

Assessing good practice and gaps in Commonwealth sexual offences legislation

Across the Commonwealth, outdated sexual offences laws fail to protect women, children, LGBT people and people with disability. The Human Dignity Trust has developed a set of good practice criteria, outlining what is necessary for these laws to be human rights compliant. Based on those criteria, this map provides a snapshot of positive developments and critical issues in sexual offences legislation in the Commonwealth.

Positive Developments

- All 5 jurisdictions expressly criminalise marital rape
- No jurisdiction in this region:
 - » criminalises consensual sexual activity with a person with disability
 - » criminalises consensual same-sex sexual activity
 - » uses derogatory or stigmatising language to describe people with disability or consensual same-sex sexual activity
 - » has a discriminatory age of consent laws for consensual same-sex sexual activity

Critical Issues

- Of the 5 jurisdictions in this region:
- » none meet all the good practice criteria
 - » only 1 specifies there is no requirement for evidence of resistance to prove absence of consent
 - » 1 does not explicitly criminalise all non-consensual sexual acts
 - » 2 do not have adequate child sexual offences
 - » 2 require corroboration and permit evidence of a victim's prior sexual conduct
 - » 2 use moralistic terms in the law, e.g. *gratifying lust, carnal connection, defilement, lewd acts*, etc.

Europe

Cyprus, Malta, and the United Kingdom (England, Wales, Northern Ireland and Scotland)

Positive Developments

Of the 7 jurisdictions in this region:

- » none use derogatory or stigmatising language to describe people with disability
- » 5 do not allow a defence of consent to child sexual assault offences
- » 5 do not criminalise consensual sexual activity with a person with disability

Critical Issues

Of the 7 jurisdictions in this region:

- » none meet all the good practice criteria
- » only 1 jurisdiction has gender-neutral sexual assault offences
- 6 of the 7 jurisdictions:
 - » do not expressly criminalise marital rape
 - » do not define 'consent' as free and voluntary
 - » permit evidence of a victim's prior sexual activity
 - » criminalise consensual same-sex sexual activity
 - » use discriminatory and stigmatising terms to describe same-sex sexual activity e.g. *outrages on decency or acts of indecency, unnatural offences, against the order of nature*, etc.
- 5 of the 7 jurisdictions:
 - » do not criminalise all non-penetrative, non-consensual physical sexual acts
 - » do not have gender-neutral child sexual assault offences
 - » use moralistic terms in sexual assault laws, such as: *intent to outrage or insult [her] modesty, intent to ravish, immoral character*, etc.
- 4 of the 7 jurisdictions:
 - » require corroboration
 - » have inadequate child sexual assault offences

Asia

Jurisdictions: Bangladesh, Brunei Darussalam, India, Malaysia, Pakistan, Singapore and Sri Lanka

Positive Developments

- Of the 18 jurisdictions in this region:
 - » 15 do not allow a defence of consent to child sexual assault offences
 - » 14 have gender-neutral sexual assault offences and expressly criminalise marital rape
 - » 13 define 'consent' as free and voluntary

Critical Issues

Of the 18 jurisdictions in this region:

- » none meet all the good practice criteria
- » 16 do not have adequate child sexual assault offences
- » 11 do not criminalise all non-consensual sexual acts
- » 10 use moralistic terms in sexual assault laws, such as *indecent act, indecent manner, immoral purposes, defilement, carnal knowledge, offences against morality, chastity* etc.
- » only 9 specify there is no requirement for evidence of resistance to prove absence of consent
- » 8 criminalise consensual sexual activity with a person with disability
- » 7 use discriminatory and stigmatising terms to describe same-sex sexual activity e.g. *buggery, sodomy, gross indecency, unnatural offences, against the order of nature, indecent practices*, etc.
- » 6 criminalise consensual same-sex sexual activity
- » 6 use derogatory and stigmatising language to describe people with disability

Pacific

Jurisdictions: Australia (Australian Capital Territory, New South Wales, Northern Territory, Queensland, South Australia, Tasmania, Victoria, Western Australia), Fiji, Kiribati, Nauru, New Zealand, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu

Positive Developments

Of the 13 jurisdictions in this region:

- » one meets all the good practice criteria - Canada
- » 9 have gender-neutral child sexual assault offences
- » 7 have gender neutral sexual assault offences and do not allow a defence of consent to child sexual assault offences

Critical Issues

- 11 of the 13 jurisdictions:
 - » do not define 'consent' as free and voluntary
 - » use moralistic terms in sexual assault laws e.g. *defilement, natural or unnatural intercourse, carnal knowledge, immoral purpose, indecent acts*, etc.
 - » use derogatory and stigmatising language to describe people with disability e.g. *mentally subnormal, idiot, imbecile, retardation, mental disorder*, etc.
 - » use discriminatory and stigmatising terms to describe same-sex sexual activity e.g. *abominable crime, infamous crime, unnatural connection, buggery, gross indecency*, etc.
- 10 of the 13 jurisdictions:
 - » permit evidence of victim's prior sexual conduct
 - » criminalise consensual same-sex sexual activity
- 8 of the 13 jurisdictions:
 - » do not criminalise all non-consensual sexual acts
 - » do not expressly criminalise marital rape
 - » do not have adequate child sexual assault offences
 - » criminalise consensual sexual activity with a person with a disability

Caribbean & Americas

Jurisdictions: Antigua and Barbuda, Bahamas, Barbados, Belize, Canada, Dominica, Grenada, Guyana, Jamaica, Saint Kitts & Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago

Africa

Jurisdictions: Botswana, Cameroon, Eswatini, Gambia, Ghana, Kenya, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Nigeria (Southern & Northern States and Federal Capital Territory), Rwanda, Seychelles, Sierra Leone, South Africa, Tanzania, Uganda and Zambia

Positive Developments

Of the 21 jurisdictions in this region:

- » one meets all the good practice criteria - South Africa
- » 13 have gender-neutral child sexual assault offences
- » 12 do not allow a defence of consent to child sexual assault offences

Critical Issues

Of the 21 jurisdictions in this region:

- » 19 use moralistic terms in the law, e.g. *defilement, carnal knowledge, insulting modesty, indecent assault* etc. 13 do not expressly criminalise marital rape
- » 18 do not define 'consent' as free and voluntary agreement
- » 17 permit evidence of victim's prior sexual activity
- » 16 criminalise consensual same-sex sexual activity
- » 14 have inadequate child sexual assault offences
- » 14 use discriminatory and stigmatising terms to describe same-sex sexual activity e.g. *against the order of nature, unnatural offences, buggery*, etc.
- » 11 criminalise consensual sexual activity with a person with disability in all cases
- » 11 do not criminalise all non-consensual sexual acts
- » 10 use derogatory and stigmatising language to describe people with disability e.g. *idiot, imbecile, sub-normal* etc.
- » 9 require corroboration

More information can be found in the five regional reports that make up *Next Steps Towards Reform: Assessing good practice and gaps in Commonwealth sexual offences legislation*. <https://www.humandignitytrust.org/hdt-resources/>

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