

ON THE MARGINS OF DEVELOPMENT

ASIA PACIFIC LGBT INCLUSION, POVERTY REDUCTION AND PROSPERITY

5 December 2016

Asian Development Bank

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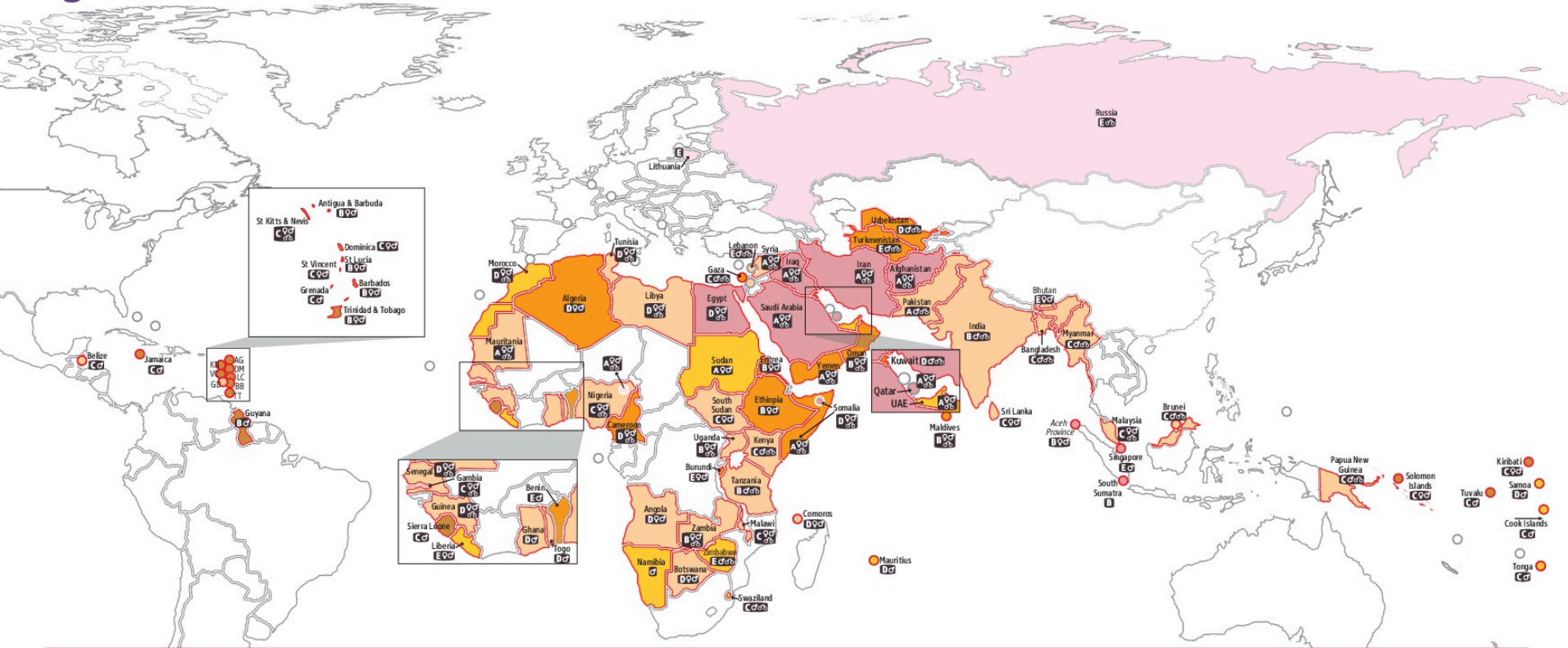


SEXUAL ORIENTATION LAWS IN THE WORLD - CRIMINALISATION

ILGA, THE INTERNATIONAL LESBIAN, GAY, BISEXUAL, TRANS AND INTERSEX ASSOCIATION

JUNE 2016

WWW.ILGA.ORG





ACTUAL OFFENCE THAT GENERATES MAXIMUM SENTENCES

Promotion ("propaganda") laws 2 States	Against nature 30 States
Sexual act 11 States	Buggery 13 States
Sodomy 11 States	Morality law: LGB expression 7 States (and some provinces)

