

# **LGBT People, the Religions & Human Rights in Europe**

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## **Executive Summary**

Human Rights Without Frontiers (HRWF) is a non-governmental organisation that focuses on research, analysis and monitoring of a wide range of human rights concerns in many countries throughout the world. It also has a long and respected history of promoting and defending the freedom of religion or belief, taking a leadership role in fighting against all forms of religious discrimination and in protecting the freedom to not have a religion.

In recent years, questions on religion have confronted another topic of concern for human rights advocates. Discussions over sexual orientation and gender identity have (re)entered the public sphere to a degree that has not been known for some time. For many people, this has been triggered by the debate over whether the right to marry should be extended to same-sex couples as well as by other issues, such as the right of same-sex couples to adopt children. Predictably, religious leaders and institutions have voiced their positions on these topics, although there has hardly been a consensus opinion, even within the same religious tradition.

Even still, the media have portrayed the debate as an irreconcilable impasse between the lesbian, gay, bisexual and transgender (LGBT) communities on the one side and the religions on the other, as if there is no common ground on which to stand. This is indeed regrettable in an environment of heightened tensions and finger-pointing in all directions. HRWF believes that an approach that is based on internationally recognised standards of human rights can be a starting point for a constructive exchange on these issues.

At the very least, the recognition of our common humanity and shared dignity should lead to a more respectful dialogue and mend bridges that have been damaged during the recent debate. This paper is presented as one contribution to this effort. It seeks to examine the key events and movements that have shaped the social history of LGBT people in Europe, the international human rights framework that has been erected to protect them and some of the shared values that can be meaningfully leveraged in order to move forward. Finally, recommendations are proposed for guiding policy makers, religious leaders, civil society leaders, educators and the media to affect positive change in their respective spheres of influence.



## Introduction

In recent history, many European countries have seen major changes in the visibility and greater acceptance of lesbian, gay, bisexual and transgender (LGBT) people. Legal frameworks have been created to better ensure the fundamental rights of LGBT people and to protect them from discrimination, both internationally and at a country level. However, these structures have often remained inadequate. Moreover, social and cultural norms persist in many European countries that continue to stigmatise and discriminate against sexual minorities, sometimes in conflict with what has already been embodied in law.

Sexual orientation and gender identity remain contentious issues for many societies and social institutions; this has been particularly evident for some religious traditions. In fact, the public debate over LGBT rights has often been framed in terms of “religious people versus homosexuals.” It is true that many religious leaders have denounced homosexual relations as immoral. Some find justification for their position in the sacred texts of their tradition. Others appeal to moral principles, official teaching or theological reasons for rejecting homosexual behaviour.

Still other religious leaders and institutions have strongly advocated for the full inclusion of LGBT people, not only within their own faith communities but in general society as well. These are the voices that receive scant attention by the media, leaving the impression that a consensus exists among the religions on this issue. In truth, the status of LGBT people remains a highly controversial topic for many religious bodies in Europe today. No such consensus can be expected in the foreseeable future, even among those of the same tradition.

It is the obligation of States under international law to protect their LGBT citizens against unequal treatment and discriminatory practices. At the same time, religion has been a potent force in the public debate concerning these issues. Regardless of a particular religion’s position on human sexuality and gender identity, the health of any democratic society is measured by its ability to ensure the security and protection of everyone within that society, including minority groups.

This report discusses how the various religious traditions in Europe have engaged with these issues through education, advocacy and legislative and judicial action. How have the religions contributed, both positively and negatively, to the political debate on the social and political inclusion of LGBT people in Europe? What can the religions bring to future discussions that will advance equality, respect and open dialogue? And what can governments and civil society do to foster a more constructive engagement with religious institutions in regard to diverse expressions of human sexuality?

This paper presents a perspective that is mostly focused on the three historic Abrahamic faiths; however, this does not imply that other religious or secular traditions have nothing to contribute to the debate. On the contrary, diverse points of view have enlivened the discussion and brought valuable insights. Modern

Europe is an experiment in secularism, asserting a pluralistic society where the right to adhere to a religion or not to believe at all is equally respected as a fundamental human right. There is need to engage all these forces productively in order to move forward. It is in this spirit that this paper is here presented.



# Terms and Definitions<sup>1</sup>

**Androgyny:** refers to the combination of masculine and feminine characteristics

**Bisexual:** a person emotionally and relationally attracted to both men and women, not necessarily simultaneously.

**Cisgender:** a term referring to those people whose gender identity and gender expression match the sex they were assigned at birth and the social expectations related to their gender.

**Coming out:** a process of self-acceptance of one's sexual orientation, which eventually could bring to the decision to share this to others.

**Gay:** a man or a woman who is emotionally, sexually and relationally attracted to members of the same sex.

**Gender:** refers to people's internal perception and experience of maleness and femaleness. It is strongly linked to society's expectations and not exclusively a biological matter.

**Gender reassignment:** refers to the process through which people re-define the gender in which they live in order to better express their gender identity. It can also involve medical assistance, as well as social or legal adjustments.

**Internalized Homophobia:** personal acceptance and endorsement of sexual stigma as part of the individual's value system and self-concept.

**Intersex:** refers to those people who have genetic, hormonal and physical features that are neither exclusively male nor exclusively female but are typical of both at once or not clearly defined as either. This term has replaced the term "hermaphrodite", used during the eighteenth and nineteenth centuries.

**Lesbian:** a woman who is emotionally, sexually and relationally attracted to other women.

**LGBT:** acronym for "lesbian, gay, bisexual and transgender".

**LGBTI:** acronym for "lesbian, gay, bisexual, transgender and intersex".

**Outing:** the act of publicly declaring someone's sexual orientation or gender identity without that person's consent.

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<sup>1</sup> Many of these definitions have been adapted from ILGA Europe. See <http://www.ilga-europe.org/home/publications/glossary>.

**Pansexual/Omnisexual:** a person who experiences the need for affection and/or love from people of all gender identities and biological sexes.

**Queer:** an umbrella term for sexual and gender minorities that are not heterosexual or LGBT. Many who choose this term feel that is more inclusive, allowing for diversity of race, class and gender.

**Questioning:** a person who does not identify as lesbian, gay or bisexual.

**Straight supporter:** a person who supports and honours sexual diversity, challenging homophobic remarks and behaviours.

**Trans:** an umbrella term referring to those people whose gender identity and/or gender expression differs from the sex they were assigned at birth. It refers also to any gender identity and/or expression which is not standard male or female and who express their gender through their choice of clothes, presentation or body modifications.

**Transphobia:** refers to negative cultural and personal beliefs, opinions, attitudes and behaviours based on prejudice, fear and/or hatred of trans people or against variation of gender identity and gender expression.

**Transgender:** refers to those trans people who live permanently in their preferred gender, without necessarily needing to undergo any medical intervention.

**Transsexual:** refers to people who identify with the gender role opposite to the sex assigned to at birth and seeks to live permanently in the preferred gender role. Transsexual people might intend to undergo, be undergoing or have undergone gender reassignment treatment.

