

# SPEAKING OUT

The rights of LGBTI citizens from across the Commonwealth





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## FOREWORD by Sir Shridath Ramphal

Sir Shridath Ramphal served as the Commonwealth Secretary-General from 1975-1990.

*'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.'*  
**Archbishop Desmond Tutu**

Not so long ago, a noble spirit of our time, with whom I had worked and prevailed in another cause, Archbishop Desmond Tutu, said in a United Nations context:

'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.'

'We make them doubt that they too are children of God!' In his inimical fashion, Desmond Tutu captured the essence of the wrong we perpetrate upon these persecuted people. How akin were his sentiments to those that the Anti Slavery Movement turned into their slogan in the 19th century when they cried out in the name of every slave 'am I not a man, and a brother'!

The abolitionists were pilloried, but they prevailed. The abomination was not their campaign, as the plantation owners complained, but the evil of slavery itself. The slaves too, every man, woman and child bound in chains, were also 'children of God'. The blasphemy was in the system.

And was it any different in that cause in which I worked with Archbishop Tutu – the struggle against apartheid. Were not its victims too – almost a whole nation – also, all children of God? Human history is replete with these blasphemies.

When the Lord Bishop of Leicester spoke in the House of Lords, in the debate on the 'Treatment of Homosexual Men and Women in the Developing World', he mentioned something which touched a special chord within me when he likened that present treatment to the burning of witches. In my own ancestry, is a line through my mother's side of the family which goes back to a settler in Barbados who sought his fortunes in Guyana. His name was Nurse, and he was one of the Nurses who we believe came to Barbados from the new England Colonies as descendants of Rebecca Nurse fleeing the abominations of the witch hunts of Massachusetts, and of Salem in particular. Rebecca was hanged – though later pardoned for the innocence of being herself. The hand of evil reaches out beyond our imaginings – and over generations.

### **Let me add one thing more:**

It is a reminder that for most of the countries of the Commonwealth, the desecration of our fellow citizens began in the law. The unreformed law of England was transported through criminal codes by imperial masters to far flung outposts of empire. Starting with the imposition of Macaulay's Indian Penal Code - criminalising same-sex relations was to spread throughout the empire to the point where today 41 of 53 Commonwealth countries have virtually the same legislation enacted almost as a matter of course by colonial administrators – not by the societies they governed. By the time reform came to Britain in 1967 under the influence of the Wolfenden Report, these jurisdictions



## FOREWORD by Sir Shridath Ramphal

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were free of British control, and the attitudes that had followed the law remained with the law unreformed. That law is still on our statute books – a relic of empire that has no place in a modern Commonwealth. As with the abolition of slavery, the decriminalisation of homosexuality in our time must be an act of law.

The wisdom of Sir John Wolfenden which he urged on Britain in 1957 is of universal application. I remind you of it:

‘Unless a deliberate attempt is made by society, acting through the agency of the law, to equate the sphere of crime with that of sin, there must remain a realm of private morality and immorality which is, in brief and crude terms, not the law’s business.’

That wisdom must now inspire us in the countries of the Commonwealth to rid ourselves of this archaic legal inheritance. We are here to call for that decriminalising act of law, and by it an end to the wrong we do to our brothers and sisters - who are, like us, all members of what Dr Rowan Williams, the former Archbishop of Canterbury, called ‘the commonwealth of God’.

*‘Unless a deliberate attempt is made by society, acting through the agency of the law, to equate the sphere of crime with that of sin, there must remain a realm of private morality and immorality which is, in brief and crude terms, not the law’s business.’*  
**Sir John Wolfenden**

**Sir Shridath Ramphal**

## INTRODUCTION by Dr Purna Sen

Dr Purna Sen is the former head of human rights at the Commonwealth Secretariat and Chair of the Kaleidoscope Trust.  
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*'Of the 53 member nations of the Commonwealth, 41 continue to criminalise consensual same-sex activities between adults. Over half the countries in the world that criminalise homosexuality are in the Commonwealth.'*

This report, which has been written and compiled by lesbian, gay, bisexual, trans and intersex people from all corners of the Commonwealth, is a vivid testament to why that organisation, which claims in its Charter to be 'implacably opposed to all forms of discrimination', continues to let down millions of its own people.

Of the 53 member nations of the Commonwealth, 41 continue to criminalise consensual same-sex activities between adults. Over half the countries in the world that criminalise homosexuality are in the Commonwealth. Across the Commonwealth lesbian, gay, bisexual, trans and intersex (LGBTI) people are denied equal access to rights, education, employment, housing and healthcare.

Once again we see Commonwealth leaders gathering at the Heads of Government meeting (CHOGM), pushing aside the urgent need to protect every citizen under the law. Once again the human rights of LGBTI people are the elephant in the room.

Most Commonwealth governments refuse to engage with their own LGBTI communities. Some try to pretend that they don't even exist. But the voices in this report reflect demands that are not going to go away just because Presidents and Prime Ministers try to close their ears to them. The people whose testimonies are contained here refuse to be silenced. Sooner rather than later the Commonwealth is going to have to tackle the justice deficit that leaves some of its citizens without the rights to which all are entitled.

The Commonwealth Secretary General, Kamalesh Sharma, has spoken out with courage. He told the UN Human Rights Council:

'With regard to sexual orientation and gender identity our position remains that, based on shared Commonwealth principles, we oppose discrimination or stigmatisation on any ground . . . we continue to encourage constructive national debate in legislatures, and the examination of legal remedies, and to work with national human rights institutions.'<sup>1</sup>

And yet the new Commonwealth Charter, formally adopted in March 2013, states that: "We are implacably opposed to all forms of discrimination, whether rooted in gender, race, colour, creed, political belief or other grounds." By refusing explicitly to reject discrimination against LGBTI people it let them down once again.

The wording is almost identical to that in the 2009 Trinidad and Tobago Affirmation of Values. Despite the Secretary General's encouraging words, in four years the organisation has made little or no real progress on the issue. In four years time will we be forced to reach the same conclusion?

## INTRODUCTION by Purna Sen

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This cannot go on. Rightly lesbian, gay, bisexual, trans and intersex people are demanding that they be recognised and that their rights – which are exactly the same rights to which every other Commonwealth citizen is or should be afforded – are protected under the law. The immediate demands outlined below are simple and speak for themselves. By themselves they would not deliver the equality to which LGBTI people are entitled, but they would show that the Commonwealth is sincere when it claims to be an organization that believes in universal human rights applicable to all persons throughout the Commonwealth in accordance with the principles of international law.

This report owes an immense debt to those across the Commonwealth who continue to raise their voices against oppression. Although not claiming to be a complete account of all the many social, legal and economic challenges facing LGBTI people in the Commonwealth, this report illustrates some of those challenges. Most importantly however, it provides a platform for the voices of LGBTI people from around the Commonwealth – voices that too often go unheeded by Commonwealth governments and the institutions of the Commonwealth itself.

There seems little doubt that the Sri Lanka CHOGM of 2013 will once again fail to address the legitimate demand for equal rights and dignity for all. By doing so it will call into question the Commonwealth's credibility and relevance. The people whose voices are contained in this report may be ignored but they won't go away. Governments must heed them, must meet with them and must embrace them as full and equal members of society. Anything less will render the fine sounding words opposing 'all forms of discrimination' meaningless and condemn the Commonwealth as impotent in the face of injustice.

**PURNA SEN**



## RECOMMENDATIONS

This report calls on all Commonwealth governments in countries which continue to criminalise same-sex sexual activity to repeal this legislation in accordance with:

- The Universal Declaration on Human Rights and other international instruments including the International Covenant of Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.
- Article II of the Commonwealth Charter.
- Recommendations of the Eminent Persons Group adopted by the Foreign Ministers of all Commonwealth members.

As an immediate step towards meeting the obligations set out in these and other commitments to equal rights for all citizens we call on all Commonwealth leaders to:

- ▶ Engage in meaningful dialogue with their own LGBTI communities to facilitate an informed debate about the means to remove all legal and other impediments to the enjoyment of their human rights.
- ▶ Put in place an immediate moratorium on the enforcement of existing laws criminalising homosexuality.
- ▶ Commit to open and free debate across the Commonwealth on the decriminalisation of homosexuality.
- ▶ Support public education initiatives to inform the people of the Commonwealth about the case for LGBTI equality.
- ▶ Support the right of an LGBTI Association to register with the Commonwealth alongside all civil society organisations and be free to express its views and engage in public debate.
- ▶ Fully include LGBTI people in development and other programmes on an equal basis with the rest of society.
- ▶ Commit to include a discussion on equal rights for LGBTI citizens as a substantive agenda item at the next CHOGM.

## SPEAKING OUT

“ [LGBTI people] are generally considered as animals or devils, so when you know that, you see that they are in permanent danger. They can be injured, they can be killed, and they can be discriminated against. They can be rejected from healthcare and justice. ”

Alice Nkom, Cameroon

“ My sexual orientation is just a part of who I am, and I am more concerned about excelling in what I want to do. When I meet new people I don't feel the urge to start the conversation by saying that I am bisexual. I want people to acknowledge me for what I have done and who I am as a person. ”

Farid-ul-Haq, Pakistan

“ Many would say that I'm facing a losing battle here in Barbados. But it is my determination to be seen and treated just as any other “ordinary” member of society which keeps me going. ”

Alex D V Hoffman, Barbados

“ These days I see a lot of gay people out in Port Vila embracing their sexuality. They have gained their self-esteem. That is a huge change in Port Vila. ”

Gillio Baxter, Vanuatu

“ I have lost two teeth, had my family property invaded and car damaged by two masked men . . . I have had stones thrown at me, experienced simulated gun shots, insults and physical harm on public transportation, threats that speak to, “Caleb You have no right to breathe! ”

Caleb Orozco, Belize

“ I wish more people knew about intersex so that other people like me felt more comfortable about being open about the way they were born. ”

Tony Briffa, Australia

“ I have had to battle against a belief that my behavior situates me outside the ‘normal’ . . . I had been called a “child of the devil” who was at-risk, vulnerable, stigmatized and lacking agency . . . we are challenging that prejudiced view with some success. ”

Joey Joleen Mataele, Tonga

“ It's been over seven months and counting ever since any of my family members spoke, nor laid eyes on me. They refuse to accept me for who I am and worse off, because I advocate for what I believe in. I can never go back home now, as home has now become a memory in my past. ”

Charles, Zambia

“ A mob had gathered there saying they wanted to kill gays. I was getting into a public minibus and the conductor started to beat me. Then everyone started beating me. ”

Anonymous, Tanzania

“ Being gay felt like a curse . . . It was not until later that I realized that it was not a curse and that I could live a happy fulfilled life. However, I must admit that a view of a happy life for me in Dominica constantly feels like a dream. ”

Anonymous, Dominica

“ I am a proud Jamaican lesbian and I applaud the incremental progress being made in Jamaica as I believe it has directly impacted my survival as a lesbian. ”

Latoya Nugent, Jamaica

## The rights of LGBTI citizens from across the Commonwealth

The Commonwealth, which accounts for 30% of the world population, has shown a stubborn refusal to address the human rights of its lesbian, gay, bisexual, transgender and intersex (LGBTI) citizens. Of the 78 countries worldwide that still criminalise consensual and private adult same-sex sexual acts, over a half are Commonwealth members states. Nearly 80% of the countries making up the Commonwealth – 41 out of 53 - still maintain such laws and show few signs of accepting that the organisation's Charter commitment to opposing 'all forms of discrimination' must include discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) people.\*

*“Of the 78 countries worldwide that still criminalise consensual and private adult same-sex sexual acts, over a half are Commonwealth members states. Nearly 80% of the countries making up the Commonwealth – 41 out of 53 – still maintain such laws.”<sup>8</sup>*

Across the Commonwealth lesbian, gay, bisexual, transgender and intersex people continue to be denied their human rights by the combined forces of ignorance, misunderstanding and oppression. Too often this occurs with the collusion of the very states that should be protecting their rights as citizens. Across the Commonwealth LGBTI people face criminalisation and social discrimination. They face violence. They face eviction from their homes, dismissal from their jobs and estrangement from their families.

The penalties for private, consensual sexual conduct between same sex adults can be harsh. They include 10 years imprisonment and hard labour in Jamaica, 14 years in Kenya, 20 years plus flogging in Malaysia, and 25 years in Trinidad and Tobago. Bangladesh, Barbados, Guyana, Pakistan, Sierra Leone, Tanzania and Uganda have a maximum sentence of life imprisonment, while in the 12 northern states of Nigeria the maximum penalty for male homosexuality is death.<sup>2</sup> In some countries, for example Cameroon, arrests and imprisonment for acts that indicate homosexuality such as amorous texts or 'appearing

like a woman' are frequently reported. In Uganda and Nigeria recent legislative proposals would significantly increase the penalties for homosexuality.

As the individual country reports which follow acknowledge, these laws are not always enforced. But even where they are not, they leave LGBTI people open to blackmail and stigmatise them as, at best, second-class citizens.

Yet, as the quotations opposite illustrate, brave individuals from across the Commonwealth continue to raise their voices in defiance. They refuse to be seen as helpless victims of injustice. Instead they continue to fight and to struggle, alone and together, to overcome these egregious – and often shocking – violations of their rights. Across the Commonwealth LGBTI people are organising and resisting laws and attitudes that discriminate against them. They are changing hearts and minds in their families and in their communities. But, within the institutions and governments of the Commonwealth, are their voices being heard?

\* Categorising and naming difference that runs along the spectrum of sexual orientation and gender identity remains a challenge to activists, policymakers and politicians alike. This report uses the term LGBTI (lesbian, gay, bisexual, trans and intersex). There are, however, distinctions between the issues faced by LGBTI people and this report hopes not to subsume this specificity of struggle under the rubric of LGBTI. Within the Commonwealth there are any number of identities and practices that are not included in - or directly translatable - to LGBTI identities, despite sharing similar struggles. This report does not use LGBTI as an equivalent for these diverse identities and wherever possible is cognisant of local configurations of sexual orientation and gender identity, such as hijra, leiti, Takataapui and fa'afafine identities and practices.

The aim of this report is two-fold. Firstly it attempts to provide a platform for some of these unheard voices. Compiled by contributors from across the Commonwealth, this report exposes some of the struggles faced by LGBTI people in their fight for respect, equality and dignity and identifies some of the many barriers they face in accessing the full benefits of citizenship. Wherever possible ‘Speaking Out’ has been written by and with those at the forefront of the battle for equal rights. Rightly it is their voices that are to the fore.

The second aim is perhaps bolder. ‘Speaking Out’ argues that it is imperative that the leaders, governments and institutions of the Commonwealth listen to the voices of their own LGBTI citizens and respond to their concerns. This is not a demand that is coming from outside of the Commonwealth – although in this regard international law is increasingly clear. Nor, as is sometimes claimed, is it a demand that comes only from those members that are situated in the global North – where despite recent advances LGBTI people still face struggles against discrimination and stigmatisation.<sup>†</sup> It is a demand that is being made from every corner of the Commonwealth, from LGBTI citizens and human rights defenders in every region and on every continent.

Throughout its recent history, the Commonwealth has repeatedly committed itself to the values of equality, liberty and human dignity. These values were at the heart of the 1971 Singapore Declaration. They were reiterated in the 1991 Harare Declaration and expanded upon to

include a commitment to fundamental human rights, including equal rights and opportunities. The recent Commonwealth Charter yet again states the commitment to human rights, tolerance and freedom of expression and opposition to discrimination on any grounds. The demands of LGBTI people in the Commonwealth are not for an extension of these core Commonwealth ideals and values, but to be included in what the Commonwealth itself says it believes in.

The advancement of equality for LGBTI people could become a significant contemporary achievement for the Commonwealth, one that would rank alongside its opposition to apartheid and the role it played in supporting the struggle in South Africa. And indeed, the institutions of the Commonwealth may be particularly well-suited to advance ‘an equality for all’ agenda. The voluntary nature of the association and its sense of family can make it a forum where serious disagreement about values and outlook is debated. And if conducted with respect for its members’ history and experience, a better understanding can be achieved, with the greater tolerance that should flow in its wake.

#### **A Commonwealth of Values?**

The key ideals and values of the Commonwealth were first articulated in 1971 in the Singapore Declaration of Commonwealth Principles, arising from that year’s CHOGM. The Declaration stated a commitment to “liberty of the individual [and] equal rights for all citizens regardless of race, colour, creed or political belief.”<sup>3</sup> As pointed out in Lennox and Waites, “notably this declaration did not

explicitly mention human rights.”<sup>4</sup> These values were re-iterated, and indeed extended upon, in the 1991 Harare Commonwealth Declaration. With the Harare Declaration the Commonwealth Heads of Government affirmed their commitment to “fundamental human rights, including equal rights and opportunities for all citizens regardless of race.”<sup>5</sup> This was the first explicit endorsement of human rights by the Commonwealth. The Commonwealth’s commitment to equal rights has been developing and deepening for the past 40 years. However across that time there has been no explicit mention of the rights of LGBTI people.

Arising out of CHOGM 2009, a Commonwealth Eminent Persons Group (EPG) consisting of 10 leading figures from around the Commonwealth chaired by former Malaysian Prime Minister, Tun Abdullah Badawi, was commissioned to examine key areas of reform for the Commonwealth.<sup>6</sup> The EPG unanimously recommended in its Report published in 2011 that steps be initiated to repeal laws criminalising homosexuality, noting:

*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*

<sup>†</sup> The terminology of the ‘global north’ and the ‘global south’ remains problematic, especially given the geographic dimensions of the Commonwealth and the power and wealth of some of its geographically southern members. The distinction is used here due to growing the political significance of the term and as it forms such a large part of the discussion on the rights of LGBTI people.

*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.<sup>7</sup>*

On 19 December 2012, Foreign Ministers of all Commonwealth countries adopted recommendation 60 of the Commonwealth EPG 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.<sup>8</sup>*

However, this was qualified by an accompanying caveat that:

*[m]ember governments have the discretion to identify which, if any, laws are considered discriminatory, and the steps deemed appropriate to address these.*

Despite this caveat, concrete and proactive measures must be taken towards progressive decriminalisation. As the Commonwealth Secretary General Kamallesh Sharma has noted at the High-Level Segment of the UN Human Rights Council:

*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.<sup>9</sup>*

Following on from the report of the EPG, the last CHOGM in Perth in 2011 did not directly address the issue of LGBTI rights publicly in its formally reported proceedings. However the Australian and Canadian leaders were reported as raising it directly in plenary sessions and the UK PM, David Cameron, said he had raised it consistently in his bilaterals. In evidence to the Foreign Affairs Committee, the lead FCO official, Kirsty Hayes, claimed the PM made "a very strong speech on these subjects." David Cameron's intervention had mixed reactions. His suggestion that aid should be linked to the human rights record of a beneficiary state met with fierce resistance from governments of criminalising countries and from some activists on the ground. But the demand for human rights does not come solely from its wealthy and powerful members. It is a demand that comes from across the Commonwealth and is inherent in the values to which the Commonwealth has time and again committed itself.

The Commonwealth Charter, agreed by the Commonwealth Heads of Government in March 2013, though good, is not good enough. Article II of the Charter, reinforces the commitment by all Commonwealth countries to the Universal Declaration of Human Rights. It repeats previously agreed language and states: "We are implacably opposed to all forms of discrimination, whether rooted in gender, race, colour, creed, political belief or other grounds". It speaks of upholding democracy and opposing "all forms of discrimination". But it does not explicitly name discrimination against LGBTI people. Furthermore, there is no institutional mechanism for citizens of member states to petition about its violation.

It is clear, however, that "gender" and "other grounds" must include LGBTI persons – a clarity that is supported by international human rights law.

