



Combating Inequality and Discrimination of Sexual Orientation and Gender Identity

Human Rights Council

**Meenal Guntuboyina & Francois Vogel,
President & Deputy President**





Introduction

The Universal Declaration of Human Rights, adopted in 1948 by the United Nations General Assembly, is a collection of civil and political principles including the inalienable right stating “*All humans are born free and equal in dignity and rights*”. However, stemming from bias and cultural notions and beliefs, the majority of LGBTQ+ members are prevented from exercising their human rights due to homophobic attitudes, failure to protect or investigate hate crimes and lack of legal protection.

Of late, the bodies of international human rights have progressed to raise awareness about issues facing the LGBTQ+ community and are pressing for a paradigm shift. Although one cannot deny its successes, laws in the criminalization of homosexuality, pervasive discrimination and persistence of unethical practices (e.g. conversion therapy) cannot be ignored either. This creates the indispensable need for the protection of the LGBTQ+ community.

It is important to keep in mind that due to the developing and ever-evolving nature of this area of the law, future verdicts made by courts and other (HR) bodies concerning the rights of the LGBTQ+ community may (significantly) alter the implementation of policies pertaining to international legal protections.

Definition of Key Terms

Sexual orientation

The gender or genders to which a person is sexually attracted.

Gender identity

A person's sense of being a man, a woman or an alternative gender, which may or may not correspond to the sex assigned at birth.

Transgender

A person whose gender does not correspond to their sex assigned at birth.

Cisgender

A person whose gender corresponds to their sex assigned at birth.

Heterosexual

A person who is sexually attracted to people of opposite sex to their own.

Homosexual

A person who is sexually attracted to people of their own sex.

**Gay**

An adjective used to describe a homosexual person.

Lesbian

A gay woman.

Intersex

A person that is born with different characteristics of different sexes.

LGBTQIA+

An acronym used to include people of all genders and sexual orientations including lesbian, gay, transgender, queer, intersex and asexual.

Conversion therapy

The practice of changing an individual's sexual orientation. They are considered potentially harmful by part of the scientific community.

General Overview

People from gender and sexual minorities are being discriminated against.

Sexual orientation discrimination

This type of discrimination is most often present in the context of employers having a predisposition towards heterosexual men and women. Several initiatives such as the importation of diversity officers in charge of overseeing inclusiveness have seen the light.

Hate crimes

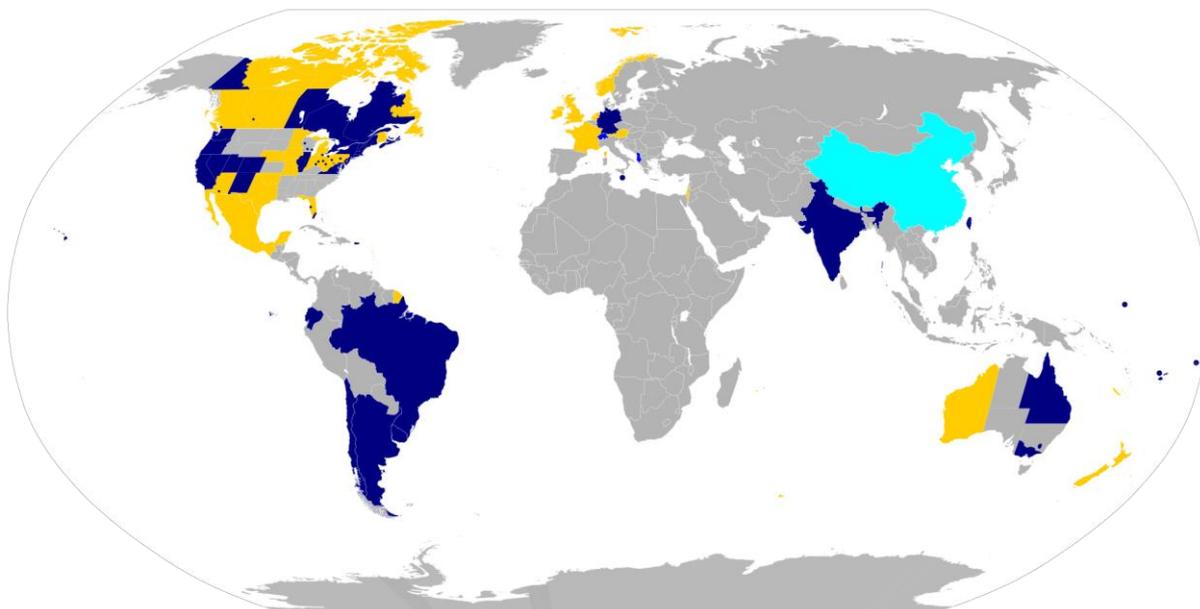
LGBT people suffer from criminal assault. Hate crimes based on sexual orientation are usually considered aggravating circumstances in the EU and US law.

