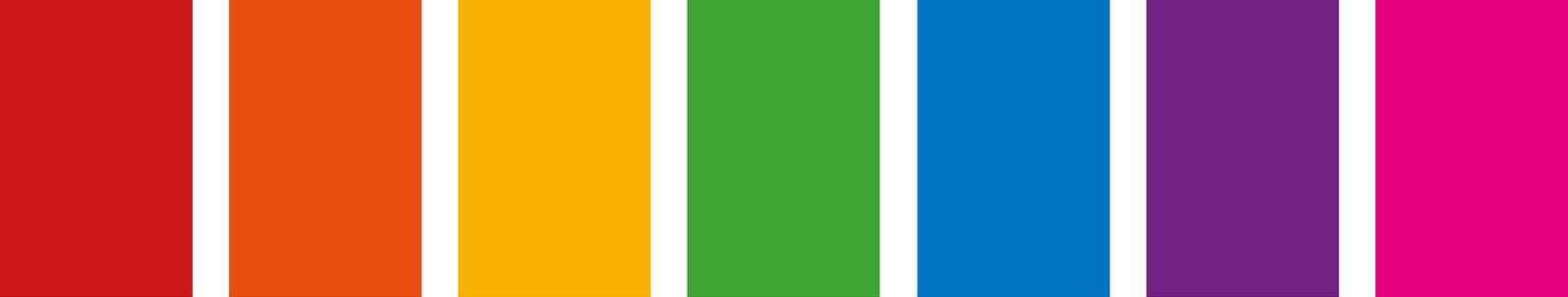


SPEAKING OUT

2015

**THE RIGHTS OF LGBTI PEOPLE
ACROSS THE COMMONWEALTH**





ACKNOWLEDGEMENTS

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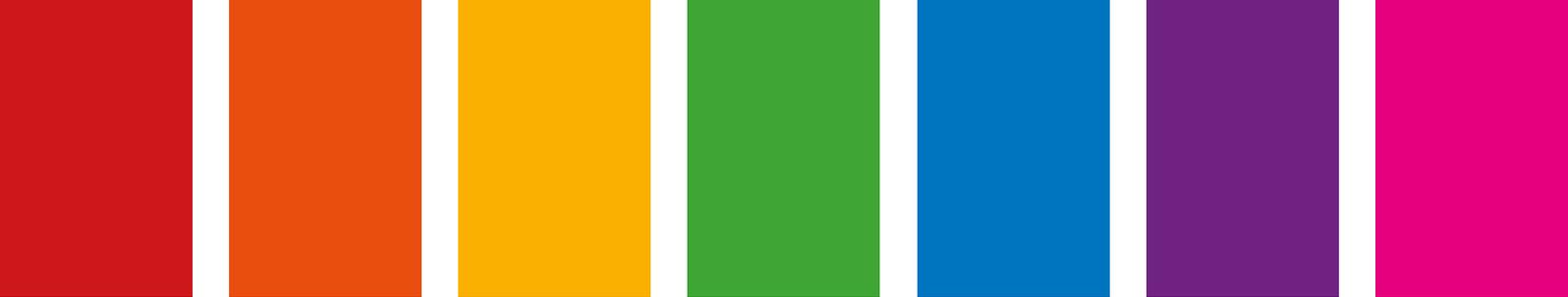
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The credit for the achievements outlined in this report, and for the courageous efforts made to confront the challenges it highlights, lies wholly with LGBTI people across the Commonwealth who strive tirelessly to fight injustice. It is impossible to thank everybody whose work contributed to the report.

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INTRODUCTION

BY JOHN FINGLETON

The Kaleidoscope Trust works to advance the human rights of lesbian, gay, bisexual and trans (LGBT) people in countries where they lack their equal rights. We have a particular focus on Commonwealth member states, where 40 of the 53 states still have laws which criminalise same-sex relationships in some way. Increasingly the international community recognises the deficiencies among Commonwealth member states in upholding the human rights of LGBTI people.

Speaking Out 2015, our biennial report on the rights of LGBTI people from across the Commonwealth, is one of the ways we amplify the voices of LGBTI activists to a wider audience. The report compiles the testimony from LGBTI people from across the Commonwealth who experience various forms of discrimination. Sadly, this is despite the Commonwealth's clear opposition to "all forms of discrimination."¹

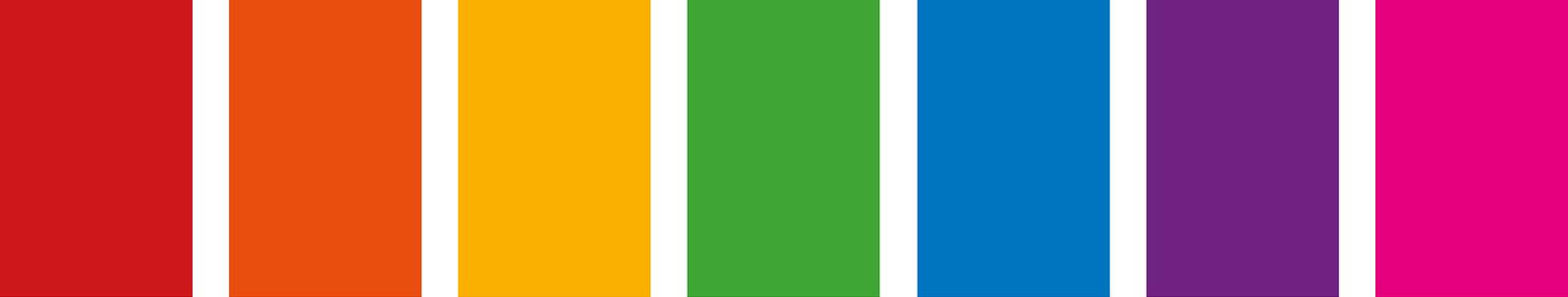
Building on the Trust's record of developing strategic networks, bringing LGBT activists together with national and international policy-makers and business leaders we host the Commonwealth Equality Network (TCEN). This is first civil society group to advocate consistently on behalf of LGBTI people within the Commonwealth diplomatic community, Commonwealth Institutions and Commonwealth civil society. TCEN brings together over 35 organisations from over 30 Commonwealth countries. **For the first time**, a delegation of TCEN members will attend the Heads of Government meeting (CHOGM) in Malta in November 2015.

Through the Trust's consistent efforts and in conjunction with TCEN, we have achieved significant support from the Commonwealth Foundation to discuss and amplify LGBTI people's concerns. **For the first time** at the 2015 Commonwealth People's Forum, there will be dedicated discussions about issues facing LGBTI people in the Commonwealth. We are extremely pleased with and applaud the more forthright statements on LGBTI rights from the Commonwealth Secretariat which is bringing stronger leadership to this issue.

We were greatly encouraged by Secretary-General Kamallesh Sharma's statement on the International Day against Homophobia, Transphobia and Biphobia in May 2015 where he said that stigma and discrimination against LGBTI people is

*"unacceptable: it robs millions of our fellow citizens of the right to live lives of dignity, undermining their mental and physical health, and sense of well-being. It leads to social estrangement, ostracism and isolation, and economic marginalisation. It flies in the face of our core values of equality and non-discrimination."*²

As Commonwealth leaders gather at CHOGM, we are compelled to reflect again on this statement as well as the data and testimonies in this report demonstrating the discrimination that LGBTI people continue to face.



Speaking Out 2015 is a compilation of contributions from activists, human rights organisations and researchers which intends to:

- deepen understanding of LGBTI rights of key Commonwealth policy makers and offer them a range of well-researched, practical policy recommendations to support change at all levels of the Commonwealth;
- increase public understanding and highlight the challenges facing LGBTI communities in the Commonwealth in the lead up to CHOGM; and,
- support the advocacy efforts of the Trust, TCEN and other human rights advocates engaging in the 2015 CHOGM.

The Trust sees the 2015 CHOGM hosted by the Government of Malta as an excellent opportunity to raise the issue of LGBTI rights in the Commonwealth community. It provides Malta the opportunity to leverage its domestic successes in introducing a range of progressive LGBTI rights onto an international stage.

The 2015 CHOGM creates an excellent opportunity for Commonwealth states to make the non-discrimination in the Commonwealth Charter a reality for LGBT citizens. They can do this by making clear commitments to improving LGBT rights domestically, and to work collectively and share stories of success, such as those in Malta, so as to build momentum for greater positive change. This CHOGM has the potential to be a turning point for LGBT rights internationally, and we encourage all the participants to use this meeting to commit to improving the basic human rights of their LGBT citizens.

John Fingleton

Chair of the Board of Trustees, Kaleidoscope Trust

COMMENT

BY ALISTAIR STEWART

In 2012 the Commonwealth Heads of Government officially adopted the Commonwealth Charter. The Charter is an affirmation of the values and aspirations which unite the Commonwealth: democracy, human rights and the rule of law. The Charter builds on a long history of Commonwealth commitments to the values of equality, diversity, democracy and respect for human rights.

For LGBTI communities, organisations and activists the language of the Charter was a mixed blessing. The failure of the Charter to specifically address the concerns of LGBTI people was a lost opportunity. However, the commitment to “equality and respect for the protection and promotion of civil, political, economic, social and cultural rights, including the right to development, for all without discrimination on any grounds” must be embraced as inclusive of LGBTI communities.

As this report shows, however, the lived experience of LGBTI people across the Commonwealth countries does not match the aspirations of the Charter. Of the 53 member states, 40 continue to criminalise same-sex activity in some way. More than 90% of Commonwealth citizens live in a jurisdiction that criminalises LGBTI people. There is growing evidence that, in every Commonwealth country, LGBTI people face higher rates of violence, reduced economic chances and poorer health outcomes than their peers. They are more likely to suffer entrenched legal discrimination and are less likely to be able to access legal protections than in non-Commonwealth countries.

While the criminalisation of same-sex activity underpins and supports a framework of exclusion, it is important to highlight that the challenges that face LGBTI people extend beyond the fact of criminalisation. Basic personal safety, to live a life free from threats and acts of violence, remains a major concern for many LGBTI people regardless of where they live or their legal status. Discrimination in education, in the workplace, in housing and in health services are recurring themes for many of the contributors to this report. The effective exclusion from a range of services works to worsen the economic outcomes of LGBTI people. Moreover, the specific needs of lesbian and bisexual women, trans and intersex people, are not always met by the abolition of laws that largely criminalise sex between men. Legal reform alone will not counter this and needs to be coupled strategically to other mechanisms for change including through good policy practice and more supportive social norms.

It is, nonetheless, worth noting and celebrating the progress that is occurring in a number of Commonwealth nations. When Commonwealth leaders met in 2013 in Sri Lanka, 41 members were counted as having laws that criminalised same-sex sexual activity. That number is now 40. In June of 2015 in Mozambique, the new Penal Code came into effect, acting to legalise homosexuality in the country. Clarification around the status of the Common Law in Lesotho, means that the 2012 Penal Code is now



interpreted as having effectively decriminalised sex between men. While the Supreme Court in India acted in late 2013 to re-instate Section 377 of the Penal Code that criminalises sodomy, the response to the ruling galvanised support for the LGBTI community in many parts of the country. This year in India, a landmark judicial ruling and new legislation have helped to secure the rights and entitlements of Hijra Indians (a traditional third gender category), allowing for reserved places in education and government, prohibiting discrimination in employment and opening up access to a raft of benefits.

Malta, the host of this year's Commonwealth Heads of Government Meeting, has led the way, not just in the Commonwealth, but globally, in supporting the rights of LGBTI people through law and policy. In 2014 Malta introduced same-sex partnerships on legal par with marriage, including adoption rights for same-sex couples. This historic step was followed by a constitutional amendment to protect sexual orientation and gender identity. In this Malta joins South Africa and Fiji as the only Commonwealth countries to expressly offer protections to citizens on the basis of sexual orientation and/or gender identity in their constitutions. In 2015 Malta passed world leading legislation securing the right for its citizens to change gender and introduced protections to prevent non-consensual surgical procedures for intersex minors. Malta's success at guarding the rights of all its citizen was recognised by

ILGA EU, (the International Lesbian, Gay, Bisexual, Trans and Intersex Association) which ranked the country as the best place in Europe to be LGBTI.

Beyond just recognising and celebrating the improvements for LGBTI people in the Commonwealth, it is vital that we mark the role that the Commonwealth must play in understanding, encouraging and supporting good policy practice in the realisation of rights for all its citizens. The Commonwealth is well placed, as a network of institutions, civil society actors and nation states, to support this good practice and to work together to better understand and resource the development and implementation of good policy.

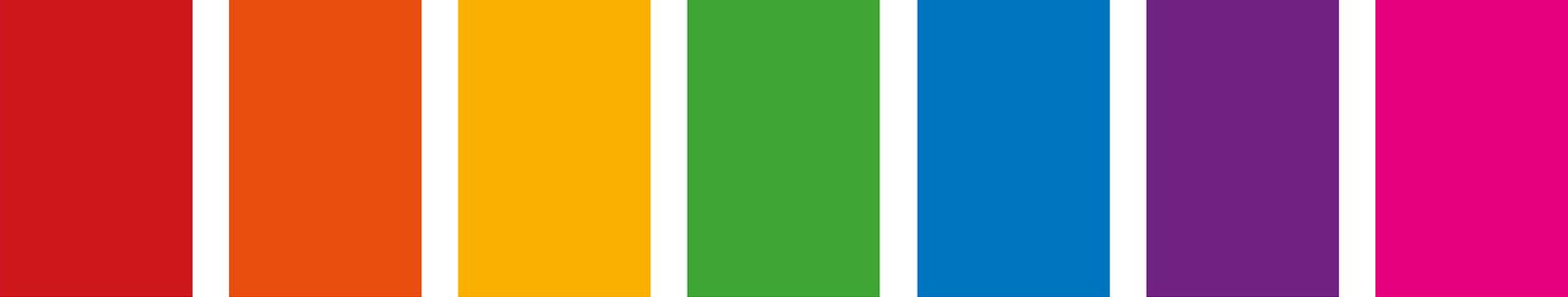
There is a vital role for Commonwealth civil society here. Civil society in the Commonwealth has long led the way in highlighting and supporting the rights of LGBTI people, in local, regional and cross-Commonwealth contexts. LGBTI civil society across the Commonwealth is increasingly vibrant, confident and active, often in the face of social stigma and official censure. The formation since the 2013 CHOGM of the Commonwealth Equality Network, is an example of the way in which national civil society actors are building on their local and regional expertise and joining together to take Commonwealth-wide action to support the rights of LGBTI people. The Kaleidoscope Trust is proud to be a founding member of TCEN and serve as Treasurer. The insight, expertise and support of the TCEN

membership has been invaluable in developing this report, particularly its recommendations. TCEN, with over 35 member organisations from every Commonwealth region is a living example of how the shared history, language and values of the Commonwealth can be used as a platform for progressive change.

The breadth of the membership of TCEN is also representative of the immense diversity of the Commonwealth's 2 billion plus citizens and of the Commonwealth's LGBTI communities. This diversity mirrors the vast range of challenges facing LGBTI communities and the need for Commonwealth-wide responses to be responsive to local concerns and strategies. The diverse experiences of Commonwealth nations, institutions and civil society actors in tackling discrimination based on sexual orientation and gender identity offers a rich toolbox of policies and of advocacy, legislative and litigation strategies that can be deployed in different ways in different contexts.

Despite this diversity, there are key themes that face LGBTI people across the Commonwealth. These themes, and the recommendations that flow from them, arise out the findings of this report and from consultation with TCEN. Physical security, economic security, legal equality and the need for a safe and enabling social environment

Violence remains one of the overriding concerns of many LGBTI communities in the Commonwealth, and is borne out through the evidence and testimony gathered



in this report. Furthermore, the violence facing LGBTI people in the Commonwealth has been recognised by Secretary-General Kamallesh Sharma in his statement to mark the 2015 International Day Against Homophobia and Transphobia:

Lesbian, gay, bisexual, transgender and intersex (LGBTI) Commonwealth citizens remain victims of stigma and discrimination in many of our communities. Appalling persecution and violence are suffered merely because of innate sexual orientation and gender identity.³

Also in 2015, the UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, published a landmark report on discrimination and violence against individuals based on their sexual orientation and gender identity, in which he observed:

The overall picture remains one of continuing, pervasive, violent abuse, harassment and discrimination affecting LGBT and intersex persons in all regions. These constitute serious human rights violations, often perpetrated with impunity, indicating that current arrangements to protect the human rights of LGBT and intersex persons are inadequate.⁴

Despite the welcome words of the Secretary-General, the Commonwealth still lags behind other regional bodies which have taken a stance against the violence, discrimination and human rights violations faced by LGBTI people, even those with large

Commonwealth memberships. The Organisation of American States (OAS) condemned violence based on sexual orientation and gender identity and invited states to adopt measures to eliminate them. In 2010 the OAS General Assembly reaffirmed and updated its resolution on *Human Rights, Sexual Orientation, and Gender Identity* and stated that it:

RESOLVES to condemn acts of violence and human rights violations committed against persons because of their sexual orientation and gender identity; and to urge states to investigate these acts and violations to ensure that their perpetrators are brought to justice.⁵

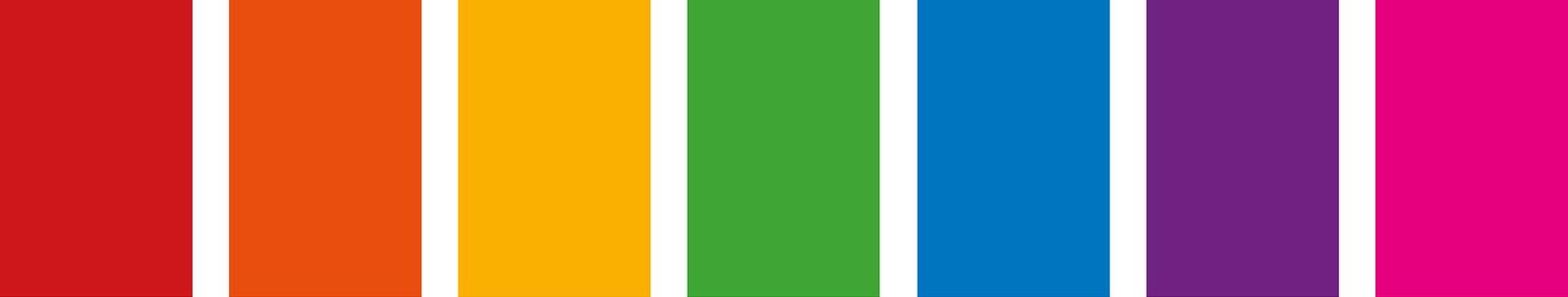
The African Commission on Human and People's Rights in 2014 published Resolution 275: *Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity*. The Resolution stated that the Commission:

Condemns the increasing incidence of violence and other human rights violations, including murder, rape, assault, arbitrary imprisonment and other forms of persecution of persons on the basis of their imputed or real sexual orientation or gender identity; Specifically condemns the situation of systematic attacks by State and non-state actors against persons on the basis of their imputed or real sexual orientation or gender identity; Strongly urges States to end all acts of violence and abuse,

whether committed by State or non-state actors, including by enacting and effectively applying appropriate laws prohibiting and punishing all forms of violence including those targeting persons on the basis of their imputed or real sexual orientation or gender identities, ensuring proper investigation and diligent prosecution of perpetrators, and establishing judicial procedures responsive to the needs of victims.⁶

The lack of action by Commonwealth leaders to not just condemn, but to prevent, violence against their own citizens remains an obstacle to fully realising the values of the Charter and the rights of LGBTI people.

