

**Criminalising  
Homosexuality  
and International  
Business:  
the Economic and  
Business Cases for  
Decriminalisation**

To carelessly and needlessly open unnecessary wars with such useful customers [in the USA and the EU] is irresponsible to say the least... The issue now, is therefore, not what other governments are telling us. It is about us deciding what is best for our country in the realm of foreign trade, which is such an important stimulus for growth and transformation that it has no equal.

President Museveni of Uganda,  
The way forward on homosexuality, 2014<sup>1</sup>

This is one in a series of notes produced for the Human Dignity Trust on the criminalisation of homosexuality and good governance. Each note in the series discusses a different aspect of policy that is engaged by the continued criminalisation of homosexuality across the globe.

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

## Contents

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|          |   |
|----------|---|
| Overview | 4 |
|----------|---|

---

|  |   |
|--|---|
| The business case for supporting decriminalisation | 5 |
|--|---|

---

|   |   |
|---|---|
| The economic case for decriminalisation | 7 |
|---|---|

---

|  |    |
|--|----|
| How has and how can international business react to criminalisation? | 13 |
|--|----|

---

|   |    |
|---|----|
| How a corporate pro-LGBT stance can manifest in criminalising countries | 18 |
|---|----|

---

|  |    |
|--|----|
| Categories of corporate interventions and actions, and when should they be used? | 21 |
|--|----|

---

|  |    |
|--|----|
| What can governments do to assist businesses tackle criminalisation? | 25 |
|--|----|

---

|          |    |
|----------|----|
| Appendix | 28 |
|----------|----|

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<sup>1</sup> As quoted in, 'Museveni calls for fresh debate on homosexuality', *New Vision*, 3 October 2014, <http://www.newvision.co.ug/news/660387-museveni-calls-for-fresh-debate-on-homosexuality.html>

## Overview

**01.** International business can play a crucial role in bringing about the decriminalisation of homosexuality. As key players and stakeholders in civil society, businesses have the means to influence the debate on lesbian, gay, bisexual and transgender (LGBT) rights at home and abroad. More directly, many multinational corporations have direct access to governments and politicians in countries where homosexuality is a crime and where the lives of LGBT people are severely restricted. These businesses have possessed the means to influence for many years; some have used it to great effect. Today, given the groundswell of support for LGBT rights in developed markets, there exists a business case for more companies to apply strategically their influence on the issue of criminalisation.

**02.** In parallel, there really is an economic case for decriminalisation. There is mounting evidence that criminalising homosexuality reduces productivity and economic growth. This alone should provide political impetus within criminalising countries to decriminalise. At the same time, international businesses can articulate to governments which criminalise homosexuality that these restrictive laws make them less attractive as a destination for global capital. Their attractiveness is diminished twofold: objectively due to reduced productivity, and subjectively due to pro-LGBT businesses being put off as criminalisation runs counter to their corporate culture. As captured by the quote on the cover page from President Museveni of Uganda, commercial relationships and trade can have far greater impact on criminalising regimes than traditional diplomatic interventions.

**03.** International business has never been better poised to help bring about the decriminalisation of homosexuality. The size and influence of many companies allows them to deliver this message loud and clear to criminalising regimes via both words and conduct that decriminalisation is good for their bottom line, good for investment relationships, and good for the wider economy. In addition, the way that businesses behave in these jurisdictions informs societal attitudes towards LGBT people.

**04.** These business and economic arguments do not replace arguments for decriminalisation grounded in morality or human rights. The latter arguments alone are vitally important. The former arguments complement the latter, and reflect a reality where the voice of human rights can fall on deaf ears.

**05.** Governments, international organisations and non-government organisations alike can assist international businesses to use their influence more effectively. Despite the clear business and economic cases for decriminalisation and a moral will too, individual companies may not be as informed as they could be, may be reluctant to speak out unilaterally, or may not know how to do so. A handbook on business and LGBT rights would be useful, which industry bodies, international organisations or national governments can consider compiling. National governments and industry bodies can help their companies speak out together or encourage them to coalesce to advocate for decriminalisation. These governments, industry bodies and international organisations too can articulate to criminalising governments that there is an economic case for decriminalisation, which is only set to grow as multinational businesses become increasingly vocal on this issue.

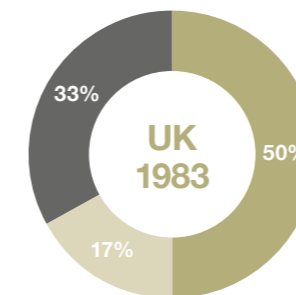
## The business case for supporting decriminalisation

### Businesses must appeal to the pro-LGBT consumer

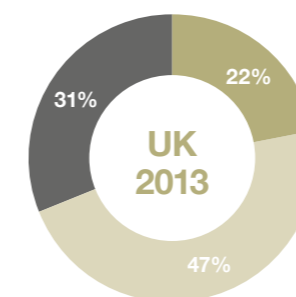
**06.** Today's consumers and shareholders are increasingly demanding that businesses act on LGBT rights. In developed Western markets attitudes towards homosexuality have changed dramatically in the space of a generation. For example:

a) Since 1983 the *British Social Attitudes* survey<sup>2</sup> has recorded the British public's attitude towards homosexuality:

i. In 1983, 50% of respondents believed that same-sex relationships are 'always wrong', with 17% believing 'not wrong at all'.

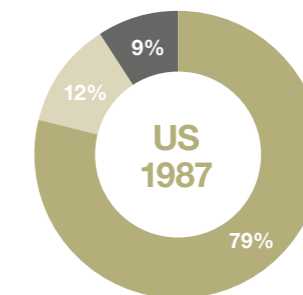


ii. By 2013, there had been a near reversal of attitude, with only 22% responding 'always wrong', and 47% responding 'not wrong at all'.

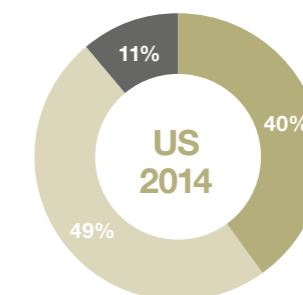


b) In the USA, there has been a similar shift in attitude, evidenced by the General Social Survey,<sup>3</sup> which recorded:

i. In 1987, 79% of respondents believed that same-sex relationships are 'always wrong', with 12% believing 'not wrong at all'.



ii. By 2014, respondents stating 'always wrong' had fallen to 40%, and those responding 'not wrong at all' had risen to 49%.

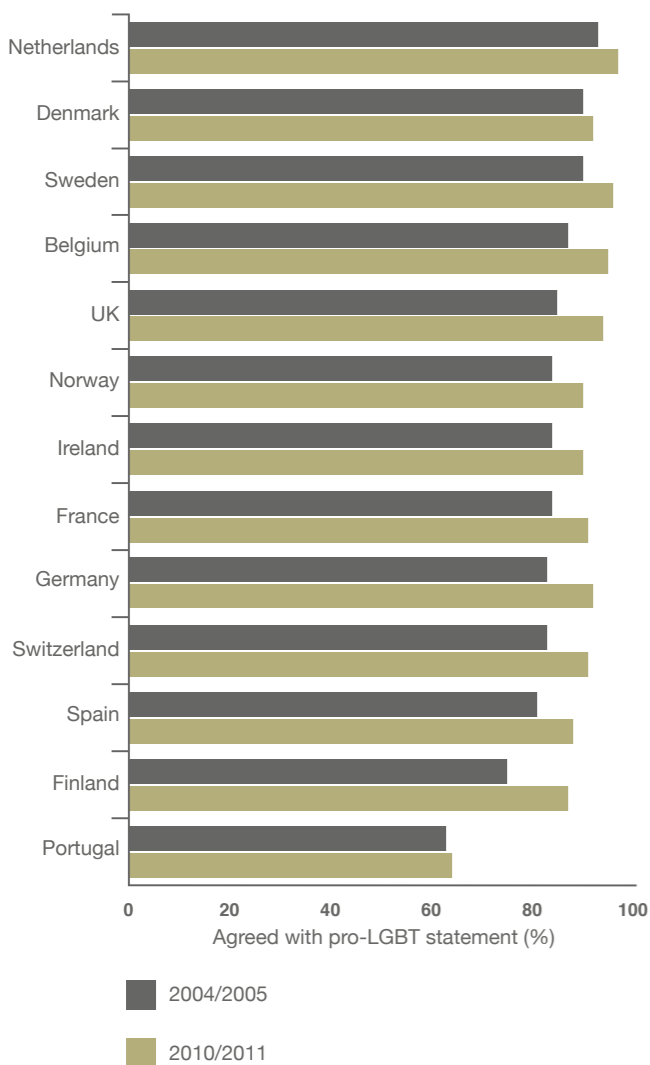


■ Always wrong  
■ Not wrong at all  
■ Abstained

<sup>2</sup> NatCen Social Research, *British Social Attitudes 30th Edition*, 2013. Available at: <http://www.bsa.natcen.ac.uk/latest-report/british-social-attitudes-30/personal-relationships/homosexuality.aspx>

