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# STATE-SPONSORED HOMOPHOBIA

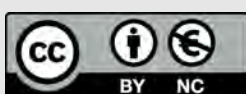
GLOBAL LEGISLATION OVERVIEW UPDATE

2020

Updated Edition

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# Co-Secretaries' General Foreword

By Luz Elena Aranda<sup>1</sup> and Ymania Brown<sup>2</sup>

This year has been a heavy blow for most members of our communities and has left many of us struggling to survive, and trying to make a living amidst hostile contexts that became even more expulsive, unequal and violent.

The COVID-19 global pandemic has affected our communities and our organising capacity deeply. Resilience and creativity have allowed many of us to remain connected and find new ways of advocating for our rights. But in numerous places, lockdowns meant the abrupt and complete interruption of activities, gatherings became impossible, events and Prides got suspended, and safe spaces dramatically shrunk overnight with extremely little to no notice.

Uncertainty suddenly is the new normal for the whole world and will continue to be the case for a while. As we write these lines, numerous organisations are struggling to survive financially, logistically and spiritually and staff and activists/defenders also have mental health and remote working burnout to contend with.

The physical distancing required to curb the spread of the virus meant that our interactions had to move into the virtual world and that our connection with our chosen families and our friends now depended on technology. Under these circumstances, the millions of members of our communities who still cannot access the Internet have experienced the highest levels of isolation and vulnerability. So much so, that they will may never ever get to read these lines.

In this context of increasing restrictions carried out in discriminatory manners, explicit legal protections against violence and discrimination have become—more than ever—a key tool to prevent further harm, to demand respect for our rights and human dignity, and to repair the violations we suffer. Hence, the importance of keeping up with our work of tracking and updating the state of law in all countries around the globe. Indeed, this update of the Global Legislation Overview attests to the fact that our quest for equality goes on—even amid this global pandemic—and, equally important, that our detractors may use (and are in fact using) these circumstances as an excuse to continue to oppress, persecute, scapegoat, and to violently discriminate against us, often with little to no regard for our human rights and with lethal consequences.

Despite the difficulties that we are all going through, we are glad to share that ILGA World's Research Program has redoubled its efforts to widen the depth and scope of its work to better reflect the current state of sexual orientation law in all 193 UN Member States and, as of now, in non-independent territories around the world as well.

Thousands of valued members of our communities live in these territories and are engaged in activism at the local and regional level. At the international level, however, many of their victories are not as publicised as the ones taking place in UN Member States, so we are really excited that, for the first time, they will find themselves among the list of jurisdictions for which we track legal progress,

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rollbacks and backtracking. As a global family, we are committed to our members regardless of the official status of their territory.

This new update to the Global Legislation Overview of *State-Sponsored Homophobia* shows how our global community has, against all odds, collectively achieved progress in every single legal category that we track. From the death penalty to “conversion therapies”, in times when the future looks particularly gloomy and uncertain, in each section of this report, it is our hope that you, our members, our stakeholders, researchers, States and readers will find hope for a better tomorrow.

A tomorrow in which we will come out again in full strength and solidarity to reclaim each one of the human rights that belong to us as members of the human family, because we, we are “born free and equal in dignity and rights”<sup>3</sup>, and these rights should have never been taken away from us.

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

<sup>3</sup> UN General Assembly. (1948). Universal Declaration of Human Rights (217 [III] A). Paris

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ILGA World has partnered with Cooley (UK) LLP. Cooley is an international law-firm committed to fighting systemic discrimination, bias and injustice in all its forms, and is a long-standing supporter and advocate for LGBTQ+ equality. This valuable partnership has allowed ILGA World to expand the scope and depth of its legal research and many of the findings presented in this report are the result of the hard work carried out by Cooley's team. We are particularly grateful to **Juan Nascimbene**.

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The lead author wholeheartedly extends his gratitude to the five co-authors **Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliia Savelev** and **Daron Tan** for their remarkable commitment and inspiring passion. Working with them in the production of this report has been a huge privilege.

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# Methodology

In this latest update to the Global Legislation Overview of the State-Sponsored Homophobia Report, our team has worked to dive deeper than ever into the data and legislation which impacts our communities based on their sexual orientation around the globe.

In this edition, while working to improve and expand upon tried and tested methods and tools that have made this report successful in the past, several improvements and changes were made to the way data is collected and systematised.

ILGA World’s research team has devoted considerable time to read, discuss, and take note of some of the more common critiques made and published by scholars and activists to previous editions of this report and a good faith attempt to address many of them has been made.

This section, then, serves to outline and clarify our methodologies and thought processes, acting both as a guide on how users can effectively navigate this document—and as a statement on our own thinking, planning, and limitations, for the sake of clarity and transparency.

## 1. Focus on sexual orientation legal issues

This publication focuses exclusively on legal issues as they pertain to individuals and communities of diverse sexual orientations. The legal categories that we cover in this report monitor the ways in which people are affected by laws that—explicitly or implicitly—make reference to sexual orientation, and track changes within multiple countries and territories over time. Conversely, this publication does not cover legal issues related to gender identity, gender expression, or sex characteristics.

This report focuses almost exclusively on the law, barring occasional comments around recent social developments for the sake of contextualisation. While we understand that the nuances of lived realities cannot be fully captured simply by highlighting what is written on paper by governments, an in-depth analysis of the human rights situation on the ground is still beyond the scope and capacity of this publication.

There are, however, at least three exceptions to this rule. Two of them fall under the “restriction” part of the report, where we track legal barriers to the rights of freedom of expression<sup>1</sup> and freedom of association.<sup>2</sup> For these legal categories, providing information that goes beyond the mere black-letter-law is often indispensable in determining whether barriers to the fulfilment of such rights are actually in place, given that in many cases restrictions are not as explicit as other legal categories covered by the report.

Likewise, this exception also applies to the section in which we track criminalising countries,<sup>3</sup> where we now make an effort to track and highlight different instances of enforcement of a country’s criminalising provisions. This divergence from our focus on legislation is in large part due to our view that criminalisation is one of the most pressing issues covered in our report. Criminalisation can deprive our community members of their lives, livelihoods, freedom and safety in ways many other provisions we document normally cannot. Hence, we see an urgency in understanding the extent to which these provisions are actually being applied on the ground.

Another reason for this departure from our legalistic focus is due to the fact that the “State-Sponsored Homophobia” report is a tool frequently used by human rights defenders working on cases of persons seeking asylum from persecution as a source of Country of Origin Information (COI) research. In this sense, evidence of enforcement of criminalising provisions may be crucial for applicants in finding refuge from the daily danger they may have been facing. Without evidence of such enforcement, regressive and violent legislation alone may not always be enough to secure safety.

The law then clearly paints only a partial picture of the situation in the countries we cover in this report. This is a key statement that should serve as a major caveat when relying on this publication. How hostile or safe a country is cannot be derived exclusively from what said country’s legal framework looks like. In other words, how the law of any given country reads on the books cannot be used as a proxy to measure how safe a country is. Nevertheless, it cannot be denied that laws on the books—whether enforced or not—have a tremendous impact on our communities, and speak volumes about the political and moral values of those holding power in a country.

<sup>1</sup> See “Legal barriers to freedom of expression on sexual and gender diversity issues” under the “Restriction” section of this report.

<sup>2</sup> See “Legal barriers to the registration or operation of CSOs working on sexual and gender diversity issues” under the “Restriction” section of this report.

<sup>3</sup> See “Consensual same-sex sexual acts between adults in private: illegal” under the “Criminalisation” section of his report.

The current title of this publication is a remnant of the original, much more limited, scope of the report: when initially conceived, “State-Sponsored Homophobia” covered only the institutionalised prohibition (criminalisation of consensual same-sex sexual acts between adults in private). The scope of the report was progressively expanded, especially since 2015, to further include issues related to protection and recognition of rights of persons of diverse sexual orientations. However, the publication maintained its focus on legal aspects as they relate to sexual orientation, while other documents produced by ILGA World covered issues related to other statuses and identities.<sup>4</sup>

## 2. Data collection and sources

This report congregates data that has been gathered over many years by an ever-changing team of researchers.<sup>5</sup> It is thanks to their commitment and selfless work that ILGA World’s publications became the leading reference on the state and evolution of legal frameworks affecting our communities globally. On the publication of each new edition, the content is updated, and some alterations are made where necessary to ensure the accuracy and proper contextualisation of information. In gathering and verifying information for the final report, the research team relies on a number of different sources, including:

1. **Legislation:** Where possible, we work to cite the primary governmental source of any law outlined within this report. Where that is not possible, we include archived material, translated copies, or other documents which contain the entire law but which might not be considered original or official copies. Legislation is cited by using the official (translated) name, number, and year of passage whenever possible, which also acts as a hyperlink to the source used by ILGA World so that readers can access and read these documents themselves.
2. **Case law:** While we do not offer comprehensive coverage of case law, judicial decisions which represent the legal basis for a right, or which enforce rights or laws not enacted by legislative or executive bodies, are included. Examples of bodies which may be cited in this instance include the Supreme Courts of India and the United States, the Federal Supreme Court of Brazil, and the Constitutional Court of Colombia, to name a few. Much like legislation, case law is cited by reference to the original (translated) name of the ruling, and hyperlinked in order for readers to access the source themselves.
3. **Executive orders, decrees, or governmental agencies:** Many times, one may find that rights are protected by executive orders, ministerial declarations, or resolutions, etc., rather than more extensive laws. These are named with full title or number (translated) and hyperlinked in the same way as legislation and case law.
4. **Unpassed bills:** Bills and other pieces of legislation being drafted, debated, or voted on by governments offer key insights into how likely a State is to make progress, and what developments readers can expect even after the publication of this report. Until laws are formally passed and/or brought into effect by a State, any relevant insights into pending legislation and recent developments in that State may be covered in the “*Is there more?*” section of the entry, rather than in the main chart.
5. **National Human Rights Institutions (NHRIs):** Where documentation for the above sections cannot be found, the research team will look to reports, litigation, or other verifiable works by NHRIs and national independent human rights organisations. As with other sources that are not laws, decisions, or decrees, any publications by such bodies cited by ILGA World will be included in the footnotes, rather than hyperlinked.
6. **International Human Rights Bodies:** Thanks to the successful advocacy work carried out by activists and civil society organisations, international human rights mechanisms now incorporate a sexual and gender diversity approach to their work. The outputs of that systematic work carried out by the United Nations bodies and agencies, as well as by regional bodies, are relied upon for the production of this report. These include recommendations issued by UN mechanisms, decisions by international courts, thematic reports and other relevant sources. However, these sources are not systematically tracked by our team, and are only included in the report

<sup>4</sup> Even though editions of “State-Sponsored Homophobia” between 2010 and 2013 did cover a few categories related to gender identity and expression, starting in 2016 ILGA has published a specific report on laws related legal gender recognition and, since 2020, on criminalisation of trans and gender diverse people: The Trans Legal Mapping Report, a publication that focuses on legal developments affecting people based on their gender identity or gender expression. The edition published in 2020 deals with legal gender recognition and criminalisation of trans and gender diverse people. For more information see: ILGA World: Zhan Chiam, Sandra Duffy, Matilda González Gil, Lara Goodwin, and Nigel Timothy Mpemba Patel, *Trans Legal Mapping Report 2019: Recognition before the law* (Geneva: ILGA World, 2020).

<sup>5</sup> The original report was written and updated by Daniel Ottosson from 2006 to 2010. Subsequently by Eddie Bruce-Jones and Lucas Paoli Itaborahy in 2011; by Lucas Paoli Itaborahy in 2012; by Lucas Paoli Itaborahy and Jingshu Zhu in 2013 & 2014; by Aengus Carroll and Lucas Paoli Itaborahy in 2015; by Aengus Carroll in 2016; by Aengus Carroll and Lucas Ramón Mendos in 2017, and by Lucas Ramón Mendos in 2019 (main edition in March, updated in December, with Daryl Yang, Lucía Belén Araque and Enrique López de la Peña as main research assistants).

where it may be relevant to contextualise the legal situation of a given country.

7. **Civil Society Organisations (CSOs):** Local and international non-profit and activist organisations are extremely useful in providing supporting information which shows how the law is being enforced, either to protect or to target sexual and gender diverse communities. Materials by such groups are thus footnoted with the link to the original source. Reports from civil society organisations and international bodies are also indispensable in confirming the validity of the information.
8. **Media outlets:** Media reporting—both mainstream and community-based—is a vital source in alerting our team to developments around the globe. Media content can act as supporting and contextualising information for various purposes (such as the development of an issue over time, the legal process behind the passage of laws, or as evidence that laws are used to target our communities). These sources are always footnoted with links to the original publication, but as far as possible any information gathered from the media is backed up by other sources in order to ensure as high a level of accuracy as possible.
9. **Academia:** Mostly used to evince trends, the historic evolution of laws cited, and to provide nuance in the application of a law, academic publications are a valuable and verifiable source both in expanding on laws, or in offering understanding where original sources are hard to come by. Academic publications cited in this document are placed in the footnotes, with links to the original publication wherever possible.
10. **Local activists:** A valuable resource in our work is the existing connections ILGA World has with activists all over the globe, who assist us where required in double-checking information and provide us with understandings of local situations where the law is not clear.

### 3. Scores and tallies: tracking global progress

One of the most interesting and useful outputs of our tracking work at the global level is the overall numbers and scores reflecting the progress (or the backtracking) that has been cumulatively achieved by our communities in regard to legal issues. These numbers are relied upon by our readership to assess the pace of legal change in each region and at a global scale. The number of “criminalising countries”—currently at 69<sup>6</sup>—is considered to be among the global

indicators of state-sponsored hostility against sexual diversity. It represents a number that many in our communities work relentlessly to reduce. Conversely, the ever-increasing number of countries that adopt progressive legislation explicitly including “sexual orientation” evinces the direction of State practice in this regard and the emerging belief that granting this protection stems from a legal obligation rooted in the principle of equality and non-discrimination.

In this subsection, the logic that supports our figures is explained. Many of the arguments below explain why other stakeholders that follow different methodologies may rightfully share different figures, higher or lower, depending on their chosen criteria for counting jurisdictions.

#### 3.1. Focus on UN Member States

The total figures listed in this report are based on UN Member States only. We understand that this is bound to carry some level of controversy, however, our reasons for this system are twofold.

The notion of a UN Member State is clear-cut (it’s a “you are”/“you are not” question) whereas the notion of “country”/“nation”/“state” can be defined in multiple ways. There is no universally adopted notion of “country”. Countries that are not recognised, secessionist movements, *de facto* independent regions, and jurisdictions under territorial disputes are referenced when relevant information is available.

Further, a large part of ILGA World’s advocacy work revolves around the UN. Therefore, our focus remains on those numbers and figures which allow us to carry out our work before the UN. As ILGA World is an ECOSOC-accredited organisation with consultative status at the United Nations, the report covers all 193 UN Member States, following UN-recommended naming protocols for countries and territories.

For these reasons, and considering the report’s advocacy purposes, only UN Member States are numbered in the primary table of each report section. However, even if not included in the overall scores, the report has largely increased the coverage of non-UN Member jurisdictions. As stated by our Co-Secretaries General in the foreword to this report, ILGA World values our communities regardless of the political status of their territory.

#### 3.2. States that are not UN Member States

These include countries which are recognised as independent nations, such as the Vatican City, but also those which are not recognised by the entire international community, but which maintain *de facto* sovereignty over their territory (for example, Kosovo and Palestine).

<sup>6</sup> 67 countries have laws which criminalise consensual same-sex sexual activity, while Egypt and Iraq have *de facto* criminalisation, relying largely on other legal mechanisms to target our communities.

### 3.3. *Non-Independent Territories*

In this edition of the report, we have sought—for the first time—to outline the legal situations in autonomous territories which are governed by external powers. These include British Overseas Territories, French Collectivities, Dutch territories in the Caribbean, Danish territories, and so forth.

Each one of these entities received specific entries, distributed according to geographic location rather than the country to which they belong, so that the situation of the laws applied on the ground within ILGA World’s regional chapters can be better reflected.

### 3.4. *Subnational jurisdictions within UN Member States*

Another important step is that, for the first time, we are “piercing” through the national level of legislation to show the legal frameworks in place in subnational jurisdictions such as cantons, provinces, and prefectures. Thus, in some cases, the tables in this document will reflect legislation in force at the subnational level.

This disaggregation will only happen where there is no nationwide legislation or judicial ruling relating to the issue being analysed and is limited to first-order subnational divisions.<sup>7</sup> It should be noted that in countries where there is no nationwide legislation in force regarding the recognition of certain rights for our communities, the threshold for inclusion into the main table is for at least 50% of the population to reside within a jurisdiction which legally recognise said right. Barring that, subnational jurisdictions may be included in the “*Is there more?*” chart, below the main table.

## 4. Structure of sections and relevant data

In this section, we explain the rationale for locating the data within each of the legal categories that the report covers, namely the “Highlights”, the main charts, and the “*Is there more?*” section.

### 4.1. *Highlights*

At the beginning of each legal category, we paint a general picture of the situation as it stands globally, referring where relevant to international developments and human rights standards. It is also

here that we indicate the percentage and number of UN Member States that have enacted the kind of legislation that meets the threshold of each category under analysis.

### 4.2. *Main Chart*

The bulk of data presented in each section comes in the form of the light brown main chart, which lists and numbers the UN Member States applicable to the category. Each section has its own methodological criteria for the inclusion of countries into the chart given the diverse ways in which different rights can be implemented or denied.

Each UN Member State is numbered so that readers can understand how we calculate the total numbers, with non-UN Member States in the chart not numbered, or included elsewhere in the document.

States are located under regional groups according to their constituent ILGA Chapter geographic regions,<sup>8</sup> and from there listed alphabetically per UN-mandated English spelling protocols.<sup>9</sup>

### 4.3. “*Is there more?*”

This section provides additional relevant information regarding countries and territories which do not fit the full criteria for inclusion into the main chart. This section covers:

1. Countries that do not make it to the main chart because legal protection is only offered at the subnational level.
2. Countries where bills have been introduced but have not yet been passed or brought into effect. Inclusion of such countries into this section is not comprehensive (see section below entitled “Tracking and documenting legislation and legal developments”). The inclusion of this additional data reflects discussions, occasional negative legal developments, and work in progress in each jurisdiction.
3. Countries where statements by political figures, lawmakers and media outlets have had demonstrable impact on legal trends, either towards recognition or detraction of protections for our communities. Changes in the status of rights as they pertain to sexual orientation which have not yet been made official may fall into this category.

<sup>7</sup> Exceptionally, information on protection against discrimination based on sexual orientation available at lower levels of administrative divisions (cities and municipalities) is included for Peru and The Philippines.

<sup>8</sup> Exceptionally, Central Asian UN Member States are listed under “Asia” although they fall under the purview of ILGA Europe. Additionally, all Caribbean jurisdictions are listed under the “Latin America and the Caribbean” even though the English and Dutch Caribbean came under the purview of the ILGA region of North America and the Caribbean in 2020. As for non-independent jurisdictions, they are listed in the corresponding region where they are geographically located regardless of where their metropolis may be located.

<sup>9</sup> The order in which jurisdictions appear is adapted to the alphabetical order in each language version of the report.

4. Special cases: In the adoption section it should be noted that territories that have a legal framework that potentially allows for adoption, but that do not seem to have the de facto possibility to formalise adoptions (either for same- or different-sex couples, because there is no permanent population, for instance) were included in this chart. In this light it must be noted that the criteria for exclusion from or inclusion in this chart are at the discretion of the research team, as there are myriad situations in which countries and territories warrant mention, but do not fit into the main chart.

## 5. Methodology notes for specific sections of the report

Some legal categories tracked in the report require further explanation on the methodology followed to classify and systematise the information and the ways in which jurisdictions are listed.

### 5.1. Criminalisation

The first two legal categories covered in the Global Legislation Overview concern criminalisation. Thus, they point out jurisdictions where criminal provisions in force impose penalties for consensual same-sex sexual acts between adults in private (“illegal”), as well as where these provisions are absent (“legal”).

#### 5.1.1. Terminology: acts, not identities

In this section, the term “criminalisation of consensual same-sex sexual acts” is adopted to describe the specific type of criminalised conduct that we track in the report. This language focuses on the criminalisation of *acts* and *behaviours*—which is the object of criminal law—as opposed to identities or sexual orientations.

ILGA World expressly refrains from using certain expressions and ways of framing this issue that other stakeholders may favour. This is especially the case of non-specialised media outlets, where the need to summarise and avoid complex phrasing or legal jargon for effective communication may justify other terminological decisions.

In particular, ILGA World refrains from using expressions such as “criminalisation of homosexuality”, countries “where it is illegal to be gay or lesbian”, and more technically “criminalisation of same-sex *relations*”. These terminological decisions are informed by our advocacy work and the need to be specific about the content of the provisions that are still in force in all criminalising countries.

In defending or justifying these laws, several States have presented arguments that hinge on legal technicalities. Although many of these arguments can be easily rebutted with contextual information, oftentimes these capricious technical arguments may survive strictly legal assessments. More specifically, countries that still have criminalising provisions in place argue that they do not penalise “homosexuality” or “being gay” *per se*, and even that they are not applying criminalisation based on the person’s sexual orientation.

For instance, in 2019, Brunei, a UN Member State where consensual same-sex sexual acts can be punished with death by stoning, stated during its third UPR cycle that “the Sharia Penal Code Order does not criminalize a person’s status based on sexual orientation or belief, nor does it victimize” and stressed that “Brunei’s society regardless of the sexual orientation have continued to live and pursue activities in the private space”.<sup>10</sup> In the same vein, Barbados explained that although “buggery” is criminalised by Section 9 of the Sexual Offences Act, “same-sex relations are not criminalised” in their legislation – “what is criminalised is buggery”.<sup>11</sup>

It goes without saying that these provisions clearly target particular communities and identities, even if not explicitly. By penalising “sodomy”, “buggery” or “sexual acts with people of the same sex”, legal frameworks impose criminal punishments upon one of the activities that is relevant in defining such identities. In many places, these acts are even “presumed” when people are reported or arrested under these provisions solely based on their appearance or being in the company of people of the same sex at a gathering. Therefore, the result is the same: impeding persons of diverse sexual orientation to live a full life free from violence and discrimination.

#### 5.1.2. Acts involving consenting adults only

The report tracks the criminalisation and decriminalisation of consensual same-sex sexual acts between adults. This criterion also informs the way in which we report on documented cases of enforcement of criminalising laws by setting the focus almost exclusively on cases that affect people above 18 years, in line with the standard definition for child established under Article 1 of the Convention on the Rights of the Child, regardless of whether domestic legislation sets lower ages of consent.

Tracking cases of enforcement on consensual same-sex sexual acts is particularly difficult for several reasons. When laws criminalise all forms of same-sex sexual acts—consensual or not—under the same provision, special efforts need to be made to corroborate several aspects of reported cases.

<sup>10</sup> See: ILGA World, *33<sup>rd</sup> UPR Working Group Sessions SOGIESC Recommendations 6–17 May 2019* (Geneva: ILGA, November 2019), 14.

<sup>11</sup> “UPR- Barbados”, *ILGA Website*, 23 January 2018, Section C.

Specifically, additional information regarding the circumstances of each case and the ages (at the time of the incidents) of those involved is always required to ascertain whether any given case reportedly brought under these provisions is actually about consensual same-sex sexual acts between adults. In other words, a major challenge in our tracking work is that the consensual nature of reported cases might not always be clear when we look at media coverage about this topic around the globe.

The reporting of cases of arrests or prosecutions for “sodomy”, for example, include cases involving consenting adults and rapists alike. To name only a few examples, in September 2001, a man in his thirties was reportedly sentenced to death by stoning “for sodomy” by an Upper Sharia Court in Kebbi State, Nigeria. However, further information on the facts of the case showed that it was actually a case of sexual abuse of a seven-year-old boy.<sup>12</sup> Likewise, in September 2003, another adult man was sentenced to death by stoning after he was found guilty of “sodomy”. However, the victims in this case were again three boys between the ages of ten and thirteen years (one of whom was reportedly given six strokes of the cane for accepting money for sexual services).<sup>13</sup> Even though the case may have been labelled as a “sodomy” case, the non-consensual nature of the act in question is evinced when specific information on the circumstances of the case becomes public. Likewise, in the Caribbean, cases of men prosecuted for “buggery” often involve men who abused underage children.<sup>14</sup>

Even more problematic, many cases of rape are labelled as cases brought against “homosexuals”. To cite only one example, in 2018, the Nigerian newspaper, *The Independent*, published an article entitled “Nigerian Suspected Homosexual Remanded in Sokoto”, reporting on the case of a 22-year-old man who was prosecuted for “carnal knowledge” of a boy “against the order of nature”.<sup>15</sup> While this is an example of a news report containing enough information to discard it completely as an instance of enforcement of criminalising laws against consenting adults, these facts are not always available. The lack of key data renders monitoring activities through the press particularly difficult, given that corroboration is not always possible. This is compounded by the high rates of underreporting of such instances, so the actual number of cases flying below our radars is hard to estimate.

Furthermore, besides posing difficulties to the tracking of cases, the fact that the same provisions serve as the legal basis to prosecute both consensual and non-consensual sexual acts reinforces the

troubling conflation of homosexuality with sexual predation. For instance, 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.<sup>16</sup> In 2016, then-Prime Minister Freundel Stuart stated, “Rape is the offence committed against in a heterosexual relationship and buggery is the offence committed in a same-sex relationship”.<sup>17</sup>

Even if all people reportedly involved are adults, the consensual nature of the act cannot be automatically assumed. As explained in the entry for Iran in the special dossier on the death penalty, legal frameworks may incentivise people who consented to sexual acts to report them as non-consensual to be spared from harsh punishments themselves.

In conclusion, it is with special caution that we look into reports of enforcement of criminalising provisions. Whenever available information indicates that the relevant case involved minors or the consensual nature of the acts is not clear, cases are either discarded or inserted with specific caveats that may cast doubt about the actual circumstances of the reported incident.

### 5.1.3. Private and public spheres

Another criterion we follow is whether or not the criminalisation of consensual acts include those which take place in private. We do not place under the “illegal” category States that still keep criminalising provisions for same-sex sexual acts committed in public.

We are aware that, in the last four decades, the focus on the right to private life and the projection of our private life into the public sphere has been the subject of debates informing legal strategies in our quest for equality. Seminal cases, including early decisions by the European Court of Human Rights and at the UN in the landmark case *Toonen v. Australia* (1994), hinged mainly around the protection of the right to private life. Later on, there was a shift towards an approach based on the right to equality before the law and non-discrimination.

The incompatibility of criminalising private consensual sexual acts with international human rights law is now a well-established minimum standard that States need to abide by. As this report was idealised to function as an advocacy instrument, the original aim was to track laws that States kept in contravention of this principle.

<sup>12</sup> Human Rights Watch, “*Political Shari’a? Human Rights and Islamic Law in Northern Nigeria* (2004), 33.

<sup>13</sup> Gunnar Weimann, *Islamic Criminal Law in Northern Nigeria: Politics, Religion, and Judicial Practice* (Amsterdam: UvA, 2010), 47. See also: “Sex offender won’t be stoned”, *News24*, 24 March 2004.

<sup>14</sup> “Photographer charged with buggery”, *Nation News*, 8 December 2015; “No bail for cop on buggery charge”, *Nation News*, 3 February 2017.

<sup>15</sup> “Nigerian Suspected Homosexual Remanded in Sokoto”, *The Independent*, 8 March 2018.

<sup>16</sup> “Zero Tolerance”, *Nation News*, 7 July 2013.

<sup>17</sup> Arshy Mann, “What does Barbados’ prime minister have to say about the country’s harsh buggery laws?”, *Daily Xtra*, 19 April 2017.

However, we understand that in many contexts certain acts—which do not amount to intercourse and are legitimate expressions of love, such as public displays of affection—can definitely play a role in how people of diverse sexual orientations are oppressed and persecuted under the law. Where such information is available, we make an effort to identify and emphasise it in the country entry, even if the State is placed under the “legal” section.

Last but not least, the process of decriminalisation has not always been clear cut in all States. In other words, many countries did not move from full criminalisation to full decriminalisation but opted for gradual changes in the way consensual same-sex sexual acts were restricted. While repealing acts in private, many countries kept residual provisions penalising crimes such as “scandalous sodomy” (i.e. Costa Rica), “public displays of homosexuality” (i.e. Cuba), or raised the age of consent to legally engage in same-sex sexual activity. These nuances have been captured to a limited extent, but even when we track them the critical date for decriminalisation is fixed at the time of decriminalisation of consensual sexual activity between adults in private.

#### 5.1.4. *De facto* criminalisation

As a general rule, this report only covers legal aspects and provisions. Thus, it is limited to the law enforced in each country, not analysing broader contexts with regard to the social reality. However, one exception could be pointed out in relation to our definition of “*de facto* criminalisation”.

While in most cases we only consider that a country criminalises same-sex sexual acts if there is an *explicit* legal provision in that regard (or terminology widely known to mean the same thing, such as “acts against nature”), there are two States in which we understand that *de facto* criminalisation is in place: Egypt and Iraq. To enter into this category, there must be substantial and consistent reports from the ground that provide evidence that persons have been arrested or prosecuted because of their actual or perceived sexual orientation or the engagement of same-sex intercourse despite there being no law explicitly criminalising such acts or identities. Therefore, we only label a given country under that category after identifying a repeating pattern that falls under these listed criteria. We do this so that isolated cases, in which a single judge may have applied an unorthodox interpretation of law, are not presumed to represent the broad situation within the country.

And it is for this same reason that some countries in which we have identified unusual cases of arrest for the practice of consensual same-sex activity, have not been categorised as having *de facto* criminalisation, such as in the Central African Republic, Democratic Republic of the Congo, and Côte d’Ivoire. If the situation in such countries changes in the coming years, they might require recategorisation.

At the time of publication, Indonesia (at the national level), appears to be moving towards becoming a country that could be considered for such

recategorisation. ILGA World will keep track of unfolding events in provinces that do not have criminalising provisions to assess whether the whole country should future be labelled as *de facto* criminalising.

#### 5.1.5. Dates of decriminalisation

A complex issue our team has faced is how best to establish the date of decriminalisation of such acts in each country. As we have stipulated, the report tracks criminalisation of consensual same-sex acts between adults in private. Thus, the date of decriminalisation should correspond to the year when the last piece of legislation criminalising these acts in the country’s territory was repealed. As mentioned above, the date of the repeal of laws criminalising certain forms of public sexual activity is not taken into account to determine the date of decriminalisation.

#### 5.1.6. Primary forms of criminalisation

When it concerns criminalisation, the main sources that we look at to ascertain whether the country indeed decriminalised are the criminal codes. For that reason, we do not *systematically* cover other types of regulations that might be used to criminalise same-sex sexual activity, although we mention it when it has come to our attention (as is the case for Peru or El Salvador).

Moreover, we prioritise the year when the country approved a national ban on criminalisation, rather than at the subnational level, when defining the main date of the entry. However, we do also indicate when the first subnational and the last jurisdiction decriminalised in countries where the process was gradual at the subnational level (as in the USA).

#### 5.1.7. Statehood and decriminalisation

In this edition, we have decided to incorporate scholarly feedback concerning the definition of the date of decriminalisation in countries that suffered periods of colonisation and that became independent under a jurisdiction in which there was no prohibition on the practice of same-sex sexual acts. Most of these cases are early dates of decriminalisation that took place during the 19<sup>th</sup> and 20<sup>th</sup> centuries due to historical reasons largely unrelated to human rights activism. In these cases, we had three different options to choose from in order to establish the relevant date:

The first one, which is mostly what had been applied in previous editions of this report, was to settle the year of independence as the one that marked decriminalisation, provided that there was no subsequent enactment of criminalising legislation following the independence. This route in essence holds that before a State formally exists, it can neither criminalise nor decriminalise anything.

Another possibility that has also been applied in past editions was to consider the year of approval of the country’s first post-independence penal code as the



decriminalising milestone. This would reflect that, in its first sovereign decision as an independent State regarding criminal laws, the country chose not to penalise same-sex sexual acts.

However, the above options might lead to some misunderstanding and have indeed been controversial among our readership. For example, territories in which such acts were never actually criminalised might be presumed to have once enacted penalties for this behaviour if the reader looks to the chart and sees either the date of independence or the date of approval of the country's first criminal code. For that reason, in this edition we note where countries appear to have never criminalised same-sex acts, and have decided to take as a reference any relevant legislation which came into effect prior to a State's formal independence.

This has led to a change in the data displayed with regard to a number of African and Asian States. In several cases, when investigating previous records of criminalisation, we found no reliable evidence as to whether the country actually ever had any criminalising laws. Thus, considering the absence of accurate information, at least available in public records, no specific year for decriminalisation was inserted for Burkina Faso, Djibouti, Vietnam, and many others.

#### 5.1.8. Gaps and transitions from colonial laws

It is important to point out that broad research on the application of colonial law in several regions has been conducted, however this has largely been limited to documents available in desktop research and without access to local archives.

In some cases, as in the former Spanish colonies, it was possible to identify that the law of the colony and the metropolis were not implemented in complete synchrony. Therefore, several colonies continued with the application of the provision from "Las Siete Partidas" (which registered the crime of "sodomy" under *Title XXI – Of those who make a sin of lust against nature, Partida No. 7, Volume III*, where it states that, if the act is proved, the person who committed it "shall die"), even after the approval of Spanish codes. As a general rule for countries that were colonised by Spain, when we indicate the year for decriminalisation as the one in which the country approved its first Penal Code, it means that we believe that the criminalising provisions from "Las Siete Partidas" were still in force until they were completely repealed by the new code.

In other situations, as in the case of the former French colonies, a dual regime was identified, with an asymmetry between the laws applied to natives and to those considered "French citizens" present in the same territory. In view of this, and considering the difficulty of ascertaining when or how the law applied to natives because of the legal uncertainty associated with it, we decided to indicate as the date of decriminalisation the year in which French laws became valid in such territories, although noting reservations with regard to the asymmetry of application.

#### 5.2. Legal barriers to freedom of expression on sexual and gender diversity

The limitations on freedom of expression may take many forms: from the laws explicitly naming issues of sexual and gender diversity to the norms containing vague language relating to public morality, and apparently unrelated laws which are used to restrict free exchange of ideas on LGBT topics.

Even though this report is focused on sexual orientation issues only, in this section, we understand it is problematic to try strictly set apart legal restrictions related to issues of sexual orientation from those that relate to gender identity and gender expression. Legislators use a plethora of legal proxies to target LGBT issues, from ambiguous "non-traditional sexual relationships" and "gender theory" to offensive terms describing issues of sexuality which, in practice, are used to target people of diverse gender identities and expressions. Therefore, dividing the laws based on whether they target sexual orientation only or combined with other characteristics has little practical value.

Additionally, in this edition, we have decided to reclassify countries into two main tiers based on the explicitness of the language used in the legal barriers to freedom of expression as they relate to our communities.

##### 5.2.1. TIER 1: Explicit legal barriers

The entries in Tier 1 include countries that have legislative or other governmental rules and regulations that explicitly outlaw forms of expression related to sexual and gender diversity issues.

We take a note of non-ambiguous targeting because they play an important role in both elucidating and crystallising an official position with regard to sexual and gender diversity issues. Moreover, such explicit language eliminates the interpretational gap that provides space for certain forms of legal advocacy.

It is enough for a country to have at least one legislative act explicitly limiting freedom of expression on SOGIE issues to be treated as a jurisdiction limiting the freedom of expression of LGBT+ people and to be included in Tier 1.

##### 5.2.2. TIER 2: Non-explicit legal barriers

The entries in Tier 2 include countries that have interpretations of legal provisions, religious norms, and law-enforcement practices which target but do not explicitly refer to sexual and gender diversity issues. It is noteworthy that the language of legislative provision does not correlate with the frequency or severity of its enforcement.

The "Is there more?" section includes examples of bills and legislative initiatives aimed at restricting the freedom of expression of LGBT+ people, as well as cases of governmental crackdowns, prosecution of individuals, or other information relevant to limitations of freedom of expression on SOGIE issues.

### 5.3. *Legal barriers to the registration or operation of CSOs working on sexual and gender diversity issues (freedom of association)*

Mapping the legal barriers to the registration or operation of sexual orientation-related (SOR) civil society organisations can be quite challenging. Unlike other laws, which may be more straightforward in their wording or effects, the barriers that usually prevent the registration or operation of organisations can be more 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 we also list States in two tiers.

#### 5.3.1. TIER 1: confirmed legal barriers

ILGA World has found that there may be an explicit prohibition against CSO activities or associations, where the law specifically forbids CSOs working on sexual and gender diversity issues from registering. Although these kinds 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 the registration of organisations working on sexual and gender diversity issues, which is often the case in countries where consensual same-sex sexual acts are criminalised.

Tier 1 countries are those for which we were able to corroborate that local groups have been denied registration based on a provision of law against working on these issues. Reference to the source in which the rejection was documented is always provided.

#### 5.3.2. 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 due to various factors.

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 other harsh penalties for same-sex consensual acts, where activists may find it too dangerous 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 as 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 an organisation working on sexual and gender diversity issues. However, this cannot be taken as a hard and fast rule given that in many countries which 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.

### 5.4. *Protection against discrimination: constitutional, broad and employment protection.*

Three sections cover the different levels of legal protection against discrimination based on sexual orientation which we have chosen to focus on in this report, namely: (1) constitutional protection, (2) broad protection, and (3) employment protection.

For the country to be included in each of these sections, the relevant legal basis or authority must *explicitly* mention sexual orientation (or any equivalent terms, such as “sexual preference”, “homosexual orientation”, or “sexual option”).<sup>18</sup>

These three categories are the only three that follow a rough hierarchical pattern, according to which “constitutional protection” is considered the highest level of protection, “broad protection” as the immediate next, and “employment protection” as the narrowest of the three. All countries that appear in the “constitutional” section appear in both “broad” and “employment” protection sections. This order of precedence reflects the hierarchy of laws within the legal frameworks that adopt a written constitution, in that constitutional provisions are expected frame and guide the drafting of all other norms of inferior hierarchy. In other words, if the constitution prohibits discrimination based on sexual orientation, in theory no legal provision in that country can discriminate based on sexual orientation.

However, it must be noted that, in practice, this is not always the case. The most salient examples that can be cited are the constitutions of Bolivia and Ecuador, which prohibit discrimination based on sexual orientation but at the same time restrict the right to

<sup>18</sup> Specific notes are included where more ambiguous terms—such as “sexual minorities” or “gender orientation”—are used.

legal protection for same-sex couples and adoption by same-sex couples, respectively. This legal collision is possible as well between the constitution and discriminatory laws that remain unchallenged on the books. Additionally, in many countries formal laws are required to implement the rights enshrined in the constitution and when no specific action is taken to enact these laws, a constitutional clause may end up being a mere expression of desire rather than an enforceable provision (oftentimes referred to as “justiciable clauses” as opposed to “programmatic provisions”).

For all these reasons, the hierarchy of the legal provisions should not always be understood as a stronger or more robust protection. Assessing the effectiveness of the protection of each of the legal provisions in this report goes well beyond its scope and would require in-depth research at a scale that is unfeasible when covering all 193 UN Member States and more than 45 non-UN member jurisdictions.

The “broad protection” category includes explicit legal protections against discrimination based on sexual orientation in health, education, housing and the provision of goods and services. For a country to be included in the main chart and counted as offering “broad” protection, it must provide protection against discrimination in at least three (3) different areas (including in employment).

Those that have some level of protection, but do not accomplish the “three-areas criterion” are included in the “*Is there more?*” entries. As a separate section is dedicated to it, employment protection is not mentioned under this section.

With notable exceptions, employment protection is regularly among the first protective measures to be enshrined in legislation.<sup>19</sup> As of December 2020, all 57 UN Member States offering “broad protection” against discrimination based on sexual orientation also ensure employment protection, and 24 more offer employment protection only. Hence, 81 countries are reported as offering employment protection in the relevant category.

ILGA World’s map additionally features a fourth category labelled “Limited/Uneven protection”. This category is explained in detail in Section 7 below.

## 6. Tracking and documenting legal developments

Even though tracking the existence of provisions relevant to our communities may appear to be a relatively straightforward task, there are certain

complexities that the research team has had to consider in undertaking this work. When ILGA World tracks and reports on legal developments these specificities come into play and inform the way in which progress or backtracking is documented and described. In this section we offer our readers a basic overview of many of these issues.

### 6.1. How laws come into being

The process by which laws are incorporated into the legal framework varies across countries (and across time) and it usually takes a considerable amount of research to learn the substance and the formalities of these procedures.

However, a few concepts can be generally identified in most systems. Granted, each of the following lines will have numerous exceptions or may not apply entirely in several countries. In this section we only aim to broadly explore the critical moments along the process by which laws generally come into being.

### 6.2. How it all starts

The very first step towards making progress in the legal arena may begin with informal discussions among relevant stakeholders. Advocacy by civil society organisations plays a fundamental role in this seminal stage, where a plethora of strategies can be deployed at the local level according to the opportunities available.

When these efforts are aimed at obtaining legal protections for any right, one of the first steps towards achieving that goal is the formal introduction of the proposal into a legislative body. This proposal is usually referred to as a “bill”. Who is entitled to take this first step varies greatly across countries.

For the purpose of our work, this is usually the first indication that a subject matter is potentially among the issues that the relevant legislative body will discuss. In many countries the introduction of a bill does not guarantee that such discussion will take place or even be given any significant consideration.

In this report we only track bills to a very limited extent and in a non-systematic way. Information on these initiatives is not always easily accessible or available online. Therefore, countries where legislative bodies do not have updated, publicly available records may be underrepresented in the tracking of bills. Moreover, where civil society or media outlets do not report on the introduction of bills, initiatives at this seminal stage become hard to track globally.<sup>20</sup>

<sup>19</sup> In numerous countries, data protection is also an area of law where seminal progress is being made. These laws usually label “sexual orientation” as sensitive information that cannot be legally shared or disclosed. This legal category is not systematically tracked in this report.

<sup>20</sup> Special attention should be given to the fact that media outlets or statements by advocacy groups may report on initiatives or proposals that “are being considered” even before the formal introduction of the bill takes place. This is usually the case when “drafts” are reported or made public before a bill is introduced.

### 6.3. Discussion (and its coverage)

If the necessary steps are taken, a bill would normally go through different stages of discussion. It can also be abandoned without further discussion, let alone a vote, or become defunct due to the passage of time according to applicable rules.<sup>21</sup>

When a bill starts to make its way through the required procedures, careful attention should be given to media outlets reporting on this progress given that the accomplishment of one formal step along the whole process can sometimes be mistaken for the “adoption” of the law if not clearly reported as such.

One of the most common cases of confusion arises when the relevant legislative body is bicameral (composed of two chambers) and the adoption by one of the chambers is made public. Bicameral systems usually require bills to be approved by both chambers in order to be adopted. Moreover, in numerous countries—bicameral or otherwise—legislative bodies can be organised in thematic commissions, committees or task forces that have specific roles in the discussions. Further, the expected linear progress made towards the adoption of a bill can be complicated when amendments are made, requiring additional readings, sessions, or reapproval. Given all these intricacies, it is always necessary to be familiar with the processes through which any given bill must go before being formally adopted.

### 6.4. Legislative approval may not mean final adoption

In numerous countries, a positive outcome in the legislative branch is not the final step in the process to creating laws. Other authorities may have the power to affect the process and prevent the final adoption of the law. Terminology varies greatly—and translation at the international level may not always accurately reflect local linguistic specificities—but it can be said that, generally speaking, a law becomes such when it is formally enacted.<sup>22</sup>

The authority empowered to this end and the formalities involved therein are also considerably different in each country. Additionally, in most legal frameworks, some sort of formal publication of the relevant law or bill is required. This is usually done in an “official gazette”. The publication itself may even be given specific legal effects. These gazettes are the

most reliable source to confirm that a law has been enacted and has full legal effect as such.

In some countries, the judiciary may also have a role to play, where constitutional courts are required to carry out a constitutional assessment of proposed legislation.

However, the most common scenario involves the executive branch. In effect, where the executive takes part in the creation of laws, it is usually the case that specific action by the incumbent executive authority is required to enact the law by means of an executive order or decree. Many countries also empower the executive to completely or partially “veto” a law that has been passed by the legislative body. If a law is vetoed, it means that it is rejected and will not come into effect.<sup>23</sup>

A very recent example of a law that would have been relevant for this report but was vetoed by the executive is the Ecuadorian Organic Health Code,<sup>24</sup> which contained specific provisions relevant to so-called “conversion therapies”.<sup>25</sup>

### 6.5. Enactment may not mean entry into force

The specific date for the law to come into force may not coincide with the date in which it was enacted. In many cases, a delay in the entry into force may be due to the need to adapt infrastructure, proceedings or other aspects required for the implementation of the law. For instance, in the past some legislative bodies have delayed the entry into force of same-sex marriage laws to make the necessary adjustments for their implementation.

Relevant to this report, the year included in all entries next to each relevant legal development corresponds to the year of entry into force.<sup>26</sup> Furthermore, at least two laws that will enter into force in 2021 have been included as enacted laws, but not yet in force: the Angolan Penal Code (2019) and the law granting rights to same-sex couples in Montenegro.

In effect, this is the basic requirement for the inclusion of laws in this report. ILGA World is not currently able to track actual implementation of laws, or the issuance of the necessary regulations for laws to become fully operative (see below).

<sup>21</sup> Some countries establish a period within which the bill has to be discussed, otherwise it lapses and becomes invalid, having to be proposed again.

<sup>22</sup> It could also be said that a bill becomes “law” when approved by the legislative and, if action by the executive is required, such acts will determine its entry into force. These terminological differences are not always relevant for the purpose of tracking laws at the international level.

<sup>23</sup> What happens after an approved law is vetoed varies greatly according to country. In some legal frameworks, the legislature has the possibility of “insisting” (overriding the veto) if certain conditions are met.

<sup>24</sup> “El veto al Código Orgánico de Salud de Ecuador es “decepcionante”, dicen expertos en DDHH”, *Noticias ONU*, 21 de octubre de 2020.

<sup>25</sup> “Aprueban en Ecuador Ley de salud que prohíbe las terapias de conversión”, *Anodis.com*, 10 September 2020.

<sup>26</sup> For some entries, especially for legal developments dating back more than 30 years, it may not have been totally possible to discern discrepancies between the date of enactment and the date of entry into force if such difference existed.

### 6.6. *Entry into force may not mean that the law is fully operative*

In some countries, for a law to become “operative” (i.e. the relevant authorities can actually implement the law) further action by the executive branch—besides enactment—may be required. This is usually the case when the law contains clauses that depend on decisions that have to be made by a relevant authority and, especially, where express action is required from the government. In these cases, an additional executive order or decree establishing further rules and regulations may be required to implement the law.

For example, as reported in 2019, the law establishing a 1% labour quota for trans and *travesti* people in the Province of Buenos Aires (which was passed by the legislature, enacted and entered into force) was rendered inoperative by the fact that the governor in office decided to shelve the executive order regulating the implementation of the law.<sup>27</sup> Scholars have argued that such omissions by the executive are an irregular way of imposing a *de facto* veto on laws in force.<sup>28</sup>

### 6.7. *ILGA World's reporting on Angola's Penal Code*

In January 2019, ILGA World received the news that the Parliament of Angola had just *approved* a new Penal Code in which consensual same-sex sexual acts were not only decriminalised, but new provisions anti-discrimination provisions were also introduced. Several sources, including reputable organisations such as Amnesty International<sup>29</sup> and Human Rights Watch,<sup>30</sup> reported on this major achievement, after a lengthy legal reform process came to an end.

At that point in time, given the reliable information ILGA had on file, including from local activists, and understanding that the publication of laws can sometimes take time, Angola was removed from the list of criminalising countries in the 13<sup>th</sup> edition of the report published in March 2019. This was done with a note specifying that the official gazette with the new Penal Code had not yet been made available and a link to the draft code that had been reportedly approved.

However, the publication of the code in the official gazette was reported to have taken place only in November 2020, almost two years after the approval. Reports indicated that after the code was approved, the executive requested amendments to some provisions unrelated to consensual same-sex sexual acts or protections based on sexual orientation. The series of events that followed the formal approval of the code by the legislative branch and the technicalities of the process remain unclear to ILGA

World, but full legal certainty about the enactment of the law now comes from the recent publication of the code, which is set to enter into force in 2021.

Upon accessing the published code, only the relevant date had to be amended, as all reported changes and improvements remained untouched.

### 6.8. *ILGA World's decision to recategorize South Korea*

Based on a methodological decision adopted in this update South Korea has been removed from the list of countries offering broad and full employment protections against discrimination based on sexual orientation at the national level.

This decision hinges on the fact that further research on certain aspects of the law that was used as the legal basis to include the country under that category (the [National Human Rights Commission Act, 2001](#)) and feedback received by multiple sources clarified the legal character of the available protections. In fact, the term “sexual orientation” is explicitly included in the provision that empowers the Commission to carry out investigations and offer certain forms of remedy of limited enforceability.

Even though this explicit reference is relied upon by subnational legislation to prohibit discrimination based on sexual orientation, under the methodology we follow, the clause in the National Human Rights Commission Act does not meet the threshold to ascertain that the legislation in force unequivocally prohibits discrimination in the way that an enforceable (justiciable) law does.

South Korea has been kept in the “*Is there more?*” chart where this limited protection and the protection effectively available in certain subnational jurisdictions is developed. This decision obeys purely to a methodological question and does not reflect any actual change or amendment of the law in question.

### 6.9. *Judicial rulings*

Another important aspect regards legal developments that are promoted by the courts, whether by declaring the unconstitutionality of a criminalising law or by extending the scope existing norms that provide protection against discrimination.

In the case of Belize, for instance, the country's Supreme Court declared unconstitutional the colonial-era sodomy law which criminalised consensual same-sex sex acts between adults. This first ruling occurred in 2016 and although an appeal was still pending, we

<sup>27</sup> Inter-American Commission on Human Rights, *Report on Trans and Gender-Diverse Persons and Their Economic, Social, Cultural, and Environmental Rights* (2020), para. 312; “Cupo trans, la ley que Vidal no reglamentó”, *La García*, 30 June 2020; Damián Belastegui, “A cinco días de irse, Vidal reglamentó leyes que le reclaman desde que asumió”, *Letra P*, 5 December 2019.

<sup>28</sup> Diana Maffia, “*Leyes sin reglamentar, la historia continúa*”: Informe sobre la reglamentación de leyes en la Ciudad de Buenos Aires (2010), 2.

<sup>29</sup> Paula Sebastião, “Raising the LGBTQI flag in Angola”, *Amnesty International*, 29 June 2019.

<sup>30</sup> Graeme Reid, “Angola Decriminalizes Same-Sex Conduct”, *Human Rights Watch*, 23 January 2019.

have established 2016 as the year for decriminalisation in the country.

In this sense, even if an appeal can still overturn the decision—provided that the ruling is already applicable and its effects are *erga omnes* (which means it applies to everyone, and not only to the parties involved in the lawsuit)—the ruling is considered as cause for a country's inclusion in the main chart. If an appeal later reverses the decision, the country would be removed from the main chart, as if it had “re-criminalised” such acts.

## 7. ILGA World Map on Sexual Orientation Law

Another important resource available both in this report and as a separate file is the [Sexual Orientation Laws Map](#), which is translated into several languages.<sup>31</sup> The purpose of the map is to serve as a visual tool highlighting general situation in across the globe in regard to sexual orientation laws. It thus covers the main legal categories explored in the report.

The different colours—which have been selected to render the map readable to community members living with varying types of colour-blindness—represent variations on a scale from full protections at one extreme to criminalisation with severe punishments at the other.

The map looks at the following categories: i) constitutional protection; ii) broad protection; iii) employment protection; iv) limited/uneven protection; v) no protection/no criminalisation; vi) de facto criminalisation; vii) criminalisation with up to eight years imprisonment; viii) criminalisation with ten years to life imprisonment; ix) criminalisation with death penalty.

The protection categories reflect the total number of countries that fall under each one of them, but the cumulative nature of the first three means that the number of jurisdictions with a certain shade of blue will not match, as they get the highest shade possible. In other words, countries that have both constitutional protection and broad protection, will only take the darkest shade of blue, and so forth. The following definitions can be used as a legend to read these categories:

1. **Constitutional Protection:** the text of the Constitution *explicitly* prohibits discrimination based on sexual orientation.
2. **Broad Protection:** protections against discrimination based on sexual orientation cover at least three of the following fields:

employment, health, education, housing and provision of goods and services.

3. **Employment:** legislation in force explicitly protects workers from discrimination based on their sexual orientation in the workplace. The scope of such protection varies from country to country and may or may not cover issues of unfair dismissal, social security, benefits, and so on.
4. **Limited/Uneven Protection:** This category groups a set of countries where protections do not amount to any of the criteria listed above, or where employment or broad protection is only available unequally in a few subnational jurisdictions. Currently only 7 UN Member States—Argentina, Dominican Republic, El Salvador, Japan, Philippines, South Korea, and Vanuatu) and 3 non-UN Member jurisdictions—Hong Kong (SAR China), Guernsey (UK), and the Northern Mariana Islands (USA)—fall under this category.

In addition to the colours selected for each country on the map, we have included a set of symbols where relevant which indicate the status of other issues such as: i) marriage or other forms of legal union for same-sex couples; ii) adoption open to same-sex couples; iii) legal barriers to freedom of expression on issues relating to sexual orientation (and occasionally also gender identity and expression); iv) legal barriers to the registration or operation of civil society organisations working on sexual and diversity issues.

As with the rest of the report, the map only reflects the legal situation of the countries as they exist on paper. In other words, nothing in this map speaks to the social attitudes towards sexual diversity, the lived realities of people on the ground, or levels of violence or prejudice in each country. Readers should be aware that several countries listed as having enacted protections may still be unsafe for our communities, either due to widespread discrimination and prejudice, or through heightened levels of violence that takes place despite legal provisions.

Similarly, some countries which criminalise same-sex sexual activity may have thriving, vocal activist communities. As such, this map remains but one tool out of many that readers and researchers can use. In a nutshell, we provide only a small part of a wider picture.

### 7.1. Disclaimers

It must be noted that the map is not meant to be used for cartographical reference. In this regard, ILGA World would like to clarify that:

<sup>31</sup> While the State-Sponsored Homophobia Report is translated into English and Spanish, we were able to translate the 2019 update of the [World Map](#) into Arabic, Chinese (simplified and traditional), Dutch, English, French, German, Italian, Japanese, Korean, Malay, Polish, Portuguese, Russian, Spanish, Swahili, Swedish, Tagalog, Thai and Vietnamese.

The shapes and borders of all countries have been simplified to improve the readability of the map. Many small islands, peninsulas, bays and other geographical features have been deleted or altered to this end. Additionally, with the exception of the Caspian Sea, all internal water bodies have been deleted.

Most country exclaves have also been deleted, and when a country is too small to be seen on the world map, it is represented by a circle that is considerably larger than its actual land area.

In Oceania, given both the small size of the individual islands that make up many nations and the wide geographic distribution that these nations have

throughout the Pacific Ocean, we have worked to find a balance in keeping the relative positions of these states and the need to fit them onto the map in a readable format.

Nothing in the shape or borders of countries should be read as an indication of ILGA World's position regarding territorial disputes, sovereignty claims, or the political status of any jurisdictions.

Any adaptations have the sole purpose of enhancing the map's usability as an advocacy tool for sexual diversity issues only.

# Main Findings

In this section we provide an overview of the main legal developments regarding sexual orientation legislation that took place since November 2019. We also summarise how each section has evolved, and whether any notable additions have been made to this edition of the report.

For this update of the Global Legislation Overview, ILGA World has utilised and collated **over 3,750 external sources**, including legislation, legal opinions, academic texts, news articles and activist testimonies from all over the world.<sup>1</sup>

This considerable expansion of our resource pool has allowed the team to identify a larger body of laws affecting our communities on the ground and to offer a considerably more contextual information for every legal category covered in the report.

This update then brings to our readers novel information reflecting the developments in 2020 and additional relevant data from previous years not previously included, identified and incorporated thanks to redoubled efforts.

## 1. Introductory Remarks: The Road to Equality is not Straight

Perusing the main findings of our report may lead one to assume that legal progress in the field of sexual orientation is a linear pathway, with constitutional protections on one end of the spectrum and criminalisation on the other.

For instance, one may be led to assume that after a jurisdiction has decriminalised consensual same-sex sexual conduct, the next step to be undertaken would be to adopt protections against hate crimes, incitement to hatred, and discrimination. Alternatively, if a jurisdiction already has protections against discrimination and hate crimes, some may presume that the end goal for activists should then be enshrining protections in the country's constitution, as the next natural step in this pathway to full legal equality.

We would like to issue a word of caution against this assumption. Even though general trends may show common patterns that apply to many countries, the complexities of local contexts show that progress can be achieved in ways that do not fit this theoretical linear trajectory.

While seemingly paradoxical, in several countries with criminalising laws, activists have been able to successfully advocate for protective laws against discrimination on the basis of sexual orientation. For example, while Barbados, Kiribati, Saint Lucia, Samoa, and Tuvalu have in place protections against employment discrimination, their legal frameworks also persist in criminalising same-sex sexual activity. This was also the case of Botswana between 2010 and 2019. These examples, among many others, show that additional contextual information is always required to understand the implications of the legal frameworks in force and, in turn, evince the importance of approaching this issue without a "one size fits all" mindset.

Additionally, as explained in the methodology section, constitutional protection, while normatively desirable, may not always provide the most comprehensive protections. A jurisdiction with constitutional protections may not in fact protect against all aspects of violence and discrimination, or may not be able to provide effective remedies for violations, let alone that it will translate into comprehensive public policies.

For instance, while Nepal has constitutional and legal provisions protecting against discrimination on the basis of sexual orientation, it does not have legal provisions protecting against incitement of hatred, hate crimes, and conversion therapy. Likewise, in Cuba, constitutional protection exists in parallel to no explicit protection of same-sex couples, or legal protection against incitement or hate crimes based on sexual orientation. In Bolivia, the same constitution that prohibits discrimination based on sexual orientation, expressly precludes the possibility of granting rights to same-sex couples. In Ecuador, constitutional protection co-exists with a constitutional ban on adoption of children by same-sex couples. In contrast, numerous countries without constitutional clauses mentioning sexual orientation have multiple legal provisions protecting members of our communities.

Argentina stands out as a peculiar case in terms of how legal progress has shaped up in recent decades and can be used as an illustrative example of the importance of looking at legal developments with a multi-layered approach that goes beyond the list of categories presented in this report. In effect, since the groundbreaking addition of sexual orientation into the Constitution of the City of Buenos Aires in 1996, progress in the field of anti-discrimination law has been extremely modest, to the point that in 2020

<sup>1</sup> Direct access to our sources is provided via hyperlinks (legal instruments) or full citations (all other sources).



there is still no federal law explicitly outlawing discrimination based on sexual orientation, even in areas of employment (hence its light shade of blue on our map). However, the limited progress made in this regard contrasts massively with the pioneering developments in the protection of same-sex couples. Civil Unions were legalised in Buenos Aires as early as 2002 and, in 2010, Argentina became the first country in Latin America to legalise same-sex marriage. Another element that our findings do not reflect is the robust set of public policies put in place by the executive branch, which have played a major role in changing hostile social attitudes. Adding further complexity to this legal analysis, even where there is an absence of anti-discrimination laws explicitly mentioning sexual orientation, the way in which international human rights treaties have been incorporated into the Argentine constitution, relevant caselaw (both domestic and Inter-American) and the existence of an open clause in the antiquated anti-discrimination law, make it extremely unlikely that local courts would openly validate acts of discrimination based on sexual orientation simply because this category is not explicitly mentioned in the relevant law.

Thus, this entrenches the importance of understanding the unique circumstances of each jurisdiction with complexities and circumstances that go beyond the information systematised in this report. The valuable information contained in our charts should serve as relevant indicators that need to be fed into a larger legal analysis.

While equalising the journeys of all countries through a linear scale of progress can be tempting for simplicity's sake, this sweeping approach risks masking the nuances and details of every country's local situation.

## 2. CRIMINALISATION

### 2.1. *Criminalisation of Consensual Same-Sex Sexual Acts*

In this latest update to the Global Legislation Overview of the State-Sponsored Homophobia Report, we have made several significant changes to this section in order to better reflect the nuances of local contexts in criminalising countries. While the report largely focuses on black-letter-law, the serious threat that criminalisation poses to the lives and livelihoods of our communities has led us to include additional contextualising information on enforcement – and in the case of countries which abide by various forms of Sharia Law, we felt it key to also offer some background information for readers not familiar with that particular legal system.

We are also pleased to note a positive trend between November 2019 and December 2020 in several countries with Sudan repealing death penalty and corporal punishment as possible penalties for same-sex conduct in July 2020. However, it is still possible for individuals found guilty of “sodomy” to be imprisoned for up to seven years, and may even be imprisoned for life if found guilty three times.

We are also gladdened by several positive developments in the area of the legality of consensual same-sex sexual acts. In Angola, the new Penal Code will finally be in force in the beginning of 2021 and does not criminalise same-sex sexual acts.<sup>2</sup>

In Gabon, the country's parliament reversed its criminalisation of “sexual relations between persons of the same sex” from 2019 in what must be one of the shortest periods of criminalisation in recent history. In Belize, in December 2019, the Court of Appeal upheld the Supreme Court ruling from 2016 that had declared unconstitutional the country's colonial-era sodomy law.

In Bhutan, a bill to decriminalise same-sex conduct is being reviewed by a parliamentary joint committee as its lower and upper houses were unable to agree on the decriminalising provisions. While an initial bill to decriminalise was adopted by the lower house in January 2019, the upper house amended this bill in February 2020, which the lower house, in turn, rejected in the same month.

Unfortunately, not all developments documented were positive. In Singapore, three constitutional challenges against Section 377A—the provision in Singapore's Penal Code criminalising acts of gross indecency between two men—were unfortunately dismissed by the High Court. In Turkmenistan, a 2019 amendment to the Penal Code reflected that the maximum punishment for sodomy had been increased to five years' imprisonment, as compared to two years in the 1997 Code.

With the inclusion of several non-independent jurisdictions in this year's report, it can also be noted that consensual same-sex conduct remains criminalised in the Cook Islands (New Zealand), despite advocacy attempts from activists to decriminalise “indecent between males” and “sodomy”.

Further amendments to data displayed in the section came from our team having access to new sources which allowed us to further explore some historical contingencies with regard to the decriminalisation process in a few countries. In Argentina, we identified that the first federal Penal Code (1886) contained a mention to sodomy in its Article 129(d), which was only definitely removed in 1903. Similarly, in Paraguay, its first Penal Code (1880), adapted from the Penal Code of the Province of Buenos Aires (1877), included the same provision under Article 256,

<sup>2</sup> Please see the methodology section for a detailed explanation on why Angola was removed from the list of criminalising countries in 2019.

and penalisation of same-sex sexual acts between adults remained in the following Penal Code (1910) under Article 325, until it was finally removed in 1990. In both countries, however, it is unclear to what extent those provisions intended to criminalise *consensual* acts.

Moreover, in the entry for Brazil, we now highlight the content of the colonial legislation that applied in the country before decriminalisation, which indicates that the penalty for the “sin of sodomy” included, among others, that the person should be “burnt to dust, so that their body and grave can never be remembered”.

Finally, we now also call attention, especially in the Methodology section, to the specific provision from “*Las Siete Partidas*” which criminalised “sodomy” with the death penalty (under Title XXI – Of those who make a sin of lust against nature, *Partida* No. 7, Volume III) and applied to several former Spanish colonies before decriminalisation.

In summary then we can conclude that there are currently **67 UN Member States** with provisions criminalising consensual same-sex conduct, with **two additional UN Member States** having *de facto* criminalisation. Additionally, there is **one non-independent jurisdiction** that criminalises same-sex sexual activity (Cook Islands).

Among those countries which criminalise, we have full legal certainty that the death penalty is the legally prescribed punishment for consensual same-sex sexual acts in **six UN Member States**, namely: Brunei, Iran, Mauritania, Nigeria (12 Northern states only), Saudi Arabia and Yemen.

There are also **five additional UN Member States** where certain sources indicate that the death penalty may be imposed for consensual same-sex conduct, but where there is less legal certainty on the matter. These countries are: Afghanistan, Pakistan, Qatar, Somalia (including Somaliland) and the United Arab Emirates.

### 3. RESTRICTION

#### 3.1. *Legal barriers to freedom of expression on sexual and gender diversity*

In this new edition of our report, this section was significantly updated. An essential methodological innovation is the separation of countries into two tiers depending on how relevant laws target expressions related to sexual and gender diversity.<sup>3</sup> The final tally of States has also increased, based on the assessment of a larger body of laws and regulations identified in Latin America, Africa, Asia and Europe.

The African section was expanded by adding five new entries for Burundi, Cote d’Ivoire, the Democratic

Republic of the Congo, Djibouti, and Mauritania. We also substantially reclassified and expanded other existing entries with penal code provisions, relevant legislation, and contextual information on incidents of restriction or censorship.

In Latin American and the Caribbean, the entry for Brazil in the complementary charts lists a proliferation of local legislation prohibiting the dissemination of so-called “gender ideology” which are currently under the scrutiny of domestic courts.

The Asian section was substantially revised, with significant expansions to many of the country entries. China, Indonesia, United Arab Emirates, Iran, Malaysia, Pakistan, Qatar, Saudi Arabia, and other entries now reflect additional legal instruments that curtail freedom of expression and documented cases of enforcement of those provisions. For instance, the entry for Singapore was significantly expanded with a detailed breakdown of numerous rules and regulations in force. North Korea was added to the list of countries with legal restrictions and additional developments were tracked in Kazakhstan and Turkmenistan.

The section on Europe was supplemented by legislative initiatives and instances of the enforcement of repressive legislation, including incidents related to “propaganda” laws in Lithuania and Russia. Turkey was also added to the list, based on the application of existing legislation to block websites and the prosecution of activists and advocates. Additional information was included in entries for Hungary, Moldova, Poland, Ukraine, and Romania.

Thus, as of December 2020, ILGA World was able to track **at least 42 UN Member States** where there are legal barriers for freedom of expression on issues related to sexual and gender diversity.

#### 3.2. *Legal barriers to the registration or operation of CSOs working on sexual and gender diversity issues*

Since the publication of our last update, there was at least one new incident of registration denial for an organisation working on sexual and gender diversity issues. This was in Eswatini, which operates on a hybrid system of common law and customary law. In addition, previously existing legislation regarding freedom of association in Tanzania was rendered even harsher and, in Senegal, the frequency and gravity of prosecution incidents have seen a considerable increase. This is especially concerning given the hostile context against activists and organisations on the ground that has been taking shape over the past few years.

In October 2020, the Congress of Nicaragua approved a law that, although not SOGI-specific, has the potential to severely restrict the operation of NGOs

<sup>3</sup> Please, see the Methodology Section to understand how we sorted the entries into each tier.

working for LGBTI rights within the national territory, necessitating cumbersome requirements and allowing for governmental supervision of any CSOs that receive funding from foreign sources. Similar laws are currently being considered in Bulgaria and Poland.

Thankfully, however, not all developments were notable for their negative impact. In February the Tunisian Court of Cassation reportedly rejected an attempt by the government to shut down a local organisation.

This section has also been amended in that new information relevant to Mongolia, Venezuela, Hungary, Azerbaijan, and Russia has been included or expanded upon. Additionally, careful assessment of legal frameworks and contextual information in several countries brought a number of new entries to this section, including Chad, Comoros, Djibouti, Eswatini, Gambia, Iraq, Sierra Leone, South Sudan, Turkmenistan, and Uzbekistan. This is not necessarily a sign of regress in the area of registration and operation of civil society organisations, but rather is reflective of ILGA World's ongoing efforts to portray data as accurately as possible.

Therefore, as of December 2020, there are **at least 51 UN Member States** with known legal barriers to the registration or operation of CSOs working on Sexual and Gender Diversity Issues.

## 4. PROTECTION

### 4.1. Constitutional Protection

There were no major changes to constitutional protections in terms of discrimination against individuals on the basis of their sexual orientation.

The notable slew of amendments made to the Russian Constitution in 2020 which have put further strain on our communities in that country is not included in this section as Russia had not adopted constitutional protections to begin with. Rather, the extensive and regressive amendments reflect the enshrining of existing laws or political ideologies which were already present.

Therefore, as of December 2020, there are **11 UN Member States** and **1 non-UN Member State** with constitutional provisions that confer protection against discrimination based on sexual orientation.

### 4.2. Broad Protection

Several updates were incorporated into this section, with a small but notable trend toward increased protections in several countries.

As mentioned above, the date of entry into force of the new Penal Code of Angola was finally confirmed, and

with it come significant provisions for the penalising of discrimination based on sexual orientation.

In Brazil, the Federal Supreme Court ruled in 2019 to recognise acts of homophobia as included in the definition of racism. This forms a stop-gap measure by the Court to protect our communities in Brazil until such time as explicit legislation aimed at combatting discrimination on the basis of sexual orientation is adopted.

In North Macedonia, the law containing provisions that forbid discrimination on the grounds of sexual orientation was struck down by the Supreme Court in May 2020, but reinstated by the Parliament in October of the same year. And in Italy a bill that, if approved, would offer broad protections against discrimination based on sexual orientation was passed in November at the Chamber of Deputies and is to be discussed by the Senate in due course.

We are also pleased to note the newest entry into this section from Oceania, with the adoption of new legislation by the Marshall Islands.

Finally, throughout this edition of our report we have for the first time covered protective legislation in non-independent jurisdictions, identifying provisions in almost all regions of the globe, including: France (Mayotte, Reunion, French Guiana, Guadeloupe, Martinique, Saint Barthelemy, Saint Martin, Saint Pierre and Miquelon, French Polynesia, New Caledonia and Wallis and Futuna); Netherlands (Aruba, Bonaire, Curacao, Saba, Sint Eustatius and Sint Maarten); United Kingdom (Bermuda, British Virgin Islands, Montserrat, Turks and Caicos Islands, Saint Helena, Ascension and Tristan da Cunha, Falkland Islands/Malvinas, Gibraltar, Guernsey, Isle of Man, Jersey, and the Pitcairn Islands).

Therefore, as of December 2020, there are **57 UN Member States**, **1 non-UN Member State**, and **28 non-independent jurisdictions** with provisions that confer broad protection against discrimination based on sexual orientation.

### 4.3. Protection in Employment

We observed several positive developments in the area of employment protections, with several jurisdictions passing laws that explicitly prohibit employment discrimination on the basis of sexual orientation.

In Angola, the Penal Code that will come into force at the beginning of 2021 will criminalise acts of discrimination based on sexual orientation. The Labour Code passed in 2019 in Sao Tome and Principe also confers the right to equality in employment to persons regardless of sexual orientation. Barbados passed the Employment (Prevention of Discrimination) Act this year, which expressly lists sexual orientation as a characteristic protected from discrimination. In March 2019, North Macedonia amended its Law on Labour Relations to plainly

prohibit discrimination based on sexual orientation in employment.

We also documented the limited expansion of employment protections in two jurisdictions in Asia. While these expansions are worth celebrating, they still fall short of a comprehensive scheme of employment protection. In Hong Kong (SAR China), the Court of Final Appeal held that the government cannot withhold spousal benefits to same-sex couples legally married under foreign laws.

In the Philippines, the cities of Dumaguete, Ilagan, Manila, Marikina, Valenzuela, and Zamboanga passed local ordinances that prohibited acts of discrimination against individuals on the basis of their sexual orientation, including employment. This had the effect of expanding the scope of protection at the subnational level, as local activists continue to push for national protections.

Further, we also note how judicial decisions at the national level can extend existing anti-discrimination provisions to cover persons of diverse sexual orientations and gender identities. In June 2020, the Supreme Court of the United States ruled that employee protections on the basis of “sex” in Title VII of the Civil Rights Act also cover persons with diverse sexual orientations and gender identities.

And finally, with the inclusion of several non-independent jurisdictions in this year’s report, it can also be noted that employment protections have historically been in place in the following locales: France (Mayotte, Réunion, French Guiana, Guadeloupe, Martinique, Saint Barthelemy, Saint Martin, Saint Pierre and Miquelon, French Polynesia, New Caledonia, and Wallis and Futuna); United Kingdom (British Indian Ocean Territory, Saint Helena, Ascension and Tristan de Cunha, Anguilla, Bermuda, British Virgin Islands, Falkland Islands/Malvinas, Montserrat, South Georgia and South Sandwich Islands, Turks and Caicos Islands, Gibraltar, Isle of Man, and Jersey); Netherlands (Aruba, Bonaire, Curacao, Saba, Sint Eustatius, and Sint Maarten); United States (Puerto Rico and Guam); Denmark (Faroe Islands); and New Zealand (Cook Islands).

Therefore, as of December 2020, there are **81 UN Member States, 2 non-UN Member States, and 33 non-independent jurisdictions** with provisions protecting against employment discrimination based on sexual orientation.

#### 4.4. Criminal Liability (Hate Crime Laws)

This section saw several amendments and a notable trend of progress on which we are pleased to report.

One such amendment was the inclusion of Chad where, in 2017, aggravated punishment for rape committed because of the victim’s sexual orientation was incorporated. We also added the protections provided by the newest Penal Code of Angola, as well as a positive legislative initiative in South Africa.

In Latin America and the Caribbean, we elaborated entries on Argentina, Brazil, Chile, Colombia, Honduras, and some states in Mexico, Bosnia and Herzegovina, France, Kosovo, and United Kingdom.

Finally, it is vital to note the inclusion of non-independent jurisdictions in this edition of the report, many of which have had protections in some form of another in years prior to this change in methodology. Such territories include: France (Mayotte, Reunion, French Guiana, Guadeloupe, Martinique, Saint Barthelemy, Saint Martin, Saint Pierre and Miquelon, French Polynesia, New Caledonia, and Wallis and Futuna); United Kingdom (Bermuda, Falkland Islands/Malvinas, Gibraltar, Guernsey, Isle of Man, and the Pitcairn Islands); United States (Puerto Rico, and the US Virgin Islands).

Therefore, there are currently **48 United Nations Member States, 1 non-UN Member State, and 19 non-independent jurisdictions** with laws providing grounds for enhancing criminal liability for offences committed on the basis of sexual orientation.

#### 4.5. Prohibition of Incitement to Hatred, Violence or Discrimination

Several changes in our methodology and the granularity with which our research team assesses each country have meant a few notable changes to the section as compared to the last update of the State-Sponsored Homophobia Report.

In this new edition, Angola was updated with the information on the coming into force of the new Penal Code in 2021. Brazil’s entry was likewise updated by including a recent Supreme Court decision, as well as legislation of several Brazilian subnational jurisdictions.

We have also made note in this section of countries such as Singapore and Israel, which offer a certain level of protection, and Norway, which recently adopted legislative amendments to ban hate speech. Switzerland now features the recent inclusion of sexual orientation as a protected category after a local public referendum voted in favour of increased protections, and the entries for France and Monaco were expanded to include more provisions of criminal law. We also created new complementary entries for Republika Srpska in Bosnia and Herzegovina, and outlined notable recent cases from Russia.

Information was also expanded for Fiji and New Zealand, but most notable in Oceania was the inclusion of Australia in the main chart, as more than half of the country’s population now lives in a subnational jurisdiction with some form of legal protection against incitement to hatred.

Finally, we note the inclusion of non-independent jurisdictions in this edition of the report, many of which have had protections in some form of another in years prior to this edition: Denmark (Greenland); Netherlands (Aruba, Bonaire, Curacao, Saba, Sint Eustatius, and Sint Maarten); France (Mayotte,

Reunion, French Guiana, Guadeloupe, Martinique, Saint Barthelemy, Saint Martin, Saint Pierre and Miquelon, French Polynesia, New Caledonia, and Wallis and Futuna); United Kingdom (Bermuda, Falkland Islands/Malvinas).

Therefore, as of December 2020, there are **45 UN Member States, 1 non-UN Member State, and 20 non-independent jurisdictions** with provisions prohibiting incitement to hatred, violence or discrimination based on sexual orientation.

#### 4.6. Bans on “Conversion Therapy”

We are delighted to inform our readers that 2020 saw a number of positive developments in regard to legal bans on so-called “conversion therapies”.

These harmful practices are now federally banned in Germany. In Brazil, litigation attempting to strike down the ban in force since 1999 has finally come to an end, with positive results. Additional bans are currently under consideration in Belgium, Canada, Chile, France, Israel, the Netherlands, and the United States of America, as well as the Isle of Man (United Kingdom).

At the local level, multiple jurisdictions over the past year legislated in favour of outlawing so-called “conversion therapy” in Australia (Australian Capital Territory and Queensland), Canada (the province of Prince Edward Island, the territory of Yukon, and the city of Edmonton), Mexico (Mexico City and the State of Mexico), and the United States of America (the states of Georgia, Utah, Virginia, as well as Puerto Rico), while numerous bills in other jurisdictions within the same countries are currently pending.

Furthermore, Albania’s Order of Psychologists issued a prohibition that is akin to a ban on “conversion therapy” among registered health professionals in the country.

Unfortunately, a number of negative developments have also occurred. In November 2020, a court of appeals reversed two county-level bans on so-called “conversion therapy” in Florida (United States) under the pretence that they violated free speech rights.

In September 2020, the Government of Ecuador vetoed the Organic Health Code that had been approved by the National Assembly the previous month. The Code would have strengthened the existing protections for LGBTI childhood and youth in the domain of health, notably in regard to the prohibition of so-called “conversion therapy”.

We can thus report that as of December 2020, there are **4 UN Member States and one non-independent jurisdiction** (Puerto Rico) with bans on so-called “conversion therapy”. **Five additional UN Member States** have indirect bans on these pseudo-scientific practices, and in **five others** there are subnational bans in force.

## 5. RECOGNITION

### 5.1. Same-Sex Marriage

Between the publication of this and the previous update to the Global Legislation Overview, we are pleased to say that we have noted progress toward marriage equality in several regions—with the notable exception of Russia, which in 2020 made sweeping amendments to its Constitution to formally ban same-sex marriage.

Same-sex marriage became legal in Northern Ireland at the start of 2020, the last constituent country of the United Kingdom to take this step, and in April 2020 the island of Sark, an autonomous constituent of Guernsey (itself an autonomous territory of the United Kingdom) became the last place in the British Isles to legalise same-sex marriage with the passage of new legislation.

Marriage equality also came to Costa Rica, with the first same-sex marriage ceremonies taking place live on television (in lieu of being open to the public, due to the COVID-19 pandemic), despite several failed attempts by conservative lawmakers to block or delay the expansion of the right to marriage to same-sex couples.

Some countries have been included or had their entries expanded to reflect new information, even where they do not meet the requirements for entry into the main chart at the time of publication. In June 2020 the Swiss Lower House passed a bill allowing same-sex couples to marry and access reproductive medical assistance, though the Upper House of the legislature has yet to vote on the matter. And in October a petition in Estonia calling on government to legalise same-sex marriage reached the requisite number of signatures to trigger a Parliamentary debate on the matter—though a right-wing coalition of lawmakers has signified their intent to ban same-sex marriage in 2021. In the same month, Nicolás Maduro reportedly stated that he would request the National Assembly of Venezuela to legalise same-sex marriage.

We are also pleased to note the expansion of rights to our communities even in countries which already enjoy marriage equality on one form or another. While South Africa has permitted same-sex marriage since 2006, the passing of the Civil Union Amendment Act in July 2020—and signing into law by the President in October—means that marriage officers will no longer be able to object to conducting same-sex marriages, after a 24-month period of re-training has concluded. Marriage equality legislation also saw expansion in Mexico, where two states—Puebla and Tlaxcala—legalised same-sex marriages.

Sadly, not all news is good news—or rather not all good news is accurate. In 2020 it was erroneously reported by international media that Tunisia had recognised a same-sex marriage. Local activists urged the public to take care in reporting such stories, given the threat of severe backlash against local LGBT communities.

And finally, with the inclusion of several non-independent jurisdictions in this year's report, it can be noted that same-sex marriage had already been legalised in the following locales: Denmark (Greenland and Faroe Islands); France (Mayotte, Reunion, French Guiana, Guadeloupe, Martinique, Saint Barthelemy, Saint Martin, Saint Pierre and Miquelon, French Polynesia, New Caledonia and Wallis and Futuna); Netherlands (Bonaire, Saba and Sint Eustatius); United Kingdom (British Indian Ocean Territory, Saint Helena, Ascension and Tristan da Cunha, Falkland Islands/Malvinas, South Georgia and South Sandwich Islands, Gibraltar, Guernsey, Isle of Man, Jersey, and the Pitcairn Islands); United States (Puerto Rico, United States Virgin Islands, Guam, and the Northern Mariana Islands).

Therefore, a total of **28 UN Member States** allow same-sex marriage as of December 2020, with **one additional non-UN Member State** and **30 non-independent territories** also having marriage equality.

### 5.2. Partnership Recognition for Same-Sex Couples

Over the past year ILGA World has noted advancements in the legal recognition of same-sex couples in virtually every region of the world. While this is often seen as "less than" marriage, the historical value of such recognition as a potential stepping stone toward full marriage equality cannot be forgotten. Nor can the importance of legal recognition for partners who do not wish to enter into the institution of marriage, regardless of their genders or sexual orientations.

In December 2019, not long after research updates to the edition published last year had ceased, Monaco's National Council passed a law to permit same-sex civil unions, which came into effect as of June 2020. Also in Europe, Montenegro became the first West Balkan nation to recognise same-sex unions. The Presidential proclamation to this effect will come into force in July 2021.

In Oceania the government of Barbados revealed that it was willing to recognise some form of civil-union for same-sex couples, but not marriage, and would put the matter to a public referendum, and the British territory of the Cayman Islands adopt its own Civil Partnership Law.

Expansion of recognition also came from Taiwan, where the National Immigration Agency announced that same-sex couples where both parties are foreign nationals would be able to register their partnerships on the island—though civil unions stopped being offered to local couples when same-sex marriage became legal in 2019. Further, the Second Constitutional Chamber of the Justice Tribunal of La Paz, Bolivia, ruled that a same-sex couple must have their union registered, though the Civil Registry has not yet complied.

At the subnational level we saw significant developments in Japan, with Osaka becoming the

second Prefecture in the country to offer Prefecture-wide recognition to same-sex couples. It followed Ibaraki which offered such recognition in 2019, and several smaller cities and wards across the country.

And lastly, in October 2020 it was revealed that Pope Francis had made statements in support of same-sex civil unions in the course of filming a documentary about his life. While certainly not a formal declaration, the potential impact this will have within the Vatican and in majority-Catholic countries should be noted.

Beyond the many developments noted above from the past year, we must note the inclusion of several non-independent jurisdictions in this year's report, many of which already recognised same-sex partnerships to varying degrees: France (Mayotte, Reunion, French Guiana, Guadeloupe, Martinique, Saint Barthelemy, Saint Martin, New Caledonia and Wallis and Futuna); Netherlands (Aruba, Bonaire, Saba and Sint Eustatius); United Kingdom (Falkland Islands/Malvinas, Gibraltar, Guernsey, Isle of Man, Jersey, and the Pitcairn Islands).

Therefore, a total of **34 UN Member States** have legal recognition of same-sex partnerships, with **one additional non-UN Member State** and **20 non-independent territories** also recognising such unions to varying degrees.

### 5.3. Adoption by Same-Sex Couples

The sections of the report which cover adoption rights (both Joint Adoption by Same-sex Couples and Second Parent Adoption) were considerably expanded by the inclusion of non-independent jurisdictions, where such rights are recognised in almost all regions of the world.

When the right to same-sex marriage became applicable in Costa Rica on 26 May 2020, following the 2018 Supreme Court ruling, this also allowed for the recognition of adoption rights for same-sex couples, although some legal gaps still need to be filled. In February 2020, the Constitutional Court of Croatia ruled that the possibility of fostering children should be equally accessible to everyone, including same-sex couple, and a bill on same-sex civil partnership, which would recognise the right of same-sex couples to adopt, is to be discussed by the Parliament in Thailand.

However, not all developments are positive, as in Hungary, where the government presented in November 2020 a draft of a constitutional amendment that, if approved, would ban adoption by same-sex couples.

Further, in the United States of America, the Supreme Court case *Sharonell Fulton v. City of Philadelphia*, in which the petitioners claim that discriminating same-sex couples in fostering services should fall under the protection of the Free Exercise Clause of the First Amendment, received support of the Trump Presidential Administration's Department of Justice in June and oral arguments were heard in November. The ruling on this case might be decided soon, and the fates of countless would-be parents hang precariously on that decision.

And finally, by the inclusion of non-independent jurisdictions where such rights are recognised, the reports entries on adoption have been expanded in almost all regions of the world. These include territories affiliated with: France (Mayotte, Reunion, French Guiana, Guadeloupe, Martinique, Saint Barthelemy, Saint Martin, Saint Pierre and Miquelon, French Polynesia, New Caledonia and Wallis and Futuna); United Kingdom (Saint Helena, Ascension and Tristan da Cunha, Bermuda, the Falkland Islands/Malvinas, Gibraltar, Guernsey, Isle of Man, Jersey and the Pitcairn Islands); United States (Puerto

Rico, US Virgin Islands, Guam and the Northern Mariana Islands); and Denmark (Greenland and the Faroe Islands).

Therefore, as of December 2020, there are 28 UN Member States and 25 non-independent jurisdictions which recognise joint adoption by same-sex couples, and 31 UN Member States, 1 non-UN Member State, and 25 non-independent jurisdictions which recognise second parent adoption.

**SPECIAL DOSSIER**

# Death Penalty as Punishment for Consensual Same-Sex Sexual Acts

The possibility that the death penalty may be legally imposed on consenting adults who decide to engage in consensual same-sex sexual acts has captured the attention of many and prompted the condemnation of human rights advocates and several international human rights bodies. Execution is indeed the harshest penalty that can be imposed on consensual same-sex sexual acts when local laws frame this conduct as criminal, and it is still legally possible in several UN Member States.

This dossier aims at providing readers with tools to understand how legal frameworks in these UN Member States operate in relation to the death penalty and consensual same-sex sexual acts.

We are aware that in many of these countries engaging in activism to fight for equality for people of diverse sexual orientations and gender identities can be extremely risky. We also know that a complex set of laws—beyond those criminalising consensual sexual acts—operate to restrict the possibilities of disseminating information or even discussing these issues and formally registering organisations to advocate for our cause. Even if such forms of engagement cannot always take place at the local level, international human rights law allows for certain forms of advocacy that we hope can be informed by this dossier and the many legal sources we were able to compile herein.

## Roadmap

This dossier consists of four parts.

1. First, an introduction will present readers with our main findings on the subject matter and will explain the criteria under which we have classified all relevant UN Member States.
2. Secondly, the internationally adopted standards for the death penalty in relation to consensual same-sex sexual acts will be developed.
3. Thirdly, given that all UN Member States that still impose the death penalty (or could potentially do so) have legal frameworks partly or totally based on Sharia law, a specific section will provide our readers with an overview on the basics of Islamic law and how it regulates consensual sexual acts.
4. Lastly, each relevant UN Member State will be examined, including contextual information and a brief overview of the legal systems in each jurisdiction is also provided in each entry.

## PART 1

### Main findings

Our findings indicate that, as of November 2020, there is full legal certainty that the death penalty is the legally prescribed punishment for consensual same-sex sexual acts in six (6) UN Member States, namely Brunei, Iran, Mauritania, Nigeria (12 Northern states only), Saudi Arabia and Yemen. There are also five (5) additional UN Member States where certain sources indicate that the death penalty may be imposed for consensual same-sex conduct, but where there is less legal certainty on the matter. These countries are Afghanistan, Pakistan, Qatar, Somalia (including Somaliland) and the United Arab Emirates.

In this report, “full legal certainty” is understood as the absence of disputes about whether the death penalty can be legally imposed for consensual same-sex conduct. This legal certainty may be derived from the existence of written, codified laws unequivocally prescribing the death penalty for same-sex conduct, as it is the case in Brunei, Iran, Mauritania, Nigeria, and Yemen. This list also includes Saudi Arabia, where fundamental laws mandate courts to apply Sharia law “as derived from the Qur’an and the Sunna”. In this particular case, even if the death penalty is not codified in black letter law (in a formal piece of legislation), a broad consensus—supported by judicial practice and ancillary sources—has made it legally certain that Saudi Arabia’s legal system considers the death penalty a possible and appropriate punishment for same-sex conduct.

Conversely, the lack of clear provisions mandating the death penalty for consensual same-sex sexual acts, the existence of disputes between scholars and experts with regard to the interpretation of ambiguous provisions, and the need for judicial interpretation of certain “generic” crimes to encompass consensual same-sex sexual acts has led ILGA World to classify the remaining five UN Member States as jurisdictions where there is no full legal certainty. Additionally, the lack of evidence of enforcement could—to a certain extent—be considered as an argument *potentially* supporting the idea that the death penalty is not considered to be the appropriate legal punishment for these acts by local authorities. However, this argument can be easily rebutted by a mere reluctance to enforce such harsh penalty, even when the possibility exists.



Nonetheless, there is still avenue for advocacy even regarding countries where it is not legally certain that the death penalty is imposed. For example, it may be worthwhile to clarify the ambit of *zina* (adultery) laws, as the threat of the death penalty—even if only a theoretical possibility—can still be an affront to human dignity and equality. To facilitate these advocacy efforts and stimulate further constructive discussions, we have documented the possible legal basis for the imposition of the death penalty and noted the conceptual dilemmas and debates they pose.

Lastly, it bears mentioning that in all five states where ILGA World was unable to confirm full legal certainty with regard to the death penalty, there is full certainty that the alternative in default of the death penalty is always a provision of law criminalising consensual same-sex sexual acts with corporal punishment, imprisonment and/or a fine. Therefore, this uncertainty does not hinge on “criminalisation vs non-criminalisation”, but rather on the severity of the penalties imposed.

## PART 2

### UN standards on the death penalty

Given the basic and essential nature of the right to life, international law regulates the principles, criteria, circumstances and conditions in which a person may be legitimately, and not arbitrarily, deprived of this right and, hence, strictly regulates the imposition of the death penalty.<sup>1</sup>

#### *The “most serious crimes” standard*

International human rights law provides that States which retain the death penalty can only impose it for “the most serious crimes” a principle that has been enshrined in Article 6(2) of the International Covenant on Civil and Political Rights (ICCPR). According to the

UN Special Rapporteur on extrajudicial, summary or arbitrary executions, this element is of “major importance in efforts to determine when the death penalty might acceptably be imposed”<sup>2</sup> and one that cannot be determined by “the subjective approach opted for within a given State’s criminal code and sentencing scheme” but rather through the interpretation and application of the relevant international law.<sup>3</sup>

In the early 1980s the UN Economic and Social Council identified this requirement with “intentional crimes, with lethal or other extremely grave consequences”.<sup>4</sup> This principle was endorsed by the General Assembly of the United Nations in 1984.<sup>5</sup> Furthermore, this restrictive standard for what may constitute the “most serious crimes” has been echoed by the Human Rights Committee—which stated that this expression only includes crimes involving “intentional killing”<sup>6</sup>—and by the Special Rapporteur on extrajudicial, summary, or arbitrary executions.<sup>7</sup>

Consensual same-sex sexual acts ostensibly fall short of such stringent standard. In effect, the Human Rights Committee has categorically stated that “under no circumstances can the death penalty ever be applied as a sanction against conduct whose very criminalization violates the Covenant, including [...] homosexuality”<sup>8</sup> and the Special Rapporteur on extrajudicial, summary, or arbitrary executions has indicated “sodomy” cannot be considered to be one of the most serious crimes for which the death penalty may be prescribed.<sup>9</sup>

For its part, the UN Special Rapporteur on the right to health indicated “that the imposition of the death penalty for consensual same-sex conduct is not only unconscionable, but further represents arbitrary deprivation of life, constituting an infringement of the right to life recognized in Article 6 of the International Covenant on Civil and Political Rights”.<sup>10</sup> The imposition of the death penalty for consensual same-sex sexual acts has also been condemned by the UN Secretary General,<sup>11</sup> the UN High Commissioner for Human Rights,<sup>12</sup> and the UN Independent expert on violence and discrimination based on sexual orientation and gender identity.<sup>13</sup>

<sup>1</sup> ICJ, *Enforced Disappearances and Extrajudicial Executions: Investigation and Sanction, A Practitioners Guide* (Geneva, 2015), 60.

<sup>2</sup> *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, A/HRC/4/20* 29 January 2007, para. 39.

<sup>3</sup> *Id.*, para. 44.

<sup>4</sup> ECOSOC, *Resolution 1984/50: Safeguards guaranteeing protection of the rights of those facing the death penalty*, 25 May 1984, para. 1.

<sup>5</sup> UN General Assembly, *Resolution 39/118, A/RES/39/118*, 14 December 1984, para. 2.

<sup>6</sup> Human Rights Committee, *General comment No. 36 (2018)*, CCPR/C/GC/36, 30 October 2018.

<sup>7</sup> *Extrajudicial, summary or arbitrary executions: Note by the Secretary-General, A/74/318*, 20 August 2019, para. 4.

<sup>8</sup> Human Rights Committee, *General comment No. 36 (2018)*, CCPR/C/GC/36, 30 October 2018, para. 36.

<sup>9</sup> *Extrajudicial, summary or arbitrary executions, Report of the Special Rapporteur, Mr. Philip Alston. Addendum: Mission to Nigeria, E/CN.4/2006/53/Add.4*, 7 January 2006, para. 35.

<sup>10</sup> *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, A/HRC/14/20*, 27 April 2010, para. 20.

<sup>11</sup> *Discrimination and violence against individuals based on their sexual orientation and gender identity, A/HRC/29/23*, 4 May 2015, para. 11.

<sup>12</sup> *Report of the Secretary-General: Question of the death penalty, A/HRC/27/23*, 30 June 2014, paras. 28, 32-34.

<sup>13</sup> *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, para. 51.

### *Death penalty as torture and cruel, inhuman, or degrading treatment*

The imposition of the death penalty may also contravene the prohibition on torture and cruel, inhuman, or degrading treatment under certain circumstances, violating Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Article 7 of the ICCPR, and other related treaties. Certain methods of execution—such as stoning—clearly violate this prohibition.<sup>14</sup> There is also growing consensus that death by hanging can run contrary to this prohibition if it results in inordinate pain and suffering.<sup>15</sup> These are some of the most common methods of execution used by states that retain the death penalty for consensual same-sex conduct.<sup>16</sup>

In 2006, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions referred to the laws in force in Nigeria on sodomy and adultery and stressed that “even if the sentence is never carried out, the mere possibility that it can threaten the accused for years until overturned or commuted constitutes a form of cruel, inhuman or degrading treatment or punishment”.<sup>17</sup>

The “death row phenomenon” can also violate the prohibition against torture, “depending on the length of isolation and severity of conditions”.<sup>18</sup> This phenomenon refers to “a combination of circumstances that produce severe mental trauma and physical suffering in prisoners serving death row sentences, including prolonged periods waiting for uncertain outcomes, solitary confinement, poor prison conditions, and lack of educational and recreational activities”.<sup>19</sup> This has been accepted by the case law of the Human Rights Committee, which found violations of Article 7 of the ICCPR if the mental condition of the prisoner awaiting the death sentence had significantly and seriously deteriorated, resulting in “documented long-term psychological damage”.<sup>20</sup>

These obligations under human rights law must be respected and cannot be circumvented through States asserting notions of national sovereignty, as some UN Member States have tried to argue.<sup>21</sup> The UN Secretary-General has provided unequivocal guidance on the false binary between sovereignty and human rights, noting that the “promotion of human rights strengthened States and societies, thereby reinforcing sovereignty”.<sup>22</sup>

### *“Assurances” of non-enforcement*

Lastly, it has also been noted that assurances that the penalties for an offence which continues to be recognized by the law will never be applied in practice are neither justified nor convincing. The very existence of such laws invites abuse by individuals.<sup>23</sup>

In effect, such assurances do not constitute any guarantee that enforceable laws will not be effectively implemented by authorities that have the legal power to do so. They can be lifted or retracted at will and, above all, do not cancel out the message sent by a law that criminalises certain forms of sexuality and behaviours which, in turn, legitimises and invigorates forces, groups or individuals who may want to take those “unenforced” laws into their own hands.

### *UN Resolutions on the death penalty and consensual same-sex sexual acts*

In 2017, the UN Human Rights Council issued a resolution condemning the imposition of the death penalty as a sanction for consensual same-sex relations (among others) and urged States that have not yet abolished the death penalty to ensure that it is not imposed as a sanction for specific forms of conduct such as consensual same-sex relations.<sup>24</sup>

Among the countries included in this section, Saudi Arabia, Qatar and the United Arab Emirates voted against this resolution, while Nigeria abstained.<sup>25</sup> The

<sup>14</sup> *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/67/279*, 9 August 2012, paras. 31, 77; *Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on freedom of religion or belief; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender, OL BRN 1/2019*, 1 April 2019 (noting that stoning for consensual same sex relationships are “cruel, inhuman and degrading punishments”).

<sup>15</sup> *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/67/279*, 9 August 2012, paras. 33 – 36, 41.

<sup>16</sup> For instance, death by stoning is prescribed in Brunei and the Northern States of Nigeria, while death by hanging is employed in Iran.

<sup>17</sup> *Extrajudicial, summary or arbitrary executions, Report of the Special Rapporteur, Mr. Philip Alston. Addendum: Mission to Nigeria, E/CN.4/2006/53/Add.4*, 7 January 2006, para. 35.

<sup>18</sup> *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment, A/67/279*, 9 August 2012, paras. 42–51, 78.

<sup>19</sup> Juan E. Méndez, “The Death Penalty and the Absolute Prohibition of Torture and Cruel, Inhuman, and Degrading Treatment or Punishment”, *Human Rights Brief* 20, No. 1 (2012), 2; *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/67/279*, 9 August 2012, paras. 78.

<sup>20</sup> Human Rights Committee, *Albert Wilson v. Philippines*, CCPR/C/79/D/868/1999, 11 November 2003, para. 7.4. See also, *Nathaniel Williams v. Jamaica*, CCPR/C/61/D/609/1994, 4 November 1997, paras. 6.4–6.5; *Francis v. Jamaica*, CCPR/C/54/D/606/1994, para. 9.2.

<sup>21</sup> See, for instance, entry for Brunei in this section of the report.

<sup>22</sup> “United Nations Secretary-General António Guterres launches his call to action for Human Rights” OHCHR (website), 30 June 2020.

<sup>23</sup> *Extrajudicial, summary or arbitrary executions, Report of the Special Rapporteur, Mr. Philip Alston. Addendum: Mission to Nigeria, E/CN.4/2006/53/Add.4*, 7 January 2006, para. 35.

<sup>24</sup> Human Rights Council, *Resolution 36/17: The question of the death penalty, A/HRC/36/L.6*, 22 September 2017, para. 6.

<sup>25</sup> Daniele Paletta, “UN Resolution Condemns Death Penalty for Same-Sex Relations”, *ILGA World*, 2 October 2017.

United States of America was heavily criticised for having joined the list of States voting against this resolution, which led to a clarification by the Department of State indicating that “the United States unequivocally condemns the application of the death penalty for conduct such as homosexuality”.<sup>26</sup>

The resolution builds upon a report by UN Secretary-General António Guterres on the question of the death penalty, where he examined its disproportionate impact on different groups and its discriminatory use based on gender or sexual orientation.<sup>27</sup>

Previously, the UN Human Rights Commission—the predecessor to the UN Human Rights Council—also passed a series of resolutions calling on States that maintained the death penalty to not impose it for sexual relations between consenting adults.<sup>28</sup>

For its part, the UN General Assembly has repeatedly adopted resolutions calling for an international moratorium on the use of the death penalty with a view to abolition, with the support of the overwhelming majority of States.<sup>29</sup> In its 2018 resolution, the UN General Assembly called for States to “ensure that the death penalty is not applied on the basis of discriminatory laws or as a result of discriminatory or arbitrary application of the law”.<sup>30</sup> The resolution further noted that a “moratorium on the use of the death penalty contributes to respect for human dignity and to the enhancement and progressive development of human rights”.<sup>31</sup>

For all the aforementioned reasons, and based on the wide range of bodies and authorities that have set relevant international standards, the possibility of imposing the death penalty—let alone actually carrying out an execution—for consensual same-sex sexual acts can never be understood as a legitimate form of punishment.

## PART 3

### Death penalty under Sharia law

Countries that still impose the death penalty for consensual same-sex sexual activity do so based on provisions directly taken from or indirectly inspired by Sharia law. This section will provide readers with a basic introduction to Sharia law, a very brief overview of its sources and its approach to certain crimes and the way in which it deals with issues of sexuality.

It should be borne in mind that Sharia law is applied in numerous countries across the world and, therefore, it will be impossible to capture all specificities, nuances, schools of thought and even all spelling variations found in every country. Additionally, translations of Arabic terms should be regarded as rough equivalents included here for the purpose of clarity. Specialised documents made available by different governments and private actors may offer different translations.<sup>32</sup>

#### *Sharia law and its sources*

*Sharia*,<sup>33</sup> or Islamic law, is an ensemble of ethical and moral codes stemming from Islamic tradition. It has two primary sources:<sup>34</sup>

1. The Quran, which is the central text of Islam;
2. The Sunna, commonly understood as the Islamic Prophet Muhammad’s customs and practices, whose recorded version is known as *Hadith* (plural: *Ahadith*). Each of these records can be classified into multiple categories depending on its renown, the issues it addresses, and its purported authenticity. *Sahih*

<sup>26</sup> Joel Gehrke, “State Department defends US vote against death penalty ban at the UN”, *Washington Examiner*, 3 October 2017.

<sup>27</sup> Human Rights Council, *Capital punishment and the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty*, A/HRC/36/26, 22 August 2017, paras. 47-48.

<sup>28</sup> Commission on Human Rights, *Resolution 2005/59*, E/CN.4/RES/2005/59, 20 April 2005; *Resolution 2004/67*, E/CN.4/RES/2004/67, 21 April 2004; *Resolution 2003/67*, E/CN.4/RES/2003/67, 25 April 2003; *Resolution 2002/77*, E/CN.4/RES/2002/77, 25 April 2002.

<sup>29</sup> The UN General Assembly issued resolutions on this issue in 2018, 2016, 2014, 2012, 2010, 2008, 2007: UN General Assembly, *Resolution adopted by the General Assembly on 17 December 2018*, A/RES/73/175, 23 January 2019; *Resolution adopted by the General Assembly on 19 December 2016*, A/RES/71/187, 2 February 2017; *Resolution adopted by the General Assembly on 18 December 2014*, A/RES/69/186, 4 February 2015; *Resolution adopted by the General Assembly on 20 December 2012*, A/RES/67/176, 20 March 2013; *Resolution adopted by the General Assembly on 21 December 2010*, A/RES/65/206, 28 March 2011; *Resolution adopted by the General Assembly on 18 December 2008*, A/RES/63/168, 13 February 2009; and *Resolution adopted by the General Assembly on 18 December 2007*, A/RES/62/149, 26 February 2008.

<sup>30</sup> UN General Assembly, *Resolution adopted by the General Assembly on 17 December 2018*, A/RES/73/175, 23 January 2019, para. 7(g).

<sup>31</sup> *Id.*, 1-2.

<sup>32</sup> The terms “Sharia”, “God” and “Prophet” are capitalised as an editorial decision out of respect to the Muslim faith.

<sup>33</sup> The literal translation of “Sharia” (in Arabic: “شريعة”) is “path” or “way” [to a watering place, or towards salvation and relief]. Given the rich phonology of Arabic language, this word contains phonemes that cannot be transliterated into the Latin alphabet too accurately. For that reason, numerous alternative spellings for “Sharia” exist, including “Shariah”, “Shari’a”, “Shari’ah”, “Šari’a”, and “Shari3a”. Equivalents stemming from the same Arabic word exist in multiple languages spoken in Muslim-majority countries, such as “Syariah” in Malay or “Şeriat” in Turkish. For more details on these nuances: Maurite Berger, “Sharia—a flexible notion”, *R & R*, 35, No. 3 (2006), 335-345; Abdullahi Ahmed An-Na’im, “Is Islamic Family Law Today Really Based on Shari’a?”, *Muslims for Progressive Values* (2015).

<sup>34</sup> Timothy P. Daniels, “Introduction: Sharia Dynamics and the Anthropology of Islam” in Timothy P. Daniels (ed.), *Sharia Dynamics: Islamic Law and Sociopolitical Processes* (Cham: Springer International Publishing AG), 10.

(authentic) hadith are the only ones regarded as possible components of Sharia.<sup>35</sup>

Traditional theory of Islamic jurisprudence recognizes two derived sources of Sharia, namely:

1. judicial consensus (*ijma*)
2. analogical reasoning (*qiyas*).<sup>36</sup>

A number of other elements bearing no direct relation to God or Prophet Muhammad from an Islamic point of view are sometimes regarded as possible additional sources of Sharia, including juristic preference (*istihsan*), public interest, reason-based interpretation, and local customs.<sup>37</sup>

### Sharia law, jurisprudence and local variations

Whereas Islamic tradition considers Sharia by itself as perfect, divine, and immutable, *fiqh* (Islamic jurisprudence) is considered changeable and fallible due to its inseparability from human understanding.<sup>38</sup> In turn, seven major schools of *fiqh* exist in the world, each with its own area of influence. The differences among these schools have implications on a number of issues, including the types of punishments recommended for certain offences.<sup>39</sup>

By tradition, those qualified to conduct *fiqh* and *ijtihad* (the process of interpreting Sharia) are either *muftis* (lit.: "those who decide a point of law"; jurists), or *'ulama* (lit.: "possessors of knowledge"; religious scholars).<sup>40</sup> They are qualified to issue *fatwas*, or nonbinding legal opinions about matters relating to Muslim rituals and social relations in general. *Fatwas*

can be delivered orally or in written form.<sup>41</sup> In several modern-day states where Sharia law is applied, the tasks of *fiqh/ijtihad* are conducted by religious state organisations formed by *muftis* and/or *'ulama*.<sup>42</sup>

Under Sharia, human actions are classified into five different categories (known as *ahkam*), depending on their permissibility: *wajib/fard* (mandatory), *mustahab/mandub* (recommended), *mubah* (neutral), *makruh* (abhorred), and *haram* (forbidden).<sup>43</sup> However, Shariah courts are only concerned with the mandatory, the forbidden, and the neutral.<sup>44</sup>

The type of punishment for conducts falling under the *haram* (forbidden) category will depend on each case, based on whether the offence is regarded as "against man" or "against God".<sup>45</sup> Offences against man, in turn, are divided into two further subcategories, based on whether or not there is bodily harm inflicted.<sup>46</sup> In the first case, the designated punishments are either *qisas* (retaliatory) or *diyat* (monetary compensations). Offences against man that do not involve bodily harm are punished with *ta'zir*, or punishments at the discretion of judges, which will vary, to a great extent, according to the main school of *fiqh* taking precedence in the region. On the other hand, offences against God are considered unforgivable, leading to "standard" bodily punishments in public known as *hudud* (sing.: *hadd*; lit.: "limits, boundaries"),<sup>47</sup> which are explicitly dictated in either the Qur'an or the Hadith. Across different countries, regions, and schools of Islamic jurisprudence, disagreements exist regarding the categories under which certain conducts fall.<sup>48</sup>

As will be explained further below, consensual same-sex sexual activity under Sharia is usually regarded as

<sup>35</sup> Mohammad H. Kamali, "The Scale of Five Values (al-Ahkam al-Khamsah)" in *Shariah Law Questions and Answers* (London: Oneworld Publications, 2017).

<sup>36</sup> Shia jurisprudence relies on dialectical reasoning (*aqil*) instead of *qiyas*. See: Silvia Tellenbach, "Islamic Criminal Law" in Markus D. Dubber and Tatjana Hornle (eds) *The Oxford Handbook of Criminal Law* (Oxford: Oxford University Press, 2015), 248-250.

<sup>37</sup> Silvia Tellenbach, *supra* note 36, 248-250. See also: Saim Kayadibi, *Istihsan (Juristic Preference)* (Doc. Diss., Durham University, 2006).

<sup>38</sup> "Fiqh", *Oxford Islamic Studies Online (website)*. Accessed on 28 September 2020; "Shariah", *Oxford Islamic Studies Online (website)*. Accessed on 28 September 2020.

<sup>39</sup> Mohammad H. Kamali, *supra* note 35. Shafi'i Abdul Azeez Bello, "The Punishment of Homosexuality in Islamic Contemporary World: Malaysia, Iran, Pakistan and Saudi Arabia as a Case Study" (Master of Comparative Laws, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia, 2012), 5; Ludovic-Mohamed Zahed, *Homosexuality, Transidentity, and Islam: A Study of Scripture Confronting the Politics of Gender and Sexuality* (Amsterdam: Amsterdam University Press, 2019), 52; Wahid Ferchichi, "Law and homosexuality: survey and analysis of legislation across the Arab world", Working Paper prepared for the Middle East and North Africa Consultation of the Global Commission on HIV and the Law, 2011, pp. 17-19.

<sup>40</sup> Frank E. Vogel, *Islamic Law and the Legal System of Saudi: Studies of Saudi Arabia* (Leiden, Boston, and Köln: Brill, 2000), 4-5.

<sup>41</sup> "Fatwa", *Encyclopaedia Iranica (website)*, 1999. Accessed on 28 September 2020.

<sup>42</sup> Iza Hussin, "Sunni Schools of Jurisprudence" in Emad El-Din Shahin (ed.), *The Oxford Encyclopedia of Islam and Politics* (Oxford University Press, 2014). See also: Adham A. Hashish, "Ijtihad institutions: the key to Islamic democracy bridging and balancing political and intellectual Islam", *Richmond Journal of Global Law & Business* 9, Issue 1 (2010), 69-84; Robert W. Hefner (ed.), *Shari'a Politics: Islamic Law and Society in the Modern World* (Bloomington: Indiana University Press, 2011), 103-106.

<sup>43</sup> Mohammad H. Kamali, *supra* note 35.

<sup>44</sup> Knut S. Vikør, "Shari'ah", *Oxford Encyclopedia of Islam and Politics*, in *Oxford Islamic Studies Online (website)*. Accessed on 4 November 2020.

<sup>45</sup> Muhammad Sohail and Ataullah Khan Mahmood, "Islamic Criminal Jurisprudence on the Offence of Trafficking in Persons: An Interpretation of Fasad fil Arz and Hadd Offence", *Pakistan Journal of Islamic Research* 20, Issue 2 (2019), 110.

<sup>46</sup> Silvia Tellenbach, *supra* note 36, 251-253.

<sup>47</sup> These punishments are also referred to as "*hadd*" (which is the singular form of the word *hudud*). See: "Hadd", *Oxford Islamic Studies Online (website)*. Accessed on 28 September 2020.

<sup>48</sup> See: Mohammad H. Kamali, *supra* note 35; Muhammad Sohail and Ataullah Khan Mahmood, "Islamic Criminal Jurisprudence on the Offence of Trafficking in Persons: An Interpretation of Fasad fil Arz and Hadd Offence", *Pakistan Journal of Islamic Research* 20, Issue 2 (2019), 110.

a violation punishable by either *hadd* or *ta'zir*,<sup>49</sup> depending on the scholarly tradition and the specificities of the case in question.

While not technically a component of Sharia law, the doctrine of *hisbah*, which refers to the duty of Muslims to intervene when another Muslim behaves immorally or improperly, is observed by many to ensure social abidance by traditional Islamic principles.<sup>50</sup> With the increasing popularity of the literalist Wahhabi movement, the duty of *hisbah* has been delegated to government committees (e.g.: Saudi Arabia's Committee for the Promotion of Virtue and the Prevention of Vice) or religious police bodies (e.g.: Northern Nigeria, and Banda Aceh in Indonesia).<sup>51</sup>

Modern-day Muslim or Muslim-majority states observe Sharia law in different ways and to different extents. Usually, the legal systems of Muslim or Muslim-majority countries are hybrid, with Sharia being applied to some issues and codified law to others.<sup>52</sup> In general, the areas falling under codified law are much broader than those falling under Sharia. In contrast, it is in this sense that Saudi Arabia is considered a peculiar case, as its legal system is almost entirely based on Sharia.<sup>53</sup>

#### *Sharia law and consensual same-sex sexual acts*

Because Sharia is at once both a religious and a legal system, certain laws under Sharia exist solely for the purpose of establishing a moral standard, even in the

absence of the possibility of enforcement.<sup>54</sup>

Throughout much of history, this was the case with sexuality norms in some parts of the Muslim World. Some sources indicate that before the 19<sup>th</sup> century, non-heteronormative forms of sexuality in certain Muslim societies were to some extent tolerated but, under colonialism, sexual notions prevalent in European societies may have contributed to the shifting of these attitudes into more negative ones.<sup>55</sup>

To this day, many of the laws that criminalise non-heteronormative forms of sexuality in Muslim-majority countries were influenced by centuries-old laws and values of European colonial regimes,<sup>56</sup> operating in tandem with literalist interpretations of Sharia that have gained popularity with the rising influence of the Wahhabi movement.<sup>57</sup>

Despite a number of dissenting scholars and imams,<sup>58</sup> the traditional Islamic viewpoint on non-heterosexual sexuality is one of strong disapproval.<sup>59</sup> In effect, in a 2017, the Independent Permanent Human Rights Commission of the Organization of the Islamic Cooperation (OIC) indicated that "the major understanding of sexual orientation which is valid in the Qur'an, Sunnah and Fiqh is heterosexual"<sup>60</sup> and that "Islamic teachings refute the notion that humans are created with homosexual predispositions. People become homosexuals because of environmental factors, some treatable medical or psychiatric conditions and at worst due to their unbridled lust for perverted sexual activities".<sup>61</sup>

<sup>49</sup> Sara Omar, "From Semantics to Normative Law: Perceptions of Liwāt (Sodomy) and Sihāq (Tribadism) in Islamic Jurisprudence", *Islamic Law and Society* 19 (2012), 222-256.

<sup>50</sup> "Hisbah", *Oxford Islamic Studies Online (website)*. Accessed on 28 September 2020.

<sup>51</sup> See: Rusjdi Ali Muhammad, "The Role of Wilayat Al-Hisbah in the Implementation of Islamic Shariah in Aceh" *Petita: Jurnal Kajian Ilmu Hukum dan Syariah* 2.2 (2017), 124-133; Rasheed O. Olaniyi, "Hisbah and Sharia law enforcement in metropolitan Kano" *Africa Today* 57.4 (2011), 71-96; Gregory Mack, *The modern muhtasib: religious policing in the Kingdom of Saudi Arabia* (Diss., McGill University, 2013).

<sup>52</sup> Jan Michiel Otto, *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present* (Leiden University Press, 2010), 636-644. See also: Jan Michiel Otto, *Sharia and National Law in Muslim Countries: Tensions and Opportunities for Dutch and EU Foreign Policy* (Leiden University Press, 2008), 8-9. Toni Johnson and Mohammed Aly Sergie, "Islam: Governing Under Sharia", *Council on Foreign Relations*, 25 July 2014.

<sup>53</sup> Frank E. Vogel, *Islamic Law and the Legal System of Saudi: Studies of Saudi Arabia* (Leiden, Boston, and Köln: Brill, 2000), 4-5; Mark Jones, "Islamic Law in Saudi Arabia: A Responsive View", *International Journal of Comparative and Applied Criminal Justice* 16, No 1-2 (1992), 43-56; Hossein Esmaeili, "On A Slow Boat towards the Rule of Law: The Nature of Law in the Saudi Arabian Legal System", *Arizona Journal of International & Comparative Law* 26, No. 1 (2009), 1-47.

<sup>54</sup> Khaled Abou El Fadl, "Islamic Sex Laws Are Easy to Break, Impossible to Enforce", *Los Angeles Daily Journal*, 5 August 1999.

<sup>55</sup> See, for example: Wahid Al Farchichi and Nizar Saghiyeh: Helem, *Homosexual Relations in the Penal Codes: General Study Regarding the Laws in the Arab Countries with a Report on Lebanon and Tunisia* (2009), 18; Ira M. Lapidus and Lena Salaymeh, *A History of Islamic Societies* (Cambridge: Cambridge University Press, 2014), 361-362; B. J. Epstein and Robert Gillett (eds.), *Queer in Translation* (London & New York: Routledge, 2017), 30; Joseph A. Massad, *Desiring Arabs* (Chicago: University of Chicago Press, 2008).

<sup>56</sup> Javaid Rehman and Eleni Polymenopoulou, "Is Green a Part of the Rainbow? Sharia, Homosexuality and LGBT Rights in the Muslim World", *Fordham International Law Journal* 37, Issue 1, (2013), 35, 50.

<sup>57</sup> Shaheer Ghulam Nabi, "Intolerance in Faith an Investigation of the Character of Wahhabism and its Potential Role in the Radicalization of Muslim Youth", (Mast. Diss., University of Oslo, 2015); Anissa Hélie and Homa Hoodfar (eds.), *Sexuality in Muslim contexts: Restrictions and resistance* (Zed Books Ltd., 2012). For more information on the surge of Wahhabism, see: Daniel Ungureanu, "Wahhabism, Salafism and the expansion of Islamic fundamentalist ideology", *Journal of the Seminar of Discursive Logic, Argumentation Theory and Rhetoric* 9, No. 2 (2011).

<sup>58</sup> Scott Alan Kugle, *Homosexuality in Islam: Critical Reflection on Gay, Lesbian, and Transgender Muslims* (London: Oneworld Publications, 2010), 560 (Kindle edition); Mustafa Akyol, "What Does Islam Say About Being Gay?", *New York Times*, 28 July 2015; Ludovic-Mohamed Zahed, *Homosexuality, Transidentity, and Islam: A Study of Scripture Confronting the Politics of Gender and Sexuality* (Amsterdam: Amsterdam University Press, 2019).

<sup>59</sup> Javaid Rehman, *supra* note 56.

<sup>60</sup> Organization of the Islamic Cooperation: Independent Permanent Human Rights Commission, *OIC-IPHRC study on sexual orientation and gender identity in the light of Islamic interpretations and international human rights framework* (Jeddah, May 2017), para. 14.

<sup>61</sup> *Id.*, para. 19.

The Commission further explained that “there is a consensus among Islamic scholars that human beings are naturally heterosexual”, that heterosexuality is “legally defined by the Islamic Shariah” and that “homosexuality is seen as a perverted deviation from the norm and all schools of Islamic thought and jurisprudence consider homosexual acts to be unlawful”.<sup>62</sup>

Sharia explicitly alludes to several forms of consensual same-sex sexual acts. In this section we will visit the notions of *zina* (regularly translated as “fornication” or “adultery”), *liwat* (usually considered the equivalent of “sodomy”) and *sihaq* (sometimes translated as “lesbianism”).

### Zina

*Zina* is a broad term commonly understood as “unlawful sexual intercourse”, encompassing adultery and fornication. Because no sexual relations outside of a traditional heterosexual marriage are considered lawful under Sharia, consensual same-sex sexual relations would technically fall under *zina* by default, though their classification under *zina* varies among different schools of jurisprudence.<sup>63</sup>

Considered an offence against God, *zina* is widely regarded as punishable by flogging in the case of unmarried men, and death by stoning in the case of married men,<sup>64</sup> although a small number of scholars disagree with the validity of said punishments.<sup>65</sup>

In theory, the evidence needed to effectively accuse a person of *zina* is complex (defendant must confess four times or be caught in the act and accused by four righteous witnesses).<sup>66</sup> In practice, however, sources indicate that the criteria to accuse people of *zina* have reportedly been much laxer,<sup>67</sup> as shown by multiple incidents of enforcement listed under this section’s country-specific entries.

### Liwat<sup>68</sup>

A rough equivalent of “sodomy” (lit. “act of the people of Prophet Lot”), sometimes considered analogous to *zina*. Under Islamic tradition, Lot was commissioned to the cities of Sodom and Gomorrah, whose inhabitants would have received a harsh divine punishment (destruction by means of a rain of stones) presumably for engaging in anal intercourse<sup>69</sup> (although a number of scholars have disputed this widely shared interpretation<sup>70</sup>). The term *liwat* as such was first coined by classical jurists who advocated the death penalty for consensual same-sex sexual activity and argued that Lot was sent to forbid anal sexual intercourse between men. For that reason, the term does not appear in the Qur’an or the Sunna, though it became part of the Sharia vocabulary over time.<sup>71</sup>

*Liwat* is also condemned by several *Ahadith*. Considered an offence against God, it can be punishable by death by stoning,<sup>72</sup> but some scholars consider that *liwat* falls under the *ta’zir* category of punishments.<sup>73</sup> It has been indicated that only within the Hanafi School these acts are considered a “slightly less serious offence” and punished at the discretion of courts through physical punishment, however, even within this School the death would be the appropriate punishment for a “persistent offender”.<sup>74</sup>

### Sihaq

*Sihaq* is a term usually used to refer to sexual intercourse between females (lit. “grinding” or “rubbing”).<sup>75</sup> Given that *sihaq* is not explicitly mentioned in the Qur’an and very rarely mentioned in the Hadith, it is usually considered an offence against man not involving bodily harm, and therefore, punishable at the discretion of each judge.<sup>76</sup> Nevertheless, this is not always the case. In at least two states in Northern Nigeria, for instance, *sihaq* is punishable by death by stoning.<sup>77</sup>

<sup>62</sup> *Id.*, para. 16.

<sup>63</sup> “Zina”, *Oxford Islamic Studies Online (website)*. Accessed on 28 September 2020; Mohammad H. Kamali, *supra* note 35.

<sup>64</sup> “Zina”, *Oxford Islamic Studies Online (website)*. Accessed on 28 September 2020; Javid Rehman, *supra* note 56.

<sup>65</sup> See for example: Michael Mumisa, *Sharia law and the death penalty: Would abolition of the death penalty be unfaithful to the message of Islam?* (Penal Reform International, 2015); Scott Alan Kugle, *supra* note 58, 560.

<sup>66</sup> Michael Mumisa, *supra* note 65, 17-19.

<sup>67</sup> Javid Rehman, *supra* note 56, 31-37.

<sup>68</sup> In Arabic: “لواط” (pronounced /li.wa.tʃ/). Spelled “livat” or “lavat” in other parts of the Muslim world. The word derives from the three-letter root *lam-waw-Taa* (ل, و, ط), which in turn refers to the prophet Lot.

<sup>69</sup> Javid Rehman, *supra* note 56, 25 and 33. See also: Mohammad H. Kamali, *supra* note 35.

<sup>70</sup> See for example: Michael Mumisa, *supra* note 65; Scott Alan Kugle, *supra* note 58, 560.

<sup>71</sup> Javid Rehman, *supra* note 56. See also: *Surah Al-A'raf* [7:80-84], Quran.

<sup>72</sup> Umar Abubakar Dubagari, “Same Sex Marriage, Human Rights and Death Penalty: Common and Islamic Law Perspectives”, *Journal of Philosophy, Culture and Religion*, Vol.23, No. 49, 2016, 51, 54, 55.

<sup>73</sup> Mohammad H. Kamali, *supra* note 35.

<sup>74</sup> Javid Rehman, *supra* note 56, 12.

<sup>75</sup> Junaid B. Jahangir and Hussein Abdul-latif, “Investigating the Islamic Perspective on Homosexuality”, *Journal of Homosexuality*, 2015; Sahar Amer, “Naming to empower: Lesbianism in the Arab Islamicate world today” *Journal of Lesbian Studies*, Vol. 16, No. 4, 2012, 381-397.

<sup>76</sup> Sara Omar, “From Semantics to Normative Law: Perceptions of Liwāt (Sodomy) and Siḥāq (Tribadism) in Islamic Jurisprudence”, *Islamic Law and Society*, Vol. 19 (2012), 255.

<sup>77</sup> For more details, see entry on Nigeria in this dossier.

## Quick Reference Chart: Death Penalty for consensual same-sex sexual acts (2020)

Countries for which ILGA World could confirm there is legal certainty that the death penalty (DP) is the established punishment for consensual same-sex sexual acts (CSSSA):

	FULL LEGAL CERTAINTY ABOUT DP FOR CSSSA	LEGAL BASIS	REPORTED STATE EXECUTIONS FOR CSSSA
1  <b>Brunei</b>	YES	Article 82 of the <i>Syariah Penal Code</i> (2019).	NO
2  <b>Iran</b>	YES	Several articles of the <i>Iran Islamic Penal Code</i> (2013), including Sections 233, 234, 235 and 239.	YES (UNCLEAR)
3  <b>Mauritania</b>	YES	Articles 306 and 308 under Section IV of the <i>Criminal Code</i> (1983).	NO
4  <b>Nigeria</b> (12 Northern States)	YES	Several provisions of the Sharia Criminal Codes in force in the states of Bauchi, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Niger, Sokoto, Yobe, Zamfara.	NO (DEATH SENTENCES REPORTEDLY QUASHED ON APPEAL)
5  <b>Saudi Arabia</b>	YES	Various passages of the <i>Quran</i> (esp. 7:80-84) and ancillary sources ( <i>Hadith</i> ). As per the <i>Basic Ordinance</i> (1992) and <i>Law on Criminal Procedures</i> (2001), courts apply Sharia law as derived from the Quran and the Sunna.	YES (UNCLEAR)
6  <b>Yemen</b>	YES	Article 264 of the <i>Penal Code</i> (1994).	NO

Countries for which there is no full legal certainty that the death penalty (DP) is the established punishment for consensual same-sex sexual acts (CSSSA):

	FULL LEGAL CERTAINTY ABOUT DP FOR CSSSA	DISPUTED / QUESTIONED LEGAL BASIS	REPORTED STATE EXECUTIONS FOR CSSSA
1  <b>Afghanistan</b>	NO	As per Article 130 of the Constitution, courts could potentially rely on Sharia law to impose the death penalty for <i>zina</i> (adultery). Consensual same-sex sexual acts can be interpreted as a form of <i>zina</i> .	NO
2  <b>Pakistan</b>	NO	The application of Section 4 of the Hudood Ordinance of 1979 (which criminalises <i>zina</i> ) and Section 367A of the Penal Code for consensual same-sex sexual acts has been disputed for several technical reasons.	NO
3  <b>Qatar</b>	NO	Article 1 of the Penal Code (2004) mandates courts to apply Sharia law for <i>zina</i> . Courts could rely on this provision to impose the death penalty for consensual same-sex sexual acts, if interpreted as a form of <i>zina</i> .	NO
4  <b>Somalia</b> (including Somaliland)	NO	As per Article 4(1) of the <i>Provisional Constitution</i> (2012), Sharia law prevails even above the constitution. Sharia is applied by courts in criminal cases.	UNCLEAR
5  <b>United Arab Emirates</b>	NO	Article 354 of the Federal Penal Code could potentially be read to impose the death penalty to consensual sodomy. This interpretation has been disputed.  Courts could potentially rely on Sharia law to impose the death penalty for <i>zina</i> . Consensual same-sex sexual acts can be interpreted as a form of <i>zina</i> .	NO



# AFGHANISTAN

## Introduction: Afghanistan's legal system

The administrative and Sharia courts are combined into one system in Afghanistan's legal system.<sup>1</sup> Under this combined system, Afghanistan's Constitution states that statutory law takes precedence over Sharia law, and recourse to Sharia law is permitted where no other law exists.<sup>2</sup> This system can be contrasted with the legal systems of other Muslim or Muslim-majority countries practising hybrid or dual legal systems, where secular law and Sharia law run parallel to each other.<sup>3</sup>

Under Sharia law, the maximum punishment for sexual conduct outside of marriage is the death penalty, to the extent that *zina* (adultery) is a *hadd* crime (punishment mandated by God).<sup>4</sup> If consensual same-sex sexual conduct is specifically classified as a form of *zina* (adultery), and the high evidentiary requirements for *hudud* punishments (punishments mandated by God) are met, then it is theoretically possible for consensual same-sex conduct to be punished with the maximum penalty of death.

There is little in terms of evidence, anecdotes, and data reported on the situation of sexual and gender minorities in the country, and there are no known SOGIESC advocacy organisations or networks.<sup>5</sup> In particular, there is a lack of publicly available information on the impact of Afghanistan's recently enacted Penal Code (APC 2017) on the imposition of the death penalty for consensual same-sex conduct.

Furthermore, many Afghans rely on traditional tribal dispute resolution mechanisms, and parallel justice systems overseen by insurgent groups. This is largely due to the Afghan judiciary apparently being "underfunded, understaffed, inadequately trained, ineffective, and vulnerable to threats, bias, political influence, and pervasive corruption".<sup>6</sup>

Further, parallel justice structures are often present in areas controlled by insurgent groups "where people had very limited access to formal judicial mechanisms."<sup>7</sup> While there is no recorded information on how traditional justice mechanisms apply to consensual same-sex conduct,<sup>8</sup> parallel justice structures run by insurgent groups, including the Taliban, may impose capital punishment and other forms of severe extrajudicial punishment for consensual same-sex conduct. These punishments are typically based on the group's strict interpretation of Sharia law.<sup>9</sup>

## Legal basis and evidentiary requirements<sup>10</sup>

Article 2 of the APC 2017 permits judges in the state judiciary to rule on crimes that fall under *hudud* (punishments mandated by God) "in accordance with the provisions of the *Hanafi* jurisprudence of the Islamic law", as the APC 2017 covers *tazir* crimes (crimes for which no punishment is specified in the Qur'an).<sup>11</sup>

- <sup>1</sup> Thomas Barfield, "Culture and Custom in Nation-Building: Law in Afghanistan", Vol. 60 *Maine Law Review* (2008): 362. Article 130 provides: "The courts, in cases under their consideration, shall apply the provisions of this constitution and other laws. Whenever no provision exists in the constitution or the law for a case under consideration, the court shall, by following the principles of the Hanafi jurisprudence and within the limitations set forth in this constitution, render a decision that secures justice in the best possible way"; see, *Afghanistan Constitution 2014*.
- <sup>2</sup> Toni Johnson and Mohammed Aly Sergie, "Islam: Governing Under Sharia", Council on Foreign Relations, 25 July 2014. See also: "Application of Sharia by country" (World map), Freedom House, 2013.
- <sup>3</sup> Torunn Wimpelmann, "Adultery, rape, and escaping the house: The protection and policing of female sexuality in Afghanistan", *CMI Working Paper* (2017); Afghanistan Legal Education Project, *An Introduction to the Criminal Law of Afghanistan* (2012), 90.
- <sup>4</sup> ILGA World: Lucas Ramon Mendos, *State-Sponsored Homophobia 2019* (Geneva; ILGA, March 2019), 430.
- <sup>5</sup> Australian Government Department of Foreign Affairs and Trade, *DFAT Country Information Report: Afghanistan*, 27 June 2019, para 5.17.
- <sup>6</sup> UN Assistance Mission in Afghanistan, *Afghanistan Annual Report 2019: Protection of Civilians in Armed Conflict*, February 2020, 50.
- <sup>7</sup> Customary law, as applied in traditional dispute resolution mechanisms, is the means by which local communities resolve disputes in the absence of state or religious authority. These mechanisms handle not only civil disputes, but also criminal cases such as murder, theft, and assault. An example of such a system is the *Pashtunwali*, the code of conduct for Pashtuns. Thomas Barfield, "Culture and Custom in Nation-Building: Law in Afghanistan", Vol. 60 *Maine Law Review* (2008): 351, 352, and 370. It should also be noted that the Afghan government, in its 2017 review by the Committee Against Torture, affirmed that informal parallel judicial mechanisms may only hear civil cases; see, Committee Against Torture, *Concluding observations on the second periodic report of Afghanistan*, CAT/C/AFG/CO/2, 12 June 2017, para. 39.
- <sup>8</sup> US Department of State, *Country Report on Human Rights Practices 2019 - Afghanistan*, 11 March 2020; European Asylum Support Office, *Country Guidance: Afghanistan*, June 2019, 26.
- <sup>9</sup> We would like to extend our gratitude to Siavash Rahbari (Program Lead - Afghanistan, International Development Law Organization) and Talwasa (an independent researcher from Afghanistan) for their invaluable guidance in understanding and navigating the intricacies of the Afghan criminal law system.
- <sup>10</sup> European Asylum Support Office, *Afghanistan: Criminal Law, customary justice and informal dispute resolution*, July 2020, 14; Murtaza Rahimi, "Afghanistan's new Penal Code: Whether or Not to codify Hudud and Qisas", *Bernard and Audre Rapoport Center for Human Rights and Justice*.



Under Sharia law, *zina* (adultery) may be punishable with *hudud* punishments, which carries a maximum punishment of death by stoning for Muslims who are married.<sup>12</sup> *Hudud* crimes are uncodified under Afghan law.<sup>13</sup> However, *hudud* punishments are only enforced provided the high evidentiary requirements are met: there must either be four male witnesses attesting to the crime, or the perpetrator giving a personal confession that can be retracted at any time.<sup>14</sup>

The UK Home Office and US Department of State have stated that the parameters noted above also apply to consensual same-sex acts<sup>15</sup> as all consensual same-sex acts would be considered sexual contact outside of marriage.<sup>16</sup> This is consistent with a statement from a high-profile Islamic scholar who claimed that “there was broad consensus amongst scholars that execution was the appropriate punishment if homosexual acts could be proven”.<sup>17</sup>

However, there is a notable disparity between the theory and practice of imposing the death penalty for *zina* (adultery) and consensual same-sex conduct. This is, in part, due to the very high evidentiary requirements for the crime of *zina* (adultery). This has led some commentators to note that the “application of the fixed *hadd* punishment for *zina* has remained largely theoretical”,<sup>18</sup> that “*hudud* punishments are not applicable in Afghanistan’s formal legal system and practices”,<sup>19</sup> or that the punishment has not “been applied by Afghan courts since 2001”.<sup>20</sup> Nonetheless, it has been noted that it may still be possible for the Afghan courts to rely on Sharia law and impose the death penalty in practice, as it is “more likely to be applied in isolated, rural communities”.<sup>21</sup>

This disparity can be further attributed to the conceptual dilemmas of *zina* (adultery) in the *Hanafi* school of jurisprudence, the main school in Afghanistan. First, there is disagreement about whether *zina* (adultery) should be adjudicated as a *hadd* crime (punishment mandated by God), and whether it is compatible with the principle of legality under the Constitution.<sup>22</sup> Second, it is unclear as well whether the *Hanafi* school includes same-sex sexual acts as a form of *zina* (adultery) or whether it considers same-sex sexual contact as attracting *hudud* punishments (punishments mandated by God).<sup>23</sup>

This uncertainty is heightened by the adoption of the APC 2017, which covers *tazir* crimes, and added the explicit criminalisation of same-sex sexual conduct. It introduced the specific offences of *mosaheghe* (same-sex intimacy between women), sodomy, and *tafkhez* (same-sex sexual relationships not involving any penetration).<sup>24</sup>

As the Constitution states that statutory law takes precedence over Sharia law,<sup>25</sup> it is possible that consensual same-sex sexual acts will be punished under these specific provisions under the APC 2017 instead of Sharia law.

#### Legislative history and international reaction

The APC 2017 came into force on 14 February 2018. Despite adding the explicit criminalisation of same-sex sexual conduct, the punishment for these offences was reduced. Previously, the 1976 Penal Code did not contain any specific provisions on the criminalisation of consensual same-sex sexual acts, but imposed a long

<sup>12</sup> Torunn Wimpelmann, “Adultery, rape, and escaping the house: The protection and policing of female sexuality in Afghanistan”, *CMI Working Paper* (2017); Afghanistan Legal Education Project, *An Introduction to the Criminal Law of Afghanistan* (2012), 90.

<sup>13</sup> European Asylum Support Office, *Afghanistan: Criminal Law, customary justice and informal dispute resolution*, July 2020, 13; Murtaza Rahimi, “Afghanistan’s new Penal Code: Whether or Not to codify Hudud and Qisas”, *Bernard and Audre Rapoport Center for Human Rights and Justice*.

<sup>14</sup> Torunn Wimpelmann, “Adultery, rape, and escaping the house: The protection and policing of female sexuality in Afghanistan”, *CMI Working Paper* (2017); Afghanistan Legal Education Project, *An Introduction to the Criminal Law of Afghanistan* (2012), 90.

<sup>15</sup> UK Home Office, *Country Policy and Information Note, Afghanistan: Sexual orientation and gender identity or expression*, February 2020, para 2.4.5; US Department of State, *Country Report on Human Rights Practice 2019 – Afghanistan*, 11 March 2020.

<sup>16</sup> Afghanistan defines marriage as a “contract that legalizes relationship between man and woman with the aim of forming a family”; Article 60, “Civil Code of the Republic of Afghanistan 1977”, Afghanistan Legal Education Project.

<sup>17</sup> ILGA World: Lucas Ramon Mendos, *State-Sponsored Homophobia 2019* (Geneva; ILGA, March 2019), 429.

<sup>18</sup> Torunn Wimpelmann, “Adultery, rape, and escaping the house: The protection and policing of female sexuality in Afghanistan”, *CMI Working Paper* (2017).

<sup>19</sup> European Asylum Support Office, *Afghanistan: Criminal Law, customary justice and informal dispute resolution*, July 2020, 13.

<sup>20</sup> Patricia Gossman, “Afghan LGBT Asylum Seekers in UK Among Most Vulnerable”, *Human Rights Watch*, 26 February 2017.

<sup>21</sup> UK Home Office, *Country Policy and Information Note, Afghanistan: Sexual orientation and gender identity or expression*, February 2020, para 2.4.5 and 4.2.1. The UK Home Office cites this to a report from the Swedish International Development Agency in November 2014, which states: “Sharia law based punishment is more likely to occur in isolated, rural communities. In the cities, persons convicted of homosexuality are generally sentenced to prison.” Sida, *The Rights of LGBTI persons in Afghanistan* (November 2014).

<sup>22</sup> Torunn Wimpelmann, “Adultery, rape, and escaping the house: The protection and policing of female sexuality in Afghanistan”, *CMI Working Paper* (2017).

<sup>23</sup> The Afghanistan Legal Education Project has noted that unlike “other schools of Islamic Law jurisprudence, the Hanafi School does not include sodomy within *hudud* provisions”. Afghanistan Legal Education Project, *An Introduction to the Criminal Law of Afghanistan* (2012), 90. See also, Javid Rehman and Eleni Polymenopoulou, “Is Green a Part of the Rainbow? Sharia, Homosexuality and LGBT Rights in the Muslim World”, *Fordham International Law Journal* Vol. 37, Issue 1 (2013), 11, 12.

<sup>24</sup> ILGA World: Lucas Ramon Mendos, *State-Sponsored Homophobia 2019* (Geneva; ILGA, March 2019), 429–430.

<sup>25</sup> Article 130, *Afghanistan Constitution* 2014.

imprisonment term for the offence of “pederasty” under Article 427.<sup>26</sup>

The potential use of the death penalty to punish same-sex sexual conduct has received limited attention from international bodies. In 2017, the Committee Against Torture urged Afghanistan to “consider taking measures for an immediate moratorium on executions and a commutation of sentences”, in light of the high number of prisoners on death row. It did not specifically mention the use of the death penalty as a punishment for consensual same-sex sexual conduct.<sup>27</sup>

Further, on the subject of parallel judicial mechanisms imposing extrajudicial punishments, the Committee Against Torture noted in 2017 that sentences imposed by these mechanisms for moral crimes, including the death sentence, may amount to torture or cruel, inhuman or degrading treatment or punishment.<sup>28</sup> The UN Assistance Mission in Afghanistan stated that extrajudicial punishments imposed by these parallel justice mechanisms are illegal under the laws of Afghanistan, constitute criminal acts, and may amount to war crimes.<sup>29</sup>

Afghanistan did not receive any SOGIESC-related recommendations during its third UPR cycle in January 2019.<sup>30</sup> During its second UPR cycle in 2014, Norway urged Afghanistan to decriminalise consensual same-sex sexual relations, which Afghanistan noted (i.e., did not accept).<sup>31</sup>

### *Instances of enforcement*

There are no known recent enforcements of the death penalty by State authorities for same-sex sexual conduct. However, the UN Assistance Mission in Afghanistan documented that in August 2015, a parallel justice court sentenced two men and a 17-year-old boy to execution by wall-toppling for homosexuality in Ghor province. According to the report, the falling wall killed the two men and injured the teenager, who they allowed to live.<sup>32</sup> Cases such as this evince the blurred boundaries between what could technically be considered an instance of enforcement of the death penalty and extrajudicial, summary or arbitrary executions carried out by non-official justice mechanisms ran by power factors that may have effective control over a portion of the state’s territory.<sup>33</sup>

In March 2019, the Ministry of Foreign Affairs of the Netherlands reported that “the Afghan government has not initiated criminal proceedings and/or imposed penalties either in cases of voluntary sexual acts between persons of the same sex”.<sup>34</sup>

The BBC reported that the Afghan LGBTI community live under the “threat of death”.<sup>35</sup> Similarly, the Telegraph recently reported that being openly gay, lesbian, bisexual or transgender in Afghanistan creates the risk of abuse and death.<sup>36</sup> Further, the UK Home Office reports that the “lack of appetite to prosecute did not indicate an increased openness to homosexuality”.<sup>37</sup>

<sup>26</sup> ILGA World: Lucas Ramon Mendos, *State-Sponsored Homophobia 2019* (Geneva; ILGA, March 2019), 429.

<sup>27</sup> Committee Against Torture, *Concluding observations on the second periodic report of Afghanistan*, CAT/C/AFG/CO/2, 12 June 2017, para. 33.

<sup>28</sup> *Ibid.*

<sup>29</sup> UN Assistance Mission in Afghanistan, *Afghanistan Annual Report 2019: Protection of Civilians in Armed Conflict*, February 2020, 50.

<sup>30</sup> ILGA World, *32nd UPR Working Group Sessions: SOGIESC Recommendations* (2019), 3.

<sup>31</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review, A/HRC/26/4*, 4 April 2014, para. 138.11.

<sup>32</sup> UN Assistance Mission in Afghanistan, *Afghanistan Annual Report 2015: Protection of Civilians in Armed Conflict*, February 2016, 51.

<sup>33</sup> It has been argued that the concept of “summary execution” encompasses situations when the death penalty is imposed as the result of a “trial” that does not comply with the standards prescribed under International Law for a fair trial (due process) and/or which present a lack of judicial guarantees; or for crimes that are not considered as “the most serious” offenses. For more information: International Commission of Jurists, *Enforced Disappearances and Extrajudicial Executions: Investigation and Sanction, A Practitioners Guide* (Geneva, 2015), 79.

<sup>34</sup> This information was received from various confidential sources. See also: UK Home Office, *Country Policy and Information Note, Afghanistan: Sexual orientation and gender identity or expression*, February 2020, para 4.2.2, citing the Ministry of Foreign Affairs of the Netherlands, Department for Country of Origin Information Reports, *Country of Origin Report Afghanistan*, March 2019, at 102.

<sup>35</sup> Aria Ahmadzai, “Afghanistan LGBT community living under threat of death”, *BBC Afghan*, 7 October 2016.

<sup>36</sup> Stefanie Glinski, “A life in hiding: Kabul’s gay community driven underground”, *The Telegraph*, 16 March 2020.

<sup>37</sup> UK Home Office, *Country Policy and Information Note, Afghanistan: Sexual orientation and gender identity or expression* (2020), para 4.2.2.



# BRUNEI

## Introduction: Brunei's dual legal system

Similarly to the majority of legal systems in other Muslim or Muslim-majority countries,<sup>1</sup> the Sultanate of Brunei runs a dual or hybrid legal system, with the common law and Sharia law running in parallel to each other.<sup>2</sup> This means that the secular Penal Code coexists with the Syariah Penal Code and their respective enforcement is under the charge of two differentiated judicial systems. Both the secular Penal Code and the Syariah Penal Code criminalise consensual same-sex sexual acts, but the provisions imposing the death penalty for such acts are found only under the provisions of the Syariah Penal Code ("SPCO").

## Legal basis and evidentiary requirements

Section 82 of the SPCO criminalises *liwat* (sodomy), which is defined as "sexual intercourse between a man and another man, or between a man and a woman other than his wife, done against the order of nature, that is through the anus".<sup>3</sup> If convicted, the person is liable to the same punishment as provided for the offence of *zina* (adultery).<sup>4</sup> This carries the possible punishment of "stoning to death, witnessed by a group of Muslims" if the person is *muhsan* (married).<sup>5</sup>

Additionally, the offence must be proven by the confession of the accused, or by eyewitness testimony of at least four credible male Muslims according to Syariah law.<sup>6</sup> If similarly proved, but the person is *ghairu muhsan* (not married), they may be punished with a whipping of 100 strokes, witnessed by a group of Muslims and imprisonment for a term of one year.<sup>7</sup> Alternatively, if the offence is proved by other evidence, a married person may be whipped with up to

30 strokes and imprisoned for a term not exceeding 7 years.<sup>8</sup> A non-married person may be whipped with up to 15 strokes and imprisoned for up to 3 years.<sup>9</sup>

Given the nature of Syariah law, it is not entirely clear whether or not the SPCO would apply to Muslims only or to the population at large. Brunei's Minister of Foreign Affairs stated that the offence does not apply to non-Muslims, except when an "act of sodomy was committed with a Muslim".<sup>10</sup> This appears to be supported by the wording of Section 69 of the SPCO, which differentiates between the punishment for a Muslim committing the offence and a non-Muslim committing the offence with a Muslim person. However, Section 69 does not cover a situation where a non-Muslim commits the offence with another non-Muslim. It should be noted that there is academic commentary from Ann Black that the Minister's interpretation is misleading or mistaken. According to Ann Black, Section 82 "applies to 'any person', which is defined in section 3 of the SPCO as 'Muslim and non-Muslim'".<sup>11</sup>

## Legislative history and international reaction

The Syariah Penal Code Order was first passed on 22 October 2013 and has undergone several stages of implementation. The first stage began on 1 May 2014 and put into force the first three parts of the SPCO.

On 5 March 2018, the [Syariah Courts Criminal Procedures Code 2018](#) passed. The second stage fully implemented the SPCO on 3 April 2019,<sup>12</sup> and gave effect to the fourth and fifth parts of the SPCO, which contain provisions defining adultery and sodomy as criminal offences carrying the possible punishments of the death penalty and whipping.<sup>13</sup> The announcement

<sup>1</sup> Toni Johnson and Mohammed Aly Sergie, "Islam: Governing Under Sharia", *Council on Foreign Relations*, 25 July 2014. See also: "Application of Sharia by country" (World map), *Freedom House*, 2013.

<sup>2</sup> Human Rights Resource Centre, *Keeping the Faith: A Study of Freedom of Thought, Conscience, and Religion in ASEAN* (Indonesia: Human Rights Resource Centre 2015), 57. This was recently confirmed by Dato Erywan Pehin Yusof, the Minister of Foreign Affairs II: see, Ministry of Foreign Affairs (Brunei Darussalam), *Reply to Communication from Special Rapporteurs*, UNGA/C/1.1/3, 7 April 2019, para. 3.

