



**THE CRIMINALISATION OF CONSENSUAL
SAME-SEX SEXUAL RELATIONS
ACROSS THE COMMONWEALTH –
DEVELOPMENTS AND OPPORTUNITIES**



Commonwealth Lawyers Association

Upholding the rule of law

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Corrigendum, 09 September 2016: Errors in the original text relating to the scale and impact of criminalisation of lesbian and bisexual women have been corrected on pp. 25-26 of this report. For further information on this topic please see our report [Breaking the Silence: Criminalisation of Lesbian and Bisexual Women and its Impacts](#).

HUMAN DIGNITY TRUST

The Human Dignity Trust (*HDT*) assists local groups and individuals around the world to challenge the legality of laws criminalising private consensual activity between same-sex adults through strategic test case litigation. The principal objective of HDT is to ensure that national laws which criminalise homosexuality are brought into conformity with binding international human rights law and constitutional law norms. It is supported in this endeavour by distinguished jurists and members of the international legal profession including barristers, former Attorneys-General and retired senior judges from across the globe as well as a legal panel of international law firms.



The Commonwealth Lawyers Association is a pan-Commonwealth organisation which seeks to uphold the rule of law in the Commonwealth by encouraging exchange of ideas between legal professionals, academics and students, through projects and by driving improvements in legal education.

"The criminalisation of LGBTI people across the Commonwealth is a matter of significant concern to the CLA. It is an abuse of fundamental human rights. The intimate activity of consenting adults in private should not be a matter of concern to Governments. We consider the work of the HDT to be very important in assisting countries to review the rights of their citizens where there are laws that discriminate on the basis of sexual orientation. The research demonstrates that in a number of countries the laws are not enforced, although they remain on the statute books – often with disproportionately high maximum sentences. The fact that the offence remains on the books still stigmatises LGBTI citizens of those countries, so non-enforcement is not a reason to keep the laws. The CLA encourages serious dialogue and leadership on these issues from the Commonwealth and its member countries and offers its assistance to facilitate this. We congratulate the HDT on its tireless efforts in this field and we are proud to be associated with it."

Alexander Ward, President Commonwealth Lawyers Association

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EXECUTIVE SUMMARY

1. In 2013, the Human Dignity Trust prepared a briefing for the Prime Minister on the criminalisation of homosexuality¹ across the Commonwealth, in advance of the Commonwealth Heads of Government Meeting (**CHOGM 2013**) in Sri Lanka. Since the last CHOGM the global situation facing LGBT people has worsened. Two years on, 40 of the 53 Commonwealth member states continue to criminalise consensual same-sex sexual relations between adults. Overall homosexuality is still illegal in 78 jurisdictions worldwide: over half of the globe.
2. The frequency of criminalisation in Commonwealth jurisdictions stems from the historical fact that criminalisation was an export of British colonial rule. Criminalisation is therefore a specific issue for the Commonwealth to consider and take steps to rectify.
3. Criminalisation fosters egregious and systematic human rights violations and directly harms lesbian, gay, bisexual and transgender (**LGBT**) individuals in numerous ways, regardless of whether these laws are actually enforced. Criminalisation outlaws LGBT people's very identities and makes LGBT people second class citizens in both the public and private spheres.
4. These laws result in a wide range of tangible harms to LGBT people, including:
 - a. murder, assault, 'corrective rape', forced or coerced marriage and suicide;
 - b. prosecution and conviction;
 - c. the constant fear of arrest, prosecution and conviction;
 - d. arbitrary detention, police abuse and harassment, even when charges are not brought or prosecutions are discontinued;
 - e. torture, inhuman and degrading treatment, including being subjected to forced medical procedures;
 - f. police entrapment, surveillance and a culture of legal impunity for violent and/or property crimes and discrimination committed against LGBT people;
 - g. harassment, blackmail and extortion by state and non-state actors;
 - h. discrimination and denial of essential services such as health, education, employment and housing;
 - i. shame, public humiliation and associated harms to their mental health;
 - j. the denial of rights to assembly, association and expression;
 - k. shattered families

¹ In this report, use of the term 'homosexuality' in the context of criminalisation and decriminalisation refers to laws penalising private same-sex sexual activity between consenting adults. This term is adopted for convenience only and recognises the fact that the laws are directed at, and impact disproportionately upon, people of minority sexual orientation and gender identity including lesbian, gay, bisexual and trans people. It also includes men who have sex with men (**MSM**) and women who have sex with women, which describe, respectively, men who have sexual encounters with other men but may not necessarily self-identify as gay or bisexual men, and women who have sexual encounters with other women but may not necessarily self-identify as lesbian or bisexual.

- l. being forced to leave their homes
 - m. treatment of LGBT people as '*unapprehended felons*' reinforcing the misapprehensions and prejudices of the media and general public;
5. Criminalisation has extremely adverse effects on public health, particularly through exacerbating HIV/AIDS epidemics.
 6. Criminalisation and the associated discrimination against LGBT people hinders countries' economic development and creates a less competitive environment for multi-national businesses.
 7. Criminalisation harms children and adolescents who are or who are perceived to be LGBT, in particular through increasing their risks of being bullied, excluded from school or committing suicide.
 8. Non-heterosexual women are just as affected by criminalisation as non-heterosexual men regardless of the specific wording of criminalising laws as they lead to the persecution and stigmatisation of the entire LGBT community.
 9. Non-criminalising countries are not immune to the effects of criminalisation. Well-founded fears of persecution on the grounds of sexual orientation or gender identity give rise to greater numbers of LGBT people claiming the right to seek asylum thus effecting migration into non-criminalising countries.
 10. Laws criminalising homosexuality violate fundamental human rights enshrined in international law and most national constitutions including:
 - a. equal protection before the law
 - b. non-discrimination
 - c. privacy
 - d. freedom from torture and inhuman and degrading treatment
 - e. dignity
 - f. health
 - g. freedom of expression, assembly and association
 - h. freedom from arbitrary detention
 11. Religious and cultural considerations do not trump these fundamental and inalienable human rights, which are possessed by every individual universally purely by virtue of their humanity. Homosexuality is not a uniquely Western experience nor is decriminalisation the aim of a modern neo-colonialist agenda, as is often claimed by opponents of decriminalisation. LGBT people live in all societies across the globe.
 12. The judicial system has played an important role in ending serious and systemic human rights violations in many jurisdictions, and will likely continue to form part of the on-going solution to ending criminalisation.
 13. Political leadership and legislative reform have proved crucial in bringing about recent change in a number of countries. Reforming anti-discrimination laws is also a promising avenue for reducing social stigma and improving the quality of life of LGBT people with regards to areas such as education, housing, healthcare and employment.

1. INTRODUCTION

Homosexuality is a crime in 78 jurisdictions worldwide.^{2 3} An estimated 2.9 billion people live in countries where consensual same-sex intimacy is punishable by imprisonment, corporal punishment or even death. Of that 2.9 billion approximately 174 million may identify as LGBT.⁴

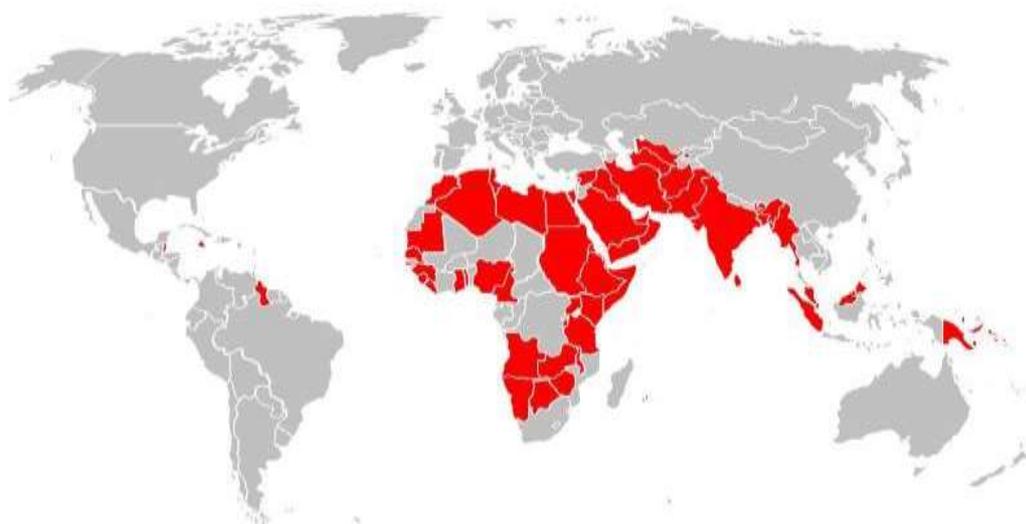


Fig. 1 Countries that Criminalise Homosexuality (2015)⁵

N.B. A comparative table summarising the criminal laws and penalties by each of the 40 criminalising Commonwealth countries is contained at **Annex C**.

Commonwealth member states constitute over half of the jurisdictions which criminalise homosexuality, and are among the countries which most actively enforce these laws. 40 of the 53 Commonwealth countries criminalise homosexuality, meaning 69% of

² This figure is derived on the basis of national law only and includes additionally those states, provinces or territories that criminalise, e.g. the Aceh and Sumatran provinces in Indonesia and the Gaza Strip insofar as it forms part of the Palestinian Authority. To see the entire list of jurisdictions included, see the Human Dignity Trust website:

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

Accessed on 13 August 2015

³ ILGA, *State-Sponsored Homophobia, A world survey of laws: criminalisation, protection and recognition of same-sex love*, 10th Edition, May 2015, available at:

http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2015.pdf

⁴ Assuming that approximately 6% of the population may identify as LGBT. See: Fiona Govan, *Six per cent of population are gay or lesbian, according to Whitehall figures* (*The Telegraph* 12 December 2005), available at: <http://www.telegraph.co.uk/news/uknews/1505277/Six-per-cent-of-population-are-gay-or-lesbian-according-to-Whitehall-figures.html> [accessed on 25 October 2015]

⁵ Not only Commonwealth countries that inherited British colonial era Sodomy provisions criminalise homosexuality. Many countries that criminalise, including many in the Middle East and Northern Africa, have laws that reflect those created and transported during the British Colonial era.

Commonwealth citizens live in criminalising countries.⁶ The Commonwealth alone accounts for over 2 billion of the 2.9 billion people living in the criminalising world.

Moreover, there is a direct link between criminalising laws and increased rates of HIV, and the Commonwealth undeniably demonstrates this link. The Commonwealth accounts for approximately 30% of the world's population but over 60% of HIV cases worldwide. This situation has gotten progressively worse since the last CHOGM.

Despite this daunting state of affairs, there has been significant progress in some areas of the Commonwealth in recent years. A number of Commonwealth states have decriminalised or strengthened anti-discrimination laws which help protect LGBT people. There have also been smaller but still encouraging signs, like political leaders making positive statements and Commonwealth countries supporting pro-LGBT initiatives at the United Nations (*UM*).

Realistically, decriminalisation across the Commonwealth will almost certainly be an incremental and long-term process. LGBT issues have become politically polarised internationally; with many political leaders using the LGBT community as a scapegoat for their own internal political ends. It is hoped that the Commonwealth will harness its strengths of continuous dialogue and shared traditions in order to tackle this blight on our shared humanity.

The Commonwealth claims to be a values-based organisation which recognises the sanctity and universality of human rights. It must commit to removing the devastating historical remnant that is criminalisation in order to live up to these values. In the words of the current Commonwealth Secretary General on the International Day against Homophobia, Biphobia and Transphobia just this year:

Much more needs to be done to realise international human rights obligations and to uphold the values of the Commonwealth Charter.⁷

⁶ These countries are: Antigua and Barbuda, Bangladesh, Barbados, Belize, Botswana, Brunei, Cameroon, Dominica, Ghana, Grenada, Guyana, India, Jamaica, Kenya, Kiribati, Malawi, Malaysia, Maldives, Mauritius, Namibia, Nauru, Nigeria, Pakistan, Papua New Guinea, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and Grenadine, Samoa, Seychelles, Sierra Leone, Singapore, Solomon Islands, Sri Lanka, Swaziland, Tanzania, Tonga, Trinidad and Tobago, Tuvalu, Uganda and Zambia.

⁷ Statement by Commonwealth Secretary-General Kamallesh Sharma, *International Day against Homophobia, Transphobia and Biphobia*, (15 May 2015). Available at: <http://thecommonwealth.org/media/news/international-day-against-homophobia-transphobia-and-biphobia#sthash.sAyAR574.dpuf>

2. THE GLOBAL EXPERIENCE OF CRIMINALISATION AND DECRIMINALISATION - CHRONOLOGY

1860

THE BRITISH COLONIES: The *Indian Penal Code 1860* devised to 'inculcate European morality into resistant masses', began the process of enforcing Victorian morality throughout the Empire. Section 377 entitled 'unnatural offences' was introduced into the *Indian Penal Code* (IPC) to criminalise 'carnal intercourse against the order of nature' with a penalty of imprisonment for life. India, Pakistan, Bangladesh, Burma, Sri Lanka, Malaysia, Singapore and Brunei also have legislation based on Section 377. Variations on IPC (e.g. *Queensland Code 1901*) were similarly introduced in other parts of the British Empire.

1861

UNITED KINGDOM (ENGLAND AND WALES): The *Offences against the Person Act 1861* replaced the death penalty for buggery with life imprisonment or 'for any term not less than ten years'. The Act was subsequently adapted, modified and incorporated into the codes of various British colonies throughout Africa, the Caribbean and South Pacific over the next half-century.

1885

UNITED KINGDOM (ENGLAND AND WALES): The *Criminal Law Amendment Act 1885* is enacted. Section 11 of the Act made gross indecency between men a crime for the first time. In effect any intimacy and/or sexual activity between men, in public or private, was criminalised. It was an offence that could only be committed consensually. In practice, the law was used broadly to prosecute non-heterosexual men when actual sodomy could not be proven. It eventually became known as the *Blackmailer's Charter*. Similar gross indecency laws were also enacted in British colonies across the globe.

1954

UNITED KINGDOM (ENGLAND AND WALES): The Church of England published *The Problem of Homosexuality: An interim report*, which called for the decriminalisation of consensual same sex conduct among gay men.

1956

UNITED KINGDOM (ENGLAND AND WALES): The *Sexual Offences Act 1956* consolidated the English criminal law relating to sexual offences with effect between 1957 and 2004.

1967

UNITED KINGDOM (ENGLAND and WALES): The *Sexual Offences Act 1967* provided for decriminalisation to a limited extent subject to conditions between two men in private, with a discriminatory age of consent of 21. The Act applied only to England and Wales.

1957

UNITED KINGDOM: The Wolfenden Report recommended that 'homosexual behaviour between consenting adults in private should no longer be a criminal offence' eventually paving the way for the full decriminalisation of homosexuality in the United Kingdom.

1972

SOUTH AUSTRALIA: *Criminal Law Consolidation Act Amendment Act 1969* (SA) enacted, permitting a defence to a sodomy charge if committed 'in private between consenting adults'.

1975

SOUTH AUSTRALIA: *Criminal Law (Sexual Offences) Amendment Act 1975* abolished buggery, gross indecency, and equalised the ages of consent between homosexuals and heterosexuals.

1980

SCOTLAND, UNITED KINGDOM: The *Criminal Justice (Scotland) Act 1980* was enacted - the equivalent of the *Sexual Offences Act 1967* -, decriminalising homosexuality in Scotland subject to the same conditions.

THE ROLE OF COLONIALISM: Supporters of criminalisation and the status quo often label decriminalisation efforts as a neo-colonial project with claims that homosexuality is a Western import foreign to their way of life. On the contrary, laws criminalising homosexuality are an archaic relic of former British colonial power. It is necessary to acknowledge properly the colonial origins of these laws.

1969

CANADA: *Criminal Law Amendment Act 1968-1969* came into effect decriminalising sodomy and gross indecency if done in private between two consenting adults. This reform was part of an omnibus bill first introduced in 1967 which served as a broader overhaul of the criminal code of Canada.

1976

AUSTRALIAN CAPITAL TERRITORY: *Law Reform (Sexual Behaviour) Ordinance 1976* decriminalised homosexual acts between consenting adults in private.

1981

VICTORIA, AUSTRALIA: *Crimes (Sexual Offences) Act 1980* came into effect, decriminalising homosexual acts in private.

EUROPEAN COURT OF HUMAN RIGHTS (NORTHERN IRELAND): The Court issues its judgment in *Dudgeon v United Kingdom* finding that Northern Ireland's laws criminalising homosexual acts between consenting adults were a violation of the right to privacy. This was the first case on the issue of criminalisation to succeed under human rights law anywhere in the world and formed the basis of successful litigation in relation to the Republic of Ireland and other subsequent instances.

COUNCIL OF EUROPE adopted decriminalisation as a necessary condition to apply to all member states. Russia (1993), Albania and Moldova (1995) all repealed their laws before being admitted. On its accession to membership in 1995 Macedonia has also promised to introduce a new penal code within one year and repeal the ban on homosexual acts between consenting adults.

1982

NORTHERN IRELAND, UNITED KINGDOM: *Homosexual Offences (Northern Ireland) Order 1982* decriminalised homosexuality in Northern Ireland to give effect to *Dudgeon*; resulting in the decriminalisation of homosexuality throughout the UK.

1986

NEW ZEALAND: The *Homosexual Law Reform Act 1986* decriminalised consensual sexual acts between men over the age of 16.

1989

WESTERN AUSTRALIA: *Law Reform (Decriminalisation of Sodomy) Act 1989 (WA)* legalised consensual sexual activity between men above the age of 21 years.

1990

QUEENSLAND (AUSTRALIA): The *Criminal Law (Sexual Offences) Act 1978-1979* was enacted, decriminalising homosexuality. The age of consent was fixed at 16 years for heterosexual acts and homosexual acts except for sodomy which is set at 18 years of age.

1991

BAHAMAS: *Sexual Offences Act 1989* removed the prohibitions against 'buggery' and 'lesbianism' in private.

1994

UNITED NATIONS (AUSTRALIA): UN Human Rights Committee issued its decision in *Toonen v Australia* declaring that domestic laws in the Australian state of Tasmania criminalising consensual same-sex sexual acts violated international human rights law, in particular, the rights to privacy and non-discrimination under the International Covenant of Civil and Political Rights (*ICCPR*).

1991

HONG KONG: Consensual homosexual relations in private were made legal through an act of the Legislative Council repealing the sodomy laws.

1996

SOUTH AFRICA: Became the first jurisdiction in the world to provide express constitutional protection from discrimination on the basis of '*sexual orientation*'.

TASMANIA: After continued resistance by Tasmania following the decision in *Toonen*, the federal government of Australia enacted the *Human Rights (Sexual Conduct) Act 1994* to override the offending laws of the state of Tasmania.

1997

EUROPEAN COMMISSION OF HUMAN RIGHTS (UNITED KINGDOM): The Commission held in *Sutherland v United Kingdom* that the higher age of consent for sexual acts between men was discriminatory and violated the right to privacy contained in the European Convention of Human Rights.

1998

SOUTH AFRICA: Constitutional Court struck down laws criminalising homosexuality in *National Coalition for Gay and Lesbian Equality v Minister of Justice* finding they violated the rights to equality, dignity and privacy.

2000

UNITED KINGDOM: Legislation giving effect to *Sutherland* was achieved by way of the *Sexual Offences (Amendment) Act 2000* which lowered the age of consent for homosexual sexual conduct to 16 years in line with heterosexual conduct.

2005

FIJI: High Court of Fiji in *Nadan and McCoskar v State* held that laws criminalising homosexuality violated the rights to equality and privacy and read down the offending provisions so they would be limited in their application only to non-consensual sexual acts.

2006

HONG KONG: In *Leung v Secretary of Justice* the Court of Appeal in the High Court of the Hong Kong Special Administrative Region ruled that differing ages of consent applicable to heterosexual and homosexual couples were discriminatory.

2007

HONG KONG: The Court of Final Appeal of the Hong Kong Special Administrative Region in *Secretary for Justice v Yau Yuk Lung Zigo* held that laws on buggery in public, violated the constitutional right to equality as there was no equivalent provision applicable to heterosexuals.

2010

UNITED NATIONS: The General Assembly voted for an amendment to restore reference to '*sexual orientation*' to a high profile resolution condemning extrajudicial, summary or arbitrary executions (the **2010 General Assembly Resolution Amendment**: 93 in favour to 55 against, 27 abstentions, 17 non-votes/absent) which had been removed at an earlier vote made at a sub-committee level. This was significant as it included a number of States that had not supported the prior 2008 General Assembly Declaration.

2003

UNITED KINGDOM: Legislation giving effect to the European Court of Human Rights decision in *A.D.T. v United Kingdom* (2003) that the offence of *gross indecency* violated the right to privacy contained in the European Convention of Human Rights, was achieved. The *Sexual Offences Act 2003* repealed and replaced older sexual offences laws, including the *Sexual Offences Act 1956* and *Sexual Offences Act 1967*. It removed the crime of *gross indecency* and was victim-centred, removing any distinction between genders.

UNITED STATES OF AMERICA: The Supreme Court of the United States strikes down laws criminalising sodomy in *Lawrence v Texas*. The Court held that adult consensual same-sex sexual conduct was protected by a right to personal and private life located within the due process clause of the US Constitution (the Fourteenth Amendment).

2008

THE ORGANISATION OF AMERICAN STATES: adopted its first resolution on sexual orientation and gender identity, condemning violence against LGBT persons. Similar resolutions were passed in 2009, 2010, 2011, 2012 and 2013.

2008

UNITED NATIONS: The General Assembly was presented with the first Declaration on Human Rights, Sexual Orientation and Gender Identity supported by 66 countries (the **2008 General Assembly Declaration**). A counter-statement was endorsed by 57 other member states (2008 General Assembly Counter Statement).

2011

UNITED NATIONS: The UN High Commissioner for Human Rights released her report in accordance with the earlier 2011 Human Rights Council Resolution. The High Commissioner expressly called for the repeal of laws criminalising homosexuality.

2011

UNITED NATIONS: The UN Human Rights Council issued a Joint Statement on Ending Acts of Violence based on Sexual Orientation and Gender Identity, sponsored by 85 member states (the **2011 Human Rights Council Joint Statement**).

2012

LESOTHO: The new *Penal Code Act 2010* entered into force. The new *Penal Code Act* does not include any provisions concerning sodomy or unnatural offences.

UNITED NATIONS: UN Human Rights Council Resolution passed the first ever positive vote raised in the UN on Human Rights, Sexual Identity and Gender Identity (the **2011 Human Rights Council Resolution**). It was passed by 23 states with 19 against with 3 abstentions and called on the UN High Commissioner for Human Rights to draw up the first UN report on LGBT people.

2013

SÃO TOMÉ & PRÍNCIPE: The former laws criminalising same-sex sexual conduct were repealed by the adoption of a new penal code, which took effect in November 2012

COMMONWEALTH: On 11 March 2013, the Commonwealth Charter was adopted that included a clause opposing discrimination on certain listed or 'other grounds'.

2014

2014

THE AFRICAN COMMISSION: adopted, for the first time, the *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*.

NORTHERN CYPRUS: Parliament passed legislation repealing laws criminalising consensual same-sex sexual conduct between consenting adults becoming the last jurisdiction in Europe to do so as a result of pressure from an impending case at the European Court of Human Rights.

PALAU: repealed its legal provisions that criminalised consensual same-sex sexual activity between gay men through the introduction of a new penal code with no such provisions.

MOZAMBIQUE: Parliament approved, by consensus, the revised *Penal Code, Law 35/2014*, which replaced the former *Penal Code from 1886*. The new penal code removes articles 70 and 71, which had criminalised '*vices against nature*'. It came into force at the end of June 2015.

3. WHY MUST DECRIMINALISATION BE A PRIORITY FOR THE COMMONWEALTH?

3.1 The Commonwealth and Beyond: Country Developments

The last few years have seen a few positive developments with respect to criminalisation but also the entrenchment and expansion of some criminalising laws. Unfortunately, the reality is that since the last CHOGM in 2013 the situation has significantly worsened for LGBT people within the Commonwealth.

There have been adverse developments in, to name a few examples, India, Uganda, Nigeria and Brunei.

- **India:** In 2009, The Delhi High Court decriminalised same-sex sexual activity between consenting adult men in private by reading down *Section 377 of the Indian Penal Code*.⁸ However, on 11 December 2013, in *Koushal v. Naz Foundation*, a two-judge bench of the Supreme Court of India upheld the original provisions of Section 377 as constitutional.⁹ Now as a result, private consensual sexual activity between two men is once again a crime in India.

The Supreme Court decision may yet be reconsidered in response to a curative petition. The decision was heavily criticised within Indian governmental and parliamentary circles. India's Law Minister at the time, Kapil Siba stated that '*[t]he archaic law should be changed, millions of people are affected and these people should not be exposed to 377*'. He added that '*[India] must decriminalize adult consensual relationships*'.¹⁰

Some countries have enacted additional laws that have either enhanced the punishments associated with criminalisation or have gone beyond criminalising consensual sexual activity to other aspects of LGBT people's lives and identities. These forms of '*enhanced criminalisation*' attack the ability of LGBT people to express themselves freely, organise and associate, in order to undermine their capacity to lobby for change. Both Uganda and Nigeria have enacted such legislation with other countries claiming they may follow suit soon.¹¹

- **Nigeria** - the *Same Sex Marriage (Prohibition) Act 2014* was signed into law on 7 January 2014. The legislation does more than contain punitive measures for anyone entering into a same-sex marriage or union. It also makes it a crime for same-sex couples to live together, with sentences of 14 years' imprisonment. It criminalises every aspect of LGBT identity, including the right to freedom of association by banning 'gay' organisations.¹²

⁸ Judgment of the Delhi High Court is available at: <http://lobis.nic.in/dhc/aps/judgement/02-072009/aps02072009cw74552001.pdf>

⁹ In the Supreme Court of India Civil Appellate Jurisdiction review petition (c) nos. 41-55 of 2014, in civil appeal no.10972, 10974, 10986, 10981, 10983, 10984, 10975, 10973, 10985, 10976, 10980, 10982, 10977, 10978 and 10979 of 2013, text of the order is available at: <http://supremecourtfindia.nic.in/outright/rc4114.pdf>

¹⁰ Roberts, S., 'India's Law Minister slams Supreme Court's decision to bring back "archaic" anti-gay law', (*Pink News* 12 December 2013) <http://www.pinknews.co.uk/2013/12/12/indias-law-minister-slams-supreme-courts-decision-to-bring-back-archaic-anti-gay-law/>

¹¹ See, for example, Tanzania in the Country Overviews at Annex A.

¹² Section 5(2) of the *Same Sex Marriage (Prohibition) Act 2014* prohibits the registering, operating, or participation in gay clubs, societies and organisations, or directly or indirectly making public show of a same-sex amorous relationship in Nigeria.

- **Brunei** - is currently phasing in the *Syariah Penal Code Order (SPC Order 2013)* which is set to come into force by the end of 2016, which will apply the death penalty - stoning to death - for consensual same-sex sexual conduct.¹³
- **Uganda** - the *Anti-Homosexuality Act (AHA)* became law on 24 February 2014. Its provisions lengthened sentences for adults found guilty of same-sex relationships and extended punishments to people involved in 'promoting homosexuality'. On 1 August 2014, the Ugandan Constitutional Court declared Uganda's AHA void on the basis that parliament did not have the constitutionally required quorum of one third of parliament members when the act was passed on 20 December 2013.¹⁴

While the AHA is no longer in force, another piece of legislation, that is likely to be passed soon, will severely restrict the activities of NGOs, and in particular those who work in support of LGBT rights. On 10 April 2015, the Non-Governmental Organisations Bill 2015 (**NGO Bill**) was published in the Ugandan government gazette. As drafted, the NGO Bill prohibits organisations from operating unless registered with the government-appointed NGO Board¹⁵ and will curtail any NGO which acts in a way that '*is prejudicial to the interests of Uganda and the dignity of the people of Uganda*'.¹⁶ This deliberately broad and vague language could be applied to organisations advocating for LGBT rights. The bill if enacted would give the NGO Board sweeping powers to monitor, inspect and shut down NGOs. They can also punish individual directors or officers with hefty fines and/or imprisonment for up to 8 years.

- Other examples outside the Commonwealth include Russia and The Gambia. Russia has criminalised the '*propaganda of homosexuality*'¹⁷ which is essentially a blanket ban of LGBT identity. On the 25 August 2014, The Gambian Parliament approved the Criminal Code (Amendment) Act 2014, which punishes '*aggravated homosexuality*' with life imprisonment.¹⁸ '*Aggravated homosexuality*' includes repeat offences and engaging in same-sex intimacy when HIV positive.

The scale of the problem of criminalisation worldwide cannot be overstated.

However, despite this and the more recent worrying developments, there have been positive steps over the last couple of years and future prospects for decriminalisation remain.

For instance, through the Universal Periodic Review (**UPR**) process, some member states have accepted recommendations to combat discrimination against LGBT people through political, legislative and administrative measures. Others have accepted recommendations calling for the improvement of LGBT access to healthcare and state services, or the promotion of tolerance and non-discrimination through education awareness campaigns. There have also been notable judicial decisions and legislative

¹³ The text of the law is available at:

www.agc.gov.bn/aGc%20images/Laws/Gazette_pdf/2013/en/syariah%20penal%20code%20order2013.pdf

¹⁴ *Onyango and Others v Attorney General*, Constitutional Petition No. 8 of 2014, Judgment of 1 August 2014.

¹⁵ Section 31(1) of the NGO Bill.

¹⁶ Section 40(f) of the NGO Bill.

¹⁷ Federal Law no 135-fz; 'on amendments to certain Legislative acts of the Russian Federation with regard to limiting the spread of information about minors, victims of illegal actions (inaction)', at Article 6.21 - promotion of non-traditional sexual relations among minors.

¹⁸ The law is available at:

http://www.hrw.org/sites/default/files/related_material/Gambia%20Criminal%20Code%20Act%202014.pdf

amendments which signal progressive change. A number of specific examples are below.

- a) There has been judicial recognition of LGBT organisations and the rights of LGBT people to freedom of association and expression in Botswana and Kenya (see Section 5 below for more detailed information on freedom of association developments).
- b) Palau, Mozambique, São Tomé and Príncipe and Lesotho have all decriminalised consensual same-sex sexual activity in recent years, with other states accepting recommendations to do the same.¹⁹
- c) Several states in Australia, in addition to the UK, have adopted measures to expunge the criminal records of individuals convicted of consensual homosexuality-related offences.
- d) Fiji expanded its non-discrimination protections through its 2015 Constitution, which prohibits not only discrimination based on sexual orientation (as in the 1997 Constitution) but also based on gender identity and gender expression. Nepal in September 2015 promulgated a new constitution that grants constitutional rights to the LGBT communities under the principle of ‘Inclusion’.²⁰ Malta added gender identity to the list of prohibited grounds of discrimination included in its constitution.
- e) Anti-discrimination laws have also been strengthened in several states around the globe, including Chile, Cuba, Georgia, the Republic of Moldova, Montenegro, Australia and Malta.

There are also encouraging signs in other Commonwealth countries (please see Section 7 below and Annex A).

These movements must be encouraged and supported so that governments receive the signal that respect for human rights will be noticed and applauded.

3.2 Impact of Criminalisation

The following subsections provide a general overview of the impact that criminalisation has on individuals and society as a whole.

‘Failure to uphold the human rights of LGBTI people and protect them against abuses such as violence and discriminatory laws and practices, constitute serious violations of international human rights law and have a far-reaching impact on society - contributing to increased vulnerability to ill health including HIV infection, social and economic exclusion, putting strain on families and communities, and impacting negatively on economic growth, decent work and progress towards achievement of the future Sustainable Development Goals.’²¹

Joint UN statement on Ending violence and discrimination against lesbian, gay, bisexual, transgender and intersex people (September 2015)

¹⁹ Namely Nauru, Kiribati and Seychelles.

²⁰ The new constitution of Nepal has also acknowledged the ‘Sexual and Gender Minority’ community in the Article 18 (Right to Equality). For further information see, <http://www.humandignitytrust.org/pages/NEWS/News?NewsArticleID=455>

²¹ Joint UN statement on Ending violence and discrimination against lesbian, gay, bisexual, transgender and intersex people (29 September 2015), available at: http://www.ohchr.org/Documents/Issues/Discrimination/Joint_LGBTI_Statement_ENG.PDF

The state of the LGBT community in society has been described as ‘a litmus test’ for the status of human rights in society more broadly.²² This is precisely because the LGBT community is such a vulnerable minority - ‘similar to the proverbial canary in the coal mine’.²³ It is more often than not the case that where the rights of LGBT people are undermined the rights of other minorities and civil society will also be in jeopardy.

a) Impact on Individuals

Laws criminalising homosexuality are not merely symbolic. They have real and pernicious consequences on the daily lives of LGBT people. This is precisely because these laws effectively render those subject to them invisible and silent in the eyes of the state, for fear of prosecution or reports of abuse and violence not being taken seriously by the police. Regardless of whether the laws are enforced or not, their very existence debases LGBT people and results in them being marginalised, stigmatised and subject to a whole host of harms to their physical well-being, life prospects and mental health.

Some examples of the extent of LGBT persecution from countries that criminalise are outlined below. These are just a few examples - there are daily reports of similar outrages.

Murder, assault, ‘corrective rape’, forced or coerced marriage and suicide:

Jamaica: On 24 October 2015, a brutal mob attack reportedly targeting homeless gay men left one young man in a critical condition, with a punctured lung and constant brain swelling.²⁴

Uganda: On 22 October 2015, it was reported that well-known Ugandan transgender activist Beyonce Karungi was admitted to hospital after being beaten by an angry mob. Previously she was forced into hiding after receiving several death threats.²⁵ This attack came during a period witnessing a rise in attacks on LGBTI people in Uganda, with six incidents reported in about a week.²⁶

Malaysia: On 10 September 2015, award-winning transgender rights activist Nisha Ayub was attacked outside her house by two men with iron rods. Nisha was sentenced to 3 months in a male prison under an Islamic anti cross-dressing law and she has been challenging this ruling since then.²⁷

²² Kenneth Roth, Executive Director of Amnesty International cited in World Economic Forum, *LGBT: moving towards equality*, available at: <http://reports.weforum.org/outlook-global-agenda-2015/global-leadership-and-governance/the-road-to-equality/>

²³ *Ibid.*

²⁴ National Anti-Discrimination Alliance, *Mob Attack Leaves one Young Man in Critical Condition* (27 October 2015) <<http://www.nadajamaica.com/homophobic-mob-attack-leaves-one-young-man-in-critical-condition/>>

²⁵ Morgan, J., ‘Trans activist escapes death after being beaten by Ugandan mob’ (*Gay Star News* 26 October 2015) <<http://www.gaystarnews.com/article/trans-activist-escapes-death-after-being-beaten-by-ugandan-mob/>>

²⁶ Editor, ‘Violent Attacks on LGBTI Persons on the Rise within Kampal’a’ (*Kuchu Times* 27 October 2015) <<https://www.kuchutimes.com/2015/10/violent-attacks-on-lgbti-persons-on-the-rise-within-kampala/>>

²⁷ Wee, D., ‘Asia’s LGBTI “hero of the year” attacked in Malaysia’ (*Gay Star News*, 14 September 2015) <<http://www.gaystarnews.com/article/asias-lgbti-hero-of-the-year-attacked-in-malaysia/>>

Ghana: In September 2015, in Accra a gay man was rescued by a soldier passing by whilst he was severely beaten. The victim was lured into watching a football match and then attacked for his sexuality.²⁸

India: In June 2015, the LGBT Collective stated that there had been 15 instances of 'corrective rape' reported to the group in the last 5 years.²⁹

Uganda: On 16 May 2015, a documentary aired on HBO revealed the story of a lesbian woman and her son who was born after she was gang-raped because of her sexuality. The documentary also featured a group of men who admitted to raping lesbians.³⁰

Pakistan: In May 2015, 3 transgender women were shot dead and 6 others were injured after 2 gunmen ambushed them in Rawalpindi. According to a local activist 'the attackers could be those who did not like the presence of transgenders in the locality'.³¹

India: In May 2015, a transgender person allegedly committed suicide after being humiliated by some youths in the state of Tamil Nadu.³²

Swaziland: In March 2015, a woman was reportedly murdered by a man in a bar in the southern town of Nhlanguano after being identified as a lesbian. This incident took place just a few months after another incident when a gay man was murdered.³³

Jamaica: In March 2015, a YouTube video appeared to show the public execution of a young man who was stoned to death in the street by a crowd chanting anti-gay slurs.³⁴

Cameroon: In January 2015, the advocacy group Camfaids (the Cameroonian Foundation for AIDS) reported an attack against a trans woman by a group of 15 people armed with stones and clubs in Yaoundé.³⁵

²⁸ Pulse Staff, 'Soldier rescues gay from severe beatings at Kawukudi' (*Pulse*, 2 September 2015)

<<http://pulse.com.gh/news/assault-soldier-rescues-gay-from-severe-beatings-at-kawukudi-id4129572.html>>

²⁹ Jain, R., 'Parents use "corrective rape" to "straighten" gays' (The Times of India 1 June 2015)

<<http://timesofindia.indiatimes.com/life-style/relationships/parenting/Parents-use-corrective-rape-to-straighten-gays/articleshow/47489949.cms>> accessed on 12 September 2015

³⁰ Tempesta, E., "'You have to be a real woman": Ugandan woman recalls the horrific moment she was brutally raped by a gang of four men after they discovered she was a lesbian' (*Daily Mail*, 16 May 2015)

<<http://www.dailymail.co.uk/femail/article-3083825/Ugandan-woman-recalls-horrific-moment-brutally-raped-gang-four-men-discovered-lesbian.html#ixzz3qWsBmge1>>

³¹ Ashgar, M., 'Three transgenders killed in armed attack' (*Dawn*, 11 May 2015)

<<http://www.dawn.com/news/1181248/three-transgenders-killed-in-armed-attack>>

³² Special correspondent, 'Transgender ends life in Palani' (*The Hindu* 10 May 2015)

<<http://www.thehindu.com/news/national/tamil-nadu/transgender-ends-life-in-palani/article7189510.ece>> accessed on 12 September 2015

³³ Morgan, J., 'Gay woman axed to death in Swaziland' (*Gay Star News* 24 March 2015)

<http://www.gaystarnews.com/article/gay-woman-axed-death-swaziland240315/>

³⁴ Grindley, L., 'Obama Isn't Quiet About LGBT Rights, Even in Jamaica Trip', (*The Advocate*, 11 April 2015)

<http://www.advocate.com/world/2015/04/11/obama-isnt-quiet-about-lgbt-rights-even-jamaica-trip>

³⁵ Stewart, C., 'Trans woman attacked again in Cameroon', (*76 Crimes*, 20 January 2015),

<http://76crimes.com/2015/01/20/trans-woman-attacked-again-in-cameroon/>

Arrests, prosecutions and convictions:

Malaysia: According to a 26 October 2015 report, police launched a wave of raids and arrested 21 trans women in the wake of a court ruling that overturned limited legal protections for trans people from repressive aspects of local *Sharia* law.³⁶

Kenya: In September 2015, the Nyeri County Commissioner issued arrest threats against gay and lesbian sex workers and claimed that 12 people had already been arrested.³⁷

Maldives: On 29 August 2015, local police reportedly arrested 2 men in their home after they were accused of same-sex sexual acts.³⁸

Zambia: In May 2015, the High Court of Zambia upheld the acquittal of human rights activist Paul Kasonkomona on charges of '*soliciting for immoral purposes*'. He was arrested in April 2013 after speaking on Zambian television about the need to recognise the rights of vulnerable groups, such as LGBT people, to address the HIV pandemic.³⁹

Malaysia: In February 2015, Anwar Ibrahim, the leader of Malaysia's opposition party Parti Keadilan Rakyat, was imprisoned for 5 years after losing his appeal against his conviction on sodomy charges.⁴⁰

Nigeria: In January 2014, in the northern state of Bauchi, local police targeted gay men and MSM immediately following the signing of the *Same Sex Marriage (Prohibition) Act 2013*. They arrested 38 men with searches continuing for a further 168 men, whose names were included on a list of suspects that had been allegedly compiled under conditions of torture.⁴¹ Also in 2014, 26 women were reportedly arrested in a single raid on suspicion of being lesbians.⁴²

Pakistan: In December 2013, a TV reporter allegedly entered a couple's house, accusing them of being gay. The news segment was filmed with phrases such as '*[LGBT are] worthy of stoning*' running over the top of the clip. The couple were arrested by the police.⁴³

³⁶ Stewart, C., 'Raids, arrests of 21 trans women after Malaysian ruling' (*Erasing 76 Crimes* 26 October 2015) <<http://76crimes.com/2015/10/26/raids-arrests-of-21-trans-women-after-malaysian-ruling/>>

³⁷ National Media Group, 'Alarm raised on gay, lesbian prostitutes in Nyeri' (*Daily Nation* 12 September 2015) <<http://www.nation.co.ke/counties/nyeri/Alarm-gay-lesbian-prostitutes-Nyeri/-/1954190/2855296/-/ccw7jj/-/index.html>>

³⁸ Stewart, C., 'Maldives: Lenient no more, island nation arrests 2' (*Erasing 76 Crimes* 1 September 2015) <<http://76crimes.com/2015/09/01/maldives-lenient-no-more-island-nation-arrests-2/>>

³⁹ Southern African Litigation Centre, 'News Release: Zambia High Court confirms acquittal of HIV activist Paul Kasonkomona' (15 May 2015) <<http://www.southernafricalitigationcentre.org/2015/05/15/news-release-zambia-high-court-confirms-acquittal-of-hiv-activist-paul-kasonkomona/>> accessed on 25 September 2015

⁴⁰ Leong, T. and Hamzah, A-Z. A., 'Malaysia's Anwar jailed for five years after losing appeal in sodomy trial' (*Reuters* 10 February 2015) <<http://uk.reuters.com/article/2015/02/10/uk-malaysia-anwar-ruling-idUKKBN0LE09G20150210>> accessed on 9 September 2015

⁴¹ Stewart, C., 'Puny response to 68 arrests in Nigeria's anti-gay war', (*76 Crimes* 21 January 2014) <<http://76crimes.com/2014/01/21/puny-response-to-68-arrests-in-nigerias-anti-gay-war/>> accessed 11 September 2015

⁴² <http://www.nigerianwatch.com/news/4531-delta-state-police-arrest-26-people-suspected-of-being-lesbians-in-asaba-swoop>

⁴³ Reid-Smith, T., 'Pakistani TV news hands over "gay couple" to police, calls for stoning', (*Gay Star News* 18 December 2013) <<http://www.gaystarnews.com/article/pakistani-tv-news-involved-arrest-gay-couple-calls-stoning181213>> accessed 19 July 2014

The constant fear of arrest, detention, prosecution and conviction:

Kenya: On 2 September 2015, Nyeri County Commissioner issued arrest threats against gay and lesbian sex workers and the head of police reportedly said that 12 suspects had been arrested.⁴⁴

Ghana: In March 2015, several students from the University of Ghana reportedly went into hiding after calls for arrest for 'illegal acts' and subsequent investigations by the Bureau of National Investigations.⁴⁵

Maldives: On 3 June 2014, a spokesman for the President's office, speaking about a Maldivian gay man who sought refuge in New Zealand following reported acts of persecution, indicated that refugees would be prosecuted upon their return to the Maldives: '*The threat from the state they speak of is in actuality our law and regulations. That will not change.*'⁴⁶

Tanzania: On 29 March 2014, MP Exekiel Wenje gave notice to Parliament of his intention to draft a Bill similar to those enacted in Nigeria and Uganda which would further criminalise consensual same-sex relations.⁴⁷

Arbitrary detention and police abuse and harassment even where charges are not laid or prosecutions are discontinued:

Nigeria: In May 2015, 21 men were reportedly arrested in Ibadan for being in a 'gay cult', having been found with over 100 condoms in their possession.⁴⁸

Zambia: On 22 October 2014, Police apparently arrested two transgender individuals in the Lusaka Kabwata area, claiming they 'looked gay'. Police told those who attempted to obtain their release that they would use the 24-hour detention period to 'teach them a lesson'. They then released them without charge only after extracting a bribe.⁴⁹

Sri Lanka: In 2012, a lesbian who simply presented with a masculine appearance was arrested on a public street, charged with vagrancy and detained for approximately 5 hours before being released.

⁴⁴ Komu, N., 'Alarm raised on gay, lesbian prostitutes in Nyeri' (*Daily Nation* 2 September 2015) <<http://www.nation.co.ke/counties/nyeri/Alarm-gay-lesbian-prostitutes-Nyeri/-/1954190/2855296/-/ccw7jj/-/index.html>> accessed on 23 September 2015

⁴⁵ *Ghana Web*, 'UG gay porn actors must be arrested- Lawyer' (17 March 2015) <<http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=350755>>

⁴⁶ Mohamed, M., 'Maldivian asylum seekers assured of prosecution upon return, says President's Office', (*Minivan News* 3 June 2014) <<http://minivannews.com/politics/maldivian-asylum-seekers-assured-of-prosecution-upon-return-says-presidents-office-86360>> accessed 19 July 2014

⁴⁷ Muga, E., 'Dar plans to introduce tougher anti-gay Bill' (*The East African*, 29 March 2014) <<http://www.theeastafrican.co.ke/news/Dar-plans-to-introduce-tougher-anti-gay-Bill--/-/2558/2262374/-/ig7xix/-/index.html>>

⁴⁸ Morgan, J., '21 young men arrested in Nigeria for being in a "gay cult"' (*Gay Star News*, 17 May 2015) <<http://www.gaystarnews.com/article/21-young-men-arrested-nigeria-being-gay-cult170515-131971/#sthash.h1eNaNvR.dpuf>> accessed on 9 September 2015

⁴⁹ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Zambia*, (US Department of State, June 2015)

Torture, inhuman and degrading treatment, including being subjected to forced medical examinations and procedures:⁵⁰

Uganda: In July 2015, a Channel 4 documentary revealed the story of 2 gay men who were arrested in January 2014 after they were thrown out of their house and beaten by the local residents. They were subjected to forced HIV and anal examinations before being paraded before the media. Although the charges against them were dismissed in October 2014, they suffered homophobic attacks from fellow inmates and since being released are now struggling to make a living.⁵¹ Moreover, a report released by Chapter Four Uganda in February 2015 detailed 25 instances of involuntary medical examinations carried out by doctors in cases related to homosexuality.⁵²

Zambia: On 25 April 2013, James Mwape and Philip Mubiana, who were both 21 years old, were reportedly arrested after Mubiana's sister reported to police that that they were staying with another man and acting as his 'wives'. Both young men were subjected to forced anal examinations by government forensic doctors upon being arrested. In July 2014, it was reported that both men were acquitted after spending a year in prison awaiting trial.⁵³

Cameroon: On 2 March 2011, Roger Jean-Claude Mbede was arrested for sending an SMS to a male friend saying: *'I'm very much in love with you'*. Despite the lack of any evidence of sexual activity, Mbede was convicted of *'same sex sexual relations'* and sentenced to 3 years' imprisonment. During custody he became malnourished, resulting in him ultimately being hospitalised, and he was subjected to humiliating and degrading treatment. For example, police officers took a photograph of him, stripped and standing naked, with an erect penis. He further claims to have been beaten. On 10 January 2014, Mbede died. It has been reported that upon his release members of his family isolated him without access to food, water or medical care in order to *'rid him of the evil'* of homosexuality.

⁵⁰ Efforts to change an individual's sexual orientation or gender identity by force or coercion may constitute torture, or inhuman or degrading treatment, and implicate other serious human rights violations, including the rights to liberty and security of person (see United Nations High Commissioner for Refugees, *Guidelines on International Protection No. 9*, HCR/GIP/12/09 23 October 2012, p. 11.

⁵¹ Strudwick, P., 'This Is What Happens When You Are Arrested For Being Gay In Uganda' (*Buzzfeed* 23 July 2015) <http://www.buzzfeed.com/patrickstrudwick/this-is-what-happens-when-you-are-arrested-for-being-gay-in?utm_term=.hr9ewenNm#igGB0B8Xx>

⁵² *Chapter Four Uganda*, 'The Abuse of the Rights of Sexual Minorities in Uganda's Criminal Justice System' (February 2015) <<http://www.scribd.com/doc/257167995/Uganda-Report-Police-Abuse-Exams>> accessed on 12 August 2015

⁵³ Stewart, C., 'Zambia frees 2 allegedly gay men after year in prison', (*76 Crimes* 3 July 2014) <<http://76crimes.com/2014/07/03/zambia-frees-2-allegedly-gay-men-after-year-in-prison/>> accessed 19 July 2014

Police entrapment, surveillance and a culture of impunity for violent and/or property crimes committed against LGBT people due to the state's systemic failure to recognise and protect LGBT victims:⁵⁴

Kenya: According to a PEMA Kenya and Human Rights Watch report released in September 2015, in at least 6 incidents between 2008 and 2015, mobs in the coastal counties of Kenya attacked or threatened LGBT people or health workers without sufficient response from authorities. In some cases the victims themselves were arrested by police following such attacks. More than 50 men living in the area fled following the arrests.⁵⁵

Pakistan: In May 2014, a group of men reportedly attacked and gang-raped a transgender woman in Karachi. Activists claimed police refused to conduct a thorough investigation despite having photographic evidence and contact information for one of the accused assailants.⁵⁶

Nigeria: In February 2014, in Geshiri town near Abuja, a mob of around 40 men reportedly dragged a number of suspected gay men from their beds in the middle of the night, after smashing down their doors in house-to-house raids. The victims were taken onto the streets and beaten with whips, wires, broken furniture and sticks spiked with nails. Members of the mob shouted that they were '*cleansing the community*' of gays and '*we are working for Jonathan*'. Some of the victims were taken to the police station where officers ignored, insulted and beat them.⁵⁷

Jamaica: In August 2013, 2 lesbian women were granted asylum in Canada after a series of persecutory events including a rape by 2 male intruders who broke into their home yelling that there should be a man living in the house. Police refused to investigate the crime, instead telling them they deserved it for living the gay lifestyle.

⁵⁴ *Discriminatory Laws and Practices*, *ibid* n 85, ¶¶ 20, 23, 30, 42.

⁵⁵ Human Rights Watch, *Kenya: Pervasive Homophobic Violence in Coastal Region* (28 September 2015) <<https://www.hrw.org/news/2015/09/28/kenya-pervasive-homophobic-violence-coastal-region>>

⁵⁶ Department of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014 Pakistan*, (US Department of State, June 2015)

⁵⁷ *PM News*, 'Mob attacks suspected gays in Abuja', (*PM News Nigeria* 16 February 2014) <<http://www.pmnewsnigeria.com/2014/02/16/reports-mob-attacks-suspected-gays-in-abuja/>> accessed 11 September 2015

Harassment, violence, blackmail and extortion by state and non-state actors:⁵⁸

Nigeria: An August 2015 podcast reported the story of a lesbian woman in Nigeria who was displaced from her home, blackmailed and faced the possibility of arrest in relation to her sexual orientation.⁵⁹ A separate episode of the same podcast described a man who was 'subjected... to a compulsory everyday prayer and fasting session' after coming out to his family.⁶⁰

India: In May 2015, the Delhi Government ordered a probe after a news report exposed some Delhi doctors offering to 'cure' homosexuality with hormone therapy, seizure-inducing drugs and electric shock therapy.⁶¹

Ghana: In February 2015, several Ghanaian celebrities condemned a mob attack on a suspected gay music producer after a video showing him being beaten and threatened circulated on social media.⁶²

India: In June 2014, a group of men were arrested for extortion after 2 of the men recorded a video of themselves having sex with a gay doctor and then demanded money from him. The men were charged both for extortion and for 'unnatural sex acts'. According to reports, the doctor will also be charged.

Discrimination:

Kenya: In July 2015, reports emerged that 2 men were evicted from their home by their landlord because of their sexual orientation.

Jamaica: On 15 April 2015, homeless gay teenagers who had been thrown out by their families were reportedly chased out of a shelter by a mob in Kingston. The mob attacked them in a popular shopping venue in order to 'cleanse' the premises.⁶³

⁵⁸ United Nations High Commissioner for Human Rights [UNHCR], *Discriminatory Laws and Practices and Acts of Violence Against Individuals Based on Their Sexual Orientation and Gender Identity: Rep. of the U.N. High Commissioner for Human Rights, Human Rights Council*, U.N. Doc. A/HRC/19/41 (Nov. 17, 2011) available at http://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.41_English.pdf; UNHCR Guidance Notes on Refugee Claims Relating to Sexual Orientation and Gender Identity ¶ 21 (Nov. 21, 2008), <http://www.unhcr.org/refworld/pdfid/48abd5660.pdf>.

⁵⁹ Stewart, C., 'A life in Nigeria: "Discovered, abandoned, depressed"' (*Erasing 76 Crimes* 18 August 2015) <<http://76crimes.com/2015/08/18/a-life-in-nigeria-discovered-abandoned-depressed/>> accessed on 15 September 2015

⁶⁰ Stewart, C., 'Denial, prayer, fasting - growing up LGBTIQ in Nigeria', (*Erasing 76 Crimes* 27 August 2015) <<http://76crimes.com/2015/08/27/denial-prayer-fasting-growing-up-lgbtqi-in-nigeria/>> accessed on 15 September 2015

⁶¹ India TV Newsdesk, 'Delhi government to probe doctor's racket promising cure for homosexuality' (India TV 28 May 2015) <<http://www.indiatvnews.com/news/india/delhi-government-to-probe-doctors-claiming-homosexuality-51030.html>> accessed on 12 September 2015

⁶² Brosnan, G., '#BBCTrending: Celebrities defend gay rights in Ghana' (BBC 19 February 2015) <<http://www.bbc.co.uk/news/magazine-31524145>>

⁶³ Tomlinson, M., 'Evicted gay youths under attack (again) in Jamaica' (*Erasing 76 Crimes* 16 April 2015) <<http://76crimes.com/2015/04/16/evicted-gay-youths-under-attack-again-in-jamaica/>>

Shame, public humiliation and associated harms to mental health:

Uganda: On 28 May 2015, a Ugandan tabloid published images of members of the Out and Proud Diamond Group attending Birmingham Pride, labelling it a 'sex fest'.⁶⁴

Kenya: On 11 May 2015, a tabloid newspaper in Kenya began printing lists of people it described as 'top homos' in an attempt to out LGBT people. The article was accompanied by 10 front-page photos and included a number of LGBT rights activists.⁶⁵

Ghana: In March 2015, a group of women perceived to be lesbians were reportedly confronted by a mob during a private birthday party near Accra and 'pelted with human faeces'. Local residents later printed and circulated posters 'outing' the women.⁶⁶

The denial of rights to assembly, association, expression and information:

Kenya: In October 2015, the National Gay & Lesbian Human Rights Commission was unable to register as an official NGO despite winning a case in the High Court in April that ordered the NGO Board to grant it legal status.⁶⁷

Mozambique: A key LGBT rights group that has been lobbying for the decriminalisation of consensual same-sex sexual acts has been unsuccessfully fighting for official recognition since 2008.⁶⁸

Shattered families and forced to leave their homes:

Kenya: On 11 August 2015, a Kenyan gay couple said that their public decision to live together has led to them being forced to flee the country. They had been in hiding since February and were hoping to make it to Tanzania or Zanzibar in order to seek asylum.⁶⁹

Nigeria: A lesbian woman reportedly fled Nigeria despite having children because her family and friends criticised and alienated her for her sexual orientation.⁷⁰

⁶⁴ Morgan, J., 'Uganda tabloid outs gay people, confuses UK Pride event for "sex fest"', (*Gay Star News*, 28 May 2015), <<http://www.gaystarnews.com/article/uganda-tabloid-outs-gay-people-confuses-uk-pride-event-sex-fest280515/>> accessed 12 August 2015.

⁶⁵ Morgan, J., 'Kenya newspaper prints list of "top homos"' (*Gay Star News* 11 May 2015) <<http://www.gaystarnews.com/article/kenya-newspaper-prints-list-top-homos110515-131699/>>

⁶⁶ *Starr FM Online*, 'Ghana: Homophobic residents flood town with posters of alleged lesbians', (7 March 2015) <<http://m.starrfonline.com/1.2020285>>

⁶⁷ Stewart, C., 'How to help build on Kenyan court success' (*Erasing 76 Crimes* 30 October 2015) <<http://76crimes.com/2015/10/30/how-to-help-build-on-kenyan-court-success/>>

⁶⁸ Smith, D., 'Mozambique LGBT activists move on to next battle after anti-gay law scrapped' (*The Guardian* 30 June 2015) <<http://www.theguardian.com/world/2015/jun/30/mozambique-lgbt-activists-anti-gay-law-scrapped>>

⁶⁹ Morgan, J., 'This Kenyan pastor and his partner have become the first to publicly marry – and now they have to flee' (*Gay Star News* 11 August 2015) <<http://www.gaystarnews.com/article/this-kenyan-pastor-and-his-partner-have-become-the-first-to-publicly-marry-and-now-they-have-to-flee/>>

⁷⁰ Soyingbe, A., 'Lesbian Mother Flees Nigeria Over Anti-gay Law' (*Daily Independent* 1 June 2015) <<http://dailyindependentnig.com/2015/06/285543/>>

Uganda: In June 2015, a Ugandan woman who was subjected to a ‘torturous exorcism’ ritual and faced deportation was granted asylum in the UK.⁷¹

Cameroon: In April 2015, a lesbian woman who fled persecution in Cameroon and who was initially denied asylum by Spanish authorities, was granted the right to stay in the country.⁷²

Stigmatisation and marginalisation of LGBT people as ‘unapprehended felons’ reinforcing the misapprehensions and general prejudices of the public.

b) Impact on non-heterosexual women: lesbians, bisexual women and trans women

It is often perceived by some that criminalisation primarily affects gay men either because of the British origins of anti-gay laws or because of the use in some criminal provisions of terms like sodomy or buggery. However, criminalising laws around the world today have just as much of a persecutory effect on non-heterosexual women and trans people. Of the 78 jurisdictions that criminalise homosexuality, at least 44 criminalise same-sex conduct between women. Of these, 17 are Commonwealth countries, these being:

- Antigua & Barbuda
- Barbados
- Botswana
- Cameroon
- Dominica
- Malawi
- Malaysia
- Maldives
- Nigeria
- St Lucia
- St Vincent & Grenadines
- Solomon Islands
- Sri Lanka
- Tanzania
- Trinidad & Tobago
- Uganda

⁷¹ McCormick, J. P., ‘Ugandan lesbian who was subjected to “exorcism” granted asylum in UK’ (*Pink News* 9 June 2015) <<http://www.pinknews.co.uk/2015/06/09/ugandan-lesbian-who-was-subjected-to-exorcism-granted-asylum-in-uk/>>

⁷² Lopez Enano, V., ‘Lesbian who fled persecution in Cameroon wins right to stay in Spain’ (*El País* 16 April 2015) <http://elpais.com/elpais/2015/04/16/inenglish/1429175977_134487.html>

- Zambia

Moreover, even in jurisdictions that clearly or likely do not criminalise women, lesbian and bisexual women are often subjected to arrest or threat of arrest, and a range of other forms of abuse enabled by the State-sanctioning of homophobia. In all countries that criminalise homosexuality, in any form, women who have sex with women (WSW), non-heterosexual women are equally targeted and subjected to violent attacks and other human rights violations, which are routinely given de facto impunity.

Further, lesbian and bisexual women may be in a particularly vulnerable position by virtue of their being women. According to a report by the United Nations High Commissioner for Refugees (**UNHCR**), lesbians are even more likely than gay men to feel obliged to conform outwardly to familial and social expectations by, for instance, marrying someone of the opposite sex.⁷³ Criminalisation also frequently operates in tandem with other laws which, for example, allow for marital rape or forced marriage.

In societies where women's primary roles are prescribed as wives and mothers, lesbians may become isolated and invisible. The concept of women living without men can be seen as a particular threat to the social order, resulting in increased forms of control and violence. In some instances women are 'rescued' from their female 'kidnappers' should they attempt to live with a female partner.⁷⁴

The prevalence of gender-based violence in these societies also puts these women at significant risk of harm at the hands of non-state actors, including being subject to the practice of so-called 'corrective rapes' or retaliatory violence by husbands, former partners, other family members or members of the community.⁷⁵ Lesbians and bisexual women rarely feel comfortable reporting these crimes to the police due to the well-founded fear of further reprisals.

c) Impact on Youth - Children and Adolescents

There is considerable evidence that discrimination and the criminalisation of the LGBT identity significantly harms children. Discrimination against children based on their sexual orientation or gender identity limits their chances of having their rights and educational potentials fulfilled, and increases their risk of abuse, exploitation, violence and marginalisation.

UNICEF has reported that in all regions of the world children who are LGBT - or perceived to have a minority sexual orientation or gender identity - often suffer discrimination, intimidation, harassment and violence.⁷⁶ Similar patterns of human rights abuses can be found against children whose parents are perceived to be LGBT. The sort of treatment these children endure includes:

- hate-motivated violence, including murder

⁷³ UN High Commissioner for Refugees, *UNHCR Guidance Note on Refugee Claims relating to Sexual Orientation and Gender Identity*, Geneva (21 November 2008), p. 9.

⁷⁴ See for example: Shrivastava, P., 'Lesbian love under attack in Kanpur' (*India Today* 26 September 2015)

<<http://indiatoday.intoday.in/story/lesbian-love-under-attack-in-kanpur/1/483347.html>>; see also: *Global Voices*, *Lesbian Couple Arrested After Marrying in Secret in Bangladesh* (26 July 2013)

<<http://globalvoicesonline.org/2013/07/26/lesbian-couple-arrested-after-marrying-in-secret-in-bangladesh/>>

⁷⁵ *UNHCR Guidance Note on Refugee Claims*, *Ibid* n 21.

⁷⁶ UNICEF, *Eliminating Discrimination Against Children and Parents Based on Sexual Orientation and/or Gender Identity*, (Current Issues, No. 9 November 2014).

- forced marriage
- discrimination at school, in hospitals, in sporting teams and many other settings
- increased health risks owing to lack of access to appropriate life-skills, education and health services
- abandonment and rejection by family, community or society

Other research studies have shown that sexual minority youth, or adolescents who identify as LGBT, are, on average, bullied three times more often than heterosexual children.⁷⁷

⁷⁷ Academy of Science South Africa, *Diversity in Human Sexuality: Implications for Policy in Africa*, p. 57
<<http://www.psyssa.com/documents/ASSAf%20Gender%20Diversity.pdf>>

The UNICEF report concluded that:

“(Criminalisation) can be even more harmful for children and adolescents, given their vulnerability to bullying, violence, and stigma. Any law which heightens the risk of harm to children is counter to the principles established in the Convention on the Rights of the Child and the universal human instinct to protect children.”⁷⁸

Moreover, there is robust evidence to suggest that LGBT children and youth exposed to discrimination are more likely to consider or attempt suicide than their peers. Rates of suicide amongst the youth who engage in same-sex conduct have been variously reported as between being 3 and 7 times higher than youth who identify as heterosexual.⁷⁹

UNICEF recommended that:

Further steps should be taken to change attitudes and protect children and families from discrimination based on their sexual orientation and gender identity. Positive social norms that recognize and welcome diversity in cultures around the world should be reinforced to include the recognition, protection and promotion of the human rights of all people, regardless of real or perceived sexual orientation or gender identity. Abuse based on real or perceived sexual orientation or gender identity should not be tolerated. All measures to protect LGBT children and LGBT parents should be enforced in a manner that truly is in the best interests of children, and does not simply silence the victim or drive the discussion underground.⁸⁰

d) Impact on Public Health

The paradox of the laws that criminalise same-sex sexual conduct is while they are in part justified by their proponents as measures to improve public health, such laws have an immediate and destructive impact on health. Not only do criminalising laws and the climate they create worsen the health of LGBT populations, their impact carries through to the general population’s health as well.⁸¹

Even if the laws around same-sex practices are not enforced, or enforced infrequently, they still have a detrimental impact on health outcomes for LGBT people.⁸² Conversely,

⁷⁸ UNICEF, *Eliminating Discrimination Against Children and Parents Based on Sexual Orientation and/or Gender Identity*, (Current Issues, No. 9 November 2014).

⁷⁹ Mahon, C., *Sexual Orientation, gender identity and right to health*, Swiss Human Rights Book, Vol. 3, *Realising the Right to Health*, A. Clapham and M. Robinson (eds.) (Ruffer & Rub, Zurich, 2009), p. 236.

⁸⁰ UNICEF, *Eliminating Discrimination Against Children and Parents Based on Sexual Orientation and/or Gender Identity*, (Current Issues, No. 9 November 2014).

⁸¹ Academy of Science South Africa, *Diversity in Human Sexuality: Implications for Policy in Africa*, p. 56
<<http://www.psyssa.com/documents/ASSAf%20Gender%20Diversity.pdf>>

⁸² Berer, M., *Criminalisation, Sexual and Reproductive Rights, public health – and Justice*, *Reproductive Health Matters*, Vol. 17, No. 34 (November 2009), p. 4.

countries and communities which reduce stigma against LGBT people see gains in both LGBT health outcomes and the health of general populations.⁸³

LGBT communities fare badly on most measures of health, from physical wellbeing, rates of STI prevalence, rates of mental illness to risk of suicide (a number of these specific health concerns are addressed below).⁸⁴ There is substantial evidence that such health disparities are not caused by individual sexual orientation, but arise because of the inability of LGBT populations to access freely healthcare and information and live their lives openly.⁸⁵

*The legal prohibition of same-sex relations in many countries, in conjunction with a widespread lack of support or protection of sexual minorities against violence and discrimination impedes the enjoyment of sexual and reproductive health' for many LGBT people.*⁸⁶

A South African report recently concluded:

*There is clear evidence that more repressive environments increase minority stress and impact negatively on LGBTI health. This has a direct impact on the general population's health, particularly in terms of HIV and AIDS, TB and other STI reduction campaigns. There are no known positive impacts on public health because criminalisation cannot stop people from feeling same-sex attractions and expressing same-sex orientations. It merely makes it harder and more stressful to be same-sex orientated and makes LGBTI individuals less likely to access health care and more likely to suffer ill-health. This causes reductions in broader social cohesion and broader social stress, as well as enhancing the transmission of infectious diseases, including HIV.*⁸⁷

International human rights law proscribes discrimination in access to healthcare and health services on numerous grounds including sexual orientation and gender identity. States have an obligation to do all they can to dismantle the barriers to health, which includes an obligation not to engage in discriminatory practices and to ensure equal access de jure and de facto to healthcare.

- **Accessing Healthcare Services**

There are two important concerns regarding access to healthcare for LGBT people. First, where criminalisation of homosexuality is enforced, LGBT people are often deterred from accessing healthcare services. Second, when care is provided it is often not specific to LGBT people's needs.

The UN highlighted this deterrent effect. According to the Special Rapporteur for Health, Anand Grover:

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ UN Commission on Human Rights, *Economic, Social and Cultural Rights: The right of everyone to the enjoyment of the highest attainable standard of physical and mental health - Report of the Special Rapporteur, Paul Hunt*, (16 February 2004), UN Doc E/CN.4/2004/49, para. 38.

⁸⁷ Academy of Science South Africa, *Diversity in Human Sexuality: Implications for Policy in Africa*, p. 60
<<http://www.psyssa.com/documents/ASSAf%20Gender%20Diversity.pdf>>

Criminalisation [of homosexuality] has adverse consequences on the enjoyment of the right to health of those who engage in consensual same-sex conduct, through the creation of the societal perception that they are “abnormal” and criminals. This has a severe deleterious impact on their self-regard, with significant, and sometimes tragic, consequences on their health-seeking behaviour.⁸⁸

(Thus, laws criminalising same-sex conduct) effectively prohibit LGBT individuals from receiving many basic services because securing access to those services would require those individuals to admit to committing an activity that is considered criminal by the law.⁸⁹

In terms of obtaining appropriate care, a recent report issued by an NGO in Jamaica found that:

LGBT individuals have difficulty acquiring health care services adapted to their specific needs because they may either be hesitant to reveal their sexual orientation to health care professionals, or health care professionals may be unwilling to learn or unknowledgeable about specific needs of different populations.⁹⁰

- **Sexual and Reproductive Health**

LGBT people who are criminalised often have little or no control over their sexual and reproductive health. For example, many such individuals are forced or coerced into heterosexual unions, or enter into them seemingly voluntarily in order to appease a society hostile to their identity.

Lesbians can be particularly adversely affected with regards to their sexual and reproductive rights, which raises profound questions in international human rights law.

Significantly less research has been done on these issues vis-à-vis other health-related issues facing LGBT people, and much more is needed.

- **HIV and AIDS**

The HIV/AIDS epidemic continues to be one of the most pressing health issues facing humanity, particularly in the Global South (which comprises nearly all of the 40 Commonwealth member states that continue to criminalise homosexuality).

⁸⁸ UN Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, Anand Grover, 27 April 2010, A/HRC/14/20, last visited 7 November 2014.

⁸⁹ Jamaica Forum for Lesbians, All-Sexuals, & Gays (J-FLAG), Women for Women (Kingston), Heartland Alliance for Human Rights and Human Dignity, International Gay and Lesbian Human Rights Commission (IGLHRC), AIDS-Free World (AFW), *The George Washington University Law School International Human Rights Clinic Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) people in Jamaica: A Shadow Report*, October 2011, via <http://iglhrc.org/sites/default/files/557-1.pdf>, last visited 7 November 2014, p 9.

⁹⁰ *Ibid.*

60% of people living with HIV globally are from a Commonwealth country. This is despite those countries representing only **30%** of the world's population.⁹¹

Commonwealth countries are still disproportionately affected by HIV. Two of our regions, sub-Saharan Africa and the Caribbean, suffer from the highest rates of prevalence globally. These are also the only regions where women and girls outnumber men and boys among people living with AIDS.

Worlds AIDS Day Statement - Secretary General of the Commonwealth:

On a macro public health level, there is an empirically observable causal link between criminalisation and HIV rates. Experts from the international and scientific community have repeatedly concluded that, rather than halting the spread of HIV, criminalisation seriously impedes the effectiveness of measures designed to halt and reverse the HIV pandemics. Decriminalisation is thus a key element in any effective public health strategy to reduce the incidence and prevalence of HIV.

- According to the United Nations Development Programme's (UNDP) *Global Commission on HIV and the Law*, the criminalisation of homosexuality 'both causes and boosts' the rate of HIV infection among men who have sex with men.⁹² The Global Commission 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'.

CARIBBEAN: The rate of infection among Men who have sex with men rose from one in 15 in countries where homosexuality was legal, to one in four where homosexuality was criminalised.



⁹¹ Commonwealth Secretariat, *A Commonwealth of the People: Time for Urgent Reform*, Report of the Eminent Persons Group to Commonwealth Heads of Government, London (2011), pp. 98-102. It should be noted this statistic was first presented by the UNDP in 2008-9. In that period, The Gambia has left the Commonwealth.

⁹² *Final Report of the Global Commission on HIV and the Law*, Global Commission on HIV and the Law (9 July 2012), p. 45. The term used by the scientific community when collecting data on HIV/AIDS is 'men who have sex with men' (MSM). MSM is not our preferred term when articulating the right not to be criminalised for consensual same-sex intimacy, as such laws do more than criminalise physical sexual acts, they also criminalise the LGBT identity. However, this note uses MSM in line with scientific usage, which also has the benefit of emphasising that HIV disproportionately affects certain groups within the LGBT community, namely MSM and sexually active transgender people.

Fig. 2 Caribbean HIV infection rates⁹³

- In 2009 the Commonwealth Eminent Persons Group (**EPG**), consisting of 10 leading figures from around the Commonwealth was commissioned at CHOGM to examine key areas of reform for the Commonwealth. Adopting a public health perspective, the EPG unanimously recommended in its report, published in 2011, that steps be initiated to repeal laws criminalising homosexuality as a critical measure in the fight against HIV:

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.⁹⁴

- Among the resulting EPG recommendations was that:
(...) heads of Government should take steps to encourage the repeal of discriminatory laws that impede the effective response of CW countries to the HIV/AIDS epidemic, and commit to programmes of education that would help a process of repeal of such laws.⁹⁵

In 2012 the Commonwealth Heads of Government adopted this recommendation, indicating that Member governments should identify which, if any, laws are discriminatory, and what steps should be taken to address these.⁹⁶

- Most recently, the UNAIDS-*Lancet* Commission's report of July 2015, which sets out '*the path to ending AIDS as a public health threat*',⁹⁷ explains that decreasing

⁹³ UNAIDS, (2008), Global Report on the AIDS Epidemic 2008. Available at:

http://data.unaids.org/pub/GlobalReport/2008/jc1511_gr08_executivesummary_en.pdf; UNAIDS, (2008), Keeping Score II: A Progress Report towards Universal Access to HIV Prevention, Treatment, Care and Support in the Caribbean. Available at:

http://www.unaids.org/en/media/unaids/contentassets/dataimport/pub/report/2008/20081206_keepingcoreii_en.pdf

⁹⁴ Commonwealth Secretariat, *A Commonwealth of the People: Time for Urgent Reform*, Report of the Eminent Persons Group to Commonwealth Heads of Government (2011), p. 100.

⁹⁵ *Ibid.*, p. 102, Recommendation 60.

⁹⁶ Commonwealth Secretariat, *Agreement by Heads of Government to the EPG Recommendations*, available at: <http://secretariat.thecommonwealth.org/files/252052/FileName/EPGRecommendationsOutcomes.pdf> See also: Commonwealth Secretariat, *Foreign Ministers agree on Draft Commonwealth Charter and EPG Recommendations*, 1 October 2012. Available at: <http://thecommonwealth.org/media/press-release/foreign-ministers-agree-draft-commonwealth-charter-and-epg-recommendations>

⁹⁷ *The Lancet*, 'UNAIDS-*Lancet* Commission on Defeating AIDS - Advancing Global Health'. Vol. 386, No. 9989 (11 July 2015): pp 171-218. Available at: [http://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736\(15\)60658-4.pdf](http://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736(15)60658-4.pdf) p. 171. The UNAIDS-*Lancet* Commission draws its expertise from diverse backgrounds, including from criminalising countries. The Commission is co-Chaired by Joyce Banda (Former President of Malawi), Nkosazana Dlamini Zuma (Chairperson, African Union Commission), and Peter Piot (Director, London School of Hygiene & Tropical Medicine).

the stigma attached to homosexuality is integral to that aim in order to facilitate access to HIV prevention and treatment.⁹⁸

The report expressly '*highlights how criminalisation can negatively affect HIV transmission*', as demonstrated by the report's following chart:

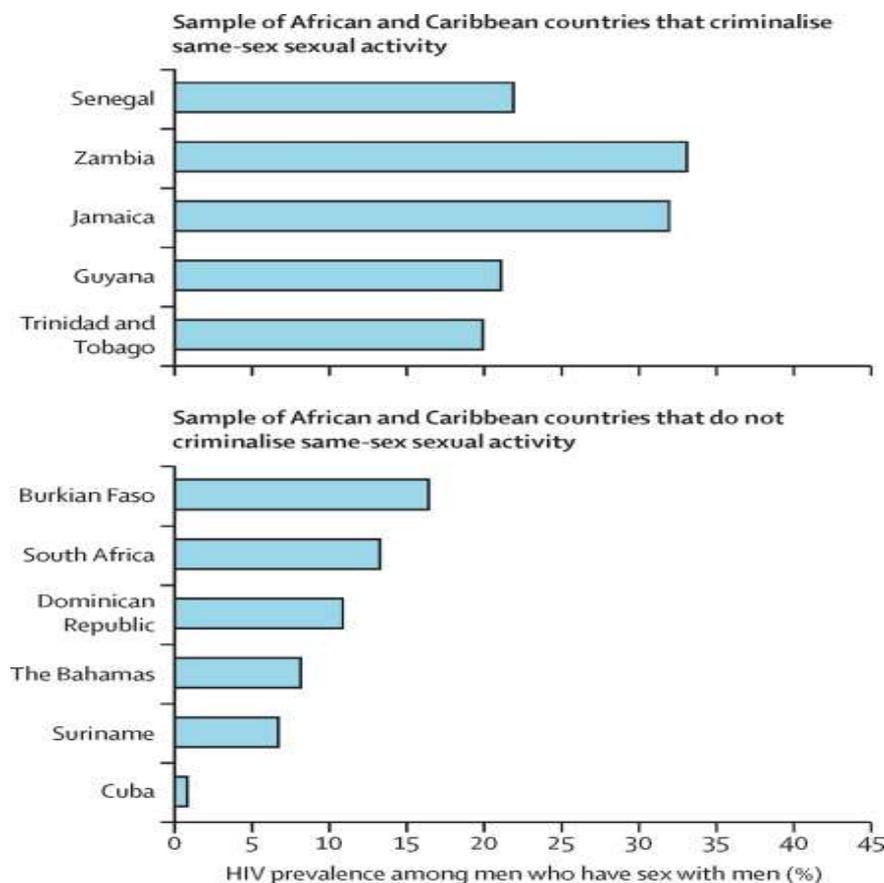


Figure 3 - The effect of criminalisation of same-sex sexual activity on HIV prevalence in selected countries. Source: Global Commission on HIV and the Law: risks, rights & health.⁹⁹

The report found that in criminalising countries '*there is increased fear and hiding, decreased provision and uptake of HIV prevention services, and decreased uptake of HIV care and treatment services*'.¹⁰⁰

Furthermore, continued criminalisation leads to underinvestment in HIV services for MSM¹⁰¹ because criminalisation makes it politically difficult for governments to justify the necessary spending for such programs;¹⁰² which ultimately exacerbates the problem. The low visibility of MSM and inaccurate data on HIV sub-epidemics among MSM¹⁰³

⁹⁸ *Ibid.*, p. 178.

⁹⁹ Global Commission on HIV and the Law, *HIV and the Law: risks, rights & health*, New York: Secretariat, Global Commission on HIV and the Law, 2012.

¹⁰⁰ *Ibid.*, p. 178.

¹⁰¹ American Foundation for AIDS Research, *Achieving an AIDS-free generation for gay men and other MSM: financing and implementation of HIV programs targeting MSM*, Washington, DC. (2012).

¹⁰² Beyrer, C., *Global prevention of HIV infection for neglected populations: men who have sex with men*, *Clin Infect Dis* (2010) 50 (suppl 3): S108–13.

¹⁰³ Jenkins, C., *Male sexuality and HIV: the case of male-to-male sex*, *Background Paper: Risks and Responsibilities, Male Sexual Health and HIV in Asia and the Pacific*, New Delhi (2006), p. 11.

means HIV prevention programmes are less likely to be adequately resourced and driven by reliable evidence.

In terms of the broader societal impact, UNAIDS has highlighted that many MSM also have sex with women.¹⁰⁴ In the Asia-Pacific region, it has been documented that half of all MSM are believed to have sex with women, such as spouses, partners, female clients and female sex workers¹⁰⁵ - often to avoid stigma and abuse. As a result, criminalisation of same-sex relations endangers not just MSM, but women, their children through foetal transmission and the wider community.¹⁰⁶

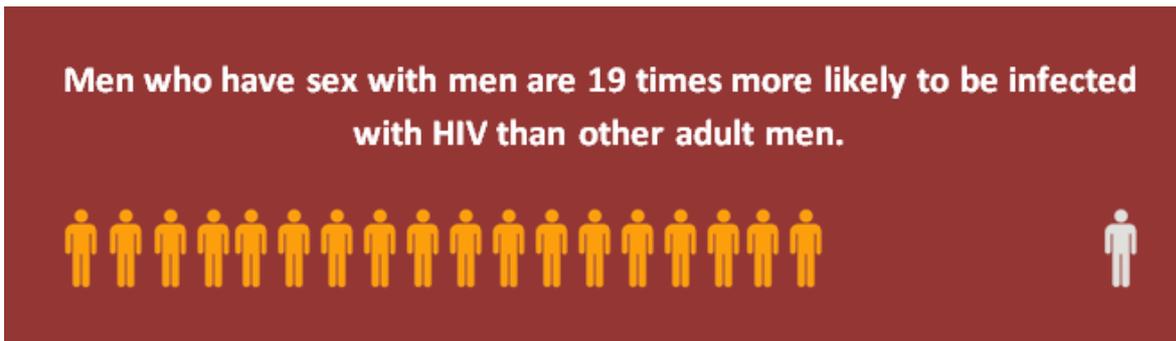


Fig. 4 HIV infection rates¹⁰⁷

ASIA: Men who have sex with men account for 10% to 30% of new HIV infections annually.¹⁰⁸

PACIFIC ISLANDS: Men who have sex with men represent one third of recorded HIV cases.¹⁰⁹

Concerns over the ability of LGBT people to access freely HIV services without fear was also highlighted by the United Nations Office of the High Commissioner for Human Rights (**OHCHR**). In 2011, the OHCHR and UNAIDS issued the International Guidelines on

¹⁰⁴ UNAIDS, (2009), *Universal Access for Men who have Sex with Men and Transgender People, Action Framework*. Available at: http://data.unaids.org/pub/report/2009/jc1720_action_framework_msm_en.pdf

¹⁰⁵ Commission on AIDS in the Pacific, *Turning the Tide: An Open strategy for a response to AIDS in the Pacific* (2008), p. 39.

¹⁰⁶ Hart, G. and Elford, J., (2010), 'Sexual risk behaviour of men who have sex with men: emerging patterns and new challenges', *Current Opinion in Infectious Diseases* 23(1), pp. 39–44; see also Dowsett, G.W., Grierson, J.W., and McNally, S.P., (2006), *A Review of Knowledge about the Sexual Networks and Behaviours of Men who have Sex with Men in Asia*, Australian Research Centre in Sex, Health and Society, La Trobe University, Melbourne, Australia, Monograph Series Number 59.

¹⁰⁷ Global Commission on HIV and the Law, *Final Report of the Global Commission on HIV and the Law*, (2012), p. 45.

¹⁰⁸ Commission on AIDS in Asia, *Redefining AIDS in Asia: Crafting an Effective Response* (2008), p. 203.

¹⁰⁹ Commission on AIDS in the Pacific, *Turning the Tide: An Open strategy for a response to AIDS in the Pacific* (2008), p. 89.

HIV/AIDS and Human Rights. According to these Guidelines, the threat of criminal sanctions can act as a deterrent to accessing HIV services:

*People will not seek HIV-related counselling, testing, treatment and support if this would mean facing discrimination, lack of confidentiality and other negative consequences.*¹¹⁰

- **Access to health services**

MSM are denied adequate access to the most basic of HIV services and information.

- Only 36% of respondents in a global survey were able to access easily HIV treatment, and under one third reported being able to access easily HIV education materials.¹¹¹
- Less than 40% of MSM in the Caribbean and 20% of MSM in the Asia-Pacific region were reached by HIV/AIDS prevention programmes.¹¹²
- By contrast, 60% of MSM were reached by HIV prevention services in countries where homosexuality is legal.¹¹³

- **Access to health information**

There is less awareness about HIV prevention among MSM in countries that criminalise homosexuality leading to MSM in these countries engaging in riskier sexual behaviours. For example:

- 73% of Zambian MSM believed that anal sex was safer than vaginal sex.¹¹⁴
- 86% of Lesotho's MSM were unaware that receptive anal sex was even a risk factor in HIV transmission.¹¹⁵
- Studies of MSM in Cameroon, Senegal and Kenya showed a strong correlation between non-participation in HIV prevention programmes and the likelihood of MSM having unprotected anal sex.¹¹⁶
- There is also evidence that health providers are less willing to offer their services to MSM out of fear of abetting criminal activity.¹¹⁷

¹¹⁰ *International Guidelines on HIV/AIDS and Human Rights*, Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS (2011): p. 78.

¹¹¹ Wilson, P., et al., *Access to HIV Prevention Services and Attitudes about Emerging Strategies: A Global Survey of Men Who Have Sex with Men (MSM) and their Health Care Providers*, The Global Forum on MSM & HIV (2011). This was a global online survey of over 5,000 MSM.

¹¹² *The Lancet* (2012), p. 412; UNDP, 'Legal Environments, Human Rights, and HIV Responses among Men who Have Sex with Men and Transgender People in Asia and the Pacific' (2010), p. 3.

¹¹³ UNAIDS, *Report on the global AIDS epidemic*, (2008), p. 84.

¹¹⁴ Zulu, K., Bulawo, N. K., Zulu, W., *Understanding HIV risk behaviour among men who have sex with men in Zambia*, International AIDS Conference, Toronto, Canada (13 August 2006).

¹¹⁵ Baral, S., Adams, D., Lebona, J., et al. 'A cross-sectional assessment of population demographics, HIV risks and human rights contexts among men who have sex with men in Lesotho' (2011) 14 *Journal of the International AIDS Society* 36.

¹¹⁶ Henry, E., Marcellin, F., Yomb, Y., et al., 'Factors associated with unprotected anal intercourse among men who have sex with men in Douala, Cameroon', *Sex Transm Infect* (2010) 86: 136–40; Larmarange, J., Wade, A. S., Diop, A. K., et al., 'Men who have sex with men (MSM) and factors associated with not using a condom at last sexual intercourse with a man and with a woman in Senegal', *PLoS One* (2010) 5: e13189; Geibel, S., Luchters, S., King'Ola, N., Esu-Williams, E., Rinyiru, A., Tun, W., 'Factors associated with self-reported unprotected anal sex among male sex workers in Mombasa, Kenya', *Sex Transm Dis* (2008) 35: 746–52.

Moreover, there is a societal stigma against being HIV positive in and of itself so the prevention of HIV in MSM is continually difficult to address due to 'double stigmatisation'.

*Prevention of HIV in these marginalised groups is difficult to address because of stigma, discrimination, and their sequelae. Key populations actually experience a double stigma related to both being associated with HIV and the reinforcement of pre-existing stigmas. This situation has led to inadequate access to service provision and treatment, in addition to many other negative outcomes.*¹¹⁸

By contrast, the evidence shows that in a range of epidemic settings, universal access to HIV services for MSM together with anti-discrimination efforts can significantly reduce infections both among MSM and the wider community.¹¹⁹

The High Commissioner and UNAIDS jointly recommended that '*criminal laws prohibiting sexual acts (including adultery, sodomy, fornication and commercial sexual encounters) between consenting adults in private should be reviewed, with the aim of repeal*'.¹²⁰

There have been further comments from the Commission on AIDS in Asia¹²⁴ and the Special Rapporteur for Health¹²⁵ who examined the relationship between the right to health and the criminalisation of consensual same-sex intimacy in a 2010 report:

Decriminalization of such conduct is necessary to address the disempowerment that affected individuals and communities face, and to enable full realization of the right to health.^{121 122}

*(...) the fear of judgement and punishment can deter those engaging in consensual same-sex conduct from seeking out and gaining access to health services. This is often a direct result of the attitudes of health-care professionals who are not trained to meet the needs of same-sex practising clients - not only in terms of sexual health, but also with regard to health care more generally. Often, health professionals may refuse to treat homosexual patients altogether, or respond with hostility when compelled to do so. Where patients may be guilty of a criminal offence, by engaging in consensual same-sex conduct, this has the potential to jeopardize the obligations of confidentiality that arise during the course of the doctor-patient relationship, as health professionals may be required by law to divulge details of patient interaction.*¹²³

¹¹⁷ Beyrer, C. and Baral, S., *MSM, HIV and the Law: The Case of Gay, Bisexual and Other Men who have Sex with Men (MSM)*, Working Paper for the Global Commission on HIV and the Law (2011) at p. 47.

¹¹⁸ Pulerwitz, J., 'Tackling stigma: fundamental to an AIDS-free future', *The Lancet Global Health*, Vol. 2, Issue 6, pp 311-312 (June 2014) at p. 311

¹¹⁹ Beyrer, C., et al., (2011), *The Global HIV Epidemics among Men Who Have Sex with Men (MSM)*, The World Bank. Available at: <http://issuu.com/world.bank.publications/docs/9780821387269>; UNAIDS, UNDP, (2009), *UNAIDS Action Framework: Universal Access for Men who have Sex with Men and Transgender People*. Available at: http://data.unaids.org/pub/report/2009/jc1720_action_framework_msm_en.pdf

¹²⁰ *Ibid.*, pp. 29-30.

¹²¹ UN Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/HRC/14/20, 27 April 2010, para. 7. Available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.pdf>

¹²² *Ibid.*, para 17.

¹²³ *Ibid.*, para 18.

¹²⁴ Commission on AIDS in Asia, *Redefining AIDS in Asia: Crafting an Effective Response*, Oxford University Press (2008), p. 203.

¹²⁵ Grover, A., *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, UN Human Rights Council 14th session (2010) UN Doc. A/HRC/14/20.

The Special Rapporteur concluded that decriminalisation facilitates the achievement of states' obligations to establish prevention and education programmes for HIV/AIDS, saying 'a legal framework promoting an enabling environment has been noted as one of the most important prerequisites to achieve this goal'.¹²⁶ Thus, decriminalisation is necessary in order to promote and protect the right to health.

It is also important to note that failing to address the HIV pandemic poses a substantial threat to economic growth. Writing about criminalisation in *The Lancet*, Ashton Barnett-Vanes of St George's University, London, explained that 'if homosexual communities are further marginalised or isolated by national policies, the prospect of undoing progress in HIV/AIDS care is real'.¹²⁷ Dr Kenneth H. Mayer concluded, '(...) in many sub-Saharan African countries, no greater threat to growth exists than the impact of HIV on human resources, development and income'.¹²⁸

Much work is already being done within Commonwealth countries and beyond to address HIV and AIDS. Regional and international organisations, together with governments, are active in this fight. For example, UNAIDS has worked closely with the Inter American Commission on Human Rights (**IACHR**) in recent years, and launched the UNAIDS-*Lancet* Commission report in the Caribbean. The Caribbean community (**CARICOM**) and the African Union (**AU**), along with selected ministers of health from both regions, have also been working together exploring the role of and developing road maps on shared responsibility and global solidarity in ending the AIDS epidemic.¹²⁹ There are many further examples.

