



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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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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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.

SPECIAL DOSSIER

Death Penalty as Punishment for Consensual Same-Sex Sexual Acts

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

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

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

Roadmap

This dossier consists of four parts.

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

PART 1

Main findings

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

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

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

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

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

PART 2

UN standards on the death penalty

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

The “most serious crimes” standard

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

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

In the early 1980s the UN Economic and Social Council identified this requirement with “intentional crimes, with lethal or other extremely grave consequences”.⁴ This principle was endorsed by the General Assembly of the United Nations in 1984.⁵ Furthermore, this restrictive standard for what may constitute the “most serious crimes” has been echoed by the Human Rights Committee—which stated that this expression only includes crimes involving “intentional killing”⁶—and by the Special Rapporteur on extrajudicial, summary, or arbitrary executions.⁷

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

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

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

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

³ *Id.*, para. 44.

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

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

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

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

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

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

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

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

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

¹³ *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/38/43, 11 May 2018, para. 51.

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

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

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

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

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

“Assurances” of non-enforcement

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

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

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

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

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

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

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

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

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

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

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

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

²¹ See, for instance, entry for Brunei in this section of the report.

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

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

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

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

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

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

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

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

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

PART 3

Death penalty under Sharia law

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

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

Sharia law and its sources

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

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

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

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

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

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

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

³¹ *Id.*, 1–2.

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

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

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

(authentic) *hadith* are the only ones regarded as possible components of *Sharia*.³⁵

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

1. judicial consensus (*ijma*)
2. analogical reasoning (*qiyas*).³⁶

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

Sharia law, jurisprudence and local variations

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

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

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

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

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

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

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

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

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

³⁸ “*Fiqh*”, *Oxford Islamic Studies Online (website)*. Accessed on 28 September 2020; “*Shariah*”, *Oxford Islamic Studies Online (website)*. Accessed on 28 September 2020.

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

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

⁴¹ “*Fatwa*”, *Encyclopaedia Iranica (website)*, 1999. Accessed on 28 September 2020.

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

⁴³ Mohammad H. Kamali, *supra* note 35.

⁴⁴ Knut S. Vikør, “*Shari’ah*”, *Oxford Encyclopedia of Islam and Politics*, in *Oxford Islamic Studies Online (website)*. Accessed on 4 November 2020.

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

⁴⁶ Silvia Tellenbach, *supra* note 36, 251-253.

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

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

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

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

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

Sharia law and consensual same-sex sexual acts

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

absence of the possibility of enforcement.⁵⁴

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

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

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

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

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

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

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

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

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

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

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

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

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

⁵⁹ Javaid Rehman, *supra* note 56.

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

⁶¹ *Id.*, para. 19.

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

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

Zina

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

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

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

Liwat⁶⁸

A rough equivalent of “sodomy” (lit. “act of the people of Prophet Lot”), sometimes considered analogous to *zina*. Under Islamic tradition, Lot was commissioned to the cities of Sodom and Gomorrah, whose inhabitants would have received a harsh divine punishment (destruction by means of a rain of stones) presumably for engaging in anal intercourse⁶⁹ (although a number of scholars have disputed this widely shared interpretation⁷⁰). The term *liwat* as such was first coined by classical jurists who advocated the death penalty for consensual same-sex sexual activity and argued that Lot was sent to forbid anal sexual intercourse between men. For that reason, the term does not appear in the Qur’an or the Sunna, though it became part of the Sharia vocabulary over time.⁷¹

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

Sihaq

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

⁶² *Id.*, para. 16.

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

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

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

⁶⁶ Michael Mumisa, *supra* note 65, 17-19.

⁶⁷ Javaid Rehman, *supra* note 56, 31-37.

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

⁶⁹ Javaid Rehman, *supra* note 56, 25 and 33. See also: Mohammad H. Kamali, *supra* note 35.

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

⁷¹ Javaid Rehman, *supra* note 56. See also: *Surah Al-A'raf* [7:80-84], Quran.

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

⁷³ Mohammad H. Kamali, *supra* note 35.

⁷⁴ Javaid Rehman, *supra* note 56, 12.

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

⁷⁶ Sara Omar, “From Semantics to Normative Law: Perceptions of Liwat (Sodomy) and Sihaq (Tribadism) in Islamic Jurisprudence”, *Islamic Law and Society*, Vol. 19 (2012), 255.

