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State-sponsored Homophobia

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

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an ILGA report

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From the Co-Secretaries General

The year which separates this issue of our report from the previous one has registered several positive steps, from the adoption of a marriage law in Argentina and Iceland (and the decision of the Brazilian Supreme Court regarding same-sex civil unions) to the issuing of a Statement signed by 85 countries at the UN Human Rights Council condemning persecution on the basis of sexual orientation or gender identity. These events mark a growing disposition in the world which makes it more and more difficult to defend state-sponsored homophobia on the international scene, as seen in the case of the international campaign against the proposed “anti-homosexuality” bill of Uganda, while the so-called Arab Spring gives reason to hope for significant changes in the legislation of many countries in the Middle East and North Africa in a not too distant future.

The purpose of this optimism is not, of course, to forget about those countries where same-sex sexual acts between consenting adults continue to be criminalised. Quite the contrary, particularly in the light of the fact that while registering no new “addition”, the infamous group of 76 countries (including the 5 which have the death penalty) have seen no “defection” either. In Malawi President Bing Wa Mutharika even thought it necessary, after raising hopes by “pardoning” Steven Monjeza and Tiwonge Chimbalanga for loving each other, to re-confirm his stance toward same-sex couples by having the penal code criminalising also “indecent practices between females”.

The positive disposition mentioned above, however, means that the 76 countries are beginning to feel isolated and in difficulty as far as their stance towards discrimination on basis of sexual orientation and gender identity is concerned. Even more so, considering that their claim to defend the view of “traditional societies” against values “imported from the West” is gradually eroded not only by the presence of many countries from the global South among the 85 signatories of the UN Human Rights Council, e.g. Rwanda, Central African Republic, Sierra Leone (not to mention the overwhelming majority of Latin American countries), but also by the very fact that the laws they defend are often the relics of colonialism.

Another factor which adds to the difficulty of the 76 countries is that their supposed defence of “traditional values” is not “simply “limited” to barring LGBTI people from enjoying equal rights, but actively implies persecution of people on the basis of their sexual orientation and gender identity, out of fear that LGBTI people might “contaminate” with their example the rest of the population – not exactly the most consistent way to defend values which are supposed to be as “traditional” as they are “natural”, and certainly a most immoral one, considering that LGBTI rights defenders have been murdered in this last year as a result of it. We cannot but express gratitude and admiration for the courage of all those activists that risk their lives and security to build a stronger LGBTI movement and – above all – a better world, where all human rights are truly for all.

The day is not far, when homophobia and transphobia will be considered everywhere as they should – with the same abhorrence currently reserved to sexism and racism, and no amount of self-serving rhetoric will prevent the wall of state-sponsored homophobia from crumbling.

While rejoicing in anticipation for that day, however, we should not forget that decriminalisation of same-sex sexual acts between consenting adults is a necessary precondition for the fight against homophobia, as it contributes to social change, but is in itself by no means sufficient, as proven by the rise of attacks against lesbians and gays in recent years from South Africa to the UK. There is no doubt that the battle on the legal level will be won sooner than the one fought at the cultural level, as pockets of homophobes will remain in all societies of the world for a long time. More needs to be done to grasp the true dimensions of this problem, ideally through a map similar to the one we release together with

this report. It is an endeavour we are willing to commit ourselves to, together with all those who want to join us.

A final word of warm welcome to our new editors of this report: Eddie Bruce-Jones and Lucas Paoli Itaborahy who take over from Daniel Ottoson, the excellent editor of the past issues.

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 700 member organizations.

Every continent and approximately 110 countries are represented.

Pan Africa ILGA, ILGA-Asia, ILGA-Europe, ILGA-LAC, ILGA-North America and ILGA-Oceania 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

From the Authors

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. Where the legal provisions were not possible to obtain, secondary sources are listed.

The aim of this report is to consolidate the latest research on a range of LGBTI legal issues.

The first part of the report presents an overview of trends of LGBTI rights around the world. The second part is comprised of a summary of countries that still maintain legal provisions criminalising same-sex sexual acts between consenting adults. Due to the fact that we aim to provide the most updated information, much of the material cited is from governmental and non-governmental organisation websites rather than from printed sources. In contrast to previous years, we have integrated the source list into the footnotes at the end of each page. This affords readers quicker access to full references.

The section of the report on criminalisation only deals with legislation criminalising sexual acts between persons of the same sex who are of consenting age 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 second part of the report also excludes countries where such acts are legal.

It is important to notice that this report covers a period of intense global discussion on LGBTI issues. Since 2009, the world has been witnessing remarkable legal developments, particularly in Latin America. In 2009, the Federal District of Mexico passed several laws protecting LGBTI people from hate crimes, followed by Ecuador in the same year and by Bolivia in 2011. Mexico also approved a very progressive law on gender recognition after gender reassignment treatment in 2009 and its Federal District opened up marriage for same-sex couples in 2010, the same year as Argentina did. The latter has also approved joint adoption by same-sex couples, followed by Brazil which recognized legal rights for same-sex stable unions in 2011.

In 2011, we anticipate a ruling by the Indian Supreme Court on the challenge of the 2009 decision of the High Court in Delhi that invalidated the criminalisation of sex between consenting adults in all Indian states except Jammu and Kashmir. There is also a potential revisiting of the widely criticised proposed 2009 Anti Homosexuality Bill in Ugandan parliament this year,¹ a year that began with the brutal murder of David Kato, one of Uganda's most vocal and longstanding advocates for LGBTI equality.²

We would like to thank the organisations that sent us their suggestions and, in particular, we would like to thank Daniel Ottosson, Robert Wintemute and Kees Waaldijk for their significant comments. Kees Waaldijk has also contributed immensely to this report, providing us with 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"³.

If you have any additional information or additional sources not available in this report, we would be grateful if you could contact us at information@ilga.org, and we will investigate the matter.

¹ See Behind The Mask: Voices of Africa's LGBTI Community, "Uncertainty of Uganda's Anti Homosexuality Bill," 23 March 2011. Available at <http://www.mask.org.za/uncertainty-over-uganda%E2%80%99s-anti-homosexuality-bill/>.

² See Human Rights Watch, "Uganda: Promptly Investigate Killing of Prominent LGBT Activist," 27 January 2011. Available at <http://www.hrw.org/en/news/2011/01/27/uganda-promptly-investigate-killing-prominent-lgbt-activist>.

³ Available at: <http://hdl.handle.net/1887/14543>.

The report has been researched and written by Eddie Bruce-Jones and Lucas Paoli Itaborahy. It is an updated version of the four annual editions of this report that were researched and compiled by Daniel Ottosson since 2007.

This ILGA report is copyright free provided you mention both the authors and ILGA, the International Lesbian, Gay, Bisexual, Trans and Intersex Association.

Free digital versions of the report are available in Word format for groups to print as well as free digital maps on gay and lesbian rights in the world, in Asia, Africa and Latin American and the Caribbean.

Most of this material is available in **English, Spanish, Portuguese and French.**

Download the maps and reports at www.ilga.org or contact information@ilga.org

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)

Africa	Benin, Burkina Faso, Cape Verde (2004), ⁴ Central African Republic, Chad, Congo-Brazzaville, Côte d'Ivoire, Democratic Republic of Congo, Djibouti, ⁵ Equatorial Guinea, ⁶ Gabon, Guinea-Bissau (1993), ⁷ Madagascar, Mali, Niger, ⁸ Rwanda, ⁹ South Africa (1998)
Asia	Cambodia, China (1997), ¹⁰ East Timor (1975), most parts of India (2009), ¹¹ most parts of Indonesia, Israel (1988), Japan (1882), Jordan (1951), Kazakhstan (1998), Kyrgyzstan (1998), Laos, Mongolia, ¹² Nepal (2008), ¹³ North Korea, Philippines, South Korea, Taiwan (1896), Tajikistan (1998), Thailand (1957), Turkey (1858), Vietnam, as well as the West Bank (1951) in the Occupied Palestinian Territory
Europe	Albania (1995), Andorra (1990), Armenia (2003), Austria (1971), Azerbaijan (2000), Belgium (1795), Bosnia and Herzegovina (1998-2001), ¹⁴ Bulgaria (1968), Croatia (1977), Cyprus (1998), Czech Republic (1962), Denmark (1933), Estonia (1992),

⁴ 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..

⁵ See Djibouti Penal Code of 1995, available at: <http://www.djibouti.mid.ru/doc/UK.htm>.

⁶ 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>.

⁷ 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.rjclp.org/RJCPLP/sections/informacao/legislacao-nacional/anexos/gb-codigo-penal/downloadFile/file/GuineBissau.CodigoPenal.pdf).

⁸ The 1961 Penal Code with amendments up to 2003 is available at:

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

⁹ 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&rubID=30691315.

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

¹¹ 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.altlawforum.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/>. Since the Indian Penal Code is not applicable to the state of Jammu and Kashmir, the Delhi High Court decision does not affect the laws in this state.

¹² See Article 125 of the Criminal Code of Mongolia of 2002, available at:

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

¹³ 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>.

¹⁴ 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/.

