

Nordiska Afrikainstitutet

The Nordic Africa Institute



Globalizing Minority Rights Working Package 4: Minority Rights in the Global South

Nordic Africa Institute
20 – 21 September 2017

Minority rights in the global south

Introduction

The Globalizing Minority Rights project aims to develop a cosmopolitan approach to the conceptualization, justification, and implementation of minority rights, and to test this theoretical framework on three case studies: minorities in the developing world, indigenous peoples, and refugees. GMR is divided into six working packages, each with a distinct yet complimentary focused area.

The Nordic Africa Institute (NAI) hosted the first meeting of Working Package 4 in Uppsala on the 21st and 22nd of September 2017. Over the four year duration of the GMR project NAI will partner in facilitating broad discussions and knowledge production within Working Package 4, led by NAI Senior Researcher Sirkku Hellsten. The working group will be comprised of regional and subject matter experts and intends to facilitate meaningful dialogue and provide deeper insight into issues faced by minorities in the developing world and Africa in particular. Contributing researchers will delve into specific case studies, illuminating a broader understanding of the lived experiences of minorities facing marginalization as a result of their gender, race, religion, sexual orientation, or nationality.

The working package was made possible through the contributions of academics and experts from a diversity of disciplines, countries and regional focus areas.

- The Nordic region - Annamari Vitikainen, The Arctic University of Norway (Tromsø)
- Tanzania - Sirkku Hellsten, Nordic Africa Institute
- Nigeria - Frank Aragbonfoh, The Arctic University of Norway (Tromsø)
- Uganda - Archangel Rukooko, Makerere University (Uganda)
- South Africa - Marc Dunnink, University West, Nordic Africa Institute
- Zambia - Patience Mususa, Nordic Africa Institute
- Marc Dunnink, University West, Nordic Africa Institute.
- Zanzibar and Namibia - Masoud Nassor, University of Namibia
- Kenya - Francis Owakah, University of Nairobi (unable to attend due to unforeseen circumstances)

Overview of the Globalizing Minority Rights project

Globalizing Minority Rights



Globalizing Minority Rights: Cosmopolitanism, Global Institutions, and Cultural Justice (2016-2020)

Globalizing Minority Rights (GMR) is an international interdisciplinary research project funded by The Research Council of Norway (NFR 259017), SAMKUL Program (2016-2020).

GMR is organized under the [Pluralism, Democracy, and Justice](#) research group at the Department of Philosophy, UiT The Arctic University of Norway, and lead by [Prof. Kasper Lippert-Rasmussen](#) and [Associate Prof. Annamari Vitikainen](#).

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For more information about the working packages, please click [here](#).

For more information about the GMR project, please contact the project leaders.

Call for Papers

Refugees and minority rights:
Acceptable and unacceptable criteria
for accepting/rejecting refugees in a
non-ideal world

14-15 June 2018 - UiT The Arctic
University of Norway, Campus Tromsø

Submission deadline: 15 January 2018

For more information, click [here](#)

**Workshop: Democracy in Context:
Contemporary Themes in Ethics and
Political Philosophy**

Dates: June 10-11 2017

Venue: Longyearbyen

Organized by the Civic Constellation
Group, Environmental Research Group
(UiT) and Globalising Minority Rights.

For more information click [Here](#).

New Post Doc

We would like to welcome our new post
doc Frank Abumere, who will be
working on a project on "Minority
Discrimination in the Global South and
Relational and Non-relational



The conception of the Globalizing Minority Rights project stemmed from the need to address the divide between multiculturalism and minority rights, and global justice. There seemed to be a disconnect between the two issues.

Multiculturalism and minority rights



Global justice



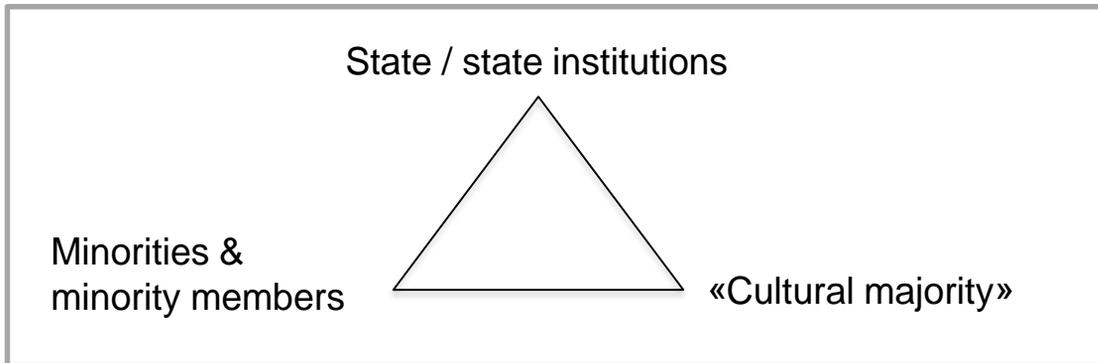
Traditional approaches to (cultural) diversity

Key questions

- Why should the (liberal) state be concerned of cultural diversity?
i.e. why should culture, religion, ethnicity, language etc. be taken into account in state policies and the organizing of society?
- How should the state respond to this diversity?
i.e. how are different types of minority protections, including minority rights, justified?
- How should different types of minority protections, including minority rights, implemented?

