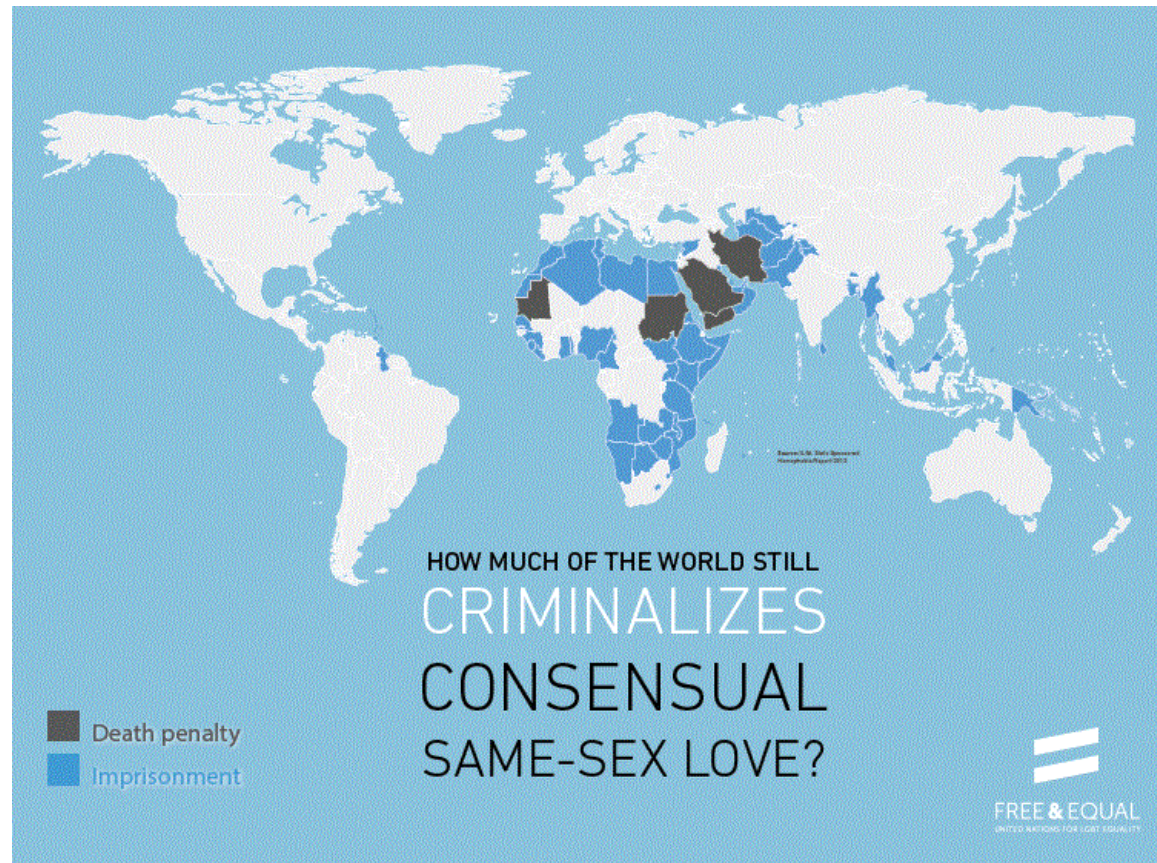


# CRIMINALIZATION OF HOMOSEXUALITY AND STATE-SPONSORED HOMOPHOBIA



14/12/2013

Priska Anna Babuin

# SUMMARY


- Definitions
- Criminalization and State-sponsored homophobia: datas
- Human rights violations (under International law)
- The most discriminating region (Africa): causes and consequences
- The less discriminating region (Europe): Sweden and Italy



# DEFINITIONS

**Sexual orientation** = refers to a person's physical, romantic and/or emotional attraction towards other people. Everyone has a sexual orientation, which is integral to a person's identity. Sexual orientation is not related to gender identity.

**Gender identity** = reflects a deeply felt and experienced sense of one's own gender. For transgender people, there is an inconsistency between their sense of their own gender and the sex they were assigned at birth.



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# SEXUALITY & GENDER ARE **NOT** BLACK & WHITE...

