

# Wrap up survey on the laws worldwide affecting gay, lesbian and trans- gendered people

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## Introduction

This survey aims to give an updated and brief view of the legal situation for LGBT people worldwide.

Due to limitation reasons, the survey only covers national and federal laws, and not local or city laws.

Researched information consists mostly of first hand sources of legal texts, and in some cases of second and third hand sources from governmental and non-governmental organizations, if the sources have been found trustworthy. It was performed from the year 2001 to July 2006.

The year in brackets is the year when the reform went into force. If no year is states, the area has either been legal all the time, or have no details about the reform been obtained.

Regarding protection on the basis of gender identity, only New Zealand bans such hate crimes. No country nationally bans discrimination based on gender identity. Such legislation is, however, available in some parts of Australia, Canada and the United States.

The research is conducted by Daniel Ottosson, student of Public Law at the Södertörn University, Stockholm, Sweden. 2006.

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## **Countries which allow homosexual relations between consenting adults in private;**

Albania (1995), Andorra, Argentina (1886), Armenia (2003), Australia, Austria (1971), Azerbaijan (2000), Bahamas (1991), Belarus (1994), Belgium (1795), Bolivia, Bosnia-Herzegovina (1998/2000)<sup>1</sup>, Brazil (1830), Bulgaria (1968), Burkina Faso, Burundi, Cambodia, Canada (1969), Cape Verde (2004), Central African Republic, Chad, Chile (1998), China<sup>2</sup>, Colombia (1981), Comoros, Congo, Costa Rica (1971), Croatia (1977), Cuba (1979), Cyprus (1998), Czech Republic (1962), Democratic Republic of Congo, Denmark (1933), Dominican Republic, Ecuador (1997)<sup>3</sup>, El Salvador, Estonia (1992), Finland (1971), Former Yugoslav Republic of Macedonia (1996), France (1791), Gabon, Georgia (2000), Germany (1968/1969)<sup>4</sup>, Greece (1951), Guatemala (1871), Haiti, Honduras, Hungary (1962), Iceland (1940), Indonesia, Ireland (1993), Israel (1988), Italy (1890), Ivory Coast, Japan (1882), Jordan (1960), Kazakhstan (1998), Kyrgyzstan (1998), Latvia (1992), Liechtenstein (1989), Lithuania (1993), Luxembourg (1795), Madagascar, Mali, Malta (1973), Mexico (1871), Micronesia, Moldova (1995), Monaco (1793), Mongolia, Montenegro (1977), Netherlands (1811), Netherlands Antilles, New Caledonia, New Zealand (1986), Niger, North Korea, Norway (1972), Palestine Self-Authority, Panama, Paraguay, Peru (1923), Philippines, Poland (1932), Portugal (1983), Puerto Rico (2004), Romania (1996), Russia (1993), Rwanda, San Marino (1865), Serbia (1994), Slovakia (1962), Slovenia (1977), South Africa (1998)<sup>5</sup>, South Korea, Spain (1979), Suriname, Sweden (1944), Switzerland (1942), Tajikistan (1998), Thailand (1957), Timor-Leste, Turkey (1858), Ukraine (1991), United Kingdom (1967-)<sup>6</sup>, United States (2003)<sup>7</sup>, Uruguay (1934), Vanuatu, Venezuela, Vietnam

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## **Countries which allow adult homosexual relations of consent between men and between women in theory, but at the same time prosecute LGBT-persons based on laws against promiscuity, prostitution and immorality;**

Egypt

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## **Countries which do not have any direct laws against consenting adult homosexual relations in private, but laws that prohibit scandalous sodomy;**

Costa Rica, Nicaragua

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## **Countries which prohibit homosexual relations between consenting adults in private, both male and female;**

Algeria, Angola, Antigua and Barbuda, Barbados, Belize, Benin, Bhutan, Botswana, Cameroon, Djibouti, Dominica, Eritrea, Ethiopia, Guinea, Guinea Bissau, Iran, Lebanon, Liberia, Libya, Marshall Islands, Mauritania, Morocco, Mozambique, Oman, Pakistan, Saint Vincent and the Grenadines, São Tomé and Príncipe, Saudi-Arabia, Senegal, Solomon Islands, Somalia, Sudan, Togo, Trinidad and Tobago, Tunisia, United Arab Emirates, Yemen and some parts of Nigeria and Zanzibar which belongs to Tanzania