### **International Law**

International law is increasingly supportive of the rights of LGBTI people. Laws that criminalise homosexuality violate fundamental and universal rights contained in the Universal Declaration of Human Rights and other key instruments such as the International Covenant of Civil and Political Rights, which most Commonwealth members have ratified.<sup>10</sup>

It is clear that the laws that criminalise homosexuality, and the laws and practices that support criminalisation, violate a raft of internationally recognised rights. In particular, the rights to:

- non-discrimination<sup>11</sup> and equality before the law/equal protection of the law;<sup>12</sup>

- privacy;<sup>13</sup>
- freedom from torture and inhuman and degrading treatment;<sup>14</sup>
- freedom of expression;<sup>15</sup>
- freedom of assembly<sup>16</sup> and association;<sup>17</sup>
- liberty and freedom from arbitrary arrest and detention;<sup>18</sup>
- life;<sup>19</sup> and
- dignity.<sup>20</sup>

The High Commissioner for Human Rights, Navi Pillay, issued her report pursuant to a resolution of the UN Human Rights Council recommending that all member countries:

Repeal laws used to criminalize individuals on grounds of homosexuality for engaging in consensual same-sex sexual conduct, and harmonize the age of consent for heterosexual and homosexual conduct; ensure that other criminal laws are not used to harass or detain people based on their sexuality or gender identity and expression, and abolish the death penalty for offences involving consensual sexual relations ...<sup>21</sup>

In light of the disproportionate adverse impact of the global HIV/AIDS crisis on LGBTI people, the right to the highest attainable standard of physical and mental health is also a key right relevant to decriminalisation.<sup>22</sup> The right to health includes the rights to privacy and access of information, an available and accessible system of health protection, a right to preventative health care and information and a right to health facilities on a non-discriminatory basis which recognises and provides for the specific needs of population groups such as LGBTI persons.

To that end, in 2011, the United Nations Office of the High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS jointly recommended that “criminal law prohibiting sexual acts (including adultery, sodomy, fornication and commercial sexual encounters) between consenting adults in private should be reviewed, with the aim of repeal”.<sup>23</sup> Similarly, the United Nations Development Programme’s Global Commission on HIV found that criminalisation “both causes and boosts” the rate of HIV infection.<sup>24</sup> Moreover, it found that the failure to repeal laws criminalising homosexuality would significantly heighten the overall HIV infection and transmission rate for all adult groups.<sup>25</sup> Ultimately, the Global Commission on HIV 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 that an “effective sustainable response to HIV that is consistent with human rights obligations”.<sup>26</sup>

Laws criminalising same-sex sexual activity per se have been held to be in violation of the abovementioned human rights standards by several international courts,<sup>27</sup> international human rights bodies<sup>28</sup> and national courts.<sup>29</sup> This is true particularly in regard to the right to equality, non-discrimination and privacy. Additionally, due to the interdependent and indivisible nature of rights, criminalisation hampers governments in respecting, protecting and fulfilling other human rights enjoyed by LGBT people including the right to employment, housing, education and protection.

### **Criminalisation and the Commonwealth**

The effects of criminalisation of LGBTI citizens reach into every aspect of their lives and have ramifications for the lives of their families and for their communities.

Even in countries where criminalisation is rarely enforced, having legislation that brands LGBT people as criminals stigmatises them as second class citizens and signals that the state has singled out this group of individuals as outcasts of society. These laws are often seen as justification for discrimination, blackmail, harassment, extortion and violent attacks on LGBTI people and they create an atmosphere of fear and intimidation. It has also become increasingly common for state actors to deny human rights defenders advocating for LGBTI rights from registering civil society organisations, assembling and organising and expressing themselves.

When compared with other Commonwealth citizens, LGBTI people are disproportionately subjected to invasions of their privacy, restrictions on freedom of assembly and expression, and other human rights violations. The decriminalisation of same-sex sexual relations is unlikely in itself to be sufficient to deal with the wide spectrum of harms which LGBTI people suffer. We first have to understand the lived experiences of LGBTI people in the Commonwealth and then devise strategies for change which look beyond decriminalisation to take account of broader human rights issues and standards, for example, the right to employment as well as access to housing, education, healthcare and protection.

A focus on decriminalisation alone might not always be the most effective way to make progress towards ending discrimination against LGBTI people. Each country's context is different and local activists might want to prioritise different rights, for example focus on hate-crimes or employment legislation, privacy rights or freedom of assembly and expression, to pave the way for wider legal reforms.

#### **Lack of hate crime legislation**

Commonwealth states are much less likely than others to have anti-hate crime legislation. A recent comparative analysis by Lennox and Waites ((eds.) 2013), highlighted that:

*Hate crimes based on sexual orientation are considered an aggravating circumstance under the law in 20 states worldwide, of which most are in Europe or Latin America but only three are in the Commonwealth: Canada (1996), New Zealand (2002) and the United Kingdom – Northern Ireland (2004), England and Wales (2005), Scotland (2010). That is only 5.6 per cent of Commonwealth states. 'Hate crimes based on gender identity', however, are considered an aggravating circumstance in only five states worldwide including four in Latin America but only one, the United Kingdom, is in the Commonwealth. [...] In relation to gender identity, 18 states worldwide grant legal recognition of gender after gender reassignment surgery, within the Commonwealth these include four states, which is only 7.4 per cent of those in the Commonwealth: New Zealand (1995), Australia (federal states changed 1996–2001), South Africa (2004), United Kingdom (2005), plus most of Canada.*

#### **Impact of criminalisation laws and stigmatisation of LGBTI on HIV/AIDS prevention**

Alarming, the continued criminalisation of homosexuality in Commonwealth countries has a major impact on the global efforts to halt the spread of HIV/AIDS as over 60% of people living with HIV globally are in Commonwealth countries. By driving same-sex behaviour underground, effective prevention and treatment of HIV/AIDS is severely undermined. Public health is best served by removing discrimination and prejudice against LGBTI persons and thereby ensuring they are better able to access HIV services without fear.

In 2011, the Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS (UNAIDS) issued the International Guidelines on HIV/AIDS and Human Rights which warn that the threat of criminal sanction can be a deterrence towards 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.” Along the same lines, only last year, the United Nations Development Programme's Global Commission on HIV declared that criminalisation ‘both causes and boosts’ the rate of HIV infection.<sup>30</sup>

#### **Employment discrimination**

In terms of employment discrimination, the Commonwealth states perform poorly by global average standards. Currently, 52 states worldwide provide protection against employment discrimination for sexual orientation, but only 12 are in the Commonwealth. With respect to employment discrimination related to gender identity, only two Commonwealth states – Australia and the United Kingdom – offer protection compared to 19 states worldwide.<sup>31</sup>

Recent developments give hope for more progress on this issue in the Commonwealth with member states such as the Seychelles (2006), Fiji (2007), Mozambique (2007), Mauritius (2008) and Botswana (2010) introducing legislation against employment discrimination on sexual orientation.

#### **Freedom of Association**

Increasingly, laws criminalising homosexuality are used as a pretext to deny official registration or recognition to human rights defenders and civil society advocating for LGBTI rights. As this report shows, in many countries civil society organisations that advocate for the rights of LGBTI people often have difficulty registering with their governments. Even in jurisdictions that don't criminalise, Mozambique for example, civil society organisations struggle for official recognition.

### **Progress is possible**

Some Commonwealth countries have shown that progress can be made, regardless of historical and cultural antipathies to homosexuality. Over the past twenty years, member states such as The Bahamas (1991), South Africa (1998), Vanuatu (2007), India (2009) and Fiji (2010) have decriminalised homosexuality.

### **Other promising signs in the last two years have been:**

In Belize, LGBT activists have started a legal challenge to the country's colonial era anti-buggery laws on constitutional grounds. In May 2013, the Belizean judiciary started hearing a case where it will be asked to weigh up whether or not laws that penalise homosexuality in the country are constitutional.

In Jamaica Prime Minister Portia Simpson Miller made statements indicating that efforts to decriminalise will be made. During her election campaign in late 2011 Miller stated that she 'believes in protecting the human rights of all Jamaicans. No one should be discriminated against because of their sexual orientation. Government should provide the protection.'<sup>32</sup>

Dane Lewis, Executive Director of J-FLAG called on Miller 'to listen to the cries and needs of members of our community who continue to be subjected to discrimination and violence, have nowhere to live and no food to eat because of their sexual orientation and or gender identity'.<sup>33</sup> Senator Sandra Falconer, Minister with responsibility for Information, announced in June 2013 that the government is to review the country's Buggery Law shortly.<sup>34</sup> Jamaica's sodomy law is also to be challenged at the Inter-American Commission on Human Rights.

Elsewhere, Prime Minister Kamla Persad-Bissessar of Trinidad and Tobago has written directly to the Kaleidoscope Trust vowing to end anti-LGBTI bias in her country, signalling that she wants to 'put an end to all discrimination based on gender or sexual orientation'. The statement came in a letter to the Kaleidoscope Trust's Executive Director, Lance Price, who met her in Port of Spain in June 2012. Mrs Persad-Bissessar said the stigmatization of LGBT people had to be 'addressed on the grounds of human rights and dignity to which every individual is entitled under international law.

Until just over a year ago, Malawi was considered amongst the most unreformed countries in the Commonwealth. President Joyce Banda announced in her State of the Nation address in 2012 that her government wants to repeal laws criminalising homosexuality.<sup>35</sup> This came after a period of increasing hostility against LGBTI people in the country and could inspire more positive developments in the region.

In March 2011, at the UN Human Rights Council, 85 states endorsed a groundbreaking joint statement to end acts of violence and related human rights violations based on sexual orientation and gender identity (UN Human Rights Council 2011). This declaration was signed by 16 Commonwealth states including a number, which have not decriminalised same-sex sexual behaviour, such as Dominica, Nauru, Samoa, Seychelles, Sierra Leone and Tuvalu. Rwanda also backed the motion. For many observers this vote represented 'a breakthrough and suggested possibilities for progress in these states in the future.'<sup>36</sup> ((eds.) 2013)

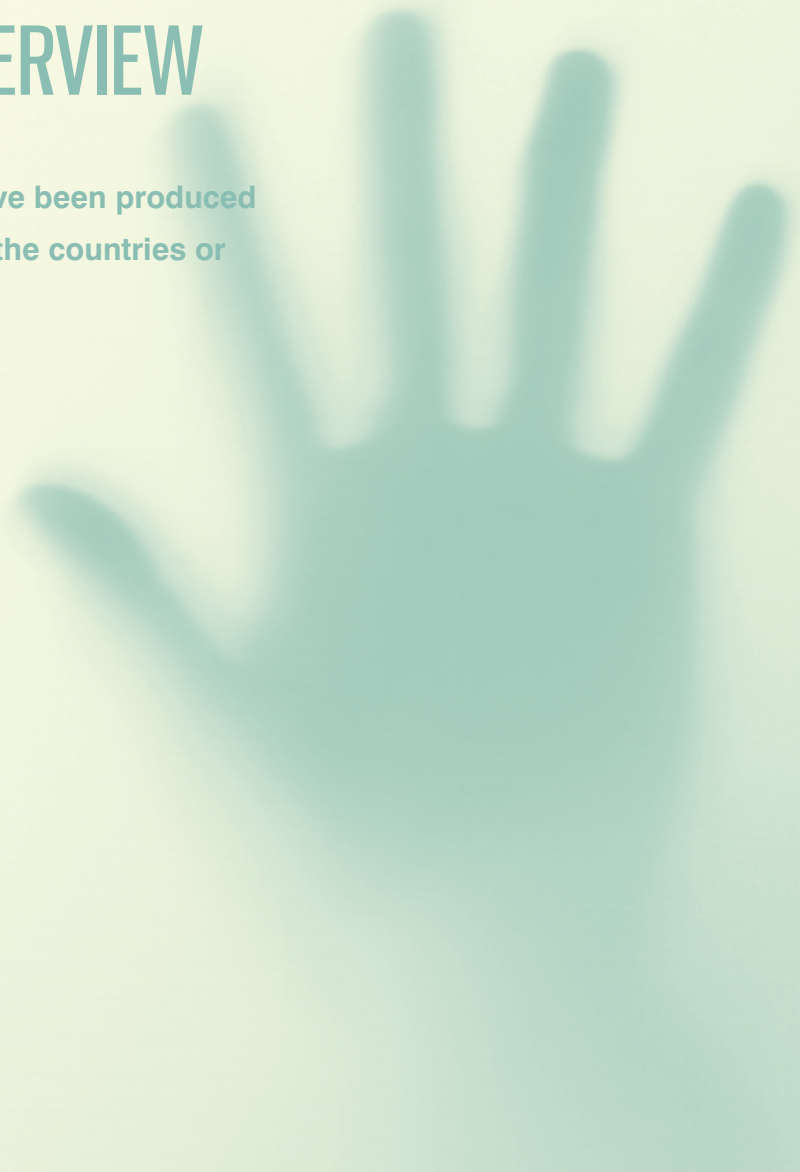
These encouraging examples show that national leaders in the Commonwealth, and those who aspire to leadership, should refrain from attacking LGBTI people as a way of winning cheap popularity. They should examine the damage done to individuals, communities and economies when a section of their population is marginalised and criminalised for no good reason. As Desmond Tutu said so eloquently 'an injustice to one is an injustice to all'.

The Commonwealth's credibility is vulnerable if it doesn't move from broad and top-line commitments on values to actions that make a change in the lives of citizens. The new Charter is welcome but it does not go far enough to protect those who still experience discrimination "whether rooted in gender, race, colour, creed, political belief or other grounds".



# COMMONWEALTH OVERVIEW

Wherever possible the accounts below have been produced by and with activists and organisations in the countries or regions concerned.



# AFRICA

## Botswana

The Penal Code states that; “any person who has carnal knowledge of any person against the order of nature, has carnal knowledge of an animal or 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.”<sup>36</sup> This section has been used to criminalise homosexuality and has created a stigmatising and unsafe environment. In 2008, the Botswana Parliament reviewed and amended some sections of the Employment Act to prohibit employment discrimination on the basis of sexual orientation.

There is a general lack of political will to debate or support issues deemed as controversial, such as the rights of sexual minorities. Homosexuality in Botswana is not discussed and is often seen as a ‘Western’ disease, ‘un-African’ and ‘un-Godly’. Such perceptions have perpetuated stigma and discrimination, violence, and homophobia. Policies and other interventions have done very little to address these rights violations and protect LGBTI.

### Recent Developments

The recent global financial crisis, which has affected the country’s diamond industry, has put a strain on the national economy and expenditure. This has combined with decreased funding from international agencies, as Botswana was regarded as a middle-income country, to worsen the situation for NGOs working on LGBTI issues, such as the Lesbians, Gays and Bisexuals of Botswana (LEGABIBO).

In 2011 the Deputy Speaker of the National Assembly Mr. Pono Moatlhodi said that homosexuals should be killed.<sup>37</sup> Utterances like these are still moulding and shaping the consciousness of the general public and their attitudes towards LGBTI people.

In 2013 members of LEGABIBO engaged in an attempt to force the government to recognise their association. LEGABIBO has been denied registration twice, in 2005 and in 2012, with the registrar saying that the country’s Constitution does not recognize homosexuality.<sup>38</sup> The applicants say the refusal to register LEGABIBO violates their right to form and join an association and that it transgresses the rights provisions in the Botswana Constitution.<sup>39</sup>

Since leaving office, former President Festus Mogae has repeatedly challenged the country’s anti-homosexuality laws, particularly the way in which they impede the fight against HIV/AIDS.<sup>40</sup>

**James<sup>41</sup>** is a 24 year old gay man from Gaborone. His mother found he was gay and she got really mad. She would insult him and call him all sorts of things. She also called her brother from the village to come and “beat the gay out of him”. She brought in people from a Church to attack him while he was in his room to try to exorcize the gay demons out of him. She would call many of his friends together with his sister to torment them about making her son gay. He fled home. He was moved from one friend’s house to the other. He fell into depression and flunked out of university. He went for counselling and somehow his mother found out and started getting to the counsellor because the counsellor also started preaching the Bible to him telling him that the mother was right. Once he recovered partially, he tried to go back to school but she wouldn’t pay his school fees. Only almost 2 years later he is now back in school but to date, the verbal abuse still continues. He avoids them by staying away from home as long as possible and disconnects his phone calls when she calls and starts shouting at him.

## Cameroon

Article 37 of Cameroon's penal code punishes homosexual conduct with jail terms ranging from six months to five years and fines from 20,000 to 200,000 francs (\$US 40 to \$US 400).<sup>42</sup> The laws are often abused and used to settle scores. Dozens of Cameroonians find themselves prosecuted and jailed solely because they are suspected of being gay or lesbian. More often than not little or no evidence is presented.<sup>43</sup>

*"They [LGBTI people] are generally considered as animals or devils, so when you know that, you see that they are in permanent danger. They can be injured, they can be killed, and they can be discriminated against. They can be rejected from healthcare and justice."*  
**Alice Nkom**

### Recent Developments

A recent report by Human Rights Watch found that at least 28 people have been prosecuted for same-sex conduct between 2010 and 2012.<sup>44</sup> Six new convictions have already taken place in the first half of 2013, among them three women (one of whom received a sentence of 5 years). LGBTI people remain vulnerable to violence by members of their local community. In July 2013, prominent LGBTI activist and reporter, Eric Lembembe was found tortured and beaten to death in his home.<sup>45</sup>

Two Cameroonian human rights lawyers, Alice Nkom and Michel Togu , received death threats against themselves and their children when two cases in which they were defending clients accused of homosexuality attracted national and international attention.<sup>46</sup> In one of the cases, Jonas Singa Kumie and Franky Djome were sentenced to five-years in prison after a judge found them guilty of 'homosexual behaviour'. His decision was based on their speech, clothes and drink preferences, reportedly their consumption of Baileys, an Irish whiskey and cream liqueur.<sup>47</sup> They were released in early 2013 after a year-and-a-half in prison.<sup>48</sup> In another case, a young man, Jean Claude Roger Mbede, was sentenced for having sent a sexually suggestive text message.<sup>49</sup>

### **Alice Nkom, Human Rights Lawyer, who regularly defends men facing homosexuality-related charges**

*"LGBT people in Cameroon face many risks. They are generally considered as animals or devils, so when you know that you see that they are in permanent danger. They can be injured, they can be killed, and they can be discriminated against. They can be rejected from healthcare and justice. So they are living in very bad situation in Cameroon – and they have nowhere to go and nowhere to complain."*

## The Gambia

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### **(recently left the Commonwealth)**

Both male and female same-sex sexual activity is illegal in The Gambia. According to the Gambian Criminal Code, any person who has carnal knowledge of any person against the order of nature or 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 of 14 years. "Carnal Knowledge against the order of nature" is defined in the code as including homosexual acts.<sup>50</sup> None of The Gambia's laws protect against discrimination based on sexual orientation or gender identity.

### **Recent Developments**

President Jammeh has a history of making inflammatory statements about LGBTI people. In 2008 he demanded that gay people leave the country and threatened to "cut off the head" of any homosexual caught in his country.<sup>51</sup> In 2013 he used his speech to the opening of parliament to state that, "Those who promote homosexuality want to put an end to human existence. It is becoming an epidemic and we Muslims and Africans will fight to end this behaviour."<sup>52</sup>

The U.S. Department of State's 2011 Human Rights Report found that "there was strong societal discrimination against LGBT individuals, some of whom were shunned", although "there were no reported incidents of physical violence against LGBT individuals during the year". The report also found that there were no LGBTI organisations active in the country.<sup>53</sup>

In April 2012, a court remanded 15 alleged homosexuals who were arrested at a bar in the Tourism Development Area.<sup>54</sup> They were charged with "indecent practice among themselves at a public place." According to police testimony in court in July 2012, the arrests were made because men were wearing women's clothes, carrying handbags, and "walking like ladies." On 1 August 2012, the prosecutor dropped all charges in the case.

On the 3 October 2013, Gambia announced that it was leaving the Commonwealth, stating it will "never be a member of any neo-colonial institution."<sup>55</sup> Some commentators pointed to increased pressure put on the Gambian government over its human rights record, including its record on the rights of LGBTI people, as a contributing factor to its withdrawal from the Commonwealth.

## Ghana

Ghana criminalises same-sex sexual activity between men as “unnatural carnal knowledge.”<sup>56</sup> The penalty for committing ‘unnatural carnal knowledge’ without the consent of one party is imprisonment for between five and twenty-five years. ‘Unnatural carnal knowledge’ between consenting parties is considered a misdemeanour and can be punished with up to three years imprisonment. Same sex conduct between females is not illegal.