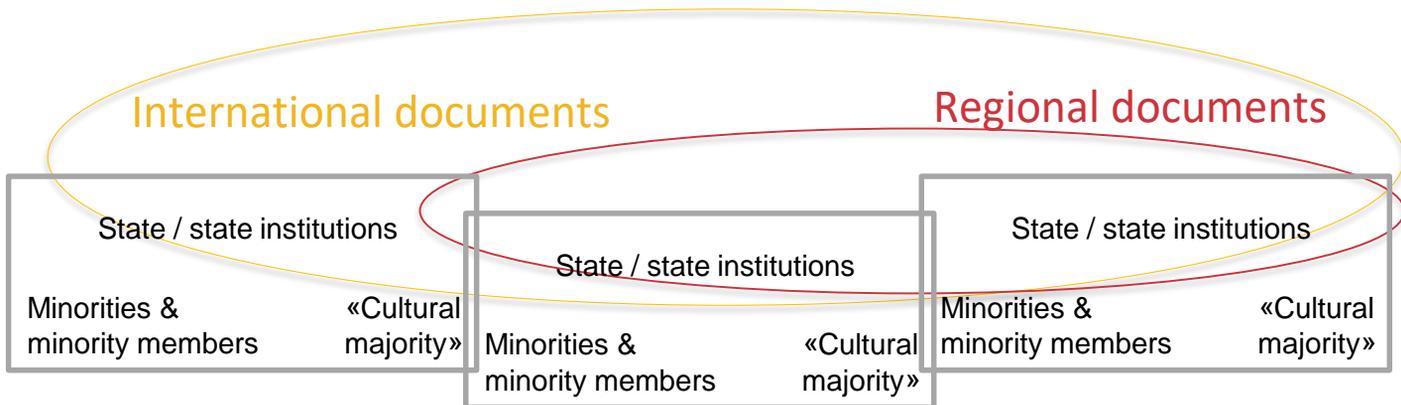
Traditional framework for minority rights

Tripartite relationship between state, minorities and the majority.



International framework for minority rights

From a global perspective it is evident that a conflict exists between international and regional legislation/frameworks. This further calls into question the case of cross border minorities – whose responsibility is it to protect them?



- UN International Covenant on Civil and Political Rights (ICCPR) (1966)
- UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992)
- UN Declaration on the Rights of Indigenous Peoples (2007)
- Council of Europe's Framework Convention for the Protection of National Minorities (1995)

Questions that the GMR project aims to address

Conceptual questions

- Who are minorities in the global context?
- How are minority rights conceptualized?

Normative questions

- How are minority rights justified?
- How do the justificatory frameworks (e.g. equality of opportunity, past injustices, value of diversity etc.) change when brought from the state-centered framework to a global level?

Questions of implementation

- Who are, and should be, the primary agents of justice?
- What is, and should be, the role of local, regional, trans- and international organizations in minority protection?

Specific cases

Case studies offer the most suitable means to provide a deeper understanding of the identified focus areas and provide insight in answering these questions.



WP4: Minorities in the developing world

WP5: Indigenous peoples

WP6: Refugees

Summary of GMR activities

Workshops & conferences:

Nov 2016	Launching seminar, UiT
March 2017	WP2 / Normative issues workshop, UiT
June 2017	WP6&WP3 / Refugees & policy implementation, Svalbard
Sep 2017	WP4 / Developing world workshop, NAI Uppsala
Sep 2017	WP6 / Refugees workshop in Copenhagen
Oct 2017	WP1&WP3 / Conceptual issues and issue of implementation, UiT
Spring 2018	WP5 / Indigenous people workshop, UiT
June 2018	1st international conference: Refugees and Minority Rights, UiT

Reading groups:

Spring 2017	WP6 reading group on Parekh: <i>Refugees and Ethics of Forced Displacement</i> (online)
Autumn 2017	'Migration in political theory' (Fine&Ypi) reading group, UiT

Publication expectations

The purpose of the GMR project is to contribute to the deepening of knowledge of minority rights in a global setting. In order to achieve this it is necessary to produce research for publication across all of the GMR working packages. All participants are urged to pursue publication of their research in their related and specific focus area. Researchers that are employed by the GMR project have a greater expectation of publication.

In addition to publication expectations, Working Package 4 has been tasked with producing training material aimed at providing a guideline for addressing minority rights in a global environment.

Outline of ongoing and future publications:

Monographs and edited volumes: e.g.

- Parekh, Serena (2017) Refugees and the Ethics of Forced Displacement. Routledge Research in Applied Ethics. NY: Routledge.
- Lippert-Rasmussen, Kasper (ed.) (2017) The Routledge Handbook of the Ethics of Discrimination (Routledge Handbooks in Applied Ethics)
- Duarte, Lippert-Rasmussen, Parekh, Vitikainen (eds.) (2016) Refugee Crisis: The Borders of Human Mobility. Special Issue of the Journal of Global Ethics, 12:3.
- Nkabahona & Rukooko (2017) Cultures at Crossroads: Homosexuality and Human Rights in Uganda. Kampala: Fountain Publishers.

