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Measuring Discrimination Against LGBTQ People: A Cross-National Analysis

Chelsea Lee & Robert L. Ostergard, Jr.**

ABSTRACT

Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) people have achieved victories in obtaining equal rights in some countries, but most states deny these rights and actively discriminate against LGBTQ people.

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This research presents one of the first attempts to assess cross-nationally discrimination against LGBTQ people through a discrimination index comprised of three components: criminalization and punishment of homosexuality, rights denied to LGBTQ people, and the level of intolerance that LGBTQ people face. Spanning 175 countries, the index shows that most states have high levels of discrimination, which not only prevent LGBTQ people from attaining equal rights, but also threatens their well-being.

Homosexuality will never be tolerated and in fact will attract the ultimate penalty since it is intended to bring humanity to an inglorious extinction. We will fight these vermins called Homosexuals or gays the same way we are fighting malaria-causing mosquitoes; if not more aggressively. We will therefore not accept any friendship, aid or any other gesture that is conditional on accepting Homosexuals or L.G.B.T. as they are now baptised by the powers that promote them. As far as I am concerned, L.G.B.T can only stand for Leprosy, Gonorrhoea, Bacteria and Tuberculosis; all of which are detrimental to human existence.

President Yahya Jammeh, The Republic of the Gambia¹

I. INTRODUCTION

Issues regarding homosexuality and gay rights and discrimination are some of the most contested and controversial around the world. In the past five years, activists and politicians have brought Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) rights to prominence in an ongoing struggle to achieve equality within their own countries. In particular Western countries, that attention has reflected attempts to advance and promote the rights of LGBTQ people, with one of the greatest achievements coming when the United States Supreme Court extended marriage rights to LGBTQ people of all US states.² However, LGBTQ people around the world have not shared the achievements that Western countries have made in advancing LGBTQ rights. In fact, in many countries, LGBTQ people are facing more violence and repression than they have ever confronted. From Uganda's "Kill the Gays" law to Russia's anti-homosexual propaganda laws, states are subjecting LGBTQ people to significant dangers, not just to their rights, but also to their very existence.³ Beyond the criminalization of homosexuality, LGBTQ

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1. Josh Scheinert, *This Is How America Should Respond When the President of Gambia Calls Gay People Ungodly Vermin*, SLATE, 24 Feb. 2014, available at http://www.slate.com/blogs/outward/2014/02/24/gambian_president_calls_gays_ungodly_vermin_how_america_should_respond.html.
 2. Obergefell v. Hodges, 135 S. Ct. 2584 (2015).
 3. Justin Ling, *Uganda's "Kill the Gays" Bill Could Be Back Soon*, VICE NEWS, 3 June 2016, available at <https://news.vice.com/article/ugandas-kill-the-gays-bill-could-be-back-soon>; Kevin Childs, *Propagating Hate: Russia's "Gay Propaganda" Laws Revisited*, HUFFINGTON POST, 23 Aug. 2013, available at http://www.huffingtonpost.com/kevin-childs/propagating-hate-russias_b_3804490.html.

individuals across the world face societal and physical violence that states often ignore. Families, communities, and authorities have subjected LGBTQ individuals to acts of humiliation, intimidation, and brutal attacks. In many states, they have been beaten, stabbed, raped, and illegally detained. Individuals often face discrimination and extortion, preventing them from reporting crimes and seeking retribution. In many cases, fear has effectively prevented individuals from revealing their sexual orientations publicly.⁴

Given the disparate treatment of LGBTQ people globally, an important question that arises is: how much and what kinds of discrimination do LGBTQ people face in achieving equal rights with the rest of their state's populations? Regrettably, cross-national research on homophobia and the discrimination toward LGBTQ people has been limited. We contribute to this research by creating an index of LGBTQ discrimination that measures the level of discrimination that LGBTQ people experience in 175 countries. We base this index on a content analysis of US State Department Human Rights reports and other sources that generated a dataset of twenty-six variables, measuring specific areas of state and societal laws and practices in which LGBTQ people experience discrimination. We subjected these data to Mokken scale analysis procedures that demonstrated LGBTQ discrimination was not a unidimensional concept. Instead, the index mirrors three latent continuums: the criminalization and punishment of LGBTQ people, the rights denied to LGBTQ people, and the level of intolerance that LGBTQ people face in their countries. The resulting discrimination index shows that LGBTQ people face the greatest levels of discrimination in Africa and Asia and the least amount of discrimination in Western states (Europe and North America regions).

This article proceeds as follows: after discussing prior research on homophobia and discrimination, we undertake a discussion of the content analysis and Mokken scale analysis procedures used to create the index. We then present the discrimination data and provide a summary overview of the entire sample and a regional breakdown of the index and its three continuums. We conclude with a discussion of the strengths and weaknesses of the index.

4. LUCAS PAOLI ITABORAHY & JINGSHU ZHU, *STATE-SPONSORED HOMOPHOBIA: A WORLD SURVEY OF LAWS: CRIMINALISATION, PROTECTION AND RECOGNITION OF SAME-SEX LOVE* (8th ed. 2013); U.S. STATE DEPARTMENT, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR: COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2012 (2012), available at <http://www.state.gov/j/drl/rls/hrrpt/2012humanrightsreport/index.htm#wrapper>.

II. HOMOPHOBIA AND DISCRIMINATION: STATE POLICY AND SOCIETAL PRACTICE

While recent news regarding LGBTQ rights may promote the view that LGBTQ discrimination is on the decline, the picture is less clear globally; LGBTQ people have faced and continue to face discrimination rooted in homophobia across multiple areas of political, economic, and social contexts. Research over the past twenty-five years provides insight and informs our understanding of why LGBTQ people face homophobia and discrimination that manifests through formal institutional arrangements and informal, social institutional arrangements. Researchers generally define homophobia⁵ as the fear or hatred of homosexuality and homosexuals.⁶ This definition may be too broad because it does not address specifically the implications and consequences of such fears; in many cases, those consequences often include actions of brutality toward, and oppression of, LGBTQ individuals. Of course, individuals may express disapproval toward homosexuality because of their cultural or religious beliefs, but they may not necessarily be homophobic. Thus, the term homophobia has specific meaning in the context of formally and informally institutionalized hatred that manifests in discriminatory policies at the national and societal levels.⁷

In this vein, Lucas Paoli Itaborahy and Jingshu Zhu employ the term “state-sponsored homophobia” to refer to the criminalization of homosexuality by states, in addition to the targeting of LGBTQ individuals through discriminatory practices and even acts of violence by individuals or by states.⁸ This definition extends beyond just the fear of LGBTQ individuals, incorporating the too often brutal consequences of hatred and fear for the LGBTQ community. Moreover, this definition examines the power of states in permeating personal convictions through public policy and represents the larger, negative implications of such actions for the LGBTQ community.

In the greater human rights context, the Universal Declaration of Human Rights (UDHR) does not specifically address LGBTQ individuals; international and nongovernmental human rights organizations such as Amnesty International, Human Rights Watch, and even the United Nations have included

5. For the purposes of this study, transphobia (fear of transgendered individuals) is also included in the broader definition of homophobia.

6. *Homophobia*, ENCYCL. HOMOSEX. 552 (Wayne R. Dynes ed. v. 1, 1990); Katrina Warriner, Craig T. Nagoshi & Julie L. Nagoshi, *Correlates of Homophobia, Transphobia, and Internalized Homophobia in Gay or Lesbian and Heterosexual Samples*, 60 J. HOMOSEXUALITY 1297, 1298 (2013).

7. *Homophobia*, ENCYCL. HOMOSEX., *supra* note 6.

8. ITABORAHY & ZHU, *supra* note 4.

LGBTQ people under the auspices of Article 3⁹ of the UDHR.¹⁰ Organizations including the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) and the United Nations have deemed institutionalized or state-sponsored homophobia as acts that have allowed the humiliation, intimidation, and violence toward such individuals to occur.¹¹ Beyond the violence against LGBTQ populations worldwide, the extent of the discrimination is also wide-ranging: states have criminalized homosexuality and punished consensual homosexual activity, denied individuals the right to marry, blocked access to the benefits and privileges associated with such unions, disrupted LGBTQ activities related to freedom of association and expression, and discriminated against individuals with regard to access of governmental services, including in the areas of education, employment, health care, and housing.¹²

Social identity theorists have focused on the nature of discrimination over a large body of work that focuses on an integrated threat theory of prejudice. They have argued that individuals within a society form groups defined by various social categories as a means of establishing individual identity and purpose.¹³ In the integrated threat theory of prejudice, individuals also form networks between and within groups to order the differences and similarities they observe in one another and to gauge acceptable and nonacceptable norms of behavior.¹⁴ However, individuals' tendencies to associate by social labels often create friction by way of comparison and competition when groups are exposed to one another. The comparison and competition manifests into preconceived stereotypes and distinctions between the in-group and out-group, a war of "us versus them."¹⁵ Consequently,

