

Research Report

Human Rights Council

Governmental implementation of Article 16 of the Universal Declaration of Human Rights specifically in regards to homosexual, bisexual and transgender rights



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Forum	Human Rights Council
Issue:	Governmental implementation of Article 16 of the Universal Declaration of Human Rights specifically in regards to homosexual, bisexual and transgender rights
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Introduction

The term 'LGBT' refers to the community of lesbian, gay, bisexual and transgender people. This collective group is subject to much legislation worldwide concerning their sexuality. A key issue that presents itself in a global community which is home to the LGBT community is whether those categorized in this community should have the same rights to marriage as others. Article 16 of the Universal Declaration of Human Rights (UDHR) states the following:

- *(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.*
- *(2) Marriage shall be entered into only with the free and full consent of the intending spouses.*
- *(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."*

This article establishes the basic human right to marriage, and for years it has been interpreted by the United Nations (UN) and many governments and organizations as being non-discriminating towards those in the LGBT community. Given that this article does not specifically state the rights of the LGBT community, it is left to interpretation by governments. Due to the fact that some governments do not recognize LGBT marriage as a right, many would argue that there is discrimination against this community.



Definition of Key Terms

Sexual orientation

Sexual orientation is a classification of a person depending on the gender of the person that they are sexually attracted to.

LGBT

This is an acronym for lesbian, gay, bisexual and transgender.

Heterosexual

This is the sexual orientation which can be used to describe people who are sexually attracted to those of the opposite sex.

Homosexual

This is the sexual orientation which can be used to describe people who are sexually attracted to those of the same sex.

Gay

The term used to describe homosexual males.

Lesbian

The term used to describe homosexual females.

Bisexual

This is the sexual orientation which can be used to describe people who are sexually attracted to those of either sex (male or female).

Gender identity

This refers to the gender that a person feels within themselves and their identification with being a male or a female, purely based on psychological feelings. Their gender identity does not have to be the same as their biological sex.

Transgender

This is an umbrella-term used to describe people who are non-conforming to their sex. They may dress, act and express themselves in a way that identifies them with another



gender than their biological one. They may also physically alter their bodies through surgery in order to transit into a different gender.

Discrimination

In the context of this issue, discrimination refers to the unjust/unfair prejudice of different groups of people.

Criminalization

This is any legislation that pronounces something to be criminal/illegal.

General Overview

Many would argue that the definition of marriage and its evolution is one of the driving forces behind the recent efforts to resolve issues of marriage for those in the LGBT community. The Heritage Foundation provides the following explanation regarding the institution of marriage: “*The institution of marriage connects men and women to one another and to their children. Marriage recognizes what social science confirms: that children fare best when raised by their mother and father.*” In modern day society, marriage has a new definition which considers LGBT/ same-sex couples. The American Heritage Dictionary provides the following alternative definition of marriage from its traditional one: “*A union between two persons having the customary but usually not the legal force of marriage.*” Due to globalization, countries all over the world are more exposed to LGBT culture and this new definition of marriage. They are therefore faced with decisions regarding legislation that concerns marriage within that sub-culture.

Drive behind different interpretations of article 16 of the UDHR

Western countries (in particular in Western Europe) are generally thought of to be more liberal in terms of legislation regulating LGBT marriages. The countries that do not allow for same-sex marriage and who may punish same-sex sexual activity generally have one driving force for their opinions on the issue; religious ideology. According to the Christian Bible, homosexuality and identical-sex marriage are immoral and unnatural (see appendix IV for more detail). Although there are many Christians who are strongly against LGBT, LGBT-affirming Christian dominations exist, which do not regard LGBT as a sin. They are more understanding and supportive of marriage rights for those in the LGBT community. In Islamic society, religious texts such as the Qur’an and religious teachings establish the general



opinion on the LGBT community. Homosexuality is condemned as a sin, and in certain Islamic countries it can be punishable by death. However, transgender-ism is much more accepted in Islamic culture. This is only a small fraction of all the religious views that pertain to LGBT rights. As is demonstrated by the Islamic views, opinions can differ between homosexual and same-sex marriage, and transgender-ism. Given that the standpoints of different countries vary greatly, it is challenging to find a solution which is accepted worldwide to the issue of governmental implementation of article 16 of the UDHR specifically in regards to LGBT.

