



CRIMINALIZATION

Criminalization of same-sex relations

In more than 70 countries, discriminatory laws criminalize private, consensual same-sex relationships, exposing millions of individuals to the risk of arrest, prosecution and imprisonment – and even, in at least five countries, the death penalty. Criminalization of consensual same-sex conduct violates rights to privacy and to freedom from discrimination, both protected under international law, and places States in material breach of their obligation to protect the human rights of all people, regardless of sexual orientation or gender identity. These laws typically prohibit either certain types of sexual activity or any intimacy or sexual

activity between persons of the same sex. In some instances, the wording of the law is vague and undefined, referring, for example, to “debauchery,” or to crimes against “morality” or “the order of nature.” Some States specifically criminalize same-sex conduct between men, while others outlaw both male and female same-sex conduct. In most cases, these laws are a legacy of colonial rule: imposed on the countries concerned during the 19th Century by the colonial powers of the day. For example, many of the laws used to punish gay men in Africa and the Caribbean were in fact written in Victorian London.

What does international law say about criminalization?

In 1994, in the case of *Toonen vs. Australia*, the United Nations Human Rights Committee confirmed that laws criminalizing homosexuality violate rights to privacy and non-discrimination in breach of States’ legal obligations under the International Covenant on Civil and Political Rights. Where these laws are enforced, they may also lead to violations of the right to freedom from arbitrary arrest and detention. In addition, States that impose the death penalty for consensual, adult same-sex conduct violate the right to life enshrined in the Universal Declaration of Human Rights. The death penalty is the legally prescribed punishment for homosexuality-related offences in Iran, Mauritania, Saudi Arabia, the Sudan, Yemen, and may be applied by religious courts in regions of Somalia and Nigeria. Defenders of

criminalization have repeatedly failed to convince the Human Rights Committee that criminalization is a “reasonable” and “proportionate” response to any claimed threat to public health and welfare. Rather, the Committee has emphasized the detrimental impact of criminalization on public health, including in the context of HIV prevention and treatment (see below). While countries have different cultures and traditions, and public attitudes vary enormously, the emphasis on universality in international human rights law requires all States, regardless of prevailing cultural and traditional values, religious beliefs and popular opinion, to protect the human rights of everyone.