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**//LESBIAN//** IS USED TO DESCRIBE A WOMAN WHO IS ATTRACTED TO OTHER WOMEN

**//GAY//** IS USED TO DESCRIBE SOMEONE WHO IS ATTRACTED TO SOMEONE OF THE SAME SEX

**//BISEXUAL//** IS USED TO DESCRIBE SOMEONE WHO CAN BE ATTRACTED TO MEN OR WOMEN

**//TRANSGENDER//** IS USED TO DESCRIBE SOMEONE WHOSE SENSE OF THEIR OWN GENDER DOES NOT MATCH THE SEX THEY WERE ASSIGNED AT BIRTH.

**//INTERSEX//** REFERS TO SOMEONE WHO IS BORN WITH SEXUAL ANATOMY, REPRODUCTIVE ORGANS, AND/OR CHROMOSOME PATTERNS THAT DO NOT FIT THE TYPICAL DEFINITION OF MALE OR FEMALE

*\* While **LGBT** is increasingly understood and used in different regions of the world, in many countries other terms may be preferred.*



- **Homophobia** = an irrational fear of, hatred or aversion towards lesbian, gay or bisexual people

- **Transphobia** = an irrational fear of, hatred or aversion towards transgender people



**UN:**

“In *76 countries* consensual, same sex relationships

**ARE STILL CRIMINALIZED.**

**This violates international human rights law.”**



# STATE-SPONSORED HOMOPHOBIA: NUMBERS

○ 76 countries:  
Discriminatory laws  
that criminalize  
private, adult,  
consensual same-sex  
relationships



Arrest, prosecution,  
imprisonment

○ 5 Countries +  
12 states in  
Nigeria +  
South Somalia



Death Penalty for  
homosexuality



# THESE ARE VIOLATIONS OF:

- The basic human right:  
“ **All human beings are born free and equal in dignity and rights**”
- Binding articles of the International Human Rights Law:
  - Right to **life, liberty and security**
  - Right to **freedom from discrimination**
  - Right to **privacy**
  - Right to **freedom from arbitrary arrest and detention**



- **UNIVERSAL DECLARATION OF HUMAN RIGHTS**
- **INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**







***TOONEN VS AUSTRALIA*** – 1994 United Nations Human Rights Committee confirmed criminalizing homosexuality violates rights to privacy and non-discrimination in breach of the International Covenant on Civil and Political Rights.



# UN:

“**International Law** requires every country to  
**PROHIBIT DISCRIMINATION**  
*based on sexual orientation  
and gender identity*”



**UN:**

“LGBT rights *are* human rights.”



# IMPACT ON:

- the right to **health**
- the right to **work**
- the right to **freedom of expression**
- the right to **education**




# CONSEQUENCES:

- Isolation, stigmatization and marginalization from society ➡ depression, multiple secretive lives, suicides
- No jobs ➡ no houses, poverty, forced to commit crimes (drug, prostitution)
- Homophobia ➡ hate crimes, hate murders, hate speech, violence and targeted attacks
- Torture, rape, police abuse



# CONSEQUENCES:

- Family violence and rejection
  - Risk of persecution ➡ fleeing from homophobia, asylum seekers
  - School bullying ➡ physical and psychological violence, rejection, expulsion
  - Impact on public health ➡ failure on efforts to prevent the spread of HIV/AIDS
  - Means of keeping homosexuals in the closet or making them normal ➡ mocking, shame, ostracism, scorn, violence
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76 countries  
LGBT un-friendly

114 countries  
LGBT friendly



Result of different cultural, social, political processes rooted in the histories of the countries and the history of their relations with one another

- Most hostile region:
  - Middle East and North Africa (MENA region)

- Case example:
  - Sweden
  - Italy



# LGBT UN-FRIENDLY COUNTRIES: AFRICA - CAUSES AND HISTORY

- Before colonialism → friendliest and most tolerant continent
- After colonialism → mass hatred and religious fundamentalism (hate missions)



Behaviors deviating from the normal gender can be addressed only through regulatory laws to prevent unknown and unacceptable sexual behaviors.

