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STATE- SPONSORED HOMOPHOBIA

**A World Survey of Laws: criminalisation, protection and
recognition of same-sex love**

MAY 2015
10TH EDITION

AENGUS CARROLL AND LUCAS PAOLI ITABORAHY

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This report is available to download in Word or PDF formats. Separate PDFs of each region are also available. Digital versions of the map of LGB legislation in the world are available for print.

Most of this material is available in Arabic, Chinese, English, French, Portuguese, Russian and Spanish. Maps are also available in Arabic, Chinese, Dutch, Estonian, German, Hindi, Italian, Montenegrin, Russian and Turkish.

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FOREWORD BY ILGA'S CO-SECRETARIES GENERAL

RUTH BALDACCHINO AND HELEN KENNEDY, ILGA CO-SECRETARIES GENERAL

The *State-Sponsored Homophobia* report originated from the need to present a concise overview of the legal situation of lesbian and gay people around the world. ILGA needed a comprehensive survey of laws that criminalise consenting adult same-sex sexual acts for its advocacy work and to present aspects of the work carried out by its members.

Over the years, the format of the report changed and each edition built on the previous, allowing the authors to sustain previous knowledge and add on new information, thus becoming a reference resource and lobbying tool. The report captures some aspects that allow us to understand ways countries perceive and treat people on the basis of their sexual orientation.

We should note the challenge to represent the complexities of our lives and the intersectionalities of our experiences when analysing legal contexts. Legal texts, access to them and interpretation of those texts are amongst the barriers to offer a multi-dimensional perspective on the situation of LGBTIQ lives. However, what this report clearly illustrates is the fact that lesbian and gay people around the world are still considered illegal, immoral and criminals, and deemed not to deserve the legal protections enjoyed by the rest.

The report refers and covers the legal situation in relation to sexual orientation and/or same-sex sexual acts. We think it is important to point out that the report should not be seen on its own, as by doing so would be narrowing the nuances of people's lives to the legal situation and to 'sexual orientation'. Rather, the report should be seen as complementing the rest of the work carried out by ILGA, its members and allies at different levels. It should be seen as an element that contributes to the body of knowledge about the situation of lesbian, gay, bisexual, trans, intersex and queer people around the globe.

This comprehensive analysis should be used as an eye-opener to those oblivious to the fact that 75 countries in the world still criminalise same-sex sexual acts, and more countries that criminalise 'homosexuality' in other ways, subjecting individuals to dangers, risks, abuses,, harassment and violations on the basis of their gender and sexuality.

Surveys are there for interpretation and our general interpretation of this world survey is that some countries have it better or worse than others. However, we do not stop there.

We see the analysis of the legal situation in countries as one of many layers of analysis. This report provides us with a solid platform from which to understand, discuss, lobby, advocate and analyse further.

When we lift that legal layer, we find many brave individuals, organisations operating on shoestring budgets, networks of activists, scholars, policy-makers and other professionals, risking their livelihood (and often their lives) to fight for what is right. We find lesbian, gay, bisexual, trans, intersex and queer people manoeuvring through political, social, religious, cultural and linguistic battles to be recognised and respected. These are efforts, initiatives and actions that empower us.

On the occasion of the 10th edition, the report should serve as a reminder of the work we carry out locally, nationally, regionally and globally, as well as cross-regionally. It is a reminder that all our work, whatever the approach, the language and the cultural contexts that we are coming from, is essential to the global efforts that aim to influence and change institutional attitudes towards LGBTIQ people. It is also a reflection of all the contributions by ILGA, its regional structures, members, other LGBTIQ organisations, allies and institutions.

We hope that this report becomes or remains useful to our members and allies, as we continue to strive in making ILGA's work more effective and more relevant to your fight for justice.

Our thanks go to all those who worked on this report: the authors, Aengus Carroll and Lucas Paoli Itaborahy; the contributors in this edition, ILGA staff, translators and all our members whose knowledge helps with keeping this report useful to many.

FOREWORD BY THE AUTHORS

AENGUS CARROLL¹ AND LUCAS PAOLI ITABORAHY²

This year, 2015, marks the tenth anniversary of this *State-Sponsored Homophobia* report, and the world map that relies on this data. The report was originally designed to be a survey of existing laws prohibiting consenting adult same-sex sexual acts across the globe. But it has developed into a more comprehensive compilation and resource on the current legal status of the human rights connected to sexual orientation. As such, it has become an important tool for the defence of these rights, being increasingly cited in a variety of settings: media, NGOs, academic, judicial and most recently by UN agencies. Activists and lawyers have particularly used the report to lobby for the de-criminalisation of same-sex sexual acts and identity both in national court cases as well as in regional and international human rights settings (such as the United Nations' Universal Period Review).

While in 2006, 92 countries (48% of UN Member States) criminalised same-sex sexual acts between consenting adults, we now see this number falling down to 75 countries (39% of UN Member States) in 2015. However, the situation is still unacceptable: more than one-third of the world's States consider same-sex sexual activity illegal. Although 2013 saw an alarming rise in the number of States considering a new wave of criminalisation through "homosexual propaganda" laws, in fact only a small number actually implemented them. By bringing an overview of these positive and negative trends, we are motivated to keep improving the quality of this publication so it can act as a useful resource and bring symbolic – and hopefully material - benefits to people's lives. We hope it will ultimately contribute to advocates' and activists' work in decreasing the criminalisation of the sexual expression of LGBTI people.

¹ Aengus Carroll, LL.M is an Irish author and editor with particular interest in the socio-legal aspects of international human rights advocacy, especially relating to SOGIE. His current research as a PhD candidate at University College Cork is on how the UN Human Rights Council's Universal Periodic Review (UPR) mechanism is affecting the scope of the non-discrimination norm in international human rights law. Amongst a range of articles and other materials, for ILGA-Europe: he was co-author of *International Human Rights References to Sexual and Reproductive Health and Rights* (2007), and *Forced Out; LGBT People in Armenia* (2008). In 2010, he was author of *Make It Work: Six Steps to Effective LGBT Human Rights Advocacy* also for ILGA-Europe. In 2013, he wrote *Testing the Waters: LGBT People in the Europe and Eurasia Region* for the United States Agency for International Development (USAID). He consults with a variety of NGOs, CSOs and State bodies regarding human rights focus. Aengus has been active in the Irish SOGI scene since the mid-1990s, and currently volunteers for Outhouse, Dublin's LGBTI resource centre.

² Lucas Paoli Itaborahy is a Brazilian LGBTI activist and international human rights specialist who holds a bachelor's degree in International Relations and a master's degree in Human Rights Practice from the University of Gothenburg (Sweden), Roehampton University (UK) and University of Tromsø (Norway). Lucas has also participated in a summer school on Sexual Orientation Law at the University of Barcelona and has acquired a diverse professional experience with LGBT issues, both in Brazil and abroad. He has already worked for governmental agencies like the Ministry for Human Rights in Brazil in 2009-2010 and the Permanent Mission of Brazil to the UN Office in Geneva in 2012. He has published academic and legal works, including ILGA's *State-Sponsored Homophobia* report over the last five years, and has consulted for other civil society organisations, such as ARC International (Geneva). He is currently based in the city of Rio de Janeiro working for Micro Rainbow International.

Following an overview of developments of sexual orientation, gender identity and expression (SOGIE) and intersex concerns at the UN, and an interesting essay on intersectionality in LGBTI advocacy written by our colleagues at the Sexual Rights Initiative, the **first part** of the report presents a global overview of developments of legislation in a variety of legal matters pertaining to sexual orientation: decriminalisation of consensual same-sex acts between adults; equalisation of ages of consent for sexual acts in societies; prohibitions of discrimination based on sexual orientation in employment and constitutional bans on discrimination, *per se*, inclusive of sexual orientation as a named ground; hate crimes based on sexual orientation considered as aggravating circumstance; prohibition of incitement to hatred based on sexual orientation; marriage and partnership rights for same-sex couples; and joint adoption by same-sex couples.

The **second** part of this report comprises a summary of the 75 countries that still maintain legal provisions criminalising same-sex sexual acts between consenting adults and who engage in sexual activity in private. In these we lay out the relevant text of the law with links to its source, and we provide some commentary on how these countries' have handled sexual orientation issues in international law settings.

The **final section** of the publication is a series of five essays from legal experts in human rights and comparative law backgrounds. These explore the legal conditions and developments pertaining to sexual orientation in each of the five continents and they provide substantial material for researchers, activists and States.

In this edition, we have updated the legal situations in many countries and/or regions. In particular, we have added some recent positive changes that were not covered by the previous editions:

- 1 As of May 2015, there are 118 countries (UN Members) where same sex sexual acts between adults in private are legal. **Mozambique** and **Palau** have decriminalised same-sex acts in 2014 and **Lesotho** in 2010. One hundred and three (103) of these States retain an equal age of consent with that of different-sex sexual activity, while 14 differentiate that age of consent between same-sex and different-sex sexual partners.
- 2 There are 75 countries where same-sex sexual acts are still illegal. We had previously listed **Iraq** in the 'unclear' category, but it is now listed in 'illegal' because of evidence from that State. **Central African Republic** was mistakenly placed in the 'illegal' list last year, but as it apparently only outlaws same-sex sexual activity in a public place, and not same-sex sexual activity *per se*, we have returned it as 'legal'.
- 3 This year, we reorganised the categorisation of the death penalty, as this is often a source of some confusion in LGBTI reportage. Eight States officially legislate for it, but only five (**Mauritania**, **Sudan**, **Iran**, **Saudi Arabia** and **Yemen**) actually

implement it. But a sixth State, **Iraq**, although not in the civil code clearly has judges and militias throughout the country that issue the death sentence for same-sex sexual behaviours. Further, some **provinces** in Nigeria and Somalia officially implement the death penalty. We are also aware that in the **Daesh**(ISIS/ISIL)-held areas the death penalty is implemented (although a non-State actor, we list it here). **Brunei Darussalam** is due to activate the death penalty for same sex sexual acts in 2016, but it seems likely that like **Pakistan, Afghanistan** and **Qatar** although it is on the statute, it will not be implemented.

- 4 Regarding the recent legal practice, emerging from Russian provinces first in 2006, to criminalise the 'propaganda of homosexuality', it is with some relief we note that in fact to date only four countries actually appear to have adopted this on their statute books: **Algeria, Lithuania, Nigeria** and **Russia**. Such discussions were happening in 11 other countries, and we may yet see negative developments in this regard.
- 5 Discrimination in employment based on sexual orientation is now prohibited in 62 countries, including **Chile** (2012), **Samoa** (2013), and city of Buenos Aires in Argentina (2015).
- 6 A total of 8 countries have a constitutional prohibition to discrimination based on sexual orientation, including **Mexico** (2011) and **Virgin Islands** (2007) – associate of the United Kingdom
- 7 Hate crimes based on sexual orientation are considered an aggravating circumstance in 35 countries. Laws in this respect have been identified in several European countries, including **Andorra** (2005), parts of **Bosnia and Herzegovina** (2013), **Iceland** (2004), Kosovo (2013), **Lithuania** (2009), **Montenegro** (2010), **Norway** (1994), **Serbia** (2012), **Slovakia** (2013), **Slovenia** (2008).
- 8 Incitement of hatred based on sexual orientation is prohibited in 31 countries. **Austria** has introduced such law in 2011, **Hungary** in 2013, **Montenegro** in 2010 and **Switzerland** in 2015.
- 9 Marriage is open for same-sex couples in 18 countries, including in **Luxembourg** and **Ireland**, both in 2015. Various states in **Mexico** and 19 further states in the **United States of America** have passed same-sex marriage laws in 2014, bringing the total number of states legislating for marriage equality to 37 (plus the District of Columbia). **Finland** approved a marriage equality law in 2015 that will come into force in 2017, while **Estonia** approved a civil partnership law in 2014, to come into force in 2016.
- 10 Joint adoption by same-sex couples is legal in 19 countries. It was legalised in **Luxemburg** and **Malta** in 2014, and in **Austria , Ireland** and **Slovenia** in 2015.

We would sincerely like to thank ILGA member organisations, activists and scholars who have contributed to and informed this edition of *State-Sponsored Homophobia*. The project could not have come to completion without the rigorous oversight of ILGA Director Renato Sabbadini, and coordination of ILGA's Communications Officer, Alessia Valenza. We are particularly grateful to the ongoing insights, generosity and advice from professor Kees Waaldijk of Leiden Law School who has provided us with so much this year and previously. We also wish to especially thank Hossein Alizadeh of ILGHRC for his clarifications and research on the Middle East and North Africa (MENA) region that he so kindly made available to us. Further we are very grateful to Professor Robert Wintemute for the research he allowed us to access, and to Professor Javaid Rehman of Warwick University for his inputs on Pakistan. We would also like to thank George Robotham for his incisive readings of various drafts of this text. We extend our great thanks to the individuals who wrote the excellent short essays for this edition (in order of appearance): André du Plessis, Fernando D'Elio (with input by Neha Sood), Anneke Meerkotter (Africa), Douglas Sanders (Asia), Evelyne Paradis (Europe), Gabriel Alves de Faria (Latin America and the Caribbean), and Anna Brown (Oceania). Finally, we would like to acknowledge use of the extensive resources that ARC-international make available on their website (www.arc-international.net), and the excellent database and country information supplied by the NGO, UPR-info (see: www.upr.info.org).

Where readers have any additional information or further sources not recorded in this report, please contact ILGA at information@ilga.org and we will gladly investigate.

The report has been researched and written by Aengus Carroll and Lucas Paoli Itaborahy. It is the tenth updated version of the original report which was researched and compiled by Daniel Ottosson from 2006 until 2010, by Eddie Bruce-Jones and Lucas Paoli Itaborahy in 2011, by Lucas Paoli Itaborahy in 2012, and by Lucas and Jingshu Zhu in 2013 and 2014.

LGBTI ACTIVITY AT THE UN IN 2014 - 2015

WRITTEN BY ANDRÉ DU PLESSIS.³

LOOKING BACK AND LOOKING FORWARDS: WHAT'S BEEN GOING ON AT THE UN ON SOGIE AND INTERSEX

The question “What’s the UN doing on LGBTI rights?” is a tricky one to answer simply because the simple acronym ‘UN’ hides a huge, complicated and multi-faceted family of organisations and fora that operate on any number of issues. The General Assembly in New York is certainly ‘the UN’, but so is the World Health Organization’s representation in Argentina or UNDP’s country office in Bangladesh. As such, this short article offers a bird’s eye overview of the central concerns for SOGIE and intersex issues at the UN over the past year.

It’s a good time to pause and take stock because 2014 was a big year for Sexual Orientation, Gender Identity, Gender Expression (SOGIE) and Intersex issues at the UN. And already 2015 is proving to be another milestone year. The big question is: ‘how do we leverage this - the world’s premier intergovernmental organisation - to make significant changes that will assist LGBTI persons the world over to live in the fullness of their human rights?’

SOGI RESOLUTION TAKE TWO

After more than three years of waiting since the first Sexual Orientation and Gender Identity (SOGI) resolution at the UN Human Rights Council brought by South Africa in June 2011, there was finally a second resolution brought in September 2014 by Brazil, Chile, Colombia and Uruguay.⁴

The statistics from the vote count are encouraging. The resolution passed with the support of States from all regions. It also did so this time with an absolute majority of the Council (the previous resolution passed because of government abstentions and absences). There was also a substantial increase in the margin of success. With 47 States able to vote, it went from a vote margin of 4 in 2011 to a margin of 11. We are seeing a change in governments’ views: The Philippines and Viet Nam were welcome new ‘yes’ votes. Benin, Congo, Kazakhstan and Sierra Leone all abstained or were purposefully

³ ILGA’s UN Programme and Advocacy Manager.

⁴ <http://ilga.org/top-un-human-rights-body-condemns-violence-discrimination-basis-sexual-orientation-gender-identity/>.

absent: these are all States that had voted ‘no’ on similar issues in the past. It is progress, but this incremental pace of change is felt as painfully slow to those whose human rights are being violated on a daily basis.

Of course, the resolution’s ‘ask’ was a modest one: an updated report by the UN.⁵ This is now imminent (to be delivered in June 2015), and civil society will be closely watching for the High Commissioner’s recommendations to the Human Rights Council. That will set the tone for the next resolution, which is expected during 2016.

FAMILY, EXECUTIONS AND TRADITION

Of course there are many other resolutions at the UN that impact LGBTI persons and not just this one specifically on SOGI. Some have been outright hostile, while others are more positive.

In June 2014 we saw Egypt leading a “Protection of the Family” resolution that explicitly refused to include wording recognising the diversity of family forms. While there is, thankfully, nothing specifically excluding such forms, the track we are on is a dangerous one: governments edging towards a ‘national sovereignty’ argument on family forms, with each State deciding for itself what a family means.

Thankfully, at the General Assembly in New York, there was growing support for the recognition that governments must investigate and prosecute those responsible for extrajudicial, summary, and arbitrary executions no matter what group is a target. That includes those targeted on the basis of their sexual orientation or gender identity.⁶

Another (4th since 2009) Russian-led ‘Traditional Values’ resolution was not brought during 2014 as expected, but such a formulation could re-emerge at any point.

THE SECRETARY GENERAL

In the first part of 2015 we saw the Russian Federation fail in a bid to stop UN staff benefits applying to same-sex couples.⁷ While this is not an action with global consequences, it was evidence of a government using LGBTI persons as a political tool in a more general attempt to undermine the authority of the UN Secretary-General. It’s a stark reminder of just how open to attack LGBTI persons are in international politics. We continually have to remind governments we are not pawns in a power game.

⁵ http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/27/32.

⁶ www.ishr.ch/news/un-general-assembly-rights-groups-welcome-condemnation-killing-lgbt-persons.

⁷ www.reuters.com/article/2015/03/24/us-un-gaymarriage-russia-idUSKBN0MK1UW20150324.

We are also drawing near to the end of Ban Ki Moon's term as Secretary General.⁸ This year and 2016 will be years when the shortlist for his successor is drafted, followed by elections. Ban has been a staunch supporter of the human rights of LGBTI persons and we will be looking for an equally supportive successor.

OUR BODIES, OUR HEALTH

The International Classification of Diseases 11th Revision is due by 2017 and we will likely see moves to important reclassifications of identities and conditions that matter to LGBTI persons. Already in 2014, we saw a beta draft from the Working Group including two newly proposed categories: 'Gender incongruence of adolescence and adulthood' and "Gender incongruence of childhood" which would be part of a new chapter on "Conditions related to sexual health".⁹ This takes trans-related issues out of 'mental and behavioural disorders' category.

Similarly, we are hopeful that the variations in sex characteristics will also be depathologised in this revision – a development that would have significant positive impacts for intersex persons as a way to discourage medical practitioners from carrying out mutilating and 'normalising' practices such as genital surgeries, psychological and other medical treatments.

Separately, the World Health Organization will no doubt continue to be a place where the human right to health for all will be fought over by diplomats. With plans for a LGBT health resolution currently shelved, during 2015 and 2016 we can expect there to be real changes in approach.

BREAD & BUTTER

Of course, a lot is happening away from the 'landmark moments' of the UN. We see that in the various country reviews that take place. The most famous of these processes is the Universal Periodic Review (UPR), and we are seeing big increases in recommendations relating to the human rights aspects of human sexuality.

We do see some changes in how countries respond to the UPR recommendations: Zambia, the Russian Federation and Barbados are all examples of countries where not everything to do with SOGI has been rejected (recorded as 'noted') and there have been progressive 'acceptances' (for example, to do with training of public servants). Much of this is down to hard work by, and strong collaboration between, civil society actors.

Similarly, the UN human rights treaty bodies are making recommendations to countries

⁸ His term ends on 31 December 2016.

⁹ <http://apps.who.int/classifications/icd11/browse/l-m/en>.

reviewed under their various mandates. For example, the early-2015 review of Switzerland by the Committee on the Rights of the Child highlighted that non-consensual intersex surgery was a harmful practice and “a kind of violence to children”.¹⁰ And in March 2015, the Human Rights Committee expressed concern about reports of discrimination, harassment, threats to physical integrity and intimidation against persons because of their sexual orientation, and made multiple recommendations to the government.¹¹

Further, the UN’s ‘Special Procedures’ experts are consistently raising LGBTI-relevant issues. In March 2015, the Special Rapporteur on Freedom of Religion or Belief highlighted the violence against LGBT persons carried out in the name of religion, providing opportunities for progressive faith and human rights groups alike to make headways on these issues.¹² Similarly, in September 2014 the Special Rapporteur on Water and Sanitation highlighted the violence in accessing water and sanitation that LGBTI persons face, often linked to deeply entrenched stigmatisation.¹³

These are just a few examples. Significant wins like this are happening frequently in the UN human rights system. Naturally, in all these situations the real news is when these recommendations lead to actual change at country levels. There is evidence that what happens at the UN can help bring about change on the ground. Of course more can and should be done to make that connection.

NOBODY LEFT BEHIND

There will be a lot of pomp and ceremony at the UN Sustainable Development Summit in New York in September (2015) when governments will finally agree the Sustainable Development Goals (SDGs) – the set of targets relating to future international development, replacing the Millennium Development Goals (MDGs) that expire at the end of this year.¹⁴

We are unlikely to find explicit references to SOGIE in the goals themselves. Much work will relate to the establishment of indicators: how these development goals will be measured, and that will continue into 2016. A key cross-cutting principle is likely to be “*leaving no one behind*” and there will be significant work to ensure that LGBTI persons are both universally recognised as marginalised groups, and that there be consequent commitment to eliminate discrimination in national development plans.

¹⁰ <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CRC/C/CHE/CO/2-4&Lang=E>.

¹¹ http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fciv%2fco%2f1&Lang=en.

¹² <http://ilga.org/ilga-muslims-progressive-values-call-visibility-inclusive-religious-voices/>.

¹³ <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/27/55&Lang=E>.

¹⁴ <https://sustainabledevelopment.un.org/topics/sustainabledevelopmentgoals>.

OTHER ANNIVERSARIES

2015 is not just the anniversary of the MDGs. It is also the 20th anniversary of the UN Women's Conference in Beijing. In the Commission on the Status of Women (CSW) in March this year, there was bitter disappointment when the Beijing+20 declaration by governments was a weak, formal declaration. While in other parts of the United Nations issues of sexual orientation are discussed openly – as well as in Beijing itself – the same cannot be said for the CSW.

2016 will see the 10-year anniversary of the Yogyakarta Principles – on the application of international human rights law to the specific situations of LGBTI persons.¹⁵ This moment presents an opportunity to consider their impact in different legal systems, and various policy environments, around the world, and how they can best guide action in meeting the needs that LGBTI persons face today.

INTO THE FUTURE

So looking into a SOGIE and intersex crystal ball of 2015 into 2016, what can we expect to see at the UN?

There will be increasing debate over the definition and protection of the family. Parts of the UN will also start to better address the question of children who are facing stigma and discrimination on the basis of their gender expression, their intersex status or their actual or perceived sexual orientation or gender identity.

With increased attention on these issues, we can expect to see an increase in extreme religious and conservative voices painting an inaccurate and hate-filled picture of LGBTI persons. This will prompt more moderate faith and non-faith voices to speak up and present visions of acceptance and tolerance that should, I think, be our real and collective traditional values of humankind.

With the development agenda so clearly in flow, we will also see an increase in attention to the rights that really matter for many LGBTI persons: economic, social and cultural rights. There will be increasing emphasis that we are not only fighting for non-discrimination in the provision of these rights, but also that we have a right to these rights: to water, to healthcare and to education. In that light, our struggle is linked with that of so many others.

It was against the background of all this activity at the UN that ILGA moved its headquarters to Geneva in May 2014. Being present in the human rights capital of the world has enabled us to be physically present at the table when important decisions are made and, more importantly, to facilitate the input of LGBTI groups into the policy and legal changes

¹⁵ www.yogyakartaprinciples.org/.

being developed at the UN (which we do through frequent notifications and support through the UPR and other processes). An office in Geneva firmly plants ILGA – the family of LGBTI organisations from around the world – as a human rights-based organisation.

With more and more opportunities available to LGBTI advocates at the multilateral level, ILGA is developing capacity to better-engage with parts of the UN system that have been covered less: the work of the UN treaty bodies such as the Committee on the Rights of the Child, and the Committee on Economic, Social and Cultural Rights are some examples where we will put significant resources in place during 2015. There are many other opportunities of course that present themselves on a near-daily basis: developing relationships between ILGA member organisations and UN agency country offices, working with the UN High Commissioner for Refugees, engaging with the International Labour Organization, as well as increased collaboration with UNAIDS and the Global Fund.

And by being in Geneva and part of the international human rights movement, we are also applying in our daily work the principle that all human rights are interconnected: the principle that “I am not truly free while another group remains oppressed”.

And that takes us to a final theme: intersectionality. There will, I believe, be increasing attention given to understanding the human rights challenges faced by LGBTI persons in our wider contexts and identities, giving fuller recognition that our experiences are linked not only to our sexual orientation and gender identity, but also our colour, race, religion, class, HIV status, gender expression, age, and many more.

In all of this, the crucial point is of course to ensure that change that happen at the UN reflect the changes that LGBTI communities actually want. And that everything that is done ‘at the UN’ is continually rooted in how it can assist change in our communities. The UN does not exist for the UN. It exists for ‘we, the peoples’ and our collaborations can help to ensure it delivers.

INTERSECTIONALITY IN LGBTI ADVOCACY

WRITTEN BY FERNANDO D'ELIO (WITH INPUT FROM NEHA SOOD).¹⁶

INTERSECTIONS

"There is no such thing as a single-issue struggle because we don't live single-issue lives."

Audre Lorde

Sexual orientation and gender identity and expression (SOGIE) activism often does not account for the many contexts oppression is expressed in – for example, race, ethnicity, gender, disability, age, class – in which discrimination, violence and other human rights violations play out. Yet LGBTI people who experience these multiple types of oppression are not necessarily able to unpick which thread they suffer from most – these oppressions are experienced intersectionally.

To conceive LGBTI people's rights as isolated and exclusive of that group – just like rights of any other groups or individuals, or those associated with any particular issue – is to overlook the existence of the multiple identities and circumstances that shape and determine how people experience their lives. An intersectional approach has great scope to address discrimination and violations perpetuated by both State and non-State actors.

We all are equal, but definitively, we are not all the same. Do violations of human rights based on SOGIE impact equally on all LGBT people? Can violations to any right, such as right to take part in governments, to free choice of employment or to an adequate standard of living affect LGBTI people in similar way to the rest of the population? Are grounds of violence against gay men and lesbians the same or even comparable with each other? Is the discrimination faced by a gay man, whose gender expression is more feminine according to cultural patterns, identical to that faced by a masculine gay man?

The experience of an indigenous gay man in any Latin American city is qualitatively different than that of a white in that same city. In the same way, the experiences of being lesbian, old, disabled, poor, trans woman, or any other identity, are unique and different. Also, LGBTI people may face homophobia, biphobia or transphobia from family, racism within LGBT spaces and both at work, in public or online.

Intersectional approaches reveal and address these multiple identities, exposing the

¹⁶ The authors are from the Sexual Rights Initiative, see: www.sexualrightsinitiative.com.

different types of discrimination and disadvantages that happen as a consequence of the combination of identities. This approach aims to address the way in which ethnicity, patriarchy, class oppression and other systems of discrimination create inequalities that structure the relative situations of marginalised people. It takes account of historical, social and political contexts and also recognises unique individual experiences resulting from the coming together of different types of identity.

Also, answering questions such as those listed above leads to an understanding that LGBTI people's rights can neither be considered nor addressed separately from the rights of women, children and youth, people with disabilities, ethnic minorities, or the rights within a variety of other categories. Therefore, each time that any related mechanism or instrument addresses and recognises such rights, is also includes LGBTI people in the scope of its application and vice versa.

Intersectional analysis posits that we should not understand the combining of identities as additively increasing one's load, but instead as producing substantively distinct experiences. In other words, the intention is not to demonstrate that one group is more victimised or privileged than another, but to reveal meaningful distinctions and similarities in order to overcome discriminations and put the conditions in place for all people to fully enjoy their human rights.

Intersectionality is a tool for analysis, advocacy and policy development that addresses multiple discriminations and helps comprehension of how different circles of identities impact people's access to rights and opportunities. This approach is critical in human rights and development work, and it suggests new and different approaches for the efforts of LGBTI human rights advocates.

There are many examples where intersectional approach has been used to advance human rights of LGBTI people, where intersecting identities inevitably led to higher vulnerability. These offer visions of how the approach could be used.

For example, in 2014 a story of a large group gay and transgender people (mostly youth and even children), who were living in a storm drain in New Kingston, Jamaica, was widely distributed across news (internet and print) media. Their situation was made visible and gained the attention of the Jamaican government and general public because of a series of local and international investigative journalistic pieces that highlighted their plight.¹⁷

Homeless and street youth who identify as gay or trans are made more persistently and more severely vulnerable than heterosexual or cisgender homeless counterparts; yet, existing policies do not separately identify or address this particular vulnerability. Furthermore, human rights violations faced by LGBTI homeless youth are rarely addressed by traditional means of law enforcement, largely due to the fact of longstanding and too-

¹⁷ See the following for reportage on this situation: http://www.jamaicaobserver.com/news/Cop-proposes-shelter-for-gay-homeless-men_17238821; http://www.huffingtonpost.com/2014/12/02/planting-peace-lgbt-homeless_n_6255526.html; and <http://www.advocate.com/world/2014/03/12/judge-rules-homeless-jamaican-lgbt-youth-can-keep-living-sewers>.

often reinforced mistrust of police. As a result, crimes and police misconduct often go unreported. Hate crime laws often create a false dichotomy in public discourse: though important in addressing crimes directed against LGBTI identities their existence can erase the relevance of the crime as being specifically directed at LGBTI people. A full understanding of the problem of the vulnerability of LGBTI homeless people demonstrates that though some of the crimes they fall victim to may be addressed by hate crimes law, changes in structural support are necessary to remedy the systematic victimisation of homeless LGBTI youth. This case is a clear example of how an intersectional approach - where being both homeless and LGBTI constructs a combined base of vulnerability - could and should be used to design remedies and meaningful policies.

In the US where the problem of discrimination and violence based on ethnic difference - mainly between white and black population but not exclusively - remains unsolved, there are several studies that link human rights violations perpetuated against gay men with discrimination based on ethnicity. Amongst these, studies, there is evidence of significant differences in the reporting of harassment at school for students from different ethnic groups, access to healthcare and employment, rates of HIV prevalence. All of them show the vulnerability of non-white LGBTI people and many of them examine differences based on racial identity and sexual orientation, and examined the intersections of race and LGBTI identity.

But the group where intersections such as gender, gender identity, class, ethnicity, activity, homeless status, among others could be identified most easily, with no doubt and all around the world, is the trans women population. Every year in November Transgender Europe¹⁸ provides a special update of the Trans Murder Monitoring (TMM) Project¹⁹ results for the International Transgender Day of Remembrance (TDOR), so as to assist activists worldwide in raising public awareness of hate crimes against trans people. The TDOR 2014 update has revealed a total of 226 cases of reported killings of trans people, in particular trans woman, from 1 October 2013 to 30 September 2014. These murders don't happen in a vacuum. They are related to the systemic oppression of trans women that exposes the most vulnerable to violence. It's directly related to the extreme exclusion that trans women face in access to housing, employment, healthcare access, physical and sexual assault amongst other areas. Extreme poverty and a lack of employment options can lead to homelessness, and often means sex work is the only job option available. And because sex work is stigmatised, and in many countries criminalised, there is a lack of resources put into protection of sex workers, and neither are there policies to address their various needs in place.

In fact, in most countries of Latin America, the specific intersection of trans women of indigenous origin doing sex work holds a particular cultural position. Organisations that support them represent a set of people who are barely valued as fully human. Sadly,

¹⁸ See: <http://tgeu.org/>.

¹⁹ See: http://www.transrespect-transphobia.org/en_US/tvt-project/tmm-results/tdor-2014.htm.

commonly this perception is strengthened by LGBTI advocate organisations that actively ignores trans sex work, and thereby contributes to erasing this core intersection. It is in this context that talking about or acknowledging the fact that murdered victims are often sex workers is avoided because of some version of “respectability politics”. These identity intersections of ethnicity, sex work, gender identity, migrant status and class, are not limited to Latin America, but appear to be present in all regions of the world where similar phenomenon is evidenced and rarely addressed, or even documented, properly.

However, an example on how these intersections that shape complex systems of oppression can be used not only for resistance but also for fighting against exclusion and advancing rights can be seen in South America. Here intersections of gender identity, class, activity and ethnicity molded a new identity within some groups of trans women, who took the term ‘travesti’ – a term originally used in medical and police contexts, and appropriated and re-signified it for themselves. They started using it for rights recognition, and gradually through staying with these particular intersections, have gained both respect as an identity and some significant policy changes.

The movement for human rights for LGBTI people is often thought of as separate to struggles for race, gender, disability, age, class, faith equality and various other movements. In fact, the rights of LGBTI people are sometimes represented as competing with other groups such as people of faith. However, that ignores the fact that LGBTI people exist within every community, identity group, faith and context; and that people from all those groups exist within LGBTI communities. Many people with intersectional identities face heightened discrimination and exclusion.

Intersectionality is a vast subject which a narrowed approach cannot do justice to and, if we do not look at the intersections, we are at risk of painting an incomplete picture which fail to see or acknowledge the very real ways that multiple marginalised identities play out in LGBTI lives.

Addressing human rights violations against LGBTI people through the intersectional perspective of any relevant subject will help to move towards meaningful and comprehensive advances. It will demonstrate the multiple ways that intersectionality can be used, and how it has the potential to reveal interlocking relationships of oppression and privilege, exposing how experiences of LGBTI people vary due to the intersections of gender, ethnicity, class, religion, birthplace, politics, etc.

With an intersectional lens, activists, human rights defenders, policy makers, stakeholders can also uncover how political, economic and social structures such as patriarchy, capitalism and neo-liberalism generate and perpetuate social inequality in all spaces of societies. It can show how the State’s institutions produce and replicate systems of oppression based on gender, sexuality, class, race, gender, religion, ability, amongst others, all of which play in simultaneous ways and affect particularly the most marginalised individuals and groups.

The intersectional approach can also encourage leaders and advocates for LGBTI people rights to make the necessary links and connections between various and concurrent forms of oppression and discriminations, making them realise that social injustice cannot be eliminated in isolation.

But most important, intersectionality should inspire advocates and other human rights defenders to work together, collaborating and supporting one another among different movements and initiatives for human rights such as the rights of women, workers, people with disabilities, environment, indigenous, and migrants. In fact all groups rendered vulnerable by State and non-State actors that suffer consequences of marginalisation, exclusion and violations to their rights in a world where structures are used to sustain gender, class, heterosexual and cisgender privilege can benefit from an intersectional approach to their work.

Further resources:

- Andy Kopsa, “Intersectionality, Women’s Rights, LGBT Rights and Moving the Conversation Forward” *Huffington Post*, 9 March 2015 www.huffingtonpost.com/andy-kopsa/intersectionality-womens-rights-lgbt-rights-and-moving-the-conversation-forward_b_6810974.html.
- Jarune Uwujaren and Jamie Utt “Why Our Feminism Must Be Intersectional (And 3 Ways to Practice It)” *Everyday Feminism*, 11 January 2015 <http://everydayfeminism.com/2015/01/why-our-feminism-must-be-intersectional/>.
- Kimberly Crenshaw “Demarginalising the Intersections of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics” (1989) *The University of Chicago Legal Forum*, 142 at: <http://philpapers.org/archive/CREDTI.pdf>.
- Svati P. Shah “Sexuality and “The Left”: Thoughts on Intersections and Visceral Others”, (Summer 2009) *The Scholar and Feminist Online* 7(3) at: http://sfonline.barnard.edu/sexecon/shah_01.htm.
- AWID (Association for Women’s Rights in Development) “Intersectionality: A Tool For Gender And Economic Justice”, *Facts and Issues*, No. 9. August 2004, AWID, online at: www.awid.org/Library/Intersectionality-A-Tool-for-Gender-and-Economic-Justice2.



ilga

GLOBAL OVERVIEW

LGB LEGISLATION GLOBAL OVERVIEW

The year in brackets refers to the year when the reform came into force.

If no year is stated, either there has never been any regulation in the relevant area or no information could be found about the year the law took effect. Countries and entities that are not Members States of the UN are indicated in this text by use of italics.

Same-sex sexual acts legal (118 States) 61% of UN States

Africa (19)

Benin, Burkina Faso, Cape Verde (2004),²⁰ Central African Republic,²¹ Chad, Congo,²² Côte d'Ivoire, Democratic Republic of Congo, Djibouti,²³ Equatorial Guinea, Gabon, Guinea-Bissau (1993),²⁴ Lesotho,²⁵ Madagascar, Mali, Mozambique,²⁶ Niger,²⁷ Rwanda,²⁸ São Tome & Principe,²⁹ South Africa (1998).

²⁰ The 2004 Penal Code does not criminalise same-sex sexual acts. However, until it came into force, Article 71 of the previous code of 1886 provided for 'security measures' for people who habitually practice 'vice against the nature'. Text of the new Penal Code is available at: www.mj.gov.cv/index.php?option=com_docman&task=doc_download&gid=388&Itemid=66.

²¹ In 2014 we included CAR in the 'illegal' list, but did so mistakenly as the law only outlaws same-sex sexual activity in a public place, and not same-sex sexual activity *per se*. We have thus re-inserted it into the 'legal' category. The text of the code reads: "*Est puni d'un emprisonnement de quinze à 20 ans et d'une amende de 50.000fcs à 500.000fcs, quiconque a des rapports sexuels avec les personnes de son sexe*".

²² In the Republic of Congo Brazzaville, the text of the Penal Code is the one that was in force when the country was still a colony of France. Art. 331 of this Code (as amended in 1947) only prohibits same-sex sexual behaviour with a person younger than 21 years. The text of the Penal Code (inherited from France) has been published by the Ministère de la Justice (République du Congo, Brazzaville) in the book *Codes d'Audience – Recueil de Codes et Textes Usuels* (Paris: Éditions Giraf, 2001), Art. 33 at 218.

