI both in the senate hearings (again Gina Wilson participated in those on behalf of Intersex and LGBTI) and in the mainstream media. Such marriages are already recognised in Australia when they are legally performed overseas and the family Court of Australia has adjudicated in the dissolution of many. All of those marriages are between heterosexual couples being wed within the traditions of one of the world's largest religions

It is confounding that such unions are projected by parliament and mainstream press as "the slippery slope" and the worst aspects of LGBTI people seeking marriage equality when, In Australia at least, it is a mainstream heterosexual issue.

STATE BASED MARRIAGE

The Australian constitution places the issue of marriages within the ambit of the federal government. The states have the funded task of registering unions on the federal government's behalf. The federal government in 2004 amended the marriage legislation to make certain unions could only be between a man and a woman, according to their birth certificate categorisation.

Given that limitation, it is thought that the constitution allows states to make laws concerning marriage, provided they do not infringe federal powers. Some constitutional lawyers have suggested that if the States bring into being "same-sex " marriage acts they can stand constitutionally, so that two kinds of marriage might be possible in Australia, a federal and a state version.

State-based marriage bills have been put or are imminent in Tasmania, Victoria, South Australia, West Australia, New South Wales and the Australian Capital Territory. Gina Wilson has been closely involved in these bills and has put submissions to all of them and attended hearings in respect of them. She observed that the original bill put to the Tasmanian legislature was flawed and these flaws have been repeated by the other States following that state's lead.

BISEXUAL, TRANS AND INTERSEX ISSUES

Bisexual issues are not addressed in the proposed bills, since the push to legalise multi-partner marriages has been rejected by many LGBTI organisations.

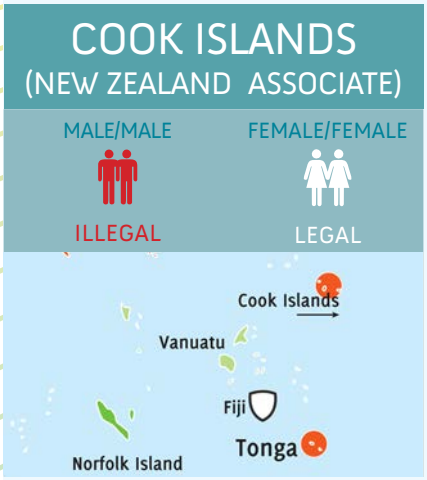
Trans individuals are already allowed to marry under federal heterosexual law, but must end any existing marriage to prevent contradicting the marriage definition. For Intersex, neither the federal or state laws addresses Intersex people's issues, e.g. intersex unfriendly legal precedent and birth certificate and passport issues.

So far all so-called marriage equality bills, including the recent one from the UK, will lead to anything but equality. Gina Wilson notes the UK bill like the Australian bills does not address bisexual rights, trans rights or intersex rights to marriage.

Simon Margan & Joey Mataele

ILGA Oceania/ANZAPI *board members, ANZAPI representatives on ILGA's World Board*

COOK ISLANDS (NEW ZEALAND ASSOCIATE)



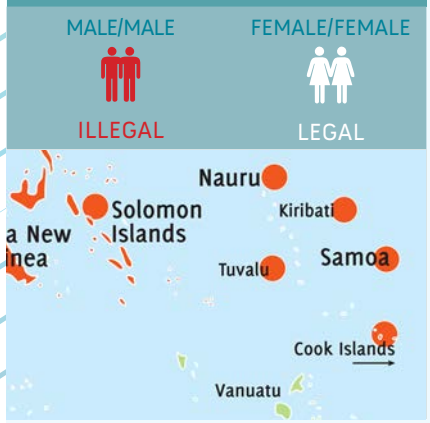
Crimes Act 1969 [276]

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."

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!

KIRIBATI



Penal Code [Cap 67] Revised Edition 1977 [267]

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

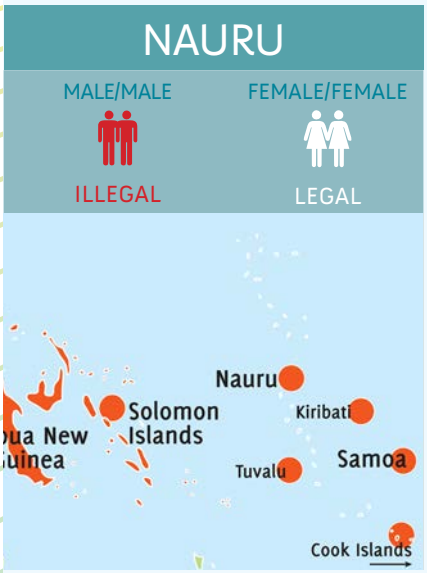
Section 154. "Any person who attempts to commit any of the offences it specified in the last preceding section, or who is guilty of any assault with intent to commit the same, or any indecent assault upon any male person shall be guilty of a felony, and shall be liable to imprisonment for 7 years."
Indecent 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."

