

# INTERNATIONAL BEST PRACTICE GUIDE TO EQUALITY ON SEXUAL ORIENTATION AND GENDER IDENTITY

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Outright International works together for better LGBTIQ lives. Outright is dedicated to working with partners around the globe to strengthen the capacity of the LGBTIQ human rights movement, document and amplify human rights violations against LGBTIQ people, and advocate for inclusion and equality. Founded in 1990, with staff in over a dozen countries, Outright works with the United Nations, regional human rights monitoring bodies, and civil society partners. Outright holds consultative status at the United Nations, where it serves as the secretariat of the UN LGBTI Core Group.

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# Glossary

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**Sexual orientation** refers to a person's physical, romantic and/or emotional attraction towards other people.

**Gender identity** reflects a deeply felt and experienced sense of one's own gender.

**Gender expression** is the way in which we express our gender through actions and appearance.

**Intersex people** are born with physical or biological sex characteristics, such as sexual anatomy, reproductive organs, hormonal patterns and/or chromosomal patterns, which do not fit the typical definitions of male or female.

# Introduction

## There is no set path toward promoting and protecting the rights of sexual and gender minorities.

Each country that has made reforms has done so at its own pace. This guide is not intended to provide an exhaustive list of countries that have reformed law and policy to address inequalities on the basis of sexual orientation, gender identity or expression and sex characteristics. Instead, it highlights promising progress from some countries in early or interim stages of introducing measures which safeguard sexual and gender minorities from harm.

Addressing inequality is important for many reasons and new data shows that inclusion of sexual and gender minorities is a major factor that fuels growth in the most innovative cities.<sup>1</sup> This is important to consider as cities play a leading role in global innovation and are responsible for more than 80% of global GDP. Economic trends have strengthened states' resolve to address inequalities as evidence suggests that sexual and gender minorities are highly vulnerable to poverty<sup>2</sup> most likely because they have missed out on opportunities to build human and social capital, capabilities and productive assets.<sup>3</sup>

The Sustainable Development Goals (SDGs), endorsed by the United Nations General Assembly in 2015 require member states to demonstrate how they are reducing inequality by empowering and promoting social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion, economic

**"Sustainable Development Goals will only be realised if member states reach all people, regardless of their sexual orientation or gender identity."**

**Ban Ki Moon**  
Former UN Secretary General

or other status, which includes sexual orientation, gender identity or expression and sex characteristics. Former Secretary General Ban Ki Moon asserted that the aspiration is to 'leave no one behind', and that achieving SDGs will only be realised if member states reach all people, regardless of their sexual orientation or gender identity.<sup>4</sup>

The Universal Declaration of Human Rights provides that all human beings are born free and equal in dignity and rights and that everyone is entitled to equal protection under the law. Regional human rights charters have empowered states to promote and protect the rights of sexual and gender minorities. In 2014, the African Commission stressed that the African Charter on Human and People's Rights prohibits discrimination on any status and strongly urged member states to end violence 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."<sup>5</sup> The General Assembly of the Organization of American States (OAS) also adopted a resolution in 2014, which condemns all

<sup>1</sup>Open For Business (2018), Strengthening the economic case for LGBT+ inclusion.

<sup>2</sup>Badgett M. V. Lee, "The Economic Cost of Stigmas and the Exclusion of LGBT People: A Case Study of India" (Washington, DC: World Bank. 2014).

<sup>3</sup>Badgett, M. V. Lee and Crehan, P. R. 2016. Investing in a research revolution for LGBTI inclusion. Washington, D.C.: World Bank Group. <http://documents.worldbank.org/curated/en/196241478752872781/Investing-in-a-research-revolution-for-LGBTI-inclusion>

<sup>4</sup>Ref:<https://www.un.org/sg/en/content/sg/statement/2015-09-29/secretary-generals-remarks-high-level-lgbt-core-group-event-leaving>

<sup>5</sup><http://www.achpr.org/sessions/55th/resolutions/275/>



Above: Former UN Secretary General Ban Ki Moon and members of the UN LGBTI Core Group.

forms of discrimination based on sexual orientation and gender identity and urged OAS member states to adopt public policies to further eliminate discrimination.<sup>6</sup>

Guidelines on integrating sexual orientation, gender identity or expression and sex characteristics into the work of National Human Rights Institutions (NHRI) in Asia Pacific provide many examples of progress in the region and focus on “mainstream efforts that an NHRI can undertake as part of a ‘business as usual’ approach to LGBTI-inclusion.”<sup>7</sup> The guidelines stress that mainstreaming efforts should “complement but...not replace the need for targeted, specialised LGBTI policies and programmes, including affirmative action or special measures.”<sup>8</sup>

**The Commonwealth has demonstrated support for building on progress that member states have made in law and policy by sharing technical expertise and good practice and facilitating sensitive dialogue.**

The Commonwealth Charter provides a framework for addressing discrimination as it affirms core Commonwealth principles of consensus and common action, mutual respect, inclusiveness, transparency, accountability, legitimacy, and responsiveness. The Charter also calls for prohibiting “discrimination on any grounds as the foundations of peaceful, just and stable societies.”<sup>9</sup> The Commonwealth has demonstrated support for building on progress that member states have made in law and policy by sharing technical expertise and good practice and facilitating sensitive dialogue.<sup>10</sup>

This guide shows how a variety of states have implemented these charters through introducing laws and policies which promote and protect the equality of all citizens. It is intended to offer tools and ideas which can support states considering how to ensure equality for sexual and gender minorities. As there is no one way to ensure equality, this guide explores different countries that have initiated different solutions suitable to their national contexts.

