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# State-sponsored Homophobia

A world survey of laws criminalising  
same-sex sexual acts between  
consenting adults

Lucas Paoli Itaborahy

an ILGA report

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## From the Co-Secretaries General

This annual report is characterized by contrasts – some victories to celebrate against a background of hateful laws still in force and hate crimes around the world. Roughly 60% of UN Members (113 of 193) has abolished (and a few never had) legislation criminalizing same-sex sexual acts between consenting adults, while roughly 40% (78 of 193) still clings to it in a misguided – as well as criminal – attempt to preserve their “cultural identities” in the face of globalization. Although this division has been relatively stable in the last years, the recent development at the UN Human Rights Council, with the groundbreaking report by the High-Commissioner Pillay on the violence and discrimination too many LGBTI people still face around the world, give us reason for hope, though change might not come at the pace we would like it to come.

This sixth issue of our annual report on State-sponsored homophobia sees unfortunately an increase in the total number of countries in the world with a legislation persecuting people on the basis of their sexual orientation, which now are 78 against the 76 of last year. Though one “new entry” – Benin – is due to our improved knowledge as to the laws of the country and to the confirmation of the existence of such a law by the very words of the Benin representative uttered during the Universal Periodic Review at the Human Rights Council last year, the other entry – South Sudan – represents a real disappointment: one would have hoped that the birth of a new country would have been also the occasion to improve the legislation inherited from the old country the new one was once part of. The only consolation, is that at least South Sudan has not adopted the death penalty for “crimes against the order of nature” that Sudan infamously continues to have in its penal code.

At the same time it is interesting to notice a paradoxical development in several states of Southern Africa and the Indian Ocean (Botswana, Mozambique, Mauritius and Seychelles), where parliaments adopt legislation to prevent discrimination on grounds of sexual orientation in workplaces, while at the same time their respective penal codes retain provisions to punish those who engage in same-sex sexual acts among consenting adults – one would hope that it is only a matter of time before these very parliaments acknowledge this contradiction and proceed as soon as possible with an update of their penal codes.

More worrying are the developments in Russia, where the city of St. Petersburg and other regions have introduced legislation to punish “homosexual propaganda”, that can include the human rights defenders work, a dangerous precedent which might soon be followed by the country as a whole. Despite de-penalizing homosexuality in 1993, Russia, unfortunately, is at the forefront of a group of countries which have been trying in the last years to limit, control or otherwise pre-empt the universal validity of the human rights declaration by promoting the notion of ‘tradition’ as a sort of filter to give the “appropriate” interpretation of human rights within the context of a culture. It is difficult at this stage, to understand whether Russia is doing all this more to profile itself as an unlikely leader in the battle against the west or to pay homage to its orthodox church... or both. While this policy will turn out to be unsuccessful in the long run, there is no doubt however that it will cause great suffering in the short one.

Furthermore – as we shall never be tired to repeat – the well-being, not to mention the safety, of LGBTI people all over the world cannot be measured solely on the basis of the legislation of the country they reside in. The fact of living in a country where same-sex sexual acts between consenting adults are not criminalized does not imply automatically that a lesbian, gay or trans person are safe there, due to violence, persecution and other discriminatory practices carried out by non-state agents, organized or not, and in some cases even protected by the authorities. We shall deal with this issue in the sections below called “Refugee Context Considered” and “Homophobia in Brazil”.

As we are proud to see the improvements this report has been accumulating in the last years, our thanks go to the author, Lucas Paoli Itaborahy, and all those who have contributed to this issue: Jenni Millbank, Eddie Bruce-Jones, Kees Waaldijk, Robert Wintemute, Sonia Correa, Irina Bacci, Roger Raupp, Eduardo Piza de Mello, our staff Sebastian Rocca and Stephen Barris, and all those who translated this report into several languages and – last but not least – all our members who helped us in searching for the relevant legislation of their countries.

**Gloria Careaga & Renato Sabbadini**  
**Co-secretaries general**  
**ILGA, the International Lesbian, Gay, Bisexual, Trans and Intersex Association**

***ILGA is a world-wide network of national and local groups dedicated to achieving equal rights for lesbian, gay, bisexual, trans and intersex (LGBTI) people everywhere.***

*Founded in 1978, it now has more than 900 member organizations.*

*Every continent and approximately 110 countries are represented.*

*Pan Africa ILGA, ILGA-Asia, ILGA-Europe, ILGA-LAC, ILGA-North America and ILGA-ANZAPI are regional chapters of ILGA.*

*ILGA is to this day the only international non-governmental community-based association focused on fighting discrimination on grounds of sexual orientation and gender identity as a global issue.*

[www.ilga.org](http://www.ilga.org)

## From the Author

Knowing the law is a very important part of any effective human rights work. Access to this knowledge is a particular challenge when it comes to LGBTI issues. This can be due to rapidly changing legal provisions, contradicting sources, and the inaccessibility of certain legal provisions in the public domain. The aim of this report is therefore to consolidate the latest research on a range of LGBTI legal issues all around the world, providing activists, lawyers, judges, academics, public officials, or anyone else interested in the subject with the most updated information.

This report has become an important tool for the defense of LGBTI rights throughout the years and it has been increasingly used and cited by a variety of media sources, NGOs, institutions, and most recently by UN agencies. This has only motivated us to keep improving its quality so it can produce useful resources and bring symbolic –and hopefully material - benefits to people's lives. After all, legal changes, particularly concerning LGBTI issues, generate further social and pedagogical effects, educating the society on the protection and promotion of the rights of such people.

The first part of the report presents a global overview of developments of LGBTI rights in a variety of matters: decriminalization of homosexual acts; equalization of ages of consent; prohibitions of discrimination based on sexual orientation and gender identity; hate crimes based on sexual orientation and gender identity considered as aggravating circumstance; marriage and partnership rights for same-sex couples; joint adoption by same-sex couples; and laws on gender recognition after gender reassignment treatment.

The second part is comprised of a summary of countries that still maintain legal provisions criminalizing same-sex sexual acts between consenting adults and who engage in sexual activity in private. Laws related to such acts done in public, with minors, by force or otherwise outlawed are not included.

The compilation of this year's report followed the same methodological procedures introduced in the 2011 version. A call to ILGA members in more than 110 countries was made to collect the most accurate data, which I combined with news articles and material I have been collecting for the past year regarding LGBTI legal developments. For each new development, I first searched for the original text of the law in penal codes or other relevant legislation. If that was not available or not very clear, I then looked for other sources, such as official reports from governmental or non-governmental agencies, the UN or other international organizations. If these were not found, other types of sources were used. Afterwards, the first draft was reviewed and discussed by an advisory group composed of LGBTI experts Kees Waaldijk<sup>1</sup> (Leiden Law School/ The Netherlands), Robert Wintemute (King's College/UK), Eddie Bruce-Jones (Birkbeck University/UK) and an ILGA board composed of Renato Sabbadini, Stephen Barris and Sebastian Rocca.

I would like to thank the members of the above mentioned group for their significant comments and assistance, as well as the organizations and other scholars that sent us their suggestions. If you have any additional information or further sources not available in this report, please contact ILGA at [information@ilga.org](mailto:information@ilga.org) and we will investigate the matter.

**The report has been researched and edited by Lucas Paoli Itaborahy.<sup>2</sup>** It is an updated version of the five annual editions of this report that were researched and compiled by Daniel Ottosson until 2010 and by Eddie Bruce-Jones and Lucas Paoli Itaborahy in 2011.

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<sup>1</sup> Kees Waaldijk has also contributed immensely to this report, providing a draft version of *Legal recognition of homosexual orientation in the countries of Africa* from March 2011, as well as his 2009 paper "Legal recognition of homosexual orientation in the countries of the world", which is available at: <http://hdl.handle.net/1887/14543>.

<sup>2</sup> Lucas Paoli Itaborahy was born in Brazil on 1<sup>st</sup> August 1986 and holds a bachelor degree in International Relations from the Pontifical Catholic University of Minas Gerais. He is currently concluding his MA in Human Rights Practice

# Refugee Context Considered

By Jenni Millbank, Professor of Law, University of Technology Sydney  
Eddie Bruce-Jones, Lecturer in Law, Birkbeck College School of Law, University of London

The ILGA Report on State-Sponsored Homophobia is a comprehensive outline of the legal status of same-sex sexual activity. However, it is very important to keep in mind that the question of *legality* of same-sex sexual activity does not determine the question whether people may be at risk of being *persecuted* in their countries of origin for engaging in such activity. Knowing that there is a difference between these two questions is vital for legal practitioners, policy makers and adjudicators in the refugee context.

The 1951 Refugee Convention defines refugees in Article 1(A) as those who:

*“owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”*

Criminalisation of same-sex activity may be relevant to the determination of risk of persecution in a number of ways. The imposition of criminal sanctions by the State in and of itself may constitute persecution (UNHCR 2002; 2008). Criminal laws prohibiting gay sex, whether or not regularly enforced, render sexual minorities vulnerable to extortion, exploitation and other forms of abuse at the hand of both state and non-state actors. Such criminal laws systematically contribute to a failure of State protection, by preventing victims of homophobic violence from seeking and being provided assistance. Furthermore, criminal laws of this kind, whether or not enforced, contribute to persecutory environments, by stigmatising LGBTI people through official means. However the absence of, or repeal of, criminal proscriptions absolutely must not be taken as establishing the reverse proposition. Lack of explicit criminalisation of same-sex sexual activity does not prevent LGBTI people from facing extreme violence. The absence of criminalisation does not demonstrate the absence of risk of persecution and/or sufficiency of state protection. The question of legality of gay sex is only one element, and cannot alone be taken as an answer to the question of risk of persecution based on sexuality.

ILGA has been given feedback that earlier incarnations of this report have been used in some refugee determination hearings as evidence that there is no real risk of persecution for lesbian or gay applicants from countries where either the law had been amended to decriminalise same-sex sexual activity or where there was no legal provision expressly criminalising the activity. This introduction urges readers of this document, in particular legal professionals, to think carefully and critically about its use in matters related to refugee and asylum claims. Specifically we urge readers to seek the most detailed, accurate and up to date country of origin information possible to place this information in context before use in any refugee determination.

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from the University of Gothenburg (Sweden), Roehampton University (UK) and University of Tromsø (Norway), as part of the Erasmus Mundus programme. Lucas has dedicated most of his academic and professional work to LGBT issues. He assisted Prof. Kees Waaldijk with his 2009 *paper* "Legal recognition of homosexual orientation in the countries of the world" and worked for the LGBT General Coordination from the Human Rights Secretary of the Presidency of Brazil from 2009 to 2010. He has been an intern at the International Centre for the Legal Protection of Human Rights (Interights) in London in 2011 and at the Permanent Mission of Brazil to the United Nations in Geneva in 2012.



## Violence and safety beyond the law

The report that follows is a compilation of laws criminalizing same sex activities amongst consenting adults, which, unfortunately, are still in place in 78 countries in the world. We are mindful, however, that even in those countries where some kind of protection is provided, violence is still a major plague in the daily lives of many LGBTI people. The case study below aims at raising awareness of the issue of safety of LGBTI people in Brazil. Although Brazil benefits from some kind of positive legislation for LGBTI people, the reality shows that violence, and too often murders, still prevail. Unfortunately, this situation of violence against LGBTI is common in many of those countries that do not criminalize homosexuality and therefore that do not appear in the report.

We are hoping this new addition to the report will become a regular feature in editions to come and this year we would like to thank Sonia Correa, Irina Bacci, Roger Raupp and Eduardo Piza de Mello for their outstanding contribution.

### Homophobia and impunity in Brazil

by **Irina Bacci**, Secretary General of the Brazilian Association of Lesbians, Gays, Bisexual, Transvestites and transsexuals (ABGLT)

**Sonia Onufer Corrêa**, co-chair of Sexuality Policy Watch,

**Eduardo Piza Gomes de Mello**, Lawyer, Specialist in Public Law and director of Gadvs – Group of Lawyers for Sexual Diversity of São Paulo,

**Roger Raupp Rios**, Doctor in Law (UFRGS) and Federal Judge in Porto Alegre. University Teacher (UniRitter),

Brazil is today the sixth world economy, having surpassed developed countries like Great Britain. There are also projections that the economy will overtake France in mid-2015, according to studies by the International Monetary Fund and the West L.B.

A country that less than 15 years ago needed financial help from the International Monetary Fund to pay its foreign debt, currently lends money to the same institution. The country's economic development has led many of its companies to build great infrastructures in various countries of Latin America, Africa and the Middle East.

This positive picture sees also the appearance of a new social class emerged in Brazil as a result of the redistributive social policies by the Lula government in the last eight years. But this reality is not effective enough to promote the improvement of the living conditions of the Brazilian people.

The Human Development Report 2011, released in November last year (2011) by the United Nations Development Programme (UNDP) ranks Brazil in the 84th position among the 187 countries assessed by the index. The index is used as a benchmark of quality of life and development without relying solely on economic indexes.

Consequently, it can be used also in relation to human rights violations in Brazil, which currently affect thousands of landless rural workers, indigenous peoples, women victims of violence because of gender differences and the violation of their reproductive rights, the discrimination against the black population which represents half of the population and many other marginalized and under-assisted social groups .

And this is the context where we find also the Brazilian LGBT community, as it has not obtained an institutional recognition of its existence by the Brazilian government nor any political-administrative recognition of its basic needs. There is no federal law dealing with recognition of civil rights (civil marriage, registration change of the social name and gender designation) or even legal protection against violence, discrimination and prejudice on the grounds of gender identity and sexual orientation (criminalization of homophobia).

The little existing legislation in states and municipalities is restricted to administrative procedures, since family law and criminal law are of the exclusive competence of the National Congress, which passes federal laws. By way of example, a bill criminalizing homophobia in the same way racism is already criminalized has been pending in the National Congress for more than 10 years. In late 2011 a group of parliamentarians from the governing coalition presented a different bill in its place, which reduced the severity of the crime of homophobia, making it less important and with less severe penalties than racism. This attempt to mitigate the fight against homophobia was not successful and received much criticism both from conservative groups and from social movement organizations, both opposed to any concession on this issue.

The institution that has, occasionally, recognized rights of gays and lesbians is the judiciary, in some regional courts. Recently also the highest Brazilian court, the Federal Supreme Court, acknowledged that the union between two persons of the same sex can be considered a family unit – it is the first, to this day, institutional, juridical demonstration of recognition of lesbian and gay rights in the State of Brazil. The effect of the decision is binding and has immediate application.

However, public policies in defense and in favour of LGBT people are neither sufficient nor effective in reducing homophobic violence, which includes murders of gays and lesbians, moral violence and prejudice in the workplace and in the media. Brazil has no public institution nor specific project counting the occurrences of homophobic crimes and violence, be it physical or symbolic.

The only survey in the country is the initiative of the social movement, the Gay Group of Bahia - GGB, which counts the crime news items published in media and social networks. In 2011, according to a survey of the GGB, there was a homophobic murder every two days in Brazil. The inertia and indifference of the Brazilian government when it comes to counting homophobic crimes, contrary to what is done instead with surveys of car thefts and armed robberies of banks, hinder the adoption of concrete measures to fight homophobia and keep the discussion on the topic off the government agenda.

Consequently, public security and judicial police are not employed for the investigation and prosecution of criminal offenses, providing a culture of impunity, discrimination and homophobia for crimes involving LGBT victims.

Another major obstacle to recognition and enjoyment of human rights by gays and lesbians is the religious dogmatism, which is currently gaining more and more ground in the control of mass media such as radio and television networks. The religious dogmatism arising from the neo-Pentecostal and the Protestant churches, and the charismatic segment of the Catholic Church, incites and legitimizes actions of intolerance.

Among the parliamentary majority supporting the current federal government, representatives of these churches and religious denominations exert a negative influence on government decisions to the detriment and prejudice of LGBT people. For example, last year a project developed and funded by the federal government to educate students and train teachers in public schools on tackling homophobia (the anti-homophobia kit), was inexplicably vetoed by the president on the eve of its launch, after she had received a group of evangelical MPs of her majority demanding the suspension of the project.

Likewise, an HIV/AIDS prevention video campaign by the Ministry of Health directed at gays and lesbians during the carnival in February 2012 was not aired on television, unlike the other videos of the same campaign targeted to other equal and potentially vulnerable segments. Despite the fact that the LGBT community in Brazil is able to gather millions of people during public demonstrations for the Gay Pride Parades, it still does not constitute a critical mass capable of exerting social pressure on political authorities and on the government. On the other hand, the fear the Brazilian government has to have a conflict with the homophobic and conservative segments and lose their support in the parliament sanctions this bleak picture of a quiet – but nonetheless very much abusive of human rights – homophobia acquiring institutional status in Brazil.