Economic security is another recurring theme in this report and one that ties to the wider agenda set by the Sustainable Development Goals. The combination of social prejudice and criminalisation acts to exclude LGBTI people from essential services including health, education, employment, housing and impedes their access to justice. Beyond the numerous examples of exclusion highlighted in this report, there is a growing body of evidence documenting this exclusion. WHO has stated that exclusion from health services on the basis of sexual orientation and gender identity contributes to poorer health outcomes, particularly for already at-risk communities, such as men who have sex with men, sex workers



and trans women.⁷ UNESCO has asserted that that LGBT students face higher rates of harassment in, and exclusion from, education than their peers, in almost every country where there is data.⁸ In Uganda evidence suggests that being denied housing because of actual or perceived sexual orientation is commonplace, even more so following the passage of the Anti-homosexuality Act.⁹

The exclusion faced by LGBT people has deleterious economic effects on individuals, families, communities and national economies. Where they face legal and social discrimination LGBT people may face “exclusion from social and economic participation, or included on adverse terms”¹⁰ resulting in lower socio-economic outcomes for them as individuals. Research in India undertaken by the World Bank suggests that the exclusion from health, education, housing and employment faced by LGBT people has a whole economy cost of between 0.1% - 1.7% of GDP.¹¹ Research by the Williams Institute suggests a positive correlation between the recognition of LGBT peoples’ human rights and a nation’s GDP.¹²

These issues resonate with the recently adopted Sustainable Development Goals (SDGs) both in terms of the content of the goals and their stated aim to ‘leave no-one behind’. The SDGs, a set of globally consulted, universally applicable goals, targets and indicators, designed to guide a more inclusive development framework. For the SDGs to be

truly inclusive, leaders need to ensure that their implementation takes into account the needs of all citizens, regardless of sexual orientation and gender identity.

A review conducted by the Institute of Development Studies demonstrates that in order to effectively meet specific targets of the SDGs they must be inclusive of sexual orientation and gender identity and expression in order reach the overall objective of ensuring that no-one is left behind in the development agenda.¹³ The following goals and targets, encompass many of the issues facing LGBTI people in the Commonwealth:

Goal 1 End Poverty

Target 1.4 Ensure that all men and women have equal rights to economic resources . . . basic services, control over land and other forms of property

Goal 3 Healthy Lives and Wellbeing for all

Target 3.4 Promote mental health and well-being

Target 3.8 Achieve universal health coverage for all

Goal 4 Quality Education for all

Target 4.5 Ensure equal access to all levels of education for children in vulnerable situations

Goal 5 Gender Equality

Target 5.2 Eliminate all forms of violence against women and girls

Goal 8 Decent Work for All

Target 8.5 Achieve full and productive employment and decent work for all women and men

Goal 10 Reduce inequality

Target 10.3 Ensure equal opportunity, including by eliminating discriminatory laws, policies and practices

Goal 11 Make cities inclusive

Target 11.1 Ensure access for all to adequate, safe and affordable housing and basic services

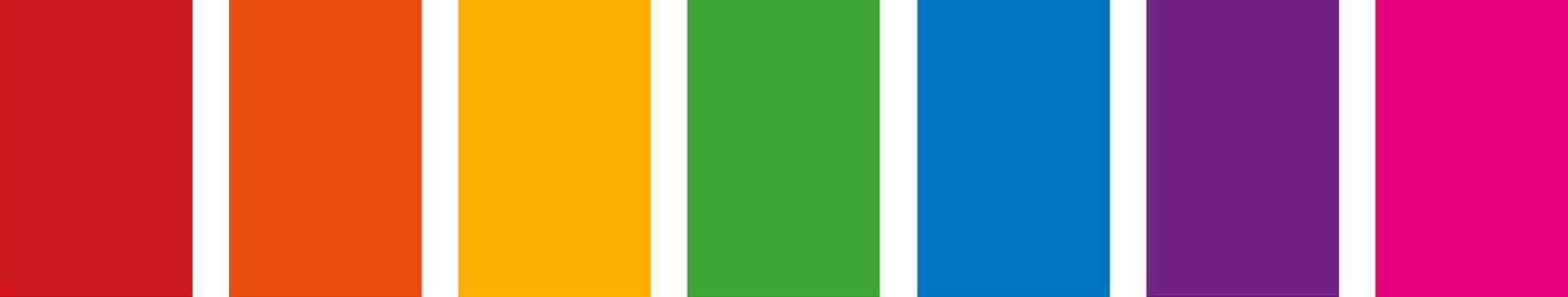
Goal 16 Inclusive Societies, Access to Justice & Inclusive Institutions

Target 16.1 Significantly reduce all forms of violence and related death threats everywhere

The role of the Commonwealth in promoting the SDGs is clear and underscored by the Commonwealth Charter which states:

We are committed to removing wide disparities and unequal living standards as guided by internationally agreed development goals. We are also committed to building economic resilience and promoting social equity, and we reiterate the value in technical assistance, capacity building and practical cooperation in promoting development.¹⁴

The Commonwealth, through its institutions and as a forum for bilateral and multilateral relationships between states and other actors, has a vital role to play in supporting members to meet the



targets set out by the SDGs. There is a responsibility here to ensure that, in supporting states to achieve SDG targets, the Commonwealth Institutions work to ensure equal access for all in healthcare, education, employment and housing and other basic services regardless of sexual orientation and/or gender identity. To do so is not only necessary to fully realise the aims of the SDGs, but is needed to fully realise the values expressed in the Charter.

We head into this year's CHOGM with much to be hopeful for. For the first time ever the Commonwealth People's Forum is hosting not one, but two sessions, devoted to examining the challenges that face LGBTI people and exploring the opportunities that the Commonwealth offers in addressing those challenges. Outgoing Secretary-General Kamalesh Sharma has consistently publicly supported the rights of LGBTI people in the Commonwealth. We are hopeful that his successor will continue this trend. The formation of the Commonwealth Equality Network has created a platform for national and regional civil society actors to translate their substantial expertise into well informed and effective Commonwealth-focused action.

Alistair Stewart

RECOMMENDATIONS

We support the following recommendations, made by the Commonwealth Equality Network.

In all Commonwealth member states people whose sexual orientation is outside the heterosexual mainstream or whose gender identity/expression does not fit within binary genders face harassment and violence. We call on Commonwealth leaders to follow the example of the African Commission on Human and People's Rights, the Organisation of American States and the UN Human Rights Council, and condemn violence on any grounds. Furthermore, Commonwealth leaders and institutions must make concrete efforts to prevent acts of violence and harassment committed against individuals because of their sexual orientation and gender identity/expression.

We welcome the adoption of the Sustainable Development Goals (SDGs) and the Commonwealth's support of member states to reach the goals and targets. Inherent in the goals is the principle that sustainable development will 'leave no-one behind.' We urge Commonwealth leaders to ensure that, in attaining the SDGs, they ensure equal access to, and protection in, healthcare, education, employment, social services and welfare, supported by policy and law, regardless of sexual orientation and/or gender identity/expression.

Furthermore, we call on 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.
- Commit to open and free debate across the Commonwealth on how best to safeguard the rights of LGBTI people.
- Support the Commonwealth Equality Network in its accreditation to the Commonwealth.
- Commit to include a discussion on equal rights for LGBTI citizens as a substantive agenda item at the next CHOGM.

COUNTRY PROFILES

AFRICA

THE AMERICAS

ASIA

EUROPE

PACIFIC

AFRICA

BOTSWANA

Sections 164, 165 and 167 of the Botswana Penal Code criminalise homosexuality as “offences against the order of nature...whether in public or private.”¹⁵ Botswana’s courts define “against the order of nature” as anal intercourse.¹⁶ The law in Botswana is “gender neutral,” but typically only male same-sex sexual acts are criminalised.¹⁷ Sexual identity is not criminalised. The maximum penalty for violation of Botswana’s homosexuality laws is seven years in prison.¹⁸ LGBTI persons face stigma and discrimination in public because homosexuality is often characterised as a “western disease” or “un-African.” LGBTI individuals in Botswana receive protection from discrimination in employment.¹⁹

Recent developments

In November 2014, the Lesbians, Gays and Bisexuals of Botswana (LeGaBiBo) gained official recognition as a non-governmental organisation in a landmark ruling by the High Court.²⁰ Previously, the government owned Registrar of Societies declined to register the group, citing that the Constitution did not recognise homosexuality. Most recently, the High Court Judge ruled in the favour of the group, stating that denying access to registration was an unconstitutional violation of the applicants’ right to freedom of expression, freedom of association and free assembly.²¹

The government later appealed the High Court ruling, arguing that the Constitution of Botswana doesn’t recognise homosexuality. By January 2015, the High Court had not yet listed the case. The appeal is still in the Registrars office of the High Court of Appeal, awaiting the appeal date. LeGaBiBo remains unregistered because of the appeal.

Since 2013, the media and public in Botswana has heightened their focus on the issue of homosexuality and reflects negative social attitudes toward homosexuality evidenced through religious bias and homophobic stigma.

“Though the organisation [LeGaBiBo] hasn’t been registered, this win [in the High Court] boosted the morale in the LGBTI community. We now have more people involved with the activities of the organisation.”

CAINE KAENE
GAY RIGHTS ACTIVIST

CAMEROON

Homosexuality is banned under Article 347 of the Cameroon Penal Code attracting sentences between six months and five years imprisonment, or a fine of CFA francs 20,000 – 200,000 (USD 42 – 419).^{22 23} The law in Cameroon is gender neutral.²⁴ The law has been used to arbitrarily arrest and harass people suspected of homosexuality and “deviant behaviours.” There is marked public hostility toward LGBTI persons, so much so that mere suspicion of LGBTI activity may lead to arrest.²⁵ Since 2005, enforcement of the law has continually increased following the arrest of 32 individuals at a night club.²⁶ Often individuals arrested under suspicion of “deviant” LGBTI behaviour are denied basic rights guaranteed by the Cameroon Constitution.²⁷

Recent developments

In January 2014, a gay man, Roger Jean-Claude Mbede, was jailed for sending a text message to another man.²⁸ After a three-year prison sentence, Mbede was released and soon after he died from an untreated hernia sustained while in prison.²⁹ Before his death he was isolated by his family and received no medical assistance.³⁰

Human Rights Watch has noted that Cameroon brings more cases against people suspected LGBTI individuals than “almost any country in the world.”³¹ According to reports, most arrests are not based on evidence. Instead, suspects are held without writ of habeas corpus and evidence is subsequently obtained through torture and interrogation.³² Most lawyers in Cameroon are unwilling to represent LGBTI people.³³ Therefore, most accused LGBTI individuals forego adequate legal representation. Lawyers’ fear that representation of LGBTI individuals will result in ‘stigma by association’ from the public, the media, and their families.³⁴ Alice Nkom, an attorney dedicated to defending LGBTI persons, observes:

“You’re not really well received when you defend homosexuals because there is a lot of stigmatisation with all of its consequences in terms of exclusion in terms of physical threats, including for your family...”³⁵

In September 2014, Cameroon released seven suspected gay men and trans women arrested for suspicion of violation of the anti-gay law.³⁶ The accused were released for insufficient evidence, but authorities maintain close observation over their private lives and will re-arrest them for “any deviant behaviour.”³⁷

“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.”

ALICE NKOM
HUMAN RIGHTS LAWYER

“
They are generally considered as animals or devils, so when you know that, you see that they are in permanent danger.
”

AFRICA

GHANA

Chapter 6, Section 104 of the Ghanaian Criminal Code criminalises male, consensual same-sex sexual acts as “unnatural carnal knowledge.”³⁸ The penalty for violation of Section 104 is a misdemeanour penalty resulting in between one and three years imprisonment.³⁹ Under Section 99 of Chapter 6, “unnatural carnal knowledge” shall be “deemed complete upon proof of the least degree of penetration,” meaning only homosexual acts—not sexual orientation—are criminalised in Ghana.⁴⁰

Recent developments

In October 2013, the President of Ghana, John Mahama, acknowledged in an interview that anti-LGBTI social stigma blocks the prospect of change. He added, “I believe that laws must prevail. For instance, people must not be beaten or killed because of their sexual orientation, but in my country there is a strong cultural hostility towards it.”⁴¹

In Ghana, Muslim and Christian traditional religious leaders speak out in public against homosexuality and urge their followers to reject homosexuals. Despite Ghana’s generally progressive political atmosphere, social stigma and homophobia exists at the second highest rate on the continent.⁴² According to a 2013 attitudes survey, 96% of Ghanaians feel society should not accept homosexuals. This represents the third highest percentage of any country surveyed.⁴³

Mobs have been formed to incite fear in LGBTI individuals in Ghana. In August 2014, two incidents involving mobs occurred. In one, police in the small town of Walewale arrested a 21-year old student to save him from public threats to kill him for cross-dressing and allegedly engaging in gay sex.⁴⁴ A Muslim Sheik, Mahamadu Alhassan, condemned the young man and incited his followers to attack the student at his home.⁴⁵

In 2015, the Queenmother of Atimpoku in the Akwamu Traditional area, Nana Abrewa Kwabiaa, called on the Ghanaian government to legalise homosexuality. She argued that it is in the interest of Ghana as a country and legalisation will help reduce the country’s high birth rate, and level distribution of natural resources.⁴⁶

In February 2015, an angry mob brutally attacked and threatened a music producer alleged to be gay.⁴⁷ The video was later posted online as a deterrent to other LGBTI individuals.⁴⁸ In response Ghanaian celebrities took to social media to condemn the violent behaviour.

“I must mention the increase of attacks on gay and lesbian persons recently, what the police, as usual, stay silent on.”

MAC-DARLING COBBINAH
GHANAIAN GAY RIGHTS ACTIVIST

KENYA

“Culture, religion, and opinion leaders shape the political atmosphere in Kenya, all of which are largely lesbian, gay, bisexual, transgender, intersex, and queer (LGBQ)-unfriendly. The most common cliché concerning homosexuality is that it is “unnatural” and goes against Kenyan culture. Religious leaders are particularly vocal in opposing any form of accommodation of basic human rights when it concerns LGBQ people in Kenya. Widespread homophobia and violence characterise the social context. Earlier this year, LGBT serving organizations in both Nairobi and various western regions were raided and vandalized. Despite these barriers, Kenya has a somewhat exceptional position in the region and stands out as an East African country with a thriving LGBQ movement. Unlike neighbouring countries, there are strong ongoing initiatives and growing activism. Also Transgender and intersex activists are increasingly active and visible. It is important to note that many of these organizations did not register explicitly as LGBQ organizations, but as self-help groups or CBO’s working with youth, health, or HIV programming.”

**JONAH CHINGA
GALCK, KENYA**

In Kenya, the Penal Code criminalises homosexuality, referring to it as “carnal knowledge of any person against the order of nature.”⁴⁹ Section 162 punishes this conduct by up to fourteen years imprisonment.⁵⁰ Section 163 criminalises the attempt to commit crimes “against nature” with a maximum seven year sentence.⁵¹ Section 165 punishes public or private acts of gross indecency, with imprisonment of up to five years.⁵²

Recent developments

In May 2014, Binyavanga Wainaina, one of Kenya’s most successful authors, came out as gay in an open letter to his late mother.⁵³ He was inspired to come out by the death of his father and a gay friend. He further attributes his inspiration to recent human rights violations against gay people in Sub-Saharan Africa. He said he was deeply touched by the Cameroonian gay man who was imprisoned for sending a love text to another man. In Kenya, mixed feelings met the news. The majority of the public called for Wainaina’s arrest for his admission of homosexuality, others however, applauded his courage.⁵⁴

In March 2014, the parliamentary leader of the Jubilee coalition, Aden Duale, compared the “problem” of homosexuality to terrorism.⁵⁵ He also argued against stepping up legal penalties for homosexuality for fear of losing international aid.⁵⁶ Aden’s controversial remarks included: “We need to go on and address this issue [homosexuality] the way we want to address terrorism. It’s as serious as terrorism.”⁵⁷

In October 2014, the High Court judge in Nairobi ordered the Kenya National Examination Council to issue Audrey Mbugua, a trans woman, a new high school certificate bearing “no gender”. Audrey had contested the change of gender on her certificate in court, but since Kenya doesn’t yet recognise third gender, the judge ruled the certificate should bear no gender.

In April 2015, a three-judge panel ruled in favour of the National Gay and Lesbian Human Rights Commission (NGLHRC) and ordered the government registrar to formally register the organisation. The NGLHRC had tried to register five times since 2012 under Kenya Non-Governmental Organisations Coordination Act. The court cited Article 36 of the Kenya Constitution: “Every person has the right to freedom of association, which includes the right to form, join or participate in the activity of an association of any kind.”⁵⁸ The LGBTI community and pro-gay clergy saw this as a landmark ruling. The Kenya Christian Professionals, religious leaders and politicians opposed the ruling. The attorney general has appealed the ruling.⁵⁹

In May 2015, the Deputy President, William Ruto, stated that Kenya has “no room” for homosexuality in remarks at a church service.⁶⁰ Ruto has a record of making homophobic remarks.

In a July 2015 press conference held with US President Obama during his visit to Kenya, the President of Kenya, Uhuru Kenyatta, dismissed the US Presidents concerns about the rights of gays and lesbians indicating that these were a ‘non-issue’ for Kenya.⁶¹ Kenyatta’s remarks were applauded by religious leaders and many anti-gay politicians. Human rights activists were worried that President Kenyatta’s remarks could be construed to condone human rights violations and acts of violence against LGBTI persons.

A gay film “Stories of Our Lives,” released in 2014 by the Nairobi based Nest Collective was banned in Kenya for ‘promoting homosexuality’.⁶² The executive producer, George Gachara, was arrested for violating the country’s Films and Plays Act, for shooting without a license, but the case was later dropped.⁶³ The media in Kenya has contributed to visibility of the LGBTI community by hosting activists to discuss important issues in the community. Further, debates between gay activists and anti-gay proponents are common and help LGBTI activists gain exposure.

**“
Kenya has a somewhat exceptional position and stands out as an East African country with a thriving LGBQ movement.
”**

AFRICA

LESOTHO

In 2012 Lesotho effectively decriminalised male same-sex activity. Female same-sex activity had never been criminalised.⁶⁴ There is no evidence that the sodomy law was used to prosecute an LGBTI individual. Regardless, it was a threat to the rights and freedoms of the LGBTI community in Lesotho. In 2012 Lesotho adopted a new penal code that eliminated the criminalisation of sodomy through common law, thus legalising homosexuality. However, Lesotho still lacks discrimination protection based on sexual orientation and identity in employment and other spheres of life.

Recent developments

The LGBTI community in Lesotho continues to suffer from widespread discrimination and harassment. Public officials, the media and religious leaders continue to express homophobic prejudice adding to the country's already hostile climate toward the LGBTI community.

The LGBTI community receives no government funded sexual health services, despite having one of the world's highest HIV prevalence rates and despite the HIV risks that face men who have sex with men (MSM) being included in the 2011 – 2016 HIV/STI National Strategic Plan. Lesotho's widespread homophobic attitudes, make it difficult for MSM to access vital resources such as education, health care and HIV prevention products.⁶⁵ The NSP makes no mention of women who have sex with women (WSW) and transgender persons even though evidence has emerged that WSW in Lesotho have higher rates of HIV than expected which underscores the needs for targeted sexual health programming within the LGBTI community.⁶⁶

In May 2014 a local LGBTI group, Matrix Support Group, held a peaceful march in the capital city to celebrate International Day Against Homophobia and Transphobia.⁶⁷ 200 members of the LGBTI community attended to hear speeches, participate in discussions and enjoy performances.⁶⁸ This was the second year of the event and , the LGBTI community in Lesotho views the ability to hold it as a significant step.