<sup>3</sup> SPCO, Section 82(2).

<sup>4</sup> SPCO, Section 82(1).

<sup>5</sup> SPCO, Section 69(1)(a).

<sup>6</sup> SPCO, Section 69(1).

<sup>7</sup> SPCO, Section 69(1)(b).

<sup>8</sup> SPCO, Section 69(2)(a).

<sup>9</sup> SPCO, Section 69(2)(b).

<sup>10</sup> Ministry of Foreign Affairs (Brunei Darussalam), *Reply to Communication from Special Rapporteurs*, UNGA/C/1.1/3, 7 April 2019, point 6.

<sup>11</sup> Ann Black, "Casting the First Stone: The Significance of Brunei Darussalam's Syariah Penal Code Order for LGBT Bruneians", *Australian Journal of Asian Law* 20, No. 1 (2019): 9.

<sup>12</sup> "Titah Of His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah Ibnu Al-Marhum Sultan Haji Omar 'Ali Saifuddien Sa'adul Khairi Waddien, The Sultan And Yang Di-Pertuan Of Brunei Darussalam", *Prime Minister's Office Brunei Darussalam*, 5 May 2019.

<sup>13</sup> OL BRN 1/2019, 1 April 2019.

of the full implementation of the SPCO drew quick reactions from international human rights bodies. The UN High Commissioner for Human Rights urged the government of Brunei to halt the implementation of the legislation, as it would “enshrine in legislation cruel and inhuman punishments that seriously breach international human rights law”.<sup>14</sup>

UNAIDS and the UN Population Fund (UNFPA) made reference to the Agenda 2030 and warned that criminalising minorities “works against reaching the Sustainable Development Goals (SDGs) ... to leave no one behind”, and that “[e]very person, without any distinction on any grounds, has an equal right to live free from violence, persecution, discrimination and stigma of any kind”.<sup>15</sup>

Notably, several UN Special Procedures<sup>16</sup> issued a communication on 1 April 2019 urging the Bruneian government to “revoke the Syariah Penal Code Order and to repeal it completely”, as the imposition of the death penalty by stoning for consensual same-sex acts between adults may violate “the prohibition of discrimination, the right to privacy, the right to life, the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, [and] the right to freedom of thought, conscience and religion”.<sup>17</sup>

Dato Erywan Pehin Yusof, Bruneian Minister of Foreign Affairs, replied to this communication. He reaffirmed the Bruneian government’s commitment to “its international obligations in promoting and protecting human rights” and highlighted that the “Syariah criminal law system focuses more on prevention than punishment”.<sup>18</sup>

The SPCO had also previously drawn grave concerns from other UN human rights mechanisms, including the Committee on the Elimination of Discrimination against Women (CEDAW) and the Committee on the Rights of the Child (CRC). The CEDAW Committee urged Brunei to review the SPCO’s provisions as women “are disproportionately affected by punishment for ‘crimes’ involving sex”.<sup>19</sup> The CRC similarly compelled Brunei to eliminate “all provisions that discriminate against women and girls and have a negative impact on their children”, including those authorising the penalty of death by stoning.<sup>20</sup>

The SPCO also drew immediate reactions from various governments, including France,<sup>21</sup> the United States of America,<sup>22</sup> and the European Parliament<sup>23</sup> stating that certain provisions were inconsistent with Brunei’s human rights commitments.

Several human rights civil society organisations also responded strongly to the SPCO. A coalition of Southeast Asian civil society organisations released a statement on 3 April 2019, calling for the government to “immediately halt the full implementation of the law”.<sup>24</sup> ILGA Asia,<sup>25</sup> the International Commission of Jurists,<sup>26</sup> Amnesty International,<sup>27</sup> and Human Rights Watch<sup>28</sup> similarly issued statements urging the government against implementing the law.

There were also calls for boycotts of luxury hotels owned by the Brunei Investment Group, including the Beverly Hills Hotel and the Dorchester in London by celebrities<sup>29</sup> and multinational companies.<sup>30</sup>

<sup>14</sup> “Bachelet urges Brunei to stop entry into force of ‘draconian’ new penal code”, *UNHCR Website*, 1 April 2019.

<sup>15</sup> “UN agencies urge Brunei to repeal new ‘extreme and unjustified’ penal code”, *UN News*, 4 April 2019.

<sup>16</sup> This included the mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on freedom of religion or belief; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on violence against women and the Working Group on the issue of discrimination against women in law and in practice.

<sup>17</sup> *OL BRN 1/2019*, 1 April 2019.

<sup>18</sup> Ministry of Foreign Affairs (Brunei Darussalam), *Reply to Communication from Special Rapporteurs*, UNGA/C/1.1/3, 7 April 2019, 1–2.

<sup>19</sup> Committee on the Elimination of Discrimination Against Women, *Concluding observations on the combined initial and second periodic reports of Brunei Darussalam*, CEDAW/C/BRN/CO/1-2, 14 November 2014, para 12.

<sup>20</sup> Committee on the Rights of the Child, *Concluding observations on the combined second and third periodic reports of Brunei Darussalam*, CRC/C/BRN/CO/2-3, 24 February 2016, paras. 45–46.

<sup>21</sup> “Brunei – New criminal legislation”, *Ministry of Europe and Foreign Affairs (France)*, 2 April 2019.

<sup>22</sup> Department of State (United States of America), “Implementation of Phases Two and Three of Brunei’s Sharia Penal Code”, 2 April 2019.

<sup>23</sup> European Parliament, *Resolution on Brunei 2019/2692(RSP)*, 18 April 2019.

<sup>24</sup> “Statement of ASEAN Civil Society Organizations on the Full Enforcement of Sharia Law in Brunei Darussalam”, *ASEAN SOGIE Caucus (Facebook page)*, 3 April 2019.

<sup>25</sup> “Statement on the implementation of the Sharia Penal Code in Brunei”, *ILGA Asia (website)*, 3 April 2019.

<sup>26</sup> “Brunei Darussalam: implementation of Syariah Penal Code is anathema for Human Rights”, *ICJ (website)*, 2 April 2019.

<sup>27</sup> “Brunei must immediately halt plans to introduce stoning and other vicious punishments”, *Amnesty International*, 3 April 2019.

<sup>28</sup> “Brunei: New Penal Code Imposes Maiming, Stoning”, *Human Rights Watch*, 3 April 2019.

<sup>29</sup> “A New Anti-LGBTQ Death-By-Stoning Law in Brunei Has Sparked A Celebrity Boycott Worldwide”, *Buzzfeed News*, 4 April 2019.

<sup>30</sup> Elisa Marinuzzi, “JPMorgan’s Brunei Boycott Deserves a Small Cheer”, *Bloomberg*, 1 May 2019.

### Official response by the Bruneian government

The Bruneian government has sought to address the “questions and misconceptions” about the SPCO and the implementation of the death penalty by emphasising its *de facto* moratorium on the death penalty and the evidentiary requirement for a conviction.<sup>31</sup>

First, according to the Sultan of Brunei, the country has a “*de facto* moratorium on the execution of death penalty for cases under the common law”, which will “also be applied to cases under the SPCO which provides a wider scope for remission.”<sup>32</sup> According to the Bruneian government, no executions have been carried out since 1996.<sup>33</sup> However, this moratorium is only *de facto* (i.e., in fact), rather than *de jure* (i.e., by official law). This has led to concerns that “this Sultan or his successor can counter with a different *titah* (speech by the Sultan) or just implement the law as it stands”.<sup>34</sup>

Second, Brunei’s Minister of Foreign Affairs has noted that the penal sentences of *hadd* (a punishment mandated by God) imposed for Section 82 of the SPCO have “extremely high evidentiary threshold”, requiring two or four male witnesses of “high moral standing and piety”, which would be “difficult to find [...] in this day and age”. Additionally, he noted that the standard of proof for an offence is “no doubt at all” for all aspects of the presumed offence, which goes significantly further than the common law standard of ‘beyond reasonable doubt’.<sup>35</sup>

Nonetheless, commentators have noted that even if no prosecutions occur under the SPCO, “the resultant social stigma remains”,<sup>36</sup> as “merely enacting such laws creates a toxic and threatening environment”.<sup>37</sup> Furthermore, arrests and prosecutions based on these

provisions are technically still possible, even if the evidentiary threshold for a conviction is very high.

### Response at the Universal Periodic Review

Additionally, during the third review of Brunei under the Universal Periodic Review (UPR) process in May 2019, Brunei received 19 recommendations related to issues of sexual orientation and gender identity, the majority of which centred on Brunei’s full implementation of the SPCO.<sup>38</sup> For instance, the Czech Republic, Denmark, France, Portugal, Sweden, Uruguay, Montenegro, and Malta called for the repeal of the death penalty for consensual same-sex sexual acts.<sup>39</sup> Many countries (including Greece, Brazil, Mexico, and Croatia) recommended that Brunei establish an official moratorium with a view to abolish the death penalty.<sup>40</sup> The Bruneian government did not accept any of the 19 recommendations.<sup>41</sup> In responding to the recommendations, the Bruneian government emphasised again the *de facto* moratorium, the high evidentiary threshold required for prosecution, and the purpose of the SPCO to deter serious crimes and preserve “peace, morality and decency of the public”.<sup>42</sup>

Additionally, the Bruneian government responded that it “continues to preserve its sovereign rights to implement laws that protect society against the most serious crimes”.<sup>43</sup>

This despite guidance from the UN Secretary-General on the false binary between sovereignty and human rights.<sup>44</sup> This stance also disregards explicit guidance from the Special Rapporteur on extrajudicial, summary or arbitrary killing and the Human Rights Committee in relation to the right to life, which note that the “most serious crimes” only include intentional killing, and the death penalty should never be applied as “a

<sup>31</sup> “Titah Of His Majesty Sultan Haji Hassanal Bolkiah Mu’izzaddin Waddaulah Ibni Al-Marhum Sultan Haji Omar ‘Ali Saifuddien Sa’adul Khairi Waddien, The Sultan and Yang Di-Pertuan Of Brunei Darussalam”, *Prime Minister’s Office Brunei Darussalam*, 5 May 2019.

<sup>32</sup> *Ibid.*

<sup>33</sup> The Sultan also stated in his *titah* (speech by the Sultan) that this has been the practice for “more than two decades”. See, “Titah Of His Majesty Sultan Haji Hassanal Bolkiah Mu’izzaddin Waddaulah Ibni Al-Marhum Sultan Haji Omar ‘Ali Saifuddien Sa’adul Khairi Waddien, The Sultan and Yang Di-Pertuan Of Brunei Darussalam”, *Prime Minister’s Office Brunei Darussalam*, 5 May 2019.

<sup>34</sup> Ann Black, “Casting the First Stone: The Significance of Brunei Darussalam’s Syariah Penal Code Order for LGBT Bruneians”, *Australian Journal of Asian Law* 20, No. 1 (2019): 15. Human Rights Watch similarly noted that “this moratorium is subject to political whim and could be lifted at any time, while leaving in place dozens of other rights-offending provisions”. See, “Brunei: New Report on Abusive Penal Code”, *Human Rights Watch*, 22 May 2019.

<sup>35</sup> Ministry of Foreign Affairs (Brunei Darussalam), *Reply to Communication from Special Rapporteurs*, UNGA/C/1.1/3, 7 April 2019, point 8.

<sup>36</sup> Ann Black, “Casting the First Stone: The Significance of Brunei Darussalam’s Syariah Penal Code Order for LGBT Bruneians”, *Australian Journal of Asian Law* 20, No. 1 (2019), 9.

<sup>37</sup> “Brunei Darussalam: Claims of ‘preventive’ stoning and amputation laws are callous and reckless”, *Amnesty International*, 12 April 2019.

<sup>38</sup> ILGA World, *33rd UPR Working Group Sessions: SOGIESC Recommendations*, 13.

<sup>39</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Brunei Darussalam*, A/HRC/42/11, 25 June 2019.

<sup>40</sup> *Ibid.*

<sup>41</sup> ILGA World, *33rd UPR Working Group Sessions: SOGIESC Recommendations*, 13.

<sup>42</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Brunei Darussalam, Addendum*, A/HRC/42/11/Add.1, 3 September 2019, 8.

<sup>43</sup> *Id.*, 4.

<sup>44</sup> “United Nations Secretary-General Antonio Guterres launches his call to action for Human Rights” *United Nations High Commissioner for Human Rights*, 30 June 2020 (noting that “the international community must overcome the false dichotomy between human rights and national sovereignty. Human rights and sovereignty went hand in hand. The promotion of human rights strengthened States and societies, thereby reinforcing sovereignty”).

sanction against conduct whose very criminalization violates the Covenant, including [...] homosexuality".<sup>45</sup>

Furthermore, as noted by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, besides the violation of the right to life, the death penalty may run afoul of the prohibition of torture and cruel, inhuman or degrading treatment. This is in violation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).<sup>46</sup>

It is worth noting that Brunei has signed the UNCAT<sup>47</sup> and must "refrain from acts which would defeat the object and purpose of [the] treaty",<sup>48</sup> especially in light of its commitment to ratify the UNCAT.<sup>49</sup>

#### *Instances of enforcement*

As of December 2020, ILGA World was unable to corroborate whether any arrests, prosecutions or convictions were carried out under Section 82 of the SPCO since its enactment.

A Bruneian news outlet reported in January 2020 about a man facing charges for hiring two men for sexual services, promising payment, and then stealing from them.<sup>50</sup> The report noted that he was facing charges in the Magistrate's Court,<sup>51</sup> which would apply the secular Penal Code,<sup>52</sup> and thus, the death penalty cannot be imposed. The report did not mention whether the man was being charged for "unnatural offences", under Section 377 of the secular Penal Code.<sup>53</sup>

<sup>45</sup> UN General Assembly, *Extrajudicial, summary or arbitrary executions: Note by the Secretary-General, A/74/318*, 20 August 2019, para 4; Human Rights Committee, *General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, CCPR/C/GC/36, 30 October 2018.

<sup>46</sup> UN General Assembly, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/67/279, 9 August 2012, paras. 76, 78.

<sup>47</sup> Brunei Darussalam signed the UNCAT on 22 September 2015. See, "Ratification Status for Brunei Darussalam", *United Nations High Commissioner for Human Rights Website*.

<sup>48</sup> Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331, art. 18. States that have signed, but not ratified treaties must not make changes to their law or policy that would undermine their obligations under the treaty in the future if they ratify the treaty.

<sup>49</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Brunei Darussalam, Addendum, A/HRC/42/11/Add.1*, 3 September 2019, 2.

<sup>50</sup> Fadley Faisal, "Man charged with seeking sexual services, thieving out on bail", *Borneo Bulletin*, 11 January 2020.

<sup>51</sup> *Ibid.*

<sup>52</sup> This is to the extent that the Magistrate Courts are a part of the common law system. The University of Melbourne, "Southeast Asian Legal Research Guide: The Brunei Court System", 17 July 2020.

<sup>53</sup> See also, Emma Powys Maurice, "Man charged with Brunei's first 'gay crime' since introduction of Sharia law", *Pink News*, 6 January 2020.



# IRAN

## Introduction

The *Iran Islamic Penal Code* (2013) (hereinafter, “IIPC 2013”) is enforced by Iran’s judiciary, which is structured as a civil law system following the French civil law system.<sup>1</sup> Iran’s judiciary follows Shi’ite Islamic Shari’a law,<sup>2</sup> which can be contrasted with other Muslim or Muslim-majority countries practising hybrid systems.<sup>3</sup> According to the Project on Extra-Legal Executions in Iran, the IIPC 2013 and its 1991 predecessor originate from Shari’a law and are influenced by Ayatollah Ruhollah Khomeini’s book of Islamic jurisprudence, *Tahrir al-Wasileh*.<sup>4</sup>

The IIPC 2013 amended Iran’s 1991 Islamic Penal Code,<sup>5</sup> which already carried the possible death penalty for sodomy if both the active and passive parties are mature, of sound mind, and have free will.<sup>6</sup>

According to Human Rights Watch, after the 1979 Islamic Revolution, the Iranian judiciary lacked a codified set of criminal laws and sentenced to death political prisoners and alleged criminals on the basis of Shari’a law sources (particularly Komeini’s *Tahrir al-Wasileh*) for crimes such as *moharebeh* (enmity against God) and *efsad-e fel arz* (spreading corruption on Earth).<sup>7</sup>

In 1982, lawmakers passed a first set of Penal Code provisions, and in 1983, ratified laws on discretionary punishments for a trial period. The 1991 Islamic Penal Code unified these separate pieces of legislation.<sup>8</sup>

In its early attempts to track laws affecting lesbians and gays around the world, ILGA World sent a letter to the Iranian embassy in The Hague, requesting official information on the criminalisation of “homosexual

behaviour”.<sup>9</sup> Most notably, the Embassy replied on March 27, 1987, stating that:

Homosexuality in Iran, treated according to the Islamic law, is a sin in the eyes of God and a crime for society. In Islam, generally, homosexuality is among the worst possible sins you can imagine.<sup>10</sup>

In its third edition of the *Pink Book*, ILGA noted that the information authors had access to indicated that judges were allowed to take action without the need of a complaint and that *hudood* punishments (including whipping and stoning) as well as *ta’zir* punishments, were concepts used in the provisions “criminalising homosexuality”.<sup>11</sup>

In 1991, lawmakers approved the 1991 Islamic Penal Code for a five-year trial period, and later renewed it for five and ten-year periods. Ahead of the expiration of the trial period of the 1991 Penal Code in March 2012, the Iranian judiciary, legislature, and executive prepared new legislation amending the 1991 Penal Code.<sup>12</sup> The IIPC 2013 was eventually ratified on 21 April 2013.

## Legal basis and evidentiary requirements

Under the Iran Islamic Penal Code 2013,<sup>13</sup> the death penalty can be imposed in Iran for at least three specific crimes involving consensual same-sex sexual acts, namely for acts of *livat* (sodomy); for *tafkhez* (rubbing penis between thighs or buttocks); and *musaheqeh* (lesbian sex) if in the latter two cases the convicted individual has already been punished three times for the same act (see below).

<sup>1</sup> Maliheh Zare, “Update: An Overview of Iranian Legal System”, *Hauser Global Law School Program*, August 2015.

<sup>2</sup> Omar Sial et al., “Update: The Legal System and Research of the Islamic Republic of Iran”, *Hauser Global Law School Program*, April 2019.

<sup>3</sup> Toni Johnson and Mohammed Aly Sergie, “Islam: Governing Under Sharia”, *Council on Foreign Relations*, 25 July 2014. See also: “Application of Sharia by country” (World map), *Freedom House*, 2013.

<sup>4</sup> Project on Extra-Legal Executions in Iran, *Capital Offenses in the Islamic Republic of Iran* (September 2009), 1.

<sup>5</sup> Human Rights Watch, *Codifying Repression: An Assessment of Iran’s New Penal Code* (2013), 8.

<sup>6</sup> ILGA World, *State-sponsored Homophobia*, May 2012, 43.

<sup>7</sup> Human Rights Watch, *Codifying Repression: An Assessment of Iran’s New Penal Code* (2013) 8-9.

<sup>8</sup> *Ibid.*

<sup>9</sup> The survey was co-sponsored by the International Humanist and Ethical Union and the Department of Gay and Lesbian Studies of the University of Utrecht.

<sup>10</sup> The International Lesbian and Gay Association (ILGA): Aart Hendriks, Rob Tielman and Evert van der Veen, *The Pink Book: A Global View of Lesbian and Gay Liberation and Oppression*, Third Edition (New York: Prometheus, 1993), 291.

<sup>11</sup> *Ibid.*

<sup>12</sup> Human Rights Watch, *Codifying Repression: An Assessment of Iran’s New Penal Code* (2013), 9.

<sup>13</sup> An English translation of the Code can be found at: “English Translation of Books I & II of the New Islamic Penal Code”, Iran Human Rights Documentation Center, 4 April 2014.

### *Livat (male anal penetration)*

Article 233 defines *livat* (sodomy) as the penetration of a man's sex organ, up to the point of circumcision, into another male person's anus.<sup>14</sup> Article 234 establishes the penalties for such acts depending on the circumstances under which those acts were committed. Two of these are relevant to consensual same-sex sexual acts while one refers to anal rape. Notably, for *livat*, the law provides for a more stringent regime of punishment to the receptive party.

For consensual same-sex sexual acts, the insertive party is punished with the death penalty only under three specific circumstances (if he does not fall under any of these circumstances, the insertive party shall instead be sentenced to one hundred lashes):

1. if he meets the conditions for *ihsan*, a status defined in the IIPC 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."<sup>15</sup>
2. if he is a non-Muslim and has penetrated a Muslim.<sup>16</sup>
3. if he is convicted for the fourth time.<sup>17</sup>

In contrast, for the receptive/passive party, the death penalty is imposed regardless of the above circumstances.<sup>18</sup>

These conditions limit the circumstances in which the death penalty can be imposed in contrast to the 1991 Islamic Penal Code, which applied to both the insertive and receptive party so long as they were mature, of sound mind, and had free will.<sup>19</sup> However, the new provisions treat the receptive/passive party more harshly compared to the insertive/active party. The receptive/passive party faces a mandatory death penalty unless he proves lack of the conditions of maturity, sound mind, and free will (on other words, if

he can prove that he was forced to participate in same-sex intercourse).

With regard to these provisions, the Iranian Lesbian and Transgender Network (6Rang) has explained the Iranian authorities usually label incidents of *livat* as non-consensual by "offering a less severe sentence for one of the parties in exchange for the confession that he was forced into same-sex intercourse by the other party".<sup>20</sup> This is also corroborated by Amnesty International who reported in 2016 that if the intercourse is deemed non-consensual (*lavat be onf*), the insertive party receives the death penalty but the receptive party is exempted from punishment and treated as a victim. Therefore, they indicated that this legal framework risks creating a situation where willing "recipients" of anal intercourse may feel compelled, when targeted by the authorities, to characterise their consensual sexual activity as rape in order to avoid the death penalty.<sup>21</sup> 6Rang has further noted that this lack of due process is exacerbated by the fact that the right to due process and legal representation for those charged with *livat* is in many cases violated by the judicial authorities.<sup>22</sup>

### *Tafkhiz (putting penis between male thighs or buttocks)*

Article 235 defines *tafkhez* as the putting of a man's sex organ (penis) between the thighs or buttocks of another male person.<sup>23</sup> Moreover, a penetration of a penis into another male person's anus that does not reach the point of circumcision is regarded as *tafkhez*.<sup>24</sup>

There are two circumstances under which men can be sentenced to death for acts of *tafkhez*:

1. when the active party is a non-Muslim, and the receptive party is a Muslim.<sup>25</sup>
2. upon conviction for the fourth time.<sup>26</sup>

Otherwise, the punishment for the insertive and receptive party is one hundred lashes.<sup>27</sup>

<sup>14</sup> *Iran Islamic Penal Code*, Art. 233.

<sup>15</sup> *Id.*, Art. 234, note 2.

<sup>16</sup> *Id.*, Art. 234, note 1.

<sup>17</sup> Art. 136 of the *Iran Islamic Penal Code* notes that "[w]here anyone commits the same offense punishable by *hadd* three times, and each time the *hadd* punishment is executed upon him/her, the *hadd* punishment on the fourth occasion shall be the death penalty."

<sup>18</sup> *Iran Islamic Penal Code*, Art. 234.

<sup>19</sup> ILGA World, *State-sponsored Homophobia*, May 2012, 43.

<sup>20</sup> "6Rang letter to Dutch government regarding its asylum policy for Iranian LGBTQI", 6Rang, 11 February 2020. See also, 6Rang (Iranian Lesbian & Transgender Network), "It's a great honor to violate homosexuals' rights: Official hate speech against LGBT people in Iran" (2017), 12.

<sup>21</sup> "Iran: Hanging of teenager shows authorities' brazen disregard for international law", *Amnesty International (website)*, 2 August 2016.

<sup>22</sup> "6Rang letter to Dutch government regarding its asylum policy for Iranian LGBTQI", 6Rang, 11 February 2020.

<sup>23</sup> *Iran Islamic Penal Code*, Art. 235.

<sup>24</sup> *Id.*, Art. 235, Note.

<sup>25</sup> *Id.*, Art. 236.

<sup>26</sup> *Id.*, Art. 136 notes that "[w]here anyone commits the same offense punishable by *hadd* three times, and each time the *hadd* punishment is executed upon him/her, the *hadd* punishment on the fourth occasion shall be the death penalty."

<sup>27</sup> *Id.*, Art. 236.



### *Musaheqeh (touching between female sex organs)*

*Musaheqeh*, which is sometimes translated as “lesbianism”, is defined under the IIPC 2013 as a situation where a “female person puts her sex organ on the sex organ of another person of the same sex”.<sup>28</sup> A woman convicted for the fourth time may be sentenced to the death penalty.<sup>29</sup> For the first three offenses, the *hadd* punishment is one hundred lashes in all circumstances.<sup>30</sup> Human Rights Watch noted that the IIPC 2013 provides a “more exact definition of lesbianism” than the 1991 Islamic Penal Code did, and may make it more difficult for authorities to convict women of lesbianism.<sup>31</sup>

### *Efsad-e-fel-arz (spreading “corruption on Earth”)*

Some commentators have suggested that the vague provision of *efsad-e-fel-arz* (corruption on Earth) can also be used against non-heterosexual individuals. According to the Special Rapporteur on the Islamic Republic of Iran, being convicted of *efsad-e-fel-arz* may carry the death penalty.<sup>32</sup>

Although the provision does not contain any explicit SOGIESC reference,<sup>33</sup> there have been reported instances of this provision being used against LGBTQ+ individuals. Human Rights Watch has noted that the IIPC 2013 expanded the definition of *efsad-e fel arz* to include “clearly non-violent activities” if they “seriously disturb the public order and security of the nation”, or widely spread “moral corruption”, in comparison to the 1991 Islamic Penal Code.<sup>34</sup>

### *International reaction*

Iran’s IIPC 2013 has received considerable scrutiny from international bodies about the potential human rights violations it may facilitate.

The Special Rapporteur on the Islamic Republic of Iran noted in January 2020 that the application of the death penalty for consensual same-sex intercourse is in contravention of article 6 of the International Covenant on Civil and Political Rights (ICCPR).<sup>35</sup>

The Committee on the Rights of Persons with Disabilities urged Iran to replace the death penalty as a form of punishment to prevent the arbitrary deprivation of life.<sup>36</sup> The Committee on the Rights of Children expressed concern that the “same-sex sexual behaviour of adolescents above the current age of criminal responsibility is criminalized and punished with penalties ranging from flogging to the death penalty”, and recommended Iran to decriminalise same-sex relations.<sup>37</sup>

During the third review of Iran under the Universal Periodic Review (UPR) process in November 2019, Iran received 10 SOGIESC recommendations.<sup>38</sup> Iceland recommended Iran to repeal relevant articles of the IIPC that impose the death penalty for consensual same-sex conduct between adults.<sup>39</sup> Malta and Mexico called for Iran to consider a moratorium on the death penalty for consensual same-sex conduct.<sup>40</sup> Several other countries, including Canada, Germany, Israel, and Italy urged Iran to decriminalise consensual same-sex activities.<sup>41</sup>

<sup>28</sup> *Id.*, Art. 238.

<sup>29</sup> *Id.*, Art. 136 notes that “[w]here anyone commits the same offense punishable by *hadd* three times, and each time the *hadd* punishment is executed upon him/her, the *hadd* punishment on the fourth occasion shall be the death penalty.”

<sup>30</sup> *Iran Islamic Penal Code*, Art. 239.

<sup>31</sup> The 1991 Islamic Penal Code defined lesbianism under Article 127 as “same-sex relations between women by way of their genitals”. See, “Codifying Repression: An Assessment of Iran’s New Penal Code”, *Human Rights Watch*, 28 August 2012, 26.

<sup>32</sup> *Situation of human rights in the Islamic Republic of Iran*, A/HRC/43/61, 28 January 2020, para 18; *Situation of human rights in the Islamic Republic of Iran*, A/75/213, 21 July 2020, para. 29.

<sup>33</sup> Art. 286 of the *Iran Islamic Penal Code* states: “Any person, who extensively commits felony against the bodily entity of people, offenses against internal or international security of the state, spreading lies, disruption of the economic system of the state, arson and destruction of properties, distribution of poisonous and bacterial and dangerous materials, and establishment of, or aiding and abetting in, places of corruption and prostitution, [on a scale] that causes severe disruption in the public order of the state and insecurity, or causes harsh damage to the bodily entity of people or public or private properties, or causes distribution of corruption and prostitution on a large scale, shall be considered as *mofsed-e-fel-arz* [corrupt on Earth] and shall be sentenced to death.”

<sup>34</sup> “Iran: Proposed Penal Code Deeply Flawed”, *Human Rights Watch*, 29 August 2012.

<sup>35</sup> Human Rights Council, *Situation of human rights in the Islamic Republic of Iran*, A/HRC/43/61, 28 January 2020, para 18. See also, Human Rights Council, *Situation of human rights in the Islamic Republic of Iran*, A/HRC/43/20, 17 January 2020, para. 5.

<sup>36</sup> The Committee notes that persons with disabilities are at a greater risk of incurring the death penalty due to a “lack of procedural accommodations in criminal proceedings”, which may result in an arbitrary deprivation of life. Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of the Islamic Republic of Iran*, CRPD/C/IRN/CO/1, 10 May 2017, para 22 – 23.

<sup>37</sup> Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic reports of the Islamic Republic of Iran*, CRC/C/IRN/CO/3-4, 14 March 2016, para 31 – 32.

<sup>38</sup> ILGA World, *34th UPR Working Group Sessions: SOGIESC Recommendations*, 47.

<sup>39</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Islamic Republic of Iran*, A/HRC/43/12, 27 December 2019, 12.

<sup>40</sup> *Id.*, 13.

<sup>41</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Islamic Republic of Iran*, A/HRC/43/12, 27 December 2019, 10.

The imposition of the death penalty under IIPC 2013 has also drawn criticism from several human rights organisations, including Human Rights Watch,<sup>42</sup> the International Federation for Human Rights,<sup>43</sup> and Südwind.<sup>44</sup>

6Rang has long argued that Iran should remove the death penalty and flogging for offences relating to consensual same-sex conduct between adults.<sup>45</sup> Amnesty International argued that Iran's imposition of the death penalty for offences that are not intentional killing violates the right to life and is the "ultimate cruel, inhuman and degrading punishment".<sup>46</sup> The University of Essex's Human Rights in Iran Unit noted that the use of the death penalty as punishment for same-sex relations is an arbitrary deprivation of life under article 6(1) of the ICCPR, and may also "contravene individuals' rights to due process and a fair trial".<sup>47</sup>

In June 2019, when Iran's Foreign Minister was asked about why the country executes homosexuals, he responded: "Our society has moral principles. And we live according to these principles. These are moral principles concerning the behaviour of people in general. And that means that the law is respected and the law is obeyed."<sup>48</sup>

#### Known instances of enforcement<sup>49</sup>

In January 2019, a state-controlled Iranian news outlet reported that a 31-years-old gay man was publicly executed by hanging for alleged *liwat e-be onf* (forced sodomy) and kidnapping charges.<sup>50</sup>

6Rang also reported that in January 2018 a man was executed in Kazerun city in January 2018 for the alleged crime of forced sodomy or raping a younger man without due process, as the authorities did not provide evidence of the non-consensual nature of the sexual act and disallowed the man any legal representation.<sup>51</sup>

In September 2017, Iran Human Rights reported that at least one prisoner was hanged on sodomy charges at Ardabil Central Prison for committing a sodomy offence in prison.<sup>52</sup>

On 18 July 2016, a 19-year-old man was executed in Arak (Markazi Province) after being convicted of an act of forced sodomy.<sup>53</sup> The alleged offence occurred while the man was still a juvenile.<sup>54</sup>

In August 2014, reports indicated that two men were executed by hanging for allegedly having engaged in consensual same-sex sexual acts.<sup>55</sup>

In May 2012, there were reports that four men were due to be executed by hanging for sodomy.<sup>56</sup>

In September 2011, reports stated that three Iranian men were executed by hanging in Ahvaz after being found guilty for sodomy charges.<sup>57</sup> The Guardian noted that these executions were "the first time for many years that any Iranians have been given death sentences on the basis of their sexuality".<sup>58</sup>

In August 2010, an 18-year-old Iranian faced execution on sodomy charges but was temporarily reprieved after his case drew widespread international attention.<sup>59</sup>

<sup>42</sup> "Codifying Repression: An Assessment of Iran's New Penal Code", *Human Rights Watch*, 28 August 2012.

<sup>43</sup> International Federation for Human Rights, *Iran/death penalty: A state terror policy*, April 2009.

<sup>44</sup> Südwind, *Iran's Penal Code: Report on conflicts with human rights law*.

<sup>45</sup> Iranian Lesbian and Transgender Network, *Submission to the UN Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity*, March 2019.

<sup>46</sup> Amnesty International, *Flawed Reforms: Iran's New Code of Criminal Procedure*, 2016, 58.

<sup>47</sup> Catherine Bevilacqua, Elizabeth Harper, and Catherine Kent, *Sexual Orientation and Gender Identity: Iran's International Human Rights Obligations*, University of Essex Human Rights in Iran Unit, 11.

<sup>48</sup> ILGA World: Lucas Ramon Mendos, *State-Sponsored Homophobia 2019: Global Legislation Overview Update* (Geneva; ILGA, 2019), 12.

<sup>49</sup> We have included instances of enforcement for same-sex conduct between adults. We have also included instances of "non-consensual" same-sex conduct, in light of the commentary that the Iranian authorities usually label incidents of *liwat* as non-consensual by offering a less severe sentence for one of the parties in exchange for the confession that he was forced into the same-sex intercourse by the other party.

<sup>50</sup> ILGA World: Lucas Ramón Mendos, *State-Sponsored Homophobia: 2019* (Geneva: ILGA, 2019), 441; Benjamin Weinthal, "Iran publicly hangs man on homosexuality charges", *The Jerusalem Post*, 26 January 2019. This was likely done pursuant to Art. 234 of the IIPC.

<sup>51</sup> "6Rang letter to Dutch government regarding its asylum policy for Iranian LGBTQI", *6Rang*, 11 February 2020.

<sup>52</sup> "Iran: Man Hanged, Prison Mates Forced to Watch", *Iran Human Rights*, 21 September 2017.

<sup>53</sup> "Iran: Hanging of teenager shows authorities' brazen disregard for international law", *Amnesty International*, 2 August 2016.

<sup>54</sup> *Ibid.* Note: ILGA World incorrectly noted in 2019 that he was executed when he was 17. ILGA World: Lucas Ramón Mendos, *State-Sponsored Homophobia: 2019* (Geneva: ILGA, 2019), 441.

<sup>55</sup> *Ibid.*

<sup>56</sup> Dan Littauer, "Four Iranian men due to be hanged for sodomy", *PinkNews*, 12 May 2012.

<sup>57</sup> Saeed Kamali Dehghan, "Iran executes three men on homosexuality charges", *The Guardian*, 7 September 2011.

<sup>58</sup> *Ibid.*

<sup>59</sup> Saeed Kamali Dehghan, "Iran executes three men on homosexuality charges", *The Guardian*, 7 September 2011; Saeed Kamali Dehghan, "Iran set to execute 18-year-old on false charge of sodomy", *The Guardian*, 8 August 2010.

The Australian Department of Foreign Affairs and Trade reported in April 2020 that where “courts find offenders guilty in same-sex relations cases, reporters observe that, in most cases, they generally refrain from imposing the death penalty and instead order floggings”.<sup>60</sup> Nonetheless, there have been recorded instances of enforcement of the death penalty for same-sex sexual acts, as noted above.

In addition, as the reported cases demonstrate, courts may use other charges such as *efsad-e-fel-arz* (corruption on Earth) which disguises the fact that the death penalty may have been imposed for consensual same sex sexual relations. Regarding *efsad-e-fel-arz*, media outlets reported in 2019 that a famous Kurdish

singer was charged with *efsad-e-fel-arz* for having same-sex sexual relations based on evidence from his private chats and postings of “immoral” content on social media.<sup>61</sup> He was allegedly executed on 6 December 2019 according to Kurdish social media accounts.<sup>62</sup>

6Rang reported that in December 2018, two men were arrested and charged with the capital offence of *efsad-e-fel-arz*, in addition to same-sex relations and breaching of public morality, after a private video of their symbolic wedding was published on social media by a third party.<sup>63</sup> As of August 2020, their case is currently being considered by the criminal court of the Province of Fars.<sup>64</sup>

<sup>60</sup> Australian Government Department of Foreign Affairs and Trade, *DFAT Country Information Report: Iran*, 14 April 2020, para 3.149.

<sup>61</sup> ILGA World, *State-Sponsored Homophobia: Global Legislation Overview Update*, December 2019, 12.

<sup>62</sup> Destiny Rogers, “Reports suggest Iran executed Mohsen Lorestani 6 December”, *Q News*, 26 December 2019. 6Rang noted in February 2020 that he “could possibly be executed”; see, “6Rang letter to Dutch government regarding its asylum policy for Iranian LGBTQI”, 6Rang, 11 February 2020.

<sup>63</sup> “6Rang letter to Dutch government regarding its asylum policy for Iranian LGBTQI”, 6Rang, 11 February 2020.

<sup>64</sup> 6Rang, *Written Contribution to the Human Rights Committee From 6Rang (Iranian Lesbian and Transgender Network)*, August 2020, para 26.



# MAURITANIA

## Introduction

Under Article 5 of the [Constitution of the Islamic Republic of Mauritania](#) (1991) Islam “is the religion of the people and the State”. Furthermore, the preamble of the Constitution declares Islam as “the only source of law”. These provisions reflect the close relationship between State and religion, which directly influences the production and application of laws in the country. This results in a legal system which combines the tradition of French civil law, given the country’s history of colonisation by France, and the rule of Islamic Sharia Law.<sup>1</sup> Under the [Criminal Code](#) (1983) consensual same-sex sexual acts are criminalised for both men and women. However, the act is punishable by the death penalty only in cases of sexual intercourse between men.

## Legal basis for the death penalty

The criminalisation of same-sex sexual activity is set forth in Articles 306 and 308 under Section IV of the [Criminal Code](#) (1983) entitled “Attacks on the morals of Islam”. This evinces the influence of Islamic law in the definition of the crime in the code.

According to Article 308: “Any Muslim charged, by witnesses or by confession, of having committed the offence of sodomy will be punished by stoning in public. And in the case of lesbianism, the penalty stipulated in the first paragraph of article 306 applies”.

In turn, Article 306 stipulates the following: “Anyone who has committed an act of breaching decency or Islamic mores or has violated sacred places or helped to violate them, if this action does not fall under crimes of *hudud* (punishments mandated by God) or *qisas* (retaliatory punishments) or *diyya* (blood money; a financial alternative to *qisas*), will be punished with a correctional sentence of three months to two years imprisonment and a fine of 5,000 to 60,000 ouguiya”.

Given the nature of the Sharia law and the explicit mention to “any Muslim” in the above Articles of the Criminal Code, it is not clear if the same provision would apply to non-Muslims.<sup>2</sup>

## International reaction, advocacy efforts, and State’s response

Mauritania has already undergone revisions in two cycles of the Universal Periodic Review (UPR). The first revision took place in November 2010 and the second in November 2015, while the third cycle was scheduled to occur in November 2020.

Despite an ongoing *de facto moratorium* on the death penalty, Mauritania rejected all recommendations in the 2010 first cycle of the UPR pertaining to the elimination of the death penalty.<sup>3</sup> In the review, France and Sweden inquired about the criminalisation of same-sex sexual relations and initiatives taken to repeal the legislation. Both countries made recommendations to remove the provision that allows the application of the death penalty to this type of conduct from the Criminal Code.

Mauritania noted the recommendations (did not accept them) and, in response to inquiries with regard to the provision of the death penalty for same-sex sexual acts, the State replied that “the Criminal Code, which included penalties for those who had same-sex sexual relations, was based on Muslim Sharia law, personal ethics and the specific nature of the country” and that the relevant provisions would be studied in detail “with a view to bringing them into line with international standards”.<sup>4</sup>

Likewise, the country did not accept any such recommendations in its second cycle of the UPR.<sup>5</sup> The States of Montenegro, Slovakia, and Chile showed concern with regard to the criminalisation of same-sex sexual acts still punishable by the death penalty and requested information on the measures being taken to ensure decriminalisation. The State received a recommendation from Sweden, Chile, and France to decriminalise consensual same-sex relations between adults and to ensure that the death penalty is not applied to such acts. Again, Mauritania did not accept any of these recommendations.<sup>6</sup>

In 2019, the Human Rights Committee recommended that the State “should repeal article 308 of the Criminal Code in order to decriminalize sexual

<sup>1</sup> Sylvain Monteillet, “L’Islam, le droit et l’État dans la Constitution mauritanienne” in *L’Afrique politique - Islams d’Afrique: entre le local et le global* (Paris: Éditions Karthala, 2002), 69-100.

<sup>2</sup> Canada: Immigration and Refugee Board of Canada, *Mauritania: The treatment of sexual minorities by society and the authorities, including laws, state protection and support services* (2015-July 2017).

<sup>3</sup> *Report of the Working Group on the Universal Periodic Review: Mauritania*, A/HRC/16/17, 4 January 2011, para. 93.

<sup>4</sup> *Id.*, para. 73.

<sup>5</sup> *Report of the Working Group on the Universal Periodic Review: Mauritania*, A/HRC/31/6, 23 December 2015, para. 129.

<sup>6</sup> *Id.*, para. 129.

relations between consenting adults of the same sex and release anyone currently detained under this article”<sup>7</sup>.

#### *Instances of enforcement: De facto moratorium*

There have been no recorded instances of enforcement of the death penalty against persons accused of participating in consensual same-sex sexual activity since the adoption of the 1983 Criminal Code.

It has been noted in the United Nations Human Rights Committee’s 2012 report on Mauritania that there is a *de facto* “moratorium on the implementation of capital punishment”, with no executions having been carried out since 1987, although sentences to death have been handed down since then and continue to be issued to date.<sup>8</sup>

This was also noted by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Mauritania in 2016, when he also expressed his concern “about the types of crimes for which the death penalty can be imposed under Mauritanian law”, including “homosexual acts”<sup>9</sup>.

The 2020 Human Rights Watch World Report also indicates that “a *de facto* moratorium remains in effect on capital punishment and on corporal punishments that are inspired by Islamic Sharia law and found in the penal code”.<sup>10</sup> The same information has likewise been confirmed by organisations such as Freedom Now<sup>11</sup> and The Advocates for Human Rights<sup>12</sup>. Moreover, Human Rights Watch also reports that “there were no recorded cases of persons deprived of their liberty for homosexuality and no one was sentenced to death in 2019 for homosexual conduct”.<sup>13</sup>

However, this changed when, on 30 January 2020, public outcry in Mauritania led to the arrest of 10 men for allegedly conducting a symbolic “same-sex marriage ceremony” after a video of the group went viral. Police later determined that the gathering was not a wedding but a birthday party, but stated that participants had confessed to being “homosexuals” and accused them of “imitating women”. The event was reported by a range of international human rights organisations and media outlets.<sup>14</sup> On 4 March 2020 the Nouakchott Court of Appeal confirmed that 8 of the 10 had been sentenced to 2 years in prison, but reduced this to 6 months on the condition that the suspended sentence would be reinstated should any in the group “reoffend” within 5 years.<sup>15</sup>

<sup>7</sup> Human Rights Committee, *Concluding observations on the second periodic report of Mauritania*, CCPR/C/MRT/CO/2, 23 August 2019, para. 13.

<sup>8</sup> Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant*, CCPR/C/MRT/1, 23 May 2012, para. 96; See also: Association mauritanienne des droits de l’homme (AMDH), *Mauritanie: 37<sup>e</sup> session rapport alternatif en vue de l’examen du rapport périodique peine de mort* (2020), 4.

<sup>9</sup> *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Mauritania*, A/HRC/34/54/Add.1, 13 December 2016, paras. 32-33.

<sup>10</sup> Human Rights Watch, *World Report 2020: Mauritania* (New York: HRW, 2020).

<sup>11</sup> Freedom Now, *Submission to the United Nations Human Rights Committee List of Issues- Mauritania 124th session* (October-November 2018).

<sup>12</sup> The Advocates for Human Rights, *Written Statement submitted by The Advocates for Human Rights, a non-governmental organization in special consultative status: The Islamic Republic of Mauritania 23rd Session of the Working Group on the Universal Periodic Review Human Rights Council* (AFHR, November 2015).

<sup>13</sup> Human Rights Watch, *World Report 2020: Mauritania* (New York: HRW, 2020).

<sup>14</sup> “Mauritania: Gay couple arrested in Nouakchott after marriage”, *The North Africa Post*, 24 January 2020; “Juzgarán a diez mauritanos por participar en un “matrimonio” homosexual”, *La Vanguardia*, 27 January 2020; “10 men jailed in Mauritania over ‘gay party’ video”, *News24*, 28 January 2020; Emma Powys Maurice, “Ten men have been thrown behind bars to await ‘judgement’ for a secret gay wedding in African country of Mauritania”, *Pink News*, 31 January 2020; Emma Powys Maurice “Eight men sentenced to two years in prison for ‘imitating women’ at a birthday party in Mauritania”, *Pink News*, 8 February 2020.

<sup>15</sup> “Mauritania: Prison Terms for Men Celebrating Birthday”, *Human Rights Watch*, 4 March 2020.



Death by stoning is the prescribed punishment for consensual same-sex sexual acts between adults in 12 states in Nigeria: Bauchi, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Niger, Sokoto, Yobe and Zamfara. A quick reference chart is included at the end of this country entry.

**Disclaimer:** ILGA World was unable to locate copies of the official versions of many of the laws in force in the Northern States of Nigeria. This section largely relies on the work carried out by scholars who had first-hand access to these laws—including the local Sharia Codes—and have carried out detailed analyses of their provisions. Among the sources ILGA World relied upon the most for the analysis of Nigerian Sharia Codes is Professor Philip Ostien's treatise "Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook" (2007).

### *Introduction: Criminal law in Nigeria and consensual same-sex Sexual acts<sup>1</sup>*

Criminal law in Nigeria is not condensed into a single code applicable across the whole country. Its criminal law framework is a complex patchwork of national, state and local laws of various origins, scopes and characteristics.

The *Criminal Code Act* (henceforth "Criminal Code") was first introduced during the British occupation in 1916 and is currently in force, contained in Chapter C38 of the Laws of the Federation of Nigeria (2004).<sup>2</sup> This code contains provisions criminalising consensual same-sex sexual acts (framed as "carnal knowledge of any person against the order of nature") imposing a penalty of imprisonment for 14 years. Most of the Southern States have continued to make use of the provisions of the Criminal Code as their state law, including those aspects that deal with sexuality.<sup>3</sup>

During the first half of the twentieth century, a multiplicity of criminal law systems was locally enforced in the Northern Region (a former administrative division of Nigeria during the British occupation), including uncodified customary law and Sharia law.

This changed in 1960 when the Penal Code (Northern States) Federal Provisions Act was enacted (henceforth, "Penal Code").<sup>4</sup> The provisions of the Penal Code aimed at capturing various principles of Islamic law and was negotiated with Northern politicians and legal scholars. The enactment of this new Penal Code (and the Criminal Procedure Code) displaced Islamic criminal law in Nigeria.<sup>5</sup> Today, this code still applies as both federal and state law in the states that succeeded to the Northern Region.<sup>6</sup> Section 284 of the Penal Code criminalises consensual same-sex sexual acts ("unnatural offences") with imprisonment for up to 14 years and a fine.<sup>7</sup>

### *The reintroduction of Sharia Law in Northern Nigeria*

In 1999, Nigeria returned to civilian rule, and the political power in the states returned to elected state governors. Under the 1999 Constitution, Nigerian federal states need to conform with constitutional provisions for all matters of public policy, but they still have considerable liberty in shaping the administration of justice within their territories and are empowered to introduce local legislation on criminal matters.<sup>8</sup> Relying on this constitutional power, between 1999 and 2001, twelve states decided to reinstate Islamic criminal law in the form of Sharia Penal Codes applicable to Muslims.<sup>9</sup> It is in these codes that the death penalty for consensual same-sex sexual

<sup>1</sup> Besides the two codes analysed in this section, the criminalising legal framework in Nigeria became even more complex in January 2014 with the entry into force of the Same-Sex Marriage (Prohibition) Act (2013), that criminalises same-sex unions and also makes it an offense to register gay clubs, societies and organisations. Under Article 4, their sustenance, processions and meetings is prohibited. Additionally, the public show of same sex amorous relationship directly or indirectly is prohibited. For more information see entry for Nigeria in the criminalisation section of this report and, among others: James Legge, "Nigeria's anti-gay laws: Homosexuals rounded up and beaten, rights groups claim", *The Independent*, 15 January 2014; Tomi Oladipo, "Inside Nigeria's secret gay club", *BBC News*, 2 January 2013.

<sup>2</sup> Ayodele Sogunro, *Bad Laws: A compendium on laws discriminating against persons in Nigeria based on sexual orientation and gender identity/ expression* (TIERS, 2017), 6.

<sup>3</sup> *Ibid.*

<sup>4</sup> Philip Ostien (ed.), *Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook*, Vol. IV (The Hague: Spectrum Books, 2007), 3.

<sup>5</sup> Mamman Lawan, "Islamic Law and Legal Hybridity in Nigeria", *Journal of African Law* 58, No. 02 (2014), 307.

<sup>6</sup> The former region of Northern Nigeria encompassed the territory now occupied by the states of Adamawa, Bauchi, Benue, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Nasarawa, Niger, Plateau, Sokoto, Taraba, Yobe, and Zamfara.

<sup>7</sup> Ayodele Sogunro, *Bad Laws: A compendium on laws discriminating against persons in Nigeria based on sexual orientation and gender identity/ expression* (TIERS, 2017), 9.

<sup>8</sup> Gunnar Weimann, *Islamic Criminal Law in Northern Nigeria: Politics, Religion, and Judicial Practice* (Amsterdam: UvA, 2010), 90; Yushau Sodiq, *A History of the Application of Islamic Law in Nigeria* (2017), 136.

<sup>9</sup> Philip Ostien and Albert Dekker, "Sharia and national law in Nigeria" in Jan Michiel Otto (ed.), *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present* (The Hague: Leiden University Press, 2010), 575.

acts (framed as *liwat* - sodomy) has its legal basis in Northern Nigeria.

Starting with Zamfara in January of 2000,<sup>10</sup> each of these 12 states subsequently enacted local laws to implement Sharia Criminal Codes.<sup>11</sup> Some states initially brought Islamic criminal law back into force by simply stating that in criminal matters Sharia Courts should apply Islamic criminal law “as found in the basic and classical sources: the *Qur’an*, the *Hadith*, and the *fiqh*”, technically the scheme followed by courts before 1960.<sup>12</sup> However, local scholars and lawyers believed that it would be unconstitutional to bring Islamic criminal law into force in this way, and so since then, all states (with the exception of the state of Niger) have formally adopted new Sharia Penal Codes.<sup>13</sup> These codes are largely similar, but certain variations exist from state to state. A “harmonised” version prepared by the Centre for Islamic Legal Studies (CILS) of Ahmadu Bello University was produced in 2005 as a model law and recommended by CILS for adoption by the States. Thus far, the state of Zamfara is the only one to have replaced its original Sharia Penal Code with the harmonised version.<sup>14</sup>

In states with Sharia Penal Codes, Sharia Courts coexist with Magistrates Courts that apply the Penal Code (1960).<sup>15</sup> In this regard, the Sharia Codes currently in force provide for offences and punishments applicable to Muslims and those non-Muslims who voluntarily consent to being tried by a Sharia Court under Sharia law.<sup>16</sup> Non-Muslims who do not consent to be tried under Sharia law are to be tried under the Penal Code by Magistrates and High Courts.<sup>17</sup> Conversely, Sharia Courts lack the authority to compel participation by non-Muslims. There appears to be at least one documented case in the state of Sokoto where a Sharia Court judge unlawfully heard a case against a Christian without the defendant’s consent, and that judge was reportedly

found to have wrongly heard the case and eventually dismissed.<sup>18</sup>

The most relevant innovation brought by the Sharia Codes, which largely followed the Penal Code (1960),<sup>19</sup> was the introduction of certain forms of punishment—most notably, death by stoning, amputations and retaliatory punishments—and the introduction of certain new offences.<sup>20</sup>

With regard to consensual same-sex sexual acts, these codes did not innovate in criminalising (as such conduct was already criminalised under the Penal Code), but they did aggravate the penalties—from 14 years imprisonment and a fine to death by stoning—and contributed to increased hostility against sexual and gender diversity in a context in which these laws were seen as a means to curb vice, corruption and “ungodly” conduct.

A local organisation reported that along with the enforcement of Sharia law, numerous practices were being *de facto* imposed on society in the name of “sharianisation” with no legal basis. These include the imposition of dress codes on women, attempts to force women to sit at the back of public vehicles, and midnight curfews.<sup>21</sup>

Prior to, or in parallel with the adoption of Sharia Codes, several states enacted a wide range of laws aimed at “social vices” and “un-Islamic behaviour” such as prostitution, alcohol consumption.<sup>22</sup> For instance, in the state of Borno, the Law on Prostitution, Homosexuality, Brothels and Other Sexual Immoralities (2000) imposed the death penalty for consensual same-sex sexual acts (regardless of the gender of those involved). This law was enacted prior to the Sharia Code.

Furthermore, several enforcement agencies and other supervisory institutions were created in several states,

<sup>10</sup> Brandon Kendhammer, “The Sharia Controversy in Northern Nigeria and the Politics of Islamic Law in New and Uncertain Democracies” *Comparative Politics* 45, No. 3 (2013), 294.

<sup>11</sup> An exception to this is the state of Niger where no Sharia Code was enacted (see entry below).

<sup>12</sup> Philip Ostien (ed.), *Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook*, Vol. IV (The Hague: Spectrum Books, 2007), 7 (an example of this sort of legislation is Katsina State’s Islamic Penal System (Adoption) Law 2000).

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

<sup>15</sup> Philip Ostien and Albert Dekker, “Sharia and national law in Nigeria” in Jan Michiel Otto (ed.), *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present* (The Hague: Leiden University Press, 2010), 589; Heather Bourbeau, *Shari’ah Criminal Law in Northern Nigeria: Implementation of Expanded Shari’ah Penal and Criminal Procedure Codes in Kano, Sokoto, and Zamfara States, 2017-2019* (United States Commission on International Religious Freedom, 2019), 8.

<sup>16</sup> Human Rights Watch, “Political Shari’a”? *Human Rights and Islamic Law in Northern Nigeria* (2004), 14.

<sup>17</sup> Gunnar Weimann, *Islamic Criminal Law in Northern Nigeria: Politics, Religion, and Judicial Practice* (Amsterdam: UvA, 2010), 95; Philip Ostien (ed.), *Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook*, Vol. IV (The Hague: Spectrum Books, 2007), 6.

<sup>18</sup> Heather Bourbeau, *Shari’ah Criminal Law in Northern Nigeria: Implementation of Expanded Shari’ah Penal and Criminal Procedure Codes in Kano, Sokoto, and Zamfara States, 2017-2019* (United States Commission on International Religious Freedom, 2019), 9.

<sup>19</sup> According to Ostien, about 89 percent of Sharia Penal Code sections coming from the Penal Code. Philip Ostien and Albert Dekker, “Sharia and national law in Nigeria” in Jan Michiel Otto (ed.), *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present* (The Hague: Leiden University Press, 2010), 589.

<sup>20</sup> Philip Ostien (ed.), *Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook*, Vol. IV (The Hague: Spectrum Books, 2007), 11.

<sup>21</sup> “BAOBAB for Women’s Human Rights and Sharia Implementation in Nigeria: The Journey so far”, *BAOBAB for Women’s Human Rights* (Lagos, 2003), 8.

<sup>22</sup> Philip Ostien and Albert Dekker, “Sharia and national law in Nigeria” in Jan Michiel Otto (ed.), *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present* (The Hague: Leiden University Press, 2010), 576.

including Sharia commissions and Councils of Ulama (with advisory and executive powers) and *hisbah* forces to monitor and enforce Sharia compliance.<sup>23</sup>

#### *Sharia law and the Southern states of Nigeria*

Only states in the Northern region of Nigeria have enacted Sharia Penal Codes. However, in the wake of Sharia implementation in the North, "Independent Sharia Panels" (ISPs) were also established in the South, including in cities such as Lagos, Ibadan, and Ijebu-Ode.<sup>24</sup> These panels act as private arbitration panels, to apply Islamic law in the settlement of disputes submitted to them by parties consenting to their jurisdiction and agreeing to abide by their judgments. Even though these panels were primarily set up to resolve private disputes, they have reportedly been drawn into applications of criminal law as well.<sup>25</sup>

Human Rights Watch documented at least one case in the southwestern state of Oyo in 2002, when a man was sentenced to flogging for extra-marital sex (punishment was effectively carried out).<sup>26</sup>

#### *Local and international reaction*

The implementation of Sharia law was reportedly well received by the Muslim communities in some Northern states and it has been stated that governors often ceded to popular pressure to introduce Islamic criminal legislation.<sup>27</sup> However, resistance and concern were notable in some states, such as Kaduna.<sup>28</sup>

While several organisations focused their objections on floggings, amputations, and sentences of stoning,<sup>29</sup> another important critique to the legal reforms revolved around the treatment of women under Sharia law, which either overtly targets or disproportionately affects women's behaviour.<sup>30</sup> Indeed, shortly after the enactment of Sharia Penal Codes, local courts started passing sentences of amputation for theft and of death by stoning for illicit sexual intercourse.<sup>31</sup> National and international media largely reported on the execution

of these harsh penalties. The first amputation of a hand for theft was imposed in March 2000, and several stoning sentences, including those of Safiyatu Hussaini and Amina Lawal, followed shortly after that.<sup>32</sup> In these two cases, which elicited strong international outrage, the men allegedly involved in the adultery were let off for lack of evidence, in stark contrast to the women allegedly involved. According to Human Rights Watch, the fact that different standards of evidence are required for men and women is illustrative of gender inequality before the law.<sup>33</sup> In Kano (as well as Niger and Kebbi), for instance, the Sharia Penal Codes specify that a man's testimony is more valuable than that of a woman. While other Sharia Penal Codes do not explicitly mention women having an inferior testimonial value than men, this does not necessarily mean that such unequal standards are not observed.<sup>34</sup>

Although the application of corporal punishments in Northern Nigeria might be limited in practice, instances of enforcement have been reported as an exercise of religious freedom and the right to worship. For instance, in the year 2000, when a 17-year-old girl, Bariya Magazu, was sentenced to lashing after being convicted of *zina* (premarital sex) in Zamfara State, local media reported on the case in a self-justifying tone, despite much backlash from international human rights organisations. Notably, the Movement for Protection of People's Rights (an "Islamic human rights" organisation), issued a press release arguing in favour of Muslims' "fundamental rights to the strict adherence to the laws of their creators", including but not limited to the right to the fulfilment of corporal sentences. Reportedly, the organisation made dubious claims about having spoken to Bariya, who would have allegedly favoured the "full application of Shari'a provisions [...] based on the offense she committed".<sup>35</sup>

Additionally, Human Rights Watch pointed out the lack of respect for due process in Northern Nigeria, including lack of access to legal representation, courts' acceptance of statements extracted under well-documented police torture, and inadequate training of Sharia Court judges, among other shortcomings. As early as 2004, defendants in virtually all Sharia death

<sup>23</sup> *Ibid.*

<sup>24</sup> *Id.*, 577.

<sup>25</sup> *Ibid.*

<sup>26</sup> Human Rights Watch, "Political Shari'a? Human Rights and Islamic Law in Northern Nigeria" (2004), 14.

<sup>27</sup> Gunnar Weimann, *Islamic Criminal Law in Northern Nigeria: Politics, Religion, and Judicial Practice* (Amsterdam: UvA, 2010), 83.

<sup>28</sup> See entry for Kaduna below.

<sup>29</sup> Brandon Kendhammer, "The Sharia Controversy in Northern Nigeria and the Politics of Islamic Law in New and Uncertain Democracies" *Comparative Politics* 45, No. 3 (2013), 299.

<sup>30</sup> Human Rights Watch, "Political Shari'a? Human Rights and Islamic Law in Northern Nigeria" (2004), 2.

<sup>31</sup> Gunnar Weimann, *Islamic Criminal Law in Northern Nigeria: Politics, Religion, and Judicial Practice* (Amsterdam: UvA, 2010), 83.

<sup>32</sup> Philip Ostien and Albert Dekker, "Sharia and national law in Nigeria" in Jan Michiel Otto (ed.), *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present* (The Hague: Leiden University Press, 2010), 577.

<sup>33</sup> Human Rights Watch, "Political Shari'a? Human Rights and Islamic Law in Northern Nigeria" (2004), 23.

<sup>34</sup> Heather Bourbeau, *Shari'ah Criminal Law in Northern Nigeria: Implementation of Expanded Shari'ah Penal and Criminal Procedure Codes in Kano, Sokoto, and Zamfara States, 2017-2019* (United States Commission on International Religious Freedom, 2019), 40.

<sup>35</sup> Brandon Kendhammer, "The Sharia Controversy in Northern Nigeria and the Politics of Islamic Law in New and Uncertain Democracies", *Comparative Politics* 45, No. 3 (2013), 299.



penalty cases would have been tried in courts of the first instance without lawyers, who would only be able to intervene at the appeal stage.<sup>36</sup> The organisation had also specifically urged Nigeria to end the death penalty and the prosecution of consensual sex between adults.<sup>37</sup>

A study conducted on behalf of the European Commission also noted that Islamic vigilante groups known as *hisbah*, which had reportedly begun to take the law into their own hands, had emerged around the time of the Sharia Penal Codes' enactments as a result of the "lax attitude" of the police, combined with the local population's high levels of religiosity. Despite this, it was strongly emphasised that the local population tends to ignore exact Sharia provisions and their rights if tried before a Sharia court.<sup>38</sup> Scholars from the University of Amsterdam, who authored the aforementioned study, contended that precluding the imposition of these penalties would necessitate a number of mechanisms such as stricter standards of evidence, allowing numerous defence pleas based on uncertainty, and training police forces, Sharia judges, and the civil population.<sup>39</sup>

Amnesty International and Baobab (a Nigerian feminist organisation) took no position on the introduction and application of Sharia law *per se* but demanded that it be carried out in full respect of international human rights standards, and in accordance with the conventions of international law signed and ratified by Nigeria.<sup>40</sup> Similarly, recommendations issued by Human Rights Watch do not hinge on repealing the Sharia legal framework, but rather seek to ensure that Sharia law is enforced in compliance with the standards voluntarily assumed by Nigeria at the international level. This would require eliminating substantive and procedural provisions that discriminate against women and those that impose cruel, inhuman and degrading punishments, amputations, floggings, and the death penalty.<sup>41</sup>

#### *Enforcement of the death penalty for consensual same-sex sexual acts between adults*

It has been reported that Sharia law is enforced inconsistently across the twelve states that have adopted it, largely depending on the religious make-up of the state and, to some extent, the political whims of state governors.<sup>42</sup> Local organisations have stressed that information on criminal proceedings in the Sharia Courts is not as accessible as those of the regular courts. Nevertheless, there are reported instances of prosecutions and successful convictions.<sup>43</sup>

Indeed, in his mission to Nigeria, the Special Rapporteur on Extrajudicial, summary or arbitrary executions, Philip Alston, interviewed at least one man awaiting death by stoning after being convicted of sodomy and reported on the situation of other men facing trials for sodomy before Sharia courts.<sup>44</sup> The information available shows that arrests, trials and even convictions have taken place in several states. However, corroborated information on *executions* being effectively carried out for consensual same-sex sexual acts between adults is particularly hard to find.

In 2004, Human Rights Watch reported that since Sharia courts started hearing criminal cases in 2000, they had handed down at least 10 death sentences, with at least one of them having been carried out.<sup>45</sup> However, even though death sentences had been handed down for "sodomy", the organisation was unable to corroborate whether any of these cases involved consenting adults.<sup>46</sup>

In 2008, a fact-finding mission led by the United Kingdom Home Office and the Danish Immigration Service reported on the enforcement of the death penalty in Northern Nigeria. The report indicates that the National Coordinator of the Legal Defence and Assistance Project (LEDAP) estimated that between 2003 and 2007, "20 people had been charged under the 'homosexuality provisions' of Sharia law, although not all [had] been convicted".<sup>47</sup> He also added that "these sentences have not been implemented, as they

<sup>36</sup> Human Rights Watch, "Political Shari'a"? *Human Rights and Islamic Law in Northern Nigeria* (2004), 23.

<sup>37</sup> "Sharia Stoning Sentence for Nigerian Woman", *Human Rights Watch*, 20 August 2002.

<sup>38</sup> Ruud Peters (with Maarten Barends), *The Reintroduction of Islamic Criminal Law in Northern Nigeria: A Study Conducted on Behalf of the European Commission* (Lagos, September 2001), 3-5.

<sup>39</sup> *Ibid.*

<sup>40</sup> BAOBAB for Women's Human Rights and Amnesty International, *Joint statement on the implementation of new Sharia-based penal codes in northern Nigeria*, AFR 44/008/2002 (25 March 2002).

<sup>41</sup> Human Rights Watch, "Political Shari'a"? *Human Rights and Islamic Law in Northern Nigeria* (2004), 6.

<sup>42</sup> *Id.*, 17.

<sup>43</sup> Ayodele Sogunro, *Bad Laws: A compendium on laws discriminating against persons in Nigeria based on sexual orientation and gender identity/ expression* (TIERS, 2017), 14.

<sup>44</sup> *Extrajudicial, summary or arbitrary executions, Report of the Special Rapporteur, Mr. Philip Alston. Addendum: Mission to Nigeria*, E/CN.4/2006/53/Add.4, 7 January 2006, para. 22-25

<sup>45</sup> Human Rights Watch, "Political Shari'a"? *Human Rights and Islamic Law in Northern Nigeria* (2004), 22.

<sup>46</sup> *Ibid.*

<sup>47</sup> United Kingdom Home Office & Danish Immigration Service, *Report of Joint British-Danish Fact-Finding Mission to Lagos and Abuja, Nigeria 9-27 September 2007 and 5-12 January 2008* (2008), 5.4

have been overturned on appeal by the federal courts".<sup>48</sup>

The source stated that "in most cases, death sentences are appealed to Upper Courts where the vast majority of them are dismissed due to procedural mistakes".<sup>49</sup> Finally, he indicated that "the final appeal option is the Federal High Court or the Supreme Court but death penalty cases according to Sharia law have not yet been taken through the federal justice system". Thus far the constitutionality of the death penalty under Sharia law has never been challenged.<sup>50</sup>

### State legislation in force

ILGA World was unable to access copies of official versions of the laws in force in the Northern States in Nigeria. The transcriptions of the provisions below are based on the information presented in Philip Ostien's treatise "Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook" (2007). Ostien presents a detailed analysis of the Harmonised Sharia Penal Code prepared by the Centre for Islamic Legal Studies (CILS) of Ahmadu Bello University and indicates the variations found in each individual Sharia Code still in force.

Each State's provisions were reconstructed based on those notes. None of these excerpts should be read as official versions of the laws in force. Actual wording, spelling and other aspects could differ from official versions. The States are listed in alphabetical order.

### State of Bauchi

The State of Bauchi was the tenth to adopt Sharia law.<sup>51</sup> The State adopted a codified law for the implementation of Sharia based on the code in force in the State of Zamfara. In 2006, the Governor of Bauchi reportedly stated: "as a result of Sharia implementation, Bauchi State has recorded a wonderful social transformation, and a noticeable decrease in crime and social evils. This has not been achieved overnight. We have taken time, using tact and wisdom to ensure a crisis-free enforcement of Sharia laws particularly in cases such as consumption and sale of alcohol, prostitution, gambling, etc. (...) In the end there is now a great measure of sanity, and

such vices that used to be committed in the open, are now hardly ever seen public as before".<sup>52</sup>

### Provisions in Force

Sharia Penal Code Law (2001).<sup>53</sup>

#### Sodomy (*Liwat*).

§ Whoever has carnal intercourse against the order of nature with any man or woman is said to commit the offence of sodomy. Except that whoever is compelled by the use of force or threats or without his consent to commit that act of sodomy upon the person of another shall not be the subject of the act of sodomy nor shall he be deemed to have committed the offence.

§ Whoever commits the offence of sodomy shall be punished with stoning to death (*rajm*) or by any other means decided by the state.

*Explanation:* Mere penetration is sufficient to constitute anal coitus necessary to the offence of sodomy.

#### Lesbianism (*Sihaq*).

§ Whoever, being a woman, engages another woman in carnal intercourse through her sexual organ or by means of stimulation or sexual excitement of one another has committed the offence of lesbianism.

§ Whoever commits the offence of lesbianism shall be punished with caning which may extend to fifty lashes and in addition be sentenced to imprisonment which may extend to up to five years.

### Enforcement

In the early stages of Sharia implementation, local Sharia courts reportedly handed down several sentences of death by stoning, including for adultery.<sup>54</sup> In June 2007, the new state governor Isa Yuguda approved three sentences of death by stoning, including one for sodomy, that his predecessor had refused to ratify, following a call for action to that end by an agency tasked with implementing Sharia law in Bauchi.<sup>55</sup>

<sup>48</sup> *Id.*, 5.4

<sup>49</sup> *Id.*, 2.6.

<sup>50</sup> *Id.*, 2.6.

<sup>51</sup> "Now Bauchi adopts Sharia", *BBC News*, 28 February 2001.

<sup>52</sup> Philip Ostien and M.J. Umaru, "Changes in the Law in the Sharia States Aimed at Suppressing Social Vices" in Philip Ostien (ed.), *Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook*, Vol. III (The Hague: Spectrum Books, 2007), 57.

<sup>53</sup> Sharia Penal Code Law (2001), Bauchi State Gazette 26, No. 16, 18 September 2001.

<sup>54</sup> "Convicted adulterer is the first man in Nigeria sentenced to death by stoning" *The Irish Times*, 28 June 2002.

<sup>55</sup> "18 Nigerian gays face death", *News24*, 9 August 2007; "Nigerian Gays Charged with Sodomy, Could Face Death Penalty", *VOA News*, 27 October 2009.

In August 2007, 18 young men of ages ranging from 18 to 21 were tried by Sharia Court in Bauchi after purportedly “engaging in homosexuality”. According to a local report, the young men were arrested in a hotel and were supposedly all wearing female clothes as part of an alleged “marriage ceremony” between two of them.<sup>56</sup> Conflicting reports exist about the outcome of this incident. Some media outlets reported that all detainees were eventually released on bail,<sup>57</sup> whereas others reported that 13 of them—all presumed to be Muslim—remained in detention awaiting a further hearing on September 13.<sup>58</sup>

After the enactment of the Same-Sex Marriage (Prohibition) Act, a local rights activist reported that she was aware of at least 38 arrests of gay people in the state of Bauchi in December 2013 alone,<sup>59</sup> and that the police were on the lookout for 168 additional candidates for arrest.<sup>60</sup> According to the activist, an undercover officer detained four gay men over the Christmas holidays after joining a counselling group on AIDS, pretending to be gay, and tortured the arrested men so that they would name others allegedly belonging to a gay organisation.<sup>61</sup>

On 16 January 2014, *PinkNews* recounted that 11 Muslim men and one Christian man had been put on trial in Bauchi for allegedly being part of a gay organisation and receiving funding from the United States of America,<sup>62</sup> having reportedly been subjected to physical violence and torture.<sup>63</sup> The chairman of Bauchi’s Sharia Commission denied any allegations of torture or intimidation, reportedly stating that all 11 arrested men signed confessions that they belonged to a gay organisation, but that some of them retracted the statements in court. He also pointed out that community members had helped “fish out” the suspects and that they were “on the hunt for others”.<sup>64</sup> Jibrin Danlami Hassan, head of Bauchi’s Sharia Commission echoed the chairman’s statements, declaring that “the alleged homosexuals” had been

handed to the Islamic police force by local residents. He also expressed his happiness about President Jonathan’s enactment of the Same-Sex Marriage (Prohibition) Act despite warnings by foreign powers to cut aid to Nigeria: “The threat they are doing cannot make us change our religion”, the commissioner said.<sup>65</sup> Ultimately, according to reports, seven of the accused were secretly granted freedom under bail.

In the opinion of a clerk at the Upper Sharia Court in Bauchi’s Unguwar Jaki, where at least one of the cases was heard, “the judge’s decision to grant them bail was borne out of the fact that none of the accused was caught in the act, which is an indispensable condition to warrant the death sentence. That means they would not get the death penalty at the end.”<sup>66</sup> On the other hand, the remaining four accused four of the accused men were publicly whipped, having been reportedly beaten and forced to confess, on March 6.<sup>67</sup> The four young men, all in their twenties, were also fined.<sup>68</sup>

Their trial, which had taken place at the Tudun Alkali Upper Sharia Court on 23 January, had been stormed by an angry mob demanding that the accused be sentenced to capital punishment.<sup>69</sup> The riot, during which pelted the defendants with stones, had to be broken up with teargas by the police. Since then, according to a local source, “the sodomy trials have been going on in secret in another location and the trial dates are never made public”.<sup>70</sup> Overall, details about this case were described by a reporter on the ground as “sketchy”.<sup>71</sup>

Also, on 16 January 2014, Mubarak Ibrahim, a 20-year-old man, was found guilty of sodomy by a local Bauchi Sharia court. He was whipped in public and forced to pay a fine. Media reports indicate that the judge of the case, Nuhu Mohammed, explained that he was spared a sentence of death by stoning because the incident had occurred seven years prior to the trial

<sup>56</sup> “18 arraigned in Bauchi Sharia Court for homosexuality”, *Daily Independent*, 13 August 2007, cited by Philip Ostien and M.J. Umaru, “Changes in the Law in the Sharia States Aimed at Suppressing Social Vices” in Philip Ostien (ed.), *Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook*, Vol. III (The Hague: Spectrum Books, 2007), 54.

<sup>57</sup> “Wave of repression on so-called ‘amoral’ behaviour”, *The New Humanitarian*, 12 September 2007.

<sup>58</sup> Peter Tatchell, “Nigeria’s anti-gay witch-hunt”, *The Guardian*, 29 August 2007.

<sup>59</sup> “Nigeria Islamic court tries gay suspects in Bauchi”, *BBC News*, 15 January 2014.

<sup>60</sup> James Legge, “Nigeria’s anti-gay laws: Homosexuals rounded up and beaten, rights groups claim”, *The Independent*, 15 January 2014.

<sup>61</sup> *Ibid.*

<sup>62</sup> Agence France-Presse in Kano, “Nigeria gay trial suspects bailed”, *The Guardian*, 28 March 2014.

<sup>63</sup> Scott Roberts, “Nigeria: 11 Muslim men accused of being gay face possible death sentence by religious court”, *PinkNews*, 16 January 2014. See also: Research Directorate, Immigration and Refugee Board of Canada, *Nigeria: Treatment of sexual minorities, including legislation, state protection, and support services; the safety of sexual minorities living in Lagos and Abuja (February 2012-October 2015)*, NGA105321.E, 13 November 2015.

<sup>64</sup> James Legge, “Nigeria’s anti-gay laws: Homosexuals rounded up and beaten, rights groups claim”, *The Independent*, 15 January 2014.

<sup>65</sup> “Nigeria Islamic court tries gay suspects in Bauchi”, *BBC News*, 15 January 2014.

<sup>66</sup> Agence France-Presse in Kano, “Nigeria gay trial suspects bailed”, *The Guardian*, 28 March 2014.

<sup>67</sup> “Nigeria gays: 20 lashes for ‘homosexual offences’”, *BBC News*, 6 March 2014.

<sup>68</sup> “Nigeria court flogs four men for homosexuality”, *France 24*, 7 March 2014.

<sup>69</sup> “Nigeria gays: 20 lashes for ‘homosexual offences’”, *BBC News*, 6 March 2014; Scott Roberts, “Nigeria: 4 Men Charged with Breaking Anti-Gay Laws Whipped in Islamic Court”, *PinkNews*, 6 March 2014. Video footage of this trial’s disturbance by an angry mob can be found in: “What’s it like to be gay in Nigeria’s Bauchi state?”, *BBC News (YouTube channel)*, 6 February 2014. Accessed on 3 November 2020.

<sup>70</sup> Agence France-Presse in Kano, “Nigeria gay trial suspects bailed”, *The Guardian*, 28 March 2014.

<sup>71</sup> “Nigeria gays: 20 lashes for ‘homosexual offences’”, *BBC News*, 6 March 2014.

and “because he had shown great remorse”.<sup>72</sup> Ibrahim reportedly claimed to have been “deceived into sodomy” by a school teacher who had vowed to finance his education.<sup>73</sup>

In February 2014, additional hostile statements by Jibrin Danlami Hassan were reported. According to him, the hunt for LGBT people in Bauchi by the Hisbah (Islamic Police) would have begun following a 2013 newspaper report that “local homosexuals” had formed an association. After being unsuccessful in tracking down the names listed in the article, the Hisbah alerted local imams and pastors so that they would preach about this issue at their respective churches and mosques. Reportedly, Hassan reiterated his determination to arrest LGBT people and affirmed his pride in “serving Allah” with this.<sup>74</sup>

In April 2014, two men accused of having same-sex intercourse and belonging to “a homosexual club” were acquitted by a court in Bauchi due to lack of evidence. According to a local court clerk, the men were acquitted because nobody had witnessed them committing sodomy. The men were reportedly arrested after a raid by local residents, where one of them was found “wearing shorts” while the other was fully clothed.<sup>75</sup>

In June 2014, an upper Sharia court in Bauchi arraigned four suspects who had been arrested the previous month for engaging in “sodomy” (in this case, consensual same-sex sexual activity). One suspect pleaded “not guilty” to all charges against him, whereas the other three admitted to the accusations but pleaded for mercy from the court.<sup>76</sup> The case was reportedly adjourned until the end of the month.<sup>77</sup> The definitive outcome of this incident is unclear.

## State of Borno

### Provisions in force

Section 7 of the Borno State law on Prostitution, Homosexuality, Brothels and Other Sexual Immoralities (2000)<sup>78</sup>—a law that was passed prior to the enactment of the Sharia Code of Borno in 2001<sup>79</sup>—imposes the death penalty to “any person who engages

in sexual intercourse with another person of the same gender”.

Under this law the term “homosexual” is defined as “a man who engages in sexual intercourse with another man and includes a man who dresses, behaves or acts as a woman with the aim of enticing another man to engage in homosexual intercourse or other immoral acts”.

Moreover, “lesbian” is defined as “any woman who acts or behaves with the intent of enticing any other woman into sexual relationship with her or any other woman”. Under section 3, any person who engages in prostitution, lesbianism, homosexual acts or pimping in the State commits an offence.

A document produced by Council of Ulama and presented to the Borno State Government—cited by Philip Ostien—made reference to the crime of *liwat* (sodomy), defined as “anal sex between men” for which the appropriate punishment is stoning to death, “whether the offender is married or not”.<sup>80</sup> This broad clause appears to depart from the general trend of imposing

The document goes on to define *al-musahaqah* or *sihaq* (lesbianism) as the act of a woman engaging another woman “in carnal intercourse through her sexual organ or by means of stimulation or sexual excitement of one another”. Punishment for lesbianism is cited as “imprisonment for not less than 6 months with 12 lashes”.<sup>81</sup>

## State of Gombe

### Provisions in force

Sharia Penal Code Law (2001)<sup>82</sup>

#### Sodomy (*Liwat*).

§ Whoever has carnal intercourse against the order of nature with any man or woman is said to commit the offence of sodomy. Except that whoever is compelled by the use of force or threats or without his consent to commit that act of

<sup>72</sup> “Gay Nigerian man whipped 20 times for single homosexual act – but is spared stoning to death” *The Independent*, 17 January 2014; “Nigeriano recibe 20 latigazos por ser homosexual”, *BBC News*, 17 January 2014.

<sup>73</sup> Agence France-Presse in Kano, “Nigeria gay trial suspects bailed”, *The Guardian*, 28 March 2014.

<sup>74</sup> Will Ross, “Nigerian gay people being hunted down”, *BBC News*, 6 February 2014.

<sup>75</sup> “Nigeria Islamic court acquits men of gay sex charge”, *BBC News*, 1 April 2014.

<sup>76</sup> Suzan Edeh, “Bauchi Sharia court arraigns four gay suspects”, *Vanguard*, 12 June 2014.

<sup>77</sup> *Ibid.*

<sup>78</sup> ILGA World was unable to retrieve a full-text official version of the law. The text cited in this section comes from the transcription of the law included in Philip Ostien (ed.), *Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook* (The Hague: Spectrum Books, 2007).

<sup>79</sup> Sharia Penal Code Law (2001).

<sup>80</sup> “Some parts of crimes & their punishments” produced by Council of Ulama and presented to the Borno State Government on 1<sup>st</sup> day of June, 2001” in Philip Ostien (ed.), *Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook*, Vol. IV (The Hague: Spectrum Books, 2007), 18.

<sup>81</sup> *Ibid.*

<sup>82</sup> Sharia Penal Code Law (2001), signed 23 November 2001.

sodomy upon the person of another shall not be the subject of the act of sodomy nor shall he be deemed to have committed the offence.

§ Whoever commits the offence of sodomy shall be punished:

- (a) with caning of 100 lashes if unmarried and shall also be liable to imprisonment for a term of one year, or
- (b) if married with stoning to death (rajm).

Lesbianism (*Sihaq*).

§ Whoever, being a woman, engages another woman in carnal intercourse through her sexual organ or by means of stimulation or sexual excitement of one another has committed the offence of lesbianism.

§ Whoever commits the offence of lesbianism shall be punished with caning which may extend to fifty lashes and in addition be sentenced to a term of imprisonment which may extend to six months.

subject of the act of sodomy nor shall he be deemed to have committed the offence.

§ Whoever commits the offence of sodomy shall be punished:

- a. with caning of 100 lashes if unmarried and shall also be liable to imprisonment for a term of one year, or
- b. if married with stoning to death (rajm).

Explanation: Mere penetration is sufficient to constitute anal coitus necessary to the offence of sodomy.

Lesbianism (*Sihaq*).

§ Whoever, being a woman, engages another woman in carnal intercourse through her sexual organ or by means of stimulation or sexual excitement of one another has committed the offence of lesbianism.

§ Section 134. Whoever commits the offence of lesbianism shall be punished with caning which may extend to fifty lashes and in addition be sentenced to a term of imprisonment which may extend to six months.

## State of Jigawa

Similar to Bauchi, the state of Jigawa adopted a codified law for the implementation of Sharia, based on the code in force in the State of Zamfara. In August of 2000, it became the sixth state to move in this direction.

Media reports from 2000 indicated that the local population appeared overwhelmingly in favour of a return to Sharia, which came to be seen as “a panacea” to political and social problems.<sup>83</sup> Locals were quoted affirming that “with Sharia it is going to be a very good, decent society, with no harlots or drunkards; all those unwanted customs that are not in our blood, are going to go away”.<sup>84</sup>

### Provisions in force

Sharia Penal Code Law (Law No. 12 of 2000)<sup>85</sup>

Sodomy (*Liwat*).

§ Whoever has carnal intercourse against the order of nature with any man or woman is said to commit the offence of sodomy. Except that whoever is compelled by the use of force or threats or without his consent to commit that act of sodomy upon the person of another shall not be the

### Enforcement

As recently as September of 2020, the Hisbah Command in Jigawa arrested two men—aged 32 and 20—over alleged “homosexual acts” at a hotel. The case was reported by local residents after they overheard the suspects arguing over money. The state of Jigawa’s Hisbah Commandant reportedly indicated that the suspects had confessed to the crime after interrogation, adding that the case would be transferred to the police for further investigation and possible prosecution.<sup>86</sup>

## State of Kaduna

The introduction of Sharia law in the state of Kaduna was not a peaceful process, with violent clashes taking place in the state capital between Christian and Muslim residents in February 2000. Hundreds of people were reportedly killed and many homes, churches, mosques and other buildings were damaged or destroyed.<sup>87</sup> Then-President Olusegun Obasanjo said “he would do whatever was necessary to restore calm”, and the Nigerian parliament scheduled an urgent debate on the issue of Sharia shortly thereafter.<sup>88</sup>

<sup>83</sup> “Nigeria’s Jigawa state adopts Sharia”, *BBC News*, 2 August 2000.

<sup>84</sup> “Sharia Marches On”, *Focus on Africa Magazine (BBC News)*, October-December 2000.

<sup>85</sup> Sharia Penal Code Law (Law No. 12 of 2000) in force since 27 December 2000 (Jigawa State Gazette Vol. 1 No. 12, 27 December 2000).

<sup>86</sup> “Hisbah arrests 2 in Jigawa over alleged homosexual act”, *The Vanguard Nigeria*, 3 September 2020.

<sup>87</sup> “Nigerian state adopts Sharia”, *BBC News*, 29 May 2000. See also: Brandon Kendhammer, “The Sharia Controversy in Northern Nigeria and the Politics of Islamic Law in New and Uncertain Democracies” *Comparative Politics* 45, No. 3 (2013), 295.

<sup>88</sup> “Islamic law extended in Nigeria”, *BBC News*, 23 February 2000.

### Provisions in force

Sharia Penal Code Law (Law No. 4 of 2002)<sup>89</sup>

#### Sodomy (*Liwat*).

§ Whoever has anal coitus with any man is said to commit the offence of sodomy.

§ Whoever commits the offence of sodomy shall be punished with stoning to death (*rajm*).

#### Lesbianism (*Sihag*).

§ Whoever, being a woman, engages another woman in carnal intercourse through her sexual organ or by means of stimulation or sexual excitement of one another has committed the offence of lesbianism.

Additionally, the **Kaduna Penal Code (2017)** punishes “Unnatural Offences” with up to 21 years of imprisonment under Section 259:

“Whoever has sexual intercourse against the order of nature with any man, woman or animal such as sodomy, lesbianism, or bestiality shall be punished with imprisonment for a term of not less than 21 years and shall also be liable to fine of not less than 200’000 Naira”.

### Enforcement

In April 2017, 53 people were charged with “conspiring to celebrate a gay wedding”, although the accused denied this and claimed that the event in question was a birthday party. Reportedly, the group was illegally detained for more than 24 hours and released on bail before the trial. Reports indicate that only four of the accused were present and that all of them pleaded “not guilty” to the charges of criminal conspiracy and illegal gathering.<sup>90</sup> ILGA World was unable to confirm the trial’s final outcome.

### State of Kano

In November 2000, Kano enacted a codified law for the implementation of Sharia.<sup>91</sup> In addition, the Prostitution and Other Immoral Acts (Prohibition) Law (2000) banned “prostitution, solicitation for prostitution, the keeping of brothels, and acting, behaving or dressing by males—in a manner which

imitates the behavioural attitude of women”, imposing up to one year of imprisonment.<sup>92</sup>

### Provisions in force

Sharia Penal Code (2000)

#### Sodomy (*Liwat*).

§ Whoever has carnal intercourse against the order of nature with any man or woman through her rectum is said to commit the offence of sodomy. Except that whoever is compelled by the use of force or threats or without his consent to commit that act of sodomy with another shall not be the subject of the act of sodomy nor shall he be deemed to have committed the offence.

§ Whoever commits the offence of sodomy shall be punished:

- with caning of 100 lashes if unmarried and shall also be liable to imprisonment for a term of one year, or
- if married or has previously been married with stoning to death (*rajm*).

Explanation: Mere penetration is sufficient to constitute anal coitus necessary to the offence of sodomy.

#### Lesbianism (*Sihag*).

§ Whoever, being a woman, engages another woman in carnal intercourse through her sexual organ or by means of stimulation or sexual excitement of one another has committed the offence of lesbianism.

§ Whoever commits the offence of lesbianism shall be stoned to death.

### Enforcement

In 2004, it was reported that the chairman of the Kano State Sharia Commission, Sheikh Ibrahim Umar Kabo, avowed that the Commission would “uphold Islamic Law in all areas of the state” and expressed disgust over the activities of gays and lesbians. Kabo declared that the “commission is working out modalities to wage war against the perpetrators of the ungodly acts in the state”.<sup>93</sup>

In a report published in 2006, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, visited the death row in a prison in Kano and interviewed a 50-year-old man awaiting death by

<sup>89</sup> Sharia Penal Code Law (Law No. 4 of 2002), in force since 21 June 2002 (Kaduna State Gazette No. 17 Vol. 36, 4th July 2002).

<sup>90</sup> “Nigeria ‘gay wedding’ bust leads to charges”, BBC News, 20 April 2017; “Nigeria Puts Dozens on Trial Over Alleged Gay Wedding”, *The Wire*, 9 May 2017.

<sup>91</sup> Sharia Penal Code Law (2000), in force since 26 November 2000.

<sup>92</sup> Philip Ostien and M.J. Umaru, “Changes in the Law in the Sharia States Aimed at Suppressing Social Vices” in Philip Ostien (ed.), *Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook*, Vol. III (The Hague: Spectrum Books, 2007), 55.

<sup>93</sup> Canada: Immigration and Refugee Board of Canada, *Nigeria: Situation of homosexuals and their treatment under sharia law (June 2002-July 2004)*, 14 July 2004, NGA42748.E.

stoning after being convicted of sodomy. A neighbour had reported him to the local Hisbah Committee, which arrested him and handed him to the police. The Special Rapporteur indicated that the man claimed to have been beaten by both the Hisba and the police and that the official court records showed that "he admitted to the offence, but sought the court's forgiveness".<sup>94</sup> As he had had no legal representation and failed to appeal within the time provided, the Special Rapporteur himself took steps so that a late appeal could be lodged and the case was eventually reviewed.<sup>95</sup>

## State of Katsina

### Provisions in force

Sharia Penal Code Law (Law No. 2 of 2001)<sup>96</sup>

#### Sodomy (*Liwat*).

§ Whoever has carnal intercourse against the order of nature with any man or woman through her rectum is said to commit the offence of sodomy. Except that whoever is compelled by the use of force or threats or without his consent to commit that act of sodomy upon the person of another shall not be the subject of the act of sodomy nor shall he be deemed to have committed the offence.

§ Whoever commits the offence of sodomy shall be punished with stoning to death (*rajm*).

Explanation: Mere penetration is sufficient to constitute anal coitus necessary to the offence of sodomy.

#### Lesbianism (*Sihag*).

§ Whoever, being a woman, engages another woman in carnal intercourse through her sexual organ or by means of stimulation or sexual excitement of one another has committed the offence of lesbianism.

§ Section 134. Whoever commits the offence of lesbianism shall be stoned to death.

### Enforcement

Katsina, along with Kano, is one of the two states that punish both *liwat* (sodomy) and *sihag* (lesbianism) by stoning to death.

The report published in 2006 by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, indicates that in December 2005 the Katsina Sharia Court acquitted two men charged with the capital offence of sodomy, because there were no witnesses. They had nevertheless spent six months in prison on remand which the judge reportedly said should remind them "to be of firm character and desist from any form of immorality".<sup>97</sup>

## State of Kebbi

The State of Kebbi enacted a codified law for the implementation of Sharia in the year 2000, following the one adopted in Zamfara.

### Provisions in force

Penal Code (Amendment) Law (Law No. 21 of 2000).<sup>98</sup>

#### Sodomy (*Liwat*).

§ Whoever has carnal intercourse against the order of nature with any man or woman is said to commit the offence of sodomy. Except that whoever is compelled by the use of force or threats or without his consent to commit that act of sodomy upon the person of another shall not be the subject of the act of sodomy nor shall he be deemed to have committed the offence.

Prove: 1. Sound mind; 2. Self-confession; 3. Four male witnesses in the act of sodomy who shall be trustworthy Muslims.

§ Whoever commits the offence of sodomy shall be punished with stoning to death (*rajm*).

Explanation: Mere penetration is sufficient to constitute anal coitus necessary to the offence of sodomy.

#### Lesbianism (*Sihag*).

§ Whoever, being a woman, engages another woman in carnal intercourse through her sexual organ or by means of stimulation or sexual excitement of one another has committed the offence of lesbianism.

§ Section 134. Whoever commits the offence of lesbianism shall be punished with caning which may extend to fifty lashes and in addition be sentenced to a term of imprisonment which may extend to six months.

<sup>94</sup> *Extrajudicial, summary or arbitrary executions, Report of the Special Rapporteur, Mr. Philip Alston. Addendum: Mission to Nigeria*, E/CN.4/2006/53/Add.4, 7 January 2006, para. 22.

<sup>95</sup> *Ibid.*

<sup>96</sup> Sharia Penal Code Law (Law No. 2 of 2001), in force since 20 June 2001 (Katsina State Gazette Vol. 12 No. 23, 27th August 2001).

<sup>97</sup> *Extrajudicial, summary or arbitrary executions, Report of the Special Rapporteur, Mr. Philip Alston. Addendum: Mission to Nigeria*, E/CN.4/2006/53/Add.4, 7 January 2006, para. 23.

<sup>98</sup> Penal Code (Amendment) Law (Law No. 21 of 2000), in force since 1 December 2000, (Kebbi State Gazette Vol. 2 No. 1, Supplement 31st December 2000).

### Enforcement

Speaking at a 2006 conference on Sharia implementation, a representative of the Governor of Kebbi reportedly said the following:

“Prostitution, promiscuity, sale and consumption of alcohol and other intoxicants have been checked to a large extent. Such activities are no longer conducted in the open. A lot of men and women engaged in such activities before have now reformed with a remarkable change in their lives. [...] Besides, the public is actively participating in combating crimes. People now feel safe to report social misfits or those engaged in prohibited practices to the combined team of Hisbah and the police for necessary corrective measures.”<sup>99</sup>

### State of Niger

Niger was the third state to enact Sharia law, after Zamfara and Sokoto, in May 2000.<sup>100</sup> However, instead of adopting a new Sharia Penal Code, Niger amended its existing Penal Code by adding a new section 68A,<sup>101</sup> which lays down that certain other sections of the code, when applied to Muslims, will carry different burdens of proof and different punishments than when applied to non-Muslims.<sup>102</sup> Under this scheme, Islamic criminal law is applied as found in the basic and classical sources: the Qur’an, the Hadith, and the *fiqh*, thereby punishing consensual same-sex sexual acts between adults (*liwat*) with death by stoning. Human Rights Watch documented the case of Fatima Usman and Ahmadu Ibrahim on the imposition of the death penalty by stoning in Niger for consensual sexual acts between adults (in this case, a heterosexual couple accused of adultery). The case is illustrative of the deficiencies of the local judiciary upon implementation of Sharia law in the early 2000s.<sup>103</sup>

### State of Sokoto

Sokoto, regarded as the centre of Islam in Nigeria, was the second State to implement Sharia law. The state enacted a codified law for the implementation of Sharia that adopted the code in force in the state of Zamfara. Media reports explained that Sokoto decided against a highly-publicised ceremony to mark the adoption of Sharia, given that the governors of the mainly-Muslim northern states had agreed with the

federal government to suspend any implementation of Sharia, though authorities in Sokoto reportedly said that they had already announced the move and could not go back on the pledge.<sup>104</sup>

### Provisions in force

Sharia Penal Code Law (2000)<sup>105</sup>

#### Sodomy (*Liwat*).

§ Whoever has carnal intercourse against the order of nature with any man or woman is said to commit the offence of sodomy. Except that whoever is compelled by the use of force or threats of force or in fear of death or grievous hurt or fear of any other serious injury or without his consent to commit that act of sodomy upon the person of another shall not be the subject of the act of sodomy nor shall he be deemed to have committed the offence.

§ Whoever commits the offence of sodomy shall be punished:

- a. with stoning to death;
- b. if the act is committed by a minor on an adult person the adult person shall be punished by way of ta’azir which may extend to 100 lashes and minor with correctional punishment.

Explanation: Mere penetration is sufficient to constitute anal coitus necessary to the offence of sodomy.

#### Lesbianism (*Sihqa*).

§ Whoever, being a woman, engages another woman in carnal intercourse through her sexual organ or by means of stimulation or sexual excitement of one another has committed the offence of lesbianism.

§ Whoever commits the offence of lesbianism shall be punished with caning which may extend to fifty lashes and in addition be sentenced to a term of imprisonment which may extend to six months.

### State of Yobe

In 2000, Yobe became the seventh in the North to announce plans to adopt Sharia.<sup>106</sup> The following year,

<sup>99</sup> Philip Ostien and M.J. Umaru, “Changes in the Law in the Sharia States Aimed at Suppressing Social Vices” in Philip Ostien (ed.), *Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook*, Vol. III (The Hague: Spectrum Books, 2007), 57.

<sup>100</sup> “Islamic law extended in Nigeria”, *BBC News*, 23 February 2000.

<sup>101</sup> According to Ostien, this amendment was implemented by means of the Penal Code (Amendment) Law 2000, HB.4/2000, in force since 4 May 2000 (Niger State Gazette Vol. 25 No. 8, 9th March 2000).

<sup>102</sup> Philip Ostien (ed.), *Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook*, Vol. IV (The Hague: Spectrum Books, 2007), 7.

<sup>103</sup> Human Rights Watch, “Political Shari’a? Human Rights and Islamic Law in Northern Nigeria (2004)”, 25.

<sup>104</sup> “Nigerian state adopts Sharia”, *BBC News*, 29 May 2000.

<sup>105</sup> Sharia Penal Code Law (2000), in force since 31 January 2001.

<sup>106</sup> “Sharia law in another Nigerian state”, *BBC News*, 8 August 2000.



Yobe enacted a codified law to that end, adopting the code that was already in force in Zamfara.<sup>107</sup>

In addition, Yobe's Prohibition of Certain Un-Islamic Practices Law (2000) banned prostitution (with up to one year in prison or a fine) and the keeping or managing of a brothel (up to three years in prison, a fine, or both), *inter alia*.<sup>108</sup>

### Provisions in force

Sharia Penal Code Law (2001)<sup>109</sup>

#### Sodomy (*Liwat*).

§ Whoever has anal coitus with any man is said to commit the offence of sodomy. Except that whoever is compelled by the use of force or threats or without his consent to commit that act of sodomy upon the person of another shall not be the subject of the act of sodomy nor shall he be deemed to have committed the offence.

§ Subject to the provisions of subsection (2), whoever commits the offence of sodomy shall be punished with stoning to death (*rajm*).

Explanation: Mere penetration is sufficient to constitute anal coitus necessary to the offence of sodomy.

#### Lesbianism (*Sihqa*).

§ Whoever, being a woman, engages another woman in carnal intercourse through her sexual organ or by means of stimulation or sexual excitement of one another has committed the offence of lesbianism.

§ Whoever commits the offence of lesbianism shall be punished with caning which may extend to fifty lashes and in addition be sentenced to a term of imprisonment which may extend to six months.

## State of Zamfara

On 19 September 1999, the governor of Zamfara announced he would fulfil a campaign promise to implement Sharia law through the state's legislative process, which marked the beginning of the implementation of the Sharia Penal Codes in northern

Nigeria.<sup>110</sup> Zamfara's Sharia Penal Code was first enacted on 27 January 2000 as Law No. 10 of 2000.<sup>111</sup> On that day, a ceremony took place in the state capital, Gusau, where *qadis* were sworn in and Sharia courts were declared officially open, causing great enthusiasm among thousands of residents, who cheered and shouted "God is great" on the streets of Gusau.<sup>112</sup> Ahmed Sani, Governor of Zamfara, stressed repeatedly that Sharia would only apply to Muslims and was mainly intended to deal with crimes such as prostitution, drunkenness, stealing, robbery, and gambling.<sup>113</sup> In 2005, Zamfara's Sharia Penal Code was replaced with a "harmonised" version produced in 2002 by the Centre for Islamic Legal Studies, Ahmadu Bello University, Zaria.<sup>114</sup>

### Provisions in force

Zamfara Penal Code (2000)<sup>115</sup>

#### Sodomy (*Liwat*).

§ Whoever has carnal intercourse against the order of nature with any man or woman is said to commit the offence of sodomy. Except that whoever is compelled by the use of force or threats or without his consent to commit that act of sodomy upon the person of another shall not be the subject of the act of sodomy nor shall he be deemed to have committed the offence.

§ Whoever commits the offence of sodomy shall be punished:

- (1) with caning of 100 lashes if unmarried and shall also be liable to imprisonment for a term of one year, or
- (2) if married with stoning to death (*rajm*).

Explanation: Mere penetration is sufficient to constitute anal coitus necessary to the offence of sodomy.

#### Lesbianism (*Sihqa*).

§ Whoever, being a woman, engages another woman in carnal intercourse through her sexual organ or by means of stimulation or sexual excitement of one another has committed the offence of lesbianism.

<sup>107</sup> Sharia Penal Code Law (Law No. 8 of 2001) in force since 25 April 2001 (Yobe State Gazette Vol. II No. 12, 22nd March 2001).

<sup>108</sup> Philip Ostien and M.J. Umaru, "Changes in the Law in the Sharia States Aimed at Suppressing Social Vices" in Philip Ostien (ed.), *Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook*, Vol. III (The Hague: Spectrum Books, 2007), 55.

<sup>109</sup> Law No. 8 of 2001, in force since 25 April 2001 (Yobe State Gazette Vol. II No. 12, 22nd March 2001).

<sup>110</sup> Brandon Kendhammer, "The Sharia Controversy in Northern Nigeria and the Politics of Islamic Law in New and Uncertain Democracies" *Comparative Politics* 45, No. 3 (2013), 294.

<sup>111</sup> Sharia Penal Code Law 2000 (Law No. 10 of 2000) in force 27 January 2000 (Zamfara State Gazette Vol. 3 No. 1, 15th June, 2000).

<sup>112</sup> "Nigerian Muslims welcome Sharia law", *BBC News*, 27 January 2000.

<sup>113</sup> "Sharia law in Nigeria" *BBC News*, 27 January 2000.

<sup>114</sup> Sharia Penal Code Law (Law No. 5 of 2005), signed 23 November 2005. See also: Heather Bourbeau, *Shari'ah Criminal Law in Northern Nigeria: Implementation of Expanded Shari'ah Penal and Criminal Procedure Codes in Kano, Sokoto, and Zamfara States, 2017-2019* (United States Commission on International Religious Freedom, 2019), 17.

<sup>115</sup> Immigration and Refugee Board of Canada, *Nigeria: Penalty under Zamfara Sharia law for a man who has premarital sex*, NGA36563.E (2001).

§ Whoever commits the offence of lesbianism shall be punished with caning which may extend to fifty lashes and in addition be sentenced to a term of imprisonment which may extend to six months.

### Enforcement

In 2000, a 17-year-old girl was sentenced to lashing after being convicted of *zina* (premarital sex). In response to backlash from international human rights organisations, some local activists stood up for the punishment in question, arguing that, under their right to worship and religious freedom, Muslims are entitled to have Sharia-dictated penalties applied to them.<sup>116</sup>

Zamfara's Hisbah (Islamic Police) was established in 2003. Though the Hisbah does not have the authority to detain offenders, it has been granted the power to charge people for moral violations of the Islamic Code. Since it has more interaction with locals and its members do not have a uniform, Hisbah authorities are able to mingle with the public and charge suspected people, probably arbitrarily.<sup>117</sup>

In February 2002, a man was in the city of Gusau sentenced to one year in prison and 100 strokes of the cane for committing sodomy with a man. Reportedly, the judge who issued this man's sentence cited a provision of section 131 of the Sharia Penal Code as a basis for his ruling.<sup>118</sup>

### QUICK REFERENCE CHART

## Death Penalty for consensual same-sex sexual acts between adults in Northern Nigeria

All Sharia Penal Codes in force in Northern Nigeria impose the death penalty by stoning for the crime of *liwat*, generally defined as sodomy but sometimes encompassing heterosexual anal sex. Death by stoning is equally imposed for the crime of *sihaq*, or lesbianism, in two states (Kano and Katsina) while in the other 10, this crime is punished with flogging and imprisonment of up to 5 years. Laws are referenced in this chart as cited by Philip Ostien's treatise "Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook" (2007).

STATE	AUTHORITY	LEGALLY PRESCRIBED PUNISHMENT	
		LIWAT (SODOMY)	SIHAQ (LESBIANISM)
1 <b>Bauchi</b>	Sharia Penal Code Law (2001), Bauchi State Gazette 26, No. 16, 18 September 2001.	Death by stoning or other means decided by the state.	50 lashes and imprisonment for up to 5 years.
2 <b>Borno</b>	Borno State law on Prostitution, Homosexuality, Brothels and Other Sexual Immoralities (2000). Sharia Penal Code Law (2001)	Death (by stoning).	12 lashes and imprisonment for not less than 6 months.
3 <b>Gombe</b>	Sharia Penal Code Law (2001), signed 23 November 2001.	If unmarried: 100 lashes and imprisonment for up to 1 year. If married: death by stoning.	50 lashes and imprisonment for up to 6 months.
4 <b>Jigawa</b>	Sharia Penal Code Law (Law No. 12 of 2000) in force since 27 December 2000 (Jigawa State Gazette Vol. 1 No. 12, 27 December 2000).	If unmarried: 100 lashes and imprisonment for up to 1 year. If married: death by stoning.	50 lashes and imprisonment for up to 6 months.
5 <b>Kaduna</b>	Sharia Penal Code Law (Law No. 4 of 2002), in force since 21 June 2002 (Kaduna State Gazette No. 17 Vol. 36, 4th July 2002).	Death by stoning.	According to the discretion of the <i>qadi</i> .

<sup>116</sup> Brandon Kendhammer, "The Sharia Controversy in Northern Nigeria and the Politics of Islamic Law in New and Uncertain Democracies" *Comparative Politics* 45, No. 3 (2013), 299.

<sup>117</sup> Yushau Sodiq, *A History of the Application of Islamic Law in Nigeria* (2017), 138.

<sup>118</sup> Canada: Immigration and Refugee Board of Canada, *Nigeria: Situation of homosexuals and their treatment under sharia law (June 2002-July 2004)*, NGA42748.E (2004). See also: Gunnar Weimann, *Islamic Criminal Law in Northern Nigeria: Politics, Religion, and Judicial Practice* (Amsterdam: UvA, 2010), 27-28.

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6	<b>Kano</b>	Sharia Penal Code Law (2000), in force since 26 November 2000.	if unmarried: 100 lashes and imprisonment for up to 1 year.  If married or has previously been married: death by stoning.	Death by stoning.
7	<b>Katsina</b>	Sharia Penal Code Law (Law No. 2 of 2001), in force since 20 June 2001 (Katsina State Gazette Vol. 12 No. 23, 27th August 2001).	Death by stoning.	Death by stoning.
8	<b>Kebbi</b>	Penal Code (Amendment) Law (Law No. 21 of 2000), in force since 1 December 2000, (Kebbi State Gazette Vol. 2 No. 1, Supplement 31st December 2000).	Death by stoning.	50 lashes and imprisonment for up to 6 months.
9	<b>Niger</b>	Penal Code (Amendment) Law 2000, HB.4/2000, in force since 4 May 2000 (Niger State Gazette Vol. 25 No. 8, 9th March 2000).	Death by stoning.	UNCLEAR
10	<b>Sokoto</b>	Sharia Penal Code Law (2000), in force since 31 January 2001.	If committed by an adult: Death by stoning.  If committed by a minor on an adult: the adult receives up to 100 lashes; the minor receives correctional punishment.	50 lashes and imprisonment for up to 6 months.
11	<b>Yobe</b>	Sharia Penal Code Law (Law No. 8 of 2001) in force since 25 April 2001 (State Gazette Vol. II No. 12, 22 March 2001).	Death by stoning.	50 lashes and imprisonment for up to 6 months.
12	<b>Zamfara</b>	Sharia Penal Code (Law No. 10 of 2000) enacted 27 January 2000 (repealed in 2005).  Sharia Penal Code Law (Law No. 5 of 2005), signed 23 November 2005.	If unmarried: 100 lashes and imprisonment for up to 1 year.  If married: death by stoning.	50 lashes and imprisonment for up to 6 months.



### Introduction

Although consensual same-sex sexual activity is widely regarded as a crime under Sharia, it is unclear whether it was actively prosecuted in Qatar before its statehood. However, according to some scholars, there were no laws governing sexuality before British occupation in the Arab World in general.<sup>1</sup>

In the present day, Sharia continues to be a significant influence in Qatar's policies and remains the official legal system under the Constitution.<sup>2</sup> In practice, however, Qatar's judicial system has been described as dual: divided into Sharia and secular law imported by the British, and influence from Ottoman and Egyptian Law.<sup>3</sup> In particular, present-day codified laws regarding consensual same-sex sexual activity in Qatar (as well as other countries in the Gulf region) were significantly influenced by the British regulations that were previously in place.<sup>4</sup>

Different courts exist for each of Qatar's two judicial branches, which fall under the jurisdiction of the Ministry of Justice: the Sharia and the Adlia courts (civil courts). Sharia courts apply Sharia law, and they traditionally deal with social disputes. In these courts—which are not bound by precedent—the significance of the Sharia judge is further highlighted by the absence of the jury system: the judge applies the verdict of God by virtue of his knowledge of the sharia law.<sup>5</sup> As for procedures, Sharia courts require neither the plaintiff nor the defendant to be represented by a lawyer before the court, Muslims represent themselves directly.<sup>6</sup> Adlia Courts handle cases involving a number of different crimes. After 1971, the Sharia court regained (in theory) full jurisdiction in all civil and criminal matters over all

foreigners in Qatar and in recent times, Islamic courts have come to deal mostly with matters related to family law and, arguably, their role has been gradually eclipsed by the Adlia.<sup>7</sup>

According to some scholars, Qatar lacks a state-linked or even institutionalised religious clergy. This would grant Qatari society a relatively secular character in comparison to neighbouring Saudi Arabia.<sup>8</sup> Nonetheless, Wahhabi-influenced government authorities are said to retain considerable power over religious affairs in Qatar. In particular, the Ministry of Awqaf and Islamic Affairs, and the *ulama* (Islamic scholars) would potentially continue exerting significant influence on these issues, albeit informally.<sup>9</sup> Further, the Hanbali school of Islamic jurisprudence, widely considered the strictest in terms of interpretation, is the dominant school in Qatar. It rejects individual reasoning or interpretation as a source of Sharia law and insists upon strict adherence to the Quran and Sunna.<sup>10</sup>

### Authority

Article 1 of the [Penal Code \(2004\)](#)<sup>11</sup> establishes that the provisions of the Islamic Shari'a shall be applicable on the *hudūd* offence of adultery (*zina*), among others, when the defendant or the plaintiff is a Muslim. This provision excludes the application of the code for the crimes listed on this article. Therefore, under Sharia law in Qatar, the offence of adultery (*zina*) renders any sexual act by a married Muslim outside of marriage punishable by death. In contrast, sexual acts by non-married persons are punishable by flogging—both are offences, no matter whether the participants are of the same or different sex. While Qatar's Sharia courts

<sup>1</sup> B. J. Epstein and Robert Gillett (eds.), *"Queer in Translation"*, Taylor & Francis, 2017, 30.

<sup>2</sup> Article 1 of the Constitution of Qatar states: Qatar is an independent sovereign Arab State. Its religion is Islam, and Islamic Sharia shall be the principal source of its legislation. Its political system is democratic, and its official language is Arabic. The people of Qatar are a part of the Arab nation. See: [Permanent Constitution of the State of Qatar \(2004\)](#). A version in English can be found [here](#). The same provision was found in the [Amended Provisional Constitution of Qatar \(1972\)](#).

<sup>3</sup> A. Nizar Hamzeh, "Qatar: The Duality of the Legal System", *Middle Eastern Studies*, Vol. 30, No. 1 (1994), 79, 89; "Qatar: Justice", *Encyclopaedia Britannica (website)*. Accessed 31 October 2020; Leon Fernando, "The Legal System of The State of Qatar", *Konsilia Services LLC*, 1.

<sup>4</sup> Wahid Al Farchichi and Nizar Saghiyeh, "Homosexual Relations in the Penal Codes: General Study Regarding the Laws in the Arab Countries with a Report on Lebanon and Tunisia", *Helem*, 2009, 19-20.

<sup>5</sup> A. Nizar Hamzeh, "Qatar: The Duality of the Legal System", *Middle Eastern Studies*, Vol. 30, No. 1 (1994), 84.

<sup>6</sup> *Id.*, 84.

<sup>7</sup> *Id.*, 86-87.

<sup>8</sup> Birol Baskan and Steven Wright, "Seeds of Change: Comparing State-Religion Relations in Qatar and Saudi Arabia", *Arab Studies Quarterly*, Vol. 33, No. 2, 2011, 96, 109-110; Courtney Freer, "Mapping Religious Authority in Wahhabi States: An Examination of Qatar and Saudi Arabia", *Rice University's Baker Institute for Public Policy* (2019), 4.

<sup>9</sup> Courtney Freer, "Mapping Religious Authority in Wahhabi States: An Examination of Qatar and Saudi Arabia", *Rice University's Baker Institute for Public Policy*, March 2019, 4.

<sup>10</sup> A. Nizar Hamzeh, "Qatar: The Duality of the Legal System", *Middle Eastern Studies*, Vol. 30, No. 1 (January 1994), 81.

<sup>11</sup> An English version of the Code can be found [here](#).

could theoretically hand down execution sentences to married Muslim men for same-sex sexual activity, it does not appear that any person has been executed for this reason.

Due to Qatar's Wahhabi-influenced Hanbali interpretation of Sharia Law, the imposition of corporal punishment by courts is common. Those accused of illicit sexual relations usually incur sentences of punishment by flogging, as has repeatedly been the case among people (mostly foreign nationals) accused of adultery.<sup>12</sup> While Qatar has issued several death penalty sentences over the past decade,<sup>13</sup> known executions are relatively rare. However, in March 2020, Qatari authorities reportedly executed a Nepali man who had been accused of murder, putting an end to an informal moratorium on the death penalty that had been in place for roughly 17 years.<sup>14</sup> Under Article 59 of the Penal Code, capital punishment may be carried out by a firing squad or by hanging.

#### *International reaction and advocacy*

During its first UPR cycle in 2010, Qatar received only one recommendation regarding SOGI Sweden: "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". Qatar rejected this recommendation, which was repeated at the Interactive Dialogue session, with no response

from the State.<sup>15</sup> Qatar supported one recommendation related to the due process, particularly in cases involving the death penalty.<sup>16</sup> However, it rejected six additional recommendations aiming at abolishing corporal punishment and/or capital punishment or declaring a moratorium.<sup>17</sup>

During its third UPR cycle, in 2019, Qatar received three SOGI-related recommendations.<sup>18</sup> Qatar also received recommendations from 10 countries to abolish the death penalty or establish a moratorium on it.<sup>19</sup> Every single one of these recommendations were noted (functionally rejected) "on account of their incompatibility with the Islamic sharia, the Constitution or domestic legislation, on grounds related to sovereignty, or because they require further study or are based on unsubstantiated allegations."<sup>20</sup>

Multiple civil society organisations have also noted the hostile context in relation to consensual same-sex sexual activity and the potential imposition of the death penalty for consensual same-sex sexual acts,<sup>21</sup> including Amnesty International,<sup>22</sup> Human Rights Watch,<sup>23</sup> and Hands Off Cain.<sup>24</sup>

#### *Enforcement*

While there are no reported cases of the death penalty being applied for consensual same-sex sexual activity in Qatar as of October 2020, there are local testimonies indicating that LGBTI people living in Qatar face an extremely hostile context.<sup>25</sup>

<sup>12</sup> See, for example: "Filipino woman gets 100 lashes for giving birth in Qatar", *GMA News*, 30 June 2006; "Annual Report: Qatar 2010", *Amnesty International*, 19 March 2011; "Annual Report 2012: Qatar", *Amnesty International*, 24 May 2012.

<sup>13</sup> "Death Penalty Database: Qatar", *Cornell University: Cornell Center on the Death Penalty Worldwide*, 28 October 2020.

<sup>14</sup> "Nepali migrant worker sentenced to death in Qatar", *Himalayan News Service*, 22 May 2020; "Nepali man shot to death in Qatar as punishment for murder", *Khabarhub*, 21 May 2020. See also: Elisabetta Zamparutti (ed.), "The Death Penalty Worldwide: 2017 Report", *Hands Off Cain*, 2017, XIII, 3, 57, 64-66, 166-167, 173; Anas Yassin, "Four Keralites Sentenced to Death for Murder in Qatar", *Deshabhimani*, 29 October 2020.

<sup>15</sup> *Report of the Working Group on the Universal Periodic Review: Qatar*, A/HRC/14/2, 15 March 2010.

<sup>16</sup> *Id.*, para. 83.37.

<sup>17</sup> These recommendations were made by Slovenia (para. 86.7), the UK (para. 86.8), Norway (para. 86.9), Brazil (para. 86.10), Spain (para. 86.11), and Chile (para. 86.12). *Report of the Working Group on the Universal Periodic Review: Qatar*, A/HRC/14/2, 15 March 2010, para. 83.37.

<sup>18</sup> *Report of the Working Group on the Universal Periodic Review: Qatar*, A/HRC/42/15, 11 July 2019, paras. 134.67, 134.68, and 134.74.

<sup>19</sup> These recommendations were made by Liechtenstein, France, Iceland, Ireland, Italy, Portugal, Rwanda, Spain, Australia, and Cyprus. *Report of the Working Group on the Universal Periodic Review: Qatar*, A/HRC/42/15, 11 July 2019, paras. 134.27, 134.87, 134.88, 134.89, 134.91, 134.92, 134.94, 134.95, and 134.97.

<sup>20</sup> *Report of the Working Group on the Universal Periodic Review: State of Qatar (Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review)*, A/HRC/42/15/Add.1, 30 August 2019.

<sup>21</sup> In addition to all sources listed in this paragraph, see: Nazeeha Saeed, "In the Persian Gulf, Four States Still Impose the Death Penalty" in ILGA World: Lucas Ramón Mendos, *State-Sponsored Homophobia 2019* (Geneva: ILGA, March 2019), 138-139; ILGA, ILGA-Europe, IGLHRC, ARC International, and Global Rights, "Submission in the UPR review of: Qatar", 7 February 2010.

<sup>22</sup> Amnesty International, *Love, Hate and the Law: Decriminalizing Homosexuality* (2008), 24, 46, 47.

<sup>23</sup> Human Rights Watch, *Audacity in Adversity: LGBT Activism in the Middle East and North Africa* (2018), 72; "Qatar: Events of 2018", *Human Rights Watch (website)*, 2019. Accessed on 30 October 2020; "Qatar: Events of 2019", *Human Rights Watch (website)*, 2020. Accessed on 30 October 2020. See also: "#Outlawed: The Love That Dare Not Speak Its Name", *Human Rights Watch (website)*, 2020. Accessed on 30 October 2020. "Qatar", *Human Rights Watch (website)*, 2020.

<sup>24</sup> Hands Off Cain, "Gay Raid: When and Where the State Kills", *Dossier on Death Penalty and Homosexuality*, 5 June 2017; "Qatar", *Hands Off Cain*, 2020.

<sup>25</sup> Brian Whitaker, "Resisting gay rights in Qatar", *Al Bab*, 9 August 2016; "What it's like to be gay and Qatari", *Doha News*, 5 August 2016.



# SAUDI ARABIA

## Introduction

In the Kingdom of Saudi Arabia, the death penalty is still largely implemented, with a record number of state executions having been reported in 2019.<sup>1</sup> Saudi law contemplates four types of crimes, all of which can incur capital punishment: *hudud* crimes, *qisas* crimes, *ta'zir* crimes, and crimes governed by royal decree.<sup>2</sup> For *hudud* crimes in particular, the death penalty is prescribed for adultery, highway robbery, and apostasy.<sup>3</sup>

Imams of the Hanbali school of thought—which is predominant in Saudi Arabia's jurisprudence—have maintained that sodomy should be treated and punished in the same way as adultery (i.e., with death by stoning),<sup>4</sup> although beheadings have been reported as a more common method of execution in the country.<sup>5</sup> Other forms of consensual same-sex sexual activity are usually treated as *ta'zir*, which, in contrast to other Muslim states, Saudi Arabia can punish with the death penalty.

Additionally, Saudi Arabia has issued *fatwas* delineating the death penalty for “corruption on Earth”, an offence that was essentially designed to apply to terrorists<sup>6</sup> but has reportedly been used in an arbitrary manner to punish whichever illicit sexual acts (whether same-sex or not) are seen fit by judges.<sup>7</sup>

Finally, Saudi Arabia uses Sharia as the law of the land regardless of religion, making *hudud* punishments

applicable to anyone under the jurisdiction of the country, including foreigners and non-Muslims (except in the crimes of drinking and apostasy, provided that no public sensitivities are offended and that the principles of Islam are not publicly attacked).<sup>8</sup>

It is worth highlighting that given Saudi Arabia's reported overall lack of transparency, together with its complex legal system and social dynamics, accessing reliable, substantial, and recent data on legal issues and incidents of law enforcement in the Kingdom remains a highly challenging task.<sup>9</sup>

## Authority

Saudi Arabia operates on a classical Sharia legal system: virtually no codified laws exist, and the *ulama* (orthodox religious scholars) play a decisive role in the interpretation and application of Sharia in the Kingdom.<sup>10</sup>

The *ulama* and the *muftis* largely resort to *fiqh* books from the Hanbali school of thought in their administration of justice.<sup>11</sup> Together with the Royal family's more than 5,000 princes, the *ulama* have been described as having absolute authority over the Kingdom's legal system.<sup>12</sup> In addition to the Hanbali school, the literalist doctrine of Wahhabism is said to largely determine how the *ulama* and the ruling authorities in Saudi Arabia interpret Sharia, although many locals deny this.<sup>13</sup> Wahhabism does not

<sup>1</sup> “Global Report: Death Sentences and Executions 2019”, *Amnesty International*, 2020; “Death penalty 2019: Saudi Arabia executed record number of people last year amid decline in global executions”, *Amnesty International*, 21 April 2020; “Saudi Arabia: Death penalty reform for minors falls short, and total abolition must now follow”, *Amnesty International*, 27 April 2020.

<sup>2</sup> See Introductory note on Sharia law for a definition of these terms.

<sup>3</sup> Elizabeth Peiffer, “The death penalty in traditional Islamic law and as interpreted in Saudi Arabia and Nigeria”, *William & Mary Journal of Race, Gender, and Social Justice/Women and the Law*, Vol. 11, Art. 9 (2004), 509.

<sup>4</sup> Ministry of Interior, Kingdom of Saudi Arabia: Crime Prevention Research Centre, “The Effect of Islamic Legislation on Crime Prevention in Saudi Arabia: Proceedings of the Symposium Held in Riyadh. 16-22 Shawal 1396 A.H. [9-13 October 1976]”, 527.

<sup>5</sup> Amnesty International, *Love, Hate and the Law: Decriminalizing Homosexuality* (2008), 48.

<sup>6</sup> Elizabeth Peiffer, “The death penalty in traditional Islamic law and as interpreted in Saudi Arabia and Nigeria”, *William & Mary Journal of Race, Gender, and Social Justice/Women and the Law*, Vol. 11, Art. 9 (2004), 507-539.

<sup>7</sup> Amnesty International, *Love, Hate and the Law: Decriminalizing Homosexuality* (2008), 48.

<sup>8</sup> Mohammad Hashim Kamali, “Shariah, Criminal Law, and the Prescribed *Hudud* Punishments” in Mohammad Hashim Kamali, *Shariah Law Questions and Answers* (London: Oneworld Publications, 2017) (Kindle Edition), Chapter VII.

<sup>9</sup> Esther van Eijk, “Sharia and national law in Saudi Arabia”, in Jan Michiel Otto (ed.), *Sharia incorporated a comparative overview of the legal systems of twelve Muslim countries in past and present* (Leiden: Leiden University Press, 2010), 139.

<sup>10</sup> Jan Michiel Otto, “Sharia and National Law in Muslim Countries. Tensions and Opportunities for Dutch and EU Foreign Policy”, Leiden University Press, 2008, 8-9.

<sup>11</sup> Esther van Eijk, “Sharia and national law in Saudi Arabia”, in Jan Michiel Otto (ed.), *Sharia incorporated a comparative overview of the legal systems of twelve Muslim countries in past and present* (Leiden: Leiden University Press, 2010), 36, 145, 157, 162, 166.

<sup>12</sup> Hossein Esmaeili, “On a slow boat towards the rule of law: The nature of law in the Saudi Arabia legal system”, *Arizona Journal of International & Comparative Law* Vol. 26, No. 1, 2009, 45.

<sup>13</sup> Courtney Freer, “Mapping Religious Authority in Wahhabi States: An Examination of Qatar and Saudi Arabia”, *Rice University's Baker Institute for Public Policy*, March 2019; Hossein Esmaeili, “On a slow boat towards the rule of law: The nature of law in the Saudi Arabia legal system”, *Arizona Journal of International & Comparative Law* Vol. 26, No. 1, 2009, 46.

recognise non-textual sources of law and rejects any innovation in religious interpretations.<sup>14</sup>

Numerous scholars hold the view that in Saudi Arabia Sharia renders law inseparable from morality, making no distinction between Qur'anic principles and criminal law.<sup>15</sup> Under this framework, because the law is comprised of commands from God, it is essentially a sacred system. Although it may be subject to different interpretations, it can be neither criticised nor fundamentally changed.<sup>16</sup>

Furthermore, any violation of Qur'anic principles is deemed to inflict substantive harm to society as a whole.<sup>17</sup>

Under its classical Sharia system, Saudi Arabia's judiciary thus enforces criminal law with regard to consensual same-sex sexual acts directly based on the passages below. It is important to bear in mind that numerous foreign language translations of the Qur'an and the Hadith exist, often with considerable degrees of variation among them.

AUTHORITY/ LEGAL INSTRUMENT	RELEVANT SECTIONS	TRANSCRIPTION OF RELEVANT TEXT	ARABIC	ENGLISH
1 <b>The Holy Quran</b>	7:80-84, <i>Liwat</i> (purported allusion)	"(80) And [We had sent] Lot when he said to his people, "Do you commit such immorality as no one has preceded you with from among the worlds? (81) Indeed, you approach men with desire, instead of women. Rather, you are a transgressing people." (82) But the answer of his people was only that they said, "Evict them from your city! Indeed, they are men who keep themselves pure." (83) So We saved him and his family, except for his wife; she was of those who remained [with the evildoers]. (84) And We rained upon them a rain [of stones]. Then see how was the end of the criminals". [Sahih International]	In Arabic and English	
	4:15-16 <i>Zina</i>	"(15) Those who commit unlawful sexual intercourse of your women - bring against them four [witnesses] from among you. And if they testify, confine the guilty women to houses until death takes them or Allah ordains for them [another] way. (16) And the two who commit it among you, dishonour them both. But if they repent and correct themselves, leave them alone. Indeed, Allah is ever Accepting of repentance and Merciful." [Sahih International]	In Arabic and English	
2 <b>Hadith</b>	Sunan Abu Dawood, 38:4447 (Narrated Abdullah ibn Abbas); Al-Tirmidhi, 15:1456 (Narrated Ibn Abbas); Ibn Maajah, 20:2561.	"Whoever is found conducting himself in the manner of the people of Lot, kill the doer and the receiver."	In Arabic and English: Abu Dawood Al-Tirmidhi Ibn Maajah	
	Sunan Abu Dawood, 38:4448 (Narrated Abdullah ibn Abbas).	"If a man who is not married is seized committing sodomy he will be stoned to death."	Arabic	English
	Al-Tabarani in Al-Mu'jam al-Awsat: 4157; Al-Bayhaqi, Shuab ul Iman: 5075.	"If a woman comes upon a woman, they are both adulteresses, if a man comes upon a man, then they are both adulterers."	Arabic	English <sup>18</sup>

<sup>14</sup> *Id.*, 5.

<sup>15</sup> Mark Jones, "Islamic Law in Saudi Arabia: A Responsive View", *International Journal of Comparative and Applied Criminal Justice*, 1992, Vol. 16:1-2, 50; Richter H. Moore Jr., "Courts, Law, Justice, and Criminal Trials in Saudi Arabia", *International Journal of Comparative and Applied Criminal Justice*, Vol. 11:1-2, 1987, 67.

<sup>16</sup> Hossein Esmaeili, "On a slow boat towards the rule of law: The nature of law in the Saudi Arabia legal system", *Arizona Journal of International & Comparative Law* Vol. 26, No. 1, 2009, 45.

<sup>17</sup> Mark Jones, "Islamic Law in Saudi Arabia: A Responsive View", *International Journal of Comparative and Applied Criminal Justice*, 1992, Vol. 16:1-2, 54.

<sup>18</sup> This Hadith is not part of any of the Six Canonical Books of Hadith. Given that non-cannonical Ahadith are translated into English less often, no full English translation of this text could be located online. The link here included leads to a document prepared by the Malaysian Department of Islamic Development, which was deemed a trustworthy source because of its members' high levels of expertise in Sharia law, as well as their presumably greater chances of accessing printed versions of the full text. Moreover, because the document in this link is an unprecedentedly thorough compilation of Ahadith related to SOGIESC, it may be of interest to this report's readers. For more information on the Six Canonical Books of Hadith, see: Abdulaziz Abdushukur ugli Abdurazzakov and Nodir Rakhmonqulovich Karimov, "Some Brief Information on Al-Sihah Al-Sitta", *International Scientific Journal of Theoretical & Applied Science*, Issue 5, Vol. 73, 30 May 2019.

3	<b>Basic Ordinance (1992)</b>	<i>Sharia as law of the land</i>	<p>Article 1. The Kingdom of Saudi Arabia is a sovereign Arab Islamic State. Its religion is Islam. Its constitution is Almighty God's Book, The Holy Qur'an, and the Sunna of the Prophet [...].</p> <p>Article 23. The State shall protect the Islamic Creed, apply the Sharia, encourage good and discourage evil, and undertake its duty regarding the Propagation of Islam (<i>Da'wa</i>).</p> <p>Article 26. The State shall protect human rights in accordance with the Sharia.</p> <p>Article 38. [...] No conviction or penalty shall be inflicted without reference to the Sharia or the provisions of the Law [...].</p> <p>Article 48. The Courts shall apply rules of the Islamic Sharia in cases that are brought before them, according to the Holy Qur'an and the Sunna, and according to laws which are decreed by the ruler in agreement with the Holy Qur'an and the Sunna.</p>	Arabic	English
4	<b>Law on Criminal Procedures (2001)<sup>19</sup></b>	<i>Procedure to deal with death penalty cases</i>	<p>Article 1 states that courts shall apply Sharia principles, as derived from the Quran and the <i>Sunna</i> to cases brought before them.</p> <p>Article 10 establishes that criminal panels of the Appellate Court shall review sentences of death, stoning, amputation or <i>qisas</i> (retaliatory punishment) in cases other than death.</p> <p>Article 11 indicates that sentences of death, stoning, amputation, or <i>qisas</i> in cases other than death that have been affirmed by the Appellate Court shall not be final unless affirmed by the Permanent Panel of the Supreme Judicial Council.</p> <p>Article 220 establishes that judgments imposing death, stoning, or amputation shall be executed pursuant to a Royal Order to be issued by the King or his authorized representative and that representatives of the Administrative Governor, the Court, the Committee for the Promotion of Virtue and Prevention of Vice, and the police shall witness the execution of the judgment involving death, stoning, amputation, or flogging.</p>	Arabic	English <sup>20</sup>
5	<b>Committee for the Promotion of Virtue and the Prevention of Vice (CPVPV)</b>	<p><i>Committee for the Promotion of Virtue and the Prevention of Vice (1980)</i></p> <p><i>Organisation system amended in 2016.</i></p> <p><i>Implementation of Hisbah.</i></p>	<p>Both the 1980 and the 2016 decrees bestow the responsibility to "enjoin good and forbid evil" upon the CPVPV. However, whereas the foundational document grants the CPVPV full authority to arrest those who violate Sharia, the amended document requires the Committee to notify any incidents to either the police or the General Administration for Narcotics Control, which are the only two authorities with the competence to conduct investigations, interrogations, and arrests, <i>inter alia</i> (Art. 7). The extent to which this provision is observed in practice is unclear.</p> <p>In 2012, an official from the Committee for the Promotion of Virtue and the Prevention of Vice committee stated that its work was focused on eradicating "erroneous behaviour that affects society, such as drinking alcohol, magic, immorality and homosexuality"<sup>21</sup></p>	<p>Arabic (1980 decree)</p> <p>Arabic (2016 decree)</p>	English <sup>22</sup>

<sup>19</sup> Before this law came into effect, the relevant law on Criminal Procedures was the *Statute of Principles of Arrest, Temporary Confinement, and Preventive Detention* (1983). This law listed "Sodomy" and "Sharia *hudud* crimes" under Article 10 as "serious offences". No full English translation of the document could be located online. For an English translation of selected articles within this statute, see: Amnesty International, *Saudi Arabia, Religious intolerance: The arrest, detention and torture of Christian worshippers and Shi'a Muslims*, 1993, 25.

<sup>20</sup> Some websites have also made English translations of this law available. See, for example: "Law of Criminal Procedure", *Embassy of the Kingdom of Saudi Arabia in Washington, D.C. (website)*. Accessed on 27 October 2020; "Law of Criminal Procedure - Saudi Arabia", *University of Minnesota Human Rights Library (website)*. Accessed on 27 October 2020.

<sup>21</sup> Muhammed Saeed Al-Zahrani, "Segregation of sexes: Hai'a chief stands by his comment", *The Saudi Gazette*, 2 March 2012.

<sup>22</sup> No English version of these texts could be located online.



In addition to the provisions in the chart above, the offence of “corruption on Earth” (الإفساد في الأرض) *al'ifsad fil-'ard*) exists in the Saudi legal tradition. As explained by Amnesty International, “corruption on Earth” is a catch-all phrase as it can apply to any offence, including heterosexual or same-sex sexual acts if the judge sees fit. It carries the death penalty”.<sup>23</sup>

Although Saudi law is often described as “unmodified” Sharia, scholars indicate that it has in fact been influenced by non-Islamic sources, such as tribal values and customs<sup>24</sup> and French civil law.<sup>25</sup> Because of the unofficial conservative tribal system, some experts see the process for reform and change in Saudi Arabia as inevitably slow and gradual.<sup>26</sup> In the early 1990s, in an historic move, the Saudi government undertook a reform whereby a series of regulations and royal decrees, most of which dealt with financial and commercial matters, were issued.<sup>27</sup> In more recent times, new legal mechanisms have been created to deal with matters not subject to specific Sharia rules (such as issues related to corporations, media, and broadcasting), which has reportedly had positive influences on the Kingdom’s legal system overall.<sup>28</sup> Despite this, strong resistance against the codifying of Sharia in Saudi Arabia remains for a number of theological and historical reasons.<sup>29</sup>

#### *International reaction and advocacy*

UN mechanisms have recently listed Saudi Arabia among the states where the death penalty for consensual same-sex sexual activity may be applied, reiterating their concern in this regard, and recalling states’ obligations “to exercise due diligence to prevent, investigate, punish and redress deprivation of life and other acts of violence [...] directed at LGBT and intersex persons”.<sup>30</sup> Furthermore, the UN Secretary-General recently listed Saudi Arabia among the states that “continue to impose and carry out the death penalty in connection with actual or purported

engagement in consensual sexual acts, such as “adultery” and “sodomy””, recalling that laws criminalising consensual same-sex sexual activity contravene international human rights law and standards.<sup>31</sup>

In 2010, Amnesty International noted that Saudi Arabia has sentenced people to death and imposed various types of corporal punishment on the grounds of their sexual orientation, and that the criminalisation of consensual same-sex sexual activity “encourages the dehumanization of lesbians, gay men, bisexual people and transgender people (LGBT) as their very identity is criminalized.”<sup>32</sup>

In 2018, Human Rights Watch pointed out that “(j)udges use principles of uncodified Islamic law to sanction people suspected of committing sexual relations outside marriage, including adultery, extramarital and homosexual sex. If individuals are engaging in such relationships online, judges and prosecutors utilize vague provisions of the country’s anti-cybercrime law that criminalize online activity impinging on ‘public order, religious values, public morals, and privacy’”.<sup>33</sup>

In 2020, Freedom House noted that “[d]ue process is notably lacking in death penalty cases. In April 2019, for example, 37 people—mostly Shiites—were put to death in a single day. Human rights groups noted that the defendants were denied access to a lawyer while their charges were being investigated, and many had retracted confessions made under torture”.<sup>34</sup>

Other civil society organisations that have expressed grave concern over the imposition of the death penalty for consensual same-sex sexual activity in Saudi Arabia include the International Gay and Lesbian Human Rights Commission (2002),<sup>35</sup> the Centre for Democracy and Human Rights in Saudi Arabia (CDHR) (2007),<sup>36</sup> Equal Rights Trust (2007),<sup>37</sup>

<sup>23</sup> Amnesty International, *Love, Hate and the Law: Decriminalizing Homosexuality* (2008), 48; Umar Abubakar Dubagari, “Same Sex Marriage, Human Rights and Death Penalty: Common and Islamic Law Perspectives”, *Journal of Philosophy, Culture and Religion* 23, No. 49, 2016, 54.

<sup>24</sup> Hossein Esmaeili, “On a slow boat towards the rule of law: The nature of law in the Saudi Arabia legal system”, *Arizona Journal of International & Comparative Law* Vol. 26, No. 1, 2009, 18.

<sup>25</sup> Maren Hanson, “The influence of French law on the legal development of Saudi Arabia”, *Arab Law Quarterly*, No. 2(3), 1987, 272-291.

<sup>26</sup> Hossein Esmaeili, “On a slow boat towards the rule of law: The nature of law in the Saudi Arabia legal system”, *Arizona Journal of International & Comparative Law*, Vol. 26, No. 1, 2009, 1, 46.

<sup>27</sup> Esther van Eijk, “Sharia and national law in Saudi Arabia”, in Jan Michiel Otto (ed.), *Sharia incorporated a comparative overview of the legal systems of twelve Muslim countries in past and present* (Leiden: Leiden University Press, 2010), 150-155.

<sup>28</sup> Hossein Esmaeili, “On a slow boat towards the rule of law: The nature of law in the Saudi Arabia legal system”, *Arizona Journal of International & Comparative Law* Vol. 26, No. 1, 2009, 46.

<sup>29</sup> For more details on the reasons behind the reluctance to codify Sharia, see: Knut S Vikør, “The Sharia and the nation state: Who can codify the divine law?”, *The Middle East in a Globalized World*, 1998.

<sup>30</sup> *Discrimination and violence against individuals based on their sexual orientation and gender identity*, A/HRC/29/23, 4 May 2015.

<sup>31</sup> United Nations General Assembly, *Report of the Secretary-General: Question of the death penalty*, A/HRC/27/23, 30 June 2014.

<sup>32</sup> “Urgent Action: Man Sentenced for Homosexuality”, *Amnesty International*, 12 November 2010.

<sup>33</sup> “Country Summary: Saudi Arabia”, *Human Rights Watch*, January 2018.

<sup>34</sup> “Freedom in the World 2020: Saudi Arabia”, *Freedom House*, 2020.

<sup>35</sup> “Saudi Arabia: Protest the death penalty for homosexual conduct in Saudi Arabia”, *IGLHRC (OutRight Action)*, 8 January 2002.

<sup>36</sup> Their statements are cited in: “Saudi Arabia: Treatment of homosexuals by authorities and by society in general; recourse available to those who have been targeted because of their sexual orientation (2004-2007)”, *Immigration and Refugee Board of Canada*, 19 March 2007.

<sup>37</sup> Equal Rights Trust, *Saudi Arabia* (2007), 3.

Human Rights Watch (2008),<sup>38</sup> and Amnesty International (2009).<sup>39</sup>

Finally, two recent reports by the German Bundestag officially stated that consensual same-sex sexual acts between adults in the Kingdom of Saudi Arabia are subject to criminal prosecution, and the imposition of the death penalty or corporal punishment on those grounds is possible.<sup>40</sup>

During its second UPR cycle, conducted in 2013, Saudi Arabia accepted a recommendation from Italy to carry out further efforts to increase the transparency and openness of legal proceedings contemplating death sentences.<sup>41</sup> However, all other recommendations that, inter alia, aimed at establishing moratoriums on the death penalty were all rejected.<sup>42</sup> In response to this decision, Saudi Arabia claimed that "The death penalty is imposed only for the most serious crimes and strict procedures are applied to safeguard human rights when the death penalty is imposed".<sup>43</sup>

In 2018, during its third UPR cycle, all recommendations aimed at establishing moratoriums on the death penalty and/or the eventual abolition were rejected.<sup>44</sup> This time, the Kingdom once again argued that "international law has not actually prohibited the death penalty but has established norms governing its imposition. Abolition of the death penalty is thus an optional rather than a mandatory measure".<sup>45</sup>

#### *Statements by Saudi public officials*

A number of Saudi public officials have reportedly commented on "homosexuality" and extramarital sexual relations, oftentimes with an antagonistic tone. State-sponsored educational materials have been reported to echo similarly reproachful messages. In January 2002, in response to the international

backlash generated by the beheadings of three men, the Information Supervisor at the Saudi Arabian embassy in Washington D.C., explained that the men had actually been executed for sexual abuse of minors. He went on to state that: "I would guess there's sodomy going on daily in Saudi Arabia ... but we don't have executions for it all the time".

On 10 May 2002, Dr Mohammed A. Rasheed, Minister of Education and Head of the Delegation of the Kingdom of Saudi Arabia, issued a statement on the occasion of the Special Session of the General Assembly on Children in New York. An excerpt from this written statement reads: "A child's first right is to be born in a legitimate marriage. This is his pre-natal right guaranteed in Islam by forbidding and outlawing sexual relationships outside marriage".<sup>46</sup>

In 2008, the Hudson Institute's Centre for Religious Freedom captured the following excerpt from the Saudi Arabian Ministry of Education's Textbooks for the 2007-2008 academic year: "Homosexuality is one of the most disgusting sins and greatest crimes. [...] It is a vile perversion that goes against sound nature, and is one of the most corrupting and hideous sins. [...] The punishment for homosexuality is death. Both the active and passive participants are to be killed whether or not they have previously had sexual intercourse in the context of a legal marriage. [...] Some of the companions of the Prophet stated that [the perpetrator] is to be burned with fire. It has also been said that he should be stoned, or thrown from a high place".<sup>47</sup>

#### *Enforcement*

Although Islamic law in theory necessitates a complex procedure to prove *zina* (adultery) or *liwat* (sodomy), Saudi Arabia has reportedly failed to incorporate the procedural protections and safeguards that Sharia law

<sup>38</sup> "Adults Before Their Time: Children in Saudi Arabia's Criminal Justice System", *Human Rights Watch*, 24 March 2008.

<sup>39</sup> "Man beheaded and crucified in Saudi Arabia", *Amnesty International*, 1 June 2009.

<sup>40</sup> "Drucksache 19/5494: Menschenrechtslage in Saudi-Arabien", *German Bundestag*, 29 November 2018; "Printed paper 19/9077: International human rights situation of lesbian, gay, bisexual, transsexual, transgender and intersex people", *German Bundestag*, 29 March 2019.

<sup>41</sup> *Report of the Working Group on the Universal Periodic Review: Saudi Arabia*, A/HRC/25/3, 26 December 2013, para. 138.123; *Report of the Working Group on the Universal Periodic Review: Saudi Arabia*, A/HRC/25/3/Add.1, 28 February 2014, para. 16.

<sup>42</sup> These recommendations were made by Paraguay (para. 138.118), Slovenia (para. 138.119), Sweden (paras. 138.119 and 138.129), Italy (para. 138.119), Poland (para. 138.119), Slovakia (para. 138.120), Spain (para. 138.120), Germany (para. 138.121), Australia (para. 138.122), Czech Republic (para. 138.127), Albania (para. 138.128), and Switzerland (para. 138.129). In: *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/25/3/Add.1, 28 February 2014, para. 16.

<sup>43</sup> *Report of the Working Group on the Universal Periodic Review: Saudi Arabia*, A/HRC/25/3, 26 December 2013, para. 97.

<sup>44</sup> These recommendations were made by Estonia (para. 122.13), Uruguay (para. 122.18), Australia (para. 122.94), Brazil (para. 122.95), Costa Rica (para. 122.98), Georgia (para. 122.102), Italy (para. 122.102), Ireland (para. 122.103), Mexico (para. 122.103), Sweden (para. 122.103), Norway (para. 122.103), Iceland (para. 122.103), Slovenia (para. 122.104), Spain (para. 122.105), Liechtenstein (para. 122.106), Argentina (para. 122.108), Montenegro (para. 122.109), and Switzerland (para. 122.115). In: *Report of the Working Group on the Universal Periodic Review: Saudi Arabia*, A/HRC/40/4, 26 December 2018; *Report of the Working Group on the Universal Periodic Review: Kingdom of Saudi Arabia (Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review)*, A/HRC/40/4/Add.1, 26 February 2019, para. 19.

<sup>45</sup> *Report of the Working Group on the Universal Periodic Review: Kingdom of Saudi Arabia (Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review)*, A/HRC/40/4/Add.1, 26 February 2019, para. 18.

<sup>46</sup> "Saudi Arabia: Treatment of homosexuals by authorities and by society in general; recourse available to those who have been targeted because of their sexual orientation (2004-2007)", *Immigration and Refugee Board of Canada*, 19 March 2007.

<sup>47</sup> "2008 Update: Saudi Arabia's Curriculum of Intolerance", *Center for Religious Freedom of Hudson Institute*, 2008.

has traditionally associated with the death penalty.<sup>48</sup> Furthermore, it has been reported that factors such as the religion, citizenship, and social status of the accused can be a strong determinant of the conviction and severity of punishments, with working-class migrant workers usually being judged and treated more harshly than upper-class Saudi citizens.<sup>49</sup>

It is often the case that authorities in Saudi Arabia, among other countries, imprison LGBTI people on a number of morality-related grounds such as “cross-dressing”, “attacks against public morals”, “offenses against Islam”, etc., although these offences alone are not usually punished with the death penalty. Further, in the vast majority of known cases where Saudi Arabia has executed people on the grounds of sodomy, those accused had reportedly been sentenced with multiple additional criminal charges, such as terrorism, extremism, theft, murder, child abuse, and rape. It is often unclear how many (if any) of those offences are factual, and whether “sodomy” is used as an aggravating circumstance or purposely conflated with other crimes by state authorities for arbitrary reasons. In light of the opaqueness surrounding these cases, gathering reliable and consistent data on incidents of enforcement of capital punishment for consensual same-sex sexual acts in the Kingdom is extremely difficult. For the most part, ILGA World relies on other civil society organisations and scarce media coverage, if any at all, to learn about incidents such as those listed below.

