



STATE-SPONSORED HOMOPHOBIA

GLOBAL LEGISLATION OVERVIEW UPDATE

2020

Updated Edition

ilga.org

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Names of countries and territories in this publication

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Co-Secretaries' General Foreword

By Luz Elena Aranda¹ and Ymania Brown²

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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² **Tuisina Ymania Brown** Tuisina Ymania Brown is trans fa'afafine woman of colour from Samoa and is a survivor of child rape, institutionalised discrimination, spousal gender-based violence and abuse, racial profiling, and trans violence & persecution all her life. She is a public speaker, an intellectual property attorney, and a working mum to two adopted sons, and has over 20 years of volunteer experience in international NGOs and has affiliations with Astraea Lesbian Foundation for Justice (New York, International Advisory Board Member), Global Interfaith Network on Sex, Sexual Orientation, Gender Identity and Expression (Former Co-Chair), Samoa Faafafine Association (Apia, Former Technical Advisor), Copenhagen2021 (International Advisory Board) and currently heads; International Trans Fund (New York, Co-Chair), ILGA World (Geneva, Co Secretary-General).

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”³, and these rights should have never been taken away from us.

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

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

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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**, **Ilia 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 expression¹ and freedom of association.² 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,³ 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.

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

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

³ 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.⁴

2. Data collection and sources

This report congregates data that has been gathered over many years by an ever-changing team of researchers.⁵ 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

⁴ 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).

⁵ 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 69⁶—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).

⁶ 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.⁷ 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,⁸ and from there listed alphabetically per UN-mandated English spelling protocols.⁹

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.

⁷ 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.

⁸ 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.

⁹ 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”.¹⁰ 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”.¹¹

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.

¹⁰ See: ILGA World, [33rd UPR Working Group Sessions SOGIESC Recommendations 6–17 May 2019](#) (Geneva: ILGA, November 2019), 14.

¹¹ “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.¹² 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).¹³ 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.¹⁴

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”.¹⁵ 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.¹⁶ 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”.¹⁷

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.

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

¹³ 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.

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

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

¹⁶ “*Zero Tolerance*”, *Nation News*, 7 July 2013.

¹⁷ 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 19th and 20th 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”).¹⁸

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

¹⁸ 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.¹⁹ 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.²⁰

¹⁹ 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.

²⁰ 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.²¹

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.²²

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.²³

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,²⁴ which contained specific provisions relevant to so-called “conversion therapies”.²⁵

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.²⁶ 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).

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

²² 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.

²³ 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.

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

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

²⁶ 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.²⁷ Scholars have argued that such omissions by the executive are an irregular way of imposing a *de facto* veto on laws in force.²⁸

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 International²⁹ and Human Rights Watch,³⁰ 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 13th 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

²⁷ 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.

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

²⁹ Paula Sebastião, “[Raising the LGBTQI flag in Angola](#)”, *Amnesty International*, 29 June 2019.

³⁰ 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.³¹ 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:

³¹ 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.¹

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

¹ 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.²

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,

² 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.

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. 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.³ 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

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

³ 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.

33	 North Macedonia	1996	The Criminal Code (1996) removed provisions regarding consensual same-sex relations between men (penalised with one year in jail) as were previously encoded under Article 101.
34	 Norway	1972	"Indecent intercourse" between men was decriminalised by the repeal of Paragraph 213 in Norway's Penal Code (1972). ⁹⁷
35	 Poland	1932	After its independence in 1918, Poland returned to the Napoleonic tradition that it had employed in the early-19 th century, and subsequently its 1932 Penal Code held no criminalising provisions regarding consensual same-sex sexual relations amongst adults.
36	 Portugal	1983	The country's long tradition in criminalising "sodomy acts" ⁹⁸ ended in 1983 with the entry into force of the 1982 Penal Code . The new code revoked the criminalisation of same-sex sexual acts between consenting adults.
37	 Romania	1996	Prior to 1996, Section 200 of the Penal Code (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 Emergency Ordinance No. 89 .
38	 Russian Federation	1993	Article 121(1) of the Criminal Code of the Russian Soviet Federative Socialist Republic (1960) stated "sexual relations of a man with a man (sodomy)" was punishable with up to five years imprisonment. ⁹⁹ The provision was amended by Law No. 4901-1 (1993) decriminalising consensual acts between adults.
39	 San Marino	2004	Although San Marino decriminalised "sodomy" in 1865, it was re-introduced by Article 274 into the Penal Code in 1975, targeting those who "habitually commit acts of lust with persons of the same sex". This was finally repealed by Law No. 121 (2004). ¹⁰⁰
40	 Serbia	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 Criminal Code removed that prohibition. ¹⁰¹
41	 Slovakia	1962	The 1961 Criminal Code (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"). ¹⁰²
42	 Slovenia	1977	When Slovenia was still a part of Yugoslavia in 1976, works on the Criminal Code to remove provisions penalising consensual same-sex sexual acts commenced, and the resultant law came into force in 1977.
43	 Spain	1979	Following the re-establishment of constitutional democracy in Spain after the rule of Francisco Franco, consensual same-sex sexual intercourse between males was removed as an offence by Law No. 77 (1978, effective in 1979). The law repealed criminalising provisions from Law No. 16 (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.