Though homosexuality is legal in Lesotho, gay and lesbian people are ostensibly prohibited from entering the country.⁶⁹ It remains unclear how the government distinguishes between homosexual and heterosexual persons without infringing on the right to private life.

MALAWI

Malawi is a traditionally religious and culturally conservative nation. In Malawi Sections 153, 154, and 156 of the Penal Code criminalise same-sex activity with a maximum punishment of fourteen years imprisonment for men and five years for women.⁷⁰

Recent developments

In January 2014, the Malawian High Court heard a petition by a leading LGBTI organisation, Centre for the Development of People (CEDEP), to obtain a review of jail sentences for three gay men imprisoned for homosexual acts.⁷¹ CEDEP challenged the fundamental principles of the law criminalising homosexuality.⁷² The Independent Malawi Law Society, representing over 300 lawyers, backed the petition.⁷³

In July 2014, the Malawian Solicitor General and Secretary for Justice, Janet Chikaya-Banda informed the UN Human Rights Committee that Malawi had stopped arresting people for same-sex sexual activity.⁷⁴ She noted, though, that no political effort would be taken to review the existing laws.⁷⁵ The Committee also heard the testimony of Gift Trapence, a human rights activist, who claimed that there is an increase of homophobia in Malawi.⁷⁶ Also at the UN in March 2015 Malawi voted against Russia when Russia tried to block same-sex partner benefits for UN employees.

In May 2014, Malawi submitted its UN Human Rights Council Universal Periodical Review (UPR) report, which was reviewed in May 2015. After the review, Malawi accepted for the first time a recommendation on sexual orientation and gender identity: To guarantee that people of the LGBTI community have effective access to health services, including treatment for HIV and AIDS.⁷⁷ Action on this recommendation was taken when Malawi's National Strategic Plan for HIV and AIDS (2015-2020) committed to increase HIV services targeting MSM and to safe-guard human rights by "ensuring a stigma-free environment and protection of patient-rights in facilities."⁷⁸

In April 2015, a new law raised the minimum age of marriage from sixteen years to eighteen years.⁷⁹ It also defined a marriage as a union between a man and a woman.⁸⁰ The law further defines a person's sex and gender as the one assigned at birth, thus not recognising the gender identity of transgender and intersex persons.⁸¹

In September 2015, Malawi President, Peter Mutharika, said the country would conduct a 'yes'/'no' referendum to decide whether same-sex marriage should be legal. Religious leaders and the public strongly and publicly opposed legalising same-sex marriage.⁸² Three days later, President Mutharika backed out of the referendum on same-sex marriage. Mutharika reasoned that it was simply his "opinion" that Malawi should put the issue of same-sex marriage up for referendum.⁸³

"Despite all these great strides, challenges still exist for the LGBTI individuals within the nation due to the sodomy laws and the negative attitudes that the general population has towards the LGBTI individuals. LGBTI individuals continue to experience stigma and discrimination in both the private and public spheres as evidenced by the reports that CEDEP and CHRR have been documenting since 2014."

GIFT TRAPENCE
CEDEP

LGBTI individuals
continue to experience
stigma and discrimination
in both the private and
public spheres.

AFRICA

MAURITIUS

The law in Mauritius doesn't criminalise homosexuality, but the act of sodomy is illegal under Criminal Code Section 250 regardless of sexual orientation.⁸⁴ Violation of Section 250 warrants a maximum sentence of five years imprisonment.⁸⁵ It should be noted that the law is not applied regularly and there are ongoing campaigns seeking to repeal Section 250. Though same-sex relationships are not recognised under the law, LGBTI people are protected under Article 12 of their Constitution from any kind of discrimination by way of their right to private life and freedom of establishment.⁸⁶

Recent developments

At the 25th Session of the UN Human Rights Council the government of Mauritius stated that it , "has not yet taken any policy decision regarding the decriminalization of sodomy."⁸⁷ No evolution or progress has been noted in Mauritius on the rights of LGBT persons since 2011.

In 2013 the Ministry of Health amended its policy to indicate that individuals who have engaged in same-sex sexual activity could donate blood.⁸⁸ The Young Queer Alliance group, however, reported that Ministry officials cancelled a blood donation event in due to their reluctance to collaborate with an LGBTI organisation.

MOZAMBIQUE

In June 2015, Mozambique decriminalised homosexuality by removing colonial-era clauses in the penal code detailing "vices against nature."⁸⁹ Courts had interpreted "vices against nature" to include homosexuality. The sentence for "vices against nature" was hard labour.

Recent developments

In 2014, Joaquin Chissamo, former Mozambican President, called for a change of attitude toward the treatment of LGBTI individuals in an open letter to African leaders. He wrote: "We can no longer afford to discriminate against people on the basis of age, sex, ethnicity, migrant status, sexual orientation and gender identity, or any other basis – we need to unleash the full potential of everyone."⁹⁰

In July 2015, the new Penal Code took effect and legalised homosexuality in a move largely considered symbolic. The decriminalisation is characterised as such because Mozambique has no reported arrests of LGBTI persons under the "vices against nature" clause since 1975 when Mozambique gained its independence.⁹¹

An LGBTI activist confirmed that there have been no reported violent acts towards members of the LGBTI community. Mozambique has a relaxed social attitude compared to most other African nations. Despite the decriminalisation of homosexuality, the government of Mozambique hasn't officially recognised and registered Lambda, the only LGBTI rights organisation in the country.⁹² Lambda has been campaigning for official recognition and registration for seven years. Registration would grant the organisation access to funding and tax exemptions.⁹³

"The best thing being gay or lesbian in Mauritius compared to other Commonwealth countries in Africa is we can say that, at least, have some legislations in terms of socio-economic easiness. The next best thing would be that we have a good network of people who know each other generally so, and that the younger generation in the population is more tolerant."

NAJEEB AHMAD
YOUNG LGBTI ACTIVIST

"Since the repeal of article 70 and 71... Regarding change (in) social attitudes towards LGBT, nothing much has changed, though Lambda continues to sensitize and educate the general population for more tolerance and acceptance."

DANILO DA SILVA
LGBT RIGHTS ACTIVIST

NAMIBIA

Male same-sex sexual acts are illegal, based on the common law offence of committing “an unnatural sex crime.” In May 2004, the clause 5(2), in employment rights from 1992 in which discrimination based on sexual orientation was outlawed, was struck from labour law by the government.⁹⁴ 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 Namibia⁹⁵

Recent developments

In May 2014, Ricardo Amunjera and Marc Theruba became the first Namibian gay couple to get married.⁹⁶ Although they married in South Africa, the couple moved back to live in Namibia and campaign for LGBTI rights.⁹⁷ Their activism earned Amunjera the title “Mr Gay Namibia 2013.” Their life is not without substantial risk. The LGBTI rights group OutRight Namibia expressed that LGBTI individuals face discrimination on a daily basis.⁹⁸

In December 2014, McHenry Venaani, the leader of the Democratic Turnhalle Alliance in Namibia, spoke out in support of LGBTI rights and refuted the popular claim that homosexuality is “un-African”⁹⁹ He said such claims are “manufactured lies” evidencing the fact that all races and cultures have substantial LGBTI communities. Venaai continued, “Africans must stop hiding the reality...homosexuality(’s) existence cannot be denied.”¹⁰⁰

AFRICA

NIGERIA

The Nigerian Criminal Code, Section 214, punishes “carnal knowledge” “against the order of nature” with a maximum sentence of fourteen years imprisonment.¹⁰¹ Further, Section 215 criminalises the attempt to commit these crimes with punishment of seven years imprisonment.¹⁰² Both laws are gender neutral. However, male homosexual acts are further criminalised by Section 217 which states that “public or private” acts may be punished by three years imprisonment.¹⁰³

In January 2014, former President Goodluck Jonathan enacted a new law setting a prison sentence of ten years for belonging to a gay organisation, supporting same-sex marriage, or displaying same-sex affection in public.¹⁰⁴ Same-sex marriage is also punishable by a fourteen year prison sentence.¹⁰⁵ The twelve Northern states of Nigeria have also adopted Sharia law which entails capital punishment for male homosexual acts and lashing or imprisonment for women engaging in homosexual acts. To date, no executions have been reported as a result of this law.¹⁰⁶

Recent developments

In January 2014, a mob of angry protesters interrupted court proceedings of seven gay men on trial for homosexuality in the northern city of Bauchi demanding quick sentences for the men.¹⁰⁷ In order to protect the lives of the men, the judge was forced to halt the trial and send the defendants to jail. A week prior, the same court sentenced a young man accused of homosexuality to public flogging.¹⁰⁸

In February 2014, an anti-gay mob in a shantytown of the Nigerian capital, Abuja, dragged fourteen alleged homosexual men out of their homes and brutally attacked them with wooden clubs and iron bars.¹⁰⁹ Four of the victims were in critical condition following the attack and all of them went into hiding. Nigerian police officers were participants in the violent attack.¹¹⁰

In May 2015, a theology student, Ododo Sylvester, was expelled from the Ezekiel College of Theology after confessing homosexual experiences in secondary school.¹¹¹ The HIV positive student had to flee to an LGBTI safe-house after being attacked and beaten for challenging his expulsion.¹¹² Sylvester commented, “If it is possible for me to vanish, I shall vanish from the country.”¹¹³

In July 2015, the newly elected President Muhammadu Buhari categorically ruled out any chance of Nigeria legalising homosexuality.¹¹⁴ The Special Adviser to the President of Media and Publicity said homosexuality is “against the law in Nigeria, and abhorrent to [Nigeria] culture,” in a Twitter post following President Obama’s visit to Nigeria.¹¹⁵

Public attitudes seem to be changing. A 2010 Amnesty International Poll found that 96% of Nigerian residents believed homosexuality should not be accepted by Nigerian residents.¹¹⁶ A 2015 poll showed this percentage fell to 87%, with 30% of Nigerians agreeing LGBTI persons should receive education, healthcare and housing.¹¹⁷ These developments have been hailed as significant progress by Nigerian activists.

RWANDA



Many people think we are useless...

Some of us cannot even get jobs just because of our sexuality.



The Rwandan Constitution and Penal Code does not explicitly criminalise homosexuality. However, Article 26 of the Rwandan Constitution states, “marriage between a man and a woman is the only recognized.”¹¹⁸ This seems to be in direct contradiction with Article 16 of the Constitution recognising that, “all human beings are equal before the law. They shall enjoy, without any discrimination, equal protection of the law.”¹¹⁹ Further, Article 22 protects the private life of all individuals.¹²⁰

Recent developments

In 2010 the Rwandan parliament attempted to pass a law criminalising homosexuality, but ultimately dropped the measure.¹²¹ The law was deemed in violation of the Constitutional protections from discrimination and freedom to private life.

Reports allege that activists and LGBTI organisations in Rwanda face eviction and societal discrimination.¹²² Socially, same-sex sexual activity is a taboo and highly stigmatised in Rwanda. One Rwandan lesbian was forced at the age of fourteen by her parents to marry a man in an attempt to forcefully change her sexual orientation.¹²³ Eventually she left that marriage, but she finds that it is “difficult for most people to accept the way we [lesbians] were born...Most people think we are useless...Some of us cannot even get jobs because of our sexuality.”¹²⁴ This discriminatory treatment directly contradicts Rwanda’s Constitutional protections. Furthermore, the Rwanda Biomedical Centre reported in a survey that 20% of MSM have suffered from violence as a result of their sexual orientation.¹²⁵

LGBTI persons also report stigmatisation and public humiliation by health service providers at sexual health service centres. A member of Rwanda Rainbow Rights, an LGBTI advocacy group in Rwanda, Enoc Ndahenyuka, said that ridicule and mistreatment in HIV clinics caused many people living with HIV in the LGBT community to shy away from seeking vital help.¹²⁶ According to the Rwanda Biomedical Center 28% of MSM said that they would not disclose their sexual orientation because of the stigma, or inadequate service that would result.¹²⁷

SEYCHELLES

The Seychelles Penal Code, Section 151 criminalises “carnal knowledge of any person against the order of nature.”¹²⁸ The penal code does not criminalise female same-sex acts. Male same-sex sexual conduct is punishable by up to fourteen years imprisonment.¹²⁹ The law is not generally enforced. LGBTI individuals are, however, protected under the Seychelles employment code from discrimination on the basis of sexual orientation.¹³⁰

In October 2011, the government agreed to decriminalise same-sex sexual acts. The challenge is based on the Seychelles Constitution which guarantees the right to equal protection of the law, whereby every person has a right to the enjoyment of universal rights, free from discrimination.¹³¹

Seychelles also agreed to prohibit discrimination based on sexual orientation or gender identity. When questioned about 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.”¹³² As of August 2014, the law criminalising homosexuality is still under review.

Recent developments

It is reported that there are no active LGBTI organisations in the country.¹³³ In August 2014, the Judicial College invited members of the public to discuss the “discrimination of gay people, marriage equality and morality”.¹³⁴

In June 2015, two gay men, a British national and a Seychellois, became the first same-sex couple to marry in Seychelles. They were married by the then out-going British High Commissioner, Lindsay Skoll, in the High Commissioner’s residence. The Seychelles Principal Secretary for Foreign Affairs, Ambassador Maurice Loustau-Lalanne, described the event as “lacking in sensitivity” because same-sex unions are not recognised in Seychelles.¹³⁵

AFRICA

SIERRA LEONE

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 sentences or a minimum sentence of ten years.¹³⁶ Sodomy is also a felony under the common law of Sierra Leone.¹³⁷ Although the law is rarely enforced, police continue to harass, detain, beat, and denounce persons perceived to be members of the LGBTI community. The law is silent on female same-sex sexual activity.

Recent developments

In February 2014, the Sierra Leone’s President Ernest Koroma made comments about certain international donors withholding aid to some African nations due to the introduction of new anti-gay laws . Koroma said “We have to take into consideration our culture, traditions, religious beliefs and all that... I think the country should be led by what it believes is right for the country and not what is necessarily right for the international community because of the variations in our traditions.”¹³⁸ He added: “I believe with engagement with our communities, sensitisation and other public awareness programmes, we will get consensus.”¹³⁹

In September 2014, Sierra Leone abstained from voting either for or against a resolution¹⁴⁰ opposing violence and discrimination based on sexual orientation and gender identity in The UN Human Rights Council. The resolution passed. . In March 2015 Sierra Leone voted against Russia at the UN when Russia tried to block same-sex partner benefits for UN employees.

In August 2014, a human rights activist, Mary Conteh received threats to stop her activism or else a rumour would be spread that she had contracted Ebola.¹⁴¹ Ms Conteh is the national coordinator of the Women’s Centre for Good Governance and Human Rights (WOCEGAR) which promotes women’s empowerment, good governance and LGBTI rights. The threats did not stop there. Mr. Osman O. Sesay, Member of Parliament for the Bombali District, has reportedly threatened to make Ms Conteh “disappear.”¹⁴²

George Reginald Freeman, a LGBTI rights activist and founder of the organisation “Pride Equality,” was attacked multiple times and was lucky to escape with his life.¹⁴³ In 2012 Freeman fled the country and is currently a political refugee in Spain where he continues to receive threats from prejudiced individuals in Sierra Leone.¹⁴

SOUTH AFRICA

In 1998 South Africa became the first country in the world to constitutionally prohibit discrimination on the basis of sexual orientation.¹⁴⁵ Currently, South Africa is only one of three Commonwealth countries that have constitutional protections on the basis of sexual orientation and/or gender identity (the others being Malta and Fiji) and is the only African country that constitutionally protects sexual orientation. LGBTI persons enjoy equal rights and equality before by law.¹⁴⁶

Recent developments

There are still high levels of social stigma and discriminatory attitudes, particularly in rural and economically deprived communities.¹⁴⁷ In particular, black lesbians and trans men are regularly the target of hate crimes, including physical and sexual violence.¹⁴⁸ The government of South Africa appears to be complicit because despite media sensationalism of attacks against gender non-conforming women phenomenon termed 'corrective rape' perpetrated to 'cure' a woman of same-sex desire or gender expression there have been no high level political statements, no specific policy action on this hate crime within strategies to combat gender based violence and there is impunity for perpetrators.¹⁴⁹

In 2014 the government of South Africa initially refused Paul Semugoma, a LGBTI rights activist from Uganda, entry into the country when he was escaping persecution after Uganda initially passed a harsh law persecuting homosexuals.¹⁵⁰ Attempts to deport Semugoma failed after a court order granted him entry.¹⁵¹ Semugoma applied for asylum but was denied and was given a 'special skills' work permit instead allowing him to live in the country. This was seen as a measure that South Africa took to avoid embarrassing the Ugandan government.

Sandy Kalyan, Member of Parliament for the Democratic Alliance, introduced a motion in Parliament to strongly condemn Uganda for its intolerant LGBTI laws.¹⁵² This was fiercely opposed by the ruling African National Congress, further demonstrating the existing gap between South Africa's legal and constitutional settlement and the current political climate.

In 2015 The Academy of Science of South Africa (ASSAF) published a multi-disciplinary report which sought to demonstrate that homosexuality is rooted in biology in response to the Ugandan president's request for evidence of the nature of sexual orientation. .¹⁵³ This research concluded that sexual orientation is determined during the second trimester of pregnancy and the authors assert that the findings challenge claims that homosexuality is 'un-African'.¹⁵⁴

South Africa's national education curriculum includes sex education but it does not adequately cover same-sex sexual relationships and teachers can opt out of covering this aspect.¹⁵⁵ This is a contentious and Professor Deevia Bhana of the University of KwaZulu-Natal School of education stated that, "[t]his is a much broader conversation around diversity, our constitution and human rights inclusion in our schools to make them safe places for all learners,...That diversity is relevant for sexual orientation or gender identity."¹⁵⁶

“Homophobia and transphobia are endemic. Policies and access to services in the private and public domain have not often been adjusted to cater for the needs of these two key populations. Attitudes are still hostile towards LGBTI persons resulting in these individuals not accessing services or accessing them when its too late. The religious communities have been slow in advocating for tolerance, inclusion and reconciliation. However, there are shifts in some larger denominations . . . What I am saying is there are still gross violations of the LGBTI persons . . . Micro-aggressions happen every day...”

ALEX BOTHA
ACTIVIST

“
There are still gross violations of the LGBTI persons ...
Micro-aggressions happen every day...
”

AFRICA

SWAZILAND

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.”¹⁵⁷ This means that since sodomy was a crime under the 1907 common law punishable by death or a lesser punishment at the discretion of the court, male same sex sexual acts are illegal in Swaziland. This does not include same sex sexual conduct between women. There is no legal protection against discrimination based on sexual orientation in Swaziland.

In 2005 the legislature considered also criminalising female same-sex activity, but it is not mentioned by the law making its legal status uncertain.¹⁵⁸ Swaziland does not provide any safeguards for the rights of LGBTI individuals.¹⁵⁹

Recent developments

In February 2014, the government Press Secretary, Percy Simelane, responding to debate around Uganda’s new anti-gay laws told the media that the government is considering its stance on same-sex sexual relationships.¹⁶⁰ He added that Swaziland “was regulated by the nation’s moral obligations and biblical values.”¹⁶¹ The government has not since clearly communicated its agenda.