⁷⁷ For more details, see entry on Nigeria in this dossier.

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

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

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

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

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



UNITED ARAB EMIRATES

Introduction

As established in Articles 94 to 109 of the Constitution, the legal system of the United Arab Emirates (UAE) is twofold: the highest judicial authority in the country is the Federal Judiciary, presided over by the Federal Supreme Court and, at the local level, judicial departments overseen by the Ministry of Justice. Each of the seven emirates has the right to either follow the federal judicial system or to maintain its own local judicial system. Whereas the emirates of Ajman, Fujairah, Sharjah, and Umm Al-Quwain participate in the Federal Judiciary, the emirates of Abu Dhabi, Dubai, and Ras Al-Khaimah maintain their own independent judicial departments, which have jurisdiction over matters that do not correspond to the Federal Judiciary.¹

While Islamic Sharia is said to be the main source of UAE law, most codified legislation in the UAE are also influenced by Egyptian and French civil laws.² Sharia is applied exclusively to civil and criminal issues, particularly within personal status courts.³ Offences of *hudud*, *qisas*, and *diya* in the UAE are said to be handled entirely by reference to Sharia jurisprudence, while governmental enactments would be the only sources of *ta'zir* offences (see the introduction on Sharia law for a more detailed definition of these terms).⁴

The UAE's criminal law, in particular derives mainly from Islamic Sharia and codified provisions within the Federal Penal Code.⁵ Moreover, the emirates of Abu Dhabi, Dubai, and Sharjah have penal codes of their own, which are all subordinate to the Federal Penal Code. Criminal courts deal with criminal cases initiated by the federal or local prosecution in each emirate, whereas federal courts handle crimes committed within the boundaries of the national capital.⁶ In addition to their respective civil courts, each emirate maintains its own parallel system of

locally organised and supervised Sharia courts. According to some legal scholars, the role of Sharia Courts in the UAE was diminished after the civil and criminal courts were established. However, the competences of the Sharia courts in some emirates, particularly Abu Dhabi, were significantly broadened later on to include matters of personal status, civil disputes, and serious criminal offences, *inter alia*.⁷

The UAE has reportedly denied access to activists and international human rights organisations, which creates a significant challenge for the purpose of SOGIESC-related research on the ground.⁸

Authority (federal level)

At the federal level, the Arabic text of Article 354 is ambiguously phrased and can be translated in different ways. Some sources indicate that the Article punishes "rape of a woman or forced sodomy with a man", while others indicate that it punishes "rape on women and sodomy between men".⁹

The official Arabic version of the provision reads as follows:

المادة 354 - موقعة أنثى أو لواط

مع عدم الإخلال بأحكام قانون الأحداث الجانحين والم شردين، يعاقب بالاعدام كل شخص استخدم الإكراه في موقعة أنثى أو اللواط مع ذكر، كما يعتبر الإكراه قائ ما إذا كان عمر المجنى عليه أقل من أربعة عشر عاماً وقت ارتكاب الجريمة

The English version of the Federal Code available in the website of the Ministry of Justice of the UAE (published in the Official Gazette, Issue no.182) reads as follows:

¹ "The Federal Judiciary", Government of the United Arab Emirates, 21 May 2020.

² "The Federal Judiciary", Government of the United Arab Emirates, 21 May 2020; Ahmed Aly Khedr and Bassam Alnuaimi, "Guide to United Arab Emirates Legal System", New York University School of Law: Hauser Global Law School Program, June 2010.

³ "The Federal Judiciary", Government of the United Arab Emirates, 21 May 2020.

⁴ Butti Sultan Butti Ali Al-Muhairi, "The Islamisation of laws in the UAE: the case of the Penal Code", *Arab Law Quarterly*, Vol. 11, No. 4, 1996, 350-371. Some scholars consider that the reason why the Supreme Court made the application of Sharia obligatory to *hudud* offences but not, for instance, to banking rules, might be that the latter would have threatened the UAE's desired economic development and the modernisation of its institutions, whereas the former would not. See: Al-Muhairi, Butti Sultan Butti Ali. "The Position of Shari'a within the UAE Constitution and the Federal Supreme Court's Application of the Constitutional Clause concerning Shari'a", *Arab Law Quarterly*, Vol. 11, No. 3, 1996, 219-244.

⁵ Butti Sultan Butti Ali Al-Muhairi, "Islamisation and Modernisation within the UAE Penal Law: Shari'a in the Pre-Modern Period", *Arab Law Quarterly*, Vol. 10, No. 4, 1995, 287-309.