**Transvestite/Cross dresser:** people who enjoy wearing the clothing of another gender for certain periods of time.

## **A Brief Social History**

It is nearly impossible to formulate a brief yet coherent history of religion and LGBT people in Europe. The ground is too broad and the narrative too complex to construct an account that hangs neatly together. In addition, contemporary sexual classifications were simply not in use in earlier times, making the debate quite different in the past than it is today. The way people understood same-sex relationships in former times is not directly applicable to how we regard such relations in our own. Ideas of what was considered acceptable sexual practices were shaped by particular social and political circumstances which are not necessarily relevant for today. Even from one country to another – and indeed from one culture or social grouping to another – attitudes toward homosexuals and transsexuals have hardly been uniform.

Even still, all European societies have been deeply marked by the institutions of the Church, the philosophy of the Enlightenment and the social and political upheavals of their more recent past. Undoubtedly, the Roman Catholic Church, for better or for worse, has strongly shaped European attitudes toward sexuality and sexual expression, including attitudes toward LGBT persons. The same could also be said to a lesser degree of some minority religious traditions.

Whilst the Roman Catholic Church has officially declared its support for the fair treatment of homosexuals in society, it has never taken the lead as an institution in publicly advocating for their human rights and social inclusion. On the contrary, the Church has frequently opposed initiatives that would have resulted in a broader recognition of the civil rights of sexual minorities, including the repeal of laws that criminalise same-sex relationships.

However, official Church positions on matters of sexuality have not gone unchallenged, even from within. In 2011, more than 300 Catholic theologians and professors of religion issued a memorandum calling for reforms within the Church on a number of matters, among them wider respect for homosexual couples who live in civil partnerships.

The recent debate over same-sex marriage has made visible the divisions that still persist in European countries between conservative institutions and attitudes, including but by no means limited to those of the Roman Catholic Church, and other voices that have been calling for change. These divisions are not new.

### *Early Appeals for Reform*

The latter part of the nineteenth century brought with it serious challenges to traditional views on sexuality and the social institutions of marriage and family.

By the 1870s, social reformers in several European countries had begun to defend the acceptability of same-sex attraction and homosexual relationships. In this period, for example, a secret British society called the "Order of Chaeronea"

campaigning for the legalisation of homosexuality and counted playwright Oscar Wilde among its members.

Several other British writers and political theorists also wrote in defence of same-sex love and androgyny, including Edward Carpenter, John Henry Mackay and John Addington Symonds. The latter's writings included the co-authorship with Havelock Ellis of *Sexual Inversion*, a ground-breaking work on male homosexual relations. The book was suppressed when it was first published in England.

The idea of sexual inversion was popularised by the 1928 novel, *The Well of Loneliness*, written by Radclyffe Hall. The novel described the social isolation and rejection experienced by two women in love. The book was attacked as "obscene" and subsequently banned.

Hall herself was a lesbian and a committed Catholic. On the last page of the book, she wrote: "Acknowledge us, O God, before the whole world. Give us also the right to our existence."

### *Sexology and German Activism*

In Germany, Magnus Hirschfeld formed in 1897 the Scientific-Humanitarian Committee, considered by some to be the first advocacy organisation for homosexual and transgender rights. Its original focus was to campaign against the notorious law "Paragraph 175," which criminalised sex between men.

One notable associate of Hirschfeld was Anna Rüling, whose historic speech at the 1904 annual assembly of the Scientific-Humanitarian Committee catapulted her to fame as the first public activist for lesbian rights. Her speech was a passionate appeal for linking the campaign for women's rights to that of achieving recognition for the rights of homosexuals. Rüling asserted that the women's movement was "a cultural historical necessity" and that rights for homosexuals were "a natural historical necessity."

Magnus Hirschfeld went on to dedicate his life to the social inclusion and legal recognition of homosexuals, transsexuals and transvestites. In 1919, he formed the Institut für Sexualwissenschaft (Institute for Sexology), which became an important centre for the study of sexuality, conducting research and championing a broad range of sexual reforms in German society, including the repeal of Paragraph 175.

Paragraph 175 was not uniformly enforced until the Nazis took power in 1933. Under the Hitler regime, the law was broadened and vigorously applied. Throughout most of this period, the German Churches were largely supportive of the Nazi Party Platform in favour of a "positive Christianity" and traditional German values. They also remained silent in the face of increasing pressure exerted against homosexuals. The Nazification of the German Churches strengthened support for the belief that sexual relations were to be reserved for the purpose of procreation and for producing "pure" children for the Reich. As

homosexuals did not serve this purpose, they were early on targeted for suppression.

In 1933, the Nazi regime abolished the Institut für Sexualwissenschaft and destroyed its extensive research library. Paragraph 175 was to remain in force in some version until it was finally abolished in 1994 after German reunification. Overall, some 140,000 men were convicted under the law.

### *The Legacy of Stonewall*

Immediately following World War II, a number of homosexual rights groups were established or revived across the Western world. These groups typically preferred the term "homophile" over "homosexual" during this period, emphasizing love over sex. The homophile movement began in the late 1940s with groups in the Netherlands and Denmark and continued throughout the 1950s and 1960s with groups in Sweden, Norway, the United States, France, Britain and elsewhere.

However, the rise of new social movements in the sixties, such as the Black Power and anti-Vietnam war movements in the U.S, the May 1968 insurrection in France and Women's Liberation throughout the Western world, inspired a new radicalism among LGBT activists. The homophile movement that had lobbied persistently for social reform and acceptability of same-sex relations gave way to a more strident Gay Liberation Movement by the end of the decade.

The most important event that spurred this transition was the Stonewall riots of 1969. It was not uncommon during this time for police in the U.S. to raid bars and nightclubs where gays, cross-dressers and some transsexuals and lesbians gathered. However, on 28<sup>th</sup> September 1969, patrons at the Stonewall Inn in New York City fought back. A large crowd assembled, and sporadic altercations with the police soon turned to full-fledged rebellion. The confrontation provoked a series of riots and violent demonstrations that have since become emblematic of the struggle for homosexual rights.

Immediately after Stonewall, such groups as the Gay Liberation Front (GLF) and the Gay Activists' Alliance (GAA) were formed. Their use of the word "gay" represented a new unapologetic defiance. In contrast to "straight" ('respectable sexual behaviour'), the term encompassed a range of non-normative sexualities and gender expressions.

The GLF established chapters across the U.S. and the United Kingdom. A GLF Manifesto was published, calling for direct actions to draw attention to the discrimination faced by homosexuals and transsexuals in Western societies.

One such action was the disruption of the official opening of the Festival of Light, a short-lived Christian campaign in 1971 to confront growing permissiveness within British society. Leading media personalities and clergymen organised several rallies to denounce an increasingly exploitive sexual and violent culture and to promote conservative Christian moral principles. The launch of the

campaign was held in Westminster Central Hall. GLF activists interrupted the meeting dressed in drag, sounding horns, turning off lights and releasing mice.

Aside from the formation of gay liberation groups, a number of Christian organisations were also formed during this period with the explicit purpose of affirming and supporting gay and lesbian Christians. Even still, official church reaction was sometimes strong as Western societies became more open toward sexual minorities.