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## **Countries which prohibit sexual relations between consenting adult men, but at the same time do not have any prohibition on lesbian relations;**

Bahrain, Bangladesh, Brunei, Cook Islands, Fiji Islands<sup>8</sup>, Gambia, Ghana, Grenada, Guyana, India, Jamaica, Kenya, Kiribati, Kuwait, Lesotho, Malawi, Malaysia, Mauritius, Myanmar (Burma), Namibia, Nauru, Nigeria, Niue, Palau, Papua New Guinea, Qatar, Saint Kitts and Nevis, Saint Lucia, Seychelles, Sierra Leone, Singapore, Sri Lanka, Swaziland<sup>9</sup>, Tanzania, Tokelau, Tonga, Tuvalu, Turkmenistan, Uganda, Uzbekistan, Western Samoa, Zambia, Zimbabwe and Chechen Republic in Russia

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## **Countries which prohibit sexual relations between consenting adult men, but where there are questions whether this prohibition is applied also to lesbian relations;**

Syria

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## **Countries where it is unclear whether homosexual relations between consenting adult persons in private are legal or not;**

Equatorial Guinea, Iraq<sup>10</sup>, Laos, Nepal<sup>11</sup>

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## **Countries where a convicted of consenting adult homosexual relations, may be subject to death penalty;**

Iran, Mauritania, Pakistan, Saudi-Arabia, Sudan, United Arab Emirates, Yemen and some parts of Nigeria and Somalia, and the Chechen Republic in Russia

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## **Countries which have higher age of consent provisions for homosexual relations than for heterosexual relations;**

Bahamas, Bermuda, Chile, Gabon, Gibraltar, Guernsey, Hong Kong<sup>12</sup>, Indonesia, Isle of Man, Ivory Coast, Jersey, Madagascar, Niger, Portugal, Rwanda, South Africa, Suriname and a few states in the United States, and Queensland in Australia.

Note that Greece has a higher age of consent limit for same-sex seduction at 17 years (Penal Code art. 347), compared to 15 for heterosexuals. The general age of consent is, however, 15 years for all.

Albania (2001), Austria (2002)<sup>13</sup>, Belarus (2000), Bulgaria (2002), Burkina Faso (1996), Cyprus (2002), Estonia (2002), Hungary (2002)<sup>14</sup>, Israel (2000), Liechtenstein (2001), Lithuania (2003), Moldova (2002), Romania (2002), Serbia (2006) and United Kingdom (2001) among others have equalised the age of consent provisions during the past years, now having the same age of consent for both hetero- and homosexual relations.

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## **Countries which have amended the constitution to ban marriages between same-sex couples;**

Honduras (2005), Latvia (2005) and some states in United States.

Australia (2004) and Uganda (2005) have banned such marriages in their Marriage Acts. Such provisions exist in the Marriage Acts of many other countries as well.

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## **Countries/States which allow marriage between same-sex couples;**

Belgium (2003), Canada (2005), Netherlands (2001), South Africa (2006)<sup>15</sup>, Spain (2005) and the US state of Massachusetts (2004)<sup>16</sup>

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## **Countries which allows same-sex couples to register Partnerships/Civil Unions;**

Andorra (2005), Czech Republic (2006)<sup>17</sup>, Denmark (1989), Finland (2002), France (1999), Germany (2001), Greenland (1996), Iceland (1996), Luxembourg (2004), Netherlands (1998), New Zealand (2005), Norway (1993), Slovenia (2006)<sup>18</sup>, Sweden (1995), Switzerland (2007)<sup>19</sup>, United Kingdom (2005) and in the city of Buenos Aires (2003) and Rio Negro Province (2003) in Argentina, Tasmania (2004) in Australia, the state of Rio Grande do Sul (2004) in Brazil<sup>20</sup>, Nova Scotia (2001) and Quebec (2002) in Canada, and the states of Connecticut (2005) and Vermont (2000) in United States