# LGBTI rights 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.

## Homosexual acts legal (113 countries)

<b>Africa</b>	Burkina Faso, Cape Verde (2004), <sup>3</sup> Central African Republic, Congo, Chad, Côte d'Ivoire, Democratic Republic of Congo, Djibouti, <sup>4</sup> Equatorial Guinea, <sup>5</sup> Gabon, Guinea-Bissau (1993), <sup>6</sup> Madagascar, Mali, Niger, <sup>7</sup> Rwanda, <sup>8</sup> South Africa (1998)
<b>Asia</b>	Bahrain (1976) <sup>9</sup> , Cambodia, China (1997), <sup>10</sup> East Timor (1975), most parts of Indonesia, Israel (1988), Japan (1882), Jordan (1951), Kazakhstan (1998), Kyrgyzstan (1998), Laos, Mongolia, <sup>11</sup> Nepal (2008), <sup>12</sup> North Korea, Philippines, South Korea, Taiwan (1896), Tajikistan (1998), Thailand (1957), Vietnam, as well as the West Bank (1951) in the Occupied Palestinian Territory
<b>Europe</b>	Albania (1995), Andorra (1990), Armenia (2003), Austria (1971), Azerbaijan (2000), Belarus (1994), Belgium (1795), Bosnia and Herzegovina (1998-2001), <sup>13</sup> Bulgaria (1968), Croatia (1977), Cyprus (1998), Czech Republic (1962), Denmark (1933), Estonia (1992), Finland (1971), France (1791), Georgia (2000), Germany (1968-69), <sup>14</sup> Greece (1951), Hungary (1962), Iceland (1940), Ireland (1993), Italy (1890), Kosovo (1994) <sup>15</sup> , Latvia (1992), Liechtenstein (1989), Lithuania (1993), Luxembourg (1795), Macedonia (1996), Malta (1973), Moldova (1995), Monaco (1793), Montenegro

<sup>3</sup> The 2004 Penal Code does not criminalise homosexual acts. 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=38&Itemid=66..](http://www.mj.gov.cv/index.php?option=com_docman&task=doc_download&gid=38&Itemid=66..)

<sup>4</sup> See Djibouti Penal Code of 1995, available at: <http://www.djibouti.mid.ru/doc/UK.htm>.

<sup>5</sup> However, according to Amnesty International's 2006 report "Sexual Minorities and the Law: A World Survey", homosexual acts are still illegal in Equatorial Guinea. Text available at:

<http://www.asylumlaw.org/docs/sexualminorities/World%20SurveyAlhomosexuality.pdf>.

<sup>6</sup> According to Waaldijk (2011), articles 133-138 on sexual offences in the new Penal Code of 1993 do not seem to criminalise homosexual acts more than heterosexual acts (Text of the law is available at: [www.rjcplp.org/RJCPLP/sections/informacao/legislacao-nacional/anexos/gb-codigo-penal/downloadFile/file/GuineBissau.CodigoPenal.pdf](http://www.rjcplp.org/RJCPLP/sections/informacao/legislacao-nacional/anexos/gb-codigo-penal/downloadFile/file/GuineBissau.CodigoPenal.pdf)).

<sup>7</sup> The 1961 Penal Code with amendments up to 2003 is available at:

<http://www.unhcr.org/refworld/docid/47fb8e642.html>.

<sup>8</sup> See the Rwanda Penal Code of 1980 available at:

[http://www.amategeko.net/display\\_rubrique.php?ActDo=ShowArt&Information\\_ID=947&Parent\\_ID=3070640&type=public&Langue\\_ID=Fr&rublD=30691315](http://www.amategeko.net/display_rubrique.php?ActDo=ShowArt&Information_ID=947&Parent_ID=3070640&type=public&Langue_ID=Fr&rublD=30691315).

<sup>9</sup> A new Penal Code was enacted in 1976 and this repealed the old Penal Code of the Persian Gulf imposed by the British. Contrary to the second-hand source used in previous editions of the report, the Penal Code allows sodomy from the age of 21, and therefore sodomy was decriminalised as of adoption of the new code.

<sup>10</sup> Homosexual acts are also legal in all Chinese associates; Hong Kong (1991) and Macau (1996).

<sup>11</sup> See Article 125 of the Criminal Code of Mongolia of 2002, available at:

<http://www.lexadin.nl/wlg/legis/otr/oeur/lxwemon.htm>.

<sup>12</sup> 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>.

<sup>13</sup> 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); see [www.ohr.int/ohr-dept/legal/crim-codes/](http://www.ohr.int/ohr-dept/legal/crim-codes/).

<sup>14</sup> East Germany (1968) and West Germany (1969).

<sup>15</sup> Kosovo is not a member state of the United Nations

(1977), Netherlands (1811),<sup>16</sup> Norway (1972), Poland (1932), Portugal (1983), Romania (1996), Russia (1993), San Marino (1865), Serbia (1994), Slovakia (1962), Slovenia (1977), Spain (1979), Sweden (1944), Switzerland (1942), Turkey (1858), Ukraine (1991), United Kingdom (see foot note for the UK and associates),<sup>17</sup> Vatican City<sup>18</sup>

**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),<sup>19</sup> El Salvador (1800's), Guatemala (1800's), Haiti (1800's), Honduras (1899), Mexico (1872), Nicaragua (2008), Panama (2008),<sup>20</sup> Paraguay (1880), Peru (1836-1837), Suriname (1869), Uruguay (1934), Venezuela (1800's)

**North America** Canada (1969), the United States (2003)<sup>21</sup>

**Oceania** Australia,<sup>22</sup> Fiji (2010),<sup>23</sup> Marshall Islands (2005), Micronesia, New Zealand (1986), Vanuatu and the New Zealand associates of Niue (2007) and Tokelau (2007)

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

## Homosexual acts illegal (78 countries)

**Africa** Algeria(1966),<sup>24</sup> Angola, Benin, Botswana, Burundi (2009), Cameroon (1972), Comoros, Egypt,<sup>25</sup> Eritrea, Ethiopia, Gambia, Ghana, Guinea, Kenya, Lesotho, Liberia, Libya, Malawi, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Nigeria, São Tomé and Príncipe, Senegal, Seychelles, Sierra Leone, Somalia, South Sudan, Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia, Zimbabwe

**Asia** Afghanistan, Bangladesh, Bhutan, Brunei, Iran, Kuwait, Lebanon, Malaysia, Maldives, Myanmar, Oman, Pakistan, Qatar, 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

<sup>16</sup> Homosexual 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.

<sup>17</sup> 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.

<sup>18</sup> The Vatican is not a member state of the United Nations

<sup>19</sup> In 27 November 1997, the Ecuador's Constitutional Court declared unconstitutional article 516 of the Penal Code which criminalized homosexual acts. See CCPR/C/ECU/5, available at:

<http://www2.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/CCPR-C-ECU-5.doc>.

<sup>20</sup> Decree No. 332, Official Gazette of 31 July 2008.

<sup>21</sup> By Supreme Court verdict. It also struck down the sodomy law in Puerto Rico, which was later repealed in 2005. Previously in: 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 associates of American Samoa (1980), American Virgin Islands (1985), Guam (1978) and Northern Mariana Islands (1983). Thereto, Missouri repealed its sodomy law from the books in 2006.

<sup>22</sup> New South Wales (1983), Norfolk Island (1993), Northern Territory (1984), Queensland (1991), South Australia (1972), Tasmania (1997), Victoria (1981), Western Australia (1990).

<sup>23</sup> The sodomy statutes were repealed by the Crimes Decree 2009, which came into force on 1 February 2010.

<sup>24</sup> See article 338 of the 1965 Penal Code, available at: <http://lexalgeria.free.fr/penal3.htm>.

<sup>25</sup> See Egypt section in the second part of this report.

<b>Oceania</b>	Kiribati, Nauru, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu
<b>Entities</b>	Cook Islands (New Zealand), Gaza (in the Occupied Palestinian Territory), Turkish Republic of Northern Cyprus (internationally unrecognised), South Sumatra and Aceh Province (Indonesia)

## Legal status of homosexual acts unclear or uncertain (2 countries)

<b>Asia</b>	Iraq; India <sup>26</sup> (see these sections on these countries in second part of this report);
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## Homosexual acts punishable with death penalty (5 countries and some parts of Nigeria and Somalia)

<b>Africa</b>	Mauritania, Sudan as well as 12 northern states in Nigeria and the southern parts of Somalia
<b>Asia</b>	Iran, Saudi Arabia, Yemen

## Equal age of consent for homosexual and heterosexual acts (99 countries)

<b>Africa</b>	Burkina Faso (1996), Cape Verde (2004), <sup>27</sup> Democratic Republic of Congo (2006), <sup>28</sup> Djibouti, <sup>29</sup> Equatorial Guinea (1931), Mali (1961), Guinea-Bissau (1993), <sup>30</sup> South Africa (2007) <sup>31</sup>
<b>Asia</b>	Cambodia, China, <sup>32</sup> East Timor (2009), Israel (2000), Japan (1882), Jordan (1951), Kazakhstan (1998), Kyrgyzstan (1998), Laos, Mongolia, Nepal (2007), North Korea, Philippines (1822), South Korea, Taiwan (1896), Tajikistan (1998), Thailand (1957), Vietnam, as well as the West Bank (1951) in the Palestinian Authority
<b>Europe</b>	Albania (2001), Andorra, Armenia (2003), Austria (2002), Azerbaijan (2000), Belarus (2000), Belgium (1985), Bosnia & Herzegovina (1998-2001), <sup>33</sup> Bulgaria (2002), Croatia

<sup>26</sup> 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, available at: <http://www.alllawforum.org/news/gender-and-sexuality/the-377-campaign/The%20right%20that%20Dares%20to%20Speak%20its%20Name.pdf>. Pending appeal of this judgment in the Delhi High Court, the Court has rejected requests to stay the judgment in the interim period. See <http://www.indianexpress.com/news/sc-declines-to-stay-hc-verdict-on-homosexual/491686/>.

<sup>27</sup> See article 71 (4) of the Código Penal, available at <http://www.saflii.org/mz/legis/codigos/cp90/>.

<sup>28</sup> According to Waaldijk (2011), articles 167 and 172 of the Penal Code, as amended by law 06/018 of 20 July 2006, do not distinguish between homosexual and heterosexual 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](http://www.leganet.cd/Legislation/JO/2006/JO.01.08.2006.C.P.P..pdf)).

<sup>29</sup> See Djibouti Penal Code of 1995, available at: <http://www.djibouti.mid.ru/doc/UK.htm>.

<sup>30</sup> According to Waaldijk (2011), articles 133-138 on sexual offences in the new Penal Code of 1993 do not seem to criminalise homosexual acts more than heterosexual acts (Text of the law is available at: [www.ricplp.org/RJCPLP/sections/informacao/legislacao-nacional/anexos/gb-codigo-penal/downloadFile/file/GuineBissau.CodigoPenal.pdf](http://www.ricplp.org/RJCPLP/sections/informacao/legislacao-nacional/anexos/gb-codigo-penal/downloadFile/file/GuineBissau.CodigoPenal.pdf)).

<sup>31</sup> According to Waaldijk (2011), 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: [http://www.amategeko.net/display\\_rubrique.php?ActDo=ShowArt&Information\\_ID=947&Parent\\_ID=3070640&type=public&Langue\\_ID=Fr&rubID=30691315](http://www.amategeko.net/display_rubrique.php?ActDo=ShowArt&Information_ID=947&Parent_ID=3070640&type=public&Langue_ID=Fr&rubID=30691315)).

<sup>32</sup> In mainland of China since decriminalisation in 1997; also in Hong Kong (2005/2006) and in Macau (1996).

<sup>33</sup> 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); see <http://www.ohr.int/ohr-dept/legal/crim-codes/>

(1998), Cyprus (2002), Czech Republic (1990), Denmark (1976),<sup>34</sup> Estonia (2002), Finland (1999), France (1982),<sup>35</sup> Georgia (2000), Germany (1994/89),<sup>36</sup> 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),<sup>37</sup> Norway (1972), Poland (1932), Portugal (2007), Romania (2002), Russia (1997), San Marino (1865), Serbia (2006), Slovakia (1990), Slovenia (1977), Spain (1979), Sweden (1978), Switzerland (1992), Turkey (1858), Ukraine (1991), United Kingdom (2001),<sup>38</sup> Vatican City

**Latin America and the Caribbean** Argentina (1887), Bolivia, Brazil (1831), 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** Australia,<sup>39</sup> Fiji (2010), Marshall Islands, Micronesia, New Zealand (1986), Vanuatu (2007) and some parts of New Zealand<sup>40</sup>

## Un-equal age of consent for homosexual and heterosexual acts (15 countries)

**Africa** Benin (1947),<sup>41</sup> Chad, Congo (1947)<sup>42</sup>, Côte d'Ivoire,<sup>43</sup> Gabon, Madagascar (1999),<sup>44</sup> Niger (1961),<sup>45</sup> Rwanda<sup>46</sup>

**Asia** Indonesia

<sup>34</sup> The Faeroe Islands (1988), Greenland (1979).

<sup>35</sup> 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.

<sup>36</sup> East Germany (GDR) in 1989 and the rest of Germany in 1994.

<sup>37</sup> 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).

<sup>38</sup> Akrotiri & Dhekelia (2003), Falkland Islands (2005), Isle of Man (2006), Jersey (2007), Guernsey (2010; see <http://news.bbc.co.uk/2/hi/europe/guernsey/8587205.stm>), Pitcairn, South Georgia, St Helena as well as all more or less uninhabited islands. 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), and was therefore set at 16 for all at that date. The Government is currently undertaking a consultation exercise to decide the final age of consent under law.

<sup>39</sup> 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).

<sup>40</sup> New Zealand associates of Niue (2007) and Tokelau (2007).

<sup>41</sup> According to Waaldijk (2011), Benin probably has a higher age limit for homosexual 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/jo\\_pdf.jsp?numJO=0&dateJO=19471123&pageDebut=11567&pageFin=&pageCourante=11569](http://www.legifrance.gouv.fr/jopdf/common/jo_pdf.jsp?numJO=0&dateJO=19471123&pageDebut=11567&pageFin=&pageCourante=11569)).

<sup>42</sup> According to art. 331 from the 1947 Penal Code, "anyone who has committed an indecent act or an act against nature with an individual of the same sex, minor of 21 years-old, will be punished with jail from 6 months to 3 years and with a fine of 4 000 francs up to 1 000 000 francs".

<sup>43</sup> However, other sources suggest that there is perhaps an equal age of consent of 15 for both homosexual and heterosexual acts; see for example [www.avert.org/aofconsent.htm](http://www.avert.org/aofconsent.htm).

<sup>44</sup> Law 98-024 of 25 January 1999 inserted a second paragraph which prohibits any act that is indecent or against nature if committed with a person of the same sex under 21. Text of the law is available at: [http://portail.droit.francophonie.org/df-web/publication.do?publicationId=2486#H\\_068](http://portail.droit.francophonie.org/df-web/publication.do?publicationId=2486#H_068).

<sup>45</sup> According to Waaldijk (2011), article 282 of the 1961 Penal Code says that any act against nature or any indecent act committed with someone of the same sex under 21 is considered a crime (text of the law is available at: [www.unhcr.org/refworld/docid/47fb8e642.html](http://www.unhcr.org/refworld/docid/47fb8e642.html)).

<sup>46</sup> See Waaldijk (2011).

