Flygtningenævnets baggrundsmateriale

Bilagsnr.:	**223**
Land:	Diverse emner
Kilde:	ILGA
Titel:	ILGA_State_Sponsored_Homophobia_2019
Udgivet:	20. marts 2019
Optaget på baggrundsmaterialet:	30. juli 2019



STATE-SPONSORED HOMOPHOBIA

2019

13th Edition

LUCAS RAMÓN MENDOS

ilga.org

COPYRIGHT

This 13th edition of *State Sponsored Homophobia* is copyright-free provided you cite both the author and the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA).

Suggested citation:

International Lesbian, Gay, Bisexual, Trans and Intersex Association: Lucas Ramon Mendos, *State-Sponsored Homophobia 2019* (Geneva; ILGA, March 2019).

Author	Lucas Ramón Mendos
Main Research Assistants	Daryl Yang Lucía Belén Araque
Research Assistants	David J. Godfrey Martina Olivera Alejandro Hilarión Moncada Ezequiel Steuermann Nahuel Grayani Estanislao Segurola
Footnote Editor	Juan Francisco Mareque
Project Assistant	Felipe Da Silva Oliveira
Proofreader	Aengus Carroll
English Translation	Jordan Beyga



STATE-SPONSORED HOMOPHOBIA

2019

13th Edition

LUCAS RAMÓN MENDOS

ilga.org

Table of Contents

Co-Secretaries General' Foreword. 11
By Ruth Baldacchino and Helen Kennedy.

Author's Preface. 13
By Lucas Ramón Mendos.

List of contributors to this edition. 17

Acknowledgements. 19

1. INTRODUCTION

Denigration, Distraction and Detraction: Forging Ahead, Even in Crisis. 23
By Cynthia Rothschild.

The Rights of LGBTQ+ People and Referendums: An Irreconcilable Marriage. 33
By Elena Brodeală and Vlad Levente Viski.

2. INTERNATIONAL HUMAN RIGHTS LAW

The Yogyakarta Principles: Introduction to the YP+10. 39
By Mauro Cabral Grinspan and Julia Ehrt.

United Nations - SOGI Independent Expert: The Role of the Independent Expert in the International Human Rights Framework on Sexual Orientation and Gender Identity. 42
By Rafael Carrano Lelis and Zhan Chiam.

United Nations – Universal Periodic Review: The Third Cycle of the UPR: Organisations Push for More and *Better* Recommendations on SOGIESC Issues. 47
By Diana Carolina Prado Mosquera.

UN Treaty Bodies: SOGIESC in the UN Treaty Bodies' Individual Cases: Analysis of Four Decades of Jurisprudence. 50
By Kseniya Kirichenko.

International Labour Organisation: Progress Towards Ending Discrimination Based on SOGI in the World of Work. 56
By Gurchaten Sandhu.

UNESCO: UNESCO and the 2030 Agenda for Education Inclusive of Young LGBTI People. 58
By the UNESCO Team.

REGIONAL HUMAN RIGHTS BODIES

Inter-American Court of Human Rights: Advisory Opinion No. 24: A Milestone in the Quest for Equality in the Americas. 63
By Lucía Belén Araque.

Inter-American Commission on Human Rights: The protection of the Rights of LGBTI People by the Inter-American Commission on Human Rights. 66
By Luiza Drummond Veado.

Organisation of American States: The Impact of the LGBTTTI Coalition of Latin America and the Caribbean at the OAS. 68
By Marcelo Ernesto Ferreyra.

Council of Europe: SOGIESC in the Council of Europe. 71
By Sarah Burton.

EU: A brief overview of the latest decisions by the Court of Justice of the European Union on SOGI issues. 76
By Constantin Cojocariu.

European International Law: European Law Developments on SOGIE. 78
By Arpi Avetisyan.

3. GLOBAL PERSPECTIVES

Africa: Courage and Resilience amidst Oppression.

Mechanisms of adaptation and resistance to repression in North Africa. 87
By Naoufal Bouzid and Khadija Rouggany.

A brief overview of East Africa. 88
By Eric Guitari.

The Situation of the LGBT Community in West Africa. 89
By Ababacar Sadikh Ndoye and Emma Onekekou.

An Overview of Some Central African countries. 92
By Julie Makuala Di Baku and Jean Paul Enama.

Small Victories Add Up in Southern Africa. 93
The author wishes to remain anonymous.

Recent SOGI developments in Angola and an overview on other African Lusophone Countries. 97
By Rui Garrido.

Latin America and the Caribbean: Before the Challenge of a New Time. 103
Coordinated by Luz Elena Aranda Arroyo, Darío Arias and Pedro Paradiso Sottile.

Advances in Equality, Setbacks to Overcome: LGBTI+ agenda in the Southern Cone. 104
By Alba Rueda.

"Boys Wear Blue and Girls Wear Pink": The LGBTI Agenda in the Face of an Extreme Right-Wing Offensive in Brazil. 106
By Bruna Andrade Ireneu.

The Andean Region, a Territory in Alert Marked by its Political Uncertainty and the Advance of Anti-Rights Groups. 107
By David Aruquipa Perez.

Homophobia in Mesoamerica. 109
By Gloria Careaga Perez.

The Situation in the Spanish-Speaking and French-Speaking Caribbean. 111
By Darío Arias, Manuel Vázquez Seijido and Francisco Rodríguez Cruz.

A Slow, but Significant Journey – Recent Developments in the Caribbean Region. 112
By Westmin R.A. James and Luciën D. Govaard.

North America

The Fight for Rights in North America: Progress and Pushback in the Shadow of the Trump Administration. 117
By David J. Godfrey and Kimahli Powell.

Asia: Lights and Shadows in a Vast Region. 127
Introduction by Daryl Yang.
A mixed report card for South East Asia. 127
By Lloyd Nicholas Vergaraand Zach ZhenHe Tan.
Challenges and Opportunities in South Korea, Taiwan, Hong Kong, and Japan 129
By Minwoo Jung.
The People's Republic of China, Macao and Mongolia. 131
By Ripley Wang.
Current State of the Law on SOGIE in Central Asia. 134
By Zhanar Sekerbayeva and Syinat Sultanalieva.
Stories of Triumph and Resilience from South Asia. 136
By Shakhawat Hossain Rajeeb.
In the Persian Gulf, Four States Still Impose the Death Penalty. 138
By Nazeeha Saeed.
LGBTI Activists Fight Denial and Erasure in the Middle East. 139
By Anonymous.
Inside the Middle Eastern Closet. 141
By Samar Shalhoub.
Decriminalising the Right to Love: *Navtej Singh Johar v. Union of India*. 142
By Arvind Narrain.

Europe

Europe – Increased Visibility, Populist Backlash and Multiple Divisions. 149
By Manon Beury and Yury Yoursky.
Banishing devils - Chechen authorities against laws of life? 155
By Ekaterina Petrova.

Oceania

Ebb and Flow: Victories and Resistance in Oceania. 161
By ILGA Oceania.

4. GLOBAL OVERVIEW

Criminalisation and Restriction

Global Trends on the Decriminalisation of Consensual Same-Sex Sexual Acts (1969 - 2019) 175
By Daryl Yang.
Consensual Same-Sex Sexual Acts: Legal 179
Consensual Same-Sex Sexual Acts: Illegal 197
Legal Barriers to Freedom of Expression on SOGIESC Issues 203
The Censorship "Propaganda" Legislation in Russia 213
By Alexander Kondakov.
Legal Barriers to the Registration or Operation of Sexual Orientation-Related CSOs 217

Protection

Constitutional Protection against Discrimination based on Sexual Orientation 231

Broad Protections Against Discrimination Based on Sexual Orientation 235
Protection Against Discrimination Based on Sexual Orientation in Employment 245
Criminal Liability for Offenses Committed on the Basis of Sexual Orientation 257
Prohibition of Incitement to Hatred, Violence or Discrimination based on Sexual Orientation 263
Bans against "Conversion Therapy" 269

Recognition

Same-Sex Marriage 277
Partnership Recognition for Same-Sex Couples 283
Joint Adoption by Same-Sex Couples 289
Second Parent Adoption by Same-Sex Couples 295

5. CRIMINALISING STATES UPDATES

Africa

Algeria 305
Botswana 307
Burundi 310
Cameroon 312
Local Perspective by Joachim Ntetmen. 314
Chad 316
Comoros 318
Eritrea 319
Eswatini 321
Ethiopia 323
Gambia 325
Ghana 328
Guinea 332
Kenya 334
Liberia 338
Libya 341
Malawi 343
Mauritania 347
Mauritius 349
Morocco 352
Namibia 355
Nigeria 358
Senegal 363
Sierra Leone 365
Somalia 367
South Sudan 369
Sudan 371
Tanzania 373
Togo 378
Tunisia 380
Uganda 383
Zambia 388
Zimbabwe 391
Local Perspective by Audrey Chacha. 393

The Caribbean

Antigua and Barbuda 397
Barbados 400
Local Perspective by Ro-Ann Mohammed. 402
Dominica 404
Grenada 407
Guyana 409
Jamaica 413
Saint Kitts and Nevis 418
Saint Lucia 420
Saint Vincent and the Grenadines 423

Asia

Afghanistan 429
Bangladesh 432
Bhutan 435
Brunei 437
Iran 439
Kuwait 444
Lebanon 447
Malaysia 450
Maldives 454
Myanmar 457
Oman 459
Pakistan 461
Qatar 465
Saudi Arabia 467
Singapore 469
Sri Lanka 472
Syria 475
Turkmenistan 477
United Arab Emirates 479
Uzbekistan 482
Local Perspective by anonymous activist. 484
Yemen 485

Asia: Non-UN Member States and Subnational Entities

Certain provinces in Indonesia 489
Palestine (Gaza) 493

Oceania

Kiribati 497
Local Perspective by Tabeio Tamton. 498
Papua New Guinea 499
Samoa 501
Solomon Islands 504
Tonga 506
Tuvalu 509

Oceania: Non-UN Member States

Cook Islands (New Zealand) 513

DE FACTO CRIMINALISATION

Egypt 517
Local Perspective by anonymous group. 520
Iraq 523

6. The World at a Glance (overview chart) 527

ILGA Co-Secretaries General' Foreword

By Ruth Baldacchino[1] and Helen Kennedy.[2]

As we celebrate ILGA's 40th anniversary, we are proud to launch the latest edition of the *State-Sponsored Homophobia* report to continue providing updates of this unique advocacy tool to member organisations and allies.

In the last few years, each edition of this report has sought to improve the quality and the breadth of the data included and this new edition is definitely no exception. Each section of the report has grown considerably, both in scope and in depth, as has the number of contributors coming from all ILGA regions whose voice adds another dimension to this world-size compendium.

Besides the analysis of legislation in force around the world and the human rights situation in each criminalising UN Member State, since 2012 the report has featured essays written by scholars and activists on the socio-legal situation in different regions around the world (Global Perspectives). This year, more than 30 voices paint the bigger picture of the progress and challenges encountered in the last two years by our communities in all ILGA regions.

As more international courts, bodies and agencies are becoming involved in establishing human rights standards on issues related to sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC), it is increasingly difficult to keep up with all of their decisions, cases, and materials. Additionally, the intricacies of legal terminology oftentimes become a barrier to many who are not familiar with the way in which these bodies write, interpret and present their arguments. Aware of these challenges, ILGA World has decided to incorporate a whole new section on International Human Rights Law, written in a more accessible language. This chapter will become an invaluable roadmap to all the legal developments taking place at the multiple fora in which SOGIESC issues are being discussed.

The volume of information in this report is also higher than the previous editions as it covers the developments in the last *two* years (2017 and 2018). The report has been published annually since 2006 and not publishing a 2018 edition has generated increased levels of expectation among activists, scholars and even State officials. We are aware that many have been waiting for this edition and we are confident that they will not be disappointed (and may even be compensated for the long wait).

We are also aware that this report has become a prominent source of credible information for courts of law, governmental agencies and other bodies at local, national and international levels. In 2018, the Supreme Court of India cited this report in its momentous decision that decriminalised consensual same-sex sexual acts and since the launch of the latest edition of the report in 2017, more than 4,500 media outlets have reported or cited it, as well as many hundreds of academic citations. Moreover, since 2015 the EU Asylum Support Office (EASO) includes *State-Sponsored Homophobia* and its maps among the key sources to conduct Country of Origin Information (COI) research to support asylum claims.

This level of reliance on our work comes with a great responsibility and leads us to put more efforts and resources into producing ever deeper and reliable data.

1 Ruth Baldacchino has extensive experience in international LGBTIQ activism and research. Their human rights work started with the Malta LGBTIQ Rights Movement, where Ruth served on the Executive Committee for several years. Ruth has served on a number of boards in the past years including IGLYO, ILGA World and ILGA-Europe. Ruth is Senior Program Officer of the Intersex Human Rights Fund at the Astraea Lesbian Foundation for Justice. Prior to joining Astraea, they worked at the Maltese Ministry for Civil Liberties in the areas of human rights and integration, where they were an active part of the process that led to the passing of the Gender Identity, Gender Expression and Sex Characteristics Act.

2 Helen Kennedy became Egale's Executive Director in 2007. She joined the organization with 22 years of experience in politics both as an elected city councillor and a political staffer. She is a founding member of Canadians for Equal Marriage, widely regarded as the most influential public policy lobbying campaign in Canadian history – which ultimately resulted in Canada being one of the first countries in the world to legalize same-sex marriage. Helen's work includes the Climate Survey on Homophobia and Transphobia in Canadian Schools, the first national survey of its kind in Canada, and provides critical findings on bullying to schools, educators and governments.

After reviewing this latest edition, it has become apparent that the report has grown out of its title, as it progressively leaves behind a focus exclusively centered around issues of homophobia and sexual orientation, and starts covering broader issues related to gender identity, gender expression and sex characteristics. In this regard, this edition could well be defined as a *transitional* one, reflective of ILGA Word's ongoing discussions on how to rethink and streamline its research. These discussions are continuing as this edition is released to the public and is concomitant of the discussions on the organisation's strategic plan for the next 5 years that will provide the framework for future research initiatives.

Our thanks go to all those who worked on this report, ILGA staff members and external contributors alike, and particularly to all ILGA members whose knowledge continues to sustain this report.

Author's Preface

By Lucas Ramón Mendos.[1]

It's been two years since we published our last edition, so there are quite a few things to catch up on!

A roadmap for this edition

- *If you are reading the PDF version of this report, note that each section has been "bookmarked" so that the content can be easily accessed. Open the bookmarks tab to find a clickable tree with all the sections and pieces within each of them.*

As anticipated by our Co-Secretaries General, this edition contains two years' worth of information, covering events from March 2017 to December 2018. Therefore, the amount of information that had to be processed was significantly higher than in previous editions of the report. Moreover, a few new sections were added. This has led to a considerable increase in the number of pages of the report, so a clear roadmap to navigate this edition appears to be necessary.

Section 1: Introduction

Section 1 contains the main introductory essay written by **Cynthia Rothschild**. In her piece, Cynthia gives us an overview of the major events related to our quest for equality that took place between March 2017 and December 2018 in almost every corner of the world. Cynthia does an exquisite job of painting a big picture for our readers to appreciate what is going on, both in terms of progress and backtracking, and she shares her views on key issues related to global advocacy strategies, challenges and opportunities ahead. In this same section, **Elena Brodeală** and **Vlad Levente Viski** invite us to think about the implications of putting our rights to a vote and help us understand why there are several reasons for concern when such proposals arise. As we note in the "Criminalisation" section of the report, several countries have been considering launching referendums, so this piece may come in handy for advocates who may need to work on the issue.

Section 2: International Human Rights Law

This is the newest addition to the report. In this chapter, scholars and activists brief us on the current state of SOGIESC-related human rights standards set by international courts, bodies and agencies. Well aware of the complexities and barriers that legalese may pose to all of us who are not familiar with the language used by courts or legal bodies, contributors have sought to explain developments in plain language, making international law less cryptic and more accessible to all.

We have the honour of having two signatories of the *Additional Yogyakarta Principles* (YP+10), **Mauro Cabral Grinspan** and **Julia Ehrt**, explain this invaluable contribution to SOGIESC International Human Rights Law, an instrument that crystallises much of the work and progress made since 2007 in this field.

One of the major breakthroughs of SOGIESC advocacy at the UN has been the 2016 appointment of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. **Rafael Carrano Lelis** and **Zhan Chiam** were able to capture all the work that the IE has carried out so far and share their overall appreciation of the progress made thus far, anticipating the upcoming vote for the renewal of the mandate.

Diana Carolina Prado Mosquera offers us a privileged perspective of how the third cycle of the UPR is unfolding. In fact, these developments and the extensive opportunities offered by the UPR mechanism are present throughout the

[1] Lucas Ramón Mendos is ILGA World's Senior Research Officer. He is a lawyer, lecturer and researcher, specialised in international human rights law and sexual and gender diversity issues. He earned his LL.B. degree with a focus on international law from the University of Buenos Aires (UBA), Argentina, and his LL.M. degree on Sexuality and the Law from the University of California in Los Angeles (UCLA). He has worked as an attorney with the LGBTI Rapporteurship of Inter-American Commission on Human Rights (OAS) and the Williams Institute International Program. He has served as a defence attorney for asylum seekers with the Office of the Defender General and as an adviser on SOGIESC issues to the Human Rights Secretariat of the Province of Buenos Aires (Argentina). He has also consulted for LGBTI organisations, including ILGA and RFSL. He was the co-author of ILGA's 2017 *State-Sponsored Homophobia* report.

"Criminalisation" section of the report, in each of the entries for every criminalising State.

The jurisprudence of UN Treaty Bodies is among the least explored UN mechanism by SOGIESC advocates. In this edition, **Kseniya Kirichenko** captures forty years of Treaty Body Jurisprudence to give us a fine overview of what the collective record of individual cases looks like to date and invites us to think of how this mechanism could be better exploited.

UN Agencies are increasingly becoming active players on SOGIESC issues. Although not all of them could be captured, this chapter has specific essays on the specific work carried out by the International Labour Organisation and UNESCO. **Gurchaten Sandhu** and **the UNESCO team**, respectively, will brief us on the important work that is being carried out by each of these agencies.

At the regional level, Europe and the Americas have seen important developments.[2] While **Lucía Belen Araque** walks us through the momentous Advisory Opinion of the Inter-American Court of Human Rights on legal gender recognition and same-sex unions, **Luiza Drummond Veado** will help us appreciate the work carried out by the Inter-American Commission on Human Rights, especially through its Rapporteurship on the Rights of LGBTI people. Additionally, **Marcelo Ferreyra** offers us a valuable recap of the advocacy efforts that are being carried out before the political organs of the Organisation of American States (OAS).

On the opposite side of the Atlantic, the vast work on SOGIESC issues carried out by the many bodies of the European Council (including the Parliamentary Assembly, the Commissioner for Human Rights, the European Commission against Racism and Intolerance, the Committee for the Prevention of Torture and the intergovernmental sector's SOGI Unit) have been captured meticulously by **Sarah Burton**. In addition, **Constantin Cojocariu** summarises the main decisions issues by the European Court of Justice on SOGI issues. Last, but not least, **Arpi Avetisyan** invites to a comparative analysis of the decisions issued by the European Court of Human Rights (ECtHR), the European Committee on Social Rights (ECSR) and the European Court of Justice (CJEU).

Section 3: Global Perspectives

The Global Perspective section offers our readers the opportunity to become acquainted with the main events and realities our communities are going through in every ILGA Region. In this edition, numerous scholars and activists add their voice to reflect the situation in their regions.

The big picture of what is going in each corner of the African continent has been collectively painted by eight activists and scholars: **Naoufal Bouzid**, **Khadija Rouggany**, **Eric Guitari**, **Ababacar Sadikh Ndoye**, **Emma Onekekou**, **Julie Makuala Di Baku**, **Jean Paul Enama**, and **Rui Garrido**.

ILGA LAC has very kindly assisted ILGA World in the coordination of the production of their Global Perspective section. The author's gratitude goes to **Luz Elena Aranda**, **Darío Arias** and **Pedro Paradiso Sottile** for their assistance. In fact, their collaboration makes it possible for us to learn about what is going on in Latin America and the Caribbean from a pallet of six different voices which include **Alba Rueda**, **Bruna Andrade Ireneu**, **David Aruquipa Perez**, **Gloria Careaga Pérez**, **Manuel Vázquez Seijido** and **Francisco Rodríguez Cruz**. Additionally, **Westmin R. A. James** and **Luciën D. Govaard** make their contributions for the English-Speaking Caribbean and elaborate on the legal peculiarities that lie within that sub-region.

The complexities of an effervescent region, as it is the case of North America, are explored and explained by **David J. Godfrey** and **Kimahli Powell**. The attempts of the Trump administration to roll back protections achieved by our communities in the USA, as well as their effects, both domestically and globally, are tracked and analysed in depth.

Capturing what is going on in a region as vast as Asia can be a huge challenge. To this aim, the following activists and scholars have set out to write on the lived realities of our communities from the Middle East to Japan and from Mongolia to Indonesia: **Lloyd Nicholas Vergara**, **Zach ZhenHe Tan**, **Minwoo Jung**, **Ripley Wang**, **Zhanar Sekerbayeva**, **Syinat Sultanalieva**, **Shakhawat Hossain Rajeeb**, **Nazeeha Saeed**, **Samar Shalhoub** and **Daryl Yang**. Additionally, **Arvind Narrain** will gently walk us through the decision of the Indian Supreme Court that decriminalised consensual same-sex sexual acts in Earth's largest democracy.

Manon Beury and **Yury Yoursky** are our hosts in Europe and help us understand the varying realities in a region marked by the contrasts of cutting-edge progress and worrysome regression.

Last but definitely not least, ILGA Oceania assisted ILGA World in producing the Global Perspective on that ILGA Region. The author's gratitude goes to the regional board members.

All in all, the contributions in this section provides a unique overview of where the world is at in SOGIESC issues.

[2] **Note**: for reasons that lie beyond ILGA World's control, the essay on the SOGIESC legal developments within the African Union could not be produced in time for the launch of this report. We expect to be able to add the essay on a future update of this edition.

Section 4: Global Overview

The Global Overview section was first included in this report in its 9th edition, authored by Lucas Paoli Itaborahy and Jingshu Zhu. In this section, the report covers the laws currently in force in all 193 UN Member States (and other jurisdictions) regarding sexual orientation.

The report covers 14 legislation categories classified into 3 major groups: (1) Criminalisation and restriction of rights; (2) Protection; and (3) Recognition.

Under the first group, we track the legality of consensual same-sex sexual acts. An interesting introductory piece on the global trends on the decriminalisation of consensual same-sex sexual acts since 1969, written by **Daryl Yang,** will give our readers a full perspective the progress achieved thus far in terms of decriminalisation since the Stonewall riots took place.

Legality of consensual same-sex sexual acts is broken down into two major categories: UN Member States that do not criminalise such acts and those that do. The latter category includes all the States in which laws criminalise same-sex sexual intercourse or other kind of same-sex sexual acts (usually captured under vague terms such as "indecency" or "immoral acts"). UN Member States with laws restricting the rights to freedom of expression on SOGI issues and freedom of association with regard to the registration or operation of sexual orientation related (SOR) civil society organisations are also included in this group.

In the protection group, the report lists countries under six categories related to protection from discrimination at different levels, criminal liability for offences committed on the basis of sexual orientation, prohibition of incitement to hatred, discrimination or violence based on sexual orientation, and bans on "conversion therapies".

Finally, in the recognition group, we list countries under four categories: same-sex sex marriage, partnership recognition for same-sex couples, joint adoption by same-sex couples and second parent adoption by same-sex couples.

Section 5: Criminalising States Updates

In this section we analyse the provisions in force and we explore the human rights situation in each criminalising State (currently 70 in total) with a special focus on the events that took place since our last edition. In this report, we particularly cover events between March 2017 and December 2018.

For the first time, in this edition we systematically include information on statements by pubic officials on SOGI-related issues, existing legal challenges before local courts, the work of the National Human Rights Institution on SOGIESC issues (where applicable) and information on the UN voting record of each State. In many cases, this information helps understand local realities and how local officials perceive SOGIESC issues. In many cases, this complementary information may provide an indication on the likelihood that authorities will effectively protect LGBTI people at risk.

Additionally, we systematically track the State's engagement with SOGIESC issues at the UN Universal Periodic Review (UPR) and other relevant instances of international and regional supervision, including UN Treaty Bodies and Special Procedures, as well as other regional bodies where applicable.

Main Findings of this Edition

As of March 2019, there are **70 UN Member States** (35%) that criminalise consensual same-sex sexual acts: **68** of them have *laws* that explicitly criminalise consensual same-sex sexual acts and **2** more criminalise such acts *de facto*.[3] In addition, other jurisdictions which are not UN Member States also criminalise such acts (Gaza, the Cook Islands and certain provinces in Indonesia).

Progress (and backtracking)

Since the last edition of this report, Angola, Trinidad & Tobago and India repealed such laws. However, Chad has troublingly criminalised such acts in 2017.

Of the 70 UN States, 26 (37%) specifically criminalise only such acts between men. The rest of the 44 criminalising UN States criminalise consensual same-sex sexual acts among all genders.

Criminal Penalties

Six UN Member States impose the death penalty on consensual same-sex sexual acts, with three in Asia

[3] "De facto" means that even though there are no *explicit* provisions criminalising consensual same-sex sexual acts in force, other legal provisions are used as the legal basis to prosecute and convict people for such acts.

(Iran, Saudi Arabia and Yemen) and three in Africa (Nigeria, Sudan and Somalia). In addition, the death penalty is a possible punishment in five UN Member States: Mauritania, United Arab Emirates, Qatar, Pakistan and Afghanistan. Though Iraq has been removed from this list following the elimination of the Islamic State (ISIL/ISIS), it remains as a *de facto* criminalising country due to reports of State prosecution using laws on public indecency, prostitution or others.

31 UN Member States (44%) impose up to eight years' imprisonment while the remaining 26 Member States (37%) impose even harsher penalties: between 10 and life imprisonment.

Legal barriers that restrict the freedom of expression and association

The data presented in this edition shows that *at least* **32 UN Member States** (17%) have introduced or interpreted provisions to restrict the freedom of expression in relation to SOGI issues. This includes laws and regulations that prohibit media or web content as well as propaganda laws that prohibit the promotion of "homosexuality" or "non-traditional" sexual relations.

Additionally, **41 UN Member States** (21%) have laws that restrict the possibilities of registering or running NGOs that work on sexual orientation issues. The justification for these restrictions is usually on the basis that these organisations' activities are illegal, immoral or against public interest.

These two types of laws, frequently found in tandem, pose serious challenges to activists and human rights defenders on the ground.

Protection from discrimination

In terms of laws that protect people from discrimination based on sexual orientation, unchanged from the 2017 edition, there are **9 UN Member States** (5%) that constitutionally prohibit discrimination on the ground of sexual orientation.

In addition, a total of **73 Member States** (38%) have laws prohibiting employment discrimination on the ground of sexual orientation. Of these 73 Member States, **52** (27%) have broad legal protections (usually applicable to goods and services, health and education) on the basis of sexual orientation as well.

39 UN Member States (20%) have enacted laws that punish acts of incitement to hatred, discrimination or violence based on sexual orientation while **42 UN Member States** (22%) impose enhanced criminal penalties for crimes motivated by hate towards the victim's sexual orientation.

The number of UN Member States that have prohibited "conversion therapy" remains at three (2%) though considerable progress has been made at the subnational level, with a growing number of local legislatures in the United States, Spain and Canada having enacted such laws over the past two years.

Recognition of same-sex relationships

Since the 2017 edition of this report, four new UN Member States now also legally recognise same-sex marriage: Australia, Austria, Germany and Malta. This brings the total number to 26 UN Member States (13%). Most of these UN Member States are in Europe (62%) and North America (7%), with a small number located in Latin America and the Caribbean (19%) and Oceania (17%). South Africa remains the only UN Member State in Africa to recognise same-sex marriage.

27 UN Member States (14%) also legally recognise same-sex partnerships. 30 UN Member States (16%) provide for second parent adoption while 27 (14%) permit joint adoption.

Existing legal challenges

In this edition we were able to track almost 30 existing legal challenges currently litigated before local courts in more than 17 criminalising countries, including in Botswana, Gambia, Grenada, Guyana (concluded), Indonesia, Jamaica, Kenya, Lebanon, Malawi, Malaysia, Namibia, Nigeria, Singapore, Tunisia, the United Arab Emirates, Uganda and Zimbabwe. In these cases, local advocates and activists challenge various laws and regulations on consensual same-sex sexual acts, NGO registration, freedom of expression on SOGI issues, legal gender recognition, forced anal examinations, among others.

This list does not claim to be exhaustive. It is just an enumeration of several prominent cases on which we may be able to provide updates in future editions.

Authorship

This 13th edition of the report was authored by Lucas Ramón Mendos; with Daryl Yang and Lucía Belén Araque, as main research assistants.

This edition evolved from the original *State-Sponsored Homophobia* report which was researched and compiled by Daniel Ottosson from 2006 until 2010; by Eddie Bruce-Jones and Lucas Paoli Itaborahy in 2011; by Lucas Paoli Itaborahy in 2012; by Lucas Paoli Itaborahy and Jingshu Zhu in 2013 & 2014 by Aengus Carroll and Lucas Paoli Itaborahy in 2015; by Aengus Carroll in 2016 and by Aengus Carroll and Lucas Ramón Mendos in 2017.

List of Contributors

Please see the respective essays for the contributors' full biographies.

Ababacar Sadikh Ndoye. Blogger and human rights activist in Senegal.

Aengus Carroll. Consultant in human rights, and previous (co)author of this publication.

Alba Rueda. Trans activist, member of Mujeres Trans Argentina and researcher with the Department of Gender and Communications.

Arpi Avetisyan. Senior Litigation Officer at ILGA-Europe.

Arvind Narrain. Arvind is the Director of Research and Practice at ARC International.

Bruna Andrade Ireneu. Bruna is president of the Associação Brasileira de Estudos da Homocultura, (ABEH).

Cynthia Rothschild. Cynthia is a human rights, feminist and sexual rights activist.

Constantin Cojocariu. Constantin is a London-based Romanian human rights lawyer and consultant.

Darío Arias. Co-Secretary General of ILGALAC.

David Aruquipa Perez. Co-founder of the Political Action Commission of Colectivo TLGB de Bolivia.

David J. Godfrey. MA in International Affairs; works in policy analysis with a focus on LGBT rights in labor law.

Kimahli Powell. Current Executive Director of Rainbow Railroad.

Daryl Yang. ILGA World's Legal Research Intern and one of the Main Research Assistants of this edition.

Diana Carolina Prado Mosquera. ILGA World's Senior Officer on UN Advocacy (UPR, HRC and SDGs).

Elena Brodeală. PhD Researcher at the European University Institute and Robina fellow of Yale Law School at the European Court of Human Rights.

Emma Onekekou. Blogger and human rights activist in Ivory Coast and Burkina Faso.

Ekaterina Petrova. Feminist and lesbian activist from Saint-Petersburg, Russia.

Eric Guitari. PhD Candidate (SJD) at Harvard Law School. Former Executive Director of the National Gay and Lesbian Human Rights Commission-Kenya (NGLHRC).

Francisco Rodríguez Cruz. Journalist and gay activist of the Humanity for Cuban Diversity Network.

Gloria Careaga Perez. Psychologist and professor at UNAM (Mexico). Coordinator of Fundación Arcoiris.

Gurchaten Sandhu. Programme Support Officer at the International Labour Organisation (ILO).

Helen Kennedy. ILGA World's Co-Secretary General and Egale's Executive Director.

Jean Paul Enama. Executive Director of Humanity First Cameroon.

Julia Ehrt. Director of Programs at ILGA World.

Julie Makuala Di Baku. Executive Director of Oasis, a Congolese association for LBT women.

Khadija Rouggany.

Kseniya Kirichenko. Senior Officer, Women and UN Advocacy at ILGA World.

Lloyd Nicholas Vergara. Co-Chair of the International Bar Association's LGBTI Law Committee (Philippines).

Lucía Belén Araque. Argentinean human rights lawyer and one of the Main Research Assistants of this edition.

Luciën D. Govaard. Chair of the Caribbean forum for Liberation and Acceptance of Genders and Sexualities.

Luiza Drummond Veado. LLM from the University of Essex, human rights lawyer and consultant.

Luz Elena Aranda Arroyo. Co-Secretary General of ILGALAC.

Manon Beury. Research and Teaching Assistant in public international law at Leiden University.

Manuel Vázquez Seijido. Deputy Director of CENESEX and member of the regional board of ILGALAC.

Marcelo Ernesto Ferreyra. Feminist activist defender of Sexual Rights and Reproductive Rights since 1987.

Minwoo Jung. PhD candidate in Sociology, University of Southern California, U.S.

Naoufal Bouzid. Executive Director of Equality Morocco, an LGBTIQ+ organization in Morocco.

Nazeeha Saeed. Bahraini journalist with thirteen years of experience in international media, press, radio and television.

Pedro Paradiso Sottile. Executive Director of ILGALAC. Secretary of the Argentine Homosexual Community (CHA).

Rafael Carrano Lelis. Lawyer and researcher focused on LGBTI+ issues. Manager of TODXS Núcleo.

Ripley Wang.

Rui Garrido. PhD candidate in African Studies at ISCTE-IUL, Portugal.

Ruth Baldacchino. ILGA World Co-Secretary General and the Intersex Fund's Program Officer at Astraea Foundation.

Samar Shalhoub.

Sarah Burton. Secretary to the Committee on Equality and Non-Discrimination of the Parliamentary Assembly of the Council of Europe.

Shakhawat Hossain Rajeeb. Gay rights activist from Bangladesh, where he led Boys of Bangladesh, for 13 years.

Syinat Sultanalieva. Queer-feminist activist and researcher from Kyrgyzstan. PhD candidate at the University of Tsukuba, Japan.

Vlad Levente Viski. President of MozaiQ, an LGBTI rights organization in Romania.

Westmin R.A. James. Lecturer in Law and Deputy Dean at the University of the West Indies Cave Hill Campus.

Yury Yoursky. Human Rights and Legal Issues Officer at the Eurasian Coalition on Male Health.

Zach ZhenHe Tan. JD candidate, Harvard Law School.

Zhan Chiam. ILGA World's Gender Identity and Gender Expression Programme Coordinator.

Zhanar Sekerbayeva. Co-founder of Kazakhstan Feminist Initiative "Feminita".

Acknowledgements

The production of this report was possible thanks to the support, contribution and assistance provided by numerous people.

The author would like to thank **Julia Ehrt** and **André du Plessis** for their constant support and assistance.

Aengus Carroll deserves a very special mention. The author is extremely grateful for his permanent support and guidance along the process of producing this report. His generosity, his passion and his humility were a constant source of inspiration.

The author wishes to very specially thank **Santiago Ramayo** for his unconditional support, care and assistance.

Special thanks

In October and November 2018, ILGA World published a call for feedback and contributions for this edition of the report. We warmly thank all of those who replied with comments, corrections, feedback and useful comments and information. Special thanks to:

- Aili Kala (Estonian LGBT Association);
- Diane Rodríguez (Asociación Silueta X Ecuador);
- Donny Reyes (Asociación LGTB ARCOIRIS Honduras);
- Elida Guerra (PROMSEX);
- Gabriel Galil (ILGA World);
- Gustavo Adolfo Pérez Rodríguez (Colombia Diversa);
- Joachim Ntetmen (Alternatives Cameroun);
- Nvard Margaryan (Pink Armenia);
- Quiteria Franco (Union Afirmativa Venezuela);
- Rex Wockner (USA).
- Rodolfo Vargas (Colectivo TLGB Bolivia);
- Yuri Guaiana;

We are also particularly grateful for the special assistance we received from:

- ILGA Regional Offices:
  - Darío Arias (ILGA LAC);
  - Kevin Haunui (IGA Oceania);
  - Lieu Anh Vu (ILGA Asia);
  - Luz Elena Aranda Arroyo (ILGA LAC);
  - Naoufal Bouzid (Pan Africa ILGA);
  - Pedro Paradiso Sottile (ILGA LAC);
  - Ymania Brown (ILGA Oceania);
- Anneke Meerkotter;
- Daniele Paletta;
- Diana Prado Mosquera;
- Dorjjantsan Ganbaatar;
- Francisco Roríguez Cruz;
- J. Andrew Baker;
- Kees Waldijk;
- Kseniya Kirichenko;
- Lucien Govaard;
- Mauro Cabral Grinspan;
- Nazeeha Saeed;
- Rafael Carrano Lelis;
- Ro-Ann Mohammed;
- Rui Garrido;
- Shakhawat Hossain Rajeeb;
- Stijn Deklerck;
- Syinat Sultanalieva;
- Tashwill Esterhuizen;
- The LGBT Centre (Mongolia);
- Wesmin James;
- Yuri Yoursky;
- Zhan Chiam;

INTRODUCTION

STATE-SPONSORED HOMOPHOBIA 2019



Denigration, Distraction and Detraction: Forging Ahead, Even in Crisis

By Cynthia Rothschild[1]

Since the publication of ILGA's last *State Sponsored Homophobia* (SSH) report in 2017, there have been great successes within our movements, as has been the norm over the last few years. Whether we call ourselves "lesbian", "trans", "intersex", "bi" or "gay" (or "gender non-conforming" or simply "allies" or "social justice advocates", for that matter), we can point to any number of victories in our local and global organising.[2]

These wins continue to come at all levels, of course with local specificity and without uniformity. In some places, national legislation shifts as States decriminalise sodomy. Fewer trans people are made to undergo forced divorce or sterilisation or other nonsensical interventions in order to change their legal gender. Public health authorities increasingly depathologise trans people in health classifications. Marriage in many places allows recognition of same sex couples. Same sex couples can sometimes adopt. Conversion therapy is under scrutiny as an unethical and illegal practice, as is the non-consensual surgical intervention used to ascribe gender or sex to intersex infants and young kids. And LGBTI organising remains vibrant from the local to the global—for instance, hardly a session of the United Nations Human Rights Council goes by now without a team of activists challenging governments about their stances on sexual orientation, gender identity and sex characteristics.

Situating our advocacy and our lives: the recent global context

Yet, the two years since the publication of ILGA's last SSH report have led many to conclude that these are challenging and draconian times all over the globe. The victories seem to be interspersed with abject attacks; determining whether there is a "backlash" as a result of cultural change or simply a continuation of the "hard times that have always been" may not matter. People in many marginalised groups have become and/or still are targets for physical, psychological and verbal abuse in both global North and South alike. Spikes in hate crimes and other violent acts have been noted in many areas, and harassment and threats abound in social media. People unfairly targeted because of their relationship to gender or sexuality—or their appearance, or their expressions of love or desire—are in broad company. Women (generally), immigrants, sex workers, trade workers and union members, journalists, Indigenous Peoples, those with disabilities, poor people and increasingly people who simply identify on the left of the political spectrum face an outpouring of unpoliced hatred.[3]

Governments across regions and—more precisely, the unethical individuals that often comprise them—seem focused on undoing social justice gains of the last decades. It is, indeed, hard to tell whether this is "backlash" against positive trends or just the confrontation of new depths of obstacles. The legal and cultural landscapes are onerous. The human rights system is under attack—in many places, underfunded and maligned. Immigrants and refugees on several continents, including some who might call themselves LGBTI, are denied the legal right to seek asylum. But they are also rounded up, caged, deported and sometimes abandoned at sea. Children are separated from parents, families are broken apart or not recognised legally. Funds are sought and utilised to build walls, to create border checkpoints, to buy missiles, to enact tests of defence systems as acts of intimidation. Voter suppression, too, maintains kleptocracy,

1 Cynthia Rothschild is a human rights, feminist and sexual rights activist. For over two decades she has been an advocate, a trainer / facilitator, and an author. She's worked with a million NGOs and occasionally with the UN Office of the High Commissioner for Human Rights and donors. Her most recent publications include "Sex at Dusk and the Mourning After: Sexuality Policy in the United States in the Years of Obama" and "Gendering Documentation: a Manual for and about Women Human Rights Defenders."

2 This essay will use several acronyms, including LGBTI (lesbian, gay, bisexual, trans and intersex) and SOGIESC (sexual orientation, gender identity and gender expression, and sex characteristics). It remains true that "LGBTI" is not a proper umbrella term for all regionally specific and rich names for gender non-conforming people around the world. In occasional instances the term LGBT is used without the I; that is done with intention and for accuracy in terms of the specific references.

3 Of course, there are important nuances within these categories also.

corruption, poverty, xenophobia, racism and white supremacy. And the strategically-used rhetoric of political and religious-fundamentalist officials remains misogynist, homophobic, transphobic and often just stunning in its offensiveness.

In the last few years, and certainly since the last ILGA SSH report was issued, commitments to multilateralism and global governance have come to seem quaint and antiquated. Each day newspapers and the websites that present real news feature stories about conservative populist movements and the failures of and attacks on "cooperation". Extreme nationalism and xenophobia, cultural and race supremacy and the "toxic masculinity" that has exploded (probably) everywhere are fuelling isolationist and self-righteous policies.

Brexit and the efforts by (parts of) the UK to wrest itself from the European Union have dominated European news since the 2016 public referendum. Some governments (and in particular, the United States) have pulled out from international human rights treaties and defence agreements. Right wing political discourse sometimes maligns the UN overall or regional agreements, including the North Atlantic Treaty Organisation (NATO), the International Criminal Court or the UN Human Rights Council. And governments have defunded, challenged the credibility of and otherwise undermined UN agencies and regional human rights systems in the period in question.

As an aside, it is important to note that despite the legal and regulatory protections some of the "institutions" or "systems" above provide, some people have had valid critiques of these systems for decades. None is or has been without bias. But overall, each has sought to serve a protective function of one form or another. Now, in the current difficult political climate, human rights defenders, including those who focus on sexual rights and gender, are increasingly organising not only to do our own social justice work, but also to strengthen these very institutions, organisations or alliances in the face of conservative political attacks against them. Our resources—already generally meagre—increasingly must go not only to SOGIESC-related organising but also to protecting civil society space all over. This is a shift that must be recognised by donors and others who support political engagement of activists.

This list of concerns above is both draconian and not exhaustive. There are a few additional current "social ills" that should be mentioned here to offer even more foundational context of the present climate, though. None of these began in the last years, but each has spiked. "Corporate capture" marks the devastating influence of an economic elite and vastly skewed global inequalities. Perpetual land appropriation of local and Indigenous communities, much of it driven by "big business" profit seeking and political interests, remains a constant threat. Activists and journalists are antagonised (and killed) with impunity and State involvement in a global clampdown on civil society organising and expression. Climate change threatens catastrophe in both hemispheres as science and evidence-based analyses (about the environment and also about public health) are obscured and denied. And we learn, almost on a daily level, about ways media in all regions is manipulated—and private data is sold—for electoral outcome while "truth" and "fact" are made to blur with "propaganda" and "fake news".[4]

Our resources—already generally meagre—increasingly must go not only to SOGIESC-related organising but also to protecting civil society space all over. This is a shift that must be recognised by donors and others who support political engagement of activists.

These concerns are both disparate and related. But together, and since the last SSH report, all shaped the world within which LGBTI and sexual rights activists formed our movements, priorities and alliances. All, in one way or another, had something to do with gender and sexuality (either overtly or subtly). Sometimes we are subjected to immediate violence and discrimination because of prejudices related to sexuality or gender. And sometimes we are targeted because we are simply engaged in being who we are in the rest of our lives, people with different histories who are of different races,

[4] The concerns are not bound by geographic borders. Consider this article in the Guardian UK from February 2019, which links Cambridge Analytica, Facebook and election "meddling" with Russia, Ukraine, the United States, Nigeria and Israeli intelligence.

castes, classes, and nationalities who actively think about, act and sometimes resist in the world around us. Our communities have lived under these conditions; we have been targeted for violations, we have organised as defenders of many rights, we have also sometimes been the people who discriminate against and judge others, including those within our own movements.[5]

All of these realities were manipulated and shaped by right wing and conservative interests—ultimately, many of which are the same interests that deny human rights overall, and specifically the rights of women, LGBTI and gender-non-conforming people.

These global forces have been, and remain, deeply daunting. Yet, sexual rights, women's rights and feminist activists—including those focused on SOGIESC—have remained focused and strategic in putting forth our legal, political and cultural agendas. And we have partnered across movements to do our own work, to support the work of other social justice agendas, and to fight against the scourges above.

The purpose of naming the details in the section above is straightforward: it is not possible to see SOGIESC concerns and activism related to gender and sexuality in a silo. Nor is it possible to fully understand our successes—whether they are legal or cultural—or the obstacles we face without naming these contexts. Our movements' interests intersect and are shaped by the external world and specific nuances of region and social location.

When we have a deeper understanding of the forces at play that restrict human rights and rights related to gender and sexuality we can not only engage in deeper strategising, but also savour and celebrate the breadth of what we overcome.

The following overview highlights some of the specific challenges activists who promote SOGIESC and sexual rights concerns have had to grapple with in the period under review, which is generally the latter part of 2017 and 2018. And, critically, this synopsis will elaborate upon some of the significant "wins" of that time and some of the areas requiring more attention—because despite the backlash against us and the power of conservative forces and the global right wing, our movements will continue to grow, succeed and make positive change.

Accentuate the positive

It is not possible to delineate each of the positive changes that have taken place since ILGA's last State-Sponsored Homophobia report. The shifts can sometimes be glacially slow, and they sometimes can come with remarkable speed. The following examples show patterns and trends—all of which rest on decades of mobilising and strategising by courageous individuals.

When we have a deeper understanding of the forces at play that restrict human rights and rights related to gender and sexuality we can not only engage in deeper strategising, but also savour and celebrate the breadth of what we overcome.

As this SSH compilation of data and analysis is developed, the ground we stand on shifts again. While these developments don't fit in the timeframe under review, they are too compelling not to mention: The High Court of Botswana is likely to issue its opinion on decriminalising homosexuality in March, 2019. In January of 2019, Angola revised its penal code, deleted language on "vices against nature" and in effect lifted sanctions against homosexuality. And Kenya may decriminalise homosexuality in coming months, as may Sri Lanka.

In terms of the main period of review:

- It is likely that the **striking of the anti-gay portions of Section 377 of the Indian penal code** is the most far reaching legal victory of 2018. Its importance will be felt by millions of people across continents, as activists and policy makers in other countries enduring the legacies of British colonial rule—and British colonial legal homophobia—will use this Supreme Court decision as a basis for their own legislative efforts to decriminalise adult consensual same sex sexual activity. Even just months after this court ruling, sodomy statutes

[5] The "internal" harms within our movements compound those of the external environment, and include tensions around race, gender, class and North-South dynamics.

(outlawing, for instance, "carnal intercourse against the order of nature") in a number of countries are being challenged -- with the repeal of 377 as part of the legal argumentation. The ramifications of the India 377 case stretch beyond the narrowest (but still foundationally critical) implications of people not being arrested because they're gay, or assumed to be. One legal activist who was involved in this struggle for decades notes that while it is too early to draw categorical opinions about the impact of the repeal, courts already are "affirming the legitimacy of queer relationships with heartening frequency - so far mainly in cases of queer women couples approaching the judiciary seeking injunctions from intrusion and coercion by relatives towards their relationships."[6]

- Less publicly heralded were the **decriminalisation of same sex sexual activity**[7] (to be more specific, anal sex and the "buggery law") **in Trinidad and Tobago, and the outlawing of SOGI-related hate crime in Mongolia**.
- **For the first time, the governments of the UK and Canada apologised for historic anti-gay laws and their aftermath. The Canadian government offered reparations to some survivors** (primarily civil servants and members of the military). Notably, the government set aside almost 90 million Canadian dollars for this process. The UK offered an apology for British colonial laws that variously outlawed "homosexuality" in Commonwealth countries.
- **The World Health Organisation (WHO) removed "gender incongruence" from its list of mental disorders** in the International Classification of Diseases (ICD), thereby validating the claims and activism of trans people demanding not to be labelled as ill. WHO now asserts that trans identity is a sexual health "condition" and "gender variant behaviour and preferences alone" are not a basis for diagnosing mental health. This change in the ICD will officially go into effect only in 2022, after what will likely be a confrontational battle at the World Health Assembly in 2019. Ultimately, this shift will challenge the pathologising of and stigma directed at trans people, and presumably reduce violence and discrimination.[8]
- **Ireland elected its first openly gay head of state** as the conservative leader Leo Varadkar became Taoiseach in June 2017. **In Costa Rica, voters elected a "pro-gay" party in their federal election**, and lifted a staunch feminist ally to the LGBT community to the position of Vice President.
- **Botswana opened the door for trans people to more easily change their official gender on identity documents. The Inter-American Court called for countries to establish simple and efficient procedures allowing for these gender changes.**
- **The Council of Europe issued a resolution protecting rights of intersex people in late 2017,** with a focus on rights of children to be free from medically-unnecessary surgical interventions. This resolution was the first from this European body to focus on intersex issues.
- **Conversion therapy (sometimes called "reparative therapy") continued to attract condemnation** from around the globe. In March of 2018, the European Parliament passed a resolution condemning the practice and urged member states to outlaw it. Brazil, Chile, Spain and Canada generated provincial level bans, and governments of New Zealand and Taiwan, among other states, outlawed at the national level. Several national psychiatric and mental health associations took stands against the practice.[9]

Same sex marriage remained a primary site of activism:

- Same sex marriage became legal in a number of countries in the period under review, including **Finland, Malta and Germany**. And in one instance of clear backlash, **same sex marriage became legal in Bermuda in 2017**, but was banned soon after, in 2018, then replaced by

6 Vivek Divan, in email, used with permission. See, also: "Kerala High Court Lets Lesbian Couple Live Together", *The Times of India*, 25 September 2018 and Ashok Kini, "Choices Of Sexual Preference Protected Under The Scheme Of Constitutional Morality: Calcutta HC", *LiveLaw.in*, 4 February 2019.

7 Generally, it is sex between men that is seen under the law as "same sex sexual activity". Sodomy statutes tend to focus on male sexual partners, and acts of anal sex.

8 Despite the constructive shift in language addressing gender identity in particular, some were quick to note that the ICD maintains pathologising language related to people who are intersex.

9 Although conversion therapy in this article obviously focuses on sexual orientation and gender identity, any reference to the practices ought to note what in 2018 became a target of global outrage: China's detention of and use of conversion therapy with possibly over a million Uighurs in anti-Muslim camps.

civil unions and then made legal again later in the year.

- **Taiwan's Supreme Court set the stage for that country to become the first in Asia to recognise same sex marriage by calling for existing laws to be amended within two years** (although there have been recent significant obstacles that may impede this process).
- **Australia** spent millions of dollars in a **public marriage referendum which saw a clear majority favouring legalising same sex marriage**; post vote, same sex marriage became legal in December of 2017.
- **Austria removed its same sex marriage ban**, which opened the door for legalisation in 2019.
- **An anti-same sex marriage referendum failed in Romania**.
- In another ground-breaking regional and binding ruling, **the Inter-American Court of Human Rights found that the right to marry should be extended to same-sex couples**. The Costa Rican case that moved through the Court led to the opinion in early 2018, yet the government of Costa Rica stirred controversy when it announced plans for an 18-month transition period to the new regulation.
- Also at the regional level, **the European Court of Justice ruled that Member States should recognise same sex marriages for residency purposes** when at least one partner is an EU citisen. The opinion rested on a case involving a Romanian national; soon after the ruling was announced, **Slovakia asserted it would recognise same sex marriages performed elsewhere.**
- Significantly, a bill was passed that **prohibited civil servants in South Africa from "opting out" of performing same sex marriage** ceremonies based on their perception of "conscience, religion and other beliefs". This is significant in light of the global trend toward allowing "religious freedom" exemptions in provision of health care and other services.
- **A new draft of the Cuban Constitution led to vibrant discussion about whether same sex marriage would be legalised**. Language referring to marriage being a union of "two people" rather than a "man and a woman" stirred pushback among conservatives; ultimately, there was no reference included to the subjects getting married, therefore, the door remains open to same sex marriage in the future.
- **Various churches and religious networks also continued the trend toward allowing both same sex marriage** and in some cases (such as the United Methodist Church) lesbian and gay clergy. Scotland, Brazil, and New Zealand were among the places where religious orders took "gay-friendly" stances.

And finally,

- **At the United Nations level, the gains remained steady**, with treaty body comments and Special Procedures (including rapporteurs, who are independent experts in a thematic area or in a country) consistently integrating SOGIESC and sexual rights concerns into their research and reporting. The Universal Periodic Review process at the Human Rights Council also provided an opportunity for activists to work with and / or challenge governments on related issues, including comprehensive sexuality education, provision of non-discriminatory health services and a range of economic and social rights.
- Some advances linked the legal with the cultural, as in when **Kenya temporarily lifted its ban on the film "Rafiki", which has lesbian content, to allow it to be eligible for Oscar consideration** as the Kenyan entry for "best foreign film." Although the film was seen by Kenya's national film censorship body as promoting "homosexuality", a court temporarily allowed the film to be screened. While there were likely nationalist interests in the lifting of the ban, the film played to crowded enthusiastic audiences.[10]

Noting the negative

Other essays in this SSH compilation will go into more depth about some of the specific challenges that appeared or became more entrenched since the last publication. Yet, a few stood out as particularly daunting or disappointing. These included:

- **Anti-gay crackdowns** took place, with subsequent arrests and torture (generally of men), in Chechnya, Cameroun and Tanzania. Each "round up" was cause for domestic but also international outcry.
- Chad's new penal code went into effect in 2017 and **criminalised male and female same-sex sexual activity**; the Democratic Republic of

[10] The film did not receive the nomination, but it did play at the Cannes film festival in France.

Congo and Cote D'Ivoire actively used penal code provisions on "public indecency" and "morality" to arrest and prosecute.

- In a widely-scrutinised federal election in Brazil, **homophobic rhetoric** helped catapult a right-wing candidate to the presidency. The effects of this evangelical victory will likely have deep impact in the region.
- Also in Brazil, Marielle Franco, a progressive Black feminist lesbian city councillor was assassinated in what has been taken by activists as a **politically-motivated killing**.
- In Israel, male same sex couples were **denied the right to adopt children through surrogacy** in an unusual legal blow to the LGBTI community.
- In a swing to the hard right, the United States **shifted its foreign and domestic policy** toward anti-SOGIESC positions, **appointed known homophobic, misogynist and transphobic people** to high level administrative posts to represent interests of conservative and religious right-wing NGOs, **denied civil rights protections** based on sexual orientation, and **created electoral wedge issues by suspending trans protections** in the US military and limiting legal protections regarding trans bathroom use.
- **Anti-propaganda laws** continued to present challenges in Russia and neighbouring countries. These efforts to "protect minors" continued to cut off information, limit counselling and place young people, as well as activists and mental health professionals, at risk.

Denigration, Distraction, Detraction

Exposing strategies, and identifying places needing our attention

It's hard to imagine a country in which attacks on feminist, sexual rights and LGBTI agendas did not take place in the last years. It's also hard to imagine a site where gender non-conforming people's bodies did not bear the brunt of brutal assaults. These manifested in many ways, including murder, torture, arbitrary arrest and rape. But other abuses were also evidenced in "administrative" attacks. These included office closures, freezing of bank accounts, denial of NGO registrations and travel bans. In these latter examples, generally government bodies or the police (or both) were responsible for the actions in question. In at least some of these examples, the motivating force behind the abuses was to elicit fear, to achieve a political outcome and / or also to project a national or cultural identity grounded in heteronormativity.

In some cases, government and religious authorities colluded not only to punish agendas or individual defenders, but to distract attention from other broader political issues such as corruption and unemployment.

As noted above, though, the violations against our communities are intrinsically linked to attacks on civil society organising overall, attacks on multilateralism, and attacks on the human rights system itself. The current political moment is a complicated one: economic interests and those of "national security" eclipse all other agendas. That is not new, in itself. But the linking of these interests with the clampdown on rights related to organising, including rights to assembly, political participation, information, speech and expression, to name but a few, makes for a daunting advocacy climate at local, national and global levels. Surveillance of defenders—both in physical terms and in social media—has become even more common, as have efforts to expose activists to risks and denigration. Add to this the fact that organising to challenge gender norms, to seek bodily autonomy and, ndeed, to bring down patriarchal (and related racist and colonial) structures is always seen as a threat to the fabric of the family, the State and society overall. We are a dangerous lot, it seems.

Organising to challenge gender norms, to seek bodily autonomy and, indeed, to bring down patriarchal (and related racist and colonial) structures is always seen as a threat to the fabric of the family, the State and society overall. We are a dangerous lot, it seems.

Challenges in defending human rights

These efforts to dismiss us and the human rights agendas we promote are strategic. We and our demands are used as chess pawns in a broader geo-political game. In fact, even when governments put forward SOGIESC-friendly policies, they sometimes do so with other motivations in mind. "Pinkwashing" continues to provide cover and allow impunity for governments' anti-civil society policies

in various human rights arenas. And, of course, too many authorities continue to create and promote an anti-LGBTI national heteronormative identity for political reasons.

Unfortunately, these strategies are effective: punish the activists for bringing a "radical" agenda; dismiss their concerns as irrelevant or immoral; use the fact of their legitimate participation as a sign of failure in governance systems; challenge their participation as a means to deter other efforts and undermine the very systems they are trying to change. Ultimately, these tactics allow governments to deflect accountability in *all* human rights areas.

Although there no doubt were other examples of failures at the regional and global levels in the period under review, these two situations that took place in 2018 stand out for marking blunt attacks on civil society in intergovernmental spaces. Both reveal the lengths to which governments will go to project an identity, to intimidate those who resist "falling into line" and to protect what they see as ownership of the space and the discourse in it.

In June of 2018, the United States pulled out of the UN Human Rights Council because, it claimed, it did not have the support it sought for efforts to "reform" the UN. Days later, the US' UN Ambassador sent a blistering letter to approximately 20 NGOs - many of which focused on sexual and reproductive rights and human rights, generally - asserting they had responsibility in the US' departure because they were blocking a US agenda for the UN. At least two of these groups had a SOGIESC focus.[11] Some had a legacy of promoting women's rights and access to safe abortion. This read to many as a thinly-veiled hostile attempt by the US to create cover for its own departure from this international human rights body.

Later in the year, the African Union's Executive Council led the African Commission on Human and Peoples' Rights to revoke the observer status of the Coalition of African Lesbians. In a throwback to a past era, the Executive Council of the AU implied that CAL promoted "un-African values" and therefore should not be allowed to continue its participation at African Commission meetings as an official civil society member. Despite CAL's longstanding history of strategic work at the Commission, the Commission's own work to further attention to violence and discrimination based on sexual orientation and gender identity/expression, and the Commission's independence as a regional governance body, pressure from the African Union (and the governments within it) proved too much.[12]

In both cases, governments penalised NGOs and their affiliated activists for exercising their rights to political participation, and certainly for having particular political agendas. These groups were used as scapegoats to demonstrate to other organisations that particular agendas and civil society participation in these spaces are at risk.

Other tactics have been employed to achieve the same repressive outcomes. Again, these are not new, but in the period of review were -- speaking euphemistically -- vibrant and omnipresent from local to global levels. Many of the strategies and tactics noted below are enacted by State and religious authorities. Health, education and other officials are also sometimes complicit, as the media can be, as well. In coming months and years, advocates and researchers will need to make deep investment in finding additional responses to these ploys and manipulations by those who oppose us.

- **Promotion of the "traditional family" and "traditional values".** These efforts are quite prominent and rely on creating a mythical and beleaguered "perfect" patriarchal, heteronormative, gendered past. These are sometimes seen as responses to advances by women's rights, sexual and reproductive rights and SOGIESC agendas.

For instance, the Human Rights Council and the UN Commission on the Status of Women provide annual playgrounds for those who promote these ahistoric ideas at the intergovernmental level. As governments negotiate language for resolutions and outcome documents, battle lines are drawn as to whether references to "families" (in the plural) will be allowed, or whether references must simply say not only "family" (in the singular), but be modified with the term "the", implying there is just one: a monolithic heteronormative and paternalistic model.

It's not just LGBT families who are denied recognition here; members of any family or kinship structure that falls outside the model of "the family" are rendered unworthy of rights protections. In this model, "the family" is mythically valorised as both the holder of rights and a site of safety; it is never a site of struggle, violence or discrimination, which all too often it is for those who defy gender roles or stereotypical gendered appearances.

In recent years, Russia (both the State and the Russian Orthodox Church) and the Holy See have

11 ILGA was one of the groups that received this letter.

12 See the related joint civil society statement here.

spearheaded some of these efforts at the global levels. They go to great lengths to stifle the truth that around the world, many forms of family exist.

Inherent to these arguments are the ideas that parents are always best suited to make decisions for their children, which denies both the evolving capacities of young people (particularly in relation to sexuality) and the fact that parents are sometimes those who cause harm. This argument also gives parents ultimate authority in overseeing their children's education and therefore the rights to deny sexuality education and information about contraception, abortion, homosexuality, trans identity, bodily autonomy and condom use.

- **Deployment of "Gender Ideology" rhetoric**. This is closely related to the notion of tradition and family as noted above. Often put forward by conservative religious authorities and right-wing NGOs, this has taken root largely in Latin America and Eastern Europe. The Vatican has played a strong role here. In short, anti-human rights, conservative and religious groups have developed a tactic that undermines gender-related rights struggles by naming them as "ideological". They argue that people who have a broad definition of gender beyond "sex" are using a dangerous "gender ideology". They see any deviation from the pre-determined definitions and roles of "man' and "woman" as threats. They use vitriolic rhetoric to allege plots and conspiracies among defenders of women's rights and rights related to sexuality; they claim that our rights agendas will destroy the family, the State and the social order.

The language of "gender ideology" as it's used by detractors of rights twists truth backwards and inside out. It argues that gender as an idea is dangerous, as is believing that gender can be shaped by social factors and power relationships. It sees biology as determining roles and hierarchies.

Of course, this tactic in itself is also ideological, but that idiosyncrasy is best left for longer analyses. In short, this is a religious and political argument that creates an hysterical response to gender as a useful concept in understanding roles, dynamics, social expression and sexuality. The connections to the promotion of mythical ideas about "tradition" and "the family" as noted above are clear - these are intersectional building blocks in conservative religious agendas.

The language of condemning "gender ideology" has been very effective at local, regional and global levels. It is important for activists, policy-makers and researchers to know that this strategy and these tactics in part have their roots in efforts that appeared decades ago, including at the "Beijing Fourth World Conference on Women" in 1995 and when the Rome Statute of the International Criminal Court was being developed in the late 1990s.[13]

This "gender ideology" strategy and these tactics to attack the very idea of "gender" in part have their roots in efforts that appeared decades ago, including at the "Beijing Fourth World Conference on Women" in 1995 and when the Rome Statute of the International Criminal Court was being developed in the late 1990s.

At these intergovernmental sites, the Holy See spearheaded efforts that continue to this day: they and others seek to focus on the language of two "sexes" rather than "gender", marriage existing only between a man and a woman, reproduction being central to and the purpose of sexuality, and "the family" as being the core unit of society.[14]

- **Promotion of "religious liberty" or "religious freedom" legal strategies.** This strategy entails conservatives and religious fundamentalists using legal systems to justify people denying provision of various forms of services or goods when they feel they don't approve either of the "product" or the recipient. So, doctors can try to withhold abortion or other reproductive health care services, pharmacists can try to withhold providing contraception, bakers can try to deny customers cakes for same sex weddings and landlords can deny leases for housing to LGBTI people—all with legal

[13] Similar efforts were made at the 1994 International Conference on Population and Development in Cairo.

[14] Other agendas include vehement anti-abortion, anti-sexuality education and anti-contraception positions.

protection. This legal strategy positions conservatives as victims being forced to provide against their consciousness. What it really does, however, is legally allow random discrimination by individuals against other people.

- **Denial of and attacks on science**. Anti-human rights campaigners and religious authorities further entrenched their positions condemning science, fact and evidence-based information. In particular, their efforts focused on condom use, HIV, homosexuality and contraception. These efforts often rely on the promulgation of lies, propaganda and the spreading of what's become known as "fake news" to sway public opinion. Some of their assertions are ludicrous—and, of course, unproven: for instance, they link abortion to incidence of breast cancer, they argue that masturbation causes illness or that homosexuality is linked to paedophilia.

One strategy that has become clear is the limiting of certain terms on websites and official documentation. In one particularly bizarre effort to censor and reshape the discourse of public health, officials in the US Centers For Disease Control (CDC) suggested that the agency stop or limit use of the terms "evidence-based", "science-based", "diversity", "transgender," and "foetus", among a few others, in their budget documents. While this was initially reported as an outright ban, what became clear soon after was that the terms were noted as lightning rods that might trigger denials of funding when those budget documents were reviewed by the Trump administration. So, while this seemed not to be an abject ban, this case does reveal the "chilling effect" on public health officials and open discourse.[15]

- **Fear mongering / moral panic.** This, too, is an old and effective tactic connected to all of the above. Whether about sexuality or other sets of issues, the creation of an "Other" that poses a threat remains a powerful force in denial of rights. It is here that the anti-gay, the anti-trans, the anti-immigrant, the anti-Muslim, the anti-Semitic, the anti-feminist (and other related sentiments) merge. "Access to abortion will cause a national population crisis". "These people are massing at the border ready to bring in drugs, rape and take your jobs." This group of people is a national security threat." "Trans people are sick". "Our children are at risk". All are fabricated ideas fed to people through manipulated media platforms and manipulative authorities, whether religious or political.

These efforts to create an "other" mark social anxieties among conservatives about liberalism, feminism, progressive ideas, and "political correctness". They also mark fear of loss of power and a concern about threats to the hegemonic and historic hierarchical position of white heteronormative male privilege.

Overall, these mark social anxieties among conservatives about liberalism, feminism, progressive ideas, and "political correctness" (which, at its core, really is a call to be respectful and aware of history, isn't it?).

They also mark fear of loss of power and a concern about threats to the hegemonic and historic hierarchical position of white heteronormative male privilege.

To improve our own advocacy, we must continue to pay close attention to how our detractors have successfully strategised and mobilised support. As much as we decry them as "bigots" or "religious fanatics", they are also engaging in long-term effective strategising. We must respond to their campaigning just as they have responded to ours.

And, finally.

Since the last SSH report was issued, the human rights climate has, for many, taken a turn for the worse. But, paradoxically, the visibility and demands of LGBTI communities and gender non-conforming people have generally increased. Sexual and reproductive rights claims have in many places

[15] Specific language and pages on websites have also been removed, including in relation to climate change.

become further developed in law and been incorporated in evolving human rights standards, including at the UN level.

This is a long game, our work. The outlook in terms of the political landscape remains bleak; social justice advocates, no matter what our main interests, must be bold and strategic and tenacious in these times. And we must be in partnership and solidarity with one another, always. We must also strengthen our capacity to address tensions in global North and South power dynamics, just as we must become better at addressing racism and sexism within our movements and networks. Our victories may ring hollow if we don't.

The essays and data presented in the rest of this SSH report can be effective tools in our ongoing advocacy and analysis. The ideas and information in this compilation have been rigorously filtered and are presented with care.

It is up to readers to use the details to oppose the conservative strategies and limiting circumstances addressed above. We must forge ahead making our demands and aspiring to our visions of justice. Even in times of crisis.

The Rights of LGBTQ+ People and Referendums: An Irreconcilable Marriage

By Elena Brodeală[1] *and Vlad Levente Viski.*[2]

Referendums that subject the rights of LGBTQ+ people to popular vote have proliferated around the world. Most of these referendums concerned the issue of marriage equality, supporting or aiming to ban same-sex unions. For example, over thirty states in the US posed the question of marriage equality to a public vote starting with Alaska and Hawaii in 1998,[3] continuing with the famous "Proposition 8" in California in 2008 and ending with North Carolina and Minnesota in 2012.[4]

Referendums on the rights of LGBTQ+ people started being quickly organised in many other countries such as Croatia (2013),[5] Slovenia (2012/2015),[6] Slovakia (2015),[7] Ireland (2015),[8] Armenia (2016),[9] Switzerland (2016),[10] Bermuda (2016),[11] Australia (2017),[12] and more recently in Romania (2018) and Taiwan (2018).[13] Two of these referendums were particularly celebrated by human rights activists—namely the ones in Ireland and in Australia—both of which legalised same-sex marriage. However, many observers remain sceptical about putting such an important issue to a popular vote. For example, commenting on the Romanian referendum aimed at defining marriage as "between a man and a woman" in the country's constitution. A spokesperson of ILGA-Europe underlined how, although unsuccessful, the popular vote on this question brought to light once again the vulnerability of the LGBTQ+ community.[14] By building on arguments put forward by one of the authors in previous articles,[15] in this short contribution we want to further discuss why referendums on human rights—and in this case in particular, the human rights of LGBTQ+ people—should *always* be a source of concern.

If the referendums in Ireland and Australia were widely celebrated by LGBTQ+ advocates around the world, this was most likely in large part due to their outcome and not because they supported putting marriage equality to a popular vote. In fact, if referendums can at times be successful in bringing equality for all, they might also hurt LGBTQ+ people in more conservative countries by setting a "dangerous precedent".[16] If similar referendums are replicated in countries where people still harbour animosity towards non-heterosexuals, there are serious chances that such

1 Elena Brodeală is a PhD Researcher at the European University Institute, Italy, and a Robina fellow of Yale Law School at the European Court of Human Rights.

2 Vlad Viski is the president of MozaiQ, a LGBTI rights organisation in Romania.

3 "Same sex marriage (SSM and civil unions in Alaska", *Religious Tolerance*, 18 October 2014: "Same-sex marriage issue has endured a long fight in Hawaii", *Honolulu Advertiser*, 24 January 2010.

4 "California Proposition 8, the "Eliminates Right of Same-Sex Couples to Marry" Initiative (2008", *Ballotpedia*: "North Carolina Same-Sex Marriage, Amendment 1 (May 2012", *Ballotpedia*: "Minnesota Same-Sex Marriage Amendment, Amendment 1 (2012", *Ballotpedia*.

5 "Croatians back same-sex marriage ban in referendum", *BBC*, 2 December 2013.

6 "Family Law Struck Down", *The Slovenia Times*, 2 March 2012; "Slovenia says No to gay marriage", *Politico*, 20 December 2015.

7 "Slovakia Referendum on Gay-Adoption Ban Fails", *The Wall Street Journal*, 8 February 2015.

8 "Ireland becomes first country to approve same-sex marriage by popular vote", *The Irish Times*, 23 May 2015.

9 "Referendum in Armenia brings constitutional reforms", *ILGA Europe*, 16 December 2015.

10 "Swiss voters reject same-sex marriage ban", *Pink News*, 29 February 2016.

11 "Voters roundly reject same-sex marriage" *The Royal Gazette*, 24 June 2016.

12 "Australia says yes to same-sex marriage in historic postal survey", *The Guardian*, 14 de noviembre de 2017.

13 "Romanian Same-Sex-Marriage Referendum Fails Amid Low Turnout", *Radio Free Europe Radio Liberty*, 7 October 2018: "Taiwan voters reject same-sex marriage in referendums", *BBC*, 25 November 2018.

14 "Voters in Romania boycott restrictive referendum on definition of family", *Euractiv Press Release*, 7 October 2018.

15 "Human Rights Should not be Subject to a Popular Vote: Lessons from Romania's Failed Anti-LGBT Referendum", *Oxford Human Right Hub*, 30 November 2018: "Why Referendums on Human Rights are a Bad Idea: Reflecting on Romania's Failed Referendum on the Traditional Family from the Perspective of Comparative Law", *The Comparative Jurist*, November 2018.

16 "A referendum is not the way to go when it comes to gay rights or minority issues", The Guardian, 22 May 2015.

referendums will restrict the rights of LGBTQ+ people.

When referendums take place in conservative countries, the LGBTQ+ community is always at risk of dangerous regression. Not only could referendums in these countries most likely lead to restricting the rights of LGBTQ+ people, but they might provide the grounds for conservative groups to grow and continue their anti-rights work. In addition, such referendums might capacitate conservative groups to attack the rights of other social groups such as women or ethnic minorities. This due to the nature of referendums—unlike debates before courts or legislatures— as it necessarily implies a stronger grassroots mobilisation and requires building serious alliances between groups with similar agendas.

The referendums that took place over the last period seem to be quite telling of how they help conservative groups grow. For example, the 2013 referendum in Croatia not only led to the enshrining of the "heterosexual" definition of marriage in the country's constitution, but it has empowered conservative groups to push their agenda even further. More precisely, after 2013, such groups became more vocal in the Croatian political sphere, opposing, among other things, the ratification of the Istanbul Convention aimed at combating violence against women.[17] This was also the case in Slovakia where shortly after the failed anti-LGBTQ+ referendum (the turnout requirement was not met), the organisation behind it, the Alliance for the Family, managed to bring over 70,000 people to the streets of Bratislava to march against abortion.[18] By the same token, in the United States referendums to forbid same-sex couples' right to marry emboldened conservative groups to push forward for legislation restricting abortion,[19] limiting the access of transgender youth to the bathrooms of their choice,[20] or opposing general anti-discrimination measures meant to protect LGBTQ+ individuals.[21]

Not only can referendums lead to restricting the rights of LGBTQ+ people, but they might provide the grounds for conservative groups to grow and continue their anti-rights work.

Moreover, not only can referendums strengthen anti-rights groups at the local level, but they can also set the base for building transnational anti-LGBTQ+ alliances. This was, for example the case in Eastern Europe, where local groups collaborated in their endeavours to put the question of equality for all to a vote with American conservative organisations such as Alliance Defending Freedom (Croatia, Slovakia, Romania)[22], or Liberty Council.[23] With this, discourses tailored in North America were transplanted in the region.[24] Among these are the ideas that the question of same-sex marriage should not be decided by "nine justices in black robes"[25] or the idea that same-sex marriage "is a serious attack to freedom of religion" and it might put people in jail (as was the case of the former American county clerk Kim Davis who refused to grant marriage licenses to same-sex couples after the US Supreme Court legalised same-sex marriage in the famous *Obergefell v. Hodges* case)[26].

Another reason for which referendums should not be organised is that their campaigns often lead to an increase in hate speech, harming LGBTQ+

17 "Croatia rally: Traditionalists reject European gender treaty", *BBC*, 24 March 2018.

18 "Tens of thousands attend Bratislava prolife march", *The Slovak Spectator*, 25 September 2015.

19 "Legal Alliance Gains Host of Court Victories for Conservative Christian Movement", *The New York Times*, 11 May 2014.

20 "This Law Firm Is Linked to Anti-Transgender Bathroom Bills Across the Country", *NBC News*, 8 April 2017.

21 "The 800-Pound Gorilla Of The Christian Right", *Think Progress*, 1 May 2014.

22 "77 Human Rights organization support constitutional referendum in Croatian", European Dignity Watch, 22 November 2013: "ADF to Slovak court: Allow citizens to affirm their values at ballot box", *Alliance Defending Freedom*, 30 September 2014: "Romania's Coalition for Family and ADF International co-hosted the conference "Referendum for the Family: Analysis and Implications" at the Romanian Parliament in Bucharest", *Family News*, 26 April 2017.

23 "Marriage on Romanian Ballot", *Liberty Counsel*, 12 September 2018.

24 "Anti-gay marriage clerk Kim Davis takes her fight from Kentucky to Romania", *The Guardian*, 13 October 2017; "Kim Davis, Once Jailed in America, Campaigns Against Gay Marriage in Romania", *The New York Times*, 12 October 2017.

25 "Raspunsuri Pentru Viață – Interviu Harry Mihet", *Rodiagnusdei*, 4 October 2016.

26 "*Obergefell et al. v. Hodges, Director, Ohio Department of Health et al.*", Supreme Court of The United States, October 2014.

individuals. In California,[27] Slovenia,[28] Slovakia,[29] Australia,[30] Taiwan,[31] and Romania,[32] the "protection of children" (from the "harms" of "legitimising homosexuality and immorality") was a major topic during the referendum campaigns. In turn this led to an increase in hate speech towards LGBTQ+ individuals.

Referendum campaigns often lead to an increase in hate speech, harming LGBTQ+ individuals.

For instance, in Romania and Slovakia the proponents of the constitutional ban on same-sex marriage compared LGBTQ+ people to paedophiles.[33] At the same time, the LGBTQ+ legal service in Australia found 220 cases of hate speech during the 2017 plebiscite.[34] Moreover, in the age of social media, when hate speech became harder and harder to sanction, the debates sparked by LGBTQ+ referendums can seriously harm non-heterosexuals. For example, in Taiwan, during the referendum campaign regarding the legalisation of same-sex marriage, conservative groups promoted messages on social media which warned that if gay marriage became legal, "HIV-positive people will [...] [go] to Taiwan and flood [...][its] health system."[35] In the same way, in Romania, during the referendum campaign, hate speech messages accompanied by images depicting "decadent" queer people in outlandish outfits were posted by public persons on social media and became viral.[36]

Observers also noted that referendums are generally a poor way of making decisions.[37] Many of them show how their outcome often depends on factors other than the question of whether people of all sexual orientations should enjoy equal rights or not. Such an example is Romania, a country often regarded as hostile towards sexual and gender diversity,[38] where, surprisingly, the referendum failed due to low turnout.[39] Although human rights groups asked people not to go to vote in support of equality for all, most of the people did not go to the polling stations for other reasons than equality concerns.[40] These include the dislike for the ruling party or the fact that the referendum was seen as "anti-European" in the conditions in which the Court of Justice of the European Union has recently required Romania to recognise same-sex marriages conducted aboard.[41] Further, when Australia held its plebiscite, Prime Minister Tony Abbott talked about the vote as being about "political correctness" and not about the rights of LGBTQ+ individuals *per se*.[42] Moreover, when put to referendums, the LGBTQ+ question could be easily instrumentalised and used by political forces to gain votes, defame their opponents, or derail the attention from other pressing problems. This was, for example the case in Slovakia where there same-sex referendum was said to have been used in the preceding presidential electoral campaign as a way to discredit opposition.[43] In Romania, it was alleged that the ruling party used the referendum to turn

27 "Yes on 8 TV Ad: It's Already Happened", *Youtube*, 7 October 2008.
28 "Slovenians vote against same-sex marriage in referendum", *The Guardian*, 21 December 2015.
29 "Vyjadri svoj názor v referende 7. februára 2015", *Youtube*, 24 January 2015.
30 "A year after the same-sex marriage postal vote, we're still wounded from a brutal campaign", *ABC News*, 14 November 2018.
31 "As Taiwan prepares to vote on LGBTQ issues, a homophobic group is running ads before kids videos on YouTube", *Tech Crunch*, November 2018.
32 "Mesaj pe tema referendumului pe un bloc din Timișoara: "Dacă nu vii la vot, doi bărbați vor putea adopta copilul tău"", *Hot News*, 23 September 2018.
33 "How is Romania's LGBT+ community preparing for an upcoming referendum on same-sex marriage?", *SBS*, 24 November 2017: "2015 – An Important Year for Marriage Equality", *Campaign In Action*, 30 January 2015.
34 "LGBTI lawyers lodge complaint over 'hate speech' during same-sex marriage survey", The Guardian, 31 August 2018
35 "'A great divide': Inside the battle to stop same-sex marriage in Taiwan", CNN, 24 November 2018.
36 See example: "Cheloo" Fanpage Post, 13 Septiember 2018.
37 "Rule by referendum is not the best way to make decisions", *The Irish Times*, 2 June 2015.
38 "Country Ranking", *Rainbow Europe*.
39 "Romania marriage poll: Referendum to ban gay unions fails", *BBC*, 8 October 2018.
40 "Why Referendums on Human Rights are a Bad Idea: Reflecting on Romania's Failed Referendum on the Traditional Family from the Perspective of Comparative Law", *Comparative Jurist*, 11 November 2018.
41 "Same-Sex Marriages Are Backed in E.U. Immigration Ruling", *The New York Times*, 5 June 2018.
42 "Marriage plebiscite: Tony Abbott urges a 'no' vote to reject political correctness and protect religious freedom", *The Sydney Morning Herald*, 9 August 2017.
43 "Bilbordy proti Kiskovi nie sú od OĽaNO, majú patriť Móricovi", *Web Noviny*, 25 March 2014.

people's attention away from its attempts to weaken the country's anti-corruption framework.[44]

Another issue that speaks against putting the rights of LGBTQ+ people to popular vote is that many of these referendums aim to entrench changes that would be very difficult to change by future generations. In many countries such as the United States, Croatia,[45] Georgia,[46] or Romania,[47] referendums meant to ban same-sex marriages in their constitutional texts. Enshrining constitutional restrictions seriously prevents progress in this field, keeping fundamental laws stuck in a period when respect for diversity and equality was not among the core values of society. Moreover, putting rights to a popular vote suggests that a constitution or the laws in any given country should in all circumstances reflect the views of the majority of the people at a certain moment in time. Yet, constitutions and laws do not always contain provisions that are descriptive of the beliefs or the values of a society at a certain point in history. Many of them have provisions that are meant to stand as aspirational goals rather than reflections of people's system of beliefs at the moment when these documents were drafted or amended. The provisions on gender equality are a representative example. In one of her studies on gender and constitutions, Catherine A. MacKinnon showed that countries where gender inequality is widespread have much more gender equality protections in their constitutions than countries where gender equality is more likely to lie at the heart of social relations.[48]

The developments taking place over the latest period show that the forums *par excellence* to decide on the legal recognition of the rights of LGBTQ+ people. Not only that, traditionally, the role of the courts was to protect the rights of all social categories, regardless of how popular these categories were. Further, courts are bound to consider arguments on all sides, and must keep the focus of debates on the question that is being examined and ensure that all parties are treated with due respect.

Courts in many parts of the world assumed their role to protect the rights of sexual minorities in a very serious way. In 2015, the US Supreme Court in the famous *Obergefell v. Hodges*[49] case struck down all the state level constitutional amendments adopted through referendums that aimed to ban same-sex marriage. At the beginning of 2018, the Inter-American Court of Human Rights delivered an opinion explaining how, under the American Convention on Human Rights, States must grant same-sex couples equal rights, including marriage.[50] Further, in June 2018, the Court of Justice of the European Union delivered its judgement in the *Coman* case in which it obliged Romania and all the other Members States of the European Union to recognise same-sex marriages concluded abroad for the purposes of freedom of movement.[51] Moreover, courts around the world have the ability to strike down legislation through which lawmakers are meant to disregard their previous case law. This is famously the case in Bermuda.[52] After the Supreme Court of Bermuda legalised same-sex marriage in May 2017, the Parliament passed a bill in December 2017 making same-sex marriage illegal once again. Among the reasons for this decision of the legislature was the result of a non-binding referendum on the matter that—although invalidated due to low turnout—showed that the majority of voters opposed same-sex marriage.[53] The Supreme Court of Bermuda, standing by the country's constitution however, declared the new law unconstitutional shortly after it entered into force in June 2018, being backed by the country's Court of Appeal later on in November.

In this context, maybe the time has come to further discuss how courts are better forums to decide sensitive issues such as the rights of LGBTQ+ people.[54] Perhaps it is a growing consensus that courts are better positioned to decide on this issue that can strengthen courts' legitimacy and their mandate of protecting sexual minorities against "majoritarian" anti-right impulses.

44 "Romanian voters ignore referendum on same-sex marriage ban", *Financial Times*, 7 October 2018.

45 "Croatians vote to ban gay marriage", *The Guardian*, 1 December 2013.

46 "Georgian president blocks referendum to ban same-sex marriage", *Democracy & Freedom Watch, 9 August 2016.*

47 "Romanian constitutional ban on same sex marriage fails on low vote turnout", *Reuters*, 7 October 2018.

48 "Gender in Constitutions" by Catharine A. MacKinnon, in *The Oxford Handbook of Comparative Constitutional Law*, para 401- 402. (Oxford, United Kingdom: Oxford University Press, 2012).

49 "OBERGEFELL ET AL. v. HODGES, DIRECTOR, OHIO DEPARTMENT OF HEALTH, ET AL", Supreme Court of The United States, October 2014.

50 "A Step Closer to Equality: LGBTQ+ Rights in the Inter-American Court of Human Rights", *Oxford H. Right Hub*, 19 March 2018.

51 "Free Movement Of Same-Sex Spouses Within The EU: The ECJ's Coman Judgment", *The European Law Blog*, 19 June 2018.

52 "Bermuda's government fights against same-sex marriage in Court of Appeal", *CNN*, 8 November 2018.

53 "Bermuda's government fights against same-sex marriage in Court of Appeal", *CNN World*, 8 November 2018.

54 "Bermuda top court reverses government's gay marriage ban", *Reuters*, 24 November 2018.

INTERNATIONAL HUMAN RIGHTS LAW

STATE-SPONSORED HOMOPHOBIA 2019



THE YOGYAKARTA PRINCIPLES + 10

Introduction to the YP+10

By Mauro Cabral Grinspan[1] and Julia Ehrt.[2]

The *Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity* (YPs) were elaborated in 2006 and released in 2007. The YPs have played a key role in advancing the rights of LGTBI people worldwide through the application of International Human Rights Law.

The YPs support and promote legal reform, policy change, judicial decision, political activism and social awareness and call upon governments to meet their obligations under International Human Rights Law. Throughout the last ten years the body of International Human Rights Law has considerably evolved in relation to sexual orientation and gender identity and new issues have evolved that have not been adequately addressed or solved within the YPs.

By 2016 it was clearly necessary to come back to the YPs to review them, update them and make them ready to support and guide human rights work in the years to come. People from all around the world contributed to the revision and updating through a participatory process. Key challenges, advances, as well as normative and conceptual tools required to address them were identified and a drafting team was appointed to conceptualise and update the YPs. A group of 28 human rights experts was constituted and met for three days in Geneva to discuss, amend and approve the revision. The new YP+10 were presented in 2017.

The YP+10 supplement the original YPs, not replace them. They add 9 new Principles to the previous 29 and add new obligations for States to the existing YPs Principles.

The notions of *sexual orientation* and *gender identity* have proven to be necessary but insufficient to articulate the complex array of human rights issues faced by LGBTI people.

Hence what the YP+10 have refined is the notion of *gender expression* now defined as 'each person's presentation of the person's gender through physical appearance—including dress, hairstyles, accessories, cosmetics—and mannerisms, speech, behavioural patterns, names and personal references' and added the notion of *sex characteristics*, which is defined in the YP+10 as 'each person's physical features relating to sex, including genitalia and other sexual and reproductive anatomy, chromosomes, hormones, and secondary physical features emerging from puberty.

The YP+10 supplement the original YPs, not replace them. They add 9 new Principles to the previous 29 and add new obligations for States to the existing YPs Principles.

The YPs and the YPs+10 must be read together and, therefore, all their Principles and State Obligations must be considered to refer to sexual orientation, gender identity, gender expression and sex characteristics.

New Principles and State Obligations in the YP+10

Everyone has the Right to State protection (Principle 30). States have the obligation to ensure that everyone is protected from violence, discrimination and other harm. The principle not only calls states to prevent, investigate, punish and eradicate such human rights violations, but also to

1 Mauro Cabral Grinspan is an intersex & trans activist from Argentina. He serves as the Executive Director of GATE. He participated in the elaboration of the Yogyakarta Principles and of the Yogyakarta Principles Plus 10.

2 Julia Ehrt is the Director of Programs at ILGA where she develops ILGA's programmatic work and manages the programs team. Before joining ILGA she was the Executive Director of Transgender Europe and has been central to TGEU's growth and development in the last decade. She is a member of the Steering Committee of the International Trans Fund (ITF), a board member of the Association for Womens' Rights in Development (AWID) and a signatory to the Yogyakarta Principles plus 10. Julia holds a PhD in mathematics.

compile statistics about them, their causes and effects, and to identify the attitudes, beliefs, customs and practices that provoke them, to provide training to all professionals involved in addressing them—including law enforcement officers—, and to provide support and remedies for victims. In the same spirit, Principle 33 on the Right to freedom from criminalisation and sanction, calls States to repeal all the forms in which people around the world are criminalised and sanctioned, as well as subjected to discriminatory laws, due to our SO, GI, GE and SC.

New communicational developments required to expand protections to include the right to the enjoyment of human rights in relation to information and communication technologies (Principle 36), which calls States to ensure all persons' right to "receive and impart information and ideas of all kinds", while protecting privacy and security of digital communications, and holding all sectors accountable for hate speech, harassment and technology related violence.

Principle 34 on the Right to protection from poverty explicitly affirms that "poverty is incompatible with respect for the equal rights and dignity of all persons", calling States not only to reduce and eliminate poverty but also promote socioeconomic inclusion and to ensure access to remedies.

While the Right to freedom of peaceful assembly and association was already included in the YPs (principle 20), developments in the last decade to infringe on those rights called for a refinement of states obligations under that principle in order to ensure the right of marginalised and vulnerable communities to organise, receive and use funding, even if not officially registered. Further adding state obligations to the right to seek asylum (original YPs Principle 23), the YP+10 now holistically reflect provisions in regard to this right and expand on minimal procedural requirements in the treatment of asylum seekers enshrined in international human rights law.

One of the ground-breaking contributions of the original YPs was to demonstrate that the right to recognition before the law implies a State obligation to recognising the gender identity of a person as self-defined. Laws, policies and rulings developed in the last decade in diverse countries across the globe have upheld this obligation, for example by granting access to legal gender recognition without imposing requirements incompatible with human rights standards.

However, the right to legal recognition (Principle 31) goes further as it shall not hinge on "making reference to or requiring assignment or disclosure of sex, gender, sexual orientation, gender identity, gender expression or sex characteristics of a person". Therefore, States are obliged to putting an end to "the registration of the sex and gender of the person in identity documents such as birth certificates, identification cards, passports and driver licenses".

Acknowledging that it will take time for States to implement this obligation, the same Principle provides for a transitional obligation to "ensure access to a quick, transparent and accessible mechanism to change names, including to gender neutral ones" and "to make available a multiplicity of gender marker options".

The entire Principle reaffirms self-determination as its key normative aspect in International Human Rights Law and explicitly rejects psycho-medical diagnosis and/or interventions, as well as minimum age, among other eligibility criteria. Additional State obligations related to YPs Principle 24 on the right to found a family add the mandate to "issue birth certificates for children upon birth that reflect the self-defined gender identity of the parents".

Bodily issues were not fully included and developed in the original YPs; therefore, the elaboration of the YP+10 is required to address those issues.

Principle 32 on Bodily and Mental Integrity articulates different State obligations referred to the place of our sexed and sexual bodies in the human rights framework. It includes protection "from all forms of forced, coercive or otherwise involuntary modification of their sex characteristics", prohibits "the use of anal and genital examinations" for legal, administrative or prosecutorial reasons, and calls States to provide counselling and support to victims. This Principle as well calls upon States to ensure that "the concept of the best interest of the child is not manipulated to justify practices that conflict with the child's right to bodily integrity".

Bodily issues were not fully included and developed in the original YPs; therefore, the elaboration of the YP+10 was required to address those issues.

Principle 34 on the Right to sanitation comes to address a sad and pervasive reality: those challenges faced by many people when trying to access public sanitation facilities, including school bathrooms, and to make explicit State obligations in this regard.

The YP+10 also added new State obligations related to YPs Principle 17 on the Right to the Highest Attainable Standard of Health to include issue such as the prevention of sexual and reproductive violence, (such as rape, forced marriage and forced pregnancy), as well as access to gender affirming healthcare, and to safe, affordable and effective contraceptives and abortion services. This same Principle calls States to ensure non-discriminatory access to donation of blood, gametes, embryos, organs, cells or other tissues, and ensuring privacy of HIV statuses.

States are also called to prohibit practices such as forced normalising surgeries, involuntary sterilisation and reparative therapies, among others.

A key normative aspect of this Principle from the call for universal access to healthcare care. Additional State obligations related to YPs Principle 20 on the Right to found a family includes access to methods to preserve fertility, and non-discriminatory access to surrogacy where legal.

Acknowledging key developments on intersex issues and human rights, additional State obligations related to Principle 10 on the right to freedom from torture and cruel, inhuman or degrading treatment or punishment establishes that "the forced, coercive and otherwise involuntary modification of a person's sex characteristics may amount to torture".

States are also called to prohibit practices such as forced normalising surgeries, involuntary sterilisation and reparative therapies, among others.

Principle 37, on the Right to Truth, seeks to ensure that both individuals and societies have access to the truth about their past, including past human rights violations based on SO, GI, GE and SO. This Principle is particularly relevant to ensure intersex people's right to know the truth about medically unnecessary and non-consensual medical procedures to "normalise" their bodies in infancy and childhood, and to access their own medical record, as they are often kept from them even in adulthood.

Finally, the last principle (38) addresses the Right to Practice, Protect, Preserve and Revive Cultural Diversity which states have an obligation to protect and ensure.

Conclusion

The 38 principles of the YPs and the YPs+10 provide an authoritative, expert exposition of international human rights law as it currently applies on the grounds of sexual orientation, gender identity, gender expression and sex characteristic. Their legal and normative weight directly comes from the body of international human rights law, and states should abide to the principles as they should abide to the universal declaration of human rights.

UNITED NATIONS: SOGI INDEPENDEN EXPERT

The Role of the Independent Expert in the International Human Rights Framework on Sexual Orientation and Gender Identity

By Rafael Carrano Lelis[3] and Zhan Chiam.[4]

June 2016 represented a landmark in the protection of sexual orientation and gender identity (SOGI) rights in the international arena. It was in this month that the United Nations (UN) Human Rights Council (HRC) appointed an Independent Expert (IE) on "protection against violence and discrimination based on sexual orientation and gender identity."[5] Despite the several attempts to block such advancement through the proposition of "hostile amendments",[6] Resolution 32/2 passed by a close vote of 23 to 18 (and 6 abstentions),[7] establishing a three-year mandate for the IE.[8]

The IE is part of the UN special procedures (SP) mechanism.[9] In order to be able to properly fulfil their objective, the SP mandate-holders employ a range of tools, such as communications, country visits and annual reports.[10]

This article will cover all the activities of the mandate since its inception, providing a brief overview of its work thus far.

Reports

The IE mandate-holders have so far submitted four reports since the mandate was established, two each to the HRC and the General Assembly (GA) in 2017 and 2018.

In his first report, Vitit Munthabhorn set out "underpinnings" for the mandate.[11]

The second report, the first to the UN General Assembly, addressed the first two underpinnings: decriminalisation and anti-discrimination.[12] Regarding criminalisation, the IE took a broad approach, covering laws that criminalised not just same-sex relations but also laws that impact on gender identity and expression (such as so-called

3 Rafael Carrano Lelis is a lawyer and researcher focused on LGBTI+ issues. He is currently the manager of TODXS Núcleo - Research Centre on LGBTI+ Policy and a master student at the Pontifical Catholic University of Rio de Janeiro (PUC-Rio).

4 Zhan Chiam is ILGA World's Gender Identity and Gender Expression Programme Coordinator, where he works to strengthen trans movements and organisations through advocacy support, movement building, research, and long-term collaborations such as reform of the International Classification of Diseases.

The authors would like to thank Kseniya Kirichenko for her suggestions to this article, especially regarding the analysis of the communications.

5 Human Rights Council, *Resolution 32/2. Protection against violence and discrimination based on sexual orientation and gender identity*. A/HRC/RES/32/2, 30 June 2016.

6 ARC International, *Appointing an Independent Expert on Sexual Orientation and Gender identity: An Analysis of Process, Results and Implications* (2016).

7 Human Rights Council, *Resolution 32/2. Protection against violence and discrimination based on sexual orientation and gender identity*. A/HRC/RES/32/2, 30 June 2016.

8 The appointment of the IE also faced fierce opposition in the General Assembly. In this sense, see: OutRight, ISHR, ILGA and ARC, *Defending the Independent Expert on Protection Against Violence and Discrimination Based on SOGIE* (2017).

9 Such mechanism was initiated by the Commission on Human Rights and later embraced by the HRC. It consists of either a person (i.e. Special Rapporteur or Independent Expert) or a group of persons (i.e. a Working Group) that conduct *pro bono* work to assess country-specific situations or thematic issues regarding human rights protection. See: Jane Connors and Markus Schimidt, "United Nations" in *International Human Rights Law*, Daniel Moeckli et al. (eds.) (Oxford: Oxford University Press, 2014), 376-70.

10 Olivier De Schutter, *International Human Rights Law: cases, material, commentary* (Cambridge: Cambridge University Press, 2010), 891-95.

11 *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/35/36, 19 April 2017. It described the themes that should be addressed during the mandate. They are: 1) decriminalisation of consensual same-sex relations; 2) effective anti-discrimination measures; 3) legal recognition of gender identity; 4) destigmatisation linked with depathologisation; 5) sociocultural inclusion; and 6) promotion of education and empathy.

12 *Protection against violence and discrimination based on sexual orientation and gender identity*, A/72/172, 19 July 2017.

"cross-dressing" and vagrancy laws), and the intersections between SO and GI. The report identified regressive and progressive moves in decriminalisation worldwide.[13] The report also recommended that States should cooperate more with national human rights institutions (NHRIs) to interlink international norms with national settings, and outlined input from the NHRIs of Australia, Malaysia, New Zealand and Cyprus to the IE on criminalisation in their countries. On anti-discrimination measures, whether positive or absent, the report provided input from stakeholders to the mandate in 2017, including where intersectionality enabled protection of SOGI under other laws.[14]

In the third report, the new IE, Victor Madrigal-Borloz, iterated his intention to continue the analytical framework developed by Professor Muntabhorn.[15] He referred back to Resolution 32/2 of the HRC, which requests the mandate-holder to address the multiple, intersecting and aggravated forms of violence and discrimination on the basis of SOGI. He also highlighted the importance of an intersectional approach, while remaining aware of all conditions that create the "substantively distinct life experience of an individual". This approach was then evident in the discussion of hate crimes and the root causes of violence and discrimination; the report emphasised that broader power structures, deeply entrenched gender inequalities and rigid sexual and gender norms should be considered in the analysis. The report also discussed HIV status and the impact of "negation"[16] against "acknowledgement" on data collection and therefore access to justice.

In the fourth and most recent report, presented in 2018 to the GA, the IE explored the next two underpinnings.[17] The fact that this is the first UN report dedicated to gender identity is not insignificant, and it was welcomed by trans communities. The report welcomes the new category for (adult and adolescent) trans identities in a new chapter created in the revision of the International Classification of Diseases (ICD-11). Given that pathologisation has had a "deep impact on public policy, legislation and jurisprudence, and has been penetrating all realms of State action in all regions of the world"[18], depathologisation becomes a tool to dismantle and abolish harmful legal and policy practices on trans and gender diverse people.[19] Concurrently, the IE takes note and remains seized of the diagnosis of gender incongruence of childhood in ICD-11 because of the potentially significant effects on the enjoyment of human rights by trans and gender diverse children, and that "such classifications have been shown to be obstacles" to such rights.[20]

The fact that this is the first UN report dedicated to gender identity is not insignificant, and it was welcomed by trans communities.

The report then traverses the global landscape of legal recognition of gender identity, emphasising States' obligations to do so without prejudice to other rights,[21] something not available to trans persons in most countries. The IE summarises that this legal vacuum could create a climate that tacitly permits, encourages and rewards with impunity, violence and discrimination leading to a situation of "*de facto* criminalisation".[22]

13 For example, while noting that 33 out of 54 African countries criminalised same-sex relations, the IE also discussed a South African Constitutional Court case which declared unconstitutional certain sodomy laws and highlighted advancements in Lesotho, Mozambique and Seychelles to remove such laws from their penal codes since 2012.

14 E.g. a law of violence against women in Colombia encompassing lesbian and bisexual women.

15 *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/38/43, 11 May 2018.

16 Meaning the refusal that violence and discrimination based on SOGI even exists.

17 *Protection against violence and discrimination based on sexual orientation and gender identity*, A/73/152, 12 July 2018. He framed them as (1) the process of abandoning the classification of certain forms of gender as a pathology ("depathologisation") and (2) the full scope of the State duty to respect and promote respect of gender recognition as a component of identity.

18 *Protection against violence and discrimination based on sexual orientation and gender identity*, A/73/152, 12 July 2018, para.14.

19 Zhan Chiam and Julia Ehrt, "Gender identity and expression in focus: The report of the United Nations Independent Expert on sexual orientation and gender identity, by Victor Madrigal-Borloz" *Journal on Rehabilitation of Torture Victims and Prevention of Torture* 23, No. 3 (2018), 133-134.

20 *Protection against violence and discrimination based on sexual orientation and gender identity*, A/73/152, 12 July 2018, para. 16.

21 Such as "the rights to freedom from discrimination, equal protection of the law, privacy, identity and freedom of expression" (para. 21).

22 *Protection against violence and discrimination based on sexual orientation and gender identity*, A/73/152, 12 July 2018, para. 25.

In two areas, the report presents a forward-thinking interpretation of human rights. First, in data management, where the mandate-holder questions the necessity of the pervasive exhibition of gender markers in official and non-official documentation and asserts that "States must refrain from gathering and exhibiting data without a legitimate, proportionate and necessary purpose", in many respects echoing Principle 31 of the Yogyakarta Principles Plus 10.[23] The second is the recommendation that States enact hate crimes legislation that establishes transphobia as an aggravating circumstance for criminal convictions, which situates developments in trans rights and their impact on criminal legal thought.[24]

Communications

Individual complaints or communications[25] are, arguably, the most useful tool available to SP and are usually followed by a reply from the corresponded State.[26] Research conducted in January 2019[27] indicates that the IE has sent 31 communications so far, including 29 joint letters together with other mandate-holders. They were addressed to countries[28] from Africa, Asia-Pacific, Eastern Europe, Latin America and the Caribbean and Western Europe and Others, covering all the UN regional groups[29]. This regional spread shows that the IE was careful in adopting a balanced and cross-regional approach. In addition, one other communication, addressed to "other actors", was sent to the United Nations High Commissioner for Refugees (UNHCR), regarding the situation of LGBT refugees in Kenya. The only countries that received more than one communication from the IE were Honduras (4), Russia Federation (3), Republic of Korea (2) and the United States of America (2).

The regional spread of communications shows that the IE was careful in adopting a balanced and cross-regional approach.

It is alarming, however, that only 16 of those communications obtained replies from the concerned entities.[30] On the other hand, it must be highlighted that, amidst the States with more than one complaint, the United States was the only one that did not respond.

Although the number of replies may be a good indicator of the engagement and concern of each country regarding SOGI violations, the content of these answers must also be analysed. In that sense, an examination of the available[31] replies can be divided into four different categories.

The first are replies which showed real concern regarding the protection of SOGI rights, including responses from different actors that, at the same, time provided the requested information and took

23 For more information on the YP+10, see the article wrote by Julia Ehrt and Mauro Cabral Grinspan in this report. See: *The Yogyakarta Principles plus 10: Additional Principles and State Obligations on the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics to complement Yogyakarta Principles*, adopted 10 November 2017, Geneva.

24 *Protection against violence and discrimination based on sexual orientation and gender identity*, A/73/152, 12 July 2018, para. 78(c). Only just becoming a concept in criminal law in a small number of jurisdictions, e.g. Argentina in the sentencing of the murderer of Amancay Diana Sacayán which included the adoption of the term "travesticide", and in Colombia where the murder of a trans woman was recognised as femicide. See, for example: "Colombia impone la primera condena por feminicidio por crimen de una mujer 'trans'", *CNN Español*, 18 December 2018; "Killer of Argentine transgender activist sentenced to life in prison in historic case", *Daily Kaos*, 19 June 2018.

25 After receiving an individual complaint or sensitive information regarding a current or potential human rights violation, the IE may issue a communication to the relevant government. In this document, that can take form of either a letter of allegation or an urgent appeal, the mandate-holder asks for clarification and/or a call to action to stop the violation.

26 Office of the High Commissioner for Human Rights, *Manual of Operations of the Special Procedures of the Human Rights Council* (2008), 12-15.

27 The data was collected from the "Communication Report and Search" website of the Office of the High Commissioner for Human Rights.

28 The countries were: Armenia, Azerbaijan, Brazil, Canada, Chile, Egypt, El Salvador, Guatemala, Haiti, Honduras, Indonesia, Kazakhstan, Kenya, Malaysia, Peru, Republic of Korea, Russian Federation, Romania, Singapore, Tunisia, Turkey, United Republic of Tanzania and United States of America.

29 "United Nations Regional Groups of Member States" *UN Website.*

30 Among them, only Azerbaijan, Brazil, Chile, El Salvador, Indonesia, Kazakhstan, Republic of Korea, Romania, Singapore, Turkey and the UNHCR answered all the delivered communications.

31 Although the system indicates that Kazakhstan have indeed replied to the received communication, the content is not available yet, because it is waiting to be translated.

concrete measures to solve the situation that lead to the violation.[32]

The second group includes countries that showed moderate concern towards the perpetrated violations, giving responses that acknowledged that some abuse had been committed and indicated some concrete measures. Nonetheless, the same States emphasised some reservations with respect to issues on SOGI.[33]

The third category comprises less engaged feedbacks, incorporating responses that completely denied any violations. Those were the replies from Azerbaijan, Turkey, Romania, Singapore, and the first replies from both Brazil and Republic of Korea. Although these countries did reply, they neither recognised the existence of a violation nor showed willingness to improve the protection of rights based on SOGI.

Finally, the last group is composed of only one State, the Russian Federation, with two replies that can only be described as completely hostile, as well as its continued position of not recognising the legitimacy of the mandate. Russia repeatedly refused to answer communications in which the IE is either author or co-author.[34]

It should be noted that the adoption of this behaviour may take activists to push for the communication to be sent without the IE when Russia is the concerned State, even if it regards sexual orientation and/or gender identity. For instance, a communication to Russia in May 2018 was addressed by three Special Rapporteurs and a Working Group, not including the IE, even though it concerned gender identity rights.[35]

Moreover, interactions between IE and other mandate-holders may help drawing an analysis of the most recurrent human rights violations suffered by persons based on SOGI. The examination of the communications reveals that the most frequent complaints were issued alongside the mandates regarding freedom of expression[36] and human rights defenders,[37] with 17 joint communications each.[38]

The most frequent complaints were issued alongside the mandates regarding freedom of expression and human rights defenders.

Lastly, an analysis of the topics of the communications issued by the IE shows a wide range of themes: education (1); criminalisation (1); hate speech (1); access to information (1); murder (6); physical violence (10); prohibition of public gathering (1); general discriminatory law (5); and other forms of discrimination (5).

It is apparent how diversified are the threats suffered by persons on the basis of SOGI. Consequently, a variety of actions is also required in order to properly protect those persons.

Country visits

Another important part of any SP work is country visits. They do so to assess the institutional, legal, judicial and administrative framework, and investigate the de facto human rights situation under their respective mandates.

Mandate-holders can meet with different branches of government, NHRIs, UN agencies, NGOs, civil society representatives, victims and others. Since the creation of the mandate, three country visits have taken place: Argentina, Georgia and Mozambique. These countries have a range of SOGI

32 This first group contemplates six different answers, those being: the second one from El Salvador (since the first one merely indicates that there will be a response); both from Honduras; the one from Chile; the one from the UNHCR; and the second reply from Brazil regarding the Marielle Franco case.

33 Such category would cover the reply from Indonesia, as well as the second reply from the Republic of Korea.

34 Russia's replies to both communications UA/RUS/5/2017 and UA/RUS/7/2017 contained the following statement: "The Russian Federation does not intend to respond to individual or joint submissions from the special procedures of the Human Rights Council when the author or co-author is the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. We wish to recall that, at the Council's thirty-second session, Russia formally stated that it would not recognise the mandate of or cooperate with this Special Procedures mechanism".

35 See: Communication AL/RUS/9/2018.

36 The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

37 The Special Rapporteur on the situation of human rights defenders.

38 From a historical perspective, according to a data collection conducted by ISHR and ILGA, those two mandates were also the most engaged ones in SOGI issues even before the appointment of the IE on SOGI. See: "LGBTI rights | Factsheets on UN Special Procedures" *ISHR Website*.

rights, as well as strong and engaged civil society, providing a rich field for analysis.

Argentina was one of the States which co-sponsored Resolution 32/2, and also was a world first in creating a gender identity law.[39] On the other hand, Mozambique is both an Islamic and African country —both blocs that opposed the Resolution in 2016— that only decriminalised same sex relations in 2015.

It is essential that the IE's mandate is renewed in order to maintain the advancement of SOGI rights protection worldwide.

Yet, the function of the IE in his country visits remains the same, which is to assess the country situation, as all three country visits have shown.[40]

For example, in Argentina the IE pointed out the issues with implementation of the transgender labour quota at the provincial level, as well as the realities of structural violence that still exists, even against prominent trans activists.[41]

On the other hand, in Mozambique, the IE noted that flagrant violence against LGBT people was not being reported and recommended that the government should take an awareness-raising role.[42]

In Georgia, the IE met with a number of civil society organisations, with one reporting that the country visit had attracted positive government's attention to "sensitive issues" (i.e. LGBTI).[43]

Conclusion

This study illustrates the importance of the IE's mandate and its work conducted thus far.

It is also a timely reminder of what has been achieved, and how much more work needs be done, not the least through providing nuanced analyses of various aspects of SOGI lives and realities, and how these nuances can be translated into suggestions for the progression of international human rights law in this area.

Therefore, it is essential that the IE's mandate is renewed in order to maintain the advancement of SOGI rights protection worldwide.

39 Ley 26.743, *Ley de Identidad de Género* (2012).

40 For country visit statements, press releases, and Report on Argentina see: "Country visits of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity" *OHCHR Website*.

41 *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity on his mission to Argentina*, A/HRC/38/43/Add.1, 9 April 2018, paras. 46, 51-52.

42 "End of mission - Visit to Mozambique" *OHCHR Website*.

43 Statement from the Women's Initiatives Support Group: "His devoted meeting with us and our beneficiaries was highly appreciated, discussing ongoing challenges towards the LGBTI community like intimate partner violence, domestic violence and hate crimes. Our expectations about his visit have been met, as we had the opportunity to emphasise priorities and challenges, share expert knowledge and attract the government's attention to sensitive issues."

UNITED NATIONS: UNIVERSAL PERIODIC REVIEW

The Third Cycle of the UPR: Organisations Push for More and Better Recommendations on SOGIESC Issues

By Diana Carolina Prado Mosquera.[44]

More than eleven years ago the Universal Periodic Review (UPR) was created.[45] This has become an innovative mechanism for States, and in practical terms one of the mechanisms that has been most accepted by governments, either because of its constructive nature, or because, as its name suggests, it is a study done between peers. States study other States.

It is universal as it not only applies to the 193 Member States of the United Nations (UN), but also, it analyses any situation on human rights, including issues of sexual orientation, gender identity and expression and sex characteristics (SOGIESC).

It is periodic as it is a mechanism that for each State happens every five years, with regularity and it does not matter the situation that the State is going through. The study must be presented, and it is irrelevant if the previous government had accepted previous recommendations, the current government is obligated to report the level of implementation of those recommendations.

Since its creation, the UPR has evolved in a positive manner. During the first session, the first country which received a recommendation on sexual orientation and gender identity issues was Ecuador. In that moment Egypt opposed this recommendation and the dispute ended when Ecuador said that the proposed recommendation by Slovenia was going to be accepted.[46] Today, such disputes are no longer observed in the working group sessions, on the contrary, the recommendations on SOGIESC issues are more frequent, and are always present in every session. By the end of 2018, the mechanism counts 2,013 recommendations on SOGIESC issues.

At the end of the second cycle in 2016, the UPR had only one recommendation and a specific advanced question on the topic of intersex persons.[47] However, the third cycle has seen an increase in these recommendations and today there are 13 that deal with this issue, and the tendency shows that the number will continue to increase in the next working group sessions. In a similar way, the same has happened with the recommendations on gender identity: in 2018 the mechanism counted 49 recommendations on the issue.

> By the end of 2018, the UPR counts 2,013 recommendations on SOGIESC issues.

This third cycle has seen the first recommendation on the prohibition of sterilisation as a requisite for the legal recognition of gender,[48] and also the first recommendation in the issue of prohibition of forced anal examinations as proof of homosexuality. Both recommendations have been the result of the efforts of civil society organisations that every day see more the utility of this mechanism and give more relevance to these processes both at a national and international level.

A lot has been said of the efficacy of the UPR in countries, and distinct comparisons are made against the other existing UN mechanisms such as Treaty Bodies and Special Procedures which issue recommendations that are more technical and concrete. However, the UPR is seen by countries as

44 Diana Carolina Prado Mosquera is ILGA World's Senior Officer on UN Advocacy (UPR, HRC and SDGs).

45 Human Rights Council, *Resolution 5/1. Institution-building of the United Nations Human Rights Council*, A/HRC/5/1, 18 June 2007.

46 *Report of the Working Group on the Universal Periodic Review: Ecuador*, A/HRC/8/20, 13 May 2008, para. 32.

47 ILGA World, *26th UPR Working Group Sessions: SOGIESC Recommendations (31 October – 9 November 2016)* (2016), 7: ILGA World, *25th UPR Working Group Sessions. SOGIESC Recommendations (2 – 13 May, 2016)* (2016), 27.

48 ILGA World, *27th UPR Working Group Sessions. SOGIESC Recommendations (May 1 – May 12, 2017)* (2017), 21.

one of the more effective mechanisms that exerts international pressure on concrete issues, and in turn deals with issues that are more relevant to the LGBTI populations in different countries.

When the UPR is utilised by civil society organisations as a complementary tool, it can bring positive benefits. By means of amending laws or generating changes in countries regarding awareness issues and even creating a new channel of communication between civil society organisations that work with LGBTI issues and the government.[49]

The UPR is seen by countries as one of the most effective mechanisms that exerts international pressure on concrete issues.

Furthermore, during the third cycle, different countries received their first recommendations in SOGIESC issues, among them are Argentina, Burkina Faso, France, Luxembourg, Morocco, Pakistan, and Serbia. Countries such as Bolivia, Ecuador, the Philippines, Georgia and India formulated their own recommendations, increasing the number of countries that contribute to these issues during interactive dialogues of the UPR working group session.

The third cycle is shaping as an implementation cycle, as during the working group sessions States should report on the level of implementation of the recommendations received during the second cycle. It is precisely here where the mechanism meets its match as midterm reports are voluntary, and to date, of the 193 states examined, only 39 have presented a midterm report for the second cycle. The level of implementation and the way to follow up continues being a challenge.

Working group sessions present new advances. For example, in the case of Luxembourg, during the second cycle (2013), it received a recommendation from the Netherlands, where it was asked to adopt a law on same-sex marriage,[50] and the State, in its third UPR, reported that in 2014 such law was approved.

At the same time, it shows advances in other countries like Ghana, where in 2013 it created a system for cases of discrimination, which received complaints online, via SMS messages or in person. Then they are investigated with the intention of resolving them. This system was created for persons who had been victims of discrimination due to their sexual orientation or gender identity among others.[51] And it responds to two recommendations that were accepted by Ghana in its second cycle and the advances were reported during the review of the third cycle.

Some countries have showed advances in the implementation of recommendations. Meanwhile, in others the reaction in the face of questions of sexual orientation and gender identity has resulted in the failure to comply with recommendations that were issued and accepted in the second cycle. For example, even though in the second cycle, Cameroon accepted the recommendation to investigate police violence motivated by sexual orientation, real or perceived,[52] there have been 137 documented arrests in the last 5 years. Further still, a law recently sanctioned the criminalisation of certain forms of expression between persons of the same sex.[53]

Whilst States have their own challenges, civil society organisations continue to strive to follow-up on recommendations. Therefore, the end of the second cycle and the beginning of the third has seen the creation of different follow-up mechanisms on the part of civil society, the organising of periodic meetings with governments, the combined work with national offices of the UN

49 In this vein, and understanding the power and value that the UPR can represent when combined with other advocacy strategies, ILGA, together with 14 other organisations and its regional offices, created the toolkit for the UPR in OSIEGCS topics (a practical guide for advocates working on issues of sexual orientation, identity and gender expression and sex characteristics). This material was produced in order to help organisations become familiar with the mechanism and include it as an additional advocacy tool. See: Diana Carolina Prado Mosquera, *SOGIESC UPR: Advocacy Toolkit. A Guide for Defenders Working on Sexual Orientation, Gender Identity and Expression and Sex Characteristics* (2017).

50 ILGA World, *29th UPR Working Group Sessions. SOGIESC Recommendations (15 January – 26 January 2018)* (2018), 36.

51 Solace Brothers Foundation, *Factsheet. UPR 2017, GHANA. 3rd Cycle of the Universal Periodic Review Sexual Orientation and Gender Identity* (2017).

52 ILGA World, *30th UPR Working Group Sessions. SOGIESC Recommendations (7 May – 18 May 2018)* (2018), 14.

53 Para más información al respecto, véase la entrada sobre Camerún en la sección "Criminalisación" de este informe.

to advance the implementation of the recommendations, etc.[54]

> **The third cycle is shaping up as a cycle in which the recommendations on SOGIESC issues will continue to increase.**

At the same time, 2018 ended with a pilot project that ILGA together with other two international non-governmental organisations held in Jamaica.[55] This project was firstly focused on the implementation and follow-up of recommendations by the UN and included recommendations from the UPR and the Human Rights Committee.

The project concluded with a national consultation that included women's organisations, organisations that work with SOGIESC issues and organisations on health issues. For 2019, ILGA hopes to continue with this project in other countries, contributing to the following-up process of recommendations.

The third cycle is shaping up as a cycle in which the recommendations on SOGIESC issues will continue to increase, as well as advanced questions proposed on these issues.

The language will be very specific and the continued presence of recommendations and forward-thinking questions in the topic of SOGIESC will oblige states under review to decide on issues, which in some cases will be the first time that civil society hears its governments decide on issues in this regard.

The third cycle will continue giving value to reports sent by organisations that work on these issues and also observe techniques, each time more elaborate. Without a doubt, one hopes that the third cycle contributes to generate a positive impact on the legislative processes, for example through laws and public policies.

54 In an effort to compile these practices, in 2019 ILGA will prepare a report on best practices for implementation and follow-up on recommendations of the UPR, which will seek to compile information from different civil society organisations, with the objective that other organisations may replicate these best practices and adapt them to their own context.

55 "UPR: First Joint Consultation on Implementation of UN Recommendations Held in Jamaica", *ILGA World Website*, 12 January 2019.

UN TREATY BODIES

SOGIESC in the UN Treaty Bodies' Individual Cases: Analysis of Four Decades of Jurisprudence

By Kseniya Kirichenko.[56]

Strategic litigation represents one of the main advocacy methods used by LGBTI human rights defenders across the globe. However, United Nations Treaty Bodies' individual communications, an important opportunity for international strategic litigation, has seemingly been overlooked by advocates.

United Nations Treaty Bodies' mechanisms of individual communications[57] provide defenders from different countries, in different regions, a chance to obtain justice after the exhaustion of domestic remedies. Using this mechanism, defenders can benefit from positive developments achieved in the field by colleagues from other countries and can contribute to the global process of SOGIESC human rights' evolution.

Applying to Treaty Bodies with individual cases allows advocates to overcome impediments they faced on the national level and to obtain more in-depth analysis of the problem, as well as concrete and comprehensive recommendations for national authorities.[58] Treaty Bodies usually review cases quicker than regional human rights courts. Treaty Bodies' individual communications mechanism also provides opportunities for a case to be analysed by international human rights experts, specialising in distinct fields, such as gender, racial discrimination or disability.

However, out of more than 1,500 cases reviewed by Treaty Bodies,[59] only 25 addressed issues of sexual orientation and/or gender identity. This statistic clearly shows that the individual complaints mechanism under Treaty Bodies has not been widely used by LGBTI advocates.

Additionally, there is no comprehensive database of Treaty Bodies' jurisprudence and there is no other available collection of up-to-date decisions made by the Committees. This makes it more difficult for advocates and researchers to access information about SOGIESC developments under Treaty Bodies' individual complaints mechanism.

> **Out of more than 1,500 cases reviewed by UN Treaty Bodies, only 25 addressed issues of SOGI.**

For this reason, ILGA decided to organise a specific research and to produce a toolkit for LGBTI defenders. The toolkit will be published in 2019 and will provide information and instruments to aid defenders with the consideration, planning and implementation of strategic litigation on SOGIESC issues before Treaty Bodies; thus, bringing positive change to their communities. The present article is based on the above-mentioned research.

General overview

Overall, the Committees have published 25 views and decisions addressing sexual orientation or gender identity since 1982. More than a half of them (14 cases) were made during 2013–2018. All the views and decisions were produced by two

56 Senior Officer, Women and UN Advocacy, ILGA World.

57 The terms "complaint," "communication" and "petition" are used interchangeably here.

58 Currently, there are eight Treaty Bodies that can receive individual complaints: Human Rights Committee, Committee on Economic, Social and Cultural Rights (CESCR), Committee on the Elimination of Discrimination against Women (CEDAW), Committee against Torture (CAT), Committee on the Rights of the Child (CRC), Committee on the Elimination of Racial Discrimination (CERD), Committee on the Rights of Persons with Disabilities (CRPD), and Committee on Enforced Disappearances (CED).

59 The estimate according to the "Statistical Survey on individual complaints" at the Committees' webpages. Available here.

Committees: HRCtee (19 cases) and the Committee against Torture (six cases).

In 18 cases, the Committees concluded that State parties violated the rights enshrined in the relevant treaties, in one case the claims were considered inadmissible, and in the rest of the cases (six views) violations were not found.

The cases reviewed by the Committees can be divided into six categories, according to the issues they address (*see figure 1*).

Cases reviewed by the Committees so far were brought against 12 countries, with Australia and Sweden having the highest number of complaints (five complaints against each of them) (*see figure 2*).

Topics

Criminalisation of same-sex relations[60]

Toonen v. Australia (Human Rights Committee, 1994), the first Treaty Bodies' case on sexual orientation where a violation was disclosed, was the truly ground-breaking decision influencing multiple national and regional developments around the globe. In this decision, the Human Rights Committee declared that adult consensual sexual activity in private is protected under the concept of "privacy", and that references to "sex" in ICCPR articles 2 and 26 cover sexual orientation.

Asylum seekers

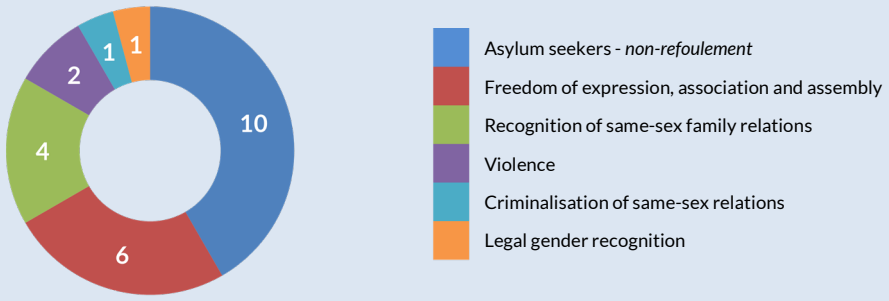
LGBT asylum seekers' situation has been addressed by Treaty Bodies' jurisprudence with regard to only one aspect, namely, the *non-refoulement* rule. This rule prohibits States from returning individuals to countries where they face a risk of torture and other forms of ill-treatment.

The very fact of criminalisation of same-sex activities (or, presumably, GIESC) in a country, does not mean that any LGB(TI) individual's deportation to this country would *per se* constitute a violation of their rights.

However, it is difficult to identify particular factors related to LGBTI persons' risk in their country of origin that would necessarily lead a Committee to recognise the violation. Instead, each case is analysed individually, and many factors are taken into account.

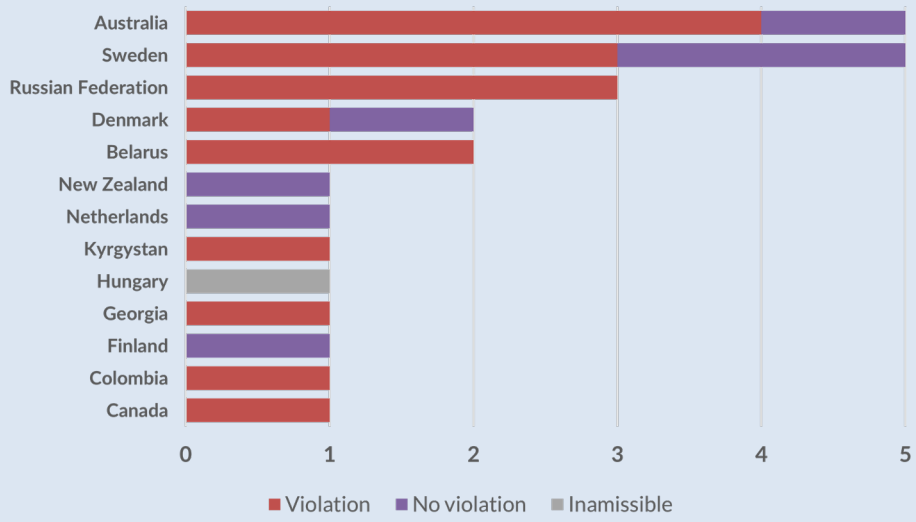
Such factors included the criminalisation of same-sex relations, religious beliefs of the author and/or their political or social activities, the author's previous experience of violence based on their sexual orientation, and sources of information confirming that the current situation in the country is that LGBTI people face enormous level of violence, harassment and intimidation, and police or other officials do not protect victims/survivors.

Figure 1: Issues addressed by UN Treaty Bodies in their jurisprudence.



[60] There was a case *Dean v. Australia* (HRCtee, 2009) that we do not consider under the criminalisation section as it concerned sexual relations with minors, and therefore there is a crucial difference between this case and cases related to criminalisation of consensual same-sex relations. While the author in *Dean* case claimed that he was discriminated against because of his sexual orientation, as he has been treated more harshly than "non-homosexuals" in respect of sentencing, the Committee found this part of his claims inadmissible.

Figure 2: SOGIESC cases by country and outcome.



Violence, hate speech and hate crimes

The two cases on violence in the context of sexual orientation reviewed by Treaty Bodies so far addressed the topic indirectly. In both cases, namely *Ernazarov v. Kyrgyzstan* (Human Rights Committee, 2015) and *D.C. and D.E. v. Georgia* (CAT, 2017), the issue raised by the authors was of particularly cruel treatment towards male detainees suspected of having committed sexual acts with other men. Surprisingly, no cases on hate crimes and hate speech against LGBTI persons have been reviewed by Treaty Bodies so far. Some cases against Russia pending before CEDAW and the Human Rights Committee could potentially fill in this gap.

Freedom of expression, assembly and association

Six SOGIESC cases on freedom of expression and freedom of assembly have been reviewed by Treaty Bodies, all by the Human Rights Committee. In all but one case, the Committee found a violation. One case (*Hertzberg et al. v. Finland*, 1982) was concerned with censoring radio and TV programmes on sexual orientation, two other cases (2012 case of *Fedotova* and 2018 case of *Nepomnyaschiy*, both against Russia) were on administrative sanctions for "propaganda of homosexuality," and three cases (*Alekseev v. Russian Federation*, 2013; *Praded v. Belarus*, 2014; and *Androsenko v. Belarus*, 2016) concerned freedom of assembly.

LGBTI families

Four cases on LGBTI families have been reviewed by Treaty Bodies so far. All four cases involved same-sex couples only; an additional case, *G. v. Australia*, involved the divorce requirement for legal gender recognition, and will be referred to in the next section. All the cases were reviewed by the Human Rights Committee.

Of the four cases on same-sex relations, two were about marriage (*Joslin et al. v. New Zealand*, 2002 and *C. v. Australia*, 2017), and two concerned the petitioners' benefits and rights after the death of their same-sex partner (*Young v. Australia*, 2003 and *X. v. Colombia*, 2007).

Only in the first case, *Joslin et al. v. New Zealand*, did the Committee find no violation. In the three later cases, the Committee decided that State parties violated the authors' rights enshrined in the ICCPR.

Legal gender recognition

Until recently, Committees did not have any jurisprudence on cases brought by trans persons. However, in March 2017, the Human Rights Committee found a violation in *G. v. Australia*, the case brought by a trans woman who underwent hormonal treatment and gender reassignment surgery, and obtained a new passport, but was not able to get her gender marker changed on her birth certificate.

Conclusions and identified gaps

For the past three decades, Treaty Bodies have accumulated a portfolio of jurisprudence on LGBT cases. However, gaps and opportunities still remain.

Firstly, so far, only the Human Rights Committee and CAT have reviewed cases on SOGI issues. Advocates are encouraged to consider other Committees, such as CEDAW, CERD, CESCR, CRC or CRPD, as they could explore new interpretations of issues, or tackle issues covered by their particular mandates.

Only the Human Rights Committee and the Committee against Torture have reviewed cases on SOGI issues.

Secondly, defenders could think about bringing cases on issues that fall within the six existing areas, but could also touch on new areas or aspects not analysed by the Committees so far.

For *criminalisation*, it could be on the criminalisation of same-sex female relations, relations between adolescents, the criminalisation of certain forms of gender expression, the criminalisation of same-sex relations in particular conditions, such as in the military, or certain degrading practices used by authorities when investigating cases on same-sex relations. Defenders could also bring cases challenging specific consequences of criminalisation for economic, social and cultural rights, or implications related to disability or race, ethnicity, indigenous or migrant status.

For LGBTI *asylum seekers*' cases, advocates can bring complaints on behalf of intersex and trans persons, LBQ women or LGBTI persons with children, as well as cases related to mistreatment and inadequate conditions in asylum centres.

On *violence*, new cases could be brought on hate crimes and hate speech and lack of effective investigation into such incidents; on violence and bullying in educational settings; on specific forms and consequences of violence experienced by LBQ women and trans and intersex persons; on the so-called "conversion therapies"; on violence in detention; and, on intersex genital mutilation and other coercive medical treatment.

Regarding *freedom of expression, assembly and association*, advocates are encouraged to consider cases on freedom of association, including restrictions on registration or operation of LGBTI organisations and problems related to funding; on impediments for dissemination of information on SOGIESC, including website blocking, media censorship, access to information for adolescents or on HIV; on impediments to LGBTI demonstrations created by private actors, such as anti-LGBTI groups, and an ineffective response to it by authorities; and, on gender expression as part of freedom of expression.

On *LGBTI families*, further cases could be brought regarding the lack of access to institutions, such as marriage, for same-sex couples or particular rights and benefits they are denied because of it; access to assisted reproductive technologies, filiation and adoption, as well as parental rights; and, families of intersex children, when it comes to information provided to them and consent for medical treatment.

Regarding *legal gender recognition*, the *G. v. Australia* case seems to open new opportunities for individual complaints related to legal gender recognition procedures. This includes, where they are not adopted in a country at all, or where they are abusive. Cases revealing particular consequences or intersectional aspects of the LGR procedures' shortcomings could be reviewed by the Human Rights Committee, but also by other Treaty Bodies.

While no cases on *discrimination* on grounds of SOGIESC in employment, education, health care, housing and other areas have been reviewed by Treaty Bodies so far, this area could be developed in future petitions.

Thirdly, most of the LGBT cases reviewed by Treaty Bodies, were brought from a limited number of countries; this situation reveals a significant regional imbalance. Of the 25 views and decisions adopted by the Committees since 1982, 16 cases came from countries in Europe and Central Asia, 6 cases from Oceania (Australia and New Zealand), one case from LAC region (Colombia), and another from North America (Canada). No cases against Asian (except for Central Asia, namely, Kyrgyzstan) or African countries have been reviewed by Treaty Bodies so far. This situation could be partly explained by objective factors, such as the number of ratifications in different regions or access to regional mechanisms. At the same time, defenders coming from underrepresented regions or sub-regions are encouraged to consider strategic litigation before Treaty Bodies and to inform partners about their needs and possible support required for such work.

Annex: Treaty Bodies' Jurisprudence on SOGIESC[61]

BODY	CASE TITLE	COM. NUMBER	DATE	SUBJECT MATTER	RESULT
CRIMINALISATION OF SAME-SEX RELATIONS					
HRCtee	Toonen v. Australia	488/1992	31 Mar 1994	Criminalisation of consensual same-sex relations between adults.	Violation
ASYLUM SEEKERS					
CAT	K.S.Y. v. Netherlands	190/2001	15 May 2003	Deportation of a gay man to Iran	No violation
CAT	E.J.V.M. v. Sweden	213/2002	14 Nov 2003	Deportation of a bisexual man to Costa Rica	No violation
CAT	Uttam Mondal v. Sweden	338/2008	23 May 2011	Deportation of a gay man to Bangladesh	Violation
HRCtee	X. v. Sweden	1833/2008	1 Nov 2011	Deportation of a bisexual man to Afghanistan	Violation
HRCtee	M.I. v. Sweden	2149/2012	25 Jul 2013	Deportation of a lesbian woman to Bangladesh	Violation
CAT	J.K. v. Canada	562/2013	23 Nov 2015	Deportation of a gay man and LGBT activist to Uganda	Violation
HRCtee	M.K.H. v. Denmark	2462/2014	12 Jul 2016	Deportation of a gay man to Bangladesh	Violation
HRCtee	M.Z.B.M. v. Denmark	2593/2015	20 Mar 2017	Deportation of a trans woman to Malaysia	No violation
CAT	E.A. v. Sweden	690/2015	11 Aug 2017	Deportation of a gay man to Lebanon	No violation
HRCtee	Z.B. v. Hungary	2768/2016	19 Jul 2018	Deportation of a woman, who allegedly suffered from violence based on her sister's sexual orientation in Cameroon, to Serbia, where she had been raped and captured	Inadmissible
VIOLENCE / HATE CRIMES / HATE SPEECH					
HRCtee	Ernazarov v. Kyrgyzstan	2054/2011	25 Mar 2015	Death of a person convicted of "forced sodomy" in a police station as a result of inter-prisoner violence against gay men and sex-offenders	Violation
CAT	D.C. and D.E. v. Georgia	573/2013	12 May 2017	Vulnerability of a detained person subjected to torture, including attempted rape, by police	Violation
FREEDOM OF EXPRESSION / FREEDOM OF ASSEMBLY AND ASSOCIATION					
HRCtee	Hertzberg et al. v. Finland	061/1979	2 Apr 1982	Censuring radio and TV programmes dealing with sexual orientation	No violation

[61] So far Treaty Bodies have reviewed cased related to LGBT persons only. Cases are grouped in the table by topics and in chronological order within each topic.

HRCtee	Fedotova v. Russian Federation	1932/2010	31 Oct 2012	Administrative fine for "gay propaganda among minors" for displaying LGBT posters	Violation
HRCtee	Alekseev v. Russian Federation	1873/2009	25 Oct 2013	Refusal to authorise a picket against execution of gay people in Iran	Violation
HRCtee	Praded v. Belarus	2092/2011	10 Oct 2014	Arrest and imposition of a fine for holding of a peaceful assembly against killings of gay people in Iran without prior authorisation	Violation
HRCtee	Androsenko v. Belarus	2092/2011	30 Mar 2016		Violation
HRCtee	Nepomnyaschiy v. Russian Federation	2318/2013	17 Jul 2018	Administrative fine for "gay propaganda among minors" for displaying LGBT posters	Violation
FAMILY RIGHTS					
HRCtee	Joslin et al. v. New Zealand	902/1999	17 Jul 2002	No access to marriage for two lesbian couples	No violation
HRCtee	Young v. Australia	941/2000	6 Aug 2003	Refusal to grant a pension to a same-sex partner of a deceased man	Violation
HRCtee	X. v. Colombia	1361/2005	30 Mar 2007	Refusal to grant a pension to a same-sex partner of a deceased man	Violation
HRCtee	C. v. Australia	2216/2012	28 Mar 2017	Denial of access to divorce proceedings for a lesbian couple married abroad	Violation
LEGAL GENDER RECOGNITION					
HRCtee	G. v. Australia	2172/2012	17 Mar 2017	Divorce requirement for legal gender recognition	Violation

INTERNATIONAL LABOUR ORGANISATION (ILO)

Progress Towards Ending Discrimination Based on SOGI in the World of Work[62]

By Gurchaten Sandhu.[63]

Standard setting

Celebrating its centenary in 2019, the International Labour Organisation (ILO) is one of the oldest United Nations' specialised agencies. Mandated to promote social justice and decent work for all, the ILO's founding mission is that social justice is essential to universal and lasting peace.

Through its unique tripartite structure, the ILO brings together governments, employers and workers to define international labour standards, and to develop policies and programme for decent work for all.

Two ILO recommendations explicitly include references to sexual orientation.

International labour standards in the form of conventions and recommendations are drawn up by governments, employers and workers that are adopted at the ILO's Annual International Labour Conference. *Conventions* are legally binding international treaties that Member States may ratify, whilst *recommendations* serve as guidelines for Member States for integration into national legislation and policy frameworks.

To date there are two ILO recommendations that explicitly include references to sexual orientation: the *Private Employment Agencies Recommendation, 1997* (No. 188) and the *HIV and AIDS Recommendation, 2010* (No. 200).

The ILO supervisory system

The ILO's has a unique supervisory system to ensure that member states implement the conventions they have ratified. Through this system, the ILO monitors the application of the conventions by Members States and identifies areas for improvement.

Member States submit reports on application in law and practice of the conventions, which are examined by two ILO Bodies: the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the International Labour Conference's Tripartite Committee on the Application of Conventions and Recommendations.

Composed of 20 eminent jurists for three year terms, the CEACR makes two kinds of comments when examining the reports from States: *observations* and *direct requests*.

In the 2017 session, the CEACR made direct requests specifically on the grounds of sexual orientation and/or gender identity to Australia,[64]

62 *The views expressed herein are those of the author(s) and do not necessarily reflect the views of the International Labour Organisation.*

63 Gurchaten Sandhu works as a Programme Support Officer at the United Nation's International Labour Organisation (ILO) has him working for the promotion of equality and non-discrimination in the Fundamental Principles and Rights at Work Branch. He also finds the time to volunteer for UN GLOBE, the staff group representing LGBTI staff in the UN and its peacekeeping operations. As its Vice-President, he works to ensure the voice and rights of LGBTI staff are represented in UN policies and procedures. He has raised the group's visibility, has trained colleagues at the highest level of the UN agencies, organised and built a community of UN LGBTI staff, as well as a network with local and national LGBTI organisations in Switzerland. Gurchaten has also helped to reform the staff regulations on personal status in the ILO and more recently helped to introduce gender inclusive/neutral toilets on every floor of the ILO building, making it the first UN agency in Geneva to do so. He serves as a steering committee member of the International Family Equality Day NGO, advising on non-discrimination based on family status in the world of work, and finally, last year, he was listed in the Financial Times Top 30 OUTstanding Role Model in the Public Sector.

64 Direct Request (CEACR) - Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Australia.

Brazil,[65] Haiti,[66] Italy,[67] Jamaica,[68] Netherlands,[69] Papua New Guinea,[70] and Vanuatu.[71]

Awareness raising and advocacy

Since 2013, the ILO's Director-General, Guy Ryder, has observed the International Day against Homophobia, Transphobia and Biphobia (IDAHOTB) by issuing a statement promoting tolerance and condemning workplace discrimination against LGBTI+ workers.[72]

The Director General's message in the statement focus on the IDAHOTB theme for that particular year in relation to the world of work. The statements also coincide with events held at HQ in Geneva to celebrate the day and giving visibility to the ILO's work on LGBTI+ issues as well as the Office's efforts to promote diversity and inclusion in the workplace.

For IDAHOTB 2017, in response to the results of an internal LGBT staff survey where 32% of LGBT respondents indicated that they were not out to colleagues at work, ILO Officials at HQ were invited to "come out" as LGBTI allies by wearing rainbow coloured lanyards/badge holder showing their commitment to making the ILO an inclusive workplace for all. Owing to the IDAHOTB theme of "alliances for solidarity" the LGBTIallies@ILO initiative was repeated in 2018, along with a panel discussion on the theme of "LGBT Voices: our experiences in the workplace & beyond". In addition, a three-step guidance piece on how to fight discrimination in the workplace and become an LGBTI ally was launched.[73]

Working with LGBTI people, the ILO piloted a specific project to promote decent and productive work. Sixteen trans women participated in the 2nd edition of the kitchen assistant course organised in April 2018 by the project "Employability of Trans People – Kitchen & Voice".[74]

The "Kitchen & Voice" project educated the first group at the end of 2017 and managed to bring about 70 per cent of participants into jobs offered by a network of partner companies. "Kitchen & Voice" is part of a National Employability Project for the LGBTI population and is expected to expand its geographic scope to other Brazilian states, including Bahia, Rio de Janeiro, Goiás and Pará.

As a follow up to the "Promoting rights, diversity and equality in the world of work (PRIDE)" Project,[75] the ILO is developing a gender-sensitive comprehensive toolbox for the promotion of inclusion of LGBTI+ people in the world of work. The Toolbox will promote the use of social dialogue and collective bargaining in addressing LGBTI+ concerns; adopt a differentiated approach to addressing the needs of LGBTI+ persons; cover a broad scope from fair recruitment to termination of work; focus on legal and policy issues at both the national and enterprise levels; include modules on HIV to be used in countries where there is a significant link between LGBTI and HIV; and promote non-violence, access to justice and social inclusion of LGBTI+ in the world of work. It will present an easy-to-use reference with step-by-step and practical guidance on how to develop inclusive working environments for use by Governments, i.e. Ministries of Labour, Employers' organisations, Workers' organisations as well as business and public sector institutions.

65 Direct Request (CEACR) - Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Brazil.

66 Direct Request (CEACR) - Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Haiti.

67 Direct Request (CEACR) - Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Italy.

68 Direct Request (CEACR) - Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Jamaica.

69 Direct Request (CEACR) - Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Netherlands.

70 Direct Request (CEACR) - Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Papua New Guinea.

71 Direct Request (CEACR) - Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Vanuatu.

72 Statements by the ILO Director-General Guy Ryder on the occasion of the International Day against Homophobia and Transphobia can be accessed here: 2013; 2014; 2015; 2016; 2017; 2018.

73 "Three steps to fight discrimination in the workplace and become an LGBTI ally", Work in Progress (ILO-Blog), 17 May 2018.

74 "ILO helps open doors to the labour market for LGBTI people in Brazil", *ILO Website*, 16 August 2018.

75 In 2012, with the support of the Government of Norway, the ILO initiated the "Gender Identity and Sexual Orientation: Promoting Rights, Diversity and Equality in the World of Work (PRIDE)" project. The project conducts research on discrimination against Lesbian, Gay, Bisexual and Transgender (LGBT) workers across the world and highlights good practices that promote meaningful inclusion. The first phase of the project, which is now complete, focused on Argentina, Hungary and Thailand, and work is on-going in Costa Rica, France, India, Indonesia, Montenegro and South Africa. See: ILO (International Labour Office Gender, Equality and Diversity Branch), *ORGULLO (PRIDE) en el trabajo: Un estudio sobre la discriminación en el trabajo por motivos de orientación sexual e identidad de género en Argentina* (2015); —, *PRIDE at work A study on discrimination at work on the basis of sexual orientation and gender identity in Thailand* (2015).

UNESCO

UNESCO and the 2030 Agenda for Education Inclusive of Young LGBTI People

By the UNESCO Team.[76]

Supporting effective education sector responses to violence and bullying based on SOGIE

School violence and bullying is an obstacle to quality education. Evidence shows that LGBTI learners are particularly vulnerable to school violence and bullying, as well as those learners who are perceived as gender-non conforming. Preventing and addressing homophobic and transphobic violence in educational institutions is essential to ensure that education is more inclusive of LGBTI and gender non-conforming learners.

UNESCO is supporting its Member States to combat school violence and bullying based on sexual orientation and gender identity or expression, in line with its mandate on ensuring the right to quality education for all in learning environments that are safe, non-violent and inclusive (SDG4 – Target 2.a). UNESCO uses a culturally sensitive approach that is adapted to a range of socio-cultural contexts and legal environments.

UNESCO's work aims at improving the evidence base, documenting and sharing best practice for action, raising awareness and build coalitions, and supporting interventions at country level to prevent and address homophobic and transphobic violence.

UNESCO started to work in this area in 2011 by convening the first-ever UN international consultation to address homophobic bullying in educational institutions.

In 2016, it organised the first international ministerial meeting on education sector responses to homophobic and transphobic violence to catalyse responses by its Member States. A group of countries affirmed a *Call for Action* by Ministers to express their political commitment to ensuring inclusive and equitable education for all learners in an environment free from discrimination and violence, including discrimination and violence based on sexual orientation and gender identity/expression.[77] This Call for Action has been supported by 56 countries.[78]

56 countries affirmed a *Call for Action* to ensuring inclusive and equitable education for all, free from discrimination and violence based on SOGIE.

During the meeting, UNESCO also launched the first global report providing an up-to-date analysis of the scope and impact of homophobic and transphobic violence in schools worldwide, as well as examples of

[76] Special thanks to Christophe Cornu, Team Leader of the Section of Health and Education (Division for Peace and Sustainable Development), Education Sector UNESCO.

[77] *Call for Action by Ministers: Inclusive and equitable Education for All learners in an environment free from discrimination and violence*, ED/IPS/HAE/2016/02 REV (2016).

[78] These countries include: Albania, Andorra, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Cabo Verde, Canada, Chile, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, El Salvador, Estonia, Fiji, Finland, France, Germany, Greece, Guatemala, Honduras, Iceland, Israel, Italy, Japan, Liechtenstein, Luxembourg, Madagascar, Malta, Mauritius, Mexico, Moldova, Montenegro, Mozambique, The Netherlands, Nicaragua, Norway, Panama, Peru, The Philippines, Portugal, Romania, Serbia, Slovenia, South Africa, Spain, Sweden, Switzerland, United States of America and Uruguay.

successful responses in a number of regions and countries.[79]

Early evidence and the conceptual framework from the UNESCO report were used by the Council of Europe to develop, in collaboration with UNESCO, a report to enrich the evidence base for education sector responses to violence based on SOGIE in the European region, published in 2018.[80]

UNESCO has supported concrete follow-up to the ministerial meeting and *Call for Action* in Ministers in various regions and selected countries.

In Asia-Pacific, in 2017, the regional UNESCO Office organised a consultation with representatives from nine countries from the region to highlight gaps and good practices at country-level and identify strategic opportunities for multi-stakeholder advocacy and action to address school-related SOGIE-based violence.

As a follow-up to the consultation, UNESCO has partnered with Education International (EI), which is the world's largest teachers' union, to build capacity of their teachers on the rights of LGBTI people and the role of the education sector to address discrimination on the basis of SOGIE in Asia Pacific.

As part of this partnership, EI has also conducted a survey on the perception of the rights of LGBTI people among teachers who are members of unions from across the region. In Thailand, a teacher training and curriculum development workshop was organised with the goal of providing national education authorities with a deeper understanding of SOGIE and the impact of bullying and discrimination based on SOGIE, and of identifying entry-points and strategies for the Thai context. A School Climate Assessment tool was piloted in North Thailand to assess aspects that are essential for a whole school approach to creating a safe and inclusive learning environment for LGBTI students.

In Europe, with support of UNESCO, the International Lesbian, Gay, Bisexual, Transgender, Queer & Intersex Youth and Student Organisation (IGLYO) organised a follow-up meeting to the Call for Action for European countries. Participating countries reviewed progress in the implementation of their commitments and planned for further actions.

In Latin America, UNESCO worked with Cenesex (*Centro Nacional de Educación Sexual*) in Cuba to generate data through two studies: a situation analysis on the response of the education sector to homophobic and transphobic bullying, and a study conducted amongst young LGBT adults about their experiences of violence when they were in school.

Promoting education and health that are fully inclusive of LGBTI learners

Beyond its activities to prevent and address homophobic and transphobic violence in educational institutions, UNESCO is working to ensure that education and health are fully inclusive of LGBTI learners.

In 2018, UNESCO published the International Technical Guidance on Sexuality Education.

In 2017, at the invitation of UNDP and the World Bank, UNESCO chaired the expert working group on education for the development of an international LGBTI Inclusion Index.

Furthermore, in 2018, UNESCO published the International technical guidance on sexuality

79 UNESCO, '*Out in the open: Education sector responses to violence based on sexual orientation and gender identity/expression*' (Paris: UNESCO, 2016). Summaries available in English and French.

80 Council of Europe, *Safe at school: Education sector responses to violence based on sexual orientation, gender identity/expression or sex characteristics in Europe* (2018).

education.[81] The guidance is developed to assist education, health and other relevant authorities in the development and implementation of school-based and out-of-school comprehensive sexuality education programmes and materials. The needs of LGBTI students are extensively referenced.

Last but not least, in 2018, UNESCO also supported a global web-based consultation conducted by the youth organisation MAG Jeunes LGBT on how to make the 2030 Sustainable Development Agenda for education and health more inclusive of young LGBTI people. The inputs of more than 20.000 LGBTI youth were presented during the second conference of the Equal Rights Coalition (ERC) in Canada, giving a voice to young LGBTI people who are often underrepresented in forums where the rights of LGBTI people are discussed.[82]

More UNESCO SOGIESC Resources

- Out in the open: education sector responses to violence based on sexual orientation and gender identity/expression, UNESCO, 2016. Summary report available in English, French and Spanish.
- From Insult to Inclusion: Asia-Pacific report on Bullying, Violence and Discrimination on the Basis of Sexual Orientation and Gender Identity, UNESCO, 2015.
- La violencia homofóbica y transfóbica en el ámbito escolar en Latinoamérica: hacia centros educativos inclusivos y seguros, UNESCO, 2015. *In Spanish only*.
- El bullying homofóbico y transfóbico en centros educativos: taller de sensibilización para su prevención (Guía de facilitación), UNESCO, 2015. *In Spanish only*.
- Bullying targeting secondary school students who are or are perceived to be transgender or same sex attracted: Types, prevalence, impact, motivation and preventive measures in 5 provinces of Thailand, UNESCO Bangkok, 2014.
- Good Policy and Practice Series, Booklet 8: Education Sector Responses to Homophobic Bullying, UNESCO, 2012. Also available in Chinese, French, Italian, Korean, Polish, Portuguese, Russian, Spanish.
- International Day against Homophobia and Transphobia Lesson Plan, UNESCO, IDAHOT, 2012.
  Also available in French, German. Locally adapted for Thailand in "Lesson Plans for teaching about sexual and gender diversity".
- Reaching Out – Volume 2: Preventing and Addressing SOGIE-related School Violence in Viet Nam, UNESCO, 2016.

81 UNESCO, UNAIDS, UNFPA, WHO, UN Women, *International technical guidance on sexuality education: an evidence-informed approach* (2018).

82 Findings are summarised in a report available on the website of MAG Jeunes LGBT: https://www.mag-jeunes.com/wp-content/uploads/2018/12/Global-Summary-Report-LGBTI-Youth-ENG.pdf

INTERNATIONAL HUMAN RIGHTS LAW

REGIONAL BODIES

STATE-SPONSORED HOMOPHOBIA 2019



INTER-AMERICAN COURT OF HUMAN RIGHTS

Advisory Opinion No. 24: A Milestone in the Quest for Equality in the Americas

By Lucía Belén Araque.[83]

The Inter-American Court of Human Rights (IACtHR or "the Court") is one of the two bodies in charge of protecting human rights within the system built around the Organisation of American States (OAS). The Court interprets and applies —among other legal instruments— the American Convention on Human Rights (ACHR, "The Convention"), the main human rights treaty of the system. It does this basically in two ways. The first —and most prominent— is by hearing and ruling on specific cases concerning alleged violations of its provisions perpetrated by States that ratified or acceded to the treaty. The Court can also express its views on concrete legal matters brought to its attention by organs and Member States of the OAS. These views—formally referred to as "advisory opinions"—have proved to be a valuable tool for further advancing human rights in the region.

In November 2017, the IACtHR issued a remarkably bold and far-reaching advisory opinion on sexual and gender diversity. Not only did the Court recognise that LGBT persons have historically been victims of stigmatisation and violence, but also set clear standards with respect to the enjoyment of their human rights in a regional context of emerging anti-rights groups and governments.

Unlike what the European Court of Human Rights (ECHR) argued in cases like Schalk and Kopf v. Austria, the IACtHR categorically stated that the lack of consensus among American States over alleged controversial topics such as those involving sexual and gender minorities cannot be considered a valid argument for denying or restricting their human rights and perpetuating and reproducing structural and historical discrimination against them, leaving no local margin of appreciation in this regard.[84] The fact that the Court distanced itself from nuanced approaches proves its potential as a driving force of change in the Americas while, at the same time, poses a challenge in terms of effectiveness of its decisions.

The Court's reliance on the progress made by OAS Member States (notably Argentina, Colombia, Mexico and Uruguay) in issues of sexual and gender diversity—and the work carried out by human rights advocates that underlies it— is undoubtedly one of the main features of this advisory opinion, together with the opportunity it offers LGBT activists to assess priorities.

The Court set clear standards with respect to the enjoyment of human rights by LGBT people in a regional context of emerging anti-rights groups and governments.

Despite being a massive win for trans identities, media coverage of the opinion—and to some extent the work of academics—appear to have intensively focused on the sections of the decision on same-sex marriage, reflecting once again the uneven attention that trans-related topics receive in comparison to LGB ones, a phenomenon that has historically been a source of tension within the LGBT movement.

[83] Lucía Belén Araque is an Argentinean lawyer specialised in Public International Law with a focus on International Human Rights Law (University of Buenos Aires, 2018). Exchange student at The University of Texas at Austin School of Law (full-ride merit-based scholarship granted by UBA Law School, Fall 2017). LLM in International Human Rights Law Candidate, researcher and Assistant Lecturer at UBA Law School.

[84] Inter-American Court of Human Rights. Gender identity, and equality and non-discrimination with regard to same-sex couples. State obligations in relation to change of name, gender identity, and rights deriving from a relationship between same-sex couples (interpretation and scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to Article 1, of the American Convention on Human Rights). *Advisory Opinion OC-24/17*. Series A No. 24 (in Spanish), para. 83.

Costa Rica's questions

Observing that the protection of the human rights of LGBT persons varies significantly among OAS Member States, Costa Rica submitted a request to the IACtHR for clarification of the content and scope of the prohibition of discrimination on grounds of sexual orientation and gender identity under the ACHR.[85] The Court was specifically asked to address whether States have an obligation to allow for name changes of individuals in accordance with gender identity and to recognise all patrimonial rights stemming from same-sex relationships.[86]

On equality and non-discrimination

The IACtHR described the principle of equality and non-discrimination as the basis of national and international human rights systems, strongly linking it to human dignity.[87]

Recalling its well-established case law, the Court stressed that States must refrain from carrying out any action that discriminates (directly or indirectly) against a person or group of people and that they must guarantee the full realisation of human rights without discrimination.[88] This also includes protecting people from third party practices that create, maintain or favour discriminatory situations.[89] Interestingly, the Court stressed that sexual orientation, gender identity and gender expression (SOGIE) are protected categories under this principle[90] and even referred to the notion of intersectionality (i.e., a theory on how overlapping dimensions of oppression operate on different identities), although it did not go into too much detail in this regard.[91]

On SOGIE and personality

The IACtHR delivered a robust construction of SOGIE as essential aspects of the "right to identity".[92] Noting that no particular mention of such human right is made in the ACHR, the Court explained that the protection of attributes and characteristics that allow the individualisation of a person within society derives from the protection that the Convention affords to the principles and rights that make up its core: personal autonomy, equality and non-discrimination, name, private and family life and freedom of expression.

In other words, the development of personality and aspirations, the determination and expression of individuality and the building and definition of social relationships belong within the domain of the choices that an individual makes in accordance with self-perception and personal convictions and that States must therefore respect and safeguard.

The Court stressed that sexual orientation, gender identity and *gender expression* are protected categories under the principle of equality and non-discrimination.

The Court also identified the nature of the right to an identity —of which SOGIE is a fundamental component— as instrumental to the full realisation of other human rights that depend on its recognition.[93]

On legal recognition of gender identity

The IACtHR explored its connection with the right to "legal recognition as a person before the law".[94]

Put this way, this right may sound odd to those who are not familiar with the I/A system or with civil (continental) law. Basically, it determines the existence of the individual as a human being with distinct needs, interests and opinions and the possibility of accessing and exercising rights. The Court also referred to the right to a name, a defining attribute of personality without which the

85 *Ibid.*, para. 2.
86 *Ibid.*, paras. 1, 3.
87 *Ibid.*, para. 61.
88 *Ibid.*, para. 63.
89 *Ibid.*, para. 65.
90 *Ibid.*, para. 78.
91 *Ibid.*, para. 41.
92 *Ibid.*, paras. 85-101.
93 *Ibid.*, paras. 98, 99.
94 *Ibid.*, paras. 102-104.

person cannot be recognised by society or registered by the State.[95]

In this regard, the Court affirmed that the ACHR establishes the right to have one's name changed and one's image and sex or gender markers rectified to match self-perceived gender identity in public records and identification documents.[96]

Furthermore, the Court declared that States are free to choose which type of procedure aimed at realising such right to implement —judiciary or administrative (though it recommended the latter)—, provided it meets certain minimum standards.[97]

Firstly, it must be of a "declaratory nature". Under no circumstances can it be turned into a form of external validation of the applicant's gender identity.[98] Secondly, it must be based solely on the free and informed consent of the applicant, without involving unreasonable or pathologising requirements such as medical, psychological or other certifications (of good conduct, "not married" marital status, criminal records, etc.),[99] forced hormonal therapy, gender reassignment surgery, sterilisation or any sort of body modification.[100] And last but not least, it must be confidential (documents cannot reflect the changes and/or rectifications either),[101] prompt and, insofar as possible, centralised and cost-free.[102]

Most notably, the Court added that these regulations apply likewise to procedures involving children.[103] The right to legal recognition of gender identity in these cases must be protected taking into account the principles of best interests of the child, progressive autonomy, participation and equality and non-discrimination.[104]

On protection of same-sex couples

The IACtHR expressed that the conventional protection of family and private and family life applies also to relations between persons of the same sex with respect to all kinds of issues.[105]

The Court outlined the different legislative, judicial and administrative measures that had been taken in the region to ensure equal rights for same-sex couples and, based on the principle of equality and non-discrimination, determined that no argument could justify not extending such institutions to same-sex couples.[106]

Particularly, it stated that establishing two types of formal unions with different names —but that grant the same rights and produce the same effects— is inadmissible under the ACHR, as it means creating a stigmatising distinction based on sexual orientation.[107]

Moving towards effective implementation

Advisory Opinion No. 24 constitutes a landmark in the advancement of human rights of LGBT persons in the Americas. The IACtHR's approach to sexual and gender diversity —undoubtedly the most progressive one ever adopted by a human rights regional court— called a halt to the discussion aimed at excluding SOGIE legal safeguards from the ACHR.

The question within the I/A System then is no longer whether legal recognition of gender identity and protection of same-sex relationships are actually required, but rather how these rights are going to be fulfilled in practice.

The effective implementation of these rights in the precise way that they were construed by the Court is still uncertain considering the high risk of political backlash in a region that shows growing anti-rights tendencies. Nevertheless, several States— responding to pressure from LGBT activists— have already started to act on the Advisory Opinion, raising hope that effective implementation will ultimately follow the Court's guidelines.

95 *Ibid.*, para. 106.
96 *Ibid.*, para. 115.
97 *Ibid.*, paras. 117, 159.
98 *Ibid.*, para. 158.
99 *Ibid.*, paras. 127-133.
100 *Ibid.*, paras. 145-148.
101 *Ibid.*, paras. 134-140.
102 *Ibid.*, paras. 124, 125, 141-144.
103 *Ibid.*, para. 154.
104 *Ibid.*, paras. 149-156.
105 *Ibid.*, paras. 191, 198.
106 *Ibid.*, paras. 200-228.
107 *Ibid.*, para. 224.

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

The Protection of the Rights of LGBTI People by the Inter-American Commission on Human Rights

Luiza Drummond Veado.[108]

The Inter-American Commission on Human Rights (IACHR) is one of the main bodies of the Organisation of American States (OAS) that promotes and protects human rights in the 35 States of the region and, together with the Inter-American Court of Human Rights (I/A Court), forms the Inter-American System.

Since 2011, the Commission has a Thematic Unit on the rights of LGBTI persons, which later became one of its Rapporteurships. Through this Rapporteurship, the IACHR monitors the situation of this population in the Americas, working with States and civil society, as well as other regional and international actors. It also processes individual petitions and cases related to SOGIESC.

Public hearings

In 2018, the IACHR heard diverse concerns from civil society organisations and received information from the States in several thematic hearings. In particular, the Commission received information on gender and sexual diversity policies in Paraguay,[109] the human rights situation of trans people in Argentina,[110] the situation of LGBT people deprived of liberty in the Americas,[111] violations of economic, social, cultural and environmental rights of LGBTI people in the region,[112] the political crisis in Venezuela and its effects on the LGBTI community[113] and equal marriage in the Americas,[114] as well as various intersectional issues that affect the lives of LGBTI people in the continent.

Through the Rapporteurship on the rights of LGBTI persons, the IACHR monitors the situation of this population in the Americas.

System of petitions and cases

In 2018, the Commission published reports on individual cases on issues of sexual orientation and gender identity.

The IACHR took the case of Azul Rojas Marín against Peru before the Inter-American Court of Human Rights.[115] This is the first case of violence against LGBTI persons before that court and refers to the illegal, arbitrary and discriminatory arrest of Azul Rojas Marín, who then identified as a gay man (she currently identifies as a trans woman). Azul suffered serious acts of physical and psychological violence perpetrated by state agents, including various forms of sexual violence and rape. The IACHR found that the acts of violence against the victim were carried out with special cruelty because the state agents had identified Azul Rojas Marín as a gay man. The Commission also found that the facts of the case constitute violence based

108 Luiza Drummond Veado, LLM from the University of Essex, is a human rights lawyer and consultant on issues of sexual orientation, gender identity and sexual characteristics.

109 "Paraguay Género y Diversidad Sexual", *IACHR YouTube Channel*, 27 February 2017.

110 "Argentina DDHH Población Trans", *IACHR YouTube Channel*, 1 March 2018.

111 "Personas LGBTI privadas de libertad", *IACHR YouTube Channel*, 8 May 2018.

112 "DESCA de personas LGBTI en América", *IACHR YouTube Channel*, 2 October 2018.

113 "Venezuela: Personas mayores y LGBTI", *IACHR YouTube Channel*, 4 October 2018.

114 "Regional: Matrimonio Igualitario", *IACHR YouTube Channel*, 5 December 2018.

115 IACHR, *Report No. 24/18*, Case 12.982. Merits. *Azul Rojas Marín et al.*. Peru. 24 February 2018; Press Release No. 189/18: "IACHR Takes Case Involving Peru to the Inter-American Court of Human Rights", 27 August 2018.

on prejudice and considered that the constitutive elements of torture are also present. In addition, throughout the investigation, the victim was humiliated, and her credibility questioned by judicial authorities, from the initial report until the final decision. Thus, the IACHR considered that the State of Peru violated the State obligations to respect and fulfil the rights of a victim who denounces sexual violence, with the aggravating prejudice against LGBT people. This is a great opportunity for the Inter-American Court to issue a paradigmatic decision with clear standards on the protection of LGBTI persons against violence.

Additionally, the IACHR published the admissibility report in the case of *Gareth Henry*, *Simone Carline Edwards and families*[116] on acts of discrimination and violence in Jamaica based on the sexual orientation of the victims. Such acts of violence forced both alleged victims to leave the country and apply for asylum abroad. The alleged victims place great emphasis on the existence of sodomy laws in Jamaica, alleging that it legitimises structural discrimination against LGBT people.

Precautionary measures

In 2018, the IACHR issued two precautionary measures in favour of human rights defenders of LGBTI persons in Brazil.

The first was awarded to Mónica Tereza Azeredo Benicio,[117] partner of Marielle Franco, a well-known defender of afro-bisexual human rights murdered in Rio de Janeiro. The Commission understood that the alleged threats, harassment and persecution, among other acts of intimidation, could be related to the complaints that the beneficiary has been filing in recent months in relation to the murder of her partner, as well as her willingness to assume her legacy and continue her important work.

The second precautionary measure granted in 2018 was granted to Jean Willys de Matos Santos,[118] the first openly gay Brazilian legislator and to his family, in relation to possible threats against his life and personal integrity. According to available information, the threats are directly related to his work as a human rights defender and as a gay man. It is important to underline that Jean Willys subsequently left Brazil due to the threats suffered and did not take up his seat in the congress, even after the issuance of the precautionary measure granted by the Inter-American Commission.

Other lines of work

In addition to all these decisions, the IACHR conducted a public consultation related to the protection of economic, social and cultural rights (ESCR) of trans people in the Americas and collected numerous responses through a public questionnaire.[119] It also issued several press releases highlighting the advances and setbacks in the region on the rights of LGBTI people[120] and held a joint event with the United Nations High Commissioner and the African Commission on Human and Peoples' Rights. Finally, the IACHR also launched a campaign composed of six videos about serious human rights violations against LGBTI people that continue to exist in the Americas and the Caribbean.[121]

Over the past decade, the Inter-American Commission has made broad strides and has developed an innovative and coherent case law for the comprehensive protection of LGBTI people at the regional level. In addition, these developments grow through cases and reports published by the IACHR. At the same time, Member States make progress by enacting new laws, issuing judicial decisions and implementing public policies on issues of sexual orientation, gender identity and expression, and sexual characteristics.

The protection of the human rights of LGBTI persons is a complex, dynamic and multifaceted process. Certainly, there are still many barriers and shadows down the road. Violence and discrimination still govern the daily lives of many LGBTI people in the hemisphere. However, victories and advances continue to be achieved. The Americas have proven to be a region that —not without difficulties— has developed numerous laws, policies and programs that are among the most advanced on the planet to recognise, protect and empower LGBTI people. Those victories are only possible thanks to the work of LGBTI activists, defenders and agents of the State that join the struggle, so that we can all be free and equal in rights and dignity.

116 IACHR, *Report No. 80/18*. Petition 1850-11. Admissibility. *Gareth Henry, Simone Carline Edwards and families*. Jamaica. 2 July 2018.
117 IACHR, Precautionary Measure No. 767-18, *Mônica Tereza Azeredo Benício*, Brazil, 1 August 2018.
118 IACHR, Precautionary Measure No. 1262-18, *Jean Wyllys de Matos Santos and family*, Brazil, 20 November 2018.
119 "Questionnaire for the Report on trans persons and economic, social and cultural rights", *IACHR Website*.
120 "Press Releases", *IACHR Website*.
121 "Campaña de videos en Youtube/Agosto 2018", *IACHR Website*.

ORGANISATION OF AMERICAN STATES (OAS) – POLITICAL ORGANS

The Impact of the LGBTTTI Coalition of Latin America and the Caribbean at the OAS

By Marcelo Ernesto Ferreyra.[122]

The Organisation of American States (OAS) is the intergovernmental organisation that unites the 35 independent States of the Western Hemisphere. In the last decade, it has become a forum that has seen great advances in equality issues. However, these advances have not gone without great resistance and challenges.

The General Assembly of 2017

In June 2017, the OAS celebrated its 47th General Assembly (GA) in Cancun, Mexico.[123] The level of anti-LGBT incidents, attacks and hate speech was lower than in previous years thanks to the efforts of the OAS to minimise conflicts through changes in the methodology of civil society participation.

Of 394 civil society organisations registered—among them were the organisations integral to the LGBTTTI Coalition of Latin America and the Caribbean that work in the OAS—around 100 organisations were in opposition.[124]

In this context, the anti-trans bus "Citizen-Go" arrived in Cancun with the intention of parking in front of the OAS GA building. However, by order of the Mexican government, the bus had to park some kilometres from the access, and it passed practically unnoticed.

At the same time, the National Council for Preventing Discrimination (CONAPRED), installed a space for receiving complaints in the GA area.

> **In the last decade, the OAS has become a forum that has seen great advances in equality issues.**

Of 24 registered coalitions to speak at the event, 10 included anti-rights speeches that dealt with, among other issues, abortion, anti-LGBT incidents and the defence of "natural" marriage between a man and a woman.