⁹⁷ 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.

⁹⁸ 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.

⁹⁹ Adrian Chan-Wyles, "The USSR and Homosexuality Part 1 (Article 121)", *The Sanghakommune*, 28 December 2016.

¹⁰⁰ 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.

¹⁰¹ 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.

¹⁰² 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.

24		North Macedonia	2019	Article 5 of the Law on Prevention of and Protection against Discrimination (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. ⁴⁰
25		Norway	2008	Article 186 of the new Penal Code (2005) was amended by Law No. 4 (2008) to criminalise discrimination in the provision of goods and services based on sexual orientation.
			2013	The Sexual Orientation Anti-Discrimination Act (2013) prohibited direct and indirect discrimination based on sexual orientation under Chapter 2 in all sectors and fields of action except "family life and other purely personal relationship" (Chapter 1, Section 2).
			2018	This law was repealed by the Equality and Anti-Discrimination Act (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		Portugal	2004	Even though there is no national law prohibiting discrimination in broad terms, the protection afforded by Article 13(2) of the Constitution (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 (Law No. 51) (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 Law No. 83 (2019), which forbids discrimination on the basis of sexual orientation in housing at Article 2(1).
27		Romania	2000	Article 2(1) of the Ordinance on the Prevention and Punishment of All Forms of Discrimination (Law No. 137) (2000) bans discrimination on the basis of sexual orientation. Article 1 extends such protection to employment, education, and health.
			2014	Under Article 297(2) of the Penal Code (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		San Marino	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 Declaration of Citizen Rights (1974), one of the documents that are part of the Constitution of San Marino, as amended by Constitutional Revision Law No. 1 (2019), applies to all rights and duties.
29		Serbia	2010	Articles 1 and 2 of the Prohibition of Discrimination Act (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		Slovakia	2008	Section 2(1) of the Act on Equal Treatment in Certain Areas and Protection against Discrimination , as amended by Act No. 85 (2008), prohibits sexual orientation discrimination. 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.

⁴⁰ 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.

30		Norway	1998	Section 55(A) of the Act relating to Worker Protection and Working Environment (1977) , 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 (Act No. 62) (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 Sexual Orientation Anti-Discrimination Act (2013), 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 Equality and Anti-Discrimination Act (2018) 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 ³ and 18 ^{3a} of the Labour Code (1997), 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 Act on Equal Treatment (2010) 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 Labour Code (2009) 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 (Law No. 137) (2000) bans discrimination based on sexual orientation. Articles 5-8 prohibit discrimination in employment.
			2005	Article 5 and 6 of the Labour Code (2003) also protects employees from discrimination based on sexual orientation.
34		San Marino	2019	The broad protection afforded by Article 4 of the Declaration of Citizen Rights (1974)—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 Labour Law (effective 2006) 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 Prohibition of Discrimination Act (2009) 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 Act on Equal Treatment in Certain Areas and Protection against Discrimination (2004), as amended by Act No. 85 (2008), 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.