Finland (1971), France (1791), Georgia (2000), Germany (1968-69),¹⁵ Greece (1951), Hungary (1962), Iceland (1940), Ireland (1993), Italy (1890), Kosovo (1994), Latvia (1992), Liechtenstein (1989), Lithuania (1993), Luxembourg (1795), Macedonia (1996), Malta (1973), Moldova (1995), Monaco (1793), Montenegro (1977), Netherlands (1811),¹⁶ 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), Ukraine (1991), United Kingdom (see foot note for the UK and associates),¹⁷ Vatican City

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),¹⁸ El Salvador (1800's), Guatemala (1800's), Haiti (1800's), Honduras (1899), Mexico (1872), Nicaragua (2008), Panama (2008),¹⁹ Paraguay (1880), Peru (1836-1837), Suriname (1869), Uruguay (1934), Venezuela (1800's)

North America Canada (1969), the United States (2003)²⁰

Oceania Australia,²¹ Fiji (2010),²² 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 Benin, Burkina Faso, Central African Republic, Chad, Congo-Brazzaville, Côte d'Ivoire, Democratic Republic of Congo, Djibouti, Gabon, Madagascar, Mali, Niger and Rwanda.

Homosexual acts illegal (76 countries)

Africa Algeria(1966),²³ Angola, Botswana, Burundi (2009), Cameroon (1972), Comoros, Egypt,²⁴ 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, Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia, Zimbabwe

Asia Afghanistan, Bangladesh, Bhutan, Brunei, some parts of Indonesia (South Sumatra and Aceh Province), Iran, Kuwait, Lebanon, Malaysia, Maldives, Myanmar, Oman, Pakistan, Qatar, Saudi Arabia, Singapore, Sri Lanka, Syria, Turkish Republic of

¹⁵ East Germany (1968) and West Germany (1969).

¹⁶ 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.

¹⁷ 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.

¹⁸ 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>.

¹⁹ Decree No. 332, Official Gazette of 31 July 2008.

²⁰ 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.

²¹ New South Wales (1983), Norfolk Island (1993), Northern Territory (1984), Queensland (1991), South Australia (1972), Tasmania (1997), Victoria (1981), Western Australia (1990).

²² The sodomy statutes were repealed by the Crimes Decree 2009, which came into force on 1 February 2010.

²³ See article 338 of the 1965 Penal Code, available at: <http://lexalgeria.free.fr/penal3.htm>.

²⁴ See Egypt section in the second part of this report.

Northern Cyprus (internationally unrecognised), Turkmenistan, United Arab Emirates, Uzbekistan, Yemen, as well as the Occupied Palestinian Territory.

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

Oceania Kiribati, Nauru, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, as well as the New Zealand associate of Cook Islands

Legal status of homosexual acts unclear (2 countries)

Asia Bahrain, Iraq (see Iraq section above)

Homosexual acts punishable with death penalty (5 countries and some parts of Nigeria and Somalia)

Africa Mauritania, Sudan as well as 12 northern states in Nigeria and the southern parts of Somalia

Asia Iran, Saudi Arabia, Yemen

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

Africa Burkina Faso (1996), Cape Verde (2004),²⁵ Democratic Republic of Congo (2006),²⁶ Djibouti,²⁷ Equatorial Guinea (1931),²⁸ Mali (1961), Guinea-Bissau (1993),²⁹ South Africa (2007)³⁰

Asia Cambodia, China,³¹ 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), Turkey (1858), Vietnam, as well as the West Bank (1951) in the Palestinian Authority

Europe Albania (2001), Andorra, Armenia (2003), Austria (2002), Azerbaijan (2000), Belgium (1985), Bosnia & Herzegovina (1998-2001),³² Bulgaria (2002), Croatia (1998), Cyprus (2002), Czech Republic (1990), Denmark (1976),³³ Estonia (2002), Finland (1999),

²⁵ See article 71(4) of the Código Penal, available at <http://www.saflii.org/mz/legis/codigos/cp90/>.

²⁶ 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).

²⁷ See Djibouti Penal Code of 1995, available at: <http://www.djibouti.mid.ru/doc/UK.htm>.

²⁸ See note 113.

²⁹ 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).

³⁰ 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).

³¹ In mainland of China since decriminalisation in 1997; also in Hong Kong (2005/2006) and in Macau (1996).

³² 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/>

³³ The Faeroe Islands (1988), Greenland (1979).

France (1982),³⁴ Georgia (2000), Germany (1994/89),³⁵ 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),³⁶ 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), Ukraine (1991), United Kingdom (2001),³⁷ 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,³⁸ Fiji (2010), Marshall Islands, Micronesia, New Zealand (1986), Vanuatu (2007) and some parts of New Zealand³⁹

Un-equal age of consent for homosexual and heterosexual acts (14 countries)

Africa Benin (1947),⁴⁰ Chad, Congo-Brazzaville, Côte d'Ivoire,⁴¹ Gabon, Madagascar (1999),⁴² Niger (1961),⁴³ Rwanda⁴⁴

Asia Indonesia

Europe Greece (only in seduction cases),⁴⁵ as well as some United Kingdom associates⁴⁶

Latin America & Caribbean Bahamas, Canada, Chile, Paraguay, Suriname as well as some United Kingdom associates,⁴⁷

³⁴ 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.

³⁵ East Germany (GDR) in 1989 and the rest of Germany in 1994.

³⁶ 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).

³⁷ 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.

³⁸ 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).

³⁹ New Zealand associates of Niue (2007) and Tokelau (2007).

⁴⁰ 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).

⁴¹ 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.

⁴² 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.

⁴³ 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).

⁴⁴ See Waaldijk (2011).

⁴⁵ See Article 347 of the Greek Penal Code.

⁴⁶ Bailiwick of Guernsey, Gibraltar.

⁴⁷ Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Montserrat, Turks & Caicos Islands.

North America: Some parts of the United States⁴⁸

Oceania The Australian state of Queensland

Prohibition of discrimination in employment based on sexual orientation (54 countries)

Africa	Botswana (2010), ⁴⁹ Cape Verde (2008), ⁵⁰ Mauritius (2008), ⁵¹ Mozambique (2007), ⁵² Seychelles (2006), ⁵³ South Africa (1996) ⁵⁴ (Namibia repealed such a law in 2004) ⁵⁵
Asia	Israel (1992), Taiwan (2007), as well as a few cities in Japan
Europe	Albania (2010), Andorra (2005), Austria (2004), Belgium (2003), Bosnia and Herzegovina (2003), ⁵⁶ Bulgaria (2004), Croatia (2003), Cyprus (2004), Czech Republic (1999), Denmark (1996), ⁵⁷ Estonia (2004), Finland (1995), France (2001), Georgia (2006), Germany (2006), Greece (2005), ⁵⁸ Hungary (2004), Ireland (1999), Italy (2003), Kosovo (2004), Latvia (2006), Lithuania (2003), Luxembourg (1997), Malta (2004), Montenegro (2010), ⁵⁹ Netherlands (1992), Norway (1998), Poland (2004), Portugal (2003), Romania (2000), Serbia (2005), Slovakia (2004), Slovenia (1998), Spain (1996), Sweden (1999), United Kingdom (2003, for associates see foot note) ⁶⁰
Latin America & Caribbean	Rosario (1996) in Argentina, some parts of Brazil, ⁶¹ Colombia (2007), Costa Rica (1998), Ecuador (2005), ⁶² Mexico (2001-2009), ⁶³ Nicaragua (2008), Venezuela (1999),

⁴⁸ Nevada (only in seduction cases) and Virginia.

⁴⁹ 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

⁵⁰ 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>.

⁵¹ 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.

⁵² 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.

⁵³ 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>.

⁵⁴ 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); and in the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 (www.info.gov.za/view/DownloadFileAction?id=68207).

⁵⁵ 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; see Waaldijk (2011).

⁵⁶ Such laws are available also in Republika Srpska (2000, 2003).

⁵⁷ 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.

⁵⁸ See Law no. 3304/2005 (Act Against Discrimination), available at: <http://www.non-discrimination.net/content/main-principles-and-definitions-6>

⁵⁹ 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.

⁶⁰ Bailiwick of Guernsey (2005), Gibraltar (2004), Isle of Man (2007).

⁶¹ 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.

⁶² See Article 79 of the *Código del Trabajo*, *Codificación 2005-17*, available at:

<http://www.unemi.edu.ec/rhh/images/archivos/codtrab.pdf>.

⁶³ Between 2001 y 2009 10 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/>.

North America: Canada (1996), some parts of the United States⁶⁴

Oceania Australia,⁶⁵ 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 Argentinean city of Rosario (2006)

North America Northwest Territories (2004) in Canada, as well as some parts of the United States⁶⁶

Oceania Australia (1996)⁶⁷

Constitutional prohibition of discrimination based on sexual orientation (7 countries)

Africa South Africa (1994 and 1997)⁶⁸

Europe Kosovo (2008), Portugal (2004), Sweden (2003), Switzerland (2000), as well as some parts of Germany⁶⁹

Latin America & Caribbean Bolivia (2009),⁷⁰ Ecuador (1998),⁷¹ as well as some parts of Argentina⁷² and Brazil⁷³ as well as the United Kingdom associate of British Virgin Islands (2007)⁷⁴

⁶⁴ 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.

⁶⁵ Capital Territory (1992), New South Wales (1983), Northern Territory (1993), Queensland (1992), South Australia (1986), Tasmania (1999), Victoria (1996), Western Australia (2002).