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9. Article 3 states, "Everyone has the right to life, liberty and security of person." Universal Declaration of Human Rights, *adopted* 10 Dec. 1948, G.A. Res. 217A (III), U.N. GAOR, 3d Sess., art. 3, U.N. Doc. A/RES/3/217A (1948).
 10. See AMNESTY INT'L, HUMAN RIGHTS DON'T DISCRIMINATE (2014), available at <http://www.amnestyusa.org/our-work/issues/lgbt-rights>; HUMAN RIGHTS WATCH, UN: LANDMARK RESOLUTION ON ANTI-GAY BIAS (2014), available at <http://www.hrw.org/news/2014/09/26/un-landmark-resolution-anti-gay-bias>.
 11. ITABORAHY & ZHU, *supra* note 4; UNITED NATIONS, DEMOCRACY AND HUMAN RIGHTS: THE HUMAN RIGHTS NORMATIVE FRAMEWORK (2014), available at https://www.un.org/en/globalissues/democracy/human_rights.shtml; U.S. STATE DEPARTMENT, BUREAU OF DEMOCRACY, *supra* note 4.
 12. ITABORAHY & ZHU, *supra* note 4; UNITED NATIONS, *supra* note 11; U.S. STATE DEPARTMENT, BUREAU OF DEMOCRACY, *supra* note 4.
 13. Christopher Hajek & Howard Giles, *The Old Man Out: An Intergroup Analysis of Intergenerational Communication Among Gay Men*, 52 J. COMM. 698, 700 (2002); Michael A. Hogg, Deborah J. Terry & Katherine M. White, *A Tale of Two Theories: A Critical Comparison of Identity Theory with Social Identity Theory*, 58 SOC. PSYCHOL. Q. 255, 258 (1995); Stephen Reicher, *The Determination of Collective Behaviour*, in SOCIAL IDENTITY AND INTERGROUP RELATIONS 41 (Henri Tajfel ed., 1982).
 14. Hogg, Terry, & White, *supra* note 13; John C. Turner, *Towards a Cognitive Redefinition of the Social Group*, in SOCIAL IDENTITY AND INTERGROUP RELATIONS, *supra* note 13, at 15.
 15. Sik Hung Ng, *Power and Intergroup Discrimination*, in SOCIAL IDENTITY AND INTERGROUP RELATIONS, *supra* note 13, at 179; Henri Tajfel & John Turner, *The Social Identity Theory of Intergroup Behaviour*, in PSYCHOLOGY OF INTERGROUP RELATIONS 7 (Stephen Worchel & William G. Austin eds., 1986); Stephen Worchel et al., *A Multidimensional Model of Identity: Relating Individual and Group Identities to Intergroup Behaviour*, in SOCIAL IDENTITY PROCESSES: TRENDS IN THEORY AND RESEARCH 15-32 (Dora Capozza & Rupert Brown eds., 2000).

discrimination occurs when individuals within the in-group are motivated into elevating their own self-esteem; to do so requires proving one's group as superior over another group.¹⁶

Accordingly, the integrated threat theory of prejudice suggests that discriminatory attitudes develop toward the out-group because the in-group believes that their livelihood is threatened by "abnormal" attitudes and actions.¹⁷ Heterosexuals have historically perceived homosexuals as inferior, primarily by way of the "symbolic threats" that homosexuals pose to the in-group. Symbolic threats refer to the in-group's perception that the out-group contradicts their own cultural, moral, and traditional belief systems.¹⁸ For instance, individuals in homosexual relationships not only lack the ability of procreation, but also challenge the norms of morality relating to traditionally defined gender and marriage roles.¹⁹ Such individuals believe that these relationships invite polygamy and ill behaviors, negate the importance of mother or father figures in a family, and redefine the institution of marriage to include a "gay agenda."²⁰ In an age still dominated by hyper masculinity, gender and marriage roles matter particularly to men, with some studies finding that, compared to women, heterosexual males are more prone to developing prejudicial attitudes toward homosexuality.²¹ Specifically, masculine men often treat other men with any sense of femininity with particular disdain; such males perceive feminine men as a threat to the collective power and dominance of the male cultural and societal role.²² Similarly, lesbians, bisexuals, and transgender individuals face discrimination for defying traditional gender roles; "butch" lesbians are exemplary of female masculinity and drag or cross-dressing activities are still controversial activities in many parts of the world.²³ Additional studies have pinpointed a number of social and political dynamics that may also contribute to levels of discrimination

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16. Hajek & Giles, *supra* note 13; Hogg, Terry, & White, *supra* note 13; Turner, *supra* note 14; Worchel et al., *supra* note 15.
 17. Walter G. Stephan & Cookie White Stephan, *Predicting Prejudice*, 20 INT'L J. INTERCULTURAL REL. 409 (1996); Warriner, Nagoshi, & Nagoshi, *supra* note 6.
 18. Stephan & Stephan, *supra* note 17, at 418; Warriner, Nagoshi, & Nagoshi, *supra* note 6, at 1300.
 19. MARTIN DUPUIS, SAME-SEX MARRIAGE, LEGAL MOBILIZATION & THE POLITICS OF RIGHTS (David A. Schultz ed., 2002); MARK STRASSER, THE CHALLENGE OF SAME-SEX MARRIAGE: FEDERALIST PRINCIPLES AND CONSTITUTIONAL PROTECTIONS 167 (1999).
 20. HERITAGE FOUND. ET AL., WHAT YOU NEED TO KNOW ABOUT MARRIAGE: QUESTIONS & ANSWERS DRIVING THE DEBATE, available at http://thf_media.s3.amazonaws.com/2013/pdf/Marriage_E-Book_Download1.pdf; NAT'L ORG. FOR MARRIAGE, SAME-SEX MARRIAGE?: ANSWERING THE TOUGHEST QUESTIONS (2014), available at https://www.nationformarriage.org/uploads/resources/667_Talking_Points_%255BJLG_FINAL%255D.pdf.
 21. Julie L. Nagoshi et al., *Gender Differences in Correlates of Homophobia and Transphobia*, 59 SEX ROLES 521, 529 (2008); Warriner, Nagoshi, & Nagoshi, *supra* note 6, at 1299.
 22. Dominic J. Parrott, Henry E. Adams & Amos Zeichner, *Homophobia: Personality and Attitudinal Correlates*, 32 PERSONALITY & INDIVIDUAL DIFFERENCES 1269, 1270 (2002); Warriner, Nagoshi, & Nagoshi, *supra* note 6, at 1299.
 23. Warriner, Nagoshi & Nagoshi, *supra* note 6.

within states; this includes the strength of religious identification (religiosity), age, education, and political ideology.

Religiosity plays a major role in predicting attitudes toward homosexuality. This concept is separate from religious identification as religiosity measures the level of importance one attributes to religion through participation in religious activities, such as prayer and church attendance, while religious identification taps into how people identify by religion. Numerous studies have found a negative association between religiosity and homosexuality.²⁴ An individual's level of religiosity signals devoutness and commitment to their religion; religious activities are opportunities for the religious people to form relationships and networks with like-minded individuals within their congregation (an in-group). Because official church doctrines generally condemn homosexuality, those who actively participate in church activities become more exposed to such teachings.²⁵ Continued participation breeds attachment, cohesiveness, and solidarity within the congregational group. Thus, individuals may be more inclined to developing prejudicial attitudes toward homosexuals and consequently, encouraged to deny equal treatment for LGBTQ individuals.²⁶ Further, religiosity is also linked to authoritarianism. In many cases, authoritarian characteristics shape the frameworks of many religions and religious organizations—rigidity, obedience, and a willing submission to a defined hierarchy are central features of such institutions.²⁷ Because authoritarian structures tend to be highly conventional and attribute great importance to traditional moral norms, they are likely to be hostile and suspicious of out-groups.²⁸

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24. Marc Hooghe & Cecil Meeusen, *Is Same-Sex Marriage Legislation Related to Attitudes Toward Homosexuality?*, 10 *SEX. RES. SOC. POL'Y* 258, 259 (2013); Laura R. Olson, Wendy Cadge & James T. Harrison, *Religion and Public Opinion about Same-Sex Marriage*, 87 *SOC. SCI. Q.* 340, 355-56 (2006); Peer Scheepers, Manfred Te Grotenhuis & Frans Van Der Slik, *Education, Religiosity and Moral Attitudes: Explaining Cross-National Effect Differences*, 63 *SOC. RELIGION* 157, 171-72 (2002); Bas Van de Meerendonk & Peer Scheepers, *Denial of Equal Civil Rights for Lesbians and Gay Men in the Netherlands, 1980-1993*, 47 *J. HOMOSEX.* 63, 72 (2004).
 25. Hanneke van den Akker, Rozemarijn van der Ploeg & Peer Scheepers, *Disapproval of Homosexuality: Comparative Research on Individual and National Determinants of Disapproval of Homosexuality in 20 European Countries*, 25 *INT'L J. PUB. OPINION RES.* 64, 67, 75 (2013); Meerendonk & Scheepers, *supra* note 24, at 66-67.
 26. Randy D. Fisher et al., *Religiosity, Religious Orientation, and Attitudes Towards Gays and Lesbians*, 24 *J. APPL. SOC. PSYCHOL.* 614 (1994); Gregory M. Herek & Eric K. Glunt, *Interpersonal Contact and Heterosexuals' Attitudes Toward Gay Men: Results from a National Survey*, 30 *J. SEX RES.* 239, 241 (1993); Gregory B. Lewis, *Black-White Differences in Attitudes Toward Homosexuality and Gay Rights*, 67 *PUB. OPIN. Q.* 59, 75-76 (2003); Larry R. Petersen & Gregory V. Donnerwerth, *Religion and Declining Support for Traditional Beliefs About Gender Roles and Homosexual Rights*, 59 *SOC. RELIGION* 353, 360-61 (1998).
 27. Bob Altemeyer & Bruce Hunsberger, *Authoritarianism, Religious Fundamentalism, Quest, and Prejudice*, 2 *INT'L J. PSYCHOL. RELIGION* 113, 114-16 (1992); Akker, Ploeg, & Scheepers, *supra* note 25, at 68-69.
 28. Altemeyer & Hunsberger, *supra* note 27, at 115; Akker, Ploeg, and Scheepers, *supra* note 25, at 68-69, 75.

In comparison to their younger cohorts, the elderly are less likely to be accepting of homosexuality.²⁹ Age is an indicator of generational progress over periods of time; it is often a measure of the transitions that occur between more liberal or conservative attitudes through the course of an individual's life. Further, it is indicative of how individuals, within the context of their generation, have had their beliefs shaped in regard to many issues, including homosexuality. Prior studies have highlighted the aging-stability and impressionable-years hypothesis, which suggest that individuals are more inclined toward and susceptible to shifts in attitudes regarding social or political issues when they are young. As individuals mature, attitudes tend to stabilize.³⁰ On issues pertaining to homosexuality, older generations have often been characterized as relatively conservative in comparison to younger generations, given that the elderly have grown up during more conservative periods in history. Consequently, they have developed more orthodox attitudes towards LGBTQ issues and homosexuality in general.³¹ In comparison, younger generations have benefited from the increasing exposure to LGBTQ issues in society, which have included activist movements, greater LGBTQ media exposure, and knowledge of the AIDS pandemic.³² Thus, younger individuals' attitudes toward homosexuality have generally been more positive and approving on such issues.