The biggest efforts for the anti-rights organisations supported by the Paraguayan and Jamaican delegations was to eliminate the entire section on the rights of LGBT people proposed by the "Core LGBTI Group" in the resolution on human rights in the region. Through a long and complicated discussion, it was finally agreed to preserve the language of the resolution from the previous year, with the ant-rights groups failing to achieve their principle objective.[125]

122 Marcelo Ernesto Ferreyra is an architect by profession and feminist activist defender of Sexual Rights and Reproductive Rights since 1987, first integrating the Comunidad Homosexual Argentina and later Gays DC (organisation with which he was one of the promoters of the First Pride March in Buenos Aires Aires), and later in Latin America and the Caribbean, being in that context a Founder member at the Coalition of LGBTTTI Organisations with work at the OAS. He has collaborated in several international organisations such as Interpride, of which he was vice president and director for the Latin America and the Caribbean area. During 2006 - 2012 he was the Coordinator of the Program for Latin America and the Caribbean in the International Commission on Human Rights for Gays and Lesbians (IGLHRC) and from 2010 to 2012 he was Coordinator Member of the Collegiate Coordination of the Campaign for an Inter-American Convention on Human Rights. Sexual and Reproductive Rights. Currently a member of the Synergia Initiative for Human Rights, he is also a member of the Sex and Revolution Advisory Collective, Feminist and Gender-Generic Policy Memories Program of CeDInCI / UNSAM; and officiates as an advisor to the Mama Cash women's fund.

123 "47mo Período Ordinario de Sesiones de la Asamblea General de la OEA – 2017", *OAS Website*.

124 The Coalition of Lesbians, Gays, Bisexuals, Transgenders, Transsexuals, *Travestis*, Intersex (LGBTTTI) of Latin America and the Caribbean that advocates before the OAS is a regional network composed of 53 organisations from 26 countries in the region. Since its foundation in 2006, its strategic objective has been visibility, promotion and mobilisation to guarantee the overall and systematic commitment of the OAS and its regional system for the protection of human rights to protect and promote LGBTI human rights in the American hemisphere.

125 The "Core Group" was founded on June 15, 2016 in Santo Domingo under the "Joint Declaration of the founding members of the LGBTI Support Group", and was signed by Argentina, Brazil, Canada, Colombia, United States, Chile, Mexico and Uruguay. The resolutions on "Human Rights, Sexual Orientation and Gender Identity" were approved annually since the 38th General Assembly

The Summit of the Americas of 2018

In April 2018, the eighth Summit of the Americas took place in Lima, Peru.[126] The opposition groups also participated in the Civil Society space of the event, but its level of influence diminished in comparison with the previous Summit.

The organisations formed the LGBTTTI coalition which participated as one of the 28 civil society coalitions that were admitted in the Summit to read their own document before the Governmental Representatives of the Highest Level.

During the presentation of the work methodology, the General Secretary of the OAS included a reminder that there will be a zero tolerance of harassment against participants and organisers of the event and adopted the appropriate measures to defend the principles of pluralism and respect, including appropriate accreditation and bathrooms for trans participants. Although these measures caused protests from opposition groups on social networks, they were respected during the whole event.

As an event without precedent in the history of the Summit of the Americas, the Secretary of the Summit took the opportunity for a person from civil society to be a spokesperson for a "dialogue between social actors and representatives of the highest levels of government", presenting a document summarising the key points for the intervention of the 28 coalitions of civil society. The one-page document clearly showed contradictions as two of the coalitions were composed of opposition groups.

The General Assembly 2018

In June 2018, the OAS celebrated its 48th General Assembly in Washington D.C. [127] Of the total 307 civil society organisations approximately 90 were opposition organisations, a few more than the organisation for sexual, reproductive and LGBTTTB rights.

A novelty was the attendance *en masse* of churches —Catholics and Evangelicals— with a pre-eminence of the latter. This is the first time that in the civil society space of the OAS, some coalitions identified openly as religious. This signalled that also, for the first time, there was a progressive religious coalition, the "Coalition for the Religions, Beliefs and Spirituality in Dialogue with Civil Society".

Of the 31 registered coalitions, 9 included an opposition discourse (less than the previous year). The issues included, among others, abortion, "gender ideology", opposition to the rights of LGBTI people and the defence of "natural" marriage between a man and a woman.

Also, they were looking to delegitimise the Inter-American Commission on Women (ICM), the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACHR), denouncing them as "overreaching" in their functions to include recommendations and jurisprudence on sexual orientation and gender identity.

This time, the efforts of the opposition—under the leaderships of Paraguay—focused on the sections regarding the rights of LGBTI people in the resolution on human rights.[128]

The situation of international treaties that expressly include sexual orientation and gender identity and/or expression

The Inter-American System is the first system of human rights in the world with two binding instruments that protect sexual orientation and gender identity and/or expression. These are the Inter-American Convention Against All Forms of Discrimination and Intolerance (A-69) approved in 2013 and the Inter-American Convention on the Protection of Human Rights of Older Persons (A-70) approved in 2015. Both enter into force 30 days after the document is ratified by only two counties.

The Convention (A-70) entered into force on the 11th of January 2017; but is still missing 4 countries' signatures and ratification in order to activate the supervisory mechanism. On the 11th of May 2018, Uruguay became the first country to ratify Convention (A-69). It is still missing one of the other 10 countries that have already signed, to ratify the convention so it can come into force.

of the OAS of 2008. In subsequent years, resolutions on the same subject were approved in each of the OAS GA, ten to date, which increased in depth and scope. A complete list of all the resolutions can be seen on this page of the IACHR website.

126 Unlike the General Assembly, which is the main organ of the organisation, the Summit of the Americas is a high-level meeting in which the first mandataries of the OAS Member States participate to discuss diplomatic and commercial issues at the continental level. The first meeting of this kind took place in 1994 and since then they have been held periodically every 3 or 4 years.

127 "48vo Período Ordinario de Sesiones de la Asamblea General de la OEA – 2018", *OAS Website*.

128 OAS GA, Draft Resolution: Promotion and Protection of Human Rights, AG/Doc.5632/18, 1 June 2018.

The efforts of the opposition focused on the sections regarding the rights of LGBTI people in the resolution.

Although instead of opposing the text completely as they had in the previous year, they opposed the advances proposed on two issues. Firstly, the language on "sexual characteristics" which includes intersex persons, and secondly, to eliminate reference to Consultative Opinion 24/17.

This was pure spectacle on its part, as the Consultative Opinion didn't need support from States by being a judicial document. Both paragraphs were eliminated.

In the frame of this General Assembly, the Inter-American Commission on Women (CIM) convened a meeting with international and regional bodies and civil society organisations that are dedicated to working for the advancement of gender equality and the empowerment of women and girls.

For this, the CIM created, by request from the Titled Delegates, the "Inter-American Guidelines on gender equality for the good for humanity",[129] with the object to emphasise the concrete benefits of gender equality for women and men in the social, political, and economic spheres, as a way to identify positive messages from responses before the anti-human rights movements and speeches and anti-gender equality. Hillary Anderson, Gender Specialist for the ICM, expressed her worry for the threat that these movements represented in the region.

The next GA of the OAS will be held in June 2019 in Medellin, Colombia.

[129] *Inter-American Guidelines on Gender Equality for the Good of Humanity*, OEA/Ser.L/II.5.33, 28 August 2017.

COUNCIL OF EUROPE

SOGIESC in the Council of Europe

By Sarah Burton.[130]

The Council of Europe promotes and defends human rights, democracy and the rule of law across its 47 Member States, which are home to 830 million people.[131] Chiefly famous as the home of the European Convention on Human Rights and the European Court of Human Rights, it conducts much of its work through intergovernmental cooperation, via its Committee of Ministers and intergovernmental steering committees, and through the human rights monitoring bodies set up under many of its more than 200 conventions.

In addition to the European Court of Human Rights, key bodies as far as SOGIESC-related matters are concerned include the Commissioner for Human Rights,[132] the Parliamentary Assembly of the Council of Europe and its General Rapporteur on the rights of LGBTI people,[133] the European Commission against Racism and Intolerance (ECRI) and the intergovernmental sector's SOGI Unit. In 2017, the Committee for the Prevention of Torture (CPT) was also active in this field.

Overall context

The Council of Europe's work from March 2017 to December 2018 reflected conflicting trends that can be observed across its member states as regards SOGIESC-related issues – from increasing recognition at one end of the spectrum, to the most egregious human rights violations, including torture and extrajudicial killings, at the other.[134]

These developments have occurred against a background of vocal opposition emanating from some religious and ultra-conservative groups to notions of gender and so-called "gender ideology".

Developments have occurred against a background of vocal opposition emanating from some religious and ultra-conservative groups to notions of gender and so-called "gender ideology".

The reticence displayed in some member states towards ratifying the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) led the Council of Europe to publish in 2018 a leaflet specifically aimed at countering misrepresentations of the Istanbul Convention, including its definition of "gender" and how it relates to issues of sexual orientation and gender identity.[135]

Persecution on the basis of actual or perceived sexual orientation or gender identity

Chechen Republic (Russian Federation)

First reported by Russian newspaper *Novaya Gazeta* in early April 2017, the alleged large-scale abduction, detention and torture—and, in some cases, killing—of LGBTI people in Chechnya led to

130 Sarah Burton is secretary to the Committee on Equality and Non-Discrimination of the Parliamentary Assembly of the Council of Europe. The views expressed in this chapter are solely those of the author and do not necessarily reflect the official policies of the Council of Europe or its member states.

131 Background information on the Council of Europe, here. List of member states, here.

132 The Commissioner is elected by the Assembly for a six-year term of office. In the period covered by this report, this post was held by Nils Muižnieks and then (as from 1 April 2018), by Dunja Mijatović.

133 The General Rapporteur on the rights of LGBTI people is appointed by the Assembly's Committee on Equality and Non-Discrimination. In the period covered by this report, the post was held by Jonas Gunnarsson (Sweden, SOC), then, as from 27 June 2017, Piet De Bruyn (Belgium, NI).

134 ECRI, *Annual Report on ECRI's Activities covering the period from 1 January to 31 December 2017*, CRI(2018)26 (2018), para. 19.

135 Council of Europe, *The Council of Europe Convention on Preventing Combating Violence against Women and Domestic Violence (Istanbul Convention): Questions and answers* (2018).

both rapid and longer-term responses from the Council of Europe.

On 5 April 2017, the Assembly's General Rapporteur on the rights of LGBTI people and its rapporteur on Human rights in the North Caucasus issued a joint statement expressing alarm at the reports and calling for an immediate, effective investigation.[136]

The same day, the Commissioner for Human Rights sent a letter to the Head of the Russian Federal Investigative Committee, requesting information about steps taken to investigate both the alleged crimes and the statements made by Chechen public figures that may have constituted incitement to hatred, as well as to protect victims.[137]

Adopting a resolution on human rights in the North Caucasus soon afterwards, on 25 April 2017, the Parliamentary Assembly expressed grave concern over the reports, condemned the "denial, trivialisation and condoning" by the Chechen authorities of the attacks, and "urge[d] the Russian Federation to carry out an immediate and transparent investigation" in order to bring those responsible to justice and ensure the safety of the LGBTI community, human rights defenders and journalists reporting on such violations.[138]

From 28 November to 4 December 2017, the Committee for the Prevention of Torture (CPT) conducted a visit to the Chechen Republic, during which it looked, inter alia, into the investigation of certain specific complaints/reports of unlawful detention and ill-treatment by law enforcement officials in the Chechen Republic.[139] Its report, adopted in March 2018,[140] has not yet been made public[141].

On 27 June 2018, the Assembly adopted *Resolution 2230* (2018)[142] and *Recommendation 2138* (2018)[143] on Persecution of LGBTI people in the Chechen Republic (Russian Federation), on the basis of a detailed report prepared by the General Rapporteur on the rights of LGBTI people, Piet De Bruyn (Belgium, NI).[144]

Persecution on the basis of actual or perceived sexual orientation or gender identity led to a series of responses from the Council of Europe.

The Assembly noted that a "campaign of persecution [had] unfolded against the backdrop of serious, systematic and widespread discrimination and harassment against LGBTI people in the Chechen Republic", and that its effects continued.

Emphasising that the Russian Federation has responsibilities as a Council of Europe member state, it called on the authorities, *inter alia*, to conduct an impartial and effective investigation into the facts, or to allow an independent international investigation; to protect victims, their families and witnesses, as well as human rights defenders; and to authorise the publication of the CPT's report.

It further called on other Council of Europe member states to grant protection to victims, witnesses and their families; to support NGOs and human rights defenders providing assistance to victims and witnesses; and, should the Russian Federation fail to conduct an investigation within a

136 "Attacks against LGBT people in Chechnya: claims must be investigated and victims protected", *Council of Europe Parliamentary Assembly Website*, 5 April 2017.

137 Commissioner for Human Rights, *Annual Activity Report 2017, CommDH (2018) 1, Chapter 2.6: Human Rights of LGBTI People*, 19 January 2018.

138 Parliamentary Assembly of the Council of Europe (Committee on Legal Affairs and Human Rights), *Resolution 2157 (2017): Human rights in the North Caucasus: what follow-up to Resolution 1738 (2010)?*, 25 April 2017.

139 CPT, "Council of Europe anti-torture Committee visits the Chechen Republic of the Russian Federation", Strasbourg, 7 December 2017. http://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-visits-the-chechen-republic-of-the-russian-federation.

140 CPT, "CPT holds its March 2018 plenary meeting", *Council of Europe Website*, 12 March 2018,

141 Under Article 11 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treating or Punishment, the report relating to a visit remains confidential until the authorities of the state concerned request its publication.

142 Parliamentary Assembly of the Council of Europe, *Resolution 2230 (2018): Persecution of LGBTI people in the Chechen Republic (Russian Federation)*, 27 June 2018.

143 Parliamentary Assembly of the Council of Europe, *Recommendation 2138 (2018): Persecution of LGBTI people in the Chechen Republic (Russian Federation)*, 27 June 2018.

144 Committee on Equality and Non-Discrimination, *Report: Doc. 14572. Persecution of LGBTI people in the Chechen Republic* (Russian Federation), 8 June 2018.

reasonable time, to consider conducting a Council of Europe investigation into these events.[145]

Azerbaijan

Reports of the arrest, detention, physical ill-treatment of LGBT persons, and other serious violations of their human rights, including forced medical examinations, in Baku in autumn 2017 also prompted a series of rapid responses. The Commissioner wrote to the Minister of Internal Affairs of Azerbaijan, calling for a thorough investigation into these allegations and underscoring that arrests based wholly or in part on sexual orientation or gender identity constitute discrimination and run counter to the ECHR. However, "the Minister's response only heightened my concerns," the Commissioner subsequently reported.[146] Adopting a resolution on the functioning of democratic institutions in Azerbaijan on 11 October 2017, the Assembly also expressed concern about the reports and called for independent, effective investigations to be conducted into the actions of the police.[147]

Hate Crime

As the European Commission against Racism and Intolerance (ECRI) noted in its 2017 annual report, homophobic and transphobic hatred is still present in Europe, and its presence on the Internet and in social media has helped fuel a rise in hostility towards LGBTI people.[148]

In June 2017, the SOGI Unit published a manual designed to help train police to provide a professional response in cases of hate crimes based on real or perceived sexual orientation or gender identity.[149]

In a Human Rights Comment published in August 2017, the Commissioner emphasised that effective laws and justice systems are essential but not enough and called on member states to work proactively to bring about broader changes in societal attitudes to LGBTI persons.[150]

Freedoms of association, assembly and expression

In June 2017, the European Court of Human Rights issued its judgment in the case of *Bayev and Others v. Russia*, finding violations of Article 10 ECHR (freedom of expression) and of Article 14 ECHR (prohibition of discrimination) in conjunction with Article 10 concerning the applicants' conviction and fining for administrative offences, following their demonstrations against so-called "gay propaganda laws".[151]

The Committee of Ministers is currently examining the measures taken by the Russian Federation to execute this judgment together with those taken to execute the Court's much earlier 2010 judgment in the case of *Alekseyev v. Russia*.[152] Meanwhile, a new judgment finding similar violations was delivered in November 2018,[153] and a number of cases concerning the registration of associations, the organisation of public events and the impact of the Russian *Foreign Agents Act*, linked to sexual orientation and/or gender identity, are currently pending before the Court.[154]

In statements issued on 26 June and 20 November 2017 respectively, the Commissioner for Human Rights regretted the decision of the governor of Istanbul to ban the 2017 Pride and that of the governor of Ankara to ban all LGBTI activities in the city.[155] On 14 December 2017, the Assembly's General Rapporteur on the rights of LGBTI people

145 See Resolution 2230 (2018) and Recommendation 2138 (2018) on Persecution of LGBTI people in the Chechen Republic (Russian Federation) cited above.

146 Commissioner for Human Rights, *Annual Activity Report 2017, CommDH (2018) 1, Chapter 2.6: Human Rights of LGBTI People*, 19 January 2018. Note: Both the letter and the Minister's response were published on 16 October 2017 and can be found here.

147 Parliamentary Assembly of the Council of Europe, *Resolution 2184 (2017) on The functioning of democratic institutions in Azerbaijan*, 11 October 2017.

148 ECRI, *Annual Report on ECRI's Activities covering the period from 1 January to 31 December 2017*, CRI(2018)26, June 2018, para. 19.

149 Joanna Perry and Paul Franey, *Policing Hate Crime against LGBTI persons: Training for a Professional Police Response* (Strasbourg: Council of Europe, 2017).

150 Commissioner for Human Rights, "The long march against homophobia and transphobia", *Commissioner for Human Rights Webpage*, 31 August 2017.

151 European Court of Human Rights, *Bayev and Others v. Russia*, applications nos. 67667/09, 44092/12 and 56717/12, judgment of 20 June 2017.

152 European Court of Human Rights, *Alekseyev v. Russia*, application no. 4916/07, judgment of 21 October 2010.

153 European Court of Human Rights, *Alekseyev and Others v. Russia*, application no. 14988/09, judgment of 27 November 2018 (not yet final at the time of writing).

154 For an up-to-date (not necessarily exhaustive) list, see Press Unit, European Court of Human Rights, Factsheet – Sexual orientation issues.

155 "Commissioner Muižnieks criticises ban of Istanbul Pride", Strasbourg, 26 June 2017. For the statement of 20 November 2017, see the Commissioner's Facebook page.

expressed similar concerns and called on the Turkish authorities to ensure that human rights were respected throughout the country.[156] Dozens of members of the Assembly signed written declarations denouncing the ban on the Istanbul Pride and calling for an end to the Ankara ban.[157]

The Committee of Ministers pursued its examination of the execution of several judgments delivered between 2012 and 2016 and finding violations by Georgia, Moldova and Turkey of the freedoms of expression, association and/or assembly, and/or of the right to an effective remedy, and/or of the prohibition of discrimination, in relation to the organisation of Pride marches or other demonstrations or publications in favour of equal rights regardless of sexual orientation or gender identity.[158]

Rights of intersex people

Prompted in part by the previous work of the Commissioner in this field,[159] in October 2017 the Assembly adopted *Resolution 2191* (2017) on Promoting the human rights of and eliminating discrimination against intersex people.

It called on states to ban unnecessary sex "normalising" surgeries, sterilisation and other treatments practised on intersex children without their informed consent, and for the deferral of treatments until such time as the child is able to participate in the decision, based on the right to self-determination and on the principle of free and informed consent.

It also urged states, inter alia, to put in place simple and accessible legal gender recognition procedures, in line with those already called for in its *Resolution 2048* (2015) on Discrimination against transgender people in Europe; to ensure, wherever gender classifications were in use by public authorities, that a range of options were available for all people, including those intersex people who do not identify as either male or female; to ensure that the law did not perpetuate barriers to equality for intersex people; to provide adequate psychosocial support mechanisms for intersex people and their families, and to work with civil society organisations to break the silence around the situation of intersex people.[160]

In 2017, the Assembly adopted Resolution 2191 on promoting the human rights of and eliminating discrimination against intersex people.

Private and family life

The Court continued building on its already considerable case-law with respect to rainbow families in 2017 and 2018, notably through its judgment in the case of *Orlandi and Others v. Italy* (legal recognition of couples married abroad).[161] An application concerning access to medically-assisted procreation for same-sex couples was however declared inadmissible due to non-exhaustion of domestic remedies.[162]

During the reporting period, the SOGI Unit launched two publications relevant to LGBT families: one on values-based campaigning[163] and the second on trends in Europe regarding the rights and responsibilities of same-sex families.[164]

In a Human Rights Comment published in February 2017, the Commissioner emphasised that access to registered same-sex partnerships is a question of

156 "Stifling LGBTI organisations' free expression is harmful and a breach of fundamental rights", Strasbourg, 14 December 2017.

157 Written declaration no. 636, "Turkish violations against the Istanbul Pride", 20 October 2017, Doc. 14374, and Written declaration no. 650, "Turkey must restore the right to freedom of expression and assembly to LGBTI persons", 9 May 2018, Doc. 14488. Written declarations by Assembly members only commit those who sign them.

158 European Court of Human Rights, *Genderdoc-M v. Moldova*, application no. 9106/06, judgment of 12 June 2012; *Identoba and Others v. Georgia*, application no. 73235/12, judgment of 12 May 2015; *Kaos GL v. Turkey*, application no. 4982/07, judgment of 22 November 2016.

159 Commissioner for Human Rights, *Human rights and intersex people: Issue paper* (2015).

160 Parliamentary Assembly of the Council of Europe, *Resolution 2191 (2017) on Promoting the human rights of and eliminating discrimination against intersex people*, 12 October 2017,

161 European Court of Human Rights, *Orlandi and Others v. Italy*, applications nos. 26431/12; 26742/12; 44057/12 and 60088/12, judgment of 14 December 2017.

162 European Court of Human Rights, *Charron and Merle-Montet v. France*, application no. 22612/15, decision of 16 January 2018.

163 Gráinne Healy, *Good Practice Guide on Values-Based Campaigning for Legal Recognition of Same-Sex Partnerships*, Council of Europe, November 2017.

164 Kees Waaldijk, "Extending rights, responsibilities and status to same-sex families: Trends across Europe", Ministry of Foreign Affairs of Denmark, March 2018.

equality, and observed that "genuine commitment to full equality would at least require states to seriously consider opening up civil marriage to same-sex couples".[165]

The Assembly had already made important recommendations regarding the rights of transgender and intersex people in the field of private and family life in its *Resolution 2191* (2017) and *Resolution 2148* (2015), referred to above.

In 2018, it took up for the first time specifically questions concerning sexual orientation and equality in private and family life. In October 2018, it adopted *Resolution 2239* (2018) on "Private and family life: achieving equality regardless of sexual orientation". It called on states that were not already doing so to implement the standards already set out in the Court's case-law, in particular by ensuring that a specific legal framework provided for the recognition and protection of same-sex couples, and that they had the same rights as regards succession to a tenancy and health insurance cover.

It further called on states to refrain from adopting changes to their constitutions that would prevent the recognition of same-sex marriage or of other forms of LGBT families, and to ensure access without discrimination to rights concerning residence, citizenship, family reunification, medical care, property, inheritance, parental authority, adoption, recognition of children and medically assisted procreation. It emphasised that intolerance that may exist in society towards people's sexual orientation or gender identity could never be used as a justification for perpetuating discriminatory treatment and urged states to work vigorously to combat the prejudice that enables such discrimination to persist, and to promote acceptance of and respect for LGBT families.[166]

Asylum

Throughout the reporting period, the Court continued to receive applications from individuals at risk of expulsion from a Council of Europe Member State, concerning a risk of ill-treatment in breach of Article 3 ECHR should they be returned to their country of origin, due to their sexual orientation or gender identity. Some applications were struck out because the applicant was no longer at risk of expulsion; others were declared inadmissible, due notably to the non-exhaustion of domestic remedies; others were still pending at the time of writing.[167]

In October 2018, the Commissioner published a Human Rights Comment entitled "Open minds are needed to improve the protection of LGBTI asylum seekers in Europe". The comment noted that persons claiming asylum because they are at risk of persecution based on their sexual orientation and gender identity are particularly at risk of the rolling back of protection, and set out key steps that member states should take to ensure adequate protection is granted to persons who seek international protection because they face persecution on the grounds of their sexual orientation or gender identity.[168]

Review of the implementation of recommendation CM/Rec(2010)5

In March 2018, the Steering Committee for Human Rights (CDDH) launched a new review process of the implementation of recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity. Both governments and NGOs were invited to contribute to this review process. The CDDH is due to adopt its report on the review in June 2019.[169]

165 Commissioner for Human Rights, "Access to registered same-sex partnerships: it's a question of equality", *Commissioner for Human Rights Webpage*, 21 February 2017.

166 Parliamentary Assembly of the Council of Europe, *Resolution 2239 (2018) on Private and family life: achieving equality regardless of sexual orientation*, 10 October 2018,

167 See European Court of Human Rights, *I.K. v. Switzerland* (no. 21417/17); *A.T. v. Sweden* (no. 78701/14); *E.S. v. Spain* (no. 13273/16); *Nurmatov v. Russia* (no. 56368/17); *O.S. v. Switzerland* (no. 43987/16); *A.R.B. v. The Netherlands* (no. 8108/18).

168 Commissioner for Human Rights, "Open minds are needed to improve the protection of LGBTI asylum seekers in Europe", *Commissioner for Human Rights Webpage*, 11 October 2018.

169 "Launching of the new review cycle of the implementation of the Recommendation (2010)5 of the CM", *Council of Europe Website*, 23 March 2018.

EUROPEAN UNION

A Brief Overview of the Latest Decisions by the Court of Justice of the European Union on SOGI issues

By Constantin Cojocariu.[170]

During the period covered by the present report, the Court of Justice of the European Union (CJUE) ruled in favour of LGBT applicants in three cases.

The first case, *F. v. Bevándorlási es Állampolgársági Hivatal*, concerned the type of evidence that may be required as proof of the applicants' sexual orientation during asylum proceedings.[171]

The second case, *MB v Secretary of State for Work and Pensions* concerned the validity of the forced divorce requirement as pre-condition to legal gender recognition where that was linked to the applicant, a trans woman, becoming eligible for a State retirement pension.[172]

The third case, *Coman and Others v. Inspectoratul General pentru Imigrări and Others*, concerned the residence rights of a same-sex couple in a Member State that does not recognise same-sex marriage.[173]

Evidence in asylum claims based on sexual orientation

The case *F. v. Bevándorlási es Állampolgársági Hivatal*, decided on 25 January 2018, involved a Nigerian man who claimed international protection in Hungary based on the fear of persecution in his home country on grounds of his sexual orientation. The Hungarian authorities denied his application in consideration of a psychological report concluding that it was impossible to corroborate his sexual orientation. In this context, the CJEU was asked to decide if the relevant EU norms in the area of asylum and human rights precluded the use of such expert opinions in asylum proceedings related to LGBT claimants. Should that option be precluded, the CJEU was also asked whether national authorities were prevented from examining by expert methods the truthfulness of such international protection claims.

From the outset, the Court stated that the applicants' claims constituted only the starting point in asylum assessments and that a well-founded fear of persecution could also be linked to the characteristic in question being *attributed* to the applicant by the perpetrator, making any assessment of the credibility of his sexual orientation superfluous.

The CJEU ruled that it was permissible to use expert reports for the assessment of the relevant facts and circumstances, including for example country of origin information (COI), in a manner consistent with the applicant's fundamental rights. At the same time, the asylum authorities had to make a determination on a case-by-case basis, instead of deferring to experts. The Court also noted that, since the type of expert reports used in national proceedings focused on an essential element of the applicant's identity, they constituted a "severe interference with his right to respect for private life". In doing so, the Court specifically mentioned the *Yogyakarta Principles* as supportive authority.[174] Besides being scientifically questionable and inconclusive, such tests were

[170] Constantin Cojocariu is a London-based Romanian human rights lawyer and consultant with a strong track record of litigating LGBT rights cases before the European Court of Human Rights and other courts in Europe. His blog covers the latest legal developments in the area of equality and non-discrimination in Europe, as well as updates on his current work (www.pedreptvorbind.blogspot.com).

[171] Court of Justice of the European Union, Case C-473/16, *F. v. Bevándorlási es Állampolgársági Hivatal* (2018); Press Release: Press Release No. 8/18: "An asylum seeker may not be subjected to a psychological test in order to determine his sexual orientation", 25 January 2018.

[172] CJEU, Case C-451/16, *MB v Secretary of State for Work and Pensions* (2018).

[173] CJEU, Case C-673/16, *Relu Adrian Coman, Robert Clabourn Hamilton, Asociația Accept v Inspectoratul General pentru Imigrări, Ministerul Afacerilor Interne* (2018).

[174] For more information on the Yogyakarta Principles and the process by which they were updated in 2017, see the article written by Julia Ehrt and Mauro Cabral Grinspan in this report.

unnecessary, with Member States having to ensure that the personnel interviewing applicants for international protection were adequately trained to assess all necessary circumstances, including with respect to sexual orientation. Furthermore, where the applicants' statements on their sexual orientation were consistent and plausible, additional confirmation was not needed. Consequently, EU law precluded the use of such expert reports.

Forced divorce as a requirement for legal gender recognition (LGR)

The question referred by the British Supreme Court in the case *MB v Secretary of State for Work and Pensions*, decided on 26 June 2018, involved a trans woman who transitioned after getting married and who was denied access to a state retirement pension from the statutory pensionable age available to women. This was due to her refusing to get a divorce, a necessary pre-condition to legal gender recognition in the United Kingdom at the time. Without being able to legally change her gender markers, she did not qualify as a "woman" for the purposes of accessing a retirement pension from the age of 60. The Supreme Court asked if the legislation preventing married trans people from accessing a State retirement pension based on their gender identity constituted discrimination based on sex prohibited under EU legislation.

The CJEU narrowly circumscribed the scope of the case before it, emphasising that it was concerned solely with the eligibility conditions for a State retirement pension, a subject matter that was covered by EU law, as opposed to legal gender recognition more broadly, which remained within the purview of Member States. Although Member States were competent in matters of civil status, they had to comply with EU law in exercising that competence.

The CJEU noted that the situation of a person who changed gender after marrying was comparable to the situation of a person who had retained their birth gender and is married. The British Government argued that the distinction served the purpose of avoiding the existence of a same-sex marriage in the event the trans spouse was allowed to change their gender markers without getting a divorce.

However, since that justification was not available under applicable EU legislation, there was discrimination based on sex.

The term "spouse" under EU law

The *Coman* case, decided on 5 June 2018, involved a same-sex couple formed of Adrian Coman —a Romanian (i.e. EU citizen)— and Robert Claibourn Hamilton, an American citizen, who got married while living in Belgium and who sought to obtain permission to reside in Romania. The Romanian authorities informed them that Hamilton was not entitled to reside in Romania for longer than three months on grounds of family reunion, since national law did not recognise same-sex marriage. The case ended up before the Constitutional Court, which referred several questions to the CJEU regarding Mr. Hamilton's right to reside in Romania under EU law and the extent to which the notion of "spouse" employed under EU law encompassed the partner in a same-sex marriage.

The CJEU noted that the applicants created a family life in Belgium, which they had a right to continue upon their return to Romania. In these circumstances, EU law required the Romanian authorities to grant Mr. Hamilton a derived residence right, based on his status as a family member of a EU national. The Court further remarked that the term "spouse" in the applicable provision was gender-neutral and referred to "a person joined to another person by the bonds of marriage." Although the definition of marriage remained a State prerogative, in exercising that competence Member States had to comply with EU law, including with respect to the freedom of movement.

Under established principle, a restriction to the freedom of movement could be justified if it was based on objective public-interest considerations, interpreted narrowly, if it was proportionate to a legitimate objective pursued by national law and if it was consistent with fundamental rights. The Governments involved in the procedure before the CJEU invoked the fundamental nature of marriage defined as "a union between a man and a woman". The Court dismissed that argument, reasoning that recognising a same-sex marriage conducted in another Member State for the sole purpose of residence rights did not undermine the institution of marriage or challenge national definitions of marriage. Furthermore, the impugned measure impinged on the right to respect for private and family life, which, under the jurisprudence of the European Court of Human Rights, also covered same-sex couples.

The CJEU therefore held that, in the particular circumstances of the case, a third country national same-sex spouse of an EU citizen had a right to reside in the Member State of which that citizen was a national.

EUROPEAN INTERNATIONAL LAW

European Law Developments on SOGIE

Complementing rulings of the European Court of Human Rights, the European Committee on Social Rights, and the European Court of Justice.

By Arpi Avetisyan.[175]

Rise of populism and nationalism, vocal anti-gender movements are increasingly more noticeable across Europe. This inevitably affects SOGIE communities and human rights activists working in this area. Judging from the extensive flow of cases on SOGIE issues to regional courts, it is evident that litigation plays ever bigger role in upholding human rights and holding states accountable.

This essay looks into the legal developments in the area of SOGIE rights at the European level, focusing on the complementing rulings of the European Court of Human Rights (ECtHR),[176] the European Committee on Social Rights (ECSR)[177] and the European Court of Justice (CJEU).[178]

It is evident that litigation plays ever bigger role in upholding human rights and holding states accountable.

Despite some setbacks, the 2017-2018 have witnessed important legal developments at the European level, especially in the areas of recognition of same-sex couples and freedom of movement, freedom of expression, prohibition of sterilisation of trans people, asylum, and *non-refoulment.*[179]

Many of the cases touch upon morality issues and the notion of "traditional family" weaves though and combines with other areas of SOGIE rights being brought to the Courts' attention.

Family rights

Within context of the right to freedom of movement, the landmark judgment of *Coman and Others*[180] brought a big celebration for confirming equality for same-sex spouses exercising their freedom of movement across the EU. In this case, Adrian Coman, a Romanian citizen, had married his husband (a US citizen) in Belgium while residing there. Although EU law provides protection against discrimination based on sexual orientation (SO),[181] and freedom of movement is one of the essential pillars of the EU,[182] Romania did not recognise

175 Arpi Avetisyan is the Senior Litigation Officer at ILGA-Europe. Arpi is an international human rights lawyer with over 15 years of experience in research, publication, advocacy, capacity development, and litigation before the European Court. Arpi holds a BA in Sociology (2001) and MA in Conflictology (2003) from Yerevan State University, Armenia; and LLM in International Human Rights Law from the University of Essex, UK (2006).

176 The European Court of Human Rights is a Council of Europe body, which rules on individual or State applications alleging violations of the civil and political rights set out in the European Convention on Human Rights.

177 The European Committee of Social Rights monitors compliance with the Charter under two complementary mechanisms: through collective complaints lodged by the social partners and other non-governmental organisations (Collective Complaints Procedure), and through national reports drawn up by Contracting Parties (Reporting System),

178 The Court of Justice of the European Union is the judicial institution of the European Union and of the European Atomic Energy Community (Euratom). Its primary task is to examine the legality of EU measures and ensure the uniform interpretation and application of EU law.

179 This is not a comprehensive survey, but provides highlights on developments that have had or will have a significant impact in further developments in respective areas.

180 CJEU, Case C-673/16, *Relu Adrian Coman and Others v Inspectoratul General pentru Imigrări and Others*, 5 June 2018.

181 Article 21 of the EU Charter on the Fundamental Rights.

182 *Citizens' Rights Directive* (Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation - EEC).

their marriage [183] and authorities denied a residence permit to the American spouse based on the Citizens Directive.

This judgment is of great significance in many ways. The CJEU confirmed that "spouse" is "a person joined to another person by the bonds of marriage",[184] and clarified that the term "is gender-neutral and may therefore cover the same-sex spouse of the Union citizen concerned".[185] This was a huge shift in Court's approach from an earlier one, where it had defined marriage as "generally accepted by the Member States", to mean "a union between two persons of the opposite sex".[186]

However, as an EU body, the CJEU lacks competence to rule on marriage laws of member states. Therefore, this ruling is confined to recognition for the purposes of freedom of movement only.[187] This was also to address the concerns raised by a few Member States around public policy or "national identity" if they allowed same-sex couples to use the Citizen's Directive.[188] In this regard, the CJEU made it clear that as "such recognition does not require that a Member State [...] provide, in its national law, for the institution of marriage between persons of the same sex". Having said that, the *Coman* case is a huge way forward as it cleared up the legal uncertainty that many LGBT families have been facing for years and it may be considered a first step in recognition of same-sex couples beyond residence rights, especially in those States that have no legal framework in place.[189]

In considerations on the family life of same-sex couples, in the *Coman* CJEU took on ECtHR's approach. Among others, it looked at *Orlandi and Others v Italy*,[190] where ECHR confirmed that States ought to provide *some form* of legal recognition to marriages of same-sex couples contracted abroad. While refusing to consider the claims under Article 12 on the right to marriage and referring to the notion of "margin of appreciation",[191] the ECtHR relied on its earlier judgment of *Oliari and Others*[192] where it had established the need of legal recognition and protection of relationships of same sex couples.[193] Importantly, both CJEU Advocate General in *Coman*, and the ECtHR in *Orlandi* indicated the shift in interpretation of the concept "spouse" and "marriage", rapid developments in recognition of same-sex unions in Europe, with majority legislation in favour of such recognitions.[194]

"Propaganda laws" and freedom of expression

In summer 2017 the ECtHR's delivered a strong worded judgment in *Bayev and Other v Russia*[195] concerning Russia's infamous "gay propaganda laws".[196] This case concerned three activists who argued that application of the laws for using slogans such as "Homosexuality is natural and normal", "Children have a right to know", "Great people are also sometimes gay" among others, during protests held outside schools or children's libraries in Russia was in violation of their right to freedom of expression. The applicants were found guilty by domestic courts of an administrative offence ("public activities aimed at the promotion of homosexuality among minors").

This judgment was a leap forward from a similar decision by UN HRC in *Fedotova* in 2012.[197] The

183 Article 277(2) of the Romanian Civil Code states: "Same-sex marriage contracted abroad, whether between Romanian citizens or by foreign citizens, is not recognised in Romania".

184 *Coman and Others*, para 34.

185 *Ibid*, para 35.

186 CJEU, C-122/99 P and C-125/99, *P D and Kingdom of Sweden v Council of the European Union*, 31 May 2001m, para 34.

187 N.B. The judgment is applicable in certain conditions: a) in freedom of movement cases only; b) the marriages must be those concluded in an EU MS with genuine residence of at least 3 months; c) the judgment concerns residence rights only, and any additional rights are under the discretion of the hosting MS.

188 Hungary, Latvia, Poland intervened on these points before the CJEU.

189 Romania, Bulgaria, Poland, Slovakia, Lithuania and Latvia.

190 *Orlandi and Others v Italy* (Applications nos. 26431/12; 26742/12; 44057/12 and 60088/12), ECtHR, 14 December 2017.

191 Margin of appreciation doctrine is developed by the ECtHR. It means that a member state is permitted a degree of discretion, subject to ECtHR's supervision, when it takes legislative, administrative or judicial action in the area of a Convention right. For further details see OSJI Factsheet.

192 *Oliari and Others v Italy* (Applications nos. 18766/11 and 36030/11), ECtHR, 21 July 2015.

193 *Orlandi*, para 192.

194 *Advocate General Opinion in Coman and Others*, 11 January 2018, para 56; *Orlandi*, paras 204-206.

195 *Bayev and Others v Russia* (Appl. Nos 67667/09, 44092/12 and 56717/12), ECtHR, 20 June 2017.

196 Series of legislative acts (most recently in 2013) "promoting non-traditional sexual relationships" among minors was made an offence punishable by a fine. For details, see *Bayev and Others*, paras 26-34, relevant domestic laws.

197 Human Rights Committee, *Fedotova v. Russian Federation*, Merits, Communication No 1932/2010, UN Doc CCPR/C/106/D/1932/2010, 31 October 2012.

ECtHR found that these laws were not only in violation of applicants' right to freedom of expression, but also had reinforced stigma and prejudice, and encouraged homophobia, which was incompatible with the values of a democratic society and the European Convention.

Interestingly, while considering how far interference in the right to freedom of expression could be justified based on the protection of morals (as argued by the Russian government), the ECtHR acknowledged the commitment to family values by LGBTI community members and in so doing reinforced the notion that the right to "family life" equally applies to them. It referred to the steady flow of cases coming to its attention on various aspects of family life (access to marriage, parenthood and adoption), in effect rejecting the Government's argument that exercising freedom of expression on this question could devalue or otherwise adversely affect the existence of "traditional families" or compromise their future.[198]

Importantly, the ECtHR reiterated that "it would be incompatible with the underlying values of the Convention if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority".[199]

The ECtHR reiterated that "it would be incompatible with the underlying values of the Convention if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority".

Lastly, in relation to the argument of the protection of the rights of others, the risk of minors being "converted" to homosexuality, the Court found that the Government had been unable to provide any explanation of the mechanism by which a minor could be enticed into "[a] homosexual lifestyle", let alone science-based evidence that one's sexual orientation or identity was susceptible to change under external influence. In addition to significant jurisprudential development, this judgment is also important means in pre-empting similar initiatives of introducing propaganda laws occurring regularly in various European countries.[200]

Sterilisation and bodily integrity

The ECtHR had already ruled in a number of cases concerning rights of trans people seeking legal gender recognition (LGR), but it was not until the case of the *A.P., Garçon and Nicot v. France* that the Court established that the sterilisation requirement as part of LGR violates human rights.[201] The applicants in this case complained that they needed to prove infertility and genital surgery, as well as undergoing excessive and lengthy discriminatory examinations in order to satisfy the condition. The ECtHR held that requiring that individuals undergo sterilisation against their will for the purpose of achieving LGR puts those individuals in a situation of an insoluble dilemma: that of choosing full exercise of the right to private life (for LGR) at the expense of their right to physical integrity, also guaranteed by the same right.[202]

This line of reasoning resonated in the decision of *Transgender Europe and ILGA-Europe v. the Czech Republic*,[203] by the European Committee on Social Rights (ECSR).[204] So far this is the first discrimination case relating to GI decided under this procedure. The ECSR found that the legal requirement for transgender persons in the Czech Republic to undergo medical sterilisation in order to have their gender identity recognised seriously impacts a person's health, physical and psychological integrity, and dignity, therefore is in violation of the right to health under the Charter. The Committee reiterated that gender recognition in itself is a right recognised under international human rights law.

198 *Bayev and Others*, para 67.

199 *Ibid*, para 70.

200 See e.g. ILGA-Europe, *Annual Review 2018*, 26 (Moldova), 72 (Hungary).

201 *A.P., Garçon and Nicot v France* (Appl nos. 79885/12, 52471/13 and 52596/13), ECtHR, 6 April 2017.

202 Although not systematically, but ECHR cases are also directly applied in domestic courts, e.g. in the case of two trans persons in Lithuania.

203 Transgender Europe and ILGA-Europe v Czech Republic, Complaint No. 117/2015, ECSR, made public 1 October 2018.

204 This case was brought under the Collective Complaints Procedure.

This case will serve as a basis for reinforced advocacy efforts before this Council of Europe body, and will allow the Committee to find violations of the right to health under its national reporting system against the many other Council of Europe Member States which still require sterilisation as part of the LGR process.[205]

Regrettably, these rulings did not go far enough to address ending forced medical examinations ordered by the national courts or a mental health diagnosis as a violation of the European Convention or the Charter. Another drawback is the reluctance by these two bodies to consider discriminatory aspect of sterilisation requirement. It is much hoped however, that in light of World Health Organisation's recent removal of trans identities from the mental health disorders chapter[206], both European and national courts will adopt the same approach.

Asylum and non-refoulment

In the area of asylum and migration, there has been different dynamics between various European Courts. To date, CJEU has ruled in three judgments,[207] the latest being *F. v Bevándorlási és Állampolgársági Hivatal*.[208] The latter concerned subjecting "F" —a Nigerian man claiming international protection in Hungary due to persecution based on his sexual orientation— to psychological tests in order to "determine his homosexuality". The CJEU established that the use of psychological tests to determine the sexual orientation of an asylum seeker "amounts to a disproportionate interference"[209] in their private life. While the CJEU upheld that national governments can use experts' reports as part of an asylum seekers' credibility assessment, they cannot do so in a way that violates the fundamental rights guaranteed by the Charter of Fundamental Rights of the EU and they cannot base a decision solely on the conclusions of such a report or be considered bound by it. What is remarkable, is that in addition to applicable EU law in this case CJEU relied on the *Yogyakarta Principles*,[210] in particular "that no person may be forced to undergo any form of psychological test on account of his sexual orientation or gender identity".[211] This is especially significant in the context of CJEU's repeatedly claimed role of adjudicator of EU law, and not being a human rights court. In comparison, the ECtHR has not yet decided in any *non-refoulment* related cases based on applicants' SOGIE. These cases have either been declared inadmissible or struck out as a result of friendly settlement. Such cases are regularly submitted to ECtHR's scrutiny, and hopefully this Court will also provide further guidance with a positive judgment in this area.[212]

These developments cannot be taken for granted, especially in light of several strong dissenting opinions voiced in these judgments.

The cases discussed above are a huge milestone in development of SOGIE issues, and important foundation to continue building on further. The notion of majority versus minority comes up in most of them, especially concerning SO. Although these developments cannot be taken for granted especially in light of several strong dissenting opinions voiced in these judgments, it is encouraging to see litigation as a means for protections of LGBTI people, followed with positive rulings from European Courts.

205 For further details, see "Reporting system of the European Social Charter".

206 "World Health Organisation moves to end classifying trans identities as mental illness", *TGEU*; WHO, International Classification of Diseases.

207 CJEU, Joint cases C-199/12 to C-201/12, *Minister voor Immigratie en Asiel v X* and *Y and Z v Minister voor Immigratie en Asiel*, 7 November 2013 (concerning concealment of one's SO); Joint Cases C-148/13 to C-150/13, *A, B, C v Staatssecretaris van Veiligheid en Justitie*, 2 December 2014 (on credibility assessments).

208 CJEU, C-473/16, *F. v Bevándorlási és Állampolgársági Hivatal*, 25 January 2018.

209 *Ibid*., para 60.

210 *Yogyakarta principles on the application of International Human Rights Law in relation to Sexual Orientation and Gender Identity* (2007).

211 *F v Bevándorlási és Állampolgársági Hivatal*, para. 62.

212 It is noteworthy, that in a recent case, *S.A.C. v UK*, currently communicated to the UK Government for response, for the first time ECtHR has asked about concealment of one's SO upon returning to their home country where they are at risk of persecution.

GLOBAL PERSPECTIVES

STATE-SPONSORED HOMOPHOBIA 2019



GLOBAL PERSPECTIVES

AFRICA

STATE-SPONSORED HOMOPHOBIA 2019



AFRICA

Courage and Resilience amidst Oppression

Various authors.

Mechanisms of Adaptation and Resistance to Repression in North Africa

By Naoufal Bouzid[1] and Khadija Rouggany.

The situation of LGBTQI + people in North Africa is characterizedby a contextin which 4 countriesstill criminalize sexual acts between adults of the same sex: Mauritania,Morocco, Algeria and Tunisia.[2] Additionally, Egypt does not formally have norms that explicitly criminalize this type of acts, but in practice they are criminalized under other legal provisions (*de facto* criminalization).[3] This criminalization carries penalties ranging from imprisonment and the fine to death, in Mauritania.

In addition,the regional contextis marked by a repression that goes beyond limiting the sexual and emotional life of LGBTQI+ people. The laws restrict the right to freedom of assembly and associationin all the countries of the region,[4] except in Tunisia, where civil society has managed to found and officially register several LGBTQI+ organizations. Similarly, freedom of expression is often severely limited,notwithstandinginitiativesthat seek to empower local communities, often running the risk of being persecuted.[5]

Therefore, despite a difficult context, queer groups are emerging under their own dynamics - groups whose objective is to improve the lives of those who are affected.

In contexts where repressive laws continue to oppress LGBTQI+ people and create barriers to the formation of human rights organisations, local activists in the region opt to organize around informal groups/collectives. Under that scheme, they carry out their work to the extent they can. Although for the moment it is mostly discrete activities, they are progressively achieving a certain level of visibility.

Arts and festivals committed to diversity

When words, slogans and harangues are no longer enough to achieve mobilization, art committed to diversity stands out as an effective alternative voice. The objective is to raise awareness about the human rights of LGBTQI+ people and democracy, through an interactive dynamic: that of cinema, music, and theater that reflect the difficult lives of LGBTQI+ people in Northern Africa. Among these initiatives are the *Chof-tohonna* festival and the Tunisian International Festival of Feminist Art LBT Chouf Minorities Association, which had its 4th edition in 2018.[6]

Social networks

In addition, the *sotto voce* dynamic has not prevented activists from participating in training activities and further developing their capacities at the national, regional or international level. The expansion of social networks also provides greater visibility to groups and organisations and helps to maintain a sense of closeness within the

1 Nao Bouzid is a gay African feminist and an LGBTIQ+ activist from Morocco. He is the co-founder and the Executive Director of Equality Morocco, an LGBTIQ+ organization in Morocco. Nao has over 10 years of experience working with local and internationalLGBTIQ+ and Human Rights NGOs. During these years of activism,he got involvedin differentnationaland internationalcampaignscallingfor the decriminalizationof same-sexconsensualrelationshipsand in social awareness campaigns about LGBTIQ+ issues in Morocco.

2 The human rights situation in each of these countries and the main events between 2017 and 2018 are developed in the entries for each country in the "Criminalization" section of this report.

3 For more information on *de facto* criminalization and the situation of persecution in Egypt, see the entry for that country in the "Criminalisation" section of this report.

4 For more information on these types of restrictions, see the section on legal barriers to registration and operation of SOR NGOs in the "Global Overview" section of this report.

5 For more information on restrictions on freedom of expression, see the corresponding section in the "Global Overview" section of this report.

6 "International Feminist Art Festival of Tunis", *Facebook Webpage*.

community, through the interaction and publication of activities on social networks.

These communication channels have been used to carry out awareness and promotion campaigns, such as the viral campaign #HomophobiaIsACrime and #StopArt489 of the MALI group (Alternative Movement for Individual Freedoms), which is launched annually on the occasion of the IDAHOT (Day International against homo, lesbo, bi and transphobia), or the #TenTen virtual campaign that celebrates the national day of LGBTIQ + people in Algeria. Initiated by three activists, this day is celebrated each year on October 10 since 2007. Activists and allies light candles and share photos of these candles with that hashtag as an act of solidarity in social networks.

Web magazines and radio broadcasts

On the other hand, in order to better frame and develop theoretical content, some groups in the region publish quarterly (or every semester) articles in attractive journals, with content on sexual diversity issues. Other groups manage to broadcast on web radios on issues related to the rights of LGBTQI + people, sometimes with the presence of experts and offering the possibility of asking questions live through Facebook.

Dynamics of regional coalitions

The dynamics of networks, meetings, exchanges and regional trainings have allowed the emergence of several initiatives. Among them is Transat, a platform of trans activists, non-binaries and gender dissidents from North Africa and the Middle East, which capitalizes on a queer regional solidarity as a form of virtual resistance.[7]

Regional and international incidence

Several groups in the region are part of a strategic vision to reform the laws that affect LGBTQI+ people and are working on the issue through two main strategies. The first is to prepare reports to monitor violations of the rights of LGBTQI+ people. The second aims to occupy advocacy spaces, to encourage and channel pressure from the international community on national governments, including the Human Rights Council, Universal Periodic Review and the African System of Human and People's Rights. In effect, the region knows of a real dynamic that overcomes the many existent restrictions. The best example is how the Egyptian queer community survived the repression of 2017, the effects of which are still palpable.

Activist groups carry out their activities despite very limited resources: only 0.001% of global LGBTIQ + funding goes to North Africa,[8] while the region needs much more help to implement the changes desired by the community.

A Brief Overview of East Africa

By Eric Guitari.[9]

In East Africa, the continued criminalization of private consensual sexual acts between adults of the same sex, as well as the outlawingof diverse gender expressions are indicators of States' interest to entrench discrimination and violence based on real or perceived sexual orientation and gender identity/ expression.

Although Rwanda does not criminalize same sex relations, social stigma against LGBTIQ persons is prevalent, including family exclusion and discrimination on the basis of sexual orientation and gender identity is rife in the employment sector.

None of the East Africa countries have anti-discrimination statutes and hate crimes laws to protect persons from bias or discrimination on grounds of their sexual orientation and gender identity. The legal social status of LGBTIQ persons and communities in East and central Africa is nothing but vague, hostile and criminal.

According to reports by social movements and activists, violence and discrimination remain the most concerning legal social issues facing LGBTIQ person and communities in the East Africa region.

For example, Tanzania has banned provision of condoms and lubricants to LGBTIQ health clinics and has since 2018, upscaled the use of forced anal examination against suspected LGBTIQ persons including cramping down on organizations that support their rights.[10]

7 "Transat", *Website*.

8 Global Philanthropy Project (GPP), *The 2015-2016 Global Resources Report: Philanthropic & Government Support for Lesbian, Gay, Bisexual, Transgender, and Intersex Communities* (2018).

9 Eric Guitari is a PhD Candidate (SJD) at Harvard Law School and the former Executive Director of the National Gay and Lesbian Human Rights Commission-Kenya (NGLHRC).

10 For more information, see the entry on Tanzania in the "Criminalisation" section of this report.

In Burundi, a protracted election violence led by an incumbent state that refuses to obey presidential constitutional term limits continues to subject LGBTIQ persons to structural violence on account of their political opinions and sexual orientations.[11]

In Uganda, reports of an imminent parliamentary bill to further criminalize same sex relations continue to heighten anguish and insecurities within LGBTIQ community members. Political and religious elites in Uganda continue to perpetuate paternalistic public discourses that cast same sex orientation and trans identities as existential threats to the future of the nation. Anxieties over reproduction and fear of recruitment of children into homosexuality are the common social trojans used against LGBTIQ persons in public discourse.

In Kenya, NGLHRC's Because Womxn has reported increased vulnerabilities and discrimination against LBQ women on account of multiple biases of gender and sexual orientation. This has resulted in marginalization, violence and exclusion of LBQ women not only by the general society but also within the LGBTIQ community. These intersections and multiplicity of discrimination grounds become more relevant and subtler in asylum cases for LGBTIQ persons who face rights violations and protection challenges during asylum processing.

Geo-conflicts in Somalia, DR Congo, Sudan and South Sudan have continued to drive out LGBTIQ refugees towards Kenya, Tanzania and Uganda. The asylum flights pose a legal paradox where countries that criminalize same sex relations continue to abide by their international obligations to protect LGBTIQ refugees and asylum seekers within their borders but at the same time continue to prosecute and persecute their LGBTIQ citizens.

Activists and groups have been documenting and fighting discriminations based on sexual orientation including ongoing litigation challenging criminalization of same sex relations in Kenya, denial of registration of SMUG in Uganda, refusal of registration of NGLHRC in Kenya and the recently (2018) successful challenge against forced anal examination in Kenya.

It can thus be said that criminalizing East States have no demonstrable legislative and political interests to reduce violence and suffering on LGBTIQ persons. LGBTIQ persons within these countries need therefore embrace their civic duty to stay vigilant on their rights and engage in public education towards equality and social justice.

The Situation of the LGBT Community in West Africa

By Ababacar Sadikh Ndoye[12] *and Emma Onekekou.*[13]

The context of West Africa is peculiar as a "false calm" exists when speaking of the rights of LGBTI persons. This silence is deceptive as it could suggest that the situation of lesbians, gays, trans and intersex persons is positive. However, nothing could be further from the truth. One of the problems in West Africa is that there is no political will to support and respect the rights of LGBT persons. There is a certain level of political will when it comes to health issues and HIV/AIDS, related to the taking care of men who have sex with men (MSM). However, it is exclusively focused on this group to the detriment of women who have sex with women and trans persons.

The socio-legal diversity in the region

The region is characterised by its socio-cultural and legislative diversity, which makes LGBT communities face distinct legal differences. These go from the explicit criminalisation (in countries such as Gambia, Guinea, Liberia, Mauritania, Nigeria, Senegal, Sierra Leon, and Togo) to countries with a certain level of antidiscrimination protection (such as Cape Verde).[14] In a more ambiguous situation are some countries that do not explicitly criminalise same-sex sexual acts. However, in practice there have been recorded cases of detention and prosecution for such acts (such as Ivory Coast).

Religion has a big influence in judicial rulings of some West African countries, such as Mauritania, Niger, Senegal and Northern Nigeria, where Islam has a strong presence in both the social notions of sexuality and its application in the law. In effect, Islamic Sharia law is one more source of law amongst others, in which same-sex sexual acts are

11 For more information, see the entry on Burundi in the "Criminalisation" section of this report.

12 Ababacar Ndoye is a blogger (@Tous_pour_1) and human rights activist in Senegal.

13 Emma Onekekou is a blogger (@EmmaInfos) and human rights activist in Ivory Coast and Burkina Faso.

14 Since 2008, article 45(2) of the New Labour Code of Cape Verde prohibits an employer soliciting information of the "sex life" of their employees. Article 406(3) imposes sanctions on employers who fire employees on the basis of their sexual orientation.

criminalised, in some cases the death penalty applies.[15]

Generally speaking, it can be said that the HIV/AIDS epidemic has opened some space for LGBT activism. The focus of the issue regarding men who have sex with men (MSM) has shaped the emergence of the LGBT community and given certain access to funding. Therefore, the rights of LGBT people in the region are mostly addressed through the issues of public health. This approach has however, brought some consequences for lesbians, bisexual women and trans persons whose own issues remain marginalised.

Even so, in recent years, a broader approach for LGBTI organisations has progressively emerged. For example, in the Ivory Coast a federation of LGBTI organisations called Couple Akwaba was created, which brought together 15 of the 23 organisations in the country.[16] This organisation faces multiple challenges, such as obtaining information on time and from reliable sources in the face of violations of LGBT persons' rights in the country and the resources to document them, give psychological support to victims of attack and/or arbitrary detention due to the sexual orientation or the gender identity, or even to provide support for temporary relocation in grave situations.[17]

In the Ivory Coast, despite the fact that no law exists which criminalises consensual same-sex sexual relations, at the end of 2016 a judge in the city of Sassandra used article 360 of the Penal Code to condemn 2 men to 18 month imprisonment.[18] They were caught by the uncle of one of the men, and after having been reported, they admitted before the judge to having been in a loving relationship.[19]

In Burkina Faso, in the period between March 2017 and December 2018, there were 10 LGBTI persons detained in Ouagadougou (the capital city) and 38 more in the municipality of Bobo-Dioulasso (the second biggest city in the country and predominantly Islamic).[20] Despite this, the Burkinabe penal code does not actually prohibit consensual same-sex sexual acts. In October 2017, two gay men reported to the authorities that their phones had been stolen. On being summoned by the authorities after the criminal had been apprehended and phones recovered, the claimants were detained as the phones had contained same-sex pornographic content. The two men were eventually freed thanks to the intervention of a community leader in Ouagadougou and having paid a fine of 40,000 francs.

In countries where same-sex sexual relations are criminalised, there are few cases where the persons arrested have been found "in flagrant delicto". In the majority of cases, the arrests and prosecutions take place based on third party accusations (sometimes anonymous) that report people for having had allegedly performed same-sex sexual acts. Such was the case where a group of 2 men and 2 women were detained on 15 September 2018 in the city of Dakar, Senegal. The authorities of Godppeul arrested them as they were reported for committing "unnatural acts" and having gone against the moral order.[21]

Violence and social prejudice

Same-sex sexual acts continues to be a taboo subject in almost all West African countries, particularly in countries such as Ivory Coast, Burkina Faso, Senegal and Benin, where the existence of LGBTI people is often completely denied. Public opinion and the media usually consider **sexual orientation** as a "choice" that reflects a "sexual perversion" or even motivated by "economic incentive".[22] The growth in widespread general homophobia has justified multiple forms of violence against LGBTI people: from arbitrary detention by the police, school exclusion, denial of medical attention, expulsion from the home, arbitrary dismissal from employment to lynching

15 Countries where there is a possibility of imposing the death penalty for consensual same-sex sexual relations are: Mauritania and Nigeria (in the provinces where Islamic sharia law applies).

16 "La Coupole Akwaba", *Facebook Page*.

17 Ababacar Sadikh Ndoye, *Rapport de terrain : Documentation des cas de violence sur les LGBTQI du Mali*, 4, 2018.

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

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

20 This information was obtained by the Courage and Plural Vision Organisation (individual interview).

21 "Sicap: Une bande d'homo arrêtée pour vidéos obscènes", *Seneweb.com*, 17 September 2018.

22 "Poverty responsible for rise in homosexuality", *Graphic Online*, 3 November 2018.

and murder.[23] In many cases the attacks are recorded on phones and go viral being shared on social media. On 15 January 2019, two young men were discovered in the district of Wolofobougou-Bolibana, Bamako, Mali, kissing in the street. Neighbours and some police officers dressed as civilians attacked and beat them in a type of lynching.[24] In some areas of Ghana, homophobic gangs lynch LGBT persons, later terrorising their partners and families.[25] LGBT people live in an increasingly hostile environment, suffering increasingly violent attacks and arbitrary detention. This happens with the acquiescence of the States of the region who give no response to these violations.[26] Even in Benin where consensual same-sex sexual relations are not criminalised, LGBT persons are forced to live in hiding.[27]

New forms of organised violence and the media

The growth of homophobia has found new ways of operating by harassing, exposing and humiliating LGBT persons through false social network profiles.[28] In 2017, the movement "Fight against homosexuality in Mali" (LCHM) was created, made up of numerous Malian residents, although its main leaders live abroad (chiefly in France, Italy, Canada and the United States). In Mali social networks, the news group of the movement is achieving high levels of participation in what they call "hunting homosexuals".[29]

In all of West Africa, we are seeing a stronger media focus on sexual orientation issues, with the media tending to publish incendiary articles and reports on the issue. It is common to read extremely pejorative content regarding same-sex sexual acts, denigrating references of LGBT people, equating it with paedophilia and prostitution, as well as negative descriptions of human rights defenders.[30]

In the face of such levels of aggressions, many LGBT people in West Africa have no other choice but to leave their countries in search of asylum. In general, the majority of victims of arbitrary attacks and detention due to their sexual orientation or gender identity go to neighbouring countries or Europe and other western countries.

Access to economic support

On the economic front, LGBTI organisations in West Africa are responsible for the plurality of self-employed activity which generates income. This highlights the vulnerability of LGBTI people in this regard. In fact, gender identity expression can be a barrier to employment. This problem is still more worrying in the case of trans people, who in most countries are unable to change their gender marker on their identity cards, diplomas and other necessary documents.[31] Some trans people have been forced to completely abandon their sources of income, and on occasion are arrested for the crime of "identity theft", as was the case of Lyly.[32]

23 "Scandale: Un homosexuel a été battu puis déshabillé en pleine rue à Abidjan", *Net Afrique*, 25 April 2018; "Bamako (Mali): lynchage sordide d'un homosexuel dans la rue", *Fdesouche*, 20 February 2018; "Vidéo – Déchaînement de violence contre une personne transsexuelle à Bamako", *Net Afrique*, 11 October 2018.

24 "Mali : des homosexuels tabassés par une foule à Bamako", *Infowakat*, 17 January 2019.

25 "Family of lynched gay man's partner demand maximum security", *Ghana Web*, 31 March 2018; "Police save suspected lesbians from lynching", 13 February 2018; "Angry Youth In Kyebi Zongo Lynched Gay Man, Still Hunting His Partner", *Daily Guide Network*, 3 August 2015.

26 See, for example: "In Sierra Leone, human rights defenders stay silent on LGBTQ+ discrimination", *Politico SL*, 16 January 2018.

27 "Être adolescent et gay au Bénin, c'est vivre caché dans un monde libre", *Le Monde*, 25 December 2018.

28 "Gays in Mali are hunted and humiliated online", *The Observers*, 18 September 2017.

29 For more information see: Ababacar Sadikh Ndoye, *Rapport de terrain : Documentation des cas de violence sur les LGBTQI du Mali*, 4, 2018; "Chasse aux homosexuels au Mali : les accusations s'organisent sur Internet", *Les Observateurs*, 15 September 2017.

30 See, for example: "Côte d'Ivoire : des homosexuels condamnés à 18 mois de prison", *Afrique sur 7*, 16 November 2016; "Homosexualité : Un haut cadre d'une entreprise privée chassait sur Facebook les…", *Seneweb*, 30 May 2018; "Homosexualité : Sur les pas de la communauté LGBT de Bobo-Dioulasso", *Le Faso*, 30 May 2016.

31 For more information on the legislation in the modification of personal documentation in Africa, see: Zhan Chiam et al., *Trans Legal Mapping Report 2017: Recognintion before the law* (Geneva: ILGA, Novemeber 2017).

32 "Les femmes transgenres africaines discriminées au travail", *Blog : Tous Pour Un Monde Meilleur*, 21 August 2018.

An Overview of Some Central African countries

By Julie Makuala Di Baku[33] *and Jean Paul Enama.*[34]

In the last two years, issues related to sexual orientation and gender identity have not seen much progress in Central Africa. These issues continue to be perceived as taboo and "contrary to African values". In addition, many people still believe that these are issues "imported from Europe". It is only necessary to walk the streets of several of these countries to understand how difficult it is to be seen as a couple with a person of the same sex. In the region, while in some countries there are explicit laws that criminalize same-sex sexual acts, in others there is a legal vacuum on the matter.

Although Cameroon revised its criminal code in 2016, the provisions that penalizes same-sex relationships were unfortunately kept intact.[35] In the international arena, Cameroon has rejected all recommendations on issues of sexual orientation and gender identity.[36] Even so, there is some political will to eradicate HIV from key population groups and the National Health Plan 2018-2022 identifies men who have sex with men (MSM) and trans women as a vulnerable population.

In the Central African Republic, although same-sex sexual relations between consenting adults are not explicitly criminalized, article 85 of the criminal code criminalizes "acts against nature committed in public", defining them as "attacks on public morals" and imposing harsher penalties compared to other attacks on morals. Alternatives Centrafrique, a local LGBT organization, has documented cases of arbitrary arrests based on (false) allegations of same-sex sexual intercourse.[37] In this line, in its 3rd cycle of the UPR, the Central African Republic received two recommendations (prohibit discrimination based on sexual orientation and gender identity and improve the situation of sexual minorities).[38] The National HIV Plan 2016-2020 identifies MSM as key populations, so the actions of the Global Fund project focus on them.

While there is no law in Gabon criminalizing consensual same-sex relations between consenting adults, the human rights situation of LGBT people remains extremely worrying,[39] with arrests for "moral attacks" based only on the form of dressing "translating sexual orientation".[40] Gabon had its first recommendation on SOGIEC in the third cycle of the UPR in 2017, which focused on access to medical care for LGBT people.[41] In fact, the National Health Plan does not recognize gay and bisexual men as a key population.

Before 2017, the legal situation was not particularly clear in Chad: Article 272 of the Criminal Code condemned those who committed "acts against nature" with persons under 21 years of age. A bill to criminalize same-sex relations with up to 20 years in prison was debated in Parliament in 2016 but failed to pass. However, the revision of the Criminal Code that entered into force in 2017 incorporated the criminalization of "same-sex sexual relations",[42] making Chad the latest State to criminalize same-sex consensual relationships and, therefore, a worrying example of legal regression in the region. Furthermore, the National Health and HIV Plan does not identify key populations and there is no record on any LGBT organization operating in the country.

Of particular gravity is the situation in the Democratic Republic of the Congo, where LGBT people continue to be victims of human rights violations and face increasing discrimination and

33 Julie Makuala Di Baku graduated in radiology from the Higher Institute of Medical Techniques of Kinshasa. She has training in conflict management and human rights from the International Mission for Justice and Human Rights in the DRC. At age 29, she started her activism in an LGBTI association as a logistics officer. She later founded Oasis, a Congolese association for LBT women. She is currently the Executive Director of Oasis, which provides medical, legal and psychosocial support and support to LBT women who are victims of violence based on sexual orientation, gender identity and expression.

34 Jean Paul Enama is the Executive Director of Humanity First Cameroon.

35 This article has simply changed its nomenclature (from 347bis to 347-1and has maintained its text.

36 For more details on the participation of Cameroon in the framework of the Universal Periodic Review, see the entry on Cameroon in the "Criminalization" section of this report.

37 For more information, see: Alternatives Centrafrique, *Rapport sur la situation des minorités sexuelles et de genre en Centrafrique* (2018.

38 El Estado contestará esta pregunta durante la 40a sesión del Consejo de Derechos Humanos.

39 "Gabon: malgré sa légalité, l'homosexualité reste très mal tolérée dans le pays", *RFI Afrique*, 17 de mayo de 2017;

40 "Un jeune homosexuel gabonais arrêté pour attentat à la pudeur à Moanda", *Info 241*, 18 de noviembre de 2018.

41 See: *Report of the Working Group on the Universal Periodic Review: Gabon*, A/HRC/37/6, 29 December 2017, para. 118.118: Strengthen public policies aimed at addressing the high number of people living with HIV/AIDS and not receiving treatment, particularly women, in order to reduce the rates of HIV transmission from mothers to children during childbirth; as well as for lesbian, gay, bisexual, transgender and intersex people, guaranteeing medical care without discrimination based on sexual orientation and gender identity (Mexico.

42 Penal Code of Chad (enacted by Law No. 001/PR/2017, 8 May 2017, article 354.

stigmatization. While same-sex sexual relations between consenting adults are not expressly criminalized,[43] Article 176 of the Criminal Code—which criminalizes activities against public decency—is used in practice as the legal basis to criminalize LGBT persons.[44]

There are numerous documented instances of arbitrary arrests and blackmail perpetrated by the police in which this provision is used to persecute and repress public displays of affection, non-normative gender expressions, among others.[45]

In this regard, the Human Rights Committee expressed its concern and recommended that the State ensure that no person is prosecuted under Article 176 of the Penal Code because of their sexual orientation or gender identity, as well as enact anti-discrimination legislation that expressly includes sexual orientation and gender identity.[46]

Among the few positive aspects, it should be mentioned that the Democratic Republic of the Congo has a law to protect people living with HIV/AIDS.[47] Articles 3 and 4 of this law prohibit acts of stigmatization and discrimination against any person living with the virus.

In addition, article 2 contains a definition of "vulnerable groups", which includes sex workers and "homosexuals". This law is today the only legal text in force that can be used to offer protection to LGBT people, although mainly with respect to men who have sex with men. Unfortunately, this means that lesbians and trans people must use the label of one of the groups identified as "vulnerable groups" to have access to care.

Small Victories Add Up in Southern Africa

The author wishes to remain anonymous.

It could be argued that in a few countries in Southern Africa some advancements in legislative protections and guarantees of equality often outpace changes in public sentiment. Even South Africa, the first country with a constitutional protection from discrimination based on sexual orientation, has and continues to struggle with a lack of societal acceptance of sexual and gender minorities, and reports of anti-LGBT violence seem to regularly cycle through the news.

Yet the past two years have seen a number of legislative and court victories for LGBTI people across the sub-region, proving that progress is possible in the face of resistance. Importantly, the governments of non-criminalizing countries have signalled support for SOGI issues in a number of areas, including ending discrimination in education and supporting LGBTI asylum-seekers.

Homophobia, discrimination, and hate incidents

In terms of marriage equality, constitutional rights, and legal protections from discrimination for LGBTI people, South Africa is undoubtedly a regional leader. At the same, South Africa's high rates of rape and homophobic crime, perpetrated disproportionately against lesbians of colour in poorer townships,[48] demonstrate that robust legislation does not necessarily translate to societal acceptance. A 2017 report on violence faced by the LGBT community in South Africa found that a shocking four out of ten LGBT South Africans know of someone who has been murdered for their sexual orientation or gender identity; that number rises to 49% for black LGBT people in the country.[49]

43 Over the past five years, several members of Parliament have made efforts to explicitly criminalize same-sex relationships. See: Canada: Immigration and Refugee Board of Canada, *Democratic Republic of Congo: Situation of sexual minorities, including legislation and treatment by society and the authorities; state protection and support services* (2014).

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

45 The East African Sexual Health and Rights Initiative, *Landscape Analysis of the Human Rights Situation of Lesbians, Gay, Bisexual, Transgender, Intersex People and Sex Workers in the Democratic Republic of Congo* (2017), 12; Mouvement pour la promotion du respect et égalité des droits et santé (MOPREDS) et al., *Human Rights Violations Against Lesbian, Gay, Bisexual and Transgender (LGBT) People in the Democratic Republic of the Congo (DRC): Submitted for consideration at the 121st Session of the Human Rights Committee* (2017), 4.

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

47 Loi n° 08/011 du 14 juillet 2008 portant protection des droits des personnes vivant avec le VIH/SIDA et des personnes affectées.

48 James Fletcher, "Born free, killed by hate - the price of being gay in South Africa" *BBC News*. 7 April 2016.

49 Michael Morris, "LGBT community still faces high levels of violence - report" *News24*. 4 December 2017.

The high rates of violence perpetrated against LGBTI people continue to be a major focus of activism from human rights groups in the country. In May 2017, dozens of human rights defenders lobbied the authorities to take immediate action on the bias murders of five LGBT persons that had been denied justice for years.[50] Soon after, activists took to the streets of several South African cities to protest ongoing deadly attacks against members of the LGBTI community.[51]

Protection from discrimination

In March of 2018, in a huge step towards addressing the country's persistent problems with homophobic and transphobic violence, South Africa's cabinet approved a bill criminalizing hate crimes and hate speech and submitted it to Parliament. Aside from providing justice to victims of bias crimes, the bill would greatly improve data collection on the incidence of and nature of hate crimes in the country. However, critics feared the broad language used in the bill may pose a threat to free speech, and pushed back by arguing that the bill "makes a 'common' insult punishable by three years in prison."[52] In December 2018, the South Africa Parliament invited public input on the bill from stakeholders and interested persons, and announced it would hold public hearings on the bill.[53]

That same month, the South African National Assembly passed a bill to remove a provision from the Civil Union Act that allowed civil servants to refuse to marry same-sex couples on the basis of their "conscience, religion, or belief."[54] The prior year, the Minister of Home Affairs revealed that only 111 of its 412 branches had officers willing to marry same-sex couples, and that 37% of its officers were exempt from providing the services. Nonetheless, the Minister refused to back an amendment repealing the provision.[55]

Civil society organizations in South Africa have been developing innovative approaches to combating discrimination and hate crimes. A nationwide initiative addressing violence against LGBTI communities has launched a website to help victims anonymously report hate crimes in South Africa.[56] A 2016 survey of LGBT people found that 88% of respondents did not report hate crimes or discrimination, as they often fear having to come out to friends and family, or facing victimization from the authorities or community.[57]

In September 2018, an umbrella organization for LGBT+ employee network groups launched an index to measure how companies in South Africa are faring when it comes to the inclusion of sexual and gender minorities in the workplace. Of the 17 companies—representing six different sectors and employing over 30, 000 people—that participated in the analysis, very few had provisions protecting employees from discrimination on the grounds of gender identity and expression.[58]

The UN Independent Expert on the protection against violence and discrimination based on sexual orientation and gender identity paid a visit to Mozambique at the end of 2018 to assess how the government was upholding the rights of its LGBT citizens.[59] In his assessment, he commented that the absence of systematic, large-scale rights violations against the LGBT community made Mozambique an "inspiring example" in the region, but that the government urgently needed to end its policy of marginalization and "guarantee the full social inclusion of lesbian, gay, bisexual and transgender people."[60]

Education

Several countries in the sub-region participated in the first international ministerial meeting on education sector responses to homophobic and transphobic violence organised by UNESCO.

50 Luiz de Barros, "The Five - Justice denied" *Love Not Hate*. 9 May 2017.

51 Roberto Igual, "Burnt body feared to be that of young lesbian woman" *Mamba Online*. 5 April 2017; Lou-Anne Daniels, "We remember Lerato Moloi" *IOL*. 20 August 2018; Roberto Igual, "Free State gay man killed and dumped in hole: Stephen Nketsi" *Mamba Online. 19 May 2017;* Love Not Hate, "Pretoria LGBTI Hate Crimes Protest" Facebook (web page), accessed 1 March 2019.

52 Queenin Masuabi, "Controversial Hate Speech Bill On Its Way To Parliament" *Huffington Post*. 17 March 2018.

53 "Parliament calls for public input on bill preventing and combating hate crimes and speech" South African Government. 7 December 2018.

54 Jan Gerber, "Home Affairs officials can't refuse to solemnise same-sex marriages after Bill is adopted" *News24*. 6 December 2018.

55 Luiz deBarros, "Home Affairs minister rejects call to amend discriminatory Civil Union Act" *Mamba Online*. 12 July 2017.

56 "New LGBTI hate crime reporting platform launched" *OUT*. 13 March 2018.

57 *Hate Crimes against Lesbian, Gay, Bisexual and Transgender (LGBT) people in South Africa, 2016* Love Not Hate Campaign; OUT LGBT Well-being. (2016).

58 *The South African Workplace Equality Index 2018*. LGBT+ Forum. (2018).

59 For more information on the visit and the role of the UN IE SOGI, see the article written by Rafael Carrano Lelis and Zhan Chiam in the International Human Rights Law of this report.

60 "Comunidade LGBT em Moçambique é discriminada?" *Deutsche Welle*. 12 December 2018.

Mauritius, South Africa and Mozambique, joined the countries signing the *Call for Action* sponsored by UNESCO to express their political commitment to ensuring inclusive and equitable education for all learners in an environment free from discrimination and violence, including discrimination and violence based on sexual orientation and gender identity/expression.[61]

In March 2017, the Limpopo Department of Education in South Africa was ordered to pay compensation to a student who had suffered discrimination for her gender identity from her school principal.[62] The same week she won her case, 38 girls at a school in Mdantsane, South Africa were forced them to disclose their sexual orientation in front of parents, guardians and teachers, after the principal had seen two of them kissing.[63] Though the education department of the province investigated the issue, they took no disciplinary action against the principal who outed the students.[64]

Intersex issues

In early 2017, activists from South Africa and Kenya gathered to Pretoria to take part in a consultative meeting on the Model Law on the rights of intersex persons in Africa, which the Centre for Human Rights was drafting for eventual tabling at the African Commission on Human and Peoples' Rights. The Draft Model Law sought to, "prevent unfair discrimination and to protect and promote of the rights of intersex persons in African countries."[65]

At the end of the year, intersex and human rights activists hosted a National Engagement on the Promotion and Protection of the Human Rights of Intersex Persons with the Department of Justice and Constitutional Development, the first large-scale engagement with the government of South Africa. They discussed a number of issues of importance to the intersex community, including infant genital mutilation and healthcare procedures, and strengthening legal mechanisms to protect from discrimination.[66]

Issues on gender identity

South Africa has similarly seen progress in legal gender recognition and accommodations for trans individuals. After a lawsuit from three trans people and their spouses, the Western Cape High Court ruled that a law barring married individuals from changing their gender without first divorcing was unconstitutional.[67]

More recently, a trans trans woman in South Africa, currently serving a 15-year sentence in a prison for men, sued the Correctional Services Department to seek recognition for her right to gender expression while in custody. The case has the potential to change the way transgender individuals are treated in the criminal justice system.[68]

In December 2017, a trans plaintiff in Botswana won the right to change his gender from female to male on identity documents.[69]

Immigration and asylum

Given the high number of criminalizing states in the sub-region, and in Sub-Saharan Africa more generally, nearby countries like South Africa where consensual same-sex acts are legal become a destination for LGBT asylum-seekers. Despite having laws guaranteeing refugee status to LGBT persons fleeing persecution, many gay, lesbian, and trans refugees are turned away at the border.[70] Queer human rights activists lobbied the government to address the situation, as many LGBT refugees being discriminated against were remaining in country undocumented. In September 2018, the Department of Home Affairs agreed to have its officials undergo sensitisation training.[71]

A Mozambican LGBT organization attended the 32nd Assembly of the African Union in February 2019 to draw attention to the fact they have been receiving requests for support from

61 *Call for Action by Ministers: Inclusive and equitable Education for All learners in an environment free from discrimination and violence*, ED/IPS/HAE/2016/02 REV (2016).

62 Kellyn Botha, "Victory for transgender learner in Limpopo a long time coming?" *Daily Maverick*. 24 March 2017.

63 Tammy Petersen. "Alleged 'homophobic abuse' at Eastern Cape school to be investigated" *News24*. 9 March 2017.

64 Roberto Igual, "No action taken against principal who outed 'lesbian' pupils" *Mamba Online*. 13 April 2017.

65 "Centre for Human Rights hosts first consultative meeting to discuss Draft Model Law on the rights of intersex persons in Africa" *Centre for Human Rights, University of Pretoria*. 26 April 2017.

66 Andrea Hayes, "11 December 2017 National Intersex Meeting Announcement" *Iranti*. 11 December 2017.

67 Safura Abdool Karim, "Married transgender people can change their official sex, court finds" *Ground Up*. 8 September 2017.

68 Norman Cloete, "Transgender prisoner looks to Constitutional Court" *IOL*. 9 December 2018.

69 For more information, please see the entry for Botswana in the Criminalisation section of this report.

70 "A Double Challenge: LGBTI Refugees and Asylum Seekers in South Africa" *Heinrich Böll Foundation*. 11 October 2018.

71 Carl Collison, "Gigaba rights queer affairs" *Mail & Guardian*. 28 September 2018.

LGBT refugees fleeing other African nations, and to partner with UNHCR to establish a, "structured response to the needs of these people." They also pledged to do more for LGBT refugees in the Nampula camp in Mozambique, including offering psychological support, counselling, and healthcare.[72]

HIV & health

A national HIV plan to address the specific needs of the LGBTI community, the first of its kind, was launched during the 8th South African AIDS Conference in Durban. The plan aims to reduce HIV rates by 63 percent, tuberculosis by 30 percent, and boost STI detection by 70 percent over five years. The plan also acknowledged the effects of societal stigma and discrimination on LGBTI people seeking healthcare, and called for services designed for their needs.[73]

As part of its commitment made under the HIV plan, South Africa's Human Sciences Research Council announced the country's first national survey on HIV in transgender women in January 2018. The study aimed to fill a gap in data on HIV prevalence among transgender women and their specific vulnerabilities in order to be able to better serve their community.[74] Just two months later, the South African government began distributing PrEP[75] to sex workers for free in hopes of reducing the spread of HIV.[76]

In neighbouring Mozambique, health NGOs announced in February 2018 they received grants from The Global Fund for programming aimed at reducing new HIV infections and HIV-related deaths by 40 percent and tuberculosis deaths by 50 percent by 2020.[77]

Activism in the sub-region

Given its size, regional power status, and active civil society, South Africa tends to dominate the discussion of LGBTI issues in Southern Africa. Yet, over the past two years, grassroots activism in neighbouring countries is increasing domestic and international visibility of their LGBT people.

At the end of 2016, representatives of LGBTI organizations from Madagascar, Mauritius, Seychelles, and Réunion gathered in Antananarivo, Madagascar for the 15th symposium on HIV, where they formed the Indian Ocean region's first LGBTI network.[78]

A few months later, a Malagasy LGBTI group belonging to the network hosted an awareness-raising event during the World Day Against Homophobia. The group aimed to highlight the discrimination and stigmatization faced by LGBTI people in everyday life in Madagascar, and to put a human face to their community.[79]

Human rights organisations in Namibia organized a five-day advocacy event in July 2017 to "celebrate the rich tapestry of Namibian LGBTI lives, while addressing social and policy discriminatory laws, policies and practices."[80] The event, called 'We Are One,' ended with activists marching for better anti-discrimination laws during the country's first pride parade.[81]

Conclusion

Though regional surveys of public sentiment towards LGBTI people often report dismal numbers, we see an interesting, seemingly contradictory, trend happening in South Africa: though the majority of South Africans (72%) believe that same-sex sexual activity is "morally wrong", a majority (51%) feel that gay South Africans deserve the same rights as all other citizens.[82] Similarly, a 2016 survey found Namibia and Mozambique to be two of the most tolerant countries in Africa,[83]

72 "Na Etiópia - Lambda Colhe Experiência Para Apoiar Refugiados Lgbt Em Moçambique" *LambdaNEWS*. February 2019.
73 "SA launches first national HIV plan for LGBTI people" *ENCA*. 16 June 2017.
74 "First South African study looking at HIV prevalence in transgender women contributes to global 90-90-90 target" *Human Sciences Research Council*. 10 January 2018.
75 Pre-Exposure Prophylaxis (PrEP) is a daily pill that reduces HIV infection risk in HIV-negative individuals by 92 - 99%.
76 Lungani Zungu, "PrEp pill to save sex workers from HIV/Aids" *IOL*. 1 April 2018.
77 The Global Fund, "Mozambique and Global Fund Launch New Grants" Reliefweb. 8 February 2018.
78 "La première coalition des associations LGBT de l'océan Indien est née" *IMAZPress*. 6 October 2016.
79 "Société : Sensibilisation Contre L'homophobie" *TVMADA - RADIOMADA*. 17 May 2017.
80 "Authenticity in Diversity" *99FM*. 26 July 2017.
81 Michaela Morgan. "Namibia just held its first official Pride parade" *SBS*. 31 July 2017.
82 Sutherland, Carla, B. Roberts, N. Gabriel, J. Struwig, and S. Gordon. "Progressive prudes: a survey of attitudes towards homosexuality & gender non-conformity in South Africa." (2016).
83 Dulani, Boniface, Gift Sambo, and Kim Yi Dionne. "Good Neighbours? African Express High Levels of Tolerance for Many but not for All." (2016).

which as a whole is also trending towards tolerance among the young and well-educated.[84]

It's also worth noting that legislative advancements made in the sub-region over the past years have retained their strength and have not been weakened by religious exemptions; the South African government even closed a loophole that allowed civil servants to decline to perform same-sex weddings. Though there remain a significant number of criminalizing countries in the sub-region, progress made in South Africa, Mozambique and Namibia offer hope as to the future of LGBTI people in neighbouring countries.

Recent SOGI Developments in Angola and an Overview on Other African Lusophone Countries

By Rui Garrido.[85]

Angola

On 23 January 2019 Angola joined the list of countries that decriminalised same-sex acts between consenting adults. The Penal Code of 1886, inherited from Portuguese colonialism, criminalised anyone who partook in the practice of "vices against the nature."[86] Same-sex sexual relations were illegal under that provision, and it was generally understood as criminalising same-sex sexual acts. Under article 71, for the offence of "vices against nature", the first time that the crime was committed the sentence was the bond of "good conduct" or "freedom under surveillance", and for those who re-offended, the sentence was surveilled freedom or internment.[87] It is not known of any case targeting LGBTI people based on that provision.

The enactment of the new Penal Code was the end of a long journey that took more than a decade to conclude. Angola started the revision of its Penal legislation in 2004 through a presidential order that created the Commission for the Reform of Justice and Law. This commission mandated, among other things, the drafting of a new Penal Code for the country.[88]

In recent years, the Angolan State has tried to be transparent, especially when it is under international scrutiny. In 2014, during the 2nd UPR cycle, in the national report, Angola argued that intimacy between consenting adults was protected under constitutional law, and the state was unaware of any case of discrimination based on sexual orientation.[89]

In 2016, Angola submitted its national report to the African Commission on Human and Peoples' Rights. The report stated that there are no laws criminalising same-sex relations between adults, and that the draft law which approves the new Penal Code prohibits discrimination based on sexual orientation.[90] This reference was not made under article 2 (non-discrimination) of the African Charter on Human and Peoples' Rights, but under article 3 (right to dignity) of the Protocol on Women's Rights. Despite the reference to sexual orientation and the absence of criminal offence against LGBTI peoples, the Angolan authorities seem to misconceive, or not fully understand the issue of sexual orientation, as it is treated under the implementation measures of women's protocol. Under the same "right to dignity", LGBTI issue are grouped with prostitution and sexual violence against women, girls and children. This reinforces the Angolan authorities' misunderstanding of the subject.

In June 2018, the Ministry of Justice and Human Rights granted the legal recognition to the association IRIS Angola, the first LGBTI association in the country.[91]

Regarding the new Penal Code approved on 23 January 2019,[92] it is a significant shift from criminalisation to protection. In fact, the new Penal Code introduced "sexual orientation" as an aggravating circumstance in the provision establishing the general guidelines for the

84 Michael Morris, "LGBT community still faces high levels of violence - report" *News24*. 4 December 2017.

85 Rui Garrido, Ph.D candidate in African Studies at ISCTE-IUL, Portugal.

86 Penal Code of 1886, article 71(4).

87 *Id.*, Article 71(1).

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

89 *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21: Angola*, A/HRC/WG.6/20/AGO/1, para. 143, 4 August 2014.

90 *Six and seventh report on the implementation of the African Charter on Human and Peoples' Rights and initial report on the Protocol on the Rights of Women in Africa 2011 – 2016*, article 22, Government of Angola (2016).

91 "Governo valida primeira associação LGBT do pais", *Novo Jornal*, 28 June 2018.

92 The bill that was approved can be read here.

determination of penalties.[93] Additionally, article 172(1) establishes the crime of threatening to perpetrate a crime against someone, which could affect their "sexual self-determination". Notably, article 241 criminalises acts of discrimination based on sexual orientation with regard to the provision of goods and services, employment and obstructing economic activities. Articles 215, 216 and 217 raise the penalties for acts of insult, defamation and disrespect of the deceased (respectively) when they are committed because of the victim's sexual orientation. Furthermore, incitement to discriminate based on sexual orientation is criminalised under article 382. Last but not least, article 284 explicitly includes prosecution based on sexual orientation in the provision on crimes against humanity. The expression "sexual orientation" appears 12 times in the Code. However, no reference is made to "gender identity", "gender expression", or "sex characteristics", so there is certainly much space for further advocacy and progress.

The Penal Code was approved by a vast majority of MPs in Parliament —115 votes in favour, 7 abstentions and only 1 vote against— and was described by the leader of the People's Movement for the Liberation of Angola as "genuinely Angolan".[94]

Cape Verde

Cape Verde is considered one of the most consolidated African democracies and a country with high levels of social acceptance of homosexuality.[95] The legal framework is not repressive towards sexual orientation, and the reform of the Penal Code in 2003 removed the criminalisation of the "vices against nature", but no protection was granted to sexual orientation.

However, in 2008, Cape Verde enacted protections against discrimination based on sexual orientation in employment under the New Labour Code.[96] Furthermore, the 2015 amendment of the Penal Code stated that "the current circumstances demand an adequate response for some kinds of murder,[97] in particular those motivated by hate of the sexual orientation or gender of a person".[98] The amendment of article 123 establishes a penalty of 15 to 30 years imprisonment for murder committed on the basis of the victim's sexual orientation or gender identity.[99] Cape Verde is the only African Lusophone country that criminalises hate crimes based both on sexual orientation and gender identity.

Guinea Bissau

Guinea Bissau was the first country to reform its Penal Code after independence from Portugal. In 1993, the Law-decree No. 4/93 (Penal Code) decriminalised same-sex activity but granted no protection to sexual orientation or gender identity. Social attitudes in the country are not tolerant, with the exception of the capital city Bissau, in which the LGBTI community have some space to be open.[100] In a recent interview, a local NGO director stated that there are some cases of violence targeting people based on their sexual orientation or gender identity and that Guinea-Bissau lacks legal protections for LGBTI people.[101]

Mozambique

Even though the legal framework of the country is not hostile to sexual orientation or gender identity, there is still much that could be improved. In 2007, the Labour Law introduced prohibition of discrimination based on sexual orientation as a fundamental principle to the Right to Work.[102] In 2015, a new Penal Code entered into force, removing the criminalisation of the "vices against nature", but no protection was granted to sexual orientation or gender identity.

The Mozambican State failed in the legal registration of the NGO LAMBDA Mozambique, a process started by LAMBDA in 2008.[103] In 2017, the Constitutional Council of Mozambique declared article 1 of Law no 8/91 unconstitutional,

93 See: Article 71(1)(c): "(…) The following are the only aggravating circumstances: when the perpetrator commits the crime (…) because of discrimination based on (…) sexual orientation (…)".

94 "Parlamento aprova novo código Penal mas UNITA condena legalização do aborto", *O País*, 24 Januray 2019: "Members of Parliament approve new Angolan Criminal Code" *Agência Angola Press*, 23 January 2019.

95 *Good neighbours? Africans express high levels of tolerance, but not for all*, Afrobarometer, article 12, (2016).

96 Decreto-Legislativo No. 5/2007 (Código Laboral Cabo-Verdiano), 16 October 2007, articles 45(2) and 406(3).

97 Legislative-Decree No. 4/2015, 11 November 2015.

98 *Id.*, p. 2177.

99 *Id.*, p. 2179.

100 "'I Have to Be Open'", *New York Times*, 23 June 2018.

101 "A invisibilidade LGBT na Guiné-Bissau", *RFI International*, 2 September 2018.

102 Law No. 23/2007 (Labour Law), article 4(1), 1 August 2007.

103 For more information on the process led by LAMBDA see: "Registe Lambda Igualdade", *Lambda Website*.

which allows the registration of associations in the country in accordance with the principles of "moral order". The Constitutional Council found that the reference to "moral order" is in contravention with article 53(3) of the Mozambican Constitution of 2004, which only forbids the registration of military associations or those that promote violence, racism or xenophobia.[104] This decision gave new strength to the aspirations of LAMBDA to became legally registered as an NGO.[105]

São Tomé e Principe

São Tomé and Principe removed criminalisation of the "vices against nature" in 2012, when the new Penal Code entered into force.[106] Article 130 (qualified murder) of the Penal Code defines sexual orientation as an aggravating circumstance of this type of crime, giving sexual orientation the same protection as racial, political or religious hate. Furthermore, sexual orientation was introduced in the law on domestic and familial violence, and was adopted 4 years before the Penal Code. Article 2 of Law No. 11/2008 states that every woman, man and child has their fundamental rights inherent to their personhood, regardless of their sexual orientation, among other factors.[107] The same law recognises domestic violence as a human rights violation.[108] There are no records of any association working with LGBT human rights in the country.

104 Acórdão No. 07/CC/2017, atinente a declaração de inconstitucionalidade do artigo 1 da Lei nº 8/91, de 18 de Julho – Lei que regula o direito à livre associação, requerido pelo Provedor de Justiça.

105 "Moçambique: É inconstitucional recusar legalização de associação de minorias sexuais", *Deutsche Welle*, 14 November 2017.

106 Law No. 6/2012 (Approving Penal Code).

107 Law No. 11/2008, 29 October 2008, article 2.

108 *Id.*, Article 6.

GLOBAL PERSPECTIVES

LATIN AMERICA AND THE CARIBBEAN

STATE-SPONSORED HOMOPHOBIA 2019



LATIN AMERICA AND THE CARIBBEAN

Latin America and the Caribbean, Before the Challenge of a New Time

Coordinated by Luz Elena Aranda Arroyo,[1] Darío Arias[2] and Pedro Paradiso Sottile.[3]

Introduction

By Luz Elena Aranda Arroyo, Darío Arias and Pedro Paradiso Sottile.

The Latin American and Caribbean region finds itself in a historic moment of transition and political dispute, where the alliances between anti-rights religious fundamentalist sectors and the ultra-conservative political forces are advancing in a dangerous way.[4] This puts in tension and risks the gains achieved by movements through the social, political and cultural struggle, after a stage that we can call a decade of achievements for the LGBT population and women.

The period of 2017-2018, as can be seen in the six essays of each of the sub-regions, began a tumultuous, unstable period with struggle and tensions. The elections of conservative right-wing governments,[5] the rise to power of neo-fascist projects,[6] strategic alliances of the Catholic, Evangelical and neo-Pentecostal churches and its growing influence in the public debate,[7] increase in social exclusion and poverty in the region from the implementation of neoliberal economic policies,[8] the growth in violence due to prejudice of sexual orientation and gender identity and expression,[9] migration and the rise in the murders of human rights defenders, makes a panorama of regional complexity and alertness.[10]

This picture however, meets resistance and struggle from powerful LGBTI and feminist movements that still continue being capable of counteracting this conservative onslaught and lead important advances.[11] These movements are probably the most hopeful social political force in this moment of history and the only ones that are

1 Luz Elena Aranda Arroyo is the Co-Secretary General of ILGALAC, Executive Director of Las Reinas Chulas Cabaret y Derechos Humanos A.C, Mexico City, Mexico.

2 Darío Arias is the Co-Secretary General of ILGALAC, he is a political and social activist, co-founder and general coordinator of the Conurbanes por la Diversidad and member of the Justice Commission for Diana Sacayán, Province of Buenos Aires, Argentina.

3 Pedro Paradiso Sottile is the Executive Director of ILGALAC. lawyer, human rights defender, LGBTI activist and secretary of the Argentine Homosexual Community (CHA).

4 Julio C. Gambina, "Los rumbos de la política en Nuestramérica", *Nodal*, 3 January 2019: "Alerta Regional: No más fundamentalismos y violencia", *Sitio Web ILGALAC*, 17 May 2018.

5 The cases of the governments of Argentina, Chile and Colombia can be cited, the latter being the one of greatest concern. The electoral Observatory for LGBTI rights of ILGALAC informed on the proposals of each candidate to the presidency. The conclusion was that most of them were against the LGBTI rights.

6 On January 1, 2019, President of the Federative Republic of Brazil, Jair Bolsonaro took office. He holds an anti-rights, racist, misogynist and LGBTIphobic discourse.

7 Gisela Zarenberg, "Más allá del estupor: evangélicos y política en América Latina", *Oráculus y Revista Política y Gobierno*, México, 16 de enero de 2019.

8 Comisión Económica para América Latina y el Caribe, CEPAL, "Panorama Social de América Latina", Capítulos I y II.

9 See, among others: IACHR, *Violence against LGBTI personas in the Americas*, (2015); Colombia Diversa y Caribe Afirmativo, "La discriminación, una guerra que no termina. Informe de derechos humanos de personas LGBT" (2017); Asociación Nacional de Travestis y Transexuales de Brasil e Instituto Brasilero Trans de Educación, *Dosier: Asesinatos y violencia contra travestis y transexuales en Brasil 2018* (2019.

10 The murder of lesbian, Afro-descendant and favela activist Marielle Franco in Brazil on March 14, 2018 is among the ones that had the greatest impact in the region and is still unpunished.

11 Among these are the Advisory Opinion No. 24/17 of the Inter-American Court of Human Rights of November 24, 2017, the decriminalization of consensual same-sex sexual acts in Trinidad and Tobago, the ruling recognizing the murder of human rights defender Diana Sacayán as a hate crime motivated by her gender identity and as a *travesticide* in Argentina on June 18, 2018, the enactment of the Comprehensive Trans Law (*Ley Integral Trans*) in Uruguay on October 19, 2018, the enactment of the Gender Identity Law in Chile on 12 September 2018, the inclusion of non-discrimination based on sexual orientation and gender identity and new concept of unions in the new Constitution of Cuba, the measures of the Costa Rican government in favor of the LGBTI population on December 21, 2018, among others.

prepared for the challenges of this new era.[12] ILGALAC is committed to continue working and facilitating between organisations in order to promote the strength of equality and freedom throughout Latin America and the Caribbean.

Advances in equality, setbacks to overcome: the LGBTI+ agenda in the Southern Cone

By Alba Rueda.[13]

The living conditions of LGBTI+ people in the Southern Cone are affected through public policies, legislation and social organisations. Between 2017 and 2018 organisations worked for specific policies for the *travesti* trans populations –to raise awareness to their extreme vulnerability, avoidable deaths and the lack of public policies that guarantee their basic rights –and recognised the legislative absence and protections for intersex persons.

The situations are very different in the four countries of the ILGALAC sub-region, being more favourable for the LGBTI+ population in the Eastern Republic of Uruguay, the action of the Broad Front government has incorporated a sustainable LGBTI+ agenda throughout its administration. In fact, the most significant advance so far has been the approval of the Comprehensive Trans Law in 2018, the law that offers the highest level of protection of the rights of trans persons in South America.[14] Under the paradigm of human rights, the law promotes the adoption of affirmative action measure in favour of trans persons,[15] establishes minimum quotas for jobs in the public sector,[16] for professional training, scholarships and student support.[17] Furthermore, the law provides comprehensive healthcare,[18] a reparative regime for victims of violence during the dictatorship and the requirement to register gender identity in the official statistical information system.[19]

In Chile, the organisations achieved the legal recognition of gender identity,[20] despite conservative proclamations from President Sebastian Piñera. The law authorises a change in name and registered sex by administrative means and without the requirement of body modification.[21] However, some organisations denounce that, as a consequence of the pressure of anti-rights groups, the law discriminates against children and married people.[22]

The actions of the conservative and neoliberal governments have obstructed legislative advances for LGBTI+ in countries such as Argentina, where there had been no improvements at the national

12 Jorge Galindo, "¿Latinoamérica feminista? Estrategias y retos del movimiento que busca la igualdad de género en la región", *El País*, 23 de octubre de 2018.

13 Trans activist, member of Mujeres Trans Argentina, researcher in sexual dissidence issues with the Department of Gender and Communications of the Centro Cultural de la Cooperación Floreal Gorini. She studied Philosophy at the University of Buenos Aires (UBA). She works at the Observatory of Discrimination of the National Institute against Discrimination, Xenophobia and Racism (INADI).

14 Law No. 19,684 (Uruguay), "Comprehensive Law for transgender people" (Ley integral para personas trans), 26 October 2018.

15 Article 2 of the law declares "of general interest" the design, promotion and implementation of public policies and affirmative actions in the public and private sectors whose beneficiaries are transgender people.

16 Article 12 of the law establishes, for a period of fifteen years, that a series of public agencies of the three branches of the State must allocate 1% of the positions to be filled in the year by trans people who comply with the regulatory requirements to access such positions.

17 Article 13 of the law establishes a quota of no less than 1% (one percent) for trans people, in the various training and qualification programs implemented by the National Institute of Employment and Vocational Training (Instituto Nacional de Empleo y Formación Profesional). Article 17 of the law establishes that the agencies that grant scholarships and student support should provide for a 2% quota for transgender people and an 8% quota for the "Carlos Quijano" special Scholarship.

18 Article 21 establishes that every trans person has the right to comprehensive care to adapt their body to their gender identity, including surgical medical treatments. Also, it provides that for people under 18 years of age to access irreversible surgeries, in order to adapt their body to their gender identity, authorization or consent from legal representatives will be required.

19 Article 10 provides for the creation of a reparation regime for trans persons born before 1975, who can prove that they were victims of institutional violence or that they deprived of their liberty by State agents or by those who, without being so, had been authorized, supported or acquiesced. Article 5 incorporates the "gender identity" variable in all official statistical information systems, including censuses, continuous household surveys, reports from the National Civil Service Office and all public measurements that contain the variable "sex".

20 Law 21,120 approved in November 2018 recognizes and protects the right to gender identity to those residing in Chile, including migrant trans people who have their Chilean document (Article 7).

21 "Historia de la ley de identidad de género en Chile", Organizando Trans Diversidades, 15 December 2018.

22 Legal guardians can litigate under the procedure established in articles 12 to 18 of the law. The law also provides for "Professional Support Programs" to advise and accompany transgender people under eighteen. If a person is married and changes their registration information under the Gender Identity law, they will be able to request the rectification of the marriage with final judgment of a family court.

level in 2017 or 2018. Although, organisations achieved labour quotas for *travesti* and trans in some localities,[23] the government of the Province of Buenos Aires –a province with *travesti* and trans labour quota laws enforced –has decided to block the implementation of the norm, refusing to regulate it.[24] At the same time, the neglect of the State denies access to basic healthcare for *travesti* and trans prisoners, which has led to the deaths of many of them.[25] Anti-rights groups have grown and strongly influenced the rejection of the draft law of voluntary termination of pregnancy and questioned the rights of the LGBTI + community, especially targeting transgender children and /or their families, especially from the movement located throughout Latin America "Don't mess with my children".[26] Furthermore, the new social climate is blamed for an increase in violence against LGBTI+ people. Despite all of this, there have been some advances that marked a new horizon in the rights of LGBTI+ people , such as the recognition of non-binary names, the issuing of birth certificates without gender markers in the Province of Mendoza and the ruling of *travesticide* in the case of Diana Sacayan.[27]

In Paraguay, the government of President Mario Abdo Benitez continued anti-rights policies of its predecessors.[28] Furthermore, the Paraguayan parliament came out against abortion and equal marriage,[29] the Ministry of Education banned all content related to the so-called "gender ideology" and its own education minister called for the "burning of books with gender ideology".[30] The country also became one of the main promoters of anti-rights groups and positions before the OAS.[31] This data marks the gravity for LGBTI+ people, and it adds to the structural violence that is especially pronounced for trans people. There are no official statistics or public policies for the LGBTI+ population but there are high levels of violence and impunity.

The travesticide of Amancay Diana Sacayan

On 11 October 2015, Amancay Diana Sacayan (Trans Alternate Secretary of ILGA since 2014), was the victim of *travesticide* in her apartment in the city of Buenos Aires. This caused deep shock throughout the Argentinian LGBT movement and above all, the *travesti* and trans community in the country. Diana was a *travesti* advocate, activist and leader, born in the north of the country and raised since a child in the Buenos Aires urban area. She was part of the National Front which in 2012 achieved the passing of the Gender Identity Law and, years later, in the Province of Buenos Aires, supported the first labour quota laws for trans persons (today the law bears her name in her honour).[32]

23 The legislative agenda on the trans labour quota is a requirement advocated by all social organizations and many bills were introduced with a consensus of broad social and political sectors, but by decision of the government, they were not debated. The cities and towns where there are quotas in force are distributed in several provinces of the country: Buenos Aires, Chaco, Cordoba, Corrientes, La Pampa, Mendoza, Rio Negro, San Luisa, Santa Fe, Tierra del Fuego and Tucumán. See also: Agencia Presentes, "MAP: This is the trans job quota in Argentina," 25 May 2018; "The trans labour quota enacted in Chubut", El Patagónico, 17 May 2018; "The Trans Labour Quota Law enacted in FME", *La Unión Digital*, 21 December 2018.

24 See: Law 14,783, Province of Buenos Aires. At the time of the enactment of the law, the IACHR issued a press release welcoming the measure. In it, the Commission stated that " These types of measures seek to encourage trans persons' access to public areas and to further the exercise of their economic and social rights. These measures contribute not only to reduce the levels of poverty faced by trans persons, but also to reduce homicides and police violence as a result of reducing the number of trans persons working in criminalized informal economies and bringing down stereotypes and prejudice related to gender identity". IACHR, Press Release 122/15: "IACHR Congratulates Argentina for Passing Provincial Quota Job Law for Trans Person," 30 October 2015. See also: IACHR, *Report on Poverty and Human Rights in the Americas*, September 7, 2017, para. 451: Ombudsman of the Province of Buenos Aires, *Right to work for transgender people and transvestites in the Province of Buenos Aires: Obstacles to the implementation of the labour quota law* ("Derecho al trabajo de las personas trans y travestis en la Provincia de Buenos Aires: Obstáculos para la implementación de la ley de cupo laboral") (2018).

25 Michelle Langrand, "'83% of trans women in Argentina have suffered some kind of violence or discrimination ': UN expert", Panorama, 18 June 2018.

26 "Campaña de grupos "antiderechos" contra una niña trans salteña", *Agencia Presentes*, 29 November 2018.

27 "Cambiar el mundo desde el propio cuerpo", *Pagina 12*, 3 November 2018; "Argentina emite por primera vez identificación sin especificar género", *CNN en Español*, 6 November 2018: "Cómo es vivir en Mendoza sin "ser" hombre ni mujer: la historia de Caro Gero", *Los Andes*, 13 November de 2018; "Inédito en América Latina: personas no binarias lograron documentos sin sexo", *Agencia Presentes*, 5 November 2018.

28 "After Signs Of Progress, Paraguay Turns Its Back On LGBT Rights", *Ozy*, 27 June 2018.

29 "#Paraguay Cámara de Diputadxs se declaró 'provida': 'Viola la Constitución'", *Agencia Presentes*, 21 December 2018.

30 "MEC prohíbe materiales sobre "ideología de género", *ABC Color*, 10 October 2017: "Paraguay: el gobierno prohíbe difundir "ideología de género" en las escuelas", *Notas Periodismo Popular*, 11 October 2017: "Ministro Riera se ofreció a quemar libros sobre ideología de género", *ABC Color*, 6 October 2017.

31 See the article by Marcelo Ferreyra, in the section on International Human Rights Law in the present report.

32 Law 14,783 (Province of Buenos Aires, Argentina); "Diana Sacayán:" This law is a response to the discourse on prostitution as work", March, September 24, 2015. The enactment of the *travesti*-trans labor quota in the Province of Buenos Aires was

On 18 June 2018, the Court for Oral Criminal Proceedings No. 4 of the city of Buenos Aires, issued a ruling without precedent regarding violence against trans people in Argentina. This rulling recognised the term "*travesticide*" to qualify the crime and sentenced the accused to life imprisonment for committing aggravated murder due to "hate towards the gender identity of the victim" and for "gender violence" (articles 80.4 and 80.11 of the Argentinian Penal Code).[33] The progress of this judicial process was actively promoted by social organisations that formed the "Commission of Justice for Diana Sacayan".[34] In 2018, the judicial decision was recognised with the "People's Choice Gavel Award" organised by Women's Link Worldwide in the category Gender and Justice Uncovered.[35]

"Boys wear blue and girls wear pink": the LGBTI agenda in the face of an extreme right-wing offensive in Brazil

By Bruna Andrade Ireneu.[36]

The timeframe of this article covers the impeachment of Dilma Rousseff,[37] the increase in the protest movement *#ForaTemer* (#TemerOut) and the various plans to incarcerate ex-President Luiz Inacio Lula da Silva.[38] During this period it is self-evident the dismantling of the policy of group conciliation carried out by the Worker's Party (PT), which had achieved uniting in the same neo-developmentalist project, opposing groups such as evangelical leaders and sectors of the LGBT movement and feminists. After the impeachment, with the approval of the constitutional amendment that put a limit on public spending, the dismantling of social policies intensified and the situation will worsen still with the current government's plan.

Yet, after 15 years of the launching of the program "Brazil without Homophobia" (the first government initiative for the benefit of the LGBTI population), Brazil continues to have a high rate of deaths due to homo/lesbo/transphobia. These murders claimed the lives of Dandara dos Santos,[39] Luana Barbosa[40] and Plinio Lima,[41] among many others. Homophobia, sexism and racism operate as a means to produce lethal violence and systematic violations of the human rights of LGBTI persons in Brazil. Furthermore, Brazil is still a high risk place for defenders of human rights, being the country with the most murders of activists in the Americas. The most notorious case was that of the activist and councillor, Marielle Franco.[42] These kinds of examples intensified further during the 2018 election period, in that a candidate publicly hostile to LGBTI recognition and who had explicitly fascist stances in his discourse was elected.

celebrated by the Human Rights Committee and by the CEDAW Committee, which not only recognized its value, but also urged Argentina to replicate this measure in other provinces and municipalities of the country (see: Human Rights Committee, *Concluding observations on the fifth periodic report of Argentina*, CCPR/C/ARG/CO/5, August 10, 2016, para. 3 and Committee for the Elimination of Discrimination against Women, *Concluding observations on the seventh periodic report of Argentina*, CEDAW/C/ARG/CO/7, for 31). 25 November 2018.

33 Tribunal Oral en lo Criminal y Correccional No. 4 - Ciudad de Buenos Aires, Causa Nro. 62.162/2015, CCC 62182/2015/TO1, 6 July 2018.

34 "Empieza un juicio histórico por el travesticidio de Diana Sacayán", *Agencia Presentes*, 11 March 2018.

35 "People's Choice Gavel: Murder of trans activist Diana Sacayán", WomenLink, December 2018.

36 Bruna Andrade Ireneu is president of the Brazilian Association of Homo-culture Studies (*Associação Brasileira de Estudos da Homocultura*, "ABEH") for the period 2019-2020. She is a social assistant, researcher, feminist, lesbian activist and professor at the Federal University of Mato Grosso (UFMT), Brazil, in the Department of Social Services.

37 Re-elected in 2016, Rousseff suffered impeachment at the behest of the Judiciary, with the approval of some of the Legislature. The process stood out as being sexist and elitist in its design, notably evidenced in the arguments presented by those parliamentarians in the plenary session on the day of the impeachment vote in the Chamber of Federal Deputies, who spoke of the defence of the "traditional" family, "morals", "good habits" and of economically liberal values, based on the criticism of social programs increased during the tenure of the Worker's Party (PT).

38 Ex-president Luiz Inacio Lula da Silva was arrested on the 7th of April 2018 and was later accused of corruption. His sentencing is still an object of contention for having taken place in the appeal's court and for the media attention given in comparison to other corruption cases that involve right-wing individuals. Recently, the judge who sentenced Lula, Sergio Moro, resigned his post to become the Minister of Justice and Public Security in the Bolsonaro administration.

39 "Morte de Dandara: foram pelo menos três sessões de tortura", *O Povo Online*, 19 March 2017.

40 "Dois anos após morte, PMs são indiciados por agressão a mulher em abordagem em Ribeirão Preto", *G1 Globo*, 19 April 2018.

41 "Cabeleireiro acompanhado do marido é morto a facadas na avenida Paulista" *Revista Forum*, 22 December 2018.

42 Marielle Franco was a black, bisexual woman from a slum and elected to the Rio de Janeiro council for the Socialism and Liberty Party (PSOL), who had reported rapes committed by members of the army during the military intervention in Rio. 10 months ago the police investigations stalled and have not advanced with respect to finding the masterminds behind the crime. Jean Willys, gay, militant and defender of human rights, as well as a federal parliamentarian for the PSOL, has constantly received death threats, as with other legislators linked with fighting for social movements.

In the same year that the Federal Supreme Court determined that it will not be necessary to acquire legal authorisation, medical/psychological reports, nor surgical procedures in order to change one's name and sex before the civil registry,[43] Jair Mesias Bolsonaro is elected. His campaign utilised the same strategies of Donald Trump, having made use of "fake news",[44] among which stand out was the alleged existence of a "Gay Kit" distributed by the PT government.[45] At the same time, the election of Bolsonaro was not without resistance or collective organisation in the form of demonstrations and the movement *#EleNao* (#NotHim), with more than 40% of the population voting against him in the polls. After the election, out of fear of same-sex marriage recognition being repealed, civil registry offices across the country saw a 25% increase in this type of marriage.[46]

In his first days as president, Bolsonaro reiterated his hate for the LGBTI community (the same hatred he expressed when he said: "I would prefer to have a criminal for a child than a gay child") by appointing to the charge of public policies for human rights, women and family, a pastor known for her support of "conversion therapy".[47] Damares Alves, with 2 weeks in government, announced to the media that for her "sex between women is an aberration"[48] and that under her watch "girls will be treated as princesses and boys princes". The minister reaffirmed her political stance that "girls wear pink and boys wear blue",[49] a phrase that triggered numerous protests on social media by artists, activists, researchers and politicians, questioning the state's attempt to present biology as a determinate to gender expression. There is a very strong consternation in the country against the government's first measures which are an attack on gender, ethno-racial relations and sexuality in the school curriculum and the intensification of the criminalisation process of the indigenous population.

The threat of neo-fascism is a global movement, which requires that collective strategies unite different progressive sectors in defence of democratic liberties and republicanism. LGBTI activism must strengthen its links with movements that fight for land rights, housing, racial feminist equality and work. Whilst conscious as to not be seduced by the conciliatory homo-nationalist discourse which comes from antidemocratic sectors or to fear the struggle itself. Resistance thrives in the streets and tomorrow is another day!

The Andean Region, a Territory in Alert Marked by its Political Uncertainty and the Advance of Anti-Rights Groups

By David Aruquipa Perez.[50]

The policies of human rights protections for the LGBT population of the Andean Region have achieved significant advances in a legal sense.[51] However, in practice exercising these rights are limited by the threats and pressures of neoconservative trends and the fragility of the

43 "STF reafirma que pessoas trans podem o mudar nome no registro sem cirurgia", *UOL Noticias*, 15 August, 2018. The decision of the Supreme Court is binding for all civil registry offices. At the same time, the National Justice Council (the administrative body for Brazilian Judicial Power) enacted a provision that regulates the administrative process of changing one's name and gender in the country: *Provimento No. 73*, 28 June 2018. The ruling was highlighted by the Inter-American Commission on Human Rights. CIDH, Comunicado de Prensa No. 85/18: "CIDH welcomes the decision of the Brazilian Supreme Court to permit trans people to change their name through self-declaration", 23 April 2018.

44 Fake news highlighted the distribution of books supposedly acquired by the Ministry of Education (MEC). Taking advantage of a controversial issue seeking to generate a discourse around "gender ideology" and to propose a bill titled "Schools without party". This fake news was put in the minds of Brazilians, especially those who yearn for a military regime, the small economic elite, religious profiteers and others attracted by the anti-corruption discourse.

45 Under pressure from the evangelical block in Congress, in Dilma's first year in office, it vetoed the "School without Homophobia", an education initiative on sexual and gender diversity by the Education Ministry. See: "Vetado por bancada religiosa, kit "Escola Sem Homofobia" pode ser baixado na internet", *Portal Aprendiz*, 11 February 2015.

46 "Casamento LGBT cresce 25% no país, diz associação; profissionais oferecem serviços gratuitos para celebrações", *G1 Sao Paulo*, 7 November 2018.

47 "Exclusivo: Em clínica de "restauração de sexualidade, Damares classifica homossexualidade como aberração", *Forum*, 4 January 2019.

48 "Ministra brasileira volta a causar polémica: sexo entre mulheres é 'aberração'", TVI24, 9 January 2019.

49 "Ministra Damares diz que 'nova era' começou: 'meninos vestem azul e meninas vestem rosa'", *O Povo*, 3 January, 2019.

50 David Aruquipa Pérez is an LGBTI activist and human rights defender, co-founder, former president and member of the Political Action Commission of Colectivo TLGB de Bolivia, Director of the Bolivian Campaign for the Right to Education (Campaña Boliviana por el Derecho a la Educación).

51 Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos (PROMSEX). *Encuentro adelante con la diversidad. Relatoría. Incrementando la protección y respeto de los derechos humanos de los derechos LGBTI en la región andina* (2018), 6-18.

States in a time of political instability.[52] The anti-rights groups come bringing a strategy of delegitimising the activism and classifying it as alleged "gender ideology",[53] promoting the suppression of intrusive rights and the ending of comprehensive sex education and the promotion of coexistence in the public national curriculum.[54]

The country of the sub-region of ILGALAC with the most advances is Colombia.[55] Yet still, according to different LGBTI organisations, they are at risk with the election of the extreme right-wing government of President Ivan Duque,[56] who has a track record contrary to LGBTI and women's rights.[57] In fact, in his first months in office he appointed anti-rights civil servants[58] and did not apply Decree 762/2018 established by President Juan Manuel Santos.[59] The Colombian situation has one of its principle elements, the Peace Accord, between the State and the FARC-EP with a focus on gender and the recognition of LGBTI victims of the armed conflict that currently is partially being fulfilled and facing difficulties and threats. At the same time, it has seen a growth in the murders of the leaders involved in this process.[60]

Another country that has made important advances is the Plurinational State of Bolivia. In effect, its political constitution contains recognition of the rights of diverse sexual orientation and gender identity populations and includes the LGBT population in the National Action Plan of Human Rights.[61] In 2016, it approved the Gender Identity Law No. 807,[62] which was a victory without precedent and bore the fruits of a long and sustained struggle for the transsexual/transgender population. Yet, five months after having adopted this norm, a group of national parliamentarians brought before the Plurinational Constitutional Court an action of unconstitutionality. On the 9th November 2017,[63] by means of the Plurinational Constitutional Sentence 76/20179, the Constitutional Court declared the unconstitutionality in the phrase "change of sex data" and from that moment operated an unjustified regression in the exercise of the rights of trans persons,[64] and the effects of this ruling has not been remedied until now.[65] Finally, one of the most important pending issues is the recognition of the families formed between same-sex persons.

In relation to the Bolivarian Republic of Venezuela the political, social and economic panorama

52 This phenomenon can be identified very clearly in the documentary "Gender under attack" (original title: "Género bajo ataque") by director Jerónimo Centurión (2018): the film has specific sections entitled: "Peru, a threat that does not stop" ("Perú, una amenaza que no se detiene") and "Colombia: the peace frustrated" ("*Colombia: la paz frustrada*") : Alfredo Serrano Mancilla , "The Invisible Footprint of Conservative Restoration" ("*La huella Invisible de la restauración conservadora*"), *Centro Estratégico Latinoamericano de Geopolítica (CELAG)*, 21 August 2018.

53 AWID - Asociación para los Derechos de las Mujeres y el Desarrollo, "Discursos principales de la oposición" en *Derechos en riesgo, Observatorio sobre la universalidad de los derechos. Informe sobre tendencias en derechos humanos* (2017), 84-85.

54 *Id.*, 73.

55 The latest achievement obtained by the Colombian LGBTI movement was the judicial sentence for the crime of Anyela Ramos Claros murdered on February 9, 2017. In this case, the murder of a trans woman was recognized as "femicide" for the first time, according to the information supplied by Colombian Diversa. See: "Primer caso de homicidio de una mujer trans que es reconocido como feminicidio en Colombia" (*First case of homicide of a trans woman that is recognized as feminicide in Colombia*), *Colombia Diversa*, 2018.

56 Consultations on the current Colombian political context were made to Corporación Femm and the León Zuleta Collective.

57 The electoral Observatory for LGBTI rights of ILGALAC issued a statement dated June 16, 2018 about the second round of the presidential election in Colombia informing that the then candidate for the Democratic Center, Iván Duque, did not include the LGBTI population in its platform policy and, on the other hand, made statements contrary to the rights of LGBTI people.

58 One of them is Alejandro Ordoñez as Ambassador to the OAS. See: "Duque posesiona a Ordóñez como embajador de la OEA pese a las críticas", *El Espectador*, 12 de septiembre de 2018.

59 The National Decree No. 762/2018 (Decreto Nacional No. 762/2018) promulgates a national LGBTI policy and with the objective to promote and guarantee the exercise of civil and political rights, in particular the rights to life, liberty, integrity, security and effective judicial protection; guarantee the right to participation and promote and guarantee the exercise of economic and social rights.

60 Information regarding the peace process in Colombia was facilitated to the authors by Corporación Caribe Afirmativo. For more information, see: "Caribe Afirmativo presenta línea base sobre derechos de las personas LGBT en los municipios de las Casas de Paz", *Corporación Caribe Afirmativo website*, 17 November 2017.

61 Political Constitution of Bolivia (CPE), article 14; Cecilia Urquieta Pardo, "Bolivia, avances en derechos de la población TLGB" en *LGBTI, compendio regional de buenas prácticas gubernamentales de garantía y protección de derechos" editado por el Instituto de Políticas Públicas en Derechos Humanos de Mercosur* (2017), 77-84.

62 Ley de Identidad de Género No. 807, The procedure for the change of the name and sex of transgender and transgender people is established, allowing for the exercise the right to gender identity (*Se establece el procedimiento para el cambio de los datos del nombre y sexo de las personas transexuales y transgénero, permitiéndoles ejercer el derecho a la identidad de género*) (2016).

63 "TCP declara ilegal matrimonio entre personas del mismo sexo", *Los Tiempos*, 9 November 2017.

64 "Bolivia declara ilegal el matrimonio homosexual y transexual", Desastre, 10 November 2017.

65 Consultations were held on the current Bolivian political context to activists of the TLGB Collective.

presents great complexity.[66] Currently the little progress made in legislative matters is combined with an unprecedented international political attack, a virtual economic and financial blockade that makes it difficult for the population to access basic goods and services,[67] and a very important migratory phenomenon. The advances in this country relating to the LGBTI issues in the last two years were in the field of universal social policies – social missions –that in this context show a great importance,[68] for the beginning of the discussion of equal marriage in the Constitutional National Assembly and with the opening of a public policy in the Caracas Town Hall.[69]

In Ecuador, after a period of advances,[70] the change of government and the election of President Lenin Moreno in May 2017 caused alarm and uncertainty, in most part by it not continuing with the previous political process.[71] In this context, two emblematic cases stand out: on the one hand,[72] the ruling of the Constitutional Court No. 184/2018 which recognised the enrolment of a girl with two surnames from her two mothers,[73] and on the other, the judicial ruling in which a trans girl was registered on the civil registry record with her gender identity.[74]

Finally, in Peru there has been a resistance with the growth of fundamentalist religious groups and from the instability due to the resignation of President Pedro Pablo Kuczynski.[75] There have been no advances in the recognition in the unions of same-sex couples or in terms of gender identity.[76] The organisations of civil society demanded the compliance of the 2018-2021 National Plan of Human Rights (NPHR 2018-2021) and achieved the Inter-American Commission of Human Rights elevating Case 12.982,[77] "*Azul Rojas Marin and Other*" before the Inter-American Court of Human Rights (ICHR) for the State to remedy the institutional violence which occurred in 2008.[78]

Homophobia in Mesoamerica

By Gloria Careaga Perez.[79]

The Mesoamerican region includes Mexico and the majority of Central America: it covers Mexico, Guatemala, El Salvador, Belize, Honduras, Nicaragua and Costa Rica. Therefore, for this report it is important to refer to the region in this manner, which makes it possible to point out some aspects related to the colonisation of the region.

The condition of LGBT people in Mesoamerica has already eliminated any hint of legal signalling that explicitly criminalises their situation. Even if there have been few steps in the advancement in the protection of their rights –this has been done unevenly across the countries –the main challenge is centred on the problem of needing a cultural change that goes beyond its legal status, achieving

66 Alejandro Fierro, "Venezuela entre legalidad y legitimidad", *Centro Estratégico Latinoamericano de Geopolítica (CELAG),* 10 de enero de 2019.

67 Alfredo Serrano Mancilla, "Sabotaje económico a Venezuela" Página/12, 7 January 2018.

68 The Fundación Base Lésbica Venezuela, in an interview with the author, stated that the Presidential Council of Popular Power for Sexual Diversity (Decree No. 2161/2015) in coordination with the Ministry of Popular Power for Women and Gender Equity and the Ministry of the Popular Power for the Communes favor the mainstreaming of different social policies so that they also reach LGBTI people.

69 "ANC abre debate sobre derechos civiles de la comunidad sexo género diversa en Venezuela", *Ciudad CCS*, 18 October 2018: n an act chaired by Mayor Erika Farias, ordinances were proclaimed for the creation of an office for LGBT issues and the month of June was instituted as the Month of the Rebellion of Sexual Diversity. See: "Gaceta Municipal en pro de la Sexodiversidad", *Ciudad CCS*, 1 June 2018.

70 Cristian Barrazueta, "Experiencia gubernamental de Ecuador" en *LGBTI, compendio regional de buenas prácticas gubernamentales de garantía y protección de derechos" editado por el Instituto de Políticas Públicas en Derechos Humanos de Mercosur* (2017), 95-111.

71 "Claves de la disputa política en Ecuador", *Centro Estratégico Latinoamericano de Geopolítica (CELAG)*, 2 December 2017.

72 Consultations were held on the Ecuadorian context with Asociación Valientes de Corazón.

73 Corte Constitucional de Ecuador (Constitutional Court of Ecuador), *Sentencia N° 184-18-SEP-CC*, Registro Oficial Año II. N° 61, 11 September 2018.

74 "Una niña transgénero de nueve años consigue cambiar su cédula de identidad en Ecuador", *El País*, 10 de diciembre de 2018.

75 The documentary film "Gender under attack" (*original title: "Género bajo ataque"*) of 2018 by director Jerónimo Centurión features a section entitled: "Peru, a threat that does not stop".

76 Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos (PROMSEX). *Informe temático de personas LGBT en el Perú 2018. Perspectivas jurídicas y políticas* (2018), 7-17. Consultations on the current political context were held with the following organisations: Promsex, *No tengo miedo* and Alma Chalaca.

77 Defensoría del Pueblo, *A dos años del informe defensorial No. 175. Estado actual de las personas LGBTI* (2018), 11.

78 Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos (PROMSEX), *Un caso de tortura sexual por orientación sexual* (2018).

79 Gloria Careaga is a psychologist, professor at the Faculty of Psychology of the UNAM (Mexico), Coordinator of Fundación Arcoiris. She was Co-Secretary General of ILGA between 2008 and 2013.

integration and social recognition. Nevertheless, the economic, political and social conditions of the region do not indicate good expectations. The advance of conservative forces entrenched in the region since colonial times and the increased presence of evangelical churches from the United States represent a grave risk to the defence of human rights.

It is interesting that the two countries in the extremes of the region are where the greatest advances have been made in recent years. In Mexico, resulting from the democratisation process started in 1997 which opened up the possibility of electing officials from the country's capital and the creation of the local Congress for Mexico City (from where authorities of the centre-left or left were based), the advances in the protection of LGBT people have had an important impact for all the country. From 2009 it legalised same-sex marriage,[80] approved the Anti-discrimination Law that includes sexual orientation (2011) and the Identity Law (2015).[81] Thanks to the active LGBT movement and the demand for the recognition of equal marriage, it has achieved this in 11 of the 32 states of the country, the most recent being Chiapas, Puebla and Baja California, which adopted it in 2017. Now Nueva Leon, Tamaulipas and Sinaloa are waiting for the approval of the resolution from the Supreme Court which mandated it in 2015, but has ordered its compliance before a writ of *amparo* in the last year.[82]

The process of the approval of the Identity Law has gone through the same process, initially in Mexico City in 2008, and it approved a jurisdictional mechanism that allows a change in legal documentation. In 2015 it achieved simplifying the process to a simple administrative procedure.[83] This advance motivated legal action that has gone to the Supreme Court, although it still has not ruled on a final decision. Nevertheless, the LGBT movement has achieved its approval in Coahuila and Michoacan (2018) and the process is pending in Jalisco.[84]

In Costa Rica, equal marriage propelled by the LGBT movement has made big steps with the ruling of Consultative Opinion No. 24 by the Inter-American Court of Human Rights,[85] which was solicited by the same State.[86] This pronouncement, however, caused a big disturbance in the country, given that it coincided by some months with the start of the presidential electoral process, which was used by conservatives to stoke fears and spectres around its approval.[87] Costa Rica is a state with official recognition of the Catholic Church. However, in recent years the growth of Evangelicals and Pentecostals has come to occupy space in the Legislative Assembly. It is not unusual that one of the presidential candidates of neo-Pentecostal origin has taken advantage of circumstances to raise his chances of success with speeches for "the protection of the family", as happened in the first electoral round. His speeches were extremely discriminative and threatening, and began to gain popular support, but mostly among traditional religious Christian-Evangelicals, with support from their pastors and leaders.[88] As well as being an elected parliamentarian in the previous period, he had the advantage of being a pastor with regular appearances in the media.[89] It was necessary to agree on a coalition government between two parties in the second round in order to remove the possibility of a Christian government being elected.

This condition is a phenomenon that crosses the region. The presence of distinct Christian voices of this sort in the political space and the presence of conservative forces have inundated daily life of countries in the region with similar strategies. Taking advantage of failed governments that have impoverished large swathes of the population, the evangelical churches have offered support to

80 The Legislative Assembly of Mexico City approved the reform of article 146 of the Civil Code of the Federal District in December 2009 and entered into force in March 2010. This provision is currently drafted in gender-neutral terms.

81 *Ley para Prevenir y Eliminar la Discriminación del Distrito Federal* (*Law to Prevent and Eliminate Discrimination in the Federal District*) (published in the Official Gazette of the Federal District on February 24, 2011), article 5. See, article 135 and subsequent provisions of the Civil Code of the Federal District.

82 For more information, see the entry on Mexico in the section on same-sex marriage in this report.

83 For more information on the legal regime for legal gender recognition in Mexico, see: ILGA: Zhan Chiam et. al., *Trans Legal Mapping Report 2017: Recognition before the law* (2017), 97.

84 "Buscan reconocer identidad de género de jaliscienses transexuales en documentos oficiales", *W Radio*, 6 November 2018.

85 Esta iniciativa ha sido aceptada, pero por fallo de la Corte, se podrá ejercer hasta inicios del 2020.

86 For more information on the content of Advisory Opinion No. 24, see the article written by Lucia Belén Araque in this report.

87 "Discurso contra parejas del mismo sexo impulsa campaña presidencial de predicador costarricense", *El Mundo*, 1 February 2018.

88 "En secreto Fabricio Alvarado pidió a pastores ayuda para su campaña", *El País*, 25 de marzo de 2018.

89 Genilma Boehler, "El fenómeno religioso cristiano en el siglo XXI con sus enlaces y proyectos seudodemocráticos: deseos, cuerpos y poder en las curvas de la América Latina", en Gloria Careaga, *Sexualidad, religión y democracia en América Latina* (México: Fundación Arcoiris, 2018).

marginalised sectors, tending to their basic needs and constructing a social fabric that pivots itself to the defence of the interests of their religion, whilst at the same time demonising alternative expressions, principally in gender and sexuality. However, its influence is not confined to the attention of these sectors, it is clear that its interest is directed to governance, and more and more they interfere in the electoral processes and lobby for their inclusion in the three branches of government of each country.

It is not unusual that Mexico, being one of the countries with the oldest tradition of state secularism, today has a distinctly evangelical party (PES) and its new president is publicly assumed as a Christian who has initiated a "moral renewal of the country" in his work program.[90]

The other countries of the region have gone through period of profound violence, where the presence of Christian forces is not absent.[91] The government of Nicaragua has established a strong alliance with the Catholic Church to indefinitely keep itself in power, and at the same time initiated a ferocious persecution against dissidents, among them women and LGBT populations. Honduras and El Salvador are being desolated by gangs which stem from *maras*, with the defence of a patriarchal model where sexual and gender dissent has no place.[92]

Guatemala, confronts a condition of mixed violence where police repression and delinquency appear to be united against the population, but where conservative forces propel an initiative on the protection of life and the family. This implies grave setbacks and limitation on the advancement of the rights of women and LGBT persons.[93]

In this geopolitical panorama, the struggle for human rights – in particular for LGBT people – appears uncertain. Even so, the work of organisations has not stopped, they seem to be stronger, despite many times facing great risks to their lives or the need to migrate for their protection. As it is, the LGBT people of these countries today represent an important challenge for Mexico and Costa Rica in regard to migrants and in response to their requests for asylum.[94]

The Situation in the Spanish-Speaking and French-Speaking Caribbean[95]

By Darío Arias,[96] *Manuel Vázquez Seijido*[97] *and Francisco Rodríguez Cruz.*[98]

The level of acceptance towards sexual and gender diversity in the Dominican society[99] is not reflected in the meagre legal progress achieved in the Dominican Republic.[100] Although lobbying by religious and fundamentalist groups has prevented the enactment of inclusive laws,[101] the explicit inclusion of the LGBTI population in the non-discrimination chapter of the National Human Rights Plan in December 2018 is one of the achievements resulting from the work of local organizations.[102]

90 "Partido Encuentro Social (PES)", *Animal Político*, 9 September 2014.

91 Gloria Careaga, *Sexualidad, religión y democracia en América Latina* (México: Fundación Arcoiris, 2018).

92 For more information on the human rights situation of the population in El Salvador, see, in general: IACHR, *Public Hearing: Protection of human rights defenders of women, LGBTI persons, and children in El Salvador*, 169 Period of Sessions, 1 October 2018; *Public Hearing: Situation of human rights of LGBTI persons in El Salvador*, 161 Period of Sessions, 21 March 2017. For more information on the human rights situation of the population in Honduras, see, in general: IACHR, *Public Hearing: Situation of human rights of LGBT people in Honduras*, 157 Period of Sessions, 5 April 2016.

93 See, in general, IACHR, *Situation of human rights in Guatemala* (2017) and, in particular: paras. 121 a 124, 210, 30 a 385.

94 See, in general: Alisa Winton, "Cuerpos disidentes en movimiento: miradas sobre movilidad transgénero desde la frontera sur de México", *El Cotidiano* 202, (2017), 115-126.

95 The authors would like to thank Sergia Tomás Rodríguez, Argentine activist, and Michaël Cousin, French activist, for their collaboration.

96 Darío Arias is ILGALAC Co-Secretary general. *See full mini-bio above.*

97 Manuel Vázquez Seijido is Deputy Director of CENESEX and member of the regional board of ILGALAC.

98 Francisco Rodríguez Cruz, journalist and gay activist of the Humanity for Cuban Diversity Network.

99 Muñiz A, Melgen L, Moren C, Balbuena A, Instituto de Investigación Social para el Desarrollo (ISD). Imagining the future: citizenship and democracy in Dominican political culture (2017. Pages 122-131).

100 The authors are especially grateful to human rights activist and defender Deivis Ventura of the Dominican Republic for the information about the context and situation of the country.

101 National Human Rights Commission. Inform about situation of human right in Dominican Republic (2018. Pages 49-50).

102 Ministry of Foreign Affairs of the Dominican Republic. National Human Rights Plan Dominican Republic 2018-2022 (2018. Pages 78-85).

In Cuba,[103] the most significant achievement was the popular consultation and the referendum on a new Constitution that replaced the definition of marriage between men and women with a neutral wording, using the term "spouses". The new constitutional text also includes the right of every person to found a family in various ways, overcomes old conceptions with regard to a couple's "reproductive purposes"[104] and explicitly proscribes discrimination based on sexual orientation and gender identity.[105]

During the debate, different forces opposing these rights emerged, especially Protestant denominations and homophobic groups. Consequently, for the Constitution to translate into effective rights, a new Family Code will have to be enacted within two years and it will have to be submitted to popular consultation and referendum.[106]

Finally, the situation in the Francophone Caribbean is of grave concern. In Haiti[107] violence against LGBTI people has been on the rise and several regressive bills have been introduced in the Senate, such as the prohibition of same-sex marriage[108] or the ban against public demonstrations advocating for the rights of LGBTI people. Additionally, LGBTI people might be included among the categories of people who could be denied a "certificate of good reputation", a document that is required in many job applications. However, effective activism prevented these initiatives to advance in the Legislature's lower house.

A Slow, but Significant Journey – Recent Developments in the Caribbean Region

By Westmin R.A. James[109] and Luciën D. Govaard.[110]

The Caribbean region consists of sovereign nations and dependent territories (France, UK, USA and Holland); islands and continental areas in the Caribbean Sea and in Central and South America. According to recent estimates, home to over forty-four (44) million people.[111] The Caribbean is rich in diversity; English, Spanish, French and Dutch are among its official languages and in addition to native indigenous populations, its people are primarily descendants of Africans, Asians and Europeans. Recent developments in Belize, Trinidad and Tobago, Guyana, Bermuda and Suriname are of particular interest when outlining SOGIE legal and social advances in this region.

Although "homosexuality" in and of itself is not a crime, laws criminalize same-sex sexual conduct between consenting adults. Among them are Antigua and Barbuda, Barbados, Dominica, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia and St. Vincent and the Grenadines. Punishments for buggery range from ten (10) years in Jamaica, Belize, Grenada and St. Lucia, Dominica, St. Kitts & Nevis (with or without hard labour) fifteen (15) years in Antigua and Barbuda if committed, and life imprisonment in Barbados and Guyana.

The act of "buggery" was defined in Antigua & Barbuda, Dominica and Trinidad and Tobago as anal intercourse by: "a male person with a male person" or "a male person with a female person". In St. Lucia buggery is limited to anal intercourse by a male person with another male person while in Jamaica buggery covered anal intercourse either with mankind or with any animal. In Barbados, St. Kitts and Nevis, St. Vincent and the Grenadines where buggery was not legislatively defined, the courts have interpreted it to include anal or oral intercourse by a man with a man or woman; or vaginal intercourse by either a man or a woman with an animal.[112] In Grenada and Belize, 'unnatural' connection', or 'carnal knowledge against the order of nature' have been interpreted by the courts to include anal intercourse between consenting adults male or female, but also includes any 'non-natural' sexual intercourse between any

103 The authors thank the CENESEX Community Social Network activists for providing information about the context and the situation in the country.

104 New Constitution Project of the Republic of Cuba. Title IV "Citizenship". Chapter III "Families". Articles 81 and 82.

105 New Constitution Project of the Republic of Cuba. Title IV "Citizenship". Chapter I "General Provisions". Article 42.

106 Francisco Rodríguez Cruz. *What happened to same-sex marriage in the draft Constitution?* (2018).

107 The authors are especially grateful to activist Charlot Jeudy, President of Kouraj, for the information Shared on the situation of LGBTI people in Haiti.

108 "The Haitian Senate passes a law criminalizing homosexual marriage". EFE Agency, 2 August 2017.

109 Westmin R. A. James is a Lecturer in Law and Deputy Dean at the University of the West Indies Cave Hill Campus.

110 Luciën D. Govaard is the chair of the Caribbean forum for Liberation and Acceptance of Genders and Sexualities and Vice-Chair for the PANCAP Policy and Strategy Working Group on Stigma and Discrimination.

111 "Caribbean Population 2019", *World Population Review Website.*

112 *R v Wiseman* (1718) Fortes Rep 91; *R v Bourne* (1952) 36 Cr App R 135.

two people, heterosexual couples included, regardless of the orifice(s) used.[113]

In Antigua and Barbuda, Barbados and Trinidad and Tobago there is also the offence of serious indecency, while in Dominica, St. Lucia, St. Vincent and Grenadines the offence is gross indecency. Guyana and Jamaica have the offence of gross indecency, but only when committed between two male persons. The act of "gross indecency" or "serious indecency" is an act other than sexual intercourse by a person involving the use of the genital organs for the purpose of arousing or gratifying sexual desire. It was also an offence under the laws of Guyana, "being a man, in any public way or public place, for any improper purpose, appears in female attire; or being a woman, in any public way or public place, for any improper purpose, appears in male attire…".

The 2018 High Court of Trinidad and Tobago ruling in *Jason Jones v AG of Trinidad and Tobago*[114] established that buggery and serious indecency laws were unconstitutional in Trinidad and Tobago. The High Court of Trinidad and Tobago following a similar case of *Caleb Orozco v The AG of Belize*[115] from Belize held that buggery law breached the constitutional rights of the gay men to equality, privacy and freedom of thought and expression. These decisions will no doubt have an impact on the law in the wider Caribbean jurisdictions. The Court later ordered that the law be modified so it no longer applies to consensual sexual acts between adults in private.[116] In 2018, the Caribbean Court of Justice (CCJ)[117] evaluated the cross-dressing law in *McEwan et al v AG of Guyana*,[118] brought by four trans women who were arrested and convicted. The CCJ concluded that the law was unconstitutionally vague and resulted in transgender and gender non-conforming persons being treated unfavourably because of their gender expression and gender identity.[119]

Ongoing cases pertaining to SOGIE are currently being litigated in Bermuda and Suriname. In Bermuda, the Court of Appeal upheld the Supreme Court's ruling that revoked parts of Civil Partnership law that prevented same-sex couples' marriage,[120] while in *Simson v. Suriname*,[121] the official registry of a trans woman's sex change, following gender affirmative surgery —a case won at first instance— is being appealed by the Government of Suriname.

In its Advisory Opinion, OC-24/17, the Inter-American Court of Human Rights addressed issues concerning gender identity, same-sex relationships, and the rights of LGBTI persons.[122] This Advisory Opinion applies to Barbados, Dominican Republic, Suriname and Haiti.[123] While many welcomed this development, it is still relatively early to outline its impact on Caribbean societies.

113 Supreme Court of Belize, *Claim No. 668 of 2010*, 10 August 2016.

114 Supreme Court of Trinidad and Tobago, *Jason Jones vs Attorney General of Trinidad & Tobago and others*, H.C.720/2017. CV.2017-00720, 4 April 2018.

115 *Ibid*.

116 The British Overseas Territories repealed their anti-sodomy laws in 2000. For more information, see section on legality of same-sex sexual acts in the Global Overview section of this report.

117 The CCJ is the highest court of appeal for Guyana, Belize, Barbados and Dominica.

118 Caribbean Court of Justice (CCJ), *McEwan et al v AG of Guyana* [2018] CCJ 30(AJ).

119 For more information see: Joint Press Statement from GTU, U-RAP and SASOD: "Highest Caribbean Court Strikes Down Guyana's Crossdressing Law", 13 November 2018. Video of the delivery of the judgement can be accessed here.

120 *AG v Ferguson et al*; The AG is considering appealing to the Privy Council

121 "Transgender wins case for sex change recognition", *The Daily Herald*, 12 January 2017.

122 For more information on the Court's Advisory opinion see the essay wrote by Lucía Belén Araque in International Law section of this report.

123 These are the only countries in the Caribbean that have ratified the American Convention on Human Rights.

GLOBAL PERSPECTIVES

NORTH AMERICA

STATE-SPONSORED HOMOPHOBIA 2019

ilga world

NORTH AMERICA

The Fight for Rights in North America: Progress and Pushback in the Shadow of the Trump Administration

By David J. Godfrey[1] and Kimahli Powell.[2]

Significant progress in the fight for equality has been made from local to national levels across the US and Canada over the past two years since the last *State-Sponsored Homophobia* report: a growing number of queer people are covered by non-discrimination provisions; cities, states and provinces are taking the lead on banning harmful conversion therapy practices; and intersex and gender non-conforming communities are beginning to receive hard-fought legal recognition.

Yet in the years since the 2015 US Supreme Court marriage equality ruling—and particularly since the installation of the Trump Administration in 2017—a wave of backlash has been growing that threatens to undermine progress towards LGBTQ equality. Faith-based and conservative campaigns have sought to either codify directly discriminatory policies like "bathroom bills" or, more insidiously, attempt to flout existing discrimination protections by claiming exemptions on the pretence of religious freedom. At the federal level, the Trump Administration has been hard at work undoing fragile protections, mostly for trans people, put in place through executive order by the Obama Administration.

In the short essay "America's unpromising start to 2017", included in the last edition of *State-Sponsored Homophobia*, Aengus Carroll and Lucas Ramón Mendos detailed some of the decisions made by the Trump Administration and the trouble they signalled on the horizon,[3] including rescinding Obama-era guidelines instructing schools to treat trans students according to their gender identity,[4] removing proposed census questions on sexual orientation and gender identity,[5] and appointing Neil Gorsuch to the Supreme Court.[6] Since then, Trump's nomination of Brett Kavanaugh to fill the vacancy left by Justice Kennedy's retirement has only increased concerns that the conservative tipping of the Court could lead to a backtrack on LGBTQ, sexual and reproductive health rights.[7]

Trump's presidency has been characterised by governing via Twitter, where he frequently announces major policy changes, conducts diplomacy, and berates the media and his detractors. Trump's reckless propensity for using Twitter as a tool for governing was perhaps best exemplified by his July 2017 tweet announcing that trans people would be banned from serving in the

1 David J. Godfrey holds an MA in International Affairs from The New School and works in policy analysis and comparison, with a focus on LGBT rights in labor law. He has worked as a consultant for the United Nations Development Programme and a researcher with WORLD Policy Analysis Center, UCLA.

2 Kimahli Powell is the current Executive Director of Rainbow Railroad. Kimahli has a wide range of experience in the non-profit sector and has spent more than fifteen years advocating for social justice, youth, arts and culture. He was the Director of Development and Outreach at the Canadian HIV/AIDS Legal Network, the Senior Development Officer at Dignitas International, Director of Development at the Inside Out Toronto LGBT Film and Video Festival in addition to holding other director-level positions with non- profit organizations in Toronto and the National Capital Region, where he studied Political Science at the University of Ottawa.

3 International Lesbian, Gay, Bisexual, Trans and Intersex Association: Carroll, A. and Mendos, L.R., *State Sponsored Homophobia 2017: A world survey of sexual orientation laws: criminalisation, protection and recognition* (Geneva; ILGA, May 2017), 163.

4 Dominic Holden, "The Trump Administration Just Withdrew Guidelines that Protected Transgender Students" *BuzzFeed News*. 22 February 2017.

5 "Media Advisory: Federal Government Rolls Back Important Data Collection on LGBT Populations," *The Williams Institute*.

6 Julie Moreau, "Trump's Supreme Court Pick Alarms LGBTQ Advocates" *NBC News*. 1 February 2017.

7 "Press Release: NCLR Responds to Trump's Nomination of Judge Brett Kavanaugh to Fill Supreme Court Vacancy." *National Center for Lesbian Rights*.

military,[8] surprising even the President's own defence officials.[9]

In addition to these prominent, visible attacks on the LGBTQ community, the Trump administration has been orchestrating a quiet campaign to erase sexual and gender minorities, most pointedly targeting the trans community. In addition to trying to remove proposed questions on sexual orientation and gender identity from the 2020 census[10] and a national survey of elderly citizens,[11] resources for lesbian and bisexual health were scrubbed from the Department of Health and Human Services' Office of Women's Health website in the fall of 2017.[12]

More recently, the same Department has begun leading efforts to establish a legal definition of gender as determined "on a biological basis that is clear, grounded in science, objective and administrable."[13] Aside from fundamentally denying the existence of trans people, the move would allow the Administration to deny access to government funding for health programs, and exclude trans people from protection from sex discrimination provided under civil rights law. The Trump Administration's international record on LGBTQ issues has been similarly dismal.

The influence on public sentiment of Trump's rhetoric and policies regarding minority communities has been pronounced. In the first half of 2017, more LGBTQ people were killed in hate incidents in the US than in all of 2016.[14] The National Coalition of Anti-Violence Programs, which tracks incidences of bias and hate crimes, recorded its highest number of anti-LGBTQ homicides to date in 2017, the majority (75%) of which were committed against people of colour. Previously, 2016 had been the deadliest year for LGBTQ individuals in the US, which signals a worrying trend.[15]

Canada makes amends

Though the Trump Administration's approach to LGBTQ issues has been largely antagonistic, the Trudeau Administration to the north has taken a decidedly conciliatory approach with the queer community. In November 2017, The Canadian Prime Minister delivered a historic apology to the LGBTQ community in the country for decades of "state-sponsored, systematic oppression and rejection."

On the occasion, the government introduced legislation – Bill C-66, the Expungement of Historically Unjust Convictions Act – that would "put into place a process to permanently destroy the records of convictions for offences involving consensual sexual activity between same-sex partners that would be lawful today."[16]

In June of 2018, a Canadian Federal Court Judge approved a settlement for the LGBTQ2 Purge class action lawsuit, which sought compensation for damages for members of the military and other federal agencies who were investigated and fired because of their sexual orientation, gender identity or gender expression. The scope covered anyone whose career suffered due to the practice between the years 1969 and 1995, making It the largest LGBTQ settlement anywhere in the world.[17]

Pushback

Religious exemptions

Religious exemptions are legal provisions that allow individuals, churches, and organizations to bypass non-discrimination protections for LGBTQ people on the grounds that treating them equally "would

8 Brian Bennett, "Trump, on Twitter, announced a ban on transgender service members. Now the military has to figure out what he means" *Los Angeles Times*. 26 July 2017.

9 Paul McLeary, "Trump Blindsides Pentagon in Transgender Policy Shift" *Foreign Policy*. *26 July 2017*

10 "Media Advisory: Federal Government Rolls Back Important Data Collection on LGBT Populations" *The Williams Institute*.

11 Matt Sedensky, "Federal surveys trim LGBT questions, alarming advocates" *AP News*. 20 March 2017.

12 Rachel Berman "Overview of HHS's Office of Women's Health Website Overhaul: Removal of Resources and Corresponding Link Alterations on the A-Z Health Topics Page" *Sunlight Foundation's Web Integrity Project*. 21 March 2018

13 Erica L. Green, "'Transgender' Could be Defined Out of Existence Under Trump Administration" The New York Times. 21 October 2018.

14 Emily Waters, Sue Yacka-Bible "A Crisis of Hate: A Mid-Year Report on Homicides Against Lesbian, Gay, Bisexual and Transgender People." National Coalition of Anti-Violence Programs (NCAVP). 2017

15 Alia E. Dastagir "2016 was the deadliest year on record for the LGBTQ community." *USA Today*. 12 June 2017.

16 "Prime Minister delivers apology to LGBTQ2 Canadians" *Justin Trudeau, Prime Minister of Canada*. 28 November 2017

17 Jack Julian "Federal Court approves class action settlement for LGBTQ Canadians" *CBC*. 19 June 2018

violate their religious beliefs."[18] In the US, religious exemptions are most often claimed by small business owners refusing to provide a good or service, like flowers or a cake for a same-sex wedding, on the basis that doing so makes them "complicit" in what they see as something sinful. Since legalizing same-sex marriage, the US has seen a startling increase in the number of "religious exemption" bills. According to Movement Advancement Project, 20 states currently have some form of religious exemption law, and Alabama has gone so far as to enshrine religious exemption law in its constitution.[19]

In early 2017, President Trump prepared to sign an executive order pledging to "vigorously promote religious liberty" that contained language many feared could weaken antidiscrimination laws pertaining to LGBTQ people.[20] Though that language was removed from the final order, the policy gives faith-based organizations more political power, which LGBTQ advocates say could lead to legal discrimination.

Republicans made another attempt to establish religious exemptions similar to those removed from Trump's executive order by reintroducing the First Amendment Defense Act (FADA) in March 2018.[21] The bill, which would prevent the federal government from punishing businesses or individuals for violating non-discrimination laws because of their religious beliefs, is again failing to advance far in the Senate.

It is not only the federal government toying with the idea of greenlighting discrimination as religious freedom. In 2018 alone, state legislatures in Iowa, West Virginia, Kentucky, Oklahoma, Colorado, Georgia, Kansas, and Missouri considered bills that would provide religious exemptions to protections in the workplace, schools, health care access, adoption and foster care, and the provision of goods and services, among others.[22] A 2015 Mississippi law that allows businesses and government officials to deny services to LGBTQ persons if it would conflict with their religious beliefs came into effect in October 2017, when an injunction against it was lifted.[23]

Court cops out on cake case

The fight over the legality of religious exemptions came to a head in mid 2018 when the US Supreme Court handed down its decision on the *Masterpiece Cakeshop v. Colorado Civil Rights Commission* case. The case involved a bakery owner in Colorado who had been found to be in violation of the state's non-discrimination law when he refused to bake a wedding cake for the marriage of a gay couple. The owner, claiming the state civil rights commission had violated his right to free speech, took his case to the Supreme Court seeking a religious exemption from non-discrimination law.

Yet the outcome of the case was not the clear mandate on the legality of religious exemptions that many were hoping for. This was partly due to a number of complicating factors that muddled the case from the beginning. For one, it was unclear whether the baker refused to bake any cake at all, or only one with a wedding message. At the time of the incident, gay marriage was not yet legal in the US, so the baker was also able to argue he was refusing to participate in an illegal activity. In the end, the Court ruled 7-2 in favour of the bakery owner, but on the narrow grounds that the state commission had failed to exercise neutrality in dealing with his religious exemption claim, another fact that complicated the case.

Though the decision didn't directly rule on whether the baker was within his rights to refuse service to the gay couple , passages of the majority opinion reaffirmed that laws must protect the rights of LGBTQ persons,[24] stating that religious objections, "do not allow business owners and other actors in the economy and in society to deny protected persons equal access to goods and services…".[25] The question of the legality of religious exemptions from non-discrimination provisions is likely to make its way back to the Court given the increase in religious freedom bills and the ensuing legal battles.

18 "'All We Want is Equality' Religious Exemptions and Discrimination against LGBT People in the United States" *Human Rights Watch*. 19 February 2018.

19 Movement Advancement Project "Religious Exemption Laws" (web page). Accessed 15 February 2019.

20 Kaelyn Forde "LGBT activists react to Trump's latest executive order" *ABC News. 4 May 2017.*

21 Ashley Killough "Sen. Mike Lee reintroduces religious freedom bill, LGBTQ groups cry discrimination" *CNN*. 9 March 2018.

22 American Civil Liberties Union "PAST LEGISLATION AFFECTING LGBT RIGHTS ACROSS THE COUNTRY (2018) (web page) Accessed 15 February 2019.

23 Samantha Allen "SCOTUS Lets Mississippi's HB 1523, America's Most Anti-LGBT Law, Stay in Place" *Daily Beast*. 11 January 2018

24 Douglas NeJaime and Reva Siegel "Religious Exemptions and Antidiscrimination Law in *Masterpiece Cakeshop*" *The Yale Law Journal Forum*. 14 September 2018.

25 James Esseks "In Masterpiece, the Bakery Wins the Battle but Loses the War" *American Civil Liberties Union*. 4 June 2018.

Trans military ban

Since Trump's abrupt announcement that trans people could no longer serve in the military, the ban has faced multiple challenges from civil rights groups,[26] and an injunction from federal courts.[27]

In November 2018, the Trump administration asked the Supreme Court to fast-track a ruling on the ban, but the court denied the request. The Court also lifted three of the four preliminary court orders preventing Trump from enforcing the ban while the cases continue in the lower courts,[28] essentially allowing the policy to take effect, even if temporarily.[29] With the confirmation of two of Trump's Supreme Court nominees, and the resulting shift to a 5-4 conservative majority, it is a distinct possibility that the Court will hand him more victories like this one, and potentially less modest.

Bathroom bills

Trans people need access to public spaces and services in accordance with their gender identity in order to avoid awkward or dangerous encounters, to enjoy access to sanitation and a basic level of dignity afforded everyone else. In the US, opponents of trans rights argue that allowing trans people to use public facilities like restrooms and locker rooms that align with their gender identities puts women and children at risk from predators taking advantage of the policy.

Though a recent study[30] and common sense say this is not the case, it has not stopped a growing number of state and local legislatures from introducing "bathroom bills" seeking to limit trans people's access to facilities of their choice. Bills in Texas,[31] Virginia,[32] and Washington[33] were defeated, along with a ballot measure in Anchorage, Alaska.[34] Bills in Alabama[35] and Missouri[36] are still being discussed, although the now-infamous North Carolina ban that sparked the national bathroom access debate was partially repealed in March 2017.[37]

The issue has the potential to impact trans public school students on the national level. Under the leadership of Betsy DeVos, the United States Education Department indicated that it will not investigate or take action on complaints filed by trans students barred from using the restroom that matches their gender identity, confirming what had implicitly been the Department's stance on the issue from the beginning.[38] Though the Supreme Court declined to hear a prominent case regarding a student's right to use the school bathroom corresponding to his gender identity in early 2017,[39] the issue is likely to make its way back to the Court.[40]

The trans bathroom panic is not unique to the US: conservative groups in Canada made the same argument against a 2017 bill criminalizing discrimination and bias crimes on the basis of gender identity, though it did not stop the bill from passing with a wide majority.[41] Federal trans-sensitive policies on the placement of inmates in prison[42] and airport screening procedures

26 "Complaint for Declaratory and Injunctive Relief" *American Civil Liberties Union*. 24 April 2018; "Complaint for Declaratory and Injunctive Relief" *Lambda Legal*. 29 August 2017; "Complaint for Declaratory and Injunctive Relief" *National Center for Lesbian Rights*. 9 August 2017.

27 Samuel Garrett-Pate "U.S. District Court Denies Motion To Dissolve Nationwide Injunction Blocking Transgender Military Ban In Stockman v. Trump", 18 September 2018.

28 Adam Liptak, "Supreme Court Revives Transgender Ban for Military Service" *The New York Times*. 22 January 2019.

29 Adam Liptak, "Supreme Court Revives Transgender Ban for Military Service" *The New York Times*. 22 January 2019.

30 Amira Hasenbush, Andrew R. Flores and Jody L. Herman "Gender Identity Nondiscrimination Laws in Public Accommodations' The Williams Institute. September 2018.

31 "Texas governor says 'bathroom bill' is no longer a priority" *NBC News*. 1 October 2018.

32 Laura Vozzella "In Virginia, Republican-led committee kills transgender 'bathroom bill'" *The Washington Post*. 20 January 2017.

33 Sydney Brownstone "For the Second Year in a Row, Anti-Trans Activists Fail to Turn in Signatures for Their Ballot Measure" *The Stranger*. 7 July 2017.

34 Samantha Allen "Alaska Voters Latest to Reject an Anti-Transgender Law" *Daily Beast*. 6 April 2018.

35 John Sharp "Alabama bathroom bill still moving forward despite setback in North Carolina"*Alabama.com*. 31 March 2017.

36 Kasandra Brabaw "Everything You Need to Know About 'Bathroom Bills'" *Refinery 29*. 31 March 2017.

37 Richard Fausset "Bathroom Law Repeal Leaves Few Pleased in North Carolina" *The New York Times*. 30 March 2017.

38 Dominic Holden, "The Education Department Officially Says It Will Reject Transgender Student Bathroom Complaints" *Buzzfeed News*. 12 February 2018.

39 Allison Turner, "Breaking: U.S. Supreme Court Remands and Vacates Gavin Grimm Case" *Human Rights Campaign*. 6 March 2017.

40 Samantha Allen, "This Could be the First Transgender Rights Case the Supreme Court Hears" *The Daily Beast*. 23 November 2018.

41 John Paul Tasker, "Canada enacts protections for transgender community" *CBC News*. 16 June 2017.

42 Kathleen Harris "Correctional Service flip-flops on transgender inmate placement policy" CBC News. 13 January 2017.

represented additional victories for the trans community in Canada.[43]

Pushback in sex education

Though Canada's federal government has taken strides towards realizing LGBTQ equality in recent years, the country has also experienced efforts on the sub-national level to hamper progress. In July 2018, the government of Ontario cancelled a 2015 sex education curriculum that taught children about different sexual and gender identities after objections from religious groups.[44] Just a few months later, the Ontario government once again angered LGBTQ and human rights groups by passing a non-binding resolution supporting establishing a rigid definition of gender and dismissing gender identity theory as "unscientific, liberal ideology".[45]

"Gender identity is recognized and protected as a human right in Ontario and under the Canadian Human Rights Act and the Criminal Code," ILGA co-Secretary General and Egale Executive Director Helen Kennedy pointed out. "It is protected for a reason. Trans people, and especially young trans and non-binary people, face a significant amount of discrimination on a daily basis."[46]

Protections from discrimination

Protection from SOGIE-based discrimination

Protections from discrimination are indispensable to guaranteeing LGBTQ individuals the same rights to work, housing, family, and participation in civic life as their heterosexual counterparts. Though federal law in Canada provides many of these protections, provinces sometimes enact human rights laws to fill gaps left in federal protections. In 2017, the Canadian provinces of Nunavut and Yukon approved bills that expand non-discrimination provisions to encompass gender identity and gender expression.[47] The bill passed in Yukon also allowed changing gender on a birth certificate without first undergoing gender-confirming surgery and gives citizens the option of recording their gender as other than male or female on government documents.[48]

As the US does not currently have federal legislation protecting LGBTQ persons from discrimination in vital areas like work and housing, state laws are the only recourse available to many LGBT Americans. Currently, just under half (48%) of the population in the United States is protected from discrimination at work.[49] The situation improved slightly over the past two years, as bans on SOGI discrimination in different contexts were passed in a number of states across the US. The governors of Virginia, New Hampshire, and California signed into law bills banning discrimination based on sexual orientation and gender identity in the provision of state services,[50] in employment, housing and public spaces,[51] and in long-term care facilities for the elderly,[52] respectively.

Though New York State already has strong protections on the book, the Governor went as far as to sign an executive order banning state agencies and authorities from doing business with companies that tolerate discrimination.[53] Finally, during the November midterms, voters in Massachusetts made history when they voted to uphold a state law forbidding discrimination based on gender identity in public places, making it the first state to uphold trans protections on a standalone ballot measure.[54]

"Conversion therapy" bans

Vancouver, British Columbia became the first Canadian city to ban conversion therapy in a

43 Kathleen Harris "Airport screening rules revamped for transgender travellers" CBC News. 22 January 2017.
44 "Canada province cancels new sex-ed curriculum after protests" *BBC News*. 12 July 2018.
45 Alison Thornton "Harmful 'Gender Identity' Resolution Passed by Ontario Party" *Human Rights Watch*.21 November 2018.
46 "Statement Opposing Policy Resolution R4" *Egale Canada Human Rights Trust*. 19 November 2018.
47 Rob Salerno "Nunavut passes trans-rights law" *DailyXtra*. 14 March 2017.
48 Rob Salerno "Yukon government introduces trans-rights bill" *DailyXtra*. 26 April 2017.
49 "State Non-Discrimination Laws", *Movement Advancement Project (MAP) Website*.
50 "Governor McAuliffe Signs LGBTQ Executive Order at UVA" *NBC News*. 2017.
51 Stephen Peters. "New Hampshire Governor Signs Legislation Protecting Transgender People from Discrimination" *Human Rights Campaign*. 8 June 2018.
52 "Press Release: California Legislature Passes 'Bill of Rights' for LGBTQ Seniors in Long-Term Care." Equality California. 12 September 2017.
53 "New York State - Governor Cuomo Signs Executive Order Banning All State Agencies and Authorities from Doing Business with Companies that Promote or Tolerate Discrimination" Office of Governor Andrew M. Cuomo. 4 February 2018.
54 "Historic Victory: Massachusetts Voters Uphold Transgender Rights" *Freedom for all Americans*. 6 November 2018.

unanimous vote in June 2018,[55] while a similar ban was enacted in the province of Nova Scotia just a couple months later.[56] The ban passed in Nova Scotia applies not only to health professionals, but to people "in positions of trust or authority" more generally.

Seven more states in the US were added to the growing list of states that ban conversion therapy: New Mexico,[57] Rhode Island,[58] Washington,[59] Maryland,[60] Hawaii,[61] New Hampshire,[62] and Delaware.[63] Similar bans were enacted in New York City[64] and Milwaukee (Wisconsin).[65] On the federal level, Democratic lawmakers advanced a bill that would ban conversion therapy under the pretence of consumer fraud.[66]

Conversion therapy bans continue to face strong opposition from religious communities in the US. The majority of state bans on conversion therapies apply only to licensed healthcare providers, meaning unlicensed religious leaders or advisors can still practice. A California lawmaker attempted to close this loophole by introducing a bill that would ban the practice for both minors and adults and applied to any commercially-available conversion therapy. However, the bill was withdrawn after strong pushback from conservative religious groups,[67] who argued that the broad language used in the bill infringed on their right to provide "therapy" to adults who come to them looking to change their sexual orientation. Though the bill would have only applied to cases where conversion therapy was being sold as a "service", and not to counselling provided free-of-charge, faith leaders pushed the narrative that the bill, "could even be used to ban the Bible or other printed materials."[68]

A recent study by the Williams Institute has shown that approximately 698,000 LGBT adults in the U.S have received "conversion therapy" at some point in their lives and estimates that 20,000 LGBT youth aged 13 to 17 will be subjected to such harmful treatments from a licensed healthcare professional before the age of 18.[69]

Protection of intersex people

In 2017, Lambda Legal asked a US federal court to reopen the case of Dana Zzyym, an intersex activist whose request for an accurate passport, without a male or female gender marker, was rejected by the State Department for the second time.[70] In September 2018, the court ruled the US State Department could not deny Zzyym a passport.[71]

A few months prior, the California Senate approved a resolution calling on medical professionals to delay unnecessary surgery on intersex infants until they reach an age where they're able to give their consent. The resolution makes California the first state to endorse the position that non-consensual, cosmetic genital 'normalising' surgery on intersex kids should only be an option when a child is old enough to participate in the decision.[72]

55 Craig Takeuchi "Vancouver becomes first Canadian city to ban anti-LGBT conversion therapy." *Straight.* 6 June 2018.
56 Michael Tutton "Nova Scotia's Liberal government to ban conversion therapy for LGBTQ youth" *Global News.* 11 September
57 2018. Drew Schwartz "New Mexico Just Banned Gay Conversion Therapy for Minors" *Vice News.* 7 April 2017.
58 Allison Turner "Rhode Island Legislature Sends Bill to Protect Youth from "Conversion Therapy" to Governor's Desk" *Human Rights Campaign.* 29 June 2017.
59 "Washington Law Protects LGBTQ Youth from Conversion Therapy" *National Center for Lesbian Rights.* 29 March 2018.
60 Scott Dance "Maryland becomes 11th state to ban conversion therapy for LGBT youth as Gov. Hogan signs bill. *The Baltimore Sun.* 15 May 2018.
61 "Hawaii becomes 12th state to ban gay conversion therapy for minors" *Hawaii News Now.* 27 August 2018.
62 Stephen Peters "New Hampshire Governor Signs Legislation Protecting Transgender People from Discrimination" *Human Rights Campaign.* 8 June 2018.
63 David Hudson "Delaware becomes 15th US state to ban conversion therapy". *Gay Star News.* 24 July 2018.
64 Erin Durkin "Conversion therapy meant to turn gay people straight to be banned in NYC under Council bill" *New York Daily News.* 30 November 2017.
65 Mary Spicuzza "Therapy to change a child's sexual orientation will be banned in Milwaukee" *journal sentinel.* 27 March 2018.
66 Dominic Holden "Democrats are taking another shot at protecting LGBT kids from so-called cures" *BuzzFeed News.* 25 April 2017.
67 Alexei Koseff "Gay conversion therapy bill dropped by California lawmaker." *Sacramento Bee.* 31 August 2018.
68 Melanie Mason, "California legislator shelves bill to ban paid 'gay conversion therapy' for adults" *Los Angeles Times.* 31 August 2018.
69 Christy Mallory, Taylor N.T. Brown and Kerith J. Conron "Conversion Therapy and LGBT Youth" *The Williams Institute.* January 2018.
70 "State Department Again Denies Intersex Citizen Passport, Even After Federal Court Tells It To Reconsider Policy" *Lambda Legal.* 26 June 2017.
71 "U.S. judge rules for Colorado intersex veteran denied passport" *NBC News.* 20 September 2018.
72 "California: Resolution Affirms Intersex Rights" *Human Rights Watch.* 28 August 2018.