Individual research articles:

- *covering all working packages, WP1-WP6*

Training material: *"Protecting Minority Rights in the Global World"*

African frameworks for minority rights

- The vast majority of literature developed on Human Rights has historically been developed by developed western states.
- More recently there has been a proliferation of research and literature emanating from developing nations that are critical of global ethics and justice approaches based on their inapplicability to a localised context.
- A number of geo-specific approaches to human rights issues have emerged that advocate for a localised contextual understanding grounded in the regions specific cultural history
- The focus on a bottom up approach towards human rights issues confuses the need for a generalisable human rights and minority rights framework with a universal understanding and ability to implement
- The African Charter is the preeminent legislation that governs human and minority rights across the continent. The Charter has widely been adopted and ratified, however is lacking in its ability to ensure states uphold the statutes. Adoption of the Charter provides a source of legitimisation for state leaders to appear to uphold Africa wide human rights laws, but provides no onus on the state to enforce compliance. Domestic policy is also often in contradiction to the regional statutes of human rights.

Minority definition: *A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.*

The traditional definition of a minority demonstrates shortcomings in applicability, globally as well as in the developing world and Africa context. how can it be defined better, is numerical inferiority applicable, are the self identification requirements applicable, is citizenship and national identity applicable?

Global normative frameworks for minority rights

Scope of justice

'Nationalist vs. Cosmopolitan'

- N: Circumstances of justice apply only within state borders; less stringent (or humanitarian) duties of justice globally
 - * e.g. domestic egalitarianism; global sufficientarianism
- C: Circumstances of justice apply globally; global scope of justice; what we owe to our fellow countrymen is also owed to others cross borders

Agents of justice

State-centric systems

- 'distributed responsibility models' (N/C)
- 'statist cosmopolitanism' (C)

Global institutions

- 'world government'
- 'hybrid models'

- Local models ('neo-medievalism')
- Non-governmental agents of justice
- Corporate responsibility?

Multiculturalism in the Nordic Region

Who are minorities in Finland?

well..... depends on how you define a minority

Working definition:

'A minority is a group that is (typically) numerically inferior to the comparative group (so-called 'majority'), and that, in some relevant sense, is disadvantaged in comparison to the so called majority.'

Swedish speaking Finns, Roma travelers, indigenous Sami, Orthodox Catholics, Muslims, Russian speakers, ethnic Somalis, ethnic Arabs, immigrants, LGBT people, refugees, disabled...

... working class, poor, women, children, elderly, white meat-eating booze-drinking heterosexual males...

How should we respond to diversity & to the possible disadvantages faced by minorities?

Strategy of assimilation

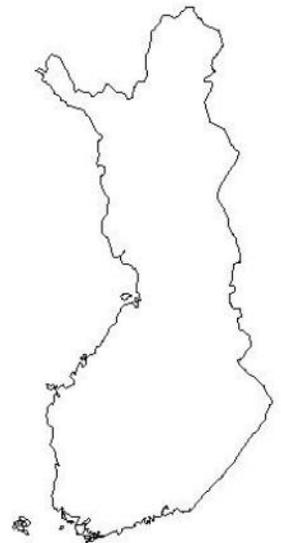
- conflicts with basic liberal values of individual freedom and toleration
- disagreement on 'culture'/'values' to which one should assimilate

Strategy of 'benign neglect'

- privileges status quo
- does nothing to address structural disadvantages

Strategy of accommodation

- via (although not always) different types of multicultural policies /minority rights



Traditional categorizations of minority rights

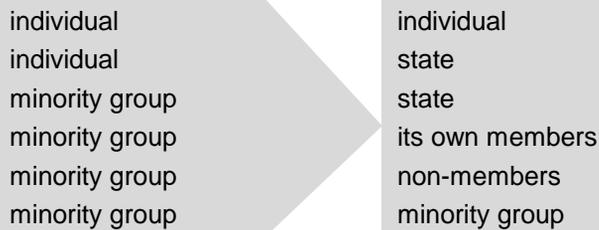
- 'Minority rights' as all existing human rights (formulated in relation to a specific group due to the specific circumstances / vulnerability of the group in question)
- 'Minority rights' as 'legal policies / differentiated rights' that aim to 'level the playing field'

Aims of rights – accommodation in terms of:

- enabling minorities to live in accordance with their own culture/religion etc.
- enabling minorities to better engage in the broader public sphere

Structure: individual membership rights vs. collective group rights

Object of regulation: relations within society



Types of groups,

- e.g. indigenous peoples – national minorities – immigrants or, e.g. UN: Indigenous peoples (UNDRIP 2007) – 'National or Ethnic, Religious and Linguistic minorities' (UN1992)

