

## **The Legalities of Love: LGBTI Legislation around the World**

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### **Abstract**

*This paper provides an overview of laws that impact members of the lesbian, gay, bisexual, queer, transgender, and intersex (LGBTI) community throughout the world. Emphasis is placed on the countries of Uganda, Russia, and the United States to illustrate discrimination and human rights issues globally. The paper concludes with an international overview of the treatment of members of the LGBTI community, using data from a recent United Nations High Commissioner for Human Rights report.*

Lesbian, gay, bisexual, queer, transgender, and intersex (LGBTI) are difficult to fit in one acceptable acronym and even harder to protect. Throughout the world, countries use different laws to either discriminate against or to protect members of the LGBT (lesbian, gay, bisexual, and transgender) community. From the fight for marriage equality in the United States to laws banning homosexuality, countries have various legal forms of discrimination against sexual minorities. In countries such as the U.S. different areas have different legislation. Despite these challenges and differences, reports from entities such as the United Nations High Commissioner for Human Rights provide recommended changes to help promote and protect the human rights of LGBTI individuals. To better understand this struggle, this paper outlines legal discrimination in Uganda, Russia, and the United States before providing an international overview and recommendations from the U.N.

## Uganda

Homosexuality is criminalized under various Ugandan laws. Section 145 of Uganda's Penal Code criminalizes consensual sex between same sex adults (Amnesty International, 2014a). Apparently members of the Ugandan government do not think this is enough, as the Anti-Homosexuality Act (AHA) was proposed in 2009. This bill called for the execution of those who had sex with someone of the same sex (Encarnacion, 2014). In addition, the proposed bill stipulated that friends and family members who failed to report gay Ugandans to the police faced a maximum sentence of seven years imprisonment. While this bill did not pass, an amended version was signed into law on February 24, 2014, and it went into effect on March 10 (Amnesty International, 2014a). While the new version of the law removed the death penalty clause, those found guilty of "aggravated homosexuality" can face a life sentence. This offense includes behaviors such as having sex with a minor, family member, or person with a disability and initiating any form of sex if one is HIV positive (Cheney, 2012). "Promoting homosexuality" and "aiding and abetting" each have a maximum sentence of seven years and are not clearly defined offenses (Amnesty International, 2014a). Conducting a same-sex wedding ceremony is also punishable with a seven year sentence (Encarnacion, 2014). While the law specifically mentions homosexual acts, the subtext clearly indicates that being homosexual in and of itself should be criminalized (Cheney, 2012).

Uganda's Constitutional Court declared the AHA null and void on August 1, 2014, due to the fact that there was no quorum when the legislation was passed. The government has filed an appeal, which is expected to go all the way to the nation's Supreme Court. The law did some major harm during the few months that it was active. It led to increased homophobia throughout the nation, which in turn led families to exile their gay relatives. The general public also felt a need to turn in gay citizens so that they could be "rehabilitated" and become heterosexual. This increased homophobia also led to increased

homelessness, increased unemployment, and decreased access to medical care among the LGBTI community (Amnesty International, 2014a).

Those who were imprisoned for violating the laws set forth by the Act were subjected to inhumane treatment in prison, as well as arbitrary arrest. Transgender individuals were placed in cells based on their legal gender, which was the gender listed on official documents – not the gender they identified as (Beaumont, 2014; Amnesty International, 2014a). HIV positive inmates were denied access to their medication and trans women were raped. The police and inmates beat those who were arrested for violating the AHA. The transgender individuals who were arrested were stripped naked and paraded in front of the media, which is an obvious violation of the right to privacy. Possibly the most heinous treatment endured by those imprisoned as a result of the AHA is the forced anal examinations used to prove that the men imprisoned were “actually homosexual.” The United Nations Committee against Torture has condemned these so-called examinations. The United Nations Working Group on Arbitrary Detention stated that detaining someone on charges related to sexual orientation or gender identity violates international law and that the arbitrary arrest of people not breaking any laws is a violation of the freedom for arbitrary arrest. The Constitution of Uganda and international treaties that Uganda is a state party to both protect people against arbitrary arrest. The Working Group also pointed out that the use of arrests to harass protestors and holding people without charge for over 48 hours violate the Ugandan Constitution (Amnesty International, 2014a).