Legal Gender Recognition (LGR)

The ability to update one's gender on identity documents has a profound impact on trans people's quality of life. Without these documents, everyday interactions like going through airport security, or checking into a hotel, or applying for credit can, at best, be uncomfortable and, at worst, fuel instances of hate, discrimination and even violence.

Achievements in legal gender recognition have been made on the local, state, and federal levels in Canada over the past two years. The governments of Newfoundland and Labrador[73] and British Columbia[74] amended their policies to allow people who do not identify as male or female to choose the gender market 'X' on their state-issued IDs. Similarly, the Government of Canada announced in August 2017 that it would begin working to implement an 'X' gender marker in Canadian passports, and other documents issued by its immigration department.[75]

In the US, state governments in Oregon,[76] Washington,[77] and Minnesota,[78] in addition to New York City,[79] instituted policies allowing people who don't identify exclusively as male or female to choose 'X' as their gender marker on government-issued IDs. Trans women in the states of Idaho[80] and Kansas[81] filed lawsuits challenging the states' bans on updating birth certificates to correctly reflect a person's gender identity. Though the Kansas case is ongoing, a judge in Idaho ruled in favour of the plaintiff and overturned the state's ban.[82]

Conclusion

In the US, the previous years of legal battles over discrimination protections and religious freedom have exemplified the tension between progress and pushback, and set the stage for what will likely be extremely impactful and long-lasting court decisions to come. The debate over whether SOGIE are protected classes comes down to interpretation of Title IX of the Civil Rights Code of 1967: since 2017, at least two federal courts have ruled in favour of plaintiffs in three separate workplace discrimination cases where the plaintiffs were fired for their sexual orientation.[83] Despite these rulings, the Trump Administration, and Republicans at large, continue to argue that the term "sex" refers strictly to gender.

Similarly, whether anti-LGBT discrimination can be carried out as a protected form of free speech under religious freedom is a question that will undoubtedly find its way before the Supreme Court, and unlike the Masterpiece Cake case, a definitive ruling on the topic will have to be made. In both cases, the Supreme Court, now with two Trump nominees, has the potential to issue rulings that could adversely impact an entire generation of LGBTQ people in the US.

Outside the courts and on the societal level, the movement remains strong: US midterm elections in November 2018 delivered wins to more than 150 LGBTI candidates at federal, state and local levels; the most of any US election. And though Canada has seen some pushback on the subnational level, its federal government has proven to be a strong ally to the LGBTQ community, doing more to make up for its past wrongs than any other country before. While it's imperative to remain vigilant and guard against rising attempts at regression, recent years are a testament to the persistence and resilience of the LGBTQ communities of Canada and the US.

73 "Gemma Hickey wins battle for gender-neutral birth certificate." *CBC*. 21 September 2017.

74 Richard Zussman " B.C. now recognizes 'X' gender marker on driver's licence, birth certificate." *Global News*. 2 November 2018.

75 "News Release: Minister Hussen announces major step forward in gender equality by making changes to passports and immigration documents." *Government of Canada*. 24 August 2017.

76 Laurel Wamslet "Oregon Adds a New Gender Option to its Driver's Licenses: X" *NPR*. 16 June 2017.

77 Emanuella Grinberg "Washington state offers third gender option on birth certificates" *CNN*. 4 January 2018.

78 Paul Walsh "Minnesota now offers 'X' for gender option on driver's licenses" *StarTribune*. 3 October 2018.

79 Brooke Sopelsa "Gender 'X': New York City to add third gender option to birth certificates." *NBC News*. 12 September 2018.

80 "Lambda Legal sues over Idaho's Anti-Trans Birth Certificate Policy" *Lambda Legal*. 18 April 2017.

81 Zack Ford "New lawsuit challenges Kansas' ban on updating transgender citizens' birth certificates" *ThinkProgress*. 16 October 2018.

82 Nico Lang "Idaho Will Finally Allow Trans People to Change Birth Certificates Following Court Ruling" *INTO*. 6 March 2018.

83 "Federal Court Rules Employers Can't Fire People for Being Gay." *Lambda Legal*. 4 April 2017;."Onward to the Supreme Court for Lambda Legal and Client Fired for being a Lesbian." *Lambda Legal*. 6 July 2017; Dominic Holden. "A Federal Court Just Ruled for Gay Rights in a Major Discrimination Case." *Buzzfeed News*. 26 February 2018.

GLOBAL PERSPECTIVES

ASIA

STATE-SPONSORED HOMOPHOBIA 2019



ASIA

Lights and Shadows in a Vast Region

Various authors. Introduction by Daryl Yang.[1]

As the essays in this section reveal, the developments in SOGIE issues in Asia have been uneven. While some states shine brightly as beacons of hope, others have regressed into the shadows of intolerance. Nevertheless, it is anticipated that it is only a matter of time before the flames of change will spread across land and sea to reach those awaiting the arrival of freedom and equality through the tireless work of activists and allies.

Firstly, India, Nepal, Thailand, Vietnam and the Philippines stand out as the beacons of hope in the region. As Shakhawat noted in his essay on South Asia, the repeal of Section 377 of the Indian Penal Code is perhaps "the most historic event to take place" in recent memory. Nepal's Supreme Court similarly issued a decision that enshrined equality and non-discrimination on the basis of SOGIE. The essay on Southeast Asia discusses the encouraging progress in the three ASEAN countries in terms of the potential legalisation of same-sex marriage and stronger legal protections for sexual and gender minorities.The triumph at the Indian Supreme Court has emboldened activists in other former British colonies to fortify their efforts to repeal the same laws in their countries. There are two ongoing constitutional challenges in Singapore over Section 377A of the Singapore Penal Code while activists in Malaysia, Sri Lanka and Myanmar have become increasingly vocal and visible following the Indian decision.

These encouraging developments stand in stark contrast to the regression seen in Indonesia and most of continental Asia, especially Central Asia and the Middle East, a likely result of the growing religious fundamentalism in those countries. A similar trend can be observed in Hong Kong, South Korea and Taiwan as described in Minwoo Jung's piece, where Christian conservative groups have become increasingly hostile in campaigning against SOGIE equality.

Despite these setbacks, the essays in this section also reveal the resilience and resistance of activists and SOGIE minorities. A key challenge faced by those championing SOGIE equality however is the lack of protections for their safety and rights as many human rights defenders have been subject to violence from both state organs and citizen vigilantes. This highlights the importance of an intersectional approach to human rights, where respect for the rights of SOGIE communities can be realised only with the entrenchment of strong democratic institutions founded on the rule of law.

While the outlook may seem bleak for Asia currently, it is hoped that things will gradually improve across the diverse societies in Asia as the hope and courage of activists and allies continue to reverberate through the continent.

A Mixed Report Card for South East Asia

By Lloyd Nicholas Vergara[2] *and Zach ZhenHe Tan.*[3]

Given the political and societal diversity of South East Asia, the report card for the region is mixed. In certain countries, progress appears ascendant. In Thailand, the military junta cabinet approved a bill

1 Daryl Yang is ILGA Legal Research Intern and one of the Main Research Assistants of this edition. He is a final-year student at Yale-NUS College, where he is reading a double degree in law and liberal arts with a minor in anthropology. He co-founded and served as the inaugural Executive Director of Singapore's Inter-University LGBT Network and previously interned with the National Center for Lesbian Rights (NCLR) in San Francisco, USA. Daryl is interested in SOGIE, migrant and disability issues, particularly in non-liberal societies. His current research is on the impact of state ratification of human rights treaties on local civil society advocacy.

2 Lloyd Nicholas Vergara is a Co-Chair (2019-2020) of the International Bar Association's LGBTI Law Committee (Philippines). He won the 2014 IBA Annual Conference Scholarship (Criminal Law Section) and has been an IBA member since 2015. He obtained his LLM in Transnational Commercial Practice from Lazarski University (Warsaw) through a partial scholarship from the Center for International Legal Studies (Salzburg). His LLB degree is from the University of San Carlos (Philippines). He is a lawyer in the Philippine Court of Appeals.

3 Zach ZhenHe Tan will graduate with a Juris Doctor from Harvard Law School in 2019, where he now serves as an Editor for the Harvard Law Review. He has interned at a variety of public interest organizations, including GLBTQ Legal Advocates & Defenders and Asian Americans Advancing Justice. He graduated from the National University of Singapore with a Bachelor of Laws in 2016.

in December 2018 that would legalize same-sex civil unions.[4] With an election likely to be called this year, the ultimate fate of the bill will be in the hands of whoever claims electoral victory and attains control of the Thai legislature.

There is also hope in Vietnam, where the government is contemplating legal protections for transgender people. As stated by a government spokesperson, "the bill stipulates how to identify a person whose gender identity is different from their assigned sex at birth through psychological evaluations."[5] It is expected that the bill would improve healthcare access for transgender individuals in Vietnam.

In the Philippines, the Department of Education, on June 29, 2017, issued its Gender-Responsive Basic Education Policy,[6] which broadens the understanding of "gender" to include relations between same-sex partners,[7] gender awareness, gender-based violence, gender-based discrimination, gender expression, and gender identity.[8] On the judicial front, the Philippine Supreme Court heard, on June 19, 2018, oral arguments over a petition to legalize same-sex marriage, currently outlawed under the Family Code.[9] The petition is still unresolved by the Supreme Court.

Despite this progress, significant portions of the region still remain unfriendly terrain for SOGIE issues. Still in the Phillipines, the Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanaowas signed into law in July 2018, empowering the Bangsamoro Parliament to enact Shari'ah laws on minor criminal offenses.[10] There is potential that this power could be used to enact laws against LGBTQ Muslim citizens.

Meanwhile, the Indonesian Province of Aceh has begun enforcing the Aceh Islamic Criminal Code (*Qanun Jinayat*), which punishes same-sex sexual acts with 100 lashes.[11] In May 2017, two men were publicly inflicted with 83 lashes each for allegedly engaging in gay sex.[12] In July 2018, another two men were publicly lashed.[13] Separately in January 2018, police officers in North Aceh arrested 12 transgender people, forcefully cutting their hair and shutting down the beauty salons where they worked. They were later released without being charged.[14]

Indonesia's Pornography Law, which includes "bodily movements" in its coverage and imposes heavy fines as well as long prison terms,[15] has also been used to target LGBTQ people. In April 2017, 14 men, who were occupying two hotel rooms in Surabaya, were raided for pornographic activities.[16] In May 2017, police raided a club in Jakarta and detained 141 men also for alleged pornographic activities.[17] A small respite came when, in December 2017, the Indonesian Constitutional Court, voting five-to-four, rejected the petition filed by the Family Love Alliance to make gay sex and sex outside marriage illegal. The court held that it was not its role to criminalize private behaviour or to usurp parliament by imposing laws on it.[18]

In Malaysia, the mood has been one marked by immense disappointment. In May 2018, a watershed election saw the first regime change in decades, one led by a diverse coalition that

4 "Thailand's Junta backs bill approving same-sex unions", *The Strait Times*, 26 December 2018.

5 "Vietnam and the LGBT rights making stride", *Vietnamnet Bridge*, 20 May 2018.

6 Gender-Responsive Basic Education Policy, Republic of the Philippines: Department of Education, Dep. Ed. Order No. 32, 2017 (accessed 18 January 2019).

7 Gender-Responsive Basic Education Policy, *iv. Definition of terms*, paragraph b).

8 *Ibid*., paragraphs d), e), f), i), and k).

9 "SC oral arguments on same sex marriage set for June 19", *Philippine News Agency*, 6 March 2018 (accessed 18 January 2019).

10 *An Act Providing for the Organic Law for the Bangsamoro Autonomous Region Muslim Mindanao, Repealing for the Purpose Republic Act No. 6734, entitled "An Act Providing for an Organic Act for the Autonomous Region in Muslim Mindanao" as amended by Republic Act No. 9054, entitled "An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao"(Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao* , Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, Article X, Section 4: The Official Gazette of the Republic of the Philippines (accessed 18 January 2019).

11 "Indonesia: Aceh Province Law Expands Caning Punishment to Adultery and Homosexual Acts", *The Law Library of Congress*, 28 October 2015 (accessed 18 January 2019).

12 "Gay Men Caned in Front of Cheering Crowd in Aceh", *Vice*, 24 May 2017 (accessed 18 January, 2019).

13 "Two Gay Men Caned Under Sharia Law In Aceh, Once Again", *Vice*, 18 July 2018 (accessed 18 January 2019).

14 "Indonesia: Police arrests and attempts to 're-educate' transgender people must end", *Amnesty International*, 29 Janury 2018 (accessed 18 Janury, 2019).

15 "Indonesia passes tough new anti-porn laws", *ABC News*, 31 October 2008 (accessed 18 Januray, 2019).

16 "Indonesia: 'Gay Porn' Arrests Threaten Privacy", *Human Rights Watch*, 4 May 2017 (accessed 18 January , 2019).

17 "Indonesian Police Detain 141 Men in Gay Club Raid", *NBC News*, 22 May 2017 (accessed 18 January, 2019).

18 "Indonesia's Constitutional Court rejects petition to criminalise gay sex in victory for besieged LGBT minority", *The Independent*, 14 December, 2017, (accessed 18 January 2019).

included both youths and progressives. However, this change has not translated into progress on SOGIE issues.[19] From the top of the house, the new Prime Minister has expressly rejected "LGBT and same-sex marriage" as "things only meant for the West."[20] This anti-SOGIE rhetoric is reflected throughout the rest of government and society. In a series of alarming events in August 2018, authorities cracked down on a popular gay nightspot in the capital city of Kuala Lumpur, a sharia court ordered a lesbian couple to be caned for same-sex intimacy, and a trans woman was brutally beaten on the streets while a crowd watched on.[21]

In Singapore, despite the lack of similar political headwinds, SOGIE individuals still face significant barriers to progress. In its most recent review of the country's criminal laws, the Singapore government reaffirmed its position not to repeal Section 377A, the colonial era law that has since become the symbol of anti-LGBT discrimination in the city-state.[22] Notwithstanding, a flicker of hope broke through when the Singapore Court of Appeal issued a landmark decision allowing a gay man's bid to become the legal parent of a child he fathered through an overseas surrogacy.[23] However, in a mark of the cautious and conservative approach that the state takes toward SOGIE issues, the decision was narrowly framed to avoid any broad pronouncements on the rights of gay couples. Similarly, in response to this judgment, the executive and legislative branches have expressed an intention to review current laws in a bid to strengthen and reinforce what they believe to be a "public policy" against "non-traditional" family units.[24]

In Myanmar, Section 377 - the same colonial-era law that was recently struck down in India - continues to be selectively enforced, with the media reporting at least two instances where charges have been filed against gay individuals.[25] In spite of this, LGBT individuals and allies continue to push back on harmful media narratives and fight to be seen and accepted in civil society.[26]

As for Cambodia, Brunei, Laos, and Timor Leste, there are no recent reports of government discrimination based on sexual orientation in employment, citizenship, access to education, or health care.

Challenges and Opportunities in South Korea, Taiwan, Hong Kong, and Japan

By Minwoo Jung.[27]

The mobilization of anti-rights groups and their political impact in many parts of East Asia have gotten much stronger in the past years, spawning an organized resistance against SOCIE rights. The new democratic governments in the region, namely those of Taiwan and South Korea, were both inaugurated with great expectations in terms of human rights protection and promotion yet have been compromised the fundamental rights of marginalized groups by allowing anti-rights practices to flourish. Despite these growing challenges, there have been crucial achievements in the areas of marriage equality and anti-discrimination in the region as well.

South Korea experienced a monumental leadership change in May 2017 soon after the impeachment of former President Park Geun-hye. Despite the expectations from civil society to advocate for the protection of various marginalized groups including sexual minorities, newly elected President Moon Jae-in, a former human rights lawyer, has done little to defend the fundamental rights of minority groups, making political decisions that endorse the growing hatred and intolerance often rooted in conservative religious grounds.

By the time around President Moon's election, it was found that the South Korean army had targeted dozens of soldiers in a campaign against gay men in the military, and around 20 soldiers had been tracked down on gay dating apps, interrogated, and put on trial due to the

19 Malaysia Turns Towards Decomracy –But Leaes LGBT Rights Behind, *Newsweek*, 11 April 2018.

20 "LBGT or sam-sex marriage not for Malaysia, says Dr. M", *The Star*, 22 September 2018.

21 "Malaysia accused of 'state-sponsored homophobia' after LGBT crackdown", *The Guardian*, 22 August 2018.

22 "Penal Code review committee: Wide-ranging proposals offer more protection for the vulnerable", *The Strait Times*, 10 September 2018.

23 "Singapore court allows gay man to adopt son in landmark ruling", *Reuters*, 17 December 2018.

24 "Government policy review will be mammoth task after gay man's legak win, experts say", *Today Online*, 19 December 2018.

25 "Gay man with HIV charged under Myanmar sodomy law" *Washington Blade*, 2 Novemeber 2018: "Myanmar is arresting people for being gay under colonial-era sodomy law", *Gay Star News*, 8 November 2018.

26 "Year end review on LGBT rights", *Myanmar Times*, 28 December 2018.

27 Ph.D. candidate in Sociology, University of Southern California, U.S. (Email: minwooju@usc.edu).

discriminatory provision in the Military Criminal Code.[28] Article 92(6) of the Military Criminal Code outlaws "sodomy or other disgraceful conduct," which prescribes up to two years in prison and disgraceful discharge for servicemen. Despite the domestic and international pressure from the National Human Rights Commission of Korea and the United Nations, the Constitutional Court upheld the provision's constitutionality in July 2016.[29]

State-sanctioned discrimination feeds the growing public hostility against sexual minorities. In the past two years, South Korea observed an important growth of pride parades and festivals across the peninsula beyond the capital city of Seoul, from the port city Incheon to the southern island Jeju. The growth of pride events, however, also triggered increased pushbacks by conservative religious groups. Many of pride parades in recent years faced intensifying counter demonstration and clashes by anti-rights protestors. The first pride parade in Incheon in September 2018, for example, was severely delayed as more than a thousand conservative Christian demonstrators blocked, and then attacked the pride participants both verbally and physically under police incompetence.[30]

A decade-long effort of SOGIE groups to legislate anti-discrimination acts to protect people from sexuality and gender-based violence has been constantly blocked by conservative backlash and their successful lobby against SOGIE rights.

On May 24, 2017 marks an important milestone of SOGIE rights in the region as Taiwan's Constitutional Court ruled in favor of marriage equality. The ruling stated that the current Civil Code is unconstitutional for discriminating against same-sex couples and gave lawmakers two years to legislate before same-sex marriage became automatically legal.[31]

However, inaction from the ruling Democratic Progressive Party, despite campaigning on a promise of marriage equality in the 2016 election, allowed anti-rights groups to utilize the new referendum law to petition for referendum against marriage equality and SOGIE-inclusive gender equality education. In turn, marriage equality groups also launched counter referendum petition. Following a well-funded campaign of misinformation and scaremongering by anti-rights religious groups, Taiwan's voters opted for a separate law to legalize same-sex unions rather than to change the Civil Code, denounced by the SOGIE advocates as failing to offer full equality.[32] The majority also voted against the implementation of Gender Equity Education Act, the legislation of which promotes SOGIE-inclusive education in schools. Taiwan's Ministry of Justice is now working on a same-sex marriage draft bill in response to results of the referendum, which will be presented to the Legislative Yuan before 1 March 2019.[33]

Despite the setback in the anti-equality referendum results, nearly 4,000 same-sex couples have registered their partnerships in their municipalities and counties since 2015.[34]

In Hong Kong, even though the anti-rights movements spread hatred and intolerance within the region, important achievements have also been made. In July 2018, at the end of a three-year long legal battle, Hong Kong's Court of Final Appeal handed down a landmark ruling in favor of a British lesbian expatriate, requiring immigration authorities to recognize overseas same-sex marriages when issuing spousal visas previously available only to heterosexual couples.[35] However, the city's definition of marriage "between one man and one woman" remains unchanged, and same-sex partnerships are still not recognized for those born and raised in Hong Kong. There are a few ongoing legal challenges relating to spousal tax benefits and equal access to public housing.[36]

The region has also observed a significant breakthrough in terms of anti-discrimination in Japan. In October 2018, the Tokyo Metropolitan Assembly passed an ordinance that bans discriminatory treatment and hate speech based on sexual orientation and gender identity. The

28 "Soldier sentenced to prison for having sex with another solider", *Hankyoreh*, 25 May 2017.

29 "Constitutional Court upholds military's ban on sodomy", *Hankyoreh*, 4 August 2016.

30 "Queer festival severely delayed by violent anti-gay protests in Korean port city", *The Korea Herald*, 9 September 2018.

31 "Taiwan's constitutional court rules in favor of same-sex marriage," *Taiwan News*, 25 May 2017.

32 "Same-sex marriage referendums: Taiwan Civil Code may remain unchanged," *Taiwan News*, 24 November 2018.

33 "Taiwan's justice ministry 'brainstorming' on same-sex marriage bill," *Taiwan News*, 6 December 2018.

34 "Taiwan has registered almost 4,000 same-sex couples," *Taiwan News*, 8 December 2018.

35 "'Giant step forward for equality' in Hong Kong as same-sex couples win rights to spousal visas in Court of Final Appeal," *South China Morning Post*, 5 July 2018.

36 "Gay civil servant will take case to Hong Kong's top court in final bid to win spousal benefits for husband," *South China Morning Post*, 30 July 2018.; "Married gay man sues Hong Kong government over rejected public housing application," *South China Morning Post*, 23 November 2018.

ordinance, which is scheduled to take effect in April 2019, is aimed at realizing the Olympic Charter's anti-discrimination standards ahead of hosting the 2020 Summer Olympics and Paralympics. The city-wide act is designed to support same-sex couples' better access to hospital visits and shared renting of apartments. It also commits the city government to establish LGBT consultation centres and conduct public education about SOGIE rights. Moreover, the legislation is to regulate hateful rhetoric in public space and online[37].

Despite this promising step forward, Japan still has no national-level laws to protect sexual minorities from discrimination and does not grant legal recognition to same-sex couples, though increasing number of cities and districts have begun to offer same-sex partnership registration since 2015 without legal weight.

The People's Republic of China, Macau and Mongolia

By Ripley Wang.

First Chinese provision to ever include "sexual orientation" explicitly

It is noteworthy that The Specification on Information Security Technology and Personal Information Security —enacted by China's National Information Security Standardization Technical Committee in May 2018 (GB/T 35273-2017)[38]— has included "sexual orientation" into the scope of protection in terms of personal information. This is the first time that the term "sexual orientation" is clearly and explicitly spelled out in the national regulations and provisions and a positive step towards the respect of the right to privacy.

Cases regarding employment discrimination

In Mr. C's case (a lawsuit brought by a Chinese trans man before local courts in south-west China), a final verdict was issued in July 2017. The court again ruled in favor of the plaintiff for the reason that the employer/defendant terminated the contract without a legitimate reason and that infringed the plaintiff's right to equal employment. The court did not support the plaintiff's appeal that the wrongful dismissal was *de facto* a discrimination on the basis of his gender identity and gender expression. However, it made a strong and clear statement in the landmark verdict, saying that "an individual's personality right should be respected regardless of their gender identity and gender expression" and that "no one should be subject to discrimination on the grounds of gender identity and gender expression in the employment process."[39]

In September 2018, a gay man, named Mingjue, brought a case to the labour arbitration commission in Qingdao City, seeking a legal remedy for employment discrimination against his employer. Mingjue claimed that he was fired by his employer —a nursery school located in the city of Qingdao— after his sexual orientation was exposed by the parent of a student. The decision issued by the Arbitration Tribunal of Labour Disputes on November 13, 2018, simply ordered compensation for violation of contract provisions stipulated in the Labor Law but did not find wrongful termination and discrimination on the grounds of sexual orientation.[40] In January 2019, Mingjue successfully filed the case to a District Court in Qingdao City, referring to the dispute of general personality right as the cause of civil case. The trial is expected to begin in February 2019.

With regard to the discussions on the Employment Non-discrimination Law, after the consultation, there is still no indication if and when this proposal was adopted and planned to make into law, judging from the NPC Standing Committee Plan for Legislation in 2017 and 2018.

Media coverage and censorship

As it relates to freedom of expression issues, the 2017 Media Monitoring Report on SOGIE Issues published by the China Rainbow Media Award indicates that the amount of media coverage made by the Chinese mainstream media was continuously declining during the recent years. Comparing to 867 reports in 2015, and 710 pieces of SOGIE-related news articles in 2016, only 447 news reports were found and documented in 2017. Regarding the GIE-related issues, the monitoring report finds that the proportion of news articles on

37 "Tokyo adopts ordinance banning discrimination against LGBT community", *The Japan Times*, 8 October 2018.

38 The Specification is not a mandatory regulation, but it is of great importance to China's Cyber Security Law and the protection of personal information in China. For more information see: Barbara Li, "Personal information security specification", *Norton Rose Fullbright Webiste*, January 2019.

39 "Chinese court says employers should not treat workers differently based on gender identity", *Hong Kong Free Press*, 8 February 2018.

40 "Gay Chinese teacher gets compensation, but no recognition of equal rights", *Inkstone*, 26 November 2018.

transgender people is increasing.[41] The invisible and unrestricted censorship on the mainstream and social media, in general, makes some impacts on the decline of the number of news reports on SOGIE issues.

On June 30, 2017, the China Netcasting Services Association, an organization supervised by the State Administration of Radio, Film, and Television (SAPPRFT), issued a general rule which banning depictions of same-sex intimacy from online video and audio platforms.[42] On November 25, 2017, Fan Chunlin, a man from Shanghai, filed a lawsuit with Beijing No. 1 Intermediate People's Court demanding SAPPRFT clarify to the policy basis for the regulation. The initial hearing was held on February 23, 2018, but thus far, no decision has been issued.

Furthermore, on April 13, 2018, Sina Weibo, one of China's biggest social media companies, initiated a campaign to "clean up" the platform in accordance with China's Cybersecurity Law, and the gay-themed content were targeted along with other contents related to violence and sex. The instance provoked intense opposition and outcry from the LGBT community and advocates. On April 16, the decision to censor gay content was reversed due to the public pressure. On May 9, 2018, Mango TV, a video-streaming site affiliated to one of China's most watched channels, Hunan TV, blacked out the performance of Ireland's Ryan O'Shaughnessy, during which two male dancers depicted a fraught relationship while airing the Eurovision song contest semi-final.[43]

LGBT human rights defenders

After the new Law on the Management of the Activities of Overseas NGOs within China[44] was enacted in January 2017, apart from the challenges concerning funding and fundraising, Chinese LGBT human rights defenders and their organizations have also been experiencing persistent stress, harassment, and intimidation from the relevant police officers. Moreover, these challenges have largely impeded their capacities to carry out their work and activities.

On January 8, 2018, the Civil Affairs Bureau of Guangzhou Municipality published a list of suspected illegal social organizations that were not registered with the civil affairs department,[45] and two of them were SOGIE-related organizations or groups, namely Guangzhou Gender and Sexuality Education Centre and Rainbow Group of Guangzhou Universities. Therefore, these two organizations were forcibly closed and cease their work. China's laws and policies allow any individuals to register social organizations, for example, the Regulation on the Administration of Registration of Social Organizations sets forth clear requirements for NGO registration. In practice, LGBT NGOs are usually rejected from registration even if they provide sufficient documents following the relevant laws and regulations.

Trans rights in China

Trans individuals are especially vulnerable to "conversion therapy" as trans identities are still on the list of mental illness of the 2001 edition of Chinese Classification of Mental Disorders.[46] Based on that classification, the current regulations regarding gender affirmation surgery require psychiatric or psychological treatment for at least one year in order to apply for sex reassignment surgeries,[47] resulting in "unwanted conversion therapy" being imposed on transgender people.

A 2017 survey report released by a Chinese NGO on transgender people reveals that 11.9% out of 1,640 respondents had been coerced to receive these types of "conversion therapy" by their parents or guardians.[48]

41 "A Deeper Collaboration for a Better Tomorrow", *Shanghai Pride*, 28 Jan 2018.

42 《网络视听节目内容审核通则》发布：应坚持以现实题材为主, 30 June 2017; "New Rules for Online Videos in China: 'No Displays of Homosexuality'" *Whats on Weibo*, 30 June 2017.

43 "Eurovision 2018: Chinese broadcaster barred from airing final after censoring LGBT+ content", *The Independent*, 11 May 2018.

44 *Law of the People's Republic of China on Administration of Activities of Overseas Nongovernmental Organizations in the Mainland of China*, promulgated by Order of the President of the People's Republic of China No. 44 on 28 April 2016.

45 "Guangzhou Civil Affairs Bureau announces list of suspected illegal social organizations" (广州市民政局公布涉嫌非法社会组织名单),. Accessed on February 3, 2019

46 The Chinese Society of Psychiatry, Chinese Classification of Mental Disorders Edition 3 (《中国精神障碍分类与诊断标准第3》), (Shandong Science and Technology Press, 2001).

47 *Sex Reassignment Surgery Procedural Management Standard* (2017 Edition) 性别重置技术管理规范（2017年版）

48 Beijing LGBT Center, *2017 Chinese Transgender Population General Survey Report* (2017中国跨性别群体生存现状调查报告), p. 10. Accessed on 2017-12-30.

In terms of Legal Gender Recognition, trans people have the right to access sex reassignment surgery (available only to people over twenty years of age),[49] and to change their gender marker on identity documents including citizenship ID cards and household registrations in China after undergoing surgery.

In 2017, the National Health and Family Planning Commission issued a new Procedural Management Standard on Sex Reassignment Surgery[50] as well as a Quality Control Index of Clinical Application of Sex Reassignment Surgery,[51] therefore repealing the old Standards.[52]

Furthermore, following official written replies issued by the Ministry of Public Security[53] and the Bureau of Public Security,[54] citizens have the right to change their gender marker on citizenship ID cards and household registrations under the condition of completing full sex reassignment surgery. However, there are still great difficulties for trans persons to change their gender marker on various other official documents, including university diplomas, and other academic and vocational certificates.

Macau

Laws against employment discrimination on SOGIE grounds exist in Macau.[55] However, the majority of the LGBT people are unaware of such anti-discrimination protection in Macau, according to a research report released by Rainbow of Macau on 12 May 2016.[56]

Same-sex marriage is not recognized in Macau and same-sex spouses are not eligible to hold visas as dependents under Macau law. In August 2018, Public Security Police Bureau of Macau admitted in an interview that four applications had been received in total regarding same-sex spouse visa, but none of them have been approved.[57]

Mongolia

On July 1, 2017, the much-anticipated new Criminal Code finally came into force, outlawing discrimination of any kind, with the protected grounds including sexual orientation, gender identity.[58] Despite the availability of protection of anti-discrimination legislation, LGBT people still report to face discrimination and violence both at home and in public on a daily basis. In November 2017, a transgender woman was arrested for being drunk and disorderly. She claimed that an officer pinned her to the floor and forcibly stripped her while in police custody. The police division responsible did not find the officer guilty of any wrongdoing. The Mongolia LGBT Centre helped the alleged victim file a complaint with the National Human Rights Commission. It is unknown if any disciplinary action has been taken against this officer.[59]

As for Legal Gender Recognition for trans people, article 20(1) of the 2009 revised Civil Registration Law permits persons who have had gender reassignment surgery to have their birth certificate, and national identity card reissued to reflect the change. The LGBT Center of Mongolia reported to the 63rd CEDAW session 2016 that transgender people received minimal medical service and support from the local professionals to have the surgery because of the incapacity of the medical specialists. Transgender persons need to obtain gender reassignment surgery outside the country.

49 Sex affirmation surgery is called by the Chinese government as sex reassignment surgery (SRS). In China, transgender persons are required to undergo these often unwanted sterilization surgeries as a prerequisite to enjoy legal recognition of their preferred gender.

50 *Sex Reassignment Surgery Procedural Management Standard* (2017 Edition) <性别重置技术管理规范 (2017年版)>.

51 *Quality Control Index of Clinical Application of Sex Reassignment Surgery* (2017 Edition) <性别重置技术临床应用质量控制指标>.

52 *Sex Change Operations and Procedural Management Standard*. Health Office of Medical Affairs No. [2009]185. <变性手术技术管理规范（试行）>.卫办医政发〔2009〕185号 .

53 *Reply of the Ministry of Public Security to the Relevant Issues Concerning the Change of Citizens' Sex-related Marker on Household Registration after Sex Change*《公安部关于公民实施变性手术后变更户口登记性别项目有关问题的批复》(公治〔2002〕13l号).

54 *Reply of the Bureau of Public Security to the Relevant Issues Concerning the Change of Citizens' Sex-related Marker on Household Registration after Sex Change*《公安部治安管理局关于公民手术变性后变更户口登记性别项目有关问题的批复》(公治[2008]478号).

55 Law No. 7/2008, article 6(2).

56 Rainbow of Macau, *Survey on LGBTIs in Macau 2016* (2016).

57 Plataforma Macau, Exclusion, (<排除在外>). Accessed on February 3, 2019.

58 Criminal Code of Mongolia (as amended in 2015), article 14(1).

59 Aubrey Menrndt, "Mongolian Pride: LGBTQ Activism In One Developing Country", *The Establishment*, August 15, 2018.

Current State of the Law on SOGIE in Central Asia

By Zhanar Sekerbayeva[60] *and Syinat Sultanalieva.*[61]

Located in between China, Russia and the Middle East, the five countries of Central Asia, while different in their economic development and geopolitical positionalities, are very similar in their attitude to the rights of lesbian, gay, bisexual, trans people. All of them have ratified key international treaties on equality and non-discrimination and regularly present their state reports to relevant bodies, but they all fall short in meeting international standards in their implementation, and in many cases, go in direct opposition to them.

For example, in Kazakhstan in 2018 the Ministry of Information and Communication developed two draft bylaws[62] titled the "Instruction on Classification of Informational Products" and "Methodology of Defining Informational Products for Children (Not) Harming Their Health and Development". The original draft bylaws declared same-sex sexual acts a "perversion" and prohibited the dissemination of any information about LGBTIQ to minors under the age of 18. If they had been adopted in their original wording, public information related to LGBTIQ would have been banned from open access in printed media, internet, social networks and others. Additionally, the text of the draft bylaw on "Methodology (...)" contained inaccurate and stereotypical representation of LGBT people. In particular, paragraph 5 of the draft indicated: "Information prohibited for distribution among children: a) encouraging children to commit acts that threaten their lives and/or health, including harm to their health, suicide, demonstration of the culture of the LGBT society (LGBT community, gay community, also LGBT community and gay community (from English LGBT community (gay community) - a community of lesbian, gay, bisexual and transgender (LGBT) people, united by common interests, problems and goals)."[63]

According to the Kazakhstani Law on Public Health, trans people in Kazakhstan must undergo extensive physical and psychological examination, hormonal treatment, sterilization and sex reassignment surgeries to be able to submit their ID documents for gender marker change. However, thanks to advocacy efforts on the part of Alma-TQ initiative group of transgender people in Kazakhstan, a pool of ally medical specialists is willing to forgo some of these requirements in order to simplify the procedure. This is informal as of yet, although efforts are continuing to develop an official protocol (similar to the one developed in Kyrgyzstan, see below) which would simplify the procedure further.[64]

The bylaws have now entered into force, however thanks to active advocacy by local LBTQ groups in Kazakhstan, with support from foreign embassies, they do not contain provisions on "homosexual propaganda."[65]

Until the constitutional referendum of 2016, Kyrgyzstan had a provision in its Constitution on direct applicability and precedence of international

60 Zhanar Sekerbayeva is the co-founder of the Kazakhstan Feminist Initiative "Feminita". She is a feminist, powerlifter and poet. In her work she aims at expanding the concept of 'gender' in the general public discourse through activism by mainstreaming questions of gender identity in the academia. She graduated with Summa Cum Laude from the 'Gumilev' Eurasian National University in 2005, as well as from the 'Lomonosov' Moscow State University in 2009. In 2014 she enrolled at the European Humanities University (Lithuania) MA program in Sociology with focus on gender and culture, continuing now at the University of Tsukuba, Japan towards a PhD degree. Her doctoral dissertation focuses on the processes of regulating identities and "normalization" of transgender people in Kazakhstan and Japan, where she is interested in understanding how the gatekeeping practices of healthcare professionals may or may not be shaping the gender identities of transgender individuals as they seek legal affirmation. Her latest publication is a chapter in the "Women, Sport and Exercise in the Asia-Pacific Region: Domination, Resistance, Accommodation" edited by Molnar G., Sara N. Amin, Yoko Kanemasu, as part of the *Routledge Research in Sports, Culture and Society* series.

61 Syinat Sultanalieva is a queer-feminist activist and researcher from Kyrgyzstan, currently enrolled in a PhD program at the University of Tsukuba, Japan. She has started her activist work in late 2007 as a staff member of LGBT organization "Labrys" in Kyrgyzstan, where she was specifically interested in raising awareness and mainstreaming LGBT human rights both on national and international levels. As part of her advocacy work, she has prepared and presented alternative reports to the UN treaty bodies (CEDAW, UPR, CCPR) on the situation of LGBT people in Kyrgyzstan, Uzbekistan and Turkmenistan. She has since then moved back into the academia, where she has focused on engaging with feminism and LGBT issues from a Critical Theory point of view ever since.

62 Bylaws are secondary to laws, as the latter are passed by the Parliament, while the former are approved by executive bodies such as ministries and departments, and as such do not require public consultation. The bylaws are usually developed with an aim to qualify the implementation of a certain law.

63 *Draft bylaw on "Methodology of Defining Informational Products for Children (Not) Harming Their Health and Development"*, para. 5.

64 *Law on Public Health and Health Care System*. Code of the Republic of Kazakhstan, Art. 88 § 3 (18 Sept. 2009) (unofficial translation).

65 "Подзаконный акт о запрете «пропаганды» не прошёл" (The bylaw to ban "propaganda" did not pass), *Feminist Initiative "Feminita" Website*, 14 January 2019.

human rights treaties, while its citizens had a right to seek justice in international human rights bodies. The reform, however, rescinded all of these obligations from the government of Kyrgyzstan.[66] Moreover, a bill named "On the introduction of amendments into certain legislative acts of the Kyrgyz Republic", registered on 6 May 2014, aimed to introduce a prohibition of distribution of any neutral or positive information about sexual orientation and gender identity in any public and private spaces (punishable by imprisonment of up to 1 year and heavy fines).[67] The draft law passed both first and second readings in 2014 and 2015. However, after being sent back for further editions it has not re-appeared on the parliamentary agenda since. This does not mean, however, that the draft law was struck down, as it is still listed as an active bill on the website of the Kyrgyz Parliament.

One of the initiators of the draft Law, MP Narynbek Moldobaev said that if it were up to him "he would shoot all of the LGBT people in Kyrgyzstan on the main square", while the other initiator, MP Torobai Zulpukarov, mentioned that: "Very often homosexuals try to get themselves the same rights as in Europe, for example, like adoption of children or same sex marriage. But in Kyrgyzstan this is impossible, it is against our traditions. I am against this and I think any public actions of LGBT should be prohibited".[68]

At the same time, there are some positive outcomes in the country as well. In January 2017 the Minister of Health of the Kyrgyz Republic signed an order approving important clinical protocols and manuals for healthcare, including the "Manual on provision of medical and social care for transgender, transsexual and gender nonconforming people for medical professionals of all levels of the Kyrgyz Republic healthcare system and other institutions."[69] This manual is a result of a decade of advocacy work conducted by the LGBT organization Labrys in Kyrgyzstan, which consisted of organising awareness raising and sensitization trainings for medical specialists, round tables with Ministry officials and study visits to Ukraine and the Netherlands for key members of the Working Group on lobbying of the manual.

Same-sex sexual acts in Tajikistan were decriminalised in 1998, however this has not translated into equal rights and non-discrimination for LGBT people in the country. The Tajik police forces have been reported to have included "fighting against homosexuality" among their legally sanctioned duties to safeguard public order and morality.[70] Local LGBT initiatives report about active work of the "moral police", who were tasked with combating the "spread of homosexuality" throughout the country.[71] Their actions include intimidation, arbitrary arrest, physical or sexual abuse, blackmailing by the police, all with complete impunity. There is no redress for violence perpetrated against LGBT people, who are further threatened by police at any attempt to report these cases.[72]

LGBT issues in Turkmenistan[73] and Uzbekistan[74] are in a similar situation. Both countries still criminalise same-sex sexual acts between consenting male adults. In Turkmenistan under Article 135 of the Criminal Code it is punishable by imprisonment for a maximum of 2 years,[75] and in Uzbekistan under Article 120 of the Criminal Code, for a maximum of 3 years. In Turkmenistan "homosexuality" is considered a mental disorder, so punishment may also include placement in psychiatric institutions for treatment. Neither of these countries have any provisions on female same-sex relations, although in Uzbekistan local groups have reported being detained and

66 European Commission for Democracy Through Law (Venice Commission), *Kyrgyz Republic Draft Law On Introduction Of Amendments And Changes To The Constitution Comparative Table* (2016).

67 Draft Law "On introducing amendments into certain legislative acts of the Kyrgyz Republic, such as Criminal Code, Administrative Code, Laws «On peaceful assemblies» and «On mass media»", *Parliament of the Kyrgyz Republic Website*.

68 Labrys Kyrgyzstan, *Shadow Report: Discriminatory Laws and Practices, Hate Speech and Hate Crimes Against LBTI Communities of Kyrgyzstan* (2015).

69 "Ministry of Health Kyrgyzstan accepts protocol on transgender health", *Labrys Website*, 4 September 2017.

70 "А геев попрошу остаться. Зачем таджикские милиционеры ставят гомосексуалов на учет?", *Asia Plus*, 3 November 2017.

71 International Partnership for Human Rights, *"We just want to be who we are!" LGBT people in Tajikistan: Beaten, Raped and Exploited by Police* (2017).

72 *Ibid*.

73 A documentary ("Turkmenistan: Forbidden Homosexuality") based on the story of a gay man who suffered violence by the police in Turkmenistan was released in 2015.

74 For more information, see the entry for Uzbekistán in the "Criminalisation" section of this report.

75 Labrys and Sexual Rights Initiative, *Submission on Turkmenistan –Third Round of the Universal Periodic Review* (2008).

blackmailed by the police for kissing inside their own car.[76]

Stories of Triumph and Resilience from South Asia

By Shakhawat Hossain Rajeeb.[77]

On May 19, 2017, Bangladesh's elite Rapid Action Battalion (RAB) raided a private party and detained 28 young men on suspicion of engaging in "homosexual activities".[78] However, the detainees were later arrested under the Narcotics Act as the police allegedly recovered contraband drugs in their possession. The First Information Report (FIR) also mentioned recovering condoms and lubricating gel tubes as an evidence of the men's will and preparation to engage in "unnatural activities". Activists claimed the unprecedented crackdown was to please the religious extremists, who have been grown significantly under the government patronage.[79]

During the 3rd cycle of the Universal Period Review (UPR) held during the 39th session of the Human Rights Council (HRC) from 7 – 18 May 2018, Bangladesh received 11 recommendations – the highest so far – on LGBTI-related issues. The recommendations however did not enjoy the support of the Bangladesh delegates. Mr Shameem Ahsan, Permanent Representative of Bangladesh to the United Nations Office at Geneva, said that it was a religious, social, cultural, moral, and ethical issue in the country.[80]

In Bhutan, Tashi Tsheten, an activist from Rainbow Bhutan, in an interview said there is a renewed momentum and hope within Bhutan's clandestine LGBTI community since the 2018 national election, which saw a center-left political party come into power. He claimed the LGBTI movement has gained significant momentum in recent years and has led to more public conversation around the issues. The International Day Against Homophobia, Biphobia and Transphobia was celebrated in 2018 for the third consecutive time and was widely reported in local media.[81]

According to Tsheten, for the first time ever, one of the political parties, BKP, included the rights of LGBTI people in their manifesto for the general election of 2018. A marriage bill with gender neutral pronoun was placed during the 2018 summer parliamentary session but has been deferred due to the election. And now with the new government in place, Tsheten and the community believes that the conversation around the bill will be revived.

Bhutan is scheduled for its Universal Periodic Review in April 2019 and the community has been lobbying to LGBTI issues on the agenda. They are hoping the new government to accept recommendations related to Sexual Orientation and Gender Identity (SOGI).

For India and much of the world, the most historic event to take place in recent time was the repeal of Indian Penal Code 377. Our colleague, Arvind Narrain, has more on the decriminalisation case in his essay featured in this report.

Since the decriminalization, there has been a surge of pro-LGBT events and campaigns across India. Most of the major cities saw the Pride events taking place in a larger scale and with wider participation. More than 15,000 people—the highest so far—participated in the Queer Azaadi Mumbai Pride Parade.[82] Kolkata was the first city to have a Pride walk after the Supreme Court verdict soon followed by Delhi and Bengaluru. Decriminalisation also encouraged pride events for the first time in smaller cities such as Shillong.[83]

The Transgender Persons (Protection of Rights) Bill passed by the Indian parliament in December 2018 came under the fire of the very community that it sought to protect. Activists and civil society organizations have been protesting the bill claiming that it violates the Supreme Court's landmark National Legal Services Authority judgment of

76 Central Asian Gender and Sexuality Advocacy Network (CAGSAN), *Human Rights Violation of Lesbian, Gay, Bisexual and Transgender Rights in Uzbekistan: A Shadow Report* (2015).

77 Shakhawat Hossain Rajeeb is a gay rights activist from Bangladesh, where he led the country's first and largest platform of gay men, Boys of Bangladesh, for 13 years. Forced to exile due to threats and persecution, Rajeeb now lives in Stockholm and works with RFSL.

78 "28 suspected homosexuals detained from Keraniganj", *The Dhaka Tribune*, 19 May 2017.

79 "Bangladesh crackdown on gay men is another gesture of capitulation to Islamist extremists", *Scroll.in*, 29 May 2017.

80 "Human Rights Council adopts Universal Periodic Review outcomes of Cameroon, Bangladesh and Uzbekistan", OHCHR Website, 20 September 2018.

81 "Social acceptance of LGBT community is growing in Bhutan", *BBS*, 21 May 2018.

82 "Taking everybody along", *Mumbai Mirror*, 3 February 2019.

83 "After The Rain Comes The Rainbow: First Pride March In Shillong", *Feminism in India Website*, 17 September 2018.

2014, which recognized the right of transgender persons to identify their own gender.[84]

Soon after the 377 verdict, the High Court of India's southern state of Kerala on ruled in favour of a lesbian couple who wanted to live together.[85] In a similar move, the High court of New Delhi ordered police protection for a lesbian couple who feared threat to life by their parents as they had been in a romantic relationship for around one-and-a half year and wished to live together as a same-sex couple.[86]

In the Maldives, Yameen Rasheed, a prominent blogger and human rights defender, was found stabbed to death on 23 April 2017 outside his apartment building in Male.[87] He, in his blog, wrote extensively in support of secularism and actively acknowledged the existence of minorities, such as LGBTQI people and non-Muslims, in the Maldives.[88]

In September 2017, the Supreme Court of Nepal issued a historic verdict stated that members of gender and sexual minority can get all the documents including citizenship and educational documents as per their gender identity. The court has also directed government officials to organize the orientation targeting gender and sexual minority.[89] However, Manisha Dhakal, Executive Director of Blue Diamond Society, said the new Citizenship Act fails to clarify the definition of transgender persons. In a recent statement, Joint-secretary of state management committee of the Parliament Sudarsan Khadka said the issue of LGBTI people was on the government's priority list. Khadka said this when representatives of the LGBTI community sought information on the citizenship bill amendment.[90] In another landmark ruling, the Supreme Court of Nepal ordered the Immigration Department to provide Non-Tourist Visa to an American national who married a Nepali woman in California, USA.[91]

On May 5, 2018, the National Assembly of Pakistan passed the Transgender Persons (Protection of Rights) Bill, 2018 aimed at ensuring rights of transgender persons.[92] Earlier, in June 2017, Farzana Jan became the first citizen of Pakistan to carry a passport that allows its bearer to select a gender other than male or female.[93]

Two members of Pakistani human rights organisation TransAction Pakistan: Transgender Community Alliance were brutally attacked in Peshawer. On 22 January 2018, trans rights activist Shama was sexually assaulted by nine men and on 17 January 2018, trans rights activist Sonia was shot and injured in Peshawar. They were both attacked for their human rights work.[94] Earlier in August 2017, a transgender person was shot dead by unknown men in Karachi.[95]

In one of the most public demonstrations to date, members of the Sri Lankan LGBTQI+ community held a press conference to protest the derogatory remark of the country's President Maithripala Sirisena against the LGBTIQ people.[96] Earlier in a statement, the community said President Sirisena should be held responsible for any homophobic incidents that Sri Lankan citizens may experience in the coming days.[97] In October 2018, Saakya Rajawasan, who identified as a bisexual caused a public stir by exposing the homophobic attitude of her school in a public statement.[98] The outpour of public support for Saakya was unprecedented in Sri Lanka.[99]

84 "'Need equality, not rehabilitation': Why the Transgender Persons Bill fails the community", *Times of India*, 20 December 2018.

85 "India court rules lesbian couple can live together", *BBC*, 25 September 2018.

86 "Delhi high court orders police protection for same sex couple", *Hindustan Times*, 1 October 2018.

87 "Outspoken Maldives Blogger Who Challenged Radical Islamists Is Killed", *The New York Times*, 23 April 2017.

88 "A collection of Yameen Rasheed's writings on Maldives, secularism, standing up for Maldivian minorities, and fighting religious radicalism #weareyaamyn #findmoyameehaa", *Hani-Amir Website*, 28 May 2017.

89 "SC issues historic verdict : It is progressive decision with far-reaching implications: Panta", *Pahichan*, 27 September 2017.

90 "LGBTI issues not govt priority: Joint-secretary", *The Himalayan Times*, 2 January 2019.

91 "SC: Allow homosexual couple to live together, Orders to provide Non-Tourist Visa to American National", *Pahichan*, 20 February 2018.

92 "NA passes Transgender Persons Protection of Rights Bill 2018", *Pakistan Observer*, 8 May 2018.

93 "First passport issued with gender-neutral 'X' option", *The Express Tribune*, 24 June 2017.

94 "Violent attacks on transgender members of trans rights organisation TransAction", *Front Line Defenders Website*, 23 January 2018.

95 "Transgender person shot dead, dozens of suspects held in Karachi", *Geo News*, 30 August 2017.

96 "Prez should apologize, says LGBTQ+ community", *Daily Mirror*, 7 November 2018.

97 "Sirisena Should Be Held Responsible For Homophobic Incidents In Sri Lanka In Coming Days: Sri Lankan LGBTQI+ Community", *Colombo Telegraph*, 6 November 2018.

98 "Colombo International School Homophobic Bullying Saga: Victimised Student Goes Public – Activists Commend", *Colombo Telegraph*, 8 October 2018.

99 "Sri Lanka: British vice-principal bullies LGBT+ pupil", *76crimes Website*, 15 October 2018.

During the Universal Periodic Review of Sri Lanka in November 2017, the government noted the recommendations regarding the decriminalization of same-sex relations. However, the government accepted, six (6) recommendations to combat the discrimination faced by the LGBTIQ community.[100] This was a welcome change in attitude, which was commended by the activists in the country.[101]

In the Persian Gulf, Four States Still Impose the Death Penalty

By Nazeeha Saeed[102]

The Persian Gulf states do no differentiate much from their neighbours in the Middle East and North Africa in their understanding and treatment of LGBT persons. In fact, criminalisation, arbitrary detention, social prejudice and hate speech in the media are common place in these countries.

In the United Arab Emirates (UAE), for example, article 356 of the Penal Code classifies as a crime the act of "crime of voluntary debasement", established a penalty of a minimum sentence of one year imprisonment.[103] According to Human Rights Watch, the courts of the UAE utilised this article to condemn and sentence persons for sexual acts outside of heterosexual marriage, including same-sex sexual acts.[104] At the same time, some jurisdictions within the country's federal system explicitly criminalise such acts, among them Abu Dhabi, where sexual acts "against nature" can be punished with up to 14 years imprisonment. In August 2017, two citizens from Singapore were arrested in a shopping centre and sentenced to one year in prison "for trying to look like women". Later, an appeal's court commuted the sentence to a fine and deportation.[105]

In the Kingdom of Bahrain, the norms around public morality are utilised frequently to prosecute and detain LGBTI persons. Furthermore, the Bahraini parliament is currently debating a law to punish all men or women who publicly present themselves as "pretending to be the other sex", or acting inappropriately, contrary to the moral and public customs of the Kingdom with a penalty of one-year imprisonment or a thousand dinar fine. According to the National Foundation of Human Rights in Bahrain, the proposal is characterised as being vague and flexible and is based on the appearance of the person and their resemblance to the other gender, without taking into account the physical and psychological aspects of each person.

In Saudi Arabia there are no written laws on sexual orientation or gender identity, but judges use unregulated Islamic precepts to prosecute suspected persons of having extramarital sexual relations, such as adultery and same-sex sexual acts. As Human Rights Watch affirms, if these types of relationships come about through digital media, judges and public prosecutors utilise further vague provisions contained in the Cyber Crime Law, which criminalises electronic activities that affect the "public order, religious values, public morality or the sanctity of private life".[106] According to the organisation, in February 2017, the Saudi police detained at least 35 people from Pakistan, some were transgender women and one of them died in police custody. The Saudi authorities said that she had died "of a heart attack", relatives of the victim pointed to the body which showed sign of torture.

In Iraq, at least since the start of 2017, various persons perceived as gay were brutally and quickly executed extra-judicially in regions under the control of the Islamic State Organisation (Da'esh).[107] The security forces of the organisation (*Diwan al-Hesba*) subjected the areas under their control to severe restrictions and penalties, including the execution of men accused of being gay, imposing the death penalty by

100 *Report of the Working Group on the Universal Periodic Review: Sri Lanka*, A/HRC/37/17, 29 December 2017, para. 117.19-25.

101 "Sri Lanka commits to human rights protections for LGBTIQ people before the UN", *Equal Ground Website*, 16 November 2017.

102 Nazeeha Saeed is a Bahraini journalist with thirteen years of experience in international media, press, radio and television. She provides coverage of human rights and politics. She has won multiple journalism awards, among them the *Johann-Philipp-Palm* Award for Freedom of Expression and Press in 2014. She is a defender of freedom of the press and expression and the rights of LGBTI people. She is also a trainer in the topics of security of journalists and press coverage of minority issues, especially those of LGBTIQ.

103 The Penal Code of the United Arab Emirates was enacted by Federal Law No. 3 of 1987. Article 356: "[…] the crime of voluntary debasement is punished with a minimum of one year imprisonment […]". For more information, see the UAE entry in the section on "Criminalisation" in this report.

104 Human Rights Watch, *Audacity in Adversity LGBT Activism in the Middle East and North Africa*, 74, 2018.

105 "Two Singaporeans jailed in Abu Dhabi for wearing women's clothes" *The Straits Times*, 23 August 2017; "A man and a transgender woman have been sentenced to one year in jail for 'crossdressing'", *SBS*, 25 August 2017; "UAE: Stop Policing Gender Expression", *Human Rights Watch*, 7 September 2017.

106 Human Rights Watch, *Audacity in Adversity LGBT Activism in the Middle East and North Africa*, 72, 2018.

107 For more information, see Iraq entry in the section on "Criminalisation" in this report.

throwing them from buildings (carried out from the tops of tall buildings) and later stoned.[108]

In Kuwait, in addition to the criminalisation of extramarital sexual relations in a broad manner, sexual relations between men are also explicitly criminalised with a penalty of up to 7 years in prison.[109] In 2017, it was reported that Kuwait deported 76 men suspected of being gay.[110] Also a report shows how the authorities detain trans-persons through a provision that was added to the criminal code in 2007 and prohibited "imitating the opposite sex".[111]

In the Sultanate of Oman, the criminal code imposes a prison term of one to three years for having consensual sexual relations with same-sex partners[112] and the Criminal Code of Qatar has it its own with "instigating homosexuality".[113] Along with Qatar, the United Arab Emirates and Yemen could eventually apply the death penalty for same-sex sexual relations if they take the public stance that they are considered "harmful to society". Even so, to date there are no records that this penalty has been imposed on LGBT persons in these countries.

In the Persian Gulf, LGBT persons in general hide their sexual orientation and non-conforming gender identity. Expressing them could put them at grave risk of violence and criminal prosecution, not only to themselves but their families too, who could also suffer rejection from society. For this reason, it is common for meeting places to be clandestine and hidden. Even so, these places are often subject to police raids that result in the arrest, public exposure and prosecution on charges against morality and violation of religious customs and teachings. At the same time, human rights institutions and associations do not include SOGI issues among their work.

Finally, it should be noted that the media in the Persian Gulf utilises pejorative and degradative terms to refer to LGBT persons, and also uses strong hate speech in its contents, making humiliating references in their ways of dressing and behaving.

LGBTI Activists Fight Denial and Erasure in the Middle East

The author wishes to remain anonymous.

Recent years have seen some progress for LGBTI issues in the Middle East, though stories of government-sanctioned discrimination and censorship remain disappointingly common. On two separate occasions, Lebanese courts conceded that same-sex conduct should not be considered a criminal offense, though the legislature has yet to make any changes to the Penal Code provision used to persecute LGBT people.[114]

In Syria and Iraq, the impending end to the Islamic State's self-proclaimed caliphate comes as a relief to LGBT communities, though the future of their rights remains uncertain; both countries retain criminalizing provisions in law.[115]

Over the past two years, LGBT families in Israel were faced with setbacks in their fight for equal rights with heterosexual families. In July 2017, the Israeli government opposed a petition submitted by an LGBT organization asking that same-sex and common-law couples be allowed to adopt. The Israeli Child Welfare Services responded by arguing that having same-sex parents would be a difficulty for a child due to societal prejudice, tacitly sanctioning and perpetuating societal prejudice towards LGBT people.[116] During protests that followed the decision, at least ten persons were reportedly arrested.[117]

The following month, the High Court of Justice rejected a petition made by the Israeli LGBT Association which demanded the state recognise marriage equality, expressing that amending the

108 "Islamic State stones a youth accused of homosexuality in Mosul", *Iraqi News*, 27 March 2017.

109 The Penal Code of Kuwait was enacted through Law No. 16 of 1960, Article 193: "Sexual consensual acts between men of consenting age (21+ years old) will be prosecuted with up to 7 years imprisonment". For more information, see Kuwait entry in the section on "Criminalisation" in this report.

110 "Kuwait Deports Dozens of Homosexuals in 'Morality' Crackdown", *Albawaba News*, 11 August 2017.

111 Human Rights Watch, "Kuwait: Country Summary", 4, 2017.

112 The Penal Code of the Sultanate of Oman was enacted through Royal Decree No. 7/74. For more information, see Oman entry in the section on "Criminalisation" in this report.

113 The Penal Code of the Qatar was enacted through Law No. 11 of 2004, Article 296. For more information, see Qatar entry in the section on "Criminalisation" in this report.

114 For more on Lebanon, please see the "Criminalization" section of this report.

115 For more on Syria and Iraq, please see the "Criminalization" section of this report.

116 "Israel Should Allow Adoption by Same-Sex Couples" *Human Rights Watch*. 20 July 2017.

117 Hagay Hacohen, "Ten Arrested During LGBT Tel Aviv Protest" *The Jerusalem Post*. 20 July 2017.

law to allow for same-sex marriage was the domain of the legislature, not the courts.[118]

Israeli rainbow families received more bad news in August 2018 when prime minister Netanyahu, caving to pressure from ultra-Orthodox parties, voted against a measure that would have granted single men and same-sex couples the same right to surrogacy as single women and heterosexual couples.[119] Following the vote, thousands of people went on strike and took to the streets in cities across Israel, and two persons were arrested in Jerusalem as demonstrators were assembling outside the residence of the prime minister.[120]

Following the demonstrations, the heads of 14 Israeli LGBT organizations released a list of demands from the government in order to ensure full equality and put an end to discrimination. The list included prevention of violence, legal recognition of same-sex families, and equality in health care, among others, and threatened continued protests if the demands were not met.[121]

Just a month prior, activists staged a demonstration blocking Tel Aviv's pride parade over what they see as the Israeli government exploiting their community to present itself as tolerant and progressive while also violating the human rights of neighbouring Palestinians. "While we're demonstrating here," said one of the protest organizers, "just a few kilometres away (Israeli soldiers) are shooting people exercising the right to protest."[122]

Palestinian human rights activists regularly accuse the Israeli government of "pink washing," or trying to portray the country as progressive by comparing it to "backwards" Palestinian and Muslim societies.[123] Indeed, aside from a pilot programme allowing bisexual and gay men to donate blood[124], Israel's track record on LGBTI issues over the previous two years tarnishes the country's claims of social liberalism and tolerance.

In neighbouring Jordan, the government remains hostile towards LGBT issues and has shown it is willing to censor free speech to erase its queer community. In August 2017, Jordanian MP Dima Tahboub filed a complaint against My.Kali, a publication covering human rights and LGBTQ issues. In her complaint to the Audiovisual Media Authority, Tahboub called the magazine "shawath", meaning "perverts" or "deviants."[125] Though media reported that her public war on the magazine had shut it down, magazine editors pointed out they had already been blocked for a year in the country.[126]

The following year, Jordanian authorities announced the cancellation of an event discussing the impact of art in the fight against stereotypes because My.Kali was involved. Still, the magazine's founder has vowed to fight on in the face of censorship, saying, "In a region where we're denied recognition, this platform isn't waiting for anyone to provide us that, but claiming it and giving a voice to many."[127]

In October 2018, the Lebanese authorities similarly attempted to stifle free speech by trying to shut down the NEDWA conference on gender and sexuality organized by the Arab Foundation of Freedom and Equality (AFE) for alleged "incitement to immorality." The conference was moved to a different location, but not before security officers took the details of all attendees from the hotel registry, worrying participants from oppressive countries like Egypt.[128]

The status of LGBTI people in the Middle East in recent years gives cause for cautious optimism, as small steps towards equality are being realized. Yet, at the same time, instances of discrimination and censorship from authorities remain commonplace. Despite attempts at erasure, whether they be through silencing the press, cancelling assemblies, or refusing to recognize the rights of queer families, LGBTI activists across the region remain resilient and undeterred.

118 Ilan Lior, "Israel's High Court Rejects Petition to Recognize Same-sex Marriages" *Haaretz*. 31 August 2017.
119 Stuart Winer, "Caving to ultra-Orthodox, Netanyahu about-faces on gay surrogacy rights" *Times of Israel*. 18 July 2018.
120 "LGBTQ Israelis hold mass strike, protests demanding equality" *+972 Magazine*. 22 July 2018.
121 "LGBT community lays out demands from government for 'full equality'" *Times of Israel*. 25 July 2018.
122 "LGBT Activists Block Tel Aviv Pride March With Pro-Palestinian Protest" *Palestine Chronicle*. 9 June 2018.
123 Nada Elia, "Don't try to stop us from denouncing Israel's pinkwashing" *Middle East Eye*. 6 April 2018.
124 Josh Jackman, "Israel to allow gay and bisexual men to donate blood – regardless of when they last had sex" *Pink News*. 11 January 2018.
125 Jason Lemon, "This Jordanian MP is leading a war against the LGBT community" *Step Feed*.1 August 2017.
126 "Open Letter to Jordanian MP Dima Tahboub" *My.Kali*. 1 August 2017.
127 Leyal Khalife, "Event in Jordan canceled because a queer publication was involved" *Step Feed*. 6 November 2018.
128 "Lebanon: Security Forces Try to CLose LGBT Conference" *Human Rights Watch*. 4 October 2018.

BRIEF COMMENTARY

Inside the Middle Eastern Closet

By Samar Shalhoub.

While conflicts of various sorts have engulfed the Middle East in recent decades, many individuals are battling daily wars with both themselves and society. As freedom of expression is still not a right in these countries, freedom of 'gender-expression' has not even become possible in this corner of the world.

Although there are many countries in which SOGI issues are seen as human rights issues, Middle Eastern countries stand their ground against this idea. Faith-based and political ideologies act as a block when it comes to understanding, learning and even speaking about issues related to sexual orientation, gender identity or expression. Consequently, laws and policies around LGBTI rights in many Middle Eastern countries are not yet open for negotiation or change. Criminalizing provisions raises the red flag in the eyes of the local LGBTI communities, most of whom are engaged in prolonged struggles on a daily basis. These laws allow government and security forces to punish anyone that defies the hetero-binary world most people are forced to live in.

One cannot help but agree with the proverb "An enemy is one whose story we have not heard". For the large majority of these individuals, they have had to jump very difficult hurdles to get to where they are today. Some having to endure being forcibly injected with testosterone treatments, another being tortured by his father's Pitbull dogs for being a "sissy" boy or raped by male relatives to prove she is not a lesbian.

What governments often ignore is that by marginalizing these individuals from society, they are not only causing them psychological damage, but are also negatively impacting on the long-term demographics of their countries. By promoting such culture of non-openness, this attitude is reflected onto the caregivers of LGBTI individuals who use the same punishment-based approach with their children. It all boils down to the idea that, whenever an individual is not accepted either by their government or their family, they are dislocated from their origins and roots, and eventually find themselves in the need to seek refuge.

Having any open public discussion about the subject at hand is really difficult and usually considered a taboo in most parts of the Middle East. Quite often, opinions are formulated by the press and the media, but these rare instances only offer a distorted insight into the problems LGBTI individuals are facing by being showcased as a joke or portrayed as mentally ill individuals, who need treatment in order to be readjusted into society.

While doors of freedom are being shut by numerous law and policy makers, a minority of youth and advocates in the Middle East region are proving to be open to change in this regard. These groups are paving the road to a tolerant and safer environment for LGBTI individuals. Such courageous human beings are working for a rising "Spring" to be possible in the Arab world; so that one day, LGBTI individuals will be able to walk on the street, as any other individual would, knowing that they are entitled to live in an environment that accepts and protect them and that, if they are abused, they can speak up without having to keep hiding, all their lives, inside a closet…

Decriminalising the Right to Love: Navtej Singh Johar v. Union of India

By Arvind Narrain.[1]

Introduction

The 6th of September 2018 marked a historic victory for a vibrant and vociferous LGBT movement in India, which for over seventeen years had been demanding the repeal of Section 377 of the Indian Penal Code. The Supreme Court in its decision in *Navtej Singh Johar v. Union of India*, struck down the 1860 law criminalising the lives of LGBT persons.

The decision itself built upon a history of struggle carried out relentlessly across the country which involved pride marches, protests, demonstrations as well as courageous individual acts of LGBT persons coming out in their workplaces, families as well as in the media. It is also important to remember those who contributed so much to the LGBT movement but are no more with us. Our collective efforts have opened out in ways small and big, a space in Indian society for respect and acceptance of sexual and gender diversity. The struggle of the last quarter century waged by thousands of people across the country has succeeded in creating a space of visibility and acceptance in Indian society around the loves and lives of the LGBT community. To recapitulate briefly on some of the legal high points in the struggle against a law of colonial vintage.

The legal backdrop

In 1950, the Indian Constitution came into force with the recognition that all persons are equal before the law. The significance of the constitutional framework was that it gave the community the language of universal human rights, which would apply to all persons without discrimination. The fundamental rights provisions relating to equality, non-discrimination, life and personal liberty would apply to all persons.

However, it took 68 years for the Court to first acknowledge that universal human rights applied to LGBT persons as well. It was only with the decision of Shah C.J. (Chief Justice) an Murlidhar J. (Justice) in *Naz Foundation v. NCT Delhi*[2] in 2009, that the Courts for the first time applied the constitutional framework to LGBT persons finding that Section 377 violated the rights to equality, non-discrimination, privacy and dignity. This remarkable judgment which was truly ahead of its time was appealed by over 15 groups spanning the religious spectrum led by Suresh Kumar Koushal. On 11 December 2013, the Supreme Court in *Suresh Kumar Koushal v. Naz Foundation*,[3] overruled the decision of the Delhi High Court and declared Section 377 constitutional. This decision was widely criticised, and the date of the judgment was appositely titled by Vikram Seth, 'a bad day for law and love'.[4]

However, in just a few months' time, the Supreme Court on 15 August 2014, *NALSA v. Union of India*,[5] found that transgender persons were entitled to the full panoply of constitutional rights protections. There was an implicit contradiction between *NALSA* and *Suresh Kumar Koushal* as the full protection of rights guaranteed to the transgender community stopped at the door of their intimate lives.

Perhaps the judgment of greatest significance was the decision of nine judges in *Puttawamy v. Union of India*[6] in which the Supreme Court found that the 'right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution'.

1 This write up is based on Arvind Narrain, *Right to Love: Navtej Singh Johar v. Union of India: A Transformative Constitution and the Rights of LGBT Persons* (Bangalore: National Printing Press, 2018).

2 160 Delhi Law Times, 277.

3 2013 (15) SCALE 55.

4 "S 377 Judgment 'A Stain' On SC: Vikram Seth", *Outlook*, 11 December 2013.

5 (2014) 5 SCC 438

6 (2017) 10 SCC 1.

In particular Chandrachud J. observed that evolution of fundamental rights protections in India, there are two 'discordant notes'. One is the infamous decision in *ADM Jabalpur v. Shivkant Shukla*[7] in 1976, in which the Supreme Court held that during the period when emergency subsisted, no person can move the Courts for enforcement of their fundamental rights. The other was *Suresh Kumar Koushal v. Naz Foundation* in 2013, in which the Court had in the course of upholding Section 377 referred to LGBT persons as a 'minuscule minority', had referred contemptuously to their 'so-called rights' and asserted that parliament should decide the matter. The opinion of the plurality authored by Chandrachud J. systematically dismantled the logic of *Koushal*. The Court in *Puttaswamy* strongly asserted that it was the responsibility of the Court to protect even so-called minuscule minorities ,that the rights of LGBT persons were not so-called rights but real rights dwelling in privacy and dignity and it was the role cast by the Constitution upon the Courts to protect the rights of unpopular minorities in the face of the opinion of legislative and popular majorities.

The decisions in *NALSA v. Union of India* and *Puttaswamy v. Union of India*, overruled key aspects of the ruling in *Suresh Kumar Koushal*. At the same time Indian society had changed dramatically with an increasingly vibrant LGBT movement, the release of films with openly LGBT characters and greater public discourse on issues of sexuality. Thus, both legal developments and social developments had made *Suresh Kumar Koushal* increasingly untenable.

There was a sea change in the social and public perception of LGBT lives which was perhaps best captured in the contrast between the empathy that the judges who heard *Navtej Singh Johar* showed towards LGBT persons compared to the cruel indifference of the Koushal Court. In *Suresh Kumar Koushal*, the judges were adamant that the law criminalised sexual acts and not identities. The judges had contemptuously observed that LGBT persons were anyway a "minuscule minority" whose rights they referred to dismissively as "so-called rights". The judges who heard *Navtej Singh Johar* were clear that Section 377 affected not only sexual acts but LGBT persons, that the right to privacy and dignity were real rights which applied to LGBT persons and that constitutional morality mandated that the rights of every minuscule minority were deserving of constitutional protection.

The judgment itself is an acknowledgment of the breadth and depth of the LGBT movement and references fact-finding reports, narratives of persecution, academic writing, poetry, literature, philosophy, law, and jurisprudence, weaving these diverse sources together to make an argument that Section 377 is violative of the promise of the Indian Constitution.

The other source the judgment relies on quite extensively is international law. In the range of comparative legal contexts cited, the Indian Supreme Courte demonstrates an openness and a willingness to learn from the jurisprudential traditions of the world. The Court cites the decriminalisation decisions from Belize, Trinidad, Kenya, USA, Fiji, Hong Kong, European Court of Human Rights as well as soft law standards such as the *Yogykarta Principles* and the *Yogyakarta Principles+10*.

Tonality of the judgment

What is most remarkable about the judgment is its tonality. It is not written in the register of cold logic, but with the emotional force of someone who is very moved by witnessing the unconscionable suffering inflicted on LGBT communities. The judges refer to the suffering of Oscar Wilde, Alan Turing, Khairati (the first reported decision on Section 377 which is of the arrest and torture of a transgender person singing in the streets), Nowshirwan (a Parsi shopkeeper arrested under Section 377), the poetry of Vikram Seth and the agony of his mother Leila Seth (Vikram Seth's mother).

Chandrachud J. characterises Section 377 as a "colonial legislation" which has made it criminal for "consenting adults for the same gender to find fulfillment in love". Chandrachud J. notes that, "the offence under Section 377 of the Penal Code – has continued to exist for nearly sixty-eight years after we gave ourselves a liberal constitution. Gays and Lesbians, Transgenders and Bisexuals continue to be denied a truly equal citizenship seven decades after independence". The effect of legislations such as Section 377 on LGBT lives led him to observe that "civilization has been brutal".

Apology

This extended meditation on the suffering imposed upon LGBT persons results in a judicial apology. An apology in essence has two dimensions, namely the acknowledgment of having done a wrong and the expression of a willingness to atone for it. *Navtej*

7 (1976) 2 SCC 521.

Singh Johar takes responsibility for having inflicted wrongs and seeks to atone for it. This sentiment is best captured by Malhotra J. who says, "History owes an apology to the members of this community and their families, for the delay in providing redressal for the ignominy and ostracism that they have suffered through the centuries".

This is important in the LGBT context, because the response to the unconscionable suffering which has been imposed upon LGBT persons is usually either indifference or pity. Rarely does one come across a judicial response which acknowledges complicity in the oppression and then promises atonement for having caused such suffering.

In *NALSA v. Union of India*, the Supreme Court noted the forms of suffering of the transgender community but did not go so far as to acknowledge its role in causing the suffering. This resulted in an important judgment but motivated by pity for the transgender community. However, in *Navtej Singh Johar* when the Supreme Court acknowledged the harm that its own historic indifference to the plight of the LGBT community had caused, it set the stage for a different kind of judgment.

The judgment broadened the ambit of its decision beyond individual petitioners to encompass the suffering of the entire LGBT community. The apology tendered in *Navtej Singh Johar* draws its strength and force from the other important apologies made for causing historic injustice; be it by the German nation to the Jews, by Canada to its indigenous inhabitants, by South African apartheid enforcers to those who suffered under their rule, and by the "regret" expressed by Britain for the spread of anti-sodomy laws in the Commonwealth.

However, an apology only has meaning if one wants to atone for the wrongdoing of the past. An apology is not only about the past but should really provide a pathway to the future. *Navtej Singh Johar* is rooted in a deep sense of responsibility for having been complicit in an egregious form of violation and then seeks to redress the wrong. As Chandrachud J. puts it, "It is difficult to right the wrongs of history. But we can certainly set the course for the future. That we can do by saying, as I propose to say in this case, that lesbians, gays, bisexuals and transgenders have a constitutional right to equal citizenship in all its manifestations".

This judgment can be seen as taking four different paths to "right the wrongs of history". Misra C.J. wrote for himself and Khanwilkar J. Justices Nariman, Chandrachud and Indu Malhotra wrote separate concurring opinions. All justices agreed with the conclusion that *Suresh Kumar Koushal* was overruled and that Section 377 should be struck down insofar as it criminalised consenting sex between adults. However, they took different routes to arrive at their conclusion and in the process highlighted different aspects of the Constitution and how it applied to the lives of LGBT persons.

Freedom to choose in the intimate sphere

The judges were unequivocal that Section 377 brutally intruded into a zone of intimate decision which is entitled to constitutional protection. As Chandrachud J. put it,

the choice of partner, the desire for personal intimacy and the yearning to find love and fulfillment in human relationships have a universal appeal and the state has no business to intrude into these personal matters. Nor can societal notions of heteronormativity regulate constitutional liberties based on sexual orientation.

The opinion of Misra J. invokes Johann Wolfgang von Goethe, who had said "I am what I am, so take me as I am" – to stress the right to develop one's individuality against the demands of social conformity. Particularly in the context of LGBT persons, where the struggle is often to assert one's personhood, in an isolating, ostracising environment in which heterosexuality is the norm, this constitutional protection given to intimate choices against the dictates of societal conformity cannot be overstated.

Expansive interpretation of privacy and dignity

The judges followed the ruling in *Puttaswamy v. Union of India* which gave an expansive interpretation of privacy as not just meaning the right to do what one wants in the privacy of one's home but also encompassing the right to make decisions about who one chooses to be intimate with. As J. Malhotra put it, "The right to privacy is not simply the 'right to be let alone' and has travelled far beyond the initial concept. It now incorporates the ideas of spatial privacy, and decisional privacy or privacy of choice".

Chandrachud J. addresses the concern that privacy is only about granting protection to acts behind closed doors, by stating that, "It must be acknowledged that members belonging to sexual minorities are often subjected to harassment in public spaces. The right to sexual privacy, founded on the right to autonomy of a free individual, must capture the right of persons of the community to navigate public places on their own terms, free from state interference".

The question of privacy of choice was closely linked to the question of dignity. The sphere of dignity

includes, 'the right to carry such function and activities as would constitute the meaningful expression of the human self'. As per Misra C.J. if the freedom to exercise one's choice of partner is curtailed it impacts an individual's sense of dignity. Since Section 377 chills one's ability to express oneself, especially in matters so integral to selfhood, it impinges upon the sense of dignity of LGBT persons.

Recognition of the "right to love"

In an evocative section, Chandrachud J. quotes Leila Seth C.J. to make the point that 'what makes life meaningful is love'. The right to love emerges as a key aspect of the judgment with Chandrachud J. recognizing that "the right to love and to find a partner, to find fulfilment in a same-sex relationship is essential to a society which believes in freedom under the constitutional order based on rights".

The right to love has elements of autonomy and dignity and the defence of the right to love is rooted in the notion of constitutional morality and the idea of a transformative constitution.

When we say 'constitutional morality' we mean that the values of the Constitution rooted in the protection of the dignity and autonomy of the individual should prevail over prejudice masquerading as social morality against LGBT persons. Further our Constitution mandates that society must transform in the direction of greater respect for autonomy, dignity and choice of the individual, including in matters of who one chooses to love.

Thus, the right to love has profound implications in a society in which love across lines of caste and religion are deeply transgressive. 'The right to love' has the potential to disturb rigid social moralities and help us to begin questioning the structures which keep in place the rigid hierarchies of Indian society be it on the lines of caste, religion, gender or sex. In fact, Chandrachud J. appositely called "the right to love not just a separate battle for LGBT individuals but a battle for us all".

Stereotypical perceptions of the LGBT person violate the right to equality and non-discrimination

The judges were also clear that the guarantee of equality at is heart was the guarantee of equal citizenship. The criminalizing ambit of Section 377 violated this guarantee as it 'singles out people, by their private choices and marks them as 'less than citizens -or less than human'.

The harm of Section 377 is not just that it prohibits a form of intimate and personal choice but that it encodes a stereotypical morality which has deep ranging social effects. As Chandrachud J. put it, Section 377, 'perpetuates a certain culture', based on 'homophobic attitudes' which make 'it impossible for victims to access justice'. Stereotypes about the LGBT community are widespread and pervasive, and it is these stereotypical perceptions which are responsible of the hatred, violence and discrimination which LGBT persons face on a day to day basis.

The fact that the Court ruled that one of the reasons for Section 377 to be ruled unconstitutional is that it fostered prejudices against LGBT persons, makes for an expansive reading of the anti-discrimination provision in Article 15 of the Constitution.

The analysis of the equality guarantee is very important as while, *Navtej Singh Johar* sees decriminalisation as an important assertion of 'full moral citizenship', it is the first step in the journey towards full equality of LGBT persons. As Chandrachud J. put it, "Decriminalisation is of course necessary to bury the ghosts of morality which flourished in a radically different age and time. But decriminalisation is a first step. The constitutional principles on which it is based have application to a broader range of entitlements".

Constitutional morality

This constitutional guarantee of the right to develop one's personhood and the right to equal citizenship is firmly anchored in the notion of constitutional morality as referenced by Justices Misra, Nariman and Chandrachud. The denial of the right to dignity of LGBT persons is incompatible with the morality of the Constitution. As Chandrachud J. put it, 'there is an unbridgeable divide between the moral values on which it [Section 377 is based] and the values of the Constitution'.

The idea of 'constitutional morality', the judges derives from Ambedkar. In the Constituent Assembly, Ambedkar had famously said that, 'constitutional morality is not a natural sentiment. It has to be cultivated. We must realise that our people have yet to learn it'. The fact that 'our people' have yet to imbibe constitutional morality leads Ambedkar to the conclusion that, "Democracy in India is only a top-dressing on an Indian soil, which is essentially undemocratic".

Constitutional morality is thus an ideal, rooted in the Constitution and Indian society must transform to bring social morality into conformity with the constitutional ideals of respect for the dignity and autonomy of all its citizens. The judiciary, the executive the legislature and citizens must all work towards achieving this ideal of 'constitutional morality'. The judgment in *Navtej Singh Johar* is on

step in this journey of bringing social morality in alignment with constitutional morality.

The idea that majority opinion should prevail over the right to dignity and liberty of the minority is explicitly rejected. As Nariman J. put it, 'it is not left to majoritarian governments to prescribe what shall be orthodox in matters concerning social morality'.

By explicitly setting out the Court as a guarantor of minority rights, regardless of the opinion of 'popular or legislative majorities', the Court signals its determination to defend the Constitution. In a time when lynchings have become the order of the day and government remains a mute spectator, the role that the Courts have to play in safeguarding the right to life of minorities of all stripes and hues cannot be overstated.

It should be noted that citizens too have a role to play in achieving a society based on constitutional morality. As Chandrachud J. put it, 'Constitutional morality requires that all the citizens need to understand and imbibe the broad values of the Constitution'. The role of the Constitution is to produce 'a social catharsis' and that 'the ability of a society to survive as a free society will depend upon whether constitutional values can prevail over the impulses of the time'.

Idea of transformative constitutionalism and the way ahead

The logic of *Navtej Singh Johar* is anchored within what both Misra J. and Chandrachud J. call 'a transformative constitution'. According to Misra, 'the purpose of having a constitution is to transform society' to 'embrace therein', the 'ideals of justice, liberty, equality and fraternity'. The mandate to transform society in allegiance to the constitution is a task vested in the state, judiciary and in the citizen.

The mandate of a 'transformative constitution' vested in the state, civil society and judiciary and as Misra C.J. put it, aims to make Indian society 'more pluralistic and inclusive'. The Indian Constitution is not a *status quoist* document, but rather in Chandrachud J.'s words, 'an essay in the acceptance of diversity' and 'founded on a vision of an inclusive society which accommodates plural ways of life'.

The fact that the Constitution must transform and democratise relations in society be it between dominant caste and oppressed caste, man and woman as well as majorities and minorities of every stripe and hue is the key to the Constitution. If the deeply hierarchical relationships in society are not challenged and transformed, democracy would be meaningless, and the Constitution would be mere words on paper. This insight flows from Ambedkar who (is cited by Chandrachud J.) famously said that

Without fraternity, liberty [and] equality could not become a natural course of things. It would require a constable to enforce them…Without fraternity, equality and liberty would will be no deeper than coats of paint. Unless one builds a society based on fraternal and egalitarian relations by combating the divisions of caste, religion, gender and sexuality, the Constitutional promise of equal citizenship will remain a mirage. The Constitution mandates that we collectively build such a society.

If the idea of a 'transformative constitution' is applied to the challenge to Section 377, then there is still a lot of work to be done post this remarkable judgement. If a law has taken root in social, cultural and a legal consciousness, the challenge of eliminating the prejudice which the law has fostered is still immense. One has to only think of the prejudice and violence still being faced at the hands of the state and society by the 'Denotified Tribes' even post the repeal of the colonial era Criminal Tribes Act in 1948.

It is this immense task of combatting the prejudicial attitudes which were encoded in Section 377 which has to continue. Nariman J. was cognisant of this challenge and mandated the Union of India to give 'wide publicity to the judgment' and conduct 'sensitisation and awareness training for government officials and in particular police officials in the light of observations contained in the judgement'.

While Nariman J. emphasises the role of the Union government in combating prejudice and stereotypes in accordance with the principles of the judgment, Chandrachud J. issues an important plea to civil society to continue to work to combat prejudices and realise full equality for LGBT persons in line with the mandate of a transformative Constitution.

Thus, as far as the LGBT movement in India is concerned there is important work ahead in popularising the judgment and using it as a tool to change societal prejudices against LGBT persons. In short, the task of converting societal prejudice into constitutional morality lies ahead. Strengthened immeasurably by *Navtej Singh Johar*, we can see that 'though the arc of the moral universe may be long, it bends towards justice'.

GLOBAL PERSPECTIVES

EUROPE

STATE-SPONSORED HOMOPHOBIA 2019



EUROPE

Europe – Increased Visibility, Populist Backlash and Multiple Divisions

By Manon Beury[1] and Yury Yoursky.[2]

As recorded on a country-by-country level in the annual reviews of ILGA-Europe, regarding sexual orientation, gender identity, gender expression, and sex characteristics (SOGIESC), public comprehension, legal progress and political reception are embedding in complex and varied ways across the continent. While presenting some of the important gains in 2017 and 2018 towards social and legal equality in the region, this essay focuses on the current pressures and lived realities where such progress is under strain, non-existent or backsliding through lack of implementation. In the current era of populist rhetoric across the region, foundational legal issues regarding the role of international law and transnational agreements, as well as the accountability of State institutions are being evoked.

Of significance to all 27 Member States of the European Union (EU), the European Court of Justice conferred legal certainty on what had proven a major stumbling block in the lives of same sex partners.[3] On 5 June 2018, the Court ruled that the term 'spouse', for the purpose of granting a right of residence to non-EU citizens, includes same sex spouses.[4] Bringing the European total to 16 States, in 2017, marriage equality was achieved in Malta,[5] Germany,[6] and Austria[7], and came into force in Finland (having being signed in February 2015).

However, as it is often the case, the widespread activist, media and political focus for marriage equality conceals other fights that are far from being won. As discussed in the second half of this essay, the denial of trans identities as 'ideology', LGBTI asylum seekers, children in LGBT families, and victims of violence based on SOGIESC, for example, rarely make their way to the European headlines and democratic debates. Yet, these individuals are amongst the most vulnerable to the backlashes that affect our communities.

Despite, and in part fed by, the legal developments that pertain to SOGIESC in some parts of Europe, homophobic and transphobic fears persist and are currently finding platform across most European States: family or traditional values, 'gender ideology', religious, or sovereignty arguments – much akin to what has been overtly (legally) happening in Russia since 2006, culminating in the 2013 federal anti-propaganda law.[8] Although the wider European region, through the Parliamentary Assembly of the Council of Europe (PACE) has

1 Manon Beury is a Teaching/Research Staff Member at the Grotius Centre for International Legal Studies, where she works as research assistant in Comparative Sexual Orientation Law. She graduated with an LL.M. in Public International Law from Leiden University and MAs in European Studies and International Relations from the Université Catholique de Louvain (Belgium). Her professional career started at the European External Action Service (EEAS) in Brussels. Later, she moved to The Hague and interned within a defence team at the International Criminal Tribunal for the former Yugoslavia (ICTY). Before joining Leiden University, she conducted research on human rights and international criminal law in diverse settings and contributed in several publications.

2 Yuri holds responsibility for activities that support and strengthen the enabling environments for HIV services for MSM and trans people in the EECA region by means of combating stigma and discrimination, promoting and protecting human rights and removing legal and policy barriers. Yuri is involved with HIV response in Ukraine from 2013 onward. As program director of "Gay Alliance Ukraine", Yuri was responsible for several projects related to protection of LGBT rights, and increasing public awareness of fundamental rights. In 2015, Yuri joined the organizing committee of the annual National Conference of LGBT-Movement and MSM-service of Ukraine.

3 Manon Beury, 'The CJEU's judgment in Coman: a small step for the recognition of same-sex couples underlying European divides over LGBT rights', *Strasbourg Observers*, 24 July 2018.

4 CJEU, Judgment of the Court (Grand Chamber) of 5 June 2018, *Relu Adrian Coman and Others v Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne*, Case C-673/16.

5 Marriage Act and other Laws (Amendment) of 2017, Act No. XXIII, 1 August 2017.

6 Gesetz zur Einführung des Rechts auf Eheschließung für Personen gleichen Geschlechts, 20 July 2017, Bundesgesetzblatt Jahrgang 2017 Teil I Nr. 52.

7 Verfassungsgerichtshof, G 258-259/2017-9, 4 December 2017.

8 Article 6.21 (Promotion of Non-Traditional Sexual Relations Among Minors) of Federal Law No 135-FZ, 2013.

strong and systemic discursive mechanisms that generally include SOGIESC in their scope, divisions on these issues crystallised more than ever across the European family during the past two years.

Looking East

Russia, Chechnya

The outrageous setback in human rights equality and protections in Russia in 2013, predicated on the idea that knowledge of sexual and gender diversity is harmful to children, is still emitting disturbance throughout the world. Specifically, the negative resonance across the whole Eastern Europe and Central Asia (EECA) region is increasingly evident in the dialogues and actions of States, where right-wing forces are gaining support from their compatriots and also from European and US interests.

Laws that ban what is colloquially-known as 'gay propaganda' - anti-propaganda or promotion laws - have not only significantly detracted from anti-discrimination agendas on the parliamentary levels in some of these countries,[9] but have also revealed overt governmental encouragement to officially harass individuals who identify as LGBTI. As a state of legal stasis appears across the EECA region regarding the harms of the propaganda laws and the vulnerabilities left exposed with lack of legal protection against discrimination, violence, stigmatization and discrimination continue unabated, and largely unaddressed.

Numerous individual cases, NGO documentation and media reportage have demonstrated that, based on their SOGIESC, people are routinely subjected to unpunished verbal and physical abuse in Russia. For example in August 2018, in the public media, the mayor of Novoulyanovsk, after withdrawing the approval for a gay pride action, explicitly indicated that he and his office will determinedly "protect the traditional family values" and they would be no gay parade in their city.[10]

That individuals on the basis of a specific characteristic – their sexual orientation, and indeed their gender expression - are being targeted and tortured in a Council of Europe sub-State, Chechnya, has been the primary object of international concern in the recent period. Certainly since the 2013 federal law, Chechnya has been on an anti-LGBT rampage, as recorded by Amnesty International and others who have been on the ground, who reveal that there is currently a 'gay purge' being exercised in Chechnya.[11] This purge has abducted, tortured, and killed dozens of men who are either perceived to be or actually gay, and none of those atrocities have been punished by the government.[12] Moreover, the government's overt ridicule and denial of these events provides an unofficial 'green light' for these abuse to continue with impunity.

Despite the intransigent position Russia has claimed since enacting the 2013 law, and a series of other laws that limit the establishment or funding of civil society organisations, there were two events of legal significance that happened during 2017-2018 which may help inform ongoing advocacy. The first of them is the ECHR ruling in *Alexeyev and Others v. Russia* the ECHR joined 51 applications from seven applicants into one case, which concerned the continuous refusal of Russia to approve LGBT persons to hold rallies. The court denied Russia's claim that public order trumped the plaintiff's Article 11 ECHR right to assembly, and the court also found Article 13 violations, regarding the denial of an effective remedy through the Russian courts' delays and frustration of process.[13] Therefore, the decision formally acknowledged the applicants' right to hold public rallies, and Russia's obligations under the European Convention on Human Rights. The second event was when 15 countries used the OSCE platform to file official questions to Russia, in which they demanded that Russia officially provide a statement on the Chechnya issue.[14] Russia did not in fact provide any credible response to the matter.

At present, the Russian State acts with violent impunity and concisely illustrates what state-sponsored homophobia looks like in the modern era. For those LGBTI citizens who are harassed or purged there is little justice available to them, and there is the ever-present chill-factor that the anyone could be targeted next. None of the branches of power in Russia have yet attempted to step in and protect these individuals' their human rights and freedoms that pertain to them

9 'Life in the Closet: The LGBT Community in Central Asia', *The Diplomat*, 29 January 2019.
10 'Local Authorities Withdraw Approval For Russia's First Gay-Pride Parade', RedioFreeEurope, 16 August 2018.
11 'Russia: One Year After 'Gay Purge' In Chechnya, Still No Justice For Victims', 4 April 2018.
12 Ibid.
13 *Alekseyev and Others v. Russia*, 2018, ECHR.
14 The Government of the UK, "Human Rights Violations And Abuses In Chechnya: Statement To The OSCE Permanent Council", 2018.

intrinsically as human beings. Concurrently, a highly homophobic public feels encouraged by such an official position to further discriminate and even harm people based on their SOGIESC, getting away unpunished.

The wider EECA region

In wider focus, the Eastern European and Central Asian region has been both restless and divided when it comes to protection from violence or discrimination based on sexual orientation, gender identity and gender expression. Currently, it does appear that aligning with the public policy (at least legislative) standards congruent with human rights principles that are inclusive of SOGIE, and as interpreted within the European Convention, has been positive motivator for changes in the EECA region. Moldova, Ukraine, and Georgia, whose socio-legislative contexts are focused on below, were successful in introducing amendments into their legislations that include SOGI and offer LGBTI individuals, at least, some level of official protection. However, these amendments continue to be challenged in these parliaments through petitions.

No other State within the EECA adopted any protective mechanisms relating to SOGIESC during 2017-2018: and it is evident that some of their legislative loopholes create motivation for governmental and public harassment around LGBT organizing, as discussed below.

Both Ukraine and Moldova successfully adopted specialized anti-discrimination clauses that have an open list of protected grounds; although SOGI is not among them, sexual orientation and gender identity are included as protected attributes in their Labour Codes.[15] Notably, only Georgia thus far has been able to expressly introduce SOGI into its anti-discrimination legislation and Criminal Code.[16] Ukraine and Moldova have not yet included SOGI in its administrative or criminal legislation. However, the Supreme Court of Ukraine interpreted that the open list of anti-discrimination grounds includes both sexual orientation and gender identity.[17] Nonetheless, drafts to introduce anti-propaganda legislation are periodically registered in all three of these countries. Communities that are set to protect the "traditional family values" and their children from being "confused" and exposed to "evil" often hold anti-propaganda actions and register respective petitions.

Despite the positive aspect of these legal amendments, there is still a long way to go for these three countries. Because of years of discrimination and stigma, LGBTI individuals and organisations are still reluctant to use the new defense mechanisms to file action against discriminators, and it may be challenging for the courts to evolve strong jurisprudence on some of these issues. Moldova and Ukraine's hate crime laws do not enumerate SOGI as an aggravating factor, and therefore SOGI remains a non-justiciable ground for appeal.

In terms of public assembly, Ukraine has been the most successful among the EECA countries: three 'Gay Pride' events were held in 2016-2018 with considerable protection and assistance from the police, and with no instances of successful counter-violence or counter-actions.[18] However, after the parade, some people were assaulted in the city, evidently based on animus to LGBTI people. The Gay Pride in Moldova in 2018 did not raise critical concerns either.[19] There are still many loopholes and much legislation missing that would create a sophisticated anti-homophobic protection and defense mechanism, but these are highly positive steps that lay the foundation for anti-discrimination in these countries.

Unfortunately, these three Sates are unusual across the range of EECA countries, none of which have been able to introduce SOGIE into their anti-discrimination, or other targeted, positive laws.[20] Lithuania, and Belarus contain provisions that to some degree mirror the 2013 Russian anti-propaganda law, in the sense that they are adopted to "protect" the "traditional family values" and the children from moral degradation.[21] No administrative or criminal offences have been adopted to supplement these laws. Parliaments in Kyrgyzstan, Kazakhstan, Poland, Romania, Tajikistan, Azerbaijan, and Armenia were not successful in passing anti-propaganda laws as of yet, although petitions continue to be made.[22]

15 Fedorovych, I and Yoursky, Y., 2018, *Legislative Analysis Related to LGBTQ Rights and HIV in 11 CEECA Countries*, ECOM.
16 *Ibid.*
17 *Ibid.*
18 *Ibid.*
19 *Ibid.*
20 *Ibid.*
21 IGLYO, *Expression Abridged: A Legal Analysis Of Anti-LGBT Propaganda Laws* (2018).
22 Ibid; Fedorovych, I and Yoursky, Y., 2018, *Legislative Analysis Related to LGBTQ Rights and HIV in 11 CEECA Countries*, ECOM.

Central Europe has proven itself uninspiring with regard to approaching anti-discrimination legislation. Where advocates draw attention to the issues regarding discrimination regarding health, privacy, access to justice amongst many other issues, they can face challenging circumstances. Armenia, despite an active LGBTI community, has interfered with NGO Pink Armenia's attempts to raise the public awareness of the toxic discrimination that is ongoing in the country: its posters were removed from across Yerevan city without any explanations; similarly, two LGBT movies were removed from the Golden Apricot Film Festival programme without any commentary on the matter.[23]

During the period under review, Azerbaijan's law enforcement conducted countless raids on LGBTI premises and individuals, arrested them, performed forced medical examinations and even blackmailed them, justifying the actions under the "necessity to protect public order" clause.[24] Although Georgia adopted SOGI as an enumerated status in its 2014 Law of Georgia on the Elimination of All Forms of Discrimination, five LGBTI persons were assaulted in Batumi and received no effective support from the police. Further, the court that convicted the murderer of transgender victim Zizi Chekalidze did not consider transphobia as an aggravating circumstance while delivering the judgment.[25]

In Central Asia, Kyrgyzstan's parliament adopted in its first reading of its anti-discrimination draft legislation which is inclusive of SOGI: this draft has not as yet been approved or adopted as law, so its destiny is still under scrutiny.

In Macedonia, an anti-discrimination bill is also under parliamentary consideration, which may be inclusive of SOGI: observers are cautiously hopeful as Macedonia successfully ratified the Istanbul Convention,[26] and has also committed to removing the homo-and transphobic wording from the educational curricula.[27]

Looking West

Within the European Union it has become abundantly evident that entrenched fractures divide sections of the populations along ideological, and increasingly politicized, lines. Growing nationalism and defiance towards EU institutions, which culminated in Brexit but is palpable everywhere, coexists in symbiosis with conservative and religious forces deploying various strategies to counter social justice progress in gender equality, sexual and reproductive health and rights, SOGIESC inclusion, migration, trade unions, and various other traditionally 'progressive' causes. These retroactive forces are indeed frequently met with determined opposition to maintain and protect the gains made in equality and human rights-based legislation, but the fact that attempts are being made to erode foundational principles continues to sound warning bells.

In September 2016 in Finland, a petition to repeal same-sex marriage illustrated that a roll-back on acquired rights is always a possibility (it failed and the 2015 marriage bill entered into force in 2017 as scheduled).[28] A common form of backlash that has reoccurred throughout Europe is the rejection of non-traditional forms of families encouraged by religious communities. For example, in the 2018 Romanian constitutional referendum concerning the definition of marriage, which inflamed rather polarized views, a boycott strategy led by human rights activists in the country proved successful, and the referendum did not get enough votes to be valid.

The recognition of systemic violation of the human rights of trans and intersex people gained ground as more European States adopted legal gender recognition in 2017 and 2018 (see 2018 TGEU Trans Rights Europe Map & Index,[29] and ILGA-Europe Annual Review 2018).[30] In the landmark case *A.P., Garçon and Nicot v. France*,[31] the European Court of Human Rights ruled that the sterilisation requirement for eligibility procedure violated trans people's right to private life. Non-consensual surgeries on intersex children were outlawed in

23 *Annual Review Of The Human Rights Situation Of Lesbian, Gay, Bisexual, Trans And Intersex People In Europe*, ILGA Europe, 2018.

24 *Ibid.*

25 *Ibid.*

26 *Istanbul Convention Action against violence against women and domestic violence: The Convention in brief*, Council of Europe website.

27 *Ibid.*

28 Valiokunnan mietintö, LaVM 1/2017 vp-KAA 2/2016 vp, 15 February 2017.

29 TGEU, Trans Rights Europe Map & Index, 2018.

30 ILGA-Europe, *Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe 2018*, May 2018.

31 *A.P., Garçon and Nicot v. France*, Nos. 79885/12, 52471/13 and 52596/13, 6 April 2017.

Portugal,[32] and the issues relating to such practices were publicly debated at national and European levels bringing more public awareness and education to the issue (see ILGA-Europe Annual Review 2018).[33]

However, the various important discussions on gender identity, gender expression and sex characteristics in particular that are emerging have shed light on deeply polarised opinions, revealing a variety of conceptual fault-lines within the public mind regarding the hierarchy of rights. As SOGIESC issues gain greater visibility and granularity within European media and pop culture, a consequent effect is the exposure faced by our communities and their allies.

The populist discourse on what has been framed as 'gender ideology' which has spread worldwide in this period serves as an illustration on how arguments picked in the queer rhetoric may be distorted to work against our causes.[34] As illustrated in the section on Russia in this essay, the issue goes far beyond gender itself, implicating any variations in sexual orientation from a perceived 'norm', under a rubric of public morality and particularly the protection of minors from such 'disturbing' or 'harmful' influences. These anxieties have taken concrete form in 2017 and 2018, such as the Hungarian ban on gender studies,[35] and Italian schools blacklisted by 'pro-family' conservative groups in Bologna.[36] Hopefully, State initiatives which are positive, such as the Welsh government's decision to make Relationship and Sexuality Education part of the curriculum from 2022,[37] will act as a coherent force to redirect the conversations away from the polarities this 'gender ideology' thinking imposes.

One year after the European Bisexual Conference (EuroBiCon) materialised,[38] the first European Lesbian Conference took place in Vienna in 2017, with the express aim to focus on lesbians' needs, struggles and oppression, to empower, increase visibility and broaden networks.[39] As an organizer of the 2nd Lesbian Conference (to be held in Vienna in April 2019) remarks: "The results of many European countries' elections have, in the last few months, brought to power individuals and movements deeply dangerous for LGBTI women, which means specifically hostile to lesbians".[40]

As ILGA-Europe reported in 2018, there is a critical lack of external funding available to organisations working with SOGIESC issues,[41] and further, financial pressures can unduly influence the agendas pursued, at times at the expense of those most precarious in our communities. The Fundamental Right Agency of the European Union noted that shrinking space for civil society affects LGBTI people particularly.[42] This trend is striking in some Eastern European countries and in Turkey,[43] where in 2018 Istanbul Pride and Pride events were banned for the fourth year in a row. These breaches of the freedoms of assembly and association, justified by the government on safety grounds, coincides with a crackdown against Turkish NGOs and the detention of leading SOGIESC rights activists with 'terror' propaganda charges, such as Ali Erol who was released in February 2018.[44]

The rise of various forms of violence based on actual or perceived SOGIESC is an undeniable reality,[45] confirmed in anecdotal data from across the continent. However, there is still a lack of even, quantifiable data across the European region, and the mechanisms to collect such information. Even

32 Lei 75/XIII/2 (GOV), 11 April 2018.

33 ILGA-Europe, *Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe 2018*, May 2018.

34 Sonia Corrêa, 'Gender Ideology: tracking its origins and meanings in current gender politics',*Engenderings LSE Blog*, November 2017.

35 'Hungary to stop financing gender studies courses: PM aide', Reuters, 14 August 2018.

36 Silvia Bignami, 'Il Family day e Forza Italia schedano le scuole di Bologna: "Insegnano il gender"', La Republica, 15 September 2017.

37 'Kirsty Williams announces focus on healthy relationships in major reforms to 'Relationships and Sexuality' education', Welsh Government website, 22 May 2018.

38 EuroBiCon (website).

39 European Lesbian* Conference Report, December 2017.

40 European Lesbian* Conference (website).

41 'New ILGA-Europe report reveals reality of funding for LGBTI activism in Europe and Central Asia', ILGA-Europe website, 30 April 2018.

42 European Union Fundamental Rights Agency, *Challenges facing civil society organisations working on human rights in the EU*, January 2018.

43 'Ankara ban on LGBTI events continues as Turkish courts reject NGO appeals', *ILGA-Europe website*, 23 February 2018,

44 *European Parliament resolution of 8 February 2018 on the current human rights situation in Turkey*, P8_TA(2018)0040,

45 Nielz Muižnieks, 'The long march against homophobia and transphobia', The Commissioner's Human Rights Comment, 31 August 2017, Council of Europe (website).

when laws protecting LGBTI people from hate crimes exist, questions and variance around their implementation and documentation remain: linked to the capacity and willingness of police forces to recognize them in the first place, and courts to adjudicate thresholds.

Efforts to recognise hate speech or speech that aims to incite violence against persons based on a particular characteristic, particularly when defended under a freedom of expression rubric, were made in Sweden in 2018,[46] and later in that year in Switzerland.[47] Relatedly, sustained activity that is designed to change a person's sexual orientation or their gender identity – generally referred to a 'conversion therapy' – is slowly gaining recognition and recognition of where vulnerability lies is emerging. Malta's law in this regard sets the bar beyond just professionals carrying out this abusive 'treatment', but also it applies to anyone performing on a minor. A 2018 bill in Ireland, which has received positive responses from the houses of parliament, if passed would outlaw anyone from practicing such 'therapy" on anyone.[48]

LGBTI asylum seekers, most particularly women,[49] are reportedly exposed to violence in European governments' facilities and camps.[50] In the context of uneven and enduring "crisis" responses to European migration and asylum, and the absence of official statistics on asylum claims based on SOGIESC across the region, LGBTI individuals are often left largely unaided when making their claims. Targeted as 'other' within populist rhetoric for either or both foreigner or SOGI status, and to address the fear of false claims and the 'floodgate' issue, the European Union,[51] civil society organisations,[52] and ILGA-Europe,[53] have developed guidelines and common standards in order to ensure that the specific needs and rights of LGBTI asylum seekers are respected by national committees performing asylum assessments. In 2018, the matter reached the European Court of Justice,[54] which ruled to ban pychological tests for assessing asylum claims based on sexual orientation.

Family law is an area of ongoing, albeit slow, progress in which some positive developments are taking place in Europe, notably with regard to the status and well-being of children in LGBT families. In 2017, the Italian courts recognized a gay couple's foreign adoption,[55] and in another case the adoption of a child born by surrogacy by the partner of the biological father.[56] In France, the High Court[57] reached a parallel decision in a surrogacy case and, in 2018, the French National Advisory Committee on Ethics recommended to extend medically assisted procreation to single women and lesbian couples.[58] In 2018, Malta allowed same sex couples to access *in vitro* fertilization, and its marriage equality law assures that same-sex couples enjoy all the rights associated with marriage, including joint adoption.[59] Automatic co-parent recognition for female same-sex couples following fertility treatment was voted for in Finland.[60]

Within the ongoing progress made in legislative provisions towards equality in Europe, a certain shadow regarding the buoyancy or solidity of such progress has emerged. In many cases, a step forward encounters a backlash and raises debates on first principles that activists thought settled long ago (and indeed may have been in law). This is

46 'Greater legal protection for trans people on the way in Sweden', ILGA-Europe website, 18 May 2018 (updated 14 November 2018).

47 'Swiss Senate votes to improve protection on grounds of sexual orientation but not gender identity', ILGA-Europe website, 29 November 2018.

48 *Prohibition of conversion therapy bill* (2018).

49 Human Rights Watch, 'Greece: Dire Risks for Women Asylum Seekers', 15 December 2017.

50 Kate Lyons, 'Abused and ignored: LGBTI asylum seekers let down by the system', The Guardian, 4 March 2018.

51 European Union Fundamental Rights Agency, *Current migration situation in the EU: Lesbian, gay, bisexual, transgender and intersex asylum seekers*, March 2017.

52 International Commission of Jurists, *Refugee Status Claims Based on Sexual Orientation and Gender Identity: A Practitioners' Guide*, Practitioners' Guide No. 11, February 2016.

53 Sabine Jansen & Jol Le Droff, Good Practices Related to LGBTI Asylum Applicants in Europe, ILGA-Europe, May 2014.

54 CJEU, Judgment of the Court (Third Chamber) of 25 January 2018, *F v. Bevándorlási és Állampolgársági Hivatal*, Case C-473/16,

55 Corte di Appello di Trento, Ordinanza, 23 February 2017.

56 Tribunale per i minorenni di Firenze, sezione adozioni, *Decreto di riconoscimento di sentenza di adozione straniera*, 7 March 2017.

57 Cour de cassation, Premire chambre civile, arrêt no. 824, 5 July 2017.

58 Comit Consultatif National d'thique, *Contribution du Comité Consultatif National d'Éthique à la révision de la loi de bioéthique 2018-2019, Avis 129*, 25 September 2018, pp . 120-122.

59 Act No. XXIV of 2018 to amend the Embryo Protection Act, 1 June 2018.

60 'Congratulations Finland!', *ILGA-Europe website*, 28 February 2018.

particularly striking in countries where same-sex marriage was voted, but related rights such as second-parent adoption are still being debated and vividly opposed today. Finland, in this regard has been instructive: it took almost three years for marriage equality to enter into force while civil service and inter-related legal provisions were being prepared for. In Ireland, four years after marriage equality, donor-assisted lesbian co-parents are still denied both names on their child's birth certificate.[61]

The authority and influence of the major European institutions on human rights across the region is clearly extremely varied. Transnational issues - free movement of individuals and families, granting asylum to LGBTI individuals and SOGIESC human rights defenders, the recognition of children born by medically assisted procreation or surrogacy, funding SOGIESC rights organisations and many other issues remain unresolved. The Russian-type 'sovereignty' approach demonstrates virtual impunity for gross violation and blanket oppression. The economic tie-in aligned to the adoption of anti-discrimination legislation that Ukraine, Moldova, and Georgia demonstrate, may indicate a certain positive trend, but such an approach also lends fuel to populist claims of 'foreign' imposition. The work of presenting LGBTIQ lives in each State belongs to the activists on the ground to speak with their own populations, institutions of State, allies, policy makers and media, to demonstrate that diversities SOGIESC status, and inclusion in policy, is neither alien nor immoral.

CHECHNYA

Banishing Devils - Chechen Authorities against Laws of Life?

By Ekaterina Petrova.[62]

The complex and challenging situation with human rights in the North Caucasus region has been attracting the attention of international organisations for some time, particularly in relation to the stark news of brutality directed against LGBT people in Chechnya in 2017 and 2018.

There are seven republics in the region: Adygeya, Ingushetia, Dagestan, Kabardino-Balkariya, Karachai-Cherkesia, North Ossetia, Chechnya, and within each of them varying levels of nationalistic and religious influences. In recent years, the political situation in Russia, and particularly Chechnya, has empowered conservative and fundamentalist forces across all aspects of society.

A 2016 report (draft resolution) of the Parliamentary Assembly of the Council of Europe[63] alerted the Council of Europe that despite the Russian delegation's acceptance and agreement to the 2010 Resolution 1738,[64] impediments and delays in implementation continue, effectively denying "human rights and rule of law" in the region. Specifically, terrorism, impunity of officials, access to justice, non-performance on ECHR decisions, and the vulnerability of human rights NGOs were identified. The Rapporteur also noted that his attempts to visit the region had been actively frustrated by Russian authorities.

The two reports quoted above (2010 and 2016) remark on the implementation and effect of the strict dress code in place in Chechnya, noting threats and violence towards women who break it. A joint shadow report discussed by the UN Committee on the Elimination of Discrimination

61 Stephen Rogers, 'New bill will allocate same-sex couples to use 'parent' on birth certificates', *Irish Examiner*, 11 January 2019.

62 Ekaterina Petrova is a feminist and lesbian activist from Saint-Petersburg, Russia. She worked with Chechen refugees who were victims of the anti-LGBT campaign in the republic.

63 Parliamentary Assembly of the Council of Europe (Committee on Legal Affairs and Human Rights), *Human rights in the North Caucasus: what follow-up to Resolution 1738 (2010)?* (2016).

64 Parliamentary Assembly of the Council of Europe, *Resolution 1738 (2010): Legal remedies for human rights violations in the North Caucasus Region*, 22 June 2010.

against Women (CEDAW) in 2015, identified setting of religious rules for women and girls dress-codes, marriage and family discrimination, gender-based violence —including marriage of underage girls, female circumcision— and so-called "honor killings" as issues of major concern.[65] Also in 2015, research entitled "Life and the Status of Women in the North Caucasus", based on interviews in Chechnya, Ingushetiya, Cabardino-Balkariya and Dagestan, illustrated the lived effects of family budget pressure, limitation of movements because of traditions, and domestic violence.[66]

Prior to early 2017, very little was known or written about LGBT people's lives in North Caucasus region, including by Russian SOGI-related groups, although there had been some reports of transgender individuals fleeing family and police violence and death threats. At the end of March 2017 information about extensive torture and killings of gay men in Chechnya became known.[67] However, it was not until the end of 2017 when the first reports of detentions of lesbian and bisexual women and girls became known, amidst fears that police had lists of women's names, and also their social media identities.

Other than Adygeya and North Ossetia, the predominant religion in other republics is interpretative of Islam. In addition to the Sharia law, the influence of traditional 'adat' tribal code of conduct and conflict resolution between individuals, communities, and tribes remains strong. Across the Northern Caucasus, the 'adat' held that the 'Teip' was the chief reference for loyalty, honour, shame and collective responsibility.[68] 'Adat' set norms according to traditional standards, such as 'honour killings', blood feuds, bride abductions and the persecution and killing of LGBT people a 'washing away the shame' that the victims have brought to their 'tribe'.

In modern Chechnya the concept of the 'tribe' is deeply ingrained: regarding the 'shame' generated by a family member being known or perceived to be gay, lesbian, bisexual or transgender, both authorities and local society apply pressure on family to punish them. State authorities have also denied the existence of LGBT people by saying 'such' people would be killed very fast, and the people claiming refugee status must not be Chechen.[69] The rhetoric of national moral superiority pervading the Chechen political space, helps explain why political and spiritual leaders deny the very existence of sexual or gender diversity in Chechnya.

It is a further twist that the people who commit 'honour killings', as reported, often consider themselves as "victims of the situation", forced to carry out the act: they love their family member, but they feel they have no other choice when the person "crossed the line" and "become a gay, lesbian, bisexual and/or transgender". To allow the entire family live "properly"', the family feels it must purge or "wash away the shame" to allow the family resume normality. There are recorded cases of family members trying to help their LGBT relatives escape, at their own personal risk.

Currently, Chechnya is presenting as the most dangerous for LGBT-identified or LGBT-perceived people among the Caucasian republics. The legacies of two recent wars have resulted in widespread weapon/gun-ownership high levels of PTSD (post-traumatic stress disorder) amongst the general public, and high levels and aptitude for violence. Further, during and after the wars, socially and politically radical interpretations of Islam came into the republic with Middle East missionaries.[70]

What has been described here is a situation whereby a person's sexual orientation or gender identity is not considered a private matter but has implications for their families and wider community. The social institution of the family in the North Caucasus region includes the extended family and the "shame" generated by deviations may result in the family's exclusion from social communications and events, and where people will avoid marrying members of this family. "Honour killing" help to repair a family's reputation and are generally carried out by the male members of families. However, "honour killings" pose significant challenges to later investigation: they may have been organised as an accident, a disappearance or a poisoning. Relatives and neighbours rarely voluntarily come forward as witnesses. There are particular silences around "honour killings" of LGBT

65 Russian Justice Initiative (RJI) & Chechnya Advocacy Network, *Submission concerning the Russian Federation's Compliance with the CEDAW Convention in the North Caucasus Region* (2015).

66 "Life and the Status of Women in the North Caucasus. Report summary on survey by Irina Kosterina", *Heinrich Böll Stiftung*, 20 August 2015.

67 "Убийство чести [Honor Killings]", *Novaya Gazeta*, 3 April 2017.

68 Egor Lazarev, *Laws in Conflict: Legacies of War and Legal Pluralism in Chechnya* (2018).

69 "Gay Chechens flee threats, beatings and exorcism", *BBC World*, 6 April 2018.

70 Olga Breininger. «The 'Chechen Syndrome' in Contemporary Russian Literature» (paper delivered in November 2016 at the ASEEES annual convention).

people. It is understood that the executor thinks that his efforts will be rewarded after his death.

Before a killing, relatives reportedly often try to change their LGBT family member through various forms of violence: beatings, placement under house arrest for months or years, and imposed isolation through removal of all communication devices. A version of "conversion therapy" is also prevalent — the "djinn expulsion"— a form of exorcism found commonly in society and in some mosques. The procedure variously includes physical restraint, and high-volume reading of the Koran through screaming in the ears of the person or headphones. The exorcist speaks to the bad spirit or "djinn", asking about its location in the body, the way it entered into a person, about its desires. Then the exorcist persuades "djinn" to escape the body, through threatening him. To make the 'djinn' exit the body will often require physical pressure of the body part where the "djinn" allegedly resides. In some mosques, it is the mullah who decides whether a "djinn" exists, but if none is detected the outcome may be worse because this may be interpreted that the person has consciously chosen their non-traditional sexual behaviour, and therefore seeks and deserves death.

International and Russian human rights activists report that the situation in the North Caucasus, especially Chechnya, is critical. But it must be noted that the conservative part of North Caucasus society does not agree: they are disgusted by several new trends: unfiltered access to information has increased, women have become more empowered and independent (increasing numbers of women are initiating divorces and refusing to marry a second time), and a social conversation about the existence of queer people has even begun. SOGI issues are a largely marginal topic for the North Caucasus, but these issues have quietly begun to be spoken out loud. Like so many other parts of the world until a problem is stated aloud, it 'does not exist'.

GLOBAL PERSPECTIVES

OCEANIA

STATE-SPONSORED HOMOPHOBIA 2019



OCEANIA

Ebb and Flow: Victories and Resistance in Oceania

By ILGA Oceania.

The socio-legal situation of LGBT people in Oceania has yielded mixed results: some incredible gains and progress, but also heart-breaking pushbacks because of the misinformation and campaigns wielded by the powerful Christian right or the religious right and their extremist conservative agenda and policies.

Though consensual same-sex sexual acts remain criminalized in just under half of the countries in the region, grassroots LGBTIQ groups and advocates are becoming increasingly visible across the region and are vocally lobbying their governments and the international community to recognise and protect their rights. And despite resistance from conservative groups and, at times, their own governments, their efforts have yielded a number of results.

Australia

Aboriginal Australian Sistergirls & Brotherboys

There has been a lot of public and media attention given to Aboriginal LGBTIQ populations in Australia highlighting the dire situation of Black Rainbow / Aboriginal Rainbow lack of access to resources specifically in the fight for more awareness to be raised on Aboriginal LGBTIQ high suicide rates. Miss Ellaneous, an Aboriginal Australian Sistergirl entertainer won the prestigious Artist of the Year Award at the Australian LGBTI Awards 2019. In her speech, she highlighted the plight of Aboriginal Sistergirls and Brotherboys.

In Ella's words: "I am honoured to have been recognised and acknowledged for my artistry and I'm lucky to be working in a career that not only creates change but allows me to pursue my passion of creating much needed visibility to my black and culturally diverse community. We currently have an epidemic of suicide in this country which is twice the national average for my Aboriginal and Torres Strait Islander community. And although not documented, we know that a large proportion of this is within our BrotherBoys, SisterGirls & Rainbow community".

Following up on research and data, Andy Archipelago has started to archive the Aboriginal Rainbow as part of his thesis in indigenous gender and sexual diversities.[1]

Marriage equality referendum

The postal survey on marriage equality in Australia heavily dominated news in the region for much of the latter part of 2017, ending in a 61% 'yes' vote and leading to the legalization of same-sex marriage shortly thereafter.

The battle for marriage equality in Australia was fraught with the issue of religious exemptions, and though the final bill contained some exemptions, they weren't as broad as those that exist in areas like education and work. Australia's very drawn-out, very visible debate on the issue of marriage equality put many religious and conservative groups across the region at unease, leading to re-entrenchment at the prospect of marriage equality arriving on their shores.

Despite that, at the end of 2017, Australia followed in New Zealand's footsteps and became the second country in the region to legalise same-sex marriage, and marriage equality became the law of the land in Australia with the passage of the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* three weeks after the country voted to legalise the practice in a nationwide postal survey. Though the results of the postal survey were positive, many LGBTIQ organizations came out against the non-binding survey.[2] As explained above,[3] from a human rights perspective, the

1 "Archiving The Aboriginal Rainbow", *Aboriginal LGBTIQASGBB Archive And Portal* (website).

2 Jordan Hirst, "Rule Out New 'Postal Plebiscite', Marriage Equality Campaigners Say", *QNews Magazine*. March 2017.

3 Read more about the implications of referendums that put our rights to a vote in the essay written by Elena Brodeala and Vlad Viski in the first section of this report.

majority voting on the rights of a minority is inherently problematic and puts LGBTIQ communities at risk of and through acts of hate speech, discrimination, and violence.[4]

And indeed, in the lead-up to the postal survey, marriage equality opponents released offensive television[5] and newspaper campaigns,[6] while the incidence of homophobic vandalism and attacks increased across the country.[7]

Pardons, apologies and decriminalisation

In 1997, Tasmania became the last Australian state to decriminalise sexual activity between consenting males. Twenty years later, the Tasmanian government issued an apology to those whose lives were impacted by the discriminatory law,[8] and a year later passed a bill allowing them to apply to have convictions for same-sex sexual acts expunged from their criminal records.[9]

Similar bills soon followed in the states of Queensland[10] and Western Australia,[11] and now there are calls for the government of Australia to deliver a *national* apology to former service members who were dishonourably discharged on the basis of their sexual orientation.[12]

Advocacy and activism

The Federal Government's Department of Foreign Affairs and Trade (DFAT) has been organising meetings in 2018 with the view of forming a consortium of human rights NGOs in Australia to share, network and collaborate on major issues affecting the lives of LGBTIQ in Australia, and this planning and massaging culminated in its DFAT NGO Forum in Canberra in February 2018 which included NGOs such as Equality Australia, Edge Effect, Planet Ally, Kaleidescope Trust Australia amongst many that attended.[13]

Protections from discrimination

While federal non-discrimination law in Australia has been grappling with the question of religious exemptions, the past two years have seen significant progress in discrimination protections at the state level.

During this time, Queensland became the second state to remove the so-called "gay panic" defence from the state's Criminal Code. The defence had been successfully used by two men who had murdered a man over an unwanted sexual advance in 2008; both men were granted shortened reduced sentences.[14]

In June of 2018, the Australian state of New South Wales passed a bill protecting LGBTIQ people from vilification, making it a crime to threaten or incite violence against people on the basis of a protected characteristic. Activist groups pushed for the legislation as a response to some of the nasty campaign ads directed at the LGBTIQ community during the run-up to the postal survey on marriage equality.[15]

Rainbow families in South Australia had cause for celebration when the state government passed bills allowing equal access to assisted reproductive treatment and unpaid surrogacy.[16] Similarly, Northern Territory passed a bill granting the legal right to adopt children to de facto and same-sex couples.[17]

Hate incidents & discrimination

A review of 88 suspicious deaths that took place New South Wales between 1976 and 2000

4 Rodney Croome, "Why a referendum on gay marriage is a bad idea" *The Sydney Morning Herald*. 29 April 2013.

5 Michael Koziol, "Shorten blames Turnbull for 'total rubbish' TV ad from same-sex marriage opponents" *The Sydney Morning Herald*. 30 August 2017.

6 Paul Karp, "Homophobic anti-marriage equality material surfaces in postal survey campaign", *The Guardian*. 21 August 2017.

7 Melissa Davey, "Rocks thrown through windows amid spate of homophobic attacks", *The Guardian*. 26 September 2017; Dr Saan Ecker, Ebony Bennett, "Preliminary results of the Coping with marriage equality debate survey" *The Australia Institute*. December 2017.

8 Lane Sainty, "Tasmania Has Apologised To People Convicted Of Historical Gay Sex Offences", *BuzzFeed News*. 12 April 2017.

9 Murray Silby, "Breakthrough as Tasmania expunges historical homosexual convictions" *SBS News*. 9 April 2018.

10 Jesse Jones, "Queensland apologises for gay sex convictions" *Star Observer*. 11 May 2017.

11 "Historical Homosexual Convictions Expungement Bill passes lower house" *Out in Perth*. 23 February 2018.

12 Melissa Davey, "'Injustice was official': call for national apology to gay former military personnel"" *The Guardian*. 25 September 2018.

13 "Australia's DFAT NGO Forum", *Australian Department of Foreign Affairs and Trade (Website)*, 8 February 2018.

14 "Queensland abolishes 'gay panic' as criminal defence for murder", *BBC News*. 21 March 2017.

15 Jessie Jones, "New Vilification Laws in NSW to Protect All LGBTIQ People" *Star Observer*. 22 June 2018.

16 Matthew Wade, "South Australia Gives Same-Sex Couples Access to IVF and Unpaid Surrogacy", *Star Observer*. 1 March 2017.

17 Leigh Andrew Hill, "Northern Territory allows same-gender couples to adopt", *Out in Perth*. 14 March 2018.

revealed that almost a third were suspected or confirmed to be driven by gay-hate bias.[18]

After receiving pressure from advocates and victim's families, the government of NSW decided to open an inquiry into the hate crimes, looking specifically at how police handled the cases and why the state's justice system may have failed to protect victims or provide justice for their families.

Many feel that the NSW police force, which has a documented history of homophobia, failed to properly respond to and investigate the murders.[19]

Legal progress on gender identity issues

In June 2017, the United Nations Human Rights Committee issued a decision stating that Australian laws barring married trans people from changing the sex on their birth certificate are in violation of international human rights law. In six states, married persons wishing to change their gender on legal documents had to first divorce.[20]

When marriage equality came to Australia later that year, the Bill included a provision outlawing 'forced divorce' provisions and giving states twelve months to amend their legislation.[21] This, coupled with pressure from LGBTIQ and other advocacy groups, led to the provision being scrapped soon after in Victoria[22], New South Wales[23], Queensland[24], and Northern Territory.[25] Though Western Australia missed the deadline to amend their laws, they did so in February of this year, leaving only Tasmania at odds with federal law.[26]

Religious exemptions

The marriage equality debate in Australia was accompanied by an ugly public battle over religious exemptions.

Religious exemptions are legal provisions that allow individuals, churches, and organizations to bypass non-discrimination protections for LGBTQ people on the grounds that treating them equally "would violate their religious beliefs."

Though civil society groups have expressed the marriage Bill "struck a fair balance" between civil rights and religious freedom, there has been increased debate over exemptions in non-discrimination law that allow religious institutions, particularly schools, to discriminate against employees and students for being LGBTIQ.[27]

The impact of these exemptions was given a face in 2017 when Craig Campbell, a teacher at a Baptist college in Perth, was fired for revealing he was in a same-sex relationship.[28]

The story brought increased visibility to the issue, with reports on calls to remove the exemptions from law and to oppose the "right" of religious schools to fire staff or expel students on the basis of their sexual orientation or gender identity.[29]

In this regard, the Prime Minister has pledged to close religious exemption loopholes in law.[30]

Intersex rights

More than 20 intersex human rights defenders from Australia and New Zealand came together for an historic gathering in Darlington, Sydney in March of 2017. The event led to the "Darlington Statement",[31] which addresses key priorities for the Intersex community, and that advocates consider to be "the basis of much of our work over the coming years."[32]

The Statement informed a shadow report submitted to the UN Human Rights Committee that found, "evidence of continuing harmful coercive

18 Lucy Cormack, "'Ugly part of our history': Sydney's wave of gay-hate deaths exposed", *The Sydney Morning Herald*. 26 June 2018.
19 Laurence Barber, "NSW Gay Hate Crimes to Be Subject of New Inquiry", *Star Observer*. 19 September 2018.
20 Lane Saint, "A Married Transgender Woman Fighting For A New Birth Certificate Won The Backing Of The UN" *BuzzFeed News*. 19 June 2017.
21 Jordan Hirst, "Calls For State Premiers To Scrap 'Forced Transgender Divorce' Laws", *QNews Magazine*. February 2018.
22 Jesse Jones, "Victoria Becomes the Third State to Scrap Forced Trans Divorce", *Star Observer*. 24 May 2018.
23 "NSW marriage laws amended to include transgender people", *South Coast Register*. 6 June 2018.
24 Ben Smee, "Queensland scraps law forcing married transgender people to divorce", *The Guardian*. 14 June 2018.
25 "Northern Territory moves to update gender laws and remove 'forced divorce'", *Out in Perth*. 24 November 2018.
26 Leigh Andrew Hill, "WA amends laws to end forced divorce for trans and gender diverse people", *Out in Perth*. 13 February 2019.
27 Paul Karp, "Marriage equality campaign seeks abolition of religious rights to discriminate", *The Guardian*. 14 February 2018.
28 Claire Moodie. "'Is it really the Christian way?' Teacher who lost job after revealing he was gay speaks out", *ABC News*. 6 December 2017.
29 Paul Karp, "Most Australians oppose religious schools' right to fire staff based on sexuality", *The Guardian*. 13 May 2018.
30 Paul Karp, "Scott Morrison will change the law to ban religious schools expelling gay students", *The Guardian*. 12 October 2018.
31 "Darlington Statement", *Intersex Human Rights Australia (website)*.
32 Morgan Carpenter, "Publication of Darlington Statement, a common platform on intersex community goals in Aus/NZ" *Intersex Human Rights Australia*. 10 March 2017.

practices" against intersex persons in Australian hospitals and made recommendations for guaranteeing the rights of intersex Australians.

The primary recommendation was to stop unnecessary, irreversible surgery on children born intersex for the purpose of assigning them a sex, a position that was affirmed by the UN Human Rights Committee.[33]

In September 2018, the Australian government responded. The Australian Human Rights Commission acknowledged the lack of national guidelines on how to treat people born with variations in sex characteristics and launched a major consultation on how to best protect their rights.

The project, which incorporated input from intersex individuals and organizations, sought to "identify key issues and obtain perspectives on current practice, evaluate approaches taken to medical interventions in Australia and other jurisdictions, and develop recommendations for a nationally consistent human-rights based approach to decision-making about medical interventions",[34] and the study is ongoing.

Health

A 2017 survey of trans and gender-diverse youth in Australia found that 48% of participants had attempted suicide, and about three in four reported experiencing anxiety or depression.[35]

As is the case universally, queer and trans youth in Australia are at a markedly higher risk for depression and suicide than their heterosexual and cisgender peers.

Australia's ongoing marriage equality debate was also deeply intertwined with the mental and physical health of its LGBTIQ population.

A 2017 study of lesbian, bisexual and queer women in Australia found that "forty percent of women had experienced some form of abuse or harassment" in the past twelve months, marking an increase on previous years.[36]

A number of NGOs banded together to launch a campaign using the link between discrimination and suicide rates to urge Australians to vote in favour of marriage equality.

According to them, "as many as 3000 youth suicide attempts could be averted each year with a 'YES' vote for marriage equality."[37]

As a response to high rates of depression and suicide among queer and trans Australians, the government's peak body for LGBTIQ health announced a new plan for strategic action to address the crisis.

The plan aims "to respond to LGBTIQ people in current need, to provide interventions to those who are at risk, and to interrupt the structural factors that contribute to overrepresentation of LGBTIQ people in mental health and suicide statistics."[38]

"Conversion therapy"

Though there is no federal ban on "conversion therapy" in Australia, this is a situation that local activists are lobbying to rectify.[39]

In September 2018, the Australian Senate passed a motion seeking to ban "conversion therapy" across the country in response to new Prime Minister Scott Morrison stating that conversion therapy, "wasn't an issue for him."[40]

Though not legally binding, the motion urges the Federal Government to pressure states to ban the practice. Victoria is currently the only state in Australia that has a Commissioner charged with investigating and bringing charges against practitioners of conversion therapy,[41] and is currently seeking to ban the practice outright in law.[42]

33 Morgan Carpenter, "Shadow Report submission to the UN Human Rights Committee" *Intersex Human Rights Australia*. 19 September 2017.

34 "Protecting the Human Rights of People Born with Variations in Sex Characteristics in the context of Medical Interventions" Australian Human Rights Commission. July 2018.

35 Strauss, P., Cook, A., Winter, S., Watson, V., Wright Toussaint, D., Lin, A. "Trans Pathways: the mental health experiences and care pathways of trans young people. Summary of results." *Telethon Kids Institute*. September 2017.

36 Amy Coopes. "Counting the toll of toxic public debate: research shows surge in abuse of lesbian, bisexual and queer women" *Croakey*. 14 July 2017.

37 #mindthefacts "#mindthefacts – vote 'YES' for better youth mental health", *The University of Sydney* (website).

38 Sally Morris & Ross Jacobs "National LGBTIQ Mental Health and Suicide Prevention Strategy: A new strategy for inclusion and action", *National LGBTI Health Alliance*. December 2016.

39 Paul Karp, "Gay conversion therapy ban found to be LGBTIQ Australians' top priority", *The Guardian*. 3 August 2018.

40 Matt Moore, "Australia's Senate passes a motion seeking to ban 'conversion therapy'", *Gay Times*. 16 September 2018.

41 Jesse Jones, "Anti-gay 'Conversion' Practitioners Could be Prosecuted in Victoria", *Star Observer*. 17 May 2018.

42 "Victorian Government aims to outlaw Gay Conversion Therapy", *Murray Campbell*. 17 May 2018.

Immigration and asylum

Australia's controversial immigration policies have been reported to have a profound impact on LGBTIQ migrants seeking asylum on the grounds of their sexual orientation or gender identity.

In May 2017, Australia began closing its Immigration Detention Centre in Manus Island, Papua New Guinea, telling detainees to "consider their options": stay in Papua New Guinea or another third country, temporarily relocate to a transit centre, or return home voluntarily.[43]

The Australian Green Party officials criticised the move as "profoundly cruel" to LGBTIQ people, as they can't return to the countries they fled because of their sexuality, and can't stay in Papua New Guinea where same-sex sexual acts is punishable by up to 14 years in prison.[44]

The following year, an immigration judge in the country came under fire from the federal court for showing "extreme illogicality" when it rejected the appeal of an Indian asylum seeker seeking protection in Australia because of his sexual orientation.[45]

New Zealand

Pardons, apologies and decriminalisation

In New Zealand, it's believed over 1,000 people were convicted before the law criminalising same-sex sexual acts was overturned in 1986.

In 2017, the New Zealand Parliament issued a formal apology for the policy, recognising, "the tremendous hurt and suffering those men and their families have gone through, and the continued effects the convictions have had on them."[46]
The following year, Parliament unanimously passed a bill to expunge those convictions, but stopped short of providing compensation.[47]

The move angered many gay rights activists in New Zealand, who are fighting for compensation for the damage done by the law.[48]

Advocacy and activism

In the recent cycle of the UN's Universal Periodic Review (UPR), New Zealand received several recommendations to add gender identity, gender expression or sex characteristics as specifically prohibited grounds of discrimination in Article 21 of the Human Rights Act of 1993 and to amend the Human Rights Act of 1993 to explicitly prohibit discrimination on the basis of gender identity and intersex status. Additionally, Chile recommended putting an end to non-consensual medical procedures which affect intersex persons.[49]

Prior to the UPR, Justice Minister Andrew Little's speech[50] was, in many ways, as useful as the recommendations themselves. Minister Little made robust statements and was very unequivocal about the gaps in New Zealand's human rights record.

It was a statement of intent from the government, and allows New Zealand to take a strong approach to its advocacy, including, as Minister Little alluded to, a broad review of the Human Rights Act, including amending section 21(1)(a) to include gender identity – which is in line with the Labour party's Rainbow (incorporating gay, lesbian, bisexual, transgender, intersex akava'ine, fa'afafine, fa'afatama, fakafifine, fakaleiti, fakaleiti (leiti), mahu, palopa, takatāpui, tangata ira tane, vakasalewa, whakawahine agender, asexual, brotherboy, gender diverse, gender fluid, genderqueer, nonbinary, pansexual, queer, sistergirl, trans feminine, trans masculine, transexual, trans) policy.[51]

The New Zealand Government's Oral Response[52] to the full UPR Report with of all 194 recommendations in Geneva, was that they have not taken a position on the recommendations and will carefully consider their position through an

43 Helen Davidson and Ben Doherty, "Manus Island detainees told to 'consider options' as closure of centre begins", *The Guardian*. 15 May 2017.
44 Matthew Wade, "Greens Urge Government to Resettle Queer Refugees Currently on Manus Island", *Star Observer*. 24 May 2017.
45 Ben Doherty, "Tribunal criticised after rejecting asylum seeker's appeal over homosexuality", *The Guardian*. 18 January 2018.
46 "Watch: The moment Amy Adams apologises on behalf of Government for convicting gay men for homosexual acts prior to 1986" *TVNZ*. 5 July 2017.
47 "We're sorry: Parliament passes law to allow wiping of convictions for gay men" *The New Zealand Herald*. 3 April 2018.
48 Eleanor Ainge Roy, "New Zealand gay rights activists demand compensation over convictions", *The Guardian*. 19 March 2018.
49 "New Zealand – UPR" *ILGA Website*.
50 "Justice Minister Andrew Little's Pre-UPR Speech" *Beehive NZ Government Speeches*, 21 January 2019
51 "New Zealand Labour Party's Rainbow Policies" *New Zealand Labour Party website*.
52 "NZ Government UPR Response", *UN WebTV*, 25 January 2019.

inter-agency process and decision by Cabinet.[53]

The next stage of the UPR is the adoption of the recommendations at the 41st session of the Human Rights Council in July 2019 and although there is no formal process for civil society involvement between now and then, civil society are working hard on the ground in their advocacy to meet with government officials before they officially respond to the recommendations.

Legal progress on gender identity issues

In New Zealand, advocates were frustrated with the results of the 10-year milestone of a Human Rights Commission report called the 2008 Inquiry into Discrimination Experienced by Transgender People.[54] The inquiry, the first of its kind in the world, was launched in 2006 to learn more about trans people's experience with discrimination, including barriers to health services and legal gender recognition.[55]

The Commission's resulting report made nine key recommendations to improve the lives of trans people, including strengthening discrimination protections, improving access to healthcare, and simplifying the process of changing one's legal gender through documentation.

The 10-year anniversary showed frustratingly little progress had been made towards realizing the recommendation: there had been no improvement in access to healthcare, birth certificates were still difficult to amend, and questions about sexual orientation and gender identity were not included on the 2018 Census.[56]

However, the government did make some progress in October 2018 when it announced it would remove a cap on the number of publicly-funded gender affirmation surgeries it would provide.

Health

HIV rates in New Zealand have been steadily rising since 2011, and reached their highest to date in 2016, with the majority of new infections among men who have sex with men.[57] Just months prior to the release of the figures, the Ministry of Health of New Zealand decided to cut funding for a landmark HIV prevention study among men who have sex with men, despite an internal report outlining the dangers of discontinuing the research.[58]

The previous caps of three male-to-female surgeries and one female-to-male surgery every two years had resulted in a waitlist of 50 years for the 105 people seeking the surgery.[59]

"Conversion therapy"

In June 2018, a New Zealand television network unveiled "conversion therapy" happening at religious organisations in the country. The investigation exposed Church organisations, a School Teacher and a Trainee Counsellor as they talked to an undercover journalist offering or describing such treatments.

When they were formally approached, however, all of them denied that what they were offering was in fact conversion therapy.[60] A couple months later, a petition was launched asking the New Zealand House of Representatives to ban the practice.[61]

Immigration and asylum

Forty people were reported to have been granted refugee status in New Zealand in the five years preceding 2017 on the grounds of their sexual orientation and gender identity.[62]

Three of the most recent cases granted by the Immigration and Deportation Tribunal include a bisexual Pakistani man, who lived with a transgender woman in Whangarei and Auckland, a lesbian teacher from Russia, and a gay man from

53 *Draft report of the Working Group on the Universal Periodic Review: New Zealand*, A/HRC/WG.6/32/L.1, 23 January 2019.

54 Sarah Harris, "10 years on from Human Rights Commission's inquiry into transgender discrimination", *New Zealand Herald*, 22 January 2018.

55 "To Be Who I Am: Report of the Inquiry into Discrimination Experienced by Transgender People".

56 Sarah Harris, "10 years on from Human Rights Commission's inquiry into transgender discrimination", *New Zealand Herald*. 22 January 2018.

57 Anna Loren, "NZ records highest-ever number of HIV diagnoses in 2016", *Stuff*. 31 May 2017.

58 Michelle Duff, "Ministry of Health declines funding for HIV prevention study, despite known risks", *Stuff*, 10 March 2017.

59 Thomas Coughlan, "Gender affirmation surgery cap lifted", *Newsroom*, 16 October 2018.

60 "New Zealand TV shows expose on gay conversion therapy", *Out in Perth*. 17 June 2018.

61 "Petition of Max Tweedie for Young Labour and the Young Greens: Ban Gay Conversion Therapy", *New Zealand Parliament (web page)*, accessed 27 February 2019.

62 "LGBT asylum seekers granted refugee status in NZ", *Radio New Zealand*. 18 June 2017.

Myanmar living in New Zealand whose wife had discovered his sexuality through a Facebook page.

The Pacific

Decriminalisation

In the Pacific, none of the criminalising states repealed its laws against consensual same-sex sexual acts between March 2017 and January 2019.

There is some positive and promising signs when in August 2017, the Cook Islands appeared to move towards decriminalisation following a planned overhaul of the 1969 Crimes Act. The local organisation Te Tiare Association (TTA) participated in the public consultation held in July 2017 to that effect,[63] and it was even reported that Christian leaders came out in support, noting that though "it is not right", same-sex sexual acts should not be treated as a criminal offence.[64] To date, the Crimes Bill 2017 remains on hold and does not appear to have advanced in the legislature.

Marriage equality

In light of growing momentum towards marriage equality in the region, the Governor General of the **Solomon Islands** reiterated in a speech that same-sex relations are illegal in the country and that, "Promoting same sex marriage is like changing the law of gravity by legislation."[65]

Similarly, a coalition of religious, women's, youth groups and local chiefs in **Vanuatu** started a petition to declare their opposition to marriage equality in the country after rumours spread that lawmakers were planning to introduce a bill on the issue.[66]

Certainly, the Pacific is shaping up to be a hot-spot in the foreseeable future for issues such as marriage equality, especially in line with Pacific Leaders public comments in Samoa[67], but it is not a priority for the Pacific human rights defenders currently.

Pardons, apologies and decriminalisation

In the Pacific, there no current plans in any of the jurisdictions to mirror the judicial and statutory regimes in Australia and New Zealand that have pardoned men who were cautioned or have historical convictions under previous legislation that criminalised same-sex sexual acts, and there are no apologies being planned.

Both pardons and apologies are the results of successful decriminalisation efforts and with a number of Pacific countries that still criminalise same-sex sexual acts, it is unlikely that these will occur anytime soon.

Advocacy and activism

Civil society and grassroots organisations across the Pacific have been busy launching initiatives to improve health, raising awareness around human rights issues, and advocating for better policies to support LGBTIQ people.

A coalition of LGBTIQ advocates started a petition in June 2018 lobbying the Pacific Islands Forum, the organisation that oversees the region's political and economic policy, to pressure its 18 member states to, "support full inclusivity, equity and equality for all people of the Pacific."[68] The petition calls on the Forum to compel member states to decriminalise same-sex sexual acts in countries where colonial-era laws are still on the books, denounce homophobia and transphobia, and include gender and sexual minorities in positions of leadership.[69]

In Fiji, civil society groups are pushing back against violence perpetrated against the trans community. Organisations are conducting research into transgender-based violence and trans women's access to justice,[70] training police officers in how to handle LGBTIQ cases with sensitivity[71] and launching a campaign against teen pregnancy and

63 Rashneel Kumar, "LGBT group makes submission", *Cook Island News*, 31 July 2017.
64 Rashneel Kumar, "'Not right in God's sight'", *Cook Island News*, 2 August 2017.
65 "Same sex marriage cannot populate the world, the Governor General says." *SIBC*. 8 June 2018.
66 Jonas Cullwick, "Civil Society Organizations Oppose Same Sex Marriage", *Daily Post of Vanuatu*. 7 April 2018.
67 "Samoan Prime Minister Against Marriage Equality", RNZ, 12 December 2017.
68 Shannon Power "Enough is enough, it's time to decriminalize homosexuality in the Pacific Islands", *Gay Star News*. 29 June 2018.
69 "Decriminalize and Protect the Rights of LGBTIQ People in the Pacific Islands Now!", *Change.org*, accessed February 26, 2019.
70 "Transgender-based Violence and Access to Justice Research" *Haus of Khameleon (web page)*, accessed February 26, 2019.
71 Iva Danford, "Tudravu reassures LGBTIQ Community police will do what needs to be done if member turns up at a police station" *Fijivillage*. 20 November 2019.

STI transmission by making free condoms available at bars, clubs, and motels around the island.[72]

Samoa similarly has a strong presence from LGBTIQ grassroots organisations who have been carrying out awareness-raising campaigns since 2008. The Samoa Fa'afafine Association met with representatives of media outlets to discuss fair media reporting on LGBTIQ issues after a national newspaper misgendered a trans woman while reporting on her death.[73]

The Association also organised a week-long series of initiatives to tackle discrimination, stigmatisation and gender-based violence in Samoa.[74]

Sadly, the Samoa Fa'afafine Association and the Pacific region were struck by tragedy early last year when the Association founder and President, So'oalo To'oto'oalii Roger Stanley passed away. Dozens of people attended and paid their homages at her funeral service, and the country's Prime Minister delivered a eulogy during the ceremony calling for all to respect Fa'afafineand Fa'atama.[75] In a statement released, OutRight Action International memorialised Roger as, "courageous and dedicated to making the world a better place for LGBTIQ people everywhere," and demonstrated that her loss was felt by LGBTIQ activists across the Pacific region and around the world.[76]

Tonga Leiti Association, a prominent LGBTIQ civil society organisation in Tonga, was similarly faced with misfortune early last year when tropical cyclone Gita, the worst to hit the main islands in 60 years, seriously damaged the organisation's center and shelter. The Association quickly set to work rebuilding the Center, which serves as much-needed refuge to LGBTIQ people who may otherwise face discrimination in housing.[77]

In addition to operating the shelter, the Association has carried out campaigns in the country's schools against trans bullying,[78] and provides the community with HIV testing, counselling services, and capacity building on HIV testing and sensitisation.[79]

Protections from discrimination

Pacific LGBTIQ populations continue to face derogatory public comments from their leaders as in Fiji,[80] despite Fiji having granted sexual and gender minorities protection against discrimination in Article 26 of the 2013 Fijian Constitution.[81]

Papua New Guinea (PNG) has one of the highest rates of HIV infection in the world,[82] and still criminalises same-sex sexual activity with a 14 years imprisonment sentence and with two per cent of the adult population being HIV positive. Human rights actors and activists have called for PNG to change its laws, and if it "refuses to decriminalise homosexuality on the grounds that it is a breach of human rights, then it should consider doing so as a means of improving health".

The common thread amongst Pacific nations is despite the lack of legislative support in protecting LGBTIQ Pacific citizens in areas of health care, education, employment, housing, freedom of expression, association and assembly, asylum and migration, family and community and relationship recognition, their lived realities suggest a more harmonious acceptance through cultural practices indigenous to each Pacific nation and these have somehow lessened the impact of any such lack of protections.

Hate incidents & discrimination

Mistrust of police is not unique to Australia and New Zealand. Following recent attacks in the urban area of Nasinu, Fiji, a human rights organisation based in the country encouraged LGBTIQ persons to speak up and report incidents of violence.

According to the organisation's director, victims of violence often choose not to report as they fear both reprisals from the community and discrimination and harassment from law

72 Semi Turaga, ""Condomising Hotspots Initiative" targets nightclubs and motels", *Fijivillage*. 14 August 2017.
73 Seia Soloi, "Fa'afafine want fair and inclusive reporting" *Samoa Observer*, 31 March 2017.
74 Adel Fruean, "Fa'afafine week campaign kicks off" *Samoa Observer*, 2 December 2018.
75 Elizabeth Ah-Hi, "Nation bids farewell to So'oalo" *Samoa Observer*, 3 February 2018.
76 "Remembering Samoan Fa'faafine Activist To'oto'oali'i Roger Stanley" *OutRight Action International (website)*.
77 Michael K. Lavers, "Cyclone seriously damages Tonga LGBTIQ center, shelter", *Washington Blade*. 21 February 2018.
78 "Tonga campaign aims to empower transgender students", *Radio New Zealand Pacific*. 27 March 2017.
79 "Tonga Leitis' Association", *Facebook webpage*, accessed 26 February 2019.
80 "Fiji Prime Minister tells Gay Couples to Move to Iceland", *Huffington Post*, 1 June 2016.
81 Constitution of the Republic of Fiji.
82 "WHO - HIV & Sexually Transmitted Diseases in Papua New Guinea", *World Health Organisation Western Pacific Region*.

enforcement.[83] One of the most recent was a hate crime against a young Fijian transgender woman, Ms Akuila Salavuki who was attacked and murdered in July 2018.[84]

However, there were signs that relations may improve: later that year, Fiji's Human Rights and Anti-Discrimination Commission commended the police force for taking swift action on two complaints of homophobic assaults.[85]

Legal progress on gender identity issues

Gender Identity is a mixed bag with a checkered past as far as the Pacific is concerned. Preferred pronouns which are very much a core aspect of one's SOGIESC and LGBTIQ identity in Australia and New Zealand are not as pronounced in the Pacific.

There has always been some hesitancy amongst activists on the ground in pursuing gender identity reform because their lived experiences and realities on the ground have more prioritised struggles - education, gainful employment, and contributions to the myriad of communal and familial obligations - these rate a higher priority in the lives of Pacific LGBTIQ.

But there is hope - the Asia Pacific Transgender Network (APTN) appointed a Pacific Co-ordinator to work with three country partners - Fiji, Papua New Guinea and Samoa - to advance legal gender recognition in Fiji, and develop a peer research study drawn from Transgender Europe's TVT campaign and program with the purpose of using this peer research to develop a record that documents the lived experiences and realities of trans communities in these 3 countries. And there is no doubt that from that peer research, more work will be done and progress made on legal progress on gender recognition.

Religious exemptions

Religious exemptions legislation in the Pacific allowing discrimination against LGBTIQ citizens on the basis of their sexuality or gender identity are non-existent. The extent though of religious persecution is another matter entirely and there are recent examples of this in the Pacific.[86]

Most notable in the religious acceptance and non-acceptance of Pacific LGBTIQ is the indigenous cultural notion of what makes a family. Some Pacific church leaders have come out in support of Pacific LGBTIQ from a religious perspective and reject the notion of cultural positionality of these identities.[87]

Intersex rights

For the first time in the history of the Pacific, Intersex became a focus of discussion / workshop during the ILGA Oceania Conference Apia Samoa August 2018.

The session "Intersex Awareness & Policy - The Untold Pacific Story" was well received and attended by health professionals and intersex activists – first time Intersex was discussed in a Pacific setting.

We are starting to see the documentation of Intersex in the Pacific as was the testimonials by National Health Service of Samoa's registered midwives who attended the session.

Health

The work of the Asia Pacific Transgender Network (APTN) is leading and paving the way for the development of relevant policies on Pacific Trans Health.

The Blueprint[88] not only maps the current human rights and trans communities health in the Asia Pacific region including best practice clinical advice about meeting the health needs of trans children, youth and adults but it is also a tool that can be tailored to each country's requirements to work in line with in-country activists strategic frameworks by enhancing their work in the improvement of

83 "Fiji Victims Of Anti-Gay Violence Often Fear Community Repercussions If They Report Attacks To Police" *Pacific Islands Report*. 12 March 2017.

84 "Murdered on International Day Against Homophobia, Transphobia and Biphobia", *ABC Net*, 23 July 2018.

85 Vijay Narayan, "Human Rights Commission commends Police for prompt action in LGBTIQ assault case" *Fijivillage*. 19 July

86 2017.

87 "Tonga Protests Pacific Human Rights Conference" *Institute for Human Security and Social Change Blog*, 16 June 2015.
"Samoan Church Leader Accepts Faafafine But Rejects Their Cultural Significance" Pacific Islands Report - Pacific Islands

88 Development Program.
"APTN Trans Health Blueprint" Asia Pacific Transgender Network

health and human rights for trans people and trans communities.

Developed between APTN, UNDP, and USAID and the PEPFAR-funded Health Policy Project, the APTN Trans Health Blueprint has been rolled out successfully in Fiji in a regional implementation in 2018 covering 8 countries - Fiji, Vanuatu, Papua New Guinea, Samoa, Tonga, Kiribati, Cook Islands and Niue and has since then been tailored and implemented in Fiji, Tonga, Samoa, and picked up by ASHM (Australasian Society for HIV, Viral Hepatitis and Sexual Health Medicine) and OSSHHM (The Oceania Society for Sexual Health and HIV Medicine) as the basis for development of a training package to advance STI management in trans health including bringing together in-country Health Ministries staff and professionals. So far, this training package has been delivered in Vanuatu, Kiribati and Federated States of Micronesia with more countries planned.

In other developments, budget cuts to the HIV treatment program in Papua New Guinea led to a critical shortage in stocks of anti-retroviral drugs.[89]

"Conversion therapy"

Since the last *State-Sponsored Homophobia* report, there have not been any reported incidents of gay "conversion therapy" in the Pacific, nor have there been any plans to introduce any further bans.

89 Yara Murray-Atfield, "Papua New Guinea's critical HIV drugs shortage sparks warning that people may die", *ABC News*. 21 April 2018.

GLOBAL OVERVIEW

STATE-SPONSORED HOMOPHOBIA 2019



GLOBAL OVERVIEW

CRIMINALISATION AND RESTRICTION

STATE-SPONSORED HOMOPHOBIA 2019

ilga world

Global Trends on the Decriminalisation of Consensual Same-Sex Sexual Acts (1969 - 2019)

By Daryl Yang.[1]

50 years after the 1969 Stonewall Riots in New York City, it is timely to look back into the past to evaluate the progress that we have achieved. As writer Rebecca Solnit wrote, "To know history is to be able to see beyond the present, to remember the past gives you capacity to look forward as well, it's to see that everything changes and the most dramatic changes are often the most unforeseen."[2] This section documents the dramatic decline in the global march towards decriminalisation that was probably unimaginable only five decades ago.

The progress made over the past 50 years could not have been possible without the tireless efforts of individual activists and advocacy organisations across local, national, regional and international levels. It is also the fruit of the courage and sacrifice of the countless individuals who stood up against these laws and risked their lives and careers, by organising advocacy groups and organisations, demonstrating on the streets, raising awareness, engaging with MPs, politicians and public officials, filing petitions and launching the judicial challenges whose decisions have become synonymous with the success of the international SOGIE rights movement. Through Dudgeon, Toonen, Lawrence, Pant, Orozco, Jones, and now Navtej Singh, among many others, millions of us are represented.

In the 2018 Indian Supreme Court decision of *Navtej Singh v Union of India* that decriminalise consensual same-sex sexual conduct, Indu Malhotra J cited ILGA's 2017 *State Sponsored Homophobia Report* and observed that "the trend of decriminalizing anti-sodomy laws world over has gained currency during the past few decades".[3]

While earlier editions of this report have hinted at this trend by tracking the decrease in the number of countries with such laws, this section makes use of recent population data to conclusively demonstrate and illustrate the significant declining trend in terms of both the number of countries criminalising consensual same-sex sexual acts and the proportion of the world's population living under such laws.

This section's findings support the view that there is an increasingly clear international norm against the criminalisation of consensual same-sex sexual conduct.[4] It highlights that countries that do so are in a shrinking minority and should join the rest of the global community in repealing such laws in compliance with international law.

While the trend of decriminalisation is encouraging and worth celebrating, decriminalisation as a formal legal change does not in and of itself lead necessarily to effective social change. Indeed, the removal of formal legal provisions does not always or immediately translate to improvements in the lived experiences of gender and sexual minorities.[5] Decriminalisation is nevertheless a crucial step in the march towards full equality and freedom that, fuelled by the encouraging developments presented in this section, will and must continue.

1 Daryl Yang is ILGA Legal Research Intern and one of the Main Research Assistants of this edition. He is a final-year student at Yale-NUS College, where he is reading a double degree in law and liberal arts with a minor in anthropology. He co-founded and served as the inaugural Executive Director of Singapore's Inter-University LGBT Network and previously interned with the National Center for Lesbian Rights (NCLR) in San Francisco, USA. Daryl is interested in SOGIE, migrant and disability issues, particularly in non-liberal societies. His current research is on the impact of state ratification of human rights treaties on local civil society advocacy.

2 Rebecca Solnit, "Protest and persist: why giving up hope is not an option", *The Guardian*, 13 March 2017.

3 *Navtej Singh Johar & Ors. versus Union of India thr. Secretary Ministry of Law and Justice* W. P. (Crl.) No. 76 of 2016 D. No. 14961/2016.

4 Elizabeth Baisley, 'Reaching the Tipping Point?: Emerging International Human Rights Norms Pertaining to Sexual Orientation and Gender Identity' 38(1) (2016) Human Rights Quarterly 134.

5 Rahul Rao, "The locations of homophobia" (2014) 2(2) London Review of International Law 169, 171.

Data Sources & Methodology

Global population data for the period 1969 to 2017 was taken from the data made available by the World Bank.[6] To ensure reliability, only data of UN Member States are included in these charts. For Serbia, the data between 1960 and 1989 was derived from the United Nations' World Population Prospects: The 2017 Revision.[7] The data for the various nations of the United Kingdom was taken from the UK Office for National Statistics.[8] Data for the Australian territories is taken from the Australian Bureau of Statistics.[9]

These charts trace the historical trends in the decriminalisation of consensual same-sex sexual acts among UN Member States. For convenience, it traces the trends of the 193 UN Member States even though some of these Member States may not have gained UN membership prior to 1969.

Findings

The three charts below reveal the dramatic decline in both the number of UN Member States that criminalise consensual same-sex sexual acts and the global population living under such laws.

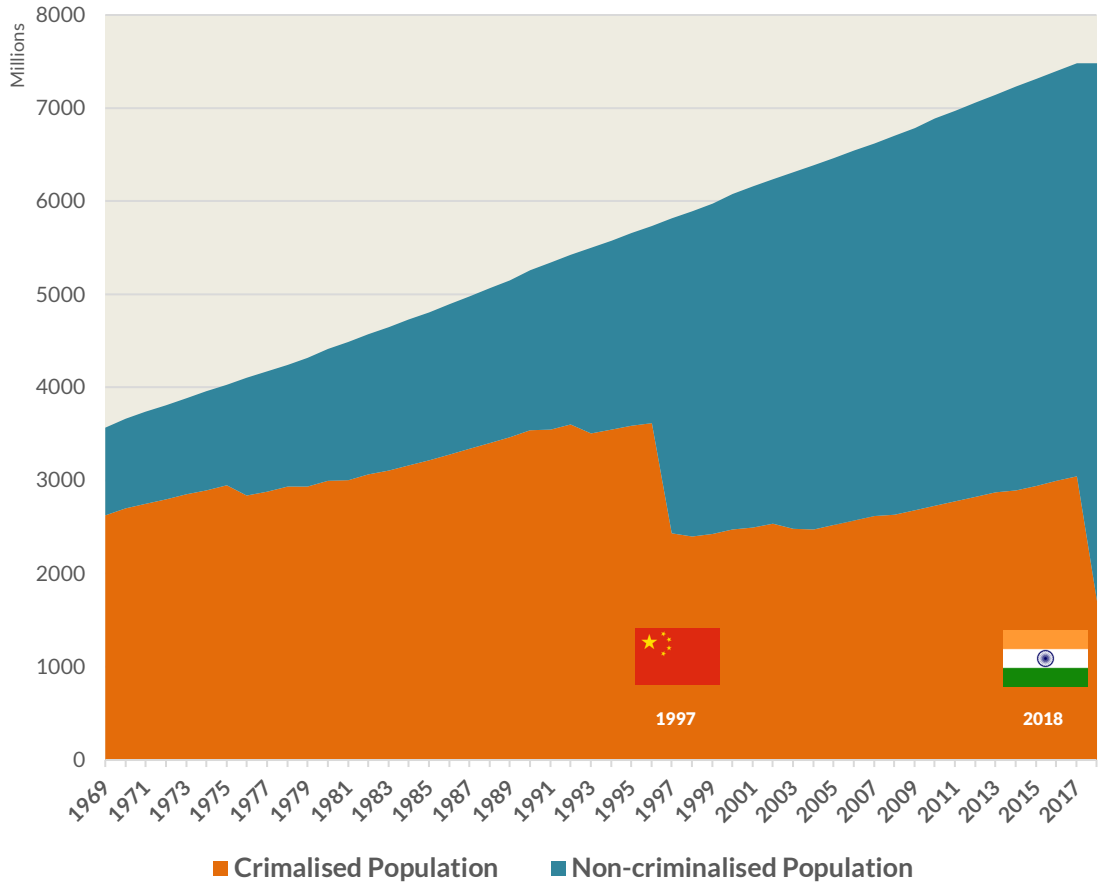


Chart 1 shows the increase in the global population from around 3.5 billion in 1969 to around 7.5 billion in 2018. It shows clearly that the proportion of the global population living in criminalising UN Member States has consistently fallen over the years in comparison. The two sharp drops in 1997 and 2018 are attributed to the decriminalisation by China and India respectively.

6 "Population, total", World Bank (website) accessed 15 March 2019. For convenience, 2018 data is extrapolated from 2017 data by assuming zero growth rate for all UN Member States.

7 "World Population Prospects 2017", *United Nations Population Division* (website) accessed 15 March 2019.

8 "Estimates of the population for the UK, England and Wales, Scotland and Northern Ireland", *Office for National Statistics* (website) accessed 15 March 2019.

9 "3101.0 – Australian Demographic Statistics, Jun 2018", *Australian Bureau of Statistics* (website) accessed 15 March 2019.

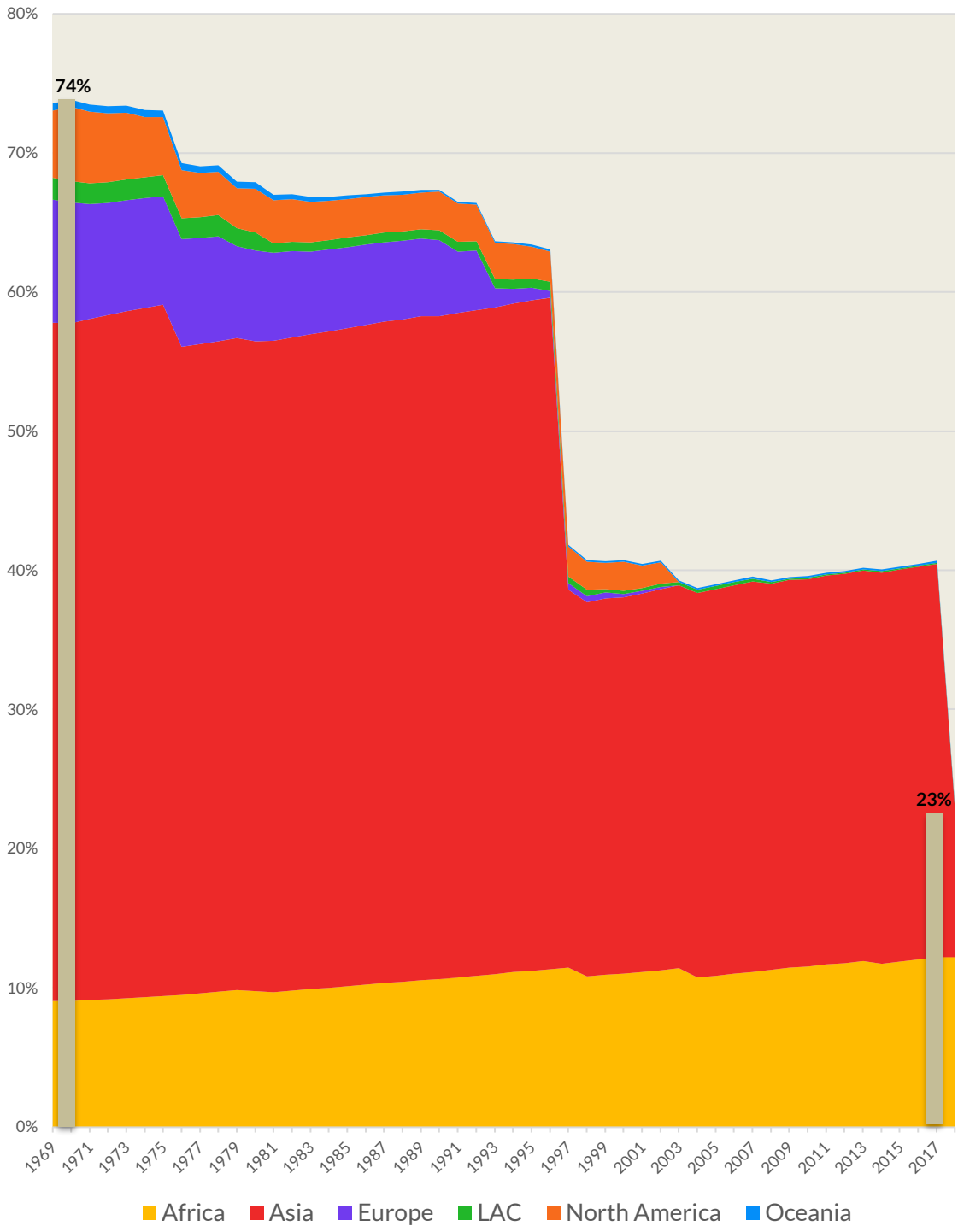


Chart 2. Proportion of global population governed by laws criminalising consensual same-sex sexual acts. This chart shows the population living in criminalising countries fell from around **74%** in 1969 to around **23%** in 2018, a 64% decrease in five decades. The proportion fell below 50% for the first time in 1997 after China decriminalised. Throughout the period, most of this population lived in Asia and Africa, with the majority in Asia. However, after India's decriminalisation in 2018, the proportion of this population is almost equally spread between the two continents as of 2018 with 12.2% living in Africa and 10.4% living in Asia.