⁶ "The Federal Judiciary", Government of the United Arab Emirates, 21 May 2020.

⁷ "UAE Company Law and Practice: Background on the United Arab Emirates (UAE) Legal System", *Gulf Law (website)*, 2014.

⁸ "United Arab Emirates", *Human Rights Watch (website)*. Accessed on 23 October 2020.

⁹ "United Arab Emirates: Situation of sexual minorities, including social attitudes and treatment by authorities", *Immigration and Refugee Board of Canada Research Directorate*, 15 July 2016.

Article 354: Without prejudice to the provisions of the law on juvenile delinquents and displaced, shall be sentenced to death penalty, whoever used coercion in having sexual intercourse with a female or sodomy with a male. Coercion shall be considered existent if the victim is below fourteen years of age when the crime is perpetrated.

In effect, according to some scholars, the way in which the Article is written leaves the door open to be interpreted as applicable to consensual same-sex sexual activity,¹⁰ while others hold that “it takes a stretch to read [this provision] as a criminalisation of consensual sex with the Arabic word for ‘coercive’ syntactically placed as it is”.¹¹

Amnesty International has categorically stated that the UAE “does not carry the death penalty for same-sex consensual sexual relations” and has indicated that Article 354 addresses “rape, not consensual same-sex sexual relations”.¹² However, in the same report, the organisation considers that, depending on each case, it is still “theoretically possible” that consensual same-sex sexual activity would be punishable by death if considered a form of *zina* (extramarital sexual activity).¹³ Furthermore, a 2014 report by Emirates Woman magazine states that *zina* is punishable by death in the UAE, noting that an Abu Dhabi criminal court had reportedly sentenced a woman to death by stoning after being found guilty of adultery, and that married persons can be convicted of those charges if involved in consensual same-sex sexual activity.¹⁴

Therefore, even if Article 354 is contested as the legal basis for the death penalty, the application of Sharia law—and more specifically, the crime of *zina*—could potentially trigger such a penalty. Other federal provisions—including Article 356 of the UAE Federal Penal Code—provide the legal basis for the criminalisation of consensual same-sex sexual acts and impose penalties of imprisonment. This has been interpreted by various scholars as the criminalisation

of consensual same-sex sexual activity.¹⁵ The original Arabic-language provision in this Article is “هتك العرض” (*hatk al-‘ard*), which literally translates to “disgrace to honour” but has been translated in substantially different ways (for example, “voluntary debasement”, “indecent assault”, “indecency”, “carnal knowledge”) by different sources.¹⁶

International reaction and advocacy

In 2013, the UAE received 2 UPR recommendations regarding SOGIESC issues, but none mentioned the death penalty: “Protect the human rights of all individuals, including LGBT individuals, and take appropriate steps to help ensure that protection is provided to the victim and perpetrators are identified and prosecuted” (from the United States), and “Repeal the criminalization of sexual relations between persons of the same sex” (from Argentina). The UAE “noted” (functionally rejected) both recommendations and made no comment on these issues.¹⁷

In 2018, during its 3rd UPR cycle, the UAE received two SOGI-related recommendations,¹⁸ both of which were rejected and no comments regarding SOGI were made.¹⁹ Regarding the death penalty, the UAE received a total of 16 recommendations, all of which aimed at the abolition of the death penalty or the restriction of its applicability to the “most serious crimes”.²⁰ Every single one of these recommendations was ‘noted’ (functionally rejected) by the UAE.²¹

Enforcement

As of October 2020—even though the UAE has been reported as a country that issues death sentences²² and one in which LGBT people are arrested and prosecuted by the State²³—ILGA World could not locate any documented cases in which the death penalty was applied for consensual same-sex sexual activity in the country.

¹⁰ Brian Whitaker, *Unspeakable Love: Gay and Lesbian Life in the Middle East*, (London: Saqi Books, 2011), 206, citing Jehoeda Sofer, “Sodomy in the Law of Muslim States”, in *Sexuality and Eroticism among Males in Moslem Societies* (New York: Harrington Park), 1992.

¹¹ “The UAE’s position on gay rights is actually surprisingly progressive—and I should know”, *The Independent*, 24 July 2017.

¹² Amnesty International, *Love, Hate and the Law: Decriminalizing Homosexuality* (2008), 48.