²³ See Djibouti Penal Code of 1995, available at: www.djibouti.mid.ru/doc/UK.htm.

²⁴ See Articles 133-138 on sexual offences in the new Penal Code of 1993, online at: www.rjclpl.org/sections/informacao/anexos/legislacao-guine-bissau4332/codigos-e-estatutos9979/codigo-penal-e/.

²⁵ In the Penal Code Act 2010, which had entered into force on 9 March 2012, sodomy does not seem to be criminalised as it used to be in section 185(5) of the 1939 Criminal Procedure and Evidence Act. The text of the new code is available at: <http://www.lesothoii.org/ls/legislation/act/2012/6>.

²⁶ On 11 July 2014, the Parliament approved, by consensus, Law 35/2014, which replaces their former Penal Code from 1886. The new Penal Code removes Articles 70 and 71, which had provided for the imposition of security measures on people who habitually practiced "vices against nature" and thereby criminalised same-sex acts between consenting adults. The revised Penal Code was published on 31 December 2014 and came into force after 180 days. Text of the law is available at: www.wlsa.org.mz/wp-content/uploads/2014/11/Lei-35_2014Codigo_Penal.pdf.

²⁷ The 1961 Penal Code with amendments up to 2003 is available at: www.unhcr.org/refworld/docid/47fb8e642.html.

²⁸ See the Rwanda Penal Code of 1980. Original text of the law is available at: www.wipo.int/wipolex/en/text.jsp?file_id=221101.

²⁹ A new Penal Code was approved by Law 6/2012 and entered into force on 6 November 2012, which does not contain any provisions criminalising same-sex consensual acts. Text of the law is available at: www.rjclpl.org/sections/informacao/anexos/legislacao-sao-tome-e2539/codigos-e-estatutos-sao2859/codigo-penal-sao-tome-e/.

Asia (19)

Bahrain (1976),³⁰ Cambodia, China (1912 and 1997),³¹ East Timor (1975), most parts of Indonesia, Israel (1988), Japan (1882), Jordan (1951), Kazakhstan (1998), Kyrgyzstan (1998), Laos, Mongolia (1961),³² Nepal (2008),³³ North Korea, Philippines, South Korea, *Taiwan* (1912),³⁴ Tajikistan (1998), Thailand (1957), Vietnam, as well as the *West Bank* (1951) in the *Occupied Palestinian Territory*.

Europe

Albania (1995), Andorra (1990), Armenia (2003), Austria (1971), Azerbaijan (2000), Belarus (1994), Belgium (1795), Bosnia and Herzegovina (1998-2001),³⁵ Bulgaria (1968), Croatia (1977), Cyprus (1998), Czech Republic (1962), Denmark (1933), Estonia (1992), Finland (1971), France (1791), Georgia (2000), Germany (1968-69),³⁶ Greece (1951), Hungary (1962), Iceland (1940), Ireland (1993), Italy (1890), *Kosovo* (1994)³⁷, Latvia (1992), Liechtenstein (1989), Lithuania (1993), Luxembourg (1795), Macedonia (FYROM) (1996), Malta (1973), Moldova (1995), Monaco (1793), Montenegro (1977), Netherlands (1811),³⁸ *Northern Cyprus* (2014),³⁹ Norway (1972), Poland (1932),

30 A new Penal Code was enacted in 1976 that decriminalised consensual adult same-sex sexual behaviour, and this repealed the old Penal Code of the Persian Gulf imposed by the British. This Penal Code allows sodomy from the age of 21, and therefore sodomy was decriminalised as of adoption of the new code. Text of the law is available at: www.track.unodc.org/LegalLibrary/LegalResources/Bahrain/Laws/Bahrain%20Penal%20Code%201976.pdf.

31 Explicit prohibitions of “consenting jijian (sodomy)” were abolished in China around 1912 (the end of the Qing Dynasty). Since then there have been no explicit prohibition of sexual acts between persons of the same sex. However, between 1979 and 1997 (the period of China’s first penal code), non-consenting same-sex sexual acts or those with minors came under the broader term “hooliganism” (itself decriminalised in 1997). Same sex sexual behaviour has also been decriminalised in all Chinese associates: Hong Kong (1991) and Macau (1996). It is notable that in its 2nd cycle UPR, China accepted recommendations from the Netherlands and Ireland to introduce non-discrimination laws inclusive of SOGI in the field of employment and education.

32 See Article 125 of the Criminal Code of Mongolia of 2002, in which “satisfaction of sexual desire in an unnatural manner” is a crime only when it is done by violence or threat of violence or by taking advantage of the helpless situation of the victim, as well as by humiliation. Text of the law is available at: http://www.unodc.org/res/cld/document/mng/2001/criminal_code_of_mongolia_html/Mongolia_Criminal_Code_2002.pdf For its 2nd cycle UPR, Mongolian advocates produced an excellent factsheet with recommendations to government on various areas, including LGBTI, see: www.upr-info.org/sites/default/files/general-document/pdf/upr_advocacy_factsheets_mngof_en.pdf.

33 The Supreme Court of Nepal ruled in 2008 that LGBTI people would be regarded as “natural persons” under law. While legislation to this effect was anticipated in 2010, there has been no legislation adopted as yet. See: <http://www.gaylawnet.com/laws/np.htm>. Nepal’s 2nd cycle UPR review will be in October 2015. However, at its Mid-term Implementation Assessment (MIA) in November 2013, the non-governmental organisation Blue Diamond Society reported that sexual orientation, gender identity and intersex non-discrimination issues are still not addressed in legislation, see: www.upr-info.org/followup/index/country/nepal at paragraphs 44 and 45. In October 2014, the government attempted to introduce a new Civil Code that does not account for 3rd sex individuals, see: <http://pahichan.com/govt-registers-bill-of-civil-code-at-parliament-ignoring-the-recognition-of-third-gender/>. Also, see *Being LGBT in Asia: Nepal Country Report, 2014* (UNDP/USAID) www.usaid.gov/sites/default/files/documents/1861/Being_LGBT_in_Asia_Nepal_Country_Report.pdf.

34 Taiwan is not a member state of the United Nations.

35 The three parts of Bosnia and Herzegovina decriminalised ‘homosexuality’ in three different years, each by enacting a new Criminal Code that introduced an equal age of consent: Federation of Bosnia and Herzegovina (1998), Republika Srpska (2000), Brcko District (2001). Text of the law is available at: www.ohr.int/ohr-dept/legal/crim-codes/.

36 East Germany (1968) and West Germany (1969).

37 Kosovo is not a member state of the United Nations.

38 Same-sex sexual acts are also legal in the three Netherlands associates (Aruba, Curaçao and St Maarten) and in the Netherlands territories of Bonaire, Saba and St Eustatius.

39 Turkish Republic of Northern Cyprus is not a member of the United Nations. On 27 January 2014, its parliament voted to abolish Article 171 and 173 of the Criminal Code that foresaw five years’ imprisonment for same-sex sexual behaviour, and three years’ imprisonment for “attempts to commit [these] crimes”, see: www.lgbt-eu.eu/press-releases/northern-part-of-cyprus-decriminalises-homosexuality/.

Portugal (1983), Romania (1996), Russia (1993), San Marino (1865), Serbia (1994), Slovakia (1962), Slovenia (1977), Spain (1979), Sweden (1944), Switzerland (1942), Turkey (1858),⁴⁰ Ukraine (1991), United Kingdom (and associates),⁴¹ Vatican City.⁴²

Latin America and Caribbean

Argentina (1887), Bahamas (1991), Bolivia, Brazil (1831), Costa Rica (1971), Chile (1999), Colombia (1981), Cuba (1979), Dominican Republic (1822), Ecuador (1997),⁴³ El Salvador (1800s), Guatemala (1800s), Haiti (1800's), Honduras (1899), Mexico (1872), Nicaragua (2008), Panama (2008),⁴⁴ Paraguay (1880), Peru (1836-1837), Suriname (1869), Uruguay (1934), Venezuela (1800s).

North America

Canada (1969), the United States (2003).⁴⁵

Oceania

Australia,⁴⁶ Fiji (2010),⁴⁷ Marshall Islands (2005), Micronesia, New Zealand (1986) and some associates,⁴⁸ Palau (2014),⁴⁹ Vanuatu.

Note that same-sex sexual activities between adults have never actually been criminalised in several countries listed in the 'legal' category, including Burkina Faso, Congo, Côte d'Ivoire, Democratic Republic of Congo, Gabon, Madagascar, Mali, Niger and Rwanda.

40 The Turkish Imperial Penal Code of 1858 considered sodomy within rape a specific crime, but there is no mention of consensual sodomy. The criminalising law is said to have been a translation of 1810 French Penal Code and was in effect till 1926, see: http://archive.org/stream/TheImperialOttomanPenalCode/OttomanPenalCode_djvu.txt.

41 England & Wales (1967), Northern Ireland (1982), Scotland (1981), Akrotiri & Dhekelia (2000), Anguilla (2001), Bailiwick of Guernsey (1983), Bermuda (1994), British Virgin Islands (2001), Cayman Islands (2001), Falkland Islands (1989), Gibraltar (1993), Isle of Man (1992), Jersey (1990), Montserrat (2001), Pitcairn, South Georgia, St Helena, Turks & Caicos Islands (2001) and all other territories.

42 The Vatican is not a member state of the United Nations.

43 On 27 November 1997, the Ecuador's Constitutional Court declared Article 516 of the Penal Code unconstitutional, which criminalised same-sex sexual acts. See CCPR/C/Ecuador/5, available at: www2.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/CCPR-C-Ecuador-5.doc.

44 Decree No. 332, Official Gazette of 31 July 2008.

45 In the 2003 landmark case of *Lawrence v. Texas*, the Supreme Court brought decriminalisation of sodomy to fourteen states (Alabama, Florida, Idaho, Kansas, Louisiana, Michigan, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Texas, Utah and Virginia) and Puerto Rico. Before that case, sodomy laws had been repealed in the following states: Alaska (1980), Arizona (2001), Arkansas (2002), California (1976), Colorado (1972), Connecticut (1971), Delaware (1973), Georgia (1998), Hawaii (1973), Illinois (1962), Indiana (1977), Iowa (1977), Kentucky (1992), Maine (1976), Minnesota (2001), Montana (1997), Nebraska (1978), Nevada (1993), New Hampshire (1975), New Jersey (1979), New Mexico (1975), New York (1980/2001), North Dakota (1975), Ohio (1974), Oregon (1972), Pennsylvania (1980/1995), Rhode Island (1998), South Dakota (1977), Tennessee (1996), Vermont (1977), Washington (1976), West Virginia (1976), Wisconsin (1983), Wyoming (1977) and District of Columbia (1993), as well as the USA associates American Samoa (1980), American Virgin Islands (1985), Guam (1978) and Northern Mariana Islands (1983).

46 New South Wales (1983), Norfolk Island (1993), Northern Territory (1984), Queensland (1991), South Australia (1972), Tasmania (1997), Victoria (1981), Western Australia (1990).

47 The sodomy statutes were repealed by the Crimes Decree 2009, which came into force on 1 February 2010.

48 *Niue* (2007) and *Tokelau* (2007).

49 See: www.humandignitytrust.org/pages/NEWS/News?NewsArticleID=300.

Same-sex sexual acts illegal (75 States) 39% of UN States

Africa

Algeria, Angola, Botswana, Burundi, Cameroon, Comoros, Egypt, Eritrea, Ethiopia, Gambia, Ghana, Guinea, Kenya, Liberia, Libya, Malawi, Mauritania, Mauritius, Morocco, Namibia, Nigeria, Senegal, Seychelles, Sierra Leone, Somalia, South Sudan, Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia, Zimbabwe.

Asia

Afghanistan, Bangladesh, Bhutan, Brunei Darussalam, *Gaza (in the Occupied Palestinian Territory)*, India, *South Sumatra and Aceh Province (in Indonesia)*, Iraq,⁵⁰ Iran, Kuwait, Lebanon, Malaysia, Maldives, Myanmar, Oman, Pakistan, Qatar,⁵¹ Saudi Arabia, Singapore, Sri Lanka, Syria, Turkmenistan, United Arab Emirates, Uzbekistan, Yemen.

Latin America & Caribbean

Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St Kitts & Nevis, St Lucia, St Vincent & the Grenadines, Trinidad and Tobago.

Oceania

Cook Islands (associates to New Zealand), Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu.

DEATH PENALTIES (IMPLEMENTED IN SIX UN STATES [FIVE BY STATUTE, ONE VIGILANTE], TWO PROVINCES AND ONE VIGILANTE-HELD AREA).

The death penalty for same-sex sexual intimacy is currently codified as being in operation in eight UN States, but it appears to be implemented only in five: **Iran, Mauritania, Saudi Arabia, Sudan, and Yemen**. While not officially codified in a sixth UN State, the death sentence is implemented widely across **Iraq**. It is also enacted provincially in **12 northern states in Nigeria** and the **southern parts of Somalia**. We are not aware of contemporaneous evidence that consensual same-sex sexual activity has been targeted for the death penalty in **Afghanistan, Pakistan⁵² or Qatar**. However, there is evidence that people who express their sexual or gender diversity are targeted in the areas occupied by **Daesh (ISIL/ISIS)** in northern Iraq and Syria. Brunei Darussalam is currently phasing in a Syariah Penal Code that sees, in black letter law, the death penalty introduced for certain same-sex sexual activity in 2016, but seems unlikely to be implemented in actuality. We have categorised our information on the death penalty accordingly.

⁵⁰ Although Iraq's Penal Code does not specify same-sex sexual behaviour, we include Iraq in this list because it is blatantly clear that non-State actors, including local judges who interpret Sharia principles in a particularly severe way and militias, target those known (or perceived) to be of diverse sexual orientation. See entry on Iraq below.

⁵¹ The Qatari Penal Code of 2004 does not outlaw consensual same-sex sexual behaviour *per se*, but the Sharia code runs in parallel with the civil code which does target same-sex sexual behaviour.

⁵² The authors are grateful to Professor Javaid Rehman of Warwick University for his opinion of the law regarding same-sex sexual relations, and its implementation, in Pakistan.

It is important to note that although each of the following countries adopts either a Sharia code in parallel to their civil codes (one allowed by the other, and generally just applicable to people within the Muslim faith), or a purely Sharia code, the adoption of the death penalty for specific same-sex sexual behaviours is the result of particular interpretation of the code. Interpretation of the principles of law encoded in the Sharia varies widely across States and territories (and non-States) that utilise it, and only a small number employs the death penalty.

- 1 **Death penalty** for same-sex sexual behaviour codified under Sharia and implemented countrywide (5):
Africa – **Mauritania, Sudan.**
Asia – **Iran, Saudi Arabia, and Yemen.**
- 2 **Death penalty** for same-sex sexual behavior codified under Sharia and implemented provincially (2):
Africa – 12 northern states in Nigeria and the southern parts of Somalia.
- 3 **Death penalty** for same-sex sexual behaviour codified under Sharia but not known to be implemented for same-sex behaviour specifically (3):
Asia – **Afghanistan, Pakistan** and **Qatar.**
- 4 **Death penalty** for same-sex sexual behaviour codified under Sharia implemented by vigilantes/non-State actors (2):
Asia – **Iraq** and Daesh (ISIS / ISIL)-held territories in Northern Iraq and northern Syria.⁵³
- 5 **Death penalty** for same-sex sexual behaviour codified under Sharia due in 2016 countrywide (1):
Asia – Brunei Darussalam.⁵⁴

⁵³ ILGHRC Timeline of Publicized Executions for “Indecent Behavior” by IS Militias (retrieved 30 April 2015), at: <http://iglhrc.org/dontturnaway/timeline>.

⁵⁴ See country entry on Brunei Darussalam for details about implementation.

Equal age of consent for same and different sex sexual acts (103 States) 53% of UN States

Africa

Burkina Faso (1996), Cape Verde (2004),⁵⁵ Central African Republic, Democratic Republic of Congo,⁵⁶ Djibouti,⁵⁷ Equatorial Guinea (1931), Lesotho (2010), Mali (1961),⁵⁸ Guinea-Bissau (1993),⁵⁹ Mozambique, São Tome & Príncipe, South Africa (2007).⁶⁰

Asia

Cambodia, China (1996-2006),⁶¹ East Timor (2009), Israel (2000), Japan (1882), Jordan (1951), Kazakhstan (1998), Kyrgyzstan (1998), Laos, Mongolia, Nepal, North Korea, Philippines, South Korea, *Taiwan*, Tajikistan (1998), Thailand (1957), Vietnam, as well as the *West Bank* (1951) in the *Palestinian Authority*.

Europe

Albania (2001), Andorra, Armenia (2003), Austria (2002), Azerbaijan (2000), Belarus (2000), Belgium (1985), Bosnia & Herzegovina (1998-2001),⁶² Bulgaria (2002), Croatia (1998), Cyprus (2002), Czech Republic (1990), Denmark (1976),⁶³ Estonia (2002), Finland (1999), France (1982),⁶⁴ Georgia (2000), Germany (1994/89),⁶⁵ Hungary (2002), Iceland (1992), Ireland (1993), Italy (1890), *Kosovo* (2004), Latvia (1999), Liechtenstein (2001), Lithuania (2003), Luxembourg (1992), Macedonia (1996), Malta (1973), Moldova (2003), Monaco (1793), Montenegro (1977), Netherlands (1971),⁶⁶ Norway (1972), Poland (1932), Portugal (2007), Romania (2002), Russia (1997), San Marino

55 The 2004 Penal code does not impose different ages of consent for sexual acts. See Chapter 5 of Section II, available at: www.mj.gov.cv/index.php?option=com_docman&task=doc_download&gid=38&Itemid=66.

56 Articles 167 and 172 of the Penal Code, as amended by Law 06/018 of 20 July 2006, do not distinguish the sexual orientation of the contacts, and both apply to indecent or immoral behaviour with respect to persons under 18: text of the law is available at: www.leganet.cd/Legislation/JO/2006/JO.01.08.2006.C.P.P.pdf.

57 See Djibouti Penal Code of 1995, available at: www.djibouti.mid.ru/doc/UK.htm.

58 See Article 180 of the Code Pénal of 1961. Original text is available at: www.wipo.int/wipolex/en/text.jsp?file_id=193676.

59 Articles 133-138 on sexual offences in the new Penal Code of 1993 appears to apply regardless of sexual orientation. Text of the law is available at: www.rjcp.org/sections/informacao/anexos/legislacao-guine-bissau4332/codigos-e-estatutos9979/codigo-penal-e/.

60 Article 362 of the Penal Code prohibits any act against nature or any indecent act with someone of the same-sex under the age of 18, while Article 358 contains a general prohibition of indecency with children of either sex under the age of 16. Text of the law available at: www1.umn.edu/humanrts/research/Penal%20Code%20%28English%29.pdf.

61 In mainland China, the age was equalised with the decriminalisation of hooliganism in 1997; also in Hong Kong (2005/2006) and in Macau (1996).

62 The three parts of Bosnia and Herzegovina decriminalised same-sex sexual relations in three different years, each by enacting a new Criminal Code that introduced an equal age of consent: Federation of Bosnia and Herzegovina (1998), Republika Srpska (2000), Brčko District (2001); see: www.ohr.int/ohr-dept/legal/crim-codes/.

63 The Faeroe Islands (1988), Greenland (1979).

64 The law applies to the following overseas departments and territories upon adoption: French Guiana, Martinique, Guadeloupe, Reunion, St Barthélemy, St Martin, St Pierre & Miquelon, as well as to French Polynesia, New Caledonia and Wallis & Futuna since 1984, and also to Mayotte.

65 East Germany (GDR) in 1989 and the rest of Germany in 1994, text of the 1994 law available at: lexetius.com/StGB/175.

66 The age of consent is also equal in the three Netherlands associates: Aruba (2003), Curaçao (2000) and St Maarten (2000), and also in the three Netherlands' territories of Bonaire (2000), Saba (2000) and St Eustatius (2000).

(1865), Serbia (2006), Slovakia (1990), Slovenia (1977), Spain (1979), Sweden (1978), Switzerland (1992), Turkey (1858), Ukraine (1991), United Kingdom (2001–2008),⁶⁷ *Vatican City*.

Latin America and the Caribbean

Argentina (1887), Bolivia, Brazil (1831), Chile, Colombia (1981), Costa Rica (1999), Cuba, Dominican Republic, Ecuador (1997), El Salvador, Guatemala, Haiti, Honduras, Mexico (1872), Nicaragua (2008), Panama (2008), Peru (1836–37), Uruguay (1934) and Venezuela.

North America:

Most parts of the United States.

Oceania

Most parts of Australia,⁶⁸ Fiji (2010), Marshall Islands, Micronesia, Palau, Vanuatu (2007) and New Zealand (1986).⁶⁹

Unequal age of consent for same and different sex sexual acts (15 States) 8% of UN States

Africa

Benin (1947),⁷⁰ Congo (1947),⁷¹ Côte d'Ivoire,⁷² Gabon,⁷³ Madagascar,⁷⁴ Niger,⁷⁵ Rwanda.⁷⁶

67 Legislation equalising the age of consent (at 16 in England & Wales and Scotland; at 17 in Northern Ireland) entered into force January 2001. The Sexual Offences Order 2008 (Northern Ireland) lowered the latter age limit to 16 (see: www.legislation.gov.uk/nisi/2008/1769/contents), Akrotiri & Dhekelia (2003), Falkland Islands (2005), Isle of Man (2006), Jersey (2007), Guernsey (2010), Pitcairn, South Georgia, St Helena as well as all more or less uninhabited islands. As to Gibraltar, the Supreme Court made a declaration in 2011 to the effect that an unequal age of consent is unconstitutional under Gibraltar law (previously 18 for gay men but 16 for heterosexuals and lesbians. Therefore, an equal age of consent of 16 was set for all.

68 All states and territories but Queensland: New South Wales (2003), Norfolk Island (1993), Northern Territory (2004), South Australia (1975), Tasmania (1997), Victoria (1981), Western Australia (2002).

69 New Zealand itself had equal age since 1986; New Zealand associates of Niue (2007) and Tokelau (2007).

70 Benin has a higher age limit for same-sex sexual acts. Since a 1947 amendment of Article 331 of the Penal Code of 1877 the first paragraph of Article 331 has fixed a general age limit of 13 for sex with a child of either gender, but the third paragraph has penalised any act that is indecent or against nature if committed with a person of the same sex under 21. Text of the amendment is available at: www.legifrance.gouv.fr/jopdf/common/fo_pdf.jsp?numJO=0&dateJO=19471123&pageDebut=11567&pageFin=&pageCourante=11569.

71 According to Art. 331 of the Penal Code (as amended in 1947), the age of consent is 13 for heterosexual sex, but "anyone who has committed an indecent act or an act against nature with an individual of the same sex younger than 21 years, will be punished with imprisonment of six months to three years and with a fine of 4 000 francs up to 1 000 000 francs". The text of the Penal Code (inherited from France) has been published by the Ministère de la Justice (République du Congo, Brazzaville) in the book *Codes d'Audience – Recueil de Codes et Textes Usuels* (Paris: Éditions Giraf, 2001); Art. 331 can be found at 218.

72 See Article 356 and 358 of the Code Pénal. Original text is available at: www.wipo.int/wipolex/en/details.jsp?id=6480.

73 See Article 258 of the Code Pénal. Original text is available at: www.wipo.int/wipolex/en/text.jsp?file_id=266824. According to Scott Barclay, Mary Bernstein and Anna-Maria Marshall *Queer mobilizations: LGBT activists confront the law* (New York: NYU Press, 2009) at 128, the age of consent for same-sex sexual relations was raised from 15 to 21 in 1969.

74 See Article 331 of the Code Pénal. Original text is available at: www.vertic.org/media/National%20Legislation/Madagascar/MG_Code_Penal.pdf.

75 See Articles 278 and 282 of the Code Pénal. Original text is available at: www.vertic.org/media/National%20Legislation/Niger/NE_Code_Penal.pdf.

76 See Articles 358 and 362 of the Code Pénal. Original text is available at: www.wipo.int/wipolex/en/text.jsp?file_id=221101.

Asia

Bahrain, Indonesia.

Europe

Greece,⁷⁷ and one United Kingdom associate.⁷⁸

Latin America & Caribbean

Bahamas, Paraguay, Suriname, some United Kingdom associates.⁷⁹

North America:

Canada, some parts of the United States.

Oceania

Some parts of Australia.⁸⁰

Propaganda laws (4 States) 2% of UN States

The concept of introducing so-called ‘anti-homosexuality’ propaganda laws to support existing criminal laws (for example in Nigeria, and previously conceived in Uganda), or as stand-alone pieces of legislation in non-criminalising countries (such as former Soviet States), became significantly more widespread in 2013, but we are pleased to note appear to have progressed little in 2014/early 2015. In 2013, Belarus, Georgia, Latvia, Kazakhstan and Ukraine all considered calls or proposals for such laws (none of which have as yet come to pass), while the parliaments in Armenia, Hungary and Moldova rejected such propositions. In 2014, similar calls were made in Kyrgyzstan, Tanzania and Uganda, none of which have as yet taken hold.

The logic that is presented in defence of such proposals revolves around the protection of public morality, particularly as pertaining to children, presents serious problems for advocates and activists in the affected territories. A core consideration in this genus of legislation is what exactly is being outlawed – promotion of a physical (sexual) practice or expression of a core identity of a class of people (LGBTI). Currently four States have enacted such legislation.

⁷⁷ See Article 347 of the Greek Penal Code, which criminalises ‘contact against nature between males’ in several circumstances including when it is committed through ‘seduction’ of a person younger than seventeen, and in which sexual acts are legal from the age of 15 for heterosexuals (Article 339). Original text is available at: www.yen.gr/php/download_xitem.php?xitem=24745/pd_fek106_85.pdf.

⁷⁸ Bailiwick of Guernsey.

⁷⁹ Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Montserrat, Turks & Caicos Islands.

⁸⁰ See State of Queensland, Criminal Code Act 1899 and Criminal Law Amendment Bill 1996, Section 208 and Section 213, indicating the age of consent for same-sex sexual acts is 18, while that of heterosexual acts is 16. Text of the 1996 law is available at: www.legislation.qld.gov.au/Bills/48PDF/1996/CriminalLawAmdB96.pdf.

Europe

Lithuania (2014),⁸¹ Russian Federation (2013),⁸²

Africa

Algeria (2014),⁸³ Nigeria (2014),⁸⁴

Prohibition of discrimination in employment based on sexual orientation (62 States)⁸⁵ 33% of UN States

Africa⁸⁶

81 In January 2014, the Lithuanian Parliament introduced amendments to the Code of Administrative Violations of Law that would levy harsh fines against participants in public demonstrations that violate so-called constitutionally established family values. These amendments are done in the context of the Law on the Protection of Minors against the Detrimental Effect of Public Information that came into effect in 2010 (see Lietuvos Respublikos Nepilnamečių apsaugos nuo neigiamo viešosios informacijos poveikio įstatymas", No. IX-1067, 21 October 2011, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=410367. A draft version is available in English at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=363137. Interestingly, ILGA-Europe reports in November 2014 that the Union of Lithuanian Psychologists claim it is the censorship of material on the rights of LGBT people that harms children, see: www.ilga-europe.org/media_library/rainbow_digest/2014/november/freedom_of_expression/lithuanian_psychologists_say_censoring_information_on_lgbt_issues_does_harm_to_minors.

82 Federal Law No 135-FZ; 'On Amendments to Certain Legislative Acts of the Russian Federation with regard to limiting the spread of information about minors, victims of illegal actions (inaction)', at Article 6.21 - Promotion of Non-Traditional Sexual Relations Among Minors; also for an in-depth contextual analysis of the law, copied in Appendix (in English) of: Heiss, Brian M. "Russian Federation Anti-Gay Laws: An Analysis & Deconstruction", 21 January 2014 at: http://static.prisonplanet.com/p/images/february2014/white_paper.pdf. In January 2015, the St Petersburg LGBT youth work organisation Children 404 were found in breach of Article 6.21, see: www.humanrightsfirst.org/press-release/russian-court-fines-children-404-founder-violating-lgbt-propaganda-law. Further, at a court hearing on 5 March 2015, the LGBT organisation, Maximum, was found guilty of failure to register under the 2012 Foreign Agents Law (see, text of law at: <http://asozd2.duma.gov.ru/main.nsf/%28SpravkaNew%29?OpenAgent&RN=102766-6&O2>) by the Court of Murmansk. This is the first LGBT organisation to be charged under this law, and it was and fined 300,000 rubles.

83 See country entry on Algeria for explanation of Article 333 (new).

84 Section 5 of the Same-Sex Marriage (Prohibition) Act (passed December 2013 and signed into law in January 2014) provides that a person who "directly or indirectly makes public show of same-sex amorous relationship[s]" may receive a penal sentence of up to ten years imprisonment; text of the law available at: www.refworld.org/docid/52f4d9cc4.html.

85 Regarding the 48 States (Council of Europe) that are signed up to the European Convention of Human Rights, to March 2015, less than half have ratified the Optional Protocol No. 12 (general right to non-discrimination that does not require that the facts of the case fall "within the ambit" of another Convention right, as is currently the case, most often Article 14 [non-discrimination]). Only eighteen States have ratified (Albania, Andorra, Armenia, Bosnia & Herzegovina, Croatia, Cyprus, Finland, Georgia, Luxembourg, Macedonia, Montenegro, Netherlands, Romania, San Marino, Serbia, Slovenia, Spain, Ukraine). A further ten countries have taken no action on this issue (Bulgaria, Denmark, France, Lithuania, Malta, Monaco, Poland, Sweden, Switzerland, United Kingdom, The remaining nineteen CoE States have signed but not ratified the Protocol. See Explanatory Note at: <http://conventions.coe.int/Treaty/en/Reports/Html/177.htm>. We extend our thanks to Professor Robert Wintemute for this research.

86 Namibia actually excluded sexual orientation from its 2007 Labour Code, having enumerated it in the earlier 1992 code.

Botswana (2010),⁸⁷ Cape Verde (2008),⁸⁸ Mauritius (2008),⁸⁹ Mozambique (2007),⁹⁰ Namibia (2004),⁹¹ Seychelles (2006),⁹² South Africa (1994).⁹³

Asia

Israel (1992), some parts of Philippines,⁹⁴ *Taiwan* (2007).⁹⁵

Europe

Albania (2010), Andorra (2005), Austria (2004), Belgium (2003), Bosnia and Herzegovina (2003),⁹⁶ Bulgaria (2004), Croatia (2003),⁹⁷ Cyprus (2004), Czech Republic (1999), Denmark (1996),⁹⁸ Estonia (2004), Finland (1995), France

87 Botswana Employment Amendment Act: 10 of 2010 amended the Employment Act to add sexual orientation and health status (including HIV/AIDS status) as prohibited grounds of discrimination, see: www.icj.org/sogi-legislative-database/botswana-sogi-legislation-country-report-2013/.

88 See Article 45(2) and Article 406 (3) of the *Novo Código Laboral Cabo-Verdiano*. Text of the law is available at: https://portoncv.gov.cv/dhub/porton.por_global.open_file?p_doc_id=786.

89 See page 8 of the Equal Opportunities Act 2008, which prohibits discrimination in employment and other activities on many grounds, including sexual orientation. Text of the law is available at: www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_126781.pdf.

90 See Articles 4, 5 and 108 of the Labour Law 23/2007. Text of the law is available at: www.tipmoz.com/library/resources/tipmoz_media/labour_law_23-2007_1533E71.pdf.

91 Section 139 of the Labour Act of 2004 repealed the Labour Act of 1992 that prohibited sexual orientation discrimination in its Section 107. Text of the 2004 law is available at: www.commonlii.org/na/legis/num_act/la200484.pdf.

92 See Articles 2, 46A (1) and 46B of the Employment Act 1995, amended by Act 4 of 2006. Text of the law is available at: <https://staging.ilo.org/dyn/natlex/docs/ELECTRONIC/40108/90799/F1128259675/SYC40108.pdf>.

93 Such a prohibition can be found in the Constitution (since 1994) and also in the Labour Relations Act of 1995, in force 11 November 1996 at: www.acts.co.za/labour-relations-act-1995/; in the Employment Equity Act of 1998: www.acts.co.za/employment-equity-act-1998/; and in the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000: www.acts.co.za/promotion-of-equality-and-prevention-of-unfair-discrimination-act-2000/person.php.

94 Some cities in Philippines, including: Quezon City (Ordinance No. SP-1309, 2003) at: www.quezoncitycouncil.ph/ordinance/SP/sp-1309,%20s%202003-1.pdf; Dagupan City (Ordinance No. 1953, 2010); Naga City (Ordinance No. 2012-035) at: www.naga.gov.ph/sp-matters/ordinances/ordinance-no-2012-035/; Angeles City (Executive Order No. 37, 2011) at: <http://210.4.99.20/lis/ExecDetails.aspx?excecode=E0000000031>; Cebu City (2012) at: <http://bayanmuna.net/casino-welcomes-anti-discrimination-ordinances/>; Davao City (Anti-discrimination Ordinance, 2013) at: www.sunstar.com.ph/davao/local-news/2013/02/14/anti-discrimination-ordinance-now-city-hall-268100. On 21 July 2014, the Province of Agusan del Norte approved Ordinance No. 358-2014 thus becoming one of the first provinces in the Philippines to pass an anti-discrimination ordinance that protects people irrespective of their sexual orientation and gender identity and expression: <http://outragemag.com/agusan-del-norte-passes-ado/>.

95 See Articles 2 and 12-15 of Gender Equity Education Act. Text of the law is available at: <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=H0080067>.

96 Such laws are available also in Republika Srpska (2000, 2003).

97 For the text of the 2003 Act on Amendments to Labour Act (Official Gazette 114/03) see: www.ilo.org/dyn/natlex/docs/SERIAL/41244/72720/F484034153/HRV41244.PDF; and for the general discrimination provisions added to the Croatian Code in 2008, see: http://minoritycentre.org/sites/default/files/antidiscrimination_law_croatia.pdf.

98 The law is not applicable to the Faeroe Islands or Greenland. However, incitement to hatred based on sexual orientation is prohibited in the Faeroe Islands since 2007, and in Greenland from 1 January 2010.

(1985), Georgia (2006, amended 2014),⁹⁹ Germany (2006), Greece (2005),¹⁰⁰ Hungary (2004), Iceland (1996), Ireland (1999), Italy (2003), *Kosovo* (2004), Latvia (2006), Lithuania (2003), Luxembourg (1997), Macedonia (FYROM) (2005),¹⁰¹ Malta (2004), Moldova (2012),¹⁰² Montenegro (2010),¹⁰³ Netherlands (1992), Norway (1998), Poland (2004), Portugal (2003), Romania (2000), Serbia (2005), Slovakia (2004), Slovenia (1995),¹⁰⁴ Spain (1996), Switzerland (2000),¹⁰⁵ Sweden (1999), United Kingdom (2003).¹⁰⁶

Latin America & Caribbean

Bolivia (2009),¹⁰⁷ some parts of Argentina,¹⁰⁸ some parts of Brazil,¹⁰⁹ Chile (2012) Colombia (2007), Costa Rica (1998), Cuba (2014),¹¹⁰ Ecuador (1998),¹¹¹ El Salvador (2010),¹¹² Mexico (2003),¹¹³ Nicaragua (2008), Venezuela (1999), Uruguay (2004).¹¹⁴

99 See Article 1 of the “Law of Georgia on the Elimination of All Forms of Discrimination”, approved on 2 May 2014, which explicitly prohibits every form of discrimination, including those based on sexual orientation, gender identity and expression. The text of the law available at: <https://matsne.gov.ge/en/document/view/2339687>.

100 See Law no. 3304/2005 (Act Against Discrimination), available at: www.non-discrimination.net/content/main-principles-and-definitions-6.

101 Law on Labour Relations, Article 6. See the COE’s ‘Legal Report’ on Macedonia at: www.coe.int/t/Commissioner/Source/LGBT/FYROMLegal_E.pdf at 18. In October 2014, SOGI activists reported that the Macedonian Parliament is attempting to define marriage in the country’s Constitution as between a man and a woman. But, uniquely to Europe, it is also trying to ensure that the only type of legal relationship recognition that is non-marital would be heterosexual, see: www.ilga-europe.org/home/guide_europe/country_by_country/fyr_macedonia/move_to_ban_gay_unions_alarms_macedonia_ngos.

102 See Article 7 of the Law on Equal (nr. 121). Text of the law available at: <http://lawsmd.blogspot.nl/2012/10/law-on-equal.html>.

103 See Articles 2, 18 and 19 of the Law on Prohibition of Discrimination. Text of the law is available at: www.legislationline.org/topics/country/57/topic/84.

104 See Art. 141 of the Penal Code, original text is available at: www.uradni-list.si/1/objava.jsp?urlid=199463&stevilka=2167; English text of this Article at: www.wipo.int/wipolex/en/text.jsp?file_id=180880.

105 Since 2000, Switzerland used the words ‘mode de vie’ to cover sexual orientation.

106 Bailiwick of Guernsey (2005), Gibraltar (2006), Isle of Man (2007). For Gibraltar, see: www.gibraltarlaws.gov.gi/articles/2006-37o.pdf.

107 See Article 281 *ter* of the Penal Code (*Título VIII del Libro Segundo del Código Penal*), as amended by Article 23 of the *Ley Contra el Racismo y Toda Forma de Discriminación* of 2011. See also Articles 5 and 12 to 14 of the latter law. Original text is available at: <http://www.acnur.org/t3/fileadmin/Documentos/BDL/2014/9502.pdf?view=1>.

108 The city of Rosario (1996) and the city of Buenos Aires (2015).

109 Bahia (1997), Federal District (2000), Minas Gerais (2002), Paraíba (2003), Piauí (2004), Rio de Janeiro (2000), Rio Grande do Sul (2002), Santa Catarina (2003), São Paulo (2001), Mato Grosso (2005), Maranhão (2006), as well as a number of cities.

110 See Article 2b of the new *Código del Trabajo*, signed into law on 17 June 2014. The text of the law is available at: www.cubadebate.cu/wp-content/uploads/2014/06/codigo-del-trabajo-de-la-republica-de-cuba.pdf.