⁶⁶ 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.

⁶⁷ 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".

⁶⁸ 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).

⁶⁹ Berlin (1995), Brandenburg (1992), Thuringia (1993).

⁷⁰ See Article 14 of the *Constitución Política del Estado*, of 7 February 2009, available at: <http://bolivia.infoleyes.com/shownorm.php?id=469>.

⁷¹ 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>.

⁷² Buenos Aires (1996).

⁷³ Alagoas (2001), Federal District (1993), Mato Grosso (1989), Pará (2003), Santa Catarina (2002), Sergipe (1989).

⁷⁴ Article 26 of the Virgin Islands Constitution Order 2007 is available at: <http://www.legislation.gov.uk/ukxi/2007/1678/contents/made>.

Oceania 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 (20 countries)

Europe Andorra (2005), Belgium (2003), Croatia (2006), Denmark (2004), France (2003),⁷⁵ Netherlands (1992), Portugal (2007), Romania (2006), San Marino (2008),⁷⁶ Spain (1996), Sweden (2003), United Kingdom (2004-10)⁷⁷

Latin America & Caribbean Bolivia (2011),⁷⁸ Colombia (2001), Ecuador (2009),⁷⁹ Nicaragua (2008), and United States (2009)⁸⁰ Uruguay (2003), some parts of Mexico⁸¹

North America Canada (1996) and United States (2009)

Oceania New Zealand (2002)

Hate crimes based on gender identity considered an aggravating circumstance (6 countries)

Europe Most parts of the United Kingdom (2004-10)⁸²

Latin America & Caribbean Bolivia (2011), Ecuador (2009), Uruguay(2003),⁸³ some parts of Mexico⁸⁴

North America the United States (2009)⁸⁵

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

Africa South Africa (2000)

⁷⁵ The law applies to the following overseas departments and territories upon adoption: French Guiana, French Polynesia, Guadeloupe, Martinique, New Caledonia, Réunion, St Barthélemy, St Martin, St Pierre & Miquelon and Wallis & Futuna, but not to Mayotte.

⁷⁶ 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

⁷⁷ Such laws have been adopted in England and Wales (2005), Northern Ireland (2004) and Scotland (effective 2010).

⁷⁸ 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.

⁷⁹ 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.

⁸⁰ 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).

⁸¹ Coahila (2005) and the Federal District (2009). See Article 350 of Coahila's Penal Code, available at: 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.

⁸² Such laws have been adopted in Northern Ireland (2004), England and Wales (2005) and Scotland (2010).

⁸³ The legal terms used are "*orientación sexual o identidad sexual*" ("sexual orientation or sexual identity"). See Article 149, Penal Code of Uruguay.

⁸⁴ Coahila (2005) and the Federal District (2009).

⁸⁵ 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).

Europe	Belgium (2003), Croatia (2003), Denmark (1987), ⁸⁶ Estonia (2006), France (2005), ⁸⁷ Iceland (1996), Ireland (1989), Lithuania (2003), Luxembourg (1997), Monaco (2005) ⁸⁸ , Netherlands (1992), Norway (1981), Portugal (2007), Romania (2000), San Marino (2008), Serbia (2009), Spain (1996), Sweden (2003), United Kingdom (2004-10) ⁸⁹
Latin America & Caribbean	Bolivia (2011), Ecuador (2009), some parts of Mexico, ⁹⁰ Uruguay (2003) ⁹¹
North America	Canada (2004)
Oceania	Some parts of Australia ⁹²

Marriage open for same-sex couples (10 countries)

Africa	South Africa (2006)
Europe	Iceland (2010), ⁹³ Belgium (2003), Netherlands (2001), Norway (2009), Portugal (2010), ⁹⁴ Spain (2005), Sweden (2009)
Latin America & Caribbean	Argentina (2010), ⁹⁵ The Federal District (2010) in Mexico
North America	Canada (2005), as well some parts of the United States ⁹⁶

Same-sex couples offered most or all rights of marriage (Civil Partnerships, Registered Partnerships, Civil Unions etc.) (12 countries)

Asia	Israel (1994)
Europe	Austria (2010), Denmark (1989), ⁹⁷ Finland (2002), Germany (2001), Hungary (2009), Ireland (2011), ⁹⁸ Liechtenstein (2011), ⁹⁹ Switzerland (2007), United Kingdom (2005), and The United Kingdom associate Isle of Man (2011) ¹⁰⁰

⁸⁶ The law is applicable to Faeroe Islands (2007) and to Greenland (2010).

⁸⁷ 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.

⁸⁸ 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.

⁸⁹ Such laws have only been adopted in Northern Ireland (2004) and England and Wales (2010).

⁹⁰ Coahila (2005) and the Federal District (2009).

⁹¹ The law included also "Sexual identity".

⁹² Australian Capital Territory (2004)⁹², New South Wales (1993), Queensland (2003), Tasmania (1999).

⁹³ 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/altext/138/s/0836.html>.

⁹⁴ Text of the law is available at <http://dre.pt/pdf1sdip/2010/05/10500/0185301853.pdf>.

⁹⁵ Text of the law is available at: <http://www.nexo.org/archivos/Ley-matrimonio-civil-boletin-oficial.pdf>

⁹⁶ Connecticut (2008), District of Columbia (2010), Iowa (2009), Massachusetts (2004), New Hampshire (2010) and Vermont (2009).

⁹⁷ The law was extended to Greenland in 1996, however still not applicable to the Faeroe Islands.

⁹⁸ 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>.

⁹⁹ See http://en.wikipedia.org/wiki/Recognition_of_same-sex_unions_in_Liechtenstein.

¹⁰⁰ See http://en.wikipedia.org/wiki/Recognition_of_same-sex_unions_in_the_Isle_of_Man.

Latin America & Caribbean	Brazil (2011) ¹⁰¹ , Colombia (2007-2009)
North America	some parts of the United States ¹⁰²
Oceania	New Zealand (2005), as well as some parts of Australia ¹⁰³

Same-sex couples offered some rights of marriage (9 countries)

Europe	Andorra (2005), Croatia (2003), Czech Republic (2006), France (1999), ¹⁰⁴ Luxembourg (2004), Slovenia (2006)
Latin America & Caribbean	Ecuador (2009), Uruguay (2008) and some parts of Argentina, Brazil, Mexico
North America	the United States ¹⁰⁵
Oceania	Australia (2008-2009) ¹⁰⁶

Joint adoption by same-sex couples legal (13 countries)

Africa	South Africa (2002)
Asia	Israel (2008)
Europe	Andorra (2005), Belgium (2006), Denmark (2010), Iceland (2006), Netherlands (2001), Norway (2009), Spain (2005), Sweden (2003), United Kingdom (2005-) ¹⁰⁷
Latin America & Caribbean	Argentina (2010), Brazil (2010), ¹⁰⁸ the Federal District (2010) in Mexico
North America	Most of the Canadian provinces, ^{109,110} and some parts of the United States ¹¹¹

¹⁰¹ See <http://www.direitoshumanos.gov.br/2011/05/06-mai-2011-nota-publica-sobre-a-decisao-favoravel-do-supremo-tribunal-federal-no-reconhecimento-da-uniao-estavel-entre-pessoas-do-mesmo-sexo> and <http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=178931>

¹⁰² California (several acts from 2000 and onwards), Nevada (2009), New Jersey (2007), Oregon (2008), Washington (2007-2009) and Wisconsin (2009).

¹⁰³ 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>.

¹⁰⁴ 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.

¹⁰⁵ Colorado (2009), Hawaii (1997), Maryland (2008), New York (several acts from 2003 and onwards), Rhode Island (several acts from 1998 and onwards).

¹⁰⁶ Capital Territory (1994, Civil Partnerships since 2008), New South Wales (several acts from 1999 and onwards), Norfolk Island (2006), Northern Territory (2004), Queensland (several acts from 1999 and onwards), South Australia (2003, 2007), Tasmania (2004), Victoria (2001, 2008), Western Australia (2002).

¹⁰⁷ 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.

¹⁰⁸ 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.athosgls.com.br/noticias_visualiza.php?contcod=29208.

¹⁰⁹ 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).

¹¹⁰ See Community Legal Information Association of Prince Edward Island, Inc., Legal Information for Same-Sex Couples, available at: <http://www.clapei.ca/sitefiles/File/publications/Legal-Info-for-Same-Sex-Rel-ships-2010.pdf>; see also infra note 216.

¹¹¹ California, Colorado, Connecticut, Illinois, Indiana, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Oregon, Vermont and District of Columbia.

Oceania Capital Territory (2004), New South Wales (2010),¹¹² Western Australia (2002) in Australia¹¹³

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)

Africa South Africa (2004)

Asia Japan (2004), Turkey (1988)

Europe Belgium (2007), Finland (2003), Germany (1981), Italy (1982), Netherlands (1985), Portugal (2010),¹¹⁴ Romania (1996), Spain (2007), Sweden (1972), United Kingdom (2005)

Latin America & Caribbean The Federal District of Mexico (2009),¹¹⁵ Panama (1975), Uruguay (2009)

North America Most parts of Canada and the United States.

Oceania Australia,¹¹⁶ 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.

¹¹² 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>.

