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What is the Human Dignity Trust?

The Human Dignity Trust is an organisation made up of international lawyers supporting local partners to uphold human rights and constitutional law in countries where private, consensual sexual conduct between adults of the same sex is criminalised.

Legal provisions that criminalise lesbian, gay, bisexual and transgender (LGBT) people put them beyond the protection of the law, fostering a climate of fear and violence. These provisions also violate constitutional and international human rights law, including a person's right to dignity, equality and privacy.

Same-sex sexual conduct between consenting adults in private continues to be criminalised in [78 jurisdictions](#) around the world. In most of these jurisdictions, the prescribed maximum punishment is a lengthy prison sentence. A few jurisdictions still retain the death penalty.

The Trust provides pro bono technical legal assistance and advisory services at the request of, and in collaboration with, local activists, their lawyers and other human rights defenders, who wish to use the courts to challenge these persecutory laws.

Our website offers a wide range of material on key issues relevant to laws that criminalise and persecute LGBT people: www.humandignitytrust.org

We are a registered charity no.1158093 in England and Wales. All our work, whatever country it is in, is strictly not-for-profit.

I. What is the purpose of this briefing?

This briefing note summarises a wide range of high-level statements and declarations from international and regional bodies condemning criminalisation of homosexuality. These statements complement and punctuate the findings by courts and tribunals around the world of the invalidity of these laws.

Inter-governmental organisations ranging from the United Nations and its specialised agencies to regional bodies such as the Organisation of American States, the African Commission on Human and Peoples' Rights, the Council of Europe, the European

* Our Briefing Notes are updated periodically as new information relevant to the topic becomes available. When substantive changes are made, the 'Last updated' date will be changed accordingly.

Union and the Commonwealth have consistently expressed grave concerns about the criminalisation of homosexuality and the violence, stigma and discrimination that such laws promote.

II. United Nations

The United Nations (UN) General Assembly *Joint Statement on Sexual Orientation and Gender Identity* delivered on 18 December 2008 and co-sponsored by 66 states stated in part:

*We urge States to take all the necessary measures, in particular legislative or administrative, to ensure that sexual orientation or gender identity may under no circumstances be the basis for criminal penalties, in particular executions, arrests or detention.*¹

A Joint Statement by 85 countries at the UN Human Rights Council in March 2011 called for states to end criminal sanctions based on sexual orientation.² In June 2011, a Human Rights Council resolution expressed:

*Grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity.*³

The first comprehensive UN study documenting discriminatory laws and practices and acts of violence against individuals based on their sexual orientation or gender identity was published in November 2011.⁴ That study confirmed that:

*Criminalisation of private consensual homosexual acts violates an individual's rights to privacy and to non-discrimination and constitutes a breach of international human rights law.*⁵

UN Secretary General Ban Ki-moon, speaking at a December 2012 event co-organised by the UN Office of the High Commissioner for Human Rights and a range of permanent missions to the world body, stated that:

Laws rooted in 19th century prejudices are fuelling 21st century hate. In other cases new discriminatory laws are being introduced. These laws must go. We must replace them with laws that provide adequate protection against discrimination, including on the basis of sexual orientation and gender identity. This is not optional. It is a State obligation, based on the principle of non-discrimination – a fundamental tenet of international human rights law.... It is an outrage that in our modern world, so many countries continue to

¹ UN General Assembly, Joint Statement on Sexual Orientation and Gender Identity, 18 December 2008. Available at: http://www.ishr.ch/document-stuff/browse-documents/doc_download/308-joint-statement-on-sexual-orientation-and-gender-identity-18-december-2008-general-assembly.

² United Nations Human Rights Council, 'Joint Statement on Ending Acts of Violence and Related Human Rights Violations Based on Sexual Orientation and Gender Identity', 22 March 2011. Available at: <http://www.unhcr.org/refworld/docid/4eb8f32e.html>.

³ United Nations Human Rights Council resolution 17/19 'Human rights, sexual orientation and gender identity', A/HRC/RES/17/19 (2011). Available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/17/L.9/Rev.1.