¹³ *Id.*, 49.

¹⁴ Sarah Garden, “Woman Sentenced to Death by Stoning in Abu Dhabi”, *Emirates Woman*, 5 May 2014.

¹⁵ Al Mubasheri, *Federal Law No (3) of 1987 on Issuance of the Penal Code* (2014); “United Arab Emirates: Events of 2016”, *Human Rights Watch* (website). Accessed on 23 October 2019.

¹⁶ See, for example: Al Mubasheri, *Federal Law No (3) of 1987 on Issuance of the Penal Code* (2014); “United Arab Emirates: Events of 2016”, *Human Rights Watch* (website). Accessed on 23 October 2019.

¹⁷ *Report of the Working Group on the Universal Periodic Review: United Arab Emirates*, A/HRC/23/13, 21 March 2013, paras. 128.135-136.

¹⁸ *Report of the Working Group on the Universal Periodic Review: United Arab Emirates*, A/HRC/38/14, 18 April 2018, paras. 141.92 and 141.93. See also: “29th UPR Working Group Sessions SOGIESC Recommendations”, *ILGA World*, 25 January 2018, pp. 66-67.

¹⁹ *Report of the Working Group on the Universal Periodic Review: United Arab Emirates*, A/HRC/38/14/Add.1, 14 June 2018, para. 6.

²⁰ *Report of the Working Group on the Universal Periodic Review: United Arab Emirates*, A/HRC/38/14, 18 April 2018.

²¹ *Report of the Working Group on the Universal Periodic Review: United Arab Emirates*, A/HRC/38/14/Add.1, 14 June 2018, para. 6.

²² “United Arab Emirates 2019”, Amnesty International, 2019.

²³ “Homosexuality in the UAE”, *Detained in Dubai* (website). Accessed on 23 October 2020. For more instances of enforcement of criminalising provisions see entry on the UAE in the “Consensual Same-Sex Sexual Acts: Illegal” section of this report.

20



United Arab Emirates

LAST AMENDED
2016

Certain interpretations posit that Article 354 of the **Federal Penal Code** (1987) prescribes the death penalty for “sodomy with a male”.²⁰¹

Similarly, Article 356 has been interpreted by various scholars to criminalise consensual same-sex sexual activity.²⁰² The original Arabic-language provision in this article is “هتك العرض” (*hatk al-‘arD*), which literally translates to “disgrace to honour” but has been translated in substantially different ways (e.g.: “voluntary debasement”, “indecent assault”, “indecency”, “carnal knowledge”) by different sources.²⁰³

In 2016, **Federal Decree-Law No. 7** (2016) amended Article 358 to establish that any person who publicly commits a “disgraceful act” would be punished by a jail sentence for no less than six months. The same penalty applies to any person who says or commits any “act against the public morals”.

► **Enforcement**

Numerous cases of state persecution of LGBT persons in the UAE have been reported in recent years.²⁰⁴ Reports of anal examinations that led to sentences of imprisonment for homosexuality and obscene acts under Sharia law have been brought to the attention of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and reported by Human Rights Watch.²⁰⁵

Consensual same-sex sexual activity is additionally criminalised in several emirates by means of local legislation:

Abu Dhabi	LAST AMENDED 1970	Article 80 of the Abu Dhabi Penal Code punishes “consensual sodomy” with a penalty of up to 14 years’ imprisonment.
Dubai	LAST AMENDED 1994	Article 177 of the Dubai Penal Code (1970), as amended in 1994, punishes “unnatural crimes (sodomy)” —defined as “sexual intercourse with another person in contravention of the laws of nature”—with a penalty of up to 10 years’ imprisonment. ²⁰⁶ Additionally, Article 183 establishes that “sexual intercourse” is deemed to have occurred once the sexual organ has entered in the slightest degree, whether or not that entry is accompanied by secretion of semen.
Sharjah	LAST AMENDED 1970	Article 176 of the Sharjah Penal Code (1970) punishes “unnatural crimes (Sodomy)” —defined as “sexual intercourse with another person in contravention of the laws of nature” or “allowing a male to have intercourse with them in contravention of the laws of nature”— with imprisonment of up to 10 years. Additionally, Article 181 establishes that “sexual intercourse” is deemed to have occurred once the sexual organ has entered in the slightest degree, whether or not that entry is accompanied by secretion of semen.

²⁰¹ This is discussed in further detail in the entry for the UAE in the special dossier on the death penalty of this report.