<sup>6</sup> <http://d35brb9zkkbdsd.cloudfront.net/wp-content/uploads/2014/06/Organization-of-American-States-LGBT-Resolution.pdf>

<sup>7</sup> <http://www.asiapacificforum.net/resources/guidelines-mainstreaming-sexual-orientation-gender-identity-and-sex-characteristics-work/>

<sup>8</sup> Ibid

<sup>9</sup> <http://thecommonwealth.org/sites/default/files/page/documents/CharteroftheCommonwealth.pdf>

<sup>10</sup> Brooks L. and Daly F. A Commonwealth Toolkit for Policy Progress on LGBT Rights. Royal Commonwealth Society, Kaleidoscope Trust, The Commonwealth Equality Network. April 2016. <https://thercs.org/assets/Research-/A-Commonwealth-Toolkit-for-Policy-Progress-on-LGBT-Rights.pdf>

# Reforming Laws and Policies

**There are several strong reasons for a country to reform laws and policies which criminalise or marginalise people because of their sexual orientation, gender identity or expression, and sex characteristics.**

Worldwide, people experience discrimination, harassment, physical and psychological violence, serious injury or even death on the basis of their sexual orientation, gender identity or expression and sex characteristics. This places barriers to many people's ability to fully participate in society, access basic services and live with human dignity.

World Bank President Jim Young Kim asserts that there is "clear evidence that when societies enact laws that prevent productive people from fully participating in the workforce, economies suffer."<sup>11</sup> Leading private sector firms emphasise that open, inclusive and diverse societies are better for business and better for economic growth.<sup>12</sup>

**There are now 124 states worldwide where there are no legal penalties against consenting same-sex sexual activity between adults in private.**

**"In terms of operationalising and implementing, protecting, fulfilling, promoting the rights of lesbian, gay, bisexual and transgender individuals... there is a lack of commitment."**

**Sulique Waqa**

**Co-founder and Creative Director of Haus of Khameleon**

In addition to material rationale for reform, there is also evidence on the impact that legislation and policies have on the lived reality and human dignity of sexual and gender minorities. Criminalisation of same sex acts and gender non-conformity sanction police and authorities to abuse, harass, extort, imprison and execute people whose sexual orientation, gender identity or expression differs from dominant social norms. This context also encourages the general public to stigmatise and harm, even kill, people solely because of their perceived or real sexual orientation or gender identity and expression.

A 2015 statement on ending violence and discrimination against lesbian, gay, bisexual, trans and intersex people endorsed by 12 UN agencies recognised that respect for their rights is integral to sustainable development.<sup>13</sup> There are now 124 states worldwide where there are no legal penalties against consenting same-sex sexual activity between adults in private.<sup>14</sup> With regards to gender

<sup>11</sup>Sexual Orientation and Gender Identity and Development and the World Bank Group. 2017.

<sup>12</sup>Open For Business (2015), The economic and business case for global LGBT&T inclusion.

<sup>13</sup>Ending Violence and Discrimination Against Lesbian, Gay, Bisexual, Transgender and Intersex People," Office of the High Commissioner for Human Rights, September, 2015, [http://www.ohchr.org/Documents/Issues/Discrimination/Joint\\_LGBTI\\_Statement\\_ENG.PDF](http://www.ohchr.org/Documents/Issues/Discrimination/Joint_LGBTI_Statement_ENG.PDF).

<sup>14</sup>International Lesbian, Gay, Bisexual, Trans and Intersex Association: Carroll, A. and Mendos, L.R., State Sponsored Homophobia 2017: A world survey of sexual orientation laws: criminalisation, protection and recognition (Geneva; ILGA, May 2017).



identity there is also progress, most recently in states such as Botswana, Germany and Mexico that recognise the rights of trans people to change the gender markers on official documents.<sup>15</sup>

Since 2007, states have used the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation to support changes to law and policy. **This re-articulation of binding human rights principles has been cited in bills, legislation, executive policies and court decisions in more than 20 states.**<sup>16</sup> In 2017, the Yogyakarta Principles were updated to reflect developments in international human rights law and recognise the distinct and intersectional grounds of gender expression and sex characteristics.<sup>17</sup>

**Taiwan's reforms are the most wide-ranging in the region including: protection against discrimination in education; gender neutral language in domestic violence legislation; gender equality in employment and the right to change legal gender identity; and the Ministry of Health and Welfare banned so-called 'gay conversion/cure' therapies.**

Certain regions have experienced greater progress in expanding the rights of sexual and gender minorities. Over the last two decades, states in Latin America have introduced some of the world's most advanced legislation and policies. For example, Uruguay has introduced a comprehensive range of reforms including

anti-discrimination laws in employment, the provision of goods and services and the criminalisation of hate speech during 2003-2004. In 2011, Mexico's Constitution was amended to prohibit discrimination on the basis of sexual orientation.<sup>18</sup>

In January 2018, the Inter-American Court of Human Rights ruled that same sex marriages should be recognised by all signatories to the Inter-American Convention on Human Rights.<sup>19</sup> Among signatories Argentina, Brazil, Columbia, certain states in Mexico and Uruguay already have laws allowing same sex marriage.

In Asia, states have used a number of different ways to effectively promote equality for sexual and gender minorities. The 2015 Constitution of Nepal includes the prohibition of discrimination on grounds of sexual orientation by the state or the public and confers gender identity rights to transgender Nepalis.

Taiwan's reforms are the most wide-ranging in the region, including: protection against discrimination in education (2004); gender neutral language in domestic violence legislation (2007); gender equality in employment and the right to change legal gender identity (2008); and the Ministry of Health and Welfare banned so-called 'gay conversion/cure' therapies (2018). In 2017, Taiwan became the first Asian country to permit same sex marriage when its highest court ruled in favour of marriage equality.<sup>20</sup> Jennifer Lu from the Taiwan Tongzhi Hotline Association reflected that these changes have helped integration: "policy changing sometimes is the first step for the whole society to help them understand the LGBT community."