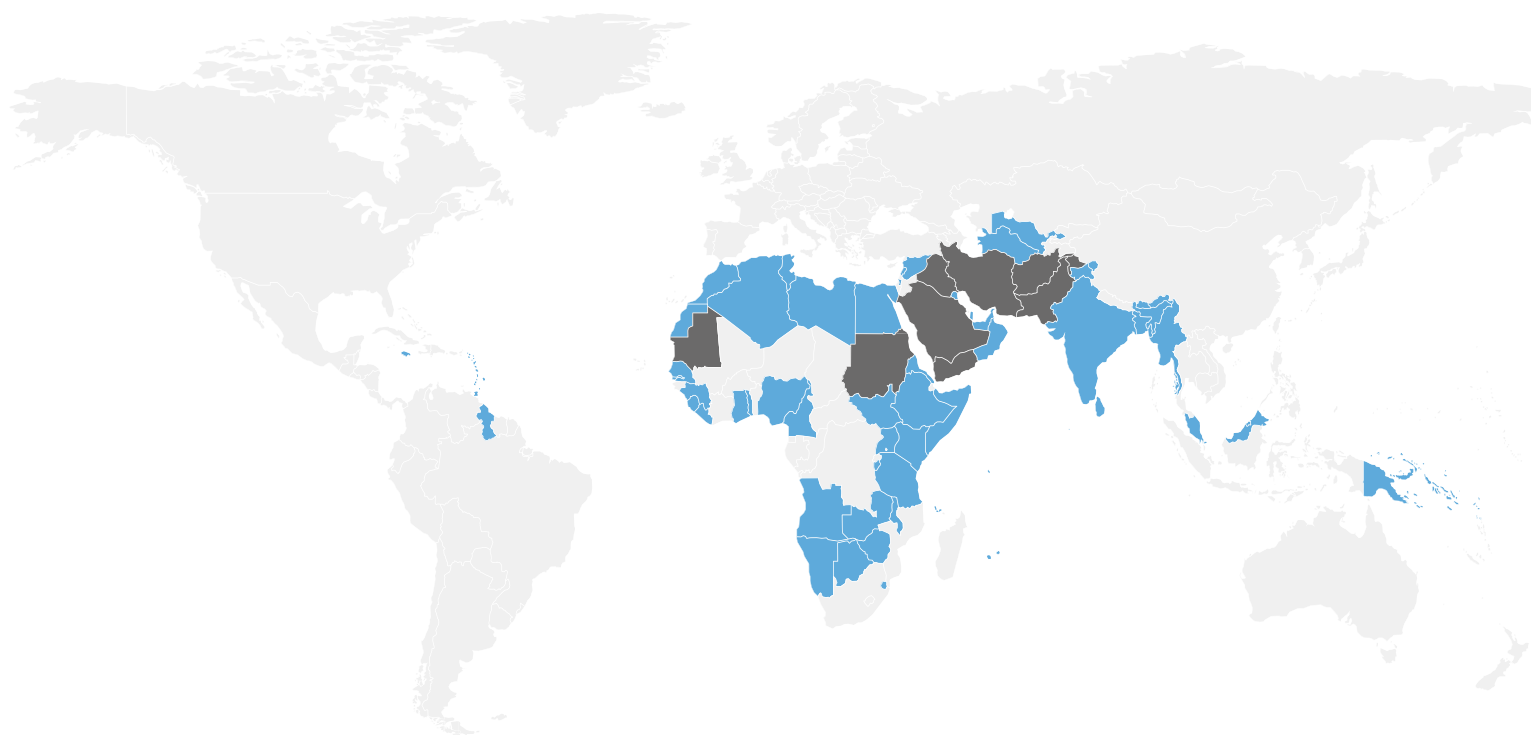




Consequences of criminalization

The United Nations has frequently expressed concern about the criminalization of same-sex relationships. In addition to violating basic rights, criminalization legitimizes prejudice in society at large and exposes people to hate crimes, police abuse, torture and family violence. As the World Health Organization (WHO) and The Joint United Nations Programme on HIV/AIDS (UNAIDS) have shown, criminalization also has a dire effect on public health, especially on efforts to prevent the spread of HIV. It can, for example, deter some of those most at risk of infection from coming forward for testing and treatment out of fear of being deemed a criminal. It can also endanger those who work to defend the human rights of lesbian, gay, bisexual

and transgender (LGBT) people by exposing them to attacks and intimidation. Criminalization also fuels discrimination against people who dress or behave in a way that challenges traditional gender norms. There have been many incidents of individuals arrested or attacked based on their clothes, mannerisms and style of speech. The existence of widespread homophobia and transphobia only makes more urgent the need for Governments to fulfil their legal duty to protect LGBT people from violence and discrimination. Repealing laws that criminalize same-sex conduct and other laws used to punish LGBT people is an important step towards combating prejudice and protecting human lives.



■ Death penalty
■ Imprisonment

Source: ILGA State Sponsored Homophobia Report 2017

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Action points

States:

- 1** Repeal laws that criminalize private, consensual sexual relationships between adults of the same sex, and other laws used to punish individuals on the basis of their sexual orientation and gender identity in violation of international human rights standards.
- 2** Release any individuals currently in custody on the basis of consensual same-sex conduct.
- 3** Where relevant, reform age-of-consent laws to equalize the age of consent for same-sex and different-sex conduct.
- 4** Ensure that individuals are not subjected to degrading physical examinations intended to determine their sexual orientation.

You, your friends and other individuals can make a difference too:

- 1** Speak out when people around you are arrested or imprisoned because of their sexual orientation or gender identity.
- 2** If you live in a State that continues to criminalize homosexuality, write to your Government and/or legislators and urge them to introduce reforms necessary to bring national law into compliance with international human rights standards, which prohibit criminalization of private, consensual same-sex conduct. Send letters to newspapers and engage in online discussions as a way of expressing your support for reform.
- 3** If you or your friends or family members are arrested and detained on charges relating to consensual, same-sex conduct, alert UN human rights special procedures by sending an email to urgent-action@ohchr.org.