²⁰² Al Mubasher, *Federal Law No (3) of 1987 on Issuance of the Penal Code* (2014); “United Arab Emirates: Events of 2016”, *Human Rights Watch* (website). Accessed on 23 October 2019.

²⁰³ See, for example: Al Mubasher, *Federal Law No (3) of 1987 on Issuance of the Penal Code* (2014); “United Arab Emirates: Events of 2016”, *Human Rights Watch* (website). Accessed on 23 October 2019.

²⁰⁴ “Gay party men may be given hormone treatment”, *Khaleej Times*, 27 November 2005; “US condemns UAE gay men arrests”, *BBC News*, 29 November 2005; “Al Arabiya, 7 July 2008. Dubai police target indecent acts on beaches”, *Al Arabiya*, 7 July 2008; “Lesbian couple jailed for kissing on beach in Dubai”, *London Evening Standard*, 2 September 2008; Dan Littauer, “Dubai Police Chief Denies Reports That Gay People Were Arrested at Party”, *HuffPost*, 21 March 2012; Bassam Za’Za’, “Gay partner jailed for one year for having consensual sex with victim”, *Gulf News*, 8 June 2012; “UAE Jails Two Singaporeans for Dressing ‘Feminine’”, *Fridae Asia*, 29 August 2017; “Singaporeans in UAE Have Sentence Reduced”, *Fridae Asia*, 30 August 2017; “Homosexuality in the UAE”, *Detained in Dubai* (website). Accessed on 23 October 2020.

²⁰⁵ *Addendum to Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/4/33/Add.1, 20 March 2007. See also: “UAE sentences 11 men to five years in jail for homosexuality”, *Khaleej Times*, 13 February 2006; Human Rights Watch, *Audacity in Adversity: LGBT Activism in the Middle East and North Africa* (2018), 20.

²⁰⁶ *Ibid.*

3 	Singapore		Singapore has a vast body of laws, rules, and regulations that severely restrict the free dissemination of information regarding sexual and gender diversity. These include the following:
		1994	Under the powers conferred by the Broadcasting Act (1994), the Media Development Authority promulgated a series of Codes of Practices that restrict freedom of expression by prohibiting the justification, promotion, or advocacy of “homosexual lifestyle”. ⁵³
		1997	The Internet Code of Practice (1997) calls stakeholders who prohibit materials to consider “whether the material advocates homosexuality or lesbianism, or depicts or promotes incest, paedophilia, bestiality and necrophilia”.
		2004	The Free-to-Air Radio Programme Code (2004) prohibits the promotion, justification, and glamorization of “lifestyles such as homosexuality, lesbianism, bisexuality, transsexualism, transvestism, paedophilia and incest”, as well as broadcasting explicit dialogue on those topics.
		2011	The Board of Film Censors Classification Guidelines (2011) puts the “promotion and glamorisation of homosexual lifestyle” in the same category as the promotion of racism and glorification of “paedophilia and bestiality”.
		2013	The Content Guidelines for Local Lifestyle Magazines (2013) and the Content Guidelines for Imported Publications prohibit content promoting an alternative lifestyle, which is defined as an “unconventional manner of living atypical of the concept of the traditional family” and including homosexuality, bisexuality, “trans-sexuality,” group sex and sado-masochism.
		2014	The Arts Entertainment Classification Code (2014) provides that arts entertainment organisers should ensure that no person under age 18 is present at the venue of the performance containing “occasional sexual gestures in a homosexual context”.
		2016	The Content Code for Nationwide Managed Transmission Linear Television Services (2016) classify films dealing with homosexuality-related content, along with “drug use” and “prostitution”, as “mature content”, for persons above the age of 16, 18, or 21, depending on the film. Additionally, films depicting a “homosexual lifestyle” should not “promote or justify a homosexual lifestyle”.
		2019	The Video Game Classification Guidelines (2019) restrict games to persons aged 18 and above if the game contains homosexual content or same-sex “kissing and hugging”. In practice, the authorities applied those restrictions not only on homosexual kisses, but on the mere possibility to develop same-sex relationships. ⁵⁴
			In addition, the official website of the Ministry of Education indicates that sexuality education should teach students “the law concerning homosexual acts in Singapore”. ⁵⁵ As explained in this report, Section 377A of the Singaporean Penal Code criminalises outrages on decency between males in private with up to two years imprisonment.
			In 2015 a court imposed a heavy fine on a blogger for “contempt of court”. The blogger suggested that the Chief Justice manipulated the court in litigation on the criminalisation of same-sex relationships. ⁵⁶
4 	United Arab Emirates	2012	Article 3(5)(4) of Law on Combating Cybercrimes (Law No. 5) (2012) criminalises the condoning, provoking, or promoting of sin through the computer network or any information technology means or a website. The Telecommunications Regulatory Authority also blocks websites that “promote destructive principles, such as homosexuality” as part of its Internet Access Management Regulatory Policy .