⁴ Report of the United Nations High Commissioner for Human Rights, 'Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity' (17 November 2011), A/HRC/19/41. Available at:

http://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/a.hrc.19.41_english.pdf.

⁵ *Ibid*, p. 41.

*criminalize people simply for loving another human being of the same sex. In most cases, these laws are not home-grown. They were inherited from former colonial powers... these laws must go.*⁶

In a video message earlier the same year to the Human Rights Council's panel discussion on the issue of discriminatory laws and practices and acts of violence, the Secretary-General stated that he understood that sexual orientation and gender identity raised sensitive cultural issues, but that cultural practice could not justify any violation of human rights.⁷ This echoed his earlier statements that laws criminalising people on the basis of their sexual orientation violated the principle of non-discrimination and that cultural considerations should not stand in the way of basic human rights.⁸

Delivering a speech on behalf of the Secretary General to the International Forum on the International Day Against Homophobia and Transphobia (The Hague, 16 May 2013), then UN High Commissioner for Human Rights Navanethem Pillay said:

*For generations, LGBT people in all regions have been subjected to terrible violence on account of their sexual orientation and gender identity. ... We know what needs to be done. Draconian laws used to criminalize and punish LGBT people must be replaced by new laws that are in harmony with universal human rights conventions and protect everyone from discrimination on grounds of their sexual orientation and gender identity. ... Ending homophobia is a matter of personal security, dignity and even survival for countless individuals.*⁹

She has repeatedly stated that the fight against discrimination in all its forms is at the root of human rights and that this fight includes ending laws that criminalize people on the basis of their sexual orientation.¹⁰

The High Level Panel on the Post-2015 Development Agenda established by the UN Secretary General, in its report entitled 'A New Global Partnership: Eradicate Poverty and Transform Economies Through Sustainable Development', recommended that: "Laws that discriminate on the basis of gender, criminalise or marginalise specific groups on the basis of their gender identity or sexual orientation must be repealed."¹¹

Steven Kraus, Director for Asia and the Pacific of the Joint United Nations Programme on HIV and AIDS (UNAIDS), speaking on the sidelines of the

⁶ Secretary-General's remarks to special event on 'Leadership in the Fight against Homophobia', 11 December 2012. Available at <http://www.un.org/sg/statements/index.asp?nid=6504>.

⁷ UN Secretary-General Ban Ki-Moon's video message to the Panel on ending violence and discrimination against individuals on the basis of their sexual orientation and gender identity, Human Rights Council, 19th Session, 22nd Meeting, 07 March 2012. Transcript available at: http://www.un.org/apps/news/infocus/sgspeeches/statments_full.asp?statID=1475#.UOwKBuSpCSo.

⁸ UN Secretary-General Ban Ki-Moon's remarks at an event on 'Ending violence and criminal sanctions based on sexual orientation and gender identity', New York, 10 December 2010. Available at: <http://www.un.org/sg/statements/?nid=4992>.

⁹ Available at: <http://www.un.org/sg/statements/?nid=6822>

¹⁰ See for example: Statement by the UN High Commissioner for Human Rights Navanethem Pillay, 'Gays, lesbians must be treated as equal members of human family', New York, 18 December 2008, Address at the 63rd session of the UN General Assembly. Available at: <http://www.un.org/apps/news/story.asp?NewsID=29364&Cr=pillay&Cr1#.UOwMZOSpCSo>.

¹¹ United Nations, 'A New Global Partnership: Eradicate Poverty and Transform Economies Through Sustainable Development: The Report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda', 2013, page 62. Available at: <http://www.post2015hlp.org/wp-content/uploads/2013/05/UN-Report.pdf>.