A 1976 report by the Saudi Ministry of Interior mentions a case where “sodomy” was punished by the death penalty at some point before the establishment of the Kingdom in 1932: “Sodomy was reported at Hail; the penalty for the sodomite was to be hurled from the top of a minaret, and his head struck with a stone to hasten death”.<sup>50</sup>

In July 2000, it was reported that three Yemeni men had been executed by the Saudi government in the southwestern city of Jizan after being found guilty “committing the extreme obscenity of homosexuality”,

“imitating women”, and “molesting young boys”, per a Ministry of Interior statement quoted by the Saudi Press Agency.<sup>51</sup> *Windy City Times* reported three more beheadings of Saudi citizens in the southwestern city of Abha on similar grounds only three days later.<sup>52</sup> In the same month, Amnesty International cited the six aforementioned cases in a campaign for the abolition of the death penalty and amputations in Saudi Arabia, without specifying the grounds on which the executions had taken place.<sup>53</sup> However, in later reports, the organisation made clear its viewpoint that the six men had indeed been executed partly, if not primarily, due to their sexual orientation.<sup>54</sup>

On 9 January 2002, Amnesty International UK condemned the public beheading of three Saudi men in Abha eight days prior. Reportedly, the Saudi Arabian Ministry of Interior issued a statement explaining that the men had been convicted for “homosexual acts”, in addition to vaguely worded charges such as “luring children’s rights and harming others”, with no further details. Trial proceedings remained fully undisclosed.<sup>55</sup> In response to international criticism of the incident, an official at the Saudi Arabian embassy in Washington, D.C., argued that the three men had been beheaded as a result of their alleged sexual abuse of young boys, and not on the grounds of their sexual orientation. He went on to state that: “I would guess there’s sodomy going on daily in Saudi Arabia ... but we don’t have executions for it all the time”.<sup>56</sup>

In April 2019, 37 men of the Shia Muslim minority were publicly beheaded in a mass execution in the cities of Riyadh, Mecca, and Medina. According to a report, “court documents accused the men of hating the Sunni sect, the State and its security forces.” But while most of these men had been generally accused of terrorism or espionage for Iran, five of them were additionally accused of same-sex sexual intercourse after one of the men “allegedly admitted to having sex with four of his co-accused ‘terrorists’”. This man denied all the charges against him, and his lawyer called his confession “a fabrication”.<sup>57</sup>

<sup>48</sup> Elizabeth Peiffer, “The death penalty in traditional Islamic law and as interpreted in Saudi Arabia and Nigeria”, *William & Mary Journal of Race, Gender, and Social Justice/Women and the Law*, Vol. 11, Art. 9 (2004), 507.

<sup>49</sup> Shafi’i Abdul Azeez Bello, “The Punishment of Homosexuality in Islamic Contemporary World: Malaysia, Iran, Pakistan and Saudi Arabia as a Case Study” (Master of Comparative Laws, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia, 2012).

<sup>50</sup> Ministry of Interior, Kingdom of Saudi Arabia: Crime Prevention Research Centre, “The Effect of Islamic Legislation on Crime Prevention in Saudi Arabia: Proceedings of the Symposium Held in Riyadh. 16-22 Shawal 1396 A.H. [9-13 October 1976]”, 527.

<sup>51</sup> Reuters, “Saudi Executes Three Yemenis for Homosexuality”, *Sodomy Laws*, 14 July 2000. See also: “Saudis execute three for homosexual acts”, *BBC News*, 14 July 2000; “Three Executed in Saudi Arabia for Sodomy”, *Al Bawaba*, 11 July 2000.

<sup>52</sup> “Saudi Gays Beheaded”, *Windy City Times*, 19 July 2000.

<sup>53</sup> “Saudi Arabia: Increase In Executions And Amputations”, *Amnesty International*, 16 July 2000.

<sup>54</sup> Amnesty International, “The Death Penalty for Sexual Relations: Acquittal in Nigeria, Executions in Saudi Arabia”, *Death Penalty News*, March 2002, 2-3; “Saudi Arabia: ‘Sexual orientation’ executions condemned”, *Amnesty International UK*, 9 January 2002.

<sup>55</sup> “Saudi Arabia: ‘Sexual orientation’ executions condemned”, *Amnesty International UK*, 9 January 2002. See also: Amnesty International, “Saudi Arabia: Three Men Executed for Homosexual Acts”, in *OutRight Action International (website)*, 8 January 2002. “السعودية: إعدام ثلاثة شاذين”, *Al Hayat*, 3 January 2002; Kim Krisberg, “Saudis Beheaded for Sodomy”, *Washington Blade*, 4 January 2002. In *Sodomy Laws (website)*.

<sup>56</sup> Kim Krisberg, “Saudi Official: Molestation Led to Beheadings”, *Washington Blade*, 11 January 2002. In *Sodomy Laws (website)*.

<sup>57</sup> Daniel Villarreal, “Saudi Arabia beheaded 5 men ‘proven’ to be gay under torture”, *LGBTQ Nation*, 28 April 2019.



# SOMALIA

## Introduction

Under colonial occupation by European powers, the territory constituting the present-day state of Somalia was divided into two parts: Italian Somalia along the south and east coasts (since 1889), and British Somaliland in the northwest (since 1884).

## South-Central Somalia and Puntland

Presently, four systems of justice coexist in Somalia: 1) Islamic Sharia; 2) *Xeer*<sup>1</sup> (customary law, under which community elders settle matters on a case-by-case basis); 3) civil law (sourced from English common law and Italian civil codes, as well as central governments created at international peace processes); and 4) initiatives by non-State actors, including militia-factions.<sup>2</sup> Given the *de facto* absence of a well-established rule of law in Somalia, non-State actors have been reported to have more power than government authorities in terms of law enforcement in several regions,<sup>3</sup> and Sharia courts, in particular, are believed to enjoy much higher rates of approval, trust, and perceived efficiency among Somali civilians.<sup>4</sup>

In 1991, General Mohamed Siad Barre, who had been ruling the country since 1969, was ousted. This event has been largely pinpointed as the start of Somalia's Civil War, which continues to the present day.<sup>5</sup> In 2004, after years of unrest and peacekeeping efforts, Somalia's Transitional Federal Government (TFG) was established. However, in 2006, its authority was

challenged by the Islamic Courts Union (ICU; later named Supreme Islamic Courts Council, or SICC), a coalition of Sharia courts with ties to Al-Shabaab.<sup>6</sup> In April 2009, in what was interpreted as a strategy to garner support among ICU/SICC sympathisers,<sup>7</sup> Somalia's transitional parliament reportedly agreed to adopt Sharia law for use throughout the country.<sup>8</sup> Furthermore, in August 2012, the TFG was replaced with the Federal Government of Somalia (FGS), and the following month, the government adopted Somalia's Provisional Constitution, which confirms Islam as the state religion and Sharia as the supreme law over Somali territory (Art. 4). It further forbids the enactment of any laws contrary to Sharia (Art. 2).<sup>9</sup> The local constitutions of Somaliland and Puntland include similar provisions, although the latter is subordinate to the Federal Constitution.<sup>10</sup> For that reason, the death penalty for consensual same-sex sexual activity in Somalia could be legitimised at a State level. Given the often-blurry lines between state and non-state actors in Somalia, however, it is unclear whether this has ever been the case.

In Italian Somalia, under the *Zanardelli Code* (1890) and the later *Rocco Code* (1930), same-sex sexual intercourse was not criminalised, although it has been reported that sexual and gender diversity was actively prosecuted throughout Italy's fascist regime around the time of World War II.<sup>11</sup> In 1962, shortly after unification, Somalia adopted a penal code that criminalised consensual same-sex sexual behaviour with up to three years of imprisonment. This provision remains officially in force in South and Central Somalia

<sup>1</sup> The legality or permissibility of consensual same-sex sexual activity under *Xeer* is unclear.

<sup>2</sup> Andre Le Sage, "Stateless Justice in Somalia: Formal and Informal Rule of Law Initiatives", *Centre for Humanitarian Dialogue*, July 2005, 7; Aline Wauters, "Research into a Harmonised Legal System for Somalia and Analysis of its Different Judicial Systems" (Ghent University: Master of Law thesis, 2013); "Somalia Legal Profile", *Proelium Law LLP*, 2020; Bertelsmann Stiftung, "Somalia Country Report 2020", *BTI Transformation Index (website)*. Accessed on 18 October 2020.

<sup>3</sup> "BTI 2020 Country Report: Somalia", *Bertelsmann Stiftung*, 2020. See also: "Somalia Country Report 2020", *BTI Transformation Index (website)*. Accessed on 18 October 2020.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.* See also: "Somalia Country Report 2020", *BTI Transformation Index (website)*. Accessed on 18 October 2020. Some scholars, nonetheless, have pointed out the numerous complexities of defining start- and end-dates for civil wars, suggesting that the the Somali Civil War could be considered as having begun much earlier. See: James D. Fearon, "Why do some civil wars last so much longer than others?" *Journal of Peace Research* 41, No. 3 (2004), 275-301.

<sup>6</sup> Ioan M. Lewis and Karen Sparks (ed.), "Somalia", *Encyclopaedia Britannica*. Accessed on 18 October 2020.

<sup>7</sup> *Ibid.*

<sup>8</sup> "Somali leader agrees [sic] Sharia law", *BBC News*, 28 February 2009; Ioan M. Lewis and Karen Sparks (ed.), "Somalia", *Encyclopaedia Britannica*. Accessed on 18 October 2020.

<sup>9</sup> Provisional Constitution of the Federal Republic of Somalia (2012), in English and in Somali. See also: "BTI 2020 Country Report: Somalia", *Bertelsmann Stiftung*, 2020. See also: "Somalia Country Report 2020", *BTI Transformation Index (website)*. Accessed on 18 October 2020.

<sup>10</sup> "Somalia Legal Profile", *Proelium Law LLP*, 2020. See also: the Constitution of the Republic of Somaliland (2000), in English and in Somali; Constitution of Puntland (2001), in English and in Somali; Provisional Constitution of the Federal Republic of Somalia (2012), in English and in Somali.

<sup>11</sup> Michael R. Ebner, "The Persecution of Homosexual Men under Fascism" in Willson (eds), *Gender, Family and Sexuality* (London: Palgrave Macmillan, 2004); Jean Le Bitoux, *Il triangolo rosa. La memoria rimossa delle persecuzioni omosessuali* (San Cesario di Lecce: Manni Editori, 2003), 112; Finbarr Toesland, "'The newspapers didn't report it at all': the story of a gay island created by Mussolini's Fascists", *Prospect Magazine*, 14 August 2018.

to date. However, application of the Somali Penal Code in these areas is reported to be scarce<sup>12</sup> and inferior in power to traditional law.<sup>13</sup>

Although Somalia's Penal Code makes no mentions of the death penalty as a punishment for consensual same-sex sexual activity, such punishment is still legitimised by strict interpretations of Islamic Sharia law, and especially so by non-state actors. This is notably the case with Al-Shabaab, an insurgent organisation whose influence on various parts of Somalia remains considerable despite more than a decade of efforts by local authorities and the international community to combat it.<sup>14</sup>

As explained by Bertelsman Stiftung, "Al-Shabaab has established courts in its area of control and follows its own quite strict interpretation of a particular Salafi version of Shariah law. These include enforcement of strict punishments (*hudud*), including amputation of limbs, stoning and executions. Al-Shabaab does not allow the application of customary law. In spite of such harsh punishments, many people, even in areas controlled by the government, prefer the legal services provided by Al-Shabaab."<sup>15</sup>

In Somalia—including Somaliland and Puntland—the judiciary is in theory independent from the executive and legislative branches of government.<sup>16</sup> However, according to Proelium Law LLP, there is no clear separation of powers in practice, and the judiciary is barely functional, relying on all traditional branches of Somali law simultaneously.<sup>17</sup>

Moreover, factors such as widespread corruption, nepotism, underfunding, deficient expertise, and a lack of accountability mechanisms are prevalent among judiciaries, leading to widespread impunity and poor transparency.<sup>18</sup> According to the Bertelsmann Stiftung foundation, because the federal government has put little effort into designing a unified and functional legal framework, court rulings are often disregarded by both lawmakers and citizens, and Sharia is interpreted

differently in different courts and locations.<sup>19</sup> Military courts, which were established in 2012, regularly try civilians for offences related to terrorism and have repeatedly mandated the death penalty.<sup>20</sup> It is unclear whether any cases related to consensual same-sex sexual activity have been settled by these courts. Nonetheless, in 2015, the United Nations Independent Expert on the Situation of Human Rights in Somalia expressed his concern about a general overreliance on military courts for justice enforcement in general.<sup>21</sup>

Also, in 2015 the UN Independent Expert on the Situation of Human Rights in Somalia was informed by the Chief Justice and the Speaker of the Federal Parliament that the death penalty is considered a lawful punishment under Sharia.<sup>22</sup> In 2016, despite having received recommendations by the international community on repeated occasions,<sup>23</sup> the Somali government informed the Independent Expert that it could not abolish the death penalty nor adopt a moratorium on it given that it was a legitimate form of punishment under Islam.<sup>24</sup>

In 2017, the Attorney General stated that executions were no longer being conducted in public unless authorisation was given by the Ministry of Justice, and that the government was working with the regional states to enforce that rule while considering alternative punishments.<sup>25</sup>

By 2018, Somalia had established a National Human Rights Commission and halted public executions of persons sentenced to death in Mogadishu. However, the government retained the death penalty despite having accepted the recommendations to establish a moratorium, made during its first Universal Periodic Review (UPR) cycle session in 2011.<sup>26</sup> Also in 2018, the Sexual Offences Bill,<sup>27</sup> which aims to protect girls against forced marriages (*inter alia*) was submitted to the Federal Parliament but faced considerable opposition on religious and cultural grounds. As of September 2019, Puntland and Somaliland had not implemented their respective sexual offences laws due

<sup>12</sup> "Country of Origin Information Report on South and Central Somalia", *Ministerie van Buitenlandse Zaken*, March 2019, 46.

<sup>13</sup> "BTI 2020 Country Report: Somalia", *Bertelsmann Stiftung*, 2020. See also: "Somalia Country Report 2020", *BTI Transformation Index (website)*. Accessed on 18 October 2020.

<sup>14</sup> *Report of the Independent Expert on the situation of human rights in Somalia*, A/HRC/42/62, 16 September 2019.

<sup>15</sup> "BTI 2020 Country Report: Somalia", *Bertelsmann Stiftung*, 2020. See also: "Somalia Country Report 2020", *BTI Transformation Index (website)*. Accessed on 18 October 2020.

<sup>16</sup> "Somalia Legal Profile", *Proelium Law LLP*, 2020.

<sup>17</sup> "Somalia Legal Profile", *Proelium Law LLP*, 2020.

<sup>18</sup> "BTI 2020 Country Report: Somalia", *Bertelsmann Stiftung*, 2020. See also: "Somalia Country Report 2020", *BTI Transformation Index (website)*. Accessed on 18 October 2020.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> *Report of the Independent Expert on the situation of human rights in Somalia*, *Bahame Tom Nyanduga*, A/HRC/30/57, 28 October 2015.

<sup>22</sup> *Id.*, para. 32.

<sup>23</sup> *Report of the Working Group on the Universal Periodic Review*, A/HRC/18/6, 11 July 2011; *Draft report of the Working Group on the Universal Periodic Review: Somalia*, A/HRC/WG.6/24/L.9, 1 February 2016.

<sup>24</sup> *Report of the Independent Expert on the situation of human rights in Somalia*, A/HRC/33/64, 15 September 2016, para. 30.

<sup>25</sup> *Report of the Independent Expert on the situation of human rights in Somalia*, A/HRC/36/62, 6 September 2017, para. 46.

<sup>26</sup> *Report of the Independent Expert on the situation of human rights in Somalia*, A/HRC/39/72, 19 July 2018.

<sup>27</sup> A condensed version of this bill, prepared by Legal Action Worldwide (LAW), Australian Aid, and the Federal Government of Somalia, can be found [here](#).

to similar objections.<sup>28</sup> The exact implications of this bill on the legality of consensual same-sex sexual activity in Somalia, if any, are unlikely to be considerable but remain unclear as of now. In 2019, the UN Independent Expert reported considerable progress in Somalia's human rights situation in general, as in its transition to a democratic state.<sup>29</sup>

Reports from recent years by the UN Independent Expert repeatedly mention the widespread prosecution and killing of journalists in Somali territory.<sup>30</sup> This represents an important challenge for the purposes of research on the human rights situation in Somalia, as obtaining information without first-hand sources on the ground is extremely difficult.<sup>31</sup>

### Somaliland

In Somaliland, same-sex sexual intercourse was criminalised since 1884, when the British took power in the region. The provision in place at the time was Section 377 ("Unnatural Offences") of the [Indian Penal code of 1860](#), which stipulated a penalty ranging from 10 years to life in prison. In 1940, the territory of British Somaliland was briefly seized by Italy, but it was recaptured by British forces the following year. When Somaliland officially became a part of the Somali Republic, the country's 1962 Penal Code

replaced the Indian Penal code of 1860. However, Somaliland has been seeking independence from the Somali Republic since 1991.<sup>32</sup>

While Somaliland's legal infrastructure has a wider reach than that of Somalia, especially among urban centres,<sup>33</sup> the judiciary reportedly faces very similar challenges to its counterpart in South and Central Somalia (poor training and qualifications, underfunding, understaffing, corruption, saturation of cases, leniency, etc.).<sup>34</sup>

Sources indicate that there is basic rule of law in urban centres of Somaliland, but *Xeer* continues to be the framework for legal order in more remote areas.<sup>35</sup> Somaliland's current constitution contemplates the three traditional branches of Somali law (civil law, Sharia, and *Xeer*). All are permitted, provided that they abide by Sharia.<sup>36</sup>

In April 2015, Somaliland executed six prisoners who had been on death row for several years, thereby breaking its nine-year-long *de facto* moratorium on the death penalty.<sup>37</sup> Whether authorities in Somaliland have ever enforced the death penalty on the grounds of consensual same-sex sexual activity is unclear. However, the territory's recent reintroduction of capital punishment, together with its Sharia law system, undoubtedly make this scenario possible.<sup>38</sup>

<sup>28</sup> *Report of the Independent Expert on the situation of human rights in Somalia*, A/HRC/42/62, 16 September 2019, paras. 48-50. The original, Somali-language texts of the bills corresponding to Puntland (2016) and Somaliland (2018) can be found [here](#) and [here](#), respectively.

<sup>29</sup> *Report of the Independent Expert on the situation of human rights in Somalia*, A/HRC/42/62, 16 September 2019.

<sup>30</sup> *Report of the Independent Expert on the situation of human rights in Somalia*, Shamsul Bari, A/HRC/21/61, 22 August 2012; *Report of the Independent Expert on the situation of human rights in Somalia*, Shamsul Bari, A/HRC/24/40, 16 August 2013; *Report of the Independent Expert on the situation of human rights in Somalia*, Shamsul Bari: Corrigendum, A/HRC/24/40/Corr.1, 30 August 2013; *Report of the Independent Expert on the situation of human rights in Somalia*, Bahame Tom Nyanduga, A/HRC/27/71, 4 September 2014; *Report of the Independent Expert on the situation of human rights in Somalia*, Bahame Tom Nyanduga, A/HRC/30/57, 28 October 2015; *Report of the Independent Expert on the situation of human rights in Somalia*, A/HRC/33/64, 15 September 2016; *Report of the Independent Expert on the situation of human rights in Somalia*, A/HRC/36/62, 6 September 2017; *Report of the Independent Expert on the situation of human rights in Somalia*, A/HRC/39/72, 19 July 2018; *Report of the Independent Expert on the situation of human rights in Somalia*, A/HRC/42/62, 16 September 2019.

<sup>31</sup> Civil society organisations have also noted the multiple challenges and risks that journalists in Somalia face, notably in areas controlled by Al-Shabaab. See: "Somalia 2019", *Amnesty International (website)*, 2019.

<sup>32</sup> For information on Somaliland's fight for secession, see: Claire Felner, "Somaliland: The Horn of Africa's Breakaway State", *Council on Foreign Relations*, 1 February 2018.

<sup>33</sup> "BTI 2020 Country Report: Somalia", *Bertelsmann Stiftung*, 2020. See also: "Somalia Country Report 2020", *BTI Transformation Index (website)*. Accessed on 18 October 2020.

<sup>34</sup> *Ibid.*

<sup>35</sup> Mohamoud Hussein Farah, "Update: Researching the Somaliland Legal System", *Hauser Global Law School Program, New York University School of Law*, May/June 2020; Bertelsmann Stiftung, "Somalia Country Report 2020", *BTI Transformation Index (website)*. Accessed on 18 October 2020.

<sup>36</sup> "The State of the Judiciary in Somaliland", *Horizon Institute*, June 2016; Bertelsmann Stiftung, "Somalia Country Report 2020", *BTI Transformation Index (website)*. See also: the Constitution of the Republic of Somaliland (2000) in English and in Somali.

<sup>37</sup> *Report of the Independent Expert on the situation of human rights in Somalia*, Bahame Tom Nyanduga, A/HRC/30/57, 28 October 2015, para. 32.

<sup>38</sup> A July 2020 report by BBC News suggests that the likelihood of the death penalty being applied on the grounds of consensual same-sex sexual activity in Somaliland is considerable. See: "Don't come back, they'll kill you for being gay", *BBC News*, 28 July 2020.

## Authority

AUTHORITY/ INSTRUMENT	RELEVANT SECTIONS	TRANSCRIPTION OF RELEVANT TEXT	SOURCES
<b>1 Sharia-based provisions</b>		<i>See entry on Saudi Arabia for a comprehensive breakdown of these provisions</i>	
<b>2 Somali Penal Code</b>  (Decree No. 5/1962) (1964)	Arts. 406, 409, and 410	<p><b>Article 406 (Incitement to lewd acts)</b> – 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 [96 P.C.] up to one year or with fine up to Sh. So. 2,000</p> <p><b>Article 409 (Homosexuality)</b> – 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 [96 P.C.] 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 [119 P.C.].</p> <p><b>Article 410 (Security Measures)</b> – A security measure [161 P.C.<sup>39</sup>] may be added to a sentence for crimes referred to in Articles 407, 408, and 409.</p>	<p>Italian and English</p> <p>English only</p> <p>Somali</p> <p>Arabic<sup>40</sup></p>
<b>3 Provisional Constitution of Somalia</b>  (2012)	Arts. 2 and 4	<p><b>Article 2: State and Religion</b></p> <ol style="list-style-type: none"> <li>1. Islam is the religion of the State.</li> <li>2. No religion other than Islam can be propagated in the country.</li> <li>3. No law which is not compliant with the general principles of Shari'ah can be enacted.</li> </ol> <p><b>Article 4: Supremacy of the Constitution</b></p> <ol style="list-style-type: none"> <li>1. After the Shari'ah, the Constitution of the Federal Republic of Somalia is the supreme law of the country. It binds the government and guides policy initiatives and decisions in all departments of government.</li> <li>2. Any law, or administrative action that is contrary to the Constitution may be invalidated by the Constitutional Court, which has the authority to do so in accordance with this Constitution.</li> </ol>	<p>English</p> <p>Somali</p>

## International reaction and advocacy

UN Mechanisms have recently listed Somalia among one of the states where the death penalty for consensual same-sex sexual activity may be applied, reiterating their concern in this regard, and recalling States' obligation "to exercise due diligence to prevent, investigate, punish and redress deprivation of life and other acts of violence [...] directed at LGBT and intersex persons".<sup>41</sup> Furthermore, the UN Secretary-General recently listed Somalia among the states that "continue to impose and carry out the death penalty in

connection to actual or purported engagement in consensual sexual acts, such as 'adultery' and 'sodomy'", recalling that laws criminalising consensual same-sex sexual activity contravene international human rights law and standards.<sup>42</sup>

In its 2nd UPR cycle session in early 2016, Somalia received recommendations from 16 countries<sup>43</sup> to establish a moratorium on the death penalty, to outright abolish it, or to prosecute individuals responsible for extrajudicial killings.<sup>44</sup> During the same UPR cycle, Somalia appears to have received only one

<sup>39</sup> Text: "No one may be subjected to a security measure not expressly provided by law nor to a measure beyond the limits provided by law [70, 162 P.C., 42 Const.]"

<sup>40</sup> The Arabic version of the Somali Penal Code is with ILGA World. Please contact us in case you need more information.

<sup>41</sup> *Discrimination and violence against individuals based on their sexual orientation and gender identity*, A/HRC/29/23, 4 May 2015.

<sup>42</sup> *Report of the Secretary-General: Question of the death penalty*, A/HRC/27/23, 30 June 2014.

<sup>43</sup> Slovenia (136.3), Montenegro (136.5), Namibia (136.6), the Netherlands (136.45), South Africa (136.63), Costa Rica (136.64), Greece (136.65), Italy (136.66), France (136.67), Austria (136.68), Lithuania (136.69), Switzerland (136.70), Australia (136.71), Canada (136.72), Mexico (136.73), and Germany (136.95). In: *Draft report of the Working Group on the Universal Periodic Review: Somalia*, A/HRC/WG.6/24/L.9, 1 February 2016.

<sup>44</sup> *Draft report of the Working Group on the Universal Periodic Review: Somalia*, A/HRC/WG.6/24/L.9, 1 February 2016.

recommendation (from Canada; para. 136.95) regarding SOGIESC: “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, but the Attorney General stated that Somalia was “reviewing penal procedure codes to reduce the number of crimes for which the death penalty was applied”<sup>45</sup> and that Somalia “was committed to engage in community dialogue on how to address it as way to punish severe crimes”.<sup>46</sup> This, he added, “would take a long time, as this issue was highly controversial and inherent to the religion, culture and beliefs of the Somali people”.<sup>47</sup> Somalia’s 3rd UPR is scheduled to begin in January 2021.

A number of governmental agencies and bodies worldwide have identified Somalia as a state where consensual same-sex sexual activity may be punishable—and/or has been punished—by the death penalty (notably, though not exclusively, in the Southern parts of the country, by Al-Shabaab forces). These governmental agencies and bodies include the United Kingdom Home Office (2002 and 2013)<sup>48</sup>, the Swedish International Development Cooperation Agency (2014),<sup>49</sup> the European Asylum Support Office (2014),<sup>50</sup> the Australian Government’s Department of Foreign Affairs and Trade (2017)<sup>51</sup>, and the Ministry of Foreign Affairs of the Netherlands (2019).<sup>52</sup> The same has been reported by UN agencies, such as UNDP (2018)<sup>53</sup> and UNICEF (2018),<sup>54</sup> and jurists from law centres such as Pride Legal (n/d)<sup>55</sup> and Law Centre NI (2016)<sup>56</sup>.

Finally, multiple civil society organisations have also noted the risk of capital punishment on the grounds of

consensual same-sex sexual activity in Somalia and expressed concern about it, including Human Rights Watch (2015),<sup>57</sup> Muslims for Progressive Values (2015),<sup>58</sup> Oxfam International (2016),<sup>59</sup> Hands Off Cain (2017),<sup>60</sup> Human Dignity Trust (2017),<sup>61</sup> Amnesty International UK (2018),<sup>62</sup> Together Against the Death Penalty (2018),<sup>63</sup> and Freedom House (2020).<sup>64</sup>

#### *Reported instances of enforcement by State authorities*

In February 2001, it was widely reported that authorities in Puntland had executed a lesbian couple after finding them guilty of “exercising unnatural behaviour”. Elements of the local police later dismissed this incident as false, stating that the case never came before the courts, and provided no comment on previous reports of hundreds of people gathering at the court of Boosaaso, where the sentence would have been issued.<sup>65</sup>

In July 2013, *Al Jazeera* published an article detailing testimonies of Somali LGBTI refugees in Kenya, who confirmed that being LGBTI or HIV-positive in Somalia is a factor that exponentially increases the risk of being prosecuted and killed by Al-Shabaab, among other armed gangs. Interviewees also pointed out that members of these armed gangs publicly labelled homosexuality as “the most infamous crime”. Reportedly, the son of one of the men interviewed was executed after being accused of sodomy “simply because he declined to join Al-Shabaab”. This was reported as an example of a tendency among authorities to purposely conflate different types of crimes in order to legitimise their executions.<sup>66</sup>

In January 2016, *The Independent* reported the case of a 22-year-old Somali lesbian activist who was able to escape to North America only hours before her

<sup>45</sup> *Report of the Working Group on the Universal Periodic Review: Somalia*, A/HRC/32/12, 13 April 2016, para. 31.

<sup>46</sup> *Id.*, para. 87.

<sup>47</sup> *Ibid.*

<sup>48</sup> “Somalia Country Assessment”, *United Kingdom Home Office Immigration & Nationality Directorate (Country Information and Policy Unit)*, April 2002; “Country of Origin Information Report: Somalia”, *United Kingdom Home Office*, 5 August 2013.

<sup>49</sup> “The Rights of LGBTI People in Somalia”, *Swedish International Development Agency*, November 2014.

<sup>50</sup> “EASO Country of Origin Information Report: South and Central Somalia Country Overview”, *European Asylum Support Office*, August 2014.

<sup>51</sup> “DFAT Country Information Report: Somalia”, *Department of Foreign Affairs and Trade (Australian Government)*, 13 June 2017.

<sup>52</sup> “Country of Origin Information Report on South and Central Somalia”, *Ministerie van Buitenlandse Zaken*, March 2019, 46.

<sup>53</sup> John Godwin and Nadya Khalife, “Somalia: Gender Justice & the Law”, *United Nations Development Programme*, 2018.

<sup>54</sup> Chris Cuninghame, Salah Kheir, Monica Martinez and Chris Rayment, “Child Notice Somalia 2018”, *UNICEF Somalia*, 2018.

<sup>55</sup> “Somalia LGBT Laws”, *Pride Legal (website)*. Accessed on 18 October 2020.

<sup>56</sup> Benjamin Christman, *Report on the Treatment of Gay Persons in Somalia* (Law Centre NI, 2016).

<sup>57</sup> *Submission on Australia’s Advocacy for the Abolition of the Death Penalty, to the Joint Standing Committee on Foreign Affairs, Defence and Trade*, Human Rights Watch, October 2015.

<sup>58</sup> *Muslims for Progressive Values (MPV) 2015 Written Submission for the Universal Periodic Review (UPR) of Somalia*, *Muslims for Progressive Values (MPV)*, 22 June 2015.

<sup>59</sup> *Sexual Diversity and Gender Identity Rights Policy*, *Oxfam International*, January 2016.

<sup>60</sup> Hands Off Cain, “Gay Raid: When and Where the State Kills”, *Dossier on Death Penalty and Homosexuality*, 5 June 2017.

<sup>61</sup> “Somalia”, in *Human Dignity Trust (website)*, 2017. Accessed on 18 October 2020.

<sup>62</sup> “LGBTI rights: Mapping anti-gay laws in Africa”, *Amnesty International UK*, 31 May 2018.

<sup>63</sup> “Criminalisation of Homosexuality: From Prison to the Death Penalty”, *Together Against the Death Penalty*, 2018.

<sup>64</sup> “Freedom in the World 2020: Somalia”, in *Freedom House (website)*. Accessed on 18 October 2020.

<sup>65</sup> “Somali ‘lesbian sentences’ denied”, *BBC News*, 23 February 2001.

<sup>66</sup> Noor Ali, “Gay Somali refugees face death threats”, *Al Jazeera*, 7 July 2013.



planned execution, after being outed and reportedly sentenced to death.<sup>67</sup>

In July 2020, *BBC News* reported that consensual same-sex sexual activity could be punishable by death under Sharia courts in Somaliland. According to the source, this led a 20-year-old gay man from Hargeisa to flee his country after surviving various forms of so-called “conversion therapy” over several years.<sup>68</sup>

#### *Insurgent groups*

On March 15, 2013, 18-year-old gay man Mohamed Ali Baashi was reportedly stoned to death in front of a crowd of villagers after he was tried and convicted of

sodomy by an Al-Shabaab judge.<sup>69</sup> The veracity of this incident was briefly contested when it was discovered that the Somali Gay Community, who first reported the event on Facebook, had used photographs of unrelated instances of stoning from earlier years to communicate its message.<sup>70</sup> However, other sources indicated that the execution indeed took place.<sup>71</sup>

In 2017, it was reported that 20-year-old Isak Abshirow and 15-year-old Abdirizak Sheikh Ali were arrested by Al-Shabaab for “immoral and reprehensible” sexual acts and executed in a public square in the town of Buale.<sup>72</sup> The incident was confirmed by Sheikh Mohamed Abu Abdalla, a regional governor for Al-Shabaab.<sup>73</sup>

<sup>67</sup> Catrina Stewart, “Young Somali activist sentenced to death for being a lesbian”, *The Independent*, 30 January 2016.

<sup>68</sup> “Don’t come back, they’ll kill you for being gay”, *BBC News*, 28 July 2020.

<sup>69</sup> Meredith Bennett-Smith, “Gay Teen Allegedly Stoned To Death In Somalia For Sodomy”, *HuffPost*, 21 March 2013.

<sup>70</sup> Brody Levesque, “Report that gay Somali teen stoned to death in doubt due to fraudulent photos”, *LGBTQ Nation*, 20 March 2013.

<sup>71</sup> Meredith Bennett-Smith, “Gay Teen Allegedly Stoned To Death In Somalia For Sodomy”, *HuffPost*, 21 March 2013. See also: Benjamin Christman, *Report on the Treatment of Gay Persons in Somalia* (Law Centre NI, 2016), 6.

<sup>72</sup> Roberto Igual, “15 and 20-year-old youths executed in Somalia for homosexuality”, *Mamba Online*, 11 January 2017; Ismail Akwei, “Al Shabaab executes Somali man and teenager for homosexuality”, *Africa News*, 11 January 2017.

<sup>73</sup> Feisal Omar, “Somali Islamists kill man and teenager for gay sex, another man for spying”, *Reuters*, 10 January 2017.



# UNITED ARAB EMIRATES

## Introduction

As established in Articles 94 to 109 of the Constitution, the legal system of the United Arab Emirates (UAE) is twofold: the highest judicial authority in the country is the Federal Judiciary, presided over by the Federal Supreme Court and, at the local level, judicial departments overseen by the Ministry of Justice. Each of the seven emirates has the right to either follow the federal judicial system or to maintain its own local judicial system. Whereas the emirates of Ajman, Fujairah, Sharjah, and Umm Al-Quwain participate in the Federal Judiciary, the emirates of Abu Dhabi, Dubai, and Ras Al-Khaimah maintain their own independent judicial departments, which have jurisdiction over matters that do not correspond to the Federal Judiciary.<sup>1</sup>

While Islamic Sharia is said to be the main source of UAE law, most codified legislation in the UAE are also influenced by Egyptian and French civil laws.<sup>2</sup> Sharia is applied exclusively to civil and criminal issues, particularly within personal status courts.<sup>3</sup> Offences of *hudud*, *qisas*, and *diya* in the UAE are said to be handled entirely by reference to Sharia jurisprudence, while governmental enactments would be the only sources of *ta'zir* offences (see the introduction on Sharia law for a more detailed definition of these terms).<sup>4</sup>

The UAE's criminal law, in particular derives mainly from Islamic Sharia and codified provisions within the Federal Penal Code.<sup>5</sup> Moreover, the emirates of Abu Dhabi, Dubai, and Sharjah have penal codes of their own, which are all subordinate to the Federal Penal Code. Criminal courts deal with criminal cases initiated by the federal or local prosecution in each emirate, whereas federal courts handle crimes committed within the boundaries of the national capital.<sup>6</sup> In addition to their respective civil courts, each emirate maintains its own parallel system of

locally organised and supervised Sharia courts. According to some legal scholars, the role of Sharia Courts in the UAE was diminished after the civil and criminal courts were established. However, the competences of the Sharia courts in some emirates, particularly Abu Dhabi, were significantly broadened later on to include matters of personal status, civil disputes, and serious criminal offences, *inter alia*.<sup>7</sup>

The UAE has reportedly denied access to activists and international human rights organisations, which creates a significant challenge for the purpose of SOGIESC-related research on the ground.<sup>8</sup>

## Authority (federal level)

At the federal level, the Arabic text of Article 354 is ambiguously phrased and can be translated in different ways. Some sources indicate that the Article punishes "rape of a woman or forced sodomy with a man", while others indicate that it punishes "rape on women and sodomy between men".<sup>9</sup>

The official Arabic version of the provision reads as follows:

المادة 354 - موقعة أنثى أو لواط

مع عدم الاخلال بأحكام قانون الأحداث الجانحين والم شردين، يعاقب بالاعدام كل شخص استخدم الاكراه في موقعة أنثى أو اللواط مع ذكر، كما يعتبر الاكراه قائمًا ما إذا كان عمر المجنى عليه أقل من أربعة عشر عامًا وقت ارتكاب الجريمة

The English version of the Federal Code available in the website of the Ministry of Justice of the UAE (published in the Official Gazette, Issue no.182) reads as follows:

<sup>1</sup> "The Federal Judiciary", *Government of the United Arab Emirates*, 21 May 2020.

<sup>2</sup> "The Federal Judiciary", *Government of the United Arab Emirates*, 21 May 2020; Ahmed Aly Khedr and Bassam Alnuaimi, "Guide to United Arab Emirates Legal System", *New York University School of Law: Hauser Global Law School Program*, June 2010.

<sup>3</sup> "The Federal Judiciary", *Government of the United Arab Emirates*, 21 May 2020.

<sup>4</sup> Butti Sultan Butti Ali Al-Muhairi, "The Islamisation of laws in the UAE: the case of the Penal Code", *Arab Law Quarterly*, Vol. 11, No. 4, 1996, 350-371. Some scholars consider that the reason why the Supreme Court made the application of Sharia obligatory to *hudud* offences but not, for instance, to banking rules, might be that the latter would have threatened the UAE's desired economic development and the modernisation of its institutions, whereas the former would not. See: Al-Muhairi, Butti Sultan Butti Ali. "The Position of Shari'a within the UAE Constitution and the Federal Supreme Court's Application of the Constitutional Clause concerning Shari'a", *Arab Law Quarterly*, Vol. 11, No. 3, 1996, 219-244.

<sup>5</sup> Butti Sultan Butti Ali Al-Muhairi, "Islamisation and Modernisation within the UAE Penal Law: Shari'a in the Pre-Modern Period", *Arab Law Quarterly*, Vol. 10, No. 4, 1995, 287-309.

<sup>6</sup> "The Federal Judiciary", *Government of the United Arab Emirates*, 21 May 2020.

<sup>7</sup> "UAE Company Law and Practice: Background on the United Arab Emirates (UAE) Legal System", *Gulf Law (website)*, 2014.

<sup>8</sup> "United Arab Emirates", *Human Rights Watch (website)*. Accessed on 23 October 2020.

<sup>9</sup> "United Arab Emirates: Situation of sexual minorities, including social attitudes and treatment by authorities", *Immigration and Refugee Board of Canada Research Directorate*, 15 July 2016.

**Article 354:** Without prejudice to the provisions of the law on juvenile delinquents and displaced, shall be sentenced to death penalty, whoever used coercion in having sexual intercourse with a female or sodomy with a male. Coercion shall be considered existent if the victim is below fourteen years of age when the crime is perpetrated.

In effect, according to some scholars, the way in which the Article is written leaves the door open to be interpreted as applicable to consensual same-sex sexual activity,<sup>10</sup> while others hold that “it takes a stretch to read [this provision] as a criminalisation of consensual sex with the Arabic word for ‘coercive’ syntactically placed as it is”.<sup>11</sup>

Amnesty International has categorically stated that the UAE “does not carry the death penalty for same-sex consensual sexual relations” and has indicated that Article 354 addresses “rape, not consensual same-sex sexual relations”.<sup>12</sup> However, in the same report, the organisation considers that, depending on each case, it is still “theoretically possible” that consensual same-sex sexual activity would be punishable by death if considered a form of *zina* (extramarital sexual activity).<sup>13</sup> Furthermore, a 2014 report by Emirates Woman magazine states that *zina* is punishable by death in the UAE, noting that an Abu Dhabi criminal court had reportedly sentenced a woman to death by stoning after being found guilty of adultery, and that married persons can be convicted of those charges if involved in consensual same-sex sexual activity.<sup>14</sup>

Therefore, even if Article 354 is contested as the legal basis for the death penalty, the application of Sharia law—and more specifically, the crime of *zina*—could potentially trigger such a penalty. Other federal provisions—including Article 356 of the UAE Federal Penal Code—provide the legal basis for the criminalisation of consensual same-sex sexual acts and impose penalties of imprisonment. This has been interpreted by various scholars as the criminalisation

of consensual same-sex sexual activity.<sup>15</sup> The original Arabic-language provision in this Article is “هتك العرض” (*hatk al-‘ard*), which literally translates to “disgrace to honour” but has been translated in substantially different ways (for example, “voluntary debasement”, “indecent assault”, “indecent”, “carnal knowledge”) by different sources.<sup>16</sup>

### *International reaction and advocacy*

In 2013, the UAE received 2 UPR recommendations regarding SOGIESC issues, but none mentioned the death penalty: “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). The UAE “noted” (functionally rejected) both recommendations and made no comment on these issues.<sup>17</sup>

In 2018, during its 3<sup>rd</sup> UPR cycle, the UAE received two SOGI-related recommendations,<sup>18</sup> both of which were rejected and no comments regarding SOGI were made.<sup>19</sup> Regarding the death penalty, the UAE received a total of 16 recommendations, all of which aimed at the abolition of the death penalty or the restriction of its applicability to the “most serious crimes”.<sup>20</sup> Every single one of these recommendations was ‘noted’ (functionally rejected) by the UAE.<sup>21</sup>

### *Enforcement*

As of October 2020—even though the UAE has been reported as a county that issues death sentences<sup>22</sup> and one in which LGBT people are arrested and prosecuted by the State<sup>23</sup>—ILGA World could not locate any documented cases in which the death penalty was applied for consensual same-sex sexual activity in the country.

<sup>10</sup> Brian Whitaker, *Unspeakable Love: Gay and Lesbian Life in the Middle East*, (London: Saqi Books, 2011), 206, citing Jehoeda Sofer, “Sodomy in the Law of Muslim States”, in *Sexuality and Eroticism among Males in Moslem Societies* (New York: Harrington Park), 1992.

<sup>11</sup> “The UAE’s position on gay rights is actually surprisingly progressive—and I should know”, *The Independent*, 24 July 2017.

<sup>12</sup> Amnesty International, *Love, Hate and the Law: Decriminalizing Homosexuality* (2008), 48.

<sup>13</sup> *Id.*, 49.

<sup>14</sup> Sarah Garden, “Woman Sentenced to Death by Stoning in Abu Dhabi”, *Emirates Woman*, 5 May 2014.

<sup>15</sup> 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 on 23 October 2019.

<sup>16</sup> See, for example: 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 on 23 October 2019.

<sup>17</sup> *Report of the Working Group on the Universal Periodic Review: United Arab Emirates*, A/HRC/23/13, 21 March 2013, paras. 128.135–136.

<sup>18</sup> *Report of the Working Group on the Universal Periodic Review: United Arab Emirates*, A/HRC/38/14, 18 April 2018, paras. 141.92 and 141.93. See also: “29th UPR Working Group Sessions SOGIESC Recommendations”, *ILGA World*, 25 January 2018, pp. 66–67.

<sup>19</sup> *Report of the Working Group on the Universal Periodic Review: United Arab Emirates*, A/HRC/38/14/Add.1, 14 June 2018, para. 6.

<sup>20</sup> *Report of the Working Group on the Universal Periodic Review: United Arab Emirates*, A/HRC/38/14, 18 April 2018.

<sup>21</sup> *Report of the Working Group on the Universal Periodic Review: United Arab Emirates*, A/HRC/38/14/Add.1, 14 June 2018, para. 6.

<sup>22</sup> “United Arab Emirates 2019”, Amnesty International, 2019.

<sup>23</sup> “Homosexuality in the UAE”, *Detained in Dubai (website)*. Accessed on 23 October 2020. For more instances of enforcement of criminalising provisions see entry on the UAE in the “Consensual Same-Sex Sexual Acts: Illegal” section of this report.



### Introduction: Yemen's legal system

Prior to unification on 22 May 1990, Yemen was divided into two states: The People's Democratic Republic of Yemen in the South, and the Yemen Arab Republic in the North. The two parts of the new Republic of Yemen had markedly contrasting legal traditions. In the South, Sharia applied to matters of personal status (e.g., marriage, divorce, inheritance) whereas British commercial and common law (modified to suit the needs of the Marxist government) applied to the rest. In the North, as well as in rural areas of the South, Sharia and *'urf* (tribal custom) were the main sources of law.<sup>1</sup> Between 1991 and 1994 new legal codes, including the national constitution, were promulgated.<sup>2</sup>

A new draft constitution was proposed in January 2015<sup>3</sup> but was eventually rejected. Therefore, the 1991 constitution (as amended in 2001) remains the supreme law of Yemen.<sup>4</sup> Under Article 2 of this constitution, Islam is the religion of the State and, as per Article 3, Sharia is established as "the source of all Yemeni legislation". Furthermore, Article 47 establishes that "no crime or punishment shall be undertaken without a provision in the Shari'ah or the law".<sup>5</sup>

Even though Islamic legal principles are reportedly applied in all courts, as opposed to in separate Sharia courts as in other Arab countries,<sup>6</sup> *hadd* punishments are said to be rarely inflicted, and rather converted into *ta'zir* punishments at judges' discretion.<sup>7</sup> Corruption and susceptibility to political and tribal influence appear to be highly prevalent within the Yemeni judiciary and attempts to reform the system have reportedly failed to render positive results.<sup>8</sup> Under Transparency International's Corruption

Perceptions Index of 2019, Yemen was ranked 177 out of 180.<sup>9</sup>

### Legal basis: The Penal Code of 1994

In Yemen, the death penalty for consensual same-sex sexual acts is explicitly established under Article 264 of the Penal Code (1994).<sup>10</sup> This provision defines the crime of *liwat* (sodomy) as "the contact of a person to another through his posterior"<sup>11</sup> and determines at least three different types of punishment:

1. death by stoning, if accused "sodomites" are married;
2. whipping of one hundred strokes, if "sodomites" are not married;
3. imprisonment of up to one year, presented as an "admissible" penalty as well.

### Fading rule of law

Since the beginning of the civil war in 2014, the rule of law in Yemen has been progressively fading. Large areas of the national territory have been taken over by numerous militia groups, such as the Houthi/Ansar Allah movement, Ansar Al-Sharia/Al-Qaeda in the Arabian Peninsula (AQAP), and the Islamic State in Yemen (ISY), with the militaries of the United Arab Emirates, Saudi Arabia, and the United States of America also carrying out combat operations within the territory.<sup>12</sup>

As a result of the humanitarian crisis brought about by the armed conflict, more than 3.65 million people have been displaced from their homes,<sup>13</sup> while 75% of the

<sup>1</sup> "Yemen: Justice", *Encyclopaedia Britannica (website)*. Accessed on 25 October 2020.

<sup>2</sup> *Ibid.*

<sup>3</sup> *The 2015 Draft Yemeni Constitution* (2015). An Arabic-language version of this text can be found [here](#).

<sup>4</sup> "Yemen Legal Profile", *Proelium Law LLP*, 10 August 2020, 1

<sup>5</sup> *Constitution of Yemen* (1991, amended in 2001), Article 3. An English translation of the Constitution can be found [here](#).

<sup>6</sup> "Arab Political Systems: Baseline Information and Reforms – Yemen", *Carnegie Endowment for International Peace and Fundación para las Relaciones Internacionales y el Diálogo Exterior*, 2006, 5.

<sup>7</sup> Hague Institute for Innovation of Law: Laila Al-Zwaini, *The Rule of Law in Yemen: Prospects and Challenges* (2012), 40.

<sup>8</sup> "Yemen Legal Profile", *Proelium Law LLP*, 10 August 2020, 1; "Yemen Business Law Handbook - Strategic Information and Basic Laws", (Washington, D.C.: International Business Publications USA, 2013), 36.

<sup>9</sup> "Corruption Perceptions Index 2019", *Transparency International*, 2020, 3, 7, 18.

<sup>10</sup> An English translation of the Code can be found [here](#).

<sup>11</sup> In previous editions of the report, we reported based on unofficial translations that the provision used the term "man" rather than "person", but after having access to the official source in Arabic ILGA World could confirm that the term used is in fact gender neutral and should be translated as "person".

<sup>12</sup> "BTI 2020 Country Report: Yemen", *Bertelsmann Stiftung*, 2020, 7.

<sup>13</sup> "Yemen: UNHCR Operational Update", *United Nations High Commissioner for Refugees*, 3 January 2020. See also: "Yemen crisis: Why is there a war?", *BBC News*, 19 June 2020.

population has been left in need of some humanitarian assistance, and at least 8.4 million people are experiencing severe food insecurity.<sup>14</sup>

Where the judiciary cannot operate, other forms of informal justice may be enforced, though information on the manner in which it is implemented and the light under which consensual-same-sex sexual acts are regarded is extremely limited. However, informal justice in Yemen has been reported to perpetuate discriminatory practices against vulnerable groups, such as women, members of weak tribes, and indigent people with no tribal affiliation or support.<sup>15</sup>

In 2015, local sources expressed: "Yemen as a whole, and not just its gay community, is suffering right now".<sup>16</sup> However, the source explained that the devastation has a particularly severe effect on sexual minorities given that spaces in which gay Yemenis were once able to express themselves have disappeared. Power outages have also reduced online connectivity, crucial to an underground community.<sup>17</sup>

#### *International reaction and advocacy*

The UN Office of the High Commissioners for Human Rights and the UN Secretary-General have listed Yemen among the states that continue to impose and carry out the death penalty in connection with actual or purported engagement in consensual sexual acts such as "adultery" and "sodomy".<sup>18</sup>

At the UPR, Yemen has not received any recommendations related to SOGI issues thus far.

Research reports produced by the Immigration and Refugee Board of Canada (2004),<sup>19</sup> the Norwegian Country of Origin Information Centre (2012),<sup>20</sup> and UNDP (2018)<sup>21</sup> have also referred to the issue of the

death penalty for consensual same-sex sexual acts in Yemen, also mentioning the difficulties in accessing information on enforcement, as well as the absence of evidence showing that executions for such acts have taken place.

Finally, multiple civil society organisations have also noted the risk of capital punishment on the grounds of consensual same-sex sexual activity in Yemen and expressed grave concern about it, including Amnesty International (2008),<sup>22</sup> Human Dignity Trust (2017),<sup>23</sup> Human Rights Watch (2015),<sup>24</sup> Equal Rights Trust (2018),<sup>25</sup> Freedom House (2020),<sup>26</sup> and Hands Off Cain (2017).<sup>27</sup>

In August 2013, in response to international demands for the repeal of laws criminalising consensual same-sex sexual activity, Fouad al-Ghaffari, an aide to Yemen's minister of human rights, reportedly stated: "We don't have gays in Yemen".<sup>28</sup>

Notably, in its 3rd UPR cycle in 2019, Yemen accepted two recommendations aimed at implementing a moratorium on the capital punishment (from Czechia and Portugal, the former making special emphasis on people under the age of 18).<sup>29</sup> However, it 'noted' (functionally rejected) five additional recommendations aiming at the abolition of the death penalty, a review of thus-related legal provisions, or a reduction of offences punishable by it,<sup>30</sup> having examined the recommendations "in line with the government's legal, religious and social obligations and in accordance with the available resources".<sup>31</sup>

#### *Enforcement by State authorities and statements by public officials*

As of October 2020, there appear to be no reported cases of the death penalty being applied by State

<sup>14</sup> Heeyam Ali, Maroia Al Katheri, Nadia Hafedh, Nazgol Kafai, Skylar Benedict, and Thomas Brown, "The Rule of Law in Yemen: Challenges and Opportunities, A Comprehensive Overview 2015-2018", *Adalah*, October 2018, 2.

<sup>15</sup> Laila Al-Zwaini, "The Rule of Law in Yemen: Prospects and Challenges", *Hague Institute for Innovation of Law*, September 2012, 52.

<sup>16</sup> Ben Gladstone, "Will Yemen's Gay Community Survive the Iran-Backed Militias Trying to Take Over?" *The Tower* 29 (2015).

<sup>17</sup> *Ibid.*

<sup>18</sup> *Discrimination and violence against individuals based on their sexual orientation and gender identity*, A/HRC/29/23, 4 May 2015; *Report of the Secretary-General: Question of the death penalty*, A/HRC/27/23, 30 June 2014.

<sup>19</sup> "Yemen: Situation for homosexuals in Yemen, including societal attitudes", *Immigration and Refugee Board of Canada Research Directorate*, 16 July 2004.

<sup>20</sup> "Yemen: Homoseksualitet og situasjonen for homofile", *Norwegian Country of Origin Information Centre*, 13 December 2012.

<sup>21</sup> United Nations Development Programme (UNDP) *Gender Justice & The Equality before the Law: Analysis of Progress and Challenges in the Arab States Region* (2018), 54.

<sup>22</sup> Amnesty International, *Love, Hate and the Law: Decriminalizing Homosexuality* (2008), 48.

<sup>23</sup> Human Dignity Trust, *Breaking the Silence: Criminalisation of Lesbians and Bisexual Women and its Impacts* (2016), 47.

<sup>24</sup> Human Rights Watch, "Look at Us with a Merciful Eye" *Juvenile Offenders Awaiting Execution in Yemen* (2013), 21.

<sup>25</sup> *From Night to Darker Night: Addressing Discrimination and Inequality in Yemen*, Equal Rights Trust, June 2018, 241-246.

<sup>26</sup> Freedom House, *Freedom in the World 2020: Yemen* (2020) 12.

<sup>27</sup> "Dossier on Death Penalty and Homosexuality", *Hands Off Cain (website)*, 5 June 2017.

<sup>28</sup> Shuaib Almosawa, "No Place for Gays in Yemen", *IPS News*, 16 August 2013.

<sup>29</sup> *Report of the Working Group on the Universal Periodic Review: Yemen*, A/HRC/41/9, 17 April 2019, paras. 123.30 and 123.45.

<sup>30</sup> These recommendations were made by Estonia (para. 124.16), Georgia (para. 124.17), Hungary (para. 124.18), Montenegro (para. 124.28), and Italy (para. 124.35). In: *Report of the Working Group on the Universal Periodic Review: Yemen*, A/HRC/41/9, 17 April 2019.

<sup>31</sup> *Report of the Working Group on the Universal Periodic Review: Yemen (Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review)*, A/HRC/41/9/Add.1, 19 June 2019, para. 2.

authorities for consensual same-sex sexual acts in the Yemen.

It's noteworthy that a source in the Yemeni Ministry of Justice was quoted on the media explaining that judicial authorities have not kept track of recent trials of suspects in cases involving consensual same-sex sexual activity.<sup>32</sup>

#### *Extrajudicial executions by insurgent groups*

Since 2013, when the Houthi militia groups seized much of the national territory, the situation of LGBT people in Yemen has gradually deteriorated. Several cases of extrajudicial killings of LGBT people in Yemen have since been reported, most notably in the Southern parts of the country, which Ansar Al-Sharia/AQAP has taken over. While the apparent toleration for these murders and the lack of accountability for them might be partly explained by the overall lack of the rule of law in Yemen, the hostile situation for LGBT people on the ground that has

existed since before the civil war could be an equally important factor in this regard.

In 2013, Freedom House received reports that members of Al-Qaeda in Yemen were killing gay men.<sup>33</sup> In the same year, multiple reports indicated that men suspected of being gay were killed by militants of Ansar Al-Sharia, a group that has been reported as imposing Islamic law in areas of the Abyan governorate under its control.<sup>34</sup> Though these acts of violence were reported to the authorities, reports indicate that no action was taken.<sup>35</sup>

In January 2014, an AQAP gunman reportedly murdered a 25-year-old man in the Southern province of Lahj, on suspicion that he was a homosexual. Sources indicated that he was at least the 35<sup>th</sup> person murdered by militants linked to AQAP on the grounds of his suspected sexual orientation since 2012.<sup>36</sup>

Further on, in 2015, it was reported that four gay men were murdered in the Yemeni capital of Aden, after AQAP took over parts of the city.<sup>37</sup>

<sup>32</sup> Ghamdan Al-Duqaimi, "المثليون في اليمن.. مستحيل أن نمتلك حريتنا", *Irfaa Sawtak*, 6 December 2017.

<sup>33</sup> "Freedom in the World 2015: Yemen", *Freedom House*, 27 February 2015. A PDF version of this website can be found [here](#).

<sup>34</sup> "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.

<sup>35</sup> Shuaib Almosawa, "No Place for Gays in Yemen", *IPS News*, 16 August 2013.

<sup>36</sup> "Al-Qaida kills another Yemeni man suspected of being gay", *LGL*, 8 January 2014; Ahmed Al-Haj, "Yemen: Gunman kills man suspected of being gay", *AP News*, 7 January 2014.

<sup>37</sup> Elham Manea, "4 Murders of Gay Men in Yemen", *Huffpost*, 11 September 2015.



GLOBAL LEGISLATION OVERVIEW

# CRIMINALISATION

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STATE-SPONSORED HOMOPHOBIA 2020



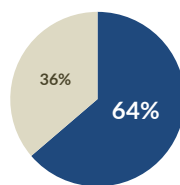




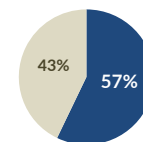
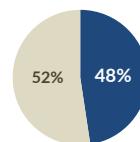
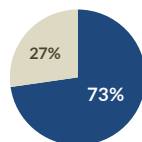
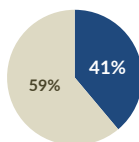
# Consensual Same-Sex Sexual Acts between Adults in Private: LEGAL

## Highlights

**124 UN Member States**  
64% UN Member States



AFRICA	LAC	NORTH AMERICA	ASIA	EUROPE	OCEANIA
22 /54	24 /33	2 /2	20 /42	48 /48	8 /14



## Introduction

This section presents annotated entries on the **124 UN Member States** where consensual same-sex sexual acts between adults in private are not criminalised. Non-member States and non-independent territories are also listed.

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.

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.

**For a detailed explanation of many of the technical legal aspects of this section, please read the methodology section of this report.**

### 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 their 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).**

States shall ensure that legal provisions, including in customary, religious and indigenous laws, whether explicit provisions, or the application of general punitive provisions such as acts against nature, morality, public decency, vagrancy, sodomy and propaganda laws, do not criminalise sexual orientation, gender identity and expression.

**Yogyakarta Principles 33(a).**

## Africa

22 out of 54 UN Member States (41%). Additionally: 4 non-UN Member jurisdictions.

1	 <b>Angola</b>	2021	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 (Presidential Order No. 124/12, 27 November 2004). This commission mandated, among other things, the drafting of a new Penal Code. In January 2019, Angola approved a new Penal Code that does not criminalise same-sex sexual acts. <sup>1</sup> In 2020, new changes in the text of the Code were discussed by the Parliament <sup>2</sup> and the official version of the new Penal Code ( <a href="#">Law No. 38/20</a> ) was finally published on 11 November 2020. According to its Article 9, the Code will enter into force ninety days after the date of its publication.
2	 <b>Benin</b>	NEVER CRIM <sup>3</sup>	The <a href="#">Penal Code</a> (2018) of Benin does not criminalise consensual same-sex sexual acts between adults. A number of amendments trying to criminalise have failed to pass into law.
3	 <b>Botswana</b>	2019	On 11 June 2019, the High Court of Botswana decriminalised consensual same-sex sexual acts in <i>Letsweletse Motshidiemang v. Attorney General</i> . <sup>4</sup>  The decision determined that the provisions that criminalised “carnal knowledge against the order of nature” were incompatible with the Constitution of Botswana <sup>5</sup> and, more specifically, that they collided with the right to privacy (Article 9) and the non-discrimination clause (Article 15). <sup>6</sup> In line with numerous precedents, the Court ruled that the term “sex” in this clause, should be “generously and purposively interpreted to include ‘sexual orientation’.” <sup>7</sup>
4	 <b>Burkina Faso</b>	NEVER CRIM <sup>3</sup>	Prior to and since independence from France in 1960, Burkina Faso has had no law outlawing consensual same-sex sexual acts for men or women in its <a href="#">Penal Code</a> (1996).
5	 <b>Cape Verde</b>	2004	The <a href="#">Penal Code</a> (2003) does not criminalise consensual same-sex sexual acts between adults. However, before it came into force in 2004, Article 71 of the 1886 penal code provided for “security measures” for people who habitually practice “vices against the nature”.
6	 <b>Central African Republic</b>	NEVER CRIM <sup>3</sup>	Since independence from France, the <a href="#">Penal Code</a> (2010) of the CAR has not outlawed consensual same-sex sexual acts between adults in private.  However, Article 85 establishes harsher penalties to same-sex sexual acts when compared to different-sex sexual acts for the crime of “indecent assault in a public place”. Different-sex acts are punishable with up to six months imprisonment and/or a fine, while same-sex acts (considered “acts against nature”) are penalised with up to two years imprisonment and a fine between 150,000 and 600,000 francs. Local CSOs indicate that these provisions have been used to blackmail and arbitrarily arrest LGBT people. <sup>8</sup>

<sup>1</sup> “Deputados aprovam novo Código Penal angolano”, *ANGOP - Agência Angola Press*, 23 January 2019.

<sup>2</sup> “Emendas ao Código Penal Reúnem Consenso”, *Assembleia Nacional de Angola (website)*, 20 October 2020.

<sup>3</sup> No reliable evidence was found to determine if the country ever had legislation explicitly criminalising consensual same-sex sexual acts between adults in private. Thus, there is no specific year for decriminalisation. For a detailed explanation see the methodology section in this publication.

<sup>4</sup> “Botswana: Another country strikes down its anti-gay laws”, *The African Human Rights Media Network*, 11 June 2019; “Reaction to court’s decision on homosexuality in Botswana: Tashwill Esterhuizen” *SABC Digital News (YouTube Channel)*, 11 June 2019.

<sup>5</sup> With regard to the provisions criminalising “indecent” (Section 167) the Court held that it was unconstitutional “to the extent that it applied to acts committed in private” and therefore decided to sever the word ‘private’ from the provision.

<sup>6</sup> High Court of Botswana, *Letsweletse Motshidiemang v. Attorney General* (2019), para. 228.

<sup>7</sup> *Id.*, para. 156.

<sup>8</sup> Alternatives Centrafrique, *Rapport sur la situation des minorités sexuelles et de genre en Centrafrique* (2018).

7	 <b>Congo</b>	NEVER CRIM <sup>3</sup>	<p>In the Republic of Congo Brazzaville, the <b>Penal Code</b> does not criminalise consensual same-sex sexual acts between adults.</p> <p>However, Article 331 establishes a higher age of consent: 21 for same-sex as opposed to 18 for different-sex sexual acts. Local organisations indicate that this provision is used to socially condemn same-sex sexual activities between persons above 21 years-old.<sup>9</sup></p>
8	 <b>Côte d'Ivoire</b>	NEVER CRIM <sup>3</sup>	<p>Post-independence from French rule in 1960, Côte d'Ivoire did not criminalise consensual same-sex sexual acts between adults in its <b>Penal Code</b> (1981), yet the age of consent differs under sections 413 and 414: 15 for different-sex, and 18 for same-sex sexual acts.</p> <p>Despite the fact that no law exists which criminalises consensual same-sex sexual relations between adults, at the end of 2016 a judge in the city of Sassandra used article 360 of the Penal Code (on acts against public modesty) to condemn 2 men to 18 months' imprisonment.<sup>10</sup> 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.<sup>11</sup></p>
9	 <b>Democratic Republic of the Congo</b>	NEVER CRIM <sup>3</sup>	<p>There are no provisions outlawing consensual same-sex sexual acts between adults in the <b>Penal Code</b> (1940) of the DRC.</p> <p>However, Article 176 of that code—which criminalises activities against public decency—has been used as the legal basis to criminalise LGBT persons.<sup>12</sup> The UN Human Rights Committee expressed concern about this and recommended that the State ensures that no person is prosecuted under Article 176 of the Penal Code because of their sexual orientation or gender identity, further recommended the State enact anti-discrimination legislation that expressly includes sexual orientation and gender identity.<sup>13</sup></p>
10	 <b>Djibouti</b>	NEVER CRIM <sup>3</sup>	<p>The <b>Penal Code</b> (1995) contains no provisions prohibiting consensual same-sex sexual acts between adults.</p>
11	 <b>Equatorial Guinea</b>	NEVER CRIM <sup>3</sup>	<p>The <b>Penal Code</b> (1963) in force in Equatorial Guinea is a revision of the Spanish Criminal Code that dates back to the Francoist era, which saw some amendments in 1967 through <b>Law No. 2</b> (1967). This Code does not contain specific provisions on same-sex sexual acts between adults.</p> <p>In 2019, it was reported that Equatorial Guinea was in the process of preparing a draft bill that would criminalise consensual same-sex sexual activity.<sup>14</sup></p>

<sup>9</sup> Cœur Arc-en-Ciel, Association de Soutien aux Groupes Vulnérables, Organisation pour le Développement des Droits de l'Homme au Congo, and Comptoir Juridique Junior, *Rapport relatif à l'Examen Périodique Universel des Nations Unies Concernant la protection des droits des minorités LGBTI en République du Congo – Session 31* (Geneva: CAC, March 2018), 7.

<sup>10</sup> 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".

<sup>11</sup> 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.

<sup>12</sup> 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".

<sup>13</sup> 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.





<sup>14</sup> "Guinea Ecuatorial Prepara un Anteproyecto de Ley para Penalizar la Homosexualidad", *Diario Rombe*, 24 September 2019; "ONG denuncia ameças aos direitos LGBTI na Guiné Equatorial" *DW*, 28 July 2020.

12	 <b>Gabon</b>	2020	<p>Prior to and following its independence from France in 1960, Gabon did not criminalise consensual same-sex sexual acts between adults. However, in July of 2019, Gabon adopted a new <b>Penal Code (2019)</b> which criminalised “sexual relations between persons of the same sex” with up to six months’ imprisonment and a fine, under Article 402(5).</p> <p>Less than a year later, the country’s parliament approved <b>Law No. 6 (2020)</b> that introduced changes to the Penal Code and decriminalised same-sex consensual acts between adults in private.</p> <p>However, even prior to the enactment of criminalising provisions in 2019 there were records of arrests for “breaches to modesty” that considered the way individuals dressed and presented themselves publicly as “translating sexual orientation”.<sup>15</sup></p> <p>Even after decriminalisation in 2020, the use of such supplementary laws to target same-sex couples remained. In November 2020, reports indicated that two lesbian women were arrested for allegedly having “simulated a same-sex marriage” (sic) and for having shown affection in public. Penal Code provisions on “acts against morality” were reportedly used to carry out these arrests.<sup>16</sup></p>
13	 <b>Guinea Bissau</b>	1993	<p>The colonial <b>Penal Code (1886)</b>, as amended by other colonial provisions such as <b>Law No. 177 (1912)</b> and <b>Executive Order-Law No. 39,688 (1954)</b>, remained in force after independence from Portugal and penalised “vices against nature”. This Code was repealed in 1993 with the enactment of a new <b>Penal Code (1993)</b> which contains no provisions criminalising consensual same-sex sexual acts between adults.</p>
14	 <b>Lesotho</b>	2012	<p>Under Article 52 of the <b>Penal Code Act (effective 2012)</b>, “sodomy” is not mentioned among the unlawful sexual acts. Furthermore, the Code does not have any provisions criminalising same-sex consensual relations, therefore revoking the previous common law crime of “sodomy”. In this sense, Section 2(2) of the Code states that “no person shall be tried, convicted or punished for an offence other than an offence specified in this Code or in any other written law or statute in force in Lesotho”<sup>17</sup>.</p>
15	 <b>Madagascar</b>	NEVER CRIM <sup>3</sup>	<p>Prior to and following its independence from France in 1960, the <b>Criminal Code (2005)</b> has not prohibited consensual same-sex sexual acts between adults. However, article 331 sets the age of consent at 14 for different-sex sexual acts and 21 for same-sex sexual acts.</p>
16	 <b>Mali</b>	NEVER CRIM <sup>3</sup>	<p>Neither the 2001 <b>Penal Code</b> (nor its predecessor, the 1961 <b>Penal Code</b>) stipulates provisions targeting consensual same-sex sexual relations between adults.</p>
17	 <b>Mozambique</b>	2015	<p>In July 2014, the Parliament approved <b>Law 35/2014</b> repealing earlier criminalising provisions, namely articles 70 and 71 of the <b>1886 Penal Code</b>, as modified by <b>Law No. 177 (1912)</b> and <b>Executive Order-Law No. 39688 of 1954</b>.</p> <p>These colonial provisions imposed penalties on people who “habitually practiced vices against nature”. The revised Penal Code came into force in June 2015.</p>
18	 <b>Niger</b>	NEVER CRIM <sup>3</sup>	<p>The <b>Penal Code (2003)</b> 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.</p>

<sup>15</sup> Julie Makuala Di Baku and Jean Paul Enama, “An Overview of Some Central African countries” in ILGA World: Lucas Ramon Mendos, *State-Sponsored Homophobia 2019* (Geneva: ILGA, March 2019), 142.



<sup>16</sup> “Gabon: deux femmes arrêtées pour avoir simulé un mariage gay”, *Komitid*, 12 November 2020.

<sup>17</sup> Southern Africa Litigation Centre, *Laws and Policies Affecting Transgender Persons in Southern Africa: Lesotho* (Johannesburg: SALC, 2017), 92.

19		<b>Rwanda</b>	NEVER CRIM <sup>3</sup>	Rwanda's current <b>Penal Code</b> (2018) (as well as the 1980 <b>Penal Code</b> ) does not contain criminalising provisions for consensual same-sex acts. Attempts to criminalise failed in 2009/2010. <sup>18</sup>
20		<b>Sao Tome and Principe</b>	2012	Sao Tome and Principe's <b>Penal Code</b> (2012) contains no provision for criminalisation of consensual same-sex sexual activity between adults. This 2012 text drops former references to "vices against nature" that were contained in the earlier colonial-era <b>Penal Code</b> (1886), as modified by <b>Law No. 177</b> (1912) and <b>Executive Order-Law No. 39688</b> (1954).
21		<b>Seychelles</b>	2016	In July 2016, an <b>amendment</b> to the country's <b>Penal Code</b> (1955) repealed Sections 151(a and c) removing from the <b>updated version</b> the provision that criminalised "carnal knowledge of any person against the order of nature".
22		<b>South Africa</b>	1998	Following a case decided by the Constitutional Court of South Africa, <sup>19</sup> the State abrogated laws carried through from the <b>Penal Code</b> of 1955 in which Article 600(1) and 601 criminalised consensual same-sex sexual conduct between adults, including the common-law crime of sodomy. The ruling was retroactively applied to all cases of "sodomy" dating back to 1994. <sup>20</sup>

#### Non-independent jurisdictions in Africa (4)

##### France (2)<sup>21</sup>

1		<b>Mayotte</b>	NEVER CRIM <sup>3</sup>	Mayotte came under French control in 1843. <sup>22</sup> France had repealed sodomy laws in 1791 and did not enact any criminalising provision since (see entry below).
2		<b>Reunion</b>	1791	France repealed sodomy laws in 1791. At that time, there was a "dual legal system" in force under which French citizens in colonial territories would be subjected to French legislation, while non-citizens were submitted to unstable rules, shaping an environment of great legal uncertainty. <sup>23</sup> This means that consensual same-sex sexual activities were at least partially decriminalised for the European population living in the territory when the law was repealed in France.

##### United Kingdom (2)

3		<b>British Indian Ocean Territory</b>	-	The population of the territory is mainly composed of military personnel. The <b>Armed Forces Act</b> (2016) repealed Sections 146(4) and 147(3) of the <b>Criminal Justice and Public Order Act</b> (1994) that provisioned "homosexual acts as grounds for discharge from the armed forces".
4		<b>Saint Helena, Ascension and Tristan da Cunha</b>	2001	Like in other UK territories, same-sex sexual acts between adults in private were decriminalised in 2001. <sup>24</sup>

<sup>18</sup> Coalition of African Lesbians, *The Violations of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in Rwanda: A Shadow Report* (2009); "Gov't cannot criminalise homosexuality-Minister", *The New Times*, 19 December 2009.

<sup>19</sup> *National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others* (CCT11/98) [1998] ZACC 15.

<sup>20</sup> Pat Reber, "South Africa Court Upholds Gay Rights" *Associated Press*, 9 October 1998 (as reproduced in *Sodomy Laws*, 11 July 2004).

<sup>21</sup> Under Article 72-3 of the **French Constitution** (1958) currently in force, Mayotte and Reunion are listed as French overseas territories. Both of them are officially overseas departments and regions and, as such, subject to Article 73 of the Constitution, according to which French statutes and regulations are automatically applicable in the territory.

<sup>22</sup> "The Union of the Comoros and Mayotte", *Ministère de Europe et des affaires Étrangères (website)*.

<sup>23</sup> Olivier Le Cour Grandmaison, "L'exception et la règle: sur le droit colonial français" *Diogenes* 212, No. 4 (2005), 42-64.

<sup>24</sup> ILGA World could not locate an online version of the relevant piece of legislation.

## Latin America and the Caribbean

24 out of 33 UN Member States (73%). Additionally: 20 non-UN Member jurisdictions.

1	 <b>Argentina</b>	1903	<p><b>Law No. 1,920</b> (1886) enacted Argentina's first federal Penal Code, which entered into force in 1887. Article 129(d) of this Code indicated that the penalty established for the crimes of rape and outrage to decency would also be applicable to the crime of "sodomy". Explicit reference to this crime was repealed in 1903 by <b>Law No. 4,189</b>.</p> <p>It bears mentioning that such provision was placed under a chapter entitled "rape and indecent exposure". According to local scholars, this is an indication that the term "sodomy" under Article 129(d) was intended to criminalise non-consensual anal sex.<sup>25</sup> Even if the 1903 amendment removed the term sodomy from the national Penal Code, until very recently local regulations issued by provincial, municipal and local authorities targeted "homosexuality" and/or regulated morality, vice and mores. LGBT people were heavily persecuted under these regulations.<sup>26</sup></p>
2	 <b>Bahamas</b>	1991	<p>Same-sex sexual acts in private were decriminalised by an amendment to the Sexual Offences Act (1989) that came into force in 1991. Under Section 16(1)(2) of the act the age of consent differs for same-sex (18) and different-sex (16) sexual acts.</p>
3	 <b>Belize</b>	2016	<p>The country's colonial-era sodomy law was declared unconstitutional by the Belize Supreme Court in 2016.<sup>27</sup> The Court revised the language of Section 53 of the <b>Criminal Code</b> (2000) and ordered the insertion of a clause to exclude consensual sexual acts between adults in private. In December 2019, the Court of Appeal in <b>Civil Appeal No. 32 of 2016</b> (2019) upheld the decision.</p>
4	 <b>Bolivia</b>	1832	<p>The first Criminal Code of Bolivia (1831) entered into force in 1832. This Code largely followed the <b>Spanish Criminal Code of 1822</b> that contained no provision on sodomy. There are no criminalising provisions for same-sex sexual acts between consenting adults in private in the current <b>Penal Code</b> (1972).</p>
5	 <b>Brazil</b>	1831	<p>The first <b>Criminal Code</b> (1831) of Brazil contained no provision on sodomy. This Code repealed the crime established under Title XIII, Book V of the colonial law ("<b>Filipe's Ordinances</b>") which established that that any person who committed the "sin of sodomy" should be "burnt to dust, so that their body and grave can never be remembered and all their possessions shall be confiscated to the Crown of our Kingdoms, even if they have descendants; for the same reason, their sons and grandsons shall be considered ineligible and infamous just as those that commit the crime of <i>Lèse-majesté</i>".</p> <p>Despite this early decriminalisation, it has been indicated that other provisions of that Code were used to persecute persons who engaged in same-sex sexual acts.<sup>28</sup></p> <p>In 2015 the Supreme Court of Brazil declared that the expressions "pederasty or other" and "homosexual or not" under article 235 of the 1969 <b>Military Penal Code</b> are not constitutional.<sup>29</sup></p>

<sup>25</sup> Betina Riva, "Cómplices y coautores del hecho: delitos sexuales "en grupo" en la Provincia de Buenos Aires, 1863-1903", *Revista Historia y Justicia* 3 (2014), 285-316.

<sup>26</sup> 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).

<sup>27</sup> *Caleb Orozco v AG of Belize* Supreme Court Claim No. 668 of 2010; "IACHR Hails Unconstitutionality Decision on Criminalization of Consensual Sexual Relations between Same Sex Adults in Belize", *OAS (website)*, 22 August 2016.

<sup>28</sup> James N Green, "Gay Rio", *Brazzil (website)*, March 2000.

<sup>29</sup> Supremo Tribunal Federal, *Arguição de descumprimento de preceito fundamental 291*, 28 October 2015.

6		<b>Chile</b>	1999	<p>The <b>Penal Code of 1874</b> (effective 1875) criminalised “sodomy”.<sup>30</sup> Article 10 of <b>Law No. 19,617</b> (1999) amended Article 365 of the <b>Penal Code</b> 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.</p> <p>Local organisations claim that Article 373, which criminalises “acts against decency and good mores” is used as a tool to criminalise LGBT people. In its second cycle of the UPR (2014), the Government of Chile committed to repealing this article in a forthcoming Penal Code revision.<sup>31</sup></p>
7		<b>Colombia</b>	1981	<p>Decriminalisation of “homosexual carnal access” occurred through the repeal of <b>Article 323(2)</b> in the <b>1980 Penal Code</b> (effective January 1981). This Penal Code also repealed <b>Article 329</b> which penalised anyone that designated a facility (or authorised its use) for the commitment of “homosexual acts”.</p> <p>In 1999, the Constitutional Court Decision <b>C-507/1999</b> repealed (or reinterpreted) certain provisions of <b>Executive Order No. 85/1989</b> which established that “associating or maintaining well-known relations with homosexuals” or “committing acts of homosexuality” were outrages to Military Honour.</p>
8		<b>Costa Rica</b>	1971	<p>The 1941 Penal Code criminalised sodomy under <b>Article 233</b>. With the enactment of the 1971 <b>Penal Code</b> consensual same-sex acts in private were decriminalised.</p> <p>However, “scandalous sodomy” remained a misdemeanour under <b>Article 378(15)</b>, until it was repealed by Article 2 of <b>Law No. 8,250</b> in 2002.</p> <p>In 2013, the last provisions which provided for security measures in cases of “homosexuality” were repealed by <b>Resolution N° 010404</b> issued by the Constitutional Chamber.</p> <p>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.<sup>32</sup></p>
9		<b>Cuba</b>	1979	<p>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 <b>New Criminal Code</b> of Cuba.</p> <p>This Code did not criminalise homosexuality <i>per se</i>, however, Article 359(1) criminalised those who made “public display of their homosexual condition” (repealed by Article 303(1) of <b>Law No. 62 of 1987</b>) or bothered or solicited others with “homosexual requests” (amended by <b>Executive Order-Law No. 175</b> in 1997 to refer only to “sexual” requests).</p>
10		<b>Dominican Republic</b>	1822	<p>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.<sup>33</sup> The new 2007 <b>Criminal Code</b> does not innovate in this regard.</p> <p>However, Article 210 of the <b>Police Justice Code</b> (1966) still outlaws sodomy (defined as a “sexual act between persons of the same-sex”) among members of police forces.</p>

<sup>30</sup> Eva Sepúlveda Herrera and Sebastián Rebolledo Muñoz, *Justicia Constitucional: el Delito de Sodomía como Norma Transgresora de La Constitución Política de la República - Análisis constitucional del artículo 365 del Código Penal* (Santiago: Universidad de Chile, 2018).

<sup>31</sup> 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.

<sup>32</sup> Committee against Torture, *Conclusions and recommendations of the Committee against Torture for Costa Rica*, CAT/C/CRI/CO/2, 7 July 2008.

<sup>33</sup> Wenceslao Vega B., *Evolución histórica del derecho dominicano* (Santo Domingo: Universidad APEC, 1987), 64-83.



11	 <b>Ecuador</b>	1997	<p>Article 516(1) of the <b>Penal Code</b> imposed a penalty of 4-8 years in prison for “acts of homosexuality” which did not fall under the crime of rape. This provision was repealed by the 1997 Constitutional Court decision in <b>Case No. 111-97-TC</b>. In 2014, the new <b>Organic Integral Penal Code</b> entered into force.</p> <p>In 2016, the Inter-American Court of Human Rights issued its decision in the <i>Homero Flor Freire</i> case regarding the powers of dismissal encoded in the 1997 Rules of Military Discipline for consensual same-sex sexual acts between adults.<sup>34</sup></p>
12	 <b>El Salvador</b>	1826	<p>The first <b>Penal Code</b> of El Salvador was enacted in 1826 following the <b>Spanish Criminal Code of 1822</b> that contained no provisions on consensual same-sex sexual acts between adults, and repealed other existing colonial laws that punished “sodomy”.</p> <p>In 2003, the Human Rights Committee noted that local provisions (“misdemeanour ordinances”) were being used to discriminate against people on account of their sexual orientation.<sup>35</sup></p>
13	 <b>Guatemala</b>	1834	<p>The country’s first <b>Penal Code</b> (1834) after independence did not criminalise consensual same-sex sexual acts between adults.<sup>36</sup></p>
14	 <b>Haiti</b>	1791	<p>France repealed its sodomy laws in 1791 thus decriminalising same-sex sexual acts in the Haitian territory, where the metropolis’ laws were applied.<sup>37</sup></p> <p>When Haiti became independent from France in 1804, no law criminalising consensual same-sex sexual acts was introduced, and no such law has been introduced into the <b>Penal Code</b> since.</p>
15	 <b>Honduras</b>	1899	<p>Consensual same-sex sexual acts between adults have been legal since the entry into force of the <b>Penal Code</b> (1898) that came into effect in 1899. This legislation repealed Article 367 of the previous <b>Penal Code</b> (1880) that provisioned the crime of “sodomy”.</p>
16	 <b>Mexico</b>	1872	<p>Mexico’s first <b>Federal Penal Code</b> (1871) entered into force in 1872.<sup>38</sup> This Code made no reference to consensual same-sex acts between adults.</p> <p>However, other provisions were occasionally used to persecute LGBT people in the country. A well-known example of that occurred in the so-called “dance of the 41”, when the police raided a men’s club in 1901, where some of them were dressed in “women’s” clothing, and arrested those involved in the dance.<sup>39</sup></p>
17	 <b>Nicaragua</b>	2008	<p>The <b>New Penal Code</b> (2007) repealed the <b>1974 Penal Code</b> that had criminalised “sodomy” under article 204.</p>
18	 <b>Panama</b>	2008	<p>Presidential <b>Executive Order No. 332</b> 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”.</p>

<sup>34</sup> I/A Court H.R., *Case of Flor Freire v. Ecuador*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2016.

<sup>35</sup> Human Rights Committee, *Concluding observations of the Human Rights Committee for El Salvador*, CCPR/CO/78/SLV, 22 August 2003.

<sup>36</sup> The criminalising provisions might have lost their effect in the territory before this point. However, given that we could not confirm this, we set the date in accordance with the pattern identified in other former Spanish colonies, in which criminalising provisions from “Las Siete Partidas” were still valid after independence until the approval of a new Penal Code (see explanation in the Methodology Section).

<sup>37</sup> Patrick Pelissier, *La garantie des droits fondamentaux en matière pénale en Haïti* (Toulouse: Université Toulouse 1 Capitole, 2018), 94-95.

<sup>38</sup> Kathryn A Sloan, “The Penal Code of 1871: From Religious to Civil Control of Everyday Life” in William H. Beezley (ed.), *A Companion to Mexican History and Culture* (Blackwell Publishing: 2011), 302-31.

<sup>39</sup> Miguel Ángel Barron Gavito, “El baile de los 41: la representación de lo afeminado en la prensa porfiriana”, *Historia y grafía* [online] No. 34 (2010), 47-73.

19	 Paraguay	1990	<p>The first <b>Penal Code of Paraguay</b> (1880) was adapted from the <b>Penal Code of the Province of Buenos Aires</b> (Argentina), in force there since 1877. This code punished the crime of “sodomy” under Article 256. Similarly, to the situation in Argentina, this article was provisioned under the “rape” section of the Code.</p> <p>Further, Article 325 of the following <b>Penal Code</b> (1910) maintained a punishment for same-sex sexual acts, although the provision was again located closely to that of rape, which might indicate that it was not intended to penalise consensual acts.<sup>40</sup> <b>Law No. 104/90</b> (1990) introduced changes in the Penal Code, altering Article 325 and finally repealing the aforementioned provision.</p> <p>However, Article 138 of the <b>Penal Code</b> 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.</p>
20	 Peru	1924	<p>Article 272 of the <b>1863 Penal Code</b> criminalised sodomy. Since the inception of the <b>1924 Penal Code</b>, consensual same-sex sexual acts have been legal.</p> <p>However, civil society organisations have indicated that Article 183 of the <b>Penal Code</b> on “obscene exhibitions and publications”, provides the legal basis for State discrimination regarding public displays of affection.<sup>41</sup></p>
21	 Suriname	1869	<p>When Suriname returned to Dutch control, after a period of British rule (1799-1816), the laws of the Kingdom of the Netherlands regained effect in the territory given that local regulations were only issued “in cases that were not covered by laws of the higher authorities”.<sup>42</sup></p> <p>However, despite the fact that the crime of sodomy had been repealed in the Netherlands in 1811, there is indication that the legislation that applied in the territory was the <i>Constitutio Criminalis Carolina</i> (1532) (which penalised same-sex sexual acts), and not the Napoleonic Code in force in the Netherlands at the time. Hence, sodomy was only fully decriminalised in the territory with the entry into force of the Penal Code for the Suriname Colony (1869).<sup>43</sup> When Suriname became fully independent from the Netherlands in 1975, no sodomy law was in force and no such law has been reintroduced since.</p> <p>However, Section 302 of the <b>Criminal Code</b> (1910) stipulates that the age of consent for same-sex sexual acts is 18 (limit established at “minority age”), while it is 16 for different-sex sexual relations.</p>
22	 Trinidad and Tobago	2018	<p>The 2018 High Court of Trinidad and Tobago, ruling in <i>Jason Jones v AG of Trinidad and Tobago</i>, established that buggery and serious indecency laws were unconstitutional.</p>
23	 Uruguay	1934	<p>The 1934 <b>Penal Code</b> repealed the crime of sodomy as established under Article 278 of the previous <b>Penal Code</b> (1888, effective 1889).</p> <p>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.<sup>44</sup></p>


<sup>40</sup> This information has only recently been discovered and thoroughly checked by ILGA. In previous editions of this publication the year indicated for the decriminalisation in Paraguay was 1880. We have decided to alter the date considering the possibility that the crime of “sodomy” was also applied to criminalise consensual same-sex sexual acts.

<sup>41</sup> Manuel Forno, Lirka Otsuka and Alberto Hidalgo, *Annual Report on Human Rights of LGBT People in Peru 2015-2016* (Peruvian Network TLGB and Promsex, 2016), 31.

<sup>42</sup> Karwan Fatah-Black, *The usurpation of legal roles by Suriname’s Governing Council, 1669–1816*. *Comparative Legal History*, v. 5, n. 2 (2017): 243-261.






<sup>43</sup> ILGA World is grateful for the information provided by Professor Kees Waaldijk.

<sup>44</sup> José Pedro Barrán, “*Vision Social de la homosexualidad*”, *Relationships*, accessed 5 March 2019.







24		<b>Venezuela</b>	1836	<p>Consensual same-sex sexual activity has not been criminalised since Venezuela produced its first <b>Penal Code</b>, (1836). In 1997, the Supreme Court of Venezuela declared the unconstitutionality of the <b>Law on Vagrants and Crooks</b>, which had been used to prosecute LGBT persons.<sup>45</sup></p> <p>However, same-sex sexual activity continues to be criminalised in the military under Article 565 of the Military Justice Code that prohibits "sexual acts against nature". Cases of harassment and dismissal of LGBT members of the army in recent years have been reported.<sup>46</sup></p>
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## Non-independent jurisdictions in Latin America and the Caribbean (20)

### France (5)

1		<i>French Guiana</i>	1817 <sup>47</sup>	<p>France repealed sodomy laws in 1791 (see entry below). The laws of metropolitan France were partially applicable in the French colonies by means of a "dual legal system" in force in colonial territories under which "French citizens" would be subjected to the metropolitan legislation, while non-citizens were submitted to unstable rules, shaping an environment of great legal uncertainty.<sup>48</sup></p> <p>This means that, once these territories came under French control, same-sex sexual activities were decriminalised, at least for a part of the population living there.</p> <p>Currently the French Constitution and other laws determine the way in which French legislation is applicable to these Caribbean territories.<sup>49</sup></p>
2		<i>Guadeloupe</i>	1816	
3		<i>Martinique</i>	1815	
4		<i>Saint Barthelemy</i>	1878	
5		<i>Saint Martin</i>	1791 <sup>50</sup>	

### Netherlands (6)

6		<i>Aruba</i>	1869	<p>As in the case of Suriname (see entry above), when these territories passed from British to Dutch control in 1816, the applicable law was that of the Kingdom of the Netherlands. However, although the Netherlands no longer criminalised same-sex sexual acts, historical evidence indicates it is likely that the law applicable in these territories were the ones from before the enactment of the Napoleonic Code, which did criminalise such acts. In this sense, "sodomy" would have been decriminalised only with the entry into force of the first <b>Penal Code of the Netherlands Antilles</b> (1869)<sup>51</sup>.</p> <p>Sodomy law was repealed in the Netherlands in 1811 (see entry below). Since then, no laws criminalising same-sex sexual acts have been enacted in these countries and territories.<sup>52</sup></p>
7		<i>Bonaire</i>		
8		<i>Curaçao</i>		
9		<i>Saba</i>		
10		<i>Sint Eustatius</i>		
11		<i>Sint Maarten</i>		

<sup>45</sup> Inter-American Commission on Human Rights (IACHR), *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the America* (2015), OAS/Ser.L/V/II.rev.1 Doc. 36, fn 239.

<sup>46</sup> "En Venezuela ser gay es un delito militar", *Fundación Reflejos de Venezuela*, 20 May 2016.

<sup>47</sup> Frédéric Piantoni, *Histoire et mémoire des immigrations en régions et dans les départements d'Outre-mer* (Université de Poitiers, 2008).

<sup>48</sup> Olivier Le Cour Grandmaison, "L'exception et la règle: sur le droit colonial français", *Diogenes* 212, No. 4, (2005), 42-64.

<sup>49</sup> Under Article 72-3 of the **French Constitution** (1958), these five jurisdictions are listed as French overseas territories. French Guiana, Martinique and Guadeloupe, as overseas departments and regions, are subject to Article 73 of the Constitution, according to which French statutes and regulations are automatically applicable in the territory. Saint Barthelemy and Saint Martin are overseas collectivities and, as such, are subject to Article 74, according to which their autonomy is established by an organic law that establishes the conditions under which the laws and regulations are applicable in the territory. Moreover, under Article LO6213-1 (for Saint Barthelemy) and Article LO6313-1 (for Saint Martin) of **General Code of Territorial Collectivities**, legislative and regulatory provisions are automatically applicable in these territories provided that they do not intervene in the matters that are of competence of the organic law or of the collectivity.

<sup>50</sup> Although Saint Martin was officially divided between France and The Netherlands in 1648, formalised in the Treaty of Concordia, there were moments of occupation of the Island by different countries between the XVII and XIX centuries, which may also have altered the applicable law. See: Steven Hillebrink, "Saint-Martin/Sint Maarten" in Godfrey Baldacchino, *The Political Economy of Divided Islands - Unified Geographies, Multiple Politics* (New York: Palgrave Macmillan, 2013), p. 176-194.



<sup>51</sup> ILGA World is grateful for the information provided by Professor Kees Waaldijk.

<sup>52</sup> COC Netherlands, *Pink Orange Alliance: for LGBT emancipation in the Dutch Caribbean* (Amsterdam: COC, 2015).

## United Kingdom (7)


12	 <i>Anguilla</i>		
13	 <i>British Virgin Islands</i>		The <b>Caribbean Territories (Criminal Law) Order</b> (2000) amended sodomy provisions in Anguilla, the British Virgin Islands, the Cayman Islands, Montserrat, and Turks and Caicos.  The Order determined that “a homosexual act in private shall not be an offence provided that the parties consent thereto and have attained the age of eighteen years.”  The Order came into force on 1 January 2001 and applied to acts committed both before and after the commencement of the Order.
14	 <i>Cayman Islands</i>	2001	
15	 <i>Montserrat</i>		
16	 <i>Turks and Caicos</i>		
17	 <i>Falkland Islands (Islas Malvinas)</i> <sup>53</sup>	1989	
18	 <i>South Georgia &amp; South Sandwich</i> <sup>55</sup>	2001	Like in other UK territories, same-sex sexual acts between adults in private were decriminalised in 2001. <sup>56</sup>

## United States of America (2)

19	 <i>Puerto Rico</i>	2003	The US Supreme Court decision in <i>Lawrence v. Texas</i> (2003) decriminalised sodomy in the United States and US Territories and was applicable to Puerto Rico, <sup>57</sup> repealing Article 103’s “sodomy” provision of the <b>Penal Code</b> (1974). Interestingly, three days before the delivery of judgment in <i>Lawrence v. Texas</i> , the territory’s Senate had voted to eliminate the same provision from the new <b>Penal Code</b> (2004) that had entered into force in 2005. <sup>58</sup>
20	 <i>US Virgin Islands</i>	1985	Sodomy provisions were repealed by <b>Law No. 5013</b> (1984) which entered into force in 1985, and modified Chapter 103, Title 14, of the <b>Virgin Islands Code</b> .

## North America

2 out of 2 UN Member States (100%). Additionally: 3 non-UN Member jurisdictions.

1	 <i>Canada</i>	1969	The enactment of the <b>Criminal Law Amendment Act</b> (Bill C-150) in 1969 introduced an exception that decriminalised “buggery” between spouses or two consenting persons over 21 years of age.  In 1988, <b>Section 159(2)(b)</b> of the <b>Criminal Code</b> replaced the buggery law altogether, but retained a different age of consent: 18 for “acts of anal intercourse” and 16 for non-anal sex. This provision was impugned by five provincial courts.  In 2019, the age of consent for all kinds of sex was equalised by means of <b>Bill C-75</b> which repealed the provision on consent for anal sex.
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<sup>53</sup> Note: ILGA World takes note of the sovereignty dispute between Argentina and the United Kingdom over the Falkland Islands/Islands Malvinas (UNGA Resolution 2065-XX). Under Argentine law, consensual same-sex sexual acts were formally decriminalised in 1903.


<sup>54</sup> ILGA was not able to locate an online version of the relevant legislation.

<sup>55</sup> Note: ILGA is aware of the sovereignty dispute between Argentina and the United Kingdom over the South Georgia and South Sandwich Islands. Under Argentine law, consensual same-sex sexual acts were legalised in 1903.

<sup>56</sup> ILGA was not able to locate an online version of the relevant legislation.


<sup>57</sup> Lawrence la Fountain-Stokes, “Recent Developments in Queer Puerto Rican History, Politics, and Culture”, *Centro Journal* 30 (2018), 503.

<sup>58</sup> Juana María Rodríguez, “Getting F’d in Puerto Rico: Metaphoric Provocations and Queer Activist Interventions” in Frances Negrón-Muntaner, *None of the above: Puerto Ricans in the global era* (New York: Palgrave Macmillan, 2007), 136.


- |   |   |           |   |
|---|---|-----------|---|
| 2 |  <b>United States of America</b> | 1962-2003 | <p>Under the USA's Federal system, all 50 States enact their own Criminal Codes.<sup>59</sup> Sodomy was criminalised throughout the USA until 1962, when Illinois became the first State to decriminalise consensual same-sex sexual acts between adults. In 2003 all remaining sodomy statutes—still in force in 14 States—were invalidated by the Supreme Court verdict in <i>Lawrence v. Texas</i> (2003).</p> <p>Age of consent laws also vary across the USA.<sup>60</sup> <b>Act No. 2019-465</b> (2019) amended Section 13A-6-62 of the <b>Code of Alabama</b> (1975), equalising the age of consent in the state. Unequal ages of consent remain in force in <b>Texas</b>.</p> |
|---|---|-----------|---|

### Non-independent jurisdictions in North America (3)


#### Denmark (1)

- |   |  |      |  |
|---|--|------|--|
| 1 |  <i>Greenland</i> | 1933 | <p>There are no records that same-sex sexual acts were ever criminalised under Greenlandic Law.</p> <p>However, Danish law applied to people who were born in Denmark and lived in Greenland. It was not until 1933 that Denmark repealed section 177 of the Danish Penal Code of 1866 and decriminalised “intercourse against nature” (see entry below)<sup>61</sup>.</p> |
|---|--|------|--|

#### France (1)

- |   |   |      |  |
|---|---|------|--|
| 2 |  <i>Saint Pierre and Miquelon</i> | 1814 | <p>The metropolitan laws of France were partially applicable in the French colonies by means of a “dual legal system” in force in colonial territories under which “French citizens” would be subjected to the metropolitan legislation, while non-citizens were submitted to unstable rules, shaping an environment of great legal uncertainty.<sup>62</sup> This means that once these territories came under French control, same-sex sexual activities were decriminalised, at least for a part of the population living there.</p> <p>Currently the French Constitution and other laws determine the way in which French legislation is applicable to Saint Pierre and Miquelon.<sup>63</sup></p> |
|---|---|------|--|

#### United Kingdom (1)

- |   |  |      |  |
|---|--|------|--|
| 3 |  <i>Bermuda</i> | 1994 | <p>An <b>Amendment Act</b> (1994) to the Bermuda <b>Criminal Code</b> (1907) introduced exceptions to Section 177 (“Unlawful anal intercourse”) and Section 179 (“Commission acts of gross indecency between male persons”), decriminalising such acts when they take place in private and between consenting people above 18 years old.</p> <p>The <b>Child Safeguarding (Miscellaneous Amendments) Act</b> (2019) completely repealed Section 179 of the Criminal Code. However, it maintained the higher age of consent in case of anal intercourse: 18 years old as opposed to 16 years old for other forms of sexual intercourse.</p> |
|---|--|------|--|

<sup>59</sup> George Painter, “The Sensibilities of Our Forefathers: The History of Sodomy Laws in the United States”, *GLAPN*, 2 February 2005.

<sup>60</sup> Hannah Cartwright, *Legal Age of Consent for Marriage and Sex for the 50 United States* (Global Justice Initiative, 2011).

<sup>61</sup> Jens Rydström, “Greenland and the Faroe Islands 1866-1988: Nordic Peripheries” in Jens Rydström and Kati Mustola (eds.), *Criminally Queer: Homosexuality and Criminal Law in Scandinavia 1842-1999* (Amsterdam: akasant, 2007), 168.

<sup>62</sup> Olivier Le Cour Grandmaison, “L'exception et la règle: sur le droit colonial français”, *Diogenes* 212, No. 4, (2005), 42-64.

<sup>63</sup> Under Article 72-3 of the French Constitution (1958), Saint Pierre et Miquelon is listed as a French overseas territory. As an overseas collectivity, Saint Pierre et Miquelon is subject to Article 74, according to which its autonomy is established by an organic law that establishes the conditions under which the laws and regulations are applicable in the territory. Moreover, under Article LO6413-1 of the General Code of Territorial Collectivities, legislative and regulatory provisions are automatically applicable provided that they do not intervene in the matters that are of competence of the organic law or of the collectivity.

## Asia

20 out of 33 UN Member States (61%). Additionally: 4 non-UN Member jurisdictions.

1	 <b>Bahrain</b>	1976	Repealing the colonial British code that had been widely enforced across the Persian Gulf, Bahrain's current <b>Penal Code</b> (1976) decriminalised consensual same-sex sexual acts between adults.
2	 <b>Cambodia</b>	NEVER CRIM <sup>3</sup>	Following royal request, in 1867 Cambodia became a French Protectorate, thereby coming under French law, which had decriminalised consensual same-sex sexual acts in 1791. Following 1946, and Independence in 1953, no criminalising provisions were added to the <b>Penal Code</b> .
3	 <b>China</b>	1997	China's current <b>Penal Code</b> (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, in the period between 1979 and 1997, the country <i>de facto</i> criminalised consensual same-sex sexual acts. <sup>64</sup> A "hooliganism" provision under Article 160 of the 1979 <b>Penal Code</b> was used to target male consensual same-sex activity until the code was repealed in 1997. <sup>65</sup>
	 <b>Hong Kong</b> (SAR China)	1991	Same-sex sexual acts were decriminalised in Hong Kong in 1991, <sup>66</sup> when the Legislative Council passed legislation repealing from the <b>Crimes Ordinance</b> the colonial provision enacted during British control. <sup>67</sup>
	 <b>Macau</b> (China)	1996	In Macau, decriminalisation was effectuated with the entry into force of the <b>Penal Code</b> (1995) in 1996, that revoked the colonial Portuguese <b>Penal Code</b> (1886) which was still applicable in the territory and punished consensual same-sex sexual act between adults.
4	 <b>East Timor</b>	1975	The country became independent from Portugal in 1975. However, it was invaded that same year by Indonesian troops that kept control of the territory until 1999. The country's sovereignty was finally restored in 2002. The Indonesian Penal Law, which did not criminalise same-sex sexual acts between consenting adults, was enforced in the country until the approval of the new <b>Penal Code</b> (2009) that made no mention of a prohibition on such acts.
5	 <b>India</b>	2018	In September 2018, the Supreme Court of India declared in <i>Navtej Singh Johar v. Union of India</i> that Section 377 of the <b>Penal Code</b> was unconstitutional. The court emphasised that the provision violated the rights to privacy and to human dignity, among others. <sup>68</sup>  In this momentous decision, Justice Indu Malhotra cited ILGA World's 2017 <i>State Sponsored Homophobia Report</i> and observed that "the trend of decriminalizing anti-sodomy laws world over has gained currency during the past few decades". <sup>69</sup>  Prior to the Supreme Court ruling in 2018, the High Court of Delhi at New Delhi had decided in <i>Naz Foundation v. Government of NCT of Delhi and Others</i> (2009) that Section 377 was unconstitutional. In 2013, this decision was quashed by the Supreme Court in <i>Suresh Kumar Koushal &amp; Anr vs Naz Foundation and Others</i> (2013).

<sup>64</sup> Fang-fu Ruan, "China" in Donald J. West and Richard Green (eds.), *Sociolegal Control of Homosexuality: a multi-nation comparison* (New York: Kluwer Academic Publishers, 2002), 63.

<sup>65</sup> UNDP and USAID, *Being LGBT in Asia: China Country Report* (2014), 23.

<sup>66</sup> Pink Alliance, *Hong Kong LGBT History* (Hong Kong: PA, 2012), 1.

<sup>67</sup> Zoe Low, "How Hong Kong passed homosexuality law, decriminalising same-sex acts, in 1991", *Post Magazine*, 12 July 2019.

<sup>68</sup> For more information on the Supreme Court decision, see: Arvind Narrain "Decriminalising the Right to Love: Navtej Singh Johar v. Union of India" in ILGA World: Lucas Ramon Mendos, *State-Sponsored Homophobia 2019* (Geneva: ILGA, March 2019), 142.

<sup>69</sup> Daryl Yang, "Global Trends on the Decriminalisation of Consensual Same-Sex Sexual Acts (1969 - 2019)" in ILGA World: Lucas Ramon Mendos, *State-Sponsored Homophobia 2019* (Geneva: ILGA, 2019), 175. Citing: *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.

6	 <b>Indonesia</b> (MOST PARTS)	NEVER CRIM <sup>3</sup>	Having achieved independence from the Netherlands in 1945, the Indonesian <b>Penal Code</b> has had no provisions outlawing same-sex sexual relations. However, Articles 290 and 292 of the Penal Code, as well as the <b>Law on Child Protection</b> (2002), establish a higher age of consent for same-sex sexual acts than for different-sex sexual-acts.  Several jurisdictions in Indonesia do, however, criminalise consensual same-sex sexual acts between adults. See: entry for Indonesia in the “Criminalisation” chapter of this report.
7	 <b>Israel</b>	1988	The <b>Criminal Code Bill</b> (1936) penalised “carnal knowledge of any person against the order of nature” under Article 152(2). After the country’s independence the provision was replaced by Article 351 of the <b>Penal Law</b> (1977) that kept the same content. Finally, the provision was repealed by Penal Law (Amendment no. 22) in 1988. <sup>70</sup>
8	 <b>Japan</b>	1882	Consensual same-sex sexual activity was never criminalised in modern Japan, with the exception of a very short period from 1873 to 1881, when “male sodomy” was considered a crime under Article 266 of the Meiji Legal Code of 1873. <sup>71</sup>
9	 <b>Jordan</b>	1951	Jordan is one the few Middle Eastern countries where consensual same-sex sexual acts are not criminalised. The <b>Criminal Code Bill</b> (1936), established by the British Mandate of Palestine and Transjordan penalised “sodomy”. With the approval of the country’s <b>Penal Code</b> (1951) this legislation was repealed. <sup>72</sup>
10	 <b>Kazakhstan</b>	1998	With independence from the USSR, Kazakhstan’s <b>Criminal Code</b> of 1997 (in force 1998) removed earlier provisions that penalised consensual same-sex sexual acts between adults in private.
11	 <b>Kyrgyzstan</b>	1998	With independence from the USSR, Kyrgyzstan’s <b>Criminal Code</b> of 1997 (in force 1998) removed earlier provisions that penalised consensual same-sex sexual acts between adults in private.
12	 <b>Laos</b>	NEVER CRIM <sup>3</sup>	Prior to and following independence from France in 1954, the country’s <b>Penal Code</b> made no provisions to criminalise consensual same-sex sexual acts.
13	 <b>Mongolia</b>	1961	In 1961, under the Mongolian People’s Revolutionary Party, consensual same-sex sexual acts were decriminalised. This position remained through the 2002 <b>Criminal Code</b> .
14	 <b>Nepal</b>	2007	Article 1 of Chapter 16 of Part 4 of the <b>National Code</b> (locally referred to as “Muluki Ain”) enacted in 1963 criminalises “unnatural sexual intercourse”, a term which was undefined and open to different interpretations. <sup>73</sup> The uncertainty, however, was clarified in <i>Sunil Babu Pant and Others v. Nepal Government and Others</i> , where the Nepal Supreme Court ruled that same-sex sexual intercourse was not to be construed as “unnatural”. <sup>74</sup> Though the new <b>Criminal Codes Act</b> which replaced the <i>Muluki Ain</i> appears to continue to criminalise “unnatural sex”, <sup>75</sup> it should be read in light of this case.

<sup>70</sup> The year and number of the amendment that finally repealed criminalising provisions from the Penal Code are confirmed by the Supreme Court of Israel in *El Al Israel Airlines Ltd. v. Yonatan Danilowitz and The National Labor Court* (1994). See: Supreme Court of Israel (sitting as the High Court of Justice), *Case no. 721/94: El Al Israel Airlines Ltd. v. Yonatan Danilowitz and The National Labor Court*, 30 November 1994.

<sup>71</sup> Yuki Arai, “Is Japan Ready to Legalize Same-Sex Marriage?” *Cornell Law School LL.M. Student Research Papers*, Paper 4 (2014), 127.

<sup>72</sup> Jehoeda Sofer, “Sodomy in the Law of Muslim States” in Arno Schmitt and Jehoeda Sofer (eds.), *Sexuality and Eroticism Among Males in Moslem Societies* (New York and London: Routledge, 2011), 250.

<sup>73</sup> Blue Diamond Society (BDS) et al., *The Violations of the Rights of Lesbian, Gay, Bisexual, Transgender, and Intersex Persons in Nepal: Submitted to the Human Rights Committee on Relevant Issues Prior to Reporting (LOIPR)* (2013), 13.

<sup>74</sup> Kyle Knight, *Bridges to Justice: Case Study of LGBTI Rights in Nepal* (Astraea Lesbian Foundation for Justice, 2015), 23.

<sup>75</sup> 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), 20.

15	 <b>North Korea</b>	NEVER CRIM <sup>3</sup>	There appears to be no laws penalising consensual same-sex sexual activities between adults in the <b>Criminal Code</b> of 1950, which was updated in 2009.
	 <b>Palestine</b>	1951	In Palestine, consensual same-sex sexual acts are legal only in the West Bank. They remain illegal in Gaza (see section below).
	<b>West Bank</b>	1951	The West Bank aligns with the Jordanian <b>Penal Code</b> , where consensual same-sex sexual acts between adults have not been penalised under the law since 1951. <sup>76</sup>
16	 <b>Philippines</b>	1870	The 1870 <b>Spanish Penal Code</b> , which contained no provisions criminalising same-sex sexual relations between consenting adults, applied in the territory until the approval of the 1932 <b>Revised Penal Code</b> (RPC) which likewise did not include such criminalising provisions. <sup>77</sup>
17	 <b>South Korea</b>	NEVER CRIM <sup>3</sup>	The 1962 <b>Criminal Act</b> (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. <sup>78</sup>  However, Article 92(6) of the <b>Military Criminal Act</b> (1962) criminalises “indecent act(s)”, provisioning that “a person who commits anal intercourse with any person prescribed in Article 1 (1) through (3) [“military person”] or any other indecent act shall be punished by imprisonment with labour for not more than two years”. In 2016, the Constitutional Court upheld the law, after its constitutionality was challenged. <sup>79</sup>
	 <b>Taiwan</b> (China) <sup>80</sup>	1912	Decriminalisation after the end of end of Qing Dynasty in 1912 affected the Taiwanese territory, in which no criminalising provisions were approved since. <sup>81</sup> The <b>Criminal Code</b> (1928) contains no provisions prohibiting consensual same-sex sexual activity between adults.
18	 <b>Tajikistan</b>	1998	Since 1998, there have been no restrictions on consensual same-sex sexual acts between adults in the <b>Criminal Code</b> (1998) of Tajikistan. <sup>82</sup>
19	 <b>Thailand</b>	1957	The Thai <b>Penal Code</b> of 1956 came into force in 1957, repealing previous criminalising provisions on consensual same-sex sexual acts between adults.
20	 <b>Vietnam</b>	NEVER CRIM <sup>83</sup>	Following independence from France in 1945 (with subsequent non-criminalisation), the <b>Penal Code</b> (1999) made no provisions to criminalise consensual same-sex sexual acts between adults.

<sup>76</sup> Jehoeda Sofer, “Sodomy in the Law of Muslim States” in Arno Schmitt and Jehoeda Sofer (eds.), *Sexuality and Eroticism Among Males in Moslem Societies* (New York and London: Routledge, 2011), 250.

<sup>77</sup> The Philippines were under Spanish control from around 1565 to 1898. There is indication that Spain applied the so-called “Indian law” in the territory throughout most of the 19<sup>th</sup> century, even after the approval of Spanish code. Similarly, in the colonies in the Americas, several jurisdictions carried on with the application of legal provisions from “*Las Siete Partidas*” (which registered the crime of “sodomy” under Title XXI, Volume III), s. See: Bernardino Bravo Lira, *El Derecho Indiano y sus raíces europeas: derecho comun y propio de Castilla* (Academia Chilena de la Historia: Universidad de Chile, 1988).

<sup>78</sup> Information verified by practitioners in South Korea, as there are English versions of the Criminal Act that state 15 as the age of consent.

<sup>79</sup> “Constitutional Court upholds military’s ban on sodomy”, *Hankyoreh*, 4 August 2016.

<sup>80</sup> Note on Names of countries and territories in this publication: ILGA World is an organisation with ECOSOC-accredited consultative status at the United Nations and our publications therefore have to follow UN-recommended language on the names of countries and territories. For more information, please read the methodology section of this report.

<sup>81</sup> Hsiaowei Kuan, “LGBT Rights in Taiwan—The Interaction Between Movements and the Law” in Jerome A. Cohen, William P. Alford, and Chang-fa Lo (eds.), *Taiwan and International Human Rights A Story of Transformation* (Springer: Singapore, 2019), 595.

<sup>82</sup> Ben Noble, “Decriminalising sex between men in the former Soviet Union, 1991–2003: Conditionality and the Council of Europe” in *Building Justice in Post-Transition Europe?* (London: Routledge, 2012), 122.

<sup>83</sup> Before coming under French control, the country was under Chinese control. There’s a possibility that criminalizing provisions may have existed at some point in time before the French occupation. ILGA World could not find reliable sources to confirm this.



## Europe










48 out of 48 UN Member States (100%). Additionally: 7 non-UN Member jurisdictions.

1	 <b>Albania</b>	1995	The Albanian <b>Penal Code</b> (1977) criminalised “pederasty” under Article 137 (“pederasty is punished: with deprivation of liberty for up to ten years”). The new <b>Penal Code</b> (1995) maintained, however, a crime of “homosexuality” under <b>Article 116</b> which penalised non-consensual sexual intercourse “with a minor or persons unable to protect themselves”. This provision was finally repealed by Article 31 of the <b>Law No. 8,733</b> (2001).
2	 <b>Andorra</b>	1990	Although France decriminalised same-sex sexual acts between adults in 1791 (see entry below) when Andorra was still a co-principality with France, there is no evidence that securely determines that the 1791 <b>Penal Code</b> did apply in the territory. Therefore, it is likely that it remained a crime until the country approved the 1990 <b>Penal Code</b> , which was then replaced by the current <b>Penal Code</b> (2005) which also does not criminalise such acts.
3	 <b>Armenia</b>	2003	Armenia’s former Soviet Union provision that punished consensual sex between adult men with five years of imprisonment (under Article 116), was repealed by the 2003 <b>Criminal Code</b> .
4	 <b>Austria</b>	1971	The previous <b>Penal Code</b> (1852) penalised (with five years’ imprisonment, under chapter 14, §129, I, b) “fornication against nature” which explicitly included same-sex sexual acts. The 1971 <b>Criminal Code</b> lifted all such sanctions.
5	 <b>Azerbaijan</b>	2000	Prior to 1988, aligned to the Soviet Union provisions, Article 113 criminalised “anal intercourse between men”. This was repealed by a new <b>Criminal Code</b> that came into force in 2000.
6	 <b>Belarus</b>	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 Law No. 2827-XII (1994) that amended the country’s <b>Criminal Code</b> .
7	 <b>Belgium</b>	1795	After it came under French control in 1795, and until its independence from the Netherlands in 1830, the criminal law that applied in the territory was the one contained in the French Codes – first the <b>Penal Code</b> (1791) and later the <b>Napoleonic Code of 1810</b> . After independence the Belgian <b>Penal Code</b> (1867) conferred no penal sanctions for consensual same-sex sexual activity between adults.
8	 <b>Bosnia &amp; Herzegovina</b>	1991-2003	There are four different criminal law statutes applicable in Bosnia and Herzegovina: one with a national cover and one for each of the three state entities. <sup>84</sup> Since 1991, the national <b>Criminal Law Act of Bosnia and Herzegovina</b> no longer criminalises homosexuality. Penalties were subsequently removed from the Penal Codes of each constituent entity: <b>Federation of Bosnia and Herzegovina, Republika Srpska, and Brcko District</b> . <sup>85</sup>
9	 <b>Bulgaria</b>	1968	The <b>Criminal Code</b> of 1968 repealed the sodomy provisions contained in Bulgaria’s first <b>Penal Code</b> of 1896.
10	 <b>Croatia</b>	1977	The provisions of 1951 Yugoslavia <b>Criminal Code</b> <sup>86</sup> regarding consensual same-sex relations were rescinded in the Croatian <b>Penal Code</b> of 1977.

<sup>84</sup> Boris Krešić, ‘Development of Rights of Homosexual Persons in Bosnia and Herzegovina’, *International Journal of Law, Policy and the Family* 28, No. 1 (2014), 48–59.

<sup>85</sup> Adelita Selmić, ‘On the Other Side of an Ethnocratic State? LGBT Activism in Post-Dayton Bosnia and Herzegovina’ in Bojan Bilić, *LGBT Activism and Europeanisation in the Post-Yugoslav Space: On the Rainbow Way to Europe* (London: Palgrave Macmillan, 2016), 211; Questioning Sarajevskog otvorenog centra, *LGBT Čitanka 3. Identiteti, aktivizam, pravo* (Sarajevo: Saša Gavrić, 2014), 59.

<sup>86</sup> Richard C. Donnelly, ‘The New Yugoslav Criminal Code’, *The Yale Law Journal* 61 (1952), 510–539.

11	 <b>Cyprus</b>	1998	Under Section 171 of the 1959 <b>Criminal Code</b> , male-on-male sexual 'unnatural acts' could be punishable with five years' imprisonment. This clause was removed in 1998 following the <i>Modinas v Cyprus</i> case.  Note: Northern Cyprus decriminalised in 2014, the last part of Europe to do so. <sup>87</sup>
12	 <b>Czechia</b>	1962	Chapter eight, section two, article 244 of the 1961 <b>Criminal Code</b> (in force as of 1962) repealed article 241 of the previous <b>Criminal Code</b> (1950) that provisioned that "whoever has sexual intercourse with a person of the same sex shall be punished by imprisonment for up to one year".
13	 <b>Denmark</b>	1933	Replacing a Criminal Code and a series of laws that criminalised sodomy, the 1930 <b>Penal Code</b> (effective 1933) removed provisions on consensual adult same-sex sexual relations. <sup>88</sup>
14	 <b>Estonia</b>	1992	Upon independence from the Soviet Union in 1991, Estonia enacted its own <b>Penal Code</b> (1992) that removed criminalising sanctions on same-sex sexual intimacy.
15	 <b>Finland</b>	1971	The 1889 <b>Criminal Code</b> as revised in 1971 removed Chapter 20 on 'Unlawful sexual intercourse and other lewdness', which criminalised same-sex consensual acts under section 12, imposing imprisonment for up to two years.
16	 <b>France</b>	1791	The newly formed constitutional monarchy of France adopted a <b>Penal Code</b> (1791) that removed sodomy provisions.  This early decriminalisation date did not translate into tolerance of sexual and gender diversity. Scholars indicate that the silence of the Penal Codes—including the Napoleonic Code which followed—was accompanied by particularly repressive case law supported by the Court of Cassation even into the 1930s, with courts relying on various other provisions to persecute homosexual people. Discriminatory age of consent provisions were enacted by the Vichy regime during the Nazi occupation and repealed only in 1982. <sup>89</sup>
17	 <b>Georgia</b>	2000	The <b>Criminal Code</b> (2000) of Georgia removed the pre-existing sodomy provisions that were carried through from the Soviet Union period.
18	 <b>Germany</b>	1968-1969	Same-sex sexual acts have historically been criminalised under the provision in <b>Paragraph 175</b> of the German <b>Criminal Code</b> that punished "unnatural fornication between persons of the male sex". It was based on this provision that the Nazi persecution of homosexual men took place. <sup>90</sup>  The paragraph's original content from 1872 was amended a few times before consensual same-sex sexual acts between adults were decriminalised in East Germany (1968) and in West Germany (1969). However, the provision was fully repealed only in 1994, when age of consent was equalised in the country for both heterosexual and homosexual relations. <sup>91</sup>
19	 <b>Greece</b>	1951	Prior to the post-war <b>Penal Code</b> (1951), consensual male same-sex sexual acts were outlawed.

<sup>87</sup> "Northern part of Cyprus decriminalises homosexuality", *EU Intergroup on LGBT rights (website)*, 27 January 2014.

<sup>88</sup> Dag Heede, "Denmark", *GLBTQ Encyclopedia (website)*, 2004.

<sup>89</sup> See, among others: Daniel Borrillo. *Histoire juridique de l'orientation sexuelle* (2016), 14; Daniel Borrillo and Thomas Formond, "Decriminalization (France)" in Louis-Georges Tin, *Dictionnaire de l'Homophobie* (Paris: Presses Universitaires de France, 2003).

<sup>90</sup> Among the many sources that can be consulted for information on the Nazi persecution of homosexual men, see: Florence Tamagne, *A History of Homosexuality in Europe: Berlin, London, Paris 1919-1939* (2004); Gunter Grau, Günter Grau and Claudia Schoppmann, *Hidden Holocaust? Gay and Lesbian Persecution in Germany, 1933-45* (Taylor & Francis, 1995). See also: Pierre Seel, I, *Pierre Seel, Deported Homosexual* (New York: Basic Book, 1995); Heinz Heger, *The Men with the Pink Triangle* (New York: Alyson Books, 1980); Richard Plant, *The Pink Triangle* (New York: An Owl Book, 1986).

<sup>91</sup> Louise K. Davidson-Schmich, "LGBT Politics in Germany: Unification as a Catalyst for Change", *German Politics* 26, No. 4 (2017), 534.

20	 Hungary	1962	The <b>1961 Criminal Code</b> of Hungary (effective 1962) removed the 1878 provisions that referred to "crimes against nature". <sup>92</sup>
21	 Iceland	1940	The <b>General Penal Code</b> (1940) removed the provisions of 1869 Penal Code, Clause 178, under Chapter 16 ("crimes against chastity") that stipulated that "sexual intercourse [samræði] against nature" was punishable by hard labour. <sup>93</sup>
22	 Ireland	1993	Section 2 of the <b>Criminal Law (Sexual Offences) Act</b> (1993) removed the "buggery" provisions Ireland inherited from British rule.
23	 Italy	1890	The first Italian <b>Penal Code</b> (established 1889; in effect as of 1890) had no prohibition on consensual same-sex sexual acts between adults in private.
	 Kosovo	1994	The <b>1994 Criminal Code</b> that applied in territory of the Republic of Kosovo repealed the 1951 Yugoslav provisions regarding same-sex sexual acts. <sup>94</sup>
24	 Latvia	1992	Following the dissolution of the Soviet Union, Latvia's <b>Criminal Law</b> removed its punitive provisions under Paragraph 124(1) regarding consensual same-sex sexual relations between adults. <sup>95</sup>
25	 Liechtenstein	1989	The <b>1987 Criminal Code</b> entered into force in 1989 and removed Sections 129 and 130 of the previous <b>Criminal Code</b> (1852) that punished "fornication against nature with persons of the same sex".
26	 Lithuania	1993	Following independence from the Soviet Union, Lithuania abolished Articles 121 and 122(1) of its previous <b>Criminal Code</b> (1961), thereby decriminalising consensual same-sex sexual relations between adults.
27	 Luxembourg	1795	As Luxembourg was under French rule, any sodomy provisions in its <b>Criminal Code</b> were removed in 1795.
28	 Malta	1973	Malta removed the offence of "unnatural carnal connection" from Article 201 of the <b>Criminal Code</b> in 1973.
29	 Moldova	1995	<b>Law No. 500</b> (1995) amended the <b>Criminal Code</b> (1961) of Moldova by removing the pre-existing sodomy provisions (Article 106) that were carried through from the Soviet Union period which criminalised consensual "homosexual sex" between adults.
30	 Monaco	1793	As Monaco was a French possession, any provisions pertaining to sodomy were removed from its <b>Penal Code</b> in 1793.
31	 Montenegro	1977	The <b>Criminal Code</b> (1977) repealed the 1951 Yugoslav provisions regarding same-sex sexual acts. <sup>96</sup>
32	 Netherlands	1811	When the Kingdom of Holland became annexed to France in 1811, the <b>Napoleonic Penal Code of 1810</b> came into operation containing no provision on sodomy. This status also applies in the current <b>Penal Code</b> .

<sup>92</sup> Anita Kurimay et al. and Judit Takács, "Emergence of the Hungarian homosexual movement in late refrigerator socialism", *Sexualities* 20 (2017), 585-603.

<sup>93</sup> Thorgerdur Thorvaldsdóttir, "Iceland 1869-1992: From Silence to Rainbow Revolution" in Jens Rydström and Kati Mustola (eds.), *Criminally Queer: Homosexuality and Criminal Law in Scandinavia 1842-1999* (Amsterdam: akasant, 2007), 117-144.

<sup>94</sup> Bojan Bilić, "Europe loves Gays? Europeanisation and Pride Parades in Serbia" in Bojan Bilić, *LGBT Activism and Europeanisation in the Post-Yugoslav Space: On the Rainbow Way to Europe* (London: Palgrave Macmillan, 2016), 119.

<sup>95</sup> Richard Molde, "Nationality and sexuality: homophobic discourse and the 'national threat' in contemporary Latvia", *Journal of the Association for the Study of Ethnicity and Nationalism*, v. 17, n. 3 (2011), 540-560.

<sup>96</sup> Danijel Kalezić and Čarna Brković, "Queering as Europeanisation, Europeanisation as Queering: Challenging Homophobia in Everyday Life in Montenegro" in Bojan Bilić, *LGBT Activism and Europeanisation in the Post-Yugoslav Space: On the Rainbow Way to Europe* (London: Palgrave Macmillan, 2016), 161.

33	 <b>North Macedonia</b>	1996	The <b>Criminal Code</b> (1996) removed provisions regarding consensual same-sex relations between men (penalised with one year in jail) as were previously encoded under Article 101.
34	 <b>Norway</b>	1972	“Indecent intercourse” between men was decriminalised by the repeal of Paragraph 213 in Norway’s <b>Penal Code</b> (1972). <sup>97</sup>
35	 <b>Poland</b>	1932	After its independence in 1918, Poland returned to the Napoleonic tradition that it had employed in the early-19 <sup>th</sup> century, and subsequently its <b>1932 Penal Code</b> held no criminalising provisions regarding consensual same-sex sexual relations amongst adults.
36	 <b>Portugal</b>	1983	The country’s long tradition in criminalising “sodomy acts” <sup>98</sup> ended in 1983 with the entry into force of the <b>1982 Penal Code</b> . The new code revoked the criminalisation of same-sex sexual acts between consenting adults.
37	 <b>Romania</b>	1996	Prior to 1996, Section 200 of the <b>Penal Code</b> (1968) penalised “sexual relations between persons of the same-sex” with 1 to 5 years’ imprisonment. This was then repealed but replaced with a clause “committed in public or producing a public scandal”, which was then removed in 2001 by <b>Emergency Ordinance No. 89</b> .
38	 <b>Russian Federation</b>	1993	Article 121(1) of the <b>Criminal Code of the Russian Soviet Federative Socialist Republic</b> (1960) stated “sexual relations of a man with a man (sodomy)” was punishable with up to five years imprisonment. <sup>99</sup> The provision was amended by <b>Law No. 4901-1</b> (1993) decriminalising consensual acts between adults.
39	 <b>San Marino</b>	2004	Although San Marino decriminalised “sodomy” in 1865, it was re-introduced by Article 274 into the <b>Penal Code</b> in 1975, targeting those who “habitually commit acts of lust with persons of the same sex”. This was finally repealed by <b>Law No. 121</b> (2004). <sup>100</sup>
40	 <b>Serbia</b>	1994	In its modern history, and as part of the Kingdom of Yugoslavia in 1918, “lewdness against the order of nature” was banned in Serbia. The 1994 <b>Criminal Code</b> removed that prohibition. <sup>101</sup>
41	 <b>Slovakia</b>	1962	The 1961 <b>Criminal Code</b> (in force as of 1962) removed sodomy provisions from previous legal codes (Slovakia relied on the Hungarian law which had previously referred to “crimes against nature”). <sup>102</sup>
42	 <b>Slovenia</b>	1977	When Slovenia was still a part of Yugoslavia in 1976, works on the <b>Criminal Code</b> to remove provisions penalising consensual same-sex sexual acts commenced, and the resultant law came into force in 1977.
43	 <b>Spain</b>	1979	Following the re-establishment of constitutional democracy in Spain after the rule of Francisco Franco, consensual same-sex sexual intercourse between males was removed as an offence by <b>Law No. 77</b> (1978, effective in 1979). The law repealed criminalising provisions from <b>Law No. 16</b> (1970). The previous law stated that those who “practiced acts of homosexuality” should be declared to be in a “dangerous condition” and should be “hospitalised in a rehabilitation facility” as well as prohibited from frequenting certain places.

<sup>97</sup> Martin Skaug Halsos, “Norway 1842-1972: When Public Interest Demands” in Jens Rydström and Kati Mustola (eds.), *Criminally Queer: Homosexuality and Criminal Law in Scandinavia 1842–1999* (Amsterdam: Akasant, 2007), 91.

<sup>98</sup> Veronica de Jesus Gomes, *Vício dos clérigos: a sodomia nas malhas do Tribunal do Santo Ofício de Lisboa* (Niterói: Universidade Federal Fluminense, 2010), 54-72.

<sup>99</sup> Adrian Chan-Wyles, “The USSR and Homosexuality Part 1 (Article 121)”, *The Sanghakommune*, 28 December 2016.

<sup>100</sup> Simon Chang, *Sex Ratio and Global Sodomy Law Reform in the Post-WWII Era* (Crawley: University of Western Australia and Global Labor Organization, 2020), 14-33.

<sup>101</sup> Bojan Bilić, “Europe loves Gays? Europeanisation and Pride Parades in Serbia” in Bojan Bilić, *LGBT Activism and Europeanisation in the Post-Yugoslav Space: On the Rainbow Way to Europe* (London: Palgrave Macmillan, 2016), 119.

<sup>102</sup> Ivo Procházka, “The Czech and Slovak Republics” in Donald J. West and Richard Green, *Sociolegal Control of Homosexuality: A Multi-Nation Comparison* (London: Kluwer Academic Publishers, 2002), 246.

44	 <b>Sweden</b>	1944	Sweden removed its 'sodomy' provisions from the <b>Penal Code</b> in 1944, specifying freedom for both men and women in a subsequent revision. <sup>103</sup>
45	 <b>Switzerland</b>	1942	Although various cantons had utilised the Napoleonic Code since 1798 in not penalising same-sex sexual relations, the entire country became free from criminalisation by way of the 1937 <b>Penal Code</b> that came into force in 1942. <sup>104</sup>
46	 <b>Turkey</b>	1858	The <b>Turkish Imperial Penal Code of 1858</b> made no mention of consensual same-sex sexual acts between adults, and neither does the current <b>Penal Code</b> (2004).
47	 <b>Ukraine</b>	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 <b>Criminal Code</b> of 1991. <sup>105</sup>
48	 <b>United Kingdom</b>	1967-1982	In 1861, the death penalty for "buggery" was abolished across the United Kingdom, but the offence was codified in Section 61 of the <b>Offences Against the Person Act</b> (1861) with a life sentence punishment, while the lesser misdemeanour of "gross indecency" was codified in Section 11 of the <b>Criminal Law Amendment Act</b> (1885), with a penalty of up to two years imprisonment, and possible hard labour.  These criminalising provisions were exported in different forms throughout the British Empire and its occupied territories. In several countries, these provisions have remained in force after their independence from Britain. In some cases, these laws have been kept intact, but in many other countries have enlarged their scope or had their penalties aggravated. <sup>106</sup>
	<i>England and Wales</i>	1967	England and Wales removed the provisions in the <b>Sexual Offences Act</b> (1967).
	<i>Scotland</i>	1981	The legislation was repealed in Scotland by the <b>Criminal Justice (Scotland) Act</b> (1980) which entered into force in 1981.
	<i>Northern Ireland</i>	1982	Northern Ireland decriminalised consensual same-sex sexual acts between adults by the enactment of <b>The Homosexual Offences (Northern Ireland) Order</b> (1982) (following the <i>Dudgeon</i> case at the European Court of Human Rights).
	 <b>Vatican City</b>	1890	The State of the Vatican City became independent from Italy in 1929. Italy decriminalised consensual same-sex relations in 1890 (see entry above). No criminalising provisions have been enacted in the State since its independence.  In 2008, the Holy See delivered a statement before the UN General Assembly condemning "all forms of violence against homosexual persons" and urging States to take necessary measures to put an end to all criminal penalties against them". Strikingly, however, it opposed the adoption of a declaration on the matter because of the use of the terms "sexual orientation" and "gender identity". <sup>107</sup>

<sup>103</sup> Jens Rydström, "Sweden 1864-1978: Beasts and Beauties" in Jens Rydström and Kati Mustola (eds.), *Criminally Queer: Homosexuality and Criminal Law in Scandinavia 1842-1999* (Amsterdam: akasant, 2007), 184.

<sup>104</sup> Thierry Delessert, "L'homosexualité dans le Code pénal suisse de 1942 - Droit octroyé et préventions de désordres sociaux", *Vingtième Siècle. Revue D'histoire* 131 (2016), 125-137.


<sup>105</sup> Tamara Martsenyuk, "The State of the LGBT Community and Homophobia in Ukraine", *Problems of Post-Communism* 59, No. 2 (2012), 51.

<sup>106</sup> For more information see: Human Rights Watch, *This Alien Legacy the Origins of "Sodomy" Laws in British Colonialism* (2008).


<sup>107</sup> "Statement of The Holy See Delegation at the 63rd Session of the General Assembly of the United Nations on the Declaration on Human Rights, Sexual Orientation and Gender Identity" *The Holy See (website)*, 18 December 2008.

## Non-independent jurisdictions in Europe (5)

### Denmark (1)

1	 <i>Faroe Islands</i>	1933	Denmark decriminalised “intercourse against nature” in 1933 with the enactment of a new <b>Penal Code</b> (see entry above). The law automatically applied to the Faroe Islands, legalising same-sex sexual acts between adults there as well. <sup>108</sup>
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### United Kingdom (4)

2	 <i>Gibraltar</i>	1993	The <b>Criminal Offences (Amendment) Act</b> (1993) inserted exceptions to the crimes of “buggery” and “indecentcy between men”, decriminalising consensual same-sex sexual acts between adults in private.
3	 <i>Guernsey</i>	1983	Homosexual acts in private were decriminalised with the entry into force of <b>Sexual Offences (Bailiwick of Guernsey) Law</b> (1983).
4	 <i>Isle of Man</i>	1992	The <b>Sexual Offences Act</b> (1992) decriminalised “buggery” in the territory when “committed” in private and between consenting adults.
5	 <i>Jersey</i>	1990	The <b>Sexual Offences (Jersey) Law</b> (1990) decriminalised homosexual acts in private.





## Oceania

8 out of 14 UN Member States (57%). Additionally: 9 non-UN Member jurisdictions.

1	 <b>Australia</b>	1975-1997	Decriminalisation of consensual same-sex sexual acts took place variously across the states of Australia between 1975 and 1997. <sup>109</sup> In 1975, South Australia abolished the offences of “buggery”, “gross indecency” and “soliciting for immoral sexual purposes”, and 22 years later the last jurisdiction to decriminalise was Tasmania in 1997.  Following the seminal UN Human Rights Committee’s finding of incompatibility in <i>Toonen v. Australia</i> in 1994 (primarily on the basis of privacy), the federal government introduced Section 4(1) of the <b>Human Rights (Sexual Conduct) Act</b> (1994) to uphold that principle in Australian law.
2	 <b>Fiji</b>	2010	In 2005, in its decision in <i>Dhirendra Nadan and Thomas McCosker v. The State</i> , the High Court of Fiji invalidated two convictions based on sections 175(a), 175(c) and 177 of the <b>Penal Code</b> which criminalised “carnal knowledge against the order of nature” and indecent practices.  These provisions were finally repealed by the <b>Crimes Decree</b> (2009), which came into force in February 2010.
3	 <b>Marshall Islands</b>	2005	The <b>Criminal Code (Amendment) Act</b> (2005) amended the <b>Criminal Code</b> to decriminalise consensual same-sex sexual activity between adults in private.
4	 <b>Micronesia</b> (Federated States of)	NEVER CRIM <sup>3</sup>	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.




<sup>108</sup> Jens Rydström, “Greenland and the Faroe Islands 1866-1988: Nordic Peripheries” in Jens Rydström and Kati Mustola (eds.), *Criminally Queer: Homosexuality and Criminal Law in Scandinavia 1842-1999* (Amsterdam: Akasant, 2007), 150.

<sup>109</sup> Graham Carbery, “Towards homosexual equality in Australian criminal law – A brief history” (Australian Lesbian and Gay Archives, 2014).

5	 <b>Nauru</b>	2016	In May 2016 the <b>Crimes Act (2016)</b> repealed the Criminal Code of 1899 that was drawn from the 1899 Queensland Criminal Code. The Government of Nauru stated that this law removed homosexuality as an offence. <sup>110</sup> Nauru had previously accepted three recommendations to decriminalise same-sex sexual activity in its UPR first cycle in 2011. <sup>111</sup>
6	 <b>New Zealand</b>	1986	The General Assembly passed the <b>Homosexual Law Reform Act (1986)</b> which decriminalised sexual acts between consenting men aged 16 and over. Same-sex sexual acts between consenting women were not illegal.  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. <sup>112</sup>
7	 <b>Palau</b>	2014	Palau repealed legal provisions that criminalised consensual same-sex sexual activity between men by introducing a new <b>Penal Code</b> (adopted 2013; in force 2014) with no such provisions. <sup>113</sup> Palau had previously accepted three recommendations to decriminalise same-sex sexual activity in its first UPR cycle in 2011. <sup>114</sup>
8	 <b>Vanuatu</b>	NEVER CRIM <sup>3</sup>	Soon after becoming an independent State in 1980, Vanuatu enacted its first Criminal Code (in force 1981), which did not criminalise same-sex activity between persons over 18 years of age. <sup>115</sup>  The <b>Consolidation of the Criminal Code (2006)</b> maintained the same provision under Section 99. In that same year, the <b>Penal Code (Amendment) Act 2006</b> (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.

## Non-independent jurisdictions in Oceania (9)

### France (3)

1	 <b>French Polynesia</b>	NEVER CRIM <sup>3</sup>	French Polynesia officially came under French control in 1842. France had repealed sodomy laws in 1791.
2	 <b>New Caledonia</b>	NEVER CRIM <sup>3</sup>	New Caledonia officially came under French control in 1853. France had repealed sodomy laws in 1791.
3	 <b>Wallis and Futuna</b>	NEVER CRIM <sup>3</sup>	Wallis and Futuna officially passed to French control in 1842. France had repealed sodomy laws in 1791.

### New Zealand (2)

4	 <b>Niue</b>	2007	The <b>Niue Amendment Act (2007)</b> repealed the “buggery” provision under Article 170 of the <b>Niue Act (1966)</b> , thus decriminalising same-sex consensual relations between adults.
5	 <b>Tokelau</b>	2007	The <b>Niue Amendment Act (2007)</b> applied to Tokelau in accordance to the <b>Tokelau Islands Crimes Regulations (1975)</b> , therefore extending the decriminalisation to this territory as well.

<sup>110</sup> “Nauru decriminalises homosexuality”, *Radio NZ*, 27 May 2016.

<sup>111</sup> *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.


<sup>112</sup> “New Zealand to quash historical gay sex convictions”, *BBC News*, 9 February 2017.

<sup>113</sup> “Palau decriminalises homosexuality”, *Human Dignity Trust*, 15 October 2014.




<sup>114</sup> 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.

<sup>115</sup> D E Paterson, “Vanuatu Penal Code” (1986) 2(2) *QIT Law Journal* 119.

## United Kingdom (1)

6		<i>Pitcairn Islands</i>	2001	Like in other UK territories, same-sex sexual acts between adults in private were decriminalized in 2001. <sup>116</sup>
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## United States of America (3)

7		<i>American Samoa</i>	1980	Public Law 16-43 (1979, in force 1980), repealed provisions from the <b>Criminal Justice Law</b> that criminalised “sodomy” between consenting adults in private.
8		<i>Guam</i>	1977	<b>Public Law No. 13-185</b> (1976) established the <b>Criminal and Correctional Code</b> that <b>came into force in 1977</b> and repealed provisions that criminalised “sodomy” between consenting adults in private. The provisions were then incorporated as the Title 9 of the <b>Guam Code Annotated</b> (1980) by <b>Public Law No. 15-104</b> .
9		<i>Northern Mariana Islands</i>	1983	<b>Public Law No. 3-71</b> (1983) enacted the Criminal Code of the Commonwealth (1983) and repealed previous provisions that criminalised “sodomy” between consenting adults in private. The new Code defined “criminal sodomy” under section 408, as applying only to non-consensual sexual acts.

<sup>116</sup> ILGA World was unable to locate an online version of the relevant piece of legislation.

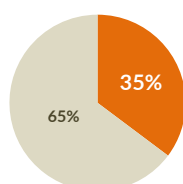




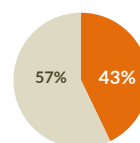
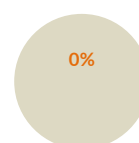
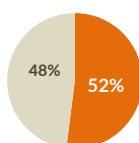
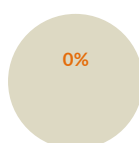
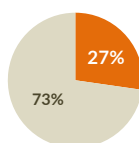
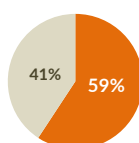
# Consensual same-sex sexual acts between adults in private: ILLEGAL

## Highlights

**67+2 UN Member States**  
35% UN Member States



AFRICA	LAC	NORTH AMERICA	ASIA	EUROPE	OCEANIA
31 (+1) /54	9 /33	0 /2	21 (+1) /42	0 /48	6 /14



## Introduction

This section provides an overview of the countries that still criminalise consensual same-sex sexual acts between adults. In many 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”, “indecent”, “immoral acts”, leave the door open to arbitrary interpretation, which leads to the discretionary use of these norms to persecute LGBT people.

Singapore is one of the only countries that does not criminalise sexual intercourse itself, but still keeps laws against “acts of gross indecency”. Likewise, countries such as Egypt and Iraq have no legislation explicitly criminalising same-sex acts, but are listed here due to the widespread use of other laws in targeting LGBT individuals. The rest of the countries listed here have provisions that in one way or another criminalise same-sex intercourse.

In this edition of the report then, for the first time, we also include *known* instances of enforcement in each jurisdiction. Cases presented here are only those that were documented by the media or by other sources. There are multiple factors that explain why it is reasonable to believe that a much larger number of cases may fly under our radar.<sup>1</sup>

**Therefore, instances of enforcement presented in this section should be read as merely illustrative and not as a comprehensive account of the extent to which criminalising provisions are actually enforced in each jurisdiction.**

### 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).**



Pending repeal, cease to apply discriminatory laws criminalising or applying general punitive sanctions on the basis of sexual orientation, gender identity, gender expression or sex characteristics.

**Yogyakarta Principle 33(c)**

<sup>1</sup> For more detailed explanation, please read the methodology section of this report.

## Africa

31 out of 54 UN Member States (59%). Additionally, 1 UN Member jurisdiction with *de facto* criminalisation (Egypt) (+1).<sup>2</sup>

1	 <b>Algeria</b>	LAST AMENDED 1966	<p>Per the <b>Penal Code (1966)</b> Article 333, any person who commits “public indecency” can be charged with a prison sentence of between 2 months and 2 years, with a fine of 500 to 2000 Algerian Dinars. Under Article 338 this is expanded to note that any person found guilty of “an act of homosexuality”<sup>3</sup> is liable to receive the same penalty.</p> <p>► <i>Enforcement</i></p> <p>In July 2020, 44 people in Constantine province were arrested and charged for allegedly organising and participating in a “same-sex wedding” between two men. In September 2020 two individuals from the group were sentenced to three years in prison, and two others to one year in prison each, despite the group reportedly claiming that the event was a birthday party, and not a wedding.<sup>4</sup></p>
2	 <b>Burundi</b>	LAST AMENDED 2009	<p>While the <b>Constitution of 2005</b> prohibited same-sex marriage, there was no law against same-sex sexual activity in Burundi until the adoption of the <b>Penal Code of 2009</b>. Article 567 of Section 5 states that “anyone who has sex with a person of the same sex” is liable to a fine of 50 000 to 100 000 Francs, or a prison sentence of 3 months to 2 years.</p> <p>► <i>Enforcement</i></p> <p>In October 2017, several outlets 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 that month.<sup>5</sup></p>
3	 <b>Cameroon</b>	LAST AMENDED 2016	<p>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 347 <i>bis</i> (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. Under Section 347-1 of the <b>Penal Code (2016)</b>, anyone who “has sexual relations with a person of the same sex” may face a penalty of 6 months to 5 years in prison and/or a fine.</p> <p>► <i>Enforcement</i></p> <p>Between 2016 and 2018 there were nearly 1,800 reports of arrests, extortion, and violence against individuals based on their sexual orientations by authorities in Cameroon.<sup>6</sup> Police reportedly also practice forced anal examinations on those suspected of having had same-sex sexual conduct.<sup>7</sup> In August 2019, donors and activists joined forces to achieve the early release of a gay man who was serving a three-year sentence for homosexuality.<sup>8</sup> After being charged with homosexuality in June 2020, three men were fined and a fourth was fined and sentenced to one year in prison. Donors and activists once again worked to assist in raising funds to pay the fees.<sup>9</sup></p>

<sup>2</sup> “De facto criminalisation” means that even though there are no laws explicitly criminalising consensual same-sex sexual acts, other laws are used in practise to arrest, prosecute and convict people of diverse sexual orientations and gender identities.

<sup>3</sup> The title of the section here described translates to “Attacks against morality”, in both the French and Arabic versions of the Algerian Penal Code. However, the term “act of homosexuality” as such only appears in Article 338 of the French version of the text (“*acte[s] d’homosexualité*”). In contrast, Article 333 of the same document criminalises “acts against nature with an individual of the same sex” (“*acte[s] contre nature avec un individu du même sexe*”). In the Arabic version of the Penal Code, the literal translation for the terminology used in both Articles 333 and 338 is “an act of sexual perversion committed against/on a person of the same sex” (“من أفعال الشذوذ”) (“الجنسي ارتكب ضد شخص من نفس الجنس / فعلا من أفعال الشذوذ الجنسي على شخص من نفس جنسه”).

<sup>4</sup> “موقع جزائري: الدرك يوقف 44 متلبا بصدد إقامة مراسم حفل زفاف بين شبابين”, *Al-Quds*, 25 July 2020; Pica Ouazi, “Algérie : Deux personnes condamnés à 3 ans de prison ferme pour un « mariage gay »”, *ObservAlgerie*, 3 September 2020.




<sup>5</sup> “Two gay teens arrested for dancing together”, *GSN*, 10 October 2017; “Burundi: Crackdown on LGBTQ community”, *Mamba Online*, 13 October 2017; “Burundi announces ‘official hunt’ for LGBTI people”, *76 Crimes*, 9 November 2017.

<sup>6</sup> Acodevo et al, *Torture and Other Cruel, Inhuman and Degrading Treatment of LGBT Individuals in Cameroon* (2017), 17; Alternatives-Cameroun et al., *Violences et violations de droits à l’encontre des LGBTI au Cameroun Rapport Annuel 2017* (2018); *Id.*, *L’ignorance. Rapport annuel des Violences et violations faites aux minorités sexuelles et de genre au Cameroun* (2018).

<sup>7</sup> Human Rights Watch, *Dignity Debased: Forced Anal Examinations in Homosexuality Prosecutions* (2016), 19-23.

<sup>8</sup> “Donors, activists free gay man from Cameroon prison”, *Erasing 76 Crimes*, 6 August 2019.

<sup>9</sup> John Enama, “Homosexuality in Cameroon: 4 plead guilty and are set free”, *Erasing 76 Crimes*, 19 August 2020.

