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## **Promoting Human Rights standards for lesbian, gay, bisexual, and transgender people from the perspective of International law**

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### **Abstract**

This article examines the issue of how various religious and legal systems cope with current developments that weaken the binary opposition of men and women including their definitions of sexual identity and culture. More concretely, this book tries to explain how society and concrete laws deal with claims of lesbian, gay, bisexual, and transsexual (LGBT) who claim wider recognition. This explains the difference between the Western provisions and the policies of relevant legal bodies such as the General Assembly of the United Nations, the European Court of Human Rights, and the Supreme Court regarding this matter. This also shows the nature and real impact of international civil society forces such as the Yogyakarta principle which formulates the expansion of rights regarding lesbian, gay, bisexual, and transsexuals. Based on a comparison of various legal and religious discourses, he describes the current practice of direct and indirect discrimination and in some non-European national systems even extrajudicial killings, torture and ill-treatment, sexual assault, rape, and other human rights violations. While emphasizing the substantial differences between current European countries and non-European countries regarding policies towards lesbian, gay, bisexual, and transgender (LGBT), it points to the current trend of progress in the field by the general policy of the European Council, the most recent assessment issued by the European Court of Human Rights as well as civil society efforts such as the Yogyakarta principle. Swedish standards have been introduced to emphasize existing progressive attitudes towards LGBT people regarding gay marriage and adoption procedures.

**Keywords:** Human Rights, legal case, homosexuality, transgender, LGBT, religion, International law

## **Introduction**

How do various religious and legal systems cope with current developments that weaken the binary opposition of men and women that imply definitions of their sexual and cultural identities and their roles? More concretely, how do communities and concrete laws deal with claims of lesbian, gay, bisexual, and transsexual (LGBT) (Hoekstra-Pijpers, 2022) who wish to gain wider recognition? What's the difference? between Western provisions and policies of relevant legal bodies such as the European Court of Human Rights or the Supreme Court regarding this issue? Can one find common policies in Western society and Christian churches or can one identify substantial differences between these entities? What are the nature and real impact of international civil society forces such as the Yogyakarta principle which formulates the expansion of rights regarding lesbian, gay, bisexual, and transsexual (LGBT)? (Usai et al., 2022)

Issues of gender identity and sexual orientation have been reflected and integrated with Western scholarship that focuses on gender regulation and has been governed by black letter laws, soft laws, and social customs (Fatmy et al., 2022). For example, the French philosopher Michel Foucault has argued that different understandings of sexual austerity have been a consistent and common feature from Antiquity through Christian texts to modern times, but the terms in which it has been expressed have often been reformulated in very different ways different. Method; in Western civilization, there is undoubtedly a tendency to associate the theme of sexual austerity with various social, civil, and religious taboos and prohibitions (de los Reyes & Collict, 2022). For example, the moral considerations of the sexual condition are subject to a fundamental gender asymmetry and the moral system is produced by and intended purely for free men, except women, children, and slaves (Vu, 2022).

Thus the system does not attempt to define domains of behavior and domains of valid rules for relations between men and women but provides a laboratory of men's perspectives to shape their behavior (Formby, 2022). The advent of Christianity did not transform people's relationships into their sexual activities, but the regulation of gender was marked by the introduction of new codes of sexuality. Behavior a new kind of relationship was formed between sex and subjectivity in which the emphasis was less on the need to exercise self-mastery and more on the need to discover the truth within oneself through a permanent diagnosis or hermeneutics of the self as a sexual being (Harris et al., 2022).

The interdependence of sexuality, subjectivity, and truth established within Christianity has emerged in more secular conditions to exert a considerable influence not only on subject formation but also on scientific methods of analysis and investigation; a telling example has been the discourse and practice of psychoanalytic recognition (Reygan et al., 2022). In modern conditions, there is an increase in the categorization of heretics where previously a man who engaged in same-sex activities will be branded as an individual who succumbs to the sin of sodomy. Under current conditions, these subjects would be categorized or labeled as homosexual (Baiocco et al., 2022).

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### **Literature Review**

Feminist scholar Judith Butler deconstructs the notion of various schools of feminist theory that aim at the construction of gender identities and subjects that should be represented at the linguistic and political levels; he emphasizes the fact that sex is a biological category on the one hand, and gender is culturally constructed on the other. He refers to Foucault's thesis that 'real' or 'true' or 'authentic' sexual identity is an illusion and that 'sex' is only one component of the omnipresent mechanism of power. While using certain Foucauldian arguments, he claims that the paternal/symbolic law defines the category of 'feminine' and in particular the notion of pregnancy; women are thus purely a product of discourse (Thompson, 2022).

When criticizing Simone de Beauvoir for phallogocentric language and Luce Irigaray for women's self-identical beings to be represented, Butler argues that gender does and there is no identity behind the act which is supposed to express gender and that gender 'women, as well as the sex of men, are contingent; these categories may be subject to further interpretation and branding, based on a critical appropriation of the intellectual heritage of Claude Lévi-Strauss, Joan Riviere, and Sigmund Freud. She is critical of the fact that feminist scholars see a non-oppressive society solely as the abolition of a presumed pre-patriarchal order, and this points to the productive and accomplished aspects of gender. More concretely, he calls for the transformation of the male and female binary opposition. and argues that heterosexual melancholy is culturally institutionalized as a price of stable gender identity. In other words, the misunderstanding between the majority of society and subjects with different gender identities can be explained by the fact that the body itself is a consequence of taboos caused by heterosexual stable boundaries (Ro & Khan, 2022). He definitively abandons the biological determination of gender and suggests that all genders are trained and practiced and that drag practice is the ideal solution for demonstrating this process for the sake of understanding among actors with different gender identities and sexual orientations. According to Butler it is necessary to leave behind the binary subject/object division and attempts to emancipate it and feminist attempts to form a general female identity and she calls for such a subject to be formed through repetition and the practice of signification (Klett-Davies, 2022).