¹¹³ See Parliament of Australia, Research Note on Same-Sex Adoption, available at: <http://www.aph.gov.au/library/pubs/rn/1999-2000/2000rn29.htm>.

¹¹⁴ 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>.

¹¹⁵ See Articles 134-135 of the *Código Civil*, available at: www2.scjn.gob.mx/Leyes/ArchivosLeyes/25996081.doc.

¹¹⁶ 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

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 union, anti-gay laws in Uganda are now weakened due to human rights opposition and the presidential pardon of a gay couple in Malawi. There is an increased awareness of homophobia in the continent with many African media adding to the furore.

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 SOGI.

The popularity of gay rights and advocacy for the social status of same sex relationships have provoked politicians and government 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 killing 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.

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 most friendly and tolerant continent: homosexuality and same gender behaviour dates 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 have 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 mission 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. This finding is publicly 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 is 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 heterosexual".
- 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 homosexuals (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 programs in schools and community dialogue to help create a more supportive environment for same sex union
- 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 relationship, 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) ^{117 118}

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) ¹¹⁹

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!

Botswana

Male/Male Illegal

Female/Female Illegal

PENAL CODE [Chapter 08:01] ¹²⁰, amended by the Penal Code Amendment Act 5, 1998¹²¹.

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 offences 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."

¹¹⁷ Text of the law is available at: <http://lexalgeria.free.fr/penal.htm>.

¹¹⁸ German Bundestag; Printed Paper 16/3597, p. 6, available at: http://www.volkerbeck.de/cms/files/16_3597_minor_interpellation.pdf

¹¹⁹ Relatório sobre os Direitos Humanos – 2005 – Angola, available at : <http://luanda.usembassy.gov/wwwdireitoshumanos05.html>

¹²⁰ Text of the law is available at : <http://www.laws.gov.bw/VOLUME%202/CHAPTER%2008-01%20PENAL%20CODE.pdf>.

¹²¹ 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, p. 272-274

Burundi

Male/Male Illegal

Female/Female Illegal

Law No. 1/05 of 22 April 2009 concerning the revision of the Penal Code ¹²²

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 ¹²³

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.'*¹²⁴

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.'¹²⁵ According to Waaldijk (2011), it is unclear whether this is the official English version, or only a translation of the French version.

Comoros

Male/Male Illegal

Female/Female Illegal

Penal Code of the Federal Islamic Republic of Comoros ¹²⁶

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.¹²⁷

¹²² Text of the law available at: http://www.oag.bi/IMG/rtf/code_penal_burundais-2.rtf.

¹²³ German Bundestag; Printed Paper 16/3597, p. 9. See footnote 5 for the link.

¹²⁴ Available at: www.glapn.org/sodomylaws/world/cameroon/cameroon.htm

¹²⁵ 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.

¹²⁶ Text of the law is available at : <http://www.comores-droit.com/code/penal>.

¹²⁷ German Bundestag; Printed Paper 16/3597, p. 8-9. See footnote 5 for the link.

Law n° 10, 1961 on 'Combating of prostitution, incitement and its encouragement': ¹²⁸

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) ¹²⁹

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."

Ethiopia

Male/Male Illegal

Female/Female Illegal

The Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No. 414/2004 ¹³⁰

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."

¹²⁸ See UNHCHR Report on Egypt, available at:

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

¹²⁹ Text of the law is available at: <http://mail.mu.edu.et/~ethiopia/laws/criminalcode/criminalcodepage.htm>

¹³⁰ Text of the law is available at:

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

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 ¹³¹ ¹³²

Article 144: Unnatural offences

“(1) Any person who—

- (a) has carnal knowledge of any person against the order of nature; or
- (b) has carnal knowledge of an animal; or
- (c) permits any person to have carnal knowledge of him or her against the order of nature;

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

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

- (a) carnal knowledge of the person through the anus or the mouth of the person;
- (b) inserting any object or thing into the vulva or the anus of the person for the purpose of simulating sex; and
- (c) committing any other homosexual act with the person”

Ghana

Male/Male Illegal

Female/Female Legal

Criminal Code, 1960 (Act 29), as amended to 2003 ¹³³

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.”

¹³¹ German Bundestag; Printed Paper 16/3597, p. 10-11. See footnote 5 for the link.

¹³² Text of the code is available at :

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

¹³³ Text of the law is available at : <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=RSDLEGAL&id=44bf823a4>

Guinea

Male/Male Illegal

Female/Female Illegal

Penal Code of 1998 ¹³⁴

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 ¹³⁵

"Section 162. Any person who—

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

(b) has carnal knowledge of an animal; or

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

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

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

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

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

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

(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 per anum between two human males". ¹³⁶

¹³⁴Text of the law available at : <http://www.unhcr.org/refworld/docid/44a3eb9a4.html>.

¹³⁵ See article "THE SEXUAL OFFENSES BILL/LAW GAZETTED", available at <http://www.gaykenya.com>.

¹³⁶ Initial report of Lesotho, CCPR/C/81/Add.14

Liberia

Male/Male Illegal

Female/Female Illegal

Penal Law, Revised Liberian Statutes ¹³⁷

Section 14.74 on 'VOLUNTARY SODOMY' makes it an offence to engage in "deviate sexual intercourse" under circumstances that is not covered in Section 14.72 or 14.73. The offence is classified as a first degree misdemeanor.

Libya

Male/Male Illegal

Female/Female Illegal

Penal Code of 1953 ¹³⁸

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 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 Legal

Penal Code Cap. 7:01 Laws of Malawi ¹³⁹

Section 153 "Unnatural offences"

"Anyone who –

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

¹³⁷ See UNHCR - Liberia: Information on the Treatment of Homosexuals, Persons with Mental Illness, Liberians of American Descent, and Criminal Deportees in Liberia, available at: <http://www.unhcr.org>

¹³⁸ See German Bundestag, Printed Paper 16/3597, p. 16. See footnote 5 for the link.

¹³⁹ Malawi, 2003, Penal Code: Chapter 7:01 of the laws of Malawi. Zomba: Government Printer

(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.¹⁴⁰

Mauritania

Male/Male Illegal

Female/Female Illegal

Penal Code of 1984 ¹⁴¹

"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 ¹⁴²

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 Bill¹⁴³ 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.

¹⁴⁰ 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>

¹⁴¹ Text of the law is available at : <http://www.droit-afrique.com/images/textes/Mauritanie/Mauritanie%20-%20Code%20penal.pdf>.

¹⁴² Text of the law is available at : <http://www.gov.mu/portal/sites/legaldb/files/criminal.pdf>.

¹⁴³ Text of the bill is available at : www.gov.mu/portal/goc/assemblysite/file/bill0607.pdf.

Morocco

Male/Male Illegal

Female/Female Illegal

Penal Code of November 26, 1962 ¹⁴⁴

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."

Mozambique

Male/Male Illegal

Female/Female Illegal

Penal Code of September 16, 1886, as amended in 1954 (Inherited from the Portuguese colonial era) ¹⁴⁵

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 mental hospitals or labor camps, as well as have their freedom or the exercise of their profession restricted..

Original Portuguese text:

ARTIGO 70°

(Medidas de segurança)

São medidas de segurança:

1° - O internamento em manicómio criminal;

2° - O internamento em casa de trabalho ou colónia agrícola;

3° - A liberdade vigiada;

4° - A caução de boa conduta;

5° - A interdição do exercício de profissão;

§ 1° - O internamento em manicómio criminal de delinquentes perigosos será ordenado na decisão que declarar irresponsável e perigoso o delinquente nos termos do § único do artigo 68°.

§ 2° - O internamento em casa de trabalho ou colónia agrícola entende-se por período indeterminado de seis meses a três anos. Este regime considera-se extensivo a quaisquer medidas de internamento, previstas em legislação especial.

§ 3° - A liberdade vigiada será estabelecida pelo prazo de dois a cinco anos e implica o cumprimento das obrigações que sejam impostas por decisão judicial nos termos do artigo 121°.

Na falta de cumprimento das condições de liberdade vigiada poderá ser alterado o seu condicionamento ou substituída a liberdade vigiada por internamento em casa de trabalho ou colónia agrícola por período indeterminado mas não superior, no seu máximo, ao prazo de liberdade vigiada ainda não cumprido.

§ 4° - A caução de boa conduta será prestada por depósito da quantia que o juiz fixar, pelo prazo de dois a cinco anos. Se não puder ser prestada caução, será esta substituída por liberdade vigiada pelo mesmo prazo. A caução será perdida a favor do Cofre Geral dos Tribunais se aquele que a houver prestado tiver comportamento incompatível com as obrigações caucionadas, dentro do prazo que for estabelecido ou se, no mesmo prazo, der causa à aplicação de outra medida de segurança.

§ 5° - A interdição duma profissão, mester, indústria ou comércio priva o condenado de capacidade para o exercício de profissão, mester, indústria, ou comércio, para os quais seja necessária habilitação especial ou autorização oficial. A interdição será aplicada pelo tribunal sempre que haja lugar a condenação em pena de prisão maior ou prisão por mais de seis meses por crimes dolosos cometidos no exercício ou com abuso de profissão, mester, indústria ou comércio, ou com violação grave dos deveres correspondentes. A duração da interdição será fixada na sentença, entre o mínimo de um mês e o máximo de dez anos.

