

Rainbow Centre

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THE GLOBAL STATE OF LGBTIQ ORGANIZING

THE RIGHT TO REGISTER

Written by Felicity Daly DrPH



OUTRIGHT
ACTION INTERNATIONAL



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Every day around the world, LGBTIQ people's human rights and dignity are abused in ways that shock the conscience. The stories of their struggles and their resilience are astounding, yet remain unknown—or willfully ignored—by those with the power to make change. OutRight Action International, founded in 1990 as the International Gay and Lesbian Human Rights Commission, works alongside LGBTIQ people in the Global South, with offices in six countries, to help identify community-focused solutions to promote policy for lasting change. We vigilantly monitor and document human rights abuses to spur action when they occur. We train partners to expose abuses and advocate for themselves. Headquartered in New York City, OutRight is the only global LGBTIQ-specific organization with a permanent presence at the United Nations in New York that advocates for human rights progress for LGBTIQ people.

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LGBTIQ center in Chile. Photo courtesy of OutRight



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LGBTIQ march in Istanbul. Photo Bertram Bustan

Executive Summary

It has become increasingly difficult for community-based organizations to operate, a phenomena frequently referred to as shrinking space for civil society. Yet, to fully understand the impact of new laws restricting organizations' access to funding, laws equating human rights with the corruption of youth, and laws written to equate activism with threats to national security, it is important to analyze exactly how LGBTIQ organizations are specifically impacted. LGBTIQ movements globally are relatively young, and so many LGBTIQ organizations have had little time to institutionalize. Are LGBTIQ organizations at heightened risk in the current environment, and what can be done to safeguard these young movements?

OutRight Action International's report, *The Global State of LGBTIQ Organizing: The Right to Register*, seeks to answer these questions and determine the possibility of legal registration for LGBTIQ organizations globally. OutRight's research finds that legal registration for LGBTIQ organizations is severely restricted and the result is that LGBTIQ human rights defenders work with fewer resources and face more danger.

OutRight's analysis of 194 countries found that only 56%, 109 countries, permit LGBTIQ organizations to legally register as LGBTIQ organizations. In 28%, 55 countries, LGBTIQ organizations exist but they cannot legally register as LGBTIQ organizations. In these countries disclosing an intention to serve LGBTIQ people sets up a barrier to legal registration. Thus, many organizations pursue



ASEAN meeting. Photo courtesy of OutRight

registration using more neutral language about their aims and objectives that do not identify that they work with LGBTIQ people. In 15% of the countries studied, OutRight could not identify any organizations working on LGBTIQ issues, whether registered or unregistered. In these countries, LGBTIQ people don't have an organization operated by and for the community that can advocate for their rights. OutRight is concerned that LGBTIQ people in these countries may be at higher risk of discrimination and violence.

The study collected data on thousands of organizations across five global regions and determined the registration status of a set of 864 organizations in Asia and the Pacific, the Caribbean, Eastern Europe, the Middle East and North Africa and sub-Saharan Africa.

This report includes a summary of legal analysis undertaken in 41 countries to determine the laws allowing Non-Government Organizations (NGOs) to register. In certain countries, the law does not explicitly deny the existence of

LGBTIQ organizations but authorities still find ways to reject registration applications and deny equal rights of recognition. Thus, the homophobic and/or transphobic biases of authorities can impede organizations from registering. Finally, the report provides in-depth case studies from Belize, China, Lebanon, Germany, Nigeria, Russia, St Lucia, Singapore, Tanzania and Tunisia on the experiences of 22 LGBTIQ organizations who have sought or obtained legal status in those countries.

The case studies reveal that registration enhances organizations' abilities to further the rights and well-being of LGBTIQ populations. Registration improves their standing with other organizations and the general public. Registered organizations feel they benefit from greater legitimacy in the eyes of the donor community, inclusive of private philanthropy and government donors. Funding permits them to provide social services as well as create and provide local employment. Depending on the context, registration can also allow organizations' leaders to have more opportunities to meet with officials and other political stakeholders and thus advance policy engagement and advocacy on behalf of LGBTIQ people. Registration also creates a legal identity which permits practicalities like leasing an office or opening a bank account.

From the organizations OutRight interviewed around the world, both registered and unregistered, the lack of registration is perceived as a barrier to reaching maximum capacity for effecting change and serving more LGBTIQ people. Many LGBTIQ organizations that cannot legally register may face serious consequences. They may be less credible within broader civil society coalitions, have limited sources of

funding, and be forced to work at a slower pace because of lack of resources.

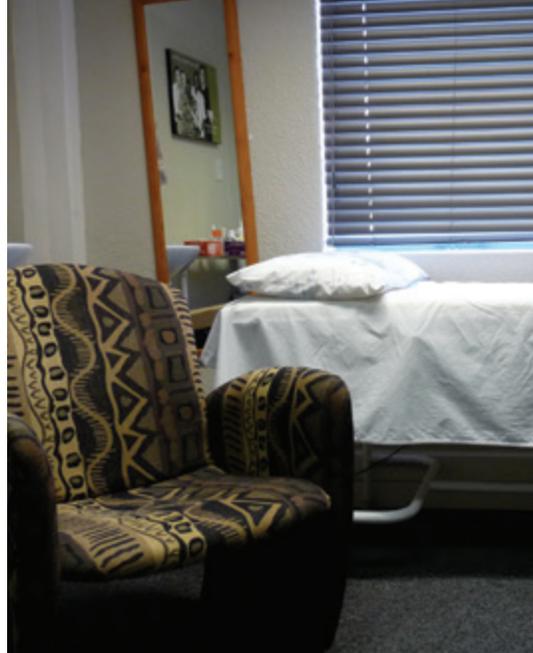
Importantly, in contexts where there is a violent backlash against civil society activism, LGBTIQ organizations, both registered and unregistered, have experienced state surveillance, indiscriminate arrests and threats of deregistration.

LGBTIQ communities and LGBTIQ civil society leaders are strong and resilient. Yet, this data represents entrenched restrictions on LGBTIQ civil society's rights. While legal registration is not right for every community-based organization, when it is desired, it should be available without discrimination on the basis of the sexual orientation, gender identity or expression and sex characteristics of the populations that the organization serves. Any restrictions based on these factors amounts to discrimination in the fundamental human rights to expression, association, and assembly.

Recommendations

OutRight urges reform of national not-for-profit laws to ensure that the sexual orientation, gender identity or expression and sex characteristics of a civil society organization's target population are not a barrier to their registration.

OutRight calls for an end to violations of LGBTIQ peoples' right to freedom of assembly, association, expression, and equality before the law in the 85 countries where we have found that LGBTIQ CSOs have either not been able to form or be registered.



Methodology

This report reflects findings of a study undertaken by OutRight Action International from June through December 2017. The study aims to establish the global presence of legally/officially registered lesbian, gay, bisexual, trans, intersex and queer (LGBTIQ) civil society organizations (CSOs) and examine how registration enhances organizations' abilities to further the rights and well-being of LGBTIQ populations and reflects on the consequences for organizations which are not registered.

This section presents the mixed methods approach to data collected for this study. Quantitative methods were used by OutRight to establish where there are legally registered civil society organizations (CSOs) that serve¹ lesbian, gay, bisexual, trans, intersex and queer (LGBTIQ) people across 194 countries, all UN Member States and Taiwan. OutRight sought to identify CSOs that include LGBTIQ or sexual orientation, gender identity and expression, and sex characteristics terminology in their name, their aims, and/or their articles of association, which they may submit for registration to regulatory authorities.

OutRight sought to answer the question, “*Where are there legally registered CSOs which serve LGBTIQ people?*” OutRight developed a multi-phase methodology. In the first phase, OutRight collated all available information on LGBTIQ CSOs in regions where the organization works. OutRight undertook additional data collection through focused digital searches to broaden the data set, fill gaps and

¹ Serve LGBTIQ people is defined as provision of programs and/or advocacy that protects the human rights and/or enhances the well-being of LGBTIQ people.

validate the registration status of CSOs. OutRight consulted with external colleagues who helped us broaden the data set for particular regions and validate the registration status of CSOs.²

OutRight's hypothesis was that this study could determine whether there are CSOs legally registered to serve LGBTIQ people in any country by identifying at least one known LGBTIQ organization that had acquired registration status in that country.³ In those countries where we did not initially identify this answer, data was validated by checking directly with a contact person in at least one CSO per country who responded to a short questionnaire that allowed them to self-report their own registration status and share perspectives on the regulatory context for similar CSOs in their country.⁴ Where possible, the data set was triangulated with findings from ten qualitative country case studies and legal analysis undertaken by the law firm Baker McKenzie, which is also presented in this report.

Data analysis utilized the following codes⁵:

- Organizations legally registered to openly address LGBTIQ issues.

² See External Colleagues noted in Acknowledgements.

³ OutRight sought advice from CIVICUS and the International Center for Not-For-Profit Law (ICNPL) regarding data validation. ICNPL advised that given registration regulations are disparate around the world and registration data is neither consistently collected nor made publicly available. Thus, OutRight was unable to undertake data validation through publicly available CSO registration data.

⁴ The questionnaires are available from OutRight upon request. Questionnaires were translated into French and Spanish. All organizations that we communicated with were assured that the information they shared would be anonymised. Replies allowed us to validate their organization's status, add data on other LGBTIQ CSOs and determine whether or not legal registration of LGBTIQ CSOs is possible in those countries.

⁵ Coding allowed for the presentation of the data without identifying organisations.

- LGBTIQ organizations that do not have legal registration.
- Organizations that serve LGBTIQ people but which are legally registered on the basis of focusing on other issues OR have not been explicit about a focus on LGBTIQ people in documents produced for registration.

The findings of this approach are presented in the Key Data section and in accompanying maps available in the Appendix and at: outrightinternational.org/righttoregister. This data helps provide insight into the global presence of CSOs serving LGBTIQ people and the registration status of hundreds of CSOs.

The report also includes findings of a multinational law firm's analysis of the legal frameworks that facilitate or prohibit the registration of lesbian, gay, bisexual, trans and intersex queer (LGBTIQ) non-governmental organizations (NGOs) in 41 countries. The methodology used in this pro-bono project is explained in the legal analysis section.

Qualitative methods were utilized to undertake case studies to explore how registration, or the inability to register, affects LGBTIQ CSOs' operations in multiple aspects, including: capacity for impact; engagement in campaigning, advocacy and policy processes; ability to provide community services; safety of staff and members; and financial sustainability. The cases from 10 countries share promising practices that have not been explored in other research and focus explicitly on the registration struggle in countries which have received attention for their restrictive environments. The 10 case



Activists in Botswana. Photo courtesy of OutRight

studies focus on two countries per global region where OutRight's programs operate or where we collaborate with other LGBTIQ organizations, specifically from: Asia, Caribbean, Europe, Middle East and North Africa and sub-Saharan Africa. Document review was undertaken to establish the legal and regulatory framework for not-for-profits in each country before interviews commenced.

Twenty-two semi-structured interviews⁶ were conducted with key informants⁷ between June

and December 2017.⁸ OutRight acquired informed consent from each informant, as well as consent to record the interview for transcription purposes. Verbatim transcripts of the recorded interviews were prepared by the author and an intern which allowed for familiarization with and analysis of the content. Due to the sensitivity of the issues and concerns about the safety of informants and the groups they represent, the data is anonymized.⁹ The qualitative findings are presented in the Case Study section and uncover significant challenges that LGBTIQ CSOs face in some countries, including barriers to registration and threats of deregistration.

⁶ Topic Guide, available from OutRight, framed discussions and standardised qualitative data collection. The semi-structured nature of the interviews allowed for variation per context.

⁷ Many are the founders and/or current leaders of LGBTIQ CSOs. Purposive sampling was used for informant selection as OutRight sought to interview at least two LGBTIQ civil society actors per country who represented different constituencies within LGBTIQ populations and were directly involved in the administrative and regulatory issues of a CSO.

⁸ Twenty of the interviews were undertaken by OutRight's Global Research Coordinator, mainly remotely and three in-person; and two interviews were conducted in-person by OutRight's Program Field Coordinator.

⁹ There are certain exceptions to this, for instance where informants wanted their organization and/or leadership to be identified.



Participants at Bogotá Pride. Photo courtesy OutRight

Introduction

This report reflects findings of a study undertaken by OutRight Action International which aims to: understand which countries permit lesbian, gay, bisexual, trans, intersex and queer (LGBTIQ)¹⁰ civil society organizations (CSOs)¹¹ to legally register; consider laws which facilitate or prohibit their registration; examine how registration enhances CSOs' ability to further the rights and well-being of LGBTIQ populations; and reflect on the consequences for organizations which face barriers to registration.

The report presents quantitative data from 194 countries, all United Nations Member States and Taiwan, to show where there are officially registered CSOs which serve LGBTIQ people and aggregates data to determine the registration status of 864 CSOs in 5 global regions. The report also offers new qualitative findings from case studies of 22 LGBTIQ CSOs in 10 countries which reflect on the context affecting registration and the implications of registration status on CSOs' ability to serve LGBTIQ people. It also provides a summary of expert legal analysis of the frameworks

¹⁰ The study considered civil society organizations (CSOs) whose documentation, i.e. their name, aims and/or articles of association, include: one or more L, G, B, T, I or Q identities; cites people marginalized due to their sexual orientation, gender identity and expression and sex characteristics (SOGIESC); or other sexual and gender minority terms. LGBTIQ is the broad descriptor OutRight uses but when an organization uses a different acronym or is focused on specific populations it cited, i.e. an intersex, LBT, MSM or trans organization.

¹¹ This study is focused on non-profit LGBTIQ civil society organizations, inclusive of non-governmental organizations. Definitions of civil society differ. See for example "a common characteristic of understandings of civil society is the separation of this sector from the state." Martti Muukkonen, "Framing the Field," *Nonprofit and Voluntary Sector Quarterly* 38, no. 4 (2009): 684 – 700.

available to LGBTIQ non-governmental organizations (NGOs)¹² seeking to register in 41 countries. Together these three parts allow OutRight to: demonstrate which countries permit LGBTIQ CSOs to achieve registration and understand survival strategies of organizations that remain without legal status, including those that exist in a legal grey area.

This report is important because it contributes to knowledge about discrimination in regulatory frameworks for CSOs and provides new insight into the registration process for CSOs that openly state their aim is to serve LGBTIQ people. There is some research that has suggested that NGO registration differs by system of governance¹³ yet we know almost nothing about how registration may differ across various types of CSOs, especially how the experience of the registration process may pose different challenges for LGBTIQ CSOs. Research exploring national styles of NGO regulation suggests the settings are more restrictive in places where NGOs are seen as posing risks to political order but that NGOs may face fewer restrictions in places where governments view NGOs as a legitimate convener of public participation.¹⁴ It has been suggested that the struggles of CSOs to obtain legal registration status are due in part to an increasingly restrictive environment wherein more than 70 countries have imposed measures

¹² Definitions of NGOs differ. See for example “the term ‘NGO’ is more widely used to characterise formal civil society groups in democratizing contexts.” Jo Crotty and Sarah Marie Hall and Sergej Ljubownikow, “Post-Soviet Civil Society Development in the Russian Federation: The Impact of the NGO Law,” *European-Asia Studies* 66, no. 8 (2014): 1253 – 1269.

¹³ Elizabeth A. Bloodgood and Joannie Tremblay-Boire and Aseem Prakash, “National Styles of NGO Regulation,” *Non-profit and Voluntary Sector Quarterly* 43, no. 4 (2014): 716 – 736.