*“We say ‘in the game.’ That is language to confuse people. It is not easy to meet other women in Ghana. It is dangerous. Everyone is against us.”*  
**Rita Johnson**

The Constitution of Ghana provides for fundamental rights and freedoms for everyone. The constitution also affirms that everyone is equal before the law and no one should be discriminated against. It also guarantees the right to privacy of the home, property and correspondence.<sup>57</sup>

### Recent Developments

In 2011 President John Atta Mills rejected British Prime Minister David Cameron’s statement on aid conditionality. “I, as president, will never initiate or support any attempt to legalise homosexuality in Ghana,” Mr Atta Mills said.<sup>58</sup>

In 2011 Ghana’s Western Regional Minister Paul Aidoo stated of the country’s LGBTI community, “All efforts are being made to get rid of these people in the society.” The minister went on to ask landlords and residents to report anyone deemed homosexual to the police for arrest.<sup>59</sup>

In March 2012 a gang of men assaulted nine people they believed to be LGBTI individuals in Jamestown, according to reports from the US State Department.<sup>60</sup> The victims were forced from their homes. No arrests have been reported.

In early 2013 Nana Oye Lithur the Minister for Gender, Children and Social Protection caused controversy with her support for the protection of the rights of LGBTI people, stating, “I stand for justice for everybody. And what I said was the rights of everybody, including homosexuals should be protected.”<sup>61</sup> In response other members of the government reiterated their support for the criminalisation of homosexuality.

Early 2013, two leading high schools in Ghana expelled 53 students for “practicing homosexuality” They had allegedly formed a society in which they recruited students to join the practise.<sup>62</sup>

### **“Rita Johnston” is a refugee from Liberia, living in Ghana**<sup>63</sup>

*I live in the Buduburam Refugee Camp with an aunt, my father’s sister. I consider myself Nigerian. My father was from Liberia but died when I was 10. My mother is Nigerian and went back there eight years ago because she had no money. After Mother left, my secondary school prefect here in Ghana started hugging me, rubbing and kissing me. She play with my breasts, we have fun [sex]. Along the line, I started to be a member. The school prefect gave me gifts like food, clothes and lotion. She was 27. I felt better. I had never dated before. I decided I like women more than men because I feel free. With men, I feel disturbed. Someday I might marry, but a man is only for financial help. If I have a trade like party catering, I don’t think it is necessary. I am okay. A man is a problem.*

*We say ‘in the game.’ That is language to confuse people. It is not easy to meet other women in Ghana. It is dangerous. Everyone is against us. Besides my school prefect, I had one girlfriend, Doris, from Nigeria. We travelled to Togo and lived in the same house compound for a few months. She was an up [top] with short hair. She was very skinny, had dark complexion and was so romantic she made me forget myself. I can do what I like as long as it is hidden.*

*I hope to meet a woman, a companion. I would like to travel, have a home, a nice place to be a lesbian. And someday when I have money, I will go to Nigeria and look for my mother.*

## Kenya

In Kenya, consensual same-sex practices between are criminalised under the Penal Code, punishable by up to 14 years imprisonment.<sup>64</sup> Female same-sex practices are not explicitly prohibited in legislation, though – like gay men – they face considerable stigma and prejudice. LGBTI people do not enjoy protection from discrimination under Kenyan law. The result of criminalisation of homosexual acts undermines the fight against HIV/AIDS, entrenches stigma and discrimination affecting service delivery to LGBTI people, encourages blackmail and extortion, promotes arbitrary arrest and/or police detentions of these persons, and other human rights violations including deprivation of life, physical assault.<sup>65</sup>

Although the existing sodomy laws are hardly ever used there are reports of harassment by police seeking to blackmail or extort money from them. The current constitution challenges these provisions by providing, a progressive Bill of Rights under Chapter Four.<sup>66 67</sup>

### Recent Developments

The Kenyan government is in the process of preparing the 4th National Health Action Plan for 2014. The Plan seeks to pay particular focus on most at risk populations which include the MSM (men who have sex with men) community. The State has embraced public participation in the process and engaged organisations working on MSM populations in the consultative processes.

Stigma against women who have sex with women has greatly contributed to their marginalisation, impacting almost all aspects of their daily lives. There has reportedly been an increase in incidents of “corrective” rape and sexual violence against lesbian and bisexual women.

On the 14th of June 2013 the High Court of Kenya declared that the Kenya Police violated the rights of a transgender woman in the course of arresting her and awarded her damages and the cost of the petition.

There has been demonstrable willingness by the Higher Education Loans Board, to recognise new genders and names of transgender persons in certificates. Additionally, the Registrar of Documents has eased the process for applicants seeking name change. Challenges still persist. In 2012 the National Registration Bureau made the process of changing names in the national identity card cumbersome, requiring applicants to seek endorsement from their local area chief.

### Festus Kisa

*My name is Festus Kisa. I am 23. I am gay. I have experienced many things as a result of my orientation. Some good, some not so good. Others downright traumatizing. One such experience of trauma happened not so long ago. About 8 months ago. I was walking out of the supermarket at around 8pm. I tried calling my taxi driver Lau but all I got was his voicemail. I got worried because that would mean walking two blocks to the taxi park.*

*The taxi park mortifies me. The taxi guys normally hurl insults at my friends and I when we walk past that place. I had barely walked 50 metres when I heard someone shout “When did men start dressing as women?” I tugged at my Zara Man blazer and continued walking. I heard another person add, “Those are female shorts, these men are embarrassing us.” Before I knew it three men had positioned themselves in front of me, visibly angry.*

*I stood there for a minute, trying to console myself that they could not do anything to me. Its only 8.30pm and we are in public. One of them moved towards me and slapped me so hard; I thought my jaw would break. The other guy roughed me up, tearing my blazer in the process. I asked them what wrong I had done to them and the answer I got was “You faggot. We should stone you just like the Bible says.” By that time tears were flowing from my eyes. A crowd had formed around us and all manner of expletives, obscenities and other hurtful words. I was so relieved to see Lau’s big frame pushing through the crowd to get to me.*

## Kenya

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Further, the NGO Coordination Board refused to register TEA, an organisation which represents gender minority persons.<sup>68</sup> Reasons for this refusal were not communicated, leading to a judicial review being filed by TEA to compel the NGO Coordination Board to register it.

Children born intersex are put through “corrective” genital surgery or pharmaceutical procedures recommended by medical practitioners consented to by parents or guardians to “fix” the child in their assigned male or female gender.<sup>69</sup> Currently in court is the case of an intersex child whose birth notification indicated a question mark in the gender box. As such, a birth certificate could not be issued.<sup>70</sup>

On 26 June 2012, the United States embassy in Nairobi held what was believed to be the first ever pride event in Kenya. A public affairs officer at the embassy said, “The U.S. government for its part has made it clear that the advancement of human rights for LGBT people is central to our human rights policies around the world and to the realization of our foreign policy goals.”<sup>71</sup>

## Lesotho

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The law in Lesotho criminalises consensual sexual activity between adult males under the Criminal Procedure and Evidence Act. The act of sodomy is prohibited as a common-law offence. It is defined as “unlawful and intentional sexual relationship per anum between two human males.”<sup>72</sup> Reports suggest that the law is not enforced. Sexual activity between consenting adult females is not criminalised.

*“Most of the time people’s views are based on a lack of knowledge. When we used to screen films in communities people would say ‘What are you talking about? This is satanic’. But now, I feel that people’s response is more positive. People are willing to learn more, to read more, and to engage in dialogue.”*  
**Sherif Mothopeng**

The 1993 constitution of Lesotho provides access to fundamental human rights and freedoms for all but does not explicitly include sexual orientation or gender identity.<sup>73</sup> The country’s law offers no protection to individuals against discrimination based on their sexual orientation or gender identity.

### Recent Developments

In May 2011 the principal secretary in Lesotho’s Ministry of Justice and Human Rights, Retslistsoe Maasenyetse, indicated that the government was studying the matter of homosexuality with the aim of finding out what the general public feels about it.<sup>74</sup>

In 2011, the president of the Matrix Support Group, a LGBTI NGO, Sherif Mothopeng had discussions with a senior official from the government to discuss some of the issues facing LGBTI people in the country and a pledge to organise a public debate with the aim of engaging the opinions of the public in the matter was made. In a statement Sherif said, “The government wants to get a clear picture about homosexuality and what we want them to do as human rights unit so we can get support in sensitizing the general community.”<sup>75</sup>

In 2013 the first LGBTI rights march was held in Maseru to mark International Day against Homophobia and Transphobia. The march was organised by Matrix Support Group. “I was worried that we wouldn’t get a permit from the police to hold the march, but it took less than ten minutes,” Sherif says. “Everybody was curious but supportive. Most of the time people’s views are based on a lack of knowledge. But MATRIX has already done a lot. When we used to screen films in communities people would say ‘What are you talking about? This is satanic’. But now, I feel that people’s response is more positive. People are willing to learn more, to read more, and to engage in dialogue.”<sup>76</sup>



## Malawi

Sexual activity by members of the same sex, both male and female, is illegal.<sup>77</sup> The penalty is up to 14 years in prison. There are no specific protections in the Constitution against discrimination on grounds of sexual orientation or gender identity. However, a de facto moratorium on the use of these laws appears to be in force and President Joyce Banda has encouraged a discussion about repeal.

### Recent Developments

There have been significant signs of progress since President Joyce Banda took office in April 2012. At the time of her first state of the nation address to parliament she said “provisions regarding indecent practices and unnatural acts” would be among those “repealed as matter of urgency.”<sup>78</sup> She was reported saying, “we need to harness our efforts in confronting antiquated beliefs based on fear and misinformation that are codified in our laws and engraved in our cultures.”<sup>79</sup> President Banda was later quoted as saying that the people of Malawi were “not ready” for repeal<sup>80</sup> and reports that the Justice Minister had announced a moratorium on prosecutions were officially denied<sup>81</sup>, but LGBTI activists in the country say that the situation has markedly improved. They are able to work openly for the first time in many years without fear of arrest and senior government officials are open to discussion and dialogue on human rights for LGBTI citizens. Issues related to homosexuality can now be

debated in the media in a relatively balanced way. Nevertheless the more positive tone adopted by the President and her office is not reflected throughout the country and attitudes to homosexuality at the regional and local level remain very hostile.

*“Sometimes I feel like maybe what I am, what God gave me to be what I am, why is that my mum or my uncle can’t just learn to live with it?”*

**Jonas**

According to Rodney Chalera, Projects Manager for the Centre for the Development of People: “Being gay or lesbian or LGBTI in Malawi is the most challenging life that one can endure. They are not regarded as part of society. People have been booted away from their houses, some have lost their places in school and others have lost their jobs. However there is hope in the sense that the current political leadership have suspended the sodomy laws for the purpose of enabling people to look at the whole discourse without prejudice. If as much information can get to the people then that opens the window of change in the way people view the whole concept of being LGBTI.”

### **‘Jonas’ aged 25 from the Northern region.<sup>82</sup>**

*Jonas was a trainee accountant with good grades. He looked forward to getting a job and contributing to society. Then his family discovered he was gay. “I wanted to be an accountant in my life. That was my dream and that is what I won’t ever be. My male friend was my neighbour actually and my uncle came and caught us red-handed. He said that he will no longer pay my fees (for my studies). He told my mum on the phone and...she was so angry about me. Since then I can’t go back to school again and my education is doomed. Sometimes I feel like maybe what I am, what God gave me to be what I am, why is that my mum or my uncle can’t just learn to live with it? I feel bad about losing my career.*

## Mauritius

In Mauritius, while homosexuality is not specifically mentioned in the legislation, the act of sodomy remains criminalised in both homosexual and heterosexual sex. Section 250 of the Mauritius criminal code of 1838 states that, “any person who is guilty of the crime of sodomy shall be liable to penal servitude for a term not exceeding 5 years.”<sup>83</sup> The US State Department reports that most sodomy cases that reach the courts involve heterosexual persons, especially in divorce cases.<sup>84</sup>

The 2008 Equal Opportunities act provides for protection on the basis of sexual orientation.<sup>85</sup> The constitution’s anti-discrimination provisions mentions “sex” but not sexual orientation.

Mauritius will be the host nation for the 2015 Commonwealth Heads of Government Meeting.

### Recent Developments

Collectif Arc-en-Ciel, the local LGBTI group, regularly holds parades that are intended to raise awareness about the pervasive forms of prejudiced, discrimination and violence against homosexuals, and to encourage respect and tolerance among members of the Mauritian democracy.<sup>86</sup>

In 2011 Mauritius supported South Africa’s historic resolution on sexual orientation and gender identity at the UN Human Rights Council.<sup>87</sup>

The Equal Opportunities Act was enacted on 1 January 2012. It prohibits both direct and indirect discrimination on the grounds of age, caste, creed, ethnic origin, impairment, marital status, place of origin, political opinion, race, sex or sexual orientation. The Equal Opportunities Act also prohibits discrimination by victimisation.<sup>88</sup> During 2012 the Mauritian Equal Opportunities Commission investigated a case of discrimination based on sexual orientation. It ruled that screening blood donors by sexual orientation to be discriminatory against LGBTI people. The Ministry of Health and Quality of Life has agreed to review the wording used on its website to eliminate derogatory text towards LGBTI people.<sup>89</sup>

## Mozambique

Perhaps owing to its history as a Portuguese, rather than British, colony there are no explicit laws against same-sex sexual conduct in Mozambique. Article 71 of the Penal Code however orders “security measures” against those who habitually commit “vices against nature.” As defined in the code, “security measures” include hard labour, internment in asylum and debarment from professional services. The term “vices against nature” is not defined, though nature is normally considered as ‘heterosexuality’. Article 35 of the Mozambican constitution enshrines the “principle of universality and equality.”<sup>90</sup> It does not specifically mention sexual orientation.

Discrimination in the workplace is prohibited on a number of factors, including sexual orientation.<sup>91</sup>

### Recent Developments

During the 2011 UN Human Rights Council’s Universal Periodic Review, the Minister of Justice, Benyinda Levi stated that homosexuality was not an offence in Mozambique.<sup>92</sup> Although welcoming the statement, The Mozambican Association for the Defence of Sexual Minorities (Lambda), still raised concern over Article 71 of the penal code. Since 2008 the government has declined to officially register Lambda.<sup>93</sup>

The group are campaigning for the words “sexual orientation” to be included in the non-discrimination clause in the constitution to prevent discrimination in future. The republic has made many advances in the issue of LGBTI rights aided by its media, with the state-owned news agency covering campaigns against discrimination in 2010. Government representatives subsequently promised to look at the situation.

## Namibia

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Both female and male same-sex sexual acts are illegal, based on the common law offence of committing “an unnatural sex crime.” In May 2004, a clause in Namibia’s employment law that protected employees on the basis of sexual orientation was removed by the government.<sup>94</sup> Namibia’s Constitution however contains provisions for inalienable rights of persons. Chapter 3 of the constitution contains a list of rights that are due to every person in Namibia.<sup>95</sup>

### Recent Developments

In June 2011 the government rejected three UN Human Rights Council Universal Periodic Review recommendations from France, Portugal and Spain dealing with LGBTI rights.<sup>96</sup> Each of the recommendations called for revoking current laws that criminalise consensual same-sex conduct.

In 2011 the first Mr Gay Namibia competition was held. Shortly after winning, Wendelinus Hamutenya was the victim of a physical attack.<sup>97</sup> More recently he has announced his intention to run for parliament.

In March 2012 Out Right Namibia was formed. The organisation advocates as the voice for LGBTI people in Namibia. It was officially registered later that year.<sup>98</sup>

In 2012 a young gay man was attacked by a group of men on the basis of his perceived sexuality. Reports suggest that the local police refused to deal with the victim’s complaints.<sup>99</sup>

## Nigeria

Both male and female homosexuality is illegal. Chapter 77 of the Criminal Code Act 1990 states that any person who 'has carnal knowledge of any person against the order of nature' is liable to fourteen years in prison. Attempted homosexual activity is punishable with seven years in prison. Gross indecency between males is punishable with three years in prison.<sup>100</sup> Twelve northern states have adopted Islamic Sharia Law and therefore punish male homosexuality with death by stoning,<sup>101</sup> and female homosexuality with up to 50 lashes.<sup>102</sup>

The Nigerian Constitution prohibits discrimination on the basis of birth, ethnicity, sex, religion or political opinion.<sup>103</sup> However, the interpretation of sex in the Nigerian Constitution does not specifically include sexual orientation and/or gender identity. There are no laws that explicitly criminalise trans and intersex persons.

### Recent Developments

On 31st May 2013 the Nigerian House of Representatives passed a bill proposing an additional 14 year jail term for persons of the same sex (both male and female) who get married or enter into a civil union. The bill requires presidential assent.<sup>104</sup> The provisions of the bill threaten organisations providing services for same-sex oriented people including likely charges for aiding and abetting same-sex couples.

The passage of the law caused concern internationally. A number of local and international human rights groups called on President Goodluck Jonathon not to sign the bill into law.<sup>105</sup>

The arrest of two men in October 2013 brought the total number of those known to be in prison or awaiting trial for homosexuality related offences to twelve.<sup>106</sup>

*"I was attacked beaten and paraded naked on the street of Dakwo village . . . People brought several video camera and mobile phone to record my nakedness. This inhuman degrading treatment has ruined my life." KC*

### **KC, is 33 years old and is from South-Eastern Nigeria<sup>108</sup>**

*I was attacked beaten and paraded naked on the street of Dakwo village, Abuja in July 2013 on the allegation that I am gay. People brought several video camera and mobile phone to record my nakedness. This inhuman degrading treatment has ruined my life and I have been banished from Dakwo village by the village chief whose house I was taken to during the incidence. My life has been ruined. The video went viral and I could not control how people distribute it. I can't go back to my hometown, to even think of going back.*

### **Kenyata is a Kenyan citizen, living in Abuja Nigeria.<sup>107</sup>**

*I have always wanted to become a successful business man in my life. I suffered rejection from 17 years from my own mother and I moved down to Nigeria of which I went through lots of difficult life situation before I begin to pick up gradually.*

*I was at my houses in Abuja on a Saturday morning when I heard someone knock on my door; it was a young man who I have been helping to look for job. I never could tell how this man get to know about my sexual orientation, but he came to my house that Saturday with someone who claim to be a lawyer and threatened me saying "we know you are gay" and falsify an allegation on me that I have been making sexual advances to this friend. Immediately they asked for N5,000,000 [\$US 32,355] because such an offence carries 14 years imprisonment in this country. He said I have to pay that money if I don't want them to take me to the court."*

## Rwanda

Both the constitution and the law in Rwanda are silent on the issue of homosexuality. Neither the 2003 constitution nor the 1977 Penal Code make mention of any crime related to homosexuality.<sup>109</sup> However there is no significant public discussion of this issue in the country and the topic remains socially taboo. The age of consent for any sexual act is 18 years but there have been reports from LGBTI Rwandans of harassment, blackmail and even arrest under various laws dealing with public order and morality.

While the constitution provides that all citizens are equal before the law, without discrimination based on a

number of factors, sexual orientation and gender identity are not listed as protected characteristics.

### Recent Developments

In 2009, attempts to make homosexuality a criminal offense foundered.<sup>110</sup> The proposed amendment to the Penal code would criminalise “[a]ny person who practices, encourages or sensitizes people of the same sex, to sexual relation or any sexual practice” and would carry a punishment of five to ten years imprisonment.<sup>111</sup> This legislation was similar to the controversial anti-homosexuality bill in the neighbouring country of Uganda. Justice minister Tharcisse

Karugarama, however, condemned and refuted reports that the government intended to criminalise homosexual acts, saying that sexual orientation is a private matter, not a state business.<sup>112</sup>

In April 2011 the Horizontal Community Association of Rwanda (HOCA), an association of gay and lesbian Rwandans, was evicted from their office in Kigali, after the landlord apparently bowed to pressure from neighbours. HOCA leaders and staff reported receiving threats in 2011, and several fled the country.<sup>113</sup>

## Seychelles

Male same-sex sexual conduct is illegal in Seychelles. Section 151 of the Penal Code states that any person who has “carnal knowledge of any person against the order of nature...or permits a male person to have carnal knowledge of him against the order of nature is guilty of a felony and is liable to imprisonment for 14 years.”<sup>114</sup> There is no criminal law in the Seychelles that covers female same-sex sexual conduct. The law is not generally enforced.