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## **Countries which have some other kind of recognition of same-sex couples;**

Austria (1998-)<sup>21</sup>, Brazil (1998 -)<sup>22</sup>, Colombia (2000-)<sup>23</sup>, Croatia (2003)<sup>24</sup>, Hungary (1996)<sup>25</sup>, Israel (1994 -)<sup>26</sup>, Liechtenstein (2001)<sup>27</sup>, Portugal (2001)<sup>28</sup>, South Africa (1996 -) and some parts of Australia, Brazil, Israel, Italy, and United States

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## **Countries which allows same-sex couples to jointly adopt children;**

Andorra (2005), Iceland (2006)<sup>29</sup>, Netherlands (2001), South Africa (2002)<sup>30</sup>, Spain (2005), Sweden (2003), United Kingdom (2005)<sup>31</sup> and some parts of Australia and United States

Denmark (1999), Germany (2004), Norway (2002) and some parts of Australia and United States allow same-sex couples to adopt each others' children, so called step-child adoption.

Israel has accepted second parent adoptions by same-sex partners through two verdicts by the Supreme Court/High Court of Justice on May 29, 2000 and January 10, 2005.

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## **Countries which allow single women and thus lesbians to get access of assisted insemination;**

Belgium, Canada, Denmark (2007)<sup>32</sup>, El Salvador, Estonia, Finland, Greece, Iceland (2006)<sup>33</sup>, Ireland, Israel, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Romania, Russia, Serbia-Montenegro, Slovakia, South Africa, Spain, Sweden (2005), United Kingdom, United States, Venezuela and some parts of Australia.

In Andorra and some other countries, assisted insemination treatment is not available for anyone.

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## **Countries which have laws prohibiting single women and therefore lesbians from obtaining assisted insemination;**

Argentina, Austria, Bangladesh, Brazil, Bulgaria, Chile, China, Czech Republic, Egypt, France, Germany, Hong Kong, Hungary, Iran, Italy, Japan, Jordan, Latvia, Lithuania, Morocco, Norway, Poland, Portugal, Saudi-Arabia, Singapore, Slovenia, South Korea, Switzerland, Taiwan, Tunisia, Turkey, Uruguay

There are some questions about whether single women and lesbians are permitted to obtain such treatment in some countries, since many countries do not have any laws on assisted insemination.

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## **Countries which include sexual orientation as a protected category in their constitutions;**

Ecuador (1998), Fiji (1998), Portugal (2004), South Africa (1996) and some states in Brazil and Germany.

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## **Countries which prohibit discrimination based on sexual orientation in employment;**

Australia<sup>34</sup>, Austria (2004), Belgium (2003), Bosnia-Herzegovina (2003), Bulgaria (2004), Canada (1996), Costa Rica (1998), Croatia (2003), Cyprus (2004), Czech Republic (2001), Denmark (1996), Estonia (2004), Finland (1995), France (2002), Germany (2001), Greece (2005), Hungary (2004), Ireland (1998), Israel (1992), Italy (2003), Lithuania (2003), Luxembourg (1997), Malta (2003), Mexico (2003), Namibia (1992), Netherlands (1993), New Zealand (1994), Norway (1998), Poland (2004), Portugal (2003), Romania (2000), Slovakia (2003), Slovenia (1998), South Africa (1995), South Korea (2001), Spain (1996), Suriname, Sweden (1999), Taiwan (2004), United Kingdom (2003-)<sup>35</sup>, Venezuela (1999) and some parts of Argentina, Brazil, Japan, United States, all states in Australia and Kosovo (2003) in Serbia

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## **Countries which prohibit discrimination based on sexual orientation in some other areas than employment;**