⁵³ Yu Sheng Teo, “[This is why we don't get LGBTQ+ representation in Singapore](#)”, *Heckin Unicorn*, 28 July 2020.

⁵⁴ See: Infocomm Media Development Authority, [Extended Classification Information \[Life Is Strange\]](#), accessed on 15 September 2020. Infocomm Media Development Authority, [Extended Classification Information \[Assassin's Creed Odyssey\]](#), accessed on 15 September 2020.

⁵⁵ Ministry of Education of Singapore, [Sexuality Education: Scope and teaching approach](#), updated on 29 April 2020.

⁵⁶ Ng Siqi Kelly, “[Alex Au found guilty of contempt of court over post](#)”, *Today*, 23 January 2015.

17	 Syria	1958	Various articles of Law No. 93 (1958) allow the Ministry to appoint or remove board members, disallow political participation, foreign funding, and allow the registration to be rescinded at will. Further, Article 35 allows any Board decision to be suspended “if it deems it to be against the law, the public order or morals”. This legal framework appears to pose severe barriers to the formal registration and the operation of an organisation working on sexual and gender diversity issues.
18	 Turkmenistan	2014	Article 7 of the Public Associations Act (2014) prohibits the establishment and operation of associations which may lead to propagandize national or religious enmity, encroach on citizens’ health or morality or engage in extremist activities. Turkmenistan’s civil space in general is highly reduced and there is an overall scarcity of NGOs in the country.⁹² Onerous registration and regulatory requirements prevent most independent organizations from operating legally or receiving foreign funding, and unregistered groups can draw fines, detention, and other penalties.⁹³ This hostile context, exacerbated by Turkmenistan’s law criminalising consensual same-sex sexual activity, impose barriers to the registration of organisation working on sexual and gender diversity issues.
19	 United Arab Emirates	1987	Article 317 of the Federal Penal Code (1987) establishes a prison sentence of five to ten years for establishing, organizing or administering any organisation aiming at resisting or vilifying the foundations or teachings of Islam. Furthermore, under Article 318, any person who joins or assists such organisations may be sentenced to up to seven years in prison.
		2008	Federal Law No. 2 (2008) confers broad powers of supervision (including sending representatives to meetings) and heavily restricts the activities that organisations can carry out without receiving first permission from the Ministry of Social Affairs. This legal framework—compounded by criminalisation of consensual same-sex sexual acts and the possible imposition of the death penalty under Shariah Law—appears to pose severe barriers to the registration of an organisation working on sexual and gender diversity issues.
20	 Uzbekistan	1991	Article 3 of the Law on Public Associations (1991) forbids “the formation of a public association whose activity is directed toward the destruction of society’s ethical foundations or general humanistic values”. A subsequent clause within the same article reads: “In accordance with the law, the formation and activity of a public association that infringes upon the health and morality of the population and the rights and legally guaranteed interests of citizens will be prosecuted”. These clauses, in light of the law criminalising consensual sexual intercourse among men in Uzbekistan, could impose severe barriers to the registration of an organisation working on sexual diversity issues.
21	 Yemen	1994	Although Article 58 of the Constitution asserts the rights on citizens to form associations, the Penal Code imposes the death penalty for same-sex sexual acts and contains several other provisions on “public morals”.
		2001	Furthermore, Article 4.1 of Yemen’s Law on Associations and Foundations (Law No. 1) (2001) states that in order to register an organisation, it is required “that its objectives do not violate the constitution, laws and legislations in force”. Such provisions, in light of Yemen’s criminalisation of consensual same-sex sexual activity, the threat of the death penalty, the fading rule of law and a hostile situation on the ground, make it very unlikely that a request to formally register an organisation to advocate on issues of sexual orientation will be accepted.⁹⁴

⁹² “Overview of NGOs and Civil Society: Turkmenistan”, *Asian Development Bank* (2007), 3.