<b>Europe</b>	Greece (only in seduction cases), <sup>47</sup> as well as some United Kingdom associates <sup>48</sup>
<b>Latin America &amp; Caribbean</b>	Bahamas, Chile, Paraguay, Suriname as well as some United Kingdom associates, <sup>49</sup>
<b>North America:</b>	Canada, two states of the United States <sup>50</sup>
<b>Oceania</b>	State of Queensland in Australia

## Prohibition of discrimination in employment based on sexual orientation (52 countries)

<b>Africa</b>	Botswana (2010), <sup>51</sup> Cape Verde (2008), <sup>52</sup> Mauritius (2008), <sup>53</sup> Mozambique (2007), <sup>54</sup> Seychelles (2006), <sup>55</sup> South Africa (1996) <sup>56</sup> (Namibia repealed such a law in 2004) <sup>57</sup>
<b>Asia</b>	Israel (1992), Taiwan (2007)
<b>Europe</b>	Albania (2010), Andorra (2005), Austria (2004), Belgium (2003), Bosnia and Herzegovina (2003), <sup>58</sup> Bulgaria (2004), Croatia (2003), Cyprus (2004), Czech Republic (1999), Denmark (1996), <sup>59</sup> Estonia (2004), Finland (1995), France (2001), Georgia (2006), Germany (2006), Greece (2005), <sup>60</sup> Hungary (2004), Ireland (1999), Italy (2003), Kosovo (2004), Latvia (2006), Lithuania (2003), Luxembourg (1997), Macedonia (2005) <sup>61</sup> , Malta (2004), Montenegro (2010), <sup>62</sup> Netherlands (1992), Norway (1998), Poland (2004), Portugal (2003), Romania (2000), Serbia (2005), Slovakia (2004), Slovenia (1995) <sup>63</sup> , Spain (1996), Sweden (1999), United Kingdom (2003, for associates see foot note) <sup>64</sup>

<sup>47</sup> See Article 347 of the Greek Penal Code.

<sup>48</sup> Bailiwick of Guernsey

<sup>49</sup> Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Montserrat, Turks & Caicos Islands.

<sup>50</sup> Nevada (only in seduction cases) and Virginia.

<sup>51</sup> See Bonela Applauds New Employment Act – Government Scraps Sexual Orientation and Health as Basis for Dismissal, 30 August 2010, available at: [http://www.bonela.org/press/30\\_august\\_2010.html](http://www.bonela.org/press/30_august_2010.html)

<sup>52</sup> See article 45(2) and article 406 (3) of the *Novo Código Laboral Cabo-Verdiano* available at: <http://www.ine.cv/Legisla%C3%A7ao/Outras/C%C3%B3digo%20laboral%20cabo-verdiano.pdf>.

<sup>53</sup> 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:

[http://www.ilo.org/wcmsp5/groups/public/--ed\\_protect/--protrav/--ilo\\_aids/documents/legaldocument/wcms\\_126781.pdf](http://www.ilo.org/wcmsp5/groups/public/--ed_protect/--protrav/--ilo_aids/documents/legaldocument/wcms_126781.pdf).

<sup>54</sup> See articles 4, 5 and 108 of the Labour Law 23/2007, available at:

[http://www.tipmoz.com/library/resources/tipmoz\\_media/labour\\_law\\_23-2007\\_1533E71.pdf](http://www.tipmoz.com/library/resources/tipmoz_media/labour_law_23-2007_1533E71.pdf).

<sup>55</sup> See articles 2, 46A (1) and 46B of the Employment Act 1995, amended by Act 4 of 2006, available at:

<https://staging.ilo.org/dyn/natlex/docs/ELECTRONIC/40108/90799/F1128259675/SYC40108.pdf>.

<sup>56</sup> According to Waaldijk (2011), 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

(<http://www.info.gov.za/view/DownloadFileAction?id=70985>); in the Employment Equity Act of 1998

([www.info.gov.za/view/DownloadFileAction?id=70714](http://www.info.gov.za/view/DownloadFileAction?id=70714)); and in the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 ([www.info.gov.za/view/DownloadFileAction?id=68207](http://www.info.gov.za/view/DownloadFileAction?id=68207)).

<sup>57</sup> Section 139 of the Labour Act of 2004 repealed the Labour Act of 1992 which in Section 107 prohibited sexual orientation discrimination. Text of the 2004 law is available at:

[http://www.commonlii.org/na/legis/num\\_act/la200484.pdf](http://www.commonlii.org/na/legis/num_act/la200484.pdf); see Waaldijk (2011).

<sup>58</sup> Such laws are available also in Republika Srpska (2000, 2003).

<sup>59</sup> 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.

<sup>60</sup> See Law no. 3304/2005 (Act Against Discrimination), available at: <http://www.non-discrimination.net/content/main-principles-and-definitions-6>

<sup>61</sup> Law on Labour Relations, article 6. See Legal Report: "The former Yugoslav Republic of Macedonia". Available at: [http://www.coe.int/Commissioner/Source/LGBT/FYROMLegal\\_E.pdf](http://www.coe.int/Commissioner/Source/LGBT/FYROMLegal_E.pdf)

<sup>62</sup> See "Montenegro adopts an anti-discrimination law", available at: <http://www.equal-jus.eu/node/38>. The text of the draft law can be found here: [http://www.venice.coe.int/docs/2010/CDL\(2010\)024-e.pdf](http://www.venice.coe.int/docs/2010/CDL(2010)024-e.pdf), see article 19.

<sup>63</sup> See Art. 141 of the Penal Code.



- Latin America & Caribbean** The city of Rosario (1996) in Argentina, some parts of Brazil,<sup>65</sup> Colombia (2007), Costa Rica (1998), Ecuador (2005),<sup>66</sup> ten states of Mexico (2001-2009),<sup>67</sup> Nicaragua (2008), Venezuela (1999),
- North America:** Canada (1996), some parts of the United States<sup>68</sup>
- Oceania** Australia,<sup>69</sup> Fiji (2007), New Zealand (1994)

## Prohibition of discrimination in employment based on gender identity (19 countries)

- Europe** Croatia (2009), Hungary (2004), Montenegro (2010), Serbia (2009), Sweden (2009). Moreover discrimination of transgender people is covered by the gender discrimination prohibitions in among others Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Latvia, Netherlands, Poland, Slovakia and United Kingdom.
- Latin America & Caribbean** The city of Rosario (2006) in Argentina
- North America** Northwest Territories (2004) in Canada, as well as some parts of the United States<sup>70</sup>
- Oceania** Australia (1996)<sup>71</sup>

## Constitutional prohibition of discrimination based on sexual orientation (6 countries)

- Africa** South Africa (1994 and 1997)<sup>72</sup>
- Europe** Kosovo (2008), Portugal (2004), Sweden (2003), Switzerland (2000), as well as some parts of Germany<sup>73</sup>

<sup>64</sup> Bailiwick of Guernsey (2005), Gibraltar (2006), Isle of Man (2007). For Gibraltar, see [www.gibraltarlaws.gov.gi/articles/2006-37o.pdf](http://www.gibraltarlaws.gov.gi/articles/2006-37o.pdf)

<sup>65</sup> Bahia (1997), Federal District (2000), Minas Gerais (2001), Paraíba (2003), Piauí (2004), Rio de Janeiro (2000), Rio Grande do Sul (2002), Santa Catarina (2003), São Paulo (2001) as well as a number of cities.

<sup>66</sup> See Article 79 of the *Código del Trabajo*, *Codificación 2005-17*, available at: <http://www.unemi.edu.ec/rhh/images/archivos/codtrab.pdf>.

<sup>67</sup> Between 2001 y 2009, ten Mexican states included in their Penal Code provisions prohibiting discrimination on the basis of sexual orientation: Aguascalientes (Article 205 bis), Chiapas (Article 324), Distrito Federal (Article 206), Durango (Article 324), Veracruz (Article 196), Colima (Article 225 bis), Coahuila (Article 383 bis), Tlaxcala (Article 255 bis), Chihuahua (Article 197) y Quintana Roo (Article 132). The texts of the laws are available at: <http://www2.scjn.gob.mx/LegislacionEstatal/>.

<sup>68</sup> 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 D.C. (1973) as well as a number of cities and towns.

<sup>69</sup> Capital Territory (1992), New South Wales (1983), Northern Territory (1993), Queensland (1992), South Australia (1986), Tasmania (1999), Victoria (1996), Western Australia (2002).

<sup>70</sup> United States: California (2004), Colorado (2007), Illinois (2006), Iowa (2007), Maine (2005), Minnesota (1993), New Jersey (2007), New Mexico (2003), Oregon (2008), Rhode Island (2001), Vermont (2007), Washington (2006) and District of Columbia (2006), as well as a number of cities and towns.

<sup>71</sup> See Waaldijk (2009), footnote 557, for a discussion of 1996 national legislation. Capital Territory (1992), New South Wales (1996), Northern Territory (1993), Queensland (2003), South Australia (1986), Tasmania (1999), Victoria (2000), Western Australia (2001). The only states using the term "Gender identity" are Queensland and Victoria, whereas Capital Territory uses the terms "Transgender" and "Intersex", New South Wales the term "Transgender" and Western Australia the term "Gender history". The rest of the states use the term "Transsexuality".

<sup>72</sup> According to Waaldijk (2011), prohibition of sexual orientation discrimination was included on the interim Constitution that came into force on 27 April 1994 (article 8), and later added to article 9 of the 1997 Constitution (both texts are available at: [www.info.gov.za/documents/constitution/index.htm](http://www.info.gov.za/documents/constitution/index.htm)).

<b>Latin America &amp; Caribbean</b>	Bolivia (2009), <sup>74</sup> Ecuador (2008), <sup>75</sup> some parts of Argentina <sup>76</sup> and Brazil <sup>77</sup> , the United Kingdom associate of British Virgin Islands (2007) <sup>78</sup>
<b>Oceania</b>	None (Fiji previous constitution, adopted in 1997, included such a provision, but this constitution was repealed in 2009)

## Hate crimes based on sexual orientation considered an aggravating circumstance (19 countries)

<b>Europe</b>	Andorra (2005), Belgium (2003), Croatia (2006), Denmark (2004), France (2003), <sup>79</sup> Netherlands (1992), Portugal (2007), Romania (2006), San Marino (2008), <sup>80</sup> Spain (1996), Sweden (2003), United Kingdom (2004-2010) <sup>81</sup>
<b>Latin America &amp; Caribbean</b>	Bolivia (2011), <sup>82</sup> Colombia (2011) <sup>83</sup> , Ecuador (2009), <sup>84</sup> Nicaragua (2008), Uruguay (2003) <sup>85</sup> , some parts of Mexico <sup>86</sup>
<b>North America</b>	Canada (1996) and United States (2009) <sup>87</sup>
<b>Oceania</b>	New Zealand (2002)

## Hate crimes based on gender identity considered an aggravating circumstance (4 countries)

<b>Europe</b>	Some parts of the United Kingdom (2004-2010) <sup>88</sup>
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<sup>73</sup> Berlin (1995), Brandenburg (1992), Thuringia (1993).

<sup>74</sup> See Article 14 of the *Constitución Política del Estado*, of 7 February 2009, available at: <http://bolivia.infoleyes.com/shownorm.php?id=469>.

<sup>75</sup> A new constitution was adopted by referendum in 2008. This protects people from discrimination based both on sexual orientation and gender identity. Text of the constitution is available at: <http://www.asambleanacional.gov.ec/documentos/Constitucion-2008.pdf>.

<sup>76</sup> Art. 11 of the Constitution of the Province of Buenos Aires (1996).

<sup>77</sup> Alagoas (2001), Federal District (1993), Mato Grosso (1989), Pará (2003), Santa Catarina (2002), Sergipe (1989).

<sup>78</sup> Article 26 of the Virgin Islands Constitution Order 2007 is available at:

<http://www.legislation.gov.uk/ukxi/2007/1678/contents/made>.

<sup>79</sup> 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.

<sup>80</sup> See Law no. 66 on *Disposizioni in materia di discriminazione razziale, etnica, religiosa e sessuale* of 28 April 2008, available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---ilo\\_aids/documents/legaldocument/wcms\\_128030.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_128030.pdf).

<sup>81</sup> Such laws have been adopted in England and Wales (2005), Northern Ireland (2004) and Scotland (effective 2010).

<sup>82</sup> See Articles 5(a, g, h) and 281ter of the *Ley contra el racismo y toda forma de discriminación*, available at: [http://www.lostiempos.com/media\\_pdf/2010/10/13/181602.pdf](http://www.lostiempos.com/media_pdf/2010/10/13/181602.pdf).

<sup>83</sup> See Law 1482 of 30 November 2011, which also covers incitement to hatred based on sexual orientation. Original text available at: [http://www.secretariasenado.gov.co/senado/basedoc/ley/2011/ley\\_1482\\_2011.html](http://www.secretariasenado.gov.co/senado/basedoc/ley/2011/ley_1482_2011.html)

<sup>84</sup> See articles 3 and 5 of the section *Reformas al Código Penal* of the *Ley Reformatoria Al Código de Procedimiento Penal y al Código Penal*, available at:

[http://www.cortesuprema.gov.ec/cn/wwwcn/pdf/leyes/ley\\_reformatoria\\_codigo\\_penal.pdf](http://www.cortesuprema.gov.ec/cn/wwwcn/pdf/leyes/ley_reformatoria_codigo_penal.pdf).

<sup>85</sup> See law 17.677, available at: <http://200.40.229.134/Leyes/ AccesoTextoLey.asp?Ley=17677&Anchor=>

<sup>86</sup> Coahuila (2005) and the Federal District (2009). See Article 350 of Coahuila's Penal Code, available at:

[www2.scjn.gob.mx/LegislacionEstatal/Textos/Coahuila/15146019.doc](http://www2.scjn.gob.mx/LegislacionEstatal/Textos/Coahuila/15146019.doc) and article 138 of the Federal District, available at: [www2.scjn.gob.mx/Leyes/ArchivosLeyes/25361036.doc](http://www2.scjn.gob.mx/Leyes/ArchivosLeyes/25361036.doc).

<sup>87</sup> 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).

**Latin America & Caribbean** Bolivia (2011), Ecuador (2009), Uruguay(2003),<sup>89</sup> some parts of Mexico<sup>90</sup>

**North America** the United States (2009)<sup>91</sup>

## Incitement to hatred based on sexual orientation prohibited (24 countries)

**Africa** South Africa (2000)

**Europe** Belgium (2003), Croatia (2003), Denmark (1987),<sup>92</sup> Estonia (2006), France (2005),<sup>93</sup> Iceland (1996), Ireland (1989), Lithuania (2003), Luxembourg (1997), Monaco (2005)<sup>94</sup>, Netherlands (1992), Norway (1981), Portugal (2007), Romania (2000), San Marino (2008), Serbia (2009), Spain (1996), Sweden (2003), some parts of the United Kingdom (2004-10)<sup>95</sup>

**Latin America & Caribbean** Bolivia (2011), Colombia (2011), Ecuador (2009), some parts of Mexico,<sup>96</sup> Uruguay (2003)<sup>97</sup>

**North America** Canada (2004)

**Oceania** Some parts of Australia<sup>98</sup>

## Marriage open for same-sex couples (10 countries)

**Africa** South Africa (2006)

**Europe** Iceland (2010),<sup>99</sup> Belgium (2003), Netherlands (2001), Norway (2009), Portugal (2010),<sup>100</sup> Spain (2005), Sweden (2009)

**Latin America & Caribbean** Argentina (2010),<sup>101</sup> the Federal District (2010) in Mexico

**North America** Canada (2005), as well some parts of the United States<sup>102</sup>

<sup>88</sup> Such laws have been adopted in Northern Ireland (2004), England and Wales (2005) and Scotland (2010).

<sup>89</sup> The legal terms used are "orientación sexual o identidad sexual" ("sexual orientation or sexual identity"). See Article 149, Penal Code of Uruguay.

<sup>90</sup> Coahila (2005) and the Federal District (2009).

<sup>91</sup> Federal law in 2009 as well as in the states of California (1999), Colorado (2005), Connecticut (2004), Hawaii (2003), Maryland (2005), Missouri (1999), New Mexico (2003), Vermont (1999) and District of Columbia (1990) and Puerto Rico (2005).

<sup>92</sup> The law is applicable to Faeroe Islands (2007) and to Greenland (2010).

<sup>93</sup> 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.

<sup>94</sup> See Articles 16, 24, 25, 44 of the *Loi n° 1.299 du 15 juillet 2005 sur la liberté d'expression publique*, available at: [http://www.conseil-national.mc/admin/rapport\\_loi/Txt\\_091106112217.pdf](http://www.conseil-national.mc/admin/rapport_loi/Txt_091106112217.pdf).

<sup>95</sup> Such laws have only been adopted in Northern Ireland (2004) and England and Wales (2010).

<sup>96</sup> Coahila (2005) and the Federal District (2009).

<sup>97</sup> The law included also "Sexual identity".

<sup>98</sup> Australian Capital Territory (2004), New South Wales (1993), Queensland (2003), Tasmania (1999).

<sup>99</sup> On 11 June 2010 the Icelandic Parliament approved the law which repeals the registered partnership law and allow couples to marry regardless of gender. Text of the law is available at: <http://www.althingi.is/altxt/138/s/0836.html>.

<sup>100</sup> Text of the law is available at <http://dre.pt/pdf1sdip/2010/05/10500/0185301853.pdf>.