Australia<sup>36</sup>, Belgium (2003), Bosnia-Herzegovina (2003), Bulgaria (2004), Canada (1996), Costa Rica (1998), Croatia (2003), Czech Republic (2001), Denmark (1987), Finland (1995), France (2002), Hungary (2004), Iceland (1996), Ireland (2000), Lithuania (2003), Luxembourg (1997), Mexico (2003), Netherlands (1994), New Zealand (1994), Norway (1981), Peru (2004), Romania (2000), Slovakia (2004), Slovenia (1998), South Africa (2000), South Korea (2001), Spain (1996), Suriname, Sweden (1987-), Taiwan (2004), United Kingdom (2006) and some parts of Argentina, Brazil, Germany, Italy, Japan, United States, and Kosovo in Serbia (2003)

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## **Countries which prohibit Hate Crimes Propaganda or hate crimes based on their sexual orientation;**

Canada (2004), Croatia (2003), Denmark (1987), Estonia (2006), Finland (1995), France (2004), Hungary (2004), Iceland (1996), Ireland (1989), Lithuania (2003), Luxembourg (1997), Netherlands (1993), New Zealand (2002), Norway (1981), Spain (1996), Sweden (2003), United Kingdom (2005)<sup>37</sup>, Uruguay (2003) and parts of the United States

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## **Countries which have laws that allow transsexuals who have gone through gender reassignment surgery to get their personal documents reflecting their new sex;**

Germany (1981), Italy (1982), Japan (2004), Netherlands (1985), New Zealand (1995), Panama (1975), Romania (1996), South Africa (2003), Spain (2006), Sweden (1972), Turkey (1988), United Kingdom (2004) and most parts of Australia, Canada and United States

To obtain personal documents reflecting the new sex is also possible by Civil Law or Court Verdicts in most parts of the Western World, and in some other countries like Egypt, Iran and so on, while in some countries like Malaysia and Thailand this is not possible.

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## **Countries which prohibit homosexuals from entering the country by its' Immigration laws;**

Belize (1958), Swaziland (1965)<sup>38</sup>, Trinidad and Tobago (1976)

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## Notes

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<sup>1</sup> Bosnia Herzegovina decriminalized homosexual activities in 1998, while Republika Srpska in Bosnia-Herzegovina decriminalized such acts in 2000.

<sup>2</sup> Hong Kong which is a Chinese dependency decriminalized homosexual acts in 1991.

<sup>3</sup> Through verdict by the Constitutional Tribunal on November 25, 1997 declaring the law banning sexual activities between persons of the same sex unconstitutional.

<sup>4</sup> Eastern Germany (DDR) decriminalized homosexual activities in 1968 and West Germany in 1969.

<sup>5</sup> Through verdict by the Constitutional Court on October 9, 1998 declaring the law banning sexual activities between men unconstitutional.

<sup>6</sup> England and Wales decriminalized homosexual activities in 1967, Scotland in 1980, Northern Ireland in 1982, Bailiwick of Guernsey in 1983, Bailiwick of Jersey in 1990, Isle of Man in 1992, Gibraltar in 1993, Bermuda in 1994 and Anguilla, British Virgin Islands, Cayman Islands, Montserrat and Turks and Caicos Islands in 2001.

<sup>7</sup> Through a verdict by the Supreme Court on June 26, 2003, declaring laws banning same-sex acts unconstitutional. Such laws, however, have been repealed in most of the states already before the Supreme Court Verdict. Homosexual acts have also been repealed in all US dependencies - Guam in 1978, American Samoa in 1980, Northern Mariana Islands in 1983, American Virgin Islands in 1985 and Puerto Rico in 2004.

<sup>8</sup> These provisions were declared unconstitutional by High Court Judge Gerald Winter on August 5, 2005.<sup>8</sup> However, the verdict seems to have no legal impact as there have been arrests for violations of the law afterwards.

<sup>9</sup> A proposal from the government in the Sexual Offences Bill, aims to prohibit also lesbian acts. It has, however, not been adopted yet.

<sup>10</sup> In 2003 the Penal Code of 1969 was reinstated. This Code does not criminalize sexual activities between persons of the same sex. However, reports tell that Death Squads operate in Iraq, killing gays.

<sup>11</sup> The National Code prohibits “unnatural sexual intercourse”. However, in August 2004, the Minister of Interior wrote in a letter to the Supreme Court that “there is no legal prohibition to ban or punish homosexual activities”.