### **Research Method**

When using the methodology of legal analysis - and in particular case law - The following article attempts to understand the evolution of international human rights law regarding the correction of misunderstandings between actors based on differences in gender identity and sexual orientation that can be documented by civil society efforts such as the Yogyakarta principle. Based on a comparison of various laws and religions shed light on current practices of direct and indirect discrimination and in some non-European national systems even extrajudicial killings, torture and ill-treatment, sexual assault, rape, and other human rights violations. While emphasizing the substantial legal differences between current European countries and non-European countries regarding policies towards lesbian, gay, bisexual, and transgender (LGBT) people, it points to current trends in progress in the field

by the European Council's general policy, a judgment that issued by the European Court of Human Rights and civil society efforts such as the Yogyakarta principle.

## **Result and Discussion**

### ***The development of international and European legal aspects regarding LGBT***

The current concern with problems of misunderstanding based on sexual orientation and gender identity, as well as patterns of harassment associated with these issues, can be documented not only by the evolution of the black letter approach and the relevant important cases analyzed below but also by the establishment of the Yogyakarta Principles. More concretely, the Yogyakarta Principles on the Application of International Human Rights Law about Sexual Orientation and Gender Identity can be characterized as a set of principles that aim to apply international human rights law standards to address human rights abuses. LGBT and intersexuality issues(Williams et al., 2022).

The Yogyakarta Principles claim that people are born free and with dignity including LGBT people. These principles were formulated by the International Commission of Jurists, the International Service for Human Rights, and human rights experts from around the world at Gadjah Mada University in Java. These principles aim to improve the interpretation of human rights treaties however, they have not yet become part of international human rights law. The signatories attempted to make the Yogyakarta Principles a standard of international law that all countries must comply with, but several countries expressed objections. Furthermore, the human rights interim report on comprehensive sexual education submitted by the Special Rapporteur on the Right to Education to the General Assembly of the United Nations cited the Yogyakarta Principles as the human rights standard but the majority of the General Assembly. Members of the Third Committee recommended against adopting these principles. For example, the Special Rapporteur was criticized by representatives of Mauritania for interpreting human rights more broadly by promoting controversial doctrines that did not gain universal recognition and by redefining established concepts of sexual and reproductive health education. In addition, the US-based conservative pressure group Catholic Family and Human Rights Watch claims that the Principles can undermine the concept of family and can be used to restrict free speech (Burke et al., 2022).

However, the perspective of international and European legal institutions about the Yogyakarta principle is different; The Council of Europe has concluded that Principle 3 of the Yogyakarta Principles is particularly relevant. It has been argued that same-sex marriage is legal in only a few Council of Europe member states and therefore many married transgender people must divorce before their new gender is officially recognized. However, they prefer to remain a legally recognized family unit because in their view such forced divorce could negatively affect the children of the marriage. The Council of Europe has also criticized the legal practice of sterilization and other compulsory medical treatment as a necessary legal requirement to recognize a person's gender identity in laws governing the process of changing names and genders, etc. European Council members also claim that gender reassignment procedures, such as hormone therapy, surgery, and psychological

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support should be accessible to transgender people and that they should also be reimbursed by public health insurance schemes linked to gender and name changes (Kerrigan & Vanlee, 2022).

### ***Repeal of sodomy laws in the United States and the European context***

Christianity, Judaism, and Islam have strictly advocated sex for reproductive reasons and they have made systematic efforts to combat sexual perversion. Christian disagreements on the issue of homosexuality today are split between conservatives and liberals, and their main disagreements stem from textual interpretations of the Bible, as well as weighing the significance and effects of historical changes on the understanding of the Bible. Christianity governed social life for a very long time, and the line between church and state of any kind was always very thin; even today the relationship between church and state is very complicated (George, 2017). The main passage against him in the Bible is the paragraph in Genesis about Lot's people and their sexual practices: They were destroyed for a large public act of sexual perversion. The major passages in the Bible condemning male homosexuality say this: *If a man sleeps with a man as a man sleeps with a woman, both of them have done what is abominable. They must be put to death and their blood will be shed on their heads.* (Marzetti et al., 2022)

Negative attitudes toward homosexuality that existed decades ago can be documented by the United States Supreme Court decision *Bowers v. Hardwick* upheld the constitutionality of Georgia's sodomy laws which criminalized private oral and anal sex between consenting adults when applied to homosexuals. *Bowers* signaled the Court's reluctance to recognize the general constitutional right to privacy or to extend that right further than it already has. Only seventeen years after *Bowers v. Hardwick*, the Supreme Court directly overruled his decision in *Lawrence v. Texas*. He insisted that the anti-sodomy bill was unconstitutional and argued that *Bowers* was not right when it was passed. Officer Torick had to contact Hardwick on different accounts whether one of the guests opened the door for the attendant and allowed him into the apartment or if the front door was already open (Willett, 2020). Officer Torick found Hardwick's bedroom door slightly ajar and then entered the room where Hardwick and a groom were engaging in consensual oral sex. He placed both men under arrest for sodomy which is defined under Georgia law to include oral sex and anal sex between members of the same or opposite sex. The case was decided by the United States District Court for the Northern District of Georgia and after Hardwick's appeal by the United States Court of Appeals for the Eleventh Circuit overturned a lower court's finding that Georgia's sodomy laws were indeed a violation of Hardwick's Constitution Right (Ragan, 2020). The court has asserted that the right to privacy is implied in the due process clause of the Fourteenth Amendment to the United States Constitution. Despite these assumptions at *Bowers*, the Court held that this right does not extend to private consensual sexual conduct, at least to the extent that it involves homosexual sex. One judge concluded *to argue that the fact of homosexual sodomy was somehow protected as a fundamental right would waste thousands of years of moral precepts* (Sekoni et al., 2022).