¹⁴ *ibid*

to curtail the role of CSOs.¹⁵ This may be due to authorities perceiving CSOs’ influence on the public as a threat.¹⁶ Anti-NGO legislation has been introduced in countries that are signatories to human rights treaties and can be seen as an indication of their discomfort with NGOs’ promotion of human rights.¹⁷

The motivations and experiences of civil society actors seeking to formalize an organization vary. The perceived benefits of acquiring an official status may drive civil society actors toward registration yet the process itself can force once informal groups to re-conceptualize the way they are structured and work in terms that are acceptable to the dictates of the state.¹⁸ Non-profit scholarship on LGBTIQ CSOs has been limited but the existing evidence suggests that these groups face unique challenges in navigating registration, which this report confirms. For example, a study in Malawi revealed that an LGBT social movement organization was counselled to pursue their registration as a ‘human rights organization’ as that could be easier in a hostile and homophobic environment.¹⁹ A study of lesbian activism in China and Myanmar suggested that, due to the

¹⁵ Thomas Carothers, “Closing Space and Fragility,” Fragility Study Group: *Policy Brief*, no. 5, (2016).

¹⁶ Thomas Carothers and Saskia Brechenmacher, *Closing Space: Democracy and Human Rights Support Under Fire*, (Washington D.C., Carnegie Endowment for International Peace, 2014).

¹⁷ Timothy M. Gill, “Unpacking the world cultural toolkit in socialist Venezuela: national sovereignty, human rights and anti-NGO legislation,” *Third World Quarterly* 38, no. 3 (2016): 621 – 625.

¹⁸ Bretton T. Alvaré, “‘Babylon Makes the Rules’: Compliance, Fear and Self-Discipline in the Quest for Official NGO Status,” *PoLAR: Political and Legal Anthropology Review* 33, no. 2 (2010): 178 – 200.

¹⁹ Ashley Currier and Tara McKay, “Pursuing social justice through public health: gender and sexual diversity activism in Malawi,” *Critical African Studies* 9, no. 1 (2017): 71 – 90.

intersection of marginalization based on gender and sexual orientation, lesbian activists face greater struggles to register their organizations compared with organizations lead by gay men.²⁰

The International Center for Not-for-Profit Law (ICNPL) argued that authorities use the law to exclude CSOs engaged in advocacy for LGBTIQ people and bar them for undertaking activities which are considered lawful when undertaken by other CSOs.²¹ Countries that ICPNL cited as having laws prohibiting the formation or registration of CSOs that advocate for LGBTIQ people include: Bahrain, Kuwait, Malawi, Nigeria, Oman, Qatar, Saudi Arabia, Syria, Uganda and Yemen. ICPNL also reported refusals or delays of registration for LGBTIQ CSOs in: Belarus, Bolivia, China, Mongolia, Mozambique and Panama.²² Similarly, the International Lesbian, Gay, Bisexual, Trans, and Intersex Association (ILGA) asserts there are barriers to the formation, establishment or registration of LGBTIQ NGOs in: Algeria, Bangladesh, Egypt, Jordan, Kazakhstan, Libya, Mauritania, Morocco, North Korea, Russia, Sudan, Tanzania and the United Arab Emirates.²³ The imposition of such laws and the overall restrictive environment for civil society have been perceived as creating a ‘perfect storm’ for LGBT CSOs which threatens their sustainability

in, for example, Hungary, Indonesia, Kenya and Kyrgyzstan.²⁴ The Global Philanthropy Project reported on the impact of this ‘perfect storm’ and called for further research to document lessons learned by LGBTIQ CSOs responding to the closing of civil society space.²⁵

OutRight’s report contributes to this knowledge, and builds on it, by exploring the barriers to registration that organizations that are explicit about their focus on LGBTIQ people face, a feature of the shrinking of civil society space. OutRight strived to produce a resource that could be useful for LGBTIQ organizations considering their options for acquiring legal status, challenging barriers to registration, or surviving in legal limbo. OutRight also endeavored to share findings that may provide insight to private philanthropy and institutional donors that often face limitations in supporting LGBTIQ organizations which are not registered. The report concludes with reflections on these findings which suggest the need to reform regulatory contexts so that LGBTIQ CSOs can claim the right to freedom of assembly, association, expression, and equality before the law.

²⁰ Timothy Hidebrandt and Lynette J. Chua, “Negotiating In/Visibility: The Political Economy of Lesbian Activism and Rights Advocacy,” *Development and Change* 48, no. 4 (2017): 639 – 662.

²¹ “LGBTI Civil Society Organizations Around the Globe: Challenges, Successes, and Lessons Learned,” *Global Trends in NGO Law* 7, no. 2 (2016).

²² *ibid*

²³ Aengus Carroll and Lucas Ramón Mendos, *State Sponsored Homophobia 2017: A world survey of sexual orientation laws: criminalisation, protection and recognition*, (Geneva, International Lesbian, Gay, Bisexual, Trans and Intersex Association, 2017), https://ilga.org/downloads/2017/ILGA_State_Sponsored_Homophobia_2017_WEB.pdf.

²⁴ Meg Davis, *The Perfect Storm: The Closing Space for LGBT Civil Society in Kyrgyzstan, Indonesia, Kenya and Hungary*, (New York, Global Philanthropy Project, 2016).

²⁵ *ibid*



Key Data

To answer the main quantitative research question, “Where are there are legally registered CSOs which serve LGBTIQ people?” OutRight collected data²⁶ from 194 countries, including all 193 United Nations Member States and Taiwan. OutRight found:

- LGBTIQ CSOs can legally register in 109 countries.
- LGBTIQ CSOs cannot legally register in 55 countries.
- LGBTIQ organizations could not be identified in 30 countries, therefore for this sub-set of countries the main quantitative research question remains unanswered.

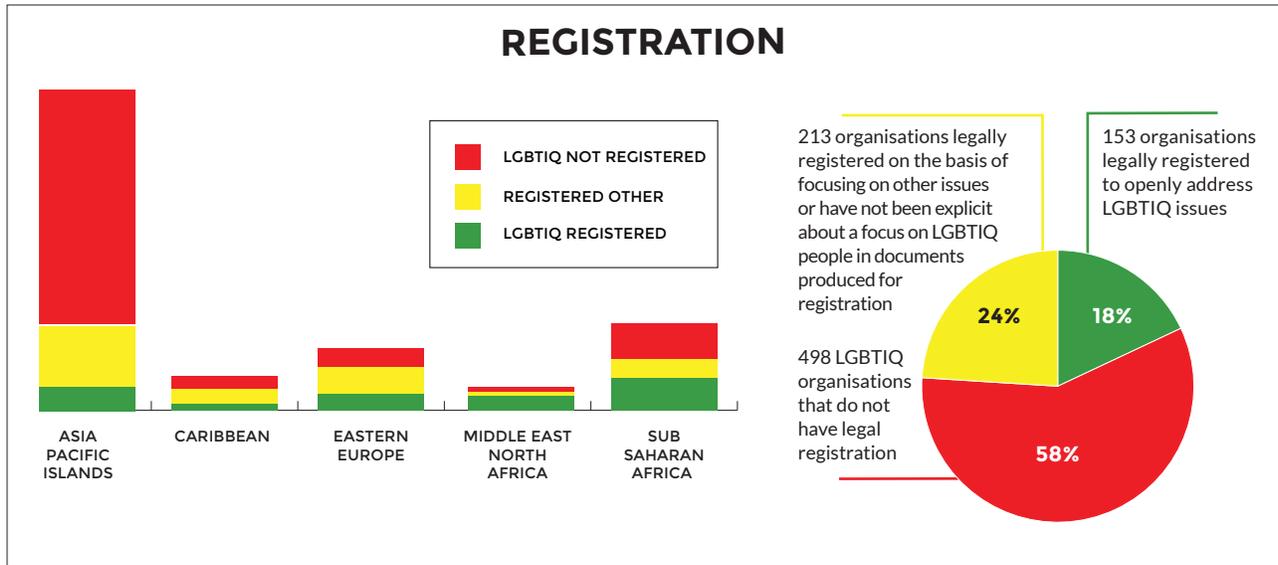
If OutRight could not identify an LGBTIQ CSO, then it has not confirmed whether or not it is permissible to register an LGBTIQ CSO in that country. The 30 countries where OutRight could not identify any LGBTIQ CSOs include: countries where LGBTIQ organizing may go on ‘underground,’ i.e. through informal networks or is undertaken by individual LGBTIQ activists who are not working collectively or within an identifiable group;²⁷ countries where the expressed legal prohibition against the formation or registration of an openly LGBTIQ CSO has been documented;²⁸ as well as small island states and micro states.²⁹ These countries present an area of concern. Without an organization to serve as a resource and to advocate, LGBTIQ people in those countries are at heightened risk of isolation, lack of services and deprivation of rights.

²⁶ The data set reflected herein was finalised on February 13 2018 and amended only twice to make corrections for the purposes of this publication and related maps. OutRight welcomes feedback which will allow us to collect and analyse additional data and provide updates to the data set in the future.

²⁷ May include: Afghanistan, Central African Republic, Chad, Comoros, Congo, Djibouti, Equatorial Guinea, Eritrea, Gabon, Gambia, Madagascar, Somalia, South Sudan, Turkmenistan and Uzbekistan.

²⁸ Includes: Bahrain, Democratic People’s Republic of Korea, Kuwait, Oman, Qatar, Saudi Arabia, Syrian Arab Republic and Yemen.

²⁹ Includes: Marshall Islands, Micronesia, Monaco, Nauru, Palau, San Marino and Solomon Islands.



To consider LGBTIQ CSOs' ability to register in Asia and the Pacific, Caribbean, Eastern Europe, Middle East and North Africa and sub-Saharan Africa, OutRight collected data on CSOs serving LGBTIQ people in 118 countries in these regions. We were able to ascertain the registration status of a set of 864 CSOs³⁰ which identified:

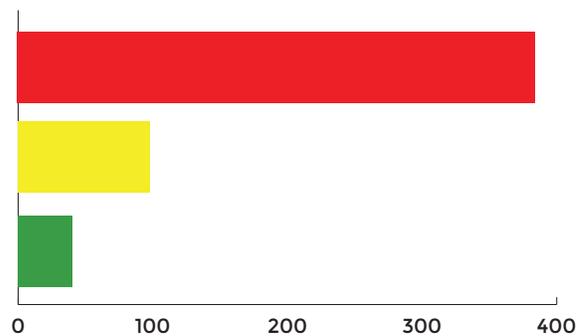
- 18% Organizations legally registered to openly address LGBTIQ issues (153);
- 58% LGBTIQ organizations that do not have legal registration (498);
- 24% Organizations serving LGBTIQ people but legally registered on the basis of focusing on other issues **or** have not been explicit about a focus on LGBTIQ people in documents produced for registration (213).

Respondents identified that many CSOs have been able to acquire registration by stating aims to focus on: human rights, women's rights and/

³⁰ OutRight collected data on 1,319 LGBTIQ CSOs in these regions, plus Latin America, with which we were able to validate the registration status of this set. Worldwide there are many more LGBTIQ CSOs that OutRight did not collect data on because they operate in countries where registration for such organizations is not usually contested.

or marginalized populations. Respondents noted that some Ministries of Health responding to a national HIV epidemic may register CSOs that focus on key populations vulnerable to HIV, including men who have sex with men (MSM) but less often including trans women.

ASIA/PACIFIC



Asia and the Pacific

Data was collected on CSOs in: Bangladesh, Bhutan, Cambodia, China (inclusive of Hong Kong), Fiji, India, Indonesia, Japan, Kazakhstan, Kiribati, Kyrgyzstan, Laos, Malaysia, Maldives, Mongolia, Myanmar, Nepal, Pakistan, Papua New Guinea, Philippines, Samoa, Singapore, South Korea, Sri Lanka, Taiwan, Tajikistan, Thailand, Timor-Leste, Tonga, Vanuatu, and Vietnam. OutRight was able to confirm the registration status of 524 of these CSOs and found:

- 8% organizations legally registered to openly address LGBTIQ issues (40);
- 74% LGBTIQ organizations that do not have legal registration (385);
- 18% organizations serving LGBTIQ people but legally registered on the basis of focusing on other issues **or** have not been explicit about a focus on LGBTIQ people in documents produced for registration (98).

The data set from the Asia/Pacific region contains the highest percentage of unregistered LGBTIQ CSOs.³¹ This suggests that activism is robust but that seeking legal registration status is complex or costly or may pose a risk for community-based work that is underway. LGBTIQ CSOs have been able to register at different times in India depending on legal rulings affecting trans people and gay and bisexual men.³² A respondent noted that many LGBTIQ groups in India have chosen to remain unregistered in order to avoid scrutiny from the state.³³ In Indonesia, only 1 of the 41 organizations identified in the data set has been registered as an LGBT CSO. The respondent from that organization reported that they were registered under the Ministry of Law and Human Rights in 2017 and reflected “after long time finally we found (a) wonderful notary and made it to

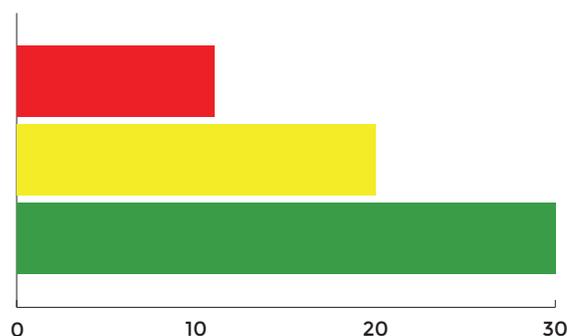
³¹ The large data set is a reflection of the region’s large population and OutRight’s extensive regional network.

³² A respondent noted that following the 2009 Delhi High Court verdict on Indian Penal Code 377 a large number of CSOs were able to register as serving MSM or LGBTQ. After the 2013 Supreme Court verdict overturned the earlier 377 ruling CSOs stopped registering this way. The 2014 Supreme Court judgement regarding a *third gender* made it easier for CSOs transgender people to register thus CSOs serving gender minorities, as well as sexual minorities, have taken advantage of this way of registering. Correspondence with OutRight 25 January 2018.

³³ Correspondence with OutRight 25 January 2018.

registered.”³⁴ It is not clear whether this is an exception or is a decision that will set a precedent.

Caribbean



Data was collected on CSOs in: Antigua and Barbuda, Bahamas, Barbados, Belize, Cuba, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Saint Lucia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago. OutRight was able to confirm the registration status of 61 CSOs and found:

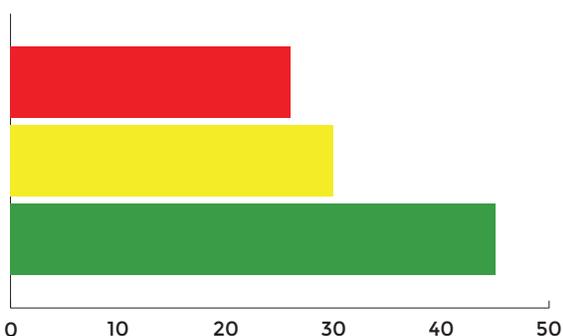
- 49% organizations legally registered to openly address LGBTIQ issues (30);
- 18% LGBTIQ organizations that do not have legal registration (11);
- 33% organizations serving LGBTIQ people but legally registered on the basis of focusing on other issues OR have not been explicit about a focus on LGBTIQ people in documents produced for registration (20).