In 2006, a prohibition on employment discrimination on the basis of sexual orientation was added to the

Employment Act, 1995. It prohibits as harassment, “any such unfriendly act, speech or gesture of one person towards another person that is based on the other person’s...sexual orientation...as would adversely affect the other person’s dignity or make that person feel threatened, humiliated or embarrassed.”<sup>115</sup>

### Recent Developments

In its May 2011 UN Human Rights Council Universal Periodic Review, the government responded positively to recommendations from four nations related to decriminalising consensual sexual activity between adults of the same sex.<sup>116</sup>

In October 2011, the government agreed to decriminalise same-sex sexual acts. The Seychelles also agreed to prohibit discrimination based on sexual orientation or gender identity. Pressed on what the timeframe is for change, the second Secretary of the Ministry of Foreign Affairs, Sandra Michel, answered that “the change of relevant laws would come pretty soon, as the government and civil society want so.”<sup>117</sup> As yet there has been no progress toward decriminalisation.

## Sierra Leone

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Same sex sexual activity between men is prohibited under law inherited from the United Kingdom. Section 61 of the Offences against the Person Act 1861 prohibits “the abominable crime of buggery” which is punishable by life in prison.<sup>118</sup> Although the law is rarely enforced, police continue to harass, detain, beat, and denounce persons perceived to be members of the LGBTI community. Female same-sex sexual activity is not expressly criminalised.

Same-sex couples have no legal recognition in Sierra Leone and the constitution does not protect against discrimination based on sexual orientation or gender identity.

Social discrimination is reported in almost every facet of life for LGBTI people.<sup>119</sup> They face social and economic exclusion on the basis of their sexual orientation or gender identity. There are barriers to access health services, with concerns about confidentiality being ignored. Many choose not to be tested or treated for sexually transmitted infection for fear of exposure. The exclusion from education and housing leads to LGBTI people turning to sex work to survive. There are reports that lesbian girls and women have been subject to ‘corrective rapes’ that were initiated by family members. Religious groups reportedly promoted discrimination against the LGBTI community.

### Recent Development

The government prefers to ignore the existence of the LGBTI community. Due to the conservative and traditional society in Sierra Leone, LGBTI issues are taboo. Violence against LGBT people remains high. The police force and judicial system is barely functioning in most of the country.

During the country’s 2011 Universal Periodic Review before the UN Human Rights Council, the attorney general stated that all persons in the country would be protected regardless of their sexual orientation.<sup>120</sup> The government however rejected the three recommendations relating to revoking the laws that criminalise male same-sex activities and to introduce anti-discrimination measures.<sup>121</sup>

In October 2011 threats from the British Prime Minister David Cameron to introduce aid conditionality brought the issue to the fore. Deputy Information Minister Sheka Tarawallie responded that, “it is not possible that we will legalise same sex marriages as they run counter to our culture.” The president of the Methodist Church in Sierra Leone, Bishop Arnold Temple, said, “The church in Sierra Leone will do everything possible to protect democracy but our values will not accept the call from . . . Mr Cameron for countries in the Commonwealth . . . to accept the practice of lesbianism and gayism. We call on the government . . . to inform the British leader that such practices are unacceptable and we condemn it totally. Africa should not be seen as a continent in need to be influenced by the demonic threat as our values are totally different.”<sup>122</sup>

## South Africa

South Africa has some of the most progressive laws in the world regarding LGBTI rights. The constitution of South Africa was the first in the world to expressly outlaw discrimination on the grounds of sexual orientation.<sup>123</sup> South Africa legalised same-sex marriages in 2006, becoming the fifth country in the world and the first in Africa to do so. All provisions that discriminate against LGBT people were repealed in 2008 and the age of consent equalised.<sup>124</sup> South Africa allows same-sex adoption and parenting rights, allows equal access to IVF and surrogacy and recognises the right to legally change gender. In September 2013, the Minister of Justice and Constitutional Development Jeff Radebe, announced plans to introduce hate crime legislation.<sup>125</sup>

### Recent Developments

Despite the positive legal environment, social acceptance of LGBTI people is lacking. According to recent research by Pew Research, a large percentage of the population is still opposed to homosexuality. In a survey conducted in 2013, about 61% of the population of South Africa still feel homosexuality is unacceptable. In a survey conducted 5 years before only 8% of the population felt homosexuality was not a problem to them.<sup>126</sup>

LGBTI people continue to be subject to physical and sexual violence. In early 2013 a teenager died after suffering from violent beatings and torture during a youth camp said to 'make men out of boys.' It is suspected that the teenager's extreme treatment was part of an attempt to make him less effeminate. According to witnesses Raymond Buys was chained to his bed every night, not allowed to use the toilet and on one occasion, was forced to eat his own faeces.<sup>127</sup>

So-called 'corrective rape' – the sexual assault of lesbian women and trans men with the aim to 'cure' them – continues to be a problem in the country. In 2013 Duduzile Zozo, 26, was found dead at the home she shared with her mother and three sisters. She had been raped before she was killed and was found with a toilet brush inside her. In 2012, Thapelo Makhutle was found murdered, apparently following an argument over his sexuality and gender presentation.<sup>128</sup>

## Swaziland

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The Constitution of the Kingdom of Swaziland states that, “the principles and rules of the Roman Dutch Common Law as applicable in Swaziland since 22nd February 1907 are confirmed and shall be applied and enforced as the common law of Swaziland.”<sup>129</sup> Sodomy, as a crime under the 1907 common law, remains punishable by death or a lesser punishment at the discretion of the court. All male same sex sexual acts are illegal in Swaziland. There are no specific provisions regarding sexual conduct between females. There is no legal protection against discrimination based on sexual orientation in Swaziland.

Many of those who reveal themselves as LGBTI face censure and exclusion from their chiefs, pastors and members of Government who have criticised same sex conduct as neither Swazi nor Christian. LGBTI advocacy organisations face difficulty registering with the government.<sup>130</sup>

### Recent Developments

Although the government rejected recommendations calling for decriminalisation in its 2011 UN Human Rights Council Universal Periodic review, it accepted recommendations to implement measures to prevent violence against LGBTI people and to improve their access to health services.<sup>131</sup>

In November of 2011, the then Minister of Justice & Constitutional Affairs Chief Mgwangwa Gamedze, said Swaziland would not give human rights to LGBTI people, claiming that they do not exist in the kingdom. Gamedze reportedly told the Times of Swaziland that there was no LGBTI group asking for recognition.<sup>132</sup>

In August 2013, two gay men were banished from their Swazi communities because of their sexual orientation. The two aged 18 & 21 were living with an aunt when the neighbours raised suspicions over the nature of their relationship. When confronted they admitted to being gay. A member of the community police noted that there was an increasing concern about the growing “bad tendencies” and they, together with responsible residents, were on a mission of getting rid of all bad elements.<sup>133</sup>



## Tanzania

Sexual conduct between men is illegal under the sections of the Penal Code the deal with 'Unnatural Offences' and 'Gross Indecency'.<sup>134</sup> It gives a penalty of 30 years imprisonment to life.

***"A mob had gathered there saying they wanted to kill gays. I was getting into a public minibus and the conductor started to beat me. Then everyone started beating me." Anonymous***

In the semi-autonomous region of Zanzibar, the law prohibits consensual same-sex relations between men (with a 14-year penalty) and women (with a 5-year penalty). Zanzibar also criminalizes undefined "unions" between couples of the same sex. The laws prohibiting same-sex conduct are rarely enforced, but do serve to drive LGBTI people underground. Legislators in Zanzibar approved the Anti-Homosexuality Bill in 2004, amending Zanzibar's 70-year-old penal code.<sup>135</sup>

The Tanzanian Constitution outlaws discrimination under Article 12 (the right to equality), Article 13 (equality before the law) and Article 16 (the right to privacy).<sup>136</sup> There are no provisions specifically dealing with sexual orientation or gender identity.

### Recent Developments

In the 2011 United Nations Human Rights Council Universal Periodic Review of Tanzania of the human rights situation in Tanzania three countries made recommendations that Tanzania repeal its statutes that criminalise same-sex sexual activities and "Commit itself to the protection of the rights of all persons regardless of their sexual orientation or gender identity."<sup>137</sup> The government rejected all three recommendations.

In October 2011 threats from the British Prime Minister David Cameron to introduce aid conditionality brought the issue to the fore. In response the Tanzanian Prime Minister Mizengo Pinda stated, "The government has already made its stand clear on the matter . . . homosexuality is unacceptable to our society. We need to look critically on these issues. To me this is unacceptable. Even animals can't do such a thing"<sup>138</sup>

The position was re-iterated by the President of Zanzibar, Dr Ali Mohamed Shein. "We have strong Islamic and Zanzibari culture that abhor gay and lesbian activities and for anyone who

tells us that development support is linked to accepting this, we are saying no. We are guided by our tradition, we have families of a father, mother and children. What Cameron is doing might lead to the collapse of the Commonwealth."<sup>139</sup>

On July 30 2012, LGBTI rights advocate Morris Mjomba was found killed and mutilated in his home in Dar es Salaam. Mjomba worked with the LGBTI Support Unit of the Centre for Human Rights Promotion. Police opened an investigation of the killing, but no arrests have been reported.<sup>140</sup>

*In September 2011, the Gender Festival, an event bringing together gender activists from throughout Africa since 1996 and organised by the Tanzania Gender Networking Program and the Feminist Activist Network, became a flashpoint for heated debate on sexual rights and whether same-sex conduct was 'natural'. Participants who self-identified as LGBTI were chased by media and forced to flee the premises, and then attacked by members of the public.*

*According to one gay participant:*

*"A mob had gathered there saying they wanted to kill gays. I was getting into a public minibus and the conductor started to beat me. Then everyone started beating me." The events contributed to heightened backlash from certain media and social networking sites and the 'outing' of MSM participants affected their relationships with families, employers, and landlords. Six MSM lost their jobs or were forced to change their residence after the festival, some because they had been seen on television, others simply because the debate provoked by the Gender Festival led to a witch hunt in which suspected gays were publicly accused by family members, neighbours, and employers.*

*Alex<sup>141</sup>, a transgender man, was sexually assaulted by the police at Buguruni Police Station in Dar es Salaam in 2009. He was 18 at the time. The manager at the bar where he worked, who accused him of being a lesbian and having a "bad attitude," turned him in to the police. When Alex arrived at the police station, he said, police told him to take off his clothes and touched his breasts and vagina. They beat him on his arms and back with a belt and then forced him to wear women's clothing and clean the police station. He was released after six days, and said, "I did not make a complaint. I was afraid."*

## Uganda

Both male and female same-sex sexual conduct is illegal in Uganda. The laws criminalising same-sex conduct in Uganda have been in existence since it became a British protectorate late in the 19th century. No single conviction or even acquittal (indicating a full trial) has been found in the law books in Kampala since 2007, and arguably none has ever been recorded in Uganda's legal history. Nevertheless, the laws are used every day to intimidate, harass, and degrade LGBTI persons. Under the 1930 Penal Code, the offence of 'carnal knowledge against the order of nature' was punished by 14 years imprisonment and corporal punishment. The Code was amended in 1950 to remove the reference to corporal punishment. After Uganda's independence in 1962, the 1930 Penal Code remained unchanged. It was modified in 1990 to increase the punishment to life imprisonment.<sup>142</sup> There are no laws protecting persons from discrimination on the grounds of sexual orientation or gender identity.

### Recent Developments

Member of Parliament David Bahati introduced The Anti-Homosexuality Bill on 13 October 2009. This act would broaden the criminalisation of same-sex relationships in Uganda and introduce the death penalty for serial offenders, HIV-positive people who engage in sexual activity with people of the same sex, and persons who engage in same-sex sexual acts with people under 18 years of age. Individuals or companies that promote LGBTI rights would be fined or imprisoned, or both. Persons "in authority" would be required to report any offence under the Bill within 24 hours or face up to three years' imprisonment. Uganda would request extradition if Ugandan citizens were having same-sex relationships outside the country.<sup>143</sup>

In the case of *Kasha Jacqueline, Pepe Julian Onziema and David Kato v Rollingstone Ltd and Giles Muhame*,<sup>144</sup> Musoke-Kibuuka J stated that one must commit an act prohibited in order to be regarded as a criminal. However, he did not define which acts are covered in the provision, which has a high potential for including all forms of sex that may be regarded by a judge/magistrate as 'unnatural.' The judge issued a permanent injunction preventing Rolling Stone and its managing editor Giles Muhame from "any further publications of the identities of the persons and homes of the applicants and homosexuals generally". The court further awarded 1.5 million Ugandan shillings plus court costs to each of the plaintiffs.

***"I had to write that I wanted to sodomise the guy. I refused. They were humiliating me, pushing me with their guns."***  
**Anonymous**

In February 2012, the Minister for Ethics and Integrity, Simon Lokodo, was involved in a raid on a workshop run by Freedom and Roam, an organisation for LGBTI women. Lokodo is reported as saying, "I have closed this conference because it's illegal. We do not accept homosexuality in Uganda. So go back home."<sup>145</sup>

In November 2012, Parliament Speaker Rebecca Kadaga promised to pass a revised anti-homosexuality law in December 2012. "Ugandans want that law as a Christmas gift. They have asked for it...and we'll give them that gift."<sup>146</sup> The parliament, however, adjourned in December 2012 without acting on the bill.<sup>147</sup>

### Anonymous

*This guy asked me whether I was married. I said no, I love men, I don't love women. He was interested, we exchanged numbers. We met the next day and he took me on his boda [motorcycle]. Then he said he had run out of fuel, so I got off. There were policemen waiting. One slapped me. The one from my tribe said I was shaming them. He said he would call the media and put my picture in the newspaper. I got very scared. They took me to the police station. I had to write that I wanted to sodomise the guy. I refused. They were humiliating me, pushing me with their guns. They told me the guy wanted 1.5 million shillings. I had 15,000 in my wallet. They took it. I said I could raise only 300,000. It was money to pay my brother's school fees. I hired a taxi and went to my place with two policemen. The driver and one policeman stood outside. I went inside with the other policeman and gave him the money. I was released at 3:00 am.*<sup>148</sup>

## Zambia

Both male and female same-sex sexual conduct is illegal in Zambia. Sections 155 of the Penal Code states that any person who has carnal knowledge against the order of nature is guilty of a felony and liable upon conviction, to imprisonment for a term not less than 15 years and may be liable to imprisonment for life.<sup>149</sup> There are no laws protecting against discrimination of persons on the basis of sexual orientation or gender identity.

*“It’s been over seven months and counting ever since any of my family members spoke, nor laid eyes on me. They refuse have refused to accept me for who I am and worse off, because I advocate for what I believe in. I can never back home now, as home is now become a memory in my past.”*

**Charles**

### Recent Developments

Zambia has attempted four times to amend the constitution. The National Constitutional Conference – the official body tasked with driving the reform process and rewriting the constitution – has included a clause that forbids marriage between same-sex couples in the draft constitution.<sup>150</sup> In July 2012, the Zambian Human Rights Commission, in its response to the draft Constitution, argued against the universal application of some rights. In its submission, the ZHRC noted that the anti-discrimination clause is “very open ended and may lead to the handing of certain rights to or inclusion of certain groups that the people of Zambia may not be ready or willing to accept. In particular this concern is directed at members of the LGBTI community.”

In 2011, a Livingstone court tried Pascal Courouble, a 49-year-old Livingstone resident and Belgian national, for sodomy, to which he pleaded not guilty. Courouble was released on bail and reportedly left the country. In two separate incidents on September 27 and 28, two transgender individuals were beaten and raped for being associated with an LGBTI group.<sup>151</sup>

Recent efforts in early 2013 in Zambia to vilify LGBTI people have publicly portrayed homosexuality as immoral and un-African. The government’s unwillingness to assert constitutional protections and ensure redress for discrimination and abuse of minorities, as well as the arbitrary arrest and prosecution of individuals suspected of homosexual acts, show the vulnerability of the country’s LGBTI community.<sup>152</sup>

Friends of RAINKA, an LGBTI organisation, has recorded over 43 incidents of human rights violations against LGBTI people, including arrests, harassment, blackmail, eviction, and physical and sexual assaults.<sup>153</sup> Human rights and HIV activist, Paul Kasonkomona, was arrested for affirming LGBTI rights on a TV talk show. The Justice Minister has claimed that the country is the victim of a massive international campaign to promote homosexuality.

### Charles<sup>154</sup>

*I successfully completed my law degree in 2012, which allowed me to engage in full time activism, championing for the rights of sexual minorities in Zambia in all spheres of their lives. Over a couple of months ago, the Government of the Republic of Zambia has been targeting LGBT persons, calling for their blood. The result being state sponsored homophobia, the likes that the country has never seen before post independence.*

*I spoke out; condemning governments hate speech, persecutions and arbitrary arrests directed towards a sexual minority group that had done nothing to the state. I was quoted on an online media tabloid, with my image splashed all over the front page. Furthermore, given the fact that I am a gay man, who equally belongs to this oppressed group. The consequence, of that interview has till now lead me to being ostracized from my family for raising my voice and also, for being gay. It’s been over seven months and counting ever since any of my family members spoke, nor laid eyes on me. They refuse have refused to accept me for who I am and worse off, because I advocate for what I believe in. I can never back home now, as home is now become a memory in my past.*

# THE AMERICAS

## Antigua and Barbuda

Under the Sexual Offences Act 1995, the punishment for buggery ranges from life imprisonment (for offences committed against minors), fifteen years (between adults) and five years (for minors).<sup>155</sup> In addition, there are laws around indecency, which affect both women and men and carry a maximum penalty of five years in prison.

*“Our cultural norms dictate that homosexuality is a sin and our laws seek to invade the privacy of our homes by dictating with whom and the nature of sexual activity is allowable.”*

**Orin Jerrick**

Negative attitudes towards LGBTI people are commonplace, although some government officials argue this is not so (or at least not as grave as other Caribbean countries). Many LGBTI people are often afraid of being public about their sexual orientation and gender identity. Reports of human rights violations relating to LGBTI issues were largely verbal attacks.<sup>156</sup>

### Recent Developments

On 2011 the Attorney General, Justin Simon notes that the government is committed to “protecting all members of society from harassment and discrimination, violence and any unfair practices because of sexual orientation.” However, he said “there will be no change in the law on buggery . . . At least not if I can help it. Being gay is morally wrong, and to be honest personally, I am still homophobic.”<sup>157</sup>

The Ministry of Health has been supporting local efforts to document human rights complaints. There are ongoing efforts through its HIV/AIDS response that reaches gay, bisexual and other men who have sex with men.<sup>158</sup> While there are some prosecutions for buggery, the Director of Public Prosecutions reports these are all “criminal” cases. The authorities do not charge for consensual same-sex intimacy.<sup>159</sup>

Individuals and groups have benefitted from Human Rights Training sponsored by Aids Free World and Caribbean Vulnerable communities, which has led to the documentation of ten human rights violation reports from 2010 to present.

### **Orin Jerrick, Founder, Meeting Emotional and Social Needs Holistically (MESH)**

*“Members of the LGBTI community experience rejection and alienation by the society at large based on sexual orientation and or sexual identity. Our cultural norms dictate that homosexuality is a sin and our laws seek to invade the privacy of our homes by dictating with whom and the nature of sexual activity is allowable. Safe spaces for socializing are minimal and as such the LGBTI community is forced to meet in secluded places and to dress in keeping with traditional norms. These societal gender biases are indeed affecting the well being of the LGBTI community and severely impacts on their mental status.*

*Because of my profession I find life for me as a gay man in Antigua and Barbuda very unique from the rest of the population. I am able to go into areas where person would normally have challenges going. However, this does not say I do not faced with some degree stigma and discrimination. The discrimination I faced is from some of my colleagues. For example, my supervisor clearly identify my sexual orientation as an abominable sin and urged me to get into a relationship that is right in the sight of God and man or I will go to “Hell.”*

## Bahamas

The Commonwealth of the Bahamas decriminalised homosexuality in The Sexual Offences Act (1991). The Act provided penalties for sexual intercourse in public. The Sexual Offences Act (2010) 'equalized' the law and the penalty for sexual intercourse in public is two years for both heterosexual and same-sex couples. Prior to this Act the penalty was up to life imprisonment.