While the European Court of Human Rights overturned the Sodomy laws in large part European countries in the early 1980s with *Dudgeon v. Britain*, these measures contradict most conservative Middle Eastern countries, and Iran is a powerful country in criminalizing homosexual acts. The case of *Dudgeon v. The UK* was the first successful case before the European Court of Human Rights on the criminalization of male homosexuality and was important for setting the legal precedent that ultimately resulted in the Council of Europe requiring that no member state can criminalize either men or women. Female homosexual behavior. The European Court of Human Rights held that laws passed in the nineteenth century to criminalize male homosexual acts in England, Wales, and Ireland violated the European Convention on Human Rights. While female homosexual behavior has never been criminalized anywhere in England, male homosexual behavior was previously decriminalized in England and Wales in 1967, in Scotland in 1980, and as a consequence of trials in Northern Ireland in 1982 (Cheng et al., 2022).

Jeff Dudgeon is a gay activist in Belfast, Northern Ireland who was questioned by the Royal Ulster Constabulary about his sexual activity. Then he filed a complaint with the European Commission on Human Rights and after several rounds of hearings held by judges of the European Court of Human Rights, the Court agreed with the Commission that the criminalization of homosexual acts in Northern Ireland between consenting adults was a violation of Article 8 of the ECHR. The court held that *once it was decided that the limitation of the applicant's right to respect his private sexual life constituted a violation of Article 8 because of its broad and absolute nature, there was no useful legal purpose to serve. in determining whether he too has experienced discrimination compared to other people.*

The court stated *the limitations imposed on Mr. Dudgeon under the laws of Northern Ireland, because of their breadth and absolute nature, are, regardless of the severity of the possible sentence imposed, disproportionate to the objective being sought* (*Dudgeon v. United Kingdom*) However, *the ruling goes, countries will have to fix it themselves...an appropriate age extension of consent related to such behavior.* (*Dudgeon v. United Kingdom.*)

### ***Diversity of policies among Christian Churches on LGBT issues***

Under current conditions, homosexuality is perceived differently by the fifteen main modern Christian churches and there is no common view on the topic. Many Christians agree that homosexuals should be accepted in the church and that their civil rights should be protected while other churches claim that homosexual performances and actions are serious crimes (White et al., 2020). Religious hostility towards homosexuality and homosexuality can be found not only in public and religious spheres, but also in the sexual and private spheres, and expressions of hatred by the church against gays are considered a legitimate church right granted in America for an example implementation of the first amendment free religion (Sumerau, 2017). Homosexuals are considered to be unpardonable sinners and dangerous criminals and much of the Catholic Church used to label homosexuality as a mental disorder. In the best cases, homosexuality is considered a forgivable sin and the church and its members should provide assistance to overcome it (Aboim, 2022).

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The Catholic Church has historically opposed same-sex unions of any kind and the Vatican has opened an official website where there are several articles against the social and legal acceptance of homosexual behavior (Lewis, 2015). For example, Pope John Paul II is deeply concerned about countries allowing same-sex marriage and the Administrative Committee of the US Conference of Catholic Bishops has called for a constitutional amendment to protect the unique social and legal status of marriage (Houghton & Tasker, 2021). According to the Southern Baptists, homosexuality is an unpardonable sin and the sacred union of marriage between only a man and a woman and gay clergy is not permitted. However, one can find other Baptist churches that are more inclusive of LGBT people. For example, the Presbyterian Church (USA) has made great strides towards accepting homosexuality, and from May 2011 allowed the ordination of gay clergy and accepted homosexual civil rights as a matter of equality in society (Agénor et al., 2022).

In 1979 Sweden was the first country in Europe to disqualify homosexuality as a disease. From now until 2007 the gay community has gained a lot of acceptance not only in social and public life but also in the legal realm. The church is very open to gay people and their freedom and within the church, the debate over gay marriage has been going on for a long time. The Swedish church has Lutheran beliefs and was separated from the country in 2000. Civil unions for gay and lesbian couples have been possible in Sweden from 2001 and 2007. 30th anniversary of the disqualification of homosexuality as a disease, the Synod, the church's governing council, made gay marriage subject to a vote, and the Synod's decision was 176 votes in favor of the 249 voting members (Renley et al., 2022).

Eva Brunne, the Dean of the Bishops of Stockholm, has endorsed equal rights for gay people and claims the church should become more open about the issue. Homosexuality is considered an acceptable alternative lifestyle and Brunne has been registered in the partnership since 2001: there is no reason for homosexual marriages to be blessed by the church if society has become so open to it. In other words, the Swedish Church has decided to support the country's law on same-sex unions and is relaxed in using the term marriage when referring to what was formerly called a registered partnership in Sweden (Jovanović & Krstić, 2020). However, the debate over term union is still debated within the sacred walls of the Church, and priests have the individual right to refuse to perform marriage ceremonies for gay couples. Regarding terminology, the church will replace husband and wife with legally wedded partners for homosexual marriages. Now, 75% of church members have offered to bless a gay couple during their union ceremony at church (Abreu et al., 2022).

Although the Church of England has written strong words in a letter to Archbishop Anders Wejryd stating that the next step of gay marriage in the church could cause a breakdown in relations between the churches. The Swedish Church has ignored the Church of England's concerns and moved forward to perform same-sex marriage ceremonies. The church allowed same-sex marriage before the respective acts were adopted by official law and therefore Sweden should be listed among the first-world countries to practice religious union between same-sex couples in a large church: As recently as May 2009, The Swedish parliament voted to legalize same-sex marriage (Fisher et al., 2022).

***LGBT issues in selected non-European religious and legal systems***

Homosexuality was common in pre-modern societies and there were entire traditions of rituals celebrating and embodying same-sex unions in ancient societies. The ancient Egyptians, Greeks, and Romans generally accepted homosexuality as not only a possible biological pattern but also a potential means of spiritual union between two partners of the same sex. Compared to the ideas and practices of the ancient world Judaism, Christianity and Islam consider homosexuality a sin, and even today in many parts of the world the act of homosexuality is a punishable crime (Davis & Yeung, 2022).