International Aids Society meeting in Kuala Lumpur, said that laws that punish same-sex activities and impose harsh sentences have prompted a rise in transmissions in parts of Asia: *'Punitive laws and practices that discriminate (against) people and prevent them from getting treatment are not helping'*.¹² Further, Speaking at a press conference on the new World Health Organisation's HIV treatment guidelines, Steven Kraus stated that: *'...we are not asking for new rights... we are asking that their (the key populations) right to health is met'*.¹³

The UN Development Programme's Global Commission on HIV and the Law, after extensive global analysis and consultation, found that criminalisation of homosexuality *'both causes and boosts'* the rate of HIV infection among men who have sex with men¹⁴ and recommended that countries *'repeal all laws that criminalise consensual sex between adults of the same sex and/or laws that punish homosexual identity'* to ensure an *'effective, sustainable response to HIV that is consistent with human rights obligations'*.¹⁵

III. Regional Bodies

Organization of American States

The Organization of American States (OAS) has since 2008 repeatedly condemned human rights violations based on sexual orientation and gender identity and invited states to adopt measures to eliminate them.¹⁶ For example, in a 2009 Resolution on *Human Rights, Sexual Orientation and Gender Identity*, members states of the OAS unanimously agreed:

1. *To condemn acts of violence and related human rights violations committed against individuals because of their sexual orientation and gender identity.*
2. *To urge states to ensure that acts of violence and human rights violations committed against individuals because of their sexual orientation and gender identity are investigated and that their perpetrators are brought to justice.*

¹² South China Morning Post, *Laws in Asia hindering Aids fight, say UN health officials*, 2 July 2013. Available at: <http://www.scmp.com/news/asia/article/1273330/laws-asia-hindering-aids-fight-say-un-health-officials>

¹³ *Towards 15 and Beyond: New Horizons for HIV Antiretroviral Treatment: Launch of new WHO Guidelines and WHO Global Progress Report*, Kuala Lumpur (Malaysia), 1 July 2013. Watch: <http://www.youtube.com/watch?v=LkynwllvgOc> [at 33:30]

¹⁴ *Final Report of the Global Commission on HIV and the Law*, Global Commission on HIV and the Law (9 July 2012), p. 45. Available at: <http://www.hivlawcommission.org/resources/report/FinalReport-Risks,Rights&Health-EN.pdf>

The Global Commission on HIV and the Law is an independent body comprising 14 former heads of state and subject experts convened by the United Nations Development Programme. It produced its recommendations after 18 months of worldwide consultation and research.

¹⁵ *Ibid.*, p. 50

¹⁶ See: Organisation of American States, 'Human Rights, Sexual Orientation and Gender Identity', AG/RES. 2435, 3 June 2008; Organisation of American States, 'Human Rights, Sexual Orientation and Gender Identity', AG/RES. 2504, 4 June 2009; Organisation of American States, 'Human Rights, Sexual Orientation and Gender Identity', AG/RES. 2600, 8 June 2010; Organisation of American States, 'Human Rights, Sexual Orientation and Gender Identity', AG/RES. 2653, 7 June 2011; Organisation of American States, 'Human Rights, Sexual Orientation and Gender Identity', AG/RES.2721, 4 June 2012; Organisation of American States, 'Human Rights, Sexual Orientation and Gender Identity and Expression', AG/RES 2807, 6 June 2013; Organisation of American States, 'Human Rights, Sexual Orientation, and Gender Identity and Expression', AG/doc.5426/14 rev. 1, 30 May 2014.

3. *To urge states to ensure adequate protection for human rights defenders who work on the issue of acts of violence and human rights violations committed against individuals because of their sexual orientation and gender identity.*¹⁷

The annual resolutions of the OAS on this issue began expressly referencing decriminalisation of homosexuality in 2012, specifically by requesting the Inter-American Commission on Human Rights to prepare ‘a study on legislation and provisions in force in the member countries of the Organization of American States that restrict the human rights of individuals by reason of their sexual orientation or gender identity or expression and to prepare, based on that study, a guide aimed at promoting the decriminalization of homosexuality and practices related to gender identity or expression.’¹⁸

African Commission on Human and Peoples’ Rights

The Chair of the African Commission on Human and Peoples’ Rights, Catherine Dupe Atoki of Nigeria, in a video address to the Oslo International Conference on Human Rights, Sexual Orientation and Gender Identity – which ran in parallel to the 53rd Ordinary Session of the African Commission (9 - 22 April 2013) – affirmed that the Commission:

*...denounces violence committed against individuals based on their sexual orientation as part of its mandate to protect individuals from all forms of violence.*¹⁹

