

November Edition

LGBT world legal wrap up survey

Compiled by
Daniel Ottosson
ILGA

© 2006 ILGA, International Lesbian and Gay Association

Introduction

Information is one of the most important tools in effective human rights work, whether it is performed by protest campaigns, lobbying, parliamentary work or diplomacy.

However, to collect information on the legal situation regarding LGBT issues can be hard as laws are changed all the time, and due to untrustworthy or nonexistent sources on the topic. Therefore, we aim by this survey to give as updated and correct information as possible on the topic on world LGBT legislation.

The compiled survey is based on factual macro and micro studies of the legal systems and the laws in detail, or from second hand sources when the legal texts have not been possible to obtain. Due to the fact that the survey aims to present the most updated information, most of the sources used are from governmental and non governmental web sites and not from books. One has to have in mind that this is a summary survey, which is simplified, and therefore does not go into nuances and details in the laws. If you want more detailed information, you should contact your local LGBT organization, your solicitor or perhaps use the Internet.

Due to limitation reasons, the survey only covers national and federal laws, and not local or city laws.

The year in brackets is the year when the reform went into force. If no year is states, the area has either been legal all the time, or have no details about the reform been obtained.

If you have any additional information not available in this survey, we would be grateful if you could contact us in ILGA, and we will investigate the matter. Please use the contact form on our web site.

The research is conducted by Daniel Ottosson, student of Public Law at Södertörn University College, Stockholm, Sweden.

Countries which allow sexual relations between persons of the same sex;

Albania (1995), Andorra, Argentina (1886), Armenia (2003), Australia (1975-97)¹, Austria (1971), Azerbaijan (2000), Bahamas (1991), Belarus (1994), Belgium (1795), Bolivia, Bosnia-Herzegovina (1998/2000)², Brazil (1830), Bulgaria (1968), Burkina Faso, Burundi, Cambodia, Canada (1969), Cape Verde (2004), Central African Republic, Chad, Chile (1998), China (1993)³, Colombia (1981), Comoros, Congo, Costa Rica (1971), Croatia (1977), Cuba (1979), Cyprus (1998)⁴, Czech Republic (1962), Democratic Republic of Congo, Denmark (1933), Dominican Republic, Ecuador (1997)⁵, El Salvador, Equatorial Guinea, Estonia (1992), Finland (1971), Former Yugoslav Republic of Macedonia (1996), France (1791), Gabon, Georgia (2000), Germany (1968/1969)⁶, Greece (1951), Guatemala (1871), Haiti, Honduras, Hungary (1962), Iceland (1940), Indonesia, Iraq⁷, Ireland (1993), Israel (1988), Italy (1890), Ivory Coast, Japan (1880), Jordan (1960), Kazakhstan (1998), Kyrgyzstan (1998), Laos, Latvia (1992), Liechtenstein (1989), Lithuania (1993), Luxembourg (1795), Madagascar, Mali, Malta (1973), Mexico (1871), Micronesia, Moldova (1995), Monaco (1793), Mongolia, Montenegro (1977), Netherlands (1811), Netherlands Antilles, New Caledonia, New Zealand (1986), Niger, North Korea, Norway (1972), Palestine – West Bank, Panama, Paraguay, Peru (1924), Philippines, Poland (1932), Portugal (1983), Puerto Rico (2005), Romania (1996), Russia (1993), Rwanda, San Marino (1865), Serbia (1994), Slovakia (1962), Slovenia (1977), South Africa (1998)⁸, South Korea, Spain (1979), Suriname, Sweden (1944), Switzerland (1942), Tajikistan (1998), Thailand (1957), Timor-Leste, Turkey (1858), Ukraine (1991), United Kingdom (1967-)⁹, United States (2003)¹⁰, Uruguay (1934), Vanuatu, Venezuela, Vietnam

Countries which allow adult homosexual relations of consent between men and between women in theory, but at the same time prosecute LGBT people based on laws against promiscuity, prostitution and immorality;