Among these collaborations, there has also been a growing recognition of the need to address discrimination and stigmatisation in order to stymie the spread of HIV. At the Caribbean launch of the UNAIDS-*Lancet* Commission Report, the Prime Minister of Saint Kitts and Nevis, Dr Timothy Harris, highlighted some of the lessons from the Commission Report, which included the:

*'(...) elimination HIV related stigma and discrimination which fan the flames of the disease', the Prime Minister stressed 'It is also clear that Caribbean countries must continue to confront the issues that are related to the elimination of stigma and discrimination and disentangle them from the misperception that this is a gay agenda.'*¹³⁰

These efforts to tackle HIV/AIDS should be praised and encouraged. Yet, despite the efforts of national, regional and global mechanisms and an increasing focus on the pandemic, the blight of HIV persists. States need to support rather than hamper efforts to address the problem, and, importantly, decriminalisation has to be an essential component of any macro response to HIV/AIDS in order to address effectively this devastating disease.

¹²⁶ *Ibid.*, para 25.

¹²⁷ [http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(14\)60403-7/fulltext?rss%3Dyes#](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(14)60403-7/fulltext?rss%3Dyes#)

¹²⁸ Kenneth, H, and Mayer, M.D., 'Criminalization of LGBT People and Those Living With HIV Threatens Global Progress Against AIDS', (*Huffington Post* 10 September 2014) http://www.huffingtonpost.com/kenneth-h-mayer-md/criminalization-of-lgbt-p_b_5796602.html

¹²⁹ www.unaids.org/en/resources/presscentre/featurestories/2014/may/20140521caricom

¹³⁰ PANCAP, *Address by Prime Minister St Kitts- Nevis, Hon Dr Timothy Harris, CARICOM Lead Head for Human Resources Health and HIV -Caribbean Launch of UNAIDS- Lancet Commission Report*, (3 July 2015), available at: <http://www.pancap.org/en/speeches-and-presentations/2601-address-by-prime-minister-st-kitts-nevis-hon-dr-timothy-harris-caricom-lead-head-for-human-resources-health-and-hiv-caribbean-launch-of-unaid-lancet-commission-report.html>

- **Mental Health and Well-being**

LGBT people experience higher rates of depression, anxiety and other stress-related mental health problems compared to the rest of the population. Such mental health issues may come from discrimination, rejection and concealment, as well as internalised stigma that leads to feelings of shame and low self-worth.

There is a paucity of studies that have addressed the direct impact of criminalisation on mental health.¹³¹ However, research has shown that LGBT people are at a greater risk of mental health problems than their heterosexual counterparts. A systematic review of mental disorder, suicide and self-harm in lesbian, gay and bisexual people concluded that LGB people are at a higher risk of mental disorder, suicide ideation, substance abuse and deliberate self-harm than heterosexual people.¹³² Although the review did not focus on why this was the case, the authors explained that it was likely that the social hostility, stigma and discrimination that most LGB people experience is at least part of the reason for higher rates of mental illness.¹³³ Importantly, the prevalence of mental disorders is unrelated to any suggestion that homosexuality is a mental disorder in and of itself.¹³⁴

Similarly in 2011, the US Institute of Medicine published a report assessing the '*current knowledge of the health status of [LGBT] populations*'¹³⁵ and found LGBT youth '*may have an elevated risk for attempted suicide and depression*'.¹³⁶ In addition, a study recently published by Dr Marc Elliot, together with researchers from the University of Cambridge and Boston Children's Hospital/Harvard Medical School showed that sexual minorities reported '*substantially worse physical and mental health than their same sex gendered heterosexual counterparts*' with '*longstanding psychological or emotional conditions at two to three times the adjusted rate of heterosexuals of the same gender*'.¹³⁷

A further study explained that stigma, prejudice and discrimination create a hostile and stressful social environment that contributes to mental health problems.¹³⁸ Anti-gay violence and discrimination have been described as core stressors or '*prejudice*

¹³¹ According to Ahmed et al there is '*a dearth of research demonstrating a clear connection between changing criminal laws and health outcomes*' attributed to the fact the populations at risk of suffering the consequences of criminalisation '*are often those with few resources to advocate research on changing laws*'. - Ahmed, A., Kaplan, M., Symington, A., and Kismodi, E., 'Criminalising consensual sexual behaviour in the context of HIV: Consequences, evidence and leadership', *Global Public Health*, Volume 6, Number 53, 357-369, at 364;

¹³² King et al, 'A systematic review of mental disorder, suicide and deliberate self-harm in lesbian, gay and bisexual people', (*BMC Psychiatry*, 2008) <<http://www.biomedcentral.com/1471-244X/B/70>>

¹³³ *Ibid.*

¹³⁴ Meyer, I.H., 'Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence', (*PMC*, 2007) <<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2072932/>> accessed on 15 September 2015.

¹³⁵ *The Health of Lesbian, Gay, Bisexual, and Transgender People, Report Brief*, Institute of Medicine, 2011, via iom.edu, last visited 12 September 2014, p 1

¹³⁶ *The Health of Lesbian, Gay, Bisexual, and Transgender People, Report Brief*, Institute of Medicine, 2011, via iom.edu, last visited 12 September 2014, p 4

¹³⁷ Elliot, M.N., Kanouse, D.E., Burkhart, Q., Abel, G.A., Lyratzopoulos, G., Beckett, M.K., Schuster, M.A. and Roland, M., 'Sexual Minorities in England have poorer health and worse health care experiences: A national Survey', *Journal of General Internal Medicine*, Vol. 29, Issue 9, September 2014, page number not available

¹³⁸ Meyer, above at n. 113

events' affecting gay and lesbian populations,¹³⁹ which include institutionalised forms of prejudice and discrimination such as the enforcement of sodomy laws.

The Special Rapporteur for Health concluded in 2010 that criminalisation had direct adverse consequences on health including a deleterious impact on LGBT individuals' health-seeking behaviours and mental health.¹⁴¹

*A right to health approach requires that states decriminalise same-sex consensual conduct as well as repeal laws that discriminate in respect of sexual orientation and gender identity in order to meet core obligations of the right to health and create an environment enabling the full enjoyment of the right.*¹⁴⁰

Anand Grover, Special Rapporteur on the Right to Health

e) Criminalisation, Economic Development and Poverty Reduction

Beyond ethical considerations, the equality and inclusion of LGBT people are also economic concerns. There is now a much greater understanding of the inter-relationship between LGBT rights, economic development and poverty reduction.

According to the capabilities approach to development advanced by numerous leading academics such as Amartya Sen,¹⁴² the exclusion of particular groups, such as LGBT people, limits economic development. Discrimination, stigmatisation, criminalisation and non-recognition in law all translate into a lack of freedom and economic agency for LGBT individuals reducing their participation in the wider economy.¹⁴³ Inclusion is thus crucial for human rights and economic development.

- **Link between LGBT inclusion and economic development**

A recent study undertaken by Professor M.V. Lee Badgett together with other experts, supported by USAID and the Williams Institute, analysed the impact of social inclusion of LGBT people on economic development in 39 countries.¹⁴⁴ The study found that:

*When LGBT people are denied full participation in society because of their identities, their human rights are violated, and those violations of human rights are likely to have a harmful effect on a country's level of economic development.*¹⁴⁵

¹³⁹ *Ibid.*

¹⁴⁰ UN HRC, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, Anand Grover, (27 April 2010), UN Doc A/HRC/14/20, para. 26.

¹⁴¹ UN HRC, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, Anand Grover, (27 April 2010), UN Doc A/HRC/14/20, para. 17.

¹⁴² Sen, A., *Development as freedom*, (1999), Oxford University Press

¹⁴³ Waaldijk, K., 'The right to relate: A lecture on the importance of "orientation" in comparative sexual orientation law', (*Duke Journal of Comparative and International Law* 24(1), 2013), 161-199.

¹⁴⁴ Badgett, M.V. Lee, Nezhad, S., Waaldijk, K. and Rodgers, Y.M., *The Relationship between LGBT Inclusion and Economic Development: An analysis of Emerging Economies*, USAID and The Williams Institute, November 2014. Of these 39 countries 7 criminalise homosexuality: Egypt; India; Indonesia; Kenya; Malaysia; Morocco; and Pakistan. 29 of the 39 countries analysed are 'emerging economies' (those countries experiencing high levels of economic growth and investment) and 10 were countries of interest (those that have active and engaged LGBT social movements and are of particular significance to global development institutions).

¹⁴⁵ Badgett *et al*, at note 123, p. 1.

At the macro level, Badgett *et al* revealed a clear positive correlation between GDP per capita and granting LGBT people legal rights, and between the Human Development Index (HDI) and LGBT rights.¹⁴⁶ Put simply, countries which protect the rights of LGBT people have higher income per capita and higher levels of human development in terms of factors like health and educational attainment.¹⁴⁷ The study also found that there were variations across different rights. In particular, the analysis identified that anti-discrimination laws covering sexual orientation had an especially positive effect on GDP per capita.¹⁴⁸

At the micro level, which focused on the experiences of LGBT individuals and defined inclusion as the ability to live one's life as one chooses (**freedoms**), the study found substantial evidence that LGBT people being limited in their freedoms results in significant economic harms,¹⁴⁹ including:

- Police officers unjustly arresting, detaining, jailing, beating, humiliating and extorting LGBT people, taking LGBT individuals out of productive employment.
- LGBT people facing disproportionate rates of physical, psychological and structural violence, restricting their ability to work because of physical and/or psychological injury.
- Workplace discrimination causing LGBT people to be unemployed or underemployed and to contribute less to the economy in both work and taxable income.
- LGBT people facing multiple barriers to their physical and mental health, which reduces their ability to work and their productivity in the workplace.
- LGBT students facing 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 in employment later on.¹⁵⁰

Badgett went on to conclude that:

*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.*¹⁵¹

Further research undertaken by Badgett as part of a World Bank project on the economic costs of stigma and exclusion of LGBT people in India¹⁵² discovered three major findings:

- a) There was clear evidence of stigma and exclusion for LGBT people in India.¹⁵³

¹⁴⁶ *Ibid.* p. 2.

¹⁴⁷ *Ibid.*

¹⁴⁸ *Ibid.*, p. 3.

¹⁴⁹ *Ibid.*, p. 2.

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*

¹⁵² Badgett, M. V. Lee, *The economic costs of homophobia, & the exclusion of LGBT people: A Case study of India* February 2014

¹⁵³ *Ibid.*, p. 5. Evidence included: data on public opinion from 2006 that showed that 41 percent of Indians would not want a homosexual neighbour, and 64 percent believed that homosexuality is never justified. Negative attitudes have diminished over time, however; homosexual behaviour is criminalised in India, no protective legislation exists for LGB people, and transgender people in India have only recently been accorded

- b) The effects of stigma and exclusion are potentially costly to economies. The conceptual model developed by Badgett linked the exclusion of LGBT people and economic development through:
- (i) lower productivity and lower output as a result of employment discrimination and constraints on labour supply;
 - (ii) inefficient investment in human capital because of lower returns to education and discrimination in educational settings;
 - (iii) lost output as a result of health disparities that are linked to exclusion
 - (iv) social and health services required to address the effects of exclusion that might be better spent elsewhere.¹⁵⁴
- c) India's GDP is reduced by approximately as much as 1.7% by homophobia, equivalent to a loss of US \$31 billion.¹⁵⁵ UNAIDS has subsequently relied on these figures.¹⁵⁶

➤ Impact on Business

The business case for LGBT equality and inclusiveness has been well documented.

- Research by Brad Sears and Christy Mallory for *The Williams Institute* highlighted economic benefits accrued from non-discrimination and diversity policies. They reviewed the non-discrimination, diversity and benefits policies of 50 private US companies and the top 50 US federal government contractors.¹⁵⁷ The benefits of inclusive corporate policies were:
 - a) a more economically competitive company because the best talent is recruited and retained¹⁵⁸
 - b) better able to serve a diverse customer base when a diverse workforce is in place¹⁵⁹
 - c) increased productivity by LGBT employees who felt valued and comfortable at work¹⁶⁰
- The Center for Talent and Innovation reiterated in 2013 that:

Given the increased productivity and lower turnover rates of 'out' workers, multinational organizations have a bottom-line incentive to create a workplace where LGBT workers feel accepted, valued and comfortable

full legal rights and recognition through a Supreme Court decision; LGBT people in India report experiences of violence, rejection, and discrimination, including in employment, education, health care, and access to social services. High rates of poverty are found in some studies of LGBT people; public health studies find evidence of health disparities that are linked to stigma and exclusion. Rates of the prevalence of depression, suicidal thinking, and HIV among LGBT people are higher than rates for the general population.

¹⁵⁴ *Ibid.*

¹⁵⁵ *Ibid.*

¹⁵⁶ UNAIDS, *The economic costs and development impact of exclusion of LGBT people*, (www.unaids.org 2014) <<http://www.unaids.org/en/resources/presscentre/featurestories/2014/march/20140314homophobia/>> accessed 3 July 2014.

¹⁵⁷ Sears, B. and Mallory, C, *Economic Motives for Adopting LGBT-Related Workplace Policies*, *The Williams Institute*, 2011, p 3

¹⁵⁸ *Ibid.*, p 5

¹⁵⁹ *Ibid.*, p 6

¹⁶⁰ *Ibid.*, p 6

*being who they are... For organizations to thrive, they must foster an environment that enables their LGBT employees to thrive.*¹⁶¹

- Stonewall's report, *Peak Performance*, determined that:

*Staff who can be open about their sexuality at work are more likely to enjoy going to work, feel able to be themselves, form honest relationships with their colleagues, are more confident, and ultimately more productive. Lesbian and gay equality at work evidently makes good business sense.*¹⁶²

Conversely, sustained discrimination against LGBT people is detrimental to businesses. Emerging academic research from South Africa suggests that multinational organisations lose out when some of their employees cannot rise to positions where their skills are needed without risking their own personal safety.¹⁶³ In addition, violence caused by discrimination has a significant productivity cost.¹⁶⁴

Many multinational businesses now recognise the link between inclusion of LGBT employees and business outcomes and have taken voluntary steps to end discrimination against LGBT workers in order to be competitive. As a result, more than 90% of Fortune 500 companies have policies to prevent homophobic discrimination.¹⁶⁵ Similarly 8,000 companies in 161 countries today have signed the UN Global Compact, an opt-in initiative that stipulates that LGBT rights apply globally and that companies should have policies in place to protect the rights of LGBT people wherever they operate.¹⁶⁶ A presentation by Global Compact in February 2015 stated that businesses are realising the benefits of promoting LGBT rights including competitive advantage, improved financial performance, avoiding negative publicity, strengthening corporate identity, and enhancing a business's ability to meet its strategic goals by attracting and retaining the best possible candidates.¹⁶⁷ Decriminalising homosexuality is therefore the first and basic step to achieving LGBT equality and the associated economic benefits.

➤ Role of Business in Ending Criminalisation

Many multinational corporations are not only taking positive steps to promote and protect the rights of LGBT people within their own workforces but they are also reacting against anti-homosexuality legislation and LGBT discrimination in different parts of the world. Some major multinational corporations have recently taken direct action, speaking out against nation states that aim to suppress the human rights of LGBT people and implementing corporate sanctions in response to LGBT criminalisation. A number of examples are below:

In March 2014, the Ugandan Civil Society Coalition on Human Rights and

¹⁶¹ Center for Talent and Innovation, *The Power of 'Out' 2.0: LGBT in the Workplace*, (2013).

¹⁶² Guasp, A. and Balfour, J., *Peak Performance: Gay People and Productivity*, (Stonewall, 2008).

¹⁶³ International Gay and Lesbian Human Rights Commission, *Investing in Africa: The High Cost of Discrimination against LGBT Persons*, (July 2014). https://iglhrc.org/sites/default/files/IGLHRC_InvestingInAfrica.pdf accessed on 25 September 2015.

¹⁶⁴ *Ibid.*

¹⁶⁵ <http://www.economist.com/news/business/21603001-one-britains-leading-businessmen-urges-firms-become-more-gay-friendly-corporate-closet>

¹⁶⁶ The UNGC has 8,369 company signatories in 161 countries, as of 1 September 2015. Example signatories include: Orange, Rio Tinto plc, Novartis, Bayer, Standard Chartered Bank, Deutsche Bank, Nike, Renault and thousands more. <https://www.unglobalcompact.org/>

¹⁶⁷ https://www.unglobalcompact.org/docs/issues_doc/human_rights/Webinars/Business_LGBT_10Feb15.pdf

Constitutional Law called on multinational companies that have businesses in Uganda to go public about their concerns on the AHA and their future economic engagements in Uganda.¹⁶⁸

Virgin responded to the AHA by working with Ugandan business people to create a list of figures and companies to lobby the Ugandan President not to sign the bill. Richard Branson, founder of Virgin, said:

*Sometimes 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*¹⁶⁹ (...) *Ideally, businesses and organisations should work with governments to try to change their attitudes from within countries.*



Whilst ultimately unsuccessful, it is particularly significant that leading business figures are able to become standard-bearers on an issue like LGBT rights. Branson's statements provoked a significant response and increased awareness of 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. Branson's limited success prompted a decision not to move ahead with plans to expand Virgin into Uganda.



Orange pledged in March 2014 to offer any necessary legal and security assistance to LGBT employees in need in Uganda and also removed all of its advertising from the Ugandan newspaper *Red Pepper* after it published the names, photographs and addresses of LGBT people in the country.

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 global banks also gathered for the second Out on the Street: Europe summit which focused on global LGBT issues and discussed what initiatives can be pursued to promote diversity of leadership.¹⁷⁰



The Four Seasons Hotel in Irving, Dallas displayed solidarity with the Ugandan LGBT community in 2014 when it refused to host Uganda's President Museveni after a campaign by the local LGBT community.¹⁷¹

¹⁶⁸ 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 Law has been Assented to*, (3 March 2014).

¹⁶⁹ <http://www.virgin.com/richard-branson/let-people-love-whoever-they-want>

¹⁷⁰ Welch, M., 'European corporations considering boycott of countries with anti-gay laws', *FourTwoNine*, 20 November 2013 < <http://dot429.com/articles/3510-european-corporations-considering-boycott-of-countries-with-anti-gay-laws> > accessed 8 September 2015.

¹⁷¹ Taffet, D., 'Four Seasons in Irving cancels Ugandan president's stay', (*Dallas Voice*, 18 September 2014) <http://www.dallasvoice.com/seasons-irving-cancels-ugandan-presidents-stay-10179667.html>

AT&T, a sponsor of Team USA at the first major US corporation to anti-gay laws, stating they were families and society.¹⁷²



the Sochi Olympics, was the condemn publicly Russia's harmful to individuals,

Corporations' actions can have a potent effect. The possibility of trade boycotts by Western companies altered the decision-making calculus of President Museveni of Uganda during the initial passage and then later invalidation of the AHA. In an interview with *Independent Magazine*, President Museveni urged Uganda not to open up wars with its trade partners recklessly over the issue of homosexuality, saying this would be irresponsible:

*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.*¹⁷³

f) Immigration - Persecution and Asylum protection

A well-founded fear of persecution on the ground of sexual orientation triggers international protection obligations allowing LGBT people to claim asylum. The right to freedom from persecution is defined in terms of particularly severe violations of core human rights.

The Supreme Court of the United Kingdom held that LGBT asylum seekers cannot be expected to conceal their sexual orientation in their countries of origin:

*Persecution is sustained or systemic failure of state protection in relation to one of the core entitlements which has been recognised by the international community, or an affront to internationally accepted human rights norms, and in particular the core values of privacy, equality and dignity.*¹⁷⁴

HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department

The UNHCR has consistently adopted the position that criminalising homosexual relations or discriminatory practices against sexual minorities can amount to persecution, giving rise to a legitimate asylum claim.

¹⁷² <http://blogs.att.net/consumerblog/story/a7793998>

¹⁷³ *New Vision*, 'Museveni calls for fresh debate on homosexuality', (3 October 2014)

<http://www.newvision.co.ug/news/660387-museveni-calls-for-fresh-debate-on-homosexuality.html> accessed on 15 August 2015.

¹⁷⁴ *HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department* [2010] UKSC 31, para. 48, per Lord Walker (Supreme Court of the United Kingdom).

*Where homosexuality is illegal in a particular society, the imposition of severe criminal penalties for homosexual conduct could amount to persecution, just as it would for refusing to wear the veil for women in some societies. Even where homosexual practices are not criminalized, a claimant could still establish a valid claim where the State condones or tolerates discriminatory practices or harm perpetrated against him or her, or where the State is unable to protect effectively the claimant against such harm.*¹⁷⁵

UNHCR (2002)

In November 2013, the Court of Justice of the European Union (**CJEU**) heard a case concerning applications for refugee status in the Netherlands by gay men from Sierra Leone, Senegal and Uganda, who feared persecution on the basis of their sexual orientation.¹⁷⁶ The CJEU found that sexual orientation is a characteristic so fundamental to a person's identity that a person cannot be expected to renounce or conceal it in order to avoid persecution. The Court ruled however, that the criminalisation of homosexual acts in and of itself does not constitute persecution, unless people found guilty under such laws are regularly sentenced to imprisonment or more severe punishments.

Nevertheless, the asylum system is not a complete solution or panacea. As a matter of principle, LGBT people should not be forced to flee their countries of origin in order to live freely and with dignity. Moreover, the refugee system has severe limitations in its ability to protect persecuted people, most of whom are unable to access a safe country in which to seek protection. Many individuals have been forced to seek refuge in countries that themselves criminalise same-sex consensual sexual relations and therefore may not adequately protect them.

For example, there is evidence of LGBT people fleeing Uganda and The Gambia for Kenya¹⁷⁷ and Senegal,¹⁷⁸ respectively, both of which criminalise. The UNHCR in Nairobi recently reported that LGBT refugees in Kenya have little choice but to keep their identity quiet while they await asylum or face the consequences.¹⁷⁹ The Refugee Commissioner of Namibia recently released a statement saying that gay refugees from Uganda will not be allowed into the country. According to the Commissioner: *'[Namibian] refugee law does not have a provision granting refugee status for being gay ... and ... will never [allow] that.'*¹⁸⁰ There are also reports that homosexual male asylum seekers arriving in Australia have been sent to be detained and processed at detention centres on Manus

¹⁷⁵ UNHCR, *Guidelines on International Protection: gender-related persecution within the context of article 1A(2) of the 1951 Convention and its 1967 Protocol relating to the Status of Refugees* UN Doc HCR/GIP02/01, 17 May 2002, para. 17.

¹⁷⁶ *X, Y, Z v Minister voor Immigratie en Asiel*, C-199/12 - C-201/12, European Union: Court of Justice of the European Union, 7 November 2013. Available at: <http://www.refworld.org/docid/527b94b14.html> [accessed 5 November 2015]

¹⁷⁷ Human Rights Watch, *Uganda: Anti-Homosexuality Act's Heavy Toll*, 15 May 2014, Available at: <http://www.hrw.org/node/125529> Accessed 06/07/2014

¹⁷⁸ Hussain, M., 'Lesbians flee to Senegal as Gambia cracks down on homosexuality', (*Reuters*, 21 November 2014), available at: <http://www.reuters.com/article/2014/11/21/gambia-lesbians-idUSL6N0TB2M320141121> accessed on 18 August 2015.

¹⁷⁹ Kushner, J., 'Inside the Nightmares of Africa's LGBT Refugees', (*Huffington Post*, 26 June 2015), available at: http://www.huffingtonpost.com/the-groundtruth-project/inside-the-nightmares-of_b_7674502.html > accessed on 25 August 2015.

¹⁸⁰ See Country Overview at Annex A.

Island in Papua New Guinea, despite the criminalisation of same-sex sexual conduct in that country.¹⁸¹

*On one projection, out of 175 million LGBT people living under persecutory conditions of peril or violence worldwide, only 17,500 are able to flee or subsist in transit countries or countries of asylum. Only 7,500 of those are able to access legal protection systems. Out of those, fewer than 2,500 LGBT people will receive international protection each year.*¹⁸²

According to the UK Lesbian and Gay Immigration Group (UKLGIG), the exact number of successful asylum claims on the basis of sexual orientation or gender identity remain unknown¹⁸³. However the organisation only manages to support a small proportion of the approximately 1,000 LGBT people who contact UKLGIG every year about claiming asylum in the UK on this basis.¹⁸⁴

In light of the consequential impacts on migration,¹⁸⁵ recipient states of LGBT refugees have an interest in ensuring progress is made on LGBT rights worldwide.¹⁸⁶

¹⁸¹ ILGA, *State-Sponsored Homophobia: A World Survey of Laws*, (10th Ed., May 2015) p. 126, available at: http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2015.pdf

¹⁸² Organization for Refuge, Asylum and Migration, *Opening Doors: A Global Survey of NGO Attitudes Towards LGBTI Refugees and Asylum Seekers* (June, 2012), p. 7.

¹⁸³ The United Nations High Commissioner for Refugees (UNHCR) does not maintain formal statistics regarding these refugees and asylum seekers. Moreover, of the 100 nations or so with functioning asylum systems, only a small proportion currently track or release statistics regarding the LGBT cases they consider or grant. See UNHCR, UNHCR Statistical Yearbook 2010, at 41 (10th ed. 2011), available at <http://www.unhcr.org/4ef9cc9c9.html>. The statistics from these countries indicate that between 4 and 6 percent of asylum seekers base their requests for protection explicitly on their sexual orientation or gender identity - Organization for Refuge, Asylum and Migration (ORAM), *Opening Doors: A Global Survey of NGO Attitudes Towards LGBTI Refugees and Asylum Seekers*, June 2012, p. 11.

¹⁸⁴ UK Lesbian and Gay Immigration Group, *Missing the Mark* (September 2013) <<http://www.uklgig.org.uk/wp-content/uploads/2014/02/Missing-the-Mark.pdf>>

¹⁸⁵ Of the 25,670 asylum applications submitted in the United Kingdom in 2008 an estimated 1,200 to 1,800 were based on sexual orientation or gender identity – See Refugee Support, *Over Not Out: The housing and Homelessness Issues Specific to Lesbian, Gay, Bisexual and Transgender Asylum Seekers* (2009) at p. 8.

¹⁸⁶ ORAM, *New web portal to help rising numbers of LGBTI refugees fighting for safety*, 20 June 2014, available at: <http://www.oraminternational.org/en/pressroom/news-feed/368-new-web-portal-to-help-rising-numbers-of-lgbti-refugees-fighting-for-safety>

4. INTERNATIONAL AND COMPARATIVE LAW AND JURISPRUDENCE - THE ROLE OF COURTS AND TRIBUNALS

4.1 Role of litigation in bringing about decriminalisation

Litigation has played an important role in decriminalisation to date, and courts and international human rights bodies are increasingly being used to strike down criminalising laws now that it has become incontrovertible that they breach international law.

Laws criminalising homosexuality have been held to be unlawful and in violation of human rights and constitutional standards by several international and regional courts,¹⁸⁷ international human rights bodies¹⁸⁸ and national courts.¹⁸⁹

At the international level, a complaint was brought to the UN Human Rights Committee, which monitors implementation of the International Covenant on Civil and Political Rights (*ICCPR*), which led to the 1994 decision in *Toonen v Australia*. This decision showed that Tasmania's continued criminalisation constituted a breach of Australia's obligation to respect the Article 17 right to privacy and the Article 26 right to non-discrimination.

At the regional level, successful cases before the European Court of Human Rights against Northern Ireland, Ireland and Cyprus based on the Article 8 right to privacy of the European Convention of Human Rights (*ECHR*), led to the repeal of criminal provisions in those countries. An ECHR case against Turkey in respect of Northern Cyprus - the last pocket within the Council of Europe to criminalise - was also discontinued in 2014 after the offending laws were repealed due to the pressure of the impending case.¹⁹⁰ Moreover, two cases have been lodged before the Inter-American Commission on Human Rights to challenge Jamaica's criminalisation of same-sex relations. They will be the first ever cases to challenge the criminalisation of homosexuality in the Inter-American system.

At the domestic level, there have been successful constitutional challenges in the last 15 years in jurisdictions as diverse as South Africa, Fiji, Nepal, Ecuador and the United States of America, and litigation is on-going in many other jurisdictions.

¹⁸⁷ European Court of Human Rights, *Modinos v Cyprus*, Application No 15070/89 (1993); *Norris v Ireland*, Application No 10581/83 (1988); *Dudgeon v The United Kingdom*, Application No 7525/76 (1981).

¹⁸⁸ UN Human Rights Committee, *Toonen v Australia*, Communication No. 488/1992, CCPR/C/50/D/488/1992, 31 March 1994.

¹⁸⁹ *National Coalition for Gay and Lesbian Equality v Minister of Justice*, Case No CCY 11/98, 9 October 1998 (Constitutional Court of South Africa); *Lawrence v Texas*, 539 US 1 (2002) (United States Supreme Court); *Nadan and McCoskar v State* [2005] FJHC 500 (High Court of Fiji); *Sunil Babu Pant & Others v Nepal Government and Others* [2008] 2 NJA LJ 261 (Supreme Court of Nepal); *Leung v Secretary for Justice* [2006] 4 HKLRD 211 (Hong Kong Court of Appeal); *Secretary of Justice v Yau Yuk Lung Zigo and Another* [2007] 10 HKCFAR 335 (Hong Kong Court of Final Appeal). The two Hong Kong cases concern statutory sodomy laws. However, in *Leung*, the challenge related to a disparity in the ages of consent between buggery and vaginal sex. In *Yau*, the appellants successfully challenged the offence of homosexual buggery committed otherwise than in private in circumstances where no equivalent offence existed prohibiting heterosexuals. The Court held the buggery provision in itself was a violation of the appellants' right to equality before the law and freedom from non-discrimination.

¹⁹⁰ *H.Ç. v. Turkey*, Application no. 6428/12.

AN OVERVIEW OF LITIGATION TO DECRIMINALISE CONSENSUAL SAME-SEX ACTS		
Successful challenges	Setbacks	Ongoing cases
United Kingdom (Northern Ireland)	Botswana	Belize
Ireland	India ¹⁹¹	India ¹⁹²
Australia (Tasmania)	Singapore	Malawi
South Africa	Zimbabwe	Jamaica
Ecuador		Cameroon
Nepal		
Fiji		
United States of America		
Cyprus		
Turkish Republic of Northern Cyprus*		

Change may be brought about by a combination of litigation and legislation (legislative reform is addressed in Section 6); however, litigation may be the only options when governments are reluctant to act owing to fears of public backlash. That said, governments acting as defendants in these cases in litigation should engage constructively with courts by framing and limiting their defences in ways which proactively seek to clarify the law.

¹⁹¹ 11 December 2013: In the case of *Suresh Kumar Kaushal v. Naz Foundation (Civil Appeal No. 10972 of 2013)*, the Supreme Court of India overturned the Delhi High Court decision that section 377 of the Indian Penal Code was unconstitutional to the extent it makes consensual same-sex intimacy in private a criminal offence. The Central Government, along with several other concerned parties had subsequently filed a review petition against the Supreme Court's judgment. After the review petition failed, three curative petitions filed against this judgment are set to be heard by the Supreme Court.

¹⁹² *Ibid.*

4.2 International and regional human rights law

Laws criminalising homosexuality breach the fundamental and universal human rights contained in the ICCPR, which most Commonwealth members have ratified,¹⁹³ in particular, the rights to:

- equality before the law and equal protection of the law;¹⁹⁴
- non-discrimination;¹⁹⁵
- privacy;¹⁹⁶
- freedom from torture and inhuman and degrading treatment;¹⁹⁷
- freedom of expression,¹⁹⁸ assembly¹⁹⁹ and association;²⁰⁰
- dignity;²⁰¹ and
- liberty and freedom from arbitrary detention.²⁰²

Additionally, the right to the highest attainable standard of health contained in the International Covenant on Economic, Social and Cultural Rights (**ICESCR**),²⁰³ is violated by such laws. Many of these fundamental rights are echoed in the other specialist instruments such as the Convention on the Elimination of Discrimination Against Women (**CEDAW**),²⁰⁴ Convention Against Torture (**CAT**)²⁰⁵ and the Convention on the Rights of the Child (**CRC**),²⁰⁶ as well as most national constitutions.

A table of ratifications of the various relevant international and regional human rights treaties by criminalising Commonwealth country is contained at Annex D.

The following provides more details as to how the rights and freedoms above are violated by criminalisation.

¹⁹³ Countries which have not ratified include Antigua and Barbuda, Brunei, Fiji, Kiribati, Malaysia, Nauru, Saint Kitts and Nevis, Saint Lucia, Singapore, Solomon Islands, Tonga and Tuvalu.

¹⁹⁴ Article 7, UDHR; Article 26, ICCPR.

¹⁹⁵ Article 7, UDHR; Articles 2 and 26, ICCPR.

¹⁹⁶ Article 12, UDHR; Article 17, ICCPR.

¹⁹⁷ Article 5, UDHR; Article 4, ICCPR.

¹⁹⁸ Article 19, UDHR; Article 19, ICCPR.

¹⁹⁹ Article 20, UDHR; Article 21, ICCPR.

²⁰⁰ Article 20, UDHR; Article 22, ICCPR.

²⁰¹ Article 1, UDHR; Preamble, ICCPR.

²⁰² Article 9, UDHR; Article 9, ICCPR.

²⁰³ Article 25, UDHR; Article 12, ICESCR.

²⁰⁴ Preamble and Articles 1 and 2, CEDAW.

²⁰⁵ Preamble, Articles 1(1), 2 and 16, CAT.

²⁰⁶ Preamble, Articles 2, 13, 14, 15, 16, and 37, CRC.

Non-discrimination / equality

The rights to equality and non-discrimination are enshrined in virtually all international,²⁰⁷ regional²⁰⁸ and domestic human rights instruments. The universality of these principles is also reflected in the sheer number of specialist human rights treaties which have enshrined them.²⁰⁹

In the leading decision of *Toonen v Australia*, the UN Human Rights Committee (**HRC**) found that criminalisation violates the prohibition against discrimination on grounds of sex, as well as the right to privacy.²¹⁰ Since then the special procedures and working groups of the UN Human Rights Council have consistently held that differences in treatment based on sexual orientation are *discriminatory* including on the prohibited ground of 'other status':

- The prohibition against discrimination encompasses 'sexual orientation' as confirmed in General Comments issued by UN Committees mandated to supervise compliance with:
 - *Convention on the Rights of the Child*;²¹¹
 - *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*;²¹²
 - *Convention on the Elimination of Discrimination against Women*,²¹³ and

²⁰⁷ Article 1(3) United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI; Articles 2 and 7 UDHR (UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III)); Articles 2 and 26 ICCPR (UN General Assembly, International Covenant on Civil and Political Rights, GA res 2200A (XXI) 21 UN SAOR Supp. (No 16) at 52, UN Doc A/6316, 16 December 1966, 999 UNTS 171, entered into force 23 March 1976).

²⁰⁸ Article 14 European Convention for the Protection of Human Rights and Fundamental Freedoms; Article 1 of Protocol No. 12 to the ECHR also contains a broad, autonomous right to non-discrimination in any domestic legislation; Articles 20 and 21 Charter of Fundamental Rights of the European Union (European Union, *Charter of Fundamental Rights of the European Union*, 7 December 2000, Official Journal of the European Communities, 18 December 2000 (OJ C 364/01)); Articles 1(1) and 24 Inter-American Convention on Human Rights (**IACHR**) (Organization of American States (**OAS**), American Convention on Human Rights, 'Pact of San Jose', Costa Rica, 22 November 1969); Article II American Declaration on the Rights and Duties of Man (OAS, American Declaration of the Rights and Duties of Man, 2 May 1948); Article 45(a) Charter of the Organization of American States (Organization of American States, Charter of the Organization of American States, 30 April 1948); Articles 2 and 3(1) and (2) African Charter on Human and People's Rights (also known as the Banjul Charter) (**ACHPR**) (Organization of African Unity, African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, entered into force 21 October 1986, 21 I.L.M. 58 (1982)); Article 3 African Convention on the Rights and Welfare of the Child (Organization of African Unity (**OAU**), African Charter on the Rights and Welfare of the Child, 11 July 1990, CAB/LEG/24.9/49); Article 3 Arab Charter on Human Rights (League of Arab States, Revised Arab Charter on Human Rights, 22 May 2004 (2005) 12 *International Human Rights Reports* 893); Association of South-East Asian Nations (**ASEAN**) Declaration of Human Rights No. 2 and No. 3 (ASEAN Declaration of Human Rights (No. 2) and (No.3), adopted 19 November 2012); Article 1(a) Cairo Declaration on Human Rights in Islam UN GAOR World Conference on Human Rights, 4th Session, Agenda Item 5, 5 August 1990, UN Doc A/CONF.157/PC/62/Add.18 (1993); Article II Commonwealth Charter (Commonwealth Charter, adopted 14 December 2012).

²⁰⁹ Articles 1 and 2 CEDAW; Article 1(1) CAT; Article 2(1) CRC; Article 2(2) ICESCR.

²¹⁰ *Toonen v Australia*, Communication No. 488/1992, 31 March 1994, para. 8.7. This has been confirmed in subsequent HRC decisions, albeit in complaints of a different factual and legal context, e.g. *Young v Australia*, Communication no 1361/2005, CCPR/C//78/D/941/2000, para. 10.4; and *X v Colombia*, Communication 1361/2005, CCPR/C/89/D/1361/2005, para. 9.

²¹¹ Committee on the Rights of the Child, General Comment 16, UN Doc CRC/C/GC/15, 17 April 2013, at para. 8.

²¹² Committee Against Torture, General Comment 2, UN Doc. CAT/C/GC/2, 24 January 2008, at para. 2.1.

²¹³ Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 28 on the core obligations of States Parties under article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women*, U.N. Doc. CEDAW/C/GC/28, 16 December 2010, at para 18.

- *International Covenant on Economic, Social and Cultural Rights*.²¹⁴
- The Committee on the Elimination of Discrimination Against Women, in its Concluding Observations on individual states, condemned discrimination on the basis of sexual orientation and called for the repeal of laws that classify homosexuality as an offence.²¹⁵

Africa

The African Commission, in *Zimbabwe Human Rights NGO Forum v Zimbabwe*, held that Article 2 of the African Charter, which prohibits discrimination on the grounds of 'other status', also extends to protect people on the basis of 'sexual orientation',²¹⁶ just like Article 3 on equality before the law and equal protection of the law

Recalling Articles 2 and 3 on non-discrimination and equality before the law and equal protection of the law, the African Commission issued a recent resolution specifically condemning 'the situation of systematic attacks by State and non-State actors against people on the basis of their imputed or real sexual orientation or gender identity'.²¹⁷

Americas

Similarly, the Inter-American Commission on Human Rights found in *Atala v Chile* that 'sexual orientation' was a characteristic protected from discrimination under the *American Convention on Human Rights (ACHR)*.²¹⁸ In a series of resolutions, the OAS has condemned human rights violations based on sexual orientation and gender identity and invited states to adopt measures to eliminate them.²¹⁹

National courts

The principles of non-discrimination and equality have also been upheld in national courts all over the world.

²¹⁴ Committee on Economic, Social and Cultural Rights, General Comment 20, UN Doc. E/C.12/GC/20, 10 June 2009, at para. 32.

²¹⁵ See e.g. Concluding Observations on Uganda, UN Doc. CEDAW/C/UGA/CO/7, 22 October 2010, at paras. 43-44.

²¹⁶ *Zimbabwe Human Rights NGO Forum v Zimbabwe*, Communication 245/02, May 2006, para 169-170. See also, General Comments on Article 14 (1) (d) and (e) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, para 4.

²¹⁷ African Commission on Human and Peoples' Rights, *Resolution 275: 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, Luanda Angola, 28 April 2012 May 2014.

²¹⁸ Inter-American Court of Human Rights, *Karen Atala and daughters v Chile*, case 12.502, 17 September 2010, paras. 88-95.

²¹⁹ Organization of American States, *Human Rights, Sexual Orientation and Gender Identity*, AG/RES.2721, 4 June 2012; OAS, *Human Rights, Sexual Orientation and Gender Identity and Expression*, AG/RES. AG/RES 2807, 6 June 2013. See for example: Organisation of American States, *Human Rights, Sexual Orientation and Gender Identity*, AG/RES. 2435 (3 June 2008); OAS, *Human Rights, Sexual Orientation and Gender Identity*, AG/RES. 2504 (4 June 2009); OAS, *Human Rights, Sexual Orientation and Gender Identity*, AG/RES. 2600 (8 June 2010); OAS, 'Human Rights, Sexual Orientation and Gender Identity'. AG/RES. 2653 (7 June 2011);

*[T]here can hardly be more palpable discrimination against a class than making the conduct that defines the class criminal.*²²⁰

*The State cannot single out one identifiable class of citizens for punishment that does not apply to everyone else, with moral disapproval as the only asserted state interest for the law. The ... sodomy statute subjects homosexuals to a lifelong penalty and stigma. A legislative classification that threatens the creation of an underclass ... cannot be reconciled with the Equal Protection Clause.*²²¹

*The effect was to brand 'all homosexuals as criminals, thereby making it more difficult for homosexuals to be treated in the same manner as everyone else.'*²²²

Lawrence v Texas (Supreme Court of the United States)

*Denying people of a minority class the right to sexual expression in the only way available to them, even if that way is denied to all, remains discriminatory when people of a majority class are permitted the right to sexual expression in a way natural to them.*²²³

Leung v Secretary of State for Justice (Hong Kong Court of Appeal)

*The criminalisation of sodomy in private between consenting males is a severe limitation of a gay man's right to **equality** in relation to sexual orientation, because it hits at one of the ways in which gays give expression to their sexual orientation ... The harm caused by the provision can, and often does, affect his ability to achieve self-identification and self-fulfilment. The harm also radiates out into society generally and gives rise to a wide variety of other **discriminations**, which collectively unfairly prevent a fair distribution of social goods and services and the award of social opportunities for gays.*²²⁴

National Coalition for Gay and Lesbian Equality v Minister of Justice (emphasis added)
(Constitutional Court of South Africa)

*(...) such unequal treatment before the law on the grounds of gender and sexual orientation to be repugnant to the Constitution and the sections invalid in that they punish males but not females for their sexual acts conducted consensually but in private.*²²⁵

Nadan and McCoskar v State (High Court of Fiji)

Privacy

The right to privacy is a fundamental human right afforded to everyone in the UDHR,²²⁶ the ICCPR²²⁷ and most major regional instruments and treaties including:

²²⁰ *Lawrence v Texas*, 539 US 1 (2002), at p. 583 per O'Connor J (separate concurring judgment).

²²¹ *Ibid.*, p. 584.

²²² *Ibid.*

²²³ *Leung v Secretary for Justice* [2006] 4 HKLRD 211 (Hong Kong Court of Appeals, para. 48).

²²⁴ *National Coalition for Gay and Lesbian Equality v Minister of Justice*, No CCY 11/98, 9 October 1998, para. 36.

²²⁵ *Nadan and McCoskar v State* [2005] FJHC 500.

²²⁶ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), art.12: 'No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.'

²²⁷ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, Article 17: '1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks.'

- The American Convention on Human Rights (ACHR)²²⁸
- The American Declaration on the Rights and Duties of Man²²⁹
- The Revised Arab Charter on Human Rights²³⁰
- The Association of South East Asian Nations Human Rights Declaration²³¹
- The European Convention on Human Rights (ECHR)²³²
- The Charter of the European Union²³³

While one or more of the above international and regional human rights treaties will be in force in most countries, and by extension will be either directly enforceable or legally persuasive in domestic courts, many national constitutions also contain a right to privacy; although the exact formulations of rights to privacy vary across jurisdictions.²³⁴

In the seminal case of *Dudgeon v United Kingdom*, the European Court of Human Rights recognised that laws in Northern Ireland criminalising homosexual acts between consenting adults represented a violation of the right to privacy.²³⁵ In two subsequent cases, the European Court applied *Dudgeon* and re-articulated the importance of the right to privacy when it found that the sodomy laws of Ireland and Cyprus were similarly incompatible with Article 8.²³⁶

²²⁸ American Convention on Human Rights, 'Pact of San Jose', Costa Rica, 22 November 1969, art. 11: '1. Everyone has the right to have his honour respected and his dignity recognised. 2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honour or reputation. 3. Everyone has the right to the protection of the law against such interference or attacks.'

²²⁹ Organization of American States, American Declaration of the Rights and Duties of Man, 2 May 1948, art. V: 'Every person has the right to the protection of the law against abusive attacks upon his honour, his reputation, and his private and family life.'

²³⁰ League of Arab States, Revised Arab Charter on Human Rights, 22 May 2004, (2005) 12, *International Human Rights Reports* 893, art. 21: '1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, or to unlawful attacks on his honour and reputation. 2. Everyone has a right to the protection of the law against such interference or attacks.'

²³¹ ASEAN Human Rights Declaration, adopted 19 November 2012, art 21: 'Every person has the right to be free from arbitrary interference with his or her privacy, family, home or correspondence including personal data, or to attacks upon that person's honour and reputation. Every person has the right to the protection of the law against such interference or attacks.'

²³² Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5 ('ECHR') art. 8: '1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'

²³³ European Union, Charter of Fundamental Rights of the European Union, 7 December 2000, Official Journal of the European Communities, 18 December 2000 (2000/C 364/01), art. 7: 'Everyone has the right to respect for his or her family life, home and communications.'

²³⁴ See for example s. 14 of the South African Constitution, s. 54 of the Zambia Constitution, Art. 26(1) of the Constitution of Ethiopia, Art. 31 of the Constitution of Kenya, Art. 3(c) of the Constitution of Mauritius, Art. 3(c) of the Constitution of Belize, Art. 5(j) of the Constitution of Vanuatu, Art. 9(1) of the Constitution of Botswana, and Art. 9(1) of the Constitution of Solomon Islands.

²³⁵ *Dudgeon v United Kingdom*, Judgment of 22 October 1981, Application No 7525/76 (1981) 4 EHRR 149, para. 41.

²³⁶ *Norris v Ireland*, Judgment of 26 October 1988, Application No 10581/83, (1988) 13 EHRR 186; *Modinos v. Cyprus*, Judgment of 22 April 1993, Application No 15070/89, (1993) 16 EHRR 485. Likewise in *A.D.T. v United*

Subsequently, in terms of international jurisprudence, the HRC in *Toonen v Australia* held that the sodomy laws of the Australian state of Tasmania constituted an arbitrary interference with the right to privacy, protected by Article 17 of the ICCPR. The Committee noted that it was ‘*undisputed that adult consensual sexual activity in private is covered by the concept of "privacy"’*.²³⁷ It found an interference with the right to privacy even though the criminal law had not been enforced in Tasmania for over a decade and despite the existence of a policy by the prosecuting authorities not to initiate criminal proceedings in respect of private homosexual conduct, as this did not guarantee that criminal actions would not be brought against LGBT people in the future.²³⁸ The HRC concluded that the mere ‘*continued existence of the challenged provisions therefore continuously and directly “interferes” with [Mr Toonen’s] privacy’*.²³⁹

Around the world, domestic courts that have considered the right to privacy have likewise held that it includes privacy in relation to one’s sexual relations.

*[T]he right to privacy extends beyond the negative conception of privacy as freedom from unwarranted State intrusion into one’s private life to include the positive right to establish and nurture human relationships free of criminal or indeed community sanction.*²⁴⁰

Nadan & McCoskar v State, High Court of Fiji

Privacy was not just ‘*a negative right to occupy a private space free from government intrusion*’ but also encompassed the right to ‘*make fundamental decisions about your intimate relationships without penalisation. [This] right to privacy is based on the notion of what is necessary to have one’s autonomous identity . . .*’²⁴¹

National Coalition for Gay and Lesbian Equality v Minister for Justice, Constitutional Court of South Africa

*The laws involved in Bowers and here are, to be sure, statutes that purport to do no more than prohibit a particular sexual act. Their penalties and purposes, though, have more far-reaching consequences, touching upon the most private human conduct, sexual behaviour, and in the most private of places, the home. The statutes do seek to control a personal relationship that, whether or not entitled to formal recognition in the law, is within the liberty of people to choose without being punished as criminals.*²⁴²

Lawrence v Texas, US Supreme Court

Kingdom, the European Court of Human Rights observed that ‘*the mere existence of legislation prohibiting male homosexual conduct in private may continuously and directly affect a person’s private life* (see *A.D.T. v. the United Kingdom*, Judgment of 31 July 2000, Application No. 35765/97, (2000) 31 EHRR 33, para. 23.).

²³⁷ *Toonen v Australia*, UN Human Rights Committee, Communication No. 488/1992, CCPR/C/50/d/488/1992, 31 March 1994, para. 8.2.

²³⁸ *Ibid.*

²³⁹ *Ibid.*

²⁴⁰ *McCoskar v State* [2005] FJHC 500 (High Court of Fiji).

²⁴¹ *National Coalition for Gay and Lesbian Equality v Minister of Justice* 6 BHRC 127 (CC, 1998), 1998 (12) BCLR 1517 (CC), para. 116-117 per Sachs J (Constitutional Court of South Africa).

²⁴² *Lawrence v Texas*, 556.

*The right to privacy is a fundamental right of an individual. The issue of sexual activity falls under the definition of privacy. No one has the right to question how two adults perform the sexual intercourse and whether this intercourse is natural or unnatural. In the way the right to privacy is secured to two heterosexual individuals in sexual intercourse it is equally secured to the people of third gender who have different gender identity and sexual orientation.*²⁴³

Sunil Babu Pant v Nepal, Supreme Court of Nepal

Dignity

Human dignity is one of the most fundamental principles of human rights law and discourse. At its core, the concept reflects the principle *'that every human being is worthy of respect'* and is used *'to explain why human beings have rights to begin with'*.²⁴⁴

*Dignity is a difficult concept to express in precise terms. At its least it is clear that [it] requires us to acknowledge the value and worth of all individuals as members of society. The common law prohibition on sodomy criminalises all sexual intercourse per anum between men: regardless of the relationship of the couple who engage therein, of the age of such couple, of the place where it occurs or indeed any other circumstances whatsoever. In doing so it punishes a form of sexual conduct which is identified by our broader society with homosexuals. Its symbolic effect is to state that in the eyes of our legal system all gay men are criminals. The stigma thus attached to a significant proportion of our population is manifest. But the harm imposed by the criminal law is far more than symbolic. As a result of the criminal offence, gay men are at risk of arrest, prosecution and conviction of the offence of sodomy simply because they seek to engage in sexual conduct which is part of their experience of being human. Just as apartheid legislation rendered the lives of couples of different racial groups perpetually at risk, the sodomy offence builds insecurity and vulnerability into the daily lives of gay men. There can be no doubt that the existence of a law which punishes a form of sexual expression for gay men degrades and devalues gay men in our broader society. As such it is a palpable invasion of their dignity...*²⁴⁵

National Coalition for Gay and Lesbian Equality v Minister for Justice, Constitutional Court of South Africa

Given the acute and particular forms of persecution, harassment, violence and discrimination faced by the LGBT community simply because of their actual or perceived sexual orientation or gender identity, it is clear that the right of such people to live with dignity is routinely violated.²⁴⁶ Dignity is a particularly relevant consideration given the deeply personal nature of the discussion around a person's perceived sexual orientation

²⁴³ *Sunil Babu Pant and others v Nepal Government and others - Supreme Court of Nepal* [2008] 2 NJA L.J., 280.

²⁴⁴ Glendon, M. A., *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, New York 2001, at p. 146

²⁴⁵ *National Coalition for Gay and Lesbian Equality v Minister of Justice* 6 BHRC 127 (CC, 1998), 1998 (12) BCLR 1517 (CC), para. 28.

²⁴⁶ See O'Flaherty, M. and Fisher, J., *Sexual orientation, gender identity and international human rights law: contextualising the Yogyakarta principles*, *Human Rights Law Review* 2008.

or gender identity. In some jurisdictions, the standalone right to dignity has been held to be violated by laws criminalising same-sex conduct.²⁴⁷

*Just as apartheid legislation rendered the lives of couples of different racial groups perpetually at risk, the sodomy offence builds insecurity and vulnerability into the daily lives of gay men. There can be no doubt that the **existence of a law which punishes a form of sexual expression for gay men degrades and devalues gay men in our broader society**. As such it is a palpable invasion of their dignity and a breach of section 10 of the Constitution [...] The harm caused by the provision can, and often does, affect his ability to achieve self-identification and self-fulfilment. The harm also radiates out into society generally and gives rise to a wide variety of other discriminations, which collectively unfairly prevent a fair distribution of social goods and services and the award of social opportunities for gays.*²⁴⁸

National Coalition for Gay and Lesbian Equality v. Minister of Justice, Constitutional Court of South Africa (emphasis added)

Freedom of expression, assembly and association

The rights to freedom of expression, assembly and association are recognised in international human rights law, regional and specialist human rights treaties as well as domestic constitutions.²⁴⁹

The rights of LGBT activists and human rights defenders to express themselves, assemble and associate are paramount as they enable activists to advocate for positive change. Yet these rights are increasingly under threat as laws criminalising homosexuality are now being used as the pretext to curtail those rights. The enactment of additional laws in some jurisdictions that go beyond merely penalising consensual sexual activity and criminalise non-sexual acts - forms of '*enhanced criminalisation*' - attack the ability of LGBT people to express themselves freely, to organise, assemble and associate.²⁵⁰

²⁴⁷ *National Coalition for Gay and Lesbian Equality and Anor v. Minister of Justice*, 6 BHRC 127 (CCT 11/98), [1998], ZACC 15, 1998 (12) BCLR 1517 (CC), 9 October 1998; *Lawrence v. Texas*, 539 US 558 (2003) at p. 575; *Leung v. Secretary for Justice*, Civil Appeal No 317 of 2005, 20 September 2006, para. 29 (challenging differing age-of-consent laws).

²⁴⁸ *National Coalition for Gay and Lesbian Equality and Anor v. Minister of Justice*, 6 BHRC 127 (CCT 11/98), [1998], ZACC 15, 1998 (12) BCLR 1517 (CC), 9 October 1998, paras. 28 and 36 (emphasis added).

²⁴⁹ Articles 19 and 20 UDHR; Articles 19, 21 and 22 ICCPR; Article 3 CEDAW; Article 13 CRC; Articles 9, 10 and 11 African Charter on Human and Peoples' Rights; Article 13 American Convention on Human Rights; Articles 10 and 11 ECHR;

²⁵⁰ For example, Uganda, Nigeria and Russia have enacted such legislation. For further information, see section 7.2.

[T]he coercive power of the State may not be exercised so as to negatively affect the freedom of expression of human rights defenders by using criminal laws to silence or intimidate those who exercise their right to express themselves critically or to lodge complaints of alleged human rights violations.²⁵¹

Inter-American Commission of Human Rights

The criminality of homosexual sexual acts cannot be constituted as a basis for restricting the basic rights of LGBT people simply to associate and assemble with others, express themselves or share information; as anyone who is lobbying is by definition advocating for change to the legal status quo. Even prior to the striking down of sodomy laws by the US Supreme Court in *Lawrence v Texas*, the right of LGBT people to associate and assemble freely was protected by the US Constitution's First Amendment and upheld by courts, notwithstanding the fact that homosexual relations were still unlawful. As the Supreme Court held in *Healy v James*:

[T]he court has consistently disapproved governmental action imposing criminal sanctions or denying rights and privileges solely because of a citizen's association with an unpopular organization ... guilt by association alone, without establishing that an individual's association poses the threat feared by the Government is ... impermissible.²⁵²

In more recent times, there has also been significant progress made through the courts with respect to the protection of the rights to freedom of association and expression, bolstering the legal framework which allows for the freedom of LGBT people to form organisations and advocate for the rights of LGBT people publicly. In both Botswana and Kenya, the High Courts have upheld the right of LGBT organisations to form associations, finding that the refusal to register formally NGOs amounted to violations of the rights to equal protection of the law, freedom of association and freedom of expression.

²⁵¹ Inter-American Commission on Human Rights, Submission note of the Case to the Court and Report of the Merits of Case 12.661 'Nestor Jose and Luis Uzcategui et al', 22 October 2010, para. 288.

²⁵² *Healy v James* 408 U.S. 169 (1972) at 186.

*The Penal Code does not criminalise homosexuality, or the state of being homosexual, but only certain sexual acts against the order of nature... More importantly, the Penal Code does not criminalise the right of association of people based on their sexual orientation, and does not contain any provision that limits the freedom of association of people based on their sexual orientation.*²⁵³

No matter how strongly held moral and religious beliefs may be, they cannot be a basis for limiting rights.

The High Court found that Article 36 of the Kenyan Constitution grants 'every person' the right to form an association 'of any kind' regardless of their gender or sexual orientation, observing that 'an interpretation of non-discrimination which excludes people based on their sexual orientation would be in conflict with the principles of human dignity, inclusiveness, equality, human rights and non-discrimination'.

Eric Gitari v Non-Governmental Organisations Co-ordination Board & others, High Court of Kenya

*(...) lobbying for legislative reforms is not per se a crime. It is also not a crime to be homosexual.*²⁵⁴

Thuto Rammoge & Ors v Attorney General of Botswana, High Court of Botswana

Torture and inhuman and degrading treatment

Freedom from torture and inhuman or degrading treatment is one of the most critical and basic rights. It is an absolute right: in no circumstances is it ever justifiable to torture or subject someone to inhuman or degrading treatment. Prohibition of torture and ill-treatment is enshrined in a number of international and regional human rights instruments,²⁵⁵ and states have an obligation to protect all people, including LGBT people, from torture and other cruel, inhuman or degrading forms of punishment in custodial, medical and other settings. This obligation extends to prohibiting, preventing, investigating and providing redress for torture and ill-treatment in all contexts of state oversight, including by ensuring that such acts are offences under domestic criminal law.²⁵⁶

Criminalising in and of itself amounts to inhuman and degrading treatment. However, LGBT people also suffer other forms of torture and ill-treatment of varying nature due to their sexual orientation and gender identity on a regular basis around the world. The full extent of these abuses is still an area which needs much greater research, but examples abound.

²⁵³ *Eric Gitari v Non-Governmental Organisations Co-ordination Board & others*, Petition no. 440 of 2013, paras. 114 and 115. This judgment is currently under appeal.

²⁵⁴ *Thuto Rammoge & Ors v Attorney General of Botswana* MAHGB-000175-13, para. 58. This judgment is currently under appeal.

²⁵⁵ Article 5 UDHR; Article 7 ICCPR; Articles 1, 3(1), 10(1) and 12 CAT; Article 3 ECHR; Article 5 American Convention on Human Rights; Article 5 African Charter on Human and Peoples' Rights; Article 14 ASEAN Declaration on Human Rights; Article 13 Arab Charter on Human Rights.

²⁵⁶ See CAT/C/GC/3, para. 39.

Of particular concern in some countries enforcing laws criminalising homosexuality is the practice of forced and unscientific anal examinations by authorities to obtain evidence for prosecutions usually in the absence of sufficient evidence that the accused engaged in same-sex sexual activity. Such examinations have been described as '*medically worthless*' and condemned by the Committee against Torture, the Special Rapporteur on Torture and the Working Group on Arbitrary Detention; all of whom have held that the practice contravenes the prohibition on torture and ill-treatment.²⁵⁷ Of equal concern, lesbians have been subjected to 'sex identification tests'²⁵⁸ and forced medical examinations to determine whether (digital) penetrative sex had occurred between them.²⁵⁹ Other medical procedures that can, when forced or coerced, breach the prohibition on torture and ill-treatment include '*conversion therapy*', sterilisation and gender reassignment.²⁶⁰

There is an evolving recognition that criminalisation on the basis of sexual orientation in and of itself equates to treatment that humiliates and debases LGBT people in ways that risk breaking their physical and moral resistance, thereby constituting prohibited ill-treatment.²⁶¹ Criminalisation exerts a daily and real toll on the emotional and mental well-being of LGBT people by making them ashamed of who they are, forcing them to live in secret and in fear.

Liberty and freedom from arbitrary detention

States have an obligation to protect the rights to liberty and security of the person, including the right not to be subjected to arbitrary arrest and detention.²⁶² UN mechanisms have called upon states to fulfil these obligations by repealing laws used to punish individuals based on their sexual orientation and gender identity, including laws criminalising homosexuality and cross-dressing, and have rejected attempts to justify such laws on the grounds of the protection of public health or morality.²⁶³ The Working Group on Arbitrary Detentions has characterised deprivations of liberty on the basis of laws that criminalise same-sex sexual conduct as discriminatory and arbitrary.²⁶⁴

The incompatibility of domestic laws criminalising homosexuality with universal standards of international human rights law is now well settled and incontrovertible.

²⁵⁷ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, 1 February 2013, UN Doc A/HRC/22/53, para. 76, 79.

²⁵⁸ <http://www.gaystarnews.com/article/bangladesh-jails-married-lesbian-couple011013/>

²⁵⁹ Fernandez, B and Gomathy, N.B., 'The Nature of Violence Faced By Lesbian Women in India' (2003) Research Centre on Violence Against Women: Mumbai pp. 50-59.

²⁶⁰ See A/HRC/22/53, paras. 76-79, 88, CRC/C/CHE/CO/2-4, paras. 42-43, CAT/C/DEU/CO/5, para. 20.

²⁶¹ See e.g., *East African Asians v United Kingdom*, Application No. 4403/70 (1973) 3 EHRR 76 (European Commission of Human Rights). The Commission held that immigration measures discriminating on the basis of race which lowers a person in rank, position, reputation or character can constitute 'degrading treatment' provided it attains a minimum level of severity; in *Smith and Grady v United Kingdom*, Applications Nos 22985 and 22986/96; (1999) 29 EHRR 493, para. 212 (European Court of Human Rights) the Court held that, in principle, bias in discharging homosexuals from the armed forces could constitute degrading treatment if it attained the minimum level of severity, though this was not found on the facts of this case.

²⁶² See CCPR/C/50/D/488/1992, paras. 8.3-10, E/C.12/IRN/CO/2, para. 7, CEDAW/C/UGA/CO/7, paras. 43-44, CRC/C/GAM/CO/2-3, paras. 29-30, A/HRC/14/20 paras. 17-26, CCPR/C/KWT/CO/2, para. 30.

²⁶³ See CCPR/C/GC/35, paras. 3, 17, A/HRC/4/40/Add.1, opinion 22/2006, para. 19; A/HRC/22/44, para. 38.

²⁶⁴ Opinion No. 22/2006 (Cameroon), U.N. Doc. A/HRC/4/40/Add.1, 2 February 2007. See also Opinion No. 7/2002 (Egypt), U.N. Doc. E/CN.4/2003/8/Add.1 at 68 (2002).

*Let there be no confusion: where there is tension between cultural attitudes and universal human rights, universal human rights must carry the day ... Personal disapproval, even society's disapproval, is no excuse to arrest, detain, imprison, harass or torture anyone - ever.*²⁶⁵

UN Secretary General Ban Ki-Moon, 2010

*Some will oppose change. They may invoke culture, tradition or religion to defend the status quo. Such arguments have been used to try to justify slavery, child marriage, rape in marriage and female genital mutilation. I respect culture, tradition and religion - but they can never justify the denial of basic human rights.*²⁶⁶

UN Secretary General Ban Ki-Moon, 2013

²⁶⁵ Ban Ki-Moon, 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/News/Press/docs/2010/sgsm13311.doc.htm>

²⁶⁶ Ban Ki-Moon, International Conference on Human Rights, Sexual Orientation and Gender Diversity, Oslo, 15-16 April 2013, available at <http://www.youtube.com/watch?list=UU5O114-PQNYkurITg6hekZw&v=7uaHZWCgGss>

5. LEGISLATIVE REFORM

The repeal of criminal laws has often resulted from the legislative process. The following provides a few examples of where legislative reform has led to decriminalisation.

- The **UK** achieved full decriminalisation by legislative reform in a piecemeal and incremental fashion, which was prompted by litigation as well as an active civil society.
- **Canada** passed the *Criminal Law Amendment Act 1968-1969* or Omnibus Bill as it is commonly called, in 1969, which covered a range of subjects including homosexuality, amending both the Criminal Code and other legislation including the Parole Act and Prisons Act. The Act decriminalised anal intercourse and gross indecency if committed in private between two consenting adults over the age of 21. The relevant homosexuality provisions were based on the *Sexual Offences Act 1967* (England and Wales).
- **New Zealand** changed its laws regarding consensual homosexual intercourse through the introduction of a private members bill: the *Homosexuality Law Reform Bill*.²⁶⁷
- The **Bahamas** sought to repeal and replace the laws relating to sexual offences in 1989 by passing the *Sexual Offences and Domestic Violence Act 1989*, which replaced the original law from 1861 with what Law Commissioners explained as ‘an attempt to provide one comprehensive piece of legislation setting out sexual offences which are indictable.’²⁶⁸ The new act still retained provisions relating to buggery and ‘unnatural offences’, and for the first time prohibited female same-sex intimacies. It was not for another 2 years, in 1991, that the government amended the law and removed the prohibitions against ‘buggery’ and ‘lesbianism’ in private.²⁶⁹
- **Lesotho’s** new *Penal Code Act 2010* entered into force on 9 March 2012. The new *Penal Code Act* does not include any of the previous provisions concerning sodomy or unnatural offences.²⁷⁰
- **São Tomé and Príncipe** enacted a new penal code, which took effect in November 2012, that did not criminalise homosexuality.²⁷¹ Just prior to its Universal Periodic Review (UPR) of the United Nations Human Rights Council, it

²⁶⁷ Detailed information on the legislative history of the Bill can be found at:

<http://www.nzhistory.net.nz/culture/homosexual-law-reform/reforming-the-law>

²⁶⁸ Alexander, M.J., ‘Not just (any)body can be a citizen: the politics of law, sexuality and postcoloniality in Trinidad and Tobago and the Bahamas’, *Feminist Review* 48 (1994), pp. 5–23.

²⁶⁹ The laws dealing with same-sex intimacy were still kept under the heading ‘unnatural’, along with the ‘unnatural connection with any animal’ (Sexual Offences Act 1991).

²⁷⁰ The text of the new code is available at: <http://www.lesotholii.org/ls/legislation/act/2012/6>. The commentary to the New Penal Code, published in the *Lesotho Government Gazette* on 9 March 2012 states that: ‘An important difference between the pre-code position and the post-code position is that once the Code is introduced the courts would not need to observe the common law as expounded by the courts of law to the same extent. The main source of law, and the one with the greatest authority within Lesotho, would then be the Penal Code Act of Lesotho. The text of the Code would be the ultimate foundation of the criminal law.’

²⁷¹ ILGA’s latest ‘State-Sponsored Homophobia’ report states that the new Penal Code of São Tomé and Príncipe took effect in November 2012. It cited the Portuguese-language articles ‘Código Penal: Aprovado pela Lei 6/2012’ and ‘Novo Código Penal já entrou em vigor.’

was announced that the country was going to introduce a new criminal code without any provisions relating to the criminalisation of same-sex conduct.²⁷²

- **Palau**²⁷³ introduced a modernised *Penal Code* in 2014 which repealed the legal provisions that criminalised consensual same-sex sexual activity between men. The new *Penal Code* is based on a *Model Penal Code* disseminated by the American Law Institute, which provides a comprehensive criminal code that clearly defines each crime.²⁷⁴ The Government of Palau engaged constructively with the United Nations on the issue of decriminalisation. In 2011, at its UPR at the UN Human Rights Council, Palau accepted the recommendations to repeal all provisions in domestic legislation criminalising consensual sexual activity between adults of the same sex and to combat discrimination against LGBT people through political, legislative and administrative measures.
- **Mozambique's** parliament approved, by consensus on 11 July 2014, *Law 35/2014*, which replaces Mozambique's former penal code from 1886. Among other provisions, the new penal code removes articles 70 and 71, which had provided for the imposition of security measures on people who habitually practiced '*vices against nature*' and thereby criminalised same-sex acts between consenting adults. The revised penal code was published on 31 December 2014 and came into force in June 2015.²⁷⁵

Other countries within the Commonwealth are also considering legislative reform.²⁷⁶

The legislative process, most notably those in more recent times, has often been characterised by a wholesale review and revision of the country's sexual offences legislation and/or penal code. This route has a number of advantages.

5.1 Why is wholesale reform desirable?

Many countries around the world, including Commonwealth states,²⁷⁷ have antiquated criminal codes and sexual offences frameworks, which were implemented by British colonial rule and based on out-dated notions of 'decency' rather than the protection of individuals and human rights.²⁷⁸ These archaic codes not only criminalise consensual same-sex sexual conduct, but also routinely fail to provide adequate protection against sexual violence and assault for women and children. In many jurisdictions, husbands can lawfully rape their wives, and there are no specific laws against domestic and gender-based violence including forced marriage. Furthermore, in many countries rape and

²⁷² *African Activist*, 'São Tomé and Príncipe set to decriminalise homosexuality', (14 February 2011) <http://www.africanactivist.org>.

²⁷³ Palau is not a member of the Commonwealth.

²⁷⁴ <https://palausenatejga.files.wordpress.com/2014/05/rppl-9-21.pdf>

²⁷⁵ The text of the law is available at: www.wlsa.org.mz/wp-content/uploads/2014/11/Lei-35_2014codigo_penal.pdf.

²⁷⁶ Nauru has accepted UPR recommendations to decriminalize. Similarly, other Commonwealth states - Belize, Guyana, Saint Kitts and Nevis, Kiribati and Seychelles - have indicated a willingness to consider and examine their laws criminalising homosexuality.

²⁷⁷ Braun, T., 'Dark Side of the Moon: The Legacy of British Sexual Offences Laws in the Commonwealth', Legal and Judicial Legacies of Empire Conference, Institute of Commonwealth Studies, London, 17 June 2014, available at <http://www.humandignitytrust.org/pages/NEWS/Our%20Work%20in%20the%20News?NewsArticleID=288>.

²⁷⁸ The majority of states that criminalise sexual orientation do so under laws that are derived from the English Common Law, which criminalises sodomy as a form of assault, whilst other states criminalise sexual orientation to reflect principles of Sharia law.

sexual assault can only be committed against female victims, which is, in and of itself, discriminatory.

Wholesale criminal law reform can play a key role in advancing human rights in relation to sexual and physical integrity and health, and is an important aspect of a comprehensive state response to sexual assault, child exploitation and gender-based violence. It also has the benefit of diffusing the often charged public and political debate that results where reform is limited to matters of sexual orientation and gender identity, as those are merely one aspect of a wider updating of out-dated sexual offences laws.

Sexual offences law reform can thus form part of a comprehensive strategy to reduce sexual crimes as well as address the persecutory and discriminatory dimensions of laws that exist on many statute books, ensuring a criminal justice regime that is fit for the 21st century and removing the colonial origins of the current laws. It presents itself as a strong public statement about equality and non-discrimination, autonomy and dignity.

5.2 Model Penal Codes

To this end, a number of organisations, international bodies and institutions have drafted and published model penal codes which could be drawn on in such reform processes:

- The American Law Institute developed a *Model Penal Code* back in the 1960s. This seminal work played an important part in the widespread revision and codification of the substantive criminal law of the United States.²⁷⁹ The model code is respected and influential, and has most recently been used as the basis for Palau's criminal law reforms.²⁸⁰
- In 1991, the CARICOM undertook an initiative to draft model legislation to address gender disparities. The draft legislation covered areas such as domestic violence and sexual offences, among others.²⁸¹ The preparation of the model legislation has not only assisted member states in the drafting of national legislation but has also assisted NGOs and intergovernmental agencies in their research and advocacy work.
- Other organisations and institutions that have drafted model penal laws include Penn University,²⁸² Legal Action Worldwide (funded by the UNDP),²⁸³ the Pan-

²⁷⁹ <https://www.ali.org/publications/show/model-penal-code/>

²⁸⁰ See Signing Statement by the President of Palau: <https://palausenatejga.files.wordpress.com/2014/05/rppl-9-21.pdf>

²⁸¹ http://www.caricom.org/jsp/secretariat/legal_instruments/model_legislation_women_issues.jsp

²⁸² The students at the criminal law research group at the University of Penn, led by Paul Robinson, drafted a new Penal Code for the Maldives from 2004-2006. In 2014 the Maldivian legislature, the People's Majlis, enacted the code, the first modern, comprehensive penal code in the world to incorporate the major tenets and principles of Islamic law. Following a one-year implementation period, the new criminal law will take force in the Maldives in 2015. See http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1289&context=faculty_scholarship

²⁸³ Legal Action Worldwide, funded by UNDP, produced a document highlighting best practices in sexual offence laws in Africa (see <http://legalactionworldwide.org/wp-content/uploads/2014/11/Best-Practices-African-Sexual-Offences-Act-2.pdf>).

American Health Organisation (*PAHO*)²⁸⁴ and the Pacific Islands Forum Secretariat.²⁸⁵

The Commonwealth is sufficiently well placed to undertake such a process of constructing a model penal code for sexual offences. It shares a common language, similar legal systems and comparable political structures. These similarities can form the basis of technical exchange. In addition, as we have seen above, a number of Commonwealth member states have already undergone the process of criminal law reform and thus could speak from direct experience. What is more, mechanisms for technical exchange already exist within the Commonwealth Institutions.

²⁸⁴ The PAHO drafted a model law addressing domestic violence against women. The document aimed to identify and analyse the critical components or non-negotiable elements that should form part of legislation and public policies enacted to take account of physical violence, sexual, patrimonial and psychological violence against women. <http://www.paho.org/Spanish/DPM/GPP/GH/LeyModelo.htm>

²⁸⁵ The Pacific Islands Forum Secretariat drafted the Sexual Offences Model Provisions in 2005 - http://www.forumsec.org/resources/uploads/attachments/documents/PIFS_Sexual_Offences_Model_Provisions_2010.pdf. For more information, see - http://www.pilonsec.org/index.php?option=com_content&view=article&id=132&Itemid=113

6. GLOBAL STATEMENTS IN SUPPORT OF DECRIMINALISATION

6.1 International Bodies

States should respect international human rights standards, including by reviewing, repealing and establishing a moratorium on the application of:

- *Laws that criminalize same-sex conduct between consenting adults;*
- *Laws that criminalize transgender people on the basis of their gender expression;*
- *Other laws used to arrest, punish or discriminate against people on the basis of their sexual orientation, gender identity or gender expression.*²⁸⁶

Joint UN statement on Ending violence and discrimination against lesbian, gay, bisexual, transgender and intersex people
September 2015

Studies show that gay and lesbian people suffer disproportionate discrimination and abuse. They are rejected by their families... kicked out of their homes ... and pushed out of school. Too many of our LGBT brothers and sisters are jobless, homeless and struggling to survive.

The situation of transgender people is even worse overall. They have higher rates of homelessness, poverty and hunger.

*I stand with the gay teen who is bullied... the transgender woman denied work ... the lesbian subjected to vicious sexual assault.... When the human rights of LGBT people are abused, all of us are diminished. Every human life is precious - none is worth more than another.*²⁸⁷

UN Secretary General Ban Ki-Moon
29 September 2015

*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 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.*²⁸⁸

UN Secretary General Ban Ki-Moon
2012

²⁸⁶ Joint UN statement on Ending violence and discrimination against lesbian, gay, bisexual, transgender and intersex people (29 September 2015), available at:

http://www.ohchr.org/Documents/Issues/Discrimination/Joint_LGBTI_Statement_ENG.PDF. The joint UN statement on 'Ending Violence and Discrimination against Lesbian, Gay, Bisexual, Transgender and Intersex People' has been endorsed by 12 UN entities: the International Labor Organization (ILO), the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Joint United Nations Programme on HIV/AIDS (UNAIDS) Secretariat, the United Nations Development Programme (UNDP), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Population Fund (UNFPA), the United Nations High Commissioner for Refugees (UNHCR), the United Nations Fund for Children (UNICEF), the United Nations Office on Drugs and Crime (UNODC), UN Women, the World Food Programme (WFP) and the World Health Organization (WHO).

²⁸⁷ Secretary-General's remarks at the High Level LGBT Core Group Event 'Leaving No-One Behind: Equality & Inclusion in the Post-2015 Development Agenda', 29 September 2015, available at:

<http://www.un.org/sg/statements/index.asp?nid=9064>

²⁸⁸ 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>.

*Governments have a duty to protect people from prejudice, not to add to it. Public hostility towards gay and lesbian people can never justify violating their fundamental human rights. Instead, it requires increased measures to protect them against human rights violations. This has been reaffirmed by UN human rights mechanisms and the African Commission on Human and Peoples' Rights.*²⁸⁹

UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein
Geneva, 20 November 2014

*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.*²⁹⁰

Former UN High Commissioner for Human Rights, Navanethem Pillay
International Forum on the International Day Against Homophobia and Transphobia
The Hague, 16 May 2013

Commonwealth

*Lesbian, gay, bisexual, transgender and intersex (LGBTI) Commonwealth citizens remain victims of stigma and discrimination in many of our communities. Appalling persecution and violence are suffered merely because of innate sexual orientation and gender identity. Such abuse is unacceptable: it robs millions of our fellow citizens of the right to live lives of dignity, undermining their mental and physical health, and sense of well-being. It leads to social estrangement, ostracism and isolation, and economic marginalisation. It flies in the face of our core values of equality and non-discrimination.*²⁹¹

Statement by Commonwealth Secretary General, Kamalesh Sharma
International Day against Homophobia, Transphobia and Biphobia
15 May 2015

*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.*²⁹²

Statement by Commonwealth Secretary General, Kamalesh Sharma
30 January 2014

²⁸⁹ The Gambia: Zeid criticizes harsh legal amendment, violence and arrests targeting gay men and lesbians, 20 November 2014, available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15318&LangID=E#sthash.9liGuUZE.dpuf>

²⁹⁰ Available at: <http://www.un.org/sg/statements/?nid=6822>

²⁹¹ Statement by: Commonwealth Secretary-General, Kamalesh Sharma for International Day against Homophobia, Transphobia and Biphobia 2015, available at:

<http://thecommonwealth.org/media/news/international-day-against-homophobia-transphobia-and-biphobia>

²⁹² '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>

*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.*²⁹³

Commonwealth Secretary General, Kamallesh Sharma
High-Level Segment of the UN Human Rights Council, 28 February 2013

*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.*²⁹⁴

Commonwealth Secretary General, Kamallesh Sharma
2011 Commonwealth People's Forum

*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.*²⁹⁵

The Commonwealth Eminent Persons Group (EPG)
2011

²⁹³ 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>

²⁹⁴ Commonwealth Secretary General, Kamallesh Sharma's Commonwealth People's Forum Opening Speech, 25 October 2011, available at: <http://theCommonwealth.org/media/news/Commonwealth-peoples-forum-opening-speech>

²⁹⁵ 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>)

Europe

*The EU stands together with LGBTI people all around the world in the struggle to end discrimination on the grounds of sexual orientation and gender identity. All human beings are equal in dignity and all are entitled to enjoy their rights as enshrined in the Universal Declaration of Human Rights.*²⁹⁶

EU High Representative for Foreign Affairs and Security Policy, Federica Mogherini
17 May 2015

*The UK would like to see the Commonwealth do more to promote the rights of its lesbian, gay, bisexual and transgender citizens. It is wrong in our view that these groups continue to suffer persecution, violence and discrimination within the Commonwealth and that many members still have laws criminalising homosexuality.*²⁹⁷

British Foreign Secretary, William Hague
2011 Commonwealth People's Forum

*There 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.*²⁹⁸

High Representative of the European Union for Foreign Affairs and Security Policy and Vice-President of the Commission, Catherine Ashton
Statement to the European Parliament, 28 September 2011

Americas

The OAS has repeatedly condemned human rights violations based on sexual orientation and gender identity since 2008 and invited states to adopt measures to eliminate them.²⁹⁹ The annual resolutions of the OAS on this issue began expressly referencing decriminalisation of homosexuality in 2012.

In the 2013 *Resolution on Human Rights, Sexual Orientation and Gender Identity*, member states of the OAS unanimously agreed:

²⁹⁶ Declaration by the High Representative, Federica Mogherini, on behalf of the European Union on the occasion of the International Day Against Homophobia, Transphobia and Biphobia, 17 May 2015, available at:

http://eeas.europa.eu/statements-eeas/2015/150517_01_en.htm

²⁹⁷ William Hague, British Foreign Secretary, 'Vision for a stronger Commonwealth: An even greater force for human rights, democracy and prosperity', Foreign Secretary William Hague's address to the Commonwealth People's Forum in Perth, Australia, 27 October 2011. Available at:

<https://www.gov.uk/government/speeches/vision-for-a-stronger-commonwealth-an-even-greater-force-for-human-rights-democracy-and-prosperity>

²⁹⁸ 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

²⁹⁹ 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.

THE GENERAL ASSEMBLY ... RESOLVES:

1. *To condemn all forms of discrimination against people by reason of their sexual orientation and gender identity or expression, and to urge the states within the parameters of the legal institutions of their domestic systems to eliminate, where they exist, barriers faced by lesbians, gays and bisexual, transsexual, and intersex (LGBTI) people in equal access to political participation and in other areas of public life, and to avoid interferences in their private life.*

...

3. *To condemn acts of violence and human rights violations committed against people by reason of their sexual orientation and gender identity or expression; and to urge states to strengthen their national institutions with a view to preventing and investigating these acts and violations and ensuring due judicial protection for victims on an equal footing and that the perpetrators are brought to justice.*³⁰⁰

Organization of American States
Resolution on Human Rights, Sexual Orientation and Gender Identity Expression
5 June 2014

Africa

*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. Violence is not justified under any circumstances or ground.*³⁰¹

Chair, African Commission on Human and Peoples' Rights
International Conference on Human Rights, Sexual Orientation and Gender Identity, Catherine
Atoki
Oslo, 16-25 April 2013

The African Commission recently noted the increasingly prevalent forms of violence against LGBT people in Africa and issued its first resolution on the rights of LGBT peoples stating that it:

1. **Condemns** the increasing incidence of violence and other human rights violations, including murder, rape, assault, arbitrary imprisonment and other forms of persecution of people 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 people on the basis of their imputed or real sexual orientation or gender identity;

³⁰⁰ Organization of American States, *Human Rights, Sexual Orientation and Gender Identity Expression*, AG/RES. 2807 (XLIII-O/13) 6 June 2013.

³⁰¹ 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>

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 people on the basis of their imputed or real sexual orientation or gender identities, ensuring proper investigation and diligent prosecution of perpetrators, and establishing judicial procedures responsive to the needs of victims.

African Commission on Human and Peoples' Rights
Resolution 275

Resolution on Protection Against Violence and other Human Rights Violations against People
on the Basis of their Real or Imputed Sexual Orientation or Gender Identity
Adopted, 55th Ordinary session, Luanda, Angola, May 2014

6.2 Religious Leaders and Organisations

The most vocal opponents of decriminalisation are often from religious quarters. However, the breadth of religious views on LGBT issues, including those originating from the Global South, is often not fully represented or appreciated.

The Anglican Communion

- Retired Archbishop of Cape Town Desmond Tutu has made a number of statements challenging stigma and discrimination on the basis of sexual orientation and calling for homosexuality to be decriminalised:

*It isn't that it's questionable when you speak up for the right of people with different sexual orientation. People took some part of us [during apartheid] and used it to discriminate against us. In our case, it was our ethnicity; it's precisely the same thing for sexual orientation. People are killed because they're gay...*³⁰²

Interview with *Charisma News*
September 2013

*I would refuse to go to a homophobic heaven.... I would not worship a God who is homophobic and that is how deeply I feel about this.*³⁰³

Statement at the launch of the United Nations Free and Equal campaign South Africa, July
2011

³⁰² *Charisma News*, 'Desmond Tutu Talks Gay Rights, Middle East and Pope Francis', 16 September 2013.

Available at: <http://www.charismanews.com/world/41002-desmond-tutu-talks-gay-rights-middle-east-and-pope-francis>

³⁰³ BBC, 'Archbishop Tutu "would not worship a homophobic God"', 26 July 2013. Available at: <http://www.bbc.co.uk/news/world-africa-23464694>

*All over the world, lesbian, gay, bisexual and transgender people are persecuted. They face violence, torture and criminal sanctions because of how they live and who they love. We make them doubt that they too are children of God - and this must be nearly the ultimate blasphemy.*³⁰⁴

UN High Level Panel on Ending Criminal Laws and Violence
2010

*I have no doubt that in the future, the laws that criminalise so many forms of human love and commitment will look the way the apartheid laws do to us now - so obviously wrong.*³⁰⁵

- Christopher Ssenyonjo, who retired in 1999 as the second Bishop of West Buganda in Uganda, called for the global decriminalisation of homosexuality during an informal interactive panel discussion at the UN in New York on 8 April 2011:

*The criminalisation of homosexuality remains the most significant barrier that needs to be dismantled to reduce the spread of AIDS... We need to ask if our laws or beliefs help or prevent the spread of HIV and hinder or support families caring for loved ones. Over 80 countries still criminalise homosexuality and see it as a crime against God and nature. Denying people their humanity puts us all at risk because AIDS spreads fast in the darkness of ignorance.*³⁰⁶

- In 2010, the Anglican Bishops of Southern Africa issued a joint statement opposing the sentencing of two gay men in Malawi to 14 years imprisonment for 'unnatural acts' and 'gross indecency'. They denounced the sentence as a 'gross violation of human rights' inconsistent with the teachings of the Scriptures 'that all human beings are created in the image of God and therefore must be treated with respect and accorded human dignity' adding:

*Though there is a breadth of theological views among us on matters of human sexuality, we are united in opposing the criminalisation of homosexual people... we appeal to law-makers everywhere to defend the rights of these minorities.*³⁰⁷

- In October 1957 the then Archbishop of Canterbury, Dr Geoffrey Fisher, supported the conclusions of the Wolfenden Committee and its conception of privacy. He stated:

³⁰⁴ Archbishop Desmond Tutu, Statement at UN High Level Panel on Ending Criminal Laws and Violence, 2010

³⁰⁵ 'A call to action for comprehensive HIV services for men who have sex with men', *The Lancet*, Vol. 380 No. 9839 pp 424-438 at page 428.

³⁰⁶ *San Diego Gay & Lesbian News*, 'Bishop Christopher Senyonjo [sic] of Uganda speaks at UN gathering today', 8 April 2011. Available at: <http://sdgln.com/news/2011/04/08/bishop-christopher-senyonjo-uganda-speaks-un-gathering#sthash.UK5Lbv3E.dpuf>

³⁰⁷ Statement by the Anglican Bishops in Southern Africa, 'The Imprisonment of Stephen Monjeza and Tiwonge Chimbalanga', 26 May 2010, available at: <http://archbishop.anglicanchurchsa.org/2010/05/imprisonment-of-stephen-monjeza-and.html>

There is a sacred realm of privacy... into which the law, generally speaking, must not intrude. This is a principle of the utmost importance for the preservation of human freedom, self-respect and responsibility.

- In a lecture to the World Council of Churches Ecumenical Centre in February 2012, then Archbishop of Canterbury, Dr Rowan Williams noted the ‘consistent support of the Anglican Communion, in successive international meetings at the highest level’ for legislative enactments protecting sexual minorities from violence and intimidation. He argued that laws were necessary to ensure the full recognition of sexual minorities’ shared humanity.³⁰⁸ He stated that:

[t]he existence of laws discriminating against sexual minorities as such can have no justification in societies that are serious about law itself. Such laws reflect a refusal to recognise that minorities belong, and they are indeed directly comparable to racial discrimination. ... Many societies would now recognise that legal interference with some sorts of consensual sexual conduct can be both unworkable and open to appalling abuse (intimidation and blackmail). This concern for protection from violence and intimidation can be held without prejudging any moral question.

- In a House of Lords debate in October 2012, the Bishop of Leicester, the Rt Revd Timothy Stevens, called on all countries to end criminalisation:

If criminalisation [of private sexual conduct of consenting adults] leads, as it evidently does, to gay people concealing their own identity, that must be wrong; if criminalisation leads to many living in fear, that must be wrong; if criminalisation leads to the prospect of persecution, arrest, detention and death, that must be wrong; and if criminalisation means that LGBT people dare not turn to the state when facing hate crimes and violence, that must be wrong too.