The data set from the Caribbean shows a high number of CSOs openly registered as LGBTIQ. This demonstrates positive momentum in a region where there are a high number of countries in the region that criminalize homosexuality, restrict transgender rights, and report high lev-

³⁴ Correspondence with OutRight 4 January 2018.

els of homo/transphobia generally. OutRight’s program in the Caribbean has actively supported the successful registration of several national LGBTIQ CSOs and one regional CSO in the past several years. Still, discrimination in the application of not-for-profit law persists in the region. In Haiti, OutRight learned that a CSO serving trans people tried to register in 2017 and was advised by regulators that “any name that had transgender in it would not be accepted.”³⁵ The Haitian regulator indicated that if the CSO changed their documentation and used a more generic description for their work, such as focusing on women – rather than trans women, they would be able to register.³⁶

Eastern Europe



Data was collected on CSOs in: Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Georgia, Hungary, Latvia, Lithuania, Macedonia, Malta, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovakia, Slovenia, and Ukraine. OutRight was able to confirm the registration status of 101 CSOs and found:

- 46% organizations legally registered to openly address LGBTIQ issues (45);

- 28% LGBTIQ organizations that do not have legal registration (26);
- 26% organizations serving LGBTIQ people but legally registered on the basis of focusing on other issues OR have not been explicit about a focus on LGBTIQ people in documents produced for registration (30).

The data set from Eastern Europe³⁷ includes a high number of registered LGBTIQ CSOs. OutRight found CSOs in all countries in the region – whether they are not registered, or registered as LGBTIQ or ‘other.’ In Armenia, it was noted that when CSOs tried to include LGBTIQ issues in their statutes, the registration office suggested to ‘erase those phrases’ and CSOs took them out.³⁸ In Bulgaria, there have been calls for the withdrawal of LGBTIQ organizations’ registration status from ultranationalists but this has not been a threat echoed by authorities.³⁹ In Montenegro, an LGBTIQ CSO that was initially denied registration was granted that right in 2011. The respondent shared that while they knew of no direct threats to withdraw their registration status as an LGBTIQ organization, there are political pressures and obstacles of many kinds and that authorities in Montenegro are “still generally hostile towards such organizations, both on an administrative and societal level, which does not make our work any easier.”⁴⁰ Similarly, in Serbia, a respondent reported that the authorities have threatened to withdraw the

³⁵ Correspondence with OutRight 27 November 2017.

³⁶ Ibid.

³⁷ These countries are members of the UN Eastern Europe group. Only Cyprus and Malta are additional and neither is a member of UN Western Europe group. Kosovo is not included as it is not recognised as a UN member state.

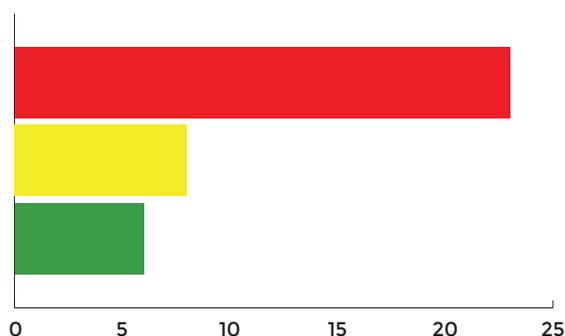
³⁸ Correspondence with OutRight 8 January 2018.

³⁹ Correspondence with OutRight 2 February 2018.

⁴⁰ Correspondence with OutRight 17 February 2018.

registration status of their organization or other LGBTIQ organizations in the country.⁴¹ They shared that such a risk is inevitable, “if you want to struggle for the improvement of LGBT+ rights and we are willing to take it.”⁴²

Middle East and North Africa



Data was collected on CSOs in: Algeria, Egypt, Iran, Iraq, Israel, Jordan, Lebanon, Morocco, Tunisia, Turkey, and United Arab Emirates. We were able to confirm the registration status of 37 CSOs and found:

- 16% organizations legally registered to openly address LGBTIQ issues (6);
- 62% LGBTIQ organizations that do not have legal registration (23);
- 22% organizations serving LGBTIQ people but legally registered on the basis of focusing on other issues OR have not been explicit about a focus on LGBTIQ people in documents produced for registration (8).

OutRight was not able to identify any LGBTIQ CSOs in 9 out of 21 countries in the MENA region.⁴³ This data set was reviewed by a

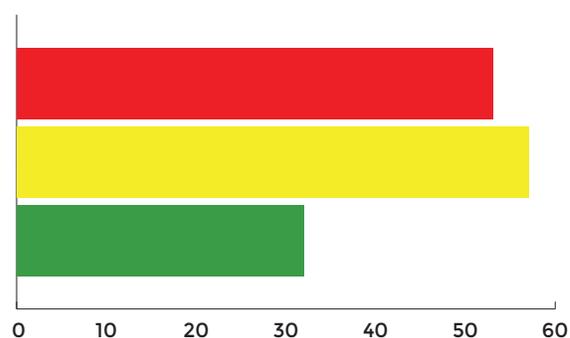
⁴¹ Correspondence with OutRight 15 January 2018.

⁴² Ibid.

⁴³ Countries where no LGBTIQ organizations were found:

regional LGBTIQ CSO and the gaps are validated by previous reviews of legal prohibitions against the formation or registration of openly LGBTIQ CSOs which exist in a majority of countries in this region. OutRight did not find any LGBTIQ CSOs registered by the Palestinian National Authority, however there are LGBTIQ organizations operating in the Palestinian territories without registration.

Sub-Saharan Africa



Data was collected on CSOs in: Angola, Benin, Botswana, Burkina Faso, Burundi, Cabo Verde, Cameroon, Côte d’Ivoire, Democratic Republic of the Congo, Ethiopia, Ghana, Guinea, Guinea Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, South Africa, Sudan, Swaziland, Tanzania, Togo, Uganda, Zambia, and Zimbabwe. We were able to confirm the registration status of 140 CSOs and found:

- 22% organizations legally registered to openly address LGBTIQ issues (32);
- 39% LGBTIQ organizations that do not have legal registration (53);

Afghanistan, Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, Syria, Uzbekistan and Yemen.

- 39% organizations serving LGBTIQ people but legally registered on the basis of focusing on other issues OR have not been explicit about a focus on LGBTIQ people in documents produced for registration (57).

This region had the most countries where OutRight was not able to identify any LGBTIQ CSOs in many countries. Specifically, LGBTIQ CSOs could not be identified in a band of countries across West, Central and the Horn of Africa, including: Central African Republic, Chad, Congo, Djibouti, Equatorial Guinea, Eritrea, Gabon, Gambia, Somalia and South Sudan as well as in the island nations Comoros and Madagascar.⁴⁴

Data collected in sub-Saharan Africa demonstrates a high percentage of organizations registered as *other* which is unsurprising given the high number of countries in the region that criminalize homosexuality, restrict transgender rights, and have high levels of homo/transphobia generally. Additionally, CSOs are able to utilize alternatives such as being able to gain registration when addressing key populations affected by HIV, including MSM. Many organizations in the region that serve LGBTIQ people do so through their work on human rights, women's rights and/or marginalized populations.

Nevertheless, CSOs may want to be able to register as openly serving LGBTIQ people. Recently, there have been breakthroughs

⁴⁴ These are not countries which have previously been identified in research on discriminatory regulatory frameworks but where, as throughout most of the continent, criminalization of homosexuality and trans identities are entrenched and community building and organizing likely goes on underground.

in the law around registration of LGBTIQ CSOs in several countries in East and Southern Africa. In 2014, Botswana's High Court ordered the Government to register an LGB CSO as a society in accordance with the Societies Act.⁴⁵ Following an appeal by the Government in 2016, the Botswana Court of Appeal found the refusal by the Government to register the society was "both irrational and in violation of the Right to Freedom of Expression and Association."⁴⁶ In 2017 the Constitutional Council of Mozambique ruled that the status of an LGBT CSO, did not violate the Republic's constitution.⁴⁷ The CSO concerned has not yet had its registration approved. In Kenya, one trans organization won a challenge and was registered as a NGO by the NGO Coordination Board in 2014.⁴⁸ In 2015 the High Court of Kenya ordered that a national LGBTIQ organization be registered but the NGO Coordination Board appealed and the organization continues to wait for the Court's decision to resolve its registration status.⁴⁹

⁴⁵ "Press Release: Groundbreaking Judgement by Botswana Court of Appeal on Freedom of Association and LGBTI Rights," LEGABIBO, 16 March 2016, <https://legabibo.wordpress.com/2016/03/16/press-release-groundbreaking-judgment-by-botswana-court-of-appeal-on-freedom-of-association-and-lgbti-rights/>.

⁴⁶ "Victory for LGBTI Activists in Botswana." OutRight Action International, 19 March 2016, <https://www.outrightinternational.org/blog/victory-lgbti-activists-botswana>.

⁴⁷ "Mozambique: Clause Used to Deny Registration to Association of Gay Mozambicans Declared Unconstitutional," All Africa, 9 November 2017, <https://allafrica.com/stories/201711130442.html>.

⁴⁸ "Litigation on the Non-Governmental Organizations Co-Ordination Act 1990 in the High Court of Kenya," Transgender Education and Advocacy, https://transgender.or.ke/?page_id=1018; https://transgender.or.ke/wp-content/uploads/2017/09/JR_Miscellaneous_Application_308a_of_2013.pdf.

⁴⁹ "Petition 440 of 2013," Kenya Law, <http://kenyalaw.org/caselaw/cases/view/108412/>.



Legal Analysis

The following section summarises a pro bono project undertaken for OutRight by the law firm Baker McKenzie.⁵⁰ The aim of the research was to collect information regarding the extent to which non-governmental organizations (NGOs) focused on lesbian, gay, bisexual, trans, intersex (LGBTI) people could legally register and operate openly and freely in 41 participating jurisdictions.⁵¹ The analysis of broad trends in the responses to Baker McKenzie’s research provide insight into legal frameworks that facilitate registration and express the legal basis that may prohibit registration.

Baker McKenzie’s research concentrated principally on the recognized state of the laws in jurisdictions rather than extraneous factors beyond the legal system (i.e. cultural/societal norms) impacting the operation of those laws.⁵² However, such factors have been considered to the extent that they directly impact regulatory, administrative or judicial attitudes in a specific jurisdiction.

⁵⁰ A summary of the project’s findings was authored by Myles Farley, Associate at Baker McKenzie, Melbourne, Australia.

⁵¹ While Baker McKenzie’s research covered many regions of the world, there are some notable omissions including Africa and South Asia. Beyond the inclusion of Hong Kong and Taiwan which were considered in addition to Mainland China (given Baker McKenzie’s operations in these jurisdictions as well as their de facto status as being distinct entities with largely separate legal/political systems) variation in the ability to register (including the related administrative/ judicial attitudes) within a country or jurisdiction was not considered. Given that Baker McKenzie offices are primarily located in jurisdictions more amenable to international commerce results of the research were skewed in favor of more economically developed jurisdictions.

⁵² Legal Questions used in all jurisdictions available from OutRight.

This legal analysis provides greater understanding of the letter of the law in countries as well as difference between the de jure and de facto realities that LGBTI NGOs face.

Summary of Findings

The majority (65%) of the 41 jurisdictions surveyed permit the registration and operation of NGOs focused on LGBTI people and apply the same laws that would apply to non-LGBTI NGOs. Predominantly, these jurisdictions were located in Western Europe and the Americas. Some jurisdictions have laws which would appear to permit the registration of LGBTI NGOs, however the actual operation of those laws and the discretion given to administrative and judicial authorities may be exercised to the detriment of LGBTI NGOs. This is the situation, to varying degrees, in Indonesia, Hungary, Russia and Singapore. Some encouraging trends were uncovered in Taiwan and Vietnam. In jurisdictions, such as Turkey and Indonesia, there appears to be heightening levels of intolerance towards LGBTI persons (whether for political or religious reasons) that would appear to impact the ability of LGBTI NGOs to register and operate.

Forty-one jurisdictions contributed and are presented in general categories:

- Where no registration of LGBTI NGOs is possible (2 jurisdictions);
- Where formal registration of LGBTI NGOs is possible but where such organizations face significant impediments to their functioning and operations (7 jurisdictions);⁵³

⁵³ OutRight did not utilize the code 'registration possible

- Where registration of LGBTI NGOs is possible, with minimal impediments to operations (32 jurisdictions).

No Registration Possible

The fewest number of jurisdictions fell into this category, namely comprised of Malaysia and Morocco. A key finding is that these jurisdictions criminalize sex between persons of the same sex and police NGOs, ensuring that they abide by laws and maintain proscriptions on public morality. While geographically disparate, the main commonality between these countries is that they can be characterized as predominantly religiously conservative.

There is express legal basis to deny registration of LGBTI NGOs in Malaysia. Sexual acts between people of the same sex are illegal under Section 377A of the Malaysian Penal Code. This criminalizes carnal intercourse, with a penalty of up to 20 years of imprisonment and possible whipping. Under Section 7(3)(a) of the Malaysian Societies Act 1966, the Registrar of societies shall refuse to register a local society where it appears that such a local society is unlawful or is likely to be used for unlawful purposes or any purpose prejudicial to or incompatible with peace, welfare, security, public order, good order or morality in Malaysia.⁵⁴ Therefore, as sexual acts between people of the same sex are illegal in Malaysia, it is likely that an LGBTI NGO will be denied registration as a society in Malaysia on this basis.

but real impediments to operation' when analyzing the data set in this report as its analysis was centered on whether or not it was possible to register. Baker's national level legal analysis was able to consider challenges in applying the law.

⁵⁴ Baker McKenzie's Pro Bono Project for OutRight, Malaysia research.

Similarly, in Morocco, Article 489 of the Moroccan Penal Code criminalizes “anyone who commits an indecent or unnatural act with an individual of his sex.” Such offences are punishable by “imprisonment, from six months to three years, and a fine of MAD 200 to 1,000.”⁵⁵ Moreover, article 4 of the Royal Decree regarding the right of association provides that, “any association based on a cause or for an illicit object, contrary to laws, morals or intended to be prejudicial to the Islamic religion, the integrity of the national territory and the monarchical regime or to appeal to discrimination is null and void.”⁵⁶

Registration Possible but Real Impediments to Operation

Countries from East Asia dominated this category, where formal registration is possible but where major structural or practical issues represented some impediment to the operations of LGBTI NGOs. Jurisdictions in this category were China, Hungary, Indonesia, Russia, Singapore, Turkey and United Arab Emirates.

Hungary falls into this category because the Constitutional Court has ruled that LGBTI organizations may not be registered unless their Charter formally prohibits minors from joining.⁵⁷ However, it seems that this requirement is not consistently enforced

with only a small majority of LGBTI organizations prohibiting minors from joining in their Charter.⁵⁸

In Indonesia, LGBTI NGOs are able to formally register and operate, although few if any have actually done so. Only 1 of the 41 organizations identified by OutRight reported that they secured their registration as an LGBT organization with the Ministry of Human Rights and Law in 2017.⁵⁹ Ostensibly most other organizations do not attempt registration in order to avoid “unnecessary hurdles or challenges from communities (including government officials)” exemplified by an apparent deteriorating environment for LGBT rights protection.⁶⁰

While Baker McKenzie found that registration is readily possible in Turkey and numerous LGBTI NGOs have registered, OutRight recognizes that the context of the current political environment, with rising nationalist and religious conservatism, has impacted the sometimes inconsistent (and discriminatory) application of laws in the country.⁶¹

In China, formal registration is possible and there is no express basis to deny registration of LGBTI NGOs. However, Baker McKenzie asserts that, “civil affairs authorities which are in charge of the registration of the NGOs tend

⁵⁵ Baker McKenzie’s Pro Bono Project for OutRight, Morocco research.

⁵⁶ Ibid.

⁵⁷ The Court’s ruling is based on Article XVI (1) of the Fundamental Law, the Hungarian. The Court found that according to the Fundamental Law, the Hungarian State is obliged to guarantee the child’s physical, mental and moral development. It found that depending on the circumstances, a child joining an LGBTIQ organization would be unable to foresee the effects on their personality, future life and social inclusion.