4	 <b>Chad</b> <small>LAST AMENDED</small> <b>2017</b>	<p>Since 2017, Article 354 of the <b>Penal Code (2017)</b> outlines a penalty of 3 months to 2 years and/or a fine for “sexual relations with a person of the same gender”. Before 2017, the legal situation was not particularly clear in Chad: Article 272 of the previous Criminal Code criminalised those who committed “acts against nature” with persons under 21 years of age. A bill to criminalise 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 criminalisation of “same-sex sexual relations”.<sup>10</sup></p> <p>► <b>Enforcement</b></p> <p>In July 2020 an individual reported to be a man dressed as a woman was arrested, claiming that they had been trapped by a third party and forced to wear traditionally female attire.<sup>11</sup> It is unclear from the limited information at hand whether the accused’s story is true, but it does highlight the widespread conflation of sexual orientation and gender identity/expression in many criminalising countries.</p>
5	 <b>Comoros</b> <small>LAST AMENDED</small> <b>1981</b>	<p>Article 318(3) of the Comorian <b>Penal Code (1981)</b> enforces 1 to 5 years in prison and a fine on persons found guilty of “indecent or unnatural acts with a person of the same sex”.</p> <p>In 2014, the government stated before the Human Rights Council that the political majority required to amend the law did not exist.<sup>12</sup></p>
6	 <b>Egypt</b> <small>DE FACTO<sup>2</sup></small> <small>LAST AMENDED</small> <b>1961</b>	<p>There is no law that explicitly criminalises same-sex sexual activity in Egypt. However, <b>Law No. 10/1961 on the Combating of Prostitution</b> is selectively used to target individuals of diverse sexual orientations and gender identities. The main charges brought include “habitual practice of debauchery” (Article 9-c), “publicising an invitation to induce debauchery” (Article 14), and “incitement to debauchery” (Article 1). While these articles provide for a maximum of three years imprisonment, Bedayaa, a local NGO, noted that some cases could receive up to six years.<sup>13</sup></p> <p>A draft law to increase the minimum prison sentence for these offences to seven years has advanced to the Parliament’s Legislative and Constitutional Committee.<sup>14</sup> Further, the Egyptian <i>Dar Al Iftaa</i> (Islamic advisory body to the government) issued a series of <i>fatwas</i> (legal opinions) in 2020, including one condemning homosexuality and outlining the need for medical intervention (i.e., “conversion therapies”).<sup>15</sup></p> <p>► <b>Enforcement</b></p> <p>In recent years there have been numerous cases of arrests and detention for “debauchery” or other charges widely understood to target LGBT individuals.<sup>16</sup> Law enforcement reportedly used online entrapment extensively to lure gay men, and allegedly subjected them to forced anal examinations while in custody.<sup>17</sup> Debauchery laws have also been used in other contexts, including against a TV presenter for interviewing a gay man<sup>18</sup> and activists.<sup>19</sup> In September 2020, there were reports of investigations being carried out on two women who announced that they had married each other.<sup>20</sup></p>

<sup>10</sup> Julie Makuala Di Baku and Jean Paul Enama, “An Overview of Some Central African countries” in ILGA World: Lucas Ramón Mendos, *State-Sponsored Homophobia 2019* (Geneva: ILGA, March 2019), 92.

<sup>11</sup> “Tchad: un homme suspect habillé en femme arrêté”, *Alwihda Info*, 24 July 2020.

<sup>12</sup> *Report of the Working Group on the Universal Periodic Review: Comoros*, A/HRC/26/11, 7 April 2014, para. 73.

<sup>13</sup> “Repression in Egypt: 92 LGBTIQ+ arrests last year”, *Rights Africa*, 8 March 2020.

<sup>14</sup> ILGA World: Lucas Ramón Mendos, *State Sponsored Homophobia 2019* (Geneva; ILGA, March 2019), 522.

<sup>15</sup> “المزيد على دنيا الوطن ثلاث فتاوى متتالية للإفتاء المصري عن الانتحار والشذوذ والغفران أثارت الجدل”, *Alwatan Voice*, 22 June 2020.

<sup>16</sup> “حبس شاب لممارسته الشذوذ الجنسي مقابل مبالغ مالية بالعمارة 4”, *Al-Khaleej News*, 18 October 2019; “من المحلة لـ الذي.. حبس شاب لممارسته الشذوذ الجنسي مقابل 300 دولار”, *Al-Khaleej News*, 10 November 2019; “إخلاء سبيل شاب متهم بممارسة الشذوذ بالجيزة”, *Al-Khaleej News*, 14 November 2019; “في العمارة 4.. حبس شاب لممارسته الشذوذ الجنسي مقابل مبالغ مالية 1000 جنيه”, *Al-Khaleej News*, 14 November 2019; “حبس شاب لممارسته الشذوذ الجنسي مقابل مبالغ مالية 1000 جنيه”, *Al-Khaleej News*, 30 September 2019; “إحالة المتهم بالترويج لممارسة الشذوذ الجنسي في مدينة نصر للمحاكمة”, *Youm7*, 13 October 2020.

<sup>17</sup> “Egypt: Security Forces Abuse, Torture LGBT People”, *Human Rights Watch*, 1 October 2020; “Egypt Detains Men for Alleged Sexual Orientation, Alongside Alleged Rapists”, *Africa Must Change*, 2 November 2020.

<sup>18</sup> “1 year in Egyptian prison. The crime? Interviewing a gay man”, *Erasing 76 Crimes*, 13 February 2019.

<sup>19</sup> Rik Glauert, “Egypt releases trans teen activist after four months”, *Gay Star News*, 16 July 2019; “Egyptian LGBT activist dies by suicide in Canada”, *Al Jazeera*, 15 June 2020.

<sup>20</sup> “تطور جديد بشأن إعلان فتاتين الزواج مثليا في مصر”, *Khaberni*, 8 September 2020; “تطور جديد بشأن إعلان فتاتين الزواج مثليا - صور”, *Shasha*, 10 September 2020.

7		<b>Eritrea</b>	LAST AMENDED 2015	<p>The <b>Penal Code of 1957</b> (inherited from Ethiopian rule), contained a “sexual deviations” chapter under which Article 600 established that sexual acts, or any other indecent act, with a person of the same sex was punishable with imprisonment from 10 days to 3 years.<sup>21</sup></p> <p>In 2015, the new <b>Penal Code (2015)</b> aggravated the penalties for consensual same-sex sexual acts. Under Article 310(1) (entitled “homosexual acts”). Such acts may result in a prison sentence “of not less than 5 years and not more than 7 years”.</p>
8		<b>Eswatini</b>	LAST AMENDED 1907	<p>Same-sex sexual activity is criminalised despite no law explicitly outlining this, as Section 252(1) of the <b>Constitution (2005)</b> states that Roman-Dutch Common Law, as interpreted in 1907, applies to any regulations or laws in place prior to independence in 1968 and not subsequently overturned. As such, “sodomy” remains a crime.</p> <p>In 2005, it was reported that the Government had plans to include prohibitions of all male homosexual acts and lesbian acts in its revision of the Sexual Offences laws with proposed penalties of imprisonment for a minimum period of two years.<sup>22</sup></p>
9		<b>Ethiopia</b>	LAST AMENDED 2004	<p>The <b>Penal Code of 1957</b> contained a “sexual deviations” chapter under which Article 600 established that sexual acts, or any other indecent act, with a person of the same sex was punishable with imprisonment from 10 days to 3 years.<sup>23</sup></p> <p>In the new <b>Penal Code (2004)</b> same-sex sexual activity is grounds for imprisonment under Article 629, with Article 630 noting that the sentence should be not less than one year. “Making a profession” of such acts aggravates the penalty to up to 10 years.</p>
10		<b>Gambia</b>	LAST AMENDED 2014	<p>Gambia has criminalised same-sex sexual activity since the implementation of the colonial <b>Criminal Code (1934)</b>, instituting prison sentences of up to 14 years for anyone with “carnal knowledge of any person against the order of nature” under Chapter XV Section 143 (1).</p> <p>The <b>Criminal Code (Amendment) Act (2005)</b> part 4(c) clarified the meaning of “carnal knowledge against the order of nature” to include anal and oral sex, the use of “any object or thing” to “simulate sex”, and “committing any other homosexual act with the person”. Article 147(2) of the 2005 version of the Criminal Code limits women to 5-year sentences for “gross indecency”. The law was expanded again with the <b>Criminal Code (Amendment) Act (2014)</b>. Part 4 of the Act introduces the category of “aggravated homosexuality”, laying out factors such as the spread of HIV and being a “serial offender” as grounds for life-imprisonment.</p> <p>► <i>Enforcement</i></p> <p>In 2019, media outlets reported that up to 16 Gambians were arrested for “alleged homosexuality”, and while most were released, a small number have faced incarceration into 2020 and alleged torture, before being acquitted.<sup>24</sup></p> <p>Further, a Senegalese national accused of being gay was arrested in June 2020. Due to the postponement of trial dates and limited reporting on the matter, the outcome of this case is unknown at the time of writing.<sup>25</sup></p> <p>In 2020, the government is also reported to have issued a statement indicating that “the decriminalization of homosexuality is not on the agenda in The Gambia”.<sup>26</sup></p>

<sup>21</sup> ILGA World: Daniel Ottosson, *State-sponsored Homophobia: A world survey of laws prohibiting same sex activity between consenting adults* (2007), 12.

<sup>22</sup> ILGA World: Eddie Bruce-Jones Lucas Paoli Itaborahy, *State-sponsored Homophobia: A world survey of laws prohibiting same sex activity between consenting adults* (2012), 36.

<sup>23</sup> ILGA World: Daniel Ottosson, *State-sponsored Homophobia: A world survey of laws prohibiting same sex activity between consenting adults* (2007), 12.

<sup>24</sup> J. Lester Feder, “This Gay Man Survived Torture In One Of Africa’s Most Horrific Dictatorships”, *Freedom Newspaper*, 19 August 2020.

<sup>25</sup> Ali Jaw, “Court Pushes Trial of Alleged Gay To November 11”, *The Voice*, 5 November 2020.

<sup>26</sup> “La dépénalisation de l’homosexualité n’est pas à l’ordre du jour en Gambie”, *Emedia.sn*, 24 June 2020; “Banjul dément vouloir décriminaliser l’homosexualité après une vive polémique en Gambie”, *Le Monde*, 24 June 2020.

11		Ghana	LAST AMENDED 2003	Section 104(1)(a) of the <b>Penal Code</b> (1960), as amended in 2003, prohibits “unnatural carnal knowledge” (defined as “sexual intercourse with a person in an unnatural manner”) of another person of sixteen years or over with his consent. It is considered a misdemeanour and carries a maximum penalty of 3 years’ imprisonment. Additionally, Section 278 criminalises acts of “gross Indecency” in public.
				▶ <i>Enforcement</i>
				Several arrests of adults for consensual same-sex sexual acts have been documented in recent years. Detentions oftentimes involve psychological abuse, damaging media exposure and medical examinations. <sup>27</sup> Local police are reportedly known to entrap and lure LGBT individuals (predominantly gay men) through social media. <sup>28</sup> In September 2020, local media indicated that 11 lesbian women were arrested in the city of Aflao, in the Volta region, after a video of two of them reportedly engaging in sexual acts became known. <sup>29</sup>
12		Guinea	LAST AMENDED 2016	Per Article 274 of the <b>Penal Code</b> (2016), any “indecent or unnatural acts committed with an individual of the same sex” is punishable by a prison sentence of 6 months to 3 years and/or a fine of 500 000 to 1 000 000 Francs. Additionally, Article 275 criminalises public outrages of modesty with up to 2 years’ imprisonment and a fine. <sup>30</sup>
				▶ <i>Enforcement</i>
				Several arrests for alleged “homosexuality” and for “promoting homosexuality” have taken place in the country over the few past years, especially in the Conakry area. <sup>31</sup>
13		Kenya	LAST AMENDED 2003	The <b>Penal Code</b> (1930), as amended by <b>Criminal Law (Amendment) Act</b> (2003), prescribes under Section 163 a prison sentence of up to 14 years for consensual “carnal knowledge of any person against the order of nature”. Section 165 also prescribes a 5-year sentence for men found guilty of “gross indecency”.
				▶ <i>Enforcement</i>
				In 2015 during the second UPR cycle, Kenya claimed that “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”. <sup>32</sup>
				Despite this, there are several reports of anal examinations being carried out in order to find “proof” of proscribed same-sex sexual conduct, while 2019 saw the arrest of 3 suspected gay men in September. <sup>33</sup>
				In May 2019, Deputy County Commissioner in Kiambu (a county in the vicinity of Nairobi) announced that authorities were “investigating claims of an increase in homosexuals” (sic) and vowed to arrest and prosecute those involved”. <sup>34</sup>
				In August 2020, a further 2 men suspected of being gay were assaulted by their neighbours before being taken into custody by police. <sup>35</sup>

<sup>27</sup> “2 arrested in Ghana; sensational news coverage”, *76crimes*, 30 March 2017; “2 Arrested for Sodomy”, *Graphic Online*, 2 February 2018.

<sup>28</sup> “Ghana: Police make rare arrests in anti-gay blackmail case”, *76 Crimes*, 6 April 2017; Kwasi Gyamfi Asiedu, “With blackmail list, gay men in Ghana fight comen posing as lovers”, *Openly*, 9 June 2020.

<sup>29</sup> “Eleven lesbians arrested at Aflao in the Volta Region” *Ghana Vanguard*, 26 September 2020; “Aflao: Paramount Chief Hunt Lesbians, Hands Over 11 To Police, Others Bolt”, *Modern Ghana*, 26 September 2020.

<sup>30</sup> The previous Penal Code (1998) contained these provisions under Articles 325 and 326.




<sup>31</sup> “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 Guinée*, 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.

<sup>32</sup> *Report of the Working Group on the Universal Periodic Review: Kenya*, A/HRC/29/10, 26 March 2015, para. 83.

<sup>33</sup> “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; John Wanjohi, “3 Kenyan Men Arrested for Engaging in Gay-Sex”, *Mwakilishi*, 30 September 2019.

<sup>34</sup> John Wanjohi, “Homosexuals in Juja Put on Notice Following Public Uproar”, *Mwakilishi*, 15 April 2019.

<sup>35</sup> John Wanjohi, “Kenya Police Arrest Two Suspected Kenyan Gay Lovers”, *Mwakilishi*, 21 August 2020.

14		Liberia	LAST AMENDED 1978	<p>Section 14.74 of the <b>Penal Code</b> (1978) lists “voluntary sodomy” as a “first degree misdemeanour”. This may result in a prison sentence of no more than one year, or a fine.</p> <p>In 2012, a bill that would have amended the <b>Domestic Relations Law</b> (1973) to criminalise the celebration of same-sex marriages as a second-degree felony was approved by the Senate but failed to be enacted.<sup>36</sup></p> <p>More recently, in March 2020, a proposal to aggravate the penalties for “voluntary sodomy” (by making it a second-degree felony) was included in a set of proposed amendments aimed primarily at “involuntary sodomy”.<sup>37</sup> At the time of publication, the result of this proposal could not be confirmed.</p> <p>▶ <i>Enforcement</i></p> <p>In 2017, local organisations indicated that numerous individuals accused or suspected of sodomy had been arrested in recent years, oftentimes subjected to prolonged detentions without trial, including the case of a man who was allegedly deprived of liberty without trial from 2010 to 2013 after he was “outed” in the media.<sup>38</sup></p>
15		Libya	LAST AMENDED 1976	<p>Article 407(4) of the <b>Penal Code</b> (1953), as amended in 1976, states that consensual “illicit sex” carries a potential punishment of up to 5 years. Further, Article 408(4) states that whoever “disgraces the honour” of a person with their consent shall be punished along with their partner with an unstated period of detention.</p> <p>▶ <i>Enforcement</i></p> <p>At the time of writing, various regions within Libya are not under the effective control of the central government, and amid the ongoing conflict the implementation of legal frameworks may differ depending on local contexts. In 2018, Human Rights Watch reported on armed groups arresting people because of their sexual orientation.<sup>39</sup></p> <p>Arrests and disappearances by Islamic police were documented in 2015 in Derna, a city then controlled by ISIS.<sup>40</sup> In 2015 three men were reportedly executed for homosexuality<sup>41</sup> and a 26-year-old man, Yousef Ghaithy, who had been jailed in 2008 for 3 years on sodomy charges, was reportedly executed: thrown from the edge of a mountain.<sup>42</sup></p> <p>In 2012, twelve men faced mutilation and execution after being captured by an extremist Libyan Islamist militia in Ain Zara, a suburb of Tripoli.<sup>43</sup></p>
16		Malawi	LAST AMENDED 2011	<p>Section 153 of the <b>Penal Code</b> states that anyone who has had “carnal knowledge of any person against the order of nature” is guilty of a felony and is liable to be imprisoned for up to 14 years. Additionally, Section 156 criminalises “indecent practices between males”, whether in public or private, imposing a penalty of imprisonment for five years and/or corporal punishment.</p> <p>In December 2010, the Parliament passed a bill amending the Penal Code (effective in January 2011) which introduced Section 137A to criminalise “indecent practices between females”, imposing a penalty of imprisonment of five years.</p> <p>▶ <i>Enforcement</i></p> <p>A 2018 Human Rights Watch study found that LGBT people routinely face police abuse and arbitrary detention.<sup>44</sup></p>

<sup>36</sup> J. Burgess Carter, “Senate Passes ‘No Same Sex Marriage’ Bill”, *Daily Observer*, 21 July 2012.

<sup>37</sup> Mark N. Mengonfia, “Sodomy Should Not Be Bailable”, *New Republic Liberia*, 19 March 2020.

<sup>38</sup> Stop AIDS in Liberia et al., *Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Liberia* (2017), 3.

<sup>39</sup> Human Rights Watch, *World Report 2019 (events of 2018)* (2019), 362.

<sup>40</sup> Graeme Reid, “Islamic State’s War on Gays”, *Human Rights Watch*, 8 June 2015.

<sup>41</sup> Reda Fhelboom, “Less than human”, *Development and Cooperation*, 22 June 2015; “Three men executed by IS for homosexuality in Libya”, *Malta Today*, 1 May 2015.

<sup>42</sup> Graeme Reid, “Islamic State’s War on Gays”, *Human Rights Watch*, 8 June 2015.

<sup>43</sup> “Twelve men to be executed by Libyan militia for allegedly being gay”, *Gay Star News*, 25 November 2012.

<sup>44</sup> Human Rights Watch, “Let Posterity Judge”: *Violence and Discrimination against LGBT people in Malawi* (2018).

In 2012 the government announced a moratorium on the enforcement of laws criminalising consensual same-sex sexual acts pending a parliamentary debate on whether to decriminalise.<sup>45</sup> Notably, the Episcopal Conference of Malawi issued a pastoral letter stating that they found this decision to be “very unfortunate” and condemned the moratorium as an “act of betrayal”.<sup>46</sup>

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.<sup>47</sup> 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.<sup>48</sup>

In one of Southern Africa’s most high-profile cases, a transgender woman by the name of Tiwonge Chimbalanga, seen by local media and authorities as a “gay man”, was arrested in 2010 for participating in a traditional engagement ceremony with her would-be husband. The pair was sentenced to 14 years’ hard labour as punishment, though international outcry and efforts by activists secured their release. Chimbalanga was eventually resettled in South Africa as an asylum seeker.<sup>49</sup>

## 17 Mauritania

LAST  
AMENDED  
1983

Same-sex sexual activity is illegal under the Sharia-based **Criminal Code** (1983), with men being liable to receive the death penalty (under Article 308) and women being subject to a “correctional sentence of 3 months to 2 years’ imprisonment and a fine” (under Article 306).

While the death penalty remains part of the country’s legislation, Mauritanian officials have maintained at the United Nations that a *de facto* moratorium on executions has been in place since 1987.<sup>50</sup>

### ► Enforcement

In January 2020, 10 men were arrested for allegedly conducting a “same-sex marriage ceremony”. Police later determined that the gathering was not a wedding but a birthday party but stated that participants had confessed to being “homosexuals” and accused them of “imitating women”. On 4 March 2020 the Nouakchott Court of Appeal confirmed that 8 of the 10 had been sentenced to 2 years in prison but reduced this to 6 months on the condition that the suspended sentence would be reinstated should any in the group “reoffend” within 5 years.<sup>51</sup>

## 18 Mauritius

LAST  
AMENDED  
1838

The **Criminal Code** (1838) Article 250 (1) states that any person found guilty of “sodomy or bestiality” shall be liable to up to 5 years’ “penal servitude”.

In 2007, the Government introduced the **Sexual Offences Bill**, which would have deleted 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.<sup>52</sup>

In June 2020, the Supreme Court of Mauritius authorised four young activists to challenge the constitutionality of Section 250(1) of the penal code.<sup>53</sup>

<sup>45</sup> Godfrey Mapondera and David Smith, “Malawi suspends anti-gay laws as MPs debate repeal”, *The Guardian*, 5 November 2012.

<sup>46</sup> Robert Shine, “Jail LGBT People, Say Malawi’s Bishops in New Pastoral Letter on Mercy” *New Ways Ministry*, 28 March 2016.

<sup>47</sup> “Malawi ‘suspends’ anti-homosexual laws”, *BBC News*, 21 December 2015.

<sup>48</sup> Collins Mtika, “Malawi court rejects moratorium on gays: Police can arrest homosexuals”, *Nysasa Times*, 10 February 2016.

<sup>49</sup> Mark Gevisser, “Love in exile: one woman’s journey from Malawi to South Africa”, *The Guardian*, 27 November 2014.

<sup>50</sup> Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant Initial reports of States parties: Mauritania*, CCPR/C/MRT/11, 3 February 2012.

<sup>51</sup> “Mauritania: Gay couple arrested in Nouakchott after marriage”, *The North Africa Post*, 24 January 2020; “Juzgarán a diez mauritanos por participar en un “matrimonio” homosexual”, *La Vanguardia*, 27 January 2020; “10 men jailed in Mauritania over ‘gay party’ video”, *News24*, 28 January 2020; Emma Powys Maurice “Ten men have been thrown behind bars to await ‘judgement’ for a secret gay wedding in African country of Mauritania”, *Pink News*, 31 January 2020; Emma Powys Maurice “Eight men sentenced to two years in prison for ‘imitating women’ at a birthday party in Mauritania”, *Pink News*, 8 February 2020; “Mauritania: Prison Terms for Men Celebrating Birthday”, *Human Rights Watch*, 4 March 2020.

<sup>52</sup> *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.

<sup>53</sup> “Code pénal : La communauté LGBT obtient l’autorisation pour une plainte constitutionnelle” *Le Mauricien*, 17 June 2020.



19		<b>Morocco</b>	LAST AMENDED <b>1963</b>	<p>“Lewd or unnatural acts”, can result in a prison sentence of 6 months to 3 years and/or a fine under Article 489 of the <b>Penal Code</b> (1963). Additionally, Article 483 criminalises acts of public indecency, with imprisonment of one month to two years and a fine.</p> <p>► <b>Enforcement</b></p> <p>In recent years there have been numerous reports of arrests, prosecutions and convictions of persons suspected of participating in same-sex sexual activity,<sup>54</sup> including against tourists visiting the country.<sup>55</sup> 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.<sup>56</sup></p> <p>Official records published by the government of Morocco showed that a striking number—170 individuals—were charged with “homosexuality” in 2018.<sup>57</sup></p>
20		<b>Namibia</b>	LAST AMENDED <b>2004</b>	<p>No codified legislation in Namibia directly criminalises same-sex sexual activity, as such criminalisation is derived from interpretations of Roman-Dutch Common Law. However, the <b>Criminal Procedure Act 25</b> (2004) outlines in Article 299 the need for verifiable evidence that an accused person committed the “offence of sodomy or attempted sodomy”, providing clear evidence of <i>de jure</i> criminalisation.</p> <p>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?”<sup>58</sup></p>
21		<b>Nigeria</b>	LAST AMENDED <b>2014</b> (FEDERAL)  <b>2017</b> (KADUNA)	<p>Nigerian criminal law is built of an array of diverse legal frameworks.</p> <p>The <b>Criminal Code Act</b> (2004) contains provisions criminalising consensual same-sex sexual acts (framed as “carnal knowledge of any person against the order of nature”) imposing a penalty of imprisonment for 14 years. Most of the Southern States use the provisions of this Code as their state law, including those aspects that deal with sexuality.<sup>59</sup></p> <p>In parallel, the <b>Penal Code (Northern States) Federal Provisions Act</b> (1959) (usually referred to as the “Penal Code”) applies as both federal and state law in the states that succeeded the colonial Northern Region.<sup>60</sup> Section 284 of the Penal Code criminalises consensual same-sex sexual acts (“unnatural offences”) with imprisonment for up to 14 years and a fine.<sup>61</sup></p> <p>Additionally, 12 Northern states (Bauchi, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Niger, Sokoto, Yobe and Zamfara) have adopted Sharia Penal Codes, which to varying degrees and contexts prescribe the death penalty for same-sex sexual activity.<sup>62</sup></p> <p>Furthermore, in December 2013 the <b>Same-Sex Marriage (Prohibition) Act</b> (2013) was passed (effective January 2014). Among the many restrictions imposed by this law—including the explicit prohibition to register or operate “gay clubs, societies and organisations—Section 4 and 5 impose a penalty of 10 years of imprisonment to anyone who “directly or indirectly makes public show of same sex amorous relationship”.</p>

<sup>54</sup> “Prison for victim of Morocco attack, not for attackers”, *7crimes Website*, 4 April 2016; “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. “Au Maroc, une journaliste arrêtée pour “avortement illégal””, *BBC Africa*, 8 September 2019; Human Dignity Trust (*website*), “Morocco”, 2019.

<sup>55</sup> “Morocco releases British tourist jailed for ‘homosexual acts’” *The Guardian*, 7 October 2014.

<sup>56</sup> Human Rights Watch, *Audacity in Adversity. LGBT Activism in the Middle East and North Africa* (2018), 22.

<sup>57</sup> “2018-النائب العام حول تنفيذ السياسة الجنائية وسير النيابة العامة لسنة 2018”, p. 261, 2018 (Translation: “Report of the Chief Public Prosecutor on the implementation of the criminal policy and functioning of the Public Prosecution for the year 2018”, p.261, 2018); “Au Maroc, 3 000 personnes poursuivies pour adultère et 170 pour homosexualité en 2018”, *Le Desk*, 26 June 2019;

<sup>58</sup> “Let gays be – Walters”, *The Namibian*, 23 August 2016.

<sup>59</sup> Ayodele Sogunro, *Bad Laws: A compendium on laws discriminating against persons in Nigeria based on SOGIE* (TIERS, 2017), 6.

<sup>60</sup> The former region of Northern Nigeria encompassed the territory now occupied by the states of Adamawa, Bauchi, Benue, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Nasarawa, Niger, Plateau, Sokoto, Taraba, Yobe, and Zamfara.

<sup>61</sup> Ayodele Sogunro, *Bad Laws: A compendium on laws discriminating against persons in Nigeria based on SOGIE* (TIERS, 2017), 9.

<sup>62</sup> For further details, see dossier on the death penalty in this report.

In 2017, in parallel to the Sharia Penal Code, the state of Kaduna enacted a **Penal Code (2017)** that punishes “unnatural offences” under Section 259 in the following terms: “Whoever has sexual intercourse against the order of nature with any man, woman or animal such as sodomy, lesbianism, or bestiality shall be punished with imprisonment for a term of not less than 21 years and shall also be liable to fine of not less than 200’000 Naira”.

► **Enforcement**<sup>63</sup>

In recent years there have been numerous cases of mass-arrests, raids, violence and extortion by authorities across the State against LGBT individuals and groups.<sup>64</sup> In November 2019, Nigerian police arrested two women rumoured to be in a relationship in the city of Edo and declared a “war” on lesbians.<sup>65</sup> That same year, authorities prosecuted 47 men after a police raid on a hotel in Lagos.<sup>66</sup> The case was delayed several times into 2020 by the court for procedural reasons.<sup>67</sup>

In 2020, local media outlets reported that the Kano State Hisbah Corps arrested at least 15 young men.<sup>68</sup> Additionally, the Jigawa State Hisbah also arrested 2 men, with the Nigeria Security and Civil Defence Corps (NSCDC) in the same state claiming to have seen a high conviction rate in 2020 for a range of crimes, including “sodomy”.<sup>69</sup> These cases are not an exhaustive list of prosecutions in Nigeria, with multiple other incidents making local headlines in 2020 alone.<sup>70</sup>

According to a recent study, since the enactment of the Same-Sex Marriage (Prohibition) Act, violence against LGBTIQ+ Nigerians has risen by 214%, with the police being among the main perpetrators.<sup>71</sup>

22  **Senegal**

LAST  
AMENDED  
**1965**

Article 319 of the **Penal Code (1965)** prescribes a penalty of imprisonment from 1 to 5 years and/or a fine for anyone who commits an “act against nature” with persons of the same gender.

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.<sup>72</sup>

► **Enforcement**

In 2018 a man was sentenced to six months in prison after a video of him having sex with another man went viral online. The woman who filmed the pair without their knowledge, and then shared the video, was also sentenced to 2 years (3 months effective) for distribution of immoral content.<sup>73</sup>

<sup>63</sup> Please refer to the special dossier on the death penalty for instances of enforcement of the capital punishment in the Northern States.

<sup>64</sup> “Nigerian man charged with running a gay bar - faces 10 years in jail”, *Mamba Online*, 13 March 2017; “Nigeria: Police nabs man in Asaba on accounts of homosexuality”, *NoStringsNG*, 11 July 2017; “53 arrested in Nigeria for celebrating gay wedding: Police”, *AP News*, 19 April 2017; “Police arrest 42 homosexuals in Lagos hotel”, *Sunday Punch*, 30 July 2017; “Report: Muslim police arrest 70 Nigerian youths for ‘gay party’”, *76 Crimes*, 2 September 2017; “Nigeria: Traditional chiefs curse gays, help anti-gay police”, *76 Crimes*, 30 January 2018; “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’”, *Mamba Online*, 21 December 2018; “Blackmailers force Nigerian student to come out to family”, *NoStringsNG*, 28 November 2018; “It messed me up big time’: Attacks and taunts against gay Nigerian youth”, *76 Crimes*, 23 October 2019; Vincent Desmond, “Nigerian Police Are Extorting People Who ‘Look Gay’”, *Vice*, 20 August 2020.

<sup>65</sup> Ifeoma Okereke, “Nigerian Police Declares ‘War’ On Lesbians, Arrest Two in Edo”, *Daily Time TV*, 10 November 2019.

<sup>66</sup> Jason Burke, “First men go on trial under Nigeria’s anti-homosexuality laws”, *The Guardian*, 11 December 2019; “Witness says no women arrested in case of 47 Nigerian men charged under homosexuality law”, *Reuters*, 3 March 2020.

<sup>67</sup> “Lagos homosexuality trial suffers more delays”, *Vanguard*, 03 March 2020.

<sup>68</sup> Annie Nwosu, “Kano: Hisbah arrests 15 teenagers over alleged immoral acts”, *Daily Post*, 27 September 2020.

<sup>69</sup> Rayyan Alhassan, “NSCDC secures conviction of 67 suspects for theft, sodomy, trespass, others in Jigawa”, *Daily Nigerian*, 16 July 2020; “Hisbah arrests 2 in Jigawa over alleged homosexual act”, *Pulse Nigeria*, 2 September 2020.

<sup>70</sup> Imelda Osayande, “Court acquits man, 52, of attempted homosexuality”, *NNN*, 5 June 2020; Temitope Musowo, “Lady, 31, on the run after being caught in lesbianism”, *Blueprint*, 12 July 2020; “Ofoma Emmanuel on the run after being caught in a gay act”, *Pulse Nigeria*, 17 July 2020; Nicole Zaramella, “La polizia mi ha rapito, pestato e derubato perché sono gay”, *Il Grande Colibri*, 6 August 2020; Mike Daemon, “Gay Nigerian forced to sign affidavit renouncing homosexuality”, *Rights Africa*, 22 September 2020.

<sup>71</sup> Sulaimon Abiodun Olawale Giwa et al., “Police violence targeting LGBTIQ+ people in Nigeria: Advancing solutions for a 21st century challenge” *Greenwich Social Work Review* 1, No 1 (2020), 36-49.

<sup>72</sup> “Macky Sall: ‘jamais, sous mon magistère, l’homosexualité ne sera légalisée sur le sol sénégalais” (in French), *Senego*, 1 March 2016.

<sup>73</sup> Sources with ILGA World. Please contact us in case you need more information.

			<p>LGBTI group Arc-en-Ciel Senegal pointed out that the “hunt” for sexual minorities in the country had increased considerably in late 2018.<sup>74</sup></p> <p>In the years since, that “hunt” seems not to have abated, with ILGA World noting reports of at least 36 suspected gay men arrested in 2020 alone.<sup>75</sup></p> <p>Sources show that media outlets have also contributed to stirring hostility against arrested people by publishing their pictures and personal information upon release.<sup>76</sup></p>
23	 <b>Sierra Leone</b>	LAST AMENDED <b>1861</b>	<p>The British colonial <b>Offences Against the Person Act</b> (1861) remains in force in Sierra Leone. Under Section 61 of this legislation, any man found guilty of “buggery” is liable to imprisonment of 10 years to life.</p> <p>► <b>Enforcement</b></p> <p>In 2019, two men were reported to the police by their family members in Sierra Leone, after being caught having sex in their house. The couple was able to escape and managed to leave the country before they were arrested. As of November 2020, their location is uncertain.<sup>77</sup></p>
24	 <b>Somalia</b>	LAST AMENDED <b>1964</b>	<p>Article 409 of the <b>Penal Code</b> (1964) stipulates that whoever has intercourse with a person of the same sex is liable to be imprisoned for up to 3 years.</p> <p>However, the <b>Provisional Constitution of Somalia</b> (2012) affirmed the primacy of Sharia law and as such the possibility exists for Sharia courts to sentence individuals found guilty of same-sex sexual activity to death.</p> <p>► <b>Enforcement</b><sup>78</sup></p> <p>At the time of writing, various regions within Somalia are not under the effective control of the central government, and amid the ongoing conflict the implementation of legal frameworks may differ depending on local contexts. Numerous reports exist of Al-Shabaab (a militant group allied to al-Qaeda) conducting extrajudicial killings within Somalia.<sup>79</sup></p> <p>A 2016 report indicated that Al-Shabaab enforces a strict interpretation of Sharia law, severely endangering the livelihoods of LGBTI people in areas under its control. Those ‘found guilty’ of engaging in consensual, same-sex sexual relations can be executed and are often imprisoned under conditions that contravene international law.<sup>80</sup></p>
25	 <b>South Sudan</b>	LAST AMENDED <b>2009</b>	<p>Article 248 of the <b>Penal Code</b> (2008) prohibits “carnal intercourse against the order of nature” and prescribes a sentence of imprisonment of up to 10 years and/or a fine. This legislation predates the country’s 2011 independence, and prior to its implementation same-sex sexual activity was criminalised under existing laws in Sudan.</p> <p>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.”<sup>81</sup></p>

<sup>74</sup> *Arc-en-Ciel Facebook Page*, 18 September 2018.

<sup>75</sup> “Senegal: Activists seek funds to rescue 10 men arrested by religious police,” *RightsAfrica*, 24 September 2020; Romaric Deguenon, “Sénégal – Corniche Ouest: deux hommes surpris en pleins ébats sexuels,” *Benin Web TV*, 27 October 2020; “Senegal: Prison for 7 men arrested at supposed ‘gay wedding,’” *RightsAfrica*, 8 November 2020.

<sup>76</sup> “11 Arrested for Being Gay in Senegal—Is President Obama to Blame?,” *The Daily Beast*, 30 December 2015; “Sénégal: ‘mariage gay’ à Kaolack ou cabale homophobe?,” *Afrique Jeune*, 25 January 2016.

<sup>77</sup> Sources with ILGA World. Please contact us in case you need more information.

<sup>78</sup> Please refer to the special dossier on the death penalty for instances of enforcement of the capital punishment.

<sup>79</sup> Meredith Bennett-Smith, “Gay Teen Allegedly Stoned to Death In Somalia For Sodomy,” *Huffington Post*, 21 March 2013; “5 and 20-year-old youths executed in Somalia for homosexuality,” *Mamba Online*, 11 January 2017.

<sup>80</sup> Benjamin Christman, *Report on the Treatment of Gay Persons in Somalia*, Law Centre NI, 3 February 2016, p.6. See also: “Report: Somalia too risky for LGBT people”, *76 Crimes*, 16 February 2016.

<sup>81</sup> 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.

26		Sudan	LAST AMENDED 2020	<p>Sudan was previously one of the countries which maintained the death penalty for same-sex sexual activity. <a href="#">Law No. 12 of 2020</a>, published in the Official Gazette, amended several sections of Article 148 to remove execution and flogging as punishments for such actions. However, persons found guilty of “sodomy” for a second time may be liable to be imprisoned for up to 7 years and to life imprisonment upon third conviction.</p> <p>Furthermore, Section 151 punishes acts of “gross indecency” with up to forty lashes and imprisonment for up to one year or a fine. Section 152 punishes acts of sexual nature that cause discomfort to public sentiment or public modesty with imprisonment of up to six months and/or a fine.</p> <p>► <i>Enforcement</i></p> <p>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.<sup>82</sup> 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 the previous year.<sup>83</sup></p> <p>In July 2020, the same month as the repeal of the death penalty and flogging as punishments for same-sex sexual activity, it was reported that two men were sentenced to 40 lashes and a fine.<sup>84</sup></p>
27		Tanzania	LAST AMENDED 1998	<p>Section 154 of Tanzania’s <a href="#">Penal Code</a> (1998) prohibits “carnal knowledge of any person against the order of nature”, with a prescribed penalty of 30 years to life imprisonment. Sections 138a and 157 also prescribe 5 years imprisonment for “gross indecency”.</p> <p>► <i>Enforcement</i></p> <p>There have been numerous cases in recent years—most notably in Zanzibar and Dar es Salaam, of authorities calling on communities to “out” “homosexuals” and conducting violent raids to arrest suspected LGBT individuals—subjecting them to anal examinations while in detention.<sup>85</sup></p> <p>Police raids have taken place at meetings and workshops, where arrests of participants, and the destruction and confiscation of property, was also reported.<sup>86</sup> In several cases such raids have been conducted against groups and individuals working to curb the spread of HIV/AIDS, as authorities accuse these groups (which include community healthcare programmes and human rights lawyers) of “promoting homosexuality”.<sup>87</sup></p>
28		Togo	LAST AMENDED 2015	<p>Section 2, Article 88 of the <a href="#">Penal Code</a> (1980) prescribes imprisonment of 1 to 3 years and a fine to anyone who commits an “indecent act or act against nature” with a person of the same sex. More recently criminalisation of same-sex sexual activity has been moved to Section 3 (Outrages against morals), Article 392 under the <a href="#">Penal Code Amendment Law</a> (2015).</p> <p>► <i>Enforcement</i></p> <p>In recent years, several arrests have been documented, with reports including instances of police harassment, blackmail and arbitrary detention.<sup>88</sup></p>

<sup>82</sup> Reem Abbas Shawkat, “Quietly, Sudan’s underground gay movement grows online”, *The Niles*, 21 September 2011.

<sup>83</sup> “Sudanese ‘trousers woman’ jailed”, *BBC News*, 7 September 2009.

<sup>84</sup> “تنفيذ عقوبة جلد لشابين مثليين ضبطا أثناء ممارسة الفاحشة في الجزيرة”, *Alrakoba*, 28 July 2020.

<sup>85</sup> “Police arrest woman in Tanzania over video of same-sex kiss”, *Reuters*, 2 December 2017; “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; “Tanzania: 10 men arrested in Zanzibar for ‘being gay’”, *Amnesty International*, 6 November 2018; “Tanzania: men arrested for ‘gay marriage’ face anal examinations”, *The Guardian*, 8 November 2018; “Men suspected of ‘being gay’ in Zanzibar released on bail - police, lawyer”, *Openly*, 8 November 2018.

<sup>86</sup> Sara Jerving, “Repressive laws in Tanzania stifle the work of NGOs”, *Devex*, 28 October 2019.

<sup>87</sup> Human Rights Watch, *World Report 2018* (2017), 544-545; “Tanzania: 20 arrested in Zanzibar for ‘homosexuality’”, *Africa News*, 16 September 2017; “Zanzibar arrests 20 over homosexuality”, *BBC*, 16 September 2017; “Tanzania: Statement on recent arrests”, *Equal Eyes*, 23 September 2017; “Facing Prosecution for Challenging HIV Policies in Tanzania”, *Human Rights Watch*, 20 October 2017; “Tanzania suspends some HIV programmes for gay men, says health minister”, *Reuters*, 31 October 2018.

<sup>88</sup> US State Department, *Togo Human Rights Report* (2012), 17; 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; Amnesty International, *Togo Shadow Report to the African Commission on Human and Peoples’ Rights* (2018), 18-19.

29  TunisiaLAST  
AMENDED  
2010

Article 230 of the **Penal Code** (2010) prohibits “sodomy” and prescribes the penalty of imprisonment of up to 3 years. Additionally, under Article 226, anyone found guilty of deliberately and publicly promoting indecency is liable to six months’ imprisonment and a fine.

► **Enforcement**

Convictions on the grounds of sodomy in Tunisia have reportedly been on the rise,<sup>89</sup> with multiple cases in recent years of LGBT individuals being arrested, jailed, and made to undergo anal examinations to find “proof” of same-sex sexual conduct.<sup>90</sup>

In early 2019, media outlets reported that a 23-year-old Tunisian man who had been raped was subjected to a judicial forced anal examination upon reporting the crime. He was eventually sentenced to six months in prison on charges of “homosexual conduct”.<sup>91</sup>

In 2020 a judge handed down a prison sentence to two men suspected of being gay for their refusal to submit to an anal examination, ruling that their refusal constituted “sufficient evidence” that the “crime” of same-sex sexual activity had been committed.<sup>92</sup>

30  UgandaLAST  
AMENDED  
2000

Section 145 of the **Penal Code** (1930/50), as amended in 2000, prescribes life imprisonment for anyone who “has carnal knowledge of any person against the order of nature”. It has remained on the books in all subsequent versions of the **Penal Code**.

The 2013 “Anti Homosexuality Act”, which initially would have prescribed the death penalty for certain forms of same-sex sexual activity, was revised to prescribe life imprisonment. The following year, however, the Constitutional Court annulled the law on “procedural grounds”.<sup>93</sup>

In 2019, Minister of Ethics and Integrity, Simon Lokodo, reportedly declared that there were plans to reintroduce the bill that would impose the death penalty for “aggravated homosexuality”,<sup>94</sup> as several MPs gave favourable opinions, expressing the need for such law.<sup>95</sup> However, the plans to reinstate the bill were denied by the government.<sup>96</sup>

► **Enforcement**

There have been several cases of detentions and forced anal examinations by police in the country,<sup>97</sup> with a 2019 report by the Human Rights Awareness and Promotion Forum identifying Ugandan police as the single biggest violator of human rights for key populations in the country.<sup>98</sup>

<sup>89</sup> Alessandro Bovo, “Tunisia: tra abusi e test anali, condanne per sodomia aumentate del 60%”, *Gay.it*, 10 October 2019.

<sup>90</sup> “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; “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; “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; “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; “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.

<sup>91</sup> “Sfax: Agressé et violé, un homo se fait arreter pour... homosexualité!” *Kapitalis*, 30 January 2019; “Tunisia rape victim jailed for homosexuality”, *Middle East Monitor*, 12 February 2019; “Tunisian victim jailed for sodomy raises alarm on systemic homophobia” *The New Arab*, 7 March 2019.

<sup>92</sup> “رفضاً الخضوع للفحص الشرجي: الحكم بسجن مثليين جنسيا لمدة سنتين في الكاف... وجمعية «شمس» تعلق”, *Tures*, 12 July 2020; Bruno Bimbi, “Túnez continúa torturando y encarcelando a los gays,” *TN*, 14 August 2020.

<sup>93</sup> “Uganda court annuls anti-homosexuality law”, *BBC*, 1 August 2014.



<sup>94</sup> Nita Bhalla, “Uganda plans bill imposing death penalty for gay sex”, *Thomson Reuters Foundation News*, 10 October 2019; “MP James Nsaba Buturo plans to retable anti-homosexuality bill next week”, *NTV Uganda YouTube Channel*, 3 August 2019; “Government Urged To Publicly Declare That They Are Not Pursuing Anti Homosexuality Bill”, *Sexual Minorities Uganda*, 16 October 2019. “Why government is reintroducing anti-gay law”, *The Daily Monitor (Uganda)*, 3 October 2019; “Uganda introduces ‘Kill the Gays’ bill”, *DW*, 11 October 2019; “Uganda: Parliament must reject bill imposing death penalty for gay sex”, *Amnesty International*, 11 October 2019.

<sup>95</sup> “Ugandan MPs press for death penalty for homosexual acts”, *The Guardian*, 15 October 2019.

<sup>96</sup> “Uganda denies plans to impose death penalty for gay sex amid global concern”, *Reuters*, 14 October 2019.

<sup>97</sup> Human Rights Watch, *Dignity Debased. Forced Anal Examinations in Homosexuality Prosecutions* (2016), 49-56; “Ugandan Police Detain 16 Men Over Suspected Homosexuality”, *VOA*, 24 October 2019; “67 Ugandans arrested in gay-friendly bar charged with ‘nuisance’”, *Sierra Leone Times*, 13 November 2019; “#Ram125: 67 Remanded To Luzira Prison”, *Kuchu Times*, 13 November 2019; “La Policía de Uganda realiza 16 exámenes anales tras redadas contra homosexuales”, *Eldiario.es*, 18 November 2019; “Uganda: Stop Police Harassment of LGBT People”, *Human Rights Watch*, November 17, 2019; ReportOUT: Dalton, A, Butler, S and Weatherston, J., *OUT in Uganda: The Lived Experiences of SOGIESC Ugandans* (2020), 32, 34.

<sup>98</sup> Human Rights Awareness and Promotion Forum, *Consolidated Human Rights Violations against Key Populations in Uganda* (2019).

			<p>In May 2020, 23 LGBTI people were arrested at a shelter for sexual minorities near Kampala for allegedly gathering in public and violating the lockdown imposed amid the COVID-19 pandemic. After being intimidated by police forces and local residents on the grounds of their sexual orientation,<sup>99</sup> the detainees were reportedly first charged with engaging in “carnal knowledge” in violation of Section 145 of the Ugandan Penal Code, which criminalises consensual same-sex sexual activity.<sup>100</sup> 19 individuals remained under state custody and were reportedly denied access to their lawyers for weeks before a court order was handed down for them to be released.<sup>101</sup></p>
31	 <b>Zambia</b>	<p>LAST AMENDED <b>1933</b></p>	<p>Per Amendment Number 26 of 1933, Article 155 of the <b>Penal Code</b> states that any person who “has carnal knowledge of any person against the order of nature” has committed a felony and is liable to receive a sentence of up to 14 years in prison.</p> <p>Additionally, Article 178(g) of the <b>Penal Code</b> (1930) criminalises any act of “soliciting for immoral purposes in a public place”. This provision was used as a legal basis to prosecute an HIV activist in 2013, for expressing his opinion on the rights of sexual minorities and sex workers.<sup>102</sup></p> <p>► <b>Enforcement</b></p> <p>There have been multiple cases of individuals and couples being arrested and detained in recent years, with defendants often subjected to forced anal examinations.<sup>103</sup></p> <p>One of the most prominent recent cases to come out of the country was that of a 15-year prison sentence being handed down to a couple who in 2018 were found guilty of “acts against the order of nature,” with the Lusaka High Court affirming the punishment in 2019 to international outcry.<sup>104</sup></p> <p>On 25 May 2020, as part of Zambia’s Africa Day celebrations, the two men received a pardon from the President alongside around 3,000 other inmates who had been convicted of various crimes.<sup>105</sup> It is important to note that this pardon did not constitute a reversal of the court’s verdict.</p>
32	 <b>Zimbabwe</b>	<p>LAST AMENDED <b>2004</b></p>	<p>Article 73 (1) of the Criminal Law (Codification and Reform) Act (<b>Act No. 23</b>) (2004) criminalises anal intercourse between males as well as “any act involving physical contact other than anal sexual intercourse that would be regarded by a reasonable person to be an indecent act”. For these two types of conduct, the Code imposes a penalty of imprisonment for up to a year and/or a fine.</p> <p>► <b>Enforcement</b></p> <p>It has been reported that the 2004 amendment led to widespread arrests throughout the country, with former-President Robert Mugabe calling for the ‘immediate arrest of anyone “caught practicing homosexuality”’.<sup>106</sup></p>

<sup>99</sup> John Sparks, “Uganda using coronavirus laws to target marginalised LGBT groups”, *Sky News*, 10 May 2020.

<sup>100</sup> Human Rights Awareness and Promotion Forum (HRAPF), Robert F. Kennedy Human Rights, and Sexual Minorities Uganda (SMUG), *Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 2003/31, 6/4, 15/18, 20/16, 24/7*, 15 May 2020.

<sup>101</sup> “The Ugandan Government Has Unlawfully Detained 19 People under the Guise of its COVID-19 Response”, *Robert F. Kennedy Human Rights*, 15 May 2020; A. McCool, “Court orders release of jailed LGBT+ Ugandans after coronavirus charges dropped”, *Reuters*, 18 May 2020

<sup>102</sup> For more information see section on Legal Barriers to Freedom of Expression on SOGIE issues in this report.

<sup>103</sup> “Zambian magistrate acquits men in gay sex case”, *The Guardian*, 3 July 2014; “Zambian judge acquits 2 men in homosexuality case”, *Erasing 76 Crimes*, 14 April 2015; Human Rights Watch, *Dignity Debated: Forced Anal Examinations in Homosexuality Prosecutions* (2016), 56-58.

<sup>104</sup> “Pan Africa ILGA condemns the prosecution and sentencing of a gay couple arrested in Zambia”, *ILGA World (Website)*, 29 November 2019; “Gays jailed 15 years”, *Zambia Daily Mail Limited*, 28 November 2019; “Two Kapiri Mposhi men found guilty of Homosexual conduct”, *The Lusaka Times*, 4 August 2018; Roberto Igual, “Zambia | Two men get 15 years in jail for homosexuality”, *Mamba Online*, 30 November 2019; “US Ambassador and YALI disagree on homosexuality laws”, *The Lusaka Times*, 2 December 2019.

<sup>105</sup> Chris Mfula, “Zambian president pardons gay couple jailed for 15 years”, *Herald Live*, 26 May 2020.


<sup>106</sup> “Gay in Zimbabwe: Arrests, Limited Access to Health Care”, *Global Press Journal*, 10 September 2012; Legal Aid Board (Ireland), *Information on whether homosexuals are openly at risk of police brutality and arbitrary arrest? What is the attitude of the Zimbabwean Government/ Agencies of the State (Police etc) towards those who are homosexual?*, 5 September 2012.

## Is there more in Africa?

<b>Central African Republic</b>	Even though the <b>Penal Code</b> (2010) does not outlaw consensual same-sex sexual acts between adults in private, 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 this provision has been used to blackmail and arbitrarily arrest LGBT people. <sup>107</sup>
<b>Cote d’Ivoire</b>	Despite the fact that no law exists which criminalises consensual same-sex sexual relations between adults, at the end of 2016 a judge in the city of Sassandra used article 360 of the Penal Code (on acts against public modesty) to condemn 2 men to 18 months’ imprisonment. <sup>108</sup> 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. <sup>109</sup>
<b>Democratic Republic of the Congo</b>	Even though there are no provisions outlawing consensual same-sex sexual acts between adults in the DRC, Article 176 of the <b>Penal Code</b> (1940)—which criminalises activities against public decency—has been used as the legal basis to criminalise LGBT persons. <sup>110</sup> The UN Human Rights Committee expressed concern about this and recommended that the State ensures that no person is prosecuted under Article 176 of the Penal Code because of their sexual orientation or gender identity, and further recommended the State enact anti-discrimination legislation that expressly includes sexual orientation and gender identity. <sup>111</sup>
<b>Equatorial Guinea</b>	In the aftermath of Gabon’s enactment of its new Penal Code, it was reported that neighbouring Equatorial Guinea was in the process of preparing a draft bill that would also criminalise consensual same-sex sexual activity. <sup>112</sup>  In 2014 it was reported that despite no law expressly prohibiting same-sex sexual activity, four young people accused of being homosexual were arrested and “forced to explain” their behaviour on a local television network. <sup>113</sup>

## Latin America and the Caribbean

9 out of 33 UN Member States (27%).

1		<b>Antigua and Barbuda</b>	LAST AMENDED <b>1995</b>	The <b>Sexual Offences Act</b> (1995) criminalises “buggery” under Article 12. According to the provision, “buggery means sexual intercourse <i>per anum</i> by a male person with a male person or by a male person with a female person”. Further, “a person who commits buggery is guilty of an offence and is liable on conviction to imprisonment for fifteen years.
				The same Act also punishes “serious indecency”, which is understood as an act, other than sexual intercourse (whether natural or unnatural), involving the use of the genital organ for the purpose of arousing or gratifying sexual desire. A person convicted for this crime is liable to imprisonment for five years.
				In the aftermath of decriminalisation in Belize, in August 2016, the Cabinet of Antigua and Barbuda proclaimed that “the buggery law will remain unchanged” in the country. <sup>114</sup>

<sup>107</sup> Alternatives Centrafricaine, *Rapport sur la situation des minorités sexuelles et de genre en Centrafrique* (2018).

<sup>108</sup> 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”.

<sup>109</sup> 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.

<sup>110</sup> 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”.

<sup>111</sup> 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.

<sup>112</sup> “Guinea Ecuatorial Prepara un Anteproyecto de Ley para Penalizar la Homosexualidad”, *Diario Rombe*, 24 September 2019.

<sup>113</sup> Thom Senzee, “WATCH: Four Youth Arrested, Forced to Explain Gay Sex in Equatorial Guinea”, *The Advocate*, 14 July 2014.

<sup>114</sup> “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.

2		<b>Barbados</b>	LAST AMENDED <b>1992</b>	<p>The <b>Sexual Offences Act</b> (1992) provisions, under Section 9, that “any person who commits buggery is guilty of an offence and is liable on conviction on indictment to imprisonment for life”.</p> <p>Moreover, Section 12 of the same act punishes “serious indecency” with imprisonment of up to 10 years. Under the Act, this crime is defined as an act, whether natural or unnatural “involving the use of the genital organs for the purpose of arousing or gratifying sexual desire”.</p>
3		<b>Dominica</b>	LAST AMENDED <b>1998</b>	<p>Under Section 16, the <b>Sexual Offences Act</b> (1998) punishes the crime of “buggery” with imprisonment of up to 10 years and, if the Court thinks it fit, the Court may order that the convicted person be admitted to a psychiatric hospital for treatment.</p> <p>Under Section 14, the crime of “gross indecency”—understood as “an act other than sexual intercourse by a person involving the use of genital organs for the purpose of arousing or gratifying sexual desire”—is punished with imprisonment for five years.</p> <p>Most notably, in 2010 the Dominican delegation before the Human Rights Council stated during its first UPR cycle that the issue of criminalisation of consensual same-sex acts “was a challenging area” and the delegation recognised “that it is discriminatory”.<sup>115</sup></p> <p>In July 2014 the Prime Minister of Dominica dismissed claims that the police had threatened to arrest people engaging in private, consensual same-sex sexual activity.<sup>116</sup></p> <p>► <i>Enforcement</i></p> <p>Cases of arrests in the early 2000s have reportedly involved both gay men and lesbian women.<sup>117</sup> However, police authorities have stated that no convictions against gay men had been issued in any of the 35 reported cases of buggery.<sup>118</sup></p> <p>In 2012, two American citizens aboard a cruise ship were arrested and charged with “buggery” after someone claimed to have witnessed the men having sex on the ship from a dock. The two men pleaded guilty and were fined nearly \$900. The ship continued on its journey to Saint Barthelemy without the men, who remained at police headquarters in Dominica.<sup>119</sup></p>
4		<b>Grenada</b>	LAST AMENDED <b>1958</b>	<p>The <b>Criminal Code</b> (1958) establishes “unnatural crime” under Article 431, stating that “if any two persons are guilty of unnatural connexion, or if any person is guilty of unnatural connexion with any animal, every such person shall be liable to imprisonment for ten years”.</p> <p>Further, Article 430 provisions that “whoever publicly and wilfully commits any grossly indecent act is guilty of a misdemeanour”.</p> <p>► <i>Enforcement</i></p> <p>In 2015, a report documented that at least two people had been formally charged for consensual same-sex sexual conduct.<sup>120</sup> Furthermore, in 2016, a man was reportedly arrested for “unnatural carnal knowledge”.<sup>121</sup></p>
5		<b>Guyana</b>	LAST AMENDED <b>1893</b>	<p>Section 353 of the <b>Criminal Law (Offences) Act</b> (1893) punishes the crime of “buggery” committed either with a human being or with any other living creature, with imprisonment for life. Under Section 352, an attempt to commit buggery carries a penalty of imprisonment for ten years.</p> <p>Additionally, Section 351 punishes acts of “gross indecency” with any other male person, in public or private, with imprisonment for two years. ↘</p>

<sup>115</sup> *Report of the Working Group on the Universal Periodic Review: Dominica*, A/HRC/13/12, 4 January 2010, para. 33.

<sup>116</sup> “Dominica PM says no to same-sex marriage”, *Jamaica Observer*, 9 July 2014.

<sup>117</sup> “Dominica Prime Minister: ‘We will never accept same-sex marriage’”, *Pink News*, 10 July 2014.

<sup>118</sup> “Police shoot down gay website allegations”, *Dominica News Online*, 28 March 2013; Scott Roberts, “Dominica Prime Minister: ‘We will never accept same-sex marriage’”, *Pink News*, 10 July 2014.

<sup>119</sup> “Dominica Anti-Sodomy Law Lands Gay Cruise Ship Passengers in Custody”, *NBC News*, 22 March 2012.

<sup>120</sup> GrenCHAP et al, *Report on Grenada 21st Round of the Universal Periodic Review – Jan/Feb 2015* (2014), para. 14.

<sup>121</sup> “Man Detained In Connection With Unnatural Carnal Knowledge Released Pending Further Investigation”, *The Grenada Informer*, 25 February 2016.



			In 2017, the government announced a plan to hold a referendum on whether “homosexuality” should remain criminalised. <sup>122</sup> However, this was opposed by LGBT rights groups on the basis that it would only fuel homophobia. <sup>123</sup>
6	 <b>Jamaica</b>	LAST AMENDED 2009	<p>Section 76 of the <b>Offences Against the Person Act</b> (1864) establishes that those convicted of “the abominable crime of buggery”,<sup>124</sup> 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. An attempt to commit such “abominable crime” is punished under Section 77 with imprisonment of up to seven years, with or without hard labour.</p> <p>Article 79 criminalises “gross indecency” with another male person, in public or private, an establishes a penalty of imprisonment of up to 2 years, with or without hard labour”.</p> <p>In 2009, Jamaica introduced a new <b>Sexual Offences Act</b> (2009) 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 <b>Offences Against the Person Act</b> (cited above) fall under the category of “specified offences” as per Article 2 of the law’s First Schedule.</p>
7	 <b>Saint Kitts and Nevis</b>	LAST AMENDED 2002	<p>Article 56 of the <b>Offences Against the Person Act</b> (1873) criminalises “sodomy” by establishing that “any person who is convicted of the abominable crime of buggery, committed either with mankind or with any animal” shall be punished with imprisonment of up to 10 years, with or without hard labour.<sup>125</sup></p> <p>Attempts to commit such “abominable crime” acts are punished under Article 57 with imprisonment of up to four years, with or without hard labour.</p>
8	 <b>Saint Lucia</b>	LAST AMENDED 2004	<p>Section 133 of the <b>Criminal Code</b> (2004) criminalises “buggery” (defined as “sexual intercourse per anus by a male person with another male person”) with a maximum punishment of ten years imprisonment. Further, any attempt to commit buggery is punished with imprisonment for 5 years.</p> <p>Under Section 132, “gross indecency” is defined as “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” and is punished with a maximum penalty of imprisonment for 10 years.</p> <p>In October 2019, Prime Minister Allen Chastanet, stated that his government did not have “an official position” with regard to the buggery law. He stressed that “nobody had been arrested under this law” and warned that the issue was “going to require a lot of dialogue and discussion”.<sup>126</sup></p>
9	 <b>Saint Vincent and the Grenadines</b>	LAST AMENDED 1988	<p>Section 146 of the <b>Criminal Code</b> (1988) establishes that any person who commits “buggery” with any other person or permits any person to commit buggery with him or her, is guilty of an offence and liable to imprisonment for 10 years.</p> <p>Under Section 148, the Code also penalises “gross indecency”—defined as “indecent practices between persons of the same sex” whether in public or private—with a punishment of imprisonment for five years.</p>

<sup>122</sup> “Referendum to decide legality of homosexuality”, *Guyana Chronicle*, 20 April 2017.

<sup>123</sup> “Rights Groups believe referendum on anti-gay laws will only fuel more homophobia”, *News Source Guyana*, 24 May 2016.

<sup>124</sup> Article 78 establishes the conditions for “proof of carnal knowledge”, indicating that “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”

<sup>125</sup> Article 58 sets a definition of “carnal knowledge”, stating that “whenever, upon the trial of any offence punishable under this Act, it is 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 on proof of any degree of penetration only”.

<sup>126</sup> “St Lucia yet to take definitive position on buggery laws”, *Jamaica Observer*, 31 October 2019.

## Is there more in Latin America and the Caribbean?

<b>Dominican Republic</b>	Even though consensual same-sex sexual acts between adults in private are legal for the general population, Article 210 of the <a href="#">Police Justice Code (1966)</a> still outlaws sodomy (defined as a “sexual act between persons of the same-sex”) among members of police forces.
<b>Venezuela</b>	Even though consensual same-sex sexual acts between adults in private are legal for the general population, same-sex sexual activity continues to be criminalised in the military under Article 565 of the <a href="#">Military Justice Code</a> that prohibits “sexual acts against nature”.

## Asia

21 out of 42 UN Member States (52%). Additionally, 1 UN Member State with *de facto* criminalisation (Iraq) (+1), several subnational jurisdictions in 1 UN Member State (Indonesia) and one region within 1 non-UN Member jurisdiction (Gaza in Palestine).

1	 <b>Afghanistan</b>	LAST AMENDED 2018	<p>In February 2018 a new <a href="#">Penal Code (2017)</a> explicitly criminalising same-sex sexual conduct came into force. The Penal Code previously in force did not do so with explicit terms, but Article 427 imposed a “long imprisonment” term for the offence of “pederasty”.<sup>127</sup></p> <p>Sodomy is now criminalised under Section 646 of the Penal Code. The crime is defined as “the penetration of a male sexual organ into a female or a male anus, not considering the depth of the penetration” and carries a punishment of up to two years’ imprisonment. Section 648 further stipulates certain aggravating conditions.<sup>128</sup></p> <p>Section 645 criminalises <i>mosaheghe</i> (feminine same-sex sexual act without penetration) with imprisonment of up to one year, while Section 649 punishes <i>tafkhiz</i> (same-sex sexual relationships not involving any penetration) by a male offender with another man, with imprisonment of up to one year.</p> <p>Section 650 criminalises <i>ghavadi</i> (incitement of two or more people to commit adultery of sodomy by introducing them to each other or finding them a place to do so). The Section states that those who are convicted “shall be punished in accordance with the provisions of this chapter.”</p> <p>There is no full legal certainty regarding the application of the death penalty as the legally prescribed punishment for consensual same-sex sexual acts.<sup>129</sup></p> <p>► <i>Enforcement</i></p> <p>In 2015, the extrajudicial sentencing of 3 gay men to death by “wall toppling” imposed by a parallel justice court was reported by the UN Assistance Mission in Afghanistan. Having survived the process, one 17-year-old accused of sodomy was allowed to live.<sup>130</sup></p>
2	 <b>Bangladesh</b>	LAST AMENDED 1860	<p>Section 377 of the Penal Code (<a href="#">Act XLV of 1860</a>) criminalises “unnatural offences”. This is defined as “carnal intercourse against the order of nature with any man, woman or animal” and penetration is “sufficient to constitute the carnal intercourse”. This crime carries the potential punishment of imprisonment for life.</p>

<sup>127</sup> “Pederasty” referred to intercourse between males regardless of age. The fact that paedophilia or sexual relations with persons under the age of consent fell under subsection 2(a) of article 427 further confirmed this. Terming sexual acts between adult men “pederasty” has previously not been uncommon. This occurred for example in the translations of the Criminal Codes of Albania (1977) and Latvia (1933), and in the old Russian legal tradition a “pederast” usually referred to a male who had anal intercourse with another male, regardless of age. See: ILGA World: Daniel Ottosson, *State-sponsored Homophobia: A world survey of laws prohibiting same sex activity between consenting adults* (2010), 23.

<sup>128</sup> These include cases where: (1) the person “against whom” the crime has been committed is someone with whom marriage is prohibited according to rules of Islam (“maharem”); (2) 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, authority or influence over the former; or (3) the person “against whom” the crime has been committed is affected by the genital disease because of the offender’s disclaim of having sexually transmitted diseases.

<sup>129</sup> For more information, please read the entry for Afghanistan in the special dossier on the death penalty in this report.

<sup>130</sup> UN Assistance Mission in Afghanistan, *Afghanistan Annual Report 2015: Protection of Civilians in Armed Conflict* (2015), 51.

► *Enforcement*

While prosecutions under Section 377 remain rare, other legislation has reportedly been used to harass, arrest and charge suspects.<sup>131</sup> In May 2017, the police special forces—the Rapid Action Battalion—was mobilised to raid a gathering in Dhaka: 28 men were arrested and outed in the media as gay.<sup>132</sup> All were eventually released and granted bail.<sup>133</sup>

3

**Bhutan**

BILL TO REPEAL LAW  
PASSED. AWAITING  
KING'S APPROVAL.

LAST  
AMENDED  
2004

Section 213 of the **Penal Code** (2004) criminalises “unnatural sex”, which is defined as “sodomy or any other sexual conduct that is against the order of nature”. As this is classified as a petty misdemeanour under Section 214, it carries a maximum punishment of imprisonment of less than one year and a minimum term of one month, according to Section 3(c) of the Penal Code.

In January 2019, the National Assembly—the lower house of Bhutan’s parliament—voted to repeal Sections 213 and 214.<sup>134</sup> In February 2020, the National Council—the upper house—sent an amended bill back to the National Assembly.<sup>135</sup> In the same month, the National Assembly did not approve the National Council’s amendments on unnatural sex and the grading of unnatural sex, *inter alia*.<sup>136</sup> The Joint Committee of the Parliament convened in October 2020 to review the disputed clauses between the two houses.<sup>137</sup> On 10 December 2020, a joint sitting of both houses approved a bill to repeal Sections 213 and 214, and will need to be approved by the King of Bhutan before becoming law.<sup>138</sup>

4

**Brunei**

LAST  
AMENDED  
2019

The Sultanate of Brunei runs a dual or hybrid legal system, with common law and Sharia law running in parallel to each other.<sup>139</sup>

Under Article 82 of the **Syariah Penal Code Order** (2013), the death penalty can be imposed for acts of *liwat* (sodomy).<sup>140</sup> Section 92(3) criminalises *musahaqah* (lesbian acts), which can result in a fine, imprisonment for up to 10 years, whipping, or a combination thereof.

Section 377 of the secular **Penal Code** (Cap. 22 of 1951) criminalises “unnatural offences”, defined as “carnal intercourse against the order of nature with any man, woman, or animal”. In 2017, the **Penal Code (Amendment) Order** (2017) increased the punishment for a conviction under Section 377 of the secular Penal Code to imprisonment for a term not exceeding 30 years and whipping. Previously, the punishment was imprisonment for up to 10 years and a fine. A Bruneian news outlet reported that the amendments were drafted “to further protect children, young and vulnerable persons from sexual exploitation and to act as a deterrent to those willing to commit such offences”.<sup>141</sup>

► *Enforcement*

In 2015, a Bruneian civil servant was fined under the Syariah Penal Code for cross-dressing in a public place, with the prosecutor warning during proceedings that “if this is not dealt with, it can lead to the spread of social disorder such as homosexuality, free sexual relations, drug abuse.”<sup>142</sup>

<sup>131</sup> “Sexual minorities being harassed”, *The Daily Star*, 12 December 2014; *Speaking Out 2015: The Rights of LGBTI People Across the Commonwealth* (Kaleidoscope Trust, 2015), p 48.

<sup>132</sup> Kyle Knight, “Bangladesh ‘Gay Party’ Raid Flouts Privacy Rights”, *Human Rights Watch*, 25 May 2017.

<sup>133</sup> “Bangladesh: 28 men suspected of being gay freed”, *Amnesty International*, 11 August 2017.

<sup>134</sup> Alasdair Pal, “Bhutan’s lower house of parliament votes to decriminalise homosexuality”, *Reuters*, 7 June 2019.

<sup>135</sup> “NC adopts the Civil and Criminal Procedure Code (Amendment) Bill 2019 and the Penal Code (Amendment) Bill 2019”, *National Council of Bhutan*, 10 February 2020.

<sup>136</sup> “National Assembly re-deliberates and passes the Penal Code (Amendment) Bill of Bhutan 2019”, *Nat. Ass. of Bhutan*, 27 February 2020.

<sup>137</sup> “Joint Committee for the Penal Code (Amendment) Bill of Bhutan 2019 holds its first meeting”, *National Council of Bhutan*, 8 October 2020.




<sup>138</sup> Gopal Sharma, “Bhutan parliament decriminalizes homosexuality, to delight of activists”, *Reuters*, 10 December 2020; Josh Milton, “Bhutan votes to decriminalise homosexuality in ‘momentous day’ for the tiny Buddhist kingdom”, *PinkNews*, 10 December 2020. This is the most recent update that ILGA World has as of 11 December 2020, four days prior to the launch of the report. This was a last minute addition.

<sup>139</sup> Human Rights Resource Centre, *Keeping the Faith: A Study of Freedom of Thought, Conscience, and Religion in ASEAN* (Indonesia: Human Rights Resource Centre 2015), 57. This was recently confirmed by Dato Erywan Pehin Yusof, the Minister of Foreign Affairs II: see, Ministry of Foreign Affairs (Brunei Darussalam), *Reply to Communication from Special Rapporteurs*, UNGA/C/1.1/3, 7 April 2019, para. 3.

<sup>140</sup> This is discussed in greater detail in Brunei’s entry in the section on the death penalty.

<sup>141</sup> Fadley Faisal, “Rape laws tightened in Brunei”, *Borneo Bulletin*, 29 July 2017.

<sup>142</sup> Ak Md Khairuddin Pg Harun, “Bruneian civil servant fined \$1000 for cross-dressing”, *The BT Archive*, 11 March 2015; Ak Md Khairuddin Pg Harun, “Bruneian civil servant fined \$1000 for cross-dressing”, *The BT Archive*, 11 March 2015.

5	 <b>Iraq</b> <i>DE FACTO</i> <sup>2</sup>	LAST AMENDED <b>2003</b>	<p>Iraq's Penal Code (<b>Law No. 111 of 1969</b>) does not explicitly prohibit consensual same-sex relations.</p> <p>However, Article 401 of the Code criminalises "immodest acts" in public, which is punishable by a period of detention not exceeding six months and/or a fine. There have been cases of same-sex couples and individuals being prosecuted for same-sex sexual intimacy on the basis of this criminal provision and prostitution charges.<sup>143</sup></p> <p>► <b>Enforcement</b></p> <p>There have been no recorded incidents in recent years of prosecutions by the state, though there have been reports of extrajudicial executions ordered by non-legal Sharia judges, and of both police and militias frequently kidnapping, threatening and killing LGBT people.<sup>144</sup></p>
6	 <b>Iran</b>	LAST AMENDED <b>2013</b>	<p>Under the <b>Iran Islamic Penal Code</b> (2013), the death penalty can be imposed for the acts of <i>liwat</i> (sodomy), <i>tafkhez</i> (rubbing penis between thighs or buttocks), and <i>musaheqeh</i> (lesbian sex).<sup>145</sup> Article 237 of the Penal Code also criminalises "homosexual acts of a male person", which includes "kissing or touching as a result of lust". This is punishable by 31 to 74 lashes.</p> <p>► <b>Enforcement</b></p> <p>It is possible for activists to be convicted of "collusion against national security by normalising same-sex relations".<sup>146</sup> In December 2019, an Iranian activist was reportedly convicted to a five-year prison term.<sup>147</sup></p> <p>There have been reports of executions by hanging for consensual same-sex sexual relations and alleged same-sex rapes.<sup>148</sup> There have been several confirmed reports of state-led raids on private parties followed by mass arrests of those suspected of homosexuality.<sup>149</sup> In September 2020, 6Rang released a report with testimonies of people who had been arrested by the police because of their diverse sexual orientation or gender identity.<sup>150</sup></p>
	 <b>Indonesia</b> <sup>151</sup> <i>(certain provinces)</i>		<p>Consensual same-sex sexual acts between consenting adults are not criminalised under the <b>Penal Code</b>. However, several provinces, cities, and districts prohibit same-sex intimacy through local ordinances.<sup>152</sup></p> <p>As such there have been multiple reports in recent years from various parts of the country of men sentenced to receive lashes, of spas and hotels being raided by police, and of individuals being detained and charged under various local laws and customs.<sup>153</sup></p>

<sup>143</sup> ILGA World: Lucas Ramón Mendos, *State-Sponsored Homophobia 2019* (Geneva: ILGA, 2019), 523; US Department of State, *Country Report on Human Rights Practices 2019 – Iraq*, 11 March 2020.

<sup>144</sup> "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.; *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; Alessandro Bovo, "In fuga dall'Iraq perché gay, la storia di Danyar tra discriminazioni e omofobia," *Gay.It*, 6 October 2020.

<sup>145</sup> This is discussed in greater detail in Iran's entry in the section on the death penalty.

<sup>146</sup> While public courts deal with civil and criminal cases, revolutionary courts try "certain categories of offenses, including crimes against national security, narcotics smuggling, and acts that undermine the Islamic Republic". See, Omar Sial and Farah Khan, "Update: The Legal System and Research of the Islamic Republic of Iran", *Hauser Global Law School Program*, April 2019.

<sup>147</sup> "Two Iran Activists Convicted To Five-Year Prison Terms Each", *Radio Farda*, 13 December 2019; ILGA World, *State-Sponsored Homophobia: Global Legislation Overview Update* (December 2019), 16.

<sup>148</sup> Jay Michaelson, "Iran's New Gay Executions", *The Daily Beast*, 12 August 2014; "Iran: Hanging of teenager shows authorities' brazen disregard for international law", *Amnesty International*, 2 August 2016; Benjamin Weinthal, "Iran publicly hangs man on homosexuality charges", *The Jerusalem Post*, 26 January 2019; Benajmin Weinthal, "Iran executes 'high number' of gays, says German intelligence", *The Jerusalem Post*, 9 June 2020.

<sup>149</sup> 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; "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.

<sup>150</sup> 6Rang, *Hidden Wounds: A Research Report on Violence Against LGBTI in Iran*, September 2020; "Iran: shocking persecution of LGBTQ+ people continues", *Outnews Global*, 18 September 2020.

<sup>151</sup> Indonesia is not considered for the final count of UN Member States criminalising consensual same-sex intimacy because these laws are not in force at the national level.

<sup>152</sup> We have included the provinces that have such ordinances, and the cities that fall outside of these provinces.

<sup>153</sup> "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;

In September 2020, nine men were arrested in Jakarta following a raid on a private party and charged under Article 296 of the Penal Code (committing or facilitating obscene acts with another person) and anti-pornography laws.<sup>154</sup>

In October 2020, the Semarang Military Court sentenced a soldier to one year's imprisonment and dismissal from military duty for having same-sex intercourse.<sup>155</sup> In the same month, a police officer was demoted and made to undergo "special training" for allegedly having participated in same-sex sexual activity, as the officer's "sexual preference was deemed as a despicable act".<sup>156</sup>

Several subnational jurisdictions have adopted local laws that criminalise consensual same-sex sexual acts.

<i>Province of Aceh</i>	2014	Articles 63 and 64 of Aceh's <b>Regulation No. 6</b> (2014) stipulate a punishment of 100 lashes and/or up to approximately eight years in prison for the crime of <i>liwat</i> (sodomy) and <i>musahaqah</i> (lesbian acts). The regulation applies to both locals and foreigners living in the province.
<i>Province of South Sumatra</i>	2002	South Sumatra's Provincial Ordinance on the Eradication of Immoral Behaviour classifies and penalises homosexual acts and anal sex performed by men as "immoral behaviour". <sup>157</sup>
<i>City of Padang Panjang (West Sumatra)</i>	2010	Padang Panjang's City Ordinance on the Prevention, Eradication and Prosecution of Social Ills (No. 9/2010) prohibits "homosexual and lesbian" relationships. It prohibits persons from "offering themselves for homosexual and lesbian relationships either with or without payment". It explicitly mentions the punishment for different immoral behaviours as a maximum of three months or a fine. <sup>158</sup>
<i>City of Pariaman (West Sumatra)</i>	2018	In 2018, the city of Pariaman, in the Province of West Sumatra, passed a regulation that penalises activities that disturb public order and "immoral acts" among people of the same sex. <sup>159</sup>
<i>City of Tasikmalava (West Java)</i>	2009	The city of Tasikmalaya, in the Province of West Java, passed the 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), which prohibits adultery and prostitution, both heterosexual and homosexual. <sup>160</sup>
<i>District of Banjar (West Java)</i>	2007	The District Ordinance on Social Order (No. 10/2007) includes "abnormal" homosexual and heterosexual acts in its definition of "prostitute", in addition to "normal" ones. No further explanation is provided for "normal" or "abnormal" acts. <sup>161</sup>

"Indonesia's Aceh lashes men 100 times each for sex crimes", *New Straits Times*, 12 December 2018; James Besanville, "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; "Indonesia: 'Gay Porn' Arrests Threaten Privacy", *Human Rights Watch*, 5 May 2017;

<sup>154</sup> Alya Nurbaiti, "Police lambasted for targeting LGBT community in raid in Jakarta", *The Jakarta Post*, 5 September 2020; "Indonesia: gay partygoers face 15 years in prison", *Outnews Global*, 4 September 2020.

<sup>155</sup> Moch. Fiqih Prawira Adjie, "Indonesian military imprisons, dismisses soldier for having same-sex intercourse", *Asia One*, 16 October 2020. This follows a telegram letter in October 2019 from the Head of the Indonesian Military Forces that strict sanctions would be imposed on "LGBT practitioners": see, Agus Raharjo, Ronggo Astungkoro, and Nawir Arsyad Akbar, "TNI Threatens Action by Soldiers Who are LGBT Practitioners", *Republic*, 18 November 2020.

<sup>156</sup> Laila Afifa and Ricky Mohammad Nugraha, "Indonesian Police Officer Convicted Over LGBT Issue Faces Demotion", *Tempo.co*, 21 October 2020.

<sup>157</sup> UNDP and USAID, *Being LGBT in Asia: Indonesia Country Report* (2014), 22–23.

<sup>158</sup> *Ibid.*

<sup>159</sup> "Indonesian city to fine LGBT for being 'public nuisance'", *The Jakarta Post*, 30 November 2018; "Indonesian city plans to fine residents for 'LGBT behaviour'", *Reuters*, 30 November 2018.

<sup>160</sup> UNDP and USAID, *Being LGBT in Asia: Indonesia Country Report* (2014), 22–23.

<sup>161</sup> *Ibid.*

7	 <b>Kuwait</b>	LAST AMENDED <b>1960</b>	<p>Article 193 of Penal Code (<b>Law No. 16</b>) (1960) criminalises consensual intercourse between men of full age (from the age of 21), which carries a possible imprisonment of up to seven years.</p> <p>► <i>Enforcement</i></p> <p>There are numerous reports of vice-police raiding parties and businesses to arrest suspected gay men and lesbian (or “tomboy”) women.<sup>162</sup> In July 2017, the government’s inter-ministry morals committee ordered the deportation of 76 gay men and the closure of 22 massage parlours.<sup>163</sup></p>
8	 <b>Lebanon</b>	LAST AMENDED <b>1943</b>	<p>Article 534 of the <b>Penal Code</b> (1943) criminalises “sexual intercourse against nature”, which is punishable with up to one year imprisonment.</p> <p>► <i>Enforcement</i></p> <p>In 2014, the Morals Protection Bureau of the Lebanese police raided a bathhouse on the basis that there were suspected “homosexuals” present, with numerous customers and employees arrested and charged under Article 534 and other offenses pertaining to prostitution and public morals.<sup>164</sup></p> <p>According to some reports forced anal examinations and non-consensual HIV and drug tests have been conducted in recent years,<sup>165</sup> and the number of annual arrests under Article 534 has seemingly increased.<sup>166</sup></p>
9	 <b>Malaysia</b>	LAST AMENDED <b>1936</b>	<p>Under Sections 377, 377A and 377B of the <b>Penal Code</b> “carnal intercourse against the order of nature” is defined as a sexual connection by the introduction of the penis into the anus or mouth of another person and is punished with imprisonment of up to 20 years and/or whipping.</p> <p>Additionally, Section 377D punishes acts of gross indecency committed in public or private with imprisonment of up to 2 years.</p> <p>► <i>Enforcement</i></p> <p>In February 2015, leading opposition leader, and former Deputy Prime Minister, Anwar Ibrahim, was convicted of sodomy and sentenced to five years’ imprisonment—though the case is widely considered to have been politically motivated and Ibrahim received a royal pardon in 2018.<sup>167</sup></p> <p>In subsequent years there have been a number of sentences meted out against those suspected of being gay or lesbian by Sharia and other courts, including several cases where corporal punishment was enforced.<sup>168</sup></p>
10	 <b>Maldives</b>	LAST AMENDED <b>2014</b>	<p>Section 411(a)(2) of the Penal Code (<b>Law No. 6</b>) (2014) criminalises “unlawful sexual intercourse”, which is committed when a person engages in sexual intercourse with a person of the same sex.</p> <p>“Same-sex intercourse” is defined either as: (a) insertion by a man his sexual organ or any other object into the anus of another man for sexual gratification; or the insertion into another man’s mouth the penis of a man; or (a) insertion of a woman’s organ or any object into the vagina or anus of another woman for sexual gratification.</p>

<sup>162</sup> “Kuwait police raid ‘gay’ party, arrest 32”, *Erasing 76 Crimes*, 11 May 2014; J. K. Trotter, “Kuwaiti Police Sweep Cafes, Arrest 215 People for Being Gay”, *The Atlantic*, 14 May 2013; Habib Toumi, “Kuwaiti Police Sweep Cafes, Arrest 215 People for Being Gay”, *Gulf News*, 17 April 2016.41 arrested in raid on homosexual massage parlour in Kuwait”, *Gulf News*, 17 April 2016.

<sup>163</sup> Habib Toumi, “Kuwait deports 76 gay men in crackdown”, *Gulf News*, 7 August 2017.

<sup>164</sup> Sarah Wansa, “Torture at Every Stage: The Unofficial Narrative of the Hammam al-Agha Raid”, *The Legal Agenda*, 12 November 2014.

<sup>165</sup> Arab Foundation for Freedoms and Equality and Outright Action International, *Activism and Resilience: LGBTQ Progress in the Middle East and North Africa* (2018), 26; ALEF et al, *Civil society report on the implementation of the International Covenant on Civil and Political Rights in Lebanon* (2018), 4; Human Rights Watch, *Dignity Debased: Forced Anal Examinations in Homosexuality Prosecutions* (2016).

<sup>166</sup> Helem - Lebanese Protection for LGBTQ Individuals, *Human Rights Violations against Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) individuals in Lebanon* (2017), 3.

<sup>167</sup> “Malaysia’s Anwar jailed for five years after losing appeal in sodomy trial”, *Reuters*, 10 February 2015; “Anwar Ibrahim fails to strike out legal challenge to pardon for his 2014 sodomy conviction”, *Channel News Asia*, 21 September 2020; Khairah N. Karim, “Court of Appeal to hear Anwar’s pardon case on Jan 11”, *New Straits Times*, 14 October 2020.

<sup>168</sup> Jo Timbuong, “Syariah Court’s judgement against lesbian couple is final”, *The Star Online*, 16 August 2018; “Malaysia sentences five men to jail, caning and fines for gay sex”, *Reuters*, 7 November 2019; “Malaysian men caned for gay sex under Islamic law”, *The Straits Times*, 19 November 2019; Balvin Kaur, “Gay Vietnamese tourists fined for committing ‘immoral act’ in Penang hotel”, *New Straits Times*, 25 November 2019; “Two Vietnamese males held for offering massages to men”, *The Star*, 14 November 2019.

			<p>The offences in the section range from Class 1 misdemeanours to Class 3 felonies that carry a jail term of between six months and eight years. It may also result in an additional punishment of 100 lashes.</p> <p>Section 412(c) of the Penal Code criminalises “unlawful sexual contact” with a person of the same sex, which includes indecent acts for obtaining sexual gratification other than those listed under Section 411(a)(2). The offences in the section range from Class 1 misdemeanours to Class 3 felonies that carry a jail term between six months and eight years.</p> <p>► <i>Enforcement</i></p> <p>In 2015, Rainbow Warriors reported that a gay couple (one aged 56 and the other 27) was arrested in their private home on the island of Dhaandhoo under the accusation of “homosexual activities”. Police had reportedly not actively tackled “private behaviour” until then.<sup>169</sup></p>
11	 Myanmar	LAST AMENDED 2018	<p>Section 377 of the Penal Code (Act No. 45/1860) criminalises “carnal intercourse against the order of nature”. This carries the potential punishment of “transportation for life”, with imprisonment for a term which may extend to ten years and a fine.</p> <p>► <i>Enforcement</i></p> <p>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”.<sup>170</sup></p>
12	 Oman	LAST AMENDED 2018	<p>The Penal Law (Promulgated by Royal Decree 7/2018) repealed the Penal Code (1974), which criminalised “erotic acts with a person of the same sex” and “homosexual or lesbian intercourse” under Article 223 with imprisonment from six months to three years.</p> <p>Under the new Penal Law (2018), Article 261 criminalises consensual same-sex sexual intercourse between men, which carries a maximum punishment of 3 years. Article 263 defines sexual intercourse as completed “upon the penetration of the male organ, however slight, into the genital or anal opening whether or not accompanied by the ejaculation of semen”. Furthermore, Article 262 punishes “lustful acts with a person of the same sex”, with imprisonment of up to 3 years.<sup>171</sup></p>
13	 Pakistan	LAST AMENDED 1860	<p>Section 377 of the Penal Code (Act XLV of 1860) punishes “carnal intercourse against the order of nature” with up to life imprisonment. It is further explained that “penetration is sufficient to constitute the carnal intercourse” (i.e., no need to prove emission of semen).</p> <p>Additionally, Section 294 of the Penal Code criminalises “obscene acts and songs” in public, “to the annoyance of others”, which may result in imprisonment for up to three months, a fine, or both. This section is reportedly often deployed to target male and trans sex workers.<sup>172</sup></p> <p>► <i>Enforcement</i></p> <p>In August 2020 an arrest warrant was reportedly issued for a trans man who married a cisgender woman, for what authorities viewed as a same-sex wedding.<sup>173</sup> The following month, in October, a Pakistan-based digital media platform reported that two lesbian women were “arrested by the police after their relatives and friends reported about their relationship and marriage plan”.<sup>174</sup></p>

<sup>169</sup> “Worrying arrest in the Maldives”, *Rainbow Warriors*, 31 August 2015.



<sup>170</sup> 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.

<sup>171</sup> Article 262 further states that criminal proceedings shall commence only “on the basis of a complaint by a spouse or guardian”; or, in the absence of a spouse or guardian, the Public Prosecution is permitted “to commence proceedings or order deportation from the country”. Further, in all cases, it is “permitted for the spouse or guardian to withdraw the case”, and the withdrawal of one of the complainants will terminate the criminal prosecution and stay the execution of the punishment.

<sup>172</sup> ILGA World: Lucas Ramón Mendos, *State-Sponsored Homophobia 2019* (Geneva: ILGA, 2019), 462; Kaleidoscope Australia, *Shadow Report to the Committee on Economic, Social and Cultural Rights Regarding Pakistan’s Protection of the Rights of LGBTI Persons* (2016), 3; Immigration and Refugee Board of Canada, *Pakistan: Situation of sexual minorities in Islamabad, Karachi and Lahore, including treatment by society and authorities; state protection (2010-2013)* [PAK104712.E], 13 January 2014.

<sup>173</sup> Emma Powys Maurice, “Trans man wanted by police for ‘illegal’ same-sex wedding. He married a cis woman,” *Pink News*, 28 August 2020.

<sup>174</sup> Sobia Umair, “Lesbians Arrested in Karachi Amidst Marriage-Announcement on Facebook”, *Republic of Buzz*, 5 October 2020.

	 <b>Palestine</b> (Gaza only)	LAST AMENDED <b>1936</b>	Section 152(2) of the British Mandate Criminal Code ( <b>Ordinance No. 74 of 1936</b> ) states that any person who: "(a) has carnal knowledge of any person against the order of nature"; or "(b) permits a male person to have carnal knowledge of him or her against the order of nature" is guilty of a felony and liable to imprisonment for ten years.
14	 <b>Qatar</b>	LAST AMENDED <b>2004</b>	<p>Article 285 of the Penal Code (<b>Law No. 11</b>) (2004) states that 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 applies "to the male for his consent".</p> <p>Article 296(3) criminalises the leading, instigating, or seducing of a male to commit sodomy and Article 296(4) criminalises the inducing or seducing of a male or female in any way to commit illegal or immoral actions. Both may result in imprisonment for up to 3 years.</p> <p>Additionally, Article 298 criminalises "sodomy as a profession or for a living" with imprisonment for a term up to ten years.</p> <p>In 2013, Qatar was one of the countries in the Gulf Cooperation Council that was exploring a ban on gay, lesbian, bisexual, and transgender foreigners from working in the region, an initiative first proposed by Kuwait.<sup>175</sup> Some analysts have suggested that Qatar backtracked on this decision only as a result of significant international criticism, in light of a potential boycott of the 2022 World Cup.<sup>176</sup></p>
15	 <b>Saudi Arabia</b>	LAST AMENDED <b>N/A</b>	<p>There is no codified Penal Law in Saudi Arabia, with Sharia law being the law of the land. All sexual relations outside of marriage are illegal and the penalty for a married man who engages in consensual same-sex intercourse is generally understood to be death by stoning.<sup>177</sup></p> <p>► <i>Enforcement</i></p> <p>Besides the documented cases of death penalty,<sup>178</sup> numerous instances of arrests, prosecutions and convictions to flogging and imprisonment have been recorded in the last two decades in Saudi Arabia. Events that made it to media headlines include numerous cases where people were accused and convicted to imprisonment or flogging for a multiplicity of crimes.<sup>179</sup></p> <p>These include cases of "sodomy",<sup>180</sup> "deviant sexual behaviour",<sup>181</sup> men living together "as married couples",<sup>182</sup> "encouraging or promoting homosexuality",<sup>183</sup> participating in purported "gay weddings" or "gay parties",<sup>184</sup> cross-dressing and "behaving like women",<sup>185</sup> "homosexual prostitution",<sup>186</sup> and "violating public order and morals" with "sexual references".<sup>187</sup></p>

<sup>175</sup> Habib Toumi, "Gulf homosexual ban was 'just a proposal': Kuwait chief", *Gulf News*, 20 October 2013.

<sup>176</sup> "Kuwaiti authorities arrest 23 'cross-dressers and homosexuals'", *Middle East Eye*, 13 February 2015; Gianluca Mezzofiore, "Qatar 2022: Gulf States' 'Gay Tests' Trigger World Cup Boycott Call", *International Business Times*, 8 October 2013 (updated 1 July 2014).

<sup>177</sup> This is discussed in greater detail in Saudi Arabia's entry in the section on the death penalty.

<sup>178</sup> See entry for Saudi Arabia in the special dossier on Death Penalty of this report.

<sup>179</sup> The crimes named in this entry only reflect the way in which events were reported by media outlets or organisations. The specific provisions relied upon by authorities and charges filed in each one of these cases is unknown.

<sup>180</sup> Mohammed Rasooldeen, "Busloads Of Illegals Rounded Up In Riyadh Crime Swoop", *Arab News*, 9 April 2005; "Sentenced to 7,000 lashes for sodomy in Saudi Arabia", *Pink News*, 5 October 2007.

<sup>181</sup> "Nine Saudi Transvestites Jailed", *Associated Press*, 16 April 2000.

<sup>182</sup> Habib Toumi, "'Married' gay couples arrested in Saudi raid", *Gulf News*, 26 January 2016.

<sup>183</sup> Ebtihal Mubarak, "Justice Served In Al-Suhaimi Case", *Arab News*, 4 January 2006; Jack Simpson, "Gay Saudi Arabian man sentenced to three years and 450 lashes for meeting men via Twitter", *The Independent*, 25 July 2014.

<sup>184</sup> Brian Whitaker, "Arrests at Saudi 'gay wedding'", *The Guardian*, 18 March 2005; AKI, "Saudi Arabia: Police Break Up Gay Beauty Contest", *Ahbab News*, 7 November 2005; Tony Grew, "20 arrested at gay 'wedding' in Saudi Arabia", *Pink News*, 17 August 2006; "20 gays arrested at Saudi wedding party", *Emirates* 24/7, 17 October 2011; "49 gays arrested in Saudi", *Emirates* 24/7, 18 March 2012.

<sup>185</sup> Brian Whitaker, "Saudis' tough line on gays", *The Guardian*, 9 April 2005; "حفلة شذوذ" في 55 شابا في "السلطات الأمنية السعودية تعتقل", *Al Arabiya*, 30 July 2008; "Saudi Arabia: Drop 'Cross-Dressing' Charges", *Human Rights Watch*, 24 June 2009; Alexandra Sandels, "Saudi Arabia: Cross-dressing men arrested at a drag party", *Los Angeles Times*, 30 June 2009.

<sup>186</sup> M. Ghazanfar Ali Khan, "15 Held on Bootlegging, Gay Prostitution Charges", *Arab News*, 11 August 2008.

<sup>187</sup> "Police kicked and tortured blogger to make him confess he is gay", *Gay Star News*, 8 June 2020.



Raids in clubs and hotels where “gay men” were arrested have taken place.<sup>188</sup> In several of these reports, the Commission for the Promotion of Virtue and Prevention of Vice (CPVPV) is mentioned as having a leading role in these instances of enforcement. There are also reports of the use of forced anal examinations. In April 2012, the Commission was reportedly asked to enforce new orders to bar the entry of “gays and tomboys” from its government schools and universities until they “prove they have been corrected and have stopped such practices”.<sup>189</sup>

Despite the abundance of documented cases, the total number of arrests, prosecutions and convictions remains largely unknown. In stark contrast to the limited number of instances that make headlines, according to a 2012 report by Saudi newspaper *Okaz*, the government had arrested over 260 people for “homosexuality” over a one-year period around 2012.<sup>190</sup>

16  Singapore

LAST  
AMENDED  
1938

Section 377A of the Penal Code (Chapter 224) criminalises 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”. This carries a possible punishment of imprisonment which may extend to two years.

Section 377A was first introduced into the Penal Code in 1938 and remained in the Penal Code after the government’s review in October 2007.<sup>191</sup>

In *Ong Ming Johnson v Attorney-General* (2020), the High Court dismissed three constitutional challenges against Section 377A. The High Court stated that Section 377A “serves the purpose of safeguarding public morality by showing societal moral disapproval of male homosexual acts”, despite it not being actively enforced.<sup>192</sup>

Section 294(a) of the Penal Code criminalises “obscene acts” in public, “to the annoyance of others”, which may result in imprisonment for up to three months, a fine, or both. In *Tan Eng Hong v Attorney-General* (2012), two men, who were arrested for engaging in oral sex in a cubicle of a public toilet, were initially charged under Section 377A of the Penal Code. The Prosecution later substituted the charge with another under Section 294(a), after one of the accused brought a constitutional challenge against Section 377A.

17  Sri Lanka

LAST  
AMENDED  
1995

Article 365 of the Penal Code (Cap. 19) punishes “unnatural offences” – defined as “carnal intercourse against the order of nature with any man, woman or animal” – with imprisonment for up to 10 years.

Article 365A of the Penal Code criminalises “acts of gross indecency between persons” in public or private with imprisonment of up to 2 years and/or a fine.

► *Enforcement*

In 2020, there have been several reports of arrests and prosecutions pursuant to Articles 365 and 365A of the Penal Code, with forced anal examinations reportedly used in the gathering of evidence of homosexuality.<sup>193</sup>

<sup>188</sup> “‘Gay club’ raided and shut in Saudi”, *Emirates* 24/7, 23 October 2012; “Filipino vice ring busted at key Saudi hotel”, *Emirates* 24/7, 6 January 2013; “Gay Parties’ Raided in Saudi Arabia; Religious Police Arrest Several People on Suspicion of Homosexuality”, *International Business Times*, 15 June 2015; “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; “Saudi Arabia Denies Claims Two Pakistani Transgender Activists Tortured to Death in Police Custody”, *The Independent*, 7 March 2017.

<sup>189</sup> “Saudi Arabia bans ‘gays, tom-boys’ from schools”, *Emirates* 24/7, 16 April 2012.

<sup>190</sup> Colin Stewart, “Saudi Arabia: 260 arrests for homosexuality in 1 year”, *Erasing 76 Crimes*, 6 June 2012.

<sup>191</sup> Lim Puay Ling, “Penal Code section 377A”, *Singapore Infopedia*.

<sup>192</sup> Lydia Lam, “High Court judge dismisses all three challenges to Section 377A”, *Channel News Asia*, 30 March 2020.

<sup>193</sup> Shihara Maguwage, “Arrests and Harassment of LGBTIQ Persons”, *Groundviews*, 22 October 2020; “Sri Lanka: Forced Anal Exams in Homosexuality Prosecutions”, *Human Rights Watch*, 20 October 2020.

18  Syria	LAST AMENDED 1949	Article 520 of the <b>Penal Code</b> (1949) criminalises “unnatural sexual intercourse” with a potential imprisonment of up to three years.
		Additionally, Article 517 criminalises any “act against public decency”, which is an act carried out in a public or open area where one could possibly see, intentionally or accidentally, the act. It is punishable with imprisonment of three months to three years.
		▶ <i>Enforcement</i>
		A submission to the 2016 UPR cycle noted that “LGBT identified individuals are 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”. <sup>194</sup> This trend has apparently not abated, with reports of authorities targeting and sexually harassing LGBT individuals into 2020. <sup>195</sup>
19  Turkmenistan	LAST AMENDED 2019	Article 135 of the <b>Criminal Code</b> (1997), as amended in 2019, punishes sodomy—defined as “sexual intercourse between men”—with imprisonment of up to 5 years (before the 2019 amendment, the legally prescribed punishment was of 2 years of imprisonment).
		In case of repeated acts or acts committed by a group of two or more persons, the punishment is imprisonment between two to five years with obligatory living in a certain place from five to ten years.
		▶ <i>Enforcement</i>
		The law criminalising same-sex sexual acts between males appears to be enforced selectively. While there are reports of arrests, individuals are rarely prosecuted under this law. “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. <sup>196</sup>
		In October 2019, a 24-year-old gay doctor disappeared for several days after being summoned to a police station in Ashgabat, having shared with a local media outlet his experience of being entrapped by an undercover police officer, arrested, humiliated, and tortured the previous year. <sup>197</sup> The doctor reappeared a few days later and retracted all of his previous statements. <sup>198</sup> The Turkmen authorities then demanded all medical personnel to get tested for STIs, after deeming the doctor as immoral and a dishonour to the medical profession. <sup>199</sup>
		In May 2020, local media reported that in mid-March a well-known showman in Ashgabat had been arrested on charges of homosexuality. Along with the young man, about a dozen other people, including well-known personalities in the country's showbusiness and modelling industry, were arrested. <sup>200</sup>

<sup>194</sup> AWASUR, *PHRO Joint Submission* (2016).

<sup>195</sup> “إختر أخبار لبنان: فضائح المخابرات السورية ضد المثليين.. ودعم ناقص في لبنان”, *Adramout*, 29 July 2020.

<sup>196</sup> 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.

<sup>197</sup> Patrick Kelleher, “Gay man in Turkmenistan goes missing after posting heartbreaking video fearing he might be ‘forcibly taken away’”, *Pink News*, 1 November 2019.

<sup>198</sup> “Turkmenistan: Gay Man Summoned by Police and Disappeared: Kasymberdi Garaev”, *Amnesty International*, 6 November 2019, Index number: EUR 61/1363/2019; “Gay man missing in Turkmenistan establishes contact and denies his statements”, *Chronicles of Turkmenistan*, 8 November 2019; “Gay Turkmen Doctor Who Vanished Returns Home, Recants”, *Radio Free Europe/Radio Liberty*, 6 November 2019.

<sup>199</sup> “После скандала с врачом-геом, медиков отправили сдавать анализы на венерические болезни”, *Chronicles of Turkmenistan*, 2 November 2019.

<sup>200</sup> “Aşgabatda ‘gomoseksuallykda aýyplanyp belli şoumen tutuldy’” (‘Showman arrested for homosexuality’ arrested in Ashgabat’), *Azathabar*, 16 April 2020.

20		<b>United Arab Emirates</b>	LAST AMENDED 2016	Certain interpretations posit that Article 354 of the <b>Federal Penal Code</b> (1987) prescribes the death penalty for “sodomy with a male”. <sup>201</sup>
				Similarly, Article 356 has been interpreted by various scholars to criminalise consensual same-sex sexual activity. <sup>202</sup> The original Arabic-language provision in this article is “هتك العرض” ( <i>hatk al-‘arD</i> ), which literally translates to “disgrace to honour” but has been translated in substantially different ways (e.g.: “voluntary debasement”, “indecent assault”, “indecenty”, “carnal knowledge”) by different sources. <sup>203</sup>
				In 2016, <b>Federal Decree-Law No. 7</b> (2016) amended Article 358 to establish that any person who publicly commits a “disgraceful act” would be punished by a jail sentence for no less than six months. The same penalty applies to any person who says or commits any “act against the public morals”.
				▶ <i>Enforcement</i>
				Numerous cases of state persecution of LGBT persons in the UAE have been reported in recent years. <sup>204</sup> Reports of anal examinations that led to sentences of imprisonment for homosexuality and obscene acts under Sharia law have been brought to the attention of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and reported by Human Rights Watch. <sup>205</sup>
				Consensual same-sex sexual activity is additionally criminalised in several emirates by means of local legislation:
		<i>Abu Dhabi</i>	LAST AMENDED 1970	Article 80 of the <b>Abu Dhabi Penal Code</b> punishes “consensual sodomy” with a penalty of up to 14 years’ imprisonment.
		<i>Dubai</i>	LAST AMENDED 1994	Article 177 of the <b>Dubai Penal Code</b> (1970), as amended in 1994, punishes “unnatural crimes (sodomy)” – defined as “sexual intercourse with another person in contravention of the laws of nature” – with a penalty of up to 10 years’ imprisonment. <sup>206</sup>
				Additionally, Article 183 establishes that “sexual intercourse” is deemed to have occurred once the sexual organ has entered in the slightest degree, whether or not that entry is accompanied by secretion of semen.
		<i>Sharjah</i>	LAST AMENDED 1970	Article 176 of the <b>Sharjah Penal Code</b> (1970) punishes “unnatural crimes (Sodomy)” – defined as “sexual intercourse with another person in contravention of the laws of nature” or “allowing a male to have intercourse with them in contravention of the laws of nature” – with imprisonment of up to 10 years.
				Additionally, Article 181 establishes that “sexual intercourse” is deemed to have occurred once the sexual organ has entered in the slightest degree, whether or not that entry is accompanied by secretion of semen.

<sup>201</sup> This is discussed in further detail in the entry for the UAE in the special dossier on the death penalty of this report.

<sup>202</sup> 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 on 23 October 2019.

<sup>203</sup> See, for example: 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 on 23 October 2019.

<sup>204</sup> “Gay party men may be given hormone treatment”, *Khaleej Times*, 27 November 2005; “US condemns UAE gay men arrests”, *BBC News*, 29 November 2005; “”, *Al Arabiya*, 7 July 2008. Dubai police target indecent acts on beaches”, *Al Arabiya*, 7 July 2008; “Lesbian couple jailed for kissing on beach in Dubai”, *London Evening Standard*, 2 September 2008; Dan Littauer, “Dubai Police Chief Denies Reports That Gay People Were Arrested at Party”, *HuffPost*, 21 March 2012; Bassam Za’Za’, “Gay partner jailed for one year for having consensual sex with victim”, *Gulf News*, 8 June 2012; “UAE Jails Two Singaporeans for Dressing ‘Feminine’”, *Fridae Asia*, 29 August 2017; “Singaporeans in UAE Have Sentence Reduced”, *Fridae Asia*, 30 August 2017; “Homosexuality in the UAE”, *Detained in Dubai (website)*. Accessed on 23 October 2020.

<sup>205</sup> *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. See also: “UAE sentences 11 men to five years in jail for homosexuality”, *Khaleej Times*, 13 February 2006; Human Rights Watch, *Audacity in Adversity: LGBT Activism in the Middle East and North Africa* (2018), 20.

<sup>206</sup> *Ibid.*

21		Uzbekistan	LAST AMENDED 1994	<p>Article 120 of the <b>Criminal Code of Uzbekistan</b> (1994) criminalises “<i>besoqolbozlik</i>” (homosexual intercourse), which is voluntary sexual intercourse of two male individuals, with imprisonment up to three years.</p> <p>► <i>Enforcement</i></p> <p>Besides fuelling hostility towards sexual and gender diversity, Article 120 has been reportedly utilised for political ends, or as a form of extortion.<sup>207</sup> There are cases in which it was utilised against those who protest or demand protections of their 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”.<sup>208</sup></p>
22		Yemen	LAST AMENDED 1994	<p>Article 264 of the <b>Penal Code</b> (1994) criminalises <i>liwat</i> (sodomy), which is defined as “the contact of one man to another through his posterior” and determines that “both sodomites whether males or females are punished with whipping of one hundred strokes if not married”. The Article further states that it is “admissible to reprimand it by imprisonment for a period not exceeding one year, punishment by stoning to death if married”.</p> <p>Article 268 also criminalises <i>sihaq</i> (lesbianism), which is defined as “intercourse between one female and another”. This carries the potential punishment of imprisonment for a period not exceeding three years.</p> <p>Articles 270 and 271 also outline punishments relating to “honour” and “disgrace”, and Article 279 similarly criminalises “immorality or prostitution”.</p> <p>Furthermore, Article 58(2) of the Decree Issuing the Executive Regulations for Law No. 48 of 1991 Regarding the Organization of Prisons (<b>Decree Law No. 221 of 1999</b>),<sup>209</sup> people arrested for “homosexuality”<sup>210</sup> charges are kept in separate cells, whose conditions, according to the United Institute for Peace, are “extremely poor, bordering on inhumane”.<sup>211</sup></p> <p>► <i>Enforcement</i></p> <p>Between 2011 and 2012, as many as 316 gay men across 18 of Yemen’s provinces were reportedly arrested on charges of homosexuality, with 95 cases in 2011 and 63 in 2012. Each of these reported cases involved the arrest of two gay persons.<sup>212</sup></p> <p>In October 2020, a newspaper reported that a man had been punished with 100 lashes in a public square after the Specialised First Instance Criminal Court of Sana’a (a court reportedly run by Houthi militia), found him guilty of practicing sodomy with another man (who was himself sentenced to death for other crimes).<sup>213</sup></p>

<sup>207</sup> “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.

<sup>208</sup> “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. For more information see: “The Human Rights Situation in Uzbekistan” in ILGA World: Lucas Rmaón Mendos, *State-Sponsored Homophobia 2019* (Geneva: ILGA, 2019), 484.

<sup>209</sup> An alternative source for this law can be found [here](#).

<sup>210</sup> The terms used in the original, Arabic-language version of this law are “شذوذ” and “شواذ” (“*shudhudh*” and “*shawaadh*”), whose literal translations are “perversion” and “perverts”, respectively, but are largely understood as synonyms of “homosexuality” and “homosexuals”, respectively. An English language translation of this law is available in: Fiona Mangan with Erica Gaston, “Prisons in Yemen”, *United States Institute of Peace*, 2015, pp. 85-101.

<sup>211</sup> Fiona Mangan with Erica Gaston, “Prisons in Yemen”, *United States Institute of Peace*, 2015, 53.

<sup>212</sup> Shuaib Almosawa, “No Place for Gays in Yemen”, *IPS News*, 16 August 2013.

<sup>213</sup> News reports provided no further details on the sodomy incident as such, adding only that, in the case of the man subjected to public lashing, the three years he had spent in prison since the date of his arrest, in addition to the corporal punishment, were considered sufficient. See: “صنعاء... الإعدام لمدان بخطف واغتصاب 92 شخصا واستخدامهم في وقائع نصب”, *Ansar Allah*, 11 October 2020.

## Is there more in Asia?


## South Korea

Even though the 1962 **Criminal Act** (updated 2009) of South Korea contains no provisions criminalising consensual same-sex sexual acts between adults, Article 92(6) of the **Military Criminal Act** criminalises “indecent acts”, provisioning that “a person who commits anal intercourse with any person prescribed in Article 1 (1) through (3) [“military person”] or any other indecent act shall be punished by imprisonment with labour for not more than two years”.

In 2016, the Constitutional Court upheld the law, that had had its constitutionality challenged.<sup>214</sup>

## Oceania

6 out of 14 UN Member States (43%). Additionally, 1 non-UN Member jurisdiction (Cook Islands).

1	 <b>Kiribati</b>	LAST AMENDED <b>1977</b>	<p>Section 153 of the <b>Penal Code</b> (1977) punishes “buggery” with imprisonment of up to 14 years. Both committing “buggery” and permitting a male person to commit buggery with him or her are criminalised under this section. Attempts to commit this “crime” are punished under Section 154 with imprisonment for 7 years.</p> <p>Further, Section 155 punishes men who commit acts of “gross indecency” with another male person, whether in public or private, with imprisonment for 5 years.<sup>215</sup></p>
2	 <b>Papua New Guinea</b>	LAST AMENDED <b>1974</b>	<p>Section 210 of the <b>Criminal Code</b> (1974) penalises “unnatural offences” with “imprisonment for a term not exceeding 14 years. The crime is defined as sexual penetration of any person “against the order of nature” (either insertive or receptive). Attempts to commit this “crime” are punished with imprisonment for 7 years.</p> <p>“Indecent practices between males” are criminalised under Section 212, with a penalty of imprisonment of up to 3 years.</p> <p>► <b>Enforcement</b></p> <p>A 2011 study found police to be one of the main sources of violence and discrimination against men who have sex with men and transgender people.<sup>216</sup> In March 2015, a Malalaua district resident was prosecuted and pleaded guilty to “indecent acts” between males in <i>State v. Sevese</i>, receiving a suspended sentence and being made to undergo mandatory counselling and community service work.<sup>217</sup></p>
3	 <b>Samoa</b>	LAST AMENDED <b>2013</b>	<p>In 2013, Samoa enacted the <b>Crimes Act</b> (2013), amending Section 58D of the <b>Crimes Ordinance</b> (1961), which decriminalised ‘indecent acts’ between males. However, Section 67 still punishes sodomy, prescribing different penalties according to the “victim” of the crime.<sup>218</sup> Under subsection (3), consent is no defence to a charge of sodomy.</p> <p>Further, Section 68 also penalises “attempts to commit sodomy” with “imprisonment for a term not exceeding 5 years”.</p> <p>Additionally, Section 71 establishes the crime of “keeping place of resort for homosexual acts”. Under this section a person is liable to imprisonment of up to 7 years if they are in any way involved with the management or rental of premises used to commit indecent acts between males.</p>

<sup>214</sup> “Constitutional Court upholds military’s ban on sodomy”, *Hankyoreh*, 4 August 2016.

<sup>215</sup> For more information, see: Tabeio Tamton, “Fighting for Equality in Kiribati” in ILGA World: Lucas Ramón Mendos, *State-Sponsored Homophobia 2019* (Geneva: ILGA, March 2019), 498.

<sup>216</sup> Christina Misa Wong and Shanti Noriega, *Exploring gender-based violence among men who have sex with men, male sex worker and transgender communities in Bangladesh and Papua New Guinea* (FHI 360, 2011).


<sup>217</sup> Kaleidoscope Trust et al., *Speaking Out* (2015); Pacific Islands Legal Info. Institute, *Papua New Guinea [National Court of Justice]* (2015).

<sup>218</sup> Section 67 establishes that (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 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.

4	 <b>Solomon Islands</b>	LAST AMENDED <b>1963</b>	<p>Section 160 of the <b>Penal Code</b> (1996) punishes with imprisonment for fourteen years any person who is convicted for “unnatural offences”, consisting of “buggery” with another person or with an animal, or permitting a male person to commit buggery with oneself. Attempts to commit “bugger” are criminalised under Section 161.</p> <p>Section 162 penalises “indecent practices between persons of the same sex”, whether in public or private, with imprisonment for 5 years.</p> <p>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.<sup>219</sup></p>
5	 <b>Tonga</b>	LAST AMENDED <b>1988</b>	<p>Under Section 136 of the <b>Criminal Offences Act</b> (1988) sodomy is penalised with up to 10 years’ imprisonment.</p> <p>Moreover, Section 142 provides for corporal punishment for those convicted of sodomy, establishing that when a male person is convicted for the crime of sodomy, “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”.</p> <p>Section 140 sets the evidentiary standards as follows: “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”.</p> <p>► <i>Enforcement</i></p> <p>In 2013, the Supreme Court refused to grant custody of a child to a gay man, in <b>FA 39 of 2011</b>. The Supreme Court stated that because Tonga’s criminal law still prohibits carnal knowledge between consenting adults of the same sex, “[n]o court would entrust a very young child into the care of person whose lifestyle carries with it a very real risk of prosecution.”</p> <p>This decision was adopted despite the Tongan <b>Judicial Code of Conduct Rules</b> (2010) incorporating the Bangalore Principles of Judicial Conduct, which explicitly prohibit judges from discriminating against any person based on “irrelevant grounds”, including “sexual orientation”.</p>
6	 <b>Tuvalu</b>	LAST AMENDED <b>1965</b>	<p>Under Section 153, the <b>Penal Code</b> (2008) criminalises “unnatural offences”, defined as “buggery with another person or with an animal”. Allowing a male person to commit buggery with oneself is equally criminalised. The penalty established is of imprisonment for 14 years (and of 7 years for attempts to commit this crime).</p> <p>In turn, Section 155 penalises “indecent practices between males” (gross indecency), whether in public or private, with imprisonment of 5 years.</p>

## Non-independent jurisdictions in Oceania (1)

### New Zealand (1)

1	 <b>Cook Islands</b>	LAST AMENDED <b>1969</b>	<p>Section 155 of the <b>Crimes Act</b> (1969) punishes sodomy, prescribing different penalties according to the “victim” of the crime.<sup>220</sup> Under subsection (4) consent is no defence to a charge of sodomy. Additionally, Section 154 punishes with up to 5 years’ imprisonment any indecent act between men.</p> <p>In 2019, a draft bill to decriminalise these acts was scrapped due to pressure from the religious community.<sup>221</sup> In October 2020, a report that was due to be presented on reforming the Crimes Act was deferred by three months.<sup>222</sup></p>
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<sup>219</sup> Equal Rights Trust et al., *Stand Up and Fight* (2016), 106-107.

<sup>220</sup> Section 155 establishes that “(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

<sup>221</sup> “Decriminalising homosexuality law hangs in the balance for the Cook Islands”, *express Magazine*, 22 November 2019.

<sup>222</sup> Andre Chumko, “Cook Islands defers decision on decriminalising gay sex”, *Stuff*, 1 October 2020.



GLOBAL LEGISLATION OVERVIEW

# RESTRICTION

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STATE-SPONSORED HOMOPHOBIA 2020

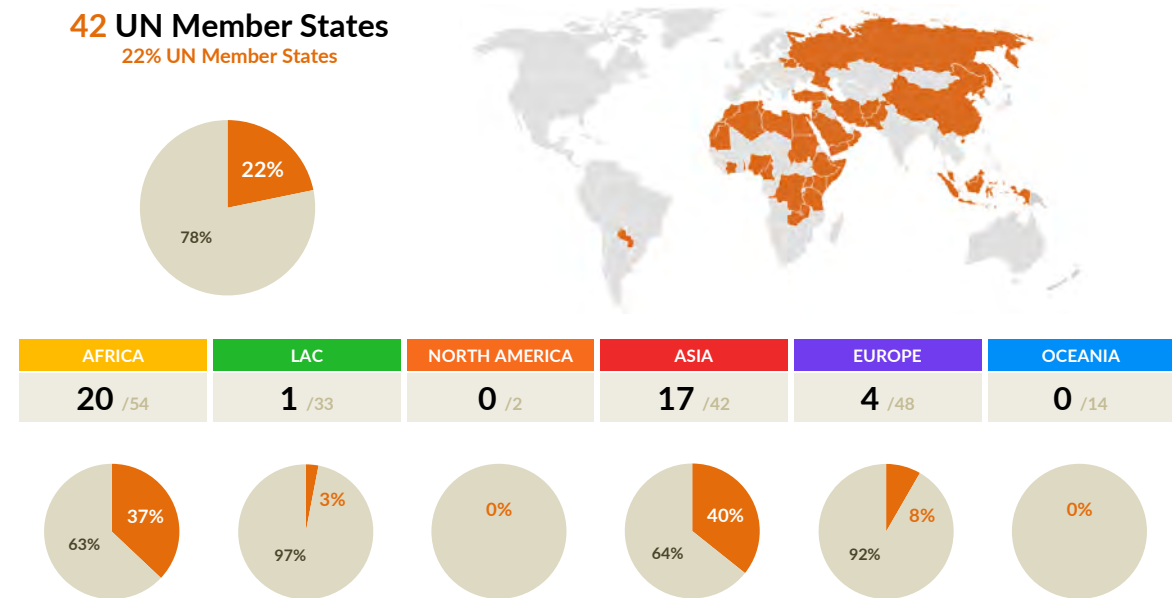






# Legal barriers to freedom of expression on sexual and gender diversity issues

## Highlights



## Introduction

This section covers laws and regulations that have been created or used to restrict the right to freedom of expression in relation to SOGIESC issues.

Governments employ multiple ways to curtail discussions about SOGIESC topics, including by criminalising offences against morality and religion, limiting sex education curriculums, prohibiting promotion or propaganda of homosexuality, censorship in media and movies, prosecution for LGBT+ symbols under public manifestation and pornography laws, blocking thematic websites and publications, chasing communications in dating apps, and other ways to limit freedom of expression.

The following entries should be interpreted with a note that the section covers primarily legislative instruments. However, the freedom of expression on SOGIESC issues may be limited as an effect of generally repressive governmental policies on any type of freedom of expression, criminalisation of homosexuality, and wide-spread societal homophobia.

### 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

20 out of 54 UN Member States (37%). Tier 1: (7); Tier 2: (13).

TIER 1: EXPLICIT LEGAL BARRIERS <sup>1</sup>			
1	 <b>Algeria</b>	1982	<p>In 1982, Law No. 82-04 amended the <b>Penal Code</b> (1966) to modify Article 333 and insert Article 333 <i>bis</i>.</p> <p>Article 333 <i>bis</i> 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 same title, the second paragraph of Article 333 (<i>Modified</i>) explicitly includes the “indecent exposure of an act against the order of nature with an individual of the same sex” as an aggravated crime against good mores.</p>
2	 <b>Cameroon</b>	2010  2016	<p>Article 83 of the Law on Cybersecurity and Cybercrime (<b>Law No. 2010/12</b>) (2010) criminalises with up to two years of imprisonment and a fine any electronic communication between individuals of the same sex for the purpose of a sexual proposition. Penalties are doubled when communication is actually followed by sexual intercourse.</p> <p>In addition, Section 264 of the <b>Penal Code</b> (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”.<sup>2</sup></p>
3	 <b>Egypt</b>	1937  2017	<p>The <b>Penal Code</b> (1937) contains several provisions that can limit freedom of expression on SOGIE issues in Egypt: Article 178 (production and dissemination of information “against public morals”); Article 278 (on commission of a “scandalous act against shame”) and Article 269 <i>bis</i> (“inciting the passers-by with signals or words to commit indecency”).</p> <p>These criminal provisions are supplemented by the Law on the Combating of Prostitution (<b>Law No. 10</b>) (1961). For example, Article 9(b) of this law introduces punishment for allowing on one’s premises “incitement to debauchery” which is understood as including non-commercial male homosexual relationships.<sup>3</sup></p> <p>In 2017, the Supreme Council for Media Regulation released a statement to ban “the appearance of homosexuals or their slogans in the media”.<sup>4</sup> In particular, the statement prohibits “homosexuals to appear in any media outlet whether written, audio, or visual” except when they “acknowledge the fact that their conduct is inappropriate and repent for it”.<sup>5</sup> That same year, the government carried out a massive arrest and sentences following the raising of LGBT flags at a concert.<sup>6</sup> In addition to other regulations, the authorities employed Article 86 <i>bis</i> of the Penal Code—the provision used for prosecuting members of the Muslim Brotherhood organisation for terrorism charges—to punish individuals for expressing support to the LGBT+ community. According to local activists, the deployment of this article was a significant departure from the previous prosecution based on charges of “promoting debauchery”.<sup>7</sup></p>

<sup>1</sup> Please see the note on methodology for this category in the Methodology chapter of this report.

<sup>2</sup> Carlson Anyangwe, *Criminal Law in Cameroon: Specific Offences* (African Books Collective, 2011), 282.

<sup>3</sup> Human Rights Watch, *In a time of torture. The Assault on Justice in Egypt’s Crackdown on Homosexual Conduct* (New York: HRW, 2004), 15.

<sup>4</sup> “All Forms of Support to the LGBT Community to be Banned on Media Outlets: SCMR”, *Egyptian Streets*, 1 October 2017.

<sup>5</sup> “Unofficial Translation of Statement by Egypt’s Supreme Council for Media Regulation”, *Human Rights Watch*, 6 October 2017.

<sup>6</sup> Ahmed Aboulenein, “Egypt arrests dozens in crackdown on gays”, *Reuters*, 2 October 2017; “Egypt jails 16 for ‘debauchery’ as LGBT crackdown continues”, *BBC News*, 28 November 2017. Three years later, Sarah Hegazi, one of the arrested activists who had to flee to Canada, took her life. Declan Walsh, “Arrested for Waving Rainbow Flag, a Gay Egyptian Takes Her Life”, *The New York Times*, 15 June 2020.

<sup>7</sup> For more information see “Rights of LGBTQ People in Egypt: Between State, Society, and de facto Criminalisation” in ILGA World: Lucas Ramón Mendos, *State-Sponsored Homophobia 2019* (Geneva: ILGA, 2019), 521.

			<p>In 2018, the authorities adopted <a href="#">Law No. 180 (2018)</a> regulating the press, media, and the Supreme Council for Media Regulation. Among other things, the law includes provisions against the “violation of public morals” and “disturbance of peace”.<sup>8</sup> That same year, the Law on Cyber Crimes (<a href="#">Law No. 175</a>) (2018) was adopted. Article 25 of this law 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”.</p> <p>In January 2019, the authorities sentenced a television host and fined him for “promoting homosexuality” by interviewing a gay person who had talked about his life as a sex worker.<sup>9</sup></p>
4	 Kenya	2012	<p>Section 12 of the Film and Stage Plays Act (<a href="#">Act No. 34</a>) (effective 1963) restricts the exhibition of films according to the discretion of the Kenya Film Classification Board. According to the Board’s <a href="#">Classification Guidelines</a> (2012), films with themes that “promote or glamorise a homosexual lifestyle” are either age-restricted (18+) or banned.</p> <p>In April 2018, the Board banned the film “Rafiki” on the basis that it was “intended to promote lesbianism in Kenya”. However, the ban was temporarily lifted for seven days by a High Court judge after the film was nominated at the Academy Awards.<sup>10</sup> In 2014, the Board also banned “Stories of Our Lives” similarly for “promoting homosexuality”.<sup>11</sup></p>
5	 Nigeria	2013	<p>Section 5(2) of the <a href="#">Same-sex Marriage (Prohibition) Act</a> (2013) provides that a person who “directly or indirectly makes public show of same-sex amorous relationships” can be sentenced to up to 10 years imprisonment.</p> <p>In addition, the Sharia Penal Codes and the Penal Code of Northern Nigeria punish different forms of dissemination of information which is obscene or “contrary to public policy” with imprisonment and caning.<sup>12</sup></p>
6	 Togo	1982 2015	<p>Articles 89 and 90 of the old <a href="#">Penal Code</a> (1982) penalised the publication and distribution of information “against public morals and decency”.</p> <p>In the new <a href="#">Penal Code</a> (2015) the same acts are criminalised under Articles 392 and 394. Offences against morality include “unnatural acts” with a person of the same sex under Article 392.</p>
7	 Uganda	1995 1996 2013 2019	<p>Under Section 9 of the <a href="#">Press and Journalist Act</a> (1995), the Media Council is authorised to censor films, plays, and other media content. In 2017, the Media Council banned a Dutch film for “glorifying homosexuality”.<sup>13</sup></p> <p>The Broadcasting Council, established under the <a href="#">Electronic Media Act</a> (1996), is empowered to regulate radio content under the Minimum Broadcasting Standards, which bans content contrary to public morality. In 2004, the Council fined a radio station for hosting gay men during a live talk show on the basis that it was “contrary to public morality”.<sup>14</sup></p> <p>Since 2013, the <a href="#">Communications Act</a> (2013) obliges broadcasters to ensure that any programme is not contrary to public morality.</p> <p>In 2019, the Uganda Communications Commission adopted the <a href="#">Standards for General Broadcast Programming in Uganda</a>. Article 6(5) determines that “information, themes or subplots on lifestyles such as homosexuality, lesbianism, bisexualism, transsexualism, transvestism, paedophilia and incest” should not “promote, justify or glamorize” them. Further, explicit dialogue or information concerning the above topics should not be broadcasted. In addition, Article 8.6 states that sex education programmes should not encourage or promote “unnatural sex acts”.</p>

<sup>8</sup> See as well: “Egypt: 2018 Law on the Organisation of Press, Media and the Supreme Council of Media”, *Article 19*, 18 March 2019.

<sup>9</sup> “Egypt TV host Mohamed al-Ghiety jailed for interviewing gay man”, *BBC News*, 21 January 2019.

<sup>10</sup> “Kenya: Censorship by film classification board limiting free expression”, *Article 19*, 17 May 2018.

<sup>11</sup> “Stories of Our Lives: Not in Kenya”, *The Nest Collective*, 04 October 2014.

<sup>12</sup> Philip Ostien, *Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook*, Vol. IV (The Hague: Spectrum Books, 2007), 15-16.

<sup>13</sup> “Uganda bans Dutch film for 'glorifying homosexuality'”, *BBC News*, 16 May 2017.

<sup>14</sup> “Fine for Ugandan radio gay show”, *BBC News*, 03 October 2004.

The now defunct [Anti-Homosexuality Act](#) (2014), struck down for procedural reasons in August 2014, contained a specific provision aimed at prohibiting the “promotion of homosexuality” in very broad terms.<sup>15</sup>

A draft bill entitled “[The Prohibition of Promotion of Unnatural Sexual Practices Bill](#)” (2014) would prohibit multiple forms of distribution and exchange of information related to same-sex relationships.<sup>16</sup>

## TIER 2: NON-EXPLICIT LEGAL BARRIERS

8	 <b>Burundi</b>	2009	<p>Article 564 of the <a href="#">Penal Code</a> (2009) prohibits the exhibition, sale, or distribution of songs, pamphlets, writings, images, emblems, or other materials “contrary to good morals”. Furthermore, anyone who has sings, reads, recites, or utters obscenities in meetings or public places in front of several people is punished with a fine.</p> <p>This provision is included in the same chapter as the provisions criminalising sexual acts with beasts and people of the same sex.</p>
9	 <b>Cote d'Ivoire</b>	1981  2019	<p>The negative effect of Article 360 of the old <a href="#">Penal Code</a> (1981) on freedom of expression remains unclear.<sup>17</sup> Article 360 previously criminalised “public indecency consisting of indecent or unnatural act with an individual of the same sex”.</p> <p>In 2019, the new <a href="#">Penal Code</a> (2019) removed the explicit mention of same-sex relationships. Article 416 criminalises “public contempt of modesty” consisting of any act committed in a public place or open to the public, offending good morals or the moral feeling of people who are involuntary witnesses and likely to disturb public order. Article 357 prohibits the dissemination of information contrary to good morals.</p>
10	 <b>Democratic Republic of the Congo</b>	1940	<p>Article 176 of the <a href="#">Penal Code</a> (1940) criminalises insulting morals by acts “offending modesty,” which has been used to prosecute LGBT people.<sup>18</sup></p> <p>In addition, Article 175 prohibits different forms of production and dissemination of information “contrary to good morals”.</p>
11	 <b>Djibouti</b>	1995	<p>Sections 353 and 354 of <a href="#">Penal Code</a> (1995) outlaw the production, distribution, and sale of any materials “contrary to good morals”, as well as the public incitation to “practices contrary to good morals” by words, writing, or other means of communication.</p> <p>According to United States Embassy in Djibouti, “LGBTI persons generally did not openly acknowledge their LGBTI status”, and “there were no LGBTI organizations”.<sup>19</sup></p>
12	 <b>Ethiopia</b>	2004	<p>Article 640 of the <a href="#">Penal Code</a> (2004) criminalises the possession or dissemination of “grossly indecent material”, including providing information on how to procure them.</p> <p>A wide range of websites is reported to be blocked in Ethiopia, including the websites of LGBTI groups and organisations.<sup>20</sup></p>

<sup>15</sup> [Anti-Homosexuality Act](#) (2014). Article 13 read as follows: “Promotion of homosexuality”: (1) A person who— (a) participates in production, procuring, marketing, broadcasting, disseminating, publishing of pornographic materials for purposes of promoting homosexuality; (b) funds or sponsors homosexuality or other related activities; (c) offers premises and other related fixed or movable assets for purposes of homosexuality or promoting homosexuality; (d) uses electronic devices which include internet, films, mobile phones for purposes of homosexuality or promoting homosexuality; or (e) who acts as an accomplice or attempts to promote or in any way abets homosexuality and related practices; commits an offence and is liable, on conviction, to a fine of five thousand currency points or imprisonment of a minimum of five years and a maximum of seven years or both fine and imprisonment. (2) Where the offender is a corporate body or a business or an association or a non-governmental organization, on conviction its certificate of registration shall be cancelled and the director, proprietor or promoter shall be liable, on conviction, to imprisonment for 7 years.

<sup>16</sup> “Uganda planning new anti-gay law despite opposition”, *BBC News*, 10 November 2014.

<sup>17</sup> “Côte d'Ivoire: Application of article 360 of the Penal Code against sexual minorities”, *Immigration and Refugee Board of Canada*, 22 December 2014.

<sup>18</sup> 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. 13.

<sup>19</sup> U.S. Embassy in Djibouti, *Djibouti 2019 Human Rights Report*, accessed on 20 November 2020.

<sup>20</sup> Freedom House, *Freedom on the Net: Ethiopia* (2017).

13	 <b>Libya</b>	1953  2016	Article 421 of the <b>Penal Code</b> (1953) criminalises the distribution of writings, pictures or other articles of an indecent nature, or who publicly exposes them for sale.  In 2016, Libya adopted <b>Law No. 11</b> (2016) prohibiting acts “contrary to public morals” and “the provisions of Islamic law”.
14	 <b>Mauritania</b>	1983	Article 264 of the <b>Penal Code</b> (1983) prohibits “songs, cries or speech contrary to good morals” and publicly drawing “attention to an occasion of debauchery” or publishing any such advertisement or correspondence. Furthermore, Article 306 punishes “public contempt of decency and Islamic mores”.  In 2020, police forces arrested ten people at a birthday party. Eight of them were charged under these provisions for “imitating women”. <sup>21</sup>
15	 <b>Morocco</b>	1962	Article 483 of the <b>Penal Code</b> (1962) criminalises public acts against decency consisting of public nudity or acts or gestures of “obscurity”. Acts are considered public if they are committed in the presence of one or more involuntary witnesses or minors, or in a place accessible to the public.  In 2015, two men were prosecuted under this law for kissing in public. They were sentenced to four months in prison and a fine. <sup>22</sup>
16	 <b>Somalia</b>	1964	Article 402 of the <b>Penal Code</b> (1964) prohibits the commission of any “obscene act” while Article 403 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.
17	 <b>Sudan</b>	1991	Article 152 of the <b>Penal Code</b> (1991) criminalises the making, portrayal, possession, or dissemination of any material contrary to public morals.  The National Telecommunications Corporation (NTC) blocks websites considered “offensive to public morality”. <sup>23</sup> Sources indicate that while pornography is the primary target of this censorship, SOGIE content and dating sites are also subject to it. <sup>24</sup>
18	 <b>Tanzania</b>	1981	Article 175 of the <b>Penal Code</b> (1981) 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”.
19	 <b>Tunisia</b>	2004	Amended in 2004, Article 226 bis of the <b>Penal Code</b> (1913) criminalises any act that publicly draws attention to the opportunity to “commit debauchery” through any form of writing, audio, or visual recording.  This provision is in the same section entitled “attacks on morals,” where the provisions criminalising consensual same-sex sexual acts are located.  Article 226, which punishes “indecent behaviour in public” by imprisonment up to six months, has been used against trans and gender diverse people. <sup>25</sup>


<sup>21</sup> “Mauritania: Prison Terms for Men Celebrating Birthday”, *Human Rights Watch*, 07 February 2020.

<sup>22</sup> “Moroccan men ‘jailed for four months for kissing in public”, *The Telegraph*, 19 June 2015; “Maroc: 4 mois de prison pour homosexualité”, *Le Figaro*, 19 June 2015.

<sup>23</sup> “The organisation’s competencies and powers”, *Sudan Telecommunications and Post Regulatory Authority (website)*, accessed: 26 August 2020.


<sup>24</sup> Liemia Abubkr, Association for Progressive Communications (APC) and Humanist Institute for Cooperation with Developing Countries (Hivos), *Global Information Society Watch 2015: Sexual rights and the internet - Sudan* (APC & Hivos, 2015).

<sup>25</sup> Amnesty International, *Tunisia: Submission to the UN Committee on Economic, Social and Cultural Rights* (London, Amnesty International Ltd., 2016), 8.

20	 <b>Zambia</b>	2005	<p>Article 178(g) of the <a href="#">Zambian Penal Code (1930)</a> criminalises any act of “soliciting for immoral purposes in a public place”.</p> <p>Notably, this provision was used as a legal basis to arrest and prosecute Paul Kasonkomona. In 2013, authorities arrested him after he appeared on a television program, arguing that the rights of sexual minorities and sex workers should be recognised in order to address the HIV epidemic effectively. Kasonkomona was acquitted two years later.<sup>26</sup></p> <p>In 2019, the Minister of Religious Affairs ordered the cancellation of a television program for allegedly “promoting homosexuality”.<sup>27</sup></p>
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## Latin America and the Caribbean

1 out of 33 UN Member States (3%). Additionally, several subnational jurisdictions in 1 UN Member State (Brazil). Tier 1: (1).

TIER 1: EXPLICIT LEGAL BARRIERS <sup>28</sup>			
1	 <b>Paraguay</b>	2017	<p>The Ministry of Education and Sciences issued <a href="#">Resolution No. 29,664 (2017)</a> prohibiting the dissemination and use of educational materials referring to “gender theory and/or ideology”.<sup>29</sup></p> <p>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”.<sup>30</sup></p>

### Is there more in LAC?

#### Brazil

In 2020, the Supreme Court struck down several local laws issued in the cities of Cascavel/Paraná ([Law No. 6496/2015](#)), Novo Gama/Goiás ([Law No. 1516/2015](#)), Foz do Iguaçu/Paraná ([Law No. 47/2018](#)), Ipatinga/Minas Gerais ([Law No. 3491/2015](#)), Palmas/Tocantins ([Law No. 2243/2016](#)), Londrina/Paraná ([Amendment Act No. 55/2018 to Municipal Organic Law](#)), and Paranaguá/Paraná ([Law No. 3468/2015](#)). These laws prohibited learning materials with “gender ideology” information and implementation of educational policies related to “gender ideology,” gender, or sexual orientation.<sup>31</sup>

Three other similar laws have been challenged before the Brazilian Supreme Court. Among those, one ([Law No. 994/2015](#) – Blumenau/Santa Catarina) had already been suspended by preliminary rulings and is awaiting a final decision by the Court, and two other are still pending analysis ([Law No. 4268/2015](#) – Tubarão/Santa Catarina; [Law No. 2985/2017](#) – Petrolina/Pernambuco).<sup>32</sup>

#### Jamaica

In Jamaica, approval is required from the Cinematograph Authority under the [Cinematograph Act No. 476/14](#) to present a film. In 2013, a film about two lesbians who were murdered by their boyfriends was banned, with the Cinematograph Authority giving no reason for the ban.<sup>33</sup>

#### Haiti

In 2017, the Senate voted to ban “any public demonstration of support for homosexuality and proselytizing in favour of such acts”.<sup>34</sup> The fate of this bill remains unknown.

<sup>26</sup> For more information see: “Zambia: Activist Defends Right to Freedom of Expression”, *Southern Africa Litigation Centre*, 25 February 2014.

<sup>27</sup> “Sumaili tells Zambezi Magic to cancel ‘Lusaka Hustle’”, *Zambian Eye*, 02 February 2019.

<sup>28</sup> Please see the note on methodology for this category in the Methodology section of this report.

<sup>29</sup> Ministry of Education and Sciences (Paraguay), [Resolution No. 29.664/2017](#), by which the dissemination and use of printed and digital materials, referring to gender theory and / or ideology, in educational institutions dependent on the Ministry of Education and Sciences is prohibited, 5 October 2017; Teo Armus, “Paraguay Bans Material on ‘Gender Ideology’ in Public Schools”, *NBC News*, 17 October 2017.

<sup>30</sup> “Press Release: IACHR Regrets Ban on Gender Education in Paraguay”, *Organisation of American States (webpage)*, 15 December 2017.

<sup>31</sup> Cristian González Cabrera, “Supreme Court Strikes Down Bigotry in Brazil’s Schools”, *Human Rights Watch*, 19 May 2020.

<sup>32</sup> Fabiana Cristina Severi, Maurício Buosi Lemes and Robert Augusto de Souza, “The debate in the STF on “gender ideology” and legal education”, *Justificando*, 18 August 2020.

<sup>33</sup> “Jamaica bans movie with lesbian scenes featuring Dominican actress”, *Dominica News Online*, 29 May 2013; Camille Royes, “Rating a film – Jamaican-style”, *Jamaica Observer*, 14 March 2012.

<sup>34</sup> “Haiti: Senate bans gay marriage”, *Tribune de Genève*, 3 August 2017.

## North America

0 out of 2 UN Member States (0%).


### Is there more in North America?

<b>United States of America</b>	<p>In the United States of America, several states 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.<sup>35</sup></p> <p>As part of the progress made in repealing these laws, in March 2017, the governor of Utah signed SB 196, revising the state law that prohibited the “advocacy of homosexuality” in schools. In April 2019, Arizona lawmakers approved <a href="#">Senate Bill 1346</a>, which repealed a 1991 law forbidding instruction on HIV and AIDS due to its alleged “promotion of a homosexual lifestyle”.<sup>36</sup></p>
<i>Alabama</i>	<p>Under the <a href="#">Alabama Code</a>, sexual education materials and instructions should include an emphasis that “homosexuality is not a lifestyle acceptable to the general public”. A bill aiming to exclude these provisions from the Code failed in 2019.<sup>37</sup> A new draft bill remains under consideration in the state legislature.<sup>38</sup></p>
<i>Mississippi</i>	<p><a href="#">Mississippi Code</a> establishes “abstinence-only” education as a standard for any sex-related education taught in public schools. In particular, such education should teach the current legislation related to “homosexual activity” and teach that a monogamous relationship in the context of marriage is the only appropriate condition for sexual intercourse.</p>
<i>Oklahoma</i>	<p><a href="#">Oklahoma Statutes</a> ensure that, as a part of AIDS prevention education, students are taught that avoiding “homosexual activity”, among other things, is the “only method” of preventing the spread of the AIDS virus.</p>
<i>South Carolina</i>	<p>The South Carolina Code of Laws provides that the educational program should not include discussions of non-heterosexual “lifestyles” outside of the context of the sexually transmitted disease. In March 2020, a district court determined that the law was unconstitutional.<sup>39</sup></p>
<i>Texas</i>	<p>Section 85.007(b)(2) of the Texas <a href="#">Health and Safety Code</a> states that the materials in the education programs intended for persons younger than 18 years of age “must state that homosexual conduct is not an acceptable lifestyle”.</p>

## Asia

17 out of 42 UN Member States (40%). Tier 1: (4); Tier 2: (13).

### TIER 1: EXPLICIT LEGAL BARRIERS<sup>40</sup>

1	 <b>China</b>	2015	Following the removal of a gay-themed web series, China issued the <a href="#">General Rules for Television Series Content Production (2015)</a> banning content that “expresses or displays “abnormal sexual relations or sexual behaviour, such as homosexuality”. <sup>41</sup>
		2017	In 2017, China Netcasting Services Association issued the <a href="#">General Rules for the Review of Network Audio-visual Program Content (2017)</a> which explicitly prohibit content relating to homosexuality, included under the category of “abnormal sexual relations or sexual behaviour”. <sup>42</sup>

<sup>35</sup> GLSEN, *Laws that Prohibit the ‘Promotion of Homosexuality’: Impacts and Implications (Research Brief)* (GLSEN, 2018).

<sup>36</sup> “Ducey signs law repealing teaching restriction considered anti-LGBTQ”, *KTAR News*, 11 April 2019.

<sup>37</sup> Jonece Starr Dunigan, “Alabama senate bill modernizes state’s sex education law”, *Al.com*, 03 April 2019.

<sup>38</sup> “HB 71 (2020) - Sex Ed Language,” *ACLU Alabama*, accessed on 14 September 2020.

<sup>39</sup> Liam Knox, “S. Carolina law banning LGBTQ sex ed is unconstitutional, judge rules”, *NBC News*, 12 March 2020.

<sup>40</sup> Please see the note on methodology for this category in the Methodology chapter of this report.

<sup>41</sup> Josh Horwitz, Zheping Huang, “China’s new television rules ban homosexuality, drinking, and vengeance”, *Quartz*, 03 March 2016.

<sup>42</sup> Cheng Li, Xinyue Zhang, “Online regulations and LGBT rights: A test for China’s legal system”, *The Brookings Institution*, 01 September 2017; Steven Lee Myers and Amy Cheng, “66 things you cannot say on China’s internet”, *The New York Times*, 24 September 2017.



In 2018, China's top social networking site, Weibo, announced a plan to censor gay-related content but reversed its decision after public backlash.<sup>43</sup> In October, authorities sentenced to ten years of imprisonment a novelist whose work included homoerotic content for making and selling "obscene material" for profit.<sup>44</sup>

In May 2018, The European Broadcasting Union banned the Chinese channel Mango TV from airing the Eurovision song contest for censoring Ireland's contestants' performance, which included references to same-sex relationships and for blurring the image of a rainbow flag.<sup>45</sup> In the same manner, scenes depicting same-sex love were removed from the Freddy Mercury's biopic "Bohemian Rhapsody".<sup>46</sup>

In 2019, China adopted the [Regulation on Administration of Online Short Video Platforms](#) (2019) that introduced the regulation of content "Promoting Unhealthy and Non-mainstream Attitudes towards Love and Marriage". This type of content includes, among other things, "expressing and presenting abnormal sexual relations or sexual conduct", "presenting and promoting unhealthy views and states of love and marriage", and "promoting and hyping non-mainstream views of marriage".

## 2 Indonesia

2008

In 2008, Indonesia introduced the Law on Pornography ([Law No. 44](#)) (2008). Article 4(1)(a) prohibits producing, reproducing, duplicating, distributing, broadcasting, importing, exporting, offering, trading, renting, or otherwise making available pornography that explicitly contains "deviant intercourse", which the explaining document defines as sexual activity with "corpses, animals, oral sex, anal sex, lesbian, and homosexuals". Human Rights Watch has documented instances in which this law has been used by the police to target LGBT people.<sup>47</sup>

2016

In February 2016, the Indonesian Broadcasting Commission (KPI) released the [Circular to All Broadcasting Companies on Effeminate Men](#) (2016), 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 programs that "promoted" homosexual lifestyle on the basis that it violated the [Broadcasting Program Standards](#) (2012) in the name of protecting children.<sup>48</sup>

In 2016, the Indonesian Ulama Council, a Muslim advisory body, released a *fatwa* (legal pronouncement) that condemned the promotion of LGBT activities. The Council's chairman clarified that "LGBT activities and campaigns are forbidden in Islam and other Abrahamic religions".<sup>49</sup>

In 2018, attempts were made by the Communications Ministry has been trying to ban same-sex dating applications on mobile phones.<sup>50</sup>

In 2019, the Indonesian parliament published a draft of the new Criminal Code which, among other things, would criminalise "obscene acts" in public.<sup>51</sup>

In August 2020, police raided a party and charged nine men with "facilitating obscene acts" and under the pornography law.<sup>52</sup>

<sup>43</sup> Yanan Wang, "China's Weibo site backtracks on gay censorship after outcry", *AP News*, 17 April 2018.

<sup>44</sup> Alison Flood, "Chinese writer Tianyi sentenced to decade in prison for gay erotic novel", *The Guardian*, 20 November 2018.

<sup>45</sup> "China Is Banned from Airing Eurovision After Censoring Performance with Gay Theme", *The New York Times*, 11 May 2018.

<sup>46</sup> Eduardo Baptista, "Six LGBT moments cut from 'Bohemian Rhapsody' in China," *CNN*, 25 March 2019.

<sup>47</sup> Andreas Harsono, "Indonesian Police Raid 'Gay Party'", *Human Rights Watch*, 8 October 2017.

<sup>48</sup> Fedina S. Sundaryani, "Commission wants TV, radio free of LGBT", *The Jakarta Post*, 14 February 2016.

<sup>49</sup> Abba Gabrillin, "MUI and Islamic Organizations Ask for Rules to Prohibit LGBT Activities", *Kompas Cyber Media*, 17 February 2016.

<sup>50</sup> Adi Renaldi, "Indonesia Wants to Ban Gay Dating Apps, Again", *Vice News*, 5 February 2018.

<sup>51</sup> European Parliament, *European Parliament resolution on the proposed new Criminal Code of Indonesia*, (2019/2881(RSP)), 22 October 2019.