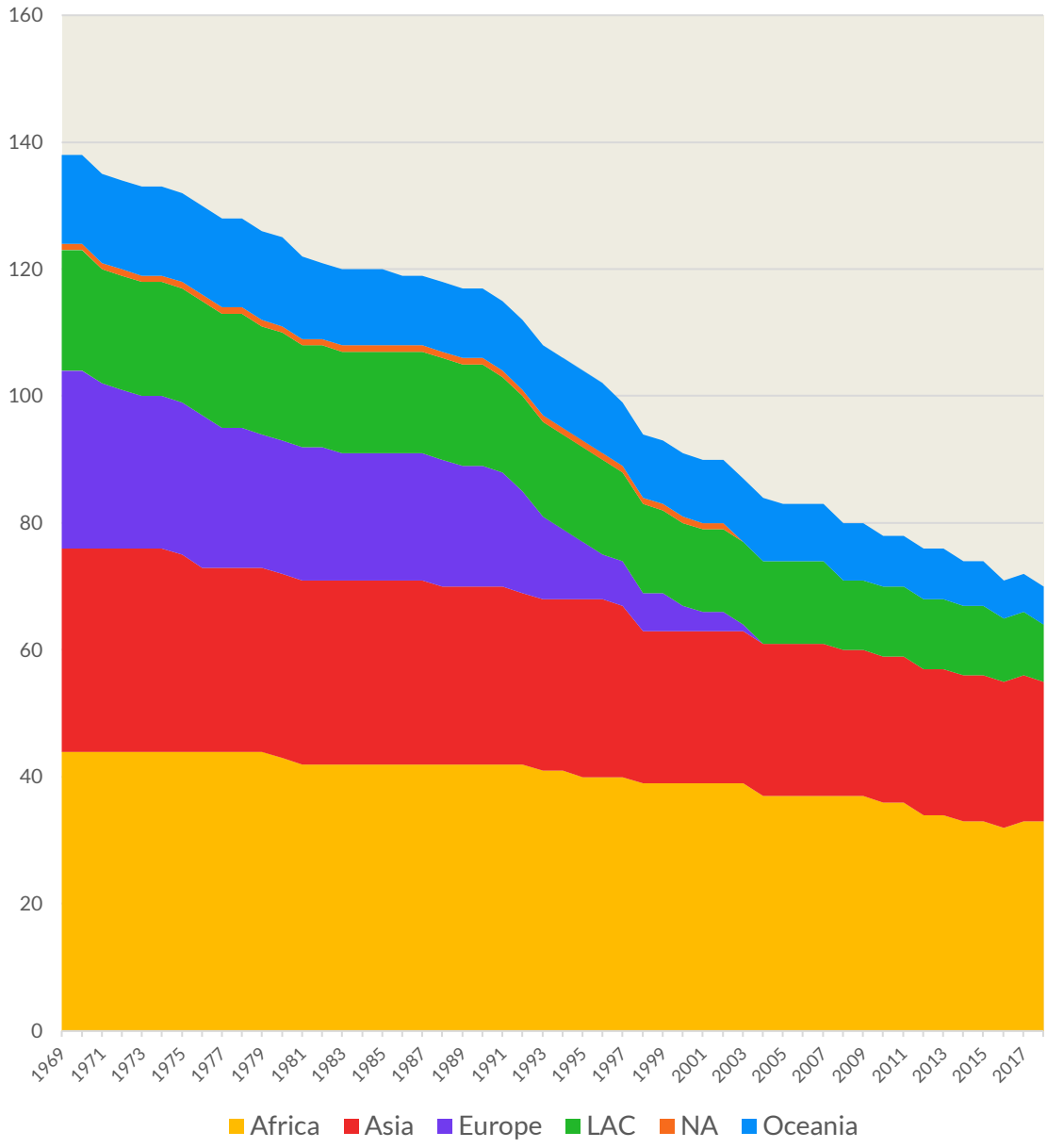
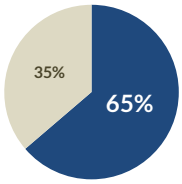


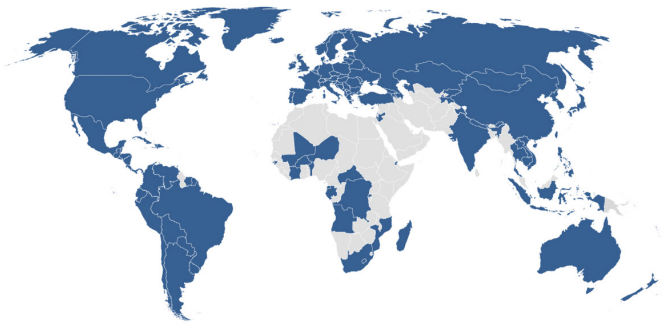
Chart 3. Number of Criminalising UN Member States. In 1969, 138 UN Member States were criminalising States. In 2018, the number almost halved with 70 remaining States. An average of 1.4 Member States decriminalised every year, with the highest being 5 in 1998. Most criminalising States were in Africa (44) and Asia (32) in 1969 and continue to be. By 2003 and 2004 respectively, both North Americas and Europe have completely repealed such laws. The percentage of criminalising States in Africa and Asia fell by 25% and 31% respectively between 1969 and 2018 to 33 and 22 respectively. The number of criminalising States in Latin America and the Caribbean and Oceania more than halved during that period, reducing from 19 to 9 (53%) for the former and from 14 to 6 for the latter (57%)

Consensual Same-Sex Sexual Acts: LEGAL

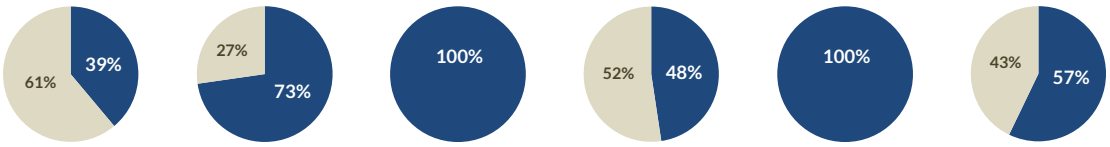
Highlights

123 UN Member States
65% UN Member States





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



Introduction

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

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

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

What does International Human Rights Law say?

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

Yogyakarta Principle 33.

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

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

Africa (21)

1	**Angola**	**2019**	In January 2019, Angola enacted a new Penal Code that does not criminalise same-sex sexual acts. Angola started the revision of its criminal law in 2004 through a presidential order that created the Commission for the Reform of Justice and Law. This commission mandated, among other things, the drafting of a new Penal Code for the country.[1]
2	**Benin**	**1877**	The Penal Code of Benin does no criminalise consensual same-sex sexual acts between adults. A number of amendments trying to criminalise have failed to pass into law. Since 1947, article 331 of the Penal Code sets the age of consent for different-sex sexual activity at 13 but at 21 for same-sex consensual activity.
3	**Burkina Faso**	**1960**	Prior to and since independence from France in 1960, Burkina Faso has no law outlawing consensual same-sex sexual acts for men or women in its Penal Code.
4	**Cape Verde**	**2004**	The Penal Code does not criminalise consensual same-sex sexual acts between adults. However, before it came into force, Article 71 of the now-obsolete 1886 penal code provided for "security measures" for people who habitually practice "vice against the nature".
5	**Central African Republic**	**1961**	Since independence from France, the Penal Code of the CAR has not outlawed consensual same-sex sexual acts between adults in private. However, article 85 criminalises "acts *against nature* committed in public", defining them as "attacks on public morals" and imposing harsher penalties compared to other attacks on morals. Local CSOs indicate that these provisions have been used to blackmail and arbitrarily arrest LGBT people.[2]
6	**Congo**	**1940**	In the Republic of Congo Brazzaville, the text of the Penal Code (as amended in 2006), only prohibits same-sex sexual behaviour with a person younger than 21 years, while the age of consent for different-sex is 18.
7	**Côte d'Ivoire**	**1960**	Post-independence from France's rule in 1960, Côte d'Ivoire did not criminalise consensual same-sex sexual acts between adults in its Penal Code, yet the age of consent differs under sections 356 and 358: 15 for different-sex, and 18 for same-sex. Despite the fact that no law exists which criminalises consensual same-sex sexual relations among adults, at the end of 2016 a judge in the city of Sassandra used article 360 of the Penal Code to condemn 2 men to 18 months imprisonment.[3] They were caught in the act by the uncle of one of the men and, after having been reported to the authorities, they admitted before the judge that they were in a loving relationship.[4]

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

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

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

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

8	**Democratic Republic of the Congo**	1940	There are no provisions outlawing consensual same-sex sexual acts between adults in the 2004 Penal Code of the DRC. However, Article 176 of that code—which criminalises activities against public decency—has been used as the legal basis to criminalise LGBT persons.[5] The Human Rights Committee expressed concern about this and recommended that the State ensure that no person is prosecuted under Article 176 of the Penal Code because of their sexual orientation or gender identity, as well as enact anti-discrimination legislation that expressly includes sexual orientation and gender identity.[6]
9	**Djibouti**	1995	The Penal Code contains no provisions prohibiting consensual same-sex sexual acts between adults.
10	**Equatorial Guinea**	1963	The Penal Code in force in Equatorial Guinea is a 1963 revision of the Spanish Criminal Code that dates back to the Francoist era. This Code does not contain specific provisions on same-sex sexual acts between adults.
11	**Gabon**	1960	Prior to and following its independence from France in 1960, the Penal Code does not criminalise consensual same-sex sexual acts between adults, yet the age of consent for different-sex sexual acts is 15, and for same-sex it is 21. However, as alluded to by the Committee on Economic, Social and Cultural Rights in 2013,[7] Gabon remains a highly discriminatory environment for LGBT people, which may be why LGBT reporting of incidences is so low.[8] In August 2016, the UN reiterated the need for non-discrimination legislation inclusive of SOGI.[9]
12	**Guinea Bissau**	1993	The Penal Code which remained in force after the independence from Portugal was repealed in 1993 with the enactment of a new Penal Code which contains no provisions criminalising consensual same-sex sexual acts between adults.
13	**Lesotho**	2012	In Article 52 of the Penal Code Act (into force in 2012), sodomy is not mentioned. This article erases the punitive enumeration of [male] sodomy indicated in Section 185(5) of the 1939 Criminal Procedure and Evidence Act.
14	**Madagascar**	1960	Prior to and following its independence from France in 1960, the Criminal Code does not prohibit consensual same-sex sexual acts between adults. However, since 1999, article 331 sets the age of consent at 14 for different-sex sexual acts and 21 for same-sex.
15	**Mali**	1961	Neither the 2001 Penal Code (nor its predecessor, the1961 Penal Code) stipulates provisions targeting consensual same-sex sexual relations between adults.

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

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

7 UN Committee on Economic, Social and Cultural Rights, *Concluding observations on the initial report of Gabon*, E/C.12/GAB/CO/1, 27 December 2013, para. 12.

8 US Department of State, *Gabon 2015 Human Rights Report* (2016), p. 19.

9 Committee on the Rights of the Child, *Concluding observations on the second periodic report of Gabon*, CRC/C/GAB/CO/2, 8 July 2016, para. 23.

16	**Mozambique**	2014	In July 2014, the Parliament approved Law 35/2014 repealing earlier criminalising provisions (articles 70 and 71 of the 1886 Penal Code had imposed penalties on people who "habitually practiced vices against nature"). This revised Penal Code came into force in June 2015.
17	**Niger**	1961	The Penal Code (with amendments up to 2003) does not specify provisions against consensual same-sex sexual relations, yet Sections 278 and 282 specify that the age of consent differs: 21 for same-sex sexual acts, and 13 for different-sex.
18	**Rwanda**	1980	The Rwanda Penal Code (1980) does not contain consensual same-sex acts criminalising provisions, yet articles 358 and 362 set the age of consent as unequal: 16 for different-sex and 18 for same-sex sexual activity. The legal and social situation of LGBT people in Rwanda is captured in a 2016 report, which points to severe stigmatisation.[10]
19	**São Tomé & Principe**	2012	Sao Tomé and Príncipe's Penal Code, adopted in 2012, contains no provision for criminalisation of consensual same-sex sexual activity between adults. This 2012 text drops former references to "acts against nature" that were contained in the earlier colonial-era Penal Code.
20	**Seychelles**	2016	In July 2016, Seychelles amended Sections 151(a and c) to the 1955 Penal Code came into force, thereby decriminalising "(a) …carnal knowledge of any person against the order of nature" that is consensual and amongst adult persons.
21	**South Africa**	1998	Following a case decided by the Constitutional Court of South Africa,[11] the State abrogated laws carried through from the 1955 Penal Code in which Article 600(1) and 601 criminalised consensual same-sex sexual conduct between adults, including the common-law crime of sodomy.

Latin America and the Caribbean (24)

1	**Argentina**	1887	Law No. 1,920 enacted Argentina's first federal Penal Code, which entered into force in 1887 and made no reference to consensual sexual acts between adults. However, until very recently local regulations issued by provincial, municipal and local authorities targeted "homosexualism" and/or regulated morality, vice and mores.[12] LGBT people were heavily persecuted under these regulations.
2	**Bahamas**	1991	Same-sex sexual acts in private were decriminalised by amendment to the Sexual Offences Act (1989), and came into force in 1991. Under Section 16(1)(2) of the Sexual Offences and Domestic Violence Act (1991) the age of consent differs for same-sex (18) and different-sex (16) sexual acts.

10 Irwin Iradukunda and Roselyn Odoyo, *Agaciro: A landscape analysis of the human rights of sex workers and LGBT communities in Rwanda* (2016).

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

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

3	**Belize**	**2016**	The country's colonial-era sodomy law was declared unconstitutional by the Belize Supreme Court.[13] The Court revised the language of Section 53 of the Criminal Code and ordered the insertion of a clause to exclude consensual sexual acts between adults in private. Interestingly, the court dismissed the National Evangelical Association of Belize (NEAB) to join the litigation, although the Catholic church appealed the decision.[14]
4	**Bolivia**	**1832**	The first Criminal Code of Bolivia (1831) entered into force in 1832. This Code largely followed the Spanish Criminal Code of 1822 that contained no provision on sodomy. There are no criminalising provisions for same-sex sexual acts between consenting adults in private in the current (2010) Penal Code.
5	**Brazil**	**1831**	The first Criminal Code of Brazil contained no provision on sodomy. However, it has been indicated that other provisions of that Code were used to persecute persons who engaged in same-sex sexual acts.[15] In 2015 the Supreme Court of Brazil declared that the expressions "pederasty or not" and "homosexual or not" under article 235 of the 1969 Military Penal Code are not constitutional.[16] These provisions had been used to restrict same-sex activity.[17]
6	**Chile**	**1999**	Article 10 of Law No. 19,617 amended Article 365 of the Penal Code by decriminalising consensual same-sex sexual acts between consenting adults. However, that same provision sets the age limit at 18 for "same-sex carnal access", and 14 for other sexual acts. Local organisations denounce that Article 373, which criminalises "acts against decency and good mores" is used as a tool to criminalise LGBT people. In its 2nd cycle of the UPR, the Government of Chile committed to repealing this article in a forthcoming Penal Code revision.[18]
7	**Colombia**	**1981**	Decriminalisation of "homosexual carnal knowledge" occurred through repeal of Article 323(2) in the 1980 Penal Code (effective January 1981). In 1999, the Constitutional Court Decision C-507/1999 repealed (or reinterpreted) certain provisions of Executive Order No. 85/1989 which established that "being homosexual" or "committing acts of homosexualism" were affronts against Military Honour.

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

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

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

16 Supremo Tribunal Federal, *Argüição de descumprimento de preceito fundamental 291*, 28 October 2015.

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

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

8	**Costa Rica**	**1971**	The 1941 Penal Code criminalized sodomy under article 233. With the enactment of the 1971 Penal Code consensual same-sex acts in private were decriminalised. However, "scandalous sodomy" remained a misdemeanour under article 378(15), until it was repealed by article 2 of Law No. 8,250 in 2002. In 2013, the last provisions which provided for security measures in cases of "homosexualism" were repealed by Resolution N° 010404 issued by the Constitutional Chamber. In 2008, the Committee against Torture noted that local provisions in Costa Rica on "public morals" granted the police and judges discretionary power to discriminate on the basis of sexual orientation.[19]
9	**Cuba**	**1979**	The Social Defence Code, which deemed "homosexual practices" as a "social threat" and imposed preventive measures to combat it, was repealed in 1979 by the New Criminal Code of Cuba. This Code did not criminalise homosexuality *per se*. However, Article 359(1) criminalised those who made "public display of their homosexual condition" (repealed by Article 303(1) of Law No. 62 of 1987) or bothered or solicited others with "homosexual requests" (amended by Executive Order-Law No. 175 in 1997 to refer only to "sexual" requests).
10	**Dominican Republic**	**1822**	The first Criminal Code in force in the Dominican Republic, imposed after the Haitian invasion in 1822, did not criminalise consensual same-sex sexual acts between adults in private. The new 2007 Criminal Code does not innovate in this regard. However, Article 210 of the 1966 Police Justice Code still outlaws sodomy (defined as a "sexual act between persons of the same-sex") among members of police forces.
11	**Ecuador**	**1997**	Article 516(1) of the Penal Code imposed a penalty of 4-8 years in prison for "acts of homosexualism" which did not fall under the crime of rape. This provision was repealed by the 1997 Constitutional Court decision in Case No. 111-97-TC. In 2014, the new Organic Integral Penal Code entered into force. In 2016, the Inter-American Court of Human Rights issued its decision in the *Homero Flor Freire* case regarding the powers of dismissal encoded in the 1997 Rules of Military Discipline for consensual same-sex sexual acts between adults.[20]
12	**El Salvador**	**1822**	The first Penal Code of El Salvador was enacted in 1826 following the Spanish Criminal Code of 1822 that contained no provisions on consensual same-sex sexual acts between adults. In 2003, the Human Right Committee noted that local provisions ("ordenanzas contravencionales") were being used to discriminate against people on account of their sexual orientation.[21]

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

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

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

13	**Guatemala**	**1871**	According to Guatemalan historian Manuel Fernandez, consensual same-sex sexual acts were decriminalized as a result of the 1871 Revolution "on the constitutional grounds that private sexual acts between consenting adults were not the concern of the state".[22] The new Penal Code (updated version) entered into force in 1877.
14	**Haiti**	**1804**	When Haiti became independent from France in 1804, no law criminalising consensual same-sex sexual acts was introduced, and no such law has come into the Penal Code since. France repealed its sodomy laws in 1791 (see entry below).
15	**Honduras**	**1899**	Consensual same-sex sexual acts between adults have been legal since the entry into force of the 1899 Penal Code of Honduras.
16	**Mexico**	**1872**	The first federal Penal Code of Mexico was approved in 1871 and entered into force in 1872.[23] This Code made no reference to consensual same-sex acts between adults.
17	**Nicaragua**	**2008**	In 2007, the New Penal Code repealed the 1974 Penal Code that had criminalised "sodomy" under article 204.
18	**Panama**	**2008**	Presidential Executive Order No. 332 of 31 July 2008 repealed section 12 of Executive Order No. 149 of 20 May 1949, which criminalised "sodomy". The Executive Order states that "sodomy was the term by which homosexuality was referred to prior to 1973".
19	**Paraguay**	**1880**	The first Penal Code of Paraguay of 1880 was adapted from the Penal Code of the Province of Buenos Aires (Argentina), in force there since 1877). This code made no reference to consensual same-sex acts between adults. However, Article 138 of the Penal Code currently in force specifies that the age of consent for "homosexual acts" is 16, while it is set at 14 for different-sex sexual acts.
20	**Peru**	**1924**	Article 272 of the 1863 Penal Code criminalized sodomy. Since the inception in the 1924 Penal Code, consensual same-sex sexual acts have been legal. However, civil society indicates that Article 183 of the Penal Code on "obscene exhibitions and publications", provides the legal basis for State discrimination regarding issues such as public display of affection.[24]
21	**Suriname**	**1975**	When Suriname became fully independent from the Netherlands in 1975, no sodomy law was in force and no such law has been reintroduced since then. Sodomy was repealed in the Netherlands in 1811. However, Section 302 of the Criminal Code stipulates that the age of consent for same-sex acts is 18 (limit established at "minority age"), while it is 16 for different-sex sexual relations.

22 Manuel Fernandez, "Guatelama", *GLBTQ Encyclopedia* (website), 2004.

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

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

22	**Trinidad & Tobago**	**2018**	The 2018 High Court of Trinidad and Tobago ruling in *Jason Jones v AG of Trinidad and Tobago*[25] established that buggery and serious indecency laws were unconstitutional in Trinidad and Tobago. This decision follows the line of *Caleb Orozco v The AG of Belize*.
23	**Uruguay**	**1934**	The 1934 amendment of the Penal Code repealed the crime of 'sodomy' in Uruguay. It bears mentioning that this provision was placed under the section on 'rape': this, together with other indicia in local case law, suggests that the crime of 'sodomy' repealed in 1934 referred to non-consensual same-sex acts.[26]
24	**Venezuela**	**1836**	Since 1836, when Venezuela produced its first Penal Code, consensual same-sex sexual activity has not been criminalised. As reported by the IACHR, in 1997, the Supreme Court of Venezuela declared the unconstitutionality of the Law on Vagrants and Crooks, which had been used to prosecute LGBT persons.[27]

North America (2)

1	**Canada**	**1969**	The enactment of the Criminal Law Amendment Act (Bill C-150) in 1969 introduced an exception that decriminalized "buggery" between spouses or two persons over 21 years of age who had consented to the commission of the act. In 1988, Section 159(2)(b) of the Criminal Code replaced that buggery law altogether, but retained a different age of consent: 18 for "acts of anal intercourse" and 16 for non-anal sex. This provision has been impugned by five provincial courts. In 2016, the Toronto police Chief apologized for the 1981 gay bathhouse raids.[28] In early 2017, the Canadian government announced that it intended to review many historical gay conviction cases.[29]
2	**United States of America**	**1962** **2003**	Under the USA federal system, all 50 states enact their own Criminal Codes.[30] "Sodomy" was criminalized throughout the USA until 1962, when Illinois became the first state to decriminalise consensual same-sex sexual acts between adults. In 2003 all remaining sodomy statutes —still in force in 14 States— were invalidated by the Supreme Court verdict in *Lawrence v. Texas* (2003). Age of consent laws also vary across the USA.[31] Three states still keep laws establishing unequal laws of consent: Alabama, Kansas and Texas.

25 Supreme Court of Trinidad and Tobago, *Jason Jones vs Attorney General of Trinidad & Tobago and others*, H.C.720/2017. CV.2017-00720, 4 April 2018.

26 José Pedro Barrán, "Vision Social de la homosexualidad", *Relationships*, accessed 5 March 2019.

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

28 Will Campbell, "Toronto Police Chief Mark Saunders apologizes for 1981 bathhouse raids", *Global News*, 22 June 2016.

29 John Ibbitson, "Trudeau to urge pardon for man deemed a dangerous sex offender for being gay in 1960s", *The Globe and Mail*, 27 February 2016.

30 George Painter, "The Sensibilities of Our Forefathers: The History of Sodomy Laws in the United States", *GLAPN*, 2 February 2005.

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

Asia (20) + Taiwan (China) + Palestine (West Bank only)

1	**Bahrain**	**1976**	Repealing the colonial British code that had pervaded the Persian Gulf, Bahrain's current Penal Code was enacted in 1976. This code decriminalised consensual same-sex sexual acts between adults. However, it set the age of consent at 20 for different-sex and at 21 for same-sex sexual acts.
2	**Cambodia**	**1953**	Following royal request, in 1867 Cambodia became a French Protectorate, thereby coming under French law, which had decriminalised same-sex sexual acts between consenting adults in 1791. Following 1946, and Independence in 1953, no criminalising provisions were added to the Penal Code in this regard.
3	**China**	**1997**	China's current Penal Code (1997) contains no explicit prohibition of consensual sexual acts between persons of the same-sex. Explicit prohibitions of "consenting jijian" (sodomy) were abolished in China around 1912 (end of Qing Dynasty). However, a 'hooliganism' provision in the 1979 Penal Code was used to target male same-sex activity until the code was repealed in 1997.[32] Same-sex sexual acts were decriminalised in the territories of Hong Kong in 1991 and Macau in 1996 respectively.
4	**East Timor**	**1975**	On Independence from Portuguese rule in 1975, the new Penal Code (2009 revision) made no mention of a prohibition on same-sex sexual acts between consenting adults in private.
5	**India**	**2018**	On 6 September 2018, the Supreme Court of India declared that Section 377 of the Penal Code is unconstitutional. ▸ For more information on the Supreme Court decision, see: "**Decriminalising the Right to Love: Navtej Singh Johar v. Union of India**" by Arvind Narrain in the Global Perspectives section of this report.
6	**Indonesia**	**1976**	Most parts. Having achieved independence from Dutch governance in 1945, the Indonesian Penal Code has no provisions outlawing same-sex sexual relations. The 2002 Law on Child Protection sets an unequal age of consent for same-sex (18) and different-sex (16) acts. ▸ Several jurisdictions in Indonesia **criminalise** consensual same-sex sexual acts between adults. See: entry for Indonesia in the "Criminalisation" chapter of this report.
7	**Israel**	**1988**	Although the 1977 Penal Law contained a sodomy provision, at Section 347, the parliament repealed that provision in 1988.
8	**Japan**	**1882**	According to some scholarship, consensual same-sex sexual activity was never criminalised in modern Japan (except a very short period 1873-1881).[33]

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

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

9	Jordan	1960	Jordan is one the few Middle Eastern countries where consensual same-sex sexual acts are not criminalised. See: Penal Code of 1960. However, levels of stigma and discrimination directed at LGBT people is significant.[34]
10	Kazakhstan	1998	With recent autonomy from the USSR, Kazakhstan's Criminal Code of 1997 (in force 1998) removed earlier provisions that penalised consensual same-sex sexual acts.
11	Kyrgyzstan	1998	With recent autonomy from the USSR, Kyrgyzstan's Criminal Code of 1997 (in force 1998) removed earlier provisions that penalised consensual same-sex sexual acts.
12	Laos	1954	Following independence from France in 1954 (with subsequent non-criminalisation), the 1989 Penal Code made no provisions to criminalise consensual same-sex sexual acts.
13	Mongolia	1961	In 1961, under the Mongolian People's Revolutionary Party, consensual same-sex sexual acts were decriminalised. This position remained through the 2002 Criminal Code.
14	Nepal	2007	Article 1 of Chapter 16 of Part 4 of the *Muluki Ain* (National Code) enacted in 1963 criminalises "unnatural sexual intercourse", a term which was undefined and open to different interpretations.[35] The uncertainty however was clarified in *Sunil Babu Pant and Others v Nepal Government and Others*, where the Nepal Supreme Court ruled that same-sex sexual intercourse was not to be construed as "unnatural".[36] Though the new Criminal Codes Act which replaced the *Muluki Ain* appears to continue to criminalise "unnatural sex", [37] it should be read in light of this case.
15	North Korea	1950	There appears to be no laws penalising consensual same-sex sexual activities between adults in the Criminal Code of 1950, which was updated in 2009.
	Palestine (West Bank)	1960	The West Bank (Palestine) aligns with the Jordanian Penal Code of 1960, where consensual same-sex sexual acts between adults are not penalised under the law.[38]
16	Philippines	1932	The 1932 Revised Penal Code (RPC) does not criminalise consensual same-sex activities between adults. In line with the adoption of the Napoleonic Code, when the Philippines came under Spanish control in 1822, "sodomy" provisions were first repealed.

34 Jcob Wirtschafter, "In much of the Middle East, it's getting more dangerous to be gay", *PRI*, 30 August 2016.

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

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

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

38 Mohammed Daraghmeh, "Book with gay character confiscated in Palestine, writer might be arrested", *LGBTQ Nation*, 11 February 2017.

17	South Korea	1962	The 1962 Criminal Act (updated 2009) of South Korea contains no provisions criminalising consensual same-sex sexual acts between adults. Article 305 (amended 1995) indicates 13 as the age of consent (information verified by practitioners in South Korea, as there are English versions of the Criminal Act that state 15 as the age of consent). The fact that such equal age protection is not afforded to the crime of rape is highlighted in Rainbow Action against Sexual Minority Discrimination's Shadow Report to CAT in March 2017.[39]
	Taiwan (China)	1954	The Criminal Code of 1954 contains no provisions prohibiting consensual same-sex sexual activity between adults.
18	Tajikistan	1998	There are no restrictions on adult, consensual same-sex sexual acts between adults in the 1998 Criminal Code of Tajikistan (amended to 2010).
19	Thailand	1957	The Thai Penal Code of 1956 came into force in 1957 and has no criminalising provision on consensual same-sex sexual acts between adults.
20	Vietnam	1945	Following independence from France in 1945 (with subsequent non-criminalisation), the 1999 Penal Code made no provisions to criminalise consensual same-sex sexual acts between adults.

Europe (48) + Kosovo

1	Albania	1995	Prior to its repeal by Article 116 of the Criminal Code, the previous Article 137 penalised "homosexuality" amongst men with up to 10 years imprisonment.
2	Andorra	1791	As a co-principality with France, Andorra was subject to the same Penal Code provisions that decriminalised "sodomy" in 1791.
3	Armenia	2003	Armenia's former Soviet Union provision that punished consensual sex between adult men with five years imprisonment (under Article 116), was repealed in the 2003 Criminal Code.
4	Austria	1971	The previous Penal Code of 1852 penalised (with five years imprisonment) "sodomy" between men, and unusually in Europe, amongst women. The 1971 Criminal Code lifted all such sanctions.
5	Azerbaijan	2000	Prior to 1988, aligned to the Soviet Union provisions, Article 113 criminalised "anal intercourse between men". This was repealed by a new Criminal Code that came into force in 2000.
6	Belarus	1994	'Homosexual acts' were criminalised with up to five years imprisonment under Article 119(1) in line with the Soviet Union code, and was repealed under the Belarus 1994 Criminal Code.

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

7	**Belgium**	1830	Neither the Napoleonic Code of 1810 (which Belgium operated under until independence in 1830) nor the Belgian Penal Code of 1867 conferred penal sanctions for consensual same-sex sexual activity between adults.
8	**Bosnia & Herzegovina**	1998 2001	The three parts of Bosnia and Herzegovina decriminalised 'homosexuality' separately: Federation of Bosnia and Herzegovina (1998), Republika Srpska (2000), Brcko District (2001).
9	**Bulgaria**	1968	The Criminal Code of 1968 repealed the sodomy provisions contained in Bulgaria's first Penal Code of 1896.
10	**Croatia**	1977	The provisions of 1951 Yugoslavia Criminal Code regarding consensual same-sex relations were rescinded in the Croatian Penal Code of 1977, and the age of consent was equalised in 1998.
11	**Cyprus**	1998	Under Section 171 of the 1959 Criminal Code, male/male sexual 'unnatural acts' could be punishable with five year's imprisonment. This clause was removed in the 1998 following the *Modinas v Cyprus* case. Northern Cyprus decriminalised in 2014, the last part of Europe to do so.[40]
12	**Czechia**	1961	The current Criminal Code came into force in 1962, which removed sodomy provisions from previous ruling codes (that of Austria ruled Bohemia and Moravia, and Slovakia used the Hungarian penal code).
13	**Denmark**	1933	Replacing a Criminal Code and a series of laws that criminalised sodomy, the 1933 Penal Code removed provisions on consensual adult same-sex sexual relations.
14	**Estonia**	1992	On dissolution from the Soviet Union in 1991, Estonia created its own Penal Code that removed criminalising sanctions on same-sex sexual intimacy.
15	**Finland**	1971	The 1889 Criminal Code was revised in 1971 to remove Chapter 20 'Unlawful sexual intercourse and other lewdness'.
16	**France**	1791	The newly-formed constitutional monarchy of France adopted a Penal Code that removed sodomy provisions, thus becoming the world's first country to decriminalise same-sex sexual acts between consenting adults. Pursuant to Article 73 of the French Constitution, the law applies to the Overseas Departments of Martinique, Guadeloupe, Saint Barthélemy, French Guyana, Mayotte, and Réunion, and to the islands of Saint Pierre and Miquelon.
17	**Georgia**	2000	The Criminal Code of Georgia removed the pre-existing sodomy provisions that were carried through from the Soviet Union period.
18	**Germany**	1968 1969	Although East Germany and West Germany stopped applying its Criminal Code provisions (Paragraph 175 – "lewd and lascivious acts") among consenting adults in 1968 and 1969 respectively, the black letter law was not abolished until 1994.[41]

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

41 "Germany to pay convicted gays 30 million euros – media", *DW News*, 8 October 2016.

19	**Greece**	1951	Prior to the post-war 1951 Penal Code, consensual male same-sex sexual acts were outlawed. Articles 339 and 347 stipulate the age of consent: 'contact against nature between males' is 17, while for different-sex that age is 15.
20	**Hungary**	1962	The Criminal Code of Hungary removed the 1878 provisions that referred to 'crimes against nature'.
21	**Iceland**	1940	The General Penal Code of 1940 removed the provisions of 1869 Penal Code, Clause 178 that stipulated, "unnatural forms of sexual intercourse are punishable by a term in prison".
22	**Ireland**	1993	Section 2, Criminal Law (Sexual Offences) Act (1993) removed the 'buggery' provisions Ireland inherited from British rule.
23	**Italy**	1890	The first Italian Penal Code in 1889 had no prohibition on consensual same-sex sexual acts between adults in private.
	Kosovo	1994	The Criminal Code of the Republic of Kosovo repealed the 1951 Yugoslav provisions regarding same-sex sexual acts. Kosovo is not a member State of the United Nations.
24	**Latvia**	1992	Following dissolution of the Soviet Union, Latvia's Criminal Law removed its punitive provisions under Paragraph 124(1) regarding consensual same-sex sexual relations between adults.
25	**Liechtenstein**	1989	The Criminal Code was revised in 1989 to remove Sections 129 and 130 "lewdness against the order of nature".
26	**Lithuania**	1993	Following independence from the Soviet Union, Lithuania abolished Articles 121 and 122(1) of its Criminal Code, thereby decriminalising consensual same-sex sexual relations between adults.
27	**Luxembourg**	1795	As Luxembourg came into the possession of France, any sodomy provisions from its Criminal Code were removed in 1795.
28	**Malta**	1973	Malta removed the offence of "unnatural carnal connection" from Article 201 of the Criminal Code in 1973.
29	**Moldova**	1995	The Criminal Code of Moldova removed the pre-existing sodomy provisions (at Article 106) that were carried through from the Soviet Union period.
30	**Monaco**	1793	As Monaco was in the possession of France, it removed any sodomy provisions from its Penal Code in 1793.
31	**Montenegro**	1977	The Criminal Code of 1977 repealed the 1951 Yugoslav provisions regarding same-sex sexual acts.
32	**Netherlands**	1811	When the Kingdom of Holland became annexed to France in 1811, the Napoleonic Penal Code of 1810 came into operation containing no provision on sodomy, and that standard applies in the current Penal Code, as well as to the three Netherlands Associates (Aruba, Curaçao and St Maarten) and in the their Territories of Bonaire, Saba and St Eustatius.

33	North Macedonia	1996	The Criminal Code of 1996 removed provisions regarding consensual [male] same-sex relations (penalised with one year in jail) that were previously encoded under Article 101.
34	Norway	1972	"Indecent intercourse" between men was decriminalised by repeal of Paragraph 213 in Norway's Penal Code of 1972.
35	Poland	1932	After its independence in 1918, Poland returned to the Napoleonic tradition that it had enjoyed in the early 19th century, and subsequently its 1932 Penal Code contains no criminalising provisions regarding consensual same-sex sexual relations amongst adults.
36	Portugal	1983	Under the reign of Louis I form 1886 on, Portugal criminalised consensual same-sex sexual acts between men, but that law was repealed in the 1983 Penal Code.
37	Romania	1996	Prior to 1996, Section 200 of the Penal Code had penalised "sexual relations between persons of the same-sex" with 1-5 years imprisonment. This was then repealed but replaced with a clause "committed in public or producing a public scandal", which was itself removed in 2001.
38	Russian Federation	1993	Article 121(1) of the 1934 Criminal Code of the Soviet Union had stated "sexual relations of a man with a man (pederasty)" was punishable with up to five years imprisonment.[42] This is the model language that was transposed into penal codes in States throughout the former Soviet Union. The 1993 Criminal Code removed such provisions from the Russian law.
39	San Marino	2004	Although San Marino decriminalised "sodomy" in 1865, it was re-introduced at article 274 into the Penal Code in 1975, targeting those who "habitually" practice (not known to have been ever implemented). This was finally repealed in the 2004 Penal Code.
40	Serbia	1994	In its modern history, and as part of the Kingdom of Yugoslavia in 1918, "lewdness against the order of nature" in Serbia was banned. The 1994 Criminal Code removed that prohibition.
41	Slovakia	1962	The current Criminal Code came into force in 1962, and removed sodomy provisions from previous ruling codes (Slovakia relied on the Hungarian law that had previously referred to "crimes against nature").
42	Slovenia	1977	When Slovenia was still a part of Yugoslavia in 1976, work on the Criminal Code to remove provisions penalising consensual same-sex sexual acts commenced, and the resultant law came into force in 1977.
43	Spain	1979	Following the re-establishment of constitutional democracy in Spain after Franco, consensual same-sex sexual intercourse amongst males was removed as an offence in the Penal Code.
44	Sweden	1944	Sweden removed its 'sodomy' provisions from the Penal Code in 1944, specifying freedom for both men and women in the subsequent revision.

42 Adrian Chan-Wyles, "The USSR and Homosexuality Part 1 (Article 121)", *The Sanghakommune*, 28 December 2016.

45	Switzerland	1942	Although various cantons had remained with the Napoleonic Code since 1798 in not penalising same-sex sexual relations, the entire country became free from such criminalisation by way of the Penal Code that came into force in 1942.
46	Turkey	1858	The Turkish Imperial Penal Code of 1858 (thought to be based on the 1810 French Penal Code) makes no mention of consensual same-sex sexual acts between adults, and neither does the current Penal Code.
47	Ukraine	1991	"Homosexual acts" were criminalised with up to five years imprisonment in line with the Soviet Union code of 1934: this was repealed under the Ukraine Criminal Code of 1991.
48	United Kingdom	1967	In 1861, the death penalty for "buggery" was abolished across the United Kingdom, but the offence was codified in Section 61 of the Offences Against the Person Act (1861) as life sentence, and the lesser misdemeanour of gross indecency was codified in Section 11 of the Criminal Law Amendment Act 1885, with a penalty of up to two years imprisonment, hard labour possible. These were the model laws that spread throughout the Commonwealth. England and Wales removed the provisions in 1967, Scotland in 1981, and Northern Ireland in 1982 (following the *Dudgeon* case at the European Court of Human Rights). Various entities attached to the UK similarly repealed: Akrotiri & Dhekelia (2000), Anguilla (2001), Bailiwick of Guernsey (1983), Bermuda (1994), British Virgin Islands (2001), Cayman Islands (2001), Falkland Islands (1989), Gibraltar (1993), Isle of Man (1992), Jersey (1990), Montserrat (2001), Pitcairn, South Georgia, St Helena, Turks & Caicos Islands, and all other territories (2001).

Oceania (8)

1	Australia	1975 1997	Decriminalisation of consensual same-sex sexual acts took place variously across the eight provinces of Australia between 1975 and 1997.[43] In 1975, South Australia abolished the offences of "buggery", "gross indecency" and "soliciting for immoral sexual purposes", and 22 years later the last jurisdiction to decriminalise was Tasmania in 1997. Following the seminal UN Human Rights Committee's finding of incompatibility in *Toonen v. Australia* in 1994 (primarily on the basis of privacy), the federal government introduced Section 4(1) of the Human Rights (Sexual Conduct) Act 1994 to uphold that principle in Australian law.

[43] Graham Carbery, "Towards homosexual equality in Australian criminal law – A brief history" (Australian Lesbian and Gay Archives, 2014).

2	**Fiji**	2010	In 2005, in its decision in *Dhirendra Nadan and Thomas McCosker v. The State*, the High Court of Fiji invalidated two convictions based on sections 175(a), 175(c) and 177 of the Penal Code which criminalised "carnal knowledge against the order of nature" and indecent practices. These provisions were finally repealed by the Crimes Decree 2009, which came into force in February 2010.
3	**Marshall Islands**	2005	The Criminal Code (Amendment) Act 2005 amended the Criminal Code to decriminalise consensual same-sex sexual activity between adults in private.
4	**Micronesia** [Federated States of]	1982	The first 1982 legal code of the FSM (which included criminal provisions) did not contain any provision criminalising same-sex consensual sexual acts between adults and no such provision has been introduced since.
5	**Nauru**	2016	In May 2016 the Crimes Act 2016 repealed the Criminal Code 1899 that itself was drawn from the 1899 Queensland Criminal Code. The Government of Nauru stated that this law —by far the most comprehensive new law in the country— removed homosexuality as an offence.[44] Nauru had previously accepted three recommendations to decriminalise same-sex sexual activity in its 1st cycle of the UPR in 2011.[45]
6	**New Zealand**	1986 2007	The General Assembly passed the Homosexual Law Reform Act 1986 which decriminalised sexual acts between consenting men aged 16 and over. Same-sex sexual acts between consenting women were not illegal. In 2007 Niue (associated state) and Tokelau (dependent territory) decriminalised same-sex consensual relations as a result of the amendment of the Niue Act by the Niue Amendment Act 2007. The act came into force on 20 September 2007. In February 2017, the government of New Zealand announced that it would introduce legislation to open an application process to quash historical convictions for consensual sex between men.[46]
7	**Palau**	2014	Palau repealed its legal provisions that criminalised consensual same-sex sexual activity between gay men, introducing a new Penal Code with no such provisions, signed by the President in April 2014.[47] Palau had previously accepted three recommendations to decriminalise same-sex sexual activity in its 1st cycle of the UPR in 2011.[48]

44 "Nauru decriminalises homosexuality", *RadioNZ*, 27 May 2016.

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

46 "New Zealand to quash historical gay sex convictions", *BBC News*, 9 February 2017.

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

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

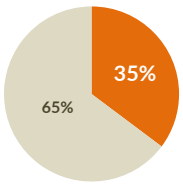
8	Vanuatu	1981	Soon after becoming an independent State in 1980, Vanuatu enacted its first Criminal Code (in force 1981), which did not criminalise (see page 122) same-sex activity between persons over 18 years of age.[49] The 2006 Consolidation of the Criminal Code maintained the same provision under Section 99. In that same year, the Penal Code (Amendment) Act 2006 (in force March 2007) repealed section 99 altogether, which had the effect of equalising ages of consent for same-sex and different-sex sexual acts at 15.

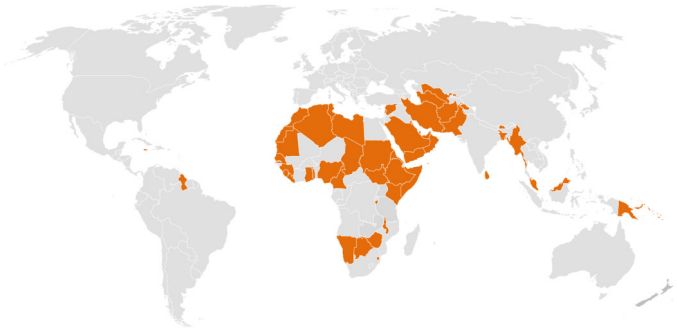
[49] D E Paterson, "Vanuatu Penal Code" (1986) 2(2) QIT Law Journal 119.

Consensual Same-Sex Sexual Acts: ILLEGAL

Highlights

68 UN Member States
35% UN Member States





AFRICA	LAC	NORTH AMERICA	ASIA	EUROPE	OCEANIA
32 /54	9 /33	0 /2	21 /42	0 /48	6 /14



Introduction

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

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

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

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

What does International Human Rights Law say?

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

Yogyakarta Principle 33.

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

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

N	CN	COUNTRY	SAME-SEX SEXUAL INTERCOURSE							SAME-SEX SEXUAL ACTS OTHER THAN INTERCOURSE					
			PROVISION IN FORCE	LAST AMEND	TERMS OF PROVISION	GENDER/S	MAX PRISON PENALTY	DEATH PENALTY	FINE / OTHER	PROVISION IN FORCE	LAST AMEND	TERMS OF PROVISION	GENDER/S	MAX PRISON PENALTY	FINE / OTHER
AFRICA															
1	1	**Algeria**	Penal Code, Article 338.	1966	Homosexual acts	ALL GENDERS	2 years	No	Yes	Penal Code, Article 333	1982	Indecent act against the order of nature	ALL GENDERS	3 years	Yes
2	2	**Botswana**	Penal Code, Article 164.	1964	Intercourse against the order of nature	ALL GENDERS	7 years	No	No	Penal Code, Article 167	-	Acts of gross indecency	ALL GENDERS	2 years	Yes
3	3	**Burundi**	Penal Code, Article 590.	2017	Sexual relations with a person of the same sex	ALL GENDERS	2 years	No	Yes	Penal Code, Article 572.	-	Acts of indecency contrary to Burundian morals	ALL GENDERS	2 years	Yes
4	4	**Cameroon**	Penal Code, Article 347-1.	2016	Sexual relations with a person of the same sex	ALL GENDERS	5 years	No	Yes						
5	5	**Chad**	Penal Code, Article 354.	2017	Sexual relations with a person of the same sex	ALL GENDERS	2 years	No	Yes						
6	6	**Comoros**	Penal Code, Article 318(3).	1981	Unnatural acts with a person of the same sex	ALL GENDERS	5 years	No	Yes	Penal Code 1981, Article 318(3).	-	Improper or unnatural act	ALL GENDERS	5 years	Yes
7	7	**Eritrea**	Penal Code, Article 310(1).	2015	Homosexual acts/ Sexual act with person of same sex	ALL GENDERS	7 years	No	No						
8	8	**Eswatini**	*Common law offence*	1907	Sodomy	MALE	*Not specified*	No	No						
9	9	**Ethiopia**	Penal Code, Article 629.	2004	Homosexual acts	ALL GENDERS	5 years	No	No						
10	10	**Gambia**	Criminal Code, Article 144.	2005	Homosexual act; carnal knowledge through anus or mouth	ALL GENDERS	14 years	No	No	Criminal Code, Article 147(2).	2005	Gross indecency	FEMALE	5 years	No
11	11	**Ghana**	Criminal Code, Section 99.	2003	Unnatural carnal knowledge	MALE	3 years	No	No						
12	12	**Guinea**	Penal Code, Article 274.	2016	Act against nature	ALL GENDERS	3 years	No	Yes	Penal Code, Articles 274, 275, 276.	2016	Indecent acts	ALL GENDERS	2 years	Yes
13	13	**Kenya**	Penal Code, Section 162.	2003	Carnal knowledge against the order of nature	ALL GENDERS	14 years	No	No	Penal Code, Section 165.	2003	Gross indecency	MALE	5 years	No
14	14	**Liberia**	Penal Code, Article 14.74.	2008	Sodomy / Deviate sexual intercourse	ALL GENDERS	1 year	No	No						

N	CN	COUNTRY	SAME-SEX SEXUAL INTERCOURSE							SAME-SEX SEXUAL ACTS OTHER THAN INTERCOURSE					
			PROVISION IN FORCE	LAST AMEND	TERMS OF PROVISION	GENDER/S	MAX PRISON PENALTY	DEATH PENALTY	FINE / OTHER	PROVISION IN FORCE	LAST AMEND	TERMS OF PROVISION	GENDER/S	MAX PRISON PENALTY	FINE / OTHER
15	15	**Libya**	Penal Code, Article 407(4).	1976	Illicit sexual intercourse	ALL GENDERS	5 years	No	No	Penal Code, Article 408(4).	-	Disgrace the honour	UNCLEAR	*Not specified*	No
16	16	**Malawi**	Penal Code, Article 153.	2011	Carnal knowledge against order of nature	ALL GENDERS	14 years	No	*Corporal Punish-ment*	Penal Code, Arts. 137(a) and 156.	2011	Gross indecency	ALL GENDERS	5 years	Corporal Punishm ent
17	17	**Mauritania**	Penal Code, Article 308.	1984	Acts against nature	ALL GENDERS	2 years (female)	Yes (men)	Yes (female)						
18	18	**Mauritius**	Penal Code, Article 250	1838	Sodomy	MALE	5 years	No	No						
19	19	**Morocco**	Penal Code, Article 489	1962	Lewd or unnatural acts	ALL GENDERS	3 years	No	Yes						
20	20	**Namibia**	*Common law offence*	-	Unlawful sexual relations per annum between males	MALE	*Not specified*	No	No	Combating of Immoral Practices Act, Article 8.	-	Immoral act in public	ALL GENDERS	3 years	Yes
21	21	**Nigeria**	Criminal Code, Section 214.	1990	Carnal knowledge against order of nature	ALL GENDERS	14 years	Yes	No	Criminal Code Act, Section 217	-	Gross indecency	MALE	3 years	No
22	22	**Senegal**	Penal Code, Article 319(3).	1965	Unnatural acts	ALL GENDERS	5 years	No	Yes						
23	23	**Sierra Leone**	OAP Act, Section 61.	1861	Buggery	MALE	*No max*	No	No						
24	24	**Somalia**	Penal Code, Article 409.	1962	Homosexuality / Carnal intercourse with person of same sex	ALL GENDERS	3 years	Yes	No						
25	25	**South Sudan**	Penal Code, Article 248.	2009	Carnal intercourse against order of nature	ALL GENDERS	10 years	No	Yes	Penal Code, Section 249.	-	Gross indecency	ALL GENDERS	14 years	Yes
26	26	**Sudan**	Penal Code, Article 148.	1991	Sodomy	MALE	5 years	Yes	Flogging	Penal Code, Section 151.	-	Gross indecency	ALL GENDERS	1 year	Yes
27	27	**Tanzania**	Penal Code, Article 154.	1998	Carnal knowledge against order of nature	ALL GENDERS	Life	No	No	Penal Code, Sections 138a and 157.	1998	Gross indecency	ALL GENDERS	5 years	Yes
28	28	**Togo**	Penal Code, Article 392.	2015	Indecent or unnatural acts with a person of same sex	ALL GENDERS	3 years	No	Yes						
29	29	**Tunisia**	Penal Code, Article 230.	2012	Sodomy	ALL GENDERS	3 years	No	No						

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

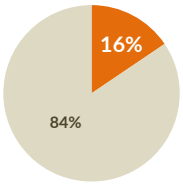
N	CN	COUNTRY	SAME-SEX SEXUAL INTERCOURSE							SAME-SEX SEXUAL ACTS OTHER THAN INTERCOURSE					
			PROVISION IN FORCE	LAST AMEND	TERMS OF PROVISION	GENDER/S	MAX PRISON PENALTY	DEATH PENALTY	FINE / OTHER	PROVISION IN FORCE	LAST AMEND	TERMS OF PROVISION	GENDER/S	MAX PRISON PENALTY	FINE / OTHER
44	3	**Bhutan**	Penal Code, Section 213.	-	Sodomy	ALL GENDERS	1 year	No	No						
45	4	**Brunei**	Penal Code, Section 377.	2001	Intercourse against the order of nature	ALL GENDERS	10 years	No	Yes						
46	5	**Iran**	Penal Code, Articles 233 – 234.	2013	Livat (penetration of man's penis into another male person's anus)	MALE	-	Yes	Caning	Islamic Penal Code Articles 235 - 240	2013	Tafkhiz, Musaheqeh and any other homosexual act	ALL GENDERS	100 lashes	No
		Certain Provs. in Indonesia	*See entry for "Certain Provinces in Indonesia" in the "Criminalisation" section of this report.*												
47	6	**Kuwait**	Penal Code, Article 193.	1976	Consensual intercouse between men	MALE	7 years	No	No	Penal Code Article 198	1976	Lewd signal or act in a public place	ALL GENDERS	1 year	Yes
48	7	**Lebanon**	Penal Code, Article 534.	-	Intercourse against nature	ALL GENDERS	1 year	No	No						
49	8	**Malaysia**	Penal Code, Sections 377A - 377B.	1989	Intercourse against the order of nature	ALL GENDERS	20 years	No	Whipping	Penal Code Section 377D	-	Act of gross indecency	ALL GENDERS	2 years	No
50	9	**Maldives**	Penal Code, Section 411.	-	Intercourse with a person of the same sex	ALL GENDERS	8 years	No	No	Penal Code Section 412	-	Indecent acts	ALL GENDERS	8 years	No
51	10	**Myanmar**	Penal Code, Section 377.	-	Intercourse against the order of nature	ALL GENDERS	10 years	No	Yes						
52	11	**Oman**	Penal Code, Article 223.	-	Erotic acts with a person of the same sex	ALL GENDERS	3 years	No	No						
53	12	**Pakistan**	Penal Code, Section 377.	-	Intercourse against the order of nature	ALL GENDERS	10 years	No	Yes	Penal Code Section 294	-	Obscene act in public	ALL GENDERS	3 months	Yes
		Palestine (Gaza)	Criminal Code Ordinance, Section 152(2).	-	Carnal knowledge against the order of nature	ALL GENDERS	10 years	No	No						
54	13	**Qatar**	Penal Code, Article 295.	-	Intercourse with a person of the same sex	MALE	Life	No	No						
55	14	**Saudi Arabia**	Sura 7:80/ 81	-	*Reference to sexual intercourse between men*	-	-	Yes	-						
56	15	**Singapore**								Penal Code Section 377A	2008	Act of gross indecency	Male	2 years	
57	16	**Sri Lanka**	Penal Code, Article 365,	1995	Intercourse against the order of nature	ALL GENDERS	10 years	No	No	Penal Code Article 365A	1995	Act of gross indecency	All GENDERS	2 years	Yes

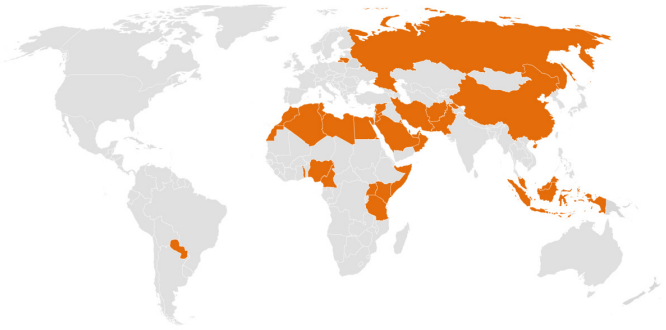
N	CN	COUNTRY	SAME-SEX SEXUAL INTERCOURSE							SAME-SEX SEXUAL ACTS OTHER THAN INTERCOURSE					
			PROVISION IN FORCE	LAST AMEND	TERMS OF PROVISION	GENDER/S	MAX PRISON PENALTY	DEATH PENALTY	FINE / OTHER	PROVISION IN FORCE	LAST AMEND	TERMS OF PROVISION	GENDER/S	MAX PRISON PENALTY	FINE / OTHER
58	17	**Syria**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

Legal Barriers to Freedom of Expression on SOGIESC Issues

Highlights

31 UN Member States
16% UN Member States





AFRICA	LAC	NORTH AMERICA	ASIA	EUROPE	OCEANIA
12 /54	1 /33	0 /2	15 /42	3 /48	0 /14



Introduction

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

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

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

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

What does International Human Rights Law say?

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

Yogyakarta Principle 19

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

Yogyakarta Principle 19.a

Africa (11)

1	**Algeria**	**2014**	Article 333 bis (*Reiterated*) of the Penal Code penalises the possession, dissemination or display of anything contrary to "decency" with imprisonment from 2 months to 2 years and a fine between 500 Da to 2000 Da. Under the second paragraph of article 333 (*Modified*) the "indecent exposure of an act against the order of nature" constitutes aggravated crime against good mores.
2	**Cameroon**	**2010** **2016**	Article 83 of the Law on Cybersecurity and Cybercrime (Law No. 2010/12 of 2010) criminalises electronic communication between individuals of the same sex for the purpose of sexual proposition. Penalties are enhanced when the communication is actually followed by sexual intercourse. Sections 264 of the Penal Code (2016) criminalises the public utterance of any immoral speech and the drawing of the public's attention to any occasion of immorality. In light of the criminalisation of same-sex intimacy, a legal scholar has suggested that a publicly uttered speech advocating "unnatural sexual indulgence" would be considered immoral.[1]
3	**Egypt**	**1937** **2018**	Individuals have been prosecuted for publicly *expressing support* for LGBTQI communities under article 86bis of the Penal Code (1937).[2] Article 25 of the Law on Cyber Crimes (Law No. 175/2018) states that "anyone who publishes online content that threatens society's and family's values shall be punished for at least six months of prison and a fine of at least fifty thousand pounds." In 2017, the Supreme Council for Media Regulation (SCMR) released an order to ban all forms of support towards the LGBT community on media outlets.[3]
4	**Kenya**	**2009**	Section 12 of the Film and Stage Plays Act restricts the exhibition of films according to the discretion of the Kenya Film Classification Board. According to the Board's Classification Guidelines (2012) films with themes that "glamorise a homosexual lifestyle" are either age-restricted to those above 18 years old or banned. In April 2018, the Board issued a ban against the film "Rafiki" on the basis that it was intended to promote lesbianism in Kenya though this was temporarily lifted for seven days by a High Court judge after the film was nominated at the Academy Awards.[4] In 2014, the Board also banned another film, "Stories of Our Lives" similarly for "promoting homosexuality".
5	**Libya**	**1953**	Article 421 of the Penal Code refers to distribution of "articles of an indecent nature". As Article 410 criminalises *indecent* acts between persons of the same sex, content relating to same-sex intimacy would fall under the definition of "articles of an indecent nature".

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

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

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

4 "Kenya: Censorship by film classification board limiting free expression", *Article 19*, 17 May 2018.

6	Morocco	1962	Article 483 of the Penal Code criminalises acts or gestures of public obscenity and indecency. In 2015, two men were prosecuted under this law for kissing in public as an act of protest.[5]
7	Nigeria	2014	Section 5(2) of the Same-sex Marriage (Prohibition) Act (2014) provides that a person who "directly or indirectly makes public show of same-sex amorous relationships" may receive a penal sentence of up to 10 years imprisonment.
8	Somalia	1964	Article 402 prohibits the commission of any obscene act while Article 403 of the Penal Code (1964) prohibits the sale, distribution and exhibition of any obscene object. Article 404 deems acts and objectives as obscene where they, in the general opinion, are *offensive to modesty*. Article 409, which criminalises same-sex intimacy, is part of the same chapter on offences against modesty in the legislation.
9	Tanzania	1981	Article 175 of the Penal Code stipulates materials that are tending to "corrupt morals" may not be distributed, sold or exhibited. Article 154 which criminalises same-sex intimacy is located in Chapter XV, titled "Offences Against Morality". In 2017, 12 people were arrested for "promoting homosexuality".[6]
10	Togo	1980	Article 392 and 394 of the Penal Code penalise the publication and distribution of materials "contrary to public morals", "decency". Offenses against morality include "unnatural acts" with a person of the same sex under Article 392.
11	Tunisia	2004	Amended in 2004, Article 226bis of the Penal Code of 1913 criminalises any act that publicly draws attention to the opportunity to commit debauchery through any form of writing, audio or visual recording. This law is found in the same section titled "Section III: attacks on morals" where the law criminalising same-sex intimacy is located.
12	Uganda	1995	Under Section 9 of the *Press and Journalist Act 1995*, the Media Council is authorised to censor films, plays and other media content for public consumption. In 2017, the Media Council banned a Dutch film for "glorifying homosexuality".[7] The Broadcasting Council, established under the *Electronic Media Act*, is similarly empowered to regulate radio content pursuant to the minimum broadcasting standards of First Schedule which prohibits programmes that are contrary to "public morality"; in 2004, it fined a radio station for hosting gay men during a live talk show on the basis that it was "contrary to public morality."[8] The Ugandan government has also tried to explicitly prohibit the "promotion" of homosexuality under the defunct *Anti-Homosexuality Act 2014* (struck down in August 2014) and *The Prohibition of Promotion of Unnatural Sexual Practices Bill*.

5 "Moroccan men 'jailed for four months for kissing in public'", *The Telegraph*, 19 June 2015.

6 Katherine Swindells, "12 arrested in Tanzania for 'promoting homosexuality'", *Pink News*, 18 October 2017.

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

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

Latin American and the Caribbean (1)

1	**Paraguay**	**2017**	The Ministry of Education and Sciences issued *Resolution No. 29,664/2017* prohibiting the dissemination and use of educational materials referring to "gender theory and/or ideology".[9] The Inter-American Commission on Human Rights (IACHR) noted that this measure "represents a setback for the rights of women, people with diverse sexual orientations and gender identities, and children to receive an education free of stereotypes that are based on ideas of inferiority or subordination".[10]

Is there more in LAC?

Jamaica	In Jamaica, approval is required from the Cinematograph Authority under the *Cinematograph Act* to present a film. In 2013, a film about two lesbians who were murdered by their boyfriends was banned though no reason was given by the Cinematograph Authority.[11] Though the Cinematograph Authority has the power to make rules to approve or ban films, those rules are not publicly available.[12]
Haiti	In 2017, the Senate voted to ban marriage equality as well as "any public demonstration of support for homosexuality and proselytizing in favour of such acts."[13]

North America (0)

Is there more in North America?

United States of America	In the United States of America, seven states (that make up around 17.4% of the total population) have enacted local laws—informally referred to as 'No Promo Homo Laws'- which prohibit educators from discussing same-sex intimacy in an affirming or positive manner.[14] For example, in Alabama and Texas, educators must emphasise that "homosexuality is not a lifestyle acceptable to the general public". In Arizona, educators cannot promote or portray homosexuality as a "positive alternative lifestyle". In South Carolina, educators cannot discuss non-heterosexual relationships except in the context of sexually transmitted diseases. The other states with such laws are Oklahoma, Louisiana and Mississippi. In March 2017, the governor of Utah signed SB 196, revising the state law that prohibited the "advocacy of homosexuality" in schools. Because less than half of the country's population is affected by these laws, the US is not included in the list.

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

10 "Press Release: IACHR Regrets Ban on Gender Education in Paraguay", *Organisation of American States (webpage)*, 15 December 2017.

11 "Jamaica bans movie with lesbian scenes featuring Dominican actress", *Dominica News Online*, 29 May 2013.

12 Camille Royes, "Rating a film — Jamaican-style", *Jamaica Observer*, 14 March 2012.

13 "Haïti: le sénat interdit le mariage gay", *Tribune de Genève*, 3 August 2017.

14 "No Promo Homo" Laws (webpage), GLSEN (website), accessed 27 January 2019.

Asia (15)

1	**Afghanistan**	1965 2006	Articles 32 and 33 of the Afghanistan Press Law (1965) prohibit the use of the press to incite others to commit an offense or to "seek depravity" (which includes the publication of articles which tend to debase public morals). Additionally, article 31(1) of the Law on Mass Media (2006) also prohibits the publication of matters "contrary to principles of Islam". In 2014, the Afghan government threatened to prosecute a gay activist for using social media to advocate for LGBT issues.[15] In 2009, it was reported that a memoir by a gay Afghan man could not be distributed in the country.[16]
2	**China**	2015	Following the removal of a gay-themed web series, China issued the General Rules for Television Series Content Production banning content which "expresses or displays abnormal sexual relations or sexual behaviour, such as homosexuality".[17] In 2017, a directive was circulated that prohibits content relating to homosexuality as well.[18] In 2018, China's top social networking site, Weibo, announced a plan to censor gay-related content but reversed its decision after public backlash.[19] In October 2018, a novelist whose work included homoerotic content was sentenced to 10 years' imprisonment for making and selling "obscene material" for profit.[20]
3	**Indonesia**	2016	In February 2016, the Indonesian Broadcasting Commission (KPI) released the Circular to All Broadcasting Companies on Effeminate Men which prohibits all broadcasting companies from representing sexual and gender diversity in men. In the same month, it also released a statement banning TV and radio programmes that "promoted" the LGBT lifestyle on the basis that it was in violation of the Broadcasting Program Standards (2012) in the name of protecting children.[21] In 2016, the Indonesian Ulema Council released a *fatwa* that rejected "all forms of propaganda, promotion and support towards lesbian, gay, bisexual and transgender (LGBT) in Indonesia", with the Council's chairman, Maruf Amin, declaring that "LGBT activities and campaign are forbidden in Islam and other Abrahamic religions."[22] Over the past few years, the Communications Ministry has been trying to ban same-sex dating applications on mobile phones albeit unsuccessfully.[23]

15 Nemat Sadat, "Afghanistan's 'coming out' for LGBT rights can pave the road to peace", *Public Radio International*, 30 April 2014.
16 Tahir Qadiry, "Gay Afghan defies tradition to expose identity", *BBC News*, 20 February 2013.
17 Josh Horwtiz et al., "China's new television rules ban homosexuality, drinking, and vengeance", *Quartz*, 3 March 2016.
18 Steven Lee Myers and Amy Cheng, "66 things you cannot say on China's internet", *New York Times*, 24 September 2017.
19 Wang Yanan, "China's Weibo site backtracks on gay censorship after outcry", *AP News*, 17 April 2018.
20 Alison Flood, "Chinese writer Tianyi sentenced to decade in prison for gay erotic novel", *The Guardian*, 20 November 2018.
21 Fedina S Sundaryani, "Commission wants TV, radio free of LGBT", *The Jakarta Post*, 14 February 2016.
22 "MUI Rejects All Forms of LGBT Promotion", *Tempo.Co*, 18 February 2016.
23 Adi Renaldi, "Indonesia Wants to Ban Gay Dating Apps, Again", *Vice News*, 5 February 2018.

4	Iran	1986 2009	The Press Law contains a variety of limitations on material that may be considered offensive to the public. The government has used this law and the Law on Computer Crimes (Law No. 71,063 of 2009) to shut down newspapers and websites with content related to sexual orientation.[24]
5	Jordan	1988	Article 37 of the Press and Publication Law prohibits the publication of content that "encourages perversion or lead to moral corruption". In July 2017, the Jordanian Audiovisual Commission blocked access to an LGBTQIA-inclusive online magazine on the basis that they had not applied for a license.[25]
6	Kuwait	1960	Article 21 of the Press and Publications Law prohibits the publication of anything that would insult the public morals or instigate others to violate the public order or to violate the laws or to commit crimes, even if the crime did not occur. This law was extended to include online publications pursuant to the Law Regulating Electronic Media (Law No. 8 of 2016). In 2017, the Ministry of Information prohibited the screening of a Disney film (The Beauty and the Beast) that contained a same-sex kiss.[26]
7	Lebanon	1943	Article 532 of the Penal Code prohibits the possession, making, or distributing of materials that may incite others to immorality. In May 2018, an organiser of Beirut Pride was detained for organising a demonstration that incite immorality.[27] In January 2019, the Ministry of Telecom reportedly ordered a ban on Grindr (an online dating app mostly used by gay men).[28]
8	Malaysia	2018	In 2010, the Film Censorship Board (LPF) relaxed its ban on "homosexual content" pursuant to the Film Censorship Act, provided that gay characters became straight at the end.[29] In 2018, in a response to a parliamentary question and following a national controversy over a gay kiss in a Disney film, the deputy home minister reiterated that LGBT content will be banned from broadcast unless there were "lessons to be learnt", pursuant to guidelines set by the LPF.[30]
9	Oman	1984	Articles 25 and 28 of the Publications and Publishing Law (1984) prohibit the publication of anything that "disrupt the public order or call people to embrace or promote anything deemed in contravention of the principles of the Islamic religion" or "that might prejudice the public code of conduct, moral norms or divine religions". Article 42 of the 2007 Executive Regulations promulgated under the Telecommunications Regulation Law prohibits a person from using telecommunication services that contain data or

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

25 "Jordan blocks access to LGBTQ online magazine", *Committee to Protect Journalists*, 8 August 2017.

26 Kate Feldman, "'Beauty and the Beast' pulled from theaters in Kuwait by censors", *New York Daily News*, 20 March 2017.

27 Hugo Lautissier, "Beirut Pride's Hadi Damien Q&A: Lebanon's LGBT movement is 'growing'", *Middle East Eye*, 19 May 2018.

28 Samuel Leighton-Dore, "Grindr has reportedly been banned in Lebanon", *SBS News*, 23 January 2019.

29 "It's OK to be gay in Malaysian movies - as long as you go straight", *Herald Sun*, 22 March 2010.

30 "Censorship board to snip LGBT elements, scenes from films, dramas", *FMT News*, 11 December 2018.

			information which are "contrary to the public ethic system, infringe the religious practice or upset others or promote any subject breaching the law". In September 2013, the newspaper *The Week* was shut down for one week after printing an article about the country's LGBT community.[31] In 2015, the Ministry of Information was purportedly taking legal action against a French radio station based in Oman that hosted a gay Omani activist who spoke about the challenges of being gay in the country.[32]
10	Pakistan	2016	Section 34 of the Prevention of Electronic Crimes Act (2016) grants the Pakistan Telecommunication Authority the power to remove or block access to content if it considers it necessary in the interest of the glory of Islam, public order, decency, or morality. Prior to this law, the government has already been banning LGB-related content online and in the media.[33]
11	Qatar	2004	Article 296 (3)-(4) of the Penal Code (2004) states, "One is convicted to no less than a year and no more than three years in prison in case of (3) Leading, instigating or seducing a male anyhow for sodomy or immorality and (4) Inducing or seducing a male or a female anyhow to commit illegal or immoral actions". In 2018, it was reported that LGB-content were censored in international newspapers.[34]
12	Saudi Arabia	2007	Article 6 of the Anti-Cyber Crime Law (2007) prohibits the production, publication and promotion of online content or webpages that the government deems to be pornographic or in violation of religious values or public morals or order. For instance, in January 2018, Saudi police arrested a group of men who had uploaded a video of a "gay wedding".[35]
13	Singapore	2016	The Info-communications Media Development Authority promulgated a series of Codes of Practices for broadcast media, radio, films and the internet, all of which prohibit the positive portrayal or advocacy of "homosexuality" and "lesbianism". The authorities may also censor the media or impose age restrictions based on these regulations and have done so many times.[36]
14	Syria	1948	Article 208 of the Syrian Penal Code prohibits offensive public utterances in writing, graphics, images, etc. Prior to the civil war, it was reported that films on LGBT content were censored.[37]

31 "Oman's government sues newspaper over story about gays", *Reuters*, 5 September 2013; "Oman: Freedom of the Press 2014", *Freedom House Website*.

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

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

34 Nick Duffy, "Qatar is censoring LGBT news coverage ahead of 2022 World Cup", *Pink News*, 21 July 2018.

35 "Saudi Arabia police arrest men over 'gay wedding' video", *BBC News*, 9 January 2018.

36 Yip Wai Yee, "Singapore cuts Obama's LGBT comments on Ellen", *The Straits Times*, 25 February 2016; "Singapore censor fines TV station for showing gay family", *The Sydney Morning Herald*, 25 April 2008.

37 "Syria: Ban on TV series and films about homosexuality", *Free Muse*, 23 May 2012.

15	United Arab Emirates	2003	Article 3(5)(4) of Law on Combating Cybercrimes (Law No. 5 of 2012) criminalises the condoning, provoking or promoting of sin through the computer network or any information technology means or a website. The Telecommunications Regulatory Authority also blocks websites that "promote destructive principles such as homosexuality" as part of its Internet Access Management Regulatory Policy. In 2018, the Knowledge and Human Development Authority of the Dubai Government banned a textbook used in a private international school for "violating the religious and traditional norms in the UAE" because it featured a family with two mothers.[38]
16	Yemen	1990	Article 103 of the Law on the Press and Publications (Law No. 25 of 1990) prohibits the publication or dissemination of "anything which undermines public morals". In 2004, a court sentenced three journalists to imprisonment for publicly discussing homosexuality and interviewing men jailed for homosexuality.[39] In 2012, a government-funded cultural magazine, Al Thaqafiya, was shut down for publishing a review of an Egyptian film that contained a scene depicting lesbian sex.[40]

Is there more in Asia?

Kazakhstan	Kazakhstan's Constitutional Council announced on May 26, 2015, that a proposed legislation on "propaganda of non-traditional sexual orientation" is unconstitutional.[41]
Kyrgyzstan	In 2014, the government of Kyrgyzstan had introduced a bill that copied Russia's legislation against "gay propaganda", with additional jail sentences for people who "promote homosexual relations" through the media.[42] The bill had a second reading in June 2015 with little discussion, no questions asked of the 28 MPs who sponsored it, and 90 votes in favour. However, in May 2016, the Parliamentary Committee on Law, Order and Fighting Crime withdrew the draft legislation for further consideration, and to date, it has not been put back before the parliament.[43]

38 "Dubai Bans Private School Book on Homosexual Parents", *Albawaba The Loop*, 9 October 2018.

39 "Journalists convicted for gay report", *Al Jazeera*, 19 May 2004.

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

41 Joanna Lillis, "Kazakhstan Strikes Down 'Gay Propaganda' Law After Olympics Outcry", *Eurasianet*, 27 May 2015.

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

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

Europe (3)

1	**Belarus**	2017	The Bill on the Protection of Children from Information Harmful to their Health and Development was passed and came into effect in July 2017 as Law No. 362-Z2. Similar to Russia's propaganda law, Article 37 prohibits the dissemination of information that "discredits the institution of family and marriage".[44]
2	**Lithuania**	2014	In January 2014, the Lithuanian Parliament introduced amendments to the Code of Administrative Violations of Law (at Section 214 and elsewhere) penalising activities or publication that violate so-called constitutionally-established family values. These amendments were enacted in the context of the Law on the Protection of Minors against the Detrimental Effect of Public Information that came into effect in March 2010.
3	**Russian Federation**	2013	Federal Law No 135-FZ which prohibits the promotion of non-traditional sexual relations among minors has been used to prosecute a range of people since it was enacted, including activists,[45] websites and the media.[46] ▸ *For more information on this law, read "The Censorship "Propaganda" Legislation in Russia" by Alexander Kondakov below.*

Is there more in Europe?

Armenia	In Armenia, an attempt was made in 2013 to introduce an amendment to the Administrative Offences Code to impose fines for "propaganda of non-traditional sexual relations" but subsequently withdrawn.[47] In October 2018, a similar law was introduced in the legislature.[48]
Hungary	The Hungarian government issued a decree in 2018 to revoke accreditation and funding for gender studies programmes at the two universities that offer them in the country. This was because the Hungarian government believed that there are only two genders and did not wish to spend public funds in this area.[49]
Latvia	The Latvian parliament successfully passed amendments to the Education Law in 2015 which obliges education institutions to provide students with 'moral' education that mirrors constitutional values, especially regarding marriage and family.[50] It had previously failed to enact an anti-gay propaganda law in 2013, which aimed to prohibit children as participants or spectators of events aimed at the promotion of LGBT relations.[51]

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

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

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

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

48 Ani Meijumyan, "Ahead of elections, Armenia's opposition attacks LGBT right",

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

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

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

Moldova	In 2013, the Moldovan government first enacted then repealed an anti-gay propaganda law inspired by the Russian law in its bid to join the European Union.[52] Two bills were tabled in 2016 and 2017 to ban "propaganda of homosexual relations among minors" and censor public distribution of information about non-heterosexual relationships and identities and remain under legislative consideration.[53]
Poland	In March 2017, draft propaganda legislation was proposed in Poland to ban homosexual people from the teaching profession.[54] The proposed bill was never voted on due to a change in the party compositions of the Polish parliament following new elections. In late 2018, the Polish president said that he would "seriously" consider a law banning "homosexual propaganda" in schools.[55]
Ukraine	**Ukraine** had tried to "protect" children from "propaganda" about homosexual relations with Draft Law 1155 and Draft Law 0945. However, after international pressure, they were removed from parliamentary consideration in April 2014.[56]

52 Joseph Patrick McCormick, "Moldova overturns anti-gay 'propaganda' law with hopes of joining EU", *Pink News*, 14 October 2013.
53 "Moldova's LGBT Community Faces a Russia-Inspired Media Crackdown", *World Politics Review*, 16 August 2017.
54 "Expression Abridged: A Legal Analysis of Anti-LGBT Propaganda Laws", *IGLYO*, April 2018, 13.
55 Patrick Kelleher, "Polish president Andrzej Duda considering 'gay propaganda' ban", *Pink News*, 11 November 2018.
56 "Expression Abridged: A Legal Analysis of Anti-LGBT Propaganda Laws", IGLYO, April 2018, 13.

The Censorship "Propaganda" Legislation in Russia

By Alexander Kondakov.[57]

In June 2013, Russian Parliament (the State Duma) adopted the bill 135-FZ meant to "protect children from information that promotes denial of traditional family values."[58] This piece of legislation amended several federal laws and the Code of Administrative Offences of the Russian Federation with the final purpose to ban from public access something called "propaganda of non-traditional sexual relations".

Most importantly, the bill ads Article 6.21 to the Administrative Code that establishes responsibility for dissemination of information about "non-traditional sexual relations" punishable by fines (for citizens and officials), fines and suspension of organizational activities (for entities) or fines and deportation (for foreign nationals and stateless persons).[59]

This law does not deliver on criminal liability; it is a misdemeanour that has a specific legal procedure and different legal consequences in comparison to criminal law. Substantially, the "propaganda" law is a censorship legislation that limits people's freedom of expression. It simply prohibits certain information from being part of the commonly accessible domain.

First attempts to ban "homosexual" propaganda

Initially, the bill was introduced to the Duma in 2012 by regional parliamentarians from the Novosibirsk branch of the United Russia Party. Their proposition was more articulate as they sought to ban "propaganda of homosexuality" just like in a dozen other regions across Russia where similar legislation was already in place.[60] The first in line was the Ryazan region, where the propaganda bill was introduced as early as 2006. In that period at the federal level, Member of Parliament Aleksandr Chuev had been trying to criminalise "propaganda of homosexual lifestyle" for some years after unsuccessful attempts to criminalise "sodomy" beforehand. Wording of his legislation drafts (also proved unsuccessful due to the criminal nature of his legal initiative) were mostly inspired by decisions of the Constitutional Court of the Russian Federation regarding national family values, as well as by the US evangelicals' doctrine of "traditional family values".[61]

This language was used in drafting the current law with the purpose of avoiding overtly mentioning "homosexuality" so that the text itself would not "promote" what it sought to prohibit. Thus, by summer 2013 despite protests from the Duma's Law Department, the Duma's Committee on Family, Women and Children headed by the Member of Parliament Yelena Mizulina drafted the ban of "non-traditional sexual relations" supported by all but one parliamentarian during voting.

Prohibited conduct

Despite common misconception, this piece of legislation is very straightforward and clear. The text of the law says that if someone promotes "non-traditional sexual relations" to minors, then they have to face legal consequences. The ways in which one may "promote" these relations are of two types:

a) *personal presentation* (private conversation, teaching, public rally and campaigning) or

---

57 Alexander Kondakov (alexander.kondakov@helsinki.fi) PhD in Sociology, is a research fellow at the Aleksanteri Institute, University of Helsinki, Finland. He is also a research associate at the Centre for Independent Social Research, Russia. Alexander serves as the deputy editor-in-chief for the *Journal of Social Policy Studies* published by the Higher School of Economics in Moscow. For a decade, Kondakov's work has primarily focused on law and sexuality studies, more specifically on queer sexualities in Russia. He is the author of a report on hate crimes against LGBTIQ people in Russia that has shown the rise of violence after the adoption of the gay propaganda bill. His publications include articles in *Sexualities*, *Social and Legal Studies*, and *Feminist Legal Studies*, among others.

58 Federal'nyj zakon "O vnesenii izmenenij v stat'ju 5 Federal'nogo zakona 'O zashhite detej ot informacii, prichinjajushhej vred ih zdorov'ju i razvitiju' i otdel'nye zakonodatel'nye akty Rossijskoj Federacii v celjah zashhity detej ot informacii, propagandirujushhej otricanie tradicionnyh semejnyh cennostej" [*Federal Law "On Amendment of Article 5 of the Federal Law 'On Protection On Protecting Children from Information Harmful to Their Health and Development' and Other Normative Acts of the Russian Federation for the Purpose of Protecting Children from Information Advocating for a Denial of Traditional Family Values"*] 29 June 2013, No. 135-FZ.

59 Fines are from 4-5,000 RUR for private citizens to 40-50,000 RUR for officials to 800,000-1,000,000 RUR for companies.

60 The regions that adopted the 'propaganda' legislation include: Arkhangelsk, Vladimir, Irkutsk, Kaliningrad, Kostroma, Krasnodar, Magadan, Novosibirsk, Ryazan, Samara regions, the city of St Petersburg, and the Republic of Bashkortostan.

61 Christopher Stroop, "Russian Social Conservatism, the WCF and the Global Culture Wars in Historical Perspective", *Political Research Associates*. 16 February 2016.

b) *mediated presentation* (airing on the Internet or TV, in newspapers and magazines).

Moreover, an actual child must not be in fact exposed to the information in question: children in general should be able to access the information in order for it to be considered "propaganda". This also uncovers the nature of "propaganda" in the text of the law: since a child is not required to be present at the event of alleged misdemeanour, then any consequences of the information to the child's sexual orientation are of no legal relevance. In other words, although the law pretends to protect children from the "harm" of becoming gay, it does not matter if any particular child has been really converted to a gay person as a result of being exposed to a plaintiff's political rally banner.

In the absurdist world of Russian legislators, this is a smart move because otherwise no case would stand trial. The legislators do mention that in result of children's exposure to information about "non-traditional sexual relations" the following possibilities are projected: "formation of non-traditional sexual attitudes," "attraction to non-traditional sexual relations," "perverse impression of social equality between traditional and non-traditional sexual relations," etc.

However, the practice of the law demonstrates that no proof of these effects on children is ever required in the courtroom. This law is about quality of information (its potential ability to convince someone that queer sexuality is a normal part of our society and even maybe an interesting practice to try), not about human capacity to experiment with one's sexuality under external influence.

The law targets information: as a censorship law, it limits freedom of expression. Court experts are called upon to testify that a piece of information may potentially ignite children's interest in homosexuality and therefore, it is a piece of "propaganda." Hence, the "frightening" consequences of "gay propaganda" are nothing more than rhetorical ornaments that serve for the creation of moral panic.

The notion of "non-traditional sexual relations"

Furthermore, in the federal legislation, the formula "non-traditional sexual relations" does divert attention from a franker wording, such as St. Petersburg's "propaganda of homosexuality, lesbianism, bisexuality and transgenderism" (paraphrased "LGBT" acronym). Yet, the Supreme Court of the Russian Federation previously clarified that "traditional sexual relations" do not include lesbian experiences, male homosexuality, bisexuality and transgender issues, so these are considered "non-traditional".

Besides, people rarely learn about law from legal books. Thus, while lawyers have the Supreme Court's rulings to understand a correct interpretation of "non-traditional" sexuality, other people may rely on TV and newspaper articles, where this linguistic formula is heavily used in reference to LGBTQ questions. Therefore, no mistake shall be committed in interpretation of the law by legal professionals or lay people.

The effects and consequences of the law

This last point actually bares discussion of the effects of the law. First, as any censorship law and contrary to its said purpose, the bill 135-FZ generated a lot of interest to the object it censored. Studies show that there are more publications about queer sexualities in Russia after adoption of the law than before it.[62] Certainly, some of them are meant to convince the public that it is in danger of "homosexuality". This is especially so for materials aired on government-controlled media resources. Yet, other publications, on the contrary, try to convey a more LGBTQ-friendly approach and are published in "oppositional" or independent media. Some of these latter types of materials were subjected to administrative litigation, while others are freely available anyway. The thing is that in order to open an administrative case, state agencies have to show that a publication in question was meant for children. Hence, if a sign marked the said publication as intended for an "18+ age" audience, then a case cannot be built.

Secondly, the law also generated legal enforcement; it is not an inactive piece of legislation (see "The implementation of the law" below).

Finally, the law also has social effects beyond its legal implementation or censorship controversies. Most importantly, academic and activist studies registered growth of violence against LGBTQ populations in Russia after 2013.[63]

The "propaganda" law is a symbolic articulation of the government's hatred policy. The law officially established that some citizens of Russia are of less

62 Emil Edenborg, *Politics of Visibility and Belonging: From Russia´s "Homosexual Propaganda" Laws to the Ukraine War* (London: Routledge, 2017); Elena Sergeevna Pronkina, "Osobennosti LGBT-diskursa v rossiyskikh media, initsiirovannogo diskussiyami o regulirovanii seksual'nosti" [Aspcets of LGBT-Related Discourse in the Russian Media Today: The Case of Discussions Provoked by Regulations on Sexuality in Russia. *Journal of Social Policy Studies* 1 (2016), 71-86.

63 Aleksandr Kondakov, *Prestuplenija na pochve nenavisti protiv LGBT v Rossii* [Hate Crime against LGBT People in Russia] (St. Petersburg: The Centre For Independent Social Research, 2017); Human Rights Watch (HRW), *License to Harm: Violence and Harassment against LGBT People and Activists in Russia* (2014).

value than others (its text refers to "social equality" between sexual groups as a "perverse impression" one must be protected from). Thus, the law and official political commentaries around it spread and reinforced the idea that queer sexualities are wrong. Judging from the growth of violence against LGBTQ people in Russia, some bigots acted violently upon this conclusion.

Russia's legislation in limiting LGBTQ populations' freedom of expression also has an international dimension. As the result of this official policy of bigotry, many queer people in Russia felt especially threatened and endangered, even experiencing actual violence and persecution because of their sexual or gender identities. Therefore, some of them had to flee the country and seek for international protection in safer places.

On the other hand, the law generated positive responses in some Post-Socialist countries. Similar "anti-propaganda" laws have been considered in Poland, Lithuania, Latvia, Hungary, Moldova, Belarus, Ukraine, Kyrgyzstan, Kazakhstan and Armenia. All attempts have proved unsuccessful so far, but the issue brings these states closer together despite political rivalry and mutual grievances and therefore, may have further developments.

Conclusion

In sum, the 135-FZ law banning "propaganda of non-traditional sexual relations" to minors is a censorship legislation that limits freedom of expression by making neutral and positive information about LGBTQ topics a misdemeanor subjected to penalties. The text of the law is clear, and the procedure of its implementation does not require an actual child to be harmed in any way. This is why it is relatively easily enforced, especially in cases against media outlets and activists' publications.

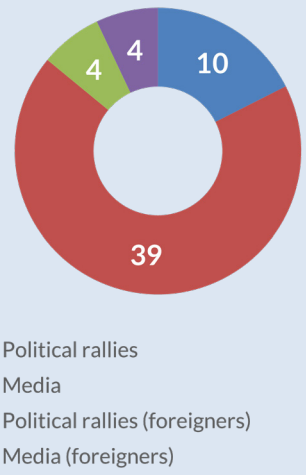
The legislation has a variety of other effects, beyond its implementation. One of the most important results of the spread of bigotry it generated is the growth of violence against queer populations in Russia. Since the law is in place, Russia is a less safe location for queer expressions than it has been before. Therefore, the law sends the country backwards on the line of progression to a more inclusive sexual citizenship.

The implementation of the law

Currently, for the years 2013-2018 there are at least 57 court rulings in the official state registrar of court decisions managed by the Ministry of Justice (unfortunately, not all court rulings appear in this database and not all of them are properly classified).

The graph shows the number of cases in which the law is cited in these rulings: the majority of court decisions are taken in respect to media publications.

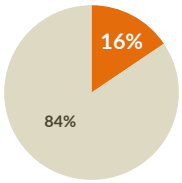
These cases are most commonly brought to court by Russia's censorship agency, *Roskomnadzor* (The Federal Service for Supervision of Communications, Information Technology and Mass Media). Cases regarding political rallies are initiated by LGBTQ activists who are denied the right to conduct a public rally by municipal authorities on the ground of the "propaganda" law and then challenge this decision in courts.

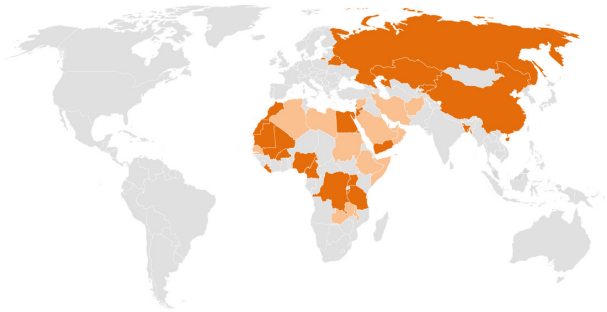


Legal Barriers to the Registration or Operation of Sexual Orientation-Related CSOs

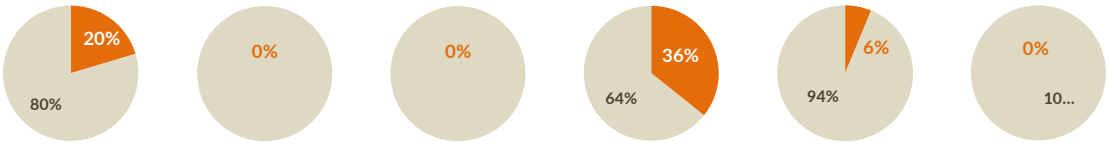
Highlights

41 UN Member States
21% UN Member States





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



Introduction

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

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

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

What does International Human Rights Law say?

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

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

Yogyakarta Principle 20

Methodology Note

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

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

In this section ILGA lists States in two tiers:

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

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

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

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

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

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

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

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

Africa (12)

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

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

2 No online text of law could be located.

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

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

5 No online text of law could be located.

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

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

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

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

6	Liberia	1977	Section 21(1) of the Associations Law of 1977 provides that a non-for-profit corporation may be formed for "any lawful purposes". In November 2016, the Trans Network of Liberia (TNOL) sought registration as a legal entity with the Liberia Business Registry but was refused on the basis that its articles of incorporation include activity which is not allowed in Liberia.[10]
7	Mali	2004	Article 4 of the Law on Associations (Law No. 04-038 of 5 August, 2004) prohibits the recognition of associations that are based on a purpose that is contrary to law and morality. In June 2005, the governor of the District of Bamako cited this law to refuse official recognition of a gay rights association.[11]
8	Mauritania	1964	Article 3 of Act No. 64-098 of 9 June 1964 on associations[12] limits the freedom to legally engage in activities unless prior authorisation has been granted from the Ministry of the Interior. A request for official recognition of the Nouakchott Solidarity Association, the country's only LGBT group, has been denied by local authorities.[13]
9	Morocco	1958 2005	Article 3 of the Decree Regulating the Right of Association (Decree 1-58-376 of 1958) prohibits associations from engaging in activities that, *inter alia*, "breach the laws or public morals" or "offend Islam". Further amendments to the 1958 law were made in Decree 2-04-969 of 2005, which include prohibitive provisions, such as capacities of the association at start-up. Akaliyat, a Moroccan organization, attempted to register in 2016 but authorities refused even to take the application and hustled those applying out of the registration office.[14]
10	Nigeria	2013	Article 4(1) of Nigeria's Same-sex Marriage (Prohibition) Act prohibits "the registration of gay clubs, societies and organisations, their sustenance, processions and meetings". Articles 5(2) and (3) impose a 10-year prison sentence on anyone who "registers, operates or participates in gay clubs, societies organization" or "supports" the activities of such organisations. In 2018, a group called "Lesbian Equality and Empowerment Initiatives" lost their appeal challenging the refusal of the Corporate Affairs Commission (CAC) to register them under the Companies and Allied Matters Act.[15] The judge held that the group's name was "in collision with an existing and operational law", referring to the Same-sex Marriage (Prohibition Act).

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

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

12 No online text of law could be located.

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

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

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

11	Uganda	2016	Section 30(1)(a) of the Non-Governmental Organizations Act states that an "organisation shall not be registered under this Act, where the objectives of the organisation as specified in its constitution are in contravention of the laws of Uganda". Sexual Minorities Uganda's (SMUG) application for registration was rejected on the ground that its name and objectives were unacceptable because same-sex sexual relations were criminalised in the country.[16] They sued the Uganda Registration Services Bureau in 2016 and the judgment is pending.[17]
12	Zambia	1958	Section 8 of the Societies Act 1958 empowers the Registrar of Societies to refuse to register any society that is prejudicial to or incompatible with the peace, welfare or good order in Zambia. In 1998, the Registrar of Societies refused to entertain activists who tried to register their group, Lesbians Gays and Transgender Association (LEGATRA), and said that he could not register the group "any more than I could a Satanic organisation".[18] While there are several LGBTI human rights organisations, they operate underground and strategically negotiate the dangerous legal landscape.[19] In 2016, several UN Special Procedures[20] expressed concern regarding undue delays, the subsequent refusal to register and arrests of civil society and defenders in the registration of the Engender Rights Centre for Justice on grounds of "soliciting for immoral purposes".[21]
TIER 2: LEGAL BARRIERS VERY LIKELY TO EXIST			
13	Algeria	2012	The Law on Associations (Law 12-06 of 2012) affords the government broad discretion to refuse to register an association with an object that is contrary to "good mores" (*bonnes moeurs*). The title of the section of the Penal Code that criminalises "homosexual acts" uses the same terminology. The law also imposes heavy fines and criminal penalties for members or leaders of informal associations.[22] Local LGBT groups have reported that gathering publicly or registering an organisation under this legal framework is impossible.[23] Human rights activists have also expressed the fear that supporting or advocating rights of LGBT people will "result in the immediate withdrawal of accreditation".[24]

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

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

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

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

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

21 For more information, see ZMB 4/2015.

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

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

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

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

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

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

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

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

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

30 Faro, "Death hangs over Somali Queers", *Behind The Mask* (website), 3 May 2004.

20	Tanzania	2016	Though there are existing registered organizations working on issues related to sexual orientation, in August 2016, the justice minister announced controversial new plans to suspend the registration of any charity or non-governmental organisation that supports homosexuality.[31] In the same year, the health ministry shut down community-based HIV programmes that served men who have sex with men.[32] There has been continued threats of violence against LGBT people and a taskforce was set up in late 2018 to "hunt" LGBT people, which have forced activists to hide for their own safety.[33]

Is there more in Africa?

Mozambique	In In 2017, the Mozambique Constitutional Council ruled in favour of an LGBT advocacy group after it had been refused registration on the basis of Law on Associations (Law No. 8/91) and held that the government's interpretation of the law violated the principle of non-discrimination under the Constitution.[34]
Tunisia	In May 2015, Shams became the first LGBT group to receive official authorisation from Tunisia's interior ministry.[35] In February 2016, Shams succeeded on appeal to the Administrative Court against a suspension order by the Tunisian government which accused the organisation of violating.[36] The Government had argued on the basis that Shams' aim to "defend homosexuals" was contrary to Article 3 of the NGO Law (Law No. 88/2011). Since this argument was rejected by the judiciary, it should mean that LGBT-related objectives are not any more a legal ground for refusing registration to SOR CSOs.

Latin American and the Caribbean (0)

Is there more in LAC?

Cuba	Even though the Cuban Law on Associations (Law No. 54) guarantees the constitutional right to freedom of association, the actual implementation of the law presents its nuances. The largest groups of LGBTI activism in the country, although without legal personality, work under the umbrella of the state-run National Center for Sex Education (CENESEX), and have relative autonomy to draw their bases and objectives, and even in some cases are already members of ILGA. The main limitation to the creation of new associations has to do with alignment with governmental directives. According to local sources, this is due to the attempts by the government of the United States to allocate resources to subvert the Cuban socio-political order through civil society organizations. This limitation, however, has not prevented the emergence of new associations according to local needs, such as the creation of the Information Technology Union of Cuba in 2016.

31 "'Seeds of hate' sown as Tanzania starts LGBT crackdown", *The Guardian*, 8 August 2016.

32 "Now Tanzania also ends vital HIV programmes targeting gay men", *Mamba Online*, 4 November 2016.

33 Nick Charity, "Tanzania taskforce to start 'witch hunt' to round up and imprison LGBT community", *Evening Standard*, 1 November 2018.

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

35 Roua Khlifi, "Controversy in Tunisia over new gay association", *The Arab Weekly*, 12 June 2015.

36 Tunisian Coalition for the Rights of LGBTQI People, *Stakeholders Report to Universal Periodic Review of Tunisia* (2017), 8.

Haiti	A pending bill aims to prohibit public demonstrations of "support for homosexuality", which would severely restrict the freedom of association and speech among LGBT activists.[37] In 2016, the Massimadi arts and film festival that celebrates Haiti's Afro-Caribbean LGBT community was shut down by the commissioner of Port-au-Prince on the basis that he was protecting public morals.[38]

Asia (18)

TIER 1: CONFIRMED LEGAL BARRIERS			
1	**Bangladesh**	1860	Only specific types of societies may be registered under the Societies Registration Act (1860) pursuant to Section 20 and activists have reported that registration of their groups have been rejected on the basis of the criminalisation of same-sex sexual conduct.[39] In addition, due to threats to the safety of activists by state officials and citizens, activists have been unable to complete the registration process which requires them to meet with government officials.[40]
2	**China**	1998 2016 2017	Article 11 of the Interim Regulations on the Registration and Administration of Private Non-enterprise Units confers a discretion on the relevant authorities to approve the registration of associations, of which one ground is violation of Article 4. Article 4 specifies that such groups shall not endanger the "social interest" as well as the lawful rights and interest of other organizations and citizens, and shall not breech "social ethics" and "morality". While some NGOs have been successful in registering, others have reported being rejected because their names or activities explicitly referred to issues on sexual orientation.[41] Furthermore, under the Charities Law (2016) only charitable organisations certified by the government are permitted to conduct public fundraising and uncertified individuals may be severely penalised for doing so. Also, in January 2017 the Law on the Management of the Activities of Overseas NGOs within Mainland China came into force, severely impeding funding capabilities. These restrictions severely restrict the ability of CSOs, particularly those that have had their registration rejected, to raise funds and organise.[42] In January 2019, the Municipal Affairs Bureau in the southern metropolis of Guangzhou shut down two organisations for "failure to register properly" by not explicitly declaring their objectives and activities related to sexual orientation.[43]

37 "In Haiti, Slight Progress for LGBT Rights Seen as Victory", *VOA*, 14 August 2018.
38 "Haiti LGBT festival cancelled due to threats", *BBC World*, 28 September 2016.
39 United States Department of State, *Bangladesh 2017 Human Rights Report* (2017).
40 Roopbaan, *Submission to 30th Universal Periodic Review* (2018), 6.
41 Outright Action International, *The Global State of LGBTIQ Organising: The Right to Register* (2018), 31.
42 "China's Complicated LGBT Movement", *The Diplomat*, 1 June 2018.
43 Rik Glauert, "China shuts down two LGBTI organizations", *Gay Star News*, 11 January 2019.

3	Jordan	2008	Article 3 of the Law of Societies (Law No. 51 of 2008 as amended by Law No. 22 of 2009) prohibits the registration of any society which has illegal goals or purposes. In 2009, a registration application was rejected and a ministry official explained to the media that if the government authorized such an organization, it "would violate 'public morals' and 'decency'."[44]
4	Kazakhstan	1996	Article 5 of the Law on Public Assembly (1996) states that the formation and operation of public association infringing the health or moral principles of the citizens, as well as the activity of unregistered pubslic associations are not allowed. Feminita, a queer feminist collective, has been rejected multiple times since 2015 allegedly because of their focus on LGBT rights.[45] According to an Amnesty International report, there is no registered SOR CSO in operation as "obtaining registration for an NGO is a bureaucratically arduous process, and registration is often refused on spurious grounds".[46]
5	Kyrgyzstan	1999	Article 12 of the Law on Non-commercial Organizations states that non-commercial organizations shall have the right to conduct "any type of activity which is not prohibited by Law". While there are several registered groups,[47] the Ministry of Justice of the Kyrgyz Republic denied registration to the public association Alliance and Social Services of Gays and Lesbians Pathfinder in January 2011 because it deemed that the "designation of the words 'gay and lesbian' in a name of the legal entity promotes the destruction of moral norms and national traditions of the people of Kyrgyzstan".[48]
6	Lebanon	1909	The Ottoman Law on Associations prohibits organisations that are founded on an "unlawful basis" and requires notification to the government upon the founding of an organisation, which will respond with a receipt that officially recognises the organisation. However, an LGBT group which applied for registration in 2004 never received any receipt though subsequent groups which did not describe themselves using any term related to sexual orientation or gender identity were successfully recognised.[49] In May 2018, Lebanese General Security officers attempted to shut down a conference on LGBT Rights organised by the Arab Foundation for Freedoms and Equality (AFE) on the basis that it "promoted homosexuality" and drug abuse.[50]

44 Aaron Magid, "Little protection for gays in Jordan", *AL-Monitor*, 12 August 2014.

45 "Kazakhstan's Queer Feminist Uprising is Now", *Queer Here*, 5 October 2015.

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

47 *Id.*, 33.

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

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

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

7	Malaysia	1966	Under Section 7(3)(a) of the Societies Act 1966, the Registrar of Societies shall refuse to register a local society where it appears that such a local society is unlawful or is likely to be used for "unlawful purposes". In 2017, LGBTI group Pelangi Campaign's application for registration was rejected without any reason and its appeal was also rejected in 2018, citing section 7 of the Act, which empowers the Registrar of Societies to reject applications without the need to provide any reasons.[51]
8	Singapore	1966	Section 4(2)(b) of the Societies Act allows the Registrar of Societies to refuse to register a society that it considers to be "likely to be used for unlawful purposes or for purposes prejudicial to public peace, welfare or good order in Singapore". A gay advocacy group, People Like Us, was not allowed to register in 1997 and 2004, and the reason given in 2004 was on the basis of that provision.[52]
TIER 2: LEGAL BARRIERS VERY LIKELY TO EXIST			
9	Afghanistan	2005	Article 7 of the Law on Non-Governmental Organizations and article 5 of the Association Law prohibit groups from engaging in activities that are illegal or against the "national interest". Reports suggest that LGBT advocates largely function underground out of fear of persecution due to the threat of severe punishment.[53]
10	Bahrein	1989	Article 3 of Law No. 21 of 1989 stipulates that a group that is deemed to "contradicts the public order or moral" or undermines the "social order" is considered illegal. There are many restrictions and conditions set and as decision-making on what construes these is dispersed across government agencies, it is highly likely a SOGI-based application would be instantly rejected.
11	Kuwait	1962	Article 6(4) of the Law on Clubs and Public Welfare Societies (Law No. 24 of 1962) states that "societies and clubs are not allowed to seek achieving any purpose that is illegal or defies ethics or related to purposes stipulated in the statute". NGO registration is mandatory under articles 2 and 3 and an implausible prospect for SOR CSOs groups.
12	Iran	1979 2005	Article 8 of the Executive Regulations Concerning the Formation and Activities of Non-Governmental Organizations (2005) provides that the organisation's constitution and activities must not be in violation of the Constitution. Article 26 of the Constitution of the Islamic Republic of Iran (1979) provides for the freedom of association provided that they do not violate "Islamic standards" and "the basis of the Islamic Republic".

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

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

53 "Afghanistan: Events of 2016", *Human Rights Watch Website*; Frud Bezhan, "'Fake Life': Being Gay In Afghanistan", *RadioFreeEurope RadioLiberty*, 12 September 2017.

13	Oman	2000	Law No. 14 of 2000 confers the Ministry of Social Affairs and Labour the power to deny registration when it considers that the services to be provided by the association "are not needed" (or for "any other reasons").[54] Though there are no SOR CSOs in operation in Oman, it is likely that even if there was one, it would be refused registration in light of the hostile environment in the country.
14	Qatar	2004	Articles 1 and 35 of the Law on Private Associations and Foundations (Law No. 12 of 2004) disallow associations from being "involved in political issues", as human rights advocacy is often framed as. This limited margin of action coupled with the harsh penalties imposed to consensual same-sex sexual acts makes it very unlikely that a SOR NGO will get formal registration.
15	Saudi Arabia	2016	Article 8 of the Civil Society Associations and Organisations Law (Royal Decree No. M/8, 19.2.1437H) prohibits the establishment of an association if its charter conflicts with the provisions of Shariah, "public policy" or "public morality".
16	Syria	1958	Various articles of Law No. 19/1958 (amended 1969) allow the Ministry to appoint or remove board members, disallow political participation, foreign funding, and allow the registration to be rescinded at will. Further, article 35 allows any Board decision to be suspended "if it deems it to be against the law, the public order or morals". This legal framework appears to pose severe barriers to the formal registration and the operation of a SOR NGO.
17	United Arab Emirates	2008	Besides the possible imposition of the death penalty under Shariah Law, local Penal Codes impose harsh penalties to consensual same-sex sexual acts.[55] Moreover, Federal Law No. 2 (2008) confers broad powers of supervision (including sending representatives to meetings) and heavily restricts the activities that organisations can carry out without receiving first permission from the Ministry of Social Affairs. This legal framework appears to pose severe barriers to the formal registration of a SOR NGO.
18	Yemen	2001	Although Article 58 of the Constitution asserts the rights on citizens to form associations, the Penal Code in force imposes the death penalty for consensual same-sex sexual acts. Such provision coupled with the hostile situation on the ground makes it very unlikely that a request to formally register an organisation to advocate on issues of sexual orientation will be accepted.

Is there more in Asia?

Mongolia	The first LGBT NGO in Mongolia was denied registration in 2007 and was only granted legal status after domestic and international pressure in 2009.[56]
North Korea	Civil society human rights activity of the type that would produce a SOGI-based NGO does not appear to be possible in North Korea. However, the amended Penal Code of 2009 does not refer to "illegal societies" as did the 1950 Code.

54 "Introduction: Civil Society and Development in the Arab World", *Global Trends in NGO Law* 1, No 4 (2010).

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

56 Anne Leach, "Coming out for LGBT rights in outer Mongolia", *Gay Star News*, 26 April 2013.

Europe (2)

TIER 1: CONFIRMED LEGAL BARRIERS			
1	**Belarus**	1994	Article 7 of Law on Public Associations prohibits the operation of unregistered associations. Attempts to register LGBT groups have been unsuccessful.[57] Activists have also faced harassment by State officials after submitting their registration application.[58] The head of Gay Belarus, fearing for his personal safety, was forced to flee the country with his family in 2013.[59]
2	**Russian Federation**	2012	The "Foreign Agent" legislation has been employed to fine several LGBT organisations, which activists have criticised for discrediting the work that they carry out.[60] Being labelled as a "foreign agent" also imposes further restrictions on funding and introduces bureaucratic burdens like extensive audits. It also confers supervisory powers on the state to interfere in the organisation's affairs.

Is there more in Europe?

Turkey	Reflecting increasing tensions, in 2013, a Turkish court rejected an application by the authorities to shut down an organisation on the basis that it included a clause stating that it "may work in the field of sexual orientation".[61]

Oceania (1)

TIER 1: CONFIRMED LEGAL BARRIERS			
1	**Fiji**	1978	LGBT groups cannot be registered under the Charitable Trusts Act due to the limited scope of what constitutes a "charitable purpose". In 2014, several LGBT advocacy groups called on the government to revise the law to allow LGBT groups to register as legal entities.[62]

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

58 "Attempt To Register A LGBT Organisation in Belarus Provokes Police Raids", *Belarus Digest*, 6 February 2013.

59 Vital Tsyhankou and Aleh Hruzdzilovich, "Pressure Mounts on Belarusian LGBT Community," *Radio Free Europe - Radio Liberty*, 10 December 2013.

60 "Russian member organisation fined as 'foreign agent'", *LGL National LGBT Rights Organisation Website*, 9 March 2015.

61 "Ekogenç's Closure Case Ends: Work in the area of sexual orientation is not "contrary to morality", *LGBTI News Turkey*, December 19, 2014.

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

GLOBAL OVERVIEW

PROTECTION

STATE-SPONSORED HOMOPHOBIA 2019

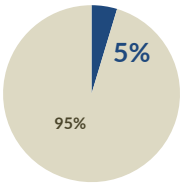
ilga world

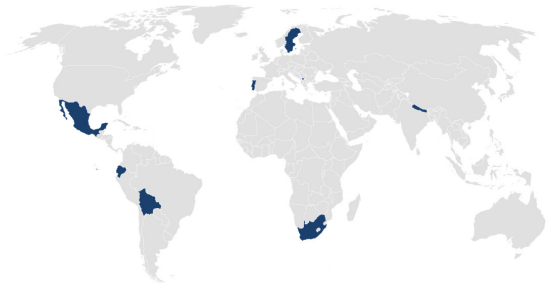
Constitutional Protection against Discrimination based on Sexual Orientation

Highlights

9 UN Member States

5% UN Member States





AFRICA	LAC	NORTH AMERICA	ASIA	EUROPE	OCEANIA
1 /54	3 /33	0 /2	1 /42	3 /50	1 /14



Introduction

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

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

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

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

What does International Human Rights Law say?

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

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

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

Yogyakarta Principle 2

Africa (1)

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

Latin American and the Caribbean (3)

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

Is there more in Latin America and the Caribbean?

Argentina	The Constitution of **Argentina** does not contain an explicit prohibition of discrimination based on sexual orientation. However, such prohibition is contemplated in the Constitution of the Autonomous City of Buenos Aires (Art. 11, 1996).
Brazil	The Constitution of **Brazil** does not contain an explicit prohibition of discrimination based on sexual orientation. However, several jurisdictions within the country do. These include the Constitutions of the States of Alagoas (Art. 2.1; 2001), Federal District (Art. 2.5; 1993), Mato Grosso (Art. 10.3;1989), Pará (Art. 3.4; 2007), Santa Catarina (Art. 4.4; 2002) and Sergipe (Art. 3.2; 1989).

North America (0)

Is there more in North America?

Canada	Constitutional protection against discrimination based on sexual orientation was introduced in paragraph 15(1) of the Canadian Charter of Rights and Freedoms by a 1995 decision issued by the Supreme Court of Canada in *Egan v. Canada*.

Asia (1)

1	**Nepal**	2015	Section 18(3) of the Constitution of Nepal specifically explains that the State shall not discriminate against, *inter alia*, "sexual minorities".

Europe (3) + Kosovo

	Kosovo	2008	Article 24(2) of the Constitution of Kosovo establishes that no one shall be discriminated against on grounds of their sexual orientation, among other grounds.
1	**Malta**	2014	Article 32 of the Constitution of Malta entitles the individual fundamental rights and freedoms regardless of sexual orientation, and Article 45(3) specifies such protection from discrimination.
2	**Portugal**	2005	Article 13(2) of the Constitution of Portugal concerning principles of equality, states that no one shall be "privileged, favoured, prejudiced, deprived of any right or exempted from any duty" on the basis of sexual orientation.
3	**Sweden**	2003	Article 2 of the Constitution of Sweden mandates all organs of the State to exercise and promote equality and non-discrimination in health, employment, housing, education, and social security on the basis of sexual orientation.

Is there more in Europe?

Switzerland	Article 8 of the Swiss Constitution includes the expression "way of life" as a prohibited ground of discrimination. This expression has been interpreted as encompassing "sexual orientation".[1]

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

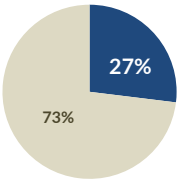
Oceania (1)

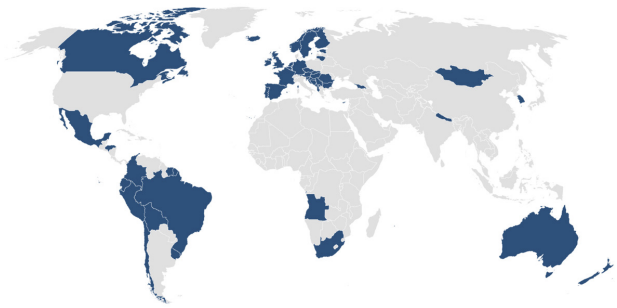
1	Fiji	1997 2013	Section 38(2) of the Constitution of Fiji (1997) prohibited discrimination based on a person's "actual or supposed personal characteristics or circumstances" including sexual orientation (among other grounds). This Constitution was repealed in 2009. In 2013, the prohibition was kept under section 26(3)(a) of the Constitution of Fiji (2013).

Broad Protections against Discrimination based on Sexual Orientation

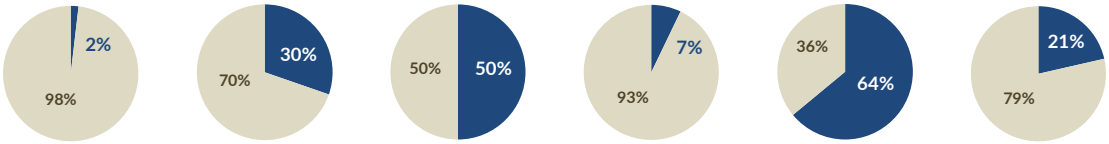
Highlights

52 UN Member States
27% UN Member States





AFRICA	LAC	NORTH AMERICA	ASIA	EUROPE	OCEANIA
3 /54	10 /33	1 /2	3 /42	32 /50	3 /14



Introduction

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

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

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

What does International Human Rights Law say?

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

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

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

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

Yogyakarta Principle 2

Africa (3)

1	**Angola**	2019	Section 197 of the Penal Code criminalises acts of discrimination based on sexual orientation with regard to the provision of goods and services, employment and obstructing economic activities.[1]
2	**Mauritius**	2008	Sections 5, 6, 7 and 8 of the Equal Opportunities Act 2008 establish general rules on discrimination based on the "status" of the aggrieved person. Section 2 includes "sexual orientation" in the definition of "status" and defines it as "homosexuality (including lesbianism), bisexuality or heterosexuality". Section 3(2) establishes that the Act applies to employment, education, qualifications for a profession, trade or occupation, the provision of goods and services, facilities or accommodation, among others.
3	**South Africa**	2000	Section 1 of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 includes sexual orientation as one of the prohibited grounds of discrimination.

Latin American and the Caribbean (10)

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

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

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

4	**Colombia**	2011	Article 134A of the Criminal Code (as amended by Act No. 1.482 of 2011) criminalises acts of discrimination based on sexual orientation (among other grounds). Articles 136C(3) and 136C(4) aggravate the penalty if such are committed by public servants or while providing public services.
5	**Ecuador**	1998	Even though there is no national law against discrimination based on sexual orientation, the constitutional prohibition of such discrimination applies to all rights and therefore offers broad legal protections.
6	**Honduras**	2013	Article 321 of the Criminal Code (as amended by Act No. 23 of 2013) criminalises acts of discrimination based on sexual orientation (among other grounds) and aggravates the penalty if they are committed by public servants.
7	**Mexico**	2003	Besides the constitutional prohibition of discrimination based on sexual orientation, article 1(3) of the Federal Act to Prevent and Eliminate Discrimination includes "sexual preferences" as one of the prohibited grounds of discrimination. This law applies to employment, goods and services, health, and education, among others.
8	**Peru**	2004 2017	Article 37(1) of the Constitutional Procedural Code establishes that the writ of *amparo* is the adequate remedy in cases of discrimination based on sexual orientation. Article 323 of the Criminal Code (as amended by Executive Order No. 1,323 of 2017) criminalises acts of discrimination on the basis of, *inter alia*, sexual orientation and aggravates the penalty if such acts are committed by public servants.
9	**Suriname**	2015	Article 175 of the Criminal Code (as amended by S.B. No. 44 of 2015) criminalises discrimination based on sexual orientation (among other grounds).
10	**Uruguay**	2004	Article 2 of the Law to combat Racism, Xenophobia and Discrimination (Law No. 17,817) includes "sexual orientation" among the prohibited grounds of discrimination. As per article 2, this law applies to all human rights and to all spheres of public life.

Is there more in Latin America and the Caribbean?

Argentina	At the federal level, there is no law against discrimination on the basis of sexual orientation in broad terms in Argentina. However, the Autonomous City of Buenos Aires (2015), the Province of Río Negro (2008) and the City of Rosario (1996) grant such protection.

North America (1)

1	**Canada**	1996	Section 3(1) of the Canadian Human Rights Act (as amended in 1996) includes "sexual orientation" as a prohibited ground of discrimination. This law applies to goods and services, employment and health, among others.

Is there more in North America?

United States of America	There is no federal law proscribing discrimination based on sexual orientation in broad terms. Protections against such discrimination vary according to state[3] but less than 50% of the population lives in states where such protection is offered in broad terms.

Asia (3)

1	**Mongolia**	2017	Section 14(1)(1) of the Penal Code criminalises acts of discrimination based on sexual orientation. Section 14(1)(2)(3) aggravates penalties when such acts are committed by public officials.
2	**Nepal**		Even though there is no law expressly prohibiting discrimination based on sexual orientation, the constitutional prohibition enshrined in Section 18(3) of the Constitution of Nepal (proscribing discrimination against "sexual minorities") offers broad protection against discrimination.
3	**South Korea**	2001	Article 30(2) of the National Human Rights Commission Act (2001) defines "unreasonable discrimination" based on sexual orientation (among other grounds) as a violation of the right to equality. This law applies to employment, provision of goods and services, education and more.

Is there more in Asia?

Japan	In 2018, the Tokyo Metropolitan Government enacted a law that prohibits discrimination on the basis of sexual orientation.[4]

Europe (32) + Kosovo

1	**Albania**	2010	Article 5 of the Protection from Discrimination Act (Law No. 10,221) prohibits discrimination on the basis of, *inter alia*, sexual orientation, both in the public and private sectors (Article 7.1). The scope of this protection includes employment (Chapter II), education (Chapter III) and goods and services (Chapter IV), among other contexts.
2	**Andorra**	2005	Article 338 of the Penal Code criminalises acts of discrimination based on sexual orientation (among other grounds) with regard to goods and services and employment, among others.

3 See "Non-Discrimination Laws", *Movement Advancement Project (MAP) Website.*

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

3	Austria		Each province (Burgenland, Carinthia, Salzburg, Styria, Tyrol, Upper Austria, Lower Austria, Vienna and Vorarlberg) have provisions prohibiting discrimination on grounds of sexual orientation with regard to goods and services offered by the provinces and communities, including social protection, social advantages, education and self-employment.
4	Belgium	2003 2007	Article 4 of the Anti-Discrimination Law (2003) proscribed discrimination in the provision of goods and services, employment, economic, social, cultural and political activities and other matters, and Article 2 included sexual orientation as one of the protected categories. This law was substituted by Anti-Discrimination Law (2007). Articles 2 and 4 of the Anti-Discrimination Law (2007) ban discrimination based on, *inter alia*, sexual orientation. Article 5 determines that the prohibition applies, among other settings, to goods and services, including social protection (education) employment in the public and private spheres.
5	Bosnia and Herzegovina	2003 2009	Article 2 of the Gender Equality Act (2003) prohibits sexual orientation discrimination, both in the public and private sectors (article 1), with regard to education (chapter IV), employment (chapter V), health (chapter VII) and other matters. Article 2 of the Act on Prohibition of Discrimination (2009) proscribes discrimination on the basis of, *inter alia*, sexual expression or sexual orientation within the private and public spheres concerning employment, education, health and goods and services, among other matters (article 6 also refers to the scope of application of the law).
6	Bulgaria	2005	Section 4(1) of the Law on Protection Against Discrimination (supplemented by SG No. 70 of 2004) bans direct and indirect discrimination based on sexual orientation (among other grounds) in employment (Section I), education (Section II), the field of goods and services (Article 37) and more.
7	Croatia	2009	Articles 1, 2 and 9 of the Anti-Discrimination Act prohibit direct and indirect discrimination because of sexual orientation (among other grounds) regarding employment, education, health, goods and services and other matters in the public and private sectors.
8	Cyprus	2004	Article 6(1) of the Combating Racism and Other Forms of Discrimination (Commissioner) Act proscribes direct and indirect discrimination in the public and private spheres based on, *inter alia*, sexual orientation in matters such as employment, education, health and goods and services.
9	Czechia	2009	Sections 2 and 3 of the Anti-Discrimination Act proscribe discrimination on the basis of sexual orientation (among other grounds). As per Section 1, the law applies to mployment, health, education and goods and services.

10	Estonia	1999 2006 2009	Article 19(2)(12) of the Chancellor of Justice Act includes sexual orientation among the protected grounds for which claims on discrimination in the public and private spheres can be brought before the Chancellor of Justice. Article 152(1) of the Penal Code (as amended in 2006) proscribes the unlawful restriction of any right on the basis of, *inter alia*, sexual orientation. Sections 1 and 3 of the Equal Treatment Act (2009) prohibit direct and indirect discrimination based on sexual orientation (among other grounds). Section 2 determines that the law applies to employment, education, health, goods and services and others.
11	Finland	2004	Section 8 of the Non-Discrimination Act prohibits any discriminatory act on the basis of sexual orientation (section 8) within public and private activities. The law applies to education and employment and allows victims of discrimination to receive compensation from the authorities, education providers or suppliers of goods or services who discriminated against them.
12	France	2001	Articles 225-1 and 225-2 of the Penal Code (as amended by Act No. 1066 of 2001) prohibit discrimination based on, *inter alia*, sexual orientation with regard to goods and services and employment, among other fields. Article 432-7 aggravates the penalty when committed by public authority or public service.
13	Georgia	2014	Articles 1 and 2(1) of the Act on the Elimination of All Forms of Discrimination prohibits every form of discrimination, including that based on sexual orientation. As per Article 3, the scope of this protection comprises all public and private fields of action.
14	Germany	2006	Sections 1 and 2 of the General Act on Equal Treatment prohibit discrimination based on, *inter alia*, sexual orientation and determine that the protection applies to employment, social protection (including health), education and the access to and supply of goods and services.
15	Hungary		Articles 7(1), 8(m) and 9 of the Equal Treatment and Promotion of Equal Opportunities Act (No. CXXV of 2003) prohibit discrimination on the basis of sexual orientation. Under articles 4 and 5 the law applies to both public and private relationships in employment (articles 21-23), health (articles 24-25) and education (articles 27-30), among others.
16	Iceland	1998 2006 2018	Article 180 of the Penal Code prohibits discrimination based on sexual orientation in the provision of goods and services. This is complemented by several provisions of the Law amending several legal provisions relating to the legal status of homosexuals and by article 7 of the Act on Equal Treatment in the Workplace (2018) prohibits sexual orientation discrimination in employment.
17	Ireland	2000	Section 3(2)(d) of the Equal Status Act defines sexual orientation as a prohibited ground of discrimination. Chapter II lists the activities to which the ban on discriminatory acts applies: the disposal of goods and the provision of services (Section 5), education (Section 7) and others.

	Kosovo	2004	Articles 1 and 2 of the Anti-Discrimination Act prohibit discrimination based on sexual orientation. As per article 4, the protection applies to employment, health, education, access to and supply of goods and services and more.
18	Liechtenstein	2016	Article 283(4) of the Penal Code proscribes acts of discrimination based on sexual orientation in broad terms. Article 283(6) refers to the denial of services based on sexual orientation.
19	Lithuania	2000 2005	Article 169 of the Criminal Code penalises discrimination on the ground of, *inter alia*, sexual orientation in political, economic, social, cultural, labour and other activities. Articles 1 and 2 of the Equal Treatment Act (2005) ban direct and indirect discrimination because of sexual orientation (among other grounds). The law applies to education (articles 4 and 8), employment (articles 5 and 7), consumer protection (articles 6 and 9) and other spheres.
20	Luxembourg	2006	Article 1 of the Equality Act (No. 28 of 2006) prohibits discrimination based on sexual orientation (among other grounds). Article 2 states that the protection applies to the public and private sectors with regard to, *inter alia*, employment, health, education and the access to and provision of goods and services.
21	Malta	2012	The broad protection afforded by article 13(2) of the Constitution is complemented by the Equality for Men and Women Act which prohibits discrimination based on sexual orientation in employment and education, among others.
22	Montenegro	2010	Article 2 of the Act on Prohibition of Discrimination proscribes discrimination based on, *inter alia*, sexual orientation. The law applies to public service delivery, education and labour, among others. Article 19 states that everyone has the right to express their sexual orientation as well as the right not to declare it.
23	Netherlands	1994	Section 1 of the Equal Treatment Act includes sexual orientation as a prohibited ground of direct and indirect discrimination (among others). Such protection concerns, *inter alia*, employment (5-6a) and goods and services (Section 7). Section 137(f) of the Penal Code proscribes taking part or supporting activities aimed at discrimination against persons because of "their hetero or homosexual orientation".
24	Norway	2013 2018	The Sexual Orientation Anti-Discrimination Act (2013) prohibited direct and indirect discrimination based on sexual orientation under Chapter 2 in all sectors and fields of action (Section 2). This law was repealed by the Equality and Anti-Discrimination Act (2018), which now proscribes any type of discriminatory act based on, *inter alia*, sexual orientation under Section 6. As per Section 2, the law applies to all sectors of society.
25	Portugal	2005	Even though there is no national law prohibiting discrimination in broad terms, the protection afforded by article 13(2) the Constitution applies to all rights and duties.

26	Romania	2000	Article 2(1) of the Ordinance on the Prevention and Punishment of All Forms of Discrimination (Law No. 137/2000) bans discrimination on the basis of sexual orientation (among other grounds). As per Article 1, such protection applies, *inter alia*, to employment, education and health.
27	Serbia	2010	Articles 1 and 2 of the Prohibition of Discrimination Act ban any discriminatory act, direct or indirect, on the basis of sexual orientation (among other grounds). Article 21 states that while "no one may be called to publicly declare his/her sexual orientation". The law applies to employment, public services, and education, among others.
28	Slovakia	2008	Section 2.1 of the Act on Equal Treatment in Certain Areas and Protection against Discrimination (as amended by Act No. 85 of 2008) prohibits sexual orientation discrimination. Section 3.1 determines that the law applies to everyone in the field of employment and similar legal relations, health, goods and services and education, among others.
29	Slovenia	2016	Article 1 of the Protection against Discrimination Act (2016) prohibits discrimination on the basis of sexual orientation (among other grounds) in the public and private spheres concerning all activities in the political, economic, social, cultural, civil and other fields. As per Article 2, some of these are: employment, health, education and good and services.
30	Spain		Article 511 and 512 of the Penal Code penalises the discriminatory denial of services on the basis of sexual orientation. Furthermore, article 314 criminalises acts of discrimination in employment. Even though there is no national law against discrimination based on sexual orientation, more than 85% of the Spanish population lives in autonomous communities and regions that offer broad protection against such discrimination, including: Andalucía (2014/2018), Aragón (2018), Islas Baleares (2007), Cataluña (2014), Canarias (2014), Madrid (2016), Navarra (2017), Valencia (2018), Extremadura (2015), Galicia (2016), País Vasco (2012), and Murcia (2016).
31	Sweden	2003 2009	Sections 1 and 3 of the Prohibition of Discrimination Act (2003) included sexual orientation as one of the protected categories against discrimination in employment, provision of goods and services and health, among other contexts. That law was repealed by the Discrimination Act (2009), which also prohibits direct and indirect discrimination based on, *inter alia*, sexual orientation. This law applies to employment (sections 1-4 and 9), education (sections 5-8), provision of goods and services (section 12-12c), health (sections 13-13b), among others.

32	**United Kingdom**	2007 2010	The Equality Act (Sexual Orientation) Regulations 2007 (No. 1263) and the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 (No. 439), laid under Part 3 of the Equality Act 2006, protected against discrimination on the basis of sexual orientation with regard to goods, facilities and services and education, among other fields. This law was revoked by Equality Act 2010. The Equality Act 2010 lists sexual orientation as a protected category (Section 4) and prohibits direct (Section 13) and indirect (Section 19) discrimination. Section 25(9) defines sexual orientation discrimination. Such protection applies to services and public functions, employment and education.

Is there more in Europe?

Faeroe Islands (Denmark)	Ordinance no. 182 (2007) prohibits discrimination based on sexual orientation in the autonomous country of the Faeroe Islands.
Switzerland	Even though there is no federal law explicitly proscribing discrimination based on sexual orientation, article 28 of the Swiss Civil Code provides the legal basis for the protection of "personality". Civil suits against acts of discrimination based on sexual orientation can be brought under this article.[5]

Oceania (3)

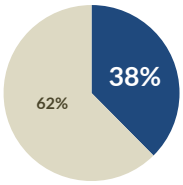
1	**Australia**		There is no piece of legislation prohibiting discrimination on the basis of sexual orientation in broad terms at the federal level. Several jurisdictions have enacted laws in this regard: Australian Capital Territory (1992), New South Wales (1983), Northern Territory (1993), Queensland (1992/2016), South Australia (1984), Tasmania (1999), Victoria (1996/2010), Western Australia (2002).
2	**Fiji**	1997 2013	Even though there is no law expressly prohibiting discrimination based on sexual orientation, the constitutional prohibition of discrimination based on sexual orientation enshrined in section 26(3)(a) of the Constitution of Fiji (2013) offers broad protection against discrimination.
3	**New Zealand**	1993	Section 21(1)(m) of the Human Rights Act 1993 includes sexual orientation ("heterosexual, homosexual, lesbian or bisexual") among the prohibited grounds of discrimination. This law applies to employment, goods and services and education, among others.

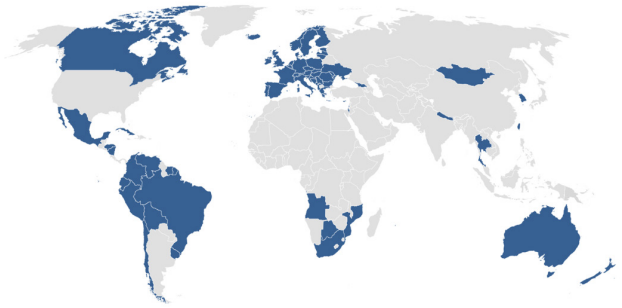
[5] Alecs Recher, *Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity Legal Report: Switzerland* (2010), 8.

Protection against Discrimination based on Sexual Orientation in Employment

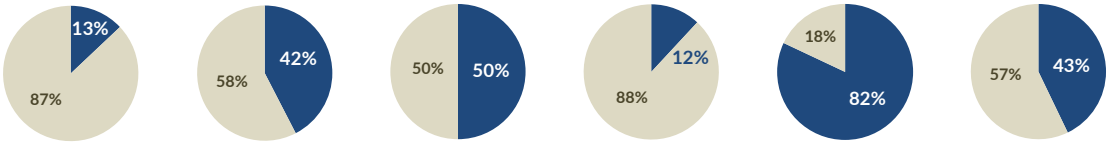
Highlights

74 UN Member States
38% UN Member States





AFRICA	LAC	NORTH AMERICA	ASIA	EUROPE	OCEANIA
7 /54	14 /33	1 /2	5 /42	41 /50	6 /14



Introduction

A person's ability to earn a living, and the opportunity to flourish in one's work life without discrimination based on a personal characteristic (sexual orientation), has increasingly been recognised as a fundamental right in States across the globe.

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

We also note where significant parts of a country have provincial ordinances that offer similar or partial protections, but where the law is not in force at the national or federal level.

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

What does International Human Rights Law say?

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

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

Yogyakarta Principle 12.

Africa (7)

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

Latin American and the Caribbean (14)

1	**Bolivia**	2010	Article 5 of the Law against Racism and All Forms of Discrimination (Law No. 45 of 2010) prohibits discrimination on the ground of sexual orientation (among others). Furthermore, article 281*sexies* of the Criminal Code (as amended by said Act) criminalises any act of discrimination based on, *inter alia*, sexual orientation. These laws ban sexual orientation discrimination in broad terms and therefore apply to employment.
2	**Brazil**		At the federal level, there is no piece of legislation prohibiting employment discrimination on the basis of sexual orientation. However, around 70% of the population reside in jurisdictions where local laws provide such protection. Several jurisdictions have enacted laws banning discrimination based on sexual orientation with varying levels of protection that explicitly specify they apply to employment: Amazonas (2006);

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

			Distrito Federal (2000); Espirito Santo (2014); Maranhão (2006); Mato Grosso do Sul (2006); Minas Gerais (2002); Para (2011); Paraiba (2003); Piaui (2004); Rio de Janeiro (2015); Rio Grande do Norte (2007); Rio Grande do Sul (2002); Santa Catarina (2003); Sao Paulo (2001); as well cities such as Fortaleza (1998) and Recife (2002). Article 8 of the Regulation (Portaria) No. 41/2007 issued by the Ministry of Labour and Employment prohibits employers to request documents or information related to the employee's sexuality.
3	Chile	2017	Article 2 of the Labour Code (as amended by the Modernization of Labour Relations Act No. 20.940 of 2016) includes sexual orientation among the prohibited grounds of discrimination.
4	Colombia	2011	Article 134A of the Criminal Code (as amended by Act No. 1.482 of 2011) criminalises acts of discrimination based on sexual orientation (among other grounds) while Article 136C(3) and (4) aggravates the penalty if such are committed by public servants or while providing public services. These provisions ban sexual orientation discrimination in broad terms and therefore apply to employment. Article 136C(6) also includes the motive of denying or restricting labour rights as an aggravating factor.
5	Cuba	2014	Article 2(b) of the Labour Code (Act No. 116) establishes the right of every person to have a job, either in the private or the public sector, according to the needs of the economy and their personal choice without discrimination based on sexual orientation (among other grounds).
6	Ecuador	2005	Article 79 of the Labour Code establishes the right to equal remuneration without discrimination based on sexual orientation (among other grounds). Article 195(3) (introduced by the Labour Justice and Recognition of Domestic Work Organic Act No. 483 of 2015) provides for special compensation in cases of discriminatory dismissal based on, *inter alia*, sexual orientation.
7	Honduras	2013	Article 321 of the Criminal Code (as amended by Act No. 23 of 2013) criminalises acts of discrimination based on sexual orientation (among other grounds) and aggravates the penalty if they are committed by public servants. This provision bans sexual orientation discrimination in broad terms and therefore applies to employment.
8	Mexico	2003	The Federal Act to Prevent and Eliminate Discrimination prohibits employment discrimination in Article 9(IV) and lists "sexual preferences" as a protected class in Article 1(III). Article 149ter(II) of the Federal Criminal Code criminalises employment discrimination based on sexual orientation and aggravates penalties for employers and public servants.
9	Nicaragua	2008	Article 315 of the Criminal Code (Title 10, Crimes against Labour Rights) criminalises employment discrimination based on "sexual option".

10	**Peru**	2004 2017	Article 37(1) of the Constitutional Procedural Code establishes that the writ of *amparo* is the adequate remedy in cases of discrimination based on sexual orientation (among other grounds). This law provides a remedy for sexual orientation discrimination in broad terms and therefore applies to employment. Article 323 of the Criminal Code (as amended by Executive Order No. 1323 of 2017) criminalises discrimination on the basis of, *inter alia*, sexual orientation and aggravates the penalty if such acts are committed by public servants. This applies to employment.
11	**Saint Lucia**	2006	Section 131(1)(a) of the Labour Code prohibits unfair dismissal based on an employee's sexual orientation (among other grounds).
12	**Suriname**	2015	Article 175 of the Criminal Code (as amended by S.B. 2015 No. 44) criminalises discrimination based on sexual orientation (among other grounds). This provision bans sexual orientation discrimination in broad terms and therefore applies to employment.
13	**Uruguay**	2004 2013	Article 2 of the Act to combat Racism, Xenophobia and Discrimination (Law No. 17,817) includes "sexual orientation and identity" among the prohibited grounds of discrimination. This provision bans sexual orientation discrimination in broad terms and therefore applies to employment. Article 2(A) of the Promotion of Youth Employment Act (Law No. 19,133) bans discrimination on the basis of sexual orientation (among other grounds) in employment.
14	**Venezuela**	2012	Article 21 of the Organic Labour Act prohibits employment discrimination based on sexual orientation (among other grounds).

Is there more in Latin America and the Caribbean?

Argentina	Articles 34(o) and 35(j), 37(h) and 121 of the Executive Order No. 214 (2006) which is applicable only within the National Administration Service, prohibit discrimination in employment on the basis of sexual orientation (limited scope ban). At the federal level, there is no piece of legislation prohibiting discrimination on the basis of sexual orientation in broad terms. The Autonomous City of Buenos Aires (2015), the Province of Río Negro (2008) and the City of Rosario (1996) have enacted norms providing such protection, which applies to employment (among other contexts).
Costa Rica	Article 10 of the General Law on HIV/AIDS (Law No. 7.771 of 1998) deals with employment discrimination against people living with HIV/AIDS and article 48 incorporates "sexual option" as one of the prohibited grounds of discrimination.[2]
El Salvador	However, Article 1 of the Executive Order No. 56 of 2010 prohibits discrimination based on sexual orientation within the Public Administration Service only (limited scope ban).[3]

[2] In our 2017 edition, Costa Rica was erroneously listed in this section as having full protection against discrimination based on sexual orientation in employment.

[3] In our 2017 edition, El Salvador was erroneously listed in this section as having full protection against discrimination based on sexual orientation in employment.

North America (1)

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

Is there more in North America?

United States of America	At the federal level, there is no piece of legislation prohibiting employment discrimination on the basis of sexual orientation. Several states have enacted laws that do so with varying levels of protection.[4] Barely under 50% of the population of the USA lives in States which grant protection against discrimination in employment. Furthermore, Executive Order No. 13087 of 1998 prohibits discrimination in employment by the federal government on the basis of sexual orientation (limited scope ban). In March 2017, the US Court of Appeals for the 7th Circuit became the first federal appeals court to determine that the Civil Rights Act 1964 protects workers from discrimination based on sexual orientation.[5] In February 2018, the US Court of Appeals for the 2nd Circuit followed suit.[6]

Asia (5) + Taiwan and Macau

1	Israel	1992	Section 2(a) of the Law on Employment (Equal Opportunities) (Law No. 5748-1988) as amended in 1992 provides that "an employer shall not discriminate among his employees or among persons seeking employment on account of their [...] sexual tendencies".
	Macau (China)	2008	Article 6(2) of Law No. 7/2008 prohibits discrimination based on sexual orientation in employment.
2	Mongolia	2017	Section 14(1)(1) of the Penal Code criminalises acts of discrimination based on sexual orientation. Section 14(1)(2)(3) aggravates penalties when such acts are committed by public officials. This provision bans sexual orientation discrimination in broad terms and therefore applies to employment.
3	Nepal	2015	Even though there is no law expressly prohibiting discrimination based on sexual orientation in employment, the constitutional prohibition enshrined in Section 18(3) of the Constitution of Nepal (proscribing discrimination against "sexual minorities") necessarily applies to employment.
4	South Korea	2001	Article 30(2) of the National Human Rights Commission Act (2001) mandates the Commission to investigate acts of discrimination based on sexual orientation in employment.

4 "State Employment Non-Discrimination Laws", *Movement Advancement Project (MAP) Website.*

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

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

	Taiwan (China)	2004 2007 2008	Article 12 of the Gender Equity Education Act (2004) specifies that both private and public schools of all levels shall respect faculty and staff's sexual orientation. Article 5 of the Employment Service Act (as amended by Presidential Order No. 09600064151 of 2007) and Chapter 2 of the Gender Equality in Employment Act (as amended by Presidential Order No. 09700003951 of 2008) prohibit employment discrimination on the basis of sexual orientation.
5	**Thailand**	2007	The Ministry of Labour's Regulation on Thai Labour Standards and Social Responsibility of Thai Businesses B.E. 2547 (discussed here) prohibits discrimination against workers on numerous grounds, including "personal sexual attitude".[7]

Europe (41) + Kosovo

1	**Albania**	2010	Articles 12-16 of the Law on Protection from Discrimination (Law No. 10,221) provide for protection from discrimination in employment. Article 5 includes "sexual orientation" as one of the prohibited grounds of discrimination. Additionally, Article 16 of the Labour Code prohibits discrimination in employment.
2	**Andorra**	2003	Section 3 of the Employment Contract Act (No. 8/2003) lists sexual orientation as one of the protected classes within labour relations. Sections 75 and 76 deal with the termination of the employment contract due to an act of discrimination on the basis of, *inter alia*, sexual orientation and establish particular consequences in terms of reparation. Article 95 considers any act of discrimination based on sexual orientation (among other grounds) by an employer a serious breach of the law that carries the most severe penalty.
3	**Austria**	2004	The Equal Treatment Act (as amended by Act No. 65 of 2004) bans sexual orientation discrimination in employment (Chapter 2).
4	**Belgium**	2003 2007	Article 4 of the Anti-Discrimination Law (2003) proscribed discrimination and Article 2 included sexual orientation as one of the protected categories. This law was substituted by Anti-Discrimination Law (2007). Articles 2 and 4 of the Anti-Discrimination Law (2007) ban discrimination based on "sexual orientation". Articles 5(1)(5) and 5(2) refer to labour relations.
5	**Bosnia and Herzegovina**	2003 2009	Article 2 of the Gender Equality Act prohibits sexual orientation discrimination. Chapter V deals with discrimination in employment. Article 2 of the Act on Prohibition of Discrimination (2009) proscribes discrimination on the basis of "sexual expression or sexual orientation" within the private and public spheres. Article 6(1)(a) states that such prohibition applies to employment.

[7] Busakorn Suriyasarn, *Promoting Rights, Diversity and Equality in the World of Work (PRIDE): Gender identity and sexual orientation in Thailand* (Bangkok: ILO Country Office for Thailand, Cambodia and Lao People's Democratic Republic, 2014), 22.

6	Bulgaria	2005	Section 4(1) of the Law on Protection Against Discrimination (supplemented by SG No. 70 of 2004) bans direct and indirect discrimination based on sexual orientation (among others). Section I of Chapter II deals with such protection while exercising the right to work.
7	Croatia	2003 2009	Article 2 of the Labour Act (as amended by Act No. 1574 of 2003) names sexual orientation as a protected ground of discrimination in employment. Article 9 of the Anti-Discrimination Act (2009) prohibits discrimination based on sexual orientation. Article 8(1) establishes that such prohibition applies to employment.
8	Cyprus	2004 2009	Article 6(1) of the Combating Racism and Other Forms of Discrimination (Commissioner) Act proscribes direct and indirect discrimination based on sexual orientation. The Equal Treatment in Employment and Occupation Act 2004 (as amended by Act No. 86(I) of 2009) protects sexual orientation against discrimination in employment (Articles 3 and 4).
9	Czechia	1999 2004 2009	Section 316(4)(c) of the Labour Code (as amended in 1999) prevents employers from requiring employees information about their sexual orientation, Section 4 of the Employment Act prohibits sexual orientation discrimination in employment. Section 12 reinforces such protection by stating that employers cannot request information about their employees' sexual orientation. Sections 2 and 3 of the Anti-Discrimination Act (2009) proscribe all types of sexual orientation discrimination.
10	Denmark	1996 2007	The Act on prohibition against discrimination in respect of employment (1996) bans both direct and indirect employment discrimination on the basis of, *inter alia*, sexual orientation. Ordinance No. 182 (2007) prohibits discrimination based on sexual orientation in the autonomous country of the Faeroe Islands. No such protection is available in Greenland.
11	Estonia	2004 2009 2011	Article 19(2)(12) of the Chancellor of Justice Act includes "sexual orientation" among the protected grounds for which claims on discrimination can be brought before the Chancellor of Justice. Articles 1(1) and 2 of the Equal Treatment Act prohibit employment discrimination based on sexual orientation. Article 152(1) of the Penal Code proscribes the unlawful restriction of any right on the basis of sexual orientation.
12	Finland	1995 2004	Section 9 (Chapter 11) of the Criminal Code (as amended by Act No. 578 of 1995) protects, *inter alia*, "sexual preference" against discrimination in trade or profession. Section 3 (Chapter 47, on labour offences), criminalises work discrimination based on sexual orientation (among other grounds). Section 8 of the Non-Discrimination Act (2004) prohibits any discriminatory act on the basis of sexual orientation (among other grounds) and Section 7 sets out a range of employment contexts to which such ban applies.

13	France	1985 2001 2008	Protection against discrimination based on sexual orientation was first codified in 1985. Today, article L1132-1 of the Labour Code (introduced by Act No. 67 of 2008 ratifying Ordinance No. 329 of 2007), prohibits discrimination based on sexual orientation in employment. This provision replaced article L122-45 (amended by Act No. 1066 of 2001).
14	Georgia	2014	Articles 1 and 2(1) of the Act on the Elimination of All Forms of Discrimination prohibits discrimination based on sexual orientation. These provisions ban sexual orientation discrimination in broad terms and therefore apply to employment.
15	Germany	2006	Sections 1 and 2 of the General Act on Equal Treatment prohibit discrimination based on sexual orientation (among other grounds). Part 2 (Chapters 1-4) describes a range of employment contexts in which such ban applies.
16	Greece	2005	Articles 1, 4 and 8 of the Act Against Discrimination (Law No. 3304 of 2005) prohibit discrimination based on sexual orientation in employment.
17	Hungary	2004	Articles 7(1), 8(m) and 9 of the Equal Treatment and Promotion of Equal Opportunities Act (No. CXXV of 2003) define direct and indirect discrimination on the basis of sexual orientation as a violation of the equal treatment principle. Articles 21-23 deal with employment.
18	Iceland	2018	Article 7 of the Act on Equal Treatment in the Workplace prohibits discrimination in the labour market on the basis of, *inter alia*, sexual orientation (Article 1). Articles 8 and 9 specify what constitutes discrimination in employment.
19	Ireland	1999	Section 6(1) and (2)(d) Employment Equality Act (1998) ensures non-discrimination in the workplace on the basis of sexual orientation (among other grounds).
20	Italy	2003	Legislative Decree No. 216 of 2003 instituted sexual orientation as a protected ground of discrimination (among others) within employment.
	Kosovo	2004	Article 2 of the Anti-Discrimination Act prohibits direct and indirect discrimination based on sexual orientation (among other grounds). Article 2(1-4) defines employment in the public and private sectors as a sphere covered by such protection.
21	Latvia	2006 2013	Article 7(1-2) of the Labour Act (as amended in 2006) establishes the right to work, to a fair, safe and healthy working environment and to a fair wage without any direct or indirect discrimination based on, *inter alia*, sexual orientation. Article 2 of the Act on Prohibition of Discrimination of Natural Persons Engaged in Economic Activity (2013) specifies sexual orientation as a protected ground of discrimination in economic activities.
22	Liechtenstein	2016	Article 283(4) of the Penal Code proscribes acts of discrimination based on sexual orientation in broad terms and, therefore, applies to employment.

23	Lithuania	2000 2005	Article 169 of the Criminal Code penalises discrimination on the ground of, *inter alia*, sexual orientation. This provision bans sexual orientation discrimination in broad terms and therefore applies to employment. Articles 1 and 2 of the Equal Treatment Act (2005) ban discrimination because of sexual orientation (among other grounds) in employment.
24	Luxembourg	1997 2006	Articles 454 and 455(5-6) of the Criminal Code (as amended by Act No. 19 of 1997) criminalise sexual orientation discrimination within the exercise of an economic activity and employment. Article 456 aggravates the penalty if the acts are committed by public servants or individuals carrying out public functions. Article 1 of the Equality Act (No. 28 of 2006) bans discrimination based on sexual orientation (among other grounds). Article 2(1)(a-d) applies to employment. Title IV of the Labour Code also proscribes discrimination on the basis of, *inter alia*, sexual orientation.
25	Malta	2004	The Equal Treatment in Employment Regulations (Legal Notice 461 of 2004) prohibit discriminatory treatment based on, *inter alia*, sexual orientation in relation to employment (Sections 1(3), 2 (a), 3), both within the public and private sectors.
26	Moldova	2013	Article 7 of the Law on Equality (Act No. 121) specifies that discrimination on the basis of sexual orientation is banned in the employment sphere only.
27	Montenegro	2010	Article 16 of the Act on Prohibition of Discrimination refers to discrimination in employment, having set out in Articles 2 and 19 that sexual orientation is protected against it.
28	Netherlands	1994	While Section 1 of the Equal Treatment Act bans sexual orientation discrimination, Sections 5(1), 6 and 6a deal with discrimination in employment. Section 8(1) renders invalid a termination of employment if based on a prohibited ground.
29	North Macedonia	2005	Article 6 of the Law on Labour Relations (2005) prohibits discrimination based on sexual orientation in employment. It also affords protection to job seekers.
30	Norway	1998 2006 2013 2018	Section 55(A) of the Act relating to Worker Protection and Working Environment (No. 4 of 1977) (as amended in 1998) protected employees from discrimination based on sexual orientation. This law was repealed by the Working Environment Act (2005), which prohibits sexual orientation discrimination in employment under Sections 13-1(7)and 13-4(3). The Sexual Orientation Anti-Discrimination Act, which aims to promote equality irrespective of sexual orientation, bans discrimination in employment in Chapter 4. This law was repealed by Equality and Anti-Discrimination Act. Section 6 of the Equality and Anti-Discrimination Act proscribes sexual orientation discrimination. Sections 25, 26 and 26a deal with employers' and employer and employee organizations' duties to promote equality. Chapter 5 contains provisions relating to employment relationships.

31	Poland	1999 2010	Articles 11(3) and 18(3)(a) of the Labour Code prohibit direct or indirect discrimination on the basis of sexual orientation in employment. Article 94(2b) establishes the employer's duty to act against such discrimination. According to Article 8(a), the prohibition on sexual orientation discrimination contained in the Act on Equal Treatment 2010 applies only to employment.
32	Portugal	2009	Article 24 (on the right to equal access to employment and work), and Article 16 (on the right to privacy) of the Labour Code explicitly protect the status of sexual orientation (among others).
33	Romania	2000	Article 2(1) of the Ordinance on the Prevention and Punishment of All Forms of Discrimination (No. 137/2000) bans discrimination on the basis of sexual orientation (among other grounds). Articles 5-9 refer to discrimination in employment.
34	Serbia	2010	Articles 1, 2, 13, and 21 of the Prohibition of Discrimination Act ban any discriminatory act, direct or indirect, on the basis of sexual orientation. Articles 16 and 51 deal with employment discrimination.
35	Slovakia	2008	Section 2.1 of the Act on Equal Treatment in Certain Areas and Protection against Discrimination (as amended by Act No. 85/2008) prohibits sexual orientation discrimination. Sections 6 and 13 deal with discrimination within labour relations.
36	Slovenia	2016	Articles 1 and 2(1) of the Protection against Discrimination Act 2016 set out sexual orientation protection from discrimination in employment.
37	Spain	1996 2004	Article 314 of the Criminal Code criminalises employment discrimination in the public and private spheres. Articles 27 and 28 of the Law No. 62 of 2003 deal with the principle of equal treatment and the prohibition of discrimination on the ground of sexual orientation (among others). Article 34 establishes that such protection applies to employment.
38	Sweden	1987 1999 2003 2009	Chapter 16, Section 9 of the Criminal Code (as amended in 1987) criminalises sexual orientation discrimination in employment. The Prohibition of Discrimination in Working Life because of Sexual Orientation Act combated direct and indirect discrimination due to sexual orientation in employment. This law was repealed by the Discrimination Act. Sections 1 and 3 of the Prohibition of Discrimination Act included sexual orientation (defined in Section 4 as "homosexual, bisexual or heterosexual") as one of the categories protected against discrimination. This law was repealed by the Discrimination Act. Chapter 1, Sections 1 and 4 of the Discrimination Act include sexual orientation (defined in Section 5 as "homosexual, bisexual or heterosexual") as a protected ground of discrimination (among others). Chapter 2, Sections 1-4 prohibit discrimination in employment.

39	Switzerland		Since registered partnerships became a possibility, there are various employment protections based on sexual orientation in the amendments to the 1911 Code of Obligations. It is understood that sexual orientation has been read into numerous laws because of the protections afforded to that status in the country's Constitution, where the words "way of life" at Article 8 have been interpreted to include SOGI.
40	Ukraine	2015	Article 2(1) of the Labour Code (as amended by Act No. 785-VIII of 2015) includes sexual orientation as one of the prohibited grounds for employment discrimination.
41	United Kingdom	2003 2007 2010	The Employment Equality (Sexual Orientation) Regulations 2003 (No. 1661) and The Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003 (No. 497), were introduced to protect against sexual orientation discrimination in the sphere of employment. Revoked by Equality Act 2010. Equality Act (Sexual Orientation) Regulations 2007 (No. 1263) and Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 (No. 439), laid under Part 3 of the Equality Act 2006, protected against discrimination on the basis of sexual orientation. Revoked by Equality Act 2010. These regulations banned sexual orientation discrimination in broad terms and therefore applied to employment. Part 5 of the Equality Act 2010 deals with employment discrimination. Sections 4, 13, 19, 25(9) and 26 define sexual orientation as one of the prohibited grounds. In Gibraltar, Part III of the Equal Opportunities Act 2006 refers to discrimination in employment. Sections 3 and 10 protect sexual orientation against any act of discrimination.

Oceania (6) + Cook Islands

1	Australia	1996 2009	Section 3(m) of the Workplace Relations Act 1996 includes "sexual preference" among the grounds of discrimination that the law intends to prevent and eliminate. Furthermore, Section 659(f) prohibits termination of employment based on the employee's sexual orientation (among other grounds). Section 351 of the Fair Work Act 2009 bans any act of discrimination against an employee on the basis of sexual orientation (among other grounds). Several jurisdictions have enacted laws in this regard: Australian Capital Territory (1992), New South Wales (1983), Northern Territory (1993), Queensland (1992/2016), South Australia (1984), Tasmania (1999), Victoria (1996/2010), Western Australia (2002).

2	Fiji	2007 2011	Section 6(2) of the Employment Relations Promulgation 2007 (Promulgation No. 36 of 2007) proscribes discrimination based on sexual orientation (among other grounds) in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment relationship. Section 75 also includes sexual orientation as a prohibited ground (among others) for discrimination in employment. Articles 10(b)(2) and 10(c) of the Public Service (Amendment) Decree 2011 (Decree No. 36 of 2011) prohibit discrimination based on sexual orientation (among other grounds) within public service
3	Kiribati	2015	Article 107(2)(b) of the Employment and Industrial Relations Code 2015 bans discrimination based on sexual orientation (among other grounds) in employment.
4	New Zealand	1993 2000	Section 21(1)(m) of the Human Rights Act (1993) includes sexual orientation ("heterosexual, homosexual, lesbian or bisexual") among the prohibited grounds of discrimination. Article 105(1)(m) of the Employment Relations Act (2000) bans employment discrimination based on sexual orientation (among other grounds).
	Cook Islands	2012	Article 55(e) of the Employment Relations Act (2012) prohibits employment discrimination based on "sexual preference" (among other grounds).
5	Samoa	2013	Section 20(2) of the Labour and Employment Relations Act (2013) proscribes discrimination against an employee or an applicant for employment in any employment policies, procedures or practices based on sexual orientation (among other grounds).
6	Tuvalu	2017	Section 5 of the Labour and Employment Relations Act (2017)[8] prohibits discrimination at the workplace, including on the basis of sexual orientation.[9]

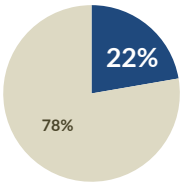
[8] The online version of the text could not be located.

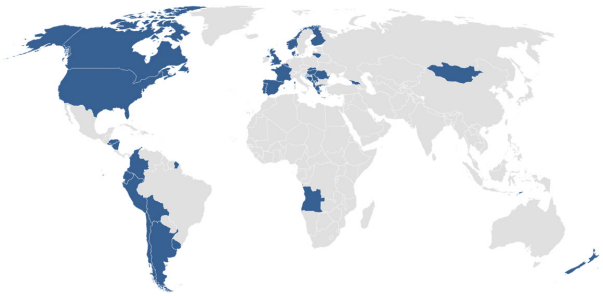
[9] *Tuvalu National Report for third cycle of UPR*, A/HRC/WG.6/30/TUV/1, 28 March 2018, para. 54.

Criminal Liability for Offences Committed on the Basis of Sexual Orientation

Highlights

42 UN Member States
22% UN Member States





AFRICA	LAC	NORTH AMERICA	ASIA	EUROPE	OCEANIA
3 /54	10 /33	2 /2	2 /42	23 /50	2 /14



Introduction

Popularly known as "hate crimes", some states have introduced two legal vehicles to address the violence motivated by sexual orientation.

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

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

The UN Human Rights Committee has recommended States to specifically criminalise acts of violence that are based on sexual orientation or gender identity, for example, by enacting hate crimes legislation concerning sexual orientation and gender identity.[1]

What does International Human Rights Law say?

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

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

Yogyakarta Principle 5

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

Africa (3)

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

Latin American and the Caribbean (10)[3]

1	Argentina	2012	Article 80(4) of the Penal Code establishes aggravated penalties only for homicides motivated by "hate towards the sexual orientation of the victim" (among other grounds).
2	Bolivia	2010	Articles 40 Bis of the Penal Code aggravates the penalties of crimes motivated by any of the discriminatory grounds included in Article 281 *quinquies* and *sexies* (the latter includes sexual orientation).
3	Chile	2012	Article 12(21) of the Penal Code (as amended by Article 17 of Law No. 20,609) includes "sexual orientation" among the aggravating circumstances that trigger harsher penalties.
4	Colombia	2000	Article 58(3) of the Penal Code states that motivation based on the victim's sexual orientation constitutes an aggravating circumstance. Furthermore, Article 134A (introduced by Law 1,482 of 30 November 2011) criminalises acts of racism and discrimination, including those based on sexual orientation.
5	Ecuador	2009	Article 177 of the Penal Code criminalises acts of hate, whether physical or psychological, based on sexual orientation. This provision also establishes aggravated penalties for physical harm and death caused by acts of hate based on sexual orientation (among other grounds).
6	El Salvador	2015	Article 129(11) of the Penal Code (as amended by D.L. No. 106/2015) aggravates the crime of homicide when it is perpetrated based on the victim's sexual orientation.
7	Honduras	2013	Article 27(27) of the Penal Code (as amended by Decree No. 23-2013) establishes that motivation based on the victim's sexual orientation (among other grounds) operates as an aggravating circumstance.

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

3 In our 2017 edition, Brazil was included in this section with regard to various local laws supposedly establishing criminal liability for acts of violence based on sexual orientation. As criminal liability is a matter reserved for federal law, such laws only establish administrative/civil responsibilities for, *inter alia*, acts of discrimination and, therefore, do not strictly fit in this category.

8	Nicaragua	2008	Article 36(5) of the Penal Code establishes aggravated penalties for crimes motivated by the victim's sexual orientation.
9	Peru	2017	Article 46(d) of the Penal Code (as amended by Legislative Order No. 1,323) aggravates penalties for crimes motivated by the victim's sexual orientation.
10	Uruguay	2003	Article 149ter of the Penal Code (as amended by Law 17.677 of 2003) provides for enhanced penalties for crimes motivated by "sexual orientation" or "sexual identity".

Is there more in Latin America and the Caribbean?

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

North America (2)

1	Canada	1996	Article 718.2(a)(i) of the Canadian Criminal Code establishes that a sentence should be increased if there is evidence that the offence was motivated by bias, prejudice or hate based on sexual orientation (among other grounds).
2	United States of America	2008	Section 249(a)(2) of the United States Code provides for enhanced penalties for crimes motivated by perceived or actual sexual orientation (also known as the *Matthew Shepard and James Byrd, Jr.* Hate Crimes Prevention Act). Numerous States have enacted hate crimes laws that include sexual orientation (see full list here by MAP).

Asia (2)

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

Europe (24)[4] + Kosovo

1	Albania	2013	Article 50(j) of the Criminal Code establishes that motivation related to sexual orientation is an aggravating circumstance for all crimes.
2	Andorra	2005	Article 30 of the Criminal Code considers sexual orientation an aggravating circumstance for crimes motivated by hate or bias.
3	Belgium	2007	Various offences in the Criminal Code were amended by L 2007-05-10/35, art. 33, 064 and now provide for enhanced punishments where the motive of the crime is hatred against, contempt for or hostility to a person on the grounds of his so-called *inter alia* sexual orientation. This includes indecent assault and rape (article 377bis) and manslaughter and intentional injury (article 405 quarter).
4	Bosnia and Herzegovina	2006 2013 2016	All three constituent units of Bosnia and Herzegovina have enacted hate crime legislation that is inclusive of sexual orientation: Federation of Bosnia and Herzegovina (2016), Republika Srpska (2013), Brcko District (2006). The has no such legislation.
5	Croatia	2006	Article 151(a) of the Penal Code specifies a criminal offence (act motivated by hatred) based on, *inter alia*, "sexual preference".
6	Denmark	2004	Section 81(6) of the Criminal Code recognises as an aggravating circumstance the situation where the offence stems from the victim's sexual orientation.
7	Finland	2011	Chapter 6, Section 5(1)(4) of the Criminal Code includes sexual orientation as an aggravating circumstance in sentencing.
8	France	2001	Article 222-12 of the Criminal Code criminalises violence specifically on the grounds of sexual orientation. Article 132-77 makes discrimination on the grounds of sexual orientation an aggravating circumstance.
9	Georgia	2012	Article 53(3) of the Penal Code provides that the commission of a crime on the grounds of, *inter alia*, sexual orientation constitutes an aggravating circumstance for all crimes under the Code.
10	Greece	2013	Article 79 of the Penal Code includes "sexual orientation" as an aggravating circumstance of an "act of hatred", with up to three years imprisonment.
11	Hungary	2013	The Criminal Code of Hungary was amended to include Section 216 ("Violence Against a Member of the Community"), which explicitly lists sexual orientation. This law criminalises the display of apparently anti-social behaviour as well as assault.
	Kosovo	2012	Article 74(2)(12) and Article 333(4) of the Criminal Code penalise crimes motivated by animus towards, *inter alia*, sexual orientation, with up to one year in prison.

[4] In 2017 we erroneously listed The Netherlands in this list.

12	Lithuania	2009	Article 60(12) of the Criminal Code provides that where an act was committed in order to express hatred towards a group of persons or a person belonging thereto on grounds of sex or sexual orientation, it would be considered an aggravating circumstance.
13	Luxembourg	1997 2007	Article 457(1)(1) of the Criminal Code penalises acts of hatred or violence motivated by, *inter alia*, sexual orientation with five to ten year's imprisonment.
14	Malta	2012	Articles 83B, 222A, 215D and 325A(1) of the Criminal Code of Malta (amended by Act No. VIII of 2012) set out the circumstances and penalties for hate crimes based on, *inter alia*, sexual orientation.
15	Montenegro	2013	Article 42(a) of the Criminal Code provides that where a criminal offence is committed from hate on the basis of a person's sexual orientation (among other grounds), the court shall consider such circumstance as aggravating.
16	Norway	1994	Article 117(a) Penal Code defines torture as the infliction of harm or sever physical or mental pain on another person by a public official or another person at the instigation of or with the expressed or implied consent of a public official because of the victim's "homosexual inclination, lifestyle or orientation".
17	Portugal	2007	The Penal Code considers sexual orientation as an aggravating factor at article 132 (homicide) and articles 143, 144 and 145(1)(a), which concern assault.
18	Romania	2006	Article 77 of the Penal Code recognises a homophobic motive as an aggravating factor in the commission of a criminal offence of violence or hatred.
19	San Marino	2008	Law no. 66 introduced Article 179*bis* to the Penal Code of San Marino, which recognises circumstances of discrimination on the basis of sexual orientation as an aggravating factor in criminal sentencing.
20	Serbia	2012	Article 54a of the Criminal Code recognises the commission of an offence on the basis sexual orientation and gender identity, *inter alia*, as aggravating circumstances in relation to hate crimes.
21	Slovakia	2013	Article 140(f) of the 2006 Criminal Code was updated in 2013 to include the commission of an offence on the basis of sexual orientation as an aggravating factor.
22	Spain		Article 22(4) of the Penal Code establishes that "sexual orientation or identity" is an aggravating circumstance of criminal responsibility.
23	United Kingdom	2004 2010	In England and Wales, Section 146 of the Criminal Justice Act 2003 empowers courts to impose enhanced sentences for offences motivated or aggravated by the victim's sexual orientation. Section 2 of the Scottish Offences (Aggravation by Prejudice) (Scotland) Act 2009 (in force 2010) incorporates sexual orientation to the reasons that aggravates penalties.

Is there more in Europe?

Sweden	Due to the constitutional protections afforded to sexual orientation in 2003, section 2(7) of chapter 29 of the Penal Code the open clause "other similar circumstance" is construed as including "sexual orientation".

Oceania (2)

1	**New Zealand**	**1993**	Article 9 of the Sentencing Act 2002 provides that it is an aggravating factor where the offender committed the offence partly or wholly because of hostility towards a group of persons who have an enduring common characteristic such as sexual orientation (among other grounds).
2	**Samoa**	**2016**	Section 7(1)(h) of the Sentencing Act 2016 increases the penalties for crimes committed partly or wholly because of hostility towards a group of persons who have an enduring common characteristic such as sexual orientation (among other grounds).

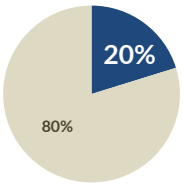
Is there more in Oceania?

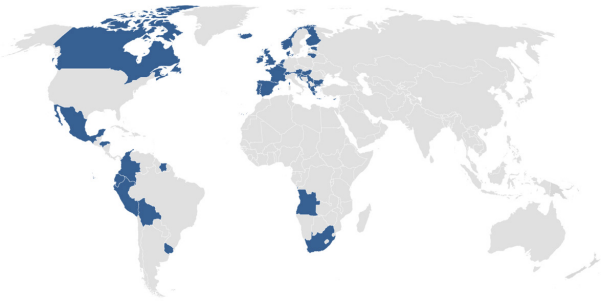
Australia	There is no federal law establishing that motivation based on sexual orientation is an aggravating circumstance. New South Wales (Art. 21A(2)(h), 2002) appears to be the sole state with such provisions in force.

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

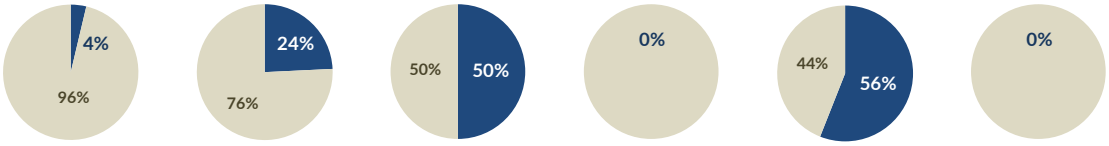
Highlights

39 UN Member States
20% UN Member States





AFRICA	LAC	NORTH AMERICA	ASIA	EUROPE	OCEANIA
2 /54	8 /33	1 /2	0 /42	28 /50	0 /14



Introduction

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

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

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

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

What does International Human Rights Law say?

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

Yogyakarta Principle 30

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

Yogyakarta Principle 30(b)

Africa (2)

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

Latin American and the Caribbean (8)

1	Bolivia	2010	Article 281 *septies* of the Penal Code of Bolivia criminalises any act of dissemination or incitement to hatred based on sexual orientation (among other grounds). Sexual orientation is included by reference to Article 281 *quinquies*.
2	Colombia	2011	Article 134B of the Penal Code (as amended by Law 1,482 of 30 November 2011) criminalises any incitement to acts of harassment aimed at causing harm based on sexual orientation.
3	Ecuador	2009	Article 176 of the Penal Code criminalises the incitement to discrimination based on sexual orientation.
4	Honduras	2013	Article 321-A of the Penal Code (as amended by Decree No. 23-2013) criminalises incitement to hatred or discrimination based on sexual orientation.
5	Mexico	2014	Article 9(27) of the Federal Law to Prevent and Eliminate Discrimination was amended to outlaw incitement to hatred and violence. Article 1(3) of this law includes "sexual preferences" as one of the prohibited grounds.
6	Peru	2017	Article 323 of the Penal Code (as amended by Legislative Order No. 1,323) criminalises acts of discrimination based on sexual orientation either by the perpetrator or through another person.
7	Suriname	2015	Articles 175(a) and 176 of the Criminal Code (as amended by S.B. 2015 No. 44) criminalise incitement to hatred based on sexual orientation (by reference to Article 175 which includes the list of prohibited grounds).
8	Uruguay	2003 2015	Article 149bis of the Penal Code (as amended by Law 17.677 of 2003) criminalises the incitement to hatred or any form of violence based on sexual orientation. Since 2015, article 28 of the Law on Audio Visual Communication Services (Law No. 19,307) prohibits the dissemination of content which promotes or incites to violence based on sexual orientation (among other grounds).

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

Is there more in Latin America and the Caribbean?

Brazil	Although there is no specific provision in the Penal Code of Brazil criminalizing incitement to hatred or violence based on sexual orientation, several jurisdictions have enacted local administrative (non-criminal) provisions that proscribe such conduct. These include: Amazonas (2006); Mato Grosso do Sul (2005); Pará (2011); Paraiba (2003); Rio de Janeiro (2015); and the city of Recife (Pernambuco).