However, there is no legislation that provides protection from human rights violation on the basis of sexual orientation or gender identity. The Constitutional Review Commission set up in 2006 "found that sexual orientation did not deserve protection against discrimination."<sup>160</sup>

### Recent Developments

In June 2011, The Bahamas supported the United Nations Human Rights Council's resolution, which affirmed equal rights for LGBTI people.<sup>161</sup>

This year, Rt. Rev. Laish Boyd, Bishop of the Bahamas, Alfred Sears, Chairman of the College of the Bahamas and former PLP MP and Cabinet Member all petitioned the government to include explicit protection for the LGBTI community in the constitution. In July, the Constitutional Review Commission highlighted that while it "wholeheartedly agrees that vulnerable groups of people such as LGBT should be protected and not discriminated against . . . it is of the view that the necessary, limited protection can be provided by ordinary legislation."<sup>162</sup>

The committee also recommended that any provisions that sought to provide protection on the grounds of sex be limited to such an extent that the provision could not be used as the foundation of an argument that same-sex marriage is a constitutional right. In June 2013 the Chief Justice of the Supreme Court Michael Barnett told lawyers that 'Bahamian courts will soon have to address the issue of same-sex marriages.'

### **Erin Greene, Human Rights Defender<sup>163</sup>**

*I am a victim of both crime and discrimination. I am a victim of stalking, for more than four years. I am unable to convince the Royal Bahamas Police Force [RBPF] that it is their duty to fully investigate these matters. I have reported both the crimes and the instances of discrimination to the RBPF, to the Commissioner of Police and directly and to the Prime Minister.*

*We [members of the LGBTI community] have been unable to convince the Royal Bahamas Police Force that it is their duty to record this information . . . when processing a crime. The fact that our government does not have the capacity to record instances of crime, violence and discrimination against the LGBT community does not mean that members of the LGBT community have not attempted to have these instances recorded by official mechanisms.*

## Barbados

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Same-sex conduct is prohibited in Barbados. Anyone found guilty of buggery is liable to life imprisonment.<sup>164</sup> In practice the law is rarely enforced. There are no laws to protect LGBTI people from discrimination on the basis of their sexual orientation and gender identity.<sup>165</sup>

### Recent Development

In August 2013, Prime Minister Freundel Stuart at the opening of the Anglican Church Province of the West Indies Provincial Congress said “whether homosexual behaviour derived from nature or from nurture, it does not lie within our competence to sit in seats of judgement and to condemn those who pursue that practice.”<sup>166</sup>

Barbados is the only Commonwealth Caribbean country that recognises the binding jurisdiction of the Inter-American Court of Human Rights and is party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which condemns sexual orientation-based discrimination.<sup>167</sup> There is an annual trans show, “Queens of Queens” in Barbados.<sup>168</sup>

*“Many would say that I’m facing a losing battle here in Barbados. But it is my determination to be seen and treated just as any other “ordinary” member of society which keeps me going.”*  
**Alex D V Hoffman**

While Barbados enjoys a certain level of tolerance for LGBTI individuals, policymakers seem unwilling to rock the boat. In February of this year, the Universal Periodic Review again recommended that they repeal anti-gay laws but to date no response has been forthcoming.<sup>169</sup>

## Barbados

**Donnya Piggott, Founder,  
Barbados Gays, Lesbians and All-  
sexuals against Discrimination**

LGBT life in Barbados is best described as subtle oppression. We are thankful that we are not often physically attacked in public, although a few incidences have occurred. The major problems facing the community in Barbados are abandonment, unemployment and rejection which then leads to homelessness, prostitution, drug use and depression. Within the family unit many young LGBT men and women are left without financial support or any support whatsoever to carry on their daily lives. Many of them are put out of their homes because of their sexual orientation or in most cases because of their refusal to conform with gender norms i.e. their dress and behaviour. Additionally, transgendered persons or gender queer individuals find it extremely difficult to find jobs regardless of their level of education, this makes them more vulnerable to discrimination as they are in many cases unable to support themselves. Constant rejection and verbal abuse within the family unit and schools are also of major concern and leads to depression and a very low self worth. Many LGBT youth have left Barbados on to Canada where they feel more comfortable being themselves.

On a more personal note, I was cut off from my immediate family financially at an early age and was made to work, thankfully I have solid qualifications and have been working and putting myself through University. Because of the lack of financial support, as a University Student I was homeless for a period

of time as I could not afford rent and school at the same time. Thankfully this is not the case now. However, many LGBT youth do not have a high level of education and have found themselves engaging in deviant or risky behaviour in order to make it through.

**Alex D V Hoffman,**

As a Transgender woman living in Barbados, I always have this to say for myself: "It's interesting, being me. But it's not always fun." Many of my friends and acquaintances don't always understand what I mean by what I'm saying, until they observe or hear about what I go through from day to day.

I have faced numerous cases where prospective employers gave me odd looks when they saw my credentials. One woman kept staring back and forth between me and my birth certificate and ID card, because she couldn't understand how a person could look so drastically different from a photo taken three years previously or appear totally opposite to what was written down on a birth certificate. Even today, when I present things such as my driver's license (bearing my likeness in May 2013) and ID card (bearing my likeness in December 2009), I'm always told "No, I asked for YOUR ID. This is someone else's!" and then I have to go through explaining myself to them, after which oftentimes a compliance authority has to be called (as has happened to me in a Bank in late August 2013), and then they're left to their own devices because companies and employers aren't sensitised to the existence and realities of Trans persons, and so they are never

prepared nor do they have any policies in place for protocol.

Where society is concerned, things tend to get ugly. In recent weeks, I have faced situations where my photo was taken (under the assumption that I was unaware of it) and posted on the internet, with captions and descriptions intending to "expose" me as a biological male. On some of these posts, threats are made by persons, expressing intentions to shoot, burn, or run me over with a vehicle if I were ever seen again (sure enough, if a moving vehicle is near me, some persons do urge the driver to attempt to hit me with the vehicle. Fortunately to date, no such incident has taken place).

As an activist for LGBT equality, with special focus on that of the Trans community, many would say that I'm facing a losing battle here in Barbados. But it is my determination to be seen and treated just as any other "ordinary" member of society which keeps me going. It is my assertion that if Government wishes to take just as much from me, if not more, than it would other persons, then it should be prepared to give back commensurately.]

## Belize

Belize identifies as a “Christian country” and many leaders are socially and politically aligned to the Church.<sup>170</sup> The criminal code outlaws same-sex conduct and even denies entry for “Any prostitute or homosexual or any person who may be living on or receiving or who may have been living on or receiving the proceeds of prostitution or homosexual behaviour” from entering the country.<sup>171</sup> While there isn’t much reporting of incidents of discrimination and violence, LGBTI people continue to be affected by sexuality-based discrimination.<sup>172</sup>

*“I have lost two teeth, had my family property invaded and car damaged by two mask men . . . I have had stones thrown at me, experienced simulated gun shots, insults and physical harm on public transportation, threats that speak to, “Caleb You have no right to breathe!”*  
**Caleb Orozco**

### Recent Developments

The Belizean government has launched a National Gender Policy to promote the empowerment of all peoples, particularly women and girls. However, religious have begun campaigning that the language is “ambiguous and may be interpreted as giving rights to homosexuals.”<sup>173</sup>

In September 2010, the United Belize Advocacy Movement (UNIBAM) and Caleb Orozco, its executive director “filed the high-profile court case against the Attorney General and the Government of Belize aimed at overturning the provisions of Section 53” of the Criminal Code.<sup>174</sup> In April 2012, UNIBAM was struck out as a litigant in the case.<sup>175</sup> The last hearing was in May 2013 and a decision on the matter is expected later this year.<sup>176</sup>

In July 2013, a report commissioned by the South Poverty Law Centre on the involvement of US religious groups in campaigning against LGBT rights in Belize was published.<sup>177</sup>

### **Caleb Orozco, Executive Director, United Belize Advocacy Movement (UNIBAM)**

*Belize has a strong human rights framework in the constitution and has been signatories to international treaties that reinforce human rights obligations for all its citizens. It has however, historically been indifferent in practice and has excluded the needs of its LGBT citizens in many legislation. Cultivating an atmosphere for non-state actors to promote functional impunity against the population. One such law in the criminal code, section 53 “every person who has carnal knowledge against the order of nature with any person or animal shall be liable for imprisonment for ten years.” As the only claimant in the current constitutional challenge case, I have lost two teeth, had my family property invaded and car damaged by two mask men in the week of Supreme court hearings in May of this year, I have had stones thrown at me, experienced simulated gun shots, insults and physical harm on public transportation, threats that speak to, “Caleb You have no right to breathe!”*



## Canada

Homosexuality was decriminalised in Canada in 1969 after amendments were made to the criminal code that previously saw same-sex conduct as a sexual offence. By 2001, with the exception of three provinces, sexual orientation was included in the Human Rights Codes of all provinces. These civil rights laws made it illegal to discriminate against LGBTI people in housing, public accommodation and employment. Canada has some of the most gay and lesbian friendly immigration laws in the world. Many LGBTI move to Canada every year to enjoy improved civil rights, benefits, and the protection of a tolerant society.<sup>178</sup>

In July 2005, Canada became the fourth country in the world, and the first in the Commonwealth, to legalise same-sex marriages nationwide.<sup>179</sup>

There remains some regional variation in the age of consent.

### Recent Developments

On March 20, 2013 a Private Member's Bill C-279 - An Act to amend the Canadian Human Rights Act and the Criminal Code (gender identity) – successfully passed third reading in the House of Commons and is now under consideration in the Senate. The Bill would extend substantial protections to trans people.<sup>180</sup>

In July 2013, the Centre for Israel and Jewish Affairs Chair David Koschitzky wrote to the Leaders of the Government and the Opposition in the Senate to enact the bill which will

“provide members of the transgendered community with enhanced protection under the law equal to that which other vulnerable groups, including the Jewish community, receive. Moreover, past experience suggests that explicit reference in the criminal code will increase the likelihood that an investigating police officer or a crown attorney will identify a criminal act as being hate or bias-motivated.” Further to this, he argued that transgender people were entitled to the full protection of the law. This would mean including gender identity as an “aggravating circumstance” under the criminal code and a “prohibited ground of discrimination” under the Canadian Human Rights Act.<sup>181</sup>

Internationally, Canada is one of the most prominent and credible voices advocating for the fair treatment of and the end to stigma and discrimination faced by LGBTI people across the world. Foreign Minister John Baird has consistently denounced the callous treatment of LGBTI people and has contended that, “The rights of gays and lesbians are tremendously important. It is completely unacceptable that homosexuality continues to be criminalized in a majority of Commonwealth countries.”<sup>182 183</sup>

Canada is currently one of the main countries that LGBTI people from around the world go to when seeking asylum because of the discrimination they face in their own countries.

## Dominica

The law criminalises all forms of same-sex conduct in Dominica under the Sexual Offences Act 1998. The Act imposes criminal sanctions for “gross indecency” with sentences up to five years and for “buggery” with sentences ranging from five to twenty-five years.<sup>184</sup> CHAP Dominica, a HIV organisation, has found that negative statements by key opinion leaders, such as politicians has contributed to reinforcing negative attitudes towards lesbian, gay, bisexual and transgender people. There are several allegations of harassment, bullying, home invasions and other types of abuses perpetrated against LGBTI people in Dominica. There are no laws to protect people from discrimination on the basis of their sexual orientation.

### Recent Development

In May 2013, Bishop Michael Daniel, President of the Dominica Association of Evangelical Churches called upon Dominica’s political leaders “to take a unified stand and oppose the LGBTI agenda to legislate their sinful behavior.”<sup>185</sup> The Prime Minister, Roosevelt Skerrit had previously said the laws criminalising same-sex intimacy will not be repealed because no “compelling” argument has been posited in that regard.<sup>186</sup>

*“Being gay felt like a curse . . . It was not until later that I realized that it was not a curse and that I could live a happy fulfilled life. However, I must admit that a view of a happy life for me in Dominica constantly feels like a dream.” Anonymous*

Minority Rights Dominica (MiRiDom), an LGBT rights advocacy group, has been lobbying the government to protect and promote the rights of LGBT people. MiRiDom has launched a campaign to decriminalise same-sex intimacy.<sup>187</sup> In 2011, Sir Brian Alleyne, Former Attorney General and former Chief Justice of the Eastern Caribbean Supreme Court, calling for changes to the law said “What a person does in the privacy of his home with another person is his business.”<sup>188</sup> In July 2013, Willie Fevrier, outgoing head of the Dominica Planned Parenthood Association (DPPA) said that discrimination against LGBT people is “a major concern” and that people should be more tolerant.<sup>189</sup>

### Anonymous gay man

*From a young age I was told that being gay was wrong and although I had feelings and attractions to men I felt like it was a necessity to hide it or I would not only be alone and rejected but I would never be loved by my family or friends. I tried many ways of hiding who I was and prayed to God that he would change me every night for years. The more I tried to change the more person would notice the small habits with which set me a part from the rest. Being gay back then felt like a curse and one that I never wished upon myself. It was not until later that I realized that it was not a curse and that I could live a happy fulfilled life. However, I must admit that a view of a happy life for me in Dominica constantly feels like a dream.*

### Anonymous lesbian

*Being a lesbian in Dominica embodies one word – Invisible. To the average eye being a lesbian in the Commonwealth of Dominica is just as easy as being a straight man. No real pressure from society. This is false. As a lesbian in one of the most rapidly growing homophobic countries in the Caribbean, I have learnt that I have no real rights as a member of the LGBTQI community, and barely that of a straight woman. I have been the victim of sexual harassment, discrimination and often the butt of a threatened man’s joke; with no law enforced for my protection. My sexuality and preference are not accepted in Dominica, but instead simply tolerated. My family has somewhat accepted my lifestyle, but always spilling the undertones that I should keep it ‘private’. My experiences and struggles with accepting myself in this closeted society, has fuelled my fight for equality and protection for the LGBTQI community, especially for my LESBIAN sisters.*

## Grenada

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Same-sex conduct between men is criminalised in Grenada as outlined by the criminal code. The criminal code views anal sex as an 'unnatural act' which is punishable of up to ten years in prison.<sup>190</sup> Female homosexuality, however, is not specifically mentioned in the law.

According to the report *Sexuality, Gender, HIV Vulnerability & Human Rights in Grenada* to the United Nations Human Rights Committee, "...the law criminalizing sodomy is [also] detrimental to Grenada's efforts toward HIV/AIDS education, prevention, treatment and care." Further to this, it argues that "failure to address anti-gay discrimination contributes not only to the HIV vulnerability of same-sex practicing people, but to their heterosexual partners as well."<sup>191</sup>

Grenada has a relatively vibrant gay community, despite the discrimination faced by LGBTI individuals, as evidenced by a number of civil society groups that advocate on behalf of the queer community. GrenCHAP, the Grenada chapter of the Caribbean HIV/AIDS Partnership (CHAP), is among the most active LGBT/HIV human rights organisations on the island.<sup>192</sup>

### **Recent Developments**

In May 2013 the head of the Senate, Lawrence Joseph, made a call for Grenada to reconsider its anti-sodomy laws. He questioned the idea that sex between consenting male adults should be outlawed as well as concern about wealthier nations imposing sanctions and withholding aid as a consequence of the maintenance of local anti-sodomy laws.<sup>193</sup>

## Guyana

Guyana's criminal law criminalizes same-sex conduct under the gross indecency and unnatural acts provisions of the Criminal Law (Offences) Act. LGBTI people are at risk of discrimination and violence. In 2000, a constitutional amendment prohibiting discrimination on the basis of sexual orientation was unanimously approved by the National Assembly of Guyana. However religious communities fiercely opposed the provision and successfully convinced President Bharrat Jagdeo not to give his assent to the bill.<sup>194</sup>

*"I have reached a point in my life where I could care less of what people think. Today, I am living my best life ever and I owe it to myself as well as society out there to come clean as it were."*  
**Leon Suseran**

### Recent Development

In April 2012, the government established a select committee to facilitate a national consultation around repealing the law.<sup>195</sup> The Guyana Equality Forum, a collective of justice related organisations, has prepared a submission to the parliamentary committee in this regard.<sup>196</sup>

In February 2010, local LGBTI rights organisation SASOD (Society Against Sexual Orientation Discrimination) filed a lawsuit contesting Guyanese laws against 'cross dressing.' The lawsuit sought to have section 153(1)(xlvii) of the Summary Jurisdiction (Offences) Act, Chapter 8:02, which makes an offence of "being a man, in any public way or public place, for any improper purpose, appears in female attire, or being a woman, in any public way or public place, for any improper purpose, appears in male attire" 'invalidated as irrational, discriminatory, undemocratic, contrary to the rule of law and unconstitutional.'<sup>197</sup> In September 2013, Chief Justice Ian Chang ruled that men can crossdress (i.e. to wear "women's clothing") as long as it is not for an "improper purpose".<sup>198</sup>

### Leon Suseran, Journalist <sup>199</sup>

*"Given the current social climate of our society in terms of how persons perceive homosexuals, I have reached a point in my life where I could care less of what people think. Today, I am living my best life ever and I owe it to myself as well as society out there to come clean as it were."*

*"You see, a lot of Guyanese males are caught up trying to promote that masculine image to the public. And rightfully so! If they do not, they will be called homos and sissies by their buddies and society! They will not measure up to what it means to be a man—a real man'."*

## Jamaica

Same-sex sexual conduct is criminal in Jamaica. Sexual acts between men are punishable with up to ten years imprisonment. Sexual acts between women are legal. Sexuality-based discrimination continues to be commonplace and impacts on LGBTI people in a number of ways, including their right to work, education, health, life, and equality before the law, among others. The law does not protect people from discrimination on the basis of their sexual orientation or gender identity. Many LGBTI Jamaicans have been forced to seek asylum as a consequence of the discrimination and violence commonly meted out to them.<sup>200</sup>

### Recent Development

In April 2011, the Jamaican government passed the Charter of Fundamental Rights and Freedom but ignored calls to include sexual orientation and gender identity as grounds for non-discrimination.<sup>201</sup> Prime Minister Portia Simpson Miller stated during the 2011 general elections that LGBTI people should not be discriminated against and she intends to facilitate a conscience vote in parliament on the matter.<sup>202</sup>

*“I am a proud Jamaican lesbian and I applaud the incremental progress being made in Jamaica as I believe it has directly impacted my survival as a lesbian.”*

#### Latoya Nugent

In 2012 a survey commissioned by J-FLAG (Jamaica Forum for Lesbians, All-Sexuals and Gays) found that one in five Jamaicans respect LGBTI people and one in five would support a Charter of Fundamental Rights and Freedoms that includes sexual orientation as a ground for non-discrimination.<sup>203</sup> In addition, about

one-third of the population believes the government is not doing enough to protect LGBTI people from violence and discrimination.<sup>204</sup>

In January 2013, J-FLAG noted that despite the continued discrimination and violence perpetrated against LGBTI people, there was some progress in Jamaica.<sup>205</sup> Among these were what it described as an “unprecedented” move by the University of Technology to address anti-gay attitudes and violence (in response to the savage beating of a male student allegedly found in a compromising position with another male in November 2012); improved relations with the Jamaica Constabulary Force, and calls by the Minister of Health, Hon. Dr. Fenton Ferguson for the buggery law to be amended.<sup>206</sup> Human rights lawyer, Maurice Tomlinson filed a landmark case against a number of broadcasters for their refusal to air an advertisement promoting the humanity of LGBT people.<sup>207</sup> The court has already begun to hear the arguments.<sup>208</sup>

In July 2013, 16 year-old Dwayne Jones who attended a party as female was murdered by a mob in St James after being identified by another patron as trans.<sup>209</sup>

### Javan Campbell, educator and reproductive health and human rights advocate

*In my earlier years in High School, I faced high levels of verbal abuse and sometimes attempted physical abuse due to my perceived sexual orientation. At one point it started to affect my grades as I struggled with high internal stigma. I had no one to trust and share my feelings with openly. Notwithstanding all this I pushed on and made it through. There were several other young men who were more effeminate than I was that did not fare so well and either left or did very poorly in their studies.*

### Latoya Nugent, Manager, Education & Outreach, J-FLAG

*I am free and happy now, accepted by my family (including my dad who is a Minister of Religion) and friends but it was not always the case. In my earlier years I was verbally assaulted because I was perceived to be a lesbian. I was asked by the then Warden for Taylor Hall, UWI [University of West Indies], to vacate the hall mid- semester because it was reported to him that I was engaging in illegal activities, that is, sexually engaging a woman. I resisted the move but was not awarded a space on Hall for the following academic year.*

*Thankfully, I no longer suffer this degree of victimisation but everyday I live with the fear of being harmed on the basis of my sexual orientation. I spend my days advocating for a more rights-based approach to development, one in which Jamaica respects the right of all persons. I am a proud Jamaican lesbian and I applaud the incremental progress being made in Jamaica as I believe it has directly impacted my survival as a lesbian.*

## St Kitts & Nevis

LGBTI people in St. Kitts & Nevis continue to experience discrimination and acts of violence based on their sexual orientation and/or their gender identity. There are no laws that prohibit discrimination against a person on the basis of sexual orientation however the act of buggery remains illegal. This carries penalties of up to 10 years in prison. Female homosexual acts are however not barred by statute.