In the end, a less confrontational and more reformist movement for gay rights emerged, framing gays and lesbians as a minority group and using the language of civil rights. In many respects, these efforts reclaimed the work of the earlier homophile period. Advocates focused on cases of discrimination and tried to dispel negative stereotypes. Gays and lesbians were presented as identical to heterosexuals in all ways but private sexual practices. The quest for respectability in European societies was well underway.

#### *Recent Debates Over Same-Sex Marriage*

Many LGBT advocates consider the right for homosexuals to marry to be fundamental. Yet the first law in the modern world to allow same-sex marriage only came into effect in 2001, after the Netherlands became the first country to grant it legal status. In recent years the issue has provoked bitter debate in many European countries.

For instance, French society was deeply divided over national legislation to permit the marriage of same-sex couples. The *Pacte Civil de Solidarité* of 1999 had already guaranteed homosexual couples the same civil and economic rights as heterosexual couples; however, considerable momentum had been building in France to also extend the right to marry.

The measure aroused considerable opposition, notably led by the Catholic Church, which views homosexual marriage as an affront to the sanctity of the family, a cherished French institution. Hundreds of thousands of people turned out to protest the bill as it moved through the legislature. A curious blend of religious people, traditionalists and hard-right conservatives put aside their differences to unite in opposition to the new law. Even still, marriage for homosexuals was officially promulgated on 17<sup>th</sup> May 2013.

Religious leaders in the United Kingdom have expressed conflicting views on the legalisation of same-sex marriage. Speaking in the House of Lords in June 2013, Archbishop of Canterbury Justin Welby opposed the gay marriage bill as it then stood, saying that it would undermine basic values that are inherent to marriage and family. Nonetheless, the Church of England has announced that it would not block attempts to institute same-sex marriage in principle. Indeed, the Bishop of Salisbury, Nicholas Holtam, has publicly appealed for the reform of marriage rights for same-sex couples. Similarly, a prominent evangelical pastor in London, Steve Chalke, released an article in January 2013 in support of same-sex

relationships, saying that “when we refuse to make room for gay people to live in loving stable relationships, we consign them to lives of loneliness, secrecy and fear.”

In contrast, the Catholic Church in England and Wales has actively opposed the same-sex marriage bill “in the interest of upholding the uniqueness of marriage as a civil institution for the common good of society.” The Catholic Bishops’ Conference mounted a robust effort to counter the initiative, enjoining faithful Catholics to work toward the bill’s demise.

In January 2013 the Polish parliament rejected draft laws that would have extended limited legal rights to unmarried couples, same-sex as well as heterosexual, in part due to strong opposition by the Roman Catholic Church, which has long held considerable influence in public life.

Lastly, Russia has recently attracted widespread attention in the media over the growing political and social hostility toward LGBT people in the country. In fact, Russia has had a mixed history on this issue. The 1917 Revolution decriminalised homosexuality and even recognised same-sex marriage; however, opposition to sexual minorities has remained strong. The recent passage of federal “anti-propaganda” laws, limiting access of information to minors on homosexuality, is indicative of the hostile environment in which homosexual Russians live.

The Russian Orthodox Church has been at the centre of this effort, waging a vigorous campaign in favour of the legislation as part of its wider efforts to promote “traditional values” in Russian society. A similar position is shared by all the Orthodox Churches of Central and Eastern Europe, including EU as well as non-EU countries.<sup>2</sup>

Most human rights groups have condemned the laws as a government assault against LGBT people and symptomatic of the worsening human rights situation overall in the country.

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<sup>2</sup> Each of the fifteen Eastern Orthodox churches is independent and self-governing; however, they observe the same canon law, which seeks agreement on matters of doctrine and certain ethical issues. See <http://www.patheos.com/Library/Eastern-Orthodoxy/Ethics-Morality-Community/Community-Organization-and-Structure.html>





## The United Nations and European Institutions in respect to LGBT people

It has only been in recent years that the United Nations has taken up the matter of LGBT rights in an explicit manner. At a minimum, UN Member States that have ratified the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and other human rights treaties are legally obliged to respect a number of core principles that are relevant to the protection of LGBT rights, such as:

- “the right to life, liberty and the security of person” (UDHR Art.3);
- “the inherent right to life” of which “no one shall be arbitrarily deprived” (ICCPR, Art.6);
- “the right to liberty and security of person” (Art.9); and
- The prohibition against “arbitrary or unlawful interference with his privacy, home or correspondence, nor to unlawful attacks on his honour and reputation” (Art. 17).

The Human Rights Committee, the body that monitors the application of the International Covenant on Economic, Social and Cultural Rights, has commented on the State’s obligation in respect to LGBT people. For example, General Comments 6 and 31<sup>3</sup> underscored the responsibility to protect life as well as preventing, punishing and redressing deprivations of life by private parties. Failure to ensure such protection is considered a breach of the State’s obligations under international law.

In 2009, the Committee also emphasized that “States parties should ensure that a person’s sexual orientation is not a barrier to realizing Covenant rights” and that “gender identity is recognized as among the prohibited grounds of discrimination.”<sup>4</sup>

In addition to the ICCPR, the Convention on the Rights of the Child<sup>5</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>6</sup> indicates the right to be free from discrimination on the basis of sexual orientation and gender identity.

Regarding the Convention on the Elimination of All Forms of Discrimination

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<sup>3</sup> UN Committee on Economic, Social and Cultural Rights, General Comments No. 6, 31 of 2009.

<sup>4</sup> UN Committee on Economic, Social and Cultural Rights, General Comment No. 20 of 2009.

<sup>5</sup> Convention on the Rights of the Child, Article 2: “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”

<sup>6</sup> International Covenant on Economic, Social and Cultural Rights, Article 2: “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”

against Women, the language is not clear on this matter. However, the relevant monitoring committee has stated that discrimination against women based on sex and gender is “inextricably linked with other factors that affect women,” including “sexual orientation and gender identity,”<sup>7</sup> and has repeatedly raised concern over sexual offences against women that have been perpetrated on account of their sexual orientation.

### *UN Special Procedures*

Since 1999, the *Special Rapporteur on extrajudicial, summary or arbitrary executions* has drawn attention to persons being subjected to death threats or killed because of their sexual orientation or gender identity. In the 2007 Report on his mission to Guatemala, for example, the Special Rapporteur highlighted that the “State has responsibility under international human rights law for the widespread killings of...gay, lesbian, transgender and transsexual persons”<sup>8</sup> and urged governments to adopt measures that “include policies and programmes geared towards overcoming hatred and prejudice against homosexuals and sensitizing public officials and the general public to crimes and acts of violence directed against members of sexual minorities.”<sup>9</sup>

The Special Rapporteur reports annually to the Human Rights Council and the General Assembly, including conclusions and recommendations. The Rapporteur can also conduct fact-finding missions and invoke the Council’s immediate attention in serious and urgent situations.

Moreover, the *Special Rapporteur on violence against women* has reported on incidents of rapes, family violence and murder experienced by lesbian, bisexual and transgender women.<sup>10</sup>

In some countries, LGBT people are under continual threat of torture or cruel and degrading treatment. Within the UN system, the *Committee Against Torture* and the *Special Rapporteur on torture* are the dedicated mechanisms to respond to allegations of abuse on the basis of sexual orientation or gender identity. In the 2001 Report, the Special Rapporteur notes that “members of sexual minorities are disproportionately subjected to torture and other forms of ill-treatment, because they fail to conform to socially constructed gender expectations”. The report goes on to say that “States parties [to the Convention against Torture] must ensure that, insofar as the obligations arising under the Convention are concerned, their laws are in practice applied to all persons, regardless of... sexual orientation [or] transgender identity.”<sup>11</sup>

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<sup>7</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No. 28 (on the core obligations of States parties under article 2), at para. 18.