¹⁴⁴ German Bundestag; Printed Paper 16/3597, p. 19. See footnote 5 for the link.

¹⁴⁵ Text of the law is available at :

http://www.portaldogoverno.gov.mz/Legisla/legisSectores/judiciaria/codigo_penal.pdf.

Quando o crime perpetrado for punível com prisão, a duração máxima da interdição é de dois anos. O prazo da interdição conta-se a partir do termo da pena de prisão. O tribunal poderá, decorrido metade do tempo da interdição, e mediante prova convincente da conveniência da cessação da interdição, substituí-la por caução de boa conduta. O exercício de profissão, mester, comércio ou indústria interditos por decisão judicial é punível com prisão até um ano.”

ARTIGO 71º

(Aplicação de medidas de seguranças)

São aplicáveis medidas de segurança:

4º. – Aos que se entreguem habitualmente à pratica de vícios contra a natureza [...].

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.¹⁴⁶

Nigeria

Male/Male Illegal

Female/Female Illegal

Criminal Code Act, Chapter 77, Laws of the Federation of Nigeria 1990 ¹⁴⁷

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.¹⁴⁸

The states which have adopted such laws are:¹⁴⁹

¹⁴⁶ Human Rights Watch (2003), p. 265-266.

¹⁴⁷ Text of the law is available at: <http://www.nigeria-law.org/Criminal%20Code%20Act-Tables.htm>.

¹⁴⁸ 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, 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).

¹⁴⁹ See The Unfizzled Sharia Vector in the Nigerian State, available at: http://www.nigerdeltacongress.com/uarticles/unfizzled_sharia_vector_in_the_n.htm.

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 together¹⁵⁰. 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) ¹⁵¹

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.¹⁵²

Senegal

Male/Male Illegal

Female/Female Illegal

Penal Code of 1965 ¹⁵³

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 ¹⁵⁴

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."

¹⁵⁰Human Rights Watch (2009), [Nigeria: Reject 'Same Gender' Marriage Ban](http://www.hrw.org/en/news/2009/01/26/nigeria-reject-same-gender-marriage-ban). Available at: www.hrw.org/en/news/2009/01/26/nigeria-reject-same-gender-marriage-ban

¹⁵¹ See São Tomé and Príncipe: Oil and tourism threaten to treble rate of HIV infect in five years, available at: <http://www.irinnews.org>.

¹⁵² See <http://www.amnesty.org/es/library/asset/IOR40/024/2008/en/269de167-d107-11dd-984e-fdc7ffcd27a6/ior400242008en.pdf>.

¹⁵³ Text of the law is available at: <http://www.justice.gouv.sn/droit/CODE%20PENAL.PDF>.

¹⁵⁴ See Seychelles section on Sexual Offences Laws, Interpol, available at: <http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/Default.asp>.

Sierra Leone

Male/Male Illegal

Female/Female Legal

Offences against the Person Act 1861 ¹⁵⁵

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) ¹⁵⁶

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.¹⁵⁷

Sudan

Male/Male Illegal

Female/Female Illegal

The Penal Code 1991 (Act No. 8 1991) ¹⁵⁸

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

¹⁵⁵ Thompson, Bankole, 1999, The criminal law of Sierra Leone. Lanham: University Press of America.

¹⁵⁶ Ganzglass, Martin R, 1971, The Penal Code of the Somali Democratic Republic. New Brunswick/New Jersey: Rutgers University Press, p. 456-457.

¹⁵⁷ See Somaliland Penal Code, available at: http://www.somalilandlaw.com/Criminal_Law/body_criminal_law.html.

¹⁵⁸ Text of the law is available at: <http://www.ecoi.net/> (Choose "Sudan" and then "National laws")

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.”¹⁵⁹

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.¹⁶⁰

The Government has plans to include prohibitions of all male homosexual acts and lesbian acts in it's' 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.¹⁶¹

Tanzania

Male/Male Illegal

Female/Female Illegal

Penal Code of 1945 (As amended by the Sexual Offences Special Provisions Act, 1998)^{162 163}

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

¹⁵⁹ See the Penal Code of New Sudan, available at: <http://www.unhcr.org/refworld/docid/469e1f0a2.html>.

¹⁶⁰ See Swaziland section on Sexual Offences Laws, Interpol. See footnote 39 for link.

¹⁶¹ See Swaziland Government warns homosexuals or sodomy are liable to imprisonment, available at: <http://www.africanveil.org/Swaziland.htm>.

¹⁶² Text of the law is available at: http://www.imolin.org/doc/amliid/Tanzania_Penal%20Code_part1.pdf.

¹⁶³ Text of the law is available at: <http://www.parliament.go.tz/Polis/PAMS/Docs/4-1998.pdf>.

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 ¹⁶⁴

Article 88 – “Impudent acts or crimes against the nature with an individual of the same sex are punished with three (03) years imprisonment and 100,000-500,000 franc in fine.”
(Unofficial translation)

Tunisia

Male/Male Illegal

Female/Female Illegal

Penal Code of 1913 (as modified) ¹⁶⁵

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

Uganda

Male/Male Illegal

Female/Female Illegal

The Penal Code Act of 1950 (Chapter 120) (as amended) ¹⁶⁶

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.”

¹⁶⁴ Text of the law is available at: <http://www.togoforum.com/Societe/DS/DROIT/codepen.htm>).

¹⁶⁵ Text of the law is available at: <http://www.jurisitetunisie.com/tunisie/codes/cp/menu.html>.

¹⁶⁶ Text of the law is available at: www.ulii.org/ug/legis/consol_act/pca195087

The Constitution (Amendment) Act, 2005¹⁶⁷

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.¹⁶⁸ 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 ¹⁶⁹

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”

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) ¹⁷⁰

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

¹⁶⁷ Text of the law is available at:

www.ugandaonlinelawlibrary.com/files/constitution/Constitutional_Amendment_Act_2005.pdf

¹⁶⁸ The text of the bill is available at: www.iglhrc.org/binary-data/ATTACHMENT/file/000/000/445-1.pdf.

¹⁶⁹ Text of the law is available at: http://www.hurid.org.zm/downloads/Zambian_Laws/volume7.pdf.

¹⁷⁰ Text of the law is available at: http://www.kubatana.net/docs/legisl/criminal_law_code_050603.pdf.

(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.”

ASIA

Half of Asian countries still criminalize homosexuality

In March 2011, 85 member states of The United Nations delivered a joint statement to the United Nations Human Rights Council recognizing human rights violations based on gender identity and sexual orientation. With so many signatories, the joint statement was a major victory in the LGBT human rights movement, however, out of the 85 member states that signed the statement, only 3 were from Asia.

Asia is the largest and most populous continent in the world spanning 19 time zones, with 60% of the world's population living on just 30% of the world's land mass, over a 1000 different languages and dialects used, every major world religion represented... With 52% of Asian countries still criminalizing homosexuality, all of the above makes coordinating the LGBT movement in Asia extremely difficult.

Even in countries where homosexuality is legal, social and cultural attitudes towards Lesbian, Gay and Transgender people still force many to hide who they truly are and are being stigmatized and discriminated against, creating great concerns to the security and well being of the estimated 320 million LGBT people in Asia. We see this clearly reflected in the UN Joint statement where countries such as the Philippines, South Korea, China, Indonesia, India, Cambodia, Vietnam, and Laos were not signatories to the statement.

However, in recent years there have been some great achievements made in Asia: the reading down of the Penal Code in India, Nepal and Pakistan recognizing the 3rd gender and the Maldives recognizing the value of the Pink dollar and actively promoting gay tourism... these changes give hope to activists across Asia.

ILGA-Asia is trying to redefine its role in the Asian LGBT movement, for we feel that it is important for us as an organization not merely to coordinate a platform for dialogue between activists from across Asia but to actively seek political and social change. ILGA-Asia has launched a campaign to identify the needs of its members and gather information as to how best ILGA-Asia can serve its members. We are currently gathering information and working towards the next ILGA-Asia conference.

We see and recognize the immense work that is ahead of us and are committed to creating great changes for the better in the lives of LGBT people across Asia. But these changes will not happen without individuals or organizations working together. We see the diversity that is Asia and it is this very diversity that we strive to protect and celebrate. We believe strongly that ALL human beings, irrespective of their sexual orientation or gender identity, are entitled to equal dignity and respect and no Human Being should be subject to Violence, Harassment, Discrimination or Abuse solely because of their sexual orientation or gender identity.

We hope that every year ILGA's map on Gay and Lesbian Rights is published, we will see changes in the colours as more and more countries across Asia decriminalize homosexuality, adopt laws that grant equality to the transgender community, create an environment where Transgendered Asian citizens can truly be free to express their gender both pre and post surgery, where gay men and women can live freely, openly and fully, being true to themselves and those they love and where we can live without fear because of who we are.

We hope that Asia as the most diverse continent in the World truly celebrates and embraces its diversity and instill laws that protect our rights as human beings and citizens of Asia.

Poedjiati Tan & Sahran Abeyesundara

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

Afghanistan

Male/Male Illegal

Female/Female Illegal

Penal Code, 1976 ¹⁷¹

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.¹⁷²

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) ¹⁷³

Section 377 "Unnatural Offences"

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

Explanation: Penetration is sufficient to constitute the offence as described in this section."

