



The Case for Decriminalization of Consensual Same-Sex Relations

Introduction

In 2013, Parliamentarians for Global Action (PGA), the largest transnational network of individual parliamentarians informing and mobilizing its membership to advance human rights in more than 130 countries, launched its Global Parliamentary Campaign against Discrimination based on Sexual Orientation and Gender Identity (SOGI) to sensitize parliamentarians about equality and non-discrimination in international human rights law and encourage them to take legislative actions that guarantee these principles for all individuals regardless of their sexual orientation, gender identity and expression and sex characteristics (SOGIESC).

PGA's [SOGI Campaign](#) has four main objectives:

- Sensitize and raise awareness among parliamentarians about equality and non-discrimination on the basis of SOGIESC in accordance with regional and international human rights instruments.
- Strengthen communication and cooperation between parliamentarians and lesbian, gay, bisexual, trans and intersex (LGBTI) civil society representatives.
- Introduce anti-discrimination legislation on the basis of SOGIESC; an
- Decriminalize homosexuality where the law penalizes consensual relations between adults of the same sex in contravention of international human rights standards.

Given parliamentarians' key role in global efforts to promote and protect human rights: in their capacity as lawmakers, in their Government-oversight functions and as democratically-elected representatives of the people who play important leadership roles in their communities, this brief provides relevant information for parliamentarians about the importance of decriminalization and offers cases of successful processes via legislative reform as well as strategic litigation.

The brief also notes which States still criminalize consensual same sex conduct, particularly in the Commonwealth where PGA is concentrating its efforts to decriminalize, explains why criminalization is against international law and how this type of statute negatively impacts people's lives and presents an overview of the efforts to decriminalize currently underway in a number of countries, especially in the Caribbean.

Parliamentarians have the prerogative to repeal discriminatory provisions by themselves or as part of a revision of criminal codes and statutes that more effectively reflect current realities in a country. When legal challenges have been filed, parliamentarians can publicly support these by exercising their oversight role vis-à-vis the executive power so any positive judicial decisions are not appealed against or by following up on positive rulings that may require or benefit from subsequent legislative action.

For example, PGA members have contributed to decriminalization via legislative reform in [Angola](#), [Mozambique](#)¹ and [Seychelles](#)², and supported decriminalization via court rulings in [Belize](#)³, [India](#)⁴ and [Trinidad and Tobago](#).

¹ More information about Mozambique is available in Human Dignity Trust's [case study](#) on this country.

² More information about Seychelles is available in Human Dignity Trust's [case study](#) on this country.

³ More information about Belize is available in Human Dignity Trust's [case study](#) on this country.

⁴ More information about India is available in Human Dignity Trust's [case digest](#) on this country.

Which states criminalize?

68 UN Member States criminalize consensual sexual acts between adults of the same sex. 34 of these states are in the Commonwealth, namely:

- 13 in Africa: Cameroon, Eswatini, Gambia, Ghana, Kenya, Malawi, Mauritius, Namibia, Nigeria, Sierra Leone, Tanzania, Uganda and Zambia.
- 6 in Asia: Bangladesh, Brunei, Malaysia, Pakistan, Singapore and Sri Lanka.
- 9 in the Caribbean: Antigua and Barbuda, Barbados, Dominica, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia and Saint Vincent and the Grenadines.
- 6 in the Pacific: Kiribati, Papua New Guinea, Samoa, Solomon Islands, Tonga and Tuvalu.

These laws are often a legacy of colonial rule: written in Victorian London and imposed by the United Kingdom on the countries concerned during the 19th century.⁵

What does international law say about criminalization?

The United Nations Human Rights Committee has confirmed that laws criminalizing homosexuality violate rights to privacy and non-discrimination in breach of States' legal obligations under the International Covenant on Civil and Political Rights. Where these laws are enforced, they may also lead to violations of the right to freedom from arbitrary arrest and detention.⁶

Everyone has the right to be free from criminalization and any form of sanction arising directly or indirectly from that person's actual or perceived sexual orientation, gender identity, gender expression or sex characteristics.⁷ States shall repeal criminal and other legal provisions that prohibit or are, in effect, employed to prohibit consensual sexual activity among people of the same sex who are over the age of consent.⁸

What are the consequences of criminalization?