111 See Article 79 of the *Código del Trabajo, Codificación 2005-17*, available at: www.unemi.edu.ec/rrhh/images/archivos/codtrab.pdf.

112 Decreto No. 56 [Decree 56], Diario Oficial (DO), No. 86, Tomo 387, entered into force 19 May 2010, original text is available at: http://biblioteca.utec.edu.sv/siab/virtual/DiarioOficial_/20100512.pdf. See also, Sexual Diversity in El Salvador, *A Report on the Human Rights Situation of the LGBT Community*, (USA: International Human Rights Law Clinic, University of California, Berkeley, School of Law, July 2012) at: www.law.berkeley.edu/files/LGBT_Report_English_Final_120705.pdf.

113 See Article 9 of Federal Law to Prevent and Eliminate Discrimination, available at: www2.ohchr.org/english/bodies/cerd/docs/CERD.C.MEX.15-17_en.doc.

114 See Law No. 17,817, Combat Racism, Xenophobia and Discrimination, original text available at: www.parlamento.gub.uy/leyes/ AccesoTextoLey.asp?Ley=17817.

North America:

Canada (1996), some parts of the United States.¹¹⁵

Oceania

Australia (1996),¹¹⁶ Fiji (2007),¹¹⁷ Samoa (2013),¹¹⁸ New Zealand (1994).

Constitutional prohibition of discrimination based on sexual orientation (8 States) 4% of UN States

Africa

South Africa (1994 and 1997).¹¹⁹

Europe

Kosovo (2008), Portugal (2004), Sweden (2003), Switzerland (2000), some parts of Germany.¹²⁰

115 United States: California (1993), Colorado (2007), Connecticut (1991), Delaware (2009), Hawaii (1992), Illinois (2006), Iowa (2007), Maine (2005), Maryland (2001), Massachusetts (1990), Minnesota (1993), Nevada (1999), New Hampshire (1998), New Jersey (1992), New Mexico (2003), New York (2003), Oregon (2008), Rhode Island (1995), Vermont (1992), Washington (2006), Wisconsin (1982) and District of Columbia (1973), as well as a number of cities and towns. On 24 May 2013, the Senate approved a bill that outlaws employment discrimination based on gender or sexual orientation. Text of the law is available at: <http://noticiasmicrojuris.files.wordpress.com/2013/05/ps238-24mayo2013.pdf>.

116 At the level of the Commonwealth of Australia, various sections of the Workplace Relations Act 1996 prohibits discrimination based on 'sexual preference', available at: www.ajml.com.au/downloads/resource-centre/laws/Workplace%20Relations%20Act%201996/WorkplaceRelations1996Vol3_WD02.pdf. Capital Territory (1992), New South Wales (1983), Northern Territory (1993), Queensland (1992), South Australia (1986), Tasmania (1999), Victoria (1996), Western Australia (2002).

117 Section 6(2) of the Employment Relations Promulgation 2007 provides: "No person shall discriminate against any worker or prospective worker on the grounds of (...) sexual orientation, (...) marital status, (...) state of health including real or perceived HIV status, (...) in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment relationship." The Promulgation entered into force on 1 October 2007. Text of the law is available at: www.pacii.org/fj/promu/promu_dec/erp2007381.

118 Both sexual orientation and perceived or actual HIV status were added as protected grounds to employment laws in Samoa in 2013 through enactment of the Labour & Employment Relations Act 2013, the text of the law is at: http://www.parliament.gov.ws/new/wp-content/uploads/01.Acts/Acts%202013/Labour_and_Employment_Relations_Act_2013_-_Eng.pdf.

119 Prohibition of sexual orientation discrimination was included on the interim Constitution that came into force on 27 April 1994 (Article 8), text of the law available at: www.constitutionalcourt.org.za/site/constitution/english-web/interim/. It is also included in Article 9 of the 1997 Constitution at: www.constitutionalcourt.org.za/site/theconstitution/thetext.htm.

120 Berlin (1995), Brandenburg (1992), Thuringia (1993).

North America, Latin America & Caribbean

Bolivia (2009),¹²¹ Canada (2005),¹²² Ecuador (1998),¹²³ some parts of Argentina,¹²⁴ some parts of Brazil,¹²⁵ *British Virgin Islands* (2007), associate of the United Kingdom,¹²⁶ and Mexico (2011).¹²⁷

Hate crime: motive based on sexual orientation (35 States) 18% of UN States

Asia

East Timor (2009).¹²⁸

Europe¹²⁹

Albania (2013),¹³⁰ Andorra (2005),¹³¹ Belgium (2003), Bosnia and Herzegovina (parts),¹³² Croatia (2006), Denmark

121 See Article 14 of the *Constitución Política del Estado*, of 7 February 2009. Text of the law is available at: <http://bolivia.infoleyes.com/shownorm.php?id=469>.

122 The judgment in *Egan v Canada* read sexual orientation into Canada's Charter of Rights and Freedoms, see commentary at: <http://ualawccsprod.srv.ualberta.ca/ccs/index.php/constitutional-issues/the-charter/democratic-rights-sections-3-5/669-egan-v-canada-1995-equality-rights-and-same-sex-spousal-benefits>.

123 See Article 23(3) of the 1998 Constitution, available at: <http://pdba.georgetown.edu/constitutions/Ecuador/ecuador98.html>. A new Constitution was adopted by referendum in 2008., which also protects people from discrimination based on gender identity, available at: www.asambleanacional.gov.ec/documentos/Constitucion-2008.pdf.

124 Art. 11 of the Constitution of the Province of Buenos Aires (1996).

125 Alagoas (2001), Federal District (1993), Mato Grosso (1989), Pará (2003), Santa Catarina (2002), Sergipe (1989).

126 Article 26 of the Virgin Islands Constitution Order 2007. Text of the law is available at: www.legislation.gov.uk/ukSI/2007/1678/contents/made.

127 Article 1 prohibits discrimination based on "sexual preferences". Text of the law is available at: <http://info4.juridicas.unam.mx/ijure/tcfed/9.htm?s>.

128 See Article 52.2(e) of the Penal Code, available at: www.wipo.int/wipolex/en/text.jsp?file_id=243617.

129 By November 2015, all EU States are obliged to have transposed the EU's Victims' Rights Directive into their national legislative codes. See, ILGA-Europe's collection of resources addressing hate crime and hate speech at: www.ilga-europe.org/home/issues/hate_crime_hate_speech/ilga_europe_reports.

130 Albania's parliament amended on 4 May 2013 Section 50/j of its Criminal Code to strictly punish a crime "when the offense is committed due to reasons related to gender, race, colour, ethnicity, language, gender identity, sexual orientation, political opinions, religious or philosophical beliefs, health status, genetic predisposition, or disability". Text of the law is available at: <http://legislationline.org/documents/section/criminal-codes>.

131 Criminal Code, 2005, "Criminal Code of Andorra: Article 30: Aggravating circumstances The following are considered aggravating circumstances of the crime: 6. when committed the crime on the grounds of racism, xenophobia or related ideology, religion, nationality, ethnicity, sex, sexual orientation, illness or the physical or mental disability of the victim".

132 Republika Srpska Criminal Code RS last amended 2013, Article 147; and Criminal Code of the Brcko District of Bosnia and Herzegovina (Brcko District Official Gazette nos.10/03, 45/04 and 6/05), Article 2, texts at: www.legislationline.org/topics/country/40/subtopic/79.

(2004), Finland (2011),¹³³ France (2003),¹³⁴ Georgia (2012),¹³⁵ Greece (2013),¹³⁶ some parts of Hungary (2014),¹³⁷ Iceland (1940, amended 2004),¹³⁸ Kosovo (2013),¹³⁹ Lithuania (2009),¹⁴⁰ Malta (2012),¹⁴¹ Montenegro (2010), Netherlands (2003),¹⁴² Norway (1994),¹⁴³ Portugal (2007), Romania (2006), San Marino (2008),¹⁴⁴ Serbia (2012),¹⁴⁵ Slovakia (2013),¹⁴⁶ Slovenia (2008),¹⁴⁷ Spain (1996), Sweden (2003), United Kingdom (2004-2010).¹⁴⁸

133 See, Finnish Crime Code (chapter 6, section 5 at: <http://www.finlex.fi/en/laki/kaannokset/1889/en18890039.pdf>).

134 The law applies to the following overseas departments and territories upon adoption: French Guiana, French Polynesia, Guadeloupe, Martinique, Mayotte, New Caledonia, Réunion, St Barthélemy, St Martin, St Pierre & Miquelon and Wallis & Futuna.

135 See Article 1 of 27 March 2012, Legislative Amendment. Original text is available at: Article 53(3) amendment of March 2012 that includes sexual orientation in the scope of non-discrimination protections, see: https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=1637963; see also <http://lgbt.ge/?p=4679> and www.legislationline.org/documents/action/popup/id/15732. In January 2015, the director of the LGBT organisation Identoba received death threats following his criticism of a Christmas speech by the Patriarch of Georgia, see: <http://identoba.com/2015/01/08/identoba-under-attack/>.

136 According to Article 66 of the Act of Addictive Substances and Other Provisions, the second paragraph of section D, paragraph 3 of Article 79 of the Criminal Code should include "sexual orientation" as a ground of hatred. Original text is available at: www.ilga-europe.org/media_library/ilga_europe/guide_to_europe/country_by_country/files_for_legal_summary/greece/hatecrime_legislation_on_sogi_greece. The Act was passed on 12 March 2013, and entered into force upon publication.

137 Hungarian Criminal Law does not explicitly make hate crime based on sexual orientation an aggravating circumstance, but the Regional Court of Appeal of Debrecen found homophobic murder an aggravating circumstance in its decision. See: <http://debrecenieltotabla.birosag.hu/sajtokozlemeny/20140210/aljas-indokbol-kulonos-kegyetlenseggel-olt-elefogytiglant-kapott>; see also, <http://en.hatter.hu/news/homophobic-murderer-gets-life-imprisonment-in-hungary>. <http://en.hatter.hu/news/homophobic-murderer-gets-life-imprisonment-in-hungary>.

138 General Penal Code of Iceland No. 19, February 12, 1940 (as of 1 March 2004), Article 233a, see: www.legislationline.org/topics/country/24/subtopic/79.

139 Criminal Code of Kosovo (promulgated 13 July 2012, into force on 1 January 2013), Article 74 (para. 2.12) and Article 333 (para. 4).

140 See the Excerpts from The Criminal Code of the Republic of Lithuania of 26 September 2000 No VIII-1968 (as last amended on 9 July 2009 – No XI-330), online at: www.legislationline.org/documents/action/popup/id/15746.

141 See Articles 83B, 222A, 215D and 325A of the Criminal Code of Malta. Text of the law available at: www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8574&l=1. The Criminal Code was amended by ACT No. VIII of 2012 at: www.justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=23426&l=1.

142 This concerns an instruction on the basis of Article 130(4) of the Wet Rechterlijke Organisatie [Act on the Judicial System]. The text of the current (2007) version of the instruction, original text is available at: www.om.nl/organisatie/beleidsregels/overzicht-0/index/@86289/aanwijzing/.

143 Criminal Code of the Kingdom of Norway (Act of 22 May 1902 No. 10 as subsequently amended, most recently by Act of 1 July 1994 No. 50), Articles 232 and 292.

144 See Law no. 66 on *Disposizioni in materia di discriminazione razziale, etnica, religiosa e sessuale* of 28 April 2008, available at: www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_128030.pdf.

145 Criminal Code ("Official Gazette of the Republic of Serbia", nos. 85/2005, 88/2005 - corrigendum, 107/2005 - corrig., 72/2009, 111/2009 and 121/2012), Article 54a.

146 Criminal Code, Act No. 300/2005, Effective 1 January 2006. Last amendments added sexual orientation (in May 2013, in force 31 July 2013), at Article 140(f), see: www.legislationline.org/topics/country/4/subtopic/79.

147 Criminal Code of Slovenia published in official gazette: Uradni list RS, št. 55/2008 (OJ RS, No. 55/2008), Article 297, see: www.legislationline.org/topics/country/3/subtopic/79.

148 Such laws have been adopted in England and Wales (2005), Northern Ireland (2004) and Scotland (effective 2010).

Latin America & Caribbean

Bolivia (2011),¹⁴⁹ Chile (2012),¹⁵⁰ Colombia (2011),¹⁵¹ Ecuador (2009),¹⁵² Honduras (2013),¹⁵³ Nicaragua (2008), Uruguay (2003),¹⁵⁴ some parts of Mexico.¹⁵⁵

North America

Canada (1996) and United States (2009).¹⁵⁶

Oceania

New Zealand (2002).

Incitement to hatred based on sexual orientation prohibited (31 States) 16% of UN States

Africa

South Africa (2000).

149 See Articles 40 *bis* and 281 *ter* of the Penal Code (*Título VIII del Libro Segundo del Código Penal*), as amended by Articles 21 and 23 of the *Ley Contra el Racismo y Toda Forma de Discriminación* of 2011. Original text is available at: www.noracismo.gob.bo/index.php/leyes-y-normativas/122-ley-n-045-contra-el-racismo-y-toda-forma-de-discriminacion..

150 See Article 12 (21) of the Código Penal of Chile, as amended by Article 17 of Ley Nº 20.609, which establishes measures against discrimination. Original text of the latter law: www.colegioabogados.cl/cgi-bin/procesa.pl?plantilla=/archivo.html&bri=colegioabogados&tab=art_1&campo=c_archivo&id=1191.

151 See Law 1482 of 30 November 2011, which also covers incitement to hatred based on sexual orientation. Original text is available at: www.vicepresidencia.gob.co/Programas/Documents/121431-LEY-ANTIDISCRIMINACION.pdf.

152 See Articles 6, 7, 8 and 21 of the section *Reformas al Código Penal* of the *Ley Reformatoria Al Código de Procedimiento Penal y al Código Penal*. Original text is available at: www.hsph.harvard.edu/population/.../ecuador.sexdiscrim.09.doc. www.carlosparma.com.ar/index.php?option=com_content&view=article&id=347:ley-reformatoria-al-codigo-penal-codigo-de-procedimiento-penal-codigo-de-la-ninez-y-adolescencia-y-codigo-de-ejecucion-de-penas-y-rehabilitacion-social&catid=41:parte-especial&Itemid=27.

153 On 21 February 2013, the Congress approved an amendment to the Penal Code that prohibits hate crimes based on sexual orientation and gender identity. Text of the decision is available at: www.insurrectasypunto.org/index.php?option=com_content&view=article&id=6799:igbti-logra-reforma-al-codigo-penal-en-honduras&catid=3:notas&Itemid=3.

154 See Article 149 *ter* of Law 17.677 of 29 July 2003, Solicitation to Hate, Contempt or Violence or Commission of These Acts Against Certain Persons. Original text is available at: www.parlamento.gub.uy/leyes/ AccesoTextoLey.asp?Ley=17677&Anchor=www.gparlamentario.org/spip/IMG/pdf/Ley_17677_de_29-7-2003_Actos_Violentos_fundados_en_Identidad_Sexua_-_Uruguay.pdf.

155 Coahila (2005) and the Federal District (2009). See Article 350 of Coahila's Penal Code, available at: <http://docs.mexico.justia.com.s3.amazonaws.com/estatales/coahuila/codigo-penal-de-coahuila.pdf>, and Article 149 *bis* of the Federal District, available at: <http://info4.juridicas.unam.mx/ijure/tcfed/8.htm?s>.

156 Also available on state level in Arizona (1995), California (1988), Colorado (2005), Connecticut (1990), Delaware (1997), Florida (1991), Hawaii (2001), Illinois (1991), Iowa (1990), Kansas (2002), Kentucky (1998), Louisiana (1997), Maine (1995), Maryland (2005), Massachusetts (1996), Minnesota (1989), Missouri (1999), Nebraska (1997), Nevada (1989), New Hampshire (1991), New Jersey (1990), New Mexico (2003), New York (2000), Oregon (1990), Rhode Island (1998), Tennessee (2000), Texas (2001), Vermont (1990), Washington (1993), Wisconsin (1988) and District of Columbia (1990), as well as Puerto Rico (2005).

Europe

Albania (2013),¹⁵⁷ Austria (2011)¹⁵⁸ Belgium (2003), Croatia (2003), Denmark (1987),¹⁵⁹ Estonia (2006), Finland (2011),¹⁶⁰ France (2005),¹⁶¹ Hungary (2013),¹⁶² Iceland (1996), Ireland (1989), Lithuania (2003), Luxembourg (1997), Malta (2012),¹⁶³ Monaco (2005),¹⁶⁴ Montenegro (2010),¹⁶⁵ Netherlands (1992), Norway (1981), Portugal (2007), Romania (2000), San Marino (2008), Serbia (2009), Slovenia (2008),¹⁶⁶ Spain (1996), Sweden (2003), Switzerland (2015 [pending]),¹⁶⁷ some parts of the United Kingdom (2004–10).¹⁶⁸

Latin America & Caribbean

Bolivia (2011),¹⁶⁹ Colombia (2011), Ecuador (2009), some parts of Mexico,¹⁷⁰ Uruguay (2003).¹⁷¹

North America

Canada (2004).

157 Albania's parliament amended its Criminal Code on 4 May 2013. Article 119/a: "Providing to the public or distribution of deliberate materials containing racist, homophobic or xenophobic content, through the communication and information technology, is punishable by a fine or imprisonment up to two years." Text of the law is available at: <http://legislationline.org/documents/section/criminal-codes>.

158 Criminal Code of Austria (1974, amended 2011); Incitement to violence § 283 StGB (Penal Code) – incitement to hatred and violence (FLG 1974/60, last amended by FLG I 2011/103), Article 1.

159 The law is applicable to Faeroe Islands (2007) and to Greenland (2010).

160 Chapter 11, Section 10 of the Penal Code makes "incitement against certain group" an offence. In June 2011, sexual orientation was added to the list of protected characteristics. Text of the law is available at: www.finlex.fi/en/laki/kaannokset/1889/en18890039.pdf.

161 The law applies to the following overseas departments and territories upon adoption: French Guiana, French Polynesia, Guadeloupe, Martinique, Mayotte, New Caledonia, Réunion, St Barthélemy, St Martin, St Pierre & Miquelon and Wallis & Futuna.

162 Criminal Code of Hungary Excerpts from Act IV of 1978 on the Criminal Code (as amended 2013), Section 216: Violence Against a Member of the Community, see: www.legislationline.org/topics/country/25/subtopic/79.

163 See Articles 82A and 82C of the Criminal Code of Malta, text of the law is available at: www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8574&l=1. The Criminal Code was amended by ACT No. VIII of 2012 at: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=23426&l=1>.

164 See Articles 16, 24, 25, 44 of the *Loi n° 1.299 du 15 juillet 2005 sur la liberté d'expression publique*, available at: www.legimonaco.mc/305/legismclois.nsf/db3b0488a44ebcf9c12574c7002a8e84/29ad7325e3a152a4c125773f003d2e4e!OpenDocument.

165 Criminal Code of Montenegro ("Official Gazette of the Republic of Montenegro" no. 70/2003, and Correction, no. 13/2004), Article 370.

166 See Article 297(1) of the Penal Code at: www.policija.si/eng/images/stories/Legislation/pdf/CriminalCode2009.pdf.

167 See text of the legislative proposal (voted and passed in the Swiss parliament in March 2015), at: www.parlament.ch/e/suche/Pages/geschaefte.aspx?gesch_id=20130407.

168 Such laws have only been adopted in Northern Ireland (2004) and England and Wales (2010).

169 See Articles 281 *quater*, 281 *septieser* and 281 *octies* of the Penal Code (*Título VIII del Libro Segundo del Código Penal*), as amended by Article 23 of the *Ley Contra el Racismo y Toda Forma de Discriminación* of 2011. Original text is available at: www.rreee.gob.bo/webmre/Documentos/d385.pdf.

170 Coahuila (2005) and the Federal District (2009).

171 See Article 149 *bis* of Law 17.677 of 29 July 2003, Solicitation to Hate, Contempt or Violence or Commission of These Acts Against Certain Persons. Original text is available at: www.parlamento.gub.uy/leyes/ AccesoTextoLey.asp?Ley=17677&Anchor=www.parlamentario.org/spip/IMG/pdf/Ley_17677_de_29-7-2003_Actos_Violentos_fundados_en_Identidad_Sexua_-_Uruguay.pdf.

Oceania

Some parts of Australia.¹⁷²

Marriage open for same-sex couples (17 States)¹⁷³ 9% of UN States

Africa

South Africa (2006).

Europe

Belgium (2003), Denmark (2012), Finland (2015, in force March 2017),¹⁷⁴ France (2013),¹⁷⁵ Iceland (2010),¹⁷⁶ Ireland (late-2015),¹⁷⁷ Luxembourg (2015),¹⁷⁸ Netherlands (2001), Norway (2009), Portugal (2010),¹⁷⁹ Spain (2005), Sweden (2009), United Kingdom (2014) (most parts).¹⁸⁰

Latin America & Caribbean

Argentina (2010),¹⁸¹ some parts of Mexico,¹⁸² Uruguay (2013).¹⁸³

172 Australian Capital Territory (2004), New South Wales (1993), Queensland (2003), Tasmania (1999).

173 It should be noted that marriage is defined as a union between a man and a woman in constitutions of Belarus, Bulgaria, Croatia, Hungary, Latvia, Lithuania, Moldova, Montenegro, Poland, Serbia, Slovakia and Ukraine. Slovenia is involved in complex socio-legal machinations, where oppositions are pushing for a referendum while negative sentiment is high, but this may be decided by the Constitutional Court. Over half of the 50 European countries still do not recognize any type of same-sex union. Our thanks to Geoff Ross for this information.

174 The new Finnish legislation, due into force on 1 March 2017, allows for gender neutral marriage in Finland, see: http://yle.fi/uutiset/president_signs_gender-neutral_marriage_law/7818157.

175 See Law Providing for Same-Sex Marriage, passed on 17 May 2013, effective 29 May 2013. Text of the law is available at: www.conseil-constitutionnel.fr/conseil-constitutionnel/english/case-law/decision/decision-no-2013-669-dc-of-17-may-2013.137411.html. As overseas Departments of France (which legislated for marriage equality in 2013), same-sex marriage is available in both Martinique and Guadeloupe. See: www.guadeloupe.franceantilles.fr/regions/grande-terre-sud-et-est/le-premier-mariage-gay-celebre-a-sainte-anne-226029.php; and www.rewmi.com/martinique-premier-mariage-homosexuel-celebre-deux-femmes-se-sont-dit-oui_a79551.html.

176 On 11 June 2010, the Icelandic Parliament approved the law that repeals the registered partnership law and allow couples to marry regardless of gender. Text of the law is available at: www.althingi.is/altext/138/s/0836.html.

177 On 22 May 2015 a referendum (popular vote) to allow for marriage equality passed by 61%-39%. A law is expected in force by late-2015.

178 See: <http://jurist.org/paperchase/2014/06/luxembourg-legalizes-same-sex-marriage-adoption.php>.

179 Text of the law is available at: <http://dre.pt/pdf1sdip/2010/05/10500/0185301853.pdf>.

180 For England and Wales, see Marriage (Same Sex Couples) Act 2013 (in force 2014), available at: www.legislation.gov.uk/ukpga/2013/30/contents/enacted. For Scotland, see Marriage and Civil Partnership (Scotland) Act 2014, available at: www.legislation.gov.uk/asp/2014/5/contents/enacted. However, on 27 April 2015, the Northern Ireland Assembly voted down (rejected) a proposal to introduce legislation on this issue for the fourth time since 2012.

181 Text of the law is available at: www.sigla.org.ar/index.php?option=com_content&view=article&catid=81:legislacion-y-jurisprudencia&id=438:ley-matrimonio-gay&Itemid=101.

182 The Federal District (2010), Quintana Roo (2012) and Coahuila (2014)

183 The Marriage Equality Bill was signed by the President on 3 May 2013, and entered into force on 1 August 2013. Original text of the law is available at: www.parlamento.gub.uy/leyes/ AccesoTextoLey.asp?Ley=18590&Anchor=www0.parlamento.gub.uy/leyes/ AccesoTextoLey.asp?Ley=19075.

North America

Canada (2005), United States (most parts).¹⁸⁴

Oceania

New Zealand (2013).¹⁸⁵

Same-sex couples offered all or most rights attached to marriage, but not marriage itself (Civil Partnerships, Registered Partnerships, Civil Unions, etc.) (12 States) 6% of UN States

Europe

Austria (2010), Croatia (2014),¹⁸⁶ Estonia (2014, in force January 2016), Germany (2001), Hungary (2009), Liechtenstein (2011),¹⁸⁷ Malta (2014),¹⁸⁸ Switzerland (2007).

184 At time of writing in late-April 2015, 37 states have legalised for marriage equality in the US: Massachusetts (2004), California (2008 for four months, then 2013 for good), Connecticut (2008), Vermont (2009), Iowa (2009), New Hampshire (2010), Washington, D.C. (2010), New York (2011), Maine (2012), Maryland (2012), Washington (2012), Delaware (2013), Rhode Island (2013), Minnesota (2013), New Jersey (2013), Hawaii (2013), New Mexico (2013), Oregon (2014), Pennsylvania (2014), Illinois (2014), Colorado (2014), Indiana (2014), Oklahoma (2014), Utah (2014), Virginia (2014), Wisconsin (2014), West Virginia (2014), Nevada (2014), North Carolina (2014), Idaho (2014), Arizona (2014), Alaska (2014), Wyoming (2014), Kansas (2014), Montana (2014), South Carolina (2014), Florida (2015) and Alabama (2015). For the texts of each of these states' laws, see: www.freedomtomarry.org/states/. Also, as reported in the Washington Blade (14 April 2015), a court case in Puerto Rico must await the outcome of four same-sex marriage cases that are currently before the US Supreme Court, see: www.washingtonblade.com/2015/04/14/federal-appeals-court-delays-puerto-rico-marriage-case/. Oral representations at the Supreme Court were heard on 28 April 2015 and reportage, including aural recordings of the testimonies, can be heard at: <http://www.freedomtomarry.org/blog/entry/live-blog-the-freedom-to-marry-at-the-u.s.-supreme-court#Question1Audio>. The Court is due to deliver its judgment in June 2015.

185 See Marriage (Definition of Marriage) Amendment Act 2013, entry into force on 19 August 2013. Text of the law is available at: www.legislation.govt.nz/act/public/2013/0020/latest/DLM4505003.html?search=ts_act%40bill%40regulation%40deemedreg_Definition+of+marriage_resel_25_a&p=1.

186 See, reportage on the Life Partnership Act of July 2014 at: http://www.ansa.it/ansamed/en/news/nations/croatia/2014/07/15/croatia-passes-law-on-same-sex-unions_64fe4604-9706-44fb-a8ce-d48129ba01e1.html.

187 See Registered Partnership Bill (Lebenspartnerschaftsgesetz), passed on 16 March 2011 and published on 21 March 2011. Original text of the law is available at: www.llv.li/pdf-llv-rk_vernehml_lebenspartnerschaftsgesetz.pdf.

188 See: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=26024&l=1>.

Latin America & Caribbean

Brazil (2011/2013),¹⁸⁹ Chile (2015),¹⁹⁰ Colombia (2009),¹⁹¹ Ecuador (2014),¹⁹² and some parts of Mexico (2007).¹⁹³

Oceania

Some parts of Australia.¹⁹⁴

Some recognition of same-sex relationships in law, without most rights attached to marriage¹⁹⁵ (5 States) 2.5% of UN States

Asia

Israel (1994).

Europe

Andorra (2005), Czech Republic (2006), Slovenia (2006).

189 On 5 May 2011, the Supreme Court in Brazil ruled in favour of recognising same-sex couples living in 'stable unions' as family units and therefore entitled to the same rights of heterosexual couples living in the same kind of unions. The original text of the decision is available at: http://direitohomoafetivo.com.br/anexos/juris/2011.05.05_-_stf_-_adi_4.277.pdf. In another decision of 25 October 2011, the Court indicated that same-sex stable unions should be converted to marriage and recommended the Congress to do so (to date, April 2015, no legislative action has been taken). The text of this decision is available at: www.gontijo-familia.adv.br/direito-de-familia-casamento-civil-entre-pessoas-do-mesmo-sexo/). Nevertheless, on 14 May 2013, the National Council of Justice passed Resolution No.175, which states that notaries from all over the country can no longer refuse to register same-sex marriage. The text of the resolution is available at: www.cnj.jus.br/images/imprensa/resolucao_n_175.pdf.

190 On 28 January 2015, the Chilean congress approved the 'Acuerdo de Unión Civil', which allows same-sex couples and unmarried heterosexual couples to enter into civil unions. The summary of the law is available at: www.gob.cl/2015/01/30/acuerdo-de-union-civil-nuevos-beneficios-para-convivientes/. The bill, which was introduced in 2011, was signed into law on 13 April 2015 and is expected to enter into force in September 2015. The legal proceedings of the law can be followed here: www.senado.cl/appsenado/templates/tramitacion/index.php?boletin_ini=7873-07 (See 'Oficio de ley al Ejecutivo', dated 28/01/15 for the final text of the law).

191 "On 29 January 2009, the Constitutional Court ruled in favour of giving cohabitating same-sex couples the same rights offered to unmarried heterosexual couples (which enjoy most rights of marriage – see text of the law at: www.corteconstitucional.gov.co/relatoria/2009/c-029-09.htm). In a further decision of 26 July 2011, the Court recognised same-sex couples as family entities and ordered the Congress to legislate on the matter of same-sex marriage before the date of 20 June 2013. In case they failed to do so, same-sex couples would be granted marriage rights automatically (see the decision at: www.corteconstitucional.gov.co/comunicados/No.%2030%20comunicado%20de%20julio%20de%202011.php). As the government did fail to legislate and have not yet delivered, the first couple registered their civil marriage in Bogota on 24 July 2013, see: http://www.matrimonioigualitario.org/2013/07/por-primera-vez-jueza-de-colombia_3133.html.

192 On 22 August 2014, President Rafael Correa signed an order requiring the Civil Registry to allow same-sex *de facto* couples to register their unions. The law took effect on September 15 in Quito, Guayaquil and Cuenca only, though it has been announced it will be gradually implemented all over the country, see: www.andes.info.ec/es/noticias/15-septiembre-reconoceran-uniones-hecho-estado-civil.html. On 21 April 2015, the National Assembly approved the 'Ley reformativa del Código Civil', which amends the Civil Code finally allowing same-sex couples to register their *de facto* unions, without having to prove they had been in a relationship for at least two years, see: <http://iiga-lac.org/ecuador-reconoce-la-union-de-hecho-homosexual-como-un-estado-civil/>.

193 In Mexico, same-sex marriage is available in the Federal District (Mexico City) and the states of Coahuila and Quintana Roo -- and, for some couples who filed legal cases, in the states of Aguascalientes, Baja California, Baja California Sur, Campeche, Chiapas, Chihuahua, Colima, Guanajuato, Jalisco, México, Michoacán, Morelos, Nayarit, Nuevo León, Oaxaca, Querétaro, San Luis Potosí, Sinaloa, Sonora, Tabasco, Tamaulipas, Veracruz and Yucatán. Mexico has 31 states. This list contains 25 of them. We thank rex Wokner for this research data (www.http://wckner.blogspot.ie).

194 Australian Capital Territory (2008), New South Wales (2010), Tasmania (2004) and Victoria (2008). See also the Family Law Amendment Act 2008, available at: www.comlaw.gov.au/Details/C2008A00115.

195 In Estonia same-sex marriage is due to come into force on 1 January 2016. While the Estonian Family Law Act of 2009 defines marriage as a union of one man and one woman, the Cohabitation Act is gender neutral, thus extending legal recognition to all registered partners regardless of their sex, see Sitting Review "Riigikogu approved Cohabitation Act" of 9 October 2014, at: www.riigikogu.ee.
8 for more information, See: www.loc.gov/lawweb/servlet/lloc_news?disp3_lJ205404169_text.

Latin America & Caribbean

Costa Rica (2013).¹⁹⁶

North America

Some parts of the United States.¹⁹⁷

Oceania

Some parts of Australia.¹⁹⁸

Joint adoption by same-sex couples legal (17 States)¹⁹⁹ 9% of UN States

Africa

South Africa (2002).²⁰⁰

Asia

Israel (2008).

Europe²⁰¹

Belgium (2006),²⁰² Denmark (2010), France (2013), Iceland (2006), Ireland (2015),²⁰³ Luxembourg (2014), Malta (2014), Netherlands (2001), Norway (2009), Spain (2005), Sweden (2003), United Kingdom (2005–2013).²⁰⁴

196 On 4 July 2013, the President signed into law the '*Ley de la Persona Jovenen*', which recognises the rights of unions without "any kind of discrimination against the human dignity", as stated in Article 2, thus allowing same-sex *de facto* unions to claim for their rights in court. Text of the law is available at: www.gaceta.go.cr/pub/2013/07/08/COMP_08_07_2013.pdf.

197 Wisconsin (2009): <http://wilawlibrary.gov/topics/familylaw/domesticpartner.php>.

198 Norfolk Island (2006), Northern Territory (2004), Queensland (several acts from 1999 and onwards), South Australia (2003, 2007), Western Australia (2002).

199 Following the 2014 Constitutional Court case (VfGH 11.12.2014, G 119-120/2014), the ban on joint adoption by same-sex couple was lifted. However, unique to Europe, Austria is the only country that allows joint adoption without recognising same-sex marriage, see: www.sexualorientationlaw.eu/105-constitutional-court-struck-down-joint-adoption-ban-austria.

200 *Du Toit and Another v Minister of Welfare and Population Development and Others* (CCT40/01) [2002] ZACC 20; 2002 (10) BCLR 1006; 2003 (2) SA 198 (CC) (10 September 2002). Text of the law is available at: www.saflii.org/za/cases/ZACC/2002/20.pdf.

201 Following its judgment in the case of *X and Others v. Austria* (application 19010/07) in February 2013, "it would follow that the legislation of Austria, Andorra, parts of Bosnia and Herzegovina, Liechtenstein, Portugal and Romania should be amended to allow same-sex couples to apply for second-parent adoption, because these countries already permit unmarried heterosexual couples to do so", see the International Federation for Human Rights (FIDH) joint statement on the judgment, see: <https://www.fidh.org/International-Federation-for-Human-Rights/europe/austria/European-Court-of-Human-Rights-ban-12919>. Also note that Finland is due to bring in joint adoption into force in March 2017.

202 On 1 January 2015, a new law came into force in Belgium which allows the non-biological mother in a lesbian couple to be automatically recognised as the legal mother following the birth of their child, see: www.marriagequality.ie/news/2014/12/06/positive-developments-for-lesbian-couples-in-belgium/.

203 Ireland enacted the Children and Family Relationships Act in April 2015 allowing for joint adoption by same-sex partners, see text of the law at: <http://www.oireachtas.ie/documents/bills28/acts/2015/a915.pdf>.

204 Such a law entered into force in England and Wales in 2005, in Scotland on 28 September 2009, and in Northern Ireland in 2013. Among British Associates, Gibraltar (2013), Isle of Man (2011) and Jersey (2012) also allow joint adoption.

Latin America & Caribbean

Argentina (2010), Brazil (2010),²⁰⁵ some parts of Mexico (2010),²⁰⁶ Uruguay (2009).²⁰⁷

North America

Canada,²⁰⁸ and some parts of the United States.²⁰⁹

Oceania

Some parts of Australia,²¹⁰ New Zealand (2013).²¹¹

205 The Superior Court of Justice of Brazil ruled in April 2010 that same-sex couples may adopt children. This judgment was upheld in the Supreme Federal Court of Brazil in August 2010. See: www.athosgls.com.br/noticias_visualiza.php?contcod=29208.

206 The Federal District (2010), and Coahuila (2014).

207 Text of the law is available at: www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=18590&Anchor=.

208 Alberta, British Columbia (1996), Manitoba (2002), New Brunswick (2008), Newfoundland & Labrador (2003), Northwest Territories (2002), Nova Scotia (2001), Nunavut, Ontario (2000), Prince Edward Island (2009), Quebec (2002), Saskatchewan (2001).

209 Up to May 2014, there are 22 states plus District of Columbia that fully allow joint adoption: Arkansas, California, Colorado, Connecticut, Delaware, Guam, Hawaii, Illinois, Indiana, Iowa, Maine, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New York, Oregon, Rhode Island, Vermont, Washington and District of Columbia. For the latest information, see Movement Advancement Project, 'Joint Adoption Laws' at: www.lgbtmap.org/equality-maps/foster_and_adoption_laws.

210 Joint adoption by same-sex couples is legal in:

- 1) Capital Territory (2004): www.austlii.edu.au/au/legis/act/consol_act/aa1993107/s14.html.
- 2) New South Wales (2010): www.legislation.nsw.gov.au/fullhtml/inforce/act+19+2010+cd+0+Ne.
- 3) Tasmania (2013): www.parliament.tas.gov.au/bills/Bills2013/reprint/6_of_2013.pdf.
- 4) Western Australia (2002): www.austlii.edu.au/au/legis/wa/consol_act/aa1994107/.

211 See Marriage (Definition of Marriage) Amendment Act 2013, which consequentially amended the Adoption Act (1995 No. 93). Text of the law is available at: www.legislation.govt.nz/act/public/2013/0020/latest/DLM4505003.html?search=ts_act%40bill%40regulation%40deemedreg_Definition+of+marriage_resel_25_a&p=1.



ilga

CRIMINALISATION

ALGERIA – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

Penal Code (Ordinance 66-156 of 8 June 1966).²¹²

Art. 338 – “Any person guilty of a homosexual act shall be punished with a term of imprisonment of between two months and two years and a fine of between 500 and 2,000 Algerian dinars.”²¹³

Original text of Art 333 in French:

Art. 333. (Modifié) – Toute personne qui a commis un outrage public à la pudeur est punie d’un emprisonnement de deux (2) mois à deux (2) ans et d’une amende de cinq cents (500) à deux mille (2.000) DA.

Lorsque l’outrage public à la pudeur a consisté en un acte contre nature avec un individu du même sexe, la peine est un emprisonnement de six (6) mois à trois (3) ans et une amende de mille (1.000) à dix mille (10.000 DA).