*“Plain and simple, the life of a gay man let alone a young man, who is already struggling to find his identity in the world, is a tough road to walk, but it’s a road we have to take.”*

### Junior

Based on the stigma and discrimination that LGBT people face, their openness about their sexuality is impeded. This has far-reaching effects on their ability to lead productive and safe lives. However, there are generally no reports of actual violence or discrimination based on sexual orientation.<sup>210</sup>

Over the last 5 years there have been a few charges of buggery against men. In 2010, for instance, two men were charged for the ‘abominable crime of buggery’.<sup>211</sup>

### Recent Developments

In August 2013, Prime Minister Dr. Denzil Douglas, who has lead responsibility for health within the quasi Caribbean Community (CARICOM) cabinet, has given his support to a debate in parliament regarding the buggery law. He has argued that, “As a country, we have been called upon to look at some of the existing laws that we have on our law books. The buggery law for example, we believe that the time has come for debate to take place in our country with regard to whether these laws, which continue to perpetuate discrimination and stigmatization against certain people.”<sup>212</sup>

Despite the progressive utterances of the prime minister, LGBT people continue to face stigma and discrimination in St. Kitts & Nevis.

### Junior, 23, Secretary<sup>213</sup>

*In a word life as a gay man in St.Kitts is complicated. You need to have real strength of character in order to live a happy life here. There are no ‘meeting spots’ such as clubs or bars where you can meet like-minded men. So it’s a constant guessing game if you see someone you’re attracted to. And while the homophobia here isn’t as blatant as other islands, it still exists. I live in the “ghetto” so there are days when I walk through some streets and a group of guys, usually below 20 years of age, would shout out “bun out!” “Battyman fi dead”, etc, after I’ve passed. All in all you need a supportive circle of friends if you want any semblance of peace of mind. As for love, or whatever you want to call it, most tend to fly out to pursue that avenue of happiness.*

*It’s really hard to summarize so much hate and ignorance in such a small space. The life of a gay Kittitian (male) is one that needs the mental strength of a thousand Vietnam soldiers. Being ambushed verbally and sometimes physically by “Christ following” men and women who are under the impression that somewhere along the line of choosing what shirt we’d wear to work today, we also chose to be aroused by the simple features of a male. Plain and simple, the life of a gay man let alone a young man, who is already struggling to find his identity in the world, is a tough road to walk, but it’s a road we have to take.*

## St Lucia

Consensual same-sex sexual activity is illegal under indecency statutes, and some same-sex sexual activity between men is also illegal under anal intercourse laws. Indecency statutes carry a maximum penalty of five years, and anal intercourse carries a maximum penalty of 10 years in prison. LGBTI people in St Lucia enjoy varying levels of tolerance, discrimination remains commonplace.<sup>214</sup>

*“I will continue to advocate for the rights of LGBT persons not only in Saint Lucia but the world. One day we will have a free world where everyone respects the rights of others to live free and they will not be afraid to do so.”*

**Jessica St Rose**

### Recent Developments

Christian fundamentalist groups continue to continue to lead anti-gay movements to block efforts by human rights defenders to advance the rights of LGBTI people. In July 2013, Caribbean Centre for Family and Human Rights (CARIFAM) published a letter in *The Voice* outlining ten reasons why the government should not decriminalize buggery.<sup>215</sup>

In May 2012, United & Strong, a ten year-old LGBT rights organisation and the only one of its kind in St Lucia, staged a demonstration at the Office of the Prime Minister and Minister of Education around the International Day Against Homophobia and Transphobia.<sup>216</sup> In April 2013, United & Strong hosted, in partnership with AIDS Free World and CariFLAGS (Caribbean Foundation for Liberation of All Genders and Sexualities), produced human rights violation documentation training for human rights defenders in the Eastern Caribbean.<sup>217</sup> In August 2013, United & Strong partnered with AIDS Free World, to host an LGBTI sensitivity training for police officers.<sup>218</sup> In October 2012, Kenita Placide, the co-Executive Director of United & Strong was named by St Lucia Voice News as one of the top ten women in the public eye.<sup>219</sup>

### **Jessica St Rose, Board Member, United & Strong**

*Coming out as a lesbian in Saint Lucia was definitely an overwhelming experience as I did not know what to expect from my family, friends, acquaintances, co-workers and even the everyday man on the street who just randomly says hi as I would walk around the busy streets of Castries. For me it was definitely an emotional roller coaster especially having to break the news to my grandparents who raised me in a Christian home where a lesbian lifestyle was not part of the norms, tradition and culture in Saint Lucia society. However, I managed to break the silence to my friends and family. While some were accepting others were not as supportive. Surprisingly my mom accepted me and like she told me “once you’re happy, I am happy” and I have always kept this with me as my strength.*

## St. Vincent and the Grenadines

Homosexual acts for both sexes are illegal under indecency statutes, and some male homosexual acts are also illegal under anal intercourse laws. Indecency statutes carry a maximum penalty of five years, and anal intercourse carries a maximum penalty of 10 years in prison. The laws, however, are rarely enforced. Although no statistics are available, anecdotal evidence suggests there is social discrimination against LGBTI people in the deeply conservative society.<sup>220</sup>

Unlike many other islands in the region, St. Vincent and the Grenadines does not have an LGBTI organization that can act as a reference point where advocacy and/or social services are concerned. This is done indirectly and through HIV organizations, such as the Caribbean HIV/AIDS Alliance, which attempt to bridge the gap between HIV prevention and social support services for at-risk groups such as MSMs and sex workers.<sup>221</sup>

### Recent Developments

St. Vincent and the Grenadines has rejected the recommendation of the 2008 UN Human Rights Committee to repeal section 146 of the Criminal Code that criminalises sexual relations between consenting adults of the same sex.<sup>222</sup>

*“I have been bullied especially in high school because of my perceived sexuality as well as been subject to physical attacks. I was beaten in fights and was even once stoned.”* **Anonymous**

### **Anonymous, Teacher<sup>223</sup>**

*As a gay young Caribbean citizen, I have experienced both sides of the coins. I have been bullied especially in high school because of my perceived sexuality as well as been subject to physical attacks. I was beaten in fights and was even once stoned.*

*There is also the acceptance which I have received in parts of my society. I have found that the more educated you become and the more you climb the social ladder especially in a small society as St. Vincent and the Grenadines that you become more accepted. After returning from my studies at university, more persons look at you now as an upstanding citizen with something to contribute rather than a deviant. There is still a struggle for total acceptance of my lifestyle and the understanding that LGBT rights are human rights rather than a fight for choice especially in a close-minded society as mine.*



## Trinidad and Tobago

Same-sex sexual conduct is prohibited for both men and women in Trinidad and Tobago. Although the law criminalises consensual homosexual relations, providing penalties of up to 25 years imprisonment, the government generally does not enforce such legislation, except when paired with more serious offenses such as rape. Immigration laws also bar the entry of homosexual persons into the country, but the legislation is not enforced.<sup>224</sup>

Like many other Caribbean territories, Trinidad and Tobago is highly influenced by religion and the Christian church in particular. This has meant that the realisation of human rights for LGBTI individuals is curtailed by these religious influences.

### Recent Developments

The Data Protection Act, passed in 2011, which sought to “ensure that protection is afforded to an individual’s right to privacy and the right to maintain sensitive personal information as private and personal” was the first pro-gay legislation passed in Trinidad and Tobago. The legislation is significant as the law provides heightened protections for “sensitive personal information”, which is defined to include one’s “sexual orientation or sexual life”. This ensures that citizens’ autonomy in their consensual sexual affairs requires both protecting their sexual lives from unwarranted intrusion and protecting them from discrimination based on their sexuality.<sup>225</sup>

In August 2012 Prime Minister Kamla Persad-Bissessar signalled that she wanted to ‘put an end to all discrimination based on gender or sexual orientation’. The statement came in a letter to the Kaleidoscope Trust. Mrs Persad-Bissessar said the stigmatisation of LGBTI people had to be ‘addressed on the grounds of human rights and dignity to which every individual is entitled under international law.’

A survey commissioned by Coalition Advocating for the Inclusion of Sexual Orientation (CAISO) in 2013 revealed that a little over half of the population is tolerant towards LGBT people.<sup>226</sup>

In May 2013, the Minister of Gender, Youth and Child Development Marlene Coudray, announced that gay rights were not a part of the gender policy which was before Cabinet, nor were they likely to be. She indicated that this decision was not hers, but the unanimous wish of the Inter-Religious Organisation, which represents 25 different religious organisations, and a large number of other faith-based organisations.<sup>227</sup>

Maurice Tomlinson, a gay rights activist from Jamaica, has contested the section of anti-gay laws which prohibit homosexuals from entering Trinidad and Tobago.

### Candace Moses

*It was 1997, she was Ellen, I was eleven, and I realized I was not alone. I had never heard the word lesbian until then and instantly I knew what it meant. I was young but I wasn’t stupid and I knew I was ‘different’, I liked girls the way I perceived that my mom liked boys.*

*It would take seven years for me to tell my mother, and when I did, I came out as bi. I did this as a way to ease her into the idea, while trying to convince myself that there was still a little ‘normal’ in me. Fact is I was as normal as anyone could be, and I was bi.*

*I experienced life and experimented like any teenager both emotionally and intimately; I remember the sting of my first heartbreak (to a woman) like the sting of losing my virginity (to a man), both events holding equal standing in my life, even to this day.*

*Now 26, I identify as lesbian, not because I’m no longer bi but because I have made the conscious decision to preference women in my life. With women I have felt butterflies and moths, passed through rainbows and thunderstorms and am surviving the test of time. They are my sisters, my surrogate mothers, my lovers, my kin.*

# ASIA

## Bangladesh

Section 377 of the Penal Code of Bangladesh makes same-sex intimacy between both men and women illegal, carrying sentences from ten years to life imprisonment.<sup>228</sup> LGBTI individuals' freedoms and well-being are curtailed and their lives otherwise lessened in quality because of this law.

Discrimination against LGBTI people is commonplace in Bangladesh. There are no specific protections for them under the law. This is compounded by the fact that Bangladesh is a very religious (Muslim) state.

There are a few organisations in Bangladesh who advocate on behalf of the marginalised LGBT community. Among them is the group Boys of Bangladesh (BoB) who has spoken out publicly about the continued oppression of sexual minorities. LGBT Bangladesh is also working towards a more inclusive society for LGBTI Bangladeshis. The hostile nature of the society against LGBTI people has resulted in a reliance on online activity to bring LGBTI people together.

### Recent Developments

In 2009 the Universal Periodic Review made a number of recommendations to Bangladesh based on their poor record of human rights generally, and LGBT rights specifically. According to LGBT Bangladesh, an LGBT rights group, "Two of the recommendations were to decriminalise same-sex relationships by abolishing Section 377 of the Bangladesh Penal Code, which is a remainder of British colonialism."<sup>229</sup> Both of these recommendations were ultimately rejected.<sup>230</sup> A third recommendation, that the government train law enforcers in sexual orientation and gender identity, was accepted.

LGBTI rights activists have criticised the government for rejecting the Universal Periodic Review's recommendations on decriminalisation.<sup>231</sup>

The national identity system in Bangladesh has still not made changes to the National ID cards of transgender people who do not fit within the exclusionary categories of male and female, despite recognising and admitting that this is shortsighted.<sup>232</sup> According to the Dhaka Tribune, "Except the Department of Immigration and Passport, no other government bodies, such as Bangladesh Bureau of Statistics which is responsible for conducting census, recognise these people as per their own distinguishable identities."<sup>233</sup>

### Anonymous 9th grader<sup>234</sup>

*When I came out publicly, it really wasn't a shock. My classmates somehow learned to accept me; however, the bullying never stopped. The seniors and the juniors started calling me names and some of the seniors even went physical on me. People used to steal my copies, stationery, and pencil-bags; all because I was gay. Of course, when I came out to my mom, she didn't support it: she gave me a long lecture about how it's unnatural and wrong.*

*I'm in ninth grade now. The bullying hasn't stopped; people got tired but I still get the occasional snide remark from a senior. The games teacher still doesn't let me play and manages to insult me every time I see him. I've learned to ignore that. I have a bunch of wonderful, accepting friends who don't really care what my sexual orientation is.*

*I guess I just got lucky: if this were some other school, I would have had to face way worse than what I faced here. Some people still choose to tell me that homosexuality is an 'abomination' and that I'll go to hell for being gay. I wouldn't say that it doesn't hurt, but I just choose to ignore it.*

*Homophobia ruined my childhood. As a child, I wasn't strong enough to bear the insults and the punches all the other kids threw at me. I used to come home and cry every day, and the worst part was that I couldn't tell anybody else. If only the society was a bit more tolerant, and parents taught their children that it is okay to be different, I could have had a nice childhood*

## Brunei Darussalam

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Brunei Darussalam is an oil rich monarchy on the north coast of the island of Borneo. A former British colony, it gained its independence in 1984 and still retains the colonial era legal code, amended in 2001, where male homosexuality is illegal and can be punished with up to 10 years imprisonment or a fine of 30,000 Brunei dollars (\$US 24,000). There are no legal prohibitions on female homosexuality, trans or intersex identity, but Brunei Darussalam is a largely conservative Muslim society.

### Recent Developments

Despite being one of the wealthiest countries in the region and having a sizeable economy, democratic institutions are fairly limited and there is no freedom of the press.<sup>235</sup> An ongoing academic study looking at the gay community in the country presented initial results in January 2011 at the 'Social Issues In Brunei Darussalam' seminar at the Universiti Brunei Darussalam. The paper, entitled 'Gay In Brunei Darussalam: An Initial Survey', was a sociological study looking at the lives and social interaction of 29 gay men living in Brunei. One of the authors of the paper was a relative of the Sultan, who is also the prime minister, and the study was reported favourably in the independent newspaper, Brunei Times.<sup>236</sup>

While gender reassignment surgery is permitted and there are trans people living in Darussalam, there is some evidence of persecution. In 2009, seven trans individuals living in Bandar Seri Begawan (the capital) were arrested by the Royal Brunei Police and subjected to forced HIV tests.<sup>237</sup>

## India

The law banning same-sex sexual activity in India was overturned in 2009 after Delhi's highest court found it to be "an affront to human dignity."<sup>238</sup> Prior to this, homosexuality was deemed to be an unnatural offence. An appeal against the Delhi ruling is ongoing, however the Supreme Court has declined to stay the Delhi High Court judgement.<sup>239</sup>

Despite the law being struck down, LGBTI Indians continue to face stigma and discrimination in their society. Anjali Gopalan, a prominent gay rights activist and founder and executive director of The Naz Foundation Trust has lamented that, "Just because a law changes, doesn't mean the way of thinking changes. That's a slow process and something we have to keep working at." She has argued that LGBTI people still face job discrimination, harassment by police, ostracism by their families, physical assault as well as problems in accessing public services such as healthcare.<sup>240</sup> This has been echoed by many other activists and ordinary citizens who are faced with discrimination on a day-to-day basis.<sup>241</sup>

Traditional religious groups remain a barrier to the seamless assimilation of LGBTI people into the wider society. Soon after the law was repealed religious groups indicated that they were not pleased with the decision. The Guardian reports that, "No sooner had the judgment been passed than all the religious groups in India started opposing it. While the law minister has said that the Congress-led government will study the judgment carefully, the main opposition party, the Hindu nationalist Bharatiya Janata party, is firmly opposed to it. Arguments invoking a nebulous notion of "Indian culture" abound."<sup>242</sup>

The benefits accorded to trans people vary across the country.<sup>243</sup> In 2010 the state of Karnataka announced that transgender persons would be included in the "Backward Classes" list, making them eligible for particular benefits. The National Legal Services Authority included transgender persons in the definition of marginalised groups, enabling access to free legal aid.

### Recent Developments

The first gay pride parade subsequent to the overturn of the law banning same-sex intimacy was held in 2012 where thousands of gay rights activists and ordinary citizens tasked the government to do more than repeal laws and to foster an environment

that is safe for LGBTI people.<sup>244</sup>

In August 2013, the LGBTI community raised concerns about the way in which the media reported on stories relating to them. An intent to approach the state human rights commission to set up guidelines about reporting issues related to them was therefore put forward.<sup>245</sup>

In September 2013, the renowned actress Celina Jaitley pledged her support for the UN's Free and Equal campaign. This global public education campaign seeks to raise awareness and respect for lesbian, gay, bisexual and transgender (LGBT) equality.<sup>246 247</sup>

### **Agnivo Niyogi**<sup>248</sup>

*India is a nation which has its feet in the twenty first century but soul in the sixteenth. A society where the generation gap stares bluntly at your face, it is but natural for the young to be reined in within a limit of "morality" which essentially encompasses everything that would "embarrass" the family in the society at large. Family ties outweigh individual aspirations and thoughts are chained to the fetters of traditions in this society which never dares to dream beyond the evident.*

*Sexuality as a whole is a banned object of discussion in a family discourse. Mention of the S word in any family gathering will earn you stares and silent reprimands. Such "dirty" talks are better limited to the dark of the night or the alleys of the closet. It is but natural for such a conservative society to adopt the "silent mode" on alternate sexuality.*

*Fighting a battle with the society becomes easier when we have the support of the family. But tragically being gay in India is a tragic battle; fought without the blessings of the dear ones. They say homosexuality is a disorder, some yoga therapists claim to have its cure too.*

*Gay is synonymous to happy, ironic, for the term is applied to whom happiness is denied at the cost of honour. But being gay in India is also about the struggle for happiness and dignity. Being gay in India is above all a responsibility to let our future generations realize the value of equality, fraternity, liberty and justice.*

*Being gay in India is all about being an Indian.*

# Malaysia

Malaysia has two sets of laws - civil law and Islamic sharia law. Civil laws are administered at the federal level and apply to everyone regardless of religious background. The civil criminal code retains colonial era anti-sodomy laws and proscribes oral sex and 'gross indecency' with sentences of up to 20 years or in some cases corporal punishment

*"There is a strong sense of community and resistance as well desire for change."*

## **Thilaga**

Sharia law is administered at the state level and applies only to Muslims. Malaysia is a federation of 13 states and three federal territories. While sharia law is the same in each state, the enforcement and penalties vary. Sexual acts between men and sexual acts between women are criminalised. Impersonation (males impersonating females) is criminalised under sharia law in all states. However, female impersonating a male is only criminalised in 3 states. In addition, in 1983, a fatwa was introduced to prohibit sex reassignment surgery for Muslim trans people. The political Islamisation of Malaysia in the late 1980's during the Mahathir administration has had a direct impact on the policing of public morality.

## **Recent Developments**

Restrictions in LGBTI human rights have played quite a big part in the politics of Malaysia for the last decade, largely driven by the ruling government and its proxies, such as the 'People's Anti-Homosexual Voluntary Movement' (PASRAH) and, during the first Anwar sodomy trial era, the Malaysian Malay Network (Jaringang Melayu Malaysia).