Subject matter, e.g. land, language, religion, self-determination

Form and function

Category	Example
<i>Exemptions</i> from laws which penalize or burden cultural practices	Sikhs / motorcycle helmet laws, Indians / peyote, hunting laws
<i>Assistance</i> to do those things the majority can do unassisted	Multilingual ballots, affirmative action, funding ethnic associations
<i>Self-government</i> for ethnic, cultural or "national" minorities	Secession (Slovenia), federal unit (Catalonia), other polity (Puerto Rico)
<i>External rules</i> restricting non-members' liberty to protect members' culture	Quebec / restrictions on English language, Indians / restrictions on local whites voting
<i>Internal rules</i> for members' conduct enforced by ostracism, ex-communication	Mennonite shunning, disowning children who marry outside the group
<i>Recognition/enforcement</i> of traditional legal code by the dominant legal system	Aboriginal land rights, traditional or group-specific family law
<i>Representation</i> of minorities in government bodies, guaranteed or facilitated	Maori voting roll for Parliament, U.S. black-majority Congressional districts
<i>Symbolic claims</i> to acknowledge the worth, status, or existence of various groups	Disputes over name of polity, national holidays, teaching of history

(Vitikainen 2017: 'Multiculturalism and Political Philosophy', Oxford Research Encyclopedia of Politics, OUP)

Return to the Finnish case

The Indigenous Sami [UNDRIP2007, no ILO169, Sami Parliament of Finland]

Aims: both enabling own culture & enabling public participation

Structure: collective & individual

Object: group / state, group / member (e.g. Sami LGBT), etc.

Type of group: indigenous, but also cross-border group

Subject matter: Land!, language!, religion, self-determination!

** Still an open question of the appropriate means for protecting the rights of the indigenous Sami*

Refugees

But who are refugees?

Type of group:

- 'immigrant'
- 'ethnic'
- 'religious'
- 'linguistic'
- 'cross-border'
- 'disadvantaged' / 'vulnerable'

Difficulties of traditional (public) debates on multiculturalism to distinguish between different kinds of groups, claims, relevant features of justifying claims, and different means of responding (e.g. minority rights)

Further layer of debates on refugees

- refugees as a (relatively) clearly defined legal category
- refugees as an extremely heterogenous group of people with partially overlapping and intersecting characteristics of 'other' minority groups

LGBTI – sexual minorities rights in Africa

Universalistic, individual rights vs. collective, cultural and group rights

- Resistance to individualistic rights during the de-colonization and nation building process
- African humanistic socialism at the forefront, advocated for by Nyerere, Nkrumah, Senghor, Kaunda, etc.

Resolve that individual rights are not suitable or desirable in Africa, because:

- Cultural misalignment as conflicting with African rights of solidarity, egalitarianism and social duties
- Potential for social divisiveness which could hinder nation-building
- African Charter developed to be alternative, but in some sense also a complementing human rights instrument

Attitudes and arguments against LGBTI rights

Africa associated with hard social and political attitudes towards LGBTI people and rights – justifications:

- LGBTI as un-African – a phenomenon brought to Africa by the foreigners (Arabs, Europeans – emergence of 'sex tourism' from the West used to legitimate this belief)
- Viewed widely as evil, unnatural, disgusting – vice to be banned; illness to be cured
- No place for homosexuality or other sexual perversions in Africa
- Against African family values
- Socially unacceptable in general
- Practice of homosexuality portrayed as destructive of the families' honor

African regional instruments for protecting human rights and sexual minority rights

- The African Commission on Human and Peoples' Rights
- African Charter on Human and People's Right – adopted 1981, enforced 1986
- African Court on Human and Peoples' Rights
- African Union – sexual minorities rights and human rights organizations
- African Commission on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity - Luanda, Angola.