Egypt

Countries which prohibit relations between persons of the same sex, both male and female;

Algeria, Angola, Antigua and Barbuda, Barbados, Belize, Benin, Bhutan, Botswana, Cameroon, Djibouti, Dominica, Eritrea, Ethiopia, Guinea, Guinea Bissau, Iran, Lebanon, Liberia, Libya, Marshall Islands, Mauritania, Morocco, Mozambique, Nepal, Nicaragua, Oman, Pakistan, Saint Vincent and the Grenadines, São Tomé and Príncipe, Saudi-Arabia, Senegal, Solomon Islands, Somalia, Sudan, Togo, Trinidad and Tobago, Tunisia, United Arab Emirates, Yemen and some parts of Nigeria and Zanzibar which belongs to Tanzania

Countries which prohibit sexual relations between men, but do not prohibit such relations between women;

Bahrain, Bangladesh, Brunei, Cook Islands, Fiji¹¹, Gambia, Ghana, Grenada, Guyana, India, Jamaica, Kenya, Kiribati, Kuwait, Lesotho, Malawi, Malaysia, Mauritius, Myanmar (Burma), Namibia, Nauru, Nigeria, Niue, Northern Cyprus, Palau, Palestine-Gaza, Papua New Guinea, Qatar, Saint Kitts and Nevis, Saint Lucia, Seychelles, Sierra Leone, Singapore, Sri Lanka, Swaziland¹², Tanzania, Tokelau, Tonga, Tuvalu, Turkmenistan, Uganda, Uzbekistan, Western Samoa, Zambia, Zimbabwe and Chechen Republic in Russia

Countries which prohibit sexual relations between consenting adult men, but where there are questions whether this prohibition is applied also to lesbian relations;

Syria

Countries where sexual relations between persons of the same sex may be subject to death penalty;

Iran, Mauritania, Pakistan, Saudi-Arabia, Sudan, United Arab Emirates, Yemen and some parts of Nigeria and Somalia, and the Chechen Republic in Russia

Countries which have higher age of consent provisions for same-sex relations than for heterosexual relations;

Bahamas, Bermuda, Chile, Gibraltar, Guernsey, Indonesia, Ivory Coast, Madagascar, Niger, Portugal, Rwanda, South Africa, Suriname, Vanuatu and a few states in the United States, and Queensland in Australia.

Albania (2001), Austria (2002)¹³, Belarus (2000), Bulgaria (2002), Burkina Faso (1996), Cyprus (2002), Estonia (2002), Hong Kong (2006)¹⁴, Hungary (2002)¹⁵, Isle of Man (2006), Israel (2000), Jersey (2006), Liechtenstein (2001), Lithuania (2003), Moldova (2002), Romania (2002), Serbia (2006) and United Kingdom (2001) among others have equalised the age of consent provisions during the past years, now having the same age of consent for both hetero- and homosexual relations.

Countries which have amended the constitution to ban marriages between same-sex couples;

Honduras (2005), Latvia (2005) and some states in United States.

Countries which allow marriage between same-sex couples;

Belgium (2003), Canada (2005), Netherlands (2001), Spain (2005) and the US state of Massachusetts (2004)¹⁶

Countries with same-sex civil unions/partnerships laws;

Andorra (2005), Czech Republic (2006)¹⁷, Denmark (1989), Finland (2002), France (1999), Germany (2001), Greenland (1996), Iceland (1996), Luxembourg (2004), Netherlands (1998), New Zealand (2005), Norway (1993), Slovenia (2006)¹⁸, Sweden (1995), Switzerland (2007)¹⁹, United Kingdom (2005) and some parts of Argentina, Australia, Brazil, Canada, Italy, Mexico and the United States.