Despite the fact that several countries, including the United States, cut aid to Uganda after the passage of the Anti-Homosexuality Act, a new bill to replace the act is already garnering attention – and these ideas are spreading. The Prohibition of Promotion of Unnatural Sexual Practices Bill reportedly will clarify what constitutes the promotion and funding of “unnatural acts.” In addition, the bill punishes the funding of LGBT human rights groups. Only time will tell what impact this bill and the Ugandan government’s appeal of the nullification of the Anti-Homosexuality Act will have on Ugandan citizens

and the adoption of legislation in other nations (BBC News, 2014). The president of Nigeria also recently signed an anti-LGBT bill. While sodomy was already punishable by jail time, the new law bans same sex marriage and “amorous relationships” as well as membership of gay rights groups. Those who enter same sex marriages and civil unions are subject to 14 years in jail, while membership in LGBT organizations is punished with a 10-year jail sentence. While the laws and the causes of homophobia in the two countries are similar, Nigeria (unlike Uganda) is not economically dependent on other nations due to its oil industry (Onuah, 2014). Since the withdrawal of aid to Uganda did not stop the nation from preparing a new anti-LGBTI bill, it is highly unlikely that Nigeria will be concerned about other countries’ reactions to the law. Interestingly enough, Nigeria’s bill has not been criticized like the AHA (Encarnacion, 2014).

Cheney (2012) presents the idea that homophobia in Uganda classifies as a moral panic over sexuality and that this panic stems from the neocolonial desires of the American religious conservatives to spread the American culture wars. Diverse sexual practices in Africa used to be seen as resisting colonization, but the manipulated narrative of tradition suggests the Africa had heterosexual normalcy until people from the West brought perverted desires to the continent. Realistically speaking, homophobia in Africa generally stems from the pressure to have children and maintain the conventional image of marriage, not from concerns about masculinity and femininity, moral standards, causes of sexual preference, or mental health as it does in Western nations. Women in Africa perceive the fact that homosexual men are not impregnating them as a threat to their own fertility (Cheney, 2012).

## **Russia**

On June 29, 2013, President Vladimir Putin approved a law banning “propaganda of nontraditional sexual relations among minors” (Tetrault-Farber, 2014). Within the first year of the law being in place, only four people were actually fined, but the law has done much more damage than that.

Simply admitting to being gay in public is considered a “harmful act” under the law, which fails to actually define what “propaganda of homosexuality” is (Amnesty International, 2014b). The law bans the promotion of “sodomy, lesbianism, bisexuality, and transgenderism” and states that people who openly admit to being gay have to shed a negative light on homosexuality in the process (Encarnacion, 2014). LGBT organizations have to put “18+” age restriction images on their promotional materials in addition to ensuring that no minors participate in any of their events in order to avoid being fined (Fortune, 2014). These events are also frequently impeded by venue cancellations and protests by those who support the law.

During the days of the U.S.S.R., homosexuality was prohibited and speaking about sexuality at all was considered taboo (Amnesty International, 2014b). This historical taboo, combined with the new law, has created an unsafe environment for members of the LGBTI community. Multiple assaults with rocks, pellet guns, rotten eggs, etc. have occurred since the law was passed and homophobia in general is on the rise (Tetrault-Farber, 2014). Teachers and college professors have been fired or investigated for their sexual orientation while activists and gay club owners have come to America to seek asylum. In St. Petersburg, a 29-year-old dance instructor was found dead in a running car with her throat slit (Fortune, 2014). The young woman was openly lesbian and gave tango lessons to same-sex couples. A few days prior to her death, she received threats and hateful comments in response to a picture of a same-sex couple dancing that she posted on social media. While the police rather quickly ruled her death a suicide, the circumstances suggest otherwise. Cases such as this show that the propaganda law allows homophobia to run rampant and that attacks, and even murders, against members of the LGBTI community often go unpunished (Fortune, 2014). This unsafe environment has forced some people to go back into the closet, but many others are willing to risk their safety to show that the propaganda law cannot crush their spirits.