North America (1)

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

Europe (28)

1	**Albania**	2013	Section 265 of the Criminal Code (as amended by Law No. 44 of 2013) penalises those who incite hate or disputes on grounds of sexual orientation, as well as those who intentionally prepare, disseminate or preserve writings with such content for purposes of distributing by any means or forms.
2	**Austria**	2011	Section 283(1) of Criminal Code (as amended in 2011) lists "sexual orientation" as a protected ground against incitement to violence.
3	**Belgium**	2013	Article 22 of the Anti-Discrimination Law (as amended in 2013) prohibits the incitement to discrimination, hate, segregation or violence on the basis of a protected criteria. Article 4(4) includes "sexual orientation" among the list of protected criteria.
4	**Bulgaria**	2004	The Protection Against Discrimination Act states that "harassment" (which includes hate speech and incitement) applies to sexual orientation, according to Articles 1(1) and 5.
5	**Croatia**	2006	Article 151(a) of the Penal Code (amended 2006) criminalises incitement to hatred based on, *inter alia*, "sexual preference".
6	**Cyprus**	2011	Prohibition of incitement to hatred based on sexual orientation was introduced through the Combating of Certain Forms and Expression of Racism and Xenophobia by means of Criminal Law in 2011.
7	**Denmark**	2004	Section 266(b) of the Criminal Code penalises any person who, publicly or with the intention of wider dissemination, makes a statement or imparts other information by which a group of people are threatened, insulted or degraded on account of their "sexual inclination".

8	Estonia	2006	Section 151(1) of the Penal Code specifies sanctions for incitement to hatred on the basis of sexual orientation.
9	Finland	2011	Chapter 11, Section 10 of the Criminal Code criminalises the public expression of an opinion or message that threatens, defames or insults a certain group on the basis of, *inter alia*, sexual orientation. Section 10(a) provides for enhanced punishment where that speech involves incitement or enticement to genocide, murder or serious violence.
10	France	2005	Article 222(18)(1) of the Criminal Code criminalises a threat to commit an offence where the threat was made on the basis of the "victim's true or supposed sexual orientation".
11	Greece	2013	Article 79 of the Penal Code proscribes incitement to hatred based on sexual orientation.
12	Hungary	2013	Section 332 of the Criminal Code was amended to include "incitement against a community" which lists sexual orientation as a prohibited ground.
13	Iceland	2004	Article 233(a) of the Penal Code (2003) specifies "sexual inclination" as being protected from anyone who publicly mocks, defames, denigrates or threatens a person or group of persons by comments or expressions of another nature, for example by means of pictures or symbols, for their sexual orientation.
14	Ireland	1989	The Prohibition of Incitement to Hatred Act (1989) penalises incitement to hatred, violence or discrimination on the ground of, *inter alia*, sexual orientation.
15	Lithuania	2005	Article 170 of the Criminal Code proscribes incitement to violence on the basis, *inter alia*, of sexual orientation.
16	Luxembourg	1997	Article 457(1)(1) of the Criminal Code outlaws incitement to hatred or violence based on, *inter alia*, sexual orientation.
17	Malta	2012	Articles 82A and 82C of the Criminal Code of Malta (amended by Act No. VIII of 2012) set out the circumstances and penalties for incitement to hatred based on, *inter alia*, sexual orientation.
18	Monaco	2005	Article 16 of the Law on Public Freedom of Expression proscribes incitement to hatred or violence based on sexual orientation.
19	Montenegro	2013	Article 443 of the Criminal Code proscribes incitement to hatred based on sexual orientation.
20	Netherlands	1994	Section 137(c) of the Penal Code prohibits the intentional making of an insulting statement about a group of persons based on, *inter alia*, their sexual orientation. Section 137(d) prohibits the incitement of hatred or discrimination about a group of persons based on, *inter alia*, their sexual orientation.
21	Norway	1981	Article 135(a) of the Penal Code criminalises the public utterance of a discriminatory or hateful expression, defined as speech that is "threatening or insulting anyone, or inciting hatred or persecution of or contempt for anyone" because of their "homosexuality, lifestyle or orientation".

22	**Portugal**	2007	Article 240(1) and (2) of the Penal Code proscribes incitement to discrimination, hatred or violence based on sexual orientation.
23	**San Marino**	2008	Law No. 66 amended Article 179 of the Penal Code of San Marino to include sexual orientation as a protected ground from incitement to hatred and violence (Article 179*bis*).
24	**Serbia**	2010	Articles 13 of the Law on the Prohibition of Discrimination proscribes "severe forms of discrimination" consisting of incitement of inequality, hatred and enmity on the grounds of, *inter alia*, sexual orientation.
25	**Slovenia**	2008	Article 297(1) of the Penal Code criminalises the public provocation or stirring up of hatred, strife or intolerance on the basis of sexual orientation.
26	**Spain**	2003	Articles 510, 511 and 515 of the Penal Code penalise those who "provoke discrimination, hate or violence" on the grounds of "sexual preference".
27	**Switzerland**	2018	Article 261*bis* of the Criminal Code was updated to include "sexual orientation" in the provision that criminalises public incitement to hatred or discrimination, as well as the public dissemination of ideologies that systematically denigrate or defame members belong to a protected group.
28	**United Kingdom**	2004 2008	Section 74 and Schedule 16 of the Criminal Justice and Immigration Act (2008) prohibits the incitement to hatred on the ground of sexual orientation. In 2004, Section 8 of the Public Order (Northern Ireland) Order 1987 was amended to comprehensively deal with incitement to hatred based on sexual orientation (Sections 9-13).

Is there more in Europe?

Sweden	Due to the constitutional protections afforded to sexual orientation in 2003, the text of the Penal Code is taken to automatically read in sexual orientation. Chapter 16, Section 8 states that those who "disseminate statement or communication, threatens or expresses contempt" may be subject to a fine or up to two years in jail.

Oceania (0)

Is there more in Oceania?

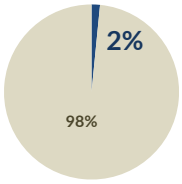
Australia	There is no federal provision prohibiting incitement to hatred based on sexual orientation in Australia, and less than half (41%) the population live in areas where provincial laws specify such protection. Article 123(3)(e) of the Broadcasting Services Act 1992 stipulates that Codes of Practice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

Bans against "Conversion Therapy"

Highlights

3 UN Member States

1,5% UN Member States





AFRICA	LAC	NORTH AMERICA	ASIA	EUROPE	OCEANIA
0 /54	2 /33	0 /2	0 /42	1 /50	0 /14



Introduction

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

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

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

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

What does International Human Rights Law say?

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

Yogyakarta Principle 17

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

Yogyakarta Principle 10.e

Latin American and the Caribbean (2)

1	**Brazil**	**1999**	Resolution 1/99 issued by the Federal Council of Psychology, prohibits the "pathologisation of homoerotic behaviours and practices" and orders all licenced psychologists to "refrain from coercive or unsolicited treatment to homosexuals". It also prohibits their participation in events or services offering a "gay cure". In 2013, the Commission for Human Rights of Brazil's lower house of Congress approved a bill that would repeal Resolution 1/99. The proposal was later abandoned. In 2017, a federal judge first overruled then reaffirmed Resolution 1/99 in a case brought by an evangelical Christian and psychologist whose licence was revoked in 2016 after she offered "conversion therapy".[1]
2	**Ecuador**	**2013**	Section 20(a) of the Ministerial Order No. 767 prohibits conversion therapies in rehabilitation institutions. Article 151(3) of the Comprehensive Organic Penal Code of 2014 also criminalizes any act of torture (defined in broad terms) perpetrated with the intention of modifying a persons' sexual orientation.

Is there more in Latin America and the Caribbean?

Argentina	Section 3(c) of the Law on Mental Health (2010) establishes that a person cannot be diagnosed on their mental health exclusively on the basis of their "sexual choice or identity". This law does not ban conversion therapies explicitly, but it prevents health professionals, particularly psychiatrists, from legally engaging in sexual orientation change efforts (SOCE).
Uruguay	Article 4 of the Mental Health Law (2017) prohibits any mental health diagnosis on the exclusive basis of sexual orientation and gender identity. This law does not ban conversion therapies explicitly, but it prevents health professionals, particularly psychiatrists, from legally engaging in sexual orientation change efforts (SOCE).

North America (0)

Is there more in North America?

Canada	While there are no nationwide bans on conversion therapy in Canada, an increasing proportion of cities and provinces have adopted or are considering adopting such bans. This includes the provinces of Manitoba (2015), Ontario (2015), Nova Scotia (2018) and the city Vancouver (2018). Therefore, around 46% of the Canadian population lives in areas with legal bans in force. The Respect for Sexual Orientation and Gender Identity Bill was introduced in Nova Scotia in September 2018.[2] A petition to ban conversion therapy nationally will be presented to the Canadian House of Commons in January 2019.[3]

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

2 Michael Gorman, 'Bill passes banning conversion therapy in Nova Scotia', *CBC News*, 25 September 2018; Liam Bretten, 'Vancouver to ban businesses offering conversion therapy', *CBC News*, 6 June 2018.

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

United States of America	There is no federal law banning conversion therapy at the federal level. However, by January 2019, a total of 15 states and the District of Columbia had local laws proscribing these practises: California (2012); Connecticut (2017); Delaware (2018); District of Columbia (2014); Hawaii (2018); Illinois (2015); Maryland (2018); Nevada (2017); New Hampshire (2018); New Jersey (2013); New Mexico (2017); New York (2019); Oregon (2015); Rhode Island (2017); Vermont (2016); Washington (2018). A number of counties and cities have also enacted local bans.[4] This means that around 40% of the population lives in jurisdictions where these "therapies" are banned. Several states have also tried to introduce such bans but have not been successful, including includes Massachusetts, Maine and Colorado. In California, AB-2943, which considered advertising, offering to engage in, engaging in for sale, or selling services constituting sexual orientation change efforts an unlawful practice prohibited under the Consumer Legal Remedies Act, was withdrawn after being brought before its state assembly.[5]

Asia (0)

Is there more in Asia?

China	Several court decisions have ruled in favour of victims of conversion therapy though there has not been a legislative ban against such practices. In December 2014, a Beijing court ruled that the electronic shock therapy the claimant received was not necessary because homosexuality did not require treatment and ordered the psychiatric clinic to pay 3,500 yuan in compensation and post an apology to its website.[6] In December 2017, a court in Henan province ordered a city psychiatric hospital to publish an apology in local newspapers and pay the 38-year old male claimant 5,000 yuan in compensation on the basis that he was forcibly treated.[7]
Israel	A bill which would have banned conversion therapy performed on minors was rejected by the legislature in 2016.[8] However, the Israel Medical Association (which represents around 90% of the country' doctors) issued a ban on "conversion therapy" that would result in the expulsion of any doctor who performs such practices.[9]
India	In December 2018, a doctor was summoned by the Delhi High Court for allegedly violating the Indian Medical Council Act, after he was banned by the Delhi Medical Council for engaging in "conversion therapy".[10]

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

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

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

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

8 Marissa Newman, 'Day after marking LGBT rights, Knesset nixes 5 gender equality bills', *The Times of Israel*, 24 February 2016.

9 Rachel Savage, 'Israeli doctors ban gay conversion therapy as risks 'mental damage'', *Thomas Reuters Foundation News*, January 9, 2019.

10 "Delhi HC Summons Doctor Treating Homosexual Patients Using Electric Shocks", *Outlook India*, December 8, 2018.

Taiwan (China)	On February 22, 2018, the Ministry of Health and Welfare issued a public announcement (Yi-Zih No. 1071660970)[11] stating that while legislative amendments to the Physicians Act to include "conversion therapy" as prohibited treatment were being debated, individuals and organisations carrying out such practices could be liable for an offence under the Children and Youth Welfare Act or the Criminal Code of the Republic of China.[12]
Malaysia Negative development	In 2017, the federal government's Islamic Development Department endorsed and promoted "conversion therapy".[13] According to local sources, State officials have been organising "conversion therapy" courses aimed at transgender women.[14]
Indonesia Negative development	In 2016, the Indonesian Psychiatrists Association (PDSKJI) classified "homosexuality", "bisexuality" and "transsexualism" as mental disorders, which "can be cured through proper treatment".[15]

Europe (1)

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

Is there more in Europe?

European Union	In March 2018, the European Parliament of the European Union approved a resolution that "welcomes initiatives prohibiting LGBTI 'conversion therapies'" and called on member states to outlaw such practices.[16]
Spain	Even though there is no nationwide ban, several jurisdictions within Spain have prohibited conversion therapy, including Madrid (2016), Murcia (2016), Valencia (2017) and Andalusia (2017).
United Kingdom	While the Counsellors and Psychotherapists (Regulation) and Conversion Therapy Bill 2017-19 is still making its way through the UK Parliament, a Memorandum of Understanding was signed by both NHS England and NHS Scotland to commit to ending the practice of conversion therapy.[17]

11 A free English translation of the official document can be accessed here. This translation was offered to ILGA World by *Marriage Equality Coalition Taiwan*.

12 "性傾向扭轉治療爭議, 衛福部最新函釋確定禁止", *Apple Daily Taiwan*, 22 February 2018.

13 'Sexual orientation can be changed, Jakim says in new LGBT video', *MalayMail*, 13 February 2017.

14 'Malaysian transgender conversion plan sparks alarm', *MalayMail*, 30 December 2017.

15 Liza Yosephine, 'Indonesian psychiatrists label LGBT as mental disorders', *The Jakarta Post*, 24 February 2016.

16 'European Parliament takes a stance against LGBTI conversion therapies for the first time', *Integroup on LGBT Rights (web page)*, 1 March 2018.

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

Oceania (0)

Is there more in Oceania?

Australia	Though there is no federal ban on conversion therapy in Australia, in September 2018, the Australian Senate passed a motion seeking to ban conversion therapy across the country. Though not legally binding, the motion urges the federal government to pressure states to ban the practice. In Victoria, under the Health Complaints Act, the Health Complaints Commissioner has the power to investigate and issue temporary or permanent bans on unregistered health providers, including those providing "conversion therapy".[18] In May 2018, the state government also launched an inquiry into such practices.[19]
Fiji	Section 3(1)(d) of the Mental Health Decree 2010 (Decree No. 54 of 2010) provides that a person is not to be considered mentally ill because they express or refuse or fail to express a particular sexual preference or sexual orientation. While this does not explicitly prohibit the practice of "conversion therapy", it prevents health professionals, particularly psychiatrists, from legally engaging in sexual orientation change efforts (SOCE).
Nauru	Nauru's Mentally Disordered Persons Act was amended in 2016 to introduce Section 4A(1)(d) under which a person cannot be regarded as mentally disordered if they express, exhibits or refuses or fails to express a particular sexual preference or sexual orientation. While this does not explicitly prohibit the practice of "conversion therapy", it prevents health professionals, particularly psychiatrists, from legally engaging in sexual orientation change efforts (SOCE).
Samoa	Section 2 of the Mental Health Act 2007 provides that a person is not to be considered mentally ill because they express or refuse or fail to express a particular sexual preference or sexual orientation. While this does not explicitly prohibit the practice of "conversion therapy", it prevents health professionals, particularly psychiatrists, from legally engaging in sexual orientation change efforts (SOCE).

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

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

GLOBAL OVERVIEW

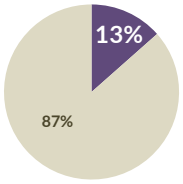
RECOGNITION

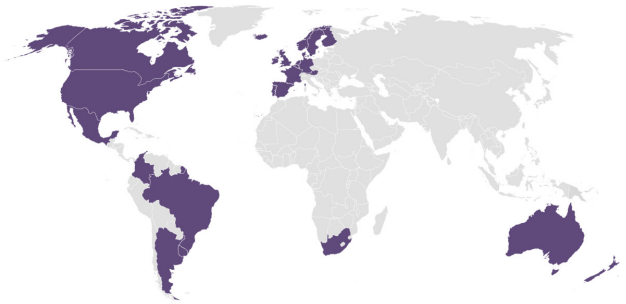
STATE-SPONSORED HOMOPHOBIA 2019

Same-Sex Marriage

Highlights

26 UN Member States
13% UN Member States





AFRICA	LAC	NORTH AMERICA	ASIA	EUROPE	OCEANIA
1 /54	5 /33	2 /2	0 /42	16 /48	2 /14



Introduction

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

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

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

What does International Human Rights Law say?

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

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

Yogyakarta Principle 24

Africa (1)

1	South Africa	2006	Despite the title of the law, the Civil Union Act (2006) confers the right to marriage to persons of the same-sex. In December 2018, the Civil Union Amendment Act (2018) repealed Section 6, which allowed a marriage officer to inform the Minister that they objected on the ground of conscience, religion, and belief to solemnising a civil union between persons of the same sex.

Latin American and the Caribbean (5)

1	Argentina	2010	The Law on Marriage Equality (Law No. 26,618) is the federal law that provides for same-sex marriage nationwide.
2	Brazil	2013	Resolution No. 175 (2013) issued by the National Council of Justice states that notaries can no longer refuse to register same-sex marriage. Previously in May 2011, the Supreme Federal Court of Brazil had issued a decision indicating that same-sex "stable unions" should be converted to marriage and recommended the Congress to do so though no legislative action has been taken so far. Another decision recognised same-sex couples living in "stable unions" as "family units" and entitled to the same rights as heterosexual couples living in that kind of unions.
3	Colombia	2016	After several years of legal uncertainty, in 2016, Colombia's Constitutional Court issued Decision SU214/16, establishing that notaries could no longer refuse to register same-sex marriages. In 2011, the Court had issued Decision C-577/11 recognising same-sex couples as "family entities" and ordered the Congress to legislate on the matter. To date, no law has been adopted.
4	Mexico		There is no federal law on same-sex marriage.[1] Some jurisdictions have enacted local laws providing for this right, including Campeche (2016); Coahuila (2014), Colima (2016), Mexico City (2009); Michoacán (2016); Morelos (2016) [constitutional amendment]; and Nayarit (2015). In Quintana Roo (2012), same-sex marriages were allowed by local authorities through a progressive construction of local regulations.[2] Similarly, in Baja California (2018), Chihuahua (2017) and Oaxaca (2018), local authorities have administratively allowed same-sex marriages to be performed.[3] In several other States, judicial decisions have ordered the recognition of same-sex marriages: Chiapas (2017); Jalisco (2016); Puebla (2017).[4]
5	Uruguay	2013	Law on Marriage Equality (Law No. 19,075) redefined marriage as the union of two persons "of different or same-sex".

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

2 Adriana Varillas, "Revocan anulación de bodas gay en QRoo", *El Universal*, Estados, 3 May 2012.

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

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

Is there more in Latin America and the Caribbean?

Costa Rica	Following the Advisory Opinion issued by the Inter-American Court of Human Rights, the Supreme Court of Costa Rica held in August 2018 that sections of the Family Code prohibiting same-sex marriage are unconstitutional and ordered the Legislative Assembly to reform the law, failing which the ban would be abolished automatically by May 2020.[5]
Chile	A marriage equality bill has been pending in Congress since 2017 despite the government's commitment to introduce marriage equality under a 2016 settlement agreement before the Inter-American Commission on Human Rights (IACHR).[6] Following a Supreme Court ruling that affirmed the right to marry and found a family, a same-sex couple filed an appeal in January 2019 to be granted marriage by the Civil Registry.[7]
Cuba	The government had initially planned to include a constitutional amendment that would introduce a gender-neutral definition of marriage but such text was removed from the final draft.[8]
Ecuador	Judges in two cases ruled in favour of same-sex couples after the Civil Registry office had rejected the couples' marriage license applications.[9] The judges ruled that the Civil registry must immediately allow the women to wed, following the Advisory Opinion issued by the Inter-American Court of Human Rights. However, in September 2018, the Labour Chamber of the Provincial Court of Justice overturned one of the cases and held that marriage equality should be decided by the National Assembly or the Constitutional Court.[10]
El Salvador	The Constitutional Chamber of the Supreme Court of Justice rejected a marriage equality case in January 2019 on technical grounds.[11] This followed the Supreme Court's ruling that blocked lawmakers from ratifying a constitutional change that would bar same-sex marriage and prohibit same-sex couples from adopting children in early 2018, similarly due to procedural issues.[12]
Honduras	Local activists filed two lawsuits with the Supreme Court to legalise same-sex marriage on the authority of the Advisory Opinion issued by the Inter-American Court of Human Rights. One was dismissed due to technical errors and the other case remains pending before the court.[13]
Peru	In 2016, the seventh Constitutional Court of Peru ordered the National Registry of Identification and Civil Status (RENIEC) to recognize and register a same-sex marriage celebrated abroad.[14]

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

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

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

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

9 Shannon Power, "In historic move, court rules Ecuador's same-sex marriage ban is illegal", *Gay Star News*, 4 July 2018.

10 "Corte de Justicia rechaza matrimonio igualitario", *El Telégrafo*, 10 September 2018.

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

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

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

14 Séptimo Juzgado Constitucional, *Expediente No. 22863-2012-0-1801-JR-CI-08*, 21 December 2016.

North America (2)

1	**Canada**	2005	The Civil Marriage Act 2005 is the federal law by which same-sex marriage was recognised nation-wide. Starting with Ontario in 2003, most jurisdictions (provinces and territories) allowed for same-sex marriage before the federal law was enacted. The provinces of Alberta and Prince Edward Island, and the territories of Nunavut and the Northwest Territories were the only jurisdictions without such laws before 2005.
2	**United States of America**	2015	The Supreme Court of the United States rules that same-sex couples had a constitutional right to marry in *Obergefell v. Hodges*, making same-sex marriage available in all 50 states. Prior to this decision, only 13 of the 50 states still outlawed same-sex marriage. Same-sex marriage is also legal in US territories: Guam (2015), Puerto Rico (2015), Northern Mariana Islands (2015), US Virgin Islands (2015), except for American Samoa.

Asia (0)

Is there more in Asia?

Taiwan (China)	The Constitutional Court of Taiwan ruled in May 2017 that same-sex couples have the right to marry under the Constitution and ordered the Legislative Yuan to amend the marriage laws within two years by May 2019.[15] However, legislative reform was stalled by a referendum in November 2018 that voted against amending the Civil Code to legalise marriage equality. According to the secretary-general of the Judicial Yuan, a separate law needs to be drafted to provide for same-sex marriage though it remains unclear how this issue will develop following the referendum.[16]

Europe (17)

1	**Austria**	2019	Following a decision by the Constitutional Court, same-sex marriage came into effect from 1 January 2019.[17] The court had held that the distinction between marriage and a registered partnership constituted discrimination against same-sex couples.
2	**Belgium**	2003	Article 143 of the Belgian Civil Code was, by act of Parliament, amended to read; "Marriage is contracted by two persons of different-sex or of the same-sex" in 2003.
3	**Denmark**	2012	Section 2 of Law No.532 (2012) incorporates marriage between "two people of the same sex" into existing marriage laws. Same-sex marriage came into force in Greenland in early April 2016[18] and in the Faroe Islands in 2017.[19]

15 Wu J R, "Taiwan court rules in favor of same-sex marriage, first in Asia", *Reuters*, 24 May 2017.

16 "Marriage law 'cannot contradict' ruling", *Taipei Times*, 30 November 2018.

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

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

19 Eir Nolsøe, "Same-sex marriage legalised in the Faroe Islands", *Faroeisland.fo*, 16 June 2017

4	Finland	2017	In February 2015, the Finnish government signed a gender-neutral marriage law that amends the text of the law through Act 156/2015 to the marriage of "two persons" and which came into force on 1 March 2017.
5	France	2013	Article 1 of the Law Opening Marriage to Same-Sex Couples (Law No. 2013-404 of 17 May 2013) establishes marriage as available to persons of the same or different, sex. The law also applies to the overseas regions of Guadeloupe and Martinique.
6	Germany	2017	The German parliament, adopted a marriage equality bill in July 2017, with the first marriages solemnized in October of that year.[20] This occurred after the Chancellor Angela Merkel allowed a conscience vote, and gives same-sex couples the same rights as heterosexual couples, including the right to joint adoption.
7	Iceland	2010	In 2010, the parliament passed Bill 138 on changes to the Marriage Act, of which Article 3.1 establishes the right to marry regardless of gender, thereby repealing the 1996 registered partnership law.
8	Ireland	2015	In October 2015, the Marriage Act 2015 was signed into law specifying its application to same-sex couples. The law replaced the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010. Interestingly, the 2015 law was enacted six months after the success of a legally binding Constitutional referendum to alter Article 41(4) to reframe marriage as gender – neutral.
9	Luxembourg	2015	Article 143 of the Civil Code was amended in 2014 (in force 1 January 2015) to simply say that two people of the same-sex can marry.
10	Malta	2017	The Marriage Act and other Laws (Amendment) Act was signed into law on 1 August 2017 and entered into operation on 1 September 2017. Amendments included eliminating any reference to "husband and wife." In the term's place is the gender-neutral "spouse" to cover all situations such that same-sex marriage is made equal to heterosexual marriage.
11	Netherlands	2001	Article 30 of the Act on the Opening up of Marriage states "[a] marriage can be contracted by two persons of different-sex or of the same-sex", thereby making the Netherlands the first country in the world to enact same-sex marriage laws.
12	Norway	2009	Chapter 1, Section 1 of the 1993 Marriage Act (amended 2009) states "[t]wo persons of opposite sex or of the same-sex may contract marriage".
13	Portugal	2010	Article 1 of Law No 9/2010 of 31 May states that the law allows for marriage of persons of the same-sex.
14	Spain	2005	The 2005 amendments made to Article 44(2) of the Civil Code state that marriage confers the same rights and responsibilities on same-sex couples as it does on spouses of different-sex.

[20] "German president signs gay marriage bill into law", *DW.com*, 21 July 2017.

15	Sweden	2009	In 2009 the 1987 Swedish Marriage Code was revised to be gender-neutral.
16	United Kingdom	2014	Section 1(1) of the Marriage (Same-sex Couples) Act 2013 (in force 2014) simply states that "marriage of same-sex couples is lawful". This Act is only applicable in England and Wales, where it repealed the Civil Partnership Act 2004. The Scottish Marriage and Civil Partnership (Scotland) Act of 2014 defines 'spouse' as being both different as well as same-sex. Northern Ireland does not enjoy marriage equality. Same-sex marriage is also available in several British Overseas Territories.[21]

Is there more in Europe?

Armenia	The Ministry of Justice stated in July 2017 that all marriages performed abroad are valid in Armenia, including marriages between people of the same sex pursuant to Article 143 of the Family Code of Armenia.
Romania	A referendum to change the constitution to ban same-sex couples from marriage equality failed due to poor turnout in October 2018.[22] However, in July 2018, the Constitutional Court ruled that the state must grant residency rights to same-sex spouses of European Union citizens following the decision of the European Court of Justice on the matter.[23]

Oceania (2)

1	Australia	2017	The Marriage Amendment (Definition and Religious Freedoms) Act 2017 legalized marriage between two persons of marriageable age, regardless of their gender.
2	New Zealand	2013	Marriage (Definition of Marriage) Amendment Act of 2013 amended the Marriage Act 1955 to allow for marriage between 2 people "regardless of their sex, sexual orientation, or gender identity". This law is not effective in any of New Zealand territories (Cook Islands, Niue or Tokelau).

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

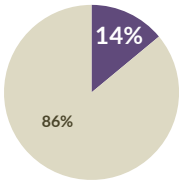
22 "Romanian referendum to ban same sex marriage fails on low turnout", *CBC News*, 7 October 2018.

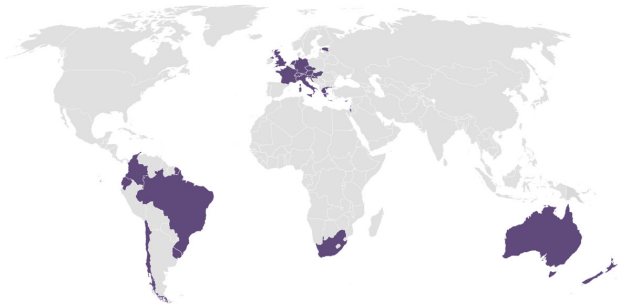
23 "Romania must give residency rights to same-sex spouses, court rules", *Reuters*, 18 July 2018.

Partnership Recognition for Same-Sex Couples

Highlights

27 UN Member States
14% UN Member States





AFRICA	LAC	NORTH AMERICA	ASIA	EUROPE	OCEANIA
1 /54	5 /33	0 /2	1 /42	18 /48	2 /14



Introduction

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

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

Prior to the 12th edition, this publication had differentiated between forms of relationship recognition between those that offer a *minimum* protection and those conferring many of the rights enshrined in marriage between different sex couples. However, we find that this distinction is no longer as relevant as it used to be, as the status of those relationships have generally been strengthened.

What does International Human Rights Law say?

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

Yogyakarta Principle 24(b)

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

Yogyakarta Principle 24(f)

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

Africa (1)

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

Is there more in Africa?

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

Latin American and the Caribbean (5)

1	**Brazil**	2011	Supreme Federal Court of Brazil recognised same-sex civil unions with *erga omnes* effects in two joint decisions (Ação Direta de Inconstitucionalidade 4,277 and Arguição de Descumprimento de Preceito Fundamental 132).
2	**Chile**	2015	The Law on Civil Union Agreement (Law 20,830) provides for civil unions, open to all couples (same-sex or not) that share a home, with the purpose of regulating the legal effects derived from their common affective life, and with a stable and permanent nature.
3	**Colombia**	2011	In C-577/11, the Constitutional Court held that while marriage may be defined as between a man and a woman under the Constitution, same-sex couples cannot be prohibited from legal recognition of their relationship. This *de facto* led to the judicial recognition of civil partnerships though no legislative reform has been introduced.
4	**Ecuador**	2008	Article 68 of the Constitution of Ecuador provides for civil unions regardless of the gender of spouses and establishes that these unions will be granted the same rights afforded to married couples, with the exception of adoption. On 22 August 2014, the Civil Registry issued Resolution No. 174 to allow same-sex couples to register their unions. On 21 April 2015, the National Assembly approved the Civil Code Amendment Law, which amends the Civil Code to incorporate the regulation of civil unions.
5	**Uruguay**	2008	Law 18,246 affords same-sex couples the right to have their union recognized (locally referred to as "union concubinaria").

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

Is there more in Latin America and the Caribbean?

Argentina	Even though there is no federal law providing for civil unions, they are recognised in the Province of Río Negro (2003), and the cities of Buenos Aires (2002), Villa Carlos Paz (2007) and Rio Cuarto (2009).
Costa Rica	A 2013 amendment to the 2002 Law on Youth inserted a non-discrimination clause with regard to *de facto* unions which appeared to allow for same-sex civil unions (even though progressive caselaw used this clause as the legal basis to recognise same-sex *de facto* unions, Article 242 of the Family Code still restricts these unions to different-sex couples). In recent years, considerable progress has been made: in 2014, Governmental Social Security Agency (CCSS) granted health insurance benefits for same-sex couples, and in 2015 the Executive Order No. 38,999 was issued, addressing agencies within the Executive Branch to regulate certain rights for same-sex *de facto* unions (sick leave, care-leave, etc). In 2016, survivor's pensions were granted to same-sex couples. In May, the government submitted a request for an advisory opinion to the Inter-American Court of Human Rights on same-sex patrimonial rights under the ACHR, which prompted its Advisory Opinion No. 24.
Mexico	There is no federal law providing for civil unions. However, civil unions and other forms of registered partnerships are recognised in several jurisdictions within Mexico, such as Campeche (2013); Coahuila (2007); Colima (2013); Jalisco (2013); Federal District (2007); Morelos (2016); Nayarit (2015).

North America (0)

Is there more in North America?

Canada	Besides marriage (see previous section), civil unions, domestic partnerships and other forms of unions are available to same-sex couples in several jurisdictions: Alberta (2002); Manitoba (2001/2002); Nova Scotia (2001); and Quebec (2002).
United States of America	Even though there is no federal law providing for civil unions, they are locally recognised in several states.[3]

Asia (1)

1	**Israel**	**1994**	According to a submission by the State of Israel before the UN, two alternatives to the traditional institution of marriage exist for same-sex couples: 1. Recognition of "Reputed Couples" (common-law partners), which enjoy similar legal rights and duties as legally married couples; 2. Registration before the Israeli Population Registration of marriages celebrated abroad (according to a ruling of the Israeli High Court ruling in November 2006), which renders the civil (legal) status of reputed and/or same-sex couples equal to that of legally married couples.[4]

[3] "Marriage, Domestic Partnerships, and Civil Unions: Same-Sex Couples Within the United States", *National Center for Lesbian Rights* (2017), accessed 22 January 2019.

Taiwan (China)	2015 2016	Over 80% of the population lives in jurisdictions that allow same-sex couples to administratively register their relationships.[5] The registration is archived in a partnership registry and some city governments have entered into agreements to share their registries so that partnerships recognized in one city or municipality would be recognized in the others. The registration confers on same-sex couples limited rights such as medical decision-making and other areas.

Is there more in Asia?

Hong Kong	In June 2018, the Hong Kong Court of Appeal overturned a lower court's decision that ruled that the government had to grant benefits to same-sex spouses of government employees married abroad. The applicant filed an appeal to the Court of Final Appeal, which was partially allowed by the Court of Appeal in September 2018. This case followed an earlier Court of Final Appeal's decision that held that the denial of a spousal visa to a lesbian spouse in a civil partnership with a Hong Kong native amounted to unlawful discrimination.
Japan	Various cities and city wards have recognized civil partnerships by issuing partnership certificates, including Sapporo (2017), Fukuoka (2018) and Osaka (2018).[6]

Europe (18)

1	Andorra	2014	In November 2014, the General Council of Andorra introduced Law 34/2014 that recognised same-sex civil unions as holding equivalence to marriage in terms of most rights and the basis on which family can be founded.
2	Austria	2010	The Registered Partnership Act (Text No. 135/2009) has strong contractual and financial securities enshrined, but offers no recognition of family life, including family name.
3	Croatia	2014	The Same-sex Life Partnership Act of July 2014 provides comprehensive civil union protections regarding recognition and maintenance, but the law has been criticized for being weak in relation to parenting rights.[7]
4	Cyprus	2015	The Civil Partnership Law (L184(1)/2015) applies to same-sex and different-sex couples regarding financial and accommodation issues, but with limited familial protection.

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

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

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

7 "LGBT Parenting" (webpage), životno Parnerstvo (website).

5	Czechia	2006	The Registered Partnership Act (Law No. 115/2006) confers comprehensive civil union protections to same-sex partners only but same-sex couples were not allowed to adopt children. In 2016, the Czech Constitutional Court struck down the ban and ruled that individuals in a same-sex partnership may adopt individually, but not as a couple.[8] Article 3020 of the 2012 Civil Code makes the provision that "the rights and responsibilities of spouses shall apply *mutatis mutandis* to registered partnership and the rights and obligations of partners" (referring to the first, third and fourth part of the section on Marriage at Section 655).
6	Estonia	2016	The Registered Partnership Act (2014) that entered into force on 1 January 2016 is open to same-sex and different-sex couples and contains limited adoption rights - second parent adoption (or joint adoption), but 'marriage' in Estonian law requires a union between a man and a woman.[9]
7	France	1999	Law 99-944 of 15 November 1999 (on the Civil Solidarity Pact) offered same-sex couples some level of legal recognition.
8	Germany	2001-2018	The Act on Registered Life Partners provides significant protections for same-sex partners (to whom the Act is limited), and some familial scope regarding adoption (Section 9). This law was repealed when same-sex marriage was legalised. Therefore, no new registered partnerships can be formalised.
9	Greece	2015	Article 1 of Law No. 4356 on Covenant Partnership of December 2015 confers gender-neutral partnership rights, and limited co-parenting provisions.
10	Hungary	2009	Section 6:514 of the 2009 Civil Code sets out quite limited provisions pertaining to gender-neutral civil partnership in Hungary.
11	Italy	2016	Article 1 of Law May 20 n. 76 regarding civil partnership and cohabitation establishes it is limited to same-sex couples. This legislation provides for equality in matters of tax, social security and inheritance. In 2012, the Court of Cassation denied a petition to recognise a same-sex marriage,[10] but with a reasoning that represented a fundamental change in approach to the issue.[11]
12	Liechtenstein	2011	The Act on Registered Life Partnership confers limited protections to same-sex partners, but overtly denies joint parental rights at Section 9.
13	Malta	2014	Section 4(1) of the Civil Unions Act confers "the corresponding effects and consequences in law of civil marriage" and, as per Section 3(2), applies to same-sex and different couples equally.

8 Pl. ÚS 7/15.

9 Peter Roudik, "Estonia: Legalization of Civil Partnerships", *Library of Congress*, 14 January 2016.

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

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

14	**Netherlands**	1998	Co-existing with same-sex marriage, Article 1:80(a)-(e), Book 1 of the Civil Code confers comprehensive protections to both same-sex and of different-sex civil partners, analysed as virtually equivalent to marriage. The Netherlands' constituent country, Aruba, does not allow same-sex marriage, but in September 2016 voted to allow civil partnerships.[12]
15	**San Marino**	2018	On 5 December 2018, the Law on the Regulation of Civil Unions (Law No. 147 of 20 November 2018) came into effect, allowing same-sex and opposite-sex couples to enter into a union and enjoy certain rights with regard to residency, social security, pension, healthcare and survivorship.
16	**Slovenia**	2017	Article 8(1) of the Civil Partnership Registration Act (into force February 2017) confers the rights to subsistence and maintenance, jointly owned property, occupancy, inheritance and partner healthcare, but is silent on joint or second parent adoption provisions (see second parent adoption below).
17	**Switzerland**	2004	The Federal Law on Registered Partnership Between Persons of the Same-sex (RS 211.231) contains protective financial and property provisions.
18	**United Kingdom**	2005	The UK's Civil Partnership Act 2004 was adopted in Northern Ireland in 2005, but not rescinded when marriage equality emerged in all other parts of the UK in 2013. In 2012, the Crown Dependency of Jersey introduced Civil Partner (Jersey) Law.

Oceania (2)

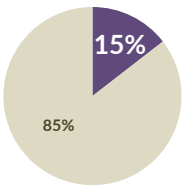
1	**Australia**	2002-2016	In 2008, the Australian Government introduced reforms to remove the discriminations between *de facto* same-sex and different-sex *de facto* couples under the Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008 and Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008. *Civil unions* are available (only to same-sex couples) in the Australian Capital Territory (2012) [domestic partnerships had been available in the ACT since 1994]. *Registered partnerships* are available in New South Wales (2010); Queensland (2012); South Australia (2016); Tasmania (2003); Victoria (2008). *Domestic partnerships* are available in South Australia (2007). *De facto relationships* are also recognized in Western Australia (2002) and in the Northern Territory (2004).
2	**New Zealand**	2008	The Civil Union Act (2004) provides for civil unions, available to same-sex or different-sex couples.

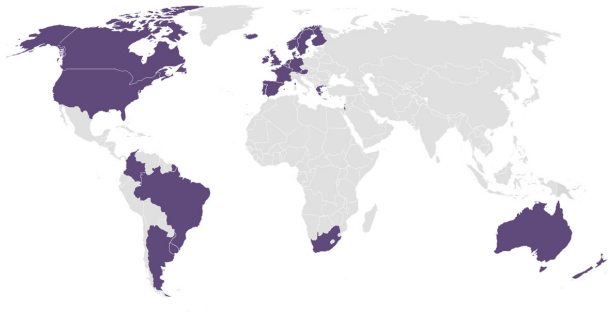
[12] Wendy Zeldin, "Aruba: Same-Sex Partnerships Recognized by Law", *Library of Congress*, 23 September 2016.

Joint Adoption by Same-Sex Couples

Highlights

28 UN Member States
15% UN Member States





AFRICA	LAC	NORTH AMERICA	ASIA	EUROPE	OCEANIA
1 /54	4 /33	2 /2	0 /42	18 /48	2 /14



Introduction

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

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

What does International Human Rights Law say?

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

Yogyakarta Principle 24(a)

Africa (1)

1	**South Africa**	2002	In the 2002 Constitutional Court case *Du Toit & Or*, it was ordered that the words "or by a person whose permanent same-sex life partner is the parent of the child" be adjoined to bring Section 17(c) of the 1983 Child Care Act in line with the Constitution.

Latin American and the Caribbean (4)

1	**Argentina**	**2010**	The Law on Marriage Equality (Law No. 26,618) grants same-sex couples all rights derived from marriage, including joint adoption.
2	**Brazil**	**2010**	The Superior Court of Justice of Brazil (STJ) ruled in April 2010 that same-sex couples may adopt children. This judgment was upheld in the Supreme Federal Court of Brazil in August 2010.
3	**Colombia**	**2015**	In November 2015, the Constitutional Court issued Decision C-683/15 that same-sex couples in Colombia can jointly adopt children.[1]
4	**Uruguay**	**2013**	Law on Marriage Equality (Law No. 19,075) grants same-sex couples all rights derived from marriage, including joint adoption.

Is there more in Latin America and the Caribbean?

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

North America (2)

1	**Canada**	**1996-2011**	Joint adoption by same-sex couples is legal in all Canadian provinces and territories. Every jurisdiction has its own laws and regulation on the matter. Alberta (2007), British Columbia (1996), Manitoba (2002), New Brunswick (2008), Newfoundland & Labrador (2003), Northwest Territories (2002), Nova Scotia (2001), Nunavut (2011), Ontario (2000), Prince Edward Island (2009), Quebec (2002), Saskatchewan (2001).
2	**United States of America**	**2015**	As a result of the Supreme Court decision in in *Obergefell v. Hodges*, joint adoption by same-sex married couples in now available in all 50 states. However, there are several states that have laws permitting state-licensed child welfare agencies to discriminate against LGBT people, including married couples.[2] Mississippi was the last state in the USA to remove blocks to joint adoption.[3]

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

2 "Joint Adoption", *Movement Advancement Project (website)*, accessed 22 January 2019.

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

Asia (1)

1	Israel	2008 2018	Although revisions to the 1981 Adoption Law make no reference to 'reputed spouses', in 2008 the Attorney General declared it should nonetheless be interpreted as also relating to them.[4] The right to joint adoption was affirmed in a 2018 decision by the High Court of Justice that ordered the Interior Ministry to list the names of a same-sex couple as the legal parents on the birth certificate of their adopted child.[5]

Europe (17)

1	Andorra	2014	Law 34/2014 recognises same-sex civil unions as holding direct equivalence to marriage, and Article 24 applies this to adoption rights of same-sex couples.
2	Austria	2016	In late 2014, the Constitutional Court in Austria ruled that provisions barring joint adoption by same-sex couples contravened the right to equality, and not in the best interest of the child.[6] As such, Articles 178-185 of Civil Code are applicable to same-sex couples as of early 2016. The legalization of same-sex marriage in 2019 reaffirms the status of same-sex families as well.
3	Belgium	2006	Articles 4 and 5 of the "Law amending certain provisions of the Civil Code with a view to enabling adoption by persons of the same-sex" primarily concern Article 353 of the Civil Code and ensures full joint-parental rights.
4	Denmark	2010	Section 5.1 of 2010 Adoption Act (updated Adoption (Consolidation) Act 2014) sets out that a partner or spouse can jointly adopt. Greenland enacted such legislation in 2016.
5	Finland	2017	Section 9 of the 2012 Adoption Act stipulates that only persons who are married may adopt. On 1 March 2017, amendments to the Marriage Act that allow for gender-neutral marriage came into force.
6	France	2013	Article 1 of the Law Opening Marriage to Same-Sex Couples (Law No. 2013-404 of 17 May 2013) updates at Articles 345(1), 360 and 371(4) in the Civil Code regarding joint adoption.
7	Germany	2017	The passage of marriage equality allows same-sex couples to adopt children who are not biologically related to them.
8	Greece	2018	Article 8 of the Child Adoption Law (2018) allows same-sex couples to adopt and become foster parents.
9	Iceland	2010	Articles, 2, 8 and 29 of the 2010 Marriage Act stipulate the joint parental responsibilities of spouses: these apply to adoption.

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

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

6 "Constitutional Court Struck Down Joint Adoption Ban | Austria", *European Commission on Sexual Orientation Law (webpage)*, 15 January 2015.

10	Ireland	2015	Part 11 of the Children and Family Relationships Act 2015 (introduced a month before a Constitutional referendum on same-sex marriage) amends prior legislation to allow for joint adoption by same-sex couples.
11	Luxembourg	2015	With the introduction of full marriage equality in force in January 2015, Article 203 of the Civil Code was amended in 2014 (in force 1 January 2015) to assert the obligation of parents to their children, including those jointly adopted.
12	Malta	2014	As reflected in Section 12 the Civil Unions Act 2014, Article 100B(1) of the Civil Code was amended to guarantee full joint adoption rights to same-sex partners, with the first same-sex adoption approved by the Maltese Family Court in July 2016.[7] The legalization of same-sex marriage reaffirms the status of same-sex families as well.
13	Netherlands	2001	Article 1 of the Dutch law on adoption by persons of the same-sex amends Article 227(1) of the Civil Code to allow for joint adoption by same-sex couples.
14	Norway	2009	In line with recent marriage provisions, Section 5 of the Adoption Act was amended to include same-sex partners as eligible to jointly adopt.
15	Portugal	2016	Articles 1-7 of the Law No.2/2016 establish that same-sex couples enjoy all the adoption rights of different-sex couples, and amends the appropriate areas of the Civil Code.
16	Spain	2005	Article 67(7) of Law 13/2005 amends Article 175 of the Civil Code to specify spouses can jointly adopt.
17	Sweden	2009	Articles 4-8 of the 2003 Act on Parenting lay out the conditions for joint adoption for married couples, same-sex and different-sex.
18	United Kingdom	2014	Sections 144 and 150 of the Adoption and Children Act 2002 that entered into force in England and Wales in 2005, establish that joint adoption applies to same-sex couples. Section 2 of the Adoption Agencies (Scotland) Regulations 2009 in Scotland defines civil partners as subject to the law, and in 2013 in Northern Ireland, the Court of Appeal mandated that civil partners can jointly adopt. Several British Overseas Territories recognise joint adoption by same-sex couples.[8]

Is there more in Europe?

Poland	In 2018, the Supreme Administrative Court ruled in favour of a lesbian couple who sought to register their child under both their names after local administrators rejected their request.[9]

7 "Malta's first child adopted by a gay couple; parents appeal the public to educate others", *The Malta Independent*, 15 July 2016.

8 Section 3(3) of the Adoption of Infants Ordinance 2015 of Pitcairn Islands, and the Civil Partnership Act 2014 (converted to marriage in 2016) in Gibraltar both allow joint adoption, as does the law in Bermuda following a 2015 decision. The Crown Dependencies of the Isle of Man introduced joint adoption in 2011 to civil partners, and Jersey legislated for joint adoption in 2012 through the Civil Partner (Jersey) Law.

9 "Lesbian Couple Granted The Right To Register Child As Their Own In Poland", *The Huffington Post*, 12 October 2018.

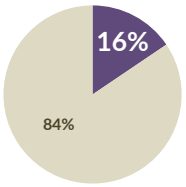
Oceania (2)

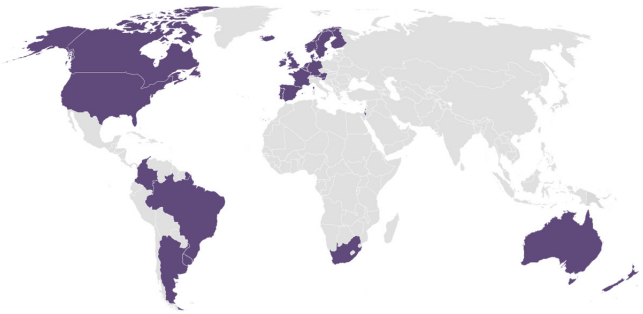
1	**Australia**	2002-2018	Joint adoption by same-sex couples is currently possible in all Australian states and Territories: Australian Capital Territory (2004); New South Wales (2010); Queensland (2016); South Australia (2017); Tasmania (2013); Victoria (2016); Western Australia (2002); Northern Territory (2018).
2	**New Zealand**	2013	Schedule 2 of the Marriage (Definition of Marriage) Amendment Act of 2013 amended the Adoption Act 1955 to allow for joint adoption by same-sex married couples. This law is not effective in any of New Zealand territories (Cook Islands, Niue or Tokelau).

Second Parent Adoption by Same-Sex Couples

Highlights

30 UN Member States
16% UN Member States





AFRICA	LAC	NORTH AMERICA	ASIA	EUROPE	OCEANIA
1 /54	4 /33	2 /2	1 /42	20 /48	2 /14



Introduction

Second parent adoption is an important legal vehicle by means of which a person adopts the child of their partner.

For children of people who are in a same-sex stable relationship being adopted by the partner of their parent may have multiple beneficial effects, such as increasing their protection, as well as their economic security and support.

Furthermore, the recognition of the link between the child and the second parent protects their respective rights and duties towards each other on an equal footing.

What does International Human Rights Law say?

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

Yogyakarta Principle 24

Africa (1)

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

Latin American and the Caribbean (4)

1	**Argentina**	2010	Law 26,618 (Law of Marriage Equality) grants same-sex couples all rights derived from marriage, including adoption. Article 631 of the Civil Code lays out the conditions by which the spouse of the biological parent may adopt their child. As per Article 621, courts may decide on the subsistence of links with other parents.
2	**Brazil**	2010	The Superior Court of Justice of Brazil (STJ) ruled in April 2010 that same-sex couples may adopt children. This judgment was upheld in the Supreme Federal Court of Brazil in August 2010.
3	**Colombia**	2015	The Constitutional Court of Columbia determined in its Decision SU-167 of 2014 that same-sex couples have the right to adopt the biological child of their partner.
4	**Uruguay**	2013	Law on Marriage Equality (Law No. 19,075) grants same-sex couples adoption rights. Article 139 of Law 17,823 (as amended by Law 18,590) establishes that adoption by the spouse of the biological parent is possible only if the link with the child and the other parent is terminated.

Is there more in Latin America and the Caribbean?

Mexico	Second parent adoption for same-sex couples is not available in all states. Some jurisdictions have local regulations on the matter, among them: Campeche (Art. 408B, 2016); Federal District (Art. 391(5), 2010); Coahuila (Art. 377, 2015), Colima (Art. 391(b), 2016); Nayarit (Art. 389(2), 2016).
Venezuela	In 2016, the Supreme Tribunal of Justice (TSJ) of Venezuela ordered a child be registered with the last names of his two mothers.

North America (2)

1	**Canada**	2005	Second parent adoption is available in several provinces and territories, including Alberta (1999), British Columbia (1996), Manitoba (2002), New Brunswick (2008), Newfoundland & Labrador (2003), Northwest Territories (2002), Nova Scotia (2001), Nunavut (2011), Ontario (2000), Prince Edward Island (2009), Quebec (2002), Saskatchewan (2001).
2	**United States of America**	2015	The availability and conditions for second parent adoption vary by state. An NGO report states that about 29 states permit second parent adoption while 10 have limited or prohibited adoption.[1]

[1] "Adoption by LGBT Parents", *National Center for Lesbian Rights (website)*, accessed January 22, 2019.

Asia (1)

1	Israel	2005	In *Yaros-Hakak v. Attorney General* two women had each given birth via ART and were raising their children together. The Supreme Court of Israel judged that the State's adoption law permitted second-parent adoption (without curtailing the first parent's rights), according to the "supreme principle" that the best interests of the child should prevail.[2]

Europe (20)

1	Andorra	2014	Law 34/2014 recognises same-sex civil unions as holding direct equivalence to marriage, and Article 24 applies this to adoption rights of same-sex couples.
2	Austria	2013	Following the return of *X. and others v. Austria* to the European Court of Human Rights in early 2013, Article 182 of the Civil Code was amended to allow same-sex second parent adoption. The legalization of same-sex marriage in 2019 reaffirms the status of same-sex families as well.
3	Belgium	2006	Articles 8 of the Law amending certain provisions of the Civil Code with a view to enabling adoption by persons of the same-sex primarily concern Article 353 of the Civil Code and ensures second-parent adoption rights.
4	Denmark	1999	Section (4)1 of the Law amending the law on Registered Partnership expressly sets out that a registered partner may adopt their partner's child. Greenland enacted second parent adoption to same-sex couples in 2009. The Faroe Islands passed second parent adoption legislation which comes into force later in 2017. Section 4a(2) of 2010 Adoption Act (updated Adoption (Consolidation) Act 2014) sets out that a partner or spouse can adopt the other's child.
5	Estonia	2016	Section 15(1-4) of the Registered Partner Act offer second-parent adoption rights to same-sex couples, where an individual may adopt the natural or adopted child of their partner.
6	Finland	2009	Section 9 of the 2001 Registered Partnership Act was amended in 2001 to clarify that civil partners could adopt, but not as constructed in adoption legislation. However, since coming into force in March 2017 Act 156/2015 confers full joint adoption rights to same-sex couples in Finland.
7	France	2013	Article 1 of the Law Opening Marriage to Same-Sex Couples (Law No. 2013-404 of 17 May 2013) inserted a paragraph (345(1)(a) to the existing Civil Code that establishes second parent adoption. The law also applies to the overseas regions of Guadeloupe and Martinique.

[2] "*Yaros-Hakak v. Attorney General, Supreme Court of Israel* (10 January 2005)", *International Commission of Jurists (website)*, accessed January 22, 2019.

8	Germany	2017	Following the passage of marriage equality which granted the same adoption rights to same-sex couples, the Federal Court of Justice held that being in a same-sex marriage does not automatically make the wife of the mother of a child the co-parent. The wife would have to apply to adopt the child, a process which has been described as "difficult and bureaucratic", and can take up to 18 months.[3]
9	Iceland	2000	Section 6 of Law amending the Registered Partnership Act (1996) specifies that civil partners can adopt one another's children.
10	Ireland	2015	Article 5 of the Children and Family Relationships Act 2015 (introduced a month before a Constitutional referendum on same-sex marriage) defines the civil partner and spouse under 'parentage'.
11	Luxembourg	2015	With the introduction of full marriage equality in force in January 2015, Article 203 of the Civil Code was amended to assert the obligation of parents to their children, including those in second parent adoption.
12	Malta	2014	As reflected in Section 12 the Civil Unions Act 2014, Article 100B(1) of the Civil Code was amended to guarantee full joint adoption rights to same-sex partners. The legalization of same-sex marriage reaffirmed the status of same-sex families as well.
13	Netherlands	2001	Article 1 of the Dutch law on adoption by persons of the same-sex amends Article 228(f) of the Civil Code to allow for second parent adoption by same-sex couples, but only through a court application procedure which was eased in 2014.
14	Norway	2009	Section 5 of the Adoption Act was amended to include same-sex partners as eligible to adopt. Section 13 regulates the adoption of the children of the spouse or cohabitant (stepchild adoption) and specifies that current or former same-sex spouses or cohabitants may not adopt a stepchild if the child has been adopted from a country that does not permit persons of the same sex to adopt together.
15	Portugal	2016	Articles 1-7 of the Law No.2/2016 establish that same-sex couples enjoy all the adoption rights of different-sex couples, and amends the appropriate areas of the Civil Code.
16	San Marino	2018	Article 10 of the Law no. 147 of 20/11/2018 on civil unions passed in November 2018 allows partners in a civil union to adopt their partner's children.
17	Slovenia	2011	The right to step-parent adoption for same-sex couples was recognized by the Ministry of Labour, Family, Social Affairs and Equal Opportunities in 2011 on the basis of the 1976 Law on Marriage and Family Relations, despite the fact that Article 135 stipulates adopters must be married.[4]

3 Damien McGuinness, "Gay Germans' joy mixed with adoption angst", *BBC News*, July 22, 2017.

4 "Ministry response in relation to the decision to adopt a biological child of a same-sex partner" [Odziv ministrstva v zvezi z odločbo o posvojitvi biološkega otroka istospolne partnerice], *Ministry of Labour, Family, Social Affairs and Equal Opportunities (website)*, 19 July 2011.

18	Spain	2005	Article 67(7) of Law 13/2005 amends Article 175 of the Civil Code to allow for second parent adoption.
19	Sweden	2009	Article 8 of the Act on Parenting (2003) lay out the conditions for second parent adoption for married couples, same-sex and different-sex.
20	United Kingdom	2005	Sections 144 and 150 of the Adoption and Children Act 2002 that entered into force in England and Wales in 2005, establish that second parent adoption applies to same-sex couples. Section 2 of the Adoption Agencies (Scotland) Regulations 2009 in Scotland defines civil partners as subject to the law, and in 2013 in Northern Ireland, the Court of Appeal mandated that civil partners enjoy second parent adoption. Several British Overseas Territories also recognize second-parent adoption.[5]

Is there more in Europe?

Croatia	Articles 45-49 of Same-sex Partnership Act (2014) falls short of providing second parent adoption rights, but the court can be petitioned to establish the right *de facto*.
Italy	No law allows for second parent adoption, but there has been important judicial activity in this regard. A high profile case involving the adoption of the birth daughter of a lesbian partner was resolved in the couple's favour in late-2016.[6] The Court of Appeal of Naples ordered full recognition of second-parent adoption on 5 April 2016, and the Court of Appeal in Trento recognised the second father as a co-parent of twins through surrogacy.[7] In September 2018, the Bologna Court of Appeal also affirmed an American adoption order on the basis that it was in the best interests of the child to do so.[8]

Oceania (2)

1	Australia	2002-2018	Second parent adoption by same-sex couples is currently possible in all Australian States and Territories: Australian Capital Territory (2004); New South Wales (2010); Queensland (2016); South Australia (2017); Tasmania (2013); Victoria (2016); Western Australia (2002); Northern Territory (2018).
2	New Zealand	2013	A step-parent in a same-sex couple is able to adopt their spouse's child under the Adoption Act 1955 (as amended by the Marriage (Definition of Marriage) Amendment Act of 2013). This law is not effective in any of New Zealand territories (Cook Islands, Niue or Tokelau).

5 Section 3(4) of the Adoption of Infants Ordinance 2015 of Pitcairn Islands, and the Civil Partnership Act 2014 (converted to marriage in 2016) in Gibraltar both accommodate second parent adoption. The Crown Dependencies of the Isle of Man introduced second parent adoption at Section 98 of the Civil Partnership Act 2011, Jersey legislated for second parent adoption in 2012 through the Civil Partner (Jersey) Law, and Guernsey approved second parent adoption coming into force in 2017 through the 2016 Same-Sex Marriage Law.

6 "Supreme Court: Full Recognition of Two Mothers | Italy", *European Commission on Sexual Orientation Law (website)*, 30 June 2016.

7 "In landmark ruling, Italy recognizes gay couple as dads to surrogate babies", *thelocal.it*, 28 February 2017.

8 Elaine Allaby, "Italian appeals court upholds validity of US adoption by lesbian couple", *The Local.it*, 27 September 2018.

CRIMINALISING STATES UPDATES

STATE-SPONSORED HOMOPHOBIA 2019



CRIMINALISATION

AFRICA

STATE-SPONSORED HOMOPHOBIA 2019

ilga world



ALGERIA

Provisions in force

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

Act of homosexuality

Art. 338.

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

Indecent Acts

Article 333 (modified) [in 1982].

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

Breach of modesty - Barrier to SOGI expression

Article 333. Reiterated.

The making or possession, importing or attempts to import for trade, distribution, for payment, copying, exhibition or display or attempts to display to the public, or for selling or attempts to sell, or distribution or engaged in the distribution of each publication, an editor or a drawing or a declaration or pictures or paintings or photographs, or the origin of the image or its template or produced anything in breach of modesty shall be punished with imprisonment from two months to two years and a fine of 500 to 2,000 dinars.

A breach of decency punished by two months to two years in prison and a fine of 500 to 2,000 Algerian dinars. The punishment for those convicted of "abnormal sexual acts" is six months to three years in prison and a fine of 1,000 to 10,000 Algerian dinars.

Human Rights Situation

An article from October 2015 points to a resilient LGBT community despite their vilification by some religious leaders.[1] In 2016, a gay Algerian man's refugee asylum claim to the UK was rejected, in part based on the lack of prosecutions or arrests in recent years,[2] but the case did not account for the extremes of family and societal shame, threats and violence that pervades rural and urban Algeria regarding diverse sexual orientations in men and women. It has been claimed that sexual minorities in Algeria have been historically ridiculed, perceived and treated as a group of "second class citizens" who are constantly subjected to violence.[3] Social rejection of sexual diversity is reported to be so radical that heterosexual marriage is often seen by gay and lesbian people as the only viable option to remain safe.[4] According to Human Rights Watch, legislation that prohibits the registration of NGOs whose aims are inconsistent with "public morals" and prescribes criminal penalties for

1 "Homosexualité en Algérie : ils ont osé le coming out", *France 24*, 9 October 2015.
2 Upper Tribunal (Immigration and Asylum Chamber), *OO (Gay Men) Algeria CG* [2016] UKUT 00065 (IAC).
3 "Homosexuals in Algeria: from self-hating to sexual apartheid", *The Dissident Blog*, 18 December 2017.
4 "Gay Algerians seek 'rainbow marriages' to elude rigid society", *France 24*, 12 October 2017.

members of unregistered organisations, has resulted in no work being carried out on LGBTI issues in the country.[5] Community LGBTI leaders have been allegedly forced to flee the country due to the harassment and violence caused by the anti-LGBT rhetoric and sentiment from politicians and the media.[6]

In February 2017, a writer received threats and was interrogated by the police over "blasphemous" allegations made in his latest novel, which spoke in favour of LGBT communities.[7] It has been reported that LGBTI people are repeatedly arrested for engaging in consensual same-sex sexual acts, suffer abuse by police officers, and are discriminated against in health and employment contexts.[8]

UN voting record

In 2011, Algeria was not a member of the Human Rights Council and, therefore, did not participate in the vote for any of the first two SOGI resolutions.[9] In 2016, Algeria voted against the adoption of Resolution 32/2 which created the mandate of the Independent Expert on protection against violence and discrimination based on SOGI.[10] At the session of Third Committee of the UN General Assembly held in 2016, Algeria voted against the LAC amendment to remove Operative Paragraph 2,[11] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session in December 2016. Additionally, Algeria voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

National Human Rights Institution

There is no evidence that Algeria's NHRI (Conseil National des Droits de l'Homme) addreeses on SOGI issues.

International advocacy and supervision

Universal Periodic Review

In its second cycle UPR in May 2012, Algeria "noted" (rejected) two recommendations to decriminalise same-sex sexual acts and to ensure non-discrimination on all grounds.[12]

In its third cycle UPR in May 2017, Algeria continued to reject recommendations based on the continuing discrimination of the LGBT community. Even though the State accepted one from France on protection against discrimination, it specifically excluded "discrimination based on SOGI".[13] Algeria expressed that "universality only makes sense if the diversity of the human family is respected" therefore arguing that respect of the religious beliefs of the majority of its population should be prioritised in regard to this issue. Moreover, the State manifested its understanding of sexual orientation being "a choice of persons".[14]

Treaty Bodies

In 2018, the **Human Rights Committee** urged Algeria to repeal Article 338 of the Penal Code and release all people arrested on its basis.[15]

Special Procedures

In 2017, the **Special Rapporteur on the right to health** urged Algeria to decriminalise, noting that it was a barrier to the right to health of those at risk, driving them away from the services they need and increasing health-related risks for them and society as a whole.[16]

5 Human Rights Watch, *Audacity in Adversity. LGBT Activism in the Middle East and North Africa* (2018), 39.

6 Human Rights Watch, *World Report 2018* (2017), 23-28.

7 "Algeria: Don't Prosecute a Writer for Insulting Islam", *Human Rights Watch Website*, 8 March 2017.

8 United States Department of State, *Algeria 2017 Human Rights Report* (2018), 30, 31.

9 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011; Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014.

10 Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

11 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

12 *Report of the Working Group on the Universal Periodic Review: Algeria*, A/HRC/21/13, 5 July 2012.

13 *Report of the Working Group on the Universal Periodic Review: Algeria*, A/HRC/36/13, 19 July 2017.

14 *Report of the Working Group on the Universal Periodic Review: Algeria*, A/HRC/36/13, 19 July 2017, Section B.

15 *Concluding observations on the fourth periodic report of Algeria*, CCPR/C/DZA/CO/4, 17 August 2018, para. 20.

16 *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health on his visit to Algeria*, A/HRC/35/21/Add.1, 20 April 2017, para. 102.



BOTSWANA

Provisions in force

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

Carnal knowledge against the order of nature

Section 164. Unnatural offences.

Any person who:

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

(b) [...]

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

is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

Attempted unnatural offence

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.

Gross indecency

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.

Human rights situation

In recent years, LGBTI people have become more visible and numerous initiatives to celebrate diversity, share experiences and address issues pertaining to LGBT people have been developed.[1] In July 2017, LeGaBiBo launched its Drop-in Center, aimed at providing support, HIV prevention, treatment and care, information on reproductive health right services and a safe space for LGBTI people.[2]

Co-hosted by LeGaBiBo, Pan Africa ILGA's 4th Regional Conference, held under the theme "Empowering LGBTI youth: uniting for an inclusive future", took place from 31 May to 4 June 2018 in Gaborone with the presence of the UN Independent Expert on SOGI, and more than 300

1 "Batho Ba Lorato Film Festival continues to celebrate diversity", *Sunday Standard*, 27 February 2017; "'Beyond the Rainbow': Broader LGBTI issues in Botswana", *76crimes*, 21 July 2017; "LGBT dance artist steps forward in Botswana", *76crimes*, 5 September 2018; LeGaBiBo, *Facebook Page*, 23 April 2017.

2 LeGaBiBo, *Facebook Page*, 13 July 2017.

LGBTI activists and supporters from over 30 African countries.[3]

However, hostility towards sexual and gender diverse people still exists,[4] as has been recognised by recently-elected President Mokgweetsi Masisi,[5] and activists have described encountering some difficulties in advocating for their rights. According to its organisers, the *Queer Shorts Showcase Festival 2018* in Gaborone had to be postponed after the Ministry of Youth Empowerment, Sports, and Culture Development refused to host queer events on government property.[6]

Statements by public officials

President Mokgweetsi Masisi: "There are many people in same sex relationships in this country who have been violated and have also suffered in silence for fear of being discriminated. [...] Just like other citizens, they deserve to have their rights protected".[7]

Existing legal challenges

Consensual same-sex sexual acts

The case challenging articles 164 (a) and (c) and 167 of the Penal Code, which criminalises consensual same-sex activity between adults, was supposed to be heard in 2018, but was postponed to 15 March 2019.[8]

NGO registration

A case about the right of a SOGI-based organisation, LeGaBiBo, to register as an NGO dates back to 2012, with a decisive win in late 2014 where the High Court said not allowing it to register would be an unconstitutional violation of the applicants' right to freedom of expression, freedom of association and free assembly. The State then appealed the decision on the grounds that its recognition would erode public morality, and that appeal was heard in mid-January 2016. In mid-March 2016, judgment from that appeal was unsuccessful and that NGO is now registered, thereby providing an example of positive jurisprudence regarding the reach of the State.[9]

Legal gender recognition

In 2017, Botswana's High Court at Lobatse found the Civil and National Registration Office's refusal to change a trans man's gender marker on his ID card in accordance with his gender identity unreasonable and against his rights to dignity, privacy, equal protection of the law, freedom of expression and freedom from discrimination and inhumane and degrading treatment.[10]

On 12 December 2017, Botswana's High Court at Gaborone ordered the Civil and National Registration Office to issue trans woman Tshepo Ricki Kgositau a card identifying her as a female (Tshepo is a prominent activist with South African-based Gender Dynamix).[11]

UN voting record

In 2011, Botswana was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.[12] In 2014, it voted against the adoption of Resolution 27/32, the second SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to update the report produced in 2011.[13] In 2016, Botswana abstained during the vote to adopt Resolution 32/2 which created the mandate of the independent Expert on

3 "PAI 4th Regional PAI Conference, Gaborone, Botswana: A Reflection", *Pan Africa ILGA Website*.

4 "Botswana activists deplore anti-trans attack", *76crimes*, 19 November 2018.

5 "Botswana: New president acknowledges LGBTI people's rights", *Mambaonline*, 10 December 2018.

6 "Botswana QSS Festival postponed! Ministry of Youth Empowerment, Sports, and Culture Development" (video), *QSS Festival YouTube Channel*, 18 October 2018.

7 "Botswana: New president acknowledges LGBTI people's rights", *Mambaonline*, 10 December 2018.

8 "Botswana High Court sets new date to consider decriminalising homosexuality", *Mambaonline*, 6 December 2018.

9 For more information on the case, see: Southern Africa Litigation Centre and LeGaBiBo, *A Victory for the Right to Freedom of Association: The LEGABIBO Case* (2018) and Esterhuizen,Tashwill and Guthrie, Brynne, "Towards Freedom of Association and Universality of Rights: The Botswana Court of Appeal Decision in Attorney General v Rammoge and 19 others" in *Goal 16 of the Sustainable Development Goals: Perspectives from Judges and Lawyers in Southern Africa on Promoting Rule of Law and Equal Access to Justice* (2016), 167-176.

10 "High Court OKs gender change on Botswana IDs", *76crimes*, 4 October 2017; "News release: Botswana registrar agrees to change gender marker from female to male", *Southern Africa Litigation Centre Website*, 5 December 2017.

11 "Botswana court orders govt to recognise transgender woman as female", *Reuters*, 12 December 2017.

12 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011.

13 Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014.

protection against violence and discrimination based on sexual orientation and gender identity.[14]

However, it is notable that Botswana's ambassador to the UN led the second wave of opposition to the establishment of the SOGI Independent Expert to the UN in November 2016, saying "[n]o nation or group of nations should pretend to hold a monopoly over cultural norms and therefore seek to impose those values on others".[15] At the session of Third Committee of the UN General Assembly held in November 2016, Botswana voted against the LAC amendment to remove Operative Paragraph 2,[16] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Botswana voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

National Human Rights Institution

Botswana does not currently have a National Human Rights Institution in accordance with the Paris Principles. Even though the Office of the Ombudsman is provisionally in charge of this role, the government and the United Nations are negotiating the establishment of a new NHRI.

International advocacy and supervision

Universal Periodic Review

In both its first and second UPR sessions Botswana rejected all recommendations for decriminalisation and non-discrimination based on SOGI.[17] In its response to recommendations the delegation confirmed Botswana's commitment to comply with its treaty obligations" and "determined to undertake educational awareness campaigns".[18]

In the third cycle of the UPR in January 2018, Botswana insisted on "noting" (rejecting) all SOGIESC related recommendations (15 in total) proposed during the session. Argentina, Canada, France, Germany, Iceland, Spain, Sweden and the United States urged Botswana to decriminalise consensual same-sex sexual relations (in sum, by amending sections 164, 165 and 167 of the Penal Code). Moreover, Australia, Brazil, Canada, Finland, Germany, Iceland, Philippines, Spain and Uruguay called for taking legislative actions to fight against the discrimination suffered by the LGBTIQ community. France proposed authorising legal gender recognition. The Netherlands proposed adopting "specific legislation to protect victims of violence and other human rights violations committed against persons on the basis of their real or imputed sexual orientation or gender identity, in line with resolution 275 of the African Commission on Human and People's Rights".[19]

The State recognised key issues which could undermine the enjoyment of equal human rights by the general populace. Included in those there were some involving the SOGIESC situation.[20]

Treaty Bodies

In 2008, the **Human Rights Committee (CCPR)** noted with concern that Botswana criminalised same-sex sexual activities between consenting adults and urged the State to repeal said provisions.[21]

Special Procedures

In 2013, a couple of mandates[22] received a report regarding the alleged arbitrary denial to register a human rights association working for the rights of LGBTI people.[23]

14 Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

15 OutRight, ISHR, ILGA and ARC, *Defending the Independent Expert on Protection Against Violence and Discrimination Based on SOGIE* (2017), 19.

16 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

17 *Report of the Working Group on the Universal Periodic Review: Botswana*, A/HRC/23/7, 22 March 2013; *Report of the Working Group on the Universal Periodic Review: Botswana*, A/HRC/10/69, 13 January 2009.

18 *Report of the Working Group on the Universal Periodic Review: Botswana*, A/HRC/23/7, 22 March 2013, para. 92.

19 "UPR- Botswana", *ILGA Website*, 19 January 2018.

20 "UPR- Botswana", *ILGA Website*, 19 January 2018, Section C.

21 *Consideration of reports submitted by States Parties under Article 40 of the Covenant - Concluding observations of the Human Rights Committee: Botswana*, CCPR/C/BWA/CO/1, 24 April 2008, para. 22.

22 Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders.

23 For more information, see: BWA 2/2013, 8 July 2013.



BURUNDI

Provisions in force

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

Sexual relations with someone of the same sex

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.

Human rights situation

A 2014 shadow report to the Human Rights Committee that oversees the ICCPR describes the repressive conditions under which LGBT people live in Burundi.[1] The legal and social situation of LGBT people in Burundi is also captured in a 2016 report produced by the East African Sexual Health and Rights Initiative.[2] The day-to-day lives of Burundian lesbian women, who are reportedly forced to hide their true selves and use secret memes and code to connect with each other on social media platforms and chat apps for fear of social rejection, discrimination and violence, were documented in a 2019 article by Megha Mohan for the BBC.[3] The journalist pointed out the lack of data and testimonies about what being LGBT+ in Burundi is like, and drew attention to alleged cases of domestic abuse towards lesbian women.

The story of Jean-Daniel Ndikumana, a Burundian LGBT activist who claims he had to seek asylum in Belgium because of his sexual orientation, gives an insight into the life of gay men in the country: subjection to verbal and physical abuse from an early age, rejection by family members when coming out, and constant fear for their safety as adults.[4]

In October 2017, several news portals reported that numerous people had been arrested for "engaging in homosexuality" and forced to pay exorbitant bribes for their release after a 'hunt' was announced by police that month.[5]

UN voting record

In 2011 and 2014, Burundi was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of the first two SOGI Resolutions.[6] However, in 2016, Burundi voted against the adoption of Resolution 32/2 which created the mandate of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.[7]

At the session of Third Committee of the UN General Assembly held in November 2016, Burundi

1 Mouvement pour les Libertés Individuelles *et al.*, *The status of lesbian, gay, bisexual and transgender rights in Burundi: A Shadow Report* (2014).

2 East African Sexual Health and Rights Initiative, *A landscape analysis of the human rights of sex workers and lgbt communities in burundi* (2016).

3 "The secret language of lesbian love. The wives, mothers and friends who hide their sexuality", *BBC*, 8 February 2019.

4 "LGBT activist from Burundi visits U.S.", *Washington Blade*, 1 September 2016.

5 "Two gay teens arrested for dancing together as Burundi starts 'official hunt' for LGBTI people", *Gay Star News*, 10 October 2017; "Burundi: Crackdown on LGBTQ community", *Mambaonline*, 13 October 2017; "Burundi announces 'official hunt' for LGBTI people", *76crimes Website*, 9 November 2017.

6 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011; Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014.

7 Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

voted against the LAC amendment to remove Operative Paragraph 2,[8] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Burundi voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

National Human Rights Institution

Burundi's National Human Rights Institution, the Commision Nationale Independante des Droits de l'Homme, does not appear to address SOGIESC issues in its work.

International advocacy and supervision

Universal Periodic Review

Burundi received 11 direct recommendations in its 2nd UPR in 2015 regarding sexual orientation, the majority regarding decriminalisation, to which the delegation is recorded as saying: "[w]ith regard to discrimination against homosexuals, the delegation acknowledged that the Criminal Code of 2009 still punished homosexuality. That situation was in line with the country's customs and values, and the delegation asked for the international community's understanding while Burundian society prepared for a change in mentality. The head of the delegation did emphasise, however, that he would raise the issue with the Government."[9]

In its 3rd cycle of the UPR carried out in January 2018, Burundi noted (functionally rejected) all 11 SOGIESC recommendations. Argentina, Australia, Ecuador, Iceland, New Zealand, Timor Leste and Uruguay asked for the decriminalisation of consensual same-sex sexual relations.[10]

Burundi referred to the SOGIESC situation in its closing remarks, expressing that "once again, we've been asked about same-sex sexual intercourse. We reject calls for decriminalisation. This is because the mindset in Burundi hasn't developed yet to allow for this. So, we're going to reject that recommendation."[11]

Treaty Bodies

In November 2014, the **Human Rights Committee (CCPR)** unambiguously stated that Burundi should decriminalise consensual same-sex sexual acts and effectively protect LGBT people from threats to their physical integrity and from discrimination.[12]

In December 2014, the **Committee Against Torture (CAT)** directly addressed discrimination based on SOGI, urging Burundi to decriminalise same-sex consensual acts and take all necessary measures to effectively protect LGBT from threats and any form of violence.[13]

In October 2015, the **Committee on Economic, Social and Cultural Rights (CESCR)** recommended that the State party repeal all provisions that could lead to the discrimination, prosecution or punishment of individuals on the basis of their sexual orientation or gender identity and that it take all appropriate steps to ensure that lesbian, gay, bisexual and transgender individuals may exercise all their socio-economic rights."[14]

Special Procedures

In December 2015, the **Special Rapporteur on the situation of human rights defenders** observed that those promoting and protecting the rights of LGBT people were particularly vulnerable,[15] because of discrimination and violence.[16] He also expressed his concern over the fact that no authorised associations were known to be working specifically on LGBTI issues.[17]

8 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

9 *Report of the Working Group on the Universal Periodic Review: Burundi*, A/HRC/23/9, 25 March 2013.

10 "UPR-Burundi", *ILGA Website*, 19 January 2018.

11 "UPR-Burundi", *ILGA Website*, 19 January 2018, Section C.

12 *Concluding observations on the second periodic report of Burundi*, CCPR/C/BDI/CO/2, 21 November 2014.

13 *Id.*, para 23.

14 *Concluding observations on the initial report of Burundi*, E/C.12/BDI/CO/1, 16 October 2015.

15 *Report of the Special Rapporteur on the situation of human rights defenders on his mission to Burundi*, A/HRC/31/55/Add.2, 30 December 2015, para. 51.

16 *Id.*, para 56.

17 *Id.*, para. 90.



CAMEROON

Provisions in force

- **Penal Code of Cameroon** (Law No. 2016/007 of 12 July 2016).

Sexual relations with a person of the same sex

Article 347-1.

Whoever has sexual relations with a person of the same sex shall be punished with imprisonment from 6 months to 5 years and fine of from CFAF 20,000 to CFAF 200,000.

Cameroon's first Penal Code, enacted in 1965, did not criminalise consensual same-sex sexual acts. An Ordinance issued in September of 1972 by President Ahmadou Ahidjo introduced Article 347bis (now 347-1). This amendment took place a few months after the advent of the unitary State under the new Constitution, when the National Assembly had not yet been elected.

- **Law on Cybersecurity and Cybercrime** (Law No. 2010/012 of 21 December 2010).

Making sexual propositions online

Article 83.

1. Any person who makes sexual propositions to a person of their sex through electronic communications shall be punished with imprisonment of one to two years and a fine of 500,000 to 1,000,000 CFA francs or only one of these two penalties.
2. The penalties provided in paragraph 1 above are doubled when the proposals have been followed by sexual intercourse.

Human Rights Situation

- Additional information on the situation in Cameroon is provided at the end of this entry in a "Local Perspective Essay" written by Joachim Ntetmen for ILGA World.

In 2013, Eric Ohena Lembembe who was a prominent gay human rights activist and who headed the AIDS advocacy group Camfaids, was found dead in his home with his limbs and face burnt after a slew of attacks on human rights defenders in the country.[1] No one has been arrested or convicted for his murder.[2] In 2014, a gay man who had been jailed for sending a text message saying "I'm very much in love with you" was also found dead in prison after his family had removed him from a hospital where he was receiving medical treatment.[3] A 2016 Human Rights Watch report documented cases of forced anal examinations by the authorities conducted on men arrested on suspicion of engaging in same-sex sexual conduct.[4] In 2018, five LGBTI human rights defenders were arrested at a youth centre run by the Avenir Jeune de l'Ouest (Youthful Future of the West) and ordered to undergo anal exams after

1 Afua Hirsch, "Cameroon gay rights activist found tortured and killed", *The Guardian*, 18 July 2013.
2 "'Your Children Will Die if You Don't Stop'", *Human Rights Watch*, 13 March 2017.
3 "Gay man jailed in Cameroon has died, says lawyer", *The Guardian*, 13 January 2014.
4 Human Rights Watch, *Dignity Debased: Forced Anal Examinations in Homosexuality Prosecutions* (2016), p. 19 - 23.

they were released on bail.[5] In 2017, a lawyer received death threats for defending LGBT people and he was told to stop doing so when he sought help from the Lawyers' Association.[6] The police similarly dismissed his case and told him not to "defend those faggots".

In June 2018, it was reported that the family members of LGBT human rights activist Dominique Menoga were also seeking asylum in France because of their association with him.[7] Attacks on LGBT human rights defenders are frequently reported: in 2016, anti-gay Cameroonians threatened and harassed LGBTI rights advocates in Douala, driving some of them from their homes.[8] In Yaoundé, Jules Eloundou, president of Humanity First, was the target of two homophobic attacks in the guise of burglaries.[9]

A UN joint (12 CSOs) shadow report of October 2017, documented cases of extortion and blackmail by police officers based on perceived or actual sexual orientation, noting at least 67 cases in 2016.[10] A media report in October 2018 highlighted cases of family violence against lesbian women who were chained and raped after their families found out about their sexuality.[11] Four cases of "corrective rape" were documented in 2014, and seven cases in 2016.[12] In December 2018, a list of persons accused of being "homosexuals" was disseminated through social media: this outed many individuals who had been hiding their identities.[13]

In January 2019, it was reported that a female footballer was thrown off her team and banned from playing after she was outed as gay.[14] In the same month, a group of anti-gay youths shut down a gay advocacy organisation after they set part of the group's office on fire, and forced the cancellation of a planned gay pride celebration.[15]

Statements by public officials

In 2013, Jacques Doo Bell, member of the National Commission for Human Rights and Freedoms wrote in the Commission's magazine that "homosexuals" were like ""highway bandits and chicken thieves [who are] systematically lynched by the crowd" and recommended that they remain "extremely careful and discreet".[16]

In July 2013, in response to the murder of activist Eric Ohena Lembembe, Issa Tchiroma Bakary, Minister of Communication and Government spokesperson, explained that between 95% and 99% of society are "against homosexuality because their religions are against homosexuality".[17] He added that "maybe in 50 years from now things will be different [but] it is the duty of the President of the Republic to respect the will of his people".

National Human Rights Institution

The National Commission for Human Rights and Freedoms is Cameroon's NHRI. The entity not only negates and ignores SOGIESC issues and requests, but, as evinced in its reports, denies discrimination and upholds the country's criminalisation laws.[18]

UN voting record

In 2011, Cameroon voted against the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council.[19] As its term of the HRC expired, it did not vote the 2014 and 2016 SOGI resolutions. At the session of Third Committee of the UN General Assembly held in November 2016, Cameroon voted against the LAC

5 "LGBTI activists arrested in Cameron get released but are ordered to take anal exams", *The Rustin Times*, 11 May 2018.
6 "'Your Children Will Die if You Don't Stop'", *Human Rights Watch*, 13 March 2017.
7 "In Cameroon, life is hell because I support my gay brother", *Erasing 76 Crimes*, 6 June 2018.
8 "Series of break-ins, murder target Ugandan activists", *Erasing 76 Crimes*, May 2016.
9 "Cameroon: Homophobic attacks disguised as burglary", *Erasing 76 Crimes*, October 2016.
10 Acodevo et al, *Torture and Other Cruel, Inhuman and Degrading Treatment of LGBT Individuals in Cameroon* (2017), 17.
11 "Lesbian 'witches' chained and raped by families in Cameroon", *Hindustan Times*, 2 October 2018.
12 Acodevo et al, *Torture and Other Cruel, Inhuman and Degrading Treatment of Lesbian, Gay, Bisexual, and Transgender (LGBT) Individuals in Cameroon* (2017), 11.
13 Erin Royal Brokovitch, "List of alleged homosexuals endangers 82 in Cameroon", *Erasing 76 Crimes*, 31 December 2018.
14 Roberto Igual, "Cameroon | Shattered dreams as lesbian footballer banned from playing", *Mamba Online*, 10 January 2019.
15 Steeves Winter, "Cameroon: Youths disrupt Pride, burn advocacy office", *Rights Africa*, 9 January 2019.
16 Observatory for the Protection of Human Rights Defenders et al, *Cameroon: Homophobia and Violence Against Defenders of the Rights of LGBTI Persons International Fact-Finding Mission Report* (2015), 15.
17 *Ibid*., 10.
18 *Ibid*., 15.
19 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011.

amendment to remove Operative Paragraph 2,[20] and in favour of the African oral amendment to block the Independent Expert on SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Cameroon voted in favour of the amendment which tried to block financial resources allocated to the newly created mandate.

International advocacy and supervision

Universal Periodic Review

Cameroon rejected all seven SOGI recommendations in its 1st cycle UPR in April 2008. In its second UPR, other than accepting one recommendation to investigate police violence based on sexual orientation, it rejected 14 SOGI recommendations.

In its 3rd cycle of the UPR carried out in May 2018, Cameroon noted (functionally rejected) all 12 SOGIESC recommendations, including those referred to decriminalisation.[21] The State provided no comments referring to the SOGIESC situation during the working group session.

Treaty Bodies

In 2010, the **Human Rights Committee** urged Cameroon to repeal article 347(1) of the Penal Code and to address "social prejudice and stigmatization of homosexuality"[22]

In February 2014, the **CEDAW Committee** urged Cameroon to raise awareness among political, traditional and religious leaders, as well as members of civil society, about the possible withdrawal of article 347 of the Penal Code".[23]

Special Procedures

In May 2012, several mandates collectively expressed concern regarding the authorities' interference with a meeting discussing HIV and human rights of LGBT people.[24] In November 2012, several mandates[25] highlighted to the state the alleged death threats against Alice Nkom and Michel Togue, legal representatives of individuals charged on the basis of their real or perceived sexual orientation.[26] In January 2013, the Special Rapporteur on extrajudicial, summary or arbitrary executions expressed concern regarding the alleged murder and death threats against two individuals related to their sexual orientation, Jonas Singa Kumie and Franky Ndome.[27] In August 2013, several mandates[28] against reiterated their concerns regarding the murder of an LGBTI defender.[29]

A LOCAL PERSPECTIVE

The Question of Sexual Orientation and Gender Identity in Cameroon

By Joachim Ntetmen for ILGA World.[30]

Arrests and prosecutions on the basis of provisions which criminalise consensual same-sex sexual relations continue to take place in Cameroon today.

In addition to this state violence, there is a very high level of acts of physical and psychological violence in Cameroon motivated by hate of sexual orientation and gender identity.[31] Blackmail and threats particularly are amongst the most common forms of aggression. In 2017, 578 cases of violence

20 Operative Paragraph 2 was an attempt by the Africa Group to defer action on Resolution 32/2 and block the IE SOGI mandate.

21 "UPR-Cameroon", *ILGA Website*, 18 May 2018.

22 *Concluding observations of the Human Rights Committee - Cameroon*, CCPR/C/CMR/CO/4, 4 August 2010, para. 12.

23 *Concluding observations on the combined fourth and fifth periodic reports of Cameroon*, CEDAW/C/CMR/CO/4-5, 28 February 2014.

24 For more information, see CMR 1/2012.

25 These are the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on extrajudicial, summary or arbitrary executions.

26 For more information, see CMR 5/2012.

27 For more information, see CMR 7/2013.

28 These are the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on rights to freedom of peaceful assembly and of association; and the Special Rapporteur on extrajudicial, summary or arbitrary executions.

29 For more information, see CMR 3/2013.

30 Joachim Ntetmen was trained as a psychologist and is currently Director of programs at Alternatives Cameroun, a human rights organisation in Cameroun created in 2006 which especially defends the rights of sexual minorities.

31 See, for example: "Cameroun: Nkozoa, deux présumés homosexuels tabassés par des conducteurs de motos", *Koaci*, 21 August 2018 ; "Cameroun: Les Homosexuels Traqués De Toute Part", *Afrique sur 7*, 12 de julio de 2017; "Arrest, conviction for visit to gay-friendly Cameroon night spot", *76 Crimes*, 10 July 2018; "Cameroon: Revealed as gay and lesbian, they're left homeless", *76 Crimes*, 11 de julio de 2018; "Cameroon: Youths disrupt Pride, burn advocacy office", *African Human Rights Media Network*, 9 January 2019;

and violations of LGBTI rights were registered.[32] Alarmingly, in 2018, 1,134 of such cases were registered, which represents a vertiginous increase.[33] Violence was the order of the day in multiple forms: waves of arrests - including the arrest of five LGBTI activists in the western region of the country - intimidation, aggression and murder. Particularly tragic was the case of a young man, Tobi Aubin Parfait Kenfack, who was murdered on the 12 August 2018 in the city of Douala: his older brother murdered him because of his sexual orientation.[34] The 2017 annual report produced by Alternatives Cameroon exposed the consequences that violence and violations of rights have on the physical and psychological health of LGBTI persons.[35] A community study carried out in 2017 showed that 57% of lesbian women in Douala consumed tobacco and 18% drugs:[36] the same study revealed that more than 30% of gay men and lesbian women suffer severe depression, as opposed to 5% nationally amongst the general population of Cameroon (WHO figures). A 2016 IBBS study signalled that the prevalence of HIV is 20.3% between men who have sex with men (MSM), with HIV rates showing as up to twice as high in those who have been exposed to violence.[37]

Discourses on issues of sexual orientation remain extremely hostile in Cameroon. In October 2018, a science text book of life and the Earth, destined for fifth grade classes caused a scandal. In it, "homosexuality" was characterised as "deviant", the same as "sodomy", "fellatio" and "cunnilingus".[38] The rationale presented for this content was the protection of children. A local NGO made their own argument and denounced the book as a "criminal initiative" that pretended "to promote zoophilia and homosexuality" following the UN agenda, plunging Cameroonian society into sexual immorality.[39] The scandal led to a petition to remove the book from the program, to which the government finally agreed. This example illustrates that talking about sexual or gender diversity to young people is never well received in Cameroon.

In terms of progress, although timid, the state response to HIV with men who have sex with men (MSM) has been included in the national HIV plans since 2011, and more recently, the 2018-2022 National HIV Plan also includes trans persons. Issues related to gender identity are achieving more visibility and a number of trans organisations have consolidated: it was their efforts that ensured inclusion, and recognition of specific vulnerability to HIV exposure, of trans persons in National HIV Plan. Further, these strategies now include a human rights perspective, access to care is a battle far from being won. Lesbians and bisexual women, for example, remain ignored and invisible in health programs.

Issues related to intersex people have rarely been addressed officially and remain little-understood within and outside the LGBTI community. However, over the past two years intersex persons have started to organise in the city of Douala and already have at least 30 members, and their work in part is to draw attention (through documentation) to the discrimination and violence they experience. There are many cases of hastily-done and unnecessary surgeries that are often harmful to an individual's wellbeing, and that have been carried out without consent.

The presidential elections of October 2018 were an opportunity to influence issues of diversity. Civil society organisations called on candidates to include issues of sexual and gender diversity in their policy agendas.[40] For this purpose, a mapping of the candidates and their respective positions on the subject was carried out: of the nine candidates, three were classified as hostile, four had a "mixed" position and two had favourable approaches to these issues.[41]

This latest data offers some hope for an eventual change in the future but the situation remains difficult.

"Battered and slashed, gay man seeks escape from Cameroon", *African Human Rights Media Network*, 4 December 2019; "Cameroon: Lesbian athlete ousted, living in fear", *African Human Rights Media Network*, 6 February de 2019.

32 Alternatives-Cameroun et al., *Violences et violations de droits à l'encontre des LGBTI au Cameroun Rapport Annuel 2017* (2018).

33 Alternatives-Cameroun et al., *Rapport annuel des Violences et violations faites aux minorités sexuelles et de genre au Cameroun* (2018).

34 "Cameroun : un jeune présumé gay tué par son propre frère", *76 Crimes en Francais*, 18 August 2018.

35 Alternatives-Cameroun et al., *Violences et violations de droits à l'encontre des LGBTI au Cameroun Rapport Annuel 2017* (2018).

36 Alternatives-Cameroun, *Rapport préliminaire de l'étude Communautaire sur les LGBTI à Douala, Cameroun* (2017).

37 MINSANTE, USAID Cameroun, CARE Cameroun. *Integrated Biological and Behavioral Survey (IBBS) Yaoundé* (2017).

38 "Le Conseil national d'agrément des manuels scolaires demande le retrait sur le marché du livre L'excellence en Sciences 5è", *Agence Press Cameroun*, 14 November 2018; "Cameroun : le gouvernement autorise la vente de la version revue et corrige du livre controversé de 5e", *Le Bled Parle*, 3 October 2018; "Controversy Sparks Over Textbook In Francophone Curriculum", *CNT*, 10 September 2018.

39 "Communiqé de Presse N° 114 CAJ/2018. Cameroun: Déclin du système éducatif", *Mandela Center Web Page*, 8 September 2018.

40 "Cameroun, Présidentielle 2018 : Les Homosexuels Écrivent Aux Candidats", *Camer Be*, 3 October 2018.

41 Alternatives cameroun, *Profil simplifié des candidats à l'élection présidentielle* (2018).



CHAD

Provisions in force

- **Penal Code** (2017).

Sexual relations with persons of the same sex

Article 354.

Anyone who has sexual relations with persons of the same sex is liable to imprisonment for three months to two years and a fine of between 50,000 and 500,000 francs.

Human rights situation

Prior to the enactment of the new Penal Code, Chad had never criminalised same-sex sexual intimacy. However, in 2017, Chad became the latest state to criminalize consensual same-sex sexual acts and, therefore, a worrying example of legal regression in the region.

An earlier draft of the legislation—introduced and debated in 2014—would have imposed severe penalties of up to 20 years imprisonment for consensual same-sex sexual conduct (pursuant to a proposed Article 361*bis*).[1] In proposing the law, the cabinet had claimed that the criminalisation of same-sex sexual acts was intended to "protect the family and to comply with Chadian society."[2] The issue re-emerged in parliament in December 2016, amidst the debate for the new Penal Code. The result: consensual same-sex acts were criminalised (with effect from 1 August 2017) as a 'misdemeanour' punishable by a significantly shorter imprisonment term and a fine.[3]

A news report on situations pertaining to LGBT advocacy in East Africa suggested that this was partially the product of "attempts by Western governments to help in a way that some believe has backfired".[4]

Even though criminalisation was formally crystallised in 2017, in September 2013, two gay men were arrested for celebrating their wedding in a bar and charged with indecent exposure.[5] Religious groups, youth associations and women's groups sought to petition the government to punish the couple for what they described as a "vile and anti-religious act". One of the men reportedly left the country after he was released.

A 2014 conference paper at the International AIDS Conference indicated that "homosexuality in Chad is considered as a taboo subject, an immoral practice, uncalled for. It is difficult to talk about it and to sense the realities bound to it."[6] This view was echoed in the US State Department human rights report, which stated that there were no known LGBT organisations in the country because "most individuals were discreet about their sexual orientation due to social and cultural strictures against homosexuality."[7]

1 Taylor Gillian, "AI: Chad considering new anti-gay law", *Jurist*, 24 September 2014.
2 David Smith, "Chad becomes 37th African state to seek ban on homosexuality", *The Guardian*, 22 September 2014.
3 Ismail Akwei, "Chad raises legal marriage age to 18, abrogates death penalty", *Africa News*, 13 December 2016.
4 Jacob Kushner and Anthony Langat, "Anti-LGBT Groups Making Inroads Across East Africa", *The Huffington Post*, 6 December 2015.
5 "Tchad: la population d'Abéché vent debout contre un couple d'homosexuels", *RFI*, 27 October 2013.
6 Alphonse Ngareyasse et al. 2004. "HIV/AIDS and Homosexuality in Chad: Case of Man Who Have Sex with Men in Prison." Paper presented at the XV International AIDS Conference, Bangkok, Thailand, 11-16 July 2004
7 US State Department, *Chad Human Rights Report* (2013), p. 23.

Statements by public officials

Delwa Kassiré Coumakoye, a former-Prime Minister of Chad and current member of parliament, explained that the reduction in the punishment for same-sex sexual intimacy was a "fair balance between conservative public opinion and an uncompromising international community on the protection of minorities."[8]

He added that, "Homosexuality is condemned by all religions. We do not have to forgive something that God himself rejects, because Westerners have said this."

National Human Rights Institution

According to the OHCHR, the National Human Rights Commission of Chad, which is attached to the Prime Minister's Office, was criticised for being "ineffective and not fully in compliance with the Paris Principles".[9] However, a recent update suggested that constitutional reforms relating to the establishment of the National Human Rights Commission as an independent body in line with the Paris Principles on national human rights institutions were being undertaken.[10]

Nevertheless, there is no evidence to suggest that the current Commission has done any work in relation to sexual orientation or gender identity.

UN voting record

Chad was not a member of the Human Rights Council between 2011 and 2016, and therefore did not vote for any of the SOGI resolutions. At the session of Third Committee of the UN General Assembly in 2016, Chad voted against the LAC amendment to remove Operative Paragraph 2,[11] and in favour of the African amendment to block the IE SOGI. Additionally, it voted in favour of the amendment to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

There was no reference to SOGIESC issues in the country during Chad's 1st or the 2nd UPR cycles in 2009 and 2013.

In its 3rd cycle of the UPR carried out in November 2018, Chad noted (functionally rejected) the only SOGIESC recommendation that it received during the session. Iceland had called for the repeal of "all laws that criminalize persons based on their sexual orientation and gender identity".[12] The State provided no comments referring to the SOGIESC situation during its participation in the working group session.[13]

Special Procedures

In 2018, the **Working Group on the issue of discrimination against women in law and in practice** on its mission to Chad expressed concern that "the culture of silence surrounding … lesbian women… makes them invisible and more likely to be victims of human rights violations."[14] It urged the State to "conduct in-depth studies on the situation of girls and women victims of multiple forms of discrimination, including… lesbian women, with a view to taking appropriate measures to better protect and empower members of these groups."[15]

8 Nick Duffy, "Chad criminalises homosexuality by vote of 111 to 1", *Pink News*, 15 December 2016.

9 "OHCHR in Chad (2010-2011)", *OHCHR* (website), accessed 6 March 2019.

10 "Debriefing statement on its mission to Chad, 16 – 23 April 2018 by Working Group on the use of mercenaries as a means of violating human rights and impeding the right of peoples to self-determination", *OHCHR* (website), accessed 6 March 2019.

11 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

12 Report of the Working Group on the Universal Periodic Review: Chad, A/HRC/40/15, 28 December 2018.

13 "UPR - Chad", *ILGA Website*.

14 *Report of the Working Group on the issue of discrimination against women in law and in practice on its mission to Chad*, A/HRC/38/46/Add.2, para. 61.

15 *Ibid*. A/HRC/38/46/Add.2, para. 75(o).



COMOROS

Provisions in force

- Penal Code **of the Federal Islamic Republic of Comoros, 1981**

Improper or unnatural acts

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.

Human rights situation

Little is known on the situation of LGBTI people in Comoros. The few available reports indicate that people do not manifest their sexual orientation for fear of family and community rejection.[1] Discrimination and violence are ever-present realities, especially after the creation of a police unit in charge of preventing "morality crimes". The media has allegedly adopted a hostile attitude towards sexual and gender diversity, and no Comorian LGBT CSOs are known to exist.

UN voting record

Comoros was not a member of the Human Rights Council between 2011 and 2016, and therefore did not vote for any of the SOGI resolutions. At the session of Third Committee of the UN General Assembly in 2016, Comoros voted against the LAC amendment to remove Operative Paragraph 2,[2] and in favour of the African amendment to block the IE SOGI. Additionally, Comoros voted in favour of the amendment to block financial resources allocated to the IE SOGI.

National Human Rights Institution

Comoros does not have a National Human Rights Institution.

International advocacy and supervision

Universal Periodic Review

In its 2nd cycle UPR in 2014, Comoros rejected recommendations to "review provisions of the criminal law penalizing consensual same-sex activity between adults" (Czechia) and to "initiate a debate on the decriminalization of homosexuality" (Spain).[3] Brazil called for the country to "take step to avoid discrimination and violation of the human rights of the LGBT population".

The State responded that "there was not currently a political majority in the Assembly to amend the law."[4]

1 French Office for the Protection of Refugees and Stateless people, *Union des Comores. Situation des minorités sexuelles* (2016); US State Department, *Comoros 2014 Human Rights Report* (2014).

2 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

3 *Report of the Working Group on the Universal Periodic Review: Comoros*, A/HRC/26/11, 7 April 2014.

4 *Report of the Working Group on the Universal Periodic Review: Comoros*, A/HRC/26/11, 7 April 2014, para. 73.



ERITREA

Provisions in force

- **Penal Code** (2015).

Homosexual Conduct

Article 310(1).

A person who performs with a person of the same sex an act corresponding to the sexual act, or any other indecent sexual act, is guilty of homosexual conduct, a Class 7 serious offence, punishable with a definite term of imprisonment of not less than 5 years and not more than 7 years.

Human rights situation

According to a 2010 text on Eritrea, "homosexuality is socially and legally not acceptable in Eritrean society. Homosexuals usually practice their sexual interactions in a highly covert atmosphere. They do not want to be openly identified by the public as homosexuals, and they make every possible effort to keep their lifestyle a secret".[1]

According to a 2013 UPR shadow report, no LGBTI organisations is known to exist publicly in Eritrea and it is reported that the authorities have carried out periodic round-ups of LGBTI people".[2] In 2013, a gay Italian teacher was reportedly deported after he was accused of being a "dangerous individual who is potentially destabilizing to the moral order and public of the country."[3]

This echoed a 2004 incident, where three foreign employees of a luxury hotel were also expelled from the country for "immoral activities", which was allegedly a reference to "homosexual conduct".[4] In 2016, a 26-year-old gay Eritrean man was granted asylum in Israel and his lawyer explained that asylum was granted because of the "danger to him due to his coming out of the closet".[5]

National Human Rights Institution

Eritrea does not have a National Human Rights Institution.

UN voting record

In 2011, Eritrea was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.[6] Neither did it have a vote in the 2014 Resolution 27/32 (on updating the 2011 report),[7] nor on the 2016 Resolution 32/2 which created the Independent Expert on SOGI mandate).[8]

At the session of Third Committee of the UN General Assembly held in November 2016, Eritrea voted against the LAC amendment to remove

1 Mussie Tesfagiorgis G, *Eritrea* (ABC-CLIO, 2010), p. 228.
2 CIVICUS *et al.*, *The State of Eritrea Submission to the UN Universal Periodic* (2013).
3 "Insegnante espulso dall'Eritrea, la Farnesina contesta l'atto", *Live Sicilia*, 10 June 2013.
4 "Eritrea expels three hotel employees for 'immorality'", *Sudan Tribune*, 8 October 2004.
5 Asaf Zagrizak, "Gay Eritrean granted asylum in Israel", *Ynet News*, 12 October 2016.
6 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011.
7 Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014.
8 Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

Operative Paragraph 2,[9] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Eritrea voted in favour of the amendment which tried to block financial resources allocated to the newly-mandated post of SOGI Independent Expert.

International advocacy and supervision

Universal Periodic Review

In its 1st cycle UPR in 2009, the Government of Eritrea rejected the recommendations made by Canada and the USA to repeal the above-mentioned article, arguing that repeal is "…in direct conflict with the values and traditions of the Eritrean people".[10]

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

Eritrea's 3rd UPR commenced in January 2019. However, it appears that no mention is made of 'LGBT' or 'sexual orientation' in any of the civil society stakeholder reports (shadow reports), or in the State's submission to date.

Treaty Bodies

In 2015, the **Committee on the Rights of the Child (CRC)** expressed concern that the criminalisation of consensual same-sex conduct encourages the stigmatisation of and discrimination against LGBT children and urged the State to repeal such laws and raise public awareness of equality and non-discrimination on the basis of sexual orientation.[11]

9 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

10 "UPR Eritrea", *ILGA World Website*.

11 *Concluding observations on the fourth periodic report of Eritrea*, CRC/C/ERI/CO/4, 2 July 2015, para. 24.



ESWATINI

Provisions in force

Consensual same-sex sexual acts are not codified, but a **common law offence** since 1907. There has been a considerable lack of clarity whether lesbian sexual activity is outlawed, and by analysis to date it appears not to be the case.

Human rights situation

There are currently no legal protections against discrimination and violence based on sexual orientation and gender identity and expression on the Eswatini statute books.[1]

Particularly within the health,[2] housing and employment contexts such discrimination is systemic.[3] Violence and deep stigmatisation is pervasive across family and social structures: there are reports of sexual and gender diverse people being ridiculed, threatened,[4] beaten, reported to authorities and banished by family members.[5]

In June 2018, the NGO Rock of Hope successfully organised the first Pride festival and march in the country's history,[6] although thereafter, concerns over the safety of LGBTI people were raised.[7]

A week before the celebrations, the *Swazi Observer*—a newspaper owned by a company currently held by sub-Saharan Africa's last absolute monarch King Mswati III— reported the event was not welcomed by the Swazi people, and divulged a letter against it supposedly written by "concerned parents". The letter, which demonised LGBTI people, was published on the CitizenGo website, a platform closely linked to right-wing hate groups.[8]

Statements by public officials

Senator Princess Phumelele: "I am totally against these laws [that legalize abortion and relationships between gays and lesbians], which go against the teaching of the Bible".[9]

National Human Rights Institution

Eswatini's National Human Rights Institution, registered in accordance with the Paris Principles, is the Commission on Human Rights and Public Administration. It does not appear to address SOGIESC issues.

UN voting record

Eswatini was not a member of the Human Rights Council in 2011, 2014 and 2016 and, therefore, did not participate in any of the votes on the HRC SOGI Resolutions.[10]

1 "Hope and defiance - Swaziland aims to hold its first LGBT Pride", *Mambaonline*, 5 April 2018.

2 Kennedy, Caitlin E. *et al.*, "'They are human beings, they are Swazi': intersecting stigmas and the positive health, dignity and prevention needs of HIV-positive men who have sex with men in Swaziland" (2013), in *Journal of the International AIDS Society*, 16 (4 Suppl 3): 18749.

3 COSPE, Center for Civil and Political Rights and Southern Africa Litigation Center, *Swaziland: Civil Society report on the Implementation of the Covenant on Civil and Political Rights: List of Issues in the absence of a State report* (2017), 12.

4 *Ibid.*; "Eswatini: Violence infringes on LGBTIQ rights", *Mambaonline*, 10 December 2018; "Suspected 'lesbian' teacher wanted out", *Times of Swaziland*, 23 March 2018.

5 "Swazi gay men thrown out of village", *Mambaonline*, 19 August 2013.

6 "The LGBT Heroes Fighting to Hold the First Ever Pride in Swaziland", *The Daily Beast*, 4 April 2018.

7 "In Photos: Swaziland's First Ever Pride March", *Okayafrica*, 2 July 2018.

8 "Swaziland: King's Newspaper Hates LGBTI People", *AllAfrica*, 22 June 2018.

9 "Phumelele: No tolerance to abortion and LGBTI rights", *Times of Swaziland* (printed version), 31 October 2018.

10 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011; Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014; Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

At the session of Third Committee of the UN General Assembly held in November 2016, Eswatini voted against the LAC amendment to remove Operative Paragraph 2,[11] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

Additionally, Eswatini did not vote the amendment which tried to block financial resources allocated to the IE SOGI.

Universal Periodic Review

In its 1st cycle UPR review in 2011, Eswatini stated that "as the world revolved, [Eswatini] would look into the possibility of adopting a policy on the issue of sexual orientation".[12] However, it later rejected all recommendations urging the state to decriminalise declaring that "the decriminalization of same-sex activity is not acceptable".[13] Eswatini did accept two further recommendations to, "[i]mplement measures to prevent violence against the LGBT community, through training and advocacy campaigns" (USA) and to ensure access to health without discrimination based on SOGI (Portugal).[14]

There is no mention of sexual orientation or SOGI in the State's report to its voluntary Mid-term Implementation Assessment (MIA) in early 2015.[15] In their commentary on the Government's activity in relation to recommendations they accepted at the UPR in 2011, Lawyers for Human Rights in Eswatini (LHRS) explain the State's non-action as being based on the homophobia inherent in indigenous tradition in the country, and they observe "[h]omosexuality is not a priority for Eswatini at the moment it seems".[16]

In its 2nd cycle UPR review in May 2016, Eswatini received three recommendations, but accepted only two of them: "Prohibit discrimination on the basis of sexual orientation and gender identity, particularly concerning the enjoyment of the right to health" (Slovenia) and to "ensure and guarantee non-discriminatory access to health services, education, justice and employment for all persons, irrespective of their actual or perceived sexual orientation or gender identity" (Spain). However, it again rejected a recommendation to decriminalise "same sex relations", also from Slovenia.[17]

Treaty Bodies

Eswatini ratified the International Covenant on Civil and Political Rights (ICCPR) in 2004 but has since failed to submit reports in fulfilment of its obligations under the treaty. In July 2017, the **Human Rights Committee (CCPR)** nevertheless reviewed the implementation of civil and political rights in the country.[18]

It then requested information on discrimination and violence on the basis of sexual orientation and gender identity, plans to remove the common law criminalization of same-sex relations and efforts to develop prevention, testing and treatment programmes specifically targeting LGBT people.[19]

11 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

12 *Report of the Working Group on the Universal Periodic Review: Swaziland*, A/HRC/19/6, 12 December 2011, para. 49.

13 *Report of the Working Group on the Universal Periodic Review: Swaziland. Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, A/HRC/19/6/Add.1, 6 March 2012.

14 *Ibid.*

15 UPR-Info, *Mid-term Implementation Assessment: Swaziland* (2015).

16 *Ibid.*, 15.

17 *Draft report of the Working Group on the Universal Periodic Review Swaziland*, A/HRC/WG.6/25/L.11, 19 May 2016.

18 "Human Rights Committee discusses implementation of Civil and Political Rights in Swaziland", *United Nations Human Rights Office of the High Commissioner Website*, 10 July 2017.

19 *List of issues in the absence of the initial report of Swaziland*, CCPR/C/SWZ/Q/1, 13 April 2017, para. 5-6.



ETHIOPIA

Provisions in force

- **Penal Code** of the Federal Democratic Republic of Ethiopia (Proclamation No. 414/2004).

Homosexual act

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.[1]

Aggravation

Article 630(1). General Aggravation to the Crime

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: […]

(b) makes a profession of such activities within the meaning of the law (article 92).

Human rights situation

According to Ethiopian human rights lawyer Abebe Hailu, no one has been charged or convicted under the new criminal provisions since they were introduced in 2004. This is because the criminal system is overloaded and there is little judicial appetite to prosecute homosexuality.[1]

Nevertheless, the difficult legal and social situation of LGBT people in Ethiopia has been described in accounts given by individuals who have fled the country. For instance, a 2013 news report interviewed two individuals who explained that homosexuality is common viewed as a "Western disease".[2] Another news report in 2014 interviewed several gay men who have been harassed and attacked in public.[3]

A 2016 research report also featured interviews with LGBT individuals in the closet who dare not reveal their sexual identities due to fears of backlash and social ostracisation.[4] There is no visible LGBT community, though there are some informal groups that have emerged online, particularly on social media.[5]

In 2011, Christian, Catholic and Muslim religious leaders demanded the cancellation of the International Conference on AIDS and STIs in Africa organised by African Men for Sexual Health and Rights (AMSHeR) on the basis that it violated the country's conservative culture.[6] In fact, there is a strong religious counter-movement to SOGI human rights claims, and representatives from different religious groups and political parties

1 According to Article 106, simple imprisonment may extend for a period of from ten days to three years. However, the court may increase this 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.

1 Elissa Jobson, "Human rights and wrongs: Demonising homosexuality in Ethiopia", *Pambazuka News*, 9 July 2014.

2 Katie J M Baker, "Ethiopia's war on homosexuals", *Newsweek*, 13 December 2013.

3 Elissa Jobson, "Human rights and wrongs: Demonising homosexuality in Ethiopia", *Pambazuka News*, 9 July 2014.

4 The East African Sexual Health and Rights Initiative, *Outside Citizen: Landscape Analysis of the Human Rights of Sex Workers and LGBTI People in Ethiopia 2014-2015* (2016), p. 35-37.

5 The East African Sexual Health and Rights Initiative, *Outside Citizen: Landscape Analysis of the Human Rights of Sex Workers and LGBTI People in Ethiopia 2014-2015* (2016), p. 26; Elissa Jobson, "Human rights and wrongs: Demonising homosexuality in Ethiopia", *Pambazuka News*, 9 July 2014.

6 Aaron Maasho, "Gay gathering sparks row between Ethiopia church and state", *Reuters*, 30 November 2011.

gather annually to discuss prevalent issues, including the "gay problem".[7] A researcher also described a "crusade against homosexuals" by various religious institutions in December 2008 that culminated in a resolution that referred to homosexuality as the "pinnacle of immorality" and urged Parliament to ban homosexuality in the Constitution, establish rehabilitation centres to "treat" homosexuals" and censor the internet to prevent exposure to "homosexuality and other unwanted cultures".[8]

In 2014, the Council of Ministers had considered putting homosexuality on a list of "non-pardonable" offences under the Pardon and Amnesty Law, but stopped short of doing so.[9] The legislative proposal was purportedly a result of the government's attempt to emulate the anti-gay laws in Nigeria and Uganda.[10] Nevertheless, a government spokesperson explained that the government decided against such an amendment because the existing penalties for homosexuality was sufficient, since it is "not a serious crime.. [and] not as widespread as some people suggest".

Statements by public officials

In 2008, the Patriarch of the Ethiopian Orthodox Church Abuna Paulos stated that gay people "have to be dumb, stupid like animals [to act in this manner]", and "have to be given a lesson".[11]

UN voting record

Ethiopia was not a member of the Human Rights Council between 2011 and 2016 and, therefore, did not vote in any of the SOGI resolutions. However, at the session of Third Committee of the UN General Assembly held in November 2016, Ethiopia voted against the LAC amendment to remove Operative Paragraph 2,[12] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Ethiopia voted in favour of the amendment which tried to block financial resources allocated to the Independent Expert on SOGI.

International advocacy and supervision

Universal Periodic Review

At its 2nd cycle UPR in April 2014, Ethiopia 'noted' (did not accept) three recommendations from France, Portugal and Argentina to decriminalise same-sex sexual activity.[13] Ethiopia made no responses to the decriminalisation issue in the UPR Interactive Dialogue or in its formal responses to recommendations in this regard.[14] Ethiopia's 3rd UPR session commences in May 2019.

Treaty Bodies

In 2011, the Human Rights Committee expressed concern about criminalisation of consensual same-sex acts and stated that its concerns were not allayed by the State's claims that "the provision in question is not applied in practice", or by its statement that "it is important to change mindsets before modifying the law in this regard".[15] It urged the State to take steps to decriminalise same-sex sexual acts between consenting adults and send a clear message that the State does not tolerate any form of violence based on sexual orientation.[16]

In 2012, the Committee on Economic, Social and Cultural Rights expressed concern that the State had not adopted an anti-discrimination bill, as well as the fact that the Penal Code criminalises consensual same-sex sexual acts. It urged the state to address both issues as well as take steps to combat and prevent discrimination and societal stigma against LGBT people.[17]

7 Katie J M Baker, "Ethiopia's war on homosexuals", *Newsweek*, 13 December 2013; "Ethiopia's War Against its LGBTQ Citizens", *Borgen Project*, 1 January 2014.

8 Daniel Iddo Balcha, "Homosexuality in Ethiopia" (2009), p. 21-22.

9 "Ethiopian government cancels anti-gay rally", *The Guardian*, 16 April 2014.

10 "Ethiopia tightens its already strict anti-gay laws", *Afrol News*, 25 March 2014.

11 Aaron Maasho, "Gay gathering sparks row between Ethiopia church and state", *Reuters*, 30 November 2011.

12 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

13 *Draft report of the Working Group on the Universal Periodic Review: Ethiopia*, A/HRC/WG.6/19/L.12, 8 May 2014.

14 *Report of the Working Group on the Universal Periodic Review: Ethiopia*, A/HRC/27/14, 7 July 2014.

15 Consideration of reports submitted by States parties under article 40 of the Covenant - Concluding observations of the Human Rights Committee - Ethiopia, CCPR/C/ETH/CO/1, 19 August 2011, para. 12.

16 Consideration of reports submitted by States parties under article 40 of the Covenant - Concluding observations of the Human Rights Committee - Ethiopia, CCPR/C/ETH/CO/1, 19 August 2011, para. 12.

17 Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant - Concluding observations of the Committee on Economic, Social and Cultural Rights - Ethiopia, E/C.12/ETH/CO/1-3, 31 May 2012, para. 8.



GAMBIA

Provisions in force

- **Criminal Code** 1965 (as amended in 2005 and 2014).

Carnal knowledge of any person against the order

Homosexual acts

Article 144: Unnatural offences.

(1) Any person who:

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

(b) […];

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

is guilty of a felony and is liable to imprisonment for a term of 14 years.

(2) In this section "carnal knowledge of any person against the order of nature" includes:

(a) carnal knowledge of the person through the anus or the mouth of the person;

(b) inserting any object or thing into the vulva or the anus of the person for the purpose of simulating sex; and

(c) committing any other homosexual act with the person.

Attempted unnatural offence

Article 145: Attempts to commit unnatural offences.

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

Gross Indecency

Article 147(2) (as amended by the Criminal Code (Amendment) Act, 2005).

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

Aggravated homosexuality

144A. Aggravated homosexuality.

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

(b) offender is a person living with HIV; […]

(f) offender is a serial offender; […]

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

Human rights situation

In 2014, the Parliament approved the Criminal Code (Amendment) Act 2014, which inserted the crime of "aggravated homosexuality" (cited above). In its 2016 report on The Gambia, Human Rights Watch observed that Section 144A of the Criminal Code "[was] taken literally verbatim from section three of Uganda's Anti-Homosexuality Act, which was later overturned by Uganda's Constitutional Court in August 2014 on technical grounds".[1]

Further, concern over The Gambia's increasing embrace of Islamic law in its governance practices was raised with regard to the erasure of the rights of sexually diverse people in a context where they were already vilified, suspected and targeted.[2] In 2017, the United States Department of State also reported high levels of societal discrimination against LGBT people and observed the lack of LGBTI NGOs in the country.[3]

In February 2017, newly-elected President Adama Barrow made public references to LGBT people that contrasted with former President Yahya Jammeh's repeatedly documented homophobic remarks.[4] Other politicians affirmed that the crime of "aggravated homosexuality" should be taken out of the laws.[5]

Statements by public officials

President Adama Barrow: "Homosexuality is not an issue [in the country] [...] economic and other social issues [...] are more of a priority".[6]

Existing legal challenges

Torture and ill-treatment: on 31 May 2018, three survivors of Yahya Jammeh's fake HIV/AIDS "treatment program" filed a complaint in the High Court of The Gambia, seeking compensation for the human rights abuses they reportedly suffered.[7]

This case is of key importance because of the documented high prevalence of HIV/AIDS among men who have sex with men (MSM) in the country.[8]

National Human Rights Institution

Gambia does not have a National Human Rights Institution.

UN voting record

Gambia was not a member of the Human Rights Council between 2011 and 2016, and therefore did not participate in the vote for the three SOGI HRC resolutions in 2011, 2014 and 2016.

At the session of Third Committee of the UN General Assembly held in November 2016, Gambia voted against the LAC amendment to remove Operative Paragraph 2,[9] and did not vote the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

Additionally, Gambia did not vote the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

Although the Gambia received and rejected ('noted') 12 recommendations regarding decriminalisation and non-discrimination based on SOGI at its 2nd cycle UPR process in October 2014, the State made no reference to this issue. Gambia's 3rd UPR occurs in April 2019.[10]

1 Human Rights Watch, *State of Fear: Arbitrary Arrests, Torture, and Killings* (2015).

2 "Signs of Islamic Law Taking Root in The Gambia", *Global Voices*, 10 January 2016; "LGBT community accused of plotting coup against Gambian president", *Washington Blade*, 5 January 2017.

3 United States Department of State, *The Gambia 2016 Human Rights Report* (2017), 27.

4 "Homosexuality not an issue in Gambia, says President Barrow", *The Point*, 14 February 2017. See also: European Asylum Support Office, *EASO Country of Origin Information Report. The Gambia. Country Focus* (2017), 66-70.

5 "With tyrant deposed, a Gambian leader rejects anti-gay law", *76crimes Website*, 2 June 2017.

6 "Homosexuality not an issue in Gambia, says President Barrow", *The Point*, 14 February 2017.

7 "Legal Action Filed Against Gambian Ex-Dictator", *Gambian-based Institute for Human Rights and Development in Africa Website*, 31 May 2018.

8 "HIV epidemic among key populations in West Africa", in *Current opinion in HIV and AIDS* (2014), Sep 9(5): 506-513.

9 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

10 *Draft report of the Working Group on the Universal Periodic Review: Gambia*, A/HRC/WG.6/20/L.3, 30 October 2014.

Treaty Bodies

In February 2015, the **Committee on the Rights of the Child (CRC)** stated that the introduction of the "aggravated homosexuality" provision into the Criminal Code in 2014 encouraged the persecution, discrimination and stigmatisation of LGBTI people, including children and children from LGBTI families.[11] Thus, it entreated the Gambia to "[e]nsure that children who belong to LGBTI groups and children from LGBTI families are not subjected to any form of discrimination, and repeal the legal provisions criminalizing homosexuality".[12]

In March 2015, the **Committee on Economic Social and Cultural Rights (CESCR)**, concerned about the criminalisation of same sex sexual relations and violence against LGBT people, recommended that The Gambia adopt non-discrimination legislation in line with its obligations under the treaty, and urged the State to repeal or amend all legislation that could result in the discrimination, prosecution and punishment of LGBTI people.[13]

In July 2015, the **Committee on the Elimination of Discrimination against Women (CEDAW)** noted that same-sex consensual acts between adults were criminalised and that "aggravated homosexuality" carried sentences of up to life imprisonment and expressed its concern over violent acts against lesbian, bisexual and transgender women.[14] It urged the State to repeal the provisions of the Criminal Code on "unnatural offences" and "aggravated homosexuality", end the arbitrary detention of lesbians and provide them with effective protection from violence and discrimination and provide appropriate training to law enforcement officials.[15]

In August 2018, the **Human Rights Committee (CCPR)** voiced its concern over the criminalisation of same sex sexual relations and arbitrary arrests and violence against LGBT people[16] and demanded that The Gambia decriminalise same-sex relationships between consenting adults and take measures to change societal perception of LGBTI people and protect them from discrimination and violence.[17]

Special Procedures

In March 2015, the **Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment** received reports about individuals who were detained and tortured due to their actual or perceived sexual orientation. He expressed his concern on the 2014 amendment to the Criminal Code on "aggravated homosexuality" subjecting LGBTI people to a greater risk of torture and ill-treatment in an overall context of State-sponsored violence against LGBT people.[18] He recommended, therefore, that the State repeal laws targeting and criminalising LGBTI people and take action to combat violence, threats and intimidation on the basis of sexual orientation and gender identity.[19]

In May 2015, the **Special Rapporteur on extrajudicial, summary or arbitrary executions** observed the alarming human rights situation in the country,[20] and mentioned having received concerning reports about hate speech, persecution and violence against LGBTI people. He specifically referred to threatening and inflammatory public comments made by Yahya Jammeh, President of The Gambia at that time, against LGBT people.[21]

11 *Concluding observations on the combined second and third periodic reports of the Gambia*, CRC/C/GMB/CO/2-3, 20 February 2015, para. 29.

12 *Concluding observations on the combined second and third periodic reports of the Gambia*, CRC/C/GMB/CO/2-3, 20 February 2015, para. 30.

13 *Concluding observations on the initial report of the Gambia*, E/C.12/GMB/CO/1, 20 March 2015, para 12.

14 *Concluding observations on the combined fourth and fifth periodic reports of the Gambia*, CEDAW/C/GMB/CO/4-5, 28 July 2015, para. 44.

15 *Concluding observations on the combined fourth and fifth periodic reports of the Gambia*, CEDAW/C/GMB/CO/4-5, 28 July 2015, para. 45.

16 *Concluding observations on the Gambia in the absence of its second periodic report*, CCPR/C/GMB/CO/2, 30 August 2018, para 11.

17 *Concluding observations on the Gambia in the absence of its second periodic report*, CCPR/C/GMB/CO/2, 30 August 2018, para 12.

18 *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to the Gambia*, A/HRC/28/68/Add.4, 16 March 2015, para. 93.

19 *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to the Gambia*, A/HRC/28/68/Add.4, 16 March 2015, para. 107.

20 *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on his mission to the Gambia*, A/HRC/29/37/Add.2, 11 May 2015, para. 10.

21 *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on his mission to the Gambia*, A/HRC/29/37/Add.2, 11 May 2015, para. 78.



GHANA

Provisions in force

- **Criminal Code** (Act No. 29 of 1960, as amended up to 2003).

Unnatural carnal knowledge

Section 104. Unnatural Carnal Knowledge.

(1) Whoever has unnatural carnal knowledge: [...]

(b) of any person of sixteen years or over with his consent is guilty of a misdemeanour; [...][1]

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

Evidence of carnal knowledge

Section 99. Evidence of Carnal Knowledge.

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

Human Rights Situation

According to Human Rights Watch's 2018 *No Choice But To Deny Who I Am* report, the criminalisation of adult consensual same-sex acts in the country, although it rarely leads to prosecution, contributes to a climate of frequent discrimination and violence against LGBTI people, both in public and in family settings.[2] In fact, incidents of violence and responses to that violence have been profusely recorded in Ghana in the last few years.[3] Although Section 104 of the Criminal Code is understood to apply to males only, there have been media reports of mob attacks on lesbians as well.[4]

Since the last edition of this report, numerous cases of discrimination and physical and psychological abuse against LGBTI people were further reported. In early 2017, media outlets reported that two men were outed on social media and arrested for "suspected homosexuality".[5] In February 2018, a mob tried to lynch two women perceived as lesbians but were stopped by the police.[6] A couple of weeks before, two students had been allegedly arrested for engaging in same-sex activity and taken to hospital for genital examinations.[7]

In March, the partner of a man lynched by a mob because of his perceived sexual orientation claimed he was forced to go on the run and remain hidden in

1 Under Article 296(4) of the Criminal Procedural Code, a misdemeanor "shall be liable to imprisonment for a term not exceeding three years."

2 Human Rights Watch, *No Choice but to Deny Who I Am* (2018), 1.

3 Kaleidoscope Trust, *Speaking out 2015: The rights of LGBTI people across the commonwealth* (2015); Solace Brothers Foundation *et al*., *Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Ghana: A Shadow Report* (2015); USAID, *Being LGBT in West Africa :A virtual student foreign service project* (2014); UK Home Office's, *Country Information and Guidance Ghana: Sexual orientation and gender identity* (2015).

4 "Homophobic residents flood town with posters of alleged lesbians", *GhanaWeb*, 7 March 2015.

5 "2 arrested in Ghana; sensational news coverage", *76crimes Website*, 30 March 2017.

6 "Police In Ghana Save Suspected Lesbians From Lynching", *NewNowNext*, 13 February 2018.

7 "2 Arrested for Sodomy", *Graphic Online*, 2 February 2018.

fear for his life.[8] In May, it was reported that two high school students were expelled after a school investigation revealed that they had engaged in same-sex sexual acts and "initiating other students into homosexuality".[9]

In November 2017, the President Akuffo-Addo's comments during an interview he gave to Aljazeera on how he believed consensual same-sex sexual acts would be eventually decriminalised in Ghana generated strong reactions from opposition leaders, including several Members of Parliament.[10] The president was accused of advocating for same-sex marriage and giving LGBT people ideas on how to achieve their goals.[11] The intensity of the scandal forced President Akufo-Addo to issue a formal statement clarifying that "it will NOT [sic] be under his Presidency that same-sex marriage will be legalised in Ghana".[12]

The anti-gay rhetoric of national and local government officials, Catholic institutions[13] and Evangelical[14], Islamic[15] and Traditional[16] religious leaders has allegedly played a significant role in fomenting the stigmatisation of sexual and gender minorities, and in producing feelings of guilt and shame among its members.[17]

In August 2018, media outlets claimed that "as many as 400 LGBTI people had voluntarily signed up for conversion therapies", to be provided by the National Coalition for Proper Human Sexual Rights and Family Values. This organisation is composed of Christians, Muslims and Traditionalists reported to have as a strategic objective to forcefully articulate the 'correct' stance on human sexual behaviour and put forward a well-reasoned position against the rights of sexual and gender minorities.[18]

According to the Coalition's leader, who revealed plans to propose a bill to make "conversion therapy" mandatory for gay men, the program will be ran by psychiatrics, psychologists, medical doctors, religious leaders and experts in traditional medicine at a Holistic Sexual Therapy Unit of the Korle Bu Teaching Hospital in Accra.[19]

Yet a different religious outlook on sexual orientation and gender identity is being promoted in the country by the Interfaith Diversity Network of West Africa (IDNOWA), a regional network of faith-based groups, LGBTI people and activists aimed at building bridges across all faiths to foster acceptance of all people.[20]

Statements by public officials

Nana Akufo-Addo (President of Ghana): "I don't believe that in Ghana, so far, a sufficiently strong coalition has emerged which is having that impact on public opinion that will say 'change it' [the criminalisation of consensual same-sex activity among adults], 'let's then have a new paradigm in Ghana' [...] I think that it is something that is bound to happen [...], like elsewhere in the world [...] at the moment, I don't feel, I don't see that in Ghana there is that strong current of opinion that will say 'this is something that we need you to deal with', it is not so far a matter which is on the agenda." [21]

Alhassan Suhuyini (Member of Parliament): "[The President] recounted how it happened in England, where he grew up, and says it will take the same process for it to become a topical issue in Ghana as well [...] That's giving free consultation to the gays on how to get their demands met."[22]

Nana Akufo-Addo (President of Ghana): "I am not involved in any conspiracies [to promote the decriminalization of consensual same-sex activity

8 "Ghanaian Man Whose Partner Was Lynched By Anti-Gay Mob Flees For His Life", *NewNowNext*, 2 April 2018.

9 "Two SHS students sacked for homosexual act", *Pulse*, 31 May 2018.

10 "MPs to reject bill seeking to legalise homosexuality", *Graphic Online*, 25 May 2018. See also below: Statements by public officials.

11 See section "Statements by public officials" below.

12 "Re: President Akufo-Addo Has Approved Gay Marriage", Presidency of Ghana Website, 28 April 2018.

13 "Knights of Marshall condemn acts of homosexuality", *Graphic Online*, 17 January 2018.

14 "'Don't bow to foreign pressure on homosexuality'", *Graphic Online*, 5 January 2018; "Prayers against gay rights to start June 30 - Pentecostal Council", *GhanaWeb*, 6 June 2018; "CAC Ghana chair lauds Nana Addo for bold rejection of homosexuality", *Graphic Online*, 21 August 2018.

15 "God created Adam and Hawa, not Adam and Husein - Federation of Muslim Councils", *GhanaWeb*, 7 December 2017; "Muslim Council pushes for law to criminalize homosexuality", *GhanaWeb*, 10 December 2017.

16 "Kill yourselves if you can't be straight – Homosexuals told", *GhanaWeb*, 13 March 2017.

17 "Ghana: Discrimination, Violence against LGBT People", *Human Rights Watch Website*, 8 January 2018.

18 "400 Homosexuals register for counselling", *Graphic Online*, 21 August 2018.

19 "Hundreds of gay people to be 'treated for homosexuality' at camp in Ghana", *PinkNews*, 21 August 2018.

20 "First West Africa LGBT-inclusive religious gathering takes place", *Washington Blade*, 6 September 2017.

21 "Ghana likely to legalize homosexuality - Akufo-Addo" (video), *GhanaWeb Facebook Page*, 26 November 2017; "Homosexuality: Legalization in Ghana is bound to happen - Akufo-Addo", *Graphic Online*, 26 November 2017.

22 "Akufo-Addo inviting calls for homosexual agitation – Suhuyini", *My Joy Online*, 22 November 2017.

among adults] [...] I think these are matters that are in the public domain and people are entitled to their own views. There is no concerted synchronized attempt on my part to promote the advocacy of it."[23]

Aaron Mike Ocquaye (Speaker of Parliament): "If anybody should bring such a thing [a proposal to decriminalize consensual same-sex activity among adults] to parliament and I have to preside over that, I'd rather resign than subscribe to this delusion."[24]

Aaron Mike Ocquaye (Speaker of Parliament) [referring to sexual orientation]: "Deformity takes many forms. It can be mental deficiency, physical deficiency, psychological deficiency, whatever deficiency [...] if a person is found to be deficient, it cannot [be] turn[ed] into a human right, because psychotic inclinations are a deficiency, paedophile inclinations are a deficiency, kleptomaniac inclinations are a deficiency. In fact, there are people who are like that. A person, if all is well, why should he be a paedophile? [...] So we treat it in medical forms [...] if it is spiritual, then we deal with it by way of prayers and other things that will take you out of that situation which you need to be redeemed. Let us treat it but don't turn it into a human right."[25]

Hajia Laadi Ayamba (Member of Parliament): "[Homosexuality] is horrible, not acceptable, and I think that we in this House should be the first people to come out to put it right to anybody that is coming out with whatever they want to call it that we will not take it, we represent the people of Ghana, we represent our constituents [and] we would not have been here if men were marrying men or women marrying women."[26]

Nana Akufo-Addo (President of Ghana): "[L]et me assure that this Government has no plans to change the law on same-sex marriage. We have no authority, and we will not seek any authority to do so."[27]

UN Voting Record

In 2011, Ghana voted against the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.[28]

In 2014, Ghana was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 27/32, the second SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to update the report produced in 2011.[29]

In 2016, Ghana abstained during the vote to adopt the Resolution 32/2 which created the mandate of the independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.[30]

At the session of Third Committee of the UN General Assembly held in November 2016, Ghana voted against the LAC amendment to remove Operative Paragraph 2,[31] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Ghana voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

National Human Rights Institution

Ghana's NHRI, the Commission on Human Rights and Administrative Justice, does not appear to address SOGIESC issues.

International advocacy and supervision

Universal Periodic Review

In December 2012, the Working Group on Ghana's 2nd cycle UPR reported the State's delegation as follows: "Concerning whether Ghana will end its

23 "'I am not part of conspiracy to promote homosexuality' - Akufo-Addo", *Graphic Online*, 17 January 2018.

24 "Stay away from us - MPs tell gay lobbyists", *GhanaWeb*, 23 May 2018.

25 "You are deformed if you are 'gay' - Oquaye to homosexuals", *GhanaWeb*, 12 May 2018.

26 "Stay away from us - MPs tell gay lobbyists", *GhanaWeb*, 23 May 2018.

27 "President of Ghana 'reassures' church leaders that he won't decriminalise homosexuality", *PinkNews*, 10 August 2018; "Press Release. Re: President Akufo-Addo Has Approved Gay Marriage", *The Presidency - Republic of Ghana Website*, 28 april 2018.

28 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011.

29 Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014.

30 Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

31 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

policy of non-equal treatment of homosexuals and lesbian, gay, bisexual and transgender (LGBT) people in general (Germany) and how Ghana will apply the principle of non-discrimination in relation to the issue of homosexuality, (the Netherlands), the delegation emphasised that Ghana does not have a policy of non-equal treatment of its citizens. The Constitution entrenches the fundamental principles of non-discrimination and equality. It also guarantees the freedom of religion and the rights of persons to practise that religion. The Constitution also provides for the legislature to enact laws that further the social cohesion and economic development of the people".[32]

In its 3rd cycle of the UPR in 2017, Ghana received 20 SOGIESC recommendations, of which it accepted three, partially accepted one, and noted (functionally rejected) sixteen.

Ghana accepted the recommendations from Czechia, asking to "ensure that victims of discrimination and violence based on sexual orientation and gender identity have access to rehabilitation and remedy and that all perpetrators are punished"; and from Ireland and Italy, urging the State to take steps to protect LGBTI persons from violence and discrimination.[33] It partially accepted a recommendation from Colombia, proposing to "continue strengthening the application of the Discrimination Complaint System that allows to protect the rights of people because of their sexual orientation and gender identity, and encourage that the education system include guidelines to prevent discrimination against students"; saying that the second part of the recommendation "limits the scope of the government's efforts at fighting discrimination at all levels to just the education system".[34]

Ghana noted (functionally rejected) all remaining sixteen recommendations, which mainly focused on the need to decriminalize consensual same-sex sexual acts and to take actions to raise awareness on the SOGIESC situation in the country.

Treaty Bodies

In August 2016, the **Human Rights Committee (CCPR)** expressed concern at the "discrimination, intimidation and harassment" directed at LGBT people, as well as the State's laconic response that same sex sexual activity falls under Section104 of the Criminal Code. The Committee thus recommended the law be revised and efforts to address discrimination be instituted.[35]

Special Procedures

In April 2012, the **Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health** noted that discrimination and stigmatisation of people living with HIV/AIDS in Ghana is reinforced through criminalisation of the conduct of populations at risk, namely female sex workers and men who have sex with men.[36] He urged Ghana to decriminalise sex work and consensual same-sex sexual acts.[37]

In October 2018, the **Special Rapporteur on extreme poverty and human rights** pointed out that LGBT people face human rights violations because they are "perceived to be different", and remarked that the absence of statistics on LGBTI population and recurrent homophobic statements by politicians and religious leaders are symptoms of the prevailing discriminatory attitudes in the country.[38] He stated that the disclosure of their sexual orientation and/or gender identity is likely to lead to them being thrown out of their jobs, schools, homes and even their communities and affirmed that in such context, it is impossible for them to become productive members of the community and therefore they are vulnerable to extreme poverty.[39] The Rapporteur recommended that the State decriminalise adult consensual same-sex acts and to provide legal remedies and social services for victims of discrimination based on SOGI.[40]

32 *Report of the Working Group on the Universal Periodic Review: Ghana*, A/HRC/22/6, 13 December 2012.

33 "UPR-Ghana", *ILGA Website*, 17 November 2017.

34 "UPR-Ghana", *ILGA Website*, 17 November 2017, Section I.

35 *Concluding observations on the initial reports of Ghana*, CCPR/C/GHA/CO/1, 9 August 2016, para. 43-44.

36 *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health on his mission to Ghana*, A/HRC/20/15/Add.1, 10 April 2012, para. 21.

37 *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health on his mission to Ghana*, A/HRC/20/15/Add.1, 10 April 2012, para. 60.

38 *Report of the Special Rapporteur on extreme poverty and human rights on his mission to Ghana*, A/HRC/38/33/Add.2, 10 October 2018, para. 40.

39 *Report of the Special Rapporteur on extreme poverty and human rights on his mission to Ghana*, A/HRC/38/33/Add.2, 10 October 2018, para. 41.

40 *Report of the Special Rapporteur on extreme poverty and human rights on his mission to Ghana*, A/HRC/38/33/Add.2, 10 October 2018, para. 42.



GUINEA

Provisions in force

- **Penal Code** (2016).

Indecent Acts / Acts against nature

Article 274.

Any indecent act or act against nature committed with an individual of the same sex or an animal will be punished with 6 months to 3 years of imprisonment and a fine of 500,000 to 1,000,000 Guinean francs or with either of those penalties. [...]

Public outrage of modesty

Article 275.

Constitutes a public outrage of modesty any intentional act committed in public and capable of offending the modesty or morality of those who involuntarily witness it.

Public outrage of modesty

Article 276

Any person who commits a public outrage of modesty will be punished with 3 months to 2 years of imprisonment and a fine of 500.000 to 1.000.000 Guinean francs or with either of those penalties. If the act was committed by a group of individuals, the double of the penalties described above must be imposed.

Human rights situation

The atmosphere within which nascent LGBT organising has been happening is both volatile and hostile.[1] Two brief reports published in 2017 document the situation of LGBTI people in the country.[2] Several arrests for alleged "homosexuality" and for "promoting homosexuality" have taken place in the country over the past years,[3] especially in the Conakry area.

Not only have police officers reportedly shown a violent attitude towards those suspected of engaging in same-sex activity, but also and particularly, such violence is found in local communities,[4] forcing members of sexual minorities to hide their sexual orientation.[5] Guinean Muslim leaders such as the Grand Imam of Conakry,[6] and the Imam of the Grand Mosque of

1 USAID, *Being LGBT in West Africa: A Virtual Student Foreign Service Project* (2014), 34-36.

2 Commissariat Général aux Réfugiés et aux Apatrides - Belgique, L'homosexualité (2017); Immigration and Refugee Board of Canada, Guinea: The situation of sexual minorities, including legislation; the treatment of sexual minorities by society and the authorities; state protection and support services available to victims (2017).

3 "Homosexualité à Conakry: Ils font les demoiselles", *Actu-elles*, 29 April 2015; "Un homosexuel mis aux arrêts à Conakry", *VisionGuinee*, 30 October 2015; "Homosexualité: Mamadou Tounkara mis aux arrêts", *Journal de Guinee*, 6 November 2015; "Guinée: Un homosexuel tabasé puis menotté par la police", *NetAfrique*, 28 June 2016; "Guinée : des jeunes militants pour la cause des homosexuels arrêtés sur une plage à Conakry", *Afrinews*, 9 October 2016; "Société: Arrestation d'un présumé promoteur de l'homosexualité à Koloma", *Mosaiqueguinee*, 24 November 2018.

4 "Guinée: les populations réclament deux homosexuels à Conakry", *Africaguinee*, 1 November 2015; "Enquête exclusive: Immersion dans l'univers "secret" des gays à Conakry", *Africaguinee*, 29 March 2018.

5 Ministère de l'Immigration, de la Diversité et de l'Inclusion - Belgique, *Réalités juridiques et sociales des minorités sexuelles dans les principaux pays d'origines des personnes nouvellement arrivées au Québec - Guide d'information* (2017), 31.

6 "Siguiri : Des homosexuels interpellés par la Gendarmerie", *Africaguinee*, 2 December 2014.

Koloma, Ratoma,[7] have strongly condemned 'homosexuality' as well.

UN voting record

In 2011, Guinea was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.[8] Neither did it have a vote in the 2014 Resolution 27/32 (on updating the 2011 report),[9] nor on the 2016 Resolution 32/2 which created the Independent Expert on SOGI mandate).[10] At the session of Third Committee of the UN General Assembly held in November 2016, Guinea voted against the LAC amendment to remove Operative Paragraph 2,[11] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Guinea voted in favour of the amendment which tried to block financial resources allocated to the Independent Expert on SOGI.

International advocacy and supervision

Universal Periodic Review

In its 2nd cycle UPR in January 2015, Guinea "noted" two recommendations from Italy and Argentina to remove discriminatory measures based on SOGI, including criminalisation.[12] The State's delegation appeared not to have made any comment regarding SOGI. Guinea's third UPR commences in may 2020.

Treaty Bodies

In December 2018, the **Human Rights Committee (CCPR)** regretted the retention of provisions in the Penal Code criminalising the behaviour of people on the grounds of their sexual orientation, underlined their discriminatory nature,[13] and urged the State to repeal them and take all necessary measures to prevent and address discrimination.[14]

7 "Oustaz Ramadan sur l'homosexualité en Guinée: 'nos autorités doivent empêcher ça dans notre pays'", *GuineeMatin*, 18 May 2017.

8 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011.

9 Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014.

10 Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

11 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

12 *Draft report of the Working Group on the Universal Periodic Review: Guinea*, A/HRC/WG.6/21/L.3, 22 January 2015.

13 *Observations finales concernant le troisième rapport périodique de la Guinée*, CCPR/C/GIN/CO/3, 7 December 2018, para. 17.

14 *Observations finales concernant le troisième rapport périodique de la Guinée*, CCPR/C/GIN/CO/3, 7 December 2018, para. 18.



KENYA

Provisions in force

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

Carnal knowledge against the order of nature

Section 162.

Any person who:

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

(b) [...]; 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.

Attempted acts against the order of nature

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.

Gross indecency

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.

Human rights situation

Kenya is one of the States in which forced anal examinations have been carried out to find "proof" of proscribed consensual same-sex sexual acts. Amidst the rise in threats of perpetuating such practices by police officers,[1] NGLHRC launched an online petition calling on the Director of Public Prosecutions Office to stop involuntary anal and HIV testing as a means of gathering evidence for prosecuting "unnatural offences".

In September 2017, the Kenya Medical Association resolved to "condemn and discourage any form of forced examination of clients, even in the guise of discovering crimes, and to advise practitioners to always conduct consenting procedures for *all* clients they examine". It also vowed to "organise a forum to address the health needs and rights of members of the LGBTIQ community".[2]

Cases of mob violence based on sexual orientation and subsequent arrest of the victims have been reported.[3] Local media reported that George Barasa, an LGBTI activist who turned his home into a safe housing space for LGBTI people, was

1 "Kenya Appeal Court Moves to End Forced Examinations of Men Suspected of Being Gay", *National Gay and Lesbian Human Rights Commission Website*, 22 March 2018.

2 "Press Release", *Kenya Medical Association Website*, 23 September 2017.

3 "Gay couple arrested in Kenya, then released", *76crimes*, 15 March 2017; "A gay couple attacked in Tana River County", *Standardmedia*, 21 March 2017.

assaulted by an individual pretending to be homeless gay man.[4]

LGBTI refugees in Kenya have also been subject to mistreatment, most of which goes undocumented. In May 2017, 17 Ugandan asylum-seekers moved from Nairobi to the Kakuma Refugee Camp in the north of the country and, having complained about police brutality and homophobia, themselves ended up in prison.[5] In May 2018, over 600 people attended the first Pride festival at the Kakuma Refugee Camp. However, after the event, threatening messages were delivered.[6]

In June 2018, the Refugee Coalition of East Africa (RefCEA) was launched in Kenya, serving as a "community-based organisation led for and by LGBTI migrants, refugees and asylum-seekers".[7] In December 2018, a group of LGBTI refugees and asylum-seekers were again victims of violence at Kakuma Refugee Camp.[8]

A recent report that revealed an alarmingly high incidence of HIV among men who have sex with men and trans women in Kenya.[9]

Existing legal challenges

Consensual same-sex sexual acts

A case (petitions 150 and 234 of 2016) seeking to decriminalise same-sex relations between consenting adults brought forward by NGLHRC, the Gay and Lesbian Coalition of Kenya (GALCK) and the Nyanza, Rift Valley and Western Kenya Network (NYARWEK) reached the Kenya High Court at Nairobi in January 2018 and will be decided on February 22, 2019.[10] Petitioners are arguing that Sections 162 (a) and (c) and 165 of the Penal Code are in breach of the Kenyan Constitution and the African Charter on Human and Peoples' Rights.[11]

According to Eric Gitari, Executive Director of NGLHRC, those provisions "are used to justify discrimination, violence, harassment and invasive intrusion on the private lives of [LGBTI people]".[12]

NGO registration

In April 2015, the High Court of Kenya at Nairobi ruled in favour of the National Gay & Lesbian Human Rights Commission (NGLHRC) in a case concerning the rejection of its registration application on the basis that its name was "unacceptable", as Kenya's Penal Code "criminalises gay and lesbian liaisons".

Forced anal examinations

After a 2016 ruling of Kenya High Court at Mombasa upholding the use of involuntary anal examinations as evidence for prosecuting proscribed same sex sexual relations, in March 2018, the Kenya Court of Appeals at Mombasa ruled the practice unlawful.[13] The case concerned two men subjected to the procedure after being charged of engaging in an "unnatural offence" in February 2015. The "arrests took place in the context of a weeks-long witch hunt [...] after photos and videos circulated on social media showing men [...] engaging in same-sex acts."[14]

Free speech

In April 2018, the Kenya Film Classification Board banned the film ''Rafiki' - about a lesbian relationship - claiming it promoted lesbianism.[15] The ban was judicially lifted for seven days in September (in which the film sold -out in national cinemas),[16] so that it could be submitted for international film awards [the Oscars].[17]

4 "Kuchu Times' Kenyan Correspondent George Barasa Attacked", *Kuchu Times*, 20 June 2017.

5 "Prison for 17 protesting Ugandan refugees in Kenya", *76crimes*, 27 May 2017.

6 "Following pride event, Kenya's gay refugees fear for their lives", *NBC*, 20 June 2018.

7 *Refugee Coalition of East Africa Facebook Page*, 26 June 2018.

8 "LGBTIQ refugees left bloodied after police attack in Kenya", *MambaOnline*, 12 December 2018; "UN claims it was not behind violence against LGBTIQ refugees", *MambaOnline*, 14 December 2018.

9 "'Alarmingly high' HIV incidence among MSM and transgender women in sub-Saharan Africa", *NAM-aidsmap*, 19 November 2018.

10 *National Gay and Lesbian Human Rights Commission Facebook Page*, 25 October 2018.

11 "Kenyan rights group in landmark case to scrap biased colonial laws", *National Gay and Lesbian Human Rights Commission Website*,19 January 2018.

12 "Rights Group Seeks to Strike Down Discriminatory Laws", *National Gay and Lesbian Human Rights Commission Website*, 20 February 2018.

13 "Kenya Appeal Court Moves to End Forced Examinations of Men Suspected of Being Gay", *National Gay & Lesbian Human Rights Commission Website*, 23 March 2018.

14 Human Rights Watch, *Dignity Debased. Forced Anal Examinations in Homosexuality Prosecutions* (2016), 29.

15 "Kenya bans lesbian love story film 'Rafiki' set to open at Cannes", *Reuters*, 27 April 2018.

16 "Screenings for lesbian film 'Rafiki' sell out after Kenya lifts ban", *CCN*, 25 September 2018.

17 "Kenya briefly lifts ban on lesbian film Rafiki ahead of Oscars", *BBC*, 21 September 2018.

The CEO of the Kenya Film Classification Board, Ezekiel Mutua, asked the NGO Coordination Board to investigate foreign NGOs suspected of "funding homosexuality".[18] He said, "I am willing and ready to lose my job of heading the moral board in a country where homosexuality is the order of the day. It will destroy even the future generations, which should not be the case. [...] It is high time we stopped this Westernised and good-for-nothing practice".[19]

Legal gender recognition

In February 2017, a court ordered the Registrar of Persons to change the name of five trans people in accordance with their gender identity in their identification cards.[20]

National Human Rights Institution

Kenya has a National Human Rights Institution in accordance with the Paris Principles: the Kenya National Commission on Human Rights.

In 2018 the institution published a Report on the Rights of Intersex Persons in Kenya[21].

UN voting record

In 2011, Kenya was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.[22]

In 2014, it voted against the adoption of Resolution 27/32, the second SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to update the report produced in 2011.[23]

In 2016, Kenya voted against the adoption of Resolution 32/2 which created the mandate of the independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.[24]

At the session of Third Committee of the UN General Assembly held in November 2016, Kenya voted against the LAC amendment to remove Operative Paragraph 2,[25] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

Additionally, Kenya voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

In its first cycle of the UPR in 2010, Kenya rejected all recommendations related to decriminalisation of same-sex sexual acts.

It is notable that Kenya's first appearance at its 2nd cycle UPR was in January 2015, where according to the report of the Working Group, Chile and Poland recommended decriminalising "… consenting relationships between adults of the same sex", and both Denmark and Chile referred to enacting legislation combating hatred, while France and Sweden referenced non-discrimination, and Brazil referenced freedom of association and expression "and rights of LGBT persons".[26]

Kenya responded that "it had come through a long period of national dialogue on the new Constitution. Critical social issues were put to the various fora […] particularly the use of criminal law in these cases. These issues were really divisive and the requisite political and social consensus on these issues was a working [sic] progress [...]. On the rights of LGBT, not a single individual could confirm the application of the criminal law on the basis of his/her sexual orientation".[27]

18 "'I'd rather lose my job than promote homosexuality', says Ezekiel Mutua", *SDE*, 5 May 2018.

19 *Ibid*.

20 "Court orders State to alter names in IDs for five transgender Kenyans", *Justicenow*, 15 February 2017.

21 Kenya National Commission on Human Rights, *Equal in Dignity and Rights: Promoting the Rights of Intersex Persons in Kenya* (2018).

22 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011.

23 Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014.

24 Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

25 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

26 *Report of the Working Group on the Universal Periodic Review: Kenya*, A/HRC/29/10, 26 March 2015.

27 *Id*., para. 83.

Kenya's 3rd UPR review will take place in January 2020.

Treaty Bodies

In March 2016, the **Committee on Economic, Social and Cultural Rights (CESCR)** expressed its concern over the discrimination, stigmatisation and marginalisation suffered by LGBTI people and called on the State to put an end to it and decriminalise sexual relations between consenting adults of the same sex.[28]

In 2012, the **Human Rights Committee** regretted the criminalisation of sexual relations between consenting adults of the same sex and the acts of violence, harassment and abuse against LGBTI persons. Therefore, it recommended Kenya to decriminalise, to take the necessary steps to put an end to the social stigmatisation of homosexuality and to send a clear message that it does not tolerate any form of harassment, discrimination or violence against persons based on their sexual orientation or gender identity.[29] The Committee also recommended taking measures to raise awareness on HIV/AIDS with a view to combating prejudices and negative stereotypes against people living with HIV/AIDS, "including homosexuals", and to ensure equal access to medical care and treatment.[30]

Special Procedures

In 2018, several mandates received information concerning alleged acts of violence, harassment and discrimination (arbitrary arrests, detention, verbal and physical attacks, lack of access to food, HIV/AIDS-related prevention and care and other basic necessities),[31] against LGBT refugees living at Kakuma Camp in Kenya.[32]

28 *Concluding observations on the combined second to fifth periodic reports of Kenya*, E/C.12/KEN/CO/2-5, 6 April 2016, para. 21-22.

29 *Consideration of reports submitted by States parties under article 40 of the Covenant - Concluding observations adopted by the Human Rights Committee at its 105th session, 9-27 July 2012: Kenya*, CCPR/C/KEN/CO/3, 31 August 2012, para. 8.

30 *Consideration of reports submitted by States parties under article 40 of the Covenant - Concluding observations adopted by the Human Rights Committee at its 105th session, 9-27 July 2012: Kenya*, CCPR/C/KEN/CO/3, 31 August 2012, para. 9.

31 Working Group on Arbitrary Detention; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the human rights of migrants; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment; Special Rapporteur on the human rights to safe drinking water and sanitation.

32 For more information, see: KEN 9/2018, 21 September 2018.



LIBERIA

Provisions in force

- Penal Law of 1976 Vol IV Title 26 Liberian Codes of Law Revised (Rev Ed 1998)

Sodomy / Deviate sexual intercourse

Section 14.74. Voluntary Sodomy.

A person who engages in deviate sexual intercourse under circumstance not stated in Section 14.72 or 14.73 has committed a first-degree misdemeanour.[1]

Relevant definitions

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

In this subchapter:

"sexual intercourse" occurs upon penetration, however slight; ejaculation in not required;

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

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

Human rights situation

In 2012, Liberia proposed amendments to the Domestic Relations Act and the Penal Code respectively. The former sought to ban same-sex marriage and criminalise it as a second degree felony, with punishment of up to five years' imprisonment.[2] The latter would make same-sex sexual practices a first degree felony under a new Section 14.80 in Chapter 14 of the Penal Code, that is punishable by death or imprisonment for up to 10 years, up from the maximum of 1 year imprisonment.[3] Though both Bills failed to pass in the House of Representatives, they remained dormant in the upper house.[4] In November 2018, the Committee on Judiciary and Gender revived the proposed introduction of Section 14.80 to the Penal Code.[5]

According to an ICCPR shadow report by a coalition of Liberian LGBT groups in 2017, individuals suspected of engaging in same-sex sexual conduct have been subject to arbitrary arrest and detention.[6] Those detained have complained of verbal and physical abuse, as well as prolonged detention.[7] For instance, a man was

1 Section 50.7 establishes the sentence to imprisonment for misdemeanour: "A person who has been convicted of a misdemeanour may be sentenced to imprisonment for the following terms: For a misdemeanour of the first degree, to a definite term of imprisonment to be fixed by the court for no more than one year; For a misdemeanour of the second degree, to a definite term of imprisonment to be fixed by the court for no more than thirty days.

2 Max Slater, "Liberia senate passes anti-same-sex marriage bill", *Jurist*, 20 July 2012.

3 "Liberia: Pres. Johnson Sirleaf Will NOT Sign Proposed Anti-Gay Bill", *Rod Online*, 27 February 2012.

4 Stop AIDS in Liberia et al., *Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Liberia* (2017), 3.

5 Leroy M Sonpon III, "Bill to Criminalize Same-Sex Marriage Under Review", *Liberian Observer*, 13 November 2018.

6 Stop AIDS in Liberia et al., *Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Liberia* (2017), 3.

7 *Ibid.*

allegedly detained without trial from 2010 to 2013 after he was "outed" in the media.

A significant source of anti-LGBT sentiment in Liberia is stirred by religious leaders. For instance, a Christian pastor publicly declared in 2018 that he would "not allow anyone or group of people to destroy our country" in response to calls for LGBT equality.[8] During the Ebola crisis in 2014, the Liberian Council of Churches—consisting of over 100 Christian leaders—jointly endorsed a resolution that stated: "Liberians have to pray and seek God's forgiveness over the corruption and immoral acts (such as "homosexualism", etc.) that continue to penetrate our society."[9]

However, it was later reported that the reference to homosexuality was not approved, and Liberian Archbishop Jonathan Bau-Bau Bonaparte Hart published an open letter apologising to "anyone and everyone who was hurt by that statement".[10] Nevertheless, the claim that Ebola was divine punishment for "homosexuality" has resulted in increased violence towards LGBT people, according to Leroy Ponpon, an LGBT activist in Monrovia.[11]

The ICCPR shadow report of 2017 also detailed multiple incidents where LGBT human rights defenders have faced harassment and violence for advocating for rights as they pertain to LGBT people.[12] In November 2016, the Trans Network of Liberia was refused registration as a legal entity by the Liberia Business Registry.[13] The reason for rejection was that the group's "articles of incorporation includes activity which is not allowed in Liberia".

Statements by Public Officials

On 19 March 2012, President Ellen Johnson Sirleaf said that she would neither introduce new laws nor repeal existing laws on same sex sexual intimacy: "We like ourselves just the way we are […] we've got certain traditional values in our society that we would like to preserve".[14]

In an open letter of 12 January 2012, Jerome Verdier—former Chairman of Liberia's Truth and Reconciliation Commission—wrote that "homosexuality" is "anti-Liberian and anti-God" and is "condemnable as an abomination for the nation".[15] He described a "conspiracy for gay rights" that promotes "legalizing carnality and exemplifying moral corruption and bribery".

Senator Prince Johnson, during an announcement of his Presidential campaign in September 2016, declared "A government, under our watch, will never ever accept gay rights. Liberia is not Sodom or Gomorrah!".[16]

National Human Rights Institution

In April 2017, following the rejection of its application for registration the previous November, the Trans Network of Liberia submitted a complaint to the Independent National Human Rights Commission.[17] However, there has reportedly been no response.

UN voting record

In 2011, Liberia was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.[18] Neither did it have a vote in the 2014 Resolution 27/32 (on updating the 2011 report),[19] nor on the 2016 Resolution 32/2 which created the Independent Expert on SOGI mandate).[20]

At the session of Third Committee of the UN General Assembly held in November 2016, Liberia abstained during the vote to adopt the LAC

8 Alvin Worzi, "Liberian 'Gay Community' Seeks Equality", *Liberian Observer*, 17 May 2018.

9 "'God Is Angry with Liberia'", *Liberian Observer*, 31 July 2014.

10 Mary Frances Schjonberg, "Praying 'that this Ebola passes over' in Liberia", *Episcopal News Service*, 18 August 2014.

11 Misha Hussain and Maria Caspani, "Gay community under attack in Liberia over Ebola outbreak", *Reuters*, 23 October 2014.

12 Stop AIDS in Liberia et al., *Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Liberia* (2017), 5.

13 *Ibid*.

14 Tamasin Ford and Bonnie Allen, "Nobel peace prize winner defends law criminalising homosexuality in Liberia", *The Guardian*, 19 March 2012.

15 "Liberia: Rally Against Homosexualism", *All Africa*, 13 January 2012.

16 "Liberia Sees a Backlash Against Gay Rights Ahead of Next Year's Election", *World Politics Review*, 27 October 2016.

17 Stop AIDS in Liberia et al., *Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Liberia* (2017), 5.

18 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011.

19 Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014.

20 Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

amendment to remove Operative Paragraph 2,[21] and abstained during the vote to adopt the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Liberia abstained during the vote to adopt the amendment which tried to block financial resources allocated to the Independent Expert on SOGI.

International advocacy and supervision

Universal Periodic Review

Liberia received 12 recommendations, three of which they accepted, regarding SOGI in their 2nd UPR review in May 2015, concerning criminalisation, non-discrimination. Interestingly, Madagascar, another African Union (UN bloc) member State, made the recommendation to "condemn discrimination", and the US made a call to implement the terms of their new National Human Rights Action Plan, which is inclusive of LGBT people, while Italy's call for Liberia to "combat all forms of discrimination and abuse against LGBTI persons" were all accepted.[22]

Treaty Bodies

In August 2018, the **Human Rights Committee (CCPR)** expressed concern regarding the worsening situation facing LGBT people and urged the State to decriminalise same-sex sexual conduct between consenting adults, and explicitly reject any form of social stigmatization, discrimination or violence against persons based on their sexual orientation or gender identity.[23] It also recommended the State to investigate and prosecute acts of violence motivated by the victim's sexual orientation or gender identity, remove any barriers preventing LGBT people from enjoying their rights and guarantee those rights to LGBT individuals, defenders and organisations.[24]

The **Committee on the Elimination of Discrimination Against Women** made an unusual call in its Concluding Observations in November 2015, recognising the existence of female same-sex couples in Liberia and urged the State to protect the economic rights of women in *de facto* unions.[25]

21 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

22 *Draft report of the Working Group on the Universal Periodic Review: Liberia*, A/HRC/WG.6/22/L.2, 6 May 2015.

23 *Concluding observations on the initial report of Liberia*, CCPR/C/LBR/CO/1, 27 August 2018, para. 19.

24 Concluding observations on the initial report of Liberia, CCPR/C/LBR/CO/1, 27 August 2018, para. 19.

25 *Concluding observations on the combined seventh and eighth periodic reports of Liberia*, CEDAW/C/LBR/CO/7-8, 24 November 2015, para. 43.



LIBYA

Provisions in force

- **Penal Code** (1953) as amended by Law No. 70 of 1976.[1]

Illicit sexual intercourse

Article 407(4).

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

Honour

Article 408(4).

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

Legal barrier to freedom of expression

Article 421.

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

Human rights situation

The overthrow of Muammar Qaddafi in 2011 brought about political instability in Libya resulting in the granting of significant power to militias. Several of these militias reportedly conducted arbitrary arrests of men on suspicion of "homosexuality" and subjected them to ill-treatment. Further, in June 2016, ISIS reportedly killed three men for alleged sodomy.[2] Consensual same-sex sexual acts and non-conforming gender expression are socially stigmatised in Libya,[3] and the sparse number of LGBTI activists who are operating are trying to build community mostly online, which they consider "the safest place to do so".[4]

In May 2017, the media announced that Germany granted asylum to a Libyan LGBTI activist and his partner who are both from Benghazi: a city where people of diverse SOGI are considered an easy target for violent anti-gay militias.[5]

Statements by public officials

Libyan delegate to the UN Human Rights Council: "[Homosexuality] affect[s] religion and the continuation and reproduction of the human race".[6]

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

2 Asylum Research Center (ARL), *Libya: Country Report* (2013), Section 4.9; Human Rights Watch, *Audacity in Adversity. LGBT Activism in the Middle East and North Africa* (2018), 13, 17, 19.

3 Asylum Research Center (ARL), *Libya: Country Report* (2013), Section 4.9.

4 Human Rights Watch, *Audacity in Adversity. LGBT Activism in the Middle East and North Africa* (2018), 30.

5 "Exclusive: Libya LGBT activist receives asylum in Germany", *Washington Blade*, 15 August 2017.

6 "Outrage as Libya tells United Nations: 'Gays threaten the future of the human race'", *Daily Mail*, 15 August 2017.

UN voting record

In 2011, Libya was not a member of the Human Rights Council and, therefore, did not participate in the vote for any of the SOGI resolutions.

At the session of Third Committee of the UN General Assembly held in November 2016, Libya voted against the LAC amendment to remove Operative Paragraph 2,[7] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Libya voted in favour of the amendment which tried to block financial resources allocated to the Independent Expert on SOGI.

National Human Rights Institution

The National Human Rights Institution of Libya is the National Council of Civil Liberties and Human Rights. It was established in 2013 and received ICC accreditation. However, it appears no to be operative.

International advocacy and supervision

Universal Periodic Review

SOGI issues appear not to have been brought up in recommendations to Libya in either of their 1st or 2nd UPR cycles (November 2010 or May 2015).[8] However, ARC International, IGLHRC and ILGA made a Joint Submission in 2010, and Amnesty International made mention of SOGI.[9]

Again in 2015, Amnesty repeated its earlier mention, and a recently-formed (2014) online organisation of LGBT Libyan activists, Quzah, submitted a report on the current SOGIESC situation in Libya, demonstrating how LGBTI Libyans are forced to hide their identities and go without protection from discrimination.[10] Libya's next UPR review will be in May 2020.

7 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

8 "UPR - Libya", *ILGA Website*.

9 ILGA *et al*., *Submission in the UPR review of Libya* (2010); Amnesty International, *Libyan Arab Jamahiriya Amnesty International submission to the UN Universal Periodic Review* (2010).

10 Amnesty International, *Libya amnesty international submission for the UN universal periodic review* (2015); Quzah Libya LGBT Rights, *UPR Review Session of Libya Based on sexual orientation, gender identity or intersex issues* (2014).



MALAWI

Provisions in force

- **Penal Code** (Cap. 7:01)

Carnal knowledge against the order of nature

Section 153. Unnatural offences.

Anyone who:

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

Attempted unnatural offence

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.

Gross indecency (males)

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.

Gross indecency (females)

Section 137A. Indecent practices between females (introduced in 2010).

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.

Human rights situation

In December 2010, the Malawi Parliament passed a bill amending the Penal Code of Malawi by introducing Section 137A to expand the criminalisation of same-sex sexual acts to women as well.[1]

This followed the sentencing of a gay couple to 14 years in prison with hard labour for holding an engagement ceremony in May 2010.[2] Though the couple was released and pardoned after a visit by the UN Secretary General, the case generated

1 The International Commission of Jurists (ICJ), *Sex Between Women Now a Crime in Malawi: New Law Violates Human Rights Obligations of Malawi* (2011).

2 "Malawi gay couple get maximum sentence of 14 years", *BBC News*, 20 May 2010.

increased hostility towards the LGBT community in the country.[3]

In 2015, President Mutharika had reportedly announced plans to hold a referendum on same-sex marriage, but this was later clarified as "just an opinion".[4] The Marriage, Divorce and Family Relations Act (Marriage Act) of 2015 was also passed that year which states that marriage is a union between two adults of "opposite" gender or sex, and that sex is one's status at birth.[5]

In February 2016, a man was attacked, and almost killed, by a mob.[6] In December 2016, Christian protesters organised marches in two cities against proposals to decriminalise consensual same-sex sexual acts.[7] A 2016 civil society report to the Committee on the Rights of the Child described the serious human rights violations suffered by intersex children as a result of a popular belief that they are *malodza* (a result of witchcraft), and would become witches or wizards when they grow up.[8]

A 2018 Human Rights Watch study found that LGBT people face "routine violence and discrimination in almost all aspects of their lives", including police abuse and arbitrary detention.[9]

Statements by public officials

In 2012, President Joyce Banda, who had promised to repeal anti-sodomy laws after her predecessor passed away, rolled back on this pledge after taking office, noting that "Malawians are not ready to deal with that right now".[10]

In 2014, the Secretary General of the Muslim Association of Malawi said that gay people "need to be handed death penalty as a way of making sure that the issue is curbed."[11]

In January 2016, the People's Party (PP) spokesperson and administrative secretary, Kenneth Msonda, wrote on his Facebook that "homosexuals" were worse than dogs and that gays and lesbians were "sons and daughters of the devil".[12] He added, "Arresting them won't address this problem because sooner or later they are being released on bail. The best way to deal with this problem is to KILL them!" [sic].