Since 2008, activists have held a sexuality rights festival "Seksualiti Merdeka" in Kuala Lumpur. In 2011, the police banned the festival following a number of police reports lodged against the festival for causing disharmony, enmity or public disorder, or threatening national security. The organizers launched a judicial review on the constitutionality of the ban. Unfortunately, the attempt was not successful.<sup>249</sup>

Since the banning of Seksualiti Merdeka, the ruling government has introduced numerous measures that attack LGBTI people. In collaboration with other bodies, the government has introduced guidelines to identify gay and lesbian individuals, funded an anti-LGBTI theater production and have set up rehabilitation camps for trans people. In 2011, four transwomen in Negeri Sembilan launched a judicial review of the constitutionality of the Negeri Sembilan sharia law that prohibits cross-dressing or impersonation. The Negeri Sembilan ruled against the transwomen and maintained that as Muslims they have to adhere to the state sharia laws.

In July 2013, Hazreen Shaik Daud became Malaysia's first trans politician with her appointment as a political secretary to Tanjung Bungah, Democratic Action Party (DAP) state assemblyman in Teh Yee Cheu.

## **Thilaga, Seksualiti Merdeka**

*While the state may be hostile towards LGBTQ people in Malaysia, there is a strong sense of community and resistance as well desire for change. It is very encouraging to see parents, friends and members of the community come together to support each other, and to celebrate love and diversity. Although in a very small scale, it is meaningful nonetheless.*

## Maldives

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Both male and female same-sex conduct is illegal in the Maldives under Sharia Law. Punishments for men include banishment for nine months to one year, imprisonment for up to three years or ten to thirty lashes.<sup>250</sup> Women may be placed under house arrest for up to one year.<sup>251</sup>

The stigma and discrimination that LGBTI Maldivians face is often directly related to the very religious ethos of the islands. As a result, lesbian, gay, bisexual, transgender and intersex people do not have communities where they can build meaningful relationships and camaraderie with other LGBTI people. ILGA reports that they are unaware of any LGBTI organizations, publications or public activities.<sup>252</sup>

### **Recent Developments**

In 2008 the Maldives became one of 57 signatories to an opposition statement (initiated by Syria) that countered the UN's declaration for the decriminalisation of homosexuality, citing the fact that the statement "delves into matters which fall essentially within the domestic jurisdiction of states" and could lead to "the social normalization, and possibly the legitimization, of many deplorable acts including paedophilia."<sup>253</sup>

In July 2013 a youth sports and entertainment policy, which aimed to get more young Maldivians active, was attacked as being a cover/disguise for homosexual activities despite any evidence for such a claim.<sup>254</sup>

## Pakistan

Same-sex sexual conduct is illegal under the colonial Penal Code of 1860. Section 377 of the Code states: "Whoever voluntarily has carnal intercourse against the order of nature . . . 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 a fine."<sup>255</sup> The law is rarely enforced.

*"My sexual orientation is just a part of who I am, and I am more concerned about excelling in what I want to do. When I meet new people I don't feel the urge to start the conversation by saying that I am bisexual. I want people to acknowledge me for what I have done and who I am as a person."* **Farid-ul-Haq**

There has been some advancement for the rights of LGBTI people, including increasing levels of tolerance amongst urban middle and upper class communities. There are no laws to protect LGBTI people from discrimination and violence on the basis of their sexual orientation or gender identity.

### Recent Development

In 2009 a landmark ruling in the Supreme Court extended benefits and equal protection to Pakistan's trans community under the leadership of Chief Justice Iftikhar Chaudhry (during his term in office).<sup>256</sup> As a result, they can now vote and run for political office.<sup>257</sup> However there are still high levels of social discrimination faced by Pakistan's hijra community. Reports suggest that hijras often were denied places in schools or admission to hospitals, and landlords often refused to rent or sell property to them.<sup>258</sup>

In March 2012, Pakistan was one of 57 countries from the Organisation of Islamic Cooperation to oppose a UN resolution on LGBTI rights. The Ambassador, Zamir Akram in a letter to the UN Human Rights Council, stated that LGBTI rights have "nothing to do with fundamental human rights."<sup>259</sup>

A Pew Research on tolerance to homosexuality conducted among 39 countries which was published in June 2013, found that Pakistan was the most intolerant of homosexuality.<sup>260</sup>

### Farid-ul-Haq<sup>261</sup>

*I am a 22 year old Muslim Pakistani, and I am very comfortable with who I am. I knew that I was attracted to men as well as women from a very young age. Truth be told, it wasn't ever confusing for me. If I liked a boy, okay fine, I liked a boy. If I liked a girl, okay fine, I liked a girl . . . Quite simple. It wasn't much of a big deal for me, nor for my parents. They accepted it from the start, and for me it was the most awesome thing any LGBT person could ask for.*

*I feel that I have the right to come out to the people I want to and live my life the way I want. I am living the life that I want to live. My sexual orientation is just a part of who I am, and I am more concerned about excelling in what I want to do. When I meet new people I don't feel the urge to start the conversation by saying that I am bisexual. I want people to acknowledge me for what I have done and who I am as a person. Sexual orientation should not be the major defining aspect for a person, and that's why I don't think that I am living under the radar or living a secret or lying to someone or myself. It shouldn't be 'straight people are different from me' or secluding yourself with one group. We are all people; different, but still, people.*

## Singapore

Singapore is a highly developed city-state, which still has in place the colonial era antigay laws. Male same-sex activity is illegal with sentences of up to 2 years, although this is rarely enforced. The Singaporean legal code also has numerous individual laws discriminating against LGBTI people. Despite this, LGBTI rights groups do exist and there is an active gay scene. However, the dominant, socially conservative People's Action Party that has ruled continuously since independence impedes the potential for reform. By contrast the legislation around trans issues is fairly liberal with Singapore being the only country in Southeast Asia that allows for gender to be changed on identity cards.

*“As a child, I was exorcised by a member of my mother’s church for being gay”*  
**Tania de Rozario**

### Recent Developments

Despite growing acceptance from the public of the LGBTI community the government has been unmoved. In part due to the campaigning of Christian fundamentalists and perhaps due to a disproportionately large amount of Christians in parliament. Police surveillance and censorship of LGBTI events and activities are a common occurrence.

An exhaustive review of the penal code in 2007 resulted in multiple reforms including the decriminalisation of heterosexual anal and oral sex. The review left in place section 377A concerning gross indecency between men, though it has been argued that this does not actually refer to anal sex between men. At the time, Prime Minister Lee Hsien Loong stated that “Singapore is basically a conservative society...The family is the basic building block of this society. And by family in Singapore we mean one man, one woman, marrying, having children and bringing up children within that framework of a stable family unit.”

There are two challenges to section 377A currently underway, one involving the defendant Ivan Tan Eng Hong<sup>262</sup> and the other by a gay couple, Kenneth Chee and Gary Lim.<sup>263</sup> The High Court has so far refused to repeal 377A in both cases and the Court of Appeal has agreed to hear both cases together.<sup>264</sup>

### **Tania De Rozario (32) is an artist and writer living in Singapore.**

*Singapore masquerades itself as a modern, cosmopolitan city, but when it comes to sexual orientation and gender identity, is stuck in a time warp. Consensual sex between men is criminalised under the law, media representations of queer sexualities are policed by government regulators and there are no laws to protect queer people from discrimination. As a child, I was exorcised by a member of my mother’s church for being gay, learned the word “lesbian” from a cover of the country’s local tabloid and received sex education that positioned homosexuality as immoral and unnatural. As an adult, not much of this has changed: Religious institutions are still allowed to perpetuate discrimination via public platforms, “themes” of “homosexuality” are paralleled with “themes” of terrorism, suicide and child abuse, and a feminist organisation was recently condemned for daring to suggest in its sex ed curriculum, that “homosexuality” is a neutral word.*

### **Pauline Ong quoted in the film Ghost Empire (2014) Director Susan Thomson**

*The internet has been a very useful platform for people to be able to share more openly and to talk on a level where it doesn’t feel like there are any restrictions...that was the initial struggle when I thought about setting up the website, basically how out was I willing to be, would I be courageous enough to be....My family, it was hard for them at first thinking about how public this was.*



## Sri Lanka

Same-sex sexual conduct is illegal in Sri Lanka. Under Section 365A of the country's penal code homosexual acts are punishable by a jail term of up to ten years. This law applied only to homosexual men up to 1995, when the law was amended to be "gender-neutral," resulting in the criminalisation of both male and female homosexual activity.<sup>265</sup>

Although the law is rarely enforced it continues to be used to threaten and harass LGBTI people. A recent study by human rights organisation EQUAL GROUND found that 90% of trans people and 65% of gay men reported experiencing police violence based on their sexuality and/or gender identity. The law still retains widespread support amongst lawyers and the police.<sup>266</sup>

Until 2012 there were several NGOs in Sri Lanka that advocated for the rights of LGBT Sri Lankans. These included the Women's Support Group (WSG)<sup>267</sup>, EQUAL GROUND<sup>268</sup> and Companions on a Journey.<sup>269</sup> Of these, however, only EQUAL GROUND is still operational.

Sri Lanka's hosting of the 2013 Commonwealth Heads of Government Meeting has caused controversy due to its human rights record.

### Recent Developments

In early 2013 Early this year, a Nationalist Facebook page published damaging and violence-inciting articles about EQUAL GROUND and the LGBT community. The owners of the page published pictures of the Executive Director of EQUAL GROUND Ms. Rosanna Flamer-Caldera, claiming that she and the organisation were attempting to convert Sinhala Buddhists to homosexuality.<sup>270</sup>

On 17th August 2013, a government controlled Sinhala newspaper 'Lakbima', printed an article claiming that a peer education workshop on HIV/AIDS was held in Anuradhapura on was to brain wash children and turn them into homosexuals.

In September 2013 Brad Adams, the Executive Director of Human Rights Watch, urged all Commonwealth Heads of Government to boycott the Commonwealth Heads of Government Meeting hosted by Sri Lanka, citing the country's poor track record on human rights as a major concern.<sup>271</sup>

In October 2013, Purna Sen, former Head of Human Rights at the Commonwealth, condemned the Sri Lankan Government over its harassment of activists campaigning for LGBTI rights.<sup>272</sup>

### Renuka.<sup>273</sup>

*I met my friend Malini and our friendship turned into a love affair after some time. We both worked together and did everything together*

*After sometime, Malini's parents brought in a marriage proposal for her and decided to give her in marriage. Malini had no courage to refuse as she was helpless. I was shocked and grieved. I became like a dead body. I once wanted to commit suicide. Malini got married and went to her husband's house. They have a daughter now. My whole life became senseless and still my love for Malini has not faded away. I look forward to seeing her some day. I want to thank all those with whom I shared my story and grief.*

# EUROPE

## Cyprus

Cyprus is a socially conservative island, divided politically since the Turkish invasion of Northern Cyprus in 1974. The Republic of Cyprus, a member of the Commonwealth and the European Union, has de facto control of only the southern half of the island. After losing a case in the European Court of Human Rights, the Republic legalised same-sex sexual relations in 1998. The age of consent was made equal at 17 in 2002. There are no provisions as yet for civil unions or marriage for LGBTI citizens. A law banning discrimination at work on the grounds of sexual orientation was passed in 2004 to comply with EU directives.

*“Affection between men is something that most Cypriots have never seen, and even holding hands in public will cause people to stare in amazement, even if you give them the ‘what are you looking at?’” Anonymous*

### Recent Developments

There have been a number of hopeful signs of progress towards the protection of rights for LGBTI citizens in recent months. The Penal Code has been amended and now states that: “A person who publicly and in a threatening manner intentionally encourages or incites either verbally or with written texts or illustrations or any other way to violence or hatred directed against a person or group defined on the basis of sexual orientation or gender identity, is guilty of an offence.”<sup>274</sup>

There have been discussions in the Cypriot Parliament about new civil partnership legislation. A draft bill was accepted by the government in February 2013. Following elections, the new President Nicos Anastasiades has been reported as supporting the measure and some MPs hope that a bill will be introduced in the coming months.<sup>275</sup>

The influence of the Orthodox Church remains strong in Cyprus and there is little evidence that social attitudes are becoming significantly more accepting. One contributor to Gay Cyprus Online refers to a survey in 2006 in which 75% of respondent expressed hostility to homosexuality and writes:

“What this translates as to you is that you will not be arrested or anything like that for being gay, but being openly gay and flaunting your sexuality is bound to irritate some people. Affection between men is something that most Cypriots have never seen, and even holding hands in public will cause people to stare in amazement, even if you give them the ‘what are you looking at?’ look. Tight knit family and social structure, the influence of the church and a practically non-existent awareness campaign from the government has led to the people here holding strong stereotypes as to what is gay, and this unfortunately links into us being viewed as ‘perverts’, ‘child molesters’ and a ‘disgrace’ generally speaking.”<sup>276</sup>

### **Costas Gavrielides, *Accept LGBT Cyprus*, quoted in the film *Ghost Empire* (2014) Director Susan Thomson**

*To be honest with you I personally find that the Cyprus problem has held us back from progressing in areas other than the Cyprus problem. I personally think it affects every walk of life even though people don't realize that it does. As far as human rights is concerned everybody thinks that human rights is for the displaced to go back to their homelands, from the South to the North or from the North to the South, and up until now they were forgetting that there are other human rights involved and that LGBT people have human rights, that they should also be looked after.*

*Homosexuality was legalised in 1998-99. Back in 99 it was illegal and there was a huge outcry as well when the bill to decriminalise homosexuality passed, particularly from the Church locally, so the Greek Cypriot church was against it and we are anticipating some sort of similar reaction to the civil partnership bill...not only because this is for same sex partners but also because this is going to apply for opposite sex partners so it's going to be something the Church themselves do not want, even for different sex partnerships.*

*Since 1998 people are now discussing homosexuality on TV, it's something that we come out in public and talk about...to be honest we try not to mix the politics with the two communities.*

## Malta

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Male and female same-sex sexual conduct is legal in Malta. Colonial era sodomy laws were abolished in 1973.<sup>277</sup> However, same-sex couples are not guaranteed full legal protections available to heterosexual couples.

### Recent Developments

In 2012, amendments to the Criminal Code were passed to include sexual orientation and gender identity under hate crime provisions.<sup>278</sup>

In January 2013, Prime Minister Lawrence Gonzi and Labour Leader, Joseph Muscat expressed their support for adoption rights for same-sex couples. Both leaders said that the decision should be guided by experts and in the best interest of the child. In an interview with Malta Today, “any such evaluation by experts should be free of any prejudice towards any sexual orientation” in response to an interview done previously by Muscat where he said ‘the important thing was for the child to have a loving and caring family, irrespective of the adoptive parents’ sexual orientation.’<sup>279 280</sup>

In June 2013, Malta Gay Rights Movement awarded the Prime Minister the annual Soldier Award for his support to the gay community. The Minister of Education, Evarist Bartolo and MGRM coordinator Gabi Calleja were previously given the award in 2011.<sup>281</sup>

After a seven year legal battle, there was a major victory for the advancement of the rights of trans people. In April 2013, Joanne Cassar, a post-op transsexual won the right to marry a male partner.<sup>282</sup>

The Maltese parliament is, at the time of publishing, considering a Bill introducing civil unions for same sex couples.<sup>283</sup> Opposition to the Bill has come from the country’s Catholic Church, which has termed civil unions a “novelty.”

## United Kingdom

Britain is now one of the states with the greatest degree of legal equality for LGBTI people. However progress towards full equality has been slow and patchy and some anomalies still remain within the four nations that make up the United Kingdom (England, Scotland, Wales and Northern Ireland).

The process towards decriminalisation started in 1967 with the Sexual Offences Act making homosexual acts legal in England and Wales for the first time if they were consensual, in 'private' and involved people over the age of 21. Similar legislation came into force in Scotland in 1981 and in Northern Ireland in 1982.

*“Transwomen in particular are still ridiculed in the media, which despite the patient attention of our equality organisations, seems completely resistant to the idea that we are a normal part of human diversity.”*  
**Martha Dunkley**

The age of consent was equalised at 16 in 2000 following a legal challenge at the European Court of Human Rights and protracted arguments in Parliament. The ban on 'gays in the military' was lifted in the same year. The first civil partnerships became possible in 2004. Everybody, regardless of sexual orientation or gender identity, now has access to in vitro fertilisation (IVF) and can adopt children, although in Northern Ireland LGBTI couples cannot adopt. Since 2005 it has been possible for a person to change their legal gender. The Equality Act of 2010 brought

various measures protecting against discrimination on grounds of sexual orientation and transgender status, as well as sex, age and religious belief, together into one piece of legislation.

Protection against hate speech based on sexual identity and inciting hatred based on gender identity are not uniform throughout the UK.

### Recent Developments

In 2013 the Same Sex Marriage Act was passed allowing gay men and women to marry in England and Wales in designated places. Such marriages can only be carried out in religious premises if the churches concerned opt in. Both the established Church of England and the Church in Wales are legally prevented from doing so. The Scottish Parliament has begun the process of legislating for equal marriage but the Northern Ireland Assembly has rejected it.

Opinion polls have consistently shown that public opinion in the UK has become considerably more accepting of LGBTI people over the past fifteen years with younger people particularly supportive of full equality. All the main party leaders support equality both within the UK and internationally. In 2011 the Prime Minister, David Cameron, said he wanted Britain to be a "global beacon for reform" of LGBTI rights.<sup>284</sup> However, more Conservative MPs voted against Same Sex Marriage than voted for it and opposition to equality in the UK Parliament remains strong but confined to a minority of MPs.<sup>285</sup>

### **Martha Dunkley is a trans activist who lives in London**

*In some ways the UK is one of the best places in the world to be transgendered. We have equality legislation and a National Health Service that will give us medication and surgery if we need it. More and more people around the country accept us.*

*However transwomen in particular are still ridiculed in the media, which despite the patient attention of our equality organisations, seems completely resistant to the idea that we are a normal part of human diversity, to be respected in the same way as ethnic minorities, gay and lesbian people and the differently-abled. We still often cannot get jobs. Also those of us who have a more complicated explanation of felt gender than 'man' or 'woman' can have more problems with the NHS and generally.*

*And do be careful where you live. Gangs of youths on housing estates can make you their pet project for bullying and harassment.*

*We have come a long way since April Ashley's marriage was annulled on the grounds that 'a man cannot marry a man', but there is still a long way to go.*

# PACIFIC

## Australia

### including Christmas Island, Cocos (Keeling) Islands and Norfolk Island)

Australia is home to the world famous Sydney Mardi Gras LGBTI festival and recognition of and rights for LGBTI people have been advancing significantly since the 1970s. During the colonial era, laws regarding homosexuality were influenced by British law and the crime of sodomy was considered a capital offence until 1899. Throughout the late 20th century homosexual acts were decriminalised at the state and territory level. Same-sex sexual activity between men was decriminalised nationwide in 1997.

*“I wish more people knew about intersex so that other people like me felt more comfortable about being open about the way they were born.” Tony Briffa*

The Australian federal government also played a key role in establishing that the International Covenant on Civil and Political Rights protects the fundamental rights of LGBTI people in the case of *Toonen v Australia* in 1994.<sup>286</sup> Australia does not yet have equal marriage.

### Recent Developments

At the federal level, under Labor governments from 2007-13 all discriminatory laws were removed from the statute books, same sex couples were given the same rights as de facto heterosexual couples and antidiscrimination legislation was introduced that, uniquely in the world, also includes intersex. However, faith organisations continue to play a big role in the provision of services. Although antidiscrimination legislation ensures that faith-run aged care facilities do not discriminate, there are exemptions for faith-run schools, hospitals, clinics, employment agencies and businesses.

Certain rights and responsibilities are handled at the state level and there is some variation there. For example, Queensland has a differential age of consent, in New South Wales LGBTI students can be expelled from faith-run schools, there are different rules for adoption and civil union registries in different states/territories and the “gay panic defence” still exists in three Australian states.

In the 2013 federal election, LGBTI rights, in particular equal marriage, played a prominent part in the campaign. The Liberal/National Coalition was elected and Tony Abbott, the new prime minister, is a social conservative from the right of his party and a former Catholic ordinand whose spiritual advisor is the very conservative Cardinal George Pell. However his sister Christine Forster is an out lesbian who says that her brother is gradually changing his mind on LGBTI issues. There are also several small ‘l’ liberals on the front bench who have in the past voiced support for LGBTI rights.