Other countries which recognize same-sex common-law marriage/partnerships, granting some benefits to same-sex couples, but no registry of the relationship;

Austria (2003)²⁰, Croatia (2003), Hungary (1996), Israel (1994 -)²¹, Portugal (2001), South Africa (1996 -) and some parts of Brazil, Italy, and United States

Countries which allows same-sex couples to jointly adopt children;

Andorra (2005), Iceland (2006)²², Netherlands (2001), South Africa (2002/2005)²³, Spain (2005), Sweden (2003), United Kingdom (2005)²⁴ and some parts of Australia, Canada and United States

Denmark (1999), Germany (2004), Israel (2000/2005)²⁵, Norway (2002) and some parts of Australia, Canada and United States allow same-sex couples to adopt each others children, so called step-child adoption.

Countries which allow artificial insemination treatment for women in a same-sex relationship;

Belgium, Canada, Denmark (2007)²⁶, El Salvador, Estonia, Finland, Greece, Iceland (2006)²⁷, Ireland, Israel, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Romania, Russia, Serbia-Montenegro, Slovakia, South Africa (1997), Spain, Sweden (2005), United Kingdom, United States, Venezuela and some parts of Australia.

Note that in Andorra and some other countries, assisted insemination treatment is not available for anyone.

Countries which prohibit artificial insemination treatment for single women and women in a same-sex relationship;

Argentina, Austria, Bangladesh, Brazil, Bulgaria, Chile, China, Czech Republic, Egypt, France, Germany, Hong Kong, Hungary, Iran, Italy, Japan, Jordan, Latvia, Lithuania, Morocco, Norway, Poland, Portugal, Saudi-Arabia, Singapore, Slovenia, South Korea, Switzerland, Taiwan, Tunisia, Turkey, Uruguay

Note that not all countries have laws regarding artificial insemination.

Countries which include sexual orientation as a protected category in the constitution;

Ecuador (1998), Fiji (1997), Portugal (2004), South Africa (1996), Sweden (2003), Switzerland (2000)²⁸ and some states in Brazil and Germany.

Countries which prohibit discrimination based on sexual orientation in employment;

Andorra (2005), Australia (1996), Austria (2004), Belgium (2003), Bosnia-Herzegovina (2003), Bulgaria (2004), Canada (1996), Costa Rica (1998), Croatia (2003), Cyprus (2004), Czech Republic (2001), Denmark (1996), Estonia (2004), Finland (1995), France (1985/2002), Germany (2006)²⁹, Greece (2005), Hungary (2004), Ireland (1998), Israel (1992), Italy (2003), Latvia (2006), Lithuania (2003), Luxembourg (1997), Malta (2003), Mexico (2003), Namibia (1992), Netherlands (1993), New Zealand (1994), Norway (1998), Peru (2004), Poland (2004), Portugal (2003), Romania (2000), Slovakia (2003), Slovenia (1998), South Africa (1995), South Korea (2001), Spain (1996), Sweden (1999), Taiwan (2004), United Kingdom (2003-)³⁰, Uruguay (2004), Venezuela (1999) and some parts of Argentina, Brazil, Japan, Serbia and United States

Countries which prohibit discrimination based on sexual orientation in other areas than employment;

Andorra (2005), Belgium (2003), Bosnia-Herzegovina (2003), Bulgaria (2004), Canada (1996), Costa Rica (1998), Croatia (2003), Czech Republic (2001), Denmark (1987), Finland (1995), France (1985/2002), Germany (2006)³¹, Hungary (2004), Iceland (1996), Ireland (2000), Lithuania (2003), Luxembourg (1997), Mexico (2003), Netherlands (1994), New Zealand (1994), Norway (1981), Peru (2004), Romania (2000), Slovakia (2004), Slovenia (1998), South Africa (2000), South Korea (2001), Spain (1996), Sweden (1987-), Taiwan (2004), United Kingdom (2006), Uruguay (2004), all states in Australia, and some parts of Argentina, Brazil, Italy, Japan, Serbia and the United States

Countries which prohibit hate crimes propaganda or have penalty increasing laws for hate crimes based on sexual orientation;