- Criminalization → harassment, humiliation, arbitrary arrests, judicial violence, imprisonment, torture, hate crimes, honor killings





LGBT people flee from their homelands and seek asylum





# LGBT UN-FRIENDLY COUNTRIES: MIDDLE EAST - CAUSES AND HISTORY

- Religious minorities united only for violent homophobia
- Sexuality as taboo
- **PAST:** homosexuality has been present and illustrated for centuries and it was more socially accepted
- **NOW:** homosexuality as a sin and an abomination, a threat to heterosexuality, to defined roles for men and women (“binarism”) and to social order (it challenges the restriction of sex to procreation)
- Problems of Arabic medias  negative pictures, unethical reports and inaccurate information, increasing homophobia 

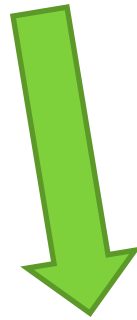
**HATE**



**CRIMINALIZATION**



**IGNORANCE**



**BANNED INFORMATION  
ON SEXUALITY**



# USEFUL TOOLS

- Civil society level: internet to organize communities, create associations and campaigns to fight homophobia
- State level:
  - legal and policy reform in order to give a full protection of human rights, above all in the context of HIV/AIDS
  - Address discrimination through education programs in school and community dialogue; training police officers and medical care staff
  - Media training against discrimination/stigmatization



# LGBT FRIENDLY COUNTRIES:

## SWEDEN

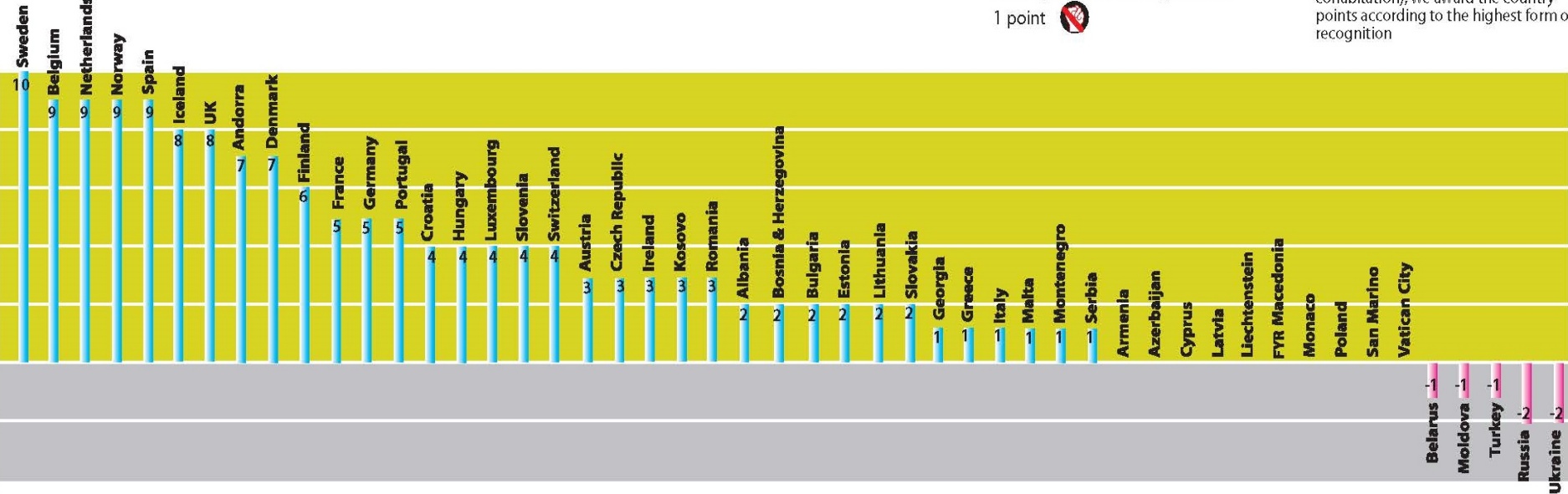
- Anti-discrimination laws referring to sexual orientation in the constitution;
- Legislation against hate speech/hate crimes based on sexual orientation;
- Recognition of marriage and cohabitation of same-sex couples;
- Guarantee of adoption;
- Reception of asylum seekers fleeing from persecution based on sexual orientation;
- Equality body/National human rights institution legally mandated to tackle discrimination on the ground of SOGI;
- Possibility to change one's name and gender to match the gender identity

