



UNIVERSITY OF TORONTO  
FACULTY OF LAW

INTERNATIONAL  
HUMAN RIGHTS  
PROGRAM

# Cuba

---

Country Report for use in refugee claims based on persecution relating to sexual orientation and gender identity

**Produced:** October 30, 2009

---

Sexual Orientation and Gender Identity research – [sogi.ihrp@gmail.com](mailto:sogi.ihrp@gmail.com)  
International Human Rights Program  
University of Toronto

This document was prepared by law students and highlights information about publicly-accessible country conditions available at the time it was prepared. It is not exhaustive, nor is it updated on a regular basis. The information provided here is not a substitute for legal advice or legal assistance, and the International Human Rights program at the University of Toronto, Faculty of Law cannot provide such advice or assistance.

**Table of Contents**

**I: Introduction..... 3**

**II: Legislation ..... 4**

    Legalization of homosexual acts..... 5

    Protective legislation..... 6

    Proposed reforms ..... 6

    Non-binding commitments ..... 7

    Illegal exit ..... 7

**III: Jurisprudence..... 7**

    Immigration Tribunal Decisions ..... 7

    Federal Court Decisions..... 11

    Other Relevant Jurisprudence ..... 11

**IV: Governmental Reports..... 12**

**V: Reports by Non-Governmental Organizations ..... 13**

**VI: Media Reports ..... 14**

**VII: Scholarship ..... 17**

## **I: Introduction**

This country report was prepared in response to a request for information about the following:

1. The treatment of discrimination against gay men in Cuba. This would include not only governmental actions towards gays or lack of state protection, but also actions of society in general;
2. The punishment for leaving Cuba illegally and whether a person's sexual orientation (and/or his religion/political opinions) could be aggravating factors in terms of that punishment;
3. Case law research on refugee claims from Cuba based on sexual orientation (from the IRB and the Federal Court)

Although post-revolutionary Cuba has had an extremely harsh history of mistreating sexual minorities, in recent years both governmental and societal attitudes towards the LGBT community seem to be improving, especially in urban areas like Havana.

Currently, there are efforts to develop legislation in support of LGBT rights. Although Cuba is a signatory of the UN declaration on sexual orientation and gender identity, the declaration is not legally binding. While there are currently no laws explicitly prohibiting homosexual conduct in Cuba, progressive legislation that would allow for same-sex civil unions, inheritance rights, the ability to personally select one's gender, etc. is presently being considered by Parliament. In 2008, a law was enacted permitting sex-reassignment operations covered by Cuba's universal healthcare system; however, there is no evidence of any surgeries actually taking place since the enactment.

Additionally, the government has made efforts to provide education campaigns, and support for public demonstrations and discussions about LGBT issues in order to foster awareness and acceptance. These efforts are being spearheaded by the National Centre for Sex Education (CENESEX). Mariela Castro Espin, the director CENESEX and daughter of Cuban president Raúl Castro, has become a powerful advocate for the Cuban LGBT community.

Despite these recent progressive efforts, the post-revolutionary machismo and homophobic attitudes are still pervasive in Cuban society, especially as one moves away from urban centres like Havana. There are still accounts of sexual minorities being subjected to police brutality, and discriminated against in both work and school environments. According to media reports, the homophobia is present and pervasive enough that some feel pressured to conform to traditional societal norms in order to avoid discrimination.

Movement in and out of the country is officially limited in several ways. First, an exit visa is required in order to leave the country. Second, those who have been outside the country for over 11 months without the proper documentation will be prohibited from re-

entering. Third, individuals who leave the country by boat or raft are subject to fines or imprisonment.

This report compiles information from the following sources: legislation, jurisprudence, government organizations, non-government organizations, media and scholarship. Summaries, key points and citations of relevant documentation are provided for each of these sections.

## **II: Legislation**

1. International Lesbian and Gay Association, *State-sponsored homophobia: a world survey of laws prohibiting same sex activity between consenting adults*, (May 2009), online:

<[http://www.ilga.org/statehomophobia/ILGA\\_State\\_Sponsored\\_Homophobia\\_2009.pdf](http://www.ilga.org/statehomophobia/ILGA_State_Sponsored_Homophobia_2009.pdf)

2. Government of Cuba, *Ley No.21, Código Penal*, (December 1978), online: <<http://www.asanac.gov.cu/espanol/leyes/Ley%20N%BA%2021%20CODIGO%20PENAL.htm>>

- **Homosexual offences: Chapter I, Articles 359(a) and 359(b)**

3. Government of Cuba, *Ley No.62, Código Penal*, without 1997 amendments, (December 1987), online: <<http://www.scribd.com/doc/10082549/Codigo-Penal-de-Cuba-wwwiestudiospenalescomar>>