## United States

No discussion of LGBTI legislation would be complete without examining the variety of laws that exist in the United States. Same-sex marriage is legal in 35 (and counting) states and Washington, D.C. (Freedom to Marry, 2014). Judges in 10 additional states have ruled in favor of marriage equality and 18 states prohibit discrimination based on sexual orientation and gender identity. In June 2013, the U.S. Supreme Court struck down the Defense of Marriage Act (DOMA) in *U.S. v. Windsor*. DOMA was passed in 1996 and prevented same-sex marriages from being recognized by the federal government. The Court also struck down California's ban on same-sex marriage by invalidating Proposition 8. Ten years prior to *Windsor*, the Court struck down laws that illegalized sodomy in the case of *Lawrence v. Texas* (Encarnacion, 2014).

While marriage equality and other cases involving equal rights for LGBT couples have generally fared well at the Supreme Court, some states are passing laws that are not as positive. Michigan's state House of Representatives passed the Religious Freedom and Restoration Act (RFRA). This act would allow EMTs to refuse emergency treatment to LGBT people on religious grounds. It would also allow Catholic hospitals to refuse pregnancy termination in the case of miscarriage due to religious grounds. Another bill that allows adoption agencies to refuse services to same-sex coupled based on religious grounds passed the state's House of Representatives. The state currently does not allow joint adoption of a child by same-sex couples. Texas wants to put an RFRA in its state constitution. This would be especially dangerous because religion could be used as a defense against civil rights law violations. Lawmakers in South Carolina introduced legislation to allow any clerk's office employee to deny gay and lesbian marriage licenses due to their religious beliefs. These RFRA's are based off the Supreme Court ruling in what is known as the *Hobby Lobby* case. The Court ruled that companies with strong religious ties do not have to cover birth control on their health insurance policies if doing so violates the beliefs of the religion associated with the company (Margolin, 2014). It will be interesting to see what kinds of

state and federal legislation regarding the LGBTI community are passed in the wake of the midterm elections.

Within the developed world, other countries are passing various forms of legislation that positively impact the LGBTI community. In 2001, the Netherlands became the first country to legalize same-sex marriage. In 2005, Spain became the first country with a Catholic majority to legalize same-sex marriage. The next year, South Africa became the first country in the developing world to legalize marriage equality. In 2008, Panama decriminalized sodomy, making homosexuality completely decriminalized in Latin America. The Mothers of the Disappeared, an NGO devoted to holding the government accountable for forced disappearances, ran a successful letter writing campaign that led to the legalization of same-sex marriage in Argentina in 2010. The letters advocated for marriage equality and the abolishment of civil unions that made gays second-class citizens. Marriage equality came to Brazil in 2013 and Italy and Greece are currently the only West European democracies that do not allow same-sex marriages or civil unions. In general, wealthier, secular nations are embracing gay rights, while poorer and more religious nations are becoming more homophobic. The strong judiciary associated with a successful democracy is also crucial to gaining marriage rights. Democracy also provides the best environment for people to openly and honestly be gay (Encarnacion, 2014). These factors combined explain why marriage equality is becoming more common in Western nations while discriminatory laws are being passed in countries in Africa and Asia.

### **United Nations High Commissioner for Human Rights Report**

In the 1994 case of *Toonen v. Australia*, the Human Rights Committee (HRC) held that state parties to the International Covenant on Civil and Political Rights have to protect against discrimination based on sexual orientation. A 2011 High Commissioner for Human Rights' report on discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender

identity held that the decision in this case is an applicable international standard used to guide decisions (United Nations High Commissioner for Human Rights, 2011).