- However, the Church of England has consistently fallen short of an outright condemnation of criminalisation or LGBT persecution worldwide or in the Commonwealth. The present Archbishop of Canterbury, the Most Reverend Justin Welby, speaking in a House of Lords debate on 3 June 2013, stated that the Anglican Church has not served the LGBT communities in the way it should:

³⁰⁸ Archbishop of Canterbury, Dr Rowan Williams, ‘Human Rights and Religious Faith’, World Council of Churches Ecumenical Centre in Geneva, 28 February 2012, available at: <http://rowanwilliams.archbishopofcanterbury.org/articles.php/2370/human-rights-and-religious-faith>

*(...) it is also absolutely true that the church has often not served the LGBT communities in the way it should. I express my sadness and sorrow for that considerable failure...It is also necessary to express, as has been done already, total rejection of homophobic language, which is wrong and, more than that, sickening.*³⁰⁹

Catholicism

The Catholic Church has expressed its opposition to the criminalisation of homosexuality:

- On 3 April 2014, Peter Turkson, a Vatican Cardinal and leader of the Pontifical Council for Justice and Peace in Ghana, criticised Uganda's anti-gay laws, saying: '*homosexuals are not criminals.*'³¹⁰
- Pope Francis declared in a 2013 interview, in the context of the role of the Catholic Church and homosexuality, that:

*If a homosexual person is of good will and is in search of God, I am no one to judge ... Religion has the right to express its opinion in the service of the people, but God in creation has set us free: it is not possible to interfere spiritually in the life of a person.*³¹¹

- On 21 May 2013, Gabriel Malzaire, Bishop of Roseau, Dominica stated:

*I wish to make it clear that the Catholic Church in Dominica adheres to the call of the Holy See in its statement to the 63rd session of the General Assembly of the United Nations on the Declaration of Human Rights, sexual orientation and gender identity, 'to condemn all forms of violence against homosexual people as well as to urge all States to take necessary measures to put an end to all criminal penalties against them'. The Catholic Church maintains that free sexual acts between adult people must not be treated as crimes to be punished by civil authorities.*³¹²

- On 10 December 2009, Philip J. Bené, Legal Attaché to the Permanent Observer Mission of the Holy See to the United Nations, issued a statement at a panel meeting of the UN General Assembly on Human Rights Day, stating:

³⁰⁹ Archbishop of Canterbury, House of Lords Debate, 'Marriage (Same Sex Couples) Bill', 3 Jun 2013, col 953, available at: <http://www.publications.parliament.uk/pa/ld201314/ldhansrd/text/130603-0001.htm#13060312000342>

³¹⁰ Fox News, 'Vatican cardinal criticizes Uganda's anti-gay law but urges continued international aid', 8 April 2014. Available at: <http://www.foxnews.com/world/2014/03/04/vatican-cardinal-criticizes-uganda-anti-gay-law-but-urges-continued/>

³¹¹ Spadaoro, A.S.J, *America: The National Catholic Review, A Big Heart Open to God: the Exclusive interview with Pope Francis*, 30 September 2013 available at <http://americamagazine.org/pope-interview>

³¹² Commentary: 'Decriminalization of homosexuality - what it means for the Catholic Church in Dominica'. Available at: <http://dominicnewsonline.com/news/homepage/features/commentary/commentary-decriminalization-of-homosexuality-what-it-means-for-the-catholic-church-in-dominica/>

*[The Holy See] opposes all forms of violence and unjust discrimination against homosexual people, including discriminatory penal legislation which undermines the inherent dignity of the human person. ... [T]he murder and abuse of homosexual people are to be confronted on all levels, especially when such violence is perpetrated by the State... we continue to call on all States and individuals to respect the rights of all people and to work to promote their inherent dignity and worth.*³¹³

- On 22 March 2011, Archbishop Silvano M. Tomasi, Permanent Representative of the Holy See to the United Nations, delivered an address at the 16th Session of the UN Human Rights Council, which met to consider the topic of sexual orientation. He declared that:

*[The Vatican affirms] the inherent dignity and worth of all human beings.... A state should never punish a person or deprive a person of the enjoyment of any human right based just on the person's feelings and thoughts, including sexual thoughts and feelings.... We wish to call attention to a disturbing trend in some of these social debates [on sexual orientation and gender identity]: People are being attacked for taking positions that do not support sexual behaviour between people of the same sex. When they express their moral beliefs or beliefs about human nature, which may also be expressions of religious convictions, or state opinions about scientific claims, they are stigmatized, and worse - they are vilified, and prosecuted.....These attacks contradict the fundamental principles announced in three of the Council's resolutions of this session. The truth is, these attacks are violations of fundamental human rights, and cannot be justified under any circumstances.*³¹⁴

Other Christian denominations

- In April 2014, senior pastor of the Riruta United Methodist Church in Kenya, pastor John Makokha, invited the LGBT community to join his church stating:

*Gays and lesbians are children of God and created in his image... they should be accepted and affirmed as such. They deserve a place to worship and serve God.*³¹⁵

- Following recent litigation in Jamaica challenging laws criminalising homosexuality, senior Christian theologians have written opinion-editorials reminding local Christians of the need to respect the secular nature of Jamaican society. Dr Clinton Chisholm wrote:

³¹³ Statement of the Holy See Delegation at a panel meeting of the UN General Assembly (10 December 2009).

³¹⁴ Statement by Archbishop Silvano M. Tomasi, Permanent Representative of the Holy See to the United Nations in Geneva at the 16th Session of the Human Rights Council – General Debate Geneva, 22 March 2011, available at: http://en.radiovaticana.va/news/2011/03/22/vatican_addresses_un_debate_on_sexual_orientation/en1-471925

³¹⁵ *The Washington Post*, 'Amid widespread discrimination, he ministers to Nairobi's gays and lesbians', (30 April 2014). Available at: http://www.washingtonpost.com/national/religion/amid-widespread-discrimination-he-ministers-to-nairobis-gays-and-lesbians/2014/04/30/961903b2-d08a-11e3-a714-be7e7f142085_story.html

*The homosexual does not cease being a human person by his/her homosexuality, nor does the adulterer by his adultery, nor the liar by her lies. Holding firmly to the view that God's normative sexual standard is one man with one woman in the context of marriage does not entail 'looking down on' or treating as 'less than' those who are sexually contrary to God's norm.*³¹⁶

Similarly, Dr Garnett Roper, Head of the Jamaica Theological Seminary, has been reported as saying:

*(...) in a society governed by the rule of law, one group cannot foist its belief on others without regard for the human rights to which citizens are entitled.*³¹⁷

An Anglican priest in Kingston, the Rev. Sean Major-Campbell, wrote an article in a leading Jamaican paper in June 2015, stating:

*Sexuality is a justice issue. Sexuality is a human-rights issue. Gender concerns are at the heart of how people live and move and have their being.*³¹⁸

In December 2014 Rev. Major-Campbell had reportedly received a 'backlash from his congregation' after washing the feet of two lesbians to show respect for the LGBT community.³¹⁹

Islam

None of Islam's major branches have yet distinguished between the Koran's apparent injunction against homosexuality and the religious implications of laws criminalising homosexuality. However, several progressive Islamic organisations have taken a different approach.³²⁰

For example, the Al-Fatiha Foundation and the Progressive Muslim Union of North America both argued that these laws are incompatible with the values of tolerance and love espoused by Mohammed.³²¹ In March 2008, Siti Musdah Mulia, Islamic scholar and Chair of the Indonesian Conference of Religions and Peace stated:

³¹⁶ Chisolm, C., 'A Radical Suggestion for Jamaican Christians', *The Gleaner*, 15 July 2013, available at <http://jamaica-gleaner.com/gleaner/20130715/cleisure/cleisure4.html>

³¹⁷ Johnson, J., 'Roper Says Church Needs to Accept that Jamaica Is Secular', *The Gleaner*, 27 June 2013 available at <http://jamaica-gleaner.com/latest/article.php?id=46057>

³¹⁸ Major-Campbell, S., 'Sexuality is a justice issue', (*The Gleaner*, 3 June 2015), <http://jamaica-gleaner.com/article/commentary/20150603/sexuality-justice-issue>

³¹⁹ Duffy, N., 'Jamaican priest washes the feet of lesbians and calls for "respect" for human rights', (Pink News, 10 December 2014) <http://www.pinknews.co.uk/2014/12/10/jamaican-priest-washes-the-feet-of-lesbians-and-calls-for-respect-for-human-rights/>

³²⁰ Habib, S., *Islam and Homosexuality (in two volumes)* (2009) Oxford: Praeger

³²¹ *Teaching Against Islamophobia*, ed. Kincheloe, J., Steinberg, S and Stonebanks, C. (2010): 192

*Homosexuality is from God and should be considered natural... In the eyes of God, people are valued based on their piety. The essence of the religion (Islam) is to humanise humans, respect and dignify them.*³²²

Judaism

3 of the 4 major Jewish traditions support decriminalisation. Reform Judaism was the first to adopt this position when the Women of Reform Judaism passed a resolution calling for decriminalisation of homosexuality in 1969. The Union for Reform Judaism and the Central Conference of American Rabbis - the Reform movement's rabbinical council - then passed resolutions urging governments to decriminalise homosexuality in 1981.³²³

According to Reconstructionist Judaism, discrimination against LGBT people constitutes a violation of Jewish values, including justice, human dignity, inclusivity and caring for those who need protection.³²⁴

While Conservative or Masorti Judaism had traditionally taken a more ambivalent stance towards homosexuality, in 1990 the Rabbinical Assembly - the leading international assembly for Conservative Jewish rabbis - announced its support for 'full civil equality for gays and lesbians' and condemned all violence and discrimination against the LGBT community.³²⁵

Though the Orthodox tradition has yet to adopt an official position on the issue, a number of Orthodox leaders have argued that criminalisation of homosexuality is inconsistent with the Torah. In 2010 104 Orthodox leaders released a joint statement, saying that:

*Embarrassing, harassing or demeaning someone with a homosexual orientation or same-sex attraction is a violation of Torah prohibitions that embody the deepest values of Judaism.*³²⁶

6.3 International Legal Associations

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 adopted a policy favouring the global repeal of criminal laws imposing penalties against people with respect to consensual, adult, private sexual conduct.³²⁷

³²² *The Jakarta Post*, 'Islam recognizes homosexuality', (28 March 2008)

³²³ Union for Reform Judaism (then Union of American Hebrew Congregations) 45th General Assembly, (November 1977) San Francisco; 'Rights of Homosexuals', 88th Annual Convention of the Central Conference of American Rabbis (1977)

³²⁴ *Homosexuality and Judaism: The Report of the Reconstructionist Commission on Homosexuality*, 1993

³²⁵ Proceedings of the Rabbinical Assembly 52 (1990): 275

³²⁶ Statement of Principles on the Place of Jews with a Homosexual Orientation in Our Community (July 2010)

³²⁷ 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]

In 2009, the Commonwealth Lawyers Association (**CLA**) endorsed a resolution on the decriminalisation of adult consensual sexual conduct in the Commonwealth.³²⁸ The CLA also set out the case for decriminalisation throughout the Commonwealth in a paper presented at a meeting of senior officials of Commonwealth Law Ministries in October 2010:

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...

...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.³²⁹

In 2009, the CLA published an opinion on the constitutionality 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 stating:

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.³³⁰

³²⁸ 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>

³²⁹ Commonwealth 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)

³³⁰ Opinion 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

7. THE COMMONWEALTH: OPPORTUNITIES

7.1 The Commonwealth: Developments to Date

It is acknowledged that there are divisions within the Commonwealth around LGBT rights and there are limits to what the Commonwealth Institutions are able to achieve in the current climate. Efforts at prioritising decriminalisation universally across the Commonwealth have faced virulent resistance before:

- On 19 December 2012, at the margins of a UN General Assembly meeting, Foreign Ministers of all Commonwealth governments adopted recommendation 60 of the Commonwealth Eminent Persons Group that:

*Heads of Government should take steps to encourage the repeal of discriminatory laws that impede the effective response of CW countries to the HIV/AIDS epidemic, and commit to programmes of education that would help a process of repeal of such laws.*³³¹

However, the adoption of this recommendation was heavily qualified by an accompanying caveat that:

(...) member governments have the discretion to identify which, if any, laws are considered discriminatory, and the steps deemed appropriate to address these.

- The Commonwealth Charter, published on Commonwealth Day in March 2013, was a significant step forward in defining the Commonwealth's principles and values to the world. It encompasses 16 core values and principles of the Commonwealth including: human rights, democracy, tolerance, respect and understanding, and freedom of expression. The Charter also makes an express commitment in section 2 to 'equality for all without discrimination on any grounds', and mirrors international human rights standards from other key instruments such as the UDHR and the ICCPR by making the non-discrimination commitment applicable to discrimination not only on certain enumerated grounds but also expandable to 'other grounds'.³³² We should not underestimate the achievement in agreeing the Commonwealth Charter. However, it does disappoint on two fronts. First, it contains no express reference to non-discrimination on the grounds of sexual orientation, or to privacy rights. Second, the Charter is unenforceable as there are no recourse mechanisms or remedies available. The greatest challenge now for the Commonwealth is to give those words force.

In spite of this there has been some progress. The Commonwealth Secretary General, in particular, has recently been increasingly vocal on issues concerning LGBT rights:

³³¹ Commonwealth Secretariat, *A Commonwealth of the People: Time for Urgent Reform*, Report of the Eminent Persons Group to Commonwealth Heads of Government (2011), p. 168, Recommendation 60.

³³² This must include sexual orientation in accordance with international human rights law - See, 'Non-discrimination' and 'equality' in Section 4 above.

*Lesbian, gay, bisexual, transgender and intersex (LGBTI) Commonwealth citizens remain victims of stigma and discrimination in many of our communities. Appalling persecution and violence are suffered merely because of innate sexual orientation and gender identity. Such abuse is unacceptable: it robs millions of our fellow citizens of the right to live lives of dignity, undermining their mental and physical health, and sense of well-being. It leads to social estrangement, ostracism and isolation, and economic marginalisation. It flies in the face of our core values of equality and non-discrimination.*³³³

Commonwealth Secretary General, Statement on the International Day against Homophobia, Transphobia and Biphobia:

Further, a number of Commonwealth states have either decriminalised or strengthened their legislative frameworks around anti-discrimination providing greater protection for LGBT communities, or have at least indicated their willingness to consider taking such measures.

In light of this background and with renewed hope of greater progress with the inauguration of a new Secretary General, there are a number of ways that the UK government could advance this issue at CHOGM 2015.

7.2 Opportunities for the Commonwealth - Multilateral Engagement

Given the collective nature of the problem of criminalisation, the Commonwealth needs to work collectively to take concrete steps towards implementing the commitments and aspirations of the Charter, particularly in respect of equality and non-discrimination. The Commonwealth prides itself on being a values-based organisation and being wholeheartedly committed to human rights protection and promotion. The stigmatisation and discrimination of the Commonwealth's LGBT citizens is clearly contrary to these shared values.

Governments should use the Commonwealth as a political tool to help collectively solve global problems. One of the Commonwealth's greatest strengths is in continued dialogue.

Moreover, the Commonwealth is well positioned to facilitate the sharing of good practice and experience among its members. There are a number of initiatives and mechanisms that the Commonwealth could adopt in order to address issues concerning LGBT rights in a politically sensitive and collaborative way. These are outlined below:

a) Legislative Reform Across the Commonwealth

➤ Model Penal Code/Sexual Offences Framework

As described in more detail in section 6, wholesale legislative reform of pre-existing criminal laws is highly beneficial for states for numerous reasons. In particular, the process is a means to address the inadequate protection that the laws offer women and children, to tackle discriminatory laws such as those that criminalise consensual same-

³³³ Statement by: Commonwealth Secretary-General Kamallesh Sharma for International Day against Homophobia, Transphobia and Biphobia 2015, available at: <http://thecommonwealth.org/media/news/international-day-against-homophobia-transphobia-and-biphobia>

sex sexual conduct and to meet international legal obligations. Many states worldwide, including Commonwealth members, have already realised the value of legislative reform and undergone this process.

A Commonwealth Model Penal Code or Sexual Offences Framework would provide a comprehensive good practice guide for all member states considering legislative reform with respect to their criminal laws and the technical know-how to achieve that. The Commonwealth is well-placed to develop such a framework given the membership's shared historical, legal and administrative traditions, as well as the technical assistance capability of Commonwealth Institutions. Moreover, it could draw on the expertise and knowledge of those member states that have undergone the process of penal legislative reform.

➤ **Anti-Discrimination Legislation**

Legislative reform has not only been evident in the criminal sphere, but many states have also passed, or are considering developing, comprehensive anti-discrimination and equality legislation pertaining to areas such as employment, goods and services and education, among others. The enactment of anti-discrimination legislation has been a means to provide greater gender equality as well as protection for marginalised communities, such as LGBT people.

Recent examples include the *Equal Opportunities Act 2008* in Mauritius and the *Labour & Employment Relations Act 2013* in Samoa. To assist in replicating similar reforms across the Commonwealth, the Commonwealth Institutions could support national processes which are already undertaking or considering such legislation, providing technical assistance, as well as facilitating knowledge sharing among Commonwealth members. They could also highlight the economic benefits of inclusivity and non-discrimination.

b) Commonwealth Special Representative for Development and Human Rights

In October 2011, the Commonwealth's Eminent Persons Group (**EPG**) issued its report *A Commonwealth of the People: Time for Urgent Reform*.³³⁴ One of the EPG's 14 core recommendations was the appointment of a Commonwealth Commissioner for Democracy, the Rule of Law and Human Rights. The British, Australian and Canadian governments supported the appointment of a Commissioner. However, the recommendation proved controversial and was ultimately shelved because the Commonwealth member states could not reach a consensus.

Many of the reasons articulated in favour of a Commissioner still resonate strongly today. Since 2011, human rights standards in the Commonwealth have continued to be a cause for alarm. Yet, the Commonwealth Ministerial Action Group (**CMAG**) has failed to hold members accountable for past actions and has not fulfilled its professed role as a human rights champion.

³³⁴ The Report of the Eminent Persons Group to Commonwealth Heads of Government, *A Commonwealth of the People: Time for Urgent Reform*, Perth October 2011.

There has never been a greater need for an independent expert to better advise Commonwealth mechanisms on human rights issues. In sum, the Commonwealth has not been able to hold its Member States to their collective core human rights commitments because its current mechanisms are not adequate for protecting human rights and it does not use the mechanisms it has to optimum effect. Experience shows that in the absence of an independent entity able to keep human rights under review the promise of the new Charter, adopted in December 2012, will remain unfulfilled.³³⁵

We should reflect on the possibility that the appointment of an effective Commissioner might have better helped defend the asserted values of the Charter and given hope to prisoners and others looking to the Commonwealth to be what it claims to be: an organisation that takes very seriously arguable violations of the fundamental human rights of Commonwealth citizens.

The Hon. Michael Kirby AC CMG
Can the Commonwealth Survive? A Dismal Story of Human Rights and Human Wrongs,
London, 21 April 2015

The key arguments leveled against the Commissioner recommendation are addressed below. Although these objections were the concerns of a number of member states, each is surmountable and they do not provide convincing enough reasons to reject a further proposal.

- **Development:** The most common counter-argument was that economic development should be seen as a greater priority and should precede any considerations around human rights. What this fails to take into account is that development and human rights are inextricably linked. As we have seen in Section 3.2e, the elimination of discrimination and the protection of rights are critical to sustained economic growth and poverty elimination.

An appointed special representative could apply a rights-based approach to development thus augmenting the development goals of the Commonwealth. To allay fears that development concerns would be overlooked, the special representative's title could make this explicit. The EPG's proposal in 2011 that the Commissioner be titled '*the Commissioner for Democracy, the Rule of Law and Human Rights*', was subject to criticism. A new title such as '*the Special Representative for Development and Human Rights*', is more succinct and marries the two goals of development and human rights.

- **Sovereignty:** These concerns focused on the potential for the Commissioner to interfere in the sovereign domestic affairs of member states. This is a mischaracterisation. A special representative would hold states accountable to the principles that they have already signed up to, namely the Commonwealth

³³⁵ CHRI 2013 CHOGM Report, *The Missing Link - A Commonwealth Commissioner for Human Rights*, (Commonwealth Human Rights Initiative, 2013). Available at: http://www.humanrightsinitiative.org/programs/CHOGM/The_Missing_Link_Report.pdf

Charter. A special representative would therefore by no means illegitimately interfere in domestic affairs.

- **Cost:** It is unreasonable to suggest that a special representative would be an unfeasible financial burden as any cost implications would be far outweighed by the benefits of a special representative. Concerns around the funding of the post of a Commissioner were to a great extent unjustified as a large proportion of the running costs would have been met from efficiency savings within the Secretariat, and the majority of any additional funding would have likely been provided by the four major donors: UK, Australia, Canada and New Zealand.³³⁶
- **Duplication:** A special representative would not be a replication of other functions undertaken by the Secretary General or the CMAG, but serve as a much needed complement. A special representative would likely reduce the onerous responsibilities placed upon the Secretary-General, enabling them to focus on core functions. The post would also call the Secretary General's attention to serious or persistent violations of Commonwealth values, strengthening their ability to respond effectively. Equally, a special representative would have the expertise and facilities to ensure that the CMAG was given an early warning of human rights violations, allowing the Commonwealth to provide timely help to member states when there were signs that Commonwealth values were at risk.

The last few years have shown that what is surely indisputable is the need for the Secretary-General and CMAG to have greater support and technical capacity available to them to investigate and report on areas of concern. A special representative would offer that support and strengthen the Commonwealth's ability to hold itself accountable to its values and monitor and respond to crises in a timely fashion.

c) **CHOGM Forums**

In view of the lack of Commonwealth consensus on decriminalisation and LGBT rights in general, formal multilateral government engagement on these sensitive issues has been difficult and polarised at times. However, formal discussion mechanisms within the Commonwealth, the CHOGM Forums, provide an alternative outlet and opportunity for governments to discuss sexual orientation and gender identity issues. The CHOGM forums have been a key channel through which these issues have been brought up before.

- The Commonwealth Youth Forum has raised concerns about LGBT rights repeatedly since 2005. In 2013, the Ninth Commonwealth Youth Forum declared:

*There is a lack of involvement of marginalized young people in rural and isolated areas and LGBTIQ communities of young people in Sexual and Reproductive Health and Rights programme planning and implementation. The inclusion of the LGBTIQ community and marginalised young people will ensure a culture of inclusivity and sustainability.*³³⁷

³³⁶ House of Commons Foreign Affairs Committee, *The role and future of the Commonwealth*, (Fourth Report of Session 2012–13, 1 November 2012), at EV 86. Available at:

<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmfa/114/114.pdf>

³³⁷ Ninth Commonwealth Youth Forum, *Declaration by the young people of the Commonwealth*, (November 2013). Available at: <http://thecommonwealth.org/sites/default/files/news-items/documents/9th%20Commonwealth%20Youth%20Forum%20-%20Youth%20Declaration.pdf>

- In 2011, the UK Foreign Secretary raised the issue of LGBT rights during the People’s Forum. The People’s Forum Civil Society Statement for that year called on member states to:

*Commit to programmes that mitigate the HIV and AIDS pandemic, including decriminalising same-sex sexual conduct, repealing all laws that impede an effective response and ensuring that all citizens have equal rights and protection, regardless of sexual orientation, marital status, gender, age, race, religion and disability, so as to ensure the health and wellbeing of its citizens.*³³⁸

- In 2007, representatives of Commonwealth civil society recommended at the Commonwealth People’s Forum in Kampala that minority issues, such as gay and lesbian people, be placed on the Commonwealth agenda.³³⁹

The CHOGM Forums thus provide a suitable platform to raise concerns about the rights and treatment of LGBT people. They have the potential to influence the broader Commonwealth agenda and provide an opportunity for engagement with wider civil society, which is important in order to bring about broader cultural change. The CHOGM Forums in Malta 2015 are likely to be particularly significant for a number of reasons:

- The Youth Forum has dedicated part of its agenda to focusing on human rights.
- The new Women’s Forum will have a presentation on the health of LBT women.
- The People’s Forum is hoping to facilitate policy dialogue sessions.

7.3 The Commonwealth: region by region

REGION	NUMBER OF COUNTRIES	COUNTRIES
Caribbean	11	Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines and Trinidad and Tobago.
Pacific	7	Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tonga and Tuvalu.
Africa	14	Botswana, Cameroon, Ghana, Kenya, Malawi, Mauritius, Namibia, Nigeria, Seychelles, Sierra Leone, Swaziland, Tanzania, Uganda and Zambia.
Asia	8	Bangladesh, Brunei Darussalam, India, Malaysia, Maldives, Pakistan, Singapore, and Sri Lanka.

³³⁸ Commonwealth People’s Forum, *Commonwealth Civil Society Statement: Presented to Commonwealth Heads of Government, Perth, Australia 2011*, (2011). Available at: http://www.commonwealthfoundation.com/sites/cwf/files/downloads/Commonwealth_Civil_Society_Statement_2011.pdf

³³⁹ Commonwealth People’s Forum, 2007. Kampala Civil Society Statement to the 2007 Commonwealth Heads of Government Meeting. Commonwealth Foundation, 2007 (para. 97e). Available at: http://www.ituc-csi.org/IMG/pdf/CPF_summary_Report_Final_Version.pdf

These regional groupings share close political, legal, socio-cultural and economic relations or characteristics, to varying extents. On one view, reform in one or two countries may be all that is needed to initiate a domino effect or take advantage of an inevitable tide within the broader region where there is a sense of common values.

Caribbean

- The Bahamas decriminalised homosexuality through legislative repeal in 1991.³⁴⁰
- The governments of Belize, Guyana and Saint Kitts and Nevis have all indicated a willingness to consider and examine their laws criminalising homosexuality.³⁴¹
- A number of Caribbean states have either implemented or accepted recommendations on measures to protect sexual minorities, or are currently considering such measures.³⁴²
- A number of Caribbean countries including Barbados, Saint Kitts and Nevis and Saint Lucia³⁴³ have undertaken sensitivity training courses for law enforcement officers and other civil service departments, intending to bring about a greater understanding of sexual orientation.
- A judgment is pending in Belize on a challenge to its criminal laws on consensual same-sex sexual activity. Two cases against Jamaica are pending at the Inter-American Commission on Human Rights. Favourable decisions in these courts and tribunals are likely to have an impact across the Caribbean.
- Encouraging statements have emerged from political leaders in Barbados,³⁴⁴ Belize³⁴⁵ and Saint Kitts and Nevis.³⁴⁶

³⁴⁰ See section 5 for further details.

³⁴¹ See Country Overviews in Annex A.

³⁴² The government of Barbados has accepted UPR recommendations to implement measures which would protect sexual minorities from violence and abuse; Belize's National Gender Policy 2013 includes a reference to respect for diversity, including the acknowledgement of sexuality as a type of diversity; Grenada is considering passing legislation to protect against discrimination in the workplace based on sexual orientation; Guyana has pledged to put in place measures to ensure those marginalised, including because of their sexual orientation, are protected and not discriminated against; Saint Kitts and Nevis accepted UPR recommendations to take measures to combat discrimination on all grounds; Saint Lucia accepted UPR recommendations to condemn acts of violence against LGBT people - see Country Overviews in Annex A.

³⁴³ See Country Overviews in Annex A.

³⁴⁴ A press release of the Inter-American Commission on Human Rights from 2014 quoted Barbados' Prime Minister Freundel Stuart as supporting: '*the elimination of all forms of discrimination including discrimination against persons of differing sexual orientation*'. Available at:

http://www.oas.org/en/iachr/media_center/PReleases/2014/060.asp

³⁴⁵ *Belizean*, 'Belize PM Independence Day Speech: More Projects, Spending, Warning To Churches', (*Belizean* 21 September 2013) <<http://belizean.com/belize-pm-independence-day-speech-projects-spending-warning-churches-1690/#ixzz2fbPoRoBv>>

³⁴⁶ PANCAP, *Address by Prime Minister St Kitts- Nevis, Hon Dr. Timothy Harris, CARICOM Lead Head for Human Resources Health and HIV -Caribbean Launch of UNAIDS- Lancet Commission Report*, (3 July 2015), available at: <http://www.pancap.org/en/speeches-and-presentations/2601-address-by-prime-minister-st-kitts-nevis-hon-dr-timothy-harris-caricom-lead-head-for-human-resources-health-and-hiv-caribbean-launch-of-un aids-lancet-commission-report.html>

Pacific

- Fiji's new constitution, that was promulgated in September 2013, includes a provision prohibiting discrimination based on sexual orientation, gender identity and gender expression.³⁴⁷ The High Court of Fiji held in 2005 that criminalisation of homosexuality violated fundamental human rights. This is particularly notable given Fiji's influential position within the region.
- Nauru³⁴⁸ and Kiribati³⁴⁹ have indicated a willingness to review their laws criminalising homosexuality. Tonga³⁵⁰ and Tuvalu³⁵¹ have noted that they are open to discussions surrounding sexual orientation. Criminal and penal code reform initiatives are currently in progress in Nauru and the Solomon Islands.³⁵²
- A number of legislative changes affecting the rights of LGBT people have occurred in Samoa, including the decriminalisation of female impersonation and the addition of both sexual orientation and perceived or actual HIV status as protected grounds against discrimination in employment laws through the enactment of the *Labour & Employment Relations Act 2013*. In a further sign of the government's engagement on LGBT issues, the leading LGBT organisation in Samoa has been appointed a member of the country's newly formed advisory board to the National Human Rights Institute.
- Government representatives from both Tonga and Tuvalu attended the launch of the United Nations Pacific Campaign Against Homophobia and Transphobia.³⁵³

Africa

- In 2012 and 2014, respectively, Lesotho and Mozambique updated their sexual offences laws through legislative reform, decriminalising consensual same-sex sexual conduct.

³⁴⁷ A copy of the Constitution is available at: <http://www.fiji.gov.fj/Govt--Publications/Constitution.aspx>

³⁴⁸ Kaleidoscope Australia, *Press Release – Kaleidoscope Australia notes changing climate for international human rights for LGBTI people*, (19 March 2014)

³⁴⁹ UNHRC, *Report of the Working Group on the Universal Periodic Review Kiribati: Addendum Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review* (1 July 2015), UN Doc A/HRC/29/5/Add.1

³⁵⁰ The Tongan delegation stated during the 2013 Universal Periodic Review that: 'The decriminalisation of consensual sex between same sex adults is an issue that Tonga still wishes to consider further, through robust and comprehensive dialogue with a vast group of stakeholders.' See: UNHRC, *Report of the Working Group on the Universal Periodic Review* (3 June 2013) UN Doc A/HRC/23/4/Add.1, para. 9

³⁵¹ UNHRC, *Report of the Working Group on the Universal Periodic Review* (5 July 2013) UN Doc A/HRC/24/8, para. 17

³⁵² Solomon Islands Law Reform Commission, *Review of the Penal Code and Criminal Procedure Code: Second Interim Report – Sexual Offences*, (June 2013) <http://www.lawreform.gov.sb/files/reports/Final-sexual_offences_report_2013_v4_12_June.pdf> accessed on 21 August 2015

³⁵³ United Nations Office of the High Commissioner for Human Rights, *United Nations launches Pacific campaign against homophobia and transphobia*, 6 August 2015, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16298&LangID=E>

- The Seychelles has accepted recommendations from ally states to repeal all provisions in its domestic law criminalising consensual sexual activity between adults of the same sex.³⁵⁴
- Malawi accepted recommendations to take effective measures to protect LGBT people from violence and guarantee that they have effective access to healthcare services.³⁵⁵
- There have been progressive judicial decisions in Botswana and Kenya with respect to the freedom of LGBT people to associate³⁵⁶. Similar cases are on foot in other African jurisdictions.
- The High Court of Malawi is reviewing the constitutionality of the country's sodomy laws in relation to the cases of 3 individuals who were prosecuted in 2011. Criminal law reform is also a possibility in Malawi given the country's Law Commission is reportedly reviewing the provisions of the *Penal Code*³⁵⁷ which criminalise same-sex sexual relations in order to discern whether they violate the country's constitution.³⁵⁸
- The *Equal Opportunities Act 2008* came into force in Mauritius in 2012. The Act prohibits discrimination on a number of grounds including on the basis of sexual orientation.
- In 2015 Kenya accepted a UPR recommendation to adopt a comprehensive anti-discrimination law affording protection to all individuals, irrespective of their sexual orientation or gender identity.
- Botswana backed the African Commission's resolution on protection against violence and other human rights violations against people on the basis of their real or perceived sexual orientation or gender identity.³⁵⁹

³⁵⁴ Human Rights Council, *Report of the Human Rights Council on its Eighteenth Session*, UN Doc A/HRC/18/2, Para 363 (18 November 2011) <http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A.HRC.18.2.pdf> accessed 2 September 2015.

³⁵⁵ UN HRC, *Report of the Working Group on the Universal Periodic Review: Malawi*, (20 July 2015), UN Doc A/GRC/30/5

³⁵⁶ *Rammoge and Others v Attorney General of Botswana*, High Court of Botswana, Case no. MAHGB 175-13, Judgment 14 November 2014. The judgment is available at: www.southernafricalitigationcentre.org/1/wp-content/uploads/2014/11/LeGaBiBo-judgment-low-resolution.pdf; *Eric Gitari v Non-Governmental Organisations Co-Ordination Board and others* [2015] eKLR (Petition No. 440 of 2013) - Text of the judgment at: <http://kenyalaw.org/caselaw/cases/view/108412/>; *Republic v Non-Governmental Organizations Co-ordination Board & Another Ex-parte Transgender Education And Advocacy & 3 Others* [2014] EKL (Judgment of 23 July 2014), available at: <http://kenyalaw.org/caselaw/cases/view/100341/>

³⁵⁷ According to the 2nd Cycle UPR stakeholder report, but that the Law Commission was yet to take any significant action towards repealing those provisions. See: UNHRC, *Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21: Malawi* (10 February 2015) A/GRC/WG.6/22/MWI/3

³⁵⁸ Malawi Law Commission, Discussion Paper No. 11: 'Section 46 and others of the Penal Code; Injunctions Against the State; Searches by the Police Without Warrants; and the Local Courts Act, April, 2012'.

³⁵⁹ See, <http://www.gaystarnews.com/article/botswana-joins-international-call-protect-lgbti-human-rights170614/>; African Commission, *Resolution 275 on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity*,

- Mauritius supported the 2011 UN Human Rights Council resolution on human rights, sexual orientation and gender identity.³⁶⁰ Previously, the state had also supported the joint statement on human rights, sexual orientation and gender identity delivered at the UN General Assembly in December 2008 which was issued on behalf of 66 states from all 5 UN regions. Amongst other things, this statement urged states to take all the necessary measures ‘to ensure that sexual orientation or gender identity may under no circumstances be the basis for criminal penalties’.³⁶¹

Asia

- Following the decision of the Indian Supreme Court to overturn a landmark 2009 decision of the Delhi High Court declaring Section 377 of the Indian Penal Code unconstitutional, a number of political figures in India spoke out against the decision.³⁶²
- The Supreme Court of India’s judgment in *National Legal Services Authority v. Union of India* [Writ Petition (Civil) No. 400 of 2012] recognised the constitutional rights of transgender people. Following this, *The Rights of Transgender People Bill 2014* was passed by the upper house of the parliament with cross-party support. The bill deals with a number of different areas ranging from social inclusion, rights and entitlements, financial and legal aid and education, to prevention of abuse, violence and exploitation. The bill now has to be passed by the lower house of parliament and obtain presidential assent in order to become law.
- In 2013, the Bangladesh government legally recognised the Hijras population - a term used in South Asia to describe a feminine gender identity sometimes adopted by people born male or intersex - as being a ‘third sex’ for the purposes of obtaining a passport and voting.³⁶³
- In November 2014, the Putrajaya Court of Appeal of Malaysia declared a provision in the state’s Sharia law which criminalised ‘cross-dressing’ unconstitutional. However, this landmark decision was recently overturned by the

The African Commission on Human and Peoples’ Rights (the African Commission), meeting at its 55th Ordinary Session held in Luanda, Angola, from 28 April to 12 May 2014, available at:

<http://www.achpr.org/sessions/55th/resolutions/275/>

³⁶⁰ UNHRC Resolution 17/19: Human rights, sexual orientation and gender identity (14 July 2011),

A/HRC/RES/17/19

³⁶¹ UN General Assembly, *Letter dated 18 December 2008 from the Permanent Representatives of Argentina, Brazil, Croatia, France, Gabon, Japan, the Netherlands and Norway to the United Nations addressed to the President of the General Assembly*, (22 December 2008) UN Doc A/63/635 < <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/667/99/PDF/N0866799.pdf?OpenElement> >

³⁶² See Country Overview available at Annex A.

³⁶³ Pantha Rahman Reza, ‘Bangladesh’s Hijras Win Official Recognition as Separate Gender’, (*Global Voices*, 13 November 2013) <https://globalvoicesonline.org/2013/11/13/bangladeshs-hijras-win-official-recognition-as-separate-gender/>

Federal Court on a technicality citing improper procedures without considering the substance of the constitutional challenge.³⁶⁴

- In Sri Lanka a draft of a *Bill of Rights* exists, prepared by a committee reporting to the Ministry of Disaster Management and Human Rights, which expressly includes sexual orientation as a protected characteristic.³⁶⁵

³⁶⁴ Mayuri Mei Lin, 'Back to square one for transgenders as Federal Court overturns landmark ruling on Shariah law' (*Malay Online* 8 October 2015). <<http://www.themalaymailonline.com/malaysia/article/square-one-for-transgenders-as-federal-court-overturns-landmark-ruling-on-s#sthash.8HlhgpFM.GuaP8F7W.dpuf>> accessed 25 October 2015.

³⁶⁵ Ministry of Disaster Management and Human Rights, *Draft Bill of Rights, Article 12: Right to equality and freedom from discrimination*, (Secretariat for Coordinating the Peace Process) <<http://www.peaceinsrilanka.lk/human-rights/bill-of-rights-final-draft>> accessed 29 August 2015.

8. CONCLUSION

Ahead of CHOGM 2013, there was reason for optimism. Whilst the Anti-Homosexuality Bill was still hovering before the Ugandan Parliament, it was low down on the Order Paper and President Museveni had indicated to the international diplomatic community that this is where he intended it to stay. The Nigerian Same-Sex Marriage Prohibition Bill, which criminalised all aspects of LGBT identity, was caught up in procedural issues between the two chambers of the Nigerian Parliament. Caleb Orozco's case had been argued in Belize, and the human rights community was still basking in the glow of the decision of the Delhi High Court which decriminalised consensual intimacy between two men a few years earlier. That judgment was a model of human rights analysis. Visionary leadership was offered by the UN, and the Secretary General of the Commonwealth had constructively responded to the challenge and followed Ban Ki-moon's lead. Despite the hostility emanating from a number of countries that retained criminalisation, the trajectory towards ending the persecution of the LGBT community felt within reach.

However, within a month of that CHOGM, hope turned to gloom. The Indian Supreme Court reversed the decision of the Delhi High Court and re-criminalised homosexuality. The Ugandan Parliament voted for the Anti-Homosexuality Act. By the end of January 2014, the Nigerian law was passed and Jean-Claude Roger Mbede from Cameroon was dead. Having finally been released from prison for being gay - he was convicted of attempted homosexuality for sending a text telling a man he fancied him - his last months had been miserable and, from various accounts, his own family allowed him to die. His death was avoidable. And almost three years on from the court case, we are still waiting for a decision from Belize. At the same time countless LGBT people have been harassed and persecuted. They have been arrested, fired and driven from their homes. There have been deaths and suicides. The number of those claiming asylum because of their sexual orientation or gender identity continues to rise.

CHOGM offers an opportunity to turn the tide, and LGBT people across the Commonwealth look to world leaders to highlight their plight and seek to end their torment. We must take a stand on behalf of LGBT people everywhere. Of course we should be strategic in how we approach this issue, but silence is not an option. Silence gives tacit endorsement to LGBT persecution.

Homophobia and discrimination based on sexual orientation or gender identity are intolerable in any form. The criminalisation of homosexuality is more than discrimination. It represents an egregious violation of human rights. It is one of the worst forms of persecution we see today because it impacts onevery aspect of LGBT people's lives.

Criminalisation outlaws and outcasts people on the basis of their identity, on the basis of a core aspect of their selves that they cannot alter. By making a fundamental and inalienable aspect of their identity a prosecutable offence, criminalisation allows no space for the LGBT identity to exist and signals that LGBT people have no place in society, thus legitimising violence and persecution against them by both state and non-state actors. It divides communities, tears families apart and destroys any chance of these individuals being able to live freely. Criminalisation represents one of the greatest human rights atrocities we see today.

It is in the interest of criminalising countries to remove these laws which massively hinder their development as a whole, by exacerbating HIV epidemics, legitimising vigilantism and mob violence and stymying economic development by undermining human potential.

The picture in 2015 remains bleak. 40 of the 53 Commonwealth member countries cling on to this relic of British colonial rule. Wherever the British went they brought the laws criminalising homosexuality with them and these laws have remained unchanged in many cases. But there are green shoots of potential change in some parts of the Commonwealth, which the Commonwealth should encourage. For example, more multi-national businesses are criticising criminalisation, and are highlighting that criminalisation is bad for business.

Further welcome developments include that in the past 12 months we have seen legal victories in Kenya and Botswana, where the most basic right of freedom of association for LGBT people has been established. We should never underestimate the power to assemble. Further still, Mozambique decriminalised by reforming their penal code. It was an exemplary exercise in democracy. Supported by civil society, democratic institutions brought the criminal justice system up to date and systemic abuses of human rights were ended. Leaders at every level of Mozambique society should be celebrated.

However, it is crucial to note that these encouraging developments have something in common: courage. It takes courage to come to a judicial decision which reflects justice rather than popular opinion. It takes courage to enact legislation which may in the short term prove unpopular. And it takes courage to make a stand. The exceptionally brave and courageous LGBT activists across the Commonwealth who stand up for human rights are an inspiration to us all.

At CHOGM 2015, world leaders should amplify these voices by calling for the decriminalisation of homosexuality wherever it exists. They should demonstrate courage and leadership. CHOGM is the place to do this as this is predominantly a Commonwealth failing. We must all work even harder to overturn these laws, which hurt so many and make us all less free. We have seen the disastrous consequences of apathy. These criminalising laws are a remnant of what the Commonwealth used to be. Leading us all towards a more just, free and prosperous world can be what the Commonwealth stands for now.

Annex A

Country Overviews - Criminalising Commonwealth Jurisdictions

	Antigua & Barbuda	
<p>National Law:</p> <p><i>Sexual Offences Act 1995</i>¹</p> <ul style="list-style-type: none"> - S12: Buggery² - S15: Serious Indecency³ 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - 15 years' imprisonment - 5 years' imprisonment 	<p><u>Treaty Ratification</u></p> <p>CAT</p> <p>CEDAW</p> <p>CRC</p> <p>CEDAW OP</p>
<p>S12 is applicable only to men. S15 is applicable to both men and women.</p>		
<p>Enforcement</p>	<ul style="list-style-type: none"> - 2014: The US Department of State human rights report on Antigua and Barbuda found that 'the law [prohibiting consensual same-sex sexual activity] was not strictly enforced' during 2014.⁴ - 10 January 2014: A report of the Immigration and Refugee Board of Canada indicates that the law is not actively enforced in Antigua and Barbuda. A representative of the Coalition of Vulnerable Communities (CVC) and current worker in the government's Gender Affairs department stated that he was '<i>not aware of any recent arrests or prosecutions for consensual same-sex sexual acts between consenting adults under these laws</i>'. However, another respondent, a worker from the LGBTI rights group, MESH, indicated that some arrests have been made where two people were caught in public, but these individuals were usually released after a couple of days.⁵ 	
<p>Statements by Public Figures</p>	<ul style="list-style-type: none"> - 13 August 2015: Former Queen of Carnival and a national broadcaster with the state-owned Antigua Broadcasting Service, Tasheka Lavann came out as 'gay and proud' in her first video blog. Recalling her early struggles with her sexuality, she said '<i>regardless of what society says I am going to live for me and I am going to be with who I truly want to be with</i>'.⁶ - 1 March 2014: Attorney General, Justice L. Simon, has claimed that gay visitors are safe travelling to Antigua and Barbuda. In reaction to calls to decriminalise, he responded: '<i>Give us time, and stop bullying. What is clear is that the law, which incidentally is an English colonial relic dating back to 1873, has not been enforced - at least not in recent times</i>'.⁷ - 5 October 2011: The Attorney General made the following statement in respect to decriminalisation in Antigua and Barbuda: '<i>[W]e do not have a political mandate to change the laws at this stage but that we will continue, in terms of informing and educating the public, in terms of international treaty principles which are being accepted and adopted elsewhere</i>'.⁸ In an earlier report, he was suggested to have said: '<i>There will be no change in the law on buggery in Antigua & Barbuda, at least not if I can help it. Being gay is morally wrong, and to be honest personally, I am still homophobic</i>'.⁹ - April 2011: Sir Clare Roberts, former president of the Inter-American Commission on Human Rights, criticised the Government of Antigua & Barbuda for failing to join 85 other states in signing a statement expressing their concern at human rights violations perpetrated against LGBT people. '<i>Government has to set the trend. It can't just follow the sentiments of the populace; you have to</i> 	

	<i>do the right thing and lead people in the right direction</i> . ¹⁰
Persecution and Discrimination	<ul style="list-style-type: none"> - 2014: The US Department of State Human Rights Report on Antigua and Barbuda for 2014 found <i>'there were limited reports of discrimination based on sexual orientation or gender identity in a variety of settings. There were no reports of violence committed against LGBT persons during the year due to their real or perceived sexual orientation.'</i>¹¹ - 2013: The United States Country Report on Antigua and Barbuda found no instances of violent persecution of sexual minorities. However, this may be due to a lack of reporting.¹² The Immigration and Refugee Board of Canada, in correspondence with representatives of LGBTI groups in Antigua and Barbuda, found reports of violence and general societal discrimination. According to the report: <i>'many LGBT people do not report violence to the police for multiple reasons, such as fear of revealing their sexual orientation, fear of stigma and discrimination or fear due to past experience with police or hearing the experiences of other LGBT people.'</i> One case that was reported involved a man who had a bottle thrown at his head. In another, a man was stabbed and robbed. Sometimes police would take longer to respond in cases involving LGBTI people than in others.¹³
Legislative News	<ul style="list-style-type: none"> - 2012: (UPR) The Government rejected recommendations to decriminalise consensual same-sex conduct: <i>'The Government of Antigua and Barbuda seeks to recognize the human rights of all citizens. However the issue of discrimination based on sexual orientation is one which remains a matter of concern and is of the view that implementing polices based on sexual orientation requires extensive public consultation and education given the current pre- disposition of its people and their religious influences and indoctrination.'</i>¹⁴

¹ Text of the law is : <http://ilo.org/dyn/natlex/docs/ELECTRONIC/42538/79312/F1146620290/ATG42538.pdf>.

² *Sexual Offences Act 1995 s12: '(1) A person who commits buggery is guilty of an offence and is liable on conviction to imprisonment - (a) for life, if committed by an adult on a minor; (b) for fifteen years, if committed by an adult on another adult; (c) for five years, if committed by a minor. (2) In this section "buggery" means sexual intercourse per anum by a male person with a male person or by a male person with a female person.'*

³ *Sexual Offences Act 1995 s15: '(1) A person who commits an act of serious indecency on or towards another is guilty of an offence and is liable on conviction to imprisonment - (a) for ten years, if committed on or towards a minor under sixteen years of age; (b) for five years, if committed an or towards a person sixteen years of age or more.'*

⁴ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Antigua and Barbuda*, (US Department of State, 2014)

⁵ Canada: Immigration and Refugee Board of Canada, *Antigua and Barbuda: Treatment of sexual minorities by society and authorities; legal recourse and protection available (2010-2013)*, 10 January 2014, ATG104715.E, : <<http://www.refworld.org/docid/52eb82e84.html>> accessed 19 July 2014

⁶ Antigua Observer Online, 'Former carnival queen comes out as gay', (*The Daily Observer* 13 August 2015) <<http://antiguaobserver.com/former-carnival-queen-comes-out-as-gay/>> accessed 18 September 2015

⁷ Shaked, O., 'AG Says Homosexuals Safe in Antigua', (*Caribantigua* 1 March 2014) <<http://www.caribantigua.com/antigua/news/latest/106125-ag-says-homosexuals-safe-in-antigua.html>> accessed 19 July 2014

⁸ *Observer News*, 'AG: Anti-Buggery Law Here To Stay', (*The Daily Observer* 5 October 2011) <<http://www.antiguaobserver.com/ag-anti-buggery-law-here-to-stay/>> accessed 19 July 2014

⁹ Armstrong, E., 'Antigua's Buggery Law Unlikely To Change', (*Asylum Law* 3 October 2011) <<http://www.asylumlaw.org/docs/sexualminorities/Antigua100311.pdf>> accessed 19 July 2014

¹⁰ *The Daily Observer*, 'Sir Clare decries country's non-signing of Gay Rights Declaration', (13 April, 2011), <http://antiguaobserver.com/sir-clare-decries-country%E2%80%99s-non-signing-of-gay-rights-declaration/>.

¹¹ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Antigua and Barbuda*, (US Department of State, 2014)

¹² Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2013: Antigua and Barbuda*, (US Department of State 2013)
<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220413>> accessed 19 July 2014

¹³ Canada: *Immigration and Refugee Board of Canada (n 1)*

¹⁴ UNHRC, *Report of the Working Group on the Universal Periodic Review*, (15 March 2012) UN Doc A/HRC/19/5/Add.1

	Bangladesh	
<p>National Law:</p> <p><i>Penal Code, 1860</i>¹</p> <ul style="list-style-type: none"> - S377: Unnatural Offences² 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - 10 years' imprisonment with the possibility of a fine 	<p><u>Treaty Ratification</u></p> <p>CAT</p> <p>CEDAW</p> <p>CEDAW OP</p> <p>CRC</p> <p>ICCPR</p> <p>ICESCR</p>
The law is applicable only to men.		
Enforcement	<ul style="list-style-type: none"> - Whilst prosecutions are rare, there have been some reported instances. Moreover, it has been reported that some gay men are forced into heterosexual relationships and marriage having revealed their sexuality to their family.³ - 2014: The 2014 United States Human Rights Country Report claims that the law is not actively enforced.⁴ - 1 October 2013: A lesbian couple who went through a Hindu marriage ceremony living in Bangladesh were imprisoned. Police sent the couple for 'sex identification' tests.⁵ 	
Statements by Public Figures	<ul style="list-style-type: none"> - September 2014: Bangladesh's Permanent Representative to the UN Abdul Momen told the Dhaka Tribune that Bangladesh did not support the recommendations of the International Conference on Population and Development (ICPD) to work to reduce vulnerability and eliminate discrimination based on sexual orientation and gender identity. <i>'It goes against our values. Like many other countries including those Muslims and Christian, we opposed it.'</i>⁶ - 25 October 2013: Muslim groups in the country called for a protest over statements made in April 2012 by Muhammad Yunus, a Bangladeshi born Nobel Peace Prize winner, which criticised the Ugandan (then proposed) anti-gay laws. Director-General of the State-run Islamic Foundation, Shamim Mohammad Afza, was quoted as saying: <i>'Yunus has become an apostate for supporting homosexuality. He must publicly apologise, or we'll force him to leave the country like Taslima Nasreen.'</i>⁷ - 29 August 2013: Bangladesh national newspaper, the <i>Dhaka Tribune</i>, called for the decriminalisation of homosexuality: <i>'we do believe that even most people, who object to homosexuality, do not want to see people put in jail for it, do not want the state to waste its resources treating it as a crime, and do not want to create an environment that allows for persecution and immiseration [sic] of homosexuals.'</i>⁸ 	
Persecution	<ul style="list-style-type: none"> - 13 July 2015: Police reportedly arrested three people over beating a transgender person to death, after a complaint was filed accusing nine people.⁹ 	

<p>and Discrimination</p>	<ul style="list-style-type: none"> - December 2014: Law enforcers are allegedly using Section 54 of the Criminal Procedure Code to harass LGBT people according to an NGO. Speaking at a Bandhu Social Welfare Society workshop, Barrister Sara Hossain, honorary director of Bangladesh Legal Aid and Services Trust (BLAST) said that law enforcers are using Section 54 of the Criminal Procedure Code to harass LGBT people. According to her, besides being politically motivated, sometimes the arrests take place simply to take bribes. Under Section 54 of the Code of Criminal Procedure of 1898, individuals may be arrested under suspicion of criminal activity without any order from a magistrate or a warrant.¹⁰ - 2014: The US Human Rights Country Report noted that LGBT groups reported police used the law as a pretext to bully LGBT individuals, particularly those seen as effeminate men. Some groups also reported harassment under a suspicious behaviour provision of the police code.¹¹ It was also reported that attacks on LGBT persons occurred occasionally, but those offenses were difficult to document because victims desired confidentiality. The Bandhu Social Welfare Society, a local NGO, reported 33 cases of assault, 82 cases of domestic violence, and 154 cases of discrimination against LGBT persons from September 2013 through September 2014. Strong social stigma based on sexual orientation was common and prevented open discussion of the subject. - October 2013: Bangladesh media reported that a lesbian couple from the Jhalakati District of Bangladesh were arrested and jailed, and subjected to a 'gender test'. A case was filed against them under Section 290 of the Penal Code for 'unsocial activities'.¹² This followed reports in June 2013 that two women in Bangladesh were arrested for marrying in secret.¹³ - July 2013: A 2012 report by the Bandhu Social Welfare Society recorded 172 incidents of persecution and abuse of Bangladeshi sexual minorities. In the report 27 people were subject to abuse by <i>mastans (local thugs with political connections and influence)</i>, and 21 by police.¹⁴ - February 2009: A report by the Sexual Rights Initiative claimed that sexual minorities in Bangladesh have been subject to '<i>abduction, arbitrary arrests, detention, beatings and gang rape by the law enforcing agencies and local thugs</i>'.¹⁵
<p>Legislative News</p>	<ul style="list-style-type: none"> - 24 March 2015: Voted in favour of a failed Russian draft decision at the UN General Assembly's Fifth Committee (Administrative and Budgetary) that would have had the Secretary-General withdraw his bulletin laying UN staff benefits for same-sex couples.¹⁶ - 2013: By decision of the Government, Bangladesh legally recognised the <i>Hijras</i> population - a South Asian feminine gender identity sometimes adopted by intersex people - as being a 'third sex' for the purposes of obtaining passport and voting.¹⁷ - Bangladesh possesses no anti-discrimination laws applicable to LGBTI people. - 2013: (Universal Periodic Review) Bangladesh rejected recommendations to decriminalise consensual same-sex sexual conduct.¹⁸ However, the government did acknowledge the existence of the LGBT population in its April 2013 Universal Periodic Review, contrary to its stance in the 2009 review, during which the foreign minister stated there were no LGBT individuals in the country. Additionally, the government allocated funds for the transgender population in the national budget.

- **2009:** (Universal Periodic Review) Bangladesh rejected recommendations to decriminalise consensual same-sex sexual conduct. It accepted recommendations to provide training to law enforcement on the protection of (among others) sexual minorities and to work to adopt measures to protect those people from violence:

Bangladesh accepts the recommendation concerning the human rights training of judicial officers. The judicial officers are being trained on the issue of rights of women, children and minorities. However, the specific recommendation on sexual orientation cannot be accepted. Bangladesh is a society with strong traditional and cultural values. Same-sex activity is not an acceptable norm to any community in the country. Indeed, sexual orientation is not an issue in Bangladesh. There has been no concern expressed by any quarter in the country on this. Therefore, the recommendation is out of context.¹⁹

¹ The law is : http://bdlaws.minlaw.gov.bd/pdf_part.php?act_name=&vol=&id=11

² Penal Code, 1860, s377: 'Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation. Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.'

³ ILGA, 'Homophobic tendencies still abound in South Asia', (ILGA 11 February 2011)
<<http://ilga.org/ilga/en/article/mQA910J1Qp>> accessed 19 July 2014

⁴ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Bangladesh*, (US Department of State 2014)
<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236634>>

⁵ Kuddus, O., 'Bangladesh jails "married" lesbian couple', (*Gay Star News* 1 October 2013)
<<http://www.gaystarnews.com/article/bangladesh-jails-married-lesbian-couple011013>> accessed 19 July 2014

⁶ Zaman, S., 'Bangladesh opposes ICPD's LGBT rights move', (*Dhaka Tribune* 14 September 2014)
<http://www.dhakatribune.com/law-rights/2014/sep/14/bangladesh-opposes-icpd%E2%80%99s-lgbt-rights-move>

⁷ *Huffington Post*, 'Muhammad Yunus, Nobel Prize Winner, Accused Of Being "Un-Islamic"\'Spreading Homosexuality"', (*Huffington Post* 25 October 2013)
<http://www.huffingtonpost.co.uk/2013/10/25/muhammad-yunus-nobel-priz_n_4162800.html> accessed 19 July 2014

⁸ *Tribune* Editorial, 'Decriminalising same-sex relations', (*Dhaka Tribune* 29 August 2013)
<<http://www.dhakatribune.com/editorial/2013/aug/29/decriminalising-same-sex-relations>> accessed 19 July 2014

⁹ Noakhali Correspondent, 'Three arrested over beating transgender to death' (bdnews24.com, 13 July 2015)
<http://bdnews24.com/bangladesh/2015/07/13/three-arrested-over-beating-transgender-to-death>

¹⁰ *The Daily Star*, 'Sexual minorities being harassed', (12 December 2014) <http://www.thedailystar.net/sexual-minorities-being-harassed-54988> accessed on 5 September 2015

¹¹ Bureau of Democracy, *Human Rights and Labor*, 'Country Reports on Human Rights Practices for 2014: Bangladesh', (US Department of State 2014)
<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236634>>

¹² Reid-Smith, T., 'Bangladesh jails 'married' lesbian couple', (*Gay Star News*, 1 October 2013),
<http://www.gaystarnews.com/article/bangladesh-jails-married-lesbian-couple011013/>

¹³ *Global Voices*, 'Lesbian Couple Arrested After Marrying in Secret in Bangladesh', (26 July 2013)
<http://globalvoicesonline.org/2013/07/26/lesbian-couple-arrested-after-marrying-in-secret-in-bangladesh/>

¹⁴ Bandhu Social Welfare Society, *Community Prosody Service and Beyond: Annual Report 2012*, (Bandhu BD July 2013) <<http://www.bandhu-bd.org/report/Annual%20Report%202012%20of%20BSWS.pdf>> accessed 19 July 2014

¹⁵ Sexual Rights Initiative, *Report on Bangladesh*, (Sexual Rights Initiative February 2009)
<<http://sexualrightsinitiative.com/wp-content/uploads/Bangladesh-UPR-4.pdf>> accessed 19 July 2014

¹⁶ Lavers, M. K., 'Bid to block spousal benefits for gay U.N. employees fails' (*Washington Blade* 24 March 2015) <<https://www.washingtonblade.com/2015/03/24/bid-to-block-spousal-benefits-for-gay-u-n-employees-fails/>> accessed 25 October 2015

¹⁷ Pantha Rahman Reza, 'Bangladesh's Hijras Win Official Recognition as Separate Gender', (*Global Voices*, 13 November 2013) <<https://globalvoicesonline.org/2013/11/13/bangladeshs-hijras-win-official-recognition-as-separate-gender/>>

¹⁸ UNHRC, *Report of the Working Group on the Universal Periodic Review*, (8 July 2013) UN Doc A/HRC/24/12

¹⁹ UNHRC, *Report of the Working Group on the Universal Periodic Review*, (9 June 2009) UN Doc A/HRC/11/18/Add.1

	Barbados	
<p>National Law:</p> <p><i>Sexual Offences Act</i> (1992) Chapter 154¹</p> <ul style="list-style-type: none"> - S9: Buggery² - S11: Indecent Assault³ - S12: “Serious” Indecency⁴ 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - Life imprisonment - 5 years’ imprisonment - 10 years’ imprisonment 	<p><u>Treaty Ratification</u></p> <p>ACHR</p> <p>CEDAW</p> <p>CRC</p> <p>ICCPR</p> <p>ICCPR OP</p> <p>ICESCR</p>
<p>S9 is applicable only to men. S11 and S12 are applicable to both men and women.</p>		
<p>Enforcement</p>	<ul style="list-style-type: none"> - 2013: In its most recent Universal Periodic Review, Barbados repeatedly stated that the law is not used to prosecute consensual acts.⁵ - 2014: The US Human Rights Country Report indicated that there were no reports of the law being enforced during the year.⁶ 	
<p>Statements by Public Figures</p>	<ul style="list-style-type: none"> - January 2015: The head of B-GLAD (Barbados Gays and Lesbians Against Discrimination) Donnya Piggott was presented with a Young Leaders Award by Queen Elizabeth II. Piggott said: <i>‘I’m elated, happy for this award. What it does is it recognises the cause’</i>.⁷ - December 2014: CariFLAGS, a coalition of lesbian, gay, bisexual and transgender (LGBT) organisations in the Caribbean, sent a letter to the Prime Minister, Freundel Stuart, expressing disappointment in his silence on the matter of equality and gender-neutral legislation, and reminded him of his duty and pledge to uphold human rights for all Barbadians. The letter was prompted by the debate swirling around Barbadian Minister of Environment & Drainage, Dr Denis Lowe, who had spoken out in opposition to gender-neutral laws. The group further urged Stuart to clarify the position of the Barbados constitution and his own Government on the exclusion of specific Barbadians from social protection, since Lowe continues to serve in his Cabinet.⁸ - June 2014: Youth leaders from Caribbean countries with anti-gay laws met last in Port-of-Spain, Trinidad, where they signed a declaration seeking greater social acceptance of LGBT people and the repeal of unfair laws against them.⁹ - May 2014: A press release of the Inter-American Commission on Human Rights quoted Barbados’ Prime Minister Freundel Stuart as supporting: <i>‘the elimination of all forms of discrimination including discrimination against persons of differing sexual orientation’</i>.¹⁰ In Antigua and Barbuda, politicians also had the chance to publicly discuss LGBTI issues at the National Youth Forum.¹¹ 	

	<ul style="list-style-type: none"> - 12 August 2013: Speaking to the Christian Church, Barbados Prime Minister, Freundel Stuart, warned that until there was conclusive evidence on whether or not homosexuality was genetic, the church should show compassion - adding that, whilst the church could argue on moral grounds, it would lose the human rights argument: <i>'until we can resolve the issue of nature and nurture, until we can clearly put ourselves in a position where we can say people who pursue that orientation, do it out of perverseness, rather than out of the fact that their own physiological make up, makes it very difficult for them to go in any other direction - until we can resolve that, we have a challenge on our hands.'</i>¹² - 4 November 2011: Following calls by UK Prime Minister David Cameron to legalise same-sex relations, Barbadian Attorney-General Adriel Brathwaite stated that Barbados' <i>'position on homosexuality was not for sale and that its legislative agenda would be determined at home'</i>.¹³ - 14 September 2010: The Prime Minister of Barbados spoke in defence of gay rights: <i>'Very little attempt is made now to consider that it might just be that practitioners of this lifestyle [homosexuality] were responding to the irresistible promptings of nature with the result that imputing fault to them satisfied no known definition of fairness. Further, that even if rather than responding to nature's promptings, these practitioners were pursuing this lifestyle as a result of nurture, in which case they may have been exercising some measure of choice, the right to choose in these circumstances was protected by the Constitution as long as its exercise did not interfere with the rights of others.'</i>¹⁴ - 25 November 2009: The Minister of Family, Youth and Sports, Esther Byer-Suckoo, spoke on the issue of violence against LGBTI people: <i>'It can no longer be gender-biased ... The law has to protect all its citizens. If we're amending legislation or drafting new legislation we have to take into consideration the nuances of the environment in which we live today.'</i>¹⁵
Persecution and Discrimination	<ul style="list-style-type: none"> - Despite many reports discussing poor societal attitudes towards homosexuality, there have been few reported instances of actual persecution. - May 2015: A Barbados bus driver and fellow passengers allegedly verbally abused a female passenger after identifying her as a lesbian. The driver stated that her throat should be cut, and none of the passengers objected.¹⁶ - May 2015: Barbados' Ministry of Industry, International Business, Commerce and Small Business Development partnered with the Canadian HIV/AIDS Legal Network and the Movement Against Dissemination Action Coalition (MOVADAC) to deliver an LGBTI sensitisation workshop attended by representatives of Barbados Defense Force, the Office of the Ombudsman, the Prisons, the National HIV/AIDS Commission, and the Ministry of Labour.¹⁷ - 2014: The US Human Rights Country Report documented that activists reported that stigma against LGBT persons persisted, although LGBT civil society groups reported no impediments to their activities. Activists reported a few violent incidents based on sexual orientation or gender identity but suggested that social stigma and fear of retribution or reprisal rendered the problem underreported by LGBT persons. Anecdotal evidence suggested that LGBT persons faced discrimination in employment, housing, and access to education and health care. Activists suggested that while many individuals lived open LGBT lifestyles, disapprobation by police officers and societal discrimination against LGBT persons occurred.¹⁸

	<ul style="list-style-type: none"> - June 2014: Donnya Piggott, Director of Barbados Gays, Lesbians and All-Sexuals against Discrimination (B-GLAD), stated that a recent study on discrimination against LGBT people in Barbados found more than 60 unreported instances of discrimination based on sexual orientation in the preceding five years. - 7 August 2013: One man had stones thrown at him and was insulted with homophobic slurs, an act which was condemned by local LGBT groups. The president of Gays and Lesbians against AIDS Barbados, Darcy Dear, called for the Church and authorities to recognise that acts of persecution against LGBT persons exist.¹⁹
Legislative News	<ul style="list-style-type: none"> - November 2014: Minister of the Environment Dr Denis Lowe stated he would resign rather than co-sponsor a bill that would make the domestic violence gender-neutral. This followed a commitment by Minister of Labour Senator Dr Esther Byer Suckoo in 2009 to implement domestic violence legislation covering all unions.²⁰ - 5 June 2014: The country noted it could not join the consensus on the approval of an OAS resolution on sexual orientation, stating, <i>'a number of the issues and terms contained in the Resolution are neither reflected in its national laws nor the subject of national consensus. As such, Barbados would not be in a position to meet these requirements.'</i>²¹ - 2013: (UPR) Barbados rejected recommendations to decriminalise consensual same-sex sexual relations. However, the state accepted recommendations to implement measures which would protect sexual minorities from violence and abuse.²² - 2009: (UPR) Barbados rejected recommendations to decriminalise consensual same-sex sexual relations. Government set out its position as follows: <ul style="list-style-type: none"> - <i>'Barbados cannot accept at this time, the recommendation to decriminalize such sexual acts between consenting adults of the same sex... significant sections of the community are opposed to such decriminalization... This is a topic which has been widely considered in society not only on the basis of its legality but from the socio-cultural and historical perspectives. It must be noted that Barbados is a heavily religious society and there is a significant lobby by the church on such issues.'</i>²³ - There are no existing laws preventing discrimination based on sexual-identity.

¹ The law is : <http://www.easterncaribbeanlaw.com/sexual-offences-act-chapter-154/>

² *Sexual Offences Act 1992, Chapter 154, s9: 'Any person who commits buggery is guilty of an offence and is liable on conviction on indictment to imprisonment for life.'*

³ *Sexual Offences Act 1992, Chapter 154, s11: '(1) A person who indecently assaults another is guilty of an offence and is liable on conviction on indictment to imprisonment for assault. 5 years. [...] (3) In this section "indecent assault" means an assault accompanied by words or circumstances indicating an indecent intention.'*

⁴ *Sexual Offences Act 1992, Chapter 154, s12: '(1) A person who commits an act of serious indecency on or serious towards another or incites another to commit that act with the person or with another person is guilty of an offence and, if committed on or towards a person 16 years of age or more or if the person incited is of 16 years of age or more, is liable on conviction to imprisonment for a term of 10 years [...] (3) An act of "serious indecency" is an act, whether natural or unnatural by a person involving the use of the genital organs for the purpose of arousing or gratifying sexual desire.'*

⁵ UNHRC, *Report of the Working Group on the Universal Periodic Review*, (12 March 2013) UN Doc A/HRC/23/11

⁶ Bureau of Democracy, Human Rights, Labor, *Country Reports on Human Rights Practices for 2014: Bangladesh*, (2014) <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dlid=236664>> accessed on 5 September 2015

⁷ *Nation news*, 'Queen's award for Donnya Piggott', (12 January 2015)

<<http://www.nationnews.com/nationnews/news/62013/queen-award-donnya-piggott>>

⁸ Antillean Media Group, 'CariFLAGS, a regional LGBT organisation, has called on Prime Minister Stuart to clarify his government's human rights position towards gays, following comments by one of Stuart's cabinet ministers', (1 December 2014) <<http://www.antillean.org/position-government-barbados-gays3/>> accessed on 5 September 2015

⁹ Stewart, C., 'Caribbean youths seek repeal of 6 nations' anti-gay laws', (*Erasing 76 Crimes*, 13 June 2014)

<<http://76crimes.com/2014/06/13/caribbean-youths-seek-repeal-of-6-nations-anti-gay-laws/>> accessed on 5 September 2015

¹⁰ IACHR, *The IACHR Welcomes Recent Developments in OAS Member States to Protect and Promote the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI)*, Press Release 060/2014 (20 May 2014)

<http://www.oas.org/en/iachr/media_center/PReleases/2014/060.asp>

¹¹ OAS, *The IACHR Welcomes Recent Developments in OAS Member States to Protect and Promote the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI)*, (20 May 2014)

<http://www.oas.org/en/iachr/media_center/PReleases/2014/060.asp> accessed on 5 September 2015

¹² *Barbados Today*, 'PM: Don't judge yet', (*Barbados Today* 12 August 2013)

<<http://www.barbadostoday.bb/2013/08/12/pm-dont-judge-yet/>> accessed 19 July 2014

¹³ *Stabroek News*, 'Barbados says will not be dictated to by UK on gay laws', (*Stabroek News* 4 November 2011)

<<http://www.stabroeknews.com/2011/news/regional/11/04/barbados-says-will-not-be-dictated-to-by-uk-on-gay-laws-2/>> accessed 19 July 2014

¹⁴ CARICOM, *ADDRESS DELIVERED BY THE HON. FREUNDEL J. STUART*, (CARICOM 14 September 2010)

<http://www.caricom.org/jsp/pressreleases/pres358_10.jsp?null&prnf=1> accessed 19 July 2014

¹⁵ Tomlinson, M., 'Progress in Barbados despite harsh anti-gay laws', (*76 Crimes* 6 March 2013)

<<https://76crimes.com/2013/03/06/progress-in-barbados-despite-harsh-anti-gay-laws/>> accessed 19 July 2014

¹⁶ Tomlinson, M., 'Will tourist-dependent Barbados risk staying anti-gay?', (*Erasing 76 Crimes*, 11 May 2015)

<http://76crimes.com/2015/05/11/will-tourist-dependent-barbados-risk-staying-anti-gay/>

¹⁷ *Ibid.*

¹⁸ Bureau of Democracy, Human Rights, Labor, *Country Reports on Human Rights Practices for 2014: Bangladesh*, (2014) <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dlid=236664>> accessed on 5 September 2015

¹⁹ Parris, D., 'Gay Plea', (*Nation News* 7 August 2013)

<<http://www.nationnews.com/index.php/articles/view/gay-plea/>> accessed 19 July 2014

²⁰ *Nation News*, 'B-GLAD calls for Lowe's resignation', (19 November 2014)

<http://www.nationnews.com/nationnews/news/59531/b-glad-calls-lowe-resignation>

²¹ OAS General Assembly, *Draft Resolution Human Rights, Sexual Orientation, and Gender Identity and Expression*, (5 June 2014) AG/CG/doc.12/14 rev. 1

²² UNHRC, *Report of the Working Group on the Universal Periodic Review*, (5 June 2013) UN Doc A/HRC/23/11/Add.1

²³ UNCCPR, *Consideration of Reports Submitted by State Parties Under Article 40 of the Covenant*, (2 June 2009) CCPR/C/BRB/CO/3/Add.1

	Belize	
<p>National Law:</p> <p><i>Belize Criminal Code, Chapter 101</i> (revised edition, 2000)¹</p> <ul style="list-style-type: none"> - S53: Unnatural Crime² 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - 10 years' imprisonment 	<p><u>Treaty Ratification</u></p> <p>CAT CEDAW CEDAW OP CRC ICCPR ICESCR</p>
<p>The law is equally applicable to both men and women.</p>		
<p>Enforcement</p>	<ul style="list-style-type: none"> - Whilst the law is rarely enforced with imprisonment, there have been instances where the law is used to 'extort gay men'.³ - March 2015: Immigration law in Belize prohibits LGBT people from entering the country, however in March 2015 the country's acting Immigration Director said the regulation is not enforced as a matter of policy: <i>'For immigration purposes, we will not prosecute, based on homosexual orientation.'</i>⁴ 	
<p>Statements by Public Figures</p>	<ul style="list-style-type: none"> - A number of positive statements have been made recently supporting the rights of LGBT people: - May 2015: To coincide with International Day Against Homophobia and Transphobia (IDAHOT) 2015, First Lady of Belize Mrs Kim Simplis Barrow, who also holds the position of Special Envoy for Women and Children in the country, released a video statement in which she repeated her warnings from 2013 regarding the 'harsh reality' of bullying against LGBT community and the loss of basic human rights.⁵ The IDAHOT event was well attended by members of the community, general supporters, well-known personalities, and representatives from the diplomatic corps in Belize.⁶ - May 2015: In an article for the <i>New York Times</i>, Julia Scott reported that <i>'the Belize attorney general [Wilfred Elrington] told me that he personally believes that Section 53 is discriminatory, though his office is obligated to defend it in court.'</i>⁷ - November 2014: The Belize Association of Evangelical Churches called for a national referendum on the question of whether Belize should continue to retain section 53 of its Criminal Code.⁸ The Association also issued a statement alleging the US Embassy's apparent intent to <i>'push the homosexual agenda on smaller nations'</i>. <i>'It seems they are intent on exporting their immorality to the nations of the world as "strings attached" to funding packages.'</i>⁹ - 13 May 2014: In response to a case being brought to the Caribbean Court of Justice against the Belize government by Maurice Tomlinson who has claimed Belize's anti-homosexual laws discriminate against him as a CARICOM national, Minister of Immigration, Godwin Hulse, argued that as Belize's laws are not enforced changing 	

	<p>the law would be without effect: <i>'For me the position is very simple; nobody at immigration is going to ask anybody to declare their sexual orientation and that's not a question coming into the country. So, how on earth are you going to know who is who and [who] to refuse or otherwise allow them entry? There striking it out makes no difference to the law at all.'</i>¹⁰</p> <ul style="list-style-type: none"> - 29 April 2014: The Prime Minister of Belize, Dean Barrow, defended the right of some civil society organisations to raise Belize's LGBTI discrimination record at the Organisation of American States.¹¹ - 25 April 2014: A former British Psychiatrist, Deborah Pitt, submitted a letter to the Belize national newspaper <i>Amandala</i> urging Belize to keep its anti-gay laws.¹² - March 2014: The Catholic Church's bishop in Belize issued a directive to all Catholic schools and organisations to not cooperate with various NGOs engaged in HIV prevention work, including UniBAM, the National AIDS Commission, and Belize Family Life Association. The bishop's directive addressed the organizations' <i>'agenda of sodomy, abortion, and sexual-gender redefinition'</i>, which is seeking to <i>'radically change Belize's Christian character'</i>.¹³ - 21 September 2013: The Belize Prime Minister, in his Independence Day speech, warned church groups that, whilst he would support their right to speak freely on the issue of homosexuality, the Belize constitution guarantees equal rights for all citizens: <i>'Government will therefore fully respect the right of the churches to propagate their understanding of the morality, or immorality, of homosexuality. But what Government cannot do is to shirk its duty to ensure that all citizens, without exception, enjoy the full protection of the law.'</i>¹⁴ - 11 July 2013: Belize Senator, Lisel Alamilla, wrote a public statement criticising the lynching of an effigy which had the word 'UNIBAM' (United Belize Advocacy Movement: a Belize gay rights organisation) written on it; an action which she said raised concerns about the potential promotion of hate crimes in the country.¹⁵ - 17 May 2013: Belize's First Lady, Kim Simplis-Barrow, speaking at IDAHOT (International Day Against Homophobia & Transphobia), argued that, regardless of views towards sexuality, <i>'bullying and physical violence is never the answer'</i>.¹⁶
Persecution and Discrimination	<ul style="list-style-type: none"> - As with many countries, reports of persecution emerging from Belize are few, yet this is likely a result of societal prejudices and an unwillingness on the part of people discriminated against to come forward. The 2013 US Country Report indicates multiple physical attacks carried out on LGBTI people, with sexual and gender minorities too fearful of the police to report abuse.¹⁷ - 9 July 2015: Leading LGBT rights activist Caleb Orozco's neighbour was found guilty of throwing missiles and using indecent words at him and was ordered by a court to apologise to Caleb.¹⁸ - 17 April 2015: At a press conference in April 2015, UNAIDS Caribbean reportedly released the findings of a research stating that people are generally more accepting in Belize. Speaking at the press conference, Dr. Ernest Massiah, Regional Director, UNAIDS Caribbean said: <i>'Number one, I would say is, compared to the other countries, with the exception of Suriname, Belize is more accepting than a lot of the other countries. There is something interesting and important that is happening in Belize, where we see that thirty four percent say they would accept someone if they</i>

	<p><i>were gay or homosexual.</i>¹⁹</p> <ul style="list-style-type: none"> - 2014: The US Human Rights Country Report documented that the extent of discrimination based on sexual orientation or gender identity was difficult to ascertain due to lack of official reporting of instances of discrimination. Local LGBT rights advocates noted that LGBT persons feared police and had been harassed while reporting unrelated crimes. They also noted that police at times refused to accept reports of crime from LGBT persons.²⁰ UniBAM, the country's first legally registered LGBT advocacy organisation, reported that continuing harassment and insults by the public affected its activities, and its members were reluctant to file complaints. In January, assailants killed Joseph Sanchez, a transgender teen, in the early morning in Belize City. While members of the LGBT community condemned the killing as a hate crime, local authorities investigated the incident as general homicide with attempted robbery as the motive. - 16 June 2014: A transgender woman was reportedly attacked with stones and bricks and was punched in the face before being rescued by police. According to the report, before her attack her attackers yelled: <i>'why is a f*cking faggot walking this block'</i>.²¹ - 14 January 2014: Joseph Jatnel Sanchez, a man living in Belize, was stabbed to death in what police described as an attempted robbery. His family disputed those claims saying he was frequently victimised for dressing in 'women's clothing'. The family report that he was dressed as a woman on the night he was attacked and was found with his mobile phone and money still on his person. Human rights lawyer Lisa Shoman similarly disputed the police's version of events: <i>'Belize has one of the highest rates of violent crime per capita, but this was not 'mere' robbery, except in the sense that he was robbed of his life.'</i>²² - 15 February 2013: Caleb Orozco, an LGBTI rights activist in Belize currently challenging the legality of its anti-homosexuality provisions, stated that there have been <i>'27 murders of gay men in its various forms between 1997 and 2012'</i>.²³ - 2012: The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders sent a joint communication about an alleged attack against a LGBT activist. According to the information received, on 8 February 2012, the President of the United Belize Advocacy Movement (UniBAM), an organisation working for the rights of LGBT persons, Caleb Orozco was attacked on George Street in Belize City. It was reported that unidentified men had shouted anti-gay slurs at him and then had thrown a beer bottle at him which had struck him in the face. The Human Rights Committee was concerned by reports of violence against LGBT persons and urged Belize to ensure that cases of violence against LGBT persons were thoroughly investigated, the perpetrators prosecuted and the victims adequately compensated.²⁴
Legislative News	<ul style="list-style-type: none"> - March 2015: The Caribbean Court of Justice heard a challenge to immigration laws in Belize and Jamaica preventing the entry of LGBT people. The case was brought by Jamaican activist Maurice Tomlinson, and judgement was reserved for a future date.²⁵ - 5 June 2014: The country noted it could not approve an OAS resolution on sexual orientation, as the matter is currently before the courts.²⁶ - October 2013: The National Assembly considered amendments to the Criminal

	<p>Code to reform provisions relating to sexual offences. The Criminal Code (Amendment) (No.2) Bill 2013 included changes to the definition of rape and sexual offences against children. No changes were proposed to amend section 53.²⁷</p> <ul style="list-style-type: none"> - 2013: The government published a revised National Gender Policy 2013 which was designed to tackle issues of gender equality, gender equity and women's empowerment, focusing on strategies to reduce gender disparities in five key areas: health; education/skills training; wealth and employment generation; violence-producing conditions; and power and decision-making. According to Belize's latest UPR (see below for more details), the government was continuing to work on a revised implementation plan for the new policy. <i>'The delegation stated that a part of what constituted a barrier to the development of the implementation plan for the gender policy was resistance from churches, especially the evangelical churches. In certain sectors, they requested complete withdrawal of the policy because it spoke to respect for diversity, including the acknowledgement of sexual orientation as a type of diversity. It spoke to providing sexual and reproductive health services for vulnerable groups, including men who have sex with men and commercial sex workers. Because of those factors, the evangelical council and other churches had called for a complete removal of the policy. Nonetheless, the Prime Minister stated his commitment to the policy and opened the door for submissions of concerns by the council, but the plans of action for various sectors were in place and Belize would continue the work in ensuring gender equity and equality and women's empowerment under the rubric of that policy.'</i>²⁸ - 2013/2014: (UPR) In its 2nd cycle Universal Periodic Review, numerous states recommended that Belize remove laws which criminalise and discriminate on the basis of same-sex sexual orientation and review its constitution to ensure that discrimination on the grounds of sexual orientation and gender identity are prohibited.²⁹ Belize noted these recommendations and confirmed that they would remain under review.³⁰ - 2012/2013: A legal challenge by Caleb Orozco, founder of the NGO United Belize Advocacy Movement's (UniBAM), was brought against section 53 of the Criminal Code (Unnatural Crime). Substantive arguments were heard in May 2013, but the Supreme Court's decision on the constitutionality of the law remained pending as of September 2015.³¹
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¹ The law is : <http://www.belize-law.org/web/lawadmin/index2.html>

² *Belize Criminal Code, Chapter 101, s53: 'Every person who has carnal intercourse against the order of nature with any person or animal shall be liable to imprisonment for ten years.'*

³ Mintz, Z., 'Homophobia In The Caribbean: Anti-Sodomy Laws And Persecution, Being Gay Is No Fun In The Islands', (*IB Times* 9 August 2013) <<http://www.ibtimes.com/homophobia-caribbean-anti-sodomy-laws-persecution-being-gay-no-fun-islands-1377485>> accessed on 19 July 2014

⁴ Wee, D., 'Landmark case challenges anti-gay laws in Belize and Trinidad and Tobago', (*Gay Star News* 19 March 2015) <http://www.gaystarnews.com/article/landmark-case-challenges-anti-gay-laws-belize-and-trinidad-and-tobago190315/>

⁵ International Day Against Homophobia, Transphobia and Biphobia, *IDAHOT reports 2015: Belize*, <http://dayagainsthomophobia.org/idahot-reports-2015-belize/>

⁶ Bureau of Democracy, Human Rights and Labor, 'Country Reports on Human Rights Practices for 2014: Belize' (US Department of State 2014) <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236666>> accessed on 5 September 2015

- ⁷ Scott, J., 'The Lonely Fight Against Belize's Antigay Laws', (*New York Times* 22 May 2015) <http://www.nytimes.com/2015/05/24/magazine/the-lonely-fight-against-belizes-antigay-laws.html?_r=0> accessed on 18 September 2015.
- ⁸ Ramos, A., 'Churches call for referendum on sodomy law', (*Amandala*, 28 November 2014) <<http://amandala.com.bz/news/churches-call-referendum-sodomy-law/>>
- ⁹ Plus TV Belize, 'Evangelical Association outraged by US Embassy's meddling in Belizean domestic issues', (26 November 2014) <<http://www.plustvbelize.com/evangelical-association-outraged-by-us-embassys-meddling-in-belizean-domestic-issues/>>
- ¹⁰ *7 News Belize*, 'Hulse: Tomlinson Free To Travel To Belize', (*7 News Belize* 13 May 2014) <<http://www.7newsbelize.com/sstory.php?nid=28707>> accessed on 19 July 2014
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- ¹² Pitt, D., 'British Citizen Argues against Decriminalizing Homosexuality', (*Amandala* 22 April 2014) <<http://amandala.com.bz/news/british-citizen-argues-decriminalizing-homosexuality/>> accessed on 19 July 2014
- ¹³ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Belize*, (US Department of State 2014) <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236666>> accessed on 5 September 2015
- ¹⁴ *Belizean*, 'Belize PM Independence Day Speech: More Projects, Spending, Warning To Churches', (*Belizean* 21 September 2013) <<http://belizean.com/belize-pm-independence-day-speech-projects-spending-warning-churches-1690/#ixzz2fbPoRoBv>> accessed on 19 July 2014
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- ¹⁶ *Sanpedro Sun*, 'IDAHO: International Day Against Homophobia & Transphobia, May 17th', (*Sanpedro Sun* 17 May 2013) <<http://www.sanpedrosun.com/community-and-society/2013/05/17/idaho-international-day-against-homophobia-transphobia-may-17th/>> accessed on 19 July 2014
- ¹⁷ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2013: Belize*, (US Department of State 2013) <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220421>> accessed on 19 July 2014
- ¹⁸ News Five, 'Caleb Orozco's Neighbor Found Guilty of Gay Bashing and Throwing Missiles', (9 July 2015) <<http://edition.channel5belize.com/archives/115972>> accessed on 18 September 2015.
- ¹⁹ Polanca, A., 'And the Survey Says... Homophobia is Down in Belize', (News Five 17 April 2015) <<http://edition.channel5belize.com/archives/112340>> accessed on 18 September 2015
- ²⁰ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Belize*, (US Department of State 2014) <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236666>> accessed on 5 September 2015
- ²¹ *Global Gayz*, 'Belize Transgender Woman Stoned And Beaten By Mob', (*Global Gayz* 16 June 2014) <<http://archive.globalgayz.com/central-america/belize/belize-transgender-woman-stoned-and-beaten-by-mob/>> accessed on 19 July 2014
- ²² Littauer, D., 'Gay man stabbed to death in Belize, family says it's a "hate crime"', (*LGBTQ Nation* 14 January 2014) <<http://www.lgbtqnation.com/2014/01/gay-man-stabbed-to-death-in-belize-family-says-its-a-hate-crime/>> accessed on 19 July 2014
- ²³ *Global Gayz*, 'Gay Murders in Belize', (*Global Gayz* 15 February 2013) <<http://archive.globalgayz.com/central-america/belize/gay-murders-in-belize/>> accessed on 19 July 2014
- ²⁴ UNHRC, *Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21: Belize*, (7 August 2013), UN Doc A/HRC/WG.6/17/BLZ/2
- ²⁵ Humes, A., 'CCJ hearings end in the case of Maurice Tomlinson', (*Belize Breaking News*, 18 March 2015) <<http://www.breakingbelizenews.com/2015/03/18/ccj-hearings-case-maurice-tomlinson/>>
- ²⁶ OAS General Assembly, *Draft Resolution Human Rights, Sexual Orientation, and Gender Identity and Expression*, (5 June 2014) AG/CG/doc.12/14 rev. 1

²⁷ The Bill is :

[http://d02044893.brinkster.net/belizecan/PDF/BILL101/Criminal Code %28Amendment%29 %28No. 2%29 Bill , 2013.pdf](http://d02044893.brinkster.net/belizecan/PDF/BILL101/Criminal_Code_%28Amendment%29_%28No.2%29_Bill_2013.pdf)

²⁸ UNHRC, *Report of the Working Group on the Universal Periodic Review*, (11 December 2013) UN Doc A/HRC/25/13, para. 96.

²⁹ UNHRC, *Report of the Working Group on the Universal Periodic Review*, (11 December 2013) UN Doc A/HRC/25/13, Recommendations 99.9, 99.17, 99.28-99.39.