Andorra (2005), Belgium (2003), Canada (2004), Croatia (2003), Denmark (1987), Estonia (2006), Finland (1995), France (2004), Germany (2005), Hungary (2004), Iceland (1996), Ireland (1989), Lithuania (2003), Luxembourg (1997), Netherlands (1993), New Zealand (2002), Norway (1981), Spain (1996), Sweden (2003), United Kingdom (2005)³², Uruguay (2003) and some parts of Australia and the United States

Countries which have laws that allow transsexuals who have undergone gender reassignment surgery to get their personal documents reflecting the “new” gender;

China (2003), Germany (1981), Italy (1982), Japan (2004), Netherlands (1985), New Zealand (1995), Panama (1975), Romania (1996), South Africa (2003), Spain (2006), Sweden (1972), Turkey (1988), United Kingdom (2004) and most parts of Australia, Canada and United States

Note that to obtain new personal documents after gender reassignment surgery is also possible by general provisions in the Civil Law in some countries, or by court verdict. This is the situation in most parts of the Western World, as well as for example in Egypt and Iran. In other countries, like Lithuania, Malaysia and Thailand, this is, however, not possible.

Countries which allow openly gay, lesbian and bisexual persons to serve in the army;

Australia (1992), Austria, Bahamas, Bulgaria (2004), Canada (1992), Colombia (1999), Croatia, Czech Republic (1999), Denmark (1978), Estonia, Finland, France, Germany (2000/01), Hungary, Ireland, Israel (1993), Italy, Lithuania, Luxembourg, Netherlands (1973), New Zealand (1993), Norway (1979), Peru (2004), Portugal (1999), Slovenia, South Africa (1996), Spain, Sweden (1976), Switzerland (1992), Taiwan (2002), Thailand (2005)³³, United Kingdom (2000)

Note that some countries don't have any army or military, like Andorra and Costa Rica.

Countries which prohibit openly gay, lesbian and bisexuals to serve in the army;

Argentina, Belarus, Brazil, Cyprus, Greece, Libya, Philippines, Russia, Serbia, Singapore, South Korea, Turkey, United States

Countries which recognize asylum for gay, lesbian and bisexual persons;

Australia (1993), Austria (1991), Belgium, Canada (1995), Finland, Germany, Greece, Ireland, Netherlands, New Zealand, Norway, South Africa (1998), Sweden (1997/2006), United Kingdom (1999)

Hereto, some countries like Denmark, France and United States among others have recognized LGBT people for asylum on a few occasions.

Notes

¹ Homosexual acts were decriminalized in all the states and territories between 1975 to 1997 as follows; South Australia (1975), Australian Capital Territory (1976), Victoria (1981), Northern Territory (1984), New South Wales (1984), Western Australia (1990), Queensland (1991), Norfolk Island (1993) and Tasmania (1997). Such acts are also legal in all other external territories.

² Bosnia Herzegovina decriminalized homosexual activities in 1998, while Republika Srpska in Bosnia-Herzegovina decriminalized such acts in 2000.

³ In the Penal Code of 1979, homosexual acts were considered as “hooliganism”. In 1993 the Ministry of Public Security issued a directive that homosexuals would not be charged against the “hooliganism-paragraph” anymore. The paragraph was later repealed in 1997. Hereto, Hong Kong which is a Chinese dependency decriminalized homosexual acts in 1991.

⁴ Sexual contacts between men are, however, still illegal in Northern Cyprus.

⁵ Through verdict by the Constitutional Tribunal on November 25, 1997, declaring the law banning sexual activities between persons of the same sex unconstitutional.

⁶ Eastern Germany (DDR) decriminalized homosexual activities in 1968 and West Germany in 1969.

⁷ In 2003 the Penal Code of 1969 was reinstated. This Code does not criminalize sexual activities between persons of the same sex. However, reports tell that Death Squads operate in Iraq, killing gays.

⁸ Through verdict by the Constitutional Court on October 9, 1998, declaring the law banning sexual activities between men unconstitutional.