Existing legal challenges

Legal challenge against the moratorium on the enforcement of criminalising provisions

In November 2012, the government announced a moratorium on its laws that criminalise consensual same-sex intimacy, awaiting a parliamentary debate on whether to decriminalise consensual same-sex sexual conduct.[13] The moratorium was reaffirmed in 2015 after two men were charged with having sex "against the order of nature" and ordered to be released by Justice Minister Samuel Tembenu.[14] However, in February 2016, the High Court in Mzuzu allowed an application by several religious leaders to quash Tembenu's decision on the basis that it was an "abdication of his constitutional duty", effectively allowing the police to arrest and prosecute people for consensual same-sex sexual acts again.[15]

Constitutionality of anti-sodomy laws

In November 2013, the Malawi High Court announced that it was planning to review the constitutionality of Section 153 by exercising its own jurisdiction under the Constitution and the Courts Act.[16] However, there has not been any development following this announcement.

Incitement to violence case

In January 2016, the People's Party (PP) spokesperson and administrative secretary Kenneth Msonda, was summoned to a magistrate court for a charge of inciting others to violence

3 "Malawi gay couple released after presidential pardon", *BBC News*, 30 May 2010; Bradley Demone, "LGBT Rights in Malawi: One Step Back, Two Steps Forward? The Case of R v Steven Monjeza Soko and Tiwonge Chimbalanga Kachepa" *Journal of African Law* 60, No. 3 (2016), 365.

4 Roberto Igual, "Malawi reverses gay marriage referendum comments", *Mambaonline*, 7 September 2015.

5 "Malawi: New Marriage Law Can Change Lives", *Human Rights Watch*, 17 April 2015.

6 Wange Gwede, "Malawi gay man subjected to sickening homophobic attack", *Nysasa Times*, 9 February 2016.

7 "Thousands march over Malawi's plans to legalise homosexuality", *The Journal*, 11 December 2016.

8 Centre for Human Rights and Rehabilitation et al, *The situation of Intersex Children in Malawi* (2016), p. 3

9 Human Rights Watch, *"Let Posterity Judge": Violence and Discrimination against LGBT people in Malawi* (2018).

10 "Malawi unlikely to overturn anti-gay laws", *news24*, 28 September 2012.

11 Zawadi Chilunga, "'Kill the gays' penalty proposed by Malawi Muslim Association", *Nyasa Times*, 17 February 2014.

12 "Homosexuals should be killed - Malawi politician", *news24*, 5 January 2016.

13 Godfrey Mapondera and David Smith, "Malawi suspends anti-gay laws as MPs debate repeal", *The Guardian*, 5 November 2012.

14 "Malawi 'suspends' anti-homosexual laws", *BBC News*, 21 December 2015.

15 Collins Mtika, "Malawi court rejects moratorium on gays: Police can arrest homosexuals", *Nysasa Times*, 10 February 2016.

16 "Malawi High Court to review sodomy laws", *Nyasa Times*, 5 November 2013.

after a complaint was filed in relation to his comments calling on Malawians "to kill gay people".[17] The case was quickly discontinued though a judicial review was then filed by two civil society organisations, the Centre for the Development of People (Cedep) and Centre for Human Rights and Rehabilitation (CHRR).[18] The case finally came to a close in July 2018 after the two groups' application was dismissed.[19]

National Human Rights Institution

Malawi has a National Human Rights Institution in accordance with the Paris Principles: the Malawi Human Rights Commission. In 2011, the institution participated in a "Joint NHRI statement on ending acts of violence and related human rights violations based on sexual orientation and gender identity" delivered to the 16th Session of the Human Rights Council in 2011.[20]

In November 2016, Solicitor-General Janet Banda confirmed that the government had instructed the Malawi Human Rights Commission to conduct public inquiries on LGBT issues.[21] However, this move was opposed by both conservative religious groups and LGBT advocacy organisations.[22]

UN voting record

In 2011, Malawi was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.[23] Neither did it have a vote in the 2014 Resolution 27/32 (on updating the 2011 report),[24] nor on the 2016 Resolution 32/2 which created the Independent Expert on SOGI mandate).[25]

At the session of Third Committee of the UN General Assembly held in November 2016, Malawi voted against the LAC amendment to remove Operative Paragraph 2,[26] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. However, Malawi did not vote on the amendment which tried to block financial resources allocated to the Independent Expert on SOGI.

International advocacy and supervision

Universal Periodic Review

Of the 18 recommendations concerning SOGI that Malawi received in its 2nd UPR in May 2015, the State accepted two: the first agreeing to "take effective measures to protect" LGBTI persons from violence and to prosecute perpetrators (Austria), and the second guaranteeing "effective access" to health services (Honduras).[27]

Malawi's 3rd UPR commences in May 2020.

Treaty Bodies

In 2012, the **Human Rights Committee** urged the State to decriminalise consensual same-sex sexual acts and conduct awareness-raising campaigns to educate the population on this issue, as well as ensuring that public officials and public authorities refrain from using language that may encourage hatred and violence against them and prosecuting and punishing persons allegedly responsible for such acts of discrimination and violence.[28]

17 Gregory Gondwe, "Court summons Kenneth Msonda over calls to kill gays", *The Times*, 9 January 2016.

18 Mercy Malikwa, "Chief Justice reserves ruling in Msonda gay case", *The Nation*, 20 January 2017.

19 Lloyd Chitsulo, "Msonda cleared in gay case", *The Nation*, 20 July 2018.

20 *Joint NHRI statement on ending acts of violence and related human rights violations based on sexual orientation and gender identity*, delivered during the 16th Regular Session of the UN Human Rights Council.

21 Golden Matonga, "Malawi to hold public inquiry on anti-homosexuality laws," *The Nation*, 23 November 2016.

22 Thom Chiumia, "Malawi: Evangelical Association of Malawi Against Homosexuality Inquiry - Calls On Mutharika to Honour Referendum Pledge", *Nyasa Times*, 7 August 2017; Hudson Mphande, "Malawi told to stop inquiry on homosexuals: 'Human rights are not for public opinion'", *Nyasa Times*, 6 September 2017.

23 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011.

24 Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014.

25 Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

26 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

27 *Draft report of the Working Group on the Universal Periodic Review: Malawi*, A/HRC/WG.6/22/L.1, 7 May 2015.

28 *Consideration of reports submitted by States parties under article 40 of the Covenant - Concluding observations of the Human Rights Committee - Malawi*, CCPR/C/MWI/CO/1, 18 June 2012, para. 7.

In 2014, after Malawi finally submitted its initial periodic report, the Human Rights Committee expressed concern that the Human Rights Commission was reluctant to engage in issues related to human rights as they relate to LGBT people. It also reiterated its recommendations for the State to decriminalise consensual same-sex sexual acts, include SOGI as prohibited grounds of discrimination, prevent and prosecute violence against LGBT persons, and guarantee "effective access" to health services for LGBTI people.[29]

In November 2015, the **Committee on the Elimination of Discrimination against Women (CEDAW)** welcomed the adoption of the Gender Equality Act that prohibits discrimination. However, it expressed concern about the 2011 amendments to the Penal Code that "criminalizes same-sex relationships between women" and recommended that Malawi envisage decriminalizing same-sex sexual acts between adult women.[30]

29 *Concluding observations on the initial periodic report of Malawi*, CCPR/C/MWI/CO/1/Add.1, 19 August 2014.

30 *Concluding observations on the seventh periodic report of Malawi*, CEDAW/C/MWI/CO/7, 24 November 2015, para. 10-11.



MAURITANIA

Provisions in force

- **Penal Code** (1984).

Indecent acts / Acts against nature

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 [Three months to two years imprisonment and a fine of 5,000 to 60,000 UM].

Human rights situation

As stated above, Mauritania's Penal Code criminalises same sex conduct for both sexes, but with different types of punishment. While adult Muslim men may receive a sentence of "death by public stoning", women have a lower sentence of between three months to two years imprisonment, and a fine of 5,000 to 60,000 UM. However, the State has observed a "*de facto* moratorium since 1987" on the death penalty.[1]

In October 2011, a Mauritanian gay man won asylum in the United States: he reportedly had to hide his identity to "avoid suspicions, beatings, and death by his father, his tribe, and by the Mauritanian government for being gay, for being himself".[2] His legal team explained that a difficulty in the case was finding evidence of the homophobic climate in the country: "One of the difficulties in confronting Mauritania's violently homophobic law is that reported instances of state or tribal execution are not published. The Mauritanian government and the country's powerful tribal system often cover up their execution of GLBT individuals, recording other causes of death."

In November 2011, 14 men were accused of being "homosexuals" and tortured while in custody. According to Amnesty International, they were sent to the police station of Tavragh Zeina in Nouakchott, where they were stripped naked and insulted.[3] Some of them were blindfolded and were beaten with electric cables while their hands and feet were tied on their back.

According to a report from HRW, in May 2017 the regional MantiQitna network coordinated a multi-country social media initiative, to mark the International Day Against Homophobia and Transphobia.[4] Called "Our Colours Are the Crime", the campaign addressed "persecution, violence in public spaces and on the streets just for existing" in Algeria, Egypt, Libya, Mauritania, Morocco, Sudan, and Tunisia. One of the organisations involved in the campaign was Nouakchott Solidarity Association (Mauritania).

UN voting record

In 2011, Mauritania voted against the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.[5] However, as Mauritania was no longer on the HRC in 2014, it did not have a vote in the 2014 Resolution 27/32 (on updating the 2011

1 See for instance, most recently, *Replies to the list of issues in relation to the second CAT periodic report*, CAT/C/MRT/Q/2/Add.1, 13 June 2018.

2 "Sexuality and Gender Law Clinic Secures Asylum for Gay Mauritanian Refugee", *Columbia Law School* (website), 25 October 2011.

3 Amnesty International, *Mauritania: briefing to the UN Committee against Torture* (2013), p. 8.

4 Human Rights Watch, *Audacity in Adversity LGBT. Activism in the Middle East and North Africa*, (2018), p. 47.

5 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011.

report),[6] nor on the 2016 Resolution 32/2 which created the Independent Expert on SOGI mandate).[7] At the session of Third Committee of the UN General Assembly held in November 2016, Mauritania voted against the LAC amendment to remove Operative Paragraph 2,[8] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Mauritania voted in favour of the amendment which tried to block financial resources allocated to the Independent Expert on SOGI.

National Human Rights Institution

Mauritania has a National Human Rights Institution in accordance with the Paris Principles: the "Commission nationale des droits de l'homme". It does not appear to address SOGIESC issues.

International advocacy and supervision

Universal Periodic Review

Both in its 1st UPR (November 2010) and in its 2nd UPR (November 2015) sessions, Mauritania was urged to remove criminalisation of same-sex sexual relations. Importantly, in both the interactive dialogue and in written recommendations in 2015, it received numerous calls to uncouple the death penalty from same-sex sexual behavior.[9] The State addressed the issues of death penalty by mentioning (at para. 54) that the country "had observed a *de facto* moratorium" for the past 28 years, but did not commit to remove it from the statute. It appears that the issue of criminalising same sex sexual relations was not addressed despite various recommendations. However, the delegation indicated a wish to have the OHCHR work with them in-country (para.16), and: "[t]he delegation emphasised that the Government had cooperated with all partners in developing an action plan against racial discrimination, xenophobia and intolerance and in drafting a national strategy for promoting social cohesion".[10] Mauritania's 3rd UPR commences in November 2020.

Treaty Bodies

In November 2013, the **Human Rights Committee (CCPR)** noted with concern that "homosexuality" was still considered to be a crime, punishable by the death penalty in Mauritania and urged the State party to decriminalise, and take the necessary measures to protect the freedom and privacy of the person.[11]

6 Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014.

7 Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

8 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

9 *Draft report of the Working Group on the Universal Periodic Review: Malawi*, A/HRC/WG.6/22/L.1, 7 May 2015, para. 54.

10 *Report of the Working Group on the Universal Periodic Review: Mauritania*, A/HRC/31/6, 18 November 2015, para. 16.

11 Concluding observations on the initial report of Mauritania, CCPR/C/MRT/CO/1, 21 November 2013, para. 8.



MAURITIUS

Provisions in force

- **Criminal Code** (1838).

Sodomy

Section 250(1). Sodomy and bestiality.

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.

Human rights situation

In 2007, the Government introduced the Sexual Offences Bill, which would delete the crime of sodomy (see Section 24), and set an equal age limit of 16 years for sexual acts (Sections 11 to 14). However, the bill was never passed in the Parliament, and in 2013 the Government announced its decision to amend the Criminal Code instead, "in order to make better provisions for the criminalisation of various acts of sexual perversion".[1] This was later clarified to refer to such acts as marital rape.[2]

In that sense, currently the crime of sodomy is criminalised in Mauritius, among both same-sex and heterosexual couples. In fact, on 7 December 2016, a local newspaper reported that an individual of 17 years old was convicted for sodomy.[3] In practice, the cases of sodomy that reach the judicial courts are almost all of heterosexual persons, especially as an aggravating factor in divorce cases.[4]

In 2008, Mauritius passed the Equal Opportunities Act with the object to prevent differential treatment based on sexual orientation in the provision of goods, services, or facilities or differential access to opportunities by the State, private sector organisations and other service providers and organisations.

In the section "Personal and Professional Behaviour' of the 2015 "Code of Ethics for Public Officers", non-discrimination on grounds of sexual orientation is listed.[5] Following a complaint to the Equal Opportunities Commission of Mauritius in 2012, the ban on men who have sex with men giving blood was lifted in 2013.[6]

Despite this improvement, in relation to hate crimes, the definition of "racial hatred" adopted by section 282 of the Criminal Code Act 1838 of Mauritius does not mention "sexual orientation" or "sexual identity" as social group, and due to this lack of definition, LGBT victims of hate crimes do not report them at police stations, as reflected in a report by Youth Queer Alliance (YQA).[7] YQA has received several reports on violence and harassment against LGBTI persons, which included family rejection, forced marriage of sexually diverse individuals, State-sponsored violence and harassment, among others.[8]

In 2018, threat of violence against LGBTIQ community in Mauritius caused the organisers of

1 *National Report submitted in accordance with paragraph 5 of the Annex to Human Rights Council Resolution 16/21: Mauritius*, A/HRC/WG.6/17/MUS/1, 17 July 2013, para. 17.
2 *Report of the Working Group on the Universal Periodic Review: Mauritius*, A/HRC/25/8, 26 December 2013, para. 121.
3 Young Queer Alliance, *Alternative Report Submitted for the 121st session of the Human Rights Committee* (2017), p. 29.
4 United Kingdom: Home Office, *Country Policy and Information Note - Mauritius: Sexual orientation and gender identity* (2017), p. 6.
5 Ministry of Civil Service & Administrative Reforms, *Code of Ethics for Public Officers* (2015).
6 Fokeerbux N.A., *LGBT, HIV/AIDS & Blood Donation in Mauritius* (2012).
7 Young Queer Alliance, *Alternative Report Submitted for the 121st session of the Human Rights Committee* (2017), p. 15.
8 Young Queer Alliance, *Shadow report for 'list of issues' for the pre-sessional working group of the Committee of the Elimination of all forms of Discrimination Against Women* (2017), p. 6.

the annual Pride March to cancel the event: death threats had been directed at diverse personalities such as journalists, news agencies and even the Attorney General and Prime Minister. Furthermore, the police were not able to ensure the safety of the participants against all "the anti-LGBTI protesters gathering illegally along the parade route", some of them carrying weapons (which is technically forbidden by Mauritius' law).[9]

Statements by public officials

The failure of the Sexual Offences Bill introduced in 2007, brought support statements, such as the one by Mr P. K. Jugnauth of the Mouvement Socialiste Militant (MSM) party, and current Prime Minister of the Republic of Mauritius, who said that he "opposed the depenalization of consensual sodomy, qualifying it as immoral and saying that Government's move was a tell-tale sign of a society that was losing its values".[10]

National Human Rights Institution

According to communications between the Ombudsman and the Research Directorate of the Immigration and Refugee Board of Canada, the Ombudsman of Mauritius said that they can receive complaints based on sexual orientation and gender identity, but they have not dealt with any complaints based on sexual orientation or gender identity since 2012.[11]

It also claimed that "LGBT people are free to declare their sexual orientation", and that "no discrimination exists" against LGBT people in the country.

UN voting record

In 2011, Mauritius voted in favour of the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.[12] In 2014, it was no longer a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 27/3 on updating the 2011 report),[13] nor on the 2016 Resolution 32/2 which created the Independent Expert on SOGI mandate).[14]

At the session of Third Committee of the UN General Assembly held in November 2016, Mauritius voted against the LAC amendment to remove Operative Paragraph 2,[15] and in favour of the African oral amendment to block the SOGI Independent Expert at the UNGA Plenary Session on 19 December 2016.

Additionally, Mauritius voted in favour of the amendment which tried to block financial resources allocated to the Independent Expert on SOGI.

International advocacy and supervision

Universal Periodic Review

In its its 2nd cycle UPR cycle in 2013, the State of Mauritius received three recommendations (Ireland, Australia and Canada) to decriminalise sodomy, but responded that further consultations on the matter were necessary.[16]

In its 3rd cycle of the UPR carried out in November 2018, Mauritius received 15 SOGIESC recommendations. Honduras, Italy, Algeria, Uruguay, Argentina, France, Brazil, Chile, The Netherlands, Australia, Belgium, Canada, Ireland and Iceland proposed, *inter alia*, to decriminalise consensual same-sex sexual relations, take steps to adapt the legislative framework to fight against the discrimination suffered by the LGBTIQ population, take positive actions for their advancement and to increase awareness of the SOGIESC situation in the country.[17]

Even though the Netherlands recommended Mauritius to implement policies and programmes to

9 "Pride leader got hundreds of death threats in just one day in Mauritius. LGBTI advocates received threats of mutilation and execution", *Gay Star News*, 7 June 2018.

10 "Sodomy halts debate on Sexual Offences Bill", *L'express*, 7 April 2007.

11 Research Directorate, Immigration and Refugee Board of Canada, Ottawa, *Mauritius: Situation of sexual minorities, including treatment by society and authorities; state protection and services available*, MUS104935.E, 15 August 2014.

12 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011.

13 Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014.

14 Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

15 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

16 *Report of the Working Group on the Universal Periodic Review: Mauritius*, A/HRC/25/8, 26 December 2013, para. 28.

17 *Report of the Working Group on the Universal Periodic Review: Mauritius*, A/HRC/40/9, 27 December 2018, paras. 115.40-54.

protect LGBTIQ from violence, in the summary of the review process the Netherlands "welcomed the constitutional provision on equality for all and the increased tolerance for homosexuality".[18]

In an interactive session in Mauritius' UPR (which is ongoing at time of writing), Montenegro called on the government to ensure legal protection for LGBTIQ persons from all forms of discrimination based on SOGI. However, there are some indicators that might suggest that no relevant steps towards an improvement of the SOGIESC situation will be taken. Even though Mauritius expressed that "the judgment of the five-judge bench of the Supreme Court of India comes at an opportune time and will go a long way to inspire countries such as Mauritius to have a fresh assessment of their laws on this subject matter",[19] the State has made no such indication or announcement on this or any SOGI-related issue in a concrete manner. In fact, both at the beginning and the end of Session, the State pointed out that a need for widespread acceptance from its population was necessary before amending its legislation for the decriminalisation of consensual same-sex sexual relations and expressed that consultations about this topic were supposed to be held in early 2019.[20]

18 *Report of the Working Group on the Universal Periodic Review: Mauritius*, A/HRC/40/9, 27 December 2018, para. 92.

19 "UPR-Mauritius", *ILGA Website*, 9 November 2018.

20 Report of the Working Group on the Universal Periodic Review: Mauritius., A/HRC/40/9, 27 December 2018, para. 23.



MOROCCO

Provisions in force

- **Penal Code** (26 November 1962).

Unnatural acts

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.

Public indecency

Article 483.

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

Human Rights Situation

Numerous reports of arrests and police intimidation appeared in the recent period with a particularly alarming event recorded in Rabat in March 2016: two men perceived as gay, who had been thrown naked into a public road after a series of beatings and verbal abuse, were then arrested for "homosexuality": one of them was ordered to pay a fine and sentenced to four months in jail.[1]

Less than a year later, two men were allegedly arrested after a video showing them having sex began circulating on Whatsapp without their consent, and they were sentenced to six months in prison for "engaging in homosexual acts".[2]

Human Rights Watch has also reported that Moroccan authorities are known to intimidate LGBTI activists by contacting their families and asking them questions that may end up 'outing' them.[3] People who are perceived as non-heterosexuals are met with general social hostility, legitimated by public officials' anti-LGBTI rhetoric,[4] and fuelled by negative media coverage of SOGIESC issues.[5]

Mob attacks have also been documented,[6] and forced heterosexual marriage, confinement or eviction from the family home, as well as psychological abuse, have been cited as examples of family responses to LGBTI people coming out.[7]

1 "Prison for victim of Morocco attack, not for attackers", *76crimes Website*, 4 April 2016.

2 "Two Men Arrested in Tangier for 'Engaging in Homosexual Acts'", *Morocco World News*, 27 February 2017; "Two men jailed in Morocco after friend leaked their 'sex tape'", *Gay Star News*, 28 February 2017.

3 Human Rights Watch, *Audacity in Adversity. LGBT Activism in the Middle East and North Africa* (2018), 22.

4 See below: Statements by public officials.

5 Arab Foundation for Freedoms and Equality (AFE) and OutRight Action International, *Activism and Resilience: LGBTQ Progress in the Middle East and North Africa. Case studies from Jordan, Lebanon, Morocco and Tunisia* (2018), 36.

6 Human Rights Watch, *Audacity in Adversity. LGBT Activism in the Middle East and North Africa* (2018), 21.

7 The Danish Immigration Service, *Morocco. Situation of LGBT Persons* (2017), 11; UK Home Office, *Country Policy and Information Note. Morocco: Sexual Orientation and Gender Identity* (2017), 27, 28; Arab Foundation for Freedoms and Equality (AFE) and OutRight Action International, *Activism and Resilience: LGBTQ Progress in the Middle East and North Africa. Case studies from Jordan, Lebanon, Morocco and Tunisia* (2018), 36.

Transgender people are reportedly viewed as mentally ill, and the lack of legal gender recognition restricts their access to services.[8]

In June 2017, an intersex person was allegedly deported to Morocco after France rejected his asylum application, even though lawyers claimed he was subjected to inhuman and degrading treatment while in detention, and that deportation would put his life at further risk considering the discrimination and violence suffered by LGBTI people in Morocco.[9] The UK Home Office,[10] and the Danish Immigration Service,[11] have published asylum practice guides analysing the current situation of sexual and gender minorities in the country.

In June 2018, Union Feministe Libre (UFL) became the first NGO working on gender and sexuality to be officially recognised in Morocco after more than two years of advocating for the right to registration.[12]

Statements by public officials

Human Rights Minister Mustapha Ramid, 2017: "We are in Morocco, if we keep talking about [homosexuals] we will give them value, [They are] trash."[13]

National Human Rights Institutions

Morocco has a National Human Rights Institution, in accordance with the Paris Principles: the National Human Rights Council. However, it does not seem to address SOGIESC issues.

UN voting record

In 2011, Morocco was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.[14]

In 2014, it voted against the adoption of Resolution 27/32, the second SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to update the report produced in 2011.[15]

In 2016, Morocco voted against the adoption of Resolution 32/2 which created the mandate of the independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.[16]

At the session of Third Committee of the UN General Assembly held in November 2016, Morocco voted against the LAC amendment to remove Operative Paragraph 2,[17] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

Additionally, Morocco voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

Although there were no direct references to SOGI in Morocco's 2nd UPR sessions in October 2012, the USA made a recommendation to "Promptly approve the license applications for all civil society organisations that meet legal requirements, including those organisations advocating for minority populations" (para. 39).[18]

In its 3rd cycle of the UPR carried out in May 2017, Morocco received ten SOGIESC recommendations. The State accepted three of them, partially rejected

8 Arab Foundation for Freedoms and Equality (AFE) and OutRight Action International, *Activism and Resilience: LGBTQ Progress in the Middle East and North Africa. Case studies from Jordan, Lebanon, Morocco and Tunisia* (2018), 35, 36.

9 "Press Release: Intersex person expelled to Casablanca, Morocco, this morning, June 28th 2017", *Vincent Guilllot Facebook Page*, 28 June 2017.

10 UK Home Office, *Country Policy and Information Note. Morocco: Sexual Orientation and Gender Identity* (2017).

11 The Danish Immigration Service, *Morocco. Situation of LGBT Persons* (2017).

12 "Pride in Morocco", *UFL Facebook Page*, 21 June 2018.

13 "Mustapha Ramid Responds to Homophobia Accusations: 'Homosexuality Disgusts the Public'", *Morocco World News*, 19 October 2017.

14 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011.

15 Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014.

16 Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

17 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

18 *Report of the Working Group on the Universal Periodic Review: Morocco*, A/HRC/21/3, 6 July 2012, para. 39.

one recommendation, and noted (functionally rejected) the six remaining ones.

Morocco accepted recommendations by Canada, France and Argentina to take measures to tackle the discrimination suffered by the LGBTIQ community in the country. It partially rejected a recommendation from Spain, asking to "ensure the same rights to all citizens, including those of the LGBTI collective, decriminalizing same-sex relationships and eliminating all discriminatory legislation on the basis of sexual orientation", arguing that the decriminalisation of same-sex relationships is inconsistent with the national framework.

Finally, it noted recommendations from Ireland, Uruguay, Belgium, Mexico, the Netherlands and Iceland urging the State to decriminalise consensual same-sex sexual relations (in particular, by repealing Art. 489 of the Penal Code).[19]

The State provided no remarks on these SOGIESC issue during the Session.

Treaty Bodies

In October 2015, the **Committee on Economic, Social and Cultural Rights (CESCR)** noted that Morocco criminalised consensual sexual relations between same-sex adults and that LGBTI people were subjected to discrimination, stigmatisation and violence.[20] It recommended that the State repeal Article 489 of the Criminal Code, combat discrimination and violence on grounds of SOGI and punish the perpetrators of such acts.[21]

In December 2016, the **Human Rights Committee (CCPR)** expressed concern about the criminalisation of "homosexuality", punishable by a term of imprisonment up to three years, the arrests made on that basis and the advocacy of hatred, discrimination and violence against people because of their sexual orientation or gender identity in the country.[22] It therefore suggested abrogating Article 489 of the Criminal Code, freeing people in detention solely for having consensual same-sex relations and putting an end to the social stigmatisation of sexual and gender diversity, incitement to hatred, discrimination and violence based on actual or presumed sexual orientation or gender identity.[23]

19 *Report of the Working Group on the Universal Periodic Review: Morocco*, A/HRC/36/13, 19 July 2017.
20 *Concluding observations on the fourth periodic report of Morocco*, E/C.12/MAR/CO/4*, 22 October 2015, para. 15.
21 *Concluding observations on the fourth periodic report of Morocco*, E/C.12/MAR/CO/4*, 22 October 2015, para. 16.
22 *Concluding observations on the sixth periodic report of Morocco*, CCPR/C/MAR/CO/6, 1 December 2016, para. 11.
23 *Concluding observations on the sixth periodic report of Morocco*, CCPR/C/MAR/CO/6, 1 December 2016, para. 12.



NAMIBIA

Provisions in force

In Namibia, there is no codified sodomy provision, but it remains a crime in the country under the Roman-Dutch common law in force. A report issued by the Ombudsman of Namibia in 2013 specifies that sodomy is defined as "unlawful and intentional sexual relations *per annum* between two human males."[1] The definition excludes sexual relations per annum between heterosexual couples, and sexual relations between lesbian women. This definition also does not take into account whether the sexual intercourse takes place in public or in private or whether it is consensual or non-consensual.[2]

Section 299 of the Criminal Procedure Act (2004) makes reference to evidentiary issues on a charge of sodomy or attempted sodomy. Schedule 1 of the Act groups sodomy together with a list of other crimes for which police are authorised to make an arrest without a warrant or to use of deadly force in the course of that arrest, among other aspects (Sections 38, 42, 44, 63 and 112).

Public displays of affection between two men can be considered "immoral" behaviour, which punishable under the Combating of Immoral Practices Act, 1980.[3]

- **Combating of Immoral Practices Act** (1980).

Immoral act

Section 8.

Any person who in public commits any immoral act with another person shall be guilty of an offence and liable on conviction to a fine not exceeding three thousand rand or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

Human rights situation

Namibia is one of the rare cases in which a provision protecting people from discrimination based on sexual orientation was repealed by a legislative body. As early as 1992, local activists successfully lobbied to include "sexual orientation" among the prohibited grounds of discrimination in the Labour Act. In 2004, a new labour law was discussed in Parliament and the inclusion of the term was a topic of heated debates,[4] resulting in the exclusion of the term from the final text. However, this law never came to force. The Labour Law currently in force was enacted in 2007 and does not include "sexual orientation" among the prohibited grounds of discrimination.

Related to violence and discrimination against LGBTIQ community, a leader of a local NGO claimed that Namibia is generally safe for them, but threats still exist, particularly with law enforcement officials.[5] According to the Ombudsman report, Namibian police officers have been reported to ridicule LGBTI persons when they report cases of abuse, thereby dissuading victims from reporting abuses.[6]

1 Office of the Ombudsman (Namibia), *Baseline Study Report on Human Rights in Namibia* (2013), 97.
2 Office of the Ombudsman (Namibia), *Baseline Study Report on Human Rights in Namibia* (2013), 97.
3 Office of the Ombudsman (Namibia), *Baseline Study Report on Human Rights in Namibia* (2013), 97.
4 "Justice Minister scorns homosexuality as 'criminal'", *The Namibian*, 7 May 2004.
5 "How Safe is the LGBTI Community in Namibia?", *The Namibian*, 29 July 2016.
6 Office of the Ombudsman (Namibia), *Baseline Study Report on Human Rights in Namibia* (2013), 97.

Same-sex relationships, including marriage, were condemned by the presiding bishop of the Evangelical Lutheran Church in Namibia, Shekutamba VV Nambala, because "homosexual" acts are against nature and are condemned in the Bible. However, he denied that the church was responsible for any form of discrimination and mistreatment of "homosexuals".[7] In 2014, a gay same-sex couple who married in South Africa and returned to Namibia was featured in the news for their activism.[8]

In July 2017, human rights organisations in Namibia organised a five-day advocacy event to "celebrate the rich tapestry of Namibian LGBTI lives, while addressing social and policy discriminatory laws, policies and practices", called '#WeAreOne'.[9] On 30 July 2017, the first Pride parade was organised in Windhoek, the country's capital, and advocates urged the government to provide legal protection to couples that live together.[10] On 1 December 2018, the biggest Pride event to date was held.[11] Another event held on 8 December 2018, in the coastal city of Swakopmund, in western Namibia, however received little support from the municipality and the police who hampered the event, although it was still a success.

Statements by public officials

Shortly after he was elected, Dr. Hage Geingob, the President of Namibia, responded aggressively to a question on rights pertaining to LGBT people, asking "Are gays oppressed here? Is there any gay who has been arrested here for being gay?... Why do you create a problem where there is no problem?"[12]

In 2016, Justice minister Albert Kawana said that Namibia would not reform its law on sodomy since LGBT people are not "persecuted or harassed as long as they do their things in private".[13]

In December 2013, McHenry Venaani, president of the opposition Democratic Turnhalle Alliance (DTA) party, came out in support of rights for LGBT people in an interview with a gay news site.[14] He said, "For many years gays have been part of the society all along. It is scientifically proven all races and cultures have gays." He said that his party would protect LGBT people and he would speak up for them upon entering parliament. He was sworn in shortly after in February 2014.[15]

National Human Rights Institution

Sexual minorities were included in the Ombudsman's 2013 baseline study report and a very detailed discussion on the challenges faced by LGBTI people was published in that report.[16]

In 2016, John Walters, the Ombudsman of Namibia, while referring to anti-sodomy legislation said that "I think the old sodomy law has served its purpose. How many prosecutions have there been? I believe none over the past 20 years. If we don't prosecute people, why do we have the [A]ct?"[17]

He highlighted that the decision to marry is a human rights issue and as an Ombudsman, "I have been appointed to protect people's human rights, despite people's choices. If people of the same sex would like to get married, it is their choice, whether the country, the community, churches and government acknowledge that [is something else]".[18]

Existing legal challenges

Though Namibia does not recognise same-sex unoins, a same-sex couple (a Namibian and a non-Namibian spouse) was granted permission to enter the country with their son. The couple had applied to the court to issue an interdict that would forbid the Ministry of Home Affairs and Immigration from treating Digashu and the couple's son as prohibited immigrants under the Immigration Control Act".[19] The High Court of Namibia ruled that Digashu and their son would not be stopped from entering the

7 "Elcin bishop pleads for political tolerance", *The Namibian*, 29 May 2018.
8 Maeve Shearlaw, "We're Namibia's first gay married couple: any questions for us?", *The Guardian*, 19 May 2014.
9 "Authenticity in Diversity", *99 FM*, 26 July 2017.
10 Dan Avery, "Marchers In First Namibia Pride Not Looking For Marriage Equality, Just "Some Legal Protection", *NewNowNext*, 30 July 2016.
11 "Namibia celebrates LGBTI+ Pride in Windhoek and Swakopmund (Pictures)", *Mamba Online*, 12 December 2018.
12 Asser Ntinda, "Dr Hage Geingob unimpressed by gay activist", *Swapo Party*, accessed 4 March 2019.
13 Ndapewoshali Shapwanale, "Nam digs in on sodomy law", *The Namibian*, 30 August 2016.
14 Clemans Miyanicwe, "Namibian political leader stands up for gay rights", *Gay Star News*, 16 December 2013.
15 Sophie Joske, "Gay Friendly Politican Enters Namibian Parliament", *Out In Perth*, 13 February 2014.
16 Office of the Ombudsman (Namibia), *Baseline Study Report on Human Rights in Namibia* (2013), pp. 96-102.
17 "Let gays be – Walters", *The Namibian*, 23 August 2016.
18 "Let gays be – Walters", *The Namibian*, 23 August 2016.
19 "Test case on gay marriage to proceed in 2018", *The Namibian*, 18 December 2018.

country on a visitor's visa while the court reviewed their case.[20]

UN voting record

In 2011, Namibia was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.[21] However, in both the 2014 Resolution 27/32 (on updating the 2011 report),[22] and on the 2016 Resolution 32/2 which created the Independent Expert on SOGI mandate,[23] Namibia abstained (it sat on the HRC in these years).

At the session of Third Committee of the UN General Assembly held in November 2016, Namibia voted against the LAC amendment to remove Operative Paragraph 2,[24] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Namibia voted in favour of the amendment which tried to block financial resources allocated to the Independent Expert on SOGI.

International advocacy and supervision

Universal Periodic Review

At its 2nd UPR session in January 2016 the Namibian government rejected five recommendations for decriminalisation and accepted two to do with strengthening of institutional capacities to address violence, and the adoption of measures to combat violence.[25]

The Namibian delegation stated that, "LGBT persons were not victimized or persecuted for practicing their preferred sexual orientation. Article 13 of the Constitution protects the right to privacy. No person is requested to disclose his or her preferred sexual orientation in any official Government form or document and no person can be refused access to public or private services based on their preference. The laws do not make provision for marriage between same sex adults."[26]

Treaty Bodies

In 2016, the **Human Rights Committee** made substantial recommendations regarding non-discrimination policy and law in key areas, awareness-raising, police ill-treatment, and *refoulement* of refugees regarding SOGI.[27]

In 2016, the **Committee on Economic, Social and Cultural Rights (CESCR)** recommended the Constitutional provision against discrimination be extended to enumerate sexual orientation. Comprehensive anti-discrimination legislation is also called for, as is the call for decriminalisation of sexual relations between consenting individuals of the same sex.[28]

In November 2016, the **Committee Against Torture (CAT)** spoke of severe issues regarding detention, harassment, police brutality, sexual violence, stigmatisation, violence, access to justice, and criminalisation.[29]

Special Procedures

In May 2013, the **Special Rapporteur on extreme poverty and human rights** urged Namibia to guarantee LGBTIQ individuals' enjoyment of the right to health, because they were having obstacles to access to condoms.[30]

20 "Namibia lets gay man into the country to be with his husband and son", *Gay Star News*, 11 January 2018.

21 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011.

22 Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014.

23 Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

24 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

25 Report of the Working Group on the Universal Periodic Review: Namibia, A/HRC/32/4, 15 April 2016.

26 Report of the Working Group on the Universal Periodic Review: Namibia, A/HRC/32/4, 15 April 2016, para. 41.

27 *Concluding observations on the second report of Namibia*,CCPR/C/NAM/CO/2, 22 April 2016.

28 *Concluding observations on the initial report of Namibia*, E/C.12/NAM/CO/1, 23 March 2016.

29 *Concluding observations on the second periodic report of Namibia*, CAT/C/NAM/CO/2, 1 February 2017.

30 Report of the Special Rapporteur on extreme poverty and human rights on her mission to Namibia, A/HRC/23/36/Add.1, 17 May 2013, para. 66.



NIGERIA

Provisions in force

- **Criminal Code Act**, Chapter 77 (Laws of the Federation of Nigeria 1990).

Carnal knowledge of any person against the order of nature

Section 214.

Any person who-

(1) has carnal knowledge of any person against the order of nature; 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.

Attempted carnal knowledge

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.

Gross indecency

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.

- **Same-Sex Marriage (Prohibition) Act.**

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

Prohibition of same-sex marriage

Section 1.

(1) A marriage contract or civil union entered into between persons of same sex:

(a) is prohibited in Nigeria; and

(b) shall not be recognised as entitled to the benefits of a valid marriage.

(2) A marriage contract or civil union entered into between persons of same sex by virtue of a certificate issued by a foreign country is void in Nigeria, and any benefit accruing there-from by virtue of the certificate shall not be enforced by any court of law.

Religious marriage / Validity of foreign certificate

Section 2.

(1) A marriage contract or civil union entered into between persons of same sex shall not be solemnised in a church, mosque or any other place of worship of Nigeria.

(2) No certificate issued to persons of same sex in a marriage or civil union shall be valid in Nigeria.

Valid marriage in Nigeria

Section 3.

Only a marriage contracted between a man and a woman shall be recognised as valid in Nigeria.

Legal barrier to the formation, registration and operation of SOR CSOs

Section 4.

(1) The registration of gay clubs, societies and organisations, their sustenance, processions and meetings is prohibited.

(2) The public show of same sex amorous relationship directly or indirectly is prohibited.

Penalties for prohibited conduct

Section 5.

(1) A person who enter into a same-sex marriage contract or civil union commit an offence and are each liable on conviction to a term of 14 years in prison.

(2) A person who registers, operates or participates in gay clubs, societies and organisations or directly or indirectly makes public show of same-sex amorous relationship in Nigeria commits an offence and shall each be liable on conviction to a term of 10 years in prison.

(3) A person or group of persons who administers, witnesses, abets or aides the solemnisation of same-sex marriage or civil union, or supports the registration, operation and sustenance of gay clubs, societies, organisations, processions or meetings in Nigeria commits and offence and is liable on conviction to a term of 10 years of imprisonment.

Shariah Law and the Death Penalty in Nigeria

Several Northern Nigerian states have adopted Islamic Sharia laws, criminalising sexual activities between persons of the same sex. The maximum penalty for such acts between men is **death penalty**, while the maximum penalty for such acts between women is a whipping and/or imprisonment.

As scholarship shows the set laws differ from the federal law, as most of these prohibit also sexual relations between women. The states which have adopted such laws are: Bauchi (the year 2001), Borno (2000), Gombe (2001), Jigawa (2000), Kaduna (2001), Kano (2000), Katsina (2000), Kebbi (2000), Niger (2000), Sokoto (2000), Yobe (2001) and Zamfara (2000).

Human rights situation

The harsh laws in force in Nigeria and its effects on LGBT people have been widely documented.[1] In fact, Nigeria has been cited as one of the most homophobic countries in the world,[2] not only due to the severity and comprehensiveness of its legislation that criminalises same-sex relations, but also for the discriminatory and violent treatment given to LGBTI people in the form of arbitrary arrests, blackmail, physical and psychological abuse by the police and kidnapping, extortion, harassment, sexual attacks, subjection to conversion therapies, pressure to marry and involuntary outing by family and society members.[3]

The Bisi Alimi Foundation, a charity that works on advancing social acceptance regarding SOGI in Nigeria, released a report exploring the results of an online survey in which 446 respondents described the stigmatisation and isolation they suffered because of their SOGIESC.[4]

LGBTI activism has reportedly grown over the past years[5] and lately there has been room for a couple of initiatives aimed at visibilising the human rights situation of LGBT people in the country through the sharing of personal experiences, such as The Initiative for Equal Rights' (TIERs) photo documentary *Human, not number*,[6] and the collection of first-hand stories from Nigerian queer women entitled *She Called Me Woman.*[7]

TIERs 2017 report on human rights violations based on SOGIE in Nigeria documented a total of 247 victims and 210 violations.[8] In January, the organisation issued another report showing the results of a survey on social perception of LGBTI people in the country. It revealed that the vast majority of Nigerians (91%) do not believe that people are born "homosexual"; 83% would not be willing to accept a family member who is "homosexual"; 90% support the Same-Sex Marriage Prohibition Act, and think that Nigeria would be a better country without "homosexual"; and 56% say "homosexual" should be denied access to public services.[9]

In March, the High Court in Badagry issued an arrest warrant for a man accused of running an alleged private-members only gay bar.[10] In July, a man was detained on account of his sexual orientation, but later released after being forced to pay a sum of money: an act that human rights activists have identified as extortive.[11] Mass arrests based on people's real or perceived SOGI have also reportedly taken place throughout the year.[12] LGBTI people also have reputedly been victims of hate crimes.[13]

In September, TIERs, in partnership with the University of Lagos, held what has been recognised as the first national conference on diversity, inclusivity and equality in Nigeria.[14]

The Initiative for Equal Rights (TIERs) 2018 report on human rights violations based on SOGIE in Nigeria documented a total of 286 victims and 213 violations, higher than in the previous year.[15]

1 "This Alien Legacy:The Origins of "Sodomy" Laws in British Colonialism", *Human rights Watch*, 17 December 2008, para. 60; Philip Ostien, *Sharia Implementation in Northern Nigeria* (2007); "The Unfizzled Sharia Vector in the Nigerian State", *DAWODU* Website. Also see: Compendium on laws discriminating against persons in Nigeria based on their sexual orientation and gender identity/expression, *The Initiative for Equal Rights*, 2017.

2 "Where are the most difficult places in the world to be gay or transgender?", *The Guardian*, 1 March 2017; "Here's why Nigeria remains one of the most homophobic countries", *NoStringsNG*, 4 December 2018.

3 European Asylum Support Office, *EASO Country of Origin Information Report - Nigeria - Country Focus* (2017), 46-50.

4 The Bisi Alimi Foundation, *Not dancing to their music* (2017).

5 "Bisi Alimi on LGBT rights in Nigeria: 'It may take 60 years, but we have to start now'", *The Guardian*, 9 February 2016.

6 The Initiative for Equal Rights, Human, not number (2019).

7 "Queer in Nigeria: 'People don't think we exist'" (video), *BBC*, 11 June 2018.

8 The Initiative for Equal Rights, *2017 Report on Human Rights Violations based on Real or Perceived Sexual Orientation and Gender Identity in Nigeria* (2017), Statistics.

9 The Initiative for Equal Rights, *Social Perception Survey on Lesbian, Gay and Bisexual Rights* (2017), 1.

10 "Nigerian man charged with running a gay bar - faces 10 years in jail", *Mambaonline*, 13 March 2017.

11 "Nigeria: Police nabs man in Asaba on accounts of homosexuality", *NoStringsNG*, 11 July 2017.

12 "53 arrested in Nigeria for celebrating gay wedding: Police", *AP News*, 19 April 2017; "Police arrest 42 homosexuals in Lagos hotel", *The Sunday Punch*, 30 July 2017; "Report: Muslim police arrest 70 Nigerian youths for 'gay' party", *76crimes Website*, 2 September 2017.

13 "15 Jigawa Students Beat Homosexual Classmate To Death", *The Herald*, 18 August 2017; "Who do we blame when an intersex teenager is attacked?", *The Guardian*, 20 September 2017.

14 "First-ever Nigerian conference on LGBT issues to start tomorrow", *76crimes Website*, 11 September 2017.

15 The Initiative for Equal Rights, *2018 Report on Human Rights Violations based on Real or Perceived Sexual Orientation and Gender Identity in Nigeria* (2018), Statistics.

In January, Edo State's traditional institutions claimed to be helping police on anti-LGBT raids.[16] Mass arrests on the ground of real or perceived SOGI were reported to continue[17] and same-sex prohibition legislation was allegedly passed in Benue[18] and Yobe[19] States.

The risk of blackmail and extortion continues to be high for Nigerian SOGI communities.[20] Hence, the police commissioner and a traditional chief in Delta State pledged to support the efforts of human rights defenders to tackle crimes against men who have sex with men.[21]

Existing legal challenges

NGO registration

On 18 November 2018, the Abuja Division of the Federal High Court dismissed a suit that challenged the Corporate Affairs Commission's refusal to register the NGO Lesbian Equality and Empowerment Initiatives. The decision was based on Section 30(1)(c) of the Companies and Allied Matters Act which prohibits the registration of an entity whose name is "undesirable, offensive or otherwise contrary to public policy."[22]

National Human Rights Institution

Nigeria's National Human Rights Institution, established in accordance with the Paris Principles, is the National Human Rights Commission of Nigeria. It does not appear to address SOGIESC issues.

UN voting record

In 2011, Nigeria voted against the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.[23]

In 2014, it was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 27/32, the second SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to update the report produced in 2011.[24]

In 2016, Nigeria voted against the adoption of Resolution 32/2 which created the mandate of the independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.[25]

At the session of Third Committee of the UN General Assembly held in November 2016, Nigeria voted against the LAC amendment to remove Operative Paragraph 2,[26] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Nigeria voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

Regarding Nigeria's responses to its international human rights law obligations in United Nations fora in relation to SOGI, the country offered 'no response' to its 1st cycle Universal Periodic Review recommendations in 2009 to decriminalise and to withdraw its prohibition of same-sex marriage.[27]

In its 2nd cycle in October 2013, the Government rejected all 12 SOGI related recommendations to do with decriminalisation, discrimination, international law obligations and the release of

16 "Nigeria: Traditional chiefs curse gays, help anti-gay police", *76crimes Website*, 30 January 2018.

17 "Nigeria: Police arrest over 100 alleged gay and lesbians", *NoStringsNG*, 11 June 2018; "Police in Nigeria arrest 57 men for having gay sex", *PinkNews*, 27 August 2018; "Nigeria: 11 women arrested over 'lesbian wedding'", *Mambaonline*, 21 December 2018.

18 "Benue Assembly passes Same Sex Prohibition law", *The Sun*, 30 May 2018.

19 "Gaidam signs bill against rape, homosexuality", The Guardian, 11 September 2018.

20 "Blackmailers force Nigerian student to come out to family", *NoStringsNG*, 28 November 2018.

21 "Police and Nigerian chief vow action against anti-gay blackmail", *76crimes Website*, 12 March 2018.

22 "Court throws out suit seeking registration of lesbian group", *Vanguard*, 18 November 2018.

23 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011.

24 Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014.

25 Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

26 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

27 *Report of the Human Rights Council on its eleventh session*, A/HRC/11/37, 16 October 2009.

individuals imprisoned because of their sexual practice.[28]

During its 3rd cycle UPR carried out in November 2018, Nigeria received 13 SOGIESC recommendations. It is due to provide State response prior to or during the 40th Session of the Human Rights Council in March 2019.

Recommendations with regards to decriminalising consensual same-sex sexual acts, fighting against violence suffered by the LGBTIQ community and ending the arrests of people under the provisions of the Same-Sex Marriage Prohibition Act of 2013 were proposed by Italy, France, Uruguay, Austria, Iceland, New Zealand, Belgium, Mexico, Argentina, Chile, Germany and Australia.[29]

The State alleged that "all attempts to integrate sexual orientation into existing universally recognised human rights have so far failed" and that, "the overwhelming majority of Nigerians objects to same sex relationships based on their deep religious, cultural and moral orientation, against which no government could successful legislate"[30]. Therefore, it seems unlikely that Nigeria will accept any of the mentioned SOGIESC recommendations.

Treaty Bodies

In July 2017, the **Committee on the Elimination of Discrimination against Women (CEDAW)** noted with concern the reports of intersecting discrimination and violence against women and girls caused by homophobia[31] and recommended that the State take measures to address it.[32]

Special Procedures

In December 2011, many mandates were provided with information on the passage by the Senate of the Same-Sex Marriage Prohibition Bill,[33] a piece of legislation that overtly places obstacles to the exercise of LGBTI people's human rights.[34]

Reports voicing concern over its alleged adoption in May 2013 by the House of Representatives[35] were received by a handful of mandates.[36]

In January 2014, several mandates[37] were again presented with concerns about the signing of the Same-Sex Marriage Prohibition Bill.[38]

Approximately two months after that, two mandates[39] received information on alleged physical attacks against a group of men on grounds of their actual or perceived sexual orientation and consequent police inaction.[40]

28 *Draft report of the Working Group on the Universal Periodic Review: Nigeria*, A/HRC/WG.6/17/L.4, 24 October 2013.

29 "UPR-Nigeria", *ILGA Website*, 9 November 2018.

30 "UPR-Nigeria", *ILGA Website*, 9 November 2018, Section C.

31 *Concluding observations on the combined seventh and eighth periodic reports of Nigeria*, CEDAW/C/NGA/CO/7-8, 24 July 2017, para. 43.

32 *Concluding observations on the combined seventh and eighth periodic reports of Nigeria*, CEDAW/C/NGA/CO/7-8, 24 July 2017, para. 44.

33 Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders.

34 For more information see: NGA 5/2011, 20 December 2011.

35 For more information see: NGA 4/2013, 13 June 2013.

36 Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders.

37 Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders.

38 For more information see: NGA 1/2014, 13 January 2014.

39 Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

40 For more information see: NGA 2/2014, 28 March 2014.



SENEGAL

Provisions in force

- Penal Code (1965).

Improper/ Unnatural acts

Article 319(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 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.

Human rights situation

Hostility against LGBT people is reported to be very strong in Senegalese society, violence appears to be widespread,[1] and the media contributes to stigmatisation and discrimination.[2]

On 24 December 2015, 11 men were arrested on suspicion of offenses under Section 319. The court released them four days later, but their faces and identities had been shared on social media, stirring huge public homophobia.[3] The backlash to their release was led by the Islamic organisation Jamra, a co-founder of the "No to Homosexuality" collective.[4]

In early March 2016, in the context of discussions around Constitutional reform, the President of Senegal was unequivocal that the law penalising same sex sexual relations would never be repealed under his tenure.[5] Later that month, campus violence broke out concerning a young gay man. Djamil Bangoura, President of LGBTI NGO Prudence, claimed nine similar cases had taken place at Cheikh Anta Diop University in the past four years. He also reported that many gay students have dropped out of school because of these events, and that others have been forced to hide their sexuality to protect themselves.[6] In September 2018, activists reported the arrest of two men and two women in Dakar for committing "unnatural acts" after videos portraying the couples having sex came into circulation,[7] and the later imprisonment of two of them.[8]

In early 2018, LGBTI group Arc-en-Ciel Senegal pointed out that the "hunt" for LGBT people in the country had increased as presidential elections approached.[9] In November 2018, the government spoke once more against the legalisation of same-sex consensual relations between adults.[10]

Statements by public officials

President Macky Sall: "Never during my tenure will homosexuality be legalized on Senegalese soil".[11]

1 "'I Don't Go Out During the Day': Inside Senegal's LGBT Crackdown", *The Daily Beast*, 2 June 2018.
2 "Au Sénégal, la presse contribue au sentiment antihomosexuel", *SlateAfrique*, 21 January 2016.
3 "11 Arrested for Being Gay in Senegal—Is President Obama to Blame?", *The Daily Beast*, 30 December 2015.
4 "Sénégal: 'mariage gay' à Kaolack ou cabale homophobe?" (in French), *Afrique Jeune*, 25 January 2016.
5 "Macky Sall: 'jamais, sous mon magistère, l'homosexualité ne sera légalisée sur le sol sénégalais'" (in French), *Senego*, 1 March 2016.
6 "Senegal student mob chases down 'gay' classmate", *The Observers*, 21 March 2016.
7 "Sicap: Une bande d'homo arrêtée pour vidéos obscènes" (in French), *SeneWeb*, 17 September 2018.
8 "Liberté 4: Les homosexuels finalement condamnés" (in French), *SeneNews*, 27 September 2018.
9 *Arc-en-Ciel Facebook Page*, 18 September 2018.
10 "Homosexualité: 'Le Sénégal rejette toute idée de légalisation'" (in French), *SeneWeb*, 6 November 2018.
11 "Macky Sall: 'jamais, sous mon magistère, l'homosexualité ne sera légalisée sur le sol sénégalais'" (in French), *Senego*, 1 March 2016.

UN voting record

In 2011, Senegal voted against the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.[12] In 2014 and in 2016, Senegal was not a member of Council and, therefore, did not participate in the vote for the adoption of the SOGI Resolutions adopted in those years.[13]

At the session of Third Committee of the UN General Assembly held in November 2016, Senegal voted against the LAC amendment to remove Operative Paragraph 2,[14] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Senegal voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

In its 2nd cycle UPR cycle in 2013, Senegal received 13 SOGI recommendations, seven of them to repeal the above-mentioned article. The Government argued that article 319 must be interpreted as a punishment for "unnatural acts committed in public", and that nobody has been imprisoned for same-sex sexual activity in the country.[15]

In its 3rd cycle of the UPR (2018), Senegal noted (functionally rejected) all 13 SOGIESC recommendations received. France, Iceland, Israel, Uruguay, Chile, the Netherlands, Australia and Mexico focused their recommendations on taking steps to end the discrimination suffered by the LGBTIQ population in the country. Luxembourg, Ireland, the United States and Canada emphasised the need for an end to persecution based on sexual orientation and gender identity. Finally, Australia, Spain and the USA mentioned decriminalisation of consensual same-sex sexual acts.[16]

The State referred to the SOGIESC situation during the Session, affirming that "nobody has been detained on the grounds of sexual orientation or gender identity and courts have established no jurisdiction over any offense in connection with these matters. People are only convicted when they act in the street, when they commit this crime in the street. And this (homosexuality) is a crime that amounts to indecency exposure".[17] Hence, a hostile position towards the LGBTIQ community is still being taken by government officials.

Treaty Bodies

In July 2013, the **Committee against Torture (CAT)** noted with concern the information on several violent arrests based on people's alleged sexual orientation,[18] and urged the State to repeal Section 319(3) of the Penal Code, take effective measures to prevent arrests and police violence and ensure that all acts of violence are investigated and that the perpetrators are brought to justice and that the victims obtain reparation.[19]

Special Procedures

In 2017, the **Working Group on the issue of discrimination against women in law and in practice** took notice of the violence, stigmatisation and exclusion suffered by lesbian women in Senegal.[20]

In December 2015, three mandates received information concerning the alleged arrest and arbitrary detention of seven individuals,[21] and their conviction for engaging in consensual same-sex conduct.

12 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011.

13 Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014; Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

14 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

15 *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Senegal*, A/HRC/WG.6/17/SEN/1, 23 July 2013, para. 116.

16 "UPR-Senegal", *ILGA Website*, 9 November 2018.

17 "UPR-Senegal", *ILGA Website*, 9 November 2018, Section C.

18 *Concluding observations concerning the fourth periodic report of Senegal*, CAT/C/SEN/CO/4, 15 May 2018, para. 35 (only in French).

19 *Concluding observations concerning the fourth periodic report of Senegal*, CAT/C/SEN/CO/4, 15 May 2018, para. 36 (only in French).

20 *Report of the Working Group on the issue of discrimination against women in law and in practice on its mission to Senegal*, A/HRC/32/44/Add.1, 7 April 2017, para. 83.

21 Working Group on Arbitrary Detention; Special Rapporteur on the right of everyone to the enjoyment of the highest standard attainable of physical and mental health; Special Rapporteur on the independence of judges and lawyers.



SIERRA LEONE

Provisions in force

- **Offences against the Person Act** (1861).

Buggery

Section 61.

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

Human rights situation

Reports have demonstrated that LGBT people face a very hostile socio-political climate in Sierra Leone.[1] This has not improved, according to a documentary photographer who interviewed individuals living in Freetown, Sierra Leone's capital about their daily struggles of being LGBT.[2]

Though the anti-buggery law is not actively enforced, a 2014 shadow report highlighted that it "contributes significantly to the stigma and discrimination of people on the basis of their sexual orientation and gender identity".[3] This is particularly in the healthcare sector where healthcare professionals have refused treatment or abused LGBT patients after discovering their identities, based on a study conducted by Dignity Association.[4]

LGBTI human rights defenders have often been the target of homophobic attacks. After the brutal murder of Fannyann Eddy, founder of the Sierra Leone Lesbian and Gay Association, in 2004,[5] other activists have also received threats to stop their activism over the years.[6] George Reginald Freeman, founder of Pride Equality International, was forced to seek asylum in Spain in 2014 after facing repeated harassment and violence from both the police and citizen vigilantes.[7]

Statements by public officials

In 2011, in response to former UK Prime Minister David Cameron's threat to cut aid to countries with poor human rights records on SOGI issues, political and religious leaders came out in opposition.[8] Deputy Information Minister, Sheka Tarawallie said: "it is not possible that we will legalise same sex marriages as they run counter to our culture".

Bishop Arnold Temple, President of the Methodist Church also declared that "The church in Sierra Leone will do everything possible to protect democracy but our values will not accept the call from British PM, for countries to accept the practice of lesbianism and gayism".

1 USAID, *Being LGBT in West Africa* (2014), p. 63; Kaleidoscope Trust, *Speaking out 2015: the rights of LGBTI people across the commonwealth* (2015), p. 24.

2 Niall Flynn, "Photos of Sierra Leone's LGBT community, where gay is a sin", *Dazed Digital*, 27 July 2017.

3 African Men for Sexual Health and Rights Network et al, *Breaking the Silence on Human Rights Violations in Sierra Leone under the International Covenant on Civil and Political Rights (ICCPR): A Shadow Report on Discrimination and Violence Based on Sexual Orientation and Gender Identity* (2014), p. 10.

4 Global Rights: Partners for Justice, Dignity Association and Pride Equality, *Discrimination on the Basis of Sexual Orientation and Gender Identity in Access to Health Care and Violence/Bias: A Sierra Leone Case Study* (2013), p. 11 - 17.

5 "Sierra Leone: Lesbian Rights Activist Brutally Murdered", *Human Rights Watch*, 5 October 2004.

6 Colin Stewart, "Sierra Leone threat: Stop activism or we'll spread ebola rumor", *Erasing76Crimes*, 29 August 2014; "Sierra Leone: Spat upon, I still became an LGBT activist", *Erasing76Crimes*, 9 July 2013.

7 George Reginald Freeman, "To be gay and African should not be a crime", *Pacific Standard*, 31 July 2015.

8 "Sierra Leone says no to gay marriage", *news24*, 11 September 2011.

In 2014, in response to the World Bank's sanction of a loan to Uganda over its anti-gay law, Sierra Leone's President Ernest Koroma said, "We have to ensure that the communities are sensitised well enough. It is not right for issues to be imposed lock, stalk and barrel from the international world".[9]

However, he also cautioned that following such "engagement", the consensus of the African people must be respected: "When a country arrives at a consensus, I think the country should be led by what it believes is right for the country and not what is necessarily right for the international community because of the variations in our traditions.''

National Human Rights Institution

The Human Rights Commission of Sierra Leone has claimed to lack authority to protect or promote LGBT rights.[10] Communication Officer of the Commission, Henry Sheku, stated in a 2011 radio interview that "the law of Sierra Leone does not give the Commission mandate to advocate and support LGBTI human rights".[11]

UN voting record

In 2011, Sierra Leone was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council.[12] Elected onto the HRC commencing 2013, Sierra Leone abstained on the 2014 Resolution 27/32 (on updating the 2011 report).[13] As it was no longer on the HRC in 2016, it did not participate in the adoption of Resolution 32/2 which created the mandate of the independent Expert on SOGI.[14]

At the session of Third Committee of the UN General Assembly held in November 2016, Sierra Leone did not vote on the LAC amendment to remove Operative Paragraph 2,[15] yet voted in favour of the African oral amendment to block the Independent Expert on SOGI at the UNGA Plenary Session on 19 December 2016. Further, Sierra Leone voted in favour of the amendment which tried to block financial resources allocated to the Independent Expert on SOGI.

International advocacy and supervision

Universal Periodic Review

In its 2nd UPR in 2016, four States urged Sierra Leone to repeal the 1861 Act (decriminalise), while five contain language urging non-discrimination or anti-stigmatisation initiatives. The Sierra Leone delegation 'noted' (functionally rejected) all recommendations.[16] Sierra Leone's 3rd UPR begins in January 2021.

Treaty Bodies

In April 2014, the **Human Rights Committee** urged Sierra Leone to review its legislation to ensure that discrimination on the grounds of sexual orientation and gender identity is prohibited, including by decriminalizing same-sex sexual acts.[17]

Special Procedures

In June 2013, several mandates[18] expressed concern regarding the physical attack and death threats against George Reginald Freeman for his LGBT advocacy work.[19] They noted that these attacks and threats "could be directly motivated to [sic] his peaceful and legitimate activities in defence of the rights of LGBT people in Sierra Leone".

9 "Sierra Leone president cautions western countries, World Bank over anti-gay law", *Vanguard*, 1 March 2014.

10 Global Rights: Partners for Justice, Dignity Association and Pride Equality, *Discrimination on the Basis of Sexual Orientation and Gender Identity in Access to Health Care and Violence/Bias: A Sierra Leone Case Study* (2013), p. 8.

11 "Sierra Leone LGBTI Activists Suffer After Radio Appearance", *ILGA* (website), 15 November 2011.

12 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011.

13 Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014.

14 Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

15 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

16 *Draft report of the Working Group on the Universal Periodic Review: Sierra Leone*, A/HRC/WG.6/24/L.13, 4 February 2016.

17 *Concluding observations on the initial report of Sierra Leone*, CCPR/C/SLE/CO/1, 17 April 2014.

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

19 For more information, see UA G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) SLE 1/2013, 20 June 2013.



SOMALIA

Provisions in force

- **Penal Code** (Legislative Decree No. 5/1962).

Carnal intercourse with a person of the same sex

Article 409. Homosexuality.

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

Security measures

Article 410. Security Measures.

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

Incitement to lewd acts

Article 406.

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

Human rights situation

The political situation in Somalia has been complicated since the fall of the dictator Mohamed Siad Barre in 1991, and the appropriate enforcement of the national Penal Code is questionable.[1] However, Somaliland in the north has declared itself independent, and it still applies the Penal Code. However, further south and central in the country, as recorded in Christman's 2016 report, "Al-Shabaab's beliefs stem from a Salafi-Wahhabi strand of Sunni Islam (an ultra-conservative movement within Sunni Islam).

They enforce a strict interpretation of Shariah law. Shariah law explicitly forbids "homosexuality"; the punishment for those 'found guilty' is at a judge's discretion, and may be punished by death".[2] A 2015 UN Human Rights Council report noted the use of the death penalty in parts of the country.[3]

A 2013 media report interviewed gay Somali refugees who described the violent hostility against LGBT people. One interviewee said, "I have no doubt all gays, lesbians, HIV/AIDS positive people and other minorities will be killed. It will be a massacre."[4]

A gay teen was allegedly stoned to death in March 2013 in front of a crowd of villagers after he was tried and convicted of sodomy by an al Shabaab judge.[5]

1 "Gay Teen Allegedly Stoned To Death In Somalia For Sodomy", *Huffpost*, 21 march 2013.

2 Ben Christman, *Report on the Treatment of Gay Persons in Somalia* (2016), 7.

3 UN Human Rights Council, 'Discrimination and violence against individuals based on their sexual orientation and gender identity - Report of the Office of the United Nations High Commissioner for Human Rights' A/HRC/29/23 (2015), para. 46.

4 Noor Ali, "Gay Somali refugees face death threats", *Al-Jazeera*, 8 July 2013.

5 Meredith Bennett-Smith, "Gay Teen Allegedly Stoned To Death In Somalia For Sodomy", *Huffington Post*, 21 March 2013.

Writing in 2014, the Somali artist and writer Diriye Osman, now resident in the UK, says to come out in Somalia one must be prepared for, "…physical abuse, ceaseless harassment, imprisonment or death".[6] Osman's own family threatened him with violence upon learning that he is gay. In early 2017, it is reported that al Shabaab (a militant group allied to al-Qaeda) murdered two individuals on account of their sexual orientation.[7]

In 2016, a 22-year-old Somali woman was scheduled to be killed before she managed to escape to Uganda.[8] This occurred after an acquaintance had outed her, which led to harassment and threats from others in the community: she had also been beaten by four men after school one day.

National Human Rights Institution

Somalia does not have a National Human Rights Institution in accordance with the Paris Principles.

UN voting record

Somalia was not a member of the Human Rights Council between 2011 and 2016 and, therefore, did not participate in the vote for the adoption of any of the SOGI resolutions.[9]

At the session of Third Committee of the UN General Assembly held in November 2016, Somalia abstained during the vote to adopt the LAC amendment to remove Operative Paragraph 2,[10] and voted in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Somalia did not vote the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

In its 2nd UPR in early 2016, Somalia appears to have received only one recommendation (Canada) regarding SOGI: "Address widespread impunity—including for attacks against journalists, civil society and human rights defenders, women and LGBTI persons—by conducting timely and impartial investigations, investigating threats of violence, and prosecuting perpetrators". The State 'noted' this recommendation, and no other comment was recorded in the Working Group's report.[11]

Somalia's 3rd UPR is scheduled to begin in January 2021.

6 Muslims for Progressive Values, *The Universal Periodic Review (UPR) of Somalia* (2015).

7 "15 and 20-year-old youths executed in Somalia for homosexuality", *Mamba Online*, 11 January 2017.

8 Catrina Stewart, "Young Somali activist sentenced to death for being a lesbian", *Independent UK*, 30 January 2016.

9 Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

10 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

11 *Draft report of the Working Group on the Universal Periodic Review: Somalia*, A/HRC/WG.6/24/L.9, 1 February 2016.



SOUTH SUDAN

Provisions in force

- **Penal Code** Act No. 9 of 2008 (Feb. 10, 2009).

Carnal intercourse against the order of nature

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."

Gross indecency

Section 249. Acts of Gross Indecency.

Whoever, commits an act of gross indecency upon the person of another without his or her consent or by the use of force or threats or compels a person to join with him or her in the commission of such act, commits the offence of gross indecency, and upon conviction, shall be sentenced to imprisonment for a term not exceeding fourteen years or with a fine or with both.

Human rights situation

Article 14 of the Transitional Constitution of the Republic of South Sudan does not guarantee equality on the basis of sexual orientation, while Article 15 specifies that the right to marry applies to heterosexual marriages. This negation in law reflects the attitude of the State's leaders, as seen in their statements (below), their inaction, and in more general social sentiments.[1]

Religious leaders are highly respected in the State, and many Christian leaders have criticised "homosexuality" as a "perversion".[2] For instance, Pastor Manasseh Maring of Christ Ministries South Sudan rebuffed the Archbishop of Canterbury Justin Welby's 2016 public apology to LGBT people by saying that "we are not going to sin against God by blessing same-sex relationships in our churches".[3]

In 2017, an Amnesty International researcher reported on the situation: "No one can be openly homosexual in South Sudan. Given the lawlessness, it's the kind of place where you could easily end up dead because your actual or perceived sexuality."[4]

In August 2018, LGBT human rights defenders had to flee the country after facing threats from the State's national security forces.[5] Members of Access for All (AfA) were arrested and arbitrarily detained for conducting health education, and the group's office was shut down by the authorities in

1 "South Sudan youth object to same-sex marriage", *Sudan Tribune*, 30 April 2012.
2 Chol Duang Chan, "Religious leaders encourage LGBT exclusion in South Sudan", *Religion News Service*, 2 February 2018.
3 Chol Duang Chan, "Religious leaders encourage LGBT exclusion in South Sudan", *Religion News Service*, 2 February 2018.
4 Joe Morgan, "South Sudan says it will consider stop using child soldiers as long as it can still kill gay people", *Gay Star News*, 31 March 2017.
5 "LGBT Activist Flees South Sudan Amid Threats From National Security Operatives", *The Tower Post*, 23 April 2018.

December 2017 on the basis that they were promoting "homosexuality".

Statements by public officials

Upon independence in 2011, President, Salva Kiir Mayardit declared that his promise of equality would not be extended to lesbians and gays.[6] He had earlier said that LGBT recognition was "not in our character" and "if anybody wants to import or to export it to Sudan, I will not get the support and it will always be condemned by everybody."

In 2012, James Mawut Lueth, a member of South Sudan's governing Sudan People's Liberation Movement, said in a news interview: "Our culture condemns in the most serious terms same sex marriage, so also our religions, Christianity and Islam in particular. This is premised on the principle that the human race must guarantee the production and reproduction of human beings."[7]

In a 2017 radio interview, Justice Minister had said that "same-sex marriage is in conflict with our national laws and our cultures".[8]

National Human Rights Institution

South Sudan does not have a National Human Rights Institution in accordance with the Paris Principles.

UN voting record

In 2011, South Sudanwas not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.[9] Neither did it have a vote in the 2014 Resolution 27/32 (on updating the 2011 report),[10] nor on the 2016 Resolution 32/2 which created the Independent Expert on SOGI mandate).[11]

At the session of Third Committee of the UN General Assembly held in November 2016, South Sudan did not vote the LAC amendment to remove Operative Paragraph 2,[12] and voted in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, South Sudan did not vote the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

South Sudan achieved its independence from Sudan on 9 July 2011, three months after Sudan's 1st cycle UPR. Therefore, South Sudan did not in fact get an independent first review. At the 2nd cycle UPR, South Sudan's first review was reported on in November 2016.[13]

It appears that no civil society organisations raised SOGI issues in their submissions to South Sudan, and only Uruguay made a recommendation to decriminalise same-sex sexual acts between consenting adults. In its responses, the State indicated that Uruguay's and other recommendations were "in conflict with the national laws, government structures, policies or customs".[14]

South Sudan's next URP process begins in November 2021.

6 Paul Canning, "South Sudan, world's newest country, off to bad start on LGBT rights", *SDGLN*, 14 July 2011.

7 "South Sudan youth object to same-sex marriage", *Sudan Tribune*, 30 April 2012.

8 Joseph Oduha, "South Sudan Rebuffs UN Push for Gay-Marriage", *The East African*, 26 March 2017.

9 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011.

10 Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014.

11 Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

12 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

13 *Draft report of the Working Group on the Universal Periodic Review:South Sudan*, A/HRC/WG.6/26/L.11, 15 November 2016.

14 *Report of the Working Group on the Universal Periodic Review: South Sudan*, A/HRC/34/13/Add.1, 8 March 2017, para. 128.33.



SUDAN

Provisions in force

- **Penal Code** (Act No. 8, 1991).

Sodomy / Recidivism

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.

Gross indecency

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.

Qadhf

Section 157. *Qadhf* (Casting Accusation of Inchastity).

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

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

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

Human rights situation

In 2006, Freedom Sudan, a LGBT organisation was set up, and the group runs an online forum to provide support and advice to LGBT people in the country.[1] In 2010, it was reported that 19 men were lashed 30 times and fined for allegedly cross-dressing and "behaving like women" at a private party.[2] A 2011 article explained that sexual behaviour is closely linked to the concept of honour, which results in honour killings and strong hostility towards any public discussion of "homosexuality" as it is regarded as linked to "sexual harassment, child abuse, class hatred and

1 Reem Abbas Shawkat, "Quietly, Sudan's underground gay movement grows online", *The Niles*, 21 September
2 2011. *Ibid.*

marital infidelity".[3] In addition, laws on gender policing and same-sex behaviour are often used against political opponents, such as in the case of journalist Lubna Hussein who was arrested and jailed for wearing trousers.[4]

Since 2012, Rainbow Sudan runs an online magazine on LGBT issues.[5] Its editor explained that "to understand the gay community in Sudan you have to understand the religious factor here... it is a big taboo and regarded one of the biggest sins possible."[6] He added: "we are just at the very first steps to start discussing about homosexuality. We move at the pace of a baby. Currently the country is not ready to open up to LGBTQ issues, but we have not lost hope of succeeding."[7]

In 2016, the Mesahat Foundation for Sexual and Gender Diversity released a booklet documenting the stories and daily struggles of LGBT Sudanese. It reported that many LGBT Sudanese leave the country to seek safety and those who are unable to do so must "withstand the physical, psychological, and emotional abuse".[8] Contributors to the report received death threats, suffered homophobic attacks and discrimination from family members, at the workplace and in school when they are outed or perceived to be LGBT. In addition, a short video on LGBT life in Sudan was released, illustrating an underlying brutality in social attitudes towards sexual and gender diversity.[9]

National Human Rights Institution

The Sudan National Human Rights Commission was established in 2012, though key leadership positions were only recently filled.[10] The Commission does not appear to have carried out any work in relation to SOGI.

UN voting record

Sudan was not a member of the Human Rights Council in 2011, 2014 or 2016 and, therefore, did not vote for any of the SOGI resolutions. At the session of Third Committee of the UN General Assembly held in November 2016, Sudan voted against the LAC amendment to remove Operative Paragraph 2,[11] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session. Additionally, it voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

In its 2nd cycle review in May 2016, Sudan 'noted' (rejected) 2 recommendations to prevent discrimination based sexual orientation.[12] Sudan's 3rd UPR commences May 2021.

Treaty Bodies

In 2007, the **Human Rights Committee** emphasised that the use of the death penalty for consensual same-sex acts, was incompatible with the ICCPR.[13] In 2018, the HRC reiterated its concern about the persistence of discriminatory provisions.[14] It also urged for the repeal of the sodomy law, the use of flogging and the death penalty.[15]

In 2015, **Committee on Economic, Social and Cultural Rights (CESCR)** urged Sudan to amend discriminatory provisions and to punish SOGI-based acts of discrimination.[16]

3 Ghareeb, "Breaking news: LGBT has hit Sudan", *Pambazuka*, 17 August 2011.
4 "Sudanese 'trousers woman' jailed", *BBC News*, 7 September 2009.
5 Dan Littauer, "New magazine and hope for LGBT people in Sudan", *Pink News*, 30 March 2012.
6 Dan Littauer, "New magazine and hope for LGBT people in Sudan", *Pink News*, 30 March 2012.
7 Pier Cesare Notaro, "LGBT rights in Sudan: someone fights for the rainbow", *ilgrandecolibri*, 13 January 2013.
8 Mesahat Foundation for Sexual and Gender Diversity, *LGBT Voices from Sudan: Recording a Past, Building a Future* (2016).
9 "Queer Voices From Sudan...What is it like to be Queer in Khartoum?", *Mesahat* مساحات *Youtube Channel*, 30 January 2017.
10 Michel Forst, *World Report on the Situation of Human Rights Defenders* (2018), p. 101.
11 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.
12 *Draft report of the Working Group on the Universal Periodic Review: Sudan*, A/HRC/WG.6/25/L.5, 19 May 2016.
13 Consideration of reports submitted by States Parties under article 40 of the Covenant - Concluding observations of the Human Rights Committee - The Sudan, CCPR/C/SDN/CO/3, 27 August 2007, para. 19.
14 *Concluding observations on the fifth periodic report of the Sudan*, CCPR/C/SDN/CO/5, 19 November 2018, para. 14.
15 *Concluding observations on the fifth periodic report of the Sudan*, CCPR/C/SDN/CO/5, 19 November 2018, para. 16.
16 *Concluding observations on the second periodic report of the Sudan*, E/C.12/SDN/CO/2, 27 October 2015, para. 20.



TANZANIA

Provisions in force

- **Penal Code**, Chapter XV: Offences Against Morality (1945) (as amended by the Sexual Offences Special Provisions Act, 1998).

Carnal knowledge against the order of nature

Section 154. Unnatural offences.

(1) Any person who:

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

Attempted unnatural offence

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.

Gross indecency (between males)

Section 157. Gross indecency.

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

Gross indecency (gender neutral)

Section 138A. Gross indecency (introduced by the Sexual Offences Special Provisions Act, 1998).

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. [...]

- **Penal Decree (Amendment) Act** (2004). *Applies to Zanzibar only*.

Acts of lesbianism

Section 145.

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

Human rights situation

Respect for the rights of LGBTI people has declined markedly in recent years. In mid-2016, the government launched a crackdown on LGBT communities that has been escalating ever since.[1]

Harsh anti-homosexuality legislation together with State-representative's hostile public statements, social media persecution,[2] widespread arrests, forced anal examinations,[3] raids and threats of deregistration against NGOs for "promotion" activities,[4] bans on the import and sale of lubricants —a safer sex commodity listed by the government as "encouraging" same-sex sexual activity[5]— suspension of HIV/AIDS programs for gay men,[6] and shutdown of drop-in centres and private clinics that provide services to key population, have led LGBTI people to conceal their identities.[7] As a result, fewer voices being able to openly speak up against such oppression. It has also limited their access to HIV/AIDS prevention, testing and treatment.[8]

In February, Deputy Health Minister Hamisi Kigwangalla ordered three men accused of "advocating for sodomy" through social networks to report to police.[9] The following week, the government banned 40 private health centres providing HIV-related services because, according to Health Minister Ummy Mwalimu, they were "promoting homosexuality".[10] A few days later, Kigwangalla informed that authorities were investigating an alleged "homosexuality syndicate" and announced plans to publish a list of gay people offering sex services online with the intention of arresting them and use them to obtain more information about people engaged in same-sex activities.[11] A week after, he backtracked claiming the issue would be dealt with differently for "strategic reasons".[12]

Human rights defenders warned about the rise of violence against LGBTI people that outing members of the community would cause.[13] Acting on Kigwangalla's orders, police in Dar es Salaam arrested a 19-year-old man suspected of "homosexuality" based on his Instagram posts and subjected him to an anal exam.[14]

In early July, following a series of anti-LGBTI statements and threats of LGBTI NGOs deregistration, and persecution or deportation of human rights defenders from top officials, organisations worldwide called on Tanzania to "end

1 "Tanzania: Mixed Messages on Anti-Gay Persecution", *Human Rights Watch*, 6 November 2018.
2 "Stripped of Dignity: The Struggle for LGBT Rights in Tanzania", *AfricLaw*, 17 March 2017; "'Seeds of hate' sown as Tanzania starts LGBT crackdown", *The Guardian*, 8 August 2016.
3 "Inside Tanzania's AIDS-enhancing anti-LGBT crackdown", *76crimes*, 10 April 2017.
4 "In an apparent crackdown, Tanzania government raids NGO meeting on reproductive rights", *Devex*, 6 January 2017.
5 "Tanzania bans lubricant in bid to 'curb homosexuality'", *Independent*, 23 July 2016.
6 "Tanzania suspends some HIV programs for gay men, says health minister", *Reuters*, 31 October 2016.
7 "The Real Situation of Lesbian, Gay, Bisexual and Transgender Individuals and Activists in Tanzania", *LGBTI Voice*, 5 October 2014.
8 Human Rights Watch, *World Report 2018* (2017), 544-545.
9 "Tanzania orders arrest of 3 men for promoting homosexuality", *The Associated Press*, 7 February 2017.
10 "People With HIV Are Panicking Due To Tanzania's Crackdown On Gays", *NPR*, 15 March 2017; "Tanzania: 20 arrested in Zanzibar for 'homosexuality'", *Africanews*, 16 September 2017.
11 "Tanzania threatens to publish 'gay list'", *Deutsche Welle*, 18 February 2017.
12 "Tanzania: Outing of gay people cancelled at the last minute", *Mambaonline*, 28 February 2017.
13 "'They are killing the LGBT community' says Tanzanian activist", *Mambaonline*, 27 February 2017.
14 "Teen posted on Instagram and the next thing he knew, a doctor was invading his body", *The EastAfrican*, 1 June 2017; Human Rights Watch, *World Report 2018* (2017), 544-545.

its hostile rhetoric toward civil society groups and threats to obstruct their work".[15]

On September 15, Zanzibar police arrested 20 people for alleged "homosexuality" at a workshop aimed at addressing stigma and discrimination in the family with regard to HIV/AIDS.[16] All but two staff members of the NGO which organised the workshop were released without being charged. Pan Africa ILGA and the Centre for Human Rights of the University of Pretoria strongly condemned the action and called to "unconditionally release the two NGO staff members".[17]

On October 17, Dar es Salaam police raided a workshop aimed at discussing the possibility of legally challenging HIV policies in Tanzania and detained 13 human rights lawyers and activists for "promoting homosexuality".[18] The Initiative for Strategic Litigation in Africa (ISLA) and Community Health Services and Advocacy (CHESA), the NGOs in charge of the organisation of the meeting, stated in a joint press release that the police operation was "an attempt to intimidate citizens from approaching judicial institutions when their rights have been violated, to create an environment where lawyers are afraid to provide legal representation and to ultimately create an environment where it is unthinkable to hold the state accountable for human rights violations".[19]

In December 2017, police in Dar es Salaam arrested a woman over a widely shared online video showing her and another woman kissing and embracing at a party.[20] In May 2018, 65 civil society groups called on the government to address the "worrying decline in respect for human rights", identifying persecution of LGBTI human rights defenders as a main concern.[21]

On October 29, Regional Commissioner for Dar es Salaam Paul Makonda announced plans to form a task force to identify and arrest LGBTI people and asked members of the public to collaborate by reporting suspected gay people.[22] Human rights organisations strongly condemned the move.[23] The European Union criticised the human rights situation in Tanzania and claimed it would revise its relations with the country,[24] and UN High Commissioner for Human Rights warned about it turning into a "witch-hunt" and being "interpreted as a licence to carry out violence, intimidation, bullying, harassment and discrimination against those perceived to be LGBT". She also called for a review of laws criminalising consensual same-sex sexual acts.[25] Following her declaration, the Ministry of Foreign Affairs and East African Cooperation issued a statement distancing the government's position from Makonda's.[26]

However, many activists and non-activists remain afraid and alert.[27] That same day, 10 men were arrested on "homosexuality"-related charges at a same-sex wedding in Zanzibar.[28] They were to face anal examinations,[29] but ended up being released on bail a few days later.[30] Also, community based

15 "Tanzania vows to arrest those 'protecting' gay interests", *Agence France Presse*, 26 June 2017; "Tanzania threatens crackdown on LGBT advocates", *Reuters*, 26 June 2017; "Tanzania's president is cracking down on LGBTQ rights. He says cows would approve", *Vox*, 28 June 2017; "Tanzania: Stop Threatening Rights Groups", *Human Rights Watch*, 6 July 2017.

16 Human Rights Watch, *World Report 2018* (2017), 544-545; "Tanzania: 20 arrested in Zanzibar for 'homosexuality'", *Africanews*, 16 September 2017; "Zanzibar arrests 20 over homosexuality", *BBC*, 16 September 2017; "Tanzania: Statement on recent arrests", *Equal Eyes*, 23 September 2017.

17 "The Right to Freedom of Association Under Threat – 20 Arrested in Tanzania for Alleged Homosexuality", *Pan Africa ILGA Website*, 21 September 2017.

18 "Facing Prosecution for Challenging HIV Policies in Tanzania", *Human Rights Watch*, 20 October 2017.

19 "Press Statement", *Human Rights Watch*, 20 October 2016.

20 "Police arrest woman in Tanzania over video of same-sex kiss", *Reuters*, 2 December 2017.

21 "Tanzania: Civil society groups express concern over rapid decline in human rights", *Civicus*, 10 May 2018.

22 "Dar es Salaam regional commissioner launches anti-gay clampdown", *The EastAfrican*, 30 October 2018; "Tanzania: Anti-gay crackdown in Dar es Salaam", *BBC*, 31 October 2018.

23 "Tanzania: 'Dangerous' plans for homophobic task force must be abandoned immediately", *Amnesty International*, 1 November 2018; "Statement: Tanzania - October 2018", *Pan Africa ILGA Website*, 2 November 2018; "RefCEA's response to events in Tanzania", *The Refugee Coalition of East Africa Website*, 4 November 2018.

24 "EU reviews relations with Tanzania over homosexuality crackdown", *Reuters*, 5 November 2018.

25 "Bachelet: Tanzania has duty to protect -not further endanger- LGBT people", *United Nations Human Rights Office of the High Commissioner Website*, 2 November 2018.

26 "Paul Makonda: The fight against homosexuals in Dar es Salaam is not the official stance" (in Swahili), *BBC*, 5 November 2018; "Tanzania: Mixed Messages on Anti-Gay Persecution", *Human Rights Watch*, 6 November 2018.

27 "Gay witch-hunt sparks fear and panic in Tanzania's LGBT+ community", *Reuters*, 1 November 2018; "Tanzania's LGBT community 'fearing for their lives'", *CNN*, 5 November 2018; "Tanzania: One transgender woman's pain amid fears of arrest", *Amnesty International*, 9 November 2018; "As Tanzania's LGBT fear for their lives, HIV will thrive", *CNN*, 1 December 2018.

28 "Tanzania: 10 men arrested in Zanzibar for 'being gay'", *Amnesty International*, 6 November 2018.

29 "Tanzania: men arrested for 'gay marriage' face anal examinations", *The Guardian*, 8 November 2018.

30 "Men suspected of 'being gay' in Zanzibar released on bail - police, lawyer", *Openly*, 8 November 2018.

HIV prevention programs for gay men were suspended for allegedly "promoting homosexuality".[31]

By the end of the month, the intensification of the clampdown on SOGI-related activity had cast a shadow over foreign aid. The Canadian government, one of Tanzania's main sources of development funding, voiced its concern about the situation of LGBTI people in the country.[32] After cancelling visiting missions to the country because of discrimination and harassment against LGBTI people,[33] the World Bank withdrew a $300m loan.[34] On the very same day, Denmark announced it would withhold $9.88m aimed at the Tanzanian government due to "negative developments" and "unacceptable homophobic statements", and give it to human rights organisations instead.[35]

Finance Minister Philip Mpango considered accepting gay rights an "intolerable" condition for aid.[36] President Magufuli said he preferred financial assistance from China because it was "not tied to any conditions".[37] Anthony Oluoch, former Program Manager for Pan Africa ILGA, suggested that "[i]n a global community rife with power-imbalances [...] [t]here should be no manipulation of the global aid system to try to bring about change". Recalling that aid "goes to improving the lives of LGBT+ people", he stated that "[i]f sending a message to the world community comes at the detriment of the section of the society they are trying to protect then that message does not need to be sent" and urged to support activists on the ground.[38]

Statements by public officials

President John Magufuli: "Those who teach such things [advocating LGBTI equality] do not like us, brothers. They brought us drugs and homosexual practices that *even cows* disapprove of".[39]

Deputy Health Minister, Hamisi Kigwangalla: "The war against promotion and normalization of homosexuality in Tanzania is real. I commend recent efforts by the police force on our cause";[40] "[We must] fight with all our strength against groups supporting homosexuality in our country";[41] "I will publish a list of gay people selling their bodies online. [...] Those who think this campaign is a joke are wrong. The government has long arms and it will quietly arrest all those involved. Once arrested, they will help us find others".[42]

Regional Commissioner for Dar es Salaam, Paul Makonda: "We will do away with all NGOs in our region of Dar es Salaam that accept aid that comes with homosexuality related conditions. [...] If a homosexual has an Instagram account, all those who 'follow him' it is very clear that they are just as guilty as the homosexual. [...] There is no [religious] writing that allows [homosexuality], our country's laws do not allow this. [...] If God has forbidden, if the nation's Constitution has forbidden, we cannot continue to turn a blind eye";[43] "I prefer to anger those countries [that condemn Tanzania's crackdown on LGBTI people] than to anger God".[44]

Ministry of Foreign Affairs and East African Cooperation: "the government [...] wishes to clarify that Mr. Makonda was only airing his personal opinion [concerning LGBTI people] which does not represent the official position of the United Republic of Tanzania. [...] The United Republic of Tanzania will continue to respect and uphold all human rights as provided for in the country's constitution".[45]

National Human Rights Institution

Tanzania's NHRI, the Commission for Human Rights and Good Governance, does not appear to address SOGIESC issues.

31 "Tanzania suspends some HIV programmes for gay men, says health minister", *Reuters*, 31 October 2018.
32 "Tanzania's homophobic crackdown casts a shadow on Canadian aid", *The Globe and Mail*, 9 November 2018.
33 "Unsafe place? World Bank cancels missions to Tanzania", *Standard Digital*, 9 November 2018.
34 "Freeze aid to Tanzania over rights violations, campaigners say", *Openly*, 15 November 2018.
35 "Denmark withholds aid to Tanzania over homophobia", *The Local*, 16 November 2018.
36 "Tanzania says it won't accept gay rights as donors pull cash", *StarTribune*, 14 November 2018.
37 "Under pressure from Western donors, Tanzanian leader prefers Chinese aid", *Reuters*, 17 November 2018.
38 "Withholding aid to Tanzania is a bad idea", *Openly*, 26 November 2018.
39 "Tanzania vows to arrest those 'protecting' gay interests", *Agence France Presse*, 26 June 2017.
40 Hamisi Kigwangalla, *Twitter*, 5 March 2017.
41 "Tanzania: 20 arrested in Zanzibar for 'homosexuality'", *Africanews*, 16 September 2017; "Zanzibar arrests 20 over homosexuality", *BBC*, 16 September 2017.
42 "Tanzania threatens to publish 'gay list'", *Deutsche Welle*, 18 February 2017.
43 "Three things that have been banned by RC Paul Makonda" (video), *Fun-Lugha YouTube Channel*, 7 July 2016.
44 "Tanzania: Anti-gay crackdown in Dar es Salaam", *BBC*, 31 October 2018.
45 "Tanzania Government clarifies 'gay crackdown' report", *The Citizen*, 4 November 2018; "Paul Makonda: The fight against homosexuals in Dar es Salaam is not the official stance" (in Swahili), *BBC*, 5 November 2018.

UN voting record

In 2011, 2014 and 2016, Tanzania was not a member of the Human Rights Council and, therefore, did not participate in any of the votes for the resolutions on SOGI adopted by the Council.[46]

At the session of Third Committee of the UN General Assembly held in November 2016, Tanzania voted against the LAC amendment to remove Operative Paragraph 2,[47] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Tanzania voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

Tanzania 'noted' three recommendations to decriminalise and provide equal opportunity legislation across its civil code in its 1st cycle UPR in 2011. Although there were no recommendations for same-sex marriage given, in its responses to recommendations the delegation for Tanzania mentioned, "Tanzania had no law on same-sex marriage, as the practice of homosexuality went against its traditional, cultural and religious rights. Homosexuality was illegal and punishable by law".[48]

At its 2nd cycle UPR in May 2016, Tanzania received six recommendations regarding decriminalisation, non-discrimination and access to justice, health and rights to assembly and expression. The delegation 'noted' (functionally rejected) all of them.[49] The next UPR of Tanzania will take place in May 2020.

Treaty Bodies

In 2015, the **Committee on the Rights of the Child (CRC)** showed concern about reports that attitudes towards the sexual orientation of HIV-infected children prevent these children from seeking and receiving proper HIV services and community health services.[50] It thus urged Tanzania to ensure access to proper HIV services and health services for all children, regardless of their sexual orientation and engage in public education campaigns to combat discriminatory attitudes towards children on the grounds of their sexual orientation".[51]

Special Procedures

In 2017, several mandates[52] were presented with a report concerning the arrest and detention of 13 people (including human rights lawyers and LGBTI activists) for "promoting homosexuality" while participating in consultations on possible strategic litigation challenging HIV policies in Tanzania.[53] In 2018, a number of mandates[54] received information about alleged restrictions to civic space in Tanzania, particularly of LGBT people and defenders of their human rights.[55]

46 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011; Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014; Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

47 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

48 *Report of the Working Group on the Universal Periodic Review: United Republic of Tanzania*, A/HRC/19/4, 8 December 2011, para. 84. See also: *Oral statement by the State of Tanzania*, 14 March 2012.

49 *Report of the Working Group on the Universal Periodic Review: United Republic of Tanzania*, A/HRC/33/12, 14 July 2016, para. 137.

50 *Concluding observations on the combined third to fifth periodic reports of the United Republic of Tanzania*, CRC/C/TZA/CO/3-5, 3 March 2015, para. 56.

51 *Ibid*.

52 Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders.

53 For more information, see: TZA 4/2017, 7 November 2017.

54 Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.

55 For more information, see: TZA 3/2018, 9 July 2018.



TOGO

Provisions in force

- **Penal Code** (as amended in 2015 by Law No. 2015-010 of 24 November 2015).

Indecent or unnatural acts (affront to good morals)

Article 392.

Indecent or unnatural acts committed with a person of the same sex constitute an affront to good morals. Any attack on public morality by words, writings, images or by any other means also constitutes an affront to morality.[1]

Legal barrier to freedom of expression

Article 394. Anyone who:

(1) publicly exposes, manufactures or sells for public display objects, images, films, sound recordings or visual audio, contrary to decency;

(2) distributes or causes to be distributed on the public highway or by post, or door-to-door or electronically all books, brochures, catalogues, prospectuses, images, films, sound recordings or audio visuals contrary to decency, without the prior consent of the recipients;

(3) distributes or publicly disseminate incentives for practices contrary to good morals by words, writing or any other means of communication.

shall be punishable by imprisonment from six (06) months to two (02) years and a fine of five hundred thousand (500,000) to two million (2,000,000) CFA francs or one of these two penalties.

Human rights situation

The law criminalising "unnatural acts between individuals of the same sex" was not repealed in the new 2015 Criminal Code and a new offence against "incitement to gross indecency" was introduced as well.[2] Though these laws are rarely employed in prosecution, several arrests have been made, most recently in 2012.[3] Those arrested often end up being charged for other offences instead.[4] The existence of these laws also leave LGBT people vulnerable to police harassment, blackmail and exploitation.[5] For instance, Amnesty International reported on multiple cases of police harassment and arbitrary detention in 2014.[6] A literature review further highlighted that discrimination and stigmatisation is rife among LGBT people across different aspects of life such as employment and healthcare.[7] LGBT human rights defenders have reported receiving threats and harassment from both family and the public.[8]

A significant source of anti-LGBT sentiment comes from the Catholic Church, which has "frequently

1 Under article 393, anyone who commits an offense against morality is punished by imprisonment of one (1) to three (3) year(s) and a fine of one million (1,000,000) three million (3,000,000) CFA francs or one of these two penalties.

2 Amnesty International, *Togo Shadow Report to the African Commission on Human and Peoples' Rights* (2018), 11.

3 US State Department, *Togo Human Rights Report* (2012), 17.

4 *Id.*, 15.

5 Afrique Arc-En-Ciel and the Sexual Rights Initiative, *Contribution conjointe pour l'examen périodique universel: Du Togo sur les droits sexuels et reproductifs* (2016), para. 17.

6 Amnesty International, *Togo Shadow Report to the African Commission on Human and Peoples' Rights* (2018), 18-19.

7 Usaid, *Being LGBT in West Africa* (2014), p. 66.

8 "Rosa* : Young LGBTI rights "lawyer"", *Amnesty International* (website), 16 May 2017.

come on air to blame any mishap or natural disaster that happens in the country on homosexuals".[9] They also often promulgate anti-LGBT sentiments in the media or their teachings. As a result, it is said that "the biggest threat to the Togo LGBT community is the church and religious leaders."[10]

UN voting record

In 2011, 2014 and 2016 Togo was not a member of the Human Rights Council and, therefore, did not participate in the vote for any of the SOGI resolutions adopted by the Council.[11]

At the session of Third Committee of the UN General Assembly held in November 2016, Togo voted against the LAC amendment to remove Operative Paragraph 2,[12] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Togo voted in favour of the amendment which tried to block financial resources allocated to the Independent Expert on SOGI.

International advocacy and supervision

Universal Periodic Review

In its 1st cycle UPR in 2011, Togo received five recommendations relating to sexual orientation. It 'noted' all of them. However, in its response to the recommendations, the delegation said, "Togo was not prepared to legislate on the question of homosexuality, given that homosexuals were not subject to any form of discrimination. Such legislation might in fact be counterproductive, given the attitude of the population".[13]

At Togo's 2nd UPR in November 2016, Australia, Argentina, Brazil, Mexico, Spain, Slovenia, France and Belgium all made recommendations to decriminalise same-sex sexual acts. Slovenia and Argentina also made recommendation regarding discrimination, and Uruguay called for Togo to investigate all allegations of attacks and arbitrary detentions of LGBTI persons.[14] Togo's 3rd UPR begins in November 2021.

Treaty Bodies

In 2011, the **Human Rights Committee (CCPR)** expressed concern about the criminalisation of same-sex sexual acts between consenting adults.[15] It added that the State's claims that "the provision is not applied in practice" or "that it is important to change mindsets before modifying the law" did not allay its concern about this law.[16] It called on the State to decriminalise and to take steps to put an end to prejudice and the social stigmatization.[17]

Special Procedures

In 2014, the **Special Rapporteur on the situation of human rights defenders** visited Togo. She reported on cases of false accusations against LGBT activists of rape and abuse of minors, and threats, harassment and intimidation faced by these activists.[18] She observed that the criminalisation of consensual same-sex sexual acts between adults can "further stigmatize those advocating for the rights of LGBT persons and make them more vulnerable to pressure and attacks".[19]

9 "LGBT Catholic Voices from W Africa: Togo", *Global Network of Rainbow Catholics*, 24 September 2015.

10 "LGBT Catholic Voices from W Africa: Togo", *Global Network of Rainbow Catholics*, 24 September 2015.

11 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011. Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014. Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

12 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

13 *Report of the Working Group on the Universal Periodic Review: Togo*, A/HRC/19/10, 14 December 2011.

14 *Draft report of the Working Group on the Universal Periodic Review: Togo*, A/HRC/WG.6/26/L.1, 16 November 2016.

15 Consideration of reports submitted by States parties under article 40 of the Covenant - Concluding observations of the Human Rights Committee - Togo, CCPR/C/TGO/CO/4, 18 April 2011, para. 14.

16 Consideration of reports submitted by States parties under article 40 of the Covenant - Concluding observations of the Human Rights Committee - Togo, CCPR/C/TGO/CO/4, 18 April 2011, para. 14.

17 Consideration of reports submitted by States parties under article 40 of the Covenant - Concluding observations of the Human Rights Committee - Togo, CCPR/C/TGO/CO/4, 18 April 2011, para. 14.

18 Report of the Special Rapporteur on the situation of human rights defenders on her mission to Togo, A/HRC/25/55/Add.2, 26 February 2014, para. 79-80.

19 Report of the Special Rapporteur on the situation of human rights defenders on her mission to Togo, A/HRC/25/55/Add.2, 26 February 2014, para. 78.



TUNISIA

Provisions in force

- **Penal Code** (1913) (as amended).

Sodomy

Article 230.

Sodomy, when not covered by any of the cases provided for in preceding articles, is punishable by three years' imprisonment.[1]

Promotion of indecency

Article 226.

Anyone found guilty of deliberately and publicly promoting indecency shall be subject to six months' imprisonment and a fine of 48 dinars.

Human rights situation

Despite ardent opposition following its formation as an NGO in June 2015, the Tunisian organisation SHAMS (Sun) managed to get NGO accreditation as the deadline for complaint had expired in May 2015. However, the organisation was court-ordered to suspend its activities for 30 days in early January 2016.[2]

SHAMS came to prominence around its December 2015 demonstrations centered on a young gay Tunisian man arrested in September 2015 who had been jailed after undergoing a forced anal exam to establish his sexual orientation.[3]

On Human Rights Day 2015 (10 December), six students were each given three years jail time under Article 230, but following an Appeals Court ruling in early-March 2016, their sentences were reduced to time already served. It is reported that one of these students refused to undergo a forced anal examination, and was subsequently tortured.[4]

Similar violations have since been reported,[5] such as the arrest of two young men in Sousse in December 2016 and their conviction in early 2017.[6] According to a joint press release from NGO Damj and the World Organization Against Torture (OMCT), they were also subject to anal examinations without their consent.[7]

In January 2017, a district court in Hammamet ordered the detention of a trans woman with a public indecency charge after the police arrested her at a Halloween party for dressing as a woman and telling a police officer she considered herself one.[8] Her lawyer claimed she had been subjected to torture, humiliation and taunting at the police station due to the reveal of her gender identity.

In March 2017, SHAMS Facebook page described a new case where forced anal examinations were

1 The Arabic version of the text verifies that sexual acts between women are included within the restriction.

2 "Tunisia: LGBT Group Suspended", *Human Rights Watch*, 16 January 2016.

3 "LGBT rights in Tunisia: The fight will be televised", *Heinrich Böll Stiftung*, 17 June 2016; "Tunisia's LGBT activists push forward", *Al-Monitor*, 14 December 2015.

4 "6 Tunisians' prison time reduced to time already served", *Erasing 76 Crimes*, 4 March 2016; "After anti-gay trial, tortures in Tunisian prison", *Erasing 76 Crimes*, 10 January 2016.

5 "Tunisia is jailing men for having gay sex and forcing them to undergo anal exams, human rights group claims", *Independent*, 30 March 2016; Amnesty International, *Assaulted and Accused: Sexual and Gender-based Violence in Tunisia* (2015), 34-43.

6 "Tunisie: deux jeunes hommes poursuivis pour homosexualité à Sousse", *L'Express*, 13 December 2016; "2 young Tunisians sentenced to 8 months for gay sex", *Erasing 76 Crimes*, 10 March 2017.

7 "Sousse: sentenced to eight months in jail for homosexuality" (in French), *Damj Website*, 15 March 2017.

8 "Tunisian judge jails trans woman pending indecency trial", *76crimes Website*, 19 January 2017.

being carried out to find "proof" of proscribed same-sex sexual conduct.[9]

In April, the National Council of the Medical Order issued a statement strongly condemning "any medical examination that is unjustified and/or that touches the dignity or the physical and mental integrity of the person examined", including forced anal and genital exams aimed to "prove" 'homosexuality', and clarifying that doctors must inform people that they have the right to refuse them.[10] In September, Minister for Human Rights, Mehdi Ben Gharbia, stated that "[anal] exams can no longer be imposed by force, physical or moral, or without the consent of the person concerned".[11] Yet, Human Rights Watch warned about "the possibility that someone accused of same-sex conduct might 'consent' to an anal exam under pressure from police, because they believe their refusal will be held against them, or because they believe it will prove their innocence".[12] Credible sources revealed that the practice was still taking place in 2018.[13]

A 2018 report further highlighted discrimination and violence from family and community members and, particularly, from law enforcement agents.[14] Since the 'Arab Spring', Tunisian LGBT groups have allegedly enjoyed greater visibility,[15] and activism has grown.[16] However, hostility against human rights defenders and NGOs supporting the rights of LGBTI people has also been reported.[17]

In December 2017, NGO SHAMS launched what was referred to as one of the first LGBTIQ online stations in the Arab world. According to the association, they have been receiving threats ever since.[18] After the National Union Council of Imams' brought a lawsuit against the radio station, rumours about its imminent shutdown began circulating, but were later dismissed (see below).[19]

In June 2018, the Individual Freedoms and Equality Committee, a presidential commission comprised of legislators, professors and human rights advocates, suggested decriminalising same-sex acts, stating that "the state and society have nothing to do with the sexual life amongst adults [...] sexual orientations and choices of individuals are essential to private life."[20] However, LGBTI activists remarked the lack of real political will to repeal Article 230 of the Penal Code.[21]

Existing legal challenges

Freedom of speech

In December 2017, the Secretary General of the National Union Council of Imams filed a complaint against the NGO SHAMS for launching SHAMS Rad, an online radio station that caters to LGBT people.[22] On 1 March 2018, a primary court in Tunis refused the group's petition to ban the broadcast for constituting "an imminent danger for [Tunisia's] values and [...] religious and social identity" and proclaimed that no violation of the rights of others or their reputations had been committed.[23]

9 SHAMS, *Facebook Page*, 16 March 2017.

10 "Tunisia doctors urged to stop forced anal examinations to 'prove' homosexuality", *International Business Times*, 12 April 2017.

11 "Tunisia bans forced anal exams for homosexuality", *News 24*, 22 September 2017.

12 "Tunisia: Doctors Oppose 'Anal Test' for Homosexuality", *Human Rights Watch Website*, 12 April 2017.

13 "Tunisia: Privacy Threatened by 'Homosexuality' Arrests", *Human Rights Watch Website*, 8 November 2018; "Tunisia's Assault on Gay Men's -and Everyone's- Right to Privacy", *Human Rights Watch Website*, 3 December 2018.

14 Arab Foundation for Freedoms and Equality (AFE) and OutRight Action International, *Activism and Resilience: LGBTQ Progress in the Middle East and North Africa. Case studies from Jordan, Lebanon, Morocco and Tunisia* (2018), 43-54; "Two men in Tunisia sent to prison for owning women's clothing and make-up", *Gay Star News*, 16 March 2017; "Tunisia: 'Homophobic' nightclub provokes controversy", *76crimes Website*, 3 July 2017; "Homophobic crime in Kef: Salih the hairdresser tortured and killed" (in French), *Kapitalis*, 15 September 2017.

15 "Call to Decriminalize Homosexuality in Tunisia Gives Hope to the LGBTQ+ Community", *Muftah*, 23 June 2018.

16 Arab Foundation for Freedoms and Equality (AFE) and OutRight Action International, *Activism and Resilience: LGBTQ Progress in the Middle East and North Africa. Case studies from Jordan, Lebanon, Morocco and Tunisia* (2018), 43-54.

17 "LGBT activists in Tunisia under pressure", *CIVICUS Website*, 13 June 2016.

18 "An Arab world first: LGBT radio goes online in Tunisia despite threats", *The Japan Times*, 19 December 2017; "Despite death threats, Tunisian LGBT online station persists", *SHAMS Facebook Page*, 27 December 2017; "Tunisia's first LGBTQ radio station keeps playing despite threats", Reuters, 27 December 2017; "Inside Tunisia's Shams Rad - the Arab world's 'only gay radio station'", *BBC*, 18 July 2018.

19 *SHAMS Facebook Page*, 29 December 2017.

20 "Tunisian presidential committee recommends decriminalizing homosexuality", *NBC News*, 15 June 2018.

21 "Call to Decriminalize Homosexuality in Tunisia Gives Hope to the LGBTQ+ Community", *Muftah*, 23 June 2018; "LGBT activists report 'witch hunt' against homosexuals in Tunisia" (in Spanish), *eldiario.es*, 21 December 2018.

22 "National Union Council of Imams files complaint against SHAMS organization and wants to get its online radio closed" (in French), *HuffPost*, 28 December 2017.

23 "Netizen Report: Tunisian Court Refuses to Ban Online LGBTQ Radio Shams Rad", *GlobalVoices*, 1 March 2018.

UN voting record

In 2011, 2014 and 2016, Tunisia was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of any of the SOGI resolution.[24]

At the session of Third Committee of the UN General Assembly held in November 2016, Tunisia did not vote the LAC amendment to remove Operative Paragraph 2,[25] and did not vote the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Tunisia did not vote on the amendment that tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

In its 2nd cycle of the UPR Tunisia received three recommendations to decriminalise consensual same-sex sexual acts and repeal Article 230. It rejected all these recommendations and states that, "it would be possible to conduct an objective and transparent national dialogue on the subject. However, it was not ready at this stage to adopt a decision".[26]

During its 3rd cycle of the UPR in May 2017, Tunisia received 22 SOGIESC recommendations. It accepted two of them, whilst noting (functionally rejecting) the remaining twenty. Both Luxemburg's recommendation on taking steps to "ensure the protection of LGBTQI persons from all forms of stigmatization, discrimination and violence and abstain from unlawful examinations", and Ireland's proposal to "immediately cease the practice of forced anal examinations of LGBTI persons" were accepted by the State. However, recommendations to decriminalise consensual same-sex sexual acts and to fight against the violence and discrimination suffered on the basis of SOGI were rejected.[27] Further, Tunisia did not make any comment on SOGIESC issues during the session.

Treaty Bodies

In 2016, the **Committee on Economic, Social and Cultural Rights (CESCR)** urged Tunisia to repeal article 230 of the Penal Code, and train law enforcement officials to respect the diversity of sexual orientation and gender identities.[28]

In 2016, the **Committee Against Torture (CAT)** also called for decriminalisation but also stressed the State should "prohibit intrusive medical examinations" [to determine sexual activity] "that have no medical justification and cannot be performed with the free and informed consent of the persons subjected to them, who consequently will then be prosecuted".[29]

Special Procedures

In 2015, several mandates[30] received a report concerning the alleged physical abuse, degrading medical exam, irregular judicial proceedings and sentencing of a 22-year-old man solely based on his perceived sexual orientation.[31]

In 2016, a number of mandates[32] were presented with information about the reportedly arbitrary arrest and detention of two human rights defenders due to their work for LGBT people in the country.[33]

24 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011; Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014; Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

25 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

26 *Report of the Working Group on the Universal Periodic Review: Tunisia*, A/HRC/21/5, 9 July 2012.

27 These recommendations were formulated by Ireland, Denmark, Sweden, the United States, Belgium, the Netherlands, Canada, Germany, France, Costa Rica, Norway, Brazil, Spain, Iceland, Argentina, Australia and Chile. See: *Report of the Working Group on the Universal Periodic Review: Tunisia*, A/HRC/36/5, 11 July 2017.

28 *Observations finales concernant le troisième rapport périodique de la Tunisie*, E/C.12/TUN/CO/3, 14 November 2016.

29 *Concluding observations on the third periodic report of Tunisia*, CAT/C/TUN/CO/3, 10 June 2016, para. 41, 42.

30 Working Group on Arbitrary Detentions; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on torture and other cruel, inhuman or degrading treatments or punishments; Special Rapporteur on the right of everyone to enjoyment of the highest standard of physical and mental health.

31 For more information, see: TUN 2/2015, 2 November 2015.

32 Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association.

33 For more information, see: TUN 3/2016, 24 November 2016.



UGANDA

Provisions in force

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

Carnal knowledge against the order of nature

Section 145. Unnatural offences.

Any person who:

(a) has carnal knowledge of any person against the order of nature; [...]

(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.

Attempted unnatural offence

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.

Gross indecency

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.

Human rights situation

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

In March 2016, the Non-Governmental Organisations Act (2016) entered into force. This law impedes the registration of NGOs "where the objectives of the organisation as specified in its constitution are in contravention of the laws of Uganda". Sexual Minorities Uganda's (SMUG) application for registration was rejected on the ground that its name and objectives were unacceptable because same-sex sexual relations were criminalised in the country.[1]

Uganda's openly hostile rhetoric has aggravated discrimination and violence against members of the LGBTI community.[2] Several cases of people subjected to forced anal examinations to prove engagement in proscribed consensual same-sex acts have been documented.[3]

While Ugandan human rights activists have been internationally recognised for promoting equality

1 For more information see "Existing legal challenges" (above) and entry for Uganda under section on "Legal barriers to the registration of sexual orientation-related NGOs" in the *Global Overview* section of this report.

2 "Sexual minorities in Uganda: 'modify the law, but also the mentality" (in French), *RFI Afrique*, 17 May 2017.

3 Human Rights Watch, *Dignity Debased. Forced Anal Examinations in Homosexuality Prosecutions* (2016), 49-56.

as related to SOGI,[4] there have been threats and violent attacks against NGOs fighting for the rights of LGBTI people in the country,[5] and some of them have even been forced to temporarily shut down operations.[6]

Plans by NGO Rainbow Riots to open Uganda's first community centre for LGBT persons in 2019 met with public opposition from Ethics and Integrity Minister, Simon Lokodo.[7] On Lokodo's orders, officials have been banning events thought to be "promoting homosexuality", specifically targeting HIV prevention and response meetings.[8]

In 2016, Pride celebrations were repeatedly and violently disrupted, and activists were arrested.[9] In 2017, after a Pride gala scheduled to take place at a hotel was shut down and police officers appeared at other venues with the intention of arresting participants, organisers were forced to cancel the event.[10] They explained the decision in these terms: "even all the courage and determination that we carry in our hearts is not enough to put the lives of so many innocent people at risk".[11]

A few weeks later, the government announced the set up of the Pornography Control Committee, designed to detect and curtail the circulation of pornographic material.[12] Human rights organisations fear it may turn into another vehicle to persecute LGBT groups and communities.[13]

In December 2017, SMUG and Icebreakers Uganda launched the #SeeTheInvisible campaign addressing depression within the LGBTI community.[14] A report by SMUG highlighting healthcare discrimination faced by sexual and gender minorities in the country was released in June 2018.[15] According to the organisation's Executive Director, Frank Mugisha, the situation is alarming: "[t]he moment you open up to a health worker about your sexual orientation you are immediately frowned upon, asked if you are a Christian and in some instances threatened with arrest or denied services."[16] The report also mentions the growing HIV prevalence among LGBTI people, especially men who have sex with men (MSM).

Statements by public officials

Uganda's President, Yoweri Museveni, 2017: "Africans here, we know a few people who are 'rumoured' to be homosexuals, even in history we had some few being rumoured, but you cannot stand up here and say "I am a homosexual." People will not like it. So whenever we talk to our partners in other parts of the world [we say]: "please that's a private matter, you leave it". But no, they want to impose it on you… that I should stand up and say, 'oh yeah, homosexuals, oh yeah'".[17]

Minister of Health for General Duties Sarah Opendi, 2017: "Homosexuality remains an illegally activity, according to our laws and, therefore [...] we cannot be seen doing the opposite [...] the Global Fund money is supposed to help in the fight against malaria and other diseases not buying lubricants for homosexuals".[18]

4 "Ugandan Videographer Honoured at Global Innovative Advocacy Summit", *Kuchu Times*, 5 April 2017; "World's Greatest Leaders", *Fortune*, 2017.

5 "ILGA and Pan Africa ILGA are among the 31 human rights groups demanding investigations on a series of attacks on Ugandan non-governmental organizations and human rights defenders", *ILGA Website*, 13 June 2016; *Icebreakers Uganda Facebook Page*, 29 March 2017; *DefendDefenders Twitter*, 9 February 2018; "Uganda: Human Rights Group Targeted in Violent Break-In", *Human Rights Watch*, 9 February 2018.

6 "Rainbow Mirrors evicted from Bunamwaya Offices", *Kuchu Times*, 25 July 2018.

7 "Minister condemns plans for Uganda's first LGBT centre as 'criminal act'", *The Guardian*, 9 October 2018.

8 "Uganda: Police Raid Queer Kampala Film Festival", *Human Rights Watch*, 15 December 2017; "Statement on Postponed First Annual Conference on Key and Priority Populations", *Sexual Minorities Uganda Website*, 30 April 2018; "HIV Organizations Decry 'Political Interference' with HIV Response in Uganda", *Sexual Minorities Uganda Website*, 22 November 2018.

9 "Pride Uganda raided by police as LGBT activists arrested", *PinkNews*, 4 August 2016; "Ugandan police storm Gay Pride event, arrest at least 15 - activist", *Reuters*, 5 August 2016; "Police Shut Down An LGBT Pride Parade In Uganda Before It Even Began", *BuzzFeed*, 24 september 2016.

10 "'No gay promotion can be allowed': Uganda cancels pride events", *The Guardian*, 21 August 2017.

11 "Statement on cancellation of Pride Uganda 2017", *Kuchu Times*, 16 August 2017.

12 "Uganda: Government introduces pornography control committee", *Deutsche Welle*, 29 August 2017.

13 "Uganda's 'Pornography Control Committee' To Get Away With Tracking LGBT People", *Sexual Minorities Uganda Website*, 28 August 2017.

14 "SMUG and IBU launch #SeeTheInvisible Campaign", *Kuchu Times*, 8 December 2017; "SMUG & Icebreakers Uganda - Kampala, 2017", *Data4chan Website*.

15 Sexual Minorities Uganda, *"Even if they spit at you, don't be surprised". Health Care Discrimination for Uganda's Sexual and Gender Minorities* (2018).

16 "'Even If They Spit At You, Don't Be Surprised' 2017 Health Report", *Sexual Minorities Uganda Website*, 27 June 2018.

17 "President Museveni says West 'imposing' homosexuality on Uganda", *Mambaonline*, 8 August 2017.

18 "Row erupts over purchase of Shs3b sex lubricants for homosexuals", *Daily Monitor*, 23 April 2017.

Member of Parliament, *Latif Ssebagala*, 2017: "There is a lot of homosexuality in schools and I think we need to bring back the [Anti-homosexuality] Bill to curb this vice".[19]

Minister of Ethics and Integrity, *Simon Lokodo*, 2017 (variously):

> "Homosexuality is not allowed and completely unacceptable in Uganda. [...] We don't and can't allow it. LGBT activities are already banned and criminalised in this country. So popularising it is only committing a crime".[20]

> "It's true I ordered the police to stop and shut down all the gay pride events. No gay gathering and promotion can be allowed in Uganda. We can't tolerate it at all. [...] We know they are trying to recruit and promote homosexuality secretly. But it's worse to attempt to stand and exhibit it in public arena. This is totally unacceptable. Never in Uganda."[21]

> "The display, sale and circulation of pornographic images in the print and electronic media is one of the key reasons we have escalating cases of drug abuse among youths, incest, teenage pregnancy and abortion, homosexuality and lesbianism and defilement".[22]

> "We are going to procure this machine and it will detect 'homos' and porn actors especially those misusing applications like WhatsApp with sex acts. The South Koreans are programming it. And very soon we will ship it into the country and all the evil will be busted".[23]

Buhweju County MP Francis Mwijukye, 2018: "We shall continue to fight the LGBT issues on the international level until people here appreciate that same-sex is inhuman and anti-culture".[24]

Existing legal challenges

Consensual same-sex sexual acts

On 20 December 2013, the Parliament adopted the Anti-Homosexuality Act, which sought to punish same-sex sexual relations with imprisonment for life and prohibited same-sex marriage and "homosexual propaganda". However, on 18 August 2014, the Act was annulled by the Constitutional Court, which ruled that parliament lacked a required quorum when the law was approved, thereby retaining the previous 1950 Penal Code.[25]

On 29 October 2014, members of Uganda's ruling party circulated a draft of a new bill entitled, "The Prohibition of Promotion of Unnatural Sexual Practices Bill", which was intended to replace the annulled 2013 Act by categorising same-sex sexual acts alongside pedophilia, bestiality and other heinous acts.[26] The Human Rights Awareness and Promotion Forum sought a ruling from the East African Court of Justice in February 2015, to clarify that laws such as the Ugandan Anti-homosexuality Act, are unacceptable and violate human rights.[27] That Court found that because the law was not enacted, the case was moot, but under a public interest exception the court did not find the evidence sufficient to "…establish the degree of public importance attached to the practice of homosexuality in Uganda….".[28]

NGO registration

Sexual Minorities Uganda (SMUG) filed an application in the High Court of Uganda challenging Uganda Registration Services Bureau's refusal to reserve the name of the organisation and register it because of its connection with people whose conduct is criminalised in the country.[29]

19 "Ethics Minister Lokodo Backs Ugandan Legislator's Call for Anti Homosexuality Bill", *Sexual Minorities Uganda Website*, 20 July 2017.

20 "Minister condemns plans for Uganda's first LGBT centre as 'criminal act'", *The Guardian*, 9 October 2018.

21 "'No gay promotion can be allowed': Uganda cancels pride events", *The Guardian*, 21 August 2017.

22 "Lokodo appoints committee to fight pornography", *Daily Monitor*, 29 August 2017.

23 "Uganda's 'Pornography Control Committee' To Get Away With Tracking LGBT People", *Sexual Minorities Uganda Website*, 28 August 2017.

24 "Kadaga rallies IPU legislators to oppose gay debate in Geneva", *The Observer*, 16 October 2018.

25 "Uganda court annuls anti-homosexuality law", *BBC news*, 1 August 2014.

26 *A Bill for an Act Entitled: The Prohibition of Promotion of Unnatural Sexual Practices Bill* (2014).

27 Full text of submission before the Court can be read here.

28 East African Court of Justice, *Reference 6 of 2014: Human Rights Awareness and Promotion Forum v The Attorney General of Uganda*, 27 September 2016.

29 "SMUG v URSB Adjourned to 24th March 2017", *Sexual Minorities Uganda Website*, 17 February 2017; "SMUGVsURSB Returns to High Court on 28th April 2017", *Sexual Minorities Uganda Website*, 24 March 2017; "Sexual Minorities Uganda-SMUG To File Written Submissions On 15th May 2017 in the SMUG v URSB Case", *Sexual Minorities Uganda Website*, 28 April 2017; "Update on SMUG v URSB Court Case", *Sexual Minorities Uganda Website*, 29 May 2017.

Hate speech

In 2012, SMUG sued Scott Lively, a United States-based anti-LGBTI evangelical pastor for his role in the persecution of LGBT people in Uganda.[30] On 5 June 2017, U.S. District Court in Springfield, Massachusetts, dismissed the suit on jurisdictional grounds but affirmed that Lively's actions violated international law: "The question before the court is not whether Defendant's actions in aiding and abetting efforts to demonize, intimidate, and injure LGBTI people in Uganda constitute violations of international law. They do. [...]". SMUG's Executive Director Frank Mugisha stated the case was a win for the organisation.[31] A few days after, an appeal was filed by the Liberty Counsel claiming that the language used by the judge was not necessary to the disposition of the case and was, therefore, seeking to strike it from the record.[32] On 10 August 2018, U.S. Court of Appeals for the 1st Circuit denied Lively's attempt to censor the District Court's ruling.

National Human Rights Institution

Uganda's National Human Rights Institution, operating in accordance with the Paris Principles, is the Uganda Human Rights Commission. The NHRI has dealt with SOGIESC issues, as evidenced in its 17th Annual Report.[33]

UN voting record

In 2011, Uganda voted against the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.[34] Further on, in 2014 and 2016, Uganda was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of the SOGI resolutions adopted in those years.[35]

At the session of Third Committee of the UN General Assembly held in November 2016, Uganda voted against the LAC amendment to remove Operative Paragraph 2,[36] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

Additionally, Uganda voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

In October 2011, at its 1st UPR review, Uganda received 19 recommendations, only three of which it accepted (all to do with prosecution of individuals who perpetrate violence against LGBT people). The rest of the recommendations concerned existing and proposed new legislations.[37]

At Uganda's 2nd UPR in November 2016, the Draft Report of the Working Group contains 18 sexual orientation recommendations that the State received, asking for concrete measures to tackle the discrimination suffered by the LGBTIQ community and the decriminalization of consensual same-sex sexual relations.[38]

However, during the Interactive Dialogue the State's formal response appeared to ignore the realities associated with SOGI in Uganda: "All Ugandans were treated equally, without discrimination. Lesbian, gay, bisexual, transgender and intersex persons who were discriminated against in accessing services or in the enjoyment of certain rights could petition the Commission for redress".[39] The State noted (functionally rejected) all recommendations on SOGIESC issues.

30 "Sexual Minorities Uganda v. Scott Lively", *Center for Constitutional Rights Website*.

31 "In Scathing Ruling, Court Affirms SMUG's Charges Against U.S. Anti-Gay Extremist Scott Lively While Dismissing on Jurisdictional Ground", *Center for Constitutional Rights Website*, 6 June 2017.

32 "Pastor Lively Files Challenge to Judge's Prejudicial Language", *Liberty Counsel Website*, 8 June 2017.

33 Uganda Human Rights Commission, *17th Annual Report* (2014).

34 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011.

35 Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014. Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

36 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

37 *Report of the Working Group on the Universal Periodic Review Uganda*, A/HRC/19/16, 22 December 2011.

38 *Report of the Working Group on the Universal Periodic Review: Uganda*, A/HRC/34/10, 27 December 2016.

39 *Report of the Working Group on the Universal Periodic Review: Uganda*, A/HRC/34/10, 27 December 2016, para. 56.

Treaty Bodies

In November 2010, the **Committee on the Elimination of Discrimination against Women (CEDAW)** expressed its concern about the criminalisation of consensual same-sex sexual acts and reported violence against women on account of their sexual orientation and gender identity, particularly in employment, health care and education, and it addressed the negative effects of the proposed Anti-Homosexuality Bill.[40] It called on Uganda to decriminalise, oppose the [then] Bill, and provide effective protection from violence and discrimination against women based on SOGI, and sensitising public, law enforcement and others.[41]

In May 2016, the Committee overseeing the **Convention of the Rights of Persons with Disabilities** noted "the absence of concrete measures to prevent and eradicate discrimination against women and girls with disabilities… especially on the grounds of sexual orientation and gender identity."[42]

In 2015, the **Committee on Economic, Social and Cultural Rights** called for Uganda to urgently take steps to amend the Penal Code to decriminalize consensual same-sex sexual conduct", as well as to prevent discrimination against LGBTs [sic] and "bring perpetrators to justice".[43]

Special procedures

In February 2011, various mandates[44] were informed about the alleged murder of LGBTI activist David Kato in late January.[45]

In March 2012, several mandates[46] received a report concerning the re-tabling of the Anti-Homosexuality Bill (AHB)I,[47] and in February 2013 some of those mandates[48] were presented with concerns over the proposed Bill in the parliamentary agenda.[49]

In February 2014, various mandates[50] were informed[51] of the alleged passing by Parliament of a revised version of the AHB on 20 December 2013. In June 2012, three mandates[52] had been provided with information on the reported disruption of a workshop for LGBTI human rights defenders by the police.[53]

In August 2016, a number of mandates[54] received a report[55] about police raids, arrests of human rights defenders and assault of many participants during that year's Uganda Pride celebration.

40 *Concluding observations of the Committee on the Elimination of Discrimination against Women: Uganda*, CEDAW/C/UGA/CO/7, 5 November 2010, para. 43.

41 *Id*., para. 44.

42 *Concluding observations on the initial report of Uganda*,CRPD/C/UGA/CO/1, 12 May 2016.

43 *Concluding observations on the initial report of Uganda*, E/C.12/UGA/CO/1, 8 July 2015.

44 Special Rapporteur on the situation of human rights defenders; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

45 For more information, see: UGA 1/2011, 1 February 2011.

46 Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Working Group on Arbitrary Detention.

47 For more information, see: UGA 2/2012, 29 March 2012

48 Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders.

49 For more information, see: UGA 6/2012, 21 February 2013.

50 Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders.

51 For more information, see: UGA 1/2014, 3 February 2014.

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

53 For more information, see: UGA 5/2012 , 25 June 2012

54 Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

55 For more information, see: UGA 6/2016, 29 August 2016.



ZAMBIA

Provisions in force

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

Carnal knowledge against the order of nature

Section 155. Unnatural offences.

Any person who:

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

Attempted unnatural offence

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.

Gross indecency

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 [...] person, or procures a male [...] person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male [...] person, whether in public or private, commits 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 [...] person, or procures a female [...] person to commit any act of gross indecency with her, or attempts to procure the commission of any such act by any female person with himself or with another female [...] 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. [...]

Human rights situation

The United Nations country team stated in 2017 that the public environment relating to lesbian, gay, bisexual, transgender and intersex persons remained largely hostile, particularly in some faith-based organisations.[1] In 2013, LGBT group Friends of Rainka documented at least 43 incidents and violations against LGBT people in a six month period.[2] The rise in anti-gay sentiments that year was attributed to a rumour first reported by a local tabloid that four gay couples had allegedly

1 *Report of the Office of the United Nations High Commissioner for Human Rights: Compilation on Zambia*, A/HRC/WG.6/28/ZMB/2, 28 August 2017, para. 15.

2 "43 anti-LGBT violations in Zambia; 'accident waiting to happen'", *Erasing 76 Crimes*, 30 September 2013.

attempted to register "same-sex marriages" during the Easter weekend.[3] Furthermore, amid the anti-gay crackdown, tribal chief Chief Madzimawe of the Ngoni and Chief Shakumbila of Mumbwa condemned LGBT people, and stated; "'It is not a culture of Zambians, Africans and Ngonis to practice homosexuality and gay people should be caged".[4]

In April 2013, after speaking on national television about the need to repeal Articles 155, 156 and 158 of the Penal Code (which are categorised under 'Offences Against Morality'), activist Paul Kasonkomona was arrested and stood before Lusaka Magistrates Court.[5] On 25 February, the court acquitted him of charges of "soliciting for immoral purposes in a public place" (which is a Nuisance offence under Article 178(g) of the Penal Code), holding that the State has failed to present a sufficient case for the defence to answer resulting in the acquittal of Kasonkomona.[6] The State appealed this ruling to the High Court. On 15 May 2015, Justice Mulongoti confirmed the acquittal of Kasonkomona and ruled that the State had not made out a case against Kasonkomona.[7]

In the same year, 21-year-old barber Philip Mubiana and bricklayer James Mwape, 20, were arrested and charged with sodomy.[8] However, the duo was acquitted after being detained for a year after a magistrate found that the State had failed to prove its case.[9] There was also another case in 2014 where two men were arrested in Chisamba, a town in central Zambia, then subsequently acquitted as well.[10] Human Rights Watch reported that in these cases, the defendants were often subjected to forced anal examinations, which is purportedly used as medical evidence of anal sex.[11]

In 2017, the Football Association of Zambia had planned to introduce a policy to prohibit discrimination on the basis of sexual orientation. This sparked outrage among Christian leaders, with International Federation of Christian Churches president Simon Chihana claiming that doing so was "inviting the wrath of God" and would "bring the happenings of Sodom and Gomorrah here".[12]

In 2018, two men were found guilty of "homosexual acts".[13] In delivering his judgment, the judge stressed that "the law is what it is and not what it ought to be". In 2019, the Minister of Religious Affairs and National Guidance, Godfridah Sumaili, ordered the cancellation of a television programme for allegedly "promoting homosexuality".[14] He said, "Our stand as a Christian nation is clear and the laws of the land speak louder."

Statements by public officials

In 2015, President Edgar Lungu declared: "We will not support homosexuality. I will not compromise human nature because of money. God made man and woman."[15] As Minister of Home Affairs, he had earlier urged the police to arrest the four gay couples that had allegedly sought to get married: "It is a pity that foreigners have started bringing this thing to us now. We are on dangerous ground where people are bringing new things to us and we are watching. The police must do their work: "same-sex" marriages are not a normal thing".[16] In 2013, Lungu had also rebuked the EU for "dangling" grants to NGOs in Zambia: "This is unzambian; it is not part of our culture. I know some money-hungry civil society organisations will fall for the money but we are waiting to see which Zambian will get the money and start championing same-sex marriages."[17]

National Human Rights Institution

During the consultation process following the first draft Constitution in 2013, the Human Rights Commission of Zambia (HRC) clarified that its proposed anti-discrimination clause is "a very progressive provision and has sought to capture as many groups as possible". However, it added that "the provision itself is very open-ended and may

3 "Friends of Rainka seek end to gay manhunt", *Zambia Watchdog*, 8 April 2013.
4 Andrew Potts, "Zambia chiefs call for 'caging' of gays after couples try to marry", *Gay Star News*, 7 April 2013.
5 "Zambian High Court to rule on gay case" *Iol*, 5 June 2013.
6 "Zambia: Activist Defends Right to Freedom of Expression", *Southern Africa Litigation Centre Website*, 25 February 2014.
7 For more information, see: "The People v. Kasonkomona" *Global Freedom of Expression Columbia University Website.*
8 Obert Simwanza, "Zambia sees growing intolerance of homosexuality", *The Namibian*, 5 June 2013.
9 "Zambian magistrate acquits men in gay sex case", *The Guardian*, 3 July 2014.
10 "Zambian judge acquits 2 men in homosexuality case", *Erasing 76 Crimes*, 14 April 2015.
11 Human Rights Watch, *Dignity Debased: Forced Anal Examinations in Homosexuality Prosecutions* (2016), p. 56-58.
12 Roberto Igual, "Outrage over attempt to block anti-gay discrimination in Zambian football", *Mamba Online*, 20 February 2017.
13 "Two Kapiri Mposhi men found guilty of Homosexual conduct", *Lusaka Times*, 4 August 2018.
14 "Sumaili tells Zambezi Magic to cancel 'Lusaka Hustle'", *Zambian Eye*, 2 February 2019.
15 "Leading contender in Zambian polls will not support Gay rights", *NewsAfrica*, 20 January 2015.
16 "Zambia: Minister Lungu Orders Arrest of Gay Couples", *All Africa*, 4 April 2013.
17 "Edgar Lungu tells off EU over gay rights advert in Zambia", *Zambian Watchdog*, 25 March 2013.

lead to the handing of certain rights to or inclusion of certain groups that the people of Zambia may not be ready or willing to accept. In particular this concern is directed at members of the Lesbian, Gay, Bisexual, Transgender and Inter-Sex (LGBTI) community". It then proposed a rewording of the anti-discrimination clause to prevent LGBT people from relying on the grounds of "conscience" and "belief" to gain recognition for rights.[18]

UN voting record

In 2011, 2014 and 2016 Zambia was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of the SOGI resolutions.[19]

At the session of Third Committee of the UN General Assembly held in November 2016, Zambia voted against the LAC amendment to remove Operative Paragraph 2,[20] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Zambia voted in favour of the amendment which tried to block financial resources allocated to the Independent Expert on SOGI.

International advocacy and supervision

Universal Periodic Review

In its 2nd cycle of the UPR, Zambia accedpted only one of the 11 recommendations on SOGI issues regarding "impartial investigations" on attacks against LGBT people.[21] However, Zambia reported on the implementation of that recommendation by simply affirming that "there were no restrictions under Zambian law towards the investigation and prosecution of crimes committed against a person", and "all allegations of attacks and threats against individuals, irrespective of the offence are required by law to be effected without discrimination".[22]

During its 3rd cycle of the UPR carried out in November 2017, Zambia received eight SOGIESC recommendations. It noted (functionally rejected) all of them, including the one issued by Uruguay to prohibit forced anal examinations.[23]

Special Procedures

In 2013, several mandates[24] expressed concern regarding criminal charges brought against LGBT human rights defender Paul Kasonkomona. In particular, they noted the campaign against LGBTI human rights defenders." [25]

In 2015, two mandates[26] showed concern regarding the alleged arbitrary arrest and prosecution of two men on the sole basis of their sexual orientation and the lack of fair trial and due process.[27]

In 2016, several mandates[28] expressed concern regarding arrests of LGBT human rights defenders and the refusal to formally register Engender Rights Centre for Justice on grounds of "soliciting for immoral purposes".[29]

18 Adriaan van Klinken, "Sexual Orientation, (Anti-)Discrimination and Human Rights in a "Christian Nation": The Politicisation of Homosexuality in Zambia" *Critical African Studies* 9(1) (2017): 9-31.

19 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011; Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014; Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

20 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

21 *Report of the Working Group on the Universal Periodic Review: Zambia*, A/HRC/22/13, 31 December 2012.

22 *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Zambia*, A/HRC/WG.6/28/ZMB/1, 26 October 2017, para. 26.

23 "UPR- Zambia", *ILGA World Website*, 16 November 2017.

24 They were: the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders.

25 For more information, see ZMB 1/2013.

26 They were: the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatments or punishments.

27 For more information, see ZMB 1/2015.

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

29 For more information, see ZMB 4/2015.



ZIMBABWE

Provisions in force

- **Criminal Law (Codification and Reform) Act** (2006).

Sodomy

Anal sexual intercourse (w/ reference to indecency)

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

Human rights situation

- Additional information on the situation in Zimbabwe is provided at the end of this entry in a "Local Perspective Essay" written by Aubrey Alessandra Bree Chacha for ILGA World.

In 2006, Zimbabwe amended its Penal Code extending the criminalisation from the simple definition of having practised anal sexual intercourse to "any act involving physical contact other than anal sexual intercourse that would be regarded by a reasonable person to be an indecent act".[2]

The atmosphere of severe socio-political hostility directed at sexual and gender minorities over the past years was described in UK Home Office's 2018 report.[3] In fact, former president Robert Mugabe's anti-gay rhetoric has been backed up by many politicians, including a member of the Zimbabwe Human Rights Commission (see below).[4] Human rights defenders have strongly condemned such comments and even lodged a formal complaint with the Commission.[5]

In November 2017, Mugabe resigned amidst an intra-party crisis and shortly after Parliament began impeachment proceedings against him. LGBTI activists were reportedly among those who celebrated his departure, hoping the new leadership would adopt a different stance on sexual and gender minority communities.[6] Unfortunately, new President Emmerson Mnangagwa made it clear he would not canvass for decriminalisation of consensual same-sex sexual acts.[7]

In July 2018, a Zimbabwean football referee was allegedly blackmailed on the basis of his sexual orientation and outed to his family and community. Having suffered rejection and fearing victimisation for his sexual orientation at home, he decided to

1 Subsection 3 deals with sexual intercourse and indecent acts with minors.

2 Adrian Jjuuko and Monica Tabengwa, "Expanded criminalisation of consensual same-sex relations in Africa: contextualising recent developments" in Nancy Nicol *et al*, (Eds.) *Envisioning Global LGBT Human Rights: (Neo)colonialism, Neoliberalism, Resistance and Hope* (2018).

3 UK Home Office, *Country Policy and Information Note. Zimbabwe: Sexual orientation and gender identity* (2018).

4 "Zimbabwe: Mugabe Praising Rights Commissioner Torches Gay Storm", *AllAfrica*, 22 April 2017.

5 "Zimbabwe human rights commissioner praises Mugabe's homophobia", *Mambaonline*, 24 April 2017.

6 "Zimbabwe LGBT activists celebrate Robert Mugabe's resignation", *Washington Blade*, 21 November 2017.

7 "LGBT in Zimbabwe: A glimmer of hope", *76crimes Website*, 21 February 2018.

apply for asylum in the UK.[8] According to Sky Sports, he was granted an initial five-year asylum reprieve by the Home Office and will have the opportunity to apply for settlement in 2023.[9]

That same month, the opening of five health clinics aimed at catering to the needs of men who have sex with men (MSM), and backed by the National AIDS Council, was announced.[10] Zimbabwean society holds widespread discriminatory and violent attitude towards sexual and gender minorities in the country: for example, in late-2018 a teacher who came out during a school assembly tackling homophobic bullying was forced to resign after a huge outcry from parents.[11]

In early-2019, it was reported that a period of political unrest had sparked off in Zimbabwe and that the human rights situation deteriorated considerably.[12]

Statements by public officials

President Emmerson Mnangagwa, 2018: "In our Constitution [homosexuality] is banned and it is my duty to obey my Constitution."[13]

Human Rights Commissioner Petunia Chiriseri on Mugabe's hostile statements against LGBT people, 2017: "[President Mugabe] took a firm stand against unbiblical, un-cultural, unacceptable practices which foreigners [...] seek to impose upon Africa. [...] [W]e applaud [him] for [his] courage [...], it preserved our nation and family values."[14]

Existing legal challenges

Discrimination based on sexual orientation

In October 2015, the country's Labour Court (based in Bulawayo) accepted the plea of a youth worker who had been fired from the civil service because he had been arrested and paid a fine following a police raid on a party held by LGBTI NGO GALZ in 2014. This court found that the dismissal based on sexual orientation was unconstitutional (although sexual orientation is not expressly named in the Constitution document).[15]

Gender identity discrimination

in July 2017, Bulawayo High Court begun hearing the case brought by a trans human rights defender who had been detained and charged with "criminal nuisance" for using a toilet comporting with her gender identity at a city hotel.[16]

National Human Rights Institution

Zimbabwe has a National Human Rights Institution in accordance with the Paris Principles: the Human Rights Commission of Zimbabwe. The Commission itself does not include SOGIESC in its work.

As explained above, in 2017, Commissioner Petunia Chiriseri praised former president Mugabe's discriminatory statements against LGBT people.

UN voting record

In 2011, 2014 and 2016 Zimbabwe was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of the SOGI resolutions.[17]

At the session of Third Committee of the UN General Assembly held in November 2016, Zimbabwe voted against the LAC amendment to remove Operative Paragraph 2,[18] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

8 "Blackmailed and outed - Zimbabwe football referee granted asylum", *Mambaonline*, 23 December 2018.

9 "CONIFA referee Raymond Mashamba, outed as gay in Zimbabwe, granted asylum in UK", *Sky Sports*, 21 December 2018.

10 "MSM sexual health clinic to open in Zimbabwe", *Gay Express*, 31 July 2018.

11 "Gay teacher in Zimbabwe faces angry demands to resign after coming out to students", *Pink News*, 25 September 2018.

12 "Zimbabwean activists on run as protests crackdown raises spectre of Mugabe era", *The Guardian*, 18 January 2019; "Zimbabwe protests: Crackdown is just a 'taste of things to come'", *BBC*, 29 January 2019.

13 "LGBT in Zimbabwe: A glimmer of hope", *76crimes Website*, 21 February 2018.

14 "Zimbabwe: Mugabe Praising Rights Commissioner Torches Gay Storm", *AllAfrica*, 22 April 2017.

15 "Court Rules in Favour of Dismissed Zimbabwe Worker Linked to Gay Party", *VOA Zimbabwe*, 27 October 2015.

16 "Chombo lawsuit in transgender's trial begins", *Bulawayo 24*, 28 July 2017.

17 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011; Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014; Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

18 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

Additionally, Zimbabwe voted in favour of the amendment which tried to block financial resources allocated to the Independent Expert on SOGI.

International advocacy and supervision

Universal Periodic Review

In its 1st UPR in October 2011, Zimbabwe received only one recommendation: to repeal the 2006 law "as soon as possible" (France) – this was, unsurprisingly, rejected and the State made no reference to SOGI in its final report or in its Interactive Dialogue.[19]

At Zimbabwe's 2nd UPR session in 2016, the State received 12 SOGI-related recommendations, mostly to do with decriminalisation. However, Zimbabwe rejected all of them, making no mention of SOGI issues in the State's Interactive Dialogue.[20]

Zimbabwe's 3rd UPR commences in November 2021.

Treaty Bodies

In March 2012, the **Committee on the Elimination of Discrimination against Women (CEDAW)** expressed its concern at the high prevalence of violence against women, especially lesbian, bisexual and transgender.[21] It thus urged Zimbabwe to enact comprehensive anti-discrimination legislation that includes the prohibition of multiple forms of discrimination, launch a sensitisation campaign aimed at the general public and provide appropriate training to law enforcement officials.[22]

In April 2016, the **Committee on the Rights of the Child (CRC)** expressed concern that national legislation remained inconsistent with the non-discrimination of the Constitution, regarding, *inter alia*, LGBTI children.[23]

Special Procedures

In October 2012 and February 2014, three mandates[24] received information on alleged repeated acts of harassment against leaders of two human rights associations advocating for social tolerance of sexual minorities and for the repeal of homophobic legislation reportedly operating as unregistered organisations.[25]

LOCAL PERSPECTIVE

The Criminalization of Same-Sex Acts and the LGBTIQ in Zimbabwe

By Aubrey Alessandra Bree Chacha.[26]

Being a member of the LGBTIQ community has never been easy in Zimbabwe, a country where the law does little to protect those who are persecuted.

Something that former dictator Robert Mugabe regarded as "being worse than dogs and pigs", the gay man in Zimbabwe has been known to be "a shame" to his family, community, professional, economic and political environment. Such was the case with Takunda, a gay man who was chased away by his family and shunned by society for having consensual same-sex relations.[27] This is frequently reflected in the media, where journalists report that "it is risky, if not deadly, to be gay and lesbian in Zimbabwe – a country where such relations are beyond taboo". [28]

19 *Report of the Working Group on the Universal Periodic Review: Zimbabwe*, A/HRC/19/14, 19 December 2011.

20 *Report of the Working Group on the Universal Periodic Review: Zimbabwe*, A/HRC/34/8/Add.1, 13 March 2017.

21 *Concluding observations of the Committee on the Elimination of Discrimination against Women - Zimbabwe*, CEDAW/C/ZWE/CO/2-5, 23 March 2012, para. 23.

22 *Concluding observations of the Committee on the Elimination of Discrimination against Women - Zimbabwe*, CEDAW/C/ZWE/CO/2-5, 23 March 2012, para. 24.

23 *Concluding observations on the second periodic report of Zimbabwe*, CRC/C/ZWE/CO/2, 7 March 2016.

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

25 For more information, see: ZWE 8/2012, 17 October 2012 and ZWE 1/2014, 7 February 2014.

26 Aubrey AlessandraBree Chacha (commonly known as "Bree") is a transwoman, human rights activist, philanthropist and entrepreneur from Harare, Zimbabwe. She is the first transwoman to publicly announce her transition in Zimbabwe in 2018, a brave move amidst a transphobic environment which she felt was necessary to educate society about transgender persons, our struggle and the need for the LGBTIQ+ to receive equal respect and opportunities just like any human being. Bree is the ambassador of Transsmart Trust, an NGO which focuses on human rights, health and capacity building of trans and intersex persons as well reducing stigma, discrimination and criminalization which affects the marginalized trans community across the region. She Is an aunt, an innovator, a friend but most importantly a human being just like anyone else.

27 "Worse than dogs and pigs: life as a gay man in Zimbabwe" *Reuters*, 4 September 2017.

28 "Surviving Zimbabwe's anti-gay laws" *NewsDay*, 12 Febrarury 2014.

Such stigma and criminalization have forced same-sex relations to be on the downlow, often increasing the spread of HIV/AIDS, depriving patients of proper medical care, since same-sex sexual acts are deemed "filthy" in the eyes of many medical practitioners in Zimbabwe. This further forces many gay men to live "double lives", having a heterosexual marriage but a same-sex relationship or affair.

Same-sex sexual acts are criminalized, whether they are consensual or not. Despite the fact that Gays And Lesbians of Zimbabwe (GALZ) met the current President Emmerson Mnangagwa, the stigma and discrimination towards the LGBTIQ in Zimbabwe is still on the rise. President Emmerson Mngangagwa was quoted saying, "With regards to areas that we felt we would not accept, it is issues of gays and homosexuality, which is unlawful in our country. We rejected all those. There are a few countries from Europe which recommended we reconsider our position with regard to adults of same sex marrying each other that we rejected".[29]

Personal stories of transgender people are starting to become more visible in Zimbabwe. This helps opening local minds to diversity and helps people understand the presence and need for acceptance for the LGBTIQ community. However, life is still extremely difficult and, with no laws protecting us, it does feel like we are walking on eggshells. Never knowing who will try to hurt us, not being able to freely express our human right for non-stigma and discrimination.

This scenario is but one of many, in December 2018, two transwomen were gang raped to a point of anal fracture and near death. This heinous crime was reported to Gumisayi Bonzo from Transsmart Trust Zimbabwe. Upon reporting to health care providers, many questions were asked and it took them long to get treatment because of the stigma associated with the patient's gender identity. This is the usual treatment for many LGBTIQ persons seeking health care services in Zimbabwe.

From experience and hearing lived in realities from other members of the LBTIQ in Zimbabwe, our Government still has a long way to go in decriminalizing consensual same-sex sexual acts in the country. The LGBTIQ key population groups are human beings as well, deserving of the same respect and freedom just like any Zimbabwean. As the saying goes, "Let's Leave no one behind", thus in this new dispensation of resuscitating the country we should not leave out the human rights of the marginalized LGBTIQ community, who are also a relevant part of our country's development.

29 "Zimbabwe says NO to homosexuality" *News24,* 7 November 20116.

CRIMINALISATION

THE CARIBBEAN

STATE-SPONSORED HOMOPHOBIA 2019



ANTIGUA AND BARBUDA

Provisions in force

- **Sexual Offences Act** (Act No. 9 of 1995).

Buggery

Article 12. Buggery.

(1) A person who commits buggery is guilty of an offence and is liable on conviction to imprisonment: [...]

(b) for fifteen years, if committed by an adult on another adult; [...]

(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. Serious indecency.

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

(b) for five years, if committed on or towards a person sixteen years of age or more. [...]

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."

Human rights situation

A detailed report of 2014 describes the legal and living conditions of sexual minorities, and a 2015 Kaleidoscope Trust report, *Speaking Out*, illustrates a very mixed landscape of strong societal and official homophobia, some official address (in terms of limited police training), and limited advocacy resources.[1]

In May 2016, Minister of Social Transformation, Samantha Marshall, defined the buggery law as "antiquated" and resolved to advance a decriminalisation recommendation to Cabinet.[2] In September, the government issued a statement that "[a]ll persons irrespective of sex, sexual orientation, or gender identity are entitled to enjoy in Antigua & Barbuda the protections provided for by our constitution and by international human right law".[3] This public statement—*'Policy on Protection from violence and discrimination of persons of the LGBTI community'*—reminded the public of the State's international law obligations.

However, even after these statements, and in the aftermath of the decriminalisation of consensual same-sex sexual acts between adults in Belize, in August 2016, the Cabinet of Antigua and Barbuda

1 Canadá: Junta de Inmigración y Refugiados de Canadá, *Antigua y Barbuda: tratamiento de las minorías sexuales por parte de la sociedad y las autoridades; Recurso legal y protección disponibles (2010-2013)*, 10 January 2014, ATG104715.E; Kaleidoscope Trust, *Speaking out 2015: The rights of LGBTI people across the commonwealth* (2015).

2 "Minister to recommend decriminalisation of buggery", *Antigua Observer Newspaper* ,18 May 2016.

3 "Gov't says it protects the LGBTI community", *Antigua Observer Newspaper*, 2 September 2016.

proclaimed that "the buggery law will remain unchanged" in the country.[4]

In 2017, carnival decorations resembling the gay pride flag were taken down after an LGBT activist joked that the event was a gay pride.[5] The Festivals Minister later clarified that the removal was not a "homophobic reaction", but nevertheless apologised to those who were "offended by it".[6]

In July 2017, the Prime Minister Gaston Browne refused to apologise for making derogatory remarks by calling a critic an "antiman", which is culturally used to insult LGBTQ people.[7]

In May 2018, the Deputy Commissioner of Police Everton Jeffers warned that persons circulating a list of alleged homosexuals could be in breach of the Electronic Crimes Act 2013 for sending by electronic means material that is false or causes insult or injury.[8]

A gay police officer interviewed by Human Rights Watch in 2018 said that LGBT people are often afraid to enter police stations due to fear and concern that they would not be taken seriously.[9] In response, he has organised LGBT sensitivity training for police officers, which has improved their attitudes towards LGBT people.

Statements by public officials

In 2011, the Antiguan Attorney General openly supported buggery laws, stating: "There will be no change in the law on buggery in Antigua & Barbuda, at least not if I can help it. Being gay is morally wrong, and to be honest personally, I am still homophobic."[10]

In September 2018, Antigua and Barbuda's Ambassador to the OAS and the US, Sir Ron Sanders published an opinion article calling for the decriminalisation of buggery and affirming that gay people are equal citizens.[11]

National Human Rights Institution

The Office of the Ombudsman does not appear to have done any work on sexual orientation or gender identity.

UN voting record

In 2011, Antigua and Barbuda was not a member of the Human Rights Council between 2011 and 2016, and therefore did not participate in the vote for any of the three SOGI resolutions.

At the session of Third Committee of the UN General Assembly held in November 2016, Antigua and Barbuda voted against the LAC amendment to remove Operative Paragraph 2,[12] and against the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

Additionally, Antigua and Barbuda voted against the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

During its 1st cycle UPR in 2011, the delegation of Antigua and Barbuda stated that although "criminalisation was on the books… it was only in the very rare instances that the law had actually been enforced".[13] Citing "society's leanings" and "public opinion" they spoke of the need for "extensive public consultation" and "the current pre-disposition of its people and their religious influences and indoctrination" [these two last arguments were added in its final response.[14] The

4 "Antigua Gov't denies turning a blind eye to LGBTI community", Jamaica Observer, 3 September 2016; "A&B says no to buggery",*Antigua Observer Newspaper* ,26 August 2016.

5 "Carnival Decorations Resembling Gay-Pride Removed From Streets", *Antigua Newsroom*, 23 July 2017.

6 "Greene says Carnival decoration was contractor's blunder", *Antigua Observer*, 25 July 2017.

7 "Gaston says no apology for 'antiman' comments", *Antigua Observer*, 26 July 2017.

8 "Circulating "The List" Is Unlawful Says Senior Cop", *Antigua Newsroom*, 22 May 2018.

9 "Paradise Lost: The Plight of LGBT People in the Eastern Caribbean", *Human Rights Watch* (website), accessed 26 February 2019.

10 "AG: Anti-Buggery Law Here To Stay", *Antigua Observer Newspaper*, 5 October 2011; "Gay man deported to Antigua", *Xtra*, 14 August 2014.

11 Ron Sanders, "Gays are citizens too", *Barbados Today*, 28 September 2018.

12 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

13 *Report of the Working Group on the Universal Periodic Review: Antigua and Barbuda*, A/HRC/19/5, 14 December 2011, para. 35.

14 *Report of the Working Group on the Universal Periodic Review: Antigua and Barbuda*, A/HRC/19/5/Add.1, 15 March 2012, para.29.

State received eight recommendations directly related to SOGI, rejecting six (decriminalisation and public awareness campaigns on discrimination), while it accepted two (condemning SOGI-related acts of violence and instituting policies and initiatives addressing discrimination).[15] The delegation indicated that "the government would continue its efforts on education and information to ensure that the public opinion would in time adopt the international standards".[16]

In its 2nd cycle UPR in 2016, the delegation insisted on the fact that "it would take time to sensitize Antiguan society, which was very moral and religious", and that "if the Government were to force these issues, the reaction from society would be negative and regressive" , while acknowledging criminalising laws "had to change at some point if the Government was serious about human rights".

The State received 13 SOGI-related recommendations, accepting only one generalist recommendation regarding discrimination, while rejecting ten which specifically referred to decriminalisation and a further two on specific SOGI discrimination. [17]

Antigua and Barbuda's next UPR cycle will take place in January 2021.

Organisation of American States (OAS)

Antigua and Barbuda has joined all the resolutions on Human Rights, Sexual Orientation, and Gender Identity and Expression adopted by the General Assembly of the Organisation of American States (OAS). Most notably, Antigua and Barbuda has not joined other OAS Member States in adding footnotes in an attempt to limit or reject the content of these resolutions.[18]

15 *Report of the Working Group on the Universal Periodic Review: Antigua and Barbuda*, A/HRC/19/5, 14 December 2011.

16 *Report of the Working Group on the Universal Periodic Review: Antigua and Barbuda*, A/HRC/19/5, 14 December 2011, para. 48.

17 *Draft report of the Working Group on the Universal Periodic Review: Antigua and Barbuda*, A/HRC/WG.6/25/L.10, 20 May 2016, para. 53, 39.

18 "OAS-GA Resolutions" *OAS* Website.



BARBADOS

Provisions in force

- **Sexual Offences Act** (1992) Chapter 154.

Buggery

Section 9. Buggery.

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. Serious indecency.

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

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

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

Human rights situation

- Additional information on the situation in Barbados is provided at the end of this entry in a "Local Perspective Essay" written by Ro-Ann Mohammed for ILGA World.

In May 2016, *Nation* newspaper—one of the most widely read newspapers in Barbados— trivialised the rape of a person who was either a gender non-conforming woman or transgender man and referred to the crime as "male medicine".[1] B-GLAD, a local LGBT civil society organisation, condemned the piece stating that it was a "perfect example" of the lack of value placed on LGBT lives and more specifically of the lives of masculine-expressive lesbians in Barbados.[2] UN Women also issued a statement showing concern about the article.[3] Massive public outcry forced the newspaper to offer an apology.[4]

In early 2017, a study was published probing public views in Barbados, Guyana and Trinidad and Tobago regarding the usefulness of the anti-gay laws in: reflecting moral standards, stopping "the spread of homosexuality", importance in terms of public health, and effectiveness in protecting young people from abuse.[5]

1 "Barbados newspaper describes rape as "male medicine"", *Code Red*, 15 June 2016.
2 "Barbados - G.L.A.D" *Facebook (Website)*.
3 "A Life Free of Violence – it's Everyone's Right: Statement of United Nations Resident Coordinator's Office for Barbados and the Organisation of Eastern Caribbean States, UN Women, UNFPA, ILO, PAHO and UNDP", *UN Women Caribbean*, 25 May 2016.
4 "We apologise", *Barbados Nation*, 25 May 2016. See also: "RoMoSexuality", *Online Blog*, 10 August 2018.
5 Mahalia Jackman, "Protecting the fabric of society? Heterosexual views on the usefulness of the anti-gay laws in Barbados, Guyana and Trinidad and Tobago" Culture, Health & Sexuality 19, No. 1 (2016), 91–106.

In March 2017, it was reported that 16 members of the Royal Barbados police force participated in a sensitivity training programme run by various LGBT NGOs.[6] A 2017 news article featured Shari Inniss-Grant who founded Join the Conversation, which aims to create a safe space for LGBT people to promote diversity and equality through sharing their experiences.[7]

However, in April 2017, the World Congress of Families, an anti-LGBT event, was organised for a second time in Barbados with American speakers promulgating homophobic and fear-mongering views.[8] In October 2017, a Christian youth group organised a march to "reclaim" the rainbow from the LGBT community, which initiated a counter-march.[9] In November 2017, Barbados held its first official LGBT pride after an earlier march in 2015 failed to take place due to obstacles and fear of violence among the community.[10]

Statements by public officials

In early 2016, during a debate on the Domestic Violence Amendment Bill, the Minister of Education declared that the time has come for Barbadians "to stop turning a blind eye and accept the fact that gay relationships were now part of Barbadian culture".[11]

In May 2017, Minister of the Environment, Dr Denis Lowe, declared that he did not support the LGBT movement in Barbados and would not support the legislation of same-sex marriage because he "still believed in the biblical way of life".[12] Lowe reiterated this in May 2018, after his party decided to bring up the issue of same-sex marriage during the electoral campaign. He said, "I stand in opposition to any attempt to legalize same sex marriage in Barbados. I stand firmly against it. If you want to do that, do it in the privacy of your home. Don't tell me there is going to be a law that will tell me I have to be subjected to that".[13]

In March 2018, Steve Blackett, Minister of Social Care and Community Development, said that calls for equality for LGBT people made straight people feel "marginalised [and] harassed". He said, "This LGBT lobby is so insistent, so persistent, claiming this community is being marginalized and stigmatized. They have been so insistent and persistent that I, as a straight person, you as a straight person, we're beginning to feel marginalized, harassed and stigmatized by them".[14]

UN voting record

Barbados was not a member of the Human Rights Council between 2011 and 2016, and therefore did not participate in the vote for the three HRC resolutions on human rights, sexual orientation and gender identity in 2011, 2014 and 2016. At the session of Third Committee of the UN General Assembly held in November 2016, it abstained during the vote to adopt the LAC amendment to remove Operative Paragraph 2,[15] and abstained during the vote to adopt the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Likewise, Barbados abstained during the vote to adopt the the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

At its 2nd cycle UPR in 2013, Barbados received 13 SOGI-related recommendations.[16] None of the recommendations that urged decriminalisation of same-sex sexual acts were accepted. Barbados argued "because it is a democracy," the Government "was hesitant to go against the wishes of its people". Furthermore, the delegation alleged that "prosecution [of same-sex sexual activity] could only occur if a minor was involved or a non-

6 Carlos Atwell, "Cops get LGBTI sensitivity training", *NationNews*, 17 March 2017.

7 "Keeping LGBTs out of the closet", *Barbados Today*, 18 May 2017.

8 Arshy Mann, "Battleground Barbados: LGBT activists face off against North American homophobes in the Caribbean", *Xtra*, 13 April 2017; Michael K Lavers, "Anti-LGBT group from U.S. holds Barbados conference", *Washington Blade*, 11 April 2016.

9 Tre Greaves, "Row over rainbow colours", *NationNews*, 30 October 2017.

10 Alexa D V Hoffmann, "Barbados Pride combats nation's anti-LGBT hatred", *76crimes*, 28 November 2017.

11 "Let's accept gays", *Barbados Today*, 3 February 2016.

12 Alex Downes, "Lowe not backing same-sex rights", *NationNews*, 15 May 2017.

13 Anmar Goodridge-Boyce, "Still no to same-sex", *Barbados Today*, 15 May 2018.

14 Bailey Vogt, "Barbados politician feels "harassed" by calls for LGBTQ equality", *Metro Weekly*, 29 March 2018.

15 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

16 *Report of the Working Group on the Universal Periodic Review: Barbados*, A/HRC/23/11, 12 March 2013, para. 22.

consenting adult". Of the remaining recommendations, two related to discrimination were also rejected, and one accepted in part. The three recommendations that were accepted urged the Government to protect "all human rights, including those LGBT [sic]"; to "protect the LGBT population from harassment, discrimination and violence"; and to provide "human rights education, including related to sexual orientation and gender identity, to all law enforcement officials." Barbados' next UPR cycle will take place in January 2018.[17]

During its 3rd cycle of the UPR carried out in January 2018, Barbados received 13 SOGIESC recommendations but rejected all of them, including those referring to decriminalisation.[18] During the Working Group session, Barbados delivered very technical, albeit confusing, statements on the issue of criminalisation: "Although buggery is criminalised by Section 9 of the Sexual Offences Act, persons who engage in same-sex relations in Barbados are not prosecuted since the persons engaged in such relationships are unlikely to complain to the police – without a complainant, there can be no successful prosecution". "Same-sex relations are not criminalised in our legislation – what is criminalised is *buggery*. The relevant government provisions confirm that in practice there is no intervention by the law between consenting adults. However, where a minor is involved, or in the case of a non-consenting adult, prosecution is possible against the offender involved". [19]

Treaty Bodies

In 2007, the **Human Rights Committee** expressed concern over criminalisation of consensual same-sex sexual acts. It urged the State to decriminalise and protect "homosexuals" from harassment, discrimination and violence.[20]

In 2017, the **CEDAW Committee** urged Barbados to improve access to information on sexual and reproductive health and rights for LBTI women and girls and train medical personnel to respond to their specific health needs.[21] It also called for the State to ensure equal rights and opportunities for women who face intersecting forms of discrimination, in particular LBT women.[22]

Organisation of American States (OAS)

As a member of the Organisation of American States, Barbados has joined the resolutions on Human Rights, Sexual Orientation, and Gender Identity and Expression adopted since 2008.[23] However, since 2013 Barbados has included footnotes to these annual resolutions in an attempt to limit or reject their content. In 2017, it included a footnote stating that it could not join consensus because SOGI was not reflected in its national law.[24] This was reiterated in the 2018 resolution.[25]

A LOCAL PERSPECTIVE

God Don't Like Ugly: Colonial Legislation and Post-Colonial Barbados

By Ro-Ann T. T. Mohammed[26] for ILGA World.

The criminalisation of same-sex intimacy was imposed on Barbados through colonial legislation in 1868.[27] The 'buggery' law has since been added to the "Sexual Offences Act" (SOA); criminalising anal sex by life imprisonment;[28] the harshest penalty in the Western Hemisphere. It remains protected from contest in domestic court by Section 26 of the Constitution, which was designed to prevent adjustment of legislation existing prior to Barbados' 1966 independence.[29] In June of 2018, three

17 *Ibid.*

18 "UPR- Barbados", *ILGA Website*, 23 January 2018.

19 *Id.*, Section C.

20 *Concluding observations of the Human Rights Committee - Barbados*, CCPR/C/BRB/CO/3, 11 May 2007, para. 13.

21 *Id.*, para. 36.

22 *Id.*, para. 44.

23 "Rapporteurship on the Rights of LGBTI Persons: Links", *IACHR Website*.

24 OAS General Assembly, "Promotion and protection of human rights", AG/RES. 2908 (XLVII-O/17), 21 June 2017, footnote 9.

25 *Id.*, footnote 12.

26 Ro-Ann Mohammed is a Caribbean activist whose work focuses on intersectional oppression and the decolonisation of Caribbean spaces. Over the past near decade, she has been cultivating her activism through radical visibility, education, community building and creating spaces for empowerment - most recently, coordinating Barbados' first Pride Parade in 2018. She founded and directs SHE (Sexuality Health & Empowerment), which is the only group in Barbados focused specifically on LBQT activism and she is also the co-founder of the LGBT public advocacy organisation, BGLAD.

27 Petitioners Hoffmann, "S.A." and "D.H.". 6 June 2018. *Hoffman et al v Barbados - Petition to IACHR*.

28 L.R.O. 2002. *The Constitution of Barbados - Chapter 154*, *"Sexual Offences"*.

29 L.R.O. 2002. *The Constitution of Barbados - Chapter 3*, *Section 26*, *"Savings of existing laws"*: "Call to repeal Sexual Offences Act - Petition filed", *Loop News Barbados*. 7 June 2018.

Barbadians (a transgender woman, a lesbian and a gay man) filed a petition before the Inter-American Commission on Human Rights (IACHR) challenging the SOA, charging that it discriminates on the basis of their SOGIE.[30]

Courts have defined 'buggery' as "sexual intercourse committed against the order of nature (i.e. per anum) by man with man or in the same unnatural manner by man with woman".[31] Criminalised by up to ten years is "serious indecency"; overarchingly defined as, "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", involving anyone over the age of sixteen.[32]

These laws' can be traced to the late-antiquity: Christian categorisation of non-procreative sex acts as "sin",[33] and although similar legislation was struck down in Britain in 1967,[34] they're a relic of Barbados' colonial legacy, a legacy also represented in Barbados' large majority Christian population.[35]

Today, this legislation is usually enforced against men who engage in sexual activity with underage boys.[36] As it makes no mention of consent, it enforces a troubling conflation of 'homosexuality' with sexual predation, and detactors of the LGBTQ movement continue to associate same-sex attraction with sexual deviance as reflected in societal attitudes. When a staff member of the Barbados Boy Scouts Association sexually assaulted a 12-year old member, the head of the Association spoke out against 'homosexuality', as opposed to paedophilia.[37] In 2016, then-Prime Minister Freundel Stuart said, "Rape is the offence committed against in a heterosexual relationship and buggery is the offence committed in a same-sex relationship."[38] However, rape via anal penetration is already specifically covered in Section 3 of the Constitution.[39]

Criminalisation, combined with Barbados' lack of anti-discrimination legislation on the basis of SOGIE, reinforce the narrative that LGBTQ people are second-class citizens; societal beliefs supported by Christian leaders and healthcare providers who continue to publicly condemn same-sex intimacy as "unhealthy",[40] but simultaneously deny that people face discrimination on the basis of SOGIE in Barbados.[41] Such denigrating messaging has created an environment where LGBTQ people are dissuaded from accessing critical healthcare resources, further marginalising a population who is already disproportionately affected by HIV/AIDS.[42]

Amidst resistance, local activists continue to advance the movement. Barbados' first Pride month celebrations and parade took place in 2018.[43] Church leaders said they were "repulsed" and held a press conference where they labelled the "gay agenda" a threat to human existence, vowing to "destroy any attempt by the LGBT community to make homosexual preferences a human right in Barbados".[44]

30 "Hateful Laws", *Barbados Today*, 6 June 2018.
31 Hunte v. The Queen. 18 October 2002. *Criminal Appeal No. 43 of 2001 (Barbados Court of Appeal).*
32 L.R.O. 2002. *The Constitution of Barbados - Chapter 154*, *"Sexual Offences"*.
33 William N. Eskridge, *Gaylaw: Challenging the Apartheid of the Closet* (Harvard University Press, 2009) 161.
34 Queen Elizabeth II. 1967. *The Constitution of England and Wales "Sexual Offences Act 1967" Chapter 60.*
35 "The World Factbook: Barbados" *Central Intelligence Agency*. 3 December 2018.
36 "Photograpger charged with buggery", *Nation News*. 8 December 2015: "No bail for former cop on buggery charge", *Nation News*. 3 February 2017.
37 "Zero Tolerance", *Nation News*. 7 July 2013.
38 Arshy Mann, "What does Barbados' prime minister have to say about the country's harsh buggery laws?", *Daily Xtra*, 19 April 2017.
39 L.R.O. 2002. *The Constitution of Barbados – Chapter 154*, *"Sexual Offences"*
40 "Doc: Anal sex is unhealthy", *Nation News*. 16 November 2017
41 Church: No climate of violence against LGBT, *Nation News*. 16 November 2017.
42 UNAIDS, National HIV/AIDS Commission of Barbados. 2013. *Barbados Report National Country Policy Index*.
43 "Barbados holds first Pride Parade and it's as fabulous as you expect", *Pink News*. 24 July 2018.
44 "So what's next?", *Barbados Today*. 20 July 2018: "No same sex!", *Barbados Today*. 19 July 2018.