⁵⁸ Baker McKenzie’s Pro Bono Project for OutRight, Morocco research.

⁵⁹ Correspondence with OutRight 4 January 2018.

⁶⁰ “Google bows to ministry’s request to remove LGBT apps,” *The Jakarta Post*, 30 January 2018, <http://www.thejakartapost.com/life/2018/01/30/google-bows-to-ministrys-request-to-remove-lgbt-apps.html>.

⁶¹ Kaos GL and LGBTIQ News Turkey and IGLHRC, *Human Rights Violations of LGBT Individuals in Turkey*, (2015). (<https://www.outrightinternational.org/sites/default/files/uprSubTurkey.pdf>.)

to deny registration of LGBTI NGOs due to ‘ethical concerns,’ though without express legal basis.”⁶² Accordingly, certain LGBTIQ NGOs therefore operate (i.e. providing health services such as HIV prevention and treatment for key populations, including MSM) without formally revealing the true nature of their work or full extent of activities. Some LGBTI organizations have also chosen to register in other legal forms such as an enterprise or a company.

Baker McKenzie’s research in Russia asserts that while there is no express legal basis for the denial of registration of LGBTI NGOs there are a range of restrictions, several of which are noted in OutRight’s Russia case study.⁶³ Baker McKenzie notes that a 2015 law gave Russian authorities the power to ban the operation of foreign organizations deemed to be a risk to national security, public order or national health.⁶⁴ The law can be unilaterally applied to civil society groups, transnational corporations or international companies and the Prosecutor-General’s office, the federal security service (FSB) and the Foreign Ministry make decisions on who to add to the so-called “patriotic stop list.” Baker McKenzie found that several cases before Russian courts have upheld registration refusals of various LGBTI NGOs⁶⁵ and that there is only one recorded

successful challenge of a decision to deny registration to an LGBTIQ NGO.⁶⁶

Baker McKenzie finds that while LGBTI NGOs can formally register under Singapore’s Societies Act,⁶⁷ they did not find evidence that any “have done so to date.” While the law is on its face neutral, it appears that the Registrar has substantial powers of discretion, which OutRight’s case study found have been used to the detriment of those LGBTI NGOs that have tried to register.⁶⁸ For example, the Registrar can deny the registration of an organization “prejudicial to good order in Singapore,” without the Registrar being required to give a specific reason to organizations for denial of registration under the Societies Act.⁶⁹ Organizations can appeal decisions made by the Registrar to the Minister for Home Affairs, whose decision is final.

In the United Arab Emirates, “conducted homosexuality,” is illegal and Baker McKenzie’s review asserts that “its ‘promotion’ would lead to excessive surveillance and potentially an arrest on either founded or spurious grounds.” While Baker McKenzie found “there is no specific legal prohibition” to prevent the registration of an LGBTI NGO they could not identify a single organisation that found no

⁶² Baker McKenzie’s Pro Bono Project for OutRight, China research.

⁶³ OutRight coded Russia as ‘not possible to register’ based on the lived reality of LGBTIQ CSOs explored in the case study presented in this report.

⁶⁴ Federal Law dated May 23, 2015 N 129-FZ “On amendments of some legislative acts of the Russian Federation”.

⁶⁵ Cases include: Movement for Marriage Equality (Moscow) Judgment of Gagarinsky District Court of Moscow, 20 July 2010, No. 2-2415/2010; Pride House in Sochi (Krasnodar Region) Judgment of the Pervomaiskiy District Court of Krasnodar, 20 February 2012, No. 2-1161/2012; Rainbow House (Tyumen) Judgment of the Central District Court of Tyument,

1 March 2011, No. 2-1529/2011.

⁶⁶ Arkhangelsk Regional Non-Governmental Organisation of Social, Psychological and Legal Support to Lesbian, Gay, Bisexual and Transgender Persons, “Rakurs” Appellate Decision of the Arkhangelsk Oblast Court, 1 November 2010, No. 33-5258/2010

⁶⁷ Societies Act (CHAPTER 311) (Original Enactment: Act 56 of 1966) Revised Edition 2014 <https://sso.agc.gov.sg/Act/SA1966>. Article 1 “The Schedule” of the Act.

⁶⁸ OutRight coded Singapore as ‘not possible to register’ based on the lived reality of LGBTIQ CSOs explored in the case study presented in this report.

⁶⁹ Baker McKenzie’s Pro Bono Project for OutRight, Singapore research.



Philippines police and mayor place LGBTIQ-friendly sticker on area business. Photo courtesy of OutRight

such organisation had attempted to register. Baker McKenzie asserts “the general attitude in society and the criminalisation of ‘indecent conduct’ act as a natural suppressor.”⁷⁰

Registration Possible and Minimal Impediments to Operation

Countries in Europe (Austria, Belgium, Czech Republic, France, Germany, Greece, Italy, Luxembourg, Netherlands, Poland, Spain, Sweden, Switzerland, Ukraine, United Kingdom) North and South America (Argentina, Brazil, Canada, Chile, Colombia, Mexico, Peru and United States of America) as well as Australia and New Zealand dominate this category.

⁷⁰ Baker McKenzie’s Pro Bono Project for OutRight, UAE research.

Jurisdictions with minimal legal impediments to operations also included Hong Kong, Japan, Kazakhstan, the Philippines, Taiwan, Thailand and Vietnam.

Most jurisdictions surveyed applied the same rules to LGBTI NGOs as to other NGOs. The correlation between jurisdictions where registration of LGBTI NGOs is possible with minimal impediments to operations and the economic development of these countries appears to correlate with other research demonstrating societies that are more open and inclusive of LGBT people are better for business and economic growth.⁷¹

⁷¹ Jon Miller and Lucy Parker, *The economic and business case for global LGBT&T inclusion*, (Open for Business, 2015)



Training in Indonesia. Photo courtesy OutRight

Case Studies

The following case studies reflect a range of contexts and regulatory frameworks influenced by different political systems. The cases represent: some of the most challenging settings for LGBTIQ CSOs seeking registration; a few examples where some progress can be shown but is still constrained; as well as good news stories where registration of LGBTIQ CSOs has become the new normal.

The main benefit that informants cited due to registration or as their rationale for striving towards registration is that having formal status eases organizational operations. Many CSO leaders particularly focused on how registration facilitates the ability to mobilize resources, receive funds from a variety of donors, and have autonomy in managing those funds in an organizational bank account. Informants who obtained registration for their organization, either forthrightly identifying their work with LGBTIQ people or by finding other ways to describe their work, cited that it provides a sense of legitimacy. Several remarked that registration provided CSOs with greater legitimacy in the eyes of donors as well improving their standing among political stakeholders, colleagues in the not-for-profit sector and the general public.⁷²

Conversely, many mentioned that without registration there were limitations to their organization's aspirations. This is due to very few external donors being willing or able to provide funding to non-registered CSOs.⁷³ Interviewees also reported that being unregistered made it harder for

⁷² This includes these foreign donors as well as public and private domestic funds and fundraising among individuals in their country.

⁷³ This includes foreign governments and foreign private philanthropy.

them to engage government officials to advocate for their communities and it also diminished their credibility among other NGOs. LGBTIQ CSOs that continue to exist without official status in settings where registration is not permissible feel vulnerable in terms of organizational sustainability and being easy targets for harassment from state and non-state actors. In some of the worst cases, informants shared instances of state surveillance and indiscriminate arrests.⁷⁴ In settings where backlash against LGBTIQ organizing is occurring, CSO leaders may be detained and/or organizations may be de-registered.

In such challenging contexts, various survival techniques are used. Several informants mentioned that they are moving toward having only an online presence. The trend in such cases is toward operating social media accounts to promote visibility of LGBTIQ peoples' concerns and support informal networking. Those working for CSOs that have secured registration by stating aims that were deemed more acceptable than serving LGBTIQ people shared that they went to great lengths to protect the real work of the organization. Protective tactics include maintaining entirely separate documentation for reporting to authorities and reporting to supporters of the organization.

Several LGBTIQ civil society leaders underscored that they have taken on a heavy burden, whether they have mounted a challenge to restrictive registration laws or continue to carry on their operations by hiding their work. They stressed that in such contexts LGBTIQ organizing is extremely difficult and it takes a personal toll. Several informants from non-registered

⁷⁴ In some cases, state surveillance of LGBTIQ CSOs is constant.

LGBTIQ CSOs mentioned using an intermediary organization to channel funds but shared the compromises to this approach. For instance, intermediaries can lead to loss of funds to administrative overhead and limits to independent decision-making. These arrangements proved particularly detrimental when rapid access to funds was required to help LGBTIQ people in crisis. OutRight notes that many of the LGBTIQ civil society leaders interviewed think of themselves as optimistic and/or creative problem solvers and most shared that they have demonstrated great personal commitment to their organizations. Clearly, they exhibit immense resilience and strength when there are real and present threats to their personal security in carrying out their organizations' work as the following case studies demonstrate.

Belize

REGISTRATION PERMISSIBLE

“The government realizes that there is an LGBT community and because (it’s) a heavily-religious country...it’s easier for the government to say ‘it’s the non- governmental organisations pushing...for LGBT equality’ as opposed the government doing it itself.”

LGBT CSOs in Belize have achieved a great breakthrough in changing national law to benefit those discriminated against because of their sexual orientation in the first case of

its kind in the Caribbean. In August 2016, the Belize Supreme Court struck down Section 53 of the Criminal Code, which criminalized private, consensual sex between adult men. The case was brought by United Belize Advocacy Movement (UNIBAM,) an LGBT NGO, that challenged Section 53 in 2010 claiming the law infringed on the “Protections of the Fundamental Rights and Freedoms” of the individual guaranteed by Belize’s Constitution.⁷⁵ The government launched an appeal, which was supported by other parties, initially including the Catholic church as well as other organized religious groups.⁷⁶ Nevertheless, UNIBAM continues its work, and OutRight learned from other LGBT civil society leaders that it has supported the foundation and operation of several other LGBT CSOs.

UNIBAM was the first organization focused on LGBT issues in Belize. It was founded in response to a gap in national HIV policy processes wherein there was no stakeholder organization for MSM vulnerable to HIV. UNIBAM’s Founder and Executive Director recalled that, “The HIV response...questioned whether we are able to register as an NGO. It wasn’t like they invited us in, I had to push the door open.”⁷⁷ The organization received its registration to operate as an NGO in 2006 and in their documentation used the term MSM rather than indicate a focus on LGBT issues. The Executive Director stated that they were influenced by, “Issues in Africa, where...people

were using legal justification around sodomy, buggery and gross indecency laws to block freedom of association. I made the list rather narrow so that it did not have a sole focus on LGBT.”⁷⁸

Reflecting on the factors that kept them from openly applying for registration as an LGBT organization, they remembered they wanted to, “Reduce any chance of the system putting up barriers to our existence...realizing the political environment...that in 30 years of independence we never had a political statement...on LGBT issues.”⁷⁹ They felt that their registration was a test to the system and were relieved that the registration authority, “Didn’t put up any barriers.”⁸⁰ According to UNIBAM’s Executive Director, without registration, the organization would not have had legitimacy in national HIV policy processes. Their Executive Director shared that when the organization became an interested party in the challenge to Section 53 they, “Experienced 4,000 people protesting against our work...and another 1,500 protesting against the decision in August 2016.”⁸¹ They feel that being registered was a factor in the strength of the organization in the face of opposition and asserted, “No other NGO that could have weathered that kind of storm.”⁸²

In March 2017, another Belizean organization which focuses on rainbow families, Our Circle, with support from OutRight, gained registration with the stated mission of, “Working to identify and develop ways to address the social inequality

⁷⁵ “UNIBAM Grand Slam: Gay Sex Law Struck Out,” 7 News Belize, 10 August 2016, <http://www.7newsbelize.com/sstory.php?nid=37283>.

⁷⁶ “Government of Belize and churches proceed with appeal of section 53,” The San Pedro Sun, 30 September 2016, <https://www.sanpedrosun.com/government/2016/09/30/gob-churches-proceed-appeal-section-53/>.

⁷⁷ OutRight interview with Caleb Orozco. 15 October 2017.

⁷⁸ Ibid

⁷⁹ Ibid

⁸⁰ Ibid

⁸¹ Ibid

⁸² Ibid

that faces the LGBT community.”⁸³ Our Circle’s Founder and President reflected on why it was possible for an LGBT organization to register openly, saying, “Because of the actual precedents set by UNIBAM itself...by addressing the fact that there is a community of LGBT persons in Belize.” The President felt this awareness facilitated Our Circle’s registration, “[B]ecause (it’s) a heavily-religious country, it’s easier for the government to say that ‘it’s the NGOs pushing...for LGBT equality’ as opposed the government doing it itself.”⁸⁴ UNIBAM’s Executive Director believes that the registration of organizations explicitly focused on LGBT people is due to the social discourse that arose from their challenge to Section 53 which, “Reinforced the importance of...representation (of LGBT people) to organize themselves...helping to inform state systems about what the issues are...that helped facilitate more language visibility in the legal documents.”⁸⁵

The Executive Director of UNIBAM stated that their registration, “Allowed us to facilitate resources to the newer groups, it allowed us to provide...technical support by explaining to them what their specialty could be, by encouraging them to collect data on particular issues.”⁸⁶ The President of Our Circle clarified, “There’s about six different organizations that actually have working with LGBT in their mandates here in Belize...The two registered NGOs are Our Circle and UNIBAM...What we’ve actually been doing, because all of our work to some extent has some form of

intersectionality is...bring the others to the table.”⁸⁷ The Co-Founder and Secretary of another CSO, Promoting Empowerment Through Awareness for Lesbian and Bisexual Women (PETAL), reflected that, “There isn’t an organization...serving LGBT in Belize right now that has not been touched by UNIBAM...It’s like the parent organization in a sense...UNIBAM is where the other organizations looked to first and foremost for support.”⁸⁸

PETAL was initiated in 2011 by a group of women, including a member of the Board of UNIBAM who wanted to provide more services for lesbian and bisexual women. PETAL registered with the Companies Registry in late 2015 with explicit language about the women they intended to reach. The Secretary of PETAL clarified that any woman can benefit from their services “but this organization specifically targets lesbian and bisexual women and all that we do is primarily for their benefit.”⁸⁹ PETAL’s next step is to apply to the Ministry of Human Development, Poverty Alleviation, and Social Transformation to register as a NGO. The Secretary indicated that they feel that being legally recognized as an NGO provides greater legitimacy “when you have the legal backing then you have the muscle to stand up and fight...When you don’t have it, it becomes a little bit more difficult.”⁹⁰

⁸³ OutRight interview with anonymous [name confidential]. 12 October 2017.

⁸⁴ Ibid

⁸⁵ OutRight interview with Caleb Orozco. 15 October 2017.

⁸⁶ Ibid

⁸⁷ OutRight interview with anonymous [name confidential]. 12 October 2017.

⁸⁸ OutRight interview with anonymous [name confidential]. 6 October 2017.

⁸⁹ Ibid

⁹⁰ Ibid

China

REGISTRATION PERMISSIBLE

“Our focus area is LGBT concerns, so until now [the government] can’t decide whether to approve the registration...we should continue to be open in our attempts to try the push the boundaries...if you tell them you are doing LGBT they’ll feel that since there’s no precedent they don’t want to be the first to do it. This is the obstacle we face.”

In the People’s Republic of China, groups engaged in advocacy are closely monitored by the Communist Party of China, many human rights defenders have been arrested or harassed, and organizations engaged in advocacy have been closed.⁹¹ Furthermore, frameworks for the operation of civil society organizations have been shifting. A new charity law came into effect in 2016 eliminating old categories and creating a new status, the charitable organization,⁹² and the Overseas NGO Management Law⁹³ was introduced in

⁹¹ “World Report 2017: China,” Human Rights Watch, <https://www.hrw.org/world-report/2017/country-chapters/china-and-tibet>.