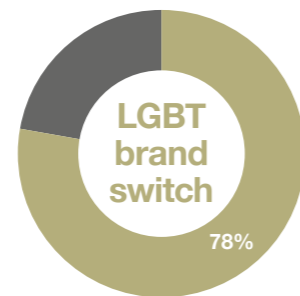
<sup>3</sup> The Associated Press-NORC Center for Public Affairs Research, General Social Survey in *Same-Sex Marriage and Gay Rights: a Shift in Americans' Attitudes*. Available at: [http://www.apnorc.org/PDFs/SameSexStudy/LGBT%20issues\\_D5\\_FINAL.pdf](http://www.apnorc.org/PDFs/SameSexStudy/LGBT%20issues_D5_FINAL.pdf)

c) Where the question is asked differently, to remove morality from it, the public support for LGBT rights is even more overwhelming. In a pan-European survey conducted in 2010/2011,<sup>4</sup> respondents were asked whether 'gay men and lesbians should be free to live their own lives as they wish'.



07. Citizens living in developed Western economies are overwhelmingly pro-LGBT. These individuals represent international businesses' core markets and main shareholders. It is their sentiments to which international businesses must most appeal. In that regard, surveys demonstrate that LGBT rights affect consumer preferences:

a) A report in 2009 found that 78% of the LGBT community, their friends and relatives would switch to brands that are known to be LGBT-friendly.<sup>5</sup>



b) More recently, in September 2015, the Brunswick Group's Open for Business report surveyed UK and US consumers on how LGBT rights influence their behaviour towards companies. The survey found that:<sup>6</sup>

- i. 47.5% of consumers would support a boycott of companies working in countries that have anti-gay laws.
- ii. 52.5% would be unlikely to support international development aid going to a country that has anti-gay laws.
- iii. 52% would be unlikely to work for a company that does business in a country that has anti-gay laws.
- iv. 42.5% would be unlikely to buy coffee from a country that has anti-gay laws.
- v. 51% would be unlikely to go on holiday to a country that has anti-gay laws.

<sup>4</sup> European Research Infrastructure, *European Social Survey – Selected findings from first five rounds*, 2010/11, p. 17. Available at: [http://www.europeansocialsurvey.org/docs/findings/ESS1\\_5\\_select\\_findings.pdf](http://www.europeansocialsurvey.org/docs/findings/ESS1_5_select_findings.pdf)

<sup>5</sup> Witeck and Harris Interactive, 'The evidence is growing – there really is a business case for diversity', *Financial Times*, 15 May 2014. Available at: <http://www.ft.com/cms/s/0/4f4b3c8e-d521-11e3-9187-00144feabdc0.html#axzz3mRtEieJL>

<sup>6</sup> Miller, J., and Parker, L., *Open for Business – the economic and business case for global LGBT&T inclusion*, October 2015, p. 7.

### Businesses benefit when homophobia is reduced

08. The business case for publicly appearing pro-LGBT is clear. At the same time, it is beneficial for businesses to be pro-LGBT in how they treat staff, and businesses benefit from society being pro-LGBT too. As Lord Browne, former Group Chief Executive of BP, states in his book *The Glass Closet*:

“Inclusion creates a level playing field, which allows the best talent to rise to the top. Respecting diversity of sexual orientation and gender identity should therefore be recognised as a matter of strategic importance to every company competing in the global market for talent.”<sup>7</sup>

09. Further, as discussed below, there is an economic case for decriminalisation. Individual businesses suffer as the broader economy suffers in terms of lost productivity resulting from homophobia. Decriminalisation is the first legal step to eradicating that homophobia.

### The economic case for decriminalisation

10. In addition to the business case for individual companies to support decriminalisation, there is also an economic case for decriminalisation. This economic case has two aspects. It interacts with the business case, as businesses subjectively find it problematic to invest where LGBT people are persecuted. Less investment lowers economic growth. But perhaps more significantly, recent studies have revealed that poor LGBT rights equate with lower economic growth. This correlation provides an objective reason for decriminalisation that is completely separate from the pressures applied by businesses, foreign governments or other groups.

### Criminalising homosexuality reduces economic growth

11. In recent years, various studies have concluded that productivity and gross domestic product (GDP) per capita are hindered by the criminalisation of homosexuality and homophobia more generally.

12. In November 2014, the Williams Institute at the University of California published a study entitled *The Relationship between LGBT Inclusion and Economic Development: An Analysis of Emerging Economies*.<sup>8</sup> This study, led by Professor M.V. Lee Badgett, consisted of a micro-level approach focusing on the individual experiences of LGBT people, and a macro-level approach focusing on the impact of LGBT rights on GDP per capita.

<sup>7</sup> Browne, J., *The Glass Closet, Why Coming Out is Good for Business*, 2014, WH Allen, p. 98.

<sup>8</sup> Lee Badgett, M.V., *The Relationship between LGBT Inclusion and Economic Development: An Analysis of Emerging Economies*, November 2014. Available at: <http://williamsinstitute.law.ucla.edu/wp-content/uploads/lgbt-inclusion-and-development-november-2014.pdf>

13. On a micro level, the Williams Institute identified examples of how LGBT people's freedom is limited in persecutory countries. These included:

*Police officers unjustly arrest, detain, jail, beat, humiliate, and extort LGBT people, taking LGBT people out of productive employment.*

*LGBT people face disproportionate rates of physical, psychological, and structural violence, which can restrict someone's ability to work because of physical injuries and psychological trauma.*

*Workplace discrimination causes LGBT people to be unemployed or underemployed, which mean their full productive capacity is not being used.*

*LGBT people face multiple barriers to physical and mental health, which reduces their ability to work and their productivity in the workplace.*

*LGBT students face discrimination in schools by teachers and other students, which hampers their learning and encourages students to drop out, in turn reducing their skills and knowledge related to the workplace.<sup>9</sup>*

14. These phenomena raise multiple human rights concerns. Yet, as the report addresses, individual instances of homophobia aggregate to produce a negative effect on the economy:

**At this micro-level, the costs to the economy of just these five examples of exclusionary treatment include lost labor time, lost productivity, underinvestment in human capital, and the inefficient allocation of human resources through discrimination in education and hiring practices. The decreased investment in human capital and suboptimal use of human resources, in turn, act as a drag on economic output at the broader economy level.<sup>10</sup>**

15. The Williams Institute's macro-level analysis then attempted to quantify the negative externalities of homophobia by analysing the relationship between GDP per capita and the legal recognition of homosexuality. Criminalisation represents the lowest form of recognition, i.e. a complete absence of it. The report concluded (emphasis added):

*The macro-level analysis reveals a clear positive correlation between per capita GDP and legal rights for LGB and transgender people across countries, as measured by the Global Index on Legal Recognition of Homosexual Orientation (GILRHO) and the Transgender Rights Index (TRI) respectively. The simplest correlation shows that one additional right in the GILRHO (out of eight rights included) is associated with \$1,400 more in per capita GDP and with a higher HDI value. In other words, **countries with more rights for LGBT people have higher per capita income and higher levels of well-being.** The positive correlation between LGBT rights and the HDI suggests that the benefits of rights extend beyond purely economic outcomes to well-being measured as educational attainment and life expectancy.*

*The relationship remains strong for GDP per capita even after taking into account other factors that influence development, although the effect is smaller. The impact of an additional right on per capita GDP is approximately \$320 after those controls, or about 3% of the average GDP per capita in our sample. A positive correlation with the HDI is not seen in some models, however. Unlike with the micro-level analysis, in the macro-level analysis we do not draw a firm conclusion about the direction of the causal link, that is, whether more rights cause higher levels of development or whether more developed countries tend to have more rights. The theoretical perspectives suggest that both directions are likely at work. The micro-level findings, aggregated up to an economy-wide level, support the idea that exclusion leads to lower levels of development and are consistent with the macro-level findings.<sup>11</sup>*

16. In a related preliminary study for the World Bank released in February 2014, *The Economic Cost of Homophobia & the Exclusion of LGBT People: A Case Study of India*,<sup>12</sup> the impact of homophobia on the Indian economy was assessed. This preliminary report estimated the cost of homophobia to have been between US\$1.9 and US\$30.8 billion in 2012 alone (or up to 1.7% of total GDP).<sup>13</sup> This estimate included lost productivity caused by social exclusion and health-related costs and losses arising from HIV, depression and suicide. Commenting on her research on India, Professor Badgett stated:

“ Our recent study shows that emerging economies that protect more rights for LGBT people through decriminalization of homosexuality, nondiscrimination laws, and recognition of LGBT families have higher GDP per capita, even after controlling for other influences on a country's economic output. Each additional right is associated with a 3% increase in GDP per capita for those countries.<sup>14</sup>

**This preliminary report estimated the cost of homophobia to have been between US\$1.9 and US\$30.8 billion in 2012 alone (or up to 1.7% of total GDP).**

17. The Brunswick Group's Open for Business Report too indicates a correlation between economic performance and LGBT rights. The report proposes nine reasons for this relationship:<sup>15</sup>

- LGBT inclusion signals a diverse and creative environment, which creates the right conditions for urban economic growth.
- LGBT inclusion results in higher levels of enterprise, creativity and innovation.
- LGBT discrimination often goes hand-in-hand with a culture of corrupt practices and a lack of openness.