<sup>101</sup> Text of the law is available at: <http://www.nexo.org/archivos/Ley-matrimonio-civil-boletin-oficial.pdf>

## Same-sex couples offered most or all rights of marriage (Civil Partnerships, Registered Partnerships, Civil Unions etc.) (14 countries)

<b>Asia</b>	Israel (1994)
<b>Europe</b>	Austria (2010), Denmark (1989), <sup>103</sup> Finland (2002), Germany (2001), Hungary (2009), Ireland (2011), <sup>104</sup> Liechtenstein (2011), <sup>105</sup> Switzerland (2007), United Kingdom (2005), and The United Kingdom associate Isle of Man (2011) <sup>106</sup>
<b>Latin America &amp; Caribbean</b>	Brazil (2011) <sup>107</sup> , Colombia (2009) <sup>108</sup> and the state of Coahuila (2007) in Mexico <sup>109</sup>
<b>North America</b>	some parts of the United States <sup>110</sup>
<b>Oceania</b>	New Zealand (2005), as well as some parts of Australia <sup>111</sup>

## Same-sex couples offered some rights of marriage (8 countries)

<b>Europe</b>	Andorra (2005), Croatia (2003), Czech Republic (2006), France (1999), <sup>112</sup> Luxembourg (2004), Slovenia (2006)
<b>Latin America &amp; Caribbean</b>	Ecuador (2009), Uruguay (2008)
<b>North America</b>	Some parts of the United States <sup>113</sup>

<sup>102</sup> Connecticut (2008), District of Columbia (2010), Iowa (2009), Massachusetts (2004), New Hampshire (2010), New York (2011) and Vermont (2009).

<sup>103</sup> The law was extended to Greenland in 1996, however still not applicable to the Faeroe Islands.

<sup>104</sup> See Civil Partnership and Certain Rights and Obligations of Cohabitants act of 2010 passed, available at <http://www.irishstatutebook.ie/pdf/2010/en.act.2010.0024.PDF>.

<sup>105</sup> See [http://en.wikipedia.org/wiki/Recognition\\_of\\_same-sex\\_unions\\_in\\_Liechtenstein](http://en.wikipedia.org/wiki/Recognition_of_same-sex_unions_in_Liechtenstein).

<sup>106</sup> See [http://en.wikipedia.org/wiki/Recognition\\_of\\_same-sex\\_unions\\_in\\_the\\_Isle\\_of\\_Man](http://en.wikipedia.org/wiki/Recognition_of_same-sex_unions_in_the_Isle_of_Man).

<sup>107</sup> On 5 May 2011, the Supreme Court ruled in favour of recognizing 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 here:

[http://direitohomoafetivo.com.br/2011/uploads/jurisprudencia/2011.05.05 - stf - adi\\_4.277.pdf](http://direitohomoafetivo.com.br/2011/uploads/jurisprudencia/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 it so. The text of this decision is available here: <http://www.gontijo-familia.adv.br/direito-de-familia-casamento-civil-entre-pessoas-do-mesmo-sexo/>.

<sup>108</sup> 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:

<http://www.corteconstitucional.gov.co/relatoria/2009/c-029-09.htm>. On another decision of 26 July 2011 the Court recognized same-sex couples as family entities and ordered the Congress to legislate on the matter of same-sex marriage until June 20th 2013. In case they fail to do it, same-sex couples will be granted all marriage rights automatically. The original text of this decision is available here:

<http://www.corteconstitucional.gov.co/comunicados/No.%2030%20comunicado%2026%20de%20julio%20de%202011.php>

<sup>109</sup> Text of the law is available at:

<http://sgob.sfpcoahuila.gob.mx/admin/uploads/Documentos/modulo3/PactoCivilSolidaridad.pdf>.

<sup>110</sup> California (several acts from 2000 and onwards), Nevada (2009), New Jersey (2007), Oregon (2008), Washington (2007–2009) and Wisconsin (2009).

<sup>111</sup> Australian Capital Territory (2008), New South Wales (2010), Tasmania (2004) and Victoria (2008). See also the Family Law Amendment Act 2008, available at <http://www.comlaw.gov.au/Details/C2008A00115>.

<sup>112</sup> The law applies to the following overseas departments and territories upon adoption: French Guiana, Guadeloupe, Martinique, Réunion, St Barthélemy, St Martin, St Pierre & Miquelon, and to New Caledonia and Wallis and Futuna in 2009.

**Oceania** Some states in Australia <sup>114</sup>

## Joint adoption by same-sex couples legal (12 countries)

<b>Africa</b>	South Africa (2002)
<b>Asia</b>	Israel (2008)
<b>Europe</b>	Andorra (2005), Belgium (2006), Denmark (2010), Iceland (2006), Netherlands (2001), Norway (2009), Spain (2005), Sweden (2003), some parts of the United Kingdom (2005-) <sup>115</sup>
<b>Latin America &amp; Caribbean</b>	Argentina (2010), Brazil (2010), <sup>116</sup> the Federal District (2010) in Mexico
<b>North America</b>	Most parts of Canada, <sup>117</sup> <sup>118</sup> and some parts of the United States <sup>119</sup>
<b>Oceania</b>	Capital Territory (2004), New South Wales (2010), <sup>120</sup> Western Australia (2002) in Australia <sup>121</sup>

Moreover, second parent adoption, but not full adoption, by same-sex couples is also legal in Finland (2009) and Germany (2005), as well as Tasmania (2004) in Australia, and Alberta (1999) in Canada.

## Law on gender recognition after gender reassignment treatment (18 countries)

<b>Africa</b>	South Africa (2004)
<b>Asia</b>	Japan (2004) <sup>122</sup> ,
<b>Europe</b>	Belgium (2007), Finland (2003), Germany (1981), Italy (1982), Netherlands (1985), Portugal (2010), <sup>123</sup> Romania (1996), Spain (2007), Sweden (1972), Turkey (1988), United Kingdom (2005)

<sup>113</sup> Colorado (2009), Hawaii (1997), Maryland (2008), New York (several acts from 2003 and onwards), Rhode Island (several acts from 1998 and onwards).

<sup>114</sup> Norfolk Island (2006), Northern Territory (2004), Queensland (several acts from 1999 and onwards), South Australia (2003, 2007), Western Australia (2002).

<sup>115</sup> Such a law entered into force in England and Wales in 2005, while in Scotland on 28 September 2010. In other parts of the United Kingdom, joint adoption by same-sex couples is not permitted.

<sup>116</sup> 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 [http://www.athosqsl.com.br/noticias\\_visualiza.php?contcod=29208](http://www.athosqsl.com.br/noticias_visualiza.php?contcod=29208).

<sup>117</sup> 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).

<sup>118</sup> See Community Legal Information Association of Prince Edward Island, Inc., Legal Information for Same-Sex Couples, available at: <http://www.ciapei.ca/sitefiles/File/publications/Legal-Info-for-Same-Sex-Rel-ships-2010.pdf>.

<sup>119</sup> California, Colorado, Connecticut, Illinois, Indiana, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Oregon, Vermont and District of Columbia.

<sup>120</sup> See the *Relationships Register Bill 2010*, which took effect on 1 July 2010, available at:

<http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/7bd7da67ee5a02c5ca256e67000c8755/57f8af30e6a0d630ca25770d001af7dc?OpenDocument>.

<sup>121</sup> See Parliament of Australia, Research Note on Same-Sex Adoption, available at: <http://www.aph.gov.au/library/pubs/rn/1999-2000/2000rn29.htm>.

<sup>122</sup> See Law No.111 on July 16. of 2003, available at:

<http://d.hatena.ne.jp/annojo/comment?date=20030716&section=p1>. In 2008 it was amended in order to allow those whose children are 20 or over to apply for the reassignment.

**Latin America & Caribbean** Argentina (2012)<sup>124</sup>, The Federal District of Mexico (2009),<sup>125</sup> Panama (1975), Uruguay (2009)

**North America** Most parts of Canada and the United States.

**Oceania** Australia,<sup>126</sup> New Zealand (1995)

Moreover, a number of other countries recognise the “new” gender as well as the right to marry after Gender Reassignment treatment through general statutes or case-law.

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<sup>123</sup> See Communiqué from the Presidency of the decree concerning the sex change procedure in the civil registry, available at <http://www.presidencia.pt/?idc=10&idi=51312>.

<sup>124</sup> Law N° 75/11, adopted on 9 May 2012. This ground-breaking law allows transgenders to correct name, sex and image regardless of psychological diagnosis, medical treatment or intervention. It also ensures full access to health care, including surgery and hormone treatments, without a judicial or administrative authorization, to be included within the mandatory medical program for free, both in public hospitals as well as social works or private medical companies. The text of the law is available at:

[http://www.senado.gov.ar/web/proyectos/verExpe.php?origen=CD&tipo=PL&numexp=75/11&nro\\_comision=&tConsulta=4](http://www.senado.gov.ar/web/proyectos/verExpe.php?origen=CD&tipo=PL&numexp=75/11&nro_comision=&tConsulta=4)

<sup>125</sup> See Articles 134-135 of the *Código Civil*, available at: [www2.scjn.gob.mx/Leyes/ArchivosLeyes/25996081.doc](http://www2.scjn.gob.mx/Leyes/ArchivosLeyes/25996081.doc).

<sup>126</sup> Capital Territory (1998), New South Wales (1996), Northern Territory (1997), Queensland (2004), South Australia (1988), Tasmania (2000), Victoria (1997), Western Australia (2001).

# AFRICA

## **Political and State-Sponsored Homophobia on the increase in the last decade**

Over the last ten years, the focus on equal rights, law reforms, community cohesion, diversity, families and migrations for Lesbian, Gay, Bisexual, Trans and Intersex (LGBTI) Africans has gone from bad to worse. The possibility for legal liberation on the grounds of sexual orientation and gender identity has been further thrown into chaos. This assessment is a universal representation of the lives of LGBTI people in Africa, including South Africa with its enviable constitution on same-sex rights.

Human Rights defenders across Africa have faced serious threats to their lives, and many have fled the continent to safety in Europe and America. Many of those who represent "the face of the faceless and the voice of the voiceless" are scattered abroad. This bears painful consequences for activism in Africa and for activists in the Diaspora.

Thirty-six countries in Africa have laws criminalizing homosexuality, some with the death penalty, and many more with harsh jail sentences. By far, it's the continent with the worst laws on the books when it comes to homosexuality and other sexual minorities, a phenomenon which is in part rooted in bad colonial-era laws and political situations, religious autonomy, strong negative belief in cultural and family values, and the evil of patriarchy.

### **Politics and State-Sponsored Homophobia**

More than 50% of African governments have taken action and steps to formally criminalise same-sex unions. There is an increased awareness of homophobia in the continent with many African media adding to the furore. Nonetheless, anti-gay laws in Uganda are now weakened due to human rights opposition and Malawi witnessed the presidential pardon of a gay couple.

In March 2011, at the second recall at the United Nations Assembly in Geneva on the Joint declaration to decriminalize homosexuality, the number of African countries who signed rose from six to eleven including Gabon, Sao Tome and Principe, Mauritius, Central Africa Republic, Cape Verde, Guinea Bissau, Angola, South Africa, Seychelles, Rwanda and Sierra Leone, thirteen countries abstained and twenty-eight opposed Joint Statement on Sexual Orientation and Gender Identity (SOGI).

The popularity of gay rights and advocacy for the social status of same-sex relationships have provoked politicians and governments in Africa to react. Recent cases of criminalisation of same-sex relationships have worsened a situation already characterized by harassment, humiliation, extortion, arbitrary arrests, judicial violence, imprisonment, torture, hate crimes and honour killings on the grounds of sexual orientation and gender identity all over Africa. These abuses are happening whether we like it or not, whether we admit it or not. Every year, there are numerous cases of hate crimes towards LGBTI people and LGBTI advocates working to deliver more justice. The abuse is escalating.

### **African LGBTI Asylum seekers**

In the last three years, there has been a sharp increase and terrible concerns for many fleeing persecution in their own countries, the number of LGBTI migrants fleeing to foreign countries have increased, and the attitude towards asylum seekers based on sexual orientation and gender identity (SOGI) in some cases have largely shameful. Many have been met with many challenges and horrendous outcomes. Attention is drawn to people fleeing Nigeria, Gambia, Liberia, Sierra Leone, Uganda and Tanzania (to mention just a few) due to the nations' political leaders and the forceful introduction of anti-gay legislations and failure to repeal discriminatory laws. We are dealing with cases of African LGBTI seeking asylum as far as Australia, Canada, North America and Western Europe, we believe that the international community on migration equality could

foster a better reception under international law and give credence to the cases of those marked with discrimination based on SOGI.

### **Tradition/Culture**

Homosexuality in Africa has been blamed on Western European influence and colonialism. It has also been blamed on the radical intervention of technology, but homosexuality has been present in the African culture throughout history. In many African societies, it is not uncommon to acknowledge same-sex relationships. Unfortunately, modern sceptics are ignoring factual history. African leaders believe that behaviours deviating from the normal gender roles are phases that the children encounter and can be addressed only through ensuring regulatory laws to prevent the unknown and unacceptable sexual behaviours.

Historically, Africa has always been the friendliest and most tolerant continent, homosexuality and same-gender behaviours dating back to time before colonialism and the intervention of religion. The arrival of colonialism contributed to the mass hatred and also the influence of religious fundamentalism has contributed to the debased argument for homophobia. Christianity teaches a faith that encourages "Love thy neighbour as thyself"; sadly, this concept has been abandoned for the sake of "hate missions" propelled by the religious leaders, such examples can be found in many places in Africa: Botswana, Uganda, Nigeria, Malawi, where the Churches, Mosques and other popular religious communities are aiding and abetting their governments to pass laws that would criminalise homosexuality and some as far as the death penalty.

### **Implications for Sexuality, HIV/AIDS & Health**

The struggle against HIV/AIDS is also undermined by criminalization of same-sex relationships. The Human Rights Committee has noted that laws criminalizing homosexuality "run counter to the implementation of effective education programmes in respect of HIV/AIDS prevention" by driving marginalized communities underground. A finding supported by UNAIDS: Former president of Botswana Festus Mogae and UN Special Envoy for HIV/AIDS in Africa Elizabeth Mataka have spoken out firmly and forcefully against criminalization of homosexuality in Africa. African LGBTI people have been struggling to have access to public health services, the level of double discrimination faced being fuelled by state-sponsored homophobia.

Over the past twenty years, there has been a growing recognition of the relativity of sexual norms and of the difficulties of accepting Western conceptions of sexuality in Africa, including gay rights and public recognition of same-sex families.

- An implication in our view is that homophobia is "deep-rooted" in culture, religion, music and law. Expressions of homosexuality are repressed by condemning homosexuals, their families and friends.
- Mocking, shame, ostracism, scorn, violence and prayers for salvation are reported means of keeping homosexuals in the closet or making them "normal." Some homosexuals respond to this stigmatization by moving away from their countries, communities, families; others build supportive networks outside their communities; while others struggle to keep it a secret by "pretending to be heterosexuals".
- Same-sex loving people often lead multiple secretive lives, men or women on the Down Low, also known as DL. Men who have sex with men (MSM) often do not admit they are gay or bisexual; these are largely married men.
- Homosexuality is often aligned with occultism.
- Many African governments have no mandate or projected plans to include Lesbians, Gays, Bisexuals and Trans in sexual health provisions and services.
- Inaccurate media publications, unethical reporting, dubious and negative publicity on matters of HIV and homosexuality in Africa need to be addressed to change attitudes.

### **The Way Forward/Recommendations**

- Legal and policy reform is urgently needed on all these fronts to legally reinforce same-sex relationships, the legal status of same-sex love and the full protection of human rights in the context of HIV/AIDS.



- Address underlying prejudices and discrimination through education programmes in schools and community dialogue to help create a more supportive environment for same-sex unions
- Promote media training, explicitly designed to discourage attitudes of discrimination and stigmatisation towards sexual reproductive health and rights and same-sex relationships, especially in respect of HIV/AIDS. Encourage the media to adopt ethical rules of conduct that prohibit disclosure of confidential patient information.

We hope that in sharing this brief overview, we give a clear understanding of the issues of same-sex relationships, LGBTI human rights in Africa and their implications for sexuality and HIV/AIDS.

**Rev Rowland Jide Macaulay & Linda RM Baumann**

**Pan Africa ILGA Board members  
Africa's representatives to the ILGA World Board**

## Algeria

**Male/Male** Illegal

**Female/Female** Illegal

Penal Code (Ordinance 66-156 of June 8, 1966) <sup>127</sup> <sup>128</sup>

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."