Art. 333 bis. (Nouveau) – Est puni d’un emprisonnement de deux (2) mois à deux (2) ans et d’une amende de cinq cents (500) à deux mille (2.000) DA quiconque aura fabriqué, détenu, importé ou fait importer en vue de faire commerce, distribution, location, affichage ou exposition, expose ou tente d’exposer aux regards du public, vendu ou tenté de vendre, distribué ou tenté de distribuer, tous imprimés, écrits, dessins, affiches, gravures, peintures, photographies, clichés, matrices, ou reproductions, tous objets contraires à la décence.

In the 2014 and 1982 revisions of this penal code,²¹⁴ Article 338 outlaws “d’homosexualité”, while Article 333 regarding public decency, specifying same-sex, makes the publication of writings, images, etc, contrary to this standard punishable. This then goes beyond the scope of traditional behaviour-based regulation, and is more akin to the ‘promotion’ of non-heterosexual identity found in Russia, Nigeria and other States. These laws find root in the French colonial legal system in place prior to the adaptation of the first national penal code in 1966.²¹⁵

ANGOLA – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

Penal Code of 16 September 1886, as amended in 1954 (inherited from the Portuguese colonial era).²¹⁶

Articles 70 and 71(4°) provide for the imposition of security measures on people who habitually practice acts against nature. The security measures may include: a bond of good behavior, being put on probation for a certain period, or even internment in a workhouse or agricultural colony (from 6 months to 3 years).

Original Text in Portuguese:

“Artigo 70° (Medidas de segurancça)

São medidas de segurancça:

1° – O internamento em manicómio criminal;

2o. – O internamento em casa de trabalho ou colónia agrícola; 3° – A liberdade vigiada;

²¹² Text of the law is available at: www.wipo.int/wipolex/en/details.jsp?id=7998.

²¹³ Original text: “*Tout coupable d’un acte d’homo- sexualité est puni d’un emprisonnement de deux (2) mois à deux (2) ans et d’une amende de cinq cents (500) à deux mille (2.000) DA.*”

²¹⁴ The original text of the codes is available at: www.joradp.dz/trv/apenal.pdf.

²¹⁵ See Muftah, “The Emergence of a Movement”, for a good overview of the SOGI situation in Algeria at end of 2014, available at: muftah.org/gay-and-lesbian-mobilization-in-algeria/#VPnU4inA4y4.

²¹⁶ Text of the law is not available online, but there is a proposal for a new Penal Code that would no longer have these provisions, available at: www.wipo.int/wipolex/en/text.jsp?file_id=244267.

4° – A caução de boa conduta;

5° – A interdição do exercício de profissão; [...]"

"Artigo 71°

(Aplicação de medidas de segurança)

São aplicáveis medidas de segurança: [...]

4° – Aos que se entreguem habitualmente à prática de vícios contra a natureza; [...]

§ 1° – O internamento, nos termos do n.º 2o e § 2° do artigo 70°, só poderá ter lugar pela primeira vez quando aos indivíduos indicados nos nos. 1o, 2°, 7o e 9o.

Aos indivíduos indicados nos n.ºs. 3°, 4°, 5°, 6°, e 8° será imposta, pela primeira vez, a caução de boa conduta ou a liberdade vigiada e, pela segunda, a liberdade vigiada com caução elevada ao dobro, ou o internamento. [...]"

BOTSWANA – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

Penal Code [Chapter 08:01],²¹⁷ amended by the Penal Code Amendment Act 5, 1998.²¹⁸

Section 164. Unnatural offences

"Any person who;

(a) has carnal knowledge of any person against the order of nature;

(b) has carnal knowledge of any animal; or

(c) permits any other person to have carnal knowledge of him or her against the order of nature, is guilty of an offence and is liable to imprisonment for a term not exceeding seven years."

Section 165. Attempts to commit unnatural offences

"Any person who attempts to commit any of the offences specified in section 164 is guilty of an offence and is liable to imprisonment for a term not exceeding five years."

Section 167. Indecent practices between persons

"Any person who, whether in public or private, commits any act of gross indecency with another person, or procures another person to commit any act of gross indecency with him or her, or attempts to procure the commission of any such act by any person with himself or herself or with another person, whether in public or private, is guilty of an offence."

BURUNDI – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

Law No. 1/05 of 22 April 2009 concerning the revision of the Penal Code.²¹⁹

Article 567:

"Whoever has sexual relations with someone of the same sex shall be punished with imprisonment for three months to two years and a fine of fifty thousand to one hundred thousand francs or one of those penalties."²²⁰

(Unofficial translation)

²¹⁷ Text of the law is available at: www.wipo.int/wipolex/en/details.jsp?id=10486.

²¹⁸ See Scott Long, "Before the law: Criminalizing sexual conduct in colonial and post-colonial southern African societies", in *More than a name: State-Sponsored Homophobia and Its Consequences in Southern Africa* (New York: Human Rights Watch & International Gay and Lesbian Human Rights Commission, 2003), available at: www.hrw.org/en/reports/2003/05/13/more-name-0, at 272-274.

²¹⁹ Text of the law is available at: www.oag.bi/IMG/rtf/code_penal_burundais-2.rtf.

²²⁰ Original text: "Quiconque fait des relations sexuelles avec la personne de même sexe est puni d'une servitude pénale de trois mois à deux ans et d'une amende de cinquante mille francs à cent mille francs ou d'une de ces peines seulement."

CAMEROON – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

Penal Code of 1965 and 1967, as amended in 1972.²²¹

The French text of article 347bis is: *'Est puni d'un emprisonnement de six mois à cinq ans et d'une amende de 20.000 à 200.000 francs toute personne qui a des rapports sexuels avec une personne de son sexe.'*²²²

An English version of this article given by Human Rights Watch is: 'Whoever has sexual relations with a person of the same sex shall be punished with imprisonment from six months to five years and fine of from 20,000 to 200,000 francs.'²²³

COMOROS – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

Penal Code of the Federal Islamic Republic of Comoros.²²⁴

Article 318:

"(3) Without prejudice to the more serious penalties provided for in the preceding paragraphs or by articles 320 and 321 of this Code, whoever will have committed an improper or unnatural act with a person of the same sex will be punished by imprisonment of between one and five years and by a fine of 50 000 to 1 000 000 francs. If the act was committed with a minor, the maximum penalty will always be applied."²²⁵

The Government of Comoros rejected the recommendation made by Czech Republic on its first UPR cycle to to "review provisions of the criminal law penalising consensual same-sex activity between adults" and the recommendation made by Spain in its second cycle to "initiate a debate on the decriminalization of homosexuality."²²⁶

²²¹ German Bundestag, Criminal law provisions on homosexuality and their application around the world, Printed Paper 16/3597, 28 November 2006 at 8. See: www.gaylawnet.com/ezine/crime/16_3597_minor_interpellation.pdf.

²²² Available at: www.glapn.org/sodomylaws/world/cameroon/cameroon.htm.

²²³ See *Criminalizing Identities – Rights Abuses in Cameroon based on Sexual Orientation and Gender Identity* (New York: Human Rights Watch, 2010) at 10, note 9, available at: www.hrw.org/reports/2010/11/04/criminalizing-identities-0

²²⁴ Text of the law is available at: <http://comoresdroit.comores-droit.com/wp-content/dossier/code/penal.pdf>.

²²⁵ Original text: *"Sans préjudice des peines plus graves prévues par les alinéas qui précèdent ou par les Articles 320 et 321 du présent code, sera puni d'un emprisonnement d'un à cinq ans et d'une amende de 50 000 à 1 000 000 francs, quiconque aura commis un acte impudique ou contre 65 nature avec un individu de son sexe. Si l'acte a été commis avec un mineur, le maximum de la peine sera toujours prononcé."*

²²⁶ See Comoros' UPR page: www.ohchr.org/EN/HRBodies/UPR/Pages/KMSession18.aspx.

EGYPT – MALE/MALE ILLEGAL – FEMALE/FEMALE LEGAL

Sexual relations between consenting adult persons of the same sex in private are not prohibited as such. However, the Law on the Combating of Prostitution, and the law against debauchery²²⁷ have been used to imprison gay men in recent years.²²⁸

Law 58/1937 promulgating The Penal Code

Article 98(f): “Detention for a period of not less than six months and not exceeding five years, or paying a fine of not less than five hundred pounds and not exceeding one thousand pounds shall be the penalty inflicted on whoever exploits and uses the religion in advocating and propagating by talk or in writing, or by any other method, extremist thoughts with the aim of instigating sedition and division or disdaining and contempting any of the heavenly religions or the sects belonging thereto, or prejudicing national unity or social peace.”²²⁹

Article 269 *bis*: “Whoever is found on a public road or a traveled and frequented place inciting the passersby with signals or words to commit indecency shall be punished with imprisonment for a period not exceeding one month. If the felon recurs to committing this crime within one year of the first crime, the penalty shall become imprisonment for a period not exceeding six months and a fine not exceeding fifty pounds. A ruling of conviction shall necessitate placing the convict under police supervision for a period equal to that of the penalty.”²³⁰

Article 278: “Whoever commits in public a scandalous act against shame shall be punished with detention for a period not exceeding one year or a fine not exceeding three hundred pounds.”²³¹

Law 10/1961 on the Combating of Prostitution

Article 9: “Punishment by imprisonment for a period not less than three months and not exceeding three years and a fine not less than 25 LE and not exceeding 300 LE [...] or one of these two punishments applies in the following cases:

- (a) Whoever lets or offers in whatever fashion a residence or place run for the purpose of debauchery or prostitution, or for the purpose of housing one or more persons, if they are to his knowledge practicing debauchery or prostitution.
- (b) Whoever owns or manages a furnished residence or furnished rooms or premises open to the public and who facilitates the practice of debauchery or prostitution, either by admitting persons so engaged or by allowing on his premises incitement to debauchery or prostitution.
- (c) Whoever habitually engages in debauchery or prostitution.

Upon the apprehension of a person in the last category, it is permitted to send him for a medical examination. If it is

²²⁷ See Scott Long, “Victory” a *paper bird* piece on the court case of 26 men following the hamman raid in December 2014, filmed by Mona Iraqi: <http://paper-bird.net/2015/01/12/victory/>, and more stories he has penned on Egypt more generally (to 3 March, 2015) at: <http://paper-bird.net/tag/egypt/>.

²²⁸ The text of the Penal Code is available (in Arabic) at: <http://pt.scribd.com/doc/30928964/%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A7%D9%84%D8%B9%D9%82%D9%88%D8%A8%D8%A7%D8%AA-%D8%A7%D9%84%D9%85%D8%B5%D8%B1%D9%8A-1-EGYPTIAN-PENAL-CODE-1>.

²²⁹ An unofficial translation of the Penal Code is available at: <http://track.unodc.org/LegalLibrary/LegalResources/Egypt/Laws/Egypt%20The%20Penal%20Code%20Law%201937.pdf>. (it is unclear if this is up-to-date). Some sources on imprisonment of gay men refer to other Articles of the Penal Code than the three quoted here, including an “Article 98(w)” that does not seem to be part of this unofficial translation.

²³⁰ Text of the law is available at: www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&_isn=57560. See the unofficial English translation – and the explanations – in the report: *In a Time of Torture: The Assault on Justice In Egypt’s Crackdown on Homosexual Conduct*, Appendix: Laws Affecting Male Homosexual Conduct in Egypt (New York: Human Rights Watch, 2004): www.hrw.org/reports/2004/egypt0304/egypt0304.pdf.

²³¹ See the Appendix at: www.hrw.org/reports/2004/egypt0304/egypt0304.pdf.

discovered that he is carrying an infectious venereal disease, it is permitted to detain him in a therapeutic institute until his cure is completed.

It is permitted to determine that the convicted person be placed, upon completion of his sentence, in a special reformatory until the administrative agency orders his release. This judgment is obligatory in cases of recidivism, and the period spent in the reformatory is not allowed to be more than three years. [...]”²³²

Egypt’s 2nd cycle UPR began in November 2014. At time of writing (April 2015), the draft report of the Working Group²³³ makes no references to sexual orientation directly. Of the NGO submissions to this session, very few appear to mention sexual orientation directly.²³⁴

ERITREA – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

Penal Code of 1957 (inherited from Ethiopian rule).²³⁵

Art. 600. Unnatural Carnal Offences

“(1) Whosoever performs with another person of the same sex an act corresponding to the sexual act, or any other indecent act, is punishable with simple imprisonment.

(2) The provisions of Art. 597 are applicable where an infant or young person is involved.”

Art.105. Simple Imprisonment

“(1) simple imprisonment is a sentence applicable to offences of a not very serious nature committed by persons who are not a serious danger to society.

It is intended as a measure of safety to the general public and as a punishment to the offender.

Subject to any special provision of law and without prejudice to conditional release, simple imprisonment may extend for a period of from ten days to three years; such period shall be fixed by the court.

(2) The sentence of simple imprisonment shall be served in such prison or in such section thereof as is appointed for the purpose.”

In its first UPR cycle, the Government of Eritrea rejected the recommendations made by Canada and the USA to repeal the above-mentioned articles, arguing that they “are in direct conflict with the values and traditions of the Eritrean people.”²³⁶

ETHIOPIA – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

The Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No. 414/2004.²³⁷

Article 629. Homosexual and other Indecent Acts

“Whoever performs with another person of the same sex a homosexual act, or any other indecent act, is punishable with simple imprisonment.”

²³² See the Appendix at: www.hrw.org/reports/2004/egypt0304/egypt0304.pdf.

²³³ See: www.upr-info.org/sites/default/files/document/egypt/session_20_-_october_2014/a_hrc_wg.6_20_1.13.pdf.

²³⁴ Find list of submissions at: www.upr-info.org/en/review/Egypt/Session-20---October-2014/Civil-society-and-other-submissions#top.

²³⁵ Text of the law is available at: www.unhcr.org/refworld/docid/49216a0a2.html.

²³⁶ See Eritrea’s UPR summary at: <http://arc-international.net/global-advocacy/universal-periodic-review/e/eritrea/>.

²³⁷ Text of the law is available at: www.ilo.org/dyn/natlex/docs/ELECTRONIC/70993/75092/F1429731028/ETH70993.pdf.

Article 630. General Aggravation to the Crime

“(1) The punishment shall be simple imprisonment for not less than one year, or, in grave cases, rigorous imprisonment not exceeding ten years, where the criminal:

a) takes unfair advantage of the material or mental distress of another or of the authority he exercises over another by virtue of his position, office or capacity as guardian, tutor, protector, teacher, master or employer, or by virtue of any other like relationship, to cause such other person to perform or to submit to such an act; or

b) makes a profession of such activities within the meaning of the law (Art. 92).

(2) The punishment shall be rigorous imprisonment from three years to fifteen years, where:

a) the criminal uses violence, intimidation or coercion, trickery or fraud, or takes unfair advantage of the victim’s inability to offer resistance or to defend himself or of his feeble-mindedness or unconsciousness; or

b) the criminal subjects his victim to acts of cruelty or sadism, or transmits to him a venereal disease with which he knows himself to be infected; or

c) the victim is driven to suicide by distress, shame or despair.”

Article 106. Simple Imprisonment

“(1) Simple imprisonment is a sentence applicable to crimes of a not very serious nature committed by persons who are not a serious danger to society.

Without prejudice to conditional release, simple imprisonment may extend for a period of from ten days to three years.

However, simple imprisonment may extend up to five years where, owing to the gravity of the crime, it is prescribed in the Special Part of this Code, or where there are concurrent crimes punishable with simple imprisonment, or where the criminal has been punished repeatedly.

The Court shall fix the period of simple imprisonment in its judgment.

(2) The sentence of simple imprisonment shall be served in such prison or in such section thereof as is appointed for the purpose.”

At its 2nd cycle UPR that commenced in April 2014, Ethiopia ‘noted’ (did not accept) three Level 5 (act immediately) recommendations from France, Portugal and Argentina to decriminalise same-sex sexual activity.²³⁸

GAMBIA – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

Criminal Code 1965, as amended in 2005.²³⁹

Article 144: Unnatural offences

“(1) Any person who—

(a) has carnal knowledge of any person against the order of nature; or

(b) has carnal knowledge of an animal; or

(c) permits any person to have carnal knowledge of him or her against the order of nature;

is guilty of a felony, and is liable to imprisonment for a term of 14 years.

(2) In this section- “carnal knowledge of any person against the order of nature” includes-

(a) carnal knowledge of the person through the anus or the mouth of the person;

(b) inserting any object or thing into the vulva or the anus of the person for the purpose of simulating sex; and

(c) committing any other homosexual act with the person.”

²³⁸ See, Draft Working Group Report A/HRC/WG.6/19/L.12

at: www.upr-info.org/sites/default/files/document/ethiopia/session_19_-_april_2014/a_hrc_wg.6_19_l.12_0.pdf; and UPR-info database at: www.upr-info.org.

²³⁹ Text of the code is available at: www.ilo.ch/dyn/natlex/docs/SERIAL/75299/78264/F1686462058/GMB75299.pdf.

On 25 August 2014, the Parliament approved the Criminal Code (Amendment) Act 2014,²⁴⁰ which punishes 'aggravated homosexuality' with imprisonment for life. The Act came into effect on 9 October 2014 and includes the following article:

"144A. Aggravated homosexuality

- (1) A person commits the offence of aggravated homosexuality where the –
- (a) person against whom the offence is committed is below the age of eighteen years;
 - (b) offender is a person living with HIV;
 - (c) offender is a parent or guardian of the person against whom the offence is committed;
 - (d) offender is a person in authority over the person against whom the offence is committed;
 - (e) victim of the offence is a person with disability;
 - (f) offender is a serial offender; or
 - (g) offender applies, administers or causes to use by any man or woman any drug, matter this with intent to stupefy or overpower him or her, so as to enable any person to have unlawful carnal connection with any person of same sex.
- (2) A person who commits the offence of aggravated homosexuality is liable on conviction to imprisonment for life."

As The Gambia's 2nd cycle UPR process is in mid-flow at the time of writing (April 2015), the State responses to four recommendations to decriminalise 'homosexuality' from Brazil, Sweden, Canada and Italy are awaited.²⁴¹

GHANA – MALE/MALE ILLEGAL – FEMALE/FEMALE LEGAL

Criminal Code, 1960 (Act 29), as amended to 2003.²⁴²

Section 104. Unnatural Carnal Knowledge

"(1) Whoever has unnatural carnal knowledge—

- (a) of any person of the age of sixteen years or over without his consent shall be guilty of a first degree felony and shall be liable on conviction to imprisonment for a term of not less than five years and not more than twenty-five years; or
 - (b) of any person of sixteen years or over with his consent is guilty of a misdemeanour; or
 - (c) of any animal is guilty of a misdemeanour.
- (2) Unnatural carnal knowledge is sexual intercourse with a person in an unnatural manner or with an animal."

According to Article 296 (4) of the Criminal Procedural Code, a misdemeanour shall be liable to imprisonment for a term not exceeding three years.²⁴³

²⁴⁰ The text of the law is available at: www.refworld.org/docid/54759cd04.html.

²⁴¹ Find Draft Report of the Working Group A/HRC/WG.6/20/L.3, and the list of NGO submissions to The Gambia's 2nd cycle UPR in October 2014 are available at: www.upr-info.org/sites/default/files/document/gambia/session_20_-_october_2014/a_hrc_wg.6_20_l.3.pdf.

²⁴² Text of the law is available at: www.refworld.org/pdfid/44bf823a4.pdf.

²⁴³ Available at: www.vertic.org/media/National%20Legislation/Ghana/GH_Criminal_Procedure_Code.pdf.

GUINEA – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

Penal Code of 1998.²⁴⁴

Article 325: “Any indecent act or act against nature committed with an individual of the same sex will be punished by six months to three years of imprisonment and a fine of 100,000 to 1,000,000 Guinean francs.

If the act was committed with a minor under 21 years of age, the maximum penalty must be pronounced.”²⁴⁵

KENYA – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

The Penal Code (as amended by Act No. 5 of 2003).²⁴⁶

“Section 162. Any person who

(a) has carnal knowledge of any person against the order of nature; or

(b) has carnal knowledge of an animal; or

is guilty of a felony and is liable to imprisonment for fourteen years:

Provided that, in the case of an offence under paragraph (a), the offender shall be liable to imprisonment for twenty-one years if—

(i) the offence was committed without the consent of the person who was carnally known; or

(ii) the offence was committed with that person’s consent but the consent was obtained by force or by means of threats or intimidation of some kind, or by fear of bodily harm, or by means of false representations as to the nature of the act.”

“Section 163. Any person who attempts to commit any of the offences specified in section 162 is guilty of a felony and is liable to imprisonment for seven years.”

“Section 165. Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a felony and is liable to imprisonment for five years.”

On 24 April 2015, the High Court of Kenya found that the State (in the form of the Non-Governmental Organisations Co-ordination Board and the Attorney General)²⁴⁷ had violated Article 36 (Freedom of Association) of the newly (2010) Constitution of Kenya,²⁴⁸ by frustrating the process of registering the NGO, the National Gay & Lesbian Human Rights Commission (NGLHRC). The Court found that LGBTI people are a constituent part of the “every person” enumerated in Article 36, that the limitation of the current criminalising legislation refers to same-sex sexual acts and not one’s sexual orientation *per se* (quoting *Kasha Jaqueline v Rolling Stone*, 2010, Uganda). It said that it appears that, “the Board has acted in a manner that is both unconstitutional and unlawful, and amounts to an abuse of power” (para. 136),

²⁴⁴ Text of the law available at: www.unhcr.org/refworld/docid/44a3eb9a4.html.

²⁴⁵ Original text: “Article 325: Tout acte impudique ou contre nature commis avec un individu de son sexe sera puni d’un emprisonnement de 6 mois à 3 ans et d’une amende de 100.000 à 1.000.000 de Francs guinéens. Si l’acte a été commis avec un mineur de moins de 21 ans, le maximum de la peine sera toujours prononcée.”

²⁴⁶ Text of the law is available at: www.kenyalaw.org/Downloads/GreyBook/8.%20The%20Penal%20Code.pdf.

²⁴⁷ Text of the judgment at: <http://kenyalaw.org/caselaw/cases/view/108412/>.

²⁴⁸ Text of Constitution is at: <https://www.kenyaembassy.com/pdfs/The%20Constitution%20of%20Kenya.pdf>

and also that the Board's reliance on its "own moral convictions as a basis for rejecting an application is outside the Board's mandate and a negation of its constitutional obligations" (para. 127) cannot be used to deny others their constitutional rights.

It is notable that Kenya's first appearance before its 2nd cycle UPR was in January 2015, where according to the report of the Working Group,²⁴⁹ Chile recommended decriminalising "consenting relationships between adults of the same sex" and both Denmark and Chile referred to enacting legislation combatting hatred, while France referenced non-discrimination, and Brazil referenced freedom of association and expression "and rights of LGBT persons".

LIBERIA – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

New Penal Law, Volume IV, Title 26, Liberian Code of Laws Revised, Approved in 1976 and Published in 1978.²⁵⁰

Articles 14.74, 14.79 and 50.7 consider "voluntary sodomy" as a first degree misdemeanor, with a penalty of up to one year imprisonment, with sodomy being defined as "deviate sexual intercourse" between human beings who are not (living as) husband and wife, that consists of contact between penis and anus, mouth and penis, or mouth and vulva.

LIBYA – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

Penal Code of 1953 as amended by Law 70 of 2 October 1973, "Regarding the Establishment of the Hadd Penalty for Zina and Modifying Some of the Provisions of the Penal Law". The law of 1973 added a fourth paragraph to Articles 407 and 408 respectively that criminalises consensual same-sex behavior.²⁵¹

Article 407

(4) Whoever has intercourse with a person with his consent will be punished with his partner by imprisonment of not more than five years.²⁵²

Article 408

(4) Whoever commits an indecent act with a person with his consent will be punished with his partner with imprisonment.²⁵³

²⁴⁹ Report of the Working Group is available at: http://www.upr-info.org/sites/default/files/document/kenya/session_21_-_january_2015/a_hrc_wg.6_21_1.7.pdf.

²⁵⁰ See Jayweh, F. "Gays and the Laws of Liberia: Do Liberians have Laws to Prohibit Lesbian and Gay's Practices in Liberia?", available at: <http://xa.yimg.com/kq/groups/16308019/1339627977/name/GAYS+AND+THE+LAWS+OF+LIBERIA.docx>.

²⁵¹ Text of the law is available in Arabic at: www.aladel.gov.ly/main/modules/sections/item.php?itemid=62.

²⁵² Ibid, 302.

²⁵³ Ibid, 304.

MALAWI – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

Penal Code Cap. 7:01 Laws of Malawi.²⁵⁴

“Section 153. Unnatural offences

Anyone who –

has carnal knowledge of any person against the order of nature; or

has carnal knowledge of any animal; or

permits a male person to have carnal knowledge of him or her against the order of nature,

shall be guilty of a felony and shall be liable to imprisonment for fourteen years, with or without corporal punishment.”

“Section 154. Attempt to commit unnatural offences

Any person who attempts to commit any of the offences specified in the last preceding section shall be guilty of a felony and shall be liable to imprisonment for seven years, with or without corporal punishment.”

“Section 156 Indecent practices between males

Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, shall be guilty of a felony and shall be liable to imprisonment for five years, with or without corporal punishment.”

In December 2010, the Parliament passed a bill amending the Penal Code of Malawi. In late January 2011, President Bingu Wa Mutharika assented to the bill, thus completing its enactment into law.

The new Section 137A, captioned “Indecent practices between females” provides that any female person who, whether in public or private, commits “any act of gross indecency with another female” shall be guilty of an offence and liable to a prison term of five years.²⁵⁵

MAURITANIA – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

Penal Code of 1984.²⁵⁶

“Article 308. – Any adult Muslim man who commits an indecent act or an act against nature with an individual of his sex will face the penalty of death by public stoning. If it is a question of two women, they will be punished as prescribed in article 306, first paragraph”.²⁵⁷

(Unofficial translation)

²⁵⁴ Text of the law (not yet including the amendment of 2011) is available at: www.malawilii.org/files/mw/legislation/consolidated-act/7:01/penal_code_pdf_14611.pdf.

²⁵⁵ See International Commission of Jurists, “Sex Between Women Now a Crime in Malawi: New Law Violates Human Rights Obligations of Malawi”, available at: www.ighrc.org/sites/default/files/488-1.pdf.

²⁵⁶ Text of the law is available at: www.droit-afrique.com/images/textes/Mauritanie/Mauritanie%20-%20Code%20penal.pdf.

²⁵⁷ Original text Article 308: “*Tout musulman majeur qui aura commis un acte impudique ou contre nature avec un individu de son sexe sera puni de peine de mort par lapidation publique. S’il s’agit de deux femmes, elles seront punies de la peine prévue à l’article 306, paragraphe premier.*” Article 306 (1): “*Toute personne qui aura commis un outrage public à la pudeur et aux mœurs islamiques ou a violé les lieux sacrés ou aidé à les violer, si cette action ne figure pas dans les crimes emportant la Ghissass ou la Diya, sera punie d’une peine correctionnelle de trois mois à deux ans d’emprisonnement et d’une amende de 5.000 à 60.000 UM.*”

MAURITIUS – MALE/MALE ILLEGAL – FEMALE/FEMALE LEGAL

Criminal Code of 1838.²⁵⁸

Section 250. Sodomy and bestiality

“(1) Any person who is guilty of the crime of sodomy or bestiality shall be liable to penal servitude for a term not exceeding 5 years.”

In 2007, the Government introduced the Sexual Offences Bill²⁵⁹, which would delete the crime of sodomy (see Section 24) and set an equal age limit of 16 years for sexual acts (Sections 11 to 14).

Nevertheless, the bill was never passed in the Parliament and the Government announced in 2013 its decision to amend the Criminal Code instead “in order to make better provisions for the criminalisation of various acts of sexual perversion”.²⁶⁰

It its second UPR cycle in 2013, the State of Mauritius received 3 recommendations (Ireland, Australia and Canada) to decriminalise sodomy but responded that further consultations on the matter were necessary.²⁶¹

MOROCCO – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

Penal Code of 26 November 1962.²⁶²

Article 489. “Any person who commits lewd or unnatural acts with an individual of the same sex shall be punished with a term of imprisonment of between six months and three years and a fine of 120 to 1,000 dirhams, unless the facts of the case constitute aggravating circumstances.”²⁶³

NAMIBIA – MALE/MALE ILLEGAL – FEMALE/FEMALE LEGAL

Sodomy remains a crime in Namibia according to the Roman-Dutch common-law, which was imposed by the South Africans. Common-law is a legal tradition based mainly on precedent court verdicts, while there is no codified sodomy provision in Namibia.²⁶⁴

²⁵⁸ Text of the law is available at: www.wipo.int/edocs/lexdocs/laws/en/mu/mu008en.pdf.

²⁵⁹ Text of the bill is available at: www.santac.org/eng/Media/Files/Mauritius-Sexual-Offences-Bill,-2007.

²⁶⁰ See paragraph 17 of Mauritius' national report submitted at their 2013 UPR, available at: www.ohchr.org/EN/HRBodies/UPR/Pages/MUSession17.aspx.

²⁶¹ See Mauritius' UPR summary at: <http://arc-international.net/global-advocacy/universal-periodic-review/m/mauritius/2nd-cycle/>.

²⁶² Text of the law is available in French and Arabic here: www.wipo.int/wipolex/en/text.jsp?file_id=190447.

²⁶³ Original text: “Est puni de l'emprisonnement de six mois à trois ans et d'une amende de 200 à 1.000 dirhams, à moins que le fait ne constitue une infraction plus grave, quiconque commet un acte impudique ou contre nature avec un individu de son sexe”.

²⁶⁴ See Submission in the UPR review of Namibia at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/NA/JS1_JointSubmission-eng.pdf.

Criminal Code Act, Chapter 77, Laws of the Federation of Nigeria 1990.²⁶⁵

Section 214.

“Any person who-

- (1) has carnal knowledge of any person against the order of nature; or
 - (2) has carnal knowledge of an animal; or
 - (3) permits a male person to have carnal knowledge of him or her against the order of nature;
- is guilty of a felony, and is liable to imprisonment for fourteen years.”

Section 215. “Any person who attempts to commit any of the offences defined in the last preceding section is guilty of a felony, and is liable to imprisonment for seven years. The offender cannot be arrested without warrant.”

Section 217. “Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a felony, and is liable to imprisonment for three years. The offender cannot be arrested without warrant.”

Note that several Northern Nigerian states have adopted Islamic Sharia laws, criminalising sexual activities between persons of the same sex. The maximum penalty for such acts between men is death penalty, while the maximum penalty for such acts between women is a whipping and/or imprisonment. These laws differ from the federal law, as most of these prohibit also sexual relations between women.²⁶⁶

The states which have adopted such laws are:²⁶⁷

Bauchi (the year 2001), Borno (2000), Gombe (2001), Jigawa (2000), Kaduna (2001), Kano (2000), Katsina (2000), Kebbi (2000), Niger (2000), Sokoto (2000), Yobe (2001) and Zamfara (2000).

In addition, on 17 December 2013, the **Same-Sex Marriage (Prohibition) Act** was passed by the Senate and the House of Representatives and signed by the President on 7 January 2014. According to the law:²⁶⁸

“§1. (1) A marriage contract or civil union entered into between persons of same sex:

- (a) is prohibited in Nigeria; and
 - (b) shall not be recognised as entitled to the benefits of a valid marriage.
- (2) A marriage contract or civil union entered into between persons of same sex by virtue of a certificate issued by a foreign country is void in Nigeria, and any benefit accruing there-from by virtue of the certificate shall not be enforced by any court of law.

§2. (1) A marriage contract or civil union entered into between persons of same sex shall not be solemnised in a church, mosque or any other place of worship of Nigeria.

(2) No certificate issued to persons of same sex in a marriage or civil union shall be valid in Nigeria.

§3. Only a marriage contracted between a man and a woman shall be recognised as valid in Nigeria.

²⁶⁵ Text of the law is available at: www.nigeria-law.org/Criminal%20Code%20Act-Tables.htm.

²⁶⁶ See Alok Gupta, *This Alien Legacy – The Origins of “Sodomy” Laws in British Colonialism* (New York: Human Rights Watch, 2008) at: www.hrw.org/en/reports/2008/12/17/alien-legacy-0 at 60-61; and ‘Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook’ at: www.sharia-in-africa.net/pages/publications/sharia-implementation-in-northern-nigeria.php.

²⁶⁷ See ‘The Unfizzled Sharia Vector in the Nigerian State’ at: www.dawodu.com/aluko5.htm.

²⁶⁸ Text of the law available at: www.refworld.org/docid/52f4d9cc4.html.

§4. (1) The registration of gay clubs, societies and organisations, their sustenance, processions and meetings is prohibited.

(2) The public show of same sex amorous relationship directly or indirectly is prohibited.

§5. (1) A person who enter into a same-sex marriage contract or civil union commit an offence and are each liable on conviction to a term of 14 years in prison.

(2) A person who registers, operates or participates in gay clubs, societies and organisations or directly or indirectly makes public show of same-sex amorous relationship in Nigeria commits an offence and shall each be liable on conviction to a term of 10 years in prison.

(3) A person or group of persons who administers, witnesses, abets or aides the solemnisation of same-sex marriage or civil union, or supports the registration, operation and sustenance of gay clubs, societies, organisations, processions or meetings in Nigeria commits and offence and is liable on conviction to a term of 10 years of imprisonment.”

On the issue of how Nigeria has responded to its international human rights law obligations in United Nations fora regarding SOGI, the country offered ‘no response’ to its first cycle Universal Periodic Review recommendations in 2009 to decriminalise and to withdraw its prohibition of same-sex marriage.²⁶⁹ In its second cycle, the Government rejected all LGBTI-related recommendations.²⁷⁰

Further, in 2011²⁷¹ and 2012,²⁷² the Special Rapporteur on the rights to freedom of peaceful assembly and of association highlighted human rights violations, torture and other cruel, inhuman or degrading treatment or punishment,²⁷³ human rights defenders,²⁷⁴ issued a Joint Statement on the [then] proposed prohibition on a Bill outlawing same-sex marriage.²⁷⁵

²⁶⁹ See: <http://arc-international.net/global-advocacy/universal-periodic-review/n/nigeria>.

²⁷⁰ See Nigeria’s UPR summary at: <http://arc-international.net/global-advocacy/universal-periodic-review/n/nigeria/2nd-cycle/>.

²⁷¹ Nigeria: Alleged restrictions on the rights to freedom of association and of peaceful assembly of groups defending lesbian, gay, bisexual, and transgender (LGBT) rights, 228. JAL 20/12/2011. Case no. NGA 5/2011. See: <http://freeassembly.net/rapporteurreports/nigeria-communications/>.

²⁷² Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/67/357, 7 September 2012, available at: www.ohchr.org/en/HRBodies/SP/Pages/GA67session.aspx.

²⁷³ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Addendum: Mission to Nigeria, A/HRC/7/3/Add.4, 22 November 2007; available at: http://www2.ohchr.org/english/bodies/chr/special/sp_reportshrc_7th.htm.

²⁷⁴ Report of the Special Representative of the Secretary-General on the situation of human rights defenders. Addendum: Summary of cases transmitted to Governments and replies received, A/HRC/4/37/Add.1, 27 March 2007; available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/4session/A-HRC-4-37-Add-1.pdf>.

²⁷⁵ Joint Statement from the Special Representative of the Secretary-General on Human Rights Defenders, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the Special Rapporteur on violence against women, its causes and consequences, and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 23 February 2007.

SENEGAL – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

Penal Code of 1965.²⁷⁶

Article 319 (third paragraph). “Without prejudice to the more serious penalties provided for in the preceding paragraphs or by articles 320 and 321 of this Code, whoever will have committed an improper or unnatural act with a person of the same sex will be punished by imprisonment of between one and five years and by a fine of 100,000 to 1,500,000 francs. If the act was committed with a person below the age of 21, the maximum penalty will always be applied.”²⁷⁷

In its second UPR cycle, the Government of Senegal received 7 recommendations (from Belgium, Greece, Germany, Ireland, Netherlands, Switzerland and Mexico) to repeal the above-mentioned article. The Government rejected them and argued that Article 319 must be interpreted as a punishment for “unnatural acts committed in public” and that nobody has been imprisoned for in the country.²⁷⁸

SEYCHELLES – MALE/MALE ILLEGAL – FEMALE/FEMALE LEGAL

Criminal Code of 1955.²⁷⁹

Section 151: “Any person who –

- a. has carnal knowledge of any person against the order of nature; or
 - b. has carnal knowledge of an animal; or
 - c. permits a male person to have carnal knowledge of him or her against the order of nature,
- is guilty of a felony, and is liable to imprisonment for fourteen years.”

Having accepted three recommendations (Norway, France and Spain) to decriminalise same-sex sexual activity at its 1st cycle UPR in 2011, Seychelles still has not implemented this recommendation, although it indicated it would do so “pretty soon”, since section 151 no longer represents the government’s and the society’s point of view.²⁸⁰ On another note, the delegation of Seychelles clarified that article 27 of the Constitution²⁸¹ prohibited discrimination on any grounds, including sexual orientation.

²⁷⁶ Text of the Penal Code, which entered into force on 1 February 1966, is available at: www.justice.gouv.sn/droitp/CODE%20PENAL.PDF.

²⁷⁷ Original text: “*Sans préjudice des peines plus graves prévues par les alinéas qui précèdent ou par les articles 320 et 321 du présent Code, sera puni d’un emprisonnement d’un à cinq ans et d’une amende de 100.000 à 1.500.000 francs, quiconque aura commis un acte impudique ou contre nature avec un individu de son sexe. Si l’acte a été commis avec un mineur de 21 ans, le maximum de la peine sera toujours prononcé.*”

²⁷⁸ See Senegal’s UPR summary at: <http://arc-international.net/global-advocacy/universal-periodic-review/s/senegal/2nd-cycle/>.

²⁷⁹ The text of the law is available at: www.refworld.org/docid/4d67afc82.html.

²⁸⁰ See Seychelles’ UPR summary at: <http://arc-international.net/global-advocacy/universal-periodic-review/s/seychelles/>.