<sup>52</sup> "Indonesia: Investigate Police Raid on 'Gay Party'", *Human Rights Watch*, 07 September 2020.

3		<b>Singapore</b>	Singapore has a vast body of laws, rules, and regulations that severely restrict the free dissemination of information regarding sexual and gender diversity. These include the following:
1994			Under the powers conferred by the <a href="#">Broadcasting Act</a> (1994), the Media Development Authority promulgated a series of Codes of Practices that restrict freedom of expression by prohibiting the justification, promotion, or advocacy of “homosexual lifestyle”. <sup>53</sup>
1997			The <a href="#">Internet Code of Practice</a> (1997) calls stakeholders who prohibit materials to consider “whether the material advocates homosexuality or lesbianism, or depicts or promotes incest, paedophilia, bestiality and necrophilia”.
2004			The <a href="#">Free-to-Air Radio Programme Code</a> (2004) prohibits the promotion, justification, and glamorization of “lifestyles such as homosexuality, lesbianism, bisexuality, transsexualism, transvestism, paedophilia and incest”, as well as broadcasting explicit dialogue on those topics.
2011			The <a href="#">Board of Film Censors Classification Guidelines</a> (2011) puts the “promotion and glamorisation of homosexual lifestyle” in the same category as the promotion of racism and glorification of “paedophilia and bestiality”.
2013			The <a href="#">Content Guidelines for Local Lifestyle Magazines</a> (2013) and the <a href="#">Content Guidelines for Imported Publications</a> prohibit content promoting an alternative lifestyle, which is defined as an “unconventional manner of living atypical of the concept of the traditional family” and including homosexuality, bisexuality, “trans-sexuality,” group sex and sado-masochism.
2014			The <a href="#">Arts Entertainment Classification Code</a> (2014) provides that arts entertainment organisers should ensure that no person under age 18 is present at the venue of the performance containing “occasional sexual gestures in a homosexual context”.
2016			The <a href="#">Content Code for Nationwide Managed Transmission Linear Television Services</a> (2016) classify films dealing with homosexuality-related content, along with “drug use” and “prostitution”, as “mature content”, for persons above the age of 16, 18, or 21, depending on the film. Additionally, films depicting a “homosexual lifestyle” should not “promote or justify a homosexual lifestyle”.
2019			The <a href="#">Video Game Classification Guidelines</a> (2019) restrict games to persons aged 18 and above if the game contains homosexual content or same-sex “kissing and hugging”. In practice, the authorities applied those restrictions not only on homosexual kisses, but on the mere possibility to develop same-sex relationships. <sup>54</sup>
			In addition, the official website of the Ministry of Education indicates that sexuality education should teach students “the law concerning homosexual acts in Singapore”. <sup>55</sup> As explained in this report, Section 377A of the Singaporean Penal Code criminalises outrages on decency between males in private with up to two years imprisonment.
			In 2015 a court imposed a heavy fine on a blogger for “contempt of court”. The blogger suggested that the Chief Justice manipulated the court in litigation on the criminalisation of same-sex relationships. <sup>56</sup>
4		<b>United Arab Emirates</b>	2012
			Article 3(5)(4) of Law on Combating Cybercrimes ( <a href="#">Law No. 5</a> ) (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 <a href="#">Internet Access Management Regulatory Policy</a> .


<sup>53</sup> Yu Sheng Teo, “This is why we don’t get LGBTQ+ representation in Singapore”, *Heckin Unicorn*, 28 July 2020.

<sup>54</sup> See: Infocomm Media Development Authority, [Extended Classification Information \[Life Is Strange\]](#), accessed on 15 September 2020.

Infocomm Media Development Authority, [Extended Classification Information \[Assassin’s Creed Odyssey\]](#), accessed on 15 September 2020.

<sup>55</sup> Ministry of Education of Singapore, [Sexuality Education: Scope and teaching approach](#), updated on 29 April 2020.

<sup>56</sup> Ng Siqi Kelly, “[Alex Au found guilty of contempt of court over post](#)”, *Today*, 23 January 2015.

		<b>2016</b>	<p>Article 362 of the <b>Federal Penal Code</b> (1987), as amended by Federal Decree-Law No. 7 (2016), punishes the production, possession or display of any material against public morals with jail sentence and/or a fine. Other relevant provisions include Article 358 (“disgraceful acts”), Article 360 (enticing by words or signs to debauchery), Article 361 (uttering immoral speech and prompting to debauchery), Article 363 (enticing to debauchery or prostitution).</p> <p>In 2013, two local men were sentenced to three years in prison for same-sex prostitution in Dubai. One of the men was also charged with “breaching public modesty” for publishing his photos wearing women’s undergarments and in full make-up.<sup>57</sup></p> <p>In October 2016, a 21-year-old Lebanese man in Abu Dhabi was arrested by an undercover police officer after posting an Instagram photo wearing short women’s clothes, wigs, and make-up, and being accused of using the online platform to offer sexual services to other men.<sup>58</sup></p> <p>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.<sup>59</sup></p>
<b>TIER 2: NON-EXPLICIT LEGAL BARRIERS</b>			
5	 <b>Afghanistan</b>	<p><b>1965</b></p> <p>Articles 32 and 33 of the <b>Afghanistan Press Law</b> (1965) prohibit the use of the press to incite others to commit an offence or to “seek depravity” (which includes the publication of articles which debase public morals).</p> <p><b>2006</b></p> <p>Additionally, Article 31(1) of the <b>Law on Mass Media</b> (2006) also prohibits the publication of matters “contrary to principles of Islam”.</p> <p>In 2009, it was reported that a memoir by a gay Afghan man could not be distributed in the country.<sup>60</sup> In 2014, authorities threatened to prosecute a gay activist for using social media to advocate for LGBT issues.<sup>61</sup></p>	
6	 <b>Iran</b>	<p><b>1986</b></p> <p>Article 6 of the <b>Press Law</b> (1986) claims that “the Press is free, except for items which undermine Islam’s bases and commandments, and public and private rights, including the spread of “fornication and forbidden practices” and “publishing photographs, pictures, and material which violate public chastity”. A violation of this provision is subject to punishments as determined in Article 698 of the Islamic Penal Code (imprisonment of between two months to two years and flogging of up to 74 lashes) and in the event of persistence, to an intensification of the punishments and the forfeiture of license.</p> <p><b>2009</b></p> <p>Article 14 of Law on Computer Crimes (<b>Law No. 71063</b>) (2009) punishes with imprisonment and fines “the use of computer systems, telecommunications systems or data carriers to publish or distribute immoral content, or their storage with the intention of corrupting society”. Article 15 explicitly includes acts of “sexual perversion”.</p> <p><b>2013</b></p> <p>Article 640 of the <b>Islamic Penal Code</b> (2013) prohibits “displays and shows to the public, or produces or keeps any writing or design, gravure, painting, picture, newspapers, advertisements, signs, film, cinema movie, or basically anything, that violates public prudency and morality”.</p>	↘




<sup>57</sup> Bassam Za'Za', “Two jailed over male prostitution in UAE”, *Gulf News*, 25 June 2013.

<sup>58</sup> Dawn Ennis Wednesday, “One photo of gay man in drag lands him on death row in Abu Dhabi”, *LGBTQ Nation*, 5 October 2016.

<sup>59</sup> “Dubai Bans Private School Book on Homosexual Parents”, *Al Bawaba*, 9 October 2018.

<sup>60</sup> Tahir Qadiry, “Gay Afghan defies tradition to expose identity”, *BBC News*, 20 February 2013.

<sup>61</sup> Nemat Sadat, “Afghanistan’s ‘coming out’ for LGBT rights can pave the road to peace”, *The World from PRX*, 30 April 2014.

			<p>The government has used these laws to shut down newspapers and websites with content related to sexual orientation.<sup>62</sup> In this line, the Head of Iran's High Council for Human Rights reportedly stated in 2013: "In our country, homosexuality is a form of sickness. It is illegal to promote homosexuality, and we have strict laws in this regard".<sup>63</sup></p> <p>In July 2020, an assistant to the Iranian president was charged with "spreading moral corruption and depravity" after she "accidentally" authorised a publication with a rainbow family infographic.<sup>64</sup></p>
7	 <b>Jordan</b>	1998	<p>Article 28 of the <b>Press and Publication Law</b> (1998) allows an editor-in-chief to refuse to publish any content that is "contrary to public morals". Under the <b>original version</b> of the Law, Article 37 prohibited the publication of content that "encourages perversion or lead to moral corruption".</p> <p>In July 2017, the Jordanian Audio-visual Commission blocked access to an LGBTQIA-inclusive online magazine on the basis that they had not applied for a license.<sup>65</sup> In 2016 and 2017, the Jordanian government banned Mashrou' Leila, a Lebanese rock band whose frontman is openly gay, from performing in Jordan as the band's opinions and songs contradicted religious beliefs,<sup>66</sup> and were "against the religion and norms of the country".<sup>67</sup></p>
8	 <b>Kuwait</b>	2006  2016	<p>Article 21 of the Press and Publications Law (<b>Law No. 3</b>) (2006) prohibits the publication of anything that would insult 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.</p> <p>This law was extended to include online publications under the Law Regulating Electronic Media (<b>Law No. 8</b>) (2016).</p> <p>In 2017, the Ministry of Information prohibited the screening of a Disney film ("The Beauty and the Beast") that contained what the director called "an exclusively gay moment".<sup>68</sup> In October 2019, the same Ministry gave a last-minute order to cancel a performance by a Korean pop band in Kuwait for its alleged "failure to adhere to local customs and values".<sup>69</sup> While no further details were officially provided, several media outlets reported that the cancellation was due to a rumour that all of the band's members were gay.<sup>70</sup></p>
9	 <b>Lebanon</b>	1943	<p>Article 531 and 532 of the <b>Penal Code</b> (1943) prohibit violation of public morals by public actions, movements, speaking, and screaming. In addition, Article 533 criminalises manufacturing, exporting, supplying, or acquiring "writings, drawings, manual or photographic images, suggestive films, or other indecent items with the intention to trade or distribute them, or announce or inform how to obtain them".</p> <p>In May 2018, media outlets reported that authorities detained a member of Beirut Pride for organising a demonstration that incites immorality.<sup>71</sup></p> <p>In 2018, authorities shut down an LGBTQ+ conference, sending security officers to the event venue.<sup>72</sup></p>

<sup>62</sup> Global Initiative for Sexuality 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*, (2013), 18–19.; 6Rang (Iranian Lesbian & Transgender Network), *It's a great honor to violate homosexuals' rights: Official hate speech against LGBT people in Iran* (December 2017).

<sup>63</sup> Hossein Allzadeh, "UN to Iran: Protect LGBT People. Iran's Spin Doctor Responds with Bad Medicine", *Huffington Post*, 01 June 2013.

<sup>64</sup> "Iran official charged for cartoon of loving same-sex parents", *Erasing 76 Crimes*, 18 July 2020.

<sup>65</sup> "Jordan blocks access to LGBTQ online magazine", *Committee to Protect Journalists*, 08 August 2017.

<sup>66</sup> "Mashrou' Leila: Jordan bans Lebanese rock band with gay singer", *BBC News*, 27 April 2016.

<sup>67</sup> Tamara Qiblawi, "Jordan bans Lebanese rock band after furore over queer frontman", *CNN*, 16 June 2017.

<sup>68</sup> Kate Feldman, "'Beauty and the Beast' pulled from theaters in Kuwait by censors", *New York Daily News*, 20 March 2017.

<sup>69</sup> "The reason why the Korean band D-Crunch was not allowed to perform in Kuwait", *Arab Times Kuwait*, 28 October 2019.

<sup>70</sup> "Because You're GAY! K-Pop Band 'D-Crunch' Got Kicked off Stage in Kuwait", *Al Bawaba*, 28 October 2019.

<sup>71</sup> Hugo Lautissier, "Beirut Pride's Hadi Damien Q&A: Lebanon's LGBT movement is 'growing'", *Middle East Eye*, 19 May 2018.

<sup>72</sup> "Lebanon: Security Forces Try to Close LGBT Conference", *Human Rights Watch*, 4 October 2018.

			In 2019, it was reported that OGERO (the Lebanese state's fixed network owner & maintainer) blocked Grindr, a dating app for gay men, on the orders of the Public Prosecutor's Office. <sup>73</sup> The ban on Grindr came after a similar but more short-lived block in January 2019. <sup>74</sup> Shortly after, it was announced that all internet service providers in the country would follow suit. <sup>75</sup>
10	 <b>Malaysia</b>	2010	<p>In 2010, under the powers conferred by the <b>Film Censorship Act (2002)</b>, the Film Censorship Board (LPF) adopted <b>Film Censorship Guidelines (2010)</b> that lifted the existent ban on LGBT-related content. However, the regulation called to give special attention to "homosexual and unnatural sex scenes," scenes of "homosexuals embracing in a provocative manner" and "scenes that depict transgender behaviour and lifestyle". Advertisements should not include "scenes that are of an anti-social nature or indecent including any kissing scenes between men and women or between the same sex".</p> <p>The Malaysian Film Producers' Association president reported that gay characters should become straight at the end as a lesson of "good triumphing over evil".<sup>76</sup></p> <p>In 2018, in response to a parliamentary question and following a national controversy over a "gay scene" in a Disney film, the Deputy Home Minister reiterated that any "elements or scenes deemed to be promoting inappropriate elements", such as LGBT content, will not be approved for public viewing, unless there were "lessons to be learnt" pursuant to guidelines set by the LPF.<sup>77</sup></p> <p>In the same year, the Department for Religious Affairs issued an order to remove portraits of two human rights defenders from the exhibition for reasons of allegedly promoting LGBT rights.<sup>78</sup></p>
11	 <b>North Korea</b>	2009	<p>Article 193 of the <b>Criminal Code (2009)</b> prohibits the import, keeping, and distribution of "decadent culture," including "sexual video recordings".</p> <p>Additionally, Article 262 prohibits collective engaging in "obscene activities".</p>
12	 <b>Oman</b>	1984  2007	<p>Articles 25 and 28 of the <b>Publications and Publishing Law (1984)</b> prohibit the publication of anything that "disrupts public order or calls 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".</p> <p>Article 42 of the <b>Executive Regulations (2007)</b> promulgated under the <b>Telecommunications Regulation Law (2002)</b> prohibits the use of telecommunication services containing information that is "contrary to the public order or morality", "infringes religious practice or upsets others", or "promotes any subject or product breaching the law".</p> <p>In September 2013, the newspaper <i>The Week</i> was shut down for one week after printing an article about the country's LGBT community.<sup>79</sup></p> <p>In 2015, the Ministry of Information was reportedly 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.<sup>80</sup></p>

<sup>73</sup> Richard Hall, "Lebanon blocks Grindr in latest attack on LGBT+ community", *The Independent*, 28 May 2019.

<sup>74</sup> Samuel Leighton-Dore, "Grindr has reportedly been banned in Lebanon", *SBS News*, 23 January 2019.

<sup>75</sup> "Lebanon's Ban of Gay Dating App 'Grindr' Sets Dangerous Precedent", *Al Bawaba*, 24 January 2019.


<sup>76</sup> "It's OK to be gay in Malaysian movies - as long as you go straight", *Herald Sun*, 22 March 2010.

<sup>77</sup> "Censorship board to snip LGBT elements, scenes from films, dramas", *FMT News*, 11 December 2018.

<sup>78</sup> "Stop censoring us: LGBT people are part of the Malaysian picture - 47 civil society organisations," *Malay Mail*, 9 August 2018.

<sup>79</sup> "Oman's government sues newspaper over story about gays", *Reuters*, 05 September 2013.

<sup>80</sup> Fahad Al Mukrashi, "Interview with gay Omani lands radio station in hot water", *Gulf News*, 29 October 2015.

13		<b>Pakistan</b>	2016	<p>Section 34 of the <b>Prevention of Electronic Crimes Act (2016)</b> 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”.</p> <p>Before the enactment of this law, the government had already been banning LGB-related content online and in the media.<sup>81</sup> In 2020, the authorities blocked Grindr, a dating app for gay men, for disseminating “immoral and indecent content”.<sup>82</sup></p>
14		<b>Qatar</b>	2004	<p>Article 296 (3)-(4) of the <b>Penal Code (2004)</b> criminalises with up to 3 years imprisonment the act of leading, instigating or seducing a male anyhow for sodomy or immorality (subsection 3) and inducing or seducing a male or a female anyhow to commit illegal or immoral actions (subsection 4).</p> <p>In July 2018, it was reported that nine articles relating to gay and transgender rights in the print version of <i>The New York Times</i> had been censored in the country.<sup>83</sup></p>
15		<b>Saudi Arabia</b>	2007	<p>Article 6 of the <b>Anti-Cyber Crime Law (2007)</b> 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.</p> <p>In 2012, the Communication and Information Technology Commission (CITC) of Saudi Arabia reportedly objected to the adoption of a ‘gay’ domain name as it would “promote homosexuality” and be “offensive” to some societies and cultures.<sup>84</sup></p> <p>In November 2010, a man in Jeddah was sentenced to five years of imprisonment, 500 lashes, and a fine after appearing in what was described as “an amateur gay video”—which reportedly showed “the man imitating a woman and turning into an explicit talk about sex”—allegedly taken inside a prison.<sup>85</sup></p> <p>In July 2014, a court in Medina sentenced a man to 3 years imprisonment and 450 lashes for “promoting the vice and practice of homosexuality”. Reportedly, the man was arrested as the result of an entrapment ploy by the Commission for the Promotion of Virtue and Prevention of Vice. He confessed to possessing gay pornography and using Twitter to meet other men.<sup>86</sup></p> <p>In January 2018, police arrested a group of men who had uploaded a video of a “gay wedding”<sup>87</sup> and a person for “calling for homosexuality” on TikTok videos.<sup>88</sup> In October 2019, Saudi authorities arrested 23-year-old social media influencer Suhail al-Jameel for posting a shirtless picture of himself wearing leopard-print shorts.<sup>89</sup> Soon after, his fans started a campaign on Twitter asking for his release.<sup>90</sup> As of February 2020, the outcome of his case was unclear.<sup>91</sup></p> <p>In 2020, a Yemeni blogger was imprisoned and fined for a post in social media in support of LGBT equality.<sup>92</sup></p>

<sup>81</sup> Zofeen T Ebrahim, “Pakistan’s gay website ban reflects bigotry”, *Index on Censorship*, 15 October 2013; “Gay kiss on New York Times cover censored in Pakistan”, *Pink News*, 31 January 2016.

<sup>82</sup> Sherisse Pham, “Pakistan blocks Tinder, Grindr and other dating apps,” *CNN Business*, 02 September 2020.

<sup>83</sup> Ariel Sobel, “Preparing for World Cup, Qatar Cracks Down on LGBT Coverage”, *The Advocate*, 20 July 2018; Pete Madden, “Exclusive: Under World Cup spotlight, Qataris crack down on LGBT news coverage”, *ABC News*, 20 July 2018; “Quand le Qatar censure des articles LGBT+”, *Têtu*, 23 July 2018.

<sup>84</sup> “Saudi Arabia opposes .gay internet domain name”, *BBC News*, 14 August 2012.

<sup>85</sup> Adnan Al-Shabrawi, “Man gets prison, lashes for gay video”, *Saudi Gazette*, 8 November 2010.

<sup>86</sup> “Gay Saudi Arabian man sentenced to three years and 450 lashes for meeting men via Twitter”, *The Independent*, 25 July 2014.

<sup>87</sup> “Saudi Arabia police arrest men over ‘gay wedding’ video”, *BBC News*, 09 January 2018.



<sup>88</sup> Information in file with ILGA World

<sup>89</sup> “Flamboyant Saudi influencer faces prison ‘for wearing leopard-print shorts’” *The New Arab*, 14 October 2019.

<sup>90</sup> Daniel Villarreal Monday, “Saudi police arrest gay 23-year-old for wearing a swimsuit”, *LGBTQ Nation*, 14 October 2019.

<sup>91</sup> “Gay influencer arrested in Saudi Arabia over shirtless selfie”, *GCN*, 24 February 2020.

<sup>92</sup> “Yemeni blogger jailed by Saudi court for supporting equal gay rights: group”, *Reuters*, 28 July 2020.

16	 Syria	1949	<p>Article 208 of the <b>Penal Code</b> (1949) prohibits offensive public utterances in writing, graphics, images, and other forms of expression.</p> <p>Before the civil war, it was reported that films with LGBT content were censored.<sup>93</sup></p>
17	 Yemen	1990	<p>Article 103 of the Law on the Press and Publications (<b>Law No. 25</b>) (1990) prohibits the publication or dissemination of “anything which undermines public morals”.</p> <p>In 2004, a court sentenced three journalists to imprisonment for publicly discussing homosexuality and interviewing men jailed for homosexuality.<sup>94</sup></p> <p>In April 2012, a government-funded cultural magazine, <i>Al Thaqafiya</i>, was shut down for publishing a review of an Egyptian film that contained a scene depicting female same-sex intimacy.<sup>95</sup> The magazine had received severe backlash after publishing an article supportive of LGB people in 2010.<sup>96</sup></p> <p>In May 2013, a student leader in the country’s youth movement was violently threatened and pushed into filing for refugee status in Canada after coming out in a public blog post.<sup>97</sup></p>

### Is there more in Asia?

#### Kazakhstan

Kazakhstan’s Constitutional Council announced in May 2015 that proposed legislation on “propaganda of non-traditional sexual orientation” was unconstitutional.<sup>98</sup>

In July 2018, the authorities adopted the Law on the Protection of Children from Information Harmful to Their Health and Development (**Law No. 169-VI**) (2018) similar to Russian “propaganda” law. However, the final version of the law did not include any mentions of sexual orientation or gender identity. Local organisations also relied on UN special procedures for their advocacy efforts.<sup>99</sup>

On a more positive note, on July 30, 2019, the Supreme Court of Kazakhstan **ruled** that a Facebook user violated the privacy rights of two women after posting, without their consent, a video of the women kissing to solicit hostile reactions from other users. This ruling invalidated a lower court’s **decision** that justified the public shaming because what was shown in the video was against the “moral foundations of society”.<sup>100</sup>

#### Kyrgyzstan

In 2014, the government of Kyrgyzstan introduced a bill that copied Russia’s legislation against “gay propaganda,” with additional jail sentences for people who “promote homosexual relations” through the media.<sup>101</sup> 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.<sup>102</sup>

#### Turkmenistan

In 2019, media reported a case of a Turkmen person who came out as gay in the media, was summoned to the police and disappeared.<sup>103</sup> Upon reappearing, he retracted his statements.<sup>104</sup> According to human rights organisations, due to the criminalisation of homosexuality, members of LGBT community control their behaviour and talks in public.<sup>105</sup>

<sup>93</sup> “Syria: Ban on TV series and films about homosexuality”, *Free Muse*, 23 May 2012.

<sup>94</sup> “Journalists convicted for gay report”, *Al Jazeera*, 18 May 2004.

<sup>95</sup> “Yemeni Magazine Dares Exploit a Fine Cinematic Work to Promote Radical Gay Agenda”, *Queerty*, 30 April 2010.

<sup>96</sup> Rachelle Kliger, “Yemen: Pro-gay article sparks smear campaign, death threats”, *The Media Line*, 26 April 2010. In *LGBT Asylum News (website)*. Accessed on 25 October 2020.

<sup>97</sup> “Gay Yemeni activist facing death threats seeks to stay in Canada”, *CBC News*, 20 June 2013.

<sup>98</sup> Joanna Lillis, “Kazakhstan Strikes Down ‘Gay Propaganda’ Law After Olympics Outcry”, *Eurasianet*, 27 May 2015.

<sup>99</sup> OL KAZ 5/2018, 7 November 2018.

<sup>100</sup> Kyle Knight, “Kazakhstan Supreme Court Upholds Privacy Rights”, *Human Rights Watch*, 24 September 2019.

<sup>101</sup> Juliet Jacques, “Fear and loathing in Kyrgyzstan: how the LGBTIQ community is fighting back against rising discrimination”, *Open Democracy*, 20 September 2018.

<sup>102</sup> “Less Equal: LGBTI Human Rights Defenders in Armenia, Belarus, Kazakhstan, and Kyrgyzstan”, *Amnesty International*, 2017, 32.

<sup>103</sup> Tatyana Zverintceva, “No exit from the closet (18+)” [Из шкафа выхода нет (18+)], *Fergana*, 05 November 2019.

<sup>104</sup> “Gay who disappeared in Turkmenistan makes contact” [Пропавший в Туркменистане гей вышел на связь], *Fergana*, 07 November 2019.

<sup>105</sup> M.F.I., *Life of LGBT people in Turkmenistan* [Жизнь ЛГБТ-людей в Туркменистане] (Bishkek: Kyrgyz Indigo, 2019), 24.

## Europe

4 out of 50 UN Member States (8%). Tier 1: (0); Tier 2: (4).

TIER 2: NON-EXPLICIT LEGAL BARRIERS			
1	 Belarus	2017	<p>The Law on the Protection of Children from Information Harmful to their Health and Development (<a href="#">Law No. 362-Z</a>) (2016) was passed and came into effect in July 2017. Similar to Russia's propaganda law, Article 37-1 prohibits the dissemination of information that "discredits the institution of family and marriage".</p> <p>In 2020, the Ministry of Health endorsed a proposal to introduce administrative and criminal liability for the dissemination of information that discredits the institution of family and marriage.<sup>106</sup></p>
2	 Lithuania	2010	<p>In 2009, the parliament adopted <a href="#">Law No. XI-594</a> (effective as of March 2010) that included the propagation of same-sex relations in the list of information "adversely affecting minors" under the Law on the Protection of Minors against the Detrimental Effect of Public Information (<a href="#">Law No. IX-1067</a>) (2002).<sup>107</sup> Article 4.2(16) of the Law provides that "information which despises family values, promotes a different concept of marriage and family formation" other than that established in the legislation of Lithuania adversely affects minors. The draft law aimed to explicitly prohibit the dissemination of information promoting "homosexual, bisexual or polygamous relations".<sup>108</sup></p> <p>In 2014, this law was used by broadcasters to justify the refusal to show LGBT-related content,<sup>109</sup> and by the Inspector of Journalist Ethics to label two fairy tales—love stories of a brother and a male dressmaker, and a princess and a shoemaker's daughter—as promoting tolerance for same-sex couples and detrimental to the minors and propagating homosexuality.<sup>110</sup> In 2020, the European Court of Human Rights communicated the latter case to the Lithuanian authorities.<sup>111</sup></p> <p>Attempts to further restrict LGBT-related content and to include specific provisions against the "public promotion of homosexual relations" or dissemination of information violating constitutional family values in the Code of Administrative Offences were unsuccessfully made in 2010,<sup>112</sup> 2014,<sup>113</sup> and 2015.<sup>114</sup></p>
3	 Russia	2013	<p>In 2013, following the adoption of similar laws in regions, the State Duma adopted <a href="#">Law No 135-FZ</a> (2013), which expanded the types of information prohibited for distribution among children as "harmful to their health and development" listed in Law On the Protection of Children from Information Harmful to their Health and Development (<a href="#">Law No. 436-FZ</a>) (2010). The Law inserted a clause referring to information "promoting non-traditional sexual relationships".</p> <p>In addition, the Russian parliament updated the Code of Administrative Offences (<a href="#">Law No. 195-FZ</a>) (2001) with Article 6.21 punishing "propaganda of non-traditional sexual relations among minors".</p>

<sup>106</sup> Adar'ya Gushtyn, "The Ministry of Health is in favor of increasing the age of consent to 18 years. But only for same-sex relationships" [Минздрав выступает за увеличение возраста согласия до 18 лет. Но только для однополых отношений], *Tut By Media*, 13 February 2020.

<sup>107</sup> "Lithuania: no right to inform minors about homosexuality?", *Lithuanian Gay League*, 10 October 2006.

<sup>108</sup> Article 19, *Traditional values? Attempts to censor sexuality. Homosexual propaganda bans, freedom of expression and equality* (2013), 31.

<sup>109</sup> "LGL's video on LGBT lives failed to pass the censorship on Lithuanian TV again", *Lithuanian Gay League*, 20 August 2014.

<sup>110</sup> "Experts Find Tolerance Promoting Fairy Tales Harmful to Minors under 14 Years Old", *Lithuanian Gay League*, 08 May 2014.

<sup>111</sup> "Children's Book Restricted in Lithuania for Showing Gay Relationships in Positive Light Goes to European Court of Human Rights," *ECHR Sexual Orientation Blog*, 29 August 2020.

<sup>112</sup> "New anti-gay law proposal registered in Lithuanian parliament", *Lithuanian Gay League*, 21 October 2010.

<sup>113</sup> "Lithuanian Parliament to vote on Russian style anti-gay 'propaganda law'", *Lithuanian Gay League*, 12 March 2014.

<sup>114</sup> "Lithuanian Parliament to vote on Russian style 'anti-gay propaganda' law again", *Lithuanian Gay League*, 10 November 2015.



According to the Code, individuals, legal entities, and officials can commit the offence by disseminating information “aimed at the formation of non-traditional sexual attitudes among minors, the attractiveness of non-traditional sexual relations, a distorted idea of the social equivalence of traditional and non-traditional sexual relations, or the imposition of information about non-traditional sexual relations that arouses interest in such relationships”.

These legal provisions have been employed to prosecute LGBT activists<sup>115</sup> and media<sup>116</sup> for their publications, to punish organisers and to deny permission for public manifestations on issues of sexual and gender diversity,<sup>117</sup> and to block LGBT-related websites.<sup>118</sup>

The judiciary enforces the law based on expert testimonies on the content under review and the mere possibility of minors’ access to the relevant piece of information, even in the absence of real “victims” of propaganda. Under this interpretation, the law exerts a deterrent effect on any public discussions about same-sex relationships.<sup>119</sup>

In March 2019, a theatre festival was banned in the Far East region of Komsomolsk-on-Amur for promoting “hatred against men” and “non-traditional family relations”. Reports indicate that the police anti-extremism unit interrogated the festival organisers after authorities were “alerted” by the use of the words “blue” and “pink” in one of the plays’ titles, as these colours were colloquially used as synonyms of the LGBT community in the country.<sup>120</sup>

In 2020, authorities fined an activist under the propaganda law for posting a drawing of a same-sex couple on a social media with the inscription “family is where love is”.<sup>121</sup> This decision was confirmed upon appeal.

In 2020, local authorities of Nevskiy district in Saint-Petersburg reportedly directed teachers to monitor social media profiles of 5-11<sup>th</sup> grades students and to report to the police if they found any indications of LGBT “propaganda”.<sup>122</sup>

In August 2020, a court imposed a fine on a film festival’s former executive director for posting a description of the gay drama “Outlaw” on the festival’s website.<sup>123</sup> The fine was imposed despite the fact that the movie had a license from the Ministry of Culture and had an “18+” rating.<sup>124</sup>

Another emerging trend is the prosecution of LGBT people and activists under the provision of the Criminal Code on the dissemination of pornography.<sup>125</sup>

<sup>115</sup> See: “Russian Court Fines Children-404 Founder for Violating LGBT Propaganda Law”, *Human Rights First*, 23 January 2015; “LGBT activist from Khabarovsk found guilty of ‘propaganda’” [ЛГБТ-активиста из Хабаровска признали виновным «в пропаганде»], *Russian LGBT Network*, 17 June 2020.

<sup>116</sup> Trudy Ring, “LGBT Website Gay.ru Blocked Within Russia”, *The Advocate*, 02 April 2018.

<sup>117</sup> See: European Court of Human Rights, *Alekseyev and Others v. Russia*, Applications No. 26624/15 and 76, 16 January 2020.

<sup>118</sup> See: “Russia’s federal censor blocks another LGBT website for spreading ‘gay propaganda’”, *Meduza*, 30 April 2018; “The prosecutor’s office asks to block the site of the ‘Russian LGBT Network’ due to a survey about the bullying of LGBT teenagers [Прокуратура просит заблокировать сайт «Российской ЛГБТ-сети» из-за опроса о травле ЛГБТ-подростков]”, *OVD Info*, 30 September 2020.

<sup>119</sup> Cathal Sheerin, “The human impact of Russia’s ‘gay propaganda’ law”, *IFEX*, 2 March 2017; Joshua Keating, “The Chilling Effects of Russia’s Anti-Gay Law, One Year Later”, *Slate*, 09 October 2014.

<sup>120</sup> Dorian Batycka, “Russian Authorities Cancel Theatre Festival Under ‘Gay Propaganda’ Law”, *Hyperallergic Media*, 19 March 2019.


<sup>121</sup> “Yulia Tsvetkova was fined for drawing with the inscription ‘Family is where love is’ (updated)” [Юлию Цветкову оштрафовали за рисунок с надписью «Семья там, где любовь» (обновлено)], *The Village*, 10 July 2020.

<sup>122</sup> “Schoolchildren of the Nevsky District were tested for their propensity for LGBT propaganda”, *Moskovsky Komsomolets*, 10 September 2020.

<sup>123</sup> “‘Nobody believes our film is actually legal’ The Russian movie ‘Outlaw’ is provoking backlash from the authorities and LGBTQ activists alike”, *Meduza*, 04 November 2020; What did the court see as “propaganda” in the film “Outlaw”? Lawyer of the Russian LGBT Network explains [В чем суд усмотрел «пропаганду» в фильме «Аутло»? Юрист Российской ЛГБТ-сети поясняет], *Russian LGBT Network*, 30 October 2020.

<sup>124</sup> Dmitriy Volchek, “According to the laws of the Third Reich. How the screenings of the film ‘Outlaw’ are disrupted” [По законам Третьего рейха. Как срывают показы фильма “Аутло”], *Radio Svoboda*, 26 October 2020.

<sup>125</sup> Anton Kass, “[The authorities] made up an article for LGBT: they are charged with ‘dissemination of pornography’ [Для ЛГБТ придумали статью: их привлекают за «распространение порно»]”, *News.Ru*, 28 February 2020; “LGBT Activist Charged With Pornography for Body-Positive Vagina Drawings”, *The Moscow Times*, 10 June 2020; “Transgender Woman In Russia Faces Hard Time In Men’s Prison On Pornography Charge”, *Radio Free Europe*, 04 December 2019; “LGBT activist from Khabarovsk accused of distributing pornography” [ЛГБТ-активиста из Хабаровска обвиняют в распространении порнографии], *DVHAB*, 27 February 2020.

4		Turkey	2007	<p>Article 8 of the Law on Regulation of Publications on the Internet and Combating Crimes Committed by means of such Publications (<b>Law No. 5651</b>) (2007) allows the government to block content if there is sufficient suspicion that certain crimes are being committed on a particular website. Article 8 was used in the past to block access to popular LGBT websites under suspicion in “obscenity” and “prostitution”.<sup>126</sup></p> <p>In 2017, Turkey declared a state of emergency and banned LGBT public events in Ankara.<sup>127</sup> The Ankara administrative Appeals Court lifted the ban in April 2019.<sup>128</sup> Several days before the event, the Middle East Technical University rectorate introduced a ban on LGBT demonstrations on campus (a ban that the Ankara 7<sup>th</sup> Administrative Court lifted for the lack of legal basis in 2020).<sup>129</sup></p> <p>On May 10, 2019, group students from the Middle East Technical University organised a peaceful march on campus. In response, the police arrested the protesters and used violence against them.<sup>130</sup> Later, the government prosecuted 19 individuals participating in the march under the law on public assemblies.<sup>131</sup> The accused students were deprived of scholarships, and their houses were raided by police.<sup>132</sup></p>
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### Is there more in Europe?

Armenia	<p>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 was subsequently withdrawn.<sup>133</sup> In October 2018, a similar law was introduced in the legislature.<sup>134</sup></p>
Hungary	<p>In 2012, bills prohibiting and punishing forms of expressions that “propagate disorders of sexual behaviour – especially sexual relations between members of the same sex” were proposed. However, the parliament did not put them on the agenda.<sup>135</sup></p> <p>In 2018, the government issued a decree <b>No. 188/2018 (X.12)</b> to ban the Gender Studies master’s degree program in Hungary.<sup>136</sup></p>
Latvia	<p>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.<sup>137</sup></p> <p>It had previously failed to enact a propaganda law in 2013, which aimed to prohibit “children as participants or as spectators of events aimed at popularisation and advertisement of sexual and marriage relations between persons of the same sex shall be prohibited” and deemed as promoting of LGBT relations.<sup>138</sup></p>

- <sup>126</sup> Jessica Geen, “Turkey blocks access to gay websites”, *Pink News*, 09 October 2009; “Access to LGBTI related websites was blocked one by one?”, *GenderIT*, 04 June 2015.
- <sup>127</sup> “Press Release Regarding the Ban Decision” [Yasaklama Kararına İlişkin Basın Duyurusu], *Governor of Ankara (Website)*, 19 November 2017.
- <sup>128</sup> Alex MacDonald, “Court lifts ban on LGBT Pride events in Ankara”, *Middle East Eye*, 19 April 2019.
- <sup>129</sup> “METU Rector Issues Last Minute Ban on Pride Parade”, *Human Rights in Turkey*, 08 May 2019.; “Ankara court reverses gay pride ban at ODTÜ campus”, *Duvar English*, 30 July 2020.
- <sup>130</sup> “Turkey: METU University Rectorate unlawfully bans LGBTI+ March”, *Front Line Defenders*, 21 May 2019.
- <sup>131</sup> Saeed Kamali Dehghan, “Turkey urged to drop case against LGBT activists charged over Pride march”, *The Guardian*, 08 November 2019.
- <sup>132</sup> “Turkey: Nineteen LGBTI+ rights defenders charged with ‘participating in unlawful assembly’ and ‘resisting despite warning’”, *Front Line Defenders*, 7 August 2019.
- <sup>133</sup> Amnesty International, *Less Equal: LGBTI Human Rights Defenders in Armenia, Belarus, Kazakhstan, and Kyrgyzstan* (2017), 20.
- <sup>134</sup> Ani Mejlumyan, “Ahead of elections, Armenia’s opposition attacks LGBT rights”, *Eurasianet*, 31 October 2018.
- <sup>135</sup> Article 19, *Traditional values? Attempts to censor sexuality. Homosexual propaganda bans, freedom of expression and equality*, (London: Article 19, 2013), 32.
- <sup>136</sup> Lauren Kent, Samantha Tapfumaneyi, “Hungary’s PM bans gender study at colleges saying ‘people are born either male or female’”, *CNN*, 19 October 2018.
- <sup>137</sup> “Saeima approves lessons in ‘constitutional morality’ for schoolchildren”, *Latvian Public Broadcasting*, 18 June 2015.
- <sup>138</sup> Anhelita Kamenska, *1705-LV-9 Attempts to ban homosexual propaganda* (European Network of Legal Experts in the Non-Discrimination Field, 2014).

<p><b>Moldova</b></p>	<p>As early as 2012, Moldovan authorities started to introduce prohibitions of “propaganda of homosexuality” at the local level (cities, districts, and villages) although without sanctions.<sup>139</sup></p> <p>In 2013, Moldova enacted a law establishing punishment for “the distribution of public information aimed at the propagation of prostitution, paedophilia, pornography, or of any other relations than those related to marriage or family”. However, this law was repealed in the same year.<sup>140</sup></p> <p>In 2016, authorities introduced a draft bill to impose sanctions for “propaganda of homosexual relations among minors by means of assemblies, mass media, Internet, brochures, booklets, images, audio-video clips, films and/or audio-video recordings, via sound recording, amplifiers or other means of sound amplification”. However, the bill was not adopted.</p>
<p><b>Poland</b></p>	<p>In March 2017, draft anti-propaganda legislation was proposed in Poland to ban LGBT people from the teaching profession.<sup>141</sup> The proposed bill was never voted on due to a change in the party compositions of the Polish parliament following new elections.</p> <p>In late 2018, the Polish president said that he would “seriously” consider a law banning “homosexual propaganda” in schools.<sup>142</sup></p> <p>Since 2019, almost 100 municipal authorities in Poland have adopted resolutions symbolically declaring their territories to be zones “free” from LGBT and “gender ideology”.<sup>143</sup> In 2020, the President pledged to “defend children from LGBT ideology”.<sup>144</sup></p> <p>In 2020, the police charged three activists with desecrating monuments for putting the rainbow flag on statues of Jesus Christ, Copernicus, and the Warsaw Mermaid.<sup>145</sup></p>
<p><b>Romania</b></p>	<p>In June 2020, the Romanian Senate approved the draft <b>Law No. L87/2020</b> prohibiting “spread the theory or opinion of gender identity”. The gender theory is defined as the theory or the opinion that “gender is a different concept from biological sex and that the two are not always the same”.<sup>146</sup> At the moment, the draft law has been sent for approval to the President, who instead <b>appealed</b> the draft law in the Constitutional Court.</p>
<p><b>Ukraine</b></p>	<p>In 2012, <b>Draft Law No. 1155</b> and <b>Draft Law No. 945</b> were introduced in Ukraine in an attempt to “protect” children from “propaganda” about same-sex relations.<sup>147</sup> However, both drafts did not reach the stage of the parliamentary debate.</p> <p>In 2019, the Rivne City Council in western Ukraine banned the holding of LGBT public manifestations. The decision was introduced “to prohibit the propaganda of various types of deviant sexual behaviour in the city of Rivne, including in the form of so-called “equality marches”, “pride parades”, and “queer culture festivals”, held in places of mass leisure for families with children”.<sup>148</sup> In 2020, the Rivne District Administrative Court declared the ban illegal and invalid.<sup>149</sup></p> <p>In 2020, two representatives introduced <b>Draft Law No. 3917</b> in Parliament attempting to prohibit “propaganda of homosexuality and transgenderism”.<sup>150</sup> Additionally, in 2020 the Kyiv Regional Administrative Court declared discriminatory a Chernivtsi regional council’s <b>resolution</b> that—like multiple decisions issued throughout the country—appealed to the government to “protect the institute of family” by prohibiting LGBT manifestations and adopting legislation against LGBT “propaganda”.<sup>151</sup></p>

<sup>139</sup> European Commission for Democracy through Law, *Opinion on the issue of the prohibition of so-called ‘Propaganda of homosexuality’ in the light of recent legislation in some Council of Europe Member States*, CDL-AD(2013)022, 18 June 2013, 5-6.

<sup>140</sup> Joseph McCormick, “Moldova overturns anti-gay ‘propaganda’ law with hopes of joining EU”, *Pink News*, 14 October 2013.

<sup>141</sup> International Gay, Lesbian, Bisexual, Queer, and Intersex Youth and Student Organisation (IGLYO), *Expression Abridged: A Legal Analysis of Anti-LGBT Propaganda Laws* (IGLYO, 2018), 13.

<sup>142</sup> Patrick Kelleher, “Polish president Andrzej Duda considering ‘gay propaganda’ ban”, *Pink News*, 11 November 2018.

<sup>143</sup> Claudia Ciobanu, “A Third of Poland Declared ‘LGBT-Free Zone’”, *Reporting Democracy*, 25 February 2020.

<sup>144</sup> Shaun Walker, “Polish president issues campaign pledge to fight ‘LGBT ideology’”, *The Guardian*, 12 June 2020.

<sup>145</sup> “Poland LGBT protests: Three charged with hanging rainbow flags off statues”, *BBC News*, 05 August 2020.

<sup>146</sup> Romanian Parliament, Law on the amendment of Article 7 of the National Education Law No. 1/2011, L87/2020, June 2020.

<sup>147</sup> International Gay, Lesbian, Bisexual, Queer, and Intersex Youth and Student Organisation (IGLYO), *Expression Abridged: A Legal Analysis of Anti-LGBT Propaganda Laws*, (IGLYO, 2018), 13.

<sup>148</sup> “Ukrainian City Bans ‘Deviant’ LGBT Marches”, *Radio Free Europe/Radio Liberty*, 25 December 2019.

<sup>149</sup> Rivne District Administrative Court, *Decision No. 460 / 307/20*, 05 June 2020.

<sup>150</sup> “A bill on punishment for LGBT propaganda submitted to the Rada” [В Раду внесли законопроект о наказании за пропаганду ЛГБТ], *Lenta.Ru*, 22 July 2020.

<sup>151</sup> “A landmark court case on “traditional values” in Ukraine ends strangely - in victory for both sides,” *Open Democracy*, 8 September 2020.

## Oceania

0 out of 14 UN Member States (0%).

### *Is there more in Oceania?*

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#### **Samoa**

In 2019, the movie “Rocketman” was censored in Samoa. Responding to questions from a media outlet, the Ministry of Justice and Courts Administration Principal Censor of Samoa explained that the movie contained “acts that are not good for public viewing, and against the law”.<sup>152</sup>

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#### *Cook Islands (New Zealand)*

In 2019, there were reports that the movie “Rocketman” would be banned in the Cook Islands following Samoa’s decision.<sup>153</sup> However, the authorities eventually decided to allow the movie for showing.<sup>154</sup>

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<sup>152</sup> Sapeer Mayron, “Principal Censor stands by decision to ban Rocketman”, *Samoa Observer*, 10 June 2019.

<sup>153</sup> “Cook Islands next to ban Elton John biopic Rocketman”, *Stuff*, 18 June 2019.

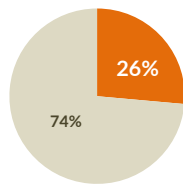
<sup>154</sup> “Cook Islands backs down on rumoured Rocketman ban”, *Radio New Zealand*, 21 June 2019.



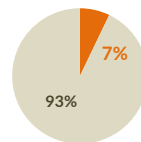
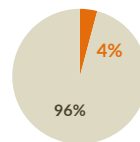
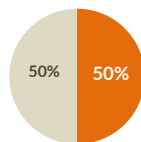
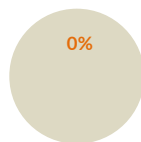
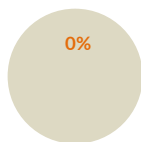
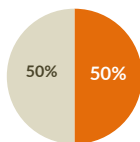
# Legal barriers to the registration or operation of CSOs working on sexual and gender diversity issues

## Highlights

**51 UN Member States**  
26% UN Member States



AFRICA	LAC	NORTH AMERICA	ASIA	EUROPE	OCEANIA
27 /54	0 /33	0 /2	21 /42	2 /48	1 /14



## Introduction

The ability of CSOs working on sexual and gender diversity issues to formally register and operate in a country allows them to more effectively serve and advocate for the cause.

Registration refers to the ability of organised groups to be recognized as independent legal entities under the law, which, among other things, allows them to receive funding and conduct their activities formally. In this section, a civil society organisation working on sexual and gender diversity issues is defined as one that does so *explicitly*, 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 are not considered in this chapter for the purpose of ascertaining the existence of legal barriers to registration.

Additionally, even 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 CSOs.

### 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**

## Africa

27 out of 54 UN Member States (50%). Tier 1: (15); Tier 2: (12).

TIER 1: CONFIRMED LEGAL BARRIERS			
1	 <b>Burkina Faso</b>	2015	<p>Article 16 of <a href="#">Law 064-2015/CNT</a> (2015) 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”.</p> <p>Repeated attempts by LGBT organizations to register with the Ministry of Territorial Administration, Decentralisation, and Security were not approved though no explanation was provided for the refusals.<sup>1</sup></p>
2	 <b>Burundi</b>	1992  2017	<p>Article 6 of <a href="#">Decree-Act No. 1/11</a> (1992) allows the authorities to deny registration when the object of the association is contrary to the law, public order or morality.<sup>2</sup></p> <p>Similarly, Article 24 of <a href="#">Law No. 1/02</a> (2017) on the Organic Framework of Non-Profit Associations prohibits the registration of organisations with purposes contrary to the law. Consensual same-sex sexual acts were made a criminal offence in Burundi in 2009.</p> <p>Activists have reported being unable to register their groups except when they focus on HIV/AIDS issues.<sup>3</sup></p>
3	 <b>Cameroon</b>	1999	<p>Law Regulating Non-Governmental Organisations (<a href="#">Law No. 99/014</a>) (1999), requires NGOs to pursue aims that are in the “public interest”.<sup>4</sup></p> <p>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.<sup>5</sup> Also, throughout 2019, CSOs known to provide support to LGBTI people reportedly faced violent attacks, vandalism and police interrogation for “promoting homosexuality”.<sup>6</sup></p>
4	 <b>Democratic Republic of Congo</b>	2001	<p>Article 3 of <a href="#">Decree-Law No. 4</a> (2001) requires CSOs 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 organisation is engaged.</p> <p>According to a joint submission by 6 SOR NGOs to the 2017 UPR (Universal Periodic Review), most organisations have been denied registration when they make reference to LGBT people in their constitutions.<sup>7</sup></p>
5	 <b>Egypt</b>	1964	<p>Article 14(b) of The Law of Associations and Other Foundations Working in the Field of Civil Work (<a href="#">Law No. 70</a>) (2017)<sup>8</sup> prohibits associations from any “activities that result in destabilizing the national unity, national security, public law and order, and public morals”.</p> <p>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.<sup>9</sup></p>

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

<sup>2</sup> *Report of the Special Rapporteur on the situation of human rights defenders: Burundi*, A/HRC/31/55/Add.2, 30 December 2015, para 30.

<sup>3</sup> 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.

<sup>4</sup> “Country Reports: Sub-Saharan Africa” *The International Journal of Not-for-Profit Law* 2, no. 3 (March 2000).

<sup>5</sup> Acodevo et al., *The Violations of the Rights of Lesbian, Gay, Bisexual, and Transgender Individuals in Cameroon* (2017), 14.

<sup>6</sup> “Vandals hit north Cameroon group fighting for gay rights”, *Erasing 76 Crimes*, 15 February 2019; “Cameroon legal-aid group battered by evictions, anti-gay attacks”, *Erasing 76 Crimes*, 18 November 2019.

<sup>7</sup> MOPREDS et al., *Human Rights Violations Against LGBT People in the Democratic Republic of the Congo (DRC)* (2017), 16.

<sup>8</sup> An unofficial translation can be accessed [here](#). As reported in previous editions, legal barriers could be found in legislation in force prior to the enactment of this law.

<sup>9</sup> 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)*, 29 March 2016.

6		<b>Eswatini</b>	-	<p>Eswatini operates on a hybrid system of common law and customary law. Although not explicitly codified as such, consensual same-sex sexual activity—at least among men—has been widely understood to be illegal since 1907. This fact, in addition to widespread conservatism regarding SOGIESC issues, constitutes a significant barrier to the registration of SOGI-based NGOs.</p> <p>In September 2019, Eswatini Sexual and Gender Minorities (ESGM), a local LGBTI group, was officially denied registration after roughly four months of unclarity. Reportedly, Eswatini's Registrar of Companies denied the organisation's application citing Article 27 of the Constitution, which “states that marriages must be between men and women, whereas this association wants to promote same-sex relations”. The Registrar is also said to have argued that the group’s objectives went against Eswatini's “communal or group interest” and could potentially “mislead the public, cause annoyance to people, or be suggestive of blasphemy or indecency”.<sup>10</sup></p>
7		<b>Liberia</b>	1977	<p>Section 21(1) of the <b>Associations Law</b> (1977) provides that a non-for-profit corporation may be formed for “any lawful purposes”.</p> <p>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.<sup>11</sup></p>
8		<b>Mali</b>	2004	<p>Article 4 of the Law on Associations (<b>Law No. 04-038</b>) (2004) prohibits the registration of associations that are based on a purpose that is contrary to law and morality.</p> <p>In June 2005, the governor of the District of Bamako cited this law to refuse official recognition of a gay rights association.<sup>12</sup> A 2015 regional study could not identify any organisation working on sexual and gender diversity issues on the ground.<sup>13</sup></p>
9		<b>Mauritania</b>	1964	<p>Article 3 of the Law on Associations (<b>Act No. 64-098</b>) (1964) limits the freedom to legally engage in activities unless prior authorisation has been granted by the Ministry of the Interior.</p> <p>Registration has been denied to at least one organisation by local authorities.<sup>14</sup></p>
10		<b>Morocco</b>	1958  2005	<p>Article 3 of the Decree Regulating the Right of Association, <b>Decree No. 1-58-376</b> (1958), prohibits associations from engaging in activities that, <i>inter alia</i>, “breach the laws or public morals” or “offend Islam”.</p> <p>Further amendments were made by <b>Decree No. 2-04-969</b> (2005), which include prohibitive provisions, such as capacities at start-up.</p> <p>A Moroccan organisation attempted to register in 2016 but authorities refused even to take the application and reportedly hustled those applying out of the registration office.<sup>15</sup></p>
11		<b>Nigeria</b>	2013	<p>Article 4(1) of Nigeria's <b>Same-Sex Marriage (Prohibition) Act</b> (2013) 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 and organisation” or “supports” the activities of such organisations.<sup>16</sup></p>

<sup>10</sup> Luiz DeBarros, “Eswatini government officially rejects LGBTI group”, *Mamba Online*, 15 September 2019.

<sup>11</sup> Stop AIDS in Liberia et al., “Human Rights Violations Against Lesbian, Gay, Bisexual and Transgender (LGBT) People in Liberia” (2018), 6.

<sup>12</sup> United States Department of State, *Mali 2006 Human Rights Report* (2007).



<sup>13</sup> Mariam Armisen, *Nous Existons: Cartographie des organisations LGBTQ en Afrique de l'Ouest* (2015), 33.

<sup>14</sup> Information with ILGA World.

<sup>15</sup> “Audacity in Adversity: LGBT Activism in the Middle East and North Africa”, *Human Rights Watch (website)*, 1 May 2018.

<sup>16</sup> In parallel to this explicit prohibition, Subsection 97A of the **Nigerian Penal Code** (in force in most Northern Nigerian states) defines an “unlawful society” as one “declared by an order of the Governor in Council to be a society dangerous to the good government of Northern



			<p>In 2018, the 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.<sup>17</sup> The judge held that the group's name was "in collision with an existing and operational law", i.e. the <a href="#">Same-Sex Marriage (Prohibition) Act</a> (2013).</p> <p>In February 2020, it was reported that the Lesbian Equality and Empowerment Initiatives had taken its case against the CAC to the Court of Appeal.<sup>18</sup></p>
12	 <b>Senegal</b>	1968 1996 2015	<p>The <a href="#">Civil and Commercial Obligations Code</a> (1968)—as amended by Decrees No. 96-03 (1996) and No. 2015-145 (2015)—regulates the registration and operation of NGOs. Article 812 of the Code establishes that registration is refused if the object of the association is illegal or if it results from serious and concordant presumptions that its constitution is in fact intended to infringe public order.</p> <p>Reportedly, only one CSO appears to have obtained registration with explicit language on sexual minorities in their by-laws. However, its members are reportedly hesitant to renew the CSO's registration, fearing it could be rescinded when the documents are resubmitted. Some activists have also faced police harassment though their charges for "establishing an illegal organization" were eventually overturned on appeal.<sup>19</sup></p> <p>In November 2019, Senegalese media widely reported that Jamra, a vocal Islamic NGO known for its hostility towards sexual and gender diversity,<sup>20</sup> accused a group of CSOs working on HIV issues of being "de facto" LGBTI organisations, thus implying that their registration was fraudulent and that the funding they had received was illegal.<sup>21</sup> These allegations are taking place in an environment of increased hostility towards groups working on sexual and gender diversity issues.</p>
13	 <b>Tanzania</b>	1954 2002 2019	<p>A vast body of laws and regulations set the regime for NGOs in the country, many of which pose legal barriers to the registration and operation of organisations working on sexual and gender diversity issues.</p> <p>For instance, various provisions within Chapter 337 of the <a href="#">Societies Act</a> (2002) allow the Tanzanian Registrar to reject, deregister, or outlaw any organisation with "any purpose prejudicial to, or incompatible with, the maintenance of peace, order and good government". Additionally, Section 14(1) of the <a href="#">Non-Governmental Organizations Act</a> (2002) states that the NGO Coordination Board may refuse the registration of NGOs whose activities are "not for public interest or are contrary to any written law".<sup>22</sup></p> <p>In 2019, the expression "order and good government" included in the Societies Act was replaced by "order, morality and good governance", as per Article 34(b) of the <a href="#">Written Laws (Miscellaneous Amendments) (No.3) Act</a> (2019). This explicit reference to "morality" increases even more the legal barriers to the registration of organisations working on sexual and gender diversity issues, which were already sizeable in light of Tanzania's active enforcement of provisions that criminalise consensual same-sex sexual acts.<sup>23</sup></p>

Nigeria or any part thereof". Additionally, the [Sharia Penal Codes](#) (in force in 12 Nigerian States have provisions that would likely present barriers to the registration of organisations attempting to work on SOGI issues: "Any society which by its composition, nature, or conduct is anti-social, counterproductive [sic] or opposed to the general belief and culture of the people of the State, or is dangerous and obstructive to the good governance of the State or any part thereof, is said to be an unlawful society". Under all codes, managing or belonging to an unlawful society can be punished by up to seven years imprisonment, plus fine or caning. See: Philip Ostien (comp. & ed.), [Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook](#), Vol. IV (The Hague: Spectrum Books Limited, 2007), 15.

<sup>17</sup> Ikechukwu Nnochiri, "Court throws out suit seeking registration of lesbian group", *Vanguard News* (Nigeria), 18 November 2018.

<sup>18</sup> Goodness Adaoyichie, "Lesbian group drags government agency to court over non-registration", *Pulse NG*, 3 February 2020.



<sup>19</sup> "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.

<sup>20</sup> For more information on the role of Jamra in the prosecution of LGBTI groups and activists in Senegal, see: Aminata Cécile Mbaye, "Queer political subjectivities in Senegal: gaining a voice within new religious landscapes of belonging", *Critical African Studies* 10, No. 3 (2018), 301.

<sup>21</sup> Information in file with ILGA World.

<sup>22</sup> In addition to the laws mentioned in this entry, also see: [The National Policy on Non-Governmental Organizations](#) (2001), the [NGO Regulations](#) (2004), and the [NGO Regulations Amendment Act](#) (2019).

<sup>23</sup> For a comprehensive overview of the numerous thus-related laws currently in force, see Tanzania's entry within the [Criminalisation section of the State-Sponsored Homophobia report's thirteenth edition](#), pp. 373-377.

			<p>The black letter law is also a reflection of official attitudes and public policies adopted in the last few years. In August 2016, the Tanzanian Minister of Justice announced plans to suspend the registration of any organisation that supports homosexuality.<sup>24</sup> In the same year, the Health Ministry shut down community-based HIV programmes that served men who have sex with men (MSM).<sup>25</sup> In September 2017, police forces in Zanzibar raided a meeting organised by a CSO whose work was focused with LGBT people and other marginalised groups, arresting 20 people on the grounds of “promoting homosexuality”.<sup>26</sup> In late 2018, a taskforce was set up to “hunt” LGBT people, forcing activists to hide for their own safety.<sup>27</sup></p> <p>In April 2019, the government formally deregistered three of Tanzania's most established organisations working for LGBTI rights, charging them with “promoting unethical acts” and violating “Tanzanian law, ethics, and culture”.<sup>28</sup></p>
14	 Uganda	2016	<p>Section 30(1)(a) of the <b>Non-Governmental Organizations Act</b> (2016) prohibits the registration of an organisation when its objectives, as specified in its constitution, “are in contravention of the laws of Uganda”.</p> <p>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 are criminalised in the country.<sup>29</sup> They sued the Uganda Registration Services Bureau (URSB) in 2016,<sup>30</sup> but their lawsuit was <b>rejected</b> in June 2018.</p> <p>In November 2019, the Ugandan government reportedly shut down more than 12,000 CSOs—nearly three quarters of those in the country—after deeming them “poorly performing”. Although unregistered groups in Uganda can operate as associations without government registration, they are no longer allowed to open bank accounts, among other limitations.<sup>31</sup></p>
15	 Zambia	1958	<p>Section 8 of the <b>Societies Act</b> (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.</p> <p>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”.<sup>32</sup> While there are several LGBTI human rights organisations, they operate underground and strategically negotiate the dangerous legal landscape.<sup>33</sup></p> <p>In 2016, several UN Special Procedures<sup>34</sup> 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”.<sup>35</sup></p> <p>In October 2019, a Member of Parliament raised a motion seeking to ban political parties and organisations that support LGBT rights in Zambia. The motion eventually expired.<sup>36</sup></p>

<sup>24</sup> “‘Seeds of hate’ sown as Tanzania starts LGBT crackdown”, *The Guardian*, 8 August 2016.

<sup>25</sup> “Now Tanzania also ends vital HIV programmes targeting gay men”, *Mamba Online*, 4 November 2016.

<sup>26</sup> “‘If We Don’t Get Services, We Will Die’: Tanzania’s Anti-LGBT Crackdown and the Right to Health”, *Human Rights Watch*, 3 February 2020.

<sup>27</sup> Nick Charity, “Tanzania taskforce to start ‘witch hunt’ to round up and imprison LGBT community”, *Evening Standard*, 1 November 2018.

<sup>28</sup> Ibid.; “Tanzania: Board Revokes Six NGOs’ License”, *The Citizen*, 19 April 2019.

<sup>29</sup> “SMUG v URSB Returns to High Court on 28 April 2017”, *Sexual Minorities Uganda (webpage)*, 24 March 2017.

<sup>30</sup> “Update on SMUG v URSB Court Case”, *Sexual Minorities Uganda (webpage)*, 29 May 2017.

<sup>31</sup> Alon Mwesigwa, “Uganda bans thousands of charities in ‘chilling’ crackdown”, *The Guardian*, 21 November 2019; Aaron Brooks, “Uganda bans thousands of charities in crackdown”, *The East Africa Monitor*, 22 November 2019.

<sup>32</sup> Scott Long et al, *More Than a Name: State-Sponsored Homophobia in Southern Africa* (Human Rights Watch, 2003), 46.

<sup>33</sup> Lily Phiri, *Canaries in the Coal Mines: an Analysis of Spaces for LGBTI Activism in Zambia* (The Other Foundation, 2017), 18.

<sup>34</sup> 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.

<sup>35</sup> For more information, see ZMB 4/2015.

<sup>36</sup> “MP moves Motion in Parliament to Ban Political Parties that support Gay, Lesbian, Bisexual and Transgender rights”, *Lusaka Times*, 10 October 2019.

TIER 2: LEGAL BARRIERS VERY LIKELY TO EXIST			
16	 <b>Algeria</b>	2012	<p>Article 2 of the Law on Associations (<a href="#">Law 12-06</a>) (2012)<sup>37</sup> affords the government broad discretion to refuse to register an association with an object that is contrary to “good mores” (<i>bonnes mœurs</i>). The title of the section of the <a href="#">Penal Code</a> (1966) that criminalises “homosexual acts”<sup>38</sup> uses the same terminology. The law also imposes heavy fines and criminal penalties for members or leaders of informal associations.<sup>39</sup></p> <p>Local LGBT groups have reported that gathering publicly or registering an organisation under this legal framework is impossible.<sup>40</sup> Human rights activists have also expressed the fear that supporting or advocating LGBT rights will “result in the immediate withdrawal of accreditation”.<sup>41</sup></p>
17	 <b>Chad</b>	1962	<p>Article 2 of the Ordinance on Organisation of Associations (<a href="#">Ordinance 62-27</a>) (1962) establishes that “any association founded on a cause or object contrary to the laws, to good morals” is “automatically void”.</p> <p>This clause, in light of the law criminalising consensual same-sex sexual activity in Chad, could impose severe barriers to the registration of organisations working on sexual and gender diversity issues.</p> <p>No ILGA Member organisation operate on the ground in Chad. No other organisations working on sexual and gender diversity issues are known to exist, neither formally nor informally.<sup>42</sup></p>
18	 <b>Comoros</b>	1986	<p>Article 5 of <a href="#">Law No. 86-006/AF</a> (1986) prohibits the existence of any association founded on a cause or with a view to an illicit object, contrary to the laws, or to good morals.</p> <p>This clause, in light of the law criminalising consensual same-sex sexual activity in Comoros, could impose severe barriers to the registration of organisations working on sexual and gender diversity issues.</p> <p>No ILGA Member organisation operate on the ground in Comoros. No other organisations working on sexual and gender diversity issues are known to exist, neither formally nor informally.<sup>43</sup></p>
19	 <b>Djibouti</b>	1901	<p>Under <a href="#">Law Relating to the Association Contract</a> (1901) any association founded on a cause or with a view contrary to “good morals”, <i>inter alia</i>, is automatically null and void”. Although this is a French law, it was still applicable in Djibouti as of February 2012 at least.<sup>44</sup></p> <p>No ILGA Member organisation operates on the ground in Djibouti. No other organisations working on sexual and gender diversity issues are known to exist, neither formally nor informally.<sup>45</sup></p>

<sup>37</sup> The Arabic version of this law can be accessed [here](#).

<sup>38</sup> The title of the section here described translates to “Attacks against morality”, in both the French and Arabic versions of the Algerian Penal Code. However, the term “homosexuality acts” as such only appears in Article 338 of the French version of the text (“*acte[s] d'homosexualité*”). In contrast, Article 333 of the same document criminalises “acts against nature with an individual of the same sex” (“*acte[s] contre nature avec un individu du même sexe*”). In the Arabic version of the Penal Code, the literal translation for the terminology used in both Articles 333 and 338 is “an act of sexual perversion committed against/on a person of the same sex” (“*الفعل (...) من أفعال الشذوذ*” (“*الجنسي ارتكب ضد شخص من نفس الجنس / فعلا من أفعال الشذوذ الجنسي على شخص من نفس جنسه*”).

<sup>39</sup> The Law on Public Meetings and Gatherings ([Law 91-19 of 1990](#)), contributes to a repressive legal environment. Article 9 of this law prohibits any gathering that opposes “good mores” (*bonnes mœurs*). The title of the section of the Penal Code that criminalises “homosexual acts” (or “act(s) of sexual perversion committed against/on a person of the same sex” in the Arabic version of the text) uses the same terminology.

<sup>40</sup> Alouen, *Préoccupations de l'Association Alouen concernant la Situation du Droit à la Non-Discrimination et à l'Égalité : Cas des LGBTI Algérien-ne-s* (2017); Sarah Jean-Jacques, “Gay and Lesbian Mobilisation in Algeria: the Emergence of a Movement”, *Muftah*, 15 December 2014.

<sup>41</sup> *Summary of other stakeholders' submissions on Algeria*, A/HRC/WG.6/27/DZA/3, 20 February 2017, para. 15.

<sup>42</sup> Felicity Daly, *The Global State of LGBTIQ Organizing. The Right to Register* (OutRight Action International, 2018), 56.

<sup>43</sup> *Ibid.*

<sup>44</sup> Permanent Mission of the Republic of Djibouti to the United Nations in Geneva, *Responses to the Questionnaire by the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association*, NV/HCDH/GVA/02/01, 3 February 2012.

<sup>45</sup> Felicity Daly, *The Global State of LGBTIQ Organizing. The Right to Register* (OutRight Action International, 2018), 41.

20	 <b>Ethiopia</b>	2009	<p>In Ethiopia, Article 69 of the Charities and Societies Proclamation Law (<a href="#">Law No. 621</a>) (2009) prohibits the registration of any group that is contrary to “public morality” or is illegal.</p> <p>This has led activists in Ethiopia to believe that they cannot be legally registered, though it has not been tested.<sup>46</sup></p>
21	 <b>Gambia</b>	1997	<p>Article 25(1)(e) of the <a href="#">Constitution of Gambia</a> (1997) grants the right to freedom of association. However, Article 25(4) allows for “reasonable restrictions” required in the interests of public order, decency or morality.</p> <p>In light of Gambia’s laws criminalising consensual same-sex sexual activity, as well as a hostile situation on the ground, the clause above could in practice impose severe barriers to the registration of organisations working on sexual and gender diversity issues.</p>
22	 <b>Libya</b>	2001	<p>Under Article 1 of Libya’s Law on the Reorganisation of NGOs (<a href="#">Law No. 19 of 2001</a>), a civil society organisation must operate “within the framework of law, morals and public order”. Article 36 confers the power to dissolve any association that commits “a grave breach of the provisions of the law, public order, or morals”, or “if the public interest calls for it”.</p> <p>The hostile context on the ground, exacerbated by Libya’s law criminalising consensual same-sex sexual activity, could impose severe barriers to the registration of organisations working on sexual and gender diversity issues.</p>
23	 <b>Malawi</b>		<p>In Malawi, organisations working on LGBT issues were able to receive legal status using non-descriptive names to avoid additional scrutiny.<sup>47</sup> Even then, they have been faced with significant obstacles to operate.</p> <p>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.<sup>48</sup></p>
24	 <b>Sierra Leone</b>	1991	<p>Article 26 of the <a href="#">Constitution of Sierra Leone</a> (1991) grants the right to freedom of association. However, the same article allows for exceptions to this right in the interest of public order, morality, and health.</p> <p>In light of Sierra Leone’s laws criminalising consensual same-sex sexual activity, the clause above could impose barriers to the registration of organisations working on sexual and gender diversity issues.</p>
25	 <b>Somalia</b>		<p>The <a href="#">Federal Constitution of Somalia</a> (2012) (Arts. 16 and 20), as well as the Constitutions of <a href="#">Jubaland</a> (2015) (Arts. 14 and 15) and <a href="#">Puntland</a> (2001) (Art. 28) provide for the right to freedom of assembly, with only the latter forbidding political parties and associations “that are contrary to the national interest and fail to abide by the law”. However, according to Freedom House, local CSOs in Somalia “face difficult and often dangerous working conditions. Regional authorities and security forces have reportedly harassed, extorted, obstructed, and attempted to control NGOs and aid groups, and the Shabaab generally do not allow such organisations to operate in their territory”.<sup>49</sup> This context, together with the overall lack of rule of law in Somalia, criminalisation of consensual same-sex sexual activity—and the threat of the death penalty—makes it highly unlikely that an organisation working on sexual and gender diversity issues would be registered. A community group of Somali activists based in Ethiopia has not been able to attempt registration due to the dangerous climate in the country.<sup>50</sup> The danger of coming out makes it practically impossible to even attempt registration.</p>

<sup>46</sup> “Interview with Beki Abi of DANA Social Club, Ethiopia”, *Institute of Development Studies* (website), 24 June 2016.

<sup>47</sup> 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).

<sup>48</sup> 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).

<sup>49</sup> “Freedom in the World 2020: Somalia”, *Freedom House* (website). Accessed on 9 October 2020.

<sup>50</sup> Faro, “Death hangs over Somali Queers”, *Behind The Mask* (website), 3 May 2004.

		<b>Somaliland</b>	<b>2010</b>	<p>Article 10 of the Law on Welfare (or Charitable) Non-Governmental Organisations (<a href="#">Law No. 43</a>) (2010) 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 laws of Somaliland.</p> <p>These provisions and context, together with Somaliland’s criminalisation of consensual same-sex sexual activity—and the threat of the death penalty—make it highly unlikely that an organisation working on sexual and gender diversity issues would be registered.</p>
26		<b>South Sudan</b>	<b>2016</b>	<p>Article 6(g) of South Sudan’s <a href="#">Non-Governmental Organisations Act</a> (2016) requires all NGOs in the country not to contravene “the sovereignty of the Republic of South Sudan, its institutions and laws”.</p> <p>Because South Sudan continues to criminalise consensual same-sex sexual activity, these two articles could impose barriers to the registration of civil society organisations working on sexual and gender diversity issues.</p>
27		<b>Sudan</b>	<b>2006</b>	<p>In Sudan, criminalisation of consensual same-sex sexual activity, coupled with a rigorous registration process mandated under Section 8(1) of the <a href="#">Voluntary and Humanitarian Work (Organisation) Act</a> (2006), makes it highly unlikely that an organisation working on sexual and gender diversity issues would be registered.</p>

### Is there more in Africa?

<b>Equatorial Guinea</b>	<p>Article 4 of the General Law on Associations (<a href="#">Law No. 11/1992</a>) considers that any association with objectives contrary to customs or public morals is illicit, and thus, forbidden.<sup>51</sup> In light of a hostile situation for LGBTI people on the ground and a reduced civic space for NGOs in general, the aforementioned clause could impose severe barriers to the registration of SOR CSOs.</p>
<b>Guinea-Bissau</b>	<p>In an August 2018 interview, the director of a local NGO stated that “there is no LGBT community in Bissau for legal and social reasons”.<sup>52</sup> The legal aspect of this comment might be related to possible hurdles posed by Article 7 of Guinea-Bissau’s <a href="#">Freedom of Union Law</a> (1991), which entitles government ministries to proceed legally against organisations whose ends are pursued by immoral means, or whose existence is contrary to public order.</p>
<b>Kenya</b>	<p>In March 2019, the Court of Appeal of Kenya ordered the Non-Governmental Organisations (NGOs) Coordination Board to register the National Gay Lesbian Human Rights Commission (NGLHRC) as a non-profit organisation.<sup>53</sup></p>
<b>Mozambique</b>	<p>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 (<a href="#">Law No. 8/91</a>) and held that the government’s interpretation of the law violated the principle of non-discrimination under the Constitution.<sup>54</sup></p>
<b>Rwanda</b>	<p>In 2017, local activists stated that “organisations seeking to legally register with the government often won’t highlight their work with the LGBTI community for fear of having their application rejected”. Those that do make their priorities explicit identify as human rights organisations that serve the LGBTI community, instead of principally LGBTI organizations. This “seemingly nominal difference” can be the key to an organisation getting legal recognition or not.<sup>55</sup></p>

<sup>51</sup> This law is complemented by the [Law on Non-Governmental Organisations](#) (1999).

<sup>52</sup> “A invisibilidade LGBT na Guiné-Bissau”, *RFI International*, 2 September 2018.

<sup>53</sup> Nita Bhalla, “Victory for Kenya’s LGBT+ community as charity wins right to be recognized”, *Reuters*, 22 March 2019.

<sup>54</sup> Constitutional Council, *Judgment No. 07/CC/2017*, 31 October 2017.

<sup>55</sup> Heather Dockray and Danielle Villasana, “Tomorrow, they’ll accept us: Rwandans fight to make their country the safest place in East Africa for LGBTI people”, *Mashable*, 18 November 2017.

**Tunisia**

In May 2019, the Court of Appeal upheld a 2016 ruling in favour of an LGBT rights group after the government had appealed against the decision that it should register the organisation.<sup>56</sup> This followed another attempt to shut down the group on the basis of Sharia law in April 2019.<sup>57</sup>

In February 2020, the Tunisian Court of Cassation definitively rejected the government's latest known attempt to shut down the organisation.<sup>58</sup> This should—in theory—mean that LGBTI-related objectives are not any more a legal ground for refusing registration to organisations working on sexual and gender diversity issues. However, the group's leader fled to France one month prior to the decision, after being charged with "blasphemy" over a post on Facebook and following a series of *fatwas* issued by local imams reportedly calling for his assassination. He declared in an interview that he would be willing to return to Tunisia if given police protection and if the blasphemy charge of is dropped.<sup>59</sup>

## Latin America and the Caribbean

0 out of 33 UN Member States (0%).

### Is there more in LAC?

**Cuba**

Even though the Cuban Law on Associations (**Law No. 54**) (1985) 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.<sup>60</sup> The main limitation to the creation of new associations has to do with alignment with governmental directives.

The document produced by the United Nations summarising stakeholders' submissions for Cuba's third UPR cycle shows that this issue was included in several reports. Many submissions "stressed the active role of Cuban civil society in the control of the organs of power and in the decision-making process on public matters" while others stated that the Law on Associations "established requirements that prevented the registration of civil society organizations that were independent of the State, including trade unions and political parties".<sup>61</sup>

**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.<sup>62</sup> In 2016, the Massimadi arts 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.<sup>63</sup>

**Nicaragua**

In September 2020, members of the Sandinista National Liberation Front presented a bill to regulate the work of NGOs and activists receiving funding from abroad, requiring them to register as "foreign agents", submit exhaustive monthly reports to the government, and refrain from "intervening in matters, activities or issues of internal politics" in Nicaragua.

The bill, which was criticised by several stakeholders,<sup>64</sup> was **approved** by Congress in October 2020.<sup>65</sup> A coalition of local NGOs has announced its intention to file an action of unconstitutionality against the law.<sup>66</sup>

<sup>56</sup> Eilizia Volkmann, "Tunisian court victory boosts push to end gay sex ban", *Reuters*, 21 May 2019.

<sup>57</sup> Saeed Kamali Dehghan, "Tunisia invokes sharia law in bid to shut down LGBT rights group", *The Guardian*, 30 April 2019.

<sup>58</sup> "Tunisia: Appeals court supports LGBT activist group Shams", *Erasing 76 Crimes*, 22 February 2020.

<sup>59</sup> "Tunisian gay-rights leader flees to France for safety", *Erasing 76 Crimes*, 6 January 2020.

<sup>60</sup> "ILGA Members in Latin America and the Caribbean", *ILGA World (Website)*.

<sup>61</sup> Office of the United Nations High Commissioner for Human Rights, "Summary of Stakeholders' submissions on Cuba", A/HRC/WG.6/30/CUB/3, 9 March 2018, paras. 44-46.

<sup>62</sup> "In Haiti, Slight Progress for LGBT Rights Seen as Victory", *VOA*, 14 August 2018.

<sup>63</sup> "Haiti LGBT festival cancelled due to threats", *BBC World*, 28 September 2016.

<sup>64</sup> Amnesty International, *Nicaragua: la Asamblea Nacional no debe aprobar la iniciativa de Ley de Regulación de Agentes Extranjeros por amenazar la libertad de asociación*, AMR 43/3127/2020, 25 September 2020; Plataforma Nicaragüense de Redes de ONG, "Oenegés denuncian "aberrante" iniciativa de ley para controlar a nicaragüenses", *Confidencial*, 23 September 2020. "Oposición rechaza ley de Regulación de Agentes Extranjeros en Nicaragua", *EFE*, 23 September 2020.

<sup>65</sup> Diego Camilo Carranza Jimenez, "Congreso de Nicaragua aprueba ley que fiscalizará financiación exterior a personas, empresas y ONG", *Anadolu Agency*, 16 October 2020.

<sup>66</sup> "ONG Nicaragua recurrirán por "inconstitucional" ley de agentes extranjeros", *Forbes*, 29 October 2020.

## Venezuela

In 2019, the UN High Commissioner for Human Rights expressed concern about actions taken to pass a law that criminalises activities of domestic human rights organizations that receive funds from abroad. She stressed that “this law, if passed and applied, would further reduce the democratic space”.<sup>67</sup>

## Asia

21 out of 42 UN Member States (50%). Tier 1: (9); Tier 2: (12).

TIER 1: CONFIRMED LEGAL BARRIERS			
1	 <b>Bangladesh</b>	1860	<p>Only specific types of organisations may be registered under the <b>Societies Registration Act (1860)</b> pursuant to Section 20 and activists have reported that registration of their groups has been rejected on the basis of the criminalisation of same-sex sexual conduct.<sup>68</sup></p> <p>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.<sup>69</sup></p>
2	 <b>China</b>	1998	<p>Article 11 of the <b>Interim Regulations on the Registration and Administration of Private Non-enterprise Units (1998)</b> confers discretion on authorities to approve the registration of associations, of which one ground is violation of Article 4. This article specifies that such groups shall not endanger the “social interest” as well as the lawful rights and interest of other organisations and citizens and shall not breach “social ethics” and “morality”. While some NGOs have been successful in registering, others have reported being rejected because their names or activities explicitly referred to issues on sexual orientation.<sup>70</sup></p> <p>2016</p> <p>Furthermore, under the <b>Charities Law (2016)</b> only organisations certified by the government are permitted to conduct public fundraising and uncertified individuals may be severely penalised for doing so.</p> <p>2017</p> <p>In 2017, the <b>Law on the Management of the Activities of Overseas NGOs (2017)</b> came into force, severely impeding funding capabilities.</p> <p>These restrictions severely limit the ability of CSOs, particularly those that have had their registration rejected, to raise funds and organise.<sup>71</sup> In January 2019, the Municipal Affairs Bureau in the southern metropolis of Guangzhou reportedly shut down two organisations for “failure to register properly” by not explicitly declaring their objectives and activities related to sexual orientation.<sup>72</sup></p>
3	 <b>Iraq</b>	2010	<p>Article 10 of Iraq’s Law of Non-Governmental Organizations (<b>Law No. 12 (2010)</b>) forbids all NGOs from “conducting any activities or pursuing any goals that violate the constitution or other Iraqi laws”.<sup>73</sup></p> <p>Based on this law, the General Secretariat of the Iraqi Council of Ministers has reportedly denied permission to at least one queer organisation to operate locally.</p>

<sup>67</sup> Human Rights Council, *Oral Update on the Human Rights Situation in the Bolivarian Republic of Venezuela: Statement by Michelle Bachelet, UN High Commissioner for Human Rights*, 42<sup>nd</sup> Session, 9 September 2019.

<sup>68</sup> United States Department of State, *Bangladesh 2017 Human Rights Report (2017)*.

<sup>69</sup> Roopbaan, *Submission to 30<sup>th</sup> Universal Periodic Review (2018)*, 6.

<sup>70</sup> Outright Action International, *The Global State of LGBTIQ Organising: The Right to Register (2018)*, 31.

<sup>71</sup> “China’s Complicated LGBT Movement”, *The Diplomat*, 1 June 2018.

<sup>72</sup> Rik Glauert, “China shuts down two LGBTI organizations”, *Gay Star News*, 11 January 2019.

<sup>73</sup> The original, Arabic-language version of this law can be accessed [here](#).

4	 <b>Jordan</b>	2008	<p>Article 3 of the Law of Societies (<b>Law No. 51</b>) (2008), as amended by Law No. 22 of 2009, prohibits the registration of any society which has illegal goals or purposes. Additionally, for non-Jordanian sources of funding, Article 17 requires that the source of donation be not contrary to public order or morals.</p> <p>On several occasions, officials have publicly stated that no authorisation would be given to LGBT groups to legally operate in the country, including in 2009,<sup>74</sup> 2015,<sup>75</sup> and, more recently, in 2017, when—in the aftermath of an inquiry discussed by MPs against a queer-inclusive magazine—the Minister of Interior issued a letter to the Minister of Political and Parliamentary Affairs stating that Jordan “would never endorse any charter or protocol acknowledging homosexuals” or would grant them any rights “as it is considered a deviation from Islamic law and Jordanian Constitution”, and that “any initiatives by those who have sexual deviancy are violating the provisions of Islamic religion and the general system”.<sup>76</sup> He also denied having permitted the establishment of any organization or association that representing LGBT people and reaffirmed that such activities “would never be tolerated”.<sup>77</sup></p>
5	 <b>Kazakhstan</b>	1996	<p>Article 5 of the <b>Law on Public Assembly</b> (1996) states that the formation and operation of public association infringing the health or moral principles of the citizens, as well as the activity of unregistered public associations are not allowed.</p> <p>Feminita, a queer feminist collective, has been rejected multiple times since 2015 allegedly because of their focus on LGBT rights,<sup>78</sup> the most recent of these refusals having occurred in September 2019.<sup>79</sup> 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”.<sup>80</sup></p>
6	 <b>Kyrgyzstan</b>	1999	<p>Article 12 of the Law on Non-Commercial Organizations (<b>Law No. 111</b>) (1999) states that non-commercial organizations shall have the right to conduct “any type of activity which is not prohibited by Law”.</p> <p>While there are several registered groups,<sup>81</sup> 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”.<sup>82</sup></p>
7	 <b>Lebanon</b>	1909	<p>The <b>Ottoman Law on Associations</b> (1909) 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.</p>

<sup>74</sup> “بسيسو تنفي تلقي طلب ترخيص جمعية للشواذ جنسيا” [Bseisu denies receiving a license application for a gay sex association], *Khaberni*, 19 March 2009; Aaron Magid, “Little protection for gays in Jordan”, *AL-Monitor*, 12 August 2014.

<sup>75</sup> “التنمية «تنفي ترخيص جمعية للشواذ أو السماح باحتفالهم»” [Al-Tanmia denies licensing an association for homosexuals or allowing their celebration], *Assabeel*, 27 May 2015.

<sup>76</sup> MJ Movahedi, “Gay-bashing in Jordan - by the government”, *The New Arab*, 30 August 2017.

<sup>77</sup> A copy of the letter provided by Human Rights Watch can be accessed [here](#).

<sup>78</sup> “Kazakhstan’s Queer Feminist Uprising is Now”, *Queer Here*, 5 October 2015.

<sup>79</sup> “Kazakhstan: Feminist Group Denied Registration”, *Human Rights Watch*, 13 September 2019

<sup>80</sup> Amnesty International, *Less Equal: LGBTI Human Rights Defenders in Armenia, Belarus, Kazakhstan, and Kyrgyzstan* (2017), 29.

<sup>81</sup> *Id.*, 33.

<sup>82</sup> Kyrgyz Indigo and Labrys, *Alternative Report on the Implementation of the Provisions of ICCPR Related to LGBT People in Kyrgyzstan*, (2014), 16.



			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. <sup>83</sup> 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. <sup>84</sup>
8	 <b>Malaysia</b>	1966	Under Section 7(3)(a) of the <b>Societies Act</b> (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. <sup>85</sup>
9	 <b>Singapore</b>	1966	Section 4(2) of the <b>Societies Act</b> (1966) 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” under Section 4(2)(b), or if it “would be contrary to the national interest for the specified society to be registered” under Section 4(2)(d). The Schedule of this Section lists societies dealing with issues relating to “gender or sexual orientation” among the “specified societies” whose registrations can be refused at the Registrar’s discretion. A gay advocacy group, People Like Us, was not allowed to register in 1997 and 2004, based on the provisions of this law. <sup>86</sup>
		1967	Furthermore, Sections 20(2)(a) and (b) of the <b>Companies Act</b> (1967) allow the Registrar to refuse the registration of any company that is “likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore”, or any company whose registration “would be contrary to the national security or interest”. The latter provision was used in 2016 and 2017 to reject the registration of a shelter for transgender women, <sup>87</sup> and it could be used against SOR CSOs as well.
<b>TIER 2: LEGAL BARRIERS VERY LIKELY TO EXIST</b>			
10	 <b>Afghanistan</b>	2005	Article 7 of the <b>Law on Non-Governmental Organizations</b> (2005) prohibits groups from engaging in activities that are illegal or against the “national interest”.
		2013	Furthermore, Article 3 of the <b>Law on Associations</b> (2013) establishes that associations “shall observe the basic principles of Islam sacred religion” and the provisions of the constitution in the fulfilment of their goals.  Reports suggest that LGBT advocates largely function underground out of fear of persecution due to the threat of severe punishment. <sup>88</sup> This hostile context, the criminalisation of consensual same-sex sexual activity and the provisions cited above make it highly unlikely that an organisation working on sexual and gender diversity issues would be registered.

<sup>83</sup> Outright Action International, *The Global State of LGBTIQ Organising: The Right to Register* (2018), 36.

<sup>84</sup> “Lebanon: Security Forces Try to Close LGBT Conference”, *Human Rights Watch (website)*, 4 October 2018.

<sup>85</sup> The Coalition for SOGIESC Human Rights in Malaysia, *Stakeholder Report on Status of Human Rights of LGBTI Persons in Malaysia* (2018), 13.

<sup>86</sup> Stephan Ortmann, *Politics and change in Singapore and Hong Kong: Containing contention* (Routledge, 2009), 154.

<sup>87</sup> “The T Project Rejected as Non-Profit Organisation”, *Rice*, 6 November 2017.

<sup>88</sup> “Afghanistan: Events of 2016”, *Human Rights Watch Website*; Frud Bezhan, “Fake Life: Being Gay In Afghanistan”, *Radio Free Europe - Radio Liberty*, 12 September 2017.

11	 <b>Bahrain</b>	1989	Article 3 of the Law on Associations [...] and Private Foundations ( <b>Law No. 21</b> ) (1989) stipulates that an organisation established in a way that contradicts public order or morals shall be considered illegal. Furthermore, Article 11 empowers the administrative authority to refuse the registration of an organisation if “society does not need its services”.
		2002	Furthermore, Article 27 of the <b>Constitution</b> (2002) states that the freedom to form associations is guaranteed “as long as the fundamentals of the religion and public order are not infringed”. The Explanatory Memorandum of the Constitution states that this guarantees the freedom of association while keeping the Islamic principles and the unity of the people. <sup>89</sup>  Human Rights Watch has documented the challenges and hurdles encountered when attempting to register an organisation in Bahrain. <sup>90</sup> These practical difficulties and the provisions cited above make it improbable that an organisation working on sexual and gender diversity issues would be registered.
12	 <b>Iran</b>	1979	Article 26 of the <b>Constitution of the Islamic Republic of Iran</b> (1979) provides for the right to freedom of association provided that it does not violate “Islamic standards” and “the basis of the Islamic Republic”.
		2005	Article 8 of the <b>Executive Regulations Concerning the Formation and Activities of Non-Governmental Organizations</b> (2005) provides that the organisation’s constitution and activities must not be in violation of the Constitution.
13	 <b>Kuwait</b>	1962	Article 6(4) of the Law on Clubs and Public Welfare Societies ( <b>Law No. 24</b> ) (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 organisations working on sexual and gender diversity issues.
14	 <b>Oman</b>	2000	<b>Law No. 14</b> (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”). <sup>91</sup>  Though there are no organisations working on sexual and gender diversity issues 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.
15	 <b>Qatar</b>	2004	Articles 1 and 35 of the Law on Private Associations and Foundations ( <b>Law No. 12</b> ) (2004) disallow associations from being “involved in political issues”. This limited margin of action coupled with the harsh penalties imposed to consensual same-sex sexual acts makes it very unlikely that an organisation working on sexual and gender diversity issues will get formal registration.
16	 <b>Saudi Arabia</b>	2016	Article 8 of the Civil Society Associations and Organisations Law ( <b>Royal Decree No. M/8, 19.2.1437H</b> ) prohibits the establishment of an association if its charter conflicts with the provisions of Sharia, “public policy” or “public morality”.  Under Saudi Arabia’s classical Sharia legal system, consensual same-sex sexual activity is considered a serious offence, a sin, and even an attack against society (see entry on Saudi Arabia under the Death Penalty section of this report). This context, together with the threat of the death penalty, could impose several barriers to the registration of SOR CSOs in Saudi Arabia.

<sup>89</sup> International Federation for Human Rights, *Freedom of Association in the Arabian Gulf: the case of Bahrain, Kuwait and Yemen* (2009), 11.

<sup>90</sup> Human Rights Watch, *‘Interfere, Restrict, Control’: Restraints on Freedom of Association in Bahrain* (2013), 17.

<sup>91</sup> “Introduction: Civil Society and Development in the Arab World”, *Global Trends in NGO Law* 1, No 4 (2010).

17	 Syria	1958	<p>Various articles of <b>Law No. 93</b> (1958) 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”.</p> <p>This legal framework appears to pose severe barriers to the formal registration and the operation of an organisation working on sexual and gender diversity issues.</p>
18	 Turkmenistan	2014	<p>Article 7 of the <b>Public Associations Act</b> (2014) prohibits the establishment and operation of associations which may lead to propagandize national or religious enmity, encroach on citizens’ health or morality or engage in extremist activities. Turkmenistan’s civil space in general is highly reduced and there is an overall scarcity of NGOs in the country.<sup>92</sup> Onerous registration and regulatory requirements prevent most independent organizations from operating legally or receiving foreign funding, and unregistered groups can draw fines, detention, and other penalties.<sup>93</sup></p> <p>This hostile context, exacerbated by Turkmenistan’s law criminalising consensual same-sex sexual activity, impose barriers to the registration of organisation working on sexual and gender diversity issues.</p>
19	 United Arab Emirates	1987  2008	<p>Article 317 of the <b>Federal Penal Code</b> (1987) establishes a prison sentence of five to ten years for establishing, organizing or administering any organisation aiming at resisting or vilifying the foundations or teachings of Islam. Furthermore, under Article 318, any person who joins or assists such organisations may be sentenced to up to seven years in prison.</p> <p><b>Federal Law No. 2</b> (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.</p> <p>This legal framework—compounded by criminalisation of consensual same-sex sexual acts and the possible imposition of the death penalty under Shariah Law—appears to pose severe barriers to the registration of an organisation working on sexual and gender diversity issues.</p>
20	 Uzbekistan	1991	<p>Article 3 of the <b>Law on Public Associations</b> (1991) forbids “the formation of a public association whose activity is directed toward the destruction of society’s ethical foundations or general humanistic values”. A subsequent clause within the same article reads: “In accordance with the law, the formation and activity of a public association that infringes upon the health and morality of the population and the rights and legally guaranteed interests of citizens will be prosecuted”.</p> <p>These clauses, in light of the law criminalising consensual sexual intercourse among men in Uzbekistan, could impose severe barriers to the registration of an organisation working on sexual diversity issues.</p>
21	 Yemen	1994  2001	<p>Although Article 58 of the <b>Constitution</b> asserts the rights on citizens to form associations, the <b>Penal Code</b> imposes the death penalty for same-sex sexual acts and contains several other provisions on “public morals”.</p> <p>Furthermore, Article 4.1 of Yemen’s Law on Associations and Foundations (<b>Law No. 1</b>) (2001) states that in order to register an organisation, it is required “that its objectives do not violate the constitution, laws and legislations in force”.</p> <p>Such provisions, in light of Yemen’s criminalisation of consensual same-sex sexual activity, the threat of the death penalty, the fading rule of law and a hostile situation on the ground, make it very unlikely that a request to formally register an organisation to advocate on issues of sexual orientation will be accepted.<sup>94</sup></p>

<sup>92</sup> “Overview of NGOs and Civil Society: Turkmenistan”, *Asian Development Bank* (2007), 3.

<sup>93</sup> “Freedom in the World 2020: Turkmenistan”, in *Freedom House* (website). Accessed on 9 October 2020.

<sup>94</sup> See: Abdulbaki Shamsan, *Freedom of Association in the Republic of Yemen* (Taiz: HR Information & Training Centre, 2008), pp. 22, 63-67.

## Is there more in Asia?

<b>Mongolia</b>	<p>The first LGBT NGO in Mongolia was denied registration in 2007 and was only granted legal status in 2009.<sup>95</sup></p> <p>In November 2019, the Mongolian parliament released a new draft law that would grant the government greater control over the funding sources of CSOs, direct supervision of the activities of NGOs in the country, and the authority to inhibit the work of any CSOs working “against public unity”. International organisations and human rights groups—including Transparency International and the UN Special Rapporteur on the situation of human rights defenders— have expressed their concern regarding the draft law and the apparent reduction of Mongolian civil society space in general, noting that people involved in activism around LGBTI issues have been especially prone to discrimination, intimidation and harassment in recent times.<sup>96</sup></p>
<b>North Korea</b>	<p>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.</p>
<b>Palestine</b> (West Bank)	<p>In August 2019, in response to a planned gathering in Nablus by Palestinian LGBT group Al-Qaws, the Palestinian Authority banned LGBT groups in the West Bank under the pretence that they are “harmful to the higher values and ideals of Palestinian society”.<sup>97</sup></p>

## Europe

2 out of 50 UN Member States (4%). Tier 1: (0); Tier 2: (2).

TIER 1: CONFIRMED LEGAL BARRIERS			
1	 <b>Belarus</b>	1994	Article 7 of <a href="#">Law on Public Associations</a> (1994) prohibits the operation of unregistered associations. Attempts to register LGBT groups have been unsuccessful. <sup>98</sup> Activists have also faced harassment by State officials after submitting their registration application. <sup>99</sup> The head of Gay Belarus, fearing for his personal safety, was forced to flee the country with his family in 2013. <sup>100</sup>
2	 <b>Russian Federation</b>	2012	In 2012, the Russian parliament adopted the <a href="#">Law on Foreign Agents</a> <sup>101</sup> ( <a href="#">Law No. 121-FZ</a> ), which brought several amendments affecting organisations receiving foreign funding. <sup>102</sup> The law introduced multiple limitations on such organisations, including their duty to register as “foreign agents”, to label their materials accordingly, and to submit to the government quarterly extensive reports about their funding and the activities performed. <sup>103</sup> Failure to comply with these obligations have resulted in heavy fines. Sources argue that this has been used as a mechanism to halt the activities of organisations working on sexual and gender diversity issues that need to rely on foreign funding. <sup>104</sup>

<sup>95</sup> Anne Leach, “Coming out for LGBT rights in outer Mongolia”, *Gay Star News*, 26 April 2013.

<sup>96</sup> “Civil Society At Risk Of Restrictions With Proposed New Ngo Law In Mongolia”, *CIVICUS*, 24 March 2020.

<sup>97</sup> Khaled Abu Toameh, “PA Bans LGBTQ Activities In West Bank”, *The Jerusalem Post*, 19 August 2019.

<sup>98</sup> GayBelarus and Sexual Rights Initiative, *Joint Submission by GayBelarus and Sexual Rights Initiative: for 22<sup>nd</sup> Session of UPR of Belarus* (2015), 5.

<sup>99</sup> “Attempt to Register A LGBT Organisation in Belarus Provokes Police Raids”, *Belarus Digest*, 6 February 2013.

<sup>100</sup> Vital Tsyhankou and Aleh Hruzdilovich, “Pressure Mounts on Belarusian LGBT Community”, *Radio Free Europe*, 10 December 2013.

<sup>101</sup> Full name of the law: *Law Amending Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-Commercial Organizations Performing the Functions of a Foreign Agent*.

<sup>102</sup> European Commission for Democracy Through Law, “Opinion on Federal Law N. 121-FZ on Non-commercial Organisations (“Law on Foreign Agents”), on Federal Laws N. 18-FZ and N. 147-FZ and on Federal Law N. 190-FZ on Making Amendments to the Criminal Code (“Law on Treason”) of the Russian Federation”, 27 June 2014.

<sup>103</sup> See: “Never Give Up: Russian Human Rights Defenders Keep Swimming Under the Ice”, *Civil Rights Defenders*, March 2018.

<sup>104</sup> E.g.: Diana Gucul, “Murmansk court found legal fine for non-profit organization for non-entry into the register of foreign agents” [Суд в Мурманске признал законным штраф НКО за невступление в реестр иноагентов], *RAPSI*, 08 April 2015.

2015

In 2015, this law was amended by the Law on Amendments to Certain Legislative Acts of the Russian Federation (*Law No. 129-FZ*), introducing a list of “undesirable organisations” (in practice, prominent international donors). The law not only prohibited their activities in Russia but also criminalised cooperation of individuals with such organisations, which led to a significant loss of financial resources for local LGBT organisations.<sup>105</sup>

On July 16, 2019, the European Court of Human Rights ordered Russia to pay a fine of €42,500 for its refusal to give official recognition to three LGBT associations under old legislation.<sup>106</sup>

In October 2019, a St. Petersburg court ordered a ban on the Russian LGBT Network and the Russian LGBT Community groups for posting information for the community on social media. At the time of publication, an upper court had granted the Russian LGBT Network’s appeal as defendants and returned the case to the first instance court, while the organisation’s group in social media is still operating.<sup>107</sup>

In 2020, the authorities introduced a package of amendments imposing further limitations on “foreign agents.”<sup>108</sup> The bills allow the government to label individuals and non-registered civil society groups receiving foreign funding—the form which most of the LGBTI organisations operate in Russia—as “foreign agents.”<sup>109</sup> The bills require them to report about any planned and performed activities to authorities every six months, and the latter would have the right to prohibit such activities.<sup>110</sup> Furthermore, the bills expand the obligation to mark any materials and petitions to the government as coming from “foreign agent” and penalise the offence of dissemination of information about such groups without labelling.<sup>111</sup>

### Is there more in Europe?

#### Azerbaijan

In February 2016, the “*Rules for Studying the Activities of Non-Governmental Organisations, Branches or Representative Offices of Foreign Non-Governmental Organisations*”, adopted by the Azerbaijani Ministry of Justice, came into force. Under these regulations, the government enjoys broad powers to conduct “regular” or “extraordinary” inspections of NGOs, and those that receive foreign funding—as well as their donors—are also subject to authorisation procedures with arbitrary outcomes.<sup>112</sup>

<sup>105</sup> Felicity Daly, *The Global State of LGBTIQ Organizing. The Right to Register* (OutRight Action International, 2018), 41.

<sup>106</sup> Kyle Knight, “Russia Fined for Anti-LGBT Actions”, *Human Rights Watch*, 17 July 2019.

<sup>107</sup> “The Court Agreed that the Decision to Block the Russian LGBT Network Group was Unlawful” [Суд согласился с тем, что решение о блокировке группы Российской ЛГБТ-Сети было неправомерным], *Russian LGBT Network*, accessed on 1 December 2020; “Group of Russian LGBT Network in “Vkontakte” is still not blocked” [Группа Российской ЛГБТ-сети «Вконтакте» все еще не заблокирована ], *Russian LGBT Network*, accessed on 17 November 2020.

<sup>108</sup> Bill Draft “On amendments to the Federal Law ‘On Non-Commercial Organizations’ in terms of improving the legal regulation of the activities of non-commercial organizations performing the functions of a foreign agent and structural divisions of foreign non-commercial”, No. 1052523-7, SOZD GAS “Lawmaking”, 09 November 2020.; “Russia’s authorities increase pressure on NGOs with plans to strengthen ‘foreign agent’ laws”, *Meduza*, 20 November 2020.

<sup>109</sup> See: Lucy Pakhnyuk, “Foreign Agents and Gay Propaganda: Russian LGBT Rights Activism Under Pressure”, *Demokratizatsiya: The Journal of Post-Soviet Democratization*, 27:4 (2019): 493.

<sup>110</sup> See: “Bill submitted to Russian parliament on labeling individuals as foreign agents”, *TASS*, 18 November 2020; “Russia: New Effort to Stifle Independent Groups”, *Human Rights Watch*, 12 November 2020.


<sup>111</sup> Bill Draft “On Amendments to the Code of Administrative Offenses of the Russian Federation in terms of clarifying responsibility for violation of the procedure for the activities of persons performing the functions of a foreign agent”, No. 1060950-7, SOZD GAS “Lawmaking”, 23 November 2020.

<sup>112</sup> Yves Cruchten (Committee on Legal Affairs and Human Rights), “New restrictions on NGO activities in Council of Europe member States”, *Council of Europe Parliamentary Assembly, Doc. 14570*, 7 June 2018, 9; Human Rights Watch, “20 October 2016. Harassed, Imprisoned, Exiled. Azerbaijan’s Continuing Crackdown on Government Critics, Lawyers and Civil Society”, 20 October 2016.

<b>Bulgaria</b>	In July 2020, a <b>bill</b> that would impose several obligations on NGOs receiving foreign funding was presented at the Bulgarian Parliament. Under this draft law, any NGOs that are registered “in the public benefit” and receive more than 1,000 Bulgarian leva from foreign sources (with the exception of funds received from the EU) must declare this money within seven days, along with “written evidence about the source of the funding”, to the Ministry of Finance. These records would then be rendered publicly accessible by the Ministry of Justice, and the NGOs in question would remain subject to multiple additional governmental inspections. Failure to declare foreign funding would entail sanctions, ranging from fines up to the NGO’s dissolution. <sup>113</sup> As of December 2020, the bill is still pending.
<b>Hungary</b>	In June 2017, the Hungarian government adopted the <b>Law on the Transparency of Foreign Aided Organizations</b> (2017), requiring any organisation receiving over €24,000 from overseas donors to register as “foreign-supported” and disclose their funding sources, or face closure. <sup>114</sup> The preamble to this law states that foreign-supported NGOs could otherwise be used to assert foreign interests and influence Hungary’s political and social life, jeopardizing the country’s political and economic interests.
<b>Poland</b>	In August 2020, the Polish Ministers of Justice and Environment presented a bill on the transparency of financing of non-governmental organizations, under which any NGOs that get at least 10% of their funding from abroad would be obligated to declare their sources, which would then be published in a public register. NGOs receiving 30% or more of their funding from abroad would be further obligated, <i>inter alia</i> , to indicate the origin of their funding for specific activities. Failure to comply with the rules would result in fines or the organisations’ eventual loss of their NGO status. <sup>115</sup>

## Oceania

1 out of 14 UN Member States (7%).

TIER 1: CONFIRMED LEGAL BARRIERS			
1	 <b>Fiji</b>	1978	<p>Section 2 of the <b>Charitable Trusts Act</b> (1978) offers a limited list of what constitutes a “charitable purpose”.</p> <p>According to CIVICUS, while most CSOs are able to register and operate with minimum government interference, LGBT groups have faced challenges. For instance, Rainbow Pride Foundation was denied registration three times under this law and was eventually forced to register as a Company Limited by Guarantee, which carries a tax burden.<sup>116</sup></p>

<sup>113</sup> "Civic Solidarity Platform: Bulgarian Parliament Should Reject Draft NGO Law", *Bulgarian Helsinki Committee*, 28 July 2020.

<sup>114</sup> Yasmeen Serhan, "Hungary's Anti-Foreign NGO Law", *The Atlantic*, 13 June 2017. See also: Jack Parrock, "Hungary breaking EU law over foreign-funded NGO crackdown, says ECJ", *Euronews*, 18 June 2020.

<sup>115</sup> The bill's Polish-language title is "Projekt Ustawy o Transparentności Finansowania Organizacji Pozarządowych". See "Nowe prawo wzmocni przejrzystość finansowania organizacji pozarządowych", *Polish Ministry of Environment*, 7 August 2020; Magdalena Chrzczonowicz, "The government is preparing an attack on NGOs in Poland", *Rule of Law*, 12 May 2020; Juliette Bretan, "Polish ministers propose law making NGOs declare foreign funding and creating public register", *Notes from Poland*, 11 May 2020.

<sup>116</sup> CIVICUS et al., *Republic of Fiji: Joint Submission to the UN Universal Periodic Review* (2019), para.2.3. See also: Oceania Pride et al, *UN Universal Periodic Review – Fiji National Civil Society Joint Submission* (2014), 2.



GLOBAL LEGISLATION OVERVIEW

# PROTECTION

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STATE-SPONSORED HOMOPHOBIA 2020

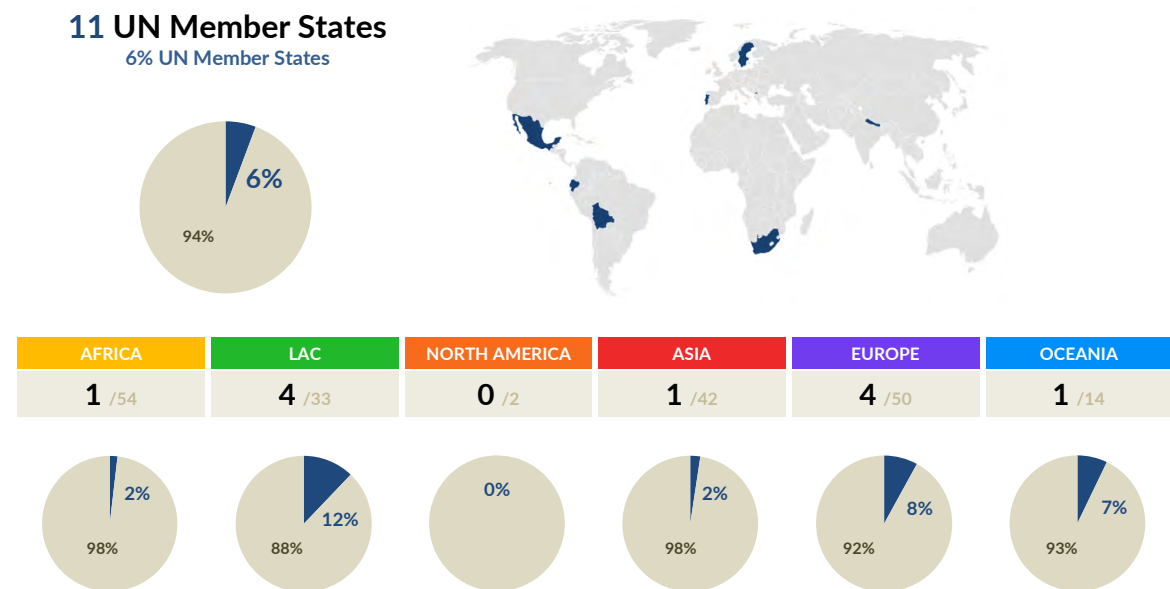






# Constitutional protection against discrimination based on sexual orientation

## Highlights



## Introduction

Constitutions are the legal texts that collect the most fundamental legal principles of any given State. They usually set the organisational 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 “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 out of 54 UN Member States (2%).

1	 <b>South Africa</b>	1994 1996	Prohibition of sexual orientation discrimination was first included at Section 8 of the <i>Interim Constitution</i> that came into force in April 1994, and was carried through Section 9(3) of the <i>Constitution of South Africa</i> (1996).
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### Is there more in Africa?

<b>Botswana</b>	Section 3 of the <i>Constitution of Botswana</i> entitles every person in the country to fundamental rights and freedoms regardless of “race, place of origin, political opinions, colour, creed or sex”.  In June 2019, the High Court of Botswana ruled in <i>Letsweletse Motshidiemang v. Attorney General</i> (2019) that “sex” in this section, should be “generously and purposively interpreted to include ‘sexual orientation’”. This decision has been appealed by the government.
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## Latin America and the Caribbean

4 out of 33 UN Member States (12%). Additionally: subnational jurisdictions in 2 UN Member States (Argentina and Brazil)

1	 <b>Bolivia</b>	2009	Article 14 of the <i>Constitution of Bolivia</i> prohibits discrimination based on sexual orientation.  However, Article 63 limits marriages and “free unions” to those formed by one man and one woman. <sup>1</sup>
2	 <b>Cuba</b>	2019	Article 42 of the <i>Constitution of Cuba</i> establishes that no person shall be discriminated on the basis of sexual orientation.
3	 <b>Ecuador</b>	1998	Article 11(2) of the <i>Constitution of Ecuador</i> prohibits discrimination based on sexual orientation.  Furthermore, the Constitution contains several other relevant provisions: <ul style="list-style-type: none"> <li>▪ 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;</li> <li>▪ Article 66(11) protects the rights of every person to the confidentiality of information on their sexual life; and</li> <li>▪ Article 83(14) establishes as a “duty” and a “responsibility” of every Ecuadorian to respect and acknowledge diverse sexual orientations.</li> </ul> Despite these protections, Article 68 expressly limits adoption of children to different-sex couples.
4	 <b>Mexico</b>	2011	Article 1 of the <i>Political Constitution of the United Mexican States</i> (federal constitution) prohibits discrimination based on “sexual preferences”.  Several State Constitutions also prohibit such discrimination:
	<i>Campeche</i>	2015	Art. 7 of the <i>Constitution of Campeche</i> prohibits discrimination based on “sexual preferences”.

<sup>1</sup> Despite this prohibition, a few days before the publication of this report, on December 10, 2020, it was reported that the first “free union” between two people of the same sex had been registered. See section “Partnership recognition for same-sex couples” in this report.

<i>Chihuahua</i>	2013	Art. 4 of the <i>Constitution of Chihuahua</i> prohibits discrimination based on “sexual preferences”.
<i>Coahuila</i>	2013	Arts. 4 and 7 of the <i>Constitution of Coahuila</i> prohibits discrimination based on “sexual preferences”.
<i>Colima</i>	2012	Art. 1 of the <i>Constitution of Colima</i> prohibits discrimination based on “sexual preferences”.
<i>Durango</i>	2013	Art. 5 of the <i>Constitution of Durango</i> prohibits discrimination based on sexual orientation.
<i>Guanajuato</i>	2015	Art. 1 of the <i>Constitution of Guanajuato</i> prohibits discrimination based on “sexual preferences”.
<i>Mexico City</i>	2018	Art. 4(C)(2) of the <i>Constitution of Mexico City</i> forbids discrimination based on “sexual preference and sexual orientation”, <i>inter alia</i> .
<i>Michoacan</i>	2012	Art. 1 of the <i>Constitution of Michoacán</i> guarantees all rights as set forth in federal constitution, which prohibits discrimination based on “sexual preferences” under Article 1.
<i>Morelos</i>	2016	Art. 1bis of the <i>Constitution of Morelos</i> prohibits discrimination based on sexual orientation.
<i>Nuevo Leon</i>	2016	Art. 1 of the <i>Constitution of Nuevo Leon</i> prohibits discrimination based on “sexual preferences”.
<i>Oaxaca</i>	2016	Art. 4 of the <i>Constitution of Oaxaca</i> prohibits discrimination based on “sexual preferences”.
<i>Puebla</i>	2011	Art. 11 of the <i>Constitution of Puebla</i> prohibits discrimination based on “sexual preferences”.
<i>Queretaro</i>	2016	Art. 2 of the <i>Constitution of Querétaro</i> prohibits discrimination based on “sexual preferences”.
<i>Quintana Roo</i>	2010	Art. 13 of the <i>Constitution of Quintana Roo</i> prohibits discrimination based on “sexual preference or condition”.
<i>San Luis Potosí</i>	2014	Art. 8 of the <i>Constitution of San Luis Potosí</i> prohibits discrimination based on “sexual preferences”.
<i>Sinaloa</i>	2013	Art. 4 bis of the <i>Constitution of Sinaloa</i> prohibits discrimination based on “sexual preferences”.
<i>Sonora</i>	2013	Art. 1 of the <i>Constitution of Sonora</i> prohibits discrimination based on sexual orientation.
<i>Tlaxcala</i>	2012	Art. 14 of the <i>Constitution of Tlaxcala</i> prohibits discrimination based on “sexual preferences”.
<i>Veracruz</i>	2016	Art. 4 of the <i>Constitution of Veracruz</i> prohibits discrimination based on “sexual preferences”.
<i>Yucatan</i>	2014	Art. 2 of the <i>Constitution of Yucatan</i> prohibits discrimination based on “sexual preferences”.
<i>Zacatecas</i>	2012	Art. 21 of the <i>Constitution of Zacatecas</i> prohibits discrimination based on “sexual preferences”.

*Is there more in Latin America and the Caribbean?*

<b>Argentina</b>	The Federal Constitution does not contain an explicit prohibition of discrimination based on sexual orientation.
<i>Autonomous City of Buenos Aires</i>	Prohibition of discrimination based on sexual orientation was explicitly included in 1996 in the <i>Constitution of the Autonomous City of Buenos Aires</i> (Art. 11).
<b>Belize</b>	The <i>Constitution of Belize</i> forbids discrimination on the grounds of “sex, race, place of origin, political opinions, colour or creed” (Section 16(3), 1981), and that every person in Belize “is entitled to the fundamental rights and freedoms of the individual” regardless of these characteristics (Section 3, 1981). In August 2016, the Supreme Court of Belize ruled in <i>Caleb Orozco v. Attorney General of Belize</i> (2016) that Sections 3 and 16(3) are to be interpreted to extend to “sexual orientation”. This decision was upheld by the Court of Appeal in <i>Caleb Orozco v. Attorney General of Belize</i> (2019).
<b>Brazil</b>	<p>The Federal Constitution does not contain an explicit prohibition of discrimination based on sexual orientation. However, several jurisdictions within the country do, as listed below.</p> <p>During the National Constituent Assembly that took place in the country in 1987 and 1988, the Brazilian homosexual movement, led by the organisation <i>Triângulo Rosa</i>, deployed intensive advocacy efforts in an attempt to include the prohibition of discrimination based on sexual orientation in the Federal Constitution. Despite these efforts, the goal was not achieved, and the advocacy initiative then turned its focus to the inclusion of sexual orientation in States’ constitutions, cities’ organic laws, and later in a new opportunity at the federal level during the Constitutional Revision scheduled to occur in 1993. The organisations’ efforts in reaching out to local legislators were partially successful this time and led to the inclusion of the term “sexual orientation” in a number of organic laws and in two States’ constitutions (Mato Grosso and Sergipe). This makes Brazil the first country to have some level of constitutional protection against discrimination based on sexual orientation.<sup>2</sup></p>
<i>Alagoas</i>	Art. 2.1 of the <i>Constitution of Alagoas</i> , as amended in 2001, states that all citizens should have equal opportunities without distinction of, <i>inter alia</i> , their sexual orientation.
<i>Ceara</i>	Art. 14.3 of the <i>Constitution of Ceará</i> , as amended in 2009, states that any form of discrimination on the basis of sexual orientation should be combatted.
<i>Espirito Santo</i>	Art. 12 of the <i>Constitution of Espírito Santo</i> , as amended in 2012, prohibits discrimination on the grounds of sexual orientation.
<i>Federal District</i>	Art. 2.5 of the <i>Organic Law of the Federal District</i> (1993), which is the equivalent of a constitution, prohibits discrimination on the grounds of sexual orientation.
<i>Mato Grosso</i>	Art. 10.3 of the <i>Constitution of Mato Grosso</i> (1989), prohibits harms or privileges based on one’s sexual orientation.
<i>Pará</i>	Art. 3.4 of the <i>Constitution of Pará</i> , as amended in 2007, states that the good of all should be promoted, without prejudice of sexual orientation.
<i>Piaui</i>	Art. 3.3 of the <i>Constitution of Piauí</i> , as amended in 2013, states that the good of all should be promoted, without prejudice of sexual orientation.
<i>Santa Catarina</i>	Art. 4.4 of the <i>Constitution of Santa Catarina</i> , as amended in 2002, states that administrative, economic, and financial penalties will be imposed on entities that discriminate on the basis of sexual orientation.
<i>Sergipe</i>	Art. 3.2 of the <i>Constitution of Sergipe</i> (1989) protects against discrimination based on sexual orientation.
<b>Costa Rica</b>	The Constitutional Chamber of the Supreme Court of Justice has established in <i>Resolution No. 18,660-2007</i> that discrimination based on sexual orientation is contrary to the concept of dignity enshrined in the <i>Political Constitution of Costa Rica</i> .

<sup>2</sup> Rafael Carrano Lelis, Marcos Felipe Lopes de Almeida, and Waleska Marcy Rosa, “Who counts as nation? The exclusion of LGBTI issues in the constituent assembly of Brazil and Colombia”, *Brazilian Journal of Public Policy*, Vol. 9, No. 2, 2019, 83-110.

## North America

0 out of 2 UN Member States (0%).

*Is there more in North America?*

### Canada

Even though the term is not explicitly included in the text of the law, constitutional protection based on “sexual orientation” was introduced in paragraph 15(1) of the [Canadian Charter of Rights and Freedoms](#) by a 1995 judicial decision of the Supreme Court in [Egan v. Canada](#).

## Asia

1 out of 33 UN Member States (3%).

1 

### Nepal

2015

Section 18(3) of the [Constitution of Nepal](#) explains that the State shall not discriminate against, *inter alia*, “sexual minorities”.

*Is there more in Asia?*

Taiwan  
(China)<sup>3</sup>

In 2017, the Taiwanese Constitutional Court issued [J.Y. Interpretation No. 748](#), which declares that Article 7 of the Constitution also contemplates “sexual orientation”, thereby prohibiting discrimination on these grounds. This decision is binding upon all institutions of Taiwan.

## Europe

4 out of 50 UN Member States (8%). Additionally: 1 non-UN Member jurisdiction (Kosovo) and subnational entities in 1 UN Member State (Germany).



### Kosovo

2008

Article 24(2) of the [Constitution of Kosovo](#) establishes that no one shall be discriminated against on grounds of their sexual orientation.

1



### Malta

2014

Article 32 of the [Constitution of Malta](#) entitles the individual fundamental rights and freedoms regardless of sexual orientation, and Article 45(3) specifies such protection from discrimination.

2



### Portugal

2004

The sixth constitutional revision incorporated the prohibition of discrimination on the basis of sexual orientation to article 13(2) of the [Constitution of Portugal](#).

3



### San Marino

2019

Article 4 of the [Declaration of Citizen Rights of 1974](#) (one of the documents that are part of the Constitution of San Marino) was amended to explicitly include “sexual orientation” as a prohibited ground of discrimination, after a national referendum in June 2019.

4



### Sweden

2011

Article 2 in Chapter 1 of the [Constitution of Sweden](#) mandates all organs of the State to exercise and promote equality and non-discrimination in health, employment, housing, education, and social security on the basis of sexual orientation. Similarly, Article 12 in Chapter 2 states that “No act of law or other provision may imply the unfavourable treatment of anyone” on account of their sexual orientation.

<sup>3</sup> Note on Names of countries and territories in this publication: ILGA World is an organisation with ECOSOC-accredited consultative status at the United Nations and our publications therefore have to follow UN-recommended language on the names of countries and territories. For more information, please read the methodology section of this report.

*Is there more in Europe?*

<b>Andorra</b>	Article 6 of the <b>Andorran Constitution</b> establishes that “no one shall be discriminated against on the basis of birth, race, sex, origin, religion, opinion, or any other personal or social condition”. On December 20, 2008, the Constitutional Court of Andorra ruled in <i>Causa 2008-17 RE</i> (2008) that sexual orientation is included in “any other (...) condition”.
<b>Estonia</b>	Article 12 of the <b>Estonian Constitution</b> states that no one “shall be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or other opinion, property or social status, or on other grounds”.  An interpretation from 2011 by the Chancellor of Justice confirmed that Article 12 covers protection against discrimination based on sexual orientation, even if it is not explicitly mentioned there. <sup>4</sup>
<b>Germany</b>	Discrimination on the basis of sexual orientation or sexual identity is constitutionally forbidden in the constitution of five German states:
<i>Berlin</i>	Art. 10(2) of the <b>Constitution of Berlin</b> states that no one may be prejudiced or favoured because of, <i>inter alia</i> , their sexual orientation.
<i>Thüringen</i>	Art. 2(3) of the <b>Constitution of Thüringen</b> states that no one may be prejudiced or favoured because of, <i>inter alia</i> , their sexual orientation.
<i>Bremen</i>	Art. 2(2) of the <b>Constitution of Bremen</b> states that no one may be prejudiced or favoured because of, <i>inter alia</i> , their sexual orientation.
<i>Saarland</i>	Art. 12(3) of the <b>Constitution of Saarland</b> states that no one may be prejudiced or favoured because of, <i>inter alia</i> , their sexual orientation.
<i>Brandenburg</i>	Art. 12(2) of the <b>Constitution of Brandenburg</b> states that no one may be prejudiced or favoured because of, <i>inter alia</i> , their sexual orientation.
<b>Netherlands</b>	Article 1 of the <b>Constitution of the Kingdom of the Netherlands</b> prohibits discrimination on the grounds of “religion, belief, political opinion, race or sex or on any other grounds whatsoever”. In June 2020, the Dutch House of Representatives voted in favour of a measure to add “sexual orientation” to the list of protected characteristics. The proposal will have to be ratified by the Dutch Senate with a two-thirds majority after the March 2021 parliamentary elections before it comes into force. <sup>5</sup>
<b>Slovenia</b>	Article 14 of the <b>Slovenian Constitution</b> guarantees that everyone shall be “guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other conviction, material standing, birth, education, social status, disability or any other personal circumstance.”  In 2009, the Constitutional Court interpreted Article 14 of the Constitution in <i>U-I-425/06-10</i> (2 July 2009) as including “sexual orientation” as one of the “personal circumstance[s]” protected against discrimination. Furthermore, according to an official interpretation from 2015 by the Parliamentary Commission for Constitutional Affairs, the clause “any other personal circumstance” in Article 14 includes individuals who are attracted to members of their same sex. <sup>6</sup>
<b>Switzerland</b>	Article 8 of the <b>Swiss Constitution</b> includes the expression “way of life” as a prohibited ground of discrimination. Even though this expression had been largely interpreted as encompassing “sexual orientation”, <sup>7</sup> in 2019 the Swiss Federal Court issued a judgment saying the <b>Equality Act</b> does not include “homosexual persons” and, therefore, there would not exist protection against discrimination based on sexual orientation. <sup>8</sup>

<sup>4</sup> Reimo Mets, *Seisukoht vastuolu mittetuvastamise kohta* (2011), 8-9.

<sup>5</sup> “Prachtig nieuws: Kamer stemt voor Grondwetswijziging!”, COC, 30 June 2020; Nick Duffy, “The Netherlands just emphatically voted to put LGBT+ rights at the very forefront of the constitution”, *Pink News*, 8 July 2020; Tris Reid-Smith, “The Dutch are putting LGBT+ rights in Article 1 of their constitution”, *Gay Star News*, 8 July 2020.

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

<sup>7</sup> Alecs Recher, *Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity Legal Report: Switzerland* (2010), 8.

<sup>8</sup> “Highest Swiss court says sexual orientation not protected under equality law”, *Swissinfo.ch*, 30 April 2019.


**United Kingdom**

The constitution of the UK is made up of a mixture of convention, legislation, common law, international treaty obligations, and the Royal Prerogative. There is no clear way of identifying which laws, if any, have ‘constitutional’ status. However, the government, parliament and courts of the UK have consistently and for several years upheld rights that protect LGBT people, which is akin to ‘constitutional’ protection on the grounds of sexual orientation.<sup>9</sup>

In particular, the [Equality Act 2010](#) was passed with the primary purpose of codifying and supplementing the multiple documents that comprise the basis of anti-discrimination law in the UK. This document includes sexual orientation as a protected characteristic.

**Oceania**

1 out of 14 UN Member States (7%).

1	 <b>Fiji</b>	<p><b>1997</b></p> <p><b>2013</b></p>	<p>Section 38(2) of the <a href="#">Constitution of Fiji (1997)</a> 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.</p> <p>In 2013, the prohibition was kept under section 26(3)(a) of the <a href="#">Constitution of Fiji (2013)</a>.</p>
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*Is there more in Oceania?*

**New Zealand**

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

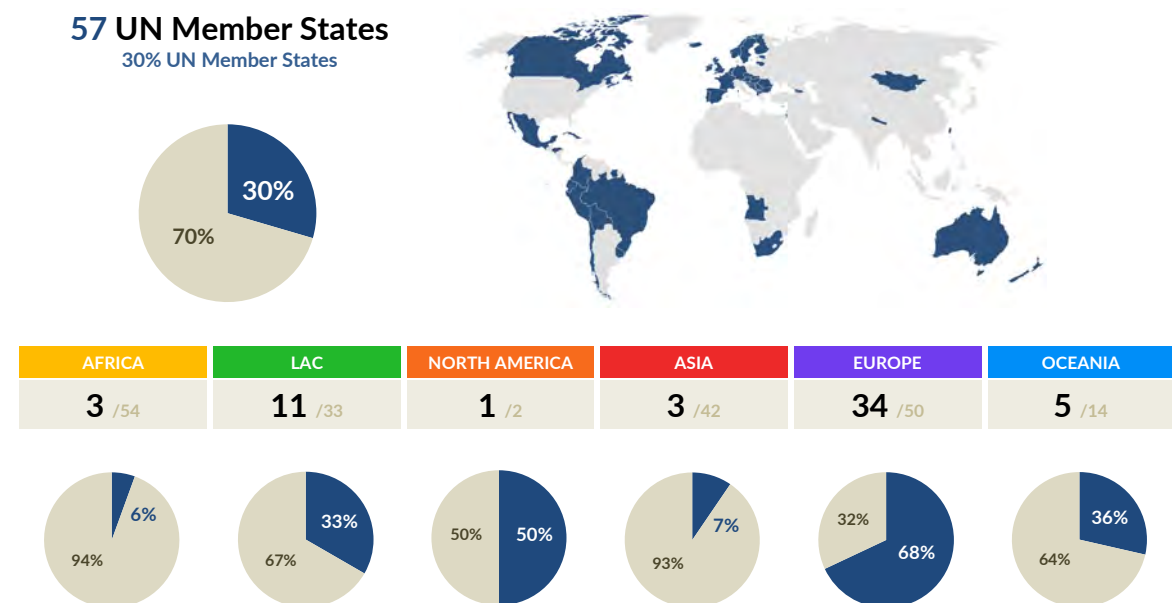
<sup>9</sup> ILGA Europe, *Rainbow Europe: United Kingdom* (2019).





# Broad protection against discrimination based on sexual orientation

## Highlights



## Introduction

Legal protections against discrimination are a key element in the human rights legal framework of every country. They serve as a tool to ensure that the principle of equality before the law is fully observed, as a basis for public policy on prevention, and to 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, ethnicity, religion, nationality, language, sex/gender, health status, migration status, 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 these open clauses. Therefore, *explicit* protection on grounds of sexual orientation becomes of key importance to effectively protect people from discrimination.

### What does International Human Rights Law say?

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

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

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

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

**Yogyakarta Principle 2**



## Africa

3 out of 54 UN Member States (6%). Additionally: 3 non-UN Member jurisdictions.


1	 <b>Angola</b>	2021 <sup>1</sup>	Article 212 of the Penal Code ( <a href="#">Law No. 38</a> ) (2020) criminalises acts of discrimination based on sexual orientation with regard to the provision of goods and services, obstructing economic activities, and access to public or private facilities. In turn, Article 380 punishes incitement to discrimination on the grounds, among other, of sexual orientation. Further, Article 71 establishes that discrimination based on sexual orientation is an aggravating circumstance for the definition of the penalty.
2	 <b>Mauritius</b>	2008	Section 2 of the <a href="#">Equal Opportunities Act</a> (2008) includes “sexual orientation” in the definition of “status” and defines it as “homosexuality (including lesbianism), bisexuality or heterosexuality”.  Sections 5, 6, 7, and 8 establish general rules on discrimination based on the “status” of the aggrieved person. 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	 <b>South Africa</b>	1998	Under Section 24(2)(e) of the Medical Schemes Act ( <a href="#">Act No. 131</a> ) (1998), a medical scheme shall not be registered if it unfairly discriminates directly or indirectly on grounds of sexual orientation.
		1999	Section 4(1) of the <a href="#">Rental Housing Act</a> (1999) prohibits a landowner from discriminating against tenants on the basis of sexual orientation.
		2000	Section 1(xxii)(a) of the Promotion of Equality and Prevention of Unfair Discrimination ( <a href="#">Act No. 4</a> ) (2000) includes sexual orientation as one of the prohibited grounds of discrimination. Section 6 of the Act establishes a “general prohibition of unfair discrimination”, according to which “neither the State nor any person may unfairly discriminate against any person”.

### Non-independent jurisdictions in Africa (3)

#### France (2)

1	 <i>Mayotte</i>	2001	Legal protection against discrimination based on sexual orientation has been explicitly recognised under French legislation since 2001. These protections are currently applicable to Reunion and Mayotte. <sup>2</sup> For further details on the evolution and scope of the afforded protections, please refer to the entry on France below.
2	 <i>Réunion</i>		

#### United Kingdom (1)

3	 <i>Saint Helena, Ascension and Tristan da Cunha</i>	2008	Section 33 of the <a href="#">Education Ordinance</a> (2008) states that “no person who is eligible for admission to a public educational institution as a student may be refused admission on any ground such as [...] sexual orientation”.
		2009	Sections 5, 122, and 187 of the <a href="#">St Helena, Ascension and Tristan da Cunha Constitution Order</a> (2009) include sexual orientation among the prohibited grounds for discrimination.
		2015	Section 79(3)(b) of the <a href="#">Mental Health and Mental Capacity Ordinance</a> (2015) establishes that the Senior Medical Officer must ensure respect for diversity including, in particular, diverse sexual orientations through an institution's statement of principles within its code of practice.

<sup>1</sup> In January 2019 Angola approved a new Penal Code. In 2020, new changes in the text of the Code were discussed by the Parliament and the official version of the new Penal Code ([Law No. 38/20](#)) was finally published on 11 November 2020. According to its Article 9, the Code will enter into force ninety days after the date of its publication.

<sup>2</sup> Under Article 72-3 of the [French Constitution](#) (1958), Mayotte and Reunion are listed as French overseas territories. Both of them are officially overseas departments and regions and, as such, subject to Article 73 of the Constitution, according to which French statutes and regulations are automatically applicable. Mayotte became a department in 2011.

*Is there more in Africa?*

<b>Cabo Verde</b>	Section 8 of the <a href="#">National Housing Policy</a> (2019) states it was developed under the premise that everyone has a right to housing, regardless of their sexual orientation, among other grounds.
<b>Democratic Republic of the Congo</b>	Articles 3 and 4 of the <a href="#">Law on the Protection of the rights of people living with HIV/AIDS and of those affected</a> (2008) prohibit acts of stigmatization and discrimination against people living with HIV/AIDS, their sexual partners, their children or parents based on their “proven or suspected HIV status”. Among those protected by the law under the category of “vulnerable groups”, Article 2(5) includes “homosexuals”.
<b>Seychelles</b>	The <a href="#">National Anti-Bullying Policy and Strategy for Primary, Secondary Schools and Professional Centres</a> (2018) includes specific sections referred to homophobic bullying (Section 2.1.2(iii), Section 2.2, paragraph 4, and Section 4.3).

## Latin America and the Caribbean

11 out of 33 UN Member States (33%). Additionally: 15 non-UN Member jurisdictions and subnational protections in one UN-Member State (Argentina).

<b>1</b>	 <b>Bolivia</b>	<b>2010</b>	<p>Article 5(a) of the Law against Racism and All Forms of Discrimination (<a href="#">Law No. 45</a>) (2010) prohibits discrimination on the ground of sexual orientation (among others).</p> <p>Furthermore, Article 281 <i>sexies</i> of the <a href="#">Criminal Code</a> (1972), as amended by the aforementioned Act, criminalises any act of discrimination based on sexual orientation and aggravates the penalty if it is committed by public servants or by private individuals providing public services.</p>
<b>2</b>	 <b>Brazil</b>	<b>1989-2019</b>	<p>At the federal level, there is no law prohibiting discrimination on the basis of sexual orientation in broad terms.</p> <p>Some specific laws have incorporated “sexual orientation” as a protected ground from discrimination, granting varying levels of protection. These include <a href="#">Law 10,216</a> (2001) which prohibits discrimination against mentally disabled people based on their sexual orientation, <a href="#">Law 11,340</a> (2006), locally known as “<a href="#">Maria da Penha</a>” law, establishes the right of every woman to a life free of violence, regardless of her sexual orientation and <a href="#">Law 12,852</a> (2013) which protects youth (aged 18 to 29, as per Article 1 of the law) from discrimination based on sexual orientation.</p> <p>Additionally, 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, as well as a number of cities such as Fortaleza (<a href="#">Law No. 8,211/1998</a>), Recife (<a href="#">Law No. 16,780/2002</a>), and Vitoria (<a href="#">Law No. 8,627/2014</a>).<sup>3</sup></p> <p>In 2019, the Brazilian Federal Supreme Court ruled in <a href="#">ADO No. 26 and MI No. 4,733</a> (2019) to recognise acts of homophobia as included in the definition of racism established under <a href="#">Law No. 7,716</a> (1989)<sup>4</sup>, which shall apply until the Parliament approves specific legislation with regard to discrimination on the grounds of sexual orientation. This law applies to employment, access to goods and services, housing, education, transportation, among others.</p>

<sup>3</sup> These cities are included only as an example, but there is a number of other cities in Brazil that enacted similar laws.

<sup>4</sup> Arguably, the decision would also allow for the prosecution of homophobic and transphobic acts under the crime of “racial injury” provisioned in Article 140 of the [Penal Code](#) (1940). See: Paulo Roberto Iotti Vechiatti, *O STF, a Homotransfobia e o seu Reconhecimento como Crime de Racismo* (Bauru: Spessoto, 2020), 127-131.

<i>Alagoas</i>	2001	Although there is no specific law on the matter, the state's <b>Constitution</b> (1989), as amended in 2001, provisions that all citizens should have equal opportunities without distinction of their sexual orientation.
<i>Amapa</i>	2009	<b>Law No. 1,417</b> (2009) provisions administrative sanctions to be applied against discrimination based on sexual orientation. This applies to acts of discrimination perpetrated by companies and other legal entities, including any type of violence, the prohibition of access to public or private facilities, access to goods and services, among others.
<i>Amazonas</i>	2006	<b>Law No. 3,079</b> (2006) prohibits "any form of discrimination, practice of violence, whether physical, psychological, cultural and verbal or prejudiced manifestation against a person for reasons derived from their sexual orientation". The Law defines discrimination as "any action or omission that, motivated by sexual orientation, causing embarrassment, exposure to humiliation, differential treatment, charging additional fees or neglecting to care for gays, lesbians, bisexuals, transgender and travestis".  The provision applies to access to public services (including security, education, health, social assistance, and work), admission in any facilities open to general public, housing, among others.
<i>Ceara</i>	2006	Although there is no specific law on the matter, the state's <b>Constitution</b> (1989), as amended in 2009, states that any form of discrimination on the basis of sexual orientation should be combatted.
<i>Distrito Federal</i>	2000	<b>Law No. 2,615</b> (2000) establishes sanctions for acts of discrimination based on sexual orientation, applying to anyone who promotes, enables or collaborates in such discriminatory acts, including situations of shaming, impediment of admission in facilities, access to goods and services, housing, employment, among other acts of violence.  In November 2020, a previous attempt by the local legislative to impede the enforcement of the law was declared unconstitutional by the Supreme Court in its ruling in <b>ADI No. 5740</b> (2020).
<i>Espirito Santo</i>	2012	Although there is no specific law on the matter, the state's <b>Constitution</b> (1989), as amended in 2012, prohibits discrimination on the grounds of sexual orientation under its Article 12, which applies to all rights and guarantees provided by the Federal Constitution.
<i>Maranhao</i>	2006	<b>Law No. 8,444</b> (2006) establishes penalties for acts of discriminations based on sexual orientation. The Law applies to any type of violence, admission in public and private facilities, access to goods and services, employment, public display of affection.
<i>Mato Grosso</i>	1989	Although there is no specific law on the matter, the state's <b>Constitution</b> (1989) prohibits harms or privileges based on one's sexual orientation.
<i>Mato Grosso do Sul</i>	2005	<b>Law No. 3,157</b> (2005) prohibits any form of discrimination and violence on the grounds of sexual orientation, which encompasses "any action or omission that, motivated by sexual orientation, causing embarrassment, exposure to humiliation, differential treatment, charging additional fees or neglecting to care for gays, lesbians, bisexuals, transgender and travestis". The law applies to access to goods and services, housing, admission in public facilities, health, among other areas.
<i>Minas Gerais</i>	2002	<b>Law No. 14,170</b> (2002) imposes sanctions to companies and other legal entities in cases of discrimination based on sexual orientation. The law applies to situations of prohibition of access to public and private facilities open to general public, wrongful termination of contracts, access to goods and services, among others.

	<i>Para</i>	2007	<a href="#">Law No. 6,971</a> (2007) provisions that companies that discriminate on the grounds of sexual orientation will not have access to tax benefits or to any kind of funding provided by the State.
		2011	<a href="#">Law No. 7,567</a> (2011) prohibits discrimination based on sexual orientation, which applies to access to public and private facilities, education, transportation, housing, blood donation, health, among others.
	<i>Paraíba</i>	2003	<a href="#">Law No. 7,309</a> (2003) prohibits discrimination based on sexual orientation, which applies to access to public and private facilities, education, transportation, housing, health, among others.
	<i>Piauí</i>	2004	<a href="#">Law No. 5,431</a> (2004) establishes sanctions to acts of discrimination based on sexual orientation, which applies to any types of violence, admission in public and private facilities, access to services, housing, among others.
	<i>Rio de Janeiro</i>	2000	<a href="#">Law No. 3,406</a> (2000) prohibited discriminations based on sexual orientation by companies and other legal entities, applying to cases of shaming, access to goods and services, among others. This Law was repealed in 2015 and replaced by <a href="#">Law No. 7.041</a> (2015).
		2015	<a href="#">Law No. 7,041</a> (2015) establishes penalties to companies and other legal entities, and public officers that discriminate on the grounds of sexual orientation. It applies to housing, access to public and private facilities, attendance at public events, education, employment, and transportation.
	<i>Rio Grande do Norte</i>	2007	<a href="#">Law No. 9,036</a> (2007) establishes penalties for acts of discrimination on the grounds of sexual orientation and applies to any types of violence, access to public and private facilities, access to services, employment, housing, among others.
	<i>Rio Grande do Sul</i>	2002	<a href="#">Law No. 11,872</a> (2002) establishes measures for the promotion and recognition of liberty regarding "sexual orientation, practice, manifestation, identity, and preference". Article 2 prohibits discriminatory acts concerning housing, employment, public display of affection, violence, among other areas.
	<i>Santa Catarina</i>	2003	<a href="#">Law No. 12,574</a> (2003) punishes "any manifestation that insults or discriminates against any homosexual, bisexual, or transgender citizen", and applies to acts of violence, admission in public and private facilities open to general public, employment, housing, public display of affection, among other cases.
	<i>Sao Paulo</i>	2001	<a href="#">Law No. 10,948</a> (2001) punishes "any manifestation that insults or discriminates against any homosexual, bisexual, or transgender citizen", and applies to acts of violence, admission in public and private facilities open to general public, employment, housing, public display of affection, among other cases.
	<i>Sergipe</i>	1989	Although there is no specific law on the matter, the state's <a href="#">Constitution</a> (1989) protects against discrimination based on sexual orientation.
3	 <b>Chile</b>	2012	The Law on the Adoption of Measures Against Discrimination ( <a href="#">Law No. 20,609</a> ) (2012) <sup>5</sup> affords protection against arbitrary discrimination based on sexual orientation with regard to any constitutional right.
4	 <b>Colombia</b>	2011	Article 134A of the <a href="#">Criminal Code</a> (2000), as amended by Article 3 of the <a href="#">Law No. 1,482</a> (2011) criminalises acts of discrimination based on sexual orientation. Articles 136C(3) and 136C(4) aggravate the penalty if such acts are committed by public servants or while providing public services.

<sup>5</sup> 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.

5	 <b>Cuba</b>	2019	Even though there is no national law prohibiting discrimination in broad terms, the protection afforded by Article 42 of the <b>Constitution</b> —establishing that all persons are equal before the law without discrimination based on sexual orientation—applies to all rights and duties.
6	 <b>Ecuador</b>	1998	Even though there is no national law against discrimination based on sexual orientation, the <b>constitutional</b> prohibition of such discrimination (Article 11.2) applies to all rights and therefore offers broad legal protections.
		2003	Article 6 of the Code on Youth and Adolescence ( <b>Law No. 100</b> ) (2003) prohibits discrimination based on sexual orientation.
7	 <b>Honduras</b>	2013	Article 321 of the <b>Penal Code</b> (1983), as amended by <b>Decree No. 23-2013</b> (2013), criminalises acts of discrimination based on sexual orientation and aggravates the penalty if they are committed by public servants.
		2020	In June 2020, a new <b>Penal Code</b> (2019) entered into force. Articles 211 and 212 prohibit discrimination based on sexual orientation with regard to access to public services, as well as services provided by other professionals and companies.
8	 <b>Mexico</b>	2003	At the level of the federal government authorities, Article 1(3) of the <b>Federal Act to Prevent and Eliminate Discrimination</b> (2003) includes “sexual preferences” as one of the prohibited grounds of discrimination. This law applies to employment, goods and services, health, and education.
		2011	The <b>constitutional</b> prohibition of discrimination based on “sexual preferences” is binding upon states and its local authorities.
9	 <b>Peru<sup>6</sup></b>	2004	Article 37(1) of the <b>Constitutional Procedural Code</b> establishes that the writ of <i>amparo</i> is the adequate remedy in cases of discrimination based on sexual orientation.
		2017	Article 323 of the <b>Criminal Code</b> (1991), as amended by <b>Legislative Order No. 1323</b> (2017) criminalises acts of discrimination on the basis of sexual orientation and aggravates the penalty if such acts are committed by public servants.  Moreover, several regions have enacted ordinances prohibiting discrimination based on sexual orientation (see below). Additionally, second-level administrative divisions and cities have also enacted local protections. <sup>7</sup>
	<i>Arequipa</i>	2020	Article 3 of <b>Regional Ordinance No. 428-2020</b> (2020) offers broad protection against discrimination based on sexual orientation. The Ordinance applies to health, education, among other areas.
	<i>Amazonas</i>	2010	Article 5 of Regional Ordinance No. 275 prohibits discrimination on the grounds of sexual orientation on broad terms. The Ordinance applies to education, health, and public services, among other areas.
	<i>Apurimac</i>	2008	Article 5 of <b>Regional Ordinance 017-2008</b> (2008) prohibits discrimination based on sexual orientation, which applies to health, education, and public services, among other areas.
	<i>Ayacucho</i>	2009	<b>Regional Ordinance No. 010-2009</b> (2009) provides broad protection against discrimination based on sexual orientation. The Ordinance applies to health, education, and public services, among other areas.

<sup>6</sup> ILGA World is particularly grateful to Nicolás Alarcón Loayza for the detailed information provided for this entry.

<sup>7</sup> For more information on the protection available at the second level of administrative divisions in Peru see [this chart](#) prepared for ILGA World by Nicolás Alarcón Loayza.

	<i>Huancavelica</i>	2009	Article 5 of <a href="#">Regional Ordinance No. 145</a> (2009) prohibits discrimination based on sexual orientation, which applies to health, education, and public services, among other areas.
	<i>Huanuco</i>	2016	Article 1 of <a href="#">Regional Ordinance No. 043-2016</a> (2016) bans discrimination based on sexual orientation in broad terms.
	<i>Ica</i>	2013	<a href="#">Regional Ordinance No. 0003-2013</a> (2013) provides protection against discrimination based on sexual orientation in broad terms.
	<i>Junin</i>	2009	<a href="#">Regional Ordinance No. 098-2009</a> (2009) provides protection against discrimination based on sexual orientation in broad terms.
	<i>La Libertad</i>	2014	Article 2 of <a href="#">Regional Ordinance No. 006-2014</a> (2014) prohibits discrimination based on sexual orientation, which applies to education, health, access to goods, among other areas.
	<i>Lima</i>	2019	Article 4 of <a href="#">Ordinance No. 2160-2019</a> (2019) prohibits discrimination based on sexual orientation in broad terms.
	<i>Loreto</i>	2010	Article 1 of <a href="#">Regional Ordinance No. 004-2010</a> (2010) prohibits discrimination based on sexual orientation in broad terms.
	<i>Madre de Dios</i>	2009	<a href="#">Regional Ordinance No. 035-2009</a> (2009) prohibits discrimination based on sexual orientation, which applies to education, health, public services, among other areas.
	<i>Moquegua</i>	2012	Article 1 of <a href="#">Regional Ordinance No. 12-2012</a> (2012) prohibits discrimination based on sexual orientation in broad terms.
	<i>Piura</i>	2016	Article 1 of <a href="#">Regional Ordinance No. 351-2016</a> (2016) prohibits discrimination based on sexual orientation in broad terms.
	<i>San Martin</i>	2014	Article 1 of <a href="#">Regional Ordinance No. 009-2014</a> (2014) prohibits discrimination based on sexual orientation in broad terms.
	<i>Tacna</i>	2010	Article 1 of <a href="#">Regional Ordinance No. 016-2010</a> (2010) prohibits discrimination based on sexual orientation in broad terms.
	<i>Ucayali</i>	2010	Article 1 of <a href="#">Regional Ordinance No. 016-2010</a> (2010) prohibits discrimination based on sexual orientation, which applies to education and health.
10	 <b>Suriname</b>	2015	Even though Article 126a of the Criminal Code (1911), as amended in 2015, criminalises discrimination without specific mention of sexual orientation, Article 175 explicitly names sexual orientation among the grounds protected from insulting expressions. Furthermore, Article 176b and Article 176c criminalise support for discriminatory activities and deliberate discrimination in the exercise of an office, profession, or business accordingly by reference to Article 175. Additionally, Article 500a criminalises “occupational discrimination” on the basis of sexual orientation in course of business or exercise of an “office”.
11	 <b>Uruguay</b>	2004	Article 2 of the Law to Combat Racism, Xenophobia and Discrimination ( <a href="#">Law No. 17817</a> ) (2004) 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.