## Angola

**Male/Male** Illegal

**Female/Female** Illegal

Penal Code of September 16, 1886, as amended in 1954 (Inherited from the Portuguese colonial era) <sup>129</sup>

Articles 70 and 71 add security measures on people who habitually practice acts against the order of nature, stating that such people shall be sent to labor camps.

For text of the law in Portuguese – see Mozambique section!

## Benin

**Male/Male** Illegal

**Female/Female** Illegal

Article 88 of Benin's Penal Code of 1996 provides:

"Anyone who commits an indecent act or an act against nature with an individual of the same sex will be punished by 1 to 3 years imprisonment and a fine of 100,000 to 500,000 francs."<sup>130</sup>

According to the response by the State of Benin on its 2008 Periodic Review, "issue of homosexuality, the phenomenon is not ignored but is marginal. Families would never allow their children to be taken to court for such an offence, so no criminal ruling has ever been rendered, although it is provided for by law."<sup>131</sup>

<sup>127</sup> Text of the law is available at: <http://lexalgeria.free.fr/penal.htm>.

<sup>128</sup> German Bundestag; Printed Paper 16/3597, p. 6, available at: [http://www.volkerbeck.de/cms/files/16\\_3597\\_minor\\_interpellation.pdf](http://www.volkerbeck.de/cms/files/16_3597_minor_interpellation.pdf)

<sup>129</sup> Relatório sobre os Direitos Humanos – 2005 – Angola, available at : <http://luanda.usembassy.gov/wwwdireitoshumanos05.html>

<sup>130</sup> Submission in the UPR review of: Benin. Available at:

[http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/BJ/ILGA\\_BEN\\_UPR\\_S2\\_2008\\_InternationalLesbianandGayAssociation\\_uprsubmission\\_JOINT.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/BJ/ILGA_BEN_UPR_S2_2008_InternationalLesbianandGayAssociation_uprsubmission_JOINT.pdf)

<sup>131</sup> See para.29. A/HRC/8/39

## Botswana

**Male/Male** Illegal

**Female/Female** Illegal

PENAL CODE [Chapter 08:01] <sup>132</sup>, amended by the Penal Code Amendment Act 5, 1998<sup>133</sup>.

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 <sup>134</sup>

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." (Unofficial translation)

## Cameroon

**Male/Male** Illegal

**Female/Female** Illegal

Penal Code of 1965 and 1967, as amended in 1972 <sup>135</sup>

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.*'<sup>136</sup>

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.'<sup>137</sup> According to Waaldijk (2011), it is unclear whether this is the official English version, or only a translation of the French version.

<sup>132</sup> Text of the law is available at : <http://www.laws.gov.bw/VOLUME%202/CHAPTER%2008-01%20PENAL%20CODE.pdf>.

<sup>133</sup> 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, available at [www.hrw.org/en/reports/2003/05/13/more-name-0](http://www.hrw.org/en/reports/2003/05/13/more-name-0), p. 272-274

<sup>134</sup> Text of the law available at: [http://www.oag.bi/IMG/rff/code\\_penal\\_burundais-2.rff](http://www.oag.bi/IMG/rff/code_penal_burundais-2.rff).

## Comoros

**Male/Male** Illegal

**Female/Female** Illegal

Penal Code of the Federal Islamic Republic of Comoros <sup>138</sup>

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.”

## Egypt

**Male/Male** Illegal

**Female/Female** Unclear

Sexual relations between consenting adult persons of the same sex in private are not prohibited as such. However, Law 10/1961, aimed at combating prostitution, as well as for example Penal Code article 98w on “Contempt for Religion” and article 278 on “Shameless public acts” have been used to imprison gay men in the recent years.<sup>139</sup>

Law n° 10, 1961 on 'Combating of prostitution, incitement and its encouragement': <sup>140</sup>

Article 9 (c) "Anyone who habitually engages in debauchery or prostitution is liable to a penalty of three months to three years imprisonment and/or a fine of LE 25-300".

## Eritrea

**Male/Male** Illegal

**Female/Female** Illegal

Penal Code of 1957 (Inherited from Ethiopian rule) <sup>141</sup>

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.”

<sup>135</sup> German Bundestag; Printed Paper 16/3597, p. 9.

[http://www.volkerbeck.de/cms/files/16\\_3597\\_minor\\_interpellation.pdf](http://www.volkerbeck.de/cms/files/16_3597_minor_interpellation.pdf)

<sup>136</sup> Available at: [www.glapn.org/sodomylaws/world/cameroon/cameroon.htm](http://www.glapn.org/sodomylaws/world/cameroon/cameroon.htm)

<sup>137</sup> See Criminalizing Identities – Rights Abuses in Cameroon based on Sexual Orientation and Gender Identity, 2010, p. 10, note 9, available at: [www.hrw.org/en/reports/2010/11/04/criminalizing-identities-0](http://www.hrw.org/en/reports/2010/11/04/criminalizing-identities-0).

<sup>138</sup> Text of the law is available at : <http://www.comores-droit.com/code/penal>.

<sup>139</sup> German Bundestag; Printed Paper 16/3597, p. 8-9.

[http://www.volkerbeck.de/cms/files/16\\_3597\\_minor\\_interpellation.pdf](http://www.volkerbeck.de/cms/files/16_3597_minor_interpellation.pdf)

<sup>140</sup> See Statement of the International Federation of Human Rights Leagues (FIDH) of 2003, available at:

<http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/fda8c19f8d15755bc1256cf40033b7d9?Opendocument>

## Ethiopia

**Male/Male** Illegal

**Female/Female** Illegal

The Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No. 414/2004 <sup>142</sup>

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."

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."

## Gambia

**Male/Male** Illegal

**Female/Female** Illegal

Criminal Code 1965, as amended in 2005 <sup>143 144</sup>

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;

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<sup>141</sup> Text of the law is available at: <http://mail.mu.edu.et/~ethioplalaws/criminalcode/criminalcodepage.htm>

<sup>142</sup> Text of the law is available at:

<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/70993/75092/F1429731028/ETH70993.pdf> .

<sup>143</sup> German Bundestag; Printed Paper 16/3597, p. 10-11.

[http://www.volkerbeck.de/cms/files/16\\_3597\\_minor\\_interpellation.pdf](http://www.volkerbeck.de/cms/files/16_3597_minor_interpellation.pdf)

<sup>144</sup> Text of the code is available at :

<http://www.ilo.ch/dyn/natlex/docs/SERIAL/75299/78264/F1686462058/GMB75299.pdf>

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"

## Ghana

**Male/Male** Illegal

**Female/Female** Legal

Criminal Code, 1960 (Act 29), as amended to 2003 <sup>145</sup>

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."

## Guinea

**Male/Male** Illegal

**Female/Female** Illegal

Penal Code of 1998 <sup>146</sup>

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."

## Kenya

**Male/Male** Illegal

**Female/Female** Legal

Cap.63 Penal Code <sup>147</sup>

"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."

<sup>145</sup> Text of the law is available at : <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=RSDLEGAL&id=44bf823a4>

<sup>146</sup>Text of the law available at : <http://www.unhcr.org/refworld/docid/44a3eb9a4.html>.

<sup>147</sup> See article "THE SEXUAL OFFENSES BILL/LAW GAZETTED", available at <http://www.gaykenya.com> .

"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."

(Sections amended by Act No. 5 of 2003)

## Lesotho

**Male/Male** Illegal

**Female/Female** Legal

Sodomy is prohibited as a common-law offence. It is defined as "unlawful and intentional sexual relationship through the anus between two human males".<sup>148</sup>

## 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.<sup>149</sup>

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<sup>150</sup>

Article 407: Sexual assault/rape

"(1) Any individual who has sexual intercourse with another person using violence, by means of threats or through deception shall be punished with a term of imprisonment of a maximum of ten years.

(2) This punishment shall also be imposed on any individual who has had sexual intercourse with the consent of a person who was not yet 14 years of age or with a person who did not resist on account of mental or physical disability. If the victim was not yet 14 years of age or was over 14 years of age but had not yet reached the age of 18, the maximum term of imprisonment shall be 15 years.

(3) If the offender is a relative of the victim, a guardian, a tutor or a custodian, or if the victim is his servant, or if the victim has a special dependant relationship to the offender, a term of imprisonment of between five and 15 years shall be imposed.

(4) If an individual has sexual intercourse with another person with their consent (outside marriage), the two persons involved shall be punished with a term of imprisonment of five years at most."

Article 408: Lewd acts

"(1) Any individual who commits lewd acts with a person in accordance with one of the methods specified in

<sup>148</sup> Initial report of Lesotho, CCPR/C/81/Add.14

<sup>149</sup> 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://www.concern-liberians.org/chat\\_room/view\\_post.php?post\\_id=779197](http://www.concern-liberians.org/chat_room/view_post.php?post_id=779197)

<sup>150</sup> See German Bundestag, Printed Paper 16/3597, p. 16.  
[http://www.volkerbeck.de/cms/files/16\\_3597\\_minor\\_interpellation.pdf](http://www.volkerbeck.de/cms/files/16_3597_minor_interpellation.pdf)

the preceding article shall be punished with a period of imprisonment of five years at most.

(2) This punishment shall also be imposed if the act has been committed in agreement with a person who was not yet 14 years of age or with a person who did not resist on account of a mental or physical disability. If the victim was between the ages of 14 and 18, the term of imprisonment shall be at least one year.

(3) If the offender belongs to one of the groups of offenders specified in paragraphs (2) and (3) of Article 407, a term of imprisonment of at least seven years shall be imposed.

(4) If an individual commits a lewd act with another person with their agreement (outside marriage), both parties shall be punished with a term of imprisonment."

## Malawi

**Male/Male** Illegal

**Female/Female** Illegal

Penal Code Cap. 7:01 Laws of Malawi <sup>151</sup>

### Section 153 "Unnatural offences"

"Anyone who –

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

(b) has carnal knowledge of any animal; or

(c) 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 156 "Indecent practices between males"

"Any male 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.<sup>152</sup>

<sup>151</sup> Malawi, 2003, Penal Code: Chapter 7:01 of the laws of Malawi. Zomba: Government Printer

<sup>152</sup> See ICJ, Sex Between Women Now a Crime in Malawi: New Law Violates Human Rights Obligations of Malawi, available at: <http://icj.org/dwn/database/Malawi%20Section%20137A%20Press%20Release.pdf>



## Mauritania

**Male/Male** Illegal

**Female/Female** Illegal

Penal Code of 1984 <sup>153</sup>

“ART. 308. - Any adult Muslim man who commits an impudent 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”.

“ART. 306(1). - Any person who commits an outrage on public decency and Islamic morals or violates the sacred places or assists in the breach, will be punished by a sentence of between three months to two years imprisonment and a fine of 5,000 to 60,000 UM, if such action is not covered by the crimes of Ghissass or Diya.”

(Unofficial translations)

## Mauritius

**Male/Male** Illegal

**Female/Female** Legal

Criminal Code of 1838 <sup>154</sup>

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.”

According to Waaldijk (2011), in 2007 the Sexual Offences Bill<sup>155</sup> was proposed, 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, it is unclear if this Bill has become law yet.

## Morocco

**Male/Male** Illegal

**Female/Female** Illegal

Penal Code of November 26, 1962 <sup>156</sup>

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.”

<sup>153</sup> Text of the law is available at : <http://www.droit-afrique.com/images/textes/Mauritanie/Mauritanie%20-%20Code%20penal.pdf>.

<sup>154</sup> Text of the law is available at : <http://www.gov.mu/portal/sites/legaldb/files/criminal.pdf>.

<sup>155</sup> Text of the bill is available at : [www.gov.mu/portal/goc/assemblysite/file/bill0607.pdf](http://www.gov.mu/portal/goc/assemblysite/file/bill0607.pdf).

<sup>156</sup> German Bundestag; Printed Paper 16/3597, p. 19.  
[http://www.volkerbeck.de/cms/files/16\\_3597\\_minor\\_interpellation.pdf](http://www.volkerbeck.de/cms/files/16_3597_minor_interpellation.pdf)

## Mozambique

**Male/Male** Illegal

**Female/Female** Illegal

Penal Code of September 16, 1886, as amended in 1954 (Inherited from the Portuguese colonial era) <sup>157</sup>

Articles 70 and 71 impose security measures on people who habitually practice acts against the order of nature. The security measures include: confinement in criminal mental hospitals or labor camps (from 6 months to 3 years), as well as have their freedom restricted (from 2 to 5 years) or the exercise of their profession interrupted (minimum of 10 months and maximum of 10 years), under the supervision of a probation officer.

## 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.<sup>158</sup>

## Nigeria

**Male/Male** Illegal

**Female/Female** Illegal

Criminal Code Act, Chapter 77, Laws of the Federation of Nigeria 1990 <sup>159</sup>

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.<sup>160</sup>

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<sup>157</sup> Text of the law is available at :

[http://www.portaldogoverno.gov.mz/Legisla/legisSectores/judiciaria/codigo\\_penal.pdf](http://www.portaldogoverno.gov.mz/Legisla/legisSectores/judiciaria/codigo_penal.pdf).

<sup>158</sup> Human Rights Watch (2003), p. 265-266.

<sup>159</sup> Text of the law is available at: <http://www.nigeria-law.org/Criminal%20Code%20Act-Tables.htm>.

<sup>160</sup> See Alok Gupta, *This Alien Legacy – The Origins of "Sodomy" Laws in British Colonialism*, New York: Human Rights Watch 2008 (available at [www.hrw.org/en/reports/2008/12/17/alien-legacy-0](http://www.hrw.org/en/reports/2008/12/17/alien-legacy-0), p. 60-61) and 'Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook' (available at: [www.sharia-in-africa.net/pages/publications/sharia-implementation-in-northern-nigeria.php](http://www.sharia-in-africa.net/pages/publications/sharia-implementation-in-northern-nigeria.php)).

The states which have adopted such laws are:<sup>161</sup>

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).

According to Waaldijk (2011), both in 2006 and 2009, a legislative proposal has been introduced to further criminalise homosexuality. The 'Same Gender Marriage (Prohibition) Bill' received approval in the House of Representatives of Nigeria in January 2009, and among other things would make it a crime for people of the same sex to live together<sup>162</sup>. Apparently, that bill did not succeed in becoming law.

## **São Tomé and Príncipe**

**Male/Male** Illegal

**Female/Female** Illegal

Penal Code of September 16, 1886, as amended in 1954 (Inherited from the Portuguese colonial era) <sup>163</sup>

Articles 70 and 71 ad security measures on people who habitually practice acts against the order of nature, stating such people shall be sent to labor camps.

For text of the law in Portuguese – see Mozambique section.

It should be noted that the country nevertheless signed the 2008 UN Statement against criminalization and persecution on the basis of sexual orientation.<sup>164</sup>

## **Senegal**

**Male/Male** Illegal

**Female/Female** Illegal

Penal Code of 1965 <sup>165</sup>

Article 319: 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 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."

## **Seychelles**

**Male/Male** Illegal

**Female/Female** Legal

Criminal Code of 1955 <sup>166</sup>

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."

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<sup>161</sup> See The Unfizzled Sharia Vector in the Nigerian State, available at:

[http://www.nigerdeltacongress.com/uarticles/unfizzled\\_sharia\\_vector\\_in\\_the\\_n.htm](http://www.nigerdeltacongress.com/uarticles/unfizzled_sharia_vector_in_the_n.htm) .

<sup>162</sup> Human Rights Watch (2009), *Nigeria: Reject 'Same Gender' Marriage Ban*. Available at:

[www.hrw.org/en/news/2009/01/26/nigeria-reject-same-gender-marriage-ban](http://www.hrw.org/en/news/2009/01/26/nigeria-reject-same-gender-marriage-ban)

<sup>163</sup> See São Tomé and Príncipe: Oil and tourism threaten to treble rate of HIV infect in five years, available at:

<http://www.irinnews.org>.

<sup>164</sup> See <http://www.amnesty.org/es/library/asset/IOR40/024/2008/en/269de167-d107-11dd-984e-fdc7ffc27a6/ior400242008en.pdf>.

<sup>165</sup> Text of the law is available at: <http://www.justice.gouv.sn/droitp/CODE%20PENAL.PDF>.

## Sierra Leone

**Male/Male** Illegal

**Female/Female** Legal

Offences against the Person Act 1861 <sup>167</sup>

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, Decree No. 5/1962 (Effective April 3, 1964) <sup>168</sup>

Article 409 Homosexuality

"Whoever

(a) has carnal intercourse

(b) 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

a) the act committed

b) 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."