²⁸¹ See Seychelles’ constitution at: www.wipo.int/wipolex/en/text.jsp?file_id=230031.

SIERRA LEONE – MALE/MALE ILLEGAL – FEMALE/FEMALE LEGAL

Offences against the Person Act 1861.²⁸²

Section 61 of the above named act, criminalises buggery and bestiality, with a penalty of life imprisonment.

SOMALIA – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

Penal Code, Legislative Decree No. 5/1962.²⁸³

Article 409. Homosexuality

“Whoever has carnal intercourse with a person of the same sex shall be punished, where the act does not constitute a more serious crime, with imprisonment from three months to three years. Where the act committed is an act of lust different from carnal intercourse, the punishment imposed shall be reduced by one-third.”

Article 410. Security Measures

“A security measure may be added to a sentence for crimes referred to in Articles 407, 408, and 409.”

(Unofficial Translation)

The political situation in Somalia has been complicated since the fall of the dictator Mohamed Siad Barre in 1991, and the enforcement of the national Penal Code can be questioned.²⁸⁴ However, Somaliland in the north has declared itself independent, and it still applies the Penal Code.²⁸⁵

SOUTH SUDAN – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

Penal Code Act 2008.²⁸⁶

Section 248. Unnatural Offences

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

[...]

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

²⁸² See Submission in the UPR review of Sierra Leone, available at: http://lib.ohchr.org/HRBodies/UPR/Documents/session11/SL/JS2_JointSubmission2-eng.pdf.

²⁸³ Original text of the law is not available online, but the table of content is available at: www.somalilandlaw.com/criminal_law.html. An unofficial English translation is available at: www.somalilandlaw.com/Penal_Code_English.pdf.

²⁸⁴ There have been reports from different parts of Somalia that Islamic Sharia law has been used to punish homosexual acts, see for example: www.huffingtonpost.com/2013/03/21/gay-teen-stoned-somalia-sodomy_n_2916655.html.

²⁸⁵ See Somaliland Penal Code, available at: www.somalilandlaw.com/Criminal_Law/body_criminal_law.html.

²⁸⁶ Available at: www.wipo.int/wipolex/en/text.jsp?file_id=250684.

SUDAN – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

The Penal Code 1991 (Act No. 8 1991).²⁸⁷

Section 148. Sodomy

“(1) Any man who inserts his penis or its equivalent into a woman’s or a man’s anus or permitted another man to insert his penis or its equivalent in his anus is said to have committed Sodomy.

(2) (a) Whoever commits Sodomy shall be punished with flogging one hundred lashes and he shall also be liable to five years imprisonment.

(b) If the offender is convicted for the second time he shall be punished with flogging one hundred lashes and imprisonment for a term which may not exceed five years.

(c) If the offender is convicted for the third time he shall be punished with death or life imprisonment.”

Section 151. Indecent Acts

“Whoever commits an act of gross indecency upon the person of another person or any sexual act which does not amount to Zina or Sodomy shall be punished with not more than forty lashes and shall also be liable for imprisonment for a term which may not exceed one year or fine.”

SWAZILAND – MALE/MALE ILLEGAL – FEMALE/FEMALE LEGAL

Sodomy - sexual intercourse per anus between two human males - is prohibited as a common law offence.²⁸⁸

In 2005, the Government planned to include prohibitions of all male same-sex sexual acts and lesbian acts in its revision of the Sexual Offences laws. The proposed penalties were imprisonment for a minimum period of two years, or a minimum fine of E5 000.²⁸⁹

Although it is still unknown whether these laws have been revised or not, the Government clearly stated its position on the matter by rejecting 3 UPR recommendations (Spain, USA, Portugal) to decriminalise sodomy.²⁹⁰

TANZANIA – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

Penal Code of 1945 (as amended by the Sexual Offences Special Provisions Act, 1998).²⁹¹

Section 154. Unnatural of offences

“(1) Any person who—

(a) has carnal knowledge of any person against the order of nature; or

²⁸⁷ Available at: www.ecoi.net/file_upload/1329_1202725629_sb106-sud-criminalact1991.pdf.

²⁸⁸ See the information provided at: www.humandignitytrust.org/uploaded/Map/Commonwealth_Country_Reports/Swaziland.pdf.

²⁸⁹ See Submission for the UPR of Swaziland, available at: <http://lib.ohchr.org/HRBodies/UPR/Documents/session12/SZ/J55-JointSubmission5-eng.pdf>.

²⁹⁰ See Swaziland UPR’s summary at: <http://arc-international.net/global-advocacy/universal-periodic-review/s/swaziland/>.

²⁹¹ Text of the law is available at: www.lrc.tz/?wpfb_dl=170.

- (b) has carnal knowledge of an animal; or
(c) permits a male person to have carnal knowledge of him or her against the order of nature, commits an offence, and is liable to imprisonment for life and in any case to imprisonment for a term of not less than thirty years.
(2) Where the offence under subsection (1) of this section is committed to a child under the age of ten years the offender shall be sentenced to life imprisonment.”

Section 155. Attempt to commit unnatural offences

“Any person who attempts to commit any of the offences specified under section 154 commits an offence and shall on conviction be sentenced to imprisonment for a term of not less than twenty years.”

Section 138A. Gross indecency

“Any person who, in public or private commits, or is party to the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person, commits an offence and is liable on conviction to imprisonment for a term of not less than one year and not exceeding five years or to a fine not less than one hundred thousand shillings and not exceeding three hundred thousand shillings; save that where the offence is committed by a person of eighteen years of age or more in respect of any person under eighteen years of age, a pupil of a primary school or a student of a secondary school the offender shall be liable on conviction to imprisonment for a term not less than ten years, with corporal punishment, and shall also be ordered to pay compensation of an amount determined by the court to the person in respect of whom the offence was committed for any injuries caused to that person.”

TOGO – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

Penal Code of 13 August 1980.²⁹²

Article 88 – “Impudent acts or crimes against the nature with an individual of the same sex are punished with imprisonment from one to three years and 100,000-500,000 franc in fine.”²⁹³

(Unofficial translation)

TUNISIA – MALE/MALE ILLEGAL – FEMALE/FEMALE LEGAL

Penal Code of 1913 (as modified).²⁹⁴

Article 230. “The sodomy, that is not covered by any of the other previous articles, is punished with imprisonment for three years.”²⁹⁵

(Unofficial translation)

²⁹² Text of the law is available at: www.wipo.int/wipolex/en/details.jsp?id=8148.

²⁹³ Original text: “Sera puni d’un emprisonnement d’un à trois ans et d’une amende de 100 000 à 500 000 francs quiconque aura commis un acte impudique ou contre nature avec un individu de son sexe.”

²⁹⁴ Text of the law is available at: www.jurisitetunisie.com/tunisie/codes/cp/menu.html.

²⁹⁵ Original text: “La sodomie, si elle ne rentre dans aucun des cas prévus aux articles précédents, est punie de l’emprisonnement pendant trois ans.”

UGANDA – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

The Penal Code Act of 1950 (Chapter 120) (as amended).²⁹⁶

Section 145. Unnatural offences

“Any person who—

(a) has carnal knowledge of any person against the order of nature;

(b) has carnal knowledge of an animal; or

(c) permits a male person to have carnal knowledge of him or her against the order of nature, commits an offence and is liable to imprisonment for life.”

Section 146. Attempt to commit unnatural offences

“Any person who attempts to commit any of the offences specified in section 145 commits a felony and is liable to imprisonment for seven years.”

Section 148. Indecent practices:

“Any person who, whether in public or in private, commits any act of gross indecency with another person or procures another person to commit any act of gross indecency with him or her or attempts to procure the commission of any such act by any person with himself or herself or with another person, whether in public or in private, commits an offence and is liable to imprisonment for seven years.”

On 20 December 2013, the Parliament adopted the Anti-Homosexuality Act, which punished “homosexuality” with imprisonment for life, and prohibited same-sex marriage and “homosexual propaganda”.²⁹⁷ However, on 18 August 2014, the Act was annulled by the Constitutional Court, which ruled that parliament lacked a required quorum when the law was approved.²⁹⁸ On 29 October 2014, members of Uganda’s ruling party circulated a draft of a new bill entitled “The Prohibition of Promotion of Unnatural Sexual Practices Bill”²⁹⁹, which it is intended to replace the annulled Act by criminalising same-sex acts and LGBT rights even further. It is not clear yet when this bill will be introduced in the Parliament.

Uganda has been directly addressed by various UN mandate-holders, amongst which the following are of relevance to the current legislation: criminal laws, human rights defenders, HIV/AIDS in relation to SOGI in 2010,³⁰⁰ criminal laws, hate crime in 2010,³⁰¹ hate crimes, death, human rights defenders in 2011,³⁰² death

²⁹⁶ Text of the law is available at: www.wipo.int/wipolex/en/details.jsp?id=5241.

²⁹⁷ Text of the law is available at: www.refworld.org/pdfid/530c4bc64.pdf.

²⁹⁸ The copy of the judgement is available at: www.hrapf.org/sites/default/files/publications/ruling_on_the_anti-homosexuality_act.pdf.

²⁹⁹ The copy of the bill is available at: <http://sexualminoritiesuganda.com/wp-content/uploads/2014/11/The-Prohibition-of-Promotion-of-Unnatural-Sexual-Practices-Bill-of-2014.pdf>.

³⁰⁰ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions. Addendum: Communications to and from Governments, A/HRC/14/24/Add.1, 18 June 2010; available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/145/06/PDF/G1014506.pdf?OpenElement>.

³⁰¹ Uganda, CEDAW/C/UGA/CO/7, 5 November 2010; available at: <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-UGA-CO-7.pdf>.

³⁰² Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. Addendum: Summary of cases transmitted to Governments and replies received, A/HRC/17/27/Add.1, 27 May 2011; available at: [available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27.Add.1_EFOnly.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27.Add.1_EFOnly.pdf).

and criminal laws in 2012,³⁰³ and human rights defenders in 2013.³⁰⁴

In light of the Anti-Homosexuality Act, it may be surprising to note that the universal principle of non-discrimination was evident in the ruling given in the High Court of Uganda in *Mukasa and Oyo*,³⁰⁵ where although acts of “carnal knowledge against the order of nature” were penalised,³⁰⁶ the sexual orientation of the plaintiffs was not at issue, but what was being adjudicated on was the police ill-treatment (search and seizure of property and physical abuse) of them based on that sexual orientation. Likewise, two years later in *Kasha Jacqueline, David Kato, and Onziema Patience v. Rolling Stone*,³⁰⁷ the question was about whether, in the heightened atmosphere around the proposed Anti-Homosexuality Bill (AHB) in Uganda,³⁰⁸ the constitutional rights of the plaintiffs had been breached, and not about “homosexuality *per se*”.³⁰⁹ Despite widespread institutionalised and public discrimination in the country, the guarantees of universal human rights were asserted in this case regardless of SOGI.

ZAMBIA – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

The Penal Code Act (as amended by Act No. 15 of 2005).³¹⁰

“Section 155. Unnatural offences

Any person who-

(a) has carnal knowledge of any person against the order of nature; or

(b) has carnal knowledge of an animal; or

³⁰³ Report of the Special Rapporteur on the situation of human rights defenders. Addendum: Observations on communications transmitted to Governments and replies received, A/HRC/19/55/Add.2, 23 February 2012; available at: www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A.HRC.19.55.Add.2_EFOnly.pdf.

³⁰⁴ Report of the Special Rapporteur on the situation of human rights defenders, A/HRC/22/47, 16 January 2013; available at: www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.47_en.pdf.

³⁰⁵ *Mukasa and Oyo v. Attorney General*, High Court of Uganda at Kampala (22 December 2008), available at: <http://www1.chr.up.ac.za/index.php/browse-by-subject/490-uganda-mukasa-and-another-v-attorney-general-2008-ahrlr-ughc-2008-.html>.

³⁰⁶ The actual act of same-sex sexual relations indicated by the word ‘carnal’ as set out in Section 145 of the Penal Code of Uganda is criminalised with a maximum term of life imprisonment. The analysis of the legislation presented here relies on *Sexual orientation and gender identity in international human rights law: The ICJ UN compilation*, 2013 Fifth updated edition ((International Commission of Jurists, Geneva, 2013) at: http://icj.wengine.netdna-cdn.com/wp-content/uploads/2013/06/SOGI-UN-Compil_electronic-version.pdf; and *Sexual Orientation, Gender Identity and Justice: A Comparative Law Casebook* (International Commission of Jurists, Geneva, 2011) at: www.icj.org/sexual-orientation-gender-identity-and-justice-a-comparative-law-casebook/.

³⁰⁷ *Kasha Jacqueline, David Kato Kisule and Onziema Patience v. Rolling Stone Ltd and Giles Muhame*, High Court of Uganda at Kampala (30 December 2010); available at: <http://iglhr.org/sites/default/files/2010%20Kasha%20Jacqueline%20v%20Rolling%20Stone.pdf>

³⁰⁸ The Anti Homosexuality Bill, Bill No.18, Uganda, 25 September 2009.

³⁰⁹ The respondents were the publishers of a newspaper called “Rolling Stone”. On 2 October 2010, an article with the title “100 Pictures of Uganda’s top homos leak” was published in the newspaper. The article accused the gay community of trying to recruit “very young kids” and “brainwash them towards bisexual orientation”. It called on the government to take a bold step against this threat by hanging dozens of homosexuals. The article published the names and pictures of several members of the Ugandan LGBT community and provided information about them and, in some cases, their home addresses. David Kato, one of those named taking the action and advocacy officer for Sexual Minorities Uganda (SMUG), was found murdered in his home on 27 January 2011: results of the official investigation into his death remain ‘inconclusive’.

³¹⁰ Text of the law is available at: www.parliament.gov.zm/downloads/VOLUME%207.pdf. The Penal Code (Amendment) Act (No. 15, of 28 September 2005) which increased the maximum sentences in sections 155 and 156, and introduced a prohibition of sex between women in section 158, can be found at: www.parliament.gov.zm/dmdocuments/Act_No_15_2005.pdf.

(c) permits a male person to have carnal knowledge of him or her against the order of nature; commits a felony and liable, upon conviction, to imprisonment for a term not less than fifteen years and may be liable to imprisonment for life:

Provided that where a person-

- (i) has carnal knowledge of a child against the order of nature;
 - (ii) causes a child to have carnal knowledge of an animal; or
 - (iii) permits a male person to have carnal knowledge of a male or female child against the order of nature;
- that person commits an offence and is liable, upon conviction, to imprisonment for not less than twenty-five years and may be liable to imprisonment for life.”

“Section 156. Attempt to commit unnatural offences

Any person who attempts to commit any of the offences specified in section *one hundred and fifty-five* commits a felony and is liable, upon conviction of not less than seven years but not exceeding fourteen years.”

“Section 158. Indecent practices between persons of the same sex

(1) Any male who, whether in public or private, commits any act of gross indecency with a male child or person, or procures a male child or person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male child or person, whether in public or private, commits a felony and is liable, upon conviction, to imprisonment for a term of not less than seven years and not exceeding fourteen years.

(2) Any female who, whether in public or private, commits any act of gross indecency with a female child or person, or procures a female child or person to commit any act of gross indecency with her, or attempts to procure the commission of any such act by any female person with himself or with another female child or person, whether in public or private, commits a felony and is liable, upon conviction, to imprisonment for a term of not less than seven years and not exceeding fourteen years.

(3) A child who, whether in public or private, commits any act of gross indecency with another child of the same sex or attempts to procure the commission of any such act by any person with the child’s self or with another child or person of the same sex, whether in public or private, commits an offence and is liable, to such community service or counseling as the court may determine in the best interests of the child.”

ZIMBABWE – MALE/MALE **ILLEGAL** – FEMALE/FEMALE **LEGAL**

Criminal Law (Codification and Reform) Act (Effective 8 July 2006).³¹¹

Section 73. Sodomy

“(1) Any male person who, with the consent of another male person, knowingly performs with that other person anal sexual intercourse, or any act involving physical contact other than anal sexual intercourse that would be regarded by a reasonable person to be an indecent act, shall be guilty of sodomy and liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding one year or both.

(2) Subject to subsection (3), both parties to the performance of an act referred to in subsection (1) may be charged with and convicted of sodomy.

(3) For the avoidance of doubt it is declared that the competent charge against a male person who performs anal sexual intercourse with or commits an indecent act upon a young male person—

(a) who is below the age of twelve years, shall be aggravated indecent assault or indecent assault, as the case may be; or

(b) who is of or above the age of twelve years but below the age of sixteen years and without the consent of such young male person, shall be aggravated indecent assault or indecent assault, as the case may be; or

(c) who is of or above the age of twelve years but below the age of sixteen years and with the consent of such young male person, shall be performing an indecent act with a young person.”

³¹¹ Text of the law is available at: www.kubatana.net/docs/legisl/criminal_law_code_050603.pdf.

AFGHANISTAN – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

Penal Code, 1976.³¹²

Chapter Eight: Adultery, Pederasty, and Violations of Honour

Article 427:

“(1) A person who commits adultery or pederasty shall be sentenced to long imprisonment.

(2) In one of the following cases commitment of the acts, specified above, is considered to be aggravating conditions:

a. In the case where the person against whom the crime has been committed is not yet eighteen years old.”

The Afghan Penal Code does not contain any explicit provisions on the criminality of consensual same-sex sexual acts. Article 130 of the Constitution allows recourse to be made to Sharia law, which prohibits same-sex sexual activity in general. Afghanistan’s Sharia law criminalises same-sex sexual acts with a maximum of death penalty. However, no known cases of death sentences have been handed out for such behaviour since the end of Taliban rule.³¹³

In Afghan legal terminology “pederasty” appears to refer to intercourse between males regardless of age. The fact that paedophilia - or sexual relations with persons under the age of consent - falls under subsection 2(a) of article 427 indicates that this is the case. Terming sexual acts between adult men “pederasty” has previously not been uncommon; this occurred for example in the translations of the Criminal Codes of Albania (1977) and Latvia (1933), and in the old Russian legal tradition a “pederast” usually referred to a male who had anal intercourse with another male, regardless of age.

In its 2nd cycle UPR January 2014 the only recommendation regarding SOGI to Afghanistan (not accepted = “noted”), Norway called for the “repeal the provisions of the penal code that criminalise sexual relations between consenting adults of the same sex”. No mention was made of the death penalty in relation to same-sex behaviour directly, although ten recommendations calling for the abolition of the death penalty in line with civil and political rights were made: under international human rights law these necessarily include SOGI in their scope.³¹⁴

BANGLADESH – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

Penal Code, 1860 (Act XLV of 1860).³¹⁵

Section 377. “Unnatural Offences”

“Whoever voluntary has carnal intercourse against the order of nature with man, woman, or animal, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to 10 years, and shall also be liable to fine.

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

While referencing family values at its 2nd cycle UPR in April 2013, the Bangladeshi Minister for Foreign Affairs concurred with the newly-found position of the National Human Rights Commission that LGBT people should be protected from violence and discrimination in law. Bangladesh also accepted a recommendation to carry out sensitisation training with public officials regarding SOGI discrimination. On 15 November

³¹² Text of the law is available at: <http://aceproject.org/ero-en/regions/asia/AF/Penal%20Code%20Eng.pdf/view>.

³¹³ Healey, Dan *Homosexual Desire in Revolutionary Russia* (Chicago: Chicago University Press, 2001) at 272.

³¹⁴ See: www.ohchr.org/EN/HRBodies/UPR/Pages/AFSession18.aspx.

³¹⁵ Text of the law is available at: http://bdlaws.minlaw.gov.bd/sections_detail.php?id=11§ions_id=3233.

2013, Bangladesh legally recognised the Hijras population as being a ‘third sex’, and for purposes of voting, travel, identification and other core civil rights. In February 2015, author of Bangladesh’s first scientific book (2010) on same sex sexual identity, Avijit Roy, was gruesomely murdered on the streets of Dhaka, seemingly by religious fundamentalists.³¹⁶

BHUTAN – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

Penal Code 2004.³¹⁷

Chapter 14: Sexual Offences

Unnatural sex –

Section 213. “A defendant shall be guilty of the offence of unnatural sex, if the defendant engages in sodomy or any other sexual conduct that is against the order of nature.”

Grading of unnatural sex

Section 214. “The offence of unnatural sex shall be a petty misdemeanor.”

Chapter 2: Classes of crime

Section 3. “For the purpose of this Penal Code, the classes of crimes shall be as follows:

(c) A crime shall be petty misdemeanor, if it is so designated in this Penal Code or other laws and provides for a maximum term of imprisonment of less than one year and a minimum term of one month for the convicted defendant.”

Bhutan did not accept any of the four recommendations to decriminalise same-sex sexual behaviour in its 2nd cycle UPR in April 2014. The representative of Bhutan did claim, however, at the UPR Interactive Dialogue in September 2014, “[h]owever, I wish to share that the provisions concerning unnatural acts in the Penal Code of Bhutan have never since its enactment been evoked for acts between two consenting adults of the same sex. The provisions can be revised when there is felt need and desire from our people”.

BRUNEI DARUSSALAM – MALE/MALE ILLEGAL – FEMALE/FEMALE LEGAL

Penal Code, Chapter 22, revised edition 2001.³¹⁸

Unnatural offences

Section 377. “Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment for a term which may extend to 10 years, and shall also be liable to fine.

[S 12/97]

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

Moreover, Brunei Darussalam is phasing in its Syariah Penal Code Order (SPC Order 2013) between May 2014 and the end of 2016, at which point the death penalty for consensual same-sex sexual behaviour is due to apply.³¹⁹

³¹⁶ <https://lgbtbangladesh.wordpress.com/2010/07/17/samakamita-the-first-bengali-book-analysing-the-issues-of-homosexuality/>.

³¹⁷ Text of the law is available at: www.judiciary.gov.bt/html/act/PENAL%20CODE.pdf.

³¹⁸ Text of the law is available at: https://www.unodc.org/tldb/pdf/Brunei_Penal_Code_1951_Full_text.pdf.

³¹⁹ Text of the law is available at: www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2013/EN/syariah%20penal%20code%20order2013.pdf; See also, the open letter from International Commission of Jurists to the Prime Minister of Brunei Darussalam at: <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/01/Brunei-Open-letter-on-2013-Penal-Code.pdf>.

Liwat

82. (1) Any person who commits *liwat* is guilty of an offence and shall be liable on conviction to the same punishment as provided for the offence of zina.³²⁰

(2) For the purposes of this Order, “*liwat*” means sexual intercourse between a man and another man or between a man and a woman other than his wife, done against the order of nature that is through the anus.

Attempt to commit *Liwat*

84. Any person who attempts to commit *liwat* or attempts to cause the commission of *liwat* is guilty of an offence and shall be liable on conviction to the same punishment as provided under the section 71 or 71, as the case may be.

Brunei Darussalam rejected (“noted”) the five recommendations made in its 2nd cycle Universal Periodic Review in April 2014. Unlike its 1st UPR cycle rejections in 2009 (mostly on non-discrimination),³²¹ the major concerns of the 2nd cycle were decriminalisation (France, Canada, Spain and Czech Republic) and the revised Penal Code (Cap 22) that reintroduces the death penalty for same-sex sexual behaviour (Spain and Czech Republic). Bangladesh, however, used the UPR process to encourage Brunei Darussalam to uphold its social policies in line with traditional family values.³²²

In November 2014, ILGHRC submitted a shadow report to the Convention on the Elimination of Discrimination Against Women (CEDAW) Committee describing in detail how “the enforcement of SPC Order 2013 is likely to result in even tighter family control and increased violence to force Bruneian lesbians, tomboys, masculine-looking women, bisexual women and transgender women to conform to social norms (and now criminal law) on sexuality and gender”.³²³

GAZA – OCCUPIED PALESTINIAN TERRITORY – MALE/MALE ILLEGAL – FEMALE/FEMALE LEGAL

The British Mandate Criminal Code Ordinance, No. 74 of 1936 is in force in Gaza.³²⁴

Section 152(2) of the Code criminalises sexual acts between men with a penalty of up to 10 years.³²⁵

This Code was in force also in Jordan until 1951 and in Israel until 1977, before they adopted their own Penal Codes. Note that in the West Bank (including East Jerusalem), however, the Jordanian Penal Code of 1951, largely modified in 1960, is in force, having no prohibition on sexual acts between persons of the same sex.

³²⁰ The same way as Zina means that he/she may be liable to death by stoning (section 69(1)(a).

³²¹ Full SOGI profile at: <http://arc-international.net/global-advocacy/universal-periodic-review/b/brunei-darussalam>

³²² See: <http://arc-international.net/wp-content/uploads/2014/05/UPR19-SOGI-report.pdf> at 10.

³²³ See: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/BRN/INT_CEDAW_NGO_BRN_18370_E.pdf.

³²⁴ Text of the law is available at: www.nevo.co.il/law_html/law21/PG-e-0633.pdf.

³²⁵ Human Rights and Legal Position of Palestinian “Collaborators”. Supreme Court of Israel. Schmitt, Arno and Sofer, Jehoeda, *Sexuality and Eroticism Among Males in Moslem Societies* (Binghamton: Harrington Park Press, 1992) at 137-138.

In March 2014, media sources reported that Hamas drafted a law - planned to come into force in late-2016 - that makes same-sex sexual behaviour punishable by 100 lashes and up to five (5) years in prison, and execution if such behaviour happens three times.³²⁶ (As it is unclear at this stage [April 2015] whether this law will come into being, we have not included it in the death penalty listing as we did with Brunei Darussalam.)

INDIA — MALE/MALE ILLEGAL — FEMALE/FEMALE LEGAL

Indian Penal Code

Section 377. Unnatural offences³²⁷

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description or a term which may extend to ten years and shall also be to fine.

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

In 2009, Section 377 of the Indian Penal Code was given a more limited interpretation by the Delhi High Court, lifting the ban on same-sex sexual activity among consenting adult men in private.³²⁸ However, on 11 December 2013, in *Koushal v. Naz Foundation*, a two-judge bench of the Supreme Court of India upheld Section 377 as constitutional.³²⁹ Therefore, private consensual sexual activity between two men is still a crime in India.

In terms of India's recent performance regarding international human rights law at the UN, its 2nd cycle UPR responses (May 2012) suggest the country's current regard to its obligations:

- India accepted a level 3 (i.e. 'to consider') recommendation to "[s]tudy the possibility of eliminating any criminalisation of same-sex relations",³³⁰ despite the concerns expressed by Action Canada for Population and Development Statement to the UPR that the Criminal Law (Amendment) Bill 2012 that was approved by the Cabinet retained Section 377 of the India Penal Code.³³¹ In the same UPR session, India rejected a general recommendation for non-discrimination, particularly in employment, based on sexual orientation.
- In *Naz Foundation*,³³² the Ministry of Home Affairs justified retention of Section 377 on the grounds of protection of health and morals, but the High Court of New Delhi found that public morality is not a legitimate State interest and held that, although protection of public health was a legitimate State

³²⁶ See: www.shasha.ps/more/99697#.VNo49i6cGug.

³²⁷ Text of the law is available at: <http://punjabrevenue.nic.in/crime13.htm>.

³²⁸ Judgment of the Delhi High Court available at: <http://lobis.nic.in/dhc/APS/judgement/02-07-2009/APS02072009CW74552001.pdf>. For more information on the judgment, see Alternative Law Forum, "The Right that Dares Speak its Name" at: www.tarshi.net/downloads/The_right%20that_Dares_to_Speak_its_Name.pdf.

³²⁹ In the Supreme Court of India Civil Appellate Jurisdiction Review Petition (C) Nos. 41-55 of 2014, in Civil Appeal No.10972, 10974, 10986, 10981, 10983, 10984, 10975, 10973, 10985, 10976, 10980, 10982, 10977, 10978 and 10979 of 2013, text of the order is available at: <http://supremecourtofindia.nic.in/outtoday/rc4114.pdf>.

³³⁰ See: www.upr-info.org/database/, (search UPR database for India and sexual orientation).

³³¹ See: <http://arc-international.net/global-advocacy/universal-periodic-review/i/india-2nd-cycle>.

³³² *Naz Foundation v. Government of NCT of Delhi and Others*, High Court of Delhi at New Delhi, India, 2009.

interest, the law at issue was not rationally connected to this legislative end.³³³ In this case, the High Court relied on *Dudgeon*³³⁴ and *Toonen* to derive this important principle.³³⁵

- The UN Rapporteur on Rights Defenders has twice noted problems in relation to SOGI in India, in 2009³³⁶ and 2012.³³⁷

INDONESIA (TWO PROVINCES ONLY) – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

Same-sex relations are not prohibited according to the national Penal Code. The only provision to deal with such relations is Article 292, which prohibits sexual acts between persons of the same sex if committed with a minor.³³⁸ However, in 2002 the national parliament gave the Aceh province the right to adopt Islamic Sharia laws. Such laws apply to Muslims only. Moreover, for example the city of Palembang in South Sumatra has introduced jail time and hefty fines for same-sex relations.³³⁹ By 2015, there is no abatement in the demands of the Muslim clerics as reported by Human Rights Watch in March.³⁴⁰

At its most recent UPR, 2nd cycle in 2012, Indonesia was very specifically asked to address violence against SOGI human rights defenders against whom threats were on the increase. Indonesia responded to Spain's call to "eliminate the legislation" that criminalises and discriminates against same sex people particularly in the Aceh province by saying,³⁴¹ "[t]he recommendations do not reflect the actual situation in the Provinces they refer to".³⁴² Here, the State representatives may have been referring to the fact that Sharia is a body of principles of law from which interpretations flows, rather than a book of rigid statutes.

333 See *Sexual Orientation, Gender Identity and Justice: A Comparative Law Casebook* (Geneva: International Commission of Jurists, 2011) at 11: <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2012/05/Sexual-orientation-gender-identity-and-Justice-report-2011.pdf>.

334 *Dudgeon v. United Kingdom*, Application No. 7525/76, Judgment of 22 October 1981 (finding that the sodomy laws of Northern Ireland violated the right to privacy under the European Convention).

335 *Toonen v. Australia*, Communication No. 488/1992, Views of 4 April 1994 (finding that the sodomy laws of Tasmania violated the rights to privacy and non-discrimination under the ICCPR).

336 Report of the Special Representative of the Secretary-General on the situation of human rights defenders. Addendum: Summary of cases transmitted to Governments and replies received, see A/HRC/10/12/Add.1, 4 March 2009.

337 Report of the Special Rapporteur on the situation of Human Rights Defenders. Addendum: Mission to India, A/HRC/19/55/Add.1, 6 February 2012.

338 Text of the law is available at: www.unhcr.org/refworld/country,,LEGISLATION,TMP,4562d8cf2,3ffbcee24,0.html.

339 See, 'Special Report: Indonesia - Exchanging Pluralism For An Islamist State', available at: <http://pancasilaislam.blogspot.sg/2012/10/special-report-indonesia-exchanging.html>.

340 See: www.hrw.org/news/2015/03/17/dispatches-challenging-indonesia-s-intolerant-muslim-clerics.

341 See, A/HRC/21/7/add.1 at para.6.5.

342 See: <http://arc-international.net/global-advocacy/universal-periodic-review/i/indonesia-2nd-cycle/>.

Islamic Penal Code of Iran of 1991.³⁴³

“Part 2: Punishment for Sodomy

Chapter 1: Definition of Sodomy

Article 108: Sodomy is sexual intercourse with a male.

Article 109: In case of sodomy both the active and the passive persons will be condemned to its punishment.

Article 110: Punishment for sodomy is killing; the Sharia judge decides on how to carry out the killing.

Article 111: Sodomy involves killing if both the active and passive persons are mature, of sound mind and have free will.

Article 112: If a mature man of sound mind commits sexual intercourse with an immature person, the doer will be killed and the passive one will be subject to Ta’azir of 74 lashes if not under duress.

Article 113: If an immature person commits sexual intercourse with another immature person, both of them will be subject to Ta’azir of 74 lashes unless one of them was under duress.

Chapter 2: Ways of proving sodomy in court

Article 114: By confessing after four lashes to having committed sodomy, punishment is established against the one making the confession.

Article 115: A confession made before receiving four lashes (to having committed sodomy) does not involve punishment of “Had” but the confessor will be subject to Ta’azir (lesser punishments).

Article 116: A confession is valid only if the confessor is mature, of sound mind, has will and intention.

Article 117: Sodomy is proved by the testimony of four righteous men who might have observed it.

Article 118: If less than four righteous men testify, sodomy is not proved and the witnesses shall be condemned to punishment for Qazf (malicious accusation).

Article 119: Testimony of women alone or together with a man does not prove sodomy.

Article 120: The Sharia judge may act according to his own knowledge which is derived through customary methods.

Article 121: Punishment for Tafhiz (the rubbing of the thighs or buttocks) and the like committed by two men without entry, shall be hundred lashes for each of them.

Article 122: If Tafhiz and the like are repeated three lashes without entry and punishment is enforced after each time, the punishment for the fourth time would be death.

Article 123: If two men not related by blood stand naked under one cover without any necessity, both of them will be subject to Ta’azir of up to 99 lashes.

Article 124: If someone kisses another with lust, he will be subject to Ta’azir of 60 lashes.

Article 125: If the one committing Tafhiz and the like or a homosexual man, repents before the giving of testimony by the witnesses, his punishment will be quashed; if he repents after the giving of testimony, the punishment will not be quashed.

Article 126: If sodomy or Tafhiz is proved by confession and thereafter he repents the Sharia judge may request the leader (Valie Amr) to pardon him.

Part 3: Lesbianism

Article 127: Mosaheqeh (lesbianism) is homosexuality of women by genitals.

Article 128: The ways of proving lesbianism in court are the same by which the homosexuality (of men) is proved.

Article 129: Punishment for lesbianism is hundred (100) lashes for each party.

Article 130: Punishment for lesbianism will be established vis-à-vis someone who is mature, of sound mind, has free

³⁴³ Text of the 1991 Penal Code in English is available at: http://mehr.org/Islamic_Penal_Code_of_Iran.pdf. The Penal Code was revised in 2012, and although none of the same-sex sexual behaviour provisions for men and women were changed (Arts. 108-134), the English translation of them provided by the Iran Human Rights Documentation Centre is somewhat more nuanced, see: www.iranhrdc.org/english/human-rights-documents/iranian-codes/3200-islamic-penal-code-of-the-islamic-republic-of-iran-book-one-and-book-two.html#20.

will and intention.

Note: In the punishment for lesbianism there will be no distinction between the doer and the subject as well as a Muslim or non-Muslim.

Article 131: If the act of lesbianism is repeated three lashes and punishment is enforced each time, death sentence will be issued the fourth time.

Article 132: If a lesbian repents before the giving of testimony by the witnesses, the punishment will be quashed; if she does so after the giving of testimony, the punishment will not be quashed.

Article 133: If the act of lesbianism is proved by the confession of the doer and she repents accordingly, the Sharia judge may request the leader (ValieAmr) to pardon her.

Article 134: If two women not related by consanguinity stand naked under one cover without necessity, they will be punished to less than hundred (100) lashes (Ta'azir). In case of its repetition as well as the repetition of punishment, hundred (100) lashes will be hit the third time."

While reviewing a periodic report of the Islamic Republic of Iran in 2013, the Committee on Economic, Social and Cultural Rights expressed concern over the criminalisation of consensual same-sex sexual activity and the possibility that convicted male persons may be subject to the death penalty. "The Committee recommends that the State party repeal or amend all legislation that results or could result in discrimination, prosecution and punishment of people because of their sexual orientation or gender identity. The Committee recommends that the State party take steps to combat and prevent discrimination and societal stigma against members of the lesbian, gay, bisexual, and transgender community, and ensure their enjoyment of all the rights enshrined in the Covenant, including unhindered access to employment, social services, health care, and education, in line with article 2(2) of the Covenant and the Committee's General Comment No.20 (2009) on non-discrimination in economic, social and cultural rights."³⁴⁴

At its 1st cycle UPR in February 2010, Iran received three recommendations regarding decriminalisation and discrimination based on SOGI, while at its 2nd cycle review in October 2014, SOGI appears not to have been mentioned at all. The situation for LGBTI in Iran people is well illustrated in a 2014 interview recorded on the website *76 Crimes*.³⁴⁵ In April 2015, ILGHRC noted that Ayatollah Hassan Sanei, a senior cleric known for his progressive views, said he does not support the imposition of Hudud for 'morality crimes', including sodomy.³⁴⁶

³⁴⁴ Committee on Economic, Social and Cultural Rights *Concluding observations on the second periodic report of the Islamic Republic of Iran*, adopted by the Committee at its 50th session (29 April-17 May 2013) E/C.12/IRN/CO2, available at: <http://www2.ohchr.org/english/bodies/cescr/docs/co/E-C-12-IRN-CO-2.doc> at para. 7.

³⁴⁵ See: <http://76crimes.com/tag/iran/page/2/>; and: <http://76crimes.com/2014/12/28/living-dangerously-what-its-like-to-be-gay-in-iran/>.

³⁴⁶ See: <http://mardomsalari.com/Template1/News.aspx?NID=215130> (in Arabic).

IRAQ – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

After the American invasion in 2003 the Penal Code of 1969 was reinstated in Iraq. This code does not prohibit same-sex relations.³⁴⁷

However, non-State actors in Iraq including Sharia judges, continue to order executions of men and women for same-sex sexual behaviour, despite the fact that Iraq's civil code makes no reference to same-sex sexual behaviour, does not criminalise it, and neither does the country's (civil law) legal system defer to the Sharia court. It is also known that both police and militias have frequently kidnapped, threatened and killed LGBT people.³⁴⁸

The Daesh (or ISIS / ISIL) held areas of northern Iraq and northern Syria, are known to target men and women on account of their gender expression, gender identity and their sexual orientation. The *Nusr* ['Victory' in Arabic] website, which claims to be the website of the Islamic Caliphate, has a section on Legal Jurisprudence (evidence-based rules and the Penal Code). One of the pages under this section is dedicated to "Punishment for Sodomy", which states: "The religiously-sanctioned penalty for sodomy is death, whether it is consensual or not. Those who are proven to have committed sodomy, whether sodomizer or sodomized, should be killed..."³⁴⁹

KUWAIT – MALE/MALE ILLEGAL – FEMALE/FEMALE LEGAL

Penal Code, Law No.16 of 2 June 1960, as amended in 1976.³⁵⁰

Article 193. "Consensual intercourse between men of full age (from the age of 21) shall be punishable with a term of imprisonment of up to seven years."