³⁰ UNHRC, *Report of the Working Group on the Universal Periodic Review: Belize - Addendum*, (6 March 2014) UN Doc A/HRC/25/13/Add.1

³¹ For further details, see - <http://www.humandignitytrust.org/pages/OUR%20WORK/Cases/Belize>

	Botswana	
<p>National Law:</p> <p><i>Penal Code 1964, Chapter 08:01, as amended by the <i>Penal Code (Amendment) Act 5 of 1998</i>¹</i></p> <ul style="list-style-type: none"> - S164: Unnatural Offences² - S165: Attempt to commit Unnatural Offences³ - S167: Indecent practices between persons⁴ 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - 7 years' imprisonment - 5 years' imprisonment - 2 years' imprisonment or a fine (or both) 	<p><u>Treaty Ratification</u></p> <p>AFRICAN CHARTER⁵</p> <p>CAT⁶</p> <p>CEDAW</p> <p>CEDAW OP⁷</p> <p>CRC</p> <p>ICCPR</p>
<p>The law applies to both men and women.⁸</p>		
<p>Status of International Law</p>	<ul style="list-style-type: none"> - Botswana is a dualist legal system.⁹ - International treaties that Botswana has ratified do not automatically apply. However, according to <i>Attorney General v Unity Dow</i>,¹⁰ international law must be used in the interpretation of the law and legislation must be interpreted in a manner which does not conflict with the international obligations Botswana has undertaken. 	
<p>Enforcement</p>	<ul style="list-style-type: none"> - 31 March 2014: A member of LeGaBiBo, an LGBTI organisation working in Botswana, explained the effect of the lack of prosecutions: <i>... one has to use a magnifying glass to read between the lines because it remains unclear whether homosexuality is illegal in our country or not. As a result, many homosexuals hide their feelings, justifying this by saying that the LGBT community is lucky and that they should be grateful that Botswana is not too extreme. They don't want to complain about unfair treatment.</i>¹¹ - 9 April 2014: The Immigration and Refugee Board of Canada highlighted two 2014 cases where individuals were subject to arrest under the country's anti-gay laws. The first was dismissed due to insufficient evidence and the second involved non-consensual sex.¹² - 2014: The US Country Report on Human Rights Practices suggests that police do not actively target gay people on the basis of their sexual activity.¹³ - The last reported case on Botswana's anti-gay legal provisions was in 2003 where the Court found: <ul style="list-style-type: none"> <i>no evidence that the approach and attitude of society in Botswana to the question of homosexuality and to homosexual practices by gay men and women required a decriminalization of those practices, even to the extent of consensual acts by adult males in private.</i>¹⁴ - Since the <i>Kanane v. The State</i> BLR 2003 decision there have been no further prosecutions for engaging in same-sex sexual conduct.¹⁵ 	

<p>Statements by Public Figures</p>	<ul style="list-style-type: none"> - 8 May 2014: After stepping down from office, Botswana's ex-President Festus Mogae has openly called for decriminalisation of homosexuality as a means of combating HIV/AIDS: <p style="margin-left: 20px;"><i>We do not give a damn about how they got infected. We have to give them treatment. The reason why I call upon police not to harass sex workers is because that has the potential to deny them access to treatment and prevention of HIV infection and interventions.</i>¹⁶</p> - 20 August 2013: the National Assembly and the National AIDS Council held open debates on homosexuality. The National AIDS Council which consists of the Vice-President, the Minister of Presidential Affairs and Public Administration, the Chairman of Ntlo ya Dikgosi (House of Chiefs), among other prominent office-bearers, discussed the outcome of a report submitted by the Ministry of Health. The findings of the Ministry of Health's study reportedly accepted the existence and reality of homosexuality in the country; an existence which had previously been denied. It was reported that the study will be analysed and aligned with laws, policies and other issues and a policy brief will be presented to the next National AIDS Council meeting in November. - 14 August 2013: Reverend Orebotse Matlhaope, president of the Evangelical Fellowship of Botswana, warned against legislation that would protect gay rights: <i>Apart from encouraging sexual deviation and depravity, we do not see how homosexuality, if decriminalised and recognised, can add value to our existence as a nation.</i>¹⁷ - 17 March 2011: Current President Ian Khama has reportedly stated that gays are 'fine by him' so long as they 'do their things' where nobody can see them.¹⁸ - 11 February 2011: Pono Moatlhodi, deputy speaker of the Botswana National Assembly, reportedly told a meeting on HIV prevention that gay people should be killed: <p style="margin-left: 20px;"><i>On this point I would agree with Zimbabwean President Robert Mugabe who once described that behaviour as that of western dogs; I don't like those gay people and will never tolerate them. They are demonic and evil ... When there are so many women in this country, why would anyone choose to have sex with another man? The Bible does not agree with such a thing and therefore it is evil; if we give prisoners condoms, are we now saying they are free?</i>¹⁹</p>
<p>Persecution and Discrimination</p>	<ul style="list-style-type: none"> - 14 November 2014: the Gaborone High Court delivered a landmark judgment overturning the Department of Labour and Home Affairs' refusal to register the organisation Lesbians, Gays and Bisexuals of Botswana (LEGABIBO).²⁰ The case was brought by 20 individuals who argued that the refusal to register their organisation violated their constitutional rights, including their rights to freedom of association, freedom of expression, and equal protection of the law. The Botswana government had consistently refused to provide registration for the LGBTI organisation LeGaBiBo on the grounds that it 'promoted an illegal activity'. The High Court held that this was unconstitutional. The judgment in the High Court did not address the prohibition on same-sex sexual conduct. The decision is being appealed.²¹ - 2014: The US Country report recorded no reports police-targeted persons suspected of same-sex sexual activity, however, civil society organisations claimed there were instances of violence, societal harassment and discrimination based on sexual orientation or gender identity.²²

	<ul style="list-style-type: none"> - A number of reports highlighted high levels of societal discrimination and unease with sexual minority issues.
Legislative News	<ul style="list-style-type: none"> - June 2015: The Botswana government and the National AIDS Coordinating Agency (NACA) are considering introducing a policy that will allow the distribution of condoms in prisons. The government had previously refused to distribute condoms to prisoners as a means to fight the spread of HIV and AIDs.²³ - May 2015: The acting Permanent Secretary in the Ministry of Health, Tebogo Banamile, revealed that some international donors had withdrawn their financial aid to Botswana because of the country's anti-homosexuality laws.²⁴ - 24 March 2015: Voted in favour of a failed Russian draft decision at the UN General Assembly's Fifth Committee (Administrative and Budgetary) that would have had the Secretary-General withdraw his bulletin laying out UN staff benefits for same-sex couples.²⁵ - March 2015: The British High Commission in Gaborone is providing financial support to the Botswana Network of Ethics, Law and HIV/AIDS (BONELA) and the Lesbians, Gays and Bisexuals of Botswana to conduct a policy dialogue to create awareness among policy makers on issues of sexual orientation and gender identity.²⁶ - September 2014: The UN Human Rights Council passed a resolution condemning violence and discrimination based on sexual orientation and gender identity. Botswana opposed the resolution.²⁷ - 17 June 2014: Botswana backed an African Commission resolution on protecting sexual and gendered minorities from violence: <i>We join the High Commissioner in welcoming the call last month by the African Commission on Human and Peoples Rights, at its 55th Session, for States to take steps to protect persons from human rights violations on the basis of sexual orientation and gender identity.</i>²⁸ - 2009, 2013: (UPR) Botswana has undergone two cycles and rejected recommendations to decriminalise at both instances.²⁹ In 2013, Botswana considered further recommendations to: (i) take steps to implement comprehensive anti-discrimination laws, particularly to eliminate discrimination on the basis of sexual orientation (Australia); and (ii) engage in a dialogue to repeal laws which criminalize consensual adult same sex relations (Canada). Ultimately, these recommendations were also rejected by Botswana. The delegation noted that <i>Botswana does not accept the recommendation. Botswana, as a predominantly Christian nation, has not reached a stage in which she can accept same sex activities. It will be necessary to conduct educational campaigns on this issue so that when the laws are changed people will be carried along.</i>³⁰ - While stressing the democratic process, however, Botswana noted the role of civil society in educating the people and in advocating for change on the issue of the criminalisation of homosexual activities. It repeated its openness towards organisations advocating for the issue. - 9 September 2010 – The Botswana government passed an amendment to its Employment Act (1983)³¹ that prohibits the termination of contracts of employment based on an individual's sexual orientation, or health status (including HIV/AIDs status).³²

¹ The text of the law is : www.wipo.int/wipolex/en/details.jsp?id=10486.

² Penal Code, Chapter 08:01, s164: 'Any person who- (a) has carnal knowledge of any person against the order of nature; (b) has carnal knowledge of an animal; or (c) permits any other person to have carnal knowledge of him or her against the order of nature, is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.'

³ Penal Code, Chapter 08:01, s165: 'Any person who attempts to commit any of the offences specified in section 164 is guilty of an offence and is liable to imprisonment for a term not exceeding five years.'

⁴ Penal Code, Chapter 08:01, s167: 'Any person who, whether in public or private, commits any act of gross indecency with another person, or procures another person to commit any act of gross indecency with him or her, or attempts to procure the commission of any such act by any person with himself or herself or with another person, whether in public or private, is guilty of an offence.' Per s33: 'When in this Code no punishment is specially provided for any offence, it shall be punishable with imprisonment for a term not exceeding two years or with a fine, or with both.'

⁵ Botswana has signed but not ratified Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights.

⁶ Accepted inquiry procedure under Article 20.

⁷ Acceptance of individual complaints and inquiry procedure.

⁸ In 1998 a review of all the laws affecting the status of women was undertaken by the government with a view to making those laws gender neutral, particularly those relating to sexual offences. As part of this review process, penal provisions relating to same-sex conduct, which had originally criminalized sexual conduct between male persons, were subsequently replaced with gender-neutral provisions to include sexual conduct between women (see. Lennox, C. and Waites, M. (eds), *Human Rights, Sexual Orientation and Gender Identity in The Commonwealth: Struggles for Decriminalisation and Change* (Institute of Commonwealth Studies, London, 2013), pp. 341-342).

⁹ *Ibid*, n. 3, p 344.

¹⁰ *Attorney General v. Unity Dow* (1992) BLR 119 CA.

¹¹ Lady???, 'LeGaBiBo Raises Awareness about Homosexuality in Botswana', *HIV Gaps*, 31 March 2014, : <http://www.hivgaps.org/blog/legabibo-raises-awareness-homosexuality-botswana/#.U7p3zvdXUV> accessed on 19 July 2014

¹² Canada: Immigration and Refugee Board of Canada, Botswana: treatment of sexual minorities by society and the government; legal recourse and protection available to sexual minorities who have been subjected to ill-treatment (2006-March 2014), 9 April 2014, BWA104810.E , : <<http://www.refworld.org/docid/537333c54.html>> accessed on 19 July 2014

¹³ Bureau of Democracy, US State Dept., *Country Reports on Human Rights Practices for 2013: Botswana*, Human Rights and Labor, 2013, <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220084>> accessed on 19 July 2014

¹⁴ Immigration and Refugee Board of Canada, *Kanane v the State; Botswana: treatment of sexual minorities by society and the government*, 2006-March 2014), 9 April 2014, BWA104810.E , legal recourse and protection available to sexual minorities who have been subjected to ill-treatment (<<http://www.refworld.org/docid/537333c54.html>> accessed on 19 July 2014

¹⁵ *Ibid*, n 3 at 347.

¹⁶ APA, 'Ex-Botswana leader slams ill-treatment of sex workers', *Star Africa*, 8 May 2014, <<http://en.starafrica.com/news/ex-botswana-leader-slams-ill-treatment-of-sex-workers.html>> accessed on 19 July 2014

¹⁷ Ngwanaamotho, M., 'Pastor says gays are criminals', *Mmegi*, 14 August 2013, <<http://www.mmegi.bw/index.php?sid=1&aid=514&dir=2013/August/Thursday15>> accessed on 19 July 2014

¹⁸ Simon, M., 'Why Botswana Shouldn't Legalize Gay Sex: Sodomy Is For "Western Dogs"', *Queerty*, 17 March 2011, <<http://www.queerty.com/why-botswana-shouldnt-legalize-gay-sex-sodomy-is-for-western-dogs-20110317>> accessed on 19 July 2014

¹⁹ 'Botswana official says he would kill gay people', *LGBT Weekly*, 3 March 2011, <<http://lgbtweekly.com/2011/03/03/botswana-official-says-he-would-kill-gay-people/>> accessed 19 July 2014

²⁰ *Rammage and Others v Attorney General of Botswana*, High Court of Botswana, Case no. MAHGB 175-13, Judgment 14 November 2014. The judgment is : www.southernafricalitigationcentre.org/1/wp-content/uploads/2014/11/LeGaBiBo-judgment-low-resolution.pdf.

²¹ Stewart, C., 'Botswana appeals ruling in favor of LGBTI rights group', *76 Crimes*, 22 January 2015, <<http://www.76crimes.com/2015/01/22/botswana-appeals-ruling-in-favor-of-lgbti-rights-group/>> accessed on 29 July 2015

²² US Department of State, Bureau of Democracy, *Country Reports on Human Rights Practices for 2014: Botswana*, Human Rights and Labor, 2014, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236330> accessed on 29 July 2015

²³ 'Botswana to consider policy on distribution of condoms in prisons', *StarAfrica*, 11 June 2015, <<http://www.starafrika.com/news/botswana-to-consider-policy-on-distribution-of-condoms-in-prisons.html>> accessed on 29 July 2015

²⁴ 'Botswana loses donor support over its anti-gay laws', *StarAfrica*, 20 May 2015, <<http://www.en.starafrika.com/news/botswana-loses-donor-support-over-its-anti-gay-laws.html>> accessed on 29 July 2015

²⁵ Lavers, M.K., 'Bid to block spousal benefits for gay U.N. employees fails,' *Washington Blade*, 24 March 2015, <<https://www.washingtonblade.com/2015/03/24/bid-to-block-spousal-benefits-for-gay-u-n-employees-fails/>> accessed 25 October 2015

²⁶ Gasennelwe, U., 'British Gov't funds gay campaign', *Weekend Post*, 16 March 2015, <<http://www.weekendpost.co.bw/wp-news-details.php?nid=723>> accessed on 29 July 2015

²⁷ See UNHRC Resolution 27/32, *Human Rights, sexual orientation and gender identity*, 2 October 2014, UN Doc A/HRC/RES/27/32

²⁸ Potts, A., 'Botswana joins international call to protect LGBTI human rights', *Gay Star News*, 17 June 2014, <<http://www.gaystarnews.com/article/botswana-joins-international-call-protect-lgbti-human-rights170614>> accessed on 19 July 2014

²⁹ See UNHRC, *Report of the Working Group on the Universal Periodic Review*, 13 January 2009, UN Doc A/HRC/10/69; UNHRC, *Report of the Working Group on the Universal Periodic Review*, (22 March 2013) UN Doc A/HRC/23/7

³⁰ UNHRC, *Report of the Working Group on the Universal Periodic Review*, (22 March 2013) UN Doc A/HRC/23/7/Add.1

³¹ Employment Act Amendment No. 10 of 2010.

³² See Tabengwa, M., Nicol, N., 'The development of sexual rights and the LGBT movement in Botswana', in Lennox, C., Waites, M., (eds.), *Human Rights, Sexual Orientation and Gender Identity in The Commonwealth: Struggles for Decriminalisation and Change*, 2013, p. 348 for a more in depth analysis.

 Brunei Darussalam		
<p>National Law:</p> <p><i>Penal Code, 1951</i>¹</p> <ul style="list-style-type: none"> - S377: Unnatural Offences² <p><i>Syariah Penal Code Order 2013</i>³</p> <ul style="list-style-type: none"> - S82(1): Liwat (sexual intercourse between two men)⁴ 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - 10 years' imprisonment with the possibility of a fine - Not yet in force. Reports suggest this provision will eventually result in a punishment of stoning (see legislative news below). 	<p><u>Treaty Ratification</u></p> <p>CEDAW</p> <p>CRC</p>
The law is only applicable to men.		
Enforcement	<ul style="list-style-type: none"> - Despite new legislative developments (detailed below) there have been few reported instances of sustained prosecutions under the Brunei Penal Code; however, this is not to say the law has not been used in order to arrest members of sexual minorities. - 11 March 2015: A Bruneian civil servant was fined \$1,000 under the Syariah Penal Code Order after he pleaded guilty to cross-dressing in a public place.⁵ - 2014: The US Human Rights Country Report documented that there were no reports of arrests or prosecutions of LGBT persons during the year.⁶ 	
Statements by Public Figures	<ul style="list-style-type: none"> - 21 May 2014: A group of 20 US lawmakers, led by Democrat Mark Pocan of Wisconsin, signed a letter calling on the US Government to pressure Brunei to revoke Islamic criminal laws that will punish sodomy and adultery with the death penalty, including by stoning.⁷ - February 2015: Singer John Legend expressed his concern about Brunei's anti-gay laws by boycotting an event at a hotel owned by the Sultan of Brunei.⁸ - 11 May 2014: Reports that the Dorchester Hotel in Los Angeles had lost an estimated £1 million in bookings due to a boycott over the actions of its owner, the Sultan of Brunei, in approving anti-gay laws in Brunei. Stephen Fry and Richard Branson were among those publicly promoting the boycott of the Dorchester Chain.⁹ - 1 May 2014: See the words of the Prime Minister (Legislative news, below) - 11 April 2014: Spokesman for the UN High Commission for Human Rights, Rupert Colville, condemned the proposed implementation of a new penal code based on local interpretations of sharia law (below) as contravening international human rights standards. He added: <i>'The provisions of the revised penal code may encourage further violence and discrimination against women and also against people on the basis of sexual orientation.'</i>¹⁰ - 24 January 2014: Sam Zarifi, Regional Director (Asia and the Pacific) of the 	

	International Commission of Jurists) published an open letter to the Prime Minister of Brunei condemning amendments to the country's Penal Code which provide for the penalty of death by stoning for the offence of sodomy. ¹¹
Persecution and Discrimination	<ul style="list-style-type: none"> - November 2014: The International Gay and Lesbian Human Rights Commission submitted a report to the Committee on the Elimination of Discrimination Against Women stating that: <i>The enforcement of SPC Order 2013 is likely to result in even tighter family control and increased violence to force Bruneian lesbians, tomboys, masculine-looking women, bisexual women and transgender women to conform to social norms (and now criminal law) on sexuality and gender.</i>¹² - 2014: The 2014 US Human Rights Country Report stated that there were no reports of official or societal discrimination based on sexual orientation in employment, housing, or access to education or health care, although societal stigma may cause affected individuals to refrain from reporting such problems. Anecdotal information indicated LGBT individuals avoided disclosing their sexual orientations due to fear of societal or legal retribution. There were no NGOs working on human rights for LGBT persons in the country.¹³
Legislative News	<ul style="list-style-type: none"> - May 2015: In their 2015 State-Sponsored Homophobia report, the International Lesbian and Gay Association (ILGA) stated that: <i>Brunei Darussalam is currently phasing in a Syariah Penal Code that sees, in black letter law, the death penalty introduced for certain same-sex sexual activity in 2016, but seems unlikely to be implemented in actuality.</i>¹⁴ - 24 March 2015: Voted in favour of a failed Russian draft decision at the UN General Assembly's Fifth Committee (Administrative and Budgetary) that would have had the Secretary-General withdraw his bulletin laying UN staff benefits for same-sex couples.¹⁵ - 1 May 2014: Despite a temporary halt, the first phase of the implementation of a new <i>Syariah</i> Penal Code, one which will eventually lead to the stoning of people found guilty of same-sex sexual activity, was started. Speaking about the penal code, the Prime Minister was quoted as saying: <i>'The decision to implement the (penal code) is not for fun but is to obey Allah's command as written in the Quran.'</i>¹⁶ - Universal Periodic Review (2010 and 2014): In 2010, Brunei rejected the recommendations to amend section 377 of the Penal Code in order to decriminalise consensual sexual activity among persons of the same sex.¹⁷ In 2014, despite concerns raised about its new <i>Sharia</i> Penal Code order 2013, Brunei rejected all recommendations to decriminalise sexual activity between same-sex consenting adults and ensure the protection of human rights for sexual minorities.¹⁸

¹ The text of the law is : https://www.unodc.org/tldb/pdf/Brunei_Penal_Code_1951_Full_text.pdf

² *Penal Code 1951, s377: 'Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment for a term which may extend to 10 years, and shall also be liable to fine. Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.'*

³ The text of the law is :

www.agc.gov.bn/aGc%20images/Laws/Gazette_pdf/2013/en/syariah%20penal%20code%20order2013.pdf

⁴ *Syariah Penal Code 2013*, s83: '(1) Any person who commits liwat is guilty of an offence and shall be liable on conviction to the same punishment as provided for the offence of zina. (2) For the purposes of this Order, "liwat" means sexual intercourse between a man and another man or between a man and a woman other than his wife, done against the order of nature that is through the anus.'

⁵ 'Bruneian civil servant fined \$1,000 for cross-dressing', *The Brunei Times*, 11 March 2015,

<<http://www.bt.com.bn/news-national/2015/03/11/bruneian-civil-servant-fined-1-000-cross-dressing>>

⁶ US Department of State Bureau of Democracy, *Country Reports on Human Rights Practices for 2014: Brunei, Human Rights and Labor*, 2014,

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236426>> accessed on 5 September 2015

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⁸ Ennis, D., 'John Legend Boycotts Event to Protest Sultan of Brunei', *The Advocate*, 5 February 2015,

<<http://www.advocate.com/politics/media/2015/02/05/john-legend-boycotts-event-protest-sultan-brunei>>

⁹ Bridge, S, 'Luxury hotel chain which owns the Dorchester on Park Lane loses £1m in boycott over gay rights', *Daily Mail*, 11 May 2014, <<http://www.dailymail.co.uk/money/markets/article-2625511/Dorchester-Collection-luxury-hotel-chain-loses-1m-boycott.html#ixzz31bwydlfO>>

¹⁰ UN, *UN concerned at broad application of death penalty in Brunei's revised penal code*, 11 April 2014,

<http://www.un.org/apps/news/story.asp?NewsID=47552&Cr=death+penalty&Cr1=#.U7p_r_lXUUV> accessed on 19 July 2014

¹¹ Open letter from International Commission of Jurists to the Prime Minister of Brunei Darussalam, 24 January 2014, <<http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/01/Brunei-Open-letter-on-2013-Penal-Code.pdf>>

¹² IGLHRC, *Discrimination and Violence Against Women in Brunei Darussalam On The Basis of Sexual Orientation and Gender Identity*, Presented to the 59th session of the Committee on the Elimination of All Forms of Discrimination Against Women, November 2014

¹³ US Department of State, Bureau of Democracy, *Human Rights and Labor, Country Reports on Human Rights Practices for 2014: Brunei*, 2014,

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236426>> accessed on 5 September 2015

¹⁴ ILGA, *State-Sponsored Homophobia*, 28, May 2015,

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¹⁵ Lavers, M., K., 'Bid to block spousal benefits for gay U.N. employees fails', *Washington Blade*, 24 March 2015,

<<https://www.washingtonblade.com/2015/03/24/bid-to-block-spousal-benefits-for-gay-u-n-employees-fails/>>

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<<http://www.msnbc.com/msnbc/brunei-sharia-penal-code-gay-stoning>> accessed on 19 July 2014

¹⁷ UNHRC, *Report of the Working Group on the Universal Periodic Review: Brunei Darussalam* (OHCHR 4 January 2010), A/HRC/13/14

¹⁸ UNHRC, *Report of the Working Group on the Universal Periodic Review: Brunei Darussalam* (OHCHR 7 July 2014), A/HRC/27/11; see also: UNHRC, *Addendum: Report of the Working Group on the Universal Periodic Review: Brunei Darussalam* (OHCHR 10 September 2014), A/HRC/27/11/Add.1

 Cameroon		
<p>National Law:</p> <p><i>Penal code of 1965 and 1967, as amended in 1972¹</i></p> <ul style="list-style-type: none"> - Article 347: <i>Homosexualité (Homosexuality)</i>² 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - Between 6 months' and 5 years' imprisonment with a fine of between 20,000 and 200,000 CFA (US\$35 - \$350) 	<p><u>Treaty Ratification</u></p> <p>AFRICAN CHARTER</p> <p>CAT</p> <p>CAT Art 22</p> <p>CEDAW</p> <p>CEDAW OP</p> <p>CRC</p> <p>ICCPR</p> <p>ICCPR OP</p> <p>ICESCR</p>
The law applies to men and women.		
Enforcement	<ul style="list-style-type: none"> - 2014: In its annual report for 2014, the advocacy group Camfaids (the Cameroonian Foundation for AIDS) reported that prosecutions for homosexuality in Yaoundé dropped by 58 per cent from 2012 to 2014. During that same period, the number of LGBT convictions fell even more from 16 in 2012 to 4 in 2014. Attorney Alice Nkom said that a similar decrease has occurred in the Douala area.³ - October 2014: In Yaoundé, elements of the Nkolemesseng gendarmerie brigade detained six persons whom they accused of prostitution and homosexuality. State Counsel at the Yaoundé Ekounou Court of First Instance ordered the release of the detainees on October 8 due to insufficient evidence.⁴ - May 2014: Two women were convicted of violating Cameroon's anti-gay laws and sentenced to four months in prison and fines of 100,000 CFA francs (US \$211) each. Due to time already served, their attorney stated the two women would be released after paying fines and court costs.⁵ - January 2013: An appeals court in Cameroon overturned the conviction of two men jailed in 2011 for homosexual acts. The trial judge had stated that <i>'the way the men dressed... spoke and the fact that they drank Bailey's Irish Cream proved they were gay.'</i>⁶ - 2013: Human Rights Watch reported that Cameroon pursues more arrests than any other country in the world.⁷ - 51 arrests of men and some women have been documented since 2005 (other sources cite 200 arrests and arbitrary detentions a year), with many more unreported.⁸ - The accused are frequently held without charge beyond the maximum permitted time of 48 hours; beaten, subjected to forced anal examinations by doctors, kept in solitary confinement and detained on remand for up to three years without charge 	

	<p>or trial. Most arrests and prosecutions are made on the basis of appearance or accusations rather than evidence of actual engagement in the acts as defined and required by law.⁹</p> <ul style="list-style-type: none"> - Recent cases to gain widespread publicity internationally include: <ul style="list-style-type: none"> ○ Jean Claude Mbédé: Accused and convicted on the basis of a text message to another man stating ‘I’m very much in love with you’. On 28 April 2011 he was sentenced to 3 years in imprisonment, during which time he reported being sexually assaulted. After falling ill, he died on the 10 January 2014, reportedly after being removed from hospital and isolated by his family. According to a lawyer who worked on Mr Mbédé’s case, his family had said: <i>‘he was a curse for them and that we should let him die’</i>.¹⁰ ○ Jonas Nsinga Kimie (aged 19 years) and Frankie Ndome (aged 20 years) were arrested on the basis of their effeminate appearance and beaten on the soles of their feet until they confessed to being gay. Upon conviction, they were sentenced to 5 years imprisonment and given a fine of 200,000 francs. The men were subsequently acquitted on appeal and released.¹¹ ○ Joseph Magloire Ombwa, Sylvain Seraphin Ntsama, Emma Louitsi Tiomela and Nicolas Ntamack: were subjected to severe delays and a lack of due process. One was subject to forced anal examinations by a military doctor in order to find ‘evidence’. Another, an artist, was arrested after being reported to police by neighbours as homosexual on the basis that tourists would frequently visit his house.¹² ○ Martine Solange Abessolo, Esther Aboa Belinga and Leonie Marie Djula: were accused of being lesbians on the basis of an accusation by the husband of Djula that his wife had been enticed by the other two women. After four days in custody, Djula became a witness for the prosecution and Abessolo and Belinga were finally charged, convicted and sentenced to 9 months in prison on 15 May 2013.¹³
<p>Statements by Public Figures</p>	<ul style="list-style-type: none"> - March 2015: Cameroonian attorney Alice Nkom called on others to join her in the fight against the country’s anti-gay laws: <i>‘If we unite our efforts and our resources, we will get the supreme court to join the other supreme courts in the world to firmly condemn the use of Article 347 as a basis for legal action or verdicts.’</i>¹⁴ - June 2014: According to an online report, Cameroon President Paul Biya had made a verbal commitment at a side meeting with a group of LGBTI rights advocates at the Africa-European Union summit held in Brussels, Belgium, on April 2-3: <i>‘to work to stop the arrests of people on the basis of their supposed sexual orientation’</i>. A National Newspaper (Tribune Verte on 27 May 2014) also referenced this commitment.¹⁵ - 4 September 2013: On national radio, a member of the National Human Rights Commission issued threats directed towards LGBTI activists who were to appear at the country’s upcoming UPR in Geneva. Activists were told that they should not expect to be safe when they returned home: <p><i>Cameroonians who denigrate their country abroad in international bodies and then complain that they are insecure when they return to their home country - they themselves are responsible for what happens. They know they will be put down.</i></p> <p>In relation to decriminalisation, the member stated:</p>

	<p><i>There's a broad consensus in society about these alleged 'LGBT rights'. People in Cameroon are against the decriminalization of Article 347 of the Criminal Code and agree totally with the government's position, which reflects the opinion of the Cameroonian society.</i>¹⁶</p> <ul style="list-style-type: none"> - 2 July 2013: Navi Pillay, the UN High Commissioner for Human Rights, called for Cameroon to focus on the implementation of recommendations of the Human Rights Treaty Bodies.¹⁷ - January 2013: President of Cameroon Paul Biya stated that attitudes were changing in the country towards LGBT people: <i>'Now I can say that discussions are under way. People are talking, minds can change one way or another but currently it's a crime.'</i>¹⁸ - Early 2012: President Paul Biya informed diplomats that, whilst he would not be prepared to call for decriminalisation, he would seek to impose a moratorium on arrests. He has not honoured this undertaking.¹⁹ - 13 January 2011: The Cameroonian Minister of External Relations, Henri Eyebe Ayissi, complained to the EU Ambassador, Raul Mateus Paula, about the EU financing a 'Project to Provide Assistance and Guidance to Sexual Minorities' on the basis that the law criminalises homosexuality.²⁰
Persecution and Discrimination	<ul style="list-style-type: none"> - LGBTI people and their associates, and lawyers for LGBTI defendants, face widespread discrimination and persecution by both State and non-State actors. No arrests or investigations have taken place despite incidents being reported to the police. Criminal provisions are used to entrap and subject LGBTI people to extortion. - 8 August 2015: Cameroon's fastest-ever hurdler was reportedly banned from the national team because of his sexual orientation.²¹ - July 2015: Yves Yomb of Alternatives-Cameroon said that although the number of LGBT people in prison in Cameroon had decreased, <i>'we still encounter many cases of scams, blackmail, entrapment, physical violence.'</i>²² - February 2015: A report by the human rights group Fédération internationale des ligues des droits de l'homme (FIDH) found that LGBT activists in Cameroon are <i>'regularly threatened by anonymous messages via SMS or Facebook'</i>.²³ - January 2015: The advocacy group Camfaids (the Cameroonian Foundation for AIDS) reported an attack against a trans woman by a group of 15 people armed with stones and clubs in Yaoundé, Cameroon.²⁴ - 24 May 2014: Cameroon Athletics Federation National Technical Director Michel Nkolo announced before an audience of more than 1,000 athletes and coaches that the federation was suspending Thierry Essamba due to rumours he was homosexual. Essamba's parents reportedly expelled him from the family home after the suspension.²⁵ - 30 December 2013: A gay man sought the help of police after being assaulted by an extortionist/blackmailer and was instead charged with the offence of homosexuality under the Penal Code.²⁶ - 22 December 2013: The offices of the NGO, Cameroon Association for Empowerment Outreach Programmes (CAMEF), was burgled and vandalised. CAMEF advocates for human rights focussing on HIV/AIDS among LGBTI people and

sex workers. Threatening graffiti was left, with one stating 'Go away, fag [pédé]' and another warning: 'Next time we will padlock and burn all of you inside. Go away.' Equipment was destroyed and the organisation was asked by their landlord to leave.²⁷

- **August 2013:** Anti-gay vigilante brigades patrolled the streets of Yaoundé, hunting for homosexuals and arresting them. The groups claimed to have the approval of the Secretary of Defence. Bars suspected of being LGBTI friendly were also targeted. Mob attacks against Franky and Jonas (see the 'Enforcement' section above for the court case) occurred for the second time that year. A 16-year-old youth was also attacked in a separate incident.²⁸
- **16 July 2013:** A prominent Cameroonian gay rights activist and chief executive of CAMFAIDS, Eric Lembembe, was tortured and murdered. His body had been burned with an iron, with his neck and feet both broken. Insufficient investigations (with no photos taken of the crime scene, etc.) were reported, with irrelevant questions asked by police aimed at ascertaining the sexual orientation of Lembembe and his colleagues. Three members of CAMFAIDS were detained for several days for questioning over Lembembe's murder despite being neither witnesses nor suspects.²⁹
- **26 June 2013:** The offices of Alternatives-Cameroun were burgled and firebombed - destroying the medical records of clients tested for HIV.³⁰
- **16 June 2013:** The offices of Michel Togué were broken into and confidential information from files stolen. Attacks on Alice Nkom and Togué, two prominent human rights lawyers defending LGBTI people, escalated. Both reported receiving threats against them and their families regularly by email and text. Togué's family sought asylum in another country. The crimes were reported to police but no investigations or arrests were made.³¹
- **June 2013:** A spate of break-ins occurred at offices of LGBTI human rights defenders and lawyers acting for LGBTI people. On 1 June 2013, the offices of REDHAC were burgled.³²
- **5 April 2013:** The son of Maximilienne Ngo Mbe, Executive Director of Réseau de Défenseurs des Droits Humains en Afrique Centrale (Central African Human Rights Defenders Network), (REDHAC), was the victim of an attempted kidnapping.³³
- **March 2013:** Alternatives-Cameroun, Association for the Defence of Homosexuals, Cameroonian Foundation for AIDS (CAMFAIDS) and Human Rights Watch issued a report revealing that many of those arrested on homosexuality charges are tortured.³⁴
- **January 2013:** A report by Amnesty International stated that the criminal justice system in Cameroon was being used '*as a weapon to attack LGBTI people*'. The report found that LGBT people in police custody were forced to undergo '*illegal, degrading*' medical examinations to prove their homosexuality.³⁵
- **6 January 2013:** A man was stoned to death by mobs in Maroua in south-western Cameroon after being found with his male lover.³⁶

Legislative News	<ul style="list-style-type: none"> - 2014: Government officials in Cameroon defended the law criminalising consensual same-sex activity by claiming the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights state that countries may limit freedoms in the interests of preserving public order and that individuals have the duty to preserve African values and morals.³⁷ - 2009 and 2013: (UPR) Cameroon rejected recommendations to decriminalise. Also in its 2013 UPR, Cameroon also rejected recommendations to respect the right to privacy, protect LGBTI human rights defenders, protect LGBTI people from violence and take steps to eliminate discrimination against LGBTI people.³⁸ - 2011: Cameroon opposed the 2011 UN Human Rights Council Resolution which called on the UN High Commissioner on Human Rights to prepare a report on the rights of LGBTI people. - Cameroon opposed the 2008 UN General Assembly Declaration on Human Rights and Sexual Orientation and Gender Identity.
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¹ Text of the law is available in French at:

http://www.vertic.org/media/National%20Legislation/Cameroon/CM_Code_Penal_Cameroun.pdf

² *Penal code of 1967, Article 347 bis: 'Est puni d'un emprisonnement de six mois à cinq ans et d'une amende de 20.000 à 200.000 francs toute personne qui a des rapports sexuels avec une personne de son sexe.'* English translation: 'Whoever has sexual relations with a person of the same sex shall be punished with imprisonment for six months to five years and a fine of 20,000 to 200,000 Francs CFA.'

³ Stewart, C., 'LGBTI life improves in homophobic Cameroon', *76 Crimes*, 28 July 2015,

<<http://76crimes.com/2015/07/28/lgbti-life-improves-in-homophobic-cameroon/>>

⁴ US Department of State Bureau of Democracy, *Human Rights and Labor, Country Reports on Human Rights Practices for 2014: Cameroon*, June 2015, <<http://www.state.gov/j/drl/rls/hrrpt/2014/af/236338.htm>>

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⁶ 'Cameroon 'gay sex' men acquitted', *BBC Africa*, 7 January 2013, <<http://www.bbc.co.uk/news/world-africa-20939129>>

⁷ Human Rights Watch, *Guilty by Association: Human Rights Violations in the Enforcement of Cameroon's Anti-Homosexuality Law*, March 2013, <http://www.hrw.org/sites/default/files/reports/cameroon0313_ForUpload.pdf> at 1, accessed on 19 July 2014

⁸ Ibid at 9

⁹ See, for example, Ibid at 23

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¹⁴ Ni Chonghaile, C., 'Cameroonian lawyer urges world to join her in fight against anti-gay legislation', *The Guardian*, 10 March 2015, <<http://www.theguardian.com/global-development/2015/mar/10/cameroon-lawyer-campaign-against-anti-gay-legislation>>

¹⁵ 'Cameroon president seeks end to arrests for being LGBTI', *SDGLN.com*, 4 June 2014, <<http://www.sdgl.com/news/2014/06/04/cameroon-president-seeks-end-arrests-being-lgbt#sthash.ZeUfjYr.dpbs>>

See also a scanned copy of: Tribune Verte, *Homosexuals support the nomination of Paul Biya for a Nobel Prize*, 27 May 2014: [in French]:

<<https://www.facebook.com/AidsAcODEVcameroun/photos/a.183518031841446.1073741827.183516951841554/247649682094947/?type=1&theater>>

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³⁴ Human Rights Watch (N 1)

³⁵ Amnesty International, *Cameroon: End impunity for grave human rights violations*, 24 January 2013, <<https://www.amnesty.org/en/latest/news/2013/01/cameroon-end-impunity-grave-human-rights-violations/>>

³⁶ Littauer, D., 'Cameroon trader stoned to death for gay sex', *Gay Star News*, 9 January 2013, <<http://www.gaystarnews.com/article/cameroon-trader-stoned-death-gay-sex090113>> accessed on 19 July 2014

³⁷ US Department of State, Bureau of Democracy, *Human Rights and Labor, Country Reports on Human Rights Practices for 2014: Cameroon*, June 2015

³⁸ UNHRC, *Report of the Working Group on the Universal Periodic Review*, 5 July 2013, UN Doc A/HRC/24/15

 Dominica		
<p>National Law:</p> <p><i>Sexual Offences Act 1998</i>¹</p> <ul style="list-style-type: none"> - S14: Gross Indecency² - S16(1): Buggery³ - S16(2): Attempted Buggery 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - 5 years' imprisonment - 10 years' imprisonment with admission to a psychiatric hospital should the court see fit - 4 years' imprisonment with admission to a psychiatric hospital should the court see fit 	<p><u>Treaty Ratification</u></p> <p>ACHR</p> <p>CEDAW</p> <p>CRC</p> <p>ICCPR</p> <p>ICESCR</p>
Section 14 is applicable to both men and women. Section 16 is applicable only to men.		
Enforcement	<ul style="list-style-type: none"> - July 2014: In a statement to Caribbean Media Corporation, Dominica's Prime Minister Roosevelt Skerit asserted that Dominica does not enforce its law against homosexual activity, at least in private homes, and has no plans to do so. <i>'This has never happened in Dominica and I don't think that will be happening any time now or later,'</i> he said.⁴ - 2014: The US Human Rights Report noted that the government had reported rare enforcement of the country's statutes that criminalise same-sex consensual sexual conduct.⁵ - 28 May 2013: Responding to an article which stated that <i>'between 1995 and 2000, 35 people were arrested by local authorities and charged with buggery'</i>, a Dominican police inspector, John Carbon, rejected the claims. Admitting that 35 people were arrested, he claimed that police reports show nobody was sent to jail.⁶ - 2010: Reports suggest that the law is only rarely enforced. A CHAP (Caribbean HIV Aids Partnership Dominican Sector) Shadow Report reveals that between 2000 and 2010 there were 50 reported cases of buggery. The report stresses, however, that these statistics do not show whether those arrested were gay men (the sodomy law applies to both homosexual and heterosexual couples), and did not show whether they involved a lack of consent.⁷ - See also the comments of the Prime Minister (below). 	
Statements by Public Figures	<ul style="list-style-type: none"> - July 2015: Coordinator of Minority Rights Dominica (MIRIDOM), Daryl Phillip, has been calling on the government to repeal the part of the Sexual Offense Act of Dominica relating to buggery and argues that Act <i>'discriminates against people because of their sexual preferences.'</i>⁸ - May 2015: Speaking to the 30th biennial conference of the Caribbean Union of Teachers in Dominica, CUT President Marvin Andall said that <i>'we have to begin to see the rights of people with different sexual orientation as that of basic human right.'</i>⁹ 	

	<ul style="list-style-type: none"> - July 2014: In response to a request from Minority Rights Dominica (MiriDom) to re-examine the Sexual Offence Act of Dominica, Prime Minister Roosevelt Skerrit said he was prepared to meet with MiriDom at any time, but that he would not support same-sex marriage. <i>I will make it clear that there are some things that this Government will not accept and we will never allow for the state to recognise same-sex marriage in our country. If other countries want to do it, that's a matter for them but there are certain guiding principles that we must follow.</i>¹⁰ - 29 May 2013: The President of the Dominican Association of Evangelical Churches, Michael Daniel, called for the government to keep the country's anti-gay laws: <i>'The DAEC unequivocally calls upon both the ruling party and the opposition to take a unified stand and oppose the LGBTI agenda to legislate their sinful behaviour.'</i>¹¹ - 27 May 2013: Prime Minister Roosevelt Skerrit spoke on the issue of criminalisation, arguing that Dominica will not repeal its buggery laws: <i>The government's position in relation to this matter is stated in law and this matter is still on our books and will remain there for the foreseeable future...The point is, it could be buggery today, tomorrow it will be incest and what other law they will want the government to repeal?</i> In his statement, the Prime Minister did at least suggest that the law does not apply to consensual acts committed in private: <i>As it is now, anybody who wants to engage in whatever activities can do so in the privacy of his home but one should not believe that the government is prepared, or thinking of or wanting to make this a public affair.</i>¹² - 21 May 2013: Bishop of Roseau - Gabriel Malzaire, speaking for the Catholic Church of Dominica, argued against the continued criminalisation of homosexuality in the country: adhering <i>to the call of the Holy See in its statement to the 63rd session of the General Assembly of the United Nations on the Declaration of Human Rights, sexual orientation and gender identity, to condemn all forms of violence against homosexual persons as well as to urge all States to take necessary measures to put an end to all criminal penalties against them.</i>¹³ - 27 July 2011: Former Chief Justice of the Eastern Caribbean Supreme Court, Sir Brian Alleyne, criticised laws which criminalise homosexuality: <i>'I think it is totally wrong. What a person does in the privacy of his home with another person is his business, he is answerable to the Lord and not to anyone else.'</i>¹⁴
Persecution and Discrimination	<ul style="list-style-type: none"> - 2014: During Dominica's Universal Periodic Review (UPR) at the UN Human Rights Council, the Sexual Rights Initiative, claimed that: <i>human rights defender groups in Dominica are forced to operate underground because of fear that their members will be victimised. Those who are openly gay complain of acts of physical abuse and are often victims of vandalism committed against their positions, as well as being expelled from home.</i>¹⁵ In response, the delegation noted:

	<p><i>The Constitution of Dominica guaranteed all individuals protection from discrimination based on race, place of origin, political opinion, colour, creed or sex and, also, guaranteed the right of freedom of association. The Government had never used fear or intimidation to prevent defenders of any cause from exercising their rights, and there was no law requiring individuals to state their sexual preference or conscientious position when associating. The relevant legislation only criminalized specific sexual acts, and not what might be considered as physical manifestations or association, and nobody had been arrested or prosecuted for such acts.</i>¹⁶</p> <ul style="list-style-type: none"> - 2014: The 2014 US Human Rights Country Report indicated that there were no legal impediments to organisations for LGBT persons, and a few groups operated in the country and were able to speak openly and publicly about their issues. In addition, there were no official reports during the year of violence against LGBT persons, but anecdotal evidence suggested societal discrimination against persons due to their real or perceived sexual orientation or gender identity was common in the socially conservative society. Furthermore, civil society organisations reported that LGBT victims of violence or harassment avoided notifying police of abuse because of social stigma.¹⁷ - 2010: The 2010 CHAP report provides some examples of discrimination and persecution on the grounds of sexuality, as well as hate crimes within the country. In 2010, Clement James was murdered after being accused of ‘watching’ the perpetrator. The man responsible, Davis St Jean had been heard singing about killing gay people. Before the murder he was reported to have said ‘<i>all battie boi must dead.</i>’¹⁸
Legislative News	<ul style="list-style-type: none"> - 2014: (UPR) The delegation maintained that ‘<i>the Government was not prepared to introduce any legislation to Parliament decriminalizing sexual relations between adults of the same sex.</i>’¹⁹ Dominica did not directly respond to the recommendations made by other States with respect to the decriminalisation of consensual same-sex conduct and increasing efforts to reduce discrimination based on sexual orientation. However, in its concluding remarks, the delegation pointed out that <p><i>Dominican people hold no animus towards persons who have same-sex relationships. Stating that Dominica, either state institutions or non-state actors, persecute and/or discriminate LGTB persons, is a serious misrepresentation of the reality. Non-governmental organizations should respect the right of peoples to self-determination, including the right to determine the laws which will govern them. Dominica strongly expressed its concern about these reiterated attacks that falsify the reality of the LGTB persons’ situation in the country.</i>²⁰</p> - 2010: (UPR) Dominica rejected recommendations to decriminalise consensual same-sex sexual conduct.²¹

¹ The law is : <http://www.dominica.gov.dm/laws/1998/act1-1998.pdf>

² *Sexual Offences Act 1998, s.14: ‘(1) Any person who commits an act of gross indecency with another person is guilty of an offence and liable on conviction to imprisonment for five years... (4) In this section “gross indecency” is an act other than sexual intercourse (whether natural or unnatural) by a person involving the use of the genital organs for the purpose of arousing or gratifying sexual desire.’*

³ *Sexual Offences Act 1998, s.16: ‘(1) A person who commits buggery is guilty of an offence and liable on conviction to imprisonment for... (b) ten years, if committed by an adult on another adult... and, if the Court*

thinks it fit, the Court may order that the convicted person be admitted to a psychiatric hospital for treatment. (2) Any person who attempts to commit the offence of buggery, or is guilty of an assault with intent to commit the same is guilty of an offence and liable to imprisonment for four years and, if the Court thinks it fit, the Court may order that the convicted person be admitted to the psychiatric hospital for treatment.'

⁴ 'Dominica PM says no to same-sex marriage', *Jamaica Observer*, 10 July 2014,

<http://www.jamaicaobserver.com/news/Dominica-PM-says-no-to-same-sex-marriage_17128008>

⁵ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Dominica*, 2014,

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236682>> accessed on 26 August 2015

⁶ 'Police shoot down gay website allegations', *Dominica News Online*, 28 May 2013,

<<http://dominicanewsonline.com/news/homepage/news/general/police-shoot-down-gay-website-allegations/>> accessed on 19 July 2014

⁷ Heartland Alliance and CHAP, *A Shadow Report on the Violations of ICCPR Obligations Relating to Lesbian, Gay, Bisexual, Transgender Persons in the Commonwealth of Dominica*, Heartland Alliance, July 2011,

<<http://www.heartlandalliance.org/gishr/publications/dominica-lgbt-iccpr-shadow-report.pdf>> accessed 19 July 2014

⁸ 'Attorney says US gay ruling could have implications for Caribbean islands', *Dominica News Online*, 26 July 2015, <http://dominicanewsonline.com/news/homepage/news/crime-court-law/attorney-says-us-gay-ruling-could-have-implications-for-caribbean-islands/> accessed on 26 August 2015

⁹ 'Regional teachers urged to pay attention to same-sex relationships', *Jamaica Observer*, 5 August 2015, <http://www.jamaicaobserver.com/news/Regional-teachers-urged-to-pay-attention-to-same-sex-relationships_19222181>

¹⁰ 'Dominica PM says no to same-sex marriage', *Jamaica Observer*, 10 July 2014,

<http://www.jamaicaobserver.com/news/Dominica-PM-says-no-to-same-sex-marriage_17128008>

¹¹ 'Evangelical churches call for political unity on homosexuality', *Dominica News Online*, 29 May 2013,

<<http://dominicanewsonline.com/news/homepage/news/religion/evangelical-churches-call-for-political-unity-on-homosexuality/comment-page-1/>> accessed 19 July 2014

¹² 'Buggery laws will not be repealed – PM', *Dominica News Online*, 27 May 2013,

<<http://dominicanewsonline.com/news/homepage/news/general/buggery-laws-will-not-be-repealed-pm/>> accessed on 19 July 2014

¹³ Malzaire, G., 'COMMENTARY: Decriminalization of homosexuality – what it means for the Catholic Church in Dominica', *Dominica News Online*, 21 May 2013,

<<http://dominicanewsonline.com/news/homepage/features/commentary/commentary-decriminalization-of-homosexuality-what-it-means-for-the-catholic-church-in-dominica/>> accessed on 19 July 2014

¹⁴ Alleyne, B., 'Homosexuality laws in Dominica impractical – Sir Brian Alleyne', *Dominica News Online*, 27 July 2011, <<http://dominicanewsonline.com/news/homepage/news/general/homosexuality-laws-in-dominica-impractical-sir-brian-alleyne/>> accessed on 19 July 2014

¹⁵ UNHRC, *Summary prepared by the Office of the United Nations High Commissioner for Human Rights*, (14 January 2014) UN Doc A/HRC/WG.6/19/DMA/3

¹⁶ UNHRC, Report of the Working Group on the Universal Periodic Review, (26 June 2014), UN Doc A/HRC/27/9*, para. 22

¹⁷ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Dominica*, 2014,

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236682>> accessed on 26 August 2015

¹⁸ Ibid 2.

¹⁹ UNHRC, Report of the Working Group on the Universal Periodic Review, (26 June 2014), UN Doc A/HRC/27/9*, para. 22

²⁰ UNHRC, *Report of the Human Rights Council on its twenty-seventh session*, (22 December 2014) UN Doc A/HRC/27/2 paras. 557-584

²¹ UNHRC, *Report of the Human Rights Council on its thirteenth session*, (8 February 2011) UN Doc A/HRC/13/56 at 167

	Ghana	
<p>National Law:</p> <p><i>Ghana Criminal Code 1960 Chpt 6¹</i></p> <ul style="list-style-type: none"> - S104: Unnatural Carnal Knowledge² 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - 3 years.³ 	<p><u>Treaty Ratification</u></p> <p>AFRICAN CHARTER</p> <p>CAT</p> <p>CAT Art 22</p> <p>CEDAW</p> <p>CEDAW OP</p> <p>CRC</p> <p>ICCPR</p> <p>ICCPR OP</p> <p>ICESCR</p>
<p>The Law is applicable to men only.</p>		
<p>Enforcement</p>	<ul style="list-style-type: none"> - There are no reports suggesting that Ghana’s anti-gay legal provisions are currently enforced. In 2007, a 63 year old British man was deported having pleaded guilty to ‘unnatural carnal knowledge’, after taking pictures of him having sex with another man. Two men were reportedly fined 6 million cedis each by the court under the same charge.⁴ - Ministerial statements on the validity of the criminal law provisions relating to “unnatural carnal knowledge” have been diverse. In August 2011, the Ghanaian Attorney General, Minister Martin A.B.K Amidu stated that private same sex conduct between two consenting adults is legal in Ghana: <p><i>The law does not follow you to see what you do, your house is your castle; your room is your castle, what you do there is no body’s business. It is only when you rape an adult by way of unnatural carnal knowledge that you become a subject of prosecution.</i>⁵</p> <p>This stands in contrast to more recent views expressed by the current AG, Marietta Appiah Oppong, who in February 2013 declared that ‘...the Criminal Offences Act of Ghana says that unnatural carnal knowledge is a criminal offence and so the position of the law is clear and that will be my advice to government.’⁶</p> - 2014: The US Human Rights Country Report highlighted that there was considerable public debate over whether this legislation could be used to prosecute consenting adults for same-sex sexual activity, but there were no reports it had been used.⁷ - August 2014: Police in Walewale, a small farming town and capital of the West Mamprusi District, Northern Region, arrested a 21-year-old man on suspicion of being homosexual and ‘recruiting’ other youth to be homosexual. Police stated the arrest was for the suspect’s own safety, since residents of the town had vowed to kill the man and his entire family if he was not removed from the community.⁸ 	

<p>Statements by Public Figures</p>	<ul style="list-style-type: none"> - July 2015: The Humanist Association of Ghana (HAG) condemned the treatment of LGBT persons. In a statement, HAG said <p style="margin-left: 2em;"><i>We, at the Humanist Association of Ghana (HAG) in clearest terms: 1. Condemn the dehumanizing treatment of gay people in our society. It is, to say the least, embarrassing that in 2015 we treat productive members of our society whose sexual orientation isn't mainstream with the courtesy afforded the carcass of rabid dogs. That a postcolonial African society will suffer any section of its members to humiliation, dehumanisation, violence and even death based on their sexual orientation is bizarre. Even more so, if you consider that pre-colonial African societies were often very tolerant of gay people and in some societies, they were elevated to divine status. We, at HAG, stand in solidarity with members of Ghana's LGBTQ community. We acknowledge their humanity and their rights to live free of intimidation. We know that the idea that homosexuality is a Western import is a myth, and more importantly that homosexuality is human and what is inhuman is the lack of compassion shown towards the LGBTQ community. Tons of research data and anthropological work inform that same-sex behaviour existed in pre-colonial and pre-Islamic sub-Saharan Africa. That the wave of homophobia currently sweeping our country and large parts of the African continent is the result of the works of bigoted homophobic Judaeo-Christian missionaries in Africa...</i>⁹</p> - Whilst some politicians have spoken in favour of LGBT rights, an overwhelming majority of statements made by public figures condemn homosexuality. When ministers have spoken positively, they have been criticised. Nana Oye Lithur, after her appointment as Minister for Gender, Children and Social Protection, was forced to defend statements she had made years earlier on gay rights: <p style="margin-left: 2em;"><i>I have never said that homosexuality should be promoted or that I will promote homosexuality. I have never said that homosexuality should be legalised... I stand for justice for everybody. And what I said was the rights of everybody, including homosexuals should be protected.</i>¹⁰</p> - 3 April 2014: Cardinal Peter Turkson, leader of the Pontifical Council for Justice and Peace in Ghana, criticised Uganda's anti-gay laws, saying: '<i>homosexuals are not criminals.</i>'¹¹ - 21 March 2014: A Former Ghanaian politician and ex-High Commissioner to India reportedly told a group of anti-gay activists: <p style="margin-left: 2em;"><i>One thing I'll want to emphasise is that homosexuality today has become a cult. It has become a club. It has become a foundation. It has become something that some people are promoting and putting billions of dollars into so that this unusual and abnormal behaviour should be accepted by force by the world. This is the strength of the danger and for which matter we must stand up strongly against it.</i>¹²</p> - 28 February 2014: Alex Afenyo-Markin, a Ghanaian MP, called for the government to set out its position on gay rights. The minister did not say whether he was pro or anti-homosexuality but stressed the importance of picking a side in order to direct future policy: '<i>If we are for gay practices and we say it's a human rights issue, we are accepting it, we have to live with it, then we should provide facilities at the health centers to take care of them because people are dying.</i>'¹³ - 19 Dec 2013: Ghana's Deputy Minister of Tourism, Culture and the Creative Arts, Dzifa Abla Gomashie, argued against discrimination on the grounds of sexuality, regardless of personal attitudes towards homosexuality. At the same time, Dr. Kojo
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	<p>Obeng, representing the Chief Psychiatrist of Ghana made similar comments: <i>'Not accepting homosexuality does not mean we should discriminate and persecute them.'</i>¹⁴ The Chief Psychiatrist, Dr. Akwasi Osei, had previously stated in March 2013 that <i>'homosexuality is not natural and should not qualify for human rights, which are natural rights. In its true nature, it is a disorder.'</i>¹⁵</p> <ul style="list-style-type: none"> - 1 October 2013: The President of Ghana John Mahama set out his position: <i>'I believe that laws must prevail. For instance, people must not be beaten or killed because of their sexual orientation, but in my country there is a strong cultural hostility towards it.'</i>¹⁶ - 1 August 2013: The son of the first president of Ghana spoke out in support of gay rights, arguing that gay people should not be prosecuted.¹⁷ - 1 July 2013: The head of the Ghanaian Presbyterian Church, Emmanuelle Martey claimed that <i>'gays'</i> wanted to destroy the country and formed part of <i>'Satan's deadly agenda.'</i>¹⁸ - The Government of Ghana released a statement that President John Mahama <i>'does not subscribe to homosexuality and will not take any step to promote homosexuality in Ghana'</i> following news reports of the President's friendship with openly gay US writer Andrew Solomon.¹⁹ - July 2011: The General Secretary of the Christian Council of Ghana was quoted saying that <i>'we Ghanaians and for the matter Africans cherish our rich and strong values on issues such as homosexuality and we must not allow anyone or group of people to impose what is acceptable in their culture on us in the name of human rights.'</i>²⁰ - 21 July 2011: Paul Evans Aidoo, a Ghanaian minister, called for the investigation and arrest of gay people living in Ghana. In making his comments, he also implored landlords to report suspected homosexuals to the authorities. Also in 2011, the then (now deceased) Prime Minister of Ghana John Atta Mills was reported to have said: <i>'I as President of this nation would never initiate or support any attempt to legalize homosexuality in Ghana.'</i>²¹
<p>Persecution and Discrimination</p>	<ul style="list-style-type: none"> - Whilst the law may not be actively enforced, reports suggest that instances of persecution are widespread and common. The 2012 UK Country of Origin Report on Ghana suggests that persecution often occurs <i>'at the hands of, or with the collusion of, the police or other agents of the state'</i>. It adds that sexual minorities faced <i>'widespread discrimination, as well as police harassment and extortion attempts'</i>, and are often subjected to physical and sexual assaults.²² - 30 August 2015: A soldier reportedly rescued a gay man being severely beaten by a mob at Kawukudi Park in Accra. The victim was invited by a friend to watch a football game with an intention to beat him up.²³ - 17 August 2015: A violent homophobe's Facebook page was reportedly blocked and police investigation started after complaints from UK based activist Pastor Jide Macaulay alleging that he was using social media to entrap and assault LGBTI people.²⁴ - 14 August 2015: The reportedly police launched a search for a group of about 20 attackers that brutally assaulted a man suspected to be a homosexual in a suburb of Accra. Police later revealed that the victim was assaulted after he had contacted one of the local men to be his friend. The incident was recorded on a video that went public.²⁵

	<ul style="list-style-type: none"> - March 2015: A group of women perceived to be lesbians were confronted by a mob during a private birthday party in the town of Teshie near Accra, and <i>'pelted with human faeces'</i> according to reports. Local residents later printed and circulated posters in an attempt to 'out' the women.²⁶ - February 2015: A well-known event promoter was beaten by a mob in Accra due to his perceived sexuality. A video recording of the attack was circulated widely through social media. Popular Ghanaian singer Efyia later condemned the attack on Twitter.²⁷ - 2014: The US Human Rights Country Report highlighted that LGBT persons face widespread discrimination in employment and education, as well as police harassment and extortion attempts. There were also reports police were reluctant to investigate claims of assault or violence against LGBT persons. According to the HRAC, gay men in prison were often subjected to sexual and other physical abuse. The government took no known action to investigate or punish those complicit in the abuses.²⁸ While there were no reported cases of police or government violence against LGBT persons during the year, stigma, intimidation, and the attitude of the police toward LGBT persons were likely factors in preventing victims from reporting incidents of abuse. - 27 May 2014: A gang of Muslim youths were wanted by police following the lynching of a gay man because of his sexuality. According to reports, local villagers refused to help the police in their investigation and were still looking for the man's lover.²⁹ - 2013: The Centre for Popular Education and Human Rights Ghana (CEPEHRG) recorded five cases in 2013 of LGBT people in Ghana being robbed or beaten after responding to profiles on dating websites.³⁰ - 19 April 2013: 53 students were expelled from a school after being suspected of being gay.³¹ - August 2012: Nine LGBT people fled the Accra neighbourhood of Jamestown after a group of youths were assaulted people in the area perceived to be homosexual.³²
Legislative News	<ul style="list-style-type: none"> - 2012: (UPR) Ghana rejected recommendations to decriminalise same-sex sexual activity between consenting adults and to adopt measures that would raise awareness in the fight against homophobia. Ghana considered that it had already taken steps to prevent acts of violence against the gay community.³³ - 14 March 2013: The Deputy Attorney-General and Deputy Minister of Justice gave guidance on the issue: <i>... Unless and until an issue, be it social, religious, economic or political is sufficiently advanced in the moral consciousness of the citizenry and an unequivocal demand is made on Parliament to address the issue through effective legislation, any attempt to bypass the true wishes of the people will be counter-productive.</i>³⁴ - 2008: (UPR) multiple recommendations were made for Ghana to repeal those provisions which criminalise homosexuality. No response was made in relation to those recommendations.³⁵

¹ The law is : <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/88530/101255/F575989920/GHA88530.pdf>

² Criminal Code 1960, Chapter 6, s.104:

(1) Whoever has unnatural carnal knowledge... (b) of any person of sixteen years or over with his consent is guilty of a misdemeanour... (2) Unnatural carnal knowledge is sexual intercourse with a person in an unnatural manner or with an animal.

³ According to Article 296 (4) of the Criminal Procedural Code, a misdemeanour shall be liable to imprisonment for a term not exceeding three years: <http://www.wipo.int/edocs/lexdocs/laws/en/gh/gh011en.pdf>

⁴ 'British Sodomite to be Deported', *Ghana Web*, 15 November 2007,

<<http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=134211>> accessed on 19 July 2014

⁵ 'Homosexuality Is Not Illegal – Attorney-General', *Ghana News Now*, 30 August 2011,

<<http://www.ghananewsnow.com/2011/08/30/homosexuality-is-not-illegal-attorney-general/>> accessed on 19 July 2014

⁶ Addo-Tetteh, R., 'I Disapprove Of Gays - Attorney-General', *Peace FM Online*, February 2013,

<<http://www.okayfmonline.com/pages/politics/politics/201302/155721.php>> accessed on 19 July 2014

⁷ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Ghana*, 2014,

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236364>> accessed on 5 September 2015

⁸ US State Department, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Ghana*, 2014,

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236364>> accessed on 5 September 2015

⁹ 'Humanist Association of Ghana Decries Homophobia', *Ghana Web*, 7 July 2015,

<http://www.ghanaweb.com/GhanaHomePage/features/Humanist-Association-of-Ghana-Decries-Homophobia-366944> > accessed on 5 September 2015

¹⁰ 'I have never said that homosexuality should be promoted- Nana Oye Lithur', *Ghana Web*, 30 January 2013,

<<http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=263636>> accessed on 19 July 2014

¹¹ 'Cardinal Peter Turkson Of Ghana Denounces Uganda's Anti-Gay Law', *Huffington Post*, 3 April 2014,

<http://www.huffingtonpost.com/2014/03/04/cardinal-turkson-uganda-gay-law_n_4897391.html> accessed on 19 July 2014

¹² Roberts, S., 'Ghanaian ex-deputy speaker: 'Homosexuality is the new sodomy slave trade'', *Pink News*, 21

March 2014, <<http://www.pinknews.co.uk/2014/03/21/ghanaian-ex-deputy-speaker-homosexuality-new-sodomy-slave-trade/>> accessed on 19 July 2014

¹³ 'Ghana needs a clear policy on homosexuality - MP', *Citi FM Online*, 28 February 2014,

<<http://www.citifmonline.com/2014/02/28/ghana-needs-a-clear-policy-on-homosexuality-mp/>> accessed on 19 July 2014

¹⁴ Daily Guide, 'Minister Okays Gay Rights', *Peace FM Online*, 19 December 2013,

<<http://news.peacefmonline.com/pages/social/201312/183433.php>> accessed on 19 July 2014

¹⁵ Appiah, E., 'Chief Psychiatrist ready to "heal" gays', *My Joy Online*, 14 March 2013,

<<http://edition.myjoyonline.com/pages/news/201303/102801.php>>

¹⁶ Gillooly, J., 'President of Ghana visits KSU', *MDJ Online*, 1 October 2013,

<<http://mdjonline.com/bookmark/23721997-President-of-Ghana-visits-KSU>> accessed on 19 July 2014

¹⁷ Potts, A., 'Son of Ghana independence leader says gays must be tolerated', *Gay Star News*, 1 August 2013,

<<http://www.gaystarnews.com/article/son-ghana-independence-leader-says-gays-must-be-tolerated010813#sthash.4PWaQmTc.dpuf>> accessed on 19 July 2014

¹⁸ Littauer, D., 'Leading Ghana cleric: gay people are 'Satan's deadly agenda'', *Gay Star News*, 1 July 2013,

<<http://www.gaystarnews.com/article/leading-ghana-cleric-gay-people-are-%E2%80%98satan%E2%80%99s-deadly-agenda%E2%80%99010713#sthash.ixcVuUgS.dpuf>> accessed on 19 July 2014

¹⁹ Solomon, A., 'In bed with the President of Ghana?', *New York Times*, 9 February 2013,

<<http://www.nytimes.com/2013/02/10/opinion/sunday/in-bed-with-the-president-of-ghana.html>>

²⁰ 'Christian Council joins calls to condemn homosexuality in Ghana', *Ghana News Agency*, 19 July 2011,

<<http://www.ghananewsagency.org/social/christian-council-joins-calls-to-condemn-homosexuality-in-ghana-31187>>

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 Grenada		
National Law: <i>Criminal Code 1987</i> ¹ <ul style="list-style-type: none"> - S430: Committing Grossly Indecent Act² - S431: Unnatural connexion³ 	Maximum Penalties: <ul style="list-style-type: none"> - A misdemeanor offence - 10 years' imprisonment 	<u>Treaty Ratification</u> ACHR CEDAW CRC ICCPR ICESCR
The Law is applicable to men only.		
Enforcement	<ul style="list-style-type: none"> - The law is rarely enforced in Grenada. - 25 May 2011: A 41-year-old man was arrested under the country's anti-gay laws. The case was dismissed but the dismissal challenged by the director of public prosecutions. The case was eventually dismissed again. No other recent examples of prosecutions could be found.⁴ 	
Statements by Public Figures	<ul style="list-style-type: none"> - 29 May 2013: Grenadian Senate President, Lawrence Joseph, called for Caribbean countries to repeal their anti-homosexuality laws. In June, he clarified his position – stating that whilst he personally thought that being gay was immoral, there is a difference between immorality and illegality.⁵ 	
Persecution and Discrimination	<ul style="list-style-type: none"> - 2014: The US Department of State human rights report for Grenada found '<i>society generally was intolerant of same-sex sexual conduct, and many churches condemned it. Most LGBT persons were not open about their sexual orientation or gender identity.</i>⁶ There were no reports of violence linked to real or perceived sexual orientation. Persons who were subjected to rumours regarding their sexual orientation complained their livelihoods were affected. - 2009: The director of Grencap, as reported by the Immigration and Refugee Board of Canada, said that police officers would sometimes target and 'taunt' gay men. Moreover, the report claims that violent attacks, where gay men '<i>were stabbed, had bottles thrown at them, or faced threats and verbal harassment</i>', had occurred. Reports of violence and persecution were otherwise low.⁷ 	
Legislative News	<ul style="list-style-type: none"> - 2015: (UPR) Grenada stated it 'cannot accept' recommendations to repeal legislation criminalising consensual same-sex practices between adults as '<i>this is an offence under domestic legislation. Government would however continue to raise awareness on the issue and encourage tolerance.</i>'⁸ - 2015: (UPR) During its presentation to the Working Group, the Delegation from Grenada reported that: <i>the issue of discrimination against LGBTI persons was being considered within the context of the ongoing process of constitutional reform and the general view</i> 	

	<p><i>[presented in public consultations] was that the Constitution should not be amended to give protection to LGBTI persons... [however] the Constitutional Reform Advisory Committee had recommended that ordinary legislation be passed with regard to “protection against discrimination at workplaces based only on sexual orientation”.</i>⁹</p> <ul style="list-style-type: none"> - 2010: (UPR) Grenada rejected recommendations to eliminate discrimination on the basis of sexuality; the country also refused to amend laws which may discriminate on that basis and refused to decriminalise consensual same-sex sexual relations.¹⁰ - 2010: Whilst ultimately rejecting the UPR recommendations to decriminalise, in the Working Group Review it was acknowledged that: <i>‘With the passage of time, growing tolerance on the part of the people would help in addressing this issue. It was a policy issue on which the Cabinet would have to deliberate.’</i>¹¹
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¹ Text of the law is : <http://laws.gov.gd/>

² *Criminal Code 1987, s.430: “Whoever publicly and wilfully commits any grossly indecent act is guilty of a misdemeanour.”*

³ *Criminal Code 1987, s.431: “If any two persons are guilty of unnatural connexion, or if any person is guilty of unnatural connexion with any animal, every such person shall be liable to imprisonment for ten years.”*

⁴ ‘Man Arrested for Gay Sex in Grenada’, *Advocate*, 26 May 2011, <<http://www.advocate.com/news/daily-news/2011/05/26/man-arrested-gay-sex-grenada>> accessed on 19 July 2014

⁵ ‘Moves to Improve Gay Rights in Caribbean’, *Mamba Online*, 29 May 2013 <<http://www.mambaonline.com/article.asp?artid=8193>> accessed on 19 July 2014

⁶ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Grenada*, June 2015

- See more at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

⁷ Canada: Immigration and Refugee Board of Canada, Grenada: Situation and treatment of homosexuals; state protection and support services (2006-2009), 17 September 2009, GRD103262.E, <<http://www.refworld.org/docid/4b20f03dc.html>> accessed on 19 July 2014

⁸ UNHRC, *Report of the Working Group on the Universal Periodic Review: addendum*, 5 June 2015, UN Doc A/HRC/29/14/Add.1

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¹⁰ UNHRC, *Report of the Working Group on the Universal Periodic Review*, 16 June 2010, UN Doc A/HRC/15/12

¹¹ *Ibid* at para 26

	Guyana	
<p>National Law:</p> <p><i>Chapter 8:01 of the Criminal Law (Offences) Act, Title 25¹</i></p> <ul style="list-style-type: none"> - S352: Gross Indecency² - S353: Attempt to commit Unnatural Offence³ - S353: Buggery⁴ 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - 2 years' imprisonment - 10 years' imprisonment - Life imprisonment 	<p><u>Treaty Ratification</u></p> <p>CAT⁵</p> <p>CEDAW</p> <p>CRC</p> <p>ICCPR</p> <p>ICCPR OP</p> <p>ICESCR</p>
<p>The Law is generally applicable to men only but anal intercourse is punishable regardless of whether the intercourse is between persons of the same sex.</p>		
<p>Enforcement</p>	<ul style="list-style-type: none"> - 22 June 2014: One MP, Manzoor Nadir, indicated that LGBTI people are not currently prosecuted under the country's anti-gay laws (see below). On the 19 January the director of Guyana Trans United said that no one has been 'locked up' recently.⁶ - 2014: The United States Country report for Guyana suggests that there are few arrests; however, the law is frequently invoked by law officers in order to intimidate men who are gay or perceived to be gay.⁷ 	
<p>Statements by Public Figures</p>	<ul style="list-style-type: none"> - 9 July 2015: Minister of Public Health Dr George Norton has said that the gap in access to healthcare is stymieing the fight against the HIV/AIDS epidemic and: <i>'Unless we can fill that gap - unless we can ensure that there is no person left behind - it will take quite a long time, or might be almost impossible, for us to conquer the AIDS epidemic'</i>.⁸ - June 2015: Guyana's new President, David Granger, stated in an interview when addressing the issue of legalising same-sex sexual conduct that <i>There was a time when same-sex relations were punishable by law, but in many countries those laws have been repealed, we have to keep abreast with what is happening in other countries. At the same time we try not to get ahead of what the people want.</i>⁹ - May 2015: The APNU and AFC, Guyana's newly elected coalition government, launched their manifesto. The Coalition had campaigned on a platform of national unity, social cohesion, equal rights and gender equality. In their manifesto, the new government committed to: <i>putting in place measures which will ensure that all vulnerable groups in our society, including...those marginalised because of sexual orientation are protected and not discriminated against. This means that the Coalition will strive towards equality in law and moral situations, such as democratic activities and the securing of equal pay for equal work.</i>¹⁰ 	

- **22 June 2014:** Manzoor Nadir, an MP from Guyana, indicated that he would be willing to support a law decriminalising consensual same-sex conduct. In a statement, he also criticised current discussions as creating a '*storm in a teacup*', arguing that until the country's laws were enforced, the level of criticism received from LGBTI groups, was unwarranted: '*People make a lot of money and create a lot of jobs by creating these storms in a tea cup.*'¹¹

- **15 June 2014:** Guyana's former junior Finance Minister, Bishop Juan Edgehill, spoke against homosexuality within the country, saying: '*The gay agenda is an in your face agenda, that is what the religious community has stood against.*' The minister was later quoted:

*Do we want people in our school system telling young boys and girls that it's ok to have same sex, in our military barrack room two men having sex, at our border locations homosexuality... do we want at the police college two men having sex or do we want in the parks, when I take children for a walk two people of the same sex embracing each other?*¹²

- **8 June 2014:** A pastor was forced to resign after coming out in the press with statements suggesting that gay people should live on a separate island to protect the community from the 'wrath of God'. On 17 June a second Pastor, Wendell Jeffrey, criticised his resignation as an effort to stifle the debate on homosexuality within the country:

*What is the real issue? Is it that they fear a reprisal from their donor agencies or potential donor agencies? Is it that the voice of SASOD [an LGBTI organisation in Guyana] is so loud that the freedom of speech in Guyana is now under threat? Or is it that spiritual leaders - for fear of being politically incorrect - are quick to throw each other under the bus?*¹³

- **7 May 2014:** In response to calls from the European Union to decriminalise consensual same-sex sexual conduct in Guyana, former President Donald Ramotar acknowledged the issue but warned of failures under the previous administration, responding:

*I wish to state that in relation to the death penalty and the sex relations you will find sympathy with your views but I am sure you will agree with me that as a democracy we have to take the opinion of our people into consideration as well.*¹⁴

- **15 August 2013:** Guyana's former Minister for Agriculture, Dr Leslie Ramsammy (and former Minister for Public Health) called for the removal of punitive laws against sexual minorities from the books, stating that: '*while HIV/AIDs brought these [LGBT] groups to prominence, they were here before we were born.*'¹⁵

- While religious leaders maintain homosexuality is wrong, unlike other countries, they do not generally advocate that individuals should judge them or take action against them themselves:

- o The bishop of the Anglican Church in Guyana, Randolph George, believes some people are born with homosexual orientation. He added unless a person publicly states that he/she is a practising homosexual, those who are perceived to be gay by others are not treated any differently and should be welcomed.¹⁶

- o The director of Education of the Central Islamic Organisation of Guyana (CIOG), Kerry Arthur, stated: '*while the behaviour [homosexuality] is not acceptable just*

	<p><i>as fornication, it does not mean persons with such persuasions would not be accepted in the Muslim faith. Fornication and stealing are wrong, [but] you would find Muslims who would indulge in those acts.'</i>¹⁷</p> <ul style="list-style-type: none"> - 23 November 2012: the former Speaker of the Guyana Parliament called for the repeal of anti-sodomy laws: <p><i>The reality is that the archaic laws against homosexuality adopted from the UK over a century ago violate our constitution. Our young and forward looking Attorney General, who has been vociferous about the constitutional rights of high officials, should follow the example of Commodore Best and talk a bit about ordinary people who are forced to live in hiding because of fear of intolerance and worse.</i>¹⁸</p> - 12 August 2012: National consultations on death penalty and anti-gay laws were announced.¹⁹
<p>Persecution and Discrimination</p>	<ul style="list-style-type: none"> - April 2015: During the 2nd UPR reporting period, there had been unfettered freedom of expression by NGOs, religious organizations and the media on LGBT issues. In response to an NGO submission on LGBT rights in Guyana, the Government wished to reiterate that the State did not discriminate against persons based on their sexual orientation and that every Guyanese was entitled to the fundamental rights and freedoms as provided for in the Constitution, laws and policies of Guyana.²⁰ - 2014: The United States Country Report noted that NGOs reported widespread discrimination of persons based on their real or perceived sexual orientation or gender identity. Discrimination was found in employment, access to education and medical care. No anti-discrimination legislation exists to protect persons from discrimination based on sexual orientation. There were also reports of LGBT persons being fearful of reporting crimes that against had been perpetrated against them.²¹ - May 2014: It was reported in the media that LGBT person were ridiculed and shunned on account of their sexual orientation when attempting to access medical care around the country. Police also allegedly ordered an LGBT person to strip and stand on a counter in a police station for hours when he tried to lodge a formal complaint against another individual.²² - April 2014: an indiscriminate shooting took place against a small group of transgender persons standing by a road. The police only initiated an investigation and prosecution following public protests.²³ - 19 January 2014: A march was organised in memory of a young man murdered in Guyana. The director of Guyana Trans United, Quincy McEwan, told reporters of three murders of LGBTI people that have taken place over the last year. Such murders are reportedly becoming increasingly common. People on the march also criticised the police for their handling of reported incidents. One member of the Society against Sexual Orientation Discrimination claimed: <i>'There's a lack of will to investigate these incidents against transgender people because of trans-phobia and homophobia in the police force.'</i>²⁴ - 2013: A 2013 survey on <i>'attitudes towards homosexuality in Guyana'</i> indicated that 58% of Guyanese people are <i>'tolerant or accepting of homosexuals'</i>, whilst 25% could be categorised as <i>'homophobic'</i>. The report also indicated that, whilst the issue of decriminalisation was not pressing:

	<p><i>Guyanese [people] believe that a clear demonstration that these laws are impacting negatively on the physical or psychological well-being of young people or adults would provide good grounds for change. There is also support for change if it can be proven that the laws contribute to the spread of HIV/AIDS.²⁵</i></p>
Legislative News	<ul style="list-style-type: none"> - June 2015: Guyana’s new President, David Granger, has not committed himself or the government to reforming legislation with respect to LGBT persons. - 2015: (UPR) Following the first UPR, Guyana voluntarily committed itself to consulting on 28 recommendations of which 7 related to decriminalising consensual same-sex adult sexual relations and discrimination against LGBT persons. A 9 member Parliamentary Special Select Committee (PSSC) was appointed as part of the consultative process and commenced meeting on 28 November 2012.²⁶ The mandate of the PSSC was to receive and hear submissions on the attitude of Guyanese to any changes in legislative provisions and the criminal code regarding consensual adult same sex relationships and discrimination, perceived or real, against LGBT persons. Guyana’s UPR delegation underscored that compared to 2010, in 2014 and 2015 there had been an increase in discussions on LGBT issues, which was a good sign, but Guyana society remained divided. Due to the prorogation of the 10th Parliament the PSSC’s work had ceased.²⁷ The Government hoped to resubmit these matters to the National Assembly following General Elections in May. Following the 2nd UPR, Guyana supported the below recommendations with respect to sexual orientation: <ul style="list-style-type: none"> • Strengthen the protection of LGBT individuals; • Take measures to ensure that hate crimes and discrimination based on sexual orientation or gender identity are vigorously investigated and appropriately prosecuted; and • Continue its effort in eliminating discrimination against LGBT starting with the review of its related legislation. <p>The following recommendations are currently being examined by Guyana:</p> <ul style="list-style-type: none"> • Repeal all provisions that discriminate against persons on the basis of their sexual orientation or gender identity, particularly those which criminalise consensual adult same-sex relations; • Guarantee to LGBTI persons the full enjoyment under equal conditions of their human rights, through the abolishment of the norms that criminalize and stigmatize them, and the investigation and sanction of cases of violence or discrimination motivated by sexual orientation or gender identity; • Amend Article 149 of the Guyana Constitution to prohibit discrimination on the basis of sexual orientation; and • Take the legislative and policy measures to prevent and fight against violence and fight against discrimination based on sexual orientation or gender identity.²⁸ - 5 June 2014: Guyana indicated that it would not be able to support a “Draft Resolution on Human Rights, Sexual Orientation, and Gender Identity and Expression” (AG/CG/doc.12/14 rev. 1), stating: <i>‘several of the issues addressed herein are currently the subject of deliberation by a special select committee of the National Assembly’</i>. A select committee was initially established under Resolution No. 23 of 2012.²⁹

- **6 September 2013:** Guyana's Constitutional Court held that the country's law prohibiting cross-dressing (section 153 of the Summary Jurisdiction (Offences) Act 1893) was constitutional. The Court did, however, stress that providing such an act did not constitute an 'improper purpose' under Section 153(1)(xlvi) of the Summary Jurisdiction (Offences) Act, no prosecution could be brought and cross-dressing in and of itself was not a criminal offence. What would constitute an '*improper purpose*' for the purposes of the Act was not expanded upon.³⁰ The Chief Justice also ruled that since the law had been in existence since 1893 and it was therefore protected from challenge under Article 152 (1) of the constitution (the savings law clauses, which essentially preserved pre-existing laws at the time of independence from constitutional scrutiny). Legislative rather than curial action was necessary to invalidate that provision. The decision is being appealed and is currently before the Court of Appeal.
- **2000:** A constitutional amendment was approved to include non-discrimination on the grounds of sexual orientation. However, the bill did not receive presidential assent.³¹

¹ Text of the law is : www.oas.org/juridico/mLa/en/guy/en_guy-int-text-cl_act.pdf.

² *Criminal Law (Offences) Act, Chapter 8:01, Title 25, s.352: "Any male person who, in public or private, commits, or is a party to the commission, or procures, or attempts to procure the commission, any male person, of any act of gross indecency with any other male person shall be guilty of a misdemeanour and be liable to imprisonment for two years."*

³ *Criminal Law (Offences) Act, Chapter 8:01, Title 25, s.353: "Everyone who (a) attempts to commit buggery; or (b) assaults any person with intend to commit buggery; or (c) being a male, indecently assaults any other male person, shall be guilty of felony and liable to imprisonment for ten years."*

⁴ *Criminal Law (Offences) Act, Chapter 8:01, Title 25, s.354: "Everyone who commits buggery, either with a human being or any other living creature, shall be guilty of felony and liable to imprisonment for life."*

⁵ Accepted inquiry procedure under Article 20.

⁶ Chabrol, D.S., 'March against slothful police probes into killing of homosexuals', *Caribbean News Desk*, 11 January 2014 <<http://www.caribnewsdesk.com/news/7217-march-against-slothful-police-probes-into-killing-of-homosexuals>> accessed 19 July 2014

⁷ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Guyana*, 2014 <<http://www.state.gov/documents/organization/236906.pdf>> accessed on 2 August 2014

⁸ 'Gap in access to healthcare stymieing HIV/AIDS fight – Health Minister', *Kaieteur News*, 9 July 2015, <<http://www.kaieteurnews.com/2015/07/09/gap-in-access-to-healthcare-stymieing-hiv-aids-fight-health-minister/>> accessed on 19 September 2015

⁹ Rockcliffe, A., 'Granger non-committal on LGBT legislation', *Kaieteur News*, 3 June 2015, <<http://www.kaieteurnews.com/2015/06/03/granger-non-committal-on-lgbt-legislation/>> accessed on 2 August 2015

¹⁰ APNU and AFC, *A partnership for National Unity and Alliance for Change Coalition: Manifesto*, <<http://apnuafc.net/APNU-AFC-Manifesto.pdf>> accessed on 2 August 2015

¹¹ Campbell, K., 'The cry to scrap Anti – Buggery Laws is a 'storm in a teacup' – PPP's Manzoor Nadir', *INews Guyana*, 22 June 2014, <<http://www.inewsguyana.com/the-cry-to-scrap-anti-buggery-laws-is-a-storm-in-a-teacup-ppps-manzoor-nadir/>> accessed 19 July 2014

¹² Campbell, K., 'Homosexuality is destructive, should not be tolerated' – Bishop Edghill defends Pastor McGarrell', *INews Guyana*, 15 June 2014, <<http://www.inewsguyana.com/homosexuality-is-destructive-should-not-be-tolerated-bishop-edghill-defends-pastor-mcgarrell/>> accessed 19 July 2014

¹³ Knews, 'Pastor condemns action to silence talks on homosexuality', *Kaieteur News*, 17 June 2014, <<http://www.kaieteurnews.com/2014/06/17/pastor-condemns-action-to-silence-talks-on-homosexuality/>> accessed 19 July 2014

- ¹⁴ Chabrol, D.S., 'Ramotar lukewarm to Europe's calls for death penalty abolition, same-sex relations', *Caribbean News Desk*, 7 May 2014 <<http://www.caribnewsdesk.com/news/7892-ramotar-lukewarm-to-europe-s-calls-for-death-penalty-abolition-same-sex-relations>> accessed 19 July 2014
- ¹⁵ ICPD, *Daring to dream* (International Conference on Population and Development beyond 2014 August 15 2013) <<http://icpdbeyond2014.org/whats-new/view/id/68/daring-to-dream#sthash.bQKlOwd7.dpuf>> accessed 19 July 2014
- ¹⁶ Alleyne, O., 'News Report: Guyanese Religious Community's Stance on Homosexuality and Condom Use', *SASSOD Guyana*, 30 January 2006, <<http://www.sasod.org.gy/sasod-blog-news-report-guyanese-religious-communitys-stance-homosexuality-and-condom-use>> accessed 19 July 2014
- ¹⁷ Ibid
- ¹⁸ Ramkarran, R., 'Letter to the Editor', *Stabroek News*, 23 November 2012, <<http://www.stabroeknews.com/2012/opinion/letters/11/23/the-government-should-follow-the-lead-of-the-army-the-archaic-laws-against-homosexuality-violate-our-constitution>> accessed 19 July 2014
- ¹⁹ Parliament of Guyana, 'Parliament Office', *Facebook*, 18 February 2013, <<https://www.facebook.com/guyana.parliament/posts/351226378323414>> accessed 19 July 2014
- ²⁰ Human Rights Council Twenty Ninth Session Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review: Guyana*, 13 April 2015, A/HRC/29/16
- ²¹ Ibid n 4.
- ²² Ibid n 4.
- ²³ Ibid n 4.
- ²⁴ Chabrol, D.S., 'March against slothful police probes into killing of homosexuals', *Caribbean News Desk*, 11 January 2014, <<http://www.caribnewsdesk.com/news/7217-march-against-slothful-police-probes-into-killing-of-homosexuals>> accessed 19 July 2014
- ²⁵ Caribbean Development Research Services, *Attitudes towards Homosexuals in Guyana*, 2013, <http://ufdcimages.uflib.ufl.edu/AA/00/01/61/51/00001/Attitudes_Toward_Homosexuals_in_Guyana.pdf> accessed 19 July 2014 At 4
- ²⁶ Human Rights Council Working Group on the Universal Periodic Review Twenty-first Session *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Guyana*, 19 January 2015, A/HRC/WG.6/21/GUY/1
- ²⁷ Human Rights Council Twenty Ninth Session Universal Periodic Review *Report of the Working Group on the Universal Periodic Review: Guyana* (13 April 2015) A/HRC/29/16
- ²⁸ Ibid n 24.
- ²⁹ OAS General Assembly *Draft Resolution Human Rights, Sexual Orientation, and Gender Identity and Expression* (5 June 2014) AG/CG/doc.12/14 rev. 1
- ³⁰ SASSOD, *Constitutional Court Rules Cross-Dressing is Not a Crime if Not for "Improper Purpose" - Rights Groups Plan Appeal on Dubious Decision* (SASSOD Guyana 27 September 2013) <<http://sasod.org.gy/sasod-blog-constitutional-court-rules-cross-dressing-not-crime-if-not-%E2%80%9Cimproper-purpose%E2%80%9D-rights>> accessed 19 July 2014
- ³¹ *Speaking Out: the Rights of LGBTI Citizens from Across the Commonwealth*, Kaleidoscope Trust, 2013, <<http://kaleidoscopetrust.com/usr/library/documents/main/speaking-out-lgbti-rights-in-the-cw.pdf>> accessed 19 July 2014 at 42

 India		
<p>National Law:</p> <p><i>Indian Penal Code, 1860</i>¹</p> <ul style="list-style-type: none"> - S377: Unnatural Offences² <p>State of Jammu and Kashmir³:</p> <p><i>Ranbir Penal Code, 1989</i>⁴</p> <ul style="list-style-type: none"> - S377: Unnatural Offences 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - Life imprisonment <ul style="list-style-type: none"> - Life imprisonment 	<p><u>Treaty Ratification</u></p> <p>CEDAW</p> <p>CRC</p> <p>ICCPR</p> <p>ICESCR</p>
<p>The law is applicable only to men.</p> <p>However, the 2009 Delhi High Court judgment in <i>Naz Foundation v Government of NCT of Delhi</i> recorded a case involving two women who wanted to live together where a magistrate's court in Delhi observed that the case involved a hidden allegation under Section 377, thus stretching its application to an adult lesbian couple.⁵</p>		
<p>Enforcement</p>	<ul style="list-style-type: none"> - Whilst enforcement of Section 377 in India is rare, less than 200 prosecutions in 150 years according to one observation in a Supreme Court judgment⁶, the decision of the Supreme Court upholding the constitutional validity of Section 377 exposes the LGBT people to a constant threat of arrest and prosecution.⁷ See below some well documented cases demonstrating this threat under Section 377: - 18 December 2013: Yashwant Sinha, a senior BJP leader, called for the arrest of gay American diplomats and their partners. According to Sinha: <ul style="list-style-type: none"> <i>... after the Supreme Court ruling, it is completely illegal in our country, just as paying less wages was illegal in the US. So, why does not the government of India go ahead and arrest them and punish them?</i>⁸ - 3 November 2013: 13 men were arrested and charged under Section 377, although the law was unenforceable at the time as the Delhi High Court has decriminalised same-sex sexual acts. A later Supreme Court judgment upheld Section 377 and cast this case in a new light.⁹ - 4 January 2006: Lucknow city police arrested four men on charges of operating a 'gay racket' on the Internet, as well as of engaging in 'unnatural' sex. Police claimed they seized the men while having a picnic in a public place, and accused them of belonging to an 'international gay club'.¹⁰ - 2007: A British man named Desmond Hope was arrested in Goa under Section 377. He was freed after a month in jail by a judge who reportedly noted that legal appeals to decriminalise homosexuality were making their way through the courts, and such archaic laws should not apply in his case because they were about to be 	

	<p>struck down.¹¹</p> <ul style="list-style-type: none"> - 2006: The 2009 Delhi High Court judgment in <i>Naz Foundation v Government of NCT of Delhi</i> recorded a case in which four policemen raped and sexually abused a gay man while holding him in jail overnight after being picked up by two policemen who accused him of being a homosexual. They used wooden sticks to assault him while also using sexual and degrading language.¹² - Lucknow arrests 2001: Healthcare workers arrested under Section 377 for distributing condoms. Remain in jail for 47 days as the courts refuse to grant bail.¹³
Statements by Public Figures	<p>After the Supreme Court upheld Section 377, statements by key public figures have generally been supportive of LGBT rights.</p> <ul style="list-style-type: none"> - 30 June 2015: After the Law Minister was quoted by a leading daily as having said that the government might look to scrap Section 377, he clarified: <i>'I never said that, I was misquoted... The topic was on USA legalising same-sex marriage. I just said that such decisions would need wide discussions in India.'</i>¹⁴ - 11 June 2015: Speaking at an interview, Justice Leila Seth, India's first female High Court Chief Justice said that <i>'sexual orientation should not be ground for discrimination'</i>.¹⁵ - 13 January 2015: After facing public criticism for his comments that the Goa government was contemplating setting up centres on the line of Alcoholics Anonymous for LGBT youth in order to make them <i>'normal'</i>, the state's Sports Minister later said that he was misunderstood: <i>'I was not talking about the LGBT (youths) but about drug addicted and sexually abused youths.'</i>¹⁶ - 11 December 2014: Former Supreme Court Chief Justice (2007-2010) and Chair of the National Human Rights Commission, KG Balakrishnan condemned the country's ban on same-sex relationships. He said: <i>'Human rights of the LGBT community need protection, and they should not be categorised as criminals.'</i>¹⁷ - 17 July 2014: India's Health Minister Harsh Vardhan had stated at an event that: <i>'Everybody, including gays, has human rights. It is the job of the government to protect their rights.'</i> However, he declined to make further comments when asked to explain his position as his party President had supported the Supreme Court judgment which had upheld the validity of Section 377.¹⁸ - 28 May 2014: Ram Madhav, the then spokesperson of RSS, India's leading Hindu think-tank and now a key member of the ruling party, BJP, had reportedly stated that while he did not glorify certain kinds of behaviour covered by Section 377, it was debatable whether they should be considered a crime.¹⁹ - 27 May 2014: The Law Minister in the current government, Ravi Shankar Prasad appeared evasive on the issue when asked whether the government was opposed to the deletion of Section 377. He stated: <i>'We will have to examine the Supreme Court judgment. I will have to examine what is the nature of the government's</i>

direction,'²⁰

- **7 May 2014:** Indian Crown Prince, Manvendra Singh Gohil, the first openly gay Prince of India, criticised the recent Indian Supreme Court decision to re-criminalise homosexuality: *'We enjoyed our freedom for four years, and now we are back to square one.'*²¹
- **27 February 2014:** The current Finance Minister Arun Jaitley has repeatedly supported decriminalisation. Mr Jaitley, when he was still the leader of opposition in the Upper House, reiterated that although his party is yet to take an official position, his personal opinion is that he supports Justice Shah's judgment decriminalising homosexuality. He had openly supported the High Court's 2009 judgment in *Naz*.²²
- **15 December 2014:** Soli Sorabjee, a former Attorney General of India and one of the senior-most lawyers in the country, heavily criticised the Supreme Court's judgment upholding the validity of Section 377, stating that the judgment shows an intolerant mindset.²³
- **12 December 2013:** India's Law Minister Kapil Sibal reacted against the decision of the Indian Supreme Court to re-criminalise gay sex: *'The archaic law should be changed, millions of people are affected and these people should not be exposed to 377.'* He added that *'[India] must decriminalize adult consensual relationships.'*²⁴
- **12 December 2013:** Following the ruling of the Supreme Court upholding the validity of section 377²⁵, a number of Indian politicians spoke both in support of and against the criminal provisions, though mostly against Section 377:
 - Rahul Gandhi, the Vice President of the Indian National Congress (then the ruling party), spoke of the importance of personal freedom.
 - P. Chidambaram, the then Indian Finance Minister, spoke of his disappointment at the decision, adding that: *'[India] must explore ways and means in which this judgement can be reversed very quickly.'*
 - Indian National Congress President, Sonia Gandhi expressed her pride at the tolerance and inclusiveness of India:

We are proud that our culture has always been an inclusive and tolerant one... I hope that Parliament will address this issue and uphold the Constitutional guarantee of life and liberty to all citizens of India, including those directly affected by this judgment.
 - Yogi Adityanath and Meenakshi Lekhi - two BJP (currently ruling party, then in opposition) leaders supported the Supreme Court ruling. The former stated that he would continue to oppose any effort to decriminalise homosexuality, while the latter argued that the provision protects men from exploitation.²⁶
- **27 May 2013:** Subramanian Swamy, the leader of the Janata Party was heavily

	criticised for referring to homosexuality as a mental disorder on twitter. ²⁷
Persecution and Discrimination	<ul style="list-style-type: none"> - 19 September 2015: Observing that a section of society may perceive homosexuality as akin to 'social evils', the Supreme Court of India has admitted an appeal by the State of Gujarat against a High Court order allowing entertainment tax exemption to a Gujarati film that depicts the '<i>sufferings of a homosexual</i>' prince from the state. This has affected the release of the film. The bench also stated that its interim order, denying tax exemption to K R Devmani's <i>Meghdhanyshya - The colour of life</i>, shall continue.²⁸ - 31 August 2015: A decade after two pioneering reports from the region, a report by Ondede documented powerful testimonies of transgender people in the State of Karnataka, showing that the transgender community continues to face harassment, abuse and violence, despite advances in transgender rights as articulated in the Supreme Court <i>NALSA judgment</i> (2014).²⁹ - 13 July 2015: Four youths were arrested in Coimbatore, south India for robbing and killing a gay man. The gang robbed four others in the same way, by luring men at a bus station toilet to a nearby lake, where they were beaten and robbed.³⁰ - 7 July 2015: Police in the north Indian state of Uttar Pradesh arrested two men in the murder case of a transgender person after recovering alleged murder weapons from their possession.³¹ - 1 June 2015: According the group LGBT Collective in the Telangana state, there have been 15 instances of 'corrective rapes' that have been reported in the group in the last five years.³² - 28 May 2015: The Delhi Government ordered a probe after a news report exposed some Delhi doctors offering to 'cure' homosexuality with hormone therapy, seizure inducing drugs and even electric shocks.³³ - 10 May 2015: A transgender person allegedly committed suicide after being humiliated by some youths in the state of Tamil Nadu.³⁴ - 20 April 2015: A doctor in Delhi committed suicide when she found out about her husband's gay relationship. The husband was later arrested.³⁵ - 17 January 2015 : Four men, who used to extort money from transgender persons, were arrested for murdering Pravalika (25) after she refused to pay them and threatened with complaining to the police.³⁶ - 11 December 2014: According to Pehchan, a healthcare charity in India, there has been an increase in instances of persecution after the Supreme Court's judgment upholding Section 377: '<i>Across the country, we are getting many more reports about threats, intimidation, police harassment, rapes and especially cases of blackmail and extortion,</i>'. The organisation had reportedly recorded 2,064 cases of violence against LGBT in one year after the Supreme Court judgment.³⁷ - 24 September 2014: A transgender person reportedly died after she was pushed

	<p>out of a running train near Bangalore. She was speech-impaired and used to beg on trains.³⁸</p> <ul style="list-style-type: none"> - 20 June 2014: A group of men were arrested for extortion after two of the men recorded a video while having sex with a gay doctor and then blackmailed him. The men were charged both with extortion and with unnatural sex acts under the IPC. According to reports, the doctor will also be charged.³⁹ - 23 May 2014: A gay man was allegedly threatened with extortion and beaten after being lured into dating by a model and his female accomplice.⁴⁰ - 23 April 2014: Inhabitants of some of the larger Indian Cities such as Delhi have been noted for their progressive attitude towards sexual minorities, but in many states LGBTI people still face high levels of discrimination. In April, a gay man was granted asylum in Australia having reportedly faced death threats and physical assault at the hands of his family in an attempt to force him into an arranged marriage.⁴¹ - 10 April 2014: Four men were arrested for attempting to blackmail a gay man over his sexuality. The police were initially reluctant to act due to the man's sexuality and the nature of the blackmail; however, with the help of a local politician the men were arrested.⁴² - 11 February 2014: A 23-year-old man reported being forced into giving two police officers oral sex. The officers stopped the man, whom they had seen at a gay pride event, and attempted to rape him. Speaking on his decision not to file a police complaint, the man said: <i>'I came out of the closet when I was 15 years old. Had homosexuality been legal, I would have had the courage to file a complaint. Also, my attackers were cops. How can I expect any justice from them?'</i>⁴³ - 2 July 2009: The Delhi High Court's judgment in <i>Naz Foundation v Government of NCT of Delhi</i> records several instances of prosecution under Section 377 as well as explains the breadth of evidence that the petitioners had placed before the Court documenting persecution of LGBT people by police, non-state actors as well as family members.⁴⁴ - 18 June 2004: A 21-year-old <i>hijra</i> (member of a traditional male-to-female transsexual community in South Asia) living in Bangalore City was raped by several men. However, when she attempted to seek redress by the police, she was arrested, verbally harassed and tortured.⁴⁵ - 2001-2003: The violation of the rights of transgender persons have been documented in the year 2001 and 2003 by way of two reports by the People's Union for Civil Liberties - Karnataka. These pioneering works documented the harassment and violence faced by transgender persons at the hands of the police, public and also their family and often the medical establishment.⁴⁶
Legislative	<ul style="list-style-type: none"> - 31 August 2015: A report by Ondede on the situation of transgender persons

News	<p>stated that the Criminal Tribes Act, a British colonial law that deemed certain people criminal merely by virtue of them belonging to a particular tribe has been re-introduced into the law books of the State of Karnataka by way of section 36A of the Karnataka Police Act. This gives the police the power to regulate 'Eunuchs'. It puts the transgender community under surveillance and threat of illegal detention.⁴⁷</p> <ul style="list-style-type: none"> - 24 April 2015: The Rights of Transgender Persons Bill 2014 was passed by the Upper House of the Parliament with cross-party support, becoming the first private member's bill passed in the last 45 years. The Bill deals with a number of different aspects ranging from social inclusion, rights and entitlements, financial and legal aid, education, skill development to prevention of abuse, violence and exploitation. The Bill now has to be passed by the Lower House of the Parliament and obtain presidential assent before it becomes an Act.⁴⁸ A later report suggested that the Central Government was worried that the Bill could provide a strong opening for decriminalisation of homosexuality and is likely to introduce another official legislation that could replace the private members' bill.⁴⁹ - 24 March 2015: Voted in favour of a failed Russian draft decision at the UN General Assembly's Fifth Committee (Administrative and Budgetary) that would have had the Secretary-General withdraw his bulletin laying UN staff benefits for same-sex couples.⁵⁰ - 2014-2015: After a 2014 Supreme Court of India judgment recognising the Constitutional rights of transgender persons⁵¹, several governmental institutions have taken steps to recognise them as a 'third gender': <ul style="list-style-type: none"> o Government Census: After being counted as 'males' by the Indian Government's Census department for decades, the transgender community for the first time found mention in a survey report released by the National Crime Records Bureau making it the first time that transgender persons have been recognised as a separate category in an official survey undertaken by the Ministry of Home Affairs.⁵² o Reserve Bank of India: To help transgender persons open bank accounts and avail related services, the Reserve Bank directed banks to include a separate column 'third gender' in all their forms and applications.⁵³ o The University Grants Commission has decided to include transgender people as a separate category for its scholarship and fellowship schemes.⁵⁴ - 19 November 2014: UN General Assembly's Third Committee adopted a resolution on Extrajudicial, summary or arbitrary executions.⁵⁵ This is introduced biennially and calls upon States to investigate killings based on discriminatory grounds, including killings that target people based on their sexual orientation or gender identity. India voted in favour of adoption this resolution.⁵⁶ - 15 April 2014: The Supreme Court of India's judgment in <i>National Legal Services Authority v. Union of India</i> [Writ Petition (Civil) No. 400 of 2012] recognised the
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constitutional rights of transgender people. Explaining that the constitutional rights guaranteed under articles 14, 15, 16, 19 and 21 are 'gender neutral' and applicable to all human-beings, the Court stated that:

discrimination on the basis of sexual orientation or gender identity includes any discrimination, exclusion, restriction or preference, which has the effect of nullifying or transposing equality by the law or the equal protection of laws guaranteed under our Constitution..." [para. 77].