The states which comprise the Commonwealth provide numerous examples of inclusive laws and policies which have been introduced by different branches of government. Anti-discrimination laws have been passed in Australia, Cyprus, Malta, Mauritius, Mozambique, Saint Lucia, Samoa, Seychelles and South Africa.<sup>21</sup>

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<sup>15</sup>International Lesbian, Gay, Bisexual, Trans and Intersex Association: Chiam, Z., Duffy, S. and González Gil, M., Trans Legal Mapping Report 2017: *Recognition before the law* (Geneva: ILGA, November 2017).

<sup>16</sup>O'Flaherty, M. The Yogyakarta Principles at Ten. *Nordic Journal of Human Rights*, Volume 33, 2015. Issue 4; Ettlbrick, P and Trabucco, A 'The Impact of the Yogyakarta Principles on International Human Rights Law Development: A Study of November 2007-June 2010 Final Report' (10 September 2010). Countries cited: Argentina, Australia, Belgium, Brazil, Bolivia, Canada, Colombia, Ecuador, Germany, Guatemala, India, Kenya, Mexico, Netherlands, Nepal, Peru, Philippines, South Africa, Spain, Sweden, United Kingdom, Uruguay, Venezuela.

<sup>17</sup><http://yogyakartaprinciples.org>

<sup>18</sup>[http://www.diputados.gob.mx/LeyesBiblio/proceso/lxi/117\\_DOF\\_10jun11.pdf](http://www.diputados.gob.mx/LeyesBiblio/proceso/lxi/117_DOF_10jun11.pdf)

<sup>19</sup><http://www.bbc.co.uk/news/world-latin-america-42633891>

<sup>20</sup><https://www.outrightinternational.org/content/taiwan-votes-legalize-same-sex-marriage>

<sup>21</sup><https://thercs.org/assets/Research-/A-Commonwealth-Toolkit-for-Policy-Progress-on-LGBT-Rights.pdf>

## CONSTITUTIONAL PROTECTIONS

Three Commonwealth member states have revised their Constitution to rights of all people, irrespective of sexual orientation. South Africa became the first country in the world to do so with its 1996 constitution. Elsewhere there have been efforts to extend constitutional protections to all. In 2011, the Uganda High Court issued an injunction against a magazine which published hate speech against Ugandan sexual minorities on the grounds that the magazine had violated their constitutional right to privacy.<sup>22</sup> In 2016, the High Court of Kenya determined that denial of “freedom of association on the basis of gender or sex is clearly unconstitutional” and thus, a civil society organisation serving gender minorities had the right to be officially registered.<sup>23</sup>

### Anti-discrimination laws have been passed in Australia, Cyprus, Malta, Mauritius, Mozambique, Saint Lucia, Samoa, Seychelles and South Africa.

#### FIJI

In 1997, Fiji became the second country in the world to prohibit discrimination on the grounds of sexual orientation in its Bill of Rights but this Constitution was repealed in 2009. The current Constitution, ratified in 2013, states that a person must not be unfairly discriminated against, directly or indirectly on the grounds of their sexual orientation, gender identity or expression.

In 2018, when reporting to the UN Committee on the Elimination of Discrimination Against Women, Fiji’s Minister for Women, Children & Poverty Alleviation, Hon. Mereseini Vuniwaqa, reflected on the anti-discrimination provisions in the 1997 and the 2013 Constitutions. She said that there were cases that demonstrated the Government was not enacting the 1997 Constitutional provisions but that “the 2013 Constitution has not been tested with regards to anti-discriminatory provisions.”<sup>24</sup> She indicated that Fiji’s Human Rights and Anti-

Discrimination Commission has recommended a change in the Births, Deaths and Marriages Act to enable change of gender in birth certificates. However, she stated that the Government believes that “this question should be tested by the judiciary.”<sup>25</sup>



Above: Sulique Waqa, Co-founder and Creative Director of Haus of Khameleon.

Ms. Sulique Waqa, co-founder and Creative Director of Haus of Khameleon, a civil society organisation focused on ending discrimination and violence against transgender people, reflected that Fijian LGBT human rights defenders have had positive dialogue with Government officials in international forums, such as the UN Human Rights Council. Nevertheless, she said “in terms of operationalising and implementing, protecting, fulfilling, promoting the rights of lesbian, gay, bisexual and transgender individuals...there is a lack of commitment.” Because domestication of the Constitutional provision is slow, civil society organisations have called on Government to “create a separate portfolio and resource(s) specifically for LGBTIQI under the Social Welfare or Women’s Ministry to demonstrate its commitment towards equal citizenry and being inclusive.”<sup>26</sup>

## LAW REFORM

Reform of penal codes has allowed for the decriminalisation of same sex acts in Cyprus, Mozambique, Nauru

<sup>22</sup><http://www.bbc.co.uk/news/world-africa-11666789>

<sup>23</sup>[https://transgender.or.ke/wp-content/uploads/2017/09/JR\\_Miscellaneous\\_Application\\_308a\\_of\\_2013.pdf](https://transgender.or.ke/wp-content/uploads/2017/09/JR_Miscellaneous_Application_308a_of_2013.pdf)

<sup>24</sup> Consideration of Fiji. 1578th Meeting 69th Session Committee on the Elimination of Discrimination Against Women. Delegation of Fiji.

<sup>25</sup> Ibid.