Even though in recent centuries various conceptions and laws put the cult of the family in a more liberal perspective, religion has played an important role in maintaining the family traditional and very heterosexual. For example, homosexuals in Islam are called *quam lut*. (Lot people) and in Islamic law homosexuality is a crime: the punishment for this crime can be fines, torture, and the death penalty. The basis for such an attitude towards homosexuality in Islamic jurisprudence is the Qur'an or the Hadith (Says and deeds of the prophet while alive). Several passages in the Quran condemn homosexuality and homosexuals and the most tolerant verse in the Qur'an on this subject is: *If two of you are guilty of obscenity, punish them both. If they repent and change, let them alone* (QS 4:16).

There are only a few records that mention the punishment for women's homosexuality; because there is no penetration there is no death penalty for homosexual women, but the punishment is caning. Various clerics of the four schools distinguished two men who engage in homosexual acts between active and passive partners: the active partner must be whipped 100 times if not married, while the sodomist adulterer must be killed; while the passive partner is killed, married or not. The criminalization of consensual homosexuality is very common and cruel in the Islamic world and criminal laws providing for corporal punishment for homosexual acts can be found in the criminal laws of more than thirty Islamic countries. For example, cruel and unusual punishments such as stoning to death, 100 lashes, or throwing from a tall building are some of the measures taken by judges who adhere to textual interpretations of Sharia law in Iran and Saudi Arabia. Criminalization has been an ongoing practice although it conflicts with the Universal Declaration of Human Rights and several other international treaties, and the penalties for crimes of homosexuality are grossly disproportionate in most countries where acts of sodomy are present in national laws (Cahill et al., 2022).

Under Islamic law, punishment for crimes such as homosexuality, adultery, and fornication requires four witnesses, and all schools require a physical presence at the time of the act (a DNA test is acceptable as evidence). Thirty-six Islamic countries provide harsh penalties for homosexuals and ten of them apply the death penalty. For example, Iran has given death sentences to four thousand homosexuals since the end of the Islamic Revolution in 1979. In the Islamic world, international law is regarded as a stranger imposed by western legal reasoning: religion is considered the only source of law and constitutionality things meet very primitive standards (Harper et al., 2022).

Sexual suppression in Iran is a state mission and homosexuality is a crime that must be punished severely. Under Iranian criminal law, Sodomy and Lesbianism must be judged



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differently from each other in some circumstances. If a mature man of common sense has sexual intercourse with a minor, the adult shall be killed, while the minor shall be subject to 74 lashes if not under duress. If neither of them came of age, they were each subject to 74 lashes. Rubbing the thighs or buttocks, which is called Tafhiz, is punishable by 100 lashes; if repeated three times, the fourth penalty is death. If an active non-Muslim sodomite engages in acts with a passive Muslim sodomite, that Muslim must be put to death. If two men who were not related by blood were naked under any cover without necessity, they were subjected to 99 lashes, and two men who kissed on the mouth were subjected to 60 lashes. Regarding Lesbianism, there is no difference between passive and active couples, or between Muslims and non-Muslims. Both would be flogged, with 100 lashes each. If the act is repeated three times and the punishment is given three times, the fourth time they must be killed (Nikolaou, 2022).

The method of proving homosexuality is the same for both sodomy and lesbianism and the standard of proof is a confession or witness. The third method is at the judge's discretion, and confession requires admitting four times to engaging in a homosexual act. If the confession is less than four times, then the punishment is Tafhiz. The confessor must be an adult, of sound mind, with free will and intent, and if the person confesses and repents, the judge may request from the superior, Valie Amr, that the person be pardoned. Only a few Islamic countries such as Afghanistan, Bahrain, Maldives, Algeria, and Qatar punish homosexual acts with fines and imprisonment rather than corporal punishment; in Iran, such punishments for sodomy or lesbianism are the result of highly conservative and arbitrary governments imposing legislatures on certain minorities. Iran and most Islamic countries lack a legal culture of gender equality and women are considered to have half the authority and credibility of men in economic procedures and testimony. The privacy of a homosexual's bedroom is the starting point of a potentially death-deserving crime, and when the penalty is death, and when the person has no other civil law procedure in place to stop this unconstitutional act, the only way out is exile (Boy & Rodríguez, 2022).

Thus this problem has become an international problem that has been handled by United Nations agencies seeking to include minorities who have been excluded and charged with the death penalty. For example, the United States, United Kingdom, and other Western European countries are faced with an average of one hundred applications each year. In April 2011 the European Parliament voted on measures to strengthen applications from LGBT people seeking asylum in the European Union, and they have been included in a special section as asylum seekers with special needs. However, only 30% of these applications were completed successfully due to a lack of evidence of the application for possible execution if they returned to their country (Eigenmann, 2022).

According to EU requirements, the applicant must be a citizen of an EU member state, but the EU Immigration Doctrine for gay asylum seekers applies to 'probably reasonable execution if they are deported', and this fact makes it easier to be deported. accepted in cases of lack of documentation. Unfortunately, at least four asylum seekers are officially known to have committed suicide out of fear of deportation after their asylum claims were rejected in the UK and the Netherlands (Bränström & Pachankis, 2021).

***The positive rights perspective of gay law***

Hans Ytterberg will become the first ombudsman on a new Swedish initiative against discrimination based on sexual orientation on May 1, 1999, and the new ombudsman's office in Sweden is called the Homosexual Ombudsman. The Office was created to ensure non-discrimination for gays and lesbians in the workplace, but its powers extend to other aspects of public life as well (Thiel, 2021). Simultaneously with the formation of the office, new laws were adopted that were supposed to regulate discrimination of gay individuals in the workplace, job market, and other benefits. Constitution. The ombudsman's role is to oversee the law in public life, and support during the legal process; his role is not only acting in the courtroom but also influencing public opinion and providing recommendations related to legislation on gay matters. Among the ombudsman's greatest accomplishments is his appointment by the state to review the rules governing state pensions. Now that in Sweden same-sex marriage is recognized by both church and state, the latest concern of the Swedish Ombudsman for Gays and Lesbians has become adoption rights. The prohibition of gay couples from parenting has always been based on the pillars of natural law, and gay marriage is contested by society and jurisprudence because national law views marriage as the union of a man and a woman. The sad tradition of denying gay parental custody is attached to the tradition of criminalizing gay intimacy (Avgeri, 2021).