<sup>9</sup> *Ibid*, p. 2.

<sup>10</sup> *Ibid*, p. 2.

<sup>11</sup> *Ibid*, p. 2.

<sup>12</sup> Lee Badgett, M.V., *The Economic Cost of Homophobia & the Exclusion of LGBT People: A Case Study of India*. Available at: <http://www.worldbank.org/content/dam/Worldbank/document/SAR/economic-costs-homophobia-lgbt-exclusion-india.pdf>

<sup>13</sup> *Ibid*, slide 14.

<sup>14</sup> Miller and Parker, at n. 6 above, foreword by M.V. Lee Badgett, p. 14.

<sup>15</sup> Miller and Parker, at n.6 above, pp. 30–37.

- d) LGBT inclusion is associated with countries which attract higher levels of foreign direct investment.
- e) LGBT discrimination may inhibit local companies from connecting to global markets.
- f) LGBT discrimination results in a 'brain drain' – the emigration of talented and skilled individuals.
- g) LGBT discrimination leads to negative economic consequences as a result of poor health outcomes.
- h) LGBT discrimination can shape perceptions on a world stage with a negative impact on tourism, talent attraction and export markets for consumer goods.
- i) LGBT discrimination leads to lower levels of national productivity.

18. These studies demonstrate that there is a genuine economic case for decriminalisation. The economy and the government coffers are net losers from criminalisation, in addition to the personal losses suffered by LGBT citizens. These studies show that there is an objective economic reason to repeal laws that criminalise homosexuality, which is completely separate from moral and human rights arguments and the pressure exerted by governments and rights groups in that regard. These studies provide powerful data that can be used by governments and businesses alike to convey this message. As always, the message could be strengthened by further studies being carried out, for instance in Africa and the Caribbean. Governments and other entities can support this and encourage the World Bank, or others whose voice resonates, to conduct further studies.

### International organisations embracing the economic case for decriminalisation

19. International organisations have recognised the economic case for decriminalisation and the importance of including LGBT rights in development goals and outcomes. Professor Badgett's presentation of her preliminary study on India elicited the following comments:<sup>16</sup>

“Protection of human rights and empowering people are important for strengthening economic outcomes and sustainable development. The study on the economic cost of homophobia towards LGBT presented today that we have supported, is a clear example of how important it is to start looking at the economic implications of homophobia and exclusion to better inform how we can work on poverty reduction and inclusive development.

(Ms Satu Santala, Executive Director for Nordic and Baltic Countries, Member of the World Bank Board of Directors)

“Every time a girl drops out of school in Pakistan, every time a man who has sex with another man gets HIV, and every time the Roma community is defamed, society pays a heavy price. Excluding sexual minorities is not only a human tragedy but it is also a significant self-inflicted economic wound, and so we at the World Bank need to listen to their voices.

(Mr Fabrice Houdart, Team Lead, Sexual Orientation, Gender Identity and Development, World Bank)

“Punitive laws are affecting our efforts to end the AIDS epidemic and are impacting countries' economies. Inclusive, rights-based responses are the hall-marks of the AIDS response and offer platforms on which to build. We need more evidence and data to convince policy makers and politicians about the need to address LGBT issues and homophobia, to ensure protection of human rights and equity in health and development.

(Dr Luiz Loures, UNAIDS Deputy Executive Director and Assistant Secretary General of the United Nations)

### Criminalising homosexuality scares away investment

20. The business case for supporting decriminalisation and the economic case to decriminalise interact. In addition to the micro and macro findings referred to above, criminalisation and poor LGBT rights affect decisions regarding whether and where to invest. The effect is twofold, which, again, can be framed in objective and subjective terms. The lower productivity associated with criminalisation renders a country objectively less attractive as a destination for investment. In parallel, a poor record for LGBT rights makes the country subjectively less attractive to companies that are pro-LGBT. The latter was neatly captured by a managing partner at EY, Andy Baldwin, who told *Gay Star News*:

“I think some of my clients have been quite shocked by what has happened in Russia [regarding LGBT rights]. We are probably not there yet but I think in some of these markets we may reach a tipping point where corporates will say we are not prepared to do business in this market.<sup>17</sup>

21. Despite these factors, some countries have passed or considered passing enhanced criminal laws that further diminish their attractiveness to investors. Uganda's proposed *Prohibition of the Promotion of Unnatural Sexual Practices Bill, 2014* lists an extraordinary range of activities that would be criminalised under the crime of 'promotion' of homosexuality. Among other things, if this legislation is passed individuals could face criminal sanctions for 'using information technology' to promote homosexuality, or distributing material that is 'likely' to promote homosexuality. A crime could be committed, for example, if a company allows access in Uganda to the company's global website containing pro-LGBT content.<sup>18</sup>

### Criminalising homosexuality and tourism

22. It is not only multinational corporations that decide whether to spend in foreign economies. Individuals travel as tourists, and can express their solidarity with LGBT rights in their choice of destination. Virgin's Richard Branson commented that due to its stance on LGBT rights Uganda could:

“find it[self] being ostracised by companies and tourists worldwide

<sup>16</sup> As stated on 12 March 2014, Preston Auditorium, World Bank Headquarters, Washington, DC. Available at: <http://www.unaids.org/en/resources/presscentre/featurestories/2014/march/20140314homophobia>

<sup>17</sup> <http://dot429.com/articles/3510-european-corporations-considering-boycott-of-countries-with-anti-gay-laws>

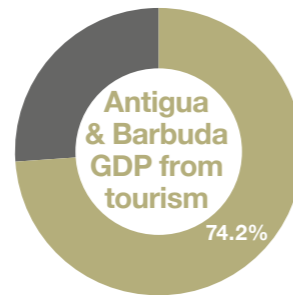
<sup>18</sup> For a more detailed analysis of how Uganda's proposed *Prohibition of the Promotion of Unnatural Sexual Practices Bill* might affect international businesses, please see our website: [http://www.humandignitytrust.org/uploaded/Library/Other\\_Material/Uganda\\_Breadth\\_of\\_the\\_USP\\_Bill\\_2013.pdf](http://www.humandignitytrust.org/uploaded/Library/Other_Material/Uganda_Breadth_of_the_USP_Bill_2013.pdf)

24. The Brunswick Group's Open for Business report supports this assertion. The report found that 51% of the US and UK consumers surveyed are 'unlikely' to go on holiday to a country with anti-gay laws.<sup>19</sup> Another recent initiative raises the public's awareness of the holiday destinations that criminalise homosexuality. In November 2015, the International HIV/AIDS Alliance launched an online quiz 'Paradise or Persecution' that tests respondents' knowledge of where homosexuality is criminalised.<sup>20</sup>



25. Many criminalising jurisdictions are heavily reliant on tourism. The island nations of the Caribbean and Indian Ocean are hotspots for poor LGBT rights. The following criminalise: Antigua and Barbuda, Barbados, Dominica, Grenada, Jamaica, the Maldives, Mauritius, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, the Seychelles, and Trinidad and Tobago.<sup>21</sup> To take one example,

tourism was estimated to account for 74.2% of Antigua and Barbuda's GDP in 2011.<sup>22</sup>



These island nations are particularly susceptible to intolerance from Western holidaymakers to their anti-gay laws. This issue may become particularly acute in the Caribbean, as the region's largest island, Cuba, opens up as a competitor to attract tourists.