- **Homosexual offence: Chapter I, Article 303(a)**

4. Government of Cuba, *LEY No. 62, Código Penal*, with 1997 amendments, (December 1987), online: <<http://www.asanac.gov.cu/espanol/leyes/Ley%20N%BA%2021%20CODIGO%20PENAL.htm>>

- **Removed homosexual offence: Chapter I, Article 303(a)**
- **Equalization of age of consent: Chapter III Article 310.1**
- **Illegal exit: Chapter XI Article 216.1**

5. Government of Cuba, *Constitución de la República de Cuba*, online: <[http://www.gacetaoficial.cu/html/constitucion\\_de\\_la\\_republica.html](http://www.gacetaoficial.cu/html/constitucion_de_la_republica.html)>

- **Equality provisions: Chapter VI, Articles 41-44**
- **Marriage: Chapter IV article 36**

6. World Security Institute, *Sexual Diversity in Cuba: New Legislation Reflects a Shift in Popular Opinion*, (22 February 2008), online:

<<http://www.wsicubaproject.org/sexualdiversity.cfm>>

- **Outline of proposed legislative reforms**

7. Dalia Acosta, *CUBA: Sexual Diversity - the Rainbow Revolution*, (21 May 2008), online: IPS News <<http://www.ipsnews.net/news.asp?idnews=42445>>

8. Dalia Acosta, *HEALTH-CUBA: Free Sex Change Operations Approved*, (6 June 2008), online: <<http://www.ipsnews.net/news.asp?idnews=42693>>

### **Legalization of homosexual acts**

No current law exists to explicitly prohibit any homosexual conduct. While sodomy was legalized in 1979, other provisions of the penal code continued to provide an umbrella for the criminalization of homosexual acts until 1997.

**1979:** Reform of the **1936** penal code (Law 21)

- a) Sodomy removed as a criminal offence (1).
- b) “Public scandal” laws expanded to punish those who “make a public display of their homosexual condition or bother or solicit another with homosexual requests”<sup>1</sup> (2).
- c) Also prohibited: “homosexual acts in a public place, or in a private place where others are involuntarily exposed to the act”<sup>2</sup> (2).

**1988:** Reform of the penal code in (Law 62)

- a) “Public scandal” laws revised to become slightly more tolerant of homosexual acts. Punishable offences reduced to “bothering others with homosexual requests” (3).<sup>3</sup>

**1997:** Reform of the penal code (article 28 of Law 175)

- a) Homosexual reference removed in from “public scandal” laws, which are renamed “sexual insult” provisions (“ultraje sexual”) (4).<sup>4</sup>
- b) Homosexual age of consent made equal to heterosexual age (4).

---

<sup>1</sup> Spanish: “a) haga pública ostentación de su condición de homosexual o importune o solicite con sus requerimientos a otro.”

<sup>2</sup> Spanish: “b) realice actos homosexuales en sitio público o en sitio privado pero expuestos a ser vistos involuntariamente por otras personas.”

<sup>3</sup> Spanish: “Se sanciona con privación de libertad de tres meses a un año o multa de cien a trescientas cuotas al que: a) importune a otro con requerimientos homosexuales.” Full legislation at: <http://www.scribd.com/doc/10082549/Codigo-Penal-de-Cuba-wwwiestudiospenalescomar>

<sup>4</sup> The relevant offence now reads: (Spanish) “Se sanciona con privación de libertad de tres meses a un año o multa de cien a trescientas cuotas al que: a) acose a otro con requerimientos sexuales.”

## Protective legislation

The equality chapter of the constitution protects from discrimination under the broad categories of “race, skin colour, sex, nationality, religious beliefs any other form of discrimination harmful to human dignity,” stating that such discrimination is “forbidden and punishable by law.” This chapter also affords “equal rights” to “all citizens.” Certain rights are afforded, including access to employment, education, and health care and unhindered access to public spaces, transport and accommodation. The constitution also establishes the equal economic, political, cultural, social and familial rights of men and women (5).<sup>5</sup>

Marriage is constitutionally recognized as “the voluntary union between a man and a woman” (5).<sup>6</sup>

## Proposed reforms

The sexual diversity advocacy group CENESEX is currently lobbying for a variety of legal reforms to establish and equalize the rights of sexual minorities (6). These proposed reforms include:

- a) The legal ability to change gender without physically altering one’s sex
- b) The right to same-sex civil unions

---

<sup>5</sup> Spanish: **CAPITULO VI: Igualdad**

**ARTICULO 41.**-Todos los ciudadanos gozan de iguales derechos y están sujetos a iguales deberes.

**ARTICULO 42.**-La discriminación por motivo de raza, color de la piel, sexo, origen nacional, creencias religiosas y cualquier otra lesiva a la dignidad humana está proscrita y es sancionada por la ley.