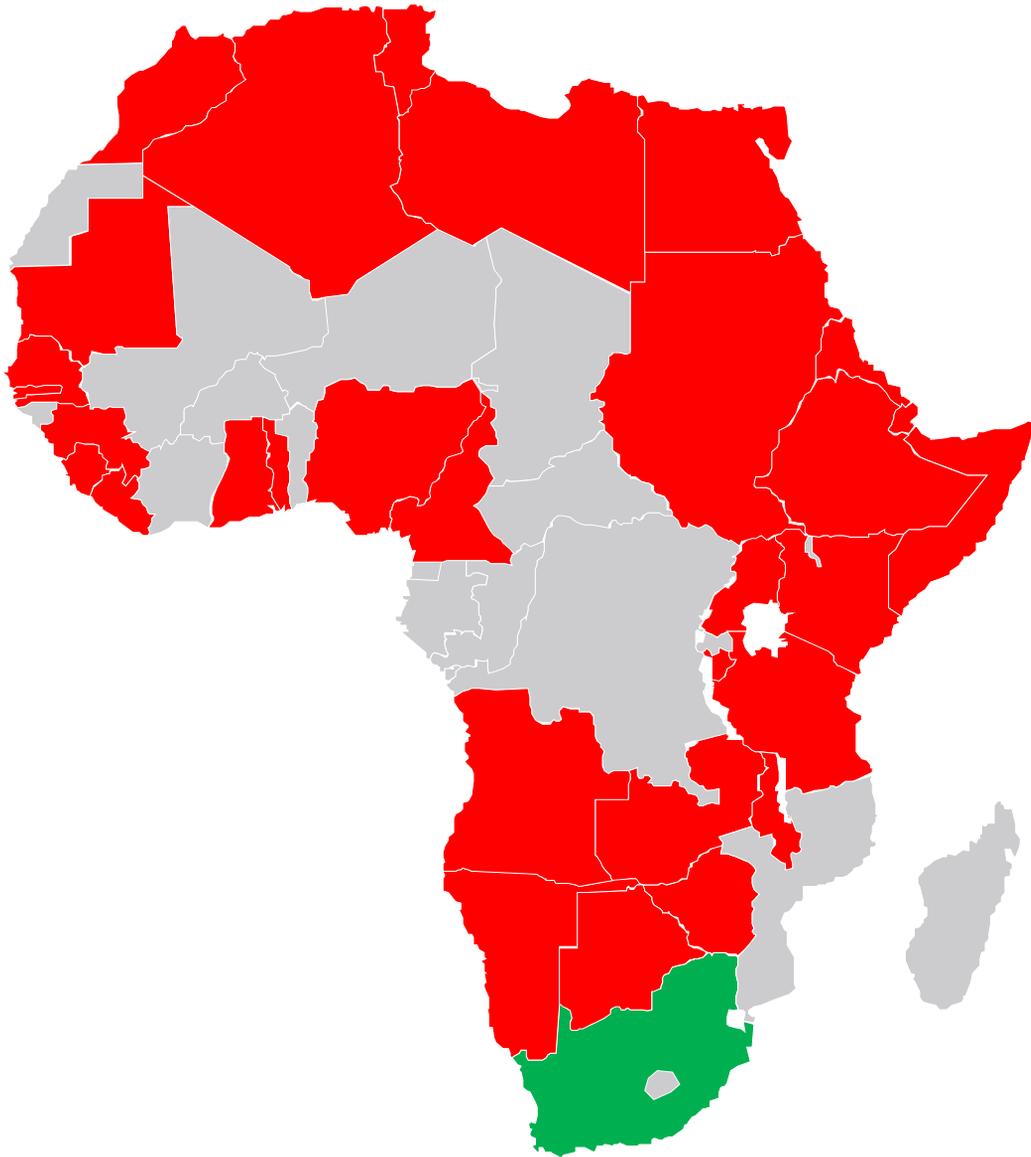
Background on sexual minorities rights in Africa

Emergence of legislature against homosexuality from colonial laws – penal codes of the colonial powers; UK, Germany, etc. - across Africa

- Christianity and Islam as primary propagator of anti-homosexual sentiment (indigenous religions?)
- Conservative religious value frameworks vs. African traditional humanism, solidarity and egalitarianism; conservatives 'won'
- With development aid, after de-colonization, came the Liberal 'Western' call for human rights promotion and protection including minority rights and sexual minorities' rights
- External pressure, development aid conditions promoted human rights protection as prerequisite
- 1990's health paradigm: HIV/AIDS 'epidemic' exacerbated an economic and public health sector crisis, and shifted the paradigm of LGBTI protection towards the health sector
- 2000 onwards saw the rise of authoritarianism and neo-conservatism in Africa, and globally, in Africa attitudes towards LGBTI/Queer rights hardened
- Emergence of differing access to human rights protection by different social classes

Country cases of LGBTI rights protection

Continent overview of repressive anti-homosexual laws



Source: International lesbian, gay, bisexual, trans and intersex association

The Nordic Region

- In the Nordics (Norway, Denmark, Sweden, Finland, and Iceland), homosexuality and same-sex sexual activity has been legal for several decades (Denmark was the first to decriminalize same-sex sexual activity in 1933 while Norway and Finland were among the last (Norway 1972, Finland 1971)). All Nordic countries began to recognize same-sex unions via Registered partnerships (in late 80's and 90's, with Finland as the last country to recognize same-sex partnerships in 2002). All the Nordic countries have since also recognized same-sex marriage (Norway and Sweden 2009, Iceland 2010, Denmark 2012, and Finland 2017), although there are some variations as to whether religious institutions also perform same-sex marriages (The Church of Norway started performing same-sex marriages in January 2017). In all countries, same-sex couples are also allowed to adopt children.
- Trans-persons can legally change (correct) their gender in all Nordic countries, although there are differences to what is required for such correction. In Norway, persons over 16 can legally change their gender without psychological evaluation or medical intervention (i.e. by notification). In Finland, the legal changing of gender is only possible if the person goes through sterilization (Discussions (although no decisions) on whether to drop the sterilization requirement are underway).
- The attitudes towards LGBT people in the Nordic countries are generally accepting, and LGB (and, perhaps to somewhat lesser extent, Trans-persons) are commonly visible in the society and in the media as integral parts of the Nordic society alongside with their heterosexual counterparts. All discrimination is banned, and LGBT people are generally well integrated and accepted in e.g. the workforce. Some prejudices and regional variations nevertheless remain, and public debates about LGBT rights (e.g. adoption and same-sex marriage) can be heated.