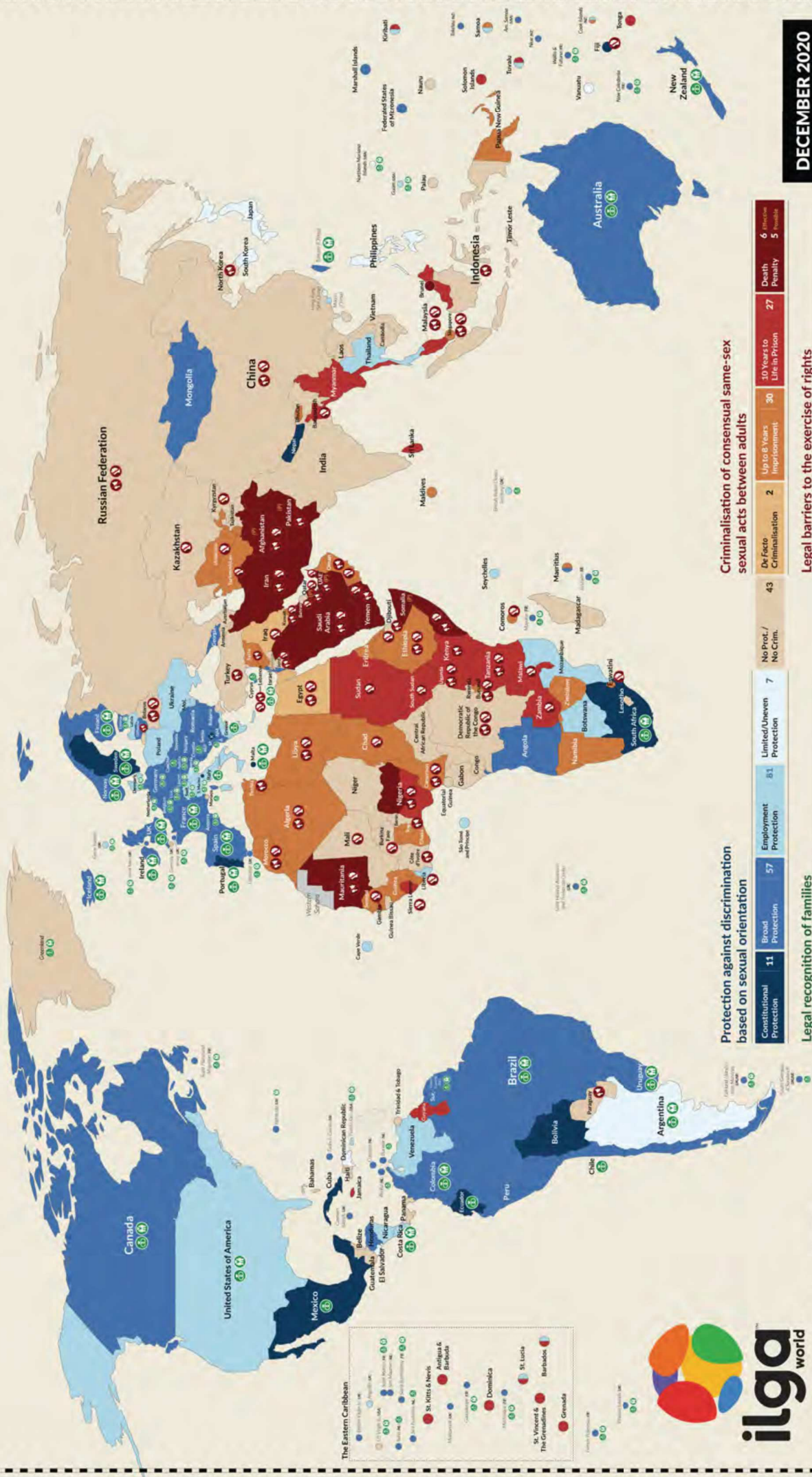
⁹³ “Freedom in the World 2020: Turkmenistan”, in *Freedom House* (website). Accessed on 9 October 2020.

⁹⁴ See: Abdulbaki Shamsan, *Freedom of Association in the Republic of Yemen* (Taiz: HR Information & Training Centre, 2008), pp. 22, 63-67.