Such relations with a man under 21 years of age are criminalised by article 192.

Kuwait 'noted' (rejected) a recommendation from Brazil to decriminalise same-sex relations between consenting adults at its 2010 UPR (1st cycle). At its 2nd UPR in January 2015, Uruguay and Iceland recommended Kuwait decriminalise same-sex sexual relations, and the Netherlands also iterated this and a call for non-discrimination in the country's law.³⁵¹ In September 2013, Kuwaiti immigration authorities put forward a proposal to screen people to identify whether they are LGBT,³⁵² and in May 2014 it was reported that vice police raided a "sex party" and arrested 32 people, both men and women ("tomboys").³⁵³

³⁴⁷ Text of the law is available at: www.refworld.org/docid/452524304.html.

³⁴⁸ In November 2014, the International Lesbian and Gay Human Rights Commission (ILGHRC) launched two important reports on the situations of LGBT people in Iraq, "When Coming Out Is A Death Sentence" and "We're Here: Iraqi LGBT People's Accounts of Violence and Rights Abuses", both of which are available at: <http://iglhrc.org/content/exposing-persecution-lgbt-individuals-iraq>.

³⁴⁹ See: <http://nusr.net/1/index.php/ar/nthm/nthm-oqobab/319-nthm-oqobab-6>; and ILGHRC timeline on killings in the region, at: <http://iglhrc.org/dontturnaway/timeline>.

³⁵⁰ German Bundestag, *Criminal law provisions on homosexuality and their application around the world*, Printed Paper 16/3597, 28 November 2006 at 15: www.gaylawnet.com/ezone/crime/16_3597_minor_interpellation.pdf.

³⁵¹ See: www.upr-info.org/sites/default/files/document/kuwait/session_21_-_january_2015/a_hrc_wg.6_21_1.14.pdf.

³⁵² See: www.independent.co.uk/news/world/gays-are-delinquent-deviants-who-destroy-humanity-kuwait-mps-attack-amnesty-international-for-protecting-lgbt-community-8884348.html.

³⁵³ See: <http://76crimes.com/2014/05/11/kuwait-police-raid-gay-party-arrest-32/>.

LEBANON — MALE/MALE ILLEGAL — FEMALE/FEMALE LEGAL

Penal Code of 1943.³⁵⁴

Article 534. “Any sexual intercourse against nature is punished with up to one year of imprisonment”.

Although Lebanon passed its penal code the same year it gained independence from France (1943), Helem, the major Lebanese LGBT advocacy group, identifies current Article 534 as a legacy of the colonial law. In 2010, at its 1st cycle UPR, Norway recommended they decriminalise and “ensure non-discrimination on the basis of sexual orientation and gender identity”, the response to which was ‘noted’ (refused). However, it is reported that in March 2014, a court read down Article 534 by ruling in favour of a transgender woman and her male partner.³⁵⁵ In contrast, in August 2014, it is reported that 27 men were arrested at a Hammam allegedly for same-sex sexual behaviour.³⁵⁶ Lebanon’s 2nd cycle UPR is due in November 2015.

MALAYSIA — MALE/MALE ILLEGAL — FEMALE/FEMALE ILLEGAL

Penal Code (Consolidated version 1998).³⁵⁷

Unnatural Offences

Section 377A. Carnal intercourse against the order of nature.

“Any person who has sexual connection with another person by the introduction of the penis into the anus or mouth of the other person is said to commit carnal intercourse against the order of nature.

Explanation: Penetration is sufficient to constitute the sexual connection necessary to the offence described in this section.”

Section 377B. Punishment for committing carnal intercourse against the order of nature

“Whoever voluntarily commits carnal intercourse against the order of nature shall be punished with imprisonment for a term which may extend to twenty years, and shall also be liable to whipping.”

Section 377C. Committing carnal intercourse against the order of nature without consent, etc

“Whoever voluntarily commits carnal intercourse against the order of nature on another person without the consent, or against the will, of the other person, or by putting other person in fear of death or hurt to the person or any other person, shall be punished with imprisonment for a term of not less than five years and not more than twenty years, and shall also be liable to whipping.”

Section 377D. Outrages on decency

“Any person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person, shall be punished with imprisonment for a term which may extend to two years.”

³⁵⁴ Original text is available at: www.wipo.int/wipolex/en/text.jsp?file_id=243255 (in Arabic); also see Helem’s legal analysis of Art. 534 at: <https://wayback.archive-it.org/1475/20121020013016/www.bekhsos.com/web/2010/04/new-publication-provides-analysis-on-article-534/>.

³⁵⁵ Source: www.dailystar.com.lb/News/Lebanon-News/2014/Mar-05/249261-landmarkruling-rubbishes-anti-gay-law-in-lebanon.ashx#axzz2v8zsB9YB.

³⁵⁶ See: <http://76crimes.com/2014/08/26/12-still-in-lebanese-jail-17-days-after-turkish-bath-raid/>.

³⁵⁷ Text of the law is available at: www.agc.gov.my/Akta/Vol.%2012/Act%20574.pdf.

Moreover, several states in Malaysia have instated Islamic Sharia laws, applying to male and female Muslims, criminalising male/male and female/female sexual acts with up to three years imprisonment and whipping.³⁵⁸ The Sharia Penal law in the Malaysian state of Pulau Pinang prescribes penalties for sodomy (Liwat) and lesbian relations (Musahaqat) with fines of RM5,000.00, three years imprisonment and 6 lashes of the whip. All these penalties can be combined.³⁵⁹

In February 2015, leading opposition leader Anwar Ibrahim was jailed for five years after losing his appeal against his conviction on sodomy charges – charges he and others (his wife and children included) claim were politically motivated.³⁶⁰

MALDIVES – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

The Penal Code of Maldives does not regulate sexual conduct.³⁶¹ It is instead regulated by uncoded Muslim Sharia law, which criminalises same-sex sexual acts between both men and between women. For men, the punishment is banishment for nine months to one year or a whipping of 10 to 30 strokes, while the punishment for women is house arrest for nine months to one year.³⁶²

At its 1st UPR in November 2010, recommendations to Maldives were to decriminalise, protect against violence and remove discrimination based on sexual orientation and gender identity in national laws. Maldives rejected all five of these recommendations. In a Briefing Paper submitted to Maldives' 2nd cycle UPR in May 2015, the International Service for Human Rights (ISHR) says, "[u]ncoded Muslim Sharia Law criminalises homosexual conduct, thus making the Maldives a very insecure place to advocate for the rights of persons who identify themselves as LGBTI."³⁶³ A panel of refugee appeals officers in the Immigration New Zealand Agency recognised that individuals are forced to flee persecution based on their sexual orientation throughout Maldives in 2014.³⁶⁴

³⁵⁸ Convictions for sodomy follow unfair trials, available at: www.amnesty.org/en/library/asset/ASA28/028/1998/en/9e941894-d9b0-11dd-af2b-b1f6023af0c5/asa280281998en.pdf.

³⁵⁹ See, Article 25 of *Enakmen Kesalahan Jenayah Syariah*. Original text is available at: http://jaipp.penang.gov.my/images/pdf/enakmen_kesalahan_jenayah_syariah_neg_p_pg_1996.pdf.

³⁶⁰ See, <http://uk.reuters.com/article/2015/02/10/uk-malaysia-anwar-ruling-idUKKBN0LE09G20150210>.

³⁶¹ Text of the law is available at: www.lexadin.nl/wlg/legis/nofr/oeur/lxwemdv.htm.

³⁶² Sexual Orientation / Gender Identity References, US Department of State, *Human Rights Reports* for 2011 (Released 24 May 2012) at 80, available at: www.weebly.com/uploads/1/2/3/0/12302675/2011-hr-report-sogi-references.pdf.

³⁶³ See: www.ishr.ch/news/maldives-briefing-paper-situation-human-rights-defenders at 2.

³⁶⁴ See: <http://globalvoicesonline.org/2014/06/06/homosexual-assylum-seekers-from-maldives-face-prosecution-upon-return/>.

MYANMAR – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

Penal Code, Act 45/1860, Revised Edition.³⁶⁵

Section 377.

“Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

Sexual orientation and gender identity was not mentioned in Myanmar’s 1st cycle UPR in November 2010. However, the National Human Rights Commission was established in 2011 and given force in 2014. One commissioner attended the UN Asia-Pacific conference in Human Rights, Sexual Orientation and Gender Identity in 2013,³⁶⁶ and although state-sponsored homophobia continues, there appears to be new energy building in LGBTI advocacy.³⁶⁷

OMAN – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

Omani Penal Code of 1974.³⁶⁸

Article 33.

“The following are deemed as disgracing crimes:

I. All felonies punishable by a coercive sentence.

II. All misdemeanours stated hereafter:

1.Bribery; 2.Embezzlement; 3.False testimony; 4.Perjury; 5.Forgery and use, with knowledge, of forged items; 6.Incitement to prostitution; 7.Homosexual and lesbian intercourses; 8.Drug trafficking; 9.Theft; 10.Rape and assault; 11.Fraud; 12.Flash Cheque; 13.Breach of trust; 14.Counterfeit; 15.Trespass.”

Homosexual and Lesbian Intercourses

Article 223.

“Anyone who commits erotic acts with a person of the same sex shall be sentenced to imprisonment from six months to three years. The suspects of homosexual or lesbian intercourse shall be prosecuted without a prior complaint, if the act results in a public scandal. The suspects of lesbian intercourse among ascendants, descendants or sisters shall only be prosecuted upon a complaint from a relative or a relative by marriage forth-degree removed.”

At its 1st cycle UPR, Sweden made two recommendations that Oman ‘noted’ (i.e. rejected) – one to decriminalise same-sex sexual relations, and the other to abolish discrimination based on SOGI. In September 2013, the English-language newspaper *The Week* was shut down for one week after printing an article about the country’s LGBT (lesbian, gay, bisexual, and transgender) community – this content was deemed to fall under “public discord”, which carries a three-year prison sentence. The article’s author and the paper’s editor were charged with violating the highly restrictive 1984 Press and Publications Law.

³⁶⁵ Text of the law is available at: www.wipo.int/wipolex/en/text.jsp?file_id=181185.

³⁶⁶ See: www.asiapacificforum.net/support/issues/sexual-orientation/downloads/role-of-nhris-in-promoting-and-protecting-the-rights-and-health-of-lgbti-in-asia-and-the-pacific-february-2015/workshop-briefing-paper at 21.

³⁶⁷ See Douglas Sanders, “Asia These Days” in the 9th edition of this publication at: http://old.ilga.org/Statehomophobia/ILGA_SSHR_2014_Eng.pdf at 86.

³⁶⁸ Text of the law is available at: <https://www.unodc.org/tldb/showDocument.do?documentUid=6409&country=OMA&language=ENG>.

Under pressure from the government, the newspaper removed the article from its website, though the print issue continued to circulate.³⁶⁹ Oman's 2nd cycle UPR is scheduled for November 2015. (The authors have not included Oman in their list of "propaganda of homosexuality" countries in the Global Overview in this publication, as this restrictive law is not *specifically designed* to limit SOGIE content, even though it does so.)

PAKISTAN — MALE/MALE ILLEGAL — FEMALE/FEMALE ILLEGAL

Penal Code (Act XLV of 1860).³⁷⁰

Section 377. 'Unnatural offences'

"Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which shall not be less than two years nor more than ten years, and shall also be liable to a fine.

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

There were no direct mentions of SOGI in either of Pakistan's UPR processes in May 2008 and October 2012. However, there were recommendations concerning the protection of human rights defenders and the training of public employees (judges, police, etc) in international human rights standards. Pakistan's 3rd cycle UPR will be in April 2017. Pakistan has been particularly vocal at the Human Rights Council and at various UN fora in its refusal to embrace SOGI within the scope of the various human rights Treaty Bodies, and in its promotion of the 'traditional values of human kind' resolutions at the Human Rights Council.³⁷¹ In June 2012, at the 19th session of the HRC, at the reading of a report mandated by the first SOGI resolution (A/HRC/19/42) of September 2011, Pakistan led a walkout (unprecedented behaviour in that forum) objecting to "attempts to create" "new standards" regarding SOGI that "seriously jeopardise[s] the entire international human rights framework".³⁷² The capacity of South Asian National Human Rights Institutions (NHRIs), including that of Pakistan, to respond to LGBTI concerns was assessed in late 2013.³⁷³

³⁶⁹ See: https://freedomhouse.org/report/freedom-press/2014/oman#VNs7Of-nF_To.

³⁷⁰ Text of the law is available at: www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html.

³⁷¹ At the Beijing + 10 conference in 2005, the Pakistani delegate accused Western delegations of "holding the women of the world hostage to one term, 'sexual orientation', when their real needs were clean water and help in overcoming illiteracy", in D. Sanders, "Getting Lesbian and Gay Issues on the International Human Rights Agenda," *Human Rights Quarterly*, 18(1) (1996) 67, at 71.

³⁷² B. Levesque "Arab, African delegates walk out on U.N. LGBT rights conference" *LGBTQ Nation* (website), 7 March 2012 at: www.dw.de/african-arab-delegates-walk-out-of-un-gay-rights-meeting/a-15794719.

³⁷³ See *The Capacity of National Human Rights Institutions to Address Human Rights in Relation to Sexual Orientation, Gender Identity and HIV* at: <http://asiapacificforum.net/news/support/issues/sexual-orientation/downloads/nhri-activities/capacity-of-national-human-rights-institutions-to-address-human-rights-in-relation-to-sexual-orientation-gender-identity-and-hiv-undp-idlo-2013>.

QATAR – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

The Penal Code (Law No.11 of 2004).³⁷⁴

Qatar's 1971 Penal Code (Law Number 14 in 1971 at Art.201) penalised consensual same-sex relations with up to 5 years in prison.³⁷⁵ The Qatari criminal law was changed in 2004,³⁷⁶ and according to law Number 11 in 2004, sodomy itself is no longer a crime.

However, under its Article 296, pimping same-sex acts is punishable by 1--5 years in jail, and Article 298 specifies that same-sex sex work is punishable by up to 10 years.³⁷⁷ This means that as of 2004, there is no civil law criminalising consensual same-sex sexual activity.³⁷⁸

Qatar also runs Sharia courts, where technically it is possible that Muslim men could be put to death for same-sex sexual behaviours, but there appears to be no evidence that has been applied to date (noting that UNHCR guidance explains norms that do not confirm with international human rights law can be seen to be persecutory "*per se*").³⁷⁹ The offence of "Zina" makes any sexual act by a married person outside of marriage punishable by death, while sexual acts by non-married persons are punishable by flogging – both offences no matter if they were same sex or different sex.³⁸⁰

SAUDI-ARABIA – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

There is no codified Penal Law in Saudi-Arabia.

Instead, the country applies strict Islamic Sharia law. According to the interpretation, Sura 7:80/81, which describes sexual intercourse between men as a misdemeanour, but does not specify a punishment. The penalty to be imposed is therefore a matter of dispute. Some call for whipping, and others believe they are quoting the Prophet that "both men to be killed".³⁸¹ However, same-sex sexual behaviour is not listed in the Sharia as one of the crimes deserving of death – as are murder, adultery, apostasy, or highway robbery.

³⁷⁴ Original text of the law is available at: www.almeezan.qa/LawArticles.aspx?LawTreeSectionID=254&lawId=26&language=ar, and English text at: www.qfju.gov.qa/files/Law%2011%20for%20the%20year2004-E.pdf.

³⁷⁵ (in Arabic) www.almeezan.qa/LawArticles.aspx?LawArticleID=34068&LawId=2505&language=ar.

³⁷⁶ See, www.qfju.gov.qa/files/Law%2011%20for%20the%20year2004-E.pdf.

³⁷⁷ See: www.almeezan.qa/SearchLawArticle.aspx?ArticleText=%D8%A7%D9%84%D9%84%D9%88%D8%A7%D8%B7&id=26&language=ar&num=0&name= (in Arabic)

³⁷⁸ The authors thank Hossein Alizadeh of the ILGHRC (MENA region) for this clarification.

³⁷⁹ United Nations High Commissioner for Refugees Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/02/01, 7 May 2002 paras. 57, 59, "[a] law can be considered as persecutory *per se*" where an applicant can show a well-founded fear of persecution" based on laws that reflect "social or cultural norms which are not in conformity with international human rights standards".

³⁸⁰ See Amnesty International, "Love, hate and the law: decriminalizing homosexuality" at 51, available at: <https://www.amnesty.org/en/documents/POL30/003/2008/en/>.

³⁸¹ See: www.gaylawnet.com/ezine/crime/16_3597_minor_interpellation.pdf.

For a married man the penalty is death by stoning, while the penalty for an unmarried man is 100 blows of the whip as well as banishment for a year.

For a non-Muslim, who commits sodomy with a Muslim, the penalty is death by stoning.

Moreover, all sexual relations outside of marriage are illegal in Saudi-Arabia according to the Sharia law, including sexual relations between women.³⁸²

SINGAPORE – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

Penal Code (Chapter 22), Revised Edition 2008.³⁸³

Outrages on decency

Section 377A. “Any male person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be punished with imprisonment for a term which may extend to 2 years.”

Section 377 criminalising “carnal knowledge against the order of nature” has been repealed by the Penal Code (Amendment) Act 2007, No. 51, which came into force on 1 February 2008.

In October 2014, Singapore’s highest court, the Court of Appeal, found that Section 377A did not infringe the rights of individuals of diverse sexual orientation.³⁸⁴ Reportedly, an internet blogger commenting on the case is currently at risk of prison for his analysis.³⁸⁵

SRI LANKA – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

Penal Code (as amended by the Penal Code (Amendment) Act, No. 22 of 1995).³⁸⁶

Article 365. Unnatural offences

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be punished with fine and where the offence is committed by a person over eighteen years of age in respect of any person under sixteen years of age shall be punished with rigorous imprisonment for a term not less than ten years and not exceeding twenty years and with fine and shall also be ordered to pay compensation of an amount determined by court to the person in respect of whom the offence was committed for injuries caused to such person. *Explanation* – penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.”

³⁸² Schmitt, Arno and Sofer, Jehoeda, *Sexuality and Eroticism Among Males in Moslem Societies* (Binghamton: Harrington Park Press, 1992) at 141.

³⁸³ Text of the law is available at: <http://statutes.agc.gov.sg/aol/search/display/view.w3p?page=0;query=Id%3A%221107d768-db70-488f-9fbb-f5a12c9da49e%22%20Status%3Ainforce;rec=0>.

³⁸⁴ See: <http://76crimes.com/2014/10/29/singapore-court-rejects-appeal-of-anti-gay-law/>.

³⁸⁵ See: <http://76crimes.com/2015/01/26/blogger-risks-jail-for-comments-on-singapore-anti-gay-law/>.

³⁸⁶ Text of the law is available at: www1.umn.edu/humanrts/research/srilanka/statutes/Penal_Code.pdf.

Article 365A. “Acts of gross indecency between persons

Any person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any person of any act of gross indecency with another person, shall be guilty of an offence and shall be punished with imprisonment of either description for a term which may extend to two years or with a fine, or with both and where the offence is committed by a person over eighteen (18) years of age in respect of any person under sixteen (16) years of age shall be punished with rigorous imprisonment for a term not less than 10 years and not exceeding 20 years and with a fine and shall also be ordered to pay compensation of amount determined by court to the person in respect of whom the offence was committed for the injuries caused to such a person.”

SYRIA – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

Penal Code of 1949.³⁸⁷

Article 520. “Any unnatural sexual intercourse shall be punished with a term of imprisonment of up to three years.”

Mawaleh, the LGBT Syrian group, argues that the words ‘same-sex’ or ‘sodomy’ or ‘cross dressing’ are not referred to in any law, therefore sodomy is not criminalised in the Syrian law.³⁸⁸

TURKMENISTAN – MALE/MALE ILLEGAL – FEMALE/FEMALE LEGAL

Criminal Code of 1997 (Effective 1 January 1998).³⁸⁹

Chapter 18: Crimes against morality

Section 135: Homosexual acts

“(1) Homosexual acts, i.e. sexual intercourse between men, shall be punished with a term of imprisonment of up to two years.

(2) Homosexual acts involving physical force, the threat of force and the exploitation of the victim’s need for assistance shall be punished with a term of imprisonment of between three and six years.

(3) The offence that is specified in subsection (2) of this Section, where:

(a) it is committed more than once;

(b) it is committed by three or more persons without collusion or by several persons in collusion;

(c) it is committed consciously against a minor;

(d) it has infected the victim with a sexual disease;

shall be punished with a term of imprisonment of between five and ten years.

(4) The offence that is specified in subsections (2) and (3) of this Section, where:

(a) it has been committed consciously against a person who has not yet reached the age of 14;

(b) it has, due to negligence, caused the death of the victim, caused severe damage to their health or infected them with AIDS;

shall be punished with a term of imprisonment of between ten and 20 years.”

Section 136. Gratification of sexual drive in unnatural form “(1) The gratification of the sexual drive in an unnatural

³⁸⁷ German Bundestag, *Criminal law provisions on homosexuality and their application around the world*, Printed Paper 16/3597, 28 November 2006 at 27, see: www.gaylawnet.com/ezine/crime/16_3597_minor_interpellation.pdf; and: www.wipo.int/wipolex/en/text.jsp?file_id=243237 (in Arabic).

³⁸⁸ See: <http://mawaleh.net/2013/06/08/الروس-لا-نوناق-ال-ي-ف-ة-س-ن-ج-ال-ة-ل-م-ل-ا/>.

³⁸⁹ Original text available is at: www.wipo.int/wipolex/en/text.jsp?file_id=249493.

form involving physical force, the threat of force and the exploitation of the victim's need for help shall be punishable with a term of imprisonment of between two and six years. (2) The same offence, where:

(a) it is committed more than once

(b) it is committed by three or more persons without collusion and by several persons in collusion;

(c) it has caused severe consequences;

shall be punished with a term of imprisonment of between three and eight years.

(3) The offence that is specified in subsections 1 and 2 of this Section, where it has been committed against a minor, shall be punished with a term of imprisonment of between five and ten years."

Section 137. Coercion to engage in sexual relations

"The coercion of a person to engage in sexual relations, homosexual acts or other acts of a sexual nature by means of blackmail, threats to destroy assets or the exploitation of a material or other dependency shall be punished with a term of correctional labour of up to two years or a term of imprisonment of up to two years."

UNITED ARAB EMIRATES – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

All sexual acts outside of heterosexual marriage are banned in the United Arab Emirates.³⁹⁰ The 1987 Federal Penal Code (Article 354) only criminalises sodomy in the context of rape, according to ILGHRC and Amnesty.³⁹¹ No article in the 1987 law specifically discusses consensual same-sex relations,³⁹² although some scholars translate this article otherwise.³⁹³

Both on-the-ground organisations concur that it is through the Sharia code that the death penalty applies to same-sex sexual relations. Firstly in Zina, which applies to sexual relations outside of marriage of any sort. Amnesty has said that the death penalty could apply in the UAE, although it is not aware of any such death sentences for consensual same-sex conduct.³⁹⁴ Secondly, Law Number 3 of 1996 allows the Sharia court to implement different aspects of the Sharia law that is not mentioned in the Federal Penal Code.³⁹⁵ This includes consensual same-sex relations.³⁹⁶ Different Emirates within the UAE have anti-sodomy laws: Article 80 of the Criminal Code in Abu Dhabi (the Emirate that is the seat of the UAE), criminalises "unnatural sex with another person", punishable up to 14 years in jail. (This law was passed in 1970, before Abu Dhabi was an independent entity). Article 177 of the Emirate of Dubai (also passed in 1970) imposes 10 years of imprisonment for sodomy.³⁹⁷

³⁹⁰ See Federal Law No (3) of 1987 on Issuance of the Penal Code, available at: [https://www.icrc.org/ihl-nat/6fa4d35e5e3025394125673e00508143/e656047207c93f99c12576b2003ab8c1/\\$FILE/Penal%20Code.pdf](https://www.icrc.org/ihl-nat/6fa4d35e5e3025394125673e00508143/e656047207c93f99c12576b2003ab8c1/$FILE/Penal%20Code.pdf).

(English), and: www.gcc-legal.org/BrowseLawOption.aspx?LawID=2767&country=2 (Arabic).

³⁹¹ See Amnesty International "Love, hate and the law: decriminalizing homosexuality" at 51, available at: <https://www.amnesty.org/en/documents/POL30/003/2008/en/>.

³⁹² ILGHRC, MENA region in correspondence with authors.

³⁹³ German Bundestag, *Criminal law provisions on homosexuality and their application around the world*, Printed Paper 16/3597, 28 November 2006 at 29, see: www.gaylawnet.com/ezine/crime/16_3597_minor_interpellation.pdf; and Schmitt, Arno and Sofer, Jehoeda, *Sexuality and Eroticism Among Males in Moslem Societies* (Binghamton: Harrington Park Press, 1992) at 144.

³⁹⁴ See: Amnesty International, "Love, hate and the law: decriminalizing homosexuality" <https://www.amnesty.org/en/documents/POL30/003/2008/en/> at 51,

³⁹⁵ See: <http://theuaelaw.com/vb/showthread.php?t=623>.

³⁹⁶ See: <http://sijournal.uaeu.ac.ae/issues/52/images/7%20Ahkam.pdf>.

³⁹⁷ See: <http://fanack.com/ar/countries/uae/society-media-culture/society/gay-rights/>.

UZBEKISTAN – MALE/MALE ILLEGAL – FEMALE/FEMALE LEGAL

Criminal Code of 1994.³⁹⁸

Article 120:

“Homosexual acts, which are defined as the gratification of a man’s sexual drive with another man without the use of force, shall be punishable with a term of imprisonment of up to three years.”

Article 128: Sexual acts by an adult with a minor

“Any person who has sexual intercourse or gratifies their sexual needs in an unnatural form with a person whom the guilty party knows to be below the age of 16 shall be punished with a term of correctional labour of up to two years or a term of detention of up to six months, or a term of imprisonment of up to three years. The same offences shall be punished with a term of imprisonment of between three and five years if

- they have been committed repeatedly or by a recidivist;
- they have been committed by a person who has previously committed offences under Article 118 or Article 119 of the Uzbek Penal Code.”

Article 129: Lewd acts with a person under the age of 16 “Any person who commits lewd acts, even without using force, on a person who has not yet reached the age of 16 shall be punished with a term of correctional labour of up to two years or a term of detention of six months. If the offence that has been committed involved the use of force or threats, it shall be punished with a term of correctional labour of between two and three years or a term of imprisonment of up to five years.”

Article 130: Production or dissemination of pornographic articles

“The production of pornographic articles for the purposes of their presentation and dissemination and the actual presentation and dissemination of pornographic articles to persons who have not yet reached the age of 21 shall, following (the previous imposition of) an administrative penalty for the same offence, be punished with a fine of between 100 and 200 minimum monthly wages or a term of corrective labour of up to three years.”

[There are no provisions that criminalise sexual acts between women.]³⁹⁹

At its second cycle UPR (16th session) in May 2013, Uzbekistan ‘noted’ (negative response) two calls to decriminalise and two others to enact non-discrimination legislation.

³⁹⁸ Text of the law is available at: www.legislationline.org/documents/id/8931.

³⁹⁹ Source of translation: www.gaylawnet.com/ezine/crime/16_3597_minor_interpellation.pdf at 31

YEMEN – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

Penal Code 1994.⁴⁰⁰

Article 264. “Homosexuality between men is defined as penetration into the anus. Unmarried men shall be punished with 100 lashes of the whip or a maximum of one year of imprisonment, married men with death by stoning.”

Article 268. “Homosexuality between women is defined as sexual stimulation by rubbing. The penalty for premeditated commission shall be up to three years of imprisonment; where the offence has been committed under duress, the perpetrator shall be punishable with up to seven years detention.”

Following the unification of north and south Yemen, the 1994 Yemeni Penal Code (the Republic’s Rule number 12) requires stoning to death for consensual same-sex relations for men (article 264) and three to seven years imprisonment for women (Article 268).⁴⁰¹

⁴⁰⁰ Text of the law is available at: www.ilo.org/dyn/natlex/docs/ELECTRONIC/83557/92354/F1549605860/YEM83557.pdf (in English).

⁴⁰¹ See: https://www1.umn.edu/humanrts/arabic/Yemeni_Laws/Yemeni_Laws14.pdf (in Arabic).

ANTIGUA AND BARBUDA – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

Sexual Offences Act of 1995 (Act No. 9).⁴⁰²

Buggery

Article 12.

“(1) A person who commits buggery is guilty of an offence and is liable on conviction to imprisonment -

- (a) for life, if committed by an adult on a minor;
- (b) for fifteen years, if committed by an adult on another adult;
- (c) for five years, if committed by a minor.

(2) In this section “buggery” means sexual intercourse per *anum* by a male person with a male person or by a male person with a female person.”

Serious indecency

Article 15. “(1) A person who commits an act of serious indecency on or towards another is guilty of an offence and is liable on conviction to imprisonment -

- (a) for ten years, if committed on or towards a minor under sixteen years of age;
 - (b) for five years, if committed on or towards a person sixteen years of age or more,
- (2) Subsection (1) does not apply to an act of serious indecency committed in private between -

- (a) a husband and his wife; or
 - (b) a male person and a female person each of whom is sixteen years of age or more;
- (3) An act of “serious indecency” is an act, other than sexual intercourse (whether natural or unnatural), by a person involving the use of genital organ for the purpose of arousing or gratifying sexual desire.”

BARBADOS – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

Sexual Offences Act 1992, Chapter 154.⁴⁰³

Buggery

Section 9. “Any person who commits buggery is guilty of an offence and is liable on conviction on indictment to imprisonment for life.”

Serious indecency

Section 12. “(1) A person who commits an act of serious indecency on or towards another or incites another to commit that act with the person or with another person is guilty of an offence and, if committed on or towards a person 16 years of age or more or if the person incited is of 16 years of age or more, is liable on conviction to imprisonment for a term of 10 years.

(2) A person who commits an act of serious indecency with or towards a child under the age of 16 or incites the child under that age to such an act with him or another, is guilty of an offence and is liable on conviction to imprisonment for a term of 15 years.

(3) An act of “serious indecency” is an act, whether natural or unnatural by a person involving the use of the genital organs for the purpose of arousing or gratifying sexual desire.”

⁴⁰² Text of the law is available at: www.laws.gov.ag/acts/1995/a1995-9.pdf.

⁴⁰³ Text of the law is available at: <http://www2.ohchr.org/english/bodies/hrc/docs/ngos/lgbti2.pdf>.

BELIZE – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

Criminal Code (Revised edition 2000).⁴⁰⁴

Unnatural Crime

Section 53.

“Every person who has carnal intercourse against the order of nature with any person or animal shall be liable to imprisonment for ten years.”

Since 2010, lawyers and activists have been challenging the constitutionality of this section. The case ‘Caleb Orozco v. Attorney General of Belize’ argues that section 53 violates the Constitution of Belize to the extent it criminalises consensual adult conduct in private. The case is still awaiting a judgment following the last hearing in May 2013.⁴⁰⁵

In its 2nd UPR cycle that commenced in October 2013, the Government noted 14 recommendations made (both in relation to the criminalisation of same-sex acts and non-discrimination). It rejected various direct recommendations to decriminalise, including the United States of America’s recommendation to “reform existing laws that can be used to discriminate against lesbian, gay, bisexual, and transgender persons, including the provision of ‘unnatural crime’ laws prohibiting ‘carnal intercourse against the order of nature’.”⁴⁰⁶

DOMINICA – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

Sexual Offences Act 1998.⁴⁰⁷

Section 14. Gross Indecency

“(1) Any person who commits an act of gross indecency with another person is guilty of an offence and liable on conviction to imprisonment for five years.

(2) Subsection (1) does not apply to an act of gross indecency committed in private between an adult male person and an adult female person, both of whom consent.

(3) For the purposes of subsection (2) –

(a) an act shall be deemed not to have been committed in private if it is committed in a public place; and

(b) a person shall be deemed not to consent to the commission of such an act if –

(i) the consent is extorted by force, threats or fear of bodily harm or is obtained by false and fraudulent representations as to the nature of the act;

(ii) the consent is induced by the application or administration of any drug, matter or thing with intent to intoxicate or stupefy the person; or

(iii) that person is, and the other party to the act knows or has good reason to believe that the person is suffering from a mental disorder.

(4) In this section “gross indecency” is an act other than sexual intercourse (whether natural or unnatural) by a person involving the use of genital organs for the purpose of arousing or gratifying sexual desire.”

⁴⁰⁴ Text of the law is available at: www.oas.org/juridico/mla/en/blz/en_blz-int-text-cc.pdf.

⁴⁰⁵ See summary of the case, available at: www.humandignitytrust.org/pages/OUR%20WORK/Cases/Belize/.

⁴⁰⁶ See Belize’s UPR summary at: <http://arc-international.net/global-advocacy/universal-periodic-review/b/belize/2nd-cycle/>.

⁴⁰⁷ Text of the law is available at: www.dominica.gov.dm/laws/1998/act1-1998.pdf.

Section 16. Buggery

“(1) A person who commits buggery is guilty of an offence and liable on conviction to imprisonment for –

(a) twenty-five years, if committed by an adult on a minor;

(b) ten years, if committed by an adult on another adult; or

(c) five years, if committed by a minor;

and, if the Court thinks it fit, the Court may order that the convicted person be admitted to a psychiatric hospital for treatment.

(2) Any person who attempts to commit the offence of buggery, or is guilty of an assault with the intent to commit the same is guilty of an offence and liable to imprisonment for four years and, if the Court thinks it fit, the Court may order that the convicted person be admitted to the psychiatric hospital for treatment.

(3) In this section “buggery” means sexual intercourse per *anum* by a male person with a male person or by a male person with a female person.”

The Government of Dominica rejected the UPR recommendations to repeal the above-mentioned articles both in its first and second cycles (made by Spain and France respectively).⁴⁰⁸

GRENADA – MALE/MALE ILLEGAL – FEMALE/FEMALE LEGAL

Criminal Code of 1987 as amended in 1993.⁴⁰⁹

Article 431. “If any two persons are guilty of unnatural connexion [sic], or if any person is guilty of an unnatural connexion with any animal, every such person shall be liable to imprisonment for ten years”.

GUYANA – MALE/MALE ILLEGAL – FEMALE/FEMALE LEGAL

Criminal Law (Offences) Act.⁴¹⁰

Section 352. Committing acts of gross indecency with male person

“Any male person, who in public or private, commits, or is a party to the commission, or procures or attempts to procure the commission, by any male person, of an act of gross indecency with any other male person shall be guilty of misdemeanour and liable to imprisonment for two years.”

Section 353. Attempt to commit unnatural offences

“Everyone who –

(a) attempts to commit buggery; or

(b) assaults any person with the intention to commit buggery; or

(c) being a male, indecently assaults any other male person,

shall be guilty of felony and liable to imprisonment for ten years.”

Section 354. Buggery

“Everyone who commits buggery, either with a human being or with any other living creature, shall be guilty of felony and liable to imprisonment for life.”

⁴⁰⁸ See Dominica’s UPR page at: www.ohchr.org/EN/HRBodies/UPR/Pages/DMSession19.aspx.

⁴⁰⁹ Text of the law is available at: www.oas.org/juridico/spanish/mesicic2_grd_criminal_code.PDF.

⁴¹⁰ Text of the law is available at: www.oas.org/juridico/MLA/en/guy/en_guy-int-text-cl_act.pdf.

JAMAICA – MALE/MALE ILLEGAL – FEMALE/FEMALE LEGAL

The Offences Against the Person Act.⁴¹¹

Article 76. Unnatural Crime

“Whosoever shall be convicted of the abominable crime of buggery [anal intercourse] committed either with mankind or with any animal, shall be liable to be imprisoned and kept to hard labour for a term not exceeding ten years.”

Article 77. Attempt

“Whosoever shall attempt to commit the said abominable crime, or shall be guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, shall be guilty of a misdemeanour, and being convicted thereof shall be liable to be imprisoned for a term not exceeding seven years, with or without hard labour.”

Article 78. Proof of Carnal Knowledge

“Whenever upon the trial of any offence punishable under this Act, it may be necessary to prove carnal knowledge, it shall not be necessary to prove the actual emission of seed in order to constitute a carnal knowledge, but the carnal knowledge shall be deemed complete upon proof of penetration only.”

Article 79. Outrages on Decency

“Any male person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for a term not exceeding 2 years, with or without hard labour.”

SAINT KITTS AND NEVIS – MALE/MALE ILLEGAL – FEMALE/FEMALE LEGAL

Offences against the Person Act.⁴¹²

The Revised Laws prescribe terms of imprisonment of up to ten years, with or without hard labor, upon conviction for engaging in anal sex, described as “the abominable crime of buggery.” Attempted “buggery” is sanctioned by up to four years imprisonment, with or without hard labor, as is “any indecent assault upon any male person.” The latter, which is in no way defined, is subject to arbitrary interpretation. It could potentially encompass any behavior perceived as a homosexual advance.⁴¹³

⁴¹¹ Text of the law is available at: www.vertic.org/media/National%20Legislation/Jamaica/JM_Offences_against_the_Person_Act.pdf.

⁴¹² Immigration and Refugee Board of Canada, *Saint Kitts and Nevis: The situation of homosexuals; state protection and availability of support groups*, 26 June 2008, KNA102823.E, available at: www.unhcr.org/refworld/docid/49b92b2614.html.

⁴¹³ See Saint Kitts-Nevis-Anguilla. & Lewis, P. C *The Revised Laws of St. Christopher, Nevis and Anguilla: Prepared under the authority of the Revised edition of the laws ordinance, 1959* (London: 1964). See also, Reding, A. *Sexual orientation and human rights in the Americas* (New York: World Policy Institute, 2003), available at: www.worldpolicy.org/sites/default/files/uploaded/image/WPR-2003-Sexual%20Orientation%20and%20Human%20Rights%20in%20the%20Americas.pdf.