The Nordic Region

Country	Same-sex sexual activity	Recognition of same-sex unions	Same-sex marriage	Adoption by same-sex couples	LGBT in Military	Anti-discrimination laws	Laws concerning gender identity/expression
Denmark	Legal since 1933 + UN decl. sign	Registered partnership from 1989 to 2012 (Existing partnerships are still recognised.)	Legal since 2012	Step-child adoption since 1999. Joint adoption since 2010. (+automatic co-parent recognition)	yes	Bans all anti-gay discrimination	Legal gender change and recognition possible without surgery or hormone therapy.
Finland	Legal since 1971 + UN decl. sign.	Registered partnership from 2002 to 2017 (Existing partnerships are still recognised.)	Legal since 2017	Step-child adoption since 2009. Joint adoption since 2017.	yes	Bans all anti-gay discrimination	Legal change and recognition is possible only with sterilisation.
Iceland	Legal since 1940 (As part of Denmark) + UN decl. sign.	Registered cohabitation since 2006; Registered partnership from 1996 to 2010 (Existing partnerships are still recognised.)	Legal since 2010	Legal since 2006 (+automatic co-parent recognition)	No military	Bans all anti-gay discrimination	Documents can be amended to the recognised gender.
Norway	Legal since 1972 + UN decl. sign. ¹	Registered partnership from 1993 to 2009 (Existing partnerships are still recognised.)	Legal since 2009	Legal since 2009 (+automatic co-parent recognition)	yes	Bans all anti-gay discrimination	All documents can be amended to the recognised gender.
Sweden	Legal since 1944 + UN decl. sign.	Registered partnership from 1995 to 2009 (Existing partnerships are still recognised.)	Legal since 2009	Legal since 2003 (+automatic co-parent recognition)	yes	Bans all anti-gay discrimination	

Kenya



- Kenyan penal code prohibits 'carnal knowledge against the order of nature' which is interpreted as sex between men, and indecent sexual practice between males
- Sodomy is considered a felony as per Penal Code 162, punishable by up to 14 years in prison
- Sexual practices between males ('crossed indecency') is considered a felony under section 165, punishable by 5 years imprisonment, no recognition of same sex relationships
- Same sex relationships are banned under the 2011 (progressive?) Constitution
- NGOs: Kenyan laws and social attitudes violate constitutional rights such as equality and non-discrimination, human dignity, freedom and security of the person, privacy, and health
- Prosecution of two men on charges of 'carnal knowledge' – arbitrary arrest occurring in the Kwale County in 2015
- Registering the National Gay and Lesbian Human Rights Commission (NGLHRC)
- Progress: in May 2017, the Auditor General set a taskforce on Policy, Legal, Institutional and Administrative Reforms Regarding Intersex Persons in Kenya – its objective is to establish comprehensive reforms to safeguard the interests of intersex persons



Tanzania and Zanzibar

- Tanzanian law criminalizes consensual sexual conduct between adult males, with a penalty of 30 years to life in prison
- Lesbian and other non-heteronormative activities are not mentioned in Tanzania's penal code
- Zanzibar has slightly different and harsher laws, both male and female same-sex activities are criminalized
- Under the Government of President John Magufuli there has been an unprecedented crackdown on LGBT people, demonstrated by
 - Government of Tanzania has shut down HIV outreach services and dep-in centers targeting men who have sex with men (MSM);
 - banned the import of water-based lubricants, an important HIV prevention tool and seen to be inciting homosexuality
 - and threatened to shut down LGBT organizations
- Recent flurry of 'known homosexuals' arrests in Zanzibar, making use of forced anal examinations at government hospitals as a method for providing scientific evidence of homosexuality
- President Magufuli has publicly condemned same-sex relationship
- Minister of Health has taken a very vocal and aggressive stance against homosexuality
- General social attitudes, by men and women, are largely intolerant of sexual minorities, cultural/religious rights are upheld and prioritised over sexual minority rights
- Justifications:
 - seen as un-African
 - against Tanzania's value systems and culture
 - against religious (Cristian and Islamic) values
 - perceived as a Western import and a symptom of foreign pressures
 - Deemed unnatural and immoral



South Africa



Constitution of South Africa, 1997

- South Africa highly regarded in the international community for its progressive constitution that offers a well-developed framework wherein broader social struggles against racism, sexism, classism, and xenophobia can be fought, and specifically protects minorities including the LGBTI community.

- The hard fought for rights of the LGBTI community enshrined in the Constitution and Bill of Rights were strongly advocated for by the National Coalition for Gay and Lesbian Equality, formed in 1994.
- This period represents a time where the LGBTI community had a common shared interest to fight for the protection of their rights
- Since then, the community has become extremely divided based on their lived experience of the realization of the rights.
- This division has emerged largely along class lines, and in the context of South Africa it is still quite prevalent that class lines are determined along race lines, with the white minority largely still holding much of the countries wealth and means of production and the black population continually not being able to transcend towards a sizeable black middle class.
- This socio-economic division has resulted in a divide between those members of the LGBTI community having the resources to use the constitution to make use of the constitution to uphold their rights, and those who do not have resources and are therefore largely unable to access the benefits of the constitution.
- For those members of the LGBTI community that see no cause for celebration of the situation in the country, they are faced with a lived experience of:
 - A police force that is implicit in normalising a culture of violence and corrective rape
 - Structural indifferences or even obstacles to seeking formalized protection
 - A value system (cultural and religious) that expressly condemns their sexuality
 - A family and community structure that takes precedence of legal action and deals harshly with non-heteronormativity



South Africa

- During an unprecedented rise in cases of rape committed on disenfranchised, black, lesbian women in the early 2000's across South Africa, the term 'corrective rape' was coined.
- The phenomenon describes the use of rape as a method employed by communities to rectify a lesbian woman's sexual orientation and to 'make her a woman again'
- With 24 out of 25 reported cases of rape not being successfully prosecuted in South African courts, victims have little means to seek protection
- Police have reportedly outright refused to even look into reported instances and will not even open cases and investigations.
- There is also no support for these women in their communities and their families are sometimes even complicit in the process.