In addition to violating basic rights, criminalization legitimizes prejudice in society at large and exposes people to hate crimes, police abuse, torture and family violence. Criminalization also has a dire effect on public health, especially on efforts to prevent the spread of HIV. It can, for example, deter some of those most at risk of infection from coming forward for testing and treatment out of fear of being deemed a criminal. It can also endanger those who work to defend the human rights of LGBTI people by exposing them to attacks and intimidation. Criminalization also fuels discrimination against people who dress or behave in a way that challenges traditional gender norms. There have been many incidents of individuals arrested or attacked based on their clothes, mannerisms and style of speech.⁹

What legal efforts to decriminalize are currently underway?

In October 2019, the LGBTI civil society group Eastern Caribbean Alliance for Diversity and Equality (ECADE) announced the launch, by the end of 2019, of five legal challenges against the so-called “buggery” and “indecent” laws in **Antigua and Barbuda, Barbados, Grenada, Saint Kitts and Nevis** and **Saint**

⁵ Information in this section extracted from [2019 State-Sponsored Homophobia report](#) (ILGA) and Human Dignity Trust's [Map of Countries that Criminalize LGBT People](#).

⁶ Paragraph extracted from the United Nations Free & Equal campaign's [Criminalization factsheet](#).

⁷ Yogyakarta Principle 33.

⁸ Yogyakarta Principles 2(b) and 6(b).

⁹ Paragraph extracted from the United Nations Free & Equal campaign's [Criminalization factsheet](#).

Lucia. ECADE is working closely with regional and international organizations to support litigants in these cases, including the [University of the West Indies' Faculty of Law Rights Advocacy Project \(U-RAP\)](#) and the [Human Dignity Trust](#). Both ECADE and the Human Dignity Trust are PGA partners.

In **Saint Vincent and the Grenadines**, two gay men have mounted a legal challenge to the provisions criminalizing homosexuality in the country. One of the attorneys leading this case is PGA member Hon. Jomo Thomas, Speaker of the House of Assembly of Saint Vincent and the Grenadines.¹⁰

Cases challenging the criminalization of sexual activity between consenting adults of the same sex have also been filed by attorney Maurice Tomlinson in **Dominica** and **Jamaica**.

To summarize, out of the nine countries that criminalize homosexuality in the Caribbean, eight have challenges to these provisions underway – all except Guyana.

It is worth noting that any ruling in favor of decriminalization in one of these countries could have a rippling effect in the rest – particularly since, as noted below, in many cases Caribbean states share judicial instances.

- Antigua and Barbuda, Dominica, Grenada, Saint Kitts and Nevis, Saint Lucia and Saint Vincent and the Grenadines are subject to the jurisdiction of the Eastern Caribbean Supreme Court.
- Antigua and Barbuda, Grenada, Jamaica, Saint Kitts and Nevis, Saint Lucia and Saint Vincent and the Grenadines are subject to the jurisdiction of the Judicial Committee of the Privy Council.
- Barbados, Dominica and Guyana are subject to the jurisdiction of the Caribbean Court of Justice.

Beyond the Caribbean, a case against decriminalization was brought in **Kenya**. In May 2019, the country's High Court upheld laws criminalizing homosexuality. The decision is being appealed. The criminalization of homosexuality is also being challenged as unconstitutional before the Supreme Court of **Mauritius**.

PGA is monitoring developments around the world and stands ready to support our members and partners to facilitate interactions with stakeholders pushing for repeal to better understand the case and contribute to the decriminalization of homosexuality where present. We hope this brief encourages you to learn more about the rights and inclusion of LGBTI people and to take action to promote decriminalization. Actions you can take include:

- Stay informed about judicial cases and legislative efforts to decriminalize.
- Learn about your role in guaranteeing the rights of all individuals, regardless of their SOGIESC.
- Meet with LGBTI civil society in your country, listen to their testimonies and establish an open dialogue.

Please do not hesitate to contact PGA's Gender, Equality and Inclusion team with any questions, comments or ideas: Mónica Adame, Director (monica.adame@pgaction.org) and Alex Roche, Senior Program Officer (alejandro.roche@pgaction.org).

¹⁰ Reportedly, Hon. Jomo Thomas has resigned from his political party and is stepping down as Speaker in the first quarter of 2020.