26. Decriminalisation ought to be a strategic economic move for these nations in the Caribbean and the Indian Ocean, and for other nations reliant on tourism. However, this area must be navigated with caution by those outside these countries. The ideal situation would be for criminalising countries to be prescient about the economic benefits of being pro-LGBT by repealing their criminalising laws in order to attract tourists. Public boycotts by tourists or pressure groups to force change could prove counterproductive. As the Jamaican lawyer and LGBT rights activist Maurice Tomlinson stated:

“Boycotts are very blunt instruments that one uses to get attention. They should be used sparingly or they can do more harm than good. I only recommend that they be resorted to when there is no other way to get the intended party to take you seriously.”<sup>23</sup>

<sup>19</sup> Miller and Parker, at n. 6 above.

<sup>20</sup> Available at: <http://www.paradiseorpersecution.com>

<sup>21</sup> <http://www.humandignitytrust.org/pages/COUNTRY%20INFO/Criminalising%20Homosexuality>

<sup>22</sup> <http://antiguaobserver.com/report-antigua-most-dependent-on-tourism/>

<sup>23</sup> Tomlinson, M., *Boycott Jamaica to push for an end to anti-gay attacks?*, 25 August 2013.

Available at: <http://76crimes.com/2013/08/25/boycott-jamaica-to-push-for-an-end-to-anti-gay-attacks/>

As another Caribbean-based LGBT activist puts it:

“ [The] reaction [to boycotts] could easily be one that further isolates LGBT folks, saying well now I'm losing my job or I'm missing out on my salary because of you and because the U.S. thinks that you're so important. I'm not sure that that is the most useful approach.”<sup>24</sup>

26. There is much to be gained from consulting with LGBT activists in the country in question. An example of such engagement came in September 2015 when representatives from Marriott, Club Med, Cruise Planners and Silver Sea Cruises met with LGBT activists from the Bahamas, the Dominican Republic, Dominica, St. Lucia, Grenada, Trinidad and Tobago, Jamaica and Belize to discuss how the travel industry could support LGBT advocacy efforts.<sup>25</sup>

27. This consultative approach is equally important when international businesses determine how they publicly apply their influence in criminalising countries.

## How has and how can international business react to criminalisation?

28. The business and economic cases for the decriminalisation of homosexuality are clear. Businesses can support the goal of global decriminalisation in multiple ways, some direct, some indirect. The paragraphs below examine the means available to businesses to effect influence in theory and offer examples of how this influence has been used in practice. The examples examined cover corporate actions on LGBT rights generally, in both criminalising countries and those with inclusive LGBT rights. Actions taken in liberal environments demonstrate how far the attitude towards LGBT rights has progressed and what businesses must now do to please their pro-LGBT consumers and shareholders. Also, actions in liberal environments raise the issue of consistency. A business' pro-LGBT corporate culture applies equally in criminalising countries too. Many businesses have supported LGBT rights in criminalising countries, as examples below show, but often companies that are pro-LGBT at home are silent in places where the LGBT community faces state-sanctioned persecution via criminal laws.

<sup>24</sup> Malaika Brooks-Smith-Lowe of Groundation Grenada, as quotes in the 'Travel industry representatives meet with Caribbean LGBT', *Washington Blade*. Available at: <http://www.washingtonblade.com/2014/09/24/exclusive-travel-industry-representatives-meet-caribbean-lgbt-advocates/>

<sup>25</sup> *Ibid.*

### Corporate social responsibility and inclusive capitalism: commitments to LGBT rights

29. Businesses increasingly view a commitment to corporate responsibility and inclusive capitalism as a part of their business models. These occurrences can result in express support for LGBT rights, or a tacit commitment that may need to be teased out.

#### Sponsoring LGBT initiatives

30. The *Open for Business* report is an example of an express commitment to LGBT rights by some of the world's largest and most influential businesses: American Express, AT&T, Brunswick, EY, Google, IBM, LinkedIn, Linklaters, Mastercard, RBS, Standard Chartered, Thomson Reuters, and Virgin.<sup>26</sup> The report describes itself as: 'a response by a number of leading businesses to the spread of anti-LGB&T sentiment in many parts of the world'.<sup>7</sup> Similarly, AXA and Accenture are sponsoring concurrent events organised by *The Economist* in Hong Kong, London and New York entitled *Pride and Prejudice: the business and economic case for LGBT diversity and inclusion*.<sup>28</sup>

31. A corporate commitment to LGBT rights can also be seen by the increased visibility of companies at LGBT Pride events. For instance, at London Pride 2015 several global businesses sponsored the event, including: ASDA (Wal-Mart), Baker & McKenzie, Barclays, Citibank, CMS, Exterion Media, Prudential, SAB Miller, Smirnoff (Diageo), Starbucks, Tesco, and Thomson Reuters.<sup>29</sup> These businesses operate in criminalising and non-criminalising countries alike, yet now view it as beneficial to associate publicly their brands with the LGBT community.

32. Many companies have gone beyond sponsorship by supporting legal reform too. Companies have been vocally supportive of same-sex marriage.

### Prior to the US Supreme Court's decision declaring that bans on same-sex marriage are unconstitutional, 379 companies and employer organisations submitted an *amici curiae* brief to the court.

This type of court document is filled by parties interested in the outcome of the case, and can be used by the court to inform its opinion. These 379 companies and employer organisations saw the ban on same-sex marriage as directly relevant to their businesses and profitability. The topics addressed in the brief were:

A. *Our Businesses Benefit From Diversity and Inclusion*

B. *To Reap The Rewards of Diversity, Employers Need To Be Able To Recruit And Retain Top Talent, In Part Through Equitable and Competitive Benefits Packages*

1. *Employees in same-sex relationships receive varying, if any, access to the rights, benefits, and privileges that different-sex couples enjoy*
2. *Marriage discrimination drives talented individuals away from jurisdictions in which amici do business*

C. *Marriage Discrimination Injures Amici's Businesses*

1. *The states' bans impose significant burdens on our employees and our businesses*
2. *State bans undermine our corporate cultures*<sup>30</sup>

33. The 379 amici included American and foreign companies. The European companies included Barclays, Credit Suisse, Deloitte, Deutsche Bank, Diageo, Ernst & Young, HSBC and UBS.

34. Similarly, as Australia debates the same issue, businesses there are publicly showing their support. In May 2015, multiple businesses joined to take out a full-page advertisement in *The Australian* newspaper backing same-sex partnerships. Again the businesses involved were both Australian and foreign.<sup>31</sup> Commenting on the advertisement, national director of Australian Marriage Equality, Rodney Croome, said:

“It was about corporate saying it's not just about us individually supporting this, we want to do it collectively and send the strongest possible message... They're also very sensitive of course to Australia's international reputation ... that is at risk of suffering if we don't catch up to countries that are most like us – New Zealand, the UK, the US, Canada and now, Ireland.”<sup>32</sup>

35. While corporate support for these LGBT initiatives is welcome, their focus is on countries where LGBT rights have advanced beyond state-sanctioned persecution. If there is a moral and business case to intervene in these countries on more advanced rights, the case for intervening in criminalising countries must exist and the imperative to do so even greater.

36. On the matter of court litigation, both the Indian and Singaporean courts heard cases on the legality of their laws that criminalise homosexuality. Shockingly, both courts upheld the criminal laws<sup>33</sup> (which is a matter addressed in another briefing note in this series *Criminalising Homosexuality and the Rule of Law*). Many of the companies that intervened in the US Supreme Court case and took out the advertisement in Australia have significant operations in India and Singapore. If these companies had a consistent corporate culture across the globe, they ought to have intervened there too. As the examples from the US and Australia show, foreign companies have not shied away from supporting legislative change in their host country.

<sup>26</sup> Miller and Parker, at n. 6 above, p. 1.

<sup>27</sup> *Ibid.*, p. 1.

<sup>28</sup> Taking place on 2 March 2016: <http://www.economist.com/events-conferences/emea/pride-and-prejudice>

<sup>29</sup> <http://prideinlondon.org/2015parade/>

<sup>30</sup> *Obergefell v. Hodges, Brief of 379 Employers and Organizations Representing Employers as Amici Curiae in Support of Petitioners*. Available at: <http://www.scribd.com/doc/257794356/Employer-Amicus-Brief-Obergefell-v-Hodges>

<sup>31</sup> 'Gay marriage: Australia's businesses take out full-page ad backing same-sex partnerships', *ABC*, 29 May 2015. Available at: <http://www.abc.net.au/news/2015-05-29/corporations-behind-same-sex-marriage/6505758>

<sup>32</sup> *Ibid.*

<sup>33</sup> *Koushal v. NAZ Foundation*, Civil Appeal No.10972 of 2013, Supreme Court, 11 December 2013; and *Tan Eng Hong v. Attorney General*, 29 October 2014, SGCA 53, Court of Appeal.