⁹² As per the Charity Law which went into effect on September 1, 2016, organizations previously registered as: Social Associations (SA); membership associations; Social Service Organizations (SSOs), formerly known as Civil Non-Enterprise Institutions; and Foundations can now also apply for status as a charitable organization.

⁹³ “Law of the People’s Republic of China on Administration of Activities of Overseas Nongovernmental Organizations in the Mainland of China,” The China NGO Project, <http://www.chinafile.com/ngo/laws-regulations/law-of-peoples-republic-of-china-administration-of-activities-of-overseas>.

2017 requiring International Non-Governmental Organizations (INGOs) to register with the Ministry for Public Security.

The status of LGBTIQ civil society organizations can be ambiguous and groups operate under various means. The legal review conducted for this study found that at least one NGO serving LGBTIQ people has been registered as a social association, several have been registered as social service organizations, and at least one has been registered as a foundation.⁹⁴ Some LGBTIQ groups have registered without being explicit about the nature of their work, and others have opted to register as other legal entities such as an enterprise or company. China has no laws protecting people from discrimination on the basis of sexual orientation, gender identity and expression or sex characteristics and activism on the rights of LGBTIQ people is discouraged.

OutRight interviewed leaders of two LGBT organizations which have not been registered under any available charitable status. One, which operates an LGBT center, tried to register as a social service organization in 2015 but was denied and is currently registered as a business. Their leader shared, “We don’t think we can register as an LGBT organization so we are attempting with the themes youth, development, gender, etc., to try to register.”⁹⁵ Another organization which operates support services for LGBT people is also registered as a business following multiple unsuccessful attempts to register explicitly as an LGBT social service organization. This group’s leader

⁹⁴ Baker McKenzie’s Pro Bono Project for OutRight, China research.

⁹⁵ OutRight interview with anonymous [name confidential], 3 November 2017.

shared that in their previous attempts to register they had told the authorities that their, “Focus area is LGBT concerns, so until now they can’t decide whether to approve the registration. Previously we changed a name to try, after they realized we are still doing LGBT issues they told us they cannot decide if they’ll let us register.”⁹⁶ They are currently pursuing another attempt to register and shared that they feel, “We should continue to be open in our attempts to try the push the boundaries...if you tell them you are doing LGBT they’ll feel that since there’s no precedent they don’t want to be the first to do it. This is the obstacle we face.”⁹⁷

Barriers to registration may result from authorities’ lack of understanding about the work of LGBT organizations. One of the LGBT civil society leaders thinks that government is, “Familiar with social work, education, disability, elderly issues...it’s hard for them to...understand what this is about...and it has to do with how open our country is to the topic of sex.”⁹⁸ Another leader wonders whether there is some level of tolerance among the authorities because while they will not approve the registration, “At the same time you are allowed to work on LGBT rights. It is a form of silent approval.”⁹⁹ Furthermore, they asserted, “We do our work with very high visibility...if they look for trouble...we tell them that ‘we have been trying to register but you did not allow us to... we have been trying to be a good citizen and a legal entity but you did not allow us to. In return, we have not even asked ‘why did you not let us register?’ In this way, they don’t bother us.”¹⁰⁰

Both organizations aspire toward making their status official given the benefits they see registration would afford. One of the LGBT leaders stated, “If we are legal, we can operate formally and legally. We can also collaborate openly with other organizations...others will find that it is weird you are not registered and will not have the peace of mind to cooperate with you.”¹⁰¹ The other leader concurred, “It promotes reliability and trust in the eyes of the public.”¹⁰²

Conversely, LGBT leaders recognize there are trade-offs for registered CSOs particularly given that any type of advocacy is frowned upon in the Chinese context. The leader of an organization offering support to marginalized and vulnerable LGBTIQ people says that registration will be, “Like a double edge sword, a curse, because you have to follow their requirements... you have to reduce your work on advocacy for rights of the LGBTIQ populations or else you might have your registration cancelled.”¹⁰³ They reflected that because they are not registered they are in a, “Grey zone of the law”¹⁰⁴ and found this allowed their organization to be more creative, “In this unknown area.”¹⁰⁵ The leader of an LGBT center said that they worried, “After registration, there (is) a lot of financial reporting, attend(ing) a lot of meetings. And we will not have as much freedom as when we are not registered...we might not be able to work on topics that are sensitive.”¹⁰⁶ They expressed concerns that the authorities have

⁹⁶ Ibid

⁹⁷ Ibid

⁹⁸ Ibid

⁹⁹ Ibid

¹⁰⁰ Ibid

¹⁰¹ Ibid

¹⁰² Ibid

¹⁰³ Ibid

¹⁰⁴ Ibid

¹⁰⁵ Ibid

¹⁰⁶ Ibid

indicated that they may give LGBT issues more attention and that LGBT organizations are encouraged to register. They think that this could be because the state, “Wants to control this area of activism.”¹⁰⁷

Germany

REGISTRATION PERMISSIBLE

“Working for equality of intersex people...of course do not appear (in German Tax Code on Charitable Status) ...now it says ‘equality of men and women, especially intersex people’... (staff in the Tax Authority) basically came up with that, by tweaking one paragraph in the law on associations...they really helped us to find a way.”

In Germany, LGBTIQ CSOs can pursue registration either as a non-profit association or as a foundation whose assets are dedicated to a specific charitable purpose determined by the founder/s.¹⁰⁸ While there are numerous organizations dedicated to supporting LGBTIQ Germans, we considered the registration challenges of two specifically. Given that there are no European Union regulations regarding not-for-profit organizations, all regional organizations in Europe have to register in the country where they base their operations. Thus, regional organizations are beholden to the regulations applied to any

national organization pursuing registration. The two organizations we focused on serve the needs of transgender or intersex people across Europe: Transgender Europe (TGEU) and Organisation Intersex International Europe (OII Europe).

TGEU was formed in 2005 and first obtained registration in Austria but decided to move operations to Germany in 2011. TGEU’s Executive Director recalled that while considering their options, they reviewed possibilities in Belgium, Germany, Sweden, and Switzerland. They found, “German law was not much worse than other legislations...everyone who has registered an organization in Belgium said ‘if you don’t have to register in Belgium then don’t!’ Switzerland was out because organizations can’t access EU funding. Germany was the compromise.”¹⁰⁹ Once they had decided on registering in Germany, the process took longer than just applying as a new organization due to the lack of a pan-European registration framework. The Executive Director recalled, “We kept the Austrian organization and founded a new org in Germany...then spent all the money...in the Austrian accounts and started all the new projects in the German organization...then finally closed down the Austrian organization.”¹¹⁰

Greater challenges were faced in developing organizational by-laws which could be accepted in order to operate as a German foundation. The Executive Director shared, “We had statutes of the Austrian organization and those needed to be tweaked...there was back and forth because the German authorities did not accept our statutes in the first go.”¹¹¹ Any

¹⁰⁷ Ibid

¹⁰⁸ Baker McKenzie’s Pro Bono Project for OutRight, Germany file.

¹⁰⁹ OutRight interview with Julia Ehrt. 18 December 2017.

¹¹⁰ Ibid

¹¹¹ Ibid

German foundation must fulfil criteria laid out in law which lists 25 grounds considered to fulfil a charitable purpose. These purposes are to be defined in the organization's by-laws and must be allocated to one or more of the 25 grounds.¹¹² TGEU faced a problem when realizing that the protection of human rights is not one of these grounds. They undertook ongoing discussion with the German tax authority, which governs the granting of charitable status, to find a way to frame the organization's purposes. The Executive Director found that since in German law, "An organization is charitable when their activities aim at improving the general society in an 'un-material' way... we tried to argue that the protection of human rights would fall under that."¹¹³

Once this argument was accepted, a second obstacle emerged in the text about the dissolution of the organization. TGEU argued that the assets of the organization would, "Need to go to a charitable organization who (*sic*) fights for the equality of all genders."¹¹⁴ Given that one of the 25 charitable purposes focuses on pursuing equality between women and men, the tax authority objected to more inclusive language. TGEU found this unacceptable, "Clearly from our trans perspective that was a significant problem...a large part of our constituency considers themselves as neither male nor female...hence (that purposed) needs to be interpreted as going beyond."¹¹⁵ During a protracted debate, TGEU told the tax authority

"that if they will not accept that phrasing we are going to take them to court."¹¹⁶ In their challenge, the organization referenced German court decisions wherein authorities were required to accept and uphold the gender identity of a person. Finally, the tax authority advised that TGEU should submit the amendments to their document. TGEU's Executive Director shared, "We resubmitted it and they accepted it."¹¹⁷ Thus, two years after relocating their operations to Germany, TGEU was registered as a German foundation in 2013.

OII Europe's journey toward registration beginning in 2015 faced similar problems with the language of German tax law. They also had additional requirements to fulfil following a change to German law which requires foundations to be more specific in their goals and account for implementation in their annual report to the tax authority. One of OII Europe's co-Chairs explained that these laws affect, "Which goals you put in...if a goal for example is 'doing research on intersex people' you need to make sure that you are actually able to do research... the tax office will...hold you accountable if it becomes visible that you are not pursuing each of your goals."¹¹⁸ They came up with a general set of statutes given that, "Before the change in the legislation it was recommended to be rather general in your goals, in order to get your registration and charity status without too many problems and delays."¹¹⁹ When OII Europe submitted their application to the tax authority they were

¹¹² "Abgabenordnung (AO) § 52 Gemeinnützige Zwecke (Tax Code Charitable Purposes)," Bundesministerium der Justiz und für Verbraucherschutz, https://www.gesetze-im-internet.de/ao_1977/___52.html.

¹¹³ OutRight interview with Julia Ehrt. 18 December 2017.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ OutRight interview with Dan Christian Ghattas. 20 December 2017.

¹¹⁹ Ibid.

denied, “They told us ‘no, because the goals are not specific enough.”¹²⁰

Thus, OII Europe had to go through the time-consuming and costly process again, and while re-drafting the statutes, faced the limits of the language in the 25 charitable purposes. The co-Chair recalled, “We were working for equality of intersex people which of course do not appear.”¹²¹ They praised German tax authority staff for their support in counselling and re-drafting because they, “Found a way to include intersex in an allowed purpose... now it says ‘equality of men and women, especially intersex people’... basically (a staff member) came up with that, by tweaking one paragraph in the law on associations.”¹²² The co-Chair stressed, “The people there were really great they really helped us to find a way. Still, after we were through with the tax office we had two or three similar turns with the registration office.”¹²³ While OII Europe found it challenging that their registration took a year, the co-Chair was encouraged because, “The people in the respective offices could have been really hard to deal with and surprisingly they were not.”¹²⁴ TGEU’s Executive Director also felt that there was an enabling environment for their registration, in part, because, “In the Government there is an increased awareness of LGBT realities.”¹²⁵

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Ibid.

¹²³ Ibid.

¹²⁴ Ibid.

¹²⁵ OutRight interview with Julia Ehrt. 18 December 2017.

Lebanon

REGISTRATION NOT PERMISSIBLE

“We don’t want to remove the words LGBT because when we do get registered we want that to be the victory. We don’t want to go behind the system and try to outsmart it...we’re fighting to make a point.”

Lebanon has established what is considered “one of the most enabling legal and regulatory environments for civil society in the entire Arab world.”¹²⁶ The government has prioritized efficient implementation of the Law on Associations and the Ministry of Interior endeavors to ensure that civil society organizations which file for registration are given a notification receipt within 30 days. Nevertheless, there are delays and if the receipt is not issued an association cannot be considered to be operating legally. The Penal Code of 1943, influenced by French colonial criminal code, is used to criminalize any sexual act ‘against the order of nature,’ as well as prohibiting “possession, making, distributing materials that may be considered a ‘breach of modesty,’”¹²⁷ which curtails organizational activities which might be perceived as ‘promoting homosexuality.’

¹²⁶ “Civic Freedom Monitor: Lebanon,” International Center for Not-for-Profit Law, 3 April 2018, <http://www.icnl.org/research/monitor/lebanon.html>.

¹²⁷ Aengus Carroll and Lucas Ramón Mendos, *State Sponsored Homophobia 2017: A world survey of sexual orientation laws: criminalisation, protection and recognition*, (Geneva, International Lesbian, Gay, Bisexual, Trans and Intersex Association, 2017), https://ilga.org/downloads/2017/ILGA_State_Sponsored_Homophobia_2017_WEB.pdf.

OutRight interviewed a Lebanese CSO that was the first to be formed in the Arab world to explicitly focus on the rights of LGBTQ people and campaign for reform of the Lebanese Penal Code. The group filed for registration in 2004 but has never received a notice of registration nor a registration number from the Ministry of Interior. Their status is an exceptional case; to this day, their application for registration has never been fully recognized. The Chair of the Board reflected that, “For some reason we are allowed to...exist as an organization but we don’t have any legal character...officially we are not registered.”¹²⁸ Other LGBT CSOs in Lebanon which followed in this organization’s footsteps were registered without reservations. The Chair of the first group explained, “All of them learned from (our) mistake...and did not include LGBT or sexual minorities in the foundational documents. All they did was include human rights.”¹²⁹

Another leader OutRight interviewed was able to register an organization based in Lebanon which supports work on LGBT rights throughout the Middle East and North Africa by stating their aims as “promoting and educating around human rights...and a regional mandate to work with activists and to help them establish their NGOs.”¹³⁰ The Executive Director of this organization supports activists without specifying that they are sexual or gender minorities. The Executive Director reflected that the criminalization of homosexuality in the Penal Code places barriers to being forthright in the

¹²⁸ OutRight interview with anonymous [name confidential], 11 November 2017.

¹²⁹ Ibid.

¹³⁰ OutRight interview with anonymous [name confidential], 9 December 2017.

documentation presented for registration saying, “Even though we can open organizations to promote the change of the law, I think no Minister of Interior wants to be the person who will officially recognize...any LGBT organization.”¹³¹ The Board Chair of the LGBTQ CSO that remains unregistered finds the provisions in the Penal Code regarding *violating public morality* are, “The legal basis that is used to deny any organization that includes the words LGBT in it. Thus, decriminalizing LGBT issues would solve this problem...and it would pave the way for registration in a non-confrontational way.”¹³²

The Executive Director of the regional organization shared that registration has helped them to obtain visas for activists from abroad who are invited to attend regional trainings and allows them to secure proper requirements for their staff including working papers and social security registration. Conversely those working for the unregistered LGBTQ CSO are not secure and their Chair reflected, “If I wasn’t someone with a sense of morality, I would be taking advantage of staff members...because I’m not legally obliged to do any of that...There’s no...legal recourse and it gets really problematic when you work in high stress with a vulnerable population in a very precarious situation like Lebanon.”¹³³ They lamented that their current status, “Has not really allowed the organization to grow.” The Chair revealed, “We sometimes need or are forced to partner with other registered organizations...which affects our priorities and the way we prefer to run our programming.”¹³⁴

¹³¹ Ibid.

¹³² OutRight interview with anonymous [name confidential], 11 November 2017.

¹³³ Ibid.

¹³⁴ Ibid.