<sup>26</sup> United Nations Universal Periodic Review Fiji. Fiji National Civil Society Joint Submission. 2014.

and Seychelles. Moratoriums on arrests under penal code provisions have been attempted in Botswana and Malawi. Courts in Botswana, India and Pakistan have also issued judgements granting gender recognition to transgender people.

## BOTSWANA

Inequalities on the basis of sexual orientation, gender identity or expression are gradually being addressed in various ways in Botswana and the general public is becoming more accepting of sexual minorities.<sup>27</sup> The revision of Botswana's Employment Act in 2010, introduced restrictions so that employers could no longer terminate contracts of employees based on their sexual orientation.<sup>28</sup> Monica Tabengwa, veteran Botswanan activist and Director of Pan Africa ILGA, stressed that discrimination on the basis of gender identity and expression persists, particularly in recruitment when identity documentation does not match how a candidate has presented in interview, which calls for further revision of the Employment Act.



**Above:** Monica Tabengwa, Director of Pan Africa ILGA, Humphrey Melusi Ndongu Zimbabwean activist and Executive Director of AMSHeR, Cindy Kelemi Botswana Executive Director of BONELA.

The next step was to ensure that the Constitutional freedoms of association and expression could not be

denied on the basis of sexual orientation. After several attempts made by the organisation Lesbians, Gays and Bisexuals of Botswana (LeGaBiBo) to register, beginning in 2005, they took their case to court. In 2014, the decision of the High Court was to order the Government to register LeGaBiBo as a society in accordance with the Societies Act.<sup>29</sup> Following an appeal by the Government in 2016, the Botswana Court of Appeal found the refusal by the Government to register the society was “both irrational and in violation of the Right to Freedom of Expression and Association.”<sup>30</sup> LeGaBiBo can now concentrate on achieving its mission to “build an independent non-partisan organisation that promotes the recognition, acceptance and equal protection of all human rights of the LGBTI community in Botswana.” They try to educate the general population that “gay people are just like them—they just happen to have a sexual attraction to the same sex. Many people may know, work for, work with, be friends with or be served by a member of the LGBTI community but not know it.”<sup>31</sup>

In 2017, there were two successful High Court challenges to the refusal of the national registration authority to allow a trans person to change their gender identity. The first case, which took 10 years was presented by a trans man, identified only as N.D. in court papers. After the judgement he said “to live years in a mistaken identity is beyond the unthinkable...I hope that many others in my position would have a similar opportunity to live their life with dignity.”<sup>32</sup> In the second case, Tshepo Ricki Kgositau<sup>33</sup> sued to change the gender on her identity document.<sup>34</sup> Her application included evidence which demonstrated that her “innate gender identity is female and that her family has embraced her and loved her as a woman.”<sup>35</sup> Both plaintiffs have been issued new documents and have paved the way for other trans Botswanans to obtain legal gender recognition.

<sup>27</sup> Afro barometer 2016 Dispatch 74: Good neighbours? Africans express high levels of tolerance for many, but not for all. <http://afrobarometer.org/publications/tolerance-in-africa>

<sup>28</sup> Chapter 47:01. Enacted 2010. Part III Para 23 (d). <http://www.elaws.gov.bw/default.php?UID=602>

<sup>29</sup> <https://legabibo.wordpress.com/2016/03/16/press-release-groundbreaking-judgment-by-botswana-court-of-appeal-on-freedom-of-association-and-lgbti-rights/>

<sup>30</sup> <https://www.outrightinternational.org/blog/victory-lgbti-activists-botswana>

<sup>31</sup> <https://legabibo.wordpress.com/about/awareness/>

<sup>32</sup> <https://www.pinknews.co.uk/2017/12/07/botswana-transgender-identity-court-ruling-salc-nd-high-court-registrar/>

<sup>33</sup> Ms Kgositau is Executive Director of Gender Dynamix, a trans rights organisation based in South Africa.

<sup>34</sup> <https://af.reuters.com/article/topNews/idAFKBNIE624L-OZATP>

<sup>35</sup> Ibid.

Ms. Tabengwa reflected that Government's attitudes toward sexual and gender minorities have changed over time. The first challenge to decriminalise same sex acts between two consenting male persons in private was lodged in 1998 and was denied by the Court of Appeal in 2003. At that time, Ms. Tabengwa asserted that, "the Government denied the existence of gay people." Now a new decriminalisation case will be heard in 2018 and Ms. Tabengwa feels it is "going to get a different hearing. Whether we win or not I think the judgement will be better."

# Improving Health Outcomes

## Innovations to ensure sexual and gender minorities do not face barriers in access to basic services have been introduced by some states.

Health policy has been more reflective of some sexual and gender minorities health concerns, particularly to address evidence of the disproportionate burden of HIV among men who have sex with men<sup>36</sup> as well as among trans women.<sup>37</sup>

Ministries of Health have shown leadership in striving to ensure sexual and gender minorities are included in public health efforts, including national responses to HIV and other sexually transmitted infections. A review of National HIV Strategic Plans in Africa found that Gambia, Ghana, Kenya, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Nigeria, Rwanda, Seychelles, Sierra Leone, South Africa, Swaziland, Tanzania have included men who have sex with men (MSM) in their plans.<sup>38</sup> Nevertheless, the review found that few states have been able to acknowledge that criminalisation and stigma are among the social drivers of MSM's HIV related risks, which would help address HIV.<sup>39</sup> Lesotho and South Africa have introduced policies for condom distribution in prisons in recognition of the high prevalence of HIV among prisoners. A study from Kenya estimated that 15% of HIV infections arose in MSMs and prisons.<sup>40</sup>

**"Sometimes people come who may not necessarily want to be there...we always try to start by telling them we're not trying to change them and we're not accusing them of being homophobic or transphobic...."**

**Neish McLean**

Coordinator, Equality for All Foundation Jamaica

In order to achieve the targets of SDG 3: *Ensure Healthy Lives and Promote Well-Being for All at All Ages*, states must confront other pressing health needs among sexual and gender minorities.<sup>41</sup> For instance, the indicator to monitor states' progress on improving mental health and well-being (SDG target 3.4) is the national suicide mortality rate. Given available data demonstrates high rates of suicide among sexual and gender minorities, states will not be able to demonstrate progress on this target without efforts to improve mental health of sexual and gender minorities and address high rates of depression and anxiety due to minority stress.<sup>42</sup> Poor health outcomes are fuelled by criminalisation, discrimination, social exclusion and violence, and are compounded by stigmatisation of sexual and gender minorities in health services.