CATEGORIES OF MAXIMUM SENTENCES

- A** Death (13 States [or parts of])
- B** 15 years to Life (14 States)
- C** 8 to 14 years (23 States)
- D** 3 to 7 years (19 States)
- E** 1 month – 2 years (or a fine) (8 States)

 Relationship between females is illegal (45 States)

 Relationship between males is illegal (73 States)

 There were arrests, prosecutions etc. in the last 3 years (45 States)

Note: the country entries on these criminalizing States in *State-Sponsored Homophobia: a World Survey of Sexual Orientation Laws: Criminalisation, Protection and Recognition*, an ILGA report by Aengus Carroll. The report and these maps are available in the six official UN languages: English, Chinese, Arabic, French, Russian and Spanish on www.ilga.org. This edition of the world map (June 2016) was coordinated by Aengus Carroll and Renato Sabbadini (ILGA), and designed by Eduardo Enoki (eduardo.enoki@gmail.com).

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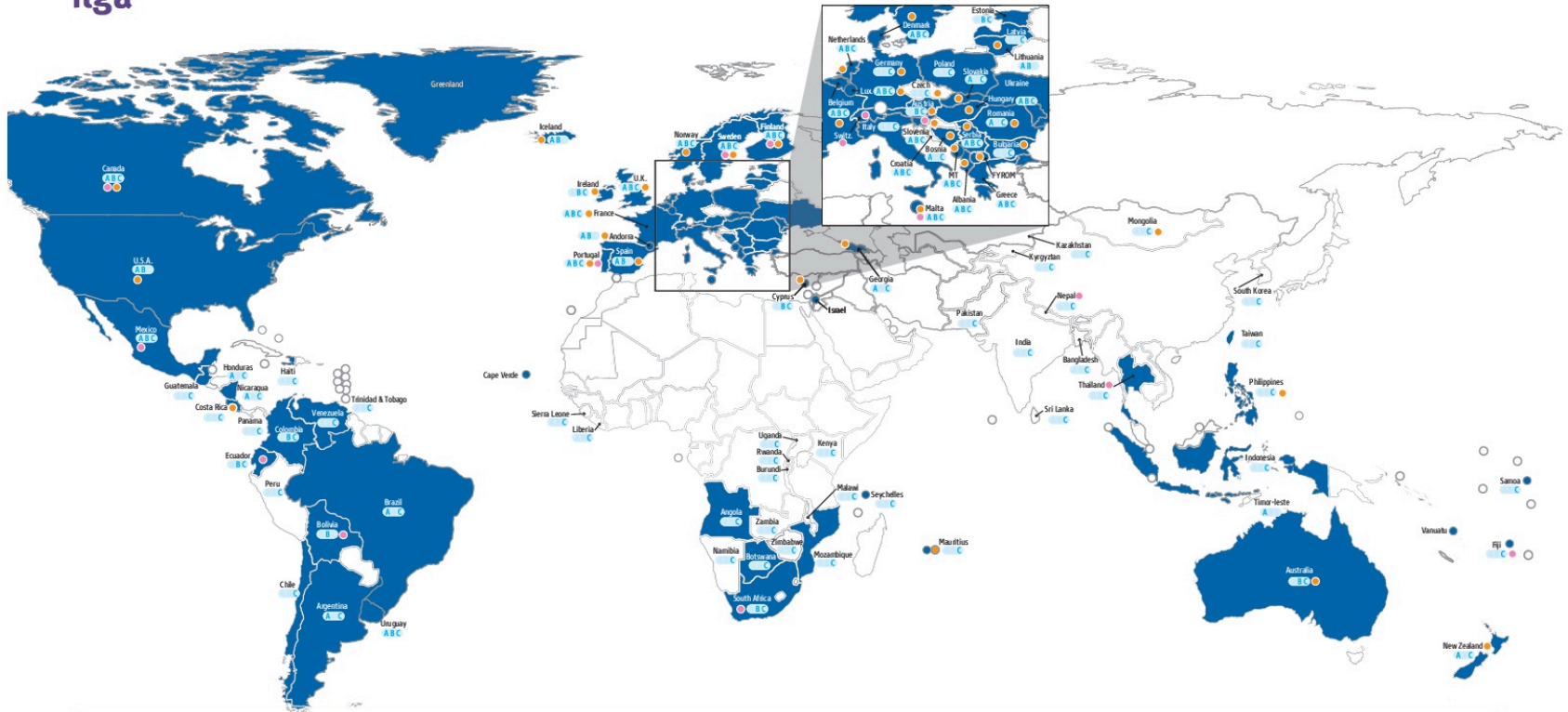