The debate between liberals and conservatives never ends Opposing one's choice to build a family is unconstitutional, and one of the main arguments against gay couples marrying and having children is the perspective of the couple's lack of parenting skills to raise healthy children. However, research has proven that parenting ability is not related to sexual orientation, and parental commitment comes from their love for their child or their educational background, but not from their sexual orientation. Brazil, Argentina, Uruguay, Canada, South Africa, Scandinavian countries, the United Kingdom, the fourteen states of the United States of America, as well as other European countries such as Andorra, Spain, and the Netherlands which allow married gay couples to adopt; in other countries such as Germany, Finland, Israel, Greenland and the Australian state of Tasmania, it is legal to adopt stepchildren, meaning that you can adopt your spouse's biological child (Altay et al., 2021). Adoption rights claims may also be legitimized by the research of Lawrence Kurdek, who in 1977 initiated a comparative social research study of 239 heterosexual couples, 79 male gay couples, and 51 lesbian couples. According to her findings, heterosexual and gay couples were comparable, and long-term lesbian relationships were of much higher quality than the first two. According to Susan Golombok's study of children raised by 27 families with heterosexual single mothers and 27 families with two lesbian partners, no findings were found differences regarding children's sexual behavior and their ability to form committed relationships (Eigenmann, 2022).

These studies have shown that in the future same-sex families could become examples of accepted parenting, and it seems that heterosexual fears about the social environment or the safety of children raised in gay families should no longer be legal arguments in courts or the basis of legal legislation. Even though the right to adopt has not been recognized as a fundamental right comparable to the right to raise one's biological child, current conceptualizations of childcare, at least in certain scientific discourses, have left a simplistic definition of gender understood as a dichotomy. between men and women. For example, in

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Bottoms v. Bottoms a lesbian mother was denied custody of her son because of his sexual orientation and she was only allowed to visit her son twice a week, but was not allowed to take him home or introduce him to his partner(Wieland & Alessi, 2021).

Kay Bottoms is suing her daughter, Sharon Bottoms, for custody of Sharon Bottom's son, Tyler Doustou; The court ruled that Sharon Bottoms was an unfit parent and Kay Bottoms was granted custody of her grandson. The ruling issued by the Virginia Circuit Court was based on the fact that homosexual sex is illegal in Virginia; Sharon Bottoms is a criminal because she admitted in this court that she was living in an active homosexual relationship. At a county court appeals hearing in April 1993, Sharon Bottoms admitted that she wasn't the best mother: she had spanked Tyler twice, he cursed in front of her, and for a year and she was living on welfare. However, the Virginia Court of Appeals reversed that decision and granted Sharon Bottoms custody of her son, saying *the fact that a mother is a lesbian and has engaged in illegal sexual acts does not justify taking custody of her child and granting custody of her child. child to non-parent* (Bottoms v. Bottoms). However, on further appeal, the Virginia Supreme Court restored custody of the grandmother (Callahan & Loscocco, 2023).

### ***The importance of the Yogyakarta principle for prospective international standards regarding LGBT rights***

A uniform legal system governing human rights at the international level in the area of sexual orientation and gender identity as a subject of non-discrimination would be an excellent way to ensure the fundamental freedoms of all gay minorities (Wijaya, 2022). Even though this situation may not occur soon, the existence of a uniform legal system will serve as a resource for all countries ready to adopt anti-discrimination laws against LGBT people. To advance these issues, independent representatives of the United Nations, human rights treaty bodies, and human rights experts met to adopt the Yogyakarta Principles which aim at the application of international human rights law regarding sexual orientation and gender identity (Madson, 2022).

The reason for the initiative is to remind UN members that they have signed international norms. At that time, 84 UN member states criminalized same-sex acts, and 7 of them homosexuals were punishable by death. The main idea of the meeting is to use international documents that have been ratified by most UN member states, such as the Universal Declaration of Human Rights (UDHR) (Department of Economic and Social Affairs Report, 2018), the International Convention on Civil and Political Rights (ICCPR) (Kinanti et al., 2022), and the Committee on the Elimination of Discrimination Against Women (CEDAW) (Runyan & Sanders, 2021), and apply it to situations of discrimination and violence (O'Flaherty, Fisher 2008). The twenty-nine Yogyakarta Principles cover areas of harassment such as torture, rape, and medical abuse, denial of freedom of speech and assembly, as well as other forms of discrimination such as immigration, discrimination at work, housing, education, and access to justice.

*Right to Life Everyone has the right to life No one may be arbitrarily deprived of life, including concerning sexual orientation or gender identity. The death penalty may not be imposed on anyone based on consensual sexual activity between persons over the age of*

*consent or based on sexual orientation or gender identity. y. Right to People Safety. Everyone, regardless of sexual orientation or gender identity, has the right to personal security and protection by the State from violence or bodily injury, whether perpetrated by government officials or by any individual or group....(O'Flaherty, 2015)*

The Yogyakarta document also contains 16 recommendations to national countries to actors at the national level such as human rights institutions, NGOs, UN agencies, High Commissioner for Human Rights, etc. The basic principles include the right to the universal enjoyment of human rights, non-discrimination and recognition before the law, and other principles that guarantee the right to human and personal security and the elimination of all forms of physical and psychological torture. In addition, economic, social, and cultural rights are upheld by principles 12 to 18, including the rights to work, education, accommodation, social security, and health. Freedom of movement and asylum are among the most important to the gay community in Islamic countries, and the right to participate in family life would guarantee partnership benefits such as marriage, and parenthood or special rights such as a survivor's pension (Carpenter, 2020).