⁹ England and Wales decriminalized homosexual activities in 1967, Scotland in 1980, Northern Ireland in 1982, Bailiwick of Guernsey in 1983, Bailiwick of Jersey in 1990, Isle of Man in 1992, Gibraltar in 1993, Bermuda in 1994 and Anguilla, British Virgin Islands, Cayman Islands, Montserrat and Turks and Caicos Islands in 2001.

¹⁰ Through a verdict by the Supreme Court on June 26, 2003, declaring laws banning same-sex acts unconstitutional. Such laws, however, have been repealed in most of the states already before the Supreme Court Verdict beginning with Illinois on January 1, 1962. Homosexual acts have also been repealed in all US dependencies - Guam in 1978, American Samoa in 1980, Northern Mariana Islands in 1983, American Virgin Islands in 1985 and Puerto Rico in 2004.

¹¹ These provisions were declared unconstitutional by High Court Judge Gerald Winter on August 5, 2005.¹¹ However, the verdict seems to have no legal impact as there have been arrests for violations of the law afterwards.

¹² A proposal from the government in the Sexual Offences Bill, aims to prohibit also lesbian acts. It has, however, not been adopted yet.

¹³ Article 209 setting the age of consent for same-sex activities higher than for heterosexual activities, was declared unconstitutional by the Constitutional Court on June 24, 2002. The law was later repealed by the parliament by law 134/2002.

¹⁴ Law was struck down by a High Court verdict in 2005, and in 2006 the court rejected the government appeal. In October 2006, the Government decided not to appeal again, declaring the law “dead”.

¹⁵ The law was repealed by a High Court verdict on September 4, 2002.

¹⁶ By a Supreme Judicial Court verdict on November 18, 2003.

¹⁷ The law entered in force on July 1, 2006.

¹⁸ The law entered into force on July 23, 2006.

¹⁹ The law enters into force on January 1, 2007.

²⁰ A verdict by the European Court of Human Rights on July 24, 2003 gives same-sex couples the same rights as heterosexual cohabitants in the tenancy area.

²¹ Through Supreme Court/High Court of Justice verdict regarding employment benefits to same-sex partners in 1994 and Nazareth Family Court verdict in 2004 on inheritance of deceased partner. Hereto, in 2000, the minister of Interior stated that the authorities now will treat same-sex couples the same as heterosexual couples in the area of immigration.

²² The law was adopted by the Icelandic Parliament on June 2, 2006, and went into force on June 27, 2006.

²³ Adoption by same-sex couples was firstly approved by a verdict by the Constitutional Court on September 10, 2002, and from 2005 the new Children’s Act includes same-sex couples for adoption and second parent adoption purposes.

²⁴ The law applies only to England and Wales, not to Northern Ireland or Scotland.

²⁵ Israel has accepted second parent adoptions by same-sex partners through two verdicts by the Supreme Court/High Court of Justice on May 29, 2000 and January 10, 2005.

²⁸ In Denmark, the insemination laws were reformed in 2006, now allowing lesbian couples to obtain such treatment in state hospitals on the same basis as heterosexual couples. The new law enters into force on January 1, 2007. Before, doctors are not allowed to perform assisted insemination treatment on lesbians or single women, but the law did not affect midwives.

²⁷ The law was adopted by the Icelandic Parliament on June 2, 2006, and went into force on June 27, 2006.

²⁸ The Constitution which went into effect on January 1, 2000 protects from discrimination based on "way of life". This expression is aimed to include sexual orientation.

²⁹ The law implicitly also covers gender identity.

³⁰ England, Wales, Scotland and Northern Ireland banned discrimination based on sexual orientation in the employment area in 2003, and Gibraltar in 2004.

³¹ The law implicitly also covers gender identity.

³² The law is only applicable for England & Wales. Such a law is in force in Northern Ireland since 2004, while Scotland has no such law.

³³ Also transsexual persons are allowed to serve in the army.