A recent survey of seventeen Southern African health policy makers, found that Swaziland and five other Southern African countries have included gay men and/or MSM among the key affected populations they are targeting through HIV services.¹⁶² These populations now have access to services to prevent and treat HIV.

In March 2015 a young lesbian, Kyalo Glover, was attacked in a bar in Swaziland by a man who objected to her presence.¹⁶³ The man brutally murdered her with an axe and chased Kyalo’s friend, who managed to escape. A few months prior, a gay man was murdered in similar circumstances.¹⁶⁴ LGBTI and human rights activists alike are decrying the increase of homophobic assaults and murders in Swaziland.

UNITED REPUBLIC OF TANZANIA

Under Section 154 of the Tanzanian Penal Code the act of “carnal knowledge against the order of nature,” is criminalised.¹⁶⁵ Violation of Section 154 carries a minimum thirty-year prison sentence and a maximum sentence of life imprisonment.¹⁶⁶ Further, Section 155 punishes any attempt to commit an act against the order of nature with seven years imprisonment.¹⁶⁷ Section 157 also bans indecent practises between males, whether in public or in private, and such acts are punishable by five years imprisonment.¹⁶⁸ Only the semi-autonomous region of Zanzibar explicitly outlaws female same-sex activity with five years imprisonment, or a 500,000 Shillings (£150) fine.¹⁶⁹

Recent developments

In March 2014, Tanzanian Member of Parliament, Hon. Ezekiel Wenyne, claimed that homosexuality is spreading in Tanzania because the law is too lenient on homosexuals.¹⁷⁰ He drafted and introduced a new bill in Parliament to enact more stringent laws on same-sex sexual conduct.¹⁷¹ The bill sought to criminalise the lives of “those who induce others to become gay or those who promote the behaviour.”¹⁷² The MP’s sentiments were not taken seriously by gay rights activists in Tanzania as most people familiar with the context view the Tanzanian government as complacent with its current position on homosexuality.

According to the U.S. State Department, LGBTI individuals “face societal discrimination that restricts their access to health care, housing, and employment.”¹⁷³ LGBTI individuals cannot live openly, and therefore, there is not a lot of advocacy on behalf of the community.¹⁷⁴ Moreover, the media fuels anti-LGBTI sentiments, making the situation worse for LGBTI persons.

UGANDA

In Uganda, Penal Code Section 145, criminalises homosexuality as “carnal knowledge of any person against the order of nature.”¹⁷⁵ The punishment for this offence is life imprisonment. In Penal Code Section 146, Uganda criminalises attempts to commit any unnatural offences in Section 145, under punishment of seven years imprisonment.¹⁷⁶ Additionally, Section 148 criminalises public and private acts of gross indecency, including homosexuality, punishable by seven years imprisonment.¹⁷⁷

In 2005 Uganda explicitly prohibited same-sex marriage in an Amendment to its Constitution.¹⁷⁸ Article 31 details the rights of the family, stating “Marriage between persons of the same sex is prohibited.”¹⁷⁹

Recent developments

In February 2014, President, Yoweri Museveni, signed into law the Ugandan Anti-Homosexuality Act. The act, which came to known as the ‘kill the gays bill’, included stiffened penalties for same-sex sexual relations in Uganda.¹⁸⁰ Additionally, the act extended punishment for individuals, companies, media, organisations and non-governmental organisations that support LGBTI persons.¹⁸¹

LGBTI and human rights activists in Uganda, including Nicholas Opiyo and Dr. Paul Semugoma, contested the new law in constitutional court and called for annulment of the law, as it was a violation of the rights of minorities. The activists saw the politicisation of homosexuality as an attempt to avert the electorate’s attention from the economic challenges facing the country.

In August 2014, the Constitutional Court annulled The Uganda Anti-homosexuality Act on a technicality.¹⁸² The legislature passed the law without the requisite quorum.

The legislation attracted harsh international criticism and prompted donors including, The World Bank, The United States, Denmark and Norway, to withhold millions of dollars in development assistance to Uganda.¹⁸³ Pope Benedict expressed his opposition for “unjust” discrimination against LGBTI individuals in his statement addressed to the UN panel by Vatican legal attaché.¹⁸⁴ This international pressure likely contributed to annulment of the legislation by the constitutional court.

The atmosphere that the act generated led to increasing repression, violence, and homophobic and gender-based discrimination. According to Amnesty International some members of the LGBTI community were beaten, sexually assaulted, and detained by police.¹⁸⁵ Sexual Minorities Uganda (SMUG), a LGBTI rights organisation, documented over 150 cases of abuse during the time the law was in force, from harassment to beatings and at least one suicide.¹⁸⁶ A police raid on a HIV service centre that provides services to the LGBT community, resulted on a decline in access to health services because people feared arrest or harassment.¹⁸⁷

Since the annulment of the act, LGBTI rights groups previously banned or harassed by the police are operating with a limited degree of freedom.¹⁸⁸ In August 2014, Uganda’s LGBTI community celebrated the first LGBTI pride event after the anti-homosexuality act was annulled. Subsequently, another pride event was held in August 2015 in Entebbe, Uganda which was attended by four hundred people. Given that up to a thousand were expected it is clear that many LGBTI persons still fear for their lives.¹⁸⁹

In February 2015, the Human Rights Awareness and Promotion Forum sought a ruling from the East African Court of Justice to clarify that anti-gay laws, such as the Ugandan Anti-homosexuality Act, are unacceptable and violate human rights.¹⁹⁰ This case is still pending in the East African Community regional court.¹⁹¹

“Actually, many homosexual Ugandans have been threatened, in fact, it is now under reported because of the misplaced belief that the LGBT community are reporting cases of violence to get sympathy . . . I get threats every day. I don’t talk about my threats because when we talk, when we’re very empathetic, about the challenges we go through, Ugandans think we are using that as a tool for sympathy.”^{192 193}

FRANK MUGISHA
UGANDAN ACTIVIST

AFRICA

ZAMBIA

The Penal Code in Zambia criminalises same-sex activity for both males and females under Section 155, punishable by a minimum of fifteen years in prison and a maximum sentence of life in prison.¹⁹⁴ Section 156 criminalises the attempt to commit “unnatural offences” with a minimum sentence of seven years and a maximum of fourteen years imprisonment.¹⁹⁵ Section 158 criminalises public and private, male and female gross indecency and imposes a minimum sentence of seven years and a maximum sentence of fourteen years.¹⁹⁶

Opposition to the LGBTI community is expressed by the Zambian Catholic Church as well as other churches and civil society organisations including Zambia Against People with Abnormal Sexual Acts.¹⁹⁷

Recent Developments

In February 2014, a Zambian court acquitted human rights and HIV activist, Paul Kasonkomona, of the charge of promotion of homosexuality.¹⁹⁸ He was charged with ‘soliciting for immoral purposes’ after advocating for LGBTI rights on a television programme.¹⁹⁹ He was arrested and released on bail before the case where he won his acquittal.

Zambia has arrested numerous other LGBTI community members. In May 2013, two gay men, Philip Mubiana and James Mwape, were arrested and jailed until April 2014, when they were acquitted.²⁰⁰ According to Human Rights Watch, LGBTI individuals are a particularly vulnerable community in Zambia due to arbitrary arrest and prosecution.²⁰¹

In June 2014, the Zambian Foreign Affairs Minister, Gabriel Namulambe, stated that homosexuality is an insult to Zambia. He added, “We have the Constitution to protect and in the preamble of our Constitution, Zambia is a Christian nation and as such we live by the Christian values and we will not be able to recognise gay rights.”²⁰²

THE AMERICAS

ANTIGUA AND BARBUDA

“The police are there to serve and protect, regardless of who is coming to you. Whether that person be a gay, lesbian, bisexual or trans person you’re supposed to protect them. We have a failure not only on that end but with our law . . . There are no laws on our books, if I recall correctly, that protect the LGBT community. We do have laws in terms of harassment and sexual assault ... but what we have to deal with on a holistic level is the issue of discrimination of LGBT persons and how do they feel safe in their own country.”²¹²

AZIZA LAKE
GENDER ACTIVIST

Antigua and Barbuda continue to criminalise buggery under Section 12 of the Sexual Offences Act of 1995.²⁰³ The punishment for such an offence is a maximum of fifteen years imprisonment.

Between the years 2010 to 2013 Antigua and Barbuda reported 12-15 instances of discrimination perpetrated against LGBTI people living in the country.²⁰⁴ The victims are mainly gay, bisexual and other men who have sex with men (MSM).

Recent Developments in Antigua and Barbuda

There have also been reports of discrimination and abuse against LGBTI people by law enforcement officers. In 2015 two cases of discrimination and abuse made headlines. A former Queen of Carnival, had to relocate to Canada after law enforcement chose not to respond to threats she received after revealing that she is a lesbian.²⁰⁵ Also, a transgender woman Prince “Princess” Warren, a prominent figure in the LGBTI community, was allegedly physically assaulted by two police officers which inevitably lead to her losing an eye.²⁰⁶

Give the context of of discrimination against LGBTI people by police officers, Antigua and Barbuda is training the police to improve their ability to uphold human rights and decrease stigma and discrimination in their interaction with LGBTI people. Police officers who have received training have been stationed where the most acts of violence and discrimination against LGBTI individuals are reported to occur.²⁰⁷

There are few LGBTI focused NGOs because the societal stigma surrounding LGBTI issues hinders the freedom of association for LGBTI individuals.²⁰⁸

In January 2014, at a National Youth Forum, political parties were asked whether there was a possibility of the buggery law being decriminalised. The political parties joined in a resounding response that the removal of the buggery law must be approached from the “bottom up” - a move headed by society instead of the legislative body.²⁰⁹

Joseph Hughes, Deputy Police Commissioner, defended the police force, stating that non-discrimination is part of the department’s policy regardless of sexual orientation.²¹⁰ Hughes also referred to the duty of the department to acknowledge and ensure the rights listed in the Constitution of Antigua and Barbuda.²¹¹

Antigua and Barbuda abstained from the vote within the UN on the extension of UN employee benefits to same-sex partners.

THE AMERICAS

BAHAMAS

Same-sex sexual activity between males and females has been legal in the Bahamas since 1991. It is the only English speaking, Caribbean country to take such action. However, a Constitutional Review Commission initiated in 2006 ruled “that sexual orientation did not deserve protection against discrimination.”²¹³ The age of consent is 18 for same-sex sexual activity, two years higher than the age of consent for persons who engage in heterosexual sex.²¹⁴

In 2013, Prime Minister Perry Christie expressed that he does not believe in same-sex marriage and that it is not on the agenda of the Bahamian government.²¹⁵ This sentiment was shared by former Minister of State and Finance, Zhivargo Laing, who, in 2011 said “as a community in The Bahamas we believe that a marriage must and should be and is between a man a woman.”²¹⁶ He further stated that “a marriage is void if it took place between persons who were male and male or female and female.”²¹⁷

LGBTI NGOs have reported that stigma and discrimination is prevalent in the Bahamas. Some persons have reported facing employment discrimination and were “frustrated at the lack of legal recourse.”²¹⁸ A study conducted by Family Health International’s Communication for Change project funded by the U.S. government indicated that many MSM are refused healthcare assistance.²¹⁹

An effort to stage a LGBTI Pride Event in Grand Bahama in 2014 failed after threats prevented patrons from attending.²²⁰ One of the promoters reported that he received death threats on social media.²²¹

Recent developments

In 2015 the Bahamas voted against the Russia motion to withhold employee benefits from same-sex partners of UN staff.

A 2014 survey by the Inter-American Development Bank found that 50.2% of participants strongly disapproved of a homosexual running for political office.²²² The survey also queried approval of same-sex marriage which showed 74.5% indicating strong disapproval.²²³

In 2014, Fred Smith, president of the Grand Bahama Human Rights Association, called for a constitutional amendment to condemn discrimination based on sexual orientation.²²⁴ He stated “It is high time that we [put] flesh to the skeleton of our constitution [and follow] the Universal Declaration of Human Rights, and The American Declaration of the Rights and Duties of Man from the Organization of American States.... We also call on the government to pass a Human Rights Act to make it illegal and to make it a criminal offense to discriminate in any way on the grounds of sex, sexual orientation, gender etc.”²²⁵

BARBADOS

“The Barbadian LGBTI community is full of entrepreneurs, skilled and talented individuals who have refused to take ‘no’ for an answer. Often times come together in groups to assist each other and express underlying support and loyalty to LGBTI businesses and ventures. During my period of homelessness I was assisted by LGBTI individuals who were understanding and were able to lend a hand where they could. Additionally, building Barbados’ LGBTI NGO, B-GLAD, was not an easy task, but through the support and assistance of some LGBTI individuals it was possible. Despite the many hardships, trials and struggles we face as individuals, as an organization and as a community—Barbados has a tremendously resilient set of LGBTI people that make an invaluable contribution to Barbadian society.”

DIRECTOR DONNYA PIGGOTT
BARBADOS GAYS & LESBIANS AGAINST
DISCRIMINATION (B-GLAD)

Under Section 9 of the Barbados Sexual Offences Act the act of buggery is criminalised.²²⁶ The punishment for buggery in Barbados carries maximum sentence of life imprisonment.²²⁷ There is no legislation in place to protect LGBTI individuals from discrimination in employment, housing, access to education, health care etc. There have also been many reports of violence against those who are LGBT. Although discrimination is prevalent, many LGBTI people live openly.²²⁸

Recent Developments

In 2013, during the Universal Periodic Review, Barbados rejected calls for the decriminalisation of the buggery law.²²⁹ However, the government agreed to provide greater protection for sexual minorities from violence and abuse.

In 2014, Barbados noted it could not join the consensus on the approval of an Organisation of American States (OAS) Resolution on Sexual Orientation, citing “a number of the issues and terms contained in the Resolution are neither reflected in its national laws nor the subject of national consensus. As such, Barbados would not be in a position to meet these requirements.”²³⁰

In August 2013, Prime Minister Freundel Stuart stated “The argument becomes even more troublesome, because it is not within the competence of any of us...to resolve the basic issue related to homosexual behaviour...We do not know, whether it is based on nature, or whether it is based on nurture. And until we can speak with pontifical certainty...whether homosexual behaviour derived from nature or from nurture, it does not lie within our competence to sit in seats of judgment and to condemn those who pursue that practice... You are going to have to ask a question: What would Christ have said, what would Christ have done? And in a case, not too, too dissimilar, His response was, ‘he that is without sin, cast the first stone.’”²³¹

In 2015 Barbados abstained from voting in the Russia motion to withhold employee benefits from same-sex partners of UN staff.

THE AMERICAS

BELIZE

In Belize, Section 53 of the Criminal Code is used to criminalise homosexuality.²³² Section 53 sentences “every person who has carnal intercourse against the order of nature with any person,” with up to 10 years imprisonment. However the government of Belize interprets this legislation to include only sex between men.²³³ Additionally, though not enforced, Section 5 of the Belize Immigration Act prohibits homosexuals from entering the country.²³⁴ There are no legislative protections for LGBTI people to live free of discrimination and violence. There is speculation that Belize’s Immigration Act “could result in numerous human rights violations, including the prohibition of torture and the right to life.”²³⁵

Recent developments

In 2015 Jamaican-born activist, Maurice Tomlinson, challenged the government of Belize’s immigration law, stating that it restricts his freedom of movement and breaches his rights as a CARICOM national—which allows for free movement of CARICOM nationals to all other member states.²³⁶ Tomlinson states the restriction of homosexuals entering Belize is strictly up to discretion of the immigration officer. Belize in their submission contends that they do not intend to invoke the law however will retain it in an effort to deter terrorists. The case is still ongoing.²³⁷

Surveys conducted by UNAIDS in 2014, reveal that the majority of Belizeans accept or tolerate LGBTI people.²³⁸ The surveys focused on two areas, attitudes and perceptions towards social and health issues in the Caribbean and health issues among MSM. The report revealed that 34% of participants said they would accept a homosexual person and a similar percentage came from those who said they would tolerate them.²³⁹ Nonetheless, 71% of Belizean MSM report suffering verbal abuse, and 17% have been physically abused.²⁴⁰

The main LGBTI organization in Belize, United Belize Advocacy Movement (UNIBAM), staged Belize’s first annual Pride celebration which ran for a week in September 2015. UNIBAM stated that the event was a reflection of LGBTI people’s right to freedom of association, expression and movement.²⁴¹

Minister of Housing Michael Finnegan, in response to the first Pride celebration, stated: “Life is never 100% and people have a right to be what they want to be, people have a right to congregate where they want to congregate once they are doing it within the scope of the laws of the country but whether you want to be gay or whatever that is your business. I hardly care, remember whether you want to be gay or straight that is for you and your God that is not for me and I will not pass judgment on people, that judgment is for God and one day God will judge all of us.”²⁴²

“

71% of Belizean MSM report suffering verbal abuse, and 17% have been physically abused.

”

CANADA

Canada has made progressive strides to uphold and protect the rights of LGBTI people. In 1969 Canada passed an amendment to the Criminal Code decriminalising homosexuality—a crime which before its legalisation could lead to imprisonment. In 1978 Canada adopted a new Immigration Act which removed prohibition of homosexuals. In 1992 the Federal Court lifted ban on homosexual person serving in the military. Sexual Orientation was added to the Canadian Human Rights Act in 1996 after over a decade of lobbying. In 2005 Canada became the fourth country to legalise same-sex marriage.²⁴³

Recent developments

A 2013 report stated that almost 29.1% of LGBTI people in Canada have faced discrimination in the workplace, compared to just 2.9% of heterosexuals.²⁴⁴ LGBTI youth in Canada are 14 times more likely to commit suicide than their heterosexual peers. Additionally, 77% of trans Canadians revealed that they have thought about suicide, and 43% reported that they have attempted suicide.²⁴⁵

In 2015 a private member's bill C-279, proposed by Randall Garrison, was introduced to fight hate crimes against transgender individuals. The bill was intended to include the prohibition of discrimination on the grounds of gender identity in both the Criminal Code and the Canadian Human Rights Act.²⁴⁶ The bill was subsequently amended by Canada's Senate Committee on Legal and Constitutional Affairs to introduce the restriction of transgender persons use of washrooms and public facilities and exemption of prisons from offering transgender inmates protection.²⁴⁷ LGBTI and human rights organisations have expressed disappointment at the bill's amendments, but they still support the help the bill does offer.

Helen Kennedy of Egale Canada Human Rights Trust stated:

"The human rights of transgender people must be protected in all spaces including public bathrooms and locker rooms. The amendment to Bill C-279 fuels discrimination against transgender individuals by making it seem like people have something to fear by sharing a bathroom with a transgender person, which of course they don't."²⁴⁸

"As a transgender person I have been waiting a long time for federal human rights protections... Bathrooms are dangerous for me. I fear what people will do to me if they realize I am transgender. Bill C-279 was meant to protect me from hate crimes, but in amending it, the Senate is putting me at risk. It will force me to use the men's bathroom, and a transgender woman in the men's room is a recipe for violence."²⁴⁹

AMANDA RYAN
GENDER MOSAIC

I fear what people will do to me if they realize I am transgender.

THE AMERICAS

DOMINICA

“My safety would be my biggest concern...there have been a few acts (of violence) on LGBT members, they were just attacked because they looked at somebody funny, or give a funny stare, they’ve been pelted with stone, or chased. There are certain places that I would not walk in town. I just don’t feel safe walking in town.”