SAINT LUCIA – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

Criminal Code, No. 9 of 2004 (Effective 1 January 2005).⁴¹⁴

Gross Indecency

Section 132. “(1) Any person who commits an act of gross indecency with another person commits an offence and is liable on conviction on indictment to imprisonment for ten years or on summary conviction to five years.

(2) Subsection (1) does not apply to an act of gross indecency committed in private between an adult male person and an adult female person, both of whom consent.

(3) For the purposes of subsection (2) —

(a) an act shall be deemed not to have been committed in private if it is committed in a public place; and

(b) a person shall be deemed not to consent to the commission of such an act if —

(i) the consent is extorted by force, threats or fear of bodily harm or is obtained by false and fraudulent representations as to the nature of the act;

(ii) the consent is induced by the application or administration of any drug, matter or thing with intent to intoxicate or stupefy the person; or

(iii) that person is, and the other party to the act knows or has good reason to believe that the person is suffering from a mental disorder.

(4) In this section “gross indecency” is an act other than sexual intercourse (whether natural or unnatural) by a person involving the use of the genital organs for the purpose of arousing or gratifying sexual desire.”

Buggery

Section 133. “(1) A person who commits buggery commits an offence and is liable on conviction on indictment to imprisonment for —

(a) life, if committed with force and without the consent of the other person;

(b) ten years, in any other case.

(2) Any person who attempts to commit buggery, or commits an assault with intent to commit buggery, commits an offence and is liable to imprisonment for five years.

(3) In this section “buggery” means sexual intercourse per anus by a male person with another male person.”

SAINT VINCENT AND THE GRENADINES

MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

Criminal Code, 1990 Edition.⁴¹⁵

Section 146.

“Any person who —

(a) commits buggery with any other person;

(b) commits buggery with an animal; or

(c) permits any person to commit buggery with him or her;

is guilty of an offence and liable to imprisonment for ten years.”

⁴¹⁴ Text of the law is available at: www.rslpf.com/site/criminal%20code%202004.pdf.

⁴¹⁵ See Immigration and Refugee Board of Canada, *Saint Vincent and the Grenadines: Sections of the criminal code that outline provisions for bodily harm and assault causing bodily harm*, 11 September 2007, VCT102596.E, available at: www.refworld.org/docid/47d654822.html.

Section 148.

“Any person, who in public or private, commits an act of gross indecency with another person of the same sex, or procures or attempts to procure another person of the same sex to commit an act of gross indecency with him or her, is guilty of an offence and liable to imprisonment for five years.”

TRINIDAD AND TOBAGO – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

Sexual Offences Act 1986, Consolidated Version 2000.⁴¹⁶

Section 13. “(1) A person who commits buggery is guilty of an offence and is liable on conviction to imprisonment—

- (a) if committed by an adult on a minor, for life;
- (b) if committed by an adult on another adult, for twenty-five years;
- (c) if committed by a minor, for five years.

(2) In this section “buggery” means sexual intercourse per *anum* by a male person with a male person or by a male person with a female person.”

Section 16. “(1) A person who commits an act of serious indecency on or towards another is guilty of an offence and is liable on conviction to imprisonment—

- (a) if committed on or towards a minor under sixteen years of age for ten years for a first offence and to imprisonment for fifteen years for a subsequent offence;
- (b) if committed on or towards a person sixteen years of age or more for five years.

(2) Subsection (1) does not apply to an act of serious indecency committed in private between—

- (a) a husband and his wife; or
- (b) a male person and a female person each of whom is sixteen years of age or more, both of whom consent to the commission of the act.

(3) An act of “serious indecency” is an act, other than sexual intercourse (whether natural or unnatural), by a person involving the use of the genital organ for the purpose of arousing or gratifying sexual desire.”

⁴¹⁶ The text of the law is available at: http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/11.28.pdf. See also Immigration and Refugee Board of Canada, *Trinidad and Tobago: Situation of homosexuals; state protection; whether Sections 13 and 16 of the Sexual Offences Act and Paragraph 8(1)(e) of the Immigration Act are enforced (January 2003- July 2009)*, 30 July 2009, TTO103215.E, available at: www.unhcr.org/refworld/docid/4b20f03423.html.

COOK ISLANDS (NEW ZEALAND ASSOCIATE)

MALE/MALE **ILLEGAL** – FEMALE/FEMALE **LEGAL****Crimes Act 1969.**⁴¹⁷

Section 154. Indecency between males

“(1) Every one is liable to imprisonment for a term not exceeding five years who, bring a male,-

(a) Indecently assaults any other male; or

(b) Does any indecent act with or upon any other male; or

(c) Induces or permits any other male to do any indecent act with or upon him.

(2) No boy under the age of fifteen years shall be charged with committing or being a party to an offence against paragraph

(b) or paragraph (c) of subsection (1) of this section, unless the other male was under the age of twenty-one years.

(3) It is not defence to a charge under this section that the other party consented.”

Section 155. Sodomy

“(1) Every one who commits sodomy is liable-

(a) Where the act of sodomy is committed on a female, to imprisonment for a term not exceeding fourteen years;

(b) Where the act of sodomy is committed on a male, and at the time of the act that male is under the age of fifteen years and the offender is of over the age of twenty-one years, to imprisonment for a term not exceeding fourteen years;

(c) In any other case, to imprisonment for a term not exceeding seven years.

(2) This offence is complete upon penetration.

(3) Where sodomy is committed on any person under the age of fifteen years he shall not be charged with being a party to that offence, but he may be charged with being a party to an offence against section 154 of this Act in say case to which that section is applicable.

(4) It is no defence to a charge under this section that the other party consented.”

Note that Cook Islands is a New Zealand associate, and that the laws in Cook Islands are only applicable to the islands, and not to New Zealand.

KIRIBATI – MALE/MALE **ILLEGAL** – FEMALE/FEMALE **LEGAL****Penal Code [Cap 67] Revised Edition 1977.**⁴¹⁸

Unnatural Offences

Section 153. “Any person who-

(a) commits buggery with another person or with an animal; or

(b) permits a male person to commit buggery with him or her,

shall be guilty of a felony, and shall be liable to imprisonment for 14 years.”

Attempts to commit unnatural offences and indecent assaults

Section 154. “Any person who attempts to commit any of the offences it specified in the last preceding section, or

⁴¹⁷ Text of the law is available at: www.paclii.org/ck/legis/num_act/ca196982/.

⁴¹⁸ Text of the law is available at: www.paclii.org/ki/legis/consol_act/pc66/.

who is guilty of any assault with intent to commit the same, or any indecent assault upon any male person shall be guilty of a felony, and shall be liable to imprisonment for 7 years.”

Indecent practices between males

Section 155. “Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, shall be guilty of a felony, and shall be liable to imprisonment for 5 years.”

Kiribati ‘noted’ (rejected) two recommendations to decriminalise, and four to include SOGI into its Constitutional provisions for non-discrimination in its 1st cycle UPR in May 2010. A Private Member’s Bill calling for such Constitutional inclusion was also rejected in the Parliament in 2014, and the unedited version of Report of the Working Group for its 2nd cycle UPR in January 2015,⁴¹⁹ shows five recommendations from France, Slovenia, Chile, Canada and Uruguay to decriminalise same-sex sexual relations.

NAURU – MALE/MALE ILLEGAL – FEMALE/FEMALE LEGAL

Criminal Code 1899.⁴²⁰

Section 208. Unnatural Offences

“Any person who:

- (1) Has carnal knowledge of any person against the order of nature; or
 - (2) Has carnal knowledge of an animal; or
 - (3) Permits a male person to have carnal knowledge of him or her against the order of nature;
- is guilty of a crime, and is liable to imprisonment with hard labour for fourteen years”

Section 209. Attempt to commit Unnatural Offences

“Any person who attempts to commit any of the crimes defined in the last preceding section is guilty of a crime, and is liable to imprisonment with hard labour for seven years. The offender cannot be arrested without warrant.”

Section 211. Indecent Practices between Males

“Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.”

Having accepted three recommendations (Sweden, United Kingdom and Slovenia) to decriminalise same-sex sexual activity at its 1st cycle UPR in 2011, Nauru still has not implemented this commitment, although it indicated it would do so immediately (action level 5 - act without delay). Nauru’s 2nd cycle UPR is in October 2015, when the State will be expected to account for failure to implement its UPR agreements.

⁴¹⁹ See, UN Human Rights Council, A/HRC/WG.6/21/L.2 at 84.50 – paragraph 84.54.

⁴²⁰ Text of the law available at: http://ozcase.library.qut.edu.au/qlhc/documents/CrimCode1899_63Vic_9.pdf.

PAPUA NEW GUINEA – MALE/MALE ILLEGAL – FEMALE/FEMALE LEGAL |

Criminal Code 1974, as amended in 2002.⁴²¹

Section 210. Unnatural Offences

“(1) A person who–

- (a) sexually penetrates any person against the order of nature; or
- (b) sexually penetrates an animal; or
- (c) permits a male person to sexually penetrate him or her against the order of nature, is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 14 years.

(2) A person who attempts to commit an offence against Subsection (1) is guilty of a crime.

Penalty: imprisonment for a term not exceeding seven years.”

Section 212. Indecent Practices between Males

“(1) A male person who, whether in public or private–

- (a) commits an act of gross indecency with another male person; or
- (b) procures another male person to commit an act of gross indecency with him; or
- (c) attempts to procure the commission of any such act by a male person with himself or with another male person, is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.”

In its 1st cycle UPR in June 2011, Papua New Guinea rejected three recommendations to decriminalise its law targeting same-sex relations between men. On 24 July, 2014 it was announced that the country’s Health Minister, Michael Malabag, committed to introducing legislation to decriminalise sex work as a key reform to tackling HIV/AIDS at an UNAIDS-AFPPD forum at the 20th International AIDS Conference in Melbourne; “I will bring in the legislation. We must remove the stigma. We are all equal”.⁴²² Papua New Guinea’s 2nd cycle UPR will be in April 2016.

SAMOA – MALE/MALE ILLEGAL – FEMALE/FEMALE LEGAL

Crimes Act 2013, Consolidated Acts of Samoa 2014⁴²³

“67. Sodomy –

(1) A person who commits sodomy is liable:

- (a) where the act of sodomy is committed on a female, to imprisonment for a term not exceeding 7 years; or
- (b) where the act of sodomy is committed on a male, and at the time of the act that male is under the age of 16 years and the offender is of or over the age of 21 years, to imprisonment for a term not exceeding 7 years; or
- (c) in any other case, to imprisonment for a term not exceeding 5 years.

(2) Sodomy is complete upon penetration.

(3) It is no defence to a charge under this section that the other party consented.”

⁴²¹ Text of the law is available at: www.paclii.org/pg/legis/consol_act/cca1974115/.

⁴²² See press release from the Asian Forum of Parliamentarians on Population and Development (AFPPD), at: <https://www.facebook.com/afppd/posts/768096593247263>.

⁴²³ Text of Act at: www.paclii.org/ws/legis/consol_act/ca201382/.

“68. Attempts to commit sodomy –

A person is liable to imprisonment for a term not exceeding 5 years who:

- (a) attempts to commit sodomy; or
- (b) assaults any person with intent to commit sodomy.”

“Article 71. Keeping place of resort for homosexual acts

A person is liable to imprisonment for a term not exceeding 7 years who:

- (a) keeps or manages, or knowingly acts or assists in the management of, any premises used as a place of resort for the commission of indecent acts between males; or
- (b) being the tenant, lessee or occupier of any premises, knowingly permits the premises or any part thereof to be used as a place of resort for the commission of indecent acts between males; or
- (c) being the lessor or landlord of any premises, or the agent of the lessor or landlord, lets the premises or any part of the premises with the knowledge that the premises are to be used as a place of resort for the commission of indecent acts between males, or that some part of the premises is to be so used, or is wilfully a party to the continued use of the premises or any part thereof as a place of resort for the commission of the indecent acts.”

At its 1st cycle UPR in May 2011, Samoa ‘noted’ three Level 5 (act immediately) recommendations to decriminalise same-sex sexual activity from Canada, France and Norway, but it did accept a Level 2 (“continue its reconsideration”) recommendation from the United States. Samoa’s next UPR is in April 2016. However, Samoa’s rejection is worthy of note at Paragraph 22 of the Report of the Working Group which reads as follows: “Samoa noted the gaps and weaknesses in its legislative framework on upholding equality and non-discrimination based on sexual orientation, and that relevant legislation was being reviewed by the Samoa Law Reform Commission. Samoa indicated that *Faafafine*, gays and lesbians were integral members of Samoan society and were heirs to family chiefly titles and lands through extended family consensus, as done for all men and women of its society. However, sexual orientation was a sensitive issue in Samoa given the religious and cultural beliefs of mainstream society. Nonetheless, Samoa was confident that education, awareness and sensitization would pave the way for societal acceptance and prevention of discrimination that might arise out of sexual orientation.”

SOLOMON ISLANDS – MALE/MALE ILLEGAL – FEMALE/FEMALE ILLEGAL

Penal Code (Revised Edition 1996).⁴²⁴

Section 160. Unnatural offences

“Any person who-

- (a) commits buggery with another person or with an animal; or
- (b) permits a male person to commit buggery with him or her, shall be guilty of a felony, and shall be liable to imprisonment for fourteen years.”

Section 161. Attempts to commit unnatural offences

“Any person who attempts to commit any of the offences specified in the last preceding section, or who is guilty of any assault with intent to commit the same, or any indecent assault indecent assaults upon any male person shall be guilty of a felony, and shall be liable to imprisonment for seven years.”

Section 162. Indecent practices between persons of the same sex (Inserted by Act 9 of 1990, s. 2)

“Any person who, whether in public or private -

- (a) commits any act of gross indecency with another of the same sex;

⁴²⁴ Text of the law is available at: www.paclii.org/sb/legis/consol_act/pc66/.

- (b) procures another of the same sex to commit any act of gross indecency; or
- (c) attempts to procure the commission of any act of gross indecency by persons of the same sex, shall be guilty of a felony and be liable to imprisonment for five years.”

Although the Solomon Islands accepted Norway’s recommendation to decriminalise same-sex sexual activity between consenting adults in its 1st cycle UPR in May 2011, in the same session it ‘noted’ three other recommendations that advised exactly the same thing (from Slovenia, France and Spain). The State has not acted on its UPR commitment as yet. The Solomon Islands next review (2nd cycle) will be in January 2016.

TONGA – MALE/MALE **ILLEGAL** – FEMALE/FEMALE **LEGAL**

Laws of Tonga, Criminal Offences [Cap 18] 1988 Edition.⁴²⁵

Sodomy and bestiality

Section 136. “Whoever shall be convicted of the crime of sodomy with another person or bestiality with any animal shall be liable at the discretion of the Court to be imprisoned for any period not exceeding ten years and such animal shall be killed by a public officer.” (Substituted by Act 9 of 1987.)

Attempted sodomy, indecent assault upon a male.

Section 139. “Whoever shall attempt to commit the said abominable crime of sodomy or shall be guilty of an assault with intent to commit the same or of any indecent assault upon any male person shall be liable at the direction of the Court to imprisonment for any term not exceeding 10 years.”

Evidence.

Section 140. “On the trial of any person upon a charge of sodomy or carnal knowledge it shall not be necessary to prove the actual emission of seed but the offence shall be deemed complete on proof of penetration only.”

Whipping for certain offences.

Section 142. “Whenever any male person shall be convicted of any offence against sections 106, 107, 115, 118, 121, 122, 125, 132, 136 and 139 of this Act the Court may, in its discretion in lieu of or in addition to any sentence of imprisonment authorised under this Act order the person so convicted to be whipped in accordance with the provisions of section 31 of this Act.” (Substituted by Act 9 of 1987.)

Tonga accepted an Action Level 3 (to consider) recommendation regarding eliminating discrimination based on SOGI, while rejecting a further five recommendations to decriminalise in its 2nd cycle UPR in January 2013. In its 1st cycle review in May 2008, Bangladesh had used the opportunity of the UPR to recommend that Tonga retain its criminalising law, but Tonga also rejected this advice.

⁴²⁵ Text of the law is available at: www.paclii.org/to/legis/consol_act/co136/.

TUVALU - MALE/MALE ILLEGAL - FEMALE/FEMALE LEGAL

Laws of Tuvalu, Penal Code [Cap 8] Revised Edition 1978.⁴²⁶

Unnatural offences

Section 153. "Any person who-

- (a) commits buggery with another person or with an animal; or
 - (b) permits a male person to commit buggery with him or her,
- shall be guilty of a felony, and shall be liable to imprisonment for 14 years."

Attempts to commit unnatural offences and indecent assault

Section 154. "Any person who attempts to commit any of the offences specified in the last proceeding section, or who is guilty of any assault with intent to commit the same, or any indecent assault upon any male person shall be guilty of a felony, and shall be liable to imprisonment for 7 years."

Indecent practices between males

Section 155. "Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, shall be guilty of a felony, and shall be liable to imprisonment for 5 years."

In its 2nd cycle UPR in June 2013, Tuvalu rejected recommendations from the United States and the United Kingdom to decriminalise consensual same-sex sexual activity.

⁴²⁶ Text of the law is available at: http://tuvalu-legislation.tv/cms/images/LEGISLATION/PRINCIPAL/1965/1965-0007/PenalCode_1.pdf.



ilga

GLOBAL PERSPECTIVES

WRITTEN BY ANNEKE MEERKOTTER⁴²⁷

REGRESSIVE LAWS AND LITIGATION SUCSESSES - A MIXED YEAR FOR LGBT IN AFRICA

WORRYING TREND TOWARDS ENHANCED CRIMINALISATION

Despite many years of advocacy against colonial-era laws which prohibit consensual same-sex sexual acts, legal developments in parts of Africa took a turn for the worse in 2014, with the enactment of a number of laws which not only increased penalties for same-sex sexual acts, but actually broadened the scope of criminalisation.

Penal codes in many African countries have criminalised consensual sexual acts between men for a long time, but these laws have been inconsistently enforced. Gradually, criminal laws have become more regressive, and, with 2014 behind us, we can no longer blame bad laws on colonialism alone. Over the past two decades, some countries have revised their laws to also criminalise consensual sexual acts between women and to increase the penalties that may be imposed for these types of offences – see for example, Botswana, Malawi, Gambia, Zambia and Tanzania. But law reform in 2014 went much further, and the laws which resulted are not only examples of inept and overly broad drafting, but are clear examples of how political influences result in rushed legislation based on prejudice and ignorance. Deliberate choices have been made by parliaments reflecting the challenge for those promoting LGBT rights to focus on changing attitudes towards LGBTI persons:

- In Nigeria, as in most countries in Africa, marriages are between men and women. Marriages which did not comply with this criteria would be deemed void, but would not have attracted criminal penalties. Nigeria's Same Sex Marriage (Prohibition) Act of 2013, which was signed into law in January 2014 changed this, and imposes a penalty of 14 years imprisonment on a person who enters into a same-sex marriage. Despite its title and stated purpose, i.e. to prohibit same-sex unions, the law goes much further and also criminalises the registration and meetings of "gay clubs, societies and organisations".
- In February 2014, Uganda's president signed the Anti-Homosexuality Act into law. The Act was declared void by the Constitutional Court in August 2014, based on a procedural irregularity in its passing by Parliament. This has resulted in the drafting of a new Bill - the Prohibition of Promotion of Unnatural

⁴²⁷ Litigation Director, Southern Africa Litigation Centre, see: www.southernafricalitigationcentre.org.

Sexual Practices Bill of 2014. The new Bill criminalises any acts deemed to “promote homosexuality” and imposes life imprisonment for consensual same-sex sexual acts.

- Gambia’s Penal Code contains much broader offences relating to same-sex sexual conduct than those contained in other countries’ Penal Codes. The traditional offence of committing “carnal knowledge against the order of nature” in Gambia extends beyond cases of anal penetration to include penetration of the mouth and penetration by an object, whilst any other “homosexual acts” fall under the offence of gross indecency. In October 2014, Gambia’s president signed into law the Criminal Code (Amendment) Act of 2014, which provides for an offence of “aggravated homosexuality” and attaches a penalty of life imprisonment. Aggravated cases include repeat offences. By not defining “homosexuality”, the law poses an increased risk of arbitrary arrests.
- In Malawi, the Marriage, Divorce and Family Relations Act was signed into law by the president in April 2015.⁴²⁸ The Act provides that a marriage is between spouses of the opposite sex and imposes a criminal penalty of a fine or five years imprisonment if a marriage is celebrated knowing that it does not comply with the Act. The law-makers, in the memorandum to the Bill, explained that they had considered the possibility of transgender persons trying to marry and have deliberately excluded this possibility by defining sex as a person’s birth sex.

Increasingly we see enhanced criminalisation pushed in other countries. For the moment, sense has prevailed in some countries. For example, in August 2014, members of Kenya parliamentary Committee on Justice and Legal Affairs rejected the introduction of a bill similar to the Anti-Homosexuality Bill in Uganda. A private member’s Bill covering similar issues also failed to make it onto the Democratic Republic of Congo’s parliamentary agenda in 2014. Law reform in Ethiopia which was mooted to remove same-sex sexual offences from the list of pardonable offences was also withdrawn in April 2014.

An excellent example of more considered criminal law reform is Mozambique, which enacted its new Penal Code in 2015. The new code does not contain any offences relating to consensual same-sex sexual acts.

The increased anti-gay rhetoric throughout Africa has also sparked an increase in arrest of persons for consensual same-sex sexual acts. Sometimes persons were attacked and brought to police stations by communities themselves and arrests were seldom the result of proper police investigations. Countries in which persons had been arrested over the past year include Uganda, Egypt, Gambia, Tanzania, Nigeria, Cameroon, Burundi, Gabon, and Zambia.

⁴²⁸ See ILGHRC statement, 17 April 2014, online at: <http://iglhrc.org/content/serious-concerns-raised-over-discriminatory-malawi-law-targeting-lgbti-people>.

Of concern, is the fact that prosecutions of same-sex sexual acts often flout criminal procedure rules and constitutional rights relating to arrest, detention and fair trial. In many countries the accused had a hard time finding legal representation for example. In many cases, invasive medical examinations were conducted by members of the medical profession even though such procedures have no scientific basis and are in violation of medical ethics.

Another concern is the lack of restraint by the media in reporting on cases relating to consensual same-sex sexual acts, sparing little thought to the impact of publishing persons' faces, medical information and other personal details in newspapers prior to and during the trial.

Luckily, in some cases, the accused were acquitted for lack of evidence, but by then much damage had been done. For example, in the case of two men who were arrested in Kapiri Mposhi in Zambia after being brought to the police station by members of the community in May 2013, they were eventually acquitted in July 2014, after spending more than a year in deplorable conditions in prison. Due to the manner in which the case was covered in the media, the men have not been able to return to their homes for fear for their safety.

INCREASED EFFORTS TO STEM THE VIOLENCE AGAINST SEXUAL MINORITY GROUPS

Hate crimes committed against persons based on their sexual orientation and gender identity remains a serious issue which has finally obtained some recognition at regional and international level. In May 2014, the African Commission on Human and People's Rights passed a resolution calling on States to:

[E]nd all acts of violence and abuse, whether committed by State or non-state actors, including by enacting and effectively applying appropriate laws and prohibiting and punishing all forms of violence, including those targeting persons on the basis of their imputed or real sexual orientation or gender identities, ensuring proper investigation and diligent prosecution of perpetrators, and establishing judicial procedures responsive to the needs of victims.

The UN Human Rights Council also passed a resolution condemning violence and discrimination based on sexual orientation and gender identity in September 2014.⁴²⁹ A number of the African states present at the meeting opposed the resolution or abstained from voting, including Botswana, Cote d'Ivoire, Ethiopia, Gabon, Kenya, Morocco, Burkina Faso, Congo, Namibia and Sierra Leone. South Africa was the only African state which voted in support of the resolution.

⁴²⁹ See, A/HRC/RES/27/32.

The United Nations Special Rapporteur on Freedom of Religion or Belief in his annual report in January 2015,⁴³⁰ recommended concerted efforts by all stakeholders, including States, religious communities, civil society and the media to contain and eliminate the scourge of violence committed in the name of religion, including against LGBT persons.

The violence against LGBT persons continues unabated and concerted efforts would have to be made to work in countries to address the hostile attitudes of communities and the lack of repercussions for persons who committed hate crimes. In December 2014, an organisation in Zimbabwe reported that its members had been attacked by unidentified armed men during a meeting, resulting in members being treated in hospital for injuries. In Cameroon and South Africa, lesbian women frequently report rape at the hands of members of the community. In South Africa beliefs promoting “corrective rape” stand in stark contrast to the protective legislation. Murders of LGBT persons have been reported in a number of countries over the past year, with the murder in March 2015 of a woman in Swaziland being the latest example of hate crimes perpetrated against persons solely because of their perceived or actual sexual orientation or gender identity.

What is urgently needed is for the advances made at regional and international levels to be communicated and followed through at national level and for regional and international bodies to take States to task on the measures they have implemented to discourage and prosecute hate crimes. Much more should be done to assist the victims of hate crimes and their families to access justice.

LITIGATING TO PROTECT THE RIGHTS TO FREEDOM OF ASSOCIATION AND EXPRESSION

There can be little improvement in the lives of LGBT persons without concerted efforts to work in communities to increase awareness of diversity and the universality of human rights. For this to happen, it requires a legal framework which allows for the freedom of LGBT persons to form associations and advocate on the rights of LGBT persons openly. In this respect, significant progress has been made through the courts in 2014. These successes should be promoted since there is a clear counter-movement in Africa towards restricting the rights to freedom of expression and association, as can be seen in Nigeria and Uganda.

In February 2014, the Zimbabwe High Court ordered that a local LGBT organisation is not an illegal organisation. This was a significant order as the organisation had often been the target of police abuse and threats because they were not formally registered as an organisation. Similarly, in July 2014, the Kenya High Court ordered the NGO Coordination Board to register a transgender advocacy group and held that the refusal to register a transgender organisation amounted to discrimination on the basis of gender or sex and

⁴³⁰ See, A/HRC/28/66, at 9.

thus constituted an unreasonable exercise of discretion.

In July 2014, the Uganda High Court published its judgment in a case where activists sued the Ethics and Integrity Minister for shutting down a workshop in 2012. The judge ruled that the workshop participants were promoting or inciting same-sex acts and the human rights training on LGBT rights is itself a form of incitement to engage in prohibited same-sex practices. The case is a setback for freedom of expression and association and the court's argument is no different from the arguments currently raised by the State in appeals in Botswana and Zambia.

In April 2013, Paul Kasonkomona was arrested after he spoke on television about gay rights and charged with an outdated and unused offence of "soliciting for an immoral purpose". He was finally acquitted by a Zambia Magistrates Court in February 2014. The Magistrate made an important distinction between committing a same-sex sexual act, which is prohibited, and advocating for law reform:⁴³¹

[F]rom the evidence on the record the accused was not engaging anyone to practice homosexuality. What I heard was that he was advocating for the rights of those already practicing it to be protected. By way of analogy, if someone was to go on television and advocate that the law on defilement should be amended will they be soliciting for immoral purposes? Or if someone was to engage the public discussing that death sentence should be abolished, will they also be soliciting for immoral purposes? The answer is not. It is through debate that people share information and ideas whether good or bad.

A similar argument was advanced by the Botswana High Court in November 2014 when it dealt with a case where a local LGBT group was refused registration:⁴³²

There is inherently nothing sinister or unlawful about the process of lobbying or advocacy. It is in fact common in many democratic countries that lobby groups for various courses operate freely and lawfully ... such lobby group's basic aim is to campaign or persuade the powers that be to embark on legislative reforms that would make it possible for a particular conduct to be lawful...

In a democratic society asking for a particular law to be changed is not a crime, neither is it incompatible with peace, welfare and good order...

It may be that engaging in homosexual activity is outlawed. But if I were to use an example of one born left handed, if it was a crime to write with a

⁴³¹ *The People v Paul Kasonkomona*, Lusaka Magistrates Court, Case No. 9/4/13 at R10, Ruling delivered on 25 February 2014, The ruling is available at: www.southernafiralitigationcentre.org/1/wp-content/uploads/2014/03/Kasonkomona-Ruling.pdf.

⁴³² *Rammoge and Others v Attorney General of Botswana*, High Court of Botswana, Case No. MAHGB 175-13, Judgment 14 November 2014. The judgment is available at: www.southernafiralitigationcentre.org/1/wp-content/uploads/2014/11/LEGABIBO-judgment-low-resolution.pdf.

left hand, such person would not be punished for being left handed but for writing with a left hand just as a gay person would not be punished for being gay but rather for engaging in a same sex relationship.

Finding that the refusal to register the organisation amounted to a violation of the rights to equal protection of the law, freedom of association and freedom of expression, the Botswana High Court concluded that “[l]obbying for legislative reforms is not per se a crime. It is also not a crime to be homosexual”.

In both the Zambia and Botswana cases mentioned above, the State has appealed the decisions of the courts and continue to pursue its argument that the criminalisation of same-sex sexual acts, implies a criminalisation of advocacy aimed at reforming such laws. Such arguments run contrary to the principles of criminal law, which requires a narrow reading of offences, and the States’ obligations under international and regional law to protect the promote the rights to freedom of expression and association. These cases are examples of the constant battle that is being fought by activists throughout Africa to assert their basic rights.

WRITTEN BY PROFESSOR DOUGLAS SANDERS

ASIA THESE DAYS

BEING LGBTI IN ASIA

The years from 2012 to 2015 have seen the completion of ‘Phase 1’ of “Being LGBT in Asia” (BLIA). And what is BLIA? There are no parallel programs in any other world region, so it needs some explanation. It isn’t even well known in its homeland.

In June 2011, the UN Human Rights Council placed violence and discrimination against LGBT individuals on the UN human rights agenda. This was our first BIG success in any of the ‘political’ bodies of the United Nations. The resolution authorised a study by the Office of the High Commissioner on Human Rights, which was completed in December 2011. That month the United States made a major double announcement. US Secretary of State Hillary Clinton, at the UN, announced a US commitment to combating LGBT discrimination internationally. In Washington, President Obama issued an Executive Order telling all US agencies with international programs to promote LGBT human rights. The Netherlands and Sweden, in particular, had already been active on LGBT human rights promotion overseas for a number of years, so the US move was an innovation, but also a catch-up.

The Asia Pacific regional office of the UN Development Program (UNDP) acted quickly. By mid 2012 there was agreement for US funding of the “Being LGBT in Asia” program, to be run by the UNDP. The program was launched in December 2012. Eight countries were selected – Cambodia, China, Indonesia, Mongolia, Nepal, Philippines, Thailand and Vietnam.

Prior government approval of the initiatives in each of these countries was, apparently, not sought. But that was okay, for governments that would be hostile or demand control over the process, were outside the program – governments such as Bangladesh, Brunei, India, Laos, Malaysia, Pakistan and Sri Lanka. Also outside the project were Muslim majority states in Central Asia and the Middle East (technically part of Asia, but handled by the UN in most matters as a special sub-region). Some Asian countries were obviously not eligible for UNDP activity, being too developed – Brunei, Japan, Korea, Malaysia and Singapore. Myanmar was too early into its political transition in mid-2012 to be included. Exiled LGBT activists had not yet returned to the country.

Governments usually did not play important roles in the BLIA process. The government of Thailand, facing domestic political instability, barely participated. The Vietnamese government, in contrast, gave some active support. If governments played marginal roles in the BLIA programs, the same was true for LGBTI civil society organisations, some

of which refused to participate as they felt their agency was compromised within the process. In other countries LGBTI NGOs were pretty weak. Sometimes the main authors of the final reports were from the country in question, as with Indonesia, but often not. The UNDP wanted one national dialogue event in Vietnam, but local NGOs and activists insisted on two, one in the North, one in the South. The process in each country was somewhat different, reflecting local realities and leadership.

There were three outcomes.

First: Eight country reports were published by UNDP and are available on the UNDP website. They each contain an overview of the country situation, followed by a description of the national 'dialogue' organised with local activists and representatives.

The publication of these reports received almost no publicity either nationally or regionally. Was this the UN being cautious about the program, choosing a low profile to avoid criticism from governments? Or was it media disinterest in yet more long reports from UN agencies? Or does it tell us that media in the region aren't yet very interested in our news? All three, probably.

Second: A final, sum-everything-up, Asia-Pacific 'dialogue' was held at the UN Conference Centre in Bangkok on the 26th and 27th of February, 2015, a big event. Around two hundred people were brought to Bangkok from countries ranging from India to the Pacific Islands. Participants were selected on the basis of written submissions outlining who they were and what they wanted to say (by-passing any selection role by NGOs). They did not have to be representatives of organisations. There were also expert panels, with Asian and non-Asian speakers. Most of the older established activists were not there.

The whole event was tightly scripted, with no open discussions or proposals from the floor. Still, it was a showy and exciting affair. Sweden was there, and will be a funder, along with the US, of Phase 2. No one told us what will happen in Phase 2.

Third: The February Dialogue event was co-sponsored by the APF – the Asia Pacific Forum of National Institutions for the Promotion and Protection of Human Rights – the organisation representing the national human rights commissions in the Asia-Pacific region. The APF held a two day workshop in advance of the dialogue, at which it discussed the work of the national commissions on LGBT issues. The workshop developed a statement of principles to guide work in the years ahead. Commission representatives came from Afghanistan, Australia, Bangladesh, India, Indonesia, Kazakhstan, South Korea, Malaysia, Mongolia, Myanmar, Nepal, Philippines, Samoa, Thailand and East Timor. The very positive outcome document is available on the APF website.⁴³³ The workshop and action plan built on earlier work of the APF on LGBTI issues, including a report of its Advisory Council of Jurists (also available on the website).

⁴³³ www.asiapacificforum.org.

REGIONAL EVENTS

In February, 2015, ALMA, the Asia LGBTI Milestone Awards, were held in Bangkok, with three host organisations: *Element* - an online LGBTI magazine from Singapore, ILGA Asia, and a regional LGBTI Business Forum backed by IBM. A year earlier the regional awards ceremony was held in Singapore, then called the Asia Pink Awards. For the 2015 event there were 100 nominations for 21 awards, and lots of talent and costumes. Good coverage in social media. None in the Bangkok newspapers.

ILGA Asia will meet in Taipei 28-30 October 2015, immediately before the giant annual pride parade on the 31 October. ILGA World will meet in Bangkok in November 2016.

The ASEAN SOGIE Caucus held a regional dialogue in Bangkok in November, 2014, and organised sessions at the ASEAN Peoples Forum in Kuala Lumpur in April 2015. ASEAN has an official commitment to promoting human rights, but there is a need for a lot of activism to ensure that the commitment means something for life in the region.

CRIMINAL LAW

No good news.

Caning for same sex sexual acts will begin soon in Aceh, an autonomous enclave at the north end of Sumatra in Indonesia. Stoning could begin in Brunei, if the Sultan goes ahead with his announced plans for the gradual introduction of a robust version of Islamic sharia law. Actual enforcement of these penalties may be unlikely – but will be possible. They will certainly keep gays quiet, and interested in moving to Bali or Bangkok.

In early 2015, Anwar Ibrahim - the opposition political leader in Malaysia - was imprisoned on sodomy charges after losing his last appeal. He is the leader of the political coalition that won the most votes in the last national election, but not a majority of the seats in parliament. He has consistently called the prosecution a political conspiracy, organised by the government, designed to end his political career. He has never called for a repeal of the anti-homosexual criminal laws inherited from Britain. He has denied any same sex sexual activity, and his wife and daughters are prominent in his political coalition, and in the campaigns for his release. International critics, aware that the law has not been enforced against anyone else for years, accept that the prosecution was politically motivated and have condemned the Malaysian government. Prime Minister Najib Razak has often condemned 'homosexuality' and no political party supports decriminalisation.

The Indian Supreme Court reinstated section 377 of the Indian Penal Code in a decision in late 2013. Section 377 prohibits "carnal intercourse against the order of nature", the same provision used against Anwar Ibrahim in Malaysia. The Indian decision may be reconsidered by the Supreme Court in response to a 'curative' petition, but don't expect anything soon. The Supreme Court decision prompted the secular Congress Party to

adopt a pro-gay platform, calling for the repeal of 377, a first. The ruling conservative and pro-Hindu BJP government contains elements sympathetic to repeal, but has taken no official position on the issue.

The highest court in Singapore rejected a constitutional challenge to its anti-gay criminal law. Section 377A prohibits acts of 'gross indecency' between males, not like the older sodomy-specific 377 law. Judges said the government could choose whatever moral concern it wished, and enforce it through the criminal law. And no problem that they only worried about men, and let lesbians off scot-free. In 2007 the Prime Minister, in parliament, pledged that his government would not 'proactively' enforce the law. But he would still 'keep it on the books', describing it as a "messy" compromise.

In Asia criminal prohibitions survive (a) in all former British colonies (except Hong Kong), and (b) in Central Asia from the period of the Soviet Union. In no jurisdiction is the prohibition actively enforced. If there are charges, they are likely to be for minor offences of vagrancy, solicitation, public nuisance, or public scandal. China used to charge gays cruising in parks with hooliganism, but those days are long gone.

Sharia laws against cross-dressing exist in a number of states within Malaysia (but not in the national criminal law). As religiously based laws, they apply only to Muslims, and typically only to men. There have been various cases in which 'beauty pageants' have been raided. Muslim men have been taken to sharia courts, while non-Muslims have been charged with a minor public disturbance offence.

In November 2014, the Malaysian Court of Appeal ruled that the law against cross-dressing in the state of Negeri Sembilan was unconstitutional. The problem was that the law applied to individuals with gender dysphoria, for whom cross-dressing was a legitimate part of medically approved behavior. There was a conflict between medical science and the prohibition. The recognition of this conflict was an important acknowledgment of 'gender dysphoria' by the Malaysian judicial system. Four provisions of the constitution were relied upon: Article 5 on the right to live with dignity; Article 8 on gender equality; Article 9 on freedom of movement; and Article 10 on freedom of speech and expression. The decision is under appeal to the Federal Court, the highest level in the Malaysian judicial system.