SEXUAL ORIENTATION LAWS IN THE WORLD - PROTECTION

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PROTECTION

Non-discrimination in employment
71 States

- A** Hate crimes based on sexual orientation considered an aggravating circumstance (40 States)
- B** Incitement to hatred based on sexual orientation prohibited (36 States)
- C** Presence of a National Human Rights Institution (NHRI) that includes sexual orientation in its human rights work (88 States)

- Constitutional prohibition of discrimination based on sexual orientation (14 States)
- Other non-discrimination provisions specifying sexual orientation (39 States)

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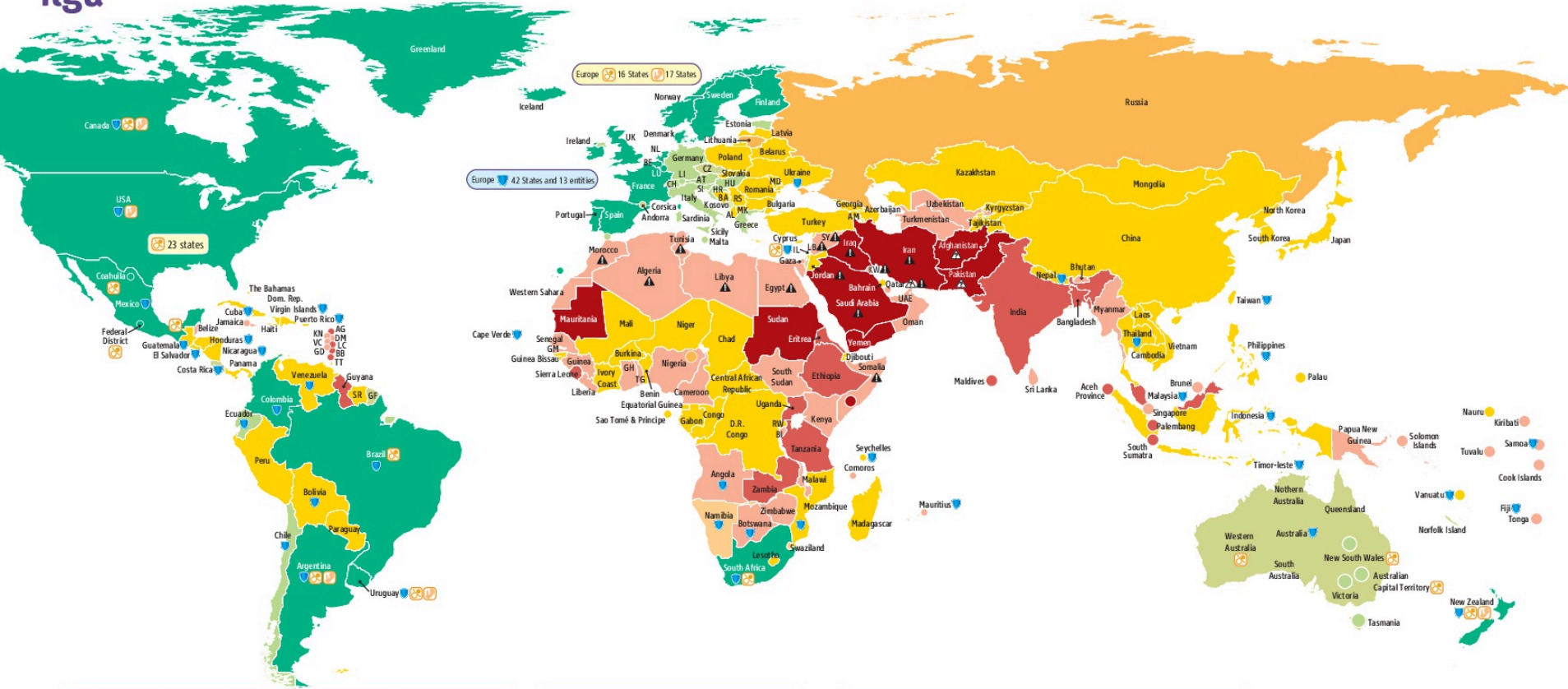