Bhutan

Male/Male Illegal

Female/Female Illegal

Penal Code 2004 ¹⁷⁴

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."

¹⁷¹ Text of the law is available at: <http://aceproject.org/ero-en/regions/asia/AF/Penal%20Code%20Eng.pdf/view>.

¹⁷² Healey, Dan, 2001, *Homosexual Desire in Revolutionary Russia*. Chicago: Chicago University Press, p. 272.

¹⁷³ Text of the law is available at: http://bdlaws.minlaw.gov.bd/sections_detail.php?id=11§ions_id=3233.

¹⁷⁴ 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 2001¹⁷⁵

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.¹⁷⁶

Section 152(2) of the Code criminalizes sexual acts between men with a penalty of up to 10 years.¹⁷⁷

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, 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.

¹⁷⁵ Text of the law is available at: <http://www.agc.gov.bn/images/LOB/PDF/Cap22.pdf>.

Bahrain – 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.

¹⁷⁶ Text of the law is available at: <http://www.unhcr.org/refworld/pdfid/4d384ae32.pdf>.

¹⁷⁷ 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.¹⁷⁸ 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.¹⁷⁹

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

¹⁷⁸ Text of the law is available at:

<http://www.unhcr.org/refworld/country,,LEGISLATION,TMP,4562d8cf2,3ffbcee24,0.html>.

¹⁷⁹ 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 Shariajudge 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.¹⁸⁰ 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.^{181 182 183 184}

Kuwait

Male/Male Illegal

Female/Female Legal

Penal Code, Law No. 16 of June 2, 1960, as amended in 1976¹⁸⁵

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.

¹⁸⁰ Text of the law is available at: <http://www.ictj.org/static/MENA/Iraq/iraq.penalcode.1969.eng.pdf>.

¹⁸¹ See Death squads targeting gays in Iraq, available at: <http://www.advocate.com/>.

¹⁸² See Iraqi LGBT, available at: <http://iraqilgbt.uk.blogspot.com/>.

¹⁸³ 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>

¹⁸⁴ See They want us exterminated - Murder, Torture, Sexual Orientation and Gender in Iraq, available at: <http://www.hrw.org/node/85050>.

¹⁸⁵ German Bundestag: Printed Paper 16/3597, p. 15. See footnote 5 for the link.

Lebanon

Male/Male Illegal

Female/Female Illegal

Penal Code of 1943 ¹⁸⁶

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) ¹⁸⁷

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.¹⁸⁸ 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.¹⁸⁹

¹⁸⁶ Available at: <http://www.bekhsos.com/web/2010/04/new-publication-provides-analysis-on-article-534/>.

¹⁸⁷ Text of the law is available at: <http://www.agc.gov.my/Akta/Vol.%2012/Act%20574.pdf>.

¹⁸⁸ Convictions for sodomy follow unfair trials, available at: <http://web.amnesty.org/library/Index/ENGASA280281998?open&of=ENG-347>.

¹⁸⁹ 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.¹⁹⁰ 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.¹⁹¹ There have been reports of women being sentenced to a whipping as well for lesbian acts.¹⁹²

Myanmar

Male/Male Illegal

Female/Female Legal

Penal Code, Act 45/1860, Revised Edition¹⁹³

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)¹⁹⁴, 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 1974¹⁹⁵

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."

¹⁹⁰ Text of the law is available at: <http://www.agoffice.gov.mv/pdf/sublawe/PC1.pdf>.

¹⁹¹ Country Reports on Human Rights Practices 2005 - Maldives, US Department of State, available at: <http://www.glaa.org/archive/2006/CountryReports2005.shtml>.

¹⁹² Amnesty International - 2003 Report on Republic of Maldives, available at: <http://web.amnesty.org/library/Index/ENGASA290022003>.

¹⁹³ Text of the law is available at: <http://www.blc-burma.org/html/Myanmar%20Penal%20Code/mpc.html>.

¹⁹⁴ <http://lawcommissionofindia.nic.in/1-50/Report39.pdf>.

¹⁹⁵ Text of the law is available at: <https://www.unodc.org/tldb/showDocument.do?documentUid=6409&country=OMA&language=ENG>.

Homosexual and Lesbian Intercourses
Article 223

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

Pakistan

Male/Male Illegal

Female/Female Legal

Penal Code (Act XLV of 1860) ¹⁹⁶

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) ¹⁹⁷

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.¹⁹⁸

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. ¹⁹⁹

¹⁹⁶ Text of the law is available at: <http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>.

¹⁹⁷ See Qatar section on Sexual Offences Laws, Interpol. See footnote 39 for link.

¹⁹⁸ 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>.

¹⁹⁹ 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 ²⁰⁰

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) ²⁰¹

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")²⁰²

"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 ²⁰³

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

²⁰⁰ Text of the law is available at: http://statutes.agc.gov.sg/non_version/cgi-bin/cgi_retrieve.pl?actno=REVED-224.

²⁰¹ Available at: <http://www.idpsrilanka.lk/html/Children/Domestic/1883%20No%20%20Penal%20code.pdf>.

²⁰² See Sri Lanka section on Sexual Offences Laws, Interpol. See footnote 39 for link.

²⁰³ German Bundestag. Printed Paper 16/3597, p. 27. See footnote 5 for the link.

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.

Turkmenistan

Male/Male Illegal

Female/Female Legal

Criminal Code of 1997 (Effective January 1, 1998) ²⁰⁴

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.²⁰⁵ 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.²⁰⁶ 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."²⁰⁷ Sofer, on the other hand, means that the article can be translated differently; "Whoever commits rape on a female or sodomy with a male".²⁰⁸ 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,

²⁰⁴ Criminal Code of the Republic of Turkmenistan.

²⁰⁵ See United Arab Emirates section on Sexual Offences Laws, Interpol. See footnote 39 for link.

²⁰⁶ Schmitt, Arno and Sofer, Jehoeda, 1992, *Sexuality and Eroticism Among Males in Moslem Societies*. Binghamton: Harrington Park Press, p. 144.

²⁰⁷ German Bundestag; Printed Paper 16/3597, p. 29. See footnote 5 for the link.

²⁰⁸ Schmitt, Arno and Sofer, Jehoeda, 1992, *Sexuality and Eroticism Among Males in Moslem Societies*. Binghamton: Harrington Park Press, p. 144.

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.²⁰⁹

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.²¹⁰

Uzbekistan

Male/Male Illegal

Female/Female Legal

Criminal Code of 1994 ²¹¹

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 ²¹²

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."

²⁰⁹ Love, hate and the law: decriminalizing homosexuality.

²¹⁰ Schmitt, Arno and Sofer, Jehoeda, 1992, *Sexuality and Eroticism Among Males in Moslem Societies*. Binghamton: Harrington Park Press, p. 145.

²¹¹ Text of the law is available at: <http://www.legislationline.org/documents/id/8931>.

²¹² German Bundestag: Printed Paper 16/3597, p. 31. See footnote 5 for the link.

LATIN AMERICA AND THE CARIBBEAN

Regarding actions in favor of the rights of the LGBTI community

The principles of "equality" and "no discrimination" have been recognized and enshrined in the International Human Rights Treaties. All of them express the commitment of States towards the equal citizenship of inhabitants, with the abolition of all caste systems, the rejection of limited, disabled, or second category citizenship. International Conventions warn that certain criteria of differentiation, certain circumstances in particular (no matter how objective, such as race or sexual orientation), are an illegitimate source to justify a different treatment in the enjoyment and appreciation of rights. Furthermore, they are arbitrary and prejudicial, involving inferiority bias against the principle of equal dignity of people.

Sexual orientation and gender identity and expression, are one of the categories censored by the Conventions, the enforcement of which, as authorities have expressed very clearly, is "undoubtedly" protected by the antidiscrimination principle. Just as a state cannot decide that the right to health is guaranteed only to members of one race or religion, it cannot decide it to be only for people of a particular sexual orientation, gender identity or expression.

A democratic society with a particular aspiration to equality cannot penalize (understanding this concept as the denial of a right) a group because of its differences with traditional models. Equality means above all things respect within differences; it is at that moment that this principle comes to life. One of the challenges posed by the rights of LGBTI people is that these are realized in our lives, that the contents have clear legal and social effects, that they are respectful of diversity, plurality and sexuality without manipulating physical realities, desires and emotions.

The lack of political will to enact new legislations guaranteeing full citizenship, the refusal to repeal repressive laws and thus coincide with the new paradigms that govern the realization of the universality of human rights, the homophobia of the church, conservative fundamentalism, the absence of public debate and public policies, pathological views, the criminalization of sexual orientation and gender identity, legal punitive practices, the absence of anti-discrimination laws, the practices of hate, physical and psychological violence, death and bullying among many others, are self-sustaining axes of lesbophobia, transphobia, homophobia and biphobia, which limit and condition the impacts of our struggle for freedom and equality in Latin America and the Caribbean.

The refusal to recognize our fundamental rights is depriving us of access to rights, benefits and basic protection, putting us in an obvious disadvantage in relation to heterosexual persons, and in a serious state of moral and material insecurity. The full recognition of our ability to access an important set of rights and protections has an enormous impact on our relationships, our lives and our security, which means that it can not validly be restricted, based on sexual orientation or gender identity and its expressions.