## Non-independent jurisdictions in Latin America and the Caribbean (15)

## France (5)

1	 <i>French Guiana</i>		
2	 <i>Guadeloupe</i>		Legal protection against discrimination based on sexual orientation has been explicitly recognised under French legislation since 2001.
3	 <i>Martinique</i>	2001	These protections are applicable to French Guiana, Guadeloupe, Martinique, Saint Barthelemy and Saint Martin. <sup>8</sup>
4	 <i>Saint Barthelemy</i>		For further details on the evolution and scope of the afforded protections, please refer to the entry on France below.
5	 <i>Saint Martin</i>		


## Netherlands (6)

6	 <i>Aruba</i>	2012	Article 2:63 of the <b>Criminal Code of Aruba</b> (2012) criminalises participating in acts of discrimination based on “heterosexual or homosexual orientation”, as protected by Article 2:60, and “providing financial or other forms of support to such acts”. Article 3:12 further criminalises acts of discrimination perpetrated in the exercise of an office, profession or business.
7	 <i>Bonaire</i>	2010	The <b>Criminal Code of Bonaire, Sint Eustatius and Saba</b> (2010), under Article 448b(1) punishes with up to two months imprisonment or a fine “anyone who, in the exercise of an office, profession or business, discriminates against persons because of their ‘heterosexual or homosexual orientation’”. Moreover, Article 143d criminalises the provision of “financial or other material support to activities aimed at discrimination”.
8	 <i>Saba</i>		
9	 <i>Sint Eustatius</i>		
10	 <i>Curaçao</i>	2014	Article 2:63 of the <b>Criminal Code of Curacao</b> (2011) criminalises participating in acts of discrimination based on “heterosexual or homosexual orientation”, as protected by Article 2:60, and “providing financial or other forms of support to such acts”. Article 3:12 further criminalises acts of discrimination perpetrated in the exercise of an office, profession or business.
11	 <i>Sint Maarten</i>	2012	Article 2:63 of the <b>Criminal Code of Sint Maarten</b> (2012) criminalises participating in acts of discrimination based on “heterosexual or homosexual orientation”, as protected by Article 2:60, and “providing financial or other forms of support to such acts”. Article 3:12 further criminalises acts of discrimination perpetrated in the exercise of an office, profession or business.

## United Kingdom (4)

12	 <i>British Virgin Islands</i>	2007	The <b>Virgin Islands Constitution Order</b> (2007) prohibits discrimination based on sexual orientation in broad terms under Sections 9 and 26(1).
13	 <i>Montserrat</i>	2010	The <b>Montserrat Constitution Order</b> (2010) proscribes discrimination based on sexual orientation in broad terms under Sections 2 and 16(3).

<sup>8</sup> Under Article 72-3 of the **French Constitution** (1958), these five jurisdictions are listed as a French overseas territory. French Guiana, Martinique and Guadeloupe, as overseas departments and regions, are subject to Article 73 of the Constitution, according to which French statutes and regulations are automatically applicable in the territory. Saint Barthelemy and Saint Martin are overseas collectivities and, as such, are subject to Article 74, according to which their autonomy is established by an organic law that establishes the conditions under which the laws and regulations are applicable in the territory. Moreover, under Article LO6213-1 (for Saint Barthelemy) and Article LO6313-1 (for Saint Martin) of **General Code of Territorial Collectivities**, legislative and regulatory provisions are automatically applicable in these territories provided that they do not intervene in the matters that are of competence of the organic law or of the collectivity. In 2001, Saint-Martin and Saint Barthelemy were part of the administrative jurisdiction of Guadeloupe.

14	 <b>Turks and Caicos</b>	2011	The <b>Turks and Caicos Islands Constitution Order (2011)</b> bans discrimination based on sexual orientation in broad terms under Sections 1 and 16(3).
15	 <b>Falkland Islands (Islas Malvinas)</b> <sup>9</sup>	2008	The <b>Falkland Islands Constitution Order (2008)</b> bans discrimination based on sexual orientation in broad terms under Section 1 and 16(3).

### Is there more in Latin America and the Caribbean?

<b>Argentina</b>	At the federal level, there is no law against discrimination on the basis of sexual orientation in broad terms. At least since 2005, several attempts to incorporate sexual orientation to the anti-discrimination law currently in force have failed. <sup>10</sup> The cities of Buenos Aires (Law Against Discrimination (Law No. 5.261/2015) and Rosario (Law No. 6.321/1996) have enacted local norms that grant different levels of protection. <sup>11</sup> Moreover, a number of provinces have enacted laws granting such protection. These local laws grant varying levels of protection.
<i>Chaco</i>	Article 60 bis of the Code of Misdemeanour (Law No. 4.209) (1995), as amended by Law No. 5733 (2006), prohibits discrimination based on sexual orientation the provision of services.
<i>Rio Negro</i>	Law No. B 3.055 (2008) recognises in Article 1 sexual orientation as an “innate right” of each person and, under Article 2, establishes that sexual orientation shall be included in the enforcement of all anti-discriminatory legislation.
<i>San Juan</i>	Article 108 of the Code of Misdemeanour (Law No. 7.819) (2007) prohibits discrimination based on sexual orientation in broad terms.
<i>Santiago del Estero</i>	Article 43 of the Code of Misdemeanour (Law No. 6.906) (2008) prohibits discrimination based on sexual orientation in broad terms.
<b>Dominican Republic</b>	Although no law offers protection on the basis of sexual orientation in broad terms, at least two laws explicitly include “sexual orientation” as grounds for protection. The scope of these laws is limited to specific populations: youth (aged 14-25) and people living with HIV.  Article 2 of the General Law on Youth (Law No. 49) (2000), prohibits discrimination on the basis of sexual orientation. As per the definition in Article 3 of the law, this protection is formally applicable only to youth between 15 and 35 years of age.  Article 2 of the Law on HIV/AIDS (Law No. 135) (2011) protects people living with HIV from discrimination on the basis of sexual orientation.
<b>Guatemala</b>	No law offers protection on the basis of sexual orientation in broad terms. Article 10 of the <b>Code of Childhood and Youth</b> (1996) prohibits discrimination of children based on their sexual orientation or that of their parents, relatives, guardians, or responsible persons. As per Article 2, protection is limited to people under 18 years of age.
<b>Panama</b>	No law offers protection on the basis of sexual orientation in broad terms. Article 3 of the Law on the Right to Admission to Public Venues (Law No. 16) (2002) prohibits discrimination based on sexual orientation for access to public venues.
<b>Venezuela</b>	Article 5(8) of the <b>Law for the Regulation and Control of Housing Leases</b> (2011) prohibits discrimination based on sexual orientation in the rental of urban and suburban properties for housing.
<b>Non-independent territories</b>	
<b>US Virgin Islands</b> <small>(United States of America)</small>	The <b>Virgin Islands Code</b> (as amended in 2014), under Section 782(b)(5), includes sexual orientation among that should be covered by bullying prevention in education policies. Furthermore, <b>United States Virgin Islands Department of Health Policy Statement</b> includes sexual orientation as a prohibited ground for discrimination.


<sup>9</sup> Note: ILGA World takes note of the sovereignty dispute between Argentina and the United Kingdom over the Falkland Islands/Islas Malvinas (UNGA Resolution 2065-XX). In Argentina there is no federal law granting nationwide protection against discrimination.

<sup>10</sup> Asociación por los Derechos Civiles, *Los Derechos LGBT: Estándares Internacionales y Nacionales* (2017), 58-66.

<sup>11</sup> These cities are included only as an example and there may be other cities in Argentina where similar laws were enacted.


## North America

1 out of 2 UN Member States (50%). Additionally: 2 non-UN Member jurisdictions and several jurisdictions in one UN Member State (United States of America).


1	 <b>Canada</b>	1996	Section 3(1) of the <a href="#">Canadian Human Rights Act</a> (as amended in 1996) includes "sexual orientation" as a prohibited ground of discrimination. This law applies to goods and services, employment and health, among others.
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### Non-independent jurisdictions in North America (2)

#### France (1)

1	 <b>Saint Pierre and Miquelon</b>	2001	Legal protection against discrimination based on sexual orientation has been explicitly recognised under French legislation since 2001. These protections are applicable to Saint Pierre and Miquelon. <sup>12</sup>  For further details on the evolution and scope of the afforded protections, please refer to the entry on France below.
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#### United Kingdom (1)

2	 <b>Bermuda</b>	2013	The <a href="#">Human Rights Act</a> (1981), as amended in 2013, prohibits discrimination on the grounds of sexual orientation under Section 2(2). The Act applies to disposal of premises, provision of goods, facilities, and services, and employment.
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### Is there more in North America?

#### United States of America

Protections against discrimination based on sexual orientation vary according to state.<sup>13</sup> However, overall, less than 50% of the U.S. population lives in states where discrimination protection based on sexual orientation is offered in broad terms.

On May 17, 2019, the House of Representatives passed the [Equality Act](#), which forbids discrimination on the grounds of sexual orientation in the provision of various goods and services, including healthcare; the bill has yet to become law.

In March 2019, the U.S. Supreme Court declined to hear an appeal of a B&B owner in Hawaii who was challenging a ruling which recognised that she had discriminated against a lesbian couple by refusing to rent them a room.<sup>14</sup>

#### California

The [California Government Code](#) (1980), as amended in 1999 prohibits discrimination on the grounds of sexual orientation concerning access to housing at Article 2 (Sections 12955-56.2). Furthermore, [The Civil Rights Act](#) (2005), under Section 3(51)(b), also prohibits discrimination based on sexual orientation, as applied to accommodations, advantages, facilities, privileges, or services in all business establishments of every kind.

#### Colorado

The [Colorado Revised Statutes](#), as amended in 2008, under [Sections 24-34-502](#) and [24-34-601\(2\)\(a\)](#), prohibit discrimination on the grounds of sexual orientation concerning access to housing, and public accommodations, which includes educational institutions.

#### Connecticut

The [General Statutes of Connecticut](#), as amended in 2013, Chapter 814 (Human Rights and Opportunities), under Sections 46a-81a to 46a-81q, prohibits discrimination based on sexual orientation in the areas of association, public accommodations, housing, credit practices, access to services, educational and vocational programs of State agencies, among others.

<sup>12</sup> Under Article 72-3 of the [French Constitution](#) (1958), Saint Pierre et Miquelon is listed as a French overseas territory. As an overseas collectivity, Saint Pierre et Miquelon is subject to Article 74, according to which its autonomy is established by an organic law that establishes the conditions under which the laws and regulations are applicable in the territory. Moreover, under Article LO6413-1 of the [General Code of Territorial Collectivities](#), legislative and regulatory provisions are automatically applicable provided that they do not intervene in the matters that are of competence of the organic law or of the collectivity.

<sup>13</sup> See "Non-Discrimination Laws", [Movement Advancement Project \(MAP\) Website](#).

<sup>14</sup> John Riley, "U.S. Supreme Court rejects appeal from Hawaii B&B owner who turned away lesbian couple". [Metro Weekly](#). 18 March 2019.


<i>Delaware</i>	The <a href="#">Delaware Code</a> , as amended by <a href="#">Senate Bill No. 121</a> (2009), under Section 4501 and others (in Titles 6, 9, 18, 19, 25, and 29), prohibits discrimination based on sexual orientation in the areas of employment, public works contracting, housing, equal accommodations and the insurance business.
<i>Florida</i>	The <a href="#">Florida Statutes</a> , as amended in 2007, at Title XXIX, Chapter 400.6095(1) prohibit discrimination based on sexual orientation with regard to health services.
<i>Hawaii</i>	The <a href="#">Hawaii Revised Statutes</a> , as amended in 2005, prohibits discrimination on the grounds of sexual orientation in relation to housing and public accommodations under <a href="#">Sections 515-3</a> and <a href="#">489-3</a> .
<i>Illinois</i>	The <a href="#">Illinois Human Rights Act</a> , as amended in 2005, under Section 1 -102, prohibits discrimination based on sexual orientation in the areas of real estate transactions, access to financial credit, and the availability of public accommodations.
<i>Iowa</i>	The <a href="#">Iowa Code</a> , as amended in 2007, prohibits discrimination on the grounds of sexual orientation in relation to housing and public accommodations under Sections 216.8 and 216.8A.
<i>Kansas</i>	Although the state has no legislation explicitly prohibiting discrimination on the grounds of sexual orientation, following the Supreme Court decision on <a href="#">Bostock v. Clayton County</a> (2020), the Kansas Human Rights Commission issued an <a href="#">Interpretative Statement</a> (2020) of the <a href="#">Kansas Act Against Discrimination</a> (2001) in order to accept complaints also in the areas of housing and public accommodations “wherein allegations include discrimination based on LGBTQ and all derivatives of ‘sex’”.
<i>Maine</i>	The <a href="#">Maine Revised Statutes</a> , as amended in 2005, prohibit discrimination on the grounds of sexual orientation in the areas of housing, public accommodations, credit, and education under Sections 4581-A, 4591, 4592, 4596, and 4602.
<i>Maryland</i>	The <a href="#">Maryland Antidiscrimination Act</a> , as amended in 2001, prohibits discrimination on the grounds of sexual orientation with regard to public accommodations and housing.
<i>Massachusetts</i>	The <a href="#">Massachusetts General Laws</a> , as amended in 2011, under Title XXI, Chapter 151B, Section 4, prohibits discrimination based on sexual orientation in relation to employment, insurance business, housing, and credit or services.
<i>Michigan</i>	Although the state has no legislation explicitly prohibiting discrimination on the grounds of sexual orientation, the Michigan Civil Rights Commission issued an <a href="#">Interpretative Statement</a> (2018) to include sexual orientation in the meaning of “sex” under the <a href="#">Elliott-Larsen Civil Rights Act</a> (1976) thus providing protection against discrimination in the areas of housing, education, and public accommodation.
<i>Minnesota</i>	The <a href="#">Minnesota Statutes</a> , as amended in 1993, under Chapter 363A, prohibit discrimination based on sexual orientation with regard to housing, public accommodations, public services, and education.
<i>Nebraska</i>	Although the state has no legislation explicitly prohibiting discrimination on the grounds of sexual orientation, following the Supreme Court decision on <a href="#">Bostock v. Clayton County</a> (2020), the Nebraska Equal Opportunity Commission stated that it would apply the same interpretation to cases of housing discrimination. <sup>15</sup>
<i>Nevada</i>	The <a href="#">Nevada Fair Housing Law</a> , as amended in 2011, prohibits discrimination based on sexual orientation with regard to housing under Sections 118.093 and 118.100. Further, the <a href="#">Statutes of Nevada</a> , as amended by Chapter 195, Senate Bill No. 207 (2009), bans discrimination in the area of public accommodations at Chapter 651.
<i>New Hampshire</i>	The <a href="#">New Hampshire Statutes</a> , as amended in 1997, prohibit discrimination based on sexual orientation in access to housing and public accommodation under Title XXXI, Chapter 354-A, Sections 8 and 17.
<i>New Jersey</i>	The <a href="#">New Jersey Revised Statutes</a> , as amended in 1992, at Title 10, Sections 5-12 prohibit discrimination based on sexual orientation in the access to housing, public accommodations, and credit.




<sup>15</sup> Henry Cordes, “State agency applies U.S. Supreme Court ruling on LGBT job rights to housing cases”, *Omaha World-Herald*, 12 August 2020.

<i>New Mexico</i>	The <b>New Mexico Statutes</b> , as amended in 2003, prohibit, under Section 28-1-7, discrimination on the grounds of sexual orientation in the areas of housing and public accommodation.
<i>New York</i>	The <b>New York Civil Rights Law and Education Law</b> , as amended in 2001, bans discrimination based on sexual orientation in the areas of education, public accommodation, and housing.
<i>Oregon</i>	The <b>Oregon Revised Statutes</b> , as amended in 2007, ban discrimination based on sexual orientation in the areas of education (Section 659.850), public accommodations (Section 659A.403), and housing (Section 659A.421).
<i>Pennsylvania</i>	Although the State has no legislation explicitly prohibiting discrimination on the grounds of sexual orientation in broad terms, the Pennsylvania Human Relations Commission issued an <b>Interpretative Statement</b> (2018) of the <b>Pennsylvania Human Relations Act</b> (1955) to include the protection against discrimination based on sexual orientation. The Act applies to housing, education, and public accommodation, resort or amusement, including educational institutions.
<i>Rhode Island</i>	The <b>Rhode Island Statutes</b> , as amended in 1995, under Sections <b>34-37-4</b> and <b>11-24-2</b> , prohibit discrimination based on sexual orientation with regard to housing and public accommodations.
<i>Utah</i>	The <b>Utah Code</b> , as amended in 2015, prohibits discriminatory housing practises on the grounds of sexual orientation under Section 57-21-5.
<i>Vermont</i>	The <b>Vermont Statutes</b> , as amended in 1992, under Title 9, Chapter 139, Sections 4502 and 4503, ban discrimination on the grounds of sexual orientation with regard to housing and public accommodation.
<i>Virginia</i>	The <b>Code of Virginia</b> , as amended by <b>Chapter 1140</b> in 2020, prohibits discrimination based on sexual orientation in the areas of employment, public accommodation, including educational institutions, real estate transactions, and housing, under Titles 2.2, 6.2, 15.2, 22.1, 36-96, and 55.1.
<i>Washington</i>	The <b>Revised Code of Washington</b> (as amended in 2006), bans discrimination on the grounds of sexual orientation with regard to housing (Section 49.60.223), credit transactions (Section 49.60.178), insurance transactions (Section 49.60.180), admission and presence in any place of public resort accommodation, assemblage, or amusement (Section 49.60.220), and public employment, public education, or public contracting (Section 49.60.401).
<i>Wisconsin</i>	The <b>Wisconsin Statutes</b> (as amended in 1982) prohibit, under Chapter 106, discrimination based on sexual orientation in the areas of housing, public place of accommodation or amusement.
<i>District of Columbia (Washington DC)</i>	The Code of the District of Columbia, as amended by the Human Rights Act ( <b>Law No. 2-38</b> ) (1977), under Sections 2-1402.21, 2-1402.31 and 2-1402.41, prohibits discrimination based on sexual orientation with regard to housing, public accommodations, and education.

## Asia

3 out of 42 UN Member States (7%). Additionally: several jurisdictions in three UN Member States (Japan, Philippines and South Korea).

1	 <b>Israel</b>	<b>2000</b>	A set of laws offer protection against discrimination based on sexual orientation in various settings. Section 3(a) of the <b>Prohibition of Discrimination in Products, Services and Entry into Places of Entertainment and Public Places Law</b> (2000) includes sexual orientation among the prohibited grounds of discrimination.
		<b>2004</b>	Article 4 of the <b>Patient Rights Law</b> (1996), as amended by the <b>Patient Rights Law (Amendment No. 2)</b> (2004), prohibits caregivers or medical institutions from discriminating against patients on the grounds of sexual orientation.
		<b>2014</b>	In education, Section 5 of the <b>Students Rights Law</b> (2000) was amended by the <b>Student Rights Law (Amendment No. 4)</b> (2014) to include sexual orientation.

2	 <b>Mongolia</b>	2017	Article 14.1.1. of the <b>Penal Code</b> (2015) criminalises acts of discrimination based on sexual orientation. Article 14.1.2.3 aggravates penalties if such acts are committed by public officials.
3	 <b>Nepal</b>	2015	Even though there is no law expressly prohibiting discrimination based on sexual orientation, the constitutional prohibition enshrined in Section 18(3) of the <b>Constitution of Nepal</b> (proscribing discrimination against “sexual minorities”) offers broad protection against discrimination.
	 <b>Taiwan (China)</b> <sup>16</sup>	2004	Articles 12, 13 and 14 of the <b>Gender Equity Education Act</b> (2004) include “sexual orientation” among the prohibited grounds of discrimination in education. Article 14 also urges educational institutions to proactively provide assistance to any student who is disadvantaged as a result of their sexual orientation (among other grounds) to improve their circumstances. Furthermore, Article 2(5) defines “sexual bullying” as engaging in ridicule, attacks, or threats directed at another person’s sexual orientation (among other grounds).
		2015	Article 1 of the <b>Long-Term Care Services Act</b> (2015) establishes that, in providing long-term care services, there shall be no discrimination that differentiates based on sexual orientation.

### Is there more in Asia?

<b>India</b>	The Anti-Discrimination and Equality Bill ( <b>Bill No. 289 of 2016</b> ) was introduced in the Indian Parliament in March of 2017. The Bill included sexual orientation as a “protected characteristic” of citizens (Article 3(i)) and included sexual orientation within the defined term “disadvantaged group” (Article 5(vi)). However, the Bill lapsed before it could be voted by the houses of the Parliament.
<b>Japan</b>	In December 2018, the <b>Bill on Promotion of Elimination of Discrimination on the Grounds of Sexual Orientation or Gender Identity</b> was introduced in the House of Representatives and is still under examination.
<i>Tokyo</i>	In 2018, the Tokyo Metropolitan Government enacted a <b>bylaw</b> that prohibits discrimination on the basis of sexual orientation. <sup>17</sup>
<i>Ibaraki</i>	In 2019, the Ibaraki Prefecture approved a <b>bylaw</b> to promote gender equality that prohibits “discrimination based on sexual orientation and gender identity”. <sup>18</sup>
<b>Philippines</b>	<p>Since 2001, lawmakers in the Philippines have been attempting to pass a comprehensive bill that would ban discrimination on the grounds of sexual orientation. Several drafts of this bill have expired after being blocked and becoming stalled in the senate, the most recent one being in July 2019.<sup>19</sup> A new version of the bill was introduced a month later and currently being discussed. President Rodrigo Duterte expressed mild support for the bill, though stated his preference for a more general anti-discrimination law.<sup>20</sup></p> <p>Section 5(b) of the <b>Mental Health Act</b> (2018) provides that service users should have access to services “on an equal and non-discriminatory basis” including on the basis of sexual orientation.</p> <p>Several provinces in The Philippines have enacted ordinances against discrimination based on sexual orientation.<sup>21</sup></p>

<sup>16</sup> Note on names of countries and territories in this publication: ILGA World is an organisation with ECOSOC-accredited consultative status at the United Nations and our publications therefore have to follow UN-recommended language on the names of countries and territories. For more information, please read the methodology section of this report.

<sup>17</sup> The Title of the Ordinance reads: *Ordinance aiming to realize the idea of respect for human rights stipulated in the Tokyo Olympic Charter.*

<sup>18</sup> “茨城県で都道府県として全国2例目のLGBT差別禁止を明文化する条例が成立、同性パートナーシップ証明制度は先送りに” (“In Ibaraki Prefecture, the second prefectural ordinance stipulating the prohibition of LGBT discrimination was enacted, and the same-sex partnership certification system was postponed”), *Out Japan*, 26 March 2019.

<sup>19</sup> Rik Glauert, “Long-awaited anti-discrimination bill flounders in Senate of the Philippines”. *Gay Star News*. 5 June 2019.

<sup>20</sup> Christina Mendez, “Duterte favors anti-discrimination law over SOGIE”. *The Philippine Star*, 12 September 2019.

<sup>21</sup> Several cities and *barangays* (villages) have also enacted local norms that forbid such discrimination: **Angeles** (Province of Pampanga, 2013), **Antipolo** (Province of Rizal, 2015), **Bacolod** (Province of Negros Occidental, 2013), **Baguio** (Province of Benguet, 2017), **Batangas** (Province of Batangas, 2016), **Butuan** (Caraga Region, 2016), **Candon** (Province of Ilocos Sur, 2014), **Cebu** (Province of Cebu, 2012), **Dagupan**

<i>Albay</i>	The Gender and Development Code ( <a href="#">Provincial Ordinance No. 2</a> ) (2003) states at Section 2(a) that “women have the right to the prevention of, and protection from all forms of violence and coercion against their person, their freedom, their sexuality, and their individuality”.
<i>Agusan del Norte</i>	Section 4(c) of the <a href="#">Provincial Ordinance No. 358</a> (2014) prohibits discrimination, humiliation and vilification towards any individual or group by reason of sexual orientation. The Ordinance applies to access to public programs and services, admission to educational institutions, accreditation of organisations, medical and health services, access to private and public establishments, facilities, utilities, transportations or services, including housing.
<i>Batangas</i>	The <a href="#">Provincial Ordinance No. 5</a> (2015) prohibits discrimination based on sexual orientation. The Ordinance applies to public programs and services admission to or expelling or dismissing from educational institutions, accreditation of organisations, medical and health services, access to private and public establishment, facilities, utilities, transportations or services, including housing, that are open to general public, among others.
<i>Cavite</i>	The <a href="#">Provincial Ordinance No. 54</a> (2014) prohibits discrimination based on sexual orientation. The Ordinance applies to education, accommodation, and goods and services.
<i>Dinagat Islands</i>	The <a href="#">Provincial Ordinance No. BBE2-007</a> (2017) prohibits discrimination on the grounds of sexual orientation. The Ordinance applies to education and educational or training institutions, delivery of goods or services, public accommodations, issuance of licenses, clearances, certifications and other similar documents, among others.
<i>Ilocos Sur</i>	In 2017, the Province of Ilocos Sur passed an Anti-Discrimination Ordinance which prohibits discrimination based on sexual orientation in the areas of education, delivery of goods and services, accommodation, among others. <sup>22</sup>
<i>Iloilo</i>	The <a href="#">Resolution No. 2016-572</a> (2016) prohibits discrimination based on sexual orientation. The Resolution applies to education, provision of goods and services, housing, accreditation of organisations, among others.
<b>South Korea</b> <sup>23</sup>	<p>Article 2(3) of the <a href="#">National Human Rights Commission Act</a> (2001) mandates the Commission to investigate acts of discrimination based on sexual orientation.<sup>24</sup></p> <p>In November 2019, members of the South Korean National Assembly proposed an amendment this law to eliminate the term “sexual orientation” as a protected ground against discrimination. Amnesty International labelled this initiative “a shameful amendment”.<sup>25</sup> The explicit reference to sexual orientation in the Act is relied upon by subnational legislation to incorporate protection based on sexual orientation at the local level (see entries below).</p> <p>Since 2007, at least six proposals to approve anti-discrimination bills have been discarded because of strong opposition.<sup>26</sup> In June 2020, a bill that would penalise discriminatory practices on grounds of a person’s sexual orientation was proposed.<sup>27</sup> The bill has received the public support of the National Human Rights Commission.<sup>28</sup></p>

(Province of Pangasinan, 2010), [Davao](#) (Province of Davao del Sur, 2012), [General Santos](#) (Province of South Cotabato, 2016), [Iloilo](#) (Province of Iloilo, 2018), [Malabon](#) (National Capital Region, 2018), [Mandaluyong](#) (National Capital Region, 2018), [Mandaue](#) (Province of Cebu, 2016), [Orani](#) (municipality in the Province of Bataan, 2019), [Puerto Princesa](#) (Province of Palawan, 2015), [Quezon](#) (National Capital Region, 2014), [San Juan](#) (National Capital Region, 2017), [San Julian](#) (municipality in the Province of Eastern Samar, 2014), [Vigan](#) (Province of Ilocos Sur, 2014); [Barangay Bagbag](#) (Quezon City, Metro Manila, 2009), [Barangay Greater Lagro](#) (Quezon City, Metro Manila, 2014), [Barangay Pansol](#) (Quezon City, Metro Manila, 2008).

<sup>22</sup> “Province of Ilocos Sur passes LGBT anti-discrimination ordinance” *Outrage (website)* 14 September 2017.

<sup>23</sup> For more information on the methodological decision that led ILGA World to remove South Korea the list of UN Member States granting employment protection, please see the methodology section of this report.

<sup>24</sup> The Commission may conduct an investigation by its *ex officio* power if it finds that there is a probable cause to believe a violation against human rights occurred. Furthermore, the Commission may issue recommendations to take emergency remedial measures and refer a petitioned case to the Conciliation Committee by its *ex officio* power or upon receiving an application from the party involved to commence the conciliation procedure if it finds that there occurred a human rights violation, but the parties failed to reach a settlement. See: National Human Rights Commission of the Republic of Korea, [Annual Report](#) (2002), 19. Furthermore, civil society reported that in 2018, the Commission implemented organizational changes including the new creation of the Discrimination Remedy Bureau in order to strengthen investigations of and remedies for acts of discrimination infringing on the right to equality and reforms of relevant institutions and, under it, the Gender Discrimination Remedy Team. It reportedly stated that “it would address LGBTI human rights in depth in addition to women’s rights through this team, which would rectify sexual harassment and discrimination based on gender, pregnancy/childbirth, and sexual orientation”. See: SOGILAW, [Annual Report: Human Rights Situation of LGBTI in South Korea](#) (2018), 32.

<sup>25</sup> “South Korea: Lawmakers should reject shameful anti-LGBTI amendment”, *Amnesty International*, 21 November 2019.

<sup>26</sup> Ann Babe, “Moon stays silent on equality law in LGBT-unfriendly South Korea”, *Nikkei Asia*, 1 July 2020.



<sup>27</sup> “South Korea: New anti-discrimination bill offers hope and safety to many”, *Amnesty International*, 16 July 2020.

<sup>28</sup> Kim Arin, “‘Legislate against discrimination,’ human rights body urges lawmakers”, *The Korea Herald*, 30 June 2020.

	In addition, a number of regional jurisdictions have enacted laws explicitly prohibiting discrimination based on sexual orientation with varying levels of protection.
<i>Gyeonggi</i>	The Gyeonggi Province Student Rights Ordinance (2010) states, under Article 5, that students have the right not to be discriminated on the basis of sexual orientation. <sup>29</sup>
<i>Gwangju</i>	The Gwangju Student Rights Ordinance (2011) establishes in Article 20 that students have the right not to be discriminated because of their sexual orientation. <sup>30</sup>
<i>Jeju</i>	The Jeju Special Self-Governing Province Ordinance on the Guarantee and Promotion of Human Rights (2015) prohibits discrimination against anyone on the grounds enumerated in the <a href="#">National Human Rights Commission Act</a> (2001), which includes sexual orientation. <sup>31</sup>
<i>North Jeolla</i>	The Jeollabuk-do Student Rights Ordinance (2013), under Article 8, prohibits discrimination against students based on the definition established by the <a href="#">National Human Rights Commission Act</a> (2001), which includes sexual orientation. <sup>32</sup>
<i>North Chungcheong</i>	Article 5 of the Ordinance for the Protection and Promotion of the Human Rights of Chungcheongnam-do Residents (2014) prohibits discrimination on the grounds enumerated in the <a href="#">National Human Rights Commission Act</a> (2001), which includes sexual orientation. The Ordinance was briefly unenforceable in 2018, but it was fully reinstated in October 2018. <sup>33</sup>
<i>Seoul</i>	The Seoul Student Rights Ordinance (2012), under Article 5, provisions that students have the right not to be discriminated on the basis of their sexual orientation. The Seoul Human Rights Ordinance (2012) establishes in its Article 6 that no one can be discriminated on the grounds prohibited in the <a href="#">National Human Rights Commission Act</a> (2001), which bans discrimination based on sexual orientation. Article 7 of the Ordinance on the Protection and Promotion of Human Rights of the Child and Youth (2012) prohibits discrimination against children and youth based on sexual orientation. <sup>34</sup>
<i>South Chungcheong</i>	The Chungcheongbuk-do Ordinance on the Guarantee and Promotion of Human Rights, under Article 4, prohibits discrimination against anyone on the grounds enumerated in the <a href="#">National Human Rights Commission Act</a> (2001), which includes sexual orientation. <sup>35</sup>

## Europe

34 out of 50 UN Member States (68%). Additionally: 4 non-UN Member jurisdictions and several jurisdictions in one UN Member State (Italy).

1	 <b>Albania</b>	2010	Article 5 of the Protection from Discrimination Act ( <a href="#">Law No. 10,221</a> ) (2010) prohibits discrimination on the basis of sexual orientation (enumerated in Article 1), 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 others.
2	 <b>Andorra</b>	2005	Article 338 of the <a href="#">Penal Code</a> (2005) criminalises acts of discrimination based on sexual orientation with regard to goods and services and employment, among others.

<sup>29</sup> The Korean Society of Law and Policy on Sexual Orientation and Gender Identity (SOGILAW), *Annual Report Human Rights Situation of LGBTI in South Korea* (South Korea: SOGILAW, 2018), 82.

<sup>30</sup> *Ibid.*

<sup>31</sup> *Id.*, 87.

<sup>32</sup> *Id.*, 85.

<sup>33</sup> *Id.*, 87.

<sup>34</sup> *Id.*, 83-84.


<sup>35</sup> *Id.*, 88.



3	 <b>Austria</b>	2004	<p>The <b>Equal Treatment Act</b> (1979), as amended in 2004, prohibits discrimination on the grounds of sexual orientation, among others. The act applies to treatment both in and outside the workplace, and in the access to goods and services.<sup>36</sup></p> <p>Additionally, each province (Burgenland, Carinthia, Salzburg, Styria, Tyrol, Upper Austria, Lower Austria, Vienna and Vorarlberg) has provisions prohibiting discrimination on grounds of sexual orientation with regard to goods and services offered by the provinces and communities, including social protection, social advantages, education and self-employment.<sup>37</sup></p>
4	 <b>Belgium</b>	2003	<p>Article 4 of the <b>Anti-Discrimination Law</b> (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).</p>
		2007	<p>Articles 2 and 4 of the <b>Anti-Discrimination Law</b> (2007) ban discrimination based on sexual orientation (as enumerated in Article 3). Article 5 determines that the prohibition applies, among other settings, to goods and services, including social protection (education) and employment in the public and private spheres.</p>
5	 <b>Bosnia and Herzegovina</b>	2003	<p>Article 2 of the <b>Gender Equality Act</b> (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.</p>
		2009	<p>Article 2 of the <b>Act of Prohibition of Discrimination</b> (2009) proscribes discrimination on the basis of 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 to all public bodies and persons, in all spheres of life). In 2016 this law was amended to include other groups, among other improvements.</p>
6	 <b>Bulgaria</b>	2004	<p>Chapter One, Article 4(1) of the <b>Law on Protection against Discrimination</b> (2003, supplemented by SG No. 70 of 2004) bans direct and indirect discrimination based on sexual orientation in employment (Chapter Two, Section I), education (Chapter Two, Section II), the field of goods and services (Chapter Two, Section III, Article 37), and more.</p>
7	 <b>Croatia</b>	2009	<p>Articles 1, 2 and 9 of the <b>Anti-Discrimination Act</b> (2009) prohibit direct and indirect discrimination because of sexual orientation regarding employment, education, health, goods and services, and other matters in the public and private sectors.</p>
		2011	<p>Article 125 of the <b>Penal Code</b> (2011) criminalises acts of discrimination based on sexual orientation in the provision of goods and services and in employment.</p>
8	 <b>Cyprus</b>	2004	<p>Article 6(1) of the <b>Combating Racism and Other Forms of Discrimination (Commissioner) Act</b> (2004) proscribes direct and indirect discrimination in the public and private spheres based on sexual orientation in matters such as employment, education, health, and goods and services.</p>
9	 <b>Czech Republic</b>	2009	<p>Sections 2 and 3 of the <b>Anti-Discrimination Act</b> (2009) proscribe discrimination on the basis of sexual orientation. As per Section 1, the law applies to employment, health, education, and goods and services.</p>

<sup>36</sup> Federal Ministry of Labour, Social Affairs and Consumer Protection, *Equal Opportunities - Equal Treatment Legislation in Austria* (Vienna: FMLSACP, 2016).

<sup>37</sup> Manfred Nowak, *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity* (Vienna: 2010), 9.

10	 <b>Estonia</b>	2004	Article 19(2)(12) of the <b>Chancellor of Justice Act</b> (relevant provision effective 2004) 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.
		2006	Article 152(1) of the <b>Penal Code</b> (2001, as amended in 2006) proscribes the unlawful restriction of any right on the basis of sexual orientation.
		2009	Sections 1 and 3 of the <b>Equal Treatment Act</b> (2009) prohibit direct and indirect discrimination based on sexual orientation. As described in Section 2, the law applies to employment, education, health, goods and services, and others.
11	 <b>Finland</b>	2014	Section 8 of the <b>Non-Discrimination Act</b> (2014) prohibits any discriminatory act on the basis of sexual orientation within public and private activities. The law applies to education and employment and allows victims of discrimination to receive compensation from the authorities, education providers or suppliers of goods or services who discriminated against them.
12	 <b>France</b>	2001 <sup>38</sup>	Article 1 of <b>Law No. 2001-1066</b> (2001) amended Articles 225-1 and 225-2 of the <b>Penal Code</b> to prohibit discrimination based on sexual orientation with regard to goods and services, access to public premises and employment, among other fields. Article 432-7 aggravates the penalty when committed by a public authority or public service. <sup>39</sup>
		2002	Article 158 of <b>Law No. 2002-73</b> (2002) amended Article 1 of <b>Law No. 89-462</b> (1989) to prohibit a landowner from discriminating against tenants on the basis of sexual orientation.
13	 <b>Georgia</b>	2014	Articles 1 and 2(1) of the <b>Act on the Elimination of All Forms of Discrimination</b> (2014) prohibit every form of discrimination, including that based on sexual orientation. Article 3 enumerates the scope of this protection to encompass all public and private fields of action.
14	 <b>Germany</b>	2006	Sections 1 and 2 of the <b>General Act on Equal Treatment</b> (2006) prohibit discrimination based on 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	 <b>Hungary</b>	1997	Discrimination in health is proscribed by <b>Act No. CLIV</b> (1997) (Article 7:4).
		2004	Further, Articles 7(1), 8(m) and 9 of the Equal Treatment and Promotion of Equal Opportunities Act ( <b>Act No. CXXV</b> ) (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	 <b>Iceland</b>	1996	Article 180 of the <b>General Penal Code</b> (1940) was amended by <b>Act No. 135</b> (1996) to criminalise discrimination based on sexual orientation in the provision of goods and services.
		2008	Article 24 of the <b>Compulsory School Act</b> (2008) reinforces the prohibition in education.
17	 <b>Ireland</b>	2000	Section 3(2)(d) of the <b>Equal Status Act</b> (2000) defines sexual orientation as a prohibited ground of discrimination. Part 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.

<sup>38</sup> As explained by Daniel Borrillo, prior to the enactment of Law No. 2001-1066 (2001) on the fight against discrimination, French law did not include any reference to the term "sexual orientation". However, since 1985, it can be argued that there has been protection against discrimination based on sexual orientation, first in criminal matters since 1985, under Law No. 85-772 (1985), and then in labour law under Law No. 86-76 (1986) and then by Law No. 92-1446 (1992). These laws did not speak to "sexual orientation": the term chosen was that of "mœurs" (French equivalent for "manners"). See: Daniel Borrillo. *Histoire juridique de l'orientation sexuelle* (2016), 14.

<sup>39</sup> As explained the section on protection in employment, this law also amended Article 122-45 of the **Labour Code** to afford explicit protection from discrimination based on sexual orientation in employment.

 <b>Kosovo</b>	2004	The constitutional prohibition of discrimination based on sexual orientation is reinforced by Articles 1 and 2 of the <b>Anti-Discrimination Act</b> (2004) which include “sexual orientation” among the prohibited grounds. Article 4 enumerates the scope of protection as applied to employment, health, education, access to and supply of goods and services, and more.
	2015	This Act was replaced by a new Law on Protection from Discrimination ( <b>Law No. 05/L-021</b> ) (2015) which includes discrimination based on “sexual orientation” among those to be “combated and prevented” under Article 1(1). Article 2 sets the scope of the legislation, which applies to social protection, social facilities, education, housing, and others.
	2019	Furthermore, the new <b>Penal Code</b> (2019) makes it a crime for anyone to deny or restrict any of the rights defined by the Constitution, the law or any other provisions based on their sexual orientation, at Article 190(1).
18  <b>Liechtenstein</b>	2016	Article 283(1)(4) of the <b>Penal Code</b> (1987), as amended by <b>LGBI. 2016 No. 14</b> (2016), proscribes acts of discrimination based on sexual orientation in broad terms. Article 283(1)(6) refers to the denial of services based on sexual orientation.
19  <b>Lithuania</b>	2000	Article 169 of the <b>Criminal Code</b> (2000) criminalises discrimination on the ground of sexual orientation in political, economic, social, cultural, labour, and other activities.
	2003	Articles 1 and 2 of the <b>Equal Treatment Act</b> (2003) prohibit direct and indirect discrimination because of sexual orientation. The law applies to education (Articles 4 and 8), employment (Articles 5 and 7), consumer protection (Articles 6 and 9), and other spheres.
	2010	Article 1(2)(3) of the <b>Law on the Rights of Patients and Compensation of the Damage to their Health</b> (2010) reinforces this protection in health environments.
20  <b>Luxembourg</b>	2006	Article 1 of the Equality Act ( <b>Law No. 28</b> ) (2006) prohibits discrimination based on sexual orientation. Article 2 states that the protection applies to the public and private sectors with regard to employment, health, education and the access to and provision of goods and services.  Furthermore, Article 21 amends Article 454 of the <b>Penal Code</b> (1879) to criminalise acts of discrimination based on sexual orientation.
21  <b>Malta</b>	2003	The broad protection afforded by Article 32 of the <b>Constitution</b> is complemented by Article 2 the <b>Equality for Men and Women Act</b> (2003) which prohibits discrimination based on sexual orientation in employment and education, among others.
	2012	Key Principle 3.1 of the <b>Teachers (Code of Ethics and Practice) Regulations</b> (2012) and Chapter 525 Article 3(1)(a) of the <b>Mental Health Act</b> (2017) reinforce this protection in education and health environments respectively.
22  <b>Montenegro</b>	2010	Article 2 of the <b>Act on Prohibition of Discrimination</b> (2010) proscribes discrimination based on 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  <b>Netherlands</b>	1992	Section 137(f) of the <b>Penal Code</b> (1881), as amended in 1991, criminalises taking part in or materially or financially supporting activities aimed at discrimination against persons because of “their hetero or homosexual orientation”.
	1994	Section 1 of the <b>Equal Treatment Act</b> (1994) includes sexual orientation as a prohibited ground of direct and indirect discrimination (among others). Such protection concerns employment (Sections 5-6a) and goods and services (Section 7).



24		<b>North Macedonia</b>	2019	Article 5 of the <b>Law on Prevention of and Protection against Discrimination</b> (2019) forbids discrimination on the grounds of sexual orientation. According to Article 3, the Law applies to work and labour relations, education, social security, health insurance and health care, housing, access to goods and services, among other areas.
			2020	This Law was temporarily struck down by the Constitutional Court, based on procedural issues, in May 2020, and later reinstated by the Parliament in October of the same year. <sup>40</sup>
25		<b>Norway</b>	2008	Article 186 of the new <b>Penal Code</b> (2005) was amended by <b>Law No. 4</b> (2008) to criminalise discrimination in the provision of goods and services based on sexual orientation.
			2013	The <b>Sexual Orientation Anti-Discrimination Act</b> (2013) prohibited direct and indirect discrimination based on sexual orientation under Chapter 2 in all sectors and fields of action except “family life and other purely personal relationship” (Chapter 1, Section 2).
			2018	This law was repealed by the <b>Equality and Anti-Discrimination Act</b> (2018), which now proscribes any type of discriminatory act based on sexual orientation under Section 6. As per Section 2, the law applies to all sectors of society.
26		<b>Portugal</b>	2004	Even though there is no national law prohibiting discrimination in broad terms, the protection afforded by Article 13(2) of the <b>Constitution</b> (1976), as amended by Article 4 of Constitutional Law No. 1/2004 (2004), applies to all rights and duties.
			2012	Furthermore, Article 7 of the Students' Statute ( <b>Law No. 51</b> ) (2012) reinforces this protection in education environments. Article 10 imposes a similar duty on students to likewise not discriminate based on sexual orientation.
			2019	In September 2019, the Portuguese Parliament passed <b>Law No. 83</b> (2019), which forbids discrimination on the basis of sexual orientation in housing at Article 2(1).
27		<b>Romania</b>	2000	Article 2(1) of the Ordinance on the Prevention and Punishment of All Forms of Discrimination ( <b>Law No. 137</b> ) (2000) bans discrimination on the basis of sexual orientation. Article 1 extends such protection to employment, education, and health.
			2014	Under Article 297(2) of the <b>Penal Code</b> (approved in 2009, in force since 2014), it is an offence for a civil servant to impede the exercise of a right of a person or to create for them a situation of inferiority on the basis of their sexual orientation.
28		<b>San Marino</b>	2019	Even though there is no national law prohibiting discrimination in broad terms, the equality before the law, regardless of sexual orientation afforded by Article 4 of the <b>Declaration of Citizen Rights</b> (1974), one of the documents that are part of the Constitution of San Marino, as amended by <b>Constitutional Revision Law No. 1</b> (2019), applies to all rights and duties.
29		<b>Serbia</b>	2010	Articles 1 and 2 of the <b>Prohibition of Discrimination Act</b> (2010) ban any discriminatory act, direct or indirect, on the basis of sexual orientation. The law applies to employment, public services, and education, among others.
30		<b>Slovakia</b>	2008	Section 2(1) of the <b>Act on Equal Treatment in Certain Areas and Protection against Discrimination</b> , as amended by <b>Act No. 85</b> (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.


<sup>40</sup> The Constitutional Court of the Republic of Northern Macedonia, [Decision U.no.115/2019](#), 14 May 2020, accessed on 02 December 2020.; Sinisa Jakov Marusic, "North Macedonia Reinstates Anti-Discrimination Law", *Balkan Insight*, 28 October 2020.

31	 <b>Slovenia</b>	2016	Article 1 of the <b>Protection against Discrimination Act</b> (2016) prohibits discrimination on the basis of sexual orientation 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 goods and services.
32	 <b>Spain</b>	1996  2011/2013	Article 511 and 512 of the <b>Penal Code</b> (1995, effective in 1996), including amendments by the <b>Organic Law No. 1/2015</b> (2015), penalise the discriminatory denial of services on the basis of sexual orientation.  Article 6(1) of Law on General Public Health ( <b>Law No. 33</b> ) (2011) and Article 124(2) of the Organic Law for the Improvement of Education ( <b>Law No. 8</b> ) (2013) reinforce the prohibition of discrimination in health and education respectively.  Additionally, several autonomous communities and regions offer broad protection against discrimination based on sexual orientation under local laws: <b>Andalusia</b> (2014/2018), <b>Aragón</b> (2018), <b>Islas Baleares</b> (2007), <b>Catalonia</b> (2014), <b>Canarias</b> (2014), <b>Madrid</b> (2016), <b>Navarra</b> (2017), <b>Valencia</b> (2019), <b>Extremadura</b> (2015), <b>Galicia</b> (2014), <b>Basque Country</b> (2012), and <b>Murcia</b> (2016).
33	 <b>Sweden</b>	1987  2003  2009	Discrimination based on sexual orientation in the provision of goods and services was outlawed for the first time under the <b>Penal Code</b> (1962), as amended by <b>Law 1987:610</b> .  Sections 1 and 3 of the <b>Prohibition of Discrimination Act</b> (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 <b>Discrimination Act</b> (2008, in force in 2009), which also prohibits direct and indirect discrimination based on sexual orientation. This law applies to employment (Sections 1-4 and 9), education (Sections 5-8), provision of goods and services (Section 12-12c), health (Sections 13-13b), among others.
34	 <b>United Kingdom</b>	2007  2010	The <b>Equality Act (Sexual Orientation) Regulations (No. 1263)</b> (2007) laid under Part 3 of the <b>Equality Act</b> (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 <b>Equality Act</b> (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.

### Non-independent jurisdictions in Europe (3)

#### United Kingdom (3)

1	 <b>Gibraltar</b>	2006	The <b>Equal Opportunities Act</b> (2006) prohibits discrimination on the grounds of sexual orientation under Section 10. The Act applies to areas of employment, education, provision of goods, facilities and services, and disposal of management of premises.
2	 <b>Isle of Man</b>	2017	The <b>Equality Act</b> (2017) bans discrimination on the grounds of sexual orientation under Section 13. The Act applies to areas of services and public functions, disposal and management of premises, work, education, among others.

3	 Jersey	2015	The <a href="#">Discrimination (Sex and Related Characteristics) (Jersey) Regulations (2015)</a> amended the <a href="#">Discrimination (Jersey) Law (2013)</a> and included sexual orientation as a protected characteristic under Article 3. The legislation applies to areas of work, education, goods, facilities and services, access to and use of public premises, disposal or management of premises, clubs, and requests for information.
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### Is there more in Europe?

<b>Denmark</b>	Article 1 of the <a href="#">Act on Prohibition of Unequal Treatment on the Grounds of Race, etc (1987)</a> offers protection against discrimination in the provision of goods and services.
<b>Italy</b>	The only law prohibiting discrimination based on sexual orientation at the national level is the <a href="#">Legislative Decree No. 216 (2003)</a> , which is applicable to employment only (see below). A bill that would offer broad protections against discrimination based on sexual orientation was passed by the Chamber of Deputies on November 4, 2020. <sup>41</sup>  However, eight out of Italy's twenty regions have passed more comprehensive legislation against discrimination on the grounds of sexual orientation at a local level.
<i>Campania</i>	Article 1 of the <a href="#">Regional Law No. 37 (2020)</a> recognises that discrimination and violence based on sexual orientation "constitute a violation of human rights, personal dignity, freedom of expression" and other human rights. The law further establishes measures to combat forms of violence and discrimination based on sexual orientation.
<i>Emilia-Romagna</i>	Article 1 of <a href="#">Regional Law No. 15 (2019)</a> aims to promote and implement policies, programmes, and actions to protect everyone against any form of discrimination based on sexual orientation. The law further establishes measures to combat discrimination in different areas, including education, sports, culture, among others.
<i>Liguria</i>	Article 1 of <a href="#">Regional Law No. 52 (2009)</a> adopts policies aimed at overcoming discrimination based on sexual orientation and guaranteeing equal rights regardless of sexual orientation, including measures on access to public and private services, health, among other areas.
<i>Marche</i>	Article 1 and 2 of <a href="#">Regional Law No. 8 (2013)</a> amend other regional laws to include the objective to promote measures aimed at overcoming discrimination based on "homosexual and heterosexual orientation".
<i>Piedmont</i>	Article 1 of the <a href="#">Regional Law No. 5 (2016)</a> establishes the objective to implement the prohibition of discrimination and promote equal treatment in the region. Under Article 2(1), equal treatment is defined as "the absence of any direct or indirect discrimination" based on sexual orientation. The law applies to health, housing, culture, sports, transportation, among other areas.
<i>Sicily</i>	Article 1 of <a href="#">Regional Law No. 6 (2015)</a> rejects any discrimination based on sexual orientation and adopts policies aimed at overcoming such discrimination. The law applies to registry of civil unions, access to services, sanitation, social assistance, culture, among others.
<i>Tuscany</i>	Article 1 of <a href="#">Regional Law No. 63 (2004)</a> adopts policies aimed at overcoming discrimination based on sexual orientation, establishing measures with regard to health and education.
<i>Umbria</i>	Article 1(1) of <a href="#">Regional Law No. 3 (2017)</a> recognises that violence and discrimination based on sexual orientation constitutes a violation of several fundamental human rights. The law establishes measures against violence and discrimination based on sexual orientation.

<sup>41</sup> "Lavori preparatori dei progetti di legge. Atto camera 569". *Camera dei deputati (website)*, 5 November 2020.

**Switzerland**

Even though there is no federal law explicitly proscribing discrimination based on sexual orientation, Article 28 of the [Civil Code](#) (1907) technically provides the legal basis for the protection of “personality”. However, in April 2019, the Federal Court held in a [case](#) involving a former unit commander in the Swiss Armed Forces that the [Law on Equality](#) (1993) did not apply to discrimination on the basis of sexual orientation.<sup>42</sup>

In 2018, Article 261 *bis* of the [Criminal Code](#) (1937) was amended to penalise discrimination based on sexual orientation in the provision of goods and services. This amendment entered into force in July 2020.

**Non-independent jurisdictions****Faroe Islands**  
(Denmark)

[Ordinance no. 182](#) (2007) extends to the Faroe Islands the application of the amendment to the [Act on Prohibition of Unequal Treatment on the Grounds of Race, etc](#) (1987) which prohibits discrimination based on sexual orientation in provision of goods and services.

**Oceania**




5 out of 14 UN Member States (36%). Additionally: 4 non-UN Member jurisdictions.

1		<b>Australia</b>	2007	Section 55-5(2)(b) of the <a href="#">Private Health Insurance Act</a> (2007) prohibits private health insurers from discriminating against people who are or wish to be insured on the basis of sexual orientation.
			2013	The <a href="#">Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act</a> (2013) provides nationwide legal protection against discrimination on the grounds of sexual orientation. Nevertheless, religious-owned private schools and religious-owned hospitals are exempt from this law’s provisions on sexual orientation and gender identity.  Several jurisdictions have enacted laws prohibiting discrimination at a state level: <a href="#">Australian Capital Territory</a> (1992), <a href="#">New South Wales</a> (1983), <a href="#">Northern Territory</a> (1993), <a href="#">Queensland</a> (1992/2016), <a href="#">South Australia</a> (1984), <a href="#">Tasmania</a> (1999), <a href="#">Victoria</a> (1996/2010), <a href="#">Western Australia</a> (2002).
2		<b>Fiji</b>	1997	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 <a href="#">Constitution of Fiji</a> (2013) offers broad protection against discrimination.
			2013	Additionally, Article 3(1)(a) of the <a href="#">HIV/AIDS Decree 2011</a> (Decree No. 5 of 2011) prohibits discrimination based on “gender orientation or sexual orientation”.
3		<b>Marshall Islands</b>	2019	The <a href="#">Gender Equality Act</a> (2019) prohibits discrimination based on sexual orientation, among other grounds, including it as a type of “multiple” and “intersectional” discrimination. Under Section 105, the Act binds the State, civil society, and the private sector. Section 107 guarantees gender equality in education, employment, health, social protection, and others.
4		<b>Micronesia</b> (Federated States of)	2018	On November 12, 2018, the Micronesian Congress passed <a href="#">Bill 20-258</a> (which became <a href="#">Public Law No. 20-153</a> (2018)), updating the country’s anti-discrimination law to include sexual orientation in Section 107 of Chapter 1 of the <a href="#">Code of the Federated States of Micronesia</a> (2014).
5		<b>New Zealand</b>	1993	Section 21(1)(m) of the <a href="#">Human Rights Act</a> (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.


<sup>42</sup> Bundesgericht, [Medienmitteilung des Bundesgerichts Urteil vom 5. April 2019](#) (8C\_594/2018); “Highest Swiss court says sexual orientation not protected under equality law”, [Swissinfo.ch](#), 30 April 2019.

## Non-independent jurisdictions in Oceania (4)

## France (3)

1	 <i>French Polynesia</i>		Legal protection against discrimination based on sexual orientation has been explicitly recognised under French legislation since 2001. Many of those legal protections have been incorporated under Book 2 of the Penal Code.  Article 711-4 of the French Penal Code (both in its current version and in the version in force in 2001) states that Book 2 of the code is applicable to the French Polynesia, New Caledonia and Wallis and Futuna. For further details on the evolution and scope of the afforded protections, please refer to the entry on France above.
2	 <i>New Caledonia</i>	2001	
3	 <i>Wallis and Futuna</i>		

## United Kingdom (1)

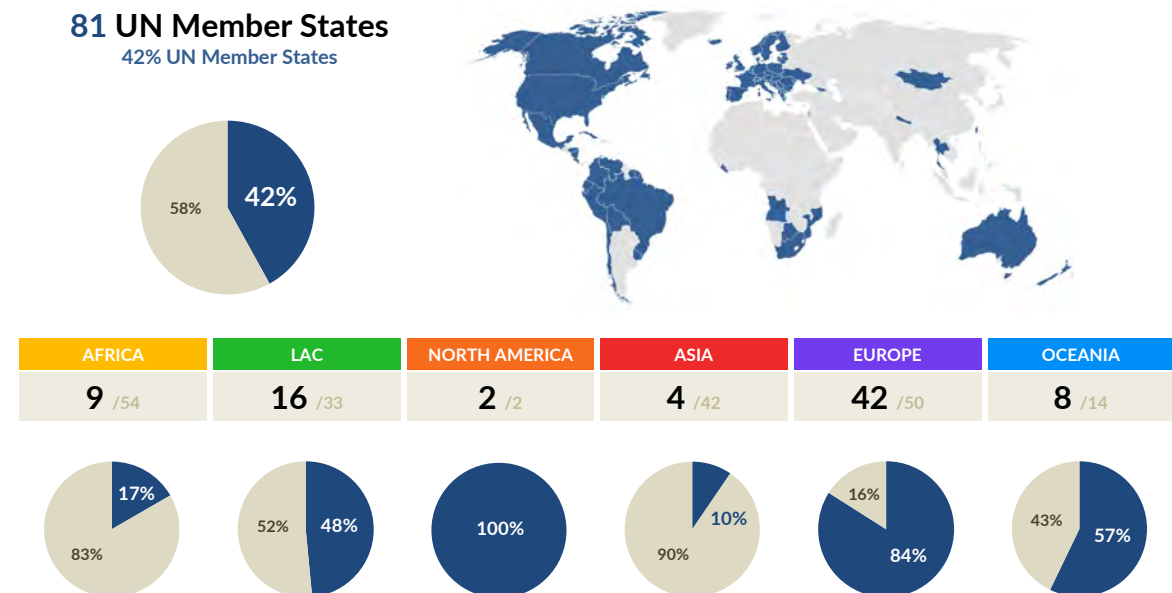
4	 <i>Pitcairn Islands</i>	2010	<i>The Pitcairn Constitution Order</i> (2010) bans discrimination based on sexual orientation in broad terms under Section 23(3).
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# Protection against discrimination based on sexual orientation in employment

## Highlights



## Introduction

A person's ability to earn a living and the opportunity to flourish in one's work life without discrimination based on sexual orientation has increasingly been recognised as a fundamental right in States across the globe.

Notably, legal protections against unfair workplace 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 such laws are not in force at the national or federal level.

Although progressive case law may have extended employment protections based on open equality clauses, the following list only names those laws that explicitly and unambiguously use the term "sexual orientation".

### 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



9 out of 54 UN Member States (17%). Additionally: 3 non-UN Member jurisdictions.

1		<b>Angola</b>	2021 <sup>1</sup>	Article 212 of the Penal Code ( <b>Law No. 38</b> ) (2020) criminalises acts of discrimination based on sexual orientation, including with regard to employment.
2		<b>Botswana</b>	2010	Section 23(d) of the <b>Employment Act</b> (1982), as amended in 2010, prohibits employers from terminating contracts of employment on the basis of sexual orientation.
3		<b>Cape Verde</b>	2008	Article 45(2) of the <b>Labour Code</b> (2007) 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		<b>Liberia</b>	2015	Despite other legislation criminalising same-sex sexual activity, Section 2.4 (b)(iii) of Liberia's <b>Decent Work Act</b> (2015) entitles all who seek to work in Liberia to do so regardless of "sex, gender identity or sexual orientation". It is unclear to what extent this law reflects the reality in the Liberian workplace.
5		<b>Mauritius</b>	2008 2015	Part III of the <b>Equal Opportunities Act</b> (2008) prohibits discrimination in employment on the basis of "status." Section 2 refers to sexual orientation defined as "homosexuality (including lesbianism), bisexuality or heterosexuality" in the list of what would be considered a "status".  Additionally, in the public sphere, Section 3 of the <b>Code of Ethics for Public Officers</b> (2015) requires Public Officers to treat the public and their colleagues without any discrimination based on sexual orientation. Albeit symbolic, this provision becomes relevant in a country where consensual same-sex sexual acts are still criminalised.
6		<b>Mozambique</b>	2007	Articles 4(1) and 108(3) of the Labour Law ( <b>Law No. 23</b> ) (2007) prohibit discrimination based on sexual orientation. Moreover, Article 5 establishes the employer's obligation to respect the employee's right to privacy, including their "sexual life".
7		<b>Sao Tome and Principe</b>	2020	Article 16(1) of the <b>Labour Code</b> (2019) confers the right to equality in access to employment and work. Article 16(2) prohibits hiring discrimination based on a person's sexual orientation. Article 17(1) further expressly prohibits an employer to discriminate employees on the basis of sexual orientation.
8		<b>Seychelles</b>	2006	Section 2 of the <b>Employment Act</b> (1995), as amended by the Employment (Amendment) Act ( <b>Act No. 4</b> ) (2006) defines "harassment" to include any unfriendly act, speech, or gesture of one person towards another based on their sexual orientation. Section 46A(1) permits a worker discriminated based on sexual orientation to complain to the Chief Executive of the business. Section 46B prohibits employer harassment against their workers.
9		<b>South Africa</b>	1996 1998	Section 187(1)(f) of the <b>Labour Relations Act</b> (1995) establishes that a dismissal is "automatically unfair" when it is based on the employee's sexual orientation.  Section 6(1) of the <b>Employment Equity Act</b> (1998) prohibits direct and indirect discrimination of an employee on the basis of sexual orientation.


<sup>1</sup> In January 2019 Angola approved a new Penal Code. In 2020, new changes in the text of the Code were discussed by the Parliament and the official version of the new Penal Code (**Law No. 38**) (2020) was finally published on 11 November 2020. According to its Article 9, the Code will enter into force ninety days after the date of its publication.

## Non-independent jurisdictions in Africa (3)

## France (2)

1	 <i>Mayotte</i>	2005	Article 2 of <a href="#">Ordinance No. 2005-44</a> (2005) inserted Article L.000-4 into the <a href="#">Labour Code applicable to Mayotte</a> to explicitly grant protection against discrimination based on sexual orientation in hiring and employment. This Code was repealed by <a href="#">Ordinance No. 2017-1491</a> (2017), and since 2018 the French Labour Code applies to Mayotte, with specific adjustments. Therefore, Article L1132 of the French <a href="#">Labour Code</a> is the current legal basis for protection from discrimination based on sexual orientation in employment.
2	 <i>Réunion</i>	2001	Legal protection against discrimination in employment based on sexual orientation has been explicitly recognised under French legislation since 2001. These protections are applicable to Reunion. <sup>2</sup> For further details on the evolution and scope of the afforded protections, please refer to the entry on France below.

## United Kingdom (1)

3	 <i>Saint Helena, Ascension and Tristan da Cunha</i>	2009	The <a href="#">St. Helena, Ascension and Tristan da Cunha Constitution Order</a> (2009) prohibits discrimination based on sexual orientation separately for each island in the territory (St. Helena at Section 21, Ascension at Section 137, and Tristan da Cunha at Section 203). The ban on sexual orientation discrimination is broad and therefore applies to employment.
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## Is there more in Africa?

**Namibia***(PROTECTION REPEALED)*

Namibia is one of the rare cases in which a provision protecting people from discrimination based on sexual orientation was repealed by a legislative body. As early as 1992, local activists successfully lobbied to include "sexual orientation" among the prohibited grounds of discrimination in the Labour Act. In 2004, a new labour law was discussed in Parliament, and the inclusion of the term was a topic of heated debates, resulting in the exclusion of the term from the final text.<sup>3</sup> However, this law never came into force.

The current [Labour Law](#) (2007) does not include "sexual orientation" among the prohibited grounds of discrimination.

**South Sudan**

Section 5 of the [Labour Act](#) (2017) establishes that "personal data" includes information on the "sex lives" of employees. Section 14(1) provides that an employer shall not collect such personal data where it is irrelevant to the requirements of the position, allow to access or disseminate it for reasons other than which it was originally intended, and to store it for no longer than is required for the original purpose it was collected.

## Non-independent jurisdictions

*British Indian Ocean Territory*  
(United Kingdom)

Though the laws of the United Kingdom generally apply to the British Indian Ocean Territory unless alternative Ordinances are passed, Section 9(1) of the [British Indian Ocean Territory Constitution Order](#) (2004) notes that no person has the right of abode within the territory as it remains solely a military base for United Kingdom and United States naval operations.

As such, with no permanent residents on the island and little scope for labour regulations outside of military operations, the relevance of existing non-discrimination legislation from the United Kingdom is uncertain. Nevertheless, the [Armed Forces Act](#) (2016) Section 14 repealed sections outlining "homosexual acts as grounds for discharge from the armed forces".

<sup>2</sup> Under Article 72-3 of the [French Constitution](#) (1958), Reunion is listed as a French overseas territory. Reunion is officially an overseas department and region and, as such, is subject to Article 73 of the Constitution, according to which French statutes and regulations are automatically applicable in the territory. Mayotte became a department in 2011 but, as explained in the entry, it had its own Code of Labour until 2018.

<sup>3</sup> "Justice Minister scorns homosexuality as 'criminal'", *The Namibian*, 7 May 2004.

## Latin America and the Caribbean

16 out of 33 UN Member States (48%). Additionally: 18 non-UN Member jurisdictions and subnational protections in one UN-Member State (Argentina).

1	 <b>Barbados</b>	2020	Section 3(2)(h) of the <b>Employment (Prevention of Discrimination) Act (2020)</b> lists sexual orientation as a category based on which employers may not discriminate against employees.
2	 <b>Bolivia</b>	2010	Article 5(a) of the Law against Racism and All Forms of Discrimination ( <b>Law No. 045</b> ) (2010) prohibits discrimination based on sexual orientation.  Furthermore, article 281 <i>sexies</i> of the <b>Criminal Code</b> (as amended by the above Act) criminalises any act of discrimination based on sexual orientation. These laws ban sexual orientation discrimination in broad terms and therefore apply to employment.
3	 <b>Brazil</b>		At the federal level, there is no legislation prohibiting employment discrimination on the basis of sexual orientation.  Only Article 8 of the <b>Regulation (Portaria) No. 41-03-07</b> (2007) issued by the Ministry of Labour and Employment prohibits employers to request documents or information related to the employee's sexuality.  However, around 70% of the population resides in jurisdictions where local laws provide such protection.
	<i>Amapa</i>	2009	Article 1 of <b>Law No. 1,417</b> (2009), establishes that “[t]he Executive Branch, within the limits of its competence, shall apply sanctions to legal entities that, by the act of their owner, manager, representative or employee, in the effective exercise of their professional activity, discriminate or violate the rights of any individual, due to their sexual orientation”.
	<i>Amazonas</i>	2006	Article 1 of <b>Law No. 3,079</b> (2006) prohibits “any and all forms of discrimination” based on sexual orientation; Article 4(VIII) prohibits such discrimination in employment, including both “public service” and “public company”. Those found in violation of this norm can be levied a fine.
	<i>Bahia</i>	2007	Article 4(V) of <b>Law No. 16,569</b> (2007) prohibits employers from dismissing employees on the basis of sexual orientation. Article 4(VII) prevents such discrimination in the hiring and promotion process.
	<i>Distrito Federal</i>	2000	Articles 1 and 2 of <b>Law No. 2,615</b> (2000) outlines various fines, sanctions and suspensions of permits that can be imposed on employers found to have discriminated against persons on the basis of sexual orientation.
	<i>Espirito Santo</i>	2012	Article 12 of the <b>State Constitution</b> (2012) prohibits “discrimination on the grounds of religious belief or sexual orientation”.
	<i>Maranhao</i>	2006	Article 2(6) of <b>Law No. 8,444</b> (2006) prohibits employers from directly or indirectly dismissing employees on the basis of their sexual orientation. The law also outlines a broader range of sexual orientation discrimination protections.
	<i>Mato Grosso do Sul</i>	2006	Article 2 (IX) of <b>Law No. 3,157</b> (2005) prohibits various forms of discrimination—including denial of employment and unfair dismissal—on the basis of a person's sexual orientation.
	<i>Minas Gerais</i>	2002	Article 2(VI) <b>Law No. 14,170</b> (2002) prohibits discrimination in areas of employment on the basis of sexual orientation. Article 3 enumerates penalties for violations, including a fine and potential suspension of business operating licences, termination of tax benefits or contracts signed with the state.






	<i>Para</i>	2011	Article 3(IV) of the <a href="#">State Constitution</a> (2011) prohibits discrimination on the basis of sexual orientation in broad terms, which applies to employment.
	<i>Paraíba</i>	2003	<a href="#">Law No. 7,309</a> (2003) broadly prohibits discrimination on the basis of sexual orientation, including in areas pertaining to labour and employment.
	<i>Piauí</i>	2004	<a href="#">Ordinary Law No. 5,431</a> (2004) prohibits discrimination on the basis of sexual orientation and provides administrative sanctions to be applied to acts of discrimination based on sexual orientation.
	<i>Rio de Janeiro</i>	2000	<a href="#">Law No. 3,406</a> (2000) broadly prohibits a wide range of discriminatory acts on the basis of sexual orientation and, therefore, applies to employment.
	<i>Rio Grande do Norte</i>	2007	<a href="#">Law No. 9,036</a> (2007) outlines the definitions and penalties for a range of prohibited discriminatory acts on the basis of sexual orientation.
	<i>Rio Grande do Sul</i>	2002	<a href="#">Law No. 11,872</a> (2002), outlines the definitions and penalties for a range of prohibited discriminatory acts on the basis of sexual orientation.
	<i>Santa Catarina</i>	2003	<a href="#">Law No. 12,574</a> (2003), prohibits a broad range of discriminatory actions on the basis of sexual orientation. Article 2(VI) prohibits direct or indirect dismissal based on the employee's sexual orientation.
	<i>Sao Paulo</i>	2001	Article 1 of <a href="#">Law No. 10,948</a> (2001) states that “any offensive or discriminatory manifestation practised against homosexual, bisexual or transgender citizens will be punished”. Article 2(VI) extends the guarantee to unfair dismissal by employers on the basis of an employee’s sexual orientation.
4	 <b>Chile</b>	2012	<a href="#">Law No. 20,609</a> (2012) on the adoption of measures against discrimination) <sup>4</sup> affords protection against discrimination based on sexual orientation with respect to any constitutional right.
		2017	Additionally, Article 2 of the <a href="#">Labour Code</a> (as amended by the <a href="#">Modernisation of Labour Relations Act No. 20,940 of 2016</a> ) includes sexual orientation among the prohibited grounds of discrimination in labour.
5	 <b>Colombia</b>	2011	Article 134A of the <a href="#">Criminal Code</a> (2000), as amended by <a href="#">Act No. 1482 of 2011</a> , criminalises discrimination based on sexual orientation while Article 136C (3) and (4) aggravate 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.
6	 <b>Costa Rica</b>	2016	Article 2 of the Labour Procedural Reform Act ( <a href="#">Act No. 9,343</a> ) (2016) amended Article 404 of the <a href="#">Labour Code</a> to include “sexual orientation” among prohibited grounds for discrimination in employment.
7	 <b>Cuba</b>	2014	Article 2(b) of the Labour Code ( <a href="#">Law No. 116</a> ) (2014) 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.

<sup>4</sup> 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.






8	 <b>Ecuador</b>	1998	The constitutional prohibition of discrimination based on sexual orientation enacted in 1998 applies to all rights and, therefore, to employment.
		2005	Article 79 of the <b>Labour Code</b> , as amended in 2005, establishes the right to equal remuneration without discrimination based on sexual orientation.
		2015	Article 195(3), introduced by the Organic Law for Labour Justice and Recognition of Domestic Work ( <b>Law No. 483</b> ) (2015), provides for special compensation for victims of discriminatory dismissal based on sexual orientation.
9	 <b>Honduras</b>	2013	Article 321 of the old <b>Criminal Code</b> , as amended by <b>Decree No. 23-2013</b> (2013), criminalises acts of discrimination based on sexual orientation.
		2020	Article 211 and 212 of the new <b>Penal Code</b> (effective 2020) prohibit discrimination based on sexual orientation with regard to access to public services, as well as services provided by other professionals and companies. This provision bans sexual orientation discrimination in broad terms and therefore applies to employment.
10	 <b>Mexico</b>	2003	Article 1(III) of the <b>Federal Act to Prevent and Eliminate Discrimination</b> (2003) lists “sexual preferences” as a protected class. Article 9(IV) prohibits employment discrimination based on the classes enumerated in Article 1(III).  Article 149 Ter (2) of the <b>Federal Criminal Code</b> (1931) criminalises employment discrimination based on “sexual preference” and aggravates penalties for employers and public servants.
11	 <b>Nicaragua</b>	2008	Article 315 of the <b>Criminal Code</b> (effective 2008) criminalises employment discrimination based on “sexual option”.
12	 <b>Peru</b>	2004	Article 37(1) of the <b>Constitutional Procedural Code</b> (2004) establishes that a writ of amparo is the adequate remedy in cases of discrimination based on sexual orientation. This law provides a remedy for sexual orientation discrimination in broad terms and therefore applies to employment.
		2017	Article 323 of the <b>Criminal Code</b> (1991), as amended by <b>Executive Order No. 1323</b> (2017), criminalises discrimination on the basis of sexual orientation and aggravates the penalty if such acts are committed by public servants. This protection applies to employment.
13	 <b>Saint Lucia</b>	2006	Section 131(1)(a) of the <b>Labour Code</b> (2006) prohibits unfair dismissal or disciplinary actions based on an employee’s sexual orientation.
14	 <b>Suriname</b>	2015	Article 175(1) of the <b>Criminal Code</b> (1911), as amended in 2015, criminalises discrimination based on sexual orientation. This provision bans sexual orientation discrimination in broad terms and therefore applies to employment.
15	 <b>Uruguay</b>	2004	Article 2 of the Act to combat Racism, Xenophobia and Discrimination ( <b>Law No. 17,817</b> ) (2004) 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.
		2013	Article 2(A) of the Promotion of Youth Employment Act ( <b>Law No. 19,133</b> ) (2013) declares non-discrimination on the basis of sexual orientation as a principle in youth training and employment.
16	 <b>Venezuela</b>	2012	Article 21 of the <b>Organic Law of Labour and Workers</b> (2012) prohibits employment discrimination based on sexual orientation.

## Non-independent jurisdictions in Latin America and the Caribbean (18)




## France (5)

1	 <i>French Guiana</i>		
2	 <i>Guadeloupe</i>		Legal protection against discrimination in employment based on sexual orientation has been explicitly recognised under French legislation since 2001. These protections are applicable to French Guiana, Guadeloupe, Martinique, Saint Barthelemy and Saint Martin. <sup>5</sup>  For further details on the evolution and scope of the afforded protections please refer to the entry on France below.
3	 <i>Martinique</i>	2001	
4	 <i>Saint Barthelemy</i>		
5	 <i>Saint Martin</i>		

## Netherlands (6)

6	 <i>Aruba</i>	2012	Article 2:60 of the <b>Criminal Code of Aruba</b> (2012) includes “heterosexual or homosexual orientation” as a protected category. By reference to this provision, Articles 2:63 and 3:12 provide the legal basis for the prohibition of acts of discrimination.
7	 <i>Bonaire</i>		Article 143d of the <b>Criminal Code of Bonaire, Sint Eustatius and Saba</b> (2010) stipulates that anybody who participates in or aids in the discrimination of persons based on “their heterosexual or homosexual orientation” is liable to be punished with imprisonment of up to 3 months or a fine.
8	 <i>Saba</i>	2010	
9	 <i>Sint Eustatius</i>		
10	 <i>Curaçao</i>	2011	Article 2:60 of the <b>Criminal Code of Curacao</b> (2012) includes “heterosexual or homosexual orientation” as a protected category. By reference to this provision, Articles 2:63 and 3:12 provide the legal basis for the prohibition of acts of discrimination.
11	 <i>Sint Maarten</i>	2012	Article 2:60 of the <b>Criminal Code of Sint Maarten</b> (2012) includes “heterosexual or homosexual orientation” as a protected category. By reference to this provision, Articles 2:63 and 3:12 provide the legal basis for the prohibition of acts of discrimination.

## United Kingdom (6)

12	 <i>Anguilla</i>	2018	Section 97(1)(a) of the Labour (Relations) Act ( <b>Act No. 14</b> ) (2018) prohibits the employer to institute disciplinary action against an employee based on sexual orientation.
13	 <i>British Virgin Islands</i>	2007	Section 26(1)(a) of the <b>Virgin Islands Constitution Order</b> (2007) includes different treatment on the basis of sexual orientation within the definition of “discriminatory”.
14	 <i>Falkland Islands (Malvinas)</i> <sup>6</sup>	2008	Section 16 of the <b>Falkland Islands Constitution Order</b> (2008) prohibits the adoption of any law which discriminates on the basis of sexual orientation. The document broadly prohibits discrimination on these grounds, which includes employment.


<sup>5</sup> Under Article 72-3 of the **French Constitution** (1958), these five jurisdictions are listed as a French overseas territory. French Guiana, Martinique and Guadeloupe, as overseas departments and regions, are subject to Article 73 of the Constitution, according to which French statutes and regulations are automatically applicable in the territory. Saint Barthelemy and Saint Martin are overseas collectivities and, as such, are subject to Article 74, according to which their autonomy is established by an organic law that establishes the conditions under which the laws and regulations are applicable in the territory. Moreover, under Article LO6213-1 (for Saint Barthelemy) and Article LO6313-1 (for Saint Martin) of **General Code of Territorial Collectivities**, legislative and regulatory provisions are automatically applicable in these territories provided that they do not intervene in the matters that are of competence of the organic law or of the collectivity. In 2001, Saint-Martin and Saint Barthelemy were part of the administrative jurisdiction of Guadeloupe.

<sup>6</sup> Note: ILGA World takes note of the sovereignty dispute between Argentina and the United Kingdom over the Falkland Islands/Islas Malvinas (**UNGA Resolution 2065-XX**). Under Argentine law, protection against discrimination in employment is not available nationwide.



15	 <b>Montserrat</b>	2012	Sections 79(2)(a) and 79(2)(b) of the <b>Labour Code (2012)</b> include sexual orientation in the definition of prohibited discrimination. Section 80 establishes the scope of the protection against discrimination, including recruitment, selection for training or apprenticeship. Additionally, Section 62(e) lists sexual orientation under prohibited grounds for dismissal; and Section 138(3) bars trade unions or employers' organisations from discriminating based on sexual orientation.
16	 <b>South Georgia and South Sandwich<sup>7</sup></b>	2003	The laws of the United Kingdom generally apply to the South Georgia and South Sandwich Islands, except in cases where specific ordinances are passed. <sup>8</sup> For further details, please refer to the entry on the United Kingdom below.
17	 <b>Turks and Caicos Islands</b>	2011	Sections 1 and 16 of the <b>Turks and Caicos Islands Constitution Order (2011)</b> broadly prohibit discrimination on the grounds of sexual orientation, which encompasses matters of employment.

### United States (1)

19	 <b>Puerto Rico</b>	2013	The Law to Prohibit Discrimination based on Sexual Orientation and Gender Identity in Employment ( <b>Law No. 22 (2013)</b> ) amended numerous laws, including the local Antidiscrimination Law ( <b>Law No. 100 of 1959</b> ), to prohibit discrimination based on sexual orientation in employment.
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### Is there more in Latin America and the Caribbean?

<b>Argentina</b>	Articles 34(o), 35(j), 37(h) and 121 of the <b>Executive Order No. 214 (2006)</b> , applicable only within the National Administration Service, prohibit discrimination in employment on the basis of sexual orientation.  The Autonomous City of Buenos Aires and one province (Río Negro) have enacted local laws that prohibit discrimination based on sexual orientation in employment.
<i>Autonomous City of Buenos Aires</i>	Article 3(a) of Law on Equality and Non-Discrimination ( <b>Law No. 5.261 (2015)</b> ) includes "sexual orientation" among the prohibited grounds for discrimination. This law applies to all rights enshrined in the National Constitution and other laws and, hence, to employment.
<i>Río Negro</i>	Article 2 of Provincial Law on the Innate Right to Sexual Orientation (effective 2008) ( <b>Law No. 3.055</b> ) establishes that whenever laws, decrees, or ordinances expressly prohibit discrimination on any grounds, it should be understood that sexual orientation is included in them.
<b>Dominican Republic</b>	While no law offers explicit protection on the basis of sexual orientation in employment, it could be argued that Article 2 of the General Law on Youth ( <b>Law No. 49 (2000)</b> ), which prohibits discrimination based on sexual orientation, could apply to employment matters. However, this law only protects youth between 14 and 25 years of age.
<b>El Salvador</b>	Article 1 of the <b>Executive Order No. 56 (2010)</b> prohibits all forms of discrimination based on sexual orientation within the Public Administration Service only.
<b>Jamaica</b>	Section 13(1)(9) of the <b>Staff Orders for the Public Service (2004)</b> requires that public service employees shall be treated fairly and equitably without discrimination based on sexual orientation.
<b>Panama</b>	Several bills which would have prohibited discrimination based on sexual orientation, among them <b>Bill No. 050-206 (2010)</b> and <b>Bill No. 029 (2017-2018)</b> , have thus far failed to pass.

<sup>7</sup> Note: ILGA is aware of the sovereignty dispute between Argentina and the United Kingdom over the South Georgia and South Sandwich Islands. Under Argentine law, protection against discrimination in employment is not available nationwide.

<sup>8</sup> "Laws of SGSSI", *Government of the South Georgia and South Sandwich Islands*, accessed on 18 October 2020


## North America

2 out of 2 UN Member States (100%). Additionally: 2 non-UN Member jurisdictions.


1	 <b>Canada</b>	1996	Section 3(1) of the <a href="#">Canadian Human Rights Act</a> (1985) includes sexual orientation as a prohibited ground of discrimination. Section 7 proscribes direct and indirect discrimination in employment. The Act specifically names other contexts protected from discrimination. For example, Section 8 prohibits discrimination in applications and advertisements of employment; Section 9, exclusion from employee organization on discriminatory grounds; Section 10 describes discriminatory policies or practices; and Section 14(c) prohibits discriminatory harassment in employment.
2	 <b>United States of America</b>	2020	In June 2020, the Supreme Court of the United States held in <a href="#">Bostock v. Clayton County</a> that employee protections based on “sex” in Title VII of the <a href="#">Civil Rights Act</a> (1964) also cover persons with diverse sexual orientations and gender identities.  Previously, several states had enacted laws protecting people from discrimination based on sexual orientation in employment with varying levels of protection. <sup>9</sup> Since 1998, <a href="#">Executive Order No. 13,087</a> (1998) prohibited discrimination in employment by the federal government on the basis of sexual orientation.

### Non-independent jurisdictions in North America (2)

#### France (1)


1	 <b>Saint Pierre and Miquelon</b>	2001	Legal protection against discrimination in employment based on sexual orientation has been explicitly recognised under French legislation since 2001 and implicitly since 1985. These protections are applicable to Saint Pierre and Miquelon. <sup>10</sup> For further details on the evolution and scope of the afforded protections please refer to the entry on France below.
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#### United Kingdom (1)

2	 <b>Bermuda</b>	2013	Sections 2 and 6 of the <a href="#">Human Rights Amendment Act</a> (2013) made several amendments to the <a href="#">Human Rights Act</a> (1981), notably by including “sexual orientation” as a protected ground under Section 2, meaning that Sections from 6 to 8 extend to protect persons from discrimination in matters of employment.
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## Asia

4 out of 42 UN Member States (12%). Additionally: 2 non-UN Member jurisdictions and multiple subnational jurisdictions in 2 UN-Member States.

1	 <b>Israel</b>	1992	Section 2(a) of the Law on Employment (Equal Opportunities) ( <a href="#">Law No. 5748-1988</a> ), 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”.
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<sup>9</sup> “State Employment Non-Discrimination Laws”, *Movement Advancement Project (MAP) Website*.

<sup>10</sup> Under Article 72-3 of the [French Constitution](#) (1958), Saint Pierre et Miquelon is listed as a French overseas territory. As an overseas collectivity, Saint Pierre et Miquelon is subject to Article 74, according to which its autonomy is established by an organic law that establishes the conditions under which the laws and regulations are applicable in the territory. Moreover, under Article LO6413-1 of the [General Code of Territorial Collectivities](#), legislative and regulatory provisions are automatically applicable provided that they do not intervene in the matters that are of competence of the organic law or of the collectivity.

	 <b>Macau</b> (China)	2008	Article 6(2) of <b>Law No. 7</b> (2008) prohibits discrimination based on sexual orientation in employment and applying for employment.
2	 <b>Mongolia</b>	2017	Article 14.1(1) of the <b>Penal Code</b> 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 matters.  A draft revision of the <b>Labour Code</b> (1999) includes sexual orientation as a protected characteristic and has been under review with the Parliament since 2018. <sup>11</sup>
3	 <b>Nepal</b>	2015	Even though there is no law expressly prohibiting discrimination based on sexual orientation in employment, the constitutional clause that explicitly includes “sexual minorities”—Section 18(3) of the <b>Constitution of Nepal</b> (2015)—confers constitutional protection based on sexual orientation and, therefore, applicable to employment.
	 <b>Taiwan</b> (China) <sup>12</sup>	2004  2007/2008	Article 12 of the <b>Gender Equity Education Act</b> (2004) specifies that both private and public schools of all levels shall respect faculty and staff’s sexual orientation.  Article 5 of the <b>Employment Service Act</b> (as amended by Presidential Order No. 09600064151 of 2007) <sup>13</sup> and Chapter II of the <b>Gender Equality in Employment Act</b> (as amended by Presidential Order No. 09700003951 of 2008) prohibit employment discrimination based on sexual orientation.
4	 <b>Thailand</b>	2004	The Ministry of Labour’s <b>Regulation on Thai Labour Standards and Social Responsibility of Thai Businesses B.E. 2547</b> (2004) prohibits discrimination against workers on numerous grounds, including “personal sexual attitude”. <sup>14</sup> However, it has been noted that it is unclear whether the Regulation “has even been applied in practice”. <sup>15</sup>

### Is there more in Asia?

#### Hong Kong (SAR China)

There is no legislation prohibiting employment discrimination on the basis of sexual orientation. Nonetheless, commentators have suggested that case law has extended some protection to employees in the public sector.

In *Leung Chun Kwong v. Secretary for the Civil Service and Commissioner of Inland Revenue* (2019), the Hong Kong Court of Final Appeal held that the government could not deny spousal benefits under the Civil Service Regulations to same-sex couples legally married under foreign laws. This was held to be contrary to the principle of equality enshrined in Article 25 of the **Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China** (1990) and Articles 1(1) and 22 the **Hong Kong Bill of Rights** (1991). Thus, the government’s denial of benefits constituted unlawful discrimination on the basis of sexual orientation.

It has been noted that this decision only applies to the provision of benefits to government employees.<sup>16</sup>

<sup>11</sup> “Committee on the Elimination of Discrimination Against Women considers reports of Mongolia”, *UN High Commissioner for Human Rights*, 19 February 2016; International Labour Organization, “Direct Request (CEACR)–adopted 2017, published 107<sup>th</sup> ILC session (2018)”; European Commission, *The EU Special Incentive Arrangement for Sustainable Development and Good Governance (‘GSP+’) assessment of Mongolia covering the period 2018 – 2019*, 10 February 2020, 2; “Mongolia Set to revise Labor Law”, *Lehmanlaw Mongolia LLP*, 22 February 2018.

<sup>12</sup> Note on Names of countries and territories in this publication: ILGA World is an organisation with ECOSOC-accredited consultative status at the United Nations and our publications therefore have to follow UN-recommended language on the names of countries and territories. For more information, please read the methodology section of this report.

<sup>13</sup> It is worth noting that the official English translation of this provision uses the term “gender orientation”, instead of “sexual orientation”. In the Chinese version of the Act, the term “性傾向” is used, which translates to “sexual orientation”.

<sup>14</sup> 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.

<sup>15</sup> United Nations Development Programme and International Labour Organization, *LGBTI People and Employment: Discrimination Based on Sexual Orientation, Gender Identity and Expression, and Sex Characteristics in China, the Philippines and Thailand*, 2018, 35.

<sup>16</sup> “Hong Kong: Extending Employment Benefits to Same-Sex Couples”, *Herbert Smith Freehills*, 26 June 2019; Aaron Chan and Mark Daly, “Leung Chun Kwong v the Secretary for the Civil Service and others – Lovers in a Dangerous Time: Common Law Protection of Human Rights”, *Hong Kong Lawyer*, October 2019.

<b>India</b>	There is no legislation prohibiting employment discrimination on the basis of sexual orientation. Nonetheless, commentators have suggested that case law has extended some protection to employment in the public sector in this regard. Article 16(1) of the <a href="#">Constitution of India</a> states that there “shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.” In <a href="#">Navtej Singh Johar v. Union of India</a> (2018), the Supreme Court held that this applies “to LGBTQ persons who have a right to non-discrimination in access and enjoyment of the right to work”. <sup>17</sup>
<b>Japan</b>	In December 2018, the <a href="#">Bill on Promotion of Elimination of Discrimination on the Grounds of Sexual Orientation or Gender Identity</a> was introduced in the House of Representatives and remains under examination.  As of December 2020, two prefectures have enacted provisions that specifically mention sexual orientation.
<i>Tokyo</i>	In 2018, the Tokyo Metropolitan Government enacted a <a href="#">bylaw</a> that prohibits discrimination on the basis of sexual orientation. <sup>18</sup>
<i>Ibaraki</i>	In 2019, the Ibaraki Prefecture approved a <a href="#">bylaw</a> to promote gender equality that prohibits “discrimination based on sexual orientation and gender identity”. <sup>19</sup>
<b>Philippines</b>	A bill aiming to prevent and penalise discrimination on the basis of gender and sexual orientation (oftentimes referred to as the SOGIE bill) is pending before the Philippine Congress. There have been several unsuccessful proposals since 2000 when it was first proposed to the House of Representatives. <sup>20</sup>  Specifically, Section 17 of the <a href="#">Act Providing a Magna Carta for Public Social Workers</a> (2007) prohibits discrimination against public social workers on the basis of their sexual orientation.  While there is no national legislation prohibiting employment discrimination on the basis of sexual orientation, numerous jurisdictions have enacted ordinances passed by local government units providing such protections. <sup>21</sup> Despite the relatively large number of jurisdictions offering legal protection, most of the population lives in areas where such protection is not available.
<i>Province of Agusan del Norte</i>	Section 6 of the <a href="#">Provincial Ordinance No. 358-2014</a> (2014) prohibit discrimination against individuals on the basis of their sexual orientation in employment.
<i>Province of Batangas</i>	Section 4 of the <a href="#">Provincial Ordinance No. 5</a> (2015) prohibits employment discrimination against individuals on the basis on their sexual orientation.
<i>Province of Cavite</i>	Section 4(1) of the <a href="#">Provincial Ordinance No. 54</a> (2014) prohibits employment discrimination against individuals on the basis of their sexual orientation.
<i>Province of Dinagat Islands</i>	Section 4(a) of the <a href="#">Provincial Ordinance No. BBE2-007</a> (2016) prohibits employment discrimination against individuals on the basis of their sexual orientation.
<i>Province of Ilocos Sur</i>	Ilocos Sur’s Anti-Discrimination Ordinance (2017) prohibits employment discrimination against individuals on the basis of their sexual orientation. <sup>22</sup>
<i>Province of Iloilo</i>	Section 6 of the <a href="#">Provincial Ordinance No. 2016-137</a> (2016) prohibits employment discrimination against individuals on the basis of their sexual orientation.

<sup>17</sup> International Commission of Jurists, *Living with Dignity: Sexual Orientation and Gender Identity-Based Human Rights Violations in Housing, Work, and Public Spaces in India*, June 2019, 72.

<sup>18</sup> The Title of the Ordinance reads: Ordinance aiming to realize the idea of respect for human rights stipulated in the Tokyo Olympic Charter.

<sup>19</sup> “茨城県で都道府県として全国2例目のLGBT差別禁止を明文化する条例が成立、同性パートナーシップ証明制度は先送りに” (“In Ibaraki Prefecture, the second prefectural ordinance stipulating the prohibition of LGBT discrimination was enacted, and the same-sex partnership certification system was postponed”), *Out Japan*, 26 March 2019.

<sup>20</sup> Alfonso Manalo, “Rhetoric: A Necessary Strategy in Debating the Ratification of the SOGIE Equality Bill”, *Synergy: The Journal of Contemporary Asia Studies*, 5 May 2020; “Philippine LGBT Activists Fight Duterte’s Machismo With Solidarity”, *The News Lens*, 1 July 2020.

<sup>21</sup> In several provinces, cities, municipalities, and *barangays* (village), there are anti-discrimination ordinances including SOGIESC as protected grounds. The Philippines is divided into provinces, and then further subdivided into cities. In this chart only the first level of administrative divisions (provinces) is covered. For further information on the cities where protection is available, see this chart prepared by Daron Tan. Additionally, see United Nations Development Programme and International Labour Organization, *LGBTI People and Employment: Discrimination Based on Sexual Orientation, Gender Identity and Expression, and Sex Characteristics in China, the Philippines and Thailand*, 2018, 32; “Anti-Discrimination Ordinances Across the Philippines”, *Transgender Philippines*, 15 May 2017; Xavier Javines Bilon and Claire De Leon, “With no national law, can we rely on local ordinances to protect LGBTQs against discrimination?”, *CNN Philippines*, 25 June 2018.

<sup>22</sup> “Province of Ilocos Sur passes LGBT anti-discrimination ordinance”, *Outrage*, 14 September 2017.

<b>South Korea</b> <sup>23</sup>	<p>The only legal basis proscribing acts of discrimination based on sexual orientation at the national level is Article 30(2) of the <b>National Human Rights Commission Act</b> (2001), which mandates the Commission to investigate acts of discrimination based on sexual orientation.<sup>24</sup> However, as the Commission has powers of inquiry and recommendation only, a finding of discrimination does not lead to an enforceable remedy.<sup>25</sup></p> <p>Since 2007, at least six proposals to approve anti-discrimination bills have failed, all of which were discarded because of strong opposition.<sup>26</sup> In June 2020, a bill that would penalise discriminatory practices on grounds of sexual orientation was again tabled.<sup>27</sup> The bill has received the public support of the National Human Rights Commission.<sup>28</sup></p> <p>Going in the opposite direction, in November 2019, members of the South Korean National Assembly proposed an amendment to the National Human Rights Commission Act to eliminate the term “sexual orientation” as a protected ground against discrimination.<sup>29</sup> Amnesty International labelled this initiative “a shameful amendment”.<sup>30</sup></p> <p>The explicit reference to sexual orientation in the Act is relied upon by subnational legislation to incorporate protection based on sexual orientation at the local level (see entries below).</p>
Jeju	<p>The Jeju Special Self-governing Province Ordinance on the Guarantee and Promotion of Human Rights (2015) prohibits discrimination against anyone on the grounds enumerated in the Article 2(3) of the <b>National Human Rights Commission Act</b> (2001), which includes sexual orientation.<sup>31</sup></p>
North Chungcheong	<p>Article 5 of the Ordinance for the Protection and Promotion of the Human Rights of Chungcheongnam-do Residents (2014) prohibits discrimination against anyone on the grounds enumerated in the Article 2(3) of the <b>National Human Rights Commission Act</b> (2001), which includes sexual orientation. The Ordinance was briefly unenforceable in 2018, but it was fully reinstated in October 2018.<sup>32</sup></p>
Seoul	<p>Article 6 of the Seoul Human Rights Ordinance (2012) establishes that no one can be discriminated on the grounds prohibited in the Article 2(3) of the <b>National Human Rights Commission Act</b> (2001), which bans discrimination based on sexual orientation.</p>
South Chungcheong	<p>The Chungcheongbuk-do Ordinance on the Guarantee and Promotion of Human Rights, under Article 4, prohibits discrimination against anyone on the grounds enumerated in the <b>National Human Rights Commission Act</b> (2001), which includes sexual orientation.<sup>33</sup></p>
<b>Timor Leste</b> <i>(PROTECTION REPEALED)</i>	<p>In another rare case of legal regression,<sup>34</sup> <b>Regulation No. 2002/5 (On the Establishment of a Labour Code for East Timor)</b> (2002), which prohibited discrimination in employment on the basis of sexual orientation at Section 35.2(d), was repealed in 2012 by Article 103 of the new Labour Code (<b>Law No. 4/2012</b>). The current Labour Code does not contemplate such prohibition.</p>

<sup>23</sup> For more information on why South Korea was removed from the list of UN Member States granting employment protection, please see the methodology section of this report.

<sup>24</sup> Civil society reported that in 2018, the Commission implemented organizational changes including the new creation of the Discrimination Remedy Bureau in order to strengthen investigations of and remedies for acts of discrimination infringing on the right to equality and reforms of relevant institutions and, under it, the Gender Discrimination Remedy Team. It reportedly stated that “it would address LGBTI human rights in depth in addition to women’s rights through this team, which would rectify sexual harassment and discrimination based on sexual orientation”. See: SOGILAW, *Annual Report: Human Rights Situation of LGBTI in South Korea* (2018), 32.

<sup>25</sup> Kaleidoscope Human Rights Foundation, *Shadow Report to the UN Human Rights Committee regarding the Republic of Korea’s protection of the rights of LGBTI Persons* (2015), 6.

<sup>26</sup> Ann Babe, “Moon stays silent on equality law in LGBT-unfriendly South Korea”, *Nikkei Asia*, 1 July 2020.

<sup>27</sup> “South Korea: New anti-discrimination bill offers hope and safety to many”, *Amnesty International*, 16 July 2020.

<sup>28</sup> Kim Arin, “Legislate against discrimination, human rights body urges lawmakers”, *The Korea Herald*, 30 June 2020.

<sup>29</sup> Ryan Thoreson, “South Korea Shouldn’t Backslide on LGBT Rights: Lawmakers Should Strengthen Protections, Not Weaken Them”, *Human Rights Watch*, 27 November 2019.

<sup>30</sup> “South Korea: Lawmakers should reject shameful anti-LGBTI amendment”, *Amnesty International*, 21 November 2019.

<sup>31</sup> The Korean Society of Law and Policy on Sexual Orientation and Gender Identity (SOGILAW), *Annual Report: Human Rights Situation of LGBTI in South Korea* (South Korea: SOGILAW, 2018), 87.


<sup>32</sup> *Id.*

<sup>33</sup> *Id.*, 88.

<sup>34</sup> See entry for Namibia in “Is there more in Africa” above.

## Europe

42 out of 50 UN Member States (84%). Additionally: 5 non-UN Member jurisdictions.

1		<b>Albania</b>	2010	Articles 12-16 of the Law on Protection from Discrimination ( <b>Law No. 10 221</b> ) (2010) provide for protection from discrimination in employment. Article 5 prohibits discrimination for the grounds enumerated in Article 1 that includes "sexual orientation" as one of such grounds.
			2015	Additionally, Article 9(1) of the Labour Code ( <b>Law No. 7961</b> ) (1995), as amended by <b>Law No. 136</b> (2015), prohibits discrimination in employment. Article 9(2) Includes "sexual orientation" within the definition of discrimination.
2		<b>Andorra</b>	2003	Section 3 of the <b>Employment Contract Act (No. 8/2003)</b> (2003) listed "sexual orientation" as a protected ground within labour relations.
			2009	This law was repealed in 2009 by the <b>Labour Relations Code</b> that prohibits discrimination based on sexual orientation per Articles 4, 45, 75 and 97(4).
			2018	In the new <b>Labour Relations Code</b> (2018), the prohibition of discrimination on the basis of sexual orientation is included under Articles 4, 44(2), 91(4), 92(3). Article 160 explicitly names unilateral company's decisions involving discrimination in remuneration, training, promotion and other working conditions for reasons of sexual orientation as a very serious offence.
3		<b>Austria</b>	2004	Chapter 2, Section 13(1) of the <b>Equal Treatment Act (1993)</b> , as amended by <b>Act No. 65 of 2004</b> , prohibits sexual orientation discrimination in employment.
4		<b>Belgium</b>	2003	Article 2(1) of the <b>Anti-Discrimination Law</b> (2003) included sexual orientation as a protected category. Article 2(4) proscribed workplace discrimination.
			2007	This law was replaced by the <b>Anti-Discrimination Law</b> (2007) where Articles 4(4) includes sexual orientation as a protected ground. Article 4(7) and 4(9) prohibit direct and indirect discrimination in labour relations, as defined in Article 4(1).
5		<b>Bosnia and Herzegovina</b>	2003	Article 2 of the <b>Gender Equality Act</b> (2003) prohibits sexual orientation discrimination. Chapter V deals with discrimination in employment.
			2009	Article 2 of the <b>Act on Prohibition of Discrimination</b> (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.
			2016	A 2016 amendment of the law reformulated the grounds to follow the correct legal terminology in local language among other improvements. <sup>35</sup>
6		<b>Bulgaria</b>	2005	Section 4(1) of the <b>Law on Protection Against Discrimination</b> (supplemented by SG No. 70 of 2004) bans direct and indirect discrimination based on sexual orientation. Chapter 2, Section 1 of the law provisions that employers may not refuse to employ, offer unequal working conditions or remuneration, or otherwise discriminate against persons based on their sexual orientation (among other grounds).
7		<b>Croatia</b>	2003	Article 2 of the Labour Act, as amended by <b>Act No. 1574 of 2003</b> , names sexual orientation as a protected ground of discrimination in employment.
			2009	Article 9 of the <b>Anti-Discrimination Act</b> (2009) prohibits discrimination based on sexual orientation. Article 8(1) establishes that such prohibition applies to employment.

<sup>35</sup> "Better protection of LGBTI persons through the amendments to the Anti-discrimination Law of BiH", *Sarajevo Open Center (Website)*, 14 July 2016.

8	 <b>Cyprus</b>	2004	Article 6(1) of the <b>Combating Racism and Other Forms of Discrimination (Commissioner) Act</b> (2004) proscribes direct and indirect discrimination based on sexual orientation. Article 6(2)(a)-(c) contemplate discrimination in employment.
		2009	Articles 3,4, and 6 of the <b>Equal Treatment in Employment and Occupation Act 2004</b> , as amended by <b>Act No. 86(I) of 2009</b> , protect sexual orientation against discrimination in employment.
9	 <b>Czech Republic</b>	1999	Section 316(4)(c) of the <b>Labour Code</b> (as amended in 1999) prevents employers from requiring employees' information about their sexual orientation.
		2004	Section 4 of the <b>Employment Act</b> (2004) prohibits sexual orientation discrimination in employment. Section 12 reinforces such protection by stating that employers cannot request information about their employees' sexual orientation.
		2009	Sections 2 and 3 of the <b>Anti-Discrimination Act</b> (2009) proscribe all types of sexual orientation discrimination.
10	 <b>Denmark</b>	1996	The <b>Act on Prohibition against Discrimination in respect of Employment</b> (1996) bans both direct and indirect employment discrimination on the basis of sexual orientation.
11	 <b>Estonia</b>	2004	Article 19(2)(12) of the <b>Chancellor of Justice Act</b> (relevant provision effective 2004) includes "sexual orientation" among the protected grounds for which claims on discrimination can be brought before the Chancellor of Justice.
		2006	Article 152(1) of the <b>Penal Code</b> (effective 2002), as amended by <b>Electronic Communications [...] Amendment Act</b> (2006), proscribes the unlawful restriction of any right on the basis of sexual orientation.
		2009	Articles 1(1) and 2(1) and (2) of the <b>Equal Treatment Act</b> (2009) prohibit employment discrimination based on sexual orientation.
12	 <b>Finland</b>	1995	Chapter 11, Section 9 of the <b>Criminal Code</b> , as amended by Act No. 578 (1995), protected "sexual preference" against discrimination in trade or profession. Chapter 47, Section 3 on labour offences, criminalises work discrimination based on sexual orientation.
		2014	Section 8 of the <b>Non-Discrimination Act</b> (2014) prohibits any discriminatory act on the basis of sexual orientation, and Section 7 sets out an employer's affirmative duties to promote equality.
13	 <b>France</b>	2001 <sup>36</sup>	Article 1 of <b>Law No. 2001-1066</b> (2001) amended Article 122-45 of the <b>Labour Code</b> to afford explicit protection from discrimination based on sexual orientation in employment. It also amended Article 225-2 of the <b>Penal Code</b> to criminalise acts of discrimination in employment based on sexual orientation, specifically when the act consisted in refusal to hire, admonishment or dismissal based on sexual orientation (at 225-2.3), making an offer of employment, internship request, or training (at 225-2.5), or refusal to accept a person for an internship (at 225-2.6) on such grounds.
		2008	In 2008, Article 122-45 was replaced by Article L1132-1 in the <b>Labour Code</b> , <sup>37</sup> which was located under the Chapter establishing the principle of non-discrimination, keeping the explicit protection based on sexual orientation in employment. This provision replaced article L122-45. ↘

<sup>36</sup> As explained by Daniel Borrillo, prior to the promulgation of Law No. 2001-1066 (2001) on the fight against discrimination, French law did not include any reference to the term "sexual orientation". However, since 1985, it can be argued that there has been protection against discrimination based on sexual orientation, first in criminal matters since 1985, under Law No. 85-772 (1985), and then in labour law under Law No. 86-76 (1986) and then by Law No. 92-1446 (1992). These laws did not speak to "sexual orientation": the term chosen was that of "mœurs" (French equivalent for "manners"). See: Daniel Borrillo. *Histoire juridique de l'orientation sexuelle* (2016), 14.

<sup>37</sup> See amendments introduced by **Law No. 2008-67** (2008) ratifying **Ordinance No. 2007-329** (2007).

		2013	In 2013, Article 1 of the Law Opening Marriage to Same-Sex Couples ( <a href="#">Law No. 2013-404</a> ) (2013) inserted Art. 1132-3-2 to the <a href="#">Labour Code</a> establishing that no employee may be sanctioned, dismissed or be the subject of a discriminatory measure referred to in Article L1132-1 (cited above) for “having refused, because of their sexual orientation, a geographical transfer to a State criminalizing homosexuality”.
14	 Georgia	2014	Articles 1 and 2(1) of the <a href="#">Act on the Elimination of All Forms of Discrimination</a> (2014) prohibits discrimination based on sexual orientation. These provisions ban sexual orientation discrimination in broad terms and therefore apply to employment.
15	 Germany	2006	Part 1, Sections 1 and 2(1) of the <a href="#">General Act on Equal Treatment</a> prohibit discrimination based on sexual orientation. Part 2 (Sections 6-18) describes a range of employment contexts in which this prohibition applies.
16	 Greece	2005	Articles 1, 4 and 8 of the Act Against Discrimination (Law No. 3304) (2005) prohibit discrimination based on sexual orientation in employment.
		2016	Additionally, Article 2(2)(b) of <a href="#">Law 4443/2016</a> also includes “sexual orientation” among other prohibited grounds.
17	 Hungary	2004	Articles 7(1), 8(m) and 9 of the Equal Treatment and Promotion of Equal Opportunities Act ( <a href="#">Act No. CXXV</a> ) (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 <a href="#">Act on Equal Treatment in the Workplace</a> prohibits discrimination in the labour market on the basis of sexual orientation defined as a protected category in Article 1. Articles 8 and 9 specify what constitutes discrimination in employment and wages, respectively.
19	 Ireland	1998	Section 6(2)(d) of the <a href="#">Employment Equality Act</a> (1998), prohibited employment discrimination on the basis of sexual orientation in Part II (6)(d).
		2015	The Employment Equality Act was amended by the <a href="#">Equality (Miscellaneous Provisions) Act</a> (2015), which, at Section 11, revised provisions under Section 37, stating that state-funded religious, medical or educational institutions may not discriminate on the basis of sexual orientation, except in limited cases where “the action is objectively justified by the institution’s aim of preventing the undermining of the religious ethos of the institution”.
20	 Italy	2003	<a href="#">Legislative Decree No. 216</a> (2003) instituted sexual orientation as a protected ground of discrimination within employment.
	 Kosovo	2004	Article 2(a) of the old Law on Protection from Discrimination ( <a href="#">Law No. 05/L -021</a> ) (2004) prohibited direct and indirect discrimination based on sexual orientation.
		2015	Article 2(1.1-1.3) of the current Law on Protection from Discrimination ( <a href="#">Law No. 05/L -021</a> ) (2015) defines employment in the public and private sectors as a sphere covered by such protection.
21	 Latvia	2006	Article 7(1) and 7(2) of the <a href="#">Labour Act</a> (2002), 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 sexual orientation.
		2013	Article 2 of the <a href="#">Act on Prohibition of Discrimination of Natural Persons Engaged in Economic Activity</a> (2013) specifies sexual orientation as a protected ground of discrimination for independent performers of economic activity.



22		<b>Liechtenstein</b>	2016	Article 283(4) of the <b>Penal Code</b> (1987), as amended in 2016, proscribes acts of discrimination based on sexual orientation in broad terms and, therefore, applies to employment.
23		<b>Lithuania</b>	2000	Article 169 of the <b>Criminal Code</b> (2000) penalises discrimination on the ground of sexual orientation. This provision bans sexual orientation discrimination in broad terms and therefore applies to employment.
			2002	Article 129(3)(4) of the <b>Labour Code</b> (2002) explicitly prohibits employment discrimination, specifically termination, based on sexual orientation in employment. Article 2(1)(4) specifies that "subjects of labour law" shall be equal irrespective of their sexual orientation.
			2005	The existing protection against discrimination based on sexual orientation in employment is reinforced by Articles 1(1), 2, 5 and 7 of the <b>Equal Treatment Act</b> (2005).
24		<b>Luxembourg</b>	1997	Articles 454 and 455(5-7) of the <b>Criminal Code (1879)</b> , 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.
			2006	Article 1 of the Equality Act ( <b>Act No. 28</b> ) (2006) bans discrimination based on sexual orientation. Article 2(1)(a-c) applies to employment.
			2007	Title V, Book II of the <b>Labour Code</b> (2007) also proscribes discrimination on the basis of sexual orientation.
25		<b>Malta</b>	2004	Articles 1(3), 2(1)(a), (b), and 3 of the Equal Treatment in Employment Regulations ( <b>Legal Notice 461 of 2004</b> ) (2004) prohibit discriminatory treatment based on sexual orientation in relation to employment, both within the public and private sectors.
26		<b>Moldova</b>	2013	Article 7 of the <b>Law on Equality (Act No. 121)</b> (2012) specifies that discrimination on the basis of sexual orientation is prohibited in the employment sphere.
27		<b>Montenegro</b>	2010	Articles 2 and 19 16 of the <b>Law on Prohibition of Discrimination</b> include sexual orientation as a basis for discrimination. Article 16 prohibits discrimination in employment, including for temporary employees.
28		<b>Netherlands</b>	1994	Section 1 of the <b>Equal Treatment Act</b> (1994) includes sexual orientation in the definition of direct and indirect discrimination. Sections 5(1), 6, and 6a prohibit discrimination in employment. Section 8(1) renders invalid a termination of employment if it was based on a prohibited ground.  Further, the <b>Criminal Code's</b> Article 143 (d) stipulates that anybody who participates in or aids in the discrimination of persons based on "their heterosexual or homosexual orientation" is liable to be punished with imprisonment of up to 3 months or a fine.
29		<b>North Macedonia</b>	2005	Article 6 of the <b>Law on Labour Relations</b> (2005) prohibited direct and indirect discrimination based on sexual orientation in employment.
			2019	In 2019 legislators adopted the <b>Law on Prevention of and Protection against Discrimination</b> which under Articles 3 and 5 outlines a prohibition on discrimination on the grounds of sexual orientation in terms of labour relations (among other areas)
			2020	This law was struck down by the Constitutional Court on procedural grounds in May 2020, and later reinstated by the Parliament in October of the same year. <sup>38</sup>

<sup>38</sup> Sinisa Jakov Marusic, "North Macedonia Reinstates Anti-Discrimination Law", *Balkan Insight*, 28 October 2020.


30		Norway	1998	Section 55(A) of the <b>Act relating to Worker Protection and Working Environment (1977)</b> , as amended in 1998, protected employees from discrimination based on "homosexual orientation or homosexual form of cohabitation" except in certain "positions related to religious denominations".
			2006	This law was repealed by the Working Environment Act ( <b>Act No. 62</b> ) (2005), which prohibits sexual orientation discrimination in employment under Sections 13-1(1-3) and 13-4(3) (on obtaining information about sexual orientation in hiring).
			2013	Article 5 of the <b>Sexual Orientation Anti-Discrimination Act (2013)</b> , which aims to promote equality irrespective of sexual orientation, bans discrimination in employment in Chapter 4. This law was repealed by the Equality and Anti-Discrimination Act (2018).
			2018	Section 6 of the <b>Equality and Anti-Discrimination Act (2018)</b> proscribes discrimination based on sexual orientation. Sections 25, 26 and 26a deal with employers' and employer and employee organizations' affirmative duties to promote equality. Chapter 5 contains provisions relating to employment relationships.
31		Poland	2004	Articles 11 <sup>3</sup> and 18 <sup>3a</sup> of the <b>Labour Code (1997)</b> , as amended in 2003, 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.
			2010	Under Article 8(1), the prohibition on discrimination based on sexual orientation is contained in the <b>Act on Equal Treatment (2010)</b> applies to employment and access to labour market instruments and services.
32		Portugal	2003	Article 23 of the Annex to the Labor Code (Law No. 99) (2003) included "sexual orientation" among the prohibited grounds of discrimination in employment. This law was repealed in 2009 by the new Labour Code.
			2009	Articles 24 (on the right to equal access to employment and work), and 16 (on the right to privacy, including "sexual life" at 16(2)) of the new <b>Labour Code (2009)</b> explicitly protect the status of sexual orientation from discrimination.
33		Romania	2000	Article 2(1) of the Ordinance on the Prevention and Punishment of All Forms of Discrimination ( <b>Law No. 137</b> ) (2000) bans discrimination based on sexual orientation. Articles 5-8 prohibit discrimination in employment.
			2005	Article 5 and 6 of the <b>Labour Code (2003)</b> also protects employees from discrimination based on sexual orientation.
34		San Marino	2019	The broad protection afforded by Article 4 of the <b>Declaration of Citizen Rights (1974)</b> —one of the documents that are part of the San Marino Constitution— states everyone is equal before the law, irrespective of "sexual orientation". This applies to all rights and duties, including "economic life", which contemplates employment.
35		Serbia	2006	Article 18 of the <b>Labour Law (effective 2006)</b> prohibits direct and indirect discrimination in employment based on sexual orientation. Article 20 defines prohibited discriminatory acts in employment.
			2010	Similarly, Articles 1, 2, 13, and 21 of the <b>Prohibition of Discrimination Act (2009)</b> ban any discriminatory act, direct or indirect, on the basis of sexual orientation. Articles 16 and 51 prohibit employment discrimination and provide for penalties in case of violation.
36		Slovakia	2008	Article I, Section 2(1) of the <b>Act on Equal Treatment in Certain Areas and Protection against Discrimination (2004)</b> , as amended by <b>Act No. 85 (2008)</b> , prohibits discrimination based on sexual orientation. Article I, Sections 6 prohibit discrimination within labour relations. Article III amends the Labour Code at Section 13 to further codify prohibition on employment discrimination based on sexual orientation.

37	 <b>Slovenia</b>	2003	Article 6(1) of the <a href="#">Employment Relationships Act</a> (2003) introduced protection against discrimination in employment based on sexual orientation.
		2016	Articles 1 and 2(1) of the <a href="#">Protection against Discrimination Act</a> (2016) further prohibits employment discrimination based on sexual orientation.
38	 <b>Spain</b>	1996	Article 314 of the <a href="#">Criminal Code</a> (1996) criminalises employment discrimination in the public and private spheres.
		2004	Article 37 of <a href="#">Law No. 62/2003</a> (2003) amended the <a href="#">Statute of Workers</a> (1995) to include “sexual orientation” among the prohibited grounds of discrimination under Articles 4 and 17 of the Statute.
39	 <b>Sweden</b>	1987	Chapter 16(9) of the <a href="#">Criminal Code</a> (effective 1965), as amended in 1987, criminalises discrimination based on sexual orientation in employment.
		1999	The <a href="#">Prohibition of Discrimination in Working Life because of Sexual Orientation Act</a> (1999) explicitly prohibited direct and indirect discrimination due to sexual orientation in employment. This law was later repealed by the <a href="#">Prohibition of Discrimination Act</a> (2003).
		2003	Sections 1 and 3 of the <a href="#">Prohibition of Discrimination Act</a> (2003) included sexual orientation (defined in Section 4 as “homosexual, bisexual or heterosexual”) as one of the categories protected against discrimination. This law was repealed by the <a href="#">Discrimination Act</a> (2008).
		2009	Chapter 1, Sections 1 and 4 of the <a href="#">Discrimination Act</a> (2008, effective 2009) include sexual orientation (defined in Chapter 1, Section 5 as “homosexual, bisexual or heterosexual”) as a protected ground of discrimination. Chapter 2, Sections 1-4 prohibit discrimination in employment.
40	 <b>Switzerland</b>	2000	<p>Since registered partnerships became a possibility, limited employment protections have been adopted in the <a href="#">Code of Obligations (1911)</a>. These are limited to areas of spousal benefits, employee compensation and other forms of remuneration which employers must extend to employees regardless of sexual orientation.</p> <p>It has been widely understood that sexual orientation has been read into numerous laws because of the protections afforded to that status in the country’s <a href="#">Constitution</a> (1999), where the words “way of life” at Article 8 have been interpreted to include diverse SOGI identities. However, in April 2019, the Federal Court held in a case involving a former unit commander in the Swiss Armed Forces that the <a href="#">Law on Equality</a> (1995) did not apply to discrimination on the basis of sexual orientation (see the section on broad protection against discrimination above).<sup>39</sup></p>
41	 <b>Ukraine</b>	2015	Article 2 <sup>1</sup> of the <a href="#">Labour Code</a> (1971), as amended by <a href="#">Law No. 785-VIII</a> (2015) includes sexual orientation as one of the prohibited grounds for employment discrimination.
42	 <b>United Kingdom</b>	2003	The <a href="#">Employment Equality (Sexual Orientation) Regulations (No. 1661)</a> (2003) and <a href="#">The Employment Equality (Sexual Orientation) Regulations (Northern Ireland) (No. 497)</a> (2003), were enacted to explicitly protect against sexual orientation discrimination in the sphere of employment.
		2007	The <a href="#">Equality Act (Sexual Orientation) Regulations (No. 1263)</a> (2007) and <a href="#">Equality Act (Sexual Orientation) Regulations (Northern Ireland) (No. 439)</a> (2006), laid under Part 3 of the <a href="#">Equality Act</a> (2006), protected against discrimination on the basis of sexual orientation.
		2010	These laws were revoked by the <a href="#">Equality Act</a> (2010), Part 5 of which deals with employment discrimination. Sections 4, 12, 13, 19, 25(9) and 26 further define sexual orientation as a category protected against direct and indirect discrimination.




<sup>39</sup> “Annual Review 2020”, [ILGA-Europe](#), Accessed 3 November 2020

## Non-independent jurisdictions in Europe (4)

## Denmark (1)

1	 <i>Faroe Islands</i>	2007	Section 1 of <a href="#">Ordinance No. 182</a> (2007) amended the Penal Code (1939) to add “sexual orientation” to the categories protected against discrimination in the autonomous country of the Faroe Islands.
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## United Kingdom (1)

2	 <i>Gibraltar</i>	2006	Part III, Sections 15-30 of the Equal Opportunities Act ( <a href="#">Act No. 2006-37</a> ) (2006) prohibits discrimination in employment. Part I, Section 3 and Part II, Section 10 protect sexual orientation against any act of discrimination.
3	 <i>Isle of Man</i>	2006	Section 127 of the <a href="#">Employment Act</a> (2006) prohibits the dismissal of an employee from the workplace on the grounds of sexual orientation is prohibited.
4	 <i>Jersey</i>	2015	Article 7 (2) of the <a href="#">Discrimination (Sex and Related Characteristics) (Jersey) Regulations</a> (2015) notes that reducing employment inequality in regard to protected characteristics is “is always to be regarded as a legitimate aim”, and lists sexual orientation as one of the law’s “relevant protected characteristics” in Article 7 (3).

## Is there more in Europe?

## Non-Independent jurisdictions


*Guernsey*

(United Kingdom)



Article 1(1) of the [Prevention of Discrimination \(Enabling Provisions\) \(Bailiwick of Guernsey\) Law](#) (2004) allows officials in this territory to pass Ordinances relating to discrimination. Article 1(2) includes “sexual orientation” within the definition of discrimination. Article 3 of the [Sex Discrimination \(Employment\) \(Guernsey\) Ordinance](#) (2005) prohibits employment discrimination on the grounds of “sex reassignment” (i.e.: for transgender persons), but no Ordinance explicitly prohibiting discrimination on the grounds of sexual orientation has yet been brought into effect.

## Oceania

8 out of 14 UN Member States (57%). Additionally: 5 non-UN Member jurisdictions.


1	 <b>Australia</b>	1996	Section 3(m) of the <a href="#">Workplace Relations Act</a> (1996) includes “sexual preference” among the grounds of discrimination that the law intends to prevent and eliminate. Furthermore, Section 659(2)(f) prohibits termination of employment based on the employee’s sexual orientation. Section 151(3)(b) establishes that “the Employment Advocate must have particular regard” to the need to prevent and eliminate discrimination based on sexual orientation.
		2009	Section 351 of the <a href="#">Fair Work Act</a> (2009) bans any act of discrimination against an employee on the basis of sexual orientation. All Australian states and territories have also enacted laws in this regard.
	<i>Australian Capital Territory</i>	1992	Part 3, Division 3.1 of the <a href="#">Discrimination Act</a> (1991) prohibits discrimination in work on the basis of sexuality, which is a protected attribute under Section 7(1)(w) of the Act.
	<i>New South Wales</i>	1983	Part 4C, Division 2 of the <a href="#">Anti-Discrimination Act No 48</a> (1977) prohibits discrimination in work on the grounds of homosexuality.

	<i>Northern Territory</i>	1993	Part 4, Division 3 of the <a href="#">Anti-Discrimination Act</a> (1992) prohibits discrimination in work on the basis of an individual's sexuality, which is a protected characteristic under Section 19(1)(c) of the Act.
	<i>Queensland</i>	2002	Chapter 2, Part 4, Division 2 of the <a href="#">Anti-Discrimination Act</a> (1991) prohibits discrimination in work-related areas on the basis of an individual's sexuality, which is a protected characteristic under Chapter 2, Part 2, Section 7(n) of the Act.
	<i>South Australia</i>	1984	Part 3, Division 2 of the <a href="#">Equal Opportunity Act</a> (1984) prohibits discrimination against workers on the ground of sexual orientation.
	<i>Tasmania</i>	1999	Section 22(1)(a) of the <a href="#">Anti-Discrimination Act</a> (1998) prohibits employment discrimination on the basis of sexual orientation, defined at Section 3 and listed as one of the protected characteristics under Section 16(c) of the Act. Section 17 of the Act also prohibits conduct that offends, humiliates, intimidates, insults or ridicules on the grounds of sexual orientation.
	<i>Victoria</i>	2010	Part 4, Divisions 1 and 2 of the <a href="#">Equal Opportunity Act</a> (2010) prohibit discrimination in employment and employment-related areas on the basis of an individual's sexual orientation, defined at Section 4(1) and listed as a protected characteristic under Section 6(p) of the Act.
	<i>Western Australia</i>	2002	Part IIB, Division 2 of the <a href="#">Equal Opportunity Act</a> (1984) prohibits discrimination in work on the ground of sexual orientation.
2	 <b>Fiji</b>	2007	Section 6(2) of the <a href="#">Employment Relations Promulgation</a> (2007) proscribes discrimination based on sexual orientation in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment relationship. Part 9, Section 75 also includes sexual orientation as a prohibited ground for discrimination in employment and further enumerates what constitutes employment discrimination in Sections 77-81.
		2011	Article 2 of the <a href="#">Public Service (Amendment) Decree</a> (2011) amended the <a href="#">Public Service Act</a> (1999) to insert Articles 10(B)(2) and 10(C) to prohibit discrimination based on sexual orientation within public service.
3	 <b>Kiribati</b>	2015	Article 107(2)(b) of the <a href="#">Employment and Industrial Relations Code</a> (2015) prohibits discrimination based on sexual orientation in employment. Article 101(1) makes it unlawful to terminate employment based on sexual orientation. Article 110(1) prohibits discriminatory employment advertising.
4	 <b>Marshall Islands</b>	2019	Section 106(1) of the <a href="#">Gender Equality Act</a> (2019) prohibits gender discrimination in the employment sphere. Section 106(2) states that this also includes "multiple discrimination" and "intersectional discrimination", both of which are defined at Section 102 to include sexual orientation as a protected ground.
5	 <b>Micronesia</b> (Federated States of)	2018	On November 12, 2018, the Micronesian Congress passed <a href="#">Bill 20-258</a> , which became <a href="#">Public Law No. 20-153</a> (2018) and amended Title 1, Section 107 of the <a href="#">Code of the Federated States of Micronesia</a> , prohibiting laws from discriminating against a person's sexual orientation. This protection applies to employment.
6	 <b>New Zealand</b>	1993	Section 21(1)(m) of the <a href="#">Human Rights Act</a> (1993) included sexual orientation (defined as "heterosexual, homosexual, lesbian or bisexual") among the prohibited grounds of discrimination.
		2000	Article 105(1)(m) of the <a href="#">Employment Relations Act</a> (2000) bans employment discrimination based on sexual orientation.


7	 <b>Samoa</b>	2013	Section 20(2) of the <b>Labour and Employment Relations Act (2013)</b> proscribes discrimination against an employee or an applicant for employment based on sexual orientation.
8	 <b>Tuvalu</b>	2017	Section 50 of the <b>Labour and Employment Relations Act (2017)</b> prohibits discrimination at the workplace, including on the basis of sexual orientation as a protected attribute (under Section 50(2)(b)).

### Non-independent jurisdictions in Oceania (5)


#### France (3)

1	 <b>French Polynesia</b>	2013	The territorial Act No. 2013-6 expands the list of prohibited grounds of discrimination in the private sector to include sexual orientation, under Article Lp. 1121-1 of the <b>Labour Code of French Polynesia (2011)</b> . The territorial Act No. 2013-17 also expands the list of prohibited grounds of discrimination in respect of public service to include sexual orientation, under Section 5 of the General Public Service Regulations. <sup>40</sup>
2	 <b>New Caledonia</b>	2001	Article 225-2 of the French <b>Penal Code (2001)</b> penalises those who discriminate on the basis of sexual orientation if it consists of the refusal to hire, to sanction, or to dismiss a person. Article 711-4 of the French Penal Code states that this is applicable to New Caledonia.  However, it is worth noting that section Lp. 112-1 of New Caledonia's own <b>Labour Code (2008)</b> does not explicitly include sexual orientation as a prohibited ground for discrimination. In 2017, the International Labour Organization called for New Caledonia to consider explicitly extending the list of prohibited grounds of discrimination in employment to align it with the French <b>Labour Code</b> . <sup>41</sup>
3	 <b>Wallis and Futuna</b>	2001	Article 225-2 of the French <b>Penal Code (2001)</b> penalises those who discriminate on the basis of sexual orientation if it consists of the refusal to hire, to sanction, or to dismiss a person. Article 711-4 of the French Penal Code states that this is applicable to Wallis and Futuna.  However, it is worth noting that Wallis and Futuna's <b>Labour Code</b> does not contain an express provision prohibiting discrimination based on sexual orientation, unlike the French <b>Labour Code</b> .

#### New Zealand (1)

4	 <b>Cook Islands</b>	2008	Sections 11, 12, and 13 of the <b>Disability Act (2008)</b> prohibit discrimination in employment on the basis of a disabled person's sexual orientation, which is a protected characteristic under Section 10(g) of the Act.
		2013	Articles 55(e) and 53 of the <b>Employment Relations Act (2012)</b> prohibit employment discrimination based on "sexual preference".

#### United Kingdom (1)


5	 <b>Pitcairn Islands</b>	2010	<b>The Pitcairn Constitution Order (2010)</b> bans discrimination based on sexual orientation in broad terms under Section 23(3) and therefore applies to employment. <sup>42</sup>
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<sup>40</sup> International Labour Organization, "Observation (CEACR) – adopted 2018, published 108<sup>th</sup> ILC session (2019)", 2019.

<sup>41</sup> International Labour Organization, "Direct Request (CEACR) – adopted 2016, published 106<sup>th</sup> ILC session (2017)", 2017.

<sup>42</sup> Based on the wording of Section 23 it could potentially be argued that the prohibition applies to employment in the public sector only.

## United States of America (1)

6	 <i>Guam</i>	2015	Section 2 of the <a href="#">Guam Employment Nondiscrimination Act (GENDA)</a> (2015) prohibits discrimination in employment on the basis of an individual's sexual orientation. Section 3 further defines "sexual orientation".
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*Is there more in Oceania?*


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<b>Vanuatu</b>	<p>There is no broad legislation prohibiting employment discrimination against individuals on the basis of their sexual orientation.</p> <p>Section 18(2)(f) of the <a href="#">Teaching Service Act No. 38</a> (2013) states that the Teaching Service Commission must "ensure that the recruitment, promotion, professional development, transfer and all other aspects of the management of its employees is carried out without discrimination on the basis of sexual preference".</p>
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**Non-Independent jurisdictions**


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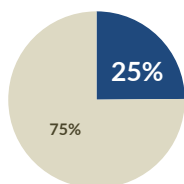
<p><i>Northern Mariana Islands</i></p> <p>(United States of America)</p>	<p>There is no broad legislation prohibiting employment discrimination against individuals on the basis of their sexual orientation.</p> <p>Section 10-10-310(a) of the <a href="#">Chapter 10-10 Excepted Service Personnel Regulations</a> (2013) prohibits discrimination against government employees based on sexual orientation. Additionally, Section 90-40-501(a) of the <a href="#">Chapter 90-40 Marianas Visitors Authority Personnel Regulations</a> (2013) prohibits employment discrimination within the entity based on an individual's sexual orientation.</p>
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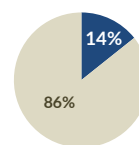
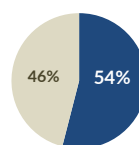
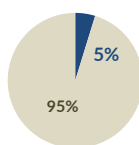
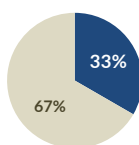
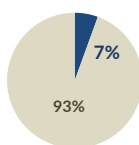
# Criminal liability for offences committed on the basis of sexual orientation

## Highlights

**48 UN Member States**  
25% UN Member States



AFRICA	LAC	NORTH AMERICA	ASIA	EUROPE	OCEANIA
4 /54	11 /33	2 /2	2 /42	27 /50	2 /14



## Introduction

Several states have introduced different legal vehicles to address the violence motivated by a victim’s sexual orientation, often referred to as “hate crime legislation”.

One strategy that many States have opted for is the enactment of a stand-alone criminal offence that criminalises the infliction of harm or violence on a victim motivated by the victim’s real or imputed sexual orientation.

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

The UN Human Rights Committee has recommended that states specifically criminalise acts of violence that are based on sexual orientation or gender identity, for example, by enacting hate crimes legislation concerning these characteristics.<sup>1</sup>

### 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

<sup>1</sup> 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

4 out of 54 UN Member States (7%). Additionally, 2 non-UN Member jurisdictions.

1	 <b>Angola</b>	2021 <sup>2</sup>	<p>Article 71(1)(c) of the Penal Code (<a href="#">Law No. 38/20</a>) (effective 2021) includes “discrimination based on sexual orientation” among the aggravating circumstances for all crimes established in the Code.</p> <p>Furthermore, sexual orientation is also explicitly included as an aggravating circumstance in crimes of threat (Article 170-3) and those “against the respect for the dead” (Article 223). Moreover, the Code establishes harsher penalties for the crimes of injury (Article 213-4) and defamation (Article 214-2) when committed because of the victim’s sexual orientation.</p> <p>Finally, Article 382(g) includes persecution because of sexual orientation among the list of crimes against humanity, which are punished with imprisonment from three to twenty years.</p>
2	 <b>Cabo Verde</b>	2015	Article 123 of the <a href="#">Penal Code</a> (effective 2004) as amended by <a href="#">Legislative Decree No. 4/2015</a> (2015) aggravates the penalty for homicides committed on the basis of the victim’s sexual orientation.
3	 <b>Chad</b>	2017	Article 350(i) of the <a href="#">Penal Code</a> (2017) establishes the aggravated punishment of imprisonment for ten to twenty years for rape committed because of the victim's sexual orientation.
4	 <b>Sao Tome and Principe</b>	2012	Article 130(2)(d) of the <a href="#">Penal Code</a> (2012) aggravates the crime of homicide when motivated by hatred towards the sexual orientation of the victim.

### Non-independent jurisdictions in Africa (2)

#### France (2)<sup>3</sup>

1	 <b>Mayotte<sup>4</sup></b>	2011	In France, Article 47 of <a href="#">Law No. 2003-239</a> (2003) inserted Article 132-77 into the French <a href="#">Penal Code</a> (1994) to aggravate penalties for crimes committed because of the victim’s sexual orientation and amended several other articles in the Code accordingly (see below).
2	 <b>Reunion</b>	2003	

### Is there more in Africa?

#### South Africa

At the time of publication, the National Assembly of South Africa is considering the Prevention and Combating of Hate Crimes and Hate Speech Bill ([Bill No. B9-2018](#)).

Under Article 3(1)(q) “sexual orientation” is listed as one of the possible motivations for a hate crime, defined in the law as an offence motivated by prejudice or intolerance.

<sup>2</sup> In January 2019 Angola approved a new Penal Code. In 2020, new changes in the text of the Code were discussed by the Parliament and the official version of the new Penal Code ([Law No. 38/20](#)) was published on 11 November 2020. According to its Article 9, the Code will enter into force ninety (90) days after the date of its publication.

<sup>3</sup> Under Article 72-3 of the [French Constitution](#) (1958), Mayotte and Reunion are listed as French overseas territories. Both of them are officially overseas departments and regions and, as such, subject to Article 73 of the Constitution, according to which French statutes and regulations are automatically applicable.




<sup>4</sup> Mayotte became a department in 2011. Article 3 of Ordinance No. 2011-337 (2011) amended the French Penal Code to determine the conditions in which Books 1 through 5 would be applicable to Mayotte. Under [Law No. 2003-239](#) (2003) Article 47 had not been included among the applicable articles in the island.

## Latin America and the Caribbean

11 out of 33 UN Member States (33%). Additionally: 8 non-UN Member jurisdictions.






1	 <b>Argentina</b>	2012	Article 80(4) of the <b>Penal Code</b> (as amended by <b>Law No. 26.791</b> in 2012) establishes aggravated penalties only for homicides motivated by hate towards a person's sexual orientation. In the same manner, Article 92 aggravates the crime of causing injury under the same circumstances.
2	 <b>Bolivia</b>	2010	Article 40 <i>bis</i> of the <b>Penal Code</b> aggravates the penalties by up to half of the original penalty (a 50% increase) for all crimes motivated by any of the discriminatory grounds listed in Article 281 <i>sexies</i> , including "sexual orientation".
3	 <b>Brazil</b>	2019	In 2019, the Federal Supreme Court issued a decision in the joint judgment of <b>ADO No. 26</b> and <b>MI No. 4733</b> to include homophobic behaviour motivated by real or imputed sexual orientation under the provisions criminalising acts motivated by racial prejudice under <b>Law No. 7.716</b> .  This decision is supposed to fill the legal void until the National Congress adopts a formal law on the matter. <sup>5</sup>  In November 2020, the Brazilian Senate approved <b>Bill No. 787</b> (2015), which includes sexual orientation as an aggravating circumstance in the <b>Penal Code</b> (1940). The bill will now be discussed by the Chamber of Deputies.
4	 <b>Chile</b>	2012  2016	Article 12(21) of the <b>Penal Code</b> (1874), as amended by Article 17 of <b>Law No. 20609</b> (2012) includes "sexual orientation" among the aggravating circumstances that trigger harsher penalties.  Furthermore, Article 150A of the <b>Penal Code</b> criminalises any act of torture based on the sexual orientation of the victim.
5	 <b>Colombia</b>	2000  2015	Article 58(3) of the <b>Penal Code</b> (2000), states that the motivation of a crime being based on the victim's sexual orientation constitutes an aggravating circumstance.  Additionally, <b>Law No. 1,761</b> (2015) inserted Article 104B on the aggravation of penalties for the crime of femicide into the Penal Code. Subsection 104B(d) determines that penalties are aggravated when such crime is committed motivated on the victim's sexual orientation.
6	 <b>Ecuador</b>	2005  2014	Article 30(6) of the old <b>Penal Code</b> (1971) as amended by Law No. 2 (2005) declared committing the offence because of sexual orientation to be an aggravating circumstance.  Article 177 of the new <b>Comprehensive Organic Criminal Code</b> (2014) criminalises acts of hate, whether physical or psychological, based on sexual orientation. This provision also establishes aggravated penalties for bodily harm and death caused by acts of hatred based on sexual orientation.
7	 <b>El Salvador</b>	2015	Article 129(11) of the <b>Penal Code</b> (as amended in 2015 by <b>Decree No. 106/2015</b> ) aggravates the crime of homicide when it is motivated by the victim's sexual orientation.
8	 <b>Honduras</b>	2013  2020	Article 27(27) of the old <b>Penal Code</b> (1983) as amended by <b>Decree No. 23-2013</b> (2013), establishes that hatred or contempt to the victim's sexual orientation is an aggravating circumstance.  Article 32 of the new <b>Penal Code</b> (effective 2020) provides that committing of the crime for reasons related to a victim's sexual orientation is an aggravating circumstance.

<sup>5</sup> "STF enquadra homofobia e transfobia como crimes de racismo ao reconhecer omissão legislativa", *Supremo Tribunal Federal*, 13 June 2019.


9	 <b>Nicaragua</b>	2008	Article 36(5) of the <b>Penal Code</b> (2007) establishes aggravated penalties for crimes motivated by the victim's sexual orientation.
10	 <b>Peru</b>	2017	Article 46(2)(d) of the <b>Penal Code</b> , as amended by <b>Legislative Order No. 1323</b> (2017), aggravates penalties for crimes motivated by the victim's sexual orientation.
11	 <b>Uruguay</b>	2003	Article 149 <i>ter</i> of the <b>Penal Code</b> , as amended by <b>Law No. 17677</b> (2003) criminalises acts of moral or physical violence of hatred or contempt against a person's sexual orientation with up to 2 years in prison.

## Non-independent jurisdictions in Latin America and the Caribbean (9)



### France (5)

1	 <b>French Guiana</b>	2003	In France, Article 47 of <b>Law No. 2003-239</b> (2003) inserted Article 132-77 into the <b>Penal Code</b> (1994) to aggravate penalties for crimes committed because of the victim's sexual orientation.  Additionally, this law amended Articles 221-4, 222-1, 222-8, 222-10, 222-12, 222-13, 222-18-1, and others to increase punishment for murder, torture, rape, theft, and other crimes committed because of the victim's sexual orientation.  These laws are applicable in French Guiana, Guadeloupe, Martinique, Saint Barthelemy and Saint Martin. <sup>6</sup>
2	 <b>Guadeloupe</b>		
3	 <b>Martinique</b>		
4	 <b>Saint Barthelemy</b>		
5	 <b>Saint Martin</b>		

### United Kingdom (1)

6	 <b>Falkland Islands (Malvinas)</b> <sup>7</sup>	2014	The <b>Criminal Procedure and Evidence Ordinance</b> (2014) lists among aggravating circumstances for a punishment the accused's motivation or demonstrated hostility towards the victim's actual or presumed sexual orientation.
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### United States of America (2)

7	 <b>Puerto Rico</b>	2002	As early as in 2002, <b>Law No. 46</b> (2002) amended the <b>Rules of Criminal Procedure</b> (1963) to complement Rule 171(A)(r) by including prejudice against the victim's sexual orientation among the aggravating circumstances.
		2012	Article 66(q) of the <b>Penal Code</b> (2012) provides that the commission of a crime motivated by prejudice against the victim's sexual orientation is an aggravating circumstance.
8	 <b>United States Virgin Islands</b>	2014	The <b>Hate-Motivated Crimes Act</b> (2014) establishes enhanced penalties for crimes committed on the basis of the victim's sexual orientation.

<sup>6</sup> Under Article 72-3 of the **French Constitution** (1958), these five jurisdictions are listed as French overseas territories. French Guiana, Martinique and Guadeloupe, as overseas departments and regions, are subject to Article 73 of the Constitution, according to which French statutes and regulations are automatically applicable in the territory. Saint Barthelemy and Saint Martin are overseas collectivities and, as such, are subject to Article 74, according to which their autonomy is established by an organic law that establishes the conditions under which the laws and regulations are applicable in the territory. Moreover, under Article LO6213-1 (for Saint Barthelemy) and Article LO6313-1 (for Saint Martin) of **General Code of Territorial Collectivities**, legislative and regulatory provisions are automatically applicable in these territories provided that they do not intervene in the matters that are of competence of the organic law or of the collectivity. In 2003, Saint-Martin and Saint Barthelemy were part of the administrative jurisdiction of Guadeloupe.

<sup>7</sup> Note: ILGA World takes note of the sovereignty dispute between Argentina and the United Kingdom over the Falkland Islands/Islands Malvinas (**UNGA Resolution 2065-XX**). Under Argentine law, certain crimes have been aggravated based on sexual orientation since 2012.

### Is there more in Latin America and the Caribbean?

<b>Antigua and Barbuda</b>	Pursuant to rule 7(1) of the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules 2019, adopted by Antigua and Barbuda under <a href="#">Statutory Instrument No. 49</a> (2019), <a href="#">Practice Direction 8E No. 1</a> (effective 1 September 2020) includes under Section 5(j) the crime of murder motivated by the victim's sexual orientation among the exceptionally serious crimes that could lead to the imposition of life imprisonment for the perpetrator.
<b>Costa Rica</b>	Article 123 <i>bis</i> of the <a href="#">Penal Code</a> (as amended by Law No. 8189) criminalises torture based on "sexual option".
<b>Dominica</b>	Pursuant to rule 7(1) of the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules (2019), adopted by the Commonwealth of Dominica under <a href="#">Statutory Instrument No. 3</a> (2019), <a href="#">Practice Direction 8E No. 1</a> (effective 1 September 2020) includes under Section 5(j) the crime of murder motivated by the victim's sexual orientation among the exceptionally serious crimes that could lead to the imposition of life imprisonment for the perpetrator.
<b>Grenada</b>	<p>The <a href="#">Code for Prosecutors</a> (2013)<sup>8</sup> provides that if an offence is motivated by any form of discrimination against the victim's sexual orientation, or if the suspect demonstrated hostility towards the victim based on their sexual orientation, the prosecution of the crime is more likely to be "in the public interest".</p> <p>Furthermore, pursuant to rule 7(1) of the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules (2019), adopted by Grenada under Statutory Rules and Orders No. 18 (2019), <a href="#">Practice Direction 8E No. 1</a> (effective 1 September 2020) includes under its Section 5(j) the crime of murder motivated by the victim's sexual orientation among the exceptionally serious crimes that could lead to the imposition of life imprisonment for the perpetrator.</p>
<b>Haiti</b>	On 24 June 2020, the presidency issued a decree to promulgate a new <a href="#">Penal Code</a> , which will enter into force in 24 months. <sup>9</sup> Several articles of the new Penal Code provide for increased punishment for specific crimes if they were motivated by the victim's sexual orientation. <sup>10</sup>
<b>Mexico</b>	<p>There are no provisions aggravating penalties for crimes motivated by the victim's sexual orientation at the federal level.</p> <p>Article 5 of the <a href="#">General Law on Victims</a> provides for a differential and specialised approach to reparations afforded to victims of crimes based on sexual orientation.</p> <p>Several jurisdictions have included such provisions in their local Penal Codes.</p>
<i>Baja California Sur</i>	Since 2017, Articles 131, 138 and 192 of the <a href="#">Penal Code</a> (2014) introduce motivation by victim's "sexual preference" as an aggravating circumstance for homicide, injuries, and forced disappearance, respectively.
<i>Coahuila</i>	Since 2005, Article 103(A)(5) of the <a href="#">Penal Code</a> (1999) requires courts to assess whether the crimes are motivated by hatred against the victim's "sexual preference".
<i>Colima</i>	Since 2015, Article 123 <i>bis</i> of the (2014) establishes enhanced penalties for homicides motivated by the victim's sexual orientation.
<i>Mexico City</i>	Since 2009, Article 138(8) of the <a href="#">Penal Code</a> (2002) aggravates the crimes of homicide and injuries when they are motivated by hatred against the victim's sexual orientation.
<i>Michoacan</i>	Article 121 of the <a href="#">Penal Code</a> (2014) aggravates the crime of homicide when motivated by the victim's "sexual preference".
<i>Puebla</i>	Since 2012, Article 330 <i>bis</i> of the <a href="#">Penal Code</a> (1986), in reference to Article 323, aggravates homicides and injuries when motivated by hatred towards the victim's "sexual preferences".
<i>Queretaro</i>	Since 2015, Article 131(4) of the <a href="#">Penal Code</a> (1987) aggravates the crimes of homicide and injuries when they are committed because of hatred towards the victim's "sexual preferences".

<sup>8</sup> As explained by the Director of Public Prosecutions of Grenada, the purpose of this Code is to provide a code of conduct for prosecutors, to promote consistent decision making at all stages of the prosecution process, and to make the community aware of the way in which the system of public prosecutions operates. For more information, see: [Code for Prosecutors: Grenada](#) (2013).



<sup>9</sup> "The new Haitian penal code in force in 24 months" [[Le nouveau code pénal haïtien en vigueur dans 24 mois](#)], *Le Nouvelliste*, 2 July 2020.

<sup>10</sup> "Homosexuality is not recognized, sexual orientation is not defined, but related crimes more strongly punished" [[L'homosexualité n'est pas reconnue, l'orientation sexuelle n'est pas définie, mais les crimes qui y sont liés plus fortement punis](#)], *Le Nouvelliste*, 3 August 2020.