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
108	19	Laos	YES	NEVER CRIM	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
109	20	Lebanon	NO	-	1	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
		<i>Macau (China)</i>	YES	1996	-	N/A	NO	YES	NO	NO	NO	NO	NO	NO	NO
110	21	Malaysia	NO	-	20	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
111	22	Maldives	NO	-	8	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
112	23	Mongolia	YES	1961	-	NO	YES	YES	YES	NO	NO	NO	NO	NO	NO
113	24	Myanmar	NO	-	10	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
114	25	Nepal	YES	2007	-	YES	YES	YES	NO	NO	NO	NO	NO	NO	NO
115	26	North Korea	YES	NEVER CRIM	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
116	27	Oman	NO	-	3	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
117	28	Pakistan	NO	-	DEATH (P)	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
		<i>Palestine²</i>	YES	1951	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
118	29	Philippines	YES	1870	-	NO	LIMITED	LIMITED	NO	NO	NO	NO	NO	NO	NO
119	30	Qatar	NO	-	DEATH (P)	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
120	31	Saudi Arabia	NO	-	DEATH	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
121	32	Singapore	NO	-	2	NO	NO	NO	NO	LIMITED	NO	NO	NO	NO	NO
122	33	South Korea	YES	NEVER CRIM	-	NO	LIMITED	LIMITED	NO	NO	NO	NO	NO	NO	NO
123	34	Sri Lanka	NO	-	10	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
124	35	Syria	NO	-	3	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
		<i>Taiwan (China)</i>	YES	1912	-	NO	YES	YES	NO	NO	NO	YES	YES	NO	YES
125	36	Tajikistan	YES	1998	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
126	37	Thailand	YES	1957	-	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO
127	38	Turkmenistan	NO	-	2	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
128	39	Vietnam	YES	NEVER CRIM	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
129	40	United Arab Emirates	NO	-	DEATH (P)	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
130	41	Uzbekistan	NO	-	3	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
131	42	Yemen	NO	-	DEATH	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
EUROPE															
132	1	Albania	YES	1995	-	NO	YES	YES	YES	YES	NO	NO	NO	NO	NO
133	2	Andorra	YES	1990	-	NO	YES	YES	YES	NO	NO	NO	YES	YES	YES
134	3	Armenia	YES	2003	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
135	4	Austria	YES	1971	-	NO	YES	YES	YES	YES	NO	YES	YES	YES	YES
136	5	Azerbaijan	YES	2000	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
137	6	Belarus	YES	1994	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
138	7	Belgium	YES	1795	-	NO	YES	YES	YES	YES	NO	YES	YES	YES	YES
139	8	Bosnia & Herzegovina	YES	1991-2003	-	NO	YES	YES	YES	LIMITED	NO	NO	NO	NO	NO
140	9	Bulgaria	YES	1968	-	NO	YES	YES	NO	YES	NO	NO	NO	NO	NO
141	10	Croatia	YES	1977	-	NO	YES	YES	YES	YES	NO	NO	YES	NO	NO
142	11	Cyprus	YES	1998	-	NO	YES	YES	YES	YES	NO	NO	YES	NO	NO
143	12	Czech Republic	YES	1962	-	NO	YES	YES	NO	NO	NO	NO	YES	NO	NO
144	13	Denmark	YES	1933	-	NO	LIMITED	YES	YES	YES	NO	YES	NO	YES	YES
145	14	Estonia	YES	1992	-	NO	YES	YES	NO	YES	NO	NO	YES	NO	YES
		<i>Faroe Islands (DN)</i>	YES	1933	-	N/A	NO	YES	NO	NO	NO	YES	NO	YES	YES
146	15	Finland	YES	1971	-	NO	YES	YES	YES	YES	NO	YES	NO	YES	YES
147	16	France	YES	1791	-	NO	YES	YES	YES	YES	NO	YES	YES	YES	YES
148	17	Georgia	YES	2000	-	NO	YES	YES	YES	NO	NO	NO	NO	NO	NO
149	18	Germany	YES	1968-1969	-	NO	YES	YES	NO	NO	YES	YES	NO	YES	YES
		<i>Gibraltar (UK)</i>	YES	1993	-	N/A	YES	YES	YES	NO	NO	YES	YES	YES	YES
150	19	Greece	YES	1951	-	NO	NO	YES	YES	YES	NO	NO	YES	NO	NO

SEXUAL ORIENTATION LAWS IN THE WORLD

From criminalisation of consensual same-sex sexual acts between adults to protection against discrimination based on sexual orientation



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