In May 2014 during its 55th Ordinary Session, the Commission passed a *Resolution on protection against violence and other human rights violations against persons on the basis of their real or imputed sexual orientation or gender identity* (Resolution 275). In it the Commission:

1. *Condemns the increasing incidence of violence and other human rights violations, including murder, rape, assault, arbitrary imprisonment and other forms of persecution of persons on the basis of their imputed or real sexual orientation or gender identity;*
2. *Specifically condemns the situation of systematic attacks by State and non-state actors against persons on the basis of their imputed or real sexual orientation or gender identity;*
3. *Calls on State Parties to ensure that human rights defenders work in an enabling environment that is free of stigma, reprisals or criminal prosecution as a result of their human rights protection activities, including the rights of sexual minorities; and*
4. *Strongly urges States to end all acts of violence and abuse, whether committed by State or non-state actors, including by enacting and effectively applying appropriate laws prohibiting and punishing all forms of violence including those targeting persons on the basis of their imputed or real sexual*

¹⁷ Organisation of American States, ‘Human Rights, Sexual Orientation and Gender Identity’, AG/RES. 2504, 4 June 2009.

¹⁸ *Ibid* footnote 16.

¹⁹ Catherine Atoki, Video Message to the International Conference on Human Rights, Sexual Orientation and Gender Identity, Oslo, 15-16 April 2013. Available at: <http://gyroconference.event123.no/MFA/HRSOGI/cathrineatoki.cfm?FuseAction=GenPage&pWebprofilfunkid=76534>; See also: <http://www.ishr.ch/general-news/1497-progress-at-the-53rd-ordinary-session-of-the-african-commission-is-hindered-by-a-lack-of-state-reporting>

*orientation or gender identities, ensuring proper investigation and diligent prosecution of perpetrators, and establishing judicial procedures responsive to the needs of victims.*²⁰

Council of Europe and European Union

The Committee of Ministers of the Council of Europe stated in 2010 that:

*Member states should ensure that any discriminatory legislation criminalising same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.*²¹

The Council of Europe's Commissioner for Human Rights likewise stated that *'...significant, albeit uneven, progress has been made over the past decades concerning the attitudes and practices towards LGBT people. The pathologisation and criminalisation of homosexuality clearly belong to the past...'*²²

In a statement to the European Parliament on 28 September 2011, the High Representative of the European Union for Foreign Affairs and Security Policy and Vice-President of the Commission, Catherine Ashton stated that:

*[t]here are 80 countries which still criminalise same-sex relations between consenting adults, and seven which apply the death penalty. Let us be clear: this is incompatible with international human rights law ... We cannot allow discrimination over sexuality and gender, any more than we can over colour and creed. Human rights are as indivisible as they are universal.*²³

Earlier, in a declaration on behalf of the European Union on the International Day Against Homophobia, 17 May 2010, she had stated that:

*The European Union rejects and condemns any manifestation of homophobia as this phenomenon is a blatant violation of human dignity. It considers that discrimination on the grounds of sexual orientation and gender identity is incompatible with the basic principles on which the EU is founded.*²⁴

²⁰ African Commission on Human and Peoples' Rights, 'Resolution on protection against violence and other human rights violations against persons on the basis of their real or imputed sexual orientation or gender identity', Adopted at the 55th Ordinary session, 28 April to 12 May 2014, Luanda, Angola.

²¹ Council of Europe, Committee of Ministers, Recommendation (2010) 5 on measures to combat discrimination based on sexual orientation and gender identity (CM/Rec(2010)5, 31 March 2010), para. 18 (available at: <https://wcd.coe.int/ViewDoc.jsp?id=1606669>).

²² Council of Europe Commissioner for Human Rights, Thomas Hammarberg, in a speech given at the launch of the Council of Europe report entitled 'Discrimination on grounds of sexual orientation and gender identity in Europe' (Strasbourg, 23 June 2011), available at: <https://wcd.coe.int/ViewDoc.jsp?id=1799477>.