Strategic benefits of registration such as influencing policy were identified by the Executive Director of the regional organization that finds certain spaces are, “Only accessible to NGOs that are registered.”¹³⁵ For example, only registered NGOs are able to meet Parliamentarians to advocate for change to laws. While the Executive Director of the regional group understands that there are some Parliamentarians and other policy stakeholders who will meet informally with the unregistered LGBTQ organization they claimed, “They cannot go through any process with an NGO that is not registered...(if they) go to the police stations and bring a lawyer to defend someone, technically they are not allowed to...they have no role and the police can kick them out any time they want and this is the weakness of the movement.”¹³⁶ The registered regional organization shared that they openly support the unregistered organization in practical ways, including as an intermediary for funding, and affirmed, “If there is a space where (they) cannot go because they are not registered, this is where (we) intervene.”¹³⁷

Successive Ministers of Interior have suggested that if the first LGBTQ CSO made changes to their mandate then they would grant them registration. Their Chair stressed, “We don’t want to remove the words LGBT because when we do get registered, we want that to be the victory. We don’t want to go behind the system and try to outsmart it...we’re fighting to make a point.”¹³⁸ They indicated

¹³⁵ OutRight interview with anonymous [name confidential], 9 December 2017.

¹³⁶ Ibid.

¹³⁷ Ibid.

¹³⁸ OutRight interview with anonymous [name confidential], 11 November 2017.

that they are continually considering how to challenge their status and will fight it until they are officially registered. The Executive Director of the regional organization concurred that they do not think that the unregistered LGBTQ CSO, “Should do anything in its mandate just to get the registration.”¹³⁹ They did express concerns about the sustainability of this exceptional status particularly given authorities are exercising more control over civil society and shared, “I think the freedom that we have is very fragile at this point. As long as there is...no registration (they) can get closed at any moment.”¹⁴⁰

Nigeria

REGISTRATION NOT PERMISSIBLE

“The worst has happened. We have the Same Sex Marriage (Prohibition) Act and now we have the NGO bill which is almost becoming an act. That puts all NGOs at risk and it’s like a double bind for LGBTIQ organizations. You are constantly hiding your work under the radar and if you decide to go beyond hiding you are putting yourself at a certain level of risk.”

Over the past several years, the context for Nigerian LGBT civil society has become

¹³⁹ OutRight interview with anonymous [name confidential], 9 December 2017.

¹⁴⁰ Ibid.

extremely constrained. *The Same Sex Marriage (Prohibition) Act (SSMPA)* was signed into law in January 2014. In addition to prohibitions against men and women’s same-sex relationships, it specifies that “any person or group of persons that ... supports the registration, operation, and sustenance of gay clubs, societies, organizations, processions or meetings in Nigeria commits an offence.”¹⁴¹ An individual found to have been working in such an organization could be imprisoned for a term of between 10-14 years. The law creates the possibility that a CSO’s registration could be cancelled or withdrawn. An LGBT civil society leader lamented that this has, “Created a state of fear in the minds of LGBT people.”¹⁴² Since the passage of the law, organizations serving LGBT people report they have experienced a backlash which is expressed by state violence on service users and on their staff. OutRight was told that some organizations have had to close and others have changed locations of their operations frequently because of such attacks. An LGBT civil society leader shared that this has forced LGBT people who utilize services to move on and, “Go under the radar.”¹⁴³

Despite all these controls, a leader of a registered CSO pointed out information on their website which demonstrated clearly that LGBT people are included in their target populations. Nevertheless, most CSOs in Nigeria operate either with documentation which does not explicitly mention that they focus on LGBT

people or they operate without any registration. Those CSOs which are registered risk de-registration as the *Corporate Affairs Commission (CAC)* monitors whether or not organizations are working within their mandate and may cancel a certificate of registration if it finds that an organization has operated in any way contrary to what is stated in their documentation. LGBT CSOs will face additional threats if a *Bill to Provide for the Establishment of a Non-Governmental Organizations Regulatory Commission* which has already passed through the House of Representatives and the House of Assembly is signed by the President.¹⁴⁴ If enacted, the Bill would give the *Regulatory Agency for The Supervision, Coordination and Monitoring of NGOs* broad discretion to refuse to issue a registration certificate, and to suspend or cancel a certificate that has been issued, if it determines that the organization’s proposed activities “are not in the national interest.”¹⁴⁵

One Nigerian LGBT civil society leader remarked, “The worst has happened. We have the SSMPA and now we have the NGO bill which is almost becoming an act - that puts all NGOs at risk and it’s like a double bind for LGBT organizations.”¹⁴⁶ The leader of a registered CSO shared that the SSMPA makes it, “Difficult to publicly declare your work, you are constantly hiding your work under the radar and if you decide to go beyond hiding you are putting yourself at a certain level

¹⁴¹ “Same-Sex Marriage (Prohibition) Act, 2014,” Centre for Laws of the Federation of Nigeria, <http://www.lawnigeria.com/LawsoftheFederation/Same-Sex-Marriage-Prohibition-Act,-2014.html>.

¹⁴² OutRight interview with anonymous [name confidential], 5 September 2017.

¹⁴³ Ibid.

¹⁴⁴ “Civic Freedom Monitor: Nigeria,” The International Center for Not-for-Profit Law, <http://www.icnl.org/research/monitor/nigeria.html>.

¹⁴⁵ Bill to Provide for the Establishment of a Non-Governmental Organizations Regulatory Commission (Section 15).

¹⁴⁶ OutRight interview with anonymous [name confidential], 15 September 2017.

of risk.”¹⁴⁷ They added that this affects collaboration with other NGOs as the climate of fear could make potential partners, “Think they don’t want to work with you...(they are worried that you might be under threat.”¹⁴⁸ The negative impact on LGBT people’s access to services is of greater concern to this leader who pointed out, “Sometimes you see people who don’t want be associated...with the work of the organization because they are still frightened.”¹⁴⁹ OutRight identified a range of limitations which non-registered Nigerian organizations face including: a lack of a formal accountability structure; the possibility of an operation being dissolved; slow or no growth; and down-sizing service provision.

The leaders we interviewed offered various perspectives about the SSMPA. One shared that, “Pre-2014 the conversation around sexuality, sexual rights, specifically LGBT, was quite under the radar. But the signing of the law made...the issues more visible...people are having the conversation...but its forcing the conversation in a way that people don’t even want to have (it).”¹⁵⁰ It is not clear that the authorities which have the power to implement the provisions about organizations in the SSMPA are actually pursuing implementation. A leader of an organization registered with a mandate to work on sexual health, human rights and sexual rights argued, “It is another law in Nigeria...and not all of them get implemented...somehow we haven’t had...a public petition that we should be deregistered... Recently we submitted our board

member data...to the registrar...they have basically sent us a new certificate.”¹⁵¹

Despite the risks that are inherent when operating under such a restrictive law, LGBT civil society leaders maintain that there are benefits to being registered. One leader shared, “Being registered comes with another level of empowerment for the organization... it just gives you more legitimacy.”¹⁵² Another reflected on how their organization has developed since achieving registration in 2011, “We see it as a space to do social change... It really helped us to look at things from a broader perspective and it has allowed us to move away from a victim perspective...to look at things critically.”¹⁵³ Another leader was circumspect about the precarious situation they face when reporting and shared, “Being a minority organization and being minority people we’ve become comfortable in fear...we just navigate the risks...I am saying that we fear when we present our reporting but our aim is stronger than the fear...we have to put the word out there and we have to try to use the word to fight all this that is happening.”¹⁵⁴ The legal context for LGBT CSOs in Nigeria is one of the most constrained worldwide. It is essential to build the resilience of non-registered organizations who can reach LGBT people and support those brave organizations that walk a very precarious line to maintain their registration while serving LGBT community needs.

¹⁴⁷ OutRight interview with anonymous [name confidential]. 5 September 2017.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

¹⁵⁰ OutRight interview with anonymous [name confidential]. 5 September 2017.

¹⁵¹ Ibid.

¹⁵² OutRight interview with anonymous [name confidential]. 15 September 2017.

¹⁵³ OutRight interview with anonymous [name confidential]. 5 September 2017.

¹⁵⁴ OutRight interview with anonymous [name confidential]. 15 September 2017.

Russia

REGISTRATION NOT PERMISSIBLE

“From the very beginning it was quite hard to register...when the legislation became more fierce towards LGBT after 2013...it became even harder to register any organization with the abbreviation of LGBT. To be honest, it’s a mystery for us - how could we operate in this context. This is a shaky situation...we don’t know what tomorrow brings.”

Since 2012, numerous proscriptions have been introduced in Russia which restrict the activities of CSOs and curb freedom of assembly, association and expression including laws on *Gay Propaganda* (2013)¹⁵⁵, *Undesirable Organizations* (2014)¹⁵⁶, and an amendment to the law on *Non-Commercial Organizations regarding Foreign Agents* (2014).¹⁵⁷ These laws have severely impacted the registration and functioning of LGBTIQ organizations, particularly those engaged in advocacy or receiving support from foreign donors that fund human rights work. Additionally, the legal analysis

¹⁵⁵ The Russian federal law ‘for the Purpose of Protecting Children from Information Advocating for a Denial of Traditional Family Values’

¹⁵⁶ Federal Law No. 129-FZ on Amendments to Certain Legislative Acts of the Russian Federation, which affects foreign and international NCOs and their partners in Russia

¹⁵⁷ Federal Law Introducing Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-commercial Organizations Performing the Function of Foreign Agents

conducted for this study found that Russian registering authorities “often refuse to register new LGBTIQ organizations.”¹⁵⁸ The legal analysis found that when CSOs have challenged such decisions, courts have upheld the actions of registrars who argue that LGBTIQ organizations pose “violation of public morals and family values, or even threat to national security and identification of the activities of an LGBTIQ organization as an extremist activity.”¹⁵⁹

OutRight interviewed staff of LGBT CSOs that maintain operations within this constrained context. The leader of one LGBT group argued that CSOs have never been able to register if they explicitly mentioned LGBT people in their charter and revealed that many groups have registered without being explicit that they work on LGBTIQ issues or they operate without registration. Either way they find CSOs face risks; the leader said, “You can’t be as transparent in your reporting and be safe.”¹⁶⁰ Another LGBTIQ civil society actor concurred that authorities have always objected to the establishment and registration of LGBT organizations because they view them as “something which threatens territorial integrity.”¹⁶¹ They confirmed that many LGBT groups do simply register as an NGO without being explicit about the aims and then, “They implement projects that are aimed at the LGBT community so...(it’s) like a double life for organizations like that.”¹⁶²

¹⁵⁸ Baker McKenzie’s Pro Bono Project for OutRight, Russia file.

¹⁵⁹ *ibid*

¹⁶⁰ OutRight interview with anonymous [name confidential], 24 August 2017.

¹⁶¹ OutRight interview with anonymous [name confidential], 18 August 2017.

¹⁶² *Ibid*.

The *gay propaganda law*, which can result up to two-years imprisonment, created an environment which one LGBT civil society actor found is, “More fierce towards LGBT...it made impossible to discuss issues connected to sexual orientation or gender identity with people who are minors.”¹⁶³ They stated, “I don’t know how we can operate legally...we share information on human rights and on the social support that we provide for the LGBT community.”¹⁶⁴ The other LGBT leader shared that because the law is vague and only used against certain entities, “You adapt...the government doesn’t adopt it to regulate society but to apply pressure against those that they don’t like...it keeps people intimidated and afraid... we have to not forget about the risks and weigh them accordingly and assess.”¹⁶⁵

The introduction of amendments to non-profit law has had an even more chilling effect. The Justice Ministry can register NGOs as *Foreign Agents* without consent or due process. Organizations that do not self-report to the Justice Ministry and are subsequently found to be in receipt of foreign funds can face fines and have this label applied to them. One LGBT civil society actor shared that this imposes, “Restrictions and extra commitments... for example, additional reports on their activity... printed materials for dissemination...need to be labeled as Foreign Agent publications.”¹⁶⁶ They also revealed that the label, “Has a heavy social stigma...very close to the concept of spy...in the

understanding of Russians.”¹⁶⁷ They found that the Justice Ministry has used the law to target, “The human rights sector as a whole....presented like an enemy of the public.”¹⁶⁸

The law on Undesirable Organizations has also had a deleterious impact on LGBT CSOs because it has impacted the operations of private philanthropic funds that support human rights work. One civil society actor reported that once the law was introduced they had to, “Stop not only operation but communication with the fund(ers) which used to donate for our project because they were no longer desirable and that could bring us responsibility for cooperation with this organization...flows of finances stopped. They just ended. And we had to find other sources for fundraising.”¹⁶⁹ They commented that the loss of resources has increased the vulnerability of LGBT organizations in particular and demonstrates, “The unwillingness of the administration to show that... human rights defenders are desirable here and that they are able to express...freedom of speech.”¹⁷⁰

These interconnected restrictions force most LGBT CSOs to operate in a legal *grey area*. One staff member of an LGBT CSO reflected, “To be honest it’s a mystery for us how could we operate in this context...this is a shaky situation...we don’t know what tomorrow brings.”¹⁷¹ Yet they asserted that they still provide open reporting to all the state bodies that require it and that despite having LGBT in the title of their organization, “We never keep our name in secret except for

¹⁶³ Ibid.

¹⁶⁴ Ibid.

¹⁶⁵ OutRight interview with anonymous [name confidential]. 24 August 2017.

¹⁶⁶ OutRight interview with anonymous [name confidential]. 18 August 2017.

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

the names of our staff members.”¹⁷² The leader of another LGBT organization shared that they have spoken to many lawyers about how to operate and have received, “Advice on various points because there is really no certainty...we monitor and are willing to take risks but it’s never 100% safe until our political environment changes.”¹⁷³ The personal and organizational costs of operating in this context are high, as this leader reported, “In challenging times 30-40% (of their work) can be directed to dealing with the legal battles. Activists burn out...during the times that no one is after us we are able to restore our strength and get back to work.”¹⁷⁴ Beyond the toll this takes on people it makes it much harder for LGBT groups to be sustainable which this LGBT leader argued is necessary, “We need a long-term approach because change will take a long time in Russia.”¹⁷⁵

Saint Lucia

REGISTRATION PERMISSIBLE

“To be registered as an NGO internationally, in the Caribbean for that matter, is a good thing in order for you to carry out your mandate... and our funders tend to want to know...your organisation is legally registered and recognized.”

LGBT civil society has gained momentum in St. Lucia over the past decade and positively

influenced the context for registering a CSO to further LGBT rights. The constitutional guarantee of freedom of assembly and association are largely upheld and many civil society groups are politically active in St. Lucia. Nevertheless, a LGBT community leader has asserted that, “Being gay in St. Lucia means having to deal with the loss of loved ones from the LGBT community, while at the same time being a support structure for so many who are closeted...a community that faces a high level of social stigma and discrimination on a daily basis.”¹⁷⁶ In 2015, Parliament began debating recommendations for the reform of St. Lucia’s 1979 Constitution. A Constitutional Reform Commission stressed that the “fundamental rights and freedoms clauses of the Constitution ought not to allow any discriminatory practices against anyone regardless of their sexual orientation.”¹⁷⁷ The Commission report also revealed that “there was also a growing acceptance of the fact that there are clear issues relating to sexual orientation in that it is being used as a basis upon which to promulgate severe levels of abuse (and) considered whether sexual acts between consenting adults of the same sex in private should not be criminalized but did not make a recommendation.”¹⁷⁸ While progress towards decriminalization of homosexuality has been slow, LGBT activists are increasingly recognized as national policy actors.

The civil society leaders we interviewed reflected on the progress they have made in St. Lucia

¹⁷² Ibid.

¹⁷³ OutRight interview with anonymous [name confidential]. 24 August 2017.

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

¹⁷⁶ Adaryl Williams, “Being LGBTIQ In Saint Lucia,” OutRight Action International, 3 November 2016, <https://www.out-rightinternational.org/content/being-lgbtiq-saint-lucia>.

¹⁷⁷ Saint Lucia Constitutional Reform Commission, *Report of the Saint Lucia Constitutional Reform Commission*, (Saint Lucia, 2011), 95.