37. Singapore, as an open economy, which is reliant on foreign trade, and which has an independent judiciary should, in particular, be a place to intervene. The Singaporean Government and court should accept *amici curiae* briefs for what they are, assistance to the court from interested stakeholders. Briefs providing a business case for decriminalisation are not human rights-based, so cannot attract the criticism of interference with a cultural issue. Rather, these briefs equip the court with information from those affected by the laws challenged. In order for courts to reach a balanced and reasoned legal determination, the views of business must be heard in court challenges to laws that criminalise homosexuality.

**A commitment to human rights is a commitment to decriminalisation: the United Nations' Global Compact**

38. As well as backing LGBT-specific initiatives, many international businesses have committed to generic human rights initiatives. One example is the United Nations' Global Compact.<sup>34</sup> As at October 2015, **8,375 companies in 162 countries have opted-in to this initiative.** The Global Compact's overarching aim is to work with businesses:

*To transform our world aiming to create a sustainable and inclusive global economy that delivers lasting benefits to all people, communities and markets.*<sup>35</sup>

39. Signatory companies commit to 10 principles based on international conventions on human rights, labour rights, the environment and corruption, including the Universal Declaration of Human Rights.

40. On the issue of criminalising homosexuality, Principle 1 of the Global Compact says it all:

“ **Businesses should support and respect the protection of internationally proclaimed human rights.**

As the Universal Declaration of Human Rights states in its opening article:

“ **All human beings are born free and equal in dignity and rights.**

41. A commitment to these principles is a commitment to the decriminalisation of homosexuality.<sup>36</sup> A commitment to the Global Compact is a public endorsement of the view that laws criminalising homosexuality should be repealed.

42. Membership of the Global Compact, or similar initiatives, can provide companies with a hook on which to hang their discussions about LGBT rights with governments that criminalise homosexuality. These companies can say that they have committed to the Global Compact and now run their businesses accordingly. Criminalisation stands in stark contrast to their commitments and is a legitimate issue for businesses to raise in their dealings with these criminalising governments.

43. The Appendix to the note lists selected companies in criminalising countries that have signed the Global Compact. These companies are obvious candidates with whom governments, international organisations and other entities can work to articulate to criminalising regimes the business and economic cases for decriminalisation.

**Inclusive capitalism includes the LGBT community**

44. Distinct from corporate social responsibility is the idea of 'inclusive capitalism'. According to the Coalition for Inclusive Capitalism:

*Inclusive Capitalism is a global effort to restore capitalism as an engine of broadly shared prosperity. Together we can achieve this through business and investment practices that extend the opportunities and benefits of our economic system to everyone...*

*Every firm must seek a license to operate from the society in which it trades. This is both a legal and a socially defined license. This means that firms must contribute proportionately to the societies in which they do business; not free-riding on services that others have paid for...*

*The public are increasingly demanding that firms account for their behaviour and values. We see this expressed in consumer buying patterns, citizen shareholder activism and demands for*

*more consumer-focused corporate information. Firms that practice unsustainable activities and disrespect their stakeholders and the communities in which they operate will find their licences called into question. Firms that practice Inclusive Capitalism will see their license strengthened over the long term.*<sup>37</sup>

45. Like the business case for being pro-LGBT, the Coalition for Inclusive Capitalism concludes that:

*Corporations that practice Inclusive Capitalism are more successful. There is strong evidence for this. Firms that invest in improving their performance on material ESG [environmental, social and governance metrics] issues experience a stock valuation premium and better profitability. Firms practicing ESG approaches have a lower cost of both debt and equity. Firms that adopt ESG metrics into their core corporate reporting practices attract more of the long-term, dedicated investors that help management make clear-sighted decisions for the long-term.*<sup>38</sup>

46. LGBT people are stakeholders in society. Their inclusion reaps benefits for businesses, and for society and the economy as a whole. A part of a company's commitment to inclusive capitalism is the inclusion of LGBT people. A basic step to achieving this is applying the company's global LGBT policy in the criminalising countries (as discussed further below at paragraph 51 and 52 below).

<sup>34</sup> For more information, see <https://www.unglobalcompact.org/what-is-gc/mission/principles>

<sup>35</sup> See United Nations Global Compact: <https://www.unglobalcompact.org/>

<sup>36</sup> This topic is discussed in more detail in another briefing note in this series, *Criminalising Homosexuality and International Human Rights Law*. To give one example, the Human Rights Committee made it clear in its communication *Toonen v. Australia* UN Doc CCPR/C/50/D/488/1992 (1994) that the criminalisation of homosexuality is incompatible with the rights to privacy and non-discrimination, as contained in the International Covenant on Civil and Political Rights.

<sup>37</sup> Coalition for Inclusive Capitalism: <http://www.inc-cap.com/about-us/>

<sup>38</sup> *Ibid.*

47. Expressing LGBT rights in terms of inclusive capitalism may be most effective in criminalising countries with developed, open economies, such as Singapore. Singapore's own leaders acknowledge that an inclusive economy is crucial for Singapore's continued economic success. Singaporean President Tony Tan Keng Yam spoke of 'Singapore's policies for a competitive and inclusive economy' in May 2014:

“Singapore has no choice but to stay globally competitive so that our economy will continue to grow... Singapore has evolved its policies over the last 50 years based on a strong social compact that allowed tradeoffs to be made between different stakeholder groups for the country to make progress, and this would continue to be critical to Singapore's ability to ensure that growth continues to be inclusive and beneficial to our current and future generations at all levels.<sup>39</sup>”

48. Like a company's commitment to inclusive capitalism must include LGBT people, Singapore's – and other countries' – commitment to an inclusive economy must include LGBT people too. International businesses can help articulate to Singapore's leaders the absurdity of their continued criminalisation of homosexuality, which is at odds with Singapore's publicly stated 'policies for a competitive and inclusive economy'.

### How a corporate pro-LGBT stance can manifest in criminalising countries

49. In recent years, there have been multiple examples of corporate interventions against the criminalisation and persecution of LGBT people. Given the groundswell of support for LGBT rights among their consumers and shareholders in developed markets, for many multinational companies the balance has tipped. Their commercial interests are served by vocalising their pro-LGBT credentials in criminalising jurisdictions, and even by directly confronting criminalising regimes. Some examples are given below:

1) **Corporate reactions to Uganda's Anti-Homosexuality Act, 2014 (AHA), which increased the penalty for consensual same-sex sex to life imprisonment, introduced the offence of 'aggravated homosexuality' for repeat offenders and those with HIV, and outlawed the 'promotion' of homosexuality, in effect criminalising all aspects of the LGBT identity:**

a) **Virgin** responded to Uganda's introduction of the AHA Bill by working with Ugandan businesspeople to create a list of figures and companies to lobby Ugandan President Yoweri Museveni not to sign the AHA into law. Richard Branson, founder of Virgin, said:

“[S]ometimes business leaders have more freedom to make controversial comments than politicians, and it is important to stimulate debate and challenge injustices – even if it hurts your business... ideally, businesses and organisations should work with governments to try to change their attitudes from within countries.<sup>40</sup>”

Whilst ultimately unsuccessful, as the AHA was signed, Richard Branson's statements provoked significant response and increased awareness on the issue. The Virgin founder was also active in meeting other government leaders, including in Nigeria, to discuss approaches to changing attitudes in countries that Virgin operates in and even in those where it does not. Virgin has since decided not to move ahead with plans to expand Virgin into Uganda. Mr Branson states on his website:

“I have been courted by various people and government officials to do business in Uganda. I was seriously considering it. However, the dreadful witch hunt against the gay community and lifetime sentences means it would be against my conscience to support this country. I would urge other companies worldwide to follow suit. Uganda must reconsider or find it being ostracised by companies and tourists worldwide.<sup>41</sup>”

b) **Barclays**, the third largest bank in Uganda, raised the subject of the AHA with Uganda's government prior to the law being passed. At the time, a spokesperson for Barclays stated:

“Barclays is aware of the proposed legislation relating to homosexuality in Uganda and we are engaging at appropriate levels of the Ugandan Government to express our views.<sup>42</sup>”

<sup>39</sup> Speech by President Tony Tan Keng Yam at the St Gallen Symposium Circle of Benefactors Dinner on 7 May 2014. Available at: <http://www.istana.gov.sg/news/speeches/2014/speech-president-tony-tan-st-gallen-symposium-circle-benefactors-dinner>

