

LGBT+ Rights are Human Rights

Ten years ago, in December 2011, the United Nations High Commissioner for Human Rights released the first ever UN report on the human rights of LGBT+ people. What has happened since then?

Although the [Universal Declaration of Human Rights](#), drafted in 1948, states that “All human beings are born free and equal in dignity and rights”, it was not until 1994 that the UN approached the issue of equality of rights regardless of sexual orientation and gender identity. In 1994, the landmark human rights case of [Toonen v. Australia](#) led to the UN Human Rights Committee concluding that sexual orientation was a protected status under the International Covenant on Civil and Political Rights. Following this case, LGBT+ rights largely remained in the background until 2011, when the United Nations High Commissioner for Human Rights released the [report](#) *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*.

The document outlines some of the most urgent human rights concerns that must be addressed and makes several recommendations on this matter to member states. For example, it suggests that states should repeal laws that criminalise homosexuality and that encourage violence against LGBT+ persons.¹ Other recommendations include “harmonising” the age of consent for heterosexuals and homosexuals, placing more emphasis on thoroughly investigating and recording hate crime incidents, and creating comprehensive laws that tackle discrimination based on sexual orientation or gender identity.

Violence and Discrimination Against the LGBT+ Community

The report begins by laying out the international standards and obligations that currently exist and should be applied by member states. It goes on to give detailed evidence of violence and discriminatory laws and practices against LGBT+ persons across the globe and states that people in all regions across the globe experience violence and discrimination based on their sexual orientation or gender identity. These violations include “killings, rape and physical attacks, torture, arbitrary detention, the denial of rights to assembly, expression and

information, and discrimination in employment, health and education”. LGBT+ people continue to be at risk from family and community violence and from attacks by groups such as “religious extremists, paramilitary groups, neo-Nazis and extreme nationalists”, who believe that LGBT+ people transgress social norms. The LGBT+ community also continues to be targeted by states themselves through legislation and policy. As cited in the report, according to the International Lesbian, Gay, Bisexual, Transgender and Intersex Association (ILGA), in 2011, 76 countries still had laws “that are used to criminalize people on the basis of sexual orientation or gender identity”. In some countries, charges under these laws can lead to life imprisonment or even the death penalty.

What Changes Have Been Made in the Last 10 Years?

In 2020, the ILGA released a [document](#) on state-sponsored homophobia stating that “69 UN member States continue to criminalise consensual same-sex activity”. That means that since 2011 seven states have repealed laws that criminalise consensual same-sex activity. For example, in 2015, Mozambique [decriminalised](#) gay and lesbian relationships. In 2019, Botswana judges [ruled](#) that laws criminalising homosexual consensual activity are unconstitutional, and in November this year the Botswana court of appeals [upheld the ruling](#) to decriminalise same-sex relationships after the government had appealed the ruling in 2019. With many states in Africa still criminalising homosexual relationships, these rulings have been hailed as important victories for gay rights campaigners in Africa, who hope that other states on the continent will follow suit.

In the past 10 years, many states have introduced new laws and policies that aim to stamp out discrimination and to create protections for LGBT+ people in legislation. Since 2011, some states, such as Cuba, Mexico, Nepal, Malta, and Sweden, have introduced the prohibition of sexual orientation discrimination in their constitutions. In Angola, Article 212 of the Penal Code (Law No. 38), which “criminalises acts of discrimination based on sexual orientation, including with [regard to employment](#)”, was published in 2020 and came into effect in 2021. Since 2011, several states, such as Barbados, Liberia, Iceland, and Ireland, have passed legislation or adjusted existing legislation that [strengthens employment protections](#) for LGBT+ people. Laws have also been passed that give homosexual couples the same rights as heterosexual couples, where the definition of marriage has been extended to include same-sex couples. States that have legalised same-sex marriage in the past 10 years include Brazil, Colombia, Ecuador, the US, Austria, Finland, Germany, and Ireland. However, since 2011,

states have also tightened laws against the LGBT+ community, with, for example, Nigeria bringing in new [legislation in 2014](#) that bans same-sex marriages and public displays of affection between couples of the same sex. In the US, the Obama administration made many changes to protect the rights of the LGBT+ community, but the Trump administration went to great lengths to [roll-back and weaken these rights](#).

Now, in 2021, in Germany, with a new government on the horizon, a [coalition agreement](#) has been released that suggests further protections for the LGBT+ community will be established in the upcoming years. In the agreement, the coalition state that they wish to counteract queer hostility and therefore intend to develop a national action plan for the acceptance and protection of sexual and gender diversity. They aim to bring more stability to rainbow families (families that are not considered heteronormative) by securing their place in family policy and to explicitly include gender-specific and homophobic motives in the “catalogue of punishments” in Section 46 (2) of the Criminal Code. They also aim to abolish the Transsexual Act and replace it with a self-determination law and to advocate for changes in EU legislation to strengthen the rights of LGBT+ people across the EU.

Protecting the rights of the LGBT+ community is an on-going struggle. Although numerous states have enacted laws and policies that protect and strengthen these rights, many states continue to persecute and criminalise LGBT+ people. As can be seen in the example of the US, new administrations can undo years or even decades of hard work in a short period of time, rolling back hard-fought rights that previous administrations have established. Therefore, it is vital that institutions such as the UN continue to push for member states to remove discriminatory laws and practices against individuals based on their sexual orientation and gender identity and that they work together with states to change negative discourses surrounding the LGBT+ community. Since 2011, the UN have continued to issue reports on human rights violations against the LGBT+ community. In 2016, the UN [created a mandate](#) “to address violence and discrimination on the basis of sexual orientation and gender identity”, with [Victor Madrigal-Borloz](#) being appointed the Independent Expert in 2017. The human rights of the LGBT+ community can only be protected if member states work together to change negative discourses and create legislation that secure these rights in the long term.

By Teri Shardlow