What has been mentioned so far has gotten thousands of lesbian, trans, gay, bisexual, intersex people involved to generate changes and transformations in international politics, and at the same time, in their own countries, attempting to overcome discrimination by the development of multiple actions located in different spaces. One of these actions has been the relationship with international human rights bodies and mechanisms.

Following is a summary of such actions, developed by ILGA-LAC within these bodies and mechanisms.

Resolutions and declarations by international institutions that promote the eradication of stigma and discrimination against LGBTI people in Latin America and the Caribbean

In August 2007, during the 9th Meeting of Senior Officials in Human Rights of the MERCOSUR, in Montevideo

(Uruguay), a Declaration was issued regarding the urgent need to design clear policies in order to eradicate discrimination based on sexual orientation and expression of gender identity in all member and associate countries. The statement contained the need to "create laws to ensure that LGBT people and their families have the same protection and rights that these States give to heterosexual families, through the creation of legal institutions like registration of cohabitation, concubinage, civil unions or equal access to marriage for same-sex couples."

In June 2008, the Organization of American States (OAS), adopted by consensus a resolution entitled "Human Rights, Sexual Orientation and Gender Identity", AG / RES-2435 (XXXVIII-O/08). For the first time, the words sexual orientation and gender identity appeared in a document agreed by 34 countries of the Americas. The resolution recognizes the serious situation of human rights violations faced by people due to their sexual orientation and gender identity. This document, unprecedented in the region, was a product of consensus, which included English-speaking Caribbean countries, who still have laws criminalizing sexual relations between adults of the same sex. The resolution stresses the importance of the adoption of the Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity, and reaffirms the fundamental principles of non-discrimination in international law. The participating states were also able to organize a special session', with the aim of discussing the application of the principles and rules" of the Inter-American System regarding abuses based on sexual orientation and gender identity.

In December 2008, representing a powerful victory for the principles of the Universal Declaration of Human Rights, 66 countries from all continents supported a statement confirming that international human rights include sexual orientation and gender identity. ILGA was part of the delegation of activists from around the world supporting the declaration, making a statement against the criminalization of homosexuality and condemning human rights violations that are based on sexual and gender identity to be repeated globally in all corners of the world. The declaration, presented and read by Argentina, emphasizes that "everyone has the right to enjoy human rights without any distinction", and indicates that "the principle of non-discrimination requires that human rights apply equally to every human, regardless of sexual orientation and gender identity." It states that "violence, harassment, discrimination, exclusion, stigma and prejudice are issues that are currently directed against people around the world due to their sexual orientation or gender identity."

In May 2009, the United Nations Committee on Economic, Social and Cultural Rights adopted a General Comment on Non-Discrimination. The treaties' bodies as well as the Committee have a mandate to monitor compliance of states to their international obligations under international treaties such as, in this case, the International Covenant on Economic, Social and Cultural Rights. The General Comments are the Committee's interpretation of the provisions of the Covenant, reflecting the reasons for prohibiting discrimination and the scope of the obligations of the states. Thus, the General comment on non-discrimination E/C.12/GC/20, states, among others:

- (1) that "any other status," as recognized in Article 2 (2) of the Covenant, includes sexual orientation. This is a simple, strong and clear statement of the legal principle that non-discrimination of the International Covenant on Economic, Social and Cultural Rights prohibits discrimination based on sexual orientation. The General Comment goes on stating that: "the participating states must ensure that a person's sexual orientation is not an obstacle to the realization of the rights of the Covenant;"
- (2) that "gender identity" is also recognized as one of the prohibited grounds for discrimination, recognizing that "for example, transgender, transsexual or intersex people often face grave human rights violations, such as harassment in schools or in the workplace ;"
- (3) the recognition of the Yogyakarta Principles whenever the General Comment refers to the definitions of "sexual orientation" and "gender identity" contained in these principles, this being the first explicit recognition of the Yogyakarta Principles by an organ of the UN Treaty;
- (4) the principles of multiple and systemic discrimination, recognizing that we are entitled to protection from direct and indirect discrimination in relation to all aspects of our identity.

In June 2009, during the 4th Plenary Session of the OAS (Organization of American States), resolution AG / RES. 2504 (XXXIX-O/09) "Human Rights, Sexual Orientation and Gender Identity" was adopted. Its text once again confirms what was established by Resolution AG/RES.2435 (XXX VII IO/08) and refers to the Declaration on Sexual Orientation and Gender Identity, presented at the UN General Assembly on December 18, 2008. The resolution not only condemns acts of violence and human rights violations perpetrated against individuals based on sexual orientation and gender identity, but it also expresses concern regarding the violence against human rights defenders working on these types of violations, urging states to ensure their protection and urging the Inter-American Commission on Human Rights and the Inter-American System to carry out actions on this issue. Finally, it reiterates the request that the Committee on Legal Affairs and Political issues include "sexual orientation and gender identity" in its agenda for its next regular session.

A year later, in June 2010, the General Assembly of the OAS issued the statement "Human rights, sexual orientation and gender identity," in which it reiterates the freedom and equal rights of all people, without distinction, thus, with regards to the violence experienced by LGBTI community, deciding:

(1) To condemn violence and human rights violations motivated by the sexual orientation of individuals. Furthermore, it urges states to investigate these actions, as to ensure that those responsible carry the appropriate legal consequences;

(2) To urge states to take action regarding the violence affecting the LGBTI community, ensuring its access to justice. Moreover, it suggests that states should consider means to carry out these actions, by particularly protecting those who are activists;

(3) To request the Inter-American Commission of Human Rights to continue to give due attention to the issue, and to consider the possibility of a hemisphere-wide thematic study on it.

(4) To instruct the Committee on Juridical and Political Affairs (CJPA) to include in its agenda, before the 41st regular session of the General Assembly, the theme "Human rights, sexual orientation and gender identity." It also requests the Permanent Council to report on the implementation of the resolution.

In March 2011 the Human Rights Council of the United Nations issued a Joint Declaration which calls on States to put an end to the violence, criminal penalties and the violations of human rights of lesbian, trans, gay, bisexual and intersex people. They emphasized the view that these important topics related to the realization of human rights should be addressed.

The Declaration was signed by 85 states worldwide. Latin American and Caribbean countries which signed this document are: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Uruguay and Venezuela. The absence of Peru and of the majority of the Caribbean countries indicates that the advocacy of international organizations should pay special attention to engaging the decision making networks in these territories. With this in mind, local and international activists, as well as decision-makers who have spoken in favor of the Declaration, should build alliances which will build citizenship-exercising spaces where this possibility has been denied.

There are important changes and advances in the recognition of the right to equality and non-discrimination against LGBTI people in Latin America and the Caribbean, as throughout the world, that were unthinkable a few years ago. However, in most cases these advances do not have the institutionality necessary to remain effective. This fact is a fundamental concern to significantly advance in the eradication of stigma and discrimination.

However, everything indicates that the access to the exercise of rights not only depends on the actions that take place in the institutions and mechanisms that have been described. We should stress certain factors that constitute strategies and approaches that underlie affirmative actions for recognition of LGBTI civil rights.

The continuing struggle for visibility and radical exercise of power: the emphasis of ILGA LAC

Political action promoting visibility exposes the conflictive interaction between on one side official institutions and on the other side groups of people considered to lack legitimacy, because of their perceived inconsistency with the formal molds that these institutions want these groups to fit in. This conflict in turn, emphasizes the importance of the intervention of normative legislation facilitating changes at different levels. The State Sponsored Homophobia Report refers only to one level. Therefore, we want to emphasize the existence of a whole tapestry of actions that precede policy changes such as those mentioned above. Also, this emphasizes the importance of the kind of activism that ILGA-LAC promotes, something that is corroborated by the information contained in the Report, and should be stressed and often repeated.

The demand and struggle for the right to have rights has the effect of unveiling the existence of oppression and its impact. The moment complaints and denunciations are filed, there is a possibility of transforming culture. Language always creates potential for action. Therefore, the language of activists, committed to action aimed at transformation, actually aspires to the transformation of present and future. Silence, however, reproduces oppression, and by not questioning, it only strengthens and reinforces the impact of oppression. The appearance of people and groups speaking out, which are organized in various communities in action, creates the potential of moving away from the hetero-normative space.

The multi-cultural tapestry of the Americas has various regions, each of them affected by discrimination in different ways. Among these, the situation in the Caribbean and Honduras in Central America are areas of special attention for ILGA-LAC, since the decision to do so at the 5th Regional Conference in Curitiba - Brazil. The radical activist strategy used by ILGA-LAC is to expose the discriminating institutions in situations of extreme violence. Its visibility becomes a double-edged sword, as they both contribute to the liberation of the community, but also put the lives of activists in that community in danger. This has the tendency of radicalizing the actions of those activists who, in service of a greater good, do not hesitate to risk their own lives.

In the Caribbean, the legacy of the colonial past is reflected in the existence of laws that propose a logic of subordination of certain groups of people based on the premise of patriarchal hegemony. This translates into the existence of a socio-cultural context of violence against the LTTTGBI community. Nevertheless this same community confronts this violence by choosing to be clearly visible and recognizable on the streets, thus creating new forms of self-empowerment. This is how, in 2010, the first walk for sexual diversity took place in Jamaica. As activists from different countries of the territory participate in international meetings, they have managed to engage the involvement of the international community in the cultural dynamics of violence observed in their region. These are expressed in acts of violence both by the formal criminalization and penalization of the so called practice of sodomy, and by the societal normative regulation and sanctioning of morality and decency. This Report describes this criminalization, which in some cases reaches unbelievable levels. In Guyana, for example, the act of sodomy is punishable by imprisonment for life.