<sup>36</sup>Beyrer, C et al. (24 July 2012). Global epidemiology of HIV infection in men who have sex with men. *Lancet*, 380(9839): 367-77.

<sup>37</sup><http://www.unaids.org/en/resources/documents/2014/Transgenderpeople>

<sup>38</sup>Makofane K et al (2012) Men who have sex with men inadequately addressed in African AIDS National Strategic Plans, *Global Public Health*, 8:2, 129-143.

<sup>39</sup>Ibid.

<sup>40</sup>UK Department for International Development. Business Case Southern Africa Regional Programme for HIV Prevention Evidence.

<sup>41</sup><https://www.outrightinternational.org/content/agenda-2030-lgbti-health-and-well-being>

<sup>42</sup>Minority stress theory suggests that sexual and gender minorities experience distinct, chronic stressors related to their stigmatized identities which disproportionately compromise their mental health and well-being. See: Meyer, I.H. (1995). Minority stress and mental health in gay men. *J. Health Soc. Behav*, 36: 38-56.; Rood, B.A. et al (2016). Expecting Rejection: Understanding the Minority Stress Experiencing of Transgender and Gender-Non-Conforming Individuals. *Transgender Health*, 1(1): 151-164.

In 2015 the Hon Timothy Harris, Prime Minister of St. Kitts and Nevis said that “the Caribbean has to focus the conversation on what various sectors and partners can do to end the AIDS epidemic by 2030. It is clear that Caribbean countries must continue to confront the issues that are related to the elimination of stigma and discrimination and disentangle them from the misperception that this is a gay agenda.”<sup>43</sup>

A 2017 meeting among Commonwealth diplomats and civil society experts in Pretoria, South Africa discussed challenges facing LGBTI people, including the HIV pandemic.<sup>44</sup> His Excellency Festus Mogae, former President of Botswana, stated that ending AIDS as a public health threat by 2030 could only be achieved by “engaging everyone... we cannot afford taboos in this day and age.”<sup>45</sup> His Excellency Benjamin Mkapa, former President of Tanzania, called for removal of barriers to sexual health education. Importantly, His Excellency Joaquim Chissano, former President of Mozambique, urged representatives of Government to decriminalise consensual same sex activity between adults.

In Fiji, men who have sex with men as well as trans women have a higher HIV prevalence than the national average but have expressed lack of comfort in attending health clinics to access HIV testing.<sup>46</sup> Civil society organisation Haus of Kameleon has advised Fiji’s HIV/AIDS Board to ensure that HIV services are accessible for transgender people and have also advised the Ministry of Education on their comprehensive sexuality education curriculum and family life programme.

## JAMAICA

While there are no protections on the grounds of sexual and gender diversity in Jamaica, the health sector does recognise that it needs to provide services to all people, regardless of their sexual orientation or gender identity. Jamaica’s Ministry of Health and regional health authorities which manage the public health sector at a decentralised level through four regions, endeavour

to sensitise health workers about sexual and gender diversity. Since 2012, Equality for All Foundation Jamaica Ltd (EFAF), formerly known as J-FLAG, has been mandated to run the Mitigating Risk and Enabling Safe Spaces Programme, which provides a two-part training focusing on sexual orientation and gender identity. They train and support health workers including doctors, nurses, midwives, pharmacists, and frontline staff. In 2017 alone, EFAF trained over 400 health workers.



Above: Neish McLean, Coordinator at EFAF.

EFAF’s Health and Wellness Coordinator, Neish McLean, revealed that they work with the regional health authorities who identify staff who really need support to challenge their attitudes. Mr. McLean noted that “sometimes people come who may not necessarily want to be there.” Furthermore, he shared “we always try to start by telling them we’re not trying to change them and we’re not accusing them of being homophobic or transphobic. We want the health care system to be better. They are not necessarily the ones who are not providing accessible and inclusive services to the LGBT community but it’s very likely that they know a colleague who may not be where they need to be.” Mr. McLean finds that most participants relax during the first day of training and are more receptive to sharing and understanding a bit more about sexual and gender minorities.

<sup>43</sup> <http://timescaribbeanonline.com/un-general-secretary-joins-st-kitts-nevis-prime-minister-in-call-for-end-to-stigma-and-homophobia-which-increases-vulnerability-to-hiv-aids/>

<sup>44</sup> <http://www.aidsfreechampions.org/newsroom/>

<sup>45</sup> Ibid.

<sup>46</sup> United Nations Development Programme. Secret Lives, Other Voices: A Community-Based Study Exploring Male-Male Sex, Gender Identity and HIV Transmission Risk in Fiji. (2011)

After part one of the training, participants return to their hospitals, health clinics and other workplaces and are asked to sensitise their colleagues. They can invite EFAF to attend or ask for information to carry out their own presentation. When they return to the training they are asked to reflect on how their interventions were received by other colleagues. EFAF provides them with a space to be honest and responses from health workers have been positive.