The report set forth obligations derived from Covenants and the Universal Declaration of Human Rights. The first of these obligations is to protect the life, liberty, and security of all people irrespective of their sexual orientation or gender identity. The United Nations High Commission for Refugees states that sexual orientation and gender identity (referred to as “SOGI” by the United Nations and other international agencies) fall under the enumerated ground of particular social group, thus these identities can be used as grounds for asylum (United Nations High Commissioner for Human Rights, 2011; Wilkinson & Langlois, 2014). The second obligation is to prevent torture and other cruel, inhumane, or degrading treatments on the grounds of SOGI. The third obligation is to protect the right to privacy and to protect against arbitrary detention based on SOGI. The next obligation is to protect individuals from discrimination due to their sexual orientation and gender identity and the final obligation is to protect the rights to freedom of expression, association, and assembly in a non-discriminatory manner (United Nations High Commissioner for Human Rights, 2011). Many of these obligations have not been met by actions by nations previously discussed, such as the use of forced anal examination in Uganda and the propaganda law in Russia.

The number of bias-motivated incidents against lesbians, gays, and bisexuals is second only to the number of racist incidents and is the same as the number of incidents against religious minorities. Homophobic hate crimes are highly cruel and brutal. These hate crimes consist of beatings, torture, mutilation, sexual assault, castration, and honor killings. Lesbians and transgender women are at a particular risk for discriminatory violence due to gender equality. From 2008 to 2011, 680 transgender people were murdered in 50 countries. Male to female transgender prisoners were physically and sexually abused within the general prison population. They were beaten on their breasts and cheekbones in order to burst their implants and release toxins into their bodies. Lesbians face an



increased risk of becoming victims of rape due to prejudices and myths, such as the idea that a lesbian will become heterosexual after a man rapes her. Lesbians and bisexual women were more likely to be assaulted in private settings, but gay and bisexual men were more likely to be attacked by a group of young men who they do not know (United Nations High Commissioner for Human Rights, 2011).

Seventy-six countries have laws that criminalize on the basis of SOGI. At least 14 countries have different ages of consent for homosexual intercourse and heterosexual intercourse, which treaty bodies have held to be discrimination. On the other hand, six countries guarantee protection from discrimination on the grounds of sexual orientation. 54 countries ban discrimination for employment based on sexual orientation. The cases of *X v. Colombia* and *Young v. Australia* found that failure to provide pension benefits to an unmarried same sex partner when pension benefits were given to unmarried heterosexual couples is a violation of human rights. The report holds that unmarried same sex couples need to be treated the same way as unmarried heterosexual couples (United Nations High Commissioner for Human Rights, 2011).

The report recommends law enforcement training on LGBT violence. It also recommends public information campaigns to address societal prejudice and the use of teacher training and safe spaces in schools. Countries should promptly investigate killings and other violence against SOGI, hold the perpetrator accountable, and establish a system of recording and reporting. Nations should prevent torture and ill treatment, thoroughly investigate reports, and prosecute and hold perpetrators accountable. Asylum laws should recognize sexual orientation and gender identity as a valid basis for an asylum claim. Countries should repeal criminalization, implement anti-discrimination legislation, and make the age of consent the same for heterosexual and homosexual sex. They should also protect freedom of expression and the right to peaceful assembly. Finally, nations should legally recognize a person's preferred gender (United Nations High Commissioner for Human Rights, 2011).

## Conclusion

From life imprisonment in Uganda to fines in Russia, members of the LGBT community are punished throughout the world. Even in countries, like the United States, working towards marriage equality, homophobic and transphobic remarks are common. Violence against people due to their sexual orientation and gender identity is an issue that needs to be addressed. People who are seeking asylum due to their SOGI should be welcomed with open arms. Unfortunately, it may be difficult for these people to find anywhere where they are truly treated as equals. They can escape torture and the death penalty, but they may not be able to escape homophobia. Wealthier democracies that are not overly religious do tend to be more accepting of people of varying sexual orientations and gender identities. As some countries in the world are rapidly working towards marriage equality, others are becoming more and more homophobic. The international community needs to pay attention to the needs of the LGBT community and to work together to ensure that all these needs are met.

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