<sup>40</sup> Branson, R., 'Let people love whoever they want', *Virgin*, 23 December 2013. Available at: <http://www.virgin.com/richard-branson/let-people-love-whoever-they-want>

<sup>41</sup> *Ibid.*

<sup>42</sup> Roberts, S., 'Barclays discusses anti-gay bill with Ugandan officials', *Pink News*, 3 December 2012. Available at: <http://www.pinknews.co.uk/2012/12/03/barclays-discusses-anti-gay-bill-with-ugandan-officials/>

a) **The Four Seasons Hotel** in Irving, Dallas displayed its solidarity with the Ugandan LGBT community in autumn 2014, after the AHA was signed into law, by refusing to host President Museveni, after a campaign from the local gay community.<sup>43</sup>

b) **Orange**, the telecommunications company, in March 2014 pledged to offer any necessary legal and security assistance to LGBT employees in Uganda in need of aid. Orange also symbolically removed all of its advertising from the Ugandan newspaper, *Red Pepper*, that published the names, photographs and addresses of LGBT peoples in the country. At the same time, the organisation All Out called on other multinationals in Uganda, including Heineken, Coca-Cola and KLM to follow Orange's example. Andre Banks, Executive Director and co-founder of All Out said:

“Orange are doing exactly the right thing by refusing to continue business as usual, and taking steps to protect their employees affected by the Anti-Homosexuality Act. Whether it's Russia, Nigeria, or Uganda, global corporations should urgently follow their lead. Other global corporations should be announcing they're afraid to do business in a country where their employees might be jailed for being gay. Religious leaders in Uganda and around the world must speak up now. Countries with diplomatic ties to Uganda should be acting with the urgency of a life and death human rights crisis. Now is the time for action.”<sup>44</sup>

II) **Corporate reactions to the Indian Supreme Court's decision in December 2013 to re-criminalise homosexuality by overturning a lower court's judgment:**

c) After the judgment was handed down businesses including **Goldman Sachs**, **IBM**, **Royal Bank of Scotland**, **Cisco**, **Citigroup**, **Google**, **Dell**, **Novell**, **General Electric** and **Microsoft** met to discuss strategies to protect their LGBT employees.<sup>45</sup>

d) **IBM** subsequently sponsored talks amid concerns that staff could be persecuted as a result of the criminal laws being reinstated. Claudia Brind-Woody, IBM's vice president and managing director of global intellectual property licensing, was quoted as saying:

“Stonewall and other NGOs can only do so much. It's the power of our corporate brands, when we put them together and go into a country that's hard (on LGBT staff), which allows us to have that convening power, to have the dialog, to discuss why fundamental human rights are important, not only from a social justice perspective, but just from a business perspective. It's good for business.”<sup>46</sup>

III) **Corporate reactions to Singapore's continued criminalisation of homosexuality:**

e) **Goldman Sachs** advertised an invitation to an LGBT recruiting and networking dinner at its Singapore office. Under Section 377A of the Penal Code, sex between men is punishable by up to two years' imprisonment.<sup>47</sup> The Singaporean Minister for Social and Family Development publicly denounced Goldman Sachs, saying that while discrimination had '*no place in our society*', foreign companies should '*respect local culture and context*' and '*not venture into public advocacy for causes [that] sow discord among Singaporeans*'. Goldman Sachs nonetheless renewed its sponsorship of PinkDot, Singapore's annual gay pride event, in 2015.<sup>48</sup>

IV) **Corporate reactions to Russia's 'gay propaganda' laws:**

- f) **AT&T** was the first major US corporation to publicly condemn anti-LGBT laws in Russia, stating the laws were harmful to individuals, families and society.<sup>49</sup>
- g) **Google** in Russia promoted tolerance towards LGBT people in connection with the 2014 Winter Olympics by re-designing its home page using the rainbow colours of the gay pride flag over its Winter Olympic-themed image. It also made a statement emphasising the importance of non-discrimination in sport. The image and translated statement were available on Google's Russian home page.<sup>50</sup>
- h) **Eight of the top ten sponsors** of the 2014 Winter Olympics raised concerns about Russian anti-gay laws with the International Olympic Committee. (None of these companies agreed to urge the IOC to lobby Russia to repeal the laws.)

LGBT rights now form a part of the historic narrative on the Sochi Olympics, perhaps more than the sport.

43 Taffet, D., 'Four Seasons in Irving cancels Ugandan president's stay', *Dallasvoice.com*, 18 September 2014. Available at: <http://www.dallasvoice.com/seasons-irving-cancels-ugandan-presidents-stay-10179667.html>

44 McCormick, J.P., 'Orange pledges to offer support for gay employees based in Uganda', *Pink News*, 12 March 2014. Available at: <http://www.pinknews.co.uk/2014/03/12/orange-pledges-support-gay-employees-based-uganda/>

45 Miller and Parker, at n. 6 above, p. 20.

46 Doe, L., 'IBM leads talks to tackle India's gay sex ban', *HR Magazine*, 17 January 2014. Available at: <http://www.hrmagazine.co.uk/article-details/ibm-leads-talks-to-tackle-indias-gay-sex-ban>

47 *Penal Code of Singapore* (Chapter 224) s. 377A. Available at: <http://statutes.agc.gov.sg/aol/search/display/view.w3p;ident=9f804d76-c39f-4e35-8cfe-1be8d20bfe9;page=0;query=DocId%3A%22025e7646-947b-462c-b557-60aa55dc7b42%22%20Status%3Ainforce%20Depth%3A0;rec=0#pr377A-he>

48 Wong, T., 'Singapore dilemma: When diversity policy meets local law', *BBC News*, 14 June 2014. Available at: <http://www.bbc.co.uk/news/world-asia-27584565>

49 HRC staff, 'AT&T Becomes First Major U.S. Corporation to Condemn Russia's Anti-LGBT Law', *Human Rights Campaign Blog*, 4 February 2014. Available at: <http://www.hrc.org/blog/entry/att-condemns-anti-lgbt-law-in-russia-sets-example-for-other-olympic-sponsor>

50 Braiker, B. 'Sochi sponsors grapple with Russia's LGBT laws', *Digiday*, 14 February 2014. Available at: <http://digiday.com/brands/sochi-sponsors-lgbt/>

#### V) Other corporate actions and policies:

- i) **Deutsche Bank** has frequently engaged with government officials to report on the negative effects of anti-gay laws on economic activity. Leading executives from the top banks also gathered for the second *Out on the Street: Europe* summit which focused on global LGBT issues discussing what initiatives can be pursued to encourage better connections between workplace organisations and to promote diversity of leadership.<sup>51</sup>
- j) One **Fortune 100 Company** presented an amicus brief in a foreign court supporting the repeal of laws criminalising same-sex consensual behaviour.<sup>52</sup>
- k) **Shell-Netherlands**, through its LGBT organisation, Pink Pearl, and its policy of inclusion and diversity, has accommodated its LGBT employees willing to work in countries where it is considered dangerous for LGBT people by affording them one week of home leave in the Netherlands for every three weeks that they are away from their partners.<sup>53</sup>
- l) **Cisco**, the American technology company, has changed its travel policy to ensure the safety of its employees who are able to refuse to travel to an assignment if they feel their personal safety would be at risk in a specific country.<sup>54</sup>
- m) **IBM** does not allow its non-discrimination policies to be adjusted in any of the 170 countries in which it operates, including those in Africa and the Middle East.<sup>55</sup> In Saudi Arabia, where segregation is a legal requirement, IBM removed the partition separating men and women in one of its conference rooms. Chairman of IBM Europe, Harry van Dorenmalen has stated that he is confident that companies can make a really positive change for some of the worst offending countries in the world in terms of hostility towards members of the LGBT community, adding that IBM has invested a considerable amount of time and effort in IBM Africa.
- n) **Thomson Reuters** offers same-sex partner benefits in Saudi Arabia,<sup>56</sup> despite consensual sex between a married man and another man being punishable by death and all sex outside marriage being illegal.
- o) **Nike, Deutsche Bank, Dell, Disney** and **Google** provide health benefits to same-sex partners globally.<sup>57</sup>

#### Categories of corporate interventions and actions, and when should they be used?

50. The examples above can be categorised into four different types:
- i. Producing and implementing internal policies aimed at protecting the business' own employees.
  - ii. On-going dialogue with the offending government in line with the business' corporate culture and business needs.
  - iii. Indirect action via public statements in response to an acute problem.
  - iv. Direct action aimed at the offending government in response to an acute problem.