Conversion therapy

Conversion therapy aims to change a person's sexual orientation or gender identity. Such discriminatory practices originate from the belief that LGBTQ+ members people must modify their identity and become heterosexual.

In many countries where being part of the LGBTQ+ community is considered a crime, conversion therapy is undergone forcibly, which is considered to be torture.

Currently, several countries have taken action to ban conversion therapy, as shown on the map below.



Map of jurisdictions that have bans on sexual orientation and gender identity change efforts with minors. (Stinger20 on Wikipedia)

- Ban on conversion therapy on the basis of sexual orientation and gender identity
- *De facto* ban on conversion therapy
- Case-by-case bans
- Ban on conversion therapy pending or proposed
- No ban on conversion therapy

Pride parades

During pride parades, LGBTQI+ social acceptance and legal rights achievements are celebrated. They are usually held annually and are an occasion to commemorate the Stoneplace riots which took place in 1969 in NYC, which were the beginning of the gay liberation movement.

Such events usually give LGBTQ+ activists mass media coverage and are considered as a form of 'propaganda' by several entities seeking to ban these demonstrations.

Major Parties Involved

United States (US)

Being LGBTQ+ has been legal in the US since 2003.

From 1994 to 2011, the US military followed the "Don't ask, don't tell" policy, during which personnel who openly declared their homosexuality were discharged. From



April 2019 to March 2021, transgender people were banned from serving in the US Armed Forces.

European Union (EU)

Same-sex activity is legal and LGBTQ+ rights are protected under European law.

France

France is one of the most progressive countries on the matter of LGBTQIA+ rights. Same-sex marriage has been legal since 2013.

United Kingdom

In the UK same-sex marriage is legal since 2014.

Russian Federation

Homosexual relations were decriminalized in 1993. However, most Russians disapprove of same-sex couples and hold negative views regarding the LGBTQIA+ community.

Since June 2013, propaganda to minors of “non-traditional sexual relationships” is considered a federal felony.

Saudi Arabia

Saudi Arabian law is derived from the Islamic Sharia, which bans same-sex relations and LGBTQIA+ recognition, considered as Western decadence.

Websites and newspapers regarding the LGBTQ+ community are being censored.

Islamic Republic of Iran

Since the Iranian revolution, same-sex activities are illegal and the LGBTQ+ community risks imprisonment and fines. The perpetrators of rape and sodomy risk capital punishment.

However, transgender identity is recognized and Iran is the second-largest country when it comes to the amount of sex reassignment surgeries.



Pakistan

LGBTQ+ members face unequal rights and social difficulties in Pakistan. They have to keep same-sex relations secret as acts of homosexuality are illegal. According to a survey led by the EU Agency for Fundamental Rights, 83% of the LGBT community “often or always avoid holding hands with their same-sex partner”, which is the second-highest rate among EU countries.

Poland

Same-sex couples are not recognized in Poland. Especially transgender people face particular challenges, as surgeries causing infertility are forbidden.

Timeline of Key Events

March 26 th 2007	Launch of the Yogyakarta Principles (Refer to Appendix)
March 27 th 2007	Human Rights Watch releases article recognizing Yogyakarta Principles (Refer to Appendix)
March 2011	Colombia delivers ‘Joint Statement’ on ending acts of violence based on sexual orientation or gender identity to the HRC on behalf of >80 nations (refer to Appendix)
June 17 th 2011	UNHRC adopts Resolution 17/19; recognizing acts of violence and discrimination committed against LGBTQ+ globally (refer to Appendix)
November 17 th 2011	OHCHR releases report for Human Rights on Discriminatory Laws

Previous attempts to resolve the issue

Currently, there are no international human rights treaties/resolutions that protect the rights of those in the LGBTQ+ community. However, it is important to recognize that regardless of the absence of such conventions, sexual minorities’ human rights are protected under the law of international human rights. The bodies of the human rights law have not (yet) uniformly addressed the rights of LGBTQ+ persons however this branch of law is subject to the advancement and it is credibly predicted that human rights bodies (as a whole) have become protective of LGBTQ+ rights. Until governments are consistent in all circumstances, the international human rights law is interpreted by some nations to treat those part of the LGBTQ+ community and any sexual minorities differently.

The majority of the advances in the recognition of LGBTQ+ rights taken recently are statements and policies made by political and (inter)governmental bodies. Differing



from the legal interpretations of human rights courts, the outcomes of such policies are not binding on nations. On the other hand, they reflect the will of governments and politicians to acknowledge the rights of the LGBTQ+ community. Some of the bodies of human rights within the UN (in addition to regional government organizations) have made progress to monitor the issues regarding sexual orientation and gender identity.