The mention of the term 'sexual orientation' along with 'gender identity' is significant as it gives a broader meaning to the constitutional guarantees.⁵⁷

- **11 December 2013:** In the case of *Suresh Kumar Kaushal v. Naz Foundation (Civil Appeal No. 10972 of 2013)*, the Supreme Court of India overturned a landmark 2009 decision in which the Delhi High Court declared section 377 of the Indian Penal Code unconstitutional to the extent it makes consensual homosexual intimacy in private a criminal offence.⁵⁸ The Central Government, along with several other concerned parties had subsequently filed a review petition against the Supreme Court's judgment.⁵⁹ After the review petitions failed, three curative petitions filed against this judgment are set to be heard by the Supreme Court.⁶⁰
- **9 July 2012:** (UPR) With regard to the protection of LGBT persons, the delegation stated that article 15 of the Constitution clearly prohibited discrimination on grounds of religion, race, caste, sex or place of birth and article 16 provided for equality of opportunity in matters of public employment.⁶¹ India accepted the recommendations to study the possibility of eliminating any criminalisation of same sex relations and to ensure access to information and counselling on sexual and reproductive health and rights as set out in its National Population Policy.⁶² The delegation did not expressly accept the recommendation to take measures to address violence and discrimination directed towards persons based on their sexual orientation, especially related to employment.
- **23 May 2008:** (UPR) Responding to a question raised during the Working Group discussions regarding section 377 and measures to ensure equality on the ground of sexual orientation, India's delegation acknowledged that: *'the concept of homosexuality itself does not find a mention in the Indian Penal Code and it can be a matter of debate whether it is "against the order of nature".'* The delegation also added that the matter was referred to the Law Commission of India, which took the view that Indian society does not currently accept homosexuality as an acceptable form of behaviour.⁶³

¹ The law is : <http://ncw.nic.in/acts/THEINDIANPENALCODE1860.pdf>

² *Indian Penal Code, 1860, s.377: 'Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with 1*[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation.-Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.'*

³ The Indian Penal Code, 1860 extends to the whole of India except the State of Jammu and Kashmir

⁴ Full text unavailable. See: Lucas Paoli Itaborahy & Jingshu Zhu, *State-Sponsored Homophobia, A world survey of laws: Criminalisation, protection and recognition of same-sex love* (International Lesbian, Gay, Bisexual, Trans and Intersex Association May 2013) <<http://www.refworld.org/pdfid/519b6c2f4.pdf>> accessed on 14 September 2015.

⁵ *Naz Foundation v Government of NCT of Delhi*, Delhi High Court, 2 July 2009, 160, DLT 277, p 20

⁶ *Suresh Kumar Kaushal v. Naz Foundation*, Civil Appeal No. 10972, 2013, para. 43. :

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¹⁰ *India: Repeal Colonial-Era Sodomy Law*, Human Rights Watch, 11 January 2006, <<https://www.hrw.org/news/2006/01/11/india-repeal-colonial-era-sodomy-law>> accessed on 10 September 2015

¹¹ Menezes, V., 'Macaulay's revenge: A giant step backwards on Section 377', *The Times of India*, 21 December 2013) <<http://timesofindia.indiatimes.com/city/goa/Macaulays-revenge-A-giant-step-backwards-on-Section-377/articleshow/27695491.cms>> accessed on 11 September 2015

¹² *Naz Foundation v Government of NCT of Delhi*, Delhi High Court, 2 July 2009, 160, DLT 277, p 20

¹³ Human Rights Watch, *Epidemic of Abuse: Police Harassment of HIV/AIDS Outreach Workers in India*, 2002 <<http://www.hrw.org/reports/2002/india2/>> accessed on 10 September 2015

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²¹ Brydum, S., 'The World's First Gay Prince on India's Colonial Hangover', *Advocate*, 7 May 2014, <<http://www.advocate.com/world/2014/05/07/worlds-first-gay-prince-indias-colonial-hangover>> accessed on 19 July 2014

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- ⁵⁶ United Nations General Assembly, *Vote name: A/C.3/69/L.47/Rev.1 Extrajudicial, summary or arbitrary executions* (19 November 2014) <http://www.un.org/en/ga/third/69/docs/voting_sheets/L47.Rev1.pdf> accessed on 9 September 2015
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⁶³ UNHRC, *Report of the Working Group on the Universal Periodic Review: India*, A/HRC/8/26, para. 84 (23 May 2008)

	Jamaica	
<p>National Law:</p> <p><i>Offences Against the Person Act, 1864</i>¹</p> <ul style="list-style-type: none"> - S76: Unnatural Crime² - S77: Attempted Buggery or Indecent Assault³ - S79: Outrages on Decency⁴ 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - 10 years' imprisonment with or without 'hard labour' - 7 years' imprisonment with or without 'hard labour' - 2 years' imprisonment with or without 'hard labour' 	<p><u>Treaty Ratification</u></p> <p>ACHR CEDAW CRC ICCPR ICESCR</p>
The law is applicable only to men.		
Enforcement	<ul style="list-style-type: none"> - 2014: The US Human Rights Country Report noted that the country's anti-buggery law had not been enforced during the year.⁵ - 17 February 2013: Two men caught naked in their car were arrested. Each pleaded guilty and was convicted of gross indecency. The men were sentenced to a fine of \$250,000 each or imprisonment for 6 months.⁶ - 2006: Two men were sentenced to two years' imprisonment with hard labour, suspended, for buggery.⁷ - Despite claims by police that arrests and prosecutions are rare, Human Rights Watch's (HRW) has found that the country's anti-gay laws are in active use, although conceding that it is impossible to say how frequently they are enforced.⁸ A defence lawyer interviewed by HRW said he <i>'always seem[ed] to have a case of a practicing gay man who is in court on account of his sexuality'</i>. He explained how prosecutions fail due to lack of evidence and that many pleaded to a lesser charge of gross indecency, but the charges alone brought 'terror' to defendants.⁹ 	
Statements by Public Figures	<ul style="list-style-type: none"> - August 2015: The Mayor of Kingston, Angela Brown-Burke, spoke at Jamaica's first pride event. In an interview before the event she said: <i>'I come from the point of view that I, as mayor, have a responsibility to all the individuals of Kingston.'</i> Jamaican Justice Minister also endorsed the event in a statement: <i>'All Jamaicans, regardless of race, class, creed or indeed sexual orientation are citizens deserving of being treated with civility and human kindness.'</i>¹⁰ - July 2015: Minister for Education Ronald Thwaites announced the launch of a new manual aimed at reducing homophobic bullying in schools: <i>'Bullying not only affects this society (LGBT), as we have heard reports of issues with regards to older students interfering with younger students, issues of gender also arise.'</i>¹¹ - June 2015: An Anglican priest in Kingston, the Rev. Sean Major-Campbell, wrote an article in Jamaican paper <i>The Gleaner</i> in which he stated <i>'Sexuality is a justice issue. Sexuality is a human-rights issue. Gender concerns are at the heart of how people live and move and have their being.'</i>¹² In December 2014, <i>Pink News</i> reported that Rev. Major-Campbell had received a <i>'backlash from his congregation'</i> after washing 	

the feet of two lesbians to show respect for the LGBT community.¹³

- **June 2015:** Jamaica's major daily newspaper *The Gleaner* published [an editorial](#) supporting the U.S. Supreme Court's marriage equality ruling and calling on Jamaica to take a similar course.¹⁴ A year earlier, in another editorial *The Gleaner* stated that *'[the prohibition on same-sex unions is] an assault on the principle of equality of people, people's right to forge relationships, and their right to equal protection under the law'*.¹⁵
- **April 2015:** In its national report submitted for the UPR 2nd cycle, the Jamaican delegation stated that the Jamaica Constabulary Force's Diversity Policy *'guides members of the police force in their professional dealings with persons of particular groups, including LGBTs.'*¹⁶
- **April 2015:** During a visit to Jamaica, Barack Obama took the opportunity of a town hall meeting at the University of the West Indies to recognise LGBT advocates from the country including Angeline Jackson, executive director for Quality of Citizenship Jamaica. *'She cares about her Jamaica, and making it a place where everybody, no matter their color, or their class, or their sexual orientation, can live in equality and opportunity.'*¹⁷
- **1 May 2014:** Leader of the Opposition in Jamaica, Andrew Holness, said that he would have no problem working with gay people in his cabinet. This stands in contrast to comments he made on 25 April, where he stated his opposition to repealing the country's sodomy laws: *'My sentiments reflect the sentiments of the country.'*¹⁸
- **10 April 2014:** Jamaica's Minister of Health, Dr. Fenton Ferguson, spoke on the need to change social attitudes in order to fight HIV and AIDS within the country: *'Strong cultural and religious beliefs have led to the isolation of some high-risk groups such as men who have sex with men and sex workers. It will not be easy to tackle these deeply embedded belief systems but we have to succeed [as] failure is not an option.'*¹⁹
- **18 August 2013:** According to the Minister of Sport in Jamaica, gay athletes would not be discriminated against: *'Sport is a right and a privilege for all Jamaicans right across the board... We don't ask as a prerequisite what is your sexual preference, as long as you qualify and apply yourself.'*²⁰
- **September 2013:** Jamaican Assistant Police Commissioner Devon Watkis denied that a recent escalation of violence towards LGBTI victims is specifically related to their sexuality: *'I have no specific evidence outside of those isolated ones, that [LGBT people are] a target group as opposed to the ordinary citizen.'*²¹
- **June 2012:** The popular Jamaican reggae musician [Diane King](#) came out as a lesbian. In the message, she wrote *'honestly speaking, I have always been afraid to admit it openly, because of the unknown, of what it may cause negatively, to me, my career, my family and loved one.'*²²
- In relation to a constitutional challenge of the laws criminalising homosexuality where a number of Christian groups have successfully applied as interested parties, a small minority of religious figures have called for greater tolerance of homosexuals. One such leading theologian, Rev Dr Clinton Chisholm, has reminded his countrymen that Jamaica is not a theocracy.²³
- Portia Simpson Miller, when standing for election as Prime Minister in December

	<p>2011, declared that <i>'no one should be discriminated against because of their sexual orientation'</i> and that she would allow a conscience vote to repeal laws criminalising homosexuality.²⁴</p>
<p>Persecution and Discrimination</p>	<ul style="list-style-type: none"> - 22 September 2015: A gay man was rescued by police after an angry mob cornered him inside a bank parking lot in Half Way Tree in Jamaica. He was reportedly attacked by a mob while he was walking with three friends in the area.²⁵ - August 2015: Over 50 people attended the opening ceremony of Jamaica's first pride festival, organised by the Jamaican Forum for Lesbians and Gays.²⁶ - July 2015: The Jamaican Court of Appeal began hearing an appeal filed by activist Maurice Tomlinson, challenging national television stations that refused to air a 'tolerance ad' promoting the human rights of LGBTI people.²⁷ - May 2015: In response to recommendations from Argentina and Slovenia in the 2nd Round of the UPR, Jamaica stated that it <i>'considers it is committed to taking steps to end prejudice and stigmatisation affecting all Jamaicans, including LGBTI persons.'</i>²⁸ - 15 April 2015: Homeless gay teens thrown out by their families were reportedly chased out of a shelter by a mob in Kingston. The mob attacked them in a popular shopping venue in Kingston in order to "cleanse" the premises.²⁹ - March 2015: A YouTube video appeared to show the public execution of a young man stoned in the street by a crowd chanting antigay slurs.³⁰ - In the six months to November 2014, <i>The Jamaica Observer</i> newspaper published a number of articles described by critics as overtly anti-gay. One story was headlined 'The Pushback Against Gays Has Begun'; another '<i>Homo Thugs!</i>' A third, unsourced story alleged that a group of gay men had assaulted a male jogger.³¹ - October 2014: A Human Rights Watch report found that LGBT people in Jamaica face 'intolerable levels of violence and cannot rely on the police' for protection. The report documented 56 cases of violence against LGBT Jamaicans, and found evidence of LGBT people being refused housing or employment on the basis of their sexuality.³² - 2014: The US Department of State's 2014 Human Rights Report for Jamaica found that during the year: <p><i>homophobia was widespread in the country, perpetuated by the country's dancehall culture through the songs and the behavior of some musicians. Lesbian, gay, bisexual, and transgender (LGBT) persons faced violence, harassment, and discrimination.</i>³³</p> <p>The report further noted instances of 'serious human rights abuses', including assault with deadly weapons, '<i>corrective rape</i>' of women accused of being lesbians, arbitrary detention, mob attacks, stabbings, harassment of gay and lesbian patients by hospital and prison staff, and targeted shootings of such persons. Within the prison system there were reports of violence against gay inmates, perpetrated by the wardens and by other inmates. Male prisoners identified as gay were held in a separate facility apparently for their own protection.³⁴</p> - Human Rights Watch has described Jamaica as one of the most homophobic countries in the world. This was endorsed, and fostered, by politicians at the

	<p>highest levels. For example in 2009, then Prime Minister Bruce Golding publicly stated that <i>[w]e are not going to yield to the pressure, whether that pressure comes from individual organisations, individuals, whether that pressure comes from foreign governments or groups of countries, to liberalise the laws as it relates to buggery.</i>³⁵</p> <ul style="list-style-type: none"> - 27 August 2013: A 41 year old openly gay hospitality worker, Dean Moriah, was stabbed and had his home torched while he was still inside in an incident suspected to be a hate-motivated crime.³⁶ - 26 August 2013: Two gay men from Old Harbour were forced to flee the scene of a car accident after witnesses realised the men were gay and pursued them. They were forced to take refuge in the local police station.³⁷ - 22 August 2013: Five gay men were subject to attacks from fellow community members. They were forced to take refuge in a dwelling until police came to disperse the crowds.³⁸ - 10 August 2013: A cross-dresser in St Catherine was attacked by a mob.³⁹ - 1 August 2013: A police officer, presumed to be gay, was mobbed in downtown Kingston. Fellow police officers were forced to disperse the crowds by firing into the air and using teargas.⁴⁰ - 1 August 2013: Two men from the parish of St Catherine were set upon by mobs.⁴¹ - 22 July 2013: Dwayne Long Jones, a 17 year old, was stabbed and shot to death and thrown into bushes during a public street-dance near Montego Bay. The attack was apparently prompted by the fact that he wore gender non-conforming attire and was dancing with someone of the same sex.⁴²
Legislative News	<ul style="list-style-type: none"> - May 2015: At the UPR 2nd Cycle, Argentina, Germany, the USA and Slovenia recommended Jamaica decriminalise sexual activity between consenting adults of the same sex. In response Jamaica's Minister of Justice stated that: <i>The Constitution of Jamaica guarantees basic human rights to all Jamaicans. There is no discrimination based on gender or sexual orientation. No law criminalizes orientation. No credible case of arbitrary detention or harassment of persons on the basis of sexual orientation has been presented.</i>⁴³ - July 2014: An official at J-FLAG, a prominent LGBT NGO, withdrew the petition he had filed with the Supreme Court in 2013 challenging Jamaica's anti-buggery law. In dropping the suit, the petitioner cited threats against himself and his family.⁴⁴ - June 2014: An estimated 25,000 people attended a rally in Kingston in support of Jamaica's anti-gay law.⁴⁵ - 5 June 2014: The country noted it could not join the consensus on the approval of an OAS resolution on sexual orientation, considering that: <i>the terminology of gender expression, as proposed, is ambiguous and has the potential to impose one value system over another. Furthermore, this term and other new terminologies used in the text, have not gained international acceptance nor are they defined in Jamaica's domestic law.</i>⁴⁶ - 2014: The Jamaican Sexual Offences Act is set to undergo review. The Act contains a provision which calls for review every 5 years. According to a report in the

	<p><i>Jamaican Observer</i>, Justice Minister Mark Golding said he ‘<i>would not be surprised if the contending parties use the opportunity, provided by the review, to make their cases for and against repealing the buggery legislation</i>’.⁴⁷</p> <ul style="list-style-type: none"> - 2011: A new Charter of Fundamental Rights was passed to expand the Bill of Rights but included a savings clause effectively precluding any constitutional challenge of laws criminalising homosexuality. - 2011: (UPR) The government stressed it will take all necessary steps to avoid homophobic violence, but rejected the recommendations to repeal all legal provisions which may discriminate against or criminalise people based on their sexual orientation or gender identity.⁴⁸ - 2009: The Sexual Offences Act passed, which was intended, among other things, to replace most of the provisions in the Offences Against the Persons Act concerning sexual offences but parliament declined to make any changes to relevant sections criminalising homosexuality.
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¹ Text of the law is :

http://moj.gov.jm/sites/default/files/laws/Offences%20Against%20the%20Person%20Act_0.pdf

² *Offences Against the Person Act, s.76: ‘Whosoever shall be convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall be liable to be imprisoned and kept to hard labour for a term not exceeding ten years.’*

³ *Offences Against the Person Act, s.77: ‘Whosoever shall attempt to commit the said abominable crime, or shall be guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, shall be guilty of a misdemeanour, and being convicted thereof, shall be liable to be imprisoned for a term not exceeding seven years, with or without hard labour.’*

⁴ *Offences Against the Person Act, s.79: ‘Any male person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for a term not exceeding two years, with or without hard labour.’*

⁵ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014*, June 2015),

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	Kenya	
<p>National Law:</p> <p><i>Kenya Penal Code (as amended by Act No. 5 of 2003), Chapter 63¹</i></p> <ul style="list-style-type: none"> - S162: Carnal Knowledge against the order of nature² - S163: Attempts to have carnal Knowledge against the order of nature³ - S165: Gross Indecency (public or private)⁴ 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - 14 years' imprisonment - 7 years' imprisonment - 5 years' imprisonment 	<p><u>Treaty Ratification</u></p> <p>AFRICAN CHARTER</p> <p>CAT</p> <p>CEDAW</p> <p>CRC</p> <p>ICCPR</p> <p>ICESCR</p>
<p>Sections 162 and 163 are applicable to both men and women. Section 165 is applicable only to men.</p>		
<p>Enforcement</p>	<ul style="list-style-type: none"> - 2014: The 2014 United States Human Rights Country Report indicated that the <i>Police detained persons under [the law criminalising same sex sexual activity], particularly suspected sex workers, but released them shortly afterward. Statistics presented in the National Assembly in March indicated police had opened files on 595 'unnatural offenses' cases since 2010, including 49 in 2014. According to a 2014 report issued by the Gay and Lesbian Coalition of Kenya and the National Gay and Lesbian Human Rights Commission, between 2012 and 2014 there were eight prosecutions of gay men on indecency charges.</i>⁵ <p>It was also reported that police more frequently used public order laws (e.g., disturbing the peace) than same-sex legislation to arrest LGBT individuals.</p>	
<p>Statements by Public Figures</p>	<ul style="list-style-type: none"> - 18 October 2015: In an interview with CNN's Fareed Zakaria, Kenya's President Uhuru Kenyatta made his strongest statement in support of basic rights for LGBT people. For the first time, he publicly condemned violence and "witch hunts" against LGBT people. He added: <i>"Every individual has a right to be protected by the law and that's stated in our constitution"</i>⁶ - 8 September 2015: The Anglican Church of Kenya suspended five priests suspected of engaging in same-sex sexual acts. Speaking on this issue, Mt. Kenya West diocesan Bishop Joseph Kagunda said: <i>'it must be noted that the Anglican Church of Kenya and particularly the Diocese is totally against any kind of gay practice and marriage,</i>⁷ - 25 July 2015: During President Obama's visit to Kenya, the US President said, in a joint press conference, that Kenya should not discriminate against people based on their sexual orientation. He explained that <p><i>If you look at the history of countries around the world, when you start treating people differently, not because of any harm they're doing anybody but because</i></p>	

they're different, that's the path whereby freedoms begin to erode... As an African-American in the United States, I'm painfully aware of the history of what happens when people are treated differently under the law.

In response, President Kenyatta noted that despite the U.S. and Kenya sharing some values such as *'love for democracy, entrepreneurship [and] value for families, there are some things Kenyan culture and society do not accept'*. He said *'the fact remains that this issue is not really an issue that is in the foremost mind of Kenyans.'*⁸

- **21 July 2015:** Ahead of President Obama's visit to Kenya, President Kenyatta dismissed the issue of LGBT rights. He is reported to have said *'That is a non-issue to the people of this country, and it is definitely not on our agenda at all... Poverty, improved health for our people, better education, better roads, better security, these are our key focuses.'*⁹
- **July 2015:** MP, Irungu Kangata, allegedly told a gathering of anti-gay protesters outside parliament that *'[w]e are telling Mr Obama when he comes to Kenya this month and he tries to bring the abortion agenda, the gay agenda, we shall tell him to shut up and go home.'*¹⁰ It is reported that the demonstration suffered low turnout, attracting only a handful of protesters.¹¹
- **May 2015:** Catholic Bishop, Rt. Rev. James Wainaina, from the Murang Diocese, condemned the recent High Court ruling ordering the registration of an LGBTI organisation. He reportedly said that the Catholic Church in Kenya is not ready and will not accept any law allowing homosexuality in society.¹² In contrast, Catholic Parish Priest, Fr. Ambrose Kimutai, cautioned top clerics against making statements stigmatizing and isolating gay people. Fr. Kimutai is reported to have said that Christians should love homosexuals as they are *'children of god'*.¹³
- **May 2015:** Kenya's Vice President, William Ruto, told church worshippers that homosexuality had no place in Kenya. He is reported to have said:

*We will not allow homosexuality in our society as it violates our religious and cultural beliefs... We will stand with religious leaders to defend our faith and our beliefs... There's no room for homosexuality in this country. That one I can assure you.*¹⁴
- **29 April 2015:** The Archbishop of the Kenyan Anglican Church, Eliud Wabukala, has called on the NGO Coordination Board not to comply with the Kenyan High Court's order requiring the government body to register an LGBTI organisation. The Archbishop stated that *'[t]he judgement was made on very narrow considerations and it is not only against Christianity but also against the Muslim teachings and traditions.'*¹⁵
- **September 2014:** Kenya opposed the UN Human Rights Council resolution condemning violence and discrimination based on sexual orientation and gender identity.¹⁶
- **June 2014:** As part of the 2015 UPR process, the Kenya Human Rights Commission

together with other civil society human rights organisations submitted a joint report to inform Kenya's second universal periodic review. With respect to sexual minorities the report recommended that

*[t]he government should ensure that barriers to accessing health services are removed and policies put in place to promote and protect the rights of LGBTI persons to access the highest attainable standard of health care including reproductive health. The government should also publicly condemn and take action against those propagating attacks, hateful and inciteful sentiments against LGBTI persons and decriminalize consensual same sex conduct between adults.*¹⁷

- **1 May 2014:** A Kenyan filmmaker, Wanuri Kahiu, made a statement to the press that it is not homosexuality that is un-African but homophobia.¹⁸
- **26 March 2014:** A number of Kenyan MPs discussed the anti-homosexuality laws in Parliament. MP Aiden Duale, upon being asked why the government was not actively pursuing homosexuals, responded by comparing gay people with terrorists, arguing: *'We need to go on and address this issue the way we want to address terrorism... It's as serious as terrorism. It's as serious as any other social evil.'* Other MPs posed similarly homophobic questions, including one which asked about the best approach to stop Ugandan gay refugees from crossing the borders. In the course of the debate Mr. Duale did concede that no new anti-homosexuality laws would be implemented: *'We do not need to go the Uganda way, we have the constitution and the penal code to deal with homosexuality, and so this debate is finished, we will not be enacting any new tougher laws.'*¹⁹
- **30 April 2014:** Kenyan pastor, John Makokha, invited the LGBTI community to join his church: *'Gays and lesbians are children of God and created in his image... they should be accepted and affirmed as such. They deserve a place to worship and serve God.'*²⁰
- **24 April 2014:** Gay Kenyan author, Binyavanga Wainaina, was named in *The Times* 100 most influential people.²¹ Coming out in January, Wainaina spoke of the anti-homosexuality laws recently introduced in Uganda and (specifically) Nigeria: *'It's hard to imagine any more repressive law of any kind anywhere in the world. It's just the most terrible thing.'*²²
- **21 January 2014:** KTN TV, Kenya's leading national news station, invited gay rights activists to talk about LGBTI equality.²³
- **25 July 2012:** Monica Mbaru, a prominent LGBTI human rights defender, was appointed as a judge on the Kenyan Industrial Court.²⁴
- **3 May 2012:** The Kenyan National Commission on Human Rights released a report on sexual and reproductive health in Kenya, and called for the removal of anti-homosexual legislation: *'The government should decriminalise same sex relationships and sex work with a view to ensure that they enjoy the human rights enshrined in the Constitution 2010 under the Bill of Rights.'*²⁵

<p>Persecution and Discrimination</p>	<ul style="list-style-type: none"> - 8 September 2015: The Anglican Church of Kenya suspended five priests suspected of engaging in same-sex sexual acts.²⁶ - 2 September 2015: Nyeri County Commissioner issued arrest threats against gay and lesbian sex workers and the head of police reportedly said that 12 suspects had been arrested.²⁷ - 11 August 2015: A Kenyan pastor and his partner were reportedly forced to flee their country after it emerged that they had become the first to publicly marry.²⁸ - July 2015: Reports have emerged that two men, suspected of being a gay couple, were evicted from their home by their landlord because of their sexual orientation.²⁹ - 11 May 2015: A tabloid newspaper in Kenya began printing lists of what it claimed as 'top homos' in an attempt to 'out' gay people. The article was accompanied by ten front page photos, included a number of LGBT rights activists.³⁰ - 31 March 2015: According to a report documenting several testimonies, LGBTI people fleeing Uganda were attacked, poisoned, threatened and forced into sex work in the world's third largest refugee camp in Kenya. The police reportedly didn't want to work on such cases.³¹ - Reports from Kenya are plentiful with accounts of persecution and violence. Whilst one 2013 report suggests that such incidents have in recent years become less common and that Kenyan people are becoming increasingly tolerant, the same report warns of the recent re-emergence of persecutory acts against gay people.³² - 2014: The United States Human Rights Country Report revealed that Police frequently harassed, intimidated, or physically abused LGBT individuals in custody and that violence and discrimination against LGBT individuals was widespread.³³ - 2014: During 2014 an 'anti-gay' caucus was formed in parliament. The National Assembly majority leader stated that homosexuality was as serious an issue as terrorism but resisted calls for new anti-LGBT legislation. Several NGOs conducted anti-LGBT political campaigns, including one that announced a drive to collect one million signatures on a petition against homosexuality. While these campaigns resulted in scattered demonstrations, they did not attract widespread support.³⁴ - 20 March 2014: A report found that hundreds of gay men have left major Kenyan Cities for fear of persecution. The article also suggests that many MSM now 'avoid public health facilities'.³⁵ - 17 July 2013: A number of violent acts against gay men were recorded following a report stating some Kenyan towns to have the highest number of gay men in the world. Within one week, separate reports emerged of men having had their throats cut with a machete (one of whom died), a sexual assault and an attack with a hammer, a call for violence against sex workers in Mombasa, beatings and blackmail.³⁶
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	<ul style="list-style-type: none"> - 17 May 2013: Protestors of the Kenyan anti-gay law had their permit revoked just before a planned IDOHOT march. According to reports, the protestors were stopped because they were seen to be <i>'promoting homosexuality'</i>.³⁷ - 2011: A report by the Kenyan Human Rights Commission details many instances of persecution. The report recounts instances of harassment by state officials, exclusion by families, physical violence, death threats and blackmail: <i>'LGBTI sex workers, mostly MSMs are often asked for bribes and sexual favours by male police officers in exchange for their freedom and security.'</i>³⁸
Legislative News	<ul style="list-style-type: none"> - 2015: (UPR) During Kenya's 2nd UPR cycle, a number of stakeholders,³⁹ international treaty bodies⁴⁰ and States⁴¹ recommended that Kenya decriminalise sexual relations between consenting adults of the same sex and put an end to the social stigmatisation of homosexuality. The recommendations from States calling for Kenya to decriminalise sexual relations between consenting adults of the same sex were rejected by Kenya. However, Kenya supported the recommendation made by Sweden, which advocated for Kenya to adopt a comprehensive anti-discrimination law affording protection to all individuals, irrespective of their sexual orientation or gender identity. During the 2010 UPR cycle, Kenya refused recommendations to decriminalise same-sex sexual activity and to take active measures to provide for the protection of LGBTI people.⁴² - 24 April 2015: The High Court in Kenya found that the failure by a government agency to register an LGBTI rights NGO, the National Gay and Lesbian Human Rights Commission (NGLHRC), on the basis that homosexuality is criminalised in the East African country, was unconstitutional. The responsible agency, the NGO Coordination Board, was ordered to register the NGO.⁴³ The High Court found that Article 36 of the Constitution grants 'every person' the right to form an association 'of any kind' regardless of their gender or sexual orientation and that the Penal Code does not criminalise homosexuality, but rather certain sexual acts 'against the order of nature', which is not defined, nor does it contain any provision that limits the freedom of association of individuals on the basis of their sexual orientation. In response to arguments concerning religion and morality, the Court held that religious and moral beliefs could not be a basis for limiting rights. With respect to Article 27 of the Constitution that protects the right to equality and non-discrimination, the Court found that Article 27 includes discrimination on basis of sexual orientation based on the breadth of that article and a holistic reading of the Constitution which emphasizes inclusiveness, human dignity and equality (as the Court put it <i>'to allow discrimination based on sexual orientation would be counter to these constitutional principles.'</i>). The NGO Coordination Board and the Attorney General filed notice of their intention to appeal the decision on 29 April 2015. In June 2015, the NGO Coordination Board filed its memorandum of appeal. No hearing date has as yet been set for the appeal. - December 2014: The High Court of Kenya ordered the government to issue a birth certificate to a five-year-old intersex child after hospital staff put a question mark next to the box designating gender on a form to record the 2009 birth of the baby. The court also ordered the Attorney General to name a body that would take

	<p>responsibility for conducting a census of intersex Kenyans and to develop guidelines and policies for their recognition and support. The court found no particular violations of the child's fundamental rights by any authority or person.⁴⁴</p> <ul style="list-style-type: none"> - August 2014: Members of Kenya parliamentary Committee on Justice and Legal Affairs rejected the introduction of a bill similar to the Anti-Homosexuality Bill in Uganda. The bill had been introduced by the Republican Liberty Party and would have imposed harsh new penalties for same-sex relations. According to news reports, the bill was rejected because the proposal was unconstitutional, improperly introduced to parliament and in violation of Kenya's international obligations.⁴⁵ - July 2014: The High Court of Kenya ordered the NGO Coordination Board to register a transgender advocacy group, the Transgender Education and Advocacy (TEA), finding that the Board had discriminated against the TEA and denied the organisation its right to freedom of association on the basis of gender or sex, which was unconstitutional, and its inaction in refusing to register the TEA constituted an unreasonable exercise of discretion.⁴⁶
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¹ The law is : <http://www.kenyalaw.org/Downloads/GreyBook/8.%20The%20Penal%20Code.pdf>

² Kenya Penal Code, Chapter 63, s.162: 'Any person who - (a) has carnal knowledge of any person against the order of nature; or (b) has carnal knowledge of an animal; or (c) permits a male person to have carnal knowledge of him or her against the order of nature, is guilty of a felony and is liable to imprisonment for fourteen years.'

³ Kenya Penal Code, Chapter 63, s.163: 'Any person who attempts to commit any of the offences specified in section 162 is guilty of a felony and is liable to imprisonment for seven years.'

⁴ Kenya Penal Code, Chapter 63, s.165: 'Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a felony and is liable to imprisonment for five years.'

⁵ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Kenya, 2014*, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236370> accessed on 24 August 2015

⁶ CNN, *President Kenyatta on gay rights in Kenya* (18 October 2015)

<http://cnnpressroom.blogs.cnn.com/2015/10/18/president-kenyatta-on-gay-rights-in-kenya/>

⁷ Nyamai, F., 'Anglicans probe more gay priests', *Daily Nation*, 8 September 2015,

<http://www.nation.co.ke/news/Anglicans-probe--more-gay-priests/-/1056/2863418/-/o7ti13/-/index.html>

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⁹ 'Kenyatta dismisses gay rights issue ahead of Obama visit', *News24*, 21 July 2015,

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- ¹⁶ See. A/HRC/RES/27/32
- ¹⁷ Kenya Human Rights Commission et al., *Civil Society Coalition on Kenya's 2nd Universal Periodic Review* (14 June 2014), para. 40 - 41 <<http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRKEStakeholdersInfoS21.aspx>>
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³⁹ Commonwealth Human Rights Initiative; Human Rights Watch; Equal Rights Trust; International Service for Human Rights; Sexual Rights Initiative, Ottawa; Gay and Lesbian Coalition of Kenya; National Gay and Lesbian Human Rights Commission; Coalition of African Lesbians; The Kenya National Commission on Human Rights; The National Coalition on Human Rights Defenders; The Coalition on Violence Against Women; The Refugee Consortium of Kenya; Ogiek Peoples' Development; Endorois Welfare Council; National Victims and Survivors Network; International Centre for Transitional Justice; The International Federation for Human Rights; International Displacement and Monitoring Centre; the Kenyan Section of the International Commission of Jurists; East African Center for Human Rights; ARTICLE 19; Transgender Education and Advocacy; CRADLE - The Children's Foundation; Federation of Women Lawyers -Kenya; Centre for Minority Rights Development; Protection International and ESP among others - see UNHRC, *Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21*, (27 October 2014) UN Doc A/HRC/WG.6/21/KEN/3

⁴⁰ Human Rights Committee, see UN HRC, *Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21*, (12 November 2014), UN Doc A/HRC/WG.6/21/KEN/2

⁴¹ France, Slovenia, Chile, Denmark and Poland - See: UNHRC, *Report of the Working Group on the Universal Periodic Review*, 26 March 2015, UN Doc A/HRC/29/10

⁴² UNHRC, *Report of the Working Group on the Universal Periodic Review*, (17 June 2010) UN Doc A/HRC/15/8

⁴³ *Eric Gitari v Non-Governmental Organisations Co-Ordination Board and others* [2015] eKLR (Petition No. 440 of 2013) - Text of the judgment at: <http://kenyalaw.org/caselaw/cases/view/108412/>

⁴⁴ *Baby 'A' (Suing through the Mother E A) & another v Attorney General & 6 others* [2014] eKLR (Judgment of 5 December 2014), : <http://kenyalaw.org/caselaw/cases/view/104234/>

⁴⁵ Stewart, C., 'Hostile reception for Kenyan bill to stone gays', *Erasing 76 Crimes*, 18 August 2014, <http://76crimes.com/2014/08/18/hostile-reception-for-kenyan-bill-to-stone-gays/> accessed on 25 August 2015

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	Kiribati	
<p>National Law:</p> <p><i>Penal Code, Revised 1977, Chapter 67¹</i></p> <ul style="list-style-type: none"> - S153: Unnatural Offences² - S154: Attempt to Commit³ Unnatural Offences and Indecent Assaults - S155: Indecent Practices between Males⁴ 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - 14 years' imprisonment - 7 years' imprisonment - 5 years' imprisonment 	<p><u>Treaty Ratification</u></p> <p>CEDAW</p> <p>CRC</p>
The law is only applicable to men.		
Enforcement	<ul style="list-style-type: none"> - 2014: The 2014 US State Human Rights Report found that there were no reports of prosecutions directed at gay, bisexual, or transgender persons under the country's penal provisions.⁵ 	
Statements by Public Figures	<ul style="list-style-type: none"> - There have been no recent statements by public ministers. However, the government has spoken in favour of repealing laws in its Universal Periodic Review (see below). 	
Persecution and Discrimination	<ul style="list-style-type: none"> - 2014: The 2014 US State Human Rights Report found no instances of persecution in Kiribati or societal discrimination or violence based on sexual orientation or gender identity.⁶ There is no law specifically prohibiting discrimination on the basis of sexual orientation or gender identity. 	
Legislative News	<ul style="list-style-type: none"> - 2015: (UPR) In response to recommendation 66.23 of the 2010 UPR, Kiribati's 2nd Cycle National Report explained that '<i>[t]here has not been any prosecution of same sex offenders although "buggery" is an offence prohibited by the Penal Code Cap 67</i>' but provided no further information on the status of the laws criminalising homosexual sexual conduct.⁷ During the 2nd cycle UPR, the CHRI noted that despite Kiribati's commitment to consider decriminalisation, the prior recommendations remain pending.⁸ Further recommendations with respect to decriminalisation as well as adopting legislation to expand forms of discrimination that are prohibited were included in the UPR working report.⁹ In response, Kiribati noted the recommendations calling for decriminalisation and indicated that it would consider the recommendation with respect to adopting legislation prohibiting all forms of discrimination of individuals, based on race, colour of the skin, religion, national or ethnic origin, disability, aesthetic aspect, gender, sexual identity or orientation.¹⁰ - April 2014: The Government rejected a bill introduced privately by a member of parliament to amend the Constitution to include sex, gender and sexual orientation as grounds for discrimination.¹¹ - 2010: (UPR) Kiribati confirmed that it was prepared to consider the recommendations to decriminalise homosexuality, and to amend its Constitution so as to expand the prohibited grounds of discrimination to include not only gender, but sexual orientation, disability, health status and economic status.¹² 	

¹ The law is : www.paclii.org/ki/legis/consol_act/pc66/

² *Penal Code, Revised 1977, Chapter 67, s.153: 'Any person who- (a) commits buggery with another person or with an animal; or (b) permits a male person to commit buggery with him or her, shall be guilty of a felony, and shall be liable to imprisonment for 14 years.'*

³ *Penal Code, Revised 1977, Chapter 67, s.154: 'Any person who attempts to commit any of the offences it specified in the last preceding section, or who is guilty of any assault with intent to commit the same, or any indecent assault upon any male person shall be guilty of a felony, and shall be liable to imprisonment for 7 years.'*

⁴ *Penal Code, Revised 1977, Chapter 67, s.155: 'Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, shall be guilty of a felony, and shall be liable to imprisonment for 5 years.'*

⁵ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Kiribati, 2014*
<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236446>> accessed on 24 August 2015

⁶ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Kiribati, 2014*
<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236446>> accessed on 24 August 2015

⁷ UNHRC, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Kiribati* (4 November 2014) UN Doc A/HRC/WG.6/21/KIR/1

⁸ UNHRC, *Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21: Kiribati*, 27 October 2014, UN Doc A/HRC/WG.6/21/KIR/3, at para. 16

⁹ UNHRC, *Report of the Working Group on the Universal Periodic Review: Kiribati*, 13 April 2015, UN Doc A/HRC/29/5, Recommendations 84.50 to 84.50.

¹⁰ UNHRC, *Report of the Working Group on the Universal Periodic Review Kiribati: Addendum Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review* (1 July 2015), UN Doc A/HRC/29/5/Add.1

¹¹ UNHRC, *Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21: Kiribati*, 27 October 2014, UN Doc A/HRC/WG.6/21/KIR/3, at para. 31

¹² UNHRC, *Report of the Working Group on the Universal Periodic Review* (30 September 2010) UN Doc A/HRC/15/3/Add.1

	Malawi	
<p>National Law: <i>Penal Code, Chapter 7:01</i>¹</p> <ul style="list-style-type: none"> - S153: Unnatural Offences² - S154: Attempt to Commit Unnatural Offences³ - S156: Indecent Practice between Males⁴ - S137A: Indecent Practice between Females⁵ 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - 14 years' imprisonment, with or without corporal punishment - 7 years' imprisonment, with or without corporal punishment - 5 years' imprisonment with or without corporal punishment - 5 years' imprisonment 	<p><u>Treaty Ratification</u> AFRICAN CHARTER</p> <p>CAT</p> <p>CEDAW</p> <p>CRC</p> <p>ICCPR</p> <p>ICCPR OP</p> <p>ICESCR</p>
<p>The law is applicable to both men and women (S153); men (S156); and women (S137A) respectively.</p>		
<p>Enforcement</p>	<ul style="list-style-type: none"> - 2014: The US Human Rights Country report notes that same-sex activity may also be prosecuted as 'conduct likely to cause a breach of the peace'.⁶ - 14 July 2014: The Malawi Government announced a moratorium on its anti-gay laws. In a statement to the UN Human Rights Committee in Geneva, Secretary for Justice and Attorney General, Janet Chikaya-Banda said that while no formal body had been created to review the possibility of decriminalising homosexuality in Malawi, there is political will to do so.⁷ After rejecting claims that there was a moratorium on prosecutions in 2012 (see below), the Malawi Government has now confirmed that police have been instructed not to arrest people for homosexuality. Reports suggest that no one in Malawi has been arrested since 2012.⁸ A number of examples before 2012 are presented in the 2012 UK Country of Origin Report.⁹ - 5 November 2013: The Malawi High Court announced its plan to review the constitutionality of the country's sodomy laws, having '<i>exercis[ed] its own jurisdiction under the constitution and the Courts Act</i>'. This review arises from confirmation cases involving 3 individuals who had been convicted in 2011 for sexual acts of a non-consensual nature. Those seeking to overturn the nation's anti-gay laws include the Malawi Law Society, the Centre for Development of the People (Cedep), the Centre for Human Rights and Rehabilitation (CHRR), the University of Malawi's Faculty of Law, and the Malawi Network of Religious Leaders living with or affected by HIV.¹⁰ The Attorney General's office and Pastor Nick Chakwera are arguing in favour of retaining the law.¹¹ The Attorney General raised a preliminary objection to the High Court's constitutional review based on procedural grounds, which has delayed consideration of the substantive issues. The Attorney General's objection is currently on appeal to the Court of Appeal. A hearing on the merits is 	

	<p>stayed until the conclusion of the appeal.</p> <ul style="list-style-type: none"> - 18 May 2011: Steven Monjeza and Tiwonge Chimbalanga were prosecuted and sentenced to 14 years imprisonment with hard labour. They were later pardoned by the president following an intervention by UN Secretary General, Ban Ki-Moon.¹²
Statements by Public Figures	<ul style="list-style-type: none"> - September 2015: President Peter Mutharika has reportedly stated that Malawians will be able to decide through a referendum on whether legalise same-sex relationships.¹³ - June 2015: The UNAIDS and Lancet Commission report, <i>Defeating AIDS - advancing global health</i>, recommended that new paths be forged to uphold human rights and address criminalisation, stigma, and discrimination using practical approaches to change laws, policies, and public attitudes that violate human rights.¹⁴ The Commission was co-chaired by former President, Joyce Banda. - February 2015: Civil Society Organisations are pressing President Peter Mutharika, who was elected in May 2014, to declare his stand on LGBT rights.¹⁵ In September 2014, the Centre for Human Rights and Rehabilitation (CHRR) partnered with Centre for Development of People (Cedep) had issued an assessment of President Mutharika's performance, in the first 100 days of office, from a human rights perspective.¹⁶ The report raised concern about the administrations silence on sexual minority rights. - 2 May 2014: Leader of the Malawi Congress Party Dr Lazarus Chakwera made a link between homosexuality and child abuse, claiming that homosexuality is a form of 'child exploitation'.¹⁷ - 18 February 2014: Dr Salmin Omar Idruss, Secretary-General of the Muslim Association of Malawi, called for the death penalty to be introduced: <p><i>Even animals like goats don't do this, what more with human beings like us who were blessed with wisdom by the Almighty God? The offenders need to be handed the death penalty as a way of making sure that the issue is curbed.</i>¹⁸</p> - 7 November 2012: After criticism by church groups and the Law Society, Justice Minister Ralph Kasambara denied earlier reports saying that a moratorium had been put in place, preventing the arrest of anyone under the country's anti-gay laws.¹⁹ - 21 May 2012: Kamuzu Chibambo, head of the Malawian opposition party, said decriminalising homosexuality would be a 'grave mistake' and urged parliament 'to resist any intention directly or indirectly to legalize same-sex marriages.'²⁰ - 18 May 2012: On assuming office, then President Joyce Banda announced at her first State of the Union address, her intention to repeal laws criminalising homosexuality. However, due to strong domestic pressure President Banda reversed her position and explained that the people of Malawi apparently were not ready to repeal the country's laws against homosexual activity.²¹

	<ul style="list-style-type: none"> - While in the United States for a speech to the United Nations, Banda reportedly stated: <i>Anyone who has listened to the debate in Malawi realizes that Malawians are not ready to deal with that right now. I as a leader have no right to influence how people feel.... Where Malawi is and most African countries are, is maybe where America or the U.K. were about 100 years ago. The best thing the world can do is to allow each country to take its course, to allow each country to have that debate freely without the pressure of being pushed. We have seen countries where homosexuals have been killed. Why? Because, in my view, the country - the nation - wasn't ready.</i>²² - There have been numerous and frequent homophobic outbursts in the last few years from politicians and religious groups. - 2009: The first time homosexuality was raised in public was when Secretary for Nutrition, HIV and AIDS, Dr Mary Shaba argued that Malawi should recognise the rights of its gay population as part of its fight against AIDS.²³
Persecution and Discrimination	<ul style="list-style-type: none"> - 2014: The US Human Rights Country Report documented that public discussion of LGBT rights increased during the year. In October the Center for Human Rights and Rehabilitation and the Center for Development of People released a report documenting 76 instances in 2013 of discrimination and human rights violations in the country based on sexual orientation and gender identity. Documented abuses included mob violence and police harassment directed toward gay or allegedly gay men. For example, the centre reported that in July 2013 a gay man named Vincent was beaten by a mob and subsequently arrested and assaulted by police.²⁴ - 2013: There were few reported examples of persecution. One report did stress the problem of blackmail of sexual minorities.²⁵
Legislative News	<ul style="list-style-type: none"> - April 2015: The Marriage, Divorce and Family Relations Act 2015 became law following the President's assent.²⁶ While the new law makes important strides to prevent child marriage, it also includes provisions that discriminate against LGBTI persons. Although Malawi's constitution does not expressly preclude marriage for same-sex couples, the Marriage Act limits marriage to 'persons of the opposite sex.' The new law also reinforces the prohibition of 'unnatural offenses' under Malawi's Penal Code by listing a conviction for such an offence as acceptable evidence of irretrievable marriage breakdown.²⁷ - February 2015: According to the 2nd Cycle UPR stakeholder report, the relevant provisions of the Penal Code that criminalise consensual sexual conduct between adults have been referred to the Law Commission for review, but that the Law Commission was yet to take any significant action towards repealing those provisions.²⁸ Malawi's National Report, which was submitted as part of the UPR process, made no mention of decriminalisation or the rights of LGBT persons.²⁹ - August 2014: The ICCPR Human Rights Committee raised concerns about the

	<p>independence of the Malawi Human Rights Commission and the rights of LGBTI persons. In particular, it was concerned about the reluctance of the Commission to engage in issues related to the rights of LGBTI persons.³⁰ The Committee also raised concern that consensual same-sex sexual activity among consenting adults was still criminalized. There were also reports of cases of violence against LGBTI persons and that, owing to the stigma, these persons do not enjoy effective access to health services. The Committee recommended that the Commission fully comply with its mandate and engage in all human rights issues, including those related to the rights of LGBTI persons, and that Malawi review its legislation to explicitly include sexual orientation and gender identity among the prohibited grounds of discrimination and repeal the provisions that criminalize homosexuality and other consensual sexual activities among adults.</p> <ul style="list-style-type: none"> - February 2013: The National Assembly passed the Gender Equality Act. This legislation focused on discrimination against women and did not address other forms of discrimination.³¹ - 2011: Malawi rejected recommendations to decriminalise homosexuality and all other laws, which lead to discrimination on the grounds of sexual orientation.³² - January 2011: Malawi Amended S137 of the Penal Code (gross indecency law) to extend its potential reach to criminalise lesbian women. - A constitutional challenge is currently underway in the courts (see above).
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¹ : http://www.malawilii.org/files/mw/legislation/consolidated-act/7:01/penal_code_pdf_14611.pdf. This version does not yet include the 2011 amendment.

² *Penal Code, Chapter 7:01, s.153: 'Any person who - (a) has carnal knowledge of any person against the order of nature; or (b) has carnal knowledge of an animal; or (c) permits a male person to have carnal knowledge of him or her against the order of nature, shall be guilty of a felony and shall be liable to imprisonment for fourteen years, with or without corporal punishment.'*

³ *Penal Code, Chapter 7:01, s.154: 'Any person who attempts to commit any of the offences specified in the last preceding section shall be guilty of a felony and shall be liable to imprisonment for seven years, with or without corporal punishment.'*

⁴ *Penal Code, Chapter 7:01, s.156: 'Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, shall be guilty of a felony and shall be liable to imprisonment for five years, with or without corporal punishment.'*

⁵ In December 2010, the Parliament passed a bill amending the Penal Code of Malawi. In late January 2011, President Bingu Wa Mutharika assented to the bill, thus completing its enactment into law. The new Section 137A, captioned 'Indecent practices between females,' provides that any female person who, whether in public or private, commits 'any act of gross indecency with another female' shall be guilty of an offence and liable to a prison term of five years.

⁶ US State Department, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Malawi 2014*, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236378>> accessed on 5 September 2015

- ⁷ Stewart, C., 'It's official: No more Malawi arrests under anti-gay laws', *Erasing 76 Crimes*, 14 July 2014, <<http://76crimes.com/2014/07/14/its-official-no-more-malawi-arrests-under-anti-gay-laws/>> accessed on 19 July 2014
- ⁸ Stewart, C., 'UN joins legal challenge to Malawi's anti-gay law', *Erasing 76 Crimes*, 21 January 2014, <<http://76crimes.com/2014/01/21/un-joins-legal-challenge-to-malawis-anti-gay-law/>> accessed on 19 July 2014
- ⁹ UK Border Agency, *MALAWI: COUNTRY OF ORIGIN INFORMATION (COI) REPORT*, 31 October 2012, <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/310462/Malawi_COI_report_2012.pdf> accessed on 19 July 2014
- ¹⁰ Stewart, C., '3 in Malawi prisons await ruling on sodomy law', *Erasing 76 Crimes*, 16 June 2014, <<http://76crimes.com/2014/06/16/3-in-malawi-prisons-await-ruling-on-sodomy-law/>> accessed on 19 July 2014; Stewart, C., 'Malawi High Court weighs overturning anti-gay law', *Erasing 76 Crimes*, 6 November 2013, <<http://76crimes.com/2013/11/06/malawi-high-court-weighs-overturning-anti-gay-law/>> accessed on 19 July 2014
- ¹¹ Ibid 10.
- ¹² Tenthani, R., 'Malawi court starts hearing landmark homosexual case', *Maravi Post*, 20 January 2014, <<http://www.maravipost.com/scope/law-and-order/5265-malawi-court-starts-hearing-landmark-homosexual-case.html>> accessed on 19 July 2014
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- ¹⁴ UNAIDS and Lancet Commission, *Defeating AID - advancing global health*, 25 June 2015 <[http://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736\(15\)60658-4.pdf](http://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736(15)60658-4.pdf)> accessed on 18 August 2015
- ¹⁵ Malawi News Network, *CSOs Want Peter to Declare Stand on Homosexuality*, 13 February 2015, <<http://www.malawinewsnetwork.com/csos-want-peter-declare-stand-homosexuality/>> accessed on 3 August 2015
- ¹⁶ CHRR and CEDEP, *Mutharika's 100 Days in Office: A Road of Hope and Apprehension to the Future*, *Malawi Voice*, 8 September 2014, <<http://malawivoice.com/2014/09/08/mutharikas-100-days-in-office-a-road-of-hope-and-apprehension-to-the-future/>> accessed on 23 September 2015
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- ¹⁸ Day, A., 'Malawi: Muslim association calls for gay people to be condemned to death', *Pink News*, 18 February 2014, <<http://www.pinknews.co.uk/2014/02/18/malawi-muslim-association-calls-death-penalty-gay-people/>> accessed on 19 July 2014
- ¹⁹ 'Malawi Law Society Faults Kasambara on Easing Anti-Gay Laws', *NYASA Times*, 7 November 2012, <<http://www.nyasatimes.com/2012/11/07/malawi-law-society-faults-kasambara-on-easing-anti-gay-laws/>> accessed on 19 July 2014
- ²⁰ Stewart, C., 'Malawi leader: My plan to repeal anti-gay laws is stymied', *Erasing 76 Crimes*, 29 September 2012, <<http://76crimes.com/2012/09/29/malawi-leader-my-plan-to-repeal-anti-gay-laws-is-stymied/>> accessed on 19 July 2014
- ²¹ Smith, D., 'Malawi president vows to legalise homosexuality', *The Guardian*, 18 May 2012, <<http://www.theguardian.com/world/2012/may/18/malawi-president-vows-legalise-homosexuality>> accessed on 19 July 2014
- ²² Stewart, C., 'Malawi leader: My plan to repeal anti-gay laws is stymied', *Erasing 76 Crimes*, 29 September 2012, <<http://76crimes.com/2012/09/29/malawi-leader-my-plan-to-repeal-anti-gay-laws-is-stymied/>> accessed on 19 July 2014
- ²³ Chanika, E., Lwanda, J., Muula, A., 'Gender, Gays and Gain: The Sexualised Politics of Donor Aid in Malawi', *African Spectrum*, 89, 93/97-8, 2013
- ²⁴ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Malawi*, 2014, <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236378>> accessed on 5 September 2015
- ²⁵ Chibwezo, W., 'Blackmail Among Gay People in Malawi', in Thoreson, R., Cook, S., (eds), *Nowhere to Turn*, 2011

²⁶ Human Rights Watch, *Malawi: New Marriage Law Can Change Lives*, 17 April 2015, <<https://www.hrw.org/news/2015/04/17/malawi-new-marriage-law-can-change-lives>> accessed on 3 August 2015

²⁷ Section 64(b) Marriage Divorce and Family Relations Act 2015.

²⁸ UNHRC, *Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21: Malawi* (10 February 2015) A/GRC/WG.6/22/MWI/3

²⁹ UNHRC, *National report submitted in accordance with paragraph 5 of the annex to the Human Rights Council resolution 16/21: Malawi* (4 February 2015) A/HRC/WG.6/22/MWI/1

³⁰ Human Rights Committee, OHCHR, *Concluding observations on the initial periodic report of Malawi*, 19 August 2014, CCPR/C/MWI/CO/1/Add.1

³¹ *Ibid* n 17.

³² UNHRC, *Report of the Working Group on the Universal Periodic Review*, 4 January 2011, UN Doc A/HRC/16/4

	Malaysia	
<p>National Law:</p> <p><i>Penal Code Act 1936 (as amended up to 1 January 2006)</i>¹</p> <ul style="list-style-type: none"> - S377A & 377B: Unnatural Offences² - S377D: Outrages of Decency³ - Additionally, in a number of states in Malaysia, Sharia laws (applying to male and female muslims) criminalise male/male and female/female sexual acts 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - Up to 20 years' imprisonment and whipping - 2 years' imprisonment - e.g. fines, up to 3 years' imprisonment and whipping⁴ 	<p><u>Treaty Ratification</u></p> <p>CEDAW CRC</p>
<p>The law is equally applicable to both men and women.</p>		
<p>Enforcement</p>	<ul style="list-style-type: none"> - June 2015: A Sharia Court in the north-eastern Malaysian state of Kelantan convicted nine transgender women under a law that prohibits '<i>a male person posing as a woman</i>'. All of the women received fines, while two were sentenced to jail terms of two months.⁵ - February 2015: The leader of Malaysia's opposition, Parti Keadilan Rakyat Anwar Ibrahim, was jailed for five years after losing his appeal against his conviction on sodomy charges.⁶ - 2014: According to the United States Human Rights Country Report, the law is rarely enforced.⁷ However, transgender individuals were often charged under the Minor Offences Act for '<i>indecent behavior</i>' and '<i>importuning for immoral purposes</i>' in public.⁸ Local advocates contended that those imprisoned served their time in the male prison population and were often mistreated verbally and sexually by police and other inmates. - 7 March 2014: Malaysia's former deputy Prime Minister was sentenced to 5 years' imprisonment under the country's sodomy laws.⁹ 	
<p>Statements by Public Figures</p>	<ul style="list-style-type: none"> - 11 September 2015: Malaysia's Tourism Minister Datuk Seri Nazri Aziz has reportedly said that: '<i>LGBT people, I am sorry but even though you argue that it your human right to lead your [life] but it will not be allowed here because it is not allowed in Islam</i>'.¹⁰ - 18 August 2015: At a seminar in Bangi, Malaysian Prime Minister Najib Razak asserted that extremist armed groups and sexual and gender minorities both pose a threat to Malaysian society. <p><i>Groups like the Islamic State and lesbians, gay, bisexuals, and transgenders (LGBT) both target the younger generation and seem successful in influencing certain groups in society</i>¹¹ At the same event, Prime Minister Razak said <i>although universal human rights have been defined, we still define human rights in the</i></p>	

	<p><i>country in the context of Islam and the syariah (Sharia law).</i>¹²</p> <ul style="list-style-type: none"> - July 2015: The National Muslim Youth Association (Pembina) launched a campaign in response to the United States Supreme Court’s ruling on same-sex marriage, urging its supporters to change their Facebook profile picture to an image of a crossed-out rainbow flag.¹³ - June 2015: At an event in Pulapo, Malaysian Prime Minister Razak said <i>‘there is no need for a gay parade [in Malaysia] whatsoever... There is a deviant teaching spreading in our society.</i>¹⁴ - 25 June 2014: Some Malaysian politicians reportedly have threatened to withdraw their support for a bill on <i>‘National Harmony and Reconciliation’</i> if it recognises discrimination against a person on the basis of their sexual orientation.¹⁵ - 24 June 2014: The deputy chairman of the National Unity Consultative Council (NUCC) law and policy committee said that the NUCC believed the section of the draft National Harmony Bill (see ‘legislative news’ below) prohibiting discrimination based on sexual orientation should remain. <i>‘Some segments in Malaysian society want to demonise the community... Why is it in Malaysia, LGBT is considered a bad word? Our Penal Code criminalises sodomy but it doesn’t criminalise sexual orientation’.</i>¹⁶ - 6 June 2014: Former Prime Minister, Mahathir Mohamad, answering a question on the best way to prevent the spread of LGBTI rights in Malaysia, responded: <i>‘It is good that they are having gay marriages, very soon they will disappear.’</i>¹⁷ - 2 May 2013: The ruling Barisan Nasional Coalition printed and distributed anti-gay pamphlets while seeking re-election.¹⁸ - 28 March 2013: Reportedly, a state-sponsored touring anti-gay theatre company has visited a number of schools in order <i>‘to educate the youngsters and their parents [on] the bad things about LGBT’.</i>¹⁹ - 13 September 2012: The Malaysian Ministry of Education approved a set of guidelines to be used to help determine whether a child is gay or not. Included among the ‘symptoms’: <i>‘Hav[ing] a muscular body and lik[ing] to show their body by wearing V-neck and sleeveless clothes; Prefer[ing] tight and light-coloured clothes; and lik[ing] to bring big handbags, similar to those used by women, when hanging out.’</i>²⁰ - 27 June 2012: Malaysian Prime Minister, Mohammad Najib Abdul Razak, in a statement talked of the importance of Islam, stating: <i>‘any deviant aspects such as liberalism, pluralism and Lesbian, Gay, Bisexual and Transgender would not have a place in the country.’</i>²¹ - 20 June 2012: Malaysian deputy-minister, Dr Mashitah Ibrahim, warned that homosexuality goes against Islam and further stated that there is no constitutional freedom from discrimination for gay people living in Malaysia: <i>Article 8 of the Federal Constitution says there must be no discrimination of citizens in terms of religion or sex. ‘Sex’ has never been interpreted to mean sexual orientation; it has always been interpreted to mean either male or female, and they are [the only ones] protected by the constitution</i>²²
Persecution	<ul style="list-style-type: none"> - 10 September 2015: Nisha Ayub, a prominent and internationally recognised transgender rights activist was assaulted in by two men with iron rods just below

<p>and</p> <p>Discrimination</p>	<p>her house.²³</p> <ul style="list-style-type: none"> - 2014: In its 2014 World Report, Human Rights Watch commented on the persecution of trans people: <i>'Police regularly arrest transgender persons, especially Muslims who are considered to be violating Sharia law provisions against cross-dressing, ridicule and humiliate them, and jail them in lock-ups where they are subject to physical and sexual abuse by police staff and male inmates.'</i>²⁴ - February 2013: An estimated 16,000 parents and teachers attended a seminar on how to curb LGBT behaviour that took place in Politeknik Seberang Prai. After opening the seminar, Malaysia's Deputy Education Minister told a press conference: <i>'It [homosexuality] is like a disease but it can be cured with early intervention.'</i>²⁵ - 2012: An Equal Rights trust report documents many instances of persecution and discrimination of Malaysian Sexual Minorities, including discriminatory police conduct and violence as well as other forms of discriminatory conduct.²⁶
<p>Legislative News</p>	<ul style="list-style-type: none"> - 8 October 2015: In November 2014 the Putrajaya Court of Appeal of Malaysia declared a provision in the state's Sharia law which criminalised 'cross-dressing' unconstitutional. However, this landmark decision was recently overturned by the Federal Court on a technicality citing improper procedures used to challenge the Sharia law and without considering the substance of the constitutional challenge.²⁷ The case began in 2011, when three Muslim transgender women challenged the provision in the state of Negeri Sembilan, claiming it violated their constitutional rights. The now overturned 2014 judgment of the Court of Appeal had noted that while states are empowered to enact laws involving matters of Islam, such laws cannot contravene the Federal Constitution.²⁸ Despite that ruling, laws against 'cross-dressing' remained in force in the rest of Malaysia's 13 states and its Federal Territories and are used against transgender people.²⁹ - August 2015: A representative of the Malaysian Prime Minister's Department announced that the proposed National Harmony Bill <i>'is expected to be tabled in Parliament in the coming session'</i>.³⁰ Some members of the government-appointed National Unity Consultative Council (NUCC) had originally indicated that the Bill would include a prohibition on discrimination on the grounds of 'gender, including sexual orientation and identity'.³¹ However in July 2014 a member of the NUCC's law and policy committee said the phrase 'sexual orientation' had been removed from the draft.³² - 24 March 2015: Voted in favour of a failed Russian draft decision at the UN General Assembly's Fifth Committee (Administrative and Budgetary) that would have had the Secretary-General withdraw his bulletin laying UN staff benefits for same-sex couples.³³ - 2013: (UPR) <p><i>The Government stated that matters involving lesbian, gay, bisexual, and transgender persons and adherents of other schools of Islamic thought would be handled carefully and consistent with cultural traditions, religious doctrine and societal norms, and domestic laws and regulations.</i>³⁴</p> <p>Malaysia went on to reject all recommendations calling for the decriminalisation of same-sex sexual conduct.³⁵</p> - 2009: (UPR) Malaysia rejected recommendations to decriminalise consensual

	same-sex sexual conduct by removing the relevant provisions from its penal code. ³⁶
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¹ The law is : <http://www.agc.gov.my/Akta/Vol.%2012/Act%20574.pdf>

² *Penal Code Act 1936, s.377: '377A Carnal intercourse against the order of nature: Any person who has sexual connection with another person by the introduction of the penis into the anus or mouth of the other person is said to commit carnal intercourse against the order of nature. Explanation - Penetration is sufficient to constitute the sexual connection necessary to the offence described in this section. 377B Punishment for committing carnal intercourse against the order of nature. Whoever voluntarily commits carnal intercourse against the order of nature shall be punished with imprisonment for a term which may extend to twenty years, and shall also be liable to whipping.'*

³ *Penal Code Act 1936, s.377D: 'Any person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person, shall be punished with imprisonment for a term which may extend to two years.'*

⁴ The Sharia Penal law in the Malaysian state of Pulau Pinang prescribes penalties for sodomy (Liwat) and lesbian relations (musahaqat) with fines of rm5,000.00, three years imprisonment and 6 lashes of the whip - see, Amnesty International, *Malaysia: Convictions for Sodomy Follow Unfair Trials* (8 October 1998), ASA 28/28/98

⁵ Human Rights Watch, *Malaysia: Court Convicts 9 Transgender Women*, 22 June 2015, <<https://www.hrw.org/news/2015/06/22/malaysia-court-convicts-9-transgender-women>> accessed on 9 September 2015

⁶ Leong, T., Hamzah, A.A., 'Malaysia's Anwar jailed for five years after losing appeal in sodomy trial', *Reuters*, 10 February 2015, <<http://uk.reuters.com/article/2015/02/10/uk-malaysia-anwar-ruling-idUKKBN0LE09G20150210>> accessed on 9 September 2015

⁷ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Malaysia*, 2014, <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236454>> accessed on 10 September 2015

⁸ Those convicted of a first offense may be fined up to RM25 (\$7.65) and sentenced to as many as 14 days in jail. The sentences for subsequent convictions may be fines up to RM100 (\$30.60) and up to three months in jail – see, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Malaysia* (US Department of State 2014) <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236454>> accessed on 10 September 2015

⁹ Roberts, S., 'Malaysia: Ex-Deputy Prime Minister jailed for five years on sodomy charges', *Pink News*, 7 March 2014, <<http://www.pinknews.co.uk/2014/03/07/malaysia-ex-deputy-prime-minister-jailed-five-years-sodomy-charges/>> accessed on 19 July 2014

¹⁰ Kamal, S.M., 'LGBT community will never have equal rights in Malaysia, tourism minister says', *The Malay Online*, 11 September 2015, <<http://www.themalaymailonline.com/malaysia/article/lgbt-community-will-never-have-equal-rights-in-malaysia-tourism-minister-sa#sthash.g1zhay44.dpuf>> accessed on 23 September 2015

¹¹ Ghoshal, N., 'Love is not terrorism, Najib', *The Malaysian Insider*, 25 August 2015, <<http://www.themalaysianinsider.com/sideviews/article/love-is-not-terrorism-najib-neela-ghoshal>> accessed on 9 September 2015

¹² Lavers, M.K., 'Malaysian prime minister: Government will not defend LGBT rights', *Washington Blade*, 21 August 2015, <<http://www.washingtonblade.com/2015/08/21/malaysian-prime-minister-government-will-not-defend-lgbt-rights/>> accessed on 9 September 2015

¹³ 'Muslim group launches anti-LGBT campaign against rainbow Facebook profile photos', *Malay Mail Online*, July 2015 <<http://www.themalaymailonline.com/malaysia/article/muslim-group-launches-anti-lgbt-campaign-against-rainbow-facebook-profile-p>> accessed on 9 September 2015

¹⁴ PM says no to LGBT and terrorism, *The Rakyat Post*, 30 June 2015, <<http://www.therakyatpost.com/news/2015/06/30/pm-says-no-to-lgbt-and-terrorism/>> accessed on 9 September 2015

¹⁵ Harmony Bill May be Under Threat, *Rakyat Times*, 25 June 2014, <<http://www.rakypattimes.com/index.php/news/842-harmony-bill-may-be-under-threat>> accessed on 19 July 2014; Sivanadam, H., 'Harmony Bill to address gender bias and sexual leaning', *Malaysian Bar*, 8 July 2014,

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	Maldives	
<p>National Law:</p> <p><i>Penal Code 2014</i>^{1*}</p> <ul style="list-style-type: none"> - S410(a)(8): Unlawful Marriage² - S411(a)(2): Unlawful Sexual Intercourse - S 411(d): Imposition of “the penalty imposed under Islamic Sharia” for Unlawful Sexual Intercourse³ - S412: Unlawful Sexual Conduct⁴ <p>* This law reportedly came into effect in July 2015⁵.</p>	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - Imprisonment of up to 1 year - Imprisonment of up to 8 years. The code also makes provision for a supplementary punishment of 100 lashes imposed under Islamic Sharia. - Imprisonment of up to 4 years 	<p><u>Treaty Ratification</u></p> <p>CAT CEDAW CEDAW OP CRC ICCPR ICCPR OP ICESCR</p>
The law is applicable to both men and women.		
Enforcement	<ul style="list-style-type: none"> - September 2015: Police reportedly arrested two men aged 56 and 27 in their private home on the island of Dhaandhoo after receiving a complaint alleging homosexual activity.⁶ - 3 June 2014: Speaking about a Maldivian gay man who sought refuge in New Zealand following reported acts of persecution, a spokesman for the President’s office indicated that refugees would be prosecuted upon their return to the Maldives: <i>‘The threat from the state they speak of is in actuality our law and regulations. That will not change.’</i>⁷ - January 2014: In Malé, the capital of Maldives, a trial for alleged homosexual conduct between a military officer and a security guard began.⁸ - 14 August 2013: 2 men were arrested for reportedly engaging in ‘homosexual activities.’⁹ - 2002: One article suggested that between 1999 and 2002, 76 people were arrested for homosexuality.¹⁰ 	
Statements by Public Figures	<ul style="list-style-type: none"> - 2015: In his opening statement at the Universal Periodic Review 2nd Cycle, the Maldives’ Minister of Foreign Affairs said <i>‘calls to introduce values and practices that are contrary to the values of Islam, such as non-traditional forms of families, and LGBT, will not be entertained by the people of Maldives’</i>¹¹ - See above (3 June 2014) on asylum. - 4 February 2014: Home Minister, Umar Naseer, criticised the ‘imperialist’ attitude of foreign NGOs: <i>‘Homosexuality and marrying of same sex people are from the examples of these unnatural and foreign ideologies to Islam... these ideologies are</i> 	

	<p><i>totally against Islam and are forbidden in Islam.</i>¹²</p>
<p>Persecution and Discrimination</p>	<ul style="list-style-type: none"> - September 2014: In a submission to the UPR 2nd Cycle, the Commonwealth Human Rights Initiative stated that <i>'the unsatisfactory legal situation [in the Maldives] discourages individuals from reporting crimes and incidents relating to LGBT related violence and harassment.'</i>¹³ - The United Nations Population Fund also submitted <i>'Stereotypes of homosexual men are often portrayed in the media as effeminate and objects of ridicule. The public sector family planning programme including condoms is couple based.'</i>¹⁴ - 18 June 2014: A group of men were reportedly attacked for being 'gay atheists'. The attackers were recorded as saying: <i>'You homosexual atheists are destroying our country - we will not stand back and watch you do it.'</i>¹⁵ - 2014: The US Human Rights Country Report notes that the Ministry of Islamic Affairs continued to block websites considered anti-Islamic or pornographic. As of October a 2011 Telecommunications Authority ban on a local blog, Hilath.com continued. The original ban came at the request of the Islamic Ministry because of the blog's alleged anti-Islamic content. The blog was known for promoting religious tolerance, as well as discussing the blogger's sexual orientation.¹⁶ - According to the report: <p style="margin-left: 40px;"><i>[t]here were no reports of officials complicit in abuses against LGBT persons, although societal stigma likely discouraged individuals from reporting such problems. Due to societal intolerance of same-sex sexual relationships, there were few openly LGBT individuals in the country and no information on official or societal discrimination based on sexual orientation in employment, housing, access to education, or health care.</i></p> - 11 April 2013: An openly gay blogger had his throat cut. He has since fled the country.¹⁷ - 2011: According to the Maldives UPR report, government officials did not discriminate against LGBTI people. However, the report also states that there were governmental concerns about calls from extremist groups to persecute actively LGBTI people.¹⁸
<p>Legislative News</p>	<ul style="list-style-type: none"> - July 2015: The Maldives new <i>Penal Code 2014</i> came into force, replacing the existing Penal Code that dated back to 1968.¹⁹ In a public statement, the Maldives Minister for Foreign Affairs described the enactment as a 'momentous milestone' and said: <i>'the Code illustrates the Government's conviction to protect and promote human rights, eradicate discrimination and widen the sphere of economic, political and civil rights to Maldivians.'</i> Among the provisions in the new code are (at section 411) a prohibition on sexual intercourse with a person of the same sex, with a penalty of up to 8 years' imprisonment, and an additional punishment of 100 lashes under Sharia law. A draft of the law was prepared by the Criminal Law Research Group at the University of Pennsylvania, led by Professor Paul Robinson,²⁰ with technical support provided by UNDP.²¹ Under the draft code, the maximum penalty for homosexual intercourse was 1 year imprisonment and 100 lashes.²² - May 2015: (UPR) At the UPR 2nd Cycle, the Maldivian delegation stated that the Maldives could not accept a recommendation from Argentina to <i>'Guarantee that LGBTI persons have full and equal enjoyment of their human rights by repealing the norms that criminalize and stigmatize them.'</i>²³

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| | <p>- 2011: (UPR) The Maldives Rejected recommendations to decriminalise consensual same-sex sexual conduct. In the report, the state suggests that there are no laws enacted to protect sexual minorities from discrimination.²⁴</p> |
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¹ Translation : <https://www.law.upenn.edu/live/files/4203-maldives-penal-code-2014>

² Penal Code 2014, s.410(a)(8): 'A person commits an offense if two persons of the same sex enter into a marriage.'

³ Penal Code 2014, s.411: '(a) Unlawful Intercourse. A person commits an offense if: (1) he engages in sexual intercourse (2) he engages in sexual intercourse with a person of the same sex. (b) Grading. (1) Adultery and Fornication. The offense in Subsection (a) is: (2) a Class 5 felony if the person is married and has intercourse. (3) a Class 1 misdemeanor if the person is unmarried and has intercourse with a person married to another. (4) a Class 2 misdemeanor if the person is unmarried and has intercourse with an unmarried person. (5) a Class 4 felony if the person married or unmarried has sexual intercourse with a person with whom marriage is prohibited by virtue of being a close relative, or being nursed by the same woman, or due to marriage. (6) a Class 3 felony, if the person holds a special place in the family and has misused such position, even if the person is not prohibited by virtue of being a close relative, or being nursed by the same woman, or due to marriage, [(c) Four Witnesses Rule. If the offense in Subsection (a) is proven with comparably persuasive evidence other than the testimony of four witnesses, such as DNA evidence or evidence of pregnancy, the offense is one grade lower than it would otherwise be.] [(d) Additional Punishment Authorized. In addition to the punishment authorized under Chapter 90, to impose the penalty imposed under Islamic Sharia, an additional punishment of 100 lashes is authorized for the offense.]* (f) Definitions... (b) (2) "Same- sex intercourse means"; (A) Insertion by a man his sexual organ or any object into the anus of another man for sexual gratification. Or the insertion into another mans mouth the penis of a man or (B) Insertion of a woman's organ or any object into the vagina or anus of another woman for sexual gratification.'

⁴ Penal Code 2014, s.411: '(a) A person commits an offense if: (1) the person is married and has sexual contact with a person not his spouse. The offense is a Class 1 misdemeanor. (2) the person is unmarried and has sexual contact with a person married to another. The offense is a Class 2 misdemeanor. (3) if the person is unmarried and has sexual contact with an unmarried person. The offense is a Class 3 misdemeanor... (6) if the person holds a special place in the family and has misused such position to engage in sexual contact, even if the person is not prohibited by virtue of being a close relative, or being breast fed by the same mother, or due to marriage. The offense is a Class 4 felony. (b) Offense Defined. A person engaging in sexual contact with a person of the same is committing an offense. (c) Prohibition. "prohibited sexual contact" means indecent acts other than the offenses prescribed under Section 411 (a) of this Code, with a person of same sex, or with a person of the opposite sex other than with a person to whom he is married, or with an animal, for obtaining sexual gratification'

⁵ Maldives High Commission London, *Statement by Minister of Foreign Affairs on the coming into force of the new Penal Code*, 16 July 2015, <<http://www.maldiveshighcommission.org/news/news-from-maldives/item/783-statement-by-minister-of-foreign-affairs-on-the-coming-into-force-of-the-new-penal-code>>

⁶ Stewart, C., 'Maldives: Lenient no more, island nation arrests 2', *Erasing 76 Crimes*, 1 September 2015, <<http://76crimes.com/2015/09/01/maldives-lenient-no-more-island-nation-arrests-2/>>

⁷ Mohamed, M., 'Maldivian asylum seekers assured of prosecution upon return, says President's Office', *Minivan News*, 3 June 2014, <<http://minivannews.com/politics/maldivian-asylum-seekers-assured-of-prosecution-upon-return-says-presidents-office-86360>> accessed on 19 July 2014

⁸ 'Trial begins over case of military officer's "indecent behavior" with security guard', *Rainbow Maldives*, 5 January 2014, <<http://rainbowmaldives.blogspot.in/2013/01/trial-begins-over-case-of-military.html>>

⁹ 'Two Arrested from Vilimale for Homosexuality', *Rainbow Maldives*, 14 August 2013, <<http://rainbowmaldives.blogspot.co.uk/2013/08/two-arrested-from-vilimale-for.html>> accessed on 19 July 2014

¹⁰ '76 People Arrested for Homosexuality over Three Years: Police', *Rainbow Maldives*, 12 November 2012, <<http://rainbowmaldives.blogspot.co.uk/2002/11/76-people-arrested-for-homosexuality.html>> accessed on 19 July 2014

¹¹ Maumoon, D., *Opening Statement by H E Ms Dunya Maumoon Minister of Foreign Affairs of the Republic of Maldives at the Twenty-Second Working Group on the Universal Periodic Review (UPR) United Nations Human*

Rights Council, 6 May 2015 <<http://www.foreign.gov.mv/v2/assets/Uploads/Maldives-intervention-and-statement-at-Maldives-UPR-Review-May-2015.pdf>> accessed on 23 September 2015

¹² 'Some are putting pressure to destroy the Islamic unity of the people- Home Minister', *Miadhu News*, 4 February 2014, <<http://www.miadhu.com/2014/02/local-news/some-are-putting-pressure-to-destroy-the-islamic-unity-of-the-people-home-minister/>> accessed on 19 July 2014

¹³ Commonwealth Human Rights Initiative, *Stakeholder submission of the Commonwealth Human Rights Initiative (CHRI) for the 2nd Universal Periodic Review of Maldives*, 15 September 2014 <<https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=1735&file=EnglishTranslation>> accessed on 23 September 2015

¹⁴ United Nations Population Fund, *UNFPA Submission for UPR of Maldives (2nd Cycle)*, September 2014

¹⁵ 'Muslim vigilantes attack "gay atheists" in the Maldives', *Gay Asia News*, 18 June 2014 <<http://gayasianews.com/2014/06/18/muslim-vigilantes-attack-gay-atheists-in-the-maldives/>> accessed on 19 July 2014

¹⁶ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Maldives*, 2014 <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236644>> accessed on 10 September 2015

¹⁷ Randolph, E., 'Darker side of the Maldives: Public lashings, religious extremists and a gay blogger with his throat slashed', *Belfast Telegraph*, 11 April 2013 <<http://www.belfasttelegraph.co.uk/news/world-news/darker-side-of-the-maldives-public-lashings-religious-extremists-and-a-gay-blogger-with-his-throat-slashed-29189177.html>> accessed on 19 July 2014

¹⁸ UNHRC, *Report of the Working Group on the Universal Periodic Review*, 4 January 2011, UN Doc A/HRC/16/7 para 89

¹⁹ The Ministry of Foreign Affairs, *Statement by Minister of Foreign Affairs on the coming into force of the new Penal Code*, 16 July 2015, <<http://www.maldiveshighcommission.org/news/news-from-maldives/item/783-statement-by-minister-of-foreign-affairs-on-the-coming-into-force-of-the-new-penal-code>> accessed on 9 September 2015

²⁰ University of Pennsylvania Law School, *Penal code drafted by Prof. Paul Robinson and students is enacted in the Maldives*, 8 May 2014, <<https://www.law.upenn.edu/live/news/4728-penal-code-drafted-by-prof-paul-robinson-and#.VfFWNBfViko>> accessed on 9 September 2015

²¹ UNDP in Maldives, *UNDP Maldives and the Attorney General's Office hold first high level stakeholder meeting on the roll-out of the Maldives' new Penal Code*, 29 April 2014, <<http://www.mv.undp.org/content/maldives/en/home/presscenter/articles/2014/04/29/undp-maldives-and-the-attorney-general-s-office-hold-first-high-level-stakeholder-meeting-on-the-roll-out-of-the-maldives-new-penal-code.html>> accessed on 9 September 2015

²² Robinson, P. H., and Criminal Law Research Group, *Final Report of The Maldivian Penal Law & Sentencing Codification Project: Text of Draft Code (Volume 1) and Official Commentary (Volume 2)*, 2006

²³ UNHRC, *Draft Report of the Working Group on the Universal Periodic Review*, 21 May 2015, UN Doc HRC/WG.6/22/L.6 para 144

²⁴ UNHRC, *Report of the Working Group on the Universal Periodic Review*, 14 March 2011, UN Doc A/HRC/16/7/Add.1

	Mauritius	
<p>National Law: <i>Criminal Code, 1838</i>¹</p> <ul style="list-style-type: none"> - S250: Sodomy and Bestiality² 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - 5 years' imprisonment 	<p><u>Treaty Ratification</u></p> <p>AFRICAN CHARTER</p> <p>CAT</p> <p>CEDAW</p> <p>CEDAW OP</p> <p>CRC</p> <p>ICCPR</p> <p>ICCPR OP</p> <p>ICESCR</p>
<p>The law is applicable only to men.</p>		
<p>Enforcement</p>	<ul style="list-style-type: none"> - The law, whilst enforced, is equally applicable to both gay and straight men. The law does not specifically criminalize consensual same-sex sexual activity. It criminalizes the act of sodomy, however, among both same-sex and heterosexual couples. Sodomy cases that reach the courts almost exclusively involve heterosexual persons, especially as an aggravating factor in divorce cases. The sodomy statute was rarely used against same-sex couples, unless one of the partners cited sodomy in the context of sexual assault.³ - 2013: The US Country Report states that while cases do occasionally reach the courts, they <i>'almost exclusively involve heterosexual persons'</i>, with cases being brought against gay people only where one person is alleged to have been assaulted.⁴ 	
<p>Statements by Public Figures</p>	<ul style="list-style-type: none"> - January 2013: Paul Bérenger (below) stood down for health reasons and has been replaced temporarily by Alan Ganoo whose position on gay rights is unknown. - 28 June 2011: Then Opposition Leader Paul Bérenger raised a Private Notice Question in Parliament as to whether the Government proposed to amend domestic laws discriminating against homosexuals. The Prime Minister replied that the Government would await the study to be commissioned by the UN High Commissioner for Human Rights, followed by a panel discussion to be convened by the Human Rights Council. Thereafter, a Select Committee would be set up at national level to study the matter and to determine which amendments should be brought to domestic law. - Bérenger has taken a conservative approach stating that Mauritius should not have signed the UN Resolutions in view of the various religious sensitivities of the 	

	country.
Persecution and Discrimination	<ul style="list-style-type: none"> - 2014: Verbal abuse or violence within the family based on sexual orientation was reported to local NGOs. Few complaints were made to the police out of fear of reprisals or ostracism. A 16-year-old committed suicide on January 27 after constant bullying and taunting from classmates due to his sexual orientation.⁵ Following a complaint about the questionnaire used by the Ministry of Health and Quality of Life to prohibit blood donation from LGBT persons, the ministry amended its policy and website in 2013 to indicate individuals who have had same-sex sexual activity could donate blood.⁶ - 2013: Reports of discrimination are rare, with the US Country Report finding no instances of discrimination in a number of areas. In the last 2 years, the country changed its policies on blood donation and the wording of some of its websites to be more inclusive of sexual and gender minorities. In respect of violence and persecution, the report found few reported instances of violence; however, it added that due to societal pressures, many people may be discouraged from reporting.⁷
Legislative News	<ul style="list-style-type: none"> - 2015: The Mauritian NGO <i>Arc-en-Ciel</i> has organised a series of activities to raise awareness of their goals as a community. Their main aims are to legalise sodomy.⁸ - 2014: (UPR) In response to calls from Canada and Australia to remove those provisions which criminalise homosexuality, Mauritius responded: <i>‘[the] Government has not yet taken any policy decision regarding the decriminalization of sodomy. In view of the sensitivity of the issue, further consultations are required.’</i>⁹ - January 2012: The Equal Opportunities Act 2008 came into force. It prohibits discrimination on the basis of sexual orientation, among other statuses, in employment and education, and with respect to the provision of goods or services, and accommodation, among other areas.¹⁰ Other similar legislation includes the Employment Rights Act 2008 (as amended)¹¹ and the Employment Relations Act 2008 (as amended).¹² Both Acts prohibit discrimination on the basis of sexual orientation. - 2009: (UPR) Mauritius accepted recommendations to implement progressive legislations regarding sexual orientation and gender identity stating: <ul style="list-style-type: none"> ○ <i>A Sexual Offences Bill was referred to a Select Committee in 2007 for further study and consultation. The object of the Bill is to make further and better provision for sexual offences. In that context... provision is made for decriminalizing of sexual activities among consenting adults.</i>¹³ - Mauritius has taken several positive steps on the international stage at the UPR and in support of some of the major Resolutions and Declarations at the UN on Sexual Orientation and Gender Identity¹⁴ but progress on decriminalisation

	appears to have stalled.
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¹ The law is : <http://attorneygeneral.govmu.org/English/Documents/A-Z%20Acts/C/Page%201/CRIMINAL%20CODE,%20Cap%20195.pdf>

² *Criminal Code 1838, s.250: 'Any person who is guilty of the crime of sodomy or bestiality shall be liable to penal servitude for a term not exceeding 5 years.'*

³ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Mauritius*, 2014, <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236384>> accessed on 10 August 2015

⁴ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2013: Mauritius*, 2013, <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220139>> accessed on 19 July 2014

⁵ *Ibid* n2.