²³ Statement to the European Parliament by the High Representative of the European Union for Foreign Affairs, Catherine Ashton on 'Sexual orientation and gender identity at the United Nations Human Rights Council', Brussels, 28 September 2011, available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/124774.pdf

²⁴ Statement by the High Representative of the European Union for Foreign Affairs, Catherine Ashton, 'Declaration on behalf of the European Union on the International Day Against Homophobia', 17 May 2010, available at: http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/cfsp/114473.pdf

Commonwealth

The Commonwealth Eminent Persons Group (EPG) – a group of 10 leading figures from around the Commonwealth chaired by Tun Abdullah Badawi, former Prime Minister of Malaysia – was commissioned in 2009 by Commonwealth Heads of Government to examine key areas for reform of the Commonwealth. After extensive study and consultations, the EPG unanimously recommended in its 2011 Report that, among others, steps be initiated to procure the repeal of laws criminalising homosexuality. The Report states:

*We have ... received submissions concerning criminal laws in many Commonwealth countries that penalise adult consensual private sexual conduct including between people of the same sex. These laws are a particular historical feature of British colonial rule. They have remained unchanged in many developing countries of the Commonwealth despite evidence that other Commonwealth countries have been successful in reducing cases of HIV infection by including repeal of such laws in their measures to combat the disease. Repeal of such laws facilitates the outreach to individuals and groups at heightened risk of infection. The importance of addressing this matter has received global attention through the United Nations. It is one of concern to the Commonwealth not only because of the particular legal context but also because it can call into question the commitment of member states to the Commonwealth's fundamental values and principles including fundamental human rights and non-discrimination.*²⁵

Commonwealth Secretary General Kamalesh Sharma agreed. In his keynote address at the opening ceremony of the 2011 Commonwealth People's Forum, he stated that:

*... criminalisation on grounds of sexual orientation is at odds with [Commonwealth] values and I have had occasion to refer to this in the context of our law-related conferences.*²⁶

Speaking at the High-Level Segment of the Human Rights Council on 28 February 2013, the Secretary General stated that:

*With regard to sexual orientation and gender identity our position remains that, based on shared Commonwealth principles, we oppose discrimination or stigmatisation on any grounds... we continue to encourage constructive national debate in legislatures, and the examination of legal remedies, and to work with national human rights institutions. Work alongside member states on the Universal Periodic Review offers scope for criminal codes to be brought into conformity with Commonwealth commitments and international human rights law supporting the principles of equality and non-discrimination.*²⁷

²⁵ Commonwealth Secretariat, (2011), *A Commonwealth of the People: Time for Urgent Reform*, Report of the Eminent Persons Group to Commonwealth Heads of Government, London, 2011, p. 100 (available at: <http://www.chogm2011.org/sites/default/files/documents/A%20Commonwealth%20of%20the%20People%20EB.pdf>).

²⁶ Commonwealth Secretary General Kamalesh Sharma's Commonwealth People's Forum Opening Speech, 25 October 2011, available at: <http://thecommonwealth.org/media/news/commonwealth-peoples-forum-opening-speech>.

²⁷ Commonwealth Secretary-General at the High-Level Segment of the Human Rights Council, 22nd Session, Geneva, 28 February 2013. Available at: <http://thecommonwealth.org/media/news/commonwealth-secretary-general-addresses-un-human-rights-council-0>

On 30 January 2014, following various developments in a number of Commonwealth member states affecting the rights of citizens based on their sexual orientation, the Secretary General renewed his call for Commonwealth values to be upheld, saying:

The Commonwealth Charter underlines the importance which people of the Commonwealth collectively attach to tolerance, respect and understanding... It emphasises that the protection of the dignity of all human beings is critical to promoting equitable, peaceful and prosperous societies in which we all wish to live.