ANONYMOUS GAY MAN
DOMINICA

The Dominican Sexual Offences Act prohibits same sex relations for both sexes under Section 14, the indecency law.²⁵⁰ Punishment for violation of Section 14 carries a maximum of five years imprisonment.²⁵¹ Also, anal intercourse carried out by any person is criminalised by Section 16 and carries a punishment of up to ten years imprisonment and Court ordered psychiatric treatment.²⁵² Further, Section 16 criminalises the attempt to undertake anal intercourse, sentencing the person to a maximum of four years imprisonment and Court ordered psychiatric treatment.²⁵³

The Dominican government reports that these laws are rarely enforced, though records show that between 2000 and 2010 fifty adult men were arrested on the charge of buggery.²⁵⁴ More recently in 2012, two men were arrested for having sex on a cruise ship that was docked at Dominica.²⁵⁵ There are also no anti-discrimination laws that protect persons who are LGBTI on basis of sexual orientation or gender identity in employment, housing, education, or health care.²⁵⁶

In 2013 Dominica Prime Minister, Roosevelt Skerit, declared that the buggery law will remain because he doesn’t “think any compelling argument can be made for it to be repealed.”²⁵⁷

Recent Developments

In 2014 the United Nations 19th Session of the Universal Periodic Review, a number countries made recommendations for Dominica to address discrimination on the basis of sexual orientation and gender identity and to act to remove legislation which criminalises same-sex sexual activity.²⁵⁸

Advocates from the Caribbean HIV/AIDS Partnership Dominica Chapter (DomCHAP) report that the media has not openly taken a position on LGBTI rights and equality. However, the media has regularly published stories and press releases submitted by DomCHAP.²⁵⁹ The Head of The Pan American Health Organization, Massimo Ghidinelli, said, “there is a serious lack of knowledge about these groups’ real health problems—they are basically invisible.” This is likely a product of the social stigma LGBTI issues carry because of criminalization.

“
I just don’t feel safe
walking in town.”

GRENADA

The Grenadian Criminal Code, Section 431 criminalises same-sex activity with a punishment of up to 10 years imprisonment.²⁶⁰ However, no legislation in Grenada criminalises same sex relations between females. Although there is no legal prohibition of female same sex conduct, lesbians - like gays, bisexuals, transgender and intersex persons - are not protected from discrimination under the law.²⁶¹ Most LGBTI Grenadians are not open about their sexual orientation or their gender identity because society is generally intolerant of same-sex activities.²⁶² Fortunately there have been no reported cases of violence against LGBTI individuals in Grenada within the past year.²⁶³

Recent Developments

The United Nation's Universal Periodic Review made recommendations to Grenada to remove laws criminalising same sex relations between consenting individuals and to create laws to prohibit discrimination on the grounds of sexual orientation and gender identity.²⁶⁴ In response, Grenada said that the issue of discrimination against those who are LGBTI is being considered within the context of the country's ongoing constitutional review.

However, Grenada has not demonstrated moves to remove its laws criminalising sexual orientation.²⁶⁵ Grenada responded to the UPR recommendations stating: "Within the democratic process, it was obvious that there was not much support for that issue nationally. It should be noted, however, that apart from the recommendations on constitutional reform made by the Committee to the Government, the Committee had recommended that ordinary legislation be passed with regard to 'protection against discrimination at workplaces based only on sexual orientation.'²⁶⁶

Jason Latty Travis, Director of the Caribbean Alliance for Equality, wrote an open letter to the Grenada Constitution Reform Committee in which he expressed concerns about the lack of community participation of LGBTI persons.²⁶⁷ He urged the committee to:

"Ensure that the fundamental rights and freedoms guaranteed in the new constitution include sexual orientation and gender identity. The explicit inclusion of these terms is necessary to protect the inalienable rights of LGBT Grenadians to life, liberty, security of the person and equal protection under the law."²⁶⁸

THE AMERICAS

JAMAICA

“I arrive at Norman Manly International Airport ...the Immigration Officer came back and ask “are you a male or female because your passport state male”, I humble reply and said I am biologically male but identify myself as woman. Then I told her that I rather be called Lady Jessica. I arrived at the security checking point... I clearly state I am a woman. She said “no because your identification states male.” She said “well the male security will have to search you” then I reply and said I needed female officer to search me, she said “ok”. Whispers of “gal bowy” spread like wild fire throughout the airport among staffs, male Security Officers leave duty to witness the famous “gal bowy”. This my experience being Lady Jessica at the Airport.”

LADY JESSICA
JAMAICA

In Jamaica, Sections 76-78 of the Offences Against the Person Act prohibit anal sex between consenting adults, punishable by up to ten years in prison with hard labour.²⁶⁹ The gross indecency law, Section 79, criminalises physical intimacy between males and is punishable by up to two years in prison and the possibility of hard labour.²⁷⁰ The Charter of Fundamental Rights and Freedoms which was passed in April 2011, protects the human rights of Jamaicans, however, it does not include protection on the grounds of sexual orientation or gender identity.²⁷¹ However, Justice Minister, Mark Golding stated that all Jamaicans are protected under the charter, including those who are LGBT.²⁷²

Recent Developments

The Jamaica Forum of Lesbians, All-Sexuals and Gays (J-FLAG) made headlines in 2015 by staging the island’s first LGBTI pride celebration.²⁷³ The event was themed “The Pride of a People: Breaking the Rules of Oppression.” It included a series of events spanning six days and included an open mic night, an opening ceremony, an art exhibition, and a flash mob.²⁷⁴ The events received endorsement from Senator Dr. Angela Brown-Burke and Justice Minister Mark Golding.

The Ministry of Education, under the leadership Rev. Ronald Thwaites, initiated a school safety manual to address the problem of homophobic bullying in schools.²⁷⁵ The move resulted in somewhat of a backlash but the Minister defended the action by stating that ‘LGBTI youths are human beings and have the same rights as everyone else in the society’.²⁷⁶

NGOs continue to report widespread human rights violations and homophobia, such as assault with deadly weapons, corrective rape, mob attacks, and health-care discrimination.²⁷⁷ Homophobia is perpetuated within Jamaican dancehall culture when songs that stigmatise LGBTI people are played.²⁷⁸ Organisations such as J-FLAG are working to alter these dynamics. J-FLAG, collaborated with the Ministry of Health to train over 300 healthcare workers in order to sensitise health-care providers about issues specific to LGBTI people and to enable effective care for LGBTI patients²⁷⁹.

“
The prejudice is not me,
the prejudice came to my
gate, on my grounds, on my
territory waiting to verbally
as physically abuse me.
”

ST LUCIA

In Saint Lucia same sex intercourse is criminalised by Sections 132 and 133 of Criminal Code.²⁸⁰ The punishment for committing, or attempting to commit the act of buggery - criminalised by Section 133 - is imprisonment ranging from five years to ten years.²⁸¹ While the laws are rarely enforced, the widespread social stigmas against LGBTI persons force the community underground.²⁸² Additionally, there are no laws in St. Lucia to protect the rights of LGBTI individuals from discrimination.²⁸³

Recent Developments

In 2014, the LGBTI NGO, United and Strong, conducted a series of human rights training exercises with police officers covering general and LGBTI-specific content.²⁸⁴ United and Strong has initiated a targeted project to address healthcare and social services interventions.²⁸⁵ Members of the LGBTQI community were trained in HIV and STI education and information sharing.²⁸⁶ Moreover, partnerships with the Ministry of Health's Bureau of Health Education and other national stakeholders, enhanced direct outreach to conduct education sessions targeting youth and other vulnerabilities populations.²⁸⁷

Each year United and Strong celebrates International Day Against Homophobia, Biphobia and Transphobia (IDAHOT).²⁸⁸ In 2015 the theme was "Stand with LGBTQI Youth" and discussion focused on the criminalization of same-sex intimacy between consenting adults under Sections 132 and 133 of the Criminal Code, as well as the religious, cultural and social stigmas faced by LGBTI individuals.²⁸⁹

ST. KITTS AND NEVIS

The St. Kitts and Nevis Offences Against the Person Act, Section 56, criminalises same-sex intimacy and carries a punishment of up to ten years in prison with the possibility of hard labour.²⁹⁰ Further, Section 57 criminalises the attempt to commit buggery and carries a punishment of up to four years and the possibility of hard labour.²⁹¹ The enforcement of the laws is relaxed and the law does not prohibit same-sex activity between women.²⁹² There are no laws protecting LGBTI individuals from discrimination on the grounds of sexual orientation or gender identity.²⁹³ The government maintains that there have been no reported cases of violence or discrimination among the LGBTI community.²⁹⁴ According to the U.S. State Department's Human Rights Report of 2014 "negative societal attitudes towards the LGBT community impeded the operations of LGBT organizations and the free association of LGBT people."²⁹⁵

Recent Developments

In June 2015, law enforcement officers and other security personnel in St. Kitts and Nevis completed a four-day sensitivity training in dealing with LGBTI people and individuals in communities who are most vulnerable.²⁹⁶ The training included personnel from the Police Force, Customs and Excise Department, and Fire and Rescue.

In speaking about the training Assistant Commissioner of Police, Vaughn Henderson, said "I think it is timely and I believe that education brings a deeper understanding for people of different beliefs, different cultures and different sexual orientation... Discrimination is an issue that is widely discussed internationally and our Constitution, in Chapter Two, speaks to constitutional rights and it says that no person shall be discriminated against for their religion, their beliefs, cultures etc. We are bound by our constitutional ideals and the rule of law, and so everything that we do must encapsulate those ideals."²⁹⁷

Speaking at the Caribbean launch of UNAIDS Lancet Commission's report *Defeating AIDS - Advancing Global Health* UN General Secretary Ban Ki-moon said "Homophobia threatens both human rights and public health. We cannot tolerate discrimination on the basis of sexual orientation nor on the basis of gender identity."²⁹⁸ St. Kitts and Nevis Prime Minister Hon. Dr. Timothy Harris attended the launch and stated that in efforts to respond to HIV in the region that "Caribbean countries must continue to confront the issues that are related to the elimination of stigma and discrimination and disentangle them from the misperception that this is a gay agenda."²⁹⁹

THE AMERICAS

ST VINCENT AND THE GRENADINES

The St. Vincent and the Grenadines Criminal Code Section 146 criminalises buggery with imprisonment of ten years.³⁰⁰ Further, Section 148 criminalises the attempt to commit an act of gross indecency with another person of the same sex and carries punishment of five years imprisonment.³⁰¹ There are no laws that prohibit the discrimination of LGBTI people on the grounds of sexual orientation or gender identity.³⁰² Although social discrimination still exists in the society, some have suggested that the society is slowly becoming more tolerant to those who are LGBT.³⁰³

Recent Developments

In 2014, the President of the Scouts Association of St. Vincent and the Grenadines, Morrison Baisden, announced that gay and lesbian leaders will not be tolerated.³⁰⁴ In a statement to the annual meeting of the scouting association he said “The World Scout movement took the decision... that you have zero tolerance of homosexuality.”³⁰⁵ This statement was inaccurate though as in 2015 after much debate the Boy Scouts of America removed the national restriction on openly gay leaders and employees in the US Scouting movement.³⁰⁶

In 2014 the Director of the Caribbean Alliance for Equality, Sean Macleish, published correspondence sent to the Prime Minister of St. Vincent and the Grenadines, Dr. Hon. Ralph Gonsalves. Macleish pointedly stated that the country “continues to discriminate against its citizen with the criminalization of homosexuality.”³⁰⁷ He also explained that LGBTI individuals are constantly humiliated by police officers which deters them from reporting cases of abuse and explicitly asked the Prime Minister what his position was in regard to decriminalization and what steps he would be willing to take.³⁰⁸

Opposition Senator, Vynnette Frederick, the New Democratic Party’s spokesperson on gender issues, argued that St. Vincent and the Grenadines need to start a conversation about same sex relationships.³⁰⁹ She reiterated the importance of the issue pointing to the possibility that the country could lose its foreign assistance if it continues to discriminate against those who are LGBTI.³¹⁰ She has said “the International community will force the conversation, because, pretty soon, financing opportunities for us to get grant money will be denied on the basis that our legislation doesn’t adequately address, but instead discriminates against people who are not heterosexual.”³¹¹ Frederick concluded that “the New Democratic party will always have a listening ear” for LGBTI individuals who are suffering from discrimination.³¹²

TRINIDAD AND TOBAGO

Same-sex intimacy is proscribed under Section 13(1)(b) of Trinidad and Tobago Sexual Offences Act which stipulates a sentence of up to twenty-five years in prison for consenting adults participating in anal intercourse.³¹³ Section 8(1)(e) of the Immigration Act explicitly grants power to Immigration Officers to refuse entry to, inter alia, homosexuals.³¹⁴ Although it is not enforced, the Immigration Act poses a threat of arbitrary discrimination at the border. Gerry Downes, the Chief Immigration Officer argues that CARICOM nationals are allowed free movement in and out of the country.³¹⁵ Nonetheless, Jamaican-born LGBTI activist, Maurice Tomlinson is challenging the law on the grounds that it infringes upon his freedom of movement.³¹⁶

Despite the existence of these statutes, the human rights situation for LGBTI people in Trinidad & Tobago is improving. A 2013 survey commissioned by UNAIDS found that 32% of people state they are homophobic³¹⁷ but 56% of people either tolerate or accept homosexuals.³¹⁸ In addition, 78% of people believe homosexuals should not be treated with indifference, and 64% say violence against gays is discrimination.³¹⁹

Recent Developments

While there are only a handful of organisations advocating for the rights of LGBTI people, activists were successful in lobbying Trinidad and Tobago's political leaders to include, for the first time, references to sexual orientation in the manifesto of the People's Partnership Coalition for the 2015 general election.³²⁰ There were a number of other significant achievements for the LGBTI community within the election. Jowelle DeSouza, a 41 year-old philanthropist who is a transgender woman ran for office.³²¹ Activists formed a coalition called Allies for Justice & Diversity and made a number of proposals, including a request for an independent senator in the country's parliament.

Dr. Keith Rowley, the new elected Prime Minister, has said LGBTI issues are "very sensitive" which his government will not make "fashion statements about" but every citizen of Trinidad and Tobago should enjoy the protection of the law.³²²

There are a number of other initiatives being undertaken to advance the rights and improve the well-being of LGBTI people in Trinidad & Tobago. The Silver Lining Foundation, an organisation founded in 2012 by students at the University of the West Indies, St Augustine, has been working with young people who are bullied because of their sexual orientation or gender identity.³²³ The Centre for Indic Studies recently hosted a panel on *Queering Hinduism* which featured noted scholars Dr Arvind Singh, a Lecturer in Engineering at UWI, Krystal Ghisyawan, a PhD candidate and indo-Trinidadian artist Shalini Seereeram who is also involved in a gay-straight alliance effort entitled *We Can't to Wait End LGBT Discrimination in TT*.³²⁴

ASIA

BANGLADESH

“As an advocate for the human right to love since 1998 and now a full time volunteer for *Roopbaan*, life has treated me well. Nevertheless, that, of course, is not the story of most LGBT people in Bangladesh, a country where: the predominant religion identifies a same sex lover as a sinner; the law of the land as a criminal; social norms as a pervert; culture as “imported.” How should life be for LGBTs in Bangladesh? For me, it’s like living in a ‘comfortable closet’. Comfortable because it is actually ‘easy’ when it comes to ‘doing it’; the culture and social norms are so focused on preventing heterosexual acts between unmarried couples: man-to-man or woman-to-woman sexual acts go almost unnoticed. Even in some more conservative regions homosexual acts between teenage boys is seen as the ‘safer’ way of exploring sexuality; so as long as they get married in their adulthood, no one cares much. However, it’s a closet! The moment someone decides to leave that they’ll be ostracized by family, friends and society.”

XULHAZ MANNAN
HUMAN RIGHTS ACTIVIST
AND ROOPBAAN VOLUNTEER

Section 377 of the *Penal Code* of Bangladesh makes same-sex activity between both men and women illegal, carrying sentences from ten years to life imprisonment.³²⁵ LGBTI individuals’ freedoms and well-being are curtailed and their lives otherwise lessened in quality because of this law. There have been two recorded arrests under Section 377. Both arrests were later charged under other penal codes. To date no single case of punishment has happened under Section 377.

In April 2013 the UN Universal Periodic Review made a number of recommendations to Bangladesh based on their poor record of human rights generally, and LGBTI rights specifically. LGBTI rights activists have since lashed out at the government for rejecting the Universal Periodic Review’s recommendations that had the potential of making meaningful changes and advancing the well-being of the LGBTI population, who face serious challenges in accessing protection against discrimination and violence.³²⁶

Discrimination against LGBTI people is commonplace in Bangladesh. There are no specific protections for them under the law. Though Islam is the dominant religion in the nation and there are widespread conservative views on sex and sexuality there is also a strongly progressive democratic aspect of Bangladeshi society which makes it different from some other Islamic countries.³²⁷

There have been a number of online gay communities in Bangladesh over the last decade. Boys of Bangladesh is still active and there are newer platforms including Roopbaan, Shambhab (a lesbian network) and Vivid Rainbow. Community movements, like Bandhu Social Welfare Society founded in 1996 to advocate for human rights for sexual and gender minorities, have also been more active in recent years.

Recent Developments

In November 2013, Bangladesh officially recognised the Hijra (third gender) population, a move allowing them to identify as such on passports and all other government documents.³²⁸ The recognition also meant that there would be reserved places for Hijras within government employment. However, the first fourteen appointed were subjected to intrusive “gender tests” twelve of whom failed.³²⁹

In November 2014 the first ever Hijra Pride Festival was held in the capital Dhaka with 1000 people in attendance.³³⁰ The festival was organised to mark the anniversary of the official recognition of hijras as a third gender in Bangladesh.

As part of a year long advocacy campaign Boys of Bangladesh launched the country’s first lesbian comic character.³³¹ In January 2013, Bangladesh’s first ever LGBTI magazine, Roopbaan was published and it has expanded its initiatives into organising awareness and advocacy events and two pride marches in Dhaka in 2014 and 2015.

“In a country where the whole concept of sex and sexuality is a taboo, we are learning to navigate our ways by highlighting love as the center of all, a human right that can’t be denied, hoping for broader acceptance some day!”

BRUNEI

“When I came out to my mom as having gender-dysphoria she advised me to get closer to God and in a harsh tone and it hurts really bad because she just wouldn’t listen. I then thought at that moment, that this was the reason I kept most things to myself all my life. Till now I’m still having trouble dealing with my thoughts & emotions seriously. I do have friends but even to them it’s difficult for me to express myself. Religion is still very strong here that I wouldn’t feel that safe to express myself fully in public. However, the “strict” Sharia law isn’t that strictly implemented - there are still lots of girls without their hijabs on or with “revealing” clothes.

Also trans people are still visible here. Some are even on hormones which I don’t know where they managed to get... as government-funded hospitals wouldn’t allow that kind of treatment as it is against Islam. What I meant by ‘visible’ is in terms of them not being as closeted as one would expect in a strict Sharia implemented country. Even a group of foreigner friends of mine had commented on things like how “there is plenty of trans people and lesbian couples here”, which is surprising even to me as I just realised this myself.”