### **Tony Briffa (43) is a councillor and former Mayor from western Melbourne.**

*When I was born doctors weren't sure if I was a boy or a girl. After many medical tests they determined I was born biologically part male and part female. The decision was made that I was to be raised as a girl, have my testes removed, and made to look like a girl. I was named Antoinette. I had many, many medical examinations and surgeries as a young person. When I grew up I did not feel I was being honest by living as a woman. I started taking male hormones, changed my name to Anthony and started living as a man. Relationships were very difficult. After a few years I began to accept the way I was born. I now openly live as an intersex person and celebrate being both male and female.*

*I still live in the community where I grew up as a girl. Australia sometimes has a reputation for a 'macho' culture so I was very proud to be elected Mayor two years ago. Being open about the way that I was born and the way I feel has been very well accepted by my community. I wish more people knew about intersex so that other people like me felt more comfortable about being open about the way they were born.*

## Fiji

### (currently suspended from the Commonwealth)

Fiji is a pacific island nation prone to ethnic tensions, civil war and political coups. Despite this, it is one of the few countries in the region where significant advances have been made in LGBTI rights in recent years. In 1997, Fiji became the second country in the world to outlaw discrimination on the basis of sexual orientation in its constitution (suspended in 2009).

*“Fijian society is homophobic and people are subjected to violence and discrimination on the basis of sexual orientation and gender identity on a daily basis. However younger people are somewhat tolerant and engaging on discussion about homosexuality.” Jasmin Kuar*

Since 2010 both male and female same sex conduct has been decriminalised. A new constitution was passed in 2013, which has a clause that outlaws discrimination on the grounds of sexual orientation and gender identity. Fiji is a signatory to the 2011 UN declaration in support of LGBT rights.

### Recent Developments

Discrimination on the basis of sexual orientation was outlawed in the 1997 constitution. This constitution was suspended in 2009 following a coup but the new constitution adopted in 2013 outlaws discrimination on the basis of sexual orientation and gender identity. In 2007, Fiji also banned discrimination on the basis of sexual orientation in employment.<sup>287</sup> In 2010 the laws criminalising sodomy and “unnatural offences” were struck down, leading to the decriminalisation of male and female homosexuality.<sup>288</sup>

Although the new constitution is secular, politics in Fiji is still influenced by religion and the prime minister recently used religion as the basis for his rejection of same-sex marriage. Society is still fairly conservative and there have been instances where the police have harassed LGBTI people, notably banning a 2012 Fijian celebration on the international day against homophobia.<sup>289</sup> There is also anecdotal evidence of the harassment of trans and intersex Fijians that led in April to the Amithi Fiji Project calling on the Attorney General to include protection of all trans people in the new constitution.<sup>290</sup> Although there have been calls for equal marriage, the prime minister recently ruled out including this in the constitution.<sup>291</sup>

### Jasmine Kaur is an activist with Oceania Pride

*I grew up with a very religious background so sexuality was not something we ever discussed at home. I realized I was a lesbian when I was 22 and soon became active in LGBT activism. Currently Fiji has no LGBT rights to speak of other than the non-discrimination clause. However the state is not ready to discuss anything on LGBT. The people’s draft constitution was a really good document as it protected everyone’s rights and would have allowed for same sex marriage if passed. The 2013 constitution however has many limitations, so now we have to be very careful and strategic about how we do our work. We could find ourselves in an incriminating situation as deemed fit by the government.*

*Fijian society is homophobic and people are subjected to violence and discrimination on the basis of sexual orientation and gender identity on a daily basis. However younger people are somewhat tolerant and engaging on discussion about homosexuality. There is a lot that needs to be done for the LGBTIQ people in Fiji and groups and networks all over Fiji are doing their best to combat homophobia.*

## Kiribati

Kiribati is a Pacific island nation made up of 32 atolls and one raised coral island dispersed over 3.5 million square kilometres. It is a parliamentary democracy and was part of the UK colony of the Gilbert and Ellice Isles along with Tuvalu until 1979. Sodomy, regardless of sexual orientation, and acts of “gross indecency between males” are illegal under sections 153, 154 and 155 of the penal code with punishments of up to 14 years imprisonment. However in recent years there do not appear to have been any prosecutions under these laws.

### Recent Developments

The US State Department 2012 Country Report on Kiribati notes that despite the fairly stringent legal position, there was no evidence of prosecutions directed at lesbian, gay, bisexual, or transgender persons. Nor were there reports of societal discrimination or violence based on sexual orientation, gender identity or against any person with HIV/AIDS.<sup>292</sup>

There appears to be no current moves to reform the Kiribati legal code but that may be an artifact partly of the fact that the I-Kiribati (the Micronesian inhabitants of Kiribati) traditionally see gay or transgender men as a third sex as a consequence of Polynesian influence from Tongan and Samoan invasions over history. But a person who chooses to live openly as a gay or lesbian individual would have difficulty integrating in Kiribati society.<sup>293</sup>

## Nauru

Nauru is a tiny Pacific island nation in Micronesia and is the smallest country by landmass (21 square km) and population (9,378 residents) in the Commonwealth. Formerly a German colony it was passed to Australia after the First World War and adopted the Queensland legal code in 1921, which contained anti-sodomy laws. Officially male-male sexual acts are illegal and can be punished by up to 14 years imprisonment and hard labour. In practice though, there have been no reported cases of these laws being used and the government has stated it will repeal them soon.<sup>294</sup> Nauru is a signatory to the 2008 UN declaration in support of LGBT rights.

### Recent Developments

Early in 2011, Matthew Batsiua, the Nauruan Minister for Health, Justice and Sports stated that the decriminalisation of “homosexual activity between consenting adults” was under active consideration.<sup>295</sup> Later that year the government of Nauru made a pledge to decriminalise same sex sexual acts.<sup>296</sup> This pledge was commended by Australia<sup>297</sup> and Sweden.<sup>298</sup> A forthcoming review of the Nauruan Criminal Code is expected to decriminalise consensual homosexual activity as part of a wider platform of reforms in coming months.

## New Zealand

New Zealand has extensive legal protections for LGBTI. Homosexual acts between men were made legal in 1986, with an equal age of consent of 16. In 1993 sexual orientation was included amongst the prohibited grounds of discrimination in the Human Rights Act. This Act is linked to the New Zealand Bill of Rights Act 1990, which describes the basic rights of New Zealanders. However, neither Act is “superior law”, and the Courts cannot overrule any other piece of legislation on the grounds that it infringes the Bill of Rights. In practice, Parliament is supreme in determining what are the limitations of human rights and discrimination.

The Births, Deaths, Marriages, and Relationships Registration Act 1995 allows trans people to change their gender on their birth certificates. Officially full sex reassignment surgery is still required, but the Courts have waived this on requirement at least one occasion. Gender identity is not officially covered by the Human Rights Act, but a Crown Law judgment stated that it was included under “sex” in the Act. This has yet to be tested in the Courts. New Zealand has recognised the equal standing of de facto relationships whether gay or straight and introduced Civil Unions for both straight and gay couples in 2004, with most of the rights of married couples. The country now allows same sex marriage. Couples may change a civil union into a marriage and vice versa, without having to dissolve the previous relationship.

### Recent developments

The most significant recent development has been the passing of the Marriage (Definition of Marriage) Amendment Act in April 2013 which amends the Marriage Act 1955 to define marriage as “the union of 2 people, regardless of their sex, sexual orientation, or gender identity.”<sup>299</sup> Although marriage celebrants have always been legally free to refuse to marry anybody, the Act made special allowance for those with religious objections to same-sex marriage. In addition married same-sex couples may now adopt. Importantly, people who change their gender who are already married no longer have to divorce.

*“The most well known love story in the Maori culture is of Tutanekai and Hinemoa. Over time, the story began to omit reference to Tiki, who was the very special male companion of Tutanekai who was also male. It is quite revealing how indigenous perceptions started to lean towards societal acceptance because of missionary ‘intervention’ (Christianity) and hegemony.”*  
**Rawa Karetai**

Gender identity is not covered so formally nor completely by human rights legislation. The Crown Law judgment that they are covered by the Human Rights Act has led Government Departments in particular to amend their procedures to allow passports, driving licences, and other documents to be changed. These changes are increasingly based on self-assessment, rather than on full reassignment surgery.

### **Rawa Karetai, Rainbow Wellington Chair, and Mervyn Ransom, Rainbow Wellington Board member**

*We’re reasonably lucky to be Takataapui (Maori word for Queer) in some families because historically Takataapui were accepted within our tribes. However in recent history, the introduction of religion has hindered the acceptance of Takataapui.*

*Our Maori MPs have been very supportive with the recent passing of the Marriage Equality Bill more so than our Pacific Island MPs. This small example shows how different cultural perspectives vary towards LGBTI people and is reflective of their communities.*

*Sexual and gender constructs speak of the cultural norms of the era. The most well known love story in the Maori culture is of Tutanekai and Hinemoa. Over time, the story began to omit reference to Tiki, who was the very special male companion of Tutanekai who was also male. It is quite revealing how indigenous perceptions started to lean towards societal acceptance because of missionary ‘intervention’ (Christianity) and hegemony.*

*Maori will further seek to reclaim the mana (prestige, power and authority) of takataapui to counter western definitions of who we are and what we should be.*

*“Whaia te iti kahurangi. Ki te tuohu koe, me he maunga teitei”  
“Pursue excellence - should you stumble, let it be to a lofty mountain”*

*We have no intention of stumbling any further.*



## Papua New Guinea

Papua New Guinea (PNG) occupies the eastern portion of the large island of Guinea in the western Pacific and gained independence from Australian in 1975. The colonial era anti-sodomy laws still apply. Section 210 of the penal code prohibits male same-sex sexual activity with those caught engaging in anal sex punished with 14 years imprisonment. Other male same-sex sexual activity is punished with up to three years imprisonment. These laws though have not been used in prosecutions in recent memory. The country has a very dispersed population with few living in cities or big towns and the country has a traditional Christian society that disapproves of lesbianism and trans identities even though there are no legal prohibitions against either.<sup>300</sup>

*“Men who have sex with men or who are transgendered tend to be “hidden” by being married and hiding behind their wives, “laplaps” or their own beards. It is very complicated and disclosure of sexuality is not recommended.” Don*

### Recent Developments

In 2011, in response to Nauru's and Palau's pledges to repeal antigay laws, the Papua New Guinea government informed the UN that it had no plans to follow suit.<sup>301</sup> Dame Carol Kidu, a prominent former PNG MP, called unsuccessfully in 2012 for the government to repeal antigay laws saying the laws forced gay Papua New Guineans to live lives of secrecy. Prime Minister Peter O'Neill replied that there were still strong feelings against homosexuality and the country was not ready “to accept such sexual openness”.

In 2013, following the deal between Australia and PNG whereby all asylum seekers arriving by boat would be sent to PNG, concerns were raised about the fate of LGBTI asylum seekers in a country where homosexuality is still illegal and LGBTI people suffer social exclusion.<sup>302</sup>

In 2009, the first gay, bisexual and trans rights NGO in PNG was founded.<sup>303</sup> Since then, the “Kapul Champions” have been advancing the interests of gay men, men who have sex with men, transsexual individuals and bisexual men in Papua New Guinea to better contribute to the national HIV response.

### **Don, vice president of the Kapul Champions<sup>304</sup>**

*Growing up as a gay man in a typical PNG coastal village is different from in the highlands. People by the coast were more understanding (or maybe couldn't be bothered) while up in the highlands it is a macho world and people bother about this a lot.*

*Men who have sex with men or who are transgendered tend to be “hidden” by being married and hiding behind their wives, “laplaps” or their own beards. It is very complicated and disclosure of sexuality is not recommended.*

*Most coastal villages are liberated and friendly, but they have more sensitisation.*

## Samoa

Samoa is the official name of a group of islands comprising the western half of the Samoan islands in the west pacific. It gained its independence from New Zealand in 1962. Same sex sexual acts are illegal in Samoa with up to 5 years for anal sex between men and up to 7 years for homosexual prostitution.

*“When we define who we are as individuals in traditional Samoan society, we don’t really care about boxes and our femininity. What gender to tick. What’s male and what’s female. We live in the gray area in between.”*  
**Tuisina Ymania Brown**

However, in common with other Polynesian nations, Samoa has a third gender subculture called “fa’afafine”, or literally translated, to be in the manner of, or to be like, a female or woman. There are no hard and fast rules as to how and why fa’afafine exist and they have for a long time been a part of the local Samoan communities and villages. The practice and display of feminine characteristics by these boys means that Samoan society is traditionally tolerant of trans people and also by extension for homosexuals in this context.<sup>305</sup> In recent years however the Christian churches have had a notable influence on politics and teachings from the bible are often used to condemn individuals who identify as fa’afafine.

### Recent Developments

In 2011, in response to Nauru’s and Palau’s pledges to repeal antigay laws, the Samoan government informed the UN that it had no plans to follow suit.<sup>306</sup> Samoan Prime Minister Tuilaepa Sailele Malielegaoi has gone on record to voice his opposition to equal marriage being legalised in Samoa.<sup>307</sup>

In 2013, the Samoan government updated the laws around sexual offences by repealing obsolete laws in the Crimes Act 2013 which now defines “sexual connections” under section S49 (3) to include oral and anal sex, and by inference allows sexual contact between males, as long as its “consented to, and voluntarily”. However under S67, sodomy is still illegal even if it is consented to. Notably, female impersonation was decriminalised - a cause for great celebration amongst the Samoan fa’afafine community and human rights activists in the Pacific.

### **Tuisina Ymania Brown is a Technical Adviser to the Samoa Fa’afafine Association.**

*Fa’afafine for me is the definition more of our spirit and essence than our physical entity. The fact that it is housed in a body of a male is just a happy coincidence, God logic, freaks of nature, call it what you like. When we define who we are as individuals in traditional Samoan society, we don’t really care about boxes and our femininity. What gender to tick. What’s male and what’s female. We live in the gray area in between. The nether regions of gender.*

*Fa’afafine is a label, attached by western society to make us more easily explained to the world. More palatable. We believe it is not a validation of who we are anymore. We have gone beyond that definition of to be in the manner of woman or be like woman. We have gone from being the parodies of females and known as the fa’afafine of Samoa, back to being caring individuals, members of a family, of a community, of a village, of a church and a district. We have reasserted our identities as Samoan citizens. Along this journey has not been easy. But each small step we have taken, is a sign of our collective belief in a better world for us, for our Samoa.*

## Solomon Islands

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The Solomon Islands consist of a large number of islands in the Pacific to the east of Papua New Guinea. Uniquely in the Pacific Rim nations female same-sex behaviour is illegal, as is male same-sex behaviour, with both attracting penalties of up to 14 years in prison. There are, however, no reports of these laws being used to prosecute LGBTI people in recent years.<sup>308</sup>

### **Recent Developments**

In 2008, the Solomon Islands Law Reform Commission proposed decriminalisation of gay and lesbian acts but this was met with fierce public opposition and no reform was brought forward.<sup>309</sup> In 2011, in response to Nauru's and Palau's pledges to repeal antigay laws, the Solomon Islands government informed the UN that it had no plans to follow suit.<sup>310</sup>

## Tonga

Tonga is a Pacific island kingdom where male same-sex activity is illegal with a maximum penalty of up to 10 years. Whipping can also be used as a punishment under certain circumstances. It appears that there have been no prosecutions under these laws in recent years and that they are mainly a legacy of colonialism.<sup>311</sup> Like other Polynesian societies, Tonga has a widely accepted third gender subculture. A “Leiti” is a Tongan male who behaves in a relatively effeminate manner. Although Leitis in Tonga do not necessarily translate to gay, lesbian or trans identities, they do have organisations that campaign on recognizably LGBTI issues. Political life is dominated by the monarch, King Siaosi Tupou VI, the nobility and popularly elected government ministers.

*“I have had to battle against a belief that my behavior situates me outside the ‘normal’ . . . I had been called a “child of the devil” who was at-risk, vulnerable, stigmatized and lacking agency . . . we are challenging that prejudiced view with some success.” Joey Joleen Mataele*

### Recent Developments

Much recent activism in Tonga has emerged from the Tonga Leitis Association (TLA). The TLA defines Leiti as an inclusive term that covers the broad range of men who have sex with other men, trans people, gay and bisexual men. Although the Leitis are a subculture with a long history, they were traditionally seen as falling outside the ‘normal’ ‘Anga FakaTonga’ (Tongan ways). Tonga is a conservative society and the TLA was formed in 1992 to counter public hostility as a result of HIV/AIDS with an ambition to make a significant difference in the lives of trans and same sex attracted people in Tonga. To date, there is no recognition in law for Leitis and by extension cross dressing or same sex relationships. In 2010, the TLA launched a strategic plan in which they called for legal recognition of Leitis and their inclusion in all National Human Rights Commissions.

For the last 21 years they have held an annual beauty pageant, the Miss Galaxy Beauty Pageant, which has in effect become a “Pride” event for the Pacific region. The TLA receives royal patronage and has been active in campaigning in the mainstream community as advocates who also promote HIV/AIDS Awareness to Youth, Family and Tonga’s LGBTI communities. TLA launched Tonga’s first ever condom and water based lubricant campaign 2007.

### **Joey Joleen Mataele an Activist for Trans and Gay Rights in the Kingdom of Tonga.**

*As a Leiti in Tonga I have had to battle against a belief that my behavior situates me outside the ‘normal’ ‘Anga FakaTonga’ (Tongan ways). In the past I had been called a “child of the devil” who was at-risk, vulnerable, stigmatized and lacking agency. My Leiti status has been equated with having a ‘lack of hope and mobility’ so I was seen as being on a pathway that leads to ‘poverty’ and isolation from normative model and space in Tongan society. But through the TLA we are challenging that prejudiced view with some success.*

## Tuvalu

Tuvalu, formerly the Ellice Islands, consists of three reef islands and 6 atolls close to Kiribati and Nauru. It is the second smallest nation by land mass and population in the Commonwealth and gained its independence from the UK in 1978. The penal code retains in sections 153, 154 and 155 the colonial anti-sodomy laws with penalties of between 7 and 15 years. However, there are no reports of there being

recent prosecutions using these laws and it appears there is little evidence of societal prejudice against people because of either sexual orientation or gender identity.<sup>312</sup>

### Recent Developments

In 2008, Tuvalu signed the UN declaration in support of LGBT rights. However there are no reports of any moves to repeal anti LGBTI laws in the penal code to date.

## Vanuatu

Vanuatu is an island archipelago of around 82 islands in the south pacific close to Papua New Guinea and Australia. It was a joint British/French "Condominium" gaining independence in 1980. Same sex sexual activity is legal in Vanuatu and there is an equal age of consent. There is no word in any of the local languages for homosexuality or trans and some evidence of social stigma being attached to both.

### Recent Developments

In 2007, Vanuatu repealed its antigay laws though it has not yet introduced antidiscrimination legislation or any recognition of same sex relationships. In 2008, Vanuatu signed the UN declaration in support of LGBTI rights.

*"These days I see a lot of gay people out in Port Vila embracing their sexuality. They have gained their self-esteem. That is a huge change in Port Vila." Gillio Baxter*

### **Gillio Baxter The Solidarity MSM project Consultant in Port Vila.**

*We are all part of a tightly woven Pasifika family and even though the sun-bleached beaches and lazy palms of the many islands and atolls are separated by a watery expanse, our hearts are close. So as GLBTI and human rights awareness is raised anywhere, so it does throughout the region.*

*These days I see a lot of gay people out in Port Vila embracing their sexuality. They have gained their self-esteem. That is a huge change in Port Vila despite the Christian influence. We still follow the Bible and we respect the Bible as a guide but we need to listen to our hearts and minds and express how we want to feel. Now gay people are accepted here in Port Vila, though sadly not yet everywhere in Vanuatu. We are able to be whoever we want to be.*

# Appendices



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The Kaleidoscope Trust is a UK based registered charity working to uphold the human rights of lesbian, gay, bisexual, transgender and intersex people internationally. We believe that the rights of all people should be respected equally, regardless of their sexual orientation or gender identity.

Our mission is to advance the human rights of LGBTI people internationally by listening to, amplifying and communicating their voices to a wider audience, and to stand with them in persuading public and political opinion of the need for an end to all discrimination based on sexual orientation or gender identity.

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