**“A midwife from the North East Regional Health Authority, Ocho Rios, recently shared “I am truly grateful for the opportunity to have been a part of this training. It has changed my negative thinking about the LGBT community and you all are now my friends.”**

**Midwife, North East Regional Health Authority,  
Ocho Rios, Jamaica.**

# National Leader Statements

In addition to the aforementioned statements by leaders urging an effective response to HIV, national leaders have also voiced support for ending discrimination on the basis of sexual orientation, gender identity or expression and sex characteristics. For example, Argentina's President Cristina Fernández de Kirchner considers the 2012 Gender Identity Law, which provides full recognition of self-defined gender identity, to have been among the policies which have "developed a strong social inclusion process which obviously results in greater opportunities for gender equality."<sup>47</sup>

In 2014, former President of Mozambique Joaquim Chissano wrote an open letter to African Leaders stating that "[Africa] can no longer afford to discriminate against people on the basis of...sexual orientation and gender identity or any other basis—we need to unleash the full potential of everyone."<sup>48</sup>

In January 2018, Indian Supreme Court Chief Justice Misra and Justices Khanwilkar and Chandrachud spoke about the upcoming reconsideration of the ruling on decriminalisation of same sex acts noting that "sexual orientation and choice cannot be allowed to cross boundaries of law but confines of law cannot trample or curtail the inherent right embedded in an individual under Article 21 of Constitution."<sup>49</sup>

**"Sexual orientation and choice cannot be allowed to cross boundaries of law but confines of law cannot trample or curtail the inherent right embedded in an individual under Article 21 of Constitution."**

**Justice Dipak Misra**  
Chief Justice, Supreme Court of India



Above: Justice Dipak Misra, 45th Chief Justice of India.

<sup>47</sup> Speech by President Cristina Fernández de Kirchner 2015 <http://www.cfkargentina.com/global-leaders-meeting-on-gender-equality-and-womens-empowerment-cristina-kirchner/>

<sup>48</sup> <http://www.theafricareport.com/Soapbox/an-open-letter-to-africas-leaders-joaquim-chissano-former-president-of-mozambique.html>

<sup>49</sup> <http://indianexpress.com/article/india/section-377-supreme-court-to-revisit-judgment-refers-matter-to-larger-bench-5016066/>



# Changing Attitudes

Public opinion about sexual and gender minorities are also improving as shown in recent surveys in various regions. The results of the 6th round (2014/2015) of the Afro Barometer survey conducted in 33 African countries found that “while the discourse on homosexuality has often painted Africa as a caricature of homophobia, the data reveal that homophobia is not a universal phenomenon in Africa.”<sup>50</sup> More than half of those surveyed in Cape Verde, Mozambique, Namibia and South Africa “would like or not mind having homosexual neighbours.”<sup>51</sup>

Public polling (2013–2014) in Belize, Grenada, Guyana, St Lucia, St Vincent, Surinam and Trinidad and Tobago asked informants if they ‘hate, tolerate or accept and if they would socialize with homosexuals’ revealed that younger Guyanese and Trinidadians and those with tertiary education were more likely to accept and socialise with sexual minorities. Women were significantly more accepting or tolerant than men in all countries which suggests that those who challenge harmful gender norms may reject homophobia as well.

A survey on attitudes towards transgender people in 23 countries found that the majority believe that transgender people deserve the right to change their identity documents to be consistent with their gender identity.<sup>52</sup> Media has an important role in improving public attitudes toward gender minorities. Change the Clap, a media campaign in Pakistan, run by the Asia Pacific Transgender Network, challenged transphobia and increased positive visibility of trans people.<sup>53</sup> The campaign ran on national television for a short term reaching a majority of Pakistanis. The campaign remained online and is regarded to have sensitised

“However, as far as the language...this is a big step forward.”

**Mehlab Jameel**

Project Manager, Naz Foundation, Pakistan

public opinion. Other prominent trans public figures, such as Begum Nawasish Ali who hosts a talk show, have led Pakistani media to cover trans people in a more positive way and highlight their lived reality through dramatic roles.

## PAKISTAN

Pakistan has taken several steps to protect and promote the rights of transgender Pakistanis. In 2009, the Supreme Court of Pakistan ruled on the introduction of a third gender marker on national identity cards. Following this judgement, transgender women were granted the right to vote. In 2017, the Transgender Persons (Protection of Rights) Bill was prepared for submission to Parliament. Prior to its introduction it was endorsed by the Council of Islamic Ideology as all laws must receive the Council’s approval before they go to Parliament. The Bill is supported by all political parties in Pakistan and was passed by the Senate Functional Committee on Human Rights.

The Bill seeks to: prohibit discrimination against transgender people in education, occupation, movement, residence, public office and in police custody; focus on enhancing employment through vocational training and self-employment opportunities; facilitate access to health care including for sex reassignment surgery and

<sup>50</sup> Afro barometer 2016 Dispatch 74: Good neighbours? Africans express high levels of tolerance for many, but not for all. <http://afrobarometer.org/publications/tolerance-in-africa>

<sup>51</sup> Ibid.

<sup>52</sup> <https://williamsinstitute.law.ucla.edu/research/public-support-for-transgender-rights-a-twenty-three-country-survey/>

<sup>53</sup> Video link available at: [https://www.youtube.com/watch?time\\_continue=4&v=RLfrIGohGv4](https://www.youtube.com/watch?time_continue=4&v=RLfrIGohGv4)

hormonal therapy and revise the medical curriculum to include trans health issues, and improve access to public amenities. It also confers rights including the right to self-perceived gender identity and ability to obtain a certificate of identity. The Bill reiterates the right to vote conferred by the 2009 Supreme Court decision.