DOMINICA

Provisions in force

- **Sexual Offences Act** (1998).

Buggery/ Attempt to commit buggery

Section 16(1)(b). Buggery.

(1) A person who commits buggery is guilty of an offence and liable on conviction to imprisonment for: [...]

(b) ten years, if committed by an adult on another adult; [...]

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 [...] 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 annum* by a male person with a male person or by a male person with a female person.

Gross indecency

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. [...]

(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.

Human rights situation

In 2012, the Education Ministry said that the problem of "anti-social behaviour and homosexuality" in the country's schools were much bigger than imagined, and a committee was set up to implement strategies to mitigate the spread of such "deviant" behaviours.[1]

In March 2012, two American men on board a gay cruise were arrested for engaging in "buggery" in public view on the balcony of the ship.[2] The men reported being detained in "inhumane conditions" and taunted by the authorities.[3] They were eventually charged for "indecent exposure".[4]

In response to this incident, the president of the Dominica Association of Evangelical Churches (DAEC) Michael Daniel issued a statement "vehemently" opposing gay cruise tours to the country.[5] He added that anyone found guilty of

1 "St. Jean says anti-social behavior, homosexuality bigger than imagined", *Dominica News Online*, 6 September 2012.

2 "Two arrested on gay cruise in Dominica", *The Guardian*, 22 March 2012.

3 "Gay men describe Dominica experience as 'horrible'", *Dominica News Online*, 23 March 2012.

4 "UPDATE: Gay men plead guilty to indecent exposure; scheduled to leave Dominica Thursday", *Dominica News Online*, 22 March 2012.

5 "Evangelical association "vehemently opposed" to gay cruise tours visiting Dominica", *Dominica Vibes*, 23 March 2012.

"such immoral acts being displayed in public should receive the full weight of the law".

In 2014, Minority Rights Dominica (MiRiDom) and the Sexual Rights Initiative, submitted a report for the country's UPR examination, indicating that human rights defender groups in Dominica "are forced to operate underground because of fear that their members will be victimised", and "those who are openly gay complain of acts of physical abuse, and are often victims of vandalism committed against their positions, as well as being ejected from house and home".[6]

In July 2014, the Prime Minister Roosevelt Skerrit dismissed claims that the police was threatening to arrest people engaging in private, consensual same-sex sexual activity.[7] He said, "[t]his has never happened in Dominica and I don't think that will be happening any time now or later". Though some news outlets have reported that 15 women and ten men were sentenced to imprisonment for engaging in same-sex sexual activity in 2001,[8] this has been disputed by the police. A spokesperson said that while there were 35 reported cases of buggery between 1995 and 2000, police records revealed that no one was actually sent to prison.[9]

The 2015 Inter-American Commission on Human Rights (IACHR) report on violence against LGBTI persons states that the so-called "gay panic" defence (defined as the attempt to justify the killing of a person by arguing that the violence was prompted by alleged same-sex sexual advances made by the victim) has been accepted by local courts in Dominica.[10] This was successfully argued by David St. Jean, who had stabbed Clement "Johnson" James to death on the basis that he was just "defending himself" after the victim purportedly stared at him in a sexual manner while holding his crotch and licking his lips.[11]

A 2018 report by Human Rights Watch featured an LGBT activist who shared information about the violence people experience because of their gender identity or sexual orientation.[12] She added that many do not report violence because the police often ignored them.

Statements by public officials

In 2014, the Prime Minister Roosevelt Skerri declared that the country will not follow in other countries' footstep in recognising same-sex marriage: "I will make it clear that there are some things that this Government will not accept, and we will never allow for the state to recognise same-sex marriage in our country. If other countries want to do it, that's a matter for them but there are certain guiding principles that we must follow".[13]

In 2016, Senator Isaac Baptiste spoke against the criminalisation of buggery in Dominica. During his contribution to the Parliamentary debate on the introduction of a Bill to amend the Sexual Offences Act, Mr. Baptiste stated that "the continued criminalization of buggery as it is now provided for, to the extent that the court can subject that person to psychiatric observation and treatment, is not consistent with what is happening internationally".[14]

National Human Rights Institution

Dominica does not have a National Human Rights Institution in accordance with the Paris Principles.

UN voting record

Dominica was not a member of the Human Rights Council between 2011 and 2016, and therefore did not participate in the vote for the three SOGI HRC resolutions.

At the session of Third Committee of the UN General Assembly held in November 2016, Dominica did not vote on the LAC amendment to remove Operative Paragraph 2,[15] and abstained during the vote to adopt the African oral

6 Minority Rights Dominica (MiRiDom) and the Sexual Rights Initiative, *Stakeholder Submission on Lesbian, Gay, Bisexual and Transgender (LGBT) Rights in Dominica For the 19th Session of the Universal Periodic Review* (2014).

7 "Dominica PM says no to same-sex marriage", *Jamaica Observer*, 9 July 2014.

8 Scott Roberts, "Dominica Prime Minister: 'We will never accept same-sex marriage'", *PinkNews*, 10 July 2014.

9 "Police shoot down gay website allegations", *Dominica News Online*, 28 March 2013.

10 Inter-American Commission on Human Rights, *Violence against lesbian, gay, bisexual, trans and intersex persons in the Americas* (2015), paras. 491, 494.

11 "David St. Jean sentenced to 13 years for manslaughter", *Dominica News Online*, 12 June 2015.

12 Human Rights Watch, *Paradise Lost: The Plight of LGBT People in the Eastern Caribbean* (2018).

13 "Dominica PM says no to same-sex marriage", *Jamaica Observer*, 9 July 2014.

14 "Senator calls for decriminalization of buggery", *Dominica Vibes News*, 25 October 2016.

15 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Dominica did not vote on the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

Dominica rejected all (7) the recommendations to repeal the above-mentioned articles that it received in its 1st cycle UPR in 2010.[16] It also rejected a series of recommendations to address discrimination in relation to HIV, engage in sensitivity training with judiciary and security forces, and to employ the *Yogyakarta Principles* to guide such work. In its response, Dominica conceded that the law is "discriminatory" and that there is a "certain element of discrimination in the society". It also stated that its 2003 HIV/AIDS strategy was inclusive "regardless… of sexual persuasion".[17]

Dominica's 2nd cycle UPR in May 2014 generated 12 strong recommendations to decriminalise and strengthen anti-discrimination provisions within the country in relation to LGBT populations. The only mention of sexual orientation during the interactive dialogue was linked to HIV: a mere reiteration of the fact that its 2003 AIDS strategy did not discriminate on grounds of sexual orientation.[18] No other address was given to four very strong comments made about Dominica's duties in regard to protection of human rights defenders doing SOGI-related work.

Dominica's next UPR cycle will take place in May 2019.

Organisation of American States (OAS)

As a member of the General Assembly of the Organisation of American States (OAS), Dominica has joined the resolutions on Human Rights, Sexual Orientation, and Gender Identity and Expression adopted by this body since 2008.

In 2013, Dominica decided to introduce a joint footnote —together with Saint Vincent and the Grenadines and San Kitts and Nevis— stating that the delegations of these three countries were "unable to join consensus on the approval of [the] resolution".[19] Since 2014, Dominica has withdrawn from the list of countries inserting footnotes aiming to limit or reject the content of these resolutions.

16 *Report of the Working Group on the Universal Periodic Review: Dominica*, A/HRC/13/12, 4 January 2010.
17 *Report of the Working Group on the Universal Periodic Review: Dominica*, A/HRC/13/12, 4 January 2010, para. 20.
18 Report of the Working Group on the Universal Periodic Review: Dominica, A/HRC/27/9*, 26 June 2014.
19 "Rapporteurship on the Rights of LGBTI Persons: Links" *IACHR Website.*



GRENADA

Provisions in force

- **Criminal Code** (1987) (as amended in 1993).

Unnatural connexion

Article 431.

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

Gross indecency

Article 430.

Whoever publicly and wilfully commits any grossly indecent act is guilty of a misdemeanour.

Human rights situation

In 2013, the Seventh Day Adventist church organised a march against "sexual immorality" with chants such as "man to man is so unjust… woman to woman is even worse".[1] However, a church leader claimed was not targeting gay and lesbian people, but only the immorality of people who practice "homosexuality". In 2015, a pastor of the Adventist church was allegedly exposed for engaging in same-sex sexual activity during a church conference.[2]

In October 2014, Groundation Grenada Directors presented at the National Consultation on Constitution Reform, proposing an expansion of the bill of rights of Grenada to include protections for LGBT people.[3] A 2015 UPR shadow report by several LGBT NGOs noted that there had been at least two people charged for consensual same-sex sexual conduct.[4]

In 2016, a man was detained for "unnatural carnal knowledge" with a police officer commenting that "homosexuals and lesbians are no longer hiding… since the night America legalised gay marriage".[5]

In October 2016, the Government announced that it would postpone the referendum for a new Constitution amid growing concerns raised about one of the bills to be voted, which was said to allow for recognition of gay relationships.

Rumours of a loophole in the Rights and Freedoms Bill that would have allowed same-sex marriage led to the postponement of the referendum on the new Constitution.[6] In November 2016, the Rights and Freedom Bills were defeated at the referendum by a wide margin.[7]

A 2018 report by Human Rights Watch found that LGBT people in Grenada faced discrimination from

1 "Adventist Church Stages March Against "Sexual Immorality"", *Now Grenada*, 24 November 2013.

2 "Adventist Pastor Caught In Homosexual Act", *The Grenada Informer*, 26 June 2015.

3 "Grenada Constitutional Reform - LGBT Rights Proposal", *Groundation Grenada YouTube Channel*, 17 October 2014.

4 GrenCHAP et al, *Report on Grenada 21st Round of the Universal Periodic Review – Jan/Feb 2015* (2014), para. 14.

5 "Man Detained In Connection With Unnatural Carnal Knowledge Released Pending Further Investigation", *The Grenada Informer*, 25 February 2016.

6 "Grenada referendum postponed amid concerns over same-sex marriages", *Jamaica Observer* , 18 October 2016; "Constitution of Grenada (Rights & Freedoms) Amendment Bill 2016 - Part 3", *Now Grenada*, 11 October 2016; "No same sex marriage", *Now Grenada*, 13 October 2016.

7 "'No' vote dominates in Grenada's constitutional reform referendum", *Caricom Today*, 25 November 2016.

the church, family, schools and the police.[8] According to an interviewee, the younger generation is becoming more accepting of LGBT people because of more positive media portrayals.[9]

Statements by public officials

In 2013, the president of Grenada's Senate, Lawrence Joseph, suggested that the Caribbean island should reconsider its laws prohibiting sex between men: "the day is fast approaching" when Grenada will need to amend anti-sodomy laws to "fall in line with the mainstream".[10]

In 2015, while visiting New York, Prime Minister Keith Mitchell called for more tolerance for Grenada's LGBT community.[11] However, in 2017, he was reported to have made homophobic comments against supporters of the main opposition political party.[12]

National Human Rights Institutions

The Office of the Ombudsman does not appear to have done any work on SOGI issues.

Existing legal challenges

Consensual same-sex sexual acts

Two lawyers purportedly initiated a constitutional challenge to the criminalizing provision after a man was charged for engaging in consensual same-sex sexual activity.[13] However, the charge was withdrawn after the challenge was brought.

UN voting record

In 2011, 2014 and 2016 Grenada was not a member of the Human Rights Council and, therefore, did not participate in the vote for any of the SOGI resolutions. At the session of Third Committee of the UN General Assembly held in November 2016, Grenada did not vote the LAC amendment to remove Operative Paragraph 2,[14] and abstained during the vote to adopt the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

International advocacy and supervision

Universal Periodic Review

At its 1st cycle UPR in May 2010, Grenada received five recommendations to decriminalise same-sex sexual acts, all of which it refused. However, it did note that the current law "could be viewed as discriminatory", and with time growing tolerance would help in addressing this issue.[15] In January 2015, Grenada's 2nd cycle UPR concluded. The State received 16 SOGI recommendations, mostly concerning decriminalisation. All of them were rejected.[16] Grenada's next UPR is in October 2019.

Organisation of American States (OAS)

As a member of the General Assembly of the Organisation of American States (OAS), Grenada has joined the resolutions on Human Rights, Sexual Orientation, and Gender Identity and Expression adopted by this body since 2008.[17]

In October 2015, a public hearing was held at the Inter-American Commission on Human Rights (IACHR) at the request of Groundation Grenada and GrenCHAP on the subject of same-sex sexual acts and the law.[18] After Grenada failed to appear at the hearing, the IACHR urged Grenada to decriminalise same-sex sexual acts, and in the meantime to issue a *de facto* moratorium on application of this legislation.[19]

8 Human Rights Watch, *"I Have to Leave to Be Me" Discriminatory Laws against LGBT People in the Eastern Caribbean* (2018).

9 Human Rights Watch, *Paradise Lost: The Plight of LGBT People in the Eastern Caribbean* (2018).

10 "Grenada senator urges 'sodomy law' change", *news24*, 29 May 2013.

11 "Grenadian Prime Minister on Tolerance" (video), Youtube (website), 28 September 2015.

12 "Prime Minister under fire over homophobic comments", *Caribbean News Service*, 29 May 2017.

13 GrenCHAP et al, *Report on Grenada 21st Round of the Universal Periodic Review – Jan/Feb 2015* (2014), para. 14.

14 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

15 Report of the Working Group on the Universal Periodic Review: Grenada, A/HRC/15/12, 16 June 2010.

16 Report of the Working Group on the Universal Periodic Review: Grenada, A/HRC/29/14, 9 April 2015, para. 35.

17 "Rapporteurship on the Rights of LGBTI Persons: Links", *IACHR Website*.

18 "Grenada: Criminalización relaciones personas mismo sexo", *Comisión Interamericana de Derechos Humanos YouTube Channel*, 19 october 2015; "GRENCHAP" *GrenCHAP* Website.

19 Human Rights Watch, *"I Have to Leave to Be Me" Discriminatory Laws against LGBT People in the Eastern Caribbean* (2018), p. 20.



GUYANA

Provisions in force

- **Criminal Law (Offences) Act** (1998).

Buggery

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."

Attempted Buggery

Section 353(a). Attempt to commit unnatural offences.

Everyone who […] attempts to commit buggery […] shall be guilty of felony and liable to imprisonment for ten years.

Gross indecency

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.

Human rights situation

Guyanese NGO Society Against Sexual Orientation Discrimination (SASOD) and the Sexual Rights Initiative (SRI) drafted a detailed shadow report that illustrates the main local challenges in terms of legal and societal bias and reported that "in a national survey 25% of Guyanese admitted to being homophobic while 18% approved of using violence against LGBT persons".[1]

Also in 2016, representatives of a human rights organisation met with the Ministry of Social Protection and recommended that the government extend workplace discrimination protection to include sexual orientation, gender identity and health status.[2] More recommendations to decriminalise consensual same-sex acts came from the European Union and the British Government and from the Guyana's Country Coordinator for the President's Emergency Plan For AIDS Relief (PEPFAR), a United States governmental initiative to address the global HIV epidemic.[3]

In March 2017, a city magistrate dismissed a physical assault case and refused to allow the victim, a transgender woman, from entering the court.[4] The magistrate was subsequently disciplined by the Judicial Service Commission for denial of justice.[5]

In April 2017, it was reported that the government had announced a plan to hold a referendum on whether "homosexuality" should remain

1 the Society Against Sexual Orientation Discrimination (SASOD) et. al., *Report on Guyana 21st Round of the Universal Periodic Review – January/February 2015* (2015), para. 8.

2 "SASOD meets with Ministry of Social Protection on anti-LGBT Discrimination in Social and Economic Services", *Society Against Sexual Orientation Discrimination (SASOD Guyana)*, 1 March 2016.

3 "International Day against Homophobia, Transphobia and Biphobia", *Guyana Chronicle*, 1 May 2016; "Guyana Charged to Amend Discrimination Law in 50th Jubilee Year", *Society Against Sexual Orientation Discrimination (SASOD Guyana)*, 25 May 2016.

4 Derwayne Wills, "Transgender assault victim barred from entering court as Magistrate dismisses case", *Demerara Waves*, 2 March 2017.

5 Judicial Service Commission, *Response of the Judicial Service Commission in Guyana on the complaint made about Magistrate Dylon Bess* (2017).

criminalised.[6] However, this was opposed by LGBT rights groups on the basis that a referendum would only fuel homophobia "as misguided, emotional arguments are made on a topic which the majority of the population is not educated to engage on rationally".[7] In July 2017, the Minister of Foreign Affairs, Carl Greenidge clarified that the government had only indicated that it was a possibility that a referendum would be held.[8]

In December 2017, SASOD concluded a consultation exercise on a proposed legislative amendment to protect LGBT people from workplace discrimination under the Prevention of Discrimination Act 1997. The government has expressed support for this move though there has not been any legislative developments in this respect after SASOD published a report on this issue in 2018.[9]

In June 2018, the first local Pride parade took place in Georgetown with over 300 participants urging the government to decriminalise consensual same-sex acts.[10] As part of the week-long celebration, the Bishop of the Anglican Diocese of Guyana, Charles Davidson, hosted a forum on faith for the LGBT community and called for more understanding about sexuality among Christians.[11] He noted also that while the seventh commandment prohibited adultery, it is not criminalised in the country while buggery, which he described as "crazy", is.

In August 2018, a full-page advertisement was taken out by close to 100 Christian leaders to oppose any attempt to decriminalise same-sex intimacy.[12] This followed their unsuccessful attempt to ban the Pride parade earlier in June 2018.[13]

Statements by public officials

In January 2016, Prime Minister Granger said that he is "prepared to respect the rights of any adult to indulge in any practice which is not harmful to others".[14] Previously in 2015, he noted that his government would not allow religious imposition to trump the human rights of LGBT people in Guyana. A month earlier, the former Health Minister had spoken about Guyana showing leadership and repealing the archaic law, within the context of the United Nations Sustainable Development Goals (2015-2030).[15]

In May 2017, the Minister of Foreign Affairs Carl Greenidge said that the decriminalisation of buggery is a "sensitive" issue because of the "different mix of not only ethnic groupings, but religious groupings".[16]

In September 2017, in response to a question on the buggery law issue, the First Lady Mrs Sandra Granger stated that her "personal view is that if two men engage in consensual sex and they harm no one, that is their right and their business. The government has no place in their relationship."[17] She added that Guyana cannot go the way of Animal Farm and "impose the belief that some animals are more equal than the others."

National Human Rights Institutions

The Office of the Ombudsman does not appear to have done any work on sexual orientation or gender identity.

Existing legal challenges

Cross-dressing

In November 2018, the Caribbean Court of Justice ruled that Section 153(1)(xlvii) of the Summary Jurisdiction (Offences) Act which criminalised cross-dressing for an "improper purpose" was unconstitutional.[18] The case was brought by four trans women who were arrested and convicted under the provision in 2009.

6 "Referendum to decide legality of homosexuality", *Guyana Chronicle*, 20 April 2017.
7 "Rights Groups believe referendum on anti-gay laws will only fuel more homophobia", *News Source Guyana*, 24 May 2016.
8 "Anatomy of a bungled submission by gov't on gay rights to IACHR", *Stabroek News*, 19 July 2017.
9 Thandeka Percival, "LGBT persons face discrimination, violence on almost daily basis", *Stabroek News*, 8 June 2018.
10 Thandeka Percival, "[Video] 'We deserve the right to live our lives, love who we love'", *Stabroek News*, 3 June 2018.
11 "'Take pride in yourself" – Anglican Bishop tells LGBT faith forum", *Pancap* (website), 6 June 2018.
12 "Guyana: Christian leaders call on gov't. to keep buggery laws in place", *St Lucia News Online*, 6 August 2018.
13 "Christian Fellowship against LGBT 'pride' parade, calls for Govt intervention", *iNews Guyana*, 1 June 2018.
14 "Guyana president takes aim at his nation's anti-gay law", *Erasing 76 crimes*, 7 January 2016; "President to respect LGBT rights",*Guyana Chronicle*, 6 January 2016.
15 "Granger says his beliefs will not affect decisions on secular issues", *Inews Guyana*, 27 May 2015; "Ramsammy lobbies for repeal of laws that discriminate against LGBT",*Stabroek News*, 3 December 2015.
16 "Legalising homosexuality no straightforward matter, says Greenidge", *Guyana Chronicle*, 22 May 2017.
17 Oluatoyin Alleyne, "Rights must be respected, people valued – First Lady", *Stabroek News*, 24 September 2017.
18 "CCJ declares Guyana's crossdressing law unconstitutional", *CCJ* (website), 13 November 2018.

In the CCJ decision, the President wrote: "No one should have his or her dignity trampled on, or human rights denied, merely on account of a difference, especially one that poses no threat to public safety or public order".[19]

In response, the Prime Minister Moses Nagamootoo accepted the decision and said that the ruling "is one step forward in an appreciation of the fact that society has differences."[20]

UN voting record

In 2011, Guyana was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.[21] Neither did it have a vote in the 2014 Resolution 27/32 (on updating the 2011 report),[22] nor on the 2016 Resolution 32/2 which created the Independent Expert on SOGI mandate).[23]

At the session of Third Committee of the UN General Assembly held in November 2016, Guyana voted against the LAC amendment to remove Operative Paragraph 2,[24] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

Additionally, Guyana voted in favour of the amendment which tried to block financial resources allocated to the Independent Expert on SOGI.

International advocacy and supervision

Universal Periodic Review

At its 1st cycle UPR in May 2010, Guyana received seven recommendations to decriminalise and include SOGI as a ground for non-discrimination.[25]

In its responses the State said that no cases stemming from the law had come before the courts, and that "[c]hanges to laws required widespread consultation and a major change in attitude on the part of the populace". The delegation also indicated that attempts to include the phrase "sexual orientation" in the anti-discrimination clause of the Constitution "had been met with widespread consternation and protest".

Guyana received 17 recommendations in its 2nd cycle UPR in January 2015, of which it accepted three: to strengthen protections, to ensure that hate crimes and discrimination based on sexual orientation or gender identity are vigorously investigated and appropriately prosecuted, and further review of legislative non-discrimination provisions relating to SOGI.[26] All other recommendations had a call to decriminalise, and all 14 were rejected ('noted').

In its responses the Guyana delegation pointed out that prior to elections the Parliamentary Special Select Committee had a mandate to look at reviewing the legislation, but that process had ceased. It stressed there had been "unfettered freedom" in regard to freedom of expression for LGBT groups, and that the State did not discriminate based on sexual orientation, as provided by the Constitution.

Guyana's 3rd UPR cycle commences in January 2020.

Treaty Bodies

Both the CEDAW Committee, in 2012 and the CESCR in 2015 have urged Guyana to decriminalise consensual adult same-sex acts.[27] Both bodies have also expressed concern at the high levels of discrimination based on sexual orientation and gender identity.

Additionally, in 2013, the CRC urged the State to ensure that its programmes address the situation of

19 "Joint Press Statement from GTU, U-RAP and SASOD: Highest Caribbean court strikes down Guyana's crossdressing law", *URAP* (website), 13 November 2018.

20 "Guyana respects CCJ decision on cross-dressing– PM Nagamootoo", *Guyana Chronicle*, 20 November 2018.

21 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011.

22 Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014.

23 Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

24 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

25 "*Report of the Working Group on the Universal Periodic Review: Guyana*", A/HRC/15/14, 21 June 2010.

26 "*Report of the Working Group on the Universal Periodic Review: Guyana*", A/HRC/29/16, 13 April 2015.

27 "*Concluding observations of the Committee on the Elimination of Discrimination against Women*", CEDAW/C/GUY/CO/7-8, 7 August 2012; "*Concluding observations on the combined second to fourth periodic reports of Guyana*", E/C.12/GUY/CO/2-4, 28 October 2015.

discrimination against children because of their sexual orientation and/or gender identity.[28]

Special Procedures

In 2017, the Working Group of Experts on People of African Descent reported receiving complaints from civil society groups on the prevalent discrimination against LGBT people and sex workers. It noted that LGBT people often choose not to express their sexual orientation or identity out of fear of being threatened, subjected to discrimination or victimised.[29]

Organisation of American States (OAS)

As one of the 35 Member States of the Organisation of American States (OAS) Guyana has subscribed to the resolutions on Human Rights, Sexual Orientation, and Gender Identity and Expression adopted by the OAS General Assembly since 2008. However, in 2013 and 2014, Guyana requested the insertion of footnotes in an attempt to limit or reject the content of the resolutions approved in those two years respectively.

In 2013 the Government declared it was "unable to join consensus" given the fact that several of the issues addressed in the Resolution were the subject of deliberation "by a special select Committee of the National Assembly".[30] The exact same footnote was inserted in 2014.[31] However, in 2016, Guyana withdrew from the list of countries requesting such "declarations".[32]

In 2017, SASOD commended the government for supporting the OAS resolution condemning discrimination and violence against LGBTI people.[33]

In terms of human rights monitoring by the Inter-American Commission on Human Rights (IACHR), in late 2013, a public hearing on reports of discrimination and violence against children based on sexual orientation and gender identity in Guyana was held in Washington DC.[34] In 2015, another public hearing was held, focusing on access to social, economic and cultural rights.[35]

28 "*Concluding observations on the combined second to fourth periodic reports of Guyana, adopted by the Committee at its sixty-second session (14 January–1 February 2013)*", CRC/C/GUY/CO/2-4, 18 June 2013.

29 Report of the Working Group of Experts on People of African Descent on its mission to Guyana, A/HRC/39/69/Add.1, 13 August 2018, para. 33.

30 OAS General Assembly, AG/RES. 2807 (XLIII-O/13) Human rights, sexual orientation, and gender identity and expression (2013).

31 OAS General Assembly, *Human rights, sexual orientation, and gender identity and expression* (2014).

32 See all OAS-GA Resolutions since 2008 here: "Rapporteurship on the Rights of LGBTI Persons: Links" *IACHR Website*.

33 "SASOD Commends Government for Supporting LGBTI Resolution at Recent OAS General Assembly", *SASOD* (website), 7 July 2017.

34 "Audiencia: Discriminación y violencia - Identidad de género - Niños y niñas - Guyana", *Comisión Interamericana de Derechos Humanos YouTube Channel*, 28 October 2013.

35 "Guyana: Situación DESC", *Comisión Interamericana de Derechos Humanos YouTube Channel*, 20 March 2015. *Coverage of the situation of LGBT people starts at minute 19.00*.



JAMAICA

Provisions in force

- **Offences Against the Person Act** (1864).

Buggery

Article 76. Unnatural Crime.

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

Attempted Buggery

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.

Proof of carnal knowledge

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.

Gross indecency

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 misdemeanour, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for a term not exceeding 2 years, with or without hard labour.

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

Human rights situation

In August 2017, Jamaican fashion designer, reality TV star and gay LGBTI activist Dexter Pottinger was found stabbed to death in his Kingston home.[1] A neighbour reported hearing "Help!" and "Murder!" screams from the victim's house, but did not immediately notify the police.[2] According to early reports, the murder was not ruled as a hate

1 "Dexter Pottinger dead: Gay activist and face of Jamaica Pride found murdered in his home", *Independent*, 2 September 2017.

2 "To Jamaica's murdered gay icon Dexter Pottinger #RestInPower", *Dazed*, 6 September 2017.

crime.[3] A suspect was allegedly arrested and charged a few days after the episode.[4]

The repeal or retention of buggery laws in the country has been a divisive topic within the Christian Church.[5] The Council of Churches reportedly held a special sitting in July 2017 to arrive at a uniformed position after the Head of the Anglican Church in Jamaica and the Cayman Islands[6] and the President of the Jamaica Theological Seminary[7] supported the decriminalisation of same-sex consensual acts among adults and the prohibition of marital rape.[8]

In October, "Intimate Conviction", a two day conference examining the Christian Church and anti-sodomy legislation across the Commonwealth was held in Kingston.[9] The Jamaica Evangelical Alliance and the Seventh-day Adventist Church in Jamaica allegedly distanced themselves from the conference.[10] A conservative Christian group has reportedly accused Jamaican judges of importing alien principles when deciding the cases challenging buggery laws[11] and faith-based groups have allegedly been lobbying for anti-LGBTI legislation.[12]

In January 2018, an American pastor known for opposing women's rights and for having repeatedly called for LGBT people to be executed (and who had previously been deported from, and denied entrance to, numerous countries) was banned from entering Jamaica (as requested by civil society through an online petition signed by almost 39,000 people and a letter to the government).[13] The decision was based on the Chief Immigration Officer's assertion that his statements were not conducive to the country's climate at that moment.[14] The pastor was reported reacting to the news by wishing the death of the activist that launched the petition.[15]

A Human Rights First report denounced the link between the criminalisation of consensual same-sex activity among adults and dancehall music,[16] and the role that it plays in perpetuating hate and violence towards LGBTI people in the country.[17] The media seems to have also contributed to the anti-LGBTI sentiment by constantly reporting alleged "gangs" of violent homosexual criminals.[18]However, during the last couple of years, writing,[19] films,[20] and music[21] aimed at visibilising LGBT lives[22] have proliferated and some local news portals, like The Gleaner,[23] have shown support of the rights of LGBTI people.

After successful Pride celebrations in 2017,[24] Montego Bay Pride march was held again in October 2018 and its organiser, Maurice Tomlinson, claimed that even though the event was incident-free, there was fear among participants.[25]

3 "Update: Suspect in Dexter Pottinger murder to be charged", *Jamaica Observer*, 2 September 2017.
4 "Man accused of killing Dexter Pottinger denied bail", *The Star*, 11 May 2018.
5 "Buggery Law Splits the Church in Jamaica", *Caribbean360*, 31 July 2017.
6 "Free Up Buggery! - Leader Breaks Ranks With Many Christian Colleagues", *The Gleaner*, 23 July 2017.
7 "Buggery Is A Moral Issue And Not A Criminal One - Roper", *The Gleaner*, 24 July 2017.
8 "Buggery Splits Church! - Rift Over Anal Sex Law Forces Council Of Churches To Call For Special Sitting", *The Gleaner*, 30 July 2017.
9 "Intimate Conviction", *Canadian HIV/AIDS Legal Network Website*, 16 May 2017.
10 "Buggery Backlash - Church Groups Distance Themselves From Conference", *The Gleaner*, 11 October 2017.
11 "Judicial Tyranny! - Church Group Weary Of Judges' Liberal Views On Buggery", *The Gleaner*, 19 May 2018.
12 "Chuck: Difficult Finding Middle Ground On Abortion, Buggery Laws", *The Gleaner*, 2 November 2018.
13 "Petition urges Jamaica to ban anti-LGBT U.S. pastor", *Washington Blade*, 2 January 2018; "Jamaicans have 48 hours to stop 'stone the gays' preacher", *Gay Star News*, 26 January 2018.
14 "Jamaica bans anti-gay Arizona pastor from visiting country", *The Guardian*, 29 January 2018.
15 "LGBTIs get hate preacher banned from Jamaica", *Gay Star News*, 30 January 2018.
16 "International stars turn to gay bashing", *The Star*, 25 March 2017.
17 *"The World as it Should Be". Advancing the Human Rights of LGBT People in Jamaica* (2015), 11.
18 "Gay, straight gang war leads to murders - May Pen mayor wants to reduce crime", *The Star*, 20 January 2017; "Irate homosexuals object to gully search", *Jamaica Observer*, 2 February 2017.
19 "Growing up gay in the Caribbean, I was in constant survival mode", *The Guardian*, 28 February 2017; "Who's Allowed to Hold Hands?", *The New York Times*, 1 September 2017; "Patrick Nelson", *London's Global University - The Equiano Centre Website*, 29 September 2017.
20 "Powerful Video Highlights the Dangers of Being LGBTQ in Jamaica", *Out*, 21 March 2017.
21 "Premiere: Listen to Rainbow Riots song Equal Rights to help fight for global LGBT+ equality", *Gay Times*, 16 May 2017.
22 "'We Are All Jamaicans!' - Transgender Woman Pleads For Tolerance", *The Gleaner*, 18 March 2018.
23 "Editorial: Break Shackles With The Courts And The Law", *The Gleaner*, 26 February 2017; "Editorial: Step In And Save Gay Gully Boys", *The Gleaner*, 6 April 2017; "Editorial: Mr Holness Should Listen To Bishop Gregory", *The Gleaner*, 27 July 2017.
24 "New Sense Of National Pride" (Nelson, Jaevion), *The Gleaner*, 5 August 2017.
25 "LGBT March With Pride In Spite Of Fear", *The Gleaner*, 18 October 2018.

In December 2018, The Guardian announced that Jamaica was "no longer the most homophobic place on Earth" on account of the work human rights advocates have been carrying out to promote respect, acceptance and inclusion of sexual and gender minorities.[26] Nevertheless, J-FLAG called to broaden the conversation about the rights of sexual and gender minorities,[27] and Jamaican LGBTI activist Jaevion Nelson recommended establishing a pro-poor advocacy agenda to address the intersections of poverty and SOGI.[28]

That same month, a House committee in charge of reviewing sexual offences legislation suggested putting buggery, among other controversial topics, to a referendum,[29] thus reigniting interest in Prime Minister Andrew Holness's pre-election prior proposal.[30] Activists strongly condemned the recommendations made by the committee.[31]

Statements by public officials

Former Minister of Education Ronald Thwaites: "[T]here is no place in our schools for violence or bullying based on differences in gender, ethnicity, religion, group identity, place of residence and/or sexual orientation. We will not allow persons to be discriminated [against]."[32]

Minister of Justice, Delroy Chuck: "The Government's position is clear and I will repeat it, the law will not be changed, save and except by a referendum. The buggery law will never be changed unless a referendum so decides.".[33]

Prime Minister Andrew Holness, 2018: "It's not my business [whether a prospective Cabinet member was gay]; neither is it my interest. Whatever is in my discretion to distribute politically, a person's sexuality or sexual orientation is not a criteria for the use of my discretion."[34]

National Human Rights Institution

Jamaica's National Human Rights Institution in accordance with the Paris Principles, is the Office of the Public Defender. There is no evidence that any work on SOGIESC issues has been carried out by the institution. However, Arlene Harrison Henry, who was designated Public Defender in 2015, publicly stated that LGBT people are entitled to equality, representation, and equal protection of laws.[35]

Existing legal challenges

Consensual same-sex sexual acts

Despite striking reports showing that up to 91% of Jamaicans believe lawmakers should make no attempt to repeal buggery laws,[36] decriminalisation efforts are also being channelled through strategic litigation before local courts.[37] The first hearing in this case, concerning Maurice Tomlinson, a gay LGBTI activist who escaped the country after authorities failed to investigate the reported threats against his life,[38] was held in January 2016.[39] This was followed by a two-year delay in the proceedings caused by discussions about the Public Defender, whose statutory job it is to support the human rights of Jamaican citizens, joining the matter as an interested party.[40] In November 2018, the Court of Appeal ruled against the Public Defender, while granting standing to ten religious groups in favour of the defendant's position.[41] Before this case, AIDS-free World had lodged a complaint with the Jamaica Supreme Court on behalf of a man whose landlord reportedly evicted him from of his home because of his sexual

26 "Welcome to Jamaica - no longer 'the most homophobic place on Earth'", *The Guardian*, 6 December 2018.
27 "J-FLAG calls for broader conversation on the Rights of LGBT Jamaicans", *J-FLAG Twitter*, 26 July 2017.
28 "Jamaica Needs a Pro-Poor LGBT Rights Movement", *Jaevion Nelson Official Website*, 17 January 2018.
29 "Let the people vote", *Jamaica Observer*, 12 December 2018.
30 "In Jamaica: House committee backs referendum on abortion, changing buggery laws", *Stabroek News*, 12 December 2018.
31 "Tenesha Myrie: A Bunch Of Cowards", *The Gleaner*, 17 December 2018.
32 "No Place in School for Violence, Discrimination – Rev. Thwaites", *Jamaica Information Service*, 29 January 2016.
33 "Chuck: Buggery law will only be changed by a referendum", *Jamaica Observer*, 16 June 2017.
34 "Editorial: PM Has Advanced, But Must Do More On Gay Rights", *The Gleaner*, 19 April 2018.
35 "Harrison-Henry Vows To Defend Rights Of All", The Gleaner, 9 February 2015.
36 "Majority Of Jamaicans Resolute On Keeping Buggery Law Intact", *Jamaica Gleaner*, 6 October 2014.
37 "Toronto lawyer challenges Jamaica's anti-homosexuality law", *CBC.CA*, 21 February 2016; "Decriminalizing homosexuality: the cases of Canada and Jamaica", *Canadian HIV/AIDS Legal Network Website*, 4 March 2016.
38 "Constitutional challenge to Jamaica's anti-sodomy law: questions & answers", *Canadian HIV/AIDS Legal Network Website*, 9 December 2015.
39 "Challenge to Jamaican anti-sodomy law gets under way", *76crimes Website*, 23 February 2016.
40 "Keep Her Out! - SG Urges Appeal Court Not To Allow Public Defender In Gay-Rights Case", *Jamaica Gleaner*, 24 February 2014.
41 "Statement: Jamaican Court of Appeal gives human rights a back seat", *Canadian HIV/AIDS Legal Network Website*, 9 November 2018; "Public Defender booted from case involving Jamaica's anti-sodomy law", *The Star*, 9 November 2018.

orientation.[42] The lawsuit, listed as the first domestic challenge to the country's anti-sodomy legislation, was later withdrawn due to concerns for the alleged victim's personal safety and that of his family.[43]

Freedom of speech

In 2012, Maurice Tomlinson filed a complaint against Jamaican television stations that refused to air "Love and Respect", a 30-second video paid advertisement calling for respect for the basic human rights of Jamaican LGBTI people, produced by human rights activists and AIDS-Free World.[44] He is currently pursuing an appeal with the support of the Canadian HIV/AIDS Legal Network.[45]

UN voting record

Jamaica was not a member of the Human Rights Council between 2011 and 2016, and therefore did not participate in the vote for the three SOGI resolutions. At the session of Third Committee of the UN General Assembly held in November 2016, Jamaica voted against the LAC amendment to remove Operative Paragraph 2,[46] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

Additionally, Jamaica abstained during the vote to adopt the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

To provide law enforcement agencies with appropriate LGBT sensitisation training was the only recommendation accepted by Jamaica in its 1st cycle UPR in October 2010.[47] All other 11 recommendations were rejected – calls for decriminalisation, non-discrimination and protection of LGBT human rights defenders. In its Final Report, the Working Group recorded the State's response: "Jamaica stressed that the issue of male homosexuality was one of great sensitivity in Jamaican society, in which cultural norms, values, religious and moral standards underlay a rejection of male homosexual behaviour by a large majority of Jamaicans; and that the Government was committed to ensuring that all citizens were protected from violence".[48]

At its 2nd cycle UPR in May 2015, Jamaica received 18 recommendations from States, of which it accepted only three: all of which were to do with the investigation and prosecution of violence acts against LGBT people and those defending their rights.[49] The rejected, or 'noted', recommendations were primarily to do with criminalisation, but also many to do with codifying non-discrimination provisions relevant to LGBT people. The State mentioned that "several initiatives had been put in place" in order to create better understanding of SOGI-related issues in Jamaica, giving the example of police sensitisation in regard to in-force education on human rights, diversity training and support to LGBT people in the reporting of crime. Jamaica's next UPR commences in May 2020.

Treaty Bodies

The **Human Rights Committee (CCPR)** (November 2011) and the **Committee on Economic, Social and Cultural Rights (CESCR)** (June 2013) urged Jamaica to repeal its buggery laws, to send a strong message that harassment, discrimination or violence against LGBT persons would not be tolerated, and to swiftly and effectively investigate, prosecute and sanction individuals for such acts.[50] Both bodies also voiced their concern over the stigmatisation of people living with HIV/AIDS, fuelled by legislation

42 "Gay Jamaican man challenges country's anti-sodomy law", *Washington Blade*, 13 February 2013.

43 "Gay Jamaican man drops lawsuit against anti-sodomy law", *Washington Blade*, 2 September 2014; "Another Challenge To Buggery Laws", *The Gleaner*, 26 May 2013.

44 "Jamaican TV Stations TVJ and CVM Sued for Not Airing Ad Promoting Tolerance Towards Homosexuals", *News and Views by Dionne Jackson Miller Website*, 20 October 2012; "Jamaican lawsuit seeks OK for gay respect TV ad", *76crimes Website*, 28 May 2013.

45 "Love and Respect: Q&A on jamaican TV ad court case", *Canadian HIV/AIDS Legal Network Website*, 20 July 2015.

46 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

47 *Report of the Working Group on the Universal Periodic Review: Jamaica*, A/HRC/16/14, 4 January 2011.

48 *Report of the Working Group on the Universal Periodic Review: Jamaica*, A/HRC/16/14, 4 January 2011, para. 32.

49 *Report of the Working Group on the Universal Periodic Review: Jamaica*, A/HRC/30/15, 20 July 2015.

50 *Consideration of reports submitted by States parties under article 40 of the Covenant - Concluding observations of the Human Rights Committee - Jamaica*, CCPR/C/JAM/CO/3, 17 November 2011, para. 8; *Concluding observations on the combined third and fourth periodic reports of Jamaica, adopted by the Committee at its fiftieth session (29 April–17 May 2013)*, E/C.12/JAM/CO/3-4, 10 June 2013, para. 8, 9.

criminalising same-sex consensual relations among adults due to the association of homosexuality with the medical condition, and the negative impact on the enjoyment of their social and cultural rights.[51]

In July 2015, the **Committee on the Rights of the Child** (**CRC**) expressed concern about gaps in the overall data collection in Jamaica, in particular with respect to LGBT children.[52]

In November 2016, the **Human Rights Committee** reiterated its 2011 suggestions made to Jamaica regarding discrimination against LGBTI people and people living with HIV/AIDS and the criminalization of consensual same-sex activity among adults.[53]

In May 2017, the **Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW)** noted with concern that emigration is mostly driven by poverty, unemployment and violence targeting sexual and gender minorities, among others.[54]

Special Procedures

In October 2010, the **Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**, touched upon the harsh living conditions of gay men deprived of their liberty.[55]

Organisation of American States (OAS)

As a member of the Organisation of American States (OAS), Jamaica is under the jurisdiction of the Inter-American Commission on Human Rights (IACHR). The IACHR visited Jamaica in 2011 and reported on SOGI issues[56] and in 2014 it held two *ex officio* public hearings, one in March and another one in October, to follow up on the Report. In both hearings, civil society organisations and the State submitted updated information with regard to the issues discussed in that 2012 Report.[57]

At the General Assembly of the OAS, Jamaica joined the resolutions on Human Rights, Sexual Orientation, and Gender Identity and Expression adopted by that body since 2008. However, since 2013, Jamaica has introduced footnotes to every resolution on the matter approved since then, in an attempt to limit or reject the content of these international instruments. The footnote inserted in 2013 (fn. 3) reads: "The Government of Jamaica is unable to join the consensus on the approval of this resolution, given that the terminology of gender expression, as proposed, is ambiguous and has the potential to impose one value system over another.[58] Furthermore, this term and other new terminologies used in the text, have not gained international acceptance nor are they defined in Jamaica's domestic law." The exact same footnote was repeated in 2014 (fn. 6).[59]

However, since 2016 (there was no resolution in 2015), Jamaica slightly shifted the tone of its footnote and declared: "The Government of Jamaica is fully committed to protecting the human rights of all its citizens including from any form of violence in accordance with the rule of law and the Jamaican Constitution. Jamaica, however expresses its reservation regarding terminologies such as gender identity and gender expression which are not defined in Jamaican law and have not gained international acceptance" (fn. 1).[60]

In July 2018, the Inter-American Commission on Human Rights issued a report declaring the admissibility of a petition against the buggery law.[61] The previous month, another petition was submitted to the Commission by a transgender woman, a lesbian woman and a gay man contesting Sections 9 and 12 of the Sexual Offences Act.[62]

51 *Consideration of reports submitted by States parties under article 40 of the Covenant - Concluding observations of the Human Rights Committee - Jamaica*, CCPR/C/JAM/CO/3, 17 November 2011, para. 9; *Concluding observations on the combined third and fourth periodic reports of Jamaica, adopted by the Committee at its fiftieth session (29 April–17 May 2013)*, E/C.12/JAM/CO/3-4, 10 June 2013, para. 28.

52 *Concluding observations on the combined third and fourth periodic reports of Jamaica*, CRC/C/JAM/CO/3-4, 10 March 2015, para. 16.

53 *Concluding observations on the fourth periodic report of Jamaica*, CCPR/C/JAM/CO/4, 22 November 2016, para. 15-20.

54 *Concluding observations on Jamaica in the absence of a report*, CMW/C/JAM/CO/1, 23 May 2017, para. 62.

55 *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his Mission to Jamaica*, A/HRC/16/52/Add.3, 11 October 2010.

56 Inter-American Commission on Human Rights, Report on the situation of human rights in Jamaica (2012).

57 "Jamaica: situación DDHH" (video), *Comisión Interamericana de Derechos Humanos YouTube Channel*, 28 March 2014; "Jamaica: seguimiento informe CIDH", *Comisión Interamericana de Derechos Humanos YouTube Channel*, 28 October 2014.

58 *Human rights, sexual orientation, and gender identity and expression*, AG/RES. 2807 (XLIII-O/13), 6 June 2013, fn. 3.

59 *Human rights, sexual orientation, and gender identity and expression*, AG/RES. 2863 (XLIV-O/14), 5 June 2014, para. 6.

60 *Promotion and protection of human rights* , AG/RES. 2887 (XLVI-O/16), 14 June 2016, fn. 1.

61 IACHR, *Report No. 80/18*. Petition 1850-11. Admissibility. *Gareth Henry, Simone Carline Edwards and families*. Jamaica. 2 July 2018.

62 "Three lodge petition against buggery law", *Nation News*, 6 June 2018.



SAINT KITTS AND NEVIS

Provisions in force

- **Offences against the Person Act** (Act No. 7 of 1873) (as amended up to 2002).

Abominable crime of buggery

Article 56. Sodomy and bestiality.

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

Attempt to commit the abominable crime

Article 57. Attempt to commit an infamous crime.

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

Human rights situation

In 2012, after an openly gay teenager was found shot in his head and chest, there was strong public sentiment that the attack was justified because of the victim's sexual orientation.[1]

In 2015, law enforcement officers attended a LGBT-sensitivity training programme that was lauded by Assistant Commissioner of Police Vaughn Henderson in the spirit of the constitutional principle of non-discrimination.[2] In late 2015, a media outlet interviewed three gay men from St Kitts and Nevis who said that "violence and harassment against the LGBT community is common and that police do little to stop it".[3] It was reported in December 2015 that a gay man was seeking asylum in Canada after suffering from two gay bashing attacks.[4]

In 2017, the US Human Rights Report reiterated its 2016 observation that "negative societal attitudes towards the LGBTI community impeded the operation of LGBTI organisations and the free association of LGBTI persons".[5] In fact, it has been reported that the country's first LGBT organisation, the St Kitts/Nevis Gay-Straight Alliance for Progress, only had its first meeting in January 2016.[6]

In 2018, a Human Rights Watch report quoted a gay male interviewee from St. Kitts and Nevis who said "I have to leave to be me" due to the discriminatory environment in which he lived.[7] The report also found that there was a general climate of homophobia, with family members as a major source of discrimination and violence. For instance, a 20-year-old gay man reported how his mother had threatened to kill her sons if they grew up to become "anti-man" (an expression used to derogatory refer to LGBT people).[8]

1 Arshy Mann, "Can St Kitts protect its gay citizens?", *Xtra*, 23 December 2015.
2 Loshaun Dixon, "Security personnel participate in LGBT Sensitivity Training", *Skn Vibes*, 14 June 2015.
3 "Gay man opens up about homophobia in St Kitts", *Xtra*, 22 December 2015.
4 Nicholas Keung, "Refugee board told gay-bash victim St. Kitts can protect him", *The Star*, 27 December 2015.
5 United States Department of State, *Human Rights and Labor, Saint Kitts and Nevis 2016 Human Rights Report* (2017); United States Department of State, *Human Rights and Labor, Saint Kitts and Nevis 2016 Human Rights Report* (2016).
6 "LGBT safety in St Kitts and Nevis", *Xtra*, 23 February 2016; "St. Kitts/Nevis Gay-Straight Alliance for Progress" *Facebook Website*.
7 Human Rights Watch, *"I Have to Leave to Be Me" Discriminatory Laws against LGBT People in the Eastern Caribbean* (2018), p. 27.
8 Human Rights Watch, *"I Have to Leave to Be Me" Discriminatory Laws against LGBT People in the Eastern Caribbean* (2018), p. 30.

Statements by public officials

In 2013, the Inter-American Commission on Human Rights (IACHR) welcomed the statement delivered by former Prime Minister of St. Kitts and Nevis, Denzil Douglas.[9] Douglas had recommended "having a very serious look" at laws that criminalise "those who are engaged in sex work for pay", and "those who are considered to be homosexuals".[10] However, less optimistic press reports indicated that, despite giving pro-LGBT comments to international audiences, Douglas had done nothing to remove the laws while he was in office, and that he had even been caught on camera making homophobic statements against his political opponent.[11]

In 2015, Prime Minister Dr Timothy Harris stated, "It is clear that Caribbean countries must continue to confront the issues that are related to the elimination of stigma and discrimination and disentangle them from the misperception that this is a gay agenda".[12]

UN voting record

In 2011, 2014 and 2016 Saint Kitts and Nevis was not a member of the Human Rights Council and, therefore, did not participate in the vote for the SOGI resolutions.[13] At the session of Third Committee of the UN General Assembly held in November 2016, Saint Kitts and Nevis voted against the LAC amendment to remove Operative Paragraph 2,[14] and against the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Saint Kitts and Nevis voted against the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

Saint Kitts and Nevis did not accept any of the eight recommendations regarding decriminalisation and non-discrimination at its 1st cycle UPR in January 2011, the State delegation noted that it protects, not excludes, MSM in its HIV programming, and that despite the existence of the criminalising legislation, LGBT people enjoyed the same freedoms as everyone else in the "tolerant society" that is Saint Kitts and Nevis.[15]

At its 2nd UPR cycle in 2015, the State also received eight recommendations concerning the same issues: decriminalisation and non-discrimination.[16] During the interactive dialogue, the delegation completely denied the existence of any formal or positive legal discrimination against persons based on their sexual orientation.[17] Saint Kitts and Nevis' 3rd UPR session commences in May 2019.

Organisaiton of American States (OAS)

As a member of the General Assembly of the Organisation of American States (OAS), Saint Kitts and Nevis has joined the resolutions on Human Rights, Sexual Orientation, and Gender Identity and Expression adopted by this body since 2008.[18] However, in 2013, Saint Kitts and Nevis joined Dominica and Saint Vincent and the Grenadines to insert a joint footnote stating that the delegations of these three countries were "unable to join consensus on the approval of this resolution". It bears mentioning that Saint Kitts and Nevis withdrew from the list of countries that inserted further footnotes in 2014 and 2016 resolutions.

9 "IACHR acknowledges recent steps taken by several OAS Member States to further equality for LGBTI persons", *IACHR Website*, 21 November 2013.

10 Daniel Carter, "Prime Minister of country that imprisons gays for 10 years calls for public to "be light" on gays", *Pink News*, 30 August 2013.

11 Arshy Mann, "Can St Kitts protect its gay citizens?", *Xtra*, 23 December 2015.

12 "UN General Secretary joins St.Kitts-Nevis Prime Minister in Call for End to HIV/AIDS Stigma and Homophobia", *Times Caribbean*, 4 July 2015.

13 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011; Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014; Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

14 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

15 *Draft report of the Working Group on the Universal Periodic Review Saint Kitts and Nevis*, A/HRC/WG.6/10/L.10, 3 February 2011, para. 35.

16 *Report of the Working Group on the Universal Periodic Review: Saint Kitts and Nevis*, A/HRC/31/16, 20 November 2015.

17 *Report of the Working Group on the Universal Periodic Review: Saint Kitts and Nevis*, A/HRC/31/16, 20 November 2015, para. 16.

18 "Rapporteurship on the Rights of LGBTI Persons: Links" *IACHR Website.*



SAINT LUCIA

Provisions in force

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

Buggery / Attempted buggery

Section 133. Buggery.

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

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

(b) ten years, in any other case.

(2) Any person who attempts to commit buggery [...] 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.

Gross indecency

Section 132. Gross Indecency.

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

(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.

Human rights situation

In 2011, the country's first LGBT human rights office—which had recently been opened by United and Strong a registered NGO based in St Lucia that focuses on SOGI issues—was maliciously [alleged] burned to the ground within months of opening.[1]

Also, In 2011, three gay American tourists were subject to hate crime based on their sexual orientation where the perpetrators used anti-gay slurs during the attack.[2] Following the attack, the minister for tourism expressed his "sincere apologies" to the victims.

The experience of sexual- or gender-diverse tourists is very different from citizens, as the government aims to attract tourists to visit the country.[3] There have been occasional reports of violence against LGBT people,[4] but underreporting is common for reasons of fear or State apathy. For instance, no progress had been made in the investigation of the 2015 killing of Marvin Anthony Augustin, which appears to have been a hate crime.[5]

Furthermore, in terms of economic, social and cultural rights, LGBTI persons were denied access

1 Tris Reid-Smith, "How gay group United and Strong is changing the island of Saint Lucia", *Gay Star News*, 4 July 2012.

2 A Pawlowski, "St. Lucia 'saddened' by attack on tourists", *CNN*, 15 March 2011.

3 Matt Risley, "St Lucia: A Caribbean paradise unlike any other...", *Gay Times*, 21 September 2017.

4 Mary Lawlor, "'They put a knife to my throat and told me I shouldn't be speaking on TV about gay men'", *The Journal.ie*, 1 November 2015.

5 "After 56 stabs, Marvin's killer is still out there", *St Lucia News Online*, 22 May 2015.

to rental homes or were forced to leave rental homes and were denied jobs or left jobs due to a hostile work environment.[6]

In 2015, United and Strong organised a rights sensitisation training programme for law enforcement officers.[7] In October 2017, the same organisaiton co-organised the 5th annual Caribbean Women and Sexual Diversity Conference (CWSDC) in St Lucia.[8] One outcome of the conference was the establishment of the Transgender Caucus Group for the Eastern Caribbean.[9]

In 2016, United and Strong called on political parties "to make a full position statement on the issue of LGBT discrimination", after a video showing the Minister of Tourism using a derogatory word sparked outrage on social media.[10] In fact, in 2015, the interplay of buggery laws and tourism was the subject of a special report by Telesur, and same-sex tourism has also been proposed as a new source of tourism revenue by United and Strong.[11]

In November 2017, United and Strong criticised the Minister for External Affairs Sarah Flood-Beaubrun for organising the World Congress of Families, which promoted heteronormativity and opposed 'homosexuality'.[12] It expressed concern about the Acting Prime Minister, Guy Joseph, and another politician, Lenard Montoute, attending the event as well. Currently, in 2019 United and Strong focuses on dialogue with political groups and individuals, in government and opposition.[13]

Statements by public officials

In 2017, the External Minister, Sarah Flood-Beaubrun, reiterated her position against the decriminalisation of buggery, and stated that the country will remain "resolute" against international pressure: "Even if it's a long struggle in some countries, this is one country that we will continue struggling".[14] She has also claimed that same-sex parenting can "set children up for failure" because it was against the "natural order".[15]

National Human Rights Institution

The Office of the Parliamentary Commissioner does not appear to have done any work on sexual orientation or gender identity.

UN Voting Record

In 2011, 2014 and 2016 Saint Lucia was not a member of the Human Rights Council and, therefore, did not participate in the vote for any of the SOGI resolutions.[16]

At the session of Third Committee of the UN General Assembly held in November 2016, Saint Lucia voted against the LAC amendment to remove Operative Paragraph 2,[17] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

Additionally, Saint Lucia abstained during the vote to adopt the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

At its 1st cycle UPR in January 2011, St Lucia received eight recommendations. It accepted two which both concerned investigation and protection of SOGI-related human rights defenders. Having asserted that non-discrimination in the Constitution was inclusive of all St Lucians, the

6 Amnesty International, *Submission for the Universal Periodic Review of Saint Lucia* (2015), 2.

7 "Rights Sensitisation for Law Enforcement Officers", *United and Strong (website)*, 21 May 2015.

8 Rehani Isidore, "Caribbean LBT Women's Conference Marks Historic 5th year", *HTS St Lucia*, 10 October 2017.

9 "LBTI conference births new Caribbean trans group", *St Lucia News Online*, 17 October 2017.

10 "NGO wants St Lucia political parties to state position on LGBT", *Jamaica Observer*, 25 May 2016.

11 "Saint Lucia Welcomes Gay Tourists But Maintains Discriminatory Laws", *TeleSUR English YouTube Channel*, 17 July 2015; "United and Strong advocates for "same-sex tourism"", *St Lucia News Online*, 29 June 2015.

12 "United & Strong Accuses Flood Beaubrun of Having 'Hate Agenda'", *The Voice*, 24 November 2017.

13 "United & Strong Officials Meet Opposition Leader", *St Lucia Times*, 13 February 2019.

14 "Laws against buggery and prostitution in St. Lucia will not change: Flood-Beaubrun", *St Lucia News Online*, 21 November 2017.

15 Rehani Isidore, ""We should not set children up for failure" – Sarah Flood-Beaubrun", *HTS St Lucia*, 5 December 2017.

16 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011; Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014; Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

17 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

delegation made an interesting comment during its Interactive Dialogue: "Matters regarding how a society interacts, what principles it is governed by and how it will evolve in the future clearly reveal a need for advocacy and changes in attitude of certain sectors of society. The question remains, however, whether such advocacy should be the role of the Government, or whether it should be carried out by those who believe they are discriminated against".[18]

In its 2nd cycle UPR in November 2015, the State revealed that it was "considering enacting ordinary legislation addressing discrimination on the grounds of sexual orientation", as suggested by the Constitutional Reform Commission, referencing its 2006 Labour Code that already outlaws such discrimination. Furthermore, the delegation indicated that "all Saint Lucians, including LGBT persons, were afforded full protection under the Constitution", and that judicial redress was afforded to "any individual" regardless of sexual orientation. Saint Lucia received a total of 13 SOGI-related recommendations.[19] All recommendations to repeal laws criminalising same-sex consensual acts or legislation that may otherwise discriminate against LGBT people were rejected.

Only three recommendations (and one in part) were accepted, all of them referring to awareness-raising campaigns and "strengthening the fight" against discrimination based on sexual orientation and gender identity. Saint Lucia's next (3rd) UPR session starts in November 2020.

Organisation of American States (OAS)

As a member of the General Assembly of the Organisation of American States (OAS), Saint Lucia has joined the resolutions on Human Rights, Sexual Orientation, and Gender Identity and Expression adopted by this body since 2008 (see all OAS-GA Resolutions since 2008).[20]

However, in 2013, Saint Lucia announced it would insert a footnote to that year's resolution (fn. 7). The following year, Saint Lucia inserted a footnote that reads as follows: "Saint Lucia is unable to join consensus on the approval of this resolution since we are of the view that the term 'gender expression' is one that is not thoroughly defined or accepted internationally. Moreover, not only is the expression heavily nuanced but most importantly it is currently not defined in domestic law" (fn. 12).

Saint Lucia inserted no footnote in the 2016 resolution (there was no resolution in 2015).

However, in both 2017 and 2018, Saint Lucia again included footnotes stating that it was "unable to agree to the section" because "most of the terms are not defined under international agreements and resolutions to which Saint Lucia is committed"[21] and the section "does not conform to its domestic laws".[22]

18 *Report of the Working Group on the Universal Periodic Review: Saint Lucia*, A/HRC/17/6, 11 March 2011, para. 65.
19 *Report of the Working Group on the Universal Periodic Review: Saint Lucia*, A/HRC/31/10, 18 November 2015.
20 "Rapporteurship on the Rights of LGBTI Persons: Links" *IACHR Website.*
21 OAS General Assembly, "Promotion and protection of human rights", AG/RES. 2908 (XLVII-O/17), 21 June 2017, footnote 8.
22 OAS General Assembly, "Promotion and protection of human rights", AG/RES. 2928 (XLVIII-O/18), 5 June 2018, footnote 8.



SAINT VINCENT AND THE GRENADINES

Provisions in force

- **Criminal Code (1990)**

Buggery

Section 146.

Any person who:

(a) commits buggery with any other person; [...]

(c) permits any person to commit buggery with him or her;

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

Gross indecency

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.

Human rights situation

In 2010, Prime Minister Ralph Golsalves, made disparaging comments about opposition Senator Vynnette Frederick, suggesting she was a lesbian. Based on those remarks, she brought a claim against the Prime Minister on the basis that those comments had negatively impacted her performance at the elections.[1] In 2015, Frederick called for the country to discuss the issues of same-sex relationships, and added that she was well positioned to lead the discussion because of her perceived sexuality.[2]

In 2015, a gay author from St Vincent published a book after he moved to Canada, based on his personal experiences of anti-gay violence and prejudice while growing up.[3]

This echoes the findings in the 2017 US Department of State Human Rights Report that there remains social discrimination against LGBTI persons. Although local observers believed such attitudes of intolerance were slowly improving, members of professional and business classes were more inclined to conceal their LGBTI sexual orientation.[4] More recently, a 2018 Human Rights Watch report found many instances of violence and discrimination, often committed by the police or family members.[5]

In August 2018, a 25-year-old man [allegedly] murdered Spiritual Baptist cleric Ian Enoch during a same-sex encounter: he claimed that Enoch had

1 "Frederick's complaints against Gonsalves contains info from separate meetings", *iWitness News*, 1 December 2011.

2 "Senator wants conversation on same-sex relationships", *iWitness News*, 25 March 2015.

3 Dinah Zeldin, "Why gay author from St Vincent only came out in Canada", *Xtra*, 26 November 2015.

4 United States Department Bureau of Democracy, Human Rights and Labor, *Saint Vincent and the Grenadines 2017 Human Rights Report* (2016).

5 Human Rights Watch, *"I Have to Leave to Be Me" Discriminatory Laws against LGBT People in the Eastern Caribbean* (2018).

previously subjected him to a non-consensual sexual assault previously.[6]

Statements by public officials

In September 2018, the Prime Minister Ralph Gonsalves said that while it was wrong for transgender women to "shock people's sensibilities and sensitivities", but also it was also wrong to assault them after two transgender women were beaten in Calliaqua.[7] While he observed that same-sex intimacy remains criminalised, he said, "I don't know of anybody who has been prosecuted for homosexual conduct whether male or female".[8] He added that he was not making a case for decriminalisation, but for an "intelligent conversation" on whether it should be decriminalised.

National Human Rights Institution

Saint Vincent and the Grenadines does not have a National Human Rights Institution in accordance with the Paris Principles.

UN voting record

In 2011, 2014 and 2016 Saint Vincent and the Grenadines was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of any of the SOGI resolutions.[9]

At the session of Third Committee of the UN General Assembly held in November 2016, Saint Vincent and The Grenadines voted against the LAC amendment to remove Operative Paragraph 2,[10] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Saint Vincent and the Grenadines abstained during the vote to adopt the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

At its 1st cycle UPR in May 2011, the State rejected 11 recommendations to lift discriminatory laws and practices, including the repeal of Section 146 (in line with the Human Rights Committee Concluding Observations in 2008).[11] In response, the State said that its current legislation was supported by society and there was no call to repeal it, "[in] n the context of the moral, societal and cultural make-up of the State". In this vein, Saint Vincent and the Grenadines compared its own legal situation to that of the United Kingdom arguing that it had taken "hundreds of years" for the UK to repeal similar legislation, and "the harsh nature of the sentences imposed under British law," comparing them to the "relatively short period of time that Saint Vincent and the Grenadines has been an independent state, and the less punitive sanctions involved".[12]

In its 2nd cycle UPR, Saint Vincent and the Grenadines once again rejected all SOGI-related recommendations. During the interactive dialogue, the delegation indicated that criminalising provisions "had existed for a long time and that the precepts underlying them had overwhelming public support in the country's Christian society espousing Judaeo-Christian values in the Caribbean context". However, changes in those values were acknowledged as "occurring, particularly among sections of young people". The delegation went on to stress that "there had been no imprisonments" based on the criminalising provisions, but at the same time, as it did in its 1st cycle, insisted on the fact that there was "no public or legislative appetite to revise any of [these] laws".[13]

Saint Vincent and the Grenadines' next URP starts in May 2021.

6 "St Vincent: Man says he killed preacher during same-sex encounter", *iWitness News*, 20 August 2018.

7 "Unacceptable to beat up gays – PM Gonsalves", *Searchlight*, 7 September 2018.

8 *Ibid*.

9 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011; Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014; Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

10 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

11 *Concluding observations of the Human Rights Committee ST. Vincent and the Grenadines*, CCPR/C/VCT/CO/2, 24 April 2008.

12 *Draft report of the Working Group on the Universal Periodic Review: Saint Vincent and the Grenadines*, A/HRC/WG.6/11/L13, 13 May 2011, para. 29.

13 *Draft report of the Working Group on the Universal Periodic Review: Saint Vincent and the Grenadines*, A/HRC/WG.6/25/L.2, 18 May 2016, para. 44.

Treaty Bodies

In 2015, the **Committee on the Elimination of Discrimination Against Women** noted that women in same-sex relationships are not covered by the 2015 Domestic Violence Act, and recommended this exclusion be rectified.[14]

In 2017, the **Committee on the Rights of the Child** expressed concern regarding the criminalisation of consensual same-sex conduct between men, which may penalise boys above 16 years of age and perpetuate the notion that LGB children have a psychosocial disorder.[15] It urged the State to decriminalise consensual same-sex conduct and raise public awareness of the equality of and the importance of not discriminating against LGBT people, and to fully respect the diversity of children's sexual orientation.[16]

Organisation of American States (OAS)

As a member of the General Assembly of the Organisation of American States (OAS), Saint Vincent and the Grenadines has joined the resolutions on Human Rights, Sexual Orientation, and Gender Identity and Expression adopted by this body since 2008 (see all OAS-GA Resolutions since 2008).[17] In 2013, Saint Vincent and the Grenadines, along with Dominica and San Kitts and Nevis, inserted a footnote stating that the delegations of these three countries were "unable to join consensus on the approval of this resolution" (fn. 2). The Government further stated that "the term 'gender expression' is one that is not thoroughly defined internationally or that has international acceptance" and suggested that the discourse at the OAS "should be confined only to language which has been recognized or approved by the United Nations". In 2016, Saint Vincent and the Grenadines withdrew from the list of countries inserting footnotes. Further, at the OAS General Assembly in June 2016, Minister of Economic Planning and Sustainable Development of Saint Vincent and the Grenadines, Camillo Gonsalves, described the Orlando shooting as a "tragic and heinous event" and said that his country offered its "support in ridding the world of hate and the tools of hate".[18]

However, despite these positive sentiments, in 2017 and 2018, Saint Vincent and Grenadines again inserted a limiting footnote in the section on the human rights and prevention of discrimination and violence against LGBTI people.[19]

14 *Concluding observations on the combined fourth to eighth periodic reports of Saint Vincent and the Grenadines*, CEDAW/C/VCT/CO/4-8, 28 July 2015.

15 *Concluding observations on the combined second and third periodic reports of Saint Vincent and the Grenadines*, CRC/C/VCT/CO/2-3, 13 March 2017, para. 22.

16 *Id.*, para. 23.

17 "Rapporteurship on the Rights of LGBTI Persons: Links" *IACHR Website.*

18 "Media Center: Press Releases: E-074/16", *OAS Website.*

19 OAS General Assembly, "Promotion and protection of human rights", AG/RES. 2908 (XLVII-O/17), 21 June 2017, footnote 10; OAS General Assembly, "Promotion and protection of human rights", AG/RES. 2928 (XLVIII-O/18), 5 June 2018, footnote 11 " ... the equality of all human beings as enshrined in its Constitution. It is necessary to underscore that some of the terms in this resolution are not defined in the domestic laws of Saint Vincent and the Grenadines or internationally. Accordingly, Saint Vincent and the Grenadines disassociates itself from those terms that are incompatible with and contrary to its national laws, reserving its rights to interpret the terms of this resolution."

CRIMINALISATION

ASIA

STATE-SPONSORED HOMOPHOBIA 2019



AFGHANISTAN

Provisions in force

A new Penal Code came into force on 14 February 2018. While the new legislation was welcomed as a "a milestone in the country's criminal justice reform",[1] it explicitly criminaliseS same-sex sexual conduct though the punishment has been reduced. Previously, Article 427 of the 1976 Penal Code imposed a long imprisonment term for the offence of "pederasty". Furthermore, all sexual contact outside marriage was punishable with a maximum of the death penalty and a high-profile Islamic scholar has claimed that "there was broad consensus amongst scholars that execution was the appropriate punishment if homosexual acts could be proven".[2] Notably, the practice of the practice of *bachebazi* - which involves the sexual abuse of underage boys - is now explicitly criminalised under Chapter 5 of Book 4 of the new Penal Code.[3]

- **Penal Code** (2017). Book Number Four: Crimes against Chastity and Public Morals.

***Chapter Two**: Adultery and its Penalty.*

Mosaheghe

Section 645. *Mosaheghe.*

A person who commits "Mosahege"[4] with another person, each of the former shall be sentenced to small imprisonment, not exceeding one year.

***Chapter Three**: Sodomy and its Penalty.*

Sodomy

Section 646. Crime of Sodomy.

(1) A person who commits sodomy with another female or male, shall be punished in accordance with the provisions of this chapter.

(2) For the purpose of this section, sodomy happens by the penetration of a male sexual organ into a female or a male anus, not considering the depth of the penetration.

Penalty for sodomy

Section 647.

Those who commit sodomy, shall be sentenced to medium imprisonment not exceeding two years.

Aggravation of sodomy

Section 648.

In one of the following cases commitment of the acts, specified above, is considered to be aggravating conditions and shall be sentenced to medium imprisonment, exceeding two years:

1 "UNAMA welcomes Afghanistan's new penal code - Calls for robust framework to protect women against violence", *UNAMA* (website), 22 February 2018.

2 Aria Ahmadzai, "Afghanistan LGBT community living under threat of death", *BBC News*, 7 October 2016.

3 Sayed Jalal Shajjan, "The revised Afghanistan criminal code: an end for Bacha Bazi?", *South Asia @ LSE* (website), 24 January 2018.

4 Mosahegheh مساحقی / مساحقه= traditionally feminine same-sex sexual relationship does not involve penetration, it is all about touching both sexes and sexual pleasure.

(1) In the case where the person against whom the crime has been committed is one of the temporary or permanent "Maharem" (*with whom marriage is prohibited according to rules of Islam*) of the offender.

(2) In the case where the offender is a tutor, teacher, or servant of the person against whom the crime has been committed or the latter has, one way or another, has authority or influence over the former.

(3) In the case where the person against whom the crime has been committed is affected by the genital disease because of the offenders disclaim of having sexually transmitted diseases.

Tafkhiz

Section 649. *Tafkhiz.*

When the male offender commits "Tafkhiz"[5] with another man, the former shall be sentenced to small imprisonment (three months to a year).

Chapter 4. *Ghavadi.*

Ghavadi

Section 650. Ghavadi.

(1) "Ghavadi" is to incite two or more people to commit adultery or "sodomy" by introducing them to each other or finding them a place to do so. In recognition of the crime "Ghavadi", repetition is not important.

(2) Those who are convicted of "Ghavadi" shall be punished in accordance with the provisions of this chapter.

Human rights situation

LGBT people face significant violence and discrimination from the State, their own families, and society at large. However, there is sparse evidence, anecdote and data being reported on the situations of sexual and gender minorities in the country, and there are no SOGI advocacy organisations or networks known of.

In 2004, an American adviser to the Afghan government was purportedly arrested for consensual same-sex sexual acts with a local man.[6] In 2011, a video of police officers harassing a transgender person was published online.[7] Police violence is not uncommon, which includes the use of "honey traps" to arrest persons because of their perceived sexual orientation.[8] LGBT people have also been victims of "honour killing" by their families.[9] Such a practice is perpetuated by Article 398 of the Penal Code, which provides a reduced sentence for murder in cases of honour killings. In 2015, it was reported that a parallel justice court sentenced three gay men, including one boy who was 17-year-old, to execution by "wall-toppling". The 17-year-old survived and was allowed to live.[10]

However, same-sex sexual relations, both amongst men and amongst women (vastly under-reported) are not uncommon in the country. A researcher noted that men in Afghanistan would sometimes have consensual same-sex sexual relations, though they would not identify as gay in the Western sense; these relations are culturally accepted, as encapsulated in a common phrase that "women are for babies, men are for sex".[11]

5 Tafkhiz تفخیذ = (masculine or feminine) same-sex sexual relationships not involving any penetration criminalized in article 649.

6 "American Arrested in Afghanistan on Suspicion of Homosexuality, Soliciting, Officials Say", *PakTribune*, 1 September 2004.

7 Nushin Arbabzadah, "Will Afghanistan learn that cross-dressers are not criminals?", *The Guardian*, 13 November 2011.

8 "Fear, secrecy and danger a way of life for Afghan gays", *Inquirer.net*, 5 November 2016.

9 "Fear, secrecy and danger a way of life for Afghan gays", *Inquirer.net*, 5 November 2016; Frud Bezhan, "'Fake Life': Being Gay In Afghanistan", *RadioLiberty RFE*, 12 September 2017.

10 UN Assistance Mission in Afghanistan, *Afghanistan Annual Report 2015: Protection of Civilians in Armed Conflict* (2015), p. 51.

11 Michael Luongo, "What It's Like Growing Up Gay in Afghanistan", *The Daily Beast*, 7 December 2016.

In addition, the practice of *bachebazi*—which is a socially-embedded form of male paedophilia—continues to operate, especially among the upper echelons of society as well as the police and security forces.[12] According to a 2017 shadow report to the Committee against Torture, young boys are kept in slave-like conditions to be sexually abused by their masters and others.[13] This practice is now criminalised under Chapter 5 of Book 4 of the Penal Code, and prohibits a person from keeping a boy (or Mokhanas) for such a purpose, forcing a child to perform this practice, organising or participating in a *bache bazi* party.

Yet across Afghanistan, people who identify as gay or LGBT, particularly if in any way public, are faced with significant discrimination. For instance, in 2013, a gay Afghan man, Nemat Sadat, was the first person to come out publicly on social media, which led to his being pressured to resign from his position as a professor at the American University of Afghanistan and leave the country.[14]

Following the 2016 shooting by Afghan-born Omar Mateen at a gay club in Florida, USA, a news report found that many Afghans supported his actions on the basis that "homosexuality" was wrong.[15]

National Human Rights Institution

Although a senior member of Afghanistan Independent Human Rights Commission (AIHRC) attended the Workshop on the Role of NHRIs in Promoting and Protecting the Rights and Health of LGBTI in Asia and the Pacific in 2015, there has been no mention of sexual orientation or SOGI in the work of that Commission,[16] or ins its 2018 submission to the Universal Periodic Review.[17]

UN voting record

Afghanistan was not a member of the Human Rights Council between 2011 and 2016, and therefore did not participate in the vote for the three HRC resolutions on human rights, sexual orientation and gender identity in 2011, 2014 and 2016. At the session of Third Committee of the UN General Assembly held in November 2016, Afghanistan voted against the LAC amendment to remove Operative Paragraph 2,[18] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Afghanistan voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

In its 2nd UPR in 2014, the only recommendation regarding SOGI that Afghanistan received was not accepted: Norway urged to decriminalise.[19] A Joint Submission (SRI, IFPP, and AFGA) made a reference to men who have sex with men (MSM), and this appears to be the only mention of SOGI-related material in Afghanistan's entire 2nd cycle UPR.[20]

Afghanistan's 3rd UPR review is taking place at time of writing.

Treaty Bodies

In 2011, the **Committee on the Rights of the Child (CRC)** expressed "grave concern" about widespread sexual abuse and exploitation of children.[21] It urged the State to ensure that child victims of sexual abuse or exploitation are treated as victims and no longer charged and detained as offenders", and to address the sexual exploitation of children.[22]

12 Afghanistan Independent Human Rights Commission, *Causes and Consequences of Bacha Bazi in Afghanistan* (2014).

13 Civil Society and Human Rights Network, *Shadow Report to the Committee against Torture on the Occasion of the Examination of the Second Periodic Report of Afghanistan at its 60th Session* (2017), p. 6.

14 Frud Bezhan, "'Fake Life': Being Gay In Afghanistan", *RadioLiberty RFE*, 12 September 2017.

15 Tim Craig, "After Orlando attack, prevailing view is there are 'not any gays' in Afghanistan", *The Washington Post*, 19 June 2016.

16 "Promoting and protecting the rights of LGBTI people in Asia and the Pacific", *The Asia Pacific Forum of National Human Rights Institutions*, 23 February 2015; "Afghanistan Independent Human Rights Commission", *Official Website*.

17 Afghanistan Independent Human Rights Commission (AIHRC), Stakeholder submission to the 32nd Session of the Working Group on the UPR Human Rights Council, Jan-Feb 2019, UPR-info website.

18 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

19 *Report of the Working Group on the Universal Periodic Review: Afghanistan*, A/HRC/26/4, 4 April 2014.

20 Afghan Family Guidance Association (AFGA) et al., "Universal Periodic Review of Afghanistan 18th Session" (2014).

21 Concluding observations on Afghanistan's initial report to CRC, CRC/C/AFG/CO/1, 8 April 2011, para. 70.

22 Concluding observations on Afghanistan's initial report to CRC, CRC/C/AFG/CO/1, 8 April 2011, para. 71.



BANGLADESH

Provisions in force

- Penal Code (Act XLV of 1860).

Carnal intercourse against the order of nature

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.

Human rights situation

Intolerance and targeted violence against SOGI activists have sharply increased over the past years in Bangladesh, resulting in subdued efforts around organising and visibility, and the inevitable need for many LGBT folk to flee the country.

Reports suggest that the levels of violence and threat from religious radicals that LGBT people have been exposed to have remained high, and the State has not offered protection.[1] A shadow report by Boys of Bangladesh reported that the extremely hostile climate has led many activists to conceal their identity or leave the country.[2]

There are no registered SOGI-based NGOs in Bangladesh, although there are some long-standing CSOs, such as Boys of Bangladesh and the Bhandu Social Welfare Society, and online communities such as Roopbaan, Shambhab (a lesbian network) and Vivid Rainbow.

In February 2015, Avijit Roy, the author of Bangladesh's first scientific book (2010) on same-sex sexual identity, was savagely murdered on the streets of Dhaka, seemingly by religious fundamentalists.[3] According to a 2017 shadow report by Front Line Defenders, the murder and the growing threat of violence faced by LGBTI human rights defenders has resulted in the breakdown of activist networks and people have become more fearful of being associated with each other.[4]

Moreover, on 25 April 2016, the editor of *Roopbaan*, Xulhaz Mannan, and fellow activist Mahbub Tonoy, were gruesomely executed in an apartment in Dhaka.[5] The culprits have not been found,[6] although reporting in early- 019 indicates the investigation is ongoing.[7]

In May 2017, the police special forces—the Rapid Action Battalion—was mobilised to raid a gathering in Dhaka: 28 men were arrested, outed and exposed in the media as gay.[8] All were eventually released and granted bail.[9]

1 Country of Origin Information Report: Bangladesh Country Overview (European Asylum Support Office, 2017), 68.
2 Mir Abu Reyad, "Submission to the UN Human Rights Committee" (Boys of Bangladesh 2017), 6.
3 "US-Bangladesh blogger Avijit Roy hacked to death", BBC News, 27 February 2015.
4 "Victim Blaming: Bangladesh's Failure to Protect Human Rights Defenders" (Front Line Defenders 2016), 18.
5 "Two LGBT activists murdered in Bangladesh", *Erasing 76 crimes*, 25 April 2015.
6 Golam Mujtaba Dhruba, "A year after Xulhaz, Tonoy murders, police say charges not anytime soon", *BD News*, 25 April 2017.
7 "Militants stalked Xulhaz through LGBTQ platforms", The Dhaka Times, 18 January 2019.
8 Kyle Knight, "Bangladesh "Gay Party" Raid Flouts Privacy Rights", *Human Rights Watch*, 25 May 2017.
9 "Bangladesh: 28 men suspected of being gay freed", *Amnesty International*, 11 August 2017.

Statements by public officials

In response to the murders of the two LGBT activists in 2016, the Prime Minister Sheikh Hasina said that her government would not take responsibility for "untoward incidents" that befell people who expressed "objectionable opinions" and likened the activists' writing to "porn".[10]

National Human Rights Institution

In 2018, the National Human Rights Commission of Bangladesh (JAMAKON) proposed an anti-discrimination law along with the Law Commission of Bangladesh that includes sexual orientation and gender identity as a prohibited ground of discrimination.[11] Human Rights Watch reported that JAMAKON has advocated for the protection of sexual and gender minorities from discrimination and arbitrary arrest.[12]

UN voting records

In 2011, Bangladesh voted against the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.[13]

In 2014, it was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 27/32, the second SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to update the report produced in 2011.[14]

In 2016, Bangladesh voted against the adoption of Resolution 32/2 which created the mandate of the independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.[15]

At the session of Third Committee of the UN General Assembly held in November 2016, Bangladesh voted against the LAC amendment to remove Operative Paragraph 2,[16] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

Additionally, Bangladesh voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

While referencing "family values" at its 2nd cycle UPR in April 2013, the Bangladeshi Minister for Foreign Affairs stated that LGBT people should be protected from violence and discrimination in law.[17] Bangladesh accepted a recommendation to carry out sensitisation training with public officials regarding SOGI discrimination at its 1st UPR, but this issue was not picked up at its 2nd cycle review, nor is there evidence that such sensitisation has significantly occurred.[18]

During its 3rd cycle of the UPR carried out in May 2018, Bangladesh received 11 SOGIESC recommendations. It noted (functionally rejected) all of them. Argentina, Chile, Honduras, Mexico and Slovenia called for the decriminalisation of consensual same-sex sexual relations (in particular, Section 377 of the Criminal Code). Belgium, Brazil, Italy, Mexico and Norway focused on the violence and discrimination suffered by the LGBTIQ community, asking the State to take necessary steps to fight against those scourges. Belgium and Germany also recommended the State to protect human rights defenders and activists from the LGBTIQ community from threats and violence, ending impunity by conducting thorough investigation of potential violations of their rights. The State referred to the SOGIESC situation during the Session, expressing that their reluctant attitude towards the recommendations received on this

10 "Campaign of terror against Bangladesh's liberal voices", *The Economist*, 27 April 2016.

11 "NHRC consultation builds case for protecting transgender rights", *Asia Pacific Forum of National Human Rights Institutions*, 22 October 2018.

12 "Bangladesh: Investigate LGBT murders", *Human Rights Watch*, 26 April 2016.

13 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011.

14 Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014.

15 Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

16 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

17 "Bangladesh FM Dr. Moni recognizes need to protect LGBT persons, affirms their constitutional rights", *Rainer Ebert YouTube Channel*, 29 April 2013.

18 *Draft report of the Working Group on the Universal Periodic Review: Bangladesh*, A/HRC/WG.6/16/L.10, 1 May 2013.

matter was a result of the fact that "as a democratic government, reflecting the will of the people, our efforts need to be aligned with the people's views and opinions, as well as the social, cultural and religious values of our people".[19] Hence, it is appears to be claimed that Bangladesh has based their LGBTIQ-hostile attitude on a supposed democratic will of its population.

Treaty Bodies

In April 2017, the **Human Rights Committee** considered the initial report of Bangladesh on the ICCPR. In its concluding observations, Bangladesh was urged to "decriminalize consensual sexual acts between same-sex couples, provide protection to lesbian, gay, bisexual and transgender persons from violence and harassment by ensuring that all cases are promptly investigated and that perpetrators are prosecuted and punished with appropriate sanctions, and eliminate barriers to employment and violations to the dignity of "hijras"."[20]

In April 2018, the **Committee on Economic, Social and Cultural Rights** considered the initial report of Bangladesh on the ICESCR. The Committee recommended that Bangladesh "expedite the adoption of comprehensive anti-discrimination legislation that prohibits direct, indirect and multiple forms of discrimination" and to "decriminalize same-sex relations between consenting adults and take the measures necessary to raise public awareness regarding, and combat discrimination based on, sexual orientation and gender identity".[21]

Special Procedures

The **Special Rapporteur on freedom of religion or belief** visited Bangladesh in late 2015. He reported "encouraging initiatives by representatives of sexual minorities and religious community leaders in South Asia, including some from Bangladesh, who met to discuss and better understand these issues" and "stress[ed] that the right to freedom of religion or belief is guaranteed for every single human being, so no one should be deprived the right on the basis of sexuality [or] gender".[22]

In May 2016, several mandates[23] received information concerning the alleged assassination of two LGBTI human rights defenders.[24] They also expressed "grave concern" at the smear campaign against organisers of the "Rainbow Rally", an annual event organised to raise awareness about the rights of the LGBTI community.

19 "UPR-Bangladesh", *ILGA Website*, 17 May 2018, Section C.

20 *Concluding observations on the initial report of Bangladesh*, CCPR/C/BGD/CO/1, 27 April 2017, para. 12.

21 *Concluding observations on the initial report of Bangladesh*, E/C.12/BGD/CO/1, 18 April 2018, para. 24.

22 *Report of the Special Rapporteur on freedom of religion or belief on his mission to Bangladesh*, A/HRC/31/18/Add.2, 22 January 2016, para. 95.

23 The mandates were the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders.

24 For more information, see AL BGD 3/2016.



BHUTAN

Provisions in force

- **Penal Code** (2004).

***Chapter 14**: Sexual Offences.*

Unnatural sex / Sexual conduct against the order of nature

Section 213. Unnatural sex.

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

Section 214. Grading of unnatural sex.

The offence of unnatural sex shall be a petty misdemeanour.

***Chapter 2:** Classes of crime.*

Penalty

Section 3.

For the purpose of this Penal Code, the classes of crimes shall be as follows: [...]

(c) A crime shall be petty misdemeanour, 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.

Human rights situation

The law criminalising sodomy has purportedly not been used to arrest or prosecute anyone since it was introduced in 2004.[1] Some politicians have come out in favour of repealing the law while others are actively studying the possibility.[2] During the 2018 elections, the Bhutan Kuen-Nyam Party pledged to ensure the rights of sexual and gender minorities and enhance their dignity.[3]

Though reports of persecution or violence against LGBTQ people are rare compared to other countries in the region, activists have highlighted that there remains prejudice and discrimination from the public at large.[4] According to a 2015 interview with gay youth activist, Pema Doji, the LGBT community is "quite hidden" due to the stigma and discrimination because it is a small country and "everyone knows each other".[5]

The country is largely Buddhist, and religious leaders have mostly come out in support of the LGBT community. For instance, in February 2015, prominent Buddhist lama and filmmaker Dzongsar

1 Namgay Zam, "Bhutan's underground gay community seeks acceptance", *ABC News*, 16 September 2013.
2 *Ibid.*; Louise Hallman, "Happiness and Harmonization – LGBT Laws in Bhutan", *Salzburg Global Seminar* (website), 29 January 2018.
3 Tshering Palden, "BKP pledges an inclusive government", *Kuensel*, 27 August 2018.
4 Pema Seldon, "LGBT community still faces stigma, stereotypes", *The Bhutanese*, 15 July 2015.
5 "Growing up gay in Bhutan", *UNAIDS* (website), 8 December 2015.

Khyentse Rinpoche urged respect for the LGBT community, noting that tolerance is not enough.[6]

In 2008, a trans teen was permitted to wear the girl's uniform in school by the country's education ministry after they had staged a walk-out from their previous school where the male uniform was mandatory.[7] In 2013, the introduction of Facebook led to increased visibility for the LGBT community with the creation of dedicated Facebook groups for the community.[8] In 2014, Rainbow Bhutan was set up as a community for LGBT people with five members; this grew to more than 100 members in 2018.[9] LGBT activists started commemorating the International Day Against Homophobia, Biphobia and Transphobia in 2016 and in 2018, the event was held at a hotel with representatives from the government, civil society and the media.[10]A 2016 survey found that over 42% of transgender women, and 23% of gay and bisexual men, have attempted multiple suicide while 24% used drugs to cope with the pressures of being different.[11]

Statements by public officials

In a 2013 interview, Gasa Dzongkhag MP and Secretary of Bhutan's National Land Commission Sangay Khandu said, "The issue is when the law is there and if people do not enforce it, is it okay? With time, as society progresses and thoughts broaden, homosexuality may need to be revisited."[12]

In 2014, the anti-corruption minister Dasho Neten Zangmo said in an address to high school students that "romantic relationships, by the way, can be boy-boy or girl-girl".[13]

National Human Rights Institution

Bhutan does not have a National Human Rights Institution in accordance with the Paris Principles.

UN voting records

Bhutan was not a member of the Human Rights Council between 2011 and 2016, so it did not participate in the vote for any of the SOGI resolutions. At the session of Third Committee of the UN General Assembly held in 2016, Bhutan abstained during the vote to adopt the LAC amendment to remove Operative Paragraph 2,[14] and abstained again during the vote to adopt the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Bhutan abstained during the vote to adopt the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

In its 1st cycle UPR in late-2009, the representative of Bhutan had claimed "[h]owever, I wish to share that the provisions concerning unnatural acts in the Penal Code of Bhutan have never since its enactment been evoked for acts between two consenting adults of the same sex.[15] The provisions can be revised when there is felt need and desire from our people". Bhutan did not accept any of the four recommendations to decriminalise same-sex sexual behaviour in its 2nd cycle UPR in April 2014.[16] Bhutan's 3rd UPR is in mid-2019.

Treaty Bodies

In 2017, the **Committee of the Rights of the Child** expressed concern peer violence and sexual harassment in schools affecting LGBTI childrenand urged Bhutan to combat bullying towards LGBTI children in schools and to train teachers and students to resolve conflicts peacefully.[17]

6 Justin Whitaker, "Dzongsar Khyentse Rinpoche talks about Homosexuality and Buddhism", *Patheos*, 2 February 2015.
7 "Teen transvestite gets Bhutan thinking about sex", *Reuters*, 13 May 2008.
8 John Leupold, "To Be, or Not to Be, in Bhutan", *The Gay & Lesbian Review*, 1 March 2016.
9 Dechen Tshomo, "Members Of Rainbow Bhutan – A LGBT Community Observes IDAHOT", *Daily Bhutan*, 26 May 2018.
10 Dechen Tshomo, "Members Of Rainbow Bhutan – A LGBT Community Observes IDAHOT", *Daily Bhutan*, 26 May 2018.
11 Chencho Dema and Peky Samal, "Amid Widespread Stigma and Harassment, Bhutan's LGBT Community Seeks Acceptance", *The Wire*, 7 November 2017.
12 Andrew Potts, "Bhutan lawmaker says law criminalizing gays may go", *Gay Star News*, 16 September 2013.
13 John Leupold, "To Be, or Not to Be, in Bhutan", *The Gay & Lesbian Review*, 1 March 2016.
14 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.
15 *Draft Report of the Working Group on the Universal Periodic Review: Bhutan*, A/HRC/WG.6/6/L.10, 8 December 2009.
16 *Report of the Working Group on the Universal Periodic Review: Bhutan*, A/HRC/27/8, 1 July 2014.
17 *Concluding observations on the third to fifth periodic report of Bhutan*, CRC/C/BTN/CO/3-5, 5 July 2017, para. 38(g).



BRUNEI

Provisions in force

- **Penal Code**, Chapter 22 (revised edition 2001).

Carnal intercourse against the order of nature

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 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.

Human rights situation

Since 2014, Brunei has been phasing in its **Syariah Penal Code Order** (SPC Order 2013).[1] In March 2018, the Criminal Procedures Code on Syariah was approved by the Brunei Islamic Religious Council and consented to by the head of state; however, there remains several other procedures that need to be put in place before the Syariah Penal Code will be fully enforced.[2] This law would impose the death penalty on same-sex sexual acts. However, a scholar has pointed out that its impact is likely to be more serious on women's rights than the LGBT community. This is because the new law is not likely to change the extant practice of non-enforcement of Section 377.[3] In addition, the standard of proof under the Syariah law is significantly higher as four male witnesses must be present during the conduct in question before there can be a conviction.[4]

In 2015, a Bruneian civil servant was fined under the Syariah Penal Code for cross-dressing in a public place. It was reported that he was "posing as a woman" and carried women's personal items in his bag.[5] However, cross-dressing as entertainment appears to be permitted.[6]

Due to the challenges in providing services for LGBT people or setting up an NGO in the country, The Brunei Project has collaborated with Singaporean LGBT counselling organisation, Oogachaga, to provide hotline and email counselling. Indie webzine, Songket Alliance, has also published multiple stories about LGBT people in Brunei to raise awareness about their struggles.[7]

The social environment is hostile and it has been reported that LGBT people have undergone conversion therapy; most do not come out publicly and use social media anonymously out of fear.[8]

Statements by public officials

In prosecuting the Bruneian civil servant for cross-dressing, the Prosecutor warned that "if this is not dealt with, it can lead to the spread of social disorder such as homosexuality, free sexual relations, drug abuse and so on."[9]

1 Brunei Darussalam Government Gazette, *Constitution of Brunei Darussalam* (2013).
2 Rokiah Mahmud, "Next phase of Syariah penal code underway", *Borneo Bulletin*, 11 March 2018.
3 Scott Long, "The Real Story Behind Brunei's Sharia Law Isn't the One that Gay Rights Groups Are Telling You", *Mic*, 8 May 2014.
4 Zania Abdul, "Being LGBTQ in Brunei", *New Naratif*, 30 July 2018.
5 Ak Md Khairuddin Pg Harun, "Bruneian civil servant fined $1000 for cross-dressing", *The BT Archive*, 11 March 2015.
6 Zania Abdul, "Being LGBTQ in Brunei", *New Naratif*, 30 July 2018.
7 Zania Abdul, "Being LGBTQ in Brunei", *New Naratif*, 30 July 2018.
8 Calum Stuart, "In fear for their lives: The hidden LGBTI community of Brunei", *Gay Star News*, 14 October 2018.
9 Ak Md Khairuddin Pg Harun, "Bruneian civil servant fined $1000 for cross-dressing", *The BT Archive*, 11 March 2015.

UN voting record

Brunei was not a member of the Human Rights Council between 2011 and 2016, and therefore did not participate in the vote for the three HRC resolutions on human rights, sexual orientation and gender identity in 2011, 2014 and 2016.

At the session of Third Committee of the UN General Assembly held in November 2016, Brunei voted against the LAC amendment to remove Operative Paragraph 2,[10] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

Additionally, Brunei Darussalam voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

Brunei Darussalam rejected ('noted') the five recommendations made in its 2nd cycle Universal Periodic Review in April 2014. Unlike its 1st UPR cycle rejections in 2009 (mostly on non-discrimination),[11] the major concerns of the 2nd cycle were decriminalisation (France, Canada, Spain and Czech Republic), and the revised Penal Code (Cap 22) that reintroduces the death penalty for same-sex sexual behaviour (Spain and Czech Republic).[12] Bangladesh, counter-intuitively to human rights, used the UPR process to encourage (at p.10) Brunei Darussalam to uphold its social policies in line with 'traditional family values'.[13] Hearings for Brunei's 3rd UPR take place in May 2019.

Treaty Bodies

A Shadow Report submitted to the **Committee on the Elimination of Discrimination Against Women** describes in detail how "the enforcement of SPC Order 2013 is likely to result in even tighter family control and increased violence to force Bruneian lesbians, tomboys, masculine-looking women, bisexual women and transgender women to conform to social norms (and now criminal law) on sexuality and gender".[14] The CEDAW committee urged Brunei to immediately review the new Sharia Penal Code Order 2013 with a view to repealing its direct and indirect discriminatory provisions affecting women.[15]

In its Concluding Observations on Brunei Darussalam in February 2016, the **Committee on the Rights of the Child** recommended efforts are stepped up to address, *inter alia*, discrimination based on SOGI, and it recommended improving awareness-raising on such issues.[16]

Special Procedures

In September 2014, several mandates expressed grave concern about the Syariah Penal Code Order,[17] especially in relation to the use of the death penalty by stoning and corporal punishment.[18] They called on the Brunei government to revoke implementation and repeal the SPC completely as it would not be in conformity with international human rights law.

10 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

11 *Report of the Working Group on the Universal Periodic Review: Brunei Darussalam*, A/HRC/13/14, 4 January 2010.

12 *Report of the Working Group on the Universal Periodic Review: Brunei Darussalam*, A/HRC/27/11, 7 July 2014.

13 *Report of the Working Group on the Universal Periodic Review: Brunei Darussalam*, A/HRC/27/11, 7 July 2014, para. 113.91.

14 International Gay and Lesbian Human Rights Commission (IGLHRC), *Discrimination and Violence Against Women in Brunei Darussalam On The Basis of Sexual Orientation and Gender Identity* (2014).

15 *Concluding observations on the combined initial and second periodic reports of Brunei Darussalam*, CEDAW/C/BRN/CO/1-2, 14 November 2014, para 13(a).

16 *Concluding observations on the combined second and third periodic reports of Brunei Darussalam*, CRC/C/BRN/CO/2-3, 24 February 2016, paras. 25-26.

17 The mandates were: Working Group on the issue of discrimination against women in law and in practice; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on minority issues; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on violence against women, its causes and consequences.

18 For more information, see BRN 1/2014.



IRAN

Provisions in force

- **Islamic Penal Code** (2013): Book Two: Hudud.

***Chapter Two**: Livat, Tafkhiz and Musaheqeh*

Livat: penetration of male anus with penis

Article 233. *Livat*.

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

Death penalty

100 lashes

Article 234.

The *hadd* punishment for *livat* shall be the death penalty for the insertive party if he has committed livat by using force, coercion, or in cases where he meets the conditions for *ihsan*; otherwise, he shall be sentenced to one hundred lashes.

The *hadd* punishment for the receptive party, in any case (whether or not he meets the conditions for *ihsan*) shall be the death penalty.

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

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

Tafkhiz: putting penis between male thighs or buttocks

Article 235. *Tafkhiz*.

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

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

100 lashes

(Note: death penalty)

Article 236.

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

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

Other homosexual acts: male (and female, note)

Article 237.

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

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

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

Musaheqeh: touching between female sex organs

Article 238. *Musaheqeh.*

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

100 lashes

Article 239.

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

Conditions for musaheqeh punishment

Article 240.

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

- **Press Law** (1986).

Legal barrier to freedom of expression

Article 6.

The Press is free, except for items which undermine Islam's bases and commandments, and public and private rights, as set forth in this chapter: [...]

(2) Spreading fornication and forbidden practices and publishing photographs, pictures, and material which violate public chastity.

Note 2. A violation of what is set forth in this Article is subject to punishments as determined in Article 698 of the Islamic Penal Code* and in the event of persistence, they are subject to an intensification of the punishments and the forfeiture of one's license.

* *Article 698 of Islamic Penal Code provides for imprisonment of between two months to two years and flogging of up to 74 lashes.*

- **Law on Computer Crimes** (Law No. 71,063)

Legal barrier to freedom of expression

Article 14.

Whoever uses computer systems, telecommunications systems or data carriers to publish or distribute immoral content, or produces or store them with the intention of corrupting the society, will be sentenced to imprisonment for between 91 days to 2 years or will be fined ... or both.

Human rights situation

In August 2014, repors indicated that two men were executed by hanging for allegedly having engaged in consensual same-sex sexual acts.[1] On 18 July 2016, a 17-year-old boy, Hassan Afshar, was hanged after being convicted of raping another male teenager, though he had consistently maintained that the sexual acts were consensual.[2] In January 2019, reports indicated that a 31-year-old gay man was publicly executed by hanging.[3] As reported in the press, Iran's opaque judicial system creates enormous difficulties for journalists and human rights advocates to examine judicial cases, what makes it very difficult to ascertain to what extent convictions are based—exclusively or not—the specific provisions that impose the death penalty for consensual same-sex sexual acts.

In April 2017, 30 men were arrested in a gathering in Bagh-e Bahadoran, Isfahan (central Iran). The men were subsequently transferred to the Dastgerd Prison and charged with sodomy by a local court.[4] According to JFI and 6Rang, since at least 2007, there have been several confirmed reports of state-led raids on private parties followed by mass arrest and detention of those suspected of same-sex sexual acts.[5] Following an arrest, LGBT people are often made to reveal the names of other LGBT people they know.[6] Individuals have also reported experiencing constant surveillance by the state's intelligence service.[7]

According to the Saghi Ghahraman, founder of the Iranian Queer Organisation, gay men often face the threat of blackmail as there are different punishments for consensual sexual intercourse which creates a climate of distrust between partners.[8]

Health-care professionals have been reported to regularly tell gay and lesbian patients that their same-sex attraction and gender non-conformity are a sign of Gender Identity Disorder that must be treated with "reparative" therapies or sex reassignment surgeries, which are often carried out without prior consent.[9] This is because religious clerics have issued fatwas recognising transsexual people as people "trapped in the wrong body" while homosexuality remains strongly condemned.[10]

However, though the State is formally accepting of transgender people who have undergone gender reassignment and provides loans specifically to fund gender reassignment surgery, there remains significant societal discrimination and violence.[11] Many gay and lesbian Iranians have tried to flee from Iran to avoid being forced to undergo gender reassignment.[12]

Laws which restrict freedom of expression are often used as the legal basis to exert control on people's behaviour both in public and in private spaces. The Supreme Council of National Security (SCNS) censored official journalists, forbidding them from covering certain topics including SOGIESC-related rights, in the name of ensuring national security. For instance, in September 2017, six admins of Telegram chat groups were reportedly charged with "promoting homosexuality".[13]

1 Jay Michaelson, "Iran's New Gay Executions", *The Daily Beast*, 12 August 2014.

2 "Iran: Hanging of teenager shows authorities' brazen disregard for international law", *Amnesty International*, 2 August 2016.

3 Benjamin Weinthal, "Iran publicly hangs man on homosexuality charges", *The Jerusalem Post*, 26 January 2019.

4 "Shots Fired as Iran Arrests Over 30 Gay Men In Violent Raid", *Jerusalem Post*, 20 April 2017; "Men Arrested at a Party in Isfahan Charged with "Sodomy", *6Rang.org*, 20 April 2017.

5 Justice for Iran (JFI) & Iranian Lesbian and Transgender Network (6Rang), *Diagnosing Identities, Wounding Bodies: Medical Abuses and Other Human Rights Violations Against Lesbian, Gay and Transgender People in Iran* (2014), 71.

6 Sune Engel Rasmussen, "Living Dangerously: What It's Like To Be Gay In Iran", *Vocativ*, 23 December 2014; see for instance, "More than 30 men arrested in Esfahan, Iran for sodomy", *Iranian Railroad for Queer Refugees*, 20 April 2017.

7 Sune Engel Rasmussen, "Living Dangerously: What It's Like To Be Gay In Iran", *Vocativ*, 23 December 2014.

8 Rachel Banning-Lover, "Where are the most difficult places in the world to be gay or transgender?", *The Guardian*, 1 March 2017.

9 Justice for Iran (JFI) & Iranian Lesbian and Transgender Network (6Rang), *Diagnosing Identities, Wounding Bodies: Medical Abuses and Other Human Rights Violations Against Lesbian, Gay and Transgender People in Iran* (2014), 13.

10 Neha Thirani Bagri, ""Everyone treated me like a saint"—In Iran, there's only one way to survive as a transgender person", *Quartz*, 19 April 2017.

11 Mehdi Fattahi and Nasser Karimi, "Iran's transgender people face discrimination despite fatwa", *AP News*, 22 May 2018.

12 Ali Hamedani, "The gay people pushed to change their gender", *BBC News*, 5 November 2014.

13 "Six Telegram Administrators Charged With 'Promoting Homosexuality'", *Deutsche Welle Persian*, 14 September 2017.

Statements by public officials

In March 2012, in response to accusations from other countries regarding Iran's treatment of LGBT people, Mehrdad Bazrpash, a former Member of Parliament and former Deputy President of the country, stated that it was "one of the honours of the Islamic Republic is to violate the rights of homosexuals".[14]

On 4 April 2014, Iran's Supreme Leader described "homosexuality" as "moral bankruptcy" and "libidinous behaviour".[15]

On 24 September 2014, the Iranian Speaker of Parliament described "homosexuality" as "modern Western barbarism".[16]

In December 2017, the Iranian Lesbian & Transgender Network published a report on official hate speech by state officials against LGBT people.[17] In January 2011, Ali Larijani, the Speaker of Parliament justified the use of the death penalty for consensual same-sex sexual conduct on the basis that it is "effective in keeping society safe from perversion".[18]

National Human Rights Institution

Iran has a National Human Rights Institution in accordance with the Paris Principles: the Islamic Commission on Human Rights. The institution does not address SOGIESC issues.

UN voting record

Iran was not a member of the Human Rights Council between 2011 and 2016, and therefore did not participate in the vote for the three HRC resolutions on human rights, sexual orientation and gender identity in 2011, 2014 and 2016.[19]

At the session of Third Committee of the UN General Assembly held in November 2016, Iran voted against the LAC amendment to remove Operative Paragraph 2,[20] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

Additionally, Iran voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

At its 1st cycle UPR in February 2010, Iran received three recommendations regarding decriminalisation and discrimination based on SOGI, while at its 2nd cycle review in October 2014, there were 14 SOGI recommendations. These mostly focused on decriminalisation, persecution and discrimination.[21]

At its interactive dialogue session, the delegation of Iran justified his country's position on "homosexuality", by saying it was not so long ago that same-sex sexual relations had been "subject to prosecution in most Western countries in the not too distant past".[22]

Iran will be before the UPR again in April 2019 for its 3rd cycle sessions.

Treaty Bodies

In 2011, the **Human Rights Committee** expressed concern that the LGBT community faced harassment, persecution, cruel punishment and even the death penalty as well as discrimination on the basis of their sexual orientation, including with respect to access to employment, housing,

14 6Rang, *Official Hate Speech against LGBT People* (2017), p. 13.

15 "بیانات در دیدار اعضای مجلس خبرگان رهبری" ,پایگاه اطلاع رسانی دفتر مقام معظم رهبری ,۱۳۹۲ /اسفند/ ; The International Gay and Lesbian Human Rights Commission (IGLHRC), *Human Rights Violations of People in the Islamic Republic of Iran on the Basis of Their Sexual Orientation and Gender Identity* (2014).

16 "بیانیه‌گزارشگر سازمان‌ملل یاغی‌گری بین‌المللی را ترویج می‌دهد", *Acana*, 17 February 2013.

17 6Rang, *Official Hate Speech against LGBT People* (2017).

18 6Rang, *Official Hate Speech against LGBT People* (2017), p. 12.

19 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011; Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014; Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

20 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

21 "UPR - Iran" *ILGA Website.*

22 "UPR - Iran" *ILGA Website.*

education and health care, as well as social exclusion within the community.[23] It called on the state to "repeal or amend all legislation which provides for or could result in discrimination against, and prosecution and punishment of, people because of their sexual orientation or gender identity" and to "take all necessary legislative, administrative and other measures to eliminate and prohibit discrimination on the basis of sexual orientation, including with respect to access to employment, housing, education and health care, and to ensure that individuals of different sexual orientation or gender identity are protected from violence and social exclusion within the community".[24]

While reviewing a periodic report of the Islamic Republic of Iran in 2013, the **Committee on Economic, Social and Cultural Rights** expressed concern over the criminalisation of consensual same-sex sexual acts and the possibility that convicted male persons may be subject to the death penalty.[25] It also called on the state to "take steps to combat and prevent discrimination and societal stigma against members of the LGBT community, and ensure their enjoyment of all the rights enshrined in the Covenant, including unhindered access to employment, social services, health care and education".[26]

The **Committee on the Rights of the Child** addressed Iran in February 2016. It expressed concern that "children who belong to the LGBTI group face continuous discrimination because of their real or perceived sexual orientation or identity and that the same sex sexual behaviour of adolescents above the actual age of criminal responsibility is criminalized and punished with penalties ranging from flogging to death penalty".[27] It also expressed concern that young people have no information on LGBTI issues, and trans people are forced into surgery and urges reversal of such policies.[28]

Special Procedures

In 2013, several mandates[29] expressed serious concerns on the revised Islamic Penal Code (IPC), which provided for the use of the death penalty for non-violent acts and the use of stoning and other corporal punishments like amputation, flogging and crucifixion.[30]

23 *Concluding observations of the Human Rights Committee - Islamic Republic of Iran*, CCPR/C/IRN/CO/3, 29 November 2011, para. 10.

24 *Ibid.*

25 *Concluding observations on the second periodic report of the Islamic Republic of Iran*, E/C.12/IRN/CO/2, 10 June 2013, para. 7.

26 *Id.*, para. 7.

27 *Concluding observations on the combined third and fourth periodic reports of the Islamic Republic of Iran*, CRC/C/IRN/CO/3-4, 14 March 2016, para. 31.

28 *Id.*, paras. 71-72.

29 The mandates were the Special Rapporteur on freedom of religion or belief; Special Rapporteur on the situation of human rights in the Islamic Republic of Iran; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on violence against women, its causes and consequences; and the Working Group on the issue of discrimination against women in law and in practice.

30 For more information, see IRN 9/2013.



KUWAIT

Provisions in force

- **Penal Code** (Law No.16 of 2 June 1960) (as amended in 1976 and 2007).

Consensual intercourse between men

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.

Lewd signals / Legal barrier to freedom of expression

Article 198

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

- **Law On Press and Publications** (Law No.3 of 2006).

Insulting public morals

Article 21(3).

It shall be prohibited to publish anything that would: [...] insult the public morals or instigate to violate the public order or to violate the laws or to commit crimes, even if the crime did not occur.

Legal barrier to freedom of expression

Article 27(3).

Without prejudice to any severer penalty which is stipulated in another law, the chief editor and article writer or the author shall be penalized if he published in the newspaper what was prohibited under article 21, he shall be penalized by fine which shall not be less than 3,000 Dinar and not more than 10,000 Dinar.

- **Law regarding the regulation of electronic media (Law No. 8 of 2016)**

Legal barrier to freedom of expression

Article 18.

The sites and electronic media sites governed by the rules of this law, cannot publish, broadcast, rebroadcast, send or quote any content that contains any of the forbidden material mentioned in articles (19, 20, 21) of law no. 3 of 2006, and article 11 of law no. 61 of 2007, and punishments are mentioned in those two laws in case of violations.

Human rights situation

In 2007, Article 198 of the Penal Code was amended to criminalise cross-dressing and non-normative gender expression. In 2012, Human Rights Watch reported that this legislative development resulted in greater discrimination and persecution of transgender women in the country.[1]

In 2013, the government also banned gay men and transgender persons from entering the country.[2] The director of public health announced that the country had developed "the technology" to detect such persons to prevent them from entering the country.[3] When criticised by Amnesty International, politicians hit back with one claiming that the organisation should "take care of lofty and noble goals for which it was established, leave aside homosexuality and deviations and stop defending delinquents".[4]

In May 2014 it was reported that vice police raided a "sex party" and arrested 32 people, both men and women ("tomboys").[5] Such raids also took place in 2012 and 2013.[6] Hostilities towards the LGBT community persisted in subsequent years as well, with 41 men arrested in a raid of a male massage parlour in April 2016.[7]

In 2017, the Ministry of Information's censorship department ordered cinemas to stop screening the Disney's film "Beauty and the Beast" which contained a same-sex kiss.[8]

In July 2017, the government's inter-ministry morals committee ordered the deportation of 76 gay men and the closure of 22 massage parlours.[9]

Statements by public officials

In a news report, the head of the Inter-Ministry Morals Committee, Mohammad Al Dhufairi said, "We have a zero-tolerance policy towards any morally objectionable activities, and we will not be lenient with anyone who breaks the rules or puts the health of Kuwaiti citizens and residents at risk."[10]

National Human Rights Institution

Kuwait does not have a National Human Rights Institution in accordance with the Paris Principles.

UN voting record

In 2011, Kuwait was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.[11]

In 2014, it voted against the adoption of Resolution 27/32, the second SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to update the report produced in 2011.[12]

In 2016, Kuwait was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 32/2 which created the mandate of the independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.[13]

At the session of Third Committee of the UN General Assembly held in November 2016, Kuwait voted against the LAC amendment to remove Operative Paragraph 2, and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Kuwait voted in favour of the

1 Human Rights Watch, *'They Hunt Us Down for Fun': Discrimination and Police Violence Against Transgender Women in Kuwait* (2012).
2 "Deputies support the rejection of the establishment of the "third sex": we will prevent them from entering Kuwait by force of law", *Alrai Media*, 8 October 2013.
3 Alexander Abad-Santos, "Kuwait Thinks Its Gaydar Is Good Enough to Ban Gays from the Country", *The Atlantic*, 7 October 2013.
4 Felicity Morse, "'Gays are delinquent deviants who destroy humanity': Kuwait MPs attack Amnesty International for protecting LGBT community", *Independent UK*, 16 October 2013.
5 "Kuwait police raid 'gay' party, arrest 32", *Erasing 76 Crimes*, 11 May 2014.
6 J. K. Trotter, "Kuwaiti Police Sweep Cafes, Arrest 215 People for Being Gay", *The Atlantic*, 14 May 2013.
7 Habib Toumi, "41 arrested in raid on homosexual massage parlour in Kuwait", *Gulf News*, 17 April 2016.
8 Mohamed Rashed, "Beauty and the Beast too 'gay' for Kuwait?", *Albawaba*, 22 March 2017.
9 Habib Toumi, "Kuwait deports 76 gay men in crackdown", *Gulf News*, 7 August 2017.
10 Habib Toumi, "Kuwait deports 76 gay men in crackdown", *Gulf News*, 7 August 2017.
11 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011.
12 Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014.
13 Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

amendment which tried to block financial resources allocated to the IE SOGI.[14]

International advocacy and supervision

Universal Periodic Review

Kuwait 'noted' (rejected) a recommendation from Brazil to decriminalise same-sex acts between consenting adults at its 1st cycle UPR in 2010.[15]

At its 2nd UPR in January 2015, Uruguay and Iceland recommended Kuwait decriminalise same-sex sexual acts, and the Netherlands also iterated this and a call for non-discrimination in the country's law. This call for non-discrimination was echoed by Argentina and Chile. Without alluding to SOGI, at para. 29 of the State's formal acceptance of the report of the Working Group, the delegation justified that looking after public morals does not contravene Article 21 of the ICCPR (peaceful assembly).[16]

Kuwait's next UPR session is in early-2020.

Treaty Bodies

In August 2016, the Human Rights Committee reiterated its 2011 recommendation for Kuwait to decriminalise consensual same-sex sexual acts between consenting adults and to repeal the offence of "imitating members of the opposite sex", in order to bring its legislation into line with the Covenant.[17] It also urged the implementation of measures to put an end to the social stigmatisation of SOGI and the harassment, discrimination and violence perpetrated against persons based on their real or perceived sexual orientation or gender identity.[18]

In 2011, the **Committee against Torture (CAT)** expressed concern about the discrimination and ill-treatment suffered by LGBT people. It called on the State to investigate crimes related to discrimination directed towards all vulnerable groups and pursue ways in which hate crimes can be prevented and punished; promptly, thoroughly and impartially investigate all cases of discrimination and ill-treatment of these vulnerable groups, and punish those responsible for these acts; and conduct awareness-raising campaigns for all officials who are in direct contact with victims of such violence, as well for the population at large.[19] There was no mention of LGBT issues in the 2016 Concluding Observations.[20]

Special Procedures

In 2014, several mandates[21] expressed concern at the allegation that a transgender woman was arrested under Article 198 of the Penal Code for "imitation of the opposite sex" and faced discrimination and other violations of her human rights in detention, including violence.[22]

In 2017, the **Working Group on the issue of discrimination against women in law and in practice** reiterated its concern about Article 198, and noted that it has received reports of discrimination against women on the basis of their gender identity and expression.[23] It added that "according to the information received, transgender people in Kuwait are an isolated, discriminated and vulnerable group who face harassment and threats".[24]

14 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

15 *Draft report of the Working Group on the Universal Periodic Review: Kuwait*, A/HRC/WG.6/8/L.14, 14 May 2010.

16 *Draft report of the Working Group on the Universal Periodic Review: Kuwait*, A/HRC/WG.6/21/L.14, 30 January 2015, para. 29.

17 *Concluding observations on the third periodic report of Kuwait*, CCPR/C/KWT/CO/3, 11 August 2016, para. 13; *Concluding observations on the second periodic report of Kuwait*, CCPR/C/KWT/CO/2, 18 November 2011, para. 30.

18 *Concluding observations on the third periodic report of Kuwait*, CCPR/C/KWT/CO/3, 11 August 2016, para. 13.

19 *Concluding observations on the second periodic report of Kuwait*, CAT/C/KWT/CO/2, 28 June 2011, para. 25.

20 *Concluding observations on the third periodic report of Kuwait*, CAT/C/KWT/CO/3, 5 September 2016.

21 The mandates were the Working Group on Arbitrary Detention; the Working Group on the issue of discrimination against women in law and in practice; and the Special Rapporteur on violence against women, its causes and consequences.

22 UA G/SO 218/2 G/SO 214 (89-15) KWT 1/2014, 5 February 2014.

23 *Report of the Working Group on the issue of discrimination against women in law and in practice on its mission to Kuwait*, A/HRC/35/29/Add.2, 24 May 2017, para. 35 and para. 91.

24 *Ibid.*



LEBANON

Provisions in force

- **Penal Code** (1943).

Sexual intercourse against nature

Article 534

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

Public morals

Article 532.

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

Legal barrier to freedom of expression

Article 209.

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

Human rights situation

Though forced anal examinations are now rarely used as evidence in Article 534 proceedings, following a 2012 advocacy campaign known as "Tests of Shame",[1] the police continue to perform them, as well as conduct HIV and drug tests on arrested persons without their consent.[2] According to activists, the number of arrests under Article 534 has increased between 2012 and 2016.[3]

In 2013, a film due to be screened at the Beirut International Film Festival that included homoerotic scenes, was banned by the Interior Ministry's censorship committee.[4]

In 2014, the Morals Protection bureau of the Lebanese police raided a bathhouse on the basis that there were "suspected homosexuals".[5] Numerous customers and employees were arrested and charged under Article 534 as well as prostitution and public morals offences.

In December 2016, a Syrian refugee reported being detained and tortured by Lebanese Military

1 Arab Foundation for Freedoms and Equality and Outright Action International, *Activism and Resilience: LGBTQ Progress in the Middle East and North Africa* (2018), p 26

2 ALEF et al, *Civil society report on the implementation of the International Covenant on Civil and Political Rights in Lebanon* (2018), p 4; Human Rights Watch, *Dignity Debased: Forced Anal Examinations in Homosexuality Prosecutions* (2016)

3 Helem - Lebanese Protection for LGBTQ Individuals, *Human Rights Violations against Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) individuals in Lebanon* (2017), p 3.

4 "Beirut bans films in setback for tolerant image", *Gulf News*, 8 October 2013.

5 Sarah Wansa, "Torture at Every Stage: The Unofficial Narrative of the Hammam al-Agha Raid", *The Legal Agenda*, 12 November 2014.

Intelligence officers as well as other security agencies on suspicion of his being gay.[6]

In 2017, Beirut Pride was held (the first in the Middle East region, other than Israel) despite pressures from Islamist organisations and the government.[7] However, in May 2018, the organiser of Beirut Pride was detained during an event and made to sign a pledge that he would cancel all remaining activities.[8]

The Lebanese Medical Association for Sexual Health (LebMASH), a sexual health NGO, launched a week of programmes on discrimination in the medical sector against LGBT people in March 2017.[9] In 2018, LebMASH hosted a conference where doctors criticised "conversion therapy" for causing suicidal thoughts and depression.[10]

During the 2018 elections, nearly 100 candidates called for the repeal of Article 534 as part of their electoral platforms,[11] including politicians from the right-wing Christian Democrat party.[12]

In July 2018, a three-judge bench of the Mount Lebanon Criminal Court of Appeal upheld Judge Maalouf's decision and found that consensual same-sex relations could not be viewed as "unnatural" unless it was performed publicly or involved a minor.[13]

In September 2018, LGBT activists were reportedly preparing a proposed law to decriminalise same-sex sexual intimacy and other laws that discriminated against LGBT people.[14]

In January 2019, the Ministry of Telecom reportedly ordered a ban on a gay dating app.[15]

Statements by public officials

In January 2017, Judge Rabih Maalouf of the el-Metn court opined that, "Homosexuals have a right to human and intimate relationships with whoever they want, without any interference or discrimination in terms of their sexual inclinations, as is the case with other people."[16]

Existing legal challenges

Consensual same-sex sexual acts (interpretation and repeal of Article 534)

In 2010, an LGBTQ group, Helem, published a booklet analysing Article 534 and calling for its repeal.[17] According to reports, numerous court decisions have interpreted Article 534 to not apply to consensual same-sex sexual intimacy on the basis that such intimacy is not in fact "against nature".[18] For instance, in January 2017, a Metn court judge declared that "homosexuality is a personal choice, and not a punishable offense".[19]

Most recently in July 2018, the Mount Lebanon Criminal Court of Appeal upheld a lower court's decision that held that consensual sex between people of the same sex was not unlawful.[20] However, activists report that despite these judicial pronouncements, Article 534 remain on the books and people perceived to identify as sexually diverse continue to be arrested arbitrarily.[21]

National Human Rights Institution

Lebanon does not have a National Human Rights Institution in accordance with the Paris Principles.

6 "Lebanon: Syrian Refugee's Account of Torture", *Human Rights Watch*, 21 December 2016.
7 Heba Kanso, "RPT-Lebanon launches Arab world's first gay pride week", *Reuters*, 17 May 2017.
8 "Beirut Pride cancelled after organiser detained", *BBC News*, 16 May 2018.
9 Charlotte Steenackers, "Pour en finir avec la marginalisation de la communauté LGBT", *L'Orient le Jour*, 13 March 2017.
10 Heba Kanso, "'I had suicidal thoughts': Gay Lebanese speak out against conversion therapy", *Openly News*, 8 November 2018.
11 Tamara Qiblawi, "Gay rights come to the fore as Lebanon prepares to vote", *CNN*, 4 May 2018.
12 Meka Beresford, "Lebanese politicians call for decriminalisation of gay sex", *Pink News*, 14 March 2018.
13 Lebanon: Same-Sex Relations Not Illegal", *Human Rights Watch*, 19 July 2018.
14 Tim Teeman, "'Love Always Wins': Inside the Fight for LGBT Equality in Lebanon", *The Daily Beast*, 8 September 2018.
15 Samuel Leighton-Dore, "Grindr has reportedly been banned in Lebanon", *SBS News*, 23 January 2019.
16 Graeme Reid, "Lebanon Edges Closer to Decriminalizing Same-sex Conduct", *Human Rights Watch*, 2 February 2017.
17 "New Publication Provides Analysis on Article 534", *Bekhsoos* (website), 13 April 2010.
18 "Lebanese Judge Rules Against the Use of Article 534 To Prosecute Homosexual", *Bekhsoos* (website), 28 December 2009; "Lebanon Court: LGBT is not a Crime nor Against Nature", *Human Rights Campaign*, 6 March 2014; Lama Karame, "Lebanese Article 534 Struck Down: Homosexuality No Longer "Contrary to Nature"", *The Legal Agenda*, 11 July 2016.
19 Lama Hajj, "Huge Step For Lebanon: Court Rules Homosexuality Not A Crime", *Beirut*, 27 January 2017.
20 Daniel Siryoti, "Landmark ruling in Lebanon says homosexuality not 'illegal'", *Israel Hayom*, 31 January 2017; Lebanon: Same-Sex Relations Not Illegal", *Human Rights Watch*, 19 July 2018.
21 ALEF et al, *Civil society report on the implementation of the International Covenant on Civil and Political Rights in Lebanon* (2018), p 4; Jessica Azar, "Homosexuality is not a crime", *The Legal Agenda*, 17 October 2016.

UN voting record

Lebanon was not a member of the Human Rights Council between 2011 and 2016, and therefore did not participate in the vote for any of the three HRC resolutions on SOGI. At the session of Third Committee of the UN General Assembly held in November 2016, Lebanon did not vote the LAC amendment to remove Operative Paragraph 2,[22] and did not vote the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Likewise, Lebanon did not vote the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

In 2010, at Lebanon's 1st cycle UPR, Norway recommended they decriminalise and "ensure non-discrimination on the basis of sexual orientation and gender identity", the response to which was 'noted' (refused).

At the Interactive Dialogue session in Lebanon's 2nd cycle UPR in November 2015, the delegation, in response to the six strong recommendations that the State received said: "As for sexual orientation, although article 534 of the Penal Code stated that sexual intercourse contrary to nature was punishable, two court decisions had indicated that article 534 did not apply to homosexuals [referring to the above].[23]

Treaty Bodies

In May 2018, the **Human Rights Committee (CCPR)** called on the Lebanon to enact a comprehensive anti-discrimination legislation that includes a prohibition of discrimination on the basis of sexual orientation and gender identity.[24] It also expressed concern that LGBTI persons continue to be arrested and prosecuted under article 534, and urged the state to decriminalise.[25]

The Committee also expressed concern about reports of the prevalence of discrimination, hate speech and homophobic attitudes; harassment, violence and extortion directed at LGBTI individuals; violations of their freedom of expression and of peaceful assembly; and the lack of protection against such acts.[26] It recommended that the State ensure that LGBTI individuals are afforded adequate and effective protection against all forms of discrimination, hate speech or violence based on sexual orientation or gender identity, and that such acts are properly investigated, prosecuted and, if the perpetrators are convicted, punished with appropriate penalties.[27]

In 2016, the **Committee on Economic, Social and Cultural Rights (CESCR)** addressed issues of discrimination based on SOGI, urging the State to adopt a legal framework for combating discrimination, enshrine the principle in the Constitution, conduct campaigns to combat prejudices and stigmatisation.[28]

In 2017, the **Committee against Torture (CAT)** reiterated its concerns about allegations of harassment, arbitrary detention, torture and ill-treatment, including beatings, sexual abuse, anal examinations and forced HIV testing, of men "suspected of being homosexual" held in custody by Internal Security Forces officers.[29] It urged the State to prohibit forced anal searches and to ensure that body searches are conducted by the least intrusive means possible.[30]

Special Procedures

In 2015, the **Special Rapporteur on freedom of religion or belief** expressed encouragement for ongoing discussions on the decriminalisation of consensual same-sex acts, including by challenging religious "justifications" for homophobic attitudes.[31]

22 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

23 *Report of the Working Group on the Universal Periodic Review: Lebanon*, A/HRC/31/5, 22 December 2015.

24 *Concluding observations on the third periodic report of Lebanon*, CCPR/C/LBN/CO/3, 9 May 2018, para. 11.

25 *Id.*, para. 14.

26 *Id.*, para. 13.

27 *Id.*, para. 14.

28 *Concluding observations on the second periodic report of Lebanon*, E/C.12/LBN/CO/2, 24 October 2016.

29 *Concluding observations on the initial report of Lebanon*, CAT/C/LBN/CO/1, 30 May 2017, para. 14.

30 *Id.*, para. 15.

31 *Report of the Special Rapporteur on freedom of religion or belief on his mission to Lebanon*, A/HRC/31/18/Add.1, 30 November 2015, para. 62.



MALAYSIA

Provisions in force

- **Penal Code** (Consolidated version 1998).

Carnal intercourse against the order of nature

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

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

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

Punishment for carnal intercourse against the order of nature

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.

Gross indecency

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.

- **Film Censorship Act** (2002).

Legal barrier to freedom of expression

Section 5.

(1) No person shall— (a) have or cause himself to have in his possession, custody, control or ownership; or (b) circulate, exhibit, distribute, display, manufacture, produce, sell or hire, any film or film-publicity material which is obscene or is otherwise against public decency.

(2) Any person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine of not less than ten thousand ringgit and not more than fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both."

Human rights situation

Several states in Malaysia have instated Islamic Sharia law, criminalising same-sex sexual acts with up to three years imprisonment and whipping.[1] The Sharia law in the Malaysian state of Pulau Pinang confers penalties for sodomy *[Liwat]* and lesbian relations *[Musahaqat]* with heavy fines, three years imprisonment and 6 lashes.[2]

1 Facts and Details, *Islamic Law in Malaysia* (2015).

2 *Enakmen Kesalahan Jenayah Syariah* (Negeri Pulau Pinang) 1996.

In February 2015, leading opposition leader, and former Deputy Prime Minister Anwar Ibrahim was jailed for five years after losing his appeal against his conviction on sodomy charges, charges widely understood to be politically motivated.[3]

In February 2017, the government's Islamic Development Department (JAKIM) released a video explaining how Muslims can "help" LGB people change their sexual orientation.[4] The video claimed that non-heterosexual orientation is a "test of Allah" and people must "face the test appropriate with what Islam demands".

In June 2017, the Ministry of Health was criticised for endorsing "conversion therapy" in a call for submissions to a video competition.[6] In December 2017, the state of Terengganu claimed that it was planning to run a "conversion therapy" course aimed at transgender women.[7] In February 2018, a newspaper published a checklist on "how to spot a gay".[8] In October 2018, the government released an app named "Hijrah Diri – Homoseksualiti" that is supposed to provide users with 'practical ways to overcome the issue of homosexuality'.[9]

In September 2017, the Immigration Department announced in a press statement that they were banning the organisers of, and anyone planning to participate in, a ''gay party'' planned for 30 September in a club in central Kuala Lumpur. The Immigration Director-General said that the move was to preserve public order, declaring gay parties a threat to peace and security.[10] In February 2018, an openly gay singer from Hong Kong was denied a performance permit allegedly because of her queer activism.[11]

In August 2018, the Shariah High Court in the state of Terengganu sentenced two women to caning and a fine for engaging in same-sex sexual activity.[12] This was criticised by the Suhakum, the country's human rights institution, as "humiliating and demeaning". In Seremban, a transgender woman was attacked by a group of assailants in the same month.[13] According to activists, there were at least three reported killings of transgender women in 2017.[14] In one of these cases, five brothers were arrested in April 2017 for shooting and slashing a transgender woman to death.[15]

In the same month, the religious affairs minister, Mujahid Yusof Rawa, ordered the removal of two portraits of LGBT activists with Malaysian and rainbow pride flags from an arts festival in

On the impact of government policies to "convert" LGBT people

Brief comment by Jeremy Tan Fok Jun, Malaysian activist.[5]

Mukkhayam ["conversion therapy"] programs organised by the religious department JAKIM are actively claiming the successfulness of such program. This is extremely worrying to the young LGBT individuals. In fact, the state of Terengganu has the intention to identify those who are "soft spoken" and those who "dress against masculinity" and to force them to attend these "conversion camps" to change their behaviour and sexual orientation. Religious brainwash will be conducted for those who attended the program, and even financial aid will be given upon the completion the program.

Bias and discriminatory laws create the notion that same-sex and cross-dressing behaviour are "deviant" and "wrong" in the eye of the public and correcting these behaviours by any means is socially valued. LGBT youth, especially those who are at school, have reported being bullied by their peers in the form of physical, verbal, and cyber bullying. These bullying behaviours have been justified to "correct" those who are perceived as non-heterosexual, or are suspected of engaging in same-sex sexual acts or cross-dressing behaviour.

3 "Malaysia's Anwar jailed for five years after losing appeal in sodomy trial", *Reuters*, 10 February 2015.
4 "Sexual orientation can be changed, Malaysia's Islamic authority says in new video", *Today Online*, 13 February 2017.
5 Special thanks to Justin Francis Bionat, Regional Coordinator of Youth Voices Count for coordinating this input.
6 "Malaysia: Health Ministry Propagates Harmful Anti-LGBT Myths", *Human Rights Watch*, 7 June 2017.
7 "Alarm over course to convert transgender women in Terengganu", *The Straits Times*, 31 December 2017.
8 Hannah Ellis-Petersen, "Malaysian newspaper publishes 'how to spot a gay' checklist", *The Guardian*, 12 February 2018.
9 "The Government Just Released An E-Book To Guide LGBT Muslims To The 'Right Path'", *The Coverage Malaysia*, 24 October 2018.
10 Syed Jaymal Zahiid, "Entry ban on gays tenuous, say lawyers", *Malay Mail*, 24 September 2017.
11 "Pop star Denise Ho denied Malaysia permit 'over LGBT views'", *BBC News*, 15 February 2018.
12 Jo Timbuong, "Syariah Court's judgement against lesbian couple is final", *The Star Online*, 16 August 2018.
13 "Rising concern in Malaysia's LGBT community after attack on transgender woman", *The Straits Times*, 24 August 2018.
14 *Ibid*.
15 "Five brothers arrested over transgender's murder", *The Star Online*, 7 April 2017.

Penang.[16] In August 2018, a gay bar was also raided in Kuala Lumpur as part of the government's effort to "mitigate the LGBT culture from spreading into our society".[17]

Further, in December 2018, the Deputy Home Minister announced a ban on scenes in films deemed to be promoting "inappropriate" elements such as LGBT issues.[18] This followed controversies over two films with gay scenes.[19]

Statements by public officials

In September 2018, Malaysia's Prime Minister Mahathir Mohamad, stated that the country cannot accept LGBT culture or rights such as same-sex marriage, dismissing them as "Western" values.[20] This was in response to the recommendation by the country's National Human Rights Commission (Suhakam) to repeal laws that discriminate against the LGBT community.

In an interview with the Wall Street Journal in the same month, Mahathir added that Malaysia would not decriminalise sodomy because "we are a Muslim nation, and we do not tolerate sodomy. The rest of the world may tolerate it, but we cannot. That is against our religion."[21]

Similarly, in July 2018, Minister in the Prime Minister's Department Datuk Dr Mujahid Yusof Rawa said: "The rights of the LGBT community to practise their lifestyle is still subject to the law that does not allow it in Malaysia." This was in response to a question on the government's plan to address the "spread of the LGBT culture".[22]

In October 2018, opposition leader Datuk Seri Ahmad Zahid Hamidi attributed an earthquake that took place in Indonesia to LGBT activities there. He warned that "we need to ensure that Malaysia and those who are against LGBT are spared Allah's punishment".[23]

Existing legal challenges

Constitutionality of criminalisation of cross-dressing

In November 2014, the Court of Appeal found section 66 of the Syariah Criminal Enactment of Negeri Sembilan State criminalising cross-dressing unconstitutional.[24]

The court observed that the existence of a law that punishes gender expression is degrading and deprives those affected of their dignity and value in society.[25]

National Human Rights Institution

In August 2018, the Shariah High Court in the state of Terengganu sentenced two women to caning and a fine for engaging in same-sex sexual activity.[26]

This was criticised by the Suhakum, the country's National Human Rights Institution, as contrary to the practices of a "cultured, civilised, moderate and progressive society".

Additionally, the NHRI observed that such a punishment was not intended to educate but "to humiliate [and] injure the reputation of the women and their families".[27]

UN voting record

In 2011, Malaysia voted against the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.[28]

In 2014 and 2016, Malaysia was not a member of the Human Rights Council and, therefore, did not

16 "Malaysia's religious affairs minister Mujahid Rawa orders removal of LGBT activists' portraits", *The Straits Times*, 8 August 2018.
17 Ella Braidwood, "Police raid Malaysian gay bar to 'stop the spread of LGBT culture in society'", *Pink News*, 18 August 2018.
18 "Censorship board to snip LGBT elements, scenes from films, dramas", *Free Malaysia Today*, 11 December 2018.
19 Gwilym Mumford, "Beauty and the Beast: Malaysian film censors back down in 'gay moment' row", *The Guardian*, 21 March 2017; Chris Mohan, "'Bohemian Rhapsody' can't break free from Malaysian censors", *Malay Mail*, 12 November 2018.
20 "LGBT or same-sex marriage not for Malaysia, says Dr M", *The Star Online*, 22 September 2018.
21 "Malaysia will not repeal anti-sodomy laws", *New Straits Times*, 29 September 2018.
22 "Minister: LGBT lifestyle against Malaysian law", *Malay Mail*, 23 July 2018.
23 Azril Annuar, "Zahid says Indonesia quake was divine retribution for LGBT activities", *Malay Mail*, 23 October 2018.
24 Civil Appeal No. N-01-498-11/2012.
25 *Ibid.*, 15.
26 Jo Timbuong, "Syariah Court's judgement against lesbian couple is final", *The Star Online*, 16 August 2018.
27 Tan Sri Razali Ismail, "Press Statement No.36 of 2018 ("Public Caning of Two Women in Terengganu")", 4 September 2018.
28 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011.

participate in the vote for the adoption of the SOGI resolutions adopted in those years.[29]

At the session of Third Committee of the UN General Assembly held in November 2016, Malaysia voted against the LAC amendment to remove Operative Paragraph 2,[30] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Malaysia voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

Having received seven recommendations from States to decriminalise in its 2nd cycle UPR in October 2013, the Government stated that matters involving lesbian, gay, bisexual, and transgender persons and adherents of other schools of Islamic thought would be handled carefully and consistent with cultural traditions, religious doctrine and societal norms, and domestic laws and regulations.[31]

During its 3rd cycle of the UPR carried out in November 2018, Malaysia received 11 SOGIESC recommendations (responses will be provided by March 2019). Canada, Chile, France and Iceland called for the decriminalisation of consensual same-sex sexual acts in the country. Uruguay, Argentina, Austria, Canada, France, Germany and the Netherlands focused violence and discrimination suffered by the LGBTIQ community in the country. Portugal proposed to "implement anti-bullying campaigns in schools addressing all forms of bullying, including based on actual or perceived sexual orientation, gender identity or gender expression".[32] The State provided no relevant comments on the SOGIESC situation during the Session.

Treaty Bodies

During the country's fifth periodic review, the **Committee on the Elimination of Discrimination against Women (CEDAW)** urged Malaysia to undertake awareness-raising measures to eliminate discrimination and negative stereotypes against LBTI women, especially by amending all discriminatory laws, including the provisions of the Penal Code and Syariah laws that criminalise same-sex relations between women and cross-dressing and by expediting measures to discontinue all policies and activities which aim to "correct" or "rehabilitate" LBTI women.[33]

Special Procedures

The **Special Rapporteur on the right to health** visited Malaysia in 2015 and expressed serious concern about the support given by public institutions to "corrective therapies".[34] He called on Malaysia to "put an end to State-led programmes that expose and punish LGBT children, and ensure that they enjoy safe and enabling spaces in schools, and other public and private institutions."[35]

In 2011, several mandates[36] received complaints concerning the alleged banning of the fourth annual Seksualiti Merdeka Lesbian, Gay, Bisexual and Transgender (LGBT) festival in Kuala Lumpur. The organisers were allegedly summoned for questioning by the police as well.[37]

29 Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014; Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

30 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

31 *Report of the Working Group on the Universal Periodic Review: Malaysia*, A/HRC/25/10, 4 December 2013, para. 9.

32 *Report of the Working Group on the Universal Periodic Report: Malaysia*, A/HRC/40/11, 7 January 2019.

33 *Concluding observations on the combined third to fifth periodic reports of Malaysia*, CEDAW/C/MYS/CO/3-5, 14 March 2018, para. 40.

34 *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health on his visit to Malaysia*, A/HRC/29/33/Add.1, 1 May 2015, para. 90.

35 *Id*., para. 111.

36 The mandates who received such reports are: the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders.

37 For more information, see AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) MYS 11/2011.



MALDIVES

Provisions in force

- **Penal Code** (Law No. 6/2014).

Unlawful intercourse / Sexual intercourse with a person of the same sex

Section 411. Unlawful sexual intercourse.

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

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

(f) Definitions: [...]

(2) "Same- sex intercourse means":

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

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

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

Indecent acts

Section 412. Unlawful sexual contact.

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

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

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

Criminalisation of same-sex marriage

Section 410. Offences against the family.

Unlawful Marriage. A person commits an offense if: [...]

(8) two persons of the same sex enter into a marriage;

The offenses in this Section are Class 1 misdemeanours which carry a jail term of 1 year or less but more than 6 months.

Human rights situation

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

Law No. 6/2014 sets out its range of offences and defences according to a Sharia scheme. This scheme then embraces the entire population and not just those of the Muslim faith. Less than two months after the new Penal Code came into force, arrests of gay men have been reported.[1]

Testimony in a 2015 Kaleidoscope Trust's publication portrays the Maldives as highly hostile to LGBTI persons.[2]

In 2012, Ismail Hilath Rasheed, an openly gay blogger and former editor of the Maldivian newspaper Haveeru, was slashed in his neck.[3] Hilath survived the attack and told journalists that his assailants had named three senior political and religious figures during the attack, and that they had been promised "entry to heaven" for murdering someone who "defended freedom of religion and gay rights".[4]

In 2014, a man who did drag was granted refugee status in New Zealand on the basis that he faced persecution in Maldives on the basis of his sexual orientation.[5] According to media reports, a spokesman for the President's Office, Ibrahim Muaz, had claimed that "the threat they speak of is in actuality our law and regulations. That will not change."

In August 2015, two men were arrested and accused of "homosexuality activity" at their home on the island of Dhaandhoo.[6] According to local LGBT group Rainbow Warriors, it was the first time that the police had arrested people for private, consensual same-sex sexual activity.

National Human Rights Institution

The Human Rights Commission of the Maldives does not appear to have addressed issues related to SOGIESC.

UN voting record

In 2011, Maldives voted against the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.[7]

In 2014, it voted against the adoption of Resolution 27/32, the second SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to update the report produced in 2011.[8]

Again in 2016, Maldives voted against the adoption of Resolution 32/2 which created the mandate of the independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.[9]

At the session of Third Committee of the UN General Assembly held in November 2016, Maldives voted against the LAC amendment to remove Operative Paragraph 2,[10] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

Additionally, Maldives voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

1 "Maldives: Lenient no more, island nation arrests 2", *Erasing 76 Crimes*, 1 September 2015.
2 Kaleidoscope Trust et al., *Speaking Out* (2015).
3 Eric Randolph, "Trouble in paradise: The darker side of the Maldives", *The Independent UK*, 11 April 2013.
4 "An All-Out Assault on Democracy: Crushing Dissent in the Maldives" *Human Rights Watch*, 16 August 2018.
5 "Maldives resolute in wake of refugee's story", *GayNZ.com*, 11 June 2014.
6 Darren Wee, "Two arrested for gay sex in Maldives", *Gay Star News*, 2 September 2015.
7 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011.
8 Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014.
9 Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.
10 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

International advocacy and supervision

Universal Periodic Review

At its 1st cycle UPR in November 2010, recommendations to Maldives were to decriminalise, protect against violence and remove discrimination based on sexual orientation and gender identity in national laws. Maldives rejected all of five these recommendations.[11]

In a report submitted to Maldives' 2nd cycle UPR in May 2015, the International Service for Human Rights (ISHR) says, "[u]ncodified Muslim Sharia Law criminalises homosexual conduct, thus making the Maldives a very insecure place to advocate for the rights of persons who identify themselves as LGBTI."[12]

In finalising its 2nd UPR process in September 2015, the Maldives rejected ('noted') two recommendations made to it concerning discrimination and decriminalisation.[13]

Treaty Bodies

In 2012, the **Human Rights Committee** expressed concern about discrimination against people on the basis of their sexual orientation as well as the social stigmatisation and social exclusion of these groups.[14] It urged the state to decriminalize sexual relations between consenting adults of the same sex and combat the stigmatisation and marginalisation of homosexuals in society, as well as accelerate the enactment of anti-discrimination legislation and ensure that it includes a prohibition of discrimination on the basis of sexual orientation.

In April 2016,-the **Committee on the Rights of the Child** recommended the State to "amend its legislation in order to eliminate any discrimination against", among others, lesbian, gay, bisexual, transgender or intersex children and "to use legislative, policy and educational measures, including sensitization and awareness-raising, to end stigmatization" of such children.[15]

11 *Draft report of the Working Group on the Universal Periodic Review: Maldives*, A/HRC/WG.6/9/L.5, 9 November 2010.

12 ISHR, *Maldives: Briefing paper on the situation of human rights defenders* (2014).

13 *Draft report of the Working Group on the Universal Periodic Review: Maldives*, A/HRC/WG.6/22/L.6, 21 May 2015.

14 *Concluding observations adopted by the Human Rights Committee at its 105th session: Maldives*, CCPR/C/MDV/CO/1, 31 August 2012, para. 8.

15 *Concluding observations of the Committee on the Rights of the Child on the combined fourth and fifth periodic reports of Maldives*, CRC/C/MDV/CO/4-5, 14 May 2016, para. 27.



MYANMAR

Provisions in force

- **Penal Code** (Act No. 45/1860, Revised Edition).

carnal intercourse against the order of nature

Section 377.

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with 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.

Human rights situation

According to activists, LGBT people, especially transgender people, are targeted under Section 35c of the Police Act, also known as the "Darkness Law", which allows authorities to detain someone whose face is covered or otherwise disguised.[1]

In 2016, a transgender woman was abused by the police and raped while held in a male prison after she was detained under this law.[2] Due to the restrictive political landscape, citizens have little recourse against police abuse or to challenge the constitutionality of such laws.[3]

In December 2018, activists criticised the film industry for spreading misinformation about the LGBT community by perpetuating harmful stereotypes.[4]

In 2019, Pride Week was held in Yangon, with a pride boat parade and a "drag olympics".[5] This followed the success of the Proud LGBT Festival in previous years, with over 5,000 participants attending in 2018.[6]

In past years, LGBT NGOs, such as Colour Rainbow, have been able to organise events (for example, a queer film festival and International Day Against Homophobia, Biphobia and Transphobia (IDAHOT) celebrations).[7]

National Human Rights Institution

The National Human Rights Commission was established in 2011 and given force in 2014. One commissioner attended the UN Asia-Pacific conference on Human Rights, Sexual Orientation and Gender Identity in 2015.[8] It has been reported that though the commission is set up as an independent body, it does not appear to operate as such.[9] Furthermore, some members of the commission are allegedly homophobic.

1 Lae Phyu Pyar Myo Myint and Nyein El El Htwe, "Prejudice and progress: a snapshot of LGBT rights in Myanmar", *MM Times*, 1 June 2017.

2 James Nickerson, "Myanmar's abused, intimidated LGBT people long for acceptance in new era", *Reuters*, 16 November 2016.

3 Arvind Narrain, "The struggle against Section 377 Myanmar Penal Code: A viewpoint from India", *ARC International*, 14 February 2019.

4 Ruby Ye, "Myanmar movies give misinformation about LGBT people, LGBT rights activist says", *Mizzima*, 29 December 2018.

5 Libby Hogan, "Myanmar LGBT Pride Out in Force, But Laws Lag Behind", *VOA News*, 29 January 2019.

6 Nandar Aung and Myo Satt, "A loud and proud success", *Myanmar Times*, 29 January 2018.

7 "Myanmar's biggest LGBT event returning to Yangon", *Frontier Myanmar*, 23 January 2018; Lae Phyu Pya Myo Myint, "'LGBT is an identity': International Day against Homophobia, Biphobia and Transphobia", *MM Times*, 22 May 2017.

8 Asia Pacific Forum, *Promoting and protecting the rights of LGBTI people in Asia and the Pacific* (2015); "Myanmar's abused, intimidated LGBT people long for acceptance in new era", *Reuters*, 15 November 2016.

9 Alice Muthoni Murage and Ohnmar Nyunt (Alison), "LGBTI people in Myanmar: second-class citizens", *Heinrich Boll Stiftung*, 1 June 2017.

UN voting record

Myanmar was not a member of the Human Rights Council between 2011 and 2016, and therefore did not participate in the vote for the three HRC SOGI resolutions in 2011, 2014 and 2016.

At the session of Third Committee of the UN General Assembly held in November 2016, Myanmar abstained during the vote to adopt the LAC amendment to remove Operative Paragraph 2,[10] and abstained during the vote to adopt the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

Likewise, Myanmar abstained during the vote to adopt the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

Sexual orientation and gender identity were not mentioned in Myanmar's 1st cycle UPR in November 2010.

In its 2nd cycle UPR in November 2015, two recommendations were made to repeal Section 377 by Australia and Spain. It appears that the delegation offered no response to these, other than 'noting' (rejecting) them.[11]

Myanmar's next UPR is in November 2020.

10 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

11 *Report of the Working Group on the Universal Periodic Review: Myanmar*, A/HRC/31/13, 23 December 2015.



OMAN

Provisions in force

- **Penal Code** (1974) (promulgated by Royal Decree No. 7/74).

Erotic acts with a person of the same sex

Homosexual or lesbian intercourse

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 fourth-degree removed.

Disgracing crimes

Article 33.

The following are deemed as disgracing crimes: [...]

II. All misdemeanours stated hereafter: [...]

7. Homosexual and lesbian intercourses; [...].

- **Law on Publications and Publishing** (1984). Chapter 4: On publication bans.

Legal barrier to freedom of expression

Article 25.

It is prohibited to [...] call people to embrace or promote anything deemed in contravention of the principles of the Islamic religion.

Legal barrier to freedom of expression

Article 28.

It is prohibited to publish anything that might prejudice the public code of conduct, moral norms or divine religions.

Punishment for unlawful publications

Article 35

Without prejudice to any severer penalty stipulated in any other law, anyone who acts in violation of Article (25) of this law shall be punished by imprisonment for a period not exceeding "three" years or a fine not exceeding "two thousand Omani Riyals" or by both penalties.

- Ministerial Resolution No. 10 (2007) on **Executive Regulations** to the **Telecommunications Law**.

Legal barrier to freedom of expression

Article 42.

The beneficiary shall be prohibited from using telecommunications service that contain data or information which meant the following: [...]

3. In contrary to the public ethic system.

4. Infringe the religious practice or upset others.

5. Promote any subject or product breaching the law.

Human rights situation

In 2010, two LGBT websites, "Community Queer" and "Muscat Confidential" were temporarily blocked for publishing content that was considered immoral.[1] In September 2013 the English-language newspaper *The Week* was shut down for one week after printing an article about the country's LGBT community.[2] Under pressure from the government, the newspaper removed the article from its website, though the print issue continued to circulate.[3]

In 2015, the Ministry of Information was purportedly taking legal action against a French radio station based in Oman that hosted a gay Omani activist who spoke about the challenges of being gay in the country.[4]

According to a 2018 Human Rights Watch report, a small group of activists have sought to create spaces for community-building, although they face challenges in doing HIV awareness work due to a restrictive legal environment.[5]

National Human Rights Institution

The Oman Human Rights Commission does not appear to have done any work in relation to sexual orientation or gender identity.

UN voting record

Oman was not a member of the Human Rights Council between 2011 and 2016, and therefore did not participate in the vote for the three HRC resolutions on human rights, sexual orientation and gender identity in 2011, 2014 and 2016.

At the session of Third Committee of the UN General Assembly held in November 2016, Oman voted against the LAC amendment to remove Operative Paragraph 2,[6] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Oman voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

At its 1st cycle UPR, Sweden made two recommendations that Oman 'noted' (i.e. rejected): one to decriminalise same-sex sexual relations, and the other to abolish discrimination based on SOGI.[7]

Oman's 2nd cycle UPR was in November 2015. Only one civil society submission mentioned decriminalising "homosexuality", and both Mexico and Brazil made recommendations for Oman to repeal (or not apply) its legislation.[8] The State 'noted' (rejected) these recommendations.[9]

Oman's next UPR review commences in November 2020.

Special Procedures

In 2015, the **Special Rapporteur on the rights to freedom of peaceful assembly and of association** expressed concern that the Penal Code made it *de facto* illegal for individuals to peacefully gather to claim the rights of LGBT people.[10] Oman was urged to repeal legislation that criminalizes same-sex sexual acts and to ensure non-discrimination and equality.[11]

1 Freedom House, *Freedom in the World 2011* (Rowman & Littlefield Publishers, 2011), 505.

2 "Oman's government sues newspaper over story about gays", *Reuters*, 5 September 2013.

3 "Oman Newspaper Shut Down After Publishing A Sympathetic Article On Homosexuals In Country", *Jonathan Turley*, 4 September 2013.

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

5 Human Rights Watch, *Audacity in Adversity: LGBT Activism in the Middle East and North Africa* (2018), 29.

6 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

7 *Draft report of the Working Group on the Universal Periodic Review Oman*, A/HRC/WG.6/10/L.5, 1 February 2011.

8 ISHR, *The Situation of Human Rights Defenders in Oman* (2015).

9 *Report of the Working Group on the Universal Periodic Review: Oman*, A/HRC/31/11, 6 January 2016.

10 *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his mission to Oman*, A/HRC/29/25/Add.1, 27 April 2015, para. 19.

11 Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his mission to Oman, A/HRC/29/25/Add.1, 27 April 2015, para. 70.



PAKISTAN

Provisions in force

- **Penal Code** (Act XLV of 1860).

Carnal intercourse against the order of nature

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.

Obscene acts

Section 294. Obscene Acts and Songs.

Whoever to the annoyance of others:

(a) does any obscene act in any public place; or

(b) sings, recites or utters any obscene songs, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

- **Prevention of Electronic Crimes Act** (2016).

Legal barrier to freedom of expression

Section 34(1). Unlawful Online Content.

The Authority shall have the power to remove or block or issue directions for removal or blocking of access to an information through any information system if it considers it necessary in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, public order, decency or morality, or in relation to contempt of court or commission of or an incitement to an offence under this Act.

Human rights situation

LGBT people report facing significant hostility within Pakistani society, including harassment and acts of violence if they disclose their sexual orientation or gender identity. Often, individuals face pressure and violence from their family members to conform to heteronormative expectations of marriage.[1]

In June 2011, the US embassy in Islamabad sponsored and held the first pride parade in the country (within the US Embassy compound). This attracted strong criticism from religious

[1] Ihsan, "What it's like to be a 22-year-old gay man in Pakistan", *Gay Star News*, 5 July 2016; Beth Abbit, "What it's like to live life as a Muslim lesbian", *Manchester Evening News*, 28 October 2017; "Country of Origin Information Report: Pakistan Country Overview" (European Asylum Support Office 2015), p. 105.

authorities, who called the event "cultural terrorism".[2]

In September 2013, the first website blocked by the Pakistan Telecommunications Authority was *queerpk.com*, a site set up to help members of Pakistan's gay and transgender community socialise and share experiences. According to a spokesperson, it was shut down because "its content was against Islam and norms of Pakistani society". The moderator of the site was unwilling to challenge the ban out of fear.[3]

In January 2014, a television programme accused the Pakistani gay community of "being part of a conspiracy hatched by Christians".[4]

According to Kaleidoscope Trust, in April 2014, a serial killer confessed to killing three gay men because of their sexual orientation, yet Pakistani media depicted the serial killer as "the epitome of righteousness".[5]

Section 294, on obscene acts, is reportedly often deployed to target male and trans sex workers.[6] In fact, in 2016, there were multiple reports of violence against transgender women. In May 2016, a transgender activist was killed after being shot eight times and suffering mistreatment at the hospital.[7]

In August 2017, a transgender person was shot dead by a group of shooters who opened fire on a number of transgender people standing in the street from a vehicle.[8] The shooting occured after the vehicle had driven past a previous time, with men throwing eggs at the group of trans women. In January 2018, two members of TransAction Pakistan: Transgender Community Alliance were attacked in separate incidents.[9]

Progress on gender identity issues

In June 2016, a group of clerics declared marriage between transgender persons permissible in Islam[10] and in November, a group of transgender activists started raising funds to build a mosque for transgender people, who are often excluded from religious participation.[11]

In January 2017, the Lahore High Court instructed the government to include the transgender community in the upcoming census in March.[12] However, in August 2017, activists rejected the census findings that the population of transgender people was 10,000 as "inaccurate and misleading"; instead, they say that there are more than a million transgender persons across the country.[13]

In April 2018, the Gender Guardian, a school for the education and vocational training of trans people, was opened in Lahore.[14] In May 2018, the National Assembly passed the Transgender Persons (Protection of Rights) Bill, 2018 aimed at ensuring rights of transgender persons.[15] The law allows transgender people to register to obtain a driver's license and passport, as well as to change their gender in the national records. Discrimination and harassment of transgender persons is also prohibited under the law.

In September 2018, the Lahore High Court ruled that public hospitals in Punjab province must provide separate facilities for transgender patients to safeguard their right to privacy and protect them from discrimination and prejudice.[16] In December 2018, the first trans pride was held in Lahore.[17]

2 "Pakistan: Religious groups condemn US embassy gay event", *BBC News*, 4 July 2011.
3 "Pakistan Blocks First Gay Website Queerpk, Deeming It 'Un-Islamic'", *Huffington Post*, 26 September 2013.
4 Tufail Ahmad, "Pakistani TV Channel's Attack On Pakistan's Gay Community, Bedrooms Raided And Gays Accused Of Being Against Islam And A Conspiracy Of Jews And Christians", *Middle East Media Research Institute*, 17 January 2014.
5 Kaleidoscope Trust et al., *Speaking Out* (2015).
6 Kaleidoscope Australia, *Shadow Report to the Committee on Economic, Social and Cultural Rights Regarding Pakistan's Protection of the Rights of LGBTI Persons* (2016).
7 Ali Akbar, "Transgender Alisha succumbs to wounds at Peshawar hospital", *Dawn*, 25 May 2016.
8 "Transgender person shot dead, dozens of suspects held in Karachi", *Geo News*, 30 August 2017.
9 "Violent Attacks on Transgender Activists", *Front Line Defenders* (website), accessed 9 February 2019.
10 Mubasher Bukhari, "Pakistani clerics declare transgender marriages legal under Islamic law", *Reuters*, 27 June 2016.
11 Sehrish Wasif, "In Islamabad, a mosque for transgender community", *The Express Tribune*, 21 November 2016.
12 "On court's order, Pakistan to count its transgenders", *Sify News*, 9 January 2017.
13 Sehrish Wasif, "Transgender community rejects census figures", *The Express Tribune*, 27 August 2017.
14 Rana Bilal, "Pakistan's first-ever school for transgender community set to open its doors", *Dawn*, 6 April 2018.
15 "NA passes Transgender Persons Protection of Rights Bill 2018", *Pakistan Observer*, 8 May 2018.
16 Rik Glauert, "Hospitals in Pakistan to separate transgender patients, court rules", *Gay Star News*, 21 September 2018.
17 Tom Capon, "Trans people held the first ever trans pride march in Pakistan", *Gay Star News*, 30 December 2018.

National Human Rights Institution

Pakistan does not have a National Human Rights Institution in accordance with the Paris Principles.

UN voting record

Pakistan has been particularly vocal at the Human Rights Council and at various UN fora in its refusal to embrace SOGI within the scope of the various human rights Treaty Bodies, and in its promotion of the 'traditional values of humankind' resolutions at the Human Rights Council.[18]

In 2011, Pakistan voted against the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.[19] In June 2012, at the 19th session of the HRC, at the reading of the report, Pakistan led a walkout by member States of the Organisation of Islamic Cooperation, which was unprecedented behaviour in that forum.[20] They were objecting to "attempts to create" "new standards" regarding SOGI that "seriously jeopardise the entire international human rights framework".

In 2014, Pakistan again voted against the adoption of Resolution 27/32, the second SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to update the report produced in 2011.[21]

Throughout 2016, Pakistan took the lead in opposing the appointment of a United Nations SOGI mandate holder.[22] However, in that year, Pakistan was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 32/2 which created the mandate of the independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.[23]

At the session of Third Committee of the UN General Assembly held in November 2016, Pakistan voted against the LAC amendment to remove Operative Paragraph 2,[24] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

Additionally, Pakistan voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

There were no direct mentions of SOGI in either of Pakistan's UPR outcome documents in May 2008[25] and October 2012.[26] Only in 2008 were there civil society submissions on the issue (it appears that of the 38 civil society submissions made in 2012, none had a SOGI context).[27] However, there were recommendations concerning the protection of human rights defenders and the training of public employees (judges, police, etc) in international human rights standards in their 2nd cycle UPR.

During its 3rd cycle of the UPR carried out in November 2017, Pakistan received seven SOGIESC recommendations. It accepted two of them, whilst noting (functionally rejecting) all remaining five.

The State accepted recommendations from Albania calling for Pakistan to "ensure that the 2017 law presently being reviewed on the recognition of the rights of intersex and transgender persons pays necessary attention to both women and men transgenders"; and from Spain, urging the State to "rapidly adopt and implement the two draft bills recently presented before the National Assembly to ensure the rights of transgender persons". However, it noted recommendations from Chile asking the State to "adopt legislative measures to

18 Human Rights Council, *Resolution 16/3: Promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind*, A/HRC/RES/16/3, 8 April 2011.

19 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011.

20 "African, Arab Delegates Walk out of UN Gay Rights Meeting", *DW*, 7 March 2012.

21 Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014.

22 "Islamic & African Nations Boycott Meeting With First U.N. Expert on Anti-Gay Violence", *UN Watch*, 26 January 2017.

23 Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

24 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

25 *Draft Report of the Working Group on the Universal Periodic Review Pakistan*, A/HRC/WG.6/2/L.8, 15 May 2008.

26 *Draft report of the Working Group on the Universal Periodic Review: Pakistan*, A/HRC/WG.6/14/L.10, 2 November 2012.

27 ILGA, *Submission in the UPR Review of: Pakistan* (2008); International Gay and Lesbian Human Rights Commission, *Human Rights and Transgender People in Pakistan* (2008).

decriminalize homosexuality and consensual sexual relations between people of the same sex"; and from Australia, France, Mexico and the Netherlands, calling the State to take measures to protect the LGBTIQ community from discrimination and violations to their human rights.[28]

Pakistan referred to SOGIESC issues during the session, focusing on the improvements of the situation of trans people. The State expressed that "for the first time ever transgenders were counted in the recently concluded census and are now being issued national identity cards by the National Database Regulatory Authority through inclusion of the third gender category".[29]

Treaty Bodies

In 2017, the **Human Rights Committee (CCPR)** expressed concern about the criminalisation of same-sex relations and the lack of information on effective measures to prevent and punish all forms of discriminations against lesbian, gay, bisexual, transgender and intersex persons.[30] It urged the state to decriminalise consensual same-sex relations and adopt a comprehensive anti-discrimination legislation that prohibits discrimination on the basis of sexual orientation and gender identity.[31]

In 2016, the **Committee on the Rights of the Child (CRC)** expressed extreme concern about the widespread discrimination against lesbian, gay, bisexual and transgender children.[32] It called on the state to take all appropriate measures, such as comprehensive public education programmes, to combat and prevent discrimination and negative societal attitudes and mobilize political, religious and community leaders to support efforts to eradicate traditional practices and attitudes that discriminate against these children.[33]

Special Procedures

In March 2016, several mandates[34] received information about alleged threats and attempted assassination of Adnany, a human rights defender and transgender activist.[35] They expressed grave concern at the recurrent threats and shooting of Adnany and the initial denial of medical treatment on the basis of gender discrimination by the hospital she was sent to after she was attacked.

28 "UPR-Pakistan", *ILGA Website*, 16 November 2017.

29 "UPR-Pakistan", *ILGA Website*, 16 November 2017, Section C.

30 *Concluding observations on the initial report of Pakistan*, CCPR/C/P AK/CO/1, 23 August 2017, para. 11.

31 *Concluding observations on the initial report of Pakistan*, CCPR/C/P AK/CO/1, 23 August 2017, para. 12.

32 *Concluding observations on the fifth periodic report of Pakistan*, CRC/C/PAK/CO/5, 11 july 2016, para. 18.

33 *Concluding observations on the fifth periodic report of Pakistan*, CRC/C/PAK/CO/5, 11 july 2016, para. 19.

34 The mandates were: the Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

35 For more information, see PAK 6/2016.



QATAR

Provisions in force

- **Penal Code** (Law No. 11 of 2004).

Copulating with a male

Article 285.

Whoever copulates with a male over sixteen years of age without compulsion, duress or ruse shall be punished with imprisonment for a term up to seven years. The same penalty shall apply to the male for his consent.

The penalty shall be life imprisonment or a prison term not exceeding fifteen years if the offender is one of those previously mentioned in the second Paragraph of Article 279 of the present Law.

The second paragraph of article 279 states that the sentence shall be capital punishment if the "perpetrator from the ascendants of the victim, or the guardian, or those undertaking the bringing up or looking after the victim, or is a person having authority thereupon, or the servant thereof or the servant of the aforesaid in this Article.

Instigation to sodomy or immoral actions

Article 296.

Whoever commits the following offences shall be punished with imprisonment for a term of no less than one year and no more than three years: [...]

(3) Leading, instigating or seducing a male by in any way to commit sodomy or dissipation;

(4) Inducing or seducing a male or a female in any way to commit illegal or immoral actions.

Human rights situation

In addition to the penal provisions, Qatar also runs Sharia courts, where technically it is possible that Muslim men could be put to death for same-sex sexual behaviours. However, it does not appear that any person has been executed for this reason or at all.[1] Nevertheless, the 'chill factor' of these provisions, are covered by UNHCR guidance of 2002 that explains norms that do not confirm with international human rights law can be seen to be persecutory "*per se*".[2] The offence of "Zina" renders any sexual act by a married person outside of marriage punishable by death, while sexual acts by non-married persons are punishable by flogging – both are offences, no matter if they were same-sex or different-sex.[3]

As the host for the Fifa 2022 World Cup, the country has come under significant scrutiny from Fifa's anti-discrimination taskforce.[4] Little information on enforcement appears to be available after the 1995 case in which a US citizen

1 Amnesty International, *Love, Hate and the Law: Decriminalizing Homosexuality* (2008), p. 47; "Annual Number of Reported Executions", *Cornell Center on the Death Penalty Worldwide* (website), accessed 16 February 2019; Human Rights Watch, *Audacity in Adversity: LGBT Activism in the Middle East and North Africa* (2018), p. 72.

2 *Guidelines on International Protection: Gender-Related Persecution within the Context of Article 1A(2) of the 1951 Convention and/or Its 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/02/01, 7 May 2002, paras. 57 and 59.

3 Amnesty International, *Love, Hate and the Law: Decriminalizing Homosexuality* (2008), p. 47; "Annual Number of Reported Executions", *Cornell Center on the Death Penalty Worldwide* (website), accessed 16 February 2019.

4 Owen Gibson, "Fifa urged to pressure Russia and Qatar over anti-gay legislation", *The Guardian*, 8 September 2013.

received 90 lashes for same-sex sexual activity and the 1997 deportation of 36 gay Filipinos.[5]

In 2013, Qatar was one of the countries in the Gulf Cooperation Council that was exploring a ban on gay/lesbian/bi and transgender foreigners from working in the region first proposed by Kuwait.[6]

In 2016, *Doha News* published an opinion piece by a Qatari man on the challenges of being gay which led to significant debate.[7] A response piece was published that criticised the news outlet for allowing the topic of "homosexuality" in Qatar be discussed.[8]

In July 2018, it was reported that articles relating to gay and transgender rights in the print version of the New York Times had been censored in the country.[9]

National Human Rights Institution

The National Committee for Human Rights does not appear to have done any work in relation to sexual orientation or gender identity.

UN voting record

In 2011, Qatar voted against the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.[10]

In 2014, it was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 27/32, the second SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to update the report produced in 2011.[11]

In 2016, Qatar again voted against the adoption of Resolution 32/2 which created the mandate of the independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.[12]

At the session of Third Committee of the UN General Assembly held in November 2016, Qatar voted against the LAC amendment to remove Operative Paragraph 2,[13] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Qatar voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

In its 1st UPR in February 2010, only Sweden made a recommendation regarding SOGI to Qatar (which was 'noted'): "To ensure that LGBT persons are not discriminated against and, as an immediate step, to amend the provisions of the penal code criminalizing consensual same-sex sexual acts and to ensure that no one is punished for such activity under Sharia law". This recommendation was repeated at the Interactive Dialogue session, but the State gave no response to either.[14]

At its 2nd cycle UPR in mid-2014, only one mention of LGBT workers was made in relation to the upcoming World Cup, to which it appears the State made no response at all.[15]

Qatar's next UPR review is scheduled for May 2019.