Somalia has not had a functioning central government since the fall of the dictator Mohamed Siad Barre in 1991, and the enforcement of the national Penal Code can be questioned. In the southern parts Islamic courts rule, having imposed Islamic Sharia law punishing homosexual acts with death penalty or flogging. However, Somaliland in the north has declared itself independent, and it still applies the Penal Code.<sup>169</sup>

## South Sudan

**Male/Male** Illegal

**Female/Female** Illegal

Penal Code Act 2008 <sup>170</sup>

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."

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<sup>166</sup> See Seychelles section on Sexual Offences Laws, Interpol, available at:

<https://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/>

<sup>167</sup> Thompson, Bankole, 1999, The criminal law of Sierra Leone. Lanham: University Press of America.

<sup>168</sup> Ganzglass, Martin R, 1971, The Penal Code of the Somali Democratic Republic. New Brunswick/New Jersey: Rutgers University Press, p. 456-457.

<sup>169</sup> See Somaliland Penal Code, available at: [http://www.somalilandlaw.com/Criminal\\_Law/body\\_criminal\\_law.html](http://www.somalilandlaw.com/Criminal_Law/body_criminal_law.html).

<sup>170</sup> Available at: [http://www.goss-online.org/magnoliaPublic/en/Laws--Legislation--Policies/mainColumnParagraphs/0/content\\_files/file12/15.pdf](http://www.goss-online.org/magnoliaPublic/en/Laws--Legislation--Policies/mainColumnParagraphs/0/content_files/file12/15.pdf).

## Sudan

**Male/Male** Illegal

**Female/Female** Illegal

The Penal Code 1991 (Act No. 8 1991) <sup>171</sup>

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.”

In 2003 the south parts of Sudan (also known as New Sudan) gained some autonomy, and adopted its own Penal Code the same year. As the federal Penal Code, this Penal Code criminalises sodomy, however with a milder punishment, according to the following section:

Section 318. Unnatural Offences: “Whoever has carnal intercourse against the order of nature with any person and whoever allows any person to have such intercourse with him commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding ten years and may also be liable to fine; and if such intercourse is done without consent he shall be punished with imprisonment for a term not exceeding fourteen years and may also be liable to fine; provided that a consent given by a person below the age of eighteen years to such intercourse shall not be deemed to be a consent within the meaning of this section.

Explanation: Penetration is sufficient to constitute the carnal knowledge necessary to the offence described in this section.” <sup>172</sup>

## Swaziland

**Male/Male** Illegal

**Female/Female** Legal

“Sodomy - it is sexual intercourse per anus between two human males” - is prohibited as a common law offence.<sup>173</sup>

In 2005, the Government planned to include prohibitions of all male homosexual acts and lesbian acts in its revision of the Sexual Offences laws. The proposed penalties are imprisonment for a minimum period of two years, or a minimum fine of E5 000. It has, however, not been adopted as of publication of this report.<sup>174</sup>

Moreover, the 2010 Human Rights Report of the U.S. Department of State revealed that “gays and lesbians who were open about their sexual orientation and relationships faced censure and exclusion from the chiefdom-based patronage system, which could result in eviction from one's home”.<sup>175</sup>

<sup>171</sup> Text of the law is available at: <http://www.ecoi.net/> (Choose “Sudan” and then “National laws”)

<sup>172</sup> See the Penal Code of New Sudan, available at: <http://www.unhcr.org/refworld/docid/469e1f0a2.html>.

<sup>173</sup> See Swaziland section on Sexual Offences Laws, Interpol.

<https://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/>

<sup>174</sup> See Swaziland Government warns homosexuals or sodomy are liable to imprisonment, available at: <http://www.africanveil.org/Swaziland.htm>.

## Tanzania

**Male/Male** Illegal

**Female/Female** Illegal

Penal Code of 1945 (As amended by the Sexual Offences Special Provisions Act, 1998) <sup>176 177</sup>

Section 154. Unnatural of 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 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 offences and shall on conviction be sentenced to imprisonment for a term not less than twenty years.”

Section 138A. Gross indecency

“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, is guilty of an offence and liable on conviction to imprisonment for a term not less than one year and not exceeding five years or to a fine not less than one hundred thousand 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 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 all amount determined by the court to the person in respect of whom the offence was committed or any injuries caused to that person”.

## Togo

**Male/Male** Illegal

**Female/Female** Illegal

Penal Code of 13 August 1980 <sup>178</sup>

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.”

(Unofficial translation)

## Tunisia

**Male/Male** Illegal

**Female/Female** Illegal

Penal Code of 1913 (as modified) <sup>179</sup>

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

(Unofficial translation)

<sup>175</sup> See page 27. Available at: <http://paei.state.gov/documents/organization/160146.pdf>

<sup>176</sup> Text of the law is available at: [http://www.imolin.org/doc/amlid/Tanzania\\_Penal%20Code\\_part1.pdf](http://www.imolin.org/doc/amlid/Tanzania_Penal%20Code_part1.pdf).

<sup>177</sup> Text of the law is available at: <http://www.parliament.go.tz/Polis/PAMS/Docs/4-1998.pdf>.

<sup>178</sup> Text of the law is available at: <http://www.togoforum.com/Societe/DS/DROIT/codepen.htm>).

## Uganda

**Male/Male** Illegal

**Female/Female** Illegal

The Penal Code Act of 1950 (Chapter 120) (as amended) <sup>180</sup>

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.”

The Constitution (Amendment) Act, 2005<sup>181</sup>

Article 31. Rights of the family.

“(2a) Marriage between persons of the same sex is prohibited.”

According to Waaldijk (2011), in 2009 the ‘Anti Homosexuality Bill’ was proposed to greatly intensify the criminalisation of homosexuality.<sup>182</sup> Nevertheless, strong national and international opposition have (so far) stopped the bill from becoming law.

## Zambia

**Male/Male** Illegal

**Female/Female** Legal

The Penal Code Act, 1995 Edition <sup>183</sup>

Section 155. “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.

(As amended by No. 26 of 1933) Unnatural offences”

Section 156. “Any person who attempts to commit any of the offences specified in the last preceding section is guilty of a felony and is liable to imprisonment for seven years.

(As amended by No. 26 of 1933) Attempt to commit unnatural offences”

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<sup>179</sup> Text of the law is available at: <http://www.juristetunisie.com/tunisie/codes/cp/menu.html>.

<sup>180</sup> Text of the law is available at: [www.ulii.org/ug/legis/consol\\_act/pca195087](http://www.ulii.org/ug/legis/consol_act/pca195087)

<sup>181</sup> Text of the law is available at:

[www.ugandaonlinelawlibrary.com/files/constitution/Constitutional\\_Amendment\\_Act,\\_2005.pdf](http://www.ugandaonlinelawlibrary.com/files/constitution/Constitutional_Amendment_Act,_2005.pdf)

<sup>182</sup> The text of the bill is available at: [www.iglhrc.org/binary-data/ATTACHMENT/file/000/000/445-1.pdf](http://www.iglhrc.org/binary-data/ATTACHMENT/file/000/000/445-1.pdf).

<sup>183</sup> Text of the law is available at: [http://www.hurid.org.zm/downloads/Zambian\\_Laws/volume7.pdf](http://www.hurid.org.zm/downloads/Zambian_Laws/volume7.pdf).

Section 158. "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. (As amended by No. 26 of 1933) Indecent practices between males"

## Zimbabwe

**Male/Male** Illegal

**Female/Female** Legal

Criminal Law (Codification and Reform) Act (Effective July 8, 2006) <sup>184</sup>

### 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."

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<sup>184</sup> Text of the law is available at: [http://www.kubatana.net/docs/legisl/criminal\\_law\\_code\\_050603.pdf](http://www.kubatana.net/docs/legisl/criminal_law_code_050603.pdf).



# ASIA

## **Half of Asian countries still criminalize homosexuality**

Over the past year we have seen a more coordinated effort made by LGBT organizations in Asia to work together to empower and educate the regional LGBT community and to work towards an ASIA free of 'State Sponsored Homophobia' this tremendous work by activists and organizations has been achieved in spite of the growing opposition by governments and fundamentalist religious groups.

An LGBT network was created within ASEAN (Association of South East Nations) and this network has been tasked to working towards the inclusion sexual orientation and gender identity as part of its human rights declaration. We also see governments in Asia, namely India and Nepal taking a positive stand for the rights of their LGBT citizens. We see LGBT organization in ASIA working together combining their resources in compiling reports for the UN UPR.

These positive steps in Asia, has come at a time where the LGBT community in ASIA most needs this positive affirmation. As we see a growing wave of intolerance, homophobic attacks and clamp downs from governments, some LGBT organizations have had their work cut out for them this past year.

We Have seen a number of countries including China and Indonesia restrict web access to Gay or Lesbian Sites including the ILGA website making it more difficult for LGBT organisations in those countries to operate. We have also seen a rise in public attacks on the LGBT movement, the Coalition of Malaysian Malays organized an Anti gay rally in Kuala Lumpur Malaysia in April 2012 which attracted a following of thousands.

Taiwan, one of Asia's more 'Gay Friendly' countries reported shocking statistics earlier this year, GSRAT (Gender/Sexuality Rights Association Taiwan) conducted a survey of 2785 Gay men which revealed that 29 percent had contemplated suicide with 18 percent having attempted in taking their own life. This coupled with fears from other countries in Asia like Sri Lanka, (that have extremely high rates of suicide), where LGBT activists believe that the reason for the high rate of suicide is largely due to people struggling with their sexuality has raised great concerns over the health and wellbeing of the LGBT citizens of Asia.

For the first time since the 1990's Singapore has reported that the number of Gay and Bisexual men diagnosed with HIV in Singapore has overtaken that of heterosexual men fuelling the fear that LGBT organizations in other Asian countries have had regarding the effect of Criminalization of Homosexuality and its impact on the LGBT community with respect to the access of medication and counseling.

We recognize the growing importance of a continuous, coordinated and well planned effort to safe guard our rights as human beings, and to guarantee the health and wellbeing of Asia's LGBT community.

There is a lot of work to be done in Asia for us to achieve our dreams, for we dream of a world free of homophobia and hate, a world where ALL people regardless of sexual orientation or gender identity can live together harmoniously and a world where we can truly celebrate our diversity.

**Poedjiati Tan & Sahran Abeysundara**

**ILGA-Asia Board members  
Asia's Representatives to the ILGA World Board**

## Afghanistan

**Male/Male** Illegal

**Female/Female** Illegal

Penal Code, 1976 <sup>185</sup>

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.
- b. ...”

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.<sup>186</sup>

Islamic Sharia law, criminalising homosexual acts with a maximum of death penalty, is applied together with the codified Penal law. However, no known cases of death sentences have been handed out for homosexual acts after the end of Taliban rule.

## Bangladesh

**Male/Male** Illegal

**Female/Female** Legal

Penal Code, 1860 (Act XLV of 1860) <sup>187</sup>

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.”

## Bhutan

**Male/Male** Illegal

**Female/Female** Illegal

Penal Code 2004 <sup>188</sup>

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.”

<sup>185</sup> Text of the law is available at: <http://aceproject.org/ero-en/regions/asia/AF/Penal%20Code%20Eng.pdf/view>.

<sup>186</sup> Healey, Dan, 2001, Homosexual Desire in Revolutionary Russia. Chicago: Chicago University Press, p. 272.

<sup>187</sup> Text of the law is available at: [http://bdlaws.minlaw.gov.bd/sections\\_detail.php?id=11&sections\\_id=3233](http://bdlaws.minlaw.gov.bd/sections_detail.php?id=11&sections_id=3233).

<sup>188</sup> Text of the law is available at: <http://www.judiciary.gov.bt/html/act/PENAL%20CODE.pdf>.

## 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."

### **Brunei**

**Male/Male** Illegal

**Female/Female** Legal

PENAL CODE, CHAPTER 22, revised edition 2001<sup>189</sup>

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."

### **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.<sup>190</sup>

Section 152(2) of the Code criminalizes sexual acts between men with a penalty of up to 10 years.<sup>191</sup>

This Code was in force also in Jordan till 1951 and in Israel till 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.

### **India**

**Male/Male** Illegal

**Female/Female** Legal

In most of India, the Indian Penal Code is applicable. In 2009, Section 377 of the Indian Penal Code was given a more limited interpretation, lifting the ban on same-sex sexual activity among consenting adult men. However, in the Indian state of Jammu and Kashmir, the Indian Penal Code is not applicable, but rather the Ranbir Penal Code (adapted from the Indian Penal Code) is applicable. Since the judgment of the Delhi High Court applies only where the Indian Penal Code is applicable, it does not change comparable provisions in Jammu and Kashmir. Therefore, Section 377 of the Ranbir Penal Code remains in effect, prohibiting same-sex sexual activity. If Section 377 of the IPC is struck down by the Supreme Court, then the *pari materia* provision in the Ranbir Penal Code will be automatically struck down as well - following precedents of the case *Jankar Singh v State*."

<sup>189</sup> Text of the law is available at: <http://www.agc.gov.bn/images/LOB/PDF/Cap22.pdf>.

<sup>190</sup> Text of the law is available at: <http://www.unhcr.org/refworld/pdfid/4d384ae32.pdf>.

<sup>191</sup> Human Rights and Legal Position of Palestinian "Collaborators". Supreme Court of Israel. Schmitt/Sofer, 1992, p. 137-138.

## Indonesia

**Male/Male** Legal

**Female/Female** Legal

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 person under the legal age.<sup>192</sup> However, in 2002 the national parliament gave the Aceh province the right to adopt Islamic Sharia laws. Such laws do 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.<sup>193</sup>

## Iran

**Male/Male** Illegal

**Female/Female** Illegal

Islamic Penal Code of Iran of 1991

“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 Shariajudge 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 Tafhizand 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

<sup>192</sup> Text of the law is available at:

[http://www.unhcr.org/refworld/country,,,LEGISLATION,TMP\\_4562d8cf2\\_3ffbcee24\\_0.html](http://www.unhcr.org/refworld/country,,,LEGISLATION,TMP_4562d8cf2_3ffbcee24_0.html).

<sup>193</sup> See Special Report: Indonesia - Exchanging Pluralism For An Islamist State, available at:

<http://www.westernresistance.com/blog/archives/002313.html>.

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 Tafhizis proved by confession and thereafter he repents the Sharijudge 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-a -vis someone who is mature, of sound mind, has free 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."

## Iraq

**Male/Male** Unclear

**Female/Female** Unclear

After the American invasion in 2003 the Penal Code of 1969 was reinstated in Iraq. This code does not prohibit same-sex relations.<sup>194</sup> However, various reports have shown that self-proclaimed Sharia judges have sentenced people to death for committing homosexual acts and that militias frequently have kidnapped, threatened and killed LGBT people. For example in August 2009, Human Rights Watch published a report documenting a wide-reaching campaign of extrajudicial executions, kidnappings, and torture of gay men that began in Iraq in the beginning of 2009.<sup>195 196 197 198</sup>

## Kuwait

**Male/Male** Illegal

**Female/Female** Legal

Penal Code, Law No. 16 of June 2, 1960, as amended in 1976<sup>199</sup>

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.

<sup>194</sup> Text of the law is available at: <http://www.ictj.org/static/MENA/Iraq/Iraq.penalcode.1969.eng.pdf>.

<sup>195</sup> See Death squads targeting gays in Iraq, available at: <http://www.advocate.com/>.

<sup>196</sup> See Iraqi LGBT, available at: <http://iraqilgbt.uk.blogspot.com/>.

<sup>197</sup> See UNAMI Human Rights report 1 November – 31 December 2006, available at:

<http://www.uniraq.org/FileLib/misc/HR%20Report%20Nov%20Dec%202006%20EN.pdf>.

<sup>198</sup> See They want us exterminated - Murder, Torture, Sexual Orientation and Gender in Iraq, available at: <http://www.hrw.org/node/85050>.

<sup>199</sup> German Bundestag; Printed Paper 16/3597, p. 15.

[http://www.volkerbeck.de/cms/files/16\\_3597\\_minor\\_interpellation.pdf](http://www.volkerbeck.de/cms/files/16_3597_minor_interpellation.pdf)

## Lebanon

**Male/Male** Illegal

**Female/Female** Illegal

Penal Code of 1943 <sup>200</sup>

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

## Malaysia

**Male/Male** Illegal

**Female/Female** Illegal

Penal Code (Consolidated version 1998) <sup>201</sup>

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."