21	 Romania	2006	In 2006, Article 75 of the old Penal Code (1968) was amended by Law No. 278 (2006) to incorporate aggravated punishments for crimes when committed because of the victim's sexual orientation.
		2014	Under Article 77(h) of the new Penal Code (2009, effective 2014), criminal motivation based on the victim's "sexual orientation" is an aggravating circumstance.
22	 San Marino	2008	Law No. 66 (2008) inserted Article 179 <i>bis</i> into the Penal Code , which recognises discrimination on the basis of sexual orientation as an aggravating factor in criminal sentencing.
23	 Serbia	2013	Article 54a of the Criminal Code , 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	 Slovakia	2013	Article 140(f) of the Criminal Code (2005) was updated in 2013 to include the commission of an offence on the basis of sexual orientation as an aggravating factor.
25	 Spain	2010	Article 22(4) of the Penal Code (1995), as amended by Law No. 5/2010 , includes criminal motivation for a crime based on the victim's sexual orientation as an aggravating circumstance.
26	 Sweden	2010	Article 29(2) of the Penal Code (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	 United Kingdom	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 Criminal Justice Act (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 Offences (Aggravation by Prejudice) (Scotland) Act (2009, in force 2010) incorporates sexual orientation to the reasons that aggravate penalties.
	<i>Northern Ireland</i>	2004	Article 3 of The Criminal Justice (No. 2) (Northern Ireland) Order 2004 amended Part III of The Public Order (Northern Ireland) Order (1987) to incorporate "sexual orientation" into the definition of "hatred".

Non-independent jurisdictions in Europe (3)

United Kingdom (3)

1	 Gibraltar	2013	In 2013, the Criminal Justice (Amendment) Act (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 Crimes Act (2011) and the Criminal Procedure and Evidence Act (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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26		Serbia	2002	Section 21 of the Law on Broadcasting (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 Law on the Prohibition of Discrimination (2009) criminalises “severe forms of discrimination” including incitement to inequality, hatred, and enmity on the ground of sexual orientation.
			2014	Article 75 of the Law on Public Information and Media (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		Slovakia	2017	The Law No. 316/2016 (effective from 2017) amended Article 424(1) of the Slovak Criminal Code (2005) to add actual or alleged sexual orientation to the grounds protected from incitement to violence, hatred, and restrictions of rights and freedoms.
28		Slovenia	2008	Article 297(1) of the Penal Code (2008) criminalises the public provocation or stirring up of hatred, strife or intolerance on the basis of sexual orientation.
29		Spain	1996	Article 510(1) of the Penal Code was amended in 1995 (effective 1996) to criminalise incitement to discrimination, hatred or violence based on sexual orientation.
			2015	In 2015, Organic Law No. 1 (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		Sweden	2003	Law 2002:800 (effective 2003) amended Article 8 of Chapter 16 of the Penal Code (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 (Law 2002:908) (2002) prohibits as a breach of freedom of the press expressions of incitement and contempt alluding to sexual orientation.
31		Switzerland	2020	In 2020, after a popular vote, Article 261 <i>bis</i> of the Criminal Code 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		United Kingdom	2008	Section 74 and Schedule 16 of the Criminal Justice and Immigration Act (2008) criminalises incitement to hatred based on the ground of sexual orientation.
		<i>Northern Ireland</i>	2004	In 2004, Section 8 of the Public Order (Northern Ireland) Order (1987) was amended to criminalise incitement to hatred or fear (enumerated in Sections 9 to 13) based on sexual orientation.

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.

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
		Guernsey (UK)	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
		Isle of Man (UK)	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
		Jersey (UK)	YES	1990	-	N/A	YES	YES	NO	NO	NO	YES	YES	YES	YES
		Kosovo	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
		Vatican City	YES	1890	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
OCEANIA															
		American Samoa (USA)	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
		Cook Islands (NZ)	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
		French Polynesia (FR)	YES	NEVER CRIM	-	N/A	YES	YES	YES	YES	NO	YES	NO	YES	YES
		Guam (USA)	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
		New Caledonia (FR)	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
		Niue (NZ)	YES	2007	-	N/A	NO	NO	NO	NO	NO	NO	NO	NO	NO
		North. Mariana Is. (USA)	YES	1983	-	N/A	NO	LIMITED	NO	NO	NO	YES	NO	YES	YES