¹⁷⁸ *ibid* p. 97

over the past decade. In 2005, the oldest and largest LGBT organization in St. Lucia, United and Strong, was founded under the umbrella of the AIDS Action Foundation. The instructing attorney who submitted the registration application shared that they faced a protracted process over a year in a somewhat intimidating environment. The Companies Act requires that the articles of incorporation must be approved by the Attorney General (AG), and in this case, the AG inquired whether they were being asked to register a “supposed gay organization.”¹⁷⁹ Those involved with the formation of United and Strong stressed that the articles stated that it would be, “An organization targeting empowerment and capacity development for youth.”¹⁸⁰ The instructing attorney indicated they chose these terms because they were clear that, “In 2005 in St. Lucia, if there had been any expressed indication that it was an organization supporting gay rights or persons who are LGBT, they would not have been registered.”¹⁸¹ The AG then asked for a series of clarifications including the activities that United and Strong would undertake. The instructing attorney addressed their concerns to the AG that there seemed to be, “A deliberate attempt to delay the process.”¹⁸² They indicated that they would let the Prime Minister’s Office know that they felt that the AG’s Office was, “Creating a bottleneck...and I would make a political issue out of it that the Attorney General had refused to act...thereafter he approved it within a week.”¹⁸³

¹⁷⁹ OutRight interview with anonymous [name confidential], 6 October 2017.

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² Ibid.

¹⁸³ Ibid.

A decade since its 2006 registration, the current Executive Director of United and Strong reflected that, “To be registered as an NGO internationally, in the Caribbean for that matter, is a good thing in order...to carry out your mandate.”¹⁸⁴ They also shared that being registered allows them to better serve LGBT St. Lucians, saying, “I think because we’re registered and we’re recognized, our mobilization efforts are more heightened...we see more persons accessing the services that we provide.”¹⁸⁵ The Director added that registration builds trust with LGBT people in that they feel, “There is an organization there that helps us...we don’t have to...fight on our own.”¹⁸⁶ They reflected that this, “Actually helps persons psychologically too. Because being LGBT in the Caribbean context we have...barriers... knowing that there’s an organization that is actually helping...actually helps.”¹⁸⁷

United and Strong’s Executive Director also found notable changes in the attitudes of St. Lucians “because of the work that we do... we’ve noticed that there’s a level of tolerance to persons...the majority of persons (are) saying that we are human beings and we should be allowed to live our lives as we please as long as we respect other persons. We see that there is progress, there is tolerance.”¹⁸⁸ Similarly, the attorney who fought for United and Strong’s registration reflected that it has become known as “one of the more vibrant civil society organizations in St. Lucia. Not just in terms of human rights or LGBT issues but as a civil

¹⁸⁴ Ibid.

¹⁸⁵ Ibid.

¹⁸⁶ Ibid.

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

society organization.”¹⁸⁹ While they reported that the organization had faced “a lot of issues, there was a burning of the previous office... issues of discrimination,”¹⁹⁰ they reconfirmed, “the organization has a voice and a respected voice...the credibility was built because it started getting involved in mainstream activities.”¹⁹¹

In 2015, this same attorney filed for the registration of another organization, Eastern Caribbean Alliance for Diversity and Equality (ECADE), to focus issues affecting LGBT people through the Eastern Caribbean region from an operational base in St. Lucia. This regional organization had its stated aims to pursue, “Human rights advocacy and representational matters related to gender identity and other related matters.”¹⁹² They added that ECADE’s application did not include the LGBT acronym but it was stated very clearly, “In the bylaws and in the profile...of the organization that was submitted.”¹⁹³ The attorney revealed that they decided to leave out sexual orientation and only include gender identity because, “As a lawyer, I am very careful that we don’t create an opportunity for these types of issues to come up. Because that’s what the Attorney General’s was alluding to during the registration of United and Strong, that this was promotion of an *illegal activity*.”¹⁹⁴ Nevertheless, with gender identity being clearly stated in the aim and LGBT being mentioned throughout ECADE’s documentation, there was a clear awareness about the reach and mission of the organization and it was approved

¹⁸⁹ Ibid.

¹⁹⁰ Ibid.

¹⁹¹ Ibid.

¹⁹² Ibid.

¹⁹³ Ibid.

¹⁹⁴ Ibid.

with, “No bottlenecks – there were no delays.”¹⁹⁵

Reflecting on the juxtaposition of the two processes, the attorney found, “In 2005, there would have been a public outcry if there was an open knowledge that a gay organization was intending to register.”¹⁹⁶ The attorney asserted that the change came about because of United and Strong’s progress over the decade since their registration, their outreach and their public profile has resulted in greater social acceptance. They find that more people in St. Lucia now realize that, “These issues (are) not something... to be afraid of...there’s a clear understanding that if you’re addressing issues about homosexuality, you are not encouraging illegality.”¹⁹⁷ LGBT civil society actors have demonstrated that despite limits in political will to decriminalize homosexuality, they are invaluable to the LGBT people they serve as well as to wider St. Lucian society.

Singapore

REGISTRATION NOT PERMISSIBLE

“We have to be careful because we are actually not a registered entity... all our activities (are) illegal essentially...if the government wants to do anything to us they could...there are a lot of personal costs to people involved...the biggest issues are self-censorship and fear...about when the police will come after us.”

¹⁹⁵ Ibid.

¹⁹⁶ Ibid.

¹⁹⁷ Ibid.

In Singapore, severe restrictions applied to LGBT CSOs are long-standing and tightly controlled. The *Societies Act* requires all clubs, companies, partnerships and associations of ten or more persons to be registered.¹⁹⁸ Any group which is not registered is prohibited and those involved, whether office holders or members, can be prosecuted. The *Schedule* included in the *Societies Act* lists specific types of societies, which Singaporeans understand as *no go areas or red lines*.¹⁹⁹ Such societies include those which are “representing, promoting any cause or interest of, or discussing an issue relating to...a class of persons defined by reference to their **gender or sexual orientation**; and any society representing people who advocate, promote or discuss any issue relating to any civil or political right...and human rights cannot be registered.”²⁰⁰ Additionally, the Minister for Home Affairs has the power to dissolve a registered society if it appears that it is being used for purposes “prejudicial to public peace, welfare or good order in Singapore.”²⁰¹

An organization seeking to register as a charity can also apply as a *company limited by guarantee* with the Accounting and Corporate Regulatory Authority (ACRA). The government recognizes *charitable purposes* including, “relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantages.”²⁰² In November 2017, a

¹⁹⁸ Societies Act (CHAPTER 311) (Original Enactment: Act 56 of 1966) Revised Edition 2014 <https://sso.agc.gov.sg/Act/SA1966>

¹⁹⁹ OutRight interview with anonymous [name confidential]. 24 January 2017.

²⁰⁰ Societies Act, article 4(2) in connection to article 1 of “The Schedule” section of the Act,

²⁰¹ Societies Act, article 4(2) b

²⁰² “About Charities and IPCs”, Charity Portal, <https://www.charities.gov.sg/setting-up-a-charity/Pages/About-Charities-And-IPCs.aspx>.

trans organization which operates a shelter for homeless trans people had their application to register as a charitable organization denied by ACRA.²⁰³ A veteran LGBT civil society leader recalled that they were aware of only two LGBT civil society organizations that had tried to register as a company. ACRA had denied both providing the reason that the registration would be *against national interest*. This leader submitted an application to ACRA in 2014 to run a charitable organization providing social services for and research about women. The organization was informed by previous denials of other LGBTIQ CSOs and took a strategic approach including by: notifying all politicians that they were in contact with that the application had been filed; securing the support of the International Commission of Jurists who agreed to help them bring ACRA to court if the registration was denied; and working with a well-read online media site which questioned ACRA when the registration process began to draw on longer than the six months the agency states it should take. In July 2016, after a year and a half struggle, this organization, Sayoni, was registered and their founder is now the President. While the legal status was affording them many opportunities, the President stressed, “It’s not an easy process, it’s so difficult and it should not be this way.”²⁰⁴

Those who agreed to be interviewed reported repeated incidents of surveillance and intimidation by state actors. One leader shared that the state threatens LGBT civil society actors in many ways including targeting veteran LGBT activists, “they sue you, some people become bankrupt...they harass you, they let you know

²⁰³ Kok Xing Hui, “The T Project Rejected as Non-Profit Organization,” Rice, 6 November 2017, <http://ricemedia.co/t-project-rejected-as-charitable-organisation/>.

²⁰⁴ OutRight interview with Jean Chong. 20 June 2017.

that you are being followed by secret police. They let you know that they are watching you.”²⁰⁵ Another leader recalled that during a 2016 LGBT Pride (Pink Dot) after-party, they noticed a police car in the vicinity “just hovering doing nothing but I think they were just purely intimidating us.”

Singapore’s authoritarian state holds the power to monitor ‘illegal gatherings’ wherein protesters can be arrested depending on the judgement of the police.²⁰⁶ The threat of being imprisoned for operating or being involved in an LGBT organization is perceived as very real. The leader of a group which operates a monthly support group for lesbian and bisexual women shared, “We have to be careful... all our activities (are) illegal essentially...if the government wants to do anything to us they could.” They added, “There are a lot of personal costs to people involved...the biggest issues are self-censorship and fear....about when the police will come after us.”²⁰⁷ A veteran LGBT civil society leader lamented that it is difficult for non-registered organizations to obtain secure and permanent locations which, “Makes organizing difficult because people are afraid when you have meetings... there is always a police officer, undercover, in the room...they will count how many people are in there, what they are talking about.”²⁰⁸ They shared that this context is disruptive to organizing because groups are, “Always

²⁰⁵ Ibid.

²⁰⁶ “Activist arrested by police outside of Parliament House after standing alone with artpiece,” The Online Citizen, 1 October 2017, <https://www.theonlinecitizen.com/2017/10/01/activist-arrested-by-police-outside-of-parliament-house-after-standing-alone-with-artpiece/>.

²⁰⁷ OutRight interview with anonymous [name confidential], 8 November 2017.

²⁰⁸ OutRight interview with anonymous [name confidential], 20 June 2017.

moving around, meeting in cafes. It’s just psychologically...really hard and someone’s always following you.”²⁰⁹ They also reflected that this context results in a lack of sustainable programs for LGBT people as, “Most groups in Singapore are for social events...workshops but there are no long-term projects.”²¹⁰

Few LGBT organizations even attempt to register as a society and instead find ways to exist as a company or another private entity without stating their aims explicitly. The leader of the lesbian and bisexual women’s support group was counselled by those who have been through the experience not to attempt registration and instead to operate as a *professional partnership* - a type of business. This leader reflected that the key barriers to official registration are the existence of section 337A of Singapore’s Penal Code, which formally criminalizes sex between men but broadly also implicates homosexuality between women, and the influence of conservative forces on politicians. While this leader imagines that there might be allies in government, they feel that politicians, “Don’t want to give us the recognition because they don’t want any backlash...they would put their job at stake.”²¹¹

LGBT civil society has had to make many compromises to appease Singaporean authorities, including omitting specific terminology. One LGBT leader expressed frustration that Pink Dot, the annual LGBT pride event, is couched in terms of, “Promoting freedom to love...they cannot say they *out rightly* support LGBT... they are playing by the rule and still trying

²⁰⁹ Ibid.

²¹⁰ Ibid.

²¹¹ OutRight interview with anonymous [name confidential], 8 November 2017.

to push boundaries... a lot more can be done.”²¹² The group which organizes Pink Dot, has been denied registration and faces many restrictions. According to civil society the authorities find Pink Dot is, “Promoting the so-called gay agenda.”²¹³ While Singapore places a variety of restrictions on freedom of assembly, association and expression, a veteran LGBT leader reflects that, “We get the brunt of it because LGBT activism is often the most vibrant, we’re powerful in society... The state is coming up with all kinds of laws but we found all kinds of ways to push the boundary...We represent...how it is possible to organize within the restrictions.”²¹⁴

Tanzania

REGISTRATION NOT PERMISSIBLE

“There is a lot of pressure...you must have...two constitutions: the constitution that you show the donors and the constitution that you show that you show to the government. Then you must have two reports, the reports that you take to the registrar’s office and the reports that you have to report to the donor...Everything has double standards...everything that you actually work on...the LGBT work, you have to hide.”

²¹² Ibid.

²¹³ Ibid.

²¹⁴ OutRight interview with anonymous [name confidential]. 20 June 2017.

Civil society organizations are experiencing serious restrictions on their ability to protect the well-being of LGBT Tanzanians. A nascent LGBT movement operated in the country for several years, but when new leadership came to power in 2015, senior politicians made a series of statements that demonstrated that they would not tolerate their activism. Much of their justification stems from the Tanzanian Penal code, wherein section 154–157 criminalizes male same-sex relationships. In June 2016, the Minister of Health announced a ban on the import and sale of lubricants because they deemed that this health commodity *encourages homosexuality*.²¹⁵ This is a stark disconnect given that the government’s national guidelines for HIV prevention address most-at-risk populations, including MSM, and recommends that essential health commodities such condoms and lubricants for the prevention of HIV and other STIs are provided.²¹⁶ In Sept 2016, the Deputy Minister of Health threatened to ban NGOs serving LGBT people stating, “Tanzania does not allow activist groups carrying out campaigns that promote homosexuality...Any attempt to commit unnatural offences is illegal and severely punished by law.”²¹⁷ A June 2017 statement by the Minister of Home Affairs echoed the intent to deregister organizations and warned the state would

²¹⁵ Charlotte England, “Tanzania bans lubricant in bid to ‘curb homosexuality,’” *Independent*, 23 July 2016, <http://www.independent.co.uk/news/tanzania-lubricant-ban-to-curb-homosexuality-lgbt-rights-east-africa-a7152656.html>.

²¹⁶ “Information, Education, and Communication,” The United Republic of Tanzania: Ministry of Health, Community Development, Gender, Elderly & Children: National AIDS Control Program, <http://www.nacp.go.tz/site/publications/information-education-and-communication>.

²¹⁷ Joseph Patrick McCormick, “Tanzania threatens to ban groups that ‘promote’ LGBT rights,” *Pink News*, 9 September 2016, <http://www.pinknews.co.uk/2016/09/09/tanzania-threatens-to-ban-groups-that-promote-lgbt-rights/>.

prosecute or deport anyone working to protect the rights or promote the wellbeing of LGBT people.²¹⁸

These are not empty threats. A civil society actor from a trans organization stated they were aware that an NGO had been deregistered because, “The registrars were going through their reporting...they mentioned that they were working with LGBT...it was...prosecuted for (distributing) lubricants.”²¹⁹ A civil society actor from an LGBT youth organization shared that scrutiny on all NGOs had intensified, “The international NGOs were asked to surrender their contracts, who is funding them...national NGOs we were just asked to bring our work plan, show what we have done for the year... it’s like they are hunting to find out the organizations that are having programs with LGBTIQ communities or...fund the programs with other CSOs that...have programs with the LGBTIQ community.”²²⁰

In October 2017, another shocking crackdown occurred. A consultation to prepare a legal challenge to the government’s decision to limit the provision of essential health services and health commodities to LGBT people was raided by the Tanzanian Police, and twelve participants were accused of *promoting homosexuality* and arrested. Several civil society leaders who we interviewed had been detained and the CSO that convened the consultation had their registration suspended, pending deregistration. A civil soci-

ety actor from a trans organization explained, “The government is angry at these people because they are fighting very hard...they were targeting that organization...trying very hard to bring it down.”²²¹ A civil society actor formerly working for a CSO providing health services shared that as far as the Police are concerned, “As long as there’s MSM, there’s promotion of homosexuality.”²²² They stated that this is negatively affecting all LGBT people seeking health services because, “A lot of people were outed in the communities during that time.”²²³

Registered LGBT organizations go to great lengths to conceal their work so that they are not threatened with suspension or closure. The civil society actor formerly working for a CSO providing health services shared that, “There is a lot of pressure...you must have...two constitutions: the constitution that you show the donors and the constitution that you show that you show to the government. Then you must have two reports, the reports that you take to the registrar’s office and the reports that you have to report to the donor...Everything has double standards... everything that you actual work on...the LGBT work, you have to hide.”²²⁴ Organizations have looked for other ways to operate and two leaders that OutRight interviewed have registered their organization with the Business Registration and Licensing Agency (BRELA). One explained their rationale, “When it comes to these situations of being de-registered then it is going to be very difficult... because it’s not

²¹⁸ “Tanzania: Stop Threatening Rights Groups,” Human Rights Watch, 6 July 2017, <https://www.hrw.org/news/2017/07/06/tanzania-stop-threatening-rights-groups>.