#### Internal policies

51. Businesses can gently encourage LGBT rights by ensuring that their global policy on diversity is indeed implemented globally. LGBT employees are in need of these policies no matter their location. A uniform message on diversity across all operations is encouraged. As Nigerian LGBT activist, Bisi Alimi, stated when addressing the UK Government's All Party Parliamentary Committee (APPG) on Global LGBT Rights:

“ There is no need for businesses to dumb down diversity training, just make it cultural sensitive.”<sup>58</sup>

52. Businesses can be subtle in breaking down homophobia, for instance by talking about the benefits of diversity as a global concern and in general terms, while noting that sexual orientation and gender identify are included in this. The message that diversity is beneficial slowly changes attitudes. Likewise, providing equal benefits to same-sex couples regardless of laws that criminalise homosexuality can subtly change attitudes. Even if LGBT employees feel unable to declare their sexuality – even in confidence – to take these benefits, presenting LGBT people as people in stable relationships challenges the perception that LGBT people are only interested in 'deviant' sex. LGBT employees should be given every opportunity to take these benefits, regardless of their location.

#### On-going dialogue

53. Businesses have a major role in putting forward a positive message about decriminalisation and the benefits that can accrue from it. On-going dialogue changes hearts and minds. It can be done either in private or by contributing openly to the UK Government's public debate.

51 Welch, M., 'European corporations considering boycott of countries with anti-gay laws', *FourTwoNine*, 20 November 2013. Available at: <http://dot429.com/articles/3510-european-corporations-considering-boycott-of-countries-with-anti-gay-laws>

52 Bromley, M., Dorf, J., Guest, M., 'Anchoring Equality: How U.S. Corporations Can Build Equal and Inclusive Workforces', *Council for Global Equality*, October 2009, p 52. Available at: [http://www.globalequality.org/storage/documents/pdf/councilforglobalequalityreportfinal\\_lowres.pdf](http://www.globalequality.org/storage/documents/pdf/councilforglobalequalityreportfinal_lowres.pdf)

53 *Ibid*, p. 17.

54 *Ibid*, p. 17.

55 Ganguly, 'Ex-BP CEO John Browne champions LGBT rights at the workplace', *The Economic Times*, 15 August 2015. Available at: [http://articles.economicstimes.indiatimes.com/2014-08-15/news/52846107\\_1\\_mncs-own-story-lgbt](http://articles.economicstimes.indiatimes.com/2014-08-15/news/52846107_1_mncs-own-story-lgbt)

56 Ernst & Young, *Making it real – globally: a practical guide for advancing lesbian, gay, bisexual and transgender diversity and inclusion across global companies*, 2015, p 13. Available at: [http://www.ey.com/Publication/vwLUAssets/EY-making-it-real-globally/\\$FILE/EY-making-it-real-globally.pdf](http://www.ey.com/Publication/vwLUAssets/EY-making-it-real-globally/$FILE/EY-making-it-real-globally.pdf)

57 Gessen, M., 'Pro-Gay Companies Stop Being Pro-Gay in Russia. Here's How to Fix That', *Slate* (web blog), 12 March 2014. Available at: [http://www.slate.com/blogs/outward/2014/03/12/coca\\_cola\\_ford\\_ikea\\_pro\\_gay\\_in\\_america\\_but\\_not\\_in\\_russia.html](http://www.slate.com/blogs/outward/2014/03/12/coca_cola_ford_ikea_pro_gay_in_america_but_not_in_russia.html)

58 *Exposing LGBT persecution in Nigeria*, 22 October 2015, Portcullis House.

54. The issue of criminalisation can be quietly raised behind closed doors with Ministers from criminalising governments. If multiple businesses consistently articulate that criminalisation is bad for business and bad for the economy, governments are more likely to act upon this message. Although this dialogue can be expressed in terms of moral disapproval, human rights or adherence to a corporate culture, the same points can be made in terms of self-interested business needs. The fact that homophobia is a drain on productivity gives businesses a Euros-and-cents reason to raise this issue with a host government, just as they would raise, for example, tax issues or poor infrastructure investment as hindrances to their business interests. On that note, when addressing the UK's APPG on Global LGBT Rights, the Nigerian activists Olumide Makanjuola and Bibi Bakare-Yusuf said, respectively:

“The business community in the UK can come together to tell the government that homophobia costs money.

“We need to have a conversation about the economic cost of homophobia. Like malaria, it makes people sick.”<sup>59</sup>

55. The dialogue on criminalisation can also be enriched by businesses including on their global websites and printed literature a message that they are pro-LGBT and anti-criminalisation. Businesses intervening in court proceedings is another contribution to the dialogue, as it adds to the material at the court's disposal and the public debate surrounding the litigation.

56. If change does not occur, businesses can consider investing elsewhere, in an economy where their needs are better accommodated by the host government. For instance, Singapore is reliant on service industry jobs, which are often transportable, for example to Hong Kong where international businesses do not have to deal with the problems brought by criminalisation.

#### Indirect and direct action against acute problems

57. When acute problems arise, such as Uganda's AHA or Russia's propaganda laws, international businesses can vocalise their opposition in the media. This can be done whether the business has operations in the country in question or not. The media forms the debate and informs the public. Richard Branson's comments on Uganda's AHA were covered in Ugandan news outlets including the *Daily Monitor*,<sup>60</sup> and *The Insider*<sup>61</sup> as well as international outlets *CNN*,<sup>62</sup> *Al Jazeera*<sup>63</sup> and the *Washington Post*<sup>64</sup>.

58. International businesses with the means can also take direct action by confronting the offending government when acute problems arise. This can take the form of private statements made directly to political leaders, or public threats to withdraw or divert investment.

59. These acute situations sometimes arise with little warning. For instance, Uganda's AHA was passed on 20 December 2013, during Parliament's Christmas recess. Businesses can plan for these acute situations as a part of their on-going risk assessments of the jurisdictions where they operate. They can consider in advance what actions they might take, and what scale of abuse against LGBT people would prompt them to divest completely. In addition, plans should be in place to protect LGBT employees when acute situations arise.

#### The role of consumers in prompting businesses to act

60. For the most part, it appears that international businesses act of their own volition, in line with their moral concerns, corporate culture or business strategy to appear pro-LGBT. At the same time, businesses' conduct can be influenced by direct consumer pressure. For instance, it was reported that Barclays' intervention in Uganda was encouraged by more than half a million people signing a petition calling on it to condemn the AHA, due to Barclays having significant operations in Uganda.<sup>65</sup>

61. An example of a company reversing its position completely on an LGBT issue can be seen in Sandals lifting a ban on same-sex couples staying at its Caribbean resorts. Sandals' policy to allow only heterosexual adult couples attracted direct action, for instance a ban on its advertisements on the London Underground, the removal of direct links on Yahoo!, and Sandals holidays being dropped from Expedia and Barclaycard promotions. The ban on same-sex couples was eventually lifted.<sup>66</sup>

62. Direct consumer action plays a part in making businesses realise the business case for being pro-LGBT. Consumers can also play a part in monitoring whether a business' apparent pro-LGBT stance is merely 'window dressing' and in challenging them to act if their conduct on LGBT rights does not live up to their projected corporate culture.

59 *Ibid.*

60 Kalinaki, D.K., 'Why does the West criminalise polygamy and allow homosexuality?', *Daily Monitor*, 23 January 2014.

61 'UK tycoon to Ugandans: accept gays, lesbians or die poor', *The Insider*, 16 November 2014. Available at: <http://www.theinsider.ug/uk-tycoon-to-ugandans-accept-gays-lesbians-or-die-poor/>

62 Farshbaf, N., Labott, L., 'U.S., Richard Branson slam Uganda's anti-gay bill', *CNN*, 24 December 2013. Available at: <http://edition.cnn.com/2013/12/24/world/africa/uganda-anti-gay-bill/>

63 'US voices concern over Uganda anti-gay bill', *Al Jazeera*, 25 December 2013. Available at: <http://www.aljazeera.com/news/africa/2013/12/us-voices-concern-over-uganda-anti-gay-bill-20131224235136296647.html>

64 Bariyo, N., 'Gay Ugandans Fight Discriminatory Law', *Washington Post*, 1 April 2014. Available at: <http://www.wsj.com/articles/SB10001424052702304688104579463151211505302>

65 Barclays discusses anti-gay bill with Ugandan officials, *Pink News*, 3 December 2012. Available at: <http://www.pinknews.co.uk/2012/12/03/barclays-discusses-anti-gay-bill-with-ugandan-officials/>

66 Hughes, H.L., 'Pink Tourism: Holidays of Gay Men and Lesbians', *CABI*, 2006, p. 84.

### Are these corporate interventions effective?

63. Six months after Uganda's AHA was signed into law by President Museveni, Uganda's Constitutional Court declared it null and void on a technicality due to the way it was passed in Parliament.