SEXUAL ORIENTATION LAWS IN THE WORLD - OVERVIEW

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CRIMINALISATION

IMPRISONMENT
73 countries and 5 entities

DEATH PENALTY
13 States (or parts of)

Death penalty not known to be implemented

Morality laws (religion-based) that limit LGB freedom of expression and association

Death penalty
Imprisonment 14 Y - Life
Imprisonment up to 14 years
Promotion ('propaganda') laws limiting freedom of expression
No penalty specified

PROTECTION

ANTI-DISCRIMINATION LAWS
76 countries and 85 entities

Includes employment, Constitution, other non-discrimination protections, hate crime and hate speech.

NO SPECIFIC LEGISLATION

Legislation penalising same-sex sexual acts decriminalised, or never existed

RECOGNITION

RECOGNITION OF SAME-SEX UNIONS
47 countries and 65 entities

JOINT ADOPTION
27 countries and 28 entities

SECOND PARENT ADOPTION
17 countries and parts of Italy



Marriage
Equal (almost equal) substitute to marriage
Clearly inferior substitute to marriage

The data represented in this map, and the three accompanying separate maps on Criminalisation, Protection and Recognition, are based on *State-Sponsored Homophobia: a World Survey of Sexual Orientation Laws: Criminalisation, Protection and Recognition*, an ILGA report by Aengus Carroll. The report and these maps are available in the six official UN languages: English, Chinese, Arabic, French, Russian and Spanish on www.ilga.org. This edition of the world map (June 2016) was coordinated by Aengus Carroll and Renato Sabadini (ILGA), and designed by Eduardo Enoki (eduardo.enoki@gmail.com).

ASIAN EXAMPLES: INDIA

Indian Penal Code Section 377 –

“...carnal intercourse against the order of nature with any man, woman or animal...punished with imprisonment for life...”

2009 Delhi High Court judgment - limited interpretation of the provision; Supreme Court (2013) upheld constitutionality of 377 (saying parliament should legislate)

A “curative petition” under consideration

ASIAN EXAMPLES: INDONESIA

- Same sex sexual relations not prohibited under the Indonesian Penal Code
- Stigmatizing regulations at the national level “healthy sexual life...free from sexual orientation dysfunction or deviance...in accordance with ethics and morals”
- Local laws in Aceh and Sumatra treat same sex relation as “immoral”

ASIAN EXAMPLES:

NEPAL

- Sunil Babu Pant v. Nepal Government (2007) – on behalf of NGOs representing sexual minorities
- Demand – recognition of third sex, gender identity; law prohibiting discrimination
- Outcome – separate column for third sex; constitutional prohibition against discrimination based on sexual orientation;
- directive order to draft law to recognize same-sex marriage

INTERNATIONAL HUMAN RIGHTS REGIME

- A set of international instruments and jurisprudence coming out of the treaty bodies
- Universal Declaration of Human Rights (1948)
- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- CERD, CEDAW, CRC, CAT

EQUALITY AND NON-DISCRIMINATION UNDER INTERNATIONAL REGIME

- Prohibition of discrimination - all persons irrespective of sex, sexual orientation or gender identity entitled to protections under HR law
- non-discrimination is universally guaranteed
- States have obligation to enact comprehensive legislation that prohibit discrimination

EQUALITY AND NON-DISCRIMINATION UNDER INTERNATIONAL REGIME

- Protection from homophobic and transphobic violence – typically hate-motivated
- Effective investigation, prosecution and punishment to perpetrators – to protect the right to life and security of person
- Enactment of hate crime laws, and system to record and respond to hate-motivated acts

EQUALITY AND NON-DISCRIMINATION UNDER INTERNATIONAL REGIME

- Prevention of torture against sexual minorities – including forced examinations and sexual violence
- The obligation to define torture as a crime and to set up a system for proper investigation and enforcement
- Decriminalize homosexuality

ROLE FOR DEVELOPMENT FINANCE WORLD?

- There is economic cost attributable to discrimination
- Should it be “rights-based”?
- MDB’s experience with other rights – gender equality, child labor, core labor standards, equal pay for equal work

THANK YOU