# Rainbow Europe: legal situation for lesbian, gay and bisexual people in Europe

May 2010

## Rainbow Europe Country Index

The Rainbow Europe Country Index rates each European country on its legislation affecting the human rights of LGB people. The Rainbow Index is based on the legislation and practices reflected in our Rainbow Europe map. The rating places a country on a scale between 10 (maximum positive score) and -4 (maximum negative score) and is an average of total possible positive and negative points. Positive points are awarded to a country which has legislation protecting from discrimination on the grounds of sexual orientation; recognising same-sex partnership; parenting rights of same-sex partners; and cover homophobia in hate speech/crime legislation. The negative points are awarded to the countries which have law banning same-sex sexual acts; have unequal age of consent; and violated the rights of LGB people to peaceful assembly and freedom of association during the last 10 years.



### Positive points:

**Anti-discrimination legislation:**

- 3 points
- 2 points
- 1 point

**Partnership recognition\*:**

- 3 points
- 2 points
- 1 point

**Parenting:**

- 1 point
- 1 point
- 1 point

**Hate speech/crime legislation:**

- 1 point

### Negative points:

**Same-sex acts illegal:**

- 1 point

**Unequal age of consent:**

- 1 point

**Violation of freedom of assembly:**

- 1 point

**Violation of freedom of association/ expression:**

- 1 point


\* In case a country has various forms of recognition (marriage and registered partnership, marriage and cohabitation or registered partnership and cohabitation), we award the country points according to the highest form of recognition

# ITALIAN SITUATION

- Guaranteed the equality on the field of employment based on sexual orientation;
- Recognition of the asylum for persecution based on sexual orientation;
- Changes of gender in documents and gender reassignment is granted, with the consent of the court;
- The cohabitation is guaranteed only in some municipalities.



# ITALIAN SITUATION

- **Problem:** hate speech against LGBT persons often comes from public officials and politicians and religious leaders. It leads to a public hostility even if private life, freedom of expression and peaceful assembly are guaranteed.
  - **Progress:** a proposal to include in the Mancino Law (the law against discrimination) the discrimination based on sexual orientation and gender identity too, in order to prevent and incriminate homophobic violence.
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# ITALY NEEDS:

- Training for police forces on discriminations with a focus on LGBTI-phobic crimes;
- Training for prison staffs on issues related to sexual orientation and gender identity;
- Acts against violence and bullying in schools, addressing homophobia and transphobia;
- An health care system that takes into consideration the special need of LGBT people;
- Measures against discrimination based on sexual orientation in sports;
- Change the discrimination in law: equality between same-sex couples and heterosexual couples;







**THANK YOU FOR YOUR  
ATTENTION**



# BIBLIOGRAPHY

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- ILGA – State-sponsored homophobia 2013
- UNFE – Criminalization (Fact Sheet)
- UNFE – LGBT rights: frequently asked questions (Fact Sheet)

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# VIDEOS

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[https://www.youtube.com/watch?v=XvpHn\\_zdkTY&feature=c4-overview&list=UU3L8u5qG07djPUwWo6VQVLA](https://www.youtube.com/watch?v=XvpHn_zdkTY&feature=c4-overview&list=UU3L8u5qG07djPUwWo6VQVLA)
- “Prince Manvendra Singh Gohil” – India  
[https://www.youtube.com/watch?v=NYXrs81G\\_YE](https://www.youtube.com/watch?v=NYXrs81G_YE)
- “How gay rights debate began at the UN”  
<https://www.youtube.com/watch?v=qd9dGN6dBwA>
- “High Commissioner Navi Pillay on homophobia”  
[https://www.youtube.com/watch?feature=player\\_embedded&v=Ps5FkwnpCpQ](https://www.youtube.com/watch?feature=player_embedded&v=Ps5FkwnpCpQ)

# MOVIES

- Philadelphia
- Milk
- Wilde
- Brokeback Mountain





“It is an outrage that in our modern world so many countries continue to criminalize people simply for loving another human being of the same sex... Laws rooted in 19th century prejudices are fuelling 21st century hate.”

**UN Secretary-General Ban Ki-moon**



**FREE & EQUAL**  
UNITED NATIONS FOR LGBT EQUALITY