Moreover, several states in Malaysia have instated Islamic Sharia laws, applying to male and female muslims, criminalising homosexual and lesbian acts with up to three years imprisonment and whipping.<sup>202</sup> The Sharia Penal law in the Malaysian state of Syriah 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.<sup>203</sup>

<sup>200</sup> Available at: <http://www.bekhsoos.com/web/2010/04/new-publication-provides-analysis-on-article-534/>.

<sup>201</sup> Text of the law is available at: <http://www.agc.gov.my/Akta/Vol.%2012/Act%20574.pdf>.

<sup>202</sup> Convictions for sodomy follow unfair trials, available at:

<http://web.amnesty.org/library/Index/ENGASA280281998?open&of=ENG-347>.

<sup>203</sup> Jabatan Agama Islam Pulau Pinang, available at: <http://jaipp.penang.gov.my/jaipp/enakmen.htm>.

## Maldives

**Male/Male** Illegal

**Female/Female** Illegal

The Penal Code of Maldives does not regulate sexual conduct.<sup>204</sup> It is instead regulated by uncodified Muslim Sharia law, which criminalises homosexual 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.<sup>205</sup> There have been reports of women being sentenced to a whipping as well for lesbian acts.<sup>206</sup>

## Myanmar

**Male/Male** Illegal

**Female/Female** Illegal

Penal Code, Act 45/1860, Revised Edition <sup>207</sup>

Section 377

"Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animals shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to 10 years, and shall be liable to fine."

"Transportation" probably means detention in an isolated penal colony. The United Kingdom used to sentence convicted criminals to "transportation for life": from England, it meant "to the 13 colonies" until the American Revolution (USA) made this no longer possible, from 1788, it meant "to Australia".

The Law Commission of India, 39th Report (July 1968)<sup>208</sup>, p. 4, para. 9, states:

(The Indian Penal Code of 1860)'... s. 377 effected at least one improvement, even though it probably inspired no celebrations at the time. From at least 1 January 1862, it repealed (at least impliedly) the death penalty for "buggery" that existed in some parts of India, and substituted a maximum penalty of "transportation for life" to the Andaman Islands, which was replaced by "imprisonment for life" in 1955.'

## Oman

**Male/Male** Illegal

**Female/Female** Illegal

Omani Penal Code of 1974 <sup>209</sup>

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

<sup>204</sup> Text of the law is available at: <http://www.agoffice.gov.mv/pdf/sublawe/PC1.pdf>.

<sup>205</sup> Country Reports on Human Rights Practices 2005 - Maldives, US Department of State, available at:

<http://www.state.gov/j/drl/rls/hrrpt/2005/61708.htm>

<sup>206</sup> Amnesty International - 2003 Report on Republic of Maldives, available at:

<http://web.amnesty.org/library/Index/ENGASA290022003>.

<sup>207</sup> Text of the law is available at: <http://www.blc-burma.org/html/Myanmar%20Penal%20Code/mpc.html>.

<sup>208</sup> <http://lawcommissionofindia.nic.in/1-50/Report39.pdf>.

## 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."

## Pakistan

**Male/Male** Illegal

**Female/Female** Legal

Penal Code (Act XLV of 1860) <sup>210</sup>

### 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.

## Qatar

**Male/Male** Illegal

**Female/Female** Illegal

The Penal Code (Act No. 11 of 2004) <sup>211</sup>

Sexual acts with a female over the age of 16 are prohibited by article 281, while sexual acts with a male are prohibited by article 284. The penalty is up to seven years imprisonment for both female and male acts.

Along with the civil Penal Code also Islamic Sharia law is in force in Qatar, although only applicable to Muslims. 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 punished by flogging – both offences no matter if they were heterosexual or homosexual.<sup>212</sup>

## 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 sodomy is criminalised. 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 are all sexual relations outside of marriage illegal in Saudi-Arabia according to the Sharia law, including sexual relations between women. <sup>213</sup>

<sup>209</sup> Text of the law is available at:

<https://www.unodc.org/ildb/showDocument.do?documentUId=6409&country=OMA&language=ENG>.

<sup>210</sup> Text of the law is available at: <http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>.

<sup>211</sup> See Qatar section on Sexual Offences Laws, Interpol.

<https://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/>

<sup>212</sup> See Love, hate and the law: decriminalizing homosexuality, available at:

<http://www.amnesty.org/en/library/asset/POL30/003/2008/en/d77d0d58-4cd3-11dd-bca2-bb9d43f3e059/pol300032008eng.html>.

<sup>213</sup> Schmitt, Arno and Sofer, Jehoeda, 1992, Sexuality and Eroticism Among Males in Moslem Societies. Binghamton: Harrington Park Press, p. 141.



## Singapore

**Male/Male** Illegal

**Female/Female** Legal

Penal Code (Chapter 22), Revised Edition 2007 <sup>214</sup>

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.

## Sri Lanka

**Male/Male** Illegal

**Female/Female** Illegal

Penal Code of 1883 No 2 (Cap. 19) <sup>215</sup>

Article 365 – "Voluntarily carnal intercourse with man, woman or animal against the order of nature - imprisonment for a term which may extend ten years."

Article 365A (as introduced by the "Penal Code (Amendment) Act, No. 22 of 1995")<sup>216</sup>

"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 <sup>217</sup>

Article 520. "Any unnatural sexual intercourse shall be punished with a term of imprisonment of up to three years."

<sup>214</sup> Text of the law is available at: [http://statutes.agc.gov.sg/non\\_version/cgi-bin/cgi\\_retrieve.pl?actno=REVED-224](http://statutes.agc.gov.sg/non_version/cgi-bin/cgi_retrieve.pl?actno=REVED-224).

<sup>215</sup> Available at: <http://www.idpsrilanka.lk/html/Children/Domestic/1883%20No%20%20Penal%20code.pdf>.

<sup>216</sup> See Sri Lanka section on Sexual Offences Laws, Interpol.

<https://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/>

<sup>217</sup> German Bundestag. Printed Paper 16/3597, p. 27.

[http://www.volkerbeck.de/cms/files/16\\_3597\\_minor\\_interpellation.pdf](http://www.volkerbeck.de/cms/files/16_3597_minor_interpellation.pdf)

## Turkmenistan

**Male/Male** Illegal

**Female/Female** Legal

Criminal Code of 1997 (Effective January 1, 1998) <sup>218</sup>

Article 135. Sodomy

“(1) Sodomy, that is the sexual relations of the man with the man, is punished by imprisonment for the term of up to two years.”

(Unofficial translation)

## United Arab Emirates

**Male/Male** Illegal

**Female/Female** Illegal

All sexual acts outside of heterosexual marriage are banned in the United Arab Emirates.<sup>219</sup> However, whether sodomy is punished with death penalty remains in dispute. The Arabic text of article 354 is ambiguously phrased and can be translated in different ways. Some sources indicate that the article punishes rape of a woman or forced sodomy with a man, while others indicate that it punishes rape on women and sodomy between men.

The semi-official translation used by attorneys in the Emirates states that “any individual who forcibly compels a woman to carnal copulation or a man to sodomy” is punished by death.<sup>220</sup> In a German parliamentary report the article has been translated as follows: “Irrespective of the provisions of the Act on Delinquent and Vagrant Juveniles, any person who forcibly engages in sexual intercourse with a woman, or a homosexual act with a homosexual, shall be punished with the death penalty. Coercion shall be recognised if the condemned person was fourteen years of age at the time of the commission of the offence.”<sup>221</sup> Sofer, on the other hand, means that the article can be translated differently; “Whoever commits rape on a female or sodomy with a male”.<sup>222</sup> Amnesty International, finally, considers article 354 to apply to rape only, and not to consensual same-sex acts. However, the organization states that the “Zina” provision according to Sharia law, punishing sexual acts by married persons outside of marriage by death, could possibly apply in the UAE, although it is not aware of any such death sentences for consensual same-sex conduct.<sup>223</sup>

Apart from federal law, consensual sodomy is criminalised in the emirates of Dubai and Abu Dhabi. Article 80 of the Dubai Penal Code punishes sodomy with a penalty of up to 14 years imprisonment, while article 177 of the Abu Dhabi Penal Code punishes such acts with a penalty of up to ten years imprisonment.<sup>224</sup>

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<sup>218</sup> Criminal Code of the Republic of Turkmenistan.

<sup>219</sup> See United Arab Emirates section on Sexual Offences Laws, Interpol.

<https://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/>

<sup>220</sup> Schmitt, Arno and Sofer, Jehoeda, 1992, *Sexuality and Eroticism Among Males in Moslem Societies*. Binghamton: Harrington Park Press, p. 144.

<sup>221</sup> German Bundestag; Printed Paper 16/3597, p. 29.

[http://www.volkerbeck.de/cms/files/16\\_3597\\_minor\\_interpellation.pdf](http://www.volkerbeck.de/cms/files/16_3597_minor_interpellation.pdf)

<sup>222</sup> Schmitt, Arno and Sofer, Jehoeda, 1992, *Sexuality and Eroticism Among Males in Moslem Societies*. Binghamton: Harrington Park Press, p. 144.

<sup>223</sup> Love, hate and the law: decriminalizing homosexuality.

<sup>224</sup> Schmitt, Arno and Sofer, Jehoeda, 1992, *Sexuality and Eroticism Among Males in Moslem Societies*. Binghamton: Harrington Park Press, p. 145.

## Uzbekistan

**Male/Male** Illegal

**Female/Female** Legal

Criminal Code of 1994 <sup>225</sup>

Article 120. Besoqolbozlik\* (Homosexual Intercourse)

"Besoqolbozlik, that is, voluntary sexual intercourse of two male individuals – shall be punished with imprisonment up to three years."

## Yemen

**Male/Male** Illegal

**Female/Female** Illegal

Penal Code 1994 <sup>226</sup>

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."

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<sup>225</sup> Text of the law is available at: <http://www.legislationline.org/documents/id/8931>.

<sup>226</sup> German Bundestag; Printed Paper 16/3597, p. 31.  
[http://www.volkerbeck.de/cms/files/16\\_3597\\_minor\\_interpellation.pdf](http://www.volkerbeck.de/cms/files/16_3597_minor_interpellation.pdf)

# EUROPE

## Progress and backlash

The only territory in Europe where consensual sexual acts between adults (men only) are still criminalized is Northern Cyprus, making Europe a region that stands out in this report. It does not mean, however, that LGBT people in Europe live their lives free from discrimination.

The situation in Europe varies from country to country. In some countries violations of human rights are state-sponsored while some countries provide, or claim to provide, legal equality for LGBT people. But even legal regulations may sometimes not be implemented fully due to homophobic attitudes in state institutions. In many cases LGBT persons hesitate to report violence due to lack of confidence in police and other authorities.

Recent years have seen several attempts – some of which successful – to enact laws that hinder dissemination of information on issues related to sexual orientation and gender identities. As a result, any public expression and information related to LGBT issues can be targeted by police action, and possibly result in penalties of fines and/or prison. Such laws have already come into force in several regions in Russia under the guise of “protecting minors from propaganda” and are on the Parliamentary agendas in other countries such as Lithuania and Hungary.

In many countries, freedom of expression is repeatedly breached when Pride marches are either banned or interrupted by counter-demonstrators without interference from authorities. Despite being in violation of international agreements signed by the respective host countries, these bans are still upheld.

However, all is not bleak. The Council of Europe has increased its attention to human rights violations faced by LGBT people, has published several reports and provided recommendations to its member states. Although not legally binding, the recommendations are still useful tools for advocacy and other efforts to improve the situation for LGBT people across Europe.

ILGA-Europe, regularly publishes in-depth information on the European situation, including an overview of legislation related to sexual orientation and gender identity, and strategies used in different European countries and cities to challenge any discriminatory governments and their agendas.

**Please visit [ilga-europe.org](http://ilga-europe.org) for more information about the European region.**

**Maria Sjödin & Ruth Baldacchino**

**European Representatives to the ILGA World Board**

## **Turkish Republic of Northern Cyprus (unrecognised state)**

**Male/Male** Illegal

**Female/Female** Legal

Criminal Code, Chapter 154

Article 171. "Whoever –

(a) has sexual intercourse against the order of nature with any person, or

(b) allows sexual intercourse against the order of nature with a male, commits a heavy crime and is punished with up to five years imprisonment."

Article 173. "Whoever attempts to commit one of the crimes mentioned above in art. 171, commits a heavy crime and is punished with up to three years imprisonment."

There are plans to repeal these articles, but such a reform has not occurred as of publication of this report.

# LATIN AMERICA AND THE CARIBBEAN

## Regarding actions in favor of the rights of the LGBTI community

The principles of "equality" and "non-discrimination" have been recognized and enshrined in International Human Rights Treaties. Likewise, in Latin America and The Caribbean we have international regulations of relevance, such as:

- Resolution AG / RES 2435 (XXXVIII-O/08), "Human Rights, Sexual Orientation and Gender Identity", agreed by the 34 countries of the Americas. This recognizes the serious human rights violations faced by people because of their sexual orientation and gender identity and points out the importance of the adoption of the Yogyakarta Principles;
- ECOSOC General Comment on non-discrimination E/C.12/GC/20 which states inter alia, the prohibition of discrimination based on sexual orientation and gender identity, recognition of the Yogyakarta Principles by a UN Treaty body and the right to protection against direct and indirect discrimination based on reasons of identity;
- OAS Resolution AG / RES. 2504 (XXXIX-O/09) "Human Rights, Sexual Orientation and Gender Identity" which confirms the recognition of violence, condemns acts of violence and human rights violations committed against individuals based on sexual orientation and gender identity;
- OAS Declaration "Human rights, sexual orientation and gender identity," which reiterated the freedom and equal rights for all persons, without distinction. The Declaration condemns violence and human rights violations based on the sexual orientation of individuals and urges the States to investigate cases of discrimination and ensure that those responsible are subject to appropriate legal consequences;
- Declaration of Human Rights Council United Nations (2011). It calls upon States to put an end to violence, criminal sanctions and violations of human rights of lesbian, trans, gay, bisexual, intersex people.

Despite these agreements, which reflect the States' commitment to provide conditions of fairness and equality for the exercise of citizenship, they seem to be not enough to stop the violence that has plagued this year the Latin American and Caribbean's LTGBI community. The death of eleven lesbians in LAC for reasons of sexual orientation, of trans people, among them well-known human rights activists such as Agnes Torres, the murder of the young Daniel Zamudio in Chile – product of cultural conditions that resulted in violence – draws attention to a institutional level that is not consistent with the willingness expressed by the signatory states.

This situation - product of the homophobia of the church, conservative fundamentalism, the failure to consider the social demands of the lesbian trans, gay, bisexual, intersex movements, among others – emphasizes the lack of legislations to repeal the existing repressive norms. This also facilitates the adverse effects of some sectors that still suggest pathologizing homosexuality, assumed as a medical concept – sustaining the reproduction of stigma and discrimination as variable structural violence affecting non-heterosexual community in our continent.

In the scenario described, oppression leads to escape exits through the alert of the Latin American and Caribbean sexual diversity/dissidence movement. This active resistance is maintained in a constant battle that has promoted- together with the institutional LTGB<sup>227</sup>- major legal changes in countries of the region. In this sense, we have observed in 2011 and in the first months of 2012, legal enactments sensitive to some of the collective demands of the non heterosexual community. Among these we can include the following, which are transformed into new debates:

- Adoption on May 9 of the Law on gender identity in Argentina. Based on the axes of depathologization, dejudicialization, decriminalization and destigmatization it is an example of the construction of such regulations in various countries of LAC, which usually take on explicitly and implicitly a medical nature that prevails with regard to freedom of choice. Argentina's law recognizes, based on Yogyakarta Principles, that it will be possible to correct the name, sex and image without medical or psychological pre-requisite or depending of treatment or intervention. It also ensures full access to health care, including surgery and hormone treatments, without a judicial or administrative authorization, without requiring diagnosis, to be included within the mandatory medical program for free, both in public hospitals as well as social works or private medical companies;
- The incipient work that promotes and enforce the development and implementation of public policies that specifically address non-heterosexual identities. Both ILGA LAC, as well as other member organizations, have done important work in the field of education, health and labor rights. We emphasize at this point the self-managed work of ILGA-LAC lesbian activists which led to the publication of a health report on lesbian and bisexual women in eleven countries in the region. This work, which allows the comparison of different geographical and political contexts, gathers the knowledge and perceptions of lesbian activists in the region on various issues associated with this topic;
- The ruling of the Inter-American Court of Human Rights regarding the case of lesbian Karen Atala against Chile. The ruling in favour of Atala, who lost custody of her daughters for living with her lesbian partner, is a precedent claiming that sexual orientation and / or gender identity of a person are categories which no state can discriminate. In Chile, where rights of this lesbian were violated, the death of Daniel Zamudio on 9 May triggered, after long years of struggle by civil society, the enactment of the Act which provides for measures against discrimination;
- The ruling of the Constitutional Court of Colombia guaranteeing pension rights of the partner of a homosexual priest. The case facilitates the development of analysis between historically variables tension between sexuality / religion also served to establish that same-sex couples in this country are indeed a family. This case becomes a precedent that will mark, no doubt, the pulse of the debates taking place in this regard, destabilizing ecclesiastical logic that links the reproduction of homophobia and oppressive regulation of the freedom of choice.