Las instituciones del Estado educan a todos, desde la más temprana edad, en el principio de la igualdad de los seres humanos.

**ARTICULO 43.**-El Estado consagra el derecho conquistado por la Revolución de que los ciudadanos, sin distinción de raza, color de la piel, sexo, creencias religiosas, origen nacional y cualquier otra lesiva a la dignidad humana:

**1-** tienen acceso, según méritos y capacidades, a todos los cargos y empleos del Estado, de la Administración Pública y de la producción y prestación de servicios;

**2-** ascienden a todas las jerarquías de las fuerzas armadas revolucionarias y de la seguridad y orden interior, según méritos y capacidades;

**3-** perciben salario igual por trabajo igual;

**4-** disfrutan de la enseñanza en todas las instituciones docentes del país, desde la escuela primaria hasta las universidades, que son las mismas para todos;

**5-** reciben asistencia en todas las instituciones de salud;

**6-** se domicilian en cualquier sector, zona o barrio de las ciudades y se alojan en cualquier hotel;

**7-** son atendidos en todos los restaurantes y demás establecimientos de servicio público;

**8-** usan, sin separaciones, los transportes marítimos, ferroviarios, aéreos y automotores;

**9-** disfrutan de los mismos balnearios, playas, parques, círculos sociales y demás centros de cultura, deportes, recreación y descanso.

**ARTICULO 44.**-La mujer y el hombre gozan de iguales derechos en lo económico, político, cultural, social y familiar.

El Estado garantiza que se ofrezcan a la mujer las mismas oportunidades y posibilidades que al hombre, a fin de lograr su plena participación en el desarrollo del país.

El Estado organiza instituciones tales como círculos infantiles, seminternados e internados escolares, casas de atención a ancianos y servicios que facilitan a la familia trabajadora el desempeño de sus responsabilidades.

Al velar por su salud y por una sana descendencia, el Estado concede a la mujer trabajadora licencia retribuida por maternidad, antes y después del parto, y opciones laborales temporales compatibles con su

<sup>6</sup>**CAPITULO IV: Familia**

**ARTICULO 36.**- El matrimonio es la unión voluntariamente concertada de un hombre y una mujer con aptitud legal para ello, a fin de hacer vida en común...

- c) Equal rights to reproductive services
- d) Equal adoption rights

None of these reforms has been approved. CENESEX has dropped the pursuit of equal access to adoption and reproduction services with the aim of pursuing broader equality issues (7).

The health ministry passed a resolution in June 2008 to permit gender reassignment surgery at a single centre for the comprehensive health care of transsexuals. It is unclear whether any such surgeries have occurred since the law was enacted.<sup>7</sup>

### **Non-binding commitments**

Cuba is a signatory to the Dec. 2008 UN declaration on sexual orientation and gender identity, a document which establishes and protects the rights of sexual minorities. This declaration is not a binding legal document.

### **Illegal exit**

Citizens are allowed to leave the country by obtaining a proper exit visa. Leaving without a visa is a criminal offence, punishable by one to three years in prison or a fine (4).<sup>8</sup> The practice of denying exit and unduly punishing those who leave illegally is not based in any legislative power.

## **III: Jurisprudence**

### **Immigration Tribunal Decisions**

1. C.Y.T. (Re), [1998] C.R.D.D. No. 186

- **The claimant (who was generally found to be credible and trustworthy) alleges that**
  - **The communist regime considers homosexuality to be counter-revolutionary.**
  - **He, as well as other directors of this gay rights organization unofficially operating in Cuba, was continually harassed by the police.**
  - **The government of Cuba coerces HIV positive persons to stay at sanatoriums by otherwise withholding medication.**

---

<sup>7</sup>This is especially vague because of more recent articles stating the same “intention” to permit such operations. See *Castro's daughter: AP foreign, Cuba to reinstate sex changes*, (27 May 2009), online: The Guardian <<http://www.guardian.co.uk/world/feedarticle/8528509>>

<sup>8</sup> Spanish: “El que, sin cumplir las formalidades legales, salga o realice actos tendentes a salir del territorio nacional, incurre en sanción de privación de libertad de uno a tres años o multa de trescientas a mil cuotas.”