In February 2018, the Bill passed the Senate in a unanimous vote and it will now pass to the National Assembly for consideration. Civil society organisations were intrinsically involved in drafting the Bill with several trans women and Hijra<sup>54</sup> activists as well as a trans man working through the Feminist Collective. Qasim Iqbal, the Executive Director of the Naz Foundation, a leading LGBT organisation based in Lahore, reflected that the swift progress of the Bill demonstrates that “in terms of transgender rights we seem to be more progressive than (other) countries.”



**Above:** Senate Chairman Rabbani with transgender community representatives at Parliament in July 2017.

The positive reaction of elected and religious officials reflects increased acceptance of and respect for trans people. This stems in part from understandings of the influential roles of Hijras and third gender people in the South Asian culture, particularly during the Mughal era in the region now comprising Pakistan. After colonial laws criminalised cross-dressing and same sex acts, the historically elevated roles of third gender people diminished due to the social stigma of criminalisation. Thus, recent activism has tried to improve the way trans people are perceived in Pakistan, reconnecting with Pakistanis’ heritage.

Ms. Mehlab Jameel, a trans woman who is a Project Manager at Naz Foundation, noted the Bill addresses harassment and violence and reflected that “this was sorely needed because Pakistani law is silent on the issue

of harassment and violence against transgender people. I cannot say how much or in what way it will contribute to reducing instances of violence...a lot of variables are involved...primarily the attitude of law enforcement agencies. However, as far as the language...this is a big step forward.”

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<sup>54</sup>Hijra is one of the most common terms in South Asia to refer to a ‘third gender’ person assigned male gender at birth and usually living communally. 18

# Legislation Inspiring Policy Reform

While countries have introduced reforms at their own pace, in several settings, there has been a dynamic relationship between legislation and policy. In these examples legislative reform has prepared the ground for new policy measures that promote equality. Decriminalisation of some sex acts have been pursued in the courts including in Australia, Belize and in India, where the judgement was appealed but will be reconsidered in 2018.

## BELIZE

The path toward equality for sexual minorities in Belize has progressed through litigation and policy revision. In 2010, Belizean citizen Caleb Orozco, brought a case against the Government. Mr. Orozco sought to decriminalise private, consensual sex between adult men, articulated in Section 53 of the Criminal Code, on the grounds that it is a violation of his constitutional rights to human dignity, privacy, and equality before the law and health.

The case was heard by the Supreme Court in 2013 and, in 2016, the Supreme Court of Belize struck down the country's anti-sodomy law. The Court ordered the Government to amend Section 53 of the Criminal Code to exclude penalty of private sexual acts between two consenting adults of the same sex. Chief Justice Kenneth Benjamin accepted Mr. Orozco's challenges on all counts. Following the ruling, Mr. Orozco maintained that "in striking down Section 53, Belize has also rejected a

**"In striking down Section 53, Belize has also rejected a poisonous remnant of colonial rule...We have reaffirmed ourselves as a society built on dignity and respect for all our people."**

**Caleb Orozco**

Executive Director, United Belize Advocacy Movement



**Above:** Caleb Orozco, Executive Director, United Belize Advocacy Movement (UNIBAM).

poisonous remnant of colonial rule...We have reaffirmed ourselves as a society built on dignity and respect for all our people.<sup>55</sup> An appeal was launched but has not progressed.

<sup>55</sup> <https://www.nbcnews.com/feature/nbc-out/belize-supreme-court-overturms-anti-gay-law-n627511>

Visibility around the case led to greater engagement of civil society organisations representing the sexual and gender minorities and Government review of law and policy. A revision to the criminal code used gender neutral terms when referring to both victims and perpetrators of sexual assault and sought to ensure all children as well as vulnerable people were adequately protected. In 2017, Our Circle was the first organisation to be registered as openly stating it works with lesbian, gay, bisexual and transgender people.

In 2013, the National Women’s Commission within the Ministry of Human Development, Social Transformation and Poverty Alleviation began revising Belize’s Gender Policy. After protracted negotiation, the Gender Policy was finalised in 2017 and includes ‘people with diverse sexualities’ among principles on respect for diversity. Judith Alpuche, CEO of the Ministry of Human Development, remarked that “the Government put a lot of energy to not have any kind of compromise that would dilute what we were trying to accomplish. It is the first time the Government acknowledges sexual orientation and gender identity. It offers us a wedge to push towards equality.”

The Government is now implementing the policy and working to support various LGBT civil society organisations. For instance, Ms. Alpuche highlighted co-sponsorship of a forum on gender justice with PETAL, a lesbian and bisexual women’s group. She noted that the public officials are now able to more openly provide support to LGBT initiatives. Support for progress has been signaled at the most senior level of Government. Tracy Robinson, former Chair of the Inter-American Commission on Human Rights and former Rapporteur on the Rights of Women for the Organization of American States recalled that “throughout the early stages of the litigation both Prime Minister Dean Barrow and the First Lady made positive statements about human rights for all.”

The Belize Supreme Court judgement is historic because it is the first time a case challenging ‘sodomy’ laws has been launched in the Caribbean and the first case worldwide where sodomy laws have been overturned. National policy responses along with the judgement, have contributed to improved attitudes towards LGBT Belizeans.

# Holistic Reforms

In order to eradicate certain violations based on sexual orientation, gender identity or expression and sex characteristics some states may take a holistic approach that prohibits harmful interventions. This approach could include introducing protections for intersex people, such as banning non-consensual surgery, and safeguarding sexual minorities from psychological violence, by outlawing ‘conversion therapy’ or ‘cures’ which erroneously claim to change a person’s sexual orientation.