⁶ *Ibid*.

⁷ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2013: Mauritius*, 2013, <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220139>> accessed on 19 July 2014

⁸ Patel, N., 'Protest Against Illegality of Anal Sex in Mauritius', *Island Crisis*, 19 February 2015, <<http://news.islandcrisis.net/2015/02/protest-against-illegality-of-anal-sex-in-mauritius/>> accessed on 10 August 2015

⁹ UNHRC, *Report of the Working Group on the Universal Periodic Review*, 14 March 2014, UN Doc A/HRC/25/8/Add.1

¹⁰ Equal Opportunities Act 2008, Act No. 42 of 2008 <http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_126781.pdf> accessed on 10 August 2015. s 2: 'status' means age, caste, colour, creed, ethnic origin, impairment, marital status, place of origin, political opinion, race, sex or sexual orientation

¹¹ The Employment Rights Act 2008, Act No. 33 of 2008 <<http://labour.govmu.org/English/Documents/Legislations/Employment%20Rights%20acts%202008/ERiA%2008%20as%20at%20Dec%202013.pdf>> accessed on 10 August 2015

¹² The Employment Relations Act 2008, Act No. 32 of 2008 <<http://labour.govmu.org/English/Documents/Legislations/Employment%20relations%20act%202008/EReA%2008%20updated%20as%20at%20%202013.pdf>> accessed on 10 August 2015

¹³ UNHRC 'National Report', 30 October 2008, UN Doc A/HRC/WG.6/4/MUS/1 para 105

¹⁴ Mauritius supported UNHRC Resolution 17/19: Human rights, sexual orientation and gender identity (14 July 2011), A/HRC/RES/17/19, but neither supported, opposed nor abstained from the most recent UNHRC Resolution on 26 September 2014 (A/HRC/RES/27/32). Mauritius supporting the joint statement on human rights, sexual orientation and gender identity delivered at the UN General Assembly in December 2008, on behalf of 66 States from all 5 UN regions. Amongst other things, this statement urged States to take all the necessary measures 'to ensure that sexual orientation or gender identity may under no circumstances be the basis for criminal penalties'.

	Namibia	
<p>National Law:</p> <p><i>Common Law Offences of:</i>¹</p> <ul style="list-style-type: none"> - Sodomy - Unnatural Sexual Offences 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - Unknown 	<p><u>Treaty Ratification</u></p> <p>AFRICAN CHARTER</p> <p>CAT</p> <p>CEDAW</p> <p>CEDAW OP</p> <p>CRC</p> <p>ICCPR</p> <p>ICCPR OP</p> <p>ICESCR</p>
The law is applicable only to men.		
Enforcement	<ul style="list-style-type: none"> - 2014: The 2014 US Country Report on Namibia suggests that the prohibition on sodomy, inherited from the Dutch-Roman common law, is not enforced in the country.² 	
Statements by Public Figures	<ul style="list-style-type: none"> - August 2015: Deputy Finance Minister of Namibia reportedly told staff at an office of the Ministry of Finance that <i>'You are either a man or a woman. Don't come from outside and tell us this is acceptable. They must keep their gay activities in their countries. We will not entertain any of this gayness.'</i>³ - 18 April 2014: The Refugee Commissioner of Namibia released a statement saying that Namibia will not allow gay refugees from Uganda into the country. According to the Commissioner: <i>'[Namibian] refugee law does not have a provision granting refugee status for being gay. And we will never do that.'</i>⁴ - 13 March 2014: In response to a question on whether he thought Namibia would introduce any further anti-gay legislation (as has been seen in Nigeria and Uganda), Namibian PM Hage Geinbob answered in the negative, adding that <i>'In Namibia, we respect human rights.'</i>⁵ - 2014: The newly formed Namibian Economic Freedom Fighters political party criticized homosexuality as a threat to the country, compared it to the Ebola virus, and claimed it must be contained.⁶ - 2013: Former Mr. Gay Namibia and potential parliamentary candidate, Wendelinus Hamutenya, was heavily criticised by both politicians and Namibian gay rights groups for reportedly threatening to release a list of gay politicians.⁷ - 17 December 2013: The leader of the Democratic Turnhalle Alliance political party in Namibia spoke out in defence of gay rights in the country. Challenging the proposition that homosexuality is 'un-African', McHenry Venaani stated that: <i>'For many years gays have been part of the society all along. It is scientifically proven all races and cultures have gays'</i>, later adding that it was 'natural' to be gay, and that gay people should be protected.⁸ - 4 May 2013: A number of politicians have reportedly spoken out against 	

	<p>homosexuality in recent years. Former president of Namibia, Sam Nujoma, has called, at various times, for the 'rejection and condemnation' of homosexuality; ordering police to 'arrest, imprison and deport gays'. Jerry Ekandjo, a cabinet minister, called for the "elimination" of gay people within the country.⁹</p> <ul style="list-style-type: none"> - 18 April 2013: The Secretary of the Youth League of the ruling SWAPO party published a message on Twitter in response to news of a gay couple who had married in South Africa and returned to Namibia: <i>'The so-called first gay marriage in Namibia is an abomination and illegal. It is moral decay at its worst, the police must arrest them.'</i>¹⁰
Persecution and Discrimination	<ul style="list-style-type: none"> - 2014: The US Department of State's Human Rights Report on Namibia reported that during 2014 <i>'many cases of human rights violations against LGBT persons went unrecorded, including the use of "corrective rape" against lesbians, families disowning LGBT children, and the beating of LGBT persons. A large number of LGBT youth were unemployed, did not go to school, abused drugs and alcohol, and remained vulnerable to discrimination.'</i>¹¹ - September 2014: A man sexually assaulted a lesbian in Windhoek because he wanted to 'cure' her of her lesbianism. When she sought medical help at a state hospital, the receptionist reportedly told her to return later and publicly announced that she had been raped.¹² - 8 February 2013: LGBTI group Out-right Namibia has spoken of an increasingly more tolerant Namibian society: <i>'We must accept that there is increasing tolerance of sexual minorities in Namibia among communities, the media, and in particular by political leaders who have not made homophobic statements in recent years.'</i>¹³ - 2013: Many cases of persecution and discrimination are not reported, although, again, reports suggest that this situation is improving, particularly through strengthened LGBTI relations with the Office of the Ombudsman and the Ministry of Health and Social Services (US Report).¹⁴
Legislative News	<ul style="list-style-type: none"> - 2011: (UPR) Namibia rejected recommendations to decriminalise consensual same-sex sexual conduct.¹⁵ The government delegation stated: <i>On homosexuality, it was noted that the Constitution outlawed discrimination of any kind. Since independence, no single case of discrimination on the basis of sexual preference or orientation had appeared before the courts. Homosexuals were not prosecuted for practising same-sex activities in private, although this practice was not condoned, and was considered immoral and prohibited in public. Same-sex marriages were not recognized. The Government has no intention of amending current laws.</i>¹⁶ - 2010: The ILO Committee of Experts expressed regret that Namibia's Labour Act of 2007 did not prohibit discrimination on the ground of sexual orientation, which had been covered under the preceding 1992 Act.¹⁷

¹ Sodomy remains a crime in Namibia according to the Roman-Dutch common-law, which was derived from South Africa. Common-law is a legal tradition based mainly on precedent court verdicts, while there is no codified sodomy provision in Namibia - see submission in the UPR of Namibia at:

http://lib.ohchr.org/hrBodies/upr/documents/session10/na/Js1_JointsSubmission-eng.pdf

² Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Namibia*, (US Department of State 2014)

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236388>> accessed on 5 September 2015

³ 'ORN accuses Natangwe Ithete of inciting homophobia', *Namibian Sun*, 3 August 2015,

<<http://www.namibiansun.com/local-news/orn-accuses-natangwe-ithete-inciting-homophobia.82020>>

⁴ Becker, J.M., 'Namibia Refuses to Accept Gay Ugandan Refugees', *Bilerico Project*, 18 April 2014,

<http://www.bilerico.com/2014/04/namibia_refuses_to_accept_gay_ugandan_refugees.php> accessed on 19 July 2014

⁵ Harvard School of Public Health, *Namibian prime minister: Inclusivity necessary for peace, development*, 13 March 2014, <<http://www.hsph.harvard.edu/news/features/namibian-prime-minister-inclusivity-necessary-for-peace-development/>> accessed on 19 July 2014

⁶ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Namibia*, 2014,

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236388>> accessed on 5 September 2015

⁷ 'Former Mr Gay Namibia for MP?', *Mamba Online*, 11 October 2013,

<<http://www.mambaonline.com/2013/10/11/former-mr-gay-namibia-for-mp/>> accessed on 19 July 2014

⁸ Miyanicwe-Nangolo, C., 'Namibian political leader stands up for gay rights', *Gay Star News*, 16 December 2013,

<<http://www.gaystarnews.com/article/namibian-political-leader-stands-gay-rights161213>> accessed on 19 July 2014

⁹ Lister, G., 'Tough times for LGBTI in Namibia too', *Open Society Initiative for South Africa*, 4 May 2013,

<<http://www.osisa.org/igbti/blog/tough-times-lgbti-namibia-too>> accessed on 19 July 2014

¹⁰ Ibid 9.

¹¹ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Namibia*, 2014,

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236388>> accessed on 5 September 2015

¹² Ibid 11.

¹³ ILGA, *Out-Right Namibia (ORN) calls on Mr. Hamutenya and The Villager to respect people's right to privacy and dignity*, 8 February 2013, <<http://ilga.org/ilga/en/article/nWRoAKS176>> accessed 19 July 2014

¹⁴ US Department of State, Bureau of Democracy, Human Rights and Labor, *Reports on Human Rights Practices for 2013: Namibia*, 2013,

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220142>> accessed on 19 July 2014

¹⁵ UNHRC, *Report of the Working Group on the Universal Periodic Review*, 24 March 2011, UN Doc A/HRC/17/14

¹⁶ UNHRC, *Report of the Working Group on the Universal Periodic Review*, 24 March 2011, UN Doc A/HRC/17/14 Para 21

¹⁷ International Labour Organisation, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, 2010

 Nauru		
National Law: Nauru <i>Criminal Code</i> 1899, Chapter XXII ¹ <ul style="list-style-type: none"> - S208: Unnatural Offences² - S209: Attempt to Commit Unnatural Offences³ - S211: Indecent Practices between Males⁴ 	Maximum Penalties: <ul style="list-style-type: none"> - 14 years' imprisonment with hard labour - 7 years' imprisonment with hard labour - 3 years' imprisonment with hard labour 	<u>Treaty Ratification</u> CAT OPCAT CEDAW CRC
The law is only applicable to men.		
Enforcement	<ul style="list-style-type: none"> - 2014: The United States Human Rights report noted that there have been no reported instances of prosecution under Nauru's legal provisions that prohibit same-sex sexual conduct.⁵ 	
Statements by Public Figures	<ul style="list-style-type: none"> - There have been no reported statements by public figures, with the exception of those made within the Universal Periodic Review (see below) 	
Persecution and Discrimination	<ul style="list-style-type: none"> - 2014: There were no reports of violence or discrimination against persons on the basis of sexual orientation or gender identity.⁶ - There have been no widespread reports of persecution in Nauru, although, as in all countries, individual instances are bound to occur. 	
Legislative News	<ul style="list-style-type: none"> - March 2014: According to Kaleidoscope Australia, the Australian Foreign Minister, Julie Bishop, indicated that: <i>the Australian Government has been in discussions with the Government of Nauru about re-engaging on Criminal Code reform. We will continue to look for opportunities to work with Nauru- through bilateral and multilateral channels - to combat discrimination and promote the human rights of all people, regardless of their sexual orientation or gender identity. Australia remains a global advocate of non-discrimination on the basis of sexual orientation.</i>⁷ - January-May 2013: Parliamentary Counsel, Katy Le Roy, visited Canberra in late January 2013 to work with the Australian Attorney-General's Department on the first part of a new Crimes Bill for Nauru and a new Police Bill for Nauru. The project is an important long-term project involving comprehensive updating of the main criminal legislation in Nauru.⁸ According to a Parliamentary Notice Paper dated 23 May 2013, the Minister for Justice (Hon Roland Kun) was to present the Crimes Bill to Parliament.⁹ The Crimes Bill remains on the Notice Paper for introduction on a later sitting date, as does the Equal Opportunities Bill.¹⁰ - 2011: (UPR) Nauru stated in its National Report submitted to the UN Human Rights Council in November 2010, concerning plans to decriminalise homosexuality under the heading "Legislative protection of rights" (at paragraph 37): 	

*With assistance from the Australian Attorney-General's Department, Nauru is currently undertaking a major review of the Criminal Code, with the aim of introducing a modernised criminal code that is appropriate for Nauru and which accords with the Universal Declaration on Human Rights. When the review is complete, it is expected that a bill for a new Criminal Code will be introduced to Parliament, which among other things proposes that sexual activity between consenting adults of the same sex be decriminalised, and that other anachronistic offences be abolished.*¹¹

*[T]his major project was expected to take three years and to introduce significant changes in how Nauru addressed sexual offences and those arising from domestic violence. The decriminalization of homosexual activity between consenting adults was under active consideration as part of this review.*¹²

*Nauru stated that homosexuality remained illegal, as the current criminal code dated back from 1899. There was a clear intent by the Government supported by the population to amend most of those laws and correct that situation.*¹³

Nauru accepted the UPR recommendations to decriminalise consensual sexual activity between adults of the same sex.¹⁴

- **2011:** Nauru sponsored the UN 2011 Human Rights Council Joint Statement on Ending Violence based on Sexual Orientation and Gender Identity.
- **2004-2013 (Constitutional Review Project):** The process of constitutional reform in Nauru began in 2004 with the establishment of a parliamentary Constitutional Review Committee (CRC).¹⁵ In 2006, the CRC designed a six-step process of review to include a public awareness and consultation project, the passage of bills by parliament and a referendum. Key changes to the Constitution that were proposed included adding reformed rights protections to the existing bill of rights such as the right to equality, which would have provided for non-discrimination on the basis of sexual orientation, among other grounds.¹⁶ A referendum was needed to make important changes to the Constitution, and this took place on 27 February 2010. The referendum, however, did not receive the two thirds support required for the proposed changes to take effect.¹⁷ Following the referendum, the CRC was considering whether it is worthwhile pursuing the proposed referendum amendments at a later date. The latest step in the constitutional review process was the introduction of 11 bills amending the Constitution to Parliament on 7 February 2013. Each of the bills were taken to a first reading and do not require a referendum.¹⁸

¹ The law is : http://ozcase.library.qut.edu.au/qhlc/documents/CrimCode1899_63Vic_9.pdf

² *Nauru Criminal Code 1899, Chapter XXII, s.208: 'Any person who: (1) Has carnal knowledge of any person against the order of nature; or (2) Has carnal knowledge of an animal; or (3) Permits a male person to have carnal knowledge of him or her against the order of nature; is guilty of a crime, and is liable to imprisonment with hard labour for fourteen years'*

³ *Nauru Criminal Code 1899, Chapter XXII, s.209: 'Any person who attempts to commit any of the crimes defined in the last preceding section is guilty of a crime, and is liable to imprisonment with hard labour for seven years. The offender cannot be arrested without warrant.'*

⁴ *Nauru Criminal Code 1899, Chapter XXII, s.211: 'Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or*

with another male person, whether in public or private, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.’

⁵ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Nauru*, 2014, <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236462>> accessed on 21 August 2014

⁶ Ibid n 2.

⁷ Kaleidoscope Australia, *Press Release - Kaleidoscope Australia notes changing climate for international human rights for LGBTI people*, 19 March 2014, <<http://www.kaleidoscopeaustralia.com/2014/03/19/19-march-2014-kaleidoscope-australia-notes-changing-climate-for-international-human-rights-for-lgbti-people/>>

⁸ <http://www.naurugov.nr/parliament-of-nauru/news-events/archive/crimes-bill.aspx>

⁹ http://www.naurugov.nr/media/25270/20th_parliamentnoticepaper_40.pdf

¹⁰ Copies of the draft Bills are currently unavailable.

¹¹ UNHRC, *National Report*, (8 March 2011) UN Doc A/HRC/WG.6/10/NRU

¹² UNHRC, *Report of the Working Group on the Universal Periodic Review*, (8 March 2011) UN Doc A/HRC/17/3

¹³ Ibid n 6, at para. 74

¹⁴ UNHRC, *Report of the Working Group on the Universal Periodic Review: Nauru*, (30 May 2011) UN Doc A/HRC/17/3/Add.1

¹⁵ <http://www.naurugov.nr/parliament-of-nauru/projects/constitutional-review-project.aspx>

¹⁶ Constitution of Nauru (Referendum Amendments) Bill 2009, :

http://www.naurugov.nr/media/16464/constitution_of_nauru_referendum_amendments_bill_2009.pdf

¹⁷ ‘STORY: REFERENDUM – WHERE TO FROM HERE?’, *Nauru Bulletin*, 11, 10 March 2010,

<<http://www.naurugov.nr/parliament-of-nauru/projects/constitutional-review-project.aspx>>

¹⁸ Ibid n 11

	Nigeria	
<p>National Law:</p> <p><i>Criminal Code Act, Chapter 77, Laws of the Federation of Nigeria 1990</i>¹</p> <ul style="list-style-type: none"> - S214: Carnal Knowledge against the Order of Nature² - S215: Attempt to Commit Carnal Knowledge against the Order of Nature³ - S217: Gross Indecency⁴ <p><i>Penal Code (Northern States) Federal Provisions Act of 1959</i>⁵, applicable to all 19 states in Northern Nigeria.⁶</p> <ul style="list-style-type: none"> - S284: Unnatural Offences⁷ - S405: Vagabonds. Definition includes at 405(2)(c) 'any male person who dresses or is attired in the fashion of a woman in a public place or who practices sodomy as a means of livelihood or as a profession.; <p><i>Same Sex Marriage (Prohibition) Act 2013</i>⁸ (SSMPA)</p> <ul style="list-style-type: none"> - S5(1): Entering into a same-sex marriage or civil partnership - S5(2): Registering, operating or participating in 'gay clubs' - S5(2): 'Public show of amorous same-sex relationship' - S5(3): Aiding or solemnising a same-sex marriage or supporting an LGBT organisation⁹ <p>*Additionally, at least 12 Northern Nigerian states (Zamfara, Bauchi, Kebbi, Jigawa, Sokoto, Kaduna, Kano, Niger, Borno, Gombe, Katsina, and Yobe) have adopted Islamic Sharia laws criminalising sexual activities between persons of the same sex. These Sharia laws run</p>	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - 14 years' imprisonment - 7 years' imprisonment - 3 years' imprisonment - 14 years' imprisonment and/or a fine - Up to two years' imprisonment and/or a fine - Penalty for an 'incorrigible vagabond' - defined at s 405(3) as any person who has been 'convicted as a vagabond' at least once already - up to three years' imprisonment and/or a fine - 14 years' imprisonment - 10 years' imprisonment - 10 years' imprisonment - 10 years' imprisonment - Execution by stoning for men¹¹ - Up to 50 lashes and/or six months' imprisonment for women¹² 	<p><u>Treaty Ratification</u></p> <p>AFRICAN CHARTER</p> <p>CAT</p> <p>CEDAW</p> <p>CEDAW OP</p> <p>CRC</p> <p>ICCPR</p> <p>ICESCR</p>

concurrently to secular state and federal laws. ¹⁰		
<p>Provisions applicable to both men and women: <i>Criminal Code Act: S214 and S215; Same Sex Marriage (Prohibition) Act 2013: S5 and Sharia Law 12 Northern Nigerian states</i></p> <p>Provisions applicable only to men: <i>Criminal Code Act: S214; Penal Code (Northern States) Federal Provisions Act of 1959: S284 and S405</i></p>		
Enforcement	<ul style="list-style-type: none"> - 2014: In its Human Rights Report on Nigeria for 2014, the US Department of State found that <i>'LGBT persons reported increased harassment and threats against them'</i> during 2014, but as of December 2014 <i>'there were no reports of the government enforcing the SSMPA'</i>.¹³ The US Department of State also found that in the Northern Nigerian states that have adopted Sharia law, <i>'although no [death] sentences were imposed during the year, individuals convicted of same-sex activity were sentenced to lashing.'</i>¹⁴ - There have been a number of recent arrests and trials in Nigeria. Some examples include: <ul style="list-style-type: none"> o January 2015: An Islamic law enforcement agency, the Hisbah, arrested 12 men in the north Nigerian city of Kano for allegedly planning a same-sex wedding.¹⁵ The head of the Hisbah, Aminu Daurawa, told <i>Agence France-Presse</i> that the suspects "looked and acted feminine", which prompted their arrest.¹⁶ o 29 May 2014: Nigeria's <i>Leadership</i> newspaper reported that police in Asaba, Delta State <i>'uncovered a hideout of lesbians... and have arrested 26 suspects.'</i>¹⁷ o May 2014: 21 men were reportedly arrested in Ibadan for being in a <i>'gay cult,'</i> having been found with over 100 condoms in their possession.¹⁸ o 14 February 2014: Three men arrested - Ope Abeeb, 18 years, Samed Ojo, 20 years and Oluwasegun Adesina-Rasheed, 64 years. The men were arraigned, imprisoned and are awaiting trial.¹⁹ o 22 January 2014: Thousands of protestors threw stones into a Sharia court in Bauchi, northern Nigeria, and demanded death sentences for the 11 men arrested for belonging to gay organisations. The court was forced to suspend the trial and security required to disperse the mob.²⁰ o 17 January 2014: More than 30 people have been arrested, increasingly from the Christian southern states where enforcement is less common than in the Muslim north.²¹ o 17 January 2014: Mubarak Ibrahim, a 20-year-old (one of the 12 accused on trial currently in the Bauchi sharia courts), was tried and convicted. He was flogged with a horse whip in public (20 lashes) and fined \$30.²² o 16 January 2014: 24 people have been arrested in three southern States (<i>Agence France-Presse</i>). Most had been detained previously and were re-arrested after the SSMPA was announced.²³ o 14 January 2014: In the northern State of Bauchi, a crackdown took place immediately following the signing of the SSMPA resulting in the arrest of 38 men with searches continuing for a further 168 men, whose names were 	

	<p>included on a list of suspects that had been compiled under conditions of torture.²⁴ Dorothy Aken'Ova, a rights activist with the Nigeria-based International Centre for Reproductive Health and Sexual Rights, told the BBC that some of those arrested in Bauchi State were beaten up and tortured.²⁵</p> <ul style="list-style-type: none"> ○ 6 January 2014: Five men appeared in a sharia court in Bauchi on charges of forming a gay club.²⁶ ○ 25 December 2013: Police in northern Nigeria detained four men over the Christmas holidays and allegedly tortured them until they named others belonging to a gay organisation.²⁷ ○ 9 October 2013: Two men, Emeka Eze, 35, and Jonathan Akatin, 22, were arraigned in the Northern city of Jos and charged with homosexual acts under section 284 of the <i>Penal Code (Northern States) Federal Provisions Act</i>. Those arrests brought the total number of persons in prison or awaiting trial to 12.²⁸ ○ 1 October 2013: Samuel Friday, 19, and Oni Oluwatobi, 18, were arraigned on charges of homosexual activity.²⁹ ○ 6 September 2013: Police arrested 32 male undergraduate students for alleged homosexual acts.³⁰ ○ August 2013: A man identified as Sadiq was reportedly arrested and beaten based on allegations of homosexual conduct.³¹ ○ 6 August 2013: Pastor Benjamin Ndubuisi was accused, charged and prosecuted for having carnal knowledge with a 23-year-old man based on hearsay rumours by locals. LGBTI advocates allege that the accused may have been beaten during his detention.³² ○ 17 January 2013: Police arrested seven men on suspicion of being homosexuals following a quarrel between two of them during which they accused each other of being homosexuals.³³ ○ 7 January 2013: Pastors Prince Ejimole and Lawrence Udo were arrested, charged and prosecuted for unlawful carnal knowledge after being caught having sex in a Lagos hotel.³⁴
Statements by Public Figures	<ul style="list-style-type: none"> - July 2015: The Special Adviser on Media and Publicity to Nigeria's President Muhammadu Buhari reported that during a visit to the United States of America <i>'the issue of gay marriage came up... PMB [President Buhari] was point blank. Sodomy is against the law in Nigeria, and abhorrent to our culture.'</i>³⁵ - July 2015: The Catholic Archbishop of Abuja Diocese, John Cardinal Onaiyekan, said <i>'even if people don't like us for it, our church has always said homosexuality is unnatural and marriage is between a man and a woman... There is no question of the Catholic Church changing its positions on this matter.'</i>³⁶ - 27 February 2014: Three leading Nigerian Authors, Chimamanda Ngozi Adichie, Jackie Kay and Helon Habila, condemned the new Nigerian anti-homosexuality law and called for its repeal.³⁷ - 19 January 2014: Pastor Ayo Oritsejafor, President of the Christian Association of Nigeria stated: <i>'We call on all those talking about human rights and international conventions to remember that there is always a limit to certain rights and that those who go out of their ways to overstep the limits now know the consequences'</i>

*of their actions. ... Human rights without limit are recipes for the destruction of any society. The culture and morality of a people must be taken into cognizance because it is important to remember that culture and morality are intricately linked with each other. By the beliefs of most Nigerians, same sex marriage is offensive to us as a people.'*³⁸

- **14 January 2014:** The Foreign Secretary of the UK expressed his disappointment that the SSMPA had received presidential assent: *'We are concerned by the prospect this raises of further action against an already marginalised section of society.'*³⁹
- **30 July 2013:** The report provided by Nigeria to the 2nd Cycle of the UPR made the claim that *'sexual and gender minorities are not visible in Nigeria and there is no officially registered association of gays and lesbians.'*⁴⁰
- **20 July 2013:** Nigerian Foreign Affairs Minister, Olugbenga Ashiru, criticised foreign diplomats for trying to 'impose' gay rights on Nigeria. The Minister declared: *'It is not part of our own culture. It needs to evolve. Let us get to that stage of understanding that two men can marry, then we will get to the bridge and cross it.'*⁴¹
- **1 July 2013:** Navi Pillay, the UN Human Rights Commissioner condemned Nigeria's Same-Sex Marriage (Prohibition) Act: *'I am very concerned that the rights of LGBT people, the sexual orientation rights are being violated, that they are subjected to discrimination.... I condemn this law of Nigeria because it violates the equality clause both in Nigerian law and also the Universal Declaration of Human Rights.'*⁴²
- **30 May 2013:** The Same Sex Marriage (Prohibition) Bill was passed by the House of Representatives. Among other things, the bill envisaged imprisonment of up to 10 years for anyone who *'participates in gay clubs or organisations'* or *'directly or indirectly makes public show of same-sex amorous relationships'*, as well as gaol terms for anyone who fails to report LGBTI people to the authorities.
- **January 2013:** President of the Senate, David Mark, insisted that the SSMP bill was *'irrevocable'* and *'we will not compromise on this'*. Instead, Nigeria has to *'prove to the rest of the world, who are advocates of this unnatural way that we Nigerians promote and respect sanity, morality and humanity.'*⁴³
- **13 December 2012:** Nigerian Nobel Laureate, Professor Wole Soyinka, criticised the (then) proposed anti-homosexuality bill:

*If there are scientific explanations for homosexual conduct - and these have been expounded in profusion - then a process of education is called for, enabling a more empathetic response to what appears an aberration to the majority.*⁴⁴
- **26 July 2010:** Bishop Nicolas Okoh, Nigeria's most senior Anglican cleric, and outspoken opponent of homosexuals and homosexual rights, stated that Nigeria is at risk of an *'invading army of homosexuality, lesbianism and bisexual lifestyle'* and later *'same sex marriage, paedophilia and all sexual pervasions [sic] should be roundly condemned by all who accept the authority of scripture over human life.'*⁴⁵
- **September 2007:** Anglican Bishop of Oyu, Isaac Orama, declared that homosexuals are *'inhuman, insane, satanic and not fit to live.'*⁴⁶

<p>Persecution and Discrimination</p>	<ul style="list-style-type: none"> - Increasing levels of mob violence, harassment, blackmail and extortion of the LGBTI community have been reported. Sometimes this occurs at the hands of the police. - August 2015: A podcast reported the story of a lesbian woman in Nigeria who was displaced from her home, blackmailed and faced the possibility of arrest in relation to her sexual orientation.⁴⁷ In a separate episode of the same podcast, a man told of being '<i>subjected... to a compulsory everyday prayer and fasting session</i>' after coming out to his family.⁴⁸ - 1 June 2015: A lesbian woman reportedly fled Nigeria despite having children because her family and friends criticised and alienated her for her sexual orientation.⁴⁹ - May 2015: A telephone poll of 1,000 Nigerians found that 87% of respondents support the SSMPA and only 11% would be willing to accept a family member if they were lesbian, gay or bisexual.⁵⁰ - July 2014: Ifeanyi Orazulike, who operates a clinic for HIV clinic for MSM and trans women in Abuja, told the International AIDS Conference of the impact that Nigeria's new SSMP law was having on HIV treatment. '<i>We used to have about 60 people a month; post-law it is down to about 10 to 15 people... For fear of going to prison, people preferred to stay at home on their sick bed.</i>'⁵¹ - 15 February 2014: In Geshiri town near Abuja, a mob of about 40 men reportedly dragged a number of suspected gay men from their beds in the middle of the night, after smashing down doors to their homes in house-to-house raids. The victims were taken onto the streets and beaten with sticks spiked with nails, wires, whips and broken furniture. Members of the mob were shouting that they were '<i>cleansing the community</i>' of gays and '<i>we are working for Jonathan</i>'. Some were taken to the police station where officers looked on and insulted them while others joined in slapping and beating them. The mobs also attempted to burn down the houses of the suspected gay men. After the attack the mob wrote '<i>homosexuals, pack and leave</i>' on the homes of the men they assaulted and warned them '<i>if you come back, we will kill you</i>'. A senior police officer in the region gave the victims of the mob attack 48 hours to leave.⁵² - 28 January 2014: In Port Harcourt, southern Nigeria, two men were reportedly forced out of their home and made to masturbate and have anal sex while mobs of onlookers jeered and filmed them on camera phones. The footage was then posted and shared on social media.⁵³ - 22 August 2013: In Ota, Ogun State of western Nigeria, a young man was beaten by a mob of villagers for allegedly being gay.⁵⁴ - 29 June 2013: A gay man was entrapped by plain-clothes police who tricked his partner into meeting at a rendezvous and also arrested him at gunpoint. Both were charged under the SSMP Bill even though it had not been signed into law. They were detained for two days and released after paying a bribe.⁵⁵ - 24 June 2013: A man was stopped by police who insisted on searching his phone and laptop. Gay pornography was found. Police obtained his parents' numbers from his phone and threatened to tell them unless he paid a bribe.⁵⁶ - 14 January 2013: Three men were stripped, paraded through streets naked and then brutally beaten. Similar incidents are still being reported.⁵⁷
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Legislative News	<ul style="list-style-type: none"> - 24 March 2015: Voted in favour of a failed Russian draft decision at the UN General Assembly's Fifth Committee (Administrative and Budgetary) that would have had the Secretary-General withdraw his bulletin laying UN staff benefits for same-sex couples⁵⁸ - October 2014: Nigeria's Federal High Court dismissed a challenge to the SSMPA brought by Joseph Teriah Ebah, a Nigerian man who lives in the UK.⁵⁹ - January 2014: The SSMPA came into force. - 2013 (UPR) Nigeria rejected Recommendations to decriminalise consensual same-sex sexual activity.⁶⁰ The delegation noted that: <p style="margin-left: 40px;"><i>The issue of sexual orientation did not enjoy consensus within the United Nations human rights system, and all attempts to integrate sexual orientation into existing universally recognized human rights had so far failed. The overwhelming majority of Nigerians objected to same-sex relationships, on the basis of their deeply held religious, cultural and moral beliefs, against which no government could successfully legislate. There was no policy or practice of witch-hunting people on the basis of their sexual orientation... The delegation stated that Nigeria did not accept the recommendations on same-sex marriage because it conflicted with national and cultural values. A poll conducted in 2011 had indicated that 92 per cent of the people were against same-sex marriage.</i>⁶¹</p> - 2009: (UPR) Recommendations were made that the then Same-Sex Marriage (Prohibition) Bill did not go ahead and that all other legislation which discriminates against and criminalises consensual same-sex sexual conduct be removed. It would seem these recommendations were rejected.⁶² - Nigeria Voted against the 2011 Human Rights Council Resolution (calling for the UN High Commissioner for Human Rights to prepare a report on the human rights of LGBT people). - Nigeria was a signatory to the 2008 General Assembly Counter-Statement opposing the 2008 General Assembly Declaration (on Human Rights and Sexual Orientation and Gender Diversity).
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¹ Text of the law is : www.nigeria-law.org/Criminal%20Code%20Act-Tables.htm

² *Criminal Code Act, Chapter 21, s.214: 'Any person who- (1) has carnal knowledge of any person against the order of nature; or (2) has carnal knowledge of an animal; or (3) permits a male person to have carnal knowledge of him or her against the order of nature; is guilty of a felony, and is liable to imprisonment for fourteen years.'*

³ *Criminal Code Act, Chapter 21, s.215: 'Any person who attempts to commit any of the offences defined in the last preceding section is guilty of a felony, and is liable to imprisonment for seven years. The offender cannot be arrested without warrant.'*

⁴ *Criminal Code Act, Chapter 21, s.217: 'Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a felony, and is liable to imprisonment for three years. The offender cannot be arrested without warrant.'*

⁵ Text of the law is reproduced in S. S. Richardson, *Notes on the Penal Code Law (Cap. 89 Laws of Northern Nigeria)* (3rd edition, Gaskiya Corporation Nigeria 1967)

⁶ *Penal Code (Northern States) Federal Provisions Act 1959, s 2*

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fine. *Explanation* - mere penetration is sufficient to constitute the carnal intercourse necessary to [commit the] offence described in this section.' With regard to the applicable procedure for this provision, S. S. Richardson writes at p187 of *Notes on the Penal Code Law (Cap. 89 Laws of Northern Nigeria 1963)* that 'no warrant is required for the arrest of an accused. The offence is not normally bailable and is not compoundable and may be tried in the High Court or a native court of grade A Limited or above.'

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[http://www.placng.org/new/laws/Same%20Sex%20Marriage%20\(Prohibition\)%20Act,%202013.pdf](http://www.placng.org/new/laws/Same%20Sex%20Marriage%20(Prohibition)%20Act,%202013.pdf)

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	Pakistan	
<p>National Law:</p> <p><i>Pakistan Penal Code</i>¹</p> <ul style="list-style-type: none"> - S377: Unnatural Offences² <p>* The <i>Hudood Ordinance</i> of 1979³ (Section 4) criminalises “zina” or sexual intercourse outside marriage, in line with Sharia law. Although the law does not specifically criminalise same-sex sexual conduct, insofar as non-heterosexual relationships cannot be legalised in any form of marriage, the provision suggests that non-heterosexual sexual acts that involve penetration⁴ can be prosecuted.⁵</p>	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - Life imprisonment or between 2 and 10 years imprisonment with a fine - Death by stoning, whipping and imprisonment. 	<p><u>Treaty Ratification</u></p> <p>CAT</p> <p>CEDAW</p> <p>CRC</p> <p>ICCPR</p> <p>ICESCR</p>
<p>S377 (Unnatural offences) is applicable only to men. S4 (Zina) of the <i>Hudood Ordinance</i> of 1979 is applicable to both men and women</p>		
<p>Enforcement</p>	<ul style="list-style-type: none"> - 2015: In its ‘State Sponsored Homophobia Report’ released May 2015, the International Lesbian and Gay Association stated: ‘we are not aware of contemporaneous evidence that consensual same-sex sexual activity has been targeted for the death penalty in Pakistan.’⁶ - 2014: The US Human Rights Country Reports on human rights for 2013 and 2014 found that Pakistan’s laws criminalising LGBTI people were rarely enforced.⁷ Yet prosecutions have been reported: <ul style="list-style-type: none"> o June 2015: Pakistan’s <i>Express Tribune</i> reported that police arrested two men in the Jaffarabad district of Balochistan after they allegedly carried out a ‘secret marriage.’⁸ o 27 August 2013: According to one article, a boy was arrested after being discovered having sex with another boy in a field. The boy’s family allegedly attempted to bribe the police, but the police would not accept the bribe. The same article claims that whilst many arrests occur, ‘[i]n almost all cases charges will be dropped.’⁹ o 18 December 2013: A TV Reporter entered a couple’s house, accusing them of being gay. The news segment was filmed with phrases such as ‘[LGBT are] worthy of stoning’ running over the top of the clip. The couple were arrested by police, although it is not known under what offence they were charged.¹⁰ o 30 November 2011: The Immigration and Refugee Board of Canada, relying on information provided by the Neengar Society, suggested that in 2011, in the city of Multan, ten prosecutions took place under Art 377, 2 of which 	

	<p>resulted in a 10 year prison sentence for those convicted.¹¹</p> <ul style="list-style-type: none"> ○ 25 May 2010: 43 people were arrested when the police suspected a gay marriage was taking place. One of those accused of getting married told police it was a birthday party.¹²
<p>Statements by Public Figures</p>	<ul style="list-style-type: none"> - July 2015: Hamza Ali Abbasi, a Pakistani actor followed by over 60,000 people on Facebook, declared himself <i>'disappointed at people in Pakistan celebrating a behaviour that is taboo even in animals'</i> and changed his profile picture to a rainbow flag with a red line across it.¹³ - 14 February 2012: Zamir Akram, Pakistan's ambassador to the UN, wrote a letter to the UN Human Rights Council expressing concern over the 'introduction' of sexual orientation in the 2012 General Assembly Resolution (17/19): <p><i>We are... disturbed at the attempt to focus on certain persons on the grounds of their abnormal sexual behaviour, while not focusing on the glaring instances of intolerance and discrimination in various parts of the world, be it on the basis of colour, race, gender or religion, to mention only a few... The OIC Member States are concerned that the Panel will discuss issues that relate to personal behaviour and preferences, and have nothing to do with fundamental human rights.</i>¹⁴</p> - Whilst there have been few ministerial statements on the matter, religious authorities have been strong in their denouncement of gay rights. One of the reasons for a lack of discussion on the subject is likely to be the strict social attitudes under which Pakistan operates.¹⁵
<p>Persecution and Discrimination</p>	<p>There are many individual reports of persecution of the LGBTI community in Pakistan:</p> <ul style="list-style-type: none"> - 25 July 2015: Some terror suspects in Karachi revealed in police investigation that they wanted to kill homosexual persons and obscenity promoters in Pakistan. A lead suspect reportedly stated: <i>'By killing the selected ones we wanted to make them a lesson for others who are bent upon making Pakistan a vulgar and obscene country and like the west, in most parts of which the homosexuality has been legalized.'</i>¹⁶ - May 2015: Three transgender women were murdered in a drive-by shooting on the evening of 8 May. Almas Bobby, President of the Shemale Foundation Pakistan - an organisation she started in 2004 to campaign for the rights of transgender people - told Pakistan's <i>Dawn News</i> that <i>'the attackers could be those who did not like the presence of transgenders in the locality.'</i>¹⁷ - 7 April 2015: Armed men in Swabi reportedly abducted and gang-raped a trans woman on after killing two others in a pre-dawn incident while a group of transgender persons were returning home after performing a music and dance show at a wedding party.¹⁸ - July 2014: The UK Home Office's Country Information and Guidance Document on Pakistan stated that: <p><i>Widespread and systematic discrimination against LGBT persons in Pakistan... persist[s], including harassment and violence... No effective protection is provided by the authorities. The document also stated that: Gay rights activists and other individuals who openly campaign for gay rights in Pakistan would be at real risk of persecution from societal actors.</i>¹⁹</p>

	<ul style="list-style-type: none"> - May 2014: A group of men reportedly attacked and gang-raped a transgender woman in Karachi. Activists claimed police refused to conduct a thorough investigation despite having photographic evidence and contact information for one of the accused assailants.²⁰ - April 2014: A Lahore paramedic confessed to killing three gay men whom he met online. Authorities suspended one senior officer allegedly involved in the attack, and the police department launched an investigation.²¹ - 25 September 2013: A popular gay website was blocked, despite it containing no pornography. A spokesman of the PTA (Pakistan's internet regulator) gave reasons for the censorship: <i>'We blocked the website under the law because its content was against Islam and norms of Pakistani society.'</i>²² - May 2013: For the first time in the country's history, several transgender women ran for public office in Pakistan's 2013 general elections.²³ - 2012: A qualitative study published in <i>BMC International Health and Human Rights</i> found that <i>'the transgender community is socially excluded by Pakistani society which is leading them to indulge in commercial sex and putting their lives at risk.'</i>²⁴
Legislative News	<ul style="list-style-type: none"> - 24 March 2015: Voted in favour of a failed Russian draft decision at the UN General Assembly's Fifth Committee (Administrative and Budgetary) that would have had the Secretary-General withdraw his bulletin laying UN staff benefits for same-sex couples²⁵ - A number of recent rulings have recognised the equal rights of <i>hirja</i> (the South Asian term for a transgender woman) in Pakistan. The transgender population in Pakistan is estimated to be between 80,000 and 300,000.²⁶ <ul style="list-style-type: none"> ○ September 2012: The Supreme Court of Pakistan affirmed that transgender citizens should be given equal basic rights as all citizens, including employment and inheritance rights.²⁷ ○ November 2011: The Supreme Court of Pakistan ordered the Election Commission of Pakistan to collect data from the <i>hirja</i> community and register them as voters.²⁸ ○ December 2009: The Supreme Court of Pakistan ruled that the country's <i>Hirja</i> community should be issued with national identity cards showing their distinct gender.²⁹ - 2008/13: (UPR) Pakistan rejected recommendations to decriminalise consensual non-marital sex: <p><i>Canada has suggested that we decriminalize consensual sex. We cannot do that. We would not ask Canada to criminalise sexual sex [sic], right, and so we would appreciate it if you do not ask us decriminalize consensual sex, because this stems from our own national legislation. We cannot sell it in Pakistan (UPR 2008).</i>³⁰</p> - Pakistan has a history of consistently voting against various United Nations resolutions on sexual orientation and gender identity. Pakistan has voted in favour of and on some occasions led various counter resolutions. - There are no anti-discrimination laws in force to protect sexual minorities.

¹ Text of the law is : www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html

² *Pakistan Penal Code, s.377: 'Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which shall not be less than two years nor more than ten years, and shall also be liable to fine. Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.'*

³ Text of the ordinance is : http://www.pakistani.org/pakistan/legislation/zia_po_1979/ord7_1979.html

⁴ It should be noted that the standard of 'penetration' used in the legal 'explanations' pertaining to both Section 377 and the Hudood Ordinance is the same. This standard is not necessarily restricted to gay men; it can be used to prosecute different forms of non-heterosexual and even heterosexual sexual contact – see, <http://icinspector.independent.gov.uk/wp-content/uploads/2015/06/IAGCI-Review-Country-Information-and-Guidance-Pakistan-Sexual-Orientation-and-Gender-Identity.pdf>

⁵ The UK Home Office will be revising its country information and guidance on sexual orientation and gender identity in Pakistan to reflect this legal position - see UK Home Office, *Home Office Response to IAGCI Review Pakistan (Sexual Orientation and Gender Identity) CIG, July 2014*, 20 April 2015, <http://icinspector.independent.gov.uk/wp-content/uploads/2015/06/HO-Response-to-IAGCI-Review-Pakistan-Sexual-Orientation-and-Gender-Identity-CIG-2015-04-20.pdf> (the original country guidance is : *Country Information and Guidance Pakistan: Sexual orientation and gender identity* (16 July 2014) <<https://www.gov.uk/government/publications/pakistan-country-information-and-guidance>>). The Home Office's country guidance was reviewed by Dr. Matthew J. Nelson who recommended that the legal position affecting LGBT persons be revised. A copy of Dr. Nelson's review is : <http://icinspector.independent.gov.uk/wp-content/uploads/2015/06/IAGCI-Review-Country-Information-and-Guidance-Pakistan-Sexual-Orientation-and-Gender-Identity.pdf>

⁶ ILGA, *State Sponsored Homophobia 2015*, 28, May 2015, <http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2015.pdf> accessed on 15 September 2015.

⁷ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Pakistan*, 2014, <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236648>> accessed on 9 September 2015.

⁸ Pycroft, H., 'Gay couple arrested in Pakistan over "secret marriage"', *Gay Star News*, 16 June 2015, <<http://www.gaystarnews.com/article/gay-couple-arrested-pakistan-over-secret-marriage160615/>> accessed on 9 September 2015

⁹ Azhar, M., 'Gay Pakistan: Where sex is available and relationships are difficult', *BBC News*, 27 August 2013, <<http://www.bbc.co.uk/news/23811826>> accessed on 19 July 2014

¹⁰ Reid-Smith, T., 'Pakistani TV news hands over 'gay couple' to police, calls for stoning', *Gay Star News*, 18 December 2013) <<http://www.gaystarnews.com/article/pakistani-tv-news-involved-arrest-gay-couple-calls-stoning181213>> accessed on 19 July 2014

¹¹ Canada: Immigration and Refugee Board of Canada, *Pakistan: Treatment of sexual minorities by society, government and religious authorities; recourse and protection available (2009-2011)*, 30 November 2011 <<http://www.refworld.org/docid/5072d0a92.html>> accessed on 20 July 2014

¹² Kahn, R., 'Transgender Wedding Broken Up By Pakistani Police', *Huffington Post*, 25 May 2010, <http://www.huffingtonpost.com/2010/05/25/transgender-wedding-broke_n_588836.html> accessed on 19 July 2014

¹³ Boone, J., 'Pakistan gets flustered over Facebook's gay rights meme', *The Guardian*, 1 July 2015, <<http://www.theguardian.com/world/2015/jul/01/pakistan-gets-flustered-over-facebooks-gay-rights-meme>> accessed on 9 September 2015

¹⁴ Akram, Z., 'Permanent Mission of Pakistan to the United Nations and Other International Organisations', *UN Watch*, 14 February 2012, <<http://www.unwatch.org/atf/cf/%7B6deb65da-be5b-4cae-8056-8bf0bedf4d17%7D/OIC%20TO%20PRESIDENT.PDF>> accessed on 19 July 2014

¹⁵ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2013: Pakistan*, 2013 <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220402>> accessed on 19 July 2014

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- ¹⁹ UK Home Office – Visas and Immigration, *Country Information and Guidance Pakistan: Sexual orientation and gender identity*, 16 July 2014, <<https://www.gov.uk/government/publications/pakistan-country-information-and-guidance>> accessed on 9 September 2015.
- ²⁰ US Department of State, Department of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Pakistan*, June 2015
- ²¹ Ibid 20.
- ²² Reporters Without Borders, *Enemies of the Internet 2014 - Pakistan: Upgraded Censorship*, 12 March 2014 <<http://www.refworld.org/docid/533925b58.html>> accessed on 20 July 2014
- ²³ Associated Press, 'Transgender Pakistanis running for office for first time', *New York Daily News*, 18 April 2013, <<http://www.nydailynews.com/news/world/transgender-pakistanis-running-office-time-article-1.1321015>> accessed on 16 September 2015
- ²⁴ Abdullah, M.M., et al., 'Is social exclusion pushing the Pakistani Hijras (Transgenders) towards commercial sex work? a qualitative study', *BMC International Health and Human Rights*, 12, 32, 2012,
- ²⁵ Lavers, M.K., 'Bid to block spousal benefits for gay U.N. employees fails', *Washington Blade*, 24 March 2015, <<https://www.washingtonblade.com/2015/03/24/bid-to-block-spousal-benefits-for-gay-u-n-employees-fails/>> accessed 25 October 2015
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- ²⁹ 'Pakistani eunuchs to have distinct gender', *BBC News*, 23 December 2009 <http://news.bbc.co.uk/1/hi/world/south_asia/8428819.stm> accessed on 15 September 2015
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 Papua New Guinea		
<p>National Law:</p> <p>Papua New Guinea <i>Criminal Code 1974 (amended 2002)</i>¹</p> <ul style="list-style-type: none"> - S210: Unnatural Offences² - S212: Indecent Practice between males³ 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - 14 years' imprisonment (7 years for attempt) - 3 year's imprisonment 	<p><u>Treaty Ratification</u></p> <p>CEDAW</p> <p>CRC</p> <p>ICCPR</p> <p>ICESCR</p>
The law is only applicable to men.		
Enforcement	<ul style="list-style-type: none"> - 2014: The 2014 United States report on Papua New Guinea suggests no recent prosecutions under the country's laws.⁴ 	
Statements by Public Figures	<ul style="list-style-type: none"> - 23 April 2014: A Papua New Guinea MP (and current Higher Education Minister) called for recognition of gay rights within the country. Malakai Tabar was quoted as saying: <i>'They have the right to be accepted into the society and be productive in their participation within the societies they live in.'</i>⁵ - September 2012: Prime Minister Peter O'Neill stated: <i>'There's very strong feelings about [homosexuality] within the country and I think Papua New Guinea is yet to accept such sexual openness.'</i>⁶ - July 2012: Former opposition leader, Dame Carol Kidu, s called upon the country's government to decriminalize homosexuality.⁷ The Catholic Bishops' Conference for Solomon Islands and Papua New Guinea, which runs HIV support services, has offered qualified support for Dame Carol Kidu's stance. Speaking with Radio Australia's Pacific Beat program, the general secretary of the Catholic Bishops' Conference, Father Victor Roach, stated that he cannot support her outright, but he explained: <i>'If [a homosexuality allegation] is brought to the court and it has to be tried, I think the church is against it [the trial].'</i> - Church leaders have strongly resisted any attempt to decriminalise homosexuality. Mendi MP and Southern Highlands Deputy Governor, Pastor Isaac Joseph, in response to a submission before the National Executive Council to legalise prostitution and homosexuality, said: <p><i>the Bill will contribute to moral decay in the very fabric of a nation of Christians. I challenge the [former] Minister for Community Development Dame Carol Kidu to have a closer look, a morally closer look at this bill. It is morally wrong even to think it up and to make it law is unthinkable. Such laws will cause social unrest.</i></p> <p>He called on all civil society groups, churches, Christians, unions and NGOs to stand up and vigorously oppose the bill. He commented that the proposed law to legalise prostitution and homosexuality was to validate HIV/AIDS: <i>'We have to ensure homosexuality is illegal.'</i> He also proposed that public consultation be carried out before introducing and passing laws which would have wider social and cultural implications.</p> 	

<p>Persecution and Discrimination</p>	<ul style="list-style-type: none"> - 2014: The 2014 United States report found no instances of discrimination or violence, but suggested that this may be due to underreporting due to societal attitudes.⁸ - November 2014: Homosexual male asylum seekers arriving in Australia are being sent to be detained and processed at detention centres on Manus Island in Papua New Guinea, despite the criminalisation of same-sex sexual conduct in that country.⁹ It has been reported that gay asylum seekers in the detention centres have been regularly sexually harassed and assaulted, but they fear going to the police because homosexual sexual conduct is illegal in PNG and have been told by camp authorities that they will be jailed.¹⁰ - October 2014: A documentary that tells the story of Hanuabada village, a haven for gay and transgender people living in PNG, is hoping to change attitudes about homosexuality.¹¹ In other areas of PNG, such as in Port Moresby, gay men are reportedly often targeted by local men, particularly those who hail from PNG's highland provinces, and have been raped, beaten and even murdered.¹²
<p>Legislative News</p>	<ul style="list-style-type: none"> - July 2014: Papua New Guinea Health Minister Michael Malabag has committed to introducing legislation to decriminalise sex work as a key reform to tackling HIV/AIDS in his nation.¹³ At the UNAIDS-AFPPD forum at the 20th International AIDS Conference in Melbourne, Minister Malabag stated '<i>I will bring in the legislation. We must remove the stigma. We are all equal.</i>' - 2011: (UPR) Papua New Guinea rejected recommendations to decriminalise sexual relations between consenting adults of the same-sex, but stated that: '<i>There is ongoing national consultation on this issue and as such no definite answer can be provided at this stage.</i>'¹⁴ According to a statement given by one MP, plans to decriminalise prostitution and allow same-sex marriage have '<i>been shelved between the Government.</i>'¹⁵

¹ The law is available at: www.paclii.org/pg/legis/consol_act/cca1974115/

² *Papua New Guinea Criminal Code 1974, s.210: '(1) A person who— (a) sexually penetrates any person against the order of nature; or (b) sexually penetrates an animal; or (c) permits a male person to sexually penetrate him or her against the order of nature, is guilty of a crime. Penalty: Imprisonment for a term not exceeding 14 years. (2) A person who attempts to commit an offence against Subsection (1) is guilty of a crime. Penalty: imprisonment for a term not exceeding seven years.'*

³ *Papua New Guinea Criminal Code 1974, s.212: '(1) A male person who, whether in public or private— (a) commits an act of gross indecency with another male person; or (b) procures another male person to commit an act of gross indecency with him; or (c) attempts to procure the commission of any such act by a male person with himself or with another male person, is guilty of a misdemeanour. Penalty: Imprisonment for a term not exceeding three years.'*

⁴ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Papua New Guinea, 2014*, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236468> > accessed on 19 August 2015

⁵ Nius, N., 'PNG MP wants gay, lesbian rights', *One Papua New Guinea*, 23 April 2014 <http://www.onepng.com/2014/04/png-mp-wants-gay-lesbian-rights.html> > accessed on 19 July 2014

⁶ Lee, S., 'Bleak Outlook for PNG Gay Rights', *Same Same AU*, 13 September 2012 <http://www.samesame.com.au/news/8898/Bleak-outlook-for-PNG-gay-rights> > accessed on 19 July 2014

⁷ Littauer, D., 'Papua New Guinea told to make gay sex legal', *Gay Star News*, 26 July 2012, <http://www.gaystarnews.com/article/papua-new-guinea-told-make-gay-sex-legal260712/> > accessed on 21 September 2015

⁸ Ibid n 2.

⁹ ILGA, *State-Sponsored Homophobia: A World Survey of Laws*, (10th Ed.), May 2015, p. 126, http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2015.pdf

¹⁰ Doherty, B., 'Manus Island detainee fears jail for homosexuality if rape reported to police', *The Guardian*, 27 November 2014, <<http://www.theguardian.com/australia-news/2014/nov/28/manus-island-detainee-fears-jail-homosexuality-rape>> accessed on 21 September 2015

¹¹ Radio Australia, *Film helping change attitudes about homosexuality in PNG*, 6 October 2014, <<http://www.radioaustralia.net.au/international/radio/program/pacific-beat/film-helping-change-attitudes-about-homosexuality-in-png/1375989>> accessed on 21 September 2015

¹² Tencic, N., 'Papua New Guinea's gay and transgender community finds safety in Hanuabada village', *ABC News*, 8 October 2014, <<http://www.abc.net.au/news/2014-10-08/living-gay-in-papua-new-guinea/5796236>> accessed on 21 September 2015

¹³ Asian Forum of Parliamentarians on Population and Development, *MPs commit to rights-based reform to tackle AIDS*, 24 July 2014 <<https://www.facebook.com/afppd/posts/768096593247263>> accessed on 21 September 2015

¹⁴ UNHRC, *Report of the Working Group on the Universal Periodic Review*, 30 September 2011, UN Doc A/HRC/18/18/Add.1 at 75.92

¹⁵ Ibid 5.

	Samoa	
National Law: <i>Crimes Act 2013</i> ¹ <ul style="list-style-type: none"> - S67: Sodomy² - S68: Attempt to Commit Sodomy³ - S71: Keeping place of resort for homosexual acts⁴ 	Maximum Penalties: <ul style="list-style-type: none"> - 5 years' imprisonment - 5 years' imprisonment - 7 years' imprisonment 	<u>Treaty Ratification</u> CEDAW CRC ICCPR
The law is only applicable to men.		
Enforcement	<ul style="list-style-type: none"> - 2014: The United States report suggests that the laws are not actively enforced with regard to consensual same-sex sexual conduct between adults.⁵ 	
Statements by Public Figures	<ul style="list-style-type: none"> - 21 October 2013: Samoan Prime Minister, Tuilaepa Sa'ilele Malielegaoi, reportedly criticised the marriage of a gay Samoan man in New Zealand as inappropriate: <i>'I now declare you man and husband and that is very inappropriate...everything is upside down.'</i>⁶ - May 2013: In connection with the newly enacted Crimes Act 2013, the Attorney General, Aumua Ming Leung Wai, said that: <i>with Samoan society where we accept fa'afines [sic], males who are more feminine, I don't think it's appropriate for us to make it illegal for them to wear women's clothes. And we have several fa'afines [sic] who come to work and they wear women's clothes and under the crimes ordinance that is an offence. And I think that's certainly something that we had to remove from our law books.</i>⁷ - 25 April 2013: So'oalo Roger Stanley, Fa'afafine Association President, spoke against "stirring" things up with the question of gay marriage: <i>There are so many reasons out there, not only that our Prime Minister is now our patron and he is strongly opposing the gay marriage bill of New Zealand. Basically what it comes down to is our Christian values and principles, and as far as the culture and religion. Because of the fa'afafine that we identify ourselves closely with, simply because it's very cultural oriented and so the cultural norms is [sic] that suited us well in our society. So you see in that same concept that we are also taken as another strong sector where we opposed gay marriage.</i>⁸ - June 2010: The Samoa Law Reform Commission recommended the abolition of the sodomy laws to widespread criticism from Church leaders. The Samoan government subsequently rejected the recommendation as unacceptable in a Christian country.⁹ 	
Persecution and Discrimination	<ul style="list-style-type: none"> - 2014: The United States country report noted that there were no reports of societal violence based on sexual orientation or gender identity, but there was evidence of isolated cases of discrimination.¹⁰ 	

	<ul style="list-style-type: none"> - 2013: The United States country report found no reports of violence on the basis of sexual orientation. Historically, the acceptance of the Fa'afafine culture has led to greater levels of cultural acceptance, at least in relation to trans-people.¹¹
Legislative News	<ul style="list-style-type: none"> - 1 May 2013: The Samoan Government updated its criminal law in the <i>Crimes Act 2013</i>, including sexual offences, making some positive steps with respect to LGBT. In particular, under section 50 'sexual connections' was defined to include oral and anal sex, and by inference allowing sexual contact between males if it is consented to.¹² However, section 67 of the Crimes Act continues to criminalise sodomy. Importantly as well, the 2013 changes included the decriminalisation of female impersonation, affirming the Samoan fa'afafine community. In a further sign of the government's engagement on LGBTI issues, the leading LGBTI organisation in Samoa has been appointed a member of the country's newly formed advisory board to the National Human Rights Institute (NHRI).¹³ The NHRI was established in 2013 within the Office of the Ombudsman, but no work has yet been commenced on LGBTI rights issues. Lesbians and gay men are not as visible but the transgender community is active and organized through the association representing transgender people, the Fa'afafine Association. The Prime Minister is Chair of the Fa'afafine Association.¹⁴ - 2013: Both sexual orientation and perceived or actual HIV status were added as protected grounds to employment laws in Samoa in 2013 through enactment of the Labour & Employment Relations Act 2013.¹⁵ - 2011: (UPR) Samoa rejected the recommendations to repeal laws criminalising relations between consenting adults of the same sex. The delegation stated, however, that: <i>[t]here have not been formal charges before the Courts based on sexual orientation and gender identity and if so, the courts would rule them out as discriminatory. The Constitution of Samoa protects right of every person regardless of gender. Decriminalizing sexual activity of sodomy is not possible at this time because of cultural sensitivities and Christian beliefs of the Samoan society. The Samoa Law Reform Commission's work on considering domestic legislation is a work in progress/ongoing.</i>¹⁶ Further, in the UN Working Group report it is explained that: <i>Samoa noted the gaps and weaknesses in its legislative framework on upholding equality and non-discrimination based on sexual orientation, and that relevant legislation was being reviewed by the Samoa Law Reform Commission. Samoa indicated that Fa'afafine, gays and lesbians were integral members of Samoan society and were heirs to family chiefly titles and lands through extended family consensus, as all men and women of its society were. However, sexual orientation was a sensitive issue in Samoa given the religious and cultural beliefs of mainstream society. Nonetheless, Samoa was confident that education, awareness and sensitization would pave the way for societal acceptance and prevention of discrimination that might arise out of sexual orientation.</i>¹⁷ - 2011: Samoa sponsored the 2011 Human Rights Council Joint Statement (to end acts of violence based on Sexual Orientation and Gender Identity).

¹ The law is : www.paclii.org/ws/legis/consol_act/ca201382/

² *Crimes Act 2013*, s.67: '(1) A person who commits sodomy is liable... (c) in any other case, to imprisonment for a term not exceeding 5 years. (2) Sodomy is complete upon penetration. (3) It is no defence to a charge under this section that the other party consented.'

³ *Crimes Act 2013*, s.68: 'A person is liable to imprisonment for a term not exceeding 5 years who: (a) attempts to commit sodomy; or (b) assaults any person with intent to commit sodomy.'

⁴ *Crimes Act 2013*, s.71: "A person is liable to imprisonment for a term not exceeding 7 years who: (a) keeps or manages, or knowingly acts or assists in the management of, any premises used as a place of resort for the commission of indecent acts between males; or (b) being the tenant, lessee or occupier of any premises, knowingly permits the premises or any part thereof to be used as a place of resort for the commission of indecent acts between males; or (c) being the lessor or landlord of any premises, or the agent of the lessor or landlord, lets the premises or any part of the premises with the knowledge that the premises are to be used as a place of resort for the commission of indecent acts between males, or that some part of the premises is to be so used, or is wilfully a party to the continued use of the premises or any part thereof as a place of resort for the commission of the indecent acts.'

⁵ US Department of State , Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Samoa*, 2014
<<http://www.state.gov/i/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236472>> accessed on 19 August 2014

⁶ 'It's Inappropriate', *Samoa Observer*, 21 October 2013,
<<http://www.samoaoobserver.ws/other/newlyweds/7608-its-inappropriate>> accessed on 19 July 2014

⁷ 'Samoa's Law Updated to Tackle 21st Century Crime', *Radio Australia*, 1 May 2013,
<<http://www.radioaustralia.net.au/international/radio/program/pacific-beat/samoas-law-updated-to-tackle-21st-century-crime/1124062>> accessed on 19 August 2015

⁸ 'Samoa fa'afafine reject same sex marriage', *Radio Australia*, 25 April 2013,
<<http://www.radioaustralia.net.au/international/radio/program/pacific-beat/samoan-faafafine-reject-same-sex-marriage/1121736>> accessed on 19 July 2014

⁹ Netzler-lose, J., 'If it's not broken, Don't fix it', *Samoa Law Reform*, 4 December 2011,
<<http://www.samoalawreform.gov.ws/News/Media/Ifitsnotbroken,Dontfixit/tabid/6878/language/en-US/Default.aspx>> accessed on 19 July 2014

¹⁰ Ibid n 2

¹¹ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2013: Samoa*, 2013,
<<http://www.state.gov/i/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220226>> accessed on 19 July 2014

¹² Under Section 49(3) of *Crimes Act 2013* an unlawful sexual connection with another person, and consequently a sexual violation, only occurs if that person has sexual connection with the other person without the consent of that other person freely and voluntarily given.

¹³ ILGA, *State Sponsored Homophobia: A World Survey of Laws: criminalisation, protection and recognition of same-sex love* (10th Ed.), May 2015, p. 125

¹⁴ APF, APCOM, UNDP, *Report of the Workshop on: The Role of National Human Rights Institutions in Promoting and Protecting the Rights, including Health, of LGBTI People in Asia and the Pacific*, February 2015,
<http://www.asia-pacific.undp.org/content/dam/rbap/docs/Research%20&%20Publications/hiv_aids/rbap-hhd-2015-role-of-nhris-promoting-protecting-rights-lgbti-ap-report.pdf>, p. 18 , accessed on 19 August 2015

¹⁵ See Section 20(2). The text of the law is : http://www.parliament.gov.ws/new/wp-content/uploads//01.acts/acts%202013/Labour_and_employment_relations_act_2013_-_eng.pdf

¹⁶ UNHRC, *Report of the Working Group on the Universal Periodic Review: Samoa - Addendum*, (21 September 2011) UN Doc A/HRC/18/14/Add.1, para. 29 and 30

¹⁷ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Samoa*, 11 July 2011, UN Doc A/HRC/18/14, para. 22

	Seychelles	
<p>National Law: <i>Penal Code</i>, Chapter 73, 1 February 1955¹</p> <ul style="list-style-type: none"> - S151: Unnatural Offences² 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - 14 years' imprisonment 	<p><u>Treaty Ratification</u></p> <p>AFRICAN CHARTER</p> <p>CAT</p> <p>CEDAW</p> <p>CEDAW OP</p> <p>CRC</p> <p>ICCPR</p> <p>ICCPR OP1</p> <p>ICESCR</p>
The law is applicable only to men.		
Enforcement	<ul style="list-style-type: none"> - 2014: The 2014 US Report on Human Rights Practices in Seychelles suggested that the laws are not currently enforced.³ 	
Statements by Public Figures	<ul style="list-style-type: none"> - 13 August 2014: In August 2014 the Seychelles Judicial College hosted a debate on decriminalisation of homosexuality, moderated by judges and lawyers. Appeal Judge Mathilda Twomey was on the panel of judges and had reportedly stated that Seychelles is a secular state and this meant that it purports to be neutral in matters of religion. Judge Twomey later reportedly told a newspaper: <i>the government of Seychelles has already committed to the United Nations to repeal these laws in conformity with its international obligations... this discussion was the first of its nature whereby a live and mature debate was held on the issue.</i>⁴ - October 2011: Responding to a question by the Canadian HIV AIDS Legal Network on timeframes for repealing section 151, the second Secretary of the Ministry of Foreign Affairs, Sandra Michel, reportedly answered at the Human Rights Council that <i>'the repeal of the law would happen soon, it would not take a long time to repeal that section. Neither the Government nor the Seychelles society wanted it in their law anymore.</i>⁵ 	
Persecution and Discrimination	<ul style="list-style-type: none"> - June 2013: A UNDP supported Ministry of Health and National AIDS Council report states that: <i>MSM in Seychelles remain hidden and are difficult-to-reach for research purposes due to social stigma and discrimination. Many MSM often feel the need to hide their same-sex relations from friends and family, thereby increasing their vulnerability to HIV and other infections... Males, who feel the need to hide their sexual preference for male sexual partners in order to appear heterosexual, not only increase their own vulnerability for HIV infection, but also increase the risk of HIV transmission to their female sexual partners.</i>⁶ - No reported incidents of violence or discrimination were found. 	

Legislative News	<ul style="list-style-type: none"> - 13 August 2014: In August 2014 the Seychelles Judicial College hosted a debate on decriminalisation of homosexuality, moderated by judges and lawyers. The panel of judges consisted of Justice Robinson, Justice Fernando and Justice Twomey. One participant reportedly stated: <i>'The law should clearly provide for some sort of protection for the LGBTI community if decriminalization is achieved because violence persists in many countries'</i>.⁷ According to the British High Commission, this event generated a serious public discussion on the issue, which continues today.⁸ - 2013: A UNDP supported Ministry of Health and National AIDS Council report, recommending that the Penal Code be amended to decriminalise consensual sex between adults in accordance with the country's own National Strategic Framework and National HIV Policy, states that: <i>The Republic of Seychelles (2011) Evaluation Report of the HIV and AIDS National Strategic Plan 2005-2009 and Roadmap for the National Strategic Plan 2012-2016 at page 59 recommends the elimination of punitive laws that criminalise certain behaviours and groups of people, namely migrant populations, IDUs, SWs and MSM and which restrict access to education, insurance and other services and freedom of movement.</i>⁹ - 2011: (UPR) The Seychelles accepted recommendations to repeal all provisions in its domestic law criminalising consensual sexual activity between adults of the same sex.¹⁰ The delegation from Seychelles also noted that article 27 of the Constitution prohibited discrimination on any grounds whatsoever, including sexual orientation.¹¹ Further, the delegation clarified that only non-consensual same-sex intercourse was an offence.¹² - 22 March 2011: At the Human Rights Council, Seychelles supported a historic Joint Statement on Ending Acts of Violence and Related Human Rights Violations Based on Sexual Orientation & Gender Identity.¹³ - The Employment Act 1995 (amended by Act 4 of 2006) prohibits discrimination on the basis of sexual orientation and HIV status.¹⁴
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¹ The law is : www.refworld.org/docid/4d67afc82.html

² *Penal Code, Chapter 73, 1 February 1955, s.151: 'Any person who – a. has carnal knowledge of any person against the order of nature; or b. has carnal knowledge of an animal; or c. permits a male person to have carnal knowledge of him or her against the order of nature, is guilty of a felony, and is liable to imprisonment for fourteen years.'*

³ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country report on human rights for 2014: Seychelles*, 25 June 2015, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220154>> accessed on 19 July 2014

⁴ Today in Seychelles, *Seychelles must legalize, advocates say*, 13 August 2014,

<https://www.facebook.com/todayinsej/posts/702980213073125>> accessed on 9 September 2015

⁵ Human Rights Council, *Human Rights Council adopts outcomes of Universal Periodic Review on Somalia, Seychelles and Solomon Islands*, 21 September 2011, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11408&LangID=E#sthash.bX2Jwhji.dpuf>> accessed on 2 September 2015

⁶ Ministry of Health Seychelles, *National AIDS Council and United Nations Development Program, Situation Analysis of Legal and Regulatory Aspects of HIV and AIDS in Seychelles*, 4 July 2014, p 74 <http://www.undp.org/content/dam/undp/library/HIV-AIDS/Governance%20of%20HIV%20Responses/HHD-Seychelles-Legal-Assessment.pdf>> accessed on 29 August 2015

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- ⁷ Today in Seychelles, *Seychelles must legalize, advocates say*, 13 August 2014, <<https://www.facebook.com/todayinseychelles/posts/702980213073125>> accessed on 9 September 2015
- ⁸ British High Commission Victoria, *Same Sex Consular Marriage*, 15 June 2015, <<https://www.gov.uk/government/world-location-news/same-sex-consular-marriage>> accessed on 9 September 2015
- ⁹ Ministry of Health Seychelles, *National AIDS Council and United Nations Development Program, Situation Analysis of Legal and Regulatory Aspects of HIV and AIDS in Seychelles*, 4 July 2014, p 75 <<http://www.undp.org/content/dam/undp/library/HIV-AIDS/Governance%20of%20HIV%20Responses/HHD-Seychelles-Legal-Assessment.pdf>> accessed on 29 August 2015 (Original text of the National Strategic Framework and National HIV Policy currently unavailable.)
- ¹⁰ Human Rights Council, *Report of the Human Rights Council on its Eighteenth Session*, , 18 November 2011, para. 363 UN Doc A/HRC/18/2 <<http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A.HRC.18.2.pdf>> accessed on 2 September 2015
- ¹¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Seychelles*, A/HRC/18/7, 11 July 2011, para. 63
- ¹² Ibid. para 68
- ¹³ US Department of State, Office of the Spokesman, *Joint Statement on the Rights of LGBT Persons at the Human Rights Council*, 22 March 2011 <<http://www.state.gov/r/pa/prs/ps/2011/03/158847.htm>> accessed on 29 August 2015
- ¹⁴ The Employment Act, Section 46A, : http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_127612.pdf accessed on 9 September 2015

	Sierra Leone	
<p>National Law: <i>Offences Against the Person Act (1861)</i>¹</p> <ul style="list-style-type: none"> - S61 – Unnatural Offences² 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - Life Imprisonment 	<p><u>Treaty Ratification</u></p> <p>AFRICAN CHARTER</p> <p>CAT</p> <p>CEDAW</p> <p>CRC</p> <p>ICCPR</p> <p>ICCPR OP</p> <p>ICESCR</p>
The law is applicable only to men.		
Enforcement	<ul style="list-style-type: none"> - 2014: The 2014 US Report on Human Rights Practices in Sierra Leone suggested that the laws are not currently enforced.³ - 2011: (UPR) During its 2011 review, the Sierra Leone delegation stated that there was no discrimination on the grounds of sexual orientation.⁴ 	
Statements by Public Figures	<ul style="list-style-type: none"> - 30 July 2013: When a review of the Sierra Leone Constitution was initiated in 2013, President Koroma reportedly spoke of his wishes to create a more ‘tolerant culture’.⁵ However, LGBTI organisations later claimed that they were excluded from the review process.⁶ - 25 June 2013: Following an attack on LGBTI rights activist George Freeman, Sierra Leone’s inspector-general of police told the BBC: <i>‘We must be very careful when it comes to dealing with the issue of gays and lesbians because these are very strange phenomena in our society and we do not have any special protection for them because they are not recognised by the laws of Sierra Leone.’</i>⁷ - 9 November 2011: In response to the British Prime Minister David Cameron’s call for respecting the human rights of LGBT people, President of the Methodist Church in Sierra Leone, Bishop Arnold Temple stated: <i>‘The church in Sierra Leone will do everything possible to protect democracy but our values will not accept the call from British Prime Minister, Mr Cameron for countries in the Commonwealth like Sierra Leone to accept the practice of lesbianism and gayism,’</i>⁸ - 2011: A Human Rights Commission of Sierra Leone representative reportedly said in a media interview: <i>‘the law of Sierra Leone does not give the commission the mandate to advocate and support LGBT human rights.’</i>⁹ 	
Persecution and Discrimination	<ul style="list-style-type: none"> - 2015: The HIV infection rate among MSM was 7.5%¹⁰, more than 5 times the national prevalence of 1.5%.¹¹ - 8 September 2013: In June 2013, George Freeman, the executive director of Pride Equality, and two of its senior members were forced to flee Sierra Leone after attempts on their lives were made in the wake of the release of a report on LGBT issues jointly prepared by the Dignity Association, Pride Equality and Global Rights - 	

Partners for Justice as well as the publication of a newspaper article on George Freeman's homosexuality.¹²

- **9 July 2013:** An LGBTI rights activist explained that he became an activist in 2011 after his nephew was beaten and lost an eye just because he was gay. He also wrote that during his activism in Sierra Leone *'we were constantly abused, spat on, and sometimes assaulted'*.¹³
- **5 July 2013:** The coordinator of Gay for Life, Septimus John and some of his colleagues were reportedly in hiding following persistent death threats from their neighbours.¹⁴
- **2013:** An extensive study conducted in 2012-2013 by three LGBTI organisations, Global Rights, Pride Equality, and Dignity Association, revealed the deeply rooted discrimination faced by the Sierra Leonean LGBTI community in nearly every facet of life.¹⁵ The research also demonstrates an overwhelming silence from the LGBTI and human rights communities due to significant fear of exposure or association with the LGBTI community.¹⁶ The report details a number of forms of persecution of LGBTI people:
 - **Healthcare:** The research documented several cases and conducted interviews with healthcare personnel and members of the LGBTI community in various districts of the country. The report documents that discriminatory practices range from disrespect, harassment, unnecessary postponement of treatment and outright denial of services. In a study, more than half of medical practitioners who were interviewed indicated that they would not treat LGBTI people.¹⁷
 - **Violence, abuse and Harassment:** The report indicates that 99% of LGBTI respondents had experienced at least one form of harassment and discrimination, because of their sexual orientation or gender identity. According to the report, Pride Equality investigated and documented 35 cases of violence, abuse and harassment experienced by LGBTI persons. Describing several such cases, the report concluded that: *'individuals in Sierra Leone are frequently subjected to discrimination and high levels of verbal abuse, violence and harassment by public officials, members of their communities and even their own families. The combination of discriminatory laws, backed up by ignorance, lack of legal protection; and intolerance by high rank politicians and religious leaders in public create an environment where LGBTI individuals cannot feel safe.'*¹⁸
- **1 January 2012:** Protests were reportedly organised in various Sierra Leonean cities at which demonstrators marched to voice their disapproval at the possibility that Sierra Leone might recognise same-sex marriages. The organisers claimed that they were worried that persistent pronouncements from major powers could influence the country's politicians to recognise 'alien' and 'immoral' practices in the country.¹⁹
- **2004:** The Equal Rights Trust, during a submission as part of Sierra Leone's Universal Periodic Review, viewed the government's lack of investigation in the murder in 2004 of prominent activist FannyAnn Eddy, founder of the Sierra Leone Lesbian and Gay Association, as *'indicative of the widespread homophobia which prevails'*.²⁰
- **January 2003:** Human Rights Watch conducted an extensive investigation and study of the sexual violence that occurred during the civil war between 1991 and 2002.

	<p>During their investigation, they spoke to a local organisation, the Forum for African Women Educationalists (FAWE) and found that <i>'boys and men were also raped by male rebels,'</i> however <i>'due to the stigma attached to homosexuality in Sierra Leone, male victims of rape feared they would be perceived as homosexuals and therefore few boys were willing to report it.'</i>²¹</p>
Legislative News	<ul style="list-style-type: none"> - 26 September 2014: Sierra Leone abstained from voting when the UN Human Rights Council passed a resolution (A/HRC/27/L.27/Rev.1) on human rights, sexual orientation and gender identity) condemning violence and discrimination based on sexual orientation and gender identity.²² - 2011: (UPR) Sierra Leone rejected recommendations to repeal all provisions which may be applied to criminalise sexual activity between consenting adults. The delegation also stated that there was no discrimination on the grounds of sexual orientation and that it was expressly prohibited under the Constitution.²³ However a closer look at the Constitution of Sierra Leone, 1991 shows that it contains no such provision expressly prohibiting discrimination on the grounds of sexual orientation.²⁴ - 14 September 2011: The National HIV and AIDS Commission Act 2011 contains penalties for discriminatory acts against those infected and affected by HIV and AIDS.²⁵ - 22 March 2011: At the Human Rights Council, Sierra Leone supported a historic Joint Statement on Ending Acts of Violence and Related Human Rights Violations Based on Sexual Orientation & Gender Identity.²⁶

¹ The Text of the law is : <http://www.legislation.gov.uk/ukpga/Vict/24-25/100/section/6163>

As a former British colony, Sierra Leone's regulatory framework is based on Common Law and derived its laws at the time from England and Ireland, including the Offences Against the Person Act (1861), which is still in force in Sierra Leone. See: Hanatu Kabbah, *Sierra Leone Legal System and Legal Research* (GlobaLex September 2014) <http://www.nyulawglobal.org/globalex/Sierra_Leone1.htm> accessed 10 September 2015.

² *Offences Against the Person Act (1861), s.61: 'Whosoever shall be convicted of the abominable Crime of Buggery, committed either with Mankind or with any Animal, shall be liable, at the Discretion of the Court, to be kept in Penal Servitude for Life or for any Term not less than Ten Years.'*

³ Bureau of Democracy, Human Rights and Labor, *Country report on human rights for 2014: Sierra Leone* (US Department of State 25 June 2015) <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236402>> accessed on 29 August 2015

⁴ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Sierra Leone*, UN Doc A/HRC/18/10, para. 27 (11 July 2011)

⁵ Kemo Cham, *Sierra Leone begins long-awaited constitutional review* (Africa Review 31 July 2013) <<http://www.africareview.com/News/Sierra-Leone-begins-constitutional-review/-/979180/1932818/-/9nq3ybz/-/index.html>> accessed on 19 July 2014

⁶ Dignity Association of Sierra Leone & others, *Breaking the Silence on Human Rights Violations in Sierra Leone under the International Covenant on Civil and Political Rights (ICCPR): A Shadow Report on Discrimination and Violence Based on Sexual Orientation and Gender Identity*, at page 6 (OHCHR March 2014) <http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/SLE/INT_CCPR_CSS_SLE_16487_E.pdf> accessed on 19 July 2014

⁷ Umaru Fofana, *Amnesty International condemns 'homophobia' in Africa* (BBC 25 June 2013) <<http://www.bbc.co.uk/news/world-africa-23033423>> accessed on 9 September 2015

⁸ News24, *Sierra Leone says no to gay marriage* (News24 9 November 2011) <<http://www.news24.com/Africa/News/Sierra-Leone-says-no-to-gay-marriage-20111108>> accessed on 19 July 2014

- ⁹ Global Rights and others, *Discrimination on the Basis of Sexual Orientation and Gender Identity in Access to Health Care and Violence/Bias: A Sierra Leone Case Study*, page 8 (Pride Equality 2013) <<http://www.prideequality.org/discrimination.pdf>> accessed on 9 September 2015
- ¹⁰ UNAIDS, *Sierra Leone National AIDS Response Progress Report 2015*, page 6 (UNAIDS) <2015>http://www.unaids.org/sites/default/files/country/documents/SLE_narrative_report_2015.pdf> accessed on 9 September 2015
- ¹¹ Ibid. page 8
- ¹² Colin Stewart, *Anti-gay threats, attacks disrupt AIDS fight in Sierra Leone* (Erasing 76 Crimes 8 September 2013) <<http://76crimes.com/2013/09/08/anti-gay-threats-attacks-disrupt-aids-fight-in-sierra-leone/>> accessed 19 July 2014; See also: Frontline Defenders, *Sierra Leone: LGBTI rights defender Mr George Reginald Freeman attacked and subjected to threats* (24 May 2013) <<https://www.frontlinedefenders.org/node/22825#sthash.s1IQgo6M.dpuf>> accessed on 29 August 2015
- ¹³ Mohamed S. Kamara, *Sierra Leone: Spat upon, I still became an LGBT activist* (Erasing 76 Crimes 9 July 2013) <<http://76crimes.com/2013/07/09/sierra-leone-spat-upon-i-still-became-an-lgbt-activist/>> accessed on 9 September 2015
- ¹⁴ SEM, *Gay Persecution Intensifies in Sierra Leone ... Coordinator Flees* (Sierra Express Media 5 July 2013) <<http://www.sierraexpressmedia.com/?p=58705>> accessed on 19 July 2014
- ¹⁵ Global Rights and others, *Discrimination on the Basis of Sexual Orientation and Gender Identity in Access to Health Care and Violence/Bias: A Sierra Leone Case Study*, page 36 (Pride Equality 2013) <<http://www.prideequality.org/discrimination.pdf>> accessed on 9 September 2015
- ¹⁶ Ibid. page 4
- ¹⁷ Ibid. pages 11-15
- ¹⁸ Ibid. pages 18-27
- ¹⁹ Kemo Cham, *Anti-homosexual protesters hit Sierra Leone streets*, (African Review 1 January 2012) <<http://www.africareview.com/News/-/979180/1298694/-/h30v4yz/-/index.html>> accessed on 29 August 2015
- ²⁰ Equal Rights Trust, *The Equal Rights Trust - Universal Periodic Review submission: Sierra Leone, 2010*, page 3 (2010) <<http://www.equalrightstrust.org/ertdocumentbank/Equal%20Rights%20Trust%20-%20UPR%20submission%20-%20Sierra%20Leone%202010.pdf>> accessed on 9 September 2015
- ²¹ Human Rights Watch, *We'll Kill You If You Cry" Sexual Violence in Sierra Leone Conflict*, Vol. 15, No. 1(A), page 42 (January 2003) < <http://www.hrw.org/reports/2003/sierraleone/sierleon0103.pdf>> accessed on 10 September 2015
- ²² Human Rights Council, *Human Rights Council adopts resolution on sexual orientation and gender identity and concludes twenty-seventh session* (OHCHR 26 September 2014) <<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=15109&LangID=E#sthash.KR2tpRif.dpuf>> accessed on 29 August 2015
- ²³ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Sierra Leone*, UN Doc A/HRC/18/10, Para 27 (11 July 2011)
- ²⁴ Sierra Leone Web, *The Constitution of Sierra Leone, 1991* (The Laws of Sierra Leone on the Sierra Leone Web) <<http://www.sierra-leone.org/Laws/constitution1991.pdf>> accessed on 9 September 2015
- ²⁵ The Laws of Sierra Leone, *National HIV and AIDS Commission Act 2011*, Part X (Sierra Leone Web) <<http://www.sierra-leone.org/Laws/2011-11.pdf>> accessed on 10 September 2015
- ²⁶ Office of the Spokesman, *Joint Statement on the Rights of LGBT Persons at the Human Rights Council* (US Department of State 22 March 2011) <<http://www.state.gov/r/pa/prs/ps/2011/03/158847.htm>> accessed on 29 August 2015

	Singapore	
<p>National Law:</p> <p><i>Penal Code</i> (Revised Edition 2008)¹</p> <ul style="list-style-type: none"> - S377A: Gross Indecency² 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - 2 years' imprisonment 	<p><u>Treaty Ratification</u></p> <p>CEDAW</p> <p>CRC</p>
<p>The law is applicable only to men.</p>		
<p>Enforcement</p>	<ul style="list-style-type: none"> - During a Parliamentary debate on the repeal of section 377A, Prime Minister Lee had stated that authorities would not actively enforce the statute.³ Despite this statement by the Prime Minister, in the 2012 case of Tan Eng Hong the Court of Appeal refused to accept that this meant there would be no enforcement of this law: <i>'It may simply mean that the police will not purposely seek out adult males who carry out such activities with a view to charging them, but if they happen to come across such activities being committed or if they receive complaints of such activities, they will then arrest and charge the relevant persons under S377A.'</i>⁴ - Prosecutions under section 377A are rare and there is only one such reported case publicly available. In 2010 Tan Eng Hong and Chin Chee Shyong were charged under section 377A. Those charges were later dropped and brought under another section which both men pleaded guilty to. The Court, however, granted leave to challenge the constitutionality of the original prosecution.⁵ 	
<p>Statements by Public Figures</p>	<ul style="list-style-type: none"> - 4 June 2015: Prime Minister Lee Hsien Loong, during an interview with several journalists from ASEAN, said: <i>'There is space for the gay community but they should not push the agenda too hard because if they push the agenda too hard, there will be a very strong pushback... We do not harass them or discriminate against them.'</i>⁶ - 3 May 2014: After a newspaper reported that Goldman Sachs will be hosting a recruitment and networking dinner for LGBT students at its office in Singapore, Minister for Social and Family Development Chan Chun Sing reportedly wrote a Facebook post stating that foreign companies <i>'should not venture into public advocacy for causes that sow discord amongst Singaporeans.'</i>⁷ - 15 February 2014: A Pastor in Singapore started an anti-gay petition having referred to gay rights as the <i>'onslaught of the evil one[s]'</i>. The petition came following the release of an online brochure by the Singapore Health Promotion Board which stated that <i>'homosexuality and bisexuality are not mental illnesses... [and] are not too different from a heterosexual relationship'</i>.⁸ - 29 January 2014: Singapore Prime Minister, Lee Hsien Loong, reportedly told students at the Nanyang Technological University, that it was not the government's job to make people believe in gay rights, adding that religious values must be respected. The statement comes after he questioned the need to remove Singapore's anti-gay laws in January 2013: <i>'Why is that law on the books? Because it's always been there and I think we just leave it.'</i>⁹ 	

	<ul style="list-style-type: none"> - 28 August 2013: Vincent Wijesingha, Singapore's first openly gay politician and former leader of the Singapore Democratic Party, resigned from his position in order to concentrate on LGBT issues: <i>'In a political party, you are involved with a whole spectrum of policy issues... you have to balance the priorities and insights of people from a whole range of demographics, so that may suggest that I can't focus my work on civil liberties and LGBT issues, which I think there is a need for.'</i>¹⁰ - 6 May 2011: At Singapore's first ever Universal Periodical Review, the country's UN delegate reportedly stated: <i>'What is being criminalised is not gay Singaporeans but homosexual acts between men. An extensive public consultation was held and the matter was considered at the highest political levels. It was not taken lightly and in the end it was decided to leave things be. The Singaporean police have not been proactively enforcing the provision and will continue to take this stance.'</i>¹¹ - 23 October 2007: Speaking in Parliament the Prime Minister refused to alter Singapore's anti-gay laws: <i>'...this is not an issue where we can reach happy consensus and abolishing section 377A, were we to do this, is not going to end the argument in Singapore. Among the conservative Singaporeans, the deep concerns over the moral values of society will remain and among the gay rights' activists, abolition is not going to give them what they want because what they want is not just to be freed from section 377A, but more space and full acceptance by other Singaporeans. And they have said so. So, supposing we move on 377A, I think the gay activists would push for more, following the example of other avant garde countries in Europe and America, to change what is taught in the schools, to advocate same-sex marriages and parenting, to ask for, to quote from their letter, '...exactly the same rights as a straight man or woman.'</i> This is quoting from the open letter which the petitioners wrote to me. And when it comes to these issues, the majority of Singaporeans will strenuously oppose these follow-up moves by the gay campaigners and many who are not anti-gay will be against this agenda, and I think for good reason. Therefore, we have decided to keep the status quo on section 377A.'¹²
<p style="text-align: center;">Persecution and Discrimination</p>	<ul style="list-style-type: none"> - 22 May 2015: Singapore's censorship board, the Media Development Authority, reportedly issued a document to all TV and radio stations banning the broadcast of a song based on the true story of a lesbian couple, which it said promoted gay marriage and therefore contravened Singaporean law.¹³ - 4 March 2015: Singapore's High Court fined a prominent dissident blogger and gay rights activist S\$8,000 for making statements that <i>'crossed the legal boundary and constitute scandalising contempt'</i> in an article where he criticised the Court of Appeal for the legal proceedings that resulted in the dismissal of lawsuits seeking to overturn Section 377A of the Penal Code. In October 2013, he had claimed that the hearing dates on the constitutional challenge had been rigged so that the Chief Justice could avoid a conflict of interest.¹⁴ - 2014: The 2014 US Report on Human Rights Practices in Singapore suggested that the government did not censor international news channels but did censor entertainment programs to remove or edit representations of intimate gay and lesbian relationships.¹⁵ - 17 July 2014: Singapore's Media Development Authority banned the sale of an Archie comic book for its frank depiction of gay marriage.¹⁶ - 11 July 2014: The Singapore government ordered the National Library Board to remove from library shelves and destroy three children's books that portray gay,

	<p>lesbian or ‘unconventional’ families. One of the books, the multi-award winning <i>And Tango Makes Three</i>, recounts the real life-inspired story of two male penguins raising a baby chick at New York's Central Park Zoo.¹⁷</p> <ul style="list-style-type: none"> - 30 May 2013: Singapore's Media Development Authority announced plans for a new rule which would require websites to apply for a licence should they attract 50,000 or more unique visitors from Singapore within a two month period. Those applying for a licence must conform to existing regulations regarding the promotion of homosexuality. Any article not in conformity with those regulations will be removed within 24 hours, and the publisher issued a large fine.¹⁸ - 2009: Singapore's Media Development Authority (MDA), in its guidelines for imported publications, prohibits comics and other illustrated material that depict or discuss ‘<i>alternative lifestyles or deviant sexual practices</i>’, listing homosexuality as an example of such (alongside ‘<i>group sex and sadomasochism</i>’). These guidelines define alternative lifestyle as ‘<i>unconventional manner of living atypical of the concept of the traditional family e.g. homosexuality and bisexuality</i>’.¹⁹ - There are few reported instances of violence against LGBTI people.
Legislative News	<ul style="list-style-type: none"> - 19 November 2014: The UN General Assembly's Third Committee adopted a resolution on Extrajudicial, summary or arbitrary executions in November 2014.²⁰ This is introduced biennially and urges States to protect the right to life of all people. Significantly, this resolution calls upon States to investigate killings based on discriminatory grounds, including killings that target people based on their sexual orientation or gender identity. Singapore voted in favour of the resolution.²¹ - 28 October 2014: Mr Tan Eng Hong mounted a challenge to the constitutionality of section 377A of the Penal Code after he was arrested and charged under that provision in 2010. Mr Lim and Mr Chee, a gay couple, had never been charged but brought a separate challenge in 2012 alleging that the mere existence of the gross indecency law violates their fundamental rights. Both cases were dismissed by the High Court in early 2013, and appeals were lodged with the Court of Appeal, the final appellate court in Singapore. The Court of Appeal dismissed the appeals on 29 October 2014.²² - 2011: (UPR) Singapore rejected the recommendations to decriminalise sexual activity between consenting adults of the same sex.²³ - 2007: The Ministry of Home Affairs began a comprehensive review of the Penal Code and in October 2007, submitted the Penal Code (Amendment) Bill to Parliament which proposed seventy amended provisions and four repealed provisions. One of the changes was to decriminalise oral and anal sex between a male and a female (section 377). However, section 377A which prohibited oral and anal sex between two males was retained.²⁴ On 22 October 2007, Siew Kum Hong tabled a petition to the Parliament for the repeal of section 377A of the Penal Code. After two days of debate the Parliament opted to keep section 377A and the Bill was passed as such.²⁵

¹ The law is : <http://statutes.agc.gov.sg/aol/search/display/view.w3p?page=0;query=DocId%3A%22025e7646-947b-462c-b557-60aa55dc7b42%22%20Status%3Ainforce%20Depth%3A0;rec=0>

² *Penal Code (Revised Edition 2008)*, s.377A: “Any male person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any male person of, any act of gross

indecently with another male person, shall be punished with imprisonment for a term which may extend to 2 years.”