- **The claimant publicly said that the allegations that homosexuals are segregated in sanatoriums in Cuba are true. This allegation was raised by a film shown at an AIDS conference in Vancouver.**
- **The Board accepted the claimant’s “detailed and insightful explanation” for the external appearance of change in Cuba as well as his viva voce evidence that, in reality, the repression of gays and lesbians is worsening.**
- **The Board accepted that the claimant had provided credible and trustworthy evidence that his fear of persecution as a gay rights activist in Cuba was well-founded and recognized his claim as a Convention refugee.**

A 36-year-old citizen of Cuba claimed to be a Convention refugee on the grounds of membership in a particular social group and perceived political opinion, owing to the persecution he suffers as a gay rights activist and international spokesman. He was the founder of a gay rights organization which unofficially operated in Cuba and alleges that the organization was perceived as anti-government. The claimant was allowed to attend the international AIDS in Vancouver in July, 1996 (although he was not a delegate of the Cuban government). During one session of the conference, a film was shown and discussed which was critical of the treatment of HIV positive persons, particularly their segregation in sanatoriums in Cuba. A representative of the Cuban government said that the film was a lie but the claimant publicly said it was true.

The claimant feared that, if he were to return to Cuba, he would again be subject to constant police harassment, and persecuted for his statement which had embarrassed the official Cuban delegation and come to the attention of the government. In particular, he feared that he, himself, could be confined to a sanatorium in punishment (he alleges that the government coerces HIV positive persons to stay at the sanatoriums by otherwise withholding medication).

The claimant was questioned about documentary evidence as well as the seeming contradiction between the claimant’s professed homosexuality and his statements in the PIF that he is married (although separated) and has a daughter. All of these issues were satisfactorily explained and a positive decision was rendered.

## 2. U.L.X. (Re), [1998] C.R.D.D. No.83

- **The claimant (who was found to be a credible witness alleged that:**
  - **If he were to return to Cuba, he would be beaten and tortured because of his sexual orientation and his imputed political opinion**
  - **He is seen an opponent of the state for having espoused or defended homosexuality**
  - **He fears for his physical, mental and artistic well-being if he were to return to Cuba**



- **The Board found that the claimant did have a well-founded fear of persecution in Cuba by reason of his political opinion and his sexual orientation.**
- **The Board accepts the claimants fear that he would experience a worsening of the treatment that he has already experienced at the hands of the Government and its supporters (as detailed in his PIF) which includes:**
  - **Being jailed**
  - **Being beaten for tortured**
  - **Other deprivation of his basic human rights and civil liberties with respect to both his sexual orientation and political opinion**
- **The Board found that this constitutes a fear of persecution and his fear results from his political opinion and his sexual orientation.**
- **The Board is persuaded by past persecution and documentary evidence of human rights abuses in Cuba not that , as the state is the agent of persecution, it is clear that state protection would not be reasonably forthcoming**

The claimant is a 36-year-old citizen of Cuba who claims Convention Refugee status based on his political opinion and on his sexual orientation (the claimant is a gay man). The Board finds the claimant to be a credible witness due to his straightforward manner and the appearance of no relevant inconsistencies between his testimonies and the evidence and, subsequently renders a positive decision.

3. V. (O.Z.) (Re) Convention Refugee Determination Decisions, [1993] C.R.D.D. No. 164

- **The board accepted the claimant’s allegation that he was subjected to repudiation due to his refusal when nominated to the Young Communist League (UJC). He refused because he did not want to become a part of political system which was intolerant of homosexuals but kept these reasons secret for fear of persecution.**
- **The claimant alleges that:**
  - **He was not permitted to go to University because his file had indicated that he refused membership to the UJC.**
  - **He was not able to find work in his profession because of the note in his file**
- **The claimant was forced to reveal his sexual orientation during a medical exam for the compulsory draft to the army since “homosexuals were not permitted in the army”. This revelation had a number of consequences on the claimant’s life including:**
  - **His work place was notified of his sexual orientation and he was humiliated and eventually fired.**