Education also plays an important role in how people view LGBTQ issues. Individuals are more likely to be supportive of homosexuality and condemn discrimination of LGBTQ individuals as their level of educational attainment increases.³³ Educational settings foster diversity and sensitivity;

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29. Brittany H. Bramlett, *The Cross-Pressures of Religion and Contact with Gays and Lesbians, and Their Impact on Same-Sex Marriage Opinion*, 40 *POL. & POL'Y* 13, 21-23 (2012); Bernadette C. Hayes, *Religious Identification and Moral Attitudes: The British Case*, 46 *BRIT. J. SOC.* 457, 469-71 (1995); Herek & Glunt, *supra* note 26; Larry Jensen, David Gambles & Joe Olsen, *Attitudes Toward Homosexuality: A Cross Cultural Analysis of Predictors*, 34 *INT'L J. SOC. PSYCHIATRY* 47-48 (1988); Melanie C. Steffens & Christof Wagner, *Attitudes Toward Lesbians, Gay Men, Bisexual Women, and Bisexual Men in Germany*, 41 *J. SEX RES.* 137, 141 (2004).
 30. Duane F. Alwin & Jon A. Krosnick, *Aging, Cohorts, and the Stability of Sociopolitical Orientations Over the Life Span*, 97 *AM. J. SOC.* 169, 173 (1991); Robert Andersen & Tina Fetner, *Economic Inequality and Intolerance: Attitudes Toward Homosexuality in 35 Democracies*, 52 *AM. J. POL. SCI.* 942, 945 (2008); Lincoln Quillian, *Group Threat and Regional Change in Attitudes toward African-Americans*, 102 *AM. J. SOC.* 816, 824 (1996); Liz Wilson, *Buddhist Views on Gender and Desire*, in *SEXUALITY AND THE WORLD'S RELIGIONS* 133, 165 (David W. Machacek & Melissa M. Wilcox eds., 2003).
 31. In fact, prior to 1973, the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* (DSM) classified homosexuality as a mental disorder. See RONALD BAYER, *HOMOSEXUALITY AND AMERICAN PSYCHIATRY: THE POLITICS OF DIAGNOSIS* (1981).
 32. Edwin Amenta, Neal Caren & Sheera Joy Olasky, *Age for Leisure? Political Mediation and the Impact of the Pension Movement on U.S. Old-Age Policy*, 70 *AM. SOC. REV.* 516 (2005); Andersen & Fetner, *supra* note 30, at 944-945; CINDY PATTON, *INVENTING AIDS* (1990); SUZANNA DANUTA WALTERS, *ALL THE RAGE: THE STORY OF GAY VISIBILITY IN AMERICA* (2003).
 33. Andersen & Fetner, *supra* note 30, at 944; Jensen, Gambles, & Olsen, *supra* note 29; Ilsa L. Lottes & Peter J. Kuriloff, *The Impact of College Experience on Political and Social Attitudes*, 31 *SEX ROLES* 31, 35 (1994); Steffens & Wagner, *supra* note 29, at 141, 144; Akker, Ploeg, & Scheepers, *supra* note 25, at 75.

individuals learn to be accepting or at the least, to be tolerant of those with different backgrounds and ideologies.³⁴ In addition, educational systems tend to foster ideals that promote equality for all individuals, including the LGBTQ community.³⁵ Such settings also allow individuals to engage in a critical-thinking process of evaluating and challenging traditional norms with forms of acquired knowledge.³⁶

On an individual level, social class also has an indirect relationship to attitudes toward homosexuality and LGBTQ individuals.³⁷ This indirect relationship manifests through the positive relationship between income and education; less educated individuals encounter greater challenges in achieving higher, professional positions, and are more likely to take on labor-intensive jobs for lower wages. Thus, individuals with higher generated incomes tend to express more favorable attitudes toward LGBTQ issues and people. Adapted cross-nationally, acceptance of homosexuality and LGBTQ individuals is positively attributed to a country's level of economic growth and stability.³⁸ Ronald Inglehart's research on post materialism further supports this idea. As states begin a process towards modernization and their economic prosperity increases, shifts in priorities occur within the state from more "traditional" or materialist aims, to those concerning self-expression and quality of life, resulting in an increase in tolerance.³⁹ Consequently, as states modernize, they become increasingly secular. Further, as economic inequality decreases, concerns of a monetary nature begin to have no influence on how attitudes develop toward social issues, including those on homosexuality.⁴⁰ Additionally, as states begin modernizing, they become increasingly secular. Thus, economically developed states are also more likely to have lower levels of religiosity and be more accepting of homosexuality and policy that benefits LGBTQ individuals.

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34. Andersen & Fetner, *supra* note 30, at 944; W. PAUL VOGT, *TOLERANCE & EDUCATION: LEARNING TO LIVE WITH DIVERSITY AND DIFFERENCE* (1997).
 35. Meerendonk & Scheepers, *supra* note 24, at 67; Akker, Ploeg, & Scheepers, *supra* note 25, at 75; VOGT, *supra* note 34.
 36. Meerendonk & Scheepers, *supra* note 24, at 67; VOGT, *supra* note 34.
 37. Andersen & Fetner, *supra* note 30, at 944; STEFAN SVALLFORS, *THE MORAL ECONOMY OF CLASS: CLASS AND ATTITUDES IN COMPARATIVE PERSPECTIVE* 131-34 (2006).
 38. Andersen & Fetner, *supra* note 30, at 952, 954; Jürgen Gerhards, *Non-Discrimination Towards Homosexuality: The European Union's Policy and Citizens' Attitudes towards Homosexuality in 27 European Countries*, 25 INT'L SOC. 5, 13-14 (2010); Hooghe & Meeusen, *supra* note 24, at 260-63.
 39. Andersen & Fetner, *supra* note 30, at 942; RONALD INGLEHART, *CULTURE SHIFT IN ADVANCED INDUSTRIAL SOCIETY* (1990); RONALD INGLEHART, MIGUEL BASAÑEZ & ALEJANDRO MORENO, *HUMAN VALUES AND BELIEFS: A CROSS-CULTURAL SOURCEBOOK: POLITICAL, RELIGIOUS, SEXUAL, AND ECONOMIC NORMS IN 43 SOCIETIES: FINDINGS FROM THE 1990-1993 WORLD VALUES SURVEY* (1998).
 40. Andersen & Fetner, *supra* note 30; Ronald Inglehart & Scott C. Flanagan, *Value Change in Industrial Societies*, 81 AM. POL. SCI. REV. 1289 (1987).

Finally, studies focused on the United States have noted that when combined with religious conditions, political ideology serves as a strong indicator of attitudes toward homosexuality.⁴¹ Approval of LGBTQ people increases as an individual's political ideology gravitates toward the left on the political spectrum; those identifying as moderates and liberals tend to be the most favorable toward LGBTQ people and issues. Conversely, conservatives, found mostly on the right part of the political spectrum, are more likely to be unresponsive and, in some cases, hostile towards LGBTQ people and issues. Furthermore, political conservatives may have increased prejudicial attitudes toward homosexuality because like highly religious individuals, they display authoritarian characteristics. Conservatives' platforms have historically stressed conventionalism and a strict adherence to traditional moral norms.⁴² While the United States' party and ideological structure does not translate well cross-nationally, we can generalize about the impact of political ideology. More liberal political parties appear to be associated with being more supportive of LGBTQ people and issues while more conservative political parties will be less sympathetic to LGBTQ people and issues. These research findings will be particularly important in states holding more traditional social norms and political views as they develop politically and economically.

III. THE MEASUREMENT OF LGBTQ DISCRIMINATION

The scientific community has produced multiple studies detailing LGBTQ issues, many of which have analyzed public opinion and discrimination toward LGBTQ individuals. Yet, there remains a gap in the literature because much of the focus has been exclusively on the United States. Scant cross-national research on LGBTQ discrimination exists and the few peer-reviewed studies available center predominantly on cross-national attitudes toward LGBTQ individuals in democratic and European countries. Collectively the

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41. Bramlett, *supra* note 29, at 29-31; Stacey M. Brumbaugh et al., *Attitudes Toward Gay Marriage in States Undergoing Marriage Law Transformation*, 70 J. MARRIAGE & FAM. 345 (2008); N. Susan Gaines & James C. Garand, *Morality, Equality, or Locality: Analyzing the Determinants of Support for Same-Sex Marriage*, 63 POL. RES. Q. 553 (2010); Olson, Cadge, & Harrison, *supra* note 24, at 355-56; Darren E. Sherkat, Kylan Mattias de Vries & Stacia Creek, *Race, Religion, and Opposition to Same-Sex Marriage*, 91 SOC. SCI. Q. 80 (2010); Steffens & Wagner, *supra* note 29, at 144; Nathan R. Todd & Katherine S. Ong, *Political and Theological Orientation as Moderators for the Association Between Religious Attendance and Attitudes Toward Gay Marriage for White Christians*, 4 PSYCHOL. RELIGION & SPIRITUALITY 56 (2012).
 42. Altemeyer & Hunsberger, *supra* note 27, at 114-16; Knud S. Larsen, Michael Reed & Susan Hoffman, *Attitudes of Heterosexuals Toward Homosexuality: A Likert-Type Scale and Construct Validity*, 16 J. SEX RES. 245 (1980); Todd & Ong, *supra* note 41; Akker, Ploeg, & Scheepers, *supra* note 25, at 68-69.

body of work is logically consistent, meaning that the controversial nature of LGBTQ rights has made larger scale research, particularly in developing states, unfeasible do to the existing research climate on LGBTQ issues in many states.

