

End the criminal treatment of LGBT people



Cary Alan Johnson

The right to dignity and respect by government authorities extends to all people. Yet every day, around the world, lesbian, gay, bisexual and transgender (LGBT) people are singled out as targets for vicious harassment, abuse, arbitrary arrests, imprisonment (sometimes for life) and even death. A major factor contributing to these abuses are laws that, in essence, make it a crime for LGBT individuals to be who they are.

In January nine men (including the head of an organisation providing HIV prevention services to the LGBT community) were charged with criminal conspiracy and ‘engaging in acts against the order of nature’ in Senegal. They were sentenced to eight years in prison, more than the five-year maximum penalty for sodomy under Senegalese law.

Legal provisions in Egypt, which refer to ‘debauchery’, ‘contempt for religion’ and ‘shameless public acts’, have been used to prosecute men presumed to be gay. Within the last year, Egyptian police have arrested at least a dozen men believed to be HIV-positive and homosexual. At one point, some of the men were chained to their prison beds before being convicted and sentenced to three-year prison terms.

In Nigeria, gay men presently face up to 14 years in jail if they live in the Christian areas of the country, and death by stoning in those parts of Nigeria that apply Sharia law.

In Uganda in 2002, two lesbian women were arrested after having arranged a private engagement ceremony. They were not engaging in any sexual activity at the time of their arrest.

More than 80 countries retain laws that effectively criminalise LGBT people. Generically referred to as ‘sodomy

laws’, many of these provisions – including in India, Uganda, Singapore and Jamaica – are relics of British colonial rule. The prohibition of consensual same-sex acts was intended to rein in the varied sexual practices and traditions encountered in the colonies.

Today these laws are used almost exclusively to allow the state to arrest, convict and imprison LGBT people. They justify the state’s involvement in cruel and abusive treatment of anyone who is known or presumed to be gay. In fact, the laws are rarely used to arrest anyone who is actually engaged in sexual activity. Rather, homophobic police forces and political leaders use these laws to threaten and punish LGBT people because of who they are – especially those who dare to challenge discrimination. These threats and punishments are usually accompanied by violence.

‘Decriminalisation is a vital step towards promoting respect for LGBT people and paving the way for legal equality. This goal requires not only public condemnation of those leaders and governments who violate the rights of a marginalised group of people, but also a demand for the state to actively protect all of its citizens, regardless of their sexual orientation or gender identity.’

Countries often go beyond criminalising sexual activity, making gender nonconformity a crime as well. In 2007, 14 people were arrested in Kuwait under a new law making it a criminal offence to ‘imitate the appearance of a member of the opposite sex’.

In 1994, the UN Human Rights Committee, which monitors state compliance with the International Covenant on Civil and Political Rights (ICCPR), is-

sued an opinion stating that Tasmania’s sodomy law violated privacy and anti-discrimination protections enshrined in the ICCPR. Courts, human rights experts and defenders, political and religious leaders, and NGOs around the world have come to recognise that the brutal enforcement of these laws directly contravenes all we expect from the promise of human rights.

In 2006, a group of 29 international human rights experts released the Yogyakarta Principles. Drawn from existing international law and jurisprudence, these principles delineate how international human rights law applies to sexual orientation and gender identity. The principles stress that states should repeal criminal provisions prohibiting consensual same-sex activity between adults.

In December 2008, in the most promising victory to date, 66 states endorsed a statement in the UN General Assembly articulating support for LGBT rights. Drafted by a cross-regional group of states, the text condemns violence and discrimination on the basis of sexual orientation and gender identity. The signatories include Argentina, the Central African Republic, France, Gabon, Nepal, the Netherlands, and Timor-Leste. The Obama administration recently added the US’s signature, reversing America’s previous stance.

The elimination of laws that criminalise sodomy and gender nonconformity will not put an immediate end to homophobic violence. In March a prominent transgender activist from Turkey was murdered in Istanbul. In the past two years there have been 13 unsolved murders of transgender individuals in Colombia alone. In neither of these two countries is sodomy or gender nonconformity a crime, but violence remains prevalent.

Still, decriminalisation is a vital step towards promoting respect for LGBT people and paving the way for legal equality. This goal requires not only public condemnation of those leaders and governments who violate the rights of a marginalised group of people, but also a demand for the state to actively protect all of its citizens, regardless of their sexual orientation or gender identity. The UN should be at the forefront of this undertaking.

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