<b>Saint Kitts and Nevis</b>	Pursuant to rule 7(1) of the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules (2019), adopted by Saint Kitts and Nevis under <a href="#">Statutory Rules and Orders No. 26 (2019)</a> , <a href="#">Practice Direction 8E No. 1</a> (effective 1 September 2020) includes under Section 5(j) the crime of murder motivated by the victim's sexual orientation among the exceptionally serious crimes that could lead to the imposition of life imprisonment for the perpetrator.
<b>Saint Lucia</b>	Pursuant to rule 7(1) of the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules (2019), adopted by Saint Lucia under <a href="#">Statutory Instrument No. 129 (2019)</a> , <a href="#">Practice Direction 8E No. 1</a> (effective 1 September 2020) includes under Section 5(j) the crime of murder motivated by the victim's sexual orientation among the exceptionally serious crimes that could lead to the imposition of life imprisonment for the perpetrator.
<b>Saint Vincent and the Grenadines</b>	Pursuant to rule 7(1) of the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules (2019), <a href="#">Practice Direction 8E No. 1</a> (effective 1 September 2020) includes under Section 5(j) the crime of murder motivated by the victim's sexual orientation among the exceptionally serious crimes that could lead to the imposition of life imprisonment for the perpetrator. <sup>11</sup>
<b>Non-independent territories</b>	
<b>Anguilla</b> <i>(United Kingdom)</i>	Pursuant to rule 6(1) of the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules (2019) adopted by Anguilla under <a href="#">Statutory Instrument No. 2 (2019)</a> , <a href="#">Practice Direction 8E No. 1</a> (effective 1 September 2020) (specific to Anguilla) includes under Section 5(j) the crime of murder motivated by the victim's sexual orientation among the exceptionally serious crimes that could lead to the imposition of life imprisonment for the perpetrator.
<b>British Virgin Islands</b> <i>(United Kingdom)</i>	Pursuant to rule 7(1) of the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules (2019), adopted by the British Virgin Islands under <a href="#">Statutory Instrument No. 53 (2019)</a> , <a href="#">Practice Direction 8E No. 1</a> (effective 1 September 2020) includes under Section 5(j) the crime of murder motivated by the victim's sexual orientation among the exceptionally serious crimes that could lead to the imposition of life imprisonment for the perpetrator.
<b>Montserrat</b> <i>(United Kingdom)</i>	Pursuant to rule 7(1) of the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules (2019), adopted by Montserrat by means of <a href="#">S.R.O. No. 31 (2019)</a> , <a href="#">Practice Direction 8E No. 1</a> (effective 1 September 2020) includes under Section 5(j) the crime of murder motivated by the victim's sexual orientation among the exceptionally serious crimes that could lead to the imposition of life imprisonment for the perpetrator.

## North America

2 out of 2 UN Member States (100%). Additionally, 2 non-UN Member jurisdiction.


1	 <b>Canada</b>	1996	Article 718.2(a)(i) of the <a href="#">Canadian Criminal Code</a> (1985), as amended in 1996, establishes that a court should consider increasing the sentence if there is evidence that the offence was motivated by bias, prejudice, or hate based on sexual orientation.
2	 <b>United States of America</b>	2009	Title 18, Section 249(a)(2) of the <a href="#">United States Code</a> provides for enhanced penalties for crimes motivated by perceived or actual sexual orientation. The law that incorporated this provision is known as the <a href="#">Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act</a> (2009).  In addition, numerous states of the United States have enacted hate crime laws that include sexual orientation. <sup>12</sup>

<sup>11</sup> ILGA World was unable to obtain a copy of the local statute officially adopting the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules (2019) in Saint Vincent and the Grenadines. It is nevertheless included in this section as the country is subject to the jurisdiction of the Eastern Caribbean Supreme Court and explicitly mentioned in the press release announcing the coming into effect of this specific Practice Direction. See: "[Eastern Caribbean Supreme Court Issues Practice Direction on Sentencing for the Offence of Murder](#)", *Eastern Caribbean Supreme Court (Website)*, 2020.


<sup>12</sup> Movement Advancement Project, [Hate Crime Laws](#), accessed on 7 July 2020.

## Non-independent jurisdictions in North America (1)

### France (1)



1	 <i>Saint Pierre and Miquelon</i> <sup>13</sup>	2003	<p>In France, Article 47 of <a href="#">Law No. 2003-239</a> (2003) inserted Article 132-77 into the <a href="#">Penal Code</a> (1994) (applicable to Saint Pierre and Miquelon) to aggravate penalties for crimes committed because of the victim's sexual orientation.</p> <p>Additionally, this law amended Articles 221-4, 222-1, 222-8, 222-10, 222-12, 222-13, 222-18-1, and others to increase punishment for murder, torture, rape, theft, and other crimes committed because of the victim's sexual orientation.</p>
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### United Kingdom (1)

2	 <i>Bermuda</i>	2001	The <a href="#">Criminal Code Amendment Act</a> (2001) amended Article 55(2)(f)(i) of the <a href="#">Criminal Code Act</a> (1907) that requires the courts to consider the motivation of the perpetrator by bias, prejudice or hate based on sexual orientation as an aggravating circumstance.
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## Asia

2 out of 42 UN Member States (5%).




1	 <i>East Timor</i>	2009	Article 52(2)(e) of the <a href="#">Penal Code</a> (2009) includes the motivation of discriminatory sentiment on the grounds of sexual orientation as a general aggravating circumstance.
2	 <i>Mongolia</i>	2017	Section 10(1)(2)(14) of the <a href="#">Penal Code</a> (2015) aggravates penalties for homicides motivated by hate towards the victim's sexual orientation.

## Europe

27 out of 50 UN Member States (54%). Additionally, 3 non-UN Member jurisdictions.

1	 <i>Albania</i>	2013	Article 50(j) of the <a href="#">Criminal Code</a> (1995), as amended in 2013, establishes that motivation related to sexual orientation is an aggravating circumstance for all crimes.
2	 <i>Andorra</i>	2005	Article 30 of the <a href="#">Criminal Code</a> (2005) considers sexual orientation an aggravating circumstance for crimes motivated by hate or bias.
3	 <i>Austria</i>	2016	Article 33(1)(5), in reference to Article 283(1)(1) of the <a href="#">Criminal Code</a> (1974), aggravates crimes motivated by the victim's sexual orientation.

<sup>13</sup> Under Article 72-3 of the [French Constitution](#) (1958), Saint Pierre et Miquelon is listed as a French overseas territory. As an overseas collectivity, Saint Pierre et Miquelon is subject to Article 74, according to which its autonomy is established by an organic law that establishes the conditions under which the laws and regulations are applicable in the territory. Moreover, under Article LO6413-1 of the [General Code of Territorial Collectivities](#), legislative and regulatory provisions are automatically applicable provided that they do not intervene in the matters that are of competence of the organic law or of the collectivity.

4	 <b>Belgium</b>	2007	Various offences in the <b>Criminal Code</b> (1999) were amended by <b>Law No. 2007-05-10/35</b> to establish enhanced punishments where the motive of the crime is hatred against or contempt for, or hostility to a person based on their sexual orientation. The list of offences includes indecent assault and rape (Article 377 <i>bis</i> ), manslaughter and intentional injury (Article 405 <i>quater</i> ).
5	 <b>Bosnia and Herzegovina</b>	2010-2017	All three constituent units of Bosnia and Herzegovina have enacted hate crime legislation that is inclusive of sexual orientation:
	<i>Brcko District</i>	2010	In 2010, Article 2 of the <b>Criminal Code</b> (2003) was amended to include actual or assumed sexual orientation (among other grounds) in the definition of “hate” as a motivation to commit a criminal offence. The motive of hate is used throughout the Code to aggravate penalties for certain crimes.
	<i>Federation of Bosnia and Herzegovina</i>	2016	Amended in 2016, Article 2 of the <b>Criminal Code</b> (2003) stipulates definition of hate crime as any crime committed because of the sexual orientation of another person.
	<i>Republika Srpska</i>	2010	Since 2010, Article 147(25) of the old <b>Criminal Code</b> (2003) defined a hate crime as an act committed in whole or in part because of a person’s sexual orientation.
		2017	The new <b>Criminal Code</b> (2017) also contains such a provision under Article 123(21).
6	 <b>Croatia</b>	2013	Article 87(20) of the new <b>Penal Code</b> (adopted in 2011, in force since 2013) establishes that penalties shall be aggravated when crimes are motivated by the victim’s sexual orientation.
7	 <b>Cyprus</b>	2017	The Criminal Code (Amendment) Act ( <b>Law No. 31(I)/2017</b> ) amended the <b>Criminal Code</b> (1962) to insert Article 35A, which provides for the aggravation of penalties when crimes are committed because of the victim’s sexual orientation.  Note: Article 152(2) of the Criminal Code of the disputed Turkish Republic of Northern Cyprus criminalises sexual assault motivated by the perpetrator’s hatred or prejudice towards the victim’s sexual orientation or sexual identity. <sup>14</sup>
8	 <b>Denmark</b>	2005	Section 81(6) of the <b>Criminal Code</b> (2005) recognises criminal motivation based on the victim’s sexual orientation as an aggravating circumstance.
9	 <b>Finland</b>	2011	Chapter 6, Section 5(1)(4) of the <b>Criminal Code</b> (1889), as amended in 2011, includes sexual orientation as an aggravating circumstance in sentencing.
10	 <b>France</b>	2003	Article 47 of <b>Law No. 2003-239</b> (2003) inserted Article 132-77 into the <b>Criminal Code</b> (1994) to aggravate penalties for crimes committed because of the victim’s sexual orientation.  Additionally, this law amended Articles 221-4, 222-1, 222-8, 222-10, 222-12, 222-13, 222-18-1, and others to increase punishment for murder, torture, rape, theft, and other crimes committed because of the victim’s sexual orientation.
11	 <b>Georgia</b>	2012	Article 53(3) of the <b>Penal Code</b> (2000), as amended in 2012, provides that the commission of a crime on the basis of sexual orientation constitutes an aggravating circumstance for all crimes under the Code.

<sup>14</sup> For more information, see: Human Dignity Trust, *Reform of Discriminatory Sexual Offences Laws in the Commonwealth and Other Jurisdictions: Case Study of Northern Cyprus* (2020), 86.


12	 <b>Greece</b>	2008 2019	<p>Article 23 of <a href="#">Law No. 3719/2008</a> amended Article 79 of the old Penal Code to include the motivation of the victim's sexual orientation as an aggravating circumstance.</p> <p>Under the new <a href="#">Penal Code (2019)</a> this aggravating circumstance is set forth under Article 82A.</p>
13	 <b>Hungary</b>	2013	<p>Section 216 on "Violence Against a Member of the Community" of the <a href="#">Criminal Code (2012)</a> explicitly lists sexual orientation and criminalises the display of apparently anti-social behaviour as well as assault.</p>
	 <b>Kosovo</b>	2012  2019	<p>Article 74(2)(12) and Article 333(4) of the old <a href="#">Penal Code (2012)</a> penalised crimes motivated by animus towards sexual orientation, with up to one year in prison.</p> <p>Article 70(2)(12) of the new <a href="#">Penal Code (2019)</a> provides for the aggravation of penalties when a crime is committed on the basis of the victim's sexual orientation, or because of their affinity with persons having a particular sexual orientation.</p> <p>In addition, the Code includes other aggravating provisions for specific crimes: Article 173(1)(10) for murder; Article 184(3) for assault; Article 185(3) for light bodily injury; and Article 186(4) for grievous physical harm.</p>
14	 <b>Lithuania</b>	2009	<p>Article 60(12) of the <a href="#">Criminal Code (2000)</a>, as amended in 2009, provides that the commission of a crime to express hatred on the grounds of sexual orientation is an aggravating circumstance.</p>
15	 <b>Malta</b>	2012	<p>Articles 83B, 222A, 215D and 325A(1) of the <a href="#">Criminal Code of Malta</a> (amended by <a href="#">Act No. VIII of 2012</a>) set out the circumstances and penalties for hate crimes based on sexual orientation.</p>
16	 <b>Monaco</b>	2019	<p>Article 18 of <a href="#">Law No. 1.478 (2019)</a> amended Articles 238-1 of the <a href="#">Penal Code (1968)</a> to aggravate penalties for crimes motivated by the victim's sexual orientation. Article 19 also amended Article 239 of the Code to include "sexual orientation" among the aggravating circumstances for crimes committed against a spouse or any other person living under the same roof or having lived there durably.</p>
17	 <b>Montenegro</b>	2013	<p>Article 42(a) of the <a href="#">Criminal Code (2003)</a>, amended in 2013, provides that courts shall consider criminal motivation based on the victim's sexual orientation as an aggravating circumstance.</p>
18	 <b>North Macedonia</b>	2018	<p>Article 122(42) of the <a href="#">Penal Code (1996)</a> as amended in 2018 includes "sexual orientation" among the characteristics that may constitute a "hate crime" under the provisions of the Code.</p>
19	 <b>Norway</b>	2004  2008	<p>In the old <a href="#">Penal Code (1902)</a>, Article 117 was amended by <a href="#">Law No. 52 (2004)</a> to include an aggravated form of torture. One of the subsections referred to the victim's sexual orientation.</p> <p>In 2008, Article 77(in) of the new <a href="#">Penal Code (2005)</a> was amended by <a href="#">Law No. 28 (2008)</a> to include as an aggravating circumstance any crime committed because of the victim's "homosexual orientation".</p>
20	 <b>Portugal</b>	2007	<p>The <a href="#">Penal Code (1983)</a>, as amended in 2007, considers sexual orientation as an aggravating factor in Article 132 (homicide) and Articles 143, 144 and 145(1)(a) (assault).</p>





21		<b>Romania</b>	2006	In 2006, Article 75 of the old <b>Penal Code</b> (1968) was amended by <b>Law No. 278</b> (2006) to incorporate aggravated punishments for crimes when committed because of the victim's sexual orientation.	
			2014	Under Article 77(h) of the new <b>Penal Code</b> (2009, effective 2014), criminal motivation based on the victim's "sexual orientation" is an aggravating circumstance.	
22		<b>San Marino</b>	2008	<b>Law No. 66</b> (2008) inserted Article 179 <i>bis</i> into the <b>Penal Code</b> , which recognises discrimination on the basis of sexual orientation as an aggravating factor in criminal sentencing.	
23		<b>Serbia</b>	2013	Article 54a of the <b>Criminal Code</b> , as amended in 2012, recognises the commission of an offence on the basis of sexual orientation and gender identity as aggravating circumstances in relation to hate crimes.	
24		<b>Slovakia</b>	2013	Article 140(f) of the <b>Criminal Code</b> (2005) was updated in 2013 to include the commission of an offence on the basis of sexual orientation as an aggravating factor.	
25		<b>Spain</b>	2010	Article 22(4) of the <b>Penal Code</b> (1995), as amended by <b>Law No. 5/2010</b> , includes criminal motivation for a crime based on the victim's sexual orientation as an aggravating circumstance.	
26		<b>Sweden</b>	2010	Article 29(2) of the <b>Penal Code</b> (1962), as amended in 2010, states that in the assessment of a crime's penalty value, special consideration must be given if the crime was motivated by a person or group's sexual orientation.	
27		<b>United Kingdom</b>	2003-2010	All three constituent countries of the United Kingdom have provisions that aggravate penalties for crimes motivated by the victim's sexual orientation:	
			<i>England and Wales</i>	2003	Section 146 of the <b>Criminal Justice Act</b> (2003) prescribes that courts treat as an aggravating factor the fact that an offence was committed when the criminal demonstrated or was motivated by hostility towards the victim's sexual orientation.
			<i>Scotland</i>	2010	Section 2 of the <b>Offences (Aggravation by Prejudice) (Scotland) Act</b> (2009, in force 2010) incorporates sexual orientation to the reasons that aggravate penalties.
			<i>Northern Ireland</i>	2004	Article 3 of <b>The Criminal Justice (No. 2) (Northern Ireland) Order 2004</b> amended Part III of <b>The Public Order (Northern Ireland) Order (1987)</b> to incorporate "sexual orientation" into the definition of "hatred".

Non-independent jurisdictions in Europe (3)

United Kingdom (3)

1		<b>Gibraltar</b>	2013	In 2013, the <b>Criminal Justice (Amendment) Act</b> (2013) defined "hatred on the grounds of sexual orientation" as hatred "against a group of persons defined by reference to sexual orientation (whether towards persons of the same sex, the opposite sex or both)". Also, the Act introduced several sections into the <b>Crimes Act</b> (2011) and the <b>Criminal Procedure and Evidence Act</b> (2011) to aggravate penalties for crimes motivated by such hatred. Furthermore, the Act amended Article 117A of the Crimes Act to establish that courts should not only treat such circumstance as an aggravating factor but also "state in open court that the offence was so aggravated".
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2	 <b>Guernsey</b>	2012	Section 13 of The Criminal Justice (Minimum Terms for Sentences of Life Imprisonment) Law ( <a href="#">Law No. III of 2012</a> ) states that murder is aggravated when the offender demonstrates (or the offence is motivated by) hostility based on the actual or presumed sexual orientation of the victim. Notably, the same section provides that “sexual orientation’ of a person includes whether the person engages in prostitution”.
3	 <b>Isle of Man</b>	2015	Article 52A of the <a href="#">Custody Rules</a> (2015) provides that when the governor or an adjudicator is considering the appropriate punishment for an offence against discipline, they must state, record, and treat as an aggravating factor (i.e., increasing punishment) the fact that the crime was committed out of hostility towards the victim’s “membership of a sexual orientation group”.

### Is there more in Europe?

<b>Netherlands</b>	Neither the Criminal Code nor the Criminal Procedure Code provide for aggravating circumstances based on the victim’s sexual orientation. However, the <i>Instruction on Discrimination</i> (2007) issued by the Public Prosecution Service establishes that prosecutors must increase the sentence they demand by 25% when such motivation is present in any given case. <sup>15</sup>
<b>Switzerland</b>	In September 2019, the Swiss Parliament narrowly approved a motion to collect statistical data on hate crimes against LGBTQ people. <sup>16</sup>




## Oceania

2 out of 14 UN Member States (14%). Additionally: 4 non-UN Member jurisdictions and a subnational jurisdiction in one UN Member State (Australia).

1	 <b>New Zealand</b>	2002	Article 9(1)(h) of the <a href="#">Sentencing Act</a> (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.
2	 <b>Samoa</b>	2016	Section 7(1)(h) of the <a href="#">Sentencing Act</a> (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.

### Non-independent jurisdictions in Oceania (4)


#### France (3)

1	 <b>French Polynesia</b>	2003	In France, Article 47 of <a href="#">Law No. 2003-239</a> (2003) inserted Article 132-77 into the <a href="#">Penal Code</a> (1994) to aggravate penalties for crimes committed because of the victim’s sexual orientation and amended several other articles in the Code accordingly (see above).  Application of these provisions in French Polynesia, New Caledonia and Wallis and Futuna is set forth under Article 121 of the <a href="#">Law No. 2003-239</a> (2003) and Article 711-1 of the <a href="#">Penal Code</a> .
2	 <b>New Caledonia</b>		
3	 <b>Wallis and Futuna</b>		

<sup>15</sup> Rick Lawson et al., *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation – Netherlands* (Leiden, 2008), 32.

<sup>16</sup> “Swiss parliament for the statistical recording of hate crimes against LGBT people” [Schweizer Parlament für statistische Erfassung von Hassverbrechen gegen LGBT], GGG.at. 27 September 2019.

**United Kingdom (1)**

1	 <i>Pitcairn Islands</i>	2002	Article 8(1)(h) of the <b>Sentencing Ordinance</b> (2002) provides that courts should take into account as an aggravating factor the fact that 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”.
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*Is there more in Oceania?*

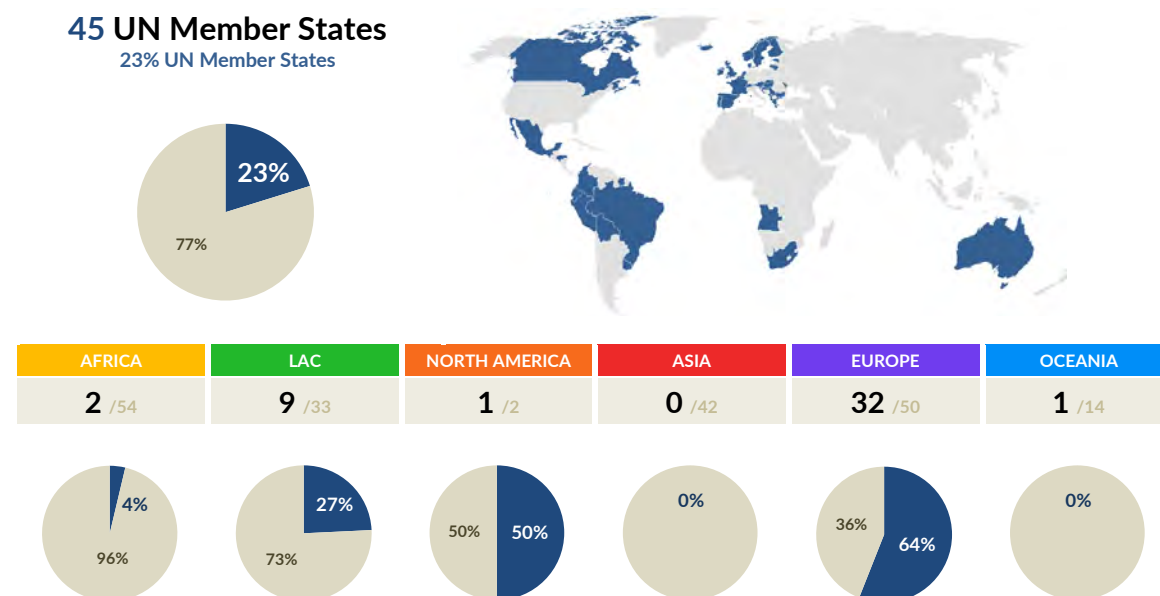
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<b>Australia</b>	There is no federal law establishing that criminal motivation based on the sexual orientation of a victim is an aggravating circumstance.
<i>New South Wales</i>	In 2002, <b>Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act No. 90</b> introduced Article 21A(2)(h) into the <b>Crimes (Sentencing Procedure) Act</b> (1999). According to this provision, crimes motivated by hatred for or prejudice against a group of people of a particular sexual orientation to which the offender believed the victim to belong should be considered as an aggravating circumstance.

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# Prohibition of incitement to hatred, violence or discrimination based on sexual orientation

## Highlights



## Introduction

In some states, it is an offence to incite hatred, violence, or discrimination against others 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”. 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 out of 54 UN Member States (4%). Additionally, 2 non-UN Member jurisdictions.

1	 <b>Angola</b>	2021 <sup>1</sup>	Article 380 of the new Penal Code ( <a href="#">Law No. 38/20</a> ) (effective 2021) criminalises incitement to hatred with the purpose to discriminate when it is committed against a person or a group because of their sexual orientation.
2	 <b>South Africa</b>	2000	The <a href="#">Promotion of Equality and Prevention of Unfair Discrimination Act</a> (2000) prohibits unfair discrimination and hate speech on prohibited grounds. Article 1(xxii)(a) includes “sexual orientation” within the definition of “prohibited grounds” of discrimination. In addition, Article 1(xiii)(a) prohibits harassment related to sexual orientation.

### Non-independent jurisdictions in Africa (2)

#### France (2)<sup>2</sup>

1	 <b>Mayotte</b> <sup>3</sup>	2005	Article 20 of <a href="#">Law No. 2004-1486</a> (effective 2005) amended Article 24 of the <a href="#">Law on Freedom of the Press</a> (1881) to criminalise the incitement to hatred or violence against a person or group of persons on the grounds of their sexual orientation. In addition, Articles 32 and 33 of the Law on Freedom of the Press criminalise defamation and insult on the basis of sexual orientation accordingly.
2	 <b>Reunion</b>		

Also in 2005, [Decree No. 2005-284](#) (2005) amended Article R. 624-3 of the [Penal Code](#) to include “sexual orientation” among the prohibited grounds in the provision prohibiting incitement to discrimination, hatred or violence.

### Is there more in Africa?

<b>Tanzania</b>	In March 2018, the Tanzanian Government published <a href="#">The Electronic and Postal Communications (Online Content) Regulations</a> (2018) which forbid online publishing of “content which advocates hate propaganda, or promotes genocide or hatred against an identifiable group”, and “the use of disparaging or abusive words which is calculated to offend an individual or a group of persons”.
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#### Non-independent territories

<b>Saint Helena</b> <i>(United Kingdom)</i>	Section 2.1.2 of the <a href="#">Saint Helena Media Standards Code of Practice</a> (2014) includes “sexual orientation” among the grounds in regard to which media services providers must apply generally accepted standards to provide adequate protection for members of the public from defamatory, discriminatory, offensive and/or harmful material.
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<sup>1</sup> In January 2019 Angola approved a new Penal Code. In 2020, new changes in the text of the Code were discussed by the Parliament and the official version of the new Penal Code ([Law No. 38/20](#)) was finally published on 11 November 2020. According to its Article 9, the Code will enter into force ninety days after the date of its publication.

<sup>2</sup> Under Article 72-3 of the [French Constitution](#) (1958), Mayotte and Reunion are listed as French overseas territories. Both of them are officially overseas departments and regions and, as such, subject to Article 73 of the Constitution, according to which French statutes and regulations are automatically applicable in the territory. However,

<sup>3</sup> In 2005, Mayotte had not yet acquired its current status. Therefore, [Law No. 2004-1486](#) specified under Article 25 that the law was applicable to Mayotte and [Decree No. 2005-284](#) did so under its Article 7.

## Latin America and the Caribbean

9 out of 33 UN Member States (27%). Additionally, 13 non-UN Member jurisdictions.

1	 <b>Bolivia</b>	2010	Article 281 <i>septies</i> of the <b>Penal Code</b> (2010) of Bolivia criminalises any act of dissemination or incitement to hatred based on sexual orientation. Sexual orientation is included by reference to Article 281 <i>sexies</i> .
2	 <b>Brazil</b>	2019	In 2019, the Federal Supreme Court issued a decision in the joint judgment of <b>ADO No. 26</b> and <b>MI No. 4733</b> to include homophobic behaviour motivated by real or imputed sexual orientation under the provisions criminalising acts motivated by racial prejudice in <b>Law No. 7,716</b> (1989) until such time as the National Congress adopts a more specific law. <sup>4</sup> Under Article 20 of Law No. 7,716, incitement to hatred is criminalised.  Furthermore, several states and the city of <b>Recife</b> have enacted local non-criminal provisions that prohibit incitement to hatred explicitly mentioning “sexual orientation.” <sup>5</sup>
	<i>Amazonas</i>	2006	Article 4(VII) of <b>Law No. 3079</b> (2006) prohibits the manufacturing, selling, distribution or dissemination of symbols, emblems, ornaments, badges or advertising that incite or induce discrimination, prejudice, hatred or violence based on an individual's sexual orientation.
	<i>Mato Grosso do Sul</i>	2005	Article 2(VIII) of <b>Law No. 3.157</b> (2005) forbids persons to “manufacture, sell, distribute or convey symbols, emblems, ornaments, badges or advertising that incite or induce discrimination, prejudice, hatred or violence based on the individual's sexual orientation.”
	<i>Para</i>	2011	Provisions VIII and IX of Article 2 of <b>Law No. 7.567</b> (2011) does not allow persons to practice, induce, and incite discrimination based on sexual orientation, as well as to “manufacture, sell, distribute or convey symbols, emblems, ornaments, badges or advertising that incite or induce discrimination, prejudice, hatred and violence” on the grounds of sexual orientation.
	<i>Paraíba</i>	2017	Article 2(VIII) of <b>Law No. 7309</b> (2003), as amended by <b>Law No. 1090</b> (2017), prohibits as an act of discrimination incitement of discrimination or prejudice based on sexual orientation through the media or publication of any kind.
	<i>Rio de Janeiro</i>	2015	Article 2(IX) of <b>Law No. 7041</b> (2015) does not allow persons “to practice, induce or incite by the media to discriminate, prejudice or practice acts of violence or coercion against any person due to prejudice” of sexual orientation.
	<i>Sao Paulo</i>	2001	<b>Law 10948/01</b> (2001) punishes “any offensive or discriminatory manifestation practiced against homosexual, bisexual or transgender citizens.”
3	 <b>Colombia</b>	2011	Article 134B of the <b>Penal Code</b> , as amended by <b>Law No. 1482</b> (2011), criminalises any incitement to acts of harassment aimed at causing physical or moral harm for reasons of sexual orientation.



<sup>4</sup> “STF enquadra homofobia e transfobia como crimes de racismo ao reconhecer omissão legislativa”, *Supremo Tribunal Federal (Website)*, 13 June 2019.

<sup>5</sup> As explained in the methodology section, the report only tracks subnational jurisdictions when no protection is available at the federal or national level. In this particular case, we exceptionally kept the subnational tracking despite the recent ruling of the Supreme Court given that the local protection against incitement to hatred are based on laws and may provide further legal certainty, as at the local level, “sexual orientation” is explicitly included among the prohibited grounds on incitement. Some of these laws further elaborate on what kind of materials are prohibited. Most of these subnational laws were not enacted with the main aim of prohibiting incitement alone, but are omnibus laws granting protection from discrimination and sometimes include explicit references to the prohibition of incitement to hatred.




4	 <b>Ecuador</b>	2006	Article 27 of the Organic Law on Health ( <a href="#">Law No. 67</a> ) (2006) requires media to refrain from disseminating information that may promote discrimination based on sexual orientation.
		2009/2014	Law 0 (2009) amended the <a href="#">Penal Code</a> (1971) to prohibited public dissemination of hatred on the basis of sexual orientation. The new <a href="#">Penal Code</a> (2014) kept this prohibition under Article 176.
		2013	Article 62 of the <a href="#">Organic Law on Communications</a> (2013) prohibits the dissemination of content through the media that promotes discrimination and incitement to carry out violent or discriminatory practices based on sexual orientation per Article 61.
5	 <b>Honduras</b>	2013	Article 321-A of the <a href="#">Penal Code</a> (1983), as amended by <a href="#">Decree No. 23-2013</a> (2013), criminalises incitement to hatred or discrimination based on sexual orientation.
		2020	Article 213 of the new <a href="#">Penal Code</a> (effective 2020) criminalises incitement to discrimination or any form of violence on the grounds prohibited in the same title of the Code (including sexual orientation in Article 211).
6	 <b>Mexico</b>	2014	In 2014, Article 9(XXVIII) of the <a href="#">Federal Law to Prevent and Eliminate Discrimination</a> (2003) was amended to outlaw promotion of violence. Article 1(III) of this law includes “sexual preferences” as one of the prohibited grounds.
7	 <b>Peru</b>	2017	Article 323 of the <a href="#">Penal Code</a> (1991), as amended by the <a href="#">Legislative Order No. 1323</a> (2017), is entitled “discrimination and incitement to discrimination” and criminalises acts of discrimination based on sexual orientation, either “by the perpetrator or through another person”.
8	 <b>Suriname</b>	2015	In 2015, Articles 175(a) and 176 of the <a href="#">Criminal Code</a> (1911) were amended by <a href="#">S.B. 2015 No. 44</a> to criminalise incitement to hatred based on sexual orientation per Article 175, which includes the list of prohibited grounds.
9	 <b>Uruguay</b>	2003	Article 149 <i>bis</i> of the <a href="#">Penal Code</a> (1933), as amended by <a href="#">Law No. 17677</a> (2003), criminalises the incitement to hatred or any form of violence based on sexual orientation.
		2006	Article 17 of the <a href="#">Law No. 18.026</a> (2006) criminalises incitement to the crime of genocide per Article 16 of the same law, with “sexual orientation” being explicitly included in the definition.
		2015	Since 2015, Article 28 of the Regulation of the Provision of Radio, Television and other Audiovisual Communication Services ( <a href="#">Law No. 19307</a> ) prohibits the dissemination of content which promotes or incites violence based on sexual orientation.

### Non-independent jurisdictions in Latin America and the Caribbean (13)


#### France (5)<sup>6</sup>

1	 <b>French Guiana</b>	2005	Article 20 of <a href="#">Law No. 2004-1486</a> (effective 2005) amended Article 24 of the <a href="#">Law on Freedom of the Press</a> (1881) to criminalise the incitement to hatred or violence against a person or group of persons on the grounds of their sexual orientation. In addition, Articles 32 and 33 of the Law on
2	 <b>Guadeloupe</b>		



<sup>6</sup> Under Article 72-3 of the [French Constitution](#) (1958), these five jurisdictions are listed as a French overseas territory. French Guiana, Martinique and Guadeloupe, as overseas departments and regions, are subject to Article 73 of the Constitution, according to which French statutes and regulations are automatically applicable in the territory. Saint Barthelemy and Saint Martin are overseas collectivities and, as such, are subject to Article 74, according to which their autonomy is established by an organic law that establishes the conditions under which the laws and regulations are applicable in the territory. Moreover, under Article LO6213-1 (for Saint Barthelemy) and Article LO6313-1 (for Saint Martin) of [General Code of Territorial Collectivities](#), legislative and regulatory provisions are automatically applicable in these territories provided that they do not intervene in the matters that are of competence of the organic law or of the collectivity. In 2005, Saint-Martin and Saint Barthelemy were part of the administrative jurisdiction of Guadeloupe.

3	 <i>Martinique</i>		Freedom of the Press criminalise defamation and insult on the basis of sexual orientation accordingly.
4	 <i>Saint Barthelemy</i>		Further, <a href="#">Decree No. 2005-284</a> (2005) amended Article R. 624-3 of the <a href="#">Penal Code</a> to include “sexual orientation” among the prohibited grounds in the provision prohibiting incitement to discrimination, hatred or violence.
5	 <i>Saint Martin</i>		

**Netherlands (6)**

6	 <i>Aruba</i>	2012	Article 2:60 of the <a href="#">Criminal Code</a> (2012) punishes by imprisonment or a fine those who appear “in public, orally or by writing or by means of an image or data from automated work, deliberately offensive about a group of people because of their...heterosexual or homosexual orientation.”
7	 <i>Bonaire</i>	2010	Articles 143a, 143b, and 143c of the <a href="#">Criminal Code of Bonaire, Sint Eustatius and Saba</a> (2010) criminalise different forms of incitement to hatred and discrimination based on the victim’s “heterosexual or homosexual orientation”.
8	 <i>Curacao</i>	2011	Articles 2:61 and 2:62 of the <a href="#">Criminal Code of Curacao</a> (2011) criminalise incitement to hatred based on “heterosexual or homosexual orientation” by means of reference to Article 2:60, which in turn criminalises the intentional vilification of people based on “heterosexual or homosexual orientation”.
9	 <i>Saba</i>	2010	Articles 143a, 143b, and 143c of the <a href="#">Criminal Code of Bonaire, Sint Eustatius and Saba</a> (2010) criminalise different forms of incitement to hatred and discrimination because of the victim’s “heterosexual or homosexual orientation”.
10	 <i>Sint Eustatius</i>	2010	Articles 143a, 143b, and 143c of the <a href="#">Criminal Code of Bonaire, Sint Eustatius and Saba</a> (2010) criminalise different forms of incitement to hatred and discrimination because of the victim’s “heterosexual or homosexual orientation”.
11	 <i>Sint Maarten</i>	2013	Articles 2:61 and 2:62 of the <a href="#">Criminal Code of Sint Maarten</a> (2013) criminalise incitement to hatred based on “heterosexual or homosexual orientation” by means of reference to Article 2:60, which in turn criminalises the intentional vilification of people based on “heterosexual or homosexual orientation”.

**United Kingdom (2)**

12	 <i>Bermuda</i>	2016	In 2016, the Human Rights Amendment (No. 2) Act ( <a href="#">Law No. 2016:24</a> ) (2016) amended Article 8A of Bermuda’s <a href="#">Human Rights Act</a> (1981) to prohibit acts which “incite or promote ill will or hostility against any section of the public distinguished by [...] sexual orientation.”
13	 <i>Falkland Islands (Islas Malvinas)</i> <sup>7</sup>	2014	The <a href="#">Crimes Ordinance</a> (2014) contains several provisions criminalising various forms of incitement to hatred based on sexual orientation. Article 533 refers to the use of words, behaviour or display of written material to stir up hatred; Article 534 to the publishing or distributing written material; Article 535 to the public performance of plays; Article 536 to the distributing, showing or playing of a recording; Article 537 to the broadcasting of programmes; and Article 538 to the possession of inflammatory material. Each of these provisions explicitly includes references to hatred based on sexual orientation.

<sup>7</sup> Note: ILGA World takes note of the sovereignty dispute between Argentina and the United Kingdom over the Falkland Islands/Islas Malvinas ([UNGA Resolution 2065-XX](#)). Under Argentine law, incitement to hatred based on sexual orientation is not criminalised.




*Is there more in Latin America and the Caribbean?*

<b>Argentina</b>	Although Article 212 of the <b>Penal Code</b> provides for the crime of incitement to violence without explicit reference to sexual orientation, Article 70 of the Law on Audiovisual Communication Services ( <b>Law No. 26.522</b> ) states that content that promotes or incites discriminatory treatment based on sexual orientation should be avoided. The latter is not a criminal provision.
<b>Córdoba</b>	Article 101 and 102 of the Code of Misdemeanours ( <b>Law No. 8.431</b> ) (2008) prohibits the utterance of expressions and the display of material based on discriminatory ideas against people based on their sexual orientation.
<b>Chile</b>	In September 2020, <b>MOVILH</b> denounced that a bill that would prohibit incitement to hatred had most of its substantive content scrapped by the House of Representatives. All references to the categories protected under the Zamudio law were omitted. <sup>8</sup>


## North America

1 out of 2 UN Member States (50%). Additionally, 2 non-UN Member jurisdiction.


1	 <b>Canada</b>	2004	Section 319 of the <b>Penal Code</b> (1985) proscribes public incitement of hatred against an “identifiable group.” The definition of an “identifiable group” in Section 318(4) was expanded by the <b>Act to amend the Criminal Code (Hate Propaganda)</b> (2004) to include sexual orientation.  In addition, Section 320 allows courts to seize publications deemed to be hate propaganda.
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### Non-independent jurisdictions in North America (2)

#### Denmark (1)

1	 <b>Greenland</b>	2010	Section 100 of the Greenlandic <b>Criminal Code</b> (2007), as amended in 2010, includes “sexual orientation” among the grounds for protection against statements or information by which a group of people are threatened, insulted or degraded”. This provision is similar to the pioneering 1987 Article 266(b) of the Danish Penal Code (see entry below). The “Comments on the Bill” <sup>9</sup> (attached to the official version of the law) state that the term “sexual orientation” means, in addition to homosexuality, “other forms of sexual orientation, e.g., transvestism”.
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#### France (1)

2	 <b>Saint Pierre and Miquelon</b> <sup>10</sup>	2005	Article 20 of <b>Law No. 2004-1486</b> (effective 2005) amended Article 24 of the <b>Law on Freedom of the Press</b> (1881) to criminalise the incitement to hatred or violence against a person or group of persons on the grounds of their sexual orientation. In addition, Articles 32 and 33 of the Law on Freedom of the Press criminalise defamation and insult on the basis of sexual orientation accordingly.  Also in 2005, <b>Decree No. 2005-284</b> (2005) amended Article R. 624-3 of the <b>Penal Code</b> to include “sexual orientation” among the prohibited grounds in the provision prohibiting incitement to discrimination, hatred or violence.
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<sup>8</sup> “Cámara cercena proyecto de ley sobre la incitación al odio: de 4 artículos, aprobó solo la mitad de uno”, **MOVILH (Website)**, 23 September 2020.

<sup>9</sup> Original text: “Bemærkninger til lovforslaget”.

<sup>10</sup> Under Article 72-3 of the **French Constitution** (1958), Saint Pierre et Miquelon is listed as a French overseas territory. As an overseas collectivity, Saint Pierre et Miquelon is subject to Article 74, according to which its autonomy is established by an organic law that

## Asia

0 out of 42 UN Member States (0%).

### Is there more in Asia?

<b>Israel</b>	Article 1 of the <b>Prohibition of Defamation Law</b> (1965) as amended in 1997, defines libel as including publications which could potentially demean a person because of their sexual orientation.
<b>Singapore</b>	The explanatory note for <b>Maintenance of Religious Harmony (Amendment) Bill</b> clarifies that the offence of knowingly urging use of force or violence on religious grounds against a target group (Article 17E) is applied <i>inter alia</i> in cases when the target group consists of individuals "who share a similar sexual orientation".

## Europe

32 out of 50 UN Member States (64%). Additionally, 1 non-UN Member jurisdiction.

1	 <b>Albania</b>	2013	Section 265 of the <b>Criminal Code</b> (1995), as amended by <b>Law No. 144</b> (2013), prohibits incitement to hatred on the ground of sexual orientation, including through intentional preparation, dissemination or preservation for purposes of distributing relevant content.
2	 <b>Austria</b>	2011	<b>Law No. 103/2011</b> (2011) amended Article 283(1) of the <b>Criminal Code</b> (1974) to include "sexual orientation" as a protected ground against incitement to violence.
3	 <b>Belgium</b>	2003 2007	Article 4 of the <b>Anti-Discrimination Law</b> (2003) penalised the incitement to discrimination, hatred or violence based on sexual orientation. Article 22 of the <b>Law against certain forms of discrimination</b> (2007) 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	 <b>Bulgaria</b>	2004	Articles 4(1) and 5 of the <b>Protection Against Discrimination Act</b> (2003) prohibits harassment and incitement to discrimination as forms of discrimination on the ground of sexual orientation.
5	 <b>Croatia</b>	2006 2013	Article 151(a) of the old <b>Penal Code</b> (amended in 2006) criminalised incitement to hatred based on "sexual preference". Article 325 of the new <b>Penal Code</b> (effective 2013) criminalises the incitement to violence or hatred directed against a group of people or a member of the group because of their sexual orientation.
6	 <b>Cyprus</b>	2015	<b>Law No. 87(I)/2015</b> (2015) complemented the <b>Penal Code</b> with Article 99A to criminalise incitement to violence or hatred directed against a group or its members on the basis of their sexual orientation.
7	 <b>Denmark</b>	1987	Article 1 of <b>Law No. 357</b> (1987) amended Article 266(b) of the <b>Penal Code</b> to include "sexual orientation" among the grounds for protection against statements or information by which a group of people are threatened, insulted or degraded.

establishes the conditions under which the laws and regulations are applicable in the territory. Moreover, under Article LO6413-1 of the **General Code of Territorial Collectivities**, legislative and regulatory provisions are automatically applicable provided that they do not intervene in the matters that are of competence of the organic law or of the collectivity.

8	 <b>Estonia</b>	2006	The <b>Electronic Communications Amendment Act</b> (2006) amended Section 151(1) of the <b>Penal Code</b> (2001) to include sexual orientation as a category for which the incitement to hatred, violence or discrimination is criminalised.
9	 <b>Finland</b>	2011	Chapter 11, Section 10 of the <b>Criminal Code</b> (as amended in 2011) criminalises the public expression of an opinion or message where a certain group is threatened, defamed or insulted on the basis of sexual orientation. Section 10(a) provides for enhanced punishment where that speech involves incitement or enticement to genocide, murder or serious violence.
10	 <b>France</b>	2005	Article 20 of <b>Law No. 2004-1486</b> (effective 2005) amended Article 24 of the <b>Law on Freedom of the Press</b> (1881) to criminalise the incitement to hatred or violence against a person or group of persons on the grounds of their sexual orientation. Articles 32 and 33 of the same law criminalise defamation and insult on the basis of sexual orientation accordingly.  Also in 2005, <b>Decree No. 2005-284</b> (2005) amended Article R. 624-3 of the <b>Penal Code</b> to include “sexual orientation” among the prohibited grounds in the provision prohibiting incitement to discrimination, hatred or violence.
11	 <b>Greece</b>	2014	Article 1 of <b>Law No. 4.285/2014</b> (2014) amended Article 1 of the Law on Public Incitement to Violence or Hatred ( <b>Law No. 927/1979</b> ) (1979) to criminalise the incitement of acts which may cause discrimination, hatred or violence based on sexual orientation.
		2019	Article 184(2) of the new <b>Penal Code</b> (2019) criminalises incitement to violence based on sexual orientation.
12	 <b>Hungary</b>	2013	Article 332 of the <b>Criminal Code</b> (2012) prohibits incitement of hatred before the public at large against a certain societal group on the grounds of sexual orientation.
13	 <b>Iceland</b>	1996	Article 2 of <b>Law No. 135</b> (1996) amended Article 233(a) of the <b>General Penal Code</b> (1940) to include sexual orientation among the grounds protected against public mockery, defamation, denigration or threat.
		2013	Furthermore, <b>Act No. 54</b> (2013) amended Article 27 of the Law on Media ( <b>Law No. 38</b> ) (2011) to prohibit the promotion of hatred based on sexual orientation.
14	 <b>Ireland</b>	1989	The Prohibition of Incitement to Hatred Act ( <b>Law No. 19</b> ) (1989) penalises incitement to hatred, violence or discrimination on grounds of sexual orientation.
	 <b>Kosovo</b>	2019	Article 141 of the new <b>Penal Code</b> (2019) criminalises public incitement or the spreading of hatred, discord, or intolerance based on sexual orientation.
15	 <b>Liechtenstein</b>	2013	The <b>Law on the Amendment of the Media Act</b> (2012) added paragraph (e) into Article 6(2) of the <b>Media Act</b> (2005) to criminalize media content that incites, encourages or endorses hate or discrimination based on sexual orientation. The 2012 law also added paragraph (b) into Article 41(1) of the Media Act to criminalise advertising that discriminates based on sexual orientation.
16	 <b>Lithuania</b>	2009	Article 1 of <b>Law No. XI-330</b> (2009) amended Article 170 of the <b>Criminal Code</b> (2000) which criminalises incitement to hatred, violence, or discrimination to include “sexual orientation”. Article 2 of the same law added Article 170-1 that criminalises creating or participating in a group or organisation that discriminates against a group of persons on the basis of their sexual orientation.

17		<b>Luxembourg</b>	2006	Article 457-1 of the <b>Criminal Code</b> criminalises incitement to hatred or violence with reference to Article 454. Article 21(1) of the <b>Law of 29 November 2006</b> (2006) amended Article 454 of the Penal Code to include sexual orientation as a ground for the criminalised incitement.
18		<b>Malta</b>	2012	Articles 82A and 82C of the <b>Criminal Code</b> (1854), amended by the <b>Act No. VIII of 2012</b> (2012), criminalises incitement to hatred and violence based on sexual orientation.
19		<b>Moldova</b>	2019	Article 1 of the <b>Code of Audiovisual Media Services</b> (2018) defines “hate speech” as a message that propagates, incites, promotes or justifies hatred based on sexual orientation. Article 17(3) prohibits such hate speech in the national audiovisual space. Article 63 prohibits commercials including or promoting any discrimination based on sexual orientation.
20		<b>Monaco</b>	2005  2019	Article 16 of the <b>Law on Public Freedom of Expression</b> (2005) prohibits incitement to hatred or violence based on sexual orientation.  Furthermore, Article 5 of <b>Law No. 1.478</b> (2019) amended Articles 421(5) and (6) of the <b>Penal Code</b> (1968) to criminalise defamation and insult against a person or a group of people based on sexual orientation.
21		<b>Montenegro</b>	2013	In 2013, the <b>Law No. 01-1450/2</b> (2013) amended Article 443(3) of the <b>Criminal Code</b> (2003) to criminalise propagation of hatred or intolerance based on sexual orientation.
22		<b>Netherlands</b>	1994	The <b>Equal Treatment Law</b> (1994) amended Article 137d of the <b>Criminal Code</b> (1881) to criminalise incitement to hatred, discrimination, or violence against people because of their “heterosexual or homosexual orientation”.
23		<b>Norway</b>	1981  2008  2020	<b>Law No. 14</b> (1981) amended Article 135(a) of the old <b>Penal Code</b> (1902) to criminalise the public utterance of discriminatory or hateful expressions, defined as speech that is “threatening or insulting anyone, or inciting hatred or persecution of or contempt for anyone” because of their “homosexuality, lifestyle or orientation”.  <b>Law No. 4</b> (2008) amended the new <b>Penal Code</b> (2005) to include Section 185(c) which criminalises hate speech and incitement to hatred and violence based on “homosexual orientation.”  In November 2020, Norway’s parliament <b>approved</b> the amendments to the Penal Code expanding protection to “sexual orientation” and including other grounds of protection. <sup>11</sup>
24		<b>Portugal</b>	2007	Article 1 of <b>Law No. 59</b> (2007) amended Articles 240(1) and (2) of the <b>Penal Code</b> (1995) to criminalise incitement to discrimination, hatred, or violence based on sexual orientation.
25		<b>San Marino</b>	2008	<b>Law No. 66</b> (2008) amended the <b>Penal Code</b> (1974) to include Article 179 <i>bis</i> which criminalises incitement to discrimination, hatred, or violence based on sexual orientation.

<sup>11</sup> Rachel Savage, “The penal code in Norway was expanded, having covered gay and lesbian people since 1981”, *Thomson Reuters Foundation*, 10 November 2020. Note: At the moment of publication, according to the Storting’s website, these amendments had not yet been enacted.

26		<b>Serbia</b>	2002	Section 21 of the <a href="#">Law on Broadcasting</a> (2002) established that administrative sanctions could be imposed on broadcasters that disseminated content that would incite discrimination, hatred or violence based on sexual orientation.
			2009	Article 13 of the <a href="#">Law on the Prohibition of Discrimination</a> (2009) criminalises “severe forms of discrimination” including incitement to inequality, hatred, and enmity on the ground of sexual orientation.
			2014	Article 75 of the <a href="#">Law on Public Information and Media</a> (2014) establishes that ideas, opinions, or information published in the media must not encourage discrimination, hatred, or violence against a person or group of persons on the basis of their sexual orientation.
27		<b>Slovakia</b>	2017	The <a href="#">Law No. 316/2016</a> (effective from 2017) amended Article 424(1) of the <a href="#">Slovak Criminal Code</a> (2005) to add actual or alleged sexual orientation to the grounds protected from incitement to violence, hatred, and restrictions of rights and freedoms.
28		<b>Slovenia</b>	2008	Article 297(1) of the <a href="#">Penal Code</a> (2008) criminalises the public provocation or stirring up of hatred, strife or intolerance on the basis of sexual orientation.
29		<b>Spain</b>	1996	Article 510(1) of the <a href="#">Penal Code</a> was amended in 1995 (effective 1996) to criminalise incitement to discrimination, hatred or violence based on sexual orientation.
			2015	In 2015, <a href="#">Organic Law No. 1</a> (2015) amended Article 510 to criminalise actions that involve humiliation, contempt, or discrediting based on sexual orientation and the exaltation or justification of crimes committed against a group for their sexual orientation.
30		<b>Sweden</b>	2003	<a href="#">Law 2002:800</a> (effective 2003) amended Article 8 of Chapter 16 of the <a href="#">Penal Code</a> (1962) which criminalises threats and expressions of disrespect alluding to sexual orientation.
				Chapter 7, Article 4(11) of the Law on the Freedom of the Press ( <a href="#">Law 2002:908</a> ) (2002) prohibits as a breach of freedom of the press expressions of incitement and contempt alluding to sexual orientation.
31		<b>Switzerland</b>	2020	In 2020, after a popular vote, Article 261 <i>bis</i> of the <a href="#">Criminal Code</a> was amended to include “sexual orientation” in the provision that criminalises public denigration, discrimination, or incitement to those actions, as well as the public dissemination of ideologies that aim to systematically denigrate or defame members of a protected group.
32		<b>United Kingdom</b>	2008	Section 74 and Schedule 16 of the <a href="#">Criminal Justice and Immigration Act</a> (2008) criminalises incitement to hatred based on the ground of sexual orientation.
			<i>Northern Ireland</i>	2004

*Is there more in Europe?*

**Bosnia and Herzegovina**

Incitement to hatred is prohibited in Republika Srpska (one of the constituent entities of Bosnia and Herzegovina). Since 2017, Article 359 of the local [Criminal Code](#) (2017) prohibits public provocation and incitement to violence and hatred against a particular person or group on account of their sexual orientation.

<b>Poland</b>	In 2019, the Warsaw District Court ordered <i>Gazeta Polska</i> , a government-aligned newspaper, to stop distributing hateful "LGBT-Free Zone" stickers in its publications. <sup>12</sup>
<b>Romania</b>	Article 25 of <b>Law No. 278</b> (2006) amended Article 317 of the old <b>Penal Code</b> (1968) to penalise incitement to hatred based on sexual orientation. Under the new <b>Penal Code</b> (approved in 2009, effective since 2014) the crime of incitement to hatred or discrimination is found under Article 369. However, this provision does not mention any specific ground or characteristic for protection.
<b>Russia</b>	<p>In 2019, when a bakery posted a sign reading "faggots are not allowed," the court levied a fine of about \$150, holding that the board contains "a public humiliation of homosexuals as representatives of a group of people distinguished on the basis of sexual orientation."<sup>13</sup> The same year, in three different instances, courts fined individuals for their homophobic comments in social media. The courts characterised the comments as possible reasons for "inciting hostility... towards a group of people distinguished on the basis of sexual orientation."<sup>14</sup></p> <p>In 2020, the court fined ₺10,000 (around \$135) a blogger for "incitement to hatred and enmity towards a social group" by making homophobic statements in TikTok.<sup>15</sup></p>

## Oceania

1 out of 14 UN Member States (7%). Additionally: 3 non-UN Member jurisdictions.

<b>1</b>  <b>Australia</b>	<p>There is no federal provision prohibiting incitement to hatred based on sexual orientation in Australia. However, about 56% of the <b>population</b> live in areas where state and territorial laws specify such protection.</p> <p>Article 123(3)(e) of the <b>Broadcasting Services Act</b> (1992) stipulates that certain codes of practice should take into account community attitudes towards "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.</p>	
<i>Australian Capital Territory</i>	2016	Section 750(1)(c)(vii) of the <b>Criminal Code</b> (2002), amended by the <b>Discrimination Amendment Act (Act No. A2016-49)</b> (2016), provides that the person commits an offence if "the person is reckless about whether the act incites hatred toward, revulsion of, serious contempt for, or severe ridicule of" a person or a group on the basis of sexuality. According to the <b>Discrimination Act</b> (1991) "Sexuality" includes heterosexuality, homosexuality and bisexuality.
<i>New South Wales</i>	1993	Section 49ZT(1) of the <b>Anti-Discrimination Act</b> (1977, amended in 1993) declares it unlawful to publicly incite hatred, serious contempt, or severe ridicule of a person or a group on the basis of their homosexuality.
<i>Queensland</i>	2002	Section 124A(1) of the <b>Anti-Discrimination Act</b> (1991) was amended by the <b>Discrimination Law Amendment Act (Act No. 74)</b> (2002) to prohibit incitement of hatred, serious contempt, or severe ridicule of a person or a group on the ground of their sexuality.
<i>Tasmania</i>	1999	Section 19(c) of the <b>Anti-Discrimination Act</b> (1998) prohibits incitement of hatred, serious contempt, or severe ridicule of a person or group on the ground of their sexual orientation or lawful sexual activity.

<sup>12</sup> Kyle Knight, "Polish Court Rebukes "LGBT-Free Zone" Stickers", *Human Rights Watch*, 1 August 2019.




<sup>13</sup> Central District Court of Kemerovo City, Decision No. 5-494/2019, 8 August 2019; "The owner of the Kemerovo bakery was fined for insulting homosexuals" [Владельца кемеровской пекарни оштрафовали за оскорбляющую гомосексуалов табличку], *Novaya Gazeta*, 27 August 2019.

<sup>14</sup> "Courts fined three residents of Urals for homophobic comments" [Трех уральцев суды оштрафовали за гомофобные комментарии], *Novyi Den*, 26 June 2019.

<sup>15</sup> "Volodya XXL was fined for homophobic speech" ["Володю XXL оштрафовали за гомофобное высказывание"], *Stimul*, 10 July 2020, accessed 04 December 2020.

Non-independent jurisdictions in Oceania (3)

France (3)

1	 <i>French Polynesia</i>	2005	<p>Article 20 of <a href="#">Law No. 2004-1486</a> (effective 2005) amended Article 24 of the <a href="#">Law on Freedom of the Press</a> (1881) to criminalise the incitement to hatred or violence against a person or group of persons on the grounds of their sexual orientation. In addition, Articles 32 and 33 of the Law on Freedom of the Press criminalise defamation and insult on the basis of sexual orientation accordingly.</p> <p>Also in 2005, <a href="#">Decree No. 2005-284</a> (2005) amended Article R. 624-3 of the <a href="#">Penal Code</a> to include “sexual orientation” among the prohibited grounds in the provision prohibiting incitement to discrimination, hatred or violence. Article 7 of the Decree specifies that the prohibition applies to French Polynesia, New Caledonia and Wallis and Futuna.</p>
2	 <i>New Caledonia</i>		
3	 <i>Wallis and Futuna</i>		

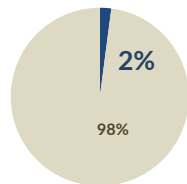
Is there more in Oceania?

<b>Fiji</b>	Articles 6(a) and 6(b) of Schedule 2 of the Media Industry Development Decree ( <a href="#">Decree No. 29</a> ) (2010) establishes that media organisations shall avoid discriminatory or denigrating references, or in a prejudicial or pejorative context, to people’s sexual orientation or preference.
<b>New Zealand</b>	Section 6 of the <a href="#">Harmful Digital Communications Act</a> (2015) establishes the guiding principle that digital communications should not denigrate an individual by reason of their sexual orientation.

# Bans against “conversion therapy”

## Highlights

**4 UN Member States**  
2.1% UN Member States



AFRICA	LAC	NORTH AMERICA	ASIA	EUROPE	OCEANIA
0 / 54	2 / 33	0 / 2	0 / 42	2 / 50	0 / 14



## Introduction

“Conversion therapy” has nowadays become the umbrella expression to refer to any sustained effort to modify a person’s sexual orientation, gender identity or gender expression.

In this section we list all jurisdictions that have enacted laws either restricting or prohibiting these pseudoscientific practices. In February 2020, ILGA World published *Curbing Deception: A world survey on legal regulation of so-called “conversion therapies”*, where this topic is analysed in depth.

Survivors, legal scholars, activists and policy makers may differ in their ideas on how put an end, restrict, or discourage “conversion therapies”. However, there seems to exist consensus around the idea that the problem cannot be tackled but with a multi-faceted strategy. Legislation restricting or banning “conversion therapy” clearly appears as one of the key elements of such strategy, but it is certainly not the only one. *Curbing Deception* analyses many of the tools that can be used in such multifaceted strategy.<sup>1</sup>

Additionally, a list of official position statements issued by professional associations or organisations against “conversion therapies” can be found in Annex 1 of *Curbing Deception*.

### 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

<sup>1</sup> In June 2020, ILGA World launched the “Toolbox” to combat conversion therapies based on Chapter 6 of the *Curbing Deception* report. The toolbox can be found in English and Spanish [here](#).




## Latin America and the Caribbean

2 out of 33 UN Member States (6%). Additionally: 2 UN Member States with indirect bans (Argentina and Uruguay); 1 non-UN member jurisdiction (Puerto Rico); 2 subnational jurisdictions (Mexico City and state of Mexico).

1	 <b>Brazil</b>	1999	<p><b>Resolution 1/99</b> (1999), issued by the <b>Federal Council of Psychology</b>, prohibits the “pathologisation of homoerotic behaviours and practices” and orders all licensed 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 <b>bill</b> that would have repealed Resolution 1/99. The proposal was later abandoned.</p> <p>In 2017, a federal judge first overruled then reaffirmed Resolution 1/99 in a case brought by an evangelical Christian psychologist whose licence was revoked in 2016 after she insisted on offering “conversion therapy”.<sup>2</sup></p> <p>On 24 April 2019, a senior jurist of the Federal Supreme Court suspended a lower court’s decision to allow psychologists to perform “conversion therapy”. In 2019, a member of the Federal Supreme Court issued an interim decision to suspend the effects of the lower federal magistrate, thereby reinstating the ban in full force.<sup>3</sup></p> <p>In January 2020, the Federal Supreme Court judge responsible for the action gave her final ruling on the merits of the case deciding to invalidate the ruling issued by the lower Federal Court. The <b>decision</b> (2020) focused mainly on procedural issues regarding legal standing and the court’s jurisdiction, so no substantive elements were actually discussed in the decision.</p> <p>Finally, in May 2020, the final <b>ruling</b> (2020) in the case was released, after the last available appeal was filed, in which the other judges responsible for analysing the matter followed the understanding that had already been laid out and put a definite end to the judicial attempts to repeal the ban before Brazilian federal courts.</p>
2	 <b>Ecuador</b>	2013 2014	<p>Section 20(a) of the <b>Ministerial Order No. 767</b> (2013) prohibits “conversion therapies” in rehabilitation institutions.</p> <p>Article 151(3) of the <b>Comprehensive Organic Penal Code</b> (2014) also criminalises any act of torture (defined in broad terms) perpetrated with the intention of modifying a persons’ sexual orientation.</p>

### Non-independent jurisdictions in Latin America and the Caribbean (1)

#### United States of America (1)

1	 <b>Puerto Rico</b>	2019	<p>On 27 March 2019, the Governor of Puerto Rico issued <b>Executive Order OE-2019-16</b> (2019), which forbade —on immediate effect— the performance of “conversion therapy” on minors by licensed individuals or professional entities. This executive order also requires medical and scientific institutions seeking state grants to explicitly certify on their requests that they will not offer “conversion therapy”.</p> <p>On 23 April 2019, <b>Senate Bill No. 1254</b> (2019), which would arguably constitute a more solid legal prohibition of “conversion therapies” on minors in Puerto Rico, was introduced to the Puerto Rican Senate and passed on to the Commission on Federal, Political, and Economic Relations. As of October 2020, this bill is still pending.</p>
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<sup>2</sup> 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.

<sup>3</sup> Victor Farias, ‘Ministra do STF suspende decisão que permitia terapia da ‘cura gay’’, *O Globo*, 24 April 2019.

*Is there more in Latin America and the Caribbean?*

<p><b>Argentina</b> INDIRECT BAN</p>	<p>Section 3(c) of the <a href="#">Law on Mental Health</a> (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).</p>
<p><b>Chile</b></p>	<p>In October 2017, the Chamber of Deputies passed the <a href="#">Bill on Mental Health Protection</a> (2016), whose Article 6 states that mental health diagnoses cannot be made based solely on a person’s identity or sexual orientation, <i>inter alia</i>. As of September 2020, the bill is under discussion by the Senate.</p> <p>In May 2019, <a href="#">Bill 12660-18</a> (2019) (locally known as “Nada Que Corregir”, or “Nothing To Fix” in Spanish) was introduced to the Chamber of Deputies and, as of September 2020, is under review by the Commission on Family and Late Adulthood within said chamber. The bill establishes that “conversion therapy” on LGBTI youth is a form of intrafamily violence and arbitrary discrimination.</p>
<p><b>Mexico</b></p>	<p>In August 2018, a <a href="#">bill</a> (2018) that would outlaw “conversion therapies” was introduced in the Federal House of Deputies. The proposed legislation would make it a criminal offense to promote, offer, teach, apply, force, or induce to undergo treatment, therapy or any type of service that seeks to change a person’s sexual orientation or gender identity. The bill also establishes aggravated penalties for parents or guardian of persons under eighteen years of age, as well as to those forcing individuals who for any reason could not resist or consent to the practice. Finally, the bill adds a specific penalty for licensed health professionals and any person related to the medical practice, consisting of suspension in the professional exercise for three years and a fine. As of September 2020, the bill is still pending.</p> <p>In October 2018, a similar <a href="#">bill</a> (2018) was introduced, and it was debated by the Federal Senate in February 2019.<sup>4</sup> As of September 2020, the bill is still pending.</p> <p>As of December 2020, roughly 20.6% of the Mexican population lives in jurisdictions with bans on so-called “conversion therapy” in place.</p>
<p><b>Jalisco</b></p>	<p>In October 2019, <a href="#">Bill 3240</a> (2019) was introduced to the Congress of Jalisco. By adding Article 202 <i>ter</i> to Jalisco’s <a href="#">Penal Code</a> (1982), the bill would effectively ban any sexual orientation or “sexual identity” change efforts (SOCE) in the state, punishing anyone offering, advertising, or financing those practices with 1 to 3 years in prison. This penalty is increased by up to a quarter in cases where the person on whom so-called “conversion therapy” is performed is under 18 years of age or unable to understand the practice. In December 2019, however, this legal initiative was postponed for further analysis as a result of pressure from a conservative social group.<sup>5</sup> As of September 2020, it has not been retaken.</p>
<p><b>Mexico City</b></p>	<p>In July 2020, the Mexico City Congress voted in favour of adding Article 190 <i>quater</i> to Mexico City’s <a href="#">Penal Code</a> (2002),<sup>6</sup> where it is now established that anyone who imparts or forces another to receive so-called “conversion therapy” shall be punished with two to five years in prison and 50 to 100 hours of community service. This penalty is increased by one half in cases where the person on whom so-called “conversion therapy” is performed is under 18 years of age or unable to understand or resist the practice.</p>
<p><b>State of Mexico</b></p>	<p>In October 2020, the Congress of the state of Mexico voted in favour of amending the Penal Code to add Article 211 <i>sexies</i> and Chapter VII (“Crimes against the free development of personality and sexual identity”), which establish penalties of one to three years in prison, as well as 25 to 100 days of community service and fines, for anyone who submits, coerces or forces another person to undergo SOGIECE. The penalties increase up to one half when the conduct is carried out against certain individuals who are unable to understand or consent to the practices, or when the victims have certain types of close relationships to the accused.<sup>7</sup></p>

<sup>4</sup> “Senado va contra terapias para ‘curar’ homosexualidad”, *Excélsior*, 17 February 2019.

<sup>5</sup> Franco González, “Hasta enero, ley contra terapias de conversión”, *Milenio*, 5 December 2019.

<sup>6</sup> The original press release can be accessed [here](#).

<sup>7</sup> As of 15 November 2020, these amendments to the Penal Code are yet to be published on the [Official Gazette of the State of Mexico](#). However, they were announced on 20 October 2020 via an official press release. See: State of Mexico Legislature, “[Prohíbe el Congreso Mexiquense Terapias de Conversión Sexual](#)”, *Press Release No. 2358*, 20 October 2020. See also: State of Mexico Legislature, “[Hasta 3 Años de Prisión por Terapias de Conversión por Orientación Sexual. Propone MORENA](#)”, *Press Release No. 1982*, 24 June 2020; State of Mexico Legislature, “[Hasta 3 Años de Prisión a Quien Obligue a Otra Persona a Recibir Terapias de Conversión Sexual](#)”, *Press Release No. 2262*, 23 September 2020.

<p><b>Uruguay</b></p> <p>INDIRECT BAN</p>	<p>Article 4 of the <a href="#">Mental Health Law</a> (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).</p>
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## North America

0 out of 2 UN Member States (0%). Additionally: several subnational jurisdictions in both UN Member States (Canada and United States of America).

### Is there more in North America?

<p><b>Canada</b></p>	<p>While there is no nationwide legislation banning “conversion therapy” in Canada, a petition to do so was presented to the Canadian House of Commons in January 2019.<sup>8</sup> As a result of this petition, Liberal senator Serge Joyal tabled <a href="#">Bill S-260</a> (2019) in April. After this bill lapsed when the Parliament was dissolved for the 2019 election, Senator Joyal tabled <a href="#">Bill S-202</a>, a virtually identical version of his previous initiative.</p> <p>In March 2020, the Canadian government’s <a href="#">Bill C-8: An Act to amend the Criminal Code (conversion therapy)</a> (2020) superseded Bill S-202 and was introduced in the House of Commons. As of September 2020, this bill is still pending.<sup>9</sup></p> <p>Conversely, an increasing proportion of cities and provinces have adopted or are considering adopting such bans. This includes the provinces listed in the rows below, as well as the cities of <a href="#">Vancouver</a> (2018), <a href="#">St. Albert</a> (2019), <a href="#">Edmonton</a> (2019), and <a href="#">Calgary</a> (2020). Therefore, as of December 2020, around 53.6% of the Canadian population lives in areas with legal prohibitions in effect.</p>
<p><b>Alberta</b></p>	<p>In May 2019, after winning a majority of legislative seats at the general election, the United Conservative Party cancelled a working group that was drafting a bill to ban “conversion therapy” in Alberta.<sup>10</sup></p>
<p><b>British Columbia</b></p>	<p><a href="#">Bill M 218-2019: Sexual Orientation and Gender Identity Protection Act</a> (2019), which would ban conversion therapy for minors under 19 years old in British Columbia, was introduced in May 2019. As of September 2020, the bill still appears to be <a href="#">pending</a>. In August 2019, the government of British Columbia called on the federal government to amend the Criminal Code in regard to “conversion therapy” instead.<sup>11</sup></p>
<p><b>Manitoba</b></p>	<p>Sections 9(2)(g) and (h) of Manitoba’s <a href="#">Human Rights Code</a> (2018) proscribe discrimination on the grounds of gender identity and sexual orientation (since 1987 and 2012, respectively). In May 2015, Manitoba Health Minister Sharon Blady noted that those provisions apply to how health care services in Manitoba are offered, and that there is “no place in the province’s public health-care system” for “conversion therapy”.<sup>12</sup> This official position is reiterated on the Government of Manitoba’s official website.<sup>13</sup></p>
<p><b>Nova Scotia</b></p>	<p><a href="#">Bill No. 16: An Act Respecting Sexual Orientation and Gender Identity Protection</a> (2018) forbids regulated health professionals and people in positions of trust or authority (such as religious leaders) from performing “conversion therapy” on people under 19 years of age. These provisions do not apply in cases where the individual is 16 or older and consents to the practice. The same law also forbids the use of public funds for “conversion therapy”.</p>
<p><b>Ontario</b></p>	<p><a href="#">Bill No. 77: An Act to amend the Health Insurance Act and the Regulated Health Professions Act, 1991 regarding efforts to change sexual orientation or gender identity</a> (2015) prohibits health care providers from engaging in sexual orientation or gender identity change efforts (SOGICE) on people under 18 years of age, unless the individual in question is capable of consenting to the practice and does so. The law does not establish a minimum age for this.</p>

<sup>8</sup> “Petition to ban conversion therapy across Canada gains steam, survivor says it’s ‘long overdue’”, *Global News*, 9 October 2018.

<sup>9</sup> Peter Gajdics, “Canada’s failed plot to end conversion therapy”, *Xtra*, 2 September 2020.

<sup>10</sup> Emma Graney, “UCP cancels gay conversion therapy ban working group”, *Edmonton Journal*, 27 May 2019.

<sup>11</sup> Richard Zussman, “B.C. government calls on federal government to ban conversion therapy”, *Global News*, 1 August 2019.

<sup>12</sup> “Province Takes Steps to Ban Conversion Therapy”, *Province of Manitoba News Releases (web page)*, 22 May 2015.

<sup>13</sup> “Position on Conversion Therapy”, *Province of Manitoba (web page)*, 2015.

<p>Prince Edward Island</p>	<p><b>Bill No. 24: Sexual Orientation and Gender Identity Protection in Health Care Act</b> (2019) amends a number of previous acts to forbid medical and psychological practitioners from providing "conversion therapy" to people under 18 years of age. The law also bans "conversion therapy" coverage under basic healthcare services or insurances. Finally, the law establishes that "no person may give consent in respect of the provision of conversion therapy on behalf of a patient who is incapable".</p>
<p>Quebec</p>	<p>In October 2020, <b>Bill No. 70</b> (2020) was introduced in the local legislature to ban "conversion therapies". The bill establishes that such practices are "presumed to affect a person's right to integrity and dignity". The bill establishes that no contract may be entered into, by gratuitous or onerous title, to provide these "therapies" to any person, under pain of a fine and the fact that a professional provides them constitutes an act "derogatory to the dignity of his or her profession".</p>
<p>Saskatchewan</p>	<p>In December 2018, a government spokesperson reportedly stated that "the Saskatchewan government does not pay for any such '[conversion] therapies' and is against them but has not decided on whether to put that into legislation".<sup>14</sup></p>
<p>Yukon</p>	<p>In November 2020, <b>Bill No. 9: Sexual Orientation and Gender Identity Protection Act</b> (2020) entered into force, effectively banning the performance of so-called "conversion therapy" on minors and adults with an appointed guardian by punishing offenders with a fine of up to \$10,000, imprisonment for up to 6 months, or both.<sup>15</sup></p>
<p>United States of America</p>	<p>There is no law banning "conversion therapy" at the federal level. However, as of September 2020, a total of 20 states, in addition to the District of Columbia (and Puerto Rico – listed as a non-independent territory below), had local laws proscribing these practices on people under 18 years of age. A number of counties and cities have also enacted local bans.<sup>16</sup></p> <p>In March 2019, a federal <b>bill</b> (2019) that would ban the use of Medicaid funding for "conversion therapy" was introduced to the U.S. Congress. As of September 2020, this bill is still pending.</p> <p>In June 2019, the latest version of the <b>Therapeutic Fraud Prevention Act</b> (2019), which would outlaw the provision of "conversion therapy" by any person to any individual nationwide, as well as the advertising of "conversion therapy", was introduced to the U.S. House of Representatives. As of September 2020, this bill is still pending.</p> <p>Even though judicial challenges against bans on "conversion therapies" have been largely unsuccessful in the United States of America,<sup>17</sup> in November 2020 media outlets reported that a divided the 11th U.S. Circuit Court of Appeals declared unconstitutional two south Florida local bans on "conversion therapy" in <i>Otto et al v City of Boca Raton</i>.<sup>18</sup></p>
<p>California</p>	<p><b>Senate Bill No. 1172</b> (2012) amended Article 15 of California's Business and Professions Code to proscribe any sexual orientation change efforts by mental health providers on patients under 18 years of age. In 2018, <b>Assembly Bill No. 2943</b> (2018), which considered advertising, offering to engage in, engaging in for sale, or selling services constituting sexual orientation change efforts (SOCE) an unlawful practice prohibited under the Consumer Legal Remedies Act, was withdrawn after being brought before the State assembly.<sup>19</sup></p>
<p>Colorado</p>	<p><b>House Bill No. 19-1129</b> (2019) prohibits registered mental health care providers from performing "conversion therapy" on patients under 18 years of age.</p>

<sup>14</sup> Stephanie Taylor, "Sask. advocates call on province to ban 'conversion therapy' for LGBT people", *CBC News*, 4 December 2018.

<sup>15</sup> "Conversion therapy banned in Yukon (News release #20-325)", *Government of Yukon (website)*, 9 November 2020.

<sup>16</sup> According to **Movement Advancement Project (MAP)**, these are the counties, cities, and boroughs with local bans in force as of September 2020. (1) Counties: Alachua County, FL (2019); Allegheny County, PA (2020); Broward County, FL (2018); Palm Beach County, FL (2017); Pima County, AZ (2017). (2) Cities and boroughs: Anchorage, AK (2020); Allentown, PA (2017); Appleton, WI (2020); Athens, OH (2017); Bay Harbor Islands, FL (2016); Bellefonte, PA (2018); Berkley, MI (2019); Bethlehem, PA (2018); Boca Raton, FL (2017); Boynton Beach, FL (2017); Cincinnati, OH (2015); Columbia, MO (2019); Columbus, OH (2017); Covington, KY (2020); Cudahy, WI (2019); Davenport, IA (2020); Dayton, OH (2017); Delray Beach, FL (2017); Doylestown, PA (2017); Duluth, MN (2020); East Lansing, MI (2019); Eau Claire, WI (2018); El Portal, FL (2017); Erie, PA (2019); Ferndale, MI (2019); Fort Lauderdale, FL (2019); Gainesville, FL (2018); Glendale, WI (2019); Greenacres, FL (2017); Huntington Woods, MI (2019); Kansas City, MO (2019); Kent, OH (2019); Key West, FL (2017); Lake Worth, FL (2017); Lakewood, OH (2018); Madison, WI (2018); Madison Heights, MI (2020); Miami, FL (2016); Miami Beach, FL (2016); Milwaukee, WI (2018); Minneapolis, MN (2019); Newtown Township (Bucks County), PA (2018); North Bay Village, FL (2016); Oakland Park, FL (2017); Philadelphia, PA (2017); Pittsburgh, PA (2016); Racine, WI (2019); Reading, PA (2017); Red Wing, MN (2020); Riviera Beach, FL (2017); Roeland Park, KS (2020); Royal Oak, MI (2020); Sheboygan, WI (2019); Shorewood, WI (2019); St. Louis, MO (2019); St. Paul, MN (2020); State College, PA (2018); Superior, WI (2019); Tallahassee, FL (2020); Toledo, OH (2017); Wellington Village, FL (2017); West Allis, WI (2020); West Palm Beach, FL (2016); West St. Paul, MN (2020); Wilton Manors, FL (2016); Winona, MN (2020); Yardley, PA (2018).

<sup>17</sup> ILGA World: Lucas Ramon Mendos, *Curbing Deception: A world survey on legal regulation of so-called "conversion therapies"* (Geneva: ILGA, 2020), 95.

<sup>18</sup> "Florida Bans on Conversion Therapy for Children Voided by U.S. Appeals Court", *US News*, 20 November 2020.

<sup>19</sup> "Assemblymember Low Statement on Assembly Bill 2943", *Assemblymember Evan Low*, 31 August 2018.

<i>Connecticut</i>	<b>Public Act No. 17-5</b> (House Bill No. 6695) (2017) forbids the practice of “conversion therapy” by licensed health care providers, or for profit, on people under 18 years of age. This act also forbids the allocation of public funding to “conversion therapy”.
<i>Delaware</i>	<b>Senate Bill No. 65</b> (2018) amended the Delaware Code to proscribe medical professionals from practicing “conversion therapy” on children or referring children to such practices.
<i>Georgia</i>	In March 2019, <b>House Bill No. 580</b> (2019), which would forbid licensed therapists from applying “conversion therapy” on anyone below the age of 18, was introduced to the Georgia General Assembly. As of September 2020, the bill is still pending.
<i>Hawaii</i>	<b>Senate Bill No. 270</b> (2018) prohibits specific state-licensed counsellors from engaging in sexual orientation change efforts on minors. <b>House Bill No. 664</b> (2019) clarifies that the aforementioned ban on sexual orientation change efforts applies to “conversion therapy”.
<i>Idaho</i>	In February 2020, <b>House Bill No. 482</b> (2020), which would forbid mental health professionals from applying “conversion therapy” on anyone below the age of 18, was introduced to the Idaho House of Representatives. As of September 2020, the bill is still pending.
<i>Illinois</i>	<b>Public Act 099-0411</b> (also known as the Youth Mental Health Protection Act; formerly House Bill No. 217) (2015) bans mental health providers from applying “conversion therapy” on patients under the age of 18. Furthermore, Section 25 of this act outlaws any fraudulent advertising of homosexuality as a mental disease, disorder, or illness.
<i>Kansas</i>	In February 2017, <b>Senate Bill No. 172</b> (2017) which would have forbidden licensed physicians from practicing “conversion therapy” on people under 18 years of age, was introduced to the Kansas Senate. However, the bill lapsed in May 2018.
<i>Kentucky</i>	<b>House Bill No. 199</b> which would ban mental health professionals from performing “conversion therapy” on people under eighteen years of age, as well as the use of public funds for “conversion therapy”, was introduced to the Kentucky Legislature in January 2020. In August 2020, it was reported that lawmakers had begun promoting similar legislation for the Kentucky General Assembly’s 2021 session. <sup>20</sup>
<i>Maine</i>	<b>House Paper 755 - Legislative Document 1025</b> (2019) forbids certain licensed professionals from advertising, offering, or administering “conversion therapy” to individuals under 18 years of age.
<i>Maryland</i>	<b>Senate Bill 1028</b> (2018) prohibits certain licensed mental health or childcare practitioners from engaging in “conversion therapy” with minors. It also forbids the allocation of state resources for “conversion therapy” purposes.
<i>Massachusetts</i>	<b>Bill H.140</b> (2019) forbids licensed health care providers from advertising or engaging in sexual orientation and gender identity change efforts with patients less than 18 years of age.
<i>Michigan</i>	In April 2019, <b>Senate Bill No. 284</b> (2019) and <b>House Bill No. 4515</b> (2019), which would forbid mental health professionals from performing “conversion therapy” on anyone below the age of 18, were introduced to the Legislature. As of September 2020, these bills are still pending.
<i>Minnesota</i>	Since at least 2017, a series of bills attempting to ban “conversion therapy” on minors in Minnesota have failed to become law after repeatedly lapsing in the state’s Legislature. The latest of these bills, <b>HF 12</b> (2019), was reintroduced in February 2020 after being struck down in April 2019. As of September 2020, this bill is still pending.
<i>Nebraska</i>	In January 2019, <b>Legislative Bill No. 167</b> (2019) was introduced to the Nebraska Legislature. The bill would outlaw for-profit “conversion therapy” on minors, as well as the false advertisement and state funding of “conversion therapy”.
<i>Nevada</i>	<b>Senate Bill No. 201</b> (2017) forbids licensed psychotherapists from practicing “conversion therapy” on people under 18 years of age.
<i>New Hampshire</i>	<b>House Bill 587-FN</b> (2018) prohibits licensed people from offering or administering “conversion therapy” to individuals under 18 years of age.

<sup>20</sup> Bruce Schreiner, “Kentucky lawmakers resume push to curb ‘conversion therapy’”, ABC News, 25 August 2020.

<i>New Jersey</i>	<a href="#">Assembly Bill 3371</a> (2013) prohibits licensed professional counsellors from engaging in sexual orientation change efforts with people under 18 years of age.
<i>New Mexico</i>	<a href="#">State Bill 121</a> (2017) forbids licensed people from providing "conversion therapy" to anyone under 18 years of age.
<i>New York</i>	In 2016, the Governor of New York issued a series of <a href="#">regulations</a> to prohibit the practice of "conversion therapies" on minors in certain mental health facilities, as well as its coverage by public and private health care insurers in the state.  <a href="#">Assembly Bill A576</a> (2019) designates sexual orientation change efforts by mental health care professionals on people under 18 years of age as professional misconduct. Additionally, in September 2019, almost two years after the approval of a broad city-wide ban on "conversion therapy", The New York Times reported that the New York City Council was preparing to reverse this provision in order to neutralise a conservative Christian legal organisation's federal lawsuit against the city, which could have had a substantially negative impact had it reached the conservative-leaning Supreme Court. <sup>21</sup>
<i>North Carolina</i>	In March 2019, <a href="#">Senate Bill No. 426</a> (also introduced as <a href="#">House Bill No. 516</a> ) (2019), which would outlaw state-licensed mental health professionals from applying "conversion therapy" on anyone below the age of 18, was introduced to the North Carolina General Assembly. As of September 2020, the bill is still pending. In August 2019, North Carolina Governor signed <a href="#">Executive Order No. 97</a> (2019) banning the allocation of public funding for "conversion therapy" on minors.
<i>Ohio</i>	In April 2019, <a href="#">Senate Bill No. 130</a> (also introduced as <a href="#">House Bill No. 503</a> ) (2019), which would prohibit certain licensed health care professionals from engaging in "conversion therapy" when treating minor patients, was introduced to the Ohio General Assembly. As of September 2020, the bill is still pending.
<i>Oklahoma</i>	In January 2020, <a href="#">House Bill No. 3872</a> (2020), which would prohibit the application of "conversion therapy" on anyone below the age of 18, was introduced to the Oklahoma State Legislature. As of September 2020, the bill is still pending.
<i>Oregon</i>	<a href="#">House Bill No. 2307</a> (2015) forbids licensed mental health care or social health professionals from practicing "conversion therapy" on people under 18 years of age.
<i>Pennsylvania</i>	In April 2019, <a href="#">House Bill No. 1293</a> (2019), which would forbid mental health professionals from applying "conversion therapy" on anyone below the age of 18, was introduced to the Pennsylvania General Assembly. As of September 2020, the bill is still pending.
<i>Rhode Island</i>	The <a href="#">Prevention of Conversion Therapy for Children Act</a> (2017) forbids licensed health care professionals from administering or advertising "conversion therapy" to people under 18 years of age. Violations of this act would incur disciplinary action and/or suspension and revocation of the practitioner's license.
<i>Utah</i>	In November 2019, the Governor of Utah, based on a <a href="#">previous bill</a> that had failed to become law, <a href="#">proposed</a> a rule to ban "conversion therapy" on minors. The rule entered into effect after being signed by the Governor in January 2020. <sup>22</sup>
<i>Vermont</i>	<a href="#">Act 138</a> (2016) prohibits licensed mental health care providers from performing "conversion therapy" on people younger than 18 years of age.
<i>Virginia</i>	<a href="#">House Bill No. 386</a> (identical to <a href="#">Senate Bill No. 245</a> ) (2020) prohibits licensed health care providers and counsellors from engaging in "conversion therapy" with any person under 18 years of age. The bill also bans the use of state funds to finance the practice of "conversion therapy", referrals to it, or the extension of health benefits coverage with those ends, for underage people.
<i>Washington</i>	<a href="#">Senate Bill No. 5722</a> (2018) forbids the performance of "conversion therapy" by licensed health care providers on people under the age of 18.
<i>District of Columbia</i> ( <i>Washington DC</i> )	<a href="#">Act 20-530</a> (formerly B20-0501) (2014) forbids licensed mental health providers from engaging in sexual orientation change efforts (SOCE) with minors. <a href="#">Act 22-573</a> (formerly B22-0972) (2019) eventually extended this ban to adults under the care of a conservator or guardian.

<sup>21</sup> Jeffery C. Mays, "New York City Is Ending a Ban on Gay Conversion Therapy. Here's Why.", *The New York Times*, 12 September 2019.

<sup>22</sup> The proposed new rule was announced in *Utah's State Bulletin from December 2019*, pp. 61-66.

## Asia

0 out of 33 UN Member States (0%).

### Is there more in Asia?

<b>China</b>	<p>At least two court decisions have ruled in favour of victims of “conversion therapy” though there has not been a legislative ban against such practices.</p> <p>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.<sup>23</sup></p> <p>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.<sup>24</sup></p>
<b>India</b>	<p>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”.<sup>25</sup> In February 2019, the Delhi High Court confirmed that the doctor was not allowed to practice legally and that his removal from the Delhi Medical Council Register was in order. Although, this <a href="#">ruling (2019)</a> contains no explicit mentions of “conversion therapy”.</p> <p>In October 2020, Team Queerala, a local organisation, filed a writ petition in the Kerala High Court seeking a ban on conversion therapy by medical practitioners and mental health providers in the state.<sup>26</sup></p>
<b>Indonesia</b> <i>NEGATIVE DEVELOPMENT</i>	<p>In 2016, the Indonesian Psychiatrists Association (PDSKJI) classified “homosexuality”, “bisexuality” and “transsexualism” as mental disorders, which “can be cured through proper treatment”.<sup>27</sup> In February 2018, Indonesia moved to officially classify homosexuality as a “mental disorder”. In 2019, it was reported that the Office Head of Indonesia’s Ministry of Law and Human Rights in West Java District had forced gay and lesbian prison inmates to undergo “conversion therapy”.<sup>28</sup></p>
<b>Israel</b>	<p>A bill which would have banned “conversion therapy” performed on minors was rejected by the legislature in 2016.<sup>29</sup> However, the Israel Medical Association (which represents around 90% of the country’s doctors) issued a ban on “conversion therapy” that would result in the expulsion of any doctor who performs such practices.<sup>30</sup></p> <p>In July 2020, the Knesset discussed two bills (<a href="#">F/23/702</a> and <a href="#">F/23/254</a>) (2020) that would outlaw the practice of “conversion therapy” by psychologists, punishing its practitioners with up to one year in prison and the removal of their licenses for five years. In November 2020, the Knesset informed the ban was still under discussion.<sup>31</sup></p>
<b>Malaysia</b> <i>NEGATIVE DEVELOPMENT</i>	<p>In 2017, the federal government’s Islamic Development Department (Jabatan Kemajuan Islam Malaysia, “JAKIM”) endorsed and promoted “conversion therapy”.<sup>32</sup> According to local sources, State officials have organised “conversion therapy” courses aimed at transgender women.<sup>33</sup></p> <p>In October 2018, an official from JAKIM, stated that these programmes had “helped 1,450 people”, indicating that “some have gone on to get married, some have changed their dressing, and some are practising control from going back to that lifestyle”. Also in October 2018, Mujahid Yusof Rawa, Minister in the Prime Minister’s Department, announced in Parliament that “since the government does not accept LGBT lifestyles”, they would continue to reach out to the community in order to “rehabilitate” them”.</p>

<sup>23</sup> ‘China orders payout in ‘gay shock therapy’ case’, *BBC News*, 19 December 2014.

<sup>24</sup> ‘Chinese man wins forced gay conversion therapy lawsuit’, *The Guardian*, 4 July 2017.

<sup>25</sup> “Delhi HC Summons Doctor Treating Homosexual Patients Using Electric Shocks”, *Outlook India*, December 8, 2018.

<sup>26</sup> “Queer group approaches Kerala High Court for ban on ‘conversion therapy’” *The News Minute*, 12 October 2020.

<sup>27</sup> Liza Yosephine, ‘Indonesian psychiatrists label LGBT as mental disorders’, *The Jakarta Post*, 24 February 2016.

<sup>28</sup> For more information: ILGA World: Lucas Ramon Mendos, *Curbing Deception: A world survey on legal regulation of so-called “conversion therapies”* (Geneva: ILGA World, 2020).

<sup>29</sup> Marissa Newman, “Day after marking LGBT rights, Knesset nixes 5 gender equality bills”, *The Times of Israel*, 24 February 2016.

<sup>30</sup> Rachel Savage, “Israeli doctors ban gay conversion therapy as risks ‘mental damage’”, *Thomas Reuters Foundation*, 9 January 2019.

<sup>31</sup> “Labor, Welfare and Health Committee discusses bill banning conversion therapy; MK Horowitz: ‘The treatments - mental and physical abuse’”, *Knesset News*, 2 November 2020.

<sup>32</sup> ‘Sexual orientation can be changed, Jakim says in new LGBT video’, *Malay Mail*, 13 February 2017.

<sup>33</sup> ‘Malaysian transgender conversion plan sparks alarm’, *Malay Mail*, 30 December 2017.



The government has also released an online application called “Hijrah Diri – Homoseksualiti”. The application, which can still be downloaded from Google Play, offers users a set of resources to “overcome the problem of homosexuality”, including audio files with thematic talks, an eBook with Islamic teachings and a stepby-step guide through topics such as “Understanding the Challenges” and “Controlling Your Lust”.<sup>34</sup>

Taiwan  
(China)<sup>35</sup>

On February 22, 2018, the Ministry of Health and Welfare issued a public announcement (Yi-Zih No. 1071660970)<sup>36</sup> 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.<sup>37</sup> A bill to include “conversion therapy” as “prohibited treatment” defined in Article 28(4)(1) in the Physicians Act was submitted during the 10th General Assembly of the Social Welfare and Environmental Hygiene Committee in the 2nd session of the 9th legislators in the Legislative Yuan.

## Europe

2 out of 50 UN Member States (4%). Additionally: several subnational jurisdictions in one UN Member State (Spain).

1	 <b>Germany</b>	2020	Section 2 of the <b>Law on Protection against Conversion Treatments (2020)</b> forbids the performance of “conversion therapy” on people under 18 years of age, as well as on adults under coercion or unable to consent. Section 5 establishes that these practices are punishable with up to one year in prison and a fine. Similarly, Section 3 prohibits advertising, offering, or mediating “conversion therapies”, and Section 6 establishes a fine of up to €30,000 as a penalty for this.
2	 <b>Malta</b>	2016	The <b>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)</b> (2016) prohibits the performance of “conversion therapy” both by professionals (Section 3.b) and by non-professionals (Section 3.a).

### Is there more in Europe?

#### Albania

In May 2020, Albania’s Order of Psychologists announced it would prohibit its members from offering “conversion therapy”. Since all registered therapists in Albania must be members of the Order of Psychologists, this decision is akin to a ban on “conversion therapy” among health professionals.<sup>38</sup>

#### Austria

On 2 July 2019, the National Council approved a **resolution (2019)** calling on the Government of Austria to “immediately submit to the Federal Council a government bill banning the use of conversion and reparative therapies on minors”.<sup>39</sup>

In May 2020, at an interview with Der Standard, the Austrian Ministry of Justice and Health reportedly stated that nationwide legislation to ban “conversion therapy” would be unnecessary, as engaging in those practices would already be considered a violation of existing regulations on professional duty and human rights.<sup>40</sup>

<sup>34</sup> For more information: ILGA World: Lucas Ramon Mendos, *Curbing Deception: A world survey on legal regulation of so-called “conversion therapies”* (Geneva: ILGA World, 2020).

<sup>35</sup> Note on Names of countries and territories in this publication: ILGA World is an organisation with ECOSOC-accredited consultative status at the United Nations and our publications therefore have to follow UN-recommended language on the names of countries and territories. For more information, please read the methodology section of this report.

<sup>36</sup> A free English translation of the official document can be accessed [here](#). This translation was offered to ILGA World by *Marriage Equality Coalition Taiwan*.

<sup>37</sup> “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.

<sup>38</sup> Rachel Savage, “Albania psychologists barred from conducting gay ‘conversion therapy’”, *Reuters*, 18 May 2020.

<sup>39</sup> “Österreich: Parlament einstimmig für Verbot von Homo-“Heilung””, *Queer.de*, 2 July 2019.

<sup>40</sup> Kriss Rudolph, “Österreich: Verbot von «Konversionstherapien» nicht nötig”, *Mannschaft Magazin*, 30 May 2020.



<b>Belgium</b>	In July 2019, a <b>draft bill</b> (2019) to outlaw “conversion therapy” was introduced to the Belgian Parliament.
<b>France</b>	In June 2020, after a series of hearings that had begun the previous year, a <b>bill</b> (2020) that would penalise sexual orientation or gender identity change efforts with up to three years’ imprisonment and fine of up to 30,000 euros was formally introduced to the National Assembly. As of September 2020, the bill is yet to be approved.
<b>Ireland</b>	In April 2018, the <b>Prohibition of Conversion Therapies Bill</b> (2018) was presented to the Irish Senate, but it <b>lapsed</b> in March 2020 with the dissolution of the Parliament and the Senate. <sup>41</sup>
<b>Netherlands</b>	“Conversion therapies” were removed from the basic health insurance package by the Ministry of Health in 2012. <sup>42</sup> In May 2019, the Dutch House of Representatives adopted a <b>motion</b> to call for a governmental prohibition of “conversion therapy”. In November 2019, the government responded by committing to conduct a study on the impact of “conversion therapy” on young and vulnerable people. <sup>43</sup> The study, completed in June 2020, identified at least 15 active organisations and individuals offering “conversion therapy” in the country. <sup>44</sup> It was expected that Phase 2 of this investigation, consisting of recommended next steps to ban “conversion therapy” in the Netherlands, would be released by the end of June 2020.
<b>Norway</b>	In December 2019, with 49 votes in favour and 53 against, the Norwegian Parliament rejected an initiative asking the government to put forward a proposal to ban “conversion therapy”, among numerous other policy changes to protect LGBTI people. <sup>45</sup>  In July 2020, the Minister of Culture and Gender Equality declared that the prohibition of “conversion therapy” was under investigation prior to other instances of deliberation. <sup>46</sup>
<b>Poland</b>	In February 2019, a group of MPs and activists submitted a <b>draft bill</b> (2019) to the Sejm (the lower house of the Polish parliament) to ban “gay conversion therapy”. <sup>47</sup> As of September 2020, the status of this bill is unclear.  In July 2020, the Polish Ministry of Health publicly stated its opposition to “conversion therapy” and strongly condemned all forms of discrimination against patients on the grounds of their <i>sexual orientation, inter alia</i> . <sup>48</sup>
<b>Spain</b>	Even though there is no nationwide ban, several jurisdictions within Spain have prohibited “conversion therapy”. As of September 2020, approximately 48.7% of the Spanish population enjoys legal protection from “conversion therapies”.
<b>Andalusia</b>	Article 62(e) of the Law of 28 December to Guarantee Rights, Equal Treatment and Non-discrimination for LGBTI People and their Relatives in Andalusia ( <b>Law 8/2017</b> ) (2018) defines the promotion, dissemination, or performance of “conversion therapy” as “a very serious administrative offence”. Under Article 65(3) of the same law, “very serious administrative offences” are punishable with fines ranging from 60,001 to 120,000 euros, in addition to a possible ban from certain public benefits for up to 5 years.
<b>Aragon</b>	Article 49(4)(c) of the Law of 20 December on Equality and Comprehensive Protection against Discrimination based on Sexual Orientation, Gender Expression and Gender Identity in the Autonomous Community of Aragon ( <b>Law 18/2018</b> ) (2019) defines the promotion or performance of “conversion therapy” as “a very serious offence”, regardless of the involved person’s consent thereto. Under Article 51 (3) of the same law, “very serious offences” are punishable with fines ranging from 30,001 to 50,000 euros, in addition to a possible ban from certain public benefits for up to 5 years.

<sup>41</sup> "Prohibition of Conversion Therapies Bill 2018", *Tithe an Oireachtais/Houses of the Oireachtas (web page)* (2020).

<sup>42</sup> "Einde vergoeding Different-therapie lijkt in zicht" *COC Netherland (website)*, 3 May 2012.

<sup>43</sup> "Kamerstuk 28345 nr. 225: Brief van de Ministers van Volksgezondheid, Welzijn en Sport en Justitie en Veiligheid aan de Voorzitter van de Tweede Kamer der Staten-Generaal", *Overheid.nl (web page)*, 15 November 2019.

<sup>44</sup> "Een exploratief onderzoek naar pogingen tot het veranderen van de seksuele gerichtheid en genderidentiteit in Nederland", *Ministry of Health, Welfare and Sport*, May 2020.

<sup>45</sup> "Voteringsoversikt for sak: Representantforslag om en aktiv regnbuepolitikk for å styrke kjønns- og seksualitetsmangfold", *Stortinget (web page)*, 11 December 2019.

<sup>46</sup> "Dokument nr. 15:2102 (2019-2020): Skriftlig spørsmål fra Anette Trettebergstuen (A) til kultur- og likestillingsministeren", *Stortinget (web page)*, 7 July 2020.

<sup>47</sup> Lydia Smith, "Poland moves step closer to banning gay conversion therapy". *Pink News*. 22 February 2019.

<sup>48</sup> "MZ do RPO: "terapia konwersyjne" niezgodne z aktualną wiedzą medyczną", *Polish Ombudsman (web page)*, 3 July 2020.

Madrid	Article 70(4)(c) of the Law of 22 July on Comprehensive Protection against LGBTBI-phobia and Discrimination on the grounds of Sexual Orientation and Identity in the Community of Madrid ( <a href="#">Law 3/2016</a> ) (2016) defines the promotion or performance of “conversion therapy” as “a very serious offence”, regardless of the involved person’s consent thereto. Under Article 51 (3) of the same law, “very serious offences” are punishable with fines ranging from 20,001 to 45,000 euros, in addition to a possible ban from certain public benefits for up to 3 years. Finally, Article 7(2) of the same law states that “conversion therapies” shall not be performed under Madrid’s public healthcare system.
Murcia	Articles 8(3) and 14(3) of Law of 27 May on Social Equality of Lesbian, Gay, Bisexual, Transsexual, Transgender and Intersex People, and on Public Policies against Discrimination based on Sexual Orientation and Gender Identity in the Autonomous Community of the Region of Murcia ( <a href="#">Law 8/2016</a> ) (2016) explicitly forbid the performance of “conversion therapy” by healthcare providers in the Autonomous Community of the Region of Murcia and the Murcian Health Service, respectively.
Valencia	Article 6 of the Comprehensive Law of 7 April on the Recognition of the Right to Gender Identity and Expression in the Valencian Community ( <a href="#">Law 8/2017</a> ) (2017) prohibits the practice of “conversion therapies” aiming to modify the gender identity or gender expression of trans people. Article 7 of the Law of November 29, of the Generalitat, on Equality of LGBTBI people ( <a href="#">Law 23/2018</a> ) (2018) extends this prohibition to all people, adding “sexual orientation” as a protected ground. Article 60(d) and (e) of the same law defines the promotion, dissemination, or performance of “conversion therapy”, or the refusal to immediately halt said practices or their diffusion, as “a very serious offence”, regardless of the involved person’s consent thereto. Finally, under Article 62(3) of the same law, “very serious offences” are punishable with fines ranging from 60,001 to 120,000 euros, in addition to a possible ban from certain public benefits for up to 5 years.
Switzerland	The Federal Council has stated its opposition to banning “conversion therapies” in Switzerland, under the pretence that existing legislation is sufficient to protect people from them. <sup>49</sup>  In June 2020 media reports indicated that German promoters of “conversion therapy” were moving into Switzerland after the enactment of the ban in Germany. <sup>50</sup>
United Kingdom	In November 2015, a <a href="#">Memorandum of Understanding</a> (2015) was signed by both NHS England and NHS Scotland to commit to ending the practice of “conversion therapy”. <sup>51</sup>  In 2018, the UK Government announced its commitment towards a total ban on “conversion therapy” under its LGBT Action Plan. <sup>52</sup> However, shortly before the 2019 General Election, Forbes reported that no political party—including the governing Conservative Party— had included a “conversion therapy” ban on their respective manifesto policies. <sup>53</sup>  The <a href="#">Counsellors and Psychotherapists (Regulation) and Conversion Therapy Bill 2017-19</a> (2017), which would have outlawed “conversion therapy” in the UK, was introduced in 2018 but failed to complete its way through Parliament before the end of the session.
Northern Ireland	In September 2020, plans to ban “conversion therapies” in Northern Ireland were reportedly underway. The initiative is led by several ministers including NI’s Health, Justice and Communities Ministers. <sup>54</sup>
Isle of Man	In June 2019, an amendment to the <a href="#">Sexual Offences and Obscene Publications Bill</a> (2019) that would make it illegal to practise “conversion therapy” in the Isle of Man was put forward to the House of Keys. Under Clause 88 of the amended bill, practising or to offer to practise “conversion therapy” would be considered an offence punishable with up to 2 years’ custody or a fine. According to the Tynwald’s website, the bill underwent its second reading by the Legislative Council in June 2020 but is yet to receive royal assent. <sup>55</sup>
European Union	In March 2018, the European Parliament of the European Union approved a resolution that “welcomes initiatives prohibiting LGBTBI ‘conversion therapies’” and called on member states to outlaw such practices. <sup>56</sup>

<sup>49</sup> “Councillors, advocates criticise Swiss government’s refusal to ban ‘gay conversion therapy’”. *The Local*. 4 October 2019.

<sup>50</sup> “Switzerland is becoming a refuge for ‘gay healers’” [Schweiz wird zum Zufluchtsort für Homo-Heiler]. *20 Minutes*, 24 June 2020.

<sup>51</sup> ‘Memorandum of Understanding on Conversion Therapy in the UK’, *UK Council for Psychotherapy (web page)* (2017).

<sup>52</sup> “Boris Johnson pledges ban on ‘gay conversion therapy’”, *BBC News*, 20 July 2020. The LGBT Action Plan (2018) can be accessed [here](#).

<sup>53</sup> “No UK Party Manifesto Promises to Ban Gay Conversion Therapy: So Where Do They Stand?”, *Forbes*, 29 November 2019.

<sup>54</sup> “Conversion therapy for LGBT people to be banned”, *Irish Legal News*, 9 September 2020.

<sup>55</sup> “Bills in Progress”, *Tynwald - Parliament of the Isle of Man (web page)* (2020).

<sup>56</sup> ‘European Parliament takes a stance against LGBTBI conversion therapies for the first time’, *Integroup on LGBT Rights*, 1 March 2018.

## Oceania

0 out of 14 UN Member States (0%). Additionally: subnational jurisdictions in one UN Member State (Australia) and 3 UN Member States with indirect bans (Fiji, Nauru and Samoa).

### Is there more in Oceania?

<b>Australia</b>	Although there is no federal ban on “conversion therapy” in Australia, in September 2018, the Australian Senate passed a motion seeking to ban them across the country. <sup>57</sup> Though not legally binding, the motion urges the federal government to pressure states to ban the practice.
<i>Australian Capital Territory</i>	In August 2020, the Australian Capital Territory passed the <b>Sexuality and Gender Identity Conversion Practices Bill</b> (2020), which outlaws “conversion therapies” on protected persons with up to a 12-month jail term or a fine of \$24,000. The bill is now awaiting notification by the parliamentary counsel and will go into effect six months after that.
<i>New South Wales</i>	While NSW does not currently ban gay conversion therapy, disciplinary proceedings can reportedly be taken against a health practitioner who provides services in an unethical manner. However, no bill has been introduced as of yet. <sup>58</sup>
<i>Queensland</i>	In August 2020, the <b>Health Legislation Amendment Bill</b> (2019), banned so-called “conversion therapy”. Under Section 213H of this law, health service providers performing “conversion therapy” are to be punished with up to 12 months in prison. When the affected individual is a child or a person with significantly limited ability to understand or make decisions about a particular treatment, the maximum penalty is 18 months in prison.
<i>South Australia</i>	A bill that would punish “conversion therapy” practitioners with up to eight years in prison is reportedly being drafted. <sup>59</sup>
<i>Victoria</i>	Under the <b>Health Complaints Act</b> (2016), the Health Complaints Commissioner has the power to investigate and issue temporary or permanent bans on unregistered health providers, including those providing “conversion therapy”. <sup>60</sup> In May 2018, the state government also launched an inquiry into such practices. <sup>61</sup> In February 2019, the Government of Victoria announced plans to ban “conversion therapy”. <sup>62</sup> In November 2020, the ban was reported to be “imminent”. <sup>63</sup>
<b>Fiji</b> <i>INDIRECT BAN</i>	Section 3(1)(d) of the Mental Health Decree ( <b>Decree No. 54</b> ) (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. <sup>64</sup>
<b>Nauru</b> <i>INDIRECT BAN</i>	Nauru’s <b>Mentally Disordered Persons Act</b> (2016) 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. <sup>63</sup>
<b>New Zealand</b>	In October 2018, the Prohibition of Conversion Therapy Bill, which would punish anyone performing, offering to perform, or advertising “conversion therapy” with up to 12 months’ imprisonment and a fine of up to \$10,000, was introduced to Parliament.
<b>Samoa</b> <i>INDIRECT BAN</i>	Section 2 of the <b>Mental Health Act</b> (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. <sup>63</sup>

<sup>57</sup> “Matters of Public Importance: Gender and Sexual Orientation”, *Parliament of Australia (web page)*, 11 September 2018. The full-length Senate Official Hansard for Tuesday, 11 September 2018 can be accessed [here](#).

<sup>58</sup> “‘Gay conversion therapy nearly killed me’: Survivor backs NSW push for national ban”, *ABC News*, 2 August 2019.

<sup>59</sup> Stephanie Richards and Angela Skujins, “SA move to outlaw conversion therapy”, *InDaily*, 16 July 2020.

<sup>60</sup> ‘Gay conversion therapy, fake doctors to be banned in Victoria’, *ABC News*, 9 February 2016.

<sup>61</sup> Danny Tran, ‘Gay conversion therapy to be investigated by Victoria’s health watchdog’, *ABC News*, 17 May 2018.

<sup>62</sup> “Conversion Practices - Legislative Option to Implement a Ban”, *Engage Victoria (web page)* (2019).

<sup>63</sup> “Victorian Conversion Practices Ban Imminent”, *Star Observer*, 11 November 2020.

<sup>64</sup> 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).

GLOBAL LEGISLATION OVERVIEW

# RECOGNITION

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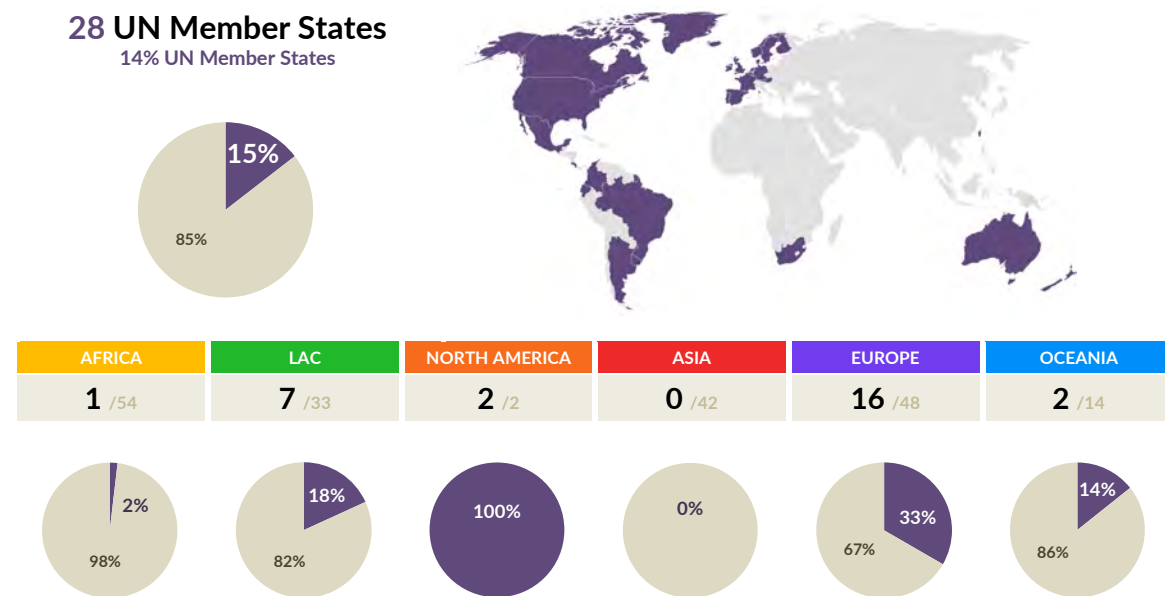
STATE-SPONSORED HOMOPHOBIA 2020





# Same-sex marriage

## Highlights



## Introduction

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

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

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

**What does International Human Rights Law say?**


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

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

**Yogyakarta Principle 24**

## Africa

1 out of 54 UN Member States (2%). Additionally: 4 non-UN Member jurisdictions.

1	 <b>South Africa</b>	2006	Despite the title of the law, the <b>Civil Union Act</b> (2006) confers the right to marriage to persons of the same sex.
		2020	In October 2020, the <b>Civil Union Amendment Act</b> (2020) was enacted by the president, <sup>1</sup> repealing Section 6 of the Civil Union Act. Section 6 had allowed a marriage officer to inform the Minister of Home Affairs that they objected on the ground of conscience, religion, and belief to solemnising a civil union between persons of the same sex. This follows from the Parliamentary Lower House passing the <b>Civil Union Amendment Bill</b> in 2018, and the Upper House passing the bill in July 2020. <sup>2</sup>

### Non-independent jurisdictions in Africa (4)

#### France (2)

1	 <b>Mayotte</b>	2013	In France, the Law Opening Marriage to Same-Sex Couples ( <b>Law No. 2013-404</b> ) (2013) amended the <b>Civil Code</b> to legalise same-sex marriage. <sup>3</sup> The first reported marriage taking place between two non-resident men on 27 September 2013. <sup>4</sup> This makes Mayotte one of the only Muslim-majority territories in the world to allow same-sex marriage.
2	 <b>Reunion</b>	2013	In France, the Law Opening Marriage to Same-Sex Couples ( <b>Law No. 2013-404</b> ) (2013) amended the <b>Civil Code</b> to legalise same-sex marriage. <sup>5</sup> The first wedding took place between two women on 14 June 2013 in the town of Saint-Paul. <sup>6</sup>

#### United Kingdom (2)

3	 <b>British Indian Ocean Territory<sup>7</sup></b>	2014	The only inhabitants of the British Indian Ocean Territory are British and United States naval personnel and support staff, following the forced removal of the local population to Mauritius and Seychelles in the 1960s and 1970s. UK personnel were granted the right to marry following the Statutory Instruments 2014 No. 1,108 ( <b>The Overseas Marriage (Armed Forces) Order 2014</b> ), which allows military personnel to enter into same-sex marriages across all United Kingdom installations. This previously excluded Northern Ireland, which only legalised same-sex marriage in January 2020.
4	 <b>Saint Helena, Ascension and Tristan da Cunha</b>	2017	Same-sex marriage was adopted gradually across the territory. Ascension's <b>Marriage Ordinance</b> (2016) came into force on 1 January 2017; Tristan da Cunha's <b>Marriage Ordinance</b> (2017) took effect on 4 August 2017; and followed by St Helena's <b>Marriage Ordinance</b> (2017), which came into effect as of 20 December 2017.

<sup>1</sup> "Same-sex marriages protected as Ramaphosa passes the Civil Union Amendment Bill into law", *News 24*, 23 October 2020.

<sup>2</sup> Press Release: "NCOP Passed the Cybercrimes Bill, Civil Union and the Science and Technology Laws Amendment Bills", *Parliament of the Republic of South Africa*, 1 July 2020.

<sup>3</sup> Under Article 72-3 of the **French Constitution** (1958), Mayotte is part of the group of Overseas Departments and Regions (status: "Collectivité Territoriale Unique") and is subject to Article 73 of the Constitution, according to which French statutes and regulations are automatically applicable in the territory.

<sup>4</sup> Badrudin, Assani, "Mayotte: First gay wedding soon celebrated on the island of perfumes", *Indian Ocean Times*, 26 September 2013.

<sup>5</sup> Under Article 72-3 of the **French Constitution** (1958), Reunion is part of the group of Overseas Departments and Regions and is subject to Article 73 of the Constitution, according to which French statutes and regulations are automatically applicable in the territory.

<sup>6</sup> "Le premier mariage gay célébré à La Réunion: Laurence et Corinne se sont dit oui," *IP Reunion*, 14 June 2013.

<sup>7</sup> On 22 May 2019, the United Nations General Assembly (UNGA) adopted a **resolution** welcoming an **Advisory Opinion** by the International Court of Justice, calling for the return of the islands to the exiled indigenous population, and for the incorporation of the territory into Mauritius. Mauritius does not recognise same-sex marriage.

## Is there more in Africa?

### Namibia

In September 2019 it was reported that two multi-national same-sex couples, seeking to have their marriages and residency-rights recognised, agreed to have their cases heard jointly before a full bench of judges,<sup>8</sup> though no judgements have yet been made. In October 2019 Namibia's Minister of Home Affairs declared that the Namibian government upholds its non-recognition of same-sex marriages.<sup>9</sup>

**NOTE:** In April 2020 it was widely—and erroneously—reported that Tunisia had become “the first North African country to recognise same-sex marriage” after a Tunisian man who married another man in France was able to register his marriage (which had taken place in France) with Tunisian authorities. The “recognition” was likely a mistake or misunderstanding and that same-sex marriage remains illegal in Tunisia. A coalition of local organisations has urged international media to refrain from sharing the story due to the risk of homophobic backlash against LGBTIQ+ people.<sup>10</sup>

## Latin America and the Caribbean

7 out of 33 UN Member States (21%). Additionally: 12 non-UN Member jurisdictions.

1		<b>Argentina</b>	2010	The Law on Marriage Equality ( <b>Law No. 26,618</b> ) is the federal law that provides for same-sex marriage nationwide.
2		<b>Brazil</b>	2013	<b>Resolution No. 175</b> (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 decided, in the joint judgment of actions <b>ADPF No. 132</b> and <b>ADI no. 4277</b> , that same-sex couples had the right to formalise “stable unions” recognised before the State. Further, the court stated that same-sex couples living in “stable unions” should be recognised as “family units” and entitled to the same rights as heterosexual couples living in that kind of union.
3		<b>Colombia</b>	2016	In 2011, the Court had issued <b>Decision C-577/11</b> recognising same-sex couples as “family entities” and ordered the Congress to legislate on the matter, though no formal law was adopted. After several years of legal uncertainty, in 2016, Colombia's Constitutional Court issued <b>Decision SU214/16</b> , establishing that notaries could no longer refuse to register same-sex marriages.
4		<b>Costa Rica</b>	2020	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 were unconstitutional. The Supreme Court ordered the Legislative Assembly to reform the law, failing which the ban would be abolished automatically by 26 May 2020. <sup>11</sup> In October 2019, a project that would have only legalised civil unions, as opposed to marriages for same-sex couples, was abandoned. <sup>12</sup>  As no law was adopted, same-sex marriage became legal as per the Court's decision. The first same-sex marriages in the country were part of a live-broadcast celebration (in lieu of a public event, so as to maintain social distancing safety regulations during the COVID-19 pandemic). <sup>13</sup> Conservative lawmakers had previously attempted to use the pandemic as cause to delay legalisation. <sup>14</sup>

<sup>8</sup> Jana-Mari Smith, “Same-sex couples join forces”, *The Namibian Sun*, 5 September 2019

<sup>9</sup> Werner Menges, “Govt sticks to stance on same-sex marriage”. *The Namibian*, 3 October 2019.

<sup>10</sup> “Same-sex marriage is still illegal in Tunisia!”, *Rights Africa*, 6 May 2020.

<sup>11</sup> Sala Constitucional de la Corte Suprema de Justicia (Costa Rica), Sentencia No. 2018-12782, Expte. 15-013971-0007-CO, 8 August 2018; “Con este comunicado, Sala IV anunció decisiones sobre matrimonio y uniones gays”, *La Nación*, 9 August 2018.

<sup>12</sup> Esteban Arrieta, “Comunidad LGBT celebra pérdida de apoyo para proyecto de uniones civiles para parejas del mismo sexo”. *La República*, 2 October 2019

<sup>13</sup> “Matrimonio gay en Costa Rica | “Es la conquista de nuestra dignidad”: la histórica primera boda igualitaria en Centroamérica”, *BBC News*, 26 May 2020.

<sup>14</sup> Oscar Lopez, “Costa Rica lawmakers criticize efforts to delay gay marriage”, *Reuters*, 14 May 2020.



5	 <b>Ecuador</b>	2019	Same-sex marriage was legalised on June 12, 2019 by means of two judgments issued by the Constitutional Court (10-18-CN/19 and 11-18-CN/19) which followed the standards set by the 2017 Advisory Opinion No. 24 of the Inter-American Court of Human Rights. <sup>15</sup>
6	 <b>Mexico</b>		<p>There is no federal law on same-sex marriage. As of December 2020, 19 jurisdictions have adopted same-sex marriage legislation, meaning that around 50% of the population live in States where same-sex marriage is legal. Furthermore, 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.<sup>16</sup> However, these decisions did not translate to the legalisation of same-sex marriages in the whole country. Rather, same-sex marriages have been celebrated on a case-by-case basis (generally after a judicial decision) in States where legislation still does not provide for such unions.</p> <p>In May 2019, Mexico's foreign affairs secretary announced that all Mexican consulates will allow citizens to marry regardless of gender.<sup>17</sup> In September 2019, the Senate received a draft bill that would provide constitutional endorsement to same-sex marriages.<sup>18</sup></p>
	<i>Aguascalientes</i>	2019	In 2019 the Supreme Court of Justice ruled to allow same-sex marriages in the State of Aguascalientes, a move celebrated by the National Human Rights Council. <sup>19</sup>
	<i>Baja California Sur</i>	2019	On 28 June 2019, the official <i>State Bulletin</i> announced amendments to the State's Civil Code would come into effect the following day, meaning same-sex marriages would formally be recognised.
	<i>Campeche</i>	2016	On 10 May 2016 the State Congress amended Articles 2, 157, 159, and 167 in the Civil Code, making same-sex marriage legal. <sup>20</sup>
	<i>Chiapas</i>	2017	Shortly after the Supreme Court of Justice ruled in favour of same-sex marriage, <sup>21</sup> Chiapas recorded its first solemnisation of such a union. <sup>22</sup> This despite the State not having amended its legislation.
	<i>Chihuahua</i>	2017	In 2017 the governor of Chihuahua instructed the head of the Civil Registry to not deny marriage to any same-sex couple. <sup>23</sup>
	<i>Coahuila</i>	2014	Coahuila was the second jurisdiction within Mexico to legalise same-sex marriage, after Mexico City. The <i>amendment</i> to the Civil Code was enacted in September 2014. <sup>24</sup>
	<i>Colima</i>	2016	The <i>Official Periodical of the Government of Colima</i> announced on 11 June 2016 that the Civil Code had been amended, formally recognising marriages between persons of the same sex.
	<i>Hidalgo</i>	2019	Same-sex marriage was formally recognised after the 10 June 2019 release of the <i>Official Gazette of the State of Hidalgo</i> , which outlined several legal amendments.

<sup>15</sup> I/A Court H.R., "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*, 24 November 2017. Series A No. 24.

<sup>16</sup> *Tesis: 1a./J. 43/2015 (10a.)*, *Supreme Court of Mexico (Webiste)*. Accessed 1 December 2020.

<sup>17</sup> "Mexican consulates to perform same-sex marriages", *AP News*, 16 May 2019.

<sup>18</sup> "Llega al Senado iniciativa para que el matrimonio gay sea avalado constitucionalmente", *La Verdad*, 24 September 2019.

<sup>19</sup> "Celebra CNDH resolución de SCJN para permitir el matrimonio igualitario [...] en el estado de Aguascalientes", *CNDH Mexico*, 3 April 2019.

<sup>20</sup> "Entra en vigor la Ley de Matrimonios Igualitarios", *Telemar Campeche*, 20 May 2016.

<sup>21</sup> "Acción de Inconstitucionalidad 32/2016", *Diario Oficial de la Federación*, 11 May 2018.

<sup>22</sup> Pérez, Fredy Martín, "Primera boda gay en Chiapas", *El Universal*, 31 July 2017.

<sup>23</sup> Argelia Domínguez, "Reitera Corral: Nadie puede negar el matrimonio igualitario" *Entrelineas*, 12 April 2017.

<sup>24</sup> "Decreto del Matrimonio igualitario en Coahuila: Garantía de igualdad y no discriminación", *CONAPRED (Website)*, 12 September 2014.

<i>Jalisco</i>	2016	Shortly after a Supreme Court of Justice ruled in favour of same-sex marriage in the State, Jalisco recorded its first solemnisation of such a union. <sup>25</sup>
<i>Mexico City</i>	2010	While not technically a State, Mexico City was the first jurisdiction in the country to legalise same-sex marriages. The <i>Law amending various provisions of the Civil Code</i> (2009) was passed by the Legislative Assembly in 2009 and came into effect on 4 March 2010.
<i>Michoacán</i>	2016	Same-sex marriage was legalised after <i>amendments</i> to the Family Code were announced in the Official Periodical of the State of Michoacán (2016).
<i>Morelos</i>	2016	Same-sex marriage was legalised after the <i>Official Periodical of the State of Morelos</i> publicised amendments to the State Constitution on 4 June 2016.
<i>Nayarit</i>	2015	After a number of amendments to the <i>Nayarit Civil Code</i> , same-sex marriage was formally recognised in 2015.
<i>Nuevo León</i>	2019	Mexico's Supreme Court <i>ruled</i> (2019) that legislation in Nuevo León regarding its definition of marriage was "not in accordance with the fundamental principles contemplated from the constitutional reform". The court further stated that the legislation did "not comply with the prohibition of discrimination based on gender, sexual preferences, marital status or any other that violates human dignity."
<i>Oaxaca</i>	2019	Same-sex marriages were legalised after amendments to legislation were announced in the <i>Official Periodical of the State of Oaxaca</i> on 5 October 2019.
<i>Puebla</i>	2017	In 2017 the Supreme Court of Justice declared Article 300 of the Civil Code, which defines marriage as being between a man and a woman, unconstitutional. <sup>26</sup> However, in October 2019, the Congress of Puebla voted against reforming local legislation in order to render it consistent with the Supreme Court's ruling. <sup>27</sup>
	2020	In November 2020, the Congress of Puebla finally approved amendments to Articles 294, 297, 298, and 300 of the <i>Civil Code</i> , which now provide for a gender-neutral definition of "marriage". <sup>28</sup>
<i>Quintana Roo</i>	2012	In Quintana Roo, same-sex marriages were allowed by local authorities through a progressive construction of local regulations. <sup>29</sup>
<i>San Luis Potosí</i>	2019	Same-sex marriages were recognised after amendments to legislation were announced in the State's <i>Parliamentary Gazette</i> (2019).
<i>Tlaxcala</i>	2020	On 8 December 2020, the Congress of Tlaxcala voted in favour of amending some articles of the state's <i>Civil Code</i> to make them gender-neutral, thereby legalising same-sex marriages. <sup>30</sup>
7  <b>Uruguay</b>	2013	Law on Marriage Equality ( <i>Law No. 19,075</i> ) redefined marriage as the union of two persons "of different or same-sex". In September 2019, a bill to allow foreign LGBT citizens to marry in the country was introduced. <sup>31</sup>

<sup>25</sup> Víctor Hugo Ornelas, "Oficial el primer matrimonio igualitario en Jalisco", *Milenio*, 20 February 2016.

<sup>26</sup> Reyes, Juan Pablo, "Corte avala bodas gay en Puebla", *Excelsior*, 1 August 2017.

<sup>27</sup> "En Puebla, rechazan matrimonio igualitario y dejan cárcel a mujeres que aborten", *Expansión Política*, 8 October 2019.

<sup>28</sup> Erick Almanza, "Congreso de Puebla aprueba el matrimonio igualitario", *El Financiero*, 3 November 2020.

<sup>29</sup> Adriana Varillas, "Revocan anulación de bodas gay en QRoo", *El Universal*, Estados, 3 May 2012.

<sup>30</sup> "Avalan en Tlaxcala el matrimonio igualitario", *El Sol de Tlaxcala*, 9 December 2020. The amended versions of the relevant Articles (39, 42, and 46) within Tlaxcala's Civil Code can be read in: Lirio Sánchez, "Se aprueba en Congreso la ley para matrimonio igualitario en Tlaxcala", *Intolerancia*, 8 December 2020.




<sup>31</sup> "Matrimonio igualitario para todos: Uruguay busca legalizar uniones LGBT para extranjeros", *La Tercera*, 11 September 2019

Non-independent jurisdictions in Latin America and the Caribbean (12)



France (5)

1	 French Guiana		
2	 Guadeloupe		
3	 Martinique	2013	<p>In France, the Law Opening Marriage to Same-Sex Couples (<a href="#">Law No. 2013-404</a>) (2013) amended the <a href="#">Civil Code</a> to legalise same-sex marriage.</p> <p>This law applies in French Guiana, Guadeloupe, Martinique, Saint Barthelemy, and Saint Martin.<sup>32</sup></p>
4	 Saint Barthelemy		
5	 Saint Martin		


Netherlands (3)

6	 Bonaire	2012	<p>Same-sex marriage became legal in Bonaire, Saba and Sint Eustatius on 10 October 2012 after amendments to <a href="#">Article 30.1</a> of the Civil Code (2013) came into force. As part of the Caribbean Netherlands, the three territories jointly legalised same-sex marriage.</p> <p>The first same-sex marriage officiated on Bonaire took place in May 2013 between two men residing in Aruba.<sup>33</sup></p> <p>Same-sex marriages have been celebrated on the territory since December 2012.<sup>34</sup></p>
7	 Saba		
8	 Sint Eustatius		

United Kingdom (2)

9	 Falkland Islands (Islas Malvinas) <sup>35</sup>	2017	<p>Same-sex marriage became legal in the Falkland Islands on 29 April 2017 after the <a href="#">Marriage (Amendment) Bill</a> (2017) was publicised in the Legislative Assembly Order Bill and minutes the previous month.</p>
10	 South Georgia & South Sandwich <sup>36</sup>	2014	<p>South Georgia's laws on marriage reflect the marriage laws in England. Therefore, same-sex became legal in 2014 when England and Wales passed the <a href="#">Marriage (Same-sex Couples) Act</a> (2013).<sup>37</sup></p>

United States of America (2)

11	 Puerto Rico	2016	<p>Puerto Rico saw its first same-sex marriages take place in July 2015, despite not legally falling under the jurisdiction of the US Supreme Court's <a href="#">Obergefell v. Hodges</a> (2015) ruling. The ruling had found bans on same-sex marriage in the United States to be unconstitutional,</p> <p>In April 2016, a <a href="#">Declaratory Judgement</a> by the United States District Court for Puerto Rico formally ruled the territory's ban on same-sex marriage to be unconstitutional.</p>
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<sup>32</sup> Under Article 72-3 of the [French Constitution](#) (1958), these five jurisdictions are listed as a French overseas territories. French Guiana, Martinique and Guadeloupe, as overseas departments and regions, are subject to Article 73 of the Constitution, according to which French statutes and regulations are automatically applicable in the territory. Saint Barthelemy and Saint Martin are overseas collectivities and, as such, are subject to Article 74, according to which their autonomy is established by an organic law that establishes the conditions under which the laws and regulations are applicable in the territory. Moreover, under Article LO6213-1 (for Saint Barthelemy) and Article LO6313-1 (for Saint Martin) of [General Code of Territorial Collectivities](#), legislative and regulatory provisions are automatically applicable in these territories provided that they do not intervene in the matters that are of competence of the organic law or of the collectivity.


<sup>33</sup> "Saba becomes first Caribbean island to legalize same-sex marriage", [Washington Blade](#), 19 December 2012.

<sup>34</sup> "First same-gender wedding in Caribbean Netherlands" [Dutch Caribbean Legal Portal](#), 5 December 2012.

<sup>35</sup> Note: ILGA is aware of the sovereignty dispute between Argentina and the United Kingdom over the Falkland Islands/Islands Malvinas ([UNGA Resolution 2065-XX](#)). 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.

<sup>36</sup> Note: ILGA is aware of the sovereignty dispute between Argentina and the United Kingdom over the South Georgia and South Sandwich Islands. Under Argentine law, same-sex marriage is legal since 2010.

<sup>37</sup> "Getting Married on South Georgia", [Government of the South Georgia and the South Sandwich Islands \(website\)](#). Accessed: 27 October 2020; "South Georgia and the South Sandwich Islands: Local Laws and Customs", [GOV.UK](#), January 2018.

12	 <b>US Virgin Islands</b>	2015	Despite being an Unincorporated Territory of the United States, an executive order issued on 9 July 2015 brought the laws of the US Virgin Islands in line with the US Supreme Court decision on same-sex marriage in <i>Obergefell v. Hodges</i> (2015), making same-sex marriage legal. <sup>38</sup>
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### Is there more in Latin America and the Caribbean?

<b>Chile</b>	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. <sup>39</sup> 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. <sup>40</sup> On February 14, 2019, the Supreme Court ruled in favour of the couple. <sup>41</sup>  In January 2020, the Senate voted in favour of adopting the bill on same-sex marriage "in general". However, this is only the first step towards the adoption of this law. <sup>42</sup>
<b>El Salvador</b>	The Constitutional Chamber of the Supreme Court of Justice rejected a marriage equality case in January 2019 on technical grounds. <sup>43</sup> 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. <sup>44</sup>
<b>Honduras</b>	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. <sup>45</sup>
<b>Peru</b>	In December 2016, March 2019 and August 2019, the National Registry of Identification and Civil Status (RENIEC) was ordered to recognise and register same-sex marriages celebrated abroad. <sup>46</sup> The same-sex marriage bill remains unpassed. <sup>47</sup>
<b>Venezuela</b>	In October 2020, Nicolás Maduro reportedly stated that he would request the National Assembly to legalise same-sex marriage. Maduro was quoted citing Pope Francis' statement on same-sex civil unions when announcing his decision. <sup>48</sup>

### Non-Independent jurisdictions

<b>Aruba</b> (Netherlands)	Under Article 40 of the <i>Statute for the Kingdom of the Netherlands</i> (1954), "judgments rendered by the court in the Netherlands, Aruba, Curaçao or Sint Maarten [...] can be enforced throughout the Kingdom, with due observance of the legal provisions of the country where enforcement takes place." After years of political and social pushback, the Aruban legislature voted to amend the <i>Civil Code</i> in order to recognise same-sex couples from other parts of the Netherlands and afford them the legal rights of a married heterosexual couple. Same-sex couples, however, cannot marry in Aruba.
<b>Bermuda</b> (United Kingdom)	The Bermuda Supreme Court legalised same-sex marriage in May 2017 only to have the legislature legally define marriage as being "between a man and a woman" later that year. In June 2018 the Supreme Court struck down the prohibition on same-sex marriage once more but in May 2019 an appeal was granted to the government. The Privy Council of the United Kingdom is now slated to deliberate on the matter and expected to make a final ruling in 2021. <sup>49</sup>

<sup>38</sup> "Mapp Signs Marriage Equality Executive Order; Measure Awaits James' Action", *The St. Croix Source*, 9 July 2015.

<sup>39</sup> "Press Release: Friendly Settlement before the IACHR Furthers Progress on Marriage Equality in Chile", *OAS (website)*, 2 February 2017.

<sup>40</sup> 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.

<sup>41</sup> "Hito: Corte Suprema ordena tramitar recurso sobre el matrimonio igualitario", *MOVILH*, 14 February 2019.

<sup>42</sup> "Chile da un paso "histórico" hacia la aprobación del matrimonio homosexual", *Republica*, 16 January 2020.

<sup>43</sup> Sala de lo Constitucional de la Corte Suprema de Justicia, *Sentencia 18-2018*, 11 January 2019.

<sup>44</sup> "El Salvador: Constitutional ban on same-sex marriage blocked", *AP News*, 1 February 2018.

<sup>45</sup> "Justicia de Honduras rechazó recurso por matrimonio igualitario", *Agencia Presentes*, 13 November 2018.

<sup>46</sup> Séptimo Juzgado Constitucional, *Expediente No. 22863-2012-0-1801-JR-CI-08*, 21 December 2016; Décimo Primer Juzgado Constitucional, *Expediente 10776 -2017*, 22 March 2019; Séptimo Juzgado Constitucional, *Expediente No. 20900-2015-0-1801-JR-CI-02*, 1 August 2019.

<sup>47</sup> "Peru gay marriage bill 'doomed' this year: congressman", *Reuters*, 17 May 2019.

<sup>48</sup> "Nicolás Maduro pide al próximo Congreso que considere el matrimonio homosexual en Venezuela", *El Comercio*, 22 October 2020.

<sup>49</sup> Jonathan Bell, "Date set for final ruling on same-sex marriage", *The Royal Gazette*, 12 March 2020.

<b>Curaçao</b> (Netherlands)	Same-sex marriages cannot be solemnised in Curaçao. However, under Article 40 of the <a href="#">Statute of the Kingdom of the Netherlands</a> (1954), Constituent Countries must abide by many of the laws passed in the Netherlands. Thus, Curaçao must register same-sex marriages performed legally in parts of the Netherlands and its Constituent Countries.
<b>Sint Maarten</b> (Netherlands)	Same-sex marriages cannot be solemnised in Sint Maarten. However, under Article 40 of the <a href="#">Statute of the Kingdom of the Netherlands</a> (1954), Constituent Countries must abide by many of the laws passed in the Netherlands. Thus, Sint Maarten must register same-sex marriages performed legally in parts of the Netherlands and its Constituent Countries.


## North America

2 out of 2 UN Member States (100%). Additionally: 2 non-UN Member jurisdictions.


1	 <b>Canada</b>	2003-2005	<p>The <a href="#">Civil Marriage Act</a> (2005) is the federal law by which same-sex marriage was recognised nationwide.</p> <p>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.</p>
2	 <b>United States of America</b>	2015	<p>The Supreme Court of the United States ruled that same-sex couples had a constitutional right to marry in <a href="#">Obergefell v. Hodges</a> (2015), making same-sex marriage available in all 50 states. Prior to this decision, only 13 of the 50 states still outlawed same-sex marriage.</p> <p>In February 2019, the Social Security Administration validated the marriage of a gay couple from Minnesota who was able to obtain a marriage license in 1971 thanks to a clerk's mistake. They are thought to be the longest-married same-sex couple in the United States, and perhaps in the world.<sup>50</sup></p> <p>In May 2019, to accommodate judges who felt uncomfortable issuing marriage licenses for same-sex couples, Alabama lawmakers passed a bill replacing marriage licenses with marriage certificates that do not need to be signed by judges before weddings.<sup>51</sup></p>

### Non-independent jurisdictions in North America (2)

#### Denmark (1)

1	 <b>Greenland</b>	2016	Same-sex marriage became legal in Greenland on 1 April 2016 after the local Home Rule Government requested an update to the territory's marriage law from Danish lawmakers. The Danish Parliament passed <a href="#">Act No. 103</a> (2016) by a vote of 27-0. <sup>52</sup>
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#### France (1)

2	 <b>Saint Pierre and Miquelon</b>	2013	In France, the Law Opening Marriage to Same-Sex Couples ( <a href="#">Law No. 2013-404</a> ) (2013) amended the <a href="#">Civil Code</a> to legalise same-sex marriage. This law applies to Saint Pierre and Miquelon. <sup>53</sup>
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<sup>50</sup> Julie Compton, "After decades-long legal battle, gay couple's 1971 marriage officially recognized", *NBC News*, 7 March 2019.

<sup>51</sup> The Associated Press, "Alabama lawmakers pass workaround bill on same-sex marriage", *Montreal Gazette*, 23 May 2019.

<sup>52</sup> Constance Johnson, "Greenland: Same-sex Marriage Bill Passes", *Library of Congress (website)*, 11 June 2015.

<sup>53</sup> Under Article 72-3 of the French Constitution (1958), Saint Pierre et Miquelon is listed as a French overseas territory. As an overseas collectivity, Saint Pierre et Miquelon is subject to Article 74, according to which its autonomy is established by an organic law that establishes the conditions under which the laws and regulations are applicable in the territory. Moreover, under Article LO6413-1 of the

## Asia

0 out of 33 UN Member States (0%). Additionally: 1 non-UN Member jurisdiction.

	<b>Taiwan</b> (China) <sup>54</sup>	<b>2019</b>	<p>In May 2019, Taiwan legalised same-sex marriage after the legislature passed the <a href="#">Act for Implementation of J.Y. Interpretation No. 748</a>.<sup>55</sup> This followed the referendum that prohibited legislators from amending the Civil Code to recognise same-sex marriages and required the enactment of a separate law to give effect to the judicial decision in 2017 that recognised a constitutional right to marry for same-sex couples.</p> <p>Currently transnational same-sex marriage is legal only if both parties are from countries where same-sex marriage are legal, which leaves lots of transnational couples out from the legal protection. In October 2019, a man from Macau and his partner, a Taiwanese citizen, announced their plans of filing an administrative appeal against the Taipei City Government after their attempt to register their marriage was rejected due to the couple's transnational nature.<sup>56</sup></p>
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### Is there more in Asia?

<b>Cambodia</b>	<p>Same-sex marriage is banned by the <a href="#">Constitution</a> (Article 45), the <a href="#">Civil Code</a> (Book 7) and the <a href="#">Law on the Marriage and Family</a> (Article 3). However, the "Declaration of Family Relationship" (DFR), which is "a civil contract between two people who are willing to be together and share responsibility taking care of the family, children and distribute joint assets, as legal spouses do" have been introduced in 15 out of Cambodia's 24 provinces, and 21 couples had entered into such unions.<sup>57</sup> However, in February 2018, police arrested a Cambodian-French same-sex (male) couple who was about to perform a wedding ceremony in the town of Kratié.<sup>58</sup> Notably, in June 2019, during its third Universal Periodic Review (UPR), Cambodia accepted recommendations from Iceland, the Netherlands, and Canada to legalise same-sex marriage.<sup>59</sup></p>
<b>Israel</b>	<p>Same-sex marriage is not legal in Israel. However, same-sex marriages celebrated abroad can be registered before the Israeli Population Registry in accordance with a 2006 ruling of the Israeli High Court, which renders the civil (legal) status of reputed and/or same-sex couples equal to that of legally married couples (see section <a href="#">Partnership Recognition for Same-Sex Couples</a> below).<sup>60</sup></p>
<b>Japan</b>	<p>In recent years, same-sex couples have filed a series of lawsuits challenging the constitutionality of Japan's ban on same-sex marriage.</p> <p>In September 2019, a member of the National Diet called for a revision of the Constitution of Japan to extend marriage rights to same-sex couples.<sup>61</sup> However, as of June 2020 no formal debate has taken place in the legislature, leaving individual Prefectures, cities and private companies to adopt measures recognising same-sex couples.<sup>62</sup></p>

[General Code of Territorial Collectivities](#), legislative and regulatory provisions are automatically applicable provided that they do not intervene in the matters that are of competence of the organic law or of the collectivity.

<sup>54</sup> Note on names of countries and territories in this publication: ILGA World is an organisation with ECOSOC-accredited consultative status at the United Nations and our publications therefore have to follow UN-recommended language on the names of countries and territories. For more information, please read the methodology section of this report.

<sup>55</sup> "同婚專法／司法院釋字第 748 號解釋施行法草案全文", CNA, 21 February 2019.

<sup>56</sup> Ann Maxon, "Same-sex couple file administrative appeal", *Taipei Times*, 2 October 2019.

<sup>57</sup> Shannon Power, "Same-sex couples tie the knot in Cambodia in a stunning public ceremony", *Gay Star News*, 24 May 2018.

<sup>58</sup> Butth Reaksmeay Kongkea, "Police prevent same-sex wedding ceremony", *Khmer Times*, 5 February 2018.

<sup>59</sup> See: *Report of the Working Group on the Universal Periodic Review: Cambodia. Addendum*, A/HRC/41/17/Add.1, 18 April 2019, para. 2; *Report of the Working Group on the Universal Periodic Review: Cambodia*, A/HRC/41/17, 5 April 2019; *Press Release: Second National Dialogue on Legal and Public Policies to Protect LGBTIQ People in Cambodia*, 27 June 2019.

<sup>60</sup> *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" *Utrecht Law Review* 4, No. 2 (2008), 222.

<sup>61</sup> Linda Sieg, "Parlamentario pide revisar Constitución de Japón para permitir unión de personas del mismo sexo", *Reuters*, 4 October 2019.

<sup>62</sup> Andrew McKirdy, "Fighting for the right to recognize same-sex marriage in Japan", *Japan Times*, 27 June 2020.

<b>Nepal</b>	<p>In October 2017, Nepal's Supreme Court <b>ruled</b> that foreign same-sex spouses of Nepali citizens can apply for non-tourist visas as dependents.<sup>63</sup> In February 2017, it was reported that the government intended to draft certain provisions to address the issue directly.<sup>64</sup></p> <p>In August 2018, former Prime Minister Baburam Bhattarai called for the legalisation of same-sex marriage in Nepal.<sup>65</sup> However, there are no updates regarding the same-sex marriage bill.<sup>66</sup></p>
<b>South Korea</b>	<p>After rejecting an application by a gay couple who had married abroad and sought recognition of their relationship, the National Human Rights Commission of South Korea said that it does not "deny" same-sex marriage but must conduct a review before marriage equality can be recognised.<sup>67</sup></p>

## Europe

16 out of 48 UN Member States (33%). Additionally: 5 non-UN Member jurisdictions.

1	 <b>Austria</b>	2019	Following a <b>decision</b> by the Constitutional Court, same-sex marriage came into effect from 1 January 2019. The court had held that the distinction between marriage and a registered partnership constituted discrimination against same-sex couples. <sup>68</sup>
2	 <b>Belgium</b>	2003	In 2003, Belgium became the second UN Member State (after the Netherlands) to legalise same-sex marriage. An <b>Act of Parliament</b> amended Article 143 of the <b>Civil Code</b> to read: "Marriage is contracted by two persons of different-sex or of the same-sex".
3	 <b>Denmark</b>	2012	Section 2 of <b>Law No. 532</b> (2012) incorporates marriage between two people of the same sex into existing marriage laws. This amendment also repealed existing registered partnership legislation.
4	 <b>Finland</b>	2017	In February 2015, the Finnish government signed a gender-neutral marriage law that amends the text of the law through <b>Act 156/2015</b> to the marriage of "two persons". The law came into force on 1 March 2017.
5	 <b>France</b>	2013	Article 1 of the Law Opening Marriage to Same-Sex Couples ( <b>Law No. 2013-404 of 17 May 2013</b> ) amended Article 143 of the <b>Civil Code</b> to establish that marriage is available to persons of the same or different sex.
6	 <b>Germany</b>	2017	The German parliament adopted a <b>Law on Marriage Equality</b> (2017) in July 2017, with the first marriages solemnised in October of that year. <sup>69</sup>
7	 <b>Iceland</b>	2010	Iceland's parliament passed Bill 138 (2010) on changes to the <b>Marriage Act</b> , of which Article 3.1 establishes the right to marry regardless of gender. The law repealed the 1996 registered partnership law.
8	 <b>Ireland</b>	2015	In October 2015, the <b>Marriage Act</b> (2015) was signed into law specifying its application to same-sex couples. The law replaced the <b>Civil Partnership and Certain Rights and Obligations of Cohabitants Act</b> (2010). The law was enacted six months after a legally binding Constitutional referendum to alter <b>Article 41(4)</b> to reframe marriage as gender neutral.

<sup>63</sup> Pradhan, Ghimire & Associates, "Client Briefing: Suman Panta v. Ministry of Home Affairs et. al.", June 2018.

<sup>64</sup> "Govt to introduce special laws to address the same-sex marriage", *Pahichan*, 25 February 2017.

<sup>65</sup> "Ensure the marriage rights of LGBTI : BRB", *Pahichan*, 27 August 2018.

<sup>66</sup> Binaj Gurubacharya, "Nepal's sexual minorities say progress in rights has stalled", *AP News*, 18 September 2019.

<sup>67</sup> Kim So-hyun, "Rights panel says it doesn't 'deny' same-sex marriage" *Korea Herald*, 27 February 2019.


<sup>68</sup> "Distinction between marriage and registered partnership violates ban on discrimination", *Constitutional Court of Austria (website)*, 5 December 2017.

<sup>69</sup> "German president signs gay marriage bill into law", *DW.com*, 21 July 2017.


9	 <b>Luxembourg</b>	2015	Article 143 of the <b>Civil Code</b> was amended in 2014 (in force 1 January 2015) to state that two people of the same sex can marry.
10	 <b>Malta</b>	2017	The <b>Marriage Act and other Laws (Amendment) Act</b> was signed into law on 1 August 2017 and entered into force on 1 September 2017. Amendments included eliminating any reference to "husband and wife" and replacing that with the gender-neutral term "spouse".
11	 <b>Netherlands</b>	2001	Article 30 of the <b>Act on the Opening up of Marriage</b> (2000) 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	 <b>Norway</b>	2009	Chapter 1, Section 1 of the <b>Marriage Act</b> (1993), amended in 2008 (in force since January 2009), states that "[t]wo persons of opposite sex or of the same-sex may contract marriage".
13	 <b>Portugal</b>	2010	Article 1 of <b>Law No. 9/2010 (2010)</b> states that the law allows for marriage of persons of the same sex.
14	 <b>Spain</b>	2005	The 2005 amendments made to Article 44(2) of the <b>Civil Code</b> state that marriage confers the same rights and responsibilities on same-sex couples as it does on spouses of different sexes.
15	 <b>Sweden</b>	2009	In 2009 the Swedish <b>Marriage Code</b> (1987) was amended to be gender-neutral, thereby legalising same-sex marriage.
16	 <b>United Kingdom</b>	2014-2020	Same-sex marriage is legal in all constituent countries of the United Kingdom. Same-sex marriage has been legislated separately by each jurisdiction. In 2019, the House of Commons Foreign Affairs Committee called for all British Overseas Territories to legalise same-sex marriages. <sup>70</sup>
	<i>England and Wales</i>	2014	Section 1(1) of the <b>Marriage (Same-sex Couples) Act</b> (2013, effective 2014) states that "marriage of same-sex couples is lawful". This Act is only applicable in England and Wales, where it repealed the <b>Civil Partnership Act</b> (2004).
	<i>Scotland</i>	2014	The Scottish <b>Marriage and Civil Partnership (Scotland) Act</b> (2014) defines 'spouse' as being both different as well as same sex.
	<i>Northern Ireland</i>	2020	As per the provisions of the <b>Northern Ireland (Executive Formation etc) Act</b> (2019), same-sex marriage was legalised in January 2020.