Yogyakarta Principles

The Yogyakarta Principles or YP are a set of international policies relating to sexual orientation and gender identity that were created in Yogyakarta, Indonesia in 2007 as a response to the abuse caused by sexual orientation and gender identity. The first principle itself address that "*human beings of all sexual orientations and gender identities are entitled to the full enjoyment of all human rights.*". In addition, each principle acknowledges a specific right which then sets forth the obligations that the nations are expected to respect. Activists and civil society groups recognize the Yogyakarta Principles as a '*major breakthrough in the international recognition of rights for the LGBTQ+ community*', which is in accordance with the article released by the Human Rights Watch titled "'Yogyakarta Principles' a milestone for Lesbian, Gay, Bisexual and Transgender Rights". Despite that, the Principles were also subject to the controversy between nations as they have opposed their use in official resolutions and documents.

United Nations Advances

The UNHRC as well as other bodies of the UN have made progress in recognizing the rights of sexual minorities. The delivery of a Joint Statement (by Colombia in 2011) on ending acts of violence based on sexual orientation or gender identity to the HRC, is a case in point. This statement acknowledged the unjust treatment of citizens around the world purely based on their sexual orientation or gender identity.

Furthermore, in 2011, the UNHRC adopted Resolution 17/19 (A/HRC/RES/17/19) recognizing the acts of violence and discrimination committed against LGBTQ+ citizens worldwide. The document also requested a report from the UN Office of the High Commissioner for Human Rights (OHCHR). In fact, this marked the first official UN document addressing sexual identity or gender orientation. The report from the OHCHR (refer to Appendix) described the issues facing the LGBTQ+ community in addition to stressing the responsibility of nations to protect the rights of all their citizens.



Possible Solutions

Based on the 'previous attempts to solve the issue', creating and discussing international human rights resolutions during debate should be a priority. As this is a non-ad hoc council, there will be plenty of opportunities to do so.

"International human rights law guarantees freedom from discrimination in the enjoyment of human rights for all people" thereby including those in the LGBTQ+ community. An example of such a principle states *"The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or another opinion, national or social origin, property birth or status."* which is written in the International Covenant on Economic, Social and Cultural Rights. Including clauses of this 'general' nature (yet specific to sexual orientation and gender identity) into submitted resolutions establishes the appropriate tone necessary to combat the issue. In addition, with justification based on precedents, including preambulatory clauses will do the same.

Diving into the rights that specifically concern the LGBTQ+ community such as the age of consent laws, marriage equality, same-sex marriage, gender reassignment and legal identity, submitting operative clauses tackling these separate issues only aids to productive debate to resolving the issue.

Appendix/Appendices

- 'Beyond Blue' The Impact of Discrimination on People in the LGBTI Community <https://www.beyondblue.org.au/who-does-it-affect/lesbian-gay-bi-trans-and-intersex-lgbti-people/the-impact-of-discrimination>
- The Yogyakarta Principles on the application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf
- 'Yogyakarta Principles' a Milestone for Lesbian, Gay, Bisexual, and Transgender Rights. *Human Rights Watch*, 26 Mar. 2007 <https://www.hrw.org/news/2007/03/26/yogyakarta-principles-milestone-lesbian-gay-bisexual-and-transgender-rights>
- Joint Statement on Ending Acts of Violence and Related Human Rights Violations Based on Sexual Orientation & Gender Identity http://download.ei-ie.org/Docs/WebDepot/Joint%20statement_FINAL.pdf



- Resolution 17/19; Human Rights, Sexual Orientation and Gender Identity A/HRC/RES/17/19 <https://www.undocs.org/A/HRC/RES/17/19>
- Report of the OHCHR on Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity (A/HRC/19/41) https://www.ohchr.org/Documents/Issues/Discrimination/A.HRC.19.41_English.pdf
- Public Education Campaign 'Free and Equal' <https://www.unfe.org/>

Bibliography

"A/C.3/65/SR.29 - E - A/C.3/65/SR.29 -Desktop." *Www.undocs.org*,
www.undocs.org/A/C.3/65/SR.29.

Australian Human Rights Commission. "What Is the Universal Declaration of Human Rights? | Australian Human Rights Commission."
Humanrights.gov.au, 2021, www.humanrights.gov.au/our-work/what-universal-declaration-human-rights.

"Sexual Orientation & Gender Identity | International Justice Resource Center." *Ijrcenter.org*, 2014, www.ijrcenter.org/thematic-research-guides/sexual-orientation-gender-identity/.

Yogyakartaprinciples.org – the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity.
www.yogyakartaprinciples.org/.

Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. "OHCHR | Report on Conversion Therapy." *Www.ohchr.org*, May 2020,



www.ohchr.org/EN/Issues/SexualOrientationGender/Pages/ReportOnConversionTherapy.aspx.

Check, Reality. "Commonwealth Summit: The Countries Where It Is Illegal to Be Gay." *BBC News*, 20 Apr. 2018, www.bbc.com/news/world-43822234.

Human Dignity Trust. "Map of Countries That Criminalise LGBT People." *Humandignitytrust.org*, 2019, www.humandignitytrust.org/lgbt-the-law/map-of-criminalisation/.