The reality of the Americas is also very complex, as in the case of the violent interruption of the Honduran democracy, which is a major concern for ILGA-LAC activism. More than thirty-one people of the LGBTI community – amongst them many activists – who were promoting LGBTI rights and the acceptance of sexual diversity, have been killed in the period after the overthrow of the government of Manuel Zelaya in 2009. Their unjustifiable deaths are evidence of an activist resolve to face the horror of dictatorship in favor of freedom. Their deaths reaffirm that LGBTI activism cannot and should not detach from libertarian ideals. It is hard to imagine that activists for the rights of lesbian, trans, gay, bisexual, intersex, can escape involvement and engagement in situations where the autonomy and freedom of a people are jeopardized, as happens with the fall of democratic systems. Fighting for the rights of LGBTI people is also fighting for better democratic models. The death of these people is, certainly, proof of this close relationship. In this same sense, the formation of alliances is inescapable in the recovery process and exercise of democratic citizenship. Building a non-discriminatory model of social relationships depends on the coming together of various actions, with an emphasis of curbing discriminatory practices, within these territories. ILGA-LAC agrees that killing and deprivation of liberty on a scale of political action merit the highest priority.

ILGA-LAC continues to look with anger at the acts of violence that every day end with trans people's lives.

According to data from the TvT Research Project (2010) "Results of Monitoring Trans Murder: (Update February 2011)," 424 murders of trans people have taken place on the continent between 2008 and 2010. Activists know that these data do not reflect the actual circumstances of violence that affect trans people. Not all cases are reported, but a majority of them are part of the crime reports. Furthermore, there is no trial or punishment for the people who have been identified as agents of transphobic violence. It is important to state that it is this continent where the highest number of murders of trans people in the world takes place. Therefore, we emphasize that the legal institutions, just as is the case in the Caribbean, particularly affect the lives of transvestites. Nevertheless, the outcry comes from different and diverse groups of trans people who fight for their rights, although this still does not impact significantly on reducing the violence that affects them.

In the same way, in 2010, ILGA-LAC identified three cases of death of lesbians. Here the same dynamic is operating as with trans people. The violence affects them by making them invisible and disappear from the scene, complicating a priori the creation of spaces for self-empowerment. Only a few weeks ago the death of a lesbian was reported in Chile. Her death was stark metaphoric example of lesbian exclusion. She was killed defending her partner from a group of gangsters. The media initially stated the victim's sexual orientation, however, all subsequent news erased her sexual orientation and the one of the partner she defended. As it operates with trans people, her murder was turned into just another one on a list within the context of violence – within the marginal classes of society. No data exists; rather they are hidden and obscured in the middle of domestic violence, femicide and rape assigned to heterosexual relationships. As data does not exist, the need to develop policies to eradicate discrimination are not being developed either. ILGA-LAC and a lesbian activist group belonging to it are finishing a study of lesbian and bisexual health-care, that is organized to address the violation of their rights. The cooperation, also agreed on in Curitiba, is just one of the actions being carried out to change the perspectives of invisibility of lesbian and bisexual women. "What is not there does not exist; what does not exist has no rights." That is a recurring motto in the vision of ILGA-LAC.

Major Latin American LGBTI advocacy

Finally, it seems important to use this space to promote actions and themes which aim to modify the scenarios of discrimination. We know these strategies help to push back the hetero-normative vision that is still expressed in the legal foundations of Latin America and the Caribbean. Although ILGA LAC promotes and carries out specific actions against lesbophobia, transphobia, homophobia, bifobia in general, we believe that there are some priorities that are worth underlining:

- (1) The actions to support the Caribbean region. It is necessary for the world that those laws that criminalize sodomy are repealed, and those relating to morality and good manners analyzed and reconsidered, and move away from heterosexual normativism;
- (2) The actions in support of Honduras. It is unacceptable that people are being killed and that the international civil community does not come up with standard intervention strategies. More activists and other people may very well still be killed in that country. Support for Honduras means support for more freedom throughout Latin America and the Caribbean;
- (3) The struggle for trans depathologization must become a priority. We should persist in reporting and denouncing institutions and practices, promoting therapies to cure from lesbianism, transvestism, homosexuality and bisexuality;
- (4) The struggle to enact anti-discrimination laws that counter the legal landscape presented in this report. This will radicalize the struggle for institutional acceptance of declarations, conventions and laws in each of the countries that make up Latin America and the Caribbean.
- (5) To encourage the creation of lesbian networks, that minimize the impacts of underrepresentation in LGBTI organizations, in order to promote their own proposals and projects of cultural, political and social intervention.
- (6) The struggle for a secular state in Latin America

State lesbophobia, transphobia, homophobia, biphobia is not only expressed in the content of the

discriminatory laws which this report records, but also by the way a lack of will to create change, be it in the form of declarations of good intent to the actual putting into practice of these declarations. It requires institutions, financial resources and involvement of civil society in decision-making, among others, to really build a world for all people. On this road, the struggle against sexism, racism, neoliberalism - among several oppressive ideologies - is part of the struggle of ILGA-LAC - because a radical exercise of citizenship – is one that enables the expression of diverse identities in every area of our continent.

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) ²¹³

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 154 ²¹⁴

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."

²¹³ Text of the law is available at: <http://www.laws.gov.ag/acts/1995/a1995-9.pdf>.

²¹⁴ Text of the law is available at: <http://www.caricomlaw.org/docs/Sexual%20Offences.pdf>.

Belize

Male/Male Illegal

Female/Female Legal

Criminal Code [CAP. 101] (REVISED EDITION 2003) ²¹⁵

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 ²¹⁶

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."

²¹⁵ Text of the law is available at: <http://www.belizelaw.org/lawadmin/PDF%20files/cap101.pdf>.

²¹⁶ 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 ²¹⁷

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 ²¹⁸

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 ²¹⁹

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

²¹⁷ See LGBT Shadow Grenada, available at:

http://www2.ohchr.org/english/bodies/hrc/docs/ngos/LGBTShadow_Grenada_annex.pdf.

²¹⁸ Text of the law is available at: http://www.oas.org/juridico/MLA/en/guy/en_guy-int-text-cl_act.pdf.

²¹⁹ 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 ²²⁰

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) ²²¹

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.

²²⁰ Available at: <http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaStKittsNevis.pdf>.

²²¹ 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 ²²²

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 ²²³

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 per anum by a male person with a male person or by a male person with a female person."

Section 16. "(1) A person who commits an act of serious indecency on or towards another is guilty of an offence and is liable on conviction to imprisonment—

- (a) if committed on or towards a minor under sixteen years of age for ten years for a first offence and to imprisonment for fifteen years for a subsequent offence;
 - (b) if committed on or towards a person sixteen years of age or more for five years.
- (2) Subsection (1) does not apply to an act of serious indecency committed in private between—
- (a) a husband and his wife; or
 - (b) a male person and a female person each of whom is sixteen years of age or more, both of whom consent to the commission of the act.
- (3) An act of "serious indecency" is an act, other than sexual intercourse (whether natural or unnatural), by a person involving the use of the genital organ for the purpose of arousing or gratifying sexual desire."

²²² Criminal Code of Saint Vincent and the Grenadines.

²²³ 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 ²²⁴

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 ²²⁵

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.”

²²⁴ Text of the law is available at: http://www.pacii.org/ck/legis/num_act/ca196982/.

²²⁵ Text of the law is available at: http://www.pacii.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 ^{226 227}

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 ²²⁸

§ 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" ".

²²⁶ Text of the law available at: http://www.vanuatu.usp.ac.fj/library/Paclaw/Nauru/Indices/Nauru_laws.html.

²²⁷ Criminal Code 1899, available at : http://ozcase.library.qut.edu.au/ghlc/documents/CrimCode1899_63Vic_9.pdf.

²²⁸ 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 ²²⁹

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 ²³⁰

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."

²²⁹ Text of the law is available at : http://www.paclii.org/pg/legis/consol_act/cca1974115/.

²³⁰ Text of the ordinance is available at : http://www.paclii.org/ws/legis/consol_act/co1961135/.

Solomon Islands

Male/Male Illegal

Female/Female Illegal

Penal Code (Revised Edition 1996)²³¹

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 ²³²

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

²³¹ Text of the law is available at: http://www.pacii.org/sb/legis/consol_act/pc66/.

²³² Text of the law is available at: http://www.pacii.org/to/legis/consol_act/co136/.

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.)

Tuvalu

Male/Male Illegal

Female/Female Legal

Laws of Tuvalu, Penal Code [Cap 8] Revised Edition 1978 ²³³

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."

²³³ Text of the law is available at: <http://www.tuvalu-legislation.tv/tuvalu/DATA/PRIN/1990-008/PenalCode.pdf>.

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Free digital versions of the report in Word format and maps on Gay and Lesbian rights in the world, in Africa, Asia and Latin America and the Caribbean are available for groups to print in English, French, Portuguese and Spanish.

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