- President Jacob Zuma delivered a 20 year review address on the nation since the rise of democracy which paints an idyllic picture of the human rights progress enjoyed, but fails to mention the situation of sexual minorities in the 165 page document.
- Combined with the narrative of rising conservatism in the country
- Zuma has also publicly declared that 'homosexuals are a disgrace tot the nation and to god... when growing up unqingili (a homosexual) could not stand in front of me because I would knock him down'
- Aside from this concerning rhetoric, the South African institutional framework ahs been challenged through the proposal of the Traditional Courts Bill, the policy framework on Non Profit Organisations Law, as well as the call for the removal of LGBT rights from the Constitution by the Congress of Traditional Leaders.



Zambia

- Anti-homosexual legislation in Zambia is largely unchanged from the imposition of British colonial laws
- The sodomy law is the primary legislative basis used for prosecuting homosexuality
- A significant history of evangelical missionary involvement has resulted in a strong social disapproval of homosexuality, with a mere 2% of Zambians believing homosexuality to be morally acceptable according to a survey conducted in 2010
- In 2013/14 a couple was arrested for homosexuality receiving local and international prominence in the media, the couple was acquitted after a year due to international pressure but the events gave rise to broader public debate on the subject.
- Following the airing of a popular TV show where a the host broached the discussion of homosexuality and societies harsh response to its practice, the TV show host was arrested.
- The court case was dismissed on the grounds that the host should not be prosecuted for standing up for some thing perceived to be unjust, this gave precedent for gay rights activists to speak publically without fear of arrest.
- In 2013, Christine Kaseba, the wife of President Michael Sata, said that "silence around issues of men who have sex with men should be stopped and no one should be discriminated against on the basis of their sexual orientation."
- Sections 155 through 157 of Zambia's penal code provides the basis for legal action against homosexual acts referring vaguely to the acts as 'carnal knowledge of any person against the order of nature' the prison sentence for perpetrators is 14 years. Gay women are not mentioned in the legislature.
- Sadly there seems to be a deterioration of the collective principle of upholding the importance of one's humanity.



Uganda

- Although there is an estimated LGBT community of at least half a million in Uganda, there are no legislative protections provided for this sexual minority
- The governing legislature against homosexuality is founded in the colonial Penal Code Act of 1950 which ensures life imprisonment for engaging in ‘carnal knowledge against the order of nature’.
- Sections 145 – 148 cover unnatural offences, attempts to commit unnatural offences and indecent practices. In 2000 the law was changed under indecent practices from ‘any male’ to ‘any person’ to ensure that women could also be criminalised for homosexuality.
- In 2004 the Ugandan anti-homosexuality Bill was passed, creating wide sweeping authority for the state to prosecute homosexuals but the constitutional court later annulled the decision on a parliamentary technicality.
- However in 2005, President Museveni signed a presidential order to amend the constitution which provides ‘equality and freedom of discrimination’ to forbid same sex marriage.
- Furthermore in 2012, 38 NGOs in the country were shut down by the government for ‘promoting homosexuality and undermining national culture. The claims implied that foreign funders were financing these NGOs to recruit young people into homosexuality.
- This rhetoric further stocked the created perception of homosexuality being un-African and brought to the continent by Western influence.
- Tabloids also published lists containing the full names and addresses of known homosexuals under the tag line ‘Hang Them’. Human Rights Activist, David Kato, successfully challenged the action at the constitutional court, but was found murdered shortly after the case was concluded.
- The most severe persecution for homosexuality, however is the social and community based action taken against homosexuals.



Nigeria

- In recent times, Nigerians have become a bit more receptive to the idea that individuals have the right to express their sexual orientation. Nevertheless, this seeming improvement in the acceptance of the sexual rights of individuals is only a matter of “private confession.” In public, however, Nigerians openly condemn lesbians, gays, bisexuals, transgenders, etc.
- The oppressive ideology that every Nigerian ought to be heterosexual and no Nigerian is permitted to be homosexual is deeply rooted mainly in the religious hypocrisy and fanaticism of Nigerians and in the traditional cultural beliefs and practices of the various ethnicities in Nigeria. While in theory and constitutionally Nigeria is a secular state, in practice and unconstitutionally Nigeria is a hypocritical and fanatical religious state dominated oppressively by the beliefs and practices of Muslims and Christians. Consequently, although the extant anti-LGBT laws in Nigeria are a rehash of colonial laws, this rehash was influenced by religious beliefs and practices.
- In the Nigerian Criminal Code Act, Chapter 21 (Offences against Morality) stipulates the punishment for sexual behaviors that are contrary to heterosexuality. Section 214 (Unnatural Offences) stipulates that “any person who: (1) has carnal knowledge of any person against the order of nature; or (2) has carnal knowledge of an animal; or (3) permits a male person to have carnal knowledge of him or her against the order of nature, is guilty of a felony and is liable to imprisonment for fourteen years.” Furthermore, Section 215 (Attempt to commit Unnatural Offences) stipulates that “any person who attempts to commit any of the offences defined in section 214 of this Code, is guilty of a felony and is liable to imprisonment for seven years.” While Section 217 (Indecent Practices between Males) stipulates that “any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a felony and is liable to imprisonment for three years.”