Case in point, Robert Andersen and Tina Fetner's study detailed attitudes toward homosexuality in thirty-five democracies from 1990 to 2002 using a single-item survey question from the World Values Survey to measure public opinion.⁴³ Other studies have followed Andersen and Fetner, employing similar survey research approaches and data.⁴⁴ Andersen and Fetner, Jürgen Gerhards, and Marc Hooghe and Cecil Meeusen are correct in noting the limitations associated with using single-item survey questions in measuring public opinion toward homosexuality. For example, a question that asks respondents whether homosexuality is justified may not necessarily be an indicator of whether respondents approve or disapprove of discriminatory legislation targeting LGBTQ individuals. These studies are limited by presenting a unidimensional measure of discrimination toward LGBTQ people; moreover, respondents' attitudes and perceptions toward discrimination are examined through a particular perceptual lens and begs the question whether researchers can develop an objective measure that attends to the more formal institutional arrangements that can provide a base for understanding the environment that shapes people's perceptions about LGBTQ people.

Additionally, many international nongovernmental organizations including Amnesty International, Human Rights Watch, International Gay and Lesbian Human Rights Commission (IGLHRC), ILGA, US Department of State, and United Nations have moved toward assessing LGBTQ discrimination across states, providing detailed reports and cross-national indices assessing the level and types of discrimination directed at LGBTQ individuals. Notably, the ILGA's annual report titled "State-Sponsored Homophobia: A World Survey of Laws: Criminalisation, Protection and Recognition of Same-Sex Love" has been one of few detailed reports documenting cross-national legislation affecting the LGBTQ community.⁴⁵ Further, ILGA Europe's annual Rainbow Map is the only index to provide ranking comparisons of how states have fared in terms of LGBTQ equality.⁴⁶ Regrettably but understandably so, this index is limited to Europe. Beyond the region of Europe, the ILGA is limited in its ability to provide a more detailed overview of the current conditions the LGBTQ community faces in other regions of the world. Given its overall comprehensiveness however, ILGA's Rainbow Map and its annual reports have

43. Andersen & Fetner, *supra* note 30, at 945.

44. Gerhards, *supra* note 38, at 9-14; Hooghe & Meeusen, *supra* note 24; Akker, Ploeg, & Scheepers, *supra* note 25.

45. ITABORAHY & ZHU, *supra* note 4.

46. ILGA-Europe, Rainbow Europe Package: Annual Review and Rainbow Europe Map (2016), available at <http://www.ilga-europe.org/rainboweurope>.

consistently been cited and integrated in a number of other human rights organizations' reports. Given the same limitations that prior researchers have faced in assessing the status of LGBTQ people globally, this research has as its goal an index that assesses the cross-national status of LGBTQ people in terms of the level of discrimination they face in their states.

A. Content Analysis and Coding Procedures

Few sources provide an overview, scant or comprehensive, of LGBTQ rights or the status of LGBTQ people cross-nationally. Following in the footsteps of other human rights researchers, we have started our process with the US Department of State's Country Reports on Human Rights.⁴⁷ Beginning in 2009, the US Department of State included a section entitled "Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity" in its country reports.⁴⁸ Prior to 2009, the country reports made sporadic mention of LGBTQ rights in the context of the larger group of rights in the human rights agenda; so some reports would mention the inability of LGBTQ people to express their opinions (freedom of speech) or to gather (freedom of assembly). Starting in 2009, the section on sexual orientation and gender identity became routine, but not comprehensive, with the section being included in some country reports but not in others. When research on this project commenced, the 2012 report was the latest release of the human rights reports and it included the sexual orientation and gender identity section for states in the report. After an analysis of the 2012 country reports, we developed an initial code sheet to be used in the coding of the document. The code sheet provided questions on issues covered across all countries in the report. The code sheet contained 52 content issues that were covered in varying degrees for each of the 195 countries in the report. The basic unit in the coding thus is the country year—each country coded for the year 2012 (i.e. Ghana-2012). The difficulty in coding the reports emerged from the inconsistent coverage of these fifty-two issues.

The initial coding of the reports produced many missing and inconsistent data. This result makes sense for two reasons. First, LGBTQ rights and issues of discrimination within states have a wide range of practices attached to them. In some states, few if any problems are present or the problems that do exist are toward refining a highly defined set of rights LGBTQ people possess within the state (i.e. Denmark, Iceland, etc.). In other states, LGBTQ

47. For the most prominent and used of the data sets that draw upon the U.S. Department of State's Country Reports on Human Rights, see DAVID CINGRANELLI, DAVID L. RICHARDS & K. CHAD CLAY, CIRI HUMAN RIGHTS DATA PROJECT: DATA & DOCUMENTATION (2014), available at <http://www.humanrightsdata.com/p/data-documentation.html>.

48. See *id.*

people are struggling simply to be able to voice an opinion or to assemble peacefully (i.e. Russia, Uganda, etc.). Therefore, the base for understanding LGBTQ rights and discrimination varies considerably across states. Second, while rights and discrimination vary across states, so too does the amount of information about those rights and discrimination. In many country reports (and in many other sources consulted in this research), fear of violence toward and retribution and discrimination against LGBTQ people seeking equal rights or those combating discrimination is widespread. Thus, it is highly probable that the discriminatory conditions that LGBTQ people face in states is understated or underreported.

To contend with the uneven data and likely underreporting of discriminatory practices, the coding process expanded to include other sources. To gather more information, we conducted second and third rounds of coding utilizing the ILGA's 2013 "State-Sponsored Homophobia" report (2012 conditions reported) and various issue and country reports from Amnesty International, Human Rights Watch, International Gay and Lesbian Human Rights Commission, The Trans Murder Monitoring Project, The Hague Center for Strategic and International Studies, and San Francisco State University's Palm Center. Finally, we completed a fourth round of coding that utilized newspaper articles from 2012 that covered LGBTQ issues and LGBTQ practices within states (*The New York Times* and *Agence France-Presse* were the primary newspapers utilized). Despite the multiple rounds of coding to gain more information, sufficient information could not be found for twenty-six of the initial fifty-two variables to maintain them in the cross-national analysis. Most of the states that did have information for these variables were predominantly developed Western states that tended to skew the data. The twenty-six areas that remained are included in Appendix I (the original fifty-two coding areas can be obtained from the authors upon request).

Three coders independently coded information for each of the initial 195 countries. Coders reconciled coding differences after this process. Given that content analysis involves the subjective interpretation of textual, visual, or audible matter, (i.e. newspaper editorials, television news advertisements, public speeches, and other types of documents) variation in decision-making approaches raises questions of reliability.⁴⁹ To address coding reliability, we employed inter-coder reliability scores to gauge the coding completed for the twenty-six variables identified on the coding sheet. Among a number of existing coefficients for calculating reliability (Cronbach's Alpha, Fleiss's K, and Scott's Pi), we selected Klaus Krippendorff's Alpha because of its general applicability in content analyses. Krippendorff's Alpha can accommodate calculations for multiple coders and also is able to generalize across differing

49. Andrew F. Hayes & Klaus Krippendorff, *Answering the Call for a Standard Reliability Measure for Coding Data*, 1 COMM. METHODS & MEASURES 77 (2007).

scales of measurement (nominal, ordinal, interval, and ratio). Additionally, Krippendorff's Alpha accommodates missing data included in the analysis,⁵⁰ represented by the general formula below, which measures the number of disagreements rather than agreements between coders:

$$\alpha = 1 - \frac{D_o}{D_e}$$

D_o is the observed disagreement and D_e is the disagreement that can be expected when chance prevails.⁵¹ Using Deen Freelon's inter-coder reliability algorithms, a Krippendorff's Alpha of 0.823 was achieved across the coding iteration, demonstrating a high level of consensus among coders.⁵² After completing all coding iterations, some missing data still existed for 20 states within the original 195; thus, the 26 coded variables contained complete data for 175 states across all geographical regions (Table 4 includes the list of countries with their respective scale scores).

B. Mokken Scale Analysis

A number of procedures that can produce scales from the raw data exist. These procedures include Guttman scaling, factor analysis using tetrachoric or polychoric correlation matrices, principal component analysis, and multiple correspondence analysis. While each procedure has its own benefits and drawbacks, we selected Mokken Scale Analysis (MSA), which has beneficial properties for this analysis. The MSA procedure is based on Item Response Theory (IRT), which has its origins in Guttman scaling procedures; MSA was designed as a combined measurement probability model and procedure to assess people's skills and attitudes that may form a single latent variable.⁵³ Thus, MSA has a solid basis, particularly in psychometric analysis and has been used in a number of political science studies related to human rights, voting patterns, and public attitude research.⁵⁴

While the LGBTQ data contain both dichotomous and polytomous variables, MSA has the flexibility to address both kinds of data in its pro-

50. KLAUS H. KRIPPENDORFF, *CONTENT ANALYSIS: AN INTRODUCTION TO ITS METHODOLOGY* (2d ed. 2003).

51. *Id.*

52. Deen G. Freelon, *ReCal: Intercoder Reliability Calculation as a Web Service*, 5 INT'L J. INTERNET SCI. 20 (2010).

53. Wijbrandt H. van Schuur, *Mokken Scale Analysis: Between the Guttman Scale and Parametric Item Response Theory*, 11 POL. ANAL. 139 (2003).

54. David L. Cingranelli & David L. Richards, *Measuring the Level, Pattern, and Sequence of Government Respect for Physical Integrity Rights*, 43 INT'L STUD. Q. 407, 410 (1999); William G. Jacoby, *Public Attitudes toward Government Spending*, 38 AM. J. POL. SCI. 342 (1994); ROLL CALLS AND SPONSORSHIP (Frans N. Stokman ed., 1977).

cedures without having to recode polytomous items. Moreover, MSA has specific properties that will be important for understanding the nature of LGBTQ discrimination. For data to form a cumulative scale, they must have three requirements: variables within the scale should increase monotonely (monotone homogeneity), high homogeneity, and there should be an agreeable order of the items on the scale that represents the latent continuum.