- His father was informed by the military of his son's homosexuality and his father's family rejected him.
- He worried constantly about being detained by the authorities for engaging in homosexual relationships.
- The claimant had a friend who had been jailed after showing a film about human rights violations against homosexuals in Cuba and others which had been expelled from university or the UJC
- The claimant (who was found to be credible and not prone to exaggeration) feared returning to Cuba because he would continue to face public humiliation, inability to get work for which he was trained, inability to receive higher education, that he might be imprisoned as a 'dangerous' person because he is a homosexual and that he would face a disproportionate punishment for illegal departure and extra-judicial sanctions following that sentence because, as a homosexual, he is politically suspect.
- The Board found that the claimant had been subjected to discrimination which was systemic in Cuba including violations of his rights to free choice of work (UDHR, Article 23(1)), his right to accessibility to higher education on the basis of merit (UNHR, Article 26(1)), and continual offenses to his basic human dignity.
- It was the panel's view that he was *not* more harshly dealt with because he was the son of a high level communist.
- The panel expressed the opinion that the claimant has a reasonable chance of persecution on return to Cuba because the immutable characteristic of homosexuality has traditionally been defined as a serious threat to the Cuban Revolution.
- "The panel is of the view that there is a reasonable chance that the claimant will face a disproportionately harsh sentence because of his record as a homosexual, that he will face cruel and unusual treatment in a Cuban prison on account of this, that he may continue to suffer denial of his rights to due process of law and equal treatment before the law upon release from jail, that he will face continual violations of his rights to privacy, and that there is more than a mere possibility that he might be denied work – including as a hairdresser. Hence there are good grounds to find that the claimant has proved that he has a well-founded fear of persecution on cumulative grounds."

The claimant is a 24-year-old citizen of Cuba who made his claim on the basis of his membership in a particular social group (homosexual men). Having been raised by his paternal grandmother, the claimant was taken at a young age to see a psychologist because of the way he behaved. The psychologist said that he was a homosexual and the claimant was then taken for various medical treatments looking for a 'cure' for his

homosexuality. The claimant comes from a family evidently immersed in the Cuban regime. He was found to be a credible witness, not prone to exaggeration.

The panel found that socio-political marginalization and disenfranchisement are indicia of a ‘particular group’ under the Convention. These indicia are pronounced with respect to homosexuals in Cuba since their non-conformity to heterosexual norms is seen to be a statement of non-adherence to the Communist Revolution. Homosexual men in Cuba may thus also be defined by attributing to them political opinions which are adverse to those of the government. For these reasons, the Board rendered a positive opinion.

### **Federal Court Decisions**

No federal case law was found.

### **Other Relevant Jurisprudence**

While the following cases are not directly related to the question, there is substantial mention of Cuba in the case law addressing the Internal Flight Alternatives of homosexual male refugee claimants from Mexico. The following cases note, Pedro Joaquin-Coldwell, the openly bi-sexual Mexican Ambassador to Cuba, when discussing the internal flight alternative of homosexual male refugee applicants from Mexico:

1. Valdes v. Canada (Minister of Citizenship and Immigration), [2004] R.P.D.D. No. 140

- **“There are also examples of sexual minorities in public life [in Mexico] including reference to elections in 1997 where federal deputies of the Partido de la Revolucion Democratica (PRD) party becoming Mexico’s first openly gay legislator. In February 1999, it was reported that Mexico had appointed an openly bisexual man as an ambassador to Cuba.”**

2. P.P.L. (Re). [2001] C.R.D.D. No. 33

- **“For example, although still isolated, the Mexican federal legislature now has an openly gay member, Patria Jimenez. Also, in February 1998, it was reported that Mexico had appointed an openly bisexual man, Pedro Joaquin-Coldwell, as ambassador to Cuba. Joaquin-Coldwell had had much experience in public life, including as head of the National Tourist Development Fund and governor of the state of Quintano Roo (Gay Place News June 1998).”**

3. M.L.M. (Re). [2005] R.P.D.D. No. 920

- **“Participation by homosexuals is widely accepted in two of Mexico’s three principle political parties. Ambassador Pedro Joaquin-Coldwell, ambassador to Cuba is openly bisexual.”**

#### IV: Governmental Reports

1. Immigration and Refugee Board of Canada, *Cuba: Treatment of homosexuals, including protection offered by the state and the attitude of the population* (11 January 2007), online: <<http://www2.irb-cisr.gc.ca/en/research/rir/?action=record.viewrec&gotorec=451241>>.

- **Cuban homosexuals are not protected by law against discrimination**
- **Cuban homosexuals are often afraid to meet and organize**
- **Some developments may indicate a trend towards enhanced homosexual rights**

In Cuba, homosexuals are not legally protected against discrimination. A report by the International Lesbian and Gay Association describes gays and lesbian as “afraid of meeting and organizing themselves”. Yet some indicators suggest improved conditions for homosexuals. Points noted to this end include: cleansing discriminatory language from the penal code; the existence of organizations working with sexual minorities (including two that are state-run); greater openness towards homosexuals in societal perceptions and media portrayals. Any increase in tolerance of homosexuality is not, however, indicative of an end to discrimination and homophobia in Cuba.

2. Immigration and Refugee Board of Canada, *Cuba: Procedures followed to obtain an exit permit; procedures followed to extend an exit permit while outside of Cuba; consequences to returning to Cuba with an expired exit permit* (9 January 2007), online: <<http://www2.irb-cisr.gc.ca/en/research/rir/?action=record.viewrec&gotorec=450823>>.