276 Text of the law is available at:, http://www.paclii.org/ck/legis/num_act/ca196982/.

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

NAURU



Criminal Code of Queensland in its application to Nauru on 1 July 1921 [278] [279]

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

Palau National Code; Penal Code [280]

§ 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"".

278 Text of the law available at: http://www.vanuatu.usp.ac.fj/library/Paclaw/Nauru/Indices/Nauru_laws.html.

279 Criminal Code 1899, available at : http://ozcase.library.qut.edu.au/qhlc/documents/CrimCode1899_63Vic_9.pdf.

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

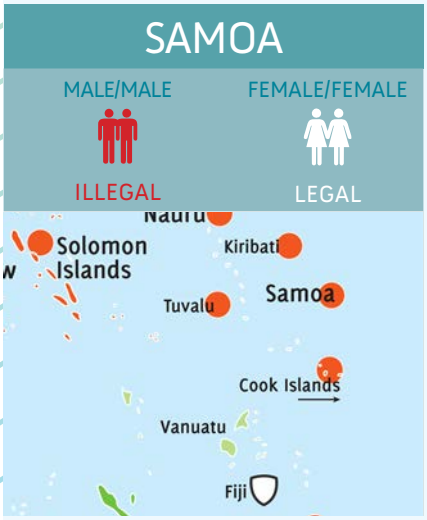
PAPUA NEW GUINEA

Criminal Code 1974, as amended in 2002 [281]

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



Crimes Ordinance 1961, Consolidated Acts of Samoa 2007-2008 [282]

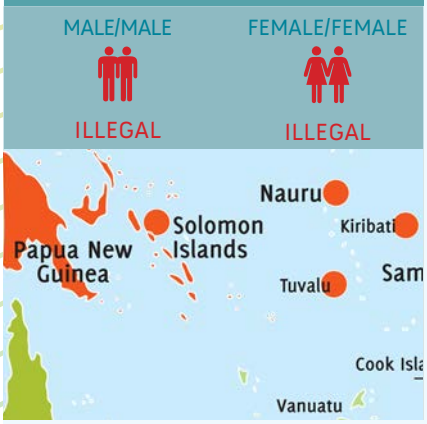
Section 58D. Indecency between males –
"(1) Everyone is liable to imprisonment for a term not exceeding 5 years who, being a male:
(a) Indecently assaults any other male; or
(b) Does any indecent act with or upon any other male; or
(c) Induces or permits any other male to do any indecent act with or 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."

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

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

SOLOMON ISLANDS



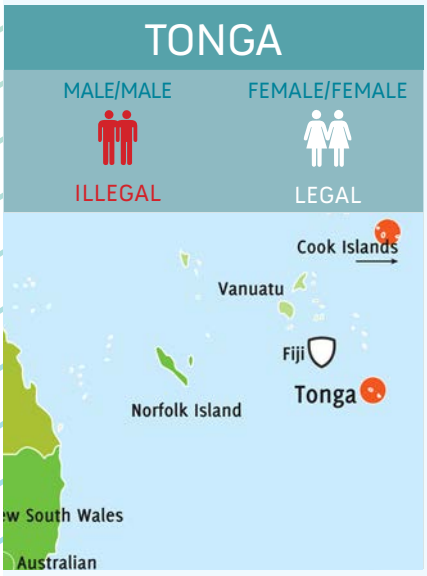
Penal Code (Revised Edition 1996)[283]

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 indecent assaults upon any male person shall be guilty of a felony, and shall be liable to imprisonment for seven years."

Section 162. Indecent practices between persons of the same sex (Inserted by Act 9 of 1990, s. 2)
"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



Laws of Tonga, Criminal Offences [Cap 18] 1988 Edition [284]

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.

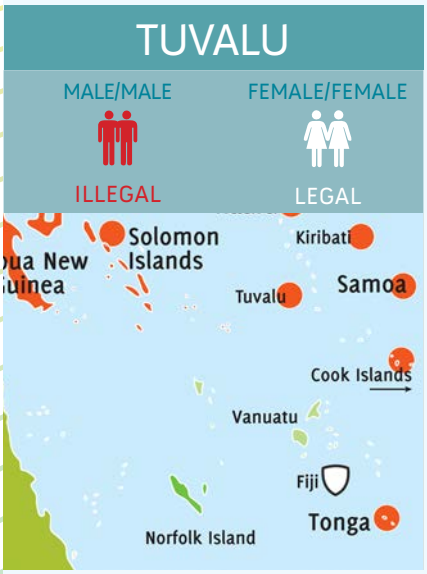
Section 139. "Whoever shall attempt to commit the said abominable crime of sodomy or shall be guilty of an assault with intent to commit the same or of any indecent assault upon any male person shall be liable at the direction of the Court to imprisonment for any term not exceeding 10 years."

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.)

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

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



Laws of Tuvalu, Penal Code [Cap 8] Revised Edition 1978

285

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."

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

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Free digital versions of the report in Word format and maps on Gay and Lesbian rights in the world, in Africa, Asia and Latin America and the Caribbean are available for groups to print.

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