Major Parties Involved and Their Views

The Netherlands

On April 1st 2001, the Netherlands became the first country to legalize same-sex marriage. Since then, there have been approximately 15,000 homosexual marriages. The introduction of this legislation was a follow up to legislation allowing for same-sex civil unions, which was introduced in 1998. The bill to allow same-sex marriage was strongly opposed by the Christian Democratic Party, however it passed. This is one of the reasons why the Netherlands is considered to be one of the most liberal countries. According to the legislation allowing for single-sex marriage in the Netherlands, the difference between heterosexual and homosexual marriages is that in the case of homosexual marriages, both parents do not obtain parentage automatically. As for transgender people, the same legislation applies as that which would apply to their legal gender. In the past, there was a large issue involving gender designation given that transgender people needed to take hormones and undergo surgery in order to change their gender. On September 13th 2011, new legislation was created meaning that transgender people could change gender without surgery, leading to an easier process to get married.

United States of America (USA)

In the USA, legislation regarding same-sex marriage is different in every state. To this day, there are 13 states where same-sex marriage is legal, and there are 35 states where laws prohibit same-sex marriages or do not have legal protections for couples in the LGBT community. Given that this is a highly debated issue and globalization results in the instigation of new ideas regarding marriage for the LGBT community, legislation is continuously being changed and discussed in all states.



In 1996, there was an effort made to defend traditional heterosexual marriages which was the creation of the Defense of Marriage Act (DOMA). This key provisions to the act were the following:

“Section 1. Short title...

...This Act may be cited as the "Defense of Marriage Act".”

“Section 2. Powers reserved to the states...

...No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.”

“Section 3. Definition of marriage...

...In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife.”

DOMA passed the US congress, and was signed by the president at the time, Bill Clinton. It prohibited recognition by federal governments of same-sex marriages by defining marriage as *“only a legal union between one man and one woman as husband and wife,”* and the text in section 2 involves the prevention of recognition of same-sex marriages in states other than those where the marriage took place. In 2006, the third section was ruled unconstitutional by the US Supreme Court, meaning that federal governments started to recognize same-sex marriages. This indicates a possible sway to acceptance of marriage within the LGBT community. Given that there is no legal requirement for states to create legislation allowing for these marriages, many argue that it may still be a long time before all US states do so. As for transgender marriage, the same principle applies as with same-sex marriage; different states have different legislation. Like in the Netherlands, legislation regarding transgender marriage depends on the legal genders of the partners concerned.

Sweden

Sweden is considered to be a very liberal country in terms of LGBT rights. Since 1995, there has been legislation in place that allows for same-sex civil unions, and on May



1st 2009, the Swedish parliament passed a law with an overwhelming majority of votes (261 in favor and 22 against), which would permit same-sex marriage.

Islamic World

LGBT rights are a particularly sensitive topic in the Islamic world, due to religious Muslim views. These beliefs are influenced by the religious texts in the Qur'an, and proclaim cross-dressing (transgenderism) and homosexuality to be sinful and punishable. See appendix III for a link to a webpage with a list of references to homosexual behavior in the Qur'an. Islamic scholars have a general consensus that humans are naturally heterosexual and homosexuality is unnatural. In Muslim culture in South and East Asia, society is more accepting of LGBT marriage than in the Arab culture. In Arab countries such as Saudi Arabia, the United Arab Emirates, Yemen, Sudan and Mauritania, homosexuality between males is punishable by the death penalty. As of 2011, according to the International Lesbian and Gay Association (ILGA), there are 8 countries where homosexuality alone is illegal and is punished by capital punishment. Other forms of punishment include jailing and flogging. Homosexual marriage is therefore not possible in these countries.

As for transgender marriage, Islamic society is much more accepting of these individuals. Verse 42:49 in the Qur'an states, "*To Allah belongs the dominion of heavens and earth; He creates what he wills. He gives to whom He wills female, and He gives to whom He wills males. Or He makes them [both] males and females, and He renders whom He wills barren. Indeed, He knows and Competent.*" Islam is supportive of sexual refinement surgery to those who are transgender, because it is believed that Allah is responsible for determining a person's gender identity.

International Lesbian and Gay Association (ILGA)

This is an alliance of organizations from all over the world that campaign and instigate advocacy of LGBT rights. One of these rights is that of marriage as stated in the UDHR. It is regularly involved in petitioning to the UN, and has consultative status in the Economics and Social Council (ECOSOC).

International Gay and Lesbian Human Rights Commission (IGLHRC)

This is an international non-governmental organization (NGO) promoting rights for those with sexual orientations other than heterosexual. They take action against violations of human rights, one of which is the human right to marriage such as specified in article 16 of the UDHR. On July 19th 2010, the IGLHRC was granted consultative status in the UN after a

vote in ECOSOC. This means that the IGLHRC can attend UN meetings, as well as contribute statements and collaborate with UN agencies.

Amnesty International

This is a global organization which connects people in order to campaign and fight against abuse of human rights. It received the Nobel Peace Prize in 1977 and the United Nations Prize in the Field of Human Rights in 1978. One of its specific aims is to protect LGBT rights, and it does so mainly by campaigning and raising awareness. As well as this, the organization publishes articles and reports relevant to this topic and the current issues that surround it.