³ Hansard, Parliament of Singapore, vol 83 col 2397 (23 October 2007)

<<http://sprs.parl.gov.sg/search/report.jsp?currentPubID=00004748-WA>> accessed on 19 July 2014.

⁴ *Tan Eng Hong v Attorney-General* [2012] SGCA 45, para. 180

⁵ Asia One News, *Lawyer challenges Section 377A of Penal Code* (Asia One News 27 September 2011)

<<http://news.asiaone.com/News/AsiaOne+News/Singapore/Story/A1Story20110927-301840.html>> accessed on 19 July 2014

⁶ Wong Siew Ying, *Singapore not ready for same-sex marriage as society is still conservative: PM Lee* (The Straits Times 5 June 2015) <<http://www.straitstimes.com/singapore/singapore-not-ready-for-same-sex-marriage-as-society-is-still-conservative-pm-lee>> accessed on 9 September 2015

⁷ Sylvia Tan, *'Respect local culture': Singapore minister rebukes US investment bank for LGBT recruitment drive* (Gay Star News 3 May 2014) <<http://www.gaystarnews.com/article/respect-local-culture-singapore-minister-rebukes-us-investment-bank-lgbt-recruitment-drive03/>> accessed on 9 September 2015

⁸ Sylvia Tan, *Singapore anti-gay pastor behind petition targeting health ministry* (Gay Star News 15 February 2014) <<http://www.gaystarnews.com/article/singapore-anti-gay-pastor-behind-petition-targeting-health-ministry150214>> accessed on 19 July 2014

⁹ See: Andrew Potts, *Singapore PM Lee says Government must not lead popular opinion on LGBTI rights* (Gay Star News 29 January 2014) <<http://www.gaystarnews.com/article/singapore-pm-lee-says-government-must-not-lead-popular-opinion-lgbti-rights290114>> accessed on 19 July 2014; Global Gayz, *Singapore PM criticised for defending anti-gay sex law* (Global Gayz 29 January 2013)

<<http://archive.globalgayz.com/asia/singapore/singapore-pm-criticised-for-defending-anti-gay-sex-law/>> accessed on 19 July 2014

¹⁰ Jeanette Tan, *Vincent Wijesingha quits Singapore Democratic Party* (Yahoo News Singapore 28 August 2013)

<<https://sg.news.yahoo.com/vincent-wijesingha-resigns-from-singapore-democratic-party-100944974.html>> accessed on 19 July 2014

¹¹ Sylvia Tan, *Singapore UN delegate: 'What is being criminalised is not gay Singaporeans but homosexual acts'* (Fridae 11 May 2011) <<http://www.fridae.asia/gay-news/2011/05/11/10867.singapore-un-delegate-what-is-being-criminalised-is-not-gay-singaporeans-but-homosexual-acts#sthash.6FGyWSOH.dpuf>> accessed on 4 September 2015

¹² Hansard, Parliament of Singapore, vol 83 col 2397 (23 October 2007)

<<http://sprs.parl.gov.sg/search/report.jsp?currentPubID=00004748-WA>> accessed on 19 July 2014

¹³ Darren Wee, *Singapore bans lesbian-themed song by gay icon Jolin Tsai* (Gay Star News 22 May 2015) <<http://www.gaystarnews.com/article/singapore-bans-lesbian-themed-song-gay-icon-jolin-tsai220515/>>

accessed on 9 September 2015

¹⁴ Selina Lum, *Blogger Alex Au fined \$8,000 for contempt of court* (The Straits Times 5 March 2015)

<<http://www.straitstimes.com/singapore/courts-crime/blogger-alex-au-fined-8000-for-contempt-of-court>> accessed on 9 September 2015

¹⁵ Bureau of Democracy, Human Rights and Labor, *Country report on human rights practices for 2014:Singapore* (US Department of State 25 June 2015)

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236474>> accessed on 9 September 2015

¹⁶ Nash Jenkins, *Singapore Has Banned an Archie Comic for Depicting a Gay Wedding* (Time 17 July 2014)

<<http://time.com/3000130/singapore-has-banned-an-archie-comic-for-depicting-a-gay-wedding/>> accessed on 9 September 2015

¹⁷ Charlie Campbell, *Singapore Provokes Outrage by Pulping Kids' Books About Gay Families* (Time 11 July 2014)

<<http://time.com/2975400/singapore-lgbt-gay-family-library-book-and-tango-makes-three-white-swan-express-whos-in-my-family/>> accessed on 9 September 2015

¹⁸ Anna Leach, *New web censorship rule bans gay content in Singapore* (Gay Star News 30 May 2013)

<<http://www.gaystarnews.com/article/new-web-censorship-rule-bans-gay-content-singapore300513>> accessed on 19 July 2014

¹⁹ Media Development Authority, *Content Guidelines for Imported Publications* (2009)

<[http://www.mda.gov.sg/RegulationsAndLicensing/ContentStandardsAndClassification/Documents/Publication%](http://www.mda.gov.sg/RegulationsAndLicensing/ContentStandardsAndClassification/Documents/Publication%20Guidelines%20for%20Imported%20Publications.pdf)

[20and%20Audio%20Materials/indus_publishing_Policies%20and%20Legislation_imported%20mags%20guidelines.pdf](#)> accessed on 9 September 2015

²⁰ United Nations General Assembly, *Extrajudicial, summary or arbitrary executions* (14 November 2014) A/C.3/69/L.47/Rev.1

²¹ United Nations General Assembly, *Vote name: A/C.3/69/L.47/Rev.1 Extrajudicial, summary or arbitrary executions* (19 November 2014) <http://www.un.org/en/ga/third/69/docs/voting_sheets/L47.Rev1.pdf> accessed on 9 September 2015

²² *Lim Meng Suang and another v Attorney-General and another matter* [2014] SGCA 53

²³ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Singapore* (11 July 2011) UN Doc A/HRC/18/11

²⁴ National Library Board Singapore, *Penal Code section 377A* (Singapore Infopedia) <http://eresources.nlb.gov.sg/infopedia/articles/SIP_1639_2010-01-31.html> accessed on 9 September 2015

²⁵ Hansard, Parliament of Singapore, vol 83 col 2354 - col 2445 (23 October 2007) <<http://sprs.parl.gov.sg/search/report.jsp?currentPubID=00004748-WA>> accessed on 9 September 2015

	Solomon Islands	
<p>National Law:</p> <p>Laws of the Solomon Island, <i>Penal Code</i>¹</p> <ul style="list-style-type: none"> - S160: Unnatural Offences² - S161: Attempt to Commit Unnatural Offences and Indecent Assaults³ - S162: Indecent Practices Between Persons of the Same Sex⁴ 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - 14 years' imprisonment - 7 years' imprisonment - 5 years' imprisonment 	<p><u>Treaty Ratification</u></p> <p>CEDAW</p> <p>CEDAW OP</p> <p>CRC</p> <p>ICESCR</p>
<p>The law is applicable to both men and women.</p>		
<p>Enforcement</p>	<ul style="list-style-type: none"> - Very few reports exist on the Solomon Islands. - 2014: The 2014 United States human rights report indicates that there were no recent prosecutions under the country's penal provisions with respect to same-sex sexual conduct, and suggested that the country's laws were generally unenforced.⁵ 	
<p>Statements by Public Figures</p>	<ul style="list-style-type: none"> - No recent statements by public figures could be found. - 2009: The Leader of the Opposition recommended banning gay people's partners from entering the country, given the country's prohibition on same-sex sexual activity.⁶ 	
<p>Persecution and Discrimination</p>	<ul style="list-style-type: none"> - 2014: The 2014 United States report suggests that there are no reports of violence or discrimination. However, the report adds that stigma may lead to underreporting.⁷ 	
<p>Legislative News</p>	<ul style="list-style-type: none"> - 24 March 2015: Voted in favour of a failed Russian draft decision at the UN General Assembly's Fifth Committee (Administrative and Budgetary) that would have had the Secretary-General withdraw his bulletin laying UN staff benefits for same-sex couples⁸ - June 2013: The Solomon Islands' Law Reform Commission was provided with terms of references to review the Penal Code and the Criminal Procedure Code, with a view to considering areas such as violence against women and sexual offences, among other things.⁹ In June 2013, the Law Reform Commission issued its interim report on its review of part XVI of the Penal Code, which set out a number of recommendations for reform of sexual offences.¹⁰ While the report did not address directly the issue of the criminalisation of same-sex sexual conduct, the Commission did make two relevant recommendations. The first advocated for defining "sexual intercourse" to include oral and anal sex and redefining rape so that it applied to all, thus by implication seeming to permit sexual contact between those of the same-sex if consented to.¹¹ However, no 	

	<p>recommendations were included to repeal sections 160 to 162. The second recommended that the offence of indecent assault be replaced and that 'indecent' be defined '<i>as meaning indecent according to the standards of ordinary or right minded people, or prevailing community standards. To determine whether conduct is offensive all of the circumstances surrounding the conduct can be considered, including the motive of the accused.</i>'¹² As a consequence, this may alter the application and interpretation of the offence of gross indecency under section 162.</p> <ul style="list-style-type: none"> - 2011: (UPR) The Solomon Islands did not support recommendations to decriminalise consensual same-sex sexual relations.¹³ The Government acknowledged and recognized international human rights standards, but explained that '<i>it would be too early, within the context of the Solomon Islands, to discuss decriminalizing sexual relations between consenting adults of the same sex. Such an issue would require thorough national consultations to address Christian doctrines and cultural perspectives on the issue.</i>' - 2008: In 2008 the Solomon Islands law reform commission suggested decriminalisation. This suggestion was rejected in light of considerable opposition.¹⁴
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¹ The law is : www.paclii.org/sb/legis/consol_act/pc66/

² *Laws of Solomon Islands, Chapter 26, Penal Code, s.160: "Any person who- (a) commits buggery with another person or with an animal; or (b) permits a male person to commit buggery with him or her, shall be guilty of a felony, and shall be liable to imprisonment for fourteen years."*

³ *Laws of Solomon Islands, Chapter 26, Penal Code, s.161: "Any person who attempts to commit any of the offences specified in the last preceding section, or who is guilty of any and assault with intent to commit the same, or any indecent assault upon any male person shall be guilty of a felony, and shall be liable to imprisonment for seven years."*

⁴ *Laws of Solomon Islands, Chapter 26, Penal Code, s.162: "Any person who, whether in public or private - (a) commits any act of gross indecency with another of the same sex; (b) procures another of the same sex to commit any act of gross indecency; or (c) attempts to procure the commission of any act of gross indecency by persons of the same sex, shall be guilty of a felony and be liable to imprisonment for five years."*

⁵ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Solomon Islands* (US Department of State 2014) <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236476>> accessed on 21 August 2015

⁶ Committee Report, *Inquiry into the Facilitation of International Assistance Notice 2003 and RAMSI intervention: Solomon Islands Committee Report No 1*, p. 68 (National Parliament of the Solomon Islands November 2009) <<http://www.parliament.gov.sb/files/committees/foreignrelations/FRC%20Final%20Report.pdf>> accessed 19 July 2014

⁷ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Solomon Islands* (US Department of State 2014) <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236476>> accessed on 21 August 2015

⁸ Michael K. Lavers, *Bid to block spousal benefits for gay U.N. employees fails* (Washington Blade 24 March 2015) <<https://www.washingtonblade.com/2015/03/24/bid-to-block-spousal-benefits-for-gay-u-n-employees-fails/>> accessed 25 October 2015

⁹ <http://www.lawreform.gov.sb/index.php/our-work/current-references/penal-code-a-criminal-procedure-code>

¹⁰ Solomon Islands Law Reform Commission, *Review of the Penal Code and Criminal Procedure Code: Second Interim Report – Sexual Offences*, (June 2013) <http://www.lawreform.gov.sb/files/reports/Final-sexual_offences_report_2013_v4_12_June.pdf> accessed on 21 August 2015

¹¹ *Ibid* n 7, p. 21-22

¹² *Ibid*, p. 24

¹³ UNHRC, *Report of the Human Rights Council on its eighteenth session* (18 November 2011) UN Doc A/HRC/18/2, para 380

¹⁴ Kaleidoscope Trust, *Speaking Out: the Rights of LGBTI Citizens from Across the Commonwealth*, at p. 65 (2013) <<http://kaleidoscopetrust.com/usr/library/documents/main/speaking-out-lgbti-rights-in-the-cw.pdf>> accessed on 19 July 2014

 Sri Lanka		
<p>National Law:</p> <p><i>Penal Code</i> (as amended by the Penal Code (Amendment) Act, No. 22 of 1995)¹</p> <ul style="list-style-type: none"> - S365: Unnatural Offences² - S365A: Gross Indecency³ 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - 10 years' imprisonment and a fine - 2 years' imprisonment and a fine 	<p><u>Treaty Ratification</u></p> <p>CAT</p> <p>CEDAW</p> <p>CEDAW OP</p> <p>CRC</p> <p>ICCPR</p> <p>ICCPR OP1</p> <p>ICESCR</p>
Section 365 is applicable only to men, whilst Section 365A is equally applicable to both men and women.		
Enforcement	<ul style="list-style-type: none"> - 2014: The 2014 US Report on Human Rights Practices found that Sri Lanka's laws criminalising LGBT people were rarely enforced.⁴ - 2014: A shadow report by Equal Ground, submitted before the United Nations Human Rights Committee, suggests that while there have been no convictions in Sri Lanka since it gained independence in 1948, the police harassed and extorted money or sexual favours from LGBT individuals with impunity and assaulted gay men and lesbians in Colombo and other areas.⁵ 	
Statements by Public Figures	<ul style="list-style-type: none"> - 9 June 2015: Wimal Weerawansa, from the National Freedom Front, asked for the Foreign Minister Mangala Samaraweera's arrest after the he had voted against a Russian resolution calling for the withdrawal of partner benefits to gay and lesbian UN employees. He reportedly stated that: <i>'Being gay and lesbian-friendly has become our foreign policy today. This will result in negative consequences in the long run for Sri Lanka... It will affect our culture. Therefore, the minister should be arrested for violating the penal code.'</i>⁶ It was further reported that the Deputy Foreign Affairs Minister Ajith P Perera <i>'categorically denied that Sri Lanka had voted to promote gay rights and said the circular was an administrative matter'</i>. On the same issue, another opposition leader, Udaya Gammanpila, general secretary of the Pivithuru Hela Urumaya party, said equality did not mean all groups should be recognised as equals.⁷ - 15 October 2014: Following a review of Sri Lanka's record on civil and political rights by the United Nations Human Rights Committee on 7-8 October in Geneva, Additional Solicitor General Bimba Jayasinghe Thilakeratne stated: <i>'Article 12.1 [Of the Constitution] ensures equality for sexual orientation and gender identity'</i> and that under Article 12.2 <i>'laws discriminating on the grounds of sexual orientation and gender identity are unconstitutional'</i>. However, she specified, <i>'Sections 365 and 365A [of Sri Lanka's Penal Code] do not target any particular group but are there to protect public morality.'</i>⁸ - 24 April 2014: The Minister for Economic Affairs, Basil Rajapaksa, reported to the press that the government had turned down the option of British aid which was offered on the condition that Sri Lanka move to legalise gay marriage.⁹ 	

	<ul style="list-style-type: none"> - 22 January 2014: Current Foreign Minister and then opposition politician, Mangala Samaraweera, accused the government of trying to discredit his reputation with accusations surrounding his sexuality. A leaked WikiLeaks cable reportedly revealed the MPs sexuality. He subsequently accused a man of stealing from his house, who later claimed to have been having sex with him: <i>'My private life, though private has never been a secret.... However, today the Rajapaksa regime, in preparation for provincial elections to be followed by Presidential elections seems to be hell bent on destroying me using the confused hallucinations of a misguided youth.'</i>¹⁰ - 25 June 2010: Then Sri Lankan Prime Minister, D.M. Jayaratne reportedly told LGBT rights groups that the government was open to dialogue on the issue of decriminalisation, but warned they would not take any decision which would <i>'hurt the culture of the country...It is not wrong for them to seek rights. But we must know what exactly they want. They should communicate that to us and then we will see if it hurts our culture and take a decision accordingly.'</i>¹¹
<p style="text-align: center;">Persecution and Discrimination</p>	<ul style="list-style-type: none"> - March 2014: Several instances of abuse of gay people were described in a shadow report by Equal Ground, submitted before the United Nations Human Rights Committee: <p>Violence: The report included many stories of violence, including a trans-man who was attacked and chased by men on motorbikes as he and his boyfriend tried to escape in their car; a 16 year-old-student who was raped by two older students; and two men who in 2008 claimed to have been abducted and tortured on account of their sexuality. According to a 2011 study, <i>'37% of LGBT respondents were victims of physical abuse, threats, assault, harassment, rape, or battery.'</i>¹²</p> <p>Police abuse: <i>'Sri Lankan police conduct arbitrary arrests of LGBT individuals without such evidence on the purported grounds that the arrested individuals, being lesbian, gay, bisexual or transgender, will commit such acts in the future. Most of these arrests lead not to the filing of charges, but to bribery, blackmail, extortion, violence or coerced sexual favours.'</i>¹³</p> <ul style="list-style-type: none"> - 14 November 2013: Gay rights campaigners in Sri Lanka were reportedly ordered to stop campaigning before a Commonwealth Heads of Government meeting.¹⁴ - 2012: UNHCR reports that one gay rights group, Companions on a Journey, was forced to close following exposure in the press as a group <i>'promoting homosexuality'</i>. One member of the group, whose name was reported in the paper, was evicted by his landlord. The office of the organisation was searched by police, and a number of gay activists questioned for several hours.¹⁵
<p style="text-align: center;">Legislative News</p>	<ul style="list-style-type: none"> - A draft of a Bill of Rights, prepared by a Committee reporting to the Ministry of Disaster Management and Human Rights, expressly includes sexual orientation as a protected characteristic.¹⁶ The Bill has now been submitted to the Ministry of Justice for review, as mandated by the National Human Rights Action Plan adopted by Cabinet in 2011. - 2014: During a review of its record on civil and political rights by the United Nations Human Rights Committee on October 7-8 in Geneva, the Government of Sri Lanka expressly stated: <i>'Article 12 of the Constitution recognizes non-discrimination based on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds as a Fundamental</i>

Right. This measure protects persons from stigmatization and discrimination on the basis of sexual orientation and gender identities.’¹⁷

- **2012:** During the second cycle of its Universal Periodic Review, Sri Lanka rejected the recommendations to decriminalise consensual same-sex sexual conduct.¹⁸

¹ The text of the law is :

http://www.lawnet.lk/section.php?file=http://www.lawnet.lk/docs/statutes/cons_stat_up2_2006/indexes/2001Y1V19C.html

² *Penal Code (as amended 1995), s.365: ‘Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be punished with fine and where the offence is committed by a person over eighteen years of age in respect of any person under sixteen years of age shall be punished with rigorous imprisonment for a term not less than ten years and not exceeding twenty years and with fine and shall also be ordered to pay compensation of an amount- determined by court to the person in respect of whom the offence was committed for injuries caused to such person.’*

³ *Penal Code (as amended 1995), s.365A: ‘Any person who, in public or private, commits, or is a party to the commission of, or procures or attempts procure the commission by any person of, any act of gross indecency with another person, shall he guilty of an offence, and shall be punished with imprisonment of either description, for a term which may extend to two years or with fine or with both and where the offence is committed by a person over eighteen years of age in respect of any person under sixteen years of age shall be punished with rigorous imprisonment for a term not less than ten years and not exceeding twenty years and with fine and shall also be ordered to pay compensation of an amount determined by court to the person in respect of whom the offence was committed for the injuries caused to such person.’*

⁴ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Sri Lanka* (US Department of State June 2014)

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dclid=236650>> accessed on on 31 August 2015

⁵ Equal Ground & Others, *Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Sri Lanka: A Shadow Report* (OHCHR December 2013)

<http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LKA/INT_CCPR_ICO_LKA_15986_E.pdf> accessed on 19 July 2014

⁶ Darren Wee, *Sri Lanka’s foreign minister threatened with arrest after voting for gay rights at UN* (Gay Star News 10 June 2015) <<http://www.gaystarnews.com/article/sri-lankas-foreign-minister-threatened-arrest-after-voting-gay-rights-un100615/#sthash.AHzJxBT9.IOdbQ9xF.dpuf>> accessed on on 29 August 2015

⁷ Ibid

⁸ Equal Ground, *Equal Ground Press Release - Positive Outcome at the UN!* (15 October 2014) <<http://equal-ground.org/news/equal-ground-press-release-positive-outcome-at-the-un>> accessed on 29 August 2015

⁹ The Republic Square, *Government says no to gay marriage in Sri Lanka* (The Republic Square 24 April 2014) <<http://www.therepublicsquare.com/politics/2014/04/24/government-says-no-to-gay-marriage-in-sri-lanka/>> accessed on 19 July 2014

¹⁰ Mangala Samaraweera, *Rajapaksa To Invoke Archaic Victorian Anti-Gay Laws Against Me* (Colombo Telegraph 22 January 2014) <<https://www.colombotelegraph.com/index.php/rajapaksa-to-invoke-archaic-victorian-anti-gay-law-against-me/>> accessed on 19 July 2014

¹¹ Indika Sri Aravinda, *Lanka for dialogue with gays* (Daily Mirror Sri Lanka 25 June 2010) <<http://www.dailymirror.lk/4626/lanka-for-dialogue-with-gays>> accessed on 19 July 2014

¹² Equal Ground & Others, *Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Sri Lanka: A Shadow Report*, page 10 (OHCHR December 2013)

<http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LKA/INT_CCPR_ICO_LKA_15986_E.pdf> accessed on 19 July 2014

¹³ Ibid, at page 5

¹⁴ Tris Reid-Smith, *Sri Lanka gays forced underground as world leaders gather for summit* (Gay Star News 11 November 2013) <<http://www.gaystarnews.com/article/sri-lanka-gays-forced-underground-world-leaders-gather-summit141113>> accessed on 19 July 2014

¹⁵ UN High Commissioner for Refugees (UNHCR), *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka*, 21 December 2012, HCR/EG/LKA/12/04, page 35/6 <<http://www.refworld.org/docid/50d1a08e2.htm>> accessed on 29 August 2015

¹⁶ Ministry of Disaster Management and Human Rights, *Draft Bill of Rights*, Article 12: Right to equality and freedom from discrimination (Secretariat for Coordinating the Peace Process) <<http://www.peaceinsrilanka.lk/human-rights/bill-of-rights-final-draft>> accessed on 29 August 2015

¹⁷ Human Rights Committee, *Replies of Sri Lanka to the list of issues*, CCPR/C/LKA/Q/5/Add.1, para. 43 (2 September 2014) <http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LKA/CCPR_C_LKA_Q_5_Add-1_18124_E.doc> accessed on 29 August 2015

¹⁸ Human Rights Council, *Report of the Working Group on the Universal Periodic Review* (18 December 2012) UN Doc A/HRC/22/16

 Saint Kitts and Nevis		
<p>National Law:</p> <p><i>Offences Against the Person Act 1986 (revised edition 2002)</i>¹</p> <ul style="list-style-type: none"> - S56: Sodomy and Bestiality² - S57: Attempt to Commit An Infamous Crime³ 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - 10 years' imprisonment with or without 'hard labour' - 4 years' imprisonment with or without 'hard labour' 	<p><u>Treaty Ratification</u></p> <p>CEDAW</p> <p>CEDAW OP</p> <p>CRC</p>
The law is applicable only to men.		
Enforcement	<ul style="list-style-type: none"> - 2014: The 2014 US Human Rights Country Report on Saint Kitts and Nevis reported that there were no reports of the law being enforced during the year.⁴ - 2011: In its 2011 UPR, St Kitts & Nevis explained, '<i>despite the existence of [anti-gay laws] on the books, there has been no known prosecution of sexual activity between consenting adults in private within recent years. This therefore means that the law has not been used in any discriminatory manner against such individuals.</i>'⁵ All recent cases that have been reported in the press tend to suggest either a lack of consent, or a victim under the age of 16. 	
Statements by Public Figures	<ul style="list-style-type: none"> - July 2015: At the Caribbean launch of the UNAIDS-Lancet Commission Report, Prime Minister Dr. Timothy Harris made an address as the CARICOM Lead Head for Human Resources Health and HIV. The Prime Minister highlighted some of the lessons from the Report that included increased focus on populations at higher risks: especially our girls and young women, men who have sex with men and commercial sex workers. The Prime Minister stressed '<i>that Caribbean countries must continue to confront the issues that are related to the elimination of stigma and discrimination and disentangle them from the misperception that this is a gay agenda.</i>'⁶ - June 2015: Law enforcement officers and other security personnel in St. Kitts and Nevis took part in a 4-day LGBT sensitivity training course. The course was intended to bring about a greater understanding of sexual orientation and better equip law enforcement officers and other public service workers with knowledge of how to deal with individuals in communities that are most vulnerable. Assistant Commissioner of Police, Vaughn Henderson, lauded the initiative stating '<i>I think it is timely and I believe that education brings a deeper understanding for people of different beliefs, different cultures and different sexual orientation.</i>'⁷ Maurice Tomlinson, Jamaican attorney and LGBT rights activist, was the course facilitator, having undertaken similar training in Suriname, Barbados and St. Lucia. - October 2014: During a special sitting of the High Court, Queen's Counsel Dr Henry Browne advocated for a national debate on the issue of same-sex marriage. Browne said '<i>Governments, lawyers, scientists and societies included must grapple with new beliefs and practices trending in our several communities. Same sex marriage or union is one such phenomenon... This is no light matter. Sooner than later our national conversations would have to be engaged in this delicate regard. I look forward with all progressive thinking lawyers to preparing our minds to take</i> 	

	<p><i>up and inform and master challenges such as this which lies ahead.’⁸</i></p> <ul style="list-style-type: none"> - 9 April 2014: During an address focusing on human rights and AIDs at the PANCAP Justice For All Consultation, now former Prime Minister Denzil Douglas explained that stigma and discrimination were the most challenging issues that could erode the gains in the AID response. One of the elements highlighted by the Prime Minister of ‘Justice For All Roadmap’ was <i>‘Actively promoting and identifying the processes for reducing and eliminating those laws that actually contribute to discrimination on the basis of gender, race and sexual preferences, and those that particularly infringe the rights of the LGBT communities.’⁹</i> - September 2013: Archdeacon Valentine Hodge, head of the Anglican Church in St Kitts and Nevis drew a distinction between legal and moral rights: <i>‘Yes people should have the right to do whatever, the right to freedom to engage in whatever activity they wish to engage in.... I know that in other parts of the Caribbean you’ve had the decriminalization of homosexuality and that’s consenting adults, it’s not a crime, but that doesn’t mean it’s not a sin.’¹⁰</i> - August 2013: While in office, Prime Minister Denzil Douglas called for more tolerance towards the LGBTI community. He expressed his desire for people to <i>‘be light’</i> when dealing with LGBTI individuals within their community, as they have a right to express their identity just like anyone else.¹¹ <p>The Prime Minister stated that he would like everyone to <i>‘[d]iscuss the issue, stop the discrimination, stop the stigmatization and let us therefore discuss this matter in an open, matured and frank way so that we can deal seriously and comprehensively with the spread of HIV.’¹²</i></p> <p>He added that <i>‘rather than judging homosexuals, the Caribbean national should support them, particularly around helping them get tested for HIV.’¹³</i></p> <p>The Prime Minister has advocated for greater tolerance for homosexual individuals in a bid to combat the spread of HIV, explaining: <i>‘if you condemn that person as being a homosexual, that person will be afraid and reluctant to go and get tested. If he doesn’t get tested and does not get the care, treatment and advice needed if he is positive; or if he is positive, but does not know he is positive as he is afraid to go and get tested because of discrimination, the virus spreads.’¹⁴</i></p>
<p>Persecution and Discrimination</p>	<ul style="list-style-type: none"> - 2014: The 2014 US Country report indicated <i>‘that negative societal attitudes towards the LGBT community impeded the operation of LGBT organizations and the free association of LGBT persons. The government asserted it received no reports of violence or discrimination based on sexual orientation; however, unofficial reports indicated that violence and discrimination remained a problem. Anecdotal evidence suggested that LGBT persons were reluctant to report incidents of violence or abuse out of fear of retribution or reprisal due to their sexual orientation or gender identity.’¹⁵</i> - 8 August 2014: It was reported that a gay teen lost his sight and was paralyzed from the waist down after he was shot in the head and chest by a neighbour in 2012 at the age of 16. He is openly gay and believes that his sexuality was the motivation for the attack. Appearing on a radio programme, he said that he had often been the target of homophobic rhetoric.¹⁶

	<ul style="list-style-type: none"> - 2011: (UPR) The National Report submitted by Saint Kitts and Nevis claimed that sexuality remained taboo and stigma and discrimination continued to be major barriers to accessing VCT, treatment of Sexually Transmitted Diseases (STDs) and seeking care and support for HIV infection.¹⁷ Stakeholder information submitted noted that Saint Kitts and Nevis had support the OAS resolution on human rights, sexual orientation and gender identity in each of 2008, 2009 and 2010.¹⁸ <p>Concerning discrimination against lesbian, gay, bisexual and transgender people, the delegation stated that the reality was that, despite the existence of a piece of legislation, in terms of the society at large, such persons did enjoy the same rights and privileges as everyone else. No instances of denial of job opportunities or attacks against such people took place. There was a culture of tolerance in respect of those individuals in the society.¹⁹</p>
Legislative News	<ul style="list-style-type: none"> - 24 March 2015: Voted against a failed Russian draft decision at the UN General Assembly's Fifth Committee (Administrative and Budgetary) that would have had the Secretary-General withdraw his bulletin laying UN staff benefits for same-sex couples.²⁰ - 2011: (UPR) Saint Kitts and Nevis accepted that the criminalization of sexual relations between consenting adults was controversial. While it was aware of the many arguments advanced by those who would wish to see them repealed, the Government of Saint Kitts and Nevis explained that it had no mandate to do so. In fact, there was strong opposition to them being repealed. However, despite their existence on the books, there had been no known prosecution of sexual activity between consenting adults in private within recent years.²¹ <p>Saint Kitts and Nevis rejected recommendations to repeal provisions that criminalise sexual relations between consenting adults of the same sex, but confirmed that it would continue to engage on the issue through a consultative process.²²</p> <p>Saint Kitts and Nevis did accepted the recommendation by Sweden that it take effective measures to effectively combat discrimination on all grounds, including on grounds of sexual orientation or identity and maintained that <i>"Chapter II of its Constitution prohibits discrimination against any person on the grounds of race, tribe, place of origin, political opinions, colour, creed or sex, and, as such, any person of the view that his or her rights have been violated could, at any time, seek redress before the Court... The Government regards seriously its commitment to protect all members of society from discrimination regardless of sexual orientation."</i>²³</p> <p>The 2nd Cycle UPR will take place in November 2015.</p>

¹ Law : <http://www.easterncaribbeanlaw.com/offences-against-the-person-act-chapter-4-21/>

² *Offences Against the Person Act 1986, Chapter 4.21, s.56: "Any person who is convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall be liable to be imprisoned for a term not exceeding ten years, with or without hard labour."*

³ *Offences Against the Person Act 1986, Chapter 4.21, s.57: 'Any person who attempts to commit the said abominable crime, or is guilty of any assault with intent to commit the same, or of any indecent assault upon any*

male person, commits a misdemeanour, and, on conviction, shall be liable to be imprisoned for a term not exceeding four years, with or without hard labour.'

⁴ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Saint Kitts and Nevis* (US Department of State 2014)

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236712>> accessed on 26 August 2015

⁵ UNHRC, *Report of the Working Group on the Universal Periodic Review* (15 March 2011) UN Doc A/HRC/17/12 Para 35

⁶ PANCAP, *Address by Prime Minister St Kitts- Nevis, Hon Dr. Timothy Harris, CARICOM Lead Head for Human Resources Health and HIV -Caribbean Launch of UNAIDS- Lancet Commission Report* (3 July 2015)

<<http://www.pancap.org/en/speeches-and-presentations/2601-address-by-prime-minister-st-kitts-nevis-hon-dr-timothy-harris-caricom-lead-head-for-human-resources-health-and-hiv-caribbean-launch-of-unaid-lancet-commission-report.html>> accessed on 21 September 2015

⁷ Loshawn Dixon, *Security personnel participate in LGBT Sensitivity Training* (SKNVibes 14 June 2015)

<<http://www.sknavibes.com/news/newsdetails.cfm/92250>> accessed on 26 August 2015

⁸ Andrew Huie, *Time is right for same sex marriage debate, says St Kitts-Nevis QC* (Caribbean News Now 9

October 2014) <<http://www.caribbeannewsnow.com/topstory-Time-is-right-for-same-sex-marriage-debate,-says-St-Kitts-Nevis-QC-23116.html>> accessed on 26 August 2015

⁹ Caribbean Community Secretariat Press Release, *Remarks by Hon. Denzil Douglas, Prime Minister of St. Kitts and Nevis – PANCAP Justice For All Regional Consultation 9 April 2014 The Jamaica Pegasus* (11 April 2014)

<http://caricom.org/jsp/pressreleases/press_releases_2014/pres72_14.jsp> accessed on 21 September 2015

¹⁰ Toni Frederick, *Anglican Church in the Caribbean says no to same sex marriage* (Caribbean News Now 2

September 2013) <<http://www.caribbeannewsnow.com/headline-Anglican-Church-in-the-Caribbean-says-no-to-same-sex-marriage-17486.html>> accessed on 19 July 2014

¹¹ Andrew Potts, *St Kitts and Nevis Prime Minister calls for gay tolerance* (Gay Star News 30 August 2013)

<<http://www.gaystarnews.com/article/st-kitts-and-nevis-prime-minister-calls-gay-tolerance300813>> accessed on 19 July 2014

¹² Ibid

¹³ Ibid

¹⁴ Ibid

¹⁵ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Saint Kitts and Nevis* (US Department of State 2014)

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236712>> accessed on 26 August 2015

¹⁶ Toni Frederick, *Popular Teen Fights To Keep Spirits Up After Shooting Leaves Him Blind and Paralyzed* (West

Indies News Network 8 August 2014) <<http://www.winnfm.com/news/local/9340-popular-teen-fights-to-keep-spirits-up-after-shooting-leaves-him-blind-and-paralyzed#sthash.Sfj44v9J.qp2Cod4S.dpuf>> accessed on 21

September 2015

¹⁷ UNHRC, *National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Saint Kitts and Nevis*, (10 November 2010) UN Doc A/HRC/WG.6/10/KNA/1, para. 44

¹⁸ UNHRC, *Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human rights Council resolution 5/1* (30 September 2010), UN Doc A/HRC/WG.6/10/KNA/3, para. 10

¹⁹ UNHRC, *Report of the Working Group on the Universal Periodic Review* (15 March 2011) UN Doc A/HRC/17/12, para 35

²⁰ Michael K. Lavers, *Bid to block spousal benefits for gay U.N. employees fails* (Washington Blade 24 March 2015)

<<https://www.washingtonblade.com/2015/03/24/bid-to-block-spousal-benefits-for-gay-u-n-employees-fails/>> accessed 25 October 2015

²¹ UNHRC, *Report of the Working Group on the Universal Periodic Review* (15 March 2011) UN Doc A/HRC/17/12, para 14

²² UNHRC, *Report of the Working Group on the Universal Periodic Review**

Saint Kitts and Nevis Addendum (31 May 2011), UN Doc A/HRC/17/12/Add.1, para. 43

²³ Ibid, para. 40

	Saint Lucia	
<p>National Law:</p> <p><i>Criminal Code</i>, No. 9 of 2004¹</p> <ul style="list-style-type: none"> - S132: Gross Indecency² - S133: Buggery³ 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - 10 years' imprisonment (5 years on a summary conviction) - 10 years' imprisonment (5 years for attempt) 	<p><u>Treaty Ratification</u></p> <p>CEDAW</p> <p>CRC</p>
Section 132 is equally applicable to both men and women. Section 133 applies only to men.		
Enforcement	<ul style="list-style-type: none"> - 2014: The US Human Right Country Report documented that Saint Lucia rarely enforced its criminal provisions with respect to consensual same-sex sexual activity.⁴ 	
Statements by Public Figures	<ul style="list-style-type: none"> - 16 July 2015: Saint Lucia's Tourism Minister reportedly said that the country remains open to visitors from the LGBT community, but made it clear that there will be no changes of Saint Lucia's colonial-era buggery laws.⁵ - May 2015: In light of the success of the 2014 human rights sensitisation training which sought to educate the Royal Saint Lucia Police Force on both general and LGBT-specific content, a further training initiative was organised by the Saint Lucian LGBT organisation, United and Strong.⁶ United and Strong extended its efforts to other law enforcement and community service providers, focusing on officers from the Air and Sea Ports, Customs and Corrections as well as members of civil society who interface with law enforcement on behalf of their community. Executive Director of United and Strong, Kenita Placide, noted, <i>"This training is important to continue to reemphasize the need for better community policing and ensure the basic understanding of human rights is the foundation of policing in Saint Lucia. This training happening in Saint Lucia now, happened in Barbados last week and hoping for the rest of the OECS in the coming months is just a small piece of United and Strong's advocacy and education to reduce incidents of discriminations and achieve equality for all."</i> - 29 May 2014: A Saint Lucian gay rights organisation celebrated the firing of Professor Brendan Bain by the University of the West Indies for professional testimony he gave in a Belize case stating that men who have sex with men posed a risk to public health.⁷ - 25 May 2014: Linus Clovis, a Catholic Priest from Saint Lucia, told reporters that the country is "losing the battle" against gay rights: <i>"I think we are losing the battle because there are insufficient numbers of people who are willing to stand up, speak out and be honest"</i> The priest added his belief that the country would be forced to decriminalise by international organisations and countries: <i>"If they can put sanctions on countries like Nigeria or Uganda because of their anti-sodomy laws, what will they do to us?"</i>⁸ - 27 June 2011: The minister for Education, Arsene James, stated his view that there was nothing wrong with having discussions on homosexuality within schools.⁹ 	

<p>Persecution and Discrimination</p>	<ul style="list-style-type: none"> - 2014: The US Country Report on Saint Lucia indicates that there was widespread social discrimination against LGBT persons in the deeply conservative society.¹⁰ There were few reported incidents of violence or abuse during the year. LGBT persons were reluctant to report incidents of violence or abuse out of fear of retribution or reprisal due to their sexual orientation or gender identity. - 8 March 2012: Kenita Placide of the LGBTI group United and Strong commented on the situation of the LGBTI community in Saint Lucia and suggested reasons for lack of reporting: <i>'It is a dangerous thing. People's rights are being violated on a daily basis...The fact that the law is there, there is no formal redress for homosexuals. It basically means that when you go to the police for something, it exposes you. Right now it is the police officers on their own deciding not to enforce this law. Homosexuals ask themselves, what if the police officers decide to book me because this law exists... Abuses have taken place. We have had deaths of gay men that are still unsolved or unresolved. We had the death of Verne Romulus, the death of Germaine Nestor, the death of Marcellus Augustin, we had the death of Ethelbert 'Romeo' Evelyn in Dennery. These were openly gay people and these cases were not cases where they were just killed. These killings were brutal, with multiple stab wounds and beatings. There have been gay people who have been beaten in the street. Society targets the highly effeminate guys and the butch looking women. Some have been raped. They get verbally abused on a daily basis. And what works against them is the fear of reporting these incidents. People are internalizing things, instead of seeking help.'</i>¹¹ - 21 March 2011: The Government of Saint Lucia apologised to three gay tourists who were robbed on the island. According to the victims the perpetrators used anti-gay slurs and issued death threats. The government issued a statement on the incident: <i>'Whether or not this crime was motivated by anti-gay sentiment, or during the course of robbery, it is nonetheless unacceptable behaviour and our destination will not tolerate it. Our law enforcement authorities are pursuing this matter relentlessly.'</i>¹²
<p>Legislative News</p>	<ul style="list-style-type: none"> - 5 June 2014: Saint Lucia noted that it was unable to 'join the consensus' on the approval of an OAS resolution on Sexual Orientation: <i>'we are of the view that the term "gender expression" is one that is not thoroughly defined or accepted internationally. Moreover, not only is the expression heavily nuanced but most importantly it is currently not defined in domestic law.'</i>¹³ - 2011: (UPR) Saint Lucia rejected recommendations to decriminalise consensual same-sex sexual relations, but did accept a recommendation to condemn acts of violence against LGBTI people: (National report) <i>'The Government acknowledges the contribution and concerns expressed by United and Strong, representing gay and lesbian interests. However deeply rooted religious, cultural and moral values and practices on the island create a formidable challenge towards mobilization and general acceptance of "gay rights" by society. Notwithstanding, gender neutral rights have been implemented in certain instances, as is reflected through legislation relating to sexual offences.'</i>¹⁴

¹ The law is : www.rslpf.com/site/criminal%20code%202004.pdf.

² Criminal Code, No. 9 of 2004, s.132: "(1) Any person who commits an act of gross indecency with another person commits an offence and is liable on conviction on indictment... (4) In this section "gross indecency" is an act other than sexual intercourse (whether natural or unnatural) by a person involving the use of the genital organs for the purpose of arousing or gratifying sexual desire."

³ *Criminal Code, No. 9 of 2004, s.133: '(1) A person who commits buggery commits an offence and is liable on conviction on indictment to imprisonment for - (a) life, if committed with force and without the consent of the other person; (b) ten years, in any other case. (2) Any person who attempts to commit buggery, or commits an assault with intent to commit buggery, commits an offence and is liable to imprisonment for five years. (3) In this section "buggery" means sexual intercourse per anus by a male person with another male person.'*

⁴ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Saint Lucia* (US Department of State 2014)

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236714>> accessed on 26 August 2015

⁵ Caribbean News Digital, *Saint Lucia Welcomes Gay Tourists, but Maintains Sodomy Laws* (16 July 2015)

<<http://www.caribbeannewsdigital.com/en/noticia/saint-lucia-welcomes-gay-tourists-maintains-sodomy-laws>> accessed on 24 September 2015

⁶ United and Strong, *Rights Sensitisation for Law Enforcement Officers*, (21 May 2015)

<https://unitedandstrongstlucia.wordpress.com/2015/05/21/rights-sensitisation-for-law-enforcement-officers/> accessed on 26 August 2015

⁷ St Lucia Times, *United and Strong Says Bain Dismissal A Victory for Gay Rights* (St Lucia Times 29 May 2014)

<<http://stluciatimes.com/article/united-and-strong-says-bain-dismissal-victory-gay-rights>> accessed on 19 July 2014

⁸ St Lucia Times, *Gay Rights - Catholic Priest Says "We are Losing the Battle"* (St Lucia Times 25 May 2014)

<<http://stluciatimes.com/article/gay-rights-catholic-priest-says-%E2%80%9Cwe-are-losing-battle%E2%80%9D>> accessed on 19 July 2014

⁹ HTS St Lucia, *Homosexuality in Schools* (Youtube 27 June 2011)

<<https://www.youtube.com/watch?v=RX6aV910nbg>> accessed on 19 July 2014

¹⁰ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Saint Lucia* (US Department of State 2014)

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236714>> accessed on 26 August 2015

¹¹ Nicole Mc Donald, *Gays Say 'We Are Here To Stay!'* (St Lucia Star 8 March 2012) <<http://stluciarstar.com/gays-say-we-are-here-to-stay/>> accessed on 19 July 2014

¹² Jessica Green, *Caribbean island St Lucia apologises for attack on gay tourists* (Pink News 21 March 2011)

<<http://www.pinknews.co.uk/2011/03/21/caribbean-island-st-lucia-apologises-for-attack-on-gay-tourists/>> accessed on 19 July 2014

¹³ OAS General Assembly, *Draft Resolution Human Rights, Sexual Orientation, and Gender Identity and Expression* (5 June 2014), AG/CG/doc.12/14 rev. 1

¹⁴ UNHRC, *National Report St Lucia* (12 November 2010), UN Doc A/HRC/WG.6/10/LCA/1, para. 123

 Saint Vincent and the Grenadines		
National Law: <i>Criminal Code (revised 1990)</i> ¹ <ul style="list-style-type: none"> - S146: Buggery² - S148: Gross Indecency³ 	Maximum Penalties: <ul style="list-style-type: none"> - 10 years' imprisonment - 5 years' imprisonment 	<u>Treaty Ratification</u> CAT CEDAW CRC ICCPR ICCPR OP ICESCR
The law is equally applicable to both men and women.		
Enforcement	<ul style="list-style-type: none"> - 2014: The US Human Rights Country Report notes that the country's laws which criminalise consensual same-sex sexual relations are rarely enforced.⁴ 	
Statements by Public Figures	<ul style="list-style-type: none"> - March 2015: Opposition politician and spokesperson on gender issues, Senator Vynnette Frederick, of the New Democratic Party, has reportedly told her party that Saint Vincent and the Grenadines needs to start talking about issues of sexuality. Senator Frederick explained that <i>"We feel what is going to happen is that the international community will force the Caribbean to confront the issue of our attitude toward persons who are homosexual."</i>⁵ - July 2014: Prime Minister Ralph Gonsalves is reported to have cautioned against merging the fight against HIV/AIDs with a gay rights agenda. Following the CARICOM Summit during which the PANCAP HIV/AIDs Justice For All programme was discussed, Prime Minister Gonsalves said <i>'We must not seek to transform the fight against HIV and AIDs into an agenda for gay rights...I made the point that there is a legitimate discussion to be had, a mature discussion to be had in the Caribbean and anywhere else on gay rights and I have said, in my view, the churches, the NGOs, the press, there are a number of entities that are well-placed to fuel and have that mature conversation...But we must not allow the fact that a lot of funding for PANCAP, which comes out of certain agencies in Europe and the United States, to be manipulated to advance a gay right agenda as distinct from fighting the issue of HIV and AIDs.'</i>⁶ - February 2014: The Caribbean Alliance for Equality wrote to the Prime Minister of Saint Vincent and the Grenadines in February 2014 asking the Prime Minister what his position is on decriminalizing homosexuality, and what documented steps he or his administration have taken to remove the laws which criminalise consensual same-sex sexual activity.⁷ - 13 September 2013: The Prime Minister of Saint Vincent and the Grenadines, Dr. Ralph Gonsalves, stated that it was not for politicians to raise the issue of decriminalisation: <i>'Now this is not a matter on which a politician should be pronouncing upfront, given the nature of this social issue, but for civic leaders to talk about, for newspapers to write and talk about and for them to raise it.'</i>⁸ 	

<p>Persecution and Discrimination</p>	<ul style="list-style-type: none"> - Due to a lack of dedicated LGBTI organisations operating in Saint Vincent, reports of persecution and discrimination are small. - 2014: The US Country Report notes that Anecdotal evidence suggested there was social discrimination against LGBT persons in the deeply conservative society, although local observers believed such attitudes of intolerance were slowly improving. Members of professional and business classes were more inclined to conceal their sexual orientation.⁹ - 11 March 2013: The report of the Immigration and Refugee Board of Canada contains statements made by the Chairman of the Saint Vincent and Grenadines chapter of Caribbean HIV/AIDS Partnership, who spoke on the issue of violence in the country: <i>'[I]ncidences [sic] of violence due to homosexuality since 2010 are relatively low, mainly result in minor injuries, and tend to be related to personal disputes rather than random violence.'</i>¹⁰
<p>Legislative News</p>	<ul style="list-style-type: none"> - 5 June 2014: The country noted it could not join the consensus on the approval of an OAS resolution on sexual orientation, finding that: <i>'Saint Vincent and the Grenadines is of the view that the term "gender expression" is one that is not thoroughly defined internationally or that has international acceptance.'</i>¹¹ - 2011: (UPR) Saint Vincent and The Grenadines rejected recommendations to decriminalise consensual same-sex sexual relations: <i>'The Government of Saint Vincent and the Grenadines cannot accept at this time this recommendation to repeal provisions against lesbian and gays, as the public sentiment favours the retention of provisions which criminalize buggery and sexual relations between adults of the same sex... Moreover, the Government wishes to inform that there are no discriminatory laws against gays, lesbian, bi-sexual and transgender people in Saint Vincent and the Grenadines as the constitution prohibits discrimination in all forms related to the enjoyment of people's rights and freedoms. In addition, it must be noted that prosecution of public indecency is not limited to homosexual acts but also relates to heterosexual acts between consenting adults.'</i>¹²

¹ Text of the law excerpted at: <http://www.refworld.org/docid/5188f6074.html>

² *Criminal Code (revised 1990)*, s.146: "Any person who commits buggery with any other person; commits buggery with an animal; or permits any person to commit buggery with him or her; is guilty of an offence and liable to imprisonment for ten years."

³ *Criminal Code (revised 1990)*, s.148: "Any person, who in public or private, commits an act of gross indecency with another person of the same sex, or procures or attempts to procure another person of the same sex to commit an act of gross indecency with him or her, is guilty of an offence and liable to imprisonment for five years."

⁴ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Saint Vincent and the Grenadines* (US Department of State 2014)

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236716>> accessed on 27 August 2015

⁵ I-Witness News, *Senator wants conversation on same-sex relationships* (25 March 2015)

<<http://www.iwnsvg.com/2015/03/25/senator-wants-conversation-on-same-sex-relationships/>> accessed on 27 August 2015

⁶ I-Witness News, *Gonsalves warns against mixing fight against HIV and gay rights agenda* (15 July 2014) <

<http://www.iwnsvg.com/2014/07/15/gonsalves-warns-against-mixing-fight-against-hiv-and-gay-rights-agenda/>> accessed on 27 August 2015

⁷ Caribbean Alliance for Equality, *Email to the Prime Minister of St. Vincent and the Grenadines* (26 February 2014) <<http://caribbeanallianceforequality.org/email-to-prime-minister-of-st-vincent-and-the-grenadines/>> accessed on 27 August 2015

⁸ Witness News, *On the decriminalising of homosexuality, Gonsalves willing to stand back* (1 Witness News 12 September 2013) <<http://www.iwnsvg.com/2013/09/12/on-the-decriminalising-of-homosexuality-gonsalves-willing-to-stand-back/>> accessed on 19 July 2014

⁹ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Saint Vincent and the Grenadines*, (US Department of State 2014) <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236716>> accessed on 27 August 2015

¹⁰ Canada: Immigration and Refugee Board of Canada, *Saint Vincent and the Grenadines: Situation and treatment of homosexuals, including legislation and societal attitudes; availability of state protection and support services (2010-February 2013)* (11 March 2013), <<http://www.refworld.org/docid/5188f6074.html>> accessed on 19 July 2014

¹¹ OAS General Assembly, *Draft Resolution Human Rights, Sexual Orientation, and Gender Identity and Expression* (5 June 2014) AG/CG/doc.12/14 rev. 1

¹² UNHRC, *Report of the Working Group on the Universal Periodic Review* (22 September 2011) UN Doc A/HRC/18/15/Add.1

	Swaziland	
National Law: <i>Common law offence of:</i> <ul style="list-style-type: none"> - Sodomy¹ 	Maximum Penalties: <ul style="list-style-type: none"> - Imprisonment or a fine 	<u>Treaty Ratification</u> AFRICAN CHARTER CAT CEDAW CRC ICCPR ICESCR
The Law is applicable to men. The status of the law in relation to women is uncertain.		
Enforcement	<ul style="list-style-type: none"> - 2014: The 2014 US Human Rights Report suggests that the law has not been used to prosecute individuals.² - 18 August 2013: Two men aged 18 and 21 were banished from their community after their aunt reported them to the police. Speaking on the incident the Aunt told news reporters: <i>"I was afraid of being labelled all sorts of names in the area and be accused of harbouring gay people in my house. My other problem was that local men would have ended up quarrelling with their wives and resorted to being gay because of the boys living under my roof."</i>³ 	
Statements by Public Figures	<ul style="list-style-type: none"> - July 2015: The United States and EU Ambassadors to Swaziland both made public comments calling for recognition of LGBT rights.⁴ - July 2015: Asked to comment on whether female same-sex relationships are legal in Swaziland, Principal Secretary in the Ministry of Home Affairs Anthony Masilela said <i>"this is the first I hear of such; we probably need to investigate this matter further."</i>⁵ - 2 March 2014: The prime minister of Swaziland shared his views on a number of issues pertaining to homosexuality. Speaking on the question of gay relationships, the Prime Minister was quoted as saying: <i>'Church clergy say this is not biblically acceptable. It is just now that some countries and communities allow it. It is still scary here in Swaziland when we see it happen. The country's laws do not allow this.'</i> According to the Prime Minister (on the question of gay marriage): <i>'People of the same sex cannot even go to regional offices to get married. It will take time before we allow this to happen and include it in the country's laws. We are not even ready to consider it.'</i>⁶ He has also been recorded describing homosexuality as <i>'an abnormality and a sickness'.</i> (27 November 2013)⁷ - 11 December 2013: The Swaziland Ministry of Education and Training called for teachers and administrators to be more understanding and supportive of LGBTI people in schools and the community: <i>'Teachers and school administrators must be supportive to gays and lesbians because some of them also belong to the category but they are afraid to declare their status because they fear that their colleagues or headmasters were lacking confidentiality.'</i>⁸ 	

	<ul style="list-style-type: none"> - 2012: At an editors' breakfast meeting, Prime Minister Sibusiso Dlamini reportedly said both gay and lesbian relationships were not allowed in Swaziland.⁹ - 14 February 2012: Simon Zwane, Deputy Director of Health, encouraged HIV couples to get tested and <i>'trust promises of confidentiality': 'Couples need to be consistently aware of their HIV status. This will result in them making joint decisions on risk reduction in their relationships.'</i>¹⁰
Persecution and Discrimination	<ul style="list-style-type: none"> - Many reports suggest high levels of discrimination in Swaziland against LGBTI people; however, statistics are difficult to come by. The US Country report on Human Rights Practices in Swaziland suggests that this is a consequence of social attitudes, and the risks presented in coming out which include eviction and exclusion from one's home and community.¹¹ - 15 March 2015: A woman was reportedly murdered by a man in a bar in the southern town of Nhlngano after being identified as a lesbian.¹² - 27 November 2013: One report claimed that less than 10% of the LGBTI community who responded to a survey, had talked about their sexual orientation with a person from outside of their immediate family.¹³ - 9 September 2013: A gay man was attacked after being discovered having sex in a toilet. The man was 'inspected' to determine his gender, while the other man managed to flee. Speaking on the inspection, one witness commented: <i>'We discovered that he is a man and nothing strange from him.'</i>¹⁴ - August 2013: Two young men, aged 18 and 21, were forced to leave a community in Swaziland after a relative reported them to the police for being gay.¹⁵
Legislative News	<ul style="list-style-type: none"> - 2012: (UPR) Swaziland rejected recommendations to decriminalise consensual same-sex sexual relations, actively prevent discrimination against such couples and to prevent discrimination based on marital status.¹⁶ In response to calls to decriminalise in its Universal Period Review, Minister of Justice and Constitutional Affairs, Magwagwa Gamedze said: <i>'It was difficult for government to formulate a policy on homosexuals or enact a law to recognise them...Their numbers do not permit us to start processing a policy.'</i>¹⁷

¹ See: UN Human Rights Council, *Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1* (22 July 2011), UN Doc A/HRC/WG.6/12/SWZ/3, para 42.

² Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Swaziland* (US Department of State 2014)
<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236412>> accessed on 5 August 2015

³ All Africa, *Swaziland: Community Police Banish Gay Men* (All Africa 18 August 2013)

<<http://allafrica.com/stories/201308190439.html>> accessed on 19 July 2014

⁴ Teetee Zwane, *No legislation against lesbianism* (Swazi Observer 12 July 2015)

<<http://www.observer.org.sz/news/74449-%E2%80%98no-legislation-against-lesbianism%E2%80%99.html>> accessed on 24 September 2015

⁵ Ibid

⁶ Welcome Dlamini, *Govt to decide on gay relationships* (Swazi Observer 2 March 2014)

<<http://www.observer.org.sz/news/59355-govt-to-decide-on-gay-relationships.html>> accessed on 19 July 2014

⁷ Peter Kenworthy, *We are not victims, says Swaziland's gay movement*, (Pambazuka 27 November 2013)

<<http://pambazuka.org/en/category/comment/89759>> accessed on 19 July 2014

⁸ Sibusiso Zwane, *Teachers Urged to Support Gays, Lesbians* (Times of Swaziland 11 December 2013)
<<http://www.times.co.sz/news/94123-teachers-urged-to-support-gays-lesbians.html>> accessed on 19 July 2014

⁹ Teetee Zwane, *No legislation against lesbianism* (Swazi Observer 12 July 2015)
<<http://www.observer.org.sz/news/74449-%E2%80%98no-legislation-against-lesbianism%E2%80%99.html>>
accessed on 24 September 2015

¹⁰ IRIN News, *SWAZILAND: Reaching out to gays for the first time* (12 February 2012)
<<http://www.irinnews.org/report/94857/swaziland-reaching-out-to-gays-for-the-first-time>> accessed on 19 July 2014

¹¹ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2013: Swaziland* (US Department of State 2013)
<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220167>> accessed on 19 July 2014

¹² Joe Morgan, *Gay woman axed to death in Swaziland* (Gay Star News 24 March 2015)
<<http://www.gaystarnews.com/article/gay-woman-axed-death-swaziland240315/>>

¹³ Peter Kenworthy, *We are not victims, says Swaziland's gay movement* (Stiff Kitten 21 November 2013)
<<http://stiffkitten.wordpress.com/2013/11/21/we-are-not-victims-says-swazilands-gay-movement/>> accessed on 19 July 2014

¹⁴ Sabelo Mazibuko, *Gay man assaulted for sodomy* (Times of Swaziland 9 September 2013)
<<http://www.times.co.sz/news/91173-gay-man-assaulted-for-sodomy.html>> accessed on 19 July 2014

¹⁵ Sisho Magagula, *Evicted for being gay* (Times of Swaziland 17 August 2013)
<<http://www.times.co.sz/news/90485-evicted-for-being-gay.html>>

¹⁶ UNHRC, *Report of the Working Group on the Universal Periodic Review* (12 December 2011) UN Doc A/HRC/19/6

¹⁷ Welcome Dlamini, *Govt to decide on gay relationships* (Swazi Observer 2 March 2014)
<<http://www.observer.org.sz/news/59355-govt-to-decide-on-gay-relationships.html>> accessed on 19 July 2014

	Tanzania	
<p>National Law:</p> <p><i>Penal Code Act 1945, Chapter XV (“Offences Against Morality”) (as amended by the <i>Sexual Offences Special Provisions Act, 1998</i>)¹</i></p> <ul style="list-style-type: none"> - S138A: Acts of Gross Indecency between Persons² - S154: Unnatural Offences³ - S155: Attempt to Commit Unnatural Offences⁴ - S157: Indecent practices between males⁵ <p><i>Zanzibar’s Penal Decree Act No.6 of 2004 (as amended by The Penal Decree (Amendment) Act No.6 of 2004)</i>⁶</p> <ul style="list-style-type: none"> - S150: Unnatural Offences⁷ - S151: Attempt to Commit Unnatural Offences⁸ - S153: Acts of Lesbianism⁹ - S154: Acts of Gross Indecency between Persons¹⁰ 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - 1-5 years’ imprisonment or fine of 100,000-300,000 shillings - 30 years’ imprisonment - 20 years’ imprisonment - 1-5 years’ imprisonment or fine not less than 100,000-300,000 shillings - 14 years’ imprisonment - 7 years’ imprisonment - 5 years’ imprisonment or a fine not exceeding 500,000 shillings - 5 years’ imprisonment or to a fine not exceeding 200,000 shillings 	<p><u>Treaty Ratification</u></p> <p>AFRICAN CHARTER</p> <p>CEDAW</p> <p>CEDAW OP</p> <p>CRC</p> <p>ICCPR</p> <p>ICESCR</p>
Both male and female same-sex sexual acts are criminalised		
Enforcement	<ul style="list-style-type: none"> - A number of reports suggest that the law has not been used to prosecute in recent years. However, there have been reported instances of arrests. - January 2015: Police in Tanzania arrested a trans man and his female partner on suspicion of violating the Tanzanian law against same-sex intimacy.¹¹ - 2014: The US Human Rights Country Report noted that in the past courts charged individuals suspected of same-sex sexual conduct with loitering or prostitution.¹² 	

	<ul style="list-style-type: none"> - 2013: According to a 2013 Human Rights Watch report, arrests of LGBT persons rarely led to prosecutions; usually they were a pretext for police to collect bribes or coerce sex from vulnerable individuals.¹³ - 2011: Prison visits by the Commission for Human Rights and Good Governance (Tanzania) (CHRAGG) from 2011 revealed that “unnatural offenses” were among the most common reasons for pretrial detention of minors.¹⁴ - 2009: In 2009 the International Gay and Lesbian Human Rights Commission reported one case involving 39 arrests of LGBTI activists under section 176(a) of the Penal Code for “<i>operating as commercial sex workers</i>”. According to the report they were detained for two weeks.¹⁵
<p>Statements by Public Figures</p>	<ul style="list-style-type: none"> - April 2015: The LGBT Voice has urged the Tanzanian Government to withdraw the proposed anti-LGBTI bill (The Bill to Prohibit and Control any form of Sexual Relations between Persons of the Same Sex, 2014) from the parliament immediately.¹⁶ - 17 March 2014: Bernard Mbembe, the Foreign Minister for Tanzania, spoke to the Commonwealth about gay rights in Africa. He was quoted as saying: <i>‘I think the Commonwealth will be hearing me say that any imposed Western cultural norm on the African continent or elsewhere is more likely to lack legitimacy and acceptance. Unless this matter is taken carefully and people become so sensitive when imposing such cultural differences and norms, we may not end up well in the continent when it comes to the debate on LGBTI.’</i>¹⁷ - 29 March 2014: (See the statements of one MP’s plans to introduce a further anti-gay law below) - February 2014: When asked whether it’s time to stop criminalising people who are in consensual relationships, President Kikwete told Amanpour from CNN it will <i>‘take time for our people to accept the norms that the west is accepting.’</i> And when pressed on whether he wants to see that happen, he told Amanpour <i>‘I cannot say that now.’</i>¹⁸ - 11 Nov 2011: Tanzanian Prime Minister Mizengo Pinda, when pressed on the issue of gay rights, said: <i>‘You are not being fair to me as the government has already made its stand clear on the matter... but since you want to get my opinion, I would like to say that homosexuality is unacceptable to our society.’</i>¹⁹
<p>Persecution and Discrimination</p>	<ul style="list-style-type: none"> - October 2014: A report by LGBT Voice, a Tanzanian LGBT advocacy organisation established in 2009, found that <i>‘LGBT persons in Tanzania continually face stigma and discrimination, harassment and arbitrary arrests, alienation from family and faith, lack of access to social services including health, justice, housing, education and dignified livelihoods.’</i>²⁰ - Reports of persecution and discrimination are widespread in Tanzania. A 2013 Human Rights Watch report noted a number of instances of persecution in a number of different areas: <i>‘arrests, violence, and harassment of LGBTI people are common, particularly for MSM. Examples of discrimination in housing, education and employment have been reported and affect lesbians and bisexual women as well as gay and bisexual men.’</i> Access to medical aid also proved a problem. The report details the case of one man in 2012 who was refused medical treatment from a doctor in Zanzibar on the basis of his sexuality.²¹

	<ul style="list-style-type: none"> - 2010: One man reported being raped by police. The gay man, who occasionally was forced to work as a sex worker, was looking for clients on the street when he was arrested by a police officer. He was forced at gunpoint to ring and invite 5 of his gay friends to join him and upon arriving they were also arrested. The man's mother paid his bail by taking out money from a money-lender. Speaking on the incident, the man recalled: <i>'When I remember that situation, I want to cry.'</i>²²
Legislative News	<ul style="list-style-type: none"> - April 2015: Tanzania postponed a referendum on the new constitution after delays in registering voters.²³ Tanzania embarked on a constitutional review process in 2011. The Constitutional Review Act of 2011 was enacted to provide a regulatory framework for the process.²⁴ As part of that process, a referendum was due to held in April 2015 to approve the new Constitution. There had been much tension surrounding the new constitution, with the main opposition parties rejecting it. The new draft Constitution improves the coverage of human rights but makes no specific reference to sexual orientation as prohibited ground of discrimination.²⁵ - 29 March 2014: Tanzanian MP Exekiel Wenje gave notice to Parliament of his intention to draft a Bill similar to those enacted in Nigeria and Uganda to criminalise further consensual same-sex sexual conduct. In an interview with <i>The East African</i>, Wenje said <i>'we should not care about aid, we should care about our values and the future of the country.'</i>²⁶ - 24 March 2015: Voted in favour of a failed Russian draft decision at the UN General Assembly's Fifth Committee (Administrative and Budgetary) that would have had the Secretary-General withdraw his bulletin laying UN staff benefits for same-sex couples.²⁷ - (UPR 2012) Tanzania rejected recommendations to remove penal provisions which criminalise consensual same-sex sexual conduct. Similarly the country rejected recommendations to take active measures to protect LGBTI people from discrimination.²⁸ The Tanzanian delegation noted that the practice of homosexuality went against the country's traditional, cultural and religious rights.²⁹

¹ The law is : www.lrct.go.tz/download/updated-acts-tanzania/PENAL.pdf

² Penal Code Act 1945, s138A: *'Any person who, in public or private commits, or is party to the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person, commits an offence and is liable on conviction to imprisonment for a term of not less than one year and not exceeding five years or to a fine not less than one hundred thousand shillings and not exceeding three hundred thousand shillings; save that where the offence is committed by a person of eighteen years of age or more in respect of any person under eighteen years of age, a pupil of a primary school or a student of a secondary school the offender shall be liable on conviction to imprisonment for a term not less than ten years, with corporal punishment, and shall also be ordered to pay compensation of an amount determined by the court to the person in respect of whom the offence was committed for any injuries caused to that person.'*

³ Penal Code Act 1945, s154: *'(1) Any person who- (a) has carnal knowledge of any person against the order of nature; or (b) has carnal knowledge of an animal; or (c) permits a male person to have carnal knowledge of him or her against the order of nature, commits an offence, and is liable to imprisonment for life and in any case to imprisonment for a term of not less than thirty years. (2) Where the offence under subsection (1) of this section is committed to a child under the age of ten years the offender shall be sentenced to life imprisonment.'*

⁴ Penal Code Act 1945, s155: *'Any person who attempts to commit any of the offences specified under section 154 commits an offence and shall on conviction be sentenced to imprisonment for a term of not less than twenty years.'*

⁵ Penal Code Act 1945, s157: *'Any male person who, whether in public or private, commits any act of gross indecency with another male person or procures another male person to commit any act of gross indecency with*

him, or attempts to procure the commission of any such act by any male person, with himself or with another male person, whether in public or private, commits an offence and is liable to imprisonment for five years.'

⁶ As a semi-autonomous legal system within Tanzania, Zanzibar has its own penal code. The Penal Decree Act and Amendment are :

http://www.africanchildforum.org/clar/Legislation%20Per%20Country/Tanzania/zanzibar_penal_2004_en.pdf;

and

[http://www.judiciaryzanzibar.go.tz/essential%20_satutes/The%20Penal%20Decree\(Amendment\)%20ACT%20%20NO.6%20%202004%20%20.pdf](http://www.judiciaryzanzibar.go.tz/essential%20_satutes/The%20Penal%20Decree(Amendment)%20ACT%20%20NO.6%20%202004%20%20.pdf)

⁷ Penal Decree Act No.6 of 2004, s.150: 'Any person who: (a) has carnal knowledge of any person against the order of nature; (b) has carnal knowledge of an animal; or (c) permits a male person to have carnal knowledge of him or her against the order of nature; is guilty of a felony, and is liable to imprisonment for a term not exceeding fourteen years.'

⁸ Penal Decree Act No.6 of 2004, s.151: 'Any person who attempts to commit any of the offences specified in sections 150 is guilty of a felony, and is liable to imprisonment for a term not exceeding seven years.'

⁹ Penal Decree Act No.6 of 2004, s.153: 'Any woman who commits an act of lesbianism with another woman whether taking an active or passive role shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding five hundred thousand shillings.'

¹⁰ Penal Decree Act No.6 of 2004, s.154: 'Any person who, in public or private commits, or is a party to the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person, is guilty of an offence and liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding two hundred thousand shillings; save that where the offence is committed by a person of eighteen years of age or more in respect of any person under eighteen years of age, the offender shall be liable on conviction to imprisonment for a term not less than ten years, with corporal punishment, and shall also be ordered to pay compensation of an amount determined by the court to the person in respect of whom the offence was committed for any injuries physical or psychological caused to that person.'

¹¹ Colin Stewart, *Tanzania: Trans man, wife arrested on gay-sex charges* (Erasing 76 Crimes 30 January 2015) <<http://76crimes.com/2015/01/30/tanzania-trans-man-wife-arrested-on-gay-sex-charges/>> accessed on 25 September 2015

¹² Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Tanzania* (US State Department, 2014)

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236414>> accessed on 8 September 2015

¹³ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Tanzania*, (US State Department, 2014) <

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236414>> accessed on 8 September 2015

¹⁴ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Tanzania* (US State Department, 2014)

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236414>> accessed on 8 September 2015

¹⁵ IGLHRC, *Tanzania: Arbitrary Arrests and Detentions of Gay and Lesbian Activists* (30 October 2009)

<<https://iglhrc.org/content/tanzania-arbitrary-arrests-and-detentions-gay-and-lesbian-activists>> accessed on 19 July 2014

¹⁶ LGBT Voice Tanzania, *LGBT Voice urges the government to withdraw the proposed bill* (1 April 2015)

<<http://lgbtvoicetz.org/blog/>> accessed on 8 September 2015

¹⁷ Andrew Potts, *Tanzania Foreign Minister advises Commonwealth to move slow on gay rights in Africa* (Gay Star News 17 March 2014) <<http://www.gaystarnews.com/article/tanzania-foreign-minister-advises-commonwealth-move-slow-gay-rights-africa170314>> accessed on 19 July 2014

¹⁸ Amanpour, *Tanzania's Blood Ivory: "This is madness now"* (CNN, 13 February 2014)

<<http://amanpour.blogs.cnn.com/2014/02/13/tanzanias-blood-ivory-this-is-madness-now/>> accessed on 8 September 2015

¹⁹ Pinda says homosexuality not human, *Felister Peter* (IPP Media 11 November 2011)

<<http://www.ippmedia.com/frontend/index.php?l=35293>> accessed on 19 July 2014

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- ²⁰ James Wandera, *The Real Situation of Lesbian, Gay, Bisexual and Transgender Individuals and Activists in Tanzania* (LGBT Voice, 5 October 2014) <<http://lgbtvoicetz.org/the-real-situation-of-lesbian-gay-bisexual-and-transgender-individuals-and-activists-in-tanzania/>> accessed on 25 September 2015
- ²¹ Human Rights Watch, *'Treat Us Like Human Beings': Discrimination against Sex Workers, Sexual and Gender Minorities, and People Who Use Drugs in Tanzania* (Human Rights Watch June 2013) <<http://www.hrw.org/sites/default/files/reports/tanzania0613webwcover.pdf>> accessed on 19 July 2014 at 26
- ²² Neela Ghoshal, *Africa's Small Steps Toward LGBTI Equality* (Human Rights Watch 17 July 2013) <<http://www.hrw.org/news/2013/07/17/africas-small-steps-toward-lgbti-equality>> accessed on 19 July 2014
- ²³ Reuters, *Tanzania postpones referendum on constitution*, (2 April 2015) <<http://www.reuters.com/article/2015/04/02/us-tanzania-politics-idUSKBN0MT21U20150402>> accessed on 9 April 2015
- ²⁴ For more information on the constitution review process please see: <http://www.constitutionnet.org/news/making-new-constitution-tanzania-challenges-and-opportunities>
- ²⁵ A copy and translation of the draft Constitution from September 2014 is : http://www.constitutionnet.org/files/the_proposed_constitution_of_tanzania_sept_2014.pdf
- ²⁶ Emmanuel Muga, *Dar plans to introduce tougher anti-gay Bill* (The East African, 29 March 2014) <<http://www.theeastafrican.co.ke/news/Dar-plans-to-introduce-tougher-anti-gay-Bill--/-/2558/2262374/-/iq7xix/-/index.html>>
- ²⁷ Michael K. Lavers, *Bid to block spousal benefits for gay U.N. employees fails* (Washington Blade 24 March 2015) <<https://www.washingtonblade.com/2015/03/24/bid-to-block-spousal-benefits-for-gay-u-n-employees-fails/>> accessed 25 October 2015
- ²⁸ UNHRC, *Report of the Working Group on the Universal Periodic Review*, (8 December 2011) UN Doc A/HRC/19/4, para. 87
- ²⁹ UNHRC, *Report of the Working Group on the Universal Periodic Review*, (8 December 2011) UN Doc A/HRC/19/4, para. 84

	Tonga	
<p>National Law:</p> <p>The <i>Laws of Tonga, Criminal Offences</i> Chapter 18, 1988 Edition¹</p> <ul style="list-style-type: none"> - S136: Sodomy and Bestiality² - S138: Indecent Assault on a Male³ - S139: Attempted Sodomy or Indecent Assault upon a Male⁴ 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - 10 years' imprisonment, with or without whipping - 2 years' imprisonment⁵ - 10 years' imprisonment 	<p><u>Treaty Ratification</u></p> <p>CRC</p>
<p>The law is applicable only to men.</p>		
<p>Enforcement</p>	<ul style="list-style-type: none"> - 2014: The US Country Report for 2014 indicates that there have been no recent prosecutions under laws which criminalise consensual same-sex sexual conduct.⁶ - 2013: (UPR) Tonga stated in its most recent Universal Periodic Review: <i>"Tonga however wishes to record that it has not yet prosecuted any same sex adults for committing the act of sodomy, and so far, the criminal prosecutions for sodomy have only been restricted in the context of criminal offending, rather than against consensual same sex partners."</i>⁷ 	
<p>Statements by Public Figures</p>	<ul style="list-style-type: none"> - 5 August 2015: The United Nations launched a Pacific campaign against homophobia and transphobia.⁸ The initiative is a spin-off of the global United Nations Free & Equal Campaign led by the UN Human Rights Office. The launch event was attended by government representatives from Tonga. - May 2015: The Pacific Sexual Diversity Network's Isikeli Vulavou says a conference in Tonga has brought together 70 regional representatives from the Lesbian-Gay-Transgender-Bisexual community for the first time. Mr Vulavou says people are becoming more accepting.⁹ <p><i>"In Polynesia, they have been accepting of transgender like the fa'afafine, akava'ine and the Tongan leitisi for years and for like other regions like Meleanesia there is change that is observed where we are seeing increased community acceptance to persons of diverse sexual orientation and gender identity."</i></p> <p>Mr Vulavou says the opening of the conference by the Deputy Prime Minister of Tonga, Hon Siaso Sovaleni, and the attendance of a member of the royal family shows the positive reception the group received from the local authorities.</p>	
<p>Persecution and Discrimination</p>	<ul style="list-style-type: none"> - May 2015: Outside a conference on Sexual Diversity and Orientation in the Pacific held in Tonga, a group of protesters held up a banner which read: <i>"Go back to your country with your immorality, Tonga do not want you evil people."</i>¹⁰ - 2014: The 2014 United States Country report indicates that no instances of persecution or discrimination on the basis of sexual orientation could be found, although, the report adds that this may be attributable to social stigma leading to 	

	underreporting. ¹¹
Legislative News	<ul style="list-style-type: none"> - May 2015: A historic conference on Sexual Diversity and Orientation in the Pacific held in Tonga, opened by the Deputy Prime Minister of Tonga and attended by a member of the royal family, was aimed at discussing issues and human rights legislation.¹² - April 2015: Tonga's Chief Executive of Internal Affairs Lopeti Senituli said the government planned to amend the country's Deaths, Births and Marriages Registration Act to explicitly prohibit same sex marriage. This move came in response to concerns raised by some community and church leaders that Tonga's planned ratification of CEDAW may oblige Tonga to legalise same-sex marriage.¹³ - 2013: (UPR) Rejected recommendations to decriminalise sexual activity between consenting adults during two cycles. The Tongan delegation stated during the 2013 review that: <i>"The decriminalisation of consensual sex between same sex adults is an issue that Tonga still wishes to consider further, through robust and comprehensive dialogue with a vast group of stakeholders."</i>¹⁴

¹ The law is : www.paclii.org/to/legis/consol_act/co136/

² *Criminal Offences Act 1988, s.136: "Whoever shall be convicted of the crime of sodomy with another person or bestiality with any animal shall be liable at the discretion of the Court to be imprisoned for any period not exceeding ten years and such animal shall be killed by a public officer."*

³ *Criminal Offences Act 1988, s.138: "It is an offence for a person to make an indecent assault on a man."*

⁴ *Criminal Offences Act 1988, s.139: "Whoever shall attempt to commit the said abominable crime of sodomy or shall be guilty of an assault with intent to commit the same or of any indecent assault upon any male person shall be liable at the direction of the Court to imprisonment for any term not exceeding 10 years."*

⁵ For the term imprisonment for the crime of indecent assault see section 124, *Laws of Tonga, Criminal Offences* [Cap 18] 1988 Edition

⁶ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Tonga* (US Department of State 2014)

<<http://www.state.gov/i/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236484>> accessed on 5 August 2015

⁷ UNHRC, *Report of the Working Group on the Universal Periodic Review* (3 June 2013) UN Doc A/HRC/23/4/Add.1, para. 9

⁸ United Nations Office of the High Commissioner for Human Rights, *United Nations launches Pacific campaign against homophobia and transphobia* (6 August 2015)

<<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16298&LangID=E>> accessed on 25 September 2015

⁹ Radio New Zealand, *Conference head says more acceptance of LGTB in Pacific* (15 May 2015)

<<http://www.radionz.co.nz/international/pacific-news/273746/conference-head-says-more-acceptance-of-lgtb-in-pacific>> accessed on 25 September 2015

¹⁰ Kalino Latu, *Uproar after gay activists told to leave Tonga because they are immoral and evil* (New Zealand Kaniva Pacific 13 May 2015) <http://www.nzkanivapacific.co.nz/2015/05/uproar-after-gay-activists-told-to-leave-tonga-because-they-are-immoral-and-evil/#.VclxD_IViko> accessed on 25 September 2015

¹¹ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2013: Tonga* (US Department of State 2014)

¹² Ibid n 3.