*The United Nations Human Rights Treaty bodies vigorously integrate these Principles into the implementation of their respective mandates, including their case law and State examination reports, and when appropriate, adopt General Comments or other interpretive texts on the application of the law. human rights for people of diverse sexual orientations and gender identities. I. National human rights institutions promote respect for these Principles by State and non-State actors, and integrate into their work the promotion and protection of the human rights of persons with different sexual orientations or gender identities... (O'Flaherty, 2015)*

For example, principle 27 recognizes the right to defend and promote human rights without discrimination based on sexual orientation or gender identity, the Swedish Homosexual Ombudsman. The right to expression, opinion, and association must be guaranteed by national law and local authorities for meetings and other events necessary for LGBT people to associate in community with others; finally, principles 28 and 29 guarantee rights to redress and accountability, the importance of holding accountable those who violate these rights. For good reason, those principles were adopted, everywhere, in Indonesia in an Islamic state ruled by a sultan to draw attention to the consciousness of states known for being discriminatory against minorities (Chowdhury et al., 2022).

The majority of Yogyakarta's principles have existed in international documents or liberal countries' legal regulations against LGBT, and what they have found is to construct the principles from a positive rights perspective. The protection of the negative rights of gays has been recognized, and the Yogyakarta principles, therefore, help to underscore the importance of the positive rights that gays have violated, along with their fundamental rights. In other words, while a global phenomenon involving transportation, communication, international economics, and migration has occurred, change must also occur within our boundaries (O'Flaherty, 2015).

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### **Conclusion**

The analysis presented in this exploratory essay defined by an evolutionary human rights perspective has demonstrated substantial differences between various legal systems and religions as well as differences in legal norms regarding LGBT rights at the national level. First, the difficulty of applying common legal norms or civil society measures such as the Yogyakarta principles mentioned above into international human rights law can be explained by the complete fragmentation of national laws and often by conflicting logic. Second, they can also be demonstrated by the differences among regional bodies responsible for human rights such as the Organization of American States (OSA), and the Council of Europe, and their repudiation in international bodies such as the United Nations General Assembly.

Religion and homophobia have been tied together for centuries. The stronger the power of religious institutions in the state, the more oppressed the rights of homosexuals are. Islam is the clearest example of gay and lesbian human rights violations: not only by criminalizing each other's activities but also by the cruelty of punishment. Punishments can vary from flogging to the death penalty and it is only in a few countries where Sharia is a state law that steps have been taken to reduce the sentence. Different times have presented the decisions of the European Court of Human Rights and the Supreme Court invalidating the Sodomy law as well as the various positions of concrete Christian churches on the problem of homosexuality.

For example, Sweden is a country that has an entirely different position towards homosexuals concerning recognizing their basic liberties and policies of non-discrimination, and where religious institutions have been more progressive than municipal institutions in terms of recognizing same-sex marriage. Several aspects of the issue of adoption have been introduced as important elements that have been neglected in gay family law and highlight the differences between each of the regulations in concrete national systems. It can be argued that a child's future does not depend on the sexual orientation of the parents: numerous studies have shown that gay families can provide a healthy social environment for a child on par with heterosexuals.

The Yogyakarta Principles, as an example of civil society efforts, forced mobilization can be considered as a useful means of reminding UN member states that they are all signatory members of international documents such as the UDHR and ICCPR, and therefore they should pay more attention to sexual minorities who are discriminated against, as well as reminding the gay minority that it is not enough to fight for their negative rights, but also to make efforts to ensure their positive rights compared to heterosexual men and women.

The positive rights perspective creates the framework for the legal environment in which gays and lesbians want to live. Although not strictly binding, the law has explained why and how the rights of gays and lesbians must be protected. While adoption and employment discrimination have been the most important issues related to the legal situation of homosexuals and lesbians in Sweden, Islamic countries seem far from adopting laws that could lead to the enjoyment of the same rights enjoyed by heterosexual couples. The positive rights perspective creates the framework for the legal environment in which gays and lesbians want to live. Although not strictly binding, international law has provided explanations for

why and how gay and lesbian rights must be protected. While adoption and employment discrimination have been the most important issues related to the legal situation of homosexuals and lesbians in Sweden, Islamic countries seem far from adopting laws that could lead to the enjoyment of the same rights enjoyed by heterosexual couples.

## References

- Aboim, S. (2022). Fragmented Recognition: Gender Identity between Moral and Legal Spheres. *Social Politics*, 29(1). <https://doi.org/10.1093/sp/jxaa011>
- Abreu, R. L., Sostre, J. P., Gonzalez, K. A., Lockett, G. M., Matsuno, E., & Mosley, D. V. (2022). Impact of Gender-Affirming Care Bans on Transgender and Gender Diverse Youth: Parental Figures' Perspective. *Journal of Family Psychology*, 36(5). <https://doi.org/10.1037/fam0000987>
- Agénor, M., Pérez, A. E., Solazzo, A. L., Beccia, A. L., Samnaliev, M., Wu, J., Charlton, B. M., & Austin, S. B. (2022). Assessing Variations in Sexual Orientation-and Gender Identity-Related U.S. State Laws for Sexual and Gender Minority Health Research and Action, 1996-2016. *LGBT Health*, 9(3). <https://doi.org/10.1089/lgbt.2021.0157>
- Altay, T., Yurdakul, G., & Korteweg, A. C. (2021). Crossing borders: the intersectional marginalisation of Bulgarian Muslim trans\*immigrant sex workers in Berlin. *Journal of Ethnic and Migration Studies*, 47(9). <https://doi.org/10.1080/1369183X.2020.1862646>
- Avgeri, M. (2021). Trans\*it: Transgender and gender nonconforming asylum claimants' narratives in Greece. *Sexualities*. <https://doi.org/10.1177/13634607211013278>
- Baiocco, R., Pezzella, A., Pistella, J., Kouta, C., Rousou, E., Rocamora-Perez, P., López-Liria, R., Dudau, V., Doru, A. M., Kuckert-Wöstheinrich, A., Ziegler, S., Nielsen, D., Bay, L. T., & Papadopoulos, I. (2022). LGBT+ Training Needs for Health and Social Care Professionals: A Cross-cultural Comparison Among Seven European Countries. *Sexuality Research and Social Policy*, 19(1). <https://doi.org/10.1007/s13178-020-00521-2>
- Boy, M., & Rodríguez, M. F. (2022). The implementation of the Gender Identity Law in still cis heteronormed times. Dynamics of (in) attention to transgender people in the field of health in the Conurbano Bonarense. *Revista Colombiana de Sociología*, 45(1). <https://doi.org/10.15446/rcs.v45n1.85708>
- Bränström, R., & Pachankis, J. E. (2021). Country-level structural stigma, identity concealment, and day-to-day discrimination as determinants of transgender people's life satisfaction. *Social Psychiatry and Psychiatric Epidemiology*, 56(9). <https://doi.org/10.1007/s00127-021-02036-6>
- Burke, K., Kazyak, E., & MillerMacPhee, A. (2022). LGBT Employment Nondiscrimination: Debating Sexuality and Citizenship. *Sexuality Research and Social Policy*, 19(2). <https://doi.org/10.1007/s13178-021-00561-2>
- Cahill, S., Miller, A. S., & Keuroghlian, A. S. (2022). Sexual and Gender Minority Health Equity in the Biden Administration. *JAMA Health Forum*, 3(2). <https://doi.org/10.1001/jamahealthforum.2021.4868>
- Callahan, I., & Loscocco, K. (2023). The Prevalence and Persistence of Homophobia in Italy.