<sup>12</sup> On August 2005, a High Court Justice ruled that the law prohibiting sexual activities with person of the same sex if the partner is under the age of 21, is unconstitutional. It is, however, unclear if this verdict has any legal impact.

<sup>13</sup> Article 209 setting the age of consent for same-sex activities higher than for heterosexual activities, was declared unconstitutional by the Constitutional Court on June 24, 2002. The law was later repealed by the parliament by law 134/2002.

<sup>14</sup> Repealed by a High Court verdict on September 4, 2002.

<sup>15</sup> In December 2005, the Constitutional Court ruled that banning same-sex marriages is unconstitutional, and the Government should legalize such marriages by December 2006, or such marriage would be legal by this verdict.

<sup>16</sup> By a Supreme Judicial Court verdict on November 18, 2003.

<sup>17</sup> The law entered in force on July 1, 2006.

<sup>18</sup> The law entered into force on July 23, 2006.

<sup>19</sup> The law enters into force in 2007.

<sup>20</sup> By a State Supreme Court verdict in March, 2004.

<sup>21</sup> A verdict by the European Court of Human Rights on July 24, 2003 gives same-sex couples the same rights as heterosexual cohabitants in the tenancy area. Same-sex couples are also entitled to refuse to testify against each other in court by an amendment to the law in 1998.

<sup>22</sup> On February 11, 1998, The High Court ruled that a gay man should be entitled to inherit his deceased partner. The Cohabitation law of 2003 covers same-sex couples as well.

<sup>23</sup> In May 2000, the Family Court No. 6 ruled that a gay man should be entitled to inherit his deceased partner, and on October 11, 2001 the Supreme Court recognized same-sex partners for conjugal visitation rights.

<sup>24</sup> Law on Civil Unions of 2003, giving same-sex couples the same rights as heterosexual cohabitants in the areas of inheritance and financial support. The law also prohibits discrimination based on sexual orientation, and discrimination of persons having entered a Civil Union.

<sup>25</sup> Law No. 42 of 1996, giving same-sex couples the same rights and obligations as heterosexual cohabitants. The law entered into force on June 19, 1996.

<sup>26</sup> Through Supreme Court/High Court of Justice verdicts, for example regarding employment benefits to same-sex partners (1994). In 2000, the minister of Interior stated that the authorities now will treat same-sex couples the same as heterosexual couples in the area of immigration.

<sup>27</sup> Same-sex couples are entitled to refuse to testify against each other in court, through an amendment to the Penal Code in 2001.

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<sup>28</sup> Law No. 7 of 2001 recognizes de-facto couples of the same sex, giving such couples some rights and obligations for example in the areas of housing and inheritance, among others.

<sup>29</sup> The law was adopted by the Icelandic Parliament on June 2, 2006, and went into force on June 27, 2006.

<sup>30</sup> The law was repealed through a verdict by the Constitutional Court on September 10, 2002.

<sup>31</sup> The law applies only to England and Wales, not to Northern Ireland or Scotland.

<sup>28</sup> In Denmark, the insemination laws were reformed in 2006, now allowing lesbian couples to obtain such treatment in state hospitals on the same basis as heterosexual couples. The new law enters into force on January 1, 2007. Before, doctors are not allowed to perform assisted insemination treatment on lesbians or single women, but the law did not affect midwives.

<sup>33</sup> The law was adopted by the Icelandic Parliament on June 2, 2006, and went into force on June 27, 2006.

<sup>34</sup> Does not apply on the federal level, but there are laws against discrimination based on sexual orientation in all of the Australian states.

<sup>35</sup> England, Wales, Scotland and Northern Ireland banned discrimination based on sexual orientation in the employment area in 2003, and Gibraltar in 2004.

<sup>36</sup> Does not apply on the federal level, but there are laws against discrimination based on sexual orientation in all of the Australian states.

<sup>37</sup> The law is only applicable for England & Wales. Such a law is in force in Northern Ireland since 2004, while Scotland has no such law.

<sup>38</sup> The prohibition only covers persons convicted for sodomy.