¹³ Radio New Zealand, *Tonga to ban same sex marriage for CEDAW* (21 April 2015) <<http://www.radionz.co.nz/international/pacific-news/271672/tonga-to-ban-same-sex-marriage-for-cedaw>> accessed on 25 September 2015

¹⁴ UNHRC, *Report of the Working Group on the Universal Periodic Review* (3 June 2013) UN Doc A/HRC/23/4/Add.1, para. 9

 Trinidad and Tobago		
National Law: <i>Sexual Offences Act 1986 (Consolidated Version 2000)</i> ¹ <ul style="list-style-type: none"> - S13: Buggery² - S16: Serious Indecency³ 	Maximum Penalties: <ul style="list-style-type: none"> - 25 years' imprisonment - 5 years' imprisonment 	<u>Treaty Ratification</u> ACHR CEDAW CRC ICCPR ICESCR
Section 13 is applicable only to men, whilst Section 16 is equally applicable to both men and women.		
Enforcement	<ul style="list-style-type: none"> - 2014: The 2014 US Report on Human Rights Practices in Trinidad and Tobago suggested that the laws are not currently enforced, <i>'except in conjunction with more serious offenses such as rape.'</i>⁴ The report further noted that the Trinidad and Tobago's immigration laws preventing the entry of 'homosexuals' were not enforced during 2014. - August 2011: Amnesty International's submission to the UN Universal Periodic Review of Trinidad and Tobago suggested that the laws were not, at the time of the submission, enforced.⁵ 	
Statements by Public Figures	<ul style="list-style-type: none"> - 7 September 2015: In the general election in Trinidad and Tobago, the opposition People's National Movement (PNM) claimed victory with 52% of the vote. During the election campaign, leader of the PNM Keith Rowley - now Prime Minister of Trinidad and Tobago - stated that while his party's manifesto did not address LGBT issues, <i>"it is the view of the PNM that all citizens of Trinidad and Tobago should enjoy the protection of the Constitution"</i>.⁶ - 31 August 2015: The Silver Lining Foundation (SLF)⁷ has condemned an apparent rise in the use of homophobic phrases on the 2015 general election campaign trail. In a statement, the SLF said <i>'The foundation is calling all parties and candidates contesting this year's general election, and their supporters, to refrain from using discrimination as a cheap political plot against the lesbian, gay, bisexual, transgender and intersexed (LGBTI) community to garner political support and votes.'</i>⁸ - August 2015: Ahead of the elections in Trinidad and Tobago in September, LGBTI group Allies for Justice and Equality published a 12-point manifesto called <i>'Initiatives to Improve LGBTI Lives - 12 Options for National Decision Makers.'</i>⁹ The advocacy group is calling on the nation's leaders to address what it says are critical areas affecting members of the LGBTI community. Colin Robinson, executive director of CAISO (Trinidad & Tobago's Coalition Advocating for Inclusion of Sexual Orientation), said <i>'This government has said that our sodomy laws are not enforced but the Director of Public Prosecutions can make that moratorium formal because clearly we know they offend human rights commitments that we have with other nations, treaties that we've signed...One of the things we also highlight in the document is a law that came in to effect on the 18th of May, provisions of the Children's Act (2012), now criminalise with life</i> 	

*sentences, two young persons of the same sex engaging in sexual exploration.'*¹⁰ Robinson added *'There are some bold steps that we think are very attainable and that is the President and the leaders of the Opposition and the Prime Minister appointing people capable of representing that part of national diversity.'*

- **August 2015:** Leaders of two opposition parties, the People's National Movement (PNM) or the Independent Liberal Party (ILP), have indicated that if either of them wins the elections scheduled for September 2015, the issue of LGBT rights will be on the agenda.¹¹ Responding to questions at his party's manifesto's launch, Dr. Keith Rowley, PNM leader, said that while the document did not address same-sex marriage, changing the country's homosexuality laws - or the decriminalization of marijuana, for that matter - those controversial issues would not be ignored under a PNM government.
- **July 2015:** The head of the Law Association of Trinidad and Tobago, Dominican born Reginald T.A Armour, said that the recent ruling by the US Supreme Court with respect to same-sex marriage could have implications for islands in the Caribbean. *'How will it impact on us in the Caribbean? It will impact on us in the Caribbean only to the extent that it is a persuasive authority, and the day might come when someone will invoke the equality of treatment provisions of our constitutions which are guaranteed by all of our constitutions and to say that all gender, all rights are to be treated equally and fairly and not to be discriminated against,'* he said.¹²
- **June 2015:** Trinidad & Tobago born United States Superior Court Judge, Helen Whitener, urged the removal of laws that discriminate against LGBT people during a speaking event being held at the University of West Indies. St Augustine. She said *'The time has come. Break down these laws.'*¹³ During the event, Judge Whitener also spoke of her own experience of overcoming intolerance due to being a lesbian.
- **April 2015:** The President of the Inter-Religious Organization of Trinidad & Tobago, Harrypersad Maharaj, said he supported a trans woman's right to stand in the Trinidadian elections.¹⁴
- **September 2014:** Prime Minister Persad-Bissessar stated Trinidad & Tobago was not ready to decriminalise homosexuality, stating, *'[decriminalisation] is a very touchy, a very sensitive issue... there's no consensus.'*¹⁵
- **May 2014:** Maurice Tomlinson, a Jamaican gay rights activist, was granted leave by the Caribbean Court of Justice to challenge immigration laws in Belize and Trinidad & Tobago which discriminate on the grounds of sexual orientation.
- **13 February 2014:** Speaking at the launch of a programme, *'Integrating Gender-based Violence Services with Sexual and Reproductive Health Services for Young People,'* head of Victims and Witness Support of the police service, Margaret Sampson-Browne, called for police to do more when LGBTI complaints of violence are brought: *'Violence is violence perpetrated by anybody. Whether it is same sex, opposite sex, adults or children we have to deal with it and leave all the emotions behind... We need to train our investigators to address situations like that so that people can feel comfortable knowing that they exist in a domestic-violence situation and they could come to the police and get a response.'*¹⁶
- **18 May 2013:** After embarking on a consultation process in late 2012 on a national policy on gender and development, the Minister of Gender, Youth and Child Development, Marlene Coudray, stated she had *'convened a meeting with*

	<p><i>faith-based organisations'</i> and they would not support the policy in its original form: <i>'there is nothing in (it) that speaks to any gay rights. There were rumours all over the place that certain things are in the draft that are not...The draft policy is before Cabinet and those issues were not part of it, so they are not likely to come up to affect the policy at all at this stage.'</i>¹⁷</p> <ul style="list-style-type: none"> - December 2012: Prime Minister Kamla Persad Bissessar was reported to have written a letter pledging to end discrimination against LGBTI people in the Sexual Offences Act and signalling her intention to devise a new gender policy. In the letter she notes that <i>'stigmatisation of homosexuality in T&T is a matter which must be addressed on the grounds of human rights and dignity to which every individual is entitled under international law.'</i>¹⁸
Persecution and Discrimination	<ul style="list-style-type: none"> - October 2014: In a poll of 1,176 people in Trinidad and Tobago commissioned by UNAIDS, 78% said that it was not acceptable for people to be treated differently on the basis of sexual orientation and 64% said violence against sexual minorities is discrimination.¹⁹ - 26 June 2014: Akil Thomas, a 26-year-old man who was stabbed multiple times and robbed by masked men, stated his belief that the attack was carried out because of his sexuality.²⁰ - 13 February 2014 Head of Victims and Witness Support of the police service, Margaret Sampson-Browne (see above) reported that only two complaints were brought in 2013.²¹ - 17 May 2013: A poll of 1,000 people conducted by a national newspaper found that over 50% of the population supported, or were tolerant of gay people. According to the poll, 36% of people polled as homophobic. This stands in contrast to a 2011 report which indicated 49% of people were totally unsupportive of gay rights and a further 20% unsupportive.²² - 2013: Few studies on persecution and discrimination exist, however individual reports of violence and intimidation can be found. The 2013 US country report suggests <i>'a reluctance to report crimes to police due to fear of harassment by police and court officials'</i>²³
Legislative News	<ul style="list-style-type: none"> - May 2015: On 18 May 2015, the Children's Act No. 12 of 2012 was proclaimed.²⁴ This new children's protection legislation was enacted by Parliament in 2012 and, among other things, repealed the buggery and serious indecency provisions of the Sexual Offences Act that refer to minors as offenders and victims.²⁵ These provisions were replaced with a substantially revised regime of sexual offences against persons under 18 (with generally harsher penalties), and at the same time exemptions from criminalisation were put in place for young persons between 12 to 20 years where there is non-coercive sexual touching or penetration with someone within two or three years of their age, <u>except if they are of the same sex</u>. Same-sex sexuality between young people (paragraphs (20)(1)(c), 20(2)(c) and 20(3)(c) of the Act) is made subject to the new, enhanced penalty of life imprisonment for genital touching or penetration of a person under 18. According to reports, the independent senate bench opposed the provisions and the Attorney General was apparently prepared to revisit the legislation, but opposition support was not forthcoming. In response to the new children's legislation, the CSO network, Justice Diversity, have called on the cabinet and the Attorney General to introduce an amendment to the legislation. Failing that, the organisation has pledged to bring a constitutional

challenge to the provisions of the Children's Act.²⁶

- **5 June 2014:** The country noted it could not join the consensus on the approval of an OAS resolution on sexual orientation.²⁷

- **2012:** (UPR) Trinidad and Tobago accepted a number of recommendations regarding discrimination and sexuality, however, the country did not expressly accept the recommendations to remove the criminalisation of consensual same sex relations between adults: *'The Government seeks to recognise the human rights of all citizens, which includes the Lesbian, Gay, Bi-Sexual and Transgendered (LGBT) community. The development of law is a dynamic process which adapts to the development of any given society. The issue of discrimination based on sexual orientation is one which remains a matter of concern in the forefront of the minds of the GOTT [Government of Trinidad and Tobago]. Trinidad and Tobago is seen as a leader in the region in relation to the manner in which it addresses the changing needs of its population. While this issue may be the subject of much public debate it is not one which will be ignored. The law must evolve and grow to suit the needs of a continually developing society. In that regard, in recent debates on the Statutory Authorities (Amendment) Bill, 2010 in Parliament, the GOTT recognised the need for a definitive debate on the protection of same sex couples.*

In relation to incidents of violence against a member of the LGBT community, Section 4 of the Constitution enshrines fundamental rights and freedoms, namely, the right of the individual to life, liberty and security of the person. Every person has the right to equality before and protection of the law. A person also has the right to respect for his private and family life. The exercise of these rights is guaranteed free from discrimination based on race, origin, colour or sex.

*With particular reference to violence against the LGBT community, the definition of rape in the Sexual Offences Act, 1986 was amended by Act 31 of 2000 to reflect a gender neutral position with regard to the complainant and the victim. This amendment serves to include protection for victims of violent same sex activity.'*²⁸

- **2011:** The Data Protection Act provides limited protection from discrimination for sexual minorities, including sexual orientation as a form of sensitive information.²⁹

¹ The law is : http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/11.28.pdf

² *Sexual Offences Act 1986, s.13: '(1) A person who commits buggery is guilty of an offence and is liable on conviction to imprisonment- (a) if committed by an adult on a minor, for life; (b) if committed by an adult on another adult, for twenty-five years; (c) if committed by a minor, for five years. (2) In this section "buggery" means sexual intercourse per anum by a male person with a male person or by a male person with a female person.'*

³ *Sexual Offences Act 1986, s.16: '(1) A person who commits an act of serious indecency on or towards another is guilty of an offence and is liable on conviction to imprisonment... (b) if committed on or towards a person sixteen years of age or more for five years... (3) An act of "serious indecency" is an act, other than sexual intercourse (whether natural or unnatural), by a person involving the use of the genital organ for the purpose of arousing or gratifying sexual desire.'*

⁴ Bureau of Democracy and Human Rights, *Country report on human rights for 2014: Trinidad and Tobago* (June 2015) <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236720>>

- ⁵ Krystal Rambally, *Amnesty International to T&T Govt: Stop the hangings* (Guardian Trinidad and Tobago 22 August 2011) <<http://www.guardian.co.tt/news/2011/08/22/amnesty-international-tt-govt-stop-hangings>> accessed on 19 July 2014
- ⁶ PNM Party, *PNM Manifesto 2015* (20 August 2014) <<https://www.youtube.com/watch?v=OlvdwaiKELc>> accessed on 22 September 2015.
- ⁷ The Silver Lining Foundation is a youth led Non-Governmental Organization (NGO) acting to serve the interests of the youths of Trinidad & Tobago and the Caribbean region, as a whole. The organization primarily acts as a guardian body for marginalized youths seeking to prevent suicide and discrimination. The focus, while on bullying and discrimination, is centred on youth with regards to Lesbian, Gay, Bisexual and Transgender (LGBT) issues and those of Gender Identity & Expression.
- ⁸ Kim Boodram, *Parties warnes against using anti-gay slurs*, (Daily Express, 31 August 2015) <<http://www.trinidadexpress.com/20150831/news/parties-warned-against-using-anti-gay-slurs>> accessed on 1 September 2015
- ⁹ The entire manifesto document can be viewed here: <http://bit.ly/1K3SpsA>
- ¹⁰ LoopTT, *LGBTI group launches manifesto* (26 August 2015) <<http://www.looptt.com/content/lgbti-group-launches-manifesto>> accessed on 25 September 2015
- ¹¹ Caribbean 360, *Gay rights discussion on agenda of Trinidad opposition parties* (21 August 2015) <<http://www.caribbean360.com/news/gay-rights-discussion-on-agenda-of-trinidad-opposition-parties>> accessed on 26 August 2015
- ¹² Dominica News Online, *Attorney says US gay ruling could have implications for Caribbean islands* (26 July 2015) <<http://dominicanewsonline.com/news/homepage/news/crime-court-law/attorney-says-us-gay-ruling-could-have-implications-for-caribbean-islands/>> accessed on 26 August 2015
- ¹³ Sean Douglas, *TT-born US judge bats for gay rights* (Trinidad and Tobago Newsday 17 June 2015) <<http://www.newsday.co.tt/news/0,212800.html>> accessed on 26 August 2015
- ¹⁴ Caribbean New Media Group, *IRO head on Jowelle De Souza's candidacy* (30 April 2015) http://www.ctntworld.com/cnews2/index.php?option=com_content&view=article&id=14927:iro-head-on-jowelle-de-souza-s-candidacy&catid=137&Itemid=707> accessed on 25 September 2015
- ¹⁵ Aaron Day, *Trinidad and Tobago: Prime Minister says gay rights is 'not legally possible'* (Pink News 26 September 2014) <<http://www.pinknews.co.uk/2014/09/26/trinidad-and-tobago-prime-minister-says-gay-rights-is-not-legally-possible/>> accessed on 25 September 2015
- ¹⁶ Geisha Kowlessar, *LGBT community reporting more cases of violence* (Guardian Trinidad and Tobago 13 February 2013) <<http://www.guardian.co.tt/news/2014-02-13/lgbt-community-reporting-more-cases-violence>> accessed on 19 July 2014
- ¹⁷ Yvonne Baboolal, *Coudray: Gay rights out of proposed gender policy* (Guardian Trinidad and Tobago 18 May 2013) <<http://www.guardian.co.tt/news/2013-05-18/coudray-gay-rights-out-proposed-gender-policy>> accessed on 19 July 2014
- ¹⁸ Joshua Surtees, *Gay rights in spotlight at reform forum* (Guardian Trinidad and Tobago 12 February 2014) <<http://www.guardian.co.tt/news/2014-02-12/gay-rights-spotlight-reform-forum>> accessed on 19 July 2014
- ¹⁹ Corey Connelly, *Yes or no to gay rights?* (Trinidad and Tobago Newsday, 14 October 2014) <<http://www.newsday.co.tt/features/0,201616.html>> accessed on 25 September 2015
- ²⁰ Rhondor Dowlat, *Man survives hate crime* (Guardian Trinidad and Tobago 26 June 2014) <<http://www.guardian.co.tt/news/2014-06-26/man-survives-hate-crime>> accessed on 19 July 2014
- ²¹ Geisha Kowlessar, *LGBT community reporting more cases of violence* (Guardian Trinidad and Tobago 13 February 2013) <<http://www.guardian.co.tt/news/2014-02-13/lgbt-community-reporting-more-cases-violence>> accessed on 19 July 2014
- ²² Kim Boodram, *Poll: More than half the population accept gays* (Trinidad Express 16 May 2013) <<http://www.trinidadexpress.com/news/Poll-More-than-half-the-population-accept-gays-207814281.html>> accessed on 19 July 2014; Ministry of the People and Social Development Social Investigations Division, *Volume 2: Perceptions of Teenager Violence and Sexual Behaviours, Disability and Homosexuality* (Ansa McAL Psychological Research Centre 2011)
- ²³ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2013: Trinidad and Tobago* (US Department of State 2013) <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220475>> accessed on 19 July 2014

²⁴ Sections 1 to 59, 60(1), 60(2) 60(5), 61,62, 63, 65, 66,67, 68, 69,71, 74 to 123 and Schedule 1, Schedule 2 and Schedule 3 of the Act became operative on 18 May 2015. See:
http://www.ctntworld.com/cnews2/index.php?option=com_content&view=article&id=15201:proclamation-of-1-the-children-s-authority-act-chap-46-10-2-the-adoption-of-children-act-3-the-children-s-community-residences-foster-care-and-nurseries-act-4-the-children-s-act-no-12-2012&catid=137:c-news&Itemid=707

²⁵ The legislation is : <http://www.ttparliament.org/legislations/a2012-12.pdf>

²⁶ <https://justicediversitytt.wordpress.com/2015/08/14/v-legislation-%E2%80%A2-equal-protection/>

²⁷ OAS General Assembly, *Draft Resolution Human Rights, Sexual Orientation, and Gender Identity and Expression*, (5 June 2014) AG/CG/doc.12/14 rev. 1

²⁸ UNHRC,,*Report of the Working Group on the Universal Periodic Review: Trinidad and Tobago - Addendum*, A/HRC/19/7/Add.1, paras. 25-27 (1 March 2012)
<http://lib.ohchr.org/HRBodies/UPR/Documents/session12/TT/A_HRC_19_7_Add.1_TrinidadandTobago_E.doc>
accessed on 25 September 2015

²⁹ Act No. 13 of 2011, section 2, : <http://www.ttparliament.org/legislations/a2011-13.pdf>

	Tuvalu	
<p>National Law:</p> <p><i>Penal Code, Chapter 10.20, Revised Edition, 2008¹</i></p> <ul style="list-style-type: none"> - S153: Unnatural Offences² - S154: Attempts to Commit Unnatural Offences and Indecent Assault³ - S155: Indecent Practice Between Males⁴ 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - 14 years' imprisonment - 7 years' imprisonment - 5 years' imprisonment 	<p><u>Treaty Ratification</u></p> <p>CEDAW</p> <p>CRC</p>
The law is applicable only to men.		
Enforcement	<ul style="list-style-type: none"> - 2014: The 2014 US Human Rights Country Report documented that there have been no recent prosecutions under the country's anti-gay legal provisions.⁵ 	
Statements by Public Figures	<ul style="list-style-type: none"> - 5 August 2015: The United Nations launched a Pacific campaign against homophobia and transphobia.⁶ The initiative is a spin-off of the global United Nations Free & Equal Campaign led by the UN Human Rights Office. The launch event was attended by government representatives from Tuvalu. - July 2013: During Tuvalu's 2nd Cycle UPR, the Attorney General explained that Tuvalu was open to discussions surrounding sexual orientation and legislative changes.⁷ 	
Persecution and Discrimination	<ul style="list-style-type: none"> - 2014: The 2014 US Country Report found no instances of persecution or discrimination on the grounds of sexual orientation. The report does, however, add that "<i>social stigma or intimidation</i>" may lead to underreporting.⁸ 	
Legislative News	<ul style="list-style-type: none"> - 2013: (UPR) Tuvalu rejected recommendation to repeal buggery and gross indecency provisions.⁹ However, the Head of the Delegation, Ms. Eselealofa Apinelu, the Attorney General, stated that '<i>people with different sexual orientation did not suffer social discrimination but the question of legal protection in the law was controversial and would need to be carefully considered. Tuvalu was open to discussion.</i>'¹⁰ - 2011: Tuvalu signed the 2011 Human Rights Council Joint Statement (to end acts of violence based on Sexual Orientation and Gender Identity). - (UPR) Tuvalu rejected recommendations for the decriminalisation of consensual same-sex sexual activity between adults.¹¹ 	

¹ The law is : http://www.unodc.org/res/cld/document/tuv/1965/penal_code_html/Tuvalu_PenalCode.pdf

² *Penal Code (revised edition 2008) Chapter 10.20, s.153: 'Any person who - (a) commits buggery with another person or with an animal; or (b) permits a male person to commit buggery with him or her, shall be guilty of a felony, and shall be liable to imprisonment for 14 years.'*

³ *Penal Code (revised edition 2008) Chapter 10.20, s.154: 'Any person who attempts to commit any of the offences specified in the last preceding section, or who is guilty of any assault with intent to commit the same, or any indecent assault upon any male person shall be guilty of a felony, and shall be liable to imprisonment for 7 years.'*

⁴ *Penal Code (revised edition 2008) Chapter 10.20, s.155: 'Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, shall be guilty of a felony, and shall be liable to imprisonment for 5 years.'*

⁵ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Tuvalu* (US Department of State 2014)

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236486>> accessed on 6 August 2015

⁶ United Nations Office of the High Commissioner for Human Rights, *United Nations launches Pacific campaign against homophobia and transphobia* (6 August 2015)

<<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16298&LangID=E>> accessed on 25 September 2015

⁷ UNHRC, *Report of the Working Group on the Universal Periodic Review* (5 July 2013) UN Doc A/HRC/24/8, para. 17

⁸ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Tuvalu* (US Department of State 2014)

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236486>> accessed on 6 August 2015

⁹ UNHRC, *Report of the Working Group on the Universal Periodic Review* (5 July 2013) UN Doc A/HRC/24/8

¹⁰ UNHRC, *Report of the Working Group on the Universal Periodic Review* (5 July 2013) UN Doc A/HRC/24/8, para. 17

¹¹ UNHRC, *Report of the Working Group on the Universal Periodic Review*, A/HRC/10/84, para. 69 (9 January 2009) <http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/TV/A_HRC_10_84_Tuvalu_E.pdf> accessed on 25 September 2015

	Uganda	
<p>National Law:</p> <p><i>Penal Code Act 1950</i>¹</p> <ul style="list-style-type: none"> - S145: Unnatural offences² - S146: Attempt to Commit Unnatural Offences³ - S148: Indecent Practices⁴ 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - Life Imprisonment - 7 years' imprisonment - 7 years' imprisonment 	<p><u>Treaty Ratification</u></p> <p>AFRICAN CHARTER</p> <p>CAT</p> <p>CEDAW</p> <p>CRC</p> <p>ICCPR</p> <p>ICCPR OP</p> <p>ICESCR</p>
<p>The law is applicable to both men and women.</p>		
<p>Enforcement</p>	<ul style="list-style-type: none"> - Few cases have been taken to judgment. However, arrests are ongoing and prosecutions commenced and increased with the passage in Parliament of the Anti-Homosexuality Act, which was signed into law in February 2014 but declared 'null and void' by the Ugandan Constitutional Court in August 2014 (see more below): - 8 September 2015: A Chief Magistrate's court while convicting an ex-football manager for forceful same-sex sexual act, acquitted him for sex with another male because that involved consensual same-sex sexual activity. However, according to the Uganda based Human Rights Awareness and Promotion Forum the accused was not acquitted on the second count because the sex was consensual but because the Magistrate concluded that evidence from his consensual sex partner could not be trusted. He even suggested that the partner could also have been prosecuted for willingly violating a law against same-sex relations.⁵ - January 2015: Police reportedly arrested nine men under the country's anti-sodomy law. Reports indicate the men were subject to forced anal examinations while in police custody.⁶ - October 2014: A Ugandan court dismissed sodomy charges against a man and a trans woman arrested in January 2014. The Plaintiffs' lawyer said the case was dismissed because the prosecution failed to produce any witnesses.⁷ - 9 May 2014: A report by Sexual Minorities Uganda noted 17 arrests since the passage of the Anti-Homosexuality Bill. This is in comparison with just one such case reported to them in 2013 and none in 2012.⁸ - 14 March 2014: After the AHA came into effect, the government ordered the suspension of the Refugee Law Project (RLP), a legal aid organization based at Kampala's Makerere University School of Law that provided services to refugees across Uganda, including victims of gender-based and sexual violence. Despite the nullification of the AHA, the responsible minister has refused to lift the RLP's suspension.⁹ 	

	<ul style="list-style-type: none"> - February 2014: NTV Uganda reported that two men suspected of engaging in homosexual acts were arrested in Oyam in the Northern Region of Uganda.¹⁰ - 28 January 2014: Police raided the premises of Steven Dhont, a Belgian national, and his Kenyan friend at midnight while they were watching television. Both were charged with the sodomy offence, and compelled to undergo anal examinations. The following day, they were paraded in public before the media.¹¹ - October 2013: 65-year-old British national Bernard Randall was arrested and charged with ‘trafficking obscene publications’. The arrest and charges arose out of an attempted blackmail plot, after Randall’s laptop was stolen and material published in a newspaper. On 22 January 2014, the charges were dropped and the Court ordered his immediate deportation.¹² Randall’s 30-year-old Ugandan partner, Albert Cheptoyek, was also arrested and charged with gross indecency. He remains in Uganda awaiting his trial.¹³ - 2011: The Human Rights Awareness and Promotion Forum, a Ugandan Organisation, reported that they were aware of 23 arrests on the basis of same-sex conduct between 2007 and 2011, none of which resulted in prosecutions.¹⁴
Statements by Public Figures	<ul style="list-style-type: none"> - 12 September 2015: When asked about the Anti-Homosexuality Act, President Yoweri Museveni told reporters in Tokyo: <i>‘That law [anti-homosexuality legislation] was not necessary, because we already have a law which was left by the British which deals with this issue’.</i>¹⁵ - July 2015: Amama Mbazazi became first Ugandan presidential candidate to say he is opposed to discrimination on the basis of sexuality. <i>‘I have stated very clearly that there shouldn’t be any discrimination and it is not the biggest threat right now in the country.’</i>¹⁶ The next elections in Uganda are due to take place in early 2016. - December 2014: While speaking to a US trade delegation in Kampala, US Ambassador to Uganda Scott H Delisi said the Anti-Homosexuality Bill was acting as a deterrent for US investors who might otherwise do business in the country. He emphasized the bill’s potential to ‘seriously undermine Uganda’s economy, trade prospects and international reputation’.¹⁷ - October 2014: In a widely-reported article, President Museveni wrote that a trade boycott by companies in the west would have a negative impact on foreign trade, thereby limiting the country’s ‘growth and transformation’. <i>‘To carelessly and needlessly open unnecessary wars with useful customers is irresponsible to say the least,’</i> he wrote. As an alternative, Museveni suggested imposing punishments for ‘those who lure minors into homosexuality and those who promote homosexuality’, while removing those provisions punishing adults engaging in consensual conduct.¹⁸ - 10 August 2014: The Archbishop of Kampala Archdiocese Dr. Cyprian Kizito Lwanga called upon legislators to continue pushing for an anti-homosexuality law.¹⁹ - 4 August 2014: Following the Court decision to nullify the AHA, Anglican Archbishop said ‘the “court of public opinion” has clearly indicated its support for the Act, and we urge Parliament to consider voting again on the Bill with the proper quorum in place’.²⁰ - 1 August 2014: In a statement, UN Secretary-General Ban-Ki Moon welcomed the decision by the Constitutional Court of Uganda to annul the AHA as ‘a victory for

the rule of law.’²¹

- **8 July 2014:** In a statement the Ugandan government claimed the Anti-Homosexuality Act had been misinterpreted and had only been put in place to stop *‘open promotion of homosexuality’* and to protect children: *‘The enactment has been misinterpreted as a piece of legislation intended to punish and discriminate against people of a “homosexual orientation”, especially by our development partners.’* It concluded: *‘Uganda reaffirms that no activities of individuals, groups, companies or organisations will be affected by the act.’*²²
- **24 June 2014:** The High Court of Kampala found in favour of the Minister of Ethics and Integrity, Simon Lokodo, in a case brought after the minister shut down a gay conference in Entebbe in 2012. Steven Musota, the presiding Judge, ruled that Lokodo had acted in order to protect moral values: *‘While the applicants (homosexual activists) enjoyed their rights they cited, they had an obligation in exercising them according to the law, which they didn’t.’*²³ **June 2014:** Canadian officials reversed an earlier decision and granted visitor visas to Ugandan delegates to attend a human rights conference. The initial decision was due to concerns the delegates may seek asylum.²⁴
- **9 May 2014:** Uganda’s Minister of State for Justice & Constitutional Affairs and Deputy Attorney General, Frederick Ruhindi, during the 55th Ordinary Session of the African Commission on Human and Peoples Rights, was quoted as saying: *‘The issue of sexual orientation is not a human right provided for in the human rights instruments we subscribe to.’*²⁵
- **5 May 2014:** A Ugandan priest, Anthony Musaala, has called for the removal of Uganda’s Anti-Homosexuality Act. For Musaala, the Act goes against biblical teaching, is *‘un-African’* and *‘serves no moral purpose’*.²⁶
- **April 2014:** 30,000 Ugandans gathered at a stadium in Kampala to *‘give thanks to the President... for passing the Anti-Homosexuality Act’*.²⁷
- **31 March 2014:** President Museveni, at a rally held in support of the recently passed Anti-Homosexuality Act, was quoted as saying: *‘I am mobilized to fight this war.’*²⁸
- **31 March 2014:** American Pastor Scott Lively reportedly has called for the arrest and imprisonment of gay people living in Uganda should they refuse to submit to anti-gay conversion therapy.²⁹
- **18 February 2014:** Simon Lokodo stated about homosexuals: *‘We are tolerant. That’s what we are saying: we are not slaughtering them ... They can come and be helped to come out of this unfortunate situation ... It’s like a drug addict. Drug addiction is not an innate situation, it is acquired. But they can be transformed and become better ... So we are saying anybody found committing this incredible and abominable act should be checked and isolated from society ... If you are found practising it, we shall take you to a cell.’*³⁰
- **15 February 2014:** The announcement was made that President Museveni would sign his assent of the Anti-Homosexuality Bill. In doing so, he stated:
- *‘In my role as a strategist and a responsible leader of our country, there is no debate regarding the promotion of homosexuality. That one I totally agree with everybody that anybody who is promoting homosexuality we must stop him ... this must be stopped by law and harshly. Secondly, I do not accept those who become*

homosexuals for mercenary reasons, thirdly, I cannot accept exhibitionalism [sic] of homosexual behaviour that must be stopped and stopped harshly.’³¹

- ‘What is important for us is the authoritative statement of those who are charged with the medical affairs of Uganda at this time because they are the ones who are historically responsible. The question I put to them was, are there people born like this? Now they are saying they [sic] are no such people. And if they put it in writing ... because this is a historical document ... that the one who was running Uganda at that time got worried, asked the experts what did they say about this and this is what they said ... then my work is finished ... Let the scientists answer this. And according to the way they have answered it, if they mislead us they are the ones who are responsible.’³²
- **15 February 2014:** Richard Tushemereirwe, Presidential Advisor on Science stated: ‘Whether there is a link or no link to this, there is no justification for this, it is a wastage of time for us to debate about this. The only science that I find relevant to the science of homosexuality is not genetic but public health citing India where homosexuality has been reinstated as a crime under their constitution.’³³
- **14 February 2014:** President Museveni and caucus agreed to implement measures to deny bail to sodomy suspects.³⁴
- **10 February 2014:** A ‘Scientific Statement on Homosexuality’ by the Ministry of Health was signed off by a committee of scientists commissioned by President Museveni. The report concludes: no definitive gene is responsible for homosexuality; homosexuality is not a disease or an abnormality; there is a small number of people with homosexual tendencies in every society; and homosexuality can be influenced by environmental factors (culture, religion, information, peer pressure); the practice needs regulation, like any other human behaviour, especially to protect the vulnerable; there is need for further study to address sexuality in the African context.³⁵
- **6 January 2014:** Prime Minister, Amama Mbabazi, in a speech at the Foreign Affairs Ministry before heads of foreign missions commented: ‘I think in our tradition, and this is what I believe, homosexuality is treated as an abnormality. Given that as a fact, then the next question is, how do we treat abnormalities in our society? Do we kill them? If you identify an abnormality and you say “Let’s kill these abnormal” my conclusion is that you are the one that is abnormal. They need help. How do you treat your children who are born as a ... I don’t know what better word to use ... as mongols? Do you execute them, imprison them for life?’³⁶
- **28 December 2013:** In a letter from President Museveni to Parliament and Parliamentary Speaker Rebecca Kadaga he stated: ‘Who is a homosexual? My answer to that is that a homosexual is somebody who is abnormal because the normal person was created to be attracted to the opposite sex in order to procreate and perpetuate the human race.’³⁷
- **25 December 2013:** Kampala Archbishop Cyprian Kizito Lwanga stated in public sermons: ‘I don’t know why our parliament could take all this time discussing whether or not we should have a law against homosexuality ... Let’s preserve our dignity as God’s loved children by preserving his own image in which we were all created and desist from such abominable acts and behaviour.’ In a further Christmas message at mass he expressed deep concern over the “soaring trends of homosexuality ... a behaviour which is in breach not only of God’s word but our national constitution as well’.³⁸

	<ul style="list-style-type: none"> - 17 December 2012: President Museveni commented at a swearing in of the head of the Anglican Church, <i>'If there are some homosexuals, we shall not kill or persecute them but there should be no promotion of homosexuality ... We cannot accept promotion of homosexuality as if it is a good thing.'</i>³⁹ - 13 November 2012: Rebecca Kadaga, Speaker of Parliament is reported as stating: <i>'Ugandans want that law as a Christmas gift. They have asked for it and we'll give them that gift.'</i>⁴⁰ - A private members bill known as the Anti-Homosexuality Bill 2009 sponsored by David Bahati MP was submitted. - 1999: President Museveni is known to have made several homophobic statements. After inaccurate published reports of a wedding ceremony between two men, President Museveni stated, <i>'I have told the CID [Criminal Investigations Department] to look for homosexuals, lock them up and charge them'</i>. Police reportedly arrested and tortured several people as a result.⁴¹
Persecution and Discrimination	<ul style="list-style-type: none"> - Generalised homophobia by State agents intensified and escalated in 2009 with the submission of the Anti-Homosexuality Bill. Uganda has a longstanding history of persecution: - August 2015: 'A few dozen' Ugandans gathered to celebrate gay pride at a secluded beach on Lake Victoria, 70 miles from Kampala.⁴² - 23 July 2015: A report released by the Consortium on Monitoring Violations Based on Sex Determination, Gender Identity and Sexual Orientation documented 89 cases of LGBT rights violations in Uganda in 2014. Of these, 47 were carried out by state actors and 42 by non-state actors.⁴³ - 23 July 2015: A Channel 4 documentary covered the story of two gay men who were arrested in January 2014 after they were thrown out of their house and beaten by the local residents. They were subjected to forced HIV examinations and one of them had an anal examination performed on him. Both were paraded before the media. Although the charges against them were dismissed in October 2014, they suffered homophobic attacks from fellow inmates and are now struggling to make a living.⁴⁴ - June 2015: The US Department of State 2014 Human Rights Report for Uganda noted that 'Local LGBT-related NGOs were denied official status due to the discriminatory law preventing their registration.'⁴⁵ - 28 May 2015: A Ugandan tabloid published images of members of the Out and Proud Diamond Group attending Birmingham Pride, labeling it a 'sex fest'.⁴⁶ - 16 May 2015: A documentary aired on HBO revealed the story of a lesbian woman and her son who was born after she was gang-raped because of her sexuality. The documentary also features a group of men who admitted to raping lesbians.⁴⁷ - February 2015: Members of Uganda's LGBT community publish the first edition of <i>Bombastic</i>, featuring personal essays, commentaries and poems by LGBT Ugandans.⁴⁸ - February 2015: A report released by Chapter Four Uganda detailed 25 instances of medical examinations carried out by doctors in cases related to homosexuality.⁴⁹

- **November 2014:** Ugandan LGBT activist Kelly Mukwano was hospitalized after an attack by a homophobic mob in Kampala.⁵⁰
- **August 2014:** A group of LGBT Ugandans and their supporters held a gay pride parade on a beach in the lakeside town of Entebbe.⁵¹
- **May 2014:** A joint press release from Amnesty International and Human Rights Watch stated that 'LGBTI people in [Uganda](#) have reported a surge in human rights violations since the [passage](#) of the [Anti-Homosexuality Act](#).'⁵²
- **9 May 2014:** A report by Sexual Minorities Uganda found 162 reported cases of persecution, with over 30% including an element of violence; 41% involving an element of intimidation; 50% involving a loss of property or an eviction or loss of home; and 25% involving family rejection, asylum or suicide.⁵³
- **7 May 2014:** At a UK-Uganda Business Summit, UK Minister for Africa Mark Simmonds stated that 'a country that is more accountable and treats its people with dignity is more likely to foster creativity, ingenuity and economic opportunity.'⁵⁴
- **30 April 2014:** A report released by Makerere University's Refugee Law Project found that the AHA not only reinforced homophobia but also heightened xenophobia'.⁵⁵
- **April 2014:** Ugandan officials raided a US military affiliated research institute at Makerere University, reportedly on account of the institute's work with the LGBT community.⁵⁶
- **April 2014:** Activists in Uganda reported at least 17 LGBT people had attempted suicide due to the AHA.⁵⁷
- **6 February 2014:** Simon Lokodo, Ugandan Minister of Ethics, was reported to be working with a list of homosexuals - corporate persons, business people, entertainment figures, foreign residents, alleged LGBTI supporters and ordinary blue-collar workers - and co-opting police secretly to investigate suspects with a view to conduct blanket arrests and naming and shaming them.⁵⁸
- **27 January 2014:** A trans-woman was attacked by a mob on her way home from a gay-friendly bar. The mob humiliated her, beat her up and undressed her to check her sex in front of media. Police intervened and detained and charged her with vagrancy.⁵⁹
- **January 2014:** A gay man was woken up by a mob of angry residents who surrounded his house and threatened to kill him for being homosexual. Other reports suggest radio broadcasts calling for the 'burning' of gays.⁶⁰
- **25 July 2013:** The offices of the Refugee Law Project housing the LGBT secretariat of the Civil Society Coalition on Human Rights and Constitutional Law was raided causing extensive damage and resulting in the confiscation of equipment.⁶¹
- **31 December 2012:** Joseph Kaweesi, a youth worker from the Ugandan group Youth on Rock Foundation, was arrested for 'recruiting' teens into homosexuality - a crime which did not exist in Ugandan law, though contained in the proposed Anti-Homosexuality Bill. On 2 January 2013, another co-worker, Kabuye Najibu, was arrested while visiting Kaweesi at the police station to bring food.⁶²

	<ul style="list-style-type: none"> - 28 December 2012: SMUG Offices in Uganda were broken into and sensitive confidential information on computers was stolen including identities of LGBTI human rights defenders.⁶³ - December 2012: Desmond Tutu published an op-ed in Ugandan newspaper the Daily Monitor in which he wrote '<i>One thing Ugandan legislators should know is God does not discriminate among members of our family... To those who claim that homosexuality is not part of our African culture, you are conveniently ignoring the fact that LGBTI Africans have lived peacefully and productively beside us throughout history.</i>'⁶⁴ - 8 February 2012: The Anti-Homosexuality Bill was resurrected in the Ugandan Parliament. - 27 January 2011: Ugandan gay rights activist David Kato was murdered.⁶⁵ - 9 October 2010: <i>Rolling Stone</i>, a tabloid paper identified individual LGBTI people with photos, addresses and names of alleged homosexuals and the headline 'Hang Them: They are After Our Kids!!! 100 Homos Leak'. In a subsequent issue the paper alleged a connection between the identified homosexuals and Somali terrorist group Al-Shabaab under the headline 'Homo Generals Plotted Kampala Terror Attacks'. In January 2011, the High Court issued an injunction to prevent the paper identifying LGBTI people.⁶⁶ - July 2005: Police raided the home of Victor Mukasa, a transgender person and founder of Sexual Minorities Uganda (SMUG), seizing documents and files. The raid was later found by the High Court to be a violation of the right to privacy under art. 27 of the Constitution.⁶⁷
Legislative News	<ul style="list-style-type: none"> - 1 September 2015: The <i>Non-Governmental Organisations Bill 2015</i> was discussed by Uganda's lawmakers in a special session called by the Deputy-Speaker. Although the Bill was not passed.⁶⁸ - 10 April 2015: The <i>Non-Governmental Organisations Bill 2015</i> was published in the Ugandan Government Gazette. If passed, the Bill will empower the National Board for Non-Governmental Organisations to refuse to register an NGO when '<i>it is in the public interest to do so</i>'. Organisations would be prohibited from operating unless registered with the National Board for NGOs. Clause 40(f) of the Bill would also prohibit NGOs from engaging in '<i>any act, which is prejudicial to the interests of Uganda and the dignity of the people of Uganda.</i>' These provisions are likely to restrict the activities of NGOs, and in particular those who work in support of LGBT rights. The Bill is currently in draft form and is awaiting parliamentary scrutiny.⁶⁹ - October 2014: Members of Uganda's ruling party circulated a draft of the <i>Prohibition of Promotion of Unnatural Sexual Practices Bill</i>, which is intended to replace the annulled Act by criminalising same-sex acts even further. It is not clear yet when this bill will be introduced in the Parliament.⁷⁰ - 8 July 2015: The Ugandan Constitutional Court was on this date due to hear the matter of <i>Jjuuko Adrian v. Attorney General</i>, which has been awaiting trial for seven years, but failed to do so. The case concerns a challenge to provisions in Uganda's <i>Equal Opportunities Commission Act</i> of 2007 preventing the Equal Opportunities Commission from investigating cases of LGBT rights abuses.⁷¹ - 1 August 2014: The Ugandan Constitutional Court struck down the Anti-

	<p>Homosexuality Act. The Court found that there was an insufficient quorum (the required number of parliamentarians to pass an Act) and thus found the Act unconstitutional.⁷²</p> <ul style="list-style-type: none"> - February 2014: The Anti-Homosexuality Act was signed into law. - 2012: (UPR) Uganda rejected recommendations to revise its national legislation to decriminalise homosexuality.⁷³ - 2011: Uganda voted against the 2011 Human Rights Council Resolution (calling for the UN High Commissioner for Human Rights to prepare a report on the human rights of LGBTI people). - 2008: Uganda was a signatory to the 2008 General Assembly Counter-Statement opposing the 2008 General Assembly Declaration (on Human Rights and Sexual Orientation and Gender Diversity).
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¹ Text of the law www.wipo.int/wipolex/en/details.jsp?id=5241.

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³ Penal Code Act 1950, s.146: 'Any person who attempts to commit any of the offences specified in section 145 commits a felony and is liable to imprisonment for seven years.'

⁴ Penal Code Act 1950, s.148: 'Any person who, whether in public or in private, commits any act of gross indecency with another person or procures another person to commit any act of gross indecency with him or her or attempts to procure the commission of any such act by any person with himself or herself or with another person, whether in public or in private, commits an offence and is liable to imprisonment for seven years.'

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	Zambia	
<p>National Law: <i>Penal Code Act¹ Amended by Penal Code (Amendment) Act No. 15 of 2005</i></p> <ul style="list-style-type: none"> - S155: Unnatural Offences² - S156: Attempt to Commit Unnatural Offences³ - S158: Indecent Practices between persons of the same sex⁴ 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - Between 15 years' and Life imprisonment - Between 7 and 14 years' imprisonment - Between 7 and 14 years' imprisonment 	<p><u>Treaty Ratification</u> AFRICAN CHARTER CAT CEDAW CRC ICCPR ICCPR OP ICESCR</p>
<p>In respect to the former two crimes, the law is applicable only to men. In respect of the latter, the law is equally applicable to both men and women.</p>		
<p>Enforcement</p>	<ul style="list-style-type: none"> - The law is actively enforced in Zambia. - May 2015: The High Court of Zambia upheld the judgment of a lower court acquitting LGBT and HIV/AIDS activist Paul Kasonkomona on charges of "<i>soliciting for immoral purposes.</i>" Kasonkomona was arrested in April 2013 after speaking on Zambian television about the need to recognise the rights of vulnerable groups, such as LGBT people, to address the HIV pandemic.⁵ - 2014: The US Human Rights Country Report reported that in 2014 there were arrests, but no prosecutions under Zambia's laws criminalising same-sex activities. The report also noted that "<i>the government [of Zambia] used laws against "soliciting for immoral purposes" to arrest and charge some LGBT activists.</i>"⁶ - 3 July 2014: The Kapiri Mposhi Magistrate Court acquitted two Kapiri Mposhi men suspected of engaging in same-sex relations, noting the prosecution had failed to prove its case against them. The men spent 14 months in remand prison before their acquittal.⁷ - 8 August 2013: Harrison Jere was arrested for allegedly engaging in consensual sodomy with Jackson Musonda after supposedly being caught in the act by the homeowner who was sleeping in the same room.⁸ - 5 May 2013: James Mwape and Philip Mubiana (both 21 years old) were arrested by police in response to reports from neighbours that the two were engaging in homosexual acts. Both men were subjected to non-consensual anal examinations by forensic doctors as part of the police investigation. Mubiana's sister allegedly reported her brother to the police. After spending one year in jail both men were eventually acquitted in July 2014.⁹ 	
<p>Statements by Public Figures</p>	<ul style="list-style-type: none"> - December 2014: President Edgar Lungu, then a Presidential aspirant who was elected to the role in January 2015, stated: "<i>We will not support homosexuality. I will not compromise human nature because of money.</i>"¹⁰ 	

	<ul style="list-style-type: none"> - June 2014: Zambia's foreign affairs minister Gabriel Namulambe stated that <i>'Zambia is a Christian nation and as such we live by the Christian values and we will not be able to recognize gay rights.'</i>¹¹ - November 2013: First Lady of Zambia Doctor Christine Kaseba-Sata called for an end to LGBT discrimination at a UNAIDS event in Lusaka. <i>'Silence around issues of men who have sex with men should be stopped and no one should be discriminated against on the basis of their sexual orientation.'</i>¹² - April 2013: Police spokeswoman, Elizabeth Kanjela, told the media that homosexuality was a serious offence and appealed to the public to report anyone involved to the police.¹³ - April 2013: Justice Minister Wynter Kabimba urged the Zambian public to report homosexuals.¹⁴ He also called on Zambians to reject unanimously people and institutions championing homosexuality. He declared Zambia a <i>'Christian nation ... there is no way we can allow this un-Zambian culture.'</i> He urged all citizens to report to law enforcement agencies anyone trying to 'import' and sponsor homosexual practices in Zambia.¹⁵ - 7 April 2013: Tribal chiefs in Zambia called for a crackdown on gays in the Southern African nation after four gay couples sought to have their marriages recognized by a state registrar - calling for them to 'be caged.' Chief Madzimawe of the Ngoni and Chief Shakumbila of Mumbwa wrote to the Zambia Daily Mail to condemn LGBT people after it reported that four mixed national same-sex couples had sought to have their marriages recognized by a state registrar earlier this month. <i>'It is not a culture of Zambians, Africans and Ngonis to practice homosexuality and gay people should be caged'</i> Chief Madzimawe told the newspaper.¹⁶ - 10 April 2013: On a live radio panel discussion among religious leaders a religious leader suggested that the most appropriate way to deal with gay people was death. Minister of Youth and Sports, Chishimba Kambwili, called in during the programme and said defenders of LGBTI rights were <i>'agents of the devil'</i>. His statements suggested that the Zambian government will be <i>'introducing stiffer penalties against homosexuality'</i>, instead of repealing the existing laws.¹⁷ - May 2013: Home Affairs Minister Edgar Lungu reacted to a Human Rights Watch report on the high-handed manner in which gay suspects have been treated by asserting that there would be no room for negotiation. Lungu said: <i>'There will be no discussion on gay rights. That issue is foreign to this country.'</i>¹⁸ - July 2012: The Zambian Human Rights Commission, in its response to a draft Constitution issued in April, argued against the universal application of some rights. It submitted that an open-ended anti-discrimination clause could be interpreted as including LGBTI rights.¹⁹ - 23 September 1998: In a statement to Parliament, Vice-President Christon Tembo threatened that: <i>'If anybody promotes gay rights after this statement, the law will take its course. We need to protect public morality. Human rights do not operate in a vacuum.'</i>²⁰
Persecution and Discrimination	<ul style="list-style-type: none"> - Extremely high levels of persecution and discrimination have been reported, as well as high levels of hostility from all public officials and church leaders in Zambia. There has been a heavy crackdown on LGBTI people from April 2013 (after false reports of four gay couples attempting to register their marriages over Easter),

resulting in a highly volatile situation for LGBTI people.

- **2014:** The US Department of State Human Rights Country Report on Zambia for 2014 found that *'according to LGBT advocacy groups, societal violence occurred, as did societal discrimination in employment, housing, and access to education or health care... LGBT groups reported frequent attacks and discrimination in the neighborhoods in which they operated. Activists reported regular harassment, including threats via text message and e-mail, vandalism, stalking, and outright violence.'*²¹
- **22 October 2014:** Police arrested two transgender individuals in Lusaka's Kabwata area, claiming they 'looked gay'. Police told those who attempted to obtain their release that police would use the 24-hour detention period to *'teach them a lesson'* and released them with no charges only after extracting a bribe.²²
- **19 May 2014:** Residents of the Marapodi area of Lusaka apprehended two women suspected of being lesbians, took them to a nearby police station, and demanded police arrest them. After the mob dispersed, police released the two without charge.²³
- **2 May 2014:** Two women were reportedly attacked by a mob of neighbors who accused them of lesbianism and living together as a same-sex couple. The neighbors were quoted as threatening *'to lynch anyone linked to lesbianism activities.'*²⁴
- **February 2014:** Between January and February, the state-owned newspaper Times of Zambia published a series of seven editorials based on pseudoscience that decried homosexuality.²⁵
- **3 January 2014:** A self-identifying gay man was reportedly attacked by a mob of people which allegedly included three police officers.²⁶
- **September 2013:** Zambian LGBT activist organization Friends of Rainka recorded 43 rights violations against LGBT people in the six months to September 2013. The report concluded that the *'continued violence that they [LGBT people] face from state and non-state actors is often unreported in the news, thereby creating a false delusion of tranquility in the Southern African Nation.'*²⁷
- Two gay men aged 19 and 21 were 'found in a compromising position' outside a nightclub. They were beaten, yet refused to press charges out of for fear of being charged themselves.²⁸
- **2010:** The US Department of State's 2010 Human Rights Report on Zambia found that *'the government enforced the law that criminalizes homosexual conduct and did not respond to societal discrimination'* and *'societal violence against homosexual persons occurred, as did societal discrimination in employment, housing, and access to education or health care.'*²⁹
- Government officials resisted attempts by LGBTI groups to register their group or hold public meetings:
- **6 April 2013:** Paul Kasonkomona was arrested on leaving a TV station after appearing on a television programme to discuss LGBTI and HIV issues and advocate for gay rights to be respected at all costs like any other form of human right. Kasonkomona was charged with the vague offence of *'soliciting in a public place for immoral purpose'*. He was acquitted in February 2014.³⁰

	<ul style="list-style-type: none"> - July 2007: Home Affairs Minister, Peter Machungwa, ordered the police to arrest anyone attempting to register a group advocating for homosexual rights. Registrar of Societies Herbert Nyendwa, who is responsible for processing requests for legal recognition of civic groups, reportedly swore he would never register an LGBTI group.³¹ - LGBTI activist organisation, Friends of Rainka, and its members were subject to repeated targeting: <ul style="list-style-type: none"> o The Lease of an advocacy officer was revoked by his landlord after speaking in an online paper on the rights of LGBTI people; and o Outreach officers were arrested and detained on suspicion of being gay. They were released next day without charge.³²
Legislative News	<ul style="list-style-type: none"> - July 2015: Zambia's Justice Minister announced a roadmap for the passage of the country's updated Constitution, stating that the government will take all provisions to Parliament in September 2015, other than the new Bill of Rights and Article 79, which require a referendum.³³ The referendum on the new Bill of Rights is scheduled to take place in 2016, concurrently with the next general election. Following this announcement the Government published the <i>Constitution of Zambia (Amendment) Bill 2015</i>³⁴ containing all provisions in the proposed new Constitution except the Bill of Rights. The most recent version of the new Bill of Rights released publicly is in the October 2014 draft of the Constitution³⁵. This draft included a number of changes and additions compared to the current 1996 Constitution that are relevant to the protection of LGBT rights: <ul style="list-style-type: none"> o 'Human dignity, equity, social justice, equality and non-discrimination' listed as one of Zambia's "national values and principles" (at Article 8(d) of draft). "Morality and ethics" are listed as another national value; o A clause precluding the interpretation of the Constitution to provide 'rights and freedoms... that are repugnant to the morals and values of the people of Zambia' (at Article 24(2)(c)); o Protection from discrimination remains in place, with the definition of discrimination expanded at Article 312 to include 'social or economic status'. 'Sex' remains a protected status under this clause; o Right to privacy now includes the right not to 'have information relating to that person's family, health status or private affairs unlawfully required or revealed' (at Article 32(d)); o Marriage explicitly limited to people 'of the opposite sex' (at Article 60(2)). - 2012 (UPR): Zambia accepted a recommendation to '<i>ensure thorough and impartial investigation into all allegations of attacks and threats against individuals targeted because of their sexual orientation or gender identity.</i>' However, Zambia failed to accept a recommendations to repeal the law criminalizing same-sex sexual relations among consenting adults,³⁶ having rejected a similar recommendation during the first review cycle in 2008.³⁷ - During the 2012 review, the Zambian delegation stated that: '<i>the Constitution making process will give the people the opportunity to determine whether specific rights for LGBT persons should be enshrined in the Constitution. The Government</i>

	<p><i>was determined not to prescribe to the Zambian people those rights that the Constitution should contain, but to let them make such a determination.</i>³⁸</p> <ul style="list-style-type: none"> - Zambia abstained on the 2011 Human Rights Council Resolution (calling for the UN High Commissioner for Human Rights to prepare a report on the human rights of LGBT people). The country was one of three abstentions.
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¹ A consolidated version of the law is : <http://www.zambialii.org/zm/legislation/consolidated-act/87>

² Penal Code Act, s.155: 'Any person who- (a) has carnal knowledge of any person against the order of nature; or (b) has carnal knowledge of an animal; or (c) permits a male person to have carnal knowledge of him or her against the order of nature; commits a felony and liable, upon conviction, to imprisonment for a term not less than fifteen years and may be liable to imprisonment for life.'

³ Penal Code Act, s.156: 'Any person who attempts to commit any of the offences specified in section one hundred and fifty-five commits a felony and is liable, upon conviction of not less than seven years but not exceeding fourteen years.'

⁴ Penal Code Act, s.158: '(1) Any male who, whether in public or private, commits any act of gross indecency with a male child or person, or procures a male child or person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male child or person, whether in public or private, commits a felony and is liable, upon conviction, to imprisonment for a term of not less than seven years and not exceeding fourteen years.'

⁵ Southern African Litigation Centre, News Release: Zambia High Court confirms acquittal of HIV activist Paul Kosonkmona (15 May 2015) <<http://www.southernafricalitigationcentre.org/2015/05/15/news-release-zambia-high-court-confirms-acquittal-of-hiv-activist-paul-kasonkomona/>> accessed on 25 September 2015

⁶ Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2014: [Zambia](#) (US Department of State June 2015)

⁷ Ibid

⁸ Colin Stewart, Report: Two more arrests in Zambia for gay sex (Erasing 76 Crimes 10 August 2013) <<http://76crimes.com/2013/08/10/report-two-more-arrests-in-zambia-for-gay-sex/>> accessed on 19 July 2014

⁹ Colin Stewart, Zambia frees 2 allegedly gay men after year in prison (Erasing 76 Crimes 3 July 2014) <<http://76crimes.com/2014/07/03/zambia-frees-2-allegedly-gay-men-after-year-in-prison/>> accessed on 19 July 2014

¹⁰ Lusaka Times, Edgar Lungu says he can't abandon Sata's vision and will not support Gay rights (13 December 2014) <<http://www.lusakatimes.com/2014/12/13/edgar-lungu-says-cant-abandon-satas-vision-will-support-gay-rights/>> accessed on 12 August 2015

¹¹ Michelle Garcia, *Zambian Minister Confirms Government Won't Recognize Gay Citizens' Rights* (The Advocate 9 June 2014), <<http://www.advocate.com/world/2014/06/09/zambian-minister-confirms-government-wont-recognize-gay-citizens-rights>> accessed on 12 August 2015

¹² Richard Lee, *Miracles do Happen* (OSISA, 6 November 2013) <<http://www.osisa.org/lgbti/blog/miracles-do-happen-zambia>> accessed on 12 August 2015

¹³ Human Rights Watch, *Zambia: Stop Prosecuting People for Homosexuality* (20 May 2014) <<http://www.hrw.org/news/2013/05/20/zambia-stop-prosecuting-people-homosexuality>> accessed on 19 July 2014

¹⁴ Colin Stewart, *10 months in Zambian prison on gay charges; no bail* (Erasing 76 Crimes 4 March 2014) <<http://76crimes.com/2014/03/04/10-months-in-zambian-prison-on-gay-charges-no-bail/>> accessed on 19 July 2014

¹⁵ Lusaka Times, *Kabimba urge Zambians reject and denounce people and institutions championing homosexuality* (22 April 2013) <<http://www.lusakatimes.com/2013/04/22/kabimba-urge-zambians-reject-and-denounce-people-and-institutions-championing-homosexuality/>> accessed on 19 July 2014

¹⁶ Andrew Potts, *Zambia chiefs call for 'caging' of gays after couples try to marry* (Gay Star News 7 April 2013) <<http://www.gaystarnews.com/article/zambia-chiefs-call-%E2%80%98caging%E2%80%99-gays-after-couples-try-marry070413/>> accessed on 10 September 2015

¹⁷ Human Rights Watch, *Zambia: Stop Prosecuting People for Homosexuality* (20 May 2014) <<http://www.hrw.org/news/2013/05/20/zambia-stop-prosecuting-people-homosexuality>> accessed on 19 July 2014

- ¹⁸ Nse Udoh, *Zambia: Go to Hell, Edgar Lungu Tells Gay Rights Activists* (All Africa 21 May 2013) <<http://allafrica.com/stories/201305210403.html>> accessed on 19 July 2014
- ¹⁹ Human Rights Commission (Zambia), *The First Draft Constitution: The Human Rights Commission's Submission to The Technical Committee On Drafting The Zambian Constitution July 2012* (July 2012) <http://www.hrc.org.zm/media/hrc_submission_to_technical_committee_on_drafting_zambian_constitution.pdf> accessed on 19 July 2014 at 5
- ²⁰ Human Rights Watch, *More Than a Name: State-Sponsored Homophobia and its Consequences in Southern Africa* (14 March 2003), at page 39 <<http://www.hrw.org/reports/2003/safrica/safrighrc0303.pdf>> accessed 19 July 2014
- ²¹ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Zambia* (US Department of State June 2015) <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>> accessed on 25 September 2015
- ²² Ibid
- ²³ Ibid
- ²⁴ Colin Stewart, *Attacked by Zambian mob, 2 lesbians must leave home* (Erasing 76 Crimes 19 May 2014) <<http://76crimes.com/2014/05/19/attacked-by-zambian-mob-2-lesbians-must-leave-home/>> accessed on 12 August 2015
- ²⁵ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Zambia* (US Department of State June 2015) <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>> accessed on 25 September 2015
- ²⁶ Colin Stewart, *Zambia's growing intolerance to LGBTI persons* (Erasing 76 Crimes 31 January 2014) <<http://76crimes.com/2014/01/31/zambias-growing-intolerance-towards-lgbti-persons/>> accessed on 12 August 2014
- ²⁷ Colin Stewart, *43 anti-LGBT violations in Zambia; 'accident waiting to happen'* (Erasing 76 Crimes 30 September 2013) <<http://76crimes.com/2013/09/30/43-anti-lgbt-violations-in-zambia-accident-waiting-to-happen/>> accessed on 12 August 2015
- ²⁸ Ibid
- ²⁹ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2013: Zambia* (US Department of State 2013) <<http://www.state.gov/j/drl/rls/hrrpt/2010/af/154376.htm>> accessed on 19 July 2014
- ³⁰ BBC News, *Zambia gay rights activist Paul Kasonkomona acquitted* (25 February 2014) <<http://www.bbc.co.uk/news/world-africa-26342543>> accessed on 19 July 2014
- ³¹ Global Rights & IGLHRC, *The Violations of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in ZAMBIA: Submission to the Human Rights Committee* (OHCHR July 2007) <http://www2.ohchr.org/english/bodies/hrc/docs/ngos/LGBTShadow_Zambia.pdf> accessed on 19 July 2014
- ³² Colin Stewart, *43 anti-LGBT violations in Zambia; 'accident waiting to happen'* (Erasing 76 Crimes 30 September 2013) <<http://76crimes.com/2013/09/30/43-anti-lgbt-violations-in-zambia-accident-waiting-to-happen/>> accessed on 10 September 2015
- ³³ Abel Mboosi, *Government to table draft constitution bill in next sitting of Parliament* (The Post Zambia 31 July 2015) <<http://www.postzambia.com/news.php?id=10158>> accessed on 12 August 2015
- ³⁴ : <http://www.parliament.gov.zm/node/4403>
- ³⁵ : http://www.elections.org.zm/media/constitution_of_zambia_technical_committee_-_23rd_october_2014.pdf
- ³⁶ UNHRC, *Report of the Working Group on the Universal Periodic Review* (31 December 2012) UN Doc A/HRC/22/13, at para. 103
- ³⁷ UNHRC, *Report of the Working Group on the Universal Periodic Review: Zambia* (2 June 2008) UN Doc A/HRC/8/43, at para. 60
- ³⁸ UNHRC, *Report of the Working Group on the Universal Periodic Review* (31 December 2012) UN Doc A/HRC/22/13, at para. 65

Annex B

Criminalising Commonwealth Jurisdictions: Ratification Status of Relevant Treaties

Key	
ICCPR	International Covenant on Civil and Political Rights
ICCPR OP	First Optional Protocol to the ICCPR (allowing for individual complaints)
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEDAW OP	Optional Protocol to CEDAW (allowing for individual complaints)
CAT	Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment
CAT Art 22	Declaration under Article 22 of the CAT (accepting the right of individual complaints).
CRC	Convention on the Rights of the Child
ICESCR	International Covenant on Economic Social and Cultural Rights
African Charter	African Charter on Human and Peoples' Rights
American Convention	American Convention on Human Rights
American Declaration	American Declaration of the Rights and Duties of Man
Cotonou Party	Parties to the Partnership Agreement between members of the African, Caribbean and Pacific (ACP) Group of States and the European Union ("Cotonou Agreement") signed on 23 June 2000
Yes	Ratified/Acceded To
No	Not Ratified/Acceded To
NA	Not Applicable
<p>NB. No States included in this report have, as of 22 September 2015, ratified or acceded to the CRC or ICESCR Optional Protocols that allow for individual complaints before their respective treaty bodies.</p>	

	A	B	C	D	E	F	G	H	I	J	K	L	M
	Criminalising jurisdiction ¹	UN Treaties and Mechanisms								Regional			EU
		ICCPR ²	ICCPR OP ³	CEDAW ⁴	CEDAW OP ⁵	CAT ⁶	CAT Art 22 ⁷	CRC	ICESCR ⁸	African Charter ⁹	American Convention ¹⁰	American Declaration signatory	Cotonou Party ¹¹
1.	Antigua and Barbuda	No	No	Yes	Yes	Yes	No	Yes	No	NA	No	Yes	Yes
2.	Bangladesh	Yes^	No	Yes	Yes	Yes	No	Yes	Yes	No	NA	NA	No
3.	Barbados	Yes	Yes	Yes	No	No	No	Yes	Yes	NA	Yes^^	Yes^^	Yes
4.	Belize	Yes^	No	Yes	Yes	Yes	No	Yes	Yes	NA	No	Yes	Yes
5.	Botswana	Yes^	No	Yes	Yes	Yes	No	Yes	No	Yes	NA	NA	Yes
6.	Brunei	No	No	Yes	No	No	No	Yes	No	NA	NA	NA	No
7.	Cameroon	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA	Yes
8.	Dominica	Yes	No	Yes	No	No	No	Yes	Yes	NA	Yes	Yes	Yes
9.	Ghana	Yes^	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA	Yes
10.	Grenada	Yes	No	Yes	No	No	No	Yes	Yes	NA	Yes	Yes	Yes

	A	B	C	D	E	F	G	H	I	J	K	L	M
	Criminalising jurisdiction ¹	UN Treaties and Mechanisms								Regional			EU
		ICCPR ²	ICCPR OP ³	CEDAW ⁴	CEDAW OP ⁵	CAT ⁶	CAT Art 22 ⁷	CRC	ICESCR ⁸	African Charter ⁹	American Convention ¹⁰	American Declaration signatory	Cotonou Party ¹¹
11.	Guyana	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	NA	No	Yes	Yes
12.	India	Yes	No	Yes	No	No*	No	Yes	Yes	NA	NA	NA	No
13.	Jamaica	Yes	No	Yes	No	No	No	Yes	Yes	NA	Yes^^	Yes^^	Yes
14.	Kenya	Yes	No	Yes	No	Yes	No	Yes	Yes	Yes	NA	NA	Yes
15.	Kiribati	No	No	Yes	No	No	No	Yes	No	NA	NA	NA	Yes
16.	Malawi	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	NA	NA	Yes
17.	Malaysia	No	No	Yes	No	No	No	Yes	No	NA	NA	NA	No
18.	Maldives	Yes^	Yes	Yes	Yes	Yes	No	Yes	Yes	NA	NA	NA	No
19.	Mauritius	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	NA	NA	Yes
20.	Namibia	Yes^	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	NA	NA	Yes
21.	Nauru	No*	No*	Yes	No	Yes	No	Yes	No	NA	NA	NA	Yes
22.	Nigeria	Yes	No	Yes	Yes	Yes	No	Yes	No	Yes	NA	NA	Yes

	A	B	C	D	E	F	G	H	I	J	K	L	M
	Criminalising jurisdiction ¹	UN Treaties and Mechanisms								Regional			EU
		ICCPR ²	ICCPR OP ³	CEDAW ⁴	CEDAW OP ⁵	CAT ⁶	CAT Art 22 ⁷	CRC	ICESCR ⁸	African Charter ⁹	American Convention ¹⁰	American Declaration signatory	Cotonou Party ¹¹
23.	Pakistan	Yes^	No	Yes	No	Yes	No	Yes	Yes	NA	NA	NA	No
24.	Papua New Guinea	Yes^	No	Yes	Yes	No	No	Yes	Yes	NA	NA	NA	Yes
25.	St Kitts & Nevis	No	No	Yes	Yes	No	No	Yes	No	NA	No	Yes	Yes
26.	St Lucia	Yes^	No	Yes	No	No	No	Yes	No	NA	No	Yes	Yes
27.	St Vincent & Grenadines	Yes	Yes	Yes	No	Yes	No	Yes	Yes	NA	No	Yes	Yes
28.	Samoa	Yes^	No	Yes	No	No	No	Yes	No	NA	NA	NA	Yes
29.	Seychelles	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA	Yes
30.	Sierra Leone	Yes^	Yes	Yes	No*	Yes	No	Yes	Yes	Yes	NA	NA	Yes
31.	Singapore	No	No	Yes	No	No	No	Yes	No	NA	NA	NA	No
32.	Solomon Islands	No	No	Yes	Yes	No	No	Yes	Yes	NA	NA	NA	Yes
33.	Sri Lanka	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	NA	NA	NA	No

	A	B	C	D	E	F	G	H	I	J	K	L	M
	Criminalising jurisdiction ¹	UN Treaties and Mechanisms								Regional			EU
		ICCPR ²	ICCPR OP ³	CEDAW ⁴	CEDAW OP ⁵	CAT ⁶	CAT Art 22 ⁷	CRC	ICESCR ⁸	African Charter ⁹	American Convention ¹⁰	American Declaration signatory	Cotonou Party ¹¹
34.	Swaziland	Yes [^]	No	Yes	No	Yes	No	Yes	Yes	Yes	NA	NA	Yes
35.	Tanzania	Yes	No	Yes	Yes	No	No	Yes	Yes	Yes	NA	NA	Yes
36.	Tonga	No	No	No	No	No	No	Yes	No	NA	NA	NA	Yes
37.	Trinidad & Tobago	Yes	No	Yes	No	No	No	Yes	Yes	NA	Yes	Yes	Yes
38.	Tuvalu	No	No	Yes	No	No	No	Yes	No	NA	NA	NA	Yes
39.	Uganda	Yes [^]	Yes	Yes	No	Yes	No	Yes	Yes	Yes	NA	NA	Yes
40.	Zambia	Yes	Yes	Yes	No [*]	Yes	No	Yes	Yes	Yes	NA	NA	Yes

* Signed, but not ratified.

[^] Signed ICCPR after *Toonen* communication was released by HRC.

^{^^} Barbados recognises the jurisdiction of the Inter-American Court of Human Rights; Jamaica recognises the competence of the Inter-American Commission on Human Rights.¹²

¹ List of criminalising jurisdictions in column A taken from: <http://www.humandignitytrust.org/pages/COUNTRY%20INFO/Criminalising%20Homosexuality>

² Office of the High Commission for Human Rights, *Ratification of 18 International Human Rights Treaties* <<http://indicators.ohchr.org>>

³ Ibid.

⁴ United Nations Treaty Collection, *Convention on the Elimination of All Forms of Discrimination against Women* <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en>

⁵ United Nations Treaty Collection, *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women* <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&lang=en>

⁶ Office of the High Commission for Human Rights, *Ratification of 18 International Human Rights Treaties* <<http://indicators.ohchr.org>>

⁷ United Nations Treaty Collection, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* <https://treaties.un.org/Pages/ViewDetails.aspx?src=treaty&mtdsg_no=iv-9&chapter=4&lang=en>

⁸ United Nations Treaty Collection, *International Covenant on Economic, Social and Cultural Rights*, <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en>

⁹ African Commission on Human and Peoples' Rights, *Ratification Table: African Charter on Human and Peoples' Rights*, <<http://www.achpr.org/instruments/achpr/ratification/>>

¹⁰ Organization of American States, *Department of International Law, American Convention on Human Rights "Pact of San Jose, Costa Rica"*, <http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm>

¹¹ Delegation of the European Union to Sierra Leone, *The ACP-EU partnership agreement*

<http://eeas.europa.eu/delegations/sierra_leone/eu_sierra_leone/political_relations/partnership_framework/acp_eu_agreement/index_en.htm>

¹² Organization of American States, *American Convention on Human Rights* <<http://www.oas.org/en/iachr/mandate/Basics/conventionrat.asp>>

Annex C

Comparative table of countries which criminalise homosexuality

COUNTRY	NATIONAL LAW	MAXIMUM PENALTIES	MALES (M) OR BOTH SEXES (M/F)
Antigua and Barbuda	<i>Sexual Offences Act 1995</i> ¹ <ul style="list-style-type: none"> • S12: Buggery • S15: Serious Indecency 	15 years' imprisonment 5 years' imprisonment	M/F
Bangladesh	<i>Penal Code 1860</i> ² <ul style="list-style-type: none"> • S377: Unnatural Offences 	10 years' imprisonment with the possibility of a fine	M
Barbados	<i>Sexual Offences Act (1992) Chapter 154</i> ³ <ul style="list-style-type: none"> • S9: Buggery • S11: Indecent Assault • S12: "Serious" Indecency 	Life imprisonment 5 years' imprisonment 10 years' imprisonment	M/F

COUNTRY	NATIONAL LAW	MAXIMUM PENALTIES	MALES (M) OR BOTH SEXES (M/F)
Belize	<i>Belize Criminal Code, Chapter 101 (revised edition, 2000)</i> ⁴ <ul style="list-style-type: none"> • S53: Unnatural Crime 	10 years' imprisonment	M/F
Botswana	<i>Penal Code 1964, Chapter 08:01, as amended by the Penal Code (Amendment) Act 5 of 1998</i> ⁵ <ul style="list-style-type: none"> • S164: Unnatural Offences • S165: Attempt to commit Unnatural Offences • S167: Indecent practices between persons 	7 years' imprisonment 5 years' imprisonment 2 years' imprisonment or a fine (or both)	M/F
Brunei	<i>Penal Code 1951</i> <ul style="list-style-type: none"> • S377: Unnatural Offences <i>Syariah Penal Code Order 2013</i> <ul style="list-style-type: none"> • S82(1): Liwat (sexual intercourse between two men) 	10 years' imprisonment with the possibility of a fine Not yet in force. Reports suggest this provision will result in a punishment of stoning.	M

COUNTRY	NATIONAL LAW	MAXIMUM PENALTIES	MALES (M) OR BOTH SEXES (M/F)
Cameroon	<p><i>Penal code of 1965 and 1967, as amended in 1972⁶</i></p> <ul style="list-style-type: none"> • Article 347: Homosexualité (Homosexuality) 	<p>Between 6 months' and 5 years' imprisonment with a fine of between 20,000 - 200,000 CFA (US\$35 - \$350)</p>	M/F
Dominica	<p><i>Sexual Offences Act 1998⁷</i></p> <ul style="list-style-type: none"> • S14: Gross Indecency • S16(1): Buggery • S16(2): Attempted Buggery 	<p>5 years' imprisonment</p> <p>10 years' imprisonment with admission to a psychiatric hospital should the court see fit</p> <p>4 years' imprisonment with admission to a psychiatric hospital should the court see fit</p>	M/F
Ghana	<p><i>Ghana Criminal Code 1960 Chapter 6⁸</i></p> <ul style="list-style-type: none"> • S104: Unnatural Carnal Knowledge 	<p>3 years' imprisonment</p>	M
Grenada	<p><i>Criminal Code 1987⁹</i></p>		M

COUNTRY	NATIONAL LAW	MAXIMUM PENALTIES	MALES (M) OR BOTH SEXES (M/F)
	<ul style="list-style-type: none"> • S430: Committing Grossly Indecent Act • S431: Unnatural connexion 	<p>A misdemeanour offence</p> <p>10 years' imprisonment</p>	
Guyana	<p><i>Chapter 8.01 of the Criminal Law (Offences) Act, Title 25¹⁰</i></p> <ul style="list-style-type: none"> • S352: Gross Indecency • S353: Attempt to commit Unnatural Offence • S353: Buggery 	<p>2 years' imprisonment</p> <p>10 years' imprisonment</p> <p>Life imprisonment</p>	M
Jamaica	<p><i>Offences Against the Person Act 1864¹¹</i></p> <ul style="list-style-type: none"> • S76: Unnatural Crime • S77: Attempted Buggery or Indecent Assault • S79: Outrages on Decency 	<p>10 years' imprisonment with or without hard labour</p> <p>7 years' imprisonment with or without hard labour</p> <p>2 years' imprisonment with or without hard labour</p>	M

COUNTRY	NATIONAL LAW	MAXIMUM PENALTIES	MALES (M) OR BOTH SEXES (M/F)
Kenya	<i>Kenya Penal Code (as amended by Act No. 5 of 2003), Chapter 63¹²</i> <ul style="list-style-type: none"> • S162: Carnal Knowledge against the order of nature • S163: Attempts to have carnal Knowledge against the order of nature • S165: Gross Indecency (public or private) 	<p>4 years' imprisonment</p> <p>7 years' imprisonment</p> <p>5 years' imprisonment</p>	M/F
Kiribati	<i>Penal Code, Revised 1977, Chapter 67¹³</i> <ul style="list-style-type: none"> • S153: Unnatural Offences • S154: Attempt to Commit Unnatural Offences and Indecent Assaults • S155: Indecent Practices between Males 	<p>4 years' imprisonment</p> <p>7 years' imprisonment</p> <p>5 years' imprisonment</p>	M
Malawi	<i>Penal Code, Chapter 7:01¹⁴</i> <ul style="list-style-type: none"> • S153: Unnatural Offences • S154: Attempt to Commit Unnatural Offences 	<p>14 years' imprisonment, with or without corporal punishment</p> <p>7 years' imprisonment, with or without</p>	M/F

COUNTRY	NATIONAL LAW	MAXIMUM PENALTIES	MALES (M) OR BOTH SEXES (M/F)
	<ul style="list-style-type: none"> • S156: Indecent Practice between Males • S137A: Indecent Practice between Females 	<p>corporal punishment</p> <p>5 years' imprisonment with or without corporal punishment</p> <p>5 years' imprisonment</p>	
Malaysia	<p><i>Penal Code Act 1936 (as amended up to 1 January 2006)¹⁵</i></p> <ul style="list-style-type: none"> • S377A & 377B: Unnatural Offences • S377D: Outrages of Decency <p>Additionally, in a number of states in Malaysia, Sharia laws (applying to male and female Muslims) criminalise male/male and female/female sexual acts</p>	<p>Up to 20 years' imprisonment and whipping</p> <p>2 years' imprisonment</p> <p>E.g. fines, up to 3 years' imprisonment and whipping</p>	M/F
Maldives	<p><i>Penal Code 2014^{16*}</i></p> <ul style="list-style-type: none"> • S410(a)(8): Unlawful Marriage • S411(a)(2): Unlawful Sexual Intercourse 	<p>Imprisonment of up to 1 year</p> <p>Imprisonment of up to 8 years. The code also makes provision for a supplementary punishment of 100</p>	M/F

COUNTRY	NATIONAL LAW	MAXIMUM PENALTIES	MALES (M) OR BOTH SEXES (M/F)
	<ul style="list-style-type: none"> • S 411(d): Imposition of the penalty imposed under Islamic Sharia for Unlawful Sexual Intercourse • S412: Unlawful Sexual Conduct <p>* This law reportedly came into effect in July 2015</p>	<p>lashes imposed under Islamic Sharia.</p> <p>Imprisonment of up to 4 years</p>	
Mauritius	<p><i>Criminal Code 1838</i>¹⁷</p> <ul style="list-style-type: none"> • S250: Sodomy and Bestiality 	<p>5 years' imprisonment</p>	M
Namibia	<p>Common Law Offences of¹⁸:</p> <ul style="list-style-type: none"> • Sodomy • Unnatural Sexual Offences 	<p>Unknown</p>	M
Nauru	<p><i>Nauru Criminal Code 1899, Chapter XXII</i>¹⁹</p> <ul style="list-style-type: none"> • S208: Unnatural Offences <p>S209: Attempt to Commit Unnatural Offences</p> <p>S211: Indecent Practices between Males</p>	<p>14 years' imprisonment with hard labour</p> <p>7 years' imprisonment with hard labour</p> <p>3 years' imprisonment with hard labour</p>	M

COUNTRY	NATIONAL LAW	MAXIMUM PENALTIES	MALES (M) OR BOTH SEXES (M/F)
<p>Nigeria</p>	<p><i>Criminal Code Act Chapter 77, Laws of the Federation of Nigeria 1990</i>²⁰</p> <ul style="list-style-type: none"> • S214: Carnal Knowledge against the Order of Nature • S215: Attempt to Commit Carnal Knowledge against the Order of Nature • S217: Gross Indecency <p><i>Penal Code (Northern States) Federal Provisions Act of 1959</i>²¹, applicable to all 19 states in Northern Nigeria.</p> <ul style="list-style-type: none"> • S284: Unnatural Offences • S405: Vagabonds. Definition includes at 405(2)(c) “any male person who dresses or is attired in the fashion of a woman in a public place or who practices sodomy as a means of livelihood or as a profession.” 	<p>14 years’ imprisonment</p> <p>7 years’ imprisonment</p> <p>3 years’ imprisonment</p> <p>14 years’ imprisonment and/or a fine</p> <p>Up to two years’ imprisonment and/or a fine. Penalty for an “incorrigible vagabond” – defined at s405(3) as any person who has been “convicted as a vagabond” at least once already – up to three years’ imprisonment and/or a fine.</p>	<p>M/F</p>

COUNTRY	NATIONAL LAW	MAXIMUM PENALTIES	MALES (M) OR BOTH SEXES (M/F)
	<p><i>Same Sex Marriage (Prohibition) Act 2013 (SSMPA)</i></p> <ul style="list-style-type: none"> • S5(1): Entering into a same-sex marriage or civil partnership • S5(2): Registering, operating or participating in gay clubs • S5(2): Public show of amorous same-sex relationship • S5(3): Aiding or solemnising a same-sex marriage or supporting an LGBT organisation <p>*Additionally, at least 12 Northern Nigerian states (Zamfara, Bauchi, Kebbi, Jigawa, Sokoto, Kaduna, Kano, Niger, Borno, Gombe, Katsina, and Yobe) have adopted Islamic Sharia laws criminalising sexual activities between persons of the same sex. These Sharia laws run concurrently to secular state and federal laws.²²</p>	<p>14 years' imprisonment</p> <p>10 years' imprisonment</p> <p>10 years' imprisonment</p> <p>10 years' imprisonment</p> <p>Execution by stoning for men. Up to 50 lashes and/or six months' imprisonment for women.</p>	
Pakistan	<p><i>Pakistan Penal Code</i>²³</p> <ul style="list-style-type: none"> • S377: Unnatural Offences 	<p>Life imprisonment or between 2 and 10 years' imprisonment with a fine</p>	M/F

COUNTRY	NATIONAL LAW	MAXIMUM PENALTIES	MALES (M) OR BOTH SEXES (M/F)
	<p>The <i>Hudood Ordinance</i>²⁴ of 1979 (Section 4) criminalises “zina” or sexual intercourse outside marriage, in line with Sharia law. Although the law does not specifically criminalise same-sex sexual conduct, insofar as non-heterosexual relationships cannot be legalised in any form of marriage, the provision suggests that non-heterosexual sexual acts that involve penetration can be prosecuted.</p>	<p>Death by stoning, whipping and imprisonment</p>	
<p>Papua New Guinea</p>	<p>Papua New Guinea <i>Criminal Code 1974</i> (amended 2002)²⁵</p> <ul style="list-style-type: none"> • S210: Unnatural Offences • S212: Indecent Practice between males 	<p>14 years imprisonment (7 years for attempt) 3 years imprisonment</p>	<p>M</p>
<p>Saint Kitts and Nevis</p>	<p><i>Offences Against the Person Act 1986</i> (revised edition 2002)²⁶</p> <ul style="list-style-type: none"> • S56: Sodomy and Bestiality • S57: Attempt to Commit An Infamous Crime 	<p>10 years’ imprisonment with or without ‘hard labour’ 4 years’ imprisonment with or without ‘hard labour’</p>	<p>M</p>

COUNTRY	NATIONAL LAW	MAXIMUM PENALTIES	MALES (M) OR BOTH SEXES (M/F)
Saint Lucia	<i>Criminal Code, No. 9 of 2004</i> ²⁷ <ul style="list-style-type: none"> • S132: Gross Indecency • S133: Buggery 	10 years' imprisonment (5 years on a summary conviction) 10 years' imprisonment (5 years for attempt)	M/F
Saint Vincent and the Grenadines	<i>Criminal Code (revised 1990)</i> ²⁸ <ul style="list-style-type: none"> • S146: Buggery • S148: Gross Indecency 	10 years' imprisonment 5 years' imprisonment	M/F
Samoa	<i>Crimes Act 2013</i> ²⁹ <ul style="list-style-type: none"> • S67: Sodomy • S68: Attempt to Commit Sodomy • S71: Keeping place of resort for homosexual acts 	5 years' imprisonment 5 years' imprisonment 7 years' imprisonment	M
Seychelles	<i>Penal Code, Chapter 73, 1 February 1955</i> ³⁰ <ul style="list-style-type: none"> • S151: Unnatural Offences 	14 years' imprisonment	M

COUNTRY	NATIONAL LAW	MAXIMUM PENALTIES	MALES (M) OR BOTH SEXES (M/F)
Sierra Leone	<i>Offences Against the Person Act (1861)</i> ³¹ <ul style="list-style-type: none"> S61: Unnatural Offences 	Life Imprisonment	M
Singapore	<i>Penal Code (Revised Edition 2008)</i> ³² <ul style="list-style-type: none"> S377A: Gross Indecency 	2 years' imprisonment	M
Solomon Islands	Laws of the Solomon Island, <i>Penal Code</i> ³³ <p>S160: Unnatural Offences</p> <p>S161: Attempt to Commit Unnatural Offences and Indecent Assaults</p> <p>S162: Indecent Practices Between Persons of the Same Sex</p>	14 years' imprisonment 7 years' imprisonment 5 years' imprisonment	M/F
Sri Lanka	<i>Penal Code (as amended by the Penal Code (Amendment) Act, No. 22 of 1995)</i> ³⁴ <ul style="list-style-type: none"> S365: Unnatural Offences S365A: Gross Indecency 	10 years' imprisonment and a fine 2 years' imprisonment and a fine	M/F

COUNTRY	NATIONAL LAW	MAXIMUM PENALTIES	MALES (M) OR BOTH SEXES (M/F)
Swaziland	Common law offence of: Sodomy ³⁵	Imprisonment or a fine	M
Tanzania	<p data-bbox="542 480 1167 587"><i>Penal Code Act 1945, Chapter XV (“Offences Against Morality”) (as amended by the Sexual Offences Special Provisions Act 1998)</i>³⁶</p> <ul data-bbox="591 639 1200 906" style="list-style-type: none"> • S138A: Acts of Gross Indecency between Persons • S154: Unnatural Offences • S155: Attempt to Commit Unnatural Offences • S157: Indecent practices between males <p data-bbox="542 1002 1196 1066"><i>Zanzibar’s Penal Decree Act No.6 of 2004 (as amended by the Penal Decree (Amendment) Act No.6 of 2004)</i>³⁷</p> <ul data-bbox="591 1118 1162 1305" style="list-style-type: none"> • S150: Unnatural Offences • S151: Attempt to Commit Unnatural Offences • S153: Acts of Lesbianism 	<p data-bbox="1258 639 1666 746">1-5 years imprisonment or a fine of 100,000-300,000 shillings</p> <p data-bbox="1258 719 1532 746">30 years’ imprisonment</p> <p data-bbox="1258 799 1532 826">20 years’ imprisonment</p> <p data-bbox="1258 879 1715 986">1 to 5 years’ imprisonment or a fine not less than 100,000 shillings and not exceeding 300,000 shillings</p> <p data-bbox="1258 1114 1532 1141">14 years’ imprisonment</p> <p data-bbox="1258 1193 1518 1220">7 years’ imprisonment</p> <p data-bbox="1258 1273 1666 1337">5 years’ imprisonment or a fine not exceeding 500,000 shillings</p>	M/F

COUNTRY	NATIONAL LAW	MAXIMUM PENALTIES	MALES (M) OR BOTH SEXES (M/F)
	<ul style="list-style-type: none"> <li data-bbox="591 400 1182 427">S154: Acts of Gross Indecency between Persons 	5 years' imprisonment or a fine not exceeding 200,000 shillings	
Tonga	<p data-bbox="539 517 1173 584">The Laws of Tonga, Criminal Offences Chapter 18, 1988 Edition³⁸</p> <ul style="list-style-type: none"> <li data-bbox="591 639 965 667">S136: Sodomy and Bestiality <li data-bbox="591 719 1021 746">S138: Indecent Assault on a Male <li data-bbox="591 799 1223 866">S139: Attempted Sodomy or Indecent Assault upon a Male 	<p data-bbox="1256 639 1720 707">10 years' imprisonment, with or without whipping</p> <p data-bbox="1256 715 1532 742">2 years' imprisonment³⁹</p> <p data-bbox="1256 799 1554 826">5-10 years' imprisonment</p>	M/F
Trinidad and Tobago	<p data-bbox="539 919 1173 946"><i>Sexual Offences Act 1986 (Consolidated Version 2000)</i>⁴⁰</p> <ul style="list-style-type: none"> <li data-bbox="591 1002 786 1029">S13: Buggery <li data-bbox="591 1082 904 1109">S16: Serious Indecency 	<p data-bbox="1256 1002 1532 1029">25 years' imprisonment</p> <p data-bbox="1256 1082 1518 1109">5 years' imprisonment</p>	M/F
Tuvalu	<p data-bbox="539 1163 1122 1190"><i>Penal Code, Chapter 10.20, Revised Edition, 2008</i>⁴¹</p> <ul style="list-style-type: none"> <li data-bbox="591 1243 936 1270">S153: Unnatural Offences 	14 years' imprisonment	M

COUNTRY	NATIONAL LAW	MAXIMUM PENALTIES	MALES (M) OR BOTH SEXES (M/F)
	<ul style="list-style-type: none"> • S154: Attempts to Commit Unnatural Offences and Indecent Assault • S155: Indecent Practice Between Males 	<p>7 years' imprisonment</p> <p>5 years' imprisonment</p>	
Uganda	<p><i>Penal Code Act 1950</i>⁴²</p> <ul style="list-style-type: none"> • S145: Unnatural offences • S146: Attempt to Commit Unnatural Offences • S148: Indecent Practices 	<p>Life Imprisonment</p> <p>7 years' imprisonment</p> <p>7 years' imprisonment</p>	M/F
Zambia	<p><i>Penal Code Act, amended by Penal Code (Amendment) Act No. 15 of 2005</i>⁴³</p> <ul style="list-style-type: none"> • S155: Unnatural Offences • S156: Attempt to Commit Unnatural Offences • S158: Indecent Practices between persons of the same sex 	<p>Between 15 years and life imprisonment</p> <p>Between 7 and 14 years' imprisonment</p> <p>Between 7 and 14 years' imprisonment</p>	M/F

¹ Source: <http://ilo.org/dyn/natlex/docs/ELECTRONIC/42538/79312/F1146620290/ATG42538.pdf>.

² Source: http://bdlaws.minlaw.gov.bd/pdf_part.php?act_name=&vol=&id=11

³ Source: <http://www.easterncaribbeanlaw.com/sexual-offences-act-chapter-154/>

⁴ Source: <http://www.belizelaw.org/web/lawadmin/index2.html>

⁵ Source: www.wipo.int/wipolex/en/details.jsp?id=10486

⁶ Source: http://www.vertic.org/media/National%20Legislation/Cameroon/CM_Code_Penal_Cameroun.pdf

⁷ Source: <http://www.dominica.gov.dm/laws/1998/act1-1998.pdf>

⁸ Source: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/88530/101255/F575989920/GHA88530.pdf>

⁹ Source: <http://laws.gov.gd/>

¹⁰ Source: www.oas.org/juridico/mLa/en/guy/en_guy-int-text-cl_act.pdf.

¹¹ Source: http://moj.gov.jm/sites/default/files/laws/Offences%20Against%20the%20Person%20Act_0.pdf

¹² Source: <http://www.kenyalaw.org/Downloads/GreyBook/8.%20The%20Penal%20Code.pdf>

¹³ Source: http://www.paclii.org/ki/legis/consol_act/pc66/

¹⁴ Source: http://www.malawilii.org/files/mw/legislation/consolidated-act/7:01/penal_code_pdf_14611.pdf

¹⁵ Source: <http://www.agc.gov.my/Akta/Vol.%2012/Act%20574.pdf>

¹⁶ Source: <https://www.law.upenn.edu/live/files/4203-maldives-penal-code-2014>

¹⁷ Source: <http://attorneygeneral.govmu.org/English/Documents/A-Z%20Acts/C/Page%201/CRIMINAL%20CODE,%20Cap%20195.pdf>

¹⁸ Source: Sodomy remains a crime in Namibia according to the Roman-Dutch common-law, which was derived from South Africa. Common-law is a legal tradition based mainly on precedent court verdicts, while there is no codified sodomy provision in Namibia - see submission in the UPR of Namibia at:

http://lib.ohchr.org/hrBodies/upr/documents/session10/na/Js1_Jointsubmission-eng.pdf

¹⁹ Source: http://ozcase.library.qut.edu.au/qhlc/documents/CrimCode1899_63Vic_9.pdf

²⁰ Source: www.nigeria-law.org/Criminal%20Code%20Act-Tables.htm

²¹ Text of the law is reproduced in S. S. Richardson, *Notes on the Penal Code Law* (Cap. 89 Laws of Northern Nigeria) (3rd edition, Gaskiya Corporation Nigeria 1967)

²² Isaac Terwase Sampson, *Religion and the Nigerian State: Situating the de facto and de jure Frontiers of State – Religion Relations and its Implications for National Security*, *Oxford Journal of Law and Religion* (2014) 3 (2), 311-339

²³ Source: <http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>

²⁴ Source: http://www.pakistani.org/pakistan/legislation/zia_po_1979/ord7_1979.html

²⁵ Source: www.paclii.org/pg/legis/consol_act/cca1974115/

²⁶ Source: <http://www.easterncaribbeanlaw.com/offences-against-the-person-act-chapter-4-21/>

²⁷ Source: <http://www.rslpf.com/site/criminal%20code%202004.pdf>

²⁸ Source: <http://www.refworld.org/docid/5188f6074.html>

²⁹ Source: http://www.paclii.org/ws/legis/consol_act/ca201382/

³⁰ Source: <http://www.refworld.org/docid/4d67afc82.html>

³¹ Source: <http://www.legislation.gov.uk/ukpga/Vict/24-25/100/crossheading/unnatural-offences/enacted>

³² Source: <http://statutes.agc.gov.sg/aol/search/display/view.w3p?page=0;query=DocId%3A%22025e7646-947b-462c-b557-60aa55dc7b42%22%20Status%3Ainforce%20Depth%3A0;rec=0>

³³ Source: http://www.paclii.org/sb/legis/consol_act/pc66/

³⁴ Source: http://www.lawnet.lk/section.php?file=http://www.lawnet.lk/docs/statutes/cons_stat_up2_2006/indexes/2001Y1V19C.html

³⁵ See: UN Human Rights Council, Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 (22 July 2011), UN Doc A/HRC/WG.6/12/SWZ/3, para 42.

³⁶ Source: www.lrct.go.tz/download/updated-acts-tanzania/PENAL.pdf

³⁷ Source: http://www.africanchildforum.org/clr/Legislation%20Per%20Country/Tanzania/zanzibar_penal_2004_en.pdf

³⁸ Source: http://www.paclii.org/to/legis/consol_act/co136/

³⁹ For the applicable term of imprisonment for the crime of indecent assault see section 124, *Laws of Tonga*, Criminal Offences [Cap 18] 1988 Edition

⁴⁰ Source: http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/11.28.pdf

⁴¹ Source: http://www.unodc.org/res/cld/document/tuv/1965/penal_code_html/Tuvalu_PenalCode.pdf

⁴² Source: <http://www.wipo.int/wipolex/en/details.jsp?id=5241>.

⁴³ Source: <http://www.zambialii.org/zm/legislation/consolidated-act/87>