The above mentioned cases show the continuous mobilization of activism in LAC. It is s diverse activism, with different logics of intervention, different strategies and scenarios to transform inequality and inequity which have been key elements in such processes. In this scenario, the fragment LTGBI movement of sexual diversity / dissidence has played an important role, we wish to underline, working with legal institutions at the country and regional levels. In this respect, we emphasize that although the work has been hard at the international level, its impact will not solve the inconsistency among adherence, discourse and practice of signatory states of the international declarations on non-discrimination. It does not result in, among others, possibilities of access to justice in local and international dimension. Also, we observe a participation of under-represented voices that foresees long ways to go, such as for example, the specificity of the violence affecting lesbians or transvestites or the discriminatory impact on variables such as race, gender and class.

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<sup>227</sup> It is important to underline that this is just an edge of practice that aims to transform the scenes of violence. The lesbofeminism has been a source of libertarian theory and practice in this regard; so has the transvestite movement which has made visible and which has tackled some variables of the violence that affect them. It is not the purpose of this foreword to develop a characterization of the different fragments of what we call a movement of sexual diversity / dissent, though we consider it necessary to state the differences between them.

In this sense, it is worth emphasizing the undervalued role of these identities in the spheres for eradicating stigma and discrimination. This highlights the need to generate policy proposals that do not favor the reproduction of hegemony, at the same time acknowledging that there are underlying conflicts based on the experience of sexuality and gender representation in this community. Therefore, we affirm that sexuality, gender, in the movement of sexual diversity is not neutral and generates exclusions that we must be able to overcome.

In this way, we also note with concern how violence in Central America, reported on a permanent basis, continues to develop in full view of international standards bodies. Only in Honduras from September 2008 to February 2012, the Red Lesbian Cattrachas reported seventy-one deaths which have affected the community known as LTGBI. At the moment of writing the present report, in the same country Erick Martinez Alex Avila was killed, he was a journalist, activist of the lesbian, gay, bisexual and transgender people community and deputy candidate in Honduras. The Caribbean, on the other hand, remains the scene of profound legal discrimination that enhances the violence affecting lesbian, trans, gay, bisexual, intersex people. In this sub-region, there are eleven countries which still pursue and imprison non-heterosexual persons.

Bearing this in mind, there is a need to generate conditions at regional level in order to legislate on hate crimes in each country of LAC, defined as *"all those crimes or attempted crimes motivated by prejudice toward and against the victim because of color, sex, sexual orientation, gender, gender identity, origin, ethnicity, marital status, birth, physical or mental discapacity, social status, religion, age, religious or political beliefs"* that should be established promptly, so that each case of "lesbotransgaybiinterphobia" are banned and that behaviors which diminish people based on the exacerbation of the difference are eradicated. We are aware that the character acquired by ILGA's ECOSOC status will be a facilitator for this and other processes and will use it responsibly.

The compilation of State-Sponsored homo-, lesbo-, bi- and transphobia laws achieved through this report, acts as an encouragement to continue the struggle of sexual diversity and dissidence in Latin America. In the framework of legal progress we wish to underline the positive development carried out by Argentina, Colombia, Brazil and we encourage the Central American, Caribbean and all those States where the enforcement of rights is being hindered, to create conditions that give effect to the commitments made in this field. This process becomes a relevant guide on the issues that should engage activists and decision makers and promotes an understanding that the latter should meet the demands of civil society. Thus, the following points are unavoidable to manage greater equality and social equity:

- Strengthen actions that promote and oblige concrete institutional frameworks with their own resources and participation of lesbian, transgender, bisexual, gay, intersex people in charge of developing strategies and public policies to eradicate stigma and discrimination based on sexual orientation and gender identity;
- Regulation on the definition of hate crimes;
- Ensure the Secular State in Latin America, agreeing on the eradication of hate speech promoted by sections of the Church and fundamentalist groups in the region.
- It should also generate actions that facilitate the shutting down of clinics that cure homosexuality. These precepts based on pathologizing of homosexuality should be prohibited, as they apply torture mechanisms to lesbians, transvestites, gay, bisexual, intersex people;
- Pay special attention to the specificity of violence that affects every non heterosexual identity, considering the intersecting variables of oppression in the areas described by the economic, social and cultural rights;
- Stop the violence affecting the community in Central America and the Caribbean;
- Facilitate access and improve the mechanisms for civil society participation in decision-making of international normative bodies, thus anticipating discussions on full citizenship and allowing such



concept to destabilize universalist and liberal tensions that generate exclusion.

The present report accounts for a clear path to address each Latin American country in the fight against violence affecting those who are different from the imposed norm. A change in this reality is urgent to advance the cultural transformation. This is a tiny step, as we know that the eradication of violence is not only based on legal reforms. It is a tiny step, we repeat, that must lead to other levels of reflection and actions that radically challenge the asymmetrical relations of power as well as political and economic scenarios in which they develop. That is why it is so important.

**Toli Hernandez, Pedro Paradiso Sottile, Amaranta Gomez**

**ILGA-LAC Board members  
Representatives for Latin America and the Caribbean to the ILGA World Board**

## Antigua and Barbuda

**Male/Male** Illegal

**Female/Female** Illegal

Sexual Offences Act of 1995 (Act No. 9) <sup>228</sup>

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 <sup>229</sup>

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.”

<sup>228</sup> Text of the law is available at: <http://www.laws.gov.ag/acts/1995/a1995-9.pdf>.

<sup>229</sup> Text of the law is available at: <http://www.caricomlaw.org/docs/Sexual%20Offences.pdf>.

## **Belize**

**Male/Male** Illegal

**Female/Female** Illegal

Criminal Code [CAP. 101] (REVISED EDITION 2003) <sup>230</sup>

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."

## **Dominica**

**Male/Male** Illegal

**Female/Female** Illegal

Sexual Offences Act 1998 <sup>231</sup>

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."

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."

<sup>230</sup> Text of the law is available at: <http://www.belize-law.org/lawadmin/PDF%20files/cap101.pdf>.

<sup>231</sup> Text of the law is available at: <http://www.dominica.gov.dm/laws/1998/act1-1998.pdf>.

## Grenada

**Male/Male** Illegal

**Female/Female** Legal

Criminal Code as amended to 1990 <sup>232</sup>

Article 435. "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 <sup>233</sup>

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."

## Jamaica

**Male/Male** Illegal

**Female/Female** Legal

The Offences Against the Person Act <sup>234</sup>

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

<sup>232</sup> See LGBT Shadow Grenada, available at:

[http://www2.ohchr.org/english/bodies/hrc/docs/ngos/LGBTShadow\\_Grenada\\_annex.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/LGBTShadow_Grenada_annex.pdf).

<sup>233</sup> Text of the law is available at: [http://www.oas.org/juridico/MLA/en/guy/en\\_guy-int-text-cl\\_act.pdf](http://www.oas.org/juridico/MLA/en/guy/en_guy-int-text-cl_act.pdf).

<sup>234</sup> Text of the law is available at:

<http://www.moj.gov.jm/laws/statutes/Offences%20Against%20the%20Person%20Act.pdf>.

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 <sup>235</sup>

#### Section 56

"The abominable crime of buggery" - up to 10 years imprisonment, with or without hard labour.

#### Section 57

"Whosoever attempts to commit the said abominable crime, or is guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, is guilty of misdemeanour, and being convicted thereof shall be liable to be imprisoned for any term not exceeding four (4) years with or without hard labour."

## **Saint Lucia**

**Male/Male** Illegal

**Female/Female** Illegal

Criminal Code, No. 9 of 2004 (Effective January 1, 2005) <sup>236</sup>

#### 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.

<sup>235</sup> Available at: <http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaStKittsNevis.pdf>.

<sup>236</sup> Text of the law is available at: <http://www.rslpf.com/site/criminal%20code%202004.pdf>.

- (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 <sup>237</sup>

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."

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 <sup>238</sup>

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 inter-course through the anus 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."

<sup>237</sup> Criminal Code of Saint Vincent and the Grenadines.

<sup>238</sup> Text of the law is available at: <http://www.unhcr.org/refworld/country,,,TTO,4562d94e2,4b20f03423,0.html>.

# OCEANIA

## Different stages in the reform of homophobic laws

The region described as ANZAPI (Australia, New Zealand and the Pacific Islands) has a mixed cultural history. The region is based on the former South Pacific Forum, now Pacific Islands Forum, and is a basis for collective LGBTI organizing, underdeveloped, with many member states being engaged in local or other regional fora. Notwithstanding which, activism in individual countries has been extensive and achieved significant gains. Indigenous history of most member countries reflects a culture in stark contrast to the current homophobic law regime, that is the legacy of colonialist laws and often incorporates a traditional recognition and acceptance of diverse gender, sex and sexuality.

Whilst our history as former European countries is the main source of homophobic laws in our region, our region's members have managed to deal with this institutionalized homophobia in different ways. However, despite having a similar seed for homophobic sentiment, the islands in this region are at different stages in the reform of homophobic laws. Australia and New Zealand are dealing with adoption and surrogacy issues, as well as relationships recognition, such as civil unions and same-sex marriage. In comparison, the Pacific Islands are dealing with issues such as decriminalization. This does not mean that the problem of homophobia can be readily delineated. Australia was the first country to ban same-sex marriage on a national basis and it certainly is the only country in the ANZAPI region that has enacted an anti-gay law this century.

The factors most prevalent in keeping colonial laws in the contemporary legal system are either an absence of effective advocacy networks and opportunities and/or the promotion of their retention by right-wing elements of established religions. These areas of society make powerful lobby groups and often coerce governments to retain laws that would otherwise have been repealed many years ago. It has been attributed as one of the reasons for Australia's recent enactment of the same-sex marriage ban and could also explain the retention of sanctions against homosexuality by some of the Pacific Island countries. In spite of this the region has made significant advancements towards equality for LGBTI people. Australia, despite having a same-sex marriage prohibition, has made significant reforms towards relationship recognition, the most recent being to equalize relationship recognition at the federal level, providing equal treatment at law in a range of contexts from aged care to superannuation. New Zealand (Aotearoa) has a civil union scheme which has been argued to provide all the substantive rights of marriage to LGBTI people. Fiji has legalized homosexual sexual activity.

There is a significant push by members for the ANZAPI region to develop and implement the regional structures that will enable the region to both better communicate and also to implement procedures to ensure decisions are made by representative and elected regional structures, ultimately enabling the tackling of homophobia and transphobia at a grass-roots level. Recent strengthening of the regional networks and dialogue has underscored the importance of recognizing specific cultural perspectives and distinctions and ensuring these are reflected in advocacy efforts. Nonetheless it remains the case that the more coordinated representation ILGA is able to develop across the region the stronger it will become.

As representatives of the ANZAPI region, we not only hope that great strides will be made against homophobia and transphobia, but also hope that through ILGA member organization, and indeed individuals, we will feel empowered to take up this campaign for equality at a personal level. ILGA is a grass-roots organisation that has for thirty three years, since its inception in 1978, thrived on the energy and efforts of its over 700 member organisations around the world from over 110 countries, including those in ANZAPI. We hope this world push for global LGBTI equality will continue well into the future.

**Simon Margan, Joleen Mataele and Lyn Morgain**

**ILGA-Oceania Board members  
ANZAPI Representatives to the ILGA World Board**

## Cook Islands (New Zealand associate)

**Male/Male** Illegal

**Female/Female** Legal

Crimes Act 1969 <sup>239</sup>

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 <sup>240</sup>

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 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.”

<sup>239</sup> Text of the law is available at: [http://www.paclii.org/ck/legis/num\\_act/ca196982/](http://www.paclii.org/ck/legis/num_act/ca196982/).

<sup>240</sup> Text of the law is available at: [http://www.paclii.org/ki/legis/consol\\_act/pc66/](http://www.paclii.org/ki/legis/consol_act/pc66/).



## 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."

## Nauru

**Male/Male** Illegal

**Female/Female** Legal

Criminal Code of Queensland in its application to Nauru on 1 July 1921 <sup>241</sup> <sup>242</sup>

### 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."

## Palau

**Male/Male** Illegal

**Female/Female** Legal

Palau National Code; Penal Code <sup>243</sup>

### § 2803. Sodomy.

"Every person who shall unlawfully and voluntarily have any sexual relations of an unnatural manner with a member of the same or the other sex, or shall have any carnal connection in any manner with a beast, shall be guilty of sodomy, and upon conviction thereof be imprisoned for a period of not more than 10 years; provided, that the term "sodomy" shall embrace any and all parts of the sometimes written "abominable and detestable crime against nature"".

<sup>241</sup> Text of the law available at: [http://www.vanuatu.usp.ac.fj/library/Paclaw/Nauru/Indices/Nauru\\_laws.html](http://www.vanuatu.usp.ac.fj/library/Paclaw/Nauru/Indices/Nauru_laws.html).

<sup>242</sup> Criminal Code 1899, available at : [http://ozcase.library.qut.edu.au/ghlc/documents/CrimCode1899\\_63Vic\\_9.pdf](http://ozcase.library.qut.edu.au/ghlc/documents/CrimCode1899_63Vic_9.pdf).

<sup>243</sup> Palau, 1995, Palau National Code Annotated. Koror/Palau: Orakiruu Corporation. Volume 1.

## Papua New Guinea

**Male/Male** Illegal

**Female/Female** Legal

Criminal Code 1974, as amended in 2002 <sup>244</sup>

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.”

## Samoa

**Male/Male** Illegal

**Female/Female** Legal

Crimes Ordinance 1961, Consolidated Acts of Samoa 2007-2008 <sup>245</sup>

Section 58D. Indecency between males –

“(1) Everyone is liable to imprisonment for a term not exceeding 5 years who, being 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 16 years shall be charged with committing or being a party to an offence against paragraph (b) or paragraph (c) of subsection (1), unless the other male was under the age of 21 years.

(3) It is no defence to a charge under this section that the other party consented.”

Section 58E. Sodomy –

“(1) Everyone 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.
- (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.
- (c) In any other case, to imprisonment for a term not exceeding 5 years.

(2) This offence is complete upon penetration.

(3) Where sodomy is committed on any person under the age of 16 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 58D of this Act in any case to which that section is applicable.

(4) It is no defence to a charge under this section that the other party consented.”

<sup>244</sup> Text of the law is available at : [http://www.paclii.org/pg/legis/consol\\_act/cca1974115/](http://www.paclii.org/pg/legis/consol_act/cca1974115/).

<sup>245</sup> Text of the ordinance is available at : [http://www.paclii.org/ws/legis/consol\\_act/co1961135/](http://www.paclii.org/ws/legis/consol_act/co1961135/).

## Solomon Islands

**Male/Male** Illegal

**Female/Female** Illegal

Penal Code (Revised Edition 1996)<sup>246</sup>

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 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;

(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.”

## Tonga

**Male/Male** Illegal

**Female/Female** Legal

Laws of Tonga, Criminal Offences [Cap 18] 1988 Edition <sup>247</sup>

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.)

<sup>246</sup> Text of the law is available at: [http://www.paclii.org/sb/legis/consol\\_act/pc66/](http://www.paclii.org/sb/legis/consol_act/pc66/).

## Tuvalu

**Male/Male** Illegal

**Female/Female** Legal

Laws of Tuvalu, Penal Code [Cap 8] Revised Edition 1978 <sup>248</sup>

### 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."

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<sup>247</sup> Text of the law is available at: [http://www.pacii.org/to/legis/consol\\_act/co136/](http://www.pacii.org/to/legis/consol_act/co136/).

<sup>248</sup> Text of the law is available at: <http://www.tuvalu-legislation.tv/tuvalu/DATA/PRIN/1990-008/PenalCode.pdf>.

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We wish to thank the many volunteers who translated this report.

Coordination: Stephen Barris