



STATE-SPONSORED HOMOPHOBIA

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13th Edition

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SOUTH SUDAN

Provisions in force

- ▶ Penal Code Act No. 9 of 2008 (Feb. 10, 2009).

*Carnal intercourse
against the order of
nature*

Section 248. Unnatural Offences.

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

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

Gross indecency

Section 249. Acts of Gross Indecency.

Whoever, commits an act of gross indecency upon the person of another without his or her consent or by the use of force or threats or compels a person to join with him or her in the commission of such act, commits the offence of gross indecency, and upon conviction, shall be sentenced to imprisonment for a term not exceeding fourteen years or with a fine or with both.

Human rights situation

Article 14 of the Transitional Constitution of the Republic of South Sudan does not guarantee equality on the basis of sexual orientation, while Article 15 specifies that the right to marry applies to heterosexual marriages. This negation in law reflects the attitude of the State's leaders, as seen in their statements (below), their inaction, and in more general social sentiments.¹

Religious leaders are highly respected in the State, and many Christian leaders have criticised "homosexuality" as a "perversion".² For instance, Pastor Manasseh Maring of Christ Ministries South Sudan rebuffed the Archbishop of Canterbury Justin Welby's 2016 public apology to LGBT people by saying that "we are not going to sin against God

by blessing same-sex relationships in our churches".³

In 2017, an Amnesty International researcher reported on the situation: "No one can be openly homosexual in South Sudan. Given the lawlessness, it's the kind of place where you could easily end up dead because your actual or perceived sexuality."⁴

In August 2018, LGBT human rights defenders had to flee the country after facing threats from the State's national security forces.⁵ Members of Access for All (AfA) were arrested and arbitrarily detained for conducting health education, and the group's office was shut down by the authorities in

¹ "South Sudan youth object to same-sex marriage", *Sudan Tribune*, 30 April 2012.

² Chol Duang Chan, "Religious leaders encourage LGBT exclusion in South Sudan", *Religion News Service*, 2 February 2018.

³ Chol Duang Chan, "Religious leaders encourage LGBT exclusion in South Sudan", *Religion News Service*, 2 February 2018.

⁴ Joe Morgan, "South Sudan says it will consider stop using child soldiers as long as it can still kill gay people", *Gay Star News*, 31 March 2017.

⁵ "LGBT Activist Flees South Sudan Amid Threats From National Security Operatives", *The Tower Post*, 23 April 2018.

December 2017 on the basis that they were promoting "homosexuality".

Statements by public officials

Upon independence in 2011, President, Salva Kiir Mayardit declared that his promise of equality would not be extended to lesbians and gays.⁶ He had earlier said that LGBT recognition was "not in our character" and "if anybody wants to import or to export it to Sudan, I will not get the support and it will always be condemned by everybody."

In 2012, James Mawut Lueth, a member of South Sudan's governing Sudan People's Liberation Movement, said in a news interview: "Our culture condemns in the most serious terms same sex marriage, so also our religions, Christianity and Islam in particular. This is premised on the principle that the human race must guarantee the production and reproduction of human beings."⁷

In a 2017 radio interview, Justice Minister had said that "same-sex marriage is in conflict with our national laws and our cultures".⁸

National Human Rights Institution

South Sudan does not have a National Human Rights Institution in accordance with the Paris Principles.

UN voting record

In 2011, South Sudan was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report

on SOGI.⁹ Neither did it have a vote in the 2014 Resolution 27/32 (on updating the 2011 report),¹⁰ nor on the 2016 Resolution 32/2 which created the Independent Expert on SOGI mandate).¹¹

At the session of Third Committee of the UN General Assembly held in November 2016, South Sudan did not vote the LAC amendment to remove Operative Paragraph 2,¹² and voted in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, South Sudan did not vote the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

South Sudan achieved its independence from Sudan on 9 July 2011, three months after Sudan's 1st cycle UPR. Therefore, South Sudan did not in fact get an independent first review. At the 2nd cycle UPR, South Sudan's first review was reported on in November 2016.¹³

It appears that no civil society organisations raised SOGI issues in their submissions to South Sudan, and only Uruguay made a recommendation to decriminalise same-sex sexual acts between consenting adults. In its responses, the State indicated that Uruguay's and other recommendations were "in conflict with the national laws, government structures, policies or customs".¹⁴

South Sudan's next UPR process begins in November 2021.

⁶ Paul Canning, "South Sudan, world's newest country, off to bad start on LGBT rights", SDGLN, 14 July 2011.

⁷ "South Sudan youth object to same-sex marriage", *Sudan Tribune*, 30 April 2012.

⁸ Joseph Oduha, "South Sudan Rebuffs UN Push for Gay-Marriage", *The East African*, 26 March 2017.

⁹ Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011.

¹⁰ Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014.

¹¹ Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

¹² Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

¹³ Draft report of the Working Group on the Universal Periodic Review: South Sudan, A/HRC/WG.6/26/L.11, 15 November 2016.

¹⁴ Report of the Working Group on the Universal Periodic Review: South Sudan, A/HRC/34/13/Add.1, 8 March 2017, para. 128.33.