First, the homogeneity of the item variables that comprise the latent continuum can be tested to assure that the items are stochastically independent of each other while also providing an indicator for judging the strength of the scale that represents the latent continuum.⁵⁵ The resulting scale allows researchers to rank items on the latent continuum; this is the MSA property of monotone homogeneity. To assess a scale's monotone homogeneity, later advances in Mokken scaling analysis have used the *crit value* that is comprised of a number of measures of item response and response violation factors.⁵⁶ *Crit values* below forty are attributed to random fluctuations in item responses. Values above eighty are considered serious violations of the monotone homogeneity assumption.⁵⁷ *Crit values* between forty and eighty require greater analysis to determine whether the assumption has been violated.

Second, as part of the property of monotone homogeneity, MSA produces two coefficients of homogeneity that are important: Item H that serves as a clustering criterion for individual elements of the scale and the scale H that assesses the overall strength of the scale formed by the items in the scale. Conventional interpretations of H and Item H abide by the following guidelines:

- If $H < 0.3$, the scale has poor scalability properties
- If $0.3 \leq H < 0.4$, the scale has weak scalability properties
- If $.4 \leq H < 0.5$, the scale has medium scalability properties
- If $0.5 \leq H$, the scale has strong scalability properties⁵⁸

Third, MSA has a secondary property of double monotonicity that ranks scale subjects by difficulty within the scale as well. This property allows researchers to rank variables based upon the proportion having joint positive responses for pairs of variables. In a contingency table of two variables, this represents the number of cases that both have positive (1, 1) responses.⁵⁹

55. van Schuur, *supra* note 53, at 149.

56. For a listing of these factors see WIJBRANDT H. VAN SCHUUR, *ORDINAL ITEM RESPONSE THEORY: MOKKEN SCALE ANALYSIS* (2011).

57. *Id.*

58. R. J. MOKKEN, *A THEORY AND PROCEDURE OF SCALE ANALYSIS: WITH APPLICATIONS IN POLITICAL RESEARCH* (1971); Jean-Benoit Hardouin, Angélique Bonnaud-Antignac & Véronique Sébille, *Non-parametric Item Response Theory Using Stata*, 11 *STATA J.* 30, 37-38 (2011).

59. VAN SCHUUR, *supra* note 56, at 169; van Schuur, *supra* note 53.

These proportions are placed into a square matrix called a P (+, +) matrix and ordered from the lowest to highest proportions of having joint positive responses (i.e. the order of decreasing difficulty). Reading across this matrix should produce proportions from the lowest to the highest; variations in proportions greater than 0.03 produce violations of the MSA model.⁶⁰ This property is the same for the P (-,-) matrix that orders the proportions from highest to lowest (i.e. the order of increasing difficulty).

Collectively, these properties imply that a scale can be formed from the raw scores for the LGBTQ variables and that we can assess the strength of that scale. Because of the property of double monotonicity in the scale, we can order the joint positive responses. To complete the latent continuum analysis, we analyzed the data using the statistical software Stata's (version 14.0) Mokken scaling procedure (MSP).⁶¹ Three variables were immediately excluded from the analysis: the target of criminalization laws (men, women, or both), the length of prison terms, and the amount of monetary fines for same-sex sexual activity. These variables were considered to be information beyond the fact that consensual sexual activity was criminalized, which was measured in other variables. The only assumption made about the latent continuum was that it would be reflective of discrimination against LGBTQ people.

We first used an initial procedure that was a form of exploratory Mokken scaling that models the data for the latent continuum and for whether all the items conform to a cumulative scale.⁶² Once we analyzed the structure of the data, we utilized confirmatory Mokken scaling to make sure the resulting scales do not violate Mokken scaling properties (as discussed above) and to evaluate the strength of the resulting scales.⁶³ Of the twenty-three variables analyzed in the exploratory procedure, all but one fit onto a latent continuum (punishing consensual same-sex sexual activity with death penalties). The results of the analysis, presented in Tables 1-3, show a pattern of LGBTQ discrimination that is, in fact, *multidimensional*, representing three continuums instead of a single continuum assumed at the start of the MSP.

C. LGBTQ Discrimination Scales

The first dimension includes variables that represent the country's criminalization and punishment of homosexual activity. The variables in this continuum include the criminalization and punishment (prison terms or monetary fines)

60. VAN SCHUUR, *supra* note 56.

61. JEAN-BENOIT HARDOUIN, MSP: STATA MODULE TO PERFORM THE MOKKEN SCALE PROCEDURE (2013), available at <https://ideas.repec.org/c/boc/bocode/s439402.html>.

62. VAN SCHUUR, *supra* note 56.

63. *Id.*

of same-sex sexual activity, non-typical punishments for same-sex sexual activity (stoning, lashing, etc.), retribution for reporting discrimination, and the use of morality laws (laws against nature, sodomy laws, etc.) to prosecute LGBTQ individuals. The second dimension represents specific rights in which LGBTQ people are discriminated against and includes the presence of anti-discrimination laws and the willingness of the state to punish discrimination against LGBTQ people, the absence or presence of national civil union and gay marriage laws, whether LGBTQ individuals in civil unions or marriages have equal rights and benefits, LGBTQ adoption, the presence of LGBTQ nongovernmental organizations (NGOs), and whether LGBTQ people can serve openly in the military. The third dimension reflects state and societal intolerance toward LGBTQ people. This dimension includes whether there have been hostile remarks made by public officials against LGBTQ people, reports of societal intolerance or discrimination, whether LGBTQ people have been subject to harassment by the police or authorities, and whether LGBTQ people have been subject to discrimination, intimidation, or harassment from the general population.

TABLE 1.
Mokken Scaling Procedure of LGBTQ Coded Variables,
Dimension 1 (Criminalization and Punishment)

<i>Item</i>	<i>Mean Score</i>	<i>Loevinger's Item H coefficient</i>
Did the State punish conduct violations with other non-typical types of punishments?	0.1031	0.56942
Did the State punish consensual same-sex sexual activity with a prison sentence?	0.4021	0.79108
Are there laws criminalizing consensual same-sex sexual activity?	0.1856	0.56446
Are there morality laws (Laws against Nature/Sodomy Laws) which may be used to apply to LGBTQ individuals in criminalizing consensual same-sex sexual activity?	0.3866	0.65342
Did the State punish consensual same-sex sexual activity with a prison sentence?	0.4021	0.79108
With regard to discrimination reporting, is there a fear of retribution, societal stigma or hate crimes based on LGBTQ identity within the state?	0.7461	0.58452

Scale H = .638; N=194

TABLE 2.
Mokken Scaling Procedure of LGBTQ Coded Variables, Dimension 2 (Discrimination)

<i>Item</i>	<i>Mean Score</i>	<i>Loevinger's Item H coefficient</i>
If the country has same sex marriages, are homosexual couples allocated the same benefits, rights, and privileges as heterosexual couples?	0.0515	0.95721
If the country has same sex marriages, are the marriages recognized nationally?	0.0567	0.92148
Does the country allow for same sex marriages?	0.0567	0.92148
Does the State grant same-sex couples rights to adoption?	0.0619	0.90766
If the country has same sex civil unions, are homosexual couples allocated the same benefits, rights, and privileges as married heterosexual couples?	0.1082	0.84126
If the country has same sex civil unions, are the unions recognized nationally?	0.1546	0.86903
Does the State demonstrate a willingness and effectiveness in seeking to punish perpetrators of discrimination against LGBTQ individuals?	0.3802	0.82513
Does the country allow for same sex civil unions or other civil arrangements?	0.1649	0.8773
Are there anti-discrimination laws that protect LGBT people in the state?	0.5	0.83094
Are gay and lesbian individuals allowed to serve openly in the military?	0.3883	0.87725
Are there NGOs dedicated to LGBTQ issues in existence within the State?	0.7807	0.91191

Scale H=.866; N=194

TABLE 3.
Mokken Scaling Procedure of LGBTQ Coded Variables, Dimension 3 (Intolerance)

<i>Item</i>	<i>Mean Score</i>	<i>Loevinger's Item H coefficient</i>
Have state officials made public statements of opposition or derogatory remarks towards LGBTQ individuals or the community?	0.3144	0.64692
Are there reports that LGBTQ people been subject to harassment or discrimination by the police or authorities (for example through either intimidation tactics or non-criminalization laws)?	0.6919	0.72003
Have there been any reports of state or societal intolerance or discrimination against LGBTQ people?	0.8557	0.74642
Are there reports of LGBTQ people being subject to discrimination, intimidation, or harassment from the general population within the state?	0.8953	0.86694

Scale H=.745; N=194

Confirmatory MSP corroborates these dimensions. In all three dimensions, *crit values* never exceeded 40. The most important measures, Loevinger's item H coefficient and the scale H coefficient, indicate that each of the continuums have a strong scalability. All three scale coefficients are greater than .5, with the strongest being the discrimination dimension with a scale H of .866. The individual item H coefficients reflect how strongly homogenous each item is with all the other items in the scale. All item H coefficients are above .5, with the strongest of these scores appearing in the discrimination dimension where all coefficients are above .8. Given the strength of the item and scale H coefficients, the evidence is strong that there are three separate continuums of discrimination that LGBTQ people face in their own countries. Furthermore, both P (+, +) and P (-,-) matrices show minor violations (less than .03 variation in the proportions) of the double monotonicity property of MSA, but these violations are within accepted ranges.