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*Journal of Homosexuality*, 70(2). <https://doi.org/10.1080/00918369.2021.1945337>

- Carpenter, M. (2020). Intersex human rights, sexual orientation, gender identity, sex characteristics and the Yogyakarta Principles plus 10. *Culture, Health and Sexuality*, 23(4). <https://doi.org/10.1080/13691058.2020.1781262>
- Cheng, Y., Zhou, X., & Yao, K. (2022). LGBT-Inclusive Representation in Entertainment Products and Its Market Response: Evidence from Field and Lab. *Journal of Business Ethics*. <https://doi.org/10.1007/s10551-022-05075-4>
- Chowdhury, M. I., Turk-Adawi, K., Samuel Babu, A., de Melo Ghisi, G. L., Seron, P., Yeo, T. J., Uddin, J., Heine, M., Saldivia, M. G., Kouidi, E., Sadeghi, M., Aljehani, R., & Grace, S. L. (2022). Development of the International Cardiac Rehabilitation Registry Including Variable Selection and Definition Process. *Global Heart*, 17(1). <https://doi.org/10.5334/GH.1091>
- Davis, N. B., & Yeung, S. T. (2022). Transgender Equity in the Workplace: A Systematic Review. *SAGE Open*, 12(1). <https://doi.org/10.1177/21582440221082863>
- de los Reyes, G. O. R., & Collict, D. (2022). “It’s Not Only about Clinical Tools but Also Our Role as Agents of Social Change”: Implementing a LGBT Competency Training for Future Mental Health Practitioners in Mexico. *Journal of Homosexuality*, 69(2). <https://doi.org/10.1080/00918369.2020.1815433>
- Department of Economic and Social Affairs Report. (2018). The United Nations and Disability: 70 years of the work towards a more Inclusive World. *Division for Social Policy and Development, January*.
- Eigenmann, L. (2022). “This Is a Union of Values”: The Rise of the LGBTI Rights Norm as Part of the EU’s Identity Construction. *Social Politics*, 29(1). <https://doi.org/10.1093/sp/jxab028>
- Fatmy, V., Kihn, J., Sihvonen, J., & Vähämaa, S. (2022). Does lesbian and gay friendliness pay off? A new look at LGBT policies and firm performance. *Accounting and Finance*, 62(1). <https://doi.org/10.1111/acfi.12787>
- Fisher, A. D., Senofonte, G., Cocchetti, C., Guercio, G., Lingiardi, V., Meriggiola, M. C., Mosconi, M., Motta, G., Ristori, J., Speranza, A. M., Pierdominici, M., Maggi, M., Corona, G., & Lombardo, F. (2022). SIGIS–SIAMS–SIE position statement of gender affirming hormonal treatment in transgender and non-binary people. *Journal of Endocrinological Investigation*, 45(3). <https://doi.org/10.1007/s40618-021-01694-2>
- Formby, E. (2022). LGBT ‘Communities’ and the (Self-)regulation and Shaping of Intimacy. *Sociological Research Online*, 27(1). <https://doi.org/10.1177/1360780420974031>
- George, A. (2017). The Phenomenal Growth of the LGBT Travel Segment and the Challenges Faced by Small Island States: The Case of Sustainable Tourism Development in the Caribbean Region. *International Journal of Business and Applied Social Science*, 3(1).
- Harper, C. R., Johns, M. M., Orenstein, D., Pampati, S., Jones, T. M., Leonard, S., Taylor, K. R., & Robin, L. (2022). Association Between LGBTQ Student Nondiscrimination Laws in Selected States and School District Support for Gay-Straight Alliances. *Journal of Adolescent Health*, 70(4). <https://doi.org/10.1016/j.jadohealth.2021.11.032>
- Harris, R., Wilson-Daily, A. E., & Fuller, G. (2022). ‘I just want to feel like I’m part of