Timeline of Events

Date	Description of event
December 10th, 1948	The Universal Declaration of Human Rights (UDHR) is adopted by the UN General Assembly.
September 21st, 1996	The Defence of Marriage Act (DOMA) is created and adopted in the US.
April 1st, 2001	Same-sex marriage is legalized in The Netherlands.
January 30th, 2003	Same-sex marriage is legalized in Belgium.
2004	May 17th is declared to be International Day Against Homophobia, Biphobia and Transphobia (IDAHOBIT). This is the day that the World Health Organization (WHO) removed homosexuality from the International Classification of Diseases in 1990.
June 30th, 2005	Same-sex marriage is legalized in Spain.
July 20th, 2005	Same-sex marriage is legalized in Canada.
2006	The US Supreme Court rules section 3 of the Defence of Marriage Act (DOMA) to be unconstitutional.
November 30th, 2006	Same-sex marriage is legalized in South Africa.
May 11th, 2008	Same-sex marriage is legalized in Norway.
May 1st, 2009	Same-sex marriage is legalized in Sweden.
May 17th, 2010	Same-sex marriage is legalized in Portugal.
June 27th, 2010	Same-sex marriage is legalized in Iceland.
July 15th, 2010	Same-sex marriage is legalized in Argentina.



June 15th, 2011	UN resolution (A/HRC/17/L.9/Rev.1) passes, becoming the first resolution passed about the rights of the LGBT community.
June 15th, 2012	Same-sex marriage is legalized in Denmark.
April 17th, 2013	Same-sex marriage is legalized in New Zealand.
May 14th, 2013	Same-sex marriage is legalized in Brazil.
May 18th, 2013	Same-sex marriage is legalized in France.

UN involvement, Relevant Resolutions, Treaties and Events

To this date, there have not been many resolutions, treaties or events which the UN has become actively involved in which pertain to this issue. However, due to the process of globalization, countries and governments are being confronted with new ideas regarding LGBT marriage, which in turn seems to be leading to a sway towards its legalization. This will probably lead to increased UN activity in the near future in order to resolve this issue.

- Universal Declaration of Human Rights (UDHR) – Not the whole document is relevant to the issue; Article 16 is that which is relevant.
- The resolution on Human rights and sexual orientation, 17 April 2003
(E/CN.4/2003/L.92*)
- Human rights, sexual orientation and gender identity, 15 June 2011
(A/HRC/17/L.9/Rev.1)
- Oslo Conference on Human Rights, Sexual Orientation and Gender Identity (April 15-16 2013)

Evaluation of Previous Attempts to Resolve the Issue

This is an issue which may require years, if not decades, to be resolved to a significant extent. In fact, even given this time, the UN may not be able to reach a general consensus on the topic and therefore resolve the issue, given the widely differing opinions and standpoints of different countries. The first of the two resolutions stated previously was not particularly successful. The reason for this was that it simply recognized the issue at hand and suggested that legislative frameworks should be non-discriminating to the LGBT community, and that they should be mutually exclusive of sexual orientation. The second resolution was passed, and has been more successful than the first. As of the date that the



resolution passed, 4 countries have legalized same-sex marriage. This indicates that countries are coming to a general consensus on the topic, which is fundamental for resolving the issue.

Possible Solutions

The solutions to a topic such as this are not black and white, given that it is highly subject to interpretation. In order to resolve the issue of governmental implementation of article 16 of the UDHR in specific regards to members of the LGBT community, it is crucial to establish dialogue and communication between countries. This would encourage mutual understanding of the various stances that countries hold regarding the issue, and help to ease strains created through these conflicting opinions. Only once this communication is established, can a general consensus be formed in respect to a solution. Some key points to address are:

- Establishing segregation between state and religion, to make it more feasible to come to mutual agreements.
- Defining the difference between the traditional purpose of marriage, and the modern purpose.

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Appendices

I – Universal Declaration of Human Rights

<http://www.un.org/en/documents/udhr/>

II – ‘A global snapshot of same-sex marriage’ - based on research conducted by the Pew Research Centre

<http://www.pewresearch.org/fact-tank/2013/06/04/global-snapshot-sex-marriage/>

III – Link to a webpage with a list to references of homosexuality and same-sex marriage in the Qur’an

<http://www.missionislam.com/knowledge/homosexuality.htm>

IV - Link to a webpage with a list to references of homosexuality and same-sex marriage in the Bible

<http://skepticsannotatedbible.com/gay/long.htm>

V - The resolution on Human rights and sexual orientation, 17 April 2003
(E/CN.4/2003/L.92*)

<http://ilga.org/ilga/en/article/406>

VI - Human rights, sexual orientation and gender identity, 15 June 2011
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