64. Tellingly, President Museveni commented upon the issue in an article entitled: *The way forward on homosexuality. Should we involve Uganda in endless wars with our trade partners on account of this?*<sup>67</sup> He stated:

“ **To carelessly and needlessly open unnecessary wars with such useful customers [in the USA and the EU] is irresponsible to say the least... The issue now, therefore, is not what other governments are telling us. It is about us deciding what is best for our country in the realm of foreign trade, which is such an important stimulus for growth and transformation that it has no equal...**

**It is now an issue of: omusota oguli muntamu – a snake in a clay cooking pot. We want to kill the snake, but we do not want to break the pot. We want to protect our children from homosexuality, but we do not want to kill our trade opportunities.**

65. He explained that although the threats from governments in Europe and the United States to cut aid did not frighten him:

“ **[A] more serious problem cropped up – the possibility of trade boycott by Western companies under the pressure of the homosexual lobbies in the West.**

The President then concluded:

“ **It is us to determine the destiny of our people in all matters – big and small; and trade is a big one.**

66. Activists in Uganda agree that international businesses play an important role. The human rights organisation Uganda Civil Society Coalition on Human Rights and Constitutional Law produced guidelines on how concerned parties could react to the AHA, including:

*Call on multinational companies that have businesses in Uganda to go public about their concerns on the Act and their future economic engagements in Uganda. For example Heineken, KLM, British Airways, Turkish Airlines, Barclays Bank, and other companies with important interests in Uganda and that already respect and value LGBT rights in their own internal policies, should note the risk that these laws pose for the safety of their own employees, as well as the impact on their brand image of continuing to do business in Uganda.*<sup>68</sup>

67. More generally, there is academic support for the view that pro-LGBT legislation becomes easier to pass if large employers align themselves with LGBT campaigners.<sup>69</sup>

68. Of course, pressure from international business is not always applied, and where it is applied it is not always effective. The role of business alone will not bring about the decriminalisation of homosexuality, but the experience in Uganda demonstrates that pressure from international business is part of a multi-pronged approach, which also includes engagement from foreign governments, international organisations, activists and civil society.

### What can governments do to assist businesses tackle criminalisation?

69. The business and economic cases for decriminalisation are clear. Governments, both national and supranational, can help convey this message to governments that criminalise homosexuality, for instance:

- a) In diplomatic relations with criminalising countries, persistently convey the message that criminalisation harms the economy and productivity.
- b) Help educate companies in their own jurisdictions on the business and economic cases for decriminalisation.
- c) As a complement to the UN Global Compact, establish a voluntary association with the objective of promoting human rights through business. A requirement of membership could include a formal commitment that the member organisation will promote international human rights principles in their international operations, pursuant to the UN Guiding Principles on Business and Human Rights.
- d) Use its influence to advocate for further studies to be carried out by the World Bank on the economic costs of homophobia, and specifically the costs of criminalisation. West Africa, East Africa and Southern Africa would make good case studies to complement the study already carried out for India.

67 'Museveni calls for fresh debate on homosexuality', *New Vision*, 3 October 2014. Available at: <http://www.newvision.co.ug/news/660387-museveni-calls-for-fresh-debate-on-homosexuality.html>

68 Uganda Civil Society Coalition on Human Rights and Constitutional Law, *Guidelines to national, regional and international partners on how to offer support now that the Anti-Homosexuality Act has been assented to*, 3 March 2014.

69 Bromley, M., Dorf, J., Guest, M., at n. 53 above, p.

## Appendix:

Selected companies in jurisdictions that criminalise homosexuality that have signed the United Nations Global Compact<sup>70</sup>

|     | Company   | Sector                              | Country | Joined     |
|-----|---|-------------------------------------|---------|------------|
| 1.  | The Coca-Cola Bottling Company of Ghana Ltd.                | Beverages                           | Ghana   | 2002-08-31 |
| 2.  | GLICO GROUP LTD   | Financial Services                  | Ghana   | 2007-05-15 |
| 3.  | Stanbic Bank Ghana Limited                                  | Financial Services                  | Ghana   | 2006-10-18 |
| 4.  | Standard Chartered Bank - Ghana                             | Financial Services                  | Ghana   | 2006-11-12 |
| 5.  | Unilever Ghana Limited                                      | Household Goods & Home Construction | Ghana   | 2006-10-13 |
| 6.  | CSS Corp  | Software & Computer Services        | India   | 2014-12-03 |
| 7.  | The Indian Hotels Company Ltd.                              | Travel & Leisure                    | India   | 2001-06-21 |
| 8.  | Indian Oil Corporation Limited                              | Oil & Gas Producers                 | India   | 2001-04-21 |
| 9.  | Infosys Ltd.  | Software & Computer Services        | India   | 2001-09-10 |
| 10. | Mindtree Limited  | Software & Computer Services        | India   | 2014-08-12 |
| 11. | The Shipping Corporation of India Ltd.                      | Industrial Transportation           | India   | 2001-03-01 |
| 12. | Tata International Limited                                  | General Industrials                 | India   | 2002-08-30 |
| 13. | Tata Motors Ltd.  | General Industrials                 | India   | 2002-09-23 |
| 14. | Tata Steel  | Industrial Metals & Mining          | India   | 2001-03-09 |
| 15. | Tata Teleservices Ltd.                                      | Mobile Telecommunications           | India   | 2008-08-08 |
| 16. | Tata Hitachi Construction Machinery Company Private Limited | Industrial Engineering              | India   | 2002-10-14 |
| 17. | Vedanta Ltd.  | Mining                              | India   | 2008-07-24 |
| 18. | Airtel Networks Kenya Ltd                                   | Mobile Telecommunications           | Kenya   | 2014-08-07 |
| 19. | Ericsson Kenya  | Mobile Telecommunications           | Kenya   | 2014-08-14 |
| 20. | Imperial Bank Limited                                       | Banks                               | Kenya   | 2014-07-07 |
| 21. | Kenya Power   | Electricity                         | Kenya   | 2007-08-23 |

<sup>70</sup> *Ibid.*

|     | Company                               | Sector                            | Country   | Joined     |
|-----|---------------------------------------|-----------------------------------|-----------|------------|
| 22. | Tata Chemicals Magadi Ltd.            | Chemicals                         | Kenya     | 2007-02-07 |
| 23. | Talisman Malaysia Limited             | Oil & Gas Producers               | Malaysia  | 2008-09-05 |
| 24. | The Mauritius Commercial Bank Limited | Financial Services                | Mauritius | 2008-04-09 |
| 25. | Deloitte and Touche Namibia           | Support Services                  | Namibia   | 2007-06-19 |
| 26. | First Bank of Nigeria Limited         | Banks                             | Nigeria   | 2013-01-23 |
| 27. | Zenith Bank Plc                       | Banks                             | Nigeria   | 2014-08-21 |
| 28. | Banyan Tree Holdings Ltd              | Travel & Leisure                  | Singapore | 2006-03-21 |
| 29. | CapitaLand Limited                    | Real Estate Investment & Services | Singapore | 2015-08-25 |
| 30. | Credit Suisse Singapore Branch        | Financial Services                | Singapore | 2006-03-21 |
| 31. | Hyflux Ltd                            | Gas, Water & Multiutilities       | Singapore | 2010-03-10 |
| 32. | Keppel Land Limited                   | Real Estate Investment & Services | Singapore | 2011-12-13 |
| 33. | Noble Agri                            | Food Producers                    | Singapore | 2015-01-16 |
| 34. | OCBC Bank Ltd.                        | Financial Services                | Singapore | 2006-12-21 |
| 35. | Qi Group of Companies                 | General Retailers                 | Singapore | 2015-08-11 |
| 36. | Shell Eastern Petroleum Pte Ltd       | Oil & Gas Producers               | Singapore | 2006-12-21 |
| 37. | Singapore Telecommunications Limited  | Fixed Line Telecommunications     | Singapore | 2007-06-01 |
| 38. | Standard Chartered Bank - Singapore   | Financial Services                | Singapore | 2007-07-30 |
| 39. | StarHub Limited                       | Mobile Telecommunications         | Singapore | 2012-11-27 |
| 40. | Commercial Bank of Ceylon PLC         | Financial Services                | Sri Lanka | 2002-09-23 |
| 41. | Sudatel Telecom Group                 | Mobile Telecommunications         | Sudan     | 2013-09-20 |
| 42. | Standard Chartered Bank Uganda Ltd    | Banks                             | Uganda    | 2010-06-28 |





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