<sup>8</sup> UNHR, Office of the High Commissioner for Human Rights, Report A/HRC/4/20/Add.2.

<sup>9</sup> Ibid.

<sup>10</sup> UNHR, Office of the High Commissioner for Human Rights, A/HRC/14/22/Add.2.

<sup>11</sup> UN Committee against Torture, General Comment No.2 of 2008.

Another indicator of an increasing engagement of the UN to protect LGBT people is the greater frequency of statements issued by senior UN Officials. For example, Navi Pillay, the UN High Commissioner for Human Rights, affirmed that “laws criminalizing homosexuality pose a serious threat to the fundamental rights of lesbian, gay, bisexual and transgender individuals... [and] criminalization perpetuates stigma and contributes to a climate of homophobia, intolerance and violence.”<sup>12</sup> Secretary General Ban-Ki-Moon expressed the UN attitude towards the human rights violations of gay and lesbian people, saying that “when individuals are attacked, abused or imprisoned because of their sexual orientation, we must speak out. We cannot stand by. We cannot be silent.”<sup>13</sup>

### *UN Resolutions and the Yogyakarta Principles*

The 2003 “Brazilian resolution,” presented to the UN Economic and Social Council (ECOSOC), explicitly addressed the topic of human rights and sexual orientation (E/CN.4/2003/L.92). The resolution made extensive reference to international covenants and stressed that human rights and basic freedoms are the birth-right of all human beings, regardless of their sexual orientation. It also called upon the High Commissioner for Human Rights to “pay due attention” to violations that are linked to sexual orientation; however, discussion of the resolution was postponed and subsequently lost enough support for passage.

In the wake of the Brazilian Resolution’s failure, another strategy was formulated for promoting LGBT rights. Instead of trying to secure legally binding resolutions – which are often very difficult to have passed in intergovernmental bodies – the Yogyakarta Principles<sup>14</sup> were elaborated in 2006 as a tool for building consensus over time. The intent was to establish a reference point for the application of universal human rights principles to matters of sexual orientation and gender identity. In this respect, the Yogyakarta Principles have been regarded as an aid for interpreting existing international law – to which States are bound to comply – through the lens of LGBT rights. They were carefully developed by a highly-regarded group of experts<sup>15</sup> along with recommendations directed toward governmental and intergovernmental institutions.

Predictably, the Yogyakarta Principles have been welcomed by some and maligned by others. In 2008, a declaration was submitted to the UN General Assembly, which was strongly supported by EU countries. It was historic in that it was the first time that such a statement was heard by this body. It condemned violence, discrimination and prejudice based on sexual orientation and gender identity. It also called for the decriminalization of homosexuality. Opposition to the statement was quickly mobilised. Among the first detractors was the Holy

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<sup>12</sup> UN High Commissioner for Human Rights, Navi Pillay, 1 February 2011.

<sup>13</sup> <http://www.un.org/apps/news/story.asp?NewsID=37026#.UdWbxj55zDE>

<sup>14</sup> See <http://www.yogyakartaprinciples.org> for the integral text of the principles in several languages.

<sup>15</sup> See list of signatories at

[http://www.yogyakartaprinciples.org/principles\\_en\\_principles.htm#\\_Toc161634723](http://www.yogyakartaprinciples.org/principles_en_principles.htm#_Toc161634723)

See's Permanent Observer at the United Nations, who expressed concern that the declaration could be used to force countries to recognise same-sex marriage.

In 2011, a resolution in the UN Human Rights Council expressed “grave concern” over increasing discrimination and hostilities based on sexual orientation and directed the Council to conduct a study to document the situation of LGBT people worldwide. The ensuing report recommended Member States to take measures to investigate human rights violations as well as to repeal laws that criminalise homosexuality. The report also urged that “asylum laws and policies recognise that persecution on account of one’s sexual orientation or gender identity may be a valid basis for an asylum claim.”<sup>16</sup>

The Human Rights Council held its first discussion of the resolution in March 2012. On that occasion, Pakistan’s representative spoke on behalf of the Organisation of Islamic Cooperation, objecting to the discussion and claiming that it was being used to promote “licentious behaviour... against the fundamental teachings of various religions, including Islam.” Most Arab countries and a number of African countries later walked out of the session.

### *Asylum Policies and Procedures*

As suggested in the aforementioned 2011 Human Rights Council resolution, policy makers have recently taken note of standards and procedures regarding claims to asylum on the basis of sexual orientation or gender identity. Documented cases of persons seeking asylum in Europe and elsewhere on these grounds – and then refused and returned to their home country to face persecution and possibly even death – have given the debate a very human face and moved some policy makers to insist upon stronger protections for LGBT asylum seekers.

Refugee law is governed internationally by the 1951 Convention Relating to the Status of Refugees (the “Geneva Convention”) and the 1967 Protocol which extended the previously limited scope of the convention. The Convention defines a refugee as a person who, “owing to well-founded fear of being persecuted for reason of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or owing to such fear is unwilling to avail himself of the protection of that country.”<sup>17</sup>

A 2008 UNHCR Note<sup>18</sup> provides guidance on refugee claims related to sexual orientation and gender identity. The United Nations High Commissioner for Refugees acknowledges the persecution of people because of their sexual orientation and gender identity and comments that the number of asylum claims by LGBT persons has been increasing. The Note goes on to state unequivocally that

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<sup>16</sup>[http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-2\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-2_en.pdf)

<sup>17</sup> UNHCR, *Convention and Protocol Relating to the Status of Refugees* (1951, 1967) p. 3

<sup>18</sup>[http://www.justice.gov/eoir/vll/benchbook/resources/UNHCR\\_Guidelines\\_Sexual\\_Orientation.pdf](http://www.justice.gov/eoir/vll/benchbook/resources/UNHCR_Guidelines_Sexual_Orientation.pdf)

LGBT individuals can fall under the Convention's definition of "refugee" in the context of fleeing abuse, prejudice and discrimination, either because of a country's cultural norms or the criminal status of homosexuality. Refugee claims related to sexual orientation and gender identity are primarily recognised under the wording "membership of a particular social group," as quoted in the 1951 Convention above.

Criminal laws may be considered persecution in themselves. They may also constitute persecution when applied indiscriminately or when they impose harsh punishments that do not conform to international human rights standards. Notably, in the aforementioned 2008 UNHCR document the *absence* of laws criminalizing homosexuality is not to be considered per se evidence that persecution does not exist in the country of origin.

In addition to the protections described in this Convention, the Parliamentary Assembly of the Council of Europe has called on its members to consider persecution based on sexual orientation and gender identity as valid reasons for seeking asylum under the terms of the Convention. In the European Pact on Immigration and Asylum, adopted on 16 October 2008, the European Council noted that considerable disparities remained between one Member State and another concerning the grant of protection.