With regard to discrimination on the grounds of sexual orientation, the responsibility for mutually respectful and constructive national debate is one to be shared by all parties, including parliaments, national human rights institutions and human rights defenders. Judiciaries continue to have a vital role in interpreting and applying national constitutional provisions, and consonance of national laws with international obligations.²⁸

IV. International Legal Associations

International Bar Association

On 27 May 2010 the International Bar Association Human Rights Institute Council (IBAHRI Council) passed the *Resolution on Sexual Orientation and Human Rights*. The Resolution 'opposes discrimination, violence and other breaches of human rights directed to people on the ground of their actual or imputed sexual orientation or gender identity'. It adopts a policy favouring the global repeal of criminal laws imposing penalties against people in respect of consensual, adult, private sexual conduct.²⁹

Commonwealth Lawyers Association

In 2009, the Commonwealth Lawyers Association (CLA) endorsed a resolution on the decriminalisation of adult consensual sexual conduct in the Commonwealth.³⁰ The CLA has also made detailed representations to the Commonwealth Law Ministers and in a paper presented at a Meeting of Senior Officials of Commonwealth Law Ministries in October 2010, it set out the case for the decriminalisation of same-sex sexual conduct between consenting adults throughout the Commonwealth:

Often as a result of legislation rooted in colonial times, around half of the states that criminalise private consensual homosexual acts between adults are members of the Commonwealth. There have, furthermore, been a number of domestic legislative proposals in recent times which, if enacted, would have led to a widening of criminalisation and the imposition of harsher sentences, including the death penalty, for acts of homosexuality...

²⁸ Secretary-General calls for respect on sexual orientation and gender identity, 30 January 2014. Available at: <http://theCommonwealth.org/media/news/secretary-general-calls-respect-sexual-orientation-and-gender-identity>

²⁹ International Bar Association Human Rights Institute Council, *Resolution on Sexual Orientation and Human Rights*, 27 May 2010. Available at: <http://www.ibanet.org/Document/Default.aspx?DocumentUid=12388A2D-B802-42FB-910A-F38CFB16D53F> [pdf]

³⁰ Commonwealth Lawyers Association (2009) *Resolution on Decriminalisation of Sexual Orientation*, 16th Commonwealth Law Conference, Hong Kong SAR 5th-9th April 2009. See: <http://www1.lawcouncil.asn.au/ILS/images/pdfs/BULLETINIssue60609.pdf>

*...These developments would, however, run counter to the clear jurisprudence and guidance of international treaty bodies, to which many Commonwealth states are party, regional courts and a number of leading domestic courts. This jurisprudence and guidance is clear that the criminalisation of homosexuality is unacceptable as running counter to fundamental principles requiring respect for human dignity, privacy and non-discrimination.*³¹

In 2009 the CLA published an opinion on the legality in constitutional terms of draft legislation relating to the criminalisation of homosexuality in Uganda (the Anti-Homosexuality Bill 2009) and also considered the broader issue of any form of criminalisation of consensual private homosexual acts. It stated:

*... it is our view that any criminalisation of private homosexual conduct between consenting adults is incompatible with the rights to dignity, equal treatment and privacy enjoyed by all human beings.*³²

V. Conclusion

The clear consensus among expert inter-governmental and legal bodies is that criminalisation of homosexuality and the discrimination and violence it perpetuates violate international law and are harmful to societies. These bodies are increasingly calling for the repeal or striking out of such laws. Their statements are based on in-depth study, analysis and specialised expertise, and should carry significant weight with governments, courts and anyone taking a rational evidence-based approach to legal analysis and law reform.

³¹Commonwealth Lawyers Association, 'The Commonwealth and the Criminalisation of Homosexuality', SOLM(10)26, Meeting of Senior Officials of Commonwealth Law Ministries, London, 18-20 October 2010. Available at:

[http://www.humanrightsinitiative.org/london/lgbt_rights/SOLM_Paper_on_Criminalisation_of_Homosexuality\(1\).pdf](http://www.humanrightsinitiative.org/london/lgbt_rights/SOLM_Paper_on_Criminalisation_of_Homosexuality(1).pdf)

³²Opinion for the Commonwealth Lawyers Association, 'The Anti Homosexuality Bill 2009 (Uganda): Legislative Provisions and Proposals Relating to the Criminalisation of Homosexuality', 13 November 2009, p. 4. Available at:

http://www.humandignitytrust.org/uploaded/Library/Other_Reports_and_Analysis/Commonwealth_Lawyers_Association_Uganda_Opinion.pdf