The ordering of variables within each dimension also reveals important patterns in discrimination against LGBTQ people. In the criminalization and punishment dimension, the least probable form of criminalization and punishment found in states is the use of non-typical types of punishments (stoning, lashing, etc.). At the same time, the most probable aspect of criminalization and punishment is the fear of retribution, stigma, and hate crimes if LGBTQ people report discrimination. The scale of this dimension ranges from 0-6, with 0 representing little to no criminalization and punishment of LGBTQ people and homosexual relations and 6 representing severe criminalization and harsh punishment of LGBTQ people and homosexual relations.

In the second dimension, discrimination, the most likely area for states to discriminate is in the area of marriage: equal benefits for married LGBTQ people, gay marriage and the recognition of gay marriage. The area of marriage rights has generally been the most contested area of rights within countries. The most likely area of rights granted by states for LGBTQ people is the presence of non-governmental organizations (rights to assembly) for LGBTQ people. The scale for these rights ranges from 0-13, with 0 representing the most discriminatory states and 13 the least discriminatory. To maintain the consistency of logic established in the first dimension, the scale is reversed so that 0 represents the least discriminatory states and 13 the most discriminatory.

Finally, in the third dimension, intolerance, the least likely act of intolerance that LGBTQ people may experience in states is the making of public derogatory remarks towards LGBTQ people by state officials. The most likely form of intolerance shown toward LGBTQ people is discrimination, intimidation and harassment by the general population. The scale ranges from 0-4, with 0 representing the least intolerant states and 4 representing the most intolerant. This dimension poses the most problems within the broader spectrum of LGBTQ discrimination because it relies mostly on the *reporting* of acts that are intolerant and discriminatory. The scale deals with known reported public pronouncements and acts against LGBTQ people. Thus, while a state may be rated less intolerant, it does not mean that intolerance does not exist in the state. It is possible that officials' public statements are not reported or noticed, or that harassment by the population goes unreported or is not covered. It may also be the case that LGBTQ people and issues are not a priority for some states or even for human rights organizations. For instance, Mauritania makes same-sex relationships illegal and men who have sex with men could be stoned to death while women who have sex with women could go to prison. However, the Mauritanian government experienced a military coup in 2008 and has struggled to return to democracy since the coup.⁶⁴ The US State Department noted that there have been no prosecutions for same-sex sexual conduct, and no evidence of violence or discrimination based on sexual orientation.⁶⁵ However, in such a climate of instability, and with the social taboos of homosexuality a given condition in a strongly Muslim country, it is likely that LGBTQ people are essentially invisible in Mauritania.

64. Kaci Racelma, *Slow but Steady Walk to Democracy*, AFRICA RENEWAL (Apr. 2014), available at <http://www.un.org/africarenewal/magazine/april-2014/slow-steady-walk-democracy>.

65. U.S. STATE DEPARTMENT, BUREAU OF DEMOCRACY, *supra* note 4.

D. Scale Analysis

While the data highlight three dimensions of discrimination against LGBTQ people, the three individual scores can also be added together to obtain a picture of the total level of discrimination against LGBTQ people in individual countries and as a check on robustness with other scaling methods.⁶⁶ Table 4 presents complete data for all 3 dimensions for 175 countries along with partial data for another 19 countries. Table 5 presents the complete discrimination index and the percentages of countries for each rank score. Table 6 presents the summary statistics for each of the resulting scales by region and for the global sample. Figures 1-3 display histogram country percentages for each of the three dimensional scales. The data for the three dimensions and the total discrimination index score present a number of important patterns.

TABLE 4.
Scale Dimension Scores by Country (sorted by Discrimination Index)

<i>Country</i>	<i>Criminalization and Punishment</i>	<i>Discrimination</i>	<i>Intolerance</i>	<i>Discrimination Index</i>
Iceland	0	0	0	0
Canada	0	1	1	2
Sweden	0	0	2	2
Norway	0	0	2	2
Denmark	0	0	2	2
Netherlands	0	0	2	2
Spain	0	1	2	3
Belgium	1	0	2	3
South Africa	1	0	3	4
Austria	0	5	0	5
Luxembourg	0	5	0	5
Andorra	0	5	0	5
New Zealand	0	3	2	5
Israel	0	3	2	5
Argentina	0	2	3	5
Ireland	0	5	1	6
United Kingdom	0	4	2	6
Finland	0	4	2	6
France	0	5	2	7
Portugal	0	5	2	7
Germany	0	4	3	7
Liechtenstein	0	8	0	8
Brazil	0	5	3	8
Australia	0	5	3	8

66. As a check on the robustness of these scales, a factor analysis was also run on these data. The analysis produced two significant dimensions that resulted in a similar discrimination index ranging from 0-26. The correlation between the Mokken scaling scale and the factor analysis scale was .93, providing confidence that the discrimination index is robust to other methods.

<i>Country</i>	<i>Criminalization and Punishment</i>	<i>Discrimination</i>	<i>Intolerance</i>	<i>Discrimination Index</i>
Slovenia	1	5	2	8
Switzerland	1	6	2	9
Uruguay	1	5	3	9
Ecuador	0	7	3	10
Colombia	0	7	3	10
Hungary	0	7	3	10
Italy	0	7	3	10
Kosovo	1	7	2	10
Montenegro	1	7	2	10
Albania	0	7	4	11
Lithuania	1	7	3	11
Cape Verde	0	12	0	12
El Salvador	0	9	3	12
Mexico	0	8	4	12
Estonia	1	8	3	12
Bosnia and Herzegovina	1	8	3	12
Chile	0	10	3	13
Costa Rica	0	9	4	13
Czech Republic	0	9	4	13
Vietnam	1	10	2	13
South Korea	1	10	2	13
Nicaragua	1	10	2	13
Bulgaria	1	9	3	13
Bolivia	1	9	3	13
Croatia	1	8	4	13
Poland	1	8	4	13
Cyprus	2	8	3	13
Cuba	0	11	3	14
Djibouti	1	13	0	14
Cambodia	1	12	1	14
Federated States of Micronesia	1	11	2	14
Japan	1	11	2	14
Latvia	1	10	3	14
Fiji	1	10	3	14
Georgia	1	9	4	14
Venezuela	1	9	4	14
Slovakia	1	9	4	14
Palau	2	12	0	14
Romania	1	11	3	15
Peru	1	11	3	15
Thailand	1	11	3	15
Taiwan	1	11	3	15
Republic of Congo	2	11	2	15
Mozambique	3	9	3	15
Bahamas	0	12	4	16
Armenia	0	12	4	16
Honduras	1	12	3	16
Tajikistan	1	12	3	16
Panama	1	12	3	16
Nepal	1	12	3	16
Haiti	1	12	3	16
Greece	1	12	3	16
Azerbaijan	1	12	3	16
Dominican Republic	1	12	3	16
China	1	12	3	16

Table 4. Continued.

<i>Country</i>	<i>Criminalization and Punishment</i>	<i>Discrimination</i>	<i>Intolerance</i>	<i>Discrimination Index</i>
Rwanda	1	12	3	16
Laos	1	12	3	16
Ukraine	1	11	4	16
Serbia	1	11	4	16
Philippines	1	11	4	16
Macedonia	1	11	4	16
Belarus	1	11	4	16
Moldova	1	11	4	16
Paraguay	1	11	4	16
Botswana	2	12	2	16
Benin	3	13	0	16
Equatorial Guinea	1	13	3	17
Mali	1	13	3	17
Jordan	1	13	3	17
Bahrain	1	13	3	17
Kyrgyz Republic	1	12	4	17
Turkey	1	12	4	17
Indonesia	1	12	4	17
Kazakhstan	1	12	4	17
Russia	1	12	4	17
Mongolia	2	12	3	17
Cote d'Ivoire	2	12	3	17
Iraq	2	12	3	17
Lesotho	2	12	3	17
Democratic Republic of Congo	2	12	3	17
Papua New Guinea	3	13	1	17
Tuvalu	3	12	2	17
Guyana	3	11	3	17
Nauru	4	13	0	17
Angola	2	13	3	18
Chad	2	13	3	18
Dominica	2	12	4	18
Namibia	2	12	4	18
Swaziland	2	12	4	18
Antigua and Barbuda	2	12	4	18
Central African Republic	3	13	2	18
Maldives	3	13	2	18
Turkmenistan	3	13	2	18
Grenada	3	12	3	18
Mauritius	3	12	3	18
Belize	3	12	3	18
Trinidad and Tobago	3	12	3	18
Burundi	3	12	3	18
Sri Lanka	3	12	3	18
Oman	3	12	3	18
Eritrea	4	13	1	18
Tonga	4	12	2	18
Saint Kitts and Nevis	4	12	2	18
Bhutan	3	13	3	19
Syria	3	13	3	19
Tunisia	3	12	4	19
Sierra Leone	3	12	4	19
Barbados	3	12	4	19
Somalia	4	13	2	19
Niger	4	13	2	19
Brunei	4	13	2	19
Algeria	4	12	3	19