- **Cubans who have been outside of Cuba for over 11 months without proper documentation cannot return home**

Official at the Canadian Embassy in Havana is quoted: “Persons who have been outside Cuba for over 11 months and do not have a re-entry permit, or an open permit to reside abroad, should never attempt to travel back to Cuba. They will be not be allowed to enter, and will be subject to swift removal.”

3. U.S. Department of State, *2008 Human Rights Report: Cuba* (25 February 2009), online: <<http://www.state.gov/g/drl/rls/hrrpt/2008/wha/119155.htm>>.

- **Cuban homosexuals face “frequent cases of police brutality”**
- **Cubans vulnerable to discharge from jobs because of sexual orientation**
- **Cuban government has undertaken some promotions of homosexual rights**

Societal discrimination against homosexuals persists in Cuba. Cases of individuals being discharged from their jobs because of their sexual orientation were reported by homosexual rights organizations. Instances of police brutality and “sweeps” continue apparently unabated by the government. State Security detained organizers and intimidated the would-be participants of a “Gay Pride” march in Havana in June 2008. There have been some measures promoting homosexual rights. Mariela Castro, the president's daughter, heads the national Center for Sexual Education and is an advocate for homosexual rights. The government has also made free gender-reassignment surgery available.

- **Unauthorized departures from Cuba by boat punished by imprisonment/fine**
- **Would-be migrants experience harassment and discrimination**

In Cuba, individuals who leave the country by boat or raft are subject to official and unofficial sanctions. Cuban law provides for up to three years of imprisonment or a fine of between 300 to 1,000 pesos. Many would-be migrants are subjected to harassment and discrimination such as “fines, expulsion from school, job loss, and detention in prison”.

### **V: Reports by Non-Governmental Organizations**

1. Freedom House, *Freedom in the World 2009 – Cuba* (16 July 2008), online: <http://www.unhcr.org/refworld/docid/4a6452c02d.html>

- **Cuban government helped sponsor International Day Against Homophobia**
- **Authorized government sponsored sex-change surgeries for transsexuals**

In 2008, the Cuban government sponsored International Day Against Homophobia. The program included showing *Brokeback Mountain*, a movie that features two men in a homosexual relationship, on state television despite the fact that the movie is still banned in most Latin American countries. More importantly, participants were offered blood tests for sexually transmitted diseases. In June, the Ministry of Public Health authorized sex-change surgeries for transsexuals. The changing governmental attitude toward homosexuals is partly due to the advocacy efforts by Mariela Castro (Raul Castro's daughter).

2. International Lesbian and Gay Association, *Carlos Sanchez, ILGA LAC rep tells us about his Cuban experience*, 12 March 2004

- **Attitude toward homosexuals are becoming more tolerant, although gays and lesbians still face discrimination**
- **Although there are no legal sanctions against homosexuals, homosexuals are still afraid of organizing themselves**
- **There are a few organizations in Cuba that work on sexuality issues**

General attitudes toward homosexuality have become more tolerant. There are no legal sanctions against gays or lesbians, but they still fear organizing themselves. A

few organizations in Cuba have been working on sexuality issues. Among these organizations include two state organizations: the National Center for Sexual Education and the Federation of Cuban Women. The National Center for Sexual Education has offered to help homosexuals organize themselves in Cuba and it is also offering programs to help gays and lesbians conceive.

## **VI: Media Reports**

1. Michael Rowe, “The New Cuban Revolución” *The Advocate* (October 1, 2009), online: Advocate.com  
<[http://advocate.com/News/World\\_News/The\\_New\\_Cuban\\_Revolucion/#at](http://advocate.com/News/World_News/The_New_Cuban_Revolucion/#at)>.

- **Cuban attitudes about LGBT minorities are evolving, but public displays of same-sex affection still dangerous away from urban areas, like Havana**
- **Since 2008 there has been increasing recognition of LGBT rights: the government passed a resolution allowing free sex-reassignment surgeries, sanctioned a “Day Against Homophobia”**
- **a bill to legalize same-sex civil unions is being reviewed by parliament**

Mariela Castro Espín, daughter of Cuban President Raúl Castro, is the director of the government run National Center for Sex Education (CENESEX). Castro Espín and CENESEX have been focusing on educating the general Cuban population, fighting homophobia and trying to change laws and regulations about LGBT issues. Castro Espín has been a powerful advocate of the LGBT rights movement because of a combination of powerful family connections and determination. The post-revolutionary machismo attitude in Cuba has contributed to anti-gay sentiments. In the 1960s gay men were forced into military camps to be reformed. While growing up, Castro Espín started developing awareness about homophobia and her family’s role in the oppression of gays. She explains, however, that over the years the ideologies of her family have also become more accepting of the LGBT community.