ANONYMOUS PERSON
LIVING IN
BANDAR SERI BEGAWAN, BRUNEI

Brunei Darussalam gained its independence from Britain in 1984 and until 2014 retained the colonial era legal code. However, in 2014 a very strict form of Syariah (Sharia) penal code introduced the death penalty for male or female homosexuality and severe penalties for cross-dressing.³³²

Recent Developments

In May 2014, Brunei at the instigation of the Sultan the country introduced a strict penal code based on traditional Islamic law.³³³ The legislation includes three phases where in the first phase brought in new fines and prison sentences for a variety of “crimes” including cross-dressing. The second phase includes the severing of limbs for crimes such as theft. In the final phase the death penalty will be introduced for crimes including same-sex sexual acts.³³⁴

Anecdotally, there is some evidence that although the laws are strict on paper, they are not being implemented. Religious police are supposedly enforcing the new penal code but women without hijab, a crime in the new penal code, can be seen in the capital. However, there have been convictions and in March 2015 a civil servant was fined \$1000 Brunei Dollars (£465) or 60 days imprisonment for cross-dressing.³³⁵ The U.S. Department of State reports that there are no organizations working on securing human rights for LGBTI individuals in Brunei, likely a result of fear of societal or legal recourse against them.³³⁶

“
Religion is still very strong here that I wouldn’t feel that safe to express myself fully in public.
”

ASIA

INDIA

The struggles of the LGBT community continue

“A confused canvas has been portrayed before the LGBTI community in India. On the one hand the Supreme Court of India has upheld the rights of transgender persons and the other, it has refused to declare the anti sodomy law being section 377 of the Indian Penal Code as unconstitutional. However, even though rights of transgender persons have been guaranteed on paper, in reality there is a long way to go in order to realise these rights. The report released by Onedede, a human rights organization in Bangalore documents the testimonies of transgender persons who continue to face violence despite developments in the law.

Post the Supreme Court decision in 2013 recriminalising homosexuality, the message from the LGBT community was clear that there is No Going Back. The struggles of the LGBT community continue in the court by way of the pending curative petition and as well on the streets and our everyday lives seeking justice.”

GOWTHAMAN RANGANATHAN
LAWYER, ALTERNATIVE LAW FORUM
BANGALORE, INDIA

Homosexual acts between men are criminalised by Section 377 of the Indian Penal Code, a law dating back to 1860.³³⁷ Violation of Section 377 is punishable with a maximum ten year prison sentence and the possibility of fines.³³⁸ Although the anti-gay law was suspended briefly between 2009 and 2013, it is now in force again, though rarely used in prosecutions. Same sex behaviour between women is not criminalised.

The rights of transgender Indians have advanced substantially in recent years and current legislation which has passed through the Upper House of Parliament and is now being considered by the Lower House of Parliament will ban discrimination and confer substantial rights to transgender Indians.

Despite some evidence of liberalising attitudes among better educated middle-class Indians and the conduct of Pride marches in cities across India, LGBTI Indians continue to face stigma and discrimination in their society. There is widespread employment discrimination, harassment by police, ostracism by families, physical assault, and difficulty accessing public services, such as healthcare.^{339 340} Traditional religious groups remain a barrier to the assimilation of LGBTI people into the wider society.

Recent Developments

In December 2013 India's highest court struck down the repeal of the anti-sodomy law, Section 377 of the Indian Penal Code. The law banning same-sex activity had been overturned in 2009 after the High Court of Delhi termed the criminalization of homosexuality “an affront to human dignity.”³⁴¹ Subsequently, the Naz Foundation attempted to secure judicial review of the December 2013 judgement, but failed in January 2014.

The reinstatement of the anti-sodomy law resulted in massive protests across the country. 2014 was an election year in India and three of the political parties, AamAadmi Party, the Communist Party, and the Congress Party, said they would repeal Section 377 of the code. However, the Baharatiya Janata Party, which won the election, has no plans to repeal the law.

On April 15, 2014, in the case of National Legal Services Authority v. Union of India and others, the Supreme Court of India upheld the Constitutional rights of transgender persons under Articles 14, 15, 19 and 21, which guarantee the right to equality, the right against discrimination, freedom of speech and expression, and the right to life with dignity respectively.³⁴² The Court accepted recommendations from an expert committee on the rights of transgender persons. These recommendations guaranteed self-identification without surgery, or medical intervention as a pre-requisite. The judgment stipulates that a transgender welfare board must be set-up in every state in India. The Supreme Court's decision has been celebrated and welcomed by transgender persons across the country.

On 24 April 2015, the Upper House of the Indian Parliament passed *The Rights of Transgender Persons Bill, 2014*. This landmark bill secures the rights and entitlements of transgender Indians, allowing for reserved places in education and government, prohibition of discrimination in employment, access to a raft of benefits and the establishment of welfare boards at the centre and State level, and for transgender Rights Courts.³⁴³ This bill has not yet been signed into law and in August 2015, there were calls to include Intersex rights within the legislation.³⁴⁴

MALAYSIA

“

More young Malaysian LGBTs are organising and engaging with their communities.

”

“Seksualiti Merdeka festival may be banned, but that hasn’t stopped us from organising. Many Facebook groups by Malaysian LGBTs, including Seksualiti Merdeka, host lively conversations discussing everything from relationships to democratic participation. More young Malaysian LGBTs are organising and engaging with their communities. We recently conducted workshops to mentor them on organising projects and negotiating the politics of private/public spaces. We have also been working very closely with the civil society movement at large. Our challenge remains in reaching out to poorer LGBTs, LGBT teens, and LGBTs in rural Malaysia who are being bullied by peers, punished by teachers, abandoned by parents, and harassed by authorities, in other words, those who have been failed by every level of society.”

PANG KHEE TEIK
CO-FOUNDER SEKSUALITI MERDEKA

Malaysia criminalises homosexuality in Section 377 of its penal code stating: “Whoever voluntarily commits carnal intercourse against the order of nature shall be punished with imprisonment for a term which may extend to twenty years, and shall also be liable to whipping.”³⁴⁵ Public and private “gross indecency” are also criminalised, punishable by a maximum two-year prison sentence.³⁴⁶

Malaysia employs a pluralistic legal system where both civil law and Islamic Sharia law operate together. However, Article 4 of Federal Constitution reserves supremacy over all other laws, including Sharia laws.³⁴⁷ The political Islamisation of Malaysia in the 1980’s, during the Mahathir administration, has had a direct impact on the policing of public morality and bodily autonomy. Sharia laws are administered at the state level and apply only to Muslims. While Sharia law is similar in each state, the enforcement and penalties vary. Male and female same-sex acts are criminalised. In all states, male persons posing as women or wearing women’s attire are liable to be arrested under Sharia law Section 66.³⁴⁸ Females cross-dressing as male is illegal in three states.³⁴⁹

Gender affirmation surgeries were formerly available in the 1980s at University Hospital in Petaling Jaya, Selangor performed by local doctors. However, this surgery was forcibly shut down, and a fatwa - or religious edict - that banned sex reassignment surgeries for people professing to Islam was introduced in the late 1980s by the National Fatwa Council. Most laws that criminalise trans people were introduced between 1985 and 2012.³⁵⁰

In 2011, the police banned an annual sexuality rights festival in Kuala Lumpur for causing disharmony, enmity or public disorder, or threatening national security following a number of police reports lodged against the festival. The organisers launched a judicial review on the constitutionality of the ban but this was not successful.³⁵¹

Recent Developments

In July 2013, Hazreen Shaik Daud became Malaysia’s first trans woman in politics after her appointment as a political secretary to Tanjung Bungah, Democratic Action Party (DAP) state assemblyman in Teh Yee Cheu.³⁵²

A Human Rights Watch report documented case studies of arrests of transgender women by state religious authorities and police in Negeri Sembilan and several other states in Malaysia.³⁵³ The report found that Section 66 of Sharia law, criminalising cross-dressing, is frequently used by state religious authorities to conduct arbitrary raids and arrests of transgender women.³⁵⁴ These arrests typically resulted in further physical, emotional, and sexual violence perpetrated by the state authorities. Section 66 and similar laws are arbitrarily used to raid private events, including beauty pageants, weddings, and birthday parties.

In February 2011, a group of trans women filed a constitutional review of Section 66, following a series of arbitrary and violent raids and arrests of trans women in Seremban, the capital city of Negeri Sembilan.³⁵⁵ In November 2014, the Court of Appeal struck down Section 66, finding it inconsistent with six articles in the Federal Constitution³⁵⁶ The Court declared the anti-cross-dressing law void for violation of transgender the constitutional right to “freedom of expression, movement and the right to live in dignity and equality.”³⁵⁷

In January 2015, the Federal High Court granted the Negeri Sembilan State Court review of the opinion.³⁵⁸

On September 11 2015, the Malaysian tourism minister, Datuk Seri Nazri Aziz, said that lesbian, gay, bisexual or transgender Malaysians would never have equal rights.³⁵⁹

In 2015 former Malaysian Deputy Prime Minister, Anwar Ibrahim, was convicted of sodomy and sentenced to five years in prison. He was originally acquitted of the charges in 2012 which stemmed from murky allegations—at best—in 2008. During the his trial, the Malaysian Malay Network (Jaringan Melayu Malaysia) was outspoken against LGBTI rights and worked to ban a local LGBTI pride event (Seksualiti Merdeka).³⁶⁰

ASIA

MALDIVES

“Living in the Maldives as a queer person meant living in fear. It meant being constantly told that I had great potential while I was denied the opportunity to live an authentic life. During the time I was resident in the Maldives I witnessed people being oppressed for being themselves. I saw a transgendered person arrested on multiple occasions for dressing to reflect her gender identity. I saw a person be bullied and tormented into suicide. My close friend had his throat slashed for speaking out about the injustice.

I was attacked at school for my effeminate appearance. I watched people be forced into marriages and have unwanted children. For LGBTQI people, marriage is necessary to mask their sexual orientation and to live safer lives. I did not want to live a life where I had to pretend, and so it was impossible for me to stay. Leaving the Maldives as a refugee has allowed me my freedom at the sacrifice of my family. I am still sent death threats by people who disagree I should be able to live a life of my choosing. Islam is heavily embedded in the cultural consciousness and people are controlled with the fear of god. This has been problematic with the full implementation of sharia law creeping into and becoming normalized in society. The repercussions of acting out are judged by the whim of the broken down judiciary system. Thus, fear is a predominant force behind peoples' actions.”

ABRAHAM NAIM AKA MEDULLA OBLONGATA, FORMERLY FROM MALDIVES, CURRENTLY IN NZ, STATELESS PERSON

Prior to 2015 the legal system of The Republic of Maldives was largely based on Islamic law as Islam is the official religion. Political pressure from opposition groups and the international community led President Gayoom to reform the Maldives' criminal system.³⁶¹ Subsequently a new penal code was passed in the Maldives that does not criminalise homosexuality.³⁶² However, Sharia law, still operates in conjunction with the penal code in some areas of Maldives, punishes homosexuality by banishing men from the community, imprisonment for up to three years, or lashings. Women may be placed on house arrest for a maximum of one year.³⁶³

The stigma and discrimination that LGBTI Maldivians face is often directly related to the religious ethos of the islands. The first LGBTI group in the Maldives, Rainbow Maldives, was founded in 2009.

In 2008 the Maldives was one of 54 signatories to a statement initiated by Syria to oppose the UN's declaration for the decriminalisation of homosexuality. The statement cites that decriminalisation “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.”³⁶⁴ The country also opposed the landmark 2011 LGBTI rights resolution in the United Nations Human Rights Council.

Recent Developments

In 2014, Parliament discussed a new bill on Sexual Offences. The Sexual Offences bill came into force last November and includes provisions against gender discrimination and sexual harassment but does not touch on the issues of same-sex relationships.

In June 2014, a Maldivian seeking asylum in New Zealand, Abraham Naim, made a public appeal to the Maldivian government about its Sharia laws against homosexuality. The President's Office in the Maldives responded that sexual orientation is reason for prosecution under Sharia law.³⁶⁵

In March 2015, Maldives abstained from a Russian attempt at the UN to withhold benefits from the same sex partners of UN employees. The abstention was condemned by the Adhaalath party (an Islamic party in the ruling coalition).³⁶⁶

In August 2015, two men, aged 56 and 27, were arrested and accused of ‘homosexuality activity’ at their home on the island of Dhaandhoo after a tip off.³⁶⁷ This is the first report of an arrest for same sex sexual activity since 2013.

“

I am still sent death threats by people who disagree I should be able to live a life of my choosing.

”

PAKISTAN

“With LGBT rights in Pakistan or for that matter in most of the Muslim world, there is no acknowledgement of LGB in this or other Muslim societies. Whatever is existing is in private and is invisible. What is visible are the transgender populations. Sexual identities get translated and rephrased in different ways than West and most other countries. As far (as) law is concerned nothing is acknowledged from LGBT except the T and that too after the Supreme Court’s judgement of 2009/10. The transgender population post this decision are considered the third gender but whether they have all the rights granted to them through this decision is a moot point. Lot has to be done on that.”

**TAHIR KHILJI, ASHOKA FELLOW
WORKING WITH HIJRA SEX WORKERS,
LAHORE**

The Pakistan Penal Code Section 377 criminalises same-sex sexual conduct. Section 377 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.”³⁶⁸ In the 1980s, the legal system introduced Sharia law was combined with the penal code. This is known as the Hudood Ordinance and technically applies only to Muslims. Application of Sharia law places more stringent punishments in the form of public lashings or death by stoning. In practice though there is no evidence the Islamic law has ever been invoked over homosexuality and in recent years neither has the civil law.³⁶⁹ In practice when homosexual sex acts are discovered it more likely that perpetrators face short jail terms without trial, blackmail, or harassment from the police and the community.³⁷⁰

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.³⁷¹

In 2009, a landmark ruling in the Supreme Court extended benefits and equal protection to Pakistan’s transgender community, including many persons identified as hijra’s.³⁷² As a result, transgender people can now vote and run for political office. However there are still high levels of social discrimination faced by Pakistan’s hijra community. Reports suggest that hijras are denied places in schools or admission to hospitals, and landlords often refused to rent or sell property to them.³⁷³ A 2012 Supreme Court ruling allowed hijras to obtain accurate identification cards and granted their full participation in the 2013 elections.³⁷⁴

In March 2012, Pakistan was one of 57 countries in the Organisation of Islamic Cooperation to oppose a UN resolution on LGBTI rights. Ambassador, Zamir Akram in a letter to the UN Human Rights Council, stated that LGBTI rights have “nothing to do with fundamental human rights.”³⁷⁵

A 2013 survey on tolerance to homosexuality found that Pakistan was highly intolerant wherein 87% of Pakistanis believe that homosexuality should not be accepted.³⁷⁶

Recent Developments

There have been many recent reports of killings and rapes of hijras which reveals that even when the law has been changed cultural norms may have not.³⁷⁷ In April 2014, a serial killer confessed to killing three gay men because of their sexual orientation and Pakistani media depicted the serial killer as “the epitome of righteousness.”³⁷⁸

ASIA

SINGAPORE

“With the collapse of the constitutional challenge on 377A in Singapore, it is clear as day that discrimination will not be dealt with in the judiciary or legislative sphere. Even more concerning was how 377A and censorship formed the twin power of evil to justify discrimination and spread misinformation against LGBT people. As a lesbian, I have been single out by schoolmates and colleagues for bullying and social isolation just because I look different. Authority figures often fail to protect me because they always told me to change and it is just a lifestyle. Sometimes I am told that I am disgusting and should be punished by the law, or if I am really unlucky be threatened with a beating. I carry this shame from my childhood to adult years, often hearing people condemning us ‘perverts’ who is out to destroy family values and convert children. Staying in the closet is the best way to protect myself and my loved ones because there is really no legal protection. Most worrying of all is the lack of human rights awareness amongst Singaporeans. How do LGBT people hope to see change if the government and public sees economic growth as the priority to country survival? Many LGBT people dream of leaving here and I hope I can too. I dream of that land of rainbow where I can be myself and bask in the sunlight of hope. Somewhere that the law not only protects us but saw us as human beings worthy of dignity and respect.”

PAULINE LEE
ENGINEER, SINGAPORE

Singapore criminalises homosexuality under Section 377A of the Penal Code.³⁷⁹ The law specifies that “acts of gross indecency” between men, including sodomy, are punishable by a term of up to 2 years imprisonment.³⁸⁰ The section applies specifically to men and may be applied where same-sex acts take place in public and private spaces. In 2007, the State of Singapore undertook a review of its Penal Code, including section 377A. Although the majority of the laws under review were repealed, section 377A was not. This law is rarely used.³⁸¹ Instead, if LGBTI persons are arrested in a public space, they are prosecuted under section 354—intent to outrage modesty—or under section 294(a)—obscene annoyances—of the Penal Code.³⁸²

The Media Development Authority Act, the Films Act and the Broadcasting Act empower the Media Development Authority (MDA) to ban, classify and, through licensing, restrict the content of various media.³⁸³ Depictions or speech that advocates for the dignity or rights of LGBTI persons are routinely cut out, or barred which results in stereotypical, negative and skewed depiction and is a form of structural violence perpetuating prejudice and stigma. Because LGBTI persons are deprived of positive role models in the media this can reinforce low self-esteem.³⁸⁴

Neither the law nor the state recognises same-sex relationships. Even marriages contracted in other jurisdictions between same-sex partners are specifically unrecognised in Singapore under Section 12(1) of the Women’s Charter. Consequently, many benefits and rights enjoyed by married opposite-sex couples are denied to same-sex couples. These include employee benefits whose scope extend to spouses, medical visitation and next-of-kin rights, rights to purchase subsidised public housing from the state, and tax allowances for married couples.³⁸⁵

The Societies Act gives discretionary power to the Registrar of Societies to approve or disapprove any organised group of ten or more persons. The Registrar of Societies can deny registration to LGBTI groups reasoning their mission is “contrary to the national interest.”³⁸⁶ Thus, LGBT advocacy groups operate under threat of arrest and prosecution. Even without such clampdowns, the lack of legal status means an inability to raise funds in any organised way, and denial of access to mainstream media wary of giving legitimacy to unregistered groups.³⁸⁷

Recent Developments

Recently, domestic and international scrutiny on LGBTI rights has increased following a Singaporean Court of Appeal ruling in October 2014, upholding the constitutionality of Section 377A of the Penal Code. The Office of the High Commissioner for Human Rights, international non-governmental organisations and Singaporean LGBTI groups have expressed dissatisfaction at the Court’s decision. The Supreme Court believes that the legislature should address the issue.³⁸⁸ The Singapore Government has been under pressure to reconsider Section 377A. In the meantime, LGBTI persons continue to live with harassment and the threat of enforcement of this section.

“
Staying in the closet is the best way to protect myself and my loved ones because there is really no legal protection.
”

SRI LANKA

“I believe with this new government in place, we can see some real changes here for the gay community. As someone who has been closely associated with EQUAL GROUND for many years, I see the kinds of progress that is being made. It was really hard during the previous regime. Intimidation, surveillance etc. Yet, they stood firm and kept pushing. I think this new government will bring in many changes for all citizens of this country. We no longer have to live in fear and I hope that soon we will not be criminals for loving people of our own sex.”

**RANJIT
COLOMBO**

The Sri Lanka Penal Code criminalises same-sex sexual conduct under Section 365A.³⁸⁹ Homosexual acts are punishable by up to ten years imprisonment.³⁹⁰ In 1995 this law was broadened to be gender-neutral and criminalise both male and female same-sex sexual activity.³⁹¹

This law is not necessarily enforced and is referred to by some as a ‘dead law’ even though it is legally valid.³⁹² Notwithstanding this, LGBTI people still face discrimination that limits their ability to lead productive and safe lives. There is a general perception among the LGBTI community that police target and extort persons they believe to be homosexual, bisexual, or transgender.³⁹³ This often results in violence, but the victim is left with no access to legal recourse.³⁹⁴

Overall there have been serious concerns with Sri Lanka’s human rights record, during three decades of civil war and in the years of authoritarian rule afterwards which adversely affected many minority communities, including LGBTI people. When Sri Lanka hosted the 2013 Commonwealth Heads of Government Meeting several member states refused to attend due to the country’s poor record of upholding human rights.