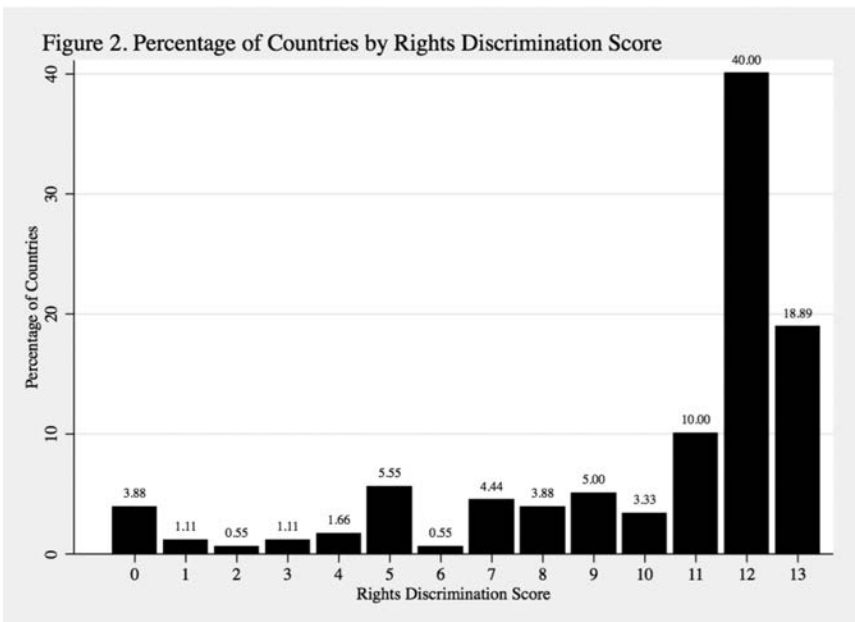
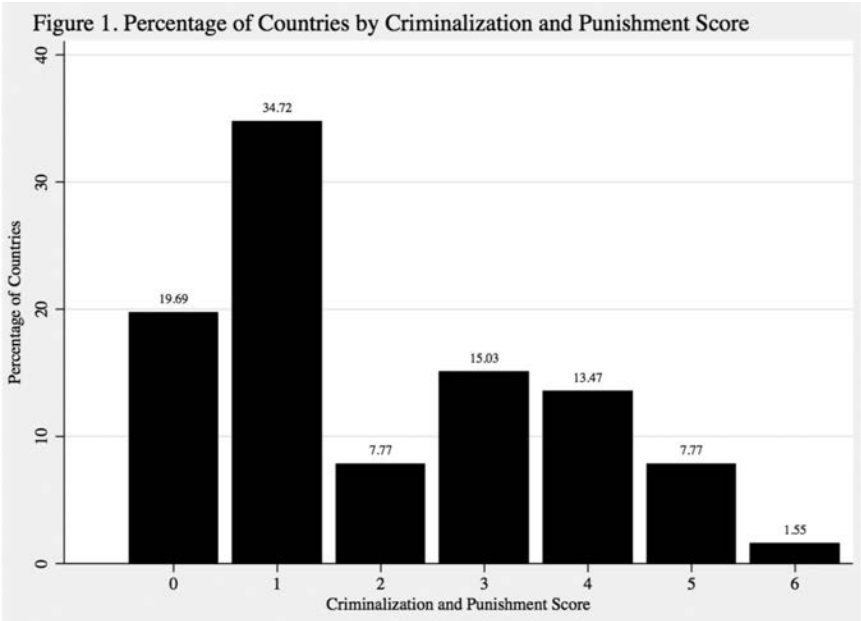
<i>Country</i>	<i>Criminalization and Punishment</i>	<i>Discrimination</i>	<i>Intolerance</i>	<i>Discrimination Index</i>
Afghanistan	4	12	3	19
Jamaica	4	12	3	19
Bangladesh	4	12	3	19
Ethiopia	4	12	3	19
Pakistan	4	12	3	19
Singapore	4	11	4	19
Guinea	5	13	1	19
Mauritania	6	13	0	19
The Gambia	3	13	4	20
Uzbekistan	3	13	4	20
Ghana	3	13	4	20
Qatar	4	13	3	20
Egypt	4	12	4	20
Madagascar	4	12	4	20
Kenya	4	12	4	20
Iran	4	12	4	20
India	4	12	4	20
Liberia	4	12	4	20
Zimbabwe	4	12	4	20
Zambia	4	12	4	20
Sudan	5	12	3	20
Cameroon	5	12	3	20
Morocco	5	12	3	20
Senegal	5	12	3	20
Burma	5	12	3	20
Lebanon	5	12	3	20
South Sudan	4	13	4	21
Yemen	4	13	4	21
Libya	4	13	4	21
Comoros	5	13	3	21
Togo	5	13	3	21
Malawi	5	12	4	21
Tanzania	5	12	4	21
Malaysia	5	12	4	21
United Arab Emirates	5	12	4	21
Kuwait	5	12	4	21
Nigeria	6	12	3	21
Saudi Arabia	6	12	3	21
Uganda	5	13	4	22
San Marino	0	-	0	-
Guinea-Bissau	0	-	1	-
Marshall Islands	1	-	0	-
Gabon	1	-	3	-
Burkina Faso	1	-	3	-
Guatemala	1	-	3	-
Suriname	1	-	4	-
Malta	1	11	-	-
North Korea	1	13	-	-
Vanuatu	1	13	-	-
Sao Tome and Principe	1	-	-	-
Timor-Leste	1	-	-	-
Kiribati	3	-	0	-
Saint Lucia	3	12	-	-
Saint Vincent and the Grenadines	3	13	-	-
Samoa	3	-	-	-
Solomon Islands	3	-	-	-
Seychelles	3	-	-	-
Monaco	-	-	0	-

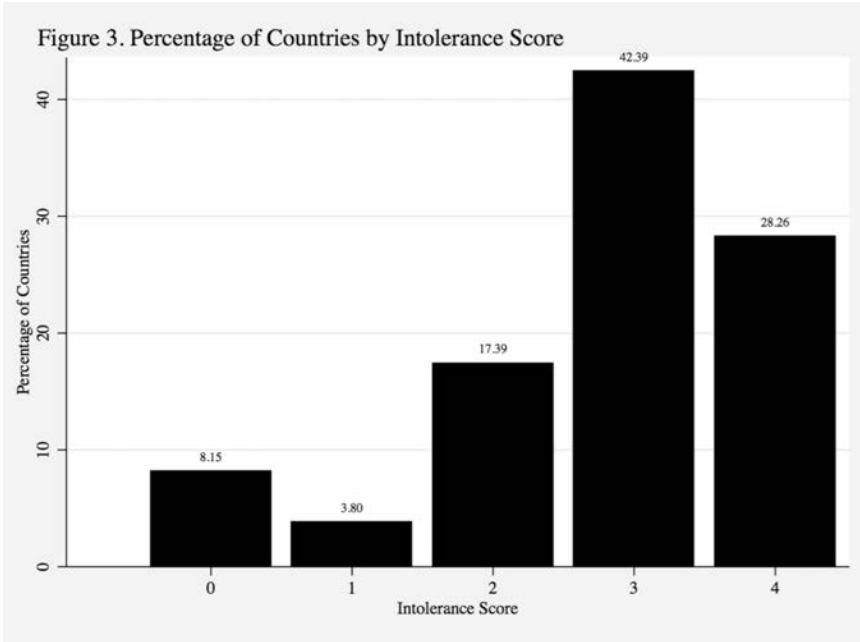
TABLE 5.
Discrimination Index and Percentages by Number of Country

<i>Scale Rank</i>	<i>Number of Countries</i>	<i>Percent</i>
0	1	0.57
2	5	2.86
3	2	1.14
4	1	0.57
5	6	3.43
6	3	1.71
7	3	1.71
8	4	2.29
9	2	1.14
10	6	3.43
11	2	1.14
12	5	2.86
13	11	6.29
14	11	6.29
15	6	3.43
16	22	12.57
17	18	10.29
18	19	10.86
19	17	9.71
20	18	10.29
21	12	6.86
22	1	0.57
Total	175	100.00

TABLE 6.
Summary Statistic for Scales by Region

	Africa	Asia (including the Middle East)	Europe & North America	Latin America & Caribbean	Oceania	Global Sample
Criminalization & Punishment Scale						
<i>N</i>	54	43	49	33	14	193
<i>Median</i>	3	3	1	1	2.5	1
<i>Mean</i>	3.15	2.55	0.55	1.36	2.07	1.97
<i>Standard Deviation</i>	1.55	1.67	0.54	1.29	1.38	1.66
<i>Skewness</i>	-0.19	0.31	0.19	0.61	-0.13	0.57
Rights Discrimination Scale						
<i>N</i>	49	42	48	31	10	180
<i>Median</i>	12	12	7	11	12	12
<i>Mean</i>	12.06	11.83	6.83	10.16	10.4	10.19
<i>Standard Deviation</i>	1.89	1.59	3.82	2.63	3.53	11.79
<i>Skewness</i>	-5.44	-4.21	-0.44	-1.45	-1.32	-1.61
Intolerance Scale						
<i>N</i>	52	41	49	31	11	184
<i>Median</i>	3	3	3	3	2	3
<i>Mean</i>	2.88	3.07	2.48	3.22	1.36	2.78
<i>Standard Deviation</i>	1.16	0.75	1.34	0.56	1.21	1.14
<i>Skewness</i>	-1.19	-0.47	-0.58	0.05	-0.02	-1.06
Discrimination Index						
<i>N</i>	49	41	47	29	9	175
<i>Median</i>	19	18	10	16	14	16
<i>Mean</i>	18.32	17.51	9.89	14.48	13.77	15
<i>Standard Deviation</i>	2.93	3.01	5.08	3.58	4.46	5.11
<i>Skewness</i>	-2.63	-1.81	-0.27	-0.82	-1.03	-1.07





On a global level, many more countries score high on the discrimination index than those that are at the lower end; the data are skewed left. Only about one-third of the countries (35.43 percent) in the sample score less than fifteen in the discrimination index and the median score is sixteen (Tables 5 and 6) with a mean score of 15. While recent media stories pinpoint Africa as ground zero of anti-gay bigotry and intolerance, the data reveal that Africa, while being the *most* discriminatory, is not the only region of the world discriminating against LGBTQ people. As with most of the scales, Europe is the least overall discriminatory region (mean = 9.89) and Africa and Asia are the most discriminatory (mean = 18.32 and 17.51, respectively; Table 6). But Europe, while low on the index, is not without its distinct issues. The standard deviation for Europe's discrimination index score (5.08) indicates a wide dispersion of scores across the twenty-three-point index. The data bear this out with 42 percent of European countries ranking below ten, but 30 percent ranking thirteen or more. At the lower end of the scale are predominantly liberal Western European countries; at the high end of the scale are mostly conservative East European countries.