2. “Big Strides in Gay and Transgender Rights in Cuba Mariela Castro Tells London Audience” *UK Gay News* (July 6, 2009), online: UK Gay News  
<<http://www.ukgaynews.org.uk/Archive/09/Jul/0701.htm>>.

- **Despite progress in recent years, much more is still needed according to Mariela Castro Espín**

After the screening of a gay film, Mariela Castro Espín participated in a question and answer session where she explained that although Cuba has made significant progress on LGBT issues, that much more was still needed. She identified historical male machismo as the major obstacle to progress.

3. Lou Chibbaro Jr, “U.S. grants asylum to gay Cuban” *Southern Voice* (June 1, 2009), online: SOVO <[http://www.sovo.com/thelatest/thelatest.cfm?blog\\_id=25598](http://www.sovo.com/thelatest/thelatest.cfm?blog_id=25598)>.

- **asylum applicant provided evidence to establish that there is a pattern and practice of state-sponsored persecution of gay and HIV-positive people in Cuba**

U.S. immigration officials granted political asylum to a gay man, Hernandez, who claims that he would be persecuted for being gay and HIV-positive in Cuba. The man has been seeking asylum approval for almost a decade, but has faced difficulty because of a U.S. ban, repealed by Congress last year, on HIV-positive visitors and immigrants that took precedent over the Cuban Adjustment Act. Canadians have also complained about being discriminated against because of their HIV/AIDS status when trying to enter the U.S. Hernandez needed to provide evidence that gay and HIV-positive people are routinely subjected to persecution.

4. “Cuba to reinstate sex changes” *South Florida Blade* (May 28, 2009), online: Florida Blade < [http://www.floridablade.com/thelatest/thelatest.cfm?blog\\_id=25571](http://www.floridablade.com/thelatest/thelatest.cfm?blog_id=25571)>

- **despite some opposition, Cuba has reinstated free sex-change operations**

Cuba will reinstate previously banned sex-change operations. The first successful operation was performed in 1988, but the procedure has been banned since then. Some Cubans protested the decision either because of general opposition to the procedure or because of its high cost, which would be covered by the government because of Cuba’s universal healthcare system.

5. Dalia Acosta, “Homophobia Is Not Incurable” *Havana Times* (May 22, 2009), online: Havana Times < <http://www.havanatimes.org/?p=9049>>.

- **CENESEX has launched a year-long campaign, “Diversity is the Norm”, to address LGBT issues**

CENESEX began a year-long campaign titled “Diversity is the Norm”. The main event was a nation-wide celebration including panels, debates, etc., but, unlike the year before, it attracted little mass media attention. Many other countries also have demonstrations and celebrations to mark the day that the WHO struck homosexuality from its list of mental illnesses. Research shows that zero-positive gays experience more discrimination because of their sexual orientation than HIV-status. The demands of lesbians often go unseen in the movement against homophobia and transphobia.

6. Irina Echarry, “Homophobia Is the Problem, Not Gays” *Havana Times* (May 19, 2009), online: Havana Times < <http://www.havanatimes.org/?p=8922>>.

- **Although education campaigns are addressing homophobia at some levels, Cuban society is generally still homophobic**
- **There are examples of women and men who, despite their homosexuality, have suffered from trying to conform to societal norms in order to avoid discrimination**

- **Police, soldiers and officials are recognized as still being homophobic groups, despite efforts being made to sensitize them**

There was a celebration in Havana for Sexual Diversity Day, supporting the proposal for a World Day against Homophobia. Activists are trying to foster an understanding of family forms that differ from the predominant family structure. Education campaigns are helping, but generally Cuban society is still homophobic. At the beginning of the Cuban Revolution, homophobia was harshly repressed. Currently, homophobia permeates all sectors of society. Some people, despite their sexual orientation, still opt to try and follow general societal canons in order to avoid discrimination. The lesbian group Fenix, alternatively, tries to promote the inclusion of homosexuals in society. Homophobia still exists amongst police, soldiers and officials, though there are efforts to sensitize them.

7. Andrea Rodriguez, "Cuban government backs calls to combat homophobia" *Miami Herald* (May 18, 2008), online: Miami Herald < <http://miamiherald.typepad.com/gaysouthflorida/2008/05/cuban-governmen.html>>.