- everyone else’: how schools unintentionally contribute to the isolation of students who identify as LGBT+. *Cambridge Journal of Education*, 52(2). <https://doi.org/10.1080/0305764X.2021.1965091>
- Hoekstra-Pijpers, R. (2022). Experiences of older LGBT people ageing in place with care and support: A window on ordinary ageing environments, home-making practices and meeting activities. *Sexualities*, 25(1–2). <https://doi.org/10.1177/1363460720936471>
- Houghton, M., & Tasker, F. (2021). Exploring Lesbian and Bisexual Catholic Women’s Narratives of Religious and Sexual Identity Formation and Integration. *Journal of Homosexuality*, 68(1). <https://doi.org/10.1080/00918369.2019.1624455>
- Jovanović, M., & Krstić, N. (2020). FELLOW TRAVELERS FROM SERBIA: LGBT-IDENTIFIED PERSONS AND THE CHURCH IN THE PROCESS OF EUROPEANIZATION. *Facta Universitatis, Series: Philosophy, Sociology, Psychology and History*. <https://doi.org/10.22190/fupsph2001027j>
- Kerrigan, P., & Vanlee, F. (2022). Public service broadcasting and the emergence of LGBT+ visibility: A comparative perspective on Ireland and Flanders. *European Journal of Cultural Studies*, 25(1). <https://doi.org/10.1177/1367549420935893>
- Kinanti, L. N. A., Hamzani, A. I., & Rizkianto, K. (2022). Chemical Castration for Child Rapists Judging from Indonesia’s Ratification of ICCPR and CAT. *Journal of Legal Subjects*. <https://doi.org/10.55529/jls.22.1.12>
- Klett-Davies, M. (2022). Border regimes: Homophobia and lgbt place making in six ordinary cities in Europe. *Religions*, 13(1). <https://doi.org/10.3390/rel13010006>
- Lewis, T. O. (2015). LGBT-Affirming Black Churches’ Responses to the HIV/AIDS Crisis. *Journal of Religion and Spirituality in Social Work*, 34(2). <https://doi.org/10.1080/15426432.2014.960760>
- Madson, N. H. (2022). Finding the “Humanity” in Human Rights: LGBT Activists and the Vernacularization of Human Rights in Hong Kong. *Law and Social Inquiry*, 47(1). <https://doi.org/10.1017/lsi.2021.24>
- Marzetti, H., McDaid, L., & O’Connor, R. (2022). “Am I really alive?”: Understanding the role of homophobia, biphobia and transphobia in young LGBT+ people’s suicidal distress. *Social Science and Medicine*, 298. <https://doi.org/10.1016/j.socscimed.2022.114860>
- Nikolaou, D. (2022). Same-sex marriage laws, LGBT hate crimes, and employment discrimination charges. *Southern Economic Journal*, 88(3). <https://doi.org/10.1002/soej.12548>
- O’Flaherty, M. (2015). The Yogyakarta Principles at Ten. *Nordic Journal of Human Rights*, 33(4). <https://doi.org/10.1080/18918131.2015.1127009>
- Ragan, B. T. (2020). Same-Sex Sexual Relations and the French Revolution: The Decriminalization of Sodomy in 1791. In *From Sodomy Laws to Same-Sex Marriage*. <https://doi.org/10.5040/9781350023932.ch-002>
- Renley, B. M., Burson, E., Simon, K. A., Caba, A. E., & Watson, R. J. (2022). Youth-specific sexual and gender minority state-level policies: Implications for pronoun, name, and bathroom/locker room use among gender minority youth. *Journal of Youth and Adolescence*, 51(4). <https://doi.org/10.1007/s10964-022-01582-9>



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- Reygan, F., Henderson, N., & Khan, J. (2022). 'I'm black, a woman, disabled and lesbian': LGBT ageing and care services at the intersections in South Africa. *Sexualities*, 25(1–2). <https://doi.org/10.1177/1363460720975322>
- Ro, H., & Khan, M. (2022). The impact of LGBT friendliness on sexual minority customers' perceptions and intentions to stay. *International Journal of Hospitality Management*, 102. <https://doi.org/10.1016/j.ijhm.2022.103181>
- Runyan, A. S., & Sanders, R. (2021). Prospects for Realizing International Women's Rights Law Through Local Governance: the Case of Cities for CEDAW. *Human Rights Review*, 22(3). <https://doi.org/10.1007/s12142-021-00635-z>
- Sekoni, A. O., Jolly, K., & Gale, N. K. (2022). Hidden healthcare populations: using intersectionality to theorise the experiences of LGBT+ people in Nigeria, Africa. *Global Public Health*, 17(1). <https://doi.org/10.1080/17441692.2020.1849351>
- Sumerau, J. E. (2017). "Some of Us Are Good, God-Fearing Folks": Justifying Religious Participation in an LGBT Christian Church. *Journal of Contemporary Ethnography*, 46(1). <https://doi.org/10.1177/0891241614559142>
- Thiel, M. (2021). The European Union's international promotion of LGBTI rights: Promises and pitfalls. In *The European Union's International Promotion of LGBTI Rights: Promises and Pitfalls*. <https://doi.org/10.4324/9781003054627>
- Thompson, J. (2022). Attitudes Towards LGBT Individuals After *bostock v. Clayton County*: Evidence From a Quasi Experiment. *Political Research Quarterly*, 75(4). <https://doi.org/10.1177/10659129211068052>
- Usai, R., Cai, W., & Wassler, P. (2022). A Queer Perspective on Heteronormativity for LGBT Travelers. *Journal of Travel Research*, 61(1). <https://doi.org/10.1177/0047287520967763>
- Vu, T. V. (2022). Linking LGBT inclusion and national innovative capacity. *Social Indicators Research*, 159(1). <https://doi.org/10.1007/s11205-021-02743-2>
- White, J. J., Dangerfield, D. T., Donovan, E., Miller, D., & Grieb, S. M. (2020). Exploring the role of LGBT-affirming churches in health promotion for Black sexual minority men. *Culture, Health and Sexuality*, 22(10). <https://doi.org/10.1080/13691058.2019.1666429>
- Wieland, R., & Alessi, E. J. (2021). Do the Challenges of LGBTQ Asylum Applicants Under Dublin Register With the European Court of Human Rights? *Social and Legal Studies*, 30(3). <https://doi.org/10.1177/0964663920946360>
- Wijaya, H. Y. (2022). Digital homophobia: Technological assemblages of anti-LGBT sentiment and surveillance in Indonesia. *Indonesia and the Malay World*, 50(146). <https://doi.org/10.1080/13639811.2022.2010357>
- Willett, G. (2020). Homosexual Politics in the British World: Toward a Transnational Understanding. In *From Sodomy Laws to Same-Sex Marriage*. <https://doi.org/10.5040/9781350023932.ch-011>
- Williams, K. A., Dakin, E. K., & Lipschutz, A. (2022). LGBT+ Older Adults in Rural South Central Appalachia: Perceptions of Current and Future Formal Service Needs. *Journal of Gerontological Social Work*, 65(2). <https://doi.org/10.1080/01634372.2021.1953661>