RECOGNITION OF RELATIONSHIPS

In 2013 the Ministry of Justice in Vietnam proposed that the law give legal recognition to heterosexual and same-sex cohabitation on questions of property and children. This was one part of a comprehensive review of the civil code provisions on marriage and families. Experts from Europe and the US were brought in to explain developments on SOGI-related rights abroad. Consultations with Vietnamese LGBTI NGOs occurred. But in the end, in 2014, the Legislative Assembly limited the recognition of heterosexual relationships to issues of children, and deleted any provision on recognising same-sex

cohabitation. The legislature has some independence on social issues, but little or none on economic or political questions.

The earlier provision in Vietnam law that made it illegal to hold an event and call it a same-sex 'wedding' was finally repealed. A section was added to say that the government did not recognise same-sex marriage. The new provisions came into effect on 1 January 2015, and a number of couples held fancy (non-legal) wedding banquets. Foreign media was confused as to what was going on, not aware that non-legal same-sex weddings had been illegal, and only non-legal same-sex weddings were now legal.

In Thailand, as of early 2015, there are two draft bills allowing for the registration of same-sex relationships. They would grant many or all of the rights and responsibilities of marriage. One draft bill has been produced by a parliamentary committee working with the Ministry of Justice. The second has been drafted by civil society groups working with the Law Reform Commission of Thailand. Neither had been endorsed by any political party before the 2014 military coup. The post-coup military established legislature has shown (as of April 2015) no interest in either draft bill.

Legislative hearings on a bill to open marriage in Taiwan occurred early in 2015, after two decades of off- and on-again discussion of the issue. Public opinion polls show majority support for extending marriage, but evangelical Christians - a relatively small minority - have organised rallies against any reform. This has worried the two competing political parties, neither of which has a platform to open marriage.

In January 2015, a committee established by order of the Supreme Court in Nepal to review the legal rights of LGBT in the country finally made its recommendations. It called for the opening of marriage (not just a registration system or the recognition of cohabitation). The drafting of a new constitution has proven impossible for many years, so quick action on the committee's recommendation is unlikely.

In March 2015, the council in Shibuya, a district within Tokyo, voted to issue 'partnership' certificates to same-sex couples. Officials said they will encourage hospitals and landlords to accept the certificates and grant equal treatment. Two other districts within Tokyo, Setagaya and Toshima, are considering similar measures, as is the city of Yokohama, Japan's second largest city. It is worth remembering that the first registration systems in North America were put in place by local governments. Equally, the very modest local partnership laws in Japan could 'break the ice' on legal recognition.

TRANS IN ASIA

Sex reassignment surgery is prohibited in Vietnam and Malaysia (except for cases of intersexuality, a separate matter). Surgical treatment is not available in many countries in Asia, but many individuals go to Thailand where hospitals and clinics are competent and reasonably priced.

Changed personal documents for post-operative transsexuals are possible in China, Hong Kong, Indonesia, Japan, Korea, Singapore and Taiwan. The exact conditions for document change have not been documented. Newer reforms in the West have (a) eliminated the need for a medical diagnosis of 'gender dysphoria' or 'transsexualism', (b) the requirement of genital surgery, and (c) the requirement of sterility. In the name of an individual right to 'self-determination' individuals who are living in their desired sex can get documents changed. Such reforms are limited to only some countries in the West and, as of yet, unheard of in Asia.

In South Asia the largest trans grouping are Hijra, who form a distinct 'third gender' identity category. They claim a history going back, at least, to the Mughal period, and many follow distinctive social patterns as acolytes of senior leaders, living communally, and with some distinctive religious traditions. Judicial decisions in India, Pakistan and Bangladesh have recognised Hijra as marginalised groupings to whom social welfare programs must be extended. As well, some recognition of Hijra (and parallel groups such as Aravani) as 'third gender' has developed, for national identity cards, welfare cards, passports and access to affirmative action programs for economically depressed population groupings. The second 'Hijra Pride' event will take place on 10 October 2015 in Bangladesh, celebrating the anniversary of the judicial decision giving them recognition.

MEDIA

Social media is alive with the sound of LGBT music, dating and news in Asia. At least two on-line magazines seem to be flourishing in Asia; *Element* from Singapore and *Outrage* from the Philippines. There had been one or two on-line magazines in India, but perhaps they have not continued. www.fridae.asia which in the past had been a marvelous site for Asian LGBT news, has fallen on lean days. GayStarNews from the UK has taken over with good Asian coverage.

Print media is limited. Thailand has the first overseas edition of the leading British gay magazine *Attitude*, and Vietnam started the second. Both translate some of the British articles, and add some local content. Thailand has *@Tom Act*, the only tom lesbian magazine anywhere, which is continuing for probably its sixth year. There are give-away gay magazines in Thailand and Hong Kong, mainly for tourists, and perhaps in a couple of other places.

There has been a recent lack of new LGBTI films, though we have seen a number with mainstream distribution over the last few years. 2014 saw the first LGBT film festival in Myanmar. Such festivals exist in Japan, Hong Kong, Indonesia, and perhaps the Philippines.

ANTI-DISCRIMINATION LAWS

Activists in the Philippines have been pushing a national anti-discrimination law for a decade or two. It still looks like a dream. But at least six local jurisdictions have now enacted anti-discrimination laws covering sexual orientation and some gender identity as well. Otherwise, in Asia, the only anti-discrimination laws that cover sexual orientation are to be found in East Timor (aggravating circumstance in crime) and Taiwan. News accounts say that a new constitution in Thailand may expand the provision on equality to list a transgender category. The Thai military appointed legislature has enacted an anti-discrimination law focused on women, but which apparently covers transgender women as well. This has happened without civil society lobbying or media recognition.

NO 'NEW-NORMAL'

Most Asian governments seem to continue to say nothing on SOGIE issues. Only Malaysia can be counted on to speak. It issues hostile statements with some regularity.

Is change in sight? Not yet. Maybe on the far horizon.

WRITTEN BY EVELYNE PARADIS⁴³⁴

DEVELOPMENTS IN THE EUROPEAN REGION IN 2014/2015

HIGHLIGHTS OF KEY DEVELOPMENTS AND TRENDS

If 2013 was a year of increasing contrasts, then 2014 was certainly the year that saw these contrasts crystallised for lesbian, gay, bisexual, trans and intersex people in Europe. As we reflect on the last 12 months, we are first and foremost heartened by the historic strides made by some European countries who demonstrated great leadership by adopting new benchmarks for LGBTI equality. Whether this is through ground-breaking legislative moves, such as Denmark's progressive legal gender recognition law; or through setting standards by placing equality issues at the foundation of a legal system, as Malta did by giving gender identity constitutional protection from discrimination, great steps forward were made in 2014.

Other developments are more subtle, but no less noteworthy. Political conversations and press coverage has evolved in many countries, giving LGBTI issues a new level of prominence. Italy's EU presidency saw the first high-level conference with a specific focus on LGBTI rights taking place in the EU Council. Malta and Sweden co-hosted the IDAHOT 2014 conference which united European leaders in the fight for equality and saw 17 countries sign a declaration of intent to mark 17 May. The fact that 26% of elected MEPs signed ILGA-Europe's Come Out Pledge is another positive sign of the times.

The other side of the story is that a number of countries have seen LGBTI rights eroded even further, while others have simply stalled in terms of equality development. Specifically, Russia's anti-equality sentiment is now impacting former USSR countries and their LGBTI communities. Opponents in Western Europe have emerged under the banner of 'family values' and a need to guard children against so-called 'gender theory'. These developments serve as potent reminders that the work of securing rights and achieving equality is far from being done. We cannot take the positive developments of the past decade for granted, which can easily come under threat.

RIGHTS OF TRANS PEOPLE AND OF INTERSEX PEOPLE

Since IDAHOT 2014, some of the most important developments relate to the recognition of the human rights of trans and intersex people. It is clear that trans people in Europe

⁴³⁴ Executive Director of ILGA Europe.

continue to face particularly high rates of discrimination, especially in the areas of employment, education and access to healthcare. In its first trans-specific report, the EU's Fundamental Rights Agency (FRA) called the results of largest survey in Europe on the experience of trans people "alarming". The survey pointed to "a vicious circle of fear and ignorance, of intolerance and discrimination or even hate-motivated violence and crime" affecting trans people. But the FRA also highlighted that legal frameworks and good policies do have a positive impact on trans people's lives.

In this context, it is very encouraging that gender identity is increasingly being recognised in its own right as a ground of discrimination across Europe; from Malta, the first European country to explicitly name it in its constitution, to Portugal, the 21st country to include gender identity as a protected ground of discrimination in the field of employment. Even more striking is the fact that European governments are finally starting to adopt legal gender recognition legislation which fully complies with human rights standards. Denmark was the prime example of this in 2014, becoming the first European country to allow trans individuals to have their correct gender recognised without a medical diagnosis or judicial authorisation. The Danish model inspired the Spanish region of Andalucía to adopt similar provisions, while The Netherlands adopted a new law on gender recognition which removes previous requirements for a court order, surgery, and permanent sterilisation. More countries are also discussing laws on legal gender recognition, including Poland, Serbia, Norway and Ireland.

In April 2015, Malta took benchmarking to the next level and became the first country in the world to enact legal provisions protecting the human rights of intersex people. The *Gender Identity, Gender Expression and Sex Characteristics Act*⁴³⁵ adopted by the Maltese parliament not only provides for legal gender recognition procedure for adults and minors, it also prohibits any unnecessary surgical procedure on the sex characteristics of a person without their consent. The human rights of intersex people are also finally being named as part of the human rights agenda. In May 2014, the Council of Europe's Human Rights Commissioner issued a Human Rights Comment on the human rights of intersex people, raising awareness to the huge barriers they face in the enjoyment of their human rights. Building on this comment, an eagerly anticipated issue paper on intersex rights will be released by the Council of Europe in May 2015 during the IDAHOT Forum in Montenegro.

FAMILY DEVELOPMENTS

The number of European countries with marriage equality continued to increase in 2014. Marriage equality entered into force in the UK (everywhere except Northern Ireland) and in Luxembourg, so there are now 11 countries in Europe. Finland also made significant strides by adopting marriage equality provisions that will be enacted

⁴³⁵ Text of the law available at: http://tgeu.org/wp-content/uploads/2015/04/Malta_GIGESC_trans_law_2015.pdf.

in early 2017, while all major political parties formally support marriage equality ahead of the May 2015 referendum in Ireland. Registered partnerships became legal in Andorra, Croatia, Estonia—the first former USSR country to grant same-sex couples the right to officially enter unions—and Malta, where the government guided a highly progressive bill through parliament.

Beyond recognition of couples, parenting rights also evolved in other positive ways. Belgium, the Netherlands and France made it easier for non-biological mothers in lesbian couples to see their children recognised. Adoption rights progressed in Andorra, Croatia, Denmark, Germany, Ireland, and Malta. By the end of the year, discussions on new adoption rights were ongoing in Switzerland and the Czech Republic. Regrettably, Portugal reneged on promises made in 2013 to allow same-sex couples to adopt, and no progress was made in 2014. In January 2015, draft laws on same-sex adoption rights were rejected for a third time by the Portuguese parliament.

While more European countries are moving progressively along the road of family rights, others are unfortunately moving in the other direction by adopting restrictive definitions of marriage in their national constitution and legislation. Following debates throughout 2014, the government and parliament of the Former Yugoslav Republic of Macedonia constitutionally defined marriage as being a man and a woman in January 2015. The amendment also increased the parliamentary majority needed to pass any future proposals on same sex unions. In Slovakia, the socialist government imposed a constitutional ban on equal marriage, in exchange for the opposition's support for reform of the judiciary in 2014. This was followed by a referendum, called for by ultra-conservative and religiously-inspired groups in February 2015, which was fortunately defeated; only 21% of registered voters took part, less than the 50% threshold required. Similar discussions are taking place in Georgia and in Switzerland, where a referendum is expected to take place in 2015.

MEANWHILE, THE SETBACKS...

Against the backdrop of historic standard-setting and changes in societal attitudes, the reality for LGBTI communities in Europe today is unfortunately marred by serious drawbacks. In several countries, the space available for human rights defenders to promote and advocate for human rights in general, and the rights of LGBTI people specifically, continued to shrink. Human rights defenders in countries as diverse as Armenia, FYR Macedonia, Hungary, Serbia, Spain, Turkey and Russia signalled developments which risk violating basic human rights such as right to liberty, freedom of association, freedom of expression and information as well as freedom of the press and wider media. These restrictions can manifest themselves through the introduction of 'foreign agents' laws, making it difficult for NGOs to receive funding from abroad. In Russia, the enactment of such laws led to NGO inspection visits. Another characteristic

of the backlash is that the participation of NGOs in policy-making becomes more restricted. For instance, this is the case in Hungary. The repressive NGO climate was also characterised by the enforcement of ‘anti-propaganda’ laws in Russia and Lithuania, and the discussion of a draft law in Belarus. In Bulgaria, the far right drafted such a bill but failed to see it adopted, so far. Positively, MPs in Ukraine withdrew a draft ‘anti-propaganda’ law after the October parliamentary elections (although Russia’s federal ‘anti-propaganda’ law now applies in occupied Crimea).

2014 is also the year that saw anti-equality groups increasingly use education as a battlefield. Indeed, the inclusion of LGBTI and diversity issues in school curriculum met with strong opposition from anti-equality groups in several EU Member States. They opposed the teaching of diversity and sexuality in school, and vocally protested against new or existing lesson plans in Germany and Slovakia. In addition to protests, in France, Italy, and Poland these groups also criticised what they termed “gender theory” or “gender ideology”—referring to any argument in favour of equality or non-discrimination—for LGBTI people as well as women. However, they have not prevented positive developments in several countries: the Netherlands amended its law to forbid religious schools from firing openly LGBTI teachers or expelling students; and in Croatia, textbooks were altered to remove homophobic content. The importance of this topic was underlined by Council of Europe Commissioner Nils Muižnieks, with his comment stating that LGBTI children have the right to safety and equality. When education is used as a battlefield, it is clear something must be done to protect vulnerable LGBTI students or staff in every school in Europe.

THE INFLUENCE OF RUSSIA

Broader geo-politics in Europe – namely the influence of Russia in its neighbouring region –also continued to be a hugely influential factor when it comes to advancing the rights of the LGBTI communities in Eastern Europe. Russian political leaders continue to successfully use a conservative narrative – which leaves no place for LGBTI people – to build a new national identity. This, in turn, creates a new ‘ideological wall’ to the West and the backlash against human rights in Russia is spreading beyond the country’s borders. As Armenia, Belarus, Kazakhstan, and Russia signed the founding treaties of the Eurasian Economic Union, homophobic and transphobic language grew. This heightened rhetoric aimed to differentiate between East and West, positioning the Eurasian bloc as fiercely traditionalist when it came to family.

The Eurasian ideology didn’t stop at the bloc’s Western borders, however. Political figures in several other European countries expressed sympathy to Eurasian views: in Bulgaria, far-right party Ataka launched its campaign for the European Parliament elections from Moscow, attacking “europederasty” [*sic*]. Even in France, the president of the far-right Front National’s youth branch supported introducing an ‘anti-propaganda’ law in

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schools. European equality politics were further criticised as a Western “cradle of decay” by a homophobic politician in Lithuania, or as “discrediting the institution of family” in Belarus. Belarusian politicians also toyed with the idea of an ‘anti-propaganda’ law, introducing this all-too-familiar style of bill to the parliament at the close of the year. A similar legislative initiative was also proposed in Ukraine but withdrawn in a year marked by civil unrest. Sadly, the pernicious threat posed by the Russian-based violent extremist group, Occupy Paedophilia, continued this year in Moldova.

WRITTEN BY GABRIEL ALVES DE FARIA⁴³⁶

LGBTI DEVELOPMENTS IN LATIN AMERICA AND THE CARIBBEAN IN 2014/2015

LATIN AMERICA

Some of the latest legal developments on the rights of LGBT persons in Latin America are notable. Regarding the recognition of diverse families, the Mexican State of Coahuila changed its Civil Code to legalise same-sex marriage. The Chilean President Michelle Bachelet signed a law that recognises civil unions between same-sex couples. In Ecuador, President Correa announced that Ecuadorans who are in same-sex civil unions were able to include this status on their ID cards.⁴³⁷

Moreover, in Cuba, lawmakers passed legislation that bans employment discrimination on the grounds of sexual orientation.⁴³⁸ Furthermore, Costa Rica's social security system extended medical benefits to same-sex couples, besides the fact that President Luis Guillermo Solís placed a rainbow flag in the Presidential House. Similarly, the Uruguayan State decided to facilitate equal access for couples to the national health system regardless of their sexual orientation or gender identity. In regards to gender identity, in Mexico City, legislators approved a measure that allows trans people to legally change their gender without a court order.

With respect to the right to political participation of LGBT persons, the Inter-American Commission on Human Rights (IACHR) pointed out some developments, such as the first ever meeting between the President of Ecuador and representatives of the LGBTI civil society.⁴³⁹ Moreover, the first openly lesbian woman was elected to the Colombian House of Representatives. In Chile, the first openly gay person was elected to the National Congress and, in Cuba, the first trans woman was elected for a political office.

⁴³⁶ Gabriel Alves de Faria is a Brazilian lawyer, LGBTI activist and human rights specialist who holds a Law degree from the Federal University of Espírito Santo and a European Master's degree in Human Rights and Democratisation (E. MA/EIUC - Utrecht University). Among other legal and social experiences in the human rights field, Gabriel has worked as a Researcher in Comparative Sexual Orientation Law at Leiden University and most recently as a Fellow and consultant lawyer at the LGBTI Rapporteurship of the Inter-American Commission on Human Rights in Washington, DC. His latest project is a documentary on the situation of LGBTI persons in Southeast Asia.

⁴³⁷ Even though this piece has its focus on the situation of LGBTI persons in Latin American and the Caribbean, it is notable that same-sex marriage was legalised in 18 states in the United States of America in 2014, accounting for a total of 36 out of the 50 states.

⁴³⁸ Gender identity was left out.

⁴³⁹ IACHR, "The IACHR Welcomes Recent Developments in OAS Member States to Protect and Promote the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI)", Press Release 060/2014, May 20, 2014, available at: http://www.oas.org/en/iachr/media_center/PReleases/2014/060.asp.

LATIN AMERICA AND THE CARIBBEAN

As for decisions and developments by the judiciary, LGBT persons had their rights recognised in some countries of Latin America. The Supreme Court of Justice of Mexico (SCJM) ruled that pensions and health benefits must be awarded to same-sex couples that are married or registered in civil unions in the same way that different-sex couples access theirs. Moreover, it declared the article that defines marriage between a man and a woman in the Civil Code of the state of Oaxaca as unconstitutional. Moreover, the SCJM adopted a Protocol aimed at aiding judges in deciding cases related to sexual orientation and gender identity in conformity with human rights standards.⁴⁴⁰

In regards to second-parent adoption, the Colombian Constitutional Court ruled that a lesbian individual could adopt her long-time partner's daughter. As for joint adoption, the Brazilian Supreme Court upheld a decision that authorised the adoption by a same-sex couple.

With respect to other positive initiatives, the IACHR has recognised progress in the police and justice systems in the region.⁴⁴¹ For example, in Mexico and Honduras, government appointed special prosecutors to investigate and prosecute crimes on the basis of sexual orientation and gender identity. In Brazil, units responsible "for guaranteeing the rights of LGBT persons in their jurisdictions, fostering educational programs and promoting the formulation of public policies" have been established.⁴⁴² The Commission also highlighted an increasing visibility of trans people serving in the Brazilian and Argentine police forces, besides the fact that police officials in "Chile have agreed to let LGBTI persons that have committed minor crimes to fulfill their community sentence working at the local LGBTI organisation".⁴⁴³ Additionally, some States in the region, such as Costa Rica, Brazil and Argentina, have been granting refugee status on the basis of sexual orientation.

Notwithstanding the aforementioned developments, LGBTI persons in Latin America still face many legal and *de facto* challenges. Two examples of recent outcomes that have limited the rights of LGBTI persons in the region are the Colombian Constitutional Court's decision to not recognise the right for joint-adoption to same-sex couples and the rejection of the Peruvian civil union bill by the legislative.

In regards to the challenges faced by LGBTI persons in the region, trans women may be the group most exposed to violence and experience greater limitation of rights. Their right to a dignified life is constantly at stake given the strong stigma and discrimination

⁴⁴⁰ IACHR, "IACHR Congratulates Mexican Supreme Court for Adoption of Protocol Involving Sexual Orientation and Gender Identity", Press Release 095/2014, August 29, 2014, available at: http://www.oas.org/en/iachr/media_center/PReleases/2014/095.asp.

⁴⁴¹ IACHR, "The IACHR Welcomes Recent Developments in OAS Member States to Protect and Promote the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI)", Press Release 060/2014, May 20, 2014, available at: http://www.oas.org/en/iachr/media_center/PReleases/2014/060.asp.

⁴⁴² Ibid

⁴⁴³ Ibid

they face in all parts of the region, and through all phases of their lives. They are initially discriminated in the family and educational context, resulting in expulsion from home and dropping out of school, and eventually they are generally impeded from getting employment and entering careers. Moreover, the lack of legal recognition regarding gender identity and the consequent criminalisation of trans people contributes to a cycle of exclusion and poverty, as well as being more vulnerable to police abuse. Often times, trans human rights defenders have to flee from their countries given the fact that they are constantly treated as delinquent or possibly criminal.

As for intersex persons, their situation is still very invisible in the region and civil society organisations in many countries have not yet started to work with the topic. Besides the stigma and ‘shame’ projected by family members, the invisibility of the existence of intersex persons has its roots on the medical protocols that authorise unnecessary medical interventions aimed at “fixing their bodies” many times without the consent of the child and/or parents.

Moreover, the situation of and violations against the rights of trans men and bisexual persons also remain invisible. Lesbians in the region face double discrimination at the intersectionality of gender and sexual orientation and are usually more vulnerable to intra-familial violence, such as harassment by the father or brother. Additionally, news of LGBT youth who committed suicide has become more visible, as documentation of such circumstances increases.

Finally, a last and major challenge in the region is the violence against LGBTI persons. On 17 December 2014, the IACHR launched its first consolidated ‘Overview’ of the violence against LGBTI persons.⁴⁴⁴ In accordance with the IACHR’s mandate to monitor the human rights situation in the Americas, the Rapporteurship on the Rights of LGBTI persons documented acts of violence against these persons during a period of fifteen-months (between 1 January 2013 and 31 March 2014).⁴⁴⁵

The Commission, among other topics, called attention to the lack of data collection and official information on the situation of LGBTI persons. The lack of this information – especially in regards to violence targeted on known or perceived status – contributes to their invisibility, to the inertia on elaborating public policies and, moreover, gives society a message of passivity and consent to the human rights violations these persons have been experiencing, such as to their right to life and to physical and mental integrity.

This Overview, together with a detailed registry of each act of violence,⁴⁴⁶ is an attempt to bring visibility to this situation and to the constant abuses faced by this community.

⁴⁴⁴ IACHR, “An overview of violence against LGBTI persons”, Annex to Press Release 153/14, December 17, 2014, available at: <http://www.oas.org/en/iachr/lgtbi/docs/Annex-Registry-Violence-LGBTI.pdf>.

⁴⁴⁵ Information on the Rapporteurship on the Rights of LGBTI Persons can be found at: <http://www.oas.org/en/iachr/lgtbi/>.

⁴⁴⁶ Available (only in Spanish) at: <http://www.oas.org/es/cidh/lgtbi/docs/Registro-Violencia-LGBTI.xlsx>.

It is a good practice that needs to be replicated by different actors and it can be used by both States and civil society organisations for the elaboration of strategies based on the specific needs and challenges highlighted throughout the document.

THE CARIBBEAN

In the Caribbean region, legislation remains very unfriendly to LGBTI individuals. Besides The Bahamas, all Anglophone countries in the region still criminalise same-sex activity between consenting adults, including countries that are common tourist destinations, such as Jamaica, Barbados and Trinidad and Tobago.

Two recent events in the region relate to legal challenges against existing anti-gay laws in Belize, Trinidad and Tobago and Jamaica. The first is an ongoing case before the Caribbean Court of Justice against immigration laws that ban LGBT persons, among other groups, to enter in Belize and Trinidad and Tobago. The applicant, who was recently heard by the Court, claims that the laws are discriminatory and violate freedom of movement inside the Caribbean. Additionally, a lawsuit that challenges the sodomy law in Belize remains pending before the country's Supreme Court.

The second event refers to the fact that a gay man who challenged Jamaica's anti-sodomy law withdrew his lawsuit because of reasons related to his personal safety and of his family. Furthermore, Jamaica got international attention because of the challenges to guarantee a safe space for LGBT homeless youth.

In general terms, the developments in the region come mainly from positive statements made by authorities and public officials, who "play a key role in combating stigmatisation of LGBTI persons and recalls that States play a crucial role in leading social change to combat discrimination and social prejudices".⁴⁴⁷

In this regard, the IACHR pointed out that the Honorable Mr. Frederick Mitchell, Minister of Foreign Affairs and Immigration of Bahamas, said that "...the sexual orientation of someone who wants to run for election should not be relevant". He added that "...there must be tolerance at a minimum and we must uphold the principle that the general rights for which we fought [are] rights for all people ... [and] cannot be derogated from because of someone's sexual orientation".⁴⁴⁸ In Antigua and Bermuda, politicians discussed LGBTI issues at a National Forum. Furthermore, the Prime Minister of Barbados, the Honorable Mr. Freundel Stuart, publicly supported

⁴⁴⁷ IACHR, "The IACHR Welcomes Recent Developments in OAS Member States to Protect and Promote the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI)", Press Release 060/2014, May 20, 2014, available at: http://www.oas.org/en/iachr/media_center/PReleases/2014/060.asp.

⁴⁴⁸ Ibid

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“the elimination of all forms of discrimination including discrimination against persons of differing sexual orientation”.⁴⁴⁹ The recently appointed public defender in Jamaica stepped up publicly for the rights of LGBT persons.

Finally, as stressed by the IACHR, States in the Caribbean should “... seriously consider the possibility of decriminalising same-sex conduct and diverse gender identities/expressions, and to advance law reforms as a means to respect, protect and guarantee the right to equality and non-discrimination of LGBTI persons, and those perceived as such”.⁴⁵⁰

⁴⁴⁹ Ibid

⁴⁵⁰ Ibid

WRITTEN BY ANNA BROWN ⁴⁵¹

STATE SPONSORED HOMOPHOBIA IN OCEANIA: PROGRESS, EMERGING CHALLENGES & FUTURE DIRECTIONS

OVERVIEW

At the establishment of ILGA Oceania in early 2014, civil society participants identified the region as the ‘pearl in the crown’ of the LGBTI movement, due to the potential for the region’s unique cultural history and legal landscape to provide fertile ground from which to progress the international movement for LGBTI equality.

While this report is focused on discrimination on the basis of sexual orientation, it should be noted that the terms “homosexual” and “transgender” do not align neatly with concepts of gender and sexuality in the Pacific. There are varied and diverse sexual and gender identities within the Pacific that are particular to local cultures with origins in tradition and mythology. An analysis of these identities and related social norms is outside the scope of this article. However, it should be understood that the criminalisation of ‘homosexuality’ (i.e. sodomy, buggery, ‘unnatural acts, etc) in the Oceania region is largely a legacy of colonialism rather than a legal tradition drawn from indigenous cultural practices.

While these criminal laws are largely unenforced in practice, the threat of enforcement and the broader impact of these laws continue to be of concern. There is generally a paucity of detailed and reliable data and research on the lived experiences of LGBTI people in the Pacific. However, it can be said that the existence of criminal laws in and of themselves increases vulnerability to social stigma, discrimination and violence.

More recently, there have been anecdotal reports of homophobic and transphobic views promoted in the Pacific by external conservative religious leaders often active in Uganda and other parts of Africa. According to human rights defenders working in some Pacific Island nations, these outside influences have fuelled anti-LGBT elements of popular Christian religions within the Pacific. These developments are cause for significant concern.

DECRIMINALISATION

While it is difficult to say that tackling homophobia has followed a linear progression in the region, there has been steady improvement when it comes to decriminalising same-

⁴⁵¹ Anna Brown is the Director of Advocacy & Strategic Litigation at the Human Rights Law Centre and on the board of the newly established ILGA Oceania (see www.hrlc.org.au). She is grateful for the assistance of André Dao and Dr Paula Gerber in the preparation of this essay.

sex sexual acts. The decriminalisation of sodomy in Palau was unquestionably the most significant development in the region in the past year.

THE PACIFIC

In 2014, Palau joined Fiji (2010), Vanuatu and the New Zealand associates Nieu and Tokelau (all in 2007), the Marshall Islands (2005), Australia (1997) and New Zealand (1986) in legalising same-sex sexual conduct. In addition to the positive development in Palau, two other countries, the Cook Islands (an associate of New Zealand) and Nauru, have indicated to the UN that they are willing to repeal their laws criminalising 'homosexuality'.⁴⁵² The Australian and New Zealand Governments have been providing assistance with the drafting of new criminal laws although there has been little, if any, public signs of progress.

The push towards decriminalisation in the Cook Islands was given a further boost in November 2014, when Marie Pa Ariki, a queen in the traditional royalty of the islands (Takitumu paramount chief), criticised the laws, saying that "[Gay] people are knowledgeable and contribute to society and to home life. They are human like everyone else... we are all *whanau* [family]." However, although Pa Ariki has influence in the Cook Islands, she does not have the power to change laws.⁴⁵³

Notably, although Samoa indicated to the UN in 2011 that it did not immediately intend to decriminalise 'same-sex sexual relations between consenting adults',⁴⁵⁴ recent actions have shown that the government is willing to engage with the LGBTI community and some positive steps have been taken. In 2013, the Samoan Government updated its criminal law in the *Crimes Act 2013*, including sexual offences, defining "sexual connections" under s. 49(3) to include oral and anal sex, and by inference allowing sexual contact between males if it is "consented to, and voluntarily." However s. 67 of the new Act continues to criminalise sodomy.

Importantly, the 2013 changes included the decriminalisation of female impersonation, affirming the Samoan fa'afafine community. Fa'afafine is a third gender subculture (commonly found in Polynesian cultures), traditionally disposing Samoan culture to be tolerant of transgender people and, by extension, to same-sex attracted people within that context. In a further sign of the government's quiet engagement on LGBTI issues, the leading LGBTI organisation in Samoa has been appointed a member of the country's newly formed advisory board to the National Human Rights Institute.

⁴⁵² See: Draft report of the Working Group on the Universal Periodic Review: Nauru, A/HRC/WG.6/10/L.1, 26 January 2011 at paragraph 9, at: http://www.upr-info.org/sites/default/files/document/nauru/session_10_-_january_2011/nauru-a_hrc_wg.6_10_l.1-eng.pdf.

⁴⁵³ See: <http://76crimes.com/2014/12/10/cook-islands-queen-our-anti-gay-law-is-unfair/>.

⁴⁵⁴ See: Report of the Working Group; Samoa, A/HRC/WG.6/11/L.12, 11 May 2011 at: http://www.upr-info.org/sites/default/files/document/samoa/session_11_-_may_2011/a_hrc_wg.6_11_l.12_samoa.pdf.

However, despite these positive steps, much work remains to be done to achieve decriminalisation across the region, with the Cook Islands, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tonga and Tuvalu all maintaining laws on the books that criminalise same sex sexual acts. The Solomon Islands, Papua New Guinea and Tonga all indicated to the UN that they would not move towards decriminalisation. The Solomon Islands faces an uphill battle after a Law Reform Commission report recommending decriminalisation in 2008 was fiercely opposed.

Kiribati continues to criminalise same-sex sexual relations in its Penal Code despite receiving recommendations in its last review by the UN Human Rights Council. While Kiribati stated that it was 'prepared to consider' the recommendations, there does not appear to have taken any active steps since.

In Papua New Guinea, former Opposition Leader Dame Carol Kidu has called for the laws to be repealed, arguing that they are contributing to the country's HIV/AIDS epidemic, with 2% of the adult population being HIV positive. However, Prime Minister Peter O'Neill stated at the time that, "[t]here's very strong feelings about [homosexuality] within the country and I think Papua New Guinea is yet to accept such sexual openness." Another issue of concern in that country is the fact that same-sex attracted male asylum seekers arriving in Australia have been sent to be detained, processed and re-settled in Papua New Guinea.

OFF-SHORE RE-SETTLEMENT OF LGBTI ASYLUM SEEKERS ARRIVING IN AUSTRALIA BY BOAT

Any asylum seeker now arriving in Australia or Australian territory by boat is subject to mandatory removal to detention centres on Nauru or Manus Island in Papua New Guinea, despite the criminalisation of male-to-male sexual conduct in these countries. There have been reports of sexual assaults and rapes of gay male detainees on Manus Island, where victims have reported that they fear going to the police because they have been told they will be jailed for identifying as gay or bisexual. According to recent estimates, roughly 36-50 of the 1,056 single male detainees on Manus Island identify as gay or bisexual. There is less known about the numbers of LGBTI asylum seekers sent to Nauru.

It is understood that a number of gay asylum seekers sent to Papua New Guinea are considering changing their refugee claims, from claims based on their sexual orientation to false claims based on some other Convention reason such as religion or political opinion. There are also reportedly a number of asylum seekers who have chosen to return home despite the risks they face in their country of origin. Ultimately, there is concern that asylum claims based on sexual orientation may not even be recognised by some decision-makers in Papua New Guinea. Similar concerns arise for any potential LGBTI asylum seekers in Nauru, although the Government's commitment

to decriminalise same sex sexual activity may signal a more progressive attitude to decision making.

AUSTRALIA

Discriminatory treatment of same-sex sexual acts under the criminal law remains a problem across a small number of states in Australia. Queensland law provides for a differential age of consent in relation to anal intercourse, which indirectly discriminates against men who have sex with men. In 2014, New South Wales legislated to remove the so-called 'gay panic' defence but this partial defence to murder remains available in Queensland and South Australia, although the newly elected Queensland Government has announced plans for its abolition. The partial defence allows a suspect to be found guilty of manslaughter rather than murder if they can prove they were provoked into killing as a result of a sexual advance from a member of the same sex.

RELATIONSHIPS RECOGNITION

In April 2013 New Zealand became the first country in the region to legislate for marriage equality, amending the *Marriage Act 1955* to define marriage as "the union of two people, regardless of their sex, sexual orientation, or gender identity". The changes also meant that same sex couples can jointly adopt.

Marriage equality campaigns have been less successful elsewhere in Oceania. In Australia, a marriage equality bill introduced by Liberal Democratic Senator David Leyonhjelm in November 2014 is yet to progress to a vote in the federal parliament and its ultimate fate will likely rest on whether the current governing party permits its members a free vote on the bill. The introduction of this Bill at a federal level followed the passage of the *Marriage Equality (Same Sex) Act 2013* in one of Australia's territories, the Australian Capital Territory (ACT), and a successful challenge to the constitutional validity of that legislation. The ACT law was ruled to be invalid by Australia's highest court less than one week after a number of same-sex marriages were performed under the new legislation. Prior to the passage of the ACT law a number of state-based same-sex marriage bills had been tabled in state parliaments around the country but not achieved passage, including Tasmania, Victoria, Western Australia, South Australia and New South Wales. Following the High Court ruling attention has now returned to the federal sphere. In the meantime, a number of civil union and relationship registration schemes remain in place at the state and territory level.

In a number of states and territories in Australia same-sex couples are not permitted to adopt children, although Victoria is set to join New South Wales, Western Australia, Tasmania and the Australian Capital Territory with a new Labor Government committing

to legislate for adoption equality. Laws relating to surrogacy vary greatly across Australian jurisdictions but in some states where surrogacy is permitted access is restricted to heterosexual couples.

In Fiji, the Prime Minister, Voreqe Bainimarama, has stated his opposition to same-sex marriage, citing “religious beliefs” in Fiji, noting that opposition to same-sex marriage was a “prominent feature” of submissions to Fiji’s Constitution commission.

ANTI-DISCRIMINATION

While there is a general dearth of discrimination protections in the majority of the Pacific, there have been a small number of positive developments. Increasingly, the efforts of civil society have focussed on advocating for anti-discrimination laws as a means of providing practical protections from unfair treatment experienced in the daily lives of LGBTI people and promoting greater respect for sexual and gender diversity.

In Samoa, the *Labour & Employment Relations Act 2013* was passed and introduced sexual orientation and real or perceived HIV status as forbidden grounds for discrimination in employment. In 1997, Fiji had become the second country in the world to include anti-discrimination protections around sexual orientation in its Constitution, and following the suspension of that Constitution following a coup, a new September 2013 Constitution included protection from discrimination on the basis of “sex, gender, sexual orientation, gender identity and expression.” Pacific Island nations that are territories of the United States of America, such as Guam, have some protections against discrimination and hate crime.

In Australia the *Sex Discrimination (Sexual Orientation, Gender Identity & Intersex Status) Amendment Act 2013* (Cth) introduced federal protections against discrimination for the first time for LGBTI people, which also responded to a recommendation made during Australia’s first Universal Periodic Review in 2011. Up until this time LGBTI people were protected from discrimination by state and territory anti-discrimination laws of general application but with gaps and weaknesses in protection in a number of areas including, most significantly, lack of protection from unfair treatment by a federal department or agency.

Both federal and state anti-discrimination laws in Australia contain broad permanent exemptions for religious organisations, schools and, in some cases, individuals. One significant improvement in the new federal anti-discrimination law is that it limits the availability of these exemptions in government-funded aged care. This will serve as an important stepping stone towards the removal of the religious exemptions in the future.

LAST WORD

In Oceania we have witnessed uneven progress in eliminating state sponsored homophobia. While New Zealand and Australia are well advanced towards achieving equality for lesbian, gay and bisexual people and their families, there is significant ground to be made up in the Pacific and emerging human rights challenges for the region, namely the violations perpetrated by the Australian Government in the operation of its asylum seekers policies and the impact of anti-gay religious groups exported to Oceania from other parts of the world.

While there has been some positive results achieved through the Universal Periodic Review and other UN processes, there remains a disappointing 'implementation gap'. The establishment of ILGA Oceania and increasing efforts to build the capacity of civil society within the Oceania region will hopefully translate to greater accountability and facilitate greater progress in the years ahead.