5 Brian Whitaker, "Qatar is more boring than backward", *The Guardian*, 3 December 2010.

6 Habib Toumi, "Gulf homosexual ban was 'just a proposal': Kuwait chief", *Gulf News*, 20 October 2013.

7 Majid Al-Qatari, "What it's like to be gay and Qatari", *Doha News*, 5 August 2016; Jason Lemon, "Debate about homosexuality sparked in Qatar", *Stepfeed*, 9 August 2016.

8 Jassim Al Maadadi, "'We do not tolerate homosexuality in Qatar'", *Doha News*, 8 August 2016.

9 Pete Madden, "EXCLUSIVE: Under World Cup spotlight, Qataris crack down on LGBT news coverage", *ABC News*, 20 July 2018.

10 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011.

11 Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014.

12 Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

13 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

14 *Draft Report of the Working Group on the Universal Periodic Review: Qatar*, A/HRC/WG.6/7/L.1, 10 February 2010.

15 Report of the Working Group on the Universal Periodic Review: Qatar, A/HRC/27/15, 27 June 2014.



SAUDI ARABIA

Provisions in force

There is no codified Penal Law in Saudi Arabia. However, the country applies strict Islamic Sharia law. According to the **Sura 7:80/81**, sexual intercourse between men is outlawed. All sexual relations outside of marriage are illegal and the penalty for a married man is generally understood to be death by stoning.

There is a morality law enforcement agency called the "Committee for the Propagation of Virtue and the Prevention of Vice" that arrests and detains people who violate the traditional teachings of Wahhabism, including same-sex sexual behaviour and diverse gender expression.[1] They operate in-person and online, and are known to be particularly vicious towards LGBT people.[2]

- **Anti Cyber Crime Law** (2007).

Legal barrier to freedom of expression

Article 6.

Any person who commits one of the following cybercrimes shall be subject to imprisonment for a period not exceeding five years and a fine not exceeding three million riyals or to either punishment:

(1) Production, preparation, transmission, or storage of material impinging on public order, religious values, public morals, and privacy, through the information network or computers; [...]

(3) The preparation, publication, and promotion of material for pornographic or gambling sites which violates public morals.

Human rights situation

There are no LGBT groups or organisations operating in Saudi Arabia, and opportunities for people to meet have been severely restricted. LGBT people are also persecuted for their identities.[1] In 2010, a gay Saudi diplomat sought asylum in the US after he was discovered to be gay and friends with a Jewish woman.[2] In November 2014, a man was sentenced to three years in jail and fined for engaging in "immoral acts". He had posted nude pictures of himself on social media and sought to arrange to have sex with other men.[3] Authorities in Saudi Arabia arrested several people on "suspicion of homosexuality" in raids on two parties in the city of Jeddah in June 2015.[4] In January 2016, four men were also allegedly arrested for living as "married couples" together in a flat.[5] In March 2016, it is reported that a doctor in Jeddah was arrested by the Committee for Promotion of Virtue and the Prevention of Vice for flying the rainbow flag, although he had been unaware of its meaning.[6] Also in March 2016, from Jeddah, ominous attention has been brought to online communications amongst sexual and gender

1 "Saudi Cabinet Decree Prevents 'Religious Police' from Pursuit, Arrest", *Al Arabiya*, 13 April 2016.
2 "Gay Saudi Arabian Man Sentenced to Three Years and 450 Lashes for Meeting Men Via Twitter", *The Independent*, 25 July 2014.
1 "Homosexuality in Saudi Arabia: A Story of Persecution, Guilt and Secrecy", *Fanack*, 26 April 2018.
2 Alexandra Zavis, "Gay Saudi diplomat seeking asylum says 'they will kill me openly'", *Los Angeles Times*, 15 September 2010.
3 Habib Toumi, "Saudi Arabia: Homosexual man jailed for 'immoral acts'", *Gulf News*, 11 November 2014.
4 "'Gay Parties' Raided in Saudi Arabia; Religious Police Arrest Several People on Suspicion of Homosexuality", *International Business Times*, 15 June 2015.
5 Habib Toumi, "'Married' gay couples arrested in Saudi raid", *Gulf News*, 26 January 2016.
6 "Saudi Man Arrested for Flying 'Pretty' Rainbow Flag Unaware It Symbolised LGBT Pride", *The Independent*, 27 March 2016.

minorities.[7] However, in May 2016, regarding the death penalty for same sex sexual relations, a leading cleric noted, "[b]y condemning homosexuals to death they are committing a graver sin than homosexuality itself".[8]

The Saudi authorities raided a resort south of Saudi capital, Riyadh in February 2017, and detained 35 Pakistani citizens, describing them as "faggots", and releasing photographs of some of the individuals who were cross-dressing.[9] It is reported that two members of the group were brutally killed by the authorities,[10] a claim that the State denies.[11]

In January 2018, police arrested several young men who were allegedly involved in a "gay wedding" video filmed and posted online.[12] In March 2018, a gay teenager allegedly committed suicide after his father had threatened to kill him for coming out as gay to his family.[13]

National Human Rights Institution

Saudi Arabia does not have a National Human Rights Institution in accordance with the Paris Principles.

UN voting record

At the United Nations, Saudi Arabia has continually refused to accept that the human rights framework includes SOGI issues.[14] In 2011, it voted against the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.[15] Again in 2014, it voted against the adoption of Resolution 27/32, the second SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to update the report produced in 2011.[16] In 2016, Saudi Arabia again voted against the adoption of Resolution 32/2 which created the mandate of the independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.[17]

At the session of Third Committee of the UN General Assembly held in November 2016, Saudi Arabia voted against the LAC amendment to remove Operative Paragraph 2,[18] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, it voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

Most notably, Saudi Arabia has never received recommendations on SOGIESC issues in any of its 3 UPR cycles.[19]

Treaty Bodies

In 2016, the **Committee of the Rights of the Child (CRC)** noted that LGBT children are subject to persistent discrimination and urged the State to combat such discrimination.[20]

7 "Report: Saudi Authorities Seek Death Penalty for Coming Out", *Washington Blade*, 28 March 2016.

8 "Senior Saudi Cleric: Homosexuality Should Not Be Punished", *Middle East Eye*, 3 May 2016.

9 " بالصور.. مداهمة حفل لـ"شواذ جنسياً" باكستانيي الجنسية في استراحة بالرياض وضبط 35 شخصا

10 "35 Transgender Pakistani Women Arrested, 2 Beaten to Death at Saudi Arabia Party", *Newsweek*, 3 march 2017; "Saudis Arrest 35 Pakistanis, Deny That 2 Were Killed", *Erasing 76 Crimes*, 10 March 2017.

11 "Saudi Arabia Denies Claims Two Pakistani Transgender Activists Tortured to Death in Police Custody", *The Independent*, 7 March 2017.

12 "Saudi Arabia police arrest men over 'gay wedding' video", *BBC News*, 9 January 2018.

13 Joe Morgan, "Saudi Arabia teen, 15, kills himself after coming out to family", *Gay Star News*, 18 March 2018.

14 "At UN Human Rights Council, Saudi Arabia Supports Right To Torture & Execute LGBT People", *MintPress News*, 12 April 2016.

15 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011.

16 Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014.

17 Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

18 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

19 *Universal Periodic Review Report of the Working on the Universal Periodic Review: Saudi Arabia*, A/HRC/11/23, 4 March 2009. *Report of the Working Group on the Universal Periodic Review: Saudi Arabia*, A/HRC/25/3, 26 December 2013; *Report of the Working Group on the Universal Periodic Review: Saudi Arabia*, A/HRC/40/4, 26 December 2018.

20 *Concluding Observations on the Combined Third and Fourth Periodic Reports of Saudi Arabia*, CRC/C/SAU/CO/3-4, 25 October 2016.



SINGAPORE

Provisions in force

- **Penal Code** (2008).

  Section 377 criminalising "carnal knowledge against the order of nature" has been already repealed by the **Penal Code (Amendment) Act 2007, No. 51**, which came into force on 1 February 2008. However, the following provisions remain in force:

Gross indecency (committing, abetting or attempting)

Section 377A. Outrages on decency.

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.

Obscene acts

Section 294.

Whoever, to the annoyance of others:

(a) does any obscene act in any public place; or

(b) sings, recites or utters any obscene song, ballad or words in or near any public place,

shall be punished with imprisonment for a term which may extend to 3 months, or with fine, or with both.

- **Internet Code of Practice** (1997).
  Issued by the Infocommunications Media Development Authority in exercise of the powers conferred by section 6 of the Broadcasting Act (Cap. 28).

Legal barrier to freedom of expression

Section 4(2)(e)

In considering what is prohibited material, the following factors should be taken into account: [...] whether the material advocates homosexuality or lesbianism.

Human rights situation

In 2018, an annual rally in support of LGBT equality, Pink Dot, celebrated its 10th run since it was first organised in 2009 at Hong Lim Park, a designated park for conducting public assemblies.[1] However, in 2017, the law was amended to prohibit non-Singaporeans from participating in public assemblies and demonstrations at the park as well as prohibit foreign sponsorship or funding for events held there.[2]

Following the Indian Supreme Court decision to strike down its anti-sodomy law in September 2018, several public figures in Singapore called for the repeal of Section 377A, and a petition to repeal

1 Cheow Sue-Ann, "Pink Dot movement marks 10 years", *The Straits Times*, 22 July 2018.

2 Melissa Zhu, "Govt has made position on Pink Dot support clear: MHA on foreign firms' appeal", *Channel NewsAsia*, 16 June 2017.

the law garnered around 45,000 signatories. However, the government said that there was no plan to repeal the law despite an ongoing review of the Penal Code.[3]

In 2018, a group of teenagers launched a petition to the media authorities after a romantic comedy about a gay youth, *Love, Simon*, was rated R21 (only for over-21 year olds) which prevented them from watching the film.[4] At the beginning of 2019, another teenager was asked by his school to remove photos of him kissing his male partner on social media after he was cyberbullied and attacked online.[5] This was raised by a coalition of women's organisations, which recommended the government to "review media policies so that LGBT content is not censored for representing LGBT experiences or pro-LGBT points of view".[6]

In 2017, the T Project, which runs a homeless shelter for transgender people, was rejected in its application to register as a non-profit organisation, although no reason for the rejection was given by the approving authority.[7] According to Project X, transgender female sex workers are particularly vulnerable in Singapore and face discrimination in employment and healthcare, as well as police violence.[8]

In January 2019, it was reported that confidential information of over 14,000 people living with HIV was leaked from the Ministry of Health, which activists say put LGBT people who have not disclosed their status in a particularly vulnerable position.[9]

Statements by public officials

Following India's Supreme Court ruling on the unconstitutionality of Section 377, Law and Home Affairs Minister K. Shanmugam said that whether a similar provision in Singapore will be repealed "is a matter for Parliament to decide".[10]

At the annual Singapore Summit, Education Minister Ong Ye Kung claimed that there was no discrimination against LGBT people "at work, housing and education" in Singapore. He added that while it is in Singapore's culture to be inclusive, "on the issue of LGBTQ, it is also an issue of social mores and societal values".[11]

In 2017, Prime Minister Lee Hsien Loong, said that he would not get rid of Section 377A: "My personal view is that if I do not have a problem, this is an uneasy compromise, I am prepared to live with it until social attitudes change. This is a society which is not that liberal on these matters. Attitudes have changed, but I believe if you have a referendum on the issue today, 377A would stand."[12]

Existing legal challenges

Consensual same-sex sexual acts

Two lawsuits have been filed to challenge the constitutionality of Section 377A of the Penal Code.[13] These followed from an earlier attempt to challenge the provision in 2014 where the Court of Appeal held that Section 377A of the Penal Code was constitutional and did not infringe constitutional rights.[14]

Single-parent adoption

In December 2018, the High Court allowed a gay man to adopt his biological son conceived through surrogacy, based on best interest of the child. The lower court had refused to grant the adoption order on the basis that commercial surrogacy was prohibited under the law.[15]

3 Alfred Chua, "Activists submit online petition, but Govt has 'no plans' to repeal S377A", *Today Online*, 30 September 2018.
4 Huang Runchen, "Singaporeans sign petition to lower rating for gay romance", *The New Paper Singapore*, 30 April 2018.
5 Sulaiman Daud, "S'pore student gets online hate for photo of kiss with male partner, JC 'advised' him to take it down", *Mothership.sg*, 31 January 2019.
6 "Many Voices, One Movement": Coalition Report of National NGOs (2017), 9.
7 Kok Xing Hui, "The T Project Rejected as Non-Profit Organisation", *Yahoo News*, 6 November 2017.
8 Lisa Ja'affar, Vanessa Ho, Michelle Lee and Sherry Sherqueshaa, Stakeholders Report by Sex Workers in Singapore (2017), 11.
9 "HIV data leak a 'criminal act that should be condemned': Action for AIDS", *Channel NewsAsia*, 30 January 2019.
10 Charmaine Ng, "Amending 377A Unlike courts, Parliament will take into account views of public", *Straits Times*, 8 September 2018.
11 Faris Mokhtar and Victor Loh, "No discrimination against LGBTQ community at work, in housing and education here: Ong Ye Kung", *Today Online*, 14 September 2018.
12 "PM Lee discusses gay rights and succession planning on BBC's HARDTalk", *Channel NewsAsia*, 9 June 2017.
13 Shaffiq Alhkhatib, "LGBT rights advocate files case against Attorney-General, stating Section 377A of Penal Code is void", *The Straits Times*, 22 January 2019; Lydia Lam, "Court challenge filed on 377A arguing that gay sex law 'violates human dignity'", *Channel NewsAsia*, 12 September 2018.
14 *Lim Meng Suang v Attorney-General* [2014] SGCA.
15 K. Vijayan, "Landmark High Court case allows Singaporean gay dad to adopt surrogate son", *The Straits Times*, 17 December 2018.

Appeal against annulment of same-sex marriage

A same-sex couple, was granted the right to appeal the Registry of Marriages' annulment of their marriage.[16] However, the couple withdrew their appeal after their application for an anonymising order was denied, and they underwent severe pressure due to the public scrutiny.[17]

National Human Rights Institution

Singapore does not have a National Human Rights Institution in accordance with the Paris Principles.

UN voting record

Between 2011 and 2016, Singapore was not a member of the Human Rights Council and, therefore, did not participate in the vote for any of the SOGI resolutions adopted by the Council.[18]

At the session of Third Committee of the UN General Assembly held in November 2016, Singapore voted against the LAC amendment to remove Operative Paragraph 2,[19] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Singapore abstained during the vote to adopt the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

In January 2016, at its 2nd cycle UPR, Singapore received 12 recommendations, 11 of which called for repeal of Section 377A, and one of which focused on bias in media representation of LGBTI persons and issue, and another which called for general non-discrimination.[20] Singapore "noted" (effectively rejected) all 12 recommendations.

Singapore's next UPR review is in early-2021.

Treaty Bodies

In 2011 the **Committee on the Elimination of Discrimination against Women** called on Singapore to launch a strategy to eliminate patriarchal attitudes and stereotypes, including those based on sexual orientation and gender identity.[21] In 2017, the Committee again urged Singapore to ensure that LBTI women are effectively protected against all forms of discrimination in law and in practice and to undertake educational to combat stereotypes.[22]

Special Procedures

In December 2013, two mandates[23] expressed concern about the prosecution of an LGBT rights activist for contempt of court.[24]

In July 2017, several mandates[25] received information concerning amendments adopted to the Public Order Act which significantly restricted the right to freedom of assembly, particularly in relation to Pink Dot annual festival.[26]

16 Beh Lih Yi, "Sex change prompts Singapore to annul couple's marriage", *Reuters*, 19 July 2017.

17 Kirsten Han, "About that ROM/same-sex couple case", *Medium*, 16 May 2018.

18 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011; Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014; Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

19 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

20 *Draft Report of the Working Group on the Universal Periodic Review: Singapore*, A/HRC/WG.6/24/L.14, 4 February 2016.

21 *Concluding observations of the Committee on the Elimination of Discrimination against Women*, CEDAW/C/SGP/CO/4, 10 August 2011, para. 22; *Concluding observations of the Committee on the Elimination of Discrimination against Women*, CEDAW/C/SGP/CO/4/Rev.1, 16 January 2012, para. 22.

22 *Concluding observations of the Committee on the Elimination of Discrimination against Women*, CEDAW/C/SGP/CO/5, 21 November 2017, para. 41.

23 These are: Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders.

24 For more information, see UA G/SO 214 (67-17) G/SO 214 (107-9) SGP 4/2013.

25 The mandates are: Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the IE on protection against violence and discrimination based on SOGI.

26 For more information, see AL SGP 3/2017.



SRI LANKA

Provisions in force

- **Penal Code** (1885) (as amended by the Penal Code (Amendment) Act, No. 22 of 1995).

Against the order of nature

Article 365. Unnatural offences.

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

Explanation – penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

Gross indecency

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.

Human rights situation

Although the 1995 amendments broadened the scope of the law to be gender-neutral, the government has guaranteed that the law appears not to be actively enforced.[1] However, a 2016 report by Human Rights Watch found that the presence of the law creates a significant 'chill factor' on LGBT people who continue to be subject to extortion and violence.[2] In addition, it noted that the police has used several criminal offenses and regulations to target LGBTI people, particularly transgender women and MSM involved in sex work. These include a law against "cheating by personation," and the vaguely worded Vagrants' Ordinance that prohibits soliciting or committing acts of "gross indecency," or being "incorrigible rogues" procuring "illicit or unnatural intercourse."

Additionally, activists have highlighted that the retention of these laws prevent LGBT people from accessing justice for violence and discrimination.[3]

In November 2017, the Sri Lankan government released the National Human Rights Action Plan for 2017-2021, which was criticised by LGBT activists for failing to include SOGI as a basis for protection against discrimination.[4] The proposed measures relating to sexual orientation and gender identity were purportedly removed because of potential "social and cultural implications".[5] This led to an online petition that called on the government to repeal laws that entrench discrimination and perpetuate violence against the LGBT community.[6]

However, in the same month, the Deputy Solicitor General Nerin Pulle's pledged at the 2017

1 P K Balachandran, "Sri Lankan cabinet decides not to de-criminalize homosexuality", *The New Indian Express*, 18 January 2017.

2 "All Five Fingers Are Not The Same: Discrimination on Grounds of Gender Identity and Sexual Orientation in Sri Lanka" (Human Rights Watch 2016).

3 "CEDAW discusses situation of women in Germany, Sri Lanka, Rwanda and Micronesia with Civil Society Representatives", *United Nations Office at Geneva*, 20 February 2017.

4 Equal Ground, "Sri Lanka National Human Rights Plan minus protection for LGBTIQ", 3 November 2017.

5 "What's at Stake for LGBT People as Sri Lanka Reforms Its Constitution", *World Politics Review*, 1 August 2017.

6 "Homophobic Justice Minister Wijeyadasa Should Resign: Right Activists", *Colombo Telegraph*, 22 January 2017.

Universal Periodic Review to "ensure that no provision in the law would be applied to persons of the LGBTIQ community in a discriminatory manner".[7]

In November 2018, the Sri Lanka president accused his political opponent of rejecting national values for a "butterfly life" and claimed that his decisions were led by a "butterfly caucus".[8] The Sinhalese term for "butterfly" is used as a derogatory term alluding to LGBT people. This led to a protest in Colombo by LGBT activists protesting the president's "insidious references degrading the LGBTIQ community" as well as a media statement condemning the president's statements.[9]

In 2018, the 14th Colombo Pride was organised, with a rainbow bus parade, an LGBTIQ film festival and other events.[10]

Statements by public officials

In a January 2017 interview the Minister for Justice Wijeyadasa Rajapaksa, basing his argument on the religious nature of Sri Lankan society, said regarding 365 and 365A, "under no circumstance are we going to change that law".[11] Elsewhere, he called "homosexuality" a "mental disorder", a comment that sparked public outcry.[12] In August 2017, he said that lesbianism "equals sadism" and advocated the rape of lesbians by convicted sexual offenders to "cure" them. He added, "Lesbianism is at least an act of gross indecency and unnatural".[13]

In 2013, the then President Mahinda Rajapaksa denied a spousal visa to the Norwegian ambassador's same-sex wife. In a discussion with representatives from the Bodhu Bala Sena, he explained that the country's "Sinhala Buddhist identity would come to an end if we allow these actions."[14]

National Human Rights Institution

In 2017, the chairperson of the Sri Lanka Human Rights Commission (HRC), Deepika Udagama, came out in favour of decriminalising homosexuality. She noted that the Commission has received many complaints about threats and discrimination on the basis of sexual orientation and these could not be justified on grounds of "culture". "If all segments of the society are not incorporated or allowed to have their natural behaviour, there is a serious problem in that society," she added.[15]

UN voting record

In 2011, 2014 and 2016 Sri Lanka was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of any of the SOGI resolution issued by the Council.[16]

At the session of Third Committee of the UN General Assembly held in November 2016, Sri Lanka voted in favour of the LAC amendment to remove Operative Paragraph 2,[17] and against the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Sri Lanka voted against the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

At Sri Lanka's 2nd cycle UPR in November 2012, only two States (Argentina and Canada) made specific recommendations regarding

7 Matt Moore, "Sri Lanka to decriminalise homosexuality and protect LGBTQ citizens", *Gay Times*, 23 November 2017.

8 Nick Duffy, "Sri Lanka president slammed for 'insidious homophobic comments'", *Pink News*, 8 November 2018.

9 "Sirisena Should Be Held Responsible For Homophobic Incidents In Sri Lanka In Coming Days: Sri Lankan LGBTQI+ Community", *Colombo Telegraph*, 6 November 2018.

10 "Colombo PRIDE 2018 - A celebration of Diversity with PRIDE!", *Equal Ground*, 8 June 2018.

11 "A Chat With Wijeyadasa Rajapakshe", *Life Online*, 31 January 2017.

12 "Homophobic Justice Minister Wijeyadasa Should Resign: Right Activists", Colombo Telegraph, 22 January 2017.

13 "Sri Lanka's lesbian-hating justice minister under fire", *Economy Next*, 20 August 2017.

14 "President disturbed by the Norway ambassador's marriage", *Lanka News Web*, 27 June 2013.

15 "Human Rights Commission Chairman for decriminalising homosexuality", *Daily News*, 20 January 2017.

16 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011; Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014; Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

17 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

decriminalisation in the Penal Code. Sri Lanka 'noted' (rejected) them.[18]

During its 3rd cycle of the UPR carried out in November 2017, Sri Lanka received 10 SOGIESC recommendations. It supported three of them, whilst noting (functionally rejecting) the remaining seven. The State accepted recommendations from Argentina, Italy and Portugal focusing on ending the discrimination suffered by the LGBTIQ community in the country. However, Sri Lanka rejected recommendations from Australia, Brazil, Canada, Honduras, the Netherlands, Sweden and Uruguay calling for the decriminalization of consensual same-sex sexual acts (in particular, by revoking Sections 365 and 365A of the Penal Code).[19]

During the Session, Sri Lanka stated that the country "is in the process of taking measures to guarantee right to non-discrimination, *inter alia*, on the grounds of sexual orientation and gender identity". It particularly focused on the commitment to reform the Penal Code.[20]

Treaty Bodies

In 2014, the **Human Rights Committee** noted that the State had confirmed that article 12 of its Constitution prohibits discrimination on the grounds of sexual orientation and gender identity. However, it recommended that the State "amend sections 365, 365A and 399 of its Penal Code to ensure full compliance with articles 2 and 26 of the Covenant". It also called on the State to "consider amending article 12 of its Constitution to state explicitly that sexual orientation and gender identity are prohibited grounds for discrimination [and] also strengthen measures to protect against violations of LGBTI rights and strengthen awareness-raising and training measures on such rights".[21]

In 2017, the **Committee on the Elimination of Discrimination against Women (CEDAW)** expressed concern about how the criminalisation of consensual same-sex acts results in women being completely excluded from legal protection as well as information that the law enforcement officers are allowed to arbitrarily detain them.[22] It urged Sri Lanka to decriminalise and abide by the obligation of non-discrimination under the Convention.[23] It also urged the state to "give due consideration to the proposal made by the subcommittee on fundamental rights of the Constitutional Assembly to include sexual orientation and gender identity as a prohibited ground for discrimination".[24]

In 2018, the **Committee on the Rights of the Child (CRC)** urged the state to "adopt a proactive and comprehensive strategy containing specific and well-targeted actions, including affirmative social actions to eliminate discrimination against children in marginalized or vulnerable situations", which includes LGBTI children.[25] It also specifically recommended the state to "combat discrimination against LGBTI children, including by decriminalizing consensual same-sex acts, prohibit harassment of transgender children by law enforcement personnel, and bring perpetrators of violence, including of sexual abuse of LGBTI children, to justice".[26]

The CRC also expressed grave concern about "the lack of legal recognition of male rape and under-reporting of sexual abuse of boys because of stigmatisation, criminalisation of homosexuality, and feeling ashamed of so-called "emasculation".[27]

18 *Report of the Working Group on the Universal Periodic Review: Sri Lanka*, A/HRC/22/16, 18 December 2012.
19 "UPR-Sri Lanka", *ILGA Website*, 17 November 2017.
20 "UPR-Sri Lanka", *ILGA Website*, 17 November 2017, Section C.
21 *Concluding observations of the Human Rights Committee on the fifth periodic report of Sri Lanka*, CCPR/C/LKA/CO/5, 21 November 2014, para. 8.
22 *Concluding observations of the Committee on the Elimination of Discrimination against Women*, CEDAW/C/LKA/CO/7, 8 April 2011, para. 24.
23 *Id*., para. 25.
24 *Concluding observations on the eighth periodic report of Sri Lanka*, CEDAW/C/LKA/CO/8, 9 March 2017, para. 11.
25 *Concluding observations on the combined fifth and sixth periodic reports of Sri Lanka*, CRC/C/LKA/CO/5-6, 2 March 2018, para. 16(b).
26 *Id*., para. 16(c).
27 *Id*., para. 23.



SYRIA

Provisions in force

- **Penal Code** (1949).

Unnatural sexual intercourse

Article 520.

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

Indecency

Article 517.

Punish crimes against public decency in any of the ways mentioned in paragraph 1 of Article 208 [*any act carried out in a public or open area where one could possibly see, intentionally or accidentally, the act*] with imprisonment of three months to three years.

Human rights situation

Following the civil war that started in 2011, Syria has become a dangerous place, with frequently complex responses to consensual same-sex sexual activity.[1] Persecution of LGBT people has occurred even prior, with multiple raids carried out in 2010 on private gay parties,[2] that resulted in the arrest of more than 25 men. The plight of LGBT people in Syria prior to the 'Arab Spring' was described in a news report as "the weakest link in the region", with honour killings and the absence of any advocacy movement.[3]

A submission to the 2016 UPR noted that "LGBT identified individuals are persecuted and stigmatized socially and legally, where they are denied equal opportunities to education and work through the denial of employment in public services and sometimes in private establishments. They are also persecuted by the law through security trailing and detention, where many men have been beaten, tortured, and raped – individually and in groups – at checkpoints due to their sexual orientation".[4]

In 2014, in a report of the independent international commission of inquiry submitted to the UN Human Rights Council, it was reported that "men were tortured and raped on the grounds of their sexual orientation at government checkpoints in Damascus".[5] The report cited two cases: in 2011, six [perceived] 'homosexual' men were beaten viciously with electric cables by security agents and threatened with rape; in October 2012, a man was stopped by security because his partner's brother was a member of the FSA. The man was taken to a rural area, where cigarettes were stubbed on his body and he was gang raped.

In 2015, the UN Security Council discussed violence against LGBTI people committed by the Islamic State (ISIS).[6] A gay Syrian refugee, addressed the Council in person and highlighted the struggles faced by LGBT people in the country. He had been detained in 2012 at a government checkpoint and mocked by soldiers for being gay.

In 2015, a news report described the plight of LGBT people in the country, where many who were

1 Counter Extremism Project, *ISIS's Persecution of Gay People* (2017); "The secret, hypocritical gay world of Islamic State", *The Express Tribune*, 11 December 2016.

2 Christopher Brocklebank, "Syrian authorities crack down on gay men", *Pink News*, 23 June 2010.

3 Ahmed Danny Ramadan, "The Dark Closet", *Foreign Policy*, 14 June 2011.

4 AWASUR, *PHRO Joint Submission* (2016).

5 *Report of the independent international commission of inquiry on the Syrian Arab Republic*, A/HRC/25/65, 12 February 2014.

6 Lucy Westcott, "Gay refugee addresses UN Security Council in historic meeting on LGBT rights", *Newsweek*, 25 August 2015.

assumed or perceived to be gay being abducted, tortured and killed by different factions in the ongoing civil war:[7] government, ISIS and al-Nusra (the Syrian branch of al-Qaeda). Methods of torture are gruesome and aimed at inflicting the maximum amount of pain and suffering on the victims.

A 2017 report by the UNHCR also reported sexual violence against LGBT people, where four out of seven refugees reported being sexually violated while in detention.[8] In addition, many continue to face persecution, exploitation and discrimination in their countries of asylum, such as Lebanon and Jordan.

In 2017, it was reported that a group of international volunteers have formed an LGBT military unit known as "The Queer Insurrection and Liberation Army" (TQILA), as part of the International Revolutionary People's Guerrilla Forces (IRPGF), an anarchist group taking part in the fight against Isis.[9] This has however been criticised by a postcolonial scholar-activist for reifying the imperialist narrative of the "war on terror".[10] In 2018, a news report on a gay Syrian refugee in Canada mentioned attempts by ISIS to "change" LGBT people.[11]

National Human Rights Institution

Syria does not have a National Human Rights Institution in accordance with the Paris Principles.

UN voting record

In 2011, 2014 and 2016, Syria was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of any of the SOGI resolutions.[12]

At the session of Third Committee of the UN General Assembly held in November 2016, Syria voted against the LAC amendment to remove Operative Paragraph 2,[13] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Syria voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

In its 1st cycle UPR, in 2011, Amnesty International was the only NGO that made a submission about the repeal of Article 520.[14] No States made recommendations on this issue, and there is no reference to SOGI in the concluding documents from the first cycle.[15]

Only two civil society submissions were made to Syria's 2nd UPR in November 2016, including this observation by MADRE: "Women and girls can be killed because of mere suspicion of an affair or romantic liaison, a false accusation, or for being raped or sexually assaulted. Victims of "honor" killings also include LGBT individuals.[16] In its preliminary Interactive Dialogue to date (March 2017), the Syrian delegation has made no mention of the multiple societal and official attacks and persecution of sexual or gender minorities in its responses.[17]

Syria's 3rd UPR will take place in October 2021.

7 "'It can't get any worse than being gay in Syria today'", *The Sydney Morning Herald*, 15 October 2015.

8 Sarah Chynoweth, *Sexual Violence against Men and Boys in the Syria Crisis* (2017), p 27 - 32.

9 Benjamin Kentish, "'The Queer Insurrection': Coalition forces fighting Isis in Syria form first LGBT unit", *The Independent UK*, 25 July 2017.

10 Razan Ghazzawi, "Decolonising Syria's so-called 'queer liberation'", *Al Jazeera*, 5 August 2017.

11 "'I was reborn here': Gay Syrian refugee says Canada has welcomed him", *CBC News*, 21 December 2018.

12 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011; Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014; Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

13 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

14 Amnesty International, *Syria: Amnesty International submission to the UN Universal Periodic Review 12th session of the UPR Working Group, October 2011* (2011).

15 *Report of the Working Group on the Universal Periodic Review: Syrian Arab Republic*, A/HRC/19/11, 24 January 2012.

16 Human Rights and Gender Justice (HRGJ) Clinic, City University of New York School of Law et al., *Human Rights Violations Against Women and Girls in Syria* (2016), para. 10.

17 *Report of the Working Group on the Universal Periodic Review: Syrian Arab Republic*, A/HRC/34/5, 27 December 2016.



TURKMENISTAN

Provisions in force

- **Criminal Code** (1997) (effective 1 January 1998).

Homosexual acts (sexual intercourse between men)

Section 135: Homosexual acts.

(1) Homosexual acts, i.e. sexual intercourse between men, shall be punished with a term of imprisonment of up to two years. [...]

Human rights situation

In Turkmenistan, "homosexuality" is widely considered a mental disorder in the country, including by law enforcement, medical institutions, and judicial officials. As such, punishment for same-sex sexual acts between men, or perceived "homosexual" behaviour, can also include placement in psychiatric institutions to be 'cured' of their sexual preferences.[1]

A 2008 cable released by Wikileaks reported that government officials claim that "there were no gay people in the country" and the topic of homosexuality was a taboo topic that was seldom discussed.[2]

A 2013 Amnesty International report stated that it has received credible information about law enforcement officers who targeted gay men for harassment and extortion. Gay men were also made to "denounce" other gay men by revealing their identities.[3]

In 2015, the documentary "Turkmenistan: Forbidden Homosexuality" premiered at the International Documentary Film Festival in Oslo. The film is reported to document the story of a young man from Turkmenistan accused of homosexual acts and sentenced to prison who tells his experience with the Turkmen law enforcement system, from the moment of detention to release, including accounts of threats, insults, torture and sexual violence. The testimony also makes reference to medical doctors in a forensic medical examination, exposing the suspects to degrading anatomical procedures.[4]

In this same line, according to research conducted by Human Rights Watch in 2016, law enforcement officials and medical personnel subject people who are detained for same-sex sexual acts to forced anal examinations with the purported objective of "finding 'proof' of homosexual conduct".[5]

National Human Rights Institution

Turkmenistan does not have a National Human Rights Institution in accordance with the Paris Principles.

UN voting record

In 2011, 2014 and 2016, Turkmenistan was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of any of the three SOGI resolutions.[6]

1 Labrys and Sexual Rights Initiative, *Submission on Turkmenistan –Third Round of the Universal Periodic Review* (2008), para. 33; Human Rights Watch, *United Nations Human Rights Committee Review of Turkmenistan* (2016), 3.

2 "Turkmenistan's gay underground: Hidden, growing and at risk", *Wikileaks* (website), 20 August 2017.

3 Amnesty International, *Turkmenistan: An "era of happiness" or more of the same repression?* (2013), 25.

4 Туркменистан: Запрещённый гомосексуализм. В Осло состоялась премьера нового фильма АНТ ("Turkmenistan: Forbidden homosexuality". In Oslo, the premiere of the new film ANT), *Alternative News of Turkmenistan*, 16 September 2015.

5 Human Rights Watch, *United Nations Human Rights Committee Review of Turkmenistan* (2016), 3; Human Rights Watch, *Dignity Debased: Forced Anal Examinations in Homosexuality Prosecutions* (2016), 48.

6 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011; Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014;

At the session of Third Committee of the UN General Assembly held in November 2016, Turkmenistan did not vote the LAC amendment to remove Operative Paragraph 2,[7] and did not vote the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Turkmenistan did not vote the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

In its 1st UPR in December 2008, Turkmenistan rejected two recommendations (Sweden and Czech Republic) to decriminalise, without offering any rationale for that refusal.[8]

Again at its 2nd UPR cycle in 2013 review, it rejected Slovenia's recommendation, which referred to other international human rights mechanisms: "Decriminalise sexual relations between consenting adults of the same sex, as recommended by the Human Rights Committee".

During its 3rd cycle of the UPR carried out in May 2018, Turkmenistan received eight SOGIESC recommendations. It noted (functionally rejected) all of them. Argentina, Iceland and Uruguay called the State to decriminalise consensual same-sex sexual relations. Furthermore, Honduras, Argentina, Czechia, Iceland, Italy and Uruguay urged the State to adopt a legislative framework to fight against the discrimination and violence suffered by the LGBTIQ community in the country.[9]

The State made no references to SOGIESC issues in its remarks during the session.

Treaty Bodies

In 2012, the **Human Rights Committee** said that, "[t]he State party should decriminalize sexual relations between consenting adults of the same sex in order to bring its legislation in line with the Covenant. The State party should also take the necessary steps to put an end to the social stigmatisation of homosexuality and send a clear message that it does not tolerate any form of discrimination against persons based on their sexual orientation or gender identity".[10] In 2017, the HRC again urged for the decriminalisation of same-sex sexual relations as well as the protection of LGBT people from discrimination and violence.[11]

In 2018, the **Committee on Economic, Social and Cultural Rights (CESCR)** similarly recommended the decriminalisation of same-sex intimacy and expressed concern about the strong stigmatisation against LGBTI people.[12]

Special Procedures

In 2016, several mandates[13] expressed concern that that the new "Law on combating the spread of diseases caused by HIV" will negatively impact the right to health of men who have sex with men.[14]

Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

7 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

8 *Report of the Working Group on the Universal Periodic Review: Turkmenistan*, A/HRC/24/3, 5 July 2013.

9 "UPR-Turkmenistan", *ILGA Website*, 11 May 2018.

10 *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant*, CCPR/C/TKM/CO/1, 19 April 2012.

11 *Concluding observations on the second periodic report of Turkmenistan*, CCPR/C/TKM/CO/2, 20 April 2017, para. 9.

12 *Concluding observations on the second periodic report of Turkmenistan*, E/C.12/TKM/CO/2, 31 October 2018, para. 16.

13 These are the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

14 For more information, see TKM 1/2016, 10 June 2016.



UNITED ARAB EMIRATES

Provisions in force

All sexual acts outside of heterosexual marriage are banned in the United Arab Emirates. No article in Federal Penal Code specifically discusses consensual same-sex relations, although various scholars translate Article 356 to criminalise such conduct (see below).[1]

However, it is through the Sharia code that the death penalty theoretically can apply to same-sex sexual relations through the offence of *Zina*, which applies to sexual relations outside of marriage of any sort. However, it appears that the law is used in rape cases only although in some cases courts have gone beyond codified laws and imposed harsher sentences of stoning and flogging for *Zina* crimes.[2]

Apart from federal law, consensual sodomy is also 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.[3]

- **Penal Code** (enacted by Federal Law No. 3 of 1987 Concerning Promulgating Penal Code).

Voluntary debasement

Article 356.

Without prejudice to two preceding articles, the crime of voluntary debasement shall be penalized by detention for a minimum term of one year [...].

According to Article 68, unless the law provides otherwise, the term of the temporary imprisonment may not be less than three years and not more than fifteen years.

- **Law on Combating Cybercrimes** (Law No. 5 of 2012).

Legal barrier to freedom of expression

Article 35(4) of

Without prejudice to the provisions of the Islamic Sharia, shall be punished by imprisonment and a fine not less than two hundred fifty thousand dirhams and not in excess of one million dirhams or either of these two penalties whoever commits through the computer network or any information technology means or a website any of the following crimes:

(4) Condoning, provoking or promoting sin.

The **Internet Access Management Regulatory Policy** also explicitly prohibits internet content that "motivates, supports, promotes or publishes opinions that include aggression to public manners or involves corrupting youth or calling for embracing or promoting destructive principles such as homosexuality".

1 Al Mubasheri, *Federal Law No (3) of 1987 on Issuance of the Penal Code* (2014); "United Arab Emirates: Events of 2016", Human Rights Watch (website), accessed 18 February 2019.

2 Amnesty International, *Love, Hate and the Law: Decriminalizing Homosexuality* (2008), 48-49.

3 "United Arab Emirates: Events of 2016", Human Rights Watch (website), accessed 18 February 2019.

Human rights situation

Several cases of State persecution of LGBT persons have been reported in the country.[1] In 2005, the police raided a villa and arrested 26 men believed to be attending a gay wedding.[2] The men were subjected to invasive anal examinations in an effort to prove their "homosexuality" as well as violence to force them to confess to "homosexual" conduct.[3] Human Rights Watch received reports of forced anal testing still going on in 2017 as well.[4]

In 2011, a counselling conference held at a university discussed the issue of *boyat* (a term which refers to women who dress and behave like men), which was considered "culturally undesirable" by the speakers.[5] In 2012, a Belgian man was jailed for a year after he was convicted of having consensual same-sex acts.[6]

In February 2012, a video made by Emirati filmmakers on how to cure "homosexuality" was taken down by YouTube after international pressure.[7]

In 2013, two men were jailed for three years for same-sex prostitution, and one of them was also charged with "breaching public modesty" by publishing his photos wearing women's undergarments and in full make-up.[8]

In August 2017, two Singaporean men were arrested for cross-dressing and sentenced to one year imprisonment before their sentences were reduced to a fine and deportation after diplomatic talks.[9] Similarly, in October 2017, a 27-year-old Scottish man was sentenced to three months in prison for inappropriately touching another man at a bar in Dubai.[10] However, he was pardoned the next day by Sheikh Mohammed bin Rashid, Vice President and Ruler of Dubai, and allowed to leave the country.[11]

In October 2018, the Knowledge and Human Development Authority in Dubai investigated a complaint from parents over a textbook used in a private school that depicted families with same-sex parents.[12] In December 2018, a man purportedly hung himself after his colleague blackmailed him with compromising photos of him performing oral sex on another man.[13]

National Human Rights Institution

United Arab Emirates does not have a National Human Rights Institution in accordance with the Paris Principles.

Existing legal challenges

Change of gender marker

In May 2017, several transgender men applied to court to change their gender markers on State records.[14] However, the Federal Appeal Court rejected the request in March 2018.[15] The plaintiffs have appealed.[16]

UN Voting Record

In 2011, United Arab Emirates was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which

1 "Homosexuality in the UAE", *Detained in Dubai* (website), accessed 18 February 2019.
2 "US condemns UAE gay men arrests", *BBC News*, 29 November 2005.
3 *Addendum to Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/4/33/Add.1, 20 March 2007.
4 Human Rights Watch, *Audacity in Adversity: LGBT Activism in the Middle East and North Africa* (2018), p. 20.
5 "Shedding light on the 'Boyat' phenomenon", *Gulf News*, 21 April 2011.
6 "Gay partner jailed for one year for having consensual sex with victim", *Gulf News*, 8 June 2012.
7 "Gay cure viral video pulled from YouTube", *The National*, 25 February 2012.
8 "Two jailed over male prostitution in UAE", *Gulf News*, 25 June 2013.
9 "UAE Jails Two Singaporeans for Dressing 'Feminine'", *Fridae Asia*, 29 August 2017; "Singaporeans in UAE Have Sentence Reduced", *Fridae Asia*, 30 August 2017.
10 Salam Al Amir, "Scottish tourist jailed for drunkenly touching man in Dubai bar", *The National*, 22 October 2017.
11 "Scottish tourist jailed for bar incident is pardoned by Ruler of Dubai", *The National*, 23 October 2017.
12 "Dubai Bans Private School Book on Homosexual Parents", *Albawaba*, 9 October 2018.
13 "Man blackmailed gay co-worker who killed himself", *Gulf News*, 19 December 2018.
14 "In first, transgender Emiratis seek recognition as men", *Reuters*, 4 May 2017.
15 "Transgender Emiratis fail in legal bid to have new sexes recognised", *The National*, 22 March 2018.
16 "Exclusive: Transgender Emiratis fight for recognition after reassignment surgery abroad", *The National*, 3 September 2018.

requested the OHCHR to produce the first report on SOGI.[17]

In 2014, it voted against the adoption of Resolution 27/32, the second SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to update the report produced in 2011.[18]

In 2016, United Arab Emirates again voted against the adoption of Resolution 32/2 which created the mandate of the independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.[19]

At the session of Third Committee of the UN General Assembly held in November 2016, United Arab Emirates voted against the LAC amendment to remove Operative Paragraph 2,[20] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, United Arab Emirates voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

In 2013, the UAE received two recommendations regarding SOGI in its 2nd cycle UPR: "Protect the human rights of all individuals, including LGBT individuals, and take appropriate steps to help ensure that protection is provided to the victim and perpetrators are identified and prosecuted" (from the United States), and "Repeal the criminalization of sexual relations between persons of the same sex" (from Argentina). It 'noted' both and appears to have made no comment at any session on these issues.[21]

During its 3rd cycle of the UPR carried out in January 2018, the United Arab Emirates received two SOGIESC recommendations. It noted (functionally rejected) both of them. Iceland called upon the State to "take policy measures to promote tolerance and non-discrimination on the grounds of sexual orientation", while the United States urged the United Arab Emirates to "take appropriate steps to protect lesbian, gay, bisexual and transgender persons and ensure that protection is provided to victims of sexual assault and perpetrators are identified, prosecuted, and held accountable".[22]

The State made no comments on the SOGIESC situation in the UAE during the interactive sessions.

17 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011.

18 Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014.

19 Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

20 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

21 *Report of the Working Group on the Universal Periodic Review: United Arab Emirates*, A/HRC/23/13, 21 March 2013.

22 "UPR-United Arab Emirates", *ILGA Website*, 25 January 2018.



UZBEKISTAN

Provisions in force

- **Criminal Code** (1994).

Voluntary sexual intercourse of two male individuals

Article 120. Besoqolbozlik *(Homosexual Intercourse).*

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

Human rights situation

- Additional information on the situation in Uzbekistan is provided at the end of this entry in a "Local Perspective Essay" written by an anonymous Uzbek activist for ILGA World.

A 2015 shadow report by the Central Asian Gender and Sexuality Advocacy Network (CAGSAN) stated that, "state actions and laws, as well as state inaction, have led to an environment of hostility, repression, and danger for the Uzbek LGBT community".[1]

The report highlighted the case of a gay couple in 2011 that had to flee the country after they were "repeatedly harassed, attacked and arrested".[2] The report also mentioned multiple other cases of blackmailing and arbitrary detention in the preceding few years.[3]

In December 2017, a gay couple was arrested and tortured for having sex. The police told the media that they had conducted anal examinations to confirm that the men had engaged in "repeated sexual intercourse".[4]

In July 2018, a transgender woman fled to Belarus after she was tortured by the police in Uzbekistan.[5] She had decided to leave the country after she was raped in police custody.[6] In fact, the issue of arbitrary arrest and torture of LGBT people was highlighted in a statement by the Organization for Security and Co-operation in Europe at the Human Dimension Implementation Meeting 2018.[7]

Statements by public officials

In 2016, President Islam Karimov claimed that homosexuality was "vulgar" and insinuated that there was something wrong mentally with homosexual people.[8] In a 2013 leak of a 2006 cable, it was reported that he said that Western democracy "would violate Uzbekistan's moral purity… because it allows for or fosters the practice of homosexuality".[9]

National Human Rights Institution

Uzbekistan does not have a National Human Rights Institution in accordance with the Paris Principles.

1 Central Asian Gender and Sexuality Advocacy Network (CAGSAN), *Human Rights Violation of Lesbian, Gay, Bisexual and Transgender Rights in Uzbekistan: A Shadow Report* (2015), 2

2 *Id.*, 4-5.

3 *Id.*, 5-7.

4 "Uzbekistan: Gay Couple Arrested for Engaging in Illegal Relations", *Euroasianet*, 4 December 2017.

5 "Belarus Refuses Asylum For Uzbek Transgender Woman", *Radio Liberty RFL*, 13 July 2018.

6 Alyaksandra Dynko and Tony Wesolowsky, "Transgender Woman Says Jail Awaits In Uzbekistan, Seeks Asylum In Belarus", *RadioLiberty RFL*, 7 January 2018.

7 "Statement based on the documentation, monitoring, researches on situation of LGBT right in Kyrgyzstan, Kazakhstan, Tajikistan and Uzbekistan 2018", HDIM.NGO/0100/2018/EN, 12 September 2018.

8 Eugene Tomiuc, "Uzbek President Calls Homosexuality 'Vulgar' Western Habit", *Radio Liberty RFE*, 8 February 2016.

9 "Karimov in Korea: Foreign investment good, but western-style democracy violates our moral purity", *WikiLeaks*, 11 April 2006.

UN voting record

In 2011, 2014 and 2016, Uzbekistan was not a member of the Human Rights Council and, therefore, did not participate in the vote for any of the three SOGI resolutions adopted by the Council.[10]

At the session of Third Committee of the UN General Assembly held in November 2016, Uzbekistan voted against the LAC amendment to remove Operative Paragraph 2,[11] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Uzbekistan voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

At its 2nd cycle UPR in 2013, Uzbekistan 'noted' (rejected) two calls to decriminalises same-sex sexual acts (Netherlands and Uruguay), and two others to enact non-discrimination legislation (Spain and Argentina).[12] The State's response to these calls was unambiguous: "On questions regarding the decriminalization of homosexuality, the Criminal Code forbids consensual sexual relations between men, but this does not apply to women. There are no plans in the near future to repeal this law which reflects traditions that have developed over more than 1,000 years. Uzbekistan in this respect shares the position of the Muslim countries expressed during the discussions of this issue within the Human Rights Council".[13]

During its 3rd cycle of the UPR in 2018, Uzbekistan received 12 SOGIESC recommendations, of which it accepted just one. The State indicated that "like the other Member States of the Organisation of Islamic Cooperation, Uzbekistan wished to preserve 'family values' and was therefore not planning to amend Article 120 of the Criminal Code". It should be noted that the *only* recommendations that Uzbekistan rejected referred to SOGIESC issues. Uzbekistan accepted one recommendation from Uruguay proposing to "legally define and include in the Criminal Code the crime of domestic violence and gender-based violence, taking into account sexual orientation and gender identity". However, the State rejected recommendations from Argentina, Canada, Italy, Spain and Uruguay calling for the decriminalisation of consensual same-sex sexual acts; and from Chile, Iceland, Mexico, the Netherlands, Honduras and Spain asking for measures to fight against the discrimination against the LGBTIQ community.[14]

Treaty Bodies

In 2010, the **Human Rights Committee (CCPR)** expressed concern about reports that individuals have been harassed, physically attacked, or discriminated on the basis of their sexual orientation and urged the state to decriminalise consensual sexual acts between adult males and provide effective protection against violence and discrimination based on sexual orientation.[15] In August 2015, the Committee noted that for the State to align with Convention obligations, its legal framework needs to ensure, *inter alia*, full protection from discrimination, including with regard to SOGI. It also reiterated a previous recommendation concerning SOGI-based stigmatization, hate speech and discrimination.[16]

Special Procedures

In 2018, the **Special Rapporteur on Freedom of Religion or Belief** noted that "the State does not acknowledge the existence of the LGBTI community". The Rapporteur also took note of reports of harassment and entrapment of LGBTI people by law enforcement officials.[17]

10 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011; Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014; Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

11 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

12 *Report of the Working Group on the Universal Periodic Review: Uzbekistan*, A/HRC/24/7, 5 July 2013.

13 *Id*., para. 88.

14 "UPR-Uzbekistan", *ILGA Website*, 11 May 2018, Section C.

15 *Concluding observations of the Human Rights Committee - Consideration of reports submitted by States parties under article 40 of the Covenant - Uzbekistan*, CCPR/C/UZB/CO/3, 7 April 2010, para. 22.

16 *Concluding Observations on the Fourth Periodic Report of Uzbekistan*, CCPR/C/UZB/CO/4, 17 August 2015, paras. 6 and 7.

17 *Report of the Special Rapporteur on freedom of religion or belief on his mission to Uzbekistan*, A/HRC/37/49/Add.2, 22 February 2018, para. 91.

A LOCAL PERSPECTIVE

The Human Rights Situation in Uzbekistan

By an anonymous Uzbek activist for ILGA World.

In the context of criminalisation in Uzbekistan, when gay and bisexual men suffer discrimination and other violations of their rights, they cannot go before a court or to a police station without running the risk of being accused under article 120 of the Penal Code. In effect, when LGBT persons are victims of crimes, they rarely go to the authorities and, when they do, they evade explaining the exact cause or being seen as LGBT to avoid worsening their situation. As a result there is an enormous underreporting of crimes, especially those committed by law enforcement. Moreover, criminalisation prevents LGBT persons from seeking professional medical and/or psychological help, in order to avoid humiliation and further trauma.

Further still, it is difficult to request the services of a lawyer when accused under article 120. The main reason for this is that these cases have no chances of winning. Additionally, due to the prevailing prejudice in society, involvement in cases of this nature can affect one's professional reputation.

Although it is sex between adult men that is explicitly criminalised, women who have sex with women are also indirectly affected by article 120. This is due to the social effect of this provision which condemns "homosexuality" in general, without distinction of the involved person's gender.

Article 120 is also utilised for political ends, or as a form of extortion.[18] There are cases in which it is utilised against protest or demand for the protection of rights. For example, in October 2015, a teacher from the city of Andijan complained about the lack of electricity and was threatened with being arrested for protesting. A month later he was accused of "homosexuality".[19]

As in other parts of the world, criminalising provisions allow law enforcement agents to blackmail, extort, threaten and physically and sexually assault with total impunity. To date, there is only one known case of police officials who were punished and later dismissed from the force for violating the rights of LGBT persons,[20] and this was only due to the fact that the cases gained visibility on local social networks.[21]

The employees of HIV/AIDS care centres have tacit instructions of informing law enforcement of the cases of men who have sex with men and health workers have different attitudes with the LGBT population when patients externalise their sexual orientation or gender identity.

Uzbek society is deeply homophobic, which is a legacy of the soviet education system, nationalist sentiment, and now the growing Islamic influence in a country where sexuality is strictly taboo. In line with this, media coverage related to the LGBT community is rare, sensational and wholly negative.[22]

Naturally, in this context, the majority of LGBT Uzbek population lead a double life, socially hiding their sexual orientation or gender identity, with the only exception of close friends. In the cases where the sexual orientation or gender identity of a person is public, it is generally subject to social processes that are very difficult to endure. Not least in their places of work where they are extorted, beaten, harassed and discriminated.

In a familial context, knowledge of sexual orientation or gender identity of LGBT persons has a strongly negative response, given that it is considered a shame for the entire family, especially in rural areas. As a result, LGBT people are beaten, locked away and hidden in their houses, forced to an arranged marriage or expelled from their homes. There have been cases of "corrective" treatments and rapes. In this context, "self-help" continues being the most accessible and effective resource

18 "Узбекистан: Закон против гомосексуализма держит в страхе геев – и обогащает милицию" (Uzbekistan: Law against homosexuality keeps gays in fear - and enriches the police), *Fergana*, 23 November 2014.

19 "Пожаловавшегося на отсутствие света молодого учителя обвинили в гомосексуализме" (Teacher who complained of the lack of electricity was accused of homosexuality), *Radio Ozodlik*, 23 November 2015.

20 "Узбекистан: Милиционеров, избивших трансвестита, разжаловали и уволили со службы" (Uzbekistan: Policemen who beat up a transvestite were demoted and fired from service), *Fergana*, 15 January 2016.

21 "Охота на трансвеститов в Ташкенте", *El Tuz Youtube Channel*, 3 January 2016.

22 "Акмаль Саидов: Узбекистан Отклонил Права Секс-Меньшинств" (Akmal Saidov: Uzbekistan Rejected The Rights Of Sexual Minorities), *Vesti.uz*, 24 May 2018; "В Кишиневе Против Воли Президента Провели Гей-Парад" (In Chisinau, A Gay Parade was held Against The Will Of The President), *Vesti.uz*, 24 May 2018; "Запад Потребовал От Узбекистана Дать Свободу Лгбти-Сообществу" (West Demanded That Uzbekistan Give Freedom To The LGBTI Community), *Vesti.uz*, 17 de mayo de 2018; "Как Продвигают «Сексуальное Здоровье»" (How To Promote "Sexual Health"), *Vesti.uz*, 1 July 2018.



YEMEN

Provisions in force

- **Penal Code** (1994).

Homosexuality (Sodomites: men and women)

Article 264.

Homosexuality is the contact of one man to another through his posterior; both sodomites whether males or females are punished with whipping of one hundred strokes if not married.

It is admissible to reprimand it by imprisonment for a period not exceeding one year, punishment by stoning to death if married.

Lesbianism

Article 268.

Lesbianism is intercourse between one female and another. Anyone engaged in this act with another shall be punished with imprisonment for a period not exceeding three years. [...]

- **Law on the press and publications** (Law No. 25 of 1990).

Legal barrier to freedom of expression

Article 103.

Persons employed in radio, television and written journalism and especially those employed in responsible positions in radio and television journalism, owners and editors-in-chief of newspapers, owners of printing presses and publishing houses and journalists, shall be bound to abstain from printing, publishing, circulating or broadcasting:

(a) Anything which prejudices the Islamic faith and its lofty principles or belittles religions or humanitarian creeds, [...]

(d) Anything which leads to the spread of ideas contrary to the principles of the Yemeni Revolution, prejudicial to national unity or distorting the image of the Yemeni, Arab or Islamic heritage, [...]

(e) Anything which undermines public moral or prejudices the dignity of individuals or the freedom of the individual by smears and defamation, [...]

(j) Advertisements containing texts or pictures which are inconsistent with Islamic values and public ethics, to defame or libel individuals, attack the rights of others or mislead the public..."

Punishment

Article 104.

Without prejudice to any more severe penalty under another law, any person who contravenes the provisions of this law shall be subject to a fine not exceeding ten thousand riyals or a period of imprisonment not exceeding one year.

Human rights situation

Prior to the civil war, the government had already been hostile towards the LGBT community. In 2004, a court sentenced three journalists to imprisonment for publicly discussing same-sex sexual relations, and for interviewing men who had been jailed for consensual same-sex acts.[1]

During the uprising in 2011, Alaa Jarban, a student leader in the country's youth movement, came out publicly in a blogpost which resulted in threats of violence and his filing for refugee status in Canada.[2] In 2012, a government-funded cultural magazine, *Al Thaqafiya*, was shut down for publishing a review of an Egyptian film that contained a scene depicting female same-sex intimacy.[3] In addition, according to a security source, at least 300 gay men have been arrested in 2012 and 2013.[4]

The situation in Yemen has become progressively worse for sexual and gender diversity since the takeover of much of the country by the Houthi militia in 2013. Multiple reports of men suspected of being gay killed or wounded by militants from the Al Qaida-affiliated Ansar Al Shari were published.[5] Though these acts of violence were reported to the police, there was purportedly no action taken.[6] In 2015, four gay men were again murdered in Aden after the Yemen-based Al Qaeda in the Arabian Peninsula (AQAP) took control of parts of the city.[7]

Statements by public officials

In response to demands that the government repeal laws which subjugates LGBT people, Fouad al-Ghaffari, an aide to Yemen's minister of human rights, reiterated the country's official position: "We don't have gays in Yemen".[8]

National Human Rights Institutions

Yemen does not have a National Human Rights Institution in accordance with the Paris Principles.

UN voting record

Yemen was not a member of the Human Rights Council between 2011 and 2016, and therefore did not participate in the vote for the three HRC resolutions on human rights, sexual orientation and gender identity in 2011, 2014 and 2016. At the session of Third Committee of the UN General Assembly held in November 2016, Yemen voted against the LAC amendment to remove Operative Paragraph 2,[9] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session in December 2016. Additionally, Yemen did not vote the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

In its 2nd cycle UPR in January 2014, there were no SOGI recommendations made by States to Yemen. In fact, it appears that there was only one passing mention of SOGI in the 18 civil society and other submissions.[10]

Yemen's 3rd UPR review is in process at time of writing. Amongst the 23 civil society submissions to Yemen's UPR, only the Equal Rights Trust (substantial content) and UNHCR (one line) make mention of LGBT situations.[11]

1 "Journalists convicted for gay report", *Al Jazeera*, 19 May 2004.

2 "Gay Yemeni activist facing death threats seeks to stay in Canada", *CBC News*, 20 June 2013.

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

4 Shuaib Almosawa, "No Place for Gays in Yemen", *IPS News*, 16 August 2013.

5 *Ibid*.; "Man accused of being homosexual shot dead in Yemen", *The National*, 16 July 2013; "Al Qaida suspects attack 'gay' man in Yemen", *Gulf News*, 20 July 2013; "Yemen gunmen kill suspected homosexual", *Gulf News*, 28 September 2013.

6 Shuaib Almosawa, "No Place for Gays in Yemen", *IPS News*, 16 August 2013.

7 Elham Manea, "4 Murders of Gay Men in Yemen", *Huffpost*, 11 September 2015.

8 Shuaib Almosawa, "No Place for Gays in Yemen", *IPS News*, 16 August 2013.

9 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

10 Amnesty International, *Yemen Amnesty International Submission for the UN Universal Periodic Review* (2013).

11 "Civil society and other submissions", *UPR-info website*.

CRIMINALISATION

ASIA

NON-UN MEMBER STATES AND SUBNATIONAL ENTITIES

STATE-SPONSORED HOMOPHOBIA 2019

CERTAIN PROVINCES IN INDONESIA

Provisions in force

Same-sex sexual relations between consenting adults are not prohibited under the Indonesian Penal Code (which finds root in the Netherlands Indies Penal Code). At the provincial level, there are areas and municipalities that criminalise same sex sexual relations through local Ordinances.

- [ACEH] **Aceh Regulation No. 6/2014** [Provincial Ordinance] on criminal offenses under Syariah law, 2014 (into effect on 23 October 2015). The law stipulates a punishment of 100 lashes and/or up to approximately eight years in prison. The regulation applies to local residents and to foreigners in the province for the crime of *Liwat* (male penetration) and *Musahaqah* (female same-sex sexual activity) in article 63 and 64.

- [SOUTH SUMATRA] **Provincial Ordinance No. 13/2002 on the Eradication of Immoral Behaviour** classifies and penalises same sex relations as "immoral behaviour".

Human rights situation (National)

In recent years, there has been no abatement in the anti-SOGI demands of Muslim clerics as reported by Human Rights Watch in March 2015.[1]

On 3 March 2016, Indonesia's Parliamentary Commission for Defense, Foreign Affairs and Information (known as Commission I) recommended "measures for the [Indonesian Broadcasting Commission, or KPI] to tighten controls over broadcasting LGBT-related content, as well as sanctioning strict punishment for violation of LGBT content delivery" –representing another repressive legal vehicle targeting LGBT people. [2]

In January 2018, it was reported that a parliamentary commission has been drafting proposed revisions to the national criminal code which would include measures to criminalise extramarital sex, same-sex relations, and co-habitation.[3]

In February 2018, the Health Ministry reportedly said that it was publishing a medical guide that classified "homosexuality" as a mental disorder.[4] In November 2018, the city council of Pariaman in West Sumatra passed a regulation that banned "acts that are considered LGBT" on the basis that such behaviour could "disturb public order".[5]

HRW and other reports in 2016 and 2017 document a worsening socio-political environment for LGBT advocacy and development, a situation that also has economic consequences for the State.[6] Reports throughout 2016 and early 2017 indicate a heightened threat from both State and non-State actors to LGBTI human rights defenders and their work.[7] A report by Front Line Defenders

1 "Dispatches : Challenging Indonesia's Intolerant Muslim Clerics", *Human Rights Watch*, 17 March 2015.

2 "Indonesia: Don't Censor LGBT Speech", *Human Rights Watch*, 9 March 2016; "Indonesia: Political Party Proposes Anti-LGBT Law", *The Library of Congress*, 9 March 2016.

3 Agustinus Beo Da Costa and Kanupriya Kapoor, "Draft proposals in Indonesian parliament aim to ban extramarital sex", *Reuters*, 29 January 2018.

4 "Indonesia classifies homosexuality as 'mental disorder'", *India Today*, 3 February 2018.

5 "Draft proposals in Indonesian parliament aim to ban extramarital sex", *Reuters*, 30 November 2017.

6 See, among others: "Indonesia: Silence, and Complicity on Human Rights Abuses", *Human Rights Watch*, 12 January 2017; "Under attack, Indonesian LGBT groups set up safehouses, live in fear", *Channel NewsAsia*, 9 march 2016; The Williams Institute, *LGBT Exclusion in Indonesia and Its Economic Effects* (2017).

7 "The criminalisation of LGBT people in Indonesia", *New Mandala*, 21 december 2016; Human Rights Watch, *World Report* (2017).

in December 2017 also found that LGBTI human rights defenders were facing increasingly "frequent, personal and violent" threats.[8] A new government "heresy" app, which allows the public to report complaints of "deviant beliefs", is also perceived as intensifying anti-LGBT crackdowns.[9]

There have been multiple reports in 2017 and 2018 of men sentenced to up to 100 lashes for engaging in same-sex sexual intimacy in Aceh.[10] In 2017, more than 10 men arrested at a raid of a spa were charged under anti-pornography laws and sentenced to up to three years in jail.[11] In April 2017, 14 men were arrested by a police raid at a hotel in Surabaya and detained on "anti-pornography" charges; several men were also publicly outed as living with HIV.[12]

In December 2017 and January 2018, there were a number of raids dubbed "Operation Anti Moral Illness" against Waria people (transgender women) in Aceh.[13] In November 2018, there were multiple attacks against these groups again in Lampung and Bekasi.[14]

In January 2017, the police in South Sulawesi shut down an annual sports and cultural event for Waria and Bissu people, who are culturally gender-nonbinary communities in the region.[15] In May 2017, a university in West Sumatra was reported to have imposed an official policy of prohibiting LGBT students from enrolling.[16] In September 2017, 12 women were evicted from their homes on the basis that their cohabitation and their "unfeminine" appearance was "against the teaching of Islam".[17]

In January 2018, Google removed gay dating app 'Blued' from its online store in the country in response to government demands.[18] Two men were arrested in October 2018 in West Java for running a Facebook account called "Gay Bandung Indonesia" and charged with breaking electronic information law by creating and transmitting pornographic content.[19] Following that incident, a circular was issued in Karawang to "prohibit LGBT practices".[20] In response, Human Rights Watch expressed their concerns to the Governor of West Java province, in a letter that documented the range of anti-LGBT incidents.[21]

Several jurisdictions within Indonesia have enacted laws and regulations that severely restrict human rights and/or stigmatise LGBT people. Among them:

- *Batam City*: City Ordinance No. 6/2002 about Social Ordinance, Social Order. Article 9 forbids the setting up of LGBT associations (explicitly mentioned).
- *Banjar*: District Ordinance No. 10/2007 on Social Order (Banjar, South Kalimantan Province) mentions "abnormal" homosexual and heterosexual acts (in addition to "normal" ones) in its definition of "prostitute". No explanation is given for "normal" or "abnormal" acts. It also prohibits the formation of organisations "…leading to immoral acts", that are "…unacceptable to the culture of [local] society".
- *Tasikmalaya*: City Ordinance on the Development of a Value System in Social Life Based on the Teachings of Islam and Local Social Norms (No. 12/2009) in Tasikmalaya, West Java: prohibits adultery and prostitution, both heterosexual and homosexual.
- *Padang Panjang*: Local Regulation [City Ordinance] about Prevention, Eradication and Action toward Social Ills (No. 9/2010) in Padang Panjang, West Sumatra: its definition

8 "Report: Attacks on LGBT Rights Defenders Escalating in Indonesia", *Front Line Defenders* (website), 6 December 2017.

9 Rik Glauert, "LGBTI Indonesians scared of government's new app, report it to Google", *Gay Star News*, 21 December 2018.

10 "Indonesia's Aceh: Two gay men sentenced to 85 lashes", *BBC News*, 17 May 2017; "Four detained in Indonesia's Aceh for alleged gay sex, face 100 lashes", *Reuters*, 3 April 2018; Euan McKirdy, "Gay men, adulterers publicly flogged in Aceh, Indonesia", *CNN*, 15 July, 2018; "Indonesia's Aceh lashes men 100 times each for sex crimes", *New Straits Times*, 12 December 2018.

11 James Besanvalle, "Indonesia sentences gay men raided in sex club to up to 3 years in jail", *Gay Star News*, 15 December 2017; Kate Lamb, "Jakarta police arrest 141 in raid on Indonesia gay club", *The Guardian*, 22 May 2017.

12 "Indonesia: 'Gay Porn' Arrests Threaten Privacy", *Human Rights Watch*, 5 May 2017.

13 "Indonesia: Transgender women in Aceh detained by police", *BBC News*, 29 January 2018; Kate Lamb, "Stripped naked and beaten: transgender women flee Indonesian city in fear", *The Guardian*, 2 February 2018.

14 A Muh Ibnu Aqil, "Transgender people assaulted by dozens of men in Bekasi", *The Jakarta Post*, 21 November 2018; Rio Tuasikal, "LGBT Raids and Spray in Lampung "Inhuman"", *VOA News*, 4 November 2018.

15 Shannon Power, "Indonesian police ban popular LGBTI event after complaints", *Gay Star News*, 24 January 2017.

16 "Unand Chancellor Is Unable To Revoke Terms Of LGBT-Free New Students, What's Up?", *Tempo.com*, 2 May 2017.

17 Kate Lamb, "LGBT crackdown feared in Indonesia after 12 women evicted from home", *The Guardian*, 6 September 2017.

18 "Google yanks gay dating app from Indonesia online store", *The Straits Times*, 31 January 2018.

19 "Indonesian police arrest two men linked to LGBT Facebook page", *Reuters*, 21 October 2018.

20 "Regent Issues Circular on Prohibition of LGBT", *Fakta Jabar*, 20 October 2018.

21 Graeme Reid and Brad Adams, "Discrimination Against LGBT People in West Java", *Human Rights Watch*, 29 October 2018.

includes same sex relationships within its scope (paid, or not paid for).

- *Palembang*: Local Regulation [City Ordinance] Palembang City No. 2/2014 about the Abomination of Prostitution, Chapter V. Prohibition Provisions, Article 8: outlaws "homosexual" "prostitution".
- *Pariaram*: Regional Regulation on Peace and Order of Kota Pariaram No 10/2018: Article 25 regulates the activities transgender women and those whose activities disturb public order. Article 26 meanwhile prohibits the activities of women and men who commit immoral (asusila) acts between the same sexes.

At the national level there are stigmatising Regulations that apply nationwide. For example, Government Regulation 61/2014 on Reproductive Health stipulates a "Healthy sexual life [...] free from sexual orientation dysfunction or deviance, [...] and in accordance with ethics and morals".

Statements by public officials

In 2016, the Defence Minister labelled the LGBT movement as a form of proxy war to undermine the country's sovereignty.[22] He said, "It's dangerous as we can't see who our foes are, but out of the blue everyone is brainwashed, now the (LGBT) community is demanding more freedom, it really is a threat."

In a 2017 report by the Ministry of Health, it was claimed that "homosexuality was against the *ethos* of the country".[23]

In October 2018, the Governor of West Java pledged that he was committed to "eradicate such things" in response to media queries on the presence of the LGBT community on social media.[24]

These views contrast with the President's attitude. In a 2016 response to questions on the threat of violence against LGBT people, President Joko Widodo told BBC that "the police must act. There must be no discrimination against anyone".[25]

Further, in a 2017 public statement, the Religious Affairs Minister called for LGBT people to be "embraced and protected, not just shunned and ostracized", urging the public to "bring them back to the right path".[26]

National Human Rights Institution

In 2016, Komnas HAM had urged the government to strengthen regulations to protect LGBT people from discrimination and violence.[27] However, in early 2019, the National Commission on Human Rights (Komnas HAM) stated that West Sumatra's plan to ban LGBT behaviour in the province was not in violation of any human rights.[28]

Existing legal challenges

Criminalisation of same-sex activity

In December 2017, the Constitutional Court rejected the application by a conservative group to make consensual same-sex sexual acts and non-marital sex illegal by a narrow margin of 5-4.[29]

UN voting record

In 2011, Indonesia was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 17/19, the first SOGI resolution adopted by the Council.[30]

In 2014, it voted against the adoption of Resolution 27/32, the second SOGI resolution adopted by the Council, which requested the OHCHR to update the report produced in 2011.[31] In 2016, Indonesia again voted against the adoption of Resolution 32/2 which created the mandate of the IE-SOGI.[32]

22 "Minister: LGBT Movement More Dangerous than Nuclear Warfare", *Tempo.co*, 23 February 2016.

23 Joseph Patrick McCormick, "Indonesia classifies homosexuality as a 'mental disorder' ahead of banning gay sex", *Pink News*, 3 February 2018.

24 Yongky Yulius, "Viral Gay Student Group Garut on Facebook, Ridwan Kamil Promises to Give Action", *TribunNews Jabar*, 9 October 2018.

25 "President Jokowi: The police must protect LGBT people and other minorities", *BBC News Indonesia*, 19 October 2016.

26 Moh Nadlir, "Minister of Religion Invites LGBT Groups to Be Embraced and Not Shunned", *Kompas*, 18 December 2017.

27 Tama Salim, "Komnas HAM, lawmakers call on govt to protect LGBT rights", *The Jakarta Post*, 22 February 2016.

28 "No human rights violation in West Sumatra's LGBT ban: Human rights commission", *Coconut News*, 15 February 2019.

29 Stephen Wright, "Top Indonesia court rejects attempt to criminalize gay sex", *AP News*, 14 December 2017; Kristian Erdianto, "Explanation of the Constitutional Court on the Allegations of Decree on Legalizing Zina and LGBT", *Kompas*, 18 December 2017.

30 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011.

31 Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014.

32 Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

At the session of Third Committee of the UN General Assembly held in November 2016, Indonesia voted against the LAC amendment to remove Operative Paragraph 2,[33] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Indonesia voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

At its 2nd UPR in May 2012, Indonesia was specifically asked to address violence against SOGI human rights defenders against whom threats were on the increase.[34] Indonesia responded to Spain's call to repeal laws that criminalise same-sex acts by saying, "[t]he recommendations do not reflect the actual situation in the Provinces they refer to".[35]

During its 3rd cycle of the UPR in May 2017, Indonesia received 12 SOGIESC recommendations. It accepted two of them and rejected the remaining ten. Indonesia accepted a recommendation from Norway, asking to "take further steps to ensure a safe and enabling environment for all human rights defenders, including those representing the LGBT community and other communities". The other accepted recommendation urged Indonesia to prioritize progress on equality and non-discrimination, including in relation to LGBT persons. The State rejected a recommendation from Iceland asking to repeal the provisions of the Aceh Islamic Criminal Code which criminalize sexual relations among consenting adults.[36]

Treaty Bodies

In 2014, the United Nations **Committee on Economic, Social and Cultural Rights (CESCR)** expressed concern about laws which discriminate against women, sex workers, and LGBT persons in provinces, districts and autonomous regions and made recommendations on how to rectify these violations.[37]

Special Procedures

In 2013, the **Special Rapporteur on adequate housing** visited Indonesia, where she heard testimonies from LGBT individuals who were discriminated in the housing sector and urged Indonesia to review and repeal national and regional laws which perpetuate discrimination.[38]

In 2016, several mandates[39] received reports on the precarious situation of LGBT people and human rights defenders in Aceh province.[40]

In 2018, several mandates[41] expressed serious concern regarding the alleged arbitrary arrests, detention and ill-treatment of twelve *waria*, or trans women, in Aceh. They also noted the absence of response to the joint allegation letter in 2016.[42]

In 2018, the Special Rapporteur on the right to health visited Indonesia and urged the State to repeal laws criminalizing persons living with HIV including those that criminalize consensual same-sex sexual acts.[43]

33 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

34 *Report of the Working Group on the Universal Periodic Review: Indonesia*, A/HRC/21/7/Add.1, 5 September 2012, para. 6.5.

35 *SOGIESC issues during Indonesia's 2nd UPR review*, 19 September 2012.

36 *Report of the Working Group on the Universal Periodic Review: Indonesia*, A/HRC/36/7, 14 July 2017.

37 *Concluding observations on the initial report of Indonesia*, E/C.12/IDN/CO/1, 19 June 2014.

38 *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context on her mission to Indonesia*, A/HRC/25/54/Add.1, 26 December 2013, para. 81.

39 The mandates who received such reports are: Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

40 For more information, see AL IDN 2/2016.

41 The mandates are Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the human rights of internally displaced persons; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

42 For more information, see UA IDN 1/2018.

43 *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health on his mission to Indonesia*, A/HRC/38/36/Add.1, 5 April 2018, para. 128.

PALESTINE[1] (GAZA)

Provisions in force

- **The British Mandate Criminal Code** (Ordinance No. 74 of 1936).

Carnal knowledge against the order of nature

Section 152(2).

Any person who:

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

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

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

Human rights situation

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

Since the 2007 governance of Gaza by Hamas, the Gazan legislative body has attempted to amend or replace the British Mandatory Penal Code but the proposed code failed to pass the Gazan legislature.

In 2013, a news report interviewed gay men living in the Palestinian territories, who shared that they risked family and social ostracisation if they came out[1]. A 2018 news report also discussed how gay men in Gaza led double lives, to avoid backlash from their families and Hamas.[2]

In 2015, a group of Palestinian protesters destroyed a gay pride flag painted on a West Bank separation barrier. Though the original artist had intended for the artwork to be a reminder of the "absence of tolerance and freedoms" in Palestinian society due to Israeli occupation, the protestors explained that they destroyed it because it was "shameful" to promote gay rights.[3]

In 2016, Hamas executed one of its commanders, Mahmoud Ishtiwi, after he was detained for a year for "moral turpitude", which is a euphemism used to refer to homosexuality.[4] In 2017, a Palestinian novelist was stranded in Qatar after the West Bank authorities confiscated all copies of his latest book and issued an arrest warrant for him.[5]

In 2018, controversy erupted over a television comedy which featured a scene where a male actor made sexual advances at young men as part of a "candid camera" segment.[6]

National Human Rights Institution

The Independent Commission for Human Rights does not appear to have done any work in relation to sexual orientation or gender identity.

1 Pursuant to United Nations General Assembly resolution 67/19 of 29 November 2012, Palestine is a non-member observer state of the United Nations

1 Nigel O'Connor, "Gay Palestinians Are Being Blackmailed Into Working As Informants", *Vice News*, 19 February 2013.

2 "What It's Like to Be Gay in Gaza: Meeting Israelis on Dating Apps, Evading Hamas and Plotting Escape", *Haaretz*, 21 February 2018; "The Real Oppressors of Gaza's Gay Community: Hamas or Israel?", *Haaretz*, 7 March 2018.

3 "Rainbow Flag on West Bank Barrier Touches Nerve for Palestinians", *Haaretz*, 30 June 2015.

4 "Hamas Commander, Accused of Theft and Gay Sex, Is Killed by His Own", *New York Times*, 1 March 2016.

5 "Arrest warrant for Palestinian novelist leaves him stranded in Qatar", *Gulf News*, 11 February 2017.

6 Khaled Abu Toameh, "Palestinians: No Place for Gays", *Gatestone Institute*, 12 June 2018.

CRIMINALISATION

OCEANIA

STATE-SPONSORED HOMOPHOBIA 2019



KIRIBATI

Provisions in force

- **Penal Code** [Cap 67] (Revised Edition 1977).

Buggery

Section 153. 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 14 years.

Attempted buggery

Section 154. Attempts to commit unnatural offences and indecent assaults.

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.

Gross indecency

Section 155. 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 5 years.

Human rights situation

- Additional information on Kiribati is provided at the end of this entry in a "Local Perspective Essay" written by Tabeio Tamton for ILGA World.

Despite the criminalisation of same-sex intimacy, the Employment and Industrial Relations Code 2015 prohibits discrimination on the basis of sexual orientation. A study by UNDP also found that most men who have sex with men have been accepted by their families, although they would not bring their partners home as that would be "too confronting" to their family members, and long-term relationships are rare.[1] The first LGBT NGO in Kiribati was founded in September 2016: Boutokaan, Inaomataia ao Mauriia Binabinaine Association (BIMBA) amongst its other aims, focuses on the decriminalisation of same-sex sexual conduct and broader law reform in the country.[2]

National Human Rights Institution

Kiribati does not have a National Human Rights Institution in accordance with the Paris Principles.

1 UNDP, *Pacific Multi-Country Mapping and Behavioural Study: HIV and STI Risk Vulnerability among Key Populations – Kiribati* (2016) p. 62.

2 "Kiribati: Are the winds of change blowing?", *Joy*, 1 November 2016.

UN voting record

Kiribati was not a member of the Human Rights Council between 2011 and 2016, and therefore did not participate in the vote for the three HRC resolutions on human rights, sexual orientation and gender identity in 2011, 2014 and 2016.[3] At the session of Third Committee of the UN General Assembly held in November 2016, Kiribati voted in favour of the LAC amendment to remove Operative Paragraph 2,[4] and against the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Kiribati voted against the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

Kiribati rejected two recommendations to decriminalise in its 1st cycle UPR in May 2010.[5]

In its 2nd cycle UPR in January 2015, Kiribati received recommendations from France, Slovenia, Chile, Canada and Uruguay to decriminalise same-sex sexual relations, and to ensure SOGI is a ground that is protected in anti-discrimination legislation.[6] In the final Working Group report for Kiribati, there is no mention of the State's reasons for rejecting ('noted') all SOGI-related recommendations.[7] Kiribati's 3rd UPR begins in January 2020.

A LOCAL PERSPECTIVE

Fighting for Equality in Kiribati

By Tabeio Tamton[8] *for ILGA World.*

Kiribati is small island state with a group of 33 coral atoll islands, distributed among 3 groups which are Gilbert, Line and Phoenix Island Groups, located in the Central Pacific region. The ethnic group within the Pacific Region archipelago is Micronesia and it was once colonized by Great Britain in the 1890s until its independence in 1979. Sadly, it is also one of the countries that still criminalises same-sex sexual acts in its legal framework which include the Constitution and Penal Code that were established during the colonization period. However, to date there has been no known arrest made to people of diverse sexual orientation and gender identity, as enforcement of these laws and regulations. Homosexuality is still a "taboo" in the country and local communities regard it as "immoral". Additionally, with the arrival of Christianity in Kiribati some of the teachings from the Bible were used to condemn homosexuality and hence the additional hatred and prejudice to lesbian, gay, bisexual and transgender (LGBT) people. In Kiribati, the word "binabinaine" refers to men who are more feminine than others and as such it is inclusive of gay men, bisexual men and transwomen.

BIMBA —the first LGBT civil society organisation (CSO) in the country— was officially established in 2016 as a civil society organisation to support human rights and health of gay and bisexual men and transgender women. Gay men usually grow up facing a number of physical, verbal and mental abuse from people within our families, schools, work and local community in general. A few of us were fortunate enough to survive all the hardships and torments and now we have the hope of becoming a group who can bring about change to the local LGBT community, especially from within our families and communities in general. Many among us need a voice to have their sexual orientation and gender identity not only recognized but respected first and foremost. The laws that criminalise same-sex sexual acts contribute to the abuse and discrimination toward the members of our community and therefore, we all dream and long for a day when those laws will be gone, and we can proudly walk on the white sandy beaches as a proud gay person without being called *a criminal*.

3 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011; Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014; Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

4 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

5 *Report of the Working Group on the Universal Periodic Review: Kiribati*, A/HRC/15/3, 17 June 2010.

6 *Draft report of the Working Group on the Universal Periodic Review: Kiribati*, A/HRC/WG.6/21/L.2, 23 January 2015.

7 *Report of the Working Group on the Universal Periodic Review: Kiribati*, A/HRC/29/5, 13 April 2015.

8 Tebeio Tamton is from Beru, a small island located in the southern part of the Gilbert Group from both my paternal and maternal links. He is an openly gay man, a father, a civil servant and a Founding Member of BIMBA Inc. (Boutokaan Inaomataia ao Mauriia Binabinaine Association).



PAPUA NEW GUINEA

Provisions in force

- **Criminal Code** (1974) (as amended in 2002).

Penetration against the order of nature

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.

Gross indecency

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.

Human rights situation

A 2011 study found that the police authorities are one of the main sources of violence and discrimination against men who have sex with men and transgender people.[1] In 2012, a Member of Parliament called on the country's next government to decriminalise same sex sexual relations.[2] This followed the government's refusal to do so at the UN UPR in 2011.[3] However, this suggestion was rejected by the new government and strongly resisted by Christian religious leaders.[4]

In 2014, another Member of Parliament said he was considering legislative interventions to recognise the rights of sexual minorities though the issue of same-sex marriage was out of the question.[5]

1 Christina Misa Wong and Shanti Noriega, *Exploring gender-based violence among MSM, male sex worker and transgender communities in Bangladesh and PNG* (FHI 360, 2011).

2 Elise Kinsella, "Push to decriminalise homosexuality in PNG", *ABC News*, 26 July 2012.

3 Andrew M Potts, "Regional push to end sodomy laws", *Star Observer*, 26 October 2011.

4 "No end in sight to PNG's anti-gay laws", *SBS News*, 26 August 2013; "Pastor abhors homosexuality", *The National*, 2 August 2012.

5 "PNG MP wants gay, lesbian rights", *One PNG*, 23 April 2014.

Kapul Champions, the first local registered gay, bisexual and transgender human rights NGO in the country came into being in 2013 and, in 2015, submitted its own report for the UPR.[6] In a UPR shadow report, Human Rights Watch stated that gay asylum seekers in Papua New Guinea were often sexually abused or assaulted, or otherwise shunned, by other men.[7] In a 2016 UPR submission, Kaleidoscope Trust and the Sexual Rights Initiative stated that LGBTI people faced problems in terms of discrimination, access to justice, health services and employment.[8]

In 2015, a man was prosecuted and pleaded guilty to indecent acts between males (see *State v. Sevese*).[9] In that matter, the sentencing judge found that "homosexual acts or this type of behaviour is quite prevalent in society" despite the lack of reported cases, and sentenced the accused to a suspended sentence, mandatory counselling and community work. In 2016, an openly gay man was allegedly killed by a relative in his family home.[10]

In 2017, the International Labour Organisation recommended the government address cases of discrimination faced by LGBT people, among others, in light of the country's ratification of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).[11]

Statements by public officials

In 2012, Prime Minister Peter O'Neill stated that there were "strong feelings against homosexuality in the country", which has "yet to accept such sexual openness".[12]

National Human Rights Institution

The Ombudsman Commission of Papua New Guinea does not appear to have done any work on sexual orientation or gender identity.

UN voting record

In 2011, 2014 and 2016, Papua New Guinea was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of any of the SOGI resolutions. At the session of Third Committee of the UN General Assembly held in November 2016, Papua New Guinea abstained during the vote to adopt the LAC amendment to remove Operative Paragraph 2,[13] and abstained during the vote to adopt the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Papua New Guinea abstained during the vote to adopt the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

In its 1st cycle UPR in June 2011, Papua New Guinea rejected two recommendations to decriminalise and one to include "sexual orientation" in non-discrimination legislation.[14]

In its 2nd cycle UPR in July 2016, Papua New Guinea did not accept five SOGI related recommendations, four of which referred to the decriminalisation of same-sex sexual activity, and included a footnote explicitly stating that "LGBT [sic] is currently not a priority of the Government" (see fn. 53).[15] During the interactive dialogue, the delegation stated that the rights of lesbian, gay, bisexual, transgender and intersex persons, "needed to be understood by the population" and that a "national consultation process was required in order to address the issue in a comprehensive way".[16]

Papua New Guinea's next UPR is in 2021

6 Kapul Champions, *Papua New Guinea* (2015).

7 Human Right Watch, *Universal Periodic Review Submission* (2015), p. 3.

8 Kaleidoscope Human Rights Foundation et al., *Report on Papua New Guinea regarding the human rights of LGBTI persons* (2016).

9 Kaleidoscope Trust et al., *Speaking Out* (2015); Pacific Islands Legal Information Institute, *Papua New Guinea [in the National Court of Justice]* (2015).

10 Bruce Hill, "Papua New Guinea gay community mourns man allegedly killed by relative", *ABC News*, 18 October 2016.

11 International Labour Organisation, *Direct Request (CEACR) - adopted 2016, published 106th ILC session* (2017).

12 Stephen Lee, "Bleak outlook for gay rights", *PNG Blogs*, 13 September 2012.

13 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

14 *Draft report of the Working Group on the Universal Periodic Review: Papua New Guinea*, A/HRC/WG.6/11/L.16, 13 May 2011.

15 *Report of the Working Group on the Universal Periodic Review: Papua New Guinea*, A/HRC/33/10, 13 July 2016; *Report of the Working Group on the Universal Periodic Review: Papua New Guinea*, A/HRC/33/10/Add.1, 22 September 2016.

16 *Report of the Working Group on the Universal Periodic Review: Papua New Guinea*, A/HRC/33/10, 13 July 2016.



SAMOA

Provisions in force

- **Crimes Act** (2013)

Sodomy

Section 67. Sodomy.

(1) A person who commits sodomy is liable:

(a) where the act of sodomy is committed on a female, to imprisonment for a term not exceeding 7 years; or

(b) where the act of sodomy is committed on a male, and at the time of the act that male is under the age of 16 years and the offender is of or over the age of 21 years, to imprisonment for a term not exceeding 7 years; or

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

(2) Sodomy is complete upon penetration.

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

Attempted sodomy

Section 68. Attempts to commit sodomy.

A person is liable to imprisonment for a term not exceeding 5 years who: attempts to commit sodomy; or assaults any person with intent to commit sodomy.

Facilitation of indecent acts

Section 71. Keeping place of resort for homosexual acts

A person is liable to imprisonment for a term not exceeding 7 years who:

(a) keeps or manages, or knowingly acts or assists in the management of, any premises used as a place of resort for the commission of indecent acts between males; or

(b) being the tenant, lessee or occupier of any premises, knowingly permits the premises or any part thereof to be used as a place of resort for the commission of indecent acts between males; or

(c) being the lessor or landlord of any premises, or the agent of the lessor or landlord, lets the premises or any part of the premises with the knowledge that the premises are to be used as a place of resort for the commission of indecent acts between males, or that some part of the premises is to be so used, or is wilfully a party to the continued use of the premises or any part thereof as a place of resort for the commission of the indecent acts.

Human rights situation

In 2013, Samoa enacted the Crimes Act 2013, amending Section 58D of the Crimes Ordinance 1961, which decriminalised 'indecent acts' between males. Furthermore, the Labour & Employment Relations Act of 2013 banned discrimination against employees or applicants for employment based on sexual orientation (among other grounds).

However, this progress is eclipsed by the fact that sodomy provisions survived the 2013 amendment. Criminalisation of same-sex consensual act between adults was kept on the books despite the recommendation to decriminalise made by the Samoa Law Reform Commission (Recommendation 12).[1] As organisations point out, the existence of the law means that Samoa's criminal provisions can still be used to target gay and bisexual men, and potentially transgender and intersex persons.[2]

In 2013, Samoa voted in favour of the Asian and Pacific Ministerial Declaration on Population and Development, which included several references to SOGI-related issues, such as violence and discrimination against LGBT people, and included policy directions on the matter.[3]

Fa'afafine and fa'afatama are a type of "social and communal gender fluid based status given to effeminate males and butch females within the Samoan cultural context".[4] After the arrival of Christianity, this group has become marginalised and face discrimination and challenges for their gender identity.[5] The Samoa Fa'afafine Association regularly organises beauty pageants and other activities to promote the rights and welfare of the community.[6] The group has stated that marriage equality is not a priority for them or the larger Samoan community.[7]

In June 2016, a Samoan publication was criticised for "insensitive" and "unethical" reporting on the death of a fa'afafine person, Jeanine Tuivaiki.[8] In response, the Samoa Fa'afafine Association organised a media consultation to promote fair and inclusive news coverage on its community.[9] In January 2017, a fa'afafine filed a complaint against her employer at the Department of Human Resources alleging that he sexually harassed her by asking her to "let us see if you're a woman".[10]

Statements by public officials

In 2017, Prime Minister Tuilaepa Sailele Malielegaoi repeatedly declared that same-sex marriage would never be legalised in the country because it is a Christian country.[11]

In September 2017, Prime Minister Malielegaoi said in a radio interview that his government would never allow "heathenistic practices" like same-sex marriage in Samoa.[12] In December 2017, he further called same-sex marriage an abomination and a "Sodom and Gomorrah practice", which would never be allowed in a true Christian country like Samoa.[13]

National Human Rights Institution

In June 2016, in response to complaints regarding the insensitive reporting on the death of fa'afafine person, Jeanine Tuivaiki, the office of the Ombudsman published a public statement recommending improvements to media reporting on the fa'afafine community.[14]

1 Samoa Law Reform Commission, *Crimes Ordinance 1961: Report 01/10* (2010), 22.
2 Kaleidoscope Australia Human Rights Foundation et al., *Submission to the UN Universal Periodic Review regarding the protection of the rights of LGBTI persons in Samoa* (2015).
3 *Report of the Sixth Asian and Pacific Population Conference*, E/ESCAP/APPC(6)/3, 18 November 2013.
4 Samoa Faafafine Association, *UPR Submission* (2016).
5 "Fa'afafine", Te Ara – The Encyclopedia of New Zealand (website), accessed 22 February 2019.
6 Adel Fruean, "Fa'afafine week campaign kicks off", *Samoa Observer*, 2 December 2018; Deidre Tautua-Fanene and Misiona Simo, "Your new Miss Samoa Fa'afafine", *Samoa Observer*, 2 September 2017.
7 "Same-sex marriage not a priority for Samoa Fa'afafine Association", *Radio NZ*, 13 December 2017.
8 Laura Walters, "Samoan reporting on trans woman's death 'disgusting', 'degrading'", *Stuff NZ*, 20 June 2016.
9 "Samoa Fa'afafine Association Calls For Fair, Accurate, Inclusive Media Coverage", *Pacific Islands Report*, 27 March 2017.
10 "Fa'afafine govt employee lays discrimination complaint", *Radio NZ*, 26 January 2017.
11 "Tuilaepa rules out abortion and same sex marriage in Samoa", *Radio NZ*, 1 September 2017; "Tuilaepa says no to same sex marriage in Samoa", *Radio NZ*, 12 December 2017.
12 "Tuilaepa rules out abortion and same sex marriage in Samoa", *Radio NZ*, 1 September 2017.
13 "Tuilaepa says no to same sex marriage in Samoa", *Radio NZ*, 12 December 2017.
14 Maiava Iulai Toma, "Ombudsman Maiava Iulai Toma responds", *Samoa Observer*, 27 June 2016.

In November 2018, the Ombudsman Maiava Iulai Toma praised the Samoa Fa'afafine Association for championing human rights in Samoa. He said, "They are a legitimate group of our society in which NHRI Samoa has a genuine interest to promote and to protect their human rights. SFA (Samoa Fa'afafine Association) has always taken a cautious approach with its advocacy work where it has kept a firm eye on local context and ensured that its work is consistent and upholds the cultural and religious values of Samoa."[15]

UN voting record

In 2011, 2014 and 2016 Samoa was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of any of the SOGI resolutions.[16]

At the session of Third Committee of the UN General Assembly held in November 2016, Samoa voted in favour of the LAC amendment to remove Operative Paragraph 2,[17] and against the African oral amendment to block the IE SOGI at the UNGA Plenary Session in December 2016. Additionally, Samoa did not vote the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

At its 1st cycle UPR in May 2011, Samoa rejected three recommendations to decriminalise same-sex sexual activity from Canada, France and Norway. However, Samoa's rejection is worthy of note: Paragraph 22 of the report of the Working Group reads: "Samoa noted the gaps and weaknesses in its legislative framework on upholding equality and non-discrimination based on sexual orientation, and that relevant legislation was being reviewed by the Samoa Law Reform Commission. Samoa indicated that *Fa'afafine*, gays and lesbians were integral members of Samoan society and were heirs to family chiefly titles and lands through extended family consensus, as done for all men and women of its society. However, sexual orientation was a sensitive issue in Samoa given the religious and cultural beliefs of mainstream society. Nonetheless, Samoa was confident that education, awareness and sensitisation would pave the way for societal acceptance and prevention of discrimination that might arise out of sexual orientation".[18]

In its 2nd cycle UPR, Samoa received seven SOGI-related recommendations, six of which were rejected and only one accepted (to reduce violence against women and girls and violence based on sexual orientation and gender identity).[19] During the interactive dialogue the delegation touched upon "discriminatory practices on sexual matters", stating that Samoa had worked to increase awareness among the population, stressing that issues like this one are especially difficult to face, as they involve "cultural and religious sensitivities".

Samoa's next UPR will take place in May 2021.

Special Procedures

In May 2018, the **Working Group on the issue of discrimination against women in law and in practice** noted that there is a lack of knowledge about the gender-based violence faced by the *fa'afafine*, *fa'afatama* and lesbian communities.[20] It recommended the State to "provide age-appropriate, comprehensive and inclusive sexuality education [that] pays particular attention to gender equality, sexuality, gender identity, including non-conforming gender identities".[21]

15 "Association praised for promoting rights", *Samoa Observer*, 26 November 2018.

16 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011; Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014; Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

17 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

18 *Report of the Working Group on the Universal Periodic Review: Samoa*, A/HRC/18/14, 11 July 2011, para. 22.

19 *Report of the Working Group on the Universal Periodic Review: Samoa*, A/HRC/33/6, 27 June 2016.

20 *Report of the Working Group on the issue of discrimination against women in law and in practice on its mission to Samoa*, A/HRC/38/46/Add.1, 17 May 2018, para. 35.

21 *Report of the Working Group on the issue of discrimination against women in law and in practice on its mission to Samoa*, A/HRC/38/46/Add.1, 17 May 2018, para. 97.



SOLOMON ISLANDS

Provisions in force

- **Penal Code** (Revised Edition 1996).

Buggery

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.

Attempted buggery

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.

Gross indecency

Section 162. Indecent practices between persons of the same sex.

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.

Human rights situation

Though the Law Reform Commission proposed the decriminalisation of consensual same-sex intimacy in 2011, it made no mention of this recommendation in its 2013 Second Interim Report on Sexual Offences.[1] The 2011 report also noted that there has only been two prosecutions involving adults who sexually abused children.[2]

In 2016, the Equal Rights Trust published a report on discrimination and inequality in the Solomon Islands that includes a section on sexual orientation discrimination (p. 104 onwards).[3]

The oppressive environment in which LGB people live in the islands is reflected in testimonies gathered in focus groups. Participants spoke of verbal, physical and sexual abuse in public places

1 Equal Rights Trust et al., *Stand Up and Fight* (2016), 106-107.
2 *Id.*, 107.
3 *Ibid.*

and lack of protection from police officers, as well as discrimination in employment.

In August 2017, a news report featured an interview with a Solomon Islander who revealed how gay people get verbally and physically abused for being gay, with some even getting threatened that they would be arrested.[4]

Statements by public officials

In a 2018 public speech, the Governor General of the Solomon Islands quoted provisions criminalising same-sex activity to reiterate that "our present criminal law is against same-sex marriage and associated conduct".[5]

National Human Rights Institution

The Solomon Islands Ombudsman does not appear to have done any work on sexual orientation or gender identity.

UN voting record

Solomon Islands was not a member of the Human Rights Council between 2011 and 2016, and therefore did not participate in the vote for the three HRC resolutions on human rights, sexual orientation and gender identity in 2011, 2014 and 2016. At the session of Third Committee of the UN General Assembly held in November 2016, Solomon Islands did not vote the LAC amendment to remove Operative Paragraph 2,[6] and did not vote the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

Additionally, Solomon Islands did not vote the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

Although the Solomon Islands accepted Norway's recommendation to decriminalise same-sex sexual activity between consenting adults in its 1st cycle UPR in May 2011, in the same session it 'noted' (rejected) three other recommendations that advised exactly the same thing (from Slovenia, France and Spain).[7] The Working Group report states: "The delegation reported that the cultural context of society did not condone same-sex relationships. Any commitment to removing Penal Code provisions criminalising sexual relations between consenting adults of the same sex must be subject to consultations. However, there had not been any submissions to the Law Reform Commission in their review of the Penal Code to repeal those sections."

In its 2nd cycle UPR, the Solomon Islands' rejected six recommendations regarding decriminalisation and anti-discrimination legislation inclusive of SOGI.[8] In a cursory response, the delegation responded that much still remained to be achieved with regard to sexual orientation and gender identity, but this would take time, resources and commitment.

The next UPR for the Solomon Islands commences 2021.

4 Sela Jane Hopgood, "Cooks bill puts spotlight on Pacific's anti-gay laws", *Radio NZ*, 21 August 2017.

5 "Same sex marriage cannot populate the world, the Governor General says", *SIBC*, 8 June 2018.

6 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

7 *Report of the Working Group on the Universal Periodic Review Solomon Islands*, A/HRC/18/8, 11 July 2011.

8 *Draft report of the Working Group on the Universal Periodic Review: Solomon Islands*, A/HRC/WG.6/24/L.11, 5 February 2016.



TONGA

Provisions in force

- **Criminal Offences Act** [Cap 18] 1988 Edition.

Sodomy

Section 136. Sodomy and bestiality.

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.

Attempted sodomy

Section 139. Attempted sodomy, indecent assault upon a male.

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. Evidence.

On the trial of any person upon a charge of sodomy or carnal knowledge it shall not be necessary to prove the actual emission of seed but the offence shall be deemed complete on proof of penetration only.

Whipping

Section 142. Whipping for certain offences.

Whenever any male person shall be convicted of any offence against sections [...] 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.

Human rights situation

Despite vitriolic rhetoric by religious groups, the local LGBT organisation *Tonga Leitis Association* (TLA) has been active on the ground urging the government to repeal sodomy laws still in force.[1] According to acting-Attorney General, 'Aminiasi Kefu, there has never been a conviction where consenting adults were charged for committing sodomy.[2]In 2013, Tonga voted in favour of the Asian and Pacific Ministerial Declaration on Population and Development, which included several references to SOGI-related issues, such as violence and discrimination against LGBT people, and included policy directions on the matter.[3] In May 2015, the Pacific Sexual Diversity Network (PSDN) held its first conference ("*Our Voices, Our Communities, Our Rights!*") in Tonga, with the

1 "'Evil' gay activists told to leave Tonga by church members", *Cook Islands News*, 18 May 2015; Indira Stewart, "LGBT community calls for change in conservative Tonga", *RNZ*, 9 October 2016.

2 Indira Stewart,"LGBT community calls for change in conservative Tonga", *RNZ*, 9 October 2016.

3 *Report of the Sixth Asian and Pacific Population Conference*, E/ESCAP/APPC(6)/3, 18 November 2013.

support of the State and the Tongan royal family.[4] Ninety-six delegates (73 of whom work for LGBT CSOs or individual activists from 12 Pacific Islands) attended.[5]

Tonga has traditionally recognised gender diversity in relation to the *fakaleiti*, a term that describes a person who is assigned male at birth, but who takes on a feminine gender role.[6] These individuals have often been called upon to serve the royal family and churches though they have faced increasing stigma and prejudice due to rising religious fundamentalism in the country as well as the criminalisation of cross-dressing.[7]

In a 2015 study, 99% of respondents said they believe that gender-diverse people are respected for their gender identity while only 22% said that gender-diverse people were especially discriminated against in society.[8] However, according to a leading transgender activist, Joey Mataele, "acceptance stops at the bedroom door".[9] Mataele founded the Tonga Leitis Association, an organisation that advocates for Leitis in Tonga as well as the annual Miss Galaxy Queen Paegant to celebrate the diversity of the leitis and LGBTQ+ Tongans.[10]

In 2018, cyclone Gita caused serious damage to a drop-in centre and shelter operated by the Tonga Leitis Association.[11] In response the group launched a campaign to raise funds for the reconstruction of its shelter.

Statements by public officials

In 2018, Israel Folau, a star rugby player of Tongan descent in Australia, sparked controversy after he posted on social media saying that all gay people would end up in hell if they do not repent.[12]

In response, the Honorable Frederica Tuita Filipe, daughter of Tonga's Princess Royal, urged Folau to reconsider his comments, stating: "My silence was my attempt at respecting our different interpretations, but I fear by doing that I'm encouraging the marginalisation of a group of people I love and serve as much as any other Tongan. I've seen how forgiveness, love and inclusion bring people closer to God. I hope the trials you face give you the strength to open your heart and mind to differing views."[13]

National Human Rights Institution

The Commissioner for Public Relations (Ombudsman) does not appear to have done any work on sexual orientation or gender identity.

UN voting record

In 2011, 2014 and 2016 Tonga was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of any of the SOGI resolutions.[14]

At the session of Third Committee of the UN General Assembly held in November 2016, Tonga did not vote the LAC amendment to remove Operative Paragraph 2,[15] and did not vote the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Tonga did not vote the amendment which tried to block financial resources allocated to the IE SOGI.

4 Kaleidoscope Trust et al., *Speaking Out* (2015).

5 PSDN, *Our Voices, Our Communities, Our Rights!* (2015).

6 Sara Vui-Talitu, "A time to shine for Tonga's silenced leitis", *Radio NZ*, 19 May 2018.

7 Yara Murray-Atfield, "Leitis: Tonga's transgender community fights for visibility from the conservative Pacific Kingdom", *ABC News*, 16 April 2018.

8 Joleen Mataele and Carsten Balzer/Carla LaGata, *Transrespect versus Transphobia: The social experiences of Leitis in the Kingdom of Tonga* (2015), p. 19-20.

9 Umberto Bacchi, "After cyclone, transgender Tongans hope movie will help build acceptance", *Reuters*, 14 April 2018.

10 Louis Staples, "Leitis in Waiting chronicles the lives of Leitis, the sparkling transgender community in the Pacific", *Dazed*, 31 May 2018.

11 Michael K Lavers, "Cyclone seriously damages Tonga LGBTI center, shelter", *Washington Blade*, 21 February 2018.

12 Sara Vui-Talitu, "NZ's Pacific community reacts to Folau's anti-gay comments", *Radio NZ*, 20 April 2018

13 Jesse Jones, "Tongan Royal asks Israel Folau to stop his anti-gay speech", *Star Observer*, 11 May 2018.

14 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011; Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014; Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

15 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

International advocacy and supervision

Universal Periodic Review

Interestingly, in its 1st cycle UPR in May 2008, having received three other States' recommendations to decriminalise same-sex sexual relations (all of which were 'noted'), Bangladesh used the opportunity of the UPR to recommend that Tonga *retain* its criminalising law—a recommendation that is anathema to international human rights standards - but Tonga also rejected this advice.[16] The delegation noted "[o]n the issue of the right to privacy… [she] indicated that Tonga is an inclusive society with tolerant Christian values that require respect across differences".

In January 2013, at its 2nd cycle UPR Tonga accepted a Level 3 ("to consider") recommendation regarding, "strengthening measures to eliminate all discriminatory treatment" based on SOGI from Argentina.[17] However, it then went on to reject a further five recommendations to decriminalise same-sex sexual relations between consenting adults. The delegation did not address the six SOGI recommendations directly in its response to the UPR, but in a response to its ratification of Convention on the Elimination of Discrimination Against Women (CEDAW) mentioned that one of its reservations may be about same-sex marriage. Tonga's next UPR will be in October 2017.

During its 3rd cycle of the UPR carried out in January 2018, Tonga received 12 SOGIESC recommendations. It noted (functionally rejected) all of them. Argentina, Canada, Germany, Honduras, Montenegro, Portugal, Timor Leste and the United States called upon the State to decriminalise consensual same-sex sexual relations. Furthermore, Argentina, Canada, Mexico, Chile and the Netherlands urged the State to take measures to fight against the discrimination suffered by the LGBTIQ community.[18]

Referring to decriminalisation and the SOGIESC situation, the State alleged that "Tonga's historical cultural and religious beliefs, although tolerant, do not recognize this legal relationship status".[19]

16 *Universal Periodic Review Report of the Working Group on the Universal Periodic Review Tonga*, A/HRC/8/48, 5 June 2008.
17 *Report of the Working Group on the Universal Periodic Review: Tonga*, A/HRC/23/4, 21 March 2013.
18 "UPR-Tonga", *ILGA Website*, 19 January 2018.
19 "UPR-Tonga", *ILGA Website*, 19 January 2018, Section C.



TUVALU

Provisions in force

- **Penal Code** [Cap 8] (Revised Edition 1978).

Buggery

Section 153. 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 14 years.

Attempted buggery

Section 154. Attempts to commit unnatural offences and indecent assault.

Any person who attempts to commit any of the offences specified in the last proceeding section [sic], or who is guilty of any assault with intent to commit the same, or any indecent assault upon any male person shall be guilty of a felony, and shall be liable to imprisonment for 7 years.

Gross indecency

Section 155. 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 5 years.

Human rights situation

In 2013, Tuvalu voted in favour of the Asian and Pacific Ministerial Declaration on Population and Development, which included several references to SOGI-related issues, such as violence and discrimination against LGBT people, and included policy directions on the matter.[1] In fact, in its oral statement, Tuvalu's delegation stressed that the country turned a new page in its efforts to address key population issues and that it was addressing human issues that are inclusive in nature, upholding the human rights of every individual in this region.

However, the 2016 US Department of State Report on Human Rights still indicates that social stigma or intimidation may prevent reporting of incidents of discrimination or violence based on sexual orientation.[2] This was also reiterated in the 2017 report, though there does not appear to have been any prosecution for consensual same-sex sexual intimacy at all.[3] According to a small-scale research study into sexual behaviours of transgender people and men who have sex with men, low self-esteem was commonly felt.[4]

1 *Report of the Sixth Asian and Pacific Population Conference*, E/ESCAP/APPC(6)/3, 18 November 2013.

2 United States Department of State, *Tuvalu 2016 Human Rights Report* (2016).

3 United States Department of State, *Tuvalu 2017 Human Rights Report* (2017).

4 Heather Worth et al, *Pacific Multi-Country Mapping and Behavioural Study: HIV and STI Risk Vulnerability among Key Populations in Tuvalu* (2016), p. 38-90.

Section 5 of the Labour and Employment Relations Act 2017 prohibits discrimination at the workplace, including on the basis of sexual orientation.[5]

Culturally, Tuvalu also recognises the *pinapinaaine*, which refers to a man who might regard himself as, or be regarded by others as, a woman.[6] However, there has been little research conducted on this group.[7]

UN voting record

In 2011, 2014 and 2016, Tuvalu was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of any SOGI resolution.[8]

At the session of Third Committee of the UN General Assembly held in November 2016, Tuvalu voted in favour of the LAC amendment to remove Operative Paragraph 2,[9] and against the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

Additionally, Tuvalu did not vote the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

Despite the Czech Republic's 1st cycle UPR recommendation to Tuvalu to decriminalise, as an act that would foster tolerance and assist with dealing with HIV, the delegation made reference to the difficulties of Constitutional change which, "will need to be carefully considered", rather than the legislative amendments that were being sought.[10]

Again, at its 2nd cycle UPR in June 2013, Tuvalu repeated the phrase "carefully considered" in relation to legislative repeal. It rejected recommendations from the United States and the United Kingdom to decriminalise consensual same-sex sexual activity, and responded by saying that, people with different sexual orientation did not suffer social discrimination but the question of legal protection in the law was controversial and would need to be carefully considered.[11]

During its 3rd cycle of the UPR carried out in May 2018, Tuvalu received 13 SOGIESC recommendations. It supported two of them, whilst noting (functionally rejecting) all remaining eleven.

Argentina, Australia, Canada, Honduras, Iceland, Italy, Spain, the United Kingdom and the United States called upon Tuvalu to decriminalize consensual same-sex sexual relations (in particular, by amending Sections 153-155 of the Penal Code). New Zealand asked for Tuvalu to "continue to take steps to actively promote the equal rights of all individuals regardless of gender, religious beliefs, sexual orientation, age, disability or other status, including by ratifying the International Covenant on Economic, Social and Cultural Rights".[12]

Tuvalu referred to the SOGIESC issue during its final Session, expressing that "sexual orientation is an issue we are trying to cope with, to understand better, because it's not practiced in the Tuvalu cultural setting, but we are committed to addressing that in a manner that is acceptable and follows the international norms".

5 *Tuvalu National Report for third cycle of UPR*, A/HRC/WG.6/30/TUV/1, 28 March 2018, para. 54.

6 Eleanor Kleiber, "Gender Identity and Sexual Identity in the Pacific and Hawai'i: Introduction", *University of Hawai'i at Manoa* (website), accessed 23 February 2019.

7 Ministry of Health of Tuvalu, *Global AIDS Progress Report of Tuvalu* (2016), p. 34.

8 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011; Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014; Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

9 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

10 *Universal Periodic Review Report of the Working Group on the Universal Periodic Review: Tuvalu*, A/HRC/10/84, 9 January 2009, para. 14.

11 *Report of the Working Group on the Universal Periodic Review: Tuvalu*, A/HRC/24/8, 5 July 2013.

12 "UPR-Tuvalu", *ILGA Website*, 11 May 2018.

CRIMINALISATION

OCEANIA

NON-UN MEMBER STATES

STATE-SPONSORED HOMOPHOBIA 2019

COOK ISLANDS (NEW ZEALAND)

Provisions in force

- **Crimes Act** (1969).

Sodomy

Section 155. Sodomy.

(1) Everyone who commits sodomy is liable-

(a) Where the act of sodomy is committed on a female, to imprisonment for a term not exceeding fourteen years;

(b) Where the act of sodomy is committed on a male, and at the time of the act that male is under the age of fifteen years and the offender is of over the age of twenty-one years, to imprisonment for a term not exceeding fourteen years;

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

(2) This offence is complete upon penetration. [...]

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

Indecent act

Section 154. Indecency between males.

(1) Everyone is liable to imprisonment for a term not exceeding five years who, being a male: [...]

(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. [...]

(3) It is not defence to a charge under this section that the other party consented.

Human rights situation

The Cook Islands is a New Zealand associate, and as such, its laws are only applicable to the islands, and not to New Zealand.

In 2015, the LGBT organisation *Te Tiare Association* [the only LGBT group in the country] was pushing for decriminalisation in light of developments at the international level.[1]

Even though representatives of the local traditional royal family have spoken against criminalisation of same-sex intimacy, it is reported that the political establishment was not as yet entirely on board.[2]

1 "Gay Rights Campaign 'Misunderstood'", *Cook Islands News*, 31 August 2015.

2 "Criminalising Gays 'Unfair': Pa Ariki", *Cook Islands News*, 10 November 2014; Kaleidoscope Trust et al., *Speaking Out* (2015); "PM sidesteps gay issue", *Cook Islands News*, 2 September 2015.

The Prime Minister has also said that same-sex marriage was not an issue that needed to be dealt with "until it becomes one".[3]

According to Solicitor General David James, there does not appear to have been any prosecution or conviction of any person for sodomy at all.[4]

In August 2017, it was reported that the country was planning to decriminalise sodomy following a planned overhaul of the 1969 Crimes Act.[5] In July, a public consultation had been held at which Te Tiare Association's (TTA) submission was given prominence.[6]

Notably, Christian leaders have also come out in support, noting that though it is "not right", it should not be treated as a criminal offence.[7] However, the Crimes Bill 2017 remains on hold and does not appear to have advanced in the legislature.[8]

International advocacy and supervision

Treaty Bodies

In July 2018, the **Committee on Elimination of Discrimination against Women (CEDAW)** commended the Cook Island's "efforts to improve its policy framework aimed at accelerating the elimination of discrimination against women and promoting gender equality", including the prohibition of discrimination based on "sexual preference" under the Public Service Code of Conduct Policy.[9]

However, it expressed concern regarding the "intersecting forms of discrimination against lesbian, bisexual and transgender women" and urged the government to address this through legislative changes and awareness-raising activities.[10]

3 "Puna says same-sex marriage not an issue in Cooks", *Radio New Zealand*, 18 August 2015.
4 Rashneel Kumar, "Decriminalizing Homosexuality In Cook Islands Does Not Affect Same-Sex Marriage", *Pireport*, 2 August 2017.
5 "Cooks may legalise homosexuality", *Radio NZ*, 7 August 2017.
6 Rashneel Kumar, "LGBT group makes submission", *Cook Island News*, 31 July 2017.
7 Rashneel Kumar, "'Not right in God's sight'", *Cook Island News*, 2 August 2017.
8 Rashneel Kumar, "Election delays two important bills", *Cook Islands News*, 23 April 2018.
9 *Concluding observations on the combined second and third periodic reports of the Cook Islands*, CEDAW/C/COK/CO/2-3, 25 July 2018, para. 5.
10 *Id.*, paras. 43-44.

DE FACTO CRIMINALISATION

STATE-SPONSORED HOMOPHOBIA 2019





EGYPT

Provisions in force

Consensual same-sex sexual acts are not explicitly prohibited under Egyptian law. However, the law on prostitution and the law against debauchery, among others, have been used liberally to imprison gay men in recent years.[1]

- **Penal Code** (Promulgated by Law No. 58/1937, as amended by **Law No. 95-2003**).

Legal barrier to freedom of association and expression

Article 86 bis.

Imprisonment shall be the inflicted penalty on whoever establishes, founds, organises, or runs contrary to the provisions of the law, an association, corporate, organization, group, or band, the purpose of which is to call by any method, for interrupting the provisions of the constitution or laws, or preventing any of the State's institutions or public authorities from exercising its functions, or encroaching on the personal freedoms of citizens or other freedoms and public rights as guaranteed by the constitution or the law, or impairing the national unity or social peace....

The penalty prescribed in the previous clause shall be inflicted on whoever propagates by speaking or writing or by any other method, for the purposes mentioned in the first clause, and also whoever, personally or by an intermediary, holds or acquires written documents, printed matter, or records, whatever their kind, comprising propagation or advocacy of any of the foregoing, if they are prepared for distribution or access by third parties, and also whoever holds of acquires any method of printing, recording, or publicising which is used or prepared for use, even temporarily for printing, recording or diffusing anything of the foregoing.

Scandalous acts

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.

- **Law No. 10/1961 on Combating of Prostitution.**

Practicing or incitement to debauchery

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:

1 "Egypt's Wipe-Out-the-Queers Bill", *A paper bird*, October 2017; "LGBT Egyptians Go Into Hiding As Regime Cracks Down", *BuzzFeed News*, September 2014.

(a) Whoever lets or offers in whatever fashion a residence or place run for the purpose of debauchery or prostitution, or for the purpose of housing one or more persons, if they are to his knowledge practicing debauchery or prostitution.

(b) Whoever owns or manages a furnished residence or furnished rooms or premises open to the public and who facilitates the practice of debauchery or prostitution, either by admitting persons so engaged or by allowing on his premises incitement to debauchery or prostitution.

(c) Whoever habitually engages in debauchery or prostitution.

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

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

Law 175/2018 on Cyber Crimes

Practicing or incitement to debauchery

Article 25.

Anyone who publishes online content that threatens society's and family's values shall be punished for at least six months of prison and a fine of at least fifty thousand pounds.

Human rights situation

- Additional information on the situation in Egypt is provided at the end of this entry in a "Local Perspective Essay" written by an anonymous group/collective working on LGBTQI issues in the MENA Region.

In 2016, Egyptian novelist Ahmed Naji was sentenced to two years in jail following the publication of a "sexually explicit" [heterosexual] excerpt from his novel 'The Use of Life' in State-owned literary magazine *Akhbar al-Adab*.[2] Following the 2017 crackdowns, four men were sentenced to three years in prison each by the Haram Misdemeanor Court.[3] 16 others were also jailed though they were freed on bail, pending an appeal.[4] The parliamentary commission on religion also announced plans to ban the "promotion of atheism", partially on the basis that it can lead to "mental imbalances" and "homosexuality".[5]

A 2016 Human Rights Watch report has found that forced anal examinations have been used in investigations of same-sex sexual conduct.[6] The Egyptian Initiative for Personal Rights published a 2017 report, detailing a five-fold increase in arrests and prosecution since 2013.[7]

In January 2019, a television host was sentenced to one-year imprisonment for contravening the Supreme Council for Media Regulations' decision "banning the appearance of homosexuals or

2 "Egyptian author gets two-year prison term for 'sexually explicit' writings", *CNN*, 22 February 2016; "En Egypte, deux ans de prison pour l'écrivain qui donnait des palpitations à ses lecteurs", *Le Monde*, 21 February 2016. For more information on the case see: *The Tahrir Institute for Middle East Policy, Ahmed Naji Public Morality Case Fact Sheet*.

3 Al-Masry Al-Youm, "Egyptian court sentences 4 gay men to 3 years in prison each", *Egypt Independent*, 14 October 2017.

4 "Egypt jails 16 for 'debauchery' as LGBT crackdown continues", *BBC News*, 28 November 2017.

5 Meka Beresford, "Egypt launches bid to ban atheism over fears it turns people gay", *Pink News*, 24 December 2017.

6 Human Rights Watch, *Dignity Debased: Forced Anal Examinations in Homosexuality Prosecutions* (2016), p. 24 - 27.

7 Egyptian Initiative for Personal Rights, *The Trap: Punishing Sexual Difference in Egypt* (2017).

promotion of their slogans" and contempt of religion by interviewing a gay man on his show.[8]

National Human Rights Institution

The National Council for Human Rights, set up in 2003, has been repeatedly criticised as a government mouthpiece.[9] In 2018, in response to criticisms of its human rights record, Prime Minister Mostafa Madbouly set up a new Permanent Higher Committee on Human Rights.[10] However, neither body appears to have done any work in relation to sexual orientation or gender identity.

UN voting record

Egypt, along with other Organisation of Islamic Cooperation (OIC) member countries at the UN, has long denied that SOGI is a status envisaged in the body of international human rights treaties, and have aggressively campaigned against any such inclusion.

In 2011, Egypt was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.[11] Neither did it have a vote in the 2014 Resolution 27/32 (on updating the 2011 report),[12] nor on the 2016 Resolution 32/2 which created the Independent Expert on SOGI mandate).[13]

However, at the session of Third Committee of the UN General Assembly held in November 2016, Egypt voted against the LAC amendment to remove Operative Paragraph 2,[14] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Egypt voted against the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

Egypt's 1st cycle of the UPR was carried out on 17 February 2010, and it noted (functionally rejected) all three SOGIESC recommendations. Switzerland called on Egypt to "apply national legislation to individuals without discrimination based on their belonging to a religious minority or on sexual orientation"; Czechia urged the State to "review national legal provisions, as e.g. those criminalising "habitual debauchery", which are open to abuse for persecution and intimidation of persons of minority sexual orientation or gender identity or of persons with HIV/AIDS"; and Canada proposed to "fully implement Article 2 of the Universal Declaration of Human Rights, which provides that "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status," and to recognize that "sex" also includes sexual orientation". The State provided no comments during the session referring to SOGIESC issues.

Egypt's 2nd cycle UPR began in November 2014. Of the 28 NGO submissions to this session, only four mentions sexual orientation directly.[15] However, there is no mention of sexual orientation in recommendations to Egypt or in that State's formal responses to its 2nd UPR.[16]

Special Procedures

In 2014, several mandates[17] expressed concern regarding the alleged arrest, detention, conviction

8 "Egypt sentences TV host to jail over gay interview", *Gulf News*, 21 January 2019.

9 "Egypt National Council for Human Rights asserts its independence", *National Human Rights Institutions Forum*, 3 March 2004.

10 Dania Akkawi, "Permanent higher committee for human rights to be established in Egypt", *Egypt Today*, 1 September 2018.

11 Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011.

12 Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014.

13 Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

14 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

15 "Egypt - NGO submissions", *UPR-Info Website*.

16 *Report of the Working Group on the Universal Periodic Review: Egypt*, A/HRC/28/16, 24 December 2014.

17 They were the Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on violence against women, its causes and consequences.

and sentencing of four individuals on the sole basis of their sexual orientation and/or gender identity.[18]

In 2015, several mandates[19] again expressed concern regarding the alleged arbitrary arrest, detention, torture and public stigmatisation of 26 men who were tried on charges related to their alleged sexual orientation.[20]

In 2017, these mandates and others[21] reiterated their concerns about the alleged unlawful arrests, detention, and incrimination of persons based on actual or perceived SOGIE, and/or their actual or perceived expression and advocacy for protection of LGBT rights.[22]

In 2018, the UN Special Rapporteur on the right to housing expressed her shock at the "most harrowing and traumatic stories" from LGBT people regarding their "experiences of extreme discrimination in accessing housing and security of tenure".[23] She observed that LGBT people often cannot rent accommodation and if they are able to, live in constant fear of being found out about their gender or sexual identity.

A LOCAL PERSPECTIVE

Rights of LGBTQ People in Egypt: Between State, Society, and de facto Criminalisation

By an anonymous group/collective working on LGBTQI issues in the MENA Region for ILGA World.

Currently, there is no outright legal criminalisation of same-sex relations in Egypt. However, Egypt's practices consistently sanction same-sex relations using vague legal articles. In that sense, Egypt *de facto* criminalises same-sex relations. This criminalisation depended mostly on the law on combating "prostitution,"[24] which earlier reports by ILGA and various activists have consistently highlighted, depending upon recorded arrests, court files, and testimonies of targeted LGBTQI individuals.

The application of *de facto* criminalisation is, however, not limited to the practice of same-sex relations. The period from September 2017 to December 2018 witnessed an expanded legal application of *de facto* criminalisation of expressions of diverse sexual orientation and gender identity and expression. This can only be understood from the lens of societal backlash appropriated and led by different State institutions, following the visibility and exposure that was caused by the events of Mashrou' Leila's concert and its aftermath in September 2017. In a few hours following the Mashrou' Leila concert, pictures of various people raising rainbow flags went viral on social media and made their way to the very conservative mainstream media outlets in Egypt. This garnered almost no positive coverage in those outlets. The media adopted a rhetoric that incited violence against LGBTQI individuals, with the Supreme Media Regulatory Council issuing an order preventing "the appearance of homosexuals" or "promoting their slogans" on media,[25] and other TV presenters calling on the State to act. A few days after this media campaign, the moral police started to round-up individuals either from dating applications- such as Grindr and Hornet - through online entrapment, or from certain public areas allegedly known for being a hot spot for gay men.[26] Furthermore, the National Security Police hunted down two individuals who reportedly raised the flags during the concert. Another individual was later arrested in early October 2017 for posting supportive content of LGBTQI communities on his social media accounts. At least 80 arrests from

18 For more information, see EGY 4/2014.

19 They were the Working Group on Arbitrary Detention; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

20 For more information, see EGY 1/2015.

21 They were the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the right to privacy; and the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.

22 For more information, see EGY 17/2017.

23 Leilani Farha, "End of Mission Statement: Visit of Leilani Farha, the Special Rapporteur on the right to adequate housing to Egypt", *OHCHR*, 3 October 2018.

24 National Legislative Bodies/National Authorities. 1961. *Egypt: Law No. 10/1961*, "On the Combatting of Prostitution".

25 "Unofficial Translation of Statement by Egypt's Supreme Council for Media Regulation", Human Rights Watch, 6 October 2017; "Top Media "prohibits gay appearance"", *Youm7*. 30 September 2017; For the original version, see: المجلس الأعلى للإعلام يحظر ظهور المثليين أو شعاراتهم بوسائل الإعلام;

26 "Egypt gay entrapment via app a sign of authorities' desperation", The Age, 28 October 2017; "Designing for the crackdown", *The Verge*, 25 April 2018.

dating applications and public areas were recorded in relation to the crackdown following the concert.

The act of raising the rainbow flag, in that sense, instated a sense of temporary visibility for the LGBTQI community that abruptly shook heteronormative societal norms and State institutions. While the instant outcomes of the backlash manifested in hate speech, incited violence, and led to several arrests in the short-term, its reach has longer-term legal and social implications as well.

One of the most dangerous social implications was that the practice of online entrapment on dating applications was not only perpetrated by State actors, such as the Moral Police.[27] It also became a vessel for violence perpetrated by non-State actors: an increased number of cases of entrapment of gay or bisexual men on dating applications by gangs and random perpetrators was recorded by various groups and activists working on the ground. Recorded cases involved different forms of assaults, blackmail, and/or robbery. No survivors of online entrapment by non-State actors chose to take a legal path against perpetrators, in part out of a justified fear it will backfire against them in police stations when officers discover exactly how they met the perpetrators.

Other long-term implications for the backlash can be outlined in two legal updates. The arrest of individuals for raising the rainbow flags was the first recorded incident in which defendants were facing charges for publicly expressing support for LGBTQI communities based on article 86 bis of Egypt's penal code,[28] which is the same article used in trialing members of the Muslim Brotherhood organisation for terrorism charges. The deployment of these legal articles resembled a significant departure from the targeting of LGBTQI individuals based on "promoting debauchery" charges.

The second long-term effect can be seen in the language adopted in new laws that stressed on "family values" in their articles. Article 25 of Law 175/2018 on Cyber Crimes, which was ratified in August 2018, states that "anyone who publishes online content that threatens society's and family's values shall be punished for at least six months of prison and a fine of at least fifty thousand pounds."[29] In addition, Article 35 of the same law threatens with "maximum-security prison" for all crimes in the law if they were found to "threaten social peace," which is a vague term leading to legal uncertainty.

Up until now, there are no recorded incidents in which these articles have been used to prosecute LGBTQI individuals for expression of their identities. However, the incorporation of "family values" and "social peace" in this law resonates with the same rhetoric that was adopted by the media and State institutions in the aftermath of Mashrou' Leila's concert. This resonance is a sufficient reason to fear that the law - which several rights groups described as catastrophic for freedom of expression - might be used to crack down on thriving Egyptian LGBTQI online groups and pages, and threatens progressive online outlets to tone down their already rare positive coverage of SOGI-related issues. In this regard, the Egyptian law resonates Russia's "gay propaganda law": the effective target is to criminalise *expressions* of sexual orientation and gender identity *without* making any mention of SOGI.

It is, however, important to highlight that the post-rainbow flags crackdown is not a break from societal and State-led targeting of LGBTQI individuals. While the scope and the nature of the targeting were significant in this case, the practice of targeting LGBTQI individuals dates back at least to the *Queen Boat* incident in 2001, which brought the issue of LGBTQI-related rights in Egypt to the attention of different rights groups internationally.[30]

The scope and the intensity of the post-rainbow flags crackdown can be understood not only as part of the current government's brutal oppression of different forms of dissent - political, social, or sexual - but also as part of a societal backlash led and advanced by Sisi's government against non-conforming practices and identities.

27 The process of entrapment starts with an undercover police officer from the department of the moral police on the dating application who usually lures other users to meet up for casual sex. The meeting is initially arranged in a public space where the victims are surprised with police forces arresting them. Police reports attach screenshots of the conversations between the undercover police officer and the entrapped defendants as incriminating evidence. The usage of screenshots of a private conversation in all of the cases we worked on as a group was without judge permit which is in violation of article 57 of the Egyptian constitution and article 309 bis of the Egyptian Penal Code.

28 *Law No. 58-01/1937*, "Promulgating the Penal Code".

29 *Law No. 175/2018*, "Anti-Cyber and Information Technology Crimes law", 5 October 2018.

30 "Egypt Tries 52 Men Suspected of Being Gay", *The New York Times*, 19 July 2001; "Egypt: Global appeal against Internet entrapment of gay men", *Amnesty International*, 9 April 2003.

Addendum

By the time this essay was finalized, a draft law has just advanced in the Parliament to replace Law No. 10/1961 on combating prostitution and debauchery, which has been consistently used to sanction same-sex relations despite that there is no outright criminalization in it. The new law aims at making sentences for debauchery charges even more severe, officially criminalize "homosexuality", and further police citizens' morality.

For example, article 14 stipulates an extreme minimum prison sentence of 7 years for what the article views as "direct or indirect invitations" for practicing debauchery on social media and digital spaces.[31] Such article equates between what is "direct" and "indirect", allowing for the blurring of what constitutes "invitation" which might lead to arbitrary application of already unfair charges.

The draft law, which is in the Parliament's Legislative and Constitutional Committee, defines "debauchery" as the act of "committing forbidden sexual crimes", such as "sodomy and incest." While "sodomy" may not strictly be an equivalent to "same-sex intercourse" in English, the meaning of the equivalent word in Arabic is the "sexual act between men".[32] It also seems to be the purpose of the law to criminalize consensual same-sex sexual acts based on remarks made by different MPs sponsoring the draft law and the preamble attached to the law.[33] The preamble cites, as a reason for proposing the law, the "rise of modern abnormal phenomena in our Eastern and Islamic societies" one of which is "sexual concerts of homosexuals," which is a phenomenon the preamble describes as "threatening to national security."

31 Our unofficial translation of article 14: *"Whoever announces, whether directly or indirectly, through digital method or social media, any invitation that includes seducing others to practice debauchery or prostitution or draws attention to them, should be sentenced for a minimum of seven years in prison."*

32 See original source here.

33 See source here.



IRAQ

Following the demise of the Islamic State in Iraq since December 2017, ILGA World has removed Iraq from the list of countries that impose the death penalty for same-sex sexual activity.[1] However, though there is no formal legal prohibition against same-sex sexual intimacy, there have been cases of same-sex couples and individuals prosecuted for same-sex sexual intimacy on the basis of other criminal provisions such as "prostitution" and "public indecency". There also remains a significant threat of violence against people on the basis of their same-sex desire or gender expression—those perceived as non-heterosexual or gender non-conforming—across the country.[2]

Provisions in force

After the American invasion in 2003 the **Penal Code** of 1969 was reinstated in Iraq. This code does not prohibit same-sex relations. Notably, even though Article 394 mentions consensual buggery, it applies *only* if the victim is aged 18 or below. It therefore does not criminalise same-sex sexual acts between consenting adults.

Immodest acts

Article 401

Any person who commits an immodest act in public is punishable by a period of detention not exceeding 6 months plus a fine not exceeding 50 dinars or by one of those penalties.

Human Rights Situation

Until December 2017, the Daesh (or ISIS/ISIL) held areas of northern Iraq and northern Syria. It was known to target men and women on account of their gender expression, gender identity and their sexual orientation. The *Nusr* ['*Victory*' in Arabic] website, which claims to be the website of the Islamic Caliphate, has a section on Legal Jurisprudence (evidence-based rules and the Penal Code).[3] One of the pages under this section is dedicated to "Punishment for Sodomy", which states: "The religiously-sanctioned penalty for sodomy is death, whether it is consensual or not. Those who are proven to have committed sodomy, whether sodomiser or sodomised should be killed...".

According to the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to Iraq, there were multiple executions of both men and women on the basis of their actual or "perceived homosexuality.[4] In August 2016, three women were executed by ISIS in Mosul for this reason, and several reports have emerged of ISIS executing gay and other men by throwing them off buildings, and, if they survived the fall, stoning them to death in a public event. Examples include two men thrown to their deaths in November 2015 in Fallujah and another two men in early 2016 in the city of Rawa and Tel-Afar. The last reported execution by ISIS appears to be in March 2017 in Mosul.[5] Since December 2017, ISIS has lost most of its territory in Iraq following its

1 For an explanation of why Iraq was included under the "Death Penalty" category see: International Lesbian, Gay, Bisexual, Trans and Intersex Association: Aengus Carroll and Lucas Ramón Mendos, *State Sponsored Homophobia 2017: A world survey of sexual orientation laws: criminalisation, protection and recognition* (Geneva; ILGA, May 2017), 128.

2 "Iraq 2017 Human Rights Report" (US State Department, Bureau of Democracy, Human Rights and Labor 2018); *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to Iraq*, A/HRC/38/44/Add.1, 5 June 2018.

3 "فقه البيات ونظام العقوبات", *The Nusr*.

4 *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to Iraq*, A/HRC/38/44/Add.1, 5 June 2018, para 27.

5 Loaa Adel, "Photos: Islamic State stones a youth accused of homosexuality in Mosul", *Iraqi News*, 27 March 2017.

military defeat.[6] In January 2019, it was reported that the building from which many of these executions were carried out was being demolished.[7]

Non-State actors in Iraq including Sharia judges, are also known to order executions of men and women for same-sex sexual behaviour, despite the fact that Iraq's civil code is silent on same-sex sexual behaviour, and the country's legal system does not defer to the Sharia court. It is also known that both police and militias have frequently kidnapped, threatened and killed LGBT people, as documented by OutRight since 2014, and charted on their Timeline.[8]

In a report by LGBT advocacy group IraQueer, it was found that there has been at least one annual killing campaign targeting queer individuals carried out by different groups.[9] This included ISIS (10%), armed groups like Asa'eb Ahl Al-Haq (31%) and the government (22%). Non-state actors are also a significant source of violence, with family members making up 27% of the violence committed.

In 2017, a theatre actor was tortured and killed in Baghdad for "looking gay".[10] A 14-year-old boy was also murdered in 2018 because of his perceived sexual orientation and the entire killing was filmed by the culprit who taunted the victim with homophobic slurs while attacking him.[11] Additionally, it was reported that suspected LGBT community spaces have been burned down or bombed.[12]

However, SOGI-related activism efforts have been documented.[13] IraQueer launched a publicity campaign in Baghdad by putting up posters and banners in support of LGBT equality.[14] Another LGBT group, Rasan, has been organising awareness campaigns about LGBT issues in Sulaymaniyah.[15] Originally founded as an organisation focusing on women's rights, the group has taken on LGBT issues: one of the activities the group did was painting the city walls with murals promoting LGBT awareness.[16]

National Human Rights Institution

Iraq has a National Human Rights Institution in accordance with the Paris Principles: the High Commission for Human Rights. However, it does not address SOGIESC issues in its work.

UN voting record

Iraq was not a member of the Human Rights Council between 2011 and 2016, and therefore did not participate in the vote for the three HRC resolutions on human rights, sexual orientation and gender identity in 2011, 2014 and 2016.

At the session of Third Committee of the UN General Assembly held in November 2016, Iraq voted against the LAC amendment to remove Operative Paragraph 2,[17] and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Iraq voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

Iraq accepted the only recommendation given to it (from France) with SOGI content in 2nd UPR in October 2014: "Guarantee equality of civil and political rights. Avoid all forms of discrimination based on ethnicity, religion, gender or sexual

6 Christopher M Blanchard, "Iraq: Issues in the 115th Congress" (Congressional Research Service, October 4, 2018).

7 "Iraq's Mosul Demolishes Iconic Building Used By ISIS To Kill "Gay" Men", *NDTV*, 14 January 2019.

8 "Exposing persecution of LGBT individuals in Iraq", *OutRight Action International*, 19 November 2014; "Timeline of publicized executions for "indecent behavior" *OutRight Action International*, 2 April 2016. |

9 "Fighting for the Right to Live: The State of LGBT+ Human Rights in Iraq" (IraQueer, 2018).

10 "Iraqi Actor Reportedly Murdered For 'Looking Gay'", *albawaba The Loop*, 3 July 2017.

11 Sara Al Shurafa, "Iraqi teenager brutally killed because of his looks", *Gulf News*, 11 October 2018.

12 Rachel Banning-Lover, "Where are the most difficult places in the world to be gay or transgender?", *The Guardian*, March 1, 2017.

13 Bethan McKernan, "Iraq's only openly gay activist on how he's fighting to make his country safer", *The Independent*, 16 August 2016.

14 "In Baghdad, a daring poster campaign to defend LGBT rights", *France24 The Observers*, 22 June 2018.

15 Alex MacDonald, "'The world is changing': Iraqi LGBT group takes campaign to streets", *Middle East Eye*, 10 March 2018.

16 Michael K Lavers, "Kurdish group launches pro-LGBT human rights campaign", *Washington Blade*, 3 January 2017.

17 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

orientation": this remained unaddressed in the delegation's formal response.[18]

The next UPR cycle of Iraq will take place in October 2019.

Treaty Bodies

In 2015, the **Human Rights Committee (CCPR)** included concerns on the stigmatisation and social exclusion of people on the basis of SOGI, and their inability to publicly demonstrate peacefully. The Committee acknowledged, "… diversity of morality and cultures must […] always be subject to the principles of universality of human rights and non-discrimination". It urged the State to "vigorously" combat stereotypes, ensure enjoyment of Covenant rights to all, investigate, prosecute perpetrators and compensate victims, collect data on SOGI-related crime, and create anti-discrimination legislation that lists SOGI as a ground for protection".[19]

Also in 2015, the **Committee Against Torture** expressed concern that attacks against LGBT people occur regularly and with impunity, at times leading to death. As such, Iraq should "take effective measures to prevent violence based on real or perceived sexual orientation and gender identity and ensure that all acts of violence are investigated and prosecuted promptly, effectively and impartially, perpetrators brought to justice and victims provided redress".[20]

In 2015, the **Committee on Economic, Social and Cultural Rights (CESCR)** expressed concern that LGBTI persons are particularly affected by discriminatory practices and recommended the Government of Iraq should adopt a comprehensive anti-discrimination legislation in accordance with article 2 of the ICESR.[21]

In 2015, the **Committee on the Rights of the Child (CRC)** urged the state to ensure that LGBT children or children who are cared for by LGBT persons, as well as gender non-conforming children, are not subjected to any form of discrimination, by raising the public's awareness of equality and non-discrimination on the basis of sexual orientation and gender identity.[22] It also called on the State to take all necessary measures to protect LGBT and children non-conforming children from all forms of attack; hold perpetrators of attacks fully accountable; and ensure that the sexual or gender identity of the victim is under no circumstances accepted as a mitigating circumstance.[23]

Special Procedures

In 2017 the **Special Rapporteur on extrajudicial, summary or arbitrary executions** visited Iraq and published a mission report in June 2018.[24] On the killings and attacks on LGBT people, the Special Rapporteur recommended the Government of Iraq to "conduct proper investigation and prosecute all those responsible for attacks against, and killings of, LGBTI persons, including by members of Government and affiliated forces as well as armed non-State actors".[25] It also called on the Government to "implement national policies to end the endorsement of and participation in violence or discrimination against anyone, including LGBTI person's by Government officials, including police and Security Forces".[26]

18 *Report of the Working Group on the Universal Periodic Review: Iraq*, A/HRC/28/14, 12 December 2014, para. 127.98.

19 *Concluding observations on the fifth periodic report of Iraq*, CCPR/C/IRQ/CO/5, 3 December 2015, para. 11 - 12.

20 *Concluding observations on the initial report of Iraq*, CAT/C/IRQ/CO/1, 7 September 2015, para. 25.

21 *Concluding observations on the fourth periodic report of Iraq*, E/C.12/IRQ/CO/4, 27 October 2015, para. 19 and 20.

22 *Concluding observations on the combined second to fourth periodic reports of Iraq*, CRC/C/IRQ/CO/2-4, 3 March 2015, para. 20.

23 *Id*., para. 28.

24 *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to Iraq*, A/HRC/38/44/Add.1, 5 June 2018.

25 *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to Iraq*, A/HRC/38/44/Add.1, 5 June 2018, para. 84.

26 *Ibid*.

THE WORLD AT A GLANCE

State-Sponsored Homophobia 2019

N	CN	COUNTRY	CRIMINALISATION			PROTECTION						RECOGNITION			
			SAME-SEX SEXUAL ACTS LEGAL?	GENDER	MAX PENALTY	CONST.	BROAD PROT.	EMPLOY.	HATE CRIMES	INCITEMENT	BAN ON CTS	SAME SEX MARRIAGE	CIVIL UNIONS	JOINT ADOPTION	SECOND PARENT ADOPTION
AFRICA															
1	1	Algeria	NO	ANY GENDER	2	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
2	2	Angola	YES	DNA	DNA	NO	YES	YES	YES	YES	NO	NO	NO	NO	NO
3	3	Benin	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
4	4	Botswana	NO	ANY GENDER	7	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO
5	5	Burkina Faso	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
6	6	Burundi	NO	ANY GENDER	2	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
7	7	Cameroon	NO	ANY GENDER	5	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
8	8	Cape Verde	YES	DNA	DNA	NO	NO	YES	YES	NO	NO	NO	NO	NO	NO
9	9	Central Africa Republic	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
10	10	Chad	NO	ANY GENDER	2	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
11	11	Comoros	NO	ANY GENDER	5	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
12	12	Congo	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
13	13	Côte d'Ivoire	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
14	14	DRC	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
15	15	Djibouti	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
16	16	Egypt	DE FACTO	ANY GENDER	UNDETERM.	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
17	17	Equatorial Guinea	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
18	18	Eritrea	NO	ANY GENDER	7	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
19	19	Eswatini	NO	MALE ONLY	UNDETERM.	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
20	20	Ethiopia	NO	ANY GENDER	3	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
21	21	Gabon	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO

N	CN	COUNTRY	CRIMINALISATION			PROTECTION						RECOGNITION			
			SAME-SEX SEXUAL ACTS LEGAL?	GENDER	MAX PENALTY	CONST.	BROAD PROT.	EMPLOY.	HATE CRIMES	INCITEMENT	BAN ON CTS	SAME SEX MARRIAGE	CIVIL UNIONS	JOINT ADOPTION	SECOND PARENT ADOPTION
22	22	Gambia	NO	ANY GENDER	14	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
23	23	Ghana	NO	ANY GENDER	3	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
24	24	Guinea	NO	ANY GENDER	3	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
25	25	Guinea-Bissau	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
26	26	Kenya	NO	MALE ONLY	14	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
27	27	Lesotho	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
28	28	Liberia	NO	ANY GENDER	1	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
29	29	Libya	NO	ANY GENDER	5	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
30	30	Madagascar	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
31	31	Malawi	NO	ANY GENDER	14	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
32	32	Mali	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
33	33	Mauritania	NO	ANY GENDER	DEATH (P)	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
34	34	Mauritius	NO	MALE ONLY	5	NO	YES	YES	NO	NO	NO	NO	NO	NO	NO
35	35	Morocco	NO	ANY GENDER	3	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
36	36	Mozambique	YES	DNA	DNA	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO
37	37	Namibia	NO	MALE ONLY	UNDETERM.	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
38	38	Niger	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
39	39	Nigeria	NO	ANY GENDER	DEATH (E)	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
40	40	Rwanda	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
41	41	São Tome & Principe	YES	DNA	DNA	NO	NO	NO	YES	NO	NO	NO	NO	NO	NO
42	42	Senegal	NO	ANY GENDER	5	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
43	43	Seychelles	YES	DNA	DNA	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO
44	44	Sierra Leone	NO	MALE ONLY	10	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
45	45	Somalia	NO	ANY GENDER	DEATH (E)	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
46	46	South Africa	YES	DNA	DNA	YES	YES	YES	NO	YES	NO	YES	YES	YES	YES

N	CN	COUNTRY	CRIMINALISATION			PROTECTION						RECOGNITION			
			SAME-SEX SEXUAL ACTS LEGAL?	GENDER	MAX PENALTY	CONST.	BROAD PROT.	EMPLOY.	HATE CRIMES	INCITEMENT	BAN ON CTS	SAME SEX MARRIAGE	CIVIL UNIONS	JOINT ADOPTION	SECOND PARENT ADOPTION
47	47	South Sudan	NO	ANY GENDER	10	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
48	48	Sudan	NO	ANY GENDER	DEATH (E)	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
49	49	Tanzania	NO	ANY GENDER	FOR LIFE	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
50	50	Togo	NO	MALE ONLY	3	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
51	51	Tunisia	NO	ANY GENDER	3	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
52	52	Uganda	NO	ANY GENDER	FOR LIFE	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
53	53	Zambia	NO	ANY GENDER	FOR LIFE	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
54	54	Zimbabwe	NO	MALE ONLY	1	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
LATIN AMERICA AND THE CARIBBEAN															
55	1	Antigua and Barbuda	NO	ANY GENDER	15	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
56	2	Argentina	YES	DNA	DNA	NO	NO	NO	YES	NO	NO	YES	NO	YES	YES
57	3	Bahamas	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
58	4	Barbados	NO	ANY GENDER	FOR LIFE	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
59	5	Belize	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
60	6	Bolivia	YES	DNA	DNA	YES	YES	YES	YES	YES	NO	NO	NO	NO	NO
61	7	Brazil	YES	DNA	DNA	NO	YES	YES	NO	NO	YES	YES	YES	YES	YES
62	8	Costa Rica	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
63	9	Chile	YES	DNA	DNA	NO	YES	YES	YES	NO	NO	NO	YES	NO	NO
64	10	Colombia	YES	DNA	DNA	NO	YES	YES	YES	YES	NO	YES	YES	YES	YES
65	11	Cuba	YES	DNA	DNA	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO
66	12	Dominica	NO	ANY GENDER	10	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
67	13	Dominican Republic	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
68	14	Ecuador	YES	DNA	DNA	YES	YES	YES	YES	YES	YES	NO	YES	NO	NO
69	15	El Salvador	YES	DNA	DNA	NO	NO	NO	YES	NO	NO	NO	NO	NO	NO
70	16	Grenada	NO	MALE ONLY	10	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO

N	CN	COUNTRY	CRIMINALISATION			PROTECTION						RECOGNITION			
			SAME-SEX SEXUAL ACTS LEGAL?	GENDER	MAX PENALTY	CONST.	BROAD PROT.	EMPLOY.	HATE CRIMES	INCITEMENT	BAN ON CTS	SAME SEX MARRIAGE	CIVIL UNIONS	JOINT ADOPTION	SECOND PARENT ADOPTION
71	17	Guatemala	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
72	18	Guyana	NO	MALE ONLY	FOR LIFE	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
73	19	Haiti	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
74	20	Honduras	YES	DNA	DNA	NO	YES	YES	YES	YES	NO	NO	NO	NO	NO
75	21	Jamaica	NO	MALE ONLY	10	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
76	22	Mexico	YES	DNA	DNA	YES	YES	YES	NO	NO	NO	YES	NO	NO	NO
77	23	Nicaragua	YES	DNA	DNA	NO	NO	YES	YES	YES	NO	NO	NO	NO	NO
78	24	Panama	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
79	25	Paraguay	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
80	26	Peru	YES	DNA	DNA	NO	YES	YES	YES	YES	NO	NO	NO	NO	NO
81	27	St Kitts & Nevis	NO	MALE ONLY	10	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
82	28	St Lucia	NO	ANY GENDER	10	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO
83	29	St Vincent & the Gren.	NO	ANY GENDER	10	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
84	30	Suriname	YES	DNA	DNA	NO	YES	YES	NO	YES	NO	NO	NO	NO	NO
85	31	Trinidad and Tobago	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
86	32	Uruguay	YES	DNA	DNA	NO	YES	YES	YES	YES	NO	YES	YES	YES	YES
87	33	Venezuela	YES	DNA	DNA	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO
NORTH AMERICA															
88	1	Canada	YES	DNA	DNA	NO	YES	YES	YES	YES	NO	YES	NO	YES	YES
89	2	United States	YES	DNA	DNA	NO	NO	NO	YES	NO	NO	YES	NO	YES	YES
ASIA															
90	1	Afghanistan	NO	ANY GENDER	DEATH (P)	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
91	2	Bahrain	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
92	3	Bangladesh	NO	MALE ONLY	10	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
93	4	Bhutan	NO	MALE ONLY	1	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO

N	CN	COUNTRY	CRIMINALISATION			PROTECTION						RECOGNITION			
			SAME-SEX SEXUAL ACTS LEGAL?	GENDER	MAX PENALTY	CONST.	BROAD PROT.	EMPLOY.	HATE CRIMES	INCITEMENT	BAN ON CTS	SAME SEX MARRIAGE	CIVIL UNIONS	JOINT ADOPTION	SECOND PARENT ADOPTION
94	5	**Brunei Darussalam**	NO	MALE ONLY	10	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
95	6	**Cambodia**	YES	*DNA*	*DNA*	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
96	7	**China**	YES	*DNA*	*DNA*	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
97	8	**East Timor**	YES	*DNA*	*DNA*	NO	NO	NO	YES	NO	NO	NO	NO	NO	NO
		Palestine[1]	YES	*DNA*	*DNA*	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
98	9	**India**	YES	*DNA*	*DNA*	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
99	10	**Indonesia**[2]	YES	*DNA*	*DNA*	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
100	11	**Iraq**	DE FACTO	ANY GENDER	UNDETERM.	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
101	12	**Iran**	NO	ANY GENDER	DEATH (E)	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
102	13	**Israel**	YES	*DNA*	*DNA*	NO	NO	YES	NO	NO	NO	NO	YES	YES	YES
103	14	**Japan**	YES	*DNA*	*DNA*	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
104	15	**Jordan**	YES	*DNA*	*DNA*	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
105	16	**Kazakhstan**	YES	*DNA*	*DNA*	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
106	17	**Kuwait**	NO	MALE ONLY	7	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
107	18	**Kyrgyzstan**	YES	*DNA*	*DNA*	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
108	19	**Laos**	YES	*DNA*	*DNA*	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
109	20	**Lebanon**	NO	MALE ONLY	1	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
		Macau	Y	*DNA*	*DNA*	N	N	Y	N	N	N	N	N	N	N
110	21	**Malaysia**	NO	ANY GENDER	20	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
111	22	**Maldives**	NO	ANY GENDER	8	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
112	23	**Mongolia**	YES	*DNA*	*DNA*	NO	YES	YES	YES	NO	NO	NO	NO	NO	NO
113	24	**Myanmar**	NO	MALE ONLY	10	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
114	25	**Nepal**	YES	*DNA*	*DNA*	YES	YES	YES	NO	NO	NO	NO	NO	NO	NO

[1] Gaza still criminalises consensual same-sex sexual acts between adults. See "Criminalisation" section.

[2] Certain provinces in Indonesia criminalise consensual same-sex sexual acts between adults. See "Criminalisation" section.

N	CN	COUNTRY	CRIMINALISATION			PROTECTION						RECOGNITION			
			SAME-SEX SEXUAL ACTS LEGAL?	GENDER	MAX PENALTY	CONST.	BROAD PROT.	EMPLOY.	HATE CRIMES	INCITEMENT	BAN ON CTS	SAME SEX MARRIAGE	CIVIL UNIONS	JOINT ADOPTION	SECOND PARENT ADOPTION
115	26	North Korea	YES	*DNA*	*DNA*	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
116	27	Oman	NO	ANY GENDER	3	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
117	28	Pakistan	NO	MALE ONLY	DEATH (P)	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
118	29	Philippines	YES	*DNA*	*DNA*	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
119	30	Qatar	NO	ANY GENDER	DEATH (P)	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
120	31	Saudi Arabia	NO	ANY GENDER	DEATH (E)	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
121	32	Singapore	NO	MALE ONLY	2	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
122	33	South Korea	YES	*DNA*	*DNA*	NO	YES	YES	NO	NO	NO	NO	NO	NO	NO
123	34	Sri Lanka	NO	ANY GENDER	10	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
124	35	Syria	NO	ANY GENDER	3	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
		Taiwan (China)	YES	*DNA*	*DNA*	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO
125	36	Tajikistan	YES	*DNA*	*DNA*	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
126	37	Thailand	YES	*DNA*	*DNA*	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO
127	38	Turkmenistan	NO	MALE ONLY	2	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
128	39	Vietnam	YES	*DNA*	*DNA*	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
129	40	United Arab Emirates	NO	ANY GENDER	DEATH (P)	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
130	41	Uzbekistan	NO	MALE ONLY	3	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
131	42	Yemen	NO	ANY GENDER	DEATH (E)	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
EUROPE															
132	1	Albania	YES	*DNA*	*DNA*	NO	YES	YES	YES	YES	NO	NO	NO	NO	NO
133	2	Andorra	YES	*DNA*	*DNA*	NO	YES	YES	YES	NO	NO	NO	YES	YES	YES
134	3	Armenia	YES	*DNA*	*DNA*	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
135	4	Austria	YES	*DNA*	*DNA*	NO	YES	YES	NO	YES	NO	YES	YES	YES	YES
136	5	Azerbaijan	YES	*DNA*	*DNA*	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
137	6	Belarus	YES	*DNA*	*DNA*	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO

N	CN	COUNTRY	CRIMINALISATION			PROTECTION						RECOGNITION			
			SAME-SEX SEXUAL ACTS LEGAL?	GENDER	MAX PENALTY	CONST.	BROAD PROT.	EMPLOY.	HATE CRIMES	INCITEMENT	BAN ON CTS	SAME SEX MARRIAGE	CIVIL UNIONS	JOINT ADOPTION	SECOND PARENT ADOPTION
138	7	**Belgium**	YES	*DNA*	*DNA*	NO	YES	YES	YES	YES	NO	YES	NO	YES	YES
139	8	**Bosnia and Herz.**	YES	*DNA*	*DNA*	NO	YES	YES	YES	NO	NO	NO	NO	NO	NO
140	9	**Bulgaria**	YES	*DNA*	*DNA*	NO	YES	YES	NO	YES	NO	NO	NO	NO	NO
141	10	**Croatia**	YES	*DNA*	*DNA*	NO	YES	YES	YES	YES	NO	NO	YES	NO	NO
142	11	**Cyprus**	YES	*DNA*	*DNA*	NO	YES	YES	NO	YES	NO	NO	YES	NO	NO
143	12	**Czechia**	YES	*DNA*	*DNA*	NO	YES	YES	NO	NO	NO	NO	YES	NO	NO
144	13	**Denmark**	YES	*DNA*	*DNA*	NO	NO	YES	YES	YES	NO	YES	NO	YES	YES
145	14	**Estonia**	YES	*DNA*	*DNA*	NO	YES	YES	NO	YES	NO	NO	YES	NO	YES
146	15	**Finland**	YES	*DNA*	*DNA*	NO	YES	YES	YES	YES	NO	YES	NO	YES	YES
147	16	**France**	YES	*DNA*	*DNA*	NO	YES	YES	YES	YES	NO	YES	YES	YES	YES
148	17	**Georgia**	YES	*DNA*	*DNA*	NO	YES	YES	YES	NO	NO	NO	NO	NO	NO
149	18	**Germany**	YES	*DNA*	*DNA*	NO	YES	YES	NO	NO	NO	YES	YES	YES	YES
150	19	**Greece**	YES	*DNA*	*DNA*	NO	NO	YES	YES	YES	NO	NO	YES	NO	NO
151	20	**Hungary**	YES	*DNA*	*DNA*	NO	YES	YES	YES	YES	NO	NO	YES	NO	NO
152	21	**Iceland**	YES	*DNA*	*DNA*	NO	YES	YES	NO	YES	NO	YES	NO	YES	YES
153	22	**Ireland**	YES	*DNA*	*DNA*	NO	YES	YES	NO	YES	NO	YES	NO	YES	YES
154	23	**Italy**	YES	*DNA*	*DNA*	NO	NO	YES	NO	NO	NO	NO	YES	NO	NO
		Kosovo	YES	*DNA*	*DNA*	NO	YES	YES	YES	NO	NO	NO	NO	NO	NO
155	24	**Latvia**	YES	*DNA*	*DNA*	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO
156	25	**Liechtenstein**	YES	*DNA*	*DNA*	NO	YES	YES	NO	NO	NO	NO	YES	NO	NO
157	26	**Lithuania**	YES	*DNA*	*DNA*	NO	YES	YES	YES	YES	NO	NO	NO	NO	NO
158	27	**Luxembourg**	YES	*DNA*	*DNA*	NO	YES	YES	YES	YES	NO	YES	NO	YES	YES
159	28	**Malta**	YES	*DNA*	*DNA*	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
160	29	**Moldova**	YES	*DNA*	*DNA*	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO
161	30	**Monaco**	YES	*DNA*	*DNA*	NO	NO	NO	NO	YES	NO	NO	NO	NO	NO

N	CN	COUNTRY	CRIMINALISATION			PROTECTION						RECOGNITION			
			SAME-SEX SEXUAL ACTS LEGAL?	GENDER	MAX PENALTY	CONST.	BROAD PROT.	EMPLOY.	HATE CRIMES	INCITEMENT	BAN ON CTS	SAME SEX MARRIAGE	CIVIL UNIONS	JOINT ADOPTION	SECOND PARENT ADOPTION
162	31	**Montenegro**	YES	*DNA*	*DNA*	NO	YES	YES	YES	YES	NO	NO	NO	NO	NO
163	32	**Netherlands**	YES	*DNA*	*DNA*	NO	YES	YES	NO	YES	NO	YES	YES	YES	YES
164	33	**North Macedonia**	YES	*DNA*	*DNA*	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO
165	34	**Norway**	YES	*DNA*	*DNA*	NO	YES	YES	YES	YES	NO	YES	NO	YES	YES
166	35	**Poland**	YES	*DNA*	*DNA*	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO
167	36	**Portugal**	YES	*DNA*	*DNA*	YES	YES	YES	YES	YES	NO	YES	NO	YES	YES
168	37	**Romania**	YES	*DNA*	*DNA*	NO	YES	YES	YES	NO	NO	NO	NO	NO	NO
169	38	**Russia**	YES	*DNA*	*DNA*	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
170	39	**San Marino**	YES	*DNA*	*DNA*	NO	NO	NO	YES	YES	NO	NO	YES	NO	YES
171	40	**Serbia**	YES	*DNA*	*DNA*	NO	YES	YES	YES	YES	NO	NO	NO	NO	NO
172	41	**Slovakia**	YES	*DNA*	*DNA*	NO	YES	YES	YES	NO	NO	NO	NO	NO	NO
173	42	**Slovenia**	YES	*DNA*	*DNA*	NO	YES	YES	NO	YES	NO	NO	YES	NO	YES
174	43	**Spain**	YES	*DNA*	*DNA*	NO	YES	YES	YES	YES	NO	YES	NO	YES	YES
175	44	**Sweden**	YES	*DNA*	*DNA*	YES	YES	YES	NO	NO	NO	YES	NO	YES	YES
176	45	**Switzerland**	YES	*DNA*	*DNA*	NO	NO	YES	NO	YES	NO	NO	YES	NO	NO
177	46	**Turkey**	YES	*DNA*	*DNA*	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
178	47	**Ukraine**	YES	*DNA*	*DNA*	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO
179	48	**United Kingdom**	YES	*DNA*	*DNA*	NO	YES	YES	YES	YES	NO	YES	YES	YES	YES
		Vatican City	YES	*DNA*	*DNA*	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
OCEANIA															
180	1	**Australia**	YES	*DNA*	*DNA*	NO	YES	YES	NO	NO	NO	YES	YES	YES	YES
		Cook Islands	N	M ONLY	5	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO
181	2	**Fiji**	YES	*DNA*	*DNA*	YES	YES	YES	NO	NO	NO	NO	NO	NO	NO
182	3	**Kiribati**	NO	MALE ONLY	14	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO
183	4	**Marshall Islands**	YES	*DNA*	*DNA*	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO

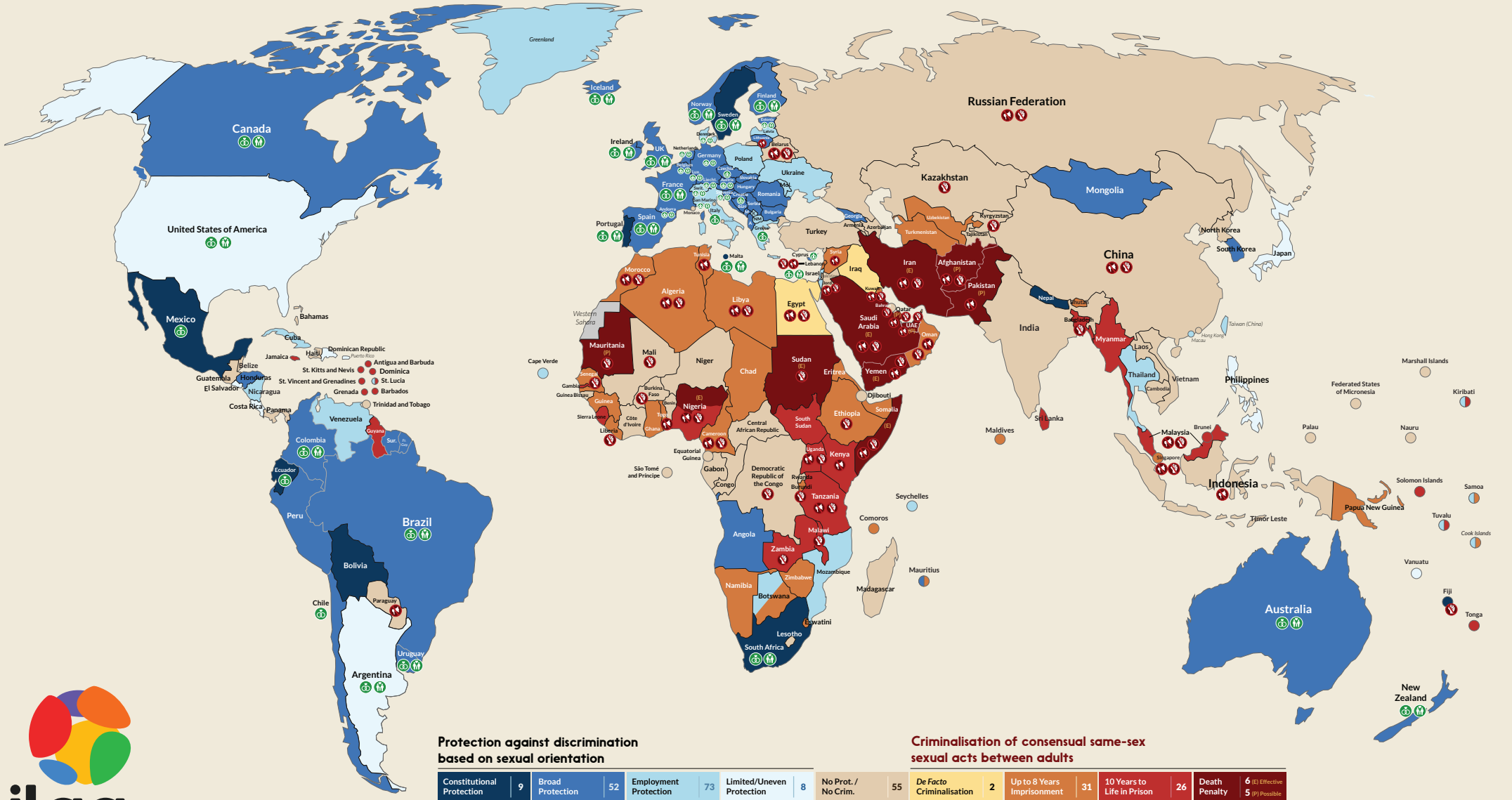
N	CN	COUNTRY	CRIMINALISATION			PROTECTION						RECOGNITION			
			SAME-SEX SEXUAL ACTS LEGAL?	GENDER	MAX PENALTY	CONST.	BROAD PROT.	EMPLOY.	HATE CRIMES	INCITEMENT	BAN ON CTS	SAME SEX MARRIAGE	CIVIL UNIONS	JOINT ADOPTION	SECOND PARENT ADOPTION
184	5	Micronesia	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
185	6	New Zealand	YES	DNA	DNA	NO	YES	YES	YES	NO	NO	YES	YES	YES	YES
186	7	Nauru	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
187	8	Palau	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
188	9	Papua New Guinea	NO	MALE ONLY	7	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
189	10	Samoa	NO	MALE ONLY	7	NO	NO	YES	YES	NO	NO	NO	NO	NO	NO
190	11	Solomon Islands	NO	ANY GENDER	14	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
191	12	Tonga	NO	MALE ONLY	10	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
192	13	Tuvalu	NO	MALE ONLY	14	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
193	14	Vanuatu	YES	DNA	DNA	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
						9	52	73	42	39	3	26	27	27	30
						5% UN Member States	27% UN Member States	38% UN Member States	22% UN Member States	20% UN Member States	2% UN Member States	13% UN Member States	14% UN Member States	14% UN Member States	16% UN Member States

DNA: Does not apply.

68	35%	UN Member States **CRIMINALISE** consensual same-sex sexual acts
2	1%	UN Member States **DE FACTO CRIMINALISE** consensual same-sex sexual acts
123	64%	UN Member States **DO NOT CRIMINALISE** consensual same-sex sexual acts
	1	UN Member State has provinces with criminalising provisions (Indonesia)

SEXUAL ORIENTATION LAWS IN THE WORLD - 2019

From criminalisation of consensual same-sex sexual acts between adults to protection against discrimination based on sexual orientation



Protection against discrimination based on sexual orientation

Constitutional Protection	9	Broad Protection	52	Employment Protection	73	Limited/Uneven Protection	8	No Prot. / No Crim.	55

Criminalisation of consensual same-sex sexual acts between adults

De Facto Criminalisation	2	Up to 8 Years Imprisonment	31	10 Years to Life in Prison	26	Death Penalty	6 (E) Effective 5 (P) Possible

Legal recognition of families

- Marriage or other forms of legal union for same-sex couples
- Adoption open to same-sex couples

Legal barriers to the exercise of rights

- Legal barriers to freedom of expression on SOGIESC issues
- Legal barriers to the registration or operation of sexual orientation related CSOs

ilga world

The data presented in this map is based on ***State-Sponsored Homophobia***, an ILGA report by Lucas Ramón Mendos. This map can be reproduced and printed without permission as long as ILGA is properly credited and the content is not altered. **ilga.org**