Recent Developments

In October 2014, in response to shadow reports that EQUAL GROUND, the only LGBT organisation in the country, submitted to the United Nations Human Rights Committee³⁹⁵ the Sri Lankan Government publicly acknowledged that the non-discrimination provisions in the Sri Lankan Constitution protect people from discrimination on the basis of sexual orientation and gender identity for the very first time. Although this was an important shift in tone, the Government was silent on repealing the laws criminalising consensual same-sex sexual conduct between both men and women.

In January 2015, a new President, Maithripala Sirisena, was elected and raised the possibility of a radical change in leadership from the 10-year authoritarian rule of former President Mahinda Rajapaksa. LGBTI groups are hopeful that President Sirisena can rally support to repeal of the nation’s repressive anti-gay laws.³⁹⁶

In March 2015, in an unprecedented move, Sri Lanka voted against Russia at the UN when Russia tried to block same-sex partner benefits for UN employees. This is viewed as a positive step towards future reforms by Sri Lankan activists.

In August 2015, the Parliamentary elections saw the United National Front for Good Governance win a majority of seats ushering a new era of democratic politics free from intimidation and fear. Activists on the ground in Sri Lanka are celebrating this hard fought victory and are feeling positive that reforms will occur in the next few years in Sri Lanka.

“

We no longer have to live in fear and I hope that soon we will not be criminals for loving people of our own sex.

”

EUROPE

CYPRUS

Until 1998 Cyprus maintained the colonial law criminalising homosexuality. In 2002 same-sex couples were brought under the same age of consent to heterosexual couples. In 2015 Cyprus approved a bill allowing for same-sex civil partnerships which conveys all of the benefits of marriage except for the right to joint adoption.³⁹⁷

Cyprus has since enacted legislation to protect sexual orientation from discrimination in employment and the provision of goods and services, but gender identity has not been included.³⁹⁸ Hate crime legislation in Cyprus does not cover either sexual orientation or gender identity.³⁹⁹ These limited protections have not done much to reduce the social stigma faced by LGBTI people, with research suggesting they often feel unable to report homophobic violence and discrimination.⁴⁰⁰

Recent Developments

A 2015 ranking of 49 European countries on the policy status of LGBTI citizens revealed that Cyprus ranked 34th in Europe with a rating of 24.9%, where 0% is gross violations of human rights, discrimination and 100% is respect of human rights, full equality.⁴⁰¹

A study published by the International Journal of Manpower revealed that gay male applicants who revealed their sexual orientation on job applications were 39% less likely to get a job interview than equivalent male applicants who did not indicate their sexuality.⁴⁰² Moreover, openly lesbian applicants were 42.7% less likely to obtain a job interview than their heterosexual counterparts.⁴⁰³

Furthermore, an EU-wide survey indicated that 56% of LGBTI individuals in Cyprus felt discriminated against or harassed because of their sexual orientation—nine percentage points above the EU average.⁴⁰⁴ Additionally, 33% felt discriminated against when buying goods or accessing services, healthcare, social services, or housing—2 percentage points above the EU average.⁴⁰⁵ These statistics show that the laws that Cyprus has enacted to protect LGBTI individuals from discrimination are not comprehensive enough to ensure their full gamut of civil liberties are accessible.

The Church in Cyprus has not fostered equal treatment for LGBTI individuals. In 2013 the Church in Cyprus referred to homosexuality as “an affliction and a moral downfall” leading to “an increase in divorce, paedophilia, people dying of AIDS and families torn apart.”⁴⁰⁶

Following the 2015 approval of the right to same-sex civil partnerships the director of ILGA-Europe, Evelyne Paradis, commented, “[w]e sincerely welcome today’s move by the Cypriot government. This bill was promised by politicians two years ago already and we call on the parliament to support this important piece of legislation without delay.”⁴⁰⁷

MALTA

In 2014 Malta recognised same-sex partnerships on legal par with marriage, including adoption rights for same-sex couples seeking to adopt.⁴⁰⁸ The Civil Unions Bill that allowed this historic step was followed by a constitutional amendment to protect sexual orientation and gender identity.⁴⁰⁹ In 2015 Malta secured the right for its citizens to change gender and protected intersex minors from invasive surgical procedures. Malta has anti-discrimination laws to protect sexual orientation and gender identity in employment and the provision of goods and services. Further, in 2012 Malta passed strict amendments to its Criminal Code to punish hate speech and indirect discrimination.⁴¹⁰

Malta is hosting the 2015 Commonwealth Heads of Government Meeting.

Recent Developments

The 2015 ILGA ranking 49 European countries ranked Malta the friendliest country for LGBTI persons, receiving an 89% score.⁴¹¹ Much of this progress is attributable to the new government's transparency and vigour in working toward achieving equal treatment for LGBTI persons.

The Malta Gay Rights Movement (MGRM) has been key to these changes. The MGRM sees deficiencies still in the safety of school environments, the reporting and monitoring of hate crimes, access to health services to support individuals with HIV/AIDS, among others.⁴¹² The MGRM commends the Maltese government for the rapid changes in support of the LGBTI community, but recognises that just because legislation exists, does not mean that it is being effectively implemented.⁴¹³

Another EU-wide survey conducted by ILGA revealed that 51% of Maltese LGBTI respondents felt discriminated against because of the sexual orientation.⁴¹⁴ Additionally, 35% felt they were discriminated against when buying goods, or accessing services, healthcare, social services, or housing.⁴¹⁵ While this data puts Malta slightly above average for the rest of the EU—47% and 32% respectively—stigma still exists.⁴¹⁶

While it is important to recognise the commendable advances that the Maltese government made in such a short period of time, there are still constituents that are uncomfortable with the new protections. Edwin Vassallo, a former Nationalist MP stated he is “not comfortable with the law that gave us marriage by another name.”⁴¹⁷ Vassallo added that feels that the law passed to give homosexual civil unions the same legal status as marriage is “dishonest” because no studies were conducted to determine whether implementation efforts would be effective.⁴¹⁸

The Ministry of Education and Employment appointed a representative from the MGRM to implement and review a national anti-bullying policy.⁴¹⁹ The policy is aimed at tackling homophobia and transphobia in schools.⁴²⁰ As an early step, the Ministry of Education disseminated information regarding the Rainbow Support Service—a counselling service for LGBTI youth and parents, offering family support and mediation—to secondary school students.⁴²¹

EUROPE

UNITED KINGDOM

United Kingdom

In England and Wales male same-sex sexual acts were decriminalised in 1967 under the Sexual Offences Act.⁴²² However, Scotland did not decriminalise until 1980, and Northern Ireland finally decriminalised in 1982.⁴²³ In 2001 England and Wales lowered the age of consent for homosexual men from eighteen to sixteen, on par with the heterosexual consent law.⁴²⁴ Northern Ireland did not equalise its consent law until 2009. In 2014 England, Wales and Scotland passed the Marriage Act allowing same-sex marriage.⁴²⁵ Northern Ireland is currently the only place in the UK where gay couples cannot get married.

The law in the United Kingdom prohibits discrimination based on sexual orientation and gender identity.⁴²⁶ Regardless, in 2013-14 police in the UK recorded 6,254 hate crimes related to sexual orientation and gender identity.⁴²⁷ Judges are encouraged to issue harsher sentences where sexual orientation or gender identity is a motive for committing a crime.⁴²⁸

Recent Developments

A 2013 survey revealed that 76% of UK citizens believe homosexuality should be accepted by society, while 18% believe homosexuality should not be accepted.⁴²⁹ Further, this study revealed that 36% of UK citizens feel that homosexuality is morally acceptable, and 43% do not believe it is a moral issue at all.⁴³⁰ However the research showed five other countries are more tolerant of homosexuality than the UK.⁴³¹ Over the past decade attitudes toward homosexuality in the UK have been stable, not improving.⁴³² The same study shows that men and women in the UK differ in their opinion regarding the acceptance of homosexuality. Only 69% of men in the UK believe homosexuality should be accepted, while 83% women feel this way.⁴³³ There is a correlation between the low rate of heterosexual men's acceptance of LGBTI people and the UK's high rates of hate crimes based on sexual orientation and gender identity.

The Church of England submitted a report in 2014 recommending that priests bless same-sex couples.⁴³⁴ Further, the report said that the Church should fight homophobia and repent for its past attitude toward LGBTI people.⁴³⁵

During the 2015 UK general election three parties: Labour, the Liberal Democrats, and the Greens all released plans for further legislation and funding to protect LGBTI rights.⁴³⁶ The Conservative Party indicated it wanted to tackle the stigma that exists, particularly in UK schools and workplaces.⁴³⁷ The UK still has outstanding issues such as not allowing transgender people to self-determine their sexual identity.

The Conservative Party won the election and The Rt Hon David Cameron continues to serve as Prime Minister. In August 2015 Cameron commented, upon receiving an honour for his efforts to achieve marriage equality in the UK, that he is proud to live in the "best place in Europe to be lesbian, gay, bisexual or transgender."⁴³⁸

In November 2015, Northern Ireland's Assembly voted on the issue of same-sex marriage, this time the vote ended narrowly in favour of marriage equality, but the largest party in the assembly, the Democratic Unionists vetoed any change in the law.⁴³⁹ The Irish Congress of Trade Unions (ICTU) spokesperson has previously said, "Northern Ireland has slipped back in terms of the human rights agenda and is now isolated in the UK as the only place where a gay couple cannot get married."⁴⁴⁰ The Democratic Unionists blocked the marriage equality law, claiming that Northern Ireland did not have the requisite cross-community support. According to a BBC News political survey, nearly two thirds of people in Northern Ireland feel comfortable with allowing same-sex marriage.⁴⁴¹

PACIFIC AUSTRALIA

“While Australia has moved significantly forward on many LGBTI reforms, in particular world-class national anti-discrimination protection, there is often still great inequity. As a trans and bi/pansexual woman who is proud of all aspects of myself, I feel saddened and torn by this paradox. Only one of Australia’s nine states/territories offers birth certificates for trans and gender diverse (TGD) people on a basis of self-affirmed identity and gives options other than male or female. TGD health care is in a crisis with few knowledgeable and sensitive health professionals available for both adults and minors. Minors face unnecessary delays in receiving irreversible hormones at 16 due to unwanted court processes and adults largely face pathologising approaches that assume we are mentally ill. Marriage equality, while needed and wanted, will not resolve these issues. True celebration of diversity of all sexual orientations, all genders and all bodies is needed. Passionate TGD and bi people are striving for this; we need changes and greater support to achieve our goals faster and more effectively.”

SALLY GOLDNER
TRANS AND BI ADVOCATE

Australia’s recognition of the rights of LGBTI people are at an advanced level. However it was only in 1997 that Tasmania became the last Australian state to decriminalise same-sex sexual activity following the landmark decision of the United Nations Human Rights Committee in *Toonen v Australia*.⁴⁴²

Australia became the first country in the world to protect the rights of intersex people and ban infant gender reassignment.⁴⁴³ At the state level, there has been progress. Victoria, New South Wales, and South Australia enacted legislation to expunge the convictions of men for engaging in gay sex prior to the repeal of the homosexuality laws.⁴⁴⁴ Similar reform is being undertaken by the Australian Capital Territory.

In many Australian states, a partial defence to murder exists called “the gay panic defence” which allows a heterosexual man to reduce his sentence from murder to manslaughter if he believed he was the object of homosexual sexual or romantic advances.⁴⁴⁵ In 2015, the Labor government in Queensland promised to repeal this defence, the unequal age of consent laws, and expunge criminal convictions of gay men for participating in same-sex sexual acts. South Australia and Queensland plan to repeal the gay panic defence in 2015.⁴⁴⁶

Australia still needs to improve its legal protections for LGBTI individuals as there are legal inequalities at the state level, particularly in regard to age of consent and adoption rights.⁴⁴⁷ Australia has yet to introduce equal marriage.

Recent Developments

Since 2013, Australia has operated offshore detention centres for asylum seekers on Nauru and on Manus Island in Papua New Guinea. Since sodomy laws exist in both Nauru and Papua New Guinea, the safety of LGBTI asylum seekers is in limbo, both in the detention centres and during potential resettlement as refugees.⁴⁴⁸ One asylum seeker described his experience: “We have no support for our emotional problems. I’d like to have a boyfriend, to talk about the future with, to share my feelings with, but I’m too scared. All I want is a couple of hours to be together without attracting attention.”⁴⁴⁹

The Coalition Government under Tony Abbott has maintained its opposition to equal marriage legislation. In August 2015, Abbott made a vague promise of a plebiscite on the issue, but there is no certainty as to when, or if this will occur. The most recent opinion polls, suggest that any such plebiscite would result in a vote in favour of marriage equality, with 72% of Australians indicating they support marriage equality.⁴⁵⁰ Since September 2015 the Coalition Government is now head by PM Malcolm Turnbull.

“
But what is my choice:
go back home to certain
death or stay here for
abuse and assault with
a horrific prospect of
resettlement in PNG?
”

PACIFIC

FIJI

The Pacific island nation of Fiji is one of the few countries in the region to advance LGBTI rights in recent years. In 1997, Fiji became the second country in the world to protect sexual orientation and gender identity from discrimination.⁴⁵¹ In 2007, Fiji also banned discrimination based on sexual orientation in employment.⁴⁵² Fiji also repealed its laws criminalising sodomy and “unnatural offences,” leading to the decriminalisation of homosexuality.⁴⁵³

The 2013 constitution provides that “sexual orientation, gender, and gender identity and expression are prohibited grounds for discrimination; however, the right to equality and non-discrimination may be limited for the purposes of adoption, marriage, devolution of property on death and pension, and excluding individuals from holding public office.”⁴⁵⁴ While the Amithi Fiji Project, an HIV/AIDS project protecting LGBTI rights, called on the Attorney General to include protection of all transgender people and third-gender recognition in the new constitution this was not accommodated in the revised constitution.⁴⁵⁵

Although the new constitution stipulates that Fiji is a secular country, religion still heavily influences politics. On 26 March 2013, Prime Minister Frank Bainimarama stated, same-sex marriage “will not be allowed because it is against religious beliefs.”⁴⁵⁶ Police harassment of LGBTI people is still common.⁴⁵⁷ Notably, in 2012 police banned a march in Suva to celebrate the international day against homophobia.⁴⁵⁸ Evidence indicates that a significant amount of violence, discrimination and marginalisation of LGBTI people still occurs in Fiji.⁴⁵⁹ Systemic homophobic bullying is common in Fiji and can range in intensity from rape and physical assaults to verbal abuse.⁴⁶⁰

Fiji was a signatory to the landmark UN declaration in support of LGBT rights in 2011.⁴⁶¹

Recent Developments

Fiji has become a hub for LGBTI rights in the Pacific region and hosted the launch of Pacific UN Free & Equal campaign in Suva, in August 2015.⁴⁶² This is a joint initiative of UN agencies including OHCHR, UNDP, UN Women, UNAIDS, UNESCO, UNV, WHO to promote LGBT equality. The President of Fiji, H.E. Ratu Epeli Nailatikau” made a strong statement of support of the Free & Equal Campaign and appealed to States across the Pacific to join the fight for LGBTI equality. The President stated “we all need to examine what we can do better, how we can take further steps, what practical measures can be adopted, to protect the human rights of lesbian, gay, bisexual, transgender and intersex people.”⁴⁶³

In May 2015, Fiji sent the largest delegation to the Pacific Human Rights Conference on Sexual Orientation, Gender Identity and Expression (SOGIE), held in Tonga, where key recommendations on future steps for progress were discussed by all participating countries.⁴⁶⁴

“I am a young Fijian itaukei transgender woman living in Fiji. I consistently face various forms of discrimination and abuse from society because of my sexual orientation and gender identity and expression. My interest for activism and advocacy on LGBTQI rights and equality and acceptance is fuelled by these various experiences of discrimination that I and my family have had to endure over the years. I am hopeful that my involvement will bring about changes for the younger community.”

TAMANI RARAMA, RAINBOW PRIDE FOUNDATION'S YOUTH WING AMBASSADOR, SUVA, FIJI

“

My interest for activism and advocacy on LGBTQI rights and equality and acceptance is fuelled by these various experiences of discrimination, bullying and violence that I and my family have had to endure over the years.

”

KIRIBATI

“As a gay individual, living in the 20th and 21st century in Kiribati nothing much has changed but there is an increase of LGBT individuals coming out as openly gay or lesbian or just recently transgendered women, and this can account to the level of acceptance from members of the local community who are educated or have access to media (internet, movies, news, so on so forth), received tertiary education abroad (exposed and experienced to co-existing and making friends with LGBT students), had live abroad and those who were able to learn and understand what LGBT individuals endured when growing up (members of family, work-force, community, etc.).

Bottom line is, in Kiribati homosexuality is still considered taboo and that most of the time people around you (families, friends, local church group members, so on so forth) are aware of your sexuality but prefer not to talk about it which is something I think, should be addressed to allow effective communication and for members of the LBGTI to be able to be safe and secure. For example, there are members of my family who know about my sexuality and are satisfied that I had opened up to them while some had received it bitterly (one of my uncles threatened to kill me if I am too feminine or gay in front of him, which he never did later on).”

TEBEI TAMTON
I-KIRIBATI GAY MAN

Kiribati was a UK colony until 1979. Sodomy, regardless of sexual orientation, and acts of “gross indecency between males” remains illegal under sections 153, 154 and 155 of the Penal Code.⁴⁶⁵ Punishments can range up to fourteen years imprisonment.⁴⁶⁶ Despite these laws, a U.S. State Department 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.^{467, 468}

There appears to be no current efforts to reform the Kiribati legal code. It is not a priority for the Kiribati government. This may be due in part to traditional views among the I-Kiribati, the Micronesian indigenous, who traditionally regard gay or transgender men as a third sex. Regardless, a person who chooses to live openly as a gay or lesbian individual faces difficulty integrating in Kiribati society.⁴⁶⁹

Recent Developments

At the Universal Periodic Review of Kiribati at the UN in January 2015, France, Slovenia and Chile all called on the I-Kiribati government to decriminalise sexual orientation.⁴⁷⁰ Canada and Uruguay also recommended the enactment of an antidiscrimination provision covering multiple issues including sexual orientation.⁴⁷¹ To date the Kiribati government has not formally responded to these recommendations.

“

Bottom line is, in Kiribati homosexuality is still considered taboo and that most of the time people around you (families, friends, local church group members, so on so forth) are aware of your sexuality but prefer not to talk about it.

”

PACIFIC

NAURU

Nauru, the smallest country by landmass and population in the Commonwealth. Chapter XXII of Nauru's Criminal Code is titled "Offences against Morality". It criminalises sexual activity between consenting male adults and contains other discriminatory and anachronistic offences.⁴⁷² Officially, male-male sexual acts are illegal and can be punished by up to fourteen years imprisonment and hard labour.⁴⁷³ In practice though, there have been no reported cases of prosecution under these laws and the government plans to repeal them soon.⁴⁷⁴

Early in 2011, Matthew Batsiua, the Nauruan Minister for Health, Justice and Sports stated that decriminalisation of "homosexual activity between consenting adults" was under active consideration.⁴⁷⁵ Later that year the government of Nauru made a pledge to decriminalise same sex sexual acts.⁴⁷⁶ This pledge was commended by Australia and Sweden.^{477 478}

Recent Developments

Following the last Universal Periodic Review, Nauru was expected to decriminalise consensual homosexual activity as part of a wider platform of reforms.