Nigeria

- In addition, in the Penal Code of Northern Nigeria, Section 284 stipulates that “whoever has carnal intercourse against the order of nature with a man, woman or an animal, shall be punished with imprisonment for a term of which may extend to fourteen years and shall also be liable to fine.” While Section 405 (2) (e) describes as a vagabond “any male person who dresses or is attired in the fashion of a woman in a public place or who practices sodomy as a means of livelihood or as a profession” and Section 405 (3) describes as an incorrigible vagabond “any person who after being convicted as a vagabond commits any of the offences which would render him liable to be convicted as such again.” Consequently, Section 407 stipulates that “whoever is convicted as being a vagabond shall be punished with imprisonment which may extend to two years or with fine which may extend to four hundred and fifty naira or both.” While Section 408 stipulates that “whoever is convicted as being an incorrigible vagabond shall be punished with imprisonment which may extend to three years or with fine which may extend to six hundred naira or with both.”
- The above laws go as far as “secularism” and “due process” are concerned. Death penalty and lynching, although are not part of the aforementioned laws, sometimes could be the punishment meted out to those who perform or attempt to perform acts contrary to heterosexual norms. When Sharia (Islamic Law) is applied in some Northern Nigerian States, the penalty is death by stoning. And all over Nigeria, when one is caught in a homosexual act or suspected to be attempting homosexual act, often the punishment is lynching by the mob or at least physical brutalization by the mob.



Namibia

- Namibia has progressive framework for minority rights, however, such rights for LGBT people are still not fully accommodate in the legal structures of the country. The Namibian's Bill of Rights enshrined in the constitution provides for a robust protection of basic rights. Debates in the parliament indicate strong affirmation of such rights. A comprehensive narration of the Namibian Law on LGBT Issues carried out by Gender Research and Advocacy Project, LEGAL ASSISTANCE CENTRE documents positive developments in its interpretation of the constitution in accordance with Namibia's commitment to respecting international instruments.
- Still homosexuality is not illegal and anal sex is outlawed under the common sodomy law provisions which were originally in the Roman-Dutch law, but the law is silent about lesbian consensual relationships.
- In Namibia, the government has been reasonably tolerant of the rights of speech, expression, association and assembly of LGBT persons – at least at the official level. The general attitude of Namibian people towards same sex relationships and LGBT issues is highly tolerable and for the most part acceptable. For instance, gay people are conscripted and serve in the military, provisions of gender change are available and blood donation from LGBT people is acceptable. However, there are several challenges facing LGBT people in Namibia but mostly falls within the confines of the law, for example, it is illegal for the same sex people to get married or adopt children.
- The current debates in Namibia center around the redefinition of what political actors and religious leaders term as “Namibian national values”. It will be interesting to observe this process as it shall for the most part determine what kinds of rights shall be accorded to minority groups such as the LGBT people or the Himbas, the later according to Himba tradition women ought not to cover their chests even in towns and cities.

Emergent themes across the continent

Colonial legacy of legislation

- The predominant basis for legal prosecution of homosexuality is the remaining British colonial Penal Code still upheld as law in many countries.
- The legislation is quite vague, referring to engaging in 'carnal knowledge against the order of nature' addressing bestiality in the same statute. Fundamentally the same sections are included in many countries covering unnatural offences, attempts to commit unnatural offences and indecent practices

Evangelical interference

- Colonial rule was symbiotically introduced through evangelical missionary activities in many countries
- The role of these missionaries was even more pervasive than colonial legislation in introducing harsh anti-homophobia sentiment and instilling the notion of homosexuality as ungodly and culturally unacceptable

Homosexuality as un-African

- The popular rhetoric of homosexuality as un-African is perplexing, considering the relative acceptance, or at least non-condemning, of homosexuality prior to colonial interference.
- The emergence of outright condemnation of homosexuality and the legislative framework to enforce these beliefs was an entirely un-African conception

Communities and society upholding heteronormativity

- On this premise of homosexuality being un-African, communities and cultural norms have often played the most active role in perpetuating the condemnation of homosexuality, with only rare cases of governments needing to resort to legal means to prosecute the practice.

Presidential boys club

- Holders of political office across the continent will very rarely speak critically on one another and will act to bolster each other's regime.
- To advocate rights for sexual minorities would be political suicide

The role of class disparities

- Where there is a developed framework for the protection of LGBT rights, and even in its absence, the social elite enjoy the ability to protect their sexual minority rights. Whether through a legislative framework or through influence that their resources empower them, their lived experience of protection is very different from those less privileged.