- **The Cuban government has showed openness about and support for the gay rights movement**
- **Parliament is considering legalizing same-sex unions**
- **Prejudice still infiltrates Cuban society, and activists are using low-key, subtle methods to change attitudes**

At a conference for the International Day Against Homophobia, Cuba's gay community celebrated openness and government support for a campaign against homophobia. Although prejudice is still present, the government has made much progress since the 1960s and 1970s. Cuba's parliament is considering proposals to legalize same-sex unions. However, the gay rights movement is being careful not to overwhelm Cuban society, and are trying to use subtle techniques.

8. Michael Voss, "Castro champions gay rights in Cuba" *BBC News* (March 27, 2008), online: BBC News < <http://news.bbc.co.uk/2/hi/americas/7314845.stm>>.

- **Cuban National Assembly considering legislation that would legalise same-sex unions, inheritance rights, sex-changes, and the right to identify one's own gender**
- **There is still deep-rooted prejudice, especially in older generations**

Mariela Castro, the head of the National Center for Sex Education is trying to promote acceptance of minority communities. She is trying to get the Cuban National Assembly to adopt legislating that would permit same-sex unions, inheritance rights, free sex-change operations for transsexuals, and the option for individuals to choose the gender on their identity cards. There are limits on adoption, and activists are trying to avoid delay by not insisting on using the term "marriage". The Center provides counselling for transsexuals. Although Cuba's gay scene is vibrant, in light of the country's history of discrimination, most people still prefer to remain discreet. Despite the legalisation of



same gender sex and educational efforts, prejudice remains, especially in older generations and police.

## **VII: Scholarship**

1. Bente Traeen *et. al.*, “Sexual Orientation and Quality of Life Among University Students from Cuba, Norway, India and South Africa” (2009) 56 Journal of Homosexuality 655.

- **Homophobia assumed to be widespread, and homosexual behaviour subject to restrictive norms**
- **LGBT people gravitate towards Havana, where it is easier to practice homosexuality**

This article explores quality-of-life aspects among gay, lesbian, bisexual, and straight male and female students in Havana, Cuba, as well as Norway, India and South Africa. In the period 2004-2005, a questionnaire survey on sexuality, happiness, and life satisfaction was undertaken among 339 students from the University of Havana, as well as cities in the other countries. In all the cities, straight men and women scored higher than gay, lesbian, and bisexual persons on the quality-of-life measures. Quality of life among gay/bisexual men and lesbian/bisexual women was higher in cultures with accepting attitudes toward homosexuality than in cultures with restrictive attitudes. Cuba was recognized as having widespread homophobia, and homosexual behaviour was subject to restrictive norms. However, there was a positive correlation between sexual orientation and sexual behaviour in Havana, which may indicate acceptance of homosexuality.

2. Beatriz R. Olson & Richard A. Dickey, “Mass Health Education on Sex and Sexuality and Its Impact on Cuba” (2002) 11 Journal of Women's Health 767.

- **Many homosexual people have been rejected by families and society, and struggled in school and work environments, often resulting in them trying to leave the country**
- **The widely viewed film *Fresas y Chocolate* has helped to encourage education and acceptance of homosexuality by highlighting the issues faced by gay people in Cuba**

The article is based on an interview with one of the directors, Merida Lopez Nodarse, of CENESEX, the National Center for Sex Education in Havana. With an emphasis on women's health, this article discusses the medical literature on the current state of affairs in Cuba with regard to views on sex and sexuality and the government's efforts to promote sexual health through mass education and screening programs. Although the

article provides unilateral impressions, there is limited medical literature about sex and sexuality in Cuba.

In Cuba, homosexuals have been rejected by their own families and society, and have struggled in both work and school environments, resulting in many fleeing the country. The film, *Fresas y Chocolate*, helped to increase recognition by focusing on the struggle of a gay man and challenged common, discriminatory view of homosexuality. People in Cuba are now starting to accept and learn more about homosexuality.

3. Ian Lumsden, *Machos, maricones, and gays: Cuba and homosexuality* (Philadelphia: Temple University Press, 1996).

- **Lives of gay men in Cuba continue to be conditioned by machismo that has been part of Cuban culture for generations, and the government has not done enough to challenge it**
- **Gay life has become much more visible in Havana, indicating that gays feels more secure about their rights than in the past**
- **Police harassment of gays has decreased since the 1960s**

Male homosexuality has been controversial since the Cuban revolution, especially the treatment of male homosexuality under Castro within the pre-revolution prejudices and preconceptions. Cultural history, the current erosion of traditional “machismo”, the correlation between traditional women’s roles and relationships between gay men, homosexuality in the law, sexual education and the differences between being publicly and privately gay are explored.