For example, human rights groups in the United Kingdom have documented numerous alleged cases supporting the claim that the UK Border Agency has routinely deported LGBT asylum seekers back to countries where they face probable persecution. Other EU countries, including Germany and the Czech Republic, have reportedly employed unreasonable and undignified methods to process LGBT asylum claims from third countries.<sup>19</sup> The need for uniform standards and procedures for EU Member States continues to be a serious concern. However, some hopeful signs are to be noted. The Stockholm Programme outlines for the period 2010-14 the EU's agenda for a number of policy areas, including the management of its external borders and asylum and immigration matters. The plan has reaffirmed the need for ensuring international protection and "access to legally safe and efficient asylum procedures." Significantly, the mention of "vulnerable groups of people" opens the possibility for this to be applied to LGBT people seeking asylum in Europe.<sup>20</sup>

In October 2011, the European Parliament adopted a new set of rules which included provisions for gender identity as ground for granting asylum due to persecution.<sup>21</sup> Previously, EU asylum law had not specified gender identity but only "gender related aspects" as ground for "due consideration" in a claim to

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<sup>19</sup> <http://www.dw.de/eu-asylum-policy-for-gays-and-lesbians-criticized-by-lgbt-groups/a-15089739>

<sup>20</sup> <http://register.consilium.europa.eu/pdf/en/09/st17/st17024.en09.pdf>

<sup>21</sup> <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2011-0469&language=EN&ring=A7-2011-0271>

asylum<sup>22</sup>. The new language obliges Member States to also consider gender identity as one of the said gender-related aspects. The United Kingdom, however, is not affected by this change, as it has opted out of EU asylum policies.

In June 2013, the European Parliament again revised the directive on asylum procedures to specify that “certain applicants may be in need of special procedural guarantees due, inter alia, to their age, gender, sexual orientation” and other characteristics.<sup>23</sup> This revision was long and hard debated and will be implemented as Member States harmonise the ruling with their own national laws. Even still, its passage strengthens the position of asylum seekers who flee their country on the basis of sexual orientation and gender identity. And it sets in motion a new procedural mechanism that recognises the right to asylum for sexual minorities that live under difficult circumstances in third countries.

### *Combating Discrimination Within Europe*

Homosexuality is no longer criminalised in any Council of Europe (CoE) country.<sup>24</sup> However, there continues to be concern on the part of European policy makers over the rise of social hostility and restrictive laws that are directed toward sexual minorities on the Continent. Several CoE countries have introduced non-discrimination legislation in respect to sexual orientation and gender identity; however, many others lack adequate legal protections in this regard. Nine countries – Armenia, Azerbaijan, Liechtenstein, Moldova, Monaco, Russian Federation, San Marino, Turkey and Ukraine) offer no protection against discrimination in terms of employment or access to goods and services.<sup>25</sup>

In addition, while discrimination against transgender persons is prohibited in 20 CoE countries on the bases of “sex” or “gender identity,” their legal position remains unclear in the other 27, largely due to the lack of a commonly accepted wording.

At a European level, there has been debate on whether the application of earlier CoE Directives should be expanded to ensure more explicit protection to sexual minorities. For instance, Directive 78/2000 prohibited harassment and discrimination on the basis of sexual orientation in the workplace but does not cover other areas. Directive 43/2000 addresses concerns of equal treatment on the basis of race or ethnic origin but could also be applied to sexual orientation and gender identity<sup>26</sup>.

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<sup>22</sup> <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2011-0469&language=EN&ring=A7-2011-0271>

<sup>23</sup> <http://register.consilium.europa.eu/pdf/en/13/st08/st08260.en13.pdf> Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection (recast)

<sup>24</sup> At the present time (November 2013) only the territory of Northern Cyprus still criminalises male homosexual relations; however, there are on-going discussions to repeal these laws in order to bring Northern Cyprus in compliance with the European Convention on Human Rights.

<sup>25</sup> Council of Europe, ‘Discrimination on grounds of sexual orientation and gender identity in Europe’ 2<sup>nd</sup> Edition, 2011, pp. 41-44.

<sup>26</sup> <https://wcd.coe.int/ViewDoc.jsp?id=855063&Site=COE>

In 2007, the European Parliament requested the Fundamental Rights Agency (FRA) to undertake comprehensive research on discrimination against homosexuals in EU countries. The result has been the publication of a series of reports signalling several obstacles to the full social and legal participation of LGBT people in public life. The reports reference the EU Charter of Fundamental Rights, which entered into force in 2009 and which prohibits discrimination on various grounds including sexual orientation.

In 2010 the Council of Europe published a document on "Discrimination on the basis of sexual orientation and gender identity," calling on Member States to take more decisive measures to combat discrimination on the grounds of sexual orientation or gender identity. Recommendations included promoting a culture of respect, taking more decisive measures against hate crimes, curtailing hate speech in the media, addressing discrimination in the workplace, regularising the civil status of same-sex couples and educating children and youth for a more tolerant society.<sup>[22]</sup> This was followed by a 2012 conference at the Palais de l'Europe under the leadership of Council Secretary General Thorbjørn Jagland, Human Rights Commissioner Thomas Hammarberg and Sir Nicolas Bratza, President of the European Court of Human Rights.

#### *European Court of Human Rights*

Several decisions of the European Court of Human Rights are also relevant to mention in this regard:

**1992** – The Court decides in *B. v. France* in favour of the right of transsexual people to legally change their name and gender, to marry and to have the costs for gender reassignment treatment covered by the state.

**2002** – The Court decides in favour of Christine Goodwin on the UK's refusal to acknowledge her post-operative gender and right to marry as a member of the acquired gender.

**2003** - The Court decision *Van Kück v. Germany* rules, on the basis of Articles 6 and 8 of the European Convention on Human Rights, that a person undergoing gender reassignment does not have to prove the "medical necessity" of the treatment nor the "authenticity" of that person's transsexualism in order to obtain financial assistance from the state for this treatment.

**2013** – The Court rejects the appeal of two cases in England in which Christians made claims of religious discrimination, because they had been sanctioned for refusing to provide professional services to same-sex couples. One case involved a London registrar who was sanctioned for refusing to perform civil partnerships for homosexual couples; the other concerned a counsellor in Bristol who was fired, because he refused to do sex therapy with couples who were the same sex.





## **Foundations for Dialogue between European Societies and the Religions on Common Values related to LGBT Persons**

In the previous chapter, we outlined a basis for the legal protection of LGBT people in respect to internationally-recognised standards of human rights. In fact, it is only recently that the international community has taken up this concern with any real seriousness. The literature suggests that the legal status of LGBT people in Europe has only been addressed either on the basis of generalised human rights principles or legal challenges to local incidents. Obviously, this is inadequate and will require a more comprehensive and coherent approach in the future.

This can equally be said of the various religious traditions that are operative in Europe today. No consensus is forthcoming from the religions on the subject of gay, lesbian, bisexual and transgendered persons in society. Most world religions have approached issues of sexuality from the position of morality or ethics rather than legal status. This has contributed to some confusion between the human rights community, which seeks to affirm the rights of LGBT people, and the religions, which tend to be more concerned with moral conduct. In the end, both the human rights community on the one hand and the religions on the other must aim for greater consensus in the interest of positive human interaction, public order and the common good of all members of society.