In August 2012, Nauru reopened detention centres to process refugees and others seeking asylum in Australia. There have been widespread concerns about human rights violations in the facilities including several reports of rape.⁴⁷⁹ Without any evidence of reform of anti-gay laws, there are serious concerns about the conditions for LGBTI refugees on Nauru.

NEW ZEALAND

“I have attempted to include an amendment to section 21 of the Human Rights Act in a Statutes Amendment Bill to include gender identity as part of sex discrimination. While some may argue that gender identity and gender expression should stand alone as a ground of unlawful discrimination, the reason for including it was that successive Governments have stated that gender identity is included within sex discrimination.

There has been concern expressed by the Human Rights Commission and by a number of members of the transgender community that there is no guarantee that a Court would interpret the law in the same way. My purpose was to make it clear and to do it through a technical amendment process that merely reflected what the Government said. The previous Minister of Justice has refused to support the amendment because she considered it was controversial, which begs the question of whether gender identity is properly covered within sex discrimination, and the current Minister feels it is unnecessary in spite of the Human Rights Commission advocating for its specific inclusion. I intend to continue to advocate for this legislative amendment.

LOUISA WALL MP
NEW ZEALAND

New Zealand has extensive legal protections for LGBTI people. Homosexual acts between men were made legal in 1986, with an equal age of consent of 16. In 1993, New Zealand passed the Human Rights Act in which sexual orientation was included amongst the groups protected from discrimination. The Act is linked to the New Zealand Bill of Rights Act 1990, which describes the basic rights of New Zealanders.

The Births, Deaths, Marriages, and Relationships Registration Act 1995 allows transgender 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 explicitly covered by the Human Rights Act, but a Crown Law judgment stated that it was included under “sex” in the Act. This has not yet been 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.

In 2013 New Zealand became the first place in Oceania to adopt marriage equality with the passing of the Marriage Amendment Act which defines marriage as “the union of 2 people, regardless of their sex, sexual orientation, or gender identity.”⁴⁸⁰ In addition, married same-sex couples may adopt. Importantly, people who are already married when they change their gender are not forced to divorce.

Gender identity is covered neither formally nor completely by human rights legislation. The Crown Law judgment that gender identity is covered by the Human Rights Act led government departments to amend their procedures to allow passports, driving licences, and other documents to be changed. The result is that document changes are increasingly based on self-identification, rather than on full reassignment surgery.

Recent developments

New Zealand’s antidiscrimination laws do not apply in its territories. While Niue and Tokelau have both repealed their anti-sodomy laws, the Cook Islands have not. In September 2015, there was confusion in the Cook Islands when the Te tiare Association began a campaign for gay law reform.⁴⁸¹ However, Cook Islands Prime Minister Puna said that his government was not considering the issue.⁴⁸²

“

We still have a way to go to fully recognise LGBTIQ rights in Aotearoa. It is a human rights issue and is about freedom to be who you are as an equal citizen.

”

“We still have a way to go to fully recognize LGBTIQ rights in Aotearoa. It is a human rights issue and is about freedom to be who you are as an equal citizen and therefore the provision of adequate and appropriate services as a consequence of being equal before the law. We are making inroads on the latter but still have a long way to go for people to be free and fully supported to be who they are. Issues around bullying, suicide and health are still in their early stages and there is a lot more work to be done to ensure a public system that is responsive to specific needs and supportive of LGBTIQ New Zealanders.”

RAWA KARETAI, CHAIRPERSON
RAINBOW WELLINGTON, NEW ZEALAND

PACIFIC

PAPUA NEW GUINEA

“My name is Iru Tau and I’m a gay man living in Papua New Guinea. I come from a Christian background family. As I was growing up [it] was very difficult for me to come out. As for that reason, I use to hide from my family . . . I was scared of been bashed and might not been accepted in my family. For that reason, I was in my own shell doing what my interest was as a gay man. Stigma and discrimination was also a contributing factor to my life as a gay man. I was accepted by my family as a gay man after I came out myself in 1999, when I told my parents who I really was. Growing up as a gay man in Papua New Guinea is very difficult as PNG is a very diverse country with 800 different languages.

Being a gay man is very difficult to present yourself in public because you will never been accepted as who you are but instead be abused and even tortured in some other places.”

IRU TAU
BOARD MEMBER OF THE
KAPUL CHAMPIONS

Papua New Guinea (PNG) gained independence from Australia in 1975. The colonial era anti-sodomy laws still apply. Section 210 of the Penal Code prohibits male same-sex sexual activity.⁴⁸³ Individuals caught engaging in anal sex can be sentenced to fourteen years imprisonment. Other male same-sex “gross indecency” is punishable by up to three years imprisonment.⁴⁸⁴ These laws have not been used to prosecute LGBTI people recently.⁴⁸⁵

In 2011 the PNG government declined to implement recommendations in its Universal Periodic review that it repeal anti-sodomy laws.⁴⁸⁶ Dame Carol Kidu, a prominent former PNG MP, called unsuccessfully in 2012 for the government to repeal anti-sodomy 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.”⁴⁸⁷

In 2013, PNG registered its first gay, bisexual and transgender rights NGO, the Kapul Champions.⁴⁸⁸ Since then, the Kapul Champions have been advancing the interests of men with diverse sexuality and transgender women in Papua New Guinea and helped LGBTI persons gain access HIV healthcare.⁴⁸⁹

Recent Developments

In April 2014 PNG MP, Malakai Tabar was reported as supporting proposals to protect the rights of persons with various sexual orientations.⁴⁹⁰

There were no reports of prosecutions for same sex behaviour in the last five years.⁴⁹¹ However, in March 2015, Malalaua district resident Mr Joe Sevese was prosecuted and pleaded guilty to indecent acts between males.⁴⁹² In that matter, the sentencing judge found that “homosexual acts or this type of behaviour is quite prevalent in society” despite the lack of reported cases, and sentenced the accused to a suspended sentence of two years imprisonment in order to “deter [him] and others from indulging in this type of behaviour.”⁴⁹³

In 2013, following arrangements between Australia and PNG whereby asylum seekers reaching Australia by boat are sent to Manus Island detention centre in PNG, concerns were raised about the treatment of LGBTI asylum seekers in a country where homosexuality is still illegal and LGBTI people suffer social exclusion.⁴⁹⁴ The detention centre is rampant with human rights abuses including rape and sexual assault, often perpetrated by staff and police forces.⁴⁹⁵ In 2014 the Australian government confirmed that LGBTI refugees on Manus Island would be resettled in PNG.⁴⁹⁶

“

Growing up in PNG stigma, discrimination, abuses and violence is part of my daily life.

”

“My name is Obert Samba but my peers and friends called me Elizabeth Taylor. I am a Transgender Woman and I am proud of it. Born into a male dominant society it was very hard because my dad wanted me to be brought up like man and not woman. Growing up in PNG stigma, discrimination, abuses and violence is part of my daily life. There is no one to run to because I am scared of being labelled. It is not safe for me to walk around freely in my own country. The law of this country see me as a perpetrator and not as a victim. My voice are not been heard when fronted up at the police station. I am not utilizing my rights as a human because I am in fear.”

ELIZABETH TAYLOR
TRANS ACTIVIST

SAMOA

“It seems to me that the confirmation of criminalisation of homosexuality by the Crimes Act 2013, has not changed the sexual active attitude of fa’afafine in Samoa. As a matter of fact, I have not yet come across a prosecuting case by which a person is charged under consensual homosexual acts between two adults, which is the main focus of this decriminalisation advocacy. I know of adult fa’afafine who are still engaging in these homosexual acts with their partners and counterparts without fear or consideration of the law. I have also spoken with a few police officers about this law, and while their position to charge must be in accordance with the law, they are aware that as long as the fa’afafine are doing within their own privacy and consensual and with an adult male or another fa’afafine, they cannot prosecute. From a criminal defence perspective, this is a very pragmatic approach by Police as an enforcement mechanism, because this will definitely be mounting a revolution in Court which is likely to rule this offence as unconstitutional.”

**ALEXANDER K SU’A, FA’AFAFINE
AND SENIOR BARRISTER AND SOLICITOR
OF THE SUPREME COURT, APIA, SAMOA.**

Samoa gained its independence from New Zealand in 1962. Section 67 of the Samoa Crimes Act 2013 criminalises same-sex sexual acts between males.⁴⁹⁷ The punishment is a maximum sentence of five years imprisonment.⁴⁹⁸

Like many 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 been a part of the local Samoan communities and villages for a long time. The practice and display of feminine characteristics by fa’afafine means that Samoan society is traditionally tolerant of transgender people and, by extension, homosexuality.⁴⁹⁹ In recent years Christian churches have heavily influenced Samoan society, thus teachings from the Bible are used to condemn individuals who identify as fa’afafine.⁵⁰⁰

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.⁵⁰¹ The Samoan Prime Minister, Tuilaepa Sailele Malielegaoi, is on record opposing equal marriage in Samoa.⁵⁰²

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 49(3) to include oral and anal sex, and by inference allows sexual contact between males, as long as its “consented to.”⁵⁰³ However, under Section 67, sodomy is still illegal even if it is consented to. Notably, female impersonation was decriminalised - a cause for celebration among the Samoan fa’afafine community and human rights activists in the Pacific.

In 2013, discrimination based on sexual orientation was explicitly prohibited in the context of employment, according to Section 20(2) of the Labour and Employment Relations Act 2013.⁵⁰⁴

Recent Developments

In August 2015, Sam Stanley, a 23 year old Rugby Union player of Samoan descent, became the first international player for England to come out as gay.⁵⁰⁵ His brother Michael is in the Samoan national squad.

“

LGBTIQ are still living uncomfortably and with fear, even in the security of their own homes, because of what the criminalisation law sets out.

”

PACIFIC

SOLOMON ISLANDS

The Solomon Islands criminalise male and female same-sex sexual activity under Section 160 of the Penal Code.⁵⁰⁶ The punishment for committing “unnatural offences” is a maximum sentence of fourteen years imprisonment. There are, however, no reports of these laws being used to prosecute LGBTI people in recent years.⁵⁰⁷

In 2008, the Solomon Islands Law Reform Commission proposed decriminalisation of gay and lesbian acts, but this was met with fierce public opposition and ultimately no reform was brought forward.⁵⁰⁸ 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.⁵⁰⁹ One opponent of the reform stated that “Legalizing gay and lesbian in the country would only encourage the breed of more,” and the Solomon Islands is a “long time Christian country” that should never think of legalising gay sex.⁵¹⁰ The Law Reform Commission Chairman, Frank Kabui, responded that “they are not encouraging people but [they] just want to be fair.”⁵¹¹ After this failed attempt, reform in the Solomon Islands seems far away.

Recent Developments

Recently, a pastor from Nigeria began a ministry on the Solomon Islands, which has been seen as an attempt to spread anti-LGBTI ideology in the country.⁵¹²

TONGA

“Anecdotal evidence suggests that many Leitis are bullied in school, negatively affecting their overall well-being. Anecdotal evidence also suggests that many Leitis drop out of school, adversely affecting their ability to gain meaningful employment. A key reason given for the high level of “drop out” is the stigma and discrimination experienced within the education system, in particular, bullying. A current programme conducted by the TLA is the provision of scholarships to Leitis wanting to achieve academic qualifications through attending tertiary education. This is in response to the number of Leitis who have dropped out of school and without support would not be able to receive tertiary education.”

JOEY JOLEEN MATAELE ACTIVIST
FOR TRANS AND GAY RIGHTS
IN THE KINGDOM OF TONGA

In the Kingdom of Tonga, male same-sex sexual activity is criminalised under the Criminal Offences Act, Section 136.⁵¹³ The maximum penalty for homosexuality is ten years imprisonment.⁵¹⁴ Whipping may be administered as punishment under certain circumstances. There have been no prosecutions under these laws in recent years.⁵¹⁵

Like other Polynesian societies, Tonga has a widely accepted third gender subculture. A “Leiti” is a Tongan male who behaves in an effeminate manner. Although Leitis in Tonga do not necessarily translate to gay, lesbian or transgender identities, there are Leiti organisations that campaign on LGBTI issues with much recent activism emerging from the Tonga Leitis Association (TLA). The TLA defines Leiti as the broad range of men who have sex with other men, trans people, gay and bisexual men.⁵¹⁶

Although the Leitis are a subculture with a long history, they are traditionally outsiders to the ‘normal’ ‘Anga FakaTonga’ (Tongan ways). Tonga is traditionally a conservative society. The TLA’s mission is to make a significant difference in the lives of transgender and people attracted to the same-sex in Tonga.⁵¹⁷ To date, there is no legal recognition of the Leitis and by extension cross-dressing or same-sex relationships. In 2010, the TLA launched a strategic plan to achieve legal recognition and protection from discrimination through National Human Rights Commissions.

Recent Developments

In May 2015, the Pacific Human Rights Conference, themed “Our Voices, Our Communities, Our Rights” was held in the Kingdom of Tonga with the support of the Tongan government and royal family.⁵¹⁸ This conference focused on activism and advocacy for sexual orientation, gender identity and gender expression communities in the Pacific. Seventy regional representatives and twelve countries across the Pacific were represented. The opening remarks at the conference were delivered by the Patron of the TLA The Hon. Salote Lupepau’u Tuita Talone. The Hon. Deputy Prime Minister of Tonga, Siaosi Sovaleni, the Australian High Commissioner, and other UN Agencies attended.

“
Anecdotal evidence suggests that many Leitis are bullied in school, negatively affecting their overall wellbeing.
”

PACIFIC

TUVALU

“Life as a gay in Tuvalu is uncertain. To make it short it is a taboo for homosexual sex. On the other hand, gay men are allowed to wear women’s clothes and do women duties in Funafuti, the capital of Tuvalu. They have gay entertainment groups consisting of both homosexuals and lesbians. So I can say that there is a certain level of acceptance but we continue to be stigmatized just like any other society in the Pacific. People would mock us etc. I have not come across a case where men were imprisoned for having sex with another men. The bottom line is that there are laws in relation to gay rights but nothing concrete has been done about it just because of the stigma associated with gays in society.”

ANONYMOUS GAY
former resident of Tuvalu

Tuvalu gained its independence from the UK in 1978. The Tuvalu Penal Code contains Sections 153, 154 and 155 criminalising same-sex sexual activity.⁵¹⁹ The penalty for the various conduct ranges between five and fourteen years.⁵²⁰ However, there are no reports of recent prosecutions under these laws.⁵²¹

In 2008, Tuvalu signed the UN declaration in support of LGBT rights. However, to date, no progress has been made to repeal anti-LGBTI laws in the penal code.

In its first Universal Periodic Review at the UN Human Rights Council in 2008, the Czech Republic recommended Tuvalu consider the decriminalization of consensual same-sex activity between adults, and the adoption of measures to promote tolerance in this regard.⁵²² In response, Tuvalu stated that, while it respects the rights of persons of all sexual orientations, the question of legal protection in the Constitution needs careful consideration.⁵²³ The government further explained that it is open to discussion surrounding and relevant actions.⁵²⁴ Tuvalu has not changed its position in regard to LGBTI rights since 2008.

Recent Developments

In the 2013, Universal Periodic Review at the UN Human Rights Council, the USA and UK recommended Tuvalu decriminalise homosexuality, and ensure that anti-discrimination laws cover sexual orientation.⁵²⁵ In response, Tuvalu said it was open to discussion and expressed that people with different sexual orientation did not suffer social discrimination, but the question of legal protection in the law was controversial and would need careful consideration.⁵²⁶

“

There is a certain level of acceptance but we continue to be stigmatized just like any other society in the Pacific.

”

VANUATU

“I was bullied and sexually abused through my school years because I was perceived as feminine. I decided to quit school. Such challenges and obstacles made a person become stronger when he/ she has faith to fight it. In 2009 I was involved in this Famous Pacific TV Show called the “Love Patrol.” In the show I play myself, a gay feminine male. The show was released in 2010 and it was a big hit in Vanuatu and the Melanesian Countries. The show addressed the gay rights issues, Sexual health and HIV awareness that Andy (my character name) played in the series. In the outside real world, it changes the audience ideas and help to make them understand about Gay people. The rate of Stigma and Discrimination has been reduced but yet needs advocates in communities to help and continuously shower knowledge for human rights and other community issues. From a high school bullied victim to Andy in Love Patrol brought me to places overseas and far as Washington DC for the International Aids Conference in 2012. I have been through a tough long journey with countless obstacles and challenges faced. However, with faith I managed to overcome it. My exposure to Love Patrol opens a door to an opportunity where I was hungry to learn to succeed and to help others. I didn’t want the upcoming generation to go through the same path I did. I want them to face an easy life that I have paved and to respect that battle I won. I am a legend/ idol before their eyes for them to look up to.”

GILLIO BAXTER, VPride
FOUNDATION SECRETARIAT
IN PORT VILA

Same sex sexual activity is legal in Vanuatu and there is an equal age of consent. Sexual orientation and gender identity are protected from discrimination in employment and occupation.⁵²⁷ There is no word in any of the local languages for homosexuality or transgender, and some evidence of social stigma attached to both.

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

Recent Developments

In October 2013, the Minister for Internal Affairs, Patrick Crowby, warned all pastors throughout the country not to preside over any gay or lesbian marriages.⁵²⁸ As a result of this the national LGBTI group VPride Foundation worked to persuade chiefs, clergy, judges and the government on LGBTI rights. In response, the Vanuatu Christian Council of Churches responded that it does not welcome the establishment of a lesbian, gay, bisexual and transgender associations in the country, and if the church accepted the gay community, it would cause a schism and societal dysfunction.⁵²⁹

“

I have been through a tough long journey with countless obstacles and challenges faced. However, with faith I managed to overcome it.

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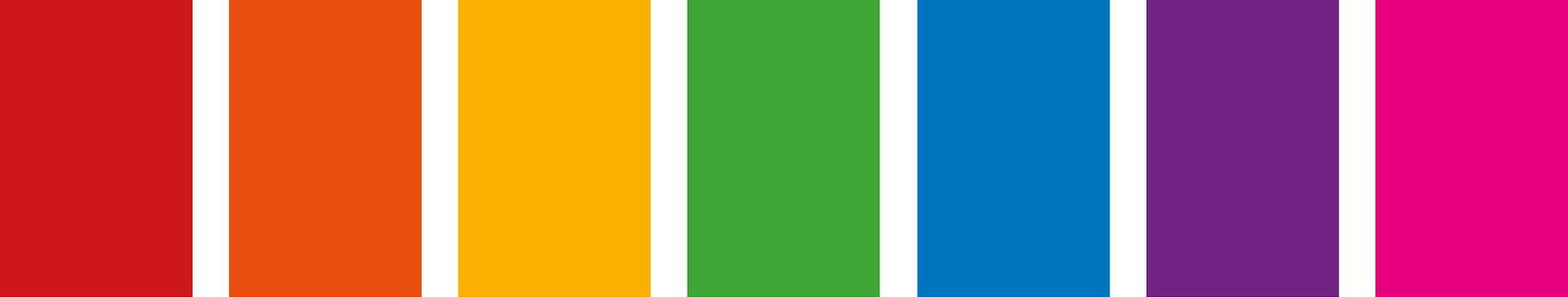
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