The distribution of data across the three indices clearly indicate that the discrimination against LGBTQ people is less about the formal criminalization and punishment of people and more about the formal institutional denying of rights and informal institution of intolerance toward LGBTQ people. The

criminalization scale is the only one of the three that is skewed to the right, with approximately 62.2 percent of the countries having a low (0-2) score while the overall mean is 1.97. Of course, that is not to say that the criminalization of homosexuality is not present (Figure 1); more than 37 percent of countries have medium to high levels of criminalization and punishment of homosexuality (Figure 1). The tendency to criminalize and punish homosexuality is most prevalent in Africa (mean score of 3.15) and Asia (mean score of 2.55). The lowest levels of criminalization and punishment (Table 6) occur in Europe (mean score of .55) and Latin America (mean score of 1.36).

The rights discrimination scale shows a more homogenous grouping of scores around the higher levels of discrimination and also shows a pattern distinct from the criminalization scale. For the global sample, these data are left skewed, with a mean of 11.19 and a median score of 12 on a scale of 0-13 (Table 6). More than 68 percent of the countries have a score of 11 or higher (Figure 2). Median scores across the regions converged at 11 or 12, though Europe is still the lowest with a median score of 7. Mean scores show a bit more variation but are high across most regions. Europe, with a mean of 6.83, has much lower levels of discrimination than other regions and a large amount of variation within the region. Belgium, Netherlands, Denmark, Sweden, Iceland, and Norway grant rights to LGBTQ people in full across the areas of the discrimination index while Greece, Armenia, Russia, Azerbaijan, and Turkey grant nearly none of these rights (Table 4). Africa remains the most discriminatory (mean of 12.06), though the other regions also maintain high levels of discrimination (means: Asia = 11.83, Latin America = 10.16, Oceania = 10.4; Table 6). South Africa is the outlier case for Africa; South Africa has a scale score of 0 with Mozambique being next with a score of 9. For Africa, almost 94 percent of countries (n=49) score 12 or 13 on the discrimination scale; Latin America shows the same pattern with almost 81 percent of the countries having a score of 12 or 13.

For the intolerance scale, the global sample shows a mean score of 2.78 with the data again being right skewed (Table 6). More than 70 percent of the global sample had intolerance scores at 3 or 4, the highest levels of intolerance shown toward LGBTQ people. The lowest levels of intolerance were in Oceania (mean of 1.36), with Asia (mean of 3.07) and Latin America (mean of 3.22) showing the highest levels of intolerance (Table 6). In Asia, Cambodia is the least intolerant; traditional Cambodian culture has been tolerant of LGBTQ people, though officially, the state has not granted rights to LGBTQ people. Iran, Kuwait, Malaysia, Yemen, India, Philippines, Uzbekistan, Indonesia, the Kyrgyz Republic, Singapore, Kazakhstan, and the United Arab Emirates are the most intolerant in Asia, scoring a 4 on the intolerance scale (Table 4). For Latin America, more than 93 percent of the countries rank 3 or 4 on the intolerance scale (Table 4). Thus, we can say confidently that a large proportion of states show wonton intolerance toward

LGBTQ people. Even if LGBTQ people are granted full rights in a state, the level of intolerance in a particular state does not mean that they will be able to exercise those rights fully.

IV. DISCUSSION AND CONCLUSION

The discrimination index that we have presented has a number of benefits. On an institutional level, the data are able to paint a picture of the progress that states are making toward legalizing, rather than punishing same-sex relations. However, this issue is separate from whether the state has actually progressed toward granting LGBTQ people the same rights enjoyed by everyone else in the country and is reflected in a completely separate dimension. At the same time, the institutional conditions for LGBTQ people cannot be examined in isolation. The third dimension of the discrimination index, intolerance, describes the official and social conditions that LGBTQ people face in terms of how the state and its people perceive and treat them. With over 72 percent of the states showing high levels (3 and 4) of intolerance, LGBTQ people face an informal stigma that can be just as pervasive and damaging as the institutionalized discrimination pictured in the criminalization and rights dimensions.

At the same time, the data have a couple of drawbacks. While the data measures whether states have decriminalized same-sex relations and whether states have granted particular rights, the data are still lacking in a number of areas. One aspect of data not represented sufficiently in the scales are socio-economic rights and discrimination. While we started with a number of areas that would measure this aspect (such as discrimination in housing, lending, education, health care, HIV/AIDS status, and employment), finding information to code these variables beyond Western European states became insurmountable.

Also, while the data are able to touch upon areas specific to transgender people, many of the issues specific to transgender people (legal status of sex reassignment surgery, specific areas of discrimination, birth certificate changes for sex reassignment surgery, legal classification of transgender people as being mentally ill) had to be left out of the scales due to missing data. Unfortunately, the area that we were able to represent well in the data was intolerance and even violence toward transgender people. As transgender issues become more visible and prevalent, even in the LGBTQ community itself, we expect more information to become available regarding these issues. Despite the lack of socio-economic and transgender details, the range of issues covered most likely serve as sufficient proxies for some of these concepts. If same-sex relations are criminalized in a state, it is probably a fair assumption that LGBTQ people will face economic discrimination sanctioned by the state or simply within the society.

Finally, the intolerance variable, while providing insight into the issue of prejudice and intolerance by the state and society, does not paint a complete picture of the problems LGBTQ people face in this area. The intolerance variable provides a good measure for the presence of intolerance; however, it has been difficult to gauge the *intensity* of this intolerance. So, while intolerance will exist to some extent in every state, it has been difficult to determine how widespread the intolerance has been within states. For some states, it is relatively easy to gauge and to gather information on this topic—as in Russia where people videotape gay bashings and post the videos online for others to see.⁶⁷ In other states, the intolerance may be relatively low or isolated. More information is needed to be able to refine this measure to account for the intensity of the intolerance in each state. Despite these drawbacks, we believe that these measures can provide researchers with an overview of the status of LGBTQ people and will be useful for research purposes cross-nationally.

67. Taylor Berman, *Human Rights Watch Releases Video Showing Anti-Gay Attacks in Russia*, GAWKER (4 Feb. 2014), available at <http://gawker.com/human-rights-watch-releases-video-showing-anti-gay-atta-1515624864>.

APPENDIX I.

Coding Sheet for Variables in the LGBTQ Discrimination Measure

COUNTRY: _____

CC (Polity Country Code): _____

1. Are there laws criminalizing consensual same-sex sexual activity?
 - No
 - Yes
 - Not mentioned

Ans: _____

2. Are there morality laws (Laws against Nature/Sodomy Laws) that may be used to apply to LGBTQ individuals in criminalizing consensual same-sex sexual activity?
 - No
 - Yes
 - Not mentioned

3. Who is the target of criminalization?
 - Men
 - Women
 - Men and Women
 - Not mentioned

4. Did the State punish consensual same-sex sexual activity with death penalties?
 - No
 - Yes
 - Not mentioned

5. Did the State punish consensual same-sex sexual activity with a prison sentence?
 - No
 - Yes
 - Not mentioned

6. If so, what was the length of term for the prison sentence?
- Less Than a Year
 - 1–5 Years
 - 5–10 Years
 - 10+ Years, Excluding Life in Prison
 - Life in Prison
 - Not mentioned
7. Did the State punish consensual same-sex sexual activity with monetary fines? (In US Dollars)
- No
 - Yes
 - Not mentioned
8. If so, what was the value of the monetary fine? (In US Dollars)
- 1–1000
 - 1001–4999
 - 5000–10000
 - 10000+
 - Not mentioned
9. Did the State punish conduct violations with other non-typical types of punishments? (Lashings, Stonings, etc.)
- No
 - Yes
 - Not mentioned
- If so, fill in _____ with specific type of punishment.
10. Have there been any reports of state or societal intolerance or discrimination against LGBTQ people?
- No
 - Yes
 - Not mentioned

11. With regard to discrimination reporting, is there a fear of retribution, societal stigma or hate crimes based on LGBTQ identity within the state?
No
Yes
Not mentioned
12. Does the State grant same-sex couples rights to adoption?
No
Yes
Not mentioned
13. Are there reports that LGBTQ people been subject to harassment or discrimination by the police or authorities (for example through either intimidation tactics or non-LGBTQ criminalization laws)?
No
Yes
Not mentioned
14. Are there reports of LGBTQ people being subject to discrimination, intimidation or harassment from the general population within the state?
No
Yes
Not mentioned
15. What level of LGBTQ harassment, discrimination, intimidation or physical violence within the State has been reported?
None or none reported
Yes, some, few or several
Yes, many
99. Not mentioned
16. Does the State demonstrate a willingness and effectiveness in seeking to punish perpetrators of discrimination against LGBTQ individuals?
No
Yes, but inconsistently
Yes
99. Not mentioned

17. Are gay and lesbian individuals allowed to serve openly in the military?
No
Yes
Not mentioned
18. Are there NGOs dedicated to LGBTQ issues in existence within the State?
No
Yes
Not mentioned
19. Have state officials made public statements of opposition or derogatory remarks towards LGBTQ individuals or the community?
No
Yes
99. Not mentioned
20. Does the country allow for same sex marriages?
No
Yes
99. Not mentioned
21. If the country has same sex marriages, are the marriages recognized nationally?
No
Yes
99. Not mentioned
22. If the country has same sex marriages, are homosexual couples allocated the same benefits, rights, and privileges as heterosexual couples?
No
Yes
99. Not mentioned
23. Does the country allow for same sex civil unions or other civil arrangements?
No
Yes
99. Not mentioned

24. If the country has same sex civil unions, are the unions recognized nationally?
No
Yes
99. Not mentioned
25. If the country has same sex civil unions, are homosexual couples allocated the same benefits, rights, and privileges as married heterosexual couples?
No
Yes
99. Not mentioned
26. Are there anti-discrimination laws that protect LGBT people in the state?
No (none at the national or state/municipal level indicated)
Yes (in some areas or not nationally, state or municipal level laws exist)
Yes (covered at the national level)
99. Not mentioned