²¹⁹ OutRight interview with anonymous [name confidential], 31 October 2017.

²²⁰ OutRight interview with anonymous [name confidential], 1 November 2017.

²²¹ OutRight interview with anonymous [name confidential], 31 October 2017.

²²² OutRight interview with anonymous [name confidential], 30 October 2017.

²²³ Ibid.

²²⁴ Ibid.

under their agency. If it's a company, but not-for-profit, then it cannot be deregistered.”²²⁵

The civil society actor from an LGBT youth organization felt that surviving in an increasingly hostile environment and surviving in order to provide vital services to LGBT people would mean learning, “How to work with a lower profile so that we can give our community the services they need...if we get closed they get annihilated from these programs. They don't get these services, they don't get this awareness.”²²⁶ They indicated that they would like to advise organizations working for key populations and LGBT issues that they should try to, “Work the way the government wants us to work, let's show them that we are working with them and also work in our own way, giving awareness to the general community...we can get very far and it can lead to annihilating the criminal offence that is making us not register these organizations and getting to the population that we aim to target.”²²⁷

Meanwhile, the climate becomes increasingly constricting, and few LGBT activists are able to speak out. A civil society actor who was detained in October noted, “This is the beginning of a heavy battle...activists have been quiet. We have not been getting the space even in the press...whatever LGBT case that comes up in the newspaper, on the television...No one is there to stand and clarify the issue...That is why people keep facing problems.”²²⁸ The civil

society actor formerly working for a CSO providing health services thought that one of the reasons some of the organizations providing services to key populations including MSM haven't been deregistered is, “Because of the choice to stay mute or to stay quiet where it was supposed to speak out as an LGBT organization.”²²⁹ OutRight's findings suggest that LGBT civil society leaders in Tanzania are unable to exercise freedom of association or expression when they are forced to: hide the actual work of their CSO, masquerade as a company, or censor their speech about human rights abuses against LGBT Tanzanians.

Tunisia

REGISTRATION PERMISSIBLE

“I would not say we are safe 100%...the Ministry of Interior... will be in a way intimidating us. They are all the time after us: what we think, what we are saying, what kind of people we are receiving in our office and even in our places or houses. There's a range of arrests and it's really serious.”

LGBT organizations in Tunisia operate in an uncertain environment wherein they face restrictions affecting all civil society organizations and have additional scrutiny applied to their work even when they have achieved registration. In June 2017, the Tunisian government proposed

31 October 2017.

²²⁹ OutRight interview with anonymous [name confidential]. 30 October 2017.

²²⁵ Ibid.

²²⁶ OutRight interview with anonymous [name confidential]. 1 November 2017.

²²⁷ OutRight interview with anonymous [name confidential]. 1 November 2017.

²²⁸ OutRight interview with anonymous [name confidential].

amending the existing Law on Associations and issued a statement requiring CSOs to publish their sources of foreign funding or face dissolution for non-compliance.²³⁰ Many civil society and human rights organizations in Tunisia are concerned that if these changes go into effect, they will lead to restrictions on the freedom of association. LGBT organizations work in a context where men's and women's consensual same-sex sexual relations are illegal and transgender people also face arrest and prosecution under laws that criminalize *indecenty*.²³¹ In 2015, an LGBT organization which had registered as an organization working to *support sexual and gender minorities* was ordered to suspend its activities temporarily and cease alleged violations of the association law as the Government perceived the organisation had changed its aims, without approval, and was focusing on *defending homosexuals*.²³² Additional restrictions may be applied by a new government institution mandated to review laws and is widely expected to reduce individual rights and may chance the law on associations.²³³ It is a difficult context even for high-profile allies. A Minister who called for the law criminalizing homosexuality to be changed was removed from office.²³⁴

²³⁰ "Civic Freedom Monitor: Tunisia," International Center for Not-for-Profit Law, <http://www.icnl.org/research/monitor/Tunisia.html>.

²³¹ "Trans woman jailed in Tunisia after indecency arrest," MambaOnline, 26 January 2017, <http://www.mambaonline.com/2017/01/26/two-lgbt-individuals-jailed-tunisia/>.

²³² "Tunisia: LGBT Group Suspended," Human Rights Watch, 16 January 2016, <https://www.hrw.org/news/2016/01/16/tunisia-lgbt-group-suspended>.

²³³ OutRight interview with anonymous [name confidential], 18 August 2017.

²³⁴ Ibid.

Initially following the Tunisian Revolution in 2010–11, there was a more permissive environment, and CSOs that were explicit in their aim to focus on LGBT people were granted registration. A leader of an LGBT organization registered in 2014 said that being explicit about an organization's mission was risky but in their application, they stated their mission is to, "Realize gender and sexual equality in society...to protect sexual and gender rights, to have a sexual culture, to be protected against HIV and to fight all forms of discrimination and sexual violence."²³⁵ They felt that the post-Revolutionary context was crucial to their registration being granted because the 2011 Law on Associations is considered by this leader to be, "Very progressive...It's an easy law to follow...and that gives a lot of freedom to register. It was simply...the revolutionary spirit in Tunisia...Back then, it was possible to have such a law."²³⁶ Based on the announcement of proposed amendments to the Law on Associations they are concerned, "Now...(the) government wants to change it to (a) worse law."²³⁷

Another LGBT civil society leader received the registration for their organization in 2011 with the stated mission, "To integrate and defend the rights of minorities and marginalized populations of Tunisian society."²³⁸ They added that these terms were chosen to echo language used in the HIV/AIDS National Strategic Plan. Using the language of marginalized populations, "Was a strategic choice...we wanted to...have...the argument to get registered and to protect

²³⁵ Ibid.

²³⁶ Ibid.

²³⁷ Ibid.

²³⁸ OutRight interview with anonymous [name confidential], 14 September 2017.

not only ourselves but also our beneficiaries.”²³⁹ They found that registration has helped with, “Planning and making the work more professional...it helps when we are trying to connect to other people...networking...when you present yourself as an individual it doesn’t really count.”²⁴⁰ They also found that registration increased their ability to provide services to LGBT Tunisians because people, “Trust our organization...it gives us...more visibility...also really protects (us) because this organization was given the right to work by the authorities themselves.”²⁴¹ They shared that now they are interested in changing their mission to make it explicit that they are “an LGBTIQ-focused organization...I think now it’s time I to really talk openly about who really we are...everyone, even in the Ministry of Interior...know everything about us. So, we don’t want to carry on this kind of hypocrisy.”²⁴² However, they remain unsure if it is worth the risk and feel the success of this depends on the outcome of upcoming elections.

Threats to LGBT civil society seem to be ever-present, and fear of repercussions by the state is prevalent among civil society leaders. The leader of a CSO registered as serving LGBT people revealed, “I must admit that we are always scared, we can’t really relax.”²⁴³ The leader of the CSO registered for HIV services shared, “I would not say we are safe one hundred percent...the Ministry of Interior...are all the time after us: what we think, what we are saying, what kind of people we are

receiving in our office and even in our places or houses.”²⁴⁴ They added that they were aware of other threats that could result in suspension, as had happened with another LGBT CSO, or de-registration, “They can... attack the organization by asking them from where you get your funding...Sometimes the authorities use these kind of measures...to block the money you are receiving.”²⁴⁵

Reporting requirements put LGBT CSOs in an extremely difficult position in Tunisia because part of their annual financial report has to be published in a newspaper. The leader of the registered LGBT CSO shared that this poses a challenge, “Because we do all the service...which is anonymous. But then when we need to get our accounting audited, we need to show the names...of any individual that you’ve served...we try to get the auditor that is friendly...wouldn’t out these persons... But it’s a challenge because of the character of the work we are doing.”²⁴⁶ They revealed that they are aware of CSOs that have been de-registered because they have been accused of a lack of financial transparency. Thus, they endeavor to be vigilant in their reporting so that, “We don’t get any attention...if we will attract the attention to ourselves then somebody will say ‘this is not okay...let’s go to their folder again’... (it) will be some politician who would be having the influence to attract the eyes on this.”²⁴⁷ However, this leader shared that they were optimistic that they will eventually see the decriminalization of homosexuality

²³⁹ Ibid.

²⁴⁰ Ibid.

²⁴¹ Ibid.

²⁴² Ibid.

²⁴³ OutRight interview with anonymous [name confidential]. 18 August 2017.

²⁴⁴ OutRight interview with anonymous [name confidential]. 14 September 2017.

²⁴⁵ Ibid.

²⁴⁶ OutRight interview with anonymous [name confidential]. 18 August 2017.

²⁴⁷ Ibid.



Photo courtesy of Mawjoudin We Exist

in Tunisia. Nonetheless, because of these restrictions, LGBT CSOs campaigning for a change to the Penal Code are constrained: they are not able to be critical of the government; the physical spaces of LGBT CSOs are increasingly monitored; and their activities and service provision to LGBT Tunisians are also scrutinized in ways that can leave both CSOs and their beneficiaries vulnerable.



Participants at Bogota Pride. Photo courtesy OutRight

Conclusion

This study establishes that in 55 countries, civil society organizations are unable to register if they cite that their aim is to serve LGBTIQ people and that a further 30 countries have no identifiable LGBTIQ CSO. Thus, CSOs that work on issues facing LGBTIQ people often operate without official status or find other ways to register and maintain that status by concealing their real purpose. These findings suggest widespread violations of LGBTIQ peoples' right to freedom of assembly, association, expression, and equality before the law in up to these combined 85 countries. Thus, the reform of not-for-profit law in countries around the world is necessary in order for LGBTIQ CSOs to claim these rights.

Where legal registration of LGBTIQ CSOs has been normalized, the findings confirm that registration facilitates operations and allows organizations to sustain their programs and increase their scope. In several settings, registered LGBTIQ CSOs have contributed to national policy processes and supported organizing and the establishment of other groups, including those focusing on underserved LGBTIQ populations.

The findings show that LGBTIQ CSOs which exist without legal registration are vulnerable because the sustainability and strategic approach of their work is undermined. Their vulnerability is due to funding limitations and also because they are often unable to be selective about collaboration with

other, registered CSOs. Sometimes working on objectives set by other CSOs may shift the focus of their work. In many cases, there are few partners that are willing to work with them and the public has less confidence in them. CSOs in hostile states are often targets for harassment including state surveillance and indiscriminate arrests. Where there is a backlash against LGBTIQ organizations, where suspension or de-registration of previously registered CSOs has occurred, vital services for LGBTIQ people have become scarce. The findings also suggest that in several contexts, LGBTIQ civil society actors manage

can have long-term adverse effects on the transparency and efficacy of their operations.

The findings confirm evidence that suggests that the barriers that CSOs face in registration are dependent on country context and are, in part, a feature of states' efforts to shrink civil society space in order to undermine advocacy to promote and protect human rights. This study provides new perspectives about how the registration process poses different challenges for LGBTIQ CSOs. In countries where freedom of assembly, association, expression have not been normalized, all people struggle to claim

these basic human rights. This study demonstrates that LGBTIQ civil society leaders challenge the denial of these rights for all LGBTIQ people. The findings allude to a double burden that many LGBTIQ civil society leaders face when they are marginalized due to their sexual orientation, gender identity or expression or sex characteristics and are striving to create,



OutRight helped activists in the Caribbean register. Photo courtesy of OutRight

to operate in a grey area. While this might be preferable for some that are unable to register, this study reveals that it forces individuals to conceal or obscure the work of their organizations. Thus, they go to great lengths to maintain their status with authorities while providing more accurate reporting to those that support them. It could be argued that this normalizes operational incentives that

maintain and sustain organizations that countless LGBTIQ people can benefit from.

Legal analysis reveals that in many jurisdictions that are economically developed, registration of LGBT NGOs is possible with minimal impediments to their operation. This would appear to correlate to findings which indicate that advanced economies have been conducive to the

human rights of LGBTI people. In several cases, notably Singapore and Russia, the findings of the legal analysis compared with the qualitative research undertaken for the study suggest that in practice LGBT NGOs face barriers in utilizing the *letter of the law*. In these cases, it has been intimated that the law is written in an opaque manner which allows regulatory authorities to discriminate against LGBTI NGOs in their decision making.

Furthermore, the findings suggest that there are significant intersections between not-for-profit law and penal codes. Of the 54 countries where OutRight found that LGBTIQ CSOs cannot legally register, 38 are countries where the law criminalises same-sex sexual activity between consenting adults in private. Of the 30 countries where OutRight could not identify any LGBTIQ CSOs, 15 are countries where the law criminalises same-sex sexual activity between consenting adults in private. This raises questions about whether challenges to law and policy which discriminate against LGBTIQ people can be successfully mounted without the capacity for advocates to build sustainable organizations that they can utilize to pursue reform.

Notably, in several countries, LGBTIQ CSOs have achieved legal registration before decriminalization has been achieved or anti-discrimination legislation has been introduced. This has been the case in countries including, Bangladesh, Barbados, Botswana, Guyana, Kenya, St. Lucia, Sri Lanka, Trinidad and Tobago and Zimbabwe. This suggests that LGBTIQ CSOs securing registration and claiming their right to freedom of association could be a 'wedge issue' that allows for public campaigning for reforms that prohibit discrimination on the

basis of sexual orientation, gender identity or expression and sex characteristics.

OutRight hopes that this report will be a resource for LGBTIQ organizations and may be particularly useful to CSOs that continue to confront regulatory barriers to registration. As we have for the past several years, OutRight will continue to provide technical assistance to support the registration of CSOs that aim to openly serve LGBTIQ people. OutRight does not recommend that all LGBTIQ groups pursue registration as a civil society organization. The findings provide insight into the survival strategies of organizations that remain without 'legal' status, including those that exist in a legal 'grey area.' It shows that there are a variety of reasons LGBTIQ groups choose to remain informal or seek other ways to register e.g. as a company. These alternatives are utilized so that organizations can carry on providing services to LGBTIQ people in restrictive environments, at least temporarily. The findings demonstrate that alternatives to registration are not always sustainable and that non-registered LGBTIQ CSOs are less safe and struggle to finance the services they provide.

OutRight is committed to challenging discrimination against LGBTIQ organizations in the application of not-for-profit law. OutRight supports reform of regulations at the national level so that the sexual orientation, gender identity or expression and sex characteristics of an organization's target population is not a barrier to registration. It is essential that civil society is able to create, maintain, sustain and legally operate organizations that provide programs that enhance the well-being of LGBTIQ people and serve as platforms for advocacy that protects the human rights of LGBTIQ people.

Appendix

This map demonstrates where there are legally registered CSOs which serve LGBTIQ people. The map shows the data OutRight has collected and analyzed from 194 countries, including all 193 United Nations Member States and Taiwan finding that:

- LGBTIQ CSOs can legally register in 109 countries.
- LGBTIQ CSOs cannot legally register in 55 countries.
- LGBTIQ organizations could not be identified in 30 countries.









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