## Non-independent jurisdictions in Europe (5)

### Denmark (1)

1	 <b>Faroe Islands</b>	2017	Same-sex marriage became legal in the Faroe Islands when the <b>Marriage Act</b> (2017) received royal assent. The Løgting (Faroese Parliament) had voted in favour of marriage equality the previous year. However, marriage equality could only be adopted after the Danish Parliament amended the law to allow the islands jurisdiction on "matrimonial matters" in the Act amending the Act on the care of the Faroe Islands ( <b>Law No. 428 of 2017</b> ).
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### United Kingdom (4)

2	 <b>Gibraltar</b>	2016	On 15 November 2016 the <b>Civil Marriage Amendment Act</b> (2016) came into force. Provisions under Sections 6 of the bill allow Deputy Registrars and religious institutions to "opt out" of officiating same-sex marriages.
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<sup>70</sup> "British parliamentary committee calls for overseas territories to legitimise same sex marriages", *National News*, 22 February 2019.



3		<b>Guernsey</b> <i>(incl. autonomous constituents, Alderney and Sark)</i>	2017	Same-sex marriage became legal in Guernsey on 2 May 2017 with the passing of the <a href="#">Same Sex Marriage (Guernsey) Law (2016)</a> .
			2018	Same-sex marriage in Alderney, an autonomous constituent of the Bailiwick of Guernsey, only became legal on 14 June 2018 after the <a href="#">commencement ordinance</a> was given for the <a href="#">Same Sex Marriage (Alderney) Law (2017)</a> .
			2020	The similarly autonomous island of Sark passed the <a href="#">Same Sex Marriage (Sark) Law (2020)</a> , which came into force on 23 April of that year per an official <a href="#">commencement ordinance</a> . This made Sark the final place in the British Isles to legalise same-sex marriage. <sup>71</sup>
4		<b>Isle of Man</b>	2016	Same-sex marriage became legal in the Isle of Man on 22 July 2016 after the passing of the <a href="#">Marriage and Civil Partnership (Amendment) Act (2016)</a> . The law was initially slated to receive Royal Assent three days prior, with the Chief Minister of the island blaming the delay on the UK "Brexit" referendum to leave the European Union. <sup>72</sup>
5		<b>Jersey</b>	2018	Under the <a href="#">Marriage and Civil Status (Amendment No. 4) (Jersey) Law (2018)</a> , same-sex marriage became legal on 1 July 2018. <sup>73</sup>

### Is there more in Europe?

<b>Armenia</b>	The Ministry of Justice stated in July 2017 that all marriages performed abroad are valid in Armenia, <sup>74</sup> including marriages between people of the same sex pursuant to Article 143 of the <a href="#">Family Code of Armenia (2004)</a> .
<b>Bulgaria</b>	Same-sex marriage has been banned by Article 46 of the <a href="#">Constitution</a> since 1994. In January 2018, the Sofia Administrative Court ruled against a lesbian couple who attempted to have their marriage, which was held in the United Kingdom, recognised. <sup>75</sup> In July 2019, following the <i>Coman-Hamilton</i> case, the Supreme Court upheld a 2018 ruling by a lower court that allowed an Australian-French lesbian couple married in France to reside legally in Bulgaria. <sup>76</sup>
<b>Estonia</b>	In October 2020 it was reported that a petition initiated by the Green Party calling for the legalisation of same-sex marriage had received the requisite signatories to be debated in Parliament. However, right-wing legislators within the ruling coalition of parties have stated their intention to seek a constitutional referendum to ban same-sex marriage in 2021. <sup>77</sup>
<b>Latvia</b>	Same-sex marriage in Latvia has been prohibited by Article 110 of the <a href="#">Constitution</a> since 2006. Several attempts to legalise registered partnerships by same-sex couples since 1999 have been rejected, with the most recent one being in June 2019. <sup>78</sup> Following the <i>Coman-Hamilton</i> case, Latvia has granted residency rights to at least one same-sex couple married in Portugal. <sup>79</sup>
<b>Lithuania</b>	Same-sex marriage in Lithuania has been banned by Article 38 of the <a href="#">Constitution</a> since 1992, as well as by Article 3(12) of the <a href="#">Lithuanian Civil Code (2000)</a> . On 11 January 2019, however, in compliance with the <i>Coman-Hamilton</i> ruling the Constitutional Court ruled that same-sex spouses of Lithuanian residents married abroad must be granted residency permits. <sup>80</sup>

<sup>71</sup> "Sark becomes last British Isle to allow same-sex marriage", *BBC News*, 18 December 2019.

<sup>72</sup> "Gay marriage bill on course to be law", *Manx Radio*, 9 July 2016.

<sup>73</sup> "Same-sex marriages to be legal from Sunday", *Jersey Evening Post*, 27 June 2018.

<sup>74</sup> "Same-sex marriages registered abroad are valid in Armenia", *PanArmenia.net*, 3 July 2017.

<sup>75</sup> "The Court did not Recognize a Marriage Between Bulgarian Women in the UK", *Novinite.com*, 12 January 2018.

<sup>76</sup> Reiss Smith, "Bulgaria court recognises same-sex marriage in landmark ruling", *Pink News*, 25 July 2019.

<sup>77</sup> Tris Reid-Smith, "Estonia's parliament likely to debate same-sex marriage by public demand", *Gay Star News*, 29 October 2020; Linas Jegelevicius, "Estonia's liberal reputation at stake as gay marriage referendum emboldens the far-right", *Euronews*, 6 November 2020.

<sup>78</sup> "Saeima rejects civil partnership bill", *LSM*, 20 June 2019.

<sup>79</sup> Laura Dzērve, "ES Tiesas spriedums: laulāto draugu Adriana un Kleija izcīnītā kopābūšana", *DELFI Plus*, 15 June 2018.

<sup>80</sup> Shakhil Shah, "Lithuanian Constitutional Court rules same-sex spouses be granted residence permits". *Emerging Europe*, 14 January 2019.

<p><b>Romania</b></p>	<p>Same-sex marriage in Romania has been banned by Article 227(1) of the <b>Civil Code</b> since 2009. In June 2018, the Court of Justice of the European Union (CJEU) ruled in favour of Adrian Coman,<sup>81</sup> a Romanian citizen who—with support from the Romanian group ACCEPT—had filed a lawsuit before a Romanian court, seeking recognition of his marriage to Claibourn Hamilton (an American citizen) which had been celebrated in Belgium.<sup>82</sup> The CJEU ruled that EU Member States were required to recognise same-sex marriages conducted in another EU Member State for the purpose of residency rights.<sup>83</sup> In light of this decision, in September 2019, the Constitutional Court of Romania ruled that the State must grant residency rights to same-sex spouses of EU citizens<sup>84</sup> and that same-sex couples enjoy the same rights to a private and family life as different sex couples. A few days later, a referendum to amend the constitution in order to ban same-sex marriage failed due to poor turnout in October 2018.<sup>85</sup></p>
<p><b>Russia</b> (NEGATIVE DEVELOPMENT)</p>	<p>In 2020, the Government adopted several profound amendments to the <b>Constitution of the Russian Federation</b>. Among other things, the new Article 72, Part 1, Paragraph “ж.1” contemplates that the Russian Federation and its constituent entities together regulate “the protection of the institution of marriage as a union of a man and a woman.” Additionally, a group of members of the Federation Council submitted to the State Duma a set of draft bills proposing an explicit ban on same-sex marriage in the Family Code of the Russian Federation.<sup>86</sup></p> <p>Moreover, the new Article 79 introduced a declaration that decisions of international organisations’ bodies are not to be implemented in the Russian Federation if they are based on an interpretation of international treaties that contradicts the Russian Constitution. The European Commission for Democracy through Law (Venice Commission) called for the provision to be repealed or amended, as it may allow Russian authorities to ignore the international judicial and quasi-judicial bodies’ positions, including positions on same-sex marriage.<sup>87</sup></p>
<p><b>Switzerland</b></p>	<p>On 11 June 2020, the Lower House of the Swiss legislature passed a bill allowing same-sex couples to marry and access reproductive medical assistance. The Upper House, however, has opted to delay the vote, seeking clarity on the constitutionality of the new law.<sup>88</sup></p>

## Oceania

2 out of 14 UN Member States (14%). Additionally, 6 non-UN Member jurisdictions.

<p>1  <b>Australia</b></p>	<p>2017</p>	<p>The <b>Marriage Amendment (Definition and Religious Freedoms) Act</b> (2017) legalised same-sex marriage between two persons of marriageable age.</p> <p>In 2019, a series of amendments were proposed to allow religious institutions to refuse certain services to LGBT people, including the use of venues for marriage ceremonies.<sup>89</sup></p>
<p>2  <b>New Zealand</b></p>	<p>2013</p>	<p><b>Marriage (Definition of Marriage) Amendment Act</b> (2013), amended the <b>Marriage Act</b> (1955) to allow for marriage between two people “regardless of their sex, sexual orientation, or gender identity”.</p>

### Non-independent jurisdictions in Oceania (6)

#### France (3)

<sup>81</sup> Court of Justice of the EU, *Coman and Others v Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne*, 5 June 2018.

<sup>82</sup> “CJUE Cuplurile gay căsătorite au dreptul de a circula ca soți. România, obligată să țină cont de decizie”, *Liber Tatea*, 5 June 2018.

<sup>83</sup> For more information on the decision and its impact, see: Constantin Cojocariu, “A Brief Overview of the Latest Decisions by the Court of Justice of the EU on SOGI issues” in ILGA World: Lucas Ramón Mendos, *State-Sponsored Homophobia 2019* (Geneva: ILGA, 2019), 76; and Daron Tan, “Adrian Coman v. Romania: A Small Victory with Wasted Potential”, *Oxford Human Rights Hub*, 19 June 2018.

<sup>84</sup> “Căsătoriile între persoane de același sex, repuse pe rol la CCR. Curtea Constituțională discută dosarul pe 5 iulie”, *Liber Tatea*, 7 June 2018.




<sup>85</sup> Luiza Ilie, “Romanian constitutional ban on same sex marriage fails on low vote turnout”, *Reuters*, 7 October 2018.

<sup>86</sup> “Russia Moves to Ban Gay Marriage”, *The Moscow Times*, 15 July 2020.

<sup>87</sup> “Opinion on draft amendments to the Constitution (as signed by the President of the Russian Federation on 14 March 2020) related to the execution in the Russian Federation of decisions by the ECHR”, *European Commission for Democracy through Law*, 18 June 2020.

<sup>88</sup> “Le National accepte le projet de mariage pour tous: les couples lesbiens devraient avoir accès au don du sperme”, *Le Nouvelliste*, 11 June 2020; Trudy Ring, “Swiss Politicians Keep Delaying Legalization of Same-Sex Marriage”, *Out*, 14 August 2020.



<sup>89</sup> Josh Taylor, “Coalition wants to amend Marriage Act as part of new laws to protect religious freedom”, *The Guardian*, 3 July 2019.

1	 <i>French Polynesia</i>	2013	<p>In France, the Law Opening Marriage to Same-Sex Couples (<i>Law No. 2013-404</i>) (2013) amended the <i>Civil Code</i> to legalise same-sex marriage.</p> <p>As per Article 22, this law applies in French Polynesia, New Caledonia, and Wallis and Futuna.</p>
2	 <i>New Caledonia</i>		
3	 <i>Wallis and Futuna</i>		

**United Kingdom (1)**

4	 <i>Pitcairn Islands</i>	2015	<p>Same-sex marriage was legalised through the <i>Same Sex Marriage and Civil Partnerships Ordinance</i> (2015). To date there are no known same-sex couples residing in the territory.<sup>90</sup></p>
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**United States of America (2)**

5	 <i>Guam</i>	2015	<p>Same-sex marriage was legalised in Guam on 9 June 2015, making it the first US Overseas Territory to legalise same-sex marriage. In the wake of the <i>Obergefell v Hodges</i> (2015) case, the District Court of Guam ruled the ban on same-sex marriage unconstitutional in 2015. Following this, the island legislature passed the <i>Guam Marriage Equality Act</i> (2015), legalising same-sex marriage.</p>
6	 <i>Northern Mariana Islands</i>	2015	<p>The Commonwealth of the Northern Mariana Islands adopted same-sex marriage on 29 June 2015 following the US Supreme Court case on <i>Obergefell v Hodges</i> (2015). The Attorney General of the islands, Edward Manibusan, declared that the territory is bound by that ruling.<sup>91</sup></p>

*Is there more in Oceania?*

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<p><i>American Samoa</i> (United States of America)</p>	<p>American Samoa is the last US territory to not recognise same-sex marriage. There is no certainty of the applicability of <i>Obergefell v Hodges</i> (2015) in the territory. Several high-ranking government officials and religious organisations, have stressed that the Supreme Court has no jurisdiction over American Samoa.<sup>92</sup></p>
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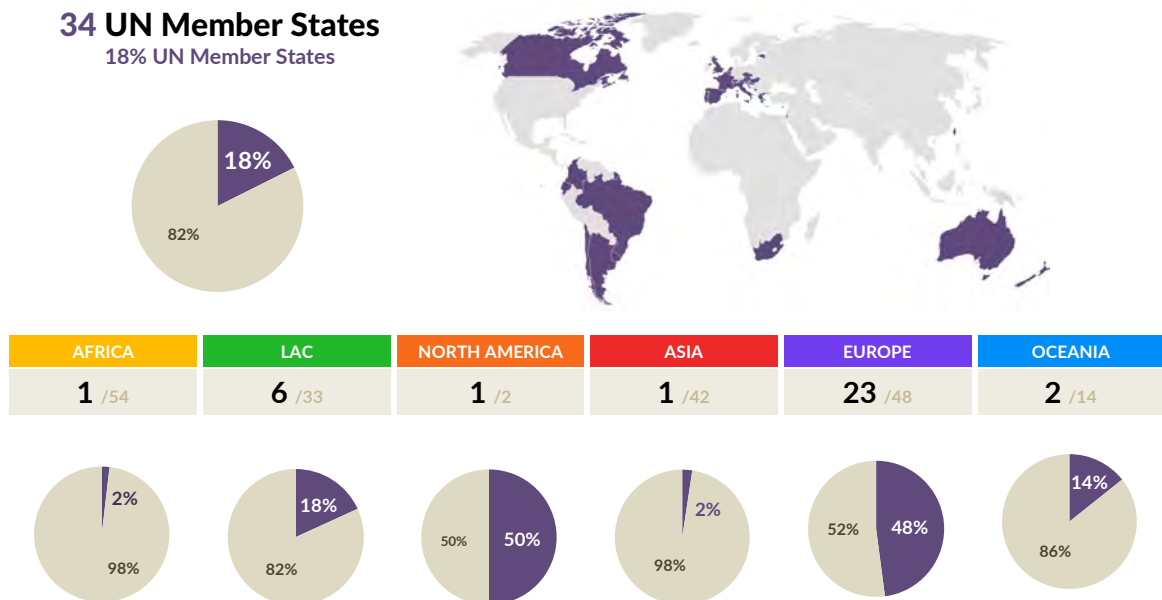
<sup>90</sup> "Pitcairn Island, population 48, passes law to allow same-sex marriage," *The Guardian*, 22 June 2015.

<sup>91</sup> Ferdie de la Torre, "AG says they will be working with Inos admin in drafting regs", *Saipan Tribune*, 30 June 2015.

<sup>92</sup> Omar Gonzalez-Pagan "No Same-Sex Couple Left Behind: SCOTUS Ruling for the Freedom to Marry Would Apply with Equal Force to U.S. Territories", *Lambda Legal*, 24 April 2015; Joyetter Feagaimaalii-Luamano "Am. Samoa Governor: Same-Sex Marriage Against Values, Law", *Pacific Islands Report*, 14 July 2015.

# Partnership recognition for same-sex couples

## Highlights



## Introduction

Several jurisdictions (including non-UN Member 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 of rights and duties for same-sex couples via different legal vehicles, with different names and varying levels of recognition of rights, including civil unions, concubinary unions, *de facto* partnerships, registered partnerships, etc.

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,<sup>1</sup> an ever-increasing number of jurisdictions have made these unions available.

Most times, these forms of partnership recognition confer less legal protection and rights than marriage, oftentimes barring partners from jointly adopting children. In many countries where same-sex marriage was legalised—thereby equalising levels of legal protection for same-sex and different-sex couples—these forms of partnership were subsequently repealed.

### 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)

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



## Africa

1 out of 54 UN Member States (2%). Additionally: 2 non-UN Member jurisdictions.

1	 <b>South Africa</b>	2006	The <b>Civil Union Act</b> (2006) legalised civil unions for same-sex couples. This is the same piece of legislation that allows for same-sex marriage.  On 22 October 2020, the President of South Africa signed the Act 8 of 2020, the <b>Civil Union Amendment Act</b> , into law nearly 2 years after being passed by the legislature. The Act repeals Section 6 of the Civil Union Act, which had allowed marriage officers to refuse to solemnise same-sex unions. The amendment will come into effect 24 months from the date of promulgation.
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### Non-independent jurisdictions in Africa (2)

#### France (2)<sup>2</sup>

1	 <b>Mayotte</b>	2006	Decree No. 2006-1807 (2006) extended the application of the French Civil Solidarity Pact to Mayotte. <b>Law No. 99-944</b> (1999) confers some legal recognition to same-sex couples outside of marriage.
2	 <b>Reunion</b>	1999	As an Overseas Department of France, <b>Law 99-944</b> (1999) applies to Réunion and offers same-sex couples some level of legal recognition outside of 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.<sup>3</sup> The couple had applied to the High Court to issue a certificate of identity that would recognise the non-citizen partner as the spouse. No decision has been released yet.

While several cases regarding residency rights for same-sex partners await final decisions before the High Court, in October 2019 the Minister of Home Affairs declared that the Namibian government upholds its non-recognition of same-sex marriages.<sup>4</sup>

## Latin America and the Caribbean

6 out of 33 UN Member States (18%). Additionally: 12 non-UN Member jurisdictions.

1	 <b>Argentina</b>	2002-2009	Civil unions were first legalised in the Autonomous City of Buenos Aires (2002), <sup>5</sup> the <b>Province of Río Negro</b> (2003), and the cities of <b>Villa Carlos Paz</b> (2007) and <b>Río Cuarto</b> (2009) <sup>6</sup> in the Province of Córdoba.
		2015	Article 509 of the <b>Civil and Commercial Code</b> (2014), in force since 2015, made civil unions available nationwide for same-sex and different-sex couples.




<sup>2</sup> Under Article 72-3 of the **French Constitution** (1958), Mayotte and Reunion are listed as French overseas territories. Both of them are officially overseas departments and regions and, as such, subject to Article 73 of the Constitution, according to which French statutes and regulations are automatically applicable in the territory. However, in 1999, Mayotte had not yet acquired its current status.

<sup>3</sup> Roberto Igual, "Namibia: Small victory for gay couple suing for marriage recognition", *Mamba Online*, 10 January 2018.

<sup>4</sup> Werner Menges, "Govt sticks to stance on same-sex marriage". *The Namibian*. 3 October 2019.






<sup>5</sup> "Por ley. Crean en la Ciudad el registro de unión civil", *La Nación*, 14 December 2002.

<sup>6</sup> "Río Cuarto: aprueban la unión civil de parejas gays", *La Voz*, 7 May 2009.


2		<b>Brazil</b>	2011	The Supreme Federal Court (STF) of Brazil recognised same-sex civil unions with <i>erga omnes</i> effects (i.e. applicable to the whole population) in two joint decisions ( <i>Ação Direta de Inconstitucionalidade 4277</i> and <i>Arguição de Descumprimento de Preceito Fundamental 132</i> ).
3		<b>Chile</b>	2015	The Law on Civil Union Agreement ( <i>Law No. 20,830</i> ) provides for civil unions open to all couples (same-sex or not) that share a home, with the purpose of regulating the legal effects derived from their common affective life, and with a stable and permanent nature.
4		<b>Colombia</b>	2011	In <i>C-577/11</i> (2011), 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 led to the judicial recognition of civil partnerships, though no legislative reform has been introduced.
5		<b>Ecuador</b>	2008	Article 68 of the <i>Constitution of Ecuador</i> provides for civil unions regardless of the gender of spouses. It establishes that these unions will be granted the same rights afforded to married couples, with the exception of adoption.
			2014	On 22 August 2014, the Civil Registry issued <i>Resolution No. 174</i> to allow same-sex couples to register their unions. In 2015, the National Assembly approved the <i>Civil Code Amendment Law</i> , which amends the Civil Code to incorporate the regulation of civil unions.
6		<b>Uruguay</b>	2008	<i>Law No. 18,246</i> (2008) affords same-sex couples the right to have their union recognised (locally referred to as “ <i>unión concubinaria</i> ”).

### Non-independent jurisdictions in Latin America and the Caribbean (12)

#### France (5)




1		<i>French Guiana</i>	1999	By means of <i>Law 99-944</i> (1999) establishing the Solidarity Pact, same-sex couples are granted some level of legal recognition outside of marriage. This law is applicable to French Guiana, Guadeloupe, Martinique, Saint Barthelemy and Saint Martin. <sup>7</sup>
2		<i>Guadeloupe</i>		
3		<i>Martinique</i>		
4		<i>Saint Barthelemy</i>		
5		<i>Saint Martin</i>		

#### Netherlands (4)

6		<i>Aruba</i>	2016	Registered partnerships for same-sex couples became legal under Article 80 of <i>Law AB-2016 No.51</i> (2016). <sup>8</sup>
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<sup>7</sup> Under Article 72-3 of the *French Constitution* (1958), these five jurisdictions are listed as French overseas territories. French Guiana, Martinique and Guadeloupe, as overseas departments and regions, are subject to Article 73 of the Constitution, according to which French statutes and regulations are automatically applicable in the territory. In 1999, Saint-Martin and Saint Barthelemy were part of the administrative jurisdiction of Guadeloupe. Nowadays, they are overseas collectivities and, as such, are subject to Article 74, according to which their autonomy is established by an organic law that establishes the conditions under which the laws and regulations are applicable in the territory.

<sup>8</sup> Wendy Zeldin, “*Aruba: Same-Sex Partnerships Recognized by Law*”, *Library of Congress*, 23 September 2016.

7	 <b>Bonaire</b>	2010	After the dissolution of the Netherlands Antilles, Bonaire, Saba and Sint Eustatius became special municipalities of the Netherlands and, as such, Dutch law applies as per <a href="#">Parliamentary Paper 31 959</a> (2009) and <a href="#">Parliamentary Paper 32 467</a> (2010), among other instruments.
8	 <b>Saba</b>		
9	 <b>Sint Eustatius</b>		

Article 1:80(a)-(e), Book 1 of the [Civil Code](#) confers comprehensive protections to both same-sex and different-sex civil partners.

## United Kingdom (2)

10	 <b>Cayman Islands</b>	2020	After much debate by political bodies, the Governor of the territory enacted the <a href="#">Civil Partnership Law</a> in September 2020. <sup>9</sup>
11	 <b>Falkland Islands (Islas Malvinas)</b> <sup>10</sup>	2017	The <a href="#">Legislative Assembly Order Paper</a> (2017) outlines regulations for same-sex marriage, and also extends to all couples the right to enter into a “civil partnership” regardless of sexual orientation.

## Is there more in Latin America and the Caribbean?

<b>Barbados</b>	In September 2020, the government revealed that it was prepared to “recognise a form of civil unions for couples of the same gender”. However, the governor emphasised that the government was “not allowing any form of same-sex marriage” and would put this matter to a public referendum. <sup>11</sup>
<b>Costa Rica</b>	In October 2019, a bill that would have only legalised civil unions, as opposed to marriages, for same-sex couples was abandoned. <sup>12</sup> Same-sex marriage became legal on 26 May 2020 following the Inter-American Court of Human Rights’ Advisory Opinion and the Supreme Court ruling that a ban on same-sex marriage was unconstitutional. <sup>13</sup>
<b>Bolivia</b>	In July 2020 the Second Constitutional Chamber of the Justice Tribunal of La Paz quashed a resolution issued by the National Civil Registry (locally known as “SERECI”) that denied registration to a same-sex couple in 2019. The SERECI had claimed that registering same-sex couples was contrary to Article 63 of the Bolivian Constitution (that limits marriages and “free unions” to those formed by one man and one woman) and Article 168 of the Family Code. <sup>14</sup> The local office of the United Nations in Bolivia welcomed the decision and urged SERECI to comply with it. <sup>15</sup> A few days before the publication of this report, on 10 December 2020, SERECI adopted Resolution 374/2020 and ordered the registration of the free union. <sup>16</sup>
<b>Mexico</b>	There is no federal law providing for civil unions. However, such unions and other forms of registered partnerships are recognised in several jurisdictions within Mexico.
<b>Campeche</b>	The State of Campeche adopted the <a href="#">Law Regulating Civil Unions</a> (2013). In 2016, same-sex couples were additionally given the right to joint adoption. <sup>17</sup>
<b>Coahuila</b>	Same-sex civil unions were legalised in Coahuila in 2007 after the legislature amended the civil code as published in the <a href="#">State Gazette</a> on 19 January of that year. The law allowed couples some shared property and inheritance rights.

<sup>9</sup> “Governor of Cayman Islands Approves Same-Sex Partnerships Law,” *Caribbean National Weekly*, 6 September 2020.

<sup>10</sup> Note: ILGA is aware of the sovereignty dispute between Argentina and the United Kingdom over the Falkland Islands/Islas Malvinas (UNGA Resolution 2065-XX). Under Argentine law, civil unions are legal nationwide since 2015.

<sup>11</sup> “Government to recognise ‘a form of civil unions’ for same sex couples”, *Barbados Today*, 15 September 2020.

<sup>12</sup> “Comunidad LGBT celebra pérdida de apoyo para proyecto de uniones civiles para parejas del mismo sexo”, *La República*, 2 October 2019.

<sup>13</sup> Sala Constitucional de la Corte Suprema de Justicia (Costa Rica), *Sentencia No. 2018-12782*, Expte. 15-013971-0007-CO, 8 August 2018; “Con este comunicado, Sala IV anunció decisiones sobre matrimonio y uniones gays”, *La Nación*, 9 August 2018

<sup>14</sup> “Fallo abre las puertas para que las personas del mismo sexo obtengan el derecho a la unión libre” *Correo del Sur*, 13 July 2020; Paola Flores, “Dos bolivianos luchan para que su unión sea reconocida”, *AP News*, 18 August 2020.

<sup>15</sup> “Naciones Unidas saluda el fallo a favor de la unión libre entre personas del mismo sexo”, *Naciones Unidas (Bolivia)*, 16 July 2020.

<sup>16</sup> “Por decisión del TSE, el Sereci dispone el registro de la unión libre de una pareja homosexual”, *Oxígeno.bo*, 10 December 2020.

<sup>17</sup> “Parejas del mismo sexo podrán adoptar en Campeche”, *El Debate*, 26 September 2016.

<i>Colima</i> (REPEALED)	In 2013, Decree No. 142 amended article 147 of the Constitution of Colima to establish civil unions (locally referred to as “unión conyugal”) for same-sex couples, while defining “marriage” as the union between “only one man and only one woman”. However, in 2015, the Supreme Court decided in <a href="#">Amparo No. 823/2014</a> that a separate marriage regime for same-sex couples violated the right to equality and non-discrimination as there was “no rational justification” for denying same-sex couples access to marriage. <sup>18</sup> Based on this decision, Colima legalised same-sex marriage in 2016. <sup>19</sup>
<i>Jalisco</i> (REPEALED)	Same-sex civil unions were legalised by the Free Coexistence Act (2013) <sup>20</sup> , which entered into effect in 2014. However, in 2018, the Supreme Court of Mexico struck down the law due to shortcomings in the parliamentary proceedings under which the law was approved. <sup>21</sup> By then, same-sex marriages had become legal after the Supreme Court issued its decision for <a href="#">Unconstitutionality Action No. 28/2015</a> .
<i>Mexico City</i>	Same-sex civil unions became legal in 2007, after the <a href="#">Law of Cohabitation of the Federal District</a> (2006) was passed by the local legislature. Article 2 of the law states that civil unions are formalised “when two natural persons of different or same sex, of legal age and with full legal capacity establish a common home, with a desire to stay and to help each other.”
<i>Michoacán</i>	Michoacán’s congress unanimously voted to legalise civil unions for same-sex couples on 9 September 2015, publishing the amendments to the Family Code in the <a href="#">State Gazette</a> on 30 September of the same year.
<i>Morelos</i>	On 4 July 2016, amendments to the Morelos Civil Code were announced in the <a href="#">State Gazette</a> to allow for same-sex couples to enter into civil unions.
<i>Nayarit</i>	In 2015, when the State’s <a href="#">Civil Code</a> was amended to allow for same-sex marriage, it was noted that civil unions for same-sex couples would also be permitted (locally referred to as “concubinato”).
<i>Tlaxcala</i>	Same-sex civil unions became legal under the <a href="#">Law on Solidary Cohabitation</a> (2017), which granted same-sex couples some of the rights and obligations given to married couples.
<i>Veracruz</i>	The Veracruz <a href="#">Civil Code</a> was amended in 2020 to include a gender-neutral provision on cohabitation providing for “the <i>de facto</i> union between two people, without there being a contract between them, that both are free from marriage and decide to share life to support each other”. The law further noted that couples entering such a union held “all the rights and obligations inherent to marriage”. <sup>22</sup>
<b>Peru</b>	Under Article 6(2) of <a href="#">Supreme Decree No. 220-2020-EF</a> , same-sex partners of health professionals who died amidst the COVID-19 pandemic were explicitly included among the beneficiaries of financial aid granted to surviving partners. <sup>23</sup>

### Non-independent jurisdictions

<i>Bermuda</i> (United Kingdom) (REPEALED)	Bermuda had initially adopted same-sex marriage legislation in May 2017, though this was repealed later that year after local government elections were held. In place of marriage, the <a href="#">Domestic Partnership Act</a> (2018) was adopted, only to be repealed again the same year when the Supreme Court and Court of Appeal both ruled against the government’s ban on same-sex marriage. Bermudan authorities are seeking to appeal this judgement. <sup>24</sup>
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<sup>18</sup> A summary of the decision can be accessed [here](#).

<sup>19</sup> “Congreso de Colima aprueba matrimonios igualitarios”, *El Universal*, 25 May 2016.

<sup>20</sup> “Jalisco aprueba ley para uniones gay... pero recortada”, *Animal Político*, 31 October 2013.

<sup>21</sup> “Corte invalida Ley de Libre Convivencia de Jalisco”, *El Universal*, 13 September 2018.

<sup>22</sup> Edgar Ávila, “Legalizan concubinato sin distinción de sexo”, *El Universal*, 29 May 2020.

<sup>23</sup> “El Estado peruano reconoce por primera vez a las parejas del mismo sexo en sus ayudas a familiares de profesionales de salud fallecidos por COVID-19”, *Dosmanzanas.com*, 22 August 2020.

<sup>24</sup> Jonathan Bell, “Date set for final ruling on same-sex marriage”, *The Royal Gazette*, 12 March 2020.



## North America

1 out of 2 UN Member States (50%). Additionally: several subnational jurisdictions in the United States of America.

1  <b>Canada</b> <sup>25</sup>	1999	Litigation by activists and organisations before Canadian courts allowed for progress in this regard in the late 1990s. As a result of a Canadian Supreme Court ruling in <i>M. v H.</i> (1999), there has been a constitutional requirement on Canadian governments to extend legal benefits and obligations to <i>de facto</i> same-sex couples on the same basis as opposite-sex couples.
	2000	In 2000, the Canadian Parliament passed the <b>Modernization of Benefits and Obligations Act</b> (Bill C-23), which gave same-sex couples the same social and tax benefits as heterosexuals in common-law relationships. However, this law did not purport to overrule provincial laws and only applied to matters within federal jurisdiction. It also included restrictions that limited access to the Canada Pension Plan survivor benefit for same-sex survivors. These restrictions were struck down by the Supreme Court of Canada in 2007 in <i>Hislop v Canada</i> .  Additionally, since 2001, specific legislation provides for civil unions and other forms of partnerships for same-sex couples in several subnational jurisdictions.
<i>Alberta</i>	2002	The <b>Adult Interdependent Relationships Act</b> (2002) allows two individuals to enter an “adult interdependent partnership”, largely equivalent to civil unions.
<i>Manitoba</i>	2001	In 2001, the Manitoba legislature began extending legislation pertaining to the legal rights and protections of different-sex couples to include same-sex couples. This culminated in the <b>Common Law Partner’s Property and Related Amendments Act</b> (2002), which formally outlined the property and inheritance rights of couples of any sex in a common-law relationship. Such a relationship, equivalent to a civil union, can be registered with local authorities and automatically comes into effect after three years of cohabitation.
<i>Nova Scotia</i>	2001	Civil unions became legal in Nova Scotia in 2001 after the <b>Law Reform Act</b> (2000) amended the Family Maintenance Act to replace terms such as “husband” and “wife” with the gender-neutral “spouse” and “common-law partner”. This law also amended a range of other laws on pension, inheritance, and hospital visitations to bring their language into alignment with the amended Family Maintenance Act.
<i>Quebec</i>	2002	The Quebecois legislature instituted reforms to allow same-sex civil unions in 2002 with the passing of <b>Bill No. 84</b> (An Act instituting civil unions and establishing new rules of filiation).

### Is there more in North America?

#### United States of America

Even though there is no federal law providing for civil unions, they are locally recognised in several states, though five states (Connecticut, Delaware, New Hampshire, Rhode Island, and Vermont) which previously recognised civil unions converted all such unions into marriages after the federal ruling on *Obergefell v. Hodges* (2015).<sup>26</sup>

<sup>25</sup> ILGA World is particularly grateful for the information provided by R. Douglas Elliott, a leading Canadian human rights lawyer who has played a key role in many landmark constitutional cases in Canada’s Supreme Court. He is a member of the of the Honourary Advisory Board, and Chair of the Just Society committee, for Egale Canada Human Rights Trust.

<sup>26</sup> “Civil Unions and Domestic Partnership Statutes”, *National Conference of State Legislatures*, 10 March 2020.

<i>California</i>	California has allowed domestic partnerships since 1999 under Section 297 of the <a href="#">Family Code</a> . Initially limited in scope, gradual amendments over the years have made such partnerships essentially equivalent to marriage. Section 297.5 (a) states that “domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law [...] as are granted to and imposed upon spouses.”
<i>Colorado</i>	Adopted in 2013, the <a href="#">Colorado Civil Union Act</a> (2013) allows two adults “of any gender” to enter into civil unions, share property rights, inheritance rights, and financial responsibilities, as well as jointly adopt children.
<i>Hawaii</i>	<a href="#">Senate Bill No. 232</a> (2011) allowed same-sex civil unions to be performed in Hawaii. The document notes that “it is not the legislature’s intent to revise the definition or eligibility requirements of marriage”, though it now remains on the books as an option for same-sex couples alongside marriage.
<i>Illinois</i>	Same-sex civil unions are permitted under the <a href="#">Religious Freedom Protection and Civil Union Act</a> (2011), passed by the Illinois General Assembly (coincidentally abbreviated as “ILGA”). However, per this legislation, “any religious body, Indian Nation or Tribe or Native Group is free to choose whether or not to solemnize or officiate a civil union.”
<i>Maine</i>	Maine legalised same-sex civil partnerships in 2004 with the approval of <a href="#">Bill 2710</a> , the Domestic Partner Registry law. This conferred limited rights to registered couples.
<i>Nevada</i>	Nevada allows same-sex couples to register their unions under the <a href="#">Domestic Partnership Act NRS 122A</a> (2009).
<i>New Jersey</i>	The <a href="#">Domestic Partnership Act</a> (2003) gave same-sex couples registered as domestic partners limited rights to tax exemptions and to make medical decisions on behalf of one another. Following the New Jersey Supreme Court <a href="#">Lewis v. Harris</a> (2005) ruling, which found the “unequal dispensation of rights” to same-sex couples to be in contravention of the state’s constitution, the local legislature revised marriage laws and adopted the <a href="#">Civil Union Act</a> (2006), which came into force the following year. Under this act, same-sex couples could enter into civil unions and enjoy the same rights and responsibilities as married couples.
<i>Washington</i>	The State of Washington adopted civil unions for same-sex couples, called State Registered Domestic Partnerships, under <a href="#">Chapter 26</a> of the state’s legal code in 2007. This followed the <a href="#">Andersen v. King County</a> (2006) Supreme Court ruling in favour of eight same-sex couples who had been denied marriage licences. <sup>27</sup>
<i>Wisconsin</i>	The Wisconsin Legislature enacted regulations on domestic partnerships under <a href="#">Chapter 770</a> of its Civil Code in 2009, giving same-sex couples registered limited rights to property inheritance, as well as hospital and jail visitation rights. Joint adoptions are not permitted under such a union.
<i>District of Columbia (Washington D.C.)</i>	Civil unions for same-sex couples were adopted in 2007 when the District’s <a href="#">Civil Code</a> was amended to include a range of domestic partnership registration and termination procedures. In 2009, the <a href="#">Domestic Partnership Judicial Determination of Parentage Act</a> (2009) was adopted, allowing the registered domestic partner of a child’s biological parent to be included on the birth certificate of the child, and eased regulations on adoptions and the recognition of rainbow families from other states.



### Non-independent jurisdictions

<i>Greenland (Denmark)</i>	In 1993, the Parliament of Greenland (locally known as the Inatsisartut) approved a law to apply the Danish registered partnership law on the island. The law came into effect in 1996.
<i>(REPEALED)</i>	This law was repealed twenty years later, in 2016, shortly after same-sex marriage was legalised.

<sup>27</sup> “Andersen v. King County, 138 P.3d 963 (Wash. 2006)”, *The Court Listener*, 26 July 2006.

## Asia

1 out of 42 UN Member States (2%). Additionally: 1 non-UN Member jurisdiction.

1	 <b>Israel</b>	1994	According to a submission by the State of Israel before the UN, two alternatives to traditional marriage exist for same-sex couples: <ol style="list-style-type: none"> <li>1. Recognition of “Reputed Couples” (common-law partners), which enjoy similar legal rights and duties as legally married couples;</li> <li>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.<sup>28</sup></li> </ol>
	 <b>Taiwan</b> (China) <sup>29</sup>	2015	Prior to 24 May 2019, when Taiwan legalised same-sex marriage, more than 80% of the population lived in jurisdictions where they could administratively register same-sex relationships. <sup>30</sup>
		2019	However, per the <b>Department of Household Registration</b> , same-sex partnership registrations (civil unions) can no longer be entered into by same-sex couples where one or both parties are Taiwanese citizens. Couples that entered into civil unions prior to the legalisation of same-sex marriage have the option of retaining their registration status or amending their partnership to marriage.
		2020	On 25 May 2020, the National Immigration Agency announced that same-sex couples who are both foreign nationals would be allowed to enter into same-sex partnership registrations. <sup>31</sup>

### Is there more in Asia?

#### China

In mid-2019, a same-sex couple married overseas became the first in Beijing to be named as each other’s “legal guardians”, a status which can be considered fairly similar to a civil union. More than 10 LGBT couples in other cities (such as Shanghai, Guangzhou and Chengdu) have gone through similar procedures.<sup>32</sup> However, the guardianship appointment process for same-sex couples is said to be too complex and time-consuming.<sup>33</sup>

Chapter 14 of a new **Civil Code**—which will reportedly be implemented in January 2021—would allow a property owner to confer a lifelong “right to reside” onto another individual—reportedly as a means for same-sex couples to have recognised shared property rights.<sup>34</sup>

#### Hong Kong (SAR China)

In June 2019, the Court of Final Appeal held in *Leung Chun Kwong v Secretary for the Civil Service and Commissioner of Inland Revenue* (2019) that it was discriminatory for the government to deny same-sex partners employment and tax benefits.<sup>35</sup> In September 2019, the Court of Appeals called for an immediate review of the laws and policies that discriminate against same-sex couples.<sup>36</sup> However, a month later, the Court of First Instance upheld Hong Kong’s ban on same-sex marriage.<sup>37</sup>

<sup>28</sup> *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”, *Utrecht Law Review* 4, No. 2 (2008), 222.

<sup>29</sup> Note on Names of countries and territories in this publication: ILGA World is an organisation with ECOSOC-accredited consultative status at the United Nations and our publications therefore have to follow UN-recommended language on the names of countries and territories. For more information, please read the methodology section of this report.

<sup>30</sup> Lee Bing-shen, “All Taiwan Municipalities To Recognize Same-Sex Relationships”, *The News Lens*, March 7, 2016; 徐亚旻, “全台同婚登记女同婚比男同婚多近 4 倍”, *Huaxia News*, 9 August 2017.

<sup>31</sup> “NIA Initiates Same-Sex Partnership Certificate for Foreign Residents”, *National Immigration Agency*, 10 June 2020.

<sup>32</sup> Mandy Zuo, “Gay couple in Beijing become first to take advantage of new legal rights”. *South China Morning Post*, 9 August 2019.

<sup>33</sup> Phoebe Zhang, “Why are so few LGBT Chinese couples taking advantage of laws that could protect their rights?”, *South China Morning Post*, 8 September 2019.

<sup>34</sup> “Chinese Couples May Soon Have Equal Property Rights”, *Star Observer*, 2 June 2020.

<sup>35</sup> High Court of the Hong Kong Special Administrative Region, Court of Appeal, Civil Appeal No. 126 of 2017, *Leung Chun Kwong v. Secretary for the Civil Service and Commissioner of Inland Revenue*, CACV 126/2017 [2018] HKCA 318, 1 June 2018.





<sup>36</sup> Jasmine Siu, “Hong Kong Court of Appeals calls for immediate review of laws and policies that discriminate against same-sex relationships”. *South China Morning Post*, 25 September 2019.

<sup>37</sup> Chris Lau, “Hong Kong court turns down first judicial challenge for same-sex marriage but urges government to review policies to avoid legal action arising from discrimination against LGBT people”. *South China Morning Post*, 18 October 2019.

<b>Japan</b>	<p>Japan has no nationwide law recognising same-sex civil unions or marriages, though various administrative divisions of the country have recognised civil partnerships by issuing partnership certificates.<sup>38</sup> As of 30 September 2020, 1,301 same-sex couples in 2 prefectures, 55 cities ,and 2 towns of Japan's 47 Prefectures have had their unions legally recognised in this way.</p> <p>Two Prefectures (Ibaraki and Osaka), recognise same-sex unions across their entire jurisdictions.<sup>39</sup> As of 1 November 2020, the number of municipalities that recognises same-sex unions has increased to 64.<sup>40</sup></p>
<i>Ibaraki</i>	In 2019 officials in Ibaraki Prefecture announced that they would begin issuing "partnership certificates" to same-sex couples. While not legally binding, these certificates allow couples to rent public housing together and give consent to medical procedures on behalf of an incapacitated partner. <sup>41</sup>
<i>Osaka</i>	In 2020, the Osaka Prefecture allowed for same-sex couples to register their partnership, making it the second Prefecture in Japan to do so. <b>Local legislation</b> has also been expanded to make widowed same-sex partners of deceased persons eligible for familial compensation grants. <sup>42</sup>
<b>Thailand</b>	Following a petition signed by 60,000 people in 2017, a bill that would allow same-sex couples to register as "life partners" and grant a limited number of the rights of heterosexual marriage was drafted and approved by the Cabinet of Thailand. <sup>43</sup> The bill was expected to pass in 2020 but no vote had taken place at the time of publication. <sup>44</sup>

## Europe

23 out of 48 UN Member States (48%). Additionally: 4 non-UN Member jurisdictions.

1	 <b>Andorra</b>	2005	Under <b>Law No. 4/2005</b> (2005) same-sex couples have been able to enter into registered partnerships that granted limited rights.
		2014	In November 2014, the General Council of Andorra introduced <b>Law No. 34/2014</b> (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	 <b>Austria</b>	2010	The Registered Partnership Act ( <b>Text No. 135/2009</b> ) originally set the legal framework for same-sex registered partnerships. The rights granted by the law were subsequently expanded both by legislative reform and judicial decisions.
3	 <b>Belgium</b>	1998	The <b>Law Establishing Legal Cohabitation</b> (1998) confers limited rights to partners, such as Article 1478 that outlines a right to shared property ownership, presumed inheritance of shared property in the event of death, shared financial obligations, and a limited right to co-raise children.
4	 <b>Croatia</b>	2014	The <b>Same-Sex Life Partnership Act</b> (2014) provides comprehensive civil union protections regarding recognition and maintenance, but the law has been criticised for being weak in relation to parenting rights. <sup>45</sup>

<sup>38</sup> 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.

<sup>39</sup> "地方自治体の同性パートナー認知件数 (2020年9月30日時点)", *Nijiuro Diversity*, 16 Oct. 2020.

<sup>40</sup> "全国パートナーシップ制度導入済み自治体状況 (2020年111日時点)", 自治体にパートナーシップ制度を求める会, 1 November, 2020.

<sup>41</sup> "In first, Ibaraki Prefecture to issue partnership certificates for LGBT couples from July", *Japan Times*, 24 July 2019.

<sup>42</sup> "Sapporo, Osaka make LGBT couples eligible to receive support money", *Kyodo News*, 30 August 2020.

<sup>43</sup> Patpicha Tanakasempipat, "Thai cabinet backs bill allowing same-sex unions", *Reuters*, 8 July 2020.

<sup>44</sup> Zsombor Peter, "Thailand's New Government Revives Proposal for Same-Sex Unions", *VOA Cambodia*, 23 August 2019.

<sup>45</sup> "LGBT Parenting" (webpage), *Životno Partnerstvo* (website).

5	 <b>Cyprus</b>	2015	The <b>Civil Partnership Law</b> (N.184(1)/2015) applies to same-sex and different-sex couples regarding financial and accommodation issues, but with limited familial protection. <sup>46</sup>
6	 <b>Czech Republic</b>	2006  2012	The Registered Partnership Act ( <b>Law No. 115/2006</b> ) confers comprehensive civil union protections to same-sex partners but prevents same-sex couples from adopting children.  Article 3020 of the <b>Civil Code</b> (2012) makes the provision that “the rights and responsibilities of spouses shall apply <i>mutatis mutandis</i> to registered partnership and the rights and obligations of partners” (referring to the first, third, and fourth parts of section on Marriage at Section 655).
7	 <b>Estonia</b>	2016	The <b>Registered Partnership Act</b> (2014), which entered into force on 1 January 2016, is open to same-sex and different-sex couples and contains limited adoption rights for joint adoption by a second parent. However, ‘family status’ under Estonian law requires a union between a man and a woman. <sup>47</sup>
8	 <b>France</b>	1999	<b>Law 99-944 of 15 November 1999</b> (on the Civil Solidarity Pact – locally known as “PACS”) modified Article 515 of the Civil Code to offer same-sex couples some level of legal recognition outside of marriage.
9	 <b>Greece</b>	2015  2016	Article 1 of Law on Covenant Partnership ( <b>Law No. 4356 of December 2015</b> ) confers gender-neutral partnership rights.  In 2016, Greece’s <b>Government Gazette</b> announced the Presidential assent of a bill, which in many ways legally equates civil partnerships with marriages.
10	 <b>Hungary</b>	2009  2018	The Law on Registered Partnership and Related Legislation ( <b>Act XXIX of 2009</b> ) provides for same-sex registered partnerships, affording same-sex couples rights equal to marriage except for taking the partner’s name, joint and second parent adoption, assisted reproduction, and the presumption of paternity. Additionally, Section 6:514 of the <b>Civil Code</b> (2009) sets out the provisions pertaining to gender-neutral limited <i>de facto</i> partnership not based on State registration.  In 2018 the Budapest District Court ruled that same-sex marriages performed abroad must be recognised as equivalent to registered partnerships. <sup>48</sup>
11	 <b>Italy</b>	2016	Article 1 of <b>Law No. 76</b> (2016) regarding civil partnership and cohabitation establishes it is limited to same-sex couples. This legislation provides for equality in matters of tax, social security, and inheritance.
12	 <b>Liechtenstein</b>	2011	The Law on Registered Partnership of Same-Sex couples ( <b>Partnership Act, 2011</b> ) confers limited protections to same-sex partners, and overtly denies couples the right to joint adoption or reproductive medical assistance under Article 25.
13	 <b>Luxembourg</b>	2004	Civil unions for same-sex couples have been available since 2004 after the enactment of <b>Law of 9 July 2004</b> . They remain available to same-sex couples and grant largely the same rights as marriage. <sup>49</sup>
14	 <b>Malta</b>	2014	Section 4(1) of the <b>Civil Unions Act</b> (2014) 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.

<sup>46</sup> Note: Same-sex unions are not recognised in the disputed Turkish Republic of Northern Cyprus. In the UK-held regions of Akrotiri and Dhekelia same-sex marriage is possible, though only if at least one member of the couple seeking to wed is a member of the British armed forces, per the **Overseas Marriage (Armed Forces) Order of 2014**.

<sup>47</sup> Peter Roudik, “Estonia: Legalization of Civil Partnerships”, *Library of Congress*, 14 January 2016.

<sup>48</sup> “Budapest court rules foreign same-sex marriages must be recognised in Hungary”, *ILGA-Europe*, 9 February 2018.

<sup>49</sup> “Understanding the legal implications of entering into a civil partnership (PACS)”, *Guichet.lu*, accessed 10 June 2019.

15	 <b>Monaco</b>	2020	Monaco's National Council voted unanimously to allow same-sex unions under the Law relating to Civil Solidarity Contracts ( <a href="#">Law No. 1,481</a> ) (2019), which came into effect on 27 June 2020. It allows same-sex couples, as well as different-sex couples, siblings, or other pairs who live together, to take on some of the legal benefits of shared property ownership and financial responsibility, pension and inheritance rights, and illness cover. However, the law does not provide cohabitants with the same rights as married couples and explicitly notes that "the legal regime of the contract has no effect on the rules of filiation, parental authority and the rights of the child". <sup>50</sup>
16	 <b>Montenegro</b>	2021	After being rejected in 2019, a bill granting rights to same-sex couples (not including adoption) was passed in 2020 and published in the <a href="#">Official Gazette of Montenegro, No. 67/2020</a> (2020). The law will take effect in July 2021 (a year after the publication of the legislation). <sup>51</sup>
17	 <b>Netherlands</b>	1998	Co-existing with same-sex marriage, Article 1:80(a)-(e), Book 1 of the <a href="#">Civil Code</a> confers comprehensive protections to both same-sex and different-sex civil partners. These unions are virtually equivalent to marriage.
18	 <b>Portugal</b>	2001	Under <a href="#">Law no. 7/2001</a> , <i>de facto</i> unions are legalised for same-sex couples. This type of union has not been repealed since the enactment of same-sex marriage and remains as an alternate option.
19	 <b>San Marino</b>	2018	In December 2018, the Law on the Regulation of Civil Unions ( <a href="#">Law No. 147 of 20 November 2018</a> ) came into effect, allowing same-sex and opposite-sex couples to enter into a union and enjoy certain rights with regard to residency, social security, pension, healthcare, and survivorship.
20	 <b>Slovenia</b>	2005  2017	In 2005 the <a href="#">Same-Sex Partnership Registration Act</a> (2005) allowed for same-sex couples to register their partnerships and take on limited rights to joint finances and property ownership.  This law was repealed with the adoption of the <a href="#">Partnership Act</a> (in force since February 2017), which 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.
21	 <b>Spain</b>	1998 - 2011	Since 1998, civil unions between people of the same sex have been legalised in several subnational jurisdictions in Spain. These rules are available to more than half of Spain's total population because of their territorial scope.
	<i>Andalusia</i>	2002	Same-sex couples can enter into domestic partnerships under Andalusia's Law on Domestic Partnerships ( <a href="#">Law No. 5</a> ) (2002), which offers wide-ranging recognition of the shared rights and responsibilities of registered couples, including the right to foster children. Part 1 of the preamble notes as legitimate the "aspirations of these citizens that their sexual choice would not be an obstacle in order to form a family nucleus".
	<i>Aragon</i>	1999	Aragon has allowed same-sex and different-sex partners to register a "stable unmarried couple" under Article 2 of <a href="#">Law No. 6</a> (1999).
	<i>Asturias</i>	2002	Same-sex unions can be registered in Asturias under the Law on Stable Couples ( <a href="#">Law No. 4</a> ) (2002), applying to individuals who have "cohabited maritally" for a period of at least one year.
	<i>Balearic Islands</i>	2001	The Balearic Islands allow same-sex unions outside of marriage to be registered under the Law on Stable Couples ( <a href="#">Law No. 18</a> ) (2001).

<sup>50</sup> "La principauté de Monaco reconnaît un contrat d'union civil pour tous les couples", *L'Express*, 6 December 2019; "Common Life Agreements Bestowing Rights for Unmarried Heterosexual and Homosexual couples Voted Unanimously", *Hello Monaco*, 27 December 2019.

<sup>51</sup> Rachel Savage, "Montenegro legalises same-sex civil partnerships", *Openly*, 1 July 2020.

	<i>Castilla La Mancha</i>	2000	<p>Castilla La Mancha allowed same-sex couples to register their relationships in 2000 after the passage of <a href="#">Decree No. 124/2000</a>, which regulates the creation and functioning of the Register of domestic partners.</p> <p>The preamble of the text notes: “The appearance of a new type of family relationship, not based exclusively on the marriage bond, but on the consent, affection and solidarity freely accepted to build a different model of life in common, oblige the various administrations to consider the establishment of a new administrative legal regime”.</p>
	<i>Canary Islands</i>	2003	<a href="#">Law No. 5/2003</a> regulating <i>de facto</i> couples allows residents to enter into a civil union without regard to sex or gender, provided they have cohabited for a period of 12 months. The law allows for couples to form a contract to select the range of their shared responsibilities, including shared financial resources, medical decision-making rights should one member become incapacitated, and the right to compensation should the contract be broken.
	<i>Cantabria</i>	2005	Cantabria’s <a href="#">Law No. 1/2005</a> regulating <i>de facto</i> couples allows same-sex couples to register a union, confers some rights to shared finances and property, and permits shared custody of adopted or foster children should the union be dissolved.
	<i>Catalonia</i>	1998 2011	<p><a href="#">Law No. 10/1998</a> on stable unions first allowed same-sex and heterosexual couples to register their partnerships.</p> <p>In 2011, the rights of such couples were significantly expanded in amendments to the Civil Code under <a href="#">Law No. 25/2010</a>.</p>
	<i>Extremadura</i>	2003	Same-sex couples can register their partnership under <a href="#">Law No. 5/2003</a> on <i>de facto</i> couples, in which two adults of any sex or gender “may validly establish in public deed the agreements they deem appropriate to govern their economic relations during cohabitation and to liquidate them after their termination”.
	<i>Galicia</i>	2006 2007	Same-sex unions were recognised in Galicia on 14 June 2006 after the passage of <a href="#">Law No. 2/2006</a> . Notably, <a href="#">Law 10/2007</a> was adopted in the following year, which amended the status of such unions to be largely equivalent to marriage.
	<i>Madrid</i>	2001	Similarly to the legislation in many other autonomous Spanish jurisdictions, Madrid’s <a href="#">Law No. 11/2001</a> on <i>de facto</i> unions allows adult residents of the same sex to enter into a union of cohabitation and sign a contract of agreement of responsibilities between them.
	<i>Navarra</i>	2000	Navarra’s <a href="#">Foral Law No. 6/2000</a> , of 3 July, for the Legal Equality of Stable Couples allowed same-sex couples to register their unions and share financial and property rights.
	<i>Valencia</i>	2001	Same-sex couples were allowed to register their unions under <a href="#">Law 1/2001</a> regulating <i>de facto</i> unions. This was repealed and replaced in 2012 with <a href="#">Law 5/2012</a> , which granted expanded rights to couples in registered unions.
22	 <b>Switzerland</b>	2007	The <a href="#">Federal Law on Registered Partnership Between Persons of the Same Sex</a> (RS 211.231) contains protective financial and property provisions to registered partnerships between same-sex couples.
23	 <b>United Kingdom</b>	2005	The <a href="#">Civil Partnership Act</a> (2004) grants same-sex couples access to legal recognition of their relationships. These unions were originally offered only to same-sex couples but then extended to different-sex couples in December 2019.

## Non-independent jurisdictions in Europe (4)

## United Kingdom (4)

1	 Gibraltar	2014	The <b>Civil Partnership Act</b> (2014) allows for couples registered under the act to share financial responsibilities, inheritance, and co-adopt children. Civil partnerships may not be officiated through a religious ceremony.
2	 Guernsey (incl. autonomous constituents, Alderney and Sark)	2011	Guernsey has not passed legislation permitting civil unions, though it permits same-sex marriage.  The <b>Inheritance (Guernsey) Law</b> (2011) does make provision to recognise same-sex civil partnerships solemnised in other jurisdictions, however, for the purposes of inheritance of property.
3	 Isle of Man	2010	Same-sex couples may register their unions under the <b>Civil Partnership Bill</b> (2010) which confers many of the rights and responsibilities of marriage.
4	 Jersey	2012	In 2012, the Crown Dependency of Jersey introduced the <b>Civil Partnership (Jersey) Law</b> (2012), which confers many of the rights and responsibilities of marriage onto same-sex couples who register under this legislation.

## Is there more in Europe?

<b>Denmark</b> (REPEALED)	Denmark was the first UN Member State to enact a nationwide law that legally recognised registered partnerships between two people of the same sex. The <b>Danish Registered Partnership Act</b> came into effect on 1 October 1989. On that same day, Eigil and Axel Axgil, who had lived together since 1950, were the first same-sex couple to have their relationship legally recognised by the Danish State. <sup>52</sup> This pioneering law was repealed in June 2012 after marriage became available for same-sex couples.
<b>Finland</b> (REPEALED)	The <b>Act on Registered Partnerships</b> legalised same-sex unions in 2002. However, after the law on marriage was amended to allow for same-sex marriage, it is no longer possible to register a relationship under this law in Finland.
<b>Germany</b> (REPEALED)	The <b>Act on Registered Life Partners</b> provided significant protections for same-sex partners (to whom the Act was 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.
<b>Ireland</b> (REPEALED)	The <b>Civil Partnership and Certain Rights and Obligations of Cohabitants Act</b> legalised same-sex civil partnerships in 2010. Following the enactment of the Marriage Act 2015, these partnerships are no longer available. If a couple decides to apply for marriage, their civil partnership is dissolved automatically.
<b>Lithuania</b>	In May 2017, a bill to grant limited partnership rights to same-sex couples was preliminarily approved. <sup>53</sup> As of the time of publication, it is still pending in the Parliament.
<b>Norway</b> (REPEALED)	With the enactment of <b>Act No. 40</b> of 30 April 1993 relating to Registered Partnership, Norway became the second country in the world (after Denmark) to legalise same-sex registered partnerships in 1993. With the enactment of same-sex marriage in 2009, couples who had entered into registered partnerships were given the possibility of modifying their civil status to marriage, but no new registered partnerships can be formalised.
<b>Poland</b>	A bill to regulate registered partnerships (including same-sex partnerships) was introduced to the Polish parliament in April 2018. As of the time of publication, the bill has not been approved. <sup>54</sup>

<sup>52</sup> Sheila Rule, "Rights for Gay Couples in Denmark", *New York Times*, 2 October 1989.

<sup>53</sup> Virginija Prasmickaitė, "Seimas Approves the Proposal on "Cohabitation Agreements" as Alternative to Partnership Law", *National LGBT Rights Organization (LGL)*, 31 May 2017.

<sup>54</sup> "Kolejny projekt Nowoczesnej. Proponuje wprowadzenie związków partnerskich", *Wiadomości*, 24 April 2018.



<b>Romania</b>	Several bills aiming to regulate same-sex civil partnerships have failed in the last few years. <sup>55</sup> In 2018, the National Council for Combating Discrimination introduced a bill that would allow couples who cannot or do not want to marry to formally register their consensual union with civil status officers. <sup>56</sup>
<b>Vatican City</b>	Though not a formal declaration of intent to adopt legislation or any change in canonical law, Pope Francis—head of state of the Vatican City—stated in an interview for the documentary <i>Francesco</i> in 2020 that “homosexuals have a right to be a part of the family” and that “we have to create is a civil union law” to legally cover homosexuals. Given the broad influence of the Catholic Church around the world, many human rights defenders are hopeful that it will have a positive effect on attitudes towards sexual and gender diversity inside and outside the Vatican. <sup>57</sup>

## Oceania

2 out of 14 UN Member States (14%). Additionally: 3 non-UN Member jurisdictions.

1	 <b>Australia</b>	2002 - 2016	In 2008, the Australian Government introduced reforms to remove the discriminations between <i>de facto</i> same-sex and different-sex couples under the <b>Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act (2008)</b> and <b>Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act (2008)</b> , however, no nationwide law on recognising such unions exists, with individual states adopting their own legislation on the matter.
	<i>Australian Capital Territory</i>	1994	Domestic partnerships for same sex couples have been recognised since 1994 under the <b>Domestic Relationships Act (1994)</b> . These unions were largely limited to an adjustment of property rates for domestic partners living under the same roof, with few of the rights and responsibilities of marriage.
		2012	The law was amended and expanded when civil unions were allowed under the passage of the <b>Civil Unions Act (2012)</b> .
	<i>New South Wales</i>	2010	Registered partnerships for same-sex and different-sex couples are available in New South Wales under the <b>Relationships Register Act (2010)</b> .
	<i>Northern Territory</i>	2004	Same-sex and different-sex couples have been able to register their partnerships since 2004 under the <b>Law Reform (Gender, Sexuality and De facto Relationships) Act (2003)</b> , though the rights conferred from such partnerships remained limited until the introduction of same-sex marriage in Australia in 2017.
	<i>Queensland</i>	2012	As of 2012 residents of Queensland have been able to register same-sex unions under the <b>Civil Partnerships Act (2011)</b> , though few additional rights beyond legal recognition of a relationship are conferred under the act.

<sup>55</sup> "Parteneriatul civil a fost respins de Senat", *Digi24.ro*, 29 October 2018.



<sup>56</sup> Clarice Dinu, "O nouă inițiativă pentru legalizarea parteneriatelor civile: uniune consensuală pentru persoanele de același sex, dar și pentru heterosexuali. Cuplurile gay NU vor putea adopta copii. PROIECT CNCD". *Gândul*, 30 March 2018.

<sup>57</sup> "ILGA World Welcomes Pope Francis' Support For LGBTI Families and Civil Unions", *ILGA World*, 21 October 2020; "Pope Francis' Meaningful Words Must Be Followed by Action," *ILGA World*, 22 October 2020; Bryan Alexander, "A big, beautiful lesson": 'Francesco' director on Pope Francis' landmark remarks about LGBT civil unions", *USA Today*, 26 October.


South Australia	2007	Registration of domestic partnerships for cohabiting persons regardless of their sex or whether a sexual relationship exists between them was allowed as of 2007 with the adoption of the <b>Statutes Amendment (Domestic Partners) Act</b> (2006).
	2011	While such partnerships were little more than contractual agreements between partners, the <b>Statutes Amendment (De facto Relationships) Act</b> (2011) expanded the rights of couples in areas of property ownership – with a subsequent shared responsibility of taxation and asset forfeiture in the case of shared debt.
	2017	In 2017, couples in registered in domestic partnerships again had several additional rights conferred in the areas of inheritance, pension, accessing a home-buyers' grant, and prison visitation rights under the <b>Statutes Amendment (Registered Relationships) Act</b> (2017).
Tasmania	2003	Registered partnerships have been permitted under Tasmania's <b>Relationships Act</b> (2003), conferring limited rights to couples. Though the law was already gender-neutral in its language, same-sex couples were formally recognised with the passage of the <b>Relationships (Consequential Amendments) Act</b> (2003), which replaced references to "de facto spouse" with "partner".
Victoria	2008	Victoria recognises registered partnerships for non-married couples "irrespective of their genders and whether or not they are living under the same roof", under the <b>Relationships Act (2008) No. 12 of 2008</b> .
Western Australia	2002	Western Australia recognises <i>de facto</i> relationships for persons in a "marriage-like relationship" under the <b>Interpretation Act</b> (1984). Section 13A(3) of the act was amended in 2002 to also recognise same-sex couples.
2  <b>New Zealand</b>	2005	The <b>Civil Union Act</b> (2004) provides for civil unions, available to same-sex or different-sex couples.

### Non-independent jurisdictions in Oceania (3)

#### France (2)

1  <b>New Caledonia</b>	2009	Article 70 of Law 2009-549 (2009) amended Article 14 of <b>Law No. 99-944</b> (1999) to make the French Civil Solidarity Pact applicable to New Caledonia and Wallis and Futuna. <b>Law No. 99-944</b> (1999) confers some legal recognition to same-sex couples outside of marriage.
2  <b>Wallis and Futuna</b>		

#### United Kingdom (1)

3  <b>Pitcairn Islands</b>	2015	The <b>Same Sex Marriage and Civil Partnerships Ordinance</b> (2015) which allows for same-sex marriages to take place within the territory, also provides for the recognition of a registered civil partnership performed outside of Pitcairn and the surrounding islands.
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### Is there more in Oceania?

**French Polynesia**  
(France)

**Law No. 99-944** (1999) is not applicable to the French Polynesia.

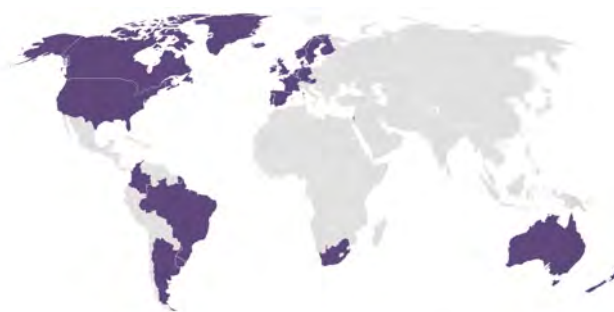
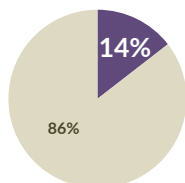
However, a Civil Solidarity Pact (PACS) validly subscribed in metropolitan France or in a department or other overseas territory will have full effect in the territory.



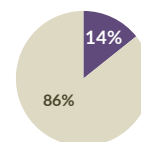
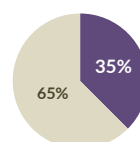
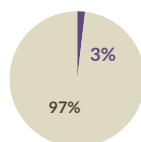
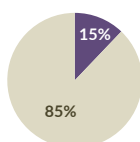
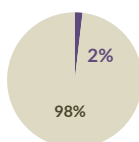
# Joint adoption by same-sex couples

## Highlights

28 UN Member States  
14% UN Member States



AFRICA	LAC	NORTH AMERICA	ASIA	EUROPE	OCEANIA
1 /54	5 /33	2 /2	1 /42	17 /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 out of 54 UN Member States (2%). Additionally: 3 non-UN Member jurisdictions.


1		<b>South Africa</b>	2002	In 2002, the Constitutional Court ordered in <i>Du Toit &amp; Or</i> 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 <b>Child Care Act</b> (1983) in line with the <b>Constitution</b> (1996).
			2005	Article 231(1)(a) the <b>Children’s Act</b> (2005) allows joint adoption by “partners in a permanent domestic life-partnership”.

## Non-independent jurisdictions in Africa (3)

## France (2)





1	 <i>Mayotte</i>	2013	In France, Chapter 2 of the Law Opening Marriage to Same-Sex Couples ( <a href="#">Law No. 2013-404</a> ) (2013) amended the <a href="#">Civil Code</a> to provide for the right to adopt by same-sex couples, including joint adoption.  This law applies to Mayotte and Reunion. <sup>1</sup>
2	 <i>Reunion</i>		

United Kingdom (1)<sup>2</sup>

3	 <i>Saint Helena, Ascension and Tristan da Cunha</i>	2017	In different months of 2017, new Marriage Ordinances came into force in <a href="#">Saint Helena</a> , <a href="#">Ascension</a> and <a href="#">Tristan da Cunha</a> recognising marriage as including unions between same-sex partners.  These ordinances extend the same legal framework applied to heterosexual couples to same-sex partners.
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## Latin America and the Caribbean

5 out of 33 UN Member States (15%). Additionally: 9 non-UN Member jurisdictions.


1	 <b>Argentina</b>	2010	The Law on Marriage Equality ( <a href="#">Law No. 26.618</a> ) (2010) grants same-sex couples all rights derived from marriage, including joint adoption.
2	 <b>Brazil</b>	2010	In April 2010, the Superior Court of Justice of Brazil (STJ) ruled in <a href="#">REsp 889,852/RS</a> that same-sex couples may adopt children.  This rationale was upheld in the Supreme Federal Court of Brazil in August 2010 (in the case <a href="#">RE 615261/PR</a> ) and later in March 2015 (in the case <a href="#">RE 846102/PR</a> ).
3	 <b>Colombia</b>	2015	In November 2015, the Constitutional Court issued <a href="#">Decision C-683/15</a> stating that same-sex couples in Colombia can jointly adopt children. <sup>3</sup>
4	 <b>Costa Rica</b>	2020	Article 103 of the <a href="#">Family Code</a> provides for joint adoption at the request of both spouses.  When same-sex marriage entered into force on 26 May 2020, same-sex married couples had their right to jointly adopt recognised under this provision. The lack of statutes regulating the matter creates a few legal voids (e.g., the order of surnames of the child) that will need to be further resolved by the judiciary. <sup>4</sup>  However, in June 2020 a bill ( <a href="#">No. 22.053</a> ) intending to prohibit adoption by same-sex couples was introduced in the Parliament. The bill is still being discussed.

<sup>1</sup> Under Article 72-3 of the [French Constitution](#) (1958), Mayotte and Reunion are listed as French overseas territories. Both of them are officially overseas departments and regions and, as such, subject to Article 73 of the Constitution, according to which French statutes and regulations are automatically applicable.

<sup>2</sup> As for the British Indian Territory, the population of the territory is mainly composed of military personnel. The [Overseas Marriage \(Armed Forces\) Order](#) (2014) provides for same-sex marriage in the military which would permit that they eventually seek joint adoption of a child as a couple. Beyond the legal possibility, ILGA World was unable to find information to corroborate that adoptions can actually be formalised in practice in the territory.






<sup>3</sup> For more information, see: "[Adopción igualitaria](#)", *Colombia Diversa* (website).

<sup>4</sup> Gloriana Casasola Calderón, "[Matrimonio igualitario abre la oportunidad de adopción a cónyuges del mismo sexo](#)", *Teletica.com*, 28 May 2020.


5		<b>Uruguay</b>	2009	The Code of Childhood and Adolescence ( <a href="#">Law 17,823</a> (2004), as amended by <a href="#">Law 18,590</a> (2009)) modified certain provisions related to adoption, thereby regulating adoption by same-sex couples in civil unions.
			2013	The Law on Marriage Equality ( <a href="#">Law No. 19,075</a> ) redefined marriage as the union of two people "of different or same sex" and granted same-sex couples all rights derived from marriage, including joint adoption.

### Non-independent jurisdictions in Latin America and the Caribbean (9)



#### France (5)

1		<i>French Guiana</i>	2013	In France, Chapter 2 of the Law Opening Marriage to Same-Sex Couples ( <a href="#">Law No. 2013-404</a> ) (2013) amended the <a href="#">Civil Code</a> to provide for the right to adopt by same-sex couples, including joint adoption.  These laws apply in French Guiana, Guadeloupe, Martinique, Saint Barthelemy, and Saint Martin. <sup>5</sup>
2		<i>Guadeloupe</i>		
3		<i>Martinique</i>		
4		<i>Saint Barthelemy</i>		
5		<i>Saint Martin</i>		

#### United Kingdom (1)

6		<i>Falkland Islands (Islas Malvinas)</i> <sup>6</sup>	2017	In April 2017, the Falkland Islands (Islas Malvinas) legalised same-sex marriage and civil partnership by amending the <a href="#">Marriage Ordinance</a> (1996). The amendments provided that couples in same-sex unions should be afforded the same rights as heterosexual couples, including joint adoption.
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#### United States of America (2)

7		<i>Puerto Rico</i>	2018	In 2018, <a href="#">Law No. 61-2018</a> (2018) amended the <a href="#">Civil Code</a> (1930), consolidating the right to adoption regardless of sexual orientation.
8		<i>US Virgin Islands</i>	2015	Following the Supreme Court decision in <i>Obergefell v. Hodges</i> , joint adoption by same-sex couples became legal in 2015.

### Is there more in Latin America and the Caribbean?

<b>Chile</b>	In May 2019, the Chamber of Deputies approved a bill for the comprehensive reform to the adoption system in Chile that would enable joint adoption for same-sex couples. The bill must be approved by the House of Senators before it can take effect. <sup>7</sup>
<b>Ecuador</b>	Despite the legalisation of same-sex marriage in Ecuador, Article 68 of the <a href="#">Constitution</a> (2008) expressly limits the right to adopt to couples of different sexes.

<sup>5</sup> Under Article 72-3 of the [French Constitution](#) (1958), these five jurisdictions are listed as French overseas territories. French Guiana, Martinique and Guadeloupe, as overseas departments and regions, are subject to Article 73 of the Constitution, according to which French statutes and regulations are automatically applicable in the territory. Saint Barthelemy and Saint Martin are overseas collectivities and, as such, are subject to Article 74, according to which their autonomy is established by an organic law that establishes the conditions under which the laws and regulations are applicable in the territory. Moreover, under Article LO6213-1 (for Saint Barthelemy) and Article LO6313-1 (for Saint Martin) of [General Code of Territorial Collectivities](#), legislative and regulatory provisions are automatically applicable in these territories provided that they do not intervene in the matters that are of competence of the organic law or of the collectivity.

<sup>6</sup> Note: ILGA is aware of the sovereignty dispute between Argentina and the United Kingdom over the Falkland Islands/Islas Malvinas. Under Argentine law, joint adoption for same-sex couples is legal since 2010. The British administration of the Islands, with effective control over that territory, legalised same-sex marriage and joint adoptions in 2017.

<sup>7</sup> "Hito: Cámara de Diputados aprueba la adopción homoparental y la despacha al Senado", [MOVILH](#), 9 May 2019.

## Mexico

There is no federal law allowing for joint adoption by same-sex couples. Although adoption would virtually be available in all states that recognise same-sex marriage (see section above), the lack of specific legislation on the matter creates great legal uncertainty and often impedes the access to adoption rights by same-sex couples.<sup>8</sup> In some jurisdictions, legislation provides for joint adoption by married couples, while in others the recognition of the right relies only on declarations made by the officials responsible for the adoption process. Among the states where adoption is recognised are: [Aguascalientes](#) (2019), [Campeche](#) (2016), [Chiapas](#) (2018),<sup>9</sup> [Chihuahua](#) (2015), [Coahuila](#) (2014), [Colima](#) (2016), [Mexico City](#) (2010), [Morelos](#) (2016), and [Nayarit](#) (2016). In other states, adoption by same-sex couples may eventually be available, even if there is no provision expressly recognising it.

Despite these provisions, same-sex couples often face challenges when intending to adopt children across all states of the country.<sup>10</sup> For instance, in Baja California, where adoption by same-sex parents has technically been available since 2017, it was not until 25 October 2019 that the first same-sex parent adoption in the state was allowed.<sup>11</sup>

## Non-independent jurisdictions

### *South Georgia and South Sandwich*



(*United Kingdom*)<sup>12</sup>

Same-sex marriage became legal in the territory in 2014 since the [Marriage \(Same Sex Couples\) Act](#) (2013) entered into force, which would allow for joint adoption by same-sex couples.

However, the Islands have no permanent population, so adoptions are unlikely to be formalised in the territory of the South Georgia and South Sandwich Islands.

## North America

2 out of 2 UN Member States (100%). Additionally: 3 non-UN Member jurisdictions.

1	 <b>Canada</b>	1996 - 2011	Joint adoption by same-sex couples is legal in all Canadian provinces and territories. Every jurisdiction has its own laws and regulations on the matter: <a href="#">Alberta</a> (2007), <a href="#">British Columbia</a> (1996), <a href="#">Manitoba</a> (2002), <a href="#">New Brunswick</a> (2008), <a href="#">Newfoundland &amp; Labrador</a> (2003), <a href="#">Northwest Territories</a> (2002), <a href="#">Nova Scotia</a> (2001), <a href="#">Nunavut</a> (2011), <a href="#">Ontario</a> (2000), <a href="#">Prince Edward Island</a> (2009), <a href="#">Quebec</a> (2002), <a href="#">Saskatchewan</a> (2001), and <a href="#">Yukon</a> (2003).
2	 <b>United States of America</b>	2015	As a result of the Supreme Court decision in <i>Obergefell v. Hodges</i> (2015), joint adoption by same-sex married couples is 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. <sup>13</sup> ↘  In June 2020, Trump's Administration Department of Justice filed a <a href="#">brief</a> as <i>amicus curiae</i> in the Supreme Court case <i>Sharonell Fulton v. City of Philadelphia</i> supporting the petitioners in their claim that discriminating against same-sex couples in fostering services fall under the protection of the Free Exercise Clause of the First Amendment. Oral arguments took place in November 2020 and final ruling is still pending. <sup>14</sup>

<sup>8</sup> Irais Quezada Vázquez, "La adopción por parejas del mismo sexo en México", *Trabajo Social Hoy*, No. 79 (2016), 43-54.

<sup>9</sup> Roberto Leonardo Cruz Nunes and Ana Rossa Nunes Serrano, "Niños, niñas y adolescentes y adopción homoparental en Chiapas, México", *Revista Intertemas*, V. 25, No. 1 (2020), 150-166.

<sup>10</sup> César García, "En México, en cinco años sólo 5 parejas homoparentales han podido adoptar", *Milenio*, 21 June 2020

<sup>11</sup> "Una pareja de mujeres se convirtió en la primera familia homoparental, de Baja California, que adopta a un menor". *Infobae*. 25 October 2019.


<sup>12</sup> Note: ILGA is aware of the sovereignty dispute between Argentina and the United Kingdom over the South Georgia and South Sandwich Islands. Under Argentine law, joint adoption for same-sex couples is legal since 2010.

<sup>13</sup> "Joint Adoption", *Movement Advancement Project (website)*, accessed 22 January 2019.


<sup>14</sup> Marie-Amélie George, "The history behind the latest LGBTQ rights case at the Supreme Court", *The Washington Post*, 17 November 2020.

## Non-independent jurisdictions in North America (3)


### Denmark (1)

1	 <b>Greenland</b>	2016	Greenland enacted <b>Act No. 103</b> (2016), which officially recognised same-sex marriage and allowed joint adoption by same-sex couples.
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### France (1)


2	 <b>Saint Pierre and Miquelon</b>	2013	In France, Chapter 2 of the Law Opening Marriage to Same-Sex Couples ( <b>Law No. 2013-404</b> ) (2013) amended the <b>Civil Code</b> to provide for the right to adopt by same-sex couples, including joint adoption. This law applies in Saint Pierre and Miquelon. <sup>15</sup>
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### United Kingdom (1)

3	 <b>Bermuda</b>	2015	In 2015, the Supreme Court of Bermuda decided in <i>A and B v. Director of Child and Family Services et al.</i> that section 28 of the <b>Adoption of Children Act</b> (2006) was discriminatory on the basis of sexual orientation and marital status, given that it did not allow unmarried couples to adopt.  The ruling stated that “a joint application to adopt a child may be made by an unmarried couple, whether same-sex or different-sex, provided that they have been living together for a continuous period of not less than one year immediately before their application”.
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## Asia

1 out of 33 UN Member States (3%).

1	 <b>Israel</b>	2008	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. <sup>16</sup>
		2018	The right to joint adoption was affirmed in 2018 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. <sup>17</sup>

### Is there more in Asia?

<b>Taiwan</b> (China) <sup>18</sup>	Same-sex couples can adopt children only if the children are related to one of the partners. This limitation means that the only type of adoption that is currently available in Taiwan for same-sex couples is second parent adoption ( <i>see below</i> ).
<b>Thailand</b>	In July 2020, a bill on same-sex civil partnership was approved by the Thai Cabinet and is to be discussed by the parliament. The bill has provisions allowing for both joint and second parent adoption by same-sex couples. <sup>19</sup>

<sup>15</sup> Under Article 72-3 of the **French Constitution** (1958), Saint Pierre and Miquelon is listed as a French overseas territory. As an overseas collectivity, Saint Pierre and Miquelon is subject to Article 74, according to which its autonomy is established by an organic law that establishes the conditions under which the laws and regulations are applicable in the territory. Moreover, under Article LO6413-1 of the **General Code of Territorial Collectivities**, legislative and regulatory provisions are automatically applicable provided that they do not intervene in the matters that are of competence of the organic law or of the collectivity.

<sup>16</sup> Talia Einhorn, “Same-sex family unions in Israeli law” *Utretch Law Review* 4 No. 2 (2008): 222, 230.

<sup>17</sup> Roberto Iguar, “Israel | Gay dads must both be named on birth certificate”, *Mamba Online*, 16 December 2018.

<sup>18</sup> Note on Names of countries and territories in this publication: ILGA World is an organisation with ECOSOC-accredited consultative status at the United Nations and our publications therefore have to follow UN-recommended language on the names of countries and territories. For more information, please read the methodology section of this report.



## Europe


17 out of 48 UN Member States (35%). Additionally: 5 non-UN Member jurisdictions.

1	 <b>Andorra</b>	2014	<a href="#">Law 34/2014</a> recognises same-sex civil unions as holding direct equivalence to marriage, and Article 24 applies this to the adoption rights of same-sex couples.
2	 <b>Austria</b>	2016	In late 2014, the Constitutional Court in Austria <a href="#">ruled</a> that provisions barring joint adoption by same-sex couples contravened the right to equality, and are not in the best interests of the child. <sup>20</sup> As such, Articles 178-185 of <a href="#">Civil Code</a> are applicable to same-sex couples as of early 2016. The legalisation of same-sex marriage in 2019 reaffirms the status of same-sex families.
3	 <b>Belgium</b>	2006	Articles 4 and 5 of the <a href="#">Law amending certain provisions of the Civil Code with a view to enabling adoption by persons of the same-sex</a> primarily concern Article 353 of the <a href="#">Civil Code</a> and ensures full joint-parental rights.
4	 <b>Denmark</b>	2010	Section 5.1 of the Adoption Act (2010), as amended by the <a href="#">Adoption (Consolidation) Act</a> (2014), provides for same-sex joint adoption.
5	 <b>Finland</b>	2017	Section 9 of the <a href="#">Adoption Act</a> (2012) stipulates that only persons who are married may adopt. On 1 March 2017, <a href="#">Act 156/2015</a> , which amends the Marriage Act to render it gender-neutral, came into force.
6	 <b>France</b>	2013	Article 1 of the Law Opening Marriage to Same-Sex Couples ( <a href="#">Law No. 2013-404</a> ) (2013) updates Articles 345(1), 360, and 371(4) of the <a href="#">Civil Code</a> regarding joint adoption.
7	 <b>Germany</b>	2017	The passage of marriage equality (see section above) allowed same-sex couples to adopt children who are not biologically related to them.
8	 <b>Iceland</b>	2006	<a href="#">Act No. 65</a> (2006) amended the country's Act on Adoption ( <a href="#">Act No. 130</a> ) (1999) authorising the joint adoption by same-sex couples in confirmed cohabitation. <sup>21</sup>
		2010	Articles, 2, 8, and 29 of the <a href="#">Marriage Act</a> (2010) stipulate the joint parental responsibilities of spouses. These apply to adoption.
9	 <b>Ireland</b>	2015	Part 11 of the <a href="#">Children and Family Relationships Act</a> (2015) (introduced a month before a Constitutional referendum on same-sex marriage) amends prior legislation to allow for joint adoption by same-sex couples.
10	 <b>Luxembourg</b>	2015	With the introduction of full marriage equality in January 2015, Article 203 of the <a href="#">Civil Code</a> was amended in 2014 (in force 1 January 2015) to assert the obligation of parents to their children, including those jointly adopted.
11	 <b>Malta</b>	2014	As reflected in Section 12 of the <a href="#">Civil Unions Act</a> (2014), Article 100B(1) of the <a href="#">Civil Code</a> 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. <sup>22</sup> The legalisation of same-sex marriage (2017) reaffirmed the status of same-sex families.

<sup>19</sup> Vitit Muntarbhorn, "Thailand's same-sex civil partnership law – a rainbow trailblazer?", *East Asia Forum*, 2 September 2020.


<sup>20</sup> "Constitutional Court Struck Down Joint Adoption Ban", *European Commission on Sexual Orientation Law*, 15 January 2015.

<sup>21</sup> Marie Digoix, "LGBT Desires in Family Land: Parenting in Iceland, from Social Acceptance to Social Pressure" in Marie Digoix (ed), *Same-Sex Families and Legal Recognition in Europe* (Cham: Springer, 2020).

12		<b>Netherlands</b>	2001	Article 1 of the <a href="#">Law on Adoption by Persons of the Same-Sex</a> (2000) amends Article 227(1) of the <a href="#">Civil Code</a> to allow for joint adoption by same-sex couples.
13		<b>Norway</b>	2009	In line with same-sex marriage provisions, Section 5 of the <a href="#">Law on Adoption</a> (1986) was amended to include the eligibility of same-sex partners to jointly adopt. <sup>23</sup>
14		<b>Portugal</b>	2016	Articles 1-7 of the <a href="#">Law No. 2</a> (2016) establish that same-sex couples enjoy all the adoption rights of different-sex couples, and amends the relevant sections of the <a href="#">Civil Code</a> .
15		<b>Spain</b>	2005	Article 67(7) of <a href="#">Law No. 13</a> (2005) amends Article 175 of the <a href="#">Civil Code</a> to specify that same-sex spouses can jointly adopt.
16		<b>Sweden</b>	2003	Since the amendment of the <a href="#">Act on Parenting</a> (2003), same-sex couples are allowed to adopt. Chapters 4-8 of the Act lay out the conditions for joint adoption for same-sex and different-sex spouses and cohabitants.
17		<b>United Kingdom</b>	2005 - 2013	Joint adoption by same-sex couples was legalised in all constituent countries of the United Kingdom separately, starting in England and Wales in 2005.
		<i>England and Wales</i>	2005	Sections 144 and 150 of the <a href="#">Adoption and Children Act</a> (2002), which entered into force in England and Wales in 2005, establish that joint adoption applies to same-sex couples.
		<i>Scotland</i>	2009	Section 2 of the <a href="#">Adoption Agencies (Scotland) Regulations</a> (2009) defines civil partners as subject to the law, which includes same-sex couples.
		<i>Northern Ireland</i>	2013	In 2013, the Court of Appeal <a href="#">held</a> that civil partners can jointly adopt.

## Non-independent jurisdictions in Europe (5)

### Denmark (1)

1		<i>Faroe Islands</i>	2017	In 2017, the Danish Parliament approved <a href="#">Act No. 428</a> (2017) that ratified an amendment to the <a href="#">Marriage Act</a> (2017), allowing same-sex married couples to adopt.
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### United Kingdom (4)

2		<i>Gibraltar</i>	2014	The <a href="#">Civil Partnership Act</a> (2014) legalised joint adoption for same-sex couples.
3		<i>Guernsey</i>	2017	The <a href="#">Adoption (Guernsey) (Amendment) Law</a> (2017) amended the <a href="#">Adoption (Guernsey) Law</a> (1960) to change the definition of “couple” and allow the joint adoption by same-sex partners.
4		<i>Isle of Man</i>	2011	The Isle of Man <a href="#">Civil Partnership Act</a> (2011) introduced joint adoption to same-sex civil partners.
5		<i>Jersey</i>	2012	Jersey legislated for joint adoption through the <a href="#">Civil Partner Causes Rules</a> (2012).

<sup>22</sup> “Malta’s first child adopted by a gay couple; parents appeal the public to educate others”, *The Malta Independent*, 15 July 2016.

<sup>23</sup> Adoption Law (1986) was repealed in 2018 as per section 52 of [Adoption Law](#) (2017).

### Is there more in Europe?

<b>Croatia</b>	<p>In 2019, an Administrative Court in Zagreb ruled in favour of a same-sex couple, recognising their right to become foster parents. The couple, who live in a “life partnership”, had previously had their request to adopt denied by the Family Ministry.<sup>24</sup></p> <p>In February 2020, the Croatian Constitutional Court ruled that the possibility of fostering children should be equally accessible to everyone, including same-sex couples.<sup>25</sup></p>
<b>Czech Republic</b>	<p>In June 2016, the Constitutional Court ruled that people living in registered partnerships (regardless of their gender) should have no impediments to adopt children as individuals. However, joint and second parent adoption by same-sex couples remain illegal to date.</p> <p>A bill addressing this issue by attempting to legalise same-sex marriage was introduced to the Chamber of Deputies in June 2018.<sup>26</sup> However, as of November 2019, the Chamber has failed to debate the bill.<sup>27</sup></p>
<b>Greece</b>	<p>Article 8 of the Child Adoption Law (Law No. 4538) (2018), passed by the parliament in May 2018, grants same-sex couples the right to foster children, but not to adopt.</p> <p>As reported by local media, the Greek Prime Minister explained that “fostering provides for the return of the child to its natural parents, who must retain contact with the child during its fostering time. It would not be an exaggeration to say that fostering is an act of altruism, solidarity, and service of those who choose it”.<sup>28</sup></p>
<b>Hungary</b> (NEGATIVE DEVELOPMENT)	<p>In November 2020, the Hungarian government presented a draft of a constitutional amendment that, if approved, would have the legal effect of banning adoption by same-sex couples.<sup>29</sup></p>
<b>Poland</b>	<p>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.<sup>30</sup> In July 2020, President Andrzej Duda announced the presentation of a proposal to amend the constitution to ban adoption by people in same-sex relationships.<sup>31</sup></p>

## Oceania

2 out of 14 UN Member States (14%). Additionally: 6 non-UN Member jurisdictions.

- |   |  |                  |   |
|---|--|------------------|---|
| 1 |  <b>Australia</b> | <b>2002-2018</b> | Joint adoption by same-sex couples is currently possible in all Australian States and Territories: <b>Australian Capital Territory</b> (2004), <b>New South Wales</b> (2010), <b>Queensland</b> (2016), <b>South Australia</b> (2017), <b>Tasmania</b> (2013), <b>Victoria</b> (2016), <b>Western Australia</b> (2002), and <b>Northern Territory</b> (2018). |
|---|--|------------------|---|

<sup>24</sup> “Sud odlučio da istospolni bračni par koji je ministarstvo odbilo ipak smije udomiti dijete” [Court rules that same-sex couple rejected by the ministry could still adopt a child], *Telegram*, 19 December 2019.

<sup>25</sup> Anja Vladislavljević, “Croatia’s Top Court Rules Same-sex Couples Can Foster”, *BalkanInsight*, 7 February 2020.

<sup>26</sup> Daniela Lazarová, “Government Backs Same-Sex Marriage Bill, But Decisive Battle Looms in Parliament”, *Radio Prague International*, 25 June 2018.


<sup>27</sup> Daniela Lazarová, “Supporters of Same-Sex Marriage Demonstrate in Prague”, *Radio Prague International*, 13 September 2019.

<sup>28</sup> “Greek MPs approve child fostering by same sex couples”, *China Daily*, 9 May 2018.

<sup>29</sup> “Hungary government proposes same-sex adoption ban”, *BBC News*, 11 November 2020.




<sup>30</sup> “Lesbian Couple Granted The Right To Register Child As Their Own In Poland”, *The Huffington Post*, 12 October 2018.

<sup>31</sup> “Duda chce wykluczyć w konstytucji adopcję dzieci przez osoby LGBT” [Duda wants to rule out the adoption of children by LGBT persons in the constitution], *Rzeczpospolita*, 4 July 2020.


2		<b>New Zealand</b>	2013	Schedule 2 of the <a href="#">Marriage (Definition of Marriage) Amendment Act</a> (2013) amended the <a href="#">Adoption Act</a> (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).
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### Non-independent jurisdictions in Oceania (6)



#### France (3)

1		<i>French Polynesia</i>	2013	In France, Chapter 2 of the Law Opening Marriage to Same-Sex Couples ( <a href="#">Law No. 2013-404</a> ) (2013) amended the <a href="#">Civil Code</a> to provide for the right to adopt by same-sex couples, including joint adoption.
2		<i>New Caledonia</i>		
3		<i>Wallis and Futuna</i>		

#### United Kingdom (1)

4		<i>Pitcairn Islands</i>	2015	Section 3(3) of the <a href="#">Adoption of Infants Ordinance</a> (2015) of Pitcairn Islands allows for joint adoption by same-sex couples, following the changes made by the <a href="#">Same Sex Marriage and Civil Partnerships Ordinance</a> (2015).
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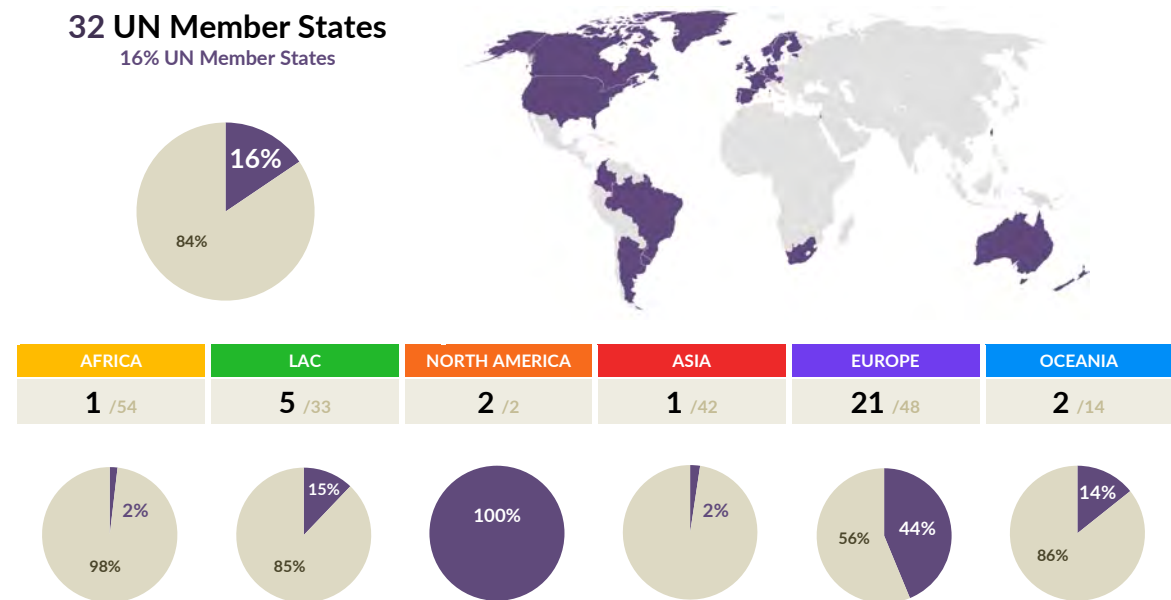
#### United States of America (2)

5		<i>Guam</i>	2015	The District Court for the Territory of Guam ruled in <a href="#">Civil Case No. 15-00009</a> to recognise same-sex marriage in the region, even before the issue was settled in <a href="#">Obergefell v. Hodges</a> , extending same-sex couples the same rights as heterosexual ones.
6		<i>Northern Mariana Islands</i>	2015	Following the Supreme Court decision in <a href="#">Obergefell v. Hodges</a> , joint adoption by same-sex couples became legal in 2015.



# Second parent adoption by same-sex couples

## Highlights



## Introduction

Second parent adoption is an important legal vehicle by means of which a person adopts the child of their partner.

For children of people who are in a same-sex stable relationship, being adopted by the partner of their parent may have multiple beneficial effects, such as increasing their protection, as well as their economic security and support.

Furthermore, the recognition of the link between the child and the second parent protects their respective rights and duties towards each other on an equal footing.


### What does International Human Rights Law say?

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

**Yogyakarta Principle 24(a)**



## Africa

1 out of 54 UN Member States (2%). Additionally, 3 non-UN Member jurisdictions.


1	 <b>South Africa</b>	2006	Section 231(1)(c) of the <b>Children's Act</b> (2005) stipulates that married persons or those in life partnerships are eligible to adopt, and the <b>Civil Union Act</b> (2006) confers those status to persons of the same-sex.
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## Non-independent jurisdictions in Africa (3)

## France (2)

1	 <i>Mayotte</i>	2013	In France, Chapter 2 of the Law Opening Marriage to Same-Sex Couples ( <a href="#">Law No. 2013-404</a> ) (2013) amended the <a href="#">Civil Code</a> to provide for the right to adopt by same-sex couples, including second parent adoption.  This law applies to Mayotte and Reunion. <sup>1</sup>
2	 <i>Reunion</i>		

United Kingdom (1)<sup>2</sup>

3	 <i>Saint Helena, Ascension and Tristan da Cunha</i>	2017	In different months of 2017, new Marriage Ordinances came into force in <a href="#">Saint Helena</a> , <a href="#">Ascension</a> and <a href="#">Tristan da Cunha</a> recognising marriage as including unions between same-sex partners. These ordinances extend the same legal framework applied to heterosexual couples to same-sex partners, including second parent adoption.
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## Latin America and the Caribbean

5 out of 33 UN Member States (15%). Additionally, 8 non-UN Member jurisdictions.






1	 <b>Argentina</b>	2010	Law of Marriage Equality ( <a href="#">Law 26.618</a> ) (2010) grants same-sex couples all rights derived from marriage, including adoption.  Article 631 of the <a href="#">Civil Code</a> (2015) 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	 <b>Brazil</b>	2010	The Superior Court of Justice of Brazil (STJ) <b>ruled</b> in April 2010 that same-sex couples may adopt children, including second parent adoption. This judgment was upheld in the Supreme Federal Court of Brazil in August 2010.
3	 <b>Colombia</b>	2014	The Constitutional Court of Colombia determined in its <a href="#">Decision SU-167</a> of 2014 that same-sex couples have the right to adopt the biological child of their partner.
4	 <b>Costa Rica</b>	2020	Article 103 of the <a href="#">Family Code</a> provides for individual adoption, as well as joint adoption at the request of both spouses.  When same-sex marriage entered into force on 26 May 2020, same-sex married couples had their right to jointly adopt recognised under this provision. This allows for the second parent adoption if one of the partners had already concluded the adoption.
5	 <b>Uruguay</b>	2009  2013	Article 139 of <a href="#">Law 17.823</a> (2004) (as amended by <a href="#">Law 18590</a> (2009)) establishes that adoption by the spouse of the biological parent is possible only if the link between the child and the other parent is terminated.  The Law on Marriage Equality ( <a href="#">Law No. 19.075</a> (2013)) grants same-sex couples adoption rights.

<sup>1</sup> Under Article 72-3 of the [French Constitution](#) (1958), Mayotte and Reunion are listed as French overseas territories. Both of them are officially overseas departments and regions and, as such, subject to Article 73 of the Constitution, according to which French statutes and regulations are automatically applicable.


<sup>2</sup> As for the British Indian Territory, the population of the territory is mainly composed of military personnel. The [Overseas Marriage \(Armed Forces\) Order](#) (2014) provides for same-sex marriage in the military which would permit that they eventually seek joint adoption of a child as a couple. Beyond the legal possibility, ILGA World was unable to find information to corroborate that adoptions can actually be formalised in practice in the territory.

## Non-independent jurisdictions in Latin America and the Caribbean (8)



## France (5)

1	 French Guiana		
2	 Guadeloupe		In France, Chapter 2 of the Law Opening Marriage to Same-Sex Couples (Law No. 2013-404) (2013) amended the <b>Civil Code</b> to provide for the right to adopt by same-sex couples, including second parent adoption. These laws applicable in French Guiana, Guadeloupe, Martinique, Saint Barthelemy, and Saint Martin. <sup>3</sup>
3	 Martinique	2013	
4	 Saint Barthelemy		
5	 Saint Martin		

## United Kingdom (1)

6	 Falkland Islands (Islas Malvinas) <sup>4</sup>	2017	In April of 2017, the Falkland Islands (Islas Malvinas) recognised same-sex marriage and civil partnership by amending the <b>Marriage Ordinance</b> (1996). The amendments provided that couples in same-sex unions should be afforded the same rights as heterosexual couples.
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## United States of America (2)

7	 Puerto Rico	2018	In 2018, <b>Law No. 61-2018</b> (2018) introduced changes to the country's <b>Civil Code</b> (1930), consolidating the right to adoption regardless of sexual orientation.
8	 US Virgin Islands	2015	Following the Supreme Court decision in <i>Obergefell v. Hodges</i> , adoption by same-sex couples became legal in 2015.

## 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, such as: **Campeche** (Art. 408B, 2016), **Coahuila** (Art. 377, 2015), **Colima** (Art. 391, 2016), **Mexico City** (Art. 391(5), 2010), and **Nayarit** (Art. 389(2), 2016).

## North America


2 out of 2 UN Member States (100%). Additionally, 3 non-UN Member jurisdiction.

1	 Canada	1996-2011	Second parent adoption is available in all provinces and territories, including <b>Alberta</b> (1999), <b>British Columbia</b> (1996), <b>Manitoba</b> (2002), <b>New Brunswick</b> (2008), <b>Newfoundland &amp; Labrador</b> (2003), <b>Northwest Territories</b> (2002), <b>Nova Scotia</b> (2001), <b>Nunavut</b> (2011), <b>Ontario</b> (2000), <b>Prince Edward Island</b> (2009), <b>Quebec</b> (2002), <b>Saskatchewan</b> (2001), and <b>Yukon</b> (2003).
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<sup>3</sup> Under Article 72-3 of the **French Constitution** (1958), these five jurisdictions are listed as French overseas territories. French Guiana, Martinique and Guadeloupe, as overseas departments and regions, are subject to Article 73 of the Constitution, according to which French statutes and regulations are automatically applicable in the territory. Saint Barthélemy and Saint Martin are overseas collectivities and, as such, are subject to Article 74, according to which their autonomy is established by an organic law that establishes the conditions under which the laws and regulations are applicable in the territory. Moreover, under Article LO6213-1 (for Saint Barthelemy) and Article LO6313-1 (for Saint Martin) of **General Code of Territorial Collectivities**, legislative and regulatory provisions are automatically applicable in these territories provided that they do not intervene in the matters that are of competence of the organic law or of the collectivity.


<sup>4</sup> Note: ILGA World takes note of the sovereignty dispute between Argentina and the United Kingdom over the Falkland Islands/Islands Malvinas (**UNGA Resolution 2065-XX**). Under Argentine law, adoption is legal since 2010.




2	 <b>United States of America</b>	2015	The availability and conditions for second parent adoption for same-sex couples varies by state. An NGO report states that about 29 states permit second parent adoption while 10 others have limited or prohibited adoption. <sup>5</sup>
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### Non-independent jurisdictions in North America (3)


#### Denmark (1)

1	 <b>Greenland</b>	2009	Greenland allowed for second parent adoption after the enactment of the <a href="#">Ordinance on the entry into force for Greenland of the Act amending the Act on registered partnership, etc. (2009)</a> .
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#### France (1)



2	 <b>Saint Pierre and Miquelon</b>	2013	In France, Chapter 2 of the Law Opening Marriage to Same-Sex Couples ( <a href="#">Law No. 2013-404</a> ) (2013) amended the <a href="#">Civil Code</a> to provide for the right to adopt by same-sex couples, including second parent adoption. This law applies in Saint Pierre and Miquelon. <sup>6</sup>
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#### United Kingdom (1)

3	 <b>Bermuda</b>	2015	In early 2015, the Supreme Court of Bermuda <a href="#">decided</a> that section 28 of the country's <a href="#">Adoption of Children Act (2006)</a> discriminated on the basis of sexual orientation and marital status, given that it did not allow unmarried couples to adopt.
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## Asia

1 out of 42 UN Member States (2%). Additionally, 1 non-UN Member jurisdiction.

1	 <b>Israel</b>	2005	In <a href="#">Yaros-Hakak v. Attorney General</a> the Supreme Court of Israel held 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. <sup>7</sup>
	 <b>Taiwan (China)</b> <sup>8</sup>	2019	As per Article 20, the <a href="#">Act on Implementation of J.Y. Interpretation No. 748</a> (2019) allows same-sex couples to adopt children only if they are related to one of the partners. This limitation means that the only type of adoption that is currently available in Taiwan for same-sex couples is second parent adoption.

<sup>5</sup> "Adoption by LGBT Parents", *National Center for Lesbian Rights (website)*, accessed January 22, 2019.

<sup>6</sup> Under Article 72-3 of the [French Constitution](#) (1958), Saint Pierre and Miquelon is listed as a French overseas territory. As an overseas collectivity, Saint Pierre and Miquelon is subject to Article 74, according to which its autonomy is established by an organic law that establishes the conditions under which the laws and regulations are applicable in the territory.

<sup>7</sup> "[Yaros-Hakak v. Attorney General, Supreme Court of Israel \(2005\)](#)", *International Commission of Jurists (website)*, accessed 22 January 2019.

<sup>8</sup> Note on names of countries and territories in this publication: ILGA World is an organisation with ECOSOC-accredited consultative status at the United Nations and our publications therefore have to follow UN-recommended language on the names of countries and territories. For more information, please read the methodology section of this report.

### Is there more in Asia?

<b>Singapore</b>	In December 2018, Singapore's High Court exceptionally allowed a gay man to adopt a child born via surrogacy in the United States. <sup>9</sup> However, the following month, Singapore's Minister for Social and Family Development stated that the government does not support "the formation of family units with children of homosexual parents through institutions and processes such as adoption" and is looking to strengthen adoption laws to "better reflect public policy". <sup>10</sup>
<b>Thailand</b>	In July 2020, a bill on same-sex civil partnership was approved by the Thai Cabinet and is to be discussed by the parliament. The bill has provisions allowing for both joint and second parent adoption by same-sex couples. <sup>11</sup>

## Europe

21 out of 48 UN Member States (44%). Additionally, 5 non-UN Member jurisdictions.

1	 <b>Andorra</b>	2014	<i>Law No. 34/2014</i> recognises same-sex civil unions as holding direct equivalence to marriage, and Article 24 applies this to the adoption rights of same-sex couples.
2	 <b>Austria</b>	2013  2019	Following the return of <i>X. and others v. Austria</i> to the European Court of Human Rights in early 2013, Article 182 of the <i>Civil Code</i> was amended to allow same-sex second parent adoption.  The legalisation of same-sex marriage in 2019 reaffirms the status of families formed by same-sex couples.
3	 <b>Belgium</b>	2006	Articles 8 of the <i>Law amending certain provisions of the Civil Code with a view to enabling adoption by persons of the same-sex (2006)</i> amended, among other provisions, Articles 353-1 to 353-5 of the <i>Civil Code</i> , ensuring second-parent adoption rights.
4	 <b>Denmark</b>	1999  2010	Section (4)1 of the <i>Law amending the Law on Registered Partnership (1999)</i> expressly sets out that a registered partner may adopt their partner's child.  Section 4(a)(2) of the <i>Adoption Act (2010)</i> , as updated in the <i>Adoption (Consolidation) Act (2014)</i> , sets out that a partner or a spouse can adopt the other's child.
5	 <b>Estonia</b>	2016	Sections 15(1-4) of the <i>Registered Partner Act (2016)</i> offer second-parent adoption rights to same-sex couples, permitting an individual to adopt the natural or adopted child of their partner.
6	 <b>Finland</b>	2009  2017	Section 9 of the <i>Registered Partnership Act (2001)</i> (as amended in 2009) states that civil partners can adopt, although not granting all rights established in the country's adoption legislation.  However, since coming into force in March 2017, <i>Act No. 156 (2015)</i> confers full joint adoption rights to same-sex couples in Finland.
7	 <b>France</b>	2013	Article 1 of the <i>Law Opening Marriage to Same-Sex Couples (Law No. 2013-404)</i> (2013) inserted paragraph 345(1)(a) to the existing <i>Civil Code</i> to allow for second parent adoption.

<sup>9</sup> Sandi Sidhu and Lauren Said-Moorhouse, "Gay Singaporean man can adopt son born via surrogacy, court rules", *CNN*, 17 December 2018.

<sup>10</sup> Fathin Ungku, "Singapore may tighten adoption law after gay father adopted son", *Reuters*, 14 January 2019.

<sup>11</sup> Vitit Muntarbhorn, "Thailand's same-sex civil partnership law – a rainbow trailblazer?", *East Asia Forum*, 2 September 2020.

8	 <b>Germany</b>	2005	Article 9(7) of the <a href="#">Act on Registered Life Partnerships</a> (2005) (to be read in conjunction with Title 2 [Adoption] of the Civil Code) legalised second parent adoption for same-sex couples.
		2017	Following the passage of marriage equality which granted the same adoption rights to same-sex couples, the Federal Court of Justice <b>held</b> 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. <sup>12</sup>
9	 <b>Iceland</b>	2000	Section 6 of Law amending the <a href="#">Registered Partnership Act</a> (1996) specifies that civil partners can adopt one another’s children. <sup>13</sup>
10	 <b>Ireland</b>	2015	Changes in the adoption legislation introduced by the <a href="#">Children and Family Relationships Act</a> (2015) and the <a href="#">Adoption (Amendment) Act 2017</a> allow for adoption by civil partners, spouses, and single applicants. These provisions define “parentage” as including spouses, civil partners, or cohabitants, granting second parent adoption rights to same-sex couples.
11	 <b>Luxembourg</b>	2015	With the introduction of full marriage equality in force in January 2015, Article 203 of the <a href="#">Civil Code</a> was amended to assert the obligation of parents to their children, including those in second parent adoption.
12	 <b>Malta</b>	2014	Article 12 the <a href="#">Civil Unions Act</a> (2014) inserted Article 100B into the <a href="#">Civil Code</a> to guarantee full joint adoption rights to same-sex partners. This, in combination with the Civil Code provisions under Title III, which allows for the adoption of stepchild and by single applicants, consolidates second parent adoption rights for same-sex couples.
		2017	The legalisation of same-sex marriage reaffirmed the status of same-sex families as well.
13	 <b>Netherlands</b>	2001	Article 1 of the Law on Adoption by Persons of the Same Sex ( <a href="#">Law No. 21</a> ) (2000) amended Article 228(f) of the <a href="#">Civil Code</a> to allow for second parent adoption by same-sex couples, but only through a court application procedure which was eased in 2014. <sup>14</sup>
14	 <b>Norway</b>	2002	Law No. 36 (2001) (effective 2002) amended the <a href="#">Law on Adoption</a> (1986) to grant the right to adopt the other partner’s child to same-sex registered partners. <sup>15</sup>
15	 <b>Portugal</b>	2016	Articles 1-7 of the <a href="#">Law No. 2</a> (2016) establish that same-sex couples enjoy all the adoption rights of different-sex couples, and amends the appropriate areas of the <a href="#">Civil Code</a> .
16	 <b>San Marino</b>	2018	Article 10 of the <a href="#">Law No. 147</a> (2018) on civil unions passed in November 2018 allows partners in a civil union to adopt their partner’s children.
17	 <b>Slovenia</b>	2011	The right to step-parent adoption for same-sex couples was recognised by the Ministry of Labour, Family, Social Affairs and Equal Opportunities in 2011 on the basis of the <a href="#">Law on Marriage and Family Relations</a> (1976). This is despite the fact that Article 135 stipulates that adopters must be married. <sup>16</sup>
18	 <b>Spain</b>	2005	Article 67(7) of <a href="#">Law No. 13</a> (2005) amends Article 175(4) of the Civil Code to allow for second parent adoption.

<sup>12</sup> Damien McGuinness, “Gay Germans’ joy mixed with adoption angst”, *BBC News*, 22 July 2017.

<sup>13</sup> See also: “Adoption of Stepchildren in Gay and Lesbian Families in Iceland”, *Gay Ottawa Archive*, 13 June 2000.

<sup>14</sup> “Parental status of co-mothers”, *Government of The Netherlands (website)*. Accessed 1 November 2020.


<sup>15</sup> Adoption Law (1986) was repealed in 2018 as per section 52 of Adoption Law (2017).

<sup>16</sup> “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.

19		<b>Sweden</b>	2003	Article 8 of the <a href="#">Act on Parenting</a> (2003) lay out the conditions for second parent adoption for same-sex and different-sex married couples.
20		<b>Switzerland</b>	2018	Article 264-c of the <a href="#">Civil Code</a> was amended in 2016 (effective 2018) to allow for stepchild adoption of couples living as registered partners or in <i>de facto</i> cohabitation. <sup>17</sup>
21		<b>United Kingdom</b>	2005-2013	Second parent adoption by same-sex couples was legalised in all constituent countries of the United Kingdom separately, starting in England and Wales in 2005.
		<i>England and Wales</i>	2005	Sections 144 and 150 of the <a href="#">Adoption and Children Act</a> (2002), which entered into force in England and Wales in 2005, establish that second parent adoption applies to same-sex couples.
		<i>Scotland</i>	2009	Section 2 of the <a href="#">Adoption Agencies (Scotland) Regulations</a> (2009) in Scotland defines civil partners as subject to the law, which includes same-sex couples.
		<i>Northern Ireland</i>	2013	in 2013 in Northern Ireland, the Court of Appeal <a href="#">held</a> that civil partners enjoy second parent adoption.

### Non-independent jurisdictions in Europe (5)

#### Denmark (1)

1		<i>Faroe Islands</i>	2017	The Faroe Islands passed the <a href="#">Act No. 428</a> (2017) that allowed for second parent adoption in the territory.
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#### United Kingdom (4)

2		<i>Gibraltar</i>	2014	The <a href="#">Civil Partnership Act</a> (2014) (converted to <a href="#">marriage in 2016</a> ) in Gibraltar allows for second parent adoption.
3		<i>Guernsey</i>	2017	The <a href="#">Adoption (Guernsey) (Amendment) Law</a> (2017) amended the <a href="#">Adoption (Guernsey) Law</a> (1960) to change the definition of “couple” and allow for second parent adoption by same-sex partners.
4		<i>Isle of Man</i>	2011	The <a href="#">Civil Partnership Act</a> (2011) introduced adoption to same-sex civil partners.
5		<i>Jersey</i>	2012	Jersey legislated for adoption by same-sex couples in 2012 through the <a href="#">Civil Partner Causes Rules</a> (2012).

### Is there more in Europe?

#### Croatia

Articles 45-49 of [Same-sex Partnership Act](#) (2014) fall short of providing second parent adoption rights, but the court can be petitioned to establish the right *de facto*.

In late 2019, an Administrative Court in Zagreb ruled in favour of a same-sex couple, recognising their right to become foster parents. The couple, who live in a “life partnership”, had previously had their request to adopt denied by the Family Ministry.<sup>18</sup>

<sup>17</sup> Amendment by No. I of the FA of 17 June 2016 (Adoption). See also: Conseil Federal, “Le nouveau droit de l’adoption entrera en vigueur le 1er janvier 2018”, 10 July 2017.

<sup>18</sup> “Sud odlučio da istospolni bračni par koji je ministarstvo odbilo ipak smije udomiti dijete”, *Telegram*, 19 December 2019.

<b>Czech Republic</b>	In June 2016, the Constitutional Court ruled that people living in registered partnerships (regardless of their gender) should have no impediments to adopt children as individuals. However, joint and second parent adoption by same-sex couples remain illegal to date.
<b>Italy</b>	No law allows for second parent adoption, but there has been important judicial activity in this regard in the last few years.  In 2016 cases involving the adoption of the birth daughter of a lesbian partner <sup>19</sup> and a co-parent through surrogacy <sup>20</sup> were resolved favourably. In September 2018, the Bologna Court of Appeal also affirmed an adoption order granted in the United States on the basis that it was in the best interests of the child to do so. <sup>21</sup>




## Oceania

2 out of 14 UN Member States (14%). Additionally: 6 non-UN Member jurisdictions.

<b>1</b>	 <b>Australia</b>	<b>2002-2018</b>	Second parent adoption by same-sex couples is currently possible in all Australian States and Territories: <b>Australian Capital Territory</b> (2004), <b>New South Wales</b> (2010), <b>Queensland</b> (2016), <b>South Australia</b> (2017), <b>Tasmania</b> (2013), <b>Victoria</b> (2016), <b>Western Australia</b> (2002), and <b>Northern Territory</b> (2018).
<b>2</b>	 <b>New Zealand</b>	<b>2013</b>	A step-parent in a same-sex couple is able to adopt their spouse's child under the <b>Adoption Act 1955</b> (as amended by the <b>Marriage (Definition of Marriage) Amendment Act of 2013</b> ).  This law is not effective in any of New Zealand territories (Cook Islands, Niue, or Tokelau).

### Non-independent jurisdictions in Oceania (6)



#### France (3)

<b>1</b>	 <b>French Polynesia</b>	<b>2013</b>	In France, Chapter 2 of the Law Opening Marriage to Same-Sex Couples ( <b>Law No. 2013-404</b> ) (2013) amended the <b>Civil Code</b> to provide for the right to adopt by same-sex couples, including second parent adoption.  As per Article 22 of the law, it applies in French Polynesia, New Caledonia, and Wallis and Futuna.
<b>2</b>	 <b>New Caledonia</b>		
<b>3</b>	 <b>Wallis and Futuna</b>		

#### United Kingdom (1)

<b>4</b>	 <b>Pitcairn Islands</b>	<b>2015</b>	Section 3(4) of the <b>Adoption of Infants Ordinance</b> (2015) of Pitcairn Islands allows for adoption by partners in same-sex couples, following the changes made by the <b>Same Sex Marriage and Civil Partnerships Ordinance</b> (2015).
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#### United States of America (2)

<b>5</b>	 <b>Guam</b>	<b>2015</b>	The District Court for the Territory of Guam ruled in <b>Civil Case No. 15-00009</b> to recognise same-sex marriage in the region, extending same-sex couples the same rights as heterosexual ones.
<b>6</b>	 <b>Northern Mariana Islands</b>	<b>2015</b>	Following the Supreme Court decision in <b>Obergefell v. Hodges</b> , adoption by same-sex couples became legal in 2015.

<sup>19</sup> "Supreme Court: Full Recognition of Two Mothers, Italy", *European Commission on Sexual Orientation Law (website)*, 30 June 2016.

<sup>20</sup> "In landmark ruling, Italy recognizes gay couple as dads to surrogate babies", *The Local.it*, 28 February 2017.

<sup>21</sup> Elaine Allaby, "Italian appeals court upholds validity of US adoption by lesbian couple", *The Local.it*, 27 September 2018.

# The World at a Glance

## State-Sponsored Homophobia (Update) – November 2020

N	CN	COUNTRY	CRIMINALISATION			PROTECTION						RECOGNITION			
			SAME-SEX SEXUAL ACTS LEGAL?	DATE OF DECRIM	MAX PENALTY	CONST.	BROAD PROT.	EMPLOY.	HATE CRIME	INCITEMENT	BAN CONV. THERAPIES	SAME SEX MARRIAGE	CIVIL UNIONS	JOINT ADOPTION	SECOND PARENT ADOPTION
<b>AFRICA</b>															
1	1	Algeria	NO	-	2	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
2	2	Angola	YES	2021	-	NO	YES	YES	YES	YES	NO	NO	NO	NO	NO
3	3	Benin	YES	NEVER CRIM	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
4	4	Botswana	YES	2019	-	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO
		<i>British Indian Terr. (UK)</i>	YES	NEVER CRIM	-	N/A	NO	YES	NO	NO	NO	YES	NO	NO	NO
5	5	Burkina Faso	YES	NEVER CRIM	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
6	6	Burundi	NO	-	2	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
7	7	Cameroon	NO	-	5	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
8	8	Cabo Verde	YES	2004	-	NO	NO	YES	YES	NO	NO	NO	NO	NO	NO
9	9	Central Africa Republic	YES	NEVER CRIM	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
10	10	Chad	NO	-	2	NO	NO	NO	YES	NO	NO	NO	NO	NO	NO
11	11	Comoros	NO	-	5	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
12	12	Congo	YES	NEVER CRIM	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
13	13	Côte d'Ivoire	YES	NEVER CRIM	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
14	14	DRC	YES	NEVER CRIM	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
15	15	Djibouti	YES	NEVER CRIM	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
16	16	Egypt	DE FACTO	-	UNDETERM.	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
17	17	Equatorial Guinea	YES	NEVER CRIM	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
18	18	Eritrea	NO	-	7	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
19	19	Eswatini	NO	-	UNDETERM.	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
20	20	Ethiopia	NO	-	3	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
21	21	Gabon	YES	2020	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
22	22	Gambia	NO	-	14	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
23	23	Ghana	NO	-	3	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
24	24	Guinea	NO	-	3	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
25	25	Guinea-Bissau	YES	1993	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
26	26	Kenya	NO	-	14	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
27	27	Lesotho	YES	2012	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
28	28	Liberia	NO	-	1	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO
29	29	Libya	NO	-	5	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
30	30	Madagascar	YES	NEVER CRIM	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
31	31	Malawi	NO	-	14	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
32	32	Mali	YES	NEVER CRIM	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
33	33	Mauritania	NO	-	DEATH	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
34	34	Mauritius	NO	-	5	NO	YES	YES	NO	NO	NO	NO	NO	NO	NO
		<i>Mayotte (FR)</i>	YES	NEVER CRIM	-	N/A	YES	YES	YES	YES	NO	YES	YES	YES	YES
35	35	Morocco	NO	-	3	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
36	36	Mozambique	YES	2015	-	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO
37	37	Namibia	NO	-	UNDETERM.	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
38	38	Niger	YES	NEVER CRIM	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
39	39	Nigeria	NO	-	VARIES	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO

N	CN	COUNTRY	CRIMINALISATION			PROTECTION						RECOGNITION			
			SAME-SEX SEXUAL ACTS LEGAL?	DATE OF DECRIM	MAX PENALTY	CONST.	BROAD PROT.	EMPLOY.	HATE CRIME	INCITEMENT	BAN CONV. THERAPIES	SAME SEX MARRIAGE	CIVIL UNIONS	JOINT ADOPTION	SECOND PARENT ADOPTION
		<i>Reunion (FR)</i>	YES	1791	-	N/A	YES	YES	YES	YES	NO	YES	YES	YES	YES
40	40	Rwanda	YES	NEVER CRIM	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
41	41	Sao Tome & Principe	YES	2012	-	NO	NO	YES	YES	NO	NO	NO	NO	NO	NO
		<i>St. Helena, Asc., TdA (UK)</i>	YES	2001	-	N/A	YES	YES	NO	LIMITED	NO	YES	NO	YES	YES
42	42	Senegal	NO	-	5	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
43	43	Seychelles	YES	2016	-	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO
44	44	Sierra Leone	NO	-	10	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
45	45	Somalia	NO	-	DEATH (P)	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
46	46	South Africa	YES	1998	-	YES	YES	YES	NO	YES	NO	YES	YES	YES	YES
47	47	South Sudan	NO	-	10	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
48	48	Sudan	NO	-	FOR LIFE	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
49	49	Tanzania	NO	-	FOR LIFE	NO	NO	NO	NO	LIMITED	NO	NO	NO	NO	NO
50	50	Togo	NO	-	3	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
51	51	Tunisia	NO	-	3	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
52	52	Uganda	NO	-	FOR LIFE	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
53	53	Zambia	NO	-	FOR LIFE	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
54	54	Zimbabwe	NO	-	1	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
<b>LATIN AMERICA AND THE CARIBBEAN</b>															
		<i>Anguilla (UK)</i>	YES	2001	-	N/A	NO	NO	LIMITED	NO	NO	NO	NO	NO	NO
55	1	Antigua and Barbuda	NO	-	15	NO	NO	NO	LIMITED	NO	NO	NO	NO	NO	NO
56	2	Argentina	YES	1903	-	NO	LIMITED	LIMITED	YES	NO	LIMITED	YES	YES	YES	YES
		<i>Aruba (NL)</i>	YES	1869	-	N/A	YES	YES	NO	YES	NO	NO	YES	NO	NO
57	3	Bahamas	YES	1991	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
58	4	Barbados	NO	-	FOR LIFE	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO
59	5	Belize	YES	2016	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
60	6	Bolivia	YES	1832	-	YES	YES	YES	YES	YES	NO	NO	NO	NO	NO
		<i>Bonaire (NL)</i>	YES	1869	-	N/A	YES	YES	NO	YES	NO	YES	YES	NO	NO
61	7	Brazil	YES	1831	-	NO	YES	YES	YES	YES	YES	YES	YES	YES	YES
		<i>British Virgin Islands (UK)</i>	YES	2001	-	N/A	YES	YES	LIMITED	NO	NO	NO	NO	NO	NO
		<i>Cayman Islands (UK)</i>	YES	2001	-	N/A	NO	NO	NO	NO	NO	NO	YES	NO	NO
62	8	Chile	YES	1999	-	NO	YES	YES	YES	NO	NO	NO	YES	NO	NO
63	9	Colombia	YES	1981	-	NO	YES	YES	YES	YES	NO	YES	YES	YES	YES
64	10	Costa Rica	YES	1971	-	NO	NO	YES	NO	NO	NO	YES	NO	YES	YES
65	11	Cuba	YES	1979	-	YES	YES	YES	NO	NO	NO	NO	NO	NO	NO
		<i>Curacao (NL)</i>	YES	1869	-	N/A	YES	YES	NO	YES	NO	NO	NO	NO	NO
66	12	Dominica	NO	-	10	NO	NO	NO	LIMITED	NO	NO	NO	NO	NO	NO
67	13	Dominican Republic	YES	1822	-	NO	NO	LIMITED	NO	NO	NO	NO	NO	NO	NO
68	14	Ecuador	YES	1997	-	YES	YES	YES	YES	YES	YES	YES	YES	NO	NO
69	15	El Salvador	YES	1826	-	NO	NO	LIMITED	YES	NO	NO	NO	NO	NO	NO
		<i>Falkland/Malv. (UK/AR)</i>	YES	1989	-	N/A	YES	YES	YES	YES	NO	YES	YES	YES	YES
		<i>French Guiana (FR)</i>	YES	1817	-	N/A	YES	YES	YES	YES	NO	YES	YES	YES	YES
70	16	Grenada	NO	-	10	NO	NO	NO	LIMITED	NO	NO	NO	NO	NO	NO
		<i>Guadeloupe (FR)</i>	YES	1816	-	N/A	YES	YES	YES	YES	NO	YES	YES	YES	YES
71	17	Guatemala	YES	1834	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
72	18	Guyana	NO	-	FOR LIFE	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
73	19	Haiti	YES	1791	-	NO	NO	NO	LIMITED	NO	NO	NO	NO	NO	NO
74	20	Honduras	YES	1899	-	NO	YES	YES	YES	YES	NO	NO	NO	NO	NO
75	21	Jamaica	NO	-	10	NO	NO	LIMITED	NO	NO	NO	NO	NO	NO	NO
		<i>Martinique (FR)</i>	YES	1815	-	N/A	YES	YES	YES	YES	NO	YES	YES	YES	YES

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76	22	Mexico	YES	1872	-	YES	YES	YES	LIMITED	YES	LIMITED	YES	LIMITED	LIMITED	LIMITED
		Montserrat (UK)	YES	2001	-	N/A	YES	YES	LIMITED	NO	NO	NO	NO	NO	NO
77	23	Nicaragua	YES	2008	-	NO	NO	YES	YES	NO	NO	NO	NO	NO	NO
78	24	Panama	YES	2008	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
79	25	Paraguay	YES	1990	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
80	26	Peru	YES	1924	-	NO	YES	YES	YES	YES	NO	NO	NO	NO	NO
		Puerto Rico (USA)	YES	2003	-	N/A	NO	YES	YES	NO	YES	YES	NO	YES	YES
		Saba (NL)	YES	1869	-	N/A	YES	YES	NO	YES	NO	YES	YES	NO	NO
		Saint Barthelemy (FR)	YES	1878	-	N/A	YES	YES	YES	YES	NO	YES	YES	YES	YES
81	27	Saint Kitts & Nevis	NO	-	10	NO	NO	NO	LIMITED	NO	NO	NO	NO	NO	NO
		Saint Martin (FR)	YES	1791	-	N/A	YES	YES	YES	YES	NO	YES	YES	YES	YES
82	28	Saint Lucia	NO	-	10	NO	NO	YES	LIMITED	NO	NO	NO	NO	NO	NO
83	29	Saint Vinc. & the Gren.	NO	-	10	NO	NO	NO	LIMITED	NO	NO	NO	NO	NO	NO
		Sint Eustatius (NL)	YES	1869	-	N/A	YES	YES	NO	YES	NO	YES	YES	NO	NO
		Sint Maarten (NL)	YES	1869	-	N/A	YES	YES	NO	YES	NO	NO	NO	NO	NO
		South Georg. & Sand. (UK)	YES	2001	-	N/A	NO	YES	NO	NO	NO	YES	NO	-	-
84	30	Suriname	YES	1869	-	NO	YES	YES	NO	YES	NO	NO	NO	NO	NO
85	31	Trinidad and Tobago	YES	2018	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
		Turks and Caicos (UK)	YES	2001	-	N/A	YES	YES	NO	NO	NO	NO	NO	NO	NO
86	32	Uruguay	YES	1934	-	NO	YES	YES	YES	YES	LIMITED	YES	YES	YES	YES
		US Virgin Islands (USA)	YES	1985	-	N/A	NO	NO	YES	NO	NO	YES	NO	YES	YES
87	33	Venezuela	YES	1836	-	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO
<b>NORTH AMERICA</b>															
		Bermuda (UK)	YES	1994	-	N/A	YES	YES	YES	YES	NO	NO	NO	YES	YES
88	1	Canada	YES	1969	-	NO	YES	YES	YES	YES	LIMITED	YES	YES	YES	YES
		Greenland (DN)	YES	1933	-	N/A	NO	NO	NO	YES	NO	YES	NO	YES	YES
		Saint Pierre et Miq. (FR)	YES	1814	-	N/A	YES	YES	YES	YES	NO	YES	YES	YES	YES
89	2	United States	YES	1962-2003	-	NO	LIMITED	YES	YES	NO	LIMITED	YES	LIMITED	YES	YES
<b>ASIA</b>															
90	1	Afghanistan	NO	-	DEATH (P)	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
91	2	Bahrain	YES	1976	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
92	3	Bangladesh	NO	-	10	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
93	4	Bhutan	NO	-	1	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
94	5	Brunei Darussalam	NO	-	10	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
95	6	Cambodia	YES	NEVER CRIM	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
96	7	China	YES	1997	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
97	8	East Timor	YES	1975	-	NO	NO	NO	YES	NO	NO	NO	NO	NO	NO
		Hong Kong (SAR China)	YES	1991	-	N/A	NO	LIMITED	NO	NO	NO	NO	NO	NO	NO
98	9	India	YES	2018	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
99	10	Indonesia <sup>1</sup>	YES	NEVER CRIM	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
100	11	Iraq	DE FACTO	-	UNDETERM.	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
101	12	Iran	NO	-	DEATH	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
102	13	Israel	YES	1988	-	NO	YES	YES	NO	LIMITED	NO	NO	YES	YES	YES
103	14	Japan	YES	1882	-	NO	LIMITED	LIMITED	NO	NO	NO	NO	LIMITED	NO	NO
104	15	Jordan	YES	1951	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
105	16	Kazakhstan	YES	1998	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
106	17	Kuwait	NO	-	7	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
107	18	Kyrgyzstan	YES	1998	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO



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108	19	Laos	YES	NEVER CRIM	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
109	20	Lebanon	NO	-	1	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
		<i>Macau (China)</i>	YES	1996	-	N/A	NO	YES	NO	NO	NO	NO	NO	NO	NO
110	21	Malaysia	NO	-	20	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
111	22	Maldives	NO	-	8	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
112	23	Mongolia	YES	1961	-	NO	YES	YES	YES	NO	NO	NO	NO	NO	NO
113	24	Myanmar	NO	-	10	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
114	25	Nepal	YES	2007	-	YES	YES	YES	NO	NO	NO	NO	NO	NO	NO
115	26	North Korea	YES	NEVER CRIM	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
116	27	Oman	NO	-	3	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
117	28	Pakistan	NO	-	DEATH (P)	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
		<i>Palestine<sup>2</sup></i>	YES	1951	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
118	29	Philippines	YES	1870	-	NO	LIMITED	LIMITED	NO	NO	NO	NO	NO	NO	NO
119	30	Qatar	NO	-	DEATH (P)	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
120	31	Saudi Arabia	NO	-	DEATH	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
121	32	Singapore	NO	-	2	NO	NO	NO	NO	LIMITED	NO	NO	NO	NO	NO
122	33	South Korea	YES	NEVER CRIM	-	NO	LIMITED	LIMITED	NO	NO	NO	NO	NO	NO	NO
123	34	Sri Lanka	NO	-	10	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
124	35	Syria	NO	-	3	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
		<i>Taiwan (China)</i>	YES	1912	-	NO	YES	YES	NO	NO	NO	YES	YES	NO	YES
125	36	Tajikistan	YES	1998	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
126	37	Thailand	YES	1957	-	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO
127	38	Turkmenistan	NO	-	2	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
128	39	Vietnam	YES	NEVER CRIM	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
129	40	United Arab Emirates	NO	-	DEATH (P)	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
130	41	Uzbekistan	NO	-	3	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
131	42	Yemen	NO	-	DEATH	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
<b>EUROPE</b>															
132	1	Albania	YES	1995	-	NO	YES	YES	YES	YES	NO	NO	NO	NO	NO
133	2	Andorra	YES	1990	-	NO	YES	YES	YES	NO	NO	NO	YES	YES	YES
134	3	Armenia	YES	2003	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
135	4	Austria	YES	1971	-	NO	YES	YES	YES	YES	NO	YES	YES	YES	YES
136	5	Azerbaijan	YES	2000	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
137	6	Belarus	YES	1994	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
138	7	Belgium	YES	1795	-	NO	YES	YES	YES	YES	NO	YES	YES	YES	YES
139	8	Bosnia & Herzegovina	YES	1991-2003	-	NO	YES	YES	YES	LIMITED	NO	NO	NO	NO	NO
140	9	Bulgaria	YES	1968	-	NO	YES	YES	NO	YES	NO	NO	NO	NO	NO
141	10	Croatia	YES	1977	-	NO	YES	YES	YES	YES	NO	NO	YES	NO	NO
142	11	Cyprus	YES	1998	-	NO	YES	YES	YES	YES	NO	NO	YES	NO	NO
143	12	Czech Republic	YES	1962	-	NO	YES	YES	NO	NO	NO	NO	YES	NO	NO
144	13	Denmark	YES	1933	-	NO	LIMITED	YES	YES	YES	NO	YES	NO	YES	YES
145	14	Estonia	YES	1992	-	NO	YES	YES	NO	YES	NO	NO	YES	NO	YES
		<i>Faroe Islands (DN)</i>	YES	1933	-	N/A	NO	YES	NO	NO	NO	YES	NO	YES	YES
146	15	Finland	YES	1971	-	NO	YES	YES	YES	YES	NO	YES	NO	YES	YES
147	16	France	YES	1791	-	NO	YES	YES	YES	YES	NO	YES	YES	YES	YES
148	17	Georgia	YES	2000	-	NO	YES	YES	YES	NO	NO	NO	NO	NO	NO
149	18	Germany	YES	1968-1969	-	NO	YES	YES	NO	NO	YES	YES	NO	YES	YES
		<i>Gibraltar (UK)</i>	YES	1993	-	N/A	YES	YES	YES	NO	NO	YES	YES	YES	YES
150	19	Greece	YES	1951	-	NO	NO	YES	YES	YES	NO	NO	YES	NO	NO

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		<i>Guernsey (UK)</i>	YES	1983	-	N/A	NO	NO	YES	NO	NO	YES	YES	YES	YES
151	20	Hungary	YES	1962	-	NO	YES	YES	YES	YES	NO	NO	YES	NO	NO
152	21	Iceland	YES	1940	-	NO	YES	YES	NO	YES	NO	YES	NO	YES	YES
153	22	Ireland	YES	1993	-	NO	YES	YES	NO	YES	NO	YES	NO	YES	YES
		<i>Isle of Man (UK)</i>	YES	1992	-	N/A	YES	YES	YES	NO	NO	YES	YES	YES	YES
154	23	Italy	YES	1890	-	NO	LIMITED	YES	NO	NO	NO	NO	YES	NO	NO
		<i>Jersey (UK)</i>	YES	1990	-	N/A	YES	YES	NO	NO	NO	YES	YES	YES	YES
		<i>Kosovo</i>	YES	1994	-	NO	YES	YES	YES	YES	NO	NO	NO	NO	NO
155	24	Latvia	YES	1992	-	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO
156	25	Liechtenstein	YES	1989	-	NO	YES	YES	NO	YES	NO	NO	YES	NO	NO
157	26	Lithuania	YES	1993	-	NO	YES	YES	YES	YES	NO	NO	NO	NO	NO
158	27	Luxembourg	YES	1795	-	NO	YES	YES	NO	YES	NO	YES	YES	YES	YES
159	28	Malta	YES	1973	-	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
160	29	Moldova	YES	1995	-	NO	NO	YES	NO	YES	NO	NO	NO	NO	NO
161	30	Monaco	YES	1793	-	NO	NO	NO	YES	YES	NO	NO	YES	NO	NO
162	31	Montenegro	YES	1977	-	NO	YES	YES	YES	YES	NO	NO	YES	NO	NO
163	32	Netherlands	YES	1811	-	NO	YES	YES	LIMITED	YES	NO	YES	YES	YES	YES
164	33	North Macedonia	YES	1996	-	NO	YES	YES	YES	NO	NO	NO	NO	NO	NO
165	34	Norway	YES	1972	-	NO	YES	YES	YES	YES	NO	YES	NO	YES	YES
166	35	Poland	YES	1932	-	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO
167	36	Portugal	YES	1983	-	YES	YES	YES	YES	YES	NO	YES	YES	YES	YES
168	37	Romania	YES	1996	-	NO	YES	YES	YES	LIMITED	NO	NO	NO	NO	NO
169	38	Russia	YES	1993	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
170	39	San Marino	YES	2004	-	YES	YES	YES	YES	YES	NO	NO	YES	NO	YES
171	40	Serbia	YES	1994	-	NO	YES	YES	YES	YES	NO	NO	NO	NO	NO
172	41	Slovakia	YES	1962	-	NO	YES	YES	YES	YES	NO	NO	NO	NO	NO
173	42	Slovenia	YES	1977	-	NO	YES	YES	NO	YES	NO	NO	YES	NO	YES
174	43	Spain	YES	1979	-	NO	YES	YES	YES	YES	LIMITED	YES	YES	YES	YES
175	44	Sweden	YES	1944	-	YES	YES	YES	YES	YES	NO	YES	NO	YES	YES
176	45	Switzerland	YES	1942	-	NO	LIMITED	YES	NO	YES	NO	NO	YES	NO	YES
177	46	Turkey	YES	1858	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
178	47	Ukraine	YES	1991	-	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO
179	48	United Kingdom	YES	1967-1982	-	NO	YES	YES	YES	YES	NO	YES	YES	YES	YES
		<i>Vatican City</i>	YES	1890	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
<b>OCEANIA</b>															
		<i>American Samoa (USA)</i>	YES	1980	-	N/A	NO	NO	NO	NO	NO	NO	NO	NO	NO
180	1	Australia	YES	1975-1997	-	NO	YES	YES	LIMITED	YES	LIMITED	YES	YES	YES	YES
		<i>Cook Islands (NZ)</i>	NO	-	5	N/A	NO	YES	NO	NO	NO	NO	NO	NO	NO
181	2	Fiji	YES	2010	-	YES	YES	YES	NO	LIMITED	LIMITED	NO	NO	NO	NO
		<i>French Polynesia (FR)</i>	YES	NEVER CRIM	-	N/A	YES	YES	YES	YES	NO	YES	NO	YES	YES
		<i>Guam (USA)</i>	YES	1977	-	N/A	NO	YES	NO	NO	NO	YES	NO	YES	YES
182	3	Kiribati	NO	-	14	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO
183	4	Marshall Islands	YES	2005	-	NO	YES	YES	NO	NO	NO	NO	NO	NO	NO
184	5	Micronesia	YES	NEVER CRIM	-	NO	YES	YES	NO	NO	NO	NO	NO	NO	NO
185	6	Nauru	YES	2016	-	NO	NO	NO	NO	NO	LIMITED	NO	NO	NO	NO
		<i>New Caledonia (FR)</i>	YES	NEVER CRIM	-	N/A	YES	YES	YES	YES	NO	YES	YES	YES	YES
186	7	New Zealand	YES	1986	-	NO	YES	YES	YES	LIMITED	NO	YES	YES	YES	YES
		<i>Niue (NZ)</i>	YES	2007	-	N/A	NO	NO	NO	NO	NO	NO	NO	NO	NO
		<i>North. Mariana Is. (USA)</i>	YES	1983	-	N/A	NO	LIMITED	NO	NO	NO	YES	NO	YES	YES

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187	8	Palau	YES	2014	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
		<i>Pitcairn Islands (UK)</i>	YES	2001	-	N/A	YES	YES	YES	NO	NO	YES	YES	YES	YES	YES
188	9	Papua New Guinea	NO	-	7	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
189	10	Samoa	NO	-	7	NO	NO	YES	YES	NO	LIMITED	NO	NO	NO	NO	NO
190	11	Solomon Islands	NO	-	14	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
		<i>Tokelau (NZ)</i>	YES	2007	-	N/A	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
191	12	Tonga	NO	-	10	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
192	13	Tuvalu	NO	-	14	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO	NO
193	14	Vanuatu	YES	NEVER CRIM	-	NO	NO	LIMITED	NO	NO	NO	NO	NO	NO	NO	NO
		<i>Wallis and Futuna (FR)</i>	YES	NEVER CRIM	-	N/A	YES	YES	YES	YES	NO	YES	YES	YES	YES	YES
						<b>11</b>	<b>57</b>	<b>81</b>	<b>48</b>	<b>45</b>	<b>4</b>	<b>28</b>	<b>34</b>	<b>28</b>	<b>32</b>	
						6% UN Member States	30% UN Member States	42% UN Member States	25% UN Member States	23% UN Member States	2% UN Member States	14% UN Member States	18% UN Member States	14% UN Member States	16% UN Member States	



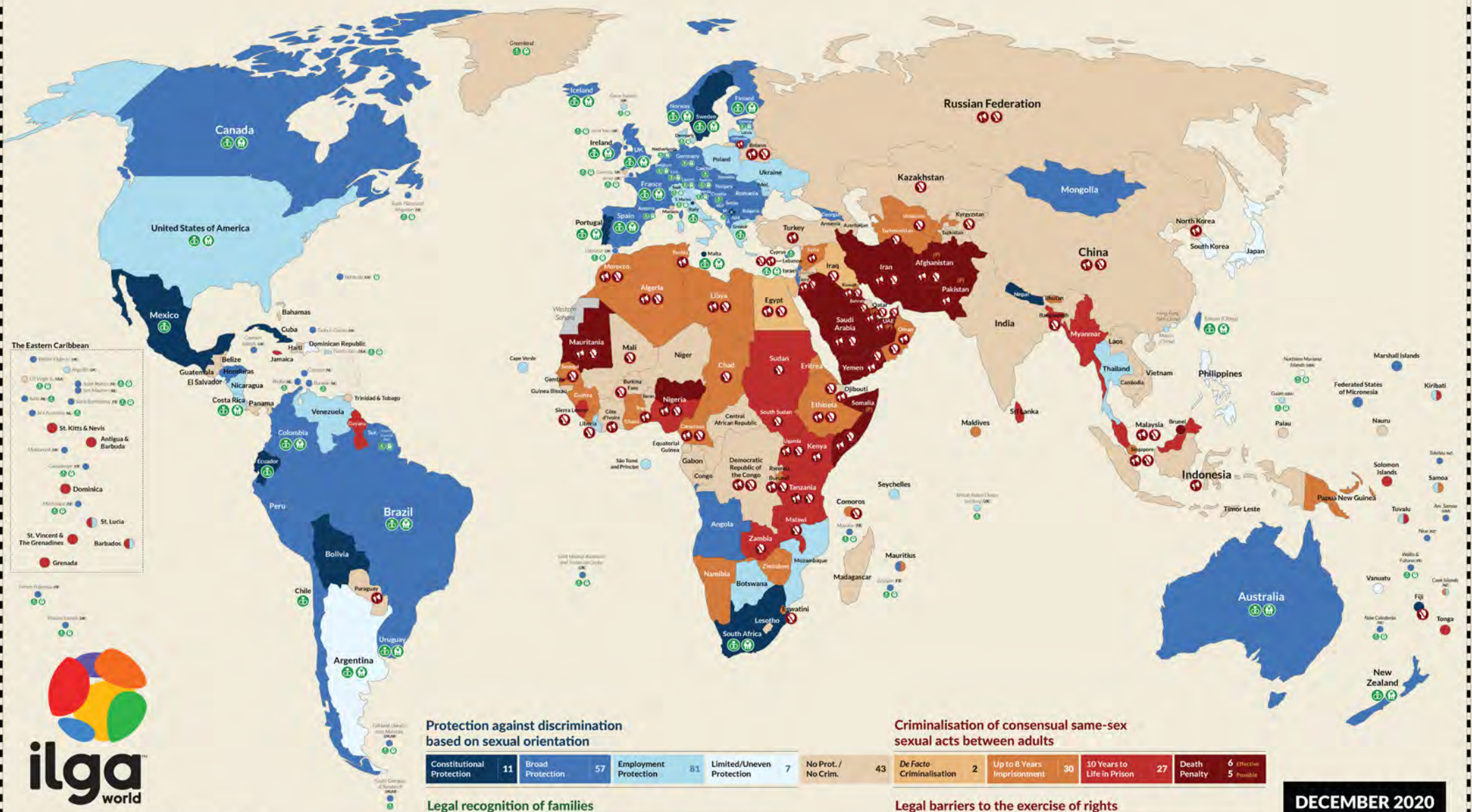
End notes

- 1) Indonesia: Certain provinces in Indonesia criminalise consensual same-sex sexual acts between adults. See "Criminalisation" section.
- 2) Palestine: Gaza still criminalises consensual same-sex sexual acts between adults. See "Criminalisation" section.

**LIMITED** Indicates that the protection is not available nationwide (subnational jurisdictions only) or that the level of protection does not meet the threshold of the category. For more information see the Methodology section.

# SEXUAL ORIENTATION LAWS IN THE WORLD

From criminalisation of consensual same-sex sexual acts between adults to protection against discrimination based on sexual orientation



DECEMBER 2020



The data presented in this map is based on *State-Sponsored Homophobia*, an ILGA report by Lucas Ramón Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, R.I. and Daron Tan. This map can be reproduced and printed without permission as long as ILGA is properly credited and the content is not altered. [ilga.org](http://ilga.org)