Historically, sexual attitudes and opinions regarding sexual behaviour have varied greatly for religious people as indeed it has for general society. Prohibitions against same-sex relations have been promoted for reasons of religious purity, adherence to a moral code, the primacy of sexual relations for biological reproduction and other reasons.

Beyond the polarising debate over the expediency of sanctioning homosexual relationships, there are values that can be explored in an effort to bridge the gap, where it exists, between human rights advocates and adherents of religion. Taken together these values provide a foundation on which to build a constructive dialogue over LGBT people in society.

However, before examining these values, it is important to acknowledge that LGBT people have no need for an external source to “sanction” for them the pleasures of human loving and sexual expression. Nor is it a question of submitting to a moral code, if it has not been freely chosen. Same-sex attraction and same-sex loving are simply facts of life. They always have been and they always will. Moreover, this is hardly a human phenomenon. Homosexuality has been observed in some form or another in hundreds of other species as well.<sup>27</sup>

Viewing issues of sexual expression and religion through the lens of commonly held values presents an opportunity for divergent opinions to find ground for further discussion and mutual understanding. This spirit of respectful dialogue and

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<sup>27</sup> See 2009 paper entitled “Trends in Ecology and Evolution,” published in 14 March 2012 Yale Scientific Magazine.

peace building must continue to shape and inform the European project. In the end, religious people as well as LGBT people – yes, sometimes the same people – all wish to be heard, respected and protected. This is a hallmark of democratic societies.

### *Free and Equal in Dignity and Rights*

Few people in Europe today would argue with the first article of the Universal Declaration of Human Rights: “All people are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

These values have deep roots in the religious foundations of European societies and continue to shape European identity. Regardless of one’s religious or belief system, a commitment to international standards of freedom, equality and human dignity should find resonance in everyone. These standards are manifestly reflected in the obligation of States to uphold international human rights law.

It was also on this basis that the Yogyakarta Principles were established in 2006. These continue to serve as a reference point for the application of human rights standards to matters of sexual orientation and gender identity, although they have not been universally accepted in every detail. In any case, European societies and the religions should be able to agree that everyone, regardless of his or her sexual orientation or gender identity, is fundamentally free and equal under the law.

It is appropriate here to address the question of authority in the context of religion. Many adherents of religion have appealed to their reading of sacred literature or tradition as the authoritative source for developing their positions on sexuality morality. Even still, the literature and tradition are not static entities. Moral positions have evolved over time and will continue to change.

It is obvious to most people in 21<sup>st</sup> century Europe that ancient texts, however sacred they may be, cannot provide the definitive word on many contemporary issues. For instance, a body of laws intended to regulate the sexual conduct of people in ancient patriarchal societies, often resulting in blatantly unjust sentences inflicted upon women, can hardly be regarded as normative for modern democratic societies.

Similarly, secular democratic countries need to periodically review their own application of human rights law in the light of their experience and that of others. This is to say that neither religious nor secular institutions have the final word on questions of human behaviour. Surely there are universal principles upon which all can agree; yet all should be able to also acknowledge the force of history in shaping human consciousness.

## *Respect for Human Diversity*

A commitment to freedom and equality also implies the obligation for us all to live with our deepest differences. Religious people in particular should be at the forefront of promoting the respect for diversity and combating ignorance and discrimination. What has become known as the Golden Rule – to treat others as one wishes to be treated oneself – can be found in one form or another in most religious traditions. Implicit in this principle is the acceptance of human differences, including those that touch upon sexual orientation and gender identity.

For many people, modern research has triggered a reassessment of positions formerly held on the nature and origins of human sexuality. For instance, although the debate continues on the development of homosexuality, the gap between supporters of innate causation and those who place greater importance on environmental factors has certainly narrowed in recent decades. Many more people have come to accept the existence of biologically determinant factors that contribute to sexual orientation. While this debate may appear inconsequential to some people, to others it has moved the discussion away from issues of moral responsibility (“choice”) and into the realm of human diversity. This has been true for secular society as much as it has been for the religions.

In any case, diversity is an obvious feature of the natural world, including the world of humans, and it is here to stay. It can be a source of conflict, but it can also be regarded as a source of strength. Societies that affirm the worth and role of all its members can richly benefit from their contributions. This mosaic of differences – of all sorts – is quickly becoming the paradigm of the 21<sup>st</sup> century. European societies are already grappling with these challenges. Religious institutions resist these changes to their peril.

## *Reimagining Marriage and Family*

For many religious people in Europe today, this is the most contentious point for expanding the public space for LGBT people. Even those who can concede the right of LGBT people to their private sexual lives may not be ready to acknowledge their right to marry and to establish a family. The refusal to accept same-sex marriage is often based on deeply-held views on how marriage is constituted and the normative nature of what is considered to be mainstream family structures.

For instance, the head of the Pontifical Council for the Family, Archbishop Vincenzo Puglia, has stated that cohabitation outside the traditional configuration of heterosexual marriage “does not constitute a family.”<sup>28</sup> And Justin Welby, the Archbishop of Canterbury, spoke in the British Parliament against the 2013 marriage legislation as it then stood, contending that “traditional marriage is a cornerstone of society” and would be weakened by the bill’s passage.

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<sup>28</sup> Religion News Service, 4<sup>th</sup> February 2013.

Yet for some time now, former versions of family have given way to new paradigms, blended families and other ways of constituting family. Anyone who wishes to establish a norm for marriage and family in modern European societies quickly runs up against hard statistics. If traditional marriage is a “cornerstone” of society, as Welby suggests, then society is clearly in the process of collapsing.

Instead, the patterns of marriage and family are remaking themselves into something quite different than anything previously conceived in the West. The claims of LGBT people for marriage and family equality are just one part of that process. Like anyone else, LGBT people wish to be free to create community and to establish a family, if they so desire. Article 8 of the European Convention on Human Rights addresses this right – and the language of the convention does not limit the provision to different-sex couples.

It is difficult to substantiate the claim that traditional marriage and family structures are superior to more recent configurations, especially as such structures have themselves been in such flux for a very long time in most Western societies. This has been the case across the span of human history and will undoubtedly continue to be so in the future.

#### *The Freedoms of Assembly, Expression and Association*

These liberties are the bedrock of any democratic society. The freedom to peacefully assemble, to express one’s ideas publicly or to form associations of one’s own choosing is upheld by human conscience and guaranteed by international law. Many people who adhere to a religion or belief bring a particular sensitivity to these freedoms, as these are often violated by repressive governments that seek to suppress any expression of religious faith or belief that is considered by authorities to be subversive or threatening to the status quo. Such actions are ultimately attempts to legitimise power and have little to do with the preservation of social stability.

In a number of European countries today, these fundamental rights are denied or obstructed at several levels for LGBT people. The free expression of sexual orientation or gender identity is suppressed, public events are banned, and LGBT organisations are shut down or forced to suspend their operations. The similarities with the suppression of religious groups during the Soviet era are haunting.

Regardless of an individual’s position or personal feelings toward sexual minorities or adherents of religion or belief, European societies as well as the religions should be able to jointly affirm every citizen’s right to the democratic freedoms of assembly, expression and association. In the absence of such freedoms, our full human potential cannot be realised and our capacities for human development are diminished.

## **A Chronology of LGBT rights in Europe**

**342** – Emperors Constantinus II and Constans condemn male same-sex marriage as “unnatural” and make it punishable by death.

**390** – Emperors Valentinian II, Theodosius I and Arcadius announce that any male “acting the part of a woman” in homosexual sex would be publicly burned alive.

**693** – The Sixteenth Council of Toledo reaffirms the penalty of castration for homosexual acts.

**1179** – The Third Lateran Council of Rome decrees excommunication for sodomites.

**1232** – Beginning of the Inquisition in the city-states of Italy, where banishment, amputation and even burning was directed for in some cities for sodomites. Similar penalties were implemented in France soon thereafter.

**1483** – Beginning of the Inquisition in Spain, in which sodomites were stoned, castrated and burned. Between 1540 and 1700, more than 1600 were prosecuted for sodomy.

**1532** – The Holy Roman Empire makes sodomy punishable by death.

**1533** – English King Henry VIII passes the Buggery Act, making all male homosexual activity punishable by death (later repealed, then reinstated, depending on who was on the throne).

**1620** – Brandenburg-Prussia criminalizes sodomy, making it punishable by death.

**1785** – British philosopher and social reformer Jeremy Bentham argues for the liberalisation of laws prohibiting homosexual acts in England.

**1791** – Penal Code of France legalises all sexual acts between consenting adults, making France the first country in the modern world to decriminalize homosexual relations.

**1836** – The last known execution for homosexuality in Great Britain.

**1867** – Karl Heinrich Ulrichs advocates the legal recognition of homosexual rights in Germany, urging the repeal of anti-homosexual laws

**1869** – In the writings of Karl-Maria Kertbeny, the term “homosexuality” appears for the first time as part of his classification of sexual types. Kertbeny also posited that homosexuality was natural for some, contradicting the dominant view at the time that homosexual acts were morally evil.

**1895** – The trial of Oscar Wilde results in his being prosecuted under the Criminal Law Amendment Act of 1885 for "gross indecency" and sentenced to two years hard labour in prison.

**1897** – Magnus Hirschfeld founds the Scientific Humanitarian Committee to organise for homosexual rights and the repeal of Germany's infamous Paragraph 175.

**1897** – George Cecil Ives organises the first homosexual rights group in England, the Order of Chaeronea.

**1907–1909** – The Harden-Eulenburg Affair in Germany led to one of the first major public discussions of homosexuality in Germany.

**1917** – The October Revolution in Russia repeals the country's criminal code, including its prohibition of homosexual relationships.

**1919** – *Different From the Others*, one of the first films to be openly sympathetic towards homosexuals, is released in Germany.

**1933** – The Nazi regime begins its assault on homosexual men, arresting some 100 000 between 1933 and 1945, of whom thousands are sentenced and sent to concentration camps. Many were especially targeted in the camps for ill treatment and sent to their death.

**1946** – "COC" (Dutch acronym for "Center for Culture and Recreation"), one of the earliest homophile organizations, is founded in the Netherlands. It is the oldest surviving LGBT organization.

**1952** – Christine Jorgensen (George William Jorgensen, Jr.) becomes the first widely publicized person to have undergone sex reassignment surgery, creating an international sensation.

**1969** – The Stonewall riots occur in New York, considered to be the single most important event that spurred the creation of the modern movement for gay and lesbian rights, including in Europe.

**1970** – The first LGBT Pride Parade is held in New York; Carl Wittman writes *A Gay Manifesto*.

**1972** – Sweden becomes the first country in the world to allow transsexuals to legally change their sex and to provide free hormone replacement therapy. Sweden also lowered the age of consent for same-sex relations to age 15, making it equal with that of heterosexuals.

**1973** – The American Psychiatric Association removes homosexuality from its Diagnostic and Statistical Manual of Mental Disorders (DSM-II).

**1979** – The Netherlands becomes the first country in the world to allow limited rights for same-sex couples, providing civil status in rent law.

**1979** - Sweden became the first country in the world to remove homosexuality as an illness.

**1988** – Sweden is the first country to pass laws protecting homosexuals regarding social services, taxes, and inheritances.

**1989** - Denmark is the first country in the world to enact registered partnership laws for same-sex couples, with most of the same rights as marriage, excluding the right to adoption and the right to marriage in a church.

**1992** – World Health Organization removes homosexuality from its list of diseases

**1993** – Norway becomes the second country in the world, after Denmark, to legally recognise same-sex partnerships.

**1997** – Sweden and The Netherlands also recognise same-sex partnerships.

**1999** – France establishes PACS - *Pacte civil de solidarité* – which recognises civil partnerships, regardless of their sex.

**2000** – Belgium likewise establishes a national registry for civil partnerships, regardless of their sex.

**2001** – Germany recognises “life partnerships.”

**2001** – Queen Beatrix of The Netherlands signs into law the first same-sex marriage bill in the world.

**2003** – Belgium becomes the second country, after The Netherlands, to legalise same-sex marriage.

**2004** – Luxembourg passes its civil partnership law.

**2005** – The United Kingdom also approves the legal recognition of civil partnerships, while Spain establishes provisions for same-sex marriage.

**2006** – The Czech Republic legally recognises civil partnerships.

**2007** – Switzerland passes its civil partnership law.

**2009** – Hungary legalises civil partnerships.

**2009** – Norway and Iceland approve the right to marriage for homosexual couples.

**2009** – Iceland elects the world’s first openly gay head of government, Prime Minister Jóhanna Sigurðardóttir

**2010** – Ireland passes its civil partnership law.

**2010** – Portugal extends the right to marriage to same-sex couples.

**2010** – Council of Europe’s Committee of Ministers issues recommendations to combat discrimination on grounds of sexual orientation or gender identity.

**2011** – Council of Europe’s Convention on preventing and combating violence against women and domestic violence explicitly addresses discrimination based on gender identity.

**2012** – Denmark affirms the right to marriage for same-sex couples, including their right to be married in the state church.

**2013** – France approves marriage for same-sex couples.

**2013** – Queen Elizabeth gives her Royal Assent to the government’s legislation to approve same-sex marriages for England and Wales, effective 2014.



## Guideposts for the Future

### Recommendations for Policy Makers

***Mainstream the promotion and protection of LGBT rights into all European policies*** – LGBT rights are human rights. None are above or inferior to another. The safeguarding of basic freedoms and standards of fairness for LGBT people is not an exercise in exceptionalism. In any democratic society, sexual minorities must be afforded the same rights and protections as any other minority.

***Representative leadership implies the responsibility to represent all members of society*** – Regardless of their personal position on homosexuality or other sexual expressions, elected officials hold a public trust on behalf of the people that they represent in government, including LGBT people. While this may at times be in conflict with others within their constituency, representatives in government are bound to respect and defend international standards of human rights.

***Establish a European framework for the equal recognition of same-sex partnerships*** – Although European bodies are not competent to make laws on questions of marriage, the European Union can mandate the extension of legal rights and protections to same-sex partnerships. This is already the case in some European countries but not in all. While some countries do not consider themselves in a position to designate such partnerships as “marriage,” there must be a minimum standard of equal respect and protection under the law for those persons who live in same-sex partnerships.

***Ensure the full participation of LGBT people in the political and cultural life of their countries*** – National governments have a particular responsibility to ensure that sexual minorities have unfettered access to be able to participate in public life. This means for some countries that national legislation and policies will need to be harmonised with internationally recognised standards on LGBT rights. This also implies that governments collaborate with civil society to identify situations which need to be addressed and to formulate clear strategies to remedy them.

### Recommendations for Religious Leaders and Institutions

***At a minimum, refrain from hate speech*** – It is an unfortunate reality that several religious leaders have issued declarations or have otherwise spoken in public forums using language that cannot be described in any other way than hate speech. It is true that individuals and institutions have the right to express opinions or to engage in social analysis on topics of concern. Indeed, such freedom is ensured under international instruments which protect the freedom of expression.

At the same time, there is a growing consensus that free speech has its limits and that public figures have a particular responsibility to foster an environment of respect and harmonious relationships within society. This is especially the case for those that are entrusted with responsibilities of moral and ethical guidance on a wider scale, such as religious leaders and institutions. Refraining from any speech

that incites hatred, bigotry or discrimination is necessary in the interest of the common good.

***Instead foster a wider dialogue in view of reconciled relationships within society*** – Regardless of the specific moral position that a religion or belief system might take in respect to sexual expression, it is critical to recognise the place for honest dialogue on these issues. Simplistic answers to complex phenomena are in no one’s best interest and are ultimately unsatisfying. The religions have had to face contentious issues in the past, such as slavery, apartheid, justification for war, colonialism and the place of women in society. In each of these instances, different sides have supported radically different positions, each referencing sacred texts and the weight of tradition. If nothing else, this should drive all religious leaders to assume a spirit of humble and honest enquiry.

### Recommendations for Civil Society Leaders

***Mainstream the promotion and protection of LGBT rights into the overall programme of building a more just and equitable society for everyone*** – There is no hierarchy in importance when it comes to the protection of human rights. Moreover, many human rights concerns are cross-cutting and have implications for all sectors of civil society. Such is the case for the protection of LGBT people against discrimination, unfair treatment and violent acts. Linkages can be made to those who work in the fields of health, education, family life, peace building and many other sectors in which civil society organisations are actively engaged.

***Conduct an audit of the policies and procedures that impact LGBT people and make appropriate recommendations*** – Civil society organisations are often well placed to carry out independent research and review the state of affairs concerning individuals and minority groups that have suffered discrimination in the countries where they operate. This information can be invaluable for engaging government officials and others in positions of power, including religious leaders, in the interest of broadening the democratic space in respect to LGBT people in these countries.

***LGBT organisations should review their communications strategies for how they speak about religion and its institutions*** – Understandably, associations that advocate for the protection of LGBT people have reacted strongly to the vitriolic speech that has come from certain religious leaders. Regrettably, some of these same associations have responded with similarly bitter speech and disrespect. This kind of exchange does not promote better understanding on either side and is ultimately unhelpful. Even where worldviews seriously clash, mutual respect and a willingness to engage in sincere dialogue could accomplish much.

## Recommendations for Educators

***Promote Respect for Diversity as a Fundamental Social Value*** – Teachers not only teach. They also model for their students the values that they are expected to assume in general society. Teachers and school administrators can help build greater social cohesion by consciously passing onto their students democratic values and the respect for human diversity. This includes the review of textbooks and other educational materials with an eye toward promoting positive messages regarding sexual minorities.

***Institute compulsory sexual education in schools, including education in sexual diversity*** – Sexual education that respects the range of sexual expression could help youth to better understand their own sexuality and to respect that of others. Such education could be done in collaboration with local LGBT organisations and LGBT-affirming religious associations. Education in sexual diversity is also meaningfully implemented in the framework of human rights education.

***Develop local strategies for countering harassment and bullying perpetrated against LGBT students*** – ILGA-Europe has highlighted in its 2013 report the effects of bullying in some European countries, resulting in high levels of depression and suicidal thoughts.<sup>29</sup> Here again, requiring sexual education which includes a component on diverse sexual expressions could help mitigate the prevalence of bullying in schools. Equally important to put in place are clear directives against discrimination and violent acts on the basis of sexual orientation or gender identity.

***Address systemic challenges to inclusion*** – Discrimination against LGBT people must also be countered in schools' policies toward student enrolment, participation in school activities and hiring practices. To educate students to respect sexual diversity on the one hand and then tolerate discriminatory practices on the other is hypocritical and ultimately harmful. Educators and school administration officials can positively contribute to building a respectful and inclusive society by reviewing all aspects of their policies toward LGBT people.

## Recommendation for the Media

***Take greater responsibility for negative images and stereotyping*** – In an age of increasingly global communications, leaders of the media have a crucial role in promoting respect, tolerance and social harmony. Regrettably, this has not always been the case, not just for LGBT people but for religious people as well. In addition, conflicts between the LGBT community and the religions have sometimes been caricaturised in a simplistic manner. Greater consultation with a broader representation of these groups can help moderate excesses and promote more accurate images on television, in films and other media.

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<sup>29</sup> ILGA-Europe, Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe, 2013, p. 14



## Conclusions

The relationship between the religions and LGBT people has been varied, ranging from acceptance and inclusion to outright hostility. It is clear that LGBT people can be found among the ranks of the faithful in every major religion. But for many lesbian, gay, bisexual and transsexual people, public and meaningful involvement in the life of those same faith communities remains difficult. Instead, they participate in secret and in fear of social ostracism.

Some religions lay claim to special revelation by which norms are established for sexual conduct. These norms seek to determine what is *normal*, a risky affair in the face of human diversity. The difficulty becomes especially evident when personal experience conflicts with claims to revelation or other constructed visions, whether religious or secular. Some opt for the authority of sacred texts; others rely on the validity of their experience; still others find no contradiction between the two.

From the perspective of human rights, there are undoubtedly crucial benchmarks for a credible exchange on religion and the status of sexual minorities in today's European societies. For instance, everyone should be free and equal in dignity and rights. No one should be subjected to discrimination and violence because of their sexual orientation or gender identity. Yet scores of countries around the world still criminalise consensual same-sex relationships. Some major religious institutions continue to demonise LGBT people and even consciously participate in their social, political and cultural exclusion. Such toxicity can only have a poisonous effect on society and undermine the democratic project.

Religious, social and political institutions can help point the way to a healthier and more inclusive vision for Europe's future. LGBT people do not ask for special treatment, just to be part of that vision.



## **Human Rights Without Frontiers International**

Founded in 1989, Human Rights Without Frontiers (HRWF) International is a non-governmental organisation that focuses on research, analysis and monitoring of a wide range of human rights concerns in many countries throughout the world. The organisation is also dedicated to the promotion of democracy and the rule of law. Located in the heart of European policy-making in Brussels, HRWF is an active member of the Human Rights and Democracy Network of organisations that seek to shape the EU policy agenda in a way that protects human rights in Europe and serves as a positive force for change in the world at large.