## MALTA

Since 2013, the Government of Malta has made rapid strides to advance equality for lesbian, gay, bisexual, trans, intersex and queer (LGBTIQ) people. That year, the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties set up a Consultative Council comprised of representatives from Maltese LGBTIQ civil society to advise the Government and recommend legislation, policies and other measures that could advance their human rights. Dr. Helena Dalli, Malta’s Minister for European Affairs and Equality stressed that “we represent all people, so all people should be represented at the table. To me, this is very simple.”

In 2014, a Constitutional amendment guaranteed the rights afforded in the Constitution to every person regardless of their sexual orientation or gender identity. The Civil Union Act was passed in 2014 granting recognition at par with marriage to same sex couples, including parenting rights and recognising marriages of same sex spouses entered into in another country. Minister Dalli reflected on society’s acceptance of these changes: “When we were about to introduce civil unions, 80% were against. A year later, most people favoured the law, because they realised that we did not take anything away from anyone.”

One of the most ground-breaking pieces of groundbreaking legislation that Malta introduced is the 2015 Gender Identity, Gender Expression and Sex

“Legislatively it’s been better than we could ever have imagined although there are levels of resistance everywhere, all the time. The main issue for us now is translating that legislation and policy into actual practice on the ground.”

**Gabi Calleja**

Coordinator, Malta Gay Rights Movement



Above: Gabi Calleja, Coordinator of the Malta Gay Rights Movement.

Characteristics Act, which provides for any resident to change their gender based on their own self-determination and without the need for medical certification or intervention. The Act is among the first of its kind worldwide to confer the right to bodily autonomy and physical integrity and protects children, especially intersex children and infants, from any non-consensual surgery concerning their sex characteristics. In 2016, the Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act empowered the state to prosecute anyone found guilty of trying to change, repress or eliminate a person’s sexual orientation, gender identity or gender expression.

Silvan Agius, Director of the Human Rights and Integration Directorate in the Ministry for European Affairs and Equality, indicated that the Government had to mitigate opposition from the Roman Catholic Church but that their position remained strong as they used faith based language that underscored compassion for those who are marginalised. He stressed that the most crucial element of the Government's progress was "the proximity to civil society." Gabi Calleja, Coordinator of Malta Gay Rights Movement a civil society organisation, said that "Legislatively it's been better than we could ever have imagined although there are levels of resistance everywhere. The main issue for us now is translating that legislation and policy into actual practice on the ground."

# Conclusions

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This guide has reviewed promising practice to eliminate discrimination based on sexual orientation, gender identity or expression and sex characteristics that has been implemented by a variety of states. It has revealed that there are pockets of progress even in states that may still have laws which criminalise or marginalise sexual and gender minorities. Case studies have revealed examples which show that progress is possible in all regions of the world. They also show that states are striving to overcome inequality as a central way to achieve the SDGs.

## Constitutional Change

The arguments for reform and state obligations on the application of human rights law have been clarified and many states have utilised the Yogyakarta Principles to initiate changes. Regional human rights agreements, as in Africa and the Americas, provide a mandate for states with common legal and cultural traditions. States considering where to begin have a variety of resources to turn to and might begin by undertaking a national law and policy audit, such as in Malta.

Where states have not initiated change, a first step to shift government stance has begun in court as in Botswana, India and Pakistan. Several examples, including Belize, demonstrate that the visibility of a legal case can introduce perspectives about sexual and gender minorities in the national dialogue and allow policy initiatives to flourish. In other settings, legislative change has been introduced 'top-down' including by introducing amendments to national constitutions.

In other states, such as Fiji, implementation of Constitutional aspirations are yet to realise greater inclusion which underscores that legislation has to be reinforced and articulated in policy and practice. States considering how to overcome resistance can learn from sectoral leaders who have fostered innovation to enhance inclusion.

## The Role of Civil Society

Where civil society has been engaged in setting the agenda, as in Malta, and drafting the text of bills, as in Pakistan, outcomes have the potential to change the lived reality of sexual and gender minorities. Participation of civil society comprising people with diverse sexual orientation, gender identity or expression and sex characteristics is an important facilitator of change and improvement of access to basic services, as in Jamaica. The legal recognition of civil society organisations that can advocate on behalf of sexual and gender minorities is an encouraging sign that states including Belize, Botswana and Kenya can accommodate greater participation of those who have previously been marginalised.

## Health Reform

The health sector has taken a lead in many countries, including Jamaica and Fiji, by utilising evidence of the burden of HIV among men who have sex with men and trans women and engaging civil society. The evidence of other health concerns including poor mental health also provides a compelling case to sensitise health services and improve the conditions that drive minority stress.

## Business Case

Leading multinational firms have embraced the 'business case' for the inclusion of sexual and gender minorities. States can access the growing body of evidence that shows that criminalisation limits the human capabilities of sexual and gender minorities and holds back national economic development.

## National Leadership

One of the most important dynamics behind law and policy reform are the voices of national leaders, both those currently in office and former leaders. Several former leaders have used their platform to encourage

reforms which they may have aspired to implement while in office. Clearly political leaders are influenced by changes in public opinion that reveal greater acceptance of sexual and gender minorities.

### **Intersectional Approach**

Polling in several regions show that women and younger, more educated people and those based in urban centres are more tolerant of sexual and gender minorities. These trends suggest that overcoming inequalities is best addressed from an intersectional perspective that challenges the harmful gender norms that underpin gender inequality as well as discrimination based on sexual orientation, gender identity or expression and sex characteristics. States including Argentina, Belize and Malta have exhibited this approach by introducing updates to gender policies that are inclusive of women and men in all their diversity.

This guide has presented a range of examples, ideas and principles which have supported law and policy reform in a growing number of states. States considering how to